

THIS AGREEMENT was made on 12 December 2006 and was amended and restated on 26 October 2011

BETWEEN

- (1) **THE SECRETARY OF STATE FOR TRANSPORT**, whose principal address is at 33 Horseferry Road, London SW1P 4DR (the *Secretary of State*);
- (2) **VIRGIN RAIL GROUP LIMITED**, (registered number 3282548) whose registered office is at The School House, 50 Brook Green, London W6 7RR (*VRG*); and
- (3) **WEST COAST TRAINS LIMITED**, (registered number 3007940) whose registered office is at The School House, 50 Brook Green, London W6 7RR (the *Franchise Operator*).

WHEREAS

(A) Pursuant to section 23(1) of the Railways Act 1993 the then Director of Passenger Rail Franchising (the *Franchising Director*) designated on 30 November 1994 certain services for the carriage of passengers by railway as eligible for provision under franchise agreements.

(B) The Franchising Director issued in December 1996 an invitation to tender under section 26(2) of the Railways Act 1993 for the right to provide, or to secure that a wholly owned subsidiary provides, certain of such services and VRG submitted a tender in response to such invitation.

(C) The Franchising Director selected VRG on the basis of such tender as the person who was to be the franchisee under the franchise agreement in respect of such services.

(D) The Franchising Director and VRG (as Franchisee) entered into a franchise agreement on 19th February 1997, as amended from time to time, for the provision of certain services (the *Original Franchise Agreement*) and the Franchise Operator became a party to the Original Franchise Agreement on 9 March 1997.

(E) Pursuant to the Transport Act 2000, on 1 February 2001 the functions, property, rights and liabilities of the Franchising Director were transferred to the Strategic Rail Authority (the *Authority*) and the rights and liabilities of the Franchising Director under the Original Franchise Agreement transferred to the Authority. By a Transfer Scheme made on 24th July 2005 pursuant to the Railways Act 2005, the Authority's activities relating to franchising inter alia transferred to the Secretary of State, including all rights and liabilities of the Authority under the Original Franchise Agreement.

(F) The Secretary of State, VRG (as franchisee) and the Franchise Operator subsequently agreed certain amendments to the Original Franchise Agreement and entered into an amended and restated franchise agreement on 12 December 2006. That agreement (as has been amended from time to time) is referred to in this agreement as the 2006 Amended and Restated Franchise Agreement.

(G) By a request for proposal dated 10 June 2011 (the "**Request for Proposal**") the Secretary of State invited proposals from VRG and the Franchise Operator in connection with an extension of the Franchise Term and certain variations to the 2006 Amended and Restated Franchise Agreement.

(H) On 22 July 2011, in response to the invitation in the Request for Proposal to do so, VRG (as franchisee) and the Franchise Operator delivered to the Secretary of State its written and priced proposal for delivering the Secretary of State's specification as set out in the Request for Proposal (the "**Response to the Request for Proposal**").

(I) Following discussions on the Response to the Request for Proposal, the Secretary of State, VRG and the Franchise Operator have agreed certain amendments to the 2006 Amended and Restated Franchise Agreement and, pursuant to paragraph 1 of Schedule 19 (*Other Provisions*) of the Terms, have agreed the form of the amendments to the 2006 Amended and Restated Franchise Agreement. On 26 October 2011, the Secretary of State, VRG (as Franchisee) and the Franchise Operator entered into a deed of amendment and restatement to give effect to such amendments (the “**Amendment and Restatement Deed**”) by amending and restating the 2006 Amended and Restated Franchise Agreement on the terms set out below.

1. INTERPRETATION AND DEFINITIONS

1.1 In this Agreement:

Terms means the National Rail Franchise Terms (Second Edition).

1.2 The Terms are hereby incorporated by reference in this Agreement.

1.3 This Agreement and the Terms together constitute a single agreement, which is a “franchise agreement” for the purposes of the Act.

1.4 This Agreement shall be interpreted in accordance with the Terms, for which purpose terms defined therein shall have the same meanings where used in this Agreement, unless this Agreement expressly provides to the contrary.

1.5 If there is any conflict between the terms of this Agreement and the Terms, the terms of this Agreement shall prevail.

1.6 References to the Franchise Agreement include references to the Original Franchise Agreement as amended and restated by the 2006 Amended and Restated Franchise Agreement and by the Amendment and Restatement Deed.

2. COMMENCEMENT

2.1 The term of the Franchise commenced on the Franchise Commencement Date.

2.2 The Original Franchise Agreement was amended and restated in its entirety as provided for in the 2006 Amended and Restated Franchise Agreement with effect from the Start Date and by the Amendment and Restatement Deed with effect from 01:59 on 1 April 2012 (the “**Extension Commencement Date**”).

2.3 The amendment and restatement of the Original Franchise Agreement does not affect the operation or effect of the Original Franchise Agreement in respect of the period up to the Start Date, nor relieve any of the parties from liabilities accrued prior to the Start Date in respect of the Original Franchise Agreement save as expressly provided in Clause 2.4.

2.4 The Secretary of State agrees that he will not take any action to enforce or terminate the Franchise Agreement in respect of any Event of Default which may have existed or been alleged to exist at the date of the Letter Agreement (as defined in Appendix 16).

2.5 Each party acknowledges and agrees that:-

- (a) subject to Clauses 2.5(c) and 2.5(d), the 2006 Amended and Restated Franchise Agreement has been amended and restated in its entirety pursuant to the Amendment and Restatement Deed with effect from the Extension Commencement Date.

- (b) subject to Clause 2.5(c), the amendment and restatement of the 2006 Amended and Restated Franchise Agreement does not affect the operation or effect of the 2006 Amended and Restated Franchise Agreement in respect of the period up to the Extension Commencement Date nor relieve any of the parties from liabilities accrued prior to the Extension Commencement Date in respect of the 2006 Amended and Restated Franchise Agreement;
- (c) paragraphs 24.17 and 29 of Appendix 13 (*West Coast Specific Provisions*), shall have effect from the Extension Signature Date; and
- (d) for the avoidance of doubt, the 2006 Amended and Restated Franchise Agreement will continue in full force and effect until the Extension Commencement Date (notwithstanding that the “Initial Expiry Date” is stated in the 2006 Amended and Restated Franchise Agreement to be 31 March 2012.

3. **TERM**

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

4. **GENERAL OBLIGATIONS**

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

4.2 The Franchise Operator shall perform its obligations under this Agreement in accordance with its terms and with that degree of skill, diligence, prudence and foresight which would be exercised by a skilled and experienced Train Operator of the Franchise.

4.3 Any obligation on the part of the Franchise Operator to use all reasonable endeavours shall extend to consequent obligations adequately to plan and resource its activities, and to implement those plans and resources, with all due efficiency and economy.

4.4 Each of VRG and the Franchise Operator shall co-operate with the Secretary of State and act reasonably and in good faith in and about the performance of its obligations and the exercise of its rights pursuant to this Agreement.

4.5 The Secretary of State shall act reasonably and in good faith in and about the performance of his obligations and the exercise of his rights pursuant to this Agreement.

4.6 Clause 4.3 shall not apply to any reference to “reasonable endeavours” or “all reasonable endeavours” in:

- (a) this Agreement other than the Terms; or
- (b) the Terms to the extent that they have been amended by another provision of this Agreement and the effect or one of the effects of such amendment is to import a “reasonable endeavours” or an “all reasonable endeavours” obligation.

5. **SPECIFIC OBLIGATIONS**

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

Franchisee/Franchise Operator Relationship

5.1 In order to give effect to the respective roles and responsibilities of VRG and the Franchise Operator the Terms shall be amended as follows:-

- (a) Subject to Clause 5.1(b) each reference in the Terms (as amended by this Agreement) to “the Franchisee” shall be amended to, and read and interpreted as, a reference to the Franchise Operator;
- (b) Clause 1 shall be amended by adding the words “(whether or not any other person is party to it)” after the words “Train Operator” and by adding the words “or some of them” after the words “to be agreed between the parties”;
- (c) Clause 2.2(f) shall be amended by adding the words “,VRG” after the words Secretary of State;
- (d) sub-clause (c) of the definition of Additional Rolling Stock Investment shall be amended by deleting the word “parties” and replacing it with “Secretary of State and the Franchisee”;
- (e) paragraph 10.7 of Schedule 1.1 (Service Development) shall be amended by replacing the word “parties” with “Secretary of State and the Franchisee”;
- (f) sub-paragraphs (b) and (c) of paragraph 13.3 of Schedule 1.1 (Service Development) shall both be amended by deleting both references to “parties” and replacing them with “Secretary of State and the Franchisee”;
- (g) sub-paragraph (e) of paragraph 9.4 of Schedule 1.2 (Operating Obligations) shall be amended by replacing the word “the parties” with “Network Rail and the Franchisee”;
- (h) paragraph 5 of Schedule 5.7 (Changes to Fares and Fares Regulation) shall be amended by deleting the words “The Parties” and replacing with “The Secretary of State and the Franchisee”;
- (i) not used;
- (j) paragraph 1.2 of Schedule 8.3 (*Miscellaneous Payment Provisions*) shall be amended by deleting the words “by either party”;
- (k) paragraph 3.2 of Schedule 9.1 (*Financial Consequences of Change*) shall be amended by deleting the first reference to the word “party” and replacing it with “the Secretary of State or the Franchisee”;
- (l) paragraph 4.1 of Schedule 9.1 (*Financial Consequences of Change*) shall be amended by deleting the word “party” in the first line of that paragraph and replacing it with “the Secretary of State or the Franchisee” and deleting the words “that party” in paragraph 4.1(b) and replacing it with “the relevant party requiring the Run of the Financial Model”;
- (m) paragraph 4.2 of Schedule 9.1 (Financial Consequences of Change) shall be amended by deleting the word “parties” and replacing it with “Secretary of State and the Franchisee”;
- (n) Schedule 9.3 (Runs of the Financial Model) shall be amended by deleting all references to “parties” therein and replacing them all with “Secretary of State and the Franchisee”;
- (o) paragraph 1.5 of Schedule 10.1 (Remedial Plans and Remedial Agreements) shall be amended by deleting the word “parties” and replacing it with “Secretary of State and the Franchisee”

- and by adding the words “and VRG” before the words “to enter into a supplemental agreement”;
- (p) paragraph 2.2 of Schedule 10.2 (Termination and Expiry) shall be amended by adding the words “either or both of” before the words the “Franchisee” and by adding the words “and VRG” after the word “Franchisee”;
 - (q) paragraph 1.2 of Schedule 10.3 (Events of Default and Termination Event) shall be amended by adding the words “Each of” at the beginning of the paragraph and adding the words “and VRG” after the first reference to “Franchisee”;
 - (r) sub-paragraphs (a) and (b) of paragraph 2.7 of Schedule 10.3 (Events of Default and Termination Event) shall be amended by adding the words “or VRG” after both references to “Franchisee”;
 - (s) sub-paragraph (a) of paragraph 2.11 of Schedule 10.3 (Events of Default and Termination Event) shall be amended by adding the words “or VRG” after the word “Franchisee”;
 - (t) sub-paragraphs (b), (b)(ii) and (c) of paragraph 2.11 of Schedule 10.3 (Events of Default and Termination Event) shall be amended by adding the words “or VRG (as the case may be)” after each reference to “Franchisee”;
 - (u) paragraphs 2.1 and 2.2 of Schedule 10.5 (Liability) shall be amended by deleting both references to “either” and replacing them with “a”;
 - (v) sub-paragraphs (a) and (b) of paragraph 4.1 of Schedule 11 (*Agreement Management Provisions*) shall be amended by deleting both references to “parties” and replacing them with “Secretary of State and the Franchisee”;
 - (w) paragraph 5.5 of Schedule 12 (Financial Obligations and Covenants) shall be amended by deleting the word “parties” and replacing it with “Secretary of State and the Franchisee”;
 - (x) sub-paragraph (a) of paragraph 2.5 of Schedule 13 (Information and Industry Initiatives) shall be amended by deleting the word “parties” and replacing it with “Secretary of State and the Franchisee”;
 - (y) paragraph 1.4 of Schedule 14.2 (Maintenance of Operating Assets) shall be amended by deleting the word “parties” and replacing it with “Secretary of State and the Franchisee” and by deleting the word “party” and replacing it with “of them”;
 - (z) recital A of Appendix 1 to Schedule 15.4 (Form of Transfer Scheme) shall be amended by adding the words “and VRG” after the definition “(the Secretary of State)”;
 - (aa) recital A of Appendix 2 to Schedule 15.4 (Form of Supplemental Agreement) shall be amended by adding the words “and VRG” after the definition “(the Secretary of State)”;
 - (bb) sub-paragraph (b) of paragraph 3.1 of Schedule 15.4 (Provisions Applying on and after Termination) shall be amended by deleting both references to “party” and by replacing only the first with “the Secretary of State or the Franchisee”;
 - (cc) paragraph 4.4 of Schedule 15.4 (Provisions Applying on and after Termination) shall be amended by deleting the word “The” and adding the words “Each of VRG and the” at the beginning of the paragraph;
 - (dd) paragraph 1 of Schedule 17 (Confidentiality) shall be amended by inserting the words “any of” after the words “on behalf of” and by replacing the second occurrence of the word “party”

- by the word “parties” and the words “the other party’s” shall be replaced by the word “the relevant party’s”;
- (ee) paragraph 2 of Schedule 17 (Confidentiality) shall be amended by deleting the words “other party” and by replacing them with “relevant party”;
 - (ff) paragraph 4 of Schedule 17 (Confidentiality) shall be amended by deleting the first reference to “either” and replacing it with “any” and by deleting the words “either party” after the words “disclosure by” and replacing with the words “any of them”;
 - (gg) sub-paragraph (b) of paragraph 1.1 and paragraph 1.2 of Schedule 19 (Other Provisions) shall be amended by deleting both references to “parties” and replacing them with “Secretary of State and the Franchisee”;
 - (hh) paragraph 4.2 of Schedule 19 (*Other Provisions*) shall be amended by deleting the word “party” and replacing it with “the Secretary of State or the Franchisee” and by deleting the word “the parties” and replacing it with “those parties”;
 - (ii) paragraph 4.3 of Schedule 19 (Other Provisions) shall be amended by deleting the words “any party” and replacing them with “either of the Secretary of State or Franchisee”;
 - (jj) sub-paragraph (a) of paragraph 5.1 of Schedule 19 (Other Provisions) shall be amended by deleting the words “the other party” and replacing them with “each other party”;
 - (kk) paragraph 6 of Schedule 19 (Other Provisions) shall be amended by deleting the words “The Franchisee shall not” and replacing them with “Neither the Franchisee nor VRG shall”; and
 - (ll) sub-paragraphs (a) and (b) of paragraph 8.1 of Schedule 19 (Other Provisions) shall be amended by deleting both references to “either” and replacing them with “any” and by deleting the words “the other party” and replacing them with “any other party”.

Clause 3 (*Definitions*)

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

- (a) the prescribed month for the purpose of the definition of ***Bond Year*** is March;
- (b) for the purpose of paragraph (ii) of the definition of ***Change of Law*** the following shall not be regarded as foreseeable:
 - (i) implementation of the Diesel Air Pollution TSI;
 - (ii) implementation of Legislation following HMT’s Consultation on ultra low sulphur tax;
 - (iii) implementation of ERTMS (and associated issues) regarding Class 390 and 221 tilt functionality;
 - (iv) implementation of any other TSIs under Directive 2001/16;
- (c) the prescribed stations for the purpose of the definition of ***Commuter Fare*** are:
 - (i) London Stations; and
 - (ii) Suburban Stations;

- (d) the ***Commuter Fares*** Document in the agreed terms is attached to this Agreement marked ***CFD***;
- (e) the schemes for the purpose of the definition of ***Discount Fare Scheme*** are:
 - (i) ATOC Disabled Persons Railcard Scheme dated 23 July 1995 between the participants named herein;
 - (ii) ATOC Young Persons Railcard Scheme dated 23 July 1995 between the participants named therein; and
 - (iii) ATOC Senior Railcard Scheme dated 23 July 1995 between the participants named therein;
- (f) the prescribed period for the purpose of the definition of ***Evening Peak*** is the period between 1600 and 1859 during a Weekday or such other continuous evening three hour period as the Secretary of State may specify from time to time;
- (g) for the purposes of the definition of ***Franchise***:
 - (i) the reference to rights tendered by the Secretary of State shall be read as a reference to rights tendered by the Franchising Director;
 - (ii) the prescribed date is December 1996; and
 - (iii) the prescribed places are London, Birmingham, Wolverhampton, Chester, Holyhead, Manchester, Liverpool, Preston and Glasgow, amongst others and as may be varied from time to time in accordance with the Franchise Agreement;
- (h) each ***Franchisee Year*** shall, subject to the terms of that definition, begin on 1 April and end on 31 March;
- (i) the ***Initial Business Plan*** in the agreed terms is attached to this Agreement marked ***IBP***;
- (j) not used;
- (k) the schemes for the purpose of the definition of ***Inter-Operator Scheme*** are:
 - (i) ATOC Staff Travel Scheme dated 23 July 1995 between the participants named therein;
 - (ii) Ticketing and Settlement Agreement;
 - (iii) ATOC LRT Scheme dated 23 July 1995 between the participants named therein;
 - (iv) Travelcard Agreement dated 15 October 1995 between London Regional Transport and the parties named therein;
 - (v) Through Ticketing (Non-Travelcard) Agreement dated 15 October 1995 between London Regional Transport and the parties named therein; and
 - (vi) National Rail Enquiry Scheme dated 11 June 1996 between the parties named therein;

- (l) the prescribed stations for the purpose of the definition of Managed Station are London Euston, Birmingham New Street, Manchester Piccadilly, Glasgow Central, Liverpool Lime Street, Edinburgh Waverley;
- (m) the prescribed amount for the purpose of the definition of **Minor Works' Budget** is £250,000 for each Franchisee Year;
- (n) the prescribed period for the purpose of the definition of **Morning Peak** is the period between 0700 and 0959 during a Weekday or such other continuous morning three hour period as the Secretary of State may specify from time to time;
- (o) the **Operational Model** in the agreed terms is attached to this Agreement marked, subject to and in accordance with paragraph 26 of Appendix 13 (*West Coast Specific Provisions*), **OM** or **OM2**;
- (p) **Parent** means VRG;
- (q) the **Passenger's Charter** in the agreed terms is attached to this Agreement marked **PC**;
- (r) the **Power of Attorney** in the agreed terms is attached to this Agreement marked **POA**;
- (s) the **Protected Fares Document** in the agreed terms is attached to this Agreement marked **PDF**;
- (t) for the purpose of the definition of **Qualifying Change**, the prevailing discount rate is 3.5 per cent. per annum (in real terms) at the date of this Agreement;
- (u) the **Record of Assumptions** in the agreed terms is attached to this Agreement and marked, subject to and in accordance with paragraph 26 of Appendix 13 (*West Coast Specific Provisions*), **ROA** or **ROA2**
- (v) the Reporting Accountants are KPMG LLP;
- (w) the agreed assumptions for the purpose of the definition of **Secretary of State Risk Assumptions** are set out in Appendix 1 (*Secretary of State Risk Assumptions*) to this Agreement;
- (x) the **Service Level Commitment** in the agreed terms is attached to this Agreement marked **SLC** (and **SLC1**, **SLC2**, **SLC3** and **SLC4** are the statements of service level commitment comprised within the Service Level Commitment and applicable for the periods stated in the Service Level Commitment);
- (y) not used;
- (z) not used;
- (aa) not used;
- (bb) not used;
- (cc) the agreed amounts of **TR** for the purpose of the definition of **Target Revenue** are set out in Appendix 2 (*Target Revenue (expressed in real terms)*) to this Agreement;
- (dd) for the purposes of the formula set out in the definition of **Threshold Amount**:

- (i) the prescribed threshold amount for any Franchise Year, referred to by the acronym “FAT” is £¹;
 - (ii) the prescribed month for the purpose of the definition of **CRPI** is the Retail Prices Index published for November; and
 - (iii) the prescribed base month and year for the purpose of the definition of **ORPI** are November and November 2005; and
- (ee) the **Train Plan** in the agreed terms is attached to this Agreement marked **TP**.

Changes to the Terms

5.3 The Terms shall be amended by:

(a) the following words and expressions or parts contained in Clause 3.1 thereof being disapplied:

- (i) **Capacity Benchmark;**
- (ii) **Capacity Benchmark Table;**
- (iii) **Certificate of Commencement;**
- (iv) **Conditions Precedent Agreement;**
- (v) **Continuation Review Date;**
- (vi) **Continuation Review Period;**
- (vii) **Franchise Letting Process Agreement;**
- (viii) **Initial Expiry Date;**
- (ix) **Previous Franchise Agreement;**
- (x) **Quality Plan;**
- (xi) **Review Date;**
- (xii) **Start Date Transfer Scheme;**
- (xiii) **Service Quality Audit Programme;**
- (xiv) **Service Quality Management System;**
- (xv) **Service Quality Plan;**
- (xvi) **Service Quality Reporting Period;**
- (xvii) **Service Quality Standard;**

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

- (xviii) ***Station Environment Specification Standard;***
- (xix) ***Train Performance Specification Standard;***
- (b) the following provisions or parts thereof of the Terms being disapplied:
 - (i) paragraph 1 of Schedule 1.3 (*Ticket Collection and Ticketing*);
 - (ii) paragraph 1.2 of Schedule 1.5 (*Information about Passengers*);
 - (iii) paragraph 5(e) of Schedule 1.6 (*Franchise Services*);
 - (iv) paragraphs 1.2, 2.3, 2.4, 2.5 and 2.6 of Schedule 7.1 (*Performance Benchmarks*);
 - (v) paragraph 4.2 of Schedule 7.1 (*Performance Benchmarks*);
 - (vi) Schedule 7.2 (*Service Quality Management*);
 - (vii) paragraph 1.7 and paragraph 1.8 of Schedule 13 (*Information and Industry Initiatives*);
 - (viii) paragraphs 4.3 to 4.5 (inclusive) of Schedule 13 (*Information and Industry Initiatives*);
 - (ix) paragraph 1.3 of Schedule 15.2 (*Last 12 or 13 Months of Franchise Period*);
 - (x) Schedule 18 (*Franchise Continuation Criteria*);
 - (xi) paragraphs 10, 11.1 and 11.2 of Schedule 1.1 (*Service Development*) from the Start Date for so long as the Franchise Operator is subject to the Best Achievable Access Rights provisions in PUG2 TAA.
- (c) the insertion in Clause 3.1 thereof of the following definitions:
 - (i) ***2006 Amended and Restated Franchise Agreement*** has the meaning given to such term in recital (F);
 - (ii) ***Amendment and Restatement Deed*** has the meaning ascribed to it in recital (I);
 - (iii) ***Cancellation Historic Performance*** means the number set out in Column 2 of the Historic Performance Table;
 - (iv) ***CrossCountry Franchise*** means the rights tendered by the Secretary of State to operate certain railway passenger services identified by him as the CrossCountry Franchise (or by such other name as he may notify to the Franchise Operator for this purpose from time to time);
 - (v) ***CrossCountry Successor Operator*** means the Train Operator succeeding or intended by the Secretary of State to succeed (and whose identity is notified to the Franchise Operator by the Secretary of State) CrossCountry Trains in the provision or operation of all or any of the services operated by CrossCountry Trains under its franchise agreement;

- (vi) **CrossCountry Trains** means CrossCountry Trains Limited, company number 3007937 whose registered office is at The School House, 50 Brook Green, London W6 7RR;
- (vii) **December 2008 Timetable Change Date** means the date in or around December 2008 which, pursuant to and for the purposes of the operation of the Network Code, is the date upon which significant changes may be made to the Timetable;
- (viii) **Execution Date** means the date on which the 2006 Amended and Restated Franchise Agreement was signed by the Secretary of State, VRG and the Franchise Operator;
- (ix) **Existing Voyager Agreement** means the agreement which:-
 - (a) is dated 20 December 2004 and made between the Franchise Operator and CrossCountry Trains; and
 - (b) relates to the making available to the Franchise Operator of Class 221T Voyager rolling stock units for use in the provision of train services operated by the Franchise Operator.
- (x) **Extension Commencement Date** means 01:59 on 1st April 2012;
- (xi) **Extension Signature Date** means the date of signature of the Amendment and Reinstatement Deed;
- (xii) **Franchise Commencement Date** means 9 March 1997;
- (xiii) **Historic Performance Table** means the table set out in Appendix 7A to this Agreement;
- (xiv) **New Track Access Contract** means:-
 - (a) a new Track Access Agreement which replaces PUG2 TAA; or
 - (b) an amendment to PUG2 TAA which has the effect of substantially amending the Franchise Operator's Schedule 5 rights including, without limitation, by providing for Firm Rights (as defined in the Network Code) in addition to or instead of the Best Achievable Access Rights provisions of the PUG2 TAA
- (xv) **Olympic Confidentiality Agreement** means the document in the agreed terms marked **OCA**;
- (xvi) **Olympic No Marketing Agreement** means the document in the agreed terms marked **ONMA**;
- (xvii) **Periodic Target Revenue** means for the period:-
 - (a) up to the Extension Commencement Date the target revenue for the relevant Reporting Period as set out in the table in the agreed terms marked **PTR**;
 - (b) commencing on and from the Extension Commencement Date the target revenue for the relevant Reporting Period as set out in the table in the agreed terms marked **PTR2**,

in either case as adjusted pursuant to Schedule 9 (*Changes*) of the Terms;

- (xv) **PUG2 TAA** means the Track Access Agreement in force as at the Start Date;
 - (xvi) **Rolling Stock Finance Facility** means any contract or facility for or relating to the provision of finance (including, without limitation any lease finance, lease purchase or hire purchase contract) for the provision of Rolling Stock or for the purpose of repaying, replacing or refinancing any other Rolling Stock Finance Facility;
 - (xvii) **Service Delivery Historic Performance** means the number set out in column 4 of the Historic Performance Table in respect of the relevant Reporting Period set out in column 1;
 - (xviii) Not used
 - (xix) Not used
 - (xx) Not used
 - (xxi) **Upgrade Project** means any and all of the following projects, as more particularly described in the West Coast Main Line Progress Report issued by the Department for Transport in May 2006:
 - (i) Line Speed Improvement to achieve the speed profile set out in the A09 Line Speed Profile;
 - (ii) Milton Keynes/Northampton;
 - (iii) Rugby re-modelling;
 - (iv) Nuneaton;
 - (v) Trent Valley Four Tracking;
 - (vi) Crewe-Weaver;
 - (vii) Installation of Auto Transformers;
 - (viii) SWIM Project.
 - (xxii) **West Midlands Franchise** means the rights tendered by the Secretary of State to operate certain railway passenger services identified by him as the West Midlands Franchise (or by such other name as he may notify to the Franchise Operator for this purpose from time to time).
- (d) the amendment to the following definitions in Clause 3.1 of the Terms thereof:
- (i) **Benchmark Table** by the deletion of the following
 - “(b) any Capacity Benchmark, the Capacity Benchmark Table,”
 - (ii) **Change** shall be amended by:
 - (a) adding the following words to the end of sub-clause (f):-
 - “and for the purposes of this Agreement, any change between:-

- (i) the services described in the West Midlands Specification in the agreed terms marked **WMS**; and
- (ii) the services which the franchisee of the West Midlands Franchise is required by the Secretary of State to operate at the commencement of the West Midlands Franchise

will be a Change for the purposes of this sub-clause (f);”

- (b) deleting the existing paragraph (j) in its entirety and inserting “the Facility Charge as defined in Schedule 7 of the Track Access Contract (Passenger Services) dated 1 September 2011 between Network Rail Infrastructure Limited and the Secretary of State (as approved by ORR and as novated to the Franchise Operator) is different from the assumed value of zero. Such a Change will be a Qualifying Change”;
- (c) deleting the existing paragraph (q) in its entirety and inserting “not used”;
- (d) deleting the reference to “clause 5.1(l)” in sub-clause (m) and replacing it with a reference to “clause 5.2(k)”;
- (e) adding further sub-paragraphs (v), (w), (x), (y), (z), (aa) and (ab) at the end as follows:
 - “(v) ²
 - (w) ³
 - (x) ⁴
 - (y) the Secretary of State exercising his rights under paragraph 17.1 of Appendix 13 (*West Coast Specific Provisions*) to require the Franchise Operator to enter into an amendment to the PUG2 TAA in order to give effect to any determination by the ORR following any Charging Review;
 - (z) ⁵
 - (aa) ⁶
 - (ab) any other circumstances which are described in this Franchise Agreement as giving rise to a Change or a Qualifying Change”.

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

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

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

- (iii) **Commuter Fare** shall be amended by deleting the references to “clause 5.1(b)(i)” in sub-paragraphs (b) and (c) and replacing them with a reference to “clause 5.2(c), and by deleting the reference to “clause 5.1(b)(ii) in sub-paragraph (c) and replacing it with a reference to “clause 5.2(c)(ii).”
- (iv) **Discount Fare Scheme** shall be amended by deleting the reference to “clause 5.1(d)” in sub-clause (a) and replacing it with a reference to “clause 5.2(e)”.
- (v) **Expiry Date** shall be amended by deleting the existing text in its entirety and inserting “**Expiry Date** means 01:59 on 9 December 2012”.
- (vi) **Financial Model** shall be amended by deleting the existing text in its entirety and inserting the following:

“ means, subject always to paragraph 26 of Appendix 13 (*West Coast Specific Provisions*), the Franchisee’s financial model (including its revenue model) deposited with the Secretary of State on the date of the Franchise Agreement as subsequently revised (in each case in accordance with Schedule 9.2 (*Identity of the Financial Model*));”.
- (vii) **Franchise Agreement** shall be amended by deleting the existing text in its entirety and inserting the following

“means the agreement between the Secretary of State, VRG and the Franchisee dated 12 December 2006 (which amended and restated the Original Franchise Agreement) as further amended and restated by the Amendment and Restatement Deed and which constitutes a single agreement together with the Terms and is a “franchise agreement” for the purposes of the Act;”.
- (viii) **Franchise Period** shall be amended to read “the period commencing on the Franchise Commencement Date and ending on the Expiry Date or, if earlier the date of termination of the Franchise Agreement pursuant to Schedule 10 (*Remedies, Termination and Expiry*)”.
- (ix) **Franchise Term** shall be amended to read “means the period commencing on the Franchise Commencement Date and expiring on the Expiry Date”.
- (x) **Inter-Operator Schemes** shall be amended by deleting the reference to “clause 5.1(l)” and replacing it with a reference to “clause 5.2(k)”.
- (xi) **Integrated Transport Smartcard Organisation** shall be amended by deleting the existing text in its entirety and inserting the following:

“**Integrated Transport Smartcard Organisation**” means ITSO Limited, the organisation created by passenger transport executives, bus operators and Train Operators for the development and promotion of smartcards for use on transport;”
- (xii) **Managed Station Area** shall be amended to read “means any premises comprising part of a Managed Station which is occupied by the Franchise Operator on or at any time after the Start Date and used for or in connection with the provision of the Franchise Services.”
- (xiii) **Olympic Services Delivery Plan** shall be amended by deleting the existing text in its entirety and inserting the following:

“Olympic Services Delivery Plan means the Olympic Services Delivery Plan in the agreed terms marked **OSDP1**;

- (xiv) ***Performance Bond*** shall be amended by deleting the following: “1 (*Form of Performance Bond*) to Schedule 12 (*Financial Obligations and Covenants*)” and replacing with “21 (*Form of Performance Bond*) to the Franchise Agreement.”
- (xv) ***Reporting Period*** shall be amended by deleting “the Start Date” in paragraph (b) (i) and inserting in their place the words “the Franchise Commencement Date”.
- (xvi) ***Review Date*** shall be amended by deleting “: (a)” after the word “means” and “or;” from the end of sub-paragraph (a) and by deleting sub-paragraph (b) entirely.
- (xvii) ***Start Date*** shall be deleted in its entirety and replaced as follows :

“Start Date shall be the effective date of the 2006 Amended and Restated Franchise Agreement being 0200 on the 10 December 2006”.
- (xviii) ***Season Ticket Bond*** “2 (*Form of Season Ticket Bond*) to Schedule 12 (*Financial Obligations and Covenants*)” and replacing with “22 (*Form of Season Ticket Bond*) to the Franchise Agreement.”
- (xix) ***Threshold Amount*** shall be amended as follows:
 - (a) the addition of a new sub-paragraph as follows:
 - (b) ⁷
 - (b) the subsequent renumbering of old sub-paragraph (b) as new sub-paragraph (c); and
 - (c) the deletion of the definition of CRPI and the replacement with the following:

“means the Retail Prices Index published for the month described as such in the Franchise Agreement immediately preceding the commencement of that Franchisee Year”.
- (xx) ***Through Ticketing (Non-Travelcard Agreement)*** shall be amended by deleting the reference to “clause 5.1(l)(v)” and replacing it with a reference to “clause 5.2(k)(v).”
- (xxi) ***Travelcard Agreement*** shall be amended by deleting the reference to “clause 5.1(l)(iv)” and replacing it with a reference to “clause 5.2(k)(iv).”
- (xxii) ***Young Person’s Railcard*** shall be amended by deleting the reference to “clause 5.1(d)(ii)” and replacing it with a reference to “clause 5.1(e)(ii).”
- (e) the following provisions being added:

[Not used]
- (f) the following provisions in the Terms being amended:

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

- (i) Clause 2.1 shall be amended by deleting the words “and the Conditions Precedent Agreement”.
- (ii) paragraph 5 of Schedule 1.6 (*Franchise Services*) shall be amended as follows:
 - (a) deletion of the word “and” at the end of sub-paragraph (p);
 - (b) insertion of the following as new sub-paragraph (q):

“(q) the management of Birmingham New Street and London Euston stations (provided that such management shall only extend to such services or activities as may or might be provided by the Franchise Operator at a Station within the other terms of Schedule 1.6 or under the terms of the Agreements for the Provision of Station Services between Network Rail and the Franchise Operator dated 9 November 1995 (as amended); and”;
 - (c) subsequent renumbering of old sub-paragraph (q) to become new sub-paragraph (r); and
 - (d) the deletion of “(p)” in new sub-paragraph (r) and replacement with “(r)”.
- (iii) the final paragraph 4.1 of Schedule 1.6 (*Franchise Services*) shall be amended by deleting the words “or Depot”.
- (iv) paragraph 5.2 of Schedule 2.2 (*Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases*) shall be amended by deleting the words “(which for the purposes of this paragraph 5.2 (b) shall include the termination, at or around the time of termination of the Previous Franchise Agreement, of a station sub-lease in respect of which the Franchisee was the lessor),”.
- (v) paragraph 1.4 of Schedule 7.1 (*Performance Benchmarks*) shall be deleted entirely and replaced as follows:-

“Cancellations Benchmark Reconciliation

1.4(a) The parties acknowledge that the Cancellations Benchmarks (the ***Current Benchmarks***) and the Cancellation Historic Performance are in each case based on data extracted using a different source/methodology (“***DfT Methodology***”) from that used by the Franchise Operator.

(b) Accordingly, and in order to hold constant the risk of the Franchise Operator failing to satisfy the requirements of the Cancellations Benchmark, by the end of the first Reporting Period after the Start Date, a new set of Cancellations Benchmarks (the ***New Benchmarks***) and a new Column 2 of the Historic Performance Table (the ***New Column 2***) shall be produced. The New Benchmarks and the New Column 2 will be recalibrated:-

- (i) taking into account historic cancellations data for the 13 Reporting Periods preceding the Start Date supplied by the Franchise Operator; and
- (ii) with the intention that the Franchise Operator shall be in an equivalent position to that which it would have been in if its performance against the Current Benchmarks was measured in line with the data used by the Franchise Operator to propose the Current Benchmarks, and if its Cancellation Historic Performance was

measured in line with its actual performance in the 13 Reporting Periods preceding the Start Date.

- (c) In the absence of agreement the New Benchmarks and the New Column 2 will be reasonably determined by the Secretary of State;
- (vi) paragraph 2.12 of Schedule 7.1 (*Performance Benchmarks*) shall be amended by deleting the words “assume performance at Target Performance Level in respect of any of the 13 Reporting Periods that precede the Start Date” and replacing them with:-
- “(a) in respect of each such Reporting Period except the last two Reporting Periods immediately preceding the Start Date (***Last Reporting Periods***), use the Cancellations Historic Performance (as recalibrated in accordance with paragraph 1.4) or Service Delivery Historic Performance (as the case may be); and
- (b) in respect of the Last Reporting Periods, comply with the requirements of paragraph 2.2 and 2.8-2.10 (respectively). For the avoidance of doubt, the Franchise Operator will comply with the requirements of paragraphs 2.1, 2.7 and 2.11 in respect of the Last Reporting Periods notwithstanding that such Last Reporting Periods precede the Start Date.”
- (vii) Schedule 8.1 (*Franchise Payments*) shall be amended by deleting that Schedule and inserting in its place the Schedule contained in Appendix 20 to this Agreement.
- (viii) Paragraph 1.1(a) of Schedule 9.1 (*Financial Consequences of Change*) will be amended to read “the amounts of Target Revenue for each Franchisee Year (together with the disaggregated amounts showing the Periodic Target Revenue as specified in the table in agreed terms marked ***PTR*** in respect of the period up to but excluding the Extension Commencement Date or ***PTR 2*** in respect of the period from and including the Extension Commencement Date) as specified in the table set out in Appendix 2 (*Target Revenue (expressed in real terms)*) to the Franchise Agreement; and”
- (ix) paragraph 1(e) of Schedule 10.4 (*Force Majeure*) shall be deleted entirely and replaced with a new sub-paragraph (e) as follows:
- “(e) act of God, war damage, enemy action, terrorism or suspected terrorism, riot, civil commotion, rebellion (together ***Emergency Events***) or the act of any government instrumentality (including the ORR in so far as the act of directly relates to any of the Emergency Events), provided that there shall be no Force Majeure Event under this paragraph 1(e) by reason of:
- (i) the suicide or attempted suicide of any person that does not constitute an act of terrorism;
- (ii) the activities of the police, fire service, ambulance service or other equivalent emergency service that are not in response to acts of terrorism or suspected terrorism;
- (iii) an act of God which results in the Franchisee or its agents or subcontractors being prevented or restricted by Network Rail from gaining access to any relevant section or part of track; or

(iv) any exercise by the Secretary of State of any of his rights under this Franchise Agreement; and ”.

- (x) paragraph 2 of Schedule 12 (*Financial Obligations and Covenants*) shall be amended to read as follows:

“FINANCIAL RATIOS

The Franchisee covenants that as at the end of each Reporting Period commencing with the first Reporting Period after the Start Date, during the Franchise Term:

- (a) the ratio of its Modified Revenue to its Actual Operating Costs during the preceding 13 Reporting Periods of the Franchise Term following the Start Date (or, prior to the end of the thirteenth such Reporting Period, during all preceding Reporting Periods following the Start Date) will equal or exceed the ratio of 1.05:1; and
- (b) the ratio of its Forecast Modified Revenue to its Forecast Operating Costs for the next 13 Reporting Periods (or where there are less than 13 Reporting Periods remaining in the Franchise Term, for all such remaining Reporting Periods) will equal or exceed the ratio of 1:05:1.”
- (xi) paragraphs 4.1(b) and 4.2(a) of Schedule 12 (*Financial Obligations and Performance Bond*) of the Terms shall be amended by deleting the reference to “Appendix 1” and replacing it with a reference to “Appendix 21” and adding the words “to the Franchise Agreement” after the words in brackets.
- (xii) paragraph 4.4 of Schedule 12 (*Financial Obligations and Covenants*) of the Terms shall be amended by deleting the words “as follows:” and by deleting paragraphs (a), (b) and (c) entirely, and replacing them with “the amount prescribed for the purpose in the Franchise Agreement.”
- (xiii) paragraph 5.1 and 5.2(a) of Schedule 12 (*Financial Obligations and Covenants*) of the Terms shall be amended by deleting the reference to “Appendix 2” and replacing it with a reference to “Appendix 22” and adding the words “to the Franchise Agreement” after the words in brackets.
- (xiv) paragraph 9 of Schedule 14.3 (*Key Contracts*) of the Terms shall be amended by deleting the words “whether or not the Franchise Agreement is continued after the Initial Expiry Date in accordance with Schedule 18 (*Franchise Continuation Criteria*)”
- (xv) Schedule 15.2 (*Last 12 or 13 Months of Franchise Period*) of the Terms shall be amended as follows:-
- (a) paragraphs 1.1 to 1.3 shall be deleted in their entirety and replaced with the following:
- “Where reference is made in this Franchise Agreement to the last twelve or thirteen months of the Franchise Period, such period shall (notwithstanding the fact that such period is longer than twelve or thirteen months) be deemed to have commenced on 28 February 2011.” ; and

(b) ⁸

- (xvi) paragraph 4.2 and 4.3 of Schedule 16 (*Pensions*) shall be deleted entirely and replaced with a new paragraph 4.2 and 4.3 as follows:

“4.2 The Franchisee shall consult with the Secretary of State on:

(a) any proposal made by the Trustee to change the statement of investment principles applicable to any Franchise Section; and

(b) any proposal to alter the rate of contributions payable by the Franchisee or its employees under a new schedule of contributions for the Franchise section.

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

- (xvii) paragraph 1.2 of Schedule 19 (*Other Provisions*) of the Terms shall be amended by deleting the words “, 18 (*Franchise Continuation Criteria*)”

Schedule 1.1 (*Service Development*)

5.4 For the purpose of paragraph 3.1 of Schedule 1.1 (*Service Development*) of the Terms, Table 1 is set out in Appendix 3 (*The Train Fleet*) to this Agreement.

Schedule 1.4 (*Passenger Facing Obligations*)

5.5 Paragraph 5.2(b) of Schedule 1.4 (*Passenger Facing Obligations*) of the Terms shall be deleted and the following shall be inserted “undertake a survey of 75 such persons with disabilities twice a year to record whether those persons received such seating accommodation and/or assistance as they required, and their satisfaction with the service they received; and”

Schedule 1.5 (*Information about Passengers*).

5.6 Paragraph 1.1 of Schedule 1.5 (*Information about Passengers*) of the Terms shall be deleted and shall be replaced with:

"1.1 The Franchisee shall, as and when so requested by the Secretary of State:

- (a) carry out a programme of passenger counts at such times and at such places and in respect of such of the Passenger Services as the Secretary of State may reasonably specify (but on no more than two occasions per calendar year) and shall notify the Secretary of State, within 14 days of the completion of any such programme, of the result of such counts provided that:-
- (i) to the extent that the Secretary of State specifies on-train counts as part of such a programme, it is agreed that the Franchisee may satisfy the on-train count requirement by undertaking its usual on-train count methodology (as utilised to produce the data described in (b) below) to provide the on-train component of the counts requested by the Secretary of State in respect of the day or period in respect of which the counts are required; and
- (ii) where paragraph (a)(i) (above) applies, then for the avoidance of doubt:-

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

- (a) the reference to “reasonable endeavours” in paragraph (b) below shall be deemed to be deleted;
 - (b) the Franchisee shall not be entitled to amend the list of stations; and
 - (c) the Franchisee’s discretion not to undertake an on-train count where it is impractical to do so, shall be exercised reasonably (having regard to all the circumstances).
 - (b) provide information to the Secretary of State on the extent of the use by passengers of the Passenger Services. In particular and when so requested, the Franchisee shall use reasonable endeavours to provide information relating to:
 - (i) the number of passengers on the train at the point when the passenger count was taken:
 - (a) travelling in each class of accommodation;
 - (b) on each Passenger Service;
 - (c) on each Route; and
 - (ii) the time of the day, week and year at which the passenger count was taken,
- following the departure of the train from each of the stations listed below at which the train is scheduled to stop:

Birmingham New Street
Bangor
Carlisle
Coventry
Crewe
Chester
Edinburgh Waverley
Euston
Glasgow Central
Holyhead
Lancaster
Liverpool Lime Street
Llandudno Junction
Lichfield Trent Valley
Manchester Piccadilly
Milton Keynes Central
Nuneaton
Oxenholme
Preston
Rhyl
Rugby
Stoke On Trent
Stafford
Watford Junction
Wilmslow
Wolverhampton

provided that the Franchisee shall not be required to provide the information to the Secretary of State where the Franchisee considers, in its sole discretion, that it is impracticable to undertake the passenger count whether due to overcrowding of the train or otherwise. The Franchisee may amend the list of stations (as set out above) at its sole discretion.

The information derived from paragraphs (a) and (b) shall together constitute ***Actual Passenger Demand***."

Schedule 1.6 (*Franchise Services*)

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

- (a) 1 per cent.; and
- (b) 5 per cent.

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

- (a) £50,000 per annum per item; and
- (b) £250,000 per annum in aggregate.

Schedule 2.1 (*Asset Vesting and Transfer*)

5.9 The provisions of Part 1 of Schedule 2.1 (*Asset Vesting and Transfer*) of the Terms shall apply, for which purpose any new Property Lease shall be in the agreed terms attached to this Agreement marked ***SL***.

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

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

Schedule 2.5 (*Transport, Travel and Other Schemes*)

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

- (a) None

5.12 The prescribed concessionary travel schemes for the purpose of paragraph 2.1(a) of Schedule 2.5 (*Transport, Travel and Other Schemes*) of the Terms are as follows:

- (a) Strathclyde PTE Concessionary Fare Scheme
- (b) GMPTE Concessionary Fare Scheme
- (c) West Midlands PTE Concessionary Fare Scheme

5.13 The prescribed multi-modal schemes for the purpose of paragraph 3.1(a) of Schedule 2.5 (*Transport, Travel and Other Schemes*) of the Terms are as follows:

- (a) Strathclyde PTE Multi-Modal Scheme

- (b) West Midlands PTE Centrocard Scheme
- (c) West Midlands PTE RailMaster Scheme

Schedule 3 (*Priced Options*)

5.14 Not Used.

Schedule 7.1 (*Performance Benchmarks*)

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

5.16 The Service Delivery Benchmarks for the purpose of paragraph 1.3 of Schedule 7.1 (*Performance Benchmarks*) of the Terms are set out in Appendix 7 (*Service Delivery Benchmark Table*) to this Agreement.

5.17 The Cancellations Historic Performance or Service Delivery Historic Performance (as the case may be) for the purpose of paragraph 2.12 of Schedule 7.1 (*Performance Benchmarks*) of the Terms are set out in Appendix 7A (*Historic Performance Table*) to this Agreement.

Schedule 8.1 (*Franchise Payments*)

5.18 Not used

5.19 Not used

Schedule 8.2 (*Annual Franchise Payments*)

5.20 The agreed figures for the purposes of the definitions of ***FXD***, ***VCRPI***, ***VCAEI***, ***PRPI*** and ***TRRPI*** in the formula set out in Schedule 8.2 (*Annual Franchise Payments*) of the Terms are shown in the table set out in Appendix 8 (*Figures for Calculation of Annual Franchise Payments*) to this Agreement.

5.21 The prescribed month and the prescribed date for the purposes of the definition of ***RPI*** in the formula set out in Schedule 8.2 (*Annual Franchise Payments*) of the Terms are respectively, November and November 2005 and the prescribed month and the prescribed date for the purposes of the definition of ***AEI*** in the formula set out in Schedule 8.2 of the Terms are, respectively November and November 2005.

Schedule 9.3 (*Runs of the Financial Model*)

5.22 The percentage agreed profit margin for the purpose of paragraphs 7.1(a) and 7.1(b)(i) of Schedule 9.3 (*Runs of the Financial Model*) of the Terms is 2.5 per cent. Notwithstanding any other provision of Schedule 9, in no circumstances shall there be any Revised Input to amend line 828 of the inbase worksheet of the Financial Model in the agreed terms **FM** (which represents a fixed adjustment to the Annual Franchise Payment in each Franchisee Year).

Schedule 12 (*Financial Obligations and Covenants*)

5.23 The agreed amount of any Performance Bond for the purpose of paragraph 4.4 of Schedule 12 (*Financial Obligations and Covenants*) of the Terms is £⁹

Schedule 13 (*Information and Industry Initiatives*)

5.24 The following sentence shall be added to the end of paragraph 7.2 of Schedule 13 (*Information and Industry Initiatives*) of the Terms:

“such obligation shall be subject to the payment by the Secretary of State of the costs incurred by RSP in providing such information”.

Schedule 14.1 (*Maintenance of Franchise*)

5.25 The words “, to the extent possible and practicable,” shall be added to paragraph 3 of Schedule 14.1 (*Maintenance of Franchise*) of the Terms following the words “Franchise Services on the basis that”.

Schedule 14.3 (*Key Contracts*)

5.26 Key Contracts as at the date of this Agreement (updated to reflect the position as at the Extension Signature Date) for the purpose of paragraph 1.2 of Schedule 14.3 (*Key Contracts*) of the Terms are set out in Appendix 9 (*List of Key Contracts*) to this Agreement. The Secretary of State agrees that, notwithstanding the provisions of Schedule 14.3 (*Key Contracts*) of the Terms, he will not designate any licence of Marks owned by the Franchise Operator as a Key Contract.

Schedule 14.4 (*Designation of Franchise Assets*)

5.27 The Primary Franchise Assets as at the date of this Agreement for the purpose of paragraph 2(a) of Schedule 14.4 (*Designation of Franchise Assets*) of the Terms are listed in Appendix 10 (*List of Primary Franchise Assets*) to this Agreement.

Schedule 15.3 (*Handover Package*)

5.28 The words “essential to the nature of the business” shall be added to paragraph 5 of the Appendix to Schedule 15.3 (*Form of Handover Package*) of the Terms following the words “of all assets”.

Schedule 15.4 (*Provisions Applying on and after Termination*)

5.29 sub-paragraph (iv) of paragraph 8.1(a) of Schedule 15.4 (*Provisions Applying on and after Termination*) of the Terms shall be amended as follows: “does not, and has not at any point during the

⁹ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

period from the Commencement Date to the end of the Franchise Period, represented or constituted a Mark; and”

Schedule 16 (*Pensions*)

5.30 The relevant section of the Railways Pension Scheme for the purpose of paragraph 1 of Schedule 16 (*Pensions*) of the Terms is the:-

West Coast Trains Limited Shared Cost Section.

Schedule 19 (*Other Provisions*)

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

Name:	The Secretary of State for Transport
Address:	Department for Transport, Great Minster House, 33 Horseferry Road, London SW1P 4DR
Facsimile:	020 7944 2177
E-mail:	Franchise.notices@dft.gsi.gov.uk
Attention:	Director, Rail Commercial Contracts

Name:	¹⁰
Address:	¹¹
Facsimile:	¹²
E-mail:	¹³
Attention:	¹⁴

¹⁰ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹¹ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹² Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹³ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁴ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

Name: West Coast Trains Limited

Address: Meridian
85 Smallbrook Queensway
Birmingham
B5 4HA

Facsimile: 0121 6547496

E-mail: andy.cross@virgintrains.co.uk

Attention: Business Support Director

6. COMMITTED OBLIGATIONS

The Franchise Operator shall deliver the Committed Obligations that are set out in Appendix 11 (*List of Committed Obligations and Related Provisions*) to this Agreement in accordance with the terms thereof.

7. SUPPLEMENTAL TERMS

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

7.2 The provisions of Appendix 13 (*West Coast Specific Provisions*) to this Agreement shall apply.

7.3 The provision of Appendix 15 (*Franchise Specific Information*) to this Agreement shall apply.

7.4 ¹⁵

7.5 The provisions of Appendix 17 (*Customer Satisfaction Provisions*) to this Agreement shall apply.

7.6 ¹⁶

7.7 The provisions of Appendix 20 (*Schedule 8.1 Franchise Payments*) to this Agreement shall apply.

7.8 ¹⁷

8. RECALIBRATION OF THE CANCELLATIONS BENCHMARK

[Not Used]

¹⁵ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁶ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁷ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

9. DOCUMENTS IN THE AGREED TERMS

The parties hereby acknowledge that the list of documents in the agreed terms is set out in Appendix 14 (*List of Documents in the Agreed Terms*) to this Agreement.

10. ENTIRE AGREEMENT

10.1 Subject to Clause 2, this Agreement and the Terms (including, where applicable, the documents in the agreed terms listed in Appendix 14) contain the entire agreement between the parties in relation to the subject matter of this Agreement and supersede all prior agreements and arrangements between the parties in respect of the amendment and restatement of the Original Franchise Agreement and the subsequent amendment and restatement of the 2006 Amended and Restated Franchise Agreement.

10.2 Each of VRG and the Franchise Operator hereby acknowledges that this Agreement and the Terms (and the agreement to amend and reinstate the same) has not been entered into wholly or partly in reliance on, nor has VRG or the Franchise Operator been given any warranty, statement, promise or representation other than as expressly set out in this Agreement and the Terms. To the extent that any such warranties, statements, promises or representations have been given, VRG and the Franchise Operator each unconditionally and irrevocably waive any claims, rights or remedies which they might otherwise have had in relation to them.

10.3 Nothing in this Clause 10 will exclude any liability which one party would otherwise have to the other party in respect of any statements made fraudulently.

10.4 Each of VRG and the Franchise Operator hereby acknowledges and agrees with the Secretary of State (for himself and as trustee for each of the other persons referred to therein) to the disclaimer of liability which is contained in the section entitled "Important Notice" contained in any document supplied by or on behalf of the Secretary of State in connection with this Agreement (and/or any amendment or reinstatement of the same), the process leading to the entering into of this Agreement (and/or any amendment or reinstatement of the same), or the Franchise Services (including any "Request for Proposal", or similar document issued in connection therewith).

CONFORMED COPY

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

THE CORPORATE SEAL
OF THE **SECRETARY OF
STATE FOR TRANSPORT**
IS HEREUNTO AFFIXED:



.....
Authenticated by authority of the
Secretary of State for Transport

SIGNED FOR AND ON
BEHALF OF **VIRGIN RAIL
GROUP LIMITED**



DIRECTOR:

.....

DIRECTOR/SECRETARY:

.....

SIGNED FOR AND ON
BEHALF OF **WEST COAST
TRAINS LIMITED**



DIRECTOR:

.....

DIRECTOR/SECRETARY:

.....

APPENDIX 1

Secretary of State Risk Assumptions (*Clause 5.2(w)*)

1. ¹⁸
2. ¹⁹
3. Not used
4. ²⁰
5. ²¹

6. 25TH SUPPLEMENTAL AGREEMENT

It has been assumed that the Franchise Operator will enter into a supplemental agreement to amend the PUG2 TAA with effect from 1 April 2006, in the form of the document in the agreed terms marked **25SA** (the **25th Supplemental**) and the following provisions shall apply:

- (a) the Franchise Operator will use all reasonable endeavours to enter into the 25th Supplemental as soon as reasonably practicable following the Secretary of State's approval of the same;
- (b) it will be a Change if the 25th Supplemental is not entered into by 31st March 2007 provided that the Franchise Operator shall not be entitled to a Run of the Financial Model in respect of such Change unless the Franchise Operator has complied with its obligations in this paragraph 6 except to the extent that such failure to comply has had no material adverse effect on the Secretary of State;
- (c) if there has been a Change under paragraph 6(b) of this Appendix 1, it will be a further Change if and when the 25th Supplemental (as may be amended) is entered into and comes into full force and effect;
- (d) If the ORR requires any amendments to the form of the 25th Supplemental submitted pursuant to paragraph (a), references in this paragraph 6 to the 25th Supplemental shall be construed as references to that document as so amended, and such amendments shall be a Change.

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

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

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

²¹ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

APPENDIX 2 ²²

Target Revenue (expressed in real terms) (*Clause 5.2(cc)*)

²² Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

APPENDIX 3**The Train Fleet (Clause 5.4)****1. THE COMPOSITION OF THE TRAIN FLEET**

The Train Fleet consists of the rolling stock vehicles specified in the tables below, with the capacity characteristics referred to there, until the lease expiry dates referred to there.

SLC 1 Train Fleet

Column 1	Column 2	Column 3				Column 4	Column 5
Class of vehicle	Number of vehicles and unit configuration	Capacity per unit				Owner/Lessor	Lease expiry date(s)
		Seats	Standing*	Total	Standard Class		
390	53 x 9 car	439	109	548	296	Angel Trains	March 2012
221	2 x 5 car diagrams	254	63	317	228	Voyager Leasing	March 2012
Mk 3 Coaches	1 x 9 car	536	134	670	374	Porterbrook Leasing	December 2006
57	16 Locomotives	Nil				Porterbrook Leasing	March 2012

* Standing capacity is assumed to be 25% of seated capacity

SLC 2 Train Fleet

Column 1	Column 2	Column 3				Column 4	Column 5
Class of vehicle	Number of vehicles and unit configuration	Capacity per unit				Owner/Lessor	Lease expiry date(s)
		Seats	Standing*	Total	Standard Class		
390	53 x 9 car	439	109	548	296	Angel Trains	March 2012
221	13 x 5 car	254	63	317	228	Voyager Leasing	March 2012
	3 x 4 car	192	48	240	166		
57	16 Locomotives	Nil				Porterbrook Leasing	March 2012

* Standing capacity is assumed to be 25% of seated capacity

SLC 3 Train Fleet

Column 1	Column 2	Column 3				Column 4	Column 5
Class of vehicle	Number of vehicles and unit configuration	Capacity per unit				Owner/Lessor	Lease expiry date(s)
		Seats	Standing*	Total	Standard Class		
390	53 x 9 car	439	109	548	296	Angel Trains	March 2012
221	13 x 5 car	254	63	317	228	Voyager Leasing	March 2012
	3 x 4 car	192	48	240	166		
57	16 Locomotives	Nil				Porterbrook Leasing	March 2012

* Standing capacity is assumed to be 25% of seated capacity

SLC 4 Train Fleet²³

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

* Standing capacity is assumed to be 25% of seated capacity

²³ It is acknowledged that by virtue of a derogation previously issued by the Secretary of State, the Franchise Operator has been permitted to convert two of three 4-car Class 221 (SuperVoyager) units to be 5-car, by means of dismantling the third 4-car set:

- Bombardier having provided written confirmation that they are content for the two driving vehicles to be held in warm storage for the duration of the reconfiguration;
- The Franchisee and the Franchise Operator and Bombardier having verified that on re-constitution of the three 4-car sets at the end of the lease, there will be no financial impact on the Secretary of State or the future lessee;
- The Franchisee and the Franchise Operator and, separately, Bombardier having verified and provided written confirmation that there will be no future incremental maintenance costs to the Secretary of State through enhanced requirements because of the break up of the vehicles;

The Franchisee shall continue to marshal the relevant Class 221 units on this basis subject to and on the basis that the Franchise Operator will return the three 4-car sets to their previous configuration :-

- if required by the Secretary of State on the basis that the reduction in availability of sets causes a marked deterioration in performance. This shall be monitored at the periodic Franchise Performance Meetings; and in any event
- by the Expiry Date, if the Secretary of State requires and gives not less than 8 weeks prior notice to that effect.

390	21 x 9 car	439	109	548	296			Angel Trains	9 th December 2012
	4x 11 car ²⁴	589	147	736	446				
	31 x 9 car ²⁵ extended to 31 x 11 car ²⁶	439 until extension to 11 car then 589	109 until extension to 11 car then 147	548 until extension to 11 car then 736	296 until extension to 11 car then 446				
221	20 x 5 car	254	63	317	228			Voyager Leasing	9 th December 2012
Mark 3	1 x 9 car	536	134	670	374			Porterbrook Leasing	30 th September 2012
57	7 Locomotives in service	Nil						Porterbrook Leasing	9 th December 2012

²⁴ Phased introduction during the Franchise Period

²⁵ From the Extension Commencement Date.

²⁶ Phased extension to 11 car during the Franchise Period

APPENDIX 4

List of Priced Options (Clause 5.14)

Not Used.

APPENDIX 5

Cancellations Benchmark Table (Clause 5.17)

Column 1		Column 2	Column 3	Column 4	Column 5
Reporting Period		Target Performance Level (%)	Improvement Plan Performance Level (%)	Breach Performance Level (%)	Default Performance Level (%)
Year 1	Period 10	0.50%	0.52%	0.54%	0.55%
	Period 11	0.50%	0.52%	0.54%	0.55%
	Period 12	0.50%	0.52%	0.54%	0.55%
	Period 13	0.50%	0.52%	0.54%	0.55%
Year 2	Period 1	0.50%	0.52%	0.54%	0.55%
	Period 2	0.50%	0.52%	0.54%	0.55%
	Period 3	0.50%	0.52%	0.54%	0.55%
	Period 4	0.50%	0.52%	0.54%	0.55%
	Period 5	0.50%	0.52%	0.54%	0.55%
	Period 6	0.50%	0.52%	0.54%	0.55%
	Period 7	0.50%	0.52%	0.54%	0.55%
	Period 8	0.50%	0.52%	0.54%	0.55%
	Period 9	0.50%	0.52%	0.54%	0.55%
	Period 10	0.50%	0.52%	0.54%	0.55%
	Period 11	0.50%	0.52%	0.54%	0.55%
	Period 12	0.50%	0.52%	0.54%	0.55%
	Period 13	0.50%	0.52%	0.54%	0.55%
Year 3	Period 1	0.50%	0.52%	0.54%	0.55%
	Period 2	0.50%	0.52%	0.54%	0.55%
	Period 3	0.50%	0.52%	0.54%	0.55%
	Period 4	0.50%	0.52%	0.54%	0.55%
	Period 5	0.50%	0.52%	0.54%	0.55%
	Period 6	0.50%	0.52%	0.54%	0.55%
	Period 7	0.50%	0.52%	0.53%	0.55%
	Period 8	0.50%	0.51%	0.53%	0.55%
	Period 9	0.50%	0.51%	0.53%	0.55%
	Period 10	0.49%	0.51%	0.53%	0.55%
	Period 11	0.49%	0.51%	0.53%	0.55%
	Period 13	0.49%	0.51%	0.53%	0.55%
Year 4	Period 1	0.49%	0.51%	0.53%	0.55%
	Period 2	0.49%	0.51%	0.53%	0.55%
	Period 3	0.49%	0.51%	0.53%	0.55%
	Period 4	0.49%	0.51%	0.53%	0.55%
	Period 5	0.49%	0.51%	0.53%	0.55%
	Period 6	0.49%	0.51%	0.53%	0.55%
	Period 7	0.49%	0.51%	0.53%	0.55%
	Period 8	0.49%	0.51%	0.53%	0.55%
	Period 9	0.49%	0.51%	0.53%	0.55%
	Period 10	0.49%	0.51%	0.53%	0.55%
	Period 11	0.49%	0.51%	0.53%	0.54%
	Period 12	0.49%	0.51%	0.53%	0.54%
	Period 13	0.49%	0.51%	0.53%	0.54%
Year 5 and until 31 March 2012	Period 1	0.49%	0.51%	0.53%	0.54%
	Period 2	0.49%	0.51%	0.53%	0.54%
	Period 3	0.49%	0.51%	0.53%	0.54%
	Period 4	0.49%	0.51%	0.53%	0.54%
	Period 5	0.49%	0.51%	0.53%	0.54%
	Period 6	0.49%	0.51%	0.53%	0.54%
	Period 7	0.49%	0.51%	0.53%	0.54%
	Period 8	0.49%	0.51%	0.53%	0.54%

	<i>Period 9</i>	<i>0.49%</i>	<i>0.51%</i>	<i>0.53%</i>	<i>0.54%</i>
	<i>Period 10</i>	<i>0.49%</i>	<i>0.51%</i>	<i>0.53%</i>	<i>0.54%</i>
	<i>Period 11</i>	<i>0.49%</i>	<i>0.51%</i>	<i>0.53%</i>	<i>0.54%</i>
	<i>Period 12</i>	<i>0.49%</i>	<i>0.51%</i>	<i>0.53%</i>	<i>0.54%</i>
	<i>Period 13</i>	<i>0.49%</i>	<i>0.51%</i>	<i>0.53%</i>	<i>0.54%</i>
<i>9 Reporting Periods from the Extension Commencement Date until end of Franchise Term</i>	<i>Period 1</i>	<i>0.49%</i>	<i>0.51%</i>	<i>0.53%</i>	<i>0.54%</i>
	<i>Period 2</i>	<i>0.49%</i>	<i>0.51%</i>	<i>0.53%</i>	<i>0.54%</i>
	<i>Period 3</i>	<i>0.49%</i>	<i>0.51%</i>	<i>0.53%</i>	<i>0.54%</i>
	<i>Period 4</i>	<i>0.49%</i>	<i>0.51%</i>	<i>0.53%</i>	<i>0.54%</i>
	<i>Period 5</i>	<i>0.49%</i>	<i>0.51%</i>	<i>0.53%</i>	<i>0.54%</i>
	<i>Period 6</i>	<i>0.49%</i>	<i>0.51%</i>	<i>0.53%</i>	<i>0.54%</i>
	<i>Period 7</i>	<i>0.49%</i>	<i>0.51%</i>	<i>0.53%</i>	<i>0.54%</i>
	<i>Period 8</i>	<i>0.49%</i>	<i>0.51%</i>	<i>0.53%</i>	<i>0.54%</i>
	<i>Period 9</i>	<i>0.49%</i>	<i>0.51%</i>	<i>0.53%</i>	<i>0.54%</i>

APPENDIX 6

Capacity Benchmark Table

[NOT USED]

APPENDIX 7

Service Delivery Benchmark Table (Clause 5.16) ²⁷

Virgin - Dec 2011 Service Delivery Benchmarks

Column 1		Column 2	Column 3	Column 4	Column 5
Franchisee Year / Reporting Period		Target Performance Level (Minutes Delay)	Improvement Plan Performance Level (Minutes Delay)	Breach Performance Level (Minutes Delay)	Default Performance Level (Minutes Delay)
Year 1	Period 10	9,250	10,000	10,500	11,000
	Period 11	9,250	10,000	10,500	11,000
	Period 12	9,250	10,000	10,500	11,000
	Period 13	9,250	10,000	10,500	11,000
Year 2	Period 1	9,250	10,000	10,500	11,000
	Period 2	9,250	10,000	10,500	11,000
	Period 3	9,250	10,000	10,500	11,000
	Period 4	9,250	10,000	10,500	11,000
	Period 5	9,250	10,000	10,500	11,000
	Period 6	9,250	10,000	10,500	11,000
	Period 7	9,250	10,000	10,500	11,000
	Period 8	9,250	10,000	10,500	11,000
	Period 9	9,250	10,000	10,500	11,000
	Period 10	11,310	12,230	12,840	13,450
	Period 11	11,310	12,230	12,840	13,450
	Period 12	11,310	12,230	12,840	13,450
	Period 13	11,310	12,230	12,840	13,450
Year 3	Period 1	11,310	12,230	12,840	13,450
	Period 2	11,310	12,230	12,840	13,450
	Period 3	11,000	11,920	12,530	13,140
	Period 4	11,000	11,920	12,530	13,140
	Period 5	11,000	11,920	12,530	13,140
	Period 6	11,000	11,920	12,530	13,140
	Period 7	11,000	11,920	12,530	13,140
	Period 8	11,000	11,920	12,530	13,140
	Period 9	11,000	11,920	12,530	13,140
	Period 10	13,700	14,840	15,600	16,360
	Period 11	13,700	14,840	15,600	16,360
	Period 12	13,700	14,840	15,600	16,360

²⁷ Date of change 04/04/2012

	Period 13	13,700	14,840	15,600	16,360
Year 4	Period 1	13,700	14,840	15,600	16,360
	Period 2	13,700	14,840	15,600	16,360
	Period 3	13,830	14,990	15,760	16,520
	Period 4	13,830	14,990	15,760	16,520
	Period 5	13,830	14,990	15,760	16,520
	Period 6	13,830	14,990	15,760	16,520
	Period 7	13,830	14,990	15,760	16,520
	Period 8	13,830	14,990	15,760	16,520
	Period 9	13,830	14,990	15,760	16,520
	Period 10	13,550	14,680	15,430	16,190
	Period 11	13,550	14,680	15,430	16,190
	Period 12	13,550	14,680	15,430	16,190
	Period 13	13,550	14,680	15,430	16,190
Year 5	Period 1	13,550	14,680	15,430	16,190
	Period 2	13,550	14,680	15,430	16,190
	Period 3	13,910	15,060	15,840	16,610
	Period 4	13,910	15,060	15,840	16,610
	Period 5	13,910	15,060	15,840	16,610
	Period 6	13,910	15,060	15,840	16,610
	Period 7	13,910	15,060	15,840	16,610
	Period 8	13,910	15,060	15,840	16,610
	Period 9	13,910	15,060	15,840	16,610
	Period 10	13,800	14,950	15,710	16,480
	Period 11	13,800	14,950	15,710	16,480
	Period 12	13,800	14,950	15,710	16,480
	Period 13	13,800	14,950	15,710	16,480
Year 6	Period 1	13,800	14,950	15,710	16,480
	Period 2	13,800	14,950	15,710	16,480
	Period 3	13,900	15,060	15,830	16,600
	Period 4	13,900	15,060	15,830	16,600
	Period 5	13,900	15,060	15,830	16,600
	Period 6	13,900	15,060	15,830	16,600
	Period 7	13,900	15,060	15,830	16,600
	Period 8	13,900	15,060	15,830	16,600
	Period 9	13,900	15,060	15,830	16,600
	Period 10	14,210	15,400	16,190	16,980
	Period 11	14,210	15,400	16,190	16,980
	Period 12	14,210	15,400	16,190	16,980
	Period 13	14,210	15,400	16,190	16,980
	Period 1	14,210	15,400	16,190	16,980
	Period 2	14,210	15,400	16,190	16,980
	Period 3	14,210	15,400	16,190	16,980

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	Period 4	14,210	15,400	16,190	16,980
	Period 5	14,210	15,400	16,190	16,980
	Period 6	14,210	15,400	16,190	16,980
	Period 7	14,210	15,400	16,190	16,980
	Period 8	14,210	15,400	16,190	16,980
	Period 9	14,210	15,400	16,190	16,980
	Period 10	14,210	15,400	16,190	16,980

APPENDIX 7A

Historic Performance Table (Clause 5.17)

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>
<i>Reporting Period in respect of 13 reporting periods preceding the Start Date</i>	<i>Cancellations % Historic Performance</i>	<i>Capacity Historic Performance</i>	<i>Service Delivery Historic Performance</i>
<i>Period 10</i>	<i>0.64</i>	<i>n/a</i>	<i>8,815</i>
<i>Period 11</i>	<i>0.17</i>	<i>n/a</i>	<i>5,806</i>
<i>Period 12</i>	<i>0.39</i>	<i>n/a</i>	<i>8,135</i>
<i>Period 13</i>	<i>0.31</i>	<i>n/a</i>	<i>6,572</i>
<i>Period 1</i>	<i>0.16</i>	<i>n/a</i>	<i>6,189</i>
<i>Period 2</i>	<i>0.3</i>	<i>n/a</i>	<i>6,245</i>
<i>Period 3</i>	<i>0.76</i>	<i>n/a</i>	<i>11,075</i>
<i>Period 4</i>	<i>0.98</i>	<i>n/a</i>	<i>11,704</i>
<i>Period 5</i>	<i>0.48</i>	<i>n/a</i>	<i>8,486</i>
<i>Period 6</i>	<i>0.28</i>	<i>n/a</i>	<i>9,859</i>
<i>Period 7</i>	<i>0.57</i>	<i>n/a</i>	<i>9,514</i>
<i>Period 8</i>	<i>0.39</i>	<i>n/a</i>	<i>8,314</i>
<i>Period 9</i>	<i>0.39</i>	<i>n/a</i>	<i>9,793</i>

APPENDIX 8

Figures for Calculation of Annual Franchise Payments (*Clause 5.20*)²⁸

²⁸ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

APPENDIX 9

List of Key Contracts (*Clause 5.26*)

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

1. Any Access Agreement to which the Franchise Operator is a party other than in its capacity as a Facility Owner.
2. Any Property Lease.
3. Any Rolling Stock Related Contract including the Rolling Stock Leases listed in Table 1 and Table 2 of Appendix 3 (*The Train Fleet*), but excluding any Rolling Stock Related Contract relating only to rolling stock vehicles funded by Additional Rolling Stock Investment.
4. Any contract or arrangement for the lending, seconding, hiring, contracting out, supervision, training, assessment, or accommodation by another Train Operator of any train drivers, conductors or other train crew used by the Franchise Operator in the provision of the Passenger Services.
5. Any contract or arrangement for the subcontracting or delegation to another Train Operator of the provision of any of the Passenger Services (whether or not the consent of the Secretary of State is required to such subcontracting or delegation under paragraph 1 of Schedule 2.3 (*Third Party Delivery of Passenger Services and Other Franchisees*) of the Terms).
6. Any contract or arrangement with a Train Operator (other than an Access Agreement) for the provision to the Franchise Operator of train dispatch, performance or supervision of platform duties, security activities, evacuation procedures, advice or assistance to customers, assistance to disabled customers, operation of customer information systems, cash management or ticket issuing systems administration.
7. Any contract or arrangement with a Train Operator for the provision of breakdown or recovery, and track call services to assist in the provision of the Passenger Services.
8. Any contract or arrangement for the supply of spare parts or Spares.
9. Any contract or arrangement for the maintenance of track and other related infrastructure.
10. Agreement dated 1 February 2002 relating to Data Services and ETD Voice and Handset Services between (1) the Franchise Operator and (2) Global Crossing (UK) Telecom Limited and any deeds of variation thereto.
11. Agreement dated 30 September 1994 relating to Retail Maintenance Services between (1) the Franchise Operator and (2) Thales Telecommunications Limited and any deeds of variation thereto.
12. Agreement dated 27 February 1996 relating to computer services between (1) ATOS Origin Services UK Ltd and (2) the Franchise Operator.
13. Universal Licence Agreement dated 27 February 1996 between the (1) British Railways Board and (2) the Franchise Operator.
14. Sub-licence Deed dated 27 February 1996 between (1) the British Railways Board and (2) the Franchise Operator.

15. Master Software Licence dated 27 February 1996 between (1) ATOS Origin Services UK Ltd and (2) the Franchise Operator.
16. Usage agreement dated 22 February 1996 between (1) Railway Documentation and Drawing Services Limited and (2) the Franchise Operator.
17. Any agreement for the provision of shunting or marshalling services to the Franchise Operator.
18. Any Rolling Stock Finance Facility to which the Franchise Operator is a party.
19. Agreement dated 30 July 2003 relating to AVANTIX Mobile Supply and Support between (1) ATOS Origin Services UK Ltd and (2) the Franchise Operator.
20. Main Services Agreement dated 15 March 1999 relating to the Outsourcing of IT Services between (1) Cap Gemini and (2) the Franchise Operator.
21. Main Services Agreement dated 11th May 2007 relating to the provision of Wide Area Network Services entered into between (1) Cable and Wireless UK and (2) West Coast Trains Limited.
22. Rail Journey Information System Licence dated 1 July 2008 between Fujitsu Services Limited and the Franchise Operator.

APPENDIX 10

List of Primary Franchise Assets (*Clause 5.27*)

1. The rights and liabilities of the Franchise Operator under the Sub-licence Deed between the Board and the Franchise Operator dated 27 February 1996.
2. The rights and liabilities of the Franchise Operator under the Master Software Licence between the Board and the Franchise Operator dated 27 February 1996.
3. The rights and liabilities of the Franchise Operator under the Computer Services Agreement between the Board and the Franchise Operator dated 27 February 1996.
4. The rights and liabilities of the Franchise Operator under the Universal Licence Agreement between the Board and the Franchise Operator dated 27 February 1996.
5. The Track Access Agreement dated 1 September 2011 and entered into between Network Rail Infrastructure Limited and the Secretary of State for Transport as such agreement is to be novated to the Franchise Operator prior to the Extension Commencement Date.

APPENDIX 11

List of Committed Obligations and Related Provisions (*Clause 6*)

Part 1 to Appendix 11

List of Committed Obligations

1. CIS FACILITIES

1.1 The Franchise Operator undertakes that by no later than 15 February 2007, and taking into account expenditure made prior to the Start Date, it will have spent a capital sum of not less than £300,000 in aggregate on:

- (a) installing new CIS facilities at Runcorn, Macclesfield, and Penrith stations; and
- (b) enhancing existing CIS facilities at 10 other Franchise Operator stations (Birmingham International, Carlisle, Crewe, Oxenholme, Rugby, Stafford, Stockport, Warrington, Wigan and Wolverhampton).

1.2 The Franchise Operator shall ensure completion of installation of the new or enhanced CIS equipment at Macclesfield, Carlisle, Stafford, Birmingham International and Crewe by no later than 15 February 2007.

2. BUS-RAIL SERVICES

2.1 The Franchise Operator will procure the operation of the Bus-Rail Services as specified in Table 1 below (*the Bus Rail Services*) up to and including 31 May 2008. All buses used to provide Bus-Rail Services will be equipped with radio or drivers to be provided with mobile telephone communication equipment to allow direct communication with customer service staff at relevant stations. The first and last services on each Bus-Rail Service will be at or around the times specified in Table 1, and the number of journeys per day on each Bus-Rail Service will be at least that specified in relation to that service in Table 1. The vehicles used in the operation of the Bus-Rail Services will carry distinctive bus/rail branding.

2.2 The Bus-Rail Services will focus on the needs of rail link passengers, and without limitation, will be timetabled and operated to take reasonable account of rail services at the rail stations which the relevant Bus-Rail Service serves, but the Bus-Rail Services will also be available to non-rail link passengers.

2.3 The Franchise Operator will use its reasonable endeavours to procure that through tickets including bus and rail elements of the rail journey are made available (such endeavours to include, without limitation, making the bus supplementary fare available to other rail operators at the same price as in the through tickets offered by the Franchise Operator), always provided that if any rail passenger arrives at a station served by a Bus-Rail Service without an appropriate through ticket but wishes to use the Bus-Rail Service, that passenger may purchase a ticket to use such service for a fare equal to the bus supplementary fare price in the through tickets offered by the Franchise Operator.

2.4 The Franchise Operator will:

- (a) include the departure and arrival times (to and from Watford Junction Station and Heathrow Airport) of the coach transfer facility, referred to in Paragraph 2.5, in the timetable information which the Franchisee is required to publish under Schedule 1.4 (Passenger Facing Obligations) of the Terms;

- (b) procure that the coach transfer facility referred to in Paragraph 2.5 is advertised in each edition of the National Rail Timetable; and
- (c) procure that timetable information in relation to the coach transfer facility referred to in Paragraph 2.5 is included within the website operated by Silverlink Train Services Limited (and the successor operator to Silverlink Train Services Limited) up to and including 31 May 2008. The timetable information is to be provided on Silverlink Train Services Limited website by 11 September 2007 and on the successor operator's website as soon as reasonably practicable after 11 November 2007 but in any case no later than 31 December 2007. If the successor operator to Silverlink Train Services Limited does not have a web site, then West Coast Trains Limited is to procure a two page advertisement of the coach transfer facility referred to in Paragraph 2.5 in the timetable information booklet which the successor operator is required to publish under Schedule 1.4 of its franchise agreement.

2.5 TABLE 1: BUS-RAIL SERVICES

	1	2	3		4		
	From	Rail station	Monday to Friday		Number of one way journeys		
			First Arr at Rail station	Last Dep from Rail station	Mon-Fri	Sat	Sun
Row 1	Heathrow Terminals 4,2,3 and 1	Watford Junction	0635	2335	30	30	17

The first arrival at, and the last departure from, each rail station listed above on Saturdays and Sundays will be timetabled to take account of the rail services at that rail station on that day.

3. WI-FI

3.1 Subject to paragraph 2.2 of Part 2 of this Appendix 11 the Franchise Operator shall procure:-

- (a) the continued provision of an operating wireless internet service in both First and Standard class on those Class 390 rolling stock vehicles comprised in the Train Fleet as at the Extension Signature Date; and
- (b) the provision of such an operating wireless internet service in the additional rolling stock vehicles comprised in the New Pendolinos and the Extended Existing Pendolinos (as defined in paragraph 24.4 of Appendix 13 (*West Coast Specific Provisions*)) from the date of introduction of those vehicles into service in the provision of the Passenger Services in accordance with paragraph 24 of Appendix 13.

3.2 ²⁹

(a) ³⁰

²⁹ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

³⁰ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

(b) 31

³¹ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

Part 2 to Appendix 11

Miscellaneous Provisions

1. APPLICATION

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

2. CONTINUATION OF AVAILABILITY

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

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

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

- (a) the obligation of the Franchise Operator applies, but shall not be regarded as being contravened by:
 - (i) temporary absences (for example for sickness or holiday); or
 - (ii) temporary non-fulfilment of a relevant post whilst the Franchise Operator is recruiting for that post, subject to the Franchise Operator using all reasonable endeavours to keep the duration between appointments as short as reasonably practicable; and
- (b) the Franchise Operator's rights in relation to the numbers or deployment of its other staff remain unaffected.

3. EXPENDITURE COMMITMENTS

Annual Expenditure

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

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

Expenditure Commitments in real amounts

3.2 All expenditure commitments set out in Part 1 to this Appendix 11, to the extent they have not already been incurred by the Franchise Operator, shall be indexed by the Retail Prices Index (in

the same way as variable costs are indexed in Schedule 8.2 (*Annual Franchise Payments*) of the Terms).

Expenditure by Network Rail

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

4. LIAISON AND CO-OPERATION

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

5. NATURE OF COMMITMENT

5.1 Any commitment in terms of Part 1 (*List of Committed Obligations*) to this Appendix 11 shall be in addition to any obligation of the Franchise Operator elsewhere in this Agreement and nothing in this Appendix 11 shall limit or restrict an obligation imposed on the Franchise Operator elsewhere in this Agreement.

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

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

6. REVIEW OF COMPLIANCE

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

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

Part 3 to Appendix 11

Late/Non Completion of Committed Obligations

1. LATE COMPLETION OR NON-DELIVERY OF COMMITTED OBLIGATIONS

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

2. *[Not Used]*

3. Waiver of Payments under this Part 3

3.1 The Secretary of State may at its reasonable discretion decide to waive its rights to receive any payments payable in respect of a late, partial or non-delivery of any Committed Obligations.

3.2 In deciding whether to waive such rights the Secretary of State may, but shall not be obliged to, take into consideration the circumstances under which the late, partial or non-delivery arose.

APPENDIX 12

2012 Olympic Games and Paralympic Games (*Clause 7.1*)

1. ACKNOWLEDGEMENT

The parties acknowledge that:

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

2. FRANCHISE OPERATOR CO-OPERATION

The Franchise Operator:

- 2.1 shall at its own cost, co-operate and consult as reasonably required by and with the Olympic Delivery Authority, the LOCOG, the Secretary of State, Transport for London, Network Rail, the British Transport Police and any other relevant party in connection with any arrangements directly or indirectly connected with the Games, including:
 - (a) the provision of additional and/or specific railway passenger services which, as a minimum, are those specified in the Olympic Services Delivery Plan;
 - (b) the carrying out of necessary works to the network;
 - (c) the provision of additional and/or specific security arrangements at stations at which the Passenger Services call and on the Passenger Services;
 - (d) the provision of specific integrated ticketing in relation to the Passenger Services; and
 - (e) advertising and marketing of the Games in relation to the Franchise Services; and
- 2.2 shall not for the purposes of publicity, advertising, marketing or any other reason, without the prior written consent of LOCOG, represent that any product or service provided by the Franchise Operator under this Agreement:
 - (a) has been endorsed or approved by LOCOG, the Olympic Delivery Authority or any other Olympic body; or
 - (b) is in any way associated with those organisations or the Games,

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

3. THE OLYMPIC SERVICES DELIVERY PLAN AND OTHER AGREEMENTS

It is acknowledged that the Franchise Operator has agreed the Olympic Services Delivery Plan with the Olympic Delivery Authority:-

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

and that the Franchise Operator has also entered into the following additional agreements with the Olympic Delivery Authority and LOCOG:

- (i) the Olympic Confidentiality Agreement; and
- (ii) the Olympic No Marketing Agreement.

4. IMPLEMENTATION OF THE OLYMPIC SERVICES DELIVERY PLAN

- 4.1 Subject to paragraph 4.2 below the Franchise Operator shall implement the Olympic Services Delivery Plan in accordance with its terms.
- 4.2 The Olympic Delivery Authority shall have the right to amend the Olympic Services Delivery Plan and, without prejudice to the obligation of the Franchise Operator pursuant to paragraph 4.1 to implement the provisions that have not been amended, the Franchise Operator shall use reasonable endeavours to implement such amendments (and for the avoidance of doubt nothing in this paragraph shall require the Franchise Operator to implement such amendments where the net financial impact on it of those amendments is unreasonable).
- 4.3 Failure by the Franchise Operator to deliver the Olympic Services Delivery Plan (in the agreed terms as at the Extension Signature Date) shall constitute a contravention of this Agreement.

APPENDIX 13

West Coast Specific Provisions (*Clause 7.2*)

1. REPRESENTATION AND WARRANTIES

1.1 Each of VRG and the Franchise Operator represents and warrants to the Secretary of State, subject only to any matter fully and fairly disclosed to him in writing (and accepted by him) that all of the information, representations and other matters of fact communicated in writing to the Secretary of State and/or his advisers by VRG or the Franchise Operator or any of their officers, employees or agents in connection with or arising out of:-

(a) the Franchise Operator's proposal in respect of the amendment and restatement of the Original Franchise Agreement by the Franchise Agreement were at the dates submitted to the Secretary of State or such advisers in all material respects, true, accurate and not misleading and remained so as at the Start Date; and

(b) VRG and the Franchise Operator's Response to the Request for Proposal referred to in Recital H in respect of the amendment and restatement of the 2006 Amended and Restated Franchise Agreement by the Amendment and Restatement Deed were at the dates submitted to the Secretary of State or such advisers and remain as at the Extension Signature Date, in all material respects, true, accurate and not misleading.

2. EXISTING VOYAGER AGREEMENT

2.1 The Franchise Operator agrees and undertakes to:-

- (a) observe and comply with all the conditions and obligations on its part contained in the Existing Voyager Agreement;
- (b) agree, and take all steps which may be required to implement, any amendment to the Existing Voyager Agreement as the Secretary of State may direct from time to time; and
- (c) not vary, agree to vary, waive performance of, or in any other way deal with or change the terms of the Existing Voyager Agreement without the prior consent of the Secretary of State not to be unreasonably withheld or delayed.

3. NOT USED

4. WEST COAST STRATEGY

The Franchise Operator will cooperate with the Secretary of State with respect to the West Coast Mainline Strategy dated June 2003, as updated by the Progress Report dated May 2006 and as may be further updated from time to time.

5. SCOTLAND SERVICES

5.1 It is acknowledged that:-

- (a) in order to meet the requirements of the Service Level Commitment, the Franchise Operator will, from the Scotland Services Start Date, take responsibility for the operation of:-
 - (i) the Birmingham Scotland Services; and
 - (ii) the Manchester Scotland Services (until the December 2007 Timetable Change Date only)

which in each case, as at the Start Date, are provided by CrossCountry Trains; and

- (b) ³².
- (c) the commencement of the Scotland Services will require the co-operation of various industry parties.

5.2 Subject to paragraph 5.3 the Franchise Operator will cooperate with the other industry parties as envisaged in paragraph 5.1(c) and shall bear its costs of doing so.

5.3 ³³.

5.4 The Franchise Operator will:-

- (a) ensure that with effect from the Scotland Services Start Date until the December 2007 Timetable Change Date the Birmingham Scotland Services will be operated as publicly advertised through services to and from other destinations south of Birmingham. It is acknowledged that the franchise operator of the CrossCountry Franchise will have responsibility for the operation of the services south of Birmingham;
- (b) reach an agreement with the party who will be the franchise operator of the CrossCountry Franchise at the relevant time, in respect of the arrangements required to achieve the working described in 5.4(a).

5.5 For the purposes of this paragraph 5 :-

Birmingham Scotland Services means Route F of the relevant section of the SLC;

Manchester Scotland Services means Route G of the relevant section of the SLC;

Scotland Services means the Birmingham Scotland Services and the Manchester Scotland Services;

Scotland Services Start Date means 11th November 2007;

December 2007 Timetable Change Date means the date in and around December 2007 which pursuant to and for the operation of the Network Code, is the date upon which significant changes may be made to the Timetable.

6. ³⁴

6.1 ³⁵

7. ³⁶

³² Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

³³ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

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

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

8. ³⁷

9. ³⁸

10. **NOT USED**

11. **TRANSPARENCY OF ARRANGEMENTS WITH CROSSCOUNTRY TRAINS**

11.1 The Franchise Operator will provide transparency and information on all joint service agreements between the Franchise Operator, VRG and/or CrossCountry Trains (*Joint Agreements*) as part of the budget setting process which the Secretary of State and CrossCountry will undertake under the terms of the Letter Agreement.

11.2 In addition to its obligations under paragraph 11.1, the Franchise Operator will provide monthly information in respect of the Joint Agreements to enable the Secretary of State to monitor those arrangements, together with any additional information as requested by the Secretary of State in respect of those arrangements.

11.3 As part of any settlement arrangement for CrossCountry Trains upon the termination of its franchise agreement and the settlement of the Letter Agreement issues, the Franchise Operator will provide, at the Secretary of State's request, transparency and evidence in respect of charging arrangements for the Joint Agreements, to support CrossCountry Trains and the process in the settlement of the Letter Agreement.

12. ³⁹

13. ⁴⁰

14. **CONTINUATION OF PRIOR ARRANGEMENTS**

For the avoidance of doubt, it is acknowledged that:

14.1 The Franchise Operator will be deemed to have satisfied its obligations under paragraph 1.1 of Schedule 1.4 (*Passenger Facing Obligations*) of the Terms to the extent that the Franchise Operator has complied with its obligations under the terms of the Original Franchise Agreement in respect of the publication of timetable information as set out in Appendix 18 (*Timetable Publication Provisions*). References to "the Timetable" in the Franchise Agreement and the Terms shall be interpreted accordingly.

14.2 The Secretary of State has:-

³⁶ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

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

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

³⁹ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁴⁰ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (i) allocated each Commuter Fare and Protected Fare to the relevant Fares Basket (for the purposes of paragraph 1 of Schedule 5.3 (*Allocation of Fares to Fares Baskets*) of the Terms; and
- (ii) designated Non-Fares Basket Fares (for the purposes of paragraph 2 of Schedule 5.3 of the Terms)

under the Original Franchise Agreement, and no further or separate allocation or designation is required prior to the Start Date.

15. MINIMUM CAPITAL AND DEED OF SUBORDINATION

15.1 The Franchise Operator shall procure the continuation of:

- (a) the £⁴¹ loan made by VRG to the Franchise Operator prior to the Franchise Commencement Date; and
- (b) the Deed of Subordination entered into between 1) the Franchise Operator 2) VRG and the Franchising Director prior to the Franchise Commencement Date as a condition precedent to the Original Franchise Agreement.

Subject to the Deed of Subordination, the Franchise Operator shall be entitled to repay the loan referred to at paragraph 15.1(a) above on the termination or expiry of the Franchise Term.

16. [NOT USED]

17. PUG2 TAA AND ACCESS CHARGES REVIEW

17.1 For so long as:-

- (a) the provisions of Clause 27.2(E) of Chapter XI of the PUG2 TAA continue to apply as between the Franchise Operator and Network Rail; and
- (b) if at any time during such period, the ORR carries out a Charging Review which would, but for those provisions, have fallen within the definition of *Charging Review*;

then the Secretary of State may, at its sole discretion, require the Franchise Operator to enter into an amendment to the PUG2 TAA in order to give effect to such Charging Review to the extent that the Secretary of State may require (subject always to ORR approval and the agreement of Network Rail).

17.2 Any exercise by the Secretary of State of his rights under 17.1 shall be a Qualifying Change.

18. PARAGRAPH 4.1 OF PART 1 OF THE SLC

18.1 ⁴²

19. FINANCIAL MODEL AS AT THE START DATE

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

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

19.1 The parties acknowledge that, for the purposes of Schedule 9.2, the following items were Placed into Escrow when the 2006 Amended and Restated Franchise Agreement was entered into in addition to the items referred to in paragraph 1.1 of Schedule 9.2:-

- (a) a copy of the Financial Model to which specific provisions have been made (*the Revised Model*); and
- (b) a reconciliation statement describing the differences between the Financial Model and the Revised Model (*the Reconciliation Statement*).

19.2 The parties acknowledge and agree that the values of Target Revenue, and the values of FXD, VCRPI, VCAEI, PRPI and TRRPI in the 2006 Amended and Restated Franchise Agreement were derived from the Revised Model.

19.3 Notwithstanding paragraph 19.2, the Financial Model in the agreed terms marked **FM** was the financial model in respect of which the certificate described in paragraph 1.2(c) of Schedule 9.2 had been given.

19.4 Prior to or upon the first release of the Financial Model in the form **FM** from Escrow the Secretary of State will make (or will direct the Franchise Operator to make), arrangements reasonably required and satisfactory to the Secretary of State to procure that the revisions listed in the Reconciliation Statement will be inserted into the Financial Model. The Financial Model as so revised will be the version released to the parties as required under paragraph 2.1 of Schedule 9.2.

20. RESPONSIBILITIES IN RESPECT OF THE DECEMBER 2012 TIMETABLE

20.1 For the purposes of paragraphs 6 and 7 of Schedule 14.1 (*Maintenance of Franchise*) and paragraph 2.2(a) of Schedule 15.4 (Provisions applying on or after termination) but without limiting the Franchise Operator's obligations under those paragraphs, it is acknowledged that as at the Extension Signature Date, the Secretary of State's requirements as to the railway passenger services to be operated by the Successor Operator are as follows:-

- (a) the passenger services in the Working Timetable (as such term is defined in the Network Code) which as at the Extension Signature Date are planned to commence on the Principal Change Date in December 2011 with the following additions and amendments:

10:30 Euston to Lancaster SX to be extended to Glasgow Central calling at Penrith and Carlisle;

12:30 Euston to Lancaster SX to be extended to Glasgow Central calling at Oxenholme and Carlisle;

14:30 Euston to Lancaster SX to be extended to Glasgow Central in the same path as the Fridays only train;

17:37 Lancaster to Euston SX to start from Glasgow Central at 15:40 calling at Carlisle and Penrith;

17:57 Euston to Glasgow SX need not run north of Lancaster provided that stops at Lockerbie and Motherwell are provided in either the 1730 or 1830 Euston to Glasgow;

19:58 Preston to Euston SX to start from Glasgow Central at 17:30 calling at Carlisle, Penrith, Oxenholme and Lancaster;

- (b) the additional passenger services between London and Scotland via Birmingham specified in that Working Timetable for the period between 1st July and 14th September 2012 to operate the equivalent period in 2013; and
- (c) the exclusion of the services required to be operated by the Franchise Operator pursuant to the Olympic Services Delivery Plan.

20.2 In order to ensure the continuity of, and orderly handover of control over the Franchise Services, the Franchise Operator will act as the Timetable Participant (as described in Part D of the Network Code) in the development of the Successor Operator Timetable and shall prepare the corresponding rolling stock, train crew diagrams and rosters required for implementation of the Successor Operator Timetable upon the expiry of the Franchise Term.

21. BIRMINGHAM GATEWAY PROJECT

21.1 If reasonably requested to do so by Network Rail, the Franchise Operator shall co-operate and engage with Network Rail in connection with the implementation of the Birmingham Gateway Project. For the purposes of this paragraph 21.1 the obligation on the Franchise Operator to co-operate and engage with Network Rail shall include:

- (a) participation at meetings;
- (b) reviewing and commenting on documentation pertaining to the Birmingham Gateway Project; and
- (c) participating in such other activities (including the development of the design for the ticket office and other ticket sales facilities and the first class lounge) as may be reasonably required by Network Rail to facilitate the efficient delivery of the Birmingham Gateway Project.

21.2 The Franchise Operator in exercising its rights under the relevant Access Agreement with Network Rail to approve the design for the ticket office, other ticket sales facilities and the first class lounge (“Passenger Facilities”) comprised in the Birmingham Gateway Project shall:

- (a) use reasonable endeavours to ensure that the design of the Passenger Facilities is consistent with the overall design of the Birmingham Gateway Project; and
- (b) not seek to influence the design of the Passenger Facilities such that its design can be associated or connected with the identity or brand of the Franchise Operator.

21.3 For the purposes of this paragraph 21 “*Birmingham Gateway Project*” means the project to redevelop and expand Birmingham New Street station as more particularly described in the major station change proposal dated 22 September 2010 and subsequent GRIP Stage 5 detailed design reports (in each case as have been amended or varied prior to the Extension Signature Date).

22. ITSO SMART SCHEMES

22.1 The Franchise Operator shall co-operate and engage with ATOC, other Train Operators, Transport for London, local authorities and Passenger Transport Executives in connection with the development and introduction of ITSO Smart Schemes by:

- (a) participating in a positive and constructive manner in the development of any approach to the provision of information regarding the use of ITSO Certified Smartmedia to facilitate the use of more sophisticated ticket types and demand management over time;

- (b) seeking to identify solutions (including in relation to the processes, business rules and necessary systems that may be required for effective introduction of ITSO Smart Schemes) which minimise overall industry costs.

22.2 The Franchise Operator shall co-operate with other Train Operators who either have or will have a ITSO Certified Smartmedia functionality to ensure reciprocal operation of such ITSO Certified Smartmedia by:

- (a) engaging in a positive and constructive manner with any Train Operator's proposal to introduce a ITSO Smart Scheme but only to the extent that such proposal may have or has an impact on the Franchise;
- (b) where required by such Train Operator, acting reasonably in seeking to agree terms for the testing, piloting, installation, implementation, operation and maintenance of any retailing equipment, cards, readers and validators required at Stations for the purposes of the introduction of such ITSO Smart Scheme. The Franchise Operator shall not enter into any agreement with such Train Operator until the Secretary of State has approved the terms of such agreement;
- (c) grant such reasonable access to Stations (or other premises) as may have been agreed with such Train Operator pursuant to paragraph 22.2(b) for the purposes of providing and installing ITSO Certified Smartmedia functionality at such Stations; and
- (d) provide such access to the relevant Franchise Employees as may be reasonably necessary for such Train Operator to provide training in relation to the use of the ITSO Certified Smartmedia and any associated equipment installed at Stations.

22.3 For the purposes of this paragraph 22:

"ITSO Smart Scheme" means a ticketing scheme that uses ITSO Certified Smartmedia;

"ITSO Certified Smartmedia" means the contactless smartcards, devices or other media designed to hold fare and travel information with the monetary or other value encoded which have been fully certified by the Integrated Transport Smartcard Organisation.

23. **JOINT PERFORMANCE IMPROVEMENT PLAN**

23.1 The Franchise Operator shall comply with the obligations on its part contained in:-

- (a) Condition LA of the Network Code; and
- (b) under the Joint Performance Improvement Plan agreed between Network Rail and the Franchise Operator under that Condition LA as at 10 June 2011("the Base JPIP") (including, subject to paragraph 23.2 any amendments to that plan and any Remedial Plan agreed pursuant to that Condition).

23.2 The Franchise Operator shall not without the Secretary of State's prior written consent agree any changes to any Joint Performance Improvement Plan which would have the effect of reducing the nature or extent of the Franchise Operator's obligations when compared to its obligations under the Base JPIP.

24. ⁴³

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

25. ⁴⁴

25.1 ⁴⁵

26. ⁴⁶

27. **CHANGE TO FRANCHISE OPERATOR'S FINANCIAL YEAR AND PROVISION OF ACCOUNTS**

27.1 VRG and the Franchise Operator warrant represent and undertake that the Franchise Operator's accounting reference date has been changed to 31 March (such that the accounting reference period of the Franchise Operator commencing on 6th March 2011 will have ended on 31 March 2012).

27.2 Within four Reporting Periods of the Extension Commencement Date the Franchise Operator shall deliver to the Secretary of State a certified copy of audited accounts of the Franchise Operator prepared in relation to the accounting reference period of the Franchise Operator ending on the Extension Commencement Date and otherwise compliant with the provisions of paragraph 3 of Schedule 13 (*Information and Industry Initiatives*) of the Terms.

28. ⁴⁷

29. **TRACK ACCESS AGREEMENT**

29.1 The Franchise Operator shall, at the request of the Secretary of State, enter into the Novation Deed for the purposes of transferring to the Franchise Operator, the Secretary of State's rights and obligations under the New TAA.

29.2 The Secretary of State hereby undertakes to the Franchise Operator that at the end of the Franchise Period it shall exercise its option under paragraph 3.1 of Schedule 15.4 (Provisions Applying on and after Termination) of the Terms to require the transfer of the future rights and future obligations and liabilities of the Franchise Operator under the New TAA to a Successor Operator.

29.3 For the purposes of this paragraph 30.1:

- (a) **"New TAA"** means the track access agreement dated 1 September 2011 and entered into between Network Rail Infrastructure Limited and the Secretary of State (as novated to the Franchise Operator pursuant to the Novation Deed).
- (b) **"Novation Deed"** means the document in the agreed form attached to this Agreement and marked **ND**, with such amendments as ORR may require.

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

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

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

⁴⁷ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

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Annex 1 to Appendix 13 (West Coast Specific Provisions)⁴⁸

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

APPENDIX 14**List of Documents in the Agreed Terms (*Clause 9*)⁴⁹**

<i>A</i>	Customer Satisfaction Benchmarks
<i>OOA</i>	Olympic Option Agreement
<i>PC</i>	Passenger's Charter
<i>POA</i>	Power of Attorney
<i>SLC</i>	Service Level Commitment
<i>SL</i>	Station Lease
<i>SQS</i>	Service Quality Standards

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

APPENDIX 15

Franchise Specific Information

1. STATIONS

Birmingham International

Carlisle

Coventry

Crewe

Lancaster

Macclesfield

Oxenholme

Penrith

Preston

Rugby

Runcorn

Stafford

Stockport

Stoke-on-Trent

Warrington Bank Quay

Wigan North Western

Wolverhampton

2. DEPOTS

None

APPENDIX 16⁵⁰

⁵⁰ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

APPENDIX 17

Customer Satisfaction Provisions

1. APPLICATION

1.1 The provisions of paragraph 2 of this Appendix 17 shall apply in place of the disappplied provisions of Schedule 7.2 (*Service Quality Management*) of the Terms.

2. “CUSTOMER SATISFACTION

2.1 The Franchise Operator shall carry out customer satisfaction surveys no less than once every six months during the Franchise Term (or as otherwise agreed by the Franchising Director) in respect of such aspects of the Franchise Services and in such form and manner and at such times as the Franchising Director may reasonably request from time to time. The manner of such surveys (including their timing) shall be designed to ensure, so far as practicable, that the results of surveys are typical of customer satisfaction for the relevant time of year and are not materially affected by any improvement or deterioration of a temporary nature in the quality of Franchise Services provided at the time. The Franchise Operator shall provide copies of the results of such surveys in relation to such aspects to the Franchising Director as soon as reasonably practicable.

2.2 The Franchising Director shall be entitled to verify that the Franchise Operator has carried out the surveys in the form and manner so requested and the Franchise Operator shall provide such information as he may reasonably so request for such purposes. In the event that any such verification exercise reveals that the Franchise Operator has not complied in any material respect with the requirements of the Franchising Director under paragraph 2.1, the Franchising Director may require the surveys to be carried out again and the Franchise Operator shall pay to the Franchising Director the costs of such verification exercise.

2.3 The Franchise Operator shall use all reasonable endeavours to secure an improvement during the Franchise Term in the overall level of customer satisfaction with the Franchise Services.

2.4 If a survey conducted under paragraph 2.1 indicates that the level of customer satisfaction in respect of any particular aspect of the Franchise Services requested to be surveyed by the Franchising Director has deteriorated below the relevant Customer Satisfaction Benchmark, the Franchise Operator shall, if so requested by the Franchising Director, submit to him proposals which, in its opinion, will reasonably ensure that (having regard to cost and the practicalities of implementation) such deterioration will be remedied as soon as practicable. The proposals shall indicate proposed timescales for implementation and the estimated cost (if any) of implementation. Such proposals shall be submitted within 6 weeks of the results of such survey being provided to the Franchising Director.

2.5 If the Franchising Director does not consider that such proposals will so ensure that the deterioration will be remedied, the parties shall in good faith use their best endeavours to agree revised proposals for 2 weeks, following which the dispute may be resolved in accordance with the Dispute Resolution Rules. Following agreement or determination of such proposals in accordance with the Dispute Resolution Rules, the Franchise Operator shall use all reasonable endeavours to remedy such deterioration in accordance with such proposals as so agreed or determined.

2.6 For the purposes of paragraph 2.4, the Customer Satisfaction Benchmarks shall, for any new aspect of the Franchise Services for which the Franchising Director may request a survey to be conducted, be determined on a basis equivalent to that on which the Customer Satisfaction Benchmarks contained in the document in the agreed terms marked A were determined. The Franchise Operator and the Franchising Director may refer any dispute relating to such determination for resolution in accordance with the Dispute Resolution Rules.”

For the purposes of the Customer Satisfaction Provisions set out above, references to:-

- (a) **Franchising Director** shall in each case be construed as references to the Secretary of State;
- (b) Customer Satisfaction Benchmarks means:-
 - (i) in relation to the aspects of the Franchise Services contained in the document in the agreed terms marked “A”, the levels of customer satisfaction set out therein; and
 - (ii) in relation to any new aspects of the Franchise Services, the levels of customer satisfaction determined in accordance with paragraph 2.6.

APPENDIX 18

Timetable Publication Provisions (*Appendix 13, paragraph 14.1*)

1. Application

1.1 The provisions of paragraph 2 of this Appendix 18 shall apply in the circumstances described in paragraph 14 of Appendix 13 (*West Coast Specific Provisions*).

2. Publication of Timetable

2.1 The Franchise Operator shall send to the Franchising Director as soon as practicable but no less than 7 weeks prior to the implementation thereof, any new Timetable and related Train Plan. Any such new Timetable shall be sent at the same time to all relevant Rail Users' Consultative Committees and any relevant Local Authorities that may have requested a copy from the Franchise Operator.

2.2

(a) The Franchise Operator shall publish at each Station, to the extent reasonably practicable, and in accordance with the ATOC Code of Practice on Presentation of Timetable Information, the times (as amended from time to time) of all passenger trains departing from such Station, including for the avoidance of doubt passenger trains operated by other train operators, the times of arrival of all such trains at all other stations at which they call, and details of the principal Connections at such other stations to other passenger trains. For the purpose of paragraph 2.2(b) the "ATOC Code of Practice on Presentation of Timetable Information" is the code of practice on presentation of timetable information issued by the Association of Train Operating Companies and in force from time to time.

(b) Without prejudice to paragraph 2.2(a), the Franchise Operator shall publish in accordance with paragraph 2.5 at each Station advising customers of all significant alterations to trains serving each such Station.

2.3 The Franchise Operator shall publish the information referred to in paragraph 2.2 from the commencement of the Franchise Term and, subsequently publish updates or replacements to such information, to the extent necessary to reflect any changes made to such information which comes into effect on a Passenger Change Date:-

(a) in the case of the booklets referred to in paragraph 2.2(a) such publication to be no later than 4 weeks in advance of the date the changes come into effect; and

(b) in the case of the information displays in paragraph 2.2(b), such publication to be no later than the date on which the changes come into effect; and

(c) in the case of significant alterations to trains serving such Station, such publication to be no later than 4 weeks in advance of the date on which the changes come into effect.

2.4 The obligations under paragraph 2.2 shall be subject to the provision of the relevant information or booklets at the relevant time by the relevant other train operators. The Franchise Operator shall provide the equivalent information and booklets to the operators of other stations which are served by the Passenger Services and which are not Stations in sufficient time for the information to be published by such other operators within the time limits provided for in paragraph 2.3.

2.5 For the purposes of this Appendix 18,

publish shall mean:

- (a) making the relevant information available upon request in one or more booklets or in other similar form at all staffed Stations; and
- (b) displaying it on information displays at all Stations.

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

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

2.6 The Franchise Operator shall use all reasonable endeavours to procure (including by virtue of any arrangements made from time to time between Network Rail and RSP) that the Great Britain Passenger Rail Timetable (or any replacement of it) which is published or procured to be published by Network Rail from time to time in relation to the Passenger Services incorporates or is consistent with its Timetable from time to time.

2.7 The Franchise Operator shall use all reasonable endeavours to procure that information in relation to the Timetable is available to passengers through the National Rail Enquiry Scheme (or any replacement of it), and that information in relation to any new or amended Timetable is available to passengers through such Scheme not less than 4 weeks prior to its implementation.”

For the purposes of the timetable publication provisions set out above, references to:-

- (a) **Franchising Director** shall in each case be construed as references to the Secretary of State; and
- (b) **Rail Users’ Consultative Committee** shall in each case be construed as references to the Rail Passengers’ Council.

APPENDIX 19⁵¹

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APPENDIX 20

Franchise Payments

1. Franchise Payments

1.1 The Franchise Payment for any Reporting Period shall be an amount equal to:

$$\text{£FP} = \text{PFP} - \text{RS}_{\text{hA}} - \text{RS}_{\text{hRA}} + \text{RS}_{\text{uA}} + \text{RS}_{\text{uRA}} + \text{TAA} + \text{SCA} - \text{COPA} + \text{FYA} + \text{ALP} + \text{TPCP} - \text{NRR}$$

08/09

where:

£FP means the Franchise Payment for that Reporting Period;

$$\text{PFP} \quad \text{means} \quad \left(\frac{\text{RPD}}{\text{FYD}} \times \text{AFP} \right)$$

where:

RPD means the number of days in that Reporting Period;

FYD the number of days in the Franchisee Year in which that Reporting Period occurs; and

AFP means the Annual Franchise Payment for the Franchisee Year in which that Reporting Period occurs, as determined in accordance with Schedule 8.2 (*Annual Franchise Payments*) of the Terms;

RS_{hA} means the amount of any Revenue Share Adjustment to be made on that Reporting Period's Payment Date;

RS_{hRA} means the amount of any Revenue Share Reconciliation Amount to be paid on that Reporting Period's Payment Date;

RS_{uA} means the amount of any Revenue Support Adjustment to be made on that Reporting Period's Payment Date;

RS_{uRA} means the amount of any Revenue Support Reconciliation Amount to be paid on that Reporting Period's Payment Date;

TAA means any Track Access Adjustment to be made on that Reporting Period's Payment Date;

SCA means any Station Charge Adjustment to be made on that Reporting Period's Payment Date;

COPA means any Committed Obligation Payment Adjustment to be made on that Reporting Period's Payment Date;

FYA means the amount of the Final Year Adjustment pursuant to paragraph 2 of Appendix 16 and which may have a negative or positive value;

ALP means the amount of any adjustment pursuant to paragraph 3 of Appendix 16 and which may have a negative or positive value; and

TPCP means the amount of any adjustment pursuant to paragraph 4 of Appendix 16 and which may have a negative or positive value.

NRR 08/09 means an amount equivalent to the amount received by the Franchisee from Network Rail in that Reporting Period by way of Network Rail Rebate in respect of the relevant year ending on 31 March 2009. For this purpose, "Network Rail Rebate" and "relevant year" have the meaning given to them in the Track Access Agreement.

1.2 Where a Franchisee Year starts or ends during a Reporting Period, £FP and PFP shall be determined as if references in paragraph 1.1 to a Reporting Period were to each of the separate sections of two such Reporting Periods which fall either side of such Franchisee Year start or end, and the Franchise Payment for such Reporting Period shall be the sum of £FP as determined for each such section of such Reporting Period.

1.3 It is agreed that:

- (a) each of £FP, RShRA, RSuA, RSuRA, TAA and SCA, may be a positive or negative number;
- (b) where £FP is a positive number, the Secretary of State shall pay that amount to the Franchisee on the Payment Date for that Reporting Period; and
- (c) where £FP is a negative number, the Franchisee shall pay the corresponding positive amount to the Secretary of State on the Payment Date for that Reporting Period.

2. Payment of Franchise Payments

2.1 The Secretary of State shall notify the Franchisee, no less than seven days prior to the end of each Reporting Period, of the amount of the Franchise Payment payable in respect of that Reporting Period.

2.2 Each such notification shall set out in reasonable detail how the Franchise Payment has been calculated.

2.3 The Payment Date for a Reporting Period shall be the last business day of that Reporting Period.

2.4 Each Franchise Payment shall be payable by the Franchisee or, as the case may be, the Secretary of State in the amount notified by the Secretary of State in accordance with paragraph 2.1 on the Payment Date of the Reporting Period to which it relates.

2.5 Each Franchise Payment shall be made:

- (a) by automatic electronic funds transfer in pounds sterling to such bank account in the United Kingdom as the payee of such payment may have previously specified to the payer in writing; and
- (b) so that cleared funds are received in that account on or before the due date for payment.

2.6 If either the Secretary of State or the Franchisee disputes the amount of a Franchise Payment, the dispute shall be resolved in accordance with the Dispute Resolution Rules but shall not affect the obligation of any of those parties to pay a Franchise Payment notified in accordance with this paragraph 2.

2.7 If either the Secretary of State or the Franchisee fails to pay any amount to the other party on its due date, it shall in addition pay interest on such amount at the Interest Rate, calculated on a daily basis, from the due date for payment to the date on which payment is made.

2.8 If the amount of any Franchise Payment is agreed or determined to be incorrect and:

- (a) either the Secretary of State or the Franchisee has made a payment to the other party which is greater than it would have made if the amount of the Franchise Payment had been correct, then the recipient shall repay the excess within three business days of the agreement or determination; or
- (b) either the Secretary of State or the Franchisee has made a payment to the other party which is less than it would have made if the amount of the Franchise Payment had been correct, then the payer shall pay the amount of any shortfall to the payee within three business days of the agreement or determination,

together, in each case, with interest on the amount payable at the Interest Rate, calculated on a daily basis from the date on which the Franchise Payment was paid until the date on which such excess amount or shortfall is paid.

3. Revenue Share

Entitlement to Revenue Share Adjustments

3.1 A Revenue Share Adjustment shall be made in accordance with paragraphs 3.2, 3.3 and 5.4 in respect of any Franchisee Year if the Annual Management Accounts for that Franchisee Year disclose Revenue for that Franchisee Year as exceeding Target Revenue for that Franchisee Year.

Amount of Revenue Share Adjustments

3.2 Each Revenue Share Adjustment in respect of any Franchisee Year, shall be determined by reference to:

- (a) the Revenue disclosed in the Annual Management Accounts for that Franchisee Year;
- (b) Target Revenue for that Franchisee Year; and
- (c) the following formula:

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where:

RS_{hA} is the Revenue Share Adjustment for that Franchisee Year;

A is the amount of Revenue for that Franchisee Year which is greater than Target Revenue;

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Revenue Share Adjustment Date

3.3 Each Revenue Share Adjustment in respect of any Franchisee Year shall be payable by the Franchisee and, subject to paragraph 5, be made to the Franchise Payment payable on the next Revenue Share Adjustment Date.

Revenue Share Reconciliation Amount

3.4 After each Franchisee Year, the Secretary of State shall, following receipt by the Secretary of State of the Annual Financial Statements in respect of that Franchisee Year, calculate the Revenue Share Reconciliation Amount in accordance with paragraph 3.5.

3.5 The Secretary of State shall calculate the Revenue Share Reconciliation Amount in accordance with the following formula:

$$RS_{hRA} = RS_{hA(FS)} - RS_{hA}$$

where:

RS_{hRA} is the Revenue Share Reconciliation Amount for any Franchisee Year;

$RS_{hA(FS)}$ is the Revenue Share Adjustment determined in the manner set out in paragraph 3.2 but by reference to the Annual Financial Statements (instead of the Annual Management Accounts) for that Franchisee Year; and

RS_{hA} is the Revenue Share Adjustment (if any, or if there was none, nil) for that Franchisee Year determined pursuant to paragraph 3.2.

Revenue Share Reconciliation Date

3.6 Any Revenue Share Reconciliation Amount shall be payable by the Secretary of State or the Franchisee (as the case may be) and, subject to paragraph 5, be applied to the Franchise Payment payable on the next Revenue Share Reconciliation Date.

Meaning of Revenue for the purposes of paragraph 3

3.7 For the purposes of this paragraph 3 only, the amount of Revenue that may be compared with Target Revenue from time to time shall exclude any Revenue that is wholly attributable to:

- (a) Additional Passenger Services operated with additional rolling stock funded by Additional Rolling Stock Investment; and/or
- (b) commission receivable by the Franchisee from other Train Operators in respect of sales of tickets for their railway passenger services sold by the Franchisee through Additional Call Centres.

Additional Investment

3.8 The Franchisee shall be entitled to notify the Secretary of State before making any Additional Investment. In so notifying, the Franchisee shall provide full details of the investment contemplated, together with the reasons why it considers that such investment constitutes Additional Investment.

3.9 To the extent that the Franchisee makes any Additional Investment without first notifying the Secretary of State, then any Revenue accruing from any related Additional Passenger Services or commission accruing from the Additional Call Centre Investment (as the case may be) shall be

included in the amount of Revenue that may be compared with Target Revenue for the purposes of this paragraph 3.

3.10 Within 28 days of receipt of any notice given in accordance with paragraph 3.9, the Secretary of State shall notify the Franchisee whether or not he considers that the investment constitutes Additional Investment, providing reasons for the decision.

Accounting for Revenue attributable to Additional Investment

3.11 In respect of any Franchisee Year, the Franchisee shall demonstrate to the Secretary of State the amount (if any) of accrued Revenue that the Franchisee believes falls within paragraph 3.7(a) and/or (b) by:

- (a) separately accounting for those amounts in any accounts or statements required pursuant to Schedule 13 (*Information and Industry Initiatives*) of the Terms; and
- (b) providing such other information as the Secretary of State reasonably requires.

3.12 The Secretary of State shall reasonably determine in accordance with established industry procedures (including those prescribed in the Ticketing and Settlement Agreement), where applicable, the amount of accrued Revenue that is attributable to the activities referred to in paragraphs 3.7(a) and/or (b).

4. Revenue Support in relation to Force Majeure Events

Purpose of Revenue Support before 8 December 2008

4.1 The purpose of Revenue Support Adjustments under this paragraph 4 is to mitigate the impact on the Franchisee of Revenue decline caused by Force Majeure Events occurring prior to ⁵³. No Revenue Support Adjustment may be claimed pursuant to this paragraph 4 in respect of any Reporting Period starting on or after ⁵⁴.

Conditions for Revenue Support Adjustments in relation to Force Majeure Events

4.2 If:

- (a) the Management Accounts for any Reporting Period which:
 - (i) includes, or begins after the Start Date; and
 - (ii) starts prior to ⁵⁵,

(the **Subject Period**), together with any supporting information (including Management Accounts for prior Reporting Periods), disclose that the cumulative year-to-date Revenue for the period commencing on the first day of the Franchisee Year within which the Subject

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Period starts and ending on the final day of the Subject Period (the ***latter period***) is less than xxx⁵⁶ per cent. of cumulative year-to-date Periodic Target Revenue for the latter period;

- (b) one or more Force Majeure Events has or have occurred in:
 - (i) the Subject Period; or
 - (ii) any prior Reporting Period or Reporting Periods which include(s) or begin(s) after the Execution Date,and the effects on Revenue of that Force Majeure Event or Force Majeure Events are or were continuing during all or part of the Subject Period; and
- (c) the Secretary of State reasonably determines that:
 - (i) cumulative year-to-date Revenue for the latter period, expressed as a percentage of cumulative Periodic Target Revenue for the latter period, has declined below the cumulative year-to-date Revenue for the former period, expressed as a percentage of cumulative Periodic Target Revenue for the former period; and
 - (ii) such Force Majeure Event or Force Majeure Events is/are the dominant cause of such decline,

then, except as provided in paragraph 4.4, a Revenue Support Adjustment shall be made in respect of the Subject Period, subject to and in accordance with the rest of this paragraph 4 and paragraphs 6 and 8.

Definitions of Former Period and Dominant Cause

4.3

- (a) For the purposes of paragraph 4.2(c)(i), ***former period*** means, the period commencing on the first day of the Franchisee Year within which the Subject Period starts and ending on the final day of:
 - (i) the Reporting Period immediately prior to the Reporting Period in which such Force Majeure Event or the first of such Force Majeure Events occurred; or
 - (ii) such earlier Reporting Period as the Secretary of State reasonably selects, following consultation with the Franchisee, if the Franchisee demonstrates to the Secretary of State's reasonable satisfaction that the percentage achieved in the Reporting Period referred to in paragraph 4.3(a)(i) is not reasonably representative of the Franchisee's overall Revenue performance.
- (b) [Not used.]
- (c) For purposes of paragraph 4.2(c)(ii), ***dominant cause*** means that either:
 - (i) such Force Majeure Event or Force Majeure Events is/are the sole cause of the decline in Revenue referred to in that paragraph; or
 - (ii) if there are other causes, that decline is at least 51 per cent. attributable to such Force Majeure Event or Force Majeure Events,

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and in the case of more than one Force Majeure Event having regard to their combined effect on Revenue.

Industrial Action

4.4 If and to the extent that the decline referred to in paragraph 4.2(c) is caused by a Force Majeure Event or Force Majeure Events arising as a result of industrial action (howsoever caused and of whatever nature), then the Franchisee shall not be eligible for any Revenue Support Adjustment, and the provisions of paragraph 1.1 of Schedule 8.3 (*Miscellaneous Payment Provisions*) of the Terms shall apply.

Timing for Claims

4.5 The Franchisee shall make any claim for a Revenue Support Adjustment by requesting, within seven days of delivery to the Secretary of State of the Management Accounts for the Subject Period, that the Secretary of State makes that Revenue Support Adjustment.

Timing for Determinations

4.6 The Secretary of State shall reasonably determine, and notify to the Franchisee, whether the conditions specified in paragraph 4.2(c) are satisfied, as soon as reasonably practicable, and in any event no more than three Reporting Periods after the later of:

- (a) the date on which any such claim by the Franchisee is made; and
- (b) the date on which the Franchisee supplies any further information requested by the Secretary of State pursuant to paragraph 4.8.

Relevant Information

4.7 The Secretary of State shall make any determination pursuant to paragraph 4.6 having due regard to:

- (a) the Management Accounts referred to in paragraph 4.2(a);
- (b) any supporting information referred to in paragraph 4.2(a);
- (c) any information provided pursuant to paragraph 4.8;
- (d) the actual duration of the Revenue impact of the Force Majeure Event; and
- (e) any other relevant information.

Further Information from Franchisee

4.8 The Franchisee shall, as soon as reasonably practicable after receipt of any notice requiring it to do so, provide such further information to the Secretary of State as he reasonably requires in order to make the determination referred to in paragraph 4.6. The Secretary of State shall not be obliged to determine entitlement to, and the amount of, any Revenue Support Adjustment claimed pursuant to paragraph 4.2 unless and until such further information is supplied.

4.9 [Not used.]

Amount of Revenue Support Adjustments in relation to Force Majeure Events

4.10 Any Revenue Support Adjustment under this paragraph 4 in respect of a Reporting Period shall be paid in accordance with paragraph 6.1 and determined by reference to:

- (a) the cumulative, year-to-date Revenue up to the end of that Reporting Period, reported in the Management Accounts for that Reporting Period and prior Reporting Periods;
- (b) the cumulative Periodic Target Revenue for the year-to-date; and
- (c) the following formula:

$$RS_{uA} = RS_{uE} - PRS_{uA}$$

where:

RS_{uA} is the Revenue Support Adjustment for that Reporting Period;

RS_{uE} is the cumulative Revenue Support Adjustment entitlement for the year-to-date, determined by reference to the following formula:

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where:

A is the amount by which cumulative, year-to-date Revenue up to the end of that Reporting Period is:

(a) less than xxx⁵⁸ per cent. of cumulative Periodic Target Revenue; and

(b) equal to or greater than xxx⁵⁹ per cent. of cumulative Periodic Target Revenue,

for the year-to-date; and

B is the amount by which cumulative, year-to-date Revenue up to the end of that Reporting Period is less than xxx⁶⁰ per cent. of cumulative, year-to-date Periodic Target Revenue for the year-to-date; and

PRS_{uA} is the cumulative net Revenue Support Adjustments (if any) made in any previous Reporting Periods in the same Franchisee Year as such Reporting Period.

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5. Revenue Support After ⁶¹

Purpose of Revenue Support after ⁶²

5.1 The purpose of Revenue Support Adjustments under this paragraph 5 is to mitigate the impact on the Franchisee of Revenue shortfalls against Target Revenue occurring after ⁶³

Entitlement to Revenue Support Adjustments after ⁶⁴

5.2 A Revenue Support Adjustment shall be made in accordance with paragraphs 5.3 and 6.1 in respect of any Reporting Period which starts on or after ⁶⁵ if:

- (a) the Management Accounts for that Reporting Period disclose that the cumulative year-to-date Revenue for the period commencing on the first day of the Franchisee Year within which that Reporting Period starts and ending on the final day of that Reporting Period is less than the cumulative Periodic Target Revenue for that period; and
- (b) within seven days of delivery to the Secretary of State of the Management Accounts for that Reporting Period, the Franchisee requests that a Revenue Support Adjustment be made by the Secretary of State.

Amount of Revenue Support Adjustments

5.3 Any Revenue Support Adjustment under this paragraph 5 in respect of a Reporting Period shall be paid in accordance with paragraph 6.1 and determined by reference to:

- (a) the cumulative, year-to-date Revenue for up to the end of that Reporting Period reported in the Management Accounts for that Reporting Period and prior Reporting Periods;
- (b) the cumulative Periodic Target Revenue for the year-to-date; and
- (c) the following formula

$$RS_uA = RS_uE - PRS_uA$$

where:

RS_uA is the Revenue Support Adjustment for that Reporting Period;

RS_uE is the cumulative Revenue Support Adjustment entitlement for the year-to-date, determined by reference to the following formula:

$$RS_uE = (A \times ^{66})$$

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where:

A is the amount by which cumulative, year-to-date Revenue up to the end of that Reporting Period is less than cumulative Periodic Target Revenue for the year-to-date;

PRS_uA is the cumulative net Revenue Support Adjustments (if any) made in any previous Reporting Periods in the same Franchisee Year as such Reporting Period.

Further Revenue Support Adjustments

5.4 If a Revenue Support Adjustment is requested and made pursuant to this paragraph 5 in relation to any Reporting Period which starts after⁶⁷, a further Revenue Support Adjustment shall be made (whether or not requested) in accordance with paragraphs 5.3 and 6.1 for each subsequent Reporting Period which falls wholly within the same Franchisee Year as that Reporting Period.

6. General Provisions in relation to Revenue Support

Payment on Revenue Support Adjustment Date

6.1 Each Revenue Support Adjustment in respect of any Reporting Period shall be payable by the Secretary of State or the Franchisee (as the case may be) and, subject to paragraph 8, made to the Franchisee payable on the Revenue Support Adjustment Date (or, in the case of further Revenue Support Adjustments made pursuant to paragraph 5.4, on each subsequent Payment Date).

Revenue Support Adjustment and Additional Passenger Services

6.2 For so long as a Revenue Support Adjustment is to be made, or has been claimed by the Franchisee, in accordance with this Agreement, then the Franchisee shall not be entitled, without the prior consent of the Secretary of State, to take any steps to operate any new Additional Passenger Services additional to those which it is already operating, including:

- (a) seeking or exercising any new Additional Timetable Development Rights in accordance with paragraph 14.1 of Schedule 1.1 (*Service Development*) of the Terms;
- (b) procuring new rolling stock vehicles in accordance with paragraph 15.2(a) of Schedule 1.1 (*Service Development*) of the Terms ; and
- (c) proposing to Network Rail the addition of any new Additional Passenger Service in accordance with paragraph 5.2 of Schedule 1.2 (*Operating Obligations*) of the Terms.

Further provisions in relation to Revenue Support Adjustment

6.3 ⁶⁸

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7. Revenue Support Reconciliation Amount

Calculation for period up to ⁶⁹

7.1 Where any Revenue Support Adjustment has been made in respect of a Franchisee Year pursuant to paragraph 4, the Secretary of State shall, following receipt by him of the Annual Audited Accounts in respect of that Franchisee Year, calculate the Revenue Support Reconciliation Amount in respect of that Franchisee Year by reasonably determining the extent to which the aggregate Revenue Support Adjustments paid by reference to that Franchisee Year would have differed if they had been determined by reference to (i) the relationship between Revenue for the full Franchisee Year (as specified in the Annual Audited Accounts, but adjusted to exclude any Revenue Support Reconciliation Amount paid in respect of a prior Franchisee Year) and Target Revenue for the full Franchisee Year (expressed as a percentage) and the information available to the Secretary of State at the time of the reconciliation (including any information previously supplied and not superseded), rather than (ii) the relevant Management Accounts and the information available to the Secretary of State at the time the Revenue Support Adjustments were paid.

Calculation for Subsequent Years

7.2 Where any Revenue Support Adjustment has been made in respect of a Franchisee Year pursuant to paragraph 5, the Secretary of State shall, following receipt by him of the Annual Financial Statements in respect of that Franchisee Year, calculate the Revenue Support Reconciliation Amount in respect of that Franchisee Year in accordance with the following formula:

$$RSuRA = RSuA(FS) - PRSuA$$

where:

RSuRA is the Revenue Support Reconciliation Amount for that Franchisee Year;

RSuA(FS) is the Revenue Support Adjustment for that Franchisee Year determined in accordance with the following formula:

$$RSuA(FS) = (A \times 70)$$

where:

A is the amount by which Revenue for that Franchisee Year as reported in the Annual Financial Statements is less than Target Revenue for that Franchisee Year; and

PRSuA is the sum of each Revenue Support Adjustment determined pursuant to paragraph 5.3 in respect of any Reporting Period in that Franchisee Year.

Revenue Support Reconciliation Date

7.3 The Revenue Support Reconciliation Amount shall be payable:

⁶⁹ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁷⁰ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (a) by the Secretary of State (if the Revenue Support Reconciliation Amount is a positive number, because the aggregate Revenue Support Adjustments determined pursuant to the Annual Audited Accounts or Annual Financial Statements exceed the aggregate Revenue Support Adjustments determined pursuant to paragraph 4 or 5); or
- (b) by the Franchisee (if the Revenue Support Reconciliation Amount is a negative number, because the aggregate Revenue Support Adjustments determined pursuant to the Annual Audited Accounts or Annual Financial Statements are less than the aggregate Revenue Support Adjustments determined pursuant to paragraph 4 or 5),

and, subject to paragraph 8, shall be applied to the Franchise Payment payable on the Revenue Support Reconciliation Date.

8. Final Franchisee Year

Revenue Share

8.1 Any Revenue Share Adjustment and/or Revenue Share Reconciliation Amount to be made in respect of the final Franchisee Year shall be determined in accordance with paragraphs 3.2 and 3.6 respectively but shall be paid within 30 days of the Secretary of State giving written notice to the Franchisee of the amount of such Revenue Share Adjustment and/or Revenue Share Reconciliation Amount.

Revenue Support

8.2 Any Revenue Support Adjustment and/or Revenue Support Reconciliation Amount which:

- (a) is to be made in respect of the final Franchisee Year; and
- (b) has not been made during the Franchise Period,

shall be determined in accordance with paragraphs 4.10, 5.3, 7.1 and 7.2 respectively, but shall be paid within 30 days of the Secretary of State giving written notice to the Franchisee (such notice to be given within 60 days of the Franchise Operator's submission of the Annual Audited Accounts for the final Franchisee Year) of the amount of such Revenue Support Adjustment and/or Revenue Support Reconciliation Amount.

Annual Audited Accounts

8.3 If the Franchisee fails to provide the Annual Audited Accounts for the final Franchisee Year within four Reporting Periods of the expiry of the final Franchisee Year pursuant to paragraph 3.9 of Schedule 13 (*Information and Industry Initiatives*) of the Terms, the Secretary of State shall be entitled (but not obliged) to determine:

- (a) any Revenue Support Adjustment in accordance with paragraph 4.10; and/or
- (b) any Revenue Support Reconciliation Amount in accordance with paragraph 7.1,

but by reference to any relevant information available to the Secretary of State at the time of such determination, including any information contained in the latest cumulative, year-to-date Management Accounts or in the Annual Management Accounts.

Annual Financial Statements

8.4 If the Franchisee fails to provide the Annual Financial Statements for the final Franchisee Year within three Reporting Periods of the expiry of the final Franchisee Year pursuant to

paragraph 3.7 of Schedule 13 (*Information and Industry Initiatives*) of the Terms, the Secretary of State shall be entitled (but not obliged) to determine:

- (a) any Revenue Share Adjustment in accordance with paragraph 3.2;
- (b) any Revenue Share Reconciliation Amount in accordance with paragraph 3.5;
- (c) any Revenue Support Adjustment in accordance with paragraph 5.3; and/or
- (d) any Revenue Support Reconciliation Amount in accordance with paragraph 7.2,

but by reference to any relevant information available to the Secretary of State at the time of such determination, including any information contained in the latest cumulative, year-to-date Management Accounts or in the Annual Management Accounts.

Final Franchisee Year

- 8.5 Where the final Franchisee Year is less than a calendar year, the final Revenue Support Reconciliation Amount shall be calculated by reference to the Periodic Target Revenue rather than the Target Revenue for such Franchisee Year.

9. ⁷¹

⁷¹ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

APPENDIX 21

Form of Performance Bond

PERFORMANCE BOND

Dated _____ 20[]

[BOND PROVIDER]

PERFORMANCE BOND

Secretary of State for Transport
33 Horseferry Road, London SW1P 4DR

To: Secretary of State for Transport
33 Horseferry Road,
London SW1P 4DR
(the Secretary of State)

Whereas:

We are informed that you have entered into an amended and restated franchise agreement dated 12 December 2006 (the **Franchise Agreement**, incorporating by reference the National Rail Franchise Terms, Second Edition (the **Terms**)) with Virgin Rail Group Limited (the **Franchisee**) and West Coast Trains Limited (the **Franchise Operator**) under which the Franchisee will secure the provision by the Franchise Operator of certain railway passenger services.

We are further informed that the Franchise Agreement requires that the Secretary of State receives a duly executed performance bond of up to ⁷² (the **Bond Value**) to secure the performance by the Franchise Operator of and its compliance with its obligations under the Franchise Agreement and any supplemental agreement thereto entered into between the Franchise Operator and a successor operator to the West Coast franchise (any such agreement, a **Supplemental Agreement**).

Accordingly:

We hereby unconditionally and irrevocably undertake to pay to you in full in London, immediately upon receipt of your first written demand on us in the form set out in the Schedule and, without further enquiry, the sum specified therein. Such written demand shall state:

- (a) the Call Event (as defined in clause 2 hereof) that has occurred; and
- (b) the date of occurrence of such Call Event.

You may call on us for the whole or part of the amount of our liability hereunder and you may make any number of calls on us up to a maximum aggregate amount of the Bond Value. All sums payable hereunder shall be paid free of any restriction or condition and free and clear of and (except to the extent required by law) without any deduction or withholding, whether for or on account of tax, by way of set-off or otherwise.

1. The undertaking given by us above shall operate provided that:

- (a) our maximum liability shall be limited to a sum or sums not exceeding in the aggregate the amount of the Bond Value or such lesser amount as you may notify us of from time to time in writing, separately from any demand, shall constitute the Bond Value of this Bond; and
- (b) notwithstanding anything contained herein, our liability hereunder shall expire on the earlier of:
 - (i) the date falling six months after the date on which any railway administration order is made in relation to the Franchise Operator pursuant to Sections 60 to 62 of the Railways Act 1993;

⁷² Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (ii) the later of:
 - (A) the date falling one month after the determination of the Purchase Price (as defined in any Supplemental Agreement) under each relevant Supplemental Agreement; and
 - (B) the end of the Franchise Term; and
- (ii) a date at least three years after the date of the bond,

except in respect of any written demand for payment complying with all the requirements hereof which is received by us on or before such date for either the Bond Value, or for such lesser amount which, when aggregated with any previous demands, amounts to the Bond Value, after which date this undertaking shall be void whether returned to us or not.

2. **Call Event** means, in this Bond, any of:

- (a) the early termination or expiry of the Franchise Agreement in circumstances where there are liabilities or obligations outstanding from the Franchise Operator to the Secretary of State;
- (b) the early termination of the Franchise Agreement (solely as a consequence of the occurrence of one or more Events of Default) in circumstances where the Secretary of State has incurred or expects to incur additional costs in connection with termination of the West Coast franchise;
- (c) the making of a railway administration order in relation to the Franchise Operator pursuant to Sections 60 to 62 of the Railways Act 1993;
- (d) the occurrence of an Event of Default under the Franchise Agreement in respect of:
 - (i) paragraph 2.13(a) of Schedule 10.3 (*Events of Default and Termination Event*) of the Terms in relation to the Performance Bond; or
 - (ii) paragraph 2.13(b) of Schedule 10.3 (*Events of Default and Termination Event*) of the Terms,

whether or not the Franchise Agreement is, or is to be, terminated as a result thereof;

- (e) the failure by the Franchise Operator to perform or comply with its obligations under any Supplemental Agreement;
- (f) the failure by the Franchise Operator to provide the Secretary of State with a replacement Performance Bond which complies with paragraph 4 of Schedule 12 (*Financial Obligations and Covenants*) of the Terms; or
- (g) the failure by the Franchise Operator to procure the execution and delivery of a new Performance Bond by a Bond Provider in favour of and acceptable to the Secretary of State when required to do so in accordance with paragraph 4.8 of Schedule 12 (*Financial Obligations and Covenants*) of the Terms.

3. This undertaking is made to you, your successors and your assigns.

4. This undertaking shall not be discharged or released by time, indulgence, waiver, alteration or release of, or in respect to, the obligations of the Franchisee or the Franchise Operator under the

Franchise Agreement or any Supplemental Agreement or any other circumstances that might operate as a release of a guarantor at law or in equity.

5. You may make demand or give notice to us under this Bond in writing by hand or facsimile transmission to us as follows:

Address: [Bond Provider's address]

Facsimile Number: [Bond Provider's fax number]

6. References in this Bond to the Franchise Agreement and the Supplemental Agreement are to the Franchise Agreement and any Supplemental Agreement as amended from time to time.

7. Where used in this Bond, capitalised terms have the same meanings as in the Terms.

8. This Bond shall be governed by and construed in accordance with the laws of England and Wales.

Executed as a deed this [day and month] of [year].

SCHEDULE TO THE PERFORMANCE BOND

SPECIMEN DEMAND NOTICE

To: [name and address of Bond Provider]

[date of demand notice]

We refer to the performance bond issued by you on [date of Bond] (the **Performance Bond**) in connection with the amended and restated franchise agreement (the **Franchise Agreement**) entered into between the Secretary of State for Transport (the **Secretary of State**) and Virgin Rail Group Limited (the **Franchisee**) and West Coast Trains Limited (the **Franchise Operator**) on 12 December 2006, incorporating by reference the National Rail Franchise Terms, Second Edition (*the Terms*)).

We hereby notify you that the following Call Event (as defined in the Performance Bond) occurred on [date of occurrence of Call Event]: [delete as appropriate]

[The Franchise Agreement has [terminated early/expired] on [date of termination/expiry] in circumstances where there are liabilities or obligations outstanding from the Franchise Operator to the Secretary of State.]

[The Franchise Agreement has terminated early (solely as a consequence of the occurrence of one or more Events of Default) on [date of termination] in circumstances where the Secretary of State has incurred or expects to incur additional costs in connection with the termination of the West Coast franchise.]

[A railway administration order has been made in relation to the Franchise Operator pursuant to Sections 60 to 62 of the Railways Act 1993.]

[That an Event of Default under the Franchise Agreement has occurred under:

[(a) paragraph 2.13(a) of Schedule 10.3 (Events of Default and Termination Event) of the Terms in relation to the Performance Bond; or]

[(b) paragraph 2.13(b) of Schedule 10.3 of the Terms,]

whether or not the Franchise Agreement is, or is to be, terminated as a result thereof.]

[The Franchise Operator has failed to perform or comply with its obligations under any Supplemental Agreement.]

[The Franchise Operator has failed to provide a replacement Performance Bond (as described in the Franchise Agreement) complying with paragraph 4 of Schedule 12 (Financial Obligations and Covenants) of the Terms at least six months prior to the scheduled expiry of the existing Performance Bond.]

[The Franchise Operator has failed to procure the execution and delivery of a new Performance Bond by a Bond Provider acceptable to the Secretary of State when required to do so in accordance with paragraph 4.8 of Schedule 12 (Financial Obligations and Covenants) of the Terms.]

We hereby demand immediate payment from you of [specify alternative amount if not Bond Value] or the Bond Value, whichever is smaller.

Please arrange for immediate payment of the relevant amount as follows:

[account details to which Bond monies to be paid into]

Where used in this Notice, capitalised terms have the same meanings as in the Terms.

For and on behalf of

Secretary of State for Transport

APPENDIX 22

Form of Season Ticket Bond

SEASON TICKET BOND

Dated_____20[]

[*BOND PROVIDER*]

SEASON TICKET BOND

Secretary of State for Transport
33 Horseferry Road, London SW1P 4DR

To: Secretary of State for Transport
33 Horseferry Road, London SW1P 4DR
(the *Secretary of State*)

Whereas:

We are informed that you have entered into an amended and restated franchise agreement dated 12 December 2006 (the **Franchise Agreement**) incorporating by reference the National Rail Franchise Terms, Second Edition (*the Terms*)) with Virgin Rail Group Limited (the **Franchisee**) and West Coast Trains Limited (the **Franchise Operator**) under which the Franchisee will secure the provision by the **Franchise Operator** of certain railway passenger services.

We are further informed that the Franchise Agreement requires that the Secretary of State receives a duly executed season ticket bond to secure the performance by the Franchise Operator of and its compliance with certain of its obligations under the Franchise Agreement and any Supplemental Agreement (any such agreement, a **Supplemental Agreement**).

Accordingly:

We hereby unconditionally and irrevocably undertake to pay to you in full in London, immediately upon receipt of your first written demand on us in the form set out in Schedule 1 and, without further enquiry, the sum specified therein. Such written demand shall state:

the Call Event (as defined in clause 2) that has occurred; and

the date of occurrence of such Call Event.

You may call on us for the whole or part of the amount of our liability hereunder and you may make any number of calls on us up to a maximum aggregate amount of the Bond Value (as defined in clause 3). All sums payable hereunder shall be paid free of any restriction or condition and free and clear of and (except to the extent required by law) without any deduction or withholding, whether for or on account of tax, by way of set-off or otherwise.

1. The undertaking given by us above shall operate provided that:
 - (a) our maximum liability shall be limited to a sum or sums not exceeding in the aggregate the amount of the Bond Value on the date of occurrence of the Call Event stated in your written demand on us; and
 - (b) you may only call on us (whether on one or more occasions) in relation to one Call Event, such Call Event to be determined by reference to the first written demand which is received by us in the form set out in Schedule 1.
2. **Call Event** means, in this Bond, any of:
 - (a) the termination or expiry of the Franchise Agreement;
 - (b) the making of a railway administration order in relation to the Franchise Operator pursuant to Sections 60 to 62 of the Railways Act; or

- (c) the occurrence of an Event of Default under paragraph 2.13(a) (in relation to a Season Ticket Bond) or 2.13(c) of Schedule 10.3 (*Events of Default and Termination Event*) of the Terms (whether or not the Franchise Agreement is, or is to be, terminated as a result thereof).
3. **Bond Value** shall mean, in respect of any date, the amount specified in Schedule 2 as being the value of this Bond for such date (provided that for these purposes the date of occurrence of the Call Event specified in clause 2(c) shall be deemed to be the last date for which a Bond Value is assigned under Schedule 2 of this Bond)
4. Notwithstanding anything contained herein, but subject to clause 5, our liability hereunder in respect of any Call Event shall expire no later than the end of the Franchise Term and:
- (a) in relation to a Call Event specified in clauses 2(a) and (b), at noon (London time) on the date falling three business days after the date of occurrence of such Call Event (*business day* being a day on which banks are open for business in the City of London); and
- (b) in relation to any other Call Event, on the day falling one month after the last date for which a Bond Value is assigned under Schedule 2, unless you notify us in writing prior to the relevant expiry time that the relevant Call Event has occurred (whether or not you call on us at the same time under this Bond).
5. If you do notify us under clause 4 our liability shall expire on:
- (a) if the Call Event in respect of which you may call on us under this Bond is the termination of the Franchise Agreement, the date falling one month after the determination of the Purchase Price (as defined in the Supplemental Agreement) under each relevant Supplemental Agreement;
- (b) if the Call Event in respect of which you may call on us under this Bond is the making of a railway administration order in relation to the Franchise Operator pursuant to Sections 60 to 62 of the Railways Act 1993, the date falling three months after the making of such railway administration order; or
- (c) if the Call Event in respect of which you may call on us under this Bond is the occurrence of an Event of Default under paragraph 2.13(a) (in relation to a Season Ticket Bond) or paragraph 2.13(c) of Schedule 10.3 (*Events of Default and Termination Event*) of the Terms (whether or not the Franchise Agreement is, or is to be, terminated as a result thereof), the date falling one month after your notification to us under clause 5, except, in each case, in respect of any written demand for payment complying with all the requirements hereof which is received by us on or before the relevant date, after which date this undertaking shall be void whether returned to us or not.
6. This undertaking is made to you, your successors and your assigns.
7. This undertaking shall not be discharged or released by time, indulgence, waiver, alteration or release of, or in respect to, the obligations of the Franchisee or the Franchise Operator under the Franchise Agreement or any Supplemental Agreement or any other circumstances that might operate as a release of a guarantor at law or in equity.
8. You may make demand or give notice to us under this Bond in writing by hand or facsimile transmission to us as follows:

Address: [Bond Provider's address]

Facsimile Number: [Bond Provider's fax number]

9. References in this Bond to the Franchise Agreement and the Supplemental Agreement are to the Franchise Agreement and the Supplemental Agreement as amended from time to time and terms defined therein shall have the same meaning in this Bond.

10. Where used in this Bond, capitalised terms have the same meanings as in the Terms.

11. This Bond shall be governed by and construed in accordance with the laws of England and Wales.

Executed as a deed this [day and month] of [year].

SCHEDULE 1 TO THE SEASON TICKET BOND

SPECIMEN DEMAND NOTICE

To: [Name and address of Bond Provider]

[date of demand notice]

We refer to the season ticket bond issued by you on [date of Bond] (the **Season Ticket Bond**) in connection with the amended and restated franchise agreement (the **Franchise Agreement**) entered into between the Secretary of State for Transport (the **Secretary of State**), Virgin Rail Group Limited (the **Franchisee**) and West Coast Trains Limited (the **Franchise Operator**) on 12 December 2006, incorporating by reference the National Rail Franchise Terms, Second Edition (the **Terms**)).

We hereby notify you that the following Call Event (as defined in the Season Ticket Bond) occurred on [date of occurrence of Call Event]: [delete as appropriate]

[The Franchise Agreement terminated on [date of termination] and the Franchise Operator has failed to perform its obligations under paragraph 3.3 of Schedule 15.4 (Provisions Applying on and after Termination) of the Terms or clause 2 of a Supplemental Agreement.]

[A railway administration order has been made in relation to the Franchise Operator pursuant to Sections 60 to 62 of the Railways Act 1993.]

[An Event of Default occurred under paragraph 2.13(a) (in relation to a Season Ticket Bond) or paragraph 2.13(c) of Schedule 10.3 (Events of Default and Termination Event) of the Terms.]

We hereby demand immediate payment from you of [specify alternative amount if not Bond Value] or the Bond Value, whichever is smaller.

Please arrange for immediate payment of the relevant amount as follows:

[account details to which Bond monies to be paid into]

Where used in this Notice, capitalised terms have the same meanings as in the Terms.

For and on behalf of
Secretary of State for Transport

**SCHEDULE 2 TO THE SEASON TICKET BOND
BOND VALUE**

Call Event occurring in Reporting Period	Bond Value
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
<i>[Dates to be specified]</i>	

APPENDIX 23

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

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Dated 12 December 2006 and Amended and Restated on 26 October 2011

THE SECRETARY OF STATE FOR TRANSPORT

and

VIRGIN RAIL GROUP LIMITED

and

WEST COAST TRAINS LIMITED

**AMENDED AND RESTATED
WEST COAST
FRANCHISE AGREEMENT**

**incorporating by reference the
National Rail Franchise Terms**

(Second Edition)
