

THIS AGREEMENT is dated 18 October 2004

Between

- (1) **STRATEGIC RAIL AUTHORITY**, whose principal place of business is at 55 Victoria Street, London, SW1H 0EU including its successors (the “**Authority**”);
- (2) **GREATER MANCHESTER PASSENGER TRANSPORT EXECUTIVE**, whose principal place of business is at 9 Portland Street, Manchester, M60 1HX;
- (3) **MERSEYSIDE PASSENGER TRANSPORT EXECUTIVE**, whose principal place of business is at 24 Hatton Garden, Liverpool, L3 2AN;
- (4) **SOUTH YORKSHIRE PASSENGER TRANSPORT EXECUTIVE**, whose principal place of business is at Exchange Street, Sheffield, S2 5YT;
- (5) **TYNE & WEAR PASSENGER TRANSPORT EXECUTIVE**, whose principal place of business is at Nexus House, St James’ Boulevard, Newcastle Upon Tyne, NE1 4AX;
- (6) **WEST YORKSHIRE PASSENGER TRANSPORT EXECUTIVE**, whose principal place of business is at Wellington House, 40/50 Wellington Street, Leeds, LS1 2DE; and
- (7) **NORTHERN RAIL LIMITED**, whose registered office is at Serco House, 16 Bartley Wood Business Park, Bartley Way, Hook, Hampshire, RG27 9UY and whose registered number is 04619954 (the “**Franchisee**”),

(any one of the Greater Manchester Passenger Transport Executive, the Merseyside Passenger Transport Executive, the South Yorkshire Passenger Transport Executive, the Tyne & Wear Passenger Transport Executive and the West Yorkshire Passenger Transport Executive an *Executive*).

Whereas

- (A) The Authority and each Executive wish to appoint a franchisee to provide railway passenger services within their Northern Franchise and expect their franchisee, on the terms of this Agreement, actively to seek, in all reasonable business ways, greatly improved performance over the Franchise Term from its employees, its Train Fleet and other assets, and from Network Rail and its other suppliers, so as to deliver to the passenger the best railway passenger service that can be obtained from the resources that are available to it.
- (B) The Franchisee wishes to be appointed as the Authority’s and the Executives’ franchisee for their Northern Franchise and intends, on the terms of this Agreement, actively to seek, in all reasonable business ways, greatly improved performance over the Franchise Term from its employees, its Train Fleet and other assets, and from Network Rail and its other suppliers, so as to deliver to the passenger the best railway passenger service that can be obtained from the resources that are available to it.
- (C) The Executives are each a party to this Agreement pursuant to Section 34(9) of the Act.
- (D) The Passenger Transport Authorities have approved pursuant to Section 34(11) of the Act the entry by each of their respective Executives into this Agreement, the Conditions Precedent Agreement and the Definitions Agreement.

(E) The following provisions of this Agreement are intended to reflect and give effect to the matters referred to in Recitals (A) and (B).

1. INTERPRETATION AND DEFINITIONS

1.1 In this Agreement:

Conditions Precedent Agreement means the agreement between the Authority, the Executives and the Franchisee of even date herewith specifying certain conditions to be satisfied prior to issue of a Certificate of Commencement.

Definitions Agreement means the agreement between the Authority, the Executives and the Franchisee of even date herewith relating to the interpretation of this Agreement and the Conditions Precedent Agreement.

1.2 This Agreement, the Conditions Precedent Agreement and the Definitions Agreement together constitute a single agreement, which is a “franchise agreement” for the purposes of the Act, and shall be interpreted in accordance with the Definitions Agreement.

2. COMMENCEMENT

2.1 The clauses of this Agreement and the provisions listed in clauses 2.1(a) to 2.1(p) (inclusive) shall take effect and be binding upon each of the Authority, the Executives and the Franchisee immediately upon signature of this Agreement:

- (a) paragraph 5.3 of Schedule 1.4 (*Passenger Facing Obligations*);
- (b) paragraph 2 of Schedule 2.2 (Security of Access Assets, Rolling Stock Leases, Station and Depot Leases);
- (c) paragraph 2 of Schedule 2.3 (Third Party Delivery of Passenger Services and Other Franchisees);
- (d) paragraphs 1 and 2 of Schedule 4.1 (*Franchise Facilities*);
- (e) Schedule 5.1 (Purpose, Structure and Construction);
- (f) Schedule 5.3 (Allocation of Fares to Fares Baskets);
- (g) Schedule 5.7 (Changes to Fares and Fares Regulation);
- (h) Schedule 9 (*Changes*);
- (i) Schedule 10 (Remedies, Termination and Expiry);
- (j) paragraphs 1 to 4 (inclusive) of Schedule 11 (*Agreement Management Provisions*);
- (k) paragraph 4 of Schedule 12 (Financial Obligations and Covenants);
- (l) Schedule 13.1 (*Franchise Management*);
- (m) paragraphs 1, 2, 5, 6, 7 and 8 of Schedule 13.2 (*Information*);
- (n) Schedule 14.3 (*Key Contracts*);

- (o) Schedule 17 (*Confidentiality*); and
- (p) Schedule 19 (*Other Provisions*).

2.2 The other provisions of this Agreement shall take effect and become binding upon the parties on the Franchise Commencement Date.

3. TERM

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

4. FRANCHISEE'S OBLIGATIONS

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

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

4.3 The Franchisee shall co-operate with the Authority and each Executive 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.

5. ARM'S LENGTH DEALINGS

The Franchisee shall ensure that every contract or other arrangement or transaction to which it may become party in connection with this Agreement with any person is on bona fide arm's length terms.

6. COMPLIANCE WITH LAWS

The Franchisee shall at all times during the Franchise Term perform the Franchise Services and all its other obligations under this Agreement in accordance with all applicable Laws.

7. ENTIRE AGREEMENT

7.1 This Agreement, the Definitions Agreement, the Conditions Precedent Agreement and the following letters:

- (a) Side letter of even date between the parties to this Agreement relating to treatment of the Rail Review;
- (b) Side letter of even date between the parties to this Agreement relating to the designation of assets, performance bond and heavy maintenance;
- (c) Side letter of even date between the parties to this Agreement relating to the revision of parts 1 to 6 of Appendices 1 to 4 of Schedule 7.1(*Performance Benchmarks*);
- (d) Side letter of even date between the parties to this Agreement relating to the recalibration of the KPI Audit Score Cards ("*Schedule 7.2 Side Letter*");

- (e) Side letter of even date between the parties to this Agreement relating to pensions;
- (f) Side letter of even date between the parties to this Agreement relating to the Service Level Commitment;
- (g) Side letter of even date between the parties to this Agreement relating to the preparation of the initial Train Plan;
- (h) Derogation side letter relating to paragraph 5(d) of Schedule 1.7 (*Franchise Services*);
- (i) Side letter of even date between the parties to this Agreement relating to the value of the previous franchise operators' assets; and
- (j) Side letter relating to GMPTE Executive Passenger Services.

contain the entire agreement between the parties in relation to the subject matter of this Agreement and supersede all prior agreements and arrangements between the parties other than any confidentiality agreements or undertakings which the Franchisee may have entered into with the Authority in connection with its proposal to secure the provision of the Passenger Services under this Agreement and any separate agreements or arrangements between all or any of the Executives and the Authority. For the avoidance of doubt, the rights and obligations owed by the Franchisee to the Authority and/or the Executives and the Authority and/or the Executives to the Franchisee are as set out in the Franchise Agreement and the side letters listed in this clause 7.1.

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

- (a) contained in this Agreement; or
- (b) embodied in any warranties, representations or undertakings contained in the long form report and supporting data books provided by the Reporting Accountants in respect of Arriva Trains Northern and First North Western, dated 8th May 2003.

7.3 The Franchisee hereby acknowledges and agrees with the Authority (for itself 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 Authority in connection with this Agreement, the process leading to the entering into of this Agreement, or the Franchise Services (including any "Invitation to Tender" issued in connection therewith).

7.4 The Franchisee irrevocably and unconditionally waives any right which it may otherwise have to claim damages in respect of and/or to rescind this Agreement on the basis of any warranty, representation (whether negligent or otherwise, and whether made prior to and/or in this Agreement) or undertaking howsoever or to whomsoever made unless and to the extent that such warranty, representation or undertaking was made fraudulently.

8. GOVERNING LAW

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

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

THE CORPORATE SEAL
OF THE **STRATEGIC RAIL
AUTHORITY**
HEREUNTO AFFIXED IS

AUTHENTICATED BY:

}

Robert Plampin [Seal Affixed]

THE CORPORATE SEAL OF
**GREATER MANCHESTER
PASSENGER TRANSPORT
EXECUTIVE** HEREUNTO
AFFIXED IS

AUTHENTICATED BY:

}

Moira Suringar [Seal Affixed]

THE CORPORATE SEAL OF
**MERSEYSIDE PASSENGER
TRANSPORT EXECUTIVE**
HEREUNTO AFFIXED IS

AUTHENTICATED BY:

}

Neil Scales [Seal Affixed]

THE CORPORATE SEAL OF
**SOUTH YORKSHIRE
PASSENGER TRANSPORT
EXECUTIVE** HEREUNTO
AFFIXED IS

AUTHENTICATED BY:

}

David Brown [Seal Affixed]

THE CORPORATE SEAL OF
**TYNE & WEAR PASSENGER
TRANSPORT EXECUTIVE**
HEREUNTO AFFIXED IS

AUTHENTICATED BY:



Michael J Parker [Seal Affixed]

THE CORPORATE SEAL OF
**WEST YORKSHIRE
PASSENGER TRANSPORT
EXECUTIVE** HEREUNTO
AFFIXED IS

AUTHENTICATED BY:



M Morrison [Seal Affixed]

SIGNED FOR AND ON
BEHALF OF **NORTHERN
RAIL LIMITED**

DIRECTOR:

DIRECTOR/SECRETARY:



B R Burdsall
A J M Valk

SCHEDULE 1

Passenger Service Obligations

Schedule 1.1: Service Development

Appendix 1: The Train Fleet

Appendix 2: Service Development Additional Factors

Schedule 1.2: Operating Obligations

Schedule 1.3: Additional Service Specifications

Schedule 1.4: Passenger Facing Obligations

Appendix 1: Form of Passenger's Charter

Appendix 2: Alternative Transport

Schedule 1.5: Information about Passengers

Schedule 1.6: Committed Obligations

Appendix 1: Programme of Committed Obligations

**Appendix 2: Liquidated Damages for Late Completion of
Committed Obligations**

Schedule 1.7: Franchise Services

Schedule 1.8: Major Projects

SCHEDULE 1.1ⁱ

Service Development

1. SERVICE LEVEL COMMITMENT – PURPOSE AND RESPONSIBILITY

1.1 A Service Level Commitment is the means by which the Authority specifies the level, frequency, maximum journey times and stopping patterns of the railway passenger services, including Executive Passenger Services, that the Franchisee is to:

- (a) seek Train Slots for from Network Rail; and
- (b) operate pursuant to the Timetable issued by Network Rail at the end of its timetable development process.

1.2 The Authority shall issue a Service Level Commitment for, and prior to the start of, each timetable development process of Network Rail during the Franchise Term.

1.3 The Service Level Commitment as at the date of this Agreement is in the agreed terms marked **SLC**.

1.4 A Service Level Commitment may be expressed in whole or in part at any level of generality or to any level of detail the Authority considers appropriate.

2. TRAIN PLAN – PURPOSE AND RESPONSIBILITY

2.1 A Train Plan is the means by which the Franchisee expresses its proposed allocation of the passenger carrying capacity of its Train Fleet to meet passenger demand for the railway passenger services it is to operate.

2.2 The Franchisee shall submit to the Authority and each Executive a Train Plan in respect of each Service Level Commitment and, subsequently, in respect of each Timetable in accordance with this Schedule 1.1.

2.3 In preparing a Train Plan in respect of a Service Level Commitment, the Franchisee shall do so by reference to the timetable that it envisages operating in order to comply with that Service Level Commitment.

2.4 The Train Plan for the Timetable as at the Franchise Commencement Date is to be agreed by the parties in accordance with the side letter mentioned in clause 7.1(g).

2.5 Each Train Plan is to set out for each railway passenger service in the Timetable to which it relates:

- (a) its start point and departure time;
- (b) its terminating point and arrival time;
- (c) the class of rolling stock vehicles that the allocated train is to have;
- (d) the passenger carrying capacity that the allocated train, as formed, is to have;

- (e) the indicative formation of those trains allocated in accordance with paragraph 2.5(d) which have a Target Passenger Demand greater than 75 per cent. of their passenger carrying capacity;
 - (f) its Actual Passenger Demand most recently determined in accordance with Schedule 1.5 (*Information about Passengers*); and
 - (g) its Forecast Passenger Demand.
- 2.6 A Train Plan shall be in any format that the Authority may reasonably specify for this purpose.

3. TRAIN FLEET

3.1 The Franchisee's Train Fleet as at the Franchise Commencement Date is as set out in Appendix 1 (*The Train Fleet*).

3.2 The Franchisee shall comply with its obligations under:

- (a) paragraph 16 concerning changes to the composition and characteristics of the Train Fleet; and
- (b) paragraph 2 of Schedule 2.2 (Security of Access Assets, Rolling Stock Leases, Station and Depot Leases) with respect to the Train Fleet.

4. SERVICE LEVEL DEVELOPMENT

The Franchisee agrees to co-operate with the Authority and each Executive to develop the Service Level Commitment in accordance with this Schedule 1.1.

5. PROCEDURE

5.1 The Franchisee agrees that the effective operation of the provisions of this Schedule 1.1, and of provisions addressing the same or similar matters in other franchise agreements, will require certain procedural arrangements and timescales to be followed to a common timescale by the Authority, each Executive, the Franchisee and others.

5.2 The Franchisee and each Executive agrees that the Authority may stipulate any reasonable procedural arrangements and timescales that are to be followed by the Authority, each Executive and the Franchisee for these purposes (which shall be consistent with any relevant standard railway industry processes for timetable development) and that the Authority may amend any such stipulation.

5.3 The Authority agrees to consult each Executive and the Franchisee as far as reasonably practicable prior to stipulating or amending any such procedural arrangements and timescales in accordance with paragraph 5.2.

5.4 Any stipulation by the Authority pursuant to paragraph 5.2:

- (a) shall be at the reasonable discretion of the Authority;
- (b) may contain procedural arrangements and timescales to be followed by the Franchisee in relation to other changes to the Franchise Services (pursuant to paragraph 1 of Schedule 19 (*Other Provisions*)) in conjunction with a Service Level Commitment;

(c) may contain reasonable procedural arrangements and timescales to be followed by the parties in relation to changes to Executive Passenger Services proposed or required by an Executive under paragraph 12 of Schedule 19 (*Other Provisions*) in order to ensure effective development of the Service Level Commitment and the Train Plan pursuant to this Schedule 1.1; and

(d) may provide for iterations of drafts of any Service Level Commitment, Train Plan or Timetable and for indicative Runs of the Financial Model in relation thereto.

5.5 Any procedural arrangements and timescales stipulated by the Authority pursuant to paragraph 5.2 shall have contractual effect between the Franchisee, each Executive and the Authority in accordance with the terms of such stipulation.

6. CONSULTATION WITH THE EXECUTIVES

6.1 As and when required by the Authority pursuant to paragraph 5.2, the Franchisee shall consult with each Executive for the purpose of considering:

(a) the aspirations of each Executive for:

(i) its Executive Passenger Services; or

(ii) other railway passenger services,

whether or not such services are specified in such Executive's "Local Transport Plan" and whether or not such Executive has proposed or intends to propose a change to its Executive Passenger Services under paragraph 12 of Schedule 19 (*Other Provisions*);

(b) any matters arising from the interaction between the Executive Passenger Services of any Executive and:

(i) other Passenger Services;

(ii) railway passenger services of other Train Operators;

(iii) services for the carriage of goods by rail; and

(iv) other modes of transport;

(c) the Forecast Passenger Demand for its Executive Passenger Services;

(d) the deployment of the relevant Executive Rolling Stock Vehicles used in the operation of any Passenger Services within the relevant Passenger Transport Area, or otherwise;

(e) the changes (if any) that the Authority ought to make to the Benchmarks and the Franchise Wide Benchmarks pursuant to paragraph 3.2 of Schedule 7.1 (*Performance Benchmarks*); and

(f) any other matter which such Executive reasonably considers is relevant to the development of the Service Level Commitment.

6.2 The Franchisee shall:

- (a) have due regard to any views expressed by any Executive in respect of the matters referred to in paragraph 6.1; and
- (b) set out its response to such views in its informed opinion required pursuant to paragraph 6 in the manner anticipated by paragraph 7.

7. FRANCHISEE'S SERVICE DEVELOPMENT OPINIONS

7.1 As and when required by the Authority pursuant to paragraph 5.2, the Franchisee shall provide to the Authority, and in respect of the Executive Passenger Services each Executive:

- (a) its informed estimate of Forecast Passenger Demand, in such format and to such level of disaggregation as the Authority or each Executive (as the case may be) may reasonably require in order to assist the Authority's or each Executive's (as the case may be) decision-making on future service level commitments, infrastructure, station and rolling stock vehicle investment, the best use of the network and the alleviation of overcrowding;
- (b) its informed opinion as to any changes to the current Service Level Commitment which;
 - (i) should be made in order to deliver an optimal range of railway passenger service patterns relative to Target Passenger Demand; and
 - (ii) could be implemented and operated without additional resources or an adjustment to the Franchise Payments;

and any such opinion shall identify the extent to which the Franchisee considers that the obligations contained in paragraph 7.7 might prejudice the delivery of an optimal range of railway passenger service relative to Target Passenger Demand.

- (c) its informed opinion as to any changes to the current Service Level Commitment which:
 - (i) would deliver an optimal range of railway passenger service patterns in accordance with paragraph 7.1(b)(i); and
 - (ii) could only be implemented and operated with additional resources and/or an adjustment to the Franchise Payments, together with an explanation as to:
 - (A) what additional resources and/or adjustments are necessary to make such changes; and
 - (B) why such additional resources and/or adjustments are necessary;

and any such opinion shall identify the extent to which the Franchisee considers that the obligations contained in paragraph 7.7 contribute to the need for additional resources and/or adjustments to Franchise Payments in order to implement and operate the changes suggested by the Franchisee pursuant to this paragraph 7.1(c).

- (d) its informed opinion as to any changes that the Authority ought to make to the Benchmarks and the Franchise Wide Benchmarks pursuant to paragraph 3.2 of Schedule 7.1 (*Performance Benchmarks*); and

- (e) a draft of the Train Plan that it considers that each set of proposed changes to the Service Level Commitment would require.
- 7.2 At the same time as the Franchisee provides its informed opinion to the Authority and each Executive pursuant to paragraph 7.1, it shall also provide to the Authority and each Executive a summary of any aspirations of any Executive it has had regard to, pursuant to paragraph 6.1, describing each such Executive aspiration and identifying:
- (a) if and in what way the Franchisee has accommodated such aspirations as a change to the current Service Level Commitment in its opinion; and
 - (b) if the Franchisee has not accommodated such aspirations in its opinion, the reasons why.
- 7.3 The Franchisee shall provide its opinion as to Service Level Commitment changes and prepare its draft Train Plan with due regard to:
- (a) any Route Utilisation Strategy and any other Strategy published by the Authority;
 - (b) the views of any Executive expressed pursuant to paragraph 6;
 - (c) the additional factors set out in Appendix 2 (*Service Development Additional Factors*); and
 - (d) any other constraints or considerations (including affordability constraints and value for money considerations) that the Authority has notified to it.
- 7.4 The Franchisee shall prepare its Train Plan so as to operate the entire Train Fleet in delivering Passenger Services during each Peak, save for any reasonable planning requirements for:
- (a) the allocation of Hot Standbys; or
 - (b) other rolling stock vehicles to be out of service due to maintenance requirements, Mandatory Modifications or any other reasons agreed with the Authority (such agreement not to be unreasonably withheld).
- 7.5 The Franchisee shall, subject always to the requirements of paragraph 7.6 and 7.7, which in the case of conflict shall take priority, in preparing its Train Plan, use all reasonable endeavours to:
- (a) provide for the Executive Rolling Stock Vehicles allocated to any Executive to be used predominantly in the operation of the Executive Passenger Services of such Executive; and
 - (b) ensure that the Rolling Stock allocated for the provision of the Executive Passenger Services has at least the reliability, capability and objective quality as the Rolling Stock allocated to such Executive Passenger Services specified in the June 2003 Train Plan.
- 7.6 *Subject to paragraph 7.7 (which in the case of conflict shall take priority) the Franchisee shall also, in preparing its Train Plan, unless the Authority otherwise agrees, use all reasonable endeavours to:***

- (a)¹ *provide for passenger carrying capacity on each Passenger Service that meets as a minimum the Target Passenger Demand;*
 - (b) *provide passengers with a reasonable expectation of a seat:*
 - (i) *on boarding in respect of any Off-Peak Passenger Service; and*
 - (ii)² *20 minutes after boarding (or such other time period as the Authority may stipulate) in respect of any Peak Passenger Service; and*
 - (c)³ *ensure that such Train Plan complies with the 1A HLOS Capacity Requirements.*
- 7.7 Unless the Authority otherwise directs the Franchisee (or the relevant Executive otherwise agrees) the Franchisee shall in preparing its Train Plan:
- (a) ⁴*Subject to paragraph 7.7(aa), in the case of the Executive Passenger Services relating to the Greater Manchester Passenger Transport Executive (“GMPTE Passenger Services”). Ensure that the Train Plan provides:*
 - (i) *at least the level of passenger capacity in Standard Class Accommodation during the Peak that was provided in relation to the equivalent passenger services pursuant to the June 2003 Train Plan; and*
 - (ii) *that the allocation of the Train Fleet to the provision of the GMPTE Passenger Services during the Peak, as set out in the Train Plan, is not reduced in overall terms below that applicable in the June 2003 Train Plan;*
 - (aa) *the obligations set out in paragraph 7.7(a)(i) and (ii) shall not apply in respect of any Passenger Services operating between Manchester Airport and Blackpool North which, from 11 June 2006, are operated by First/Keolis Transpennine Limited; and*
 - (b) in the case of the Executive Passenger Services relating to the South Yorkshire Passenger Transport Executive (“*SYPTe Passenger Services*”), ensure that the allocation of the Train Fleet to the provision of the SYPTe Passenger Services during the Peak, as set out in the Train Plan, is not reduced in overall terms below that applicable in the June 2003 Train Plan; and
 - (c) in the case of the Executive Passenger Services relating to the West Yorkshire Passenger Transport Executive (“*WYPTe Passenger Services*”) ensure that the Train Plan provides:
 - (i) at least the level of passenger carrying capacity in Standard Class Accommodation during the Peak that was provided in relation to the equivalent passenger services pursuant to the June 2003 Train Plan; and

¹ Date of Change 02/03/2010

² Date of Change 02/03/2010

³ Date of Change 02/03/2010

⁴ Replacement text inserted wef 9 June 2006.

(ii) that the allocation of the Train Fleet to the provision of the WYPTE Passenger Services during the Peak, as set out in the Train Plan, is not reduced in overall terms below that applicable in the June 2003 Train Plan; and

7.8 If at the time it prepares its Train Plan, having exercised all reasonable endeavours, the Franchisee is unable to prepare a Train Plan having the passenger carrying capacity and meeting the reasonable expectations referred to in paragraph 7.6, then subject to paragraph 7.7 (which in the case of conflict shall take priority) the Train Plan shall specify the best allocation of rolling stock vehicles to Passenger Services that is reasonably practicable with a view to:

- (a) minimising, so far as is possible, the amount by which Target Passenger Demand exceeds the provision of passenger carrying capacity on the affected Passenger Services;
- (b) ensuring, so far as possible, that such excess is not unduly concentrated on any particular Route or Passenger Service; and
- (c) minimising, so far as is possible, the extent to which passengers are required to stand:
 - (i) on boarding in the case of any Off-Peak Passenger Service; and
 - (ii) 20 minutes after boarding (or such other time period as the Authority may stipulate) in respect of any Peak Passenger Service.

7.9 Where paragraph 7.8 applies, the Franchisee shall propose to the Authority and each affected Executive:

- (a) such changes to the Train Plan and/or to the Service Level Commitment ; and
- (b) any other actions,

that it considers would most efficiently address the shortfall in passenger carrying capacity and meet Target Passenger Demand. Such proposal shall also include the Franchisee's informed opinion on the extent to which the obligations contained in paragraph 7.7 prejudice the Franchisee's ability to comply with its obligations in paragraph 7.6 or 7.8. It shall also identify any changes to the Train Plan prepared by the Franchisee pursuant to Paragraph 7.8 which would be required if the Franchisee was not obliged to give priority to the obligation contained in paragraph 7.7.

Costs relating to sub optimisation

7.10 If the Franchisee believes that compliance with one or more of its obligations under paragraphs 7.5(a), 7.5(b) and/or paragraph 7.7 would prevent the Franchisee operating an optimal range of Passenger Services relative to Target Passenger Demand and would result in the Franchisee suffering a Net Adverse Effect that it would not otherwise suffer, then the Franchisee shall make a written submission to each Executive to whom such obligations are owed setting out:

- (a) the relevant obligation or obligations of the Franchisee in relation to that Executive;
- (b) how the Passenger Services could be optimised relative to Target Passenger Demand if that Executive, and to the extent necessary the other Executives, were to waive the performance by the Franchisee of the obligation or obligations identified in paragraph 7.10(a);

- (c) the type of rolling stock vehicles and/or the passenger carrying capacity that the Franchisee proposes to allocate to or provide in relation to that Executive's Executive Passenger Services if that Executive were to waive performance by the Franchisee of the obligation or obligations identified in paragraph 7.10(a);
- (d) the estimated Net Adverse Effect that would be suffered by the Franchisee (on the basis that the Franchisee would use all reasonable endeavours to minimise such Net Adverse Effect) in each Reporting Period during which the Train Plan is implemented if that Executive does not waive performance by the Franchisee of the obligation or obligations identified in paragraph 7.10(a) and the other Executives do not waive the Franchisee's performance of its obligations under paragraphs 7.5(a), 7.5(b) and/or paragraph 7.7; and
- (e) the terms on which, if the Executive decided not to waive the performance by the Franchisee of the obligation or obligations identified in paragraph 7.10(a) and instead pay the Franchisee in accordance with paragraph 7.13,
- (i) the Franchisee would report to the Executive on its performance of the obligation or obligations specified in paragraph 7.10(a); and
- (ii) the quantum of the estimated Net Adverse Effect would be allocated between the affected Executives and correlated to the Franchisee's performance of the obligation or obligations specified in paragraph 7.10(a),

and which shall be accompanied by such evidence of the nature and quantum of the estimated Net Adverse Effect as is reasonably available to the Franchisee. The Franchisee shall use its reasonable endeavours to ensure that any submission made under this paragraph 7.10 is made in a manner which is consistent with any relevant standard railway industry processes and timescales for timetable development.

7.11 The Franchisee shall provide, at the request of an Executive to whom it has made a written submission under paragraph 7.10, such further information as the Executive may reasonably require in order to verify the accuracy of the estimated Net Adverse Effect set out in the submission or the basis for the allocation thereof between affected Executives, provided that such request is received by the Franchisee no later than 10 working days from the date the Executive receives or is deemed to receive the Franchisee's written submission (the "**Request Date**"). The Franchisee shall provide, to the extent reasonably practicable, the information requested by the Executive no later than 10 working days from the date of such request. On and from the Request Date an Executive may reasonably request further information to assist it in verifying the accuracy of the estimated Net Adverse Effect or the basis of the allocation thereof between affected Executives and the Franchisee shall act reasonably in considering whether to provide such requested information.

7.12 Without prejudice to paragraph 7.13 where an Executive to whom the Franchisee has made a written submission under paragraph 7.10 does not agree the quantum of the estimated Net Adverse Effect set out in the submission or the allocation thereof to the Executive it shall notify the Franchisee in writing by the later of:

- (i) 10 working days of receipt of the written submission; and
- (ii) 5 working days of the Executive receiving any further information requested under paragraph 7.11,

setting out its reasons for not agreeing the quantum of the estimated Net Adverse Effect or the allocation thereof between affected Executives. Where the Franchisee and the Executive

acting in good faith do not agree on the quantum of the estimated Net Adverse Effect and the allocation thereof to the Executive within 5 working days of such notification then the disputed matters may be referred by either of them for independent expert determination in accordance with the following provisions:-

- (a) the identity of the independent expert shall be agreed between the Franchisee and the Executive or, if they cannot decide as to the identity of the independent expert within 3 working days, such expert will be appointed, on the application of either of them, by the President of the Institute of Chartered Accountants in England and Wales;
- (b) Part C (as amended by Part D and as may be subsequently amended) of the Dispute Resolution Rules shall be applied to the dispute as if references to the arbitrator and the arbitration were references to the independent expert and the independent expert determination respectively;
- (c) the independent expert shall deliver his determination and the reasons for it within 56 days of his appointment; and
- (d) the independent expert's decision shall be final and binding save where a court holds it to be so clearly erroneous on fact that it would be unconscionable for it to stand.

Where the Franchisee does not receive a notice from the Executive by the dates specified in paragraphs 7.12, the Executive shall be deemed to have agreed the quantum of the estimated Net Adverse Effect and the allocation thereof to the Executive as set out in the submission made by the Franchisee pursuant to paragraph 7.10.

7.12A If any dispute referred to independent expert determination pursuant to paragraph 7.12 (a the "**Dispute**") raises issues or facts which are substantially the same as or connected with issues or facts raised in any other disputes to which the Franchisee is a party (a "**Related Dispute**") the following provisions shall apply:

- (a) if no independent expert has been appointed in connection with the Dispute or the Related Dispute the Franchisee may by notice in writing to the relevant Executives require the Dispute to be referred for determination by the independent expert appointed or to be appointed in respect of any such Related Dispute(s); and
- (b) if no independent expert has been appointed in connection with a Related Dispute the Franchisee may by notice in writing to the relevant Executives require the Related Dispute(s) to be referred for determination by the independent expert appointed or to be appointed in respect of any such Dispute.

7.13 An Executive to whom the Franchisee has made a written submission under paragraph 7.10 shall notify the Franchisee within 40 working days of receipt of the submission (or, if later, within 10 working days of receipt of any further information that has been reasonably requested by the Executive within 10 working days of receipt of such submission) whether it:

- (a) agrees to waive the performance by the Franchisee of the obligation or obligations set out in the written submission so as to enable the Franchisee to achieve the optimisation set out therein; or
- (b) does not agree to waive the performance by the Franchisee of such obligation or obligations and instead agrees to pay to the Franchisee, as an addition to the Executive

Franchise Payment payable by that Executive in respect of each Reporting Period during which the relevant Train Plan is implemented, either:

- (i) (where the quantum of the estimated Net Adverse Effect and the allocation thereof to the Executive has been agreed by the Executive and the Franchisee or deemed to have been agreed) the Executive's allocation of the estimated Net Adverse Effect suffered by the Franchisee in each such Reporting Period as set out in the written submission or as has otherwise been agreed between the Executive and the Franchisee; or
- (ii) (without prejudice to paragraph 7.14 and where the quantum of the estimated Net Adverse Effect or the allocation thereof to the Executive has not been agreed by the Executive and the Franchisee) the Executive's allocation (if any) of the estimated Net Adverse Effect (if any) suffered by the Franchisee in each Reporting Period as determined by an independent expert under paragraph 7.12 or as may otherwise subsequently be agreed between the Executive and the Franchisee

7.13A Where the Franchisee has not been notified by an Executive in accordance with paragraph 7.13 by the specified dates then the Executive shall be deemed to have agreed to waive the performance by the Franchisee of the obligations or obligations set out in the Franchisee's submission so as to enable the Franchisee to achieve the optimisation set out therein.

7.14 Where:-

- (a) an Executive to whom the Franchisee has made a written submission under paragraph 7.10 has not agreed to waive the performance of the obligation or obligations set out in the submission by the Franchisee; and
- (b) the quantum of the estimated Net Adverse Effect and/or the allocation thereof to the Executive has not been either agreed or resolved by expert determination prior to the end of the first such Reporting Period on which the Train Plan becomes operational,

then the Executive shall make an appropriate retrospective payment to the Franchisee within 10 working days of such estimated Net Adverse Effect and/or the allocation thereof to the Executive being agreed or determined and paragraph 7.13(b)(ii) shall apply to all subsequent Reporting Periods for which the Train Plan is effective provided that where the Net Adverse Effect is determined as being zero or less than zero no payment shall be due from the Executive or (for the avoidance of doubt) from the Franchisee to the Executive.

7.15 Where the Franchisee reasonably considers that the process set out in paragraphs 7.10 to 7.14 is inconsistent with any relevant standard industry processes and timescales for timetable development and/or any procedural arrangements and timescales stipulated by the Authority under paragraph 5.2 then the Franchisee shall notify the Authority and each Executive in writing of its opinion and the parties shall act in good faith to revise the process set out in paragraphs 7.10 to 7.15 to make it consistent with such industry processes and procedural arrangements as soon as reasonably practicable.

7.16 For the purposes of paragraph 7.10 to 7.14 the term "*Net Adverse Effect*" means the aggregate of:

- (a) the difference between the Costs which would be incurred by the Franchisee during the period in which the relevant Train Plan is to be implemented if the relevant Executive (and to the extent necessary the other Executives) waived performance by the Franchisee of the obligation or obligations set out in the Franchisee's submission and the Costs which

would be incurred by the Franchisee if the relevant Executive (and to the extent necessary the other Executives) did not waive performance of such obligation or obligations (on the basis that any reduction in Costs arising from such waiver shall have a positive value and any increase in Costs arising from such waiver shall have a negative value); and

(b) the difference between the Revenue relating to the relevant railway passenger services that would be derived by the Franchisee during the period in which the relevant Train Plan is to be implemented if the relevant Executive (and to the extent necessary the other Executives) waived performance of the obligation or obligations set out in the Franchisee's submission and the Revenue relating to the relevant railway passenger services which would be derived by the Franchisee if the relevant Executive (and to the extent necessary the other Executives) did not waive performance of such obligation or obligations (on the basis that any increase in such revenues arising from such waiver shall have a positive value and any decrease in such revenues arising from such waiver shall have a negative value).

7.17 For the purposes of paragraph 7.16 the term “*Costs*” shall mean:

- (a) rolling stock costs including rolling stock operational and maintenance costs payable by the Franchisee;
- (b) staff costs including train crew costs and other employment related costs payable by the Franchisee;
- (c) access charges payable by the Franchisee; and
- (d) other administrative, financial, and/or operational costs payable by the Franchisee.

8. DRAFT SERVICE LEVEL COMMITMENT

As and when required pursuant to paragraph 5.2, the Authority shall provide to the Franchisee:

- (a) its draft Service Level Commitment;
- (b) its opinion on any changes that the Authority reasonably considers are required to the Train Plan for such Train Plan:
 - (i) to satisfy the capacity requirements referred to in paragraphs 7.6 and 7.7; or
 - (ii) to satisfy the capacity requirements referred to in paragraphs 7.8 and 7.9 if the Authority reasonably considers that the capacity requirements referred to in paragraph 7.6 and 7.7 cannot be met; and
- (c) its opinion of any changes that are required to the Benchmarks and the Franchise Wide Benchmarks pursuant to paragraph 3.2 of Schedule 7.1 (*Performance Benchmarks*)

and in providing its opinion under paragraph (b) the Authority may direct the Franchisee that it need not comply with paragraph 7.7 in relation to the Train Plan.

9. INDICATIVE TIMETABLE AND CONSULTATION

9.1 If and to the extent that the Franchisee reasonably considers that any Service Level Commitment issued by the Authority pursuant to this Schedule 1.1 contains insufficient

information to enable it to perform its obligations under this Schedule 1.1, it shall promptly notify the Authority and the Authority shall provide such further information as is reasonably required.

9.2 The Franchisee shall, as and when required pursuant to paragraph 5.2, provide the Authority and each affected Executive with a summary (in such form as the Authority may specify) of any material changes that it would expect there to be to the Passenger Services from the current Timetable if the Authority's draft Service Level Commitment and its proposed Train Plan were to be implemented.

9.3 Notwithstanding any consultation the Authority might separately undertake in respect of the draft Service Level Commitment issued pursuant to paragraph 8, the Franchisee shall:

- (a) as soon as reasonably practicable after:
 - (i) first providing a summary to the Authority pursuant to paragraph 9.2, give all Stakeholders notice and consult them in respect of the changes to the Passenger Services specified in such summary; and
 - (ii) sending or receiving any correspondence in respect of such notice or consultation, provide the Authority with copies of such correspondence;
- (b) take due account of such bodies' views that are submitted to the Franchisee in accordance with the procedural stipulations pursuant to paragraph 5.2 and the guidance referred to in paragraph 9.3(d);
- (c) inform the Authority of any material changes that it would expect there to be to such draft Service Level Commitment if the views of such bodies were accommodated in such draft Service Level Commitment; and
- (d) comply with such reasonable requirements and guidance as the Authority may notify to it from time to time in respect of giving notice to and consulting such Stakeholders in accordance with this paragraph 9.3.

10. SERVICE LEVEL COMMITMENT

The Authority shall, in accordance with paragraph 5.2, issue to the Franchisee the Service Level Commitment that it requires the Franchisee to operate and notice of the changes (if any) to the Benchmarks and the Franchise Wide Benchmarks that the Authority will make pursuant to paragraph 3.2 of Schedule 7.1 (*Performance Benchmarks*).

11. TIMETABLE DEVELOPMENT RIGHTS

11.1 The Franchisee shall:

- (a) use all reasonable endeavours to amend and/or enter into such Access Agreements as may be necessary or desirable from time to time to obtain the timetable development rights that it requires to secure a Timetable that enables it to operate railway passenger services that comply with the Service Level Commitment; and
- (b) if requested by the Authority, surrender any Timetable Development Rights that the Authority considers the Franchisee no longer requires.

11.2 The Franchisee shall exercise its Timetable Development Rights so as to secure a Timetable that enables it to operate railway passenger services that comply with the Service Level Commitment in accordance with its obligations under paragraph 13.

11.3 Unless the Authority otherwise directs, the Franchisee shall, for the purposes of securing a Timetable that complies with the Service Level Commitment, exercise its rights under the Track Access Agreement (including the Network Code) to object, to make representations and to withhold consent in respect of any actual or proposed act or omission by Network Rail in relation to such agreement in respect of its Timetable Development Rights.

11.4 Subject to the Franchisee complying with its obligations under paragraph 11.3, it shall not be liable for any failure to secure a Timetable that enables the Franchisee to operate railway passenger services that comply with the Service Level Commitment, to the extent that such failure is caused by:

- (a) the Franchisee's Timetable Development Rights being inadequate to enable it to secure the requisite Train Slots, provided that the Franchisee has exercised all reasonable endeavours to obtain the requisite timetable development rights in accordance with paragraph 11.1;
- (b) Network Rail exercising its flexing rights from time to time under the Track Access Agreement or the Network Code in respect of such Train Slots;
- (c) Network Rail exercising its other rights from time to time under the Track Access Agreement or the Network Code; or
- (d) the exercise by the Regulator of his powers pursuant to Section 22C of the Act.

11.5 If the Authority does not consider that the Franchisee has taken sufficient steps under paragraph 11.3, it may require the Franchisee to exercise its rights referred to in paragraph 11.3 in such manner as the Authority reasonably considers appropriate in the circumstances, including:

- (a) disputing any actual or proposed act or omission by Network Rail in respect of any Timetable Development Rights; and
- (b) submitting such dispute to any relevant dispute resolution arrangements or procedures and appealing against any award or determination under such arrangements or procedures, including to the Regulator.

11.6 The Authority shall, to the extent reasonably practicable, allow the Franchisee a reasonable opportunity to make representations to the Authority concerning the exercise by the Franchisee of any of its rights referred to in paragraph 11.3 before requiring the Franchisee to take any action referred to in paragraph 11.5.

11.7 If and to the extent that the Franchisee is not able to secure a Timetable enabling it to operate railway passenger services that comply with the Service Level Commitment as a result of it not being able to obtain the timetable development rights that it requires for that purpose, the Authority shall issue to the Franchisee a Service Level Commitment in the form required by paragraph 11.7(a), which shall operate between the parties only for the purpose referred to in paragraph 11.7(b):

- (a) the Service Level Commitment issued pursuant to this paragraph 11.7 shall be in a form that:
 - (i) would enable the Franchisee to secure a Timetable in compliance with it by exercise of the Timetable Development Rights that the Franchisee does have or would have had the Franchisee properly performed its obligations under this Agreement; and
 - (ii) in all other respects, is the same as the immediately preceding Service Level Commitment issued to the Franchisee by the Authority; and
- (b) any Service Level Commitment issued pursuant to this paragraph 11.7 shall, for the purpose of Schedule 9 (*Changes*) only, stand in place of the immediately preceding Service Level Commitment issued to the Franchisee by the Authority.

12. CERTIFICATION AND NOTIFICATION BY FRANCHISEE OF TIMETABLE BIDS

12.1 Before exercising any Timetable Development Right to bid for Train Slots, the Franchisee shall provide a certificate addressed to the Authority confirming that its proposed exercise of that Timetable Development Right will be compliant with its obligation specified in paragraph 11.2.

12.2 If requested by the Authority, the Franchisee agrees to demonstrate to the reasonable satisfaction of the Authority that the Franchisee's certificate referred to in paragraph 12.1 is a true and accurate confirmation of compliance with its obligation specified in paragraph 11.2. The Authority agrees that the certificate will be acceptable if:

- (a) such certificate confirms that the Franchisee has used assurance processes approved by the Authority; and
- (b) the Franchisee has demonstrated its compliance with the Service Level Commitment by using such assurance processes.

12.3 The Franchisee shall:

- (a) keep the Authority and each Executive fully informed of any discussions with Network Rail in relation to the matters referred to in this Schedule 1.1 which may have a material bearing on the ability of the Franchisee to deliver the Service Level Commitment through the Timetable and shall, if required to do so by the Authority, supply copies of any related correspondence to the Authority and each Executive; and
- (b) update any notification under this paragraph 12.3 and/or certification under paragraph 12.1 as soon as reasonably practicable, if at any time it elects or is required to modify any aspect of its exercise of its Timetable Development Rights following Network Rail's proposed or actual rejection or modification of its bid or any part of it or for any other reason.

13. OBLIGATIONS IN RELATION TO OTHER TRAIN OPERATORS

Subject to the terms of the Licences and any applicable Law, the Franchisee shall co-operate with other Train Operators in respect of their timetable development rights where such other Train Operators provide railway passenger services meeting common or displaced passenger demand, with a view to ensuring that:

- (a) the levels of overcrowding over the Routes or other relevant routes are minimised and not unduly concentrated on particular railway passenger services, Routes or other relevant routes;
- (b) the stopping patterns of such railway passenger services are placed at approximately evenly-spaced intervals throughout each relevant hour, taking into account the reasonable needs of passengers and the different types of railway passenger services provided by other Train Operators and the Franchisee; and
- (c) a reasonable pattern of railway passenger service is provided on the relevant route(s) to enable passengers to make Connections (particularly where low frequency railway passenger services are operated or last trains are involved, taking account of seasonal fluctuations in passenger demand and the time needed to make any such Connection).

14. FINALISING THE TRAIN PLAN

14.1 The Franchisee shall submit its Train Plan to the Authority and each Executive as soon as reasonably practicable after Network Rail has published the working timetable on which the Timetable is to be based.

14.2 The Authority may notify the Franchisee of:

- (a) any respect in which it considers that the Train Plan does not comply with the requirements of this Schedule 1.1; and
- (b) any revisions that the Authority requires to address such non-compliance,

and the Franchisee shall revise the Train Plan in accordance with the Authority's requirements.

14.3 If the Franchisee considers that any of the revisions that the Authority requires pursuant to paragraph 14.2(b) are not required for the Train Plan to comply with this Schedule 1.1 then:

- (a) it shall nevertheless make such revisions;
- (b) it may subsequently refer the question as to whether such revisions were so required for resolution in accordance with such dispute resolution procedure as it and the Authority may agree or, in the absence of agreement, in accordance with the Dispute Resolution Rules; and
- (c) following determination of any such dispute, the parties shall take such steps as are required to give effect to such determination.

15. PROVISIONS RELATING TO ACCESS AGREEMENTS AND PROPERTY LEASES

15.1 Where the Authority considers it requisite for the purposes of better securing the delivery of railway passenger services under this Agreement, or any other franchise agreement, or for the better achievement by it of any of its statutory purposes, the Authority may require the Franchisee:

- (a) to exercise or refrain from exercising its rights under any Access Agreement or any Property Lease, or any related rights under such other agreements as the Authority may specify; and/or

- (b) subject to the consent of the counterparty thereto, to assign, novate or surrender its rights under any Access Agreement or Property Lease.

15.2 Except to the extent that the Authority otherwise indicates from time to time, the Franchisee shall notify the Authority of its intention to enter into or amend any Access Agreement:

- (a) where the approval of the Regulator is required under the Act, not less than 10 business days before the submission to the Regulator; and
- (b) where no such approval is required, not less than 10 business days prior to entering into such amendment or Access Agreement.

15.3 The Franchisee shall comply with its obligations under any Access Agreement or any Property Lease to which it is a party from time to time:

- (a) to notify or consult with the Authority on any matter or proposal relating to that Access Agreement or Property Lease; and
- (b) which are contingent on a particular course of action being taken by the Authority or which are otherwise expressly included in that Access Agreement or Property Lease for the benefit of the Authority.

15.4 If and to the extent that:

- (a) the Authority exercises its rights pursuant to paragraph 15.1;
- (b) the Franchisee's compliance with the Authority's requirements pursuant to paragraph 15.1 would lead to the unavoidable consequence of the Franchisee contravening any other terms of this Agreement or the occurrence of an Event of Default; and
- (c) the Franchisee duly complies with such requirements, no such contravention of this Agreement or Event of Default shall have occurred.

16. CHANGES TO THE TRAIN FLEET

16.1 The Franchisee shall maintain the composition of the Train Fleet during the Franchise Term, unless the Authority otherwise agrees, such that there are no changes to the Train Fleet, including changes:

- (a) to the classes or types;
- (b) to the interior configurations; or
- (c) which may reduce the journey time capabilities,

of any rolling stock vehicles specified in the Train Fleet.

16.2 Without prejudice to the Authority's right pursuant to paragraph 2.1(a) of Schedule 2.2 (*Security of Access Assets, Rolling Stock Leases, Station and Depot Leases*) to impose conditions on its consent to the entry into by the Franchisee, the exercise of any option by the Franchisee in respect of, or any proposed amendment to, any Rolling Stock Related Contract, the Franchisee shall procure that:

- (a) the rolling stock vehicles specified in Table 1 of Appendix 1 (*The Train Fleet*):
 - (i) are deployed in the provision of the Passenger Services in accordance with the Train Plan prevailing from time to time; and
 - (ii) when so deployed, have the characteristics specified in Table 1 of Appendix 1,

on and from the Franchise Commencement Date until the relevant dates specified in column 5 of Table 1 of Appendix 1;

- (b) any substitute rolling stock vehicles which form part of the Train Fleet and which are deployed in the provision of the Passenger Services in accordance with the Train Plan prevailing from time to time, have the characteristics specified in paragraph 1(b) of Appendix 1;

- (c) the additional rolling stock vehicles specified in Table 2 of Appendix 1:

- (i) are deployed in the provision of the Passenger Services in accordance with the Train Plan prevailing from time to time; and

- (ii) when so deployed, have the characteristics specified in paragraph 1(c)(i) of Appendix 1,

on and from the relevant dates specified in column 1 of Table 2 of Appendix 1 until the relevant dates specified in column 6 of Table 2 of Appendix 1; and

- (d) any other additional rolling stock vehicles which form part of the Train Fleet and which are deployed in the provision of the Passenger Services in accordance with the Train Plan prevailing from time to time, have the characteristics specified in paragraph 1(c)(ii) of Appendix 1.

16.3 During the Franchise Term, the Franchisee shall advise the Authority and any affected Executive of any rolling stock vehicles damaged beyond economic repair or likely to be unavailable for service for a period of 3 consecutive Reporting Periods or more.

16.4 If any change is made to the Train Fleet in accordance with this paragraph 16, the Authority may, after consulting the Franchisee and the affected Executive, notify the Franchisee and the affected Executive of the passenger carrying capacity of any rolling stock vehicles or class of rolling stock vehicles comprising the Train Fleet following such change.

16.5 In respect of the rolling stock vehicles specified in the letter of even date entitled “Northern Rail Franchise: West Yorkshire Passenger Transport Executive (“**WYPTE**”) Rolling Stock Issues” from the Franchisee to WYPTE (“**WYPTE Rolling Stock**”), the Authority hereby agrees that it will consent to any changes required to Table 1 of Appendix 1 in order to give effect to any alternative solutions agreed by the Franchisee and WYPTE in respect of the WYPTE Rolling Stock.

17. AUTHORITY’S STATEMENT OF SERVICE LEVEL COMMITMENT CHANGES

Any requirement for the Authority to issue a draft or final Service Level Commitment may be satisfied by it issuing a draft or final statement of how the existing Service Level Commitment is to be changed.

18. THE TIMETABLE AND THE WORKING TIMETABLE

18.1 Any specification of railway passenger services in a Service Level Commitment shall (unless the Authority states to the contrary) be regarded as relating to how those services are to be provided for in the National Rail Timetable that Network Rail publishes for passengers, and not how they are to be provided for in the working timetable that Network Rail issues to industry parties at the conclusion of its timetable development process.

18.2 Accordingly, the Franchisee's obligations specified in paragraph 11.2 shall be construed as an obligation to secure the requisite Train Slots in the working timetable to be issued by Network Rail at the conclusion of its timetable development process that will permit the Franchisee to operate railway passenger services that comply with the Service Level Commitment provided for in the relevant Timetable.

18.3 The Franchisee shall ensure, for each period between two consecutive Passenger Change Dates during the Franchise Term, that the Timetable for such period is not materially different from the relevant working timetable issued by Network Rail at the conclusion of its timetable development process.

APPENDIX 1 TO SCHEDULE 1.1

The Train Fleet

1. THE COMPOSITION OF THE TRAIN FLEET

The Train Fleet consists of:

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

TABLE 1⁵ ⁶

<i>Class of vehicle</i>	<i>Number of vehicles and unit configuration</i>	<i>Capacity of vehicles</i>			<i>Owner/Lessor</i>	<i>Lease expiry date(s)</i>
		<i>Seats</i>	<i>Standing</i>	<i>Total</i>		
<i>142</i>	<i>29 x 2 car (ex ATN)</i>	<i>106</i>	<i>31</i>	<i>137</i>	<i>Angel Trains</i>	<i>September 2011 extendable to September 2013</i>
<i>142</i>	<i>28 x 2 car (ex FNW)</i>	<i>114</i>	<i>23</i>	<i>137</i>	<i>Angel Trains</i>	<i>September 2011 extendable to September 2013</i> <i>7x2 car leased to FGW (to 12.12.10)</i>
<i>142</i>	<i>5 x 2 car</i>	<i>121</i>	<i>16</i>	<i>137</i>	<i>Angel Trains</i>	<i>September 2011 extendable to September 2013</i>
<i>142</i>	<i>17 x 2 car</i>	<i>114</i>	<i>23</i>	<i>137</i>	<i>Angel Trains</i>	<i>September 2011 extendable to September 2013</i>
<i>144</i>	<i>13 x 2 car</i>	<i>99</i>	<i>49</i>	<i>148</i>	<i>Porterbrook</i>	<i>September 2013</i>
<i>144</i>	<i>10 x 3 car</i>	<i>157</i>	<i>65</i>	<i>222</i>	<i>Porterbrook/WYPTE</i>	<i>September 2013</i>

⁵ Replacement text inserted wef 29 November 2005

⁶ Date of Change 24/06/2010

<i>Class of vehicle</i>	<i>Number of vehicles and unit configuration</i>	<i>Capacity of vehicles</i>			<i>Owner/Lessor</i>	<i>Lease expiry date(s)</i>
		<i>Seats</i>	<i>Standing</i>	<i>Total</i>		
<i>150/1</i>	<i>18 x 2 car</i>	<i>124</i>	<i>80</i>	<i>204</i>	<i>Angel Trains</i>	<i>September 2011 extendable to September 2013</i>
<i>150/2</i>	<i>11 x 2 car (ex FNW)</i>	<i>131</i>	<i>67</i>	<i>198</i>	<i>Porterbrook</i>	<i>September 2013</i>
<i>150/2</i>	<i>11 x 2 car (ex ATN)</i>	<i>149</i>	<i>49</i>	<i>198</i>	<i>Angel Trains</i>	<i>September 2011 extendable to September 2013</i>
<i>153</i>	<i>8 x 1 car (ex FNW)</i>	<i>73</i>	<i>25</i>	<i>98</i>	<i>Porterbrook</i>	<i>September 2013</i>
<i>153</i>	<i>10 x 1 car (ex ATN)</i>	<i>75</i>	<i>23</i>	<i>98</i>	<i>Angel Trains</i>	<i>September 2011 extendable to September 2013</i>
<i>155</i>	<i>7 x 2 car</i>	<i>160</i>	<i>60</i>	<i>220</i>	<i>WYPTE</i>	<i>September 2013</i>
<i>156⁷</i>	<i>10 x 2 car (ex FNW)</i>	<i>146</i>	<i>78</i>	<i>224</i>	<i>Porterbrook</i>	<i>September 2013</i>
<i>156</i>	<i>28 x 2 car (ex ATN)</i>	<i>152</i>	<i>72</i>	<i>224</i>	<i>Angel Trains</i>	<i>September 2011 extendable to September 2013</i>
<i>158/0</i>	<i>8 x 2 car</i>	<i>138</i>	<i>81</i>	<i>219</i>	<i>Porterbrook</i>	<i>September 2013</i>
<i>158/9</i>	<i>10 x 2 car</i>	<i>142</i>	<i>77</i>	<i>219</i>	<i>WYPTE</i>	<i>September 2013</i>

⁷ Date of Change 12/03/2010

<i>Class of vehicle</i>	<i>Number of vehicles and unit configuration</i>	<i>Capacity of vehicles</i>			<i>Owner/Lessor</i>	<i>Lease expiry date(s)</i>
		<i>Seats</i>	<i>Standing</i>	<i>Total</i>		
<i>321</i>	<i>3 x 4 car</i>	<i>309</i>	<i>113</i>	<i>422</i>	<i>WYPTE</i>	<i>September 2013</i>
<i>323</i>	<i>3 x 3 car</i>	<i>259</i>	<i>98</i>	<i>357</i>	<i>Porterbrook</i>	<i>September 2013</i>
<i>323</i>	<i>14 x 3 car</i>	<i>289</i>	<i>68</i>	<i>357</i>	<i>Porterbrook</i>	<i>September 2013</i>
<i>333</i>	<i>16 x 4 car</i>	<i>360</i>	<i>107</i>	<i>467</i>	<i>Angel Trains</i>	<i>September 2011 extendable to September 2013</i>
<i>150/1</i>	<i>10x2 car</i>	<i>124</i>	<i>80</i>	<i>204</i>	<i>Angel Trains</i>	<i>18th September 2011, subject to Clause 4.1 of the MOLA</i>
<i>150/2</i>	<i>4x2 car</i>	<i>131</i>	<i>67</i>	<i>198</i>	<i>Angel Trains</i>	<i>18th September 2011, subject to Clause 4.1 of the MOLA</i>
<i>150/1⁸</i>	<i>20 - 2 car</i>	<i>124</i>	<i>80</i>	<i>204</i>	<i>Angel Trains</i>	<i>18 September 2011, subject to Clause 4.1 of the MOLA</i>

⁸ Date of Change 12/03/2010

<i>Class of vehicle</i>	<i>Number of vehicles and unit configuration</i>	<i>Capacity of vehicles</i>			<i>Owner/Lessor</i>	<i>Lease expiry date(s)</i>
		<i>Seats</i>	<i>Standing</i>	<i>Total</i>		
<i>150/2</i>	<i>8 - 2 car</i>	<i>131</i>	<i>67</i>	<i>198</i>	<i>Angel Trains</i>	<i>18 September 2011, subject to Clause 4.1 of the MOLA</i>
<i>180</i>	<i>15-5 car</i>	<i>268</i>	<i>106 (estimated)</i>	<i>374</i>	<i>Angel Trains</i>	<i>Sub-lease from East Coast Trains 30 June 2010</i>

TABLE 2: Additional Rolling Stock Units^{9 10}

<i>Class of vehicle</i>	<i>Number of vehicles and unit configuration</i>	<i>Capacity of vehicles</i>			<i>Owner/Lessor</i>	<i>Introduction/Lease expiry date(s)</i>
		<i>Seats</i>	<i>Standing</i>	<i>Total</i>		

⁹ Date of change 10/12/2008

¹⁰ Date of Change 24/06/2010

<i>Class of vehicle</i>	<i>Number of vehicles and unit configuration</i>	<i>Capacity of vehicles</i>			<i>Owner/Lessor</i>	<i>Introduction/Lease expiry date(s)</i>
		<i>Seats</i>	<i>Standing</i>	<i>Total</i>		
<i>158</i>	<i>6 x 2 car</i>	<i>138</i>	<i>123</i>	<i>261</i>	<i>Angel Trains</i>	<i>September 2006 to September 2011 (with a clause to extend to September 2013)</i>
<i>158</i>	<i>4 x 2 car</i>	<i>138</i>	<i>123</i>	<i>261</i>	<i>Angel Trains</i>	<i>December 2007 to September 2011 (with a clause to extend to September 2013)</i> <i>8x2 car S/L to FSR. Terminates 30.6.10</i>
<i>180</i>	<i>3x 5 car</i>	<i>284</i>	<i>120</i>	<i>415</i>	<i>Angel Trains</i>	<i>12 December 2010, sub-leased from East Coast Mainline Co.</i>

APPENDIX 2 TO SCHEDULE 1.1

Service Development Additional Factors

1. The Franchisee, in formulating its opinion in respect of any changes to the Service Level Commitment in accordance with paragraph 7.1 of Schedule 1.1 (*Service Development*), in addition to having regard to any Route Utilisation Strategy or any other Strategy published by the Authority pursuant to paragraph 7.3(a) of Schedule 1.1 (*Service Development*), the views of any Executive expressed pursuant to paragraph 6 of Schedule 1.1 (*Service Development*) and any other constraints or considerations notified to it pursuant to paragraph 7.3(d) of Schedule 1.1 (*Service Development*), shall also have regard to:

- (a) Actual Passenger Demand;
- (b) the latest Forecast Passenger Demand;
- (c) the revenue and cost consequences of operating railway passenger services on the Routes;
- (d) opportunities to reduce the incidence of disruption caused by the Franchisee, Network Rail, other Train Operators, freight operators and/or other industry parties;
- (e) operational constraints and measures that might be taken to address such constraints;
- (f) the appropriateness of the Train Fleet to the Routes;
- (g) service calling patterns and journey times;
- (h) changes in circumstances local to the stations at which the Passenger Services call which may affect Forecast Passenger Demand;
- (i) the effect of the Service Level Commitment on the railway passenger services operated by other Train Operators and/or freight operators;
- (j) interchange and inter modal opportunities;
- (k) Stakeholder aspirations (including such aspirations as are expressed or are likely to be expressed in any “Local Transport Plans”);
- (l) the likelihood of special events generating sufficient passenger demand to support the provision of railway passenger services by the Franchisee to or from such special events;
- (m) the impact of Major Projects or restrictions of use that may affect Forecast Passenger Demand; and
- (n) such other matters as the Authority may notify to the Franchisee from time to time.

Appendix 3: 1A HLOS Capacity Requirements¹¹

Part 1

The 1A HLOS Capacity Requirement which the Franchisee shall use all reasonable endeavours to deliver from 1st July 2010 until the end of the Franchise Period in accordance with the provisions of paragraph 7.6(c) of Schedule 1.1 (Service Development) of the Franchise Agreement is:

Increased Capacity on Specified Services

<i>Service</i>	<i>Diagrammed traction units prior to 1 July 2010</i>	<i>HLOS Intervention A Traction units to be operated after 1 July 2010</i>
<i>16:03 Manchester Airport - Southport</i>	<i>150</i>	<i>142+142</i>
<i>16:48 Wigan Wallgate-Rochdale</i>	<i>142</i>	<i>142+142</i>
<i>17:00 Manchester Vic-Leeds</i>	<i>144(2)</i>	<i>144(2)+142</i>
<i>17:09 Clitheroe-Rochdale</i>	<i>153</i>	<i>150</i>
<i>17:27 Manchester Vic-Huddersfield</i>	<i>156</i>	<i>156+142</i>
<i>18:00 Manchester Vic-Clitheroe</i>	<i>150</i>	<i>153+150</i>
<i>18:00 Rochdale-Blackburn</i>	<i>142</i>	<i>142+142</i>
<i>18:43 Leeds-Huddersfield</i>	<i>144(2)</i>	<i>144(2)+142</i>
<i>06:36 New Mills Ctl-Manchester Pic</i>	<i>142</i>	<i>142+142</i>
<i>06:57 Huddersfield-Southport</i>	<i>156</i>	<i>156+142</i>
<i>07:40 Clitheroe-Manchester Vic</i>	<i>150</i>	<i>153+150</i>
<i>07:44 Todmorden-Wigan Wallgate</i>	<i>150</i>	<i>150+142</i>
<i>07:59 Marple-Manchester Pic</i>	<i>142</i>	<i>142+142</i>
<i>08:00 Wigan Wallgate-Manchester Vic</i>	<i>150</i>	<i>142+142</i>
<i>08:32 Blackburn-Manchester Vic</i>	<i>153</i>	<i>150</i>

¹¹ Date of Change 02/03/2010

In this table a reference to any unit of rolling stock such as “Class 142” is a reference to a properly formed diesel multiple unit of such class. A reference such as “142+142” is a reference to a train made up of two such specified properly formed diesel multiple units coupled together and operating as a single train.

The Franchisee shall use all reasonable endeavours to ensure that all future Timetables applicable after 1st July 2010 include such Passenger Services. In the event that any such Passenger Services cannot be provided in any future Timetable then the Franchisee will use all reasonable endeavours to allocate its Train Fleet so that to the greatest extent reasonably practicable the capacity specified in the table above continues to be allocated to the same passenger flows at the same time of day.

Increased Capacity in the Manchester Morning Peak and Evening Peak

The Franchisee will use all reasonable endeavours with effect from 1 July 2010 until the end of the Franchise Period and in accordance with the requirements of paragraph 7.6(c) of Schedule 1.1 (Service Development) of the Franchise Agreement to include in its Train Plan:

in respect of Passenger Services arriving at Manchester Stations capacity between 07:00 and 10:00 equivalent to that provided in the Base Train Plan plus capacity for an additional 959 persons (seated and standing in accordance with the capacity for vehicles of specified classes of rolling stock specified in Table 1 to Appendix 1 of Schedule 1.1 of the Franchise Agreement) with capacity for 446 persons being provided between 08:00 and 09:00; and

in respect of Passenger Services departing from Manchester Stations capacity between 16:00 and 19:00 equivalent to that provided in the Base Train Plan plus capacity for an additional 959 persons (seated and standing in accordance with the capacity for vehicles of specified classes of rolling stock specified in Table 1 to Appendix 1 of Schedule 1.1 of the Franchise Agreement) with capacity for 446 persons being provided between 17:00 and 18:00.

For the avoidance of doubt capacity provided by a Passenger Service which calls at more than one Manchester Station shall only be counted once for the purposes of determining the compliance of the Franchisee with its obligations under this paragraph 2.

For the purposes of this paragraph:

“Manchester Stations” means Manchester Piccadilly, Manchester Victoria and Manchester Oxford Road.

“Base Train Plan” means the Train Plan applicable from the Principal Change Date occurring in December 2009 excluding the capacity provided by:

one two car class 142 unit diagrammed to be operated on each of the following services:

07:44 Todmorden - Wigan Wallgate

16:46 Wigan Wallgate - Rochdale

06:57 Huddersfield - Manchester Victoria

17:00 Manchester Victoria - Leeds

17:27 Manchester Victoria - Huddersfield.

Reallocation of Capacity

Without prejudice to any other provision of the Franchise Agreement, the Franchisee may propose to the Authority as part of the process for finalising any Train Plan under Schedule 1.1 (Service Development) of the Franchise Agreement alterations to the allocation of capacity pursuant to this Schedule 2 Part 1. Any such proposal will be accompanied by an explanation of why the Franchisee believes that its proposal would optimise the allocation of capacity to meet demand together with details of the steps needed to be taken to implement the proposal and the anticipated effects on costs and revenue.

Part 2 ¹²

The 1B HLOS Capacity Requirement which the Franchisee shall use all reasonable endeavours to deliver from the Subsidiary Change Date occurring in May 2011 until the end of the Franchise Period in accordance with the provisions of paragraph 2.4 of Part 2A of Schedule 1.6 (Committed Obligations) of the Franchise Agreement is:

1. Increased Capacity on Specified Services

<i>Service</i>	<i>Diagrammed traction units prior to the May 2011 Subsidiary Change Date</i>	<i>HLOS Intervention 1B Traction Units to be operated after the May 2011 Subsidiary Change Date</i>
<i>16:06 Manchester Pic-Rose Hill Marple</i>	<i>142</i>	<i>142+142</i>
<i>16:10 Manchester Vic-Kirkby Merseyside</i>	<i>142</i>	<i>150</i>
<i>16:13 Adwick-Retford</i>	<i>142</i>	<i>142+142</i>
<i>16:30 Buxton-Blackpool North</i>	<i>156</i>	<i>150+150</i>
<i>16:43 Manchester O Rd-Liverpool L St</i>	<i>142</i>	<i>150</i>
<i>17:03 Manchester Pic-Marple</i>	<i>142</i>	<i>142+142</i>
<i>17:13 Manchester O Rd-Liverpool L St</i>	<i>142</i>	<i>150</i>
<i>17:48 Manchester Pic-Chinley</i>	<i>142</i>	<i>142+142</i>
<i>18:22 Manchester Pic-New Mills Ctl</i>	<i>142</i>	<i>142+142</i>
<i>18:25 Liverpool L St-Manchester O Rd</i>	<i>142</i>	<i>150</i>
<i>18:45 Manchester Vic-Wigan Wallgate</i>	<i>142</i>	<i>150</i>
<i>18:55 Liverpool L St-Warrington Ctl</i>	<i>142</i>	<i>150</i>
<i>06:36 Wigan Wallgate-Manchester Vic</i>	<i>142</i>	<i>150</i>
<i>06:50 Buxton-Blackpool North</i>	<i>150</i>	<i>156</i>
<i>07:16 Rose Hill Marple-Manchester</i>	<i>142</i>	<i>142+142</i>

¹² Date of Change 12/03/2010

<i>Pic</i>		
<i>07:22 Warrington Ctl-Manchester O Rd</i>	<i>142</i>	<i>150</i>
<i>07:24 Buxton-Manchester Pic</i>	<i>156</i>	<i>150+150</i>
<i>07:29 Adwick-Sheffield</i>	<i>142</i>	<i>142+142</i>
<i>07:38 Wigan North West-Liverpool L St</i>	<i>150+142</i>	<i>150+150</i>
<i>07:39 New Mills Ctl-Manchester Pic</i>	<i>142</i>	<i>142+142</i>
<i>08:13 Wigan Wallgate-Manchester Vic</i>	<i>142</i>	<i>150</i>
<i>08:15 Manchester O Rd-Liverpool L St</i>	<i>142</i>	<i>150</i>
<i>08:24 New Mills Ctl-Manchester Pic</i>	<i>142</i>	<i>142+142</i>
<i>08:44 Liverpool L St-Stalybridge</i>	<i>142</i>	<i>150</i>
<i>08:59 Rose Hill Marple-Manchester Pic</i>	<i>142</i>	<i>142+142</i>
<i>16:59 Buxton-Blackpool North</i>	<i>156</i>	<i>150</i>
<i>17:36 Manchester Vic-Wigan Wallgate</i>	<i>156</i>	<i>150</i>
<i>18:20 Manchester Vic-Blackpool North</i>	<i>156</i>	<i>150</i>
<i>08:20 Blackpool North-Manchester Vic</i>	<i>156</i>	<i>150</i>
<i>08:27 Buxton-Manchester Pic</i>	<i>156</i>	<i>150</i>

In this table a reference to any unit of rolling stock such as “Class 142” is a reference to a properly formed diesel multiple unit of such class. A reference such as “142+142” is a reference to a train made up of two such specified properly formed diesel multiple units coupled together and operating as a single train.

The Franchisee shall use all reasonable endeavours to ensure that all future Timetables applicable after the Principal Change Date occurring in May 2011 include such Passenger Services. In the event that any such Passenger Services cannot be provided in any future Timetable then the Franchisee will use all reasonable endeavours to allocate its Train Fleet so that to the greatest extent reasonably practicable the capacity specified in the table above continues to be allocated to the same passenger flows at the same time of day.

2. Specified Increased Capacity

The Franchisee shall use all reasonable endeavours with effect from the Subsidiary Change Date occurring in May 2011 until the end of the Franchise Period to deliver capacity in excess of the Base Capacity as shown in the tables below.

“Manchester Base Capacity” shall mean capacity equivalent to that which the Franchisee is required to deliver pursuant to paragraph 2 of Part 1 of Appendix 3 to Schedule 1.1 of the Franchise Agreement as inserted into the Franchise Agreement by Schedule 2 of the HLOS Deed of Amendment 1A.

“Liverpool Base Capacity” shall mean capacity equivalent to that which the Franchisee is required to deliver in the Train Plan effective from December 2009.

“Sheffield Base Capacity” shall mean capacity equivalent to that which the Franchisee is required to deliver in the Train Plan effective from December 2009.

Manchester Stations

<i>Time Period</i>	<i>Capacity to be provided in excess of Manchester Base Capacity (seated and standing) in accordance with the capacity for vehicles of specified classes of rolling stock specified in Table 1 and Table 2 to Appendix 1 of Schedule 1.1 of the Franchise Agreement)</i>
<i>Morning Peak (07:00 - 10:00) such capacity to include capacity to be provided in the High Morning Peak</i>	<i>952</i>
<i>High Morning Peak (08:00 - 09:00)</i>	<i>576</i>
<i>Evening Peak (16:00-19:00) such capacity to include capacity to be provided in the High Evening Peak</i>	<i>904</i>
<i>High Evening Peak (17:00-18:00)</i>	<i>465</i>

For the avoidance of doubt capacity provided by a Passenger Service which calls at more than one Manchester Station shall only be counted once for the purposes of determining the compliance of the Franchisee with its obligations under this paragraph 2.

For the purposes of this paragraph “Manchester Stations” means Manchester Piccadilly, Manchester Victoria and Manchester Oxford Road.

Liverpool Lime Street

<i>Time Period</i>	<i>Capacity to be provided in excess of Liverpool Base Capacity (seated and standing) in accordance with the capacity for vehicles of specified classes of rolling stock specified in Table 1 and Table 2 to Appendix 1 of Schedule 1.1 of the Franchise Agreement</i>
<i>Morning Peak (07:00 - 10:00) such capacity to include capacity to be provided in the High Morning Peak</i>	<i>126</i>
<i>High Peak (08:00 - 09:00)</i>	<i>63</i>
<i>Evening Peak (16:00 - 19:00)</i>	<i>126</i>

Sheffield Station

<i>Time Period</i>	<i>Capacity to be provided in excess of Sheffield Base Capacity (seated and standing) in accordance with the capacity for vehicles of specified classes of rolling stock specified in Table 1 and Table 2 to Appendix 1 of Schedule 1.1 of the Franchise Agreement</i>
<i>Morning Peak (08:00 - 09:00)</i>	<i>137</i>
<i>Evening Peak (17:00 - 18:00)</i>	<i>137</i>

3. Reallocation of Capacity

Without prejudice to any other provision of the Franchise Agreement, the Franchisee may propose to the Authority as part of the process for finalising any Train Plan under Schedule 1.1 (Service Development) of the Franchise Agreement alterations to the allocation of capacity pursuant to this Schedule 2 Part 1. Any such proposal will be accompanied by an explanation of why the Franchisee believes that its proposal would optimise the allocation of capacity to meet demand together with details of the steps needed to be taken to implement the proposal and the anticipated effects on costs and revenue.

4. Obligations in respect of Infrastructure Enhancements

For the avoidance of doubt in this Appendix 3 (HLOS Capacity Requirements) in undertaking all reasonable endeavours, the Franchisee shall not be required to fund or complete any infrastructure enhancements and/or platform lengthening which may be necessary or desirable to accommodate the HLOS Capacity Requirements. The Franchisee will exercise relevant contractual or regulatory rights to remedy any failure of Network Rail to deliver any such infrastructure enhancements and/or platform lengthening relevant to the delivery of the 1B HLOS Capacity Requirement in accordance with its obligations.

SCHEDULE 1.2¹

Operating Obligations

1. DAILY OPERATING OBLIGATION

1.1ⁱⁱ *The Franchisee agrees to use all reasonable endeavours to operate on each day of the Franchise Term those of its Passenger Services as are set out in the Plan of the Day for that day, with at least the passenger carrying capacity specified in the Train Plan.*

1.2ⁱⁱⁱ *The Franchisee agrees to use all reasonable endeavours to operate during the Peak the entire Train Fleet in delivering each Peak Passenger Service, save for any reasonable requirements:*

(a) for the deployment of Hot Standbys; or

(b) for other rolling stock vehicles to be out of service due to maintenance requirements, Mandatory Modifications or for any other reason agreed with the Authority (such agreement not to be unreasonably withheld).

1.3 The Franchisee agrees to use all reasonable endeavours to operate the Train Fleet in accordance with the current Train Presentation Specification Standard.

1.4 The Franchisee shall not remove any rolling stock vehicle from service with a view to distorting the results of any audit carried out in accordance with Schedule 7.2 (*Key Performance Indicators*).

1.5 The Franchisee shall ensure that its performance in respect of each Performance Management Unit, in each Reporting Period, calculated as a moving annual average in accordance with Schedule 7.1 (*Performance Benchmarks*), does not exceed (that is, is neither equal to or worse than) each Breach Performance Level in respect of that Reporting Period for each such Performance Management Unit. Subject to paragraph 1.6, it shall be a contravention by the Franchisee of the terms of this Agreement if its performance exceeds (that is, is equal to or worse than) any Breach Performance Level in respect of any of the Performance Management Units in any Reporting Period.

1.6 If the Franchisee's performance in any Reporting Period exceeds (that is, is equal to or worse than) the Breach Performance Level relating to any PMU Network Rail Benchmark, it shall not be regarded as being a contravention of the terms of this Agreement provided that the Authority is satisfied that the Franchisee is in compliance with paragraph 9.1(c).

2. THE TRAIN PLAN

References in this Schedule 1.2 are to the Train Plan as issued by the Franchisee to the Authority pursuant to paragraph 14.1 of Schedule 1.1 (*Service Development*), and as amended:

(a) to comply with any requirements of the Authority pursuant to paragraph 14.2 of Schedule 1.1; or

(b) pursuant to paragraph 3.

3. AMENDMENTS TO THE TRAIN PLAN

3.1 The Franchisee shall use all reasonable endeavours to propose to the Authority and each affected Executive from time to time any amendments that it considers should be made to the Train Plan to better match the passenger carrying capacity of the Train Fleet to Target Passenger Demand, having regard to:

- (a) any foreseeable differences that there may be between the Timetable and any Plan of the Day; and
- (b) any material alteration in Target Passenger Demand, subsequent to the issue of the Train Plan, that is:
 - (i) observable from the most recent determination of Actual Passenger Demand in accordance with paragraph 1 of Schedule 1.5 (*Information about Passengers*); or
 - (ii) attributable to seasonal or exceptional factors;

and in so doing the Franchisee shall also identify the extent to which such proposed amendments conflict with the obligations contained in paragraph 7.7 of Schedule 1.1 (*Service Development*).

The Franchisee shall amend the Train Plan in accordance with the Authority's response to its proposal.

3.2

(a) The Franchisee may, subject to complying with the provisions of Schedule 1.1 in respect of the preparation of Train Plans, propose amendments to the Train Plan for the purposes of optimising Passenger Services relative to Target Passenger Demand or for the purposes of achieving improved operational efficiency or performance. The Franchisee shall consult with the Authority and each affected Executive with regard to such proposed amendments. Subject to paragraph 3.2 (b) below the Authority shall permit the Franchisee to amend the Train Plan if it is reasonably satisfied that the proposed amendments are for the purposes of optimising Passenger Services relative to Target Passenger Demand or for the purposes of improving operational efficiency or performance and that the amended Train Plan has been prepared in compliance with the provisions of Schedule 1.1 in respect of the preparation of Train Plans.

(b) The provisions of paragraphs 7.10 to 7.17 of Schedule 1.1 will apply where the Franchisee proposes amendments to the Train Plan under paragraph 3.2(a) that would conflict with the requirements of paragraphs 7.5(b) and/or 7.7 of Schedule 1.1.

3.3 Where there are short-notice factors or exceptional factors affecting passenger demand to which the Franchisee reasonably considers that it should respond before it is able to make a proposal to the Authority and each affected Executive in accordance with paragraph 3.1, it may amend the Train Plan prior to the submission of its proposal, but shall notify the Authority and each affected Executive as soon as reasonably practicable afterwards and shall subsequently amend the Train Plan in accordance with the Authority's response to such amendment.

3.4 The obligation to use all reasonable endeavours to propose amendments to the Train Plan to better match the passenger carrying capacity of the Train Fleet to Target Passenger

Demand is an obligation to use all reasonable endeavours to propose amendments which would either:

- (a) provide for passenger carrying capacity on each Passenger Service that is at least equal to the Target Passenger Demand for that Passenger Service; or
- (b) provide the best allocation of rolling stock vehicles to Passenger Services that is reasonably practicable so as to:
 - (i) minimise the amount by which Target Passenger Demand exceeds the provision of passenger carrying capacity on the affected Passenger Services;
 - (ii) ensure, so far as is possible, that the excess of Target Passenger Demand is not unduly concentrated on any particular Route or Passenger Service; and
 - (iii) minimise the extent to which passengers are required to stand:
 - (A) on boarding in respect of any Off-Peak Passenger Service; and
 - (B) 20 minutes after boarding (or such other time period as the Authority may stipulate) in respect of any Peak Passenger Service.

3.5 If the Authority does not consider that the Franchisee has exercised all reasonable endeavours to make proposals as required by paragraph 3.1, the Authority may require the Franchisee to amend the Train Plan in accordance with its requirements.

4. TIMETABLE CHANGES PROPOSED BY NETWORK RAIL

4.1 The Franchisee shall notify the Authority and each affected Executive promptly after being notified by Network Rail that Network Rail has decided or proposes to:

- (a) omit from the Plan of the Day Passenger Services that are included in the Timetable; or
- (b) reschedule in the Plan of the Day Passenger Services from their scheduling in the Timetable,

to the extent that any such decision or proposal may materially (having regard to both duration and scale) prejudice the Franchisee's ability to deliver the Timetable with the passenger carrying capacity stipulated in a Train Plan which satisfies the requirements of paragraphs 3.1 and 3.4.

4.2 The Franchisee shall explain in such notification the way in which, in its opinion, such omission or rescheduling may materially prejudice the Franchisee's ability to deliver the Timetable with the passenger carrying capacity stipulated in a Train Plan which satisfies the requirements of paragraphs 3.1 and 3.4.

4.3 The Franchisee agrees to supply to the Authority and each affected Executive from time to time, in the format required by the Authority and/or such Executive, such details of any actual or proposed omission or rescheduling of Passenger Services by Network Rail as the Authority and/or such Executive may reasonably require, including details of the steps which the Franchisee proposes to take pursuant to paragraph 4.4.

4.4 Where the actual or proposed omission or rescheduling of Passenger Services is one which may materially prejudice the Franchisee's ability to deliver the Timetable with the passenger carrying capacity stipulated in a Train Plan which satisfies the capacity requirements of paragraphs 3.1 and 3.4, the Franchisee agrees (unless the Authority specifically agrees otherwise) to exercise its rights under the Track Access Agreement (including the Network Code) to object, to make representations and to withhold consent in respect of any actual or proposed omission or rescheduling of Passenger Services by Network Rail.

4.5 If the Authority does not consider that the Franchisee has taken sufficient steps under paragraph 4.4, the Authority may require the Franchisee to exercise its rights referred to in paragraph 4.4 in such manner as the Authority may consider appropriate in the circumstances, including:

- (a) disputing any actual or proposed act or omission by Network Rail in respect of any Timetable Development Rights; and
- (b) submitting such dispute to any relevant dispute resolution arrangements or procedures and appealing against any award or determination under such arrangements or procedures, including to the Regulator.

4.6 The Authority shall, to the extent reasonably practicable, allow the Franchisee a reasonable opportunity to make representations to the Authority concerning the exercise of any of its rights referred to in paragraph 4.4 before requiring the Franchisee to take any action referred to in paragraph 4.5.

4.7 The provisions of this paragraph 4 shall apply to any actual or proposed omission or rescheduling of Passenger Services that originates from any person other than Network Rail, as those provisions apply to Network Rail.

5. TIMETABLE CHANGES PROPOSED BY THE FRANCHISEE

5.1 The Franchisee agrees, subject to paragraph 5.2, not to propose to Network Rail:

- (a) the addition to the Plan of the Day of any railway passenger services which are not included in the Timetable;
- (b) the omission from the Plan of the Day of any Passenger Services included in the Timetable; or
- (c) the rescheduling in the Plan of the Day of any Passenger Services from their scheduling in the Timetable,

without the Authority's prior consent.

5.2 Paragraph 5.1 shall not apply to additional railway passenger services to be operated to meet passenger demand that the Franchisee anticipates from special events (and any related omissions and/or rescheduling of Passenger Services) which:

- (a) when operated, still permit the Franchisee to deliver the Timetable with the passenger carrying capacity stipulated in a Train Plan which satisfies the requirements of paragraphs 3.1 and 3.4;

- (b) are consistent with any Route Utilisation Strategy or any other Strategy of the Authority; and
- (c) are compliant with any framework that the Authority may issue for the planning and operation of railway passenger services.

5.3 The Franchisee shall use all reasonable endeavours to operate adequate railway passenger services to or from any special events:

- (a) which it has identified pursuant to paragraph (1) of Appendix 2 (*Service Development Additional Factors*) to Schedule 1.1 (*Service Development*);
- (b) which are not already provided for in the Plan of the Day; and
- (c) which comply with the requirements of paragraph 5.2,

to meet the passenger demand that is reasonably likely to arise from such special events and from the operation of such railway passenger services.

5.4 The Franchisee shall notify each affected Executive in respect of any proposal pursuant to paragraph 5.1 at the same time as it seeks the Authority's consent thereto.

6. TIMETABLE CHANGES REQUESTED BY THE AUTHORITY

The Franchisee agrees, as and when requested by the Authority, to use all reasonable endeavours to seek and to obtain:

- (a) the addition to the Plan of the Day of any railway passenger services that are not included in the Timetable;
- (b) the omission from the Plan of the Day of any Passenger Services that are included in the Timetable; and/or
- (c) the rescheduling in the Plan of the Day of any Passenger Services from their scheduling in the Timetable.

7. ADDITIONAL RAILWAY PASSENGER SERVICES

The Franchisee agrees not to operate any railway passenger services other than those:

- (a) required or permitted pursuant to this Schedule 1.2; or
- (b) operated on behalf of any other Train Operator where the Authority has approved the sub-contracting of the operation of such railway passenger services to the Franchisee.

8. OBLIGATIONS OF THE FRANCHISEE IN THE EVENT OF DISRUPTION TO RAILWAY PASSENGER SERVICES

8.1 In the event of any planned or unplanned disruption to railway passenger services operated on the Routes, or on other parts of the network which are reasonably local to the Routes, the Franchisee shall:

- (a) without prejudice to any other provision of this Schedule 1.2, notify the Authority and the relevant Executive promptly where such disruption would materially (having

regard to both duration and scale) prejudice the Franchisee's ability to deliver the Timetable;

- (b) use reasonable endeavours to act in accordance with any Strategy or plan published or endorsed by the Authority in relation to such disruption notified to it by the Authority from time to time;
- (c) co-operate with Network Rail and other Train Operators to act in the overall interests of passengers using such railway passenger services, including using all reasonable endeavours to ensure that such disruption is not concentrated on a particular part of the network, except where such concentration either:
 - (i) would be in the overall interests of passengers using such Passenger Services or railway passenger services and would not result in disproportionate inconvenience to any group of passengers; or
 - (ii) is reasonably necessary as a result of the cause or the location of the disruption; and
- (d) provide or secure the provision of alternative transport arrangements in accordance with paragraph 8.2.

8.2 The Franchisee shall use all reasonable endeavours to secure the provision of alternative transport arrangements to enable passengers affected by the disruption referred to in paragraph 8.1 to complete their intended journeys in accordance with this paragraph 8.2. In particular, the Franchisee shall use all reasonable endeavours to:

- (a) ensure that such alternative transport arrangements are of reasonable quality, of a reasonably similar frequency to the Passenger Services included in the Timetable which such arrangements replace and reasonably fit for the purpose of the journey to be undertaken;
- (b) without prejudice to its obligations in paragraph 8.2(a), comply with any standards issued by the Authority from time to time in respect of such alternative transport arrangements;
- (c) transport passengers to, or as near as reasonably practicable to, the end of their intended journey on such Passenger Services, having particular regard to the needs of any disabled persons and, where appropriate, making additional arrangements for such disabled persons to complete their intended journey;
- (d) provide adequate and prominent publicity of such alternative transport arrangements in advance, subject, in the case of unplanned disruption, to the Franchisee having sufficient notice of such disruption to enable it to provide such publicity;
- (e) provide sufficient alternative transport capacity for the reasonably foreseeable demand for the disrupted Passenger Services; and
- (f) ensure, if any planned disruption overruns, that there is a reasonable contingency arrangement for such alternative transport arrangements to continue for the duration of such overrun.

9. OBLIGATION TO USE ALL REASONABLE ENDEAVOURS

9.1 Any obligation in this Schedule 1.2 on the part of the Franchisee to use all reasonable endeavours to operate railway passenger services shall include an obligation to:

- (a) ensure (so far as it is able to do so) the provision of the Passenger Services as set out in the Plan of the Day in ordinary operating conditions;
- (b) take reasonable measures to avoid and/or reduce the impact of any disruption to the Franchise Services having regard to all the circumstances, including the reasonably foreseeable risks arising from the matters referred to in paragraph 9.2; and
- (c) actively manage the performance by Network Rail of its contractual relationship with the Franchisee (and provide appropriate management resources for this purpose) so as to secure the best performance reasonably obtainable from Network Rail by these means (including taking the steps referred to in paragraph 9.4), having regard to all the circumstances.

9.2 The matters to which the Franchisee is to have regard pursuant to paragraph 9.1(b) shall include:

- (a) variations in weather and operating conditions (including Network Rail's infrastructure not being available for any reason), which may in either case include seasonal variations;
- (b) default by, or restrictions imposed by, suppliers to the Franchisee;
- (c) shortages of appropriately skilled or qualified Franchise Employees;
- (d) disputes with Franchise Employees;
- (e) the availability of the Train Fleet, having regard to maintenance requirements and any Mandatory Modifications;
- (f) establishing reasonable Turnaround Time allowances for enabling or disabling (as appropriate) any part of a train, the rostering of any train crew, the servicing or cleaning of any rolling stock vehicles in accordance with the current Train Presentation Specification Standard; and
- (g) failures of rolling stock vehicles in service and contingency arrangements (including Hot Standbys and rescue traction).

9.3 For the purpose of taking measures in respect of any disruption to the Franchise Services in accordance with paragraph 9.1(b) and assessing the extent of any risk referred to in paragraph 9.1(b) and any such risk's reasonable foreseeability, regard shall be had both:

- (a) to the historical levels of incidence of disruption in the operation of:
 - (i) the Franchise Services;
 - (ii) similar services both by the Franchisee and/or its predecessors; and
 - (iii) other services of a type similar to the Franchise Services; and

(b) to potential changes in circumstances which may affect those levels.

9.4 The steps to which paragraph 9.1(c) refers include:

(a) co-operating with Network Rail in adopting the principles set out in any Service Recovery Plans agreed between Network Rail and the Franchisee from time to time;

(b) undertaking a weekly review of:

(i) the 10 most common causes of delay to the Passenger Services; and

(ii) the 10 causes of delay to the Passenger Services with the longest duration (to the extent not already reviewed in accordance with paragraph 9.4(b)(i)),

which have occurred during that week and which have been caused by the Franchisee, any other Train Operator or Network Rail;

(c) undertaking with Network Rail a review of the time taken to recover the Passenger Services following the occurrence of any of the events specified in paragraphs 9.4(b)(i) and (b)(ii) and seeking to identify and implement actions that reduce the delay effect of such events;

(d) setting up and holding regular and effective performance review meetings with Network Rail, evidenced by meeting minutes and the closure of actions agreed between the Authority and the Franchisee;

(e) regularly monitoring (at least every Reporting Period) the delivery of local output commitments made by Network Rail and using reasonable endeavours to specify and develop such local output commitments;

(f) as and when required by Network Rail, co-operating with Network Rail in improving the accuracy of future timetables by providing access to trains, other facilities or information;

(g) co-operating with Network Rail in other delay management initiatives, including such as the use of virtual general managers;

(h) regularly reviewing (at least every Reporting Period) the imposition and clearance of temporary speed restrictions;

(i) regularly reviewing (at least every Reporting Period) the timely and efficient handover and hand-back of possessions; and

(j) where appropriate and where Network Rail fails to perform its obligations under the Track Access Agreement, enforcing the Franchisee's rights under such Track Access Agreement.

9.5 The Franchisee undertakes to reasonably co-operate with Network Rail with regard to Network Rail's management of the network, including in relation to the establishment of up to date Rules of the Plan.

9.6 To the extent not already provided for in this Agreement, the Franchisee shall use all reasonable endeavours to ensure the performance by Network Rail of its obligations under any relevant agreement including, where appropriate or where requested by the Authority, enforcing its rights against Network Rail under any such agreement.

9.7 When and to the extent reasonably requested by the Authority, the Franchisee shall provide to the Authority and the affected Executive evidence of the steps taken by it in order to comply with its obligations under this paragraph 9.

SCHEDULE 1.3

Additional Service Specifications

1. THE AUTHORITY'S SERVICE QUALITY STANDARDS

1.1 The Franchisee shall at all times during the Franchise Term employ the Franchise Facilities to provide the Franchise Services and shall use all reasonable endeavours to do so in accordance with the:

- (a) Train Presentation Specification Standard;
- (b) Station Environment Specification Standard;
- (c) Information Provision Specification Standard;
- (d) Security Specification Standard; and
- (e) Ticket Selling Specification Standard,

each as at the date of this Agreement or as amended by the Authority from time to time.

1.2 The requirement to employ the Franchise Facilities in the provision of the Franchise Services is to use or to make available those Franchise Facilities for the benefit of passengers in the condition and with the functionality which is the higher of:

- (a) the standard for the Franchise Facility recorded in the Franchise Facilities Book;
- (b) any enhanced standard that is specifically provided for in Schedule 1.6 (*Committed Obligations*); or
- (c) any standard that the Authority applies by means of a Variation pursuant to Schedule 19 (*Other Provisions*),

subject in each case to fair wear and tear.

1.3 The Franchisee shall:

- (a) use all reasonable endeavours to procure, including by:
 - (i) entering into new agreements with relevant third parties; and/or
 - (ii) varying existing agreements with relevant third parties; and
- (b) use all reasonable endeavours to enforce any rights it has under any Access Agreement in respect of any Franchisee Access Station,

in order that any equivalent services to the Franchise Services that are provided by the Facility Owner at any Franchisee Access Station are provided in accordance with the Service Quality Standards.

2. REVENUE COLLECTION AND PROTECTION AGAINST TICKETLESS TRAVEL

2.1 The Franchisee shall, within 4 Reporting Periods of the Franchise Commencement Date, provide to the Authority and each Executive:

- (a) a report which measures the level of ticketless travel and fare evasion on the Passenger Services. The report shall include an analysis of its findings and shall detail:
 - (i) where incidences of ticketless travel and fare evasion are greatest on the Routes;
 - (ii) which stations (if any) have no or minimal revenue-protection measures; and
 - (iii) the Franchisee's opinion as to whether there is any correlation between such ticketless travel and fare evasion and high crime areas both within and outside the railway environment; and
- (b) a plan to reduce ticketless travel and fare evasion in a cost-effective manner. The plan shall include measurable targets for reducing incidences of ticketless travel and fare evasion for the remainder of the Franchise Term. The plan shall also contain the following elements:
 - (i) the estimated costs and benefits of measures requiring material capital expenditure to reduce the level of ticketless travel and fare evasion in the 13 Reporting Periods following the date of the plan; and
 - (ii) any operational initiatives not requiring material capital expenditure that might be undertaken to:
 - (A) reduce the incidences of ticketless travel and fare evasion;
 - (B) improve the Franchisee's awareness of the incidences of ticketless travel and fare evasion; and
 - (C) improve the Franchisee's understanding of the ways in which the incidences of ticketless travel and fare evasion can be reduced.

2.2 The Franchisee shall:

- (a) implement the plan to be provided in accordance with paragraph 2.1(b) and report in writing to the Authority and each Executive every 3 Reporting Periods on such implementation and any progress against such plan's targets;
- (b) review such plan annually and make such revisions as are appropriate to further reduce, in a cost-effective manner, incidences of ticketless travel and fare evasion over the remainder of the Franchise Term; and
- (c) implement such revised plan and report to the Authority and each Executive in accordance with paragraph 2.2(a) as if such revised plan was referred to therein.

2.3 If the Franchisee introduces a smartcard scheme for use by passengers, whether on a permanent or trial basis, it shall ensure that any such scheme is compliant with any specification and operating requirement of the Integrated Transport Smartcard Organisation.

SCHEDULE 1.4

Passenger Facing Obligations

1. PUBLISHING THE TIMETABLE

The First Timetable

1.1 The Franchisee shall publish on the Franchise Commencement Date:

- (a) the Timetable:
 - (i) at each staffed Station, by making the relevant information available upon request and free of charge in 1 or more booklets or in other similar form;
 - (ii) at each Station, by display on information displays;
 - (iii) at Franchisee Access Stations, by providing to the operators of such stations the departure and arrival times of such services in the same form as specified in paragraphs 1.1(a)(i) and (a)(ii); and
 - (iv) on the Franchisee's website; and
- (b) the timetables of other Train Operators at Stations, in accordance with paragraph 1.4.

Timetable Revisions and Alterations^{iv}

1.2 The Franchisee shall publish updates or replacements to the Timetable at the locations specified in paragraph 1.1 to the extent necessary to reflect any changes which come into effect on a Passenger Change Date:

- (a) in the case of booklets, at least 4 weeks before the changes come into effect;
- (b) in the case of information displays, no later than the day before the changes come into effect;
- (c) in the case of information provided to the operators of Franchisee Access Stations, in sufficient time for such information to be published by such operators within the time limits provided for in this paragraph 1.2; and
- (d) in the case of the Franchisee's website, at least 4 weeks before the changes come into effect.

1.3 In addition, the Franchisee shall:

- (a) subject to paragraph 1.4, display posters at each Station advising passengers of all significant alterations between any 2 Passenger Change Dates to railway passenger services calling at that Station, no later than 4 weeks in advance of the date on which the alterations come into effect; and
- (b) provide posters to the operators of Franchisee Access Stations, advising passengers of all significant alterations between any 2 Passenger Change Dates to the Passenger Services which call at such Franchisee Access Stations, in sufficient time for such

information to be published by such operators within the time limit provided for in paragraph 1.3(a).

Other Train Operators' Timetables

1.4 The Franchisee shall also comply with the requirements of paragraphs 1.1 to 1.3 inclusive in respect of any other Train Operator's timetable at each Station where the railway passenger services of such other Train Operator are scheduled to call:

- (a) within the time limits specified in paragraphs 1.2 and 1.3 where such other Train Operator delivers to the Franchisee the relevant information in sufficient time for the Franchisee to so publish; and
- (b) as soon as reasonably practicable thereafter where such other Train Operator delivers the relevant information late to the Franchisee.

Executives' Timetable Information

1.5 In publishing details of any Executive Passenger Service in the Timetable in accordance with paragraphs 1.1 and 1.2 and publishing the information referred to in paragraph 1.3 at Stations at which such services call, the Franchisee shall comply with the reasonable timetable publication requirements of each Executive, subject to, in respect of an Executive:

- (a) such Executive:
 - (i) providing to the Franchisee equivalent materials to the materials specified in paragraphs 1.1 to 1.3 inclusive; or
 - (ii) instructing the Franchisee of its requirements in respect of the information specified in paragraphs 1.1 to 1.3 inclusive,

in sufficient time for such materials or information to be published by the Franchisee within the time limits provided for in paragraphs 1.2 and 1.3; and

- (b) paragraphs 1.8 and 1.9.

Verification of Executives' Timetable Information

1.6 Subject to paragraphs 1.8 and 1.9, the Franchisee shall, in respect of the Executive Passenger Services of any Executive, at its own cost, co-operate with such Executive in confirming the accuracy of the information concerning such Executive Passenger Services contained in any timetable proposed to be published by that Executive.

Advertising and Promotion of Executive Passenger Services

1.7 Subject to paragraphs 1.8 and 1.9, the Franchisee shall in respect of the Executive Passenger Services of any Executive, at its own cost:

- (a) co-operate with such Executive in respect of such Executive's advertising and promotion of such services at the relevant Executive Stations and/or Non-Executive Stations within the Passenger Transport Area relevant to it including by:
 - (i) attending meetings with such Executive; and

- (ii) assisting such Executive with the co-ordination of advertising and promotional activities;
- (b) publish as such Executive may direct at such Executive Stations and/or Non-Executive Stations within the Passenger Transport Area any advertising and promotional materials as such Executive may reasonably require; and
- (c) use all reasonable endeavours to make available as directed by such Executive such advertising and promotional materials as it may reasonably require at all Passenger Transport Area Stations.

Franchisee's Maximum Publication Expenditure

1.8 The Franchisee shall not be obliged to incur more than the amount specified in paragraph 1.9 in any Franchisee Year in respect of meeting any individual Executive's timetable information and promotion requirements under paragraphs 1.5, 1.6 and 1.7 (the *Publication Expenditure*). Publication Expenditure for the purposes of this paragraph 1.8 shall:

- (a) include expenditure directly incurred by the Franchisee for the purposes of compliance with the Franchisee's obligations under paragraphs 1.5, 1.6 and/or 1.7 and demonstrated to have been so incurred to the reasonable satisfaction of such Executive; and
- (b) exclude any expenditure incurred by any Franchise Employees, including time spent, in the performance, publication, advertising and promotional activities which could reasonably be discharged incidentally to the performance by such employees of their other duties.

1.9 The Publication Expenditure shall be determined in accordance with the following formula:

$$PE = A \times RPI$$

where:

PE equals the Publication Expenditure;

A equals £173, 434

RPI is the quotient of the Retail Prices Index for the March which immediately precedes the commencement of the relevant Franchisee Year divided by the Retail Prices Index for the March 2004, provided that, for the period between the Franchise Commencement Date and the date of commencement of the first complete Franchisee Year the Publication Expenditure shall be the amount of Publication Expenditure derived from the above formula divided by 13 and multiplied by the number of complete Reporting Periods between the Franchise Commencement Date and the date of commencement of the first complete Franchisee Year.

The Publication Expenditure shall be divided proportionately between each Executive using the following formula:

$$PE \times \left(\frac{X}{Y} \right)$$

where

PE equals the Publication Expenditure;

X is, in respect of the first Franchisee Year, the scheduled train miles of such Executive's Passenger Services as stated in the Timetable in force as at the Franchise Commencement Date, and, in respect of each subsequent Franchisee Year, is the scheduled train miles of such Executive's Passenger Services as stated in the Timetable in force as at the last day of the previous Franchisee Year; and

Y is, in respect of the first Franchisee Year, the scheduled train miles of all the Executive Passenger Services as stated in the Timetable in force as at the Franchise Commencement Date, and, in respect of each subsequent Franchisee Year, is the scheduled train miles of all the Executive Passenger Services provided as stated in the Timetable in force as at the last day of the previous Franchisee Year.

Advertising and Promotion of Passenger Services

1.10 The Franchisee may advertise and promote the Passenger Services at Executive Stations in a manner reasonably consistent with the relevant Executive's requirements for advertising and promotion of the relevant Executive Passenger Services in accordance with paragraph 1.7.

National Rail Timetable and National Rail Enquiry Scheme

1.11 The Franchisee 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 National Rail Timetable (or any replacement), which Network Rail is responsible for publishing from time to time in relation to the Passenger Services, incorporates or is consistent with its Timetable from time to time.

1.12 The Franchisee shall use all reasonable endeavours to procure that information in relation to:

- (a) the Timetable; and
- (b) any significant alterations to the Timetable to take effect between any 2 Passenger Change Dates,

is available to passengers through the National Rail Enquiry Scheme (or any replacement) not less than 4 weeks prior to coming into effect.

2. LATE TIMETABLE CHANGES

2.1 Save in respect of significant alterations, for which the provisions of paragraphs 1.3 and 1.12 shall apply, the Franchisee shall inform passengers, so far as possible on 7-days' prior notice, if it will be unable to operate its trains in accordance with the Timetable. Such information shall include any revised Timetable or travelling arrangements.

2.2 Such information shall be provided by:

- (a) revising or adding to the information displays referred to in paragraph 1.1;

- (b) notifying the operators of the Franchisee Access Stations, as appropriate, including by providing such operators with revised posters;
- (c) complying with the reasonable directions of any Executive pursuant to paragraph 1.5; and
- (d) updating the Franchisee's website.

2.3 The Franchisee shall revise or add to the information displays at the Stations promptly on receipt of any equivalent information relating to the railway passenger services of other Train Operators whose services call at the Stations.

2.4 Where the Franchisee is unable to provide the information specified in paragraph 2.1 because the relevant revisions are made on an emergency basis, the Franchisee shall notify passengers and publish the relevant revisions by way of the means contemplated by paragraph 2.2 as soon as reasonably practicable.

2.5 The Franchisee shall ensure that, so far as reasonably practicable (including by communication of the relevant information to persons likely to receive enquiries), passengers making enquiries regarding the Passenger Services are informed of the revised Timetable and any revised travel arrangements of the Franchisee as far in advance as is reasonably practicable.

3. FARES SELLING RESTRICTIONS

Agents of the Franchisee

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

- (a) for Fares whose:
 - (i) Prices are regulated under Schedules 5.4 (*Regulation of Fares Basket Values*) and 5.5 (*Regulation of Individual Fares and T&WPTE Fares*) including, without limitation T&WPTE Fares, sell or offer to sell at prices no greater than the Prices set for such Fares from time to time in accordance with Schedules 5.4 and 5.5 unless otherwise agreed by the Authority or in relation to a PTE Fare, the Authority and the relevant Executive; and
 - (ii) Child Prices are regulated under Schedules 5.4 and 5.5 including, without limitation, T&WPTE Fares, sell or offer to sell at prices no greater than the Child Prices set for such Fares from time to time in accordance with Schedules 5.4 and 5.5 unless otherwise agreed by the Authority or in relation to a PTE Fare, the Authority and the relevant Executive;
- (b) for Fares whose Child Price has been set pursuant to paragraph 2.1 of Schedule 5.2 (*Franchisee's Obligation to Create Fares*) or paragraph 4 of Schedule 5.5, sell or offer to sell such Fares to any person under the age of 16 for an amount which is no greater than the lowest amount that would be paid if that person were the holder of a Young Person's Railcard (as amended or replaced from time to time) and whose purchase was made without condition unless otherwise agreed by the Authority or in relation to a PTE Fare, the Authority and the relevant Executive; and
- (c) for all Fares:

- (i) do not sell or offer to sell any Fare or Discount Card with a validity of 13 or more months without the consent of the Authority or in relation to a PTE Fare, the Authority and the relevant Executive (such consent not to be unreasonably withheld). In relation to T&WPTE Fares, T&WPTE shall not require the Franchisee to do anything which is inconsistent with this paragraph 3.1(c)(i); and
- (ii) comply with the provisions of paragraph 3 of Schedule 15.2 (*Last 12 or 13 Months of Franchise Period*) to the extent they apply to the selling of Fares by the Franchisee.

Restrictions on Sales

3.2 The Franchisee shall ensure that the purchaser of any Protected Fare or PTE Fare:

- (a) shall be entitled, without further charge, to such rights of access and egress and other similar rights at the commencement and end of the relevant intended journey or journeys as may be reasonably necessary for such purchaser to travel on the Passenger Services;
- (b) shall not be required to incur any cost or take any action beyond the payment of an amount equal to the Price or Child Price (as the case may be) of such Protected Fare or PTE Fare (as the case may be) and, in relation to the issue of a Season Ticket Fare, the completion of such identity card as the Franchisee or, in the case of a T&WPTE Season Ticket Fare, T&WPTE, may reasonably require.
- (c) shall not be required to pay an amount in respect of a seat reservation or other similar right which it may be compulsory for such purchaser to have in order to make a journey with such PTE Fare or Protected Fare (as the case may be) on a Passenger Service.

3.3 The Franchisee shall procure that for any:

- (a) Protected Return Fare, Single Fare which is a PTE Fare or Return Fare which is a PTE Fare, each such Fare shall be offered for sale wherever and whenever any other Fare (not being a Season Ticket Fare) for a journey between the same origin and destination stations is offered for sale; and
- (b) Protected Weekly Season Ticket or Season Ticket Fare which is a PTE Fare, each such Fare shall be offered for sale at all staffed ticket offices at which Fares for a journey between the same origin and destination stations are sold and otherwise wherever and whenever any Season Ticket Fare is offered for sale,

in each case, either by it or its agents (except persons acting in such capacity by virtue of having been appointed under Parts II to VI of Chapter 9 of the Ticketing and Settlement Agreement or by being party to the Ticketing and Settlement Agreement).

3.4 Where the Franchisee sets a limit on the number of PTE Fares or Protected Fares that may be used on any particular train, such limit shall be the greater of:

- (a) the number of seats in Standard Class Accommodation on such train; and
- (b) the capacity of Standard Class Accommodation of the rolling stock vehicles comprising such train according to Appendix 1 (*The Train Fleet*) to Schedule 1.1 (*Service Development*).

3.5 The Franchisee shall not sell any Fare or Discount Card which has a validity of 13 or more months, except to the extent required to do so under the terms of the Ticketing and

Settlement Agreement. In relation to T&WPTE Fares, T&WPTE shall not require the Franchisee to do anything which is inconsistent with this paragraph 3.5.

Additional Ancillary Services

3.6 The Franchisee shall, subject to paragraphs 3.1 and 8, and in relation to T&WPTE Fares, to paragraph 3.8 of Schedule 5.5 (*Regulation of Individual Fares and T&WPTE Fares*) be entitled to charge a purchaser of any PTE Fare or Protected Fare for any additional services:

- (a) which are ancillary to the railway passenger service for which such PTE Fare or Protected Fare (as the case may be) was purchased (including, charges in respect of car parking or catering services); and
- (b) which such purchaser is not obliged to purchase.

4. PASSENGER'S CHARTER

Content

4.1 The Franchisee shall:

- (a) publish its Passenger's Charter:
 - (i) in substantially the form set out in Appendix 1 (*Form of Passenger's Charter*); and
 - (ii) in accordance with the requirements specified in paragraph 4.3;
- (b) review the need for changes to the Passenger's Charter at least every 3 years, in consultation with each Executive and relevant Rail Passengers' Committees, and shall submit a draft of any revisions to the Passenger's Charter that it wishes to propose, together with proof of such consultation, to the Authority; and
- (c) state the date of publication clearly on the front cover of the Passenger's Charter.

4.2 The Franchisee may not change the Passenger's Charter without the Authority's prior written consent (which is not to be unreasonably withheld).

Publishing the Passenger's Charter

4.3 The Franchisee shall publicise its Passenger's Charter by:

- (a) providing copies to the Authority, each Executive and any relevant Rail Passengers' Committee at least 7 days before it comes into effect;
- (b) providing copies to passengers, free of charge, at each staffed Station and in the case of any revision thereto, providing such copies at least 7 days before such revision comes into effect;
- (c) sending a copy, free of charge, to any person who requests it; and
- (d) displaying it on its website at all times and, in the case of any revision thereto, at least 7 days before such revision comes into effect,

save in respect of the Passenger's Charter which is effective on the Franchise Commencement Date, in which case the Franchisee shall publicise such Passenger's Charter in the manner contemplated by this paragraph 4.3 on and from the Franchise Commencement Date.

4.4 The Franchisee shall also provide at each staffed Station the current passenger's charter of any other Train Operator whose trains call there, subject to the provision of such passenger's charter to the Franchisee by such other Train Operator.

4.5 The Franchisee shall provide copies of its Passenger's Charter to the operators of Franchisee Access Stations to enable such operators to publish it.

Passenger's Charter Payments

4.6 The Franchisee shall:

- (a) make all payments and all extensions to Fares; and
- (b) provide all discounts on the price of Fares,

which passengers may reasonably expect to be made or provided from time to time under the terms of the Passenger's Charter (whether or not the Franchisee is legally obliged to do so).

4.7 Where the Franchisee is the Lead Retailer at a Station, it shall comply with paragraph 4.4 in respect of the provision of the passenger's charters of other Train Operators.

4.8 The Franchisee shall use all reasonable endeavours:

- (a) to comply with any other obligations, statements and representations; and
- (b) to meet any other standards or targets of performance, as are comprised in its Passenger's Charter from time to time.

Passenger's Charter Statistics

4.9 The Franchisee shall:

- (a) prepare the Passenger's Charter Statistics (in accordance with the Passenger's Charter Guidelines);
- (b) publish the Passenger's Charter Statistics (and the passenger's charter statistics of other Train Operators whose trains call at any Stations) in a format approved by the Authority on information displays at all staffed Stations by midnight on the Saturday following the end of each Reporting Period. The Passenger's Charter Statistics to be displayed shall relate to the Service Groups serving such Stations;
- (c) display the Passenger's Charter Statistics relating to each Service Group on its website by midnight on the Saturday following the end of each Reporting Period; and
- (d) at the same time, provide copies of its Passenger's Charter Statistics to the Authority, each Executive and all relevant Rail Passengers' Committees.

4.10 The obligation under paragraph 4.9(b) to display any other Train Operator's statistics is subject to the provision of such statistics to the Franchisee by such other Train Operators.

4.11 The Franchisee shall provide Passenger's Charter Statistics in a format approved by the Authority to the operators of Franchisee Access Stations in sufficient time for the information to be displayed by such other operators within the time limits specified in paragraph 4.9.

Audit of the Passenger's Charter Statistics

4.12 The Franchisee shall procure that:

- (a) the Passenger's Charter Statistics published in accordance with paragraphs 4.9 and 4.11 are audited by an independent person or persons acceptable to the Authority;
- (b) the audit is conducted at least once every 13 Reporting Periods; and
- (c) details of the methodology and the results of the audit are provided to the Authority and each Executive within 28 days of receipt by the Franchisee.

4.13 If any audit reveals inaccuracies in the data and information used to measure the performance of the Franchisee, the Franchisee shall:

- (a) ensure so far as reasonably practicable that the production of such inaccurate data and information is not repeated;
- (b) as soon as reasonably practicable implement any corrections to such inaccurate data and information (including on a retrospective basis for the previous 13 Reporting Periods); and
- (c) insofar as any inaccuracies in data and information result in compensation that was not given to passengers when it should have been given, so far as reasonably possible make such compensation available.

5. SPECIFIC ADDITIONAL OBLIGATIONS RELATING TO PERSONS WITH DISABILITIES

5.1 The Franchisee acknowledges that its obligations in this paragraph 5 are in addition to and do not limit its obligations to comply with:

- (a) the DDA;
- (b) any applicable condition in any of its Licences (including in respect of persons with disabilities); and
- (c) any other of the requirements of this Agreement.

5.2 The Franchisee shall establish and implement procedures necessary to:

- (a) record the making of reservations for seating accommodation for and/or the provision of assistance to, persons with disabilities which are made through the Disabled Person's Reporting System (or whatever system may replace it from time to time for the purposes of the Authority's Guidance on Disabled People's Protection Policies) and where the Franchisee is responsible for making the reservation and/or delivering the seating accommodation or assistance reserved;
- (b) record whether such seating accommodation and/or assistance is actually provided; and

(c) provide such records to the Authority on its request.

5.3 Where the Franchisee's Disabled People's Protection Policy:

(a) has been established before the date of this Agreement; and

(b) has not been revised and approved by the Authority to take into account the Authority's most recent published guidance on Disabled People's Protection Policies as at the date of this Agreement,

the Franchisee shall within 6 months of the date of this Agreement revise its Disabled People's Protection Policy such that it complies with that guidance, and obtain the Authority's approval of the revised version.

5.4 The Franchisee shall comply with the requirements set out in Appendix 2 (*Alternative Transport*) in respect of the provision of alternative means of transportation for persons with disabilities.

6. LOST PROPERTY

The Franchisee shall comply with any code of practice issued by ATOC from time to time in respect of the handling of lost property.

7. BICYCLES

7.1 The Franchisee shall, so far as is reasonably practical and subject to the availability of appropriate space on any rolling stock vehicles in the Train Fleet, ensure that reasonable facilities for the transport of bicycles on such rolling stock vehicles are made available, at reasonable charges (if any) or, in relation to the Executive Passenger Services, any lower charge specified by any Executive (including no charge), to passengers using the Passenger Services.

7.2 The Franchisee shall, so far as is reasonably practical and subject to the availability of appropriate space at Stations, ensure that reasonable facilities to enable the secure storage of bicycles at Stations are made available, at reasonable charges (if any) or, in relation to the Executive Passenger Services, any lower charge specified by any Executive (including no charge), to passengers using the Passenger Services.

7.3 The Franchisee shall not, except to the extent the Authority otherwise agrees, cease to provide the level of facilities for the carriage and storage of bicycles on the rolling stock vehicles used in the provision of the Passenger Services as at the Franchise Commencement Date.

7.4 Except to the extent that the Authority otherwise agrees, having regard to, amongst other things, the likely use of such facilities (such agreement not to be unreasonably withheld), any new rolling stock vehicles which are procured directly or indirectly by the Franchisee shall include reasonable facilities for the carriage and storage of bicycles.

7.5 Notwithstanding any of the above, the Franchisee shall not be in contravention of any of its obligations under this paragraph 7 if the reason for its failure to comply with any such obligation is the use by it on any particular occasion of some or all space otherwise available to cyclists and/or bicycles for the carriage and/or accommodation of wheelchairs and/or wheelchair users and/or those passengers travelling with such wheelchair users.

8. CAR PARKING AT EXECUTIVE STATIONS

The Franchisee shall only be entitled to introduce or vary car parking charges at Executive Stations with the prior consent of the relevant Executive.

9. TRAVELINE

The Franchisee shall co-operate with the Authority in developing Traveline for the purpose of increasing the numbers of passengers using railway passenger services.

10. STATUTORY NOTICES

If requested by the Authority, the Franchisee shall publish and display at the Stations (and shall use all reasonable endeavours to procure the publication and display at Franchisee Access Stations) such notices as the Authority may wish to publish from time to time in the exercise of its functions (including in relation to Closures or any enforcement or penalty orders).

11. WEBSITE

11.1 The Franchisee shall publish and maintain a website throughout the Franchise Term.

11.2 Any such publication and maintenance shall be in accordance with any guidance issued by the Authority to the Franchisee from time to time.

APPENDIX 1 TO SCHEDULE 1.4

Form of Passenger's Charter

[Note some contact and other details as shown in square brackets will be completed before Franchise Commencement Date]

1.1 Introduction

Each Train Operating Company is required to produce a Passenger's Charter that sets out the commitments that it makes to its customers. The key elements of the Passenger's Charter are:

- A statement from the Train Operating Company of its intentions
- Standards of service covering punctuality and reliability
- What passengers can expect - for example on telephone enquiries and booking services, reservations, availability of catering, provision for passengers with disabilities
- What passengers can expect if things go wrong
- Compensation arrangements for single/return and weekly season ticket holders for one-off delays or to monthly or longer season ticket holders if performance drops below the expected standards
- A list of contacts for passenger complaints and comment .

This Charter is a statement of our commitment to provide the safe and high-quality service you have the right to expect. We publish it so that you know the standards we are determined to achieve. We will monitor how well we are doing by measuring our performance and by carrying out regular surveys of your opinion. We will publish the results of our research and review our standards at least once a year.

Our mission is to be a reliable, co-operative and customer-focused operator that will turn a journey into a straightforward, enjoyable and hassle-free experience.

To help you, the passenger, to have a clear understanding of the services you can expect to receive, we have produced this Passenger's Charter that sets out our commitments.

Our services are supported by 5 Passenger Transport Executives (PTEs).

- on Merseyside by Merseytravel
- in the Manchester area by Greater Manchester PTE
- in West Yorkshire by West Yorkshire PTE (Metro)
- in South Yorkshire by South Yorkshire PTE
- in Tyne & Wear by Nexus

The Charter applies to all services operated by Northern Rail including those in PTE areas.

Northern Rail will work with other train operators to provide a seamless national rail network and with operators of other forms of transport to provide an integrated service. Northern Rail has adopted the existing National Rail Standards that are designed to provide consistent standards of customer service across the Rail Network. They cover:

- Presentation of timetable information
- Arrangements for passengers with disabilities
- Customer service when you change trains
- Help during train service disruptions

- Lost property
- Comments involving two or more operators

Further details can be found in the 'Map & Guide to using the National Rail Network' obtainable at all staffed stations.

We welcome your views on this Charter that will be reviewed on a 12 monthly basis in conjunction with Rail Passengers Committees and PTEs.

Copies of this Charter are available at staffed stations served by our trains or from the address on [*the last page when printed*].

We will also provide copies of other relevant train operators' Passengers Charters at the staffed stations that we operate (to the extent that they are provided by other operators).

The Passenger's Charter incorporates information about Rail Passengers Committees, the Guide Dogs Travel Charter, and our Disabled People's Protection Policy.

1.2 The Informed Customer

We aim to provide comprehensive, accurate and timely timetable information, giving the platform, departure time and station stops of each train. Departure information will be displayed on the platforms and concourse areas of each Northern Rail station. At larger Northern Rail stations, TV monitors and public address systems will also provide information. A Freephone helpline and Internet site provides the latest information on the running of Northern Rail trains. The telephone number is [*to be completed during mobilisation*] and the hotline is staffed 24 hours daily (except Christmas Day and Boxing Day). The web site is [*to be completed during mobilisation*]

We provide free pocket timetables and other advertising and information material for you to take away at all staffed stations at which our services call and from rail-appointed travel agents.

Advance information informing customers of changes to services as a result of Bank Holidays or engineering work will be produced at least four weeks in advance. Such information will be displayed at relevant stations. We will try to keep disruption to a minimum.

As much notice as possible will be provided in the event of unplanned or emergency train alterations. Information will also be given on BBC 2 Ceefax page 434 whenever possible and on the live departures page of the National Rail web site www.nationalrail.co.uk.

When new timetables are introduced we will ensure that they are available at least four weeks prior to their commencement.

The National Rail Enquiry Service provides comprehensive information on all rail services. It can be contacted by telephoning 08457 48 49 50, 24 hours daily. A minicom service is available between 08 00 and 20 00 daily on 0845 60 50 600. Alterations to services due to engineering work and at Bank Holidays are normally available up to 12 weeks in advance. All calls are at local call rate. NRES has a performance standard of answering 92.5% of calls made.

Station staff, where they are provided, will be able to answer enquiries and provide help and advice. This can also be obtained from staff on trains.

Times when stations are staffed will be displayed on signs at each station. A map showing Northern Rail stations is shown on the inside back cover of this Charter.

We will endeavour to widen the range of outlets that carry our material.

Information about Northern Rail services, including current train running information can be accessed from our website: www.northernrail.org.

1.3 Buying a Ticket

A full range of tickets is available from the ticket office at Northern Rail stations. Seat reservations can be made from the ticket offices of larger stations. Tickets can be purchased by cash, cheque (backed by a guarantee card), most major debit and credit cards, Rail Warrants and Travel Vouchers.

We will serve you in an impartial, accurate and efficient way. We will always sell you the most appropriate ticket for your journey whether or not you are travelling on Northern Rail. You will not have to wait to buy a rail ticket more than five minutes in busy periods and three minutes at all other times.

The opening hours of each ticket office will be displayed at each station. We will display details of busy times at ticket offices to help you avoid delays. If you wish to purchase a reservation or a ticket in advance of travelling this information will enable you to choose a quieter time in which to do this. We will undertake regular checks to ensure that the above standards are being achieved and the results will be published every six months on our website and through customer newsletters.

A Telesales service is available 0800-2000 Monday to Friday, 0900-1700 weekends on *[to be completed during mobilisation]* Please allow seven days for delivery of tickets. Tickets are also available from rail-appointed travel agents.

Tickets for travel should be bought before your journey commences wherever there is a staffed ticket office or a suitable self-service ticketing machine. Where such facilities are available and you travel without a ticket, reduced rate tickets will not be available on the train or at your destination. Where fraudulent travel is involved it is our policy to seek criminal prosecution.

As part of our commitment to making sure that we provide the service you expect, we need to make sure that all our customers are paying the appropriate fare for the journey they are making. In addition to our on-train conductors, we also deploy Travelling Ticket Inspectors who will make random checks of tickets. These staff are there to demonstrate to our fare-paying customers that we are doing everything possible to ensure others do not fail to pay. Where there is evidence of an intention to defraud us of fares due we will seek criminal prosecution.

On some routes we may introduce a Penalty Fares Scheme. Wherever a penalty fares scheme is in place, there will be ticket machines at stations and customers must buy a ticket or permit to travel before they board the train. If they do not do so, they may have to pay a penalty fare as well as the full fare for the journey they are making.

On non penalty fare routes, when journeys commence at locations where there is no ticketing facility available, the normal range of tickets will be available from your conductor on board the train.

If you decide not to use a ticket you have bought you can apply for a refund at any station ticket office within 28 days of the date shown on the ticket. Tickets purchased from a Travel Agent or via another operator's telesales must be returned to the issuing office. We will normally charge an administration fee of £5, unless we have been at fault. Special conditions apply to advance purchase products such as APEX tickets.

1.4 Customers with Special Needs

Northern Rail welcomes customers with restricted mobility or other special needs. We have a Disabled People's' Protection Policy (DPPP) that sets out the services that disabled customers can expect when travelling with Northern Rail.

A summary of the policy is freely available to customers at all staffed Northern Rail stations, or by writing to or telephoning our Customer Services Manager.

Our commitment to customers with special needs includes:

- a) The availability of a telephone pre-booking assistance service to ensure that customers are met and assisted throughout their journey. In order to ensure that the best service is available, we would appreciate 24 hours notice. We will consider appropriate compensation if arrangements made in advance for travel on Northern Rail and for Northern Rail' stations are not provided.

If it is not possible to give notice we will still do our utmost to help you. The special contact telephone numbers for this purpose is:

Disabled Assistance and Advice *[to be provided during mobilisation]*
(06 00 – 23 00 Monday to Friday, 0700-2200 weekends)*

*There is a recorded message outside these hours. A textphone services is available on 0845 xxxxxxx *[to be provided during mobilisation]*

- b) A pre-booking ticket and reservation service that can be completed at the same time as help is confirmed (some rail tickets require advance purchase).
- c) All our services carry ramps and our staff will be able to use them.
- d) We will try to provide space as far as practicable in our trains for customers using standard wheelchairs (67cm wide). However, scooters and other runabout vehicles cannot be carried.
- e) Northern Rail accepts the National Disabled Railcard that offers price reductions of up to a third on a range of rail tickets.
- f) Northern Rail's services call at approximately 500 stations and levels of accessibility and assistance vary considerably. This can be clarified by ringing the Disabled Assistance and Advice line.

- g) Northern Rail will do as much as possible to ensure ease of access into its stations and onto its trains.
- h) Northern Rail will consult with the Royal National Institutes for the Blind, and for Deaf People to improve the provision of information.
- i) Northern Rail supports the objectives of the Code of Practice “Train and Station Services for Disabled Passengers” published by the Strategic Rail Authority in February 2002.
- j) Northern Rail is pleased to support the Guide Dogs Travel Charter.
- k) Northern Rail will make available its printed customer information in alternative formats on request.

1.5 Station Standards & Facilities

We will maintain our stations in a good condition and to a high standard of cleanliness. We promise that regular inspections will be carried out to ensure these standards are maintained. We report the results of our audits to the Strategic Rail Authority (SRA), PTEs and Rail Passengers Committees and will also make these results available at staffed stations, on our website and through customer newsletters

All Customer Service staff at our stations will be easily identifiable and will present a good image, wearing uniform including name badges.

Security guards will patrol selected Northern Rail stations and car parks and, to provide further security, surveillance cameras will be installed at certain stations.

We will use our reasonable endeavours to ensure that a public telephone is provided on, or in the immediate vicinity of all Northern Rail stations. We will provide real time information about our train services at Northern Rail stations by means of public address and/or information screens and/or by means of a freephone hotline where public telephones are provided.

Toilets will be kept clean and in good order where provided at Northern Rail stations.

We will display notices at stations giving details of our address and telephone number; facilities available at the station; details of other nearby public transport and taxis; the location of the nearest public telephone and details of how to complain, firstly to the Company and, if not satisfied, to the local Rail Passengers Committee.

1.6 Train Service Standards & Facilities

We will review the train service we offer regularly. The emphasis will be, improving the reliability and capacity of train services and reducing journey times wherever possible.

Northern Rail plans services so that customers boarding trains should be able to obtain a seat in normal circumstances. Customers should not have to stand on our trains outside of peak times unless they choose to, and at peak times for no more than 20 minutes. Where customers do need to stand, the number doing so should not exceed 35% of the seating capacity. Where our projections of future demand suggest that these standards will not be met we will consult with the SRA and PTEs to discuss with them the most appropriate solutions.

We will operate a reservation service allowing you to reserve a seat in advance on the Northern Rail services shown as available for reservation in the timetable. Where a reservation is not honoured, we will refund any seat reservation fee paid and, with vouchers, the cost of the journey if no alternative seat is available.

We will maintain our trains in a good condition and to a high standard of cleanliness. Regular inspections will be carried out to ensure these standards are maintained. We report the results of our audits to the Strategic Rail Authority (SRA), PTEs and Rail Passengers Committees and will also make these results available at staffed stations on our website and through customer newsletters.

All customer service staff on our trains will be easily identifiable and will present a good image, wearing full uniform including name badges. They will keep you informed during your journey and help with any problems, should they occur.

We will continue to aim for improved standards of punctuality and reliability. We will publish our reliability and punctuality figures at all staffed stations every four weeks. These figures will be independently audited every year.

We will operate at least 99% of services in the published timetable.

Our punctuality standards for arrival at final destination are as follows:

- **Short-distance services (punctuality) – We aim that at least 91 out of every 100 trains (91%) will arrive within five minutes of the time shown in our timetables.**
- **Long-distance services (punctuality) - We aim that at least 91 out of every 100 trains (91%) will arrive within 10 minutes of the time shown in our timetables.**

Sundays are not included for the purpose of calculating punctuality and reliability performance.

Certain causes of delay are outside the control of our control and are not included when calculating punctuality and reliability performance for compensation purposes. These include vandalism, security alerts, and exceptionally severe weather conditions which similarly affect other modes of transport and where no special pre-advertised emergency timetable has been in operation.

Essential engineering work sometimes takes place at weekends and late at night. This may mean that services are changed. Information will be provided at local stations at least seven days before any planned changes to services in your area.

We regret that, on buses, we will not be able to carry prams, pushchairs, bicycles or wheelchairs that do not fold up.

In severe weather, trains often continue to run when roads and airports are closed. However, when speeds are reduced, delays can build up and schedules may be disrupted.

Emergency timetables may be used depending on weather forecasts or local conditions. We will give you as much notice as we can before these emergency timetables come into force.

1.7 Safety

Northern Rail is committed to running a safe railway and to ensuring that appropriate resources are available to do so. We will protect the safety of our customers, staff, contractors and the general public where affected by our actions and will ensure that property and the environment are protected.

The identification, control and minimisation of hazards and risks are contained in the Company's Safety Policy that is translated into measurable actions in a Safety Plan that is produced annually and reviewed regularly.

1.8 Environmental

Our Promise is that we are dedicated to the continual improvement of our environmental performance.

Our main aims are:

- To comply with all our legal obligations.
- To make efficient use of renewable and non-renewable resources.
- To keep abreast of technological developments impacting on environmental performance and adopt those where practicable.
- To engender an environmental culture which enables employees to be fully involved and aware of their environmental responsibilities.
- To specify, monitor and review annual environmental objectives for key managers.

1.9 Smoking Policy

All Northern Rail trains are fully non-smoking.

1.10 If Things Go Wrong

We recognise that passengers want to know what is happening when things go wrong. Our staff on our trains and at stations and through our Freephone Helpline will help by providing as much information as they can to passengers.

In cases of severe disruption, every effort will be made to provide alternative transport to ensure you reach your final destination station. In exceptional circumstances, hotel accommodation will be provided.

If a delay to a Northern Rail service adds an hour or more to your journey, we will offer you rail travel vouchers to the value of at least 50% of the fare you paid for that journey.

This does not apply to season ticket holders, other than weekly season ticket holders. The vouchers are available for use on other train operators' services.

If you are unsure which train company to write to, write to us and we will be pleased to either deal with the claim or refer it to the appropriate company and tell you what we have done.

If you purchase a ticket for your journey and the train you plan to catch is delayed or cancelled, or your reservation is not honoured and you decide not to travel, you will be given a full refund if you return your unused ticket to any ticket office.

Separate arrangements for season ticket holders are shown below.

1.11 Season Ticket Holders

Season Ticket holders have made a long term commitment to us on the basis of our Promise. Therefore the price you pay on renewal of your Season Ticket is linked closely to our performance.

If, for your Service Group, Northern Rail's average punctuality is more than 3% below the standards shown on page [xx] or if reliability is below 98% in respect of the preceding twelve months, season ticket holders will receive a 5% discount on renewal within four weeks for a similar journey and period.

If both punctuality and reliability performance fail to meet these thresholds in respect of the preceding twelve months, season ticket holders will be given a 10% discount on renewal. These discounts will be paid to holders of PTE multi-modal tickets *[as listed in the Franchise Agreement]* that include rail travel.

Compensation for holders of weekly season tickets is the same as for individual journey. Customers will have their season tickets extended on renewal to compensate them for days when no service or a heavily curtailed service was provided. Season ticket holders not renewing their tickets may request the discount in the form of rail travel vouchers. We will publish a list of applicable void days with our four weekly performance results.

1.12 Bicycles

Northern Rail serves stations in some of the most beautiful and challenging countryside in the UK. We would like to welcome you and your bicycle to Northern England – by train. Cyclists may travel on any service operated by Northern Rail where space permits. Most trains can only accommodate two bicycles. There will be no extra charge for bringing your bicycle on a Northern Rail service.

Bicycle spaces can be reserved on certain services. To avoid disappointment it is essential to book at least 48 hours in advance of your journey. Reservations can be made at many staffed stations, at Rail appointed Travel Agents or by phoning *[to be completed during mobilisation]*. On all other services, space is allocated on a first come, first served basis subject to space being available. Only one accompanied bicycle per person will be allowed, in the interests of other customers.

Motorised cycles, tandems, tricycles and 'Rann' type trailers cannot be conveyed.

1.13 How to Contact Us

We value what you have to say, and by passing on your opinions you will help us to improve. We do our best to give you the quality of service you have the right to expect. Our aim is to achieve customer satisfaction by improving our services in response to your comments.

If you wish to make any comment or complaint, please contact the Customer Relations team as follows:

Northern Rail *[details to be completed during mobilisation]*

Address

Telephone
Fax:
Minicom:
E-mail:

Customer Service staff on our trains and at our stations can also give you forms for comments and complaints.

Where a complaint cannot be satisfied at the time, we aim to provide you with a response within 5 working days. If you are not satisfied with our initial response we will investigate further and also advise you of the arrangements operated by the Rail Passengers Committees for considering your complaint. Where your complaint is complex or requires detailed investigation that may take longer than our normal response time we will advise you of this and aim to have a full response with you within 20 working days.

Notices providing contact information are provided on our trains.

1.14 Seeking Your Views

Northern Rail actively seeks your comments and opinions. Regular feedback will enable us to introduce improvements. We will achieve this by:

a) Undertaking market research to establish your expectations and tell us how you think we are performing. Shortcomings identified between expectations and current performance will be targeted and acted upon.

Extracts from our market research will be circulated to relevant Rail Passengers Committees and Passenger Transport Executives. This information can be made available on request to passengers by contacting the Customer Relations team.

b) Inviting you to participate in customer panels that will consider customer service improvements.

c) Holding regular “Meet the Manager” sessions.

1.15 Contacting your Rail Passengers Committee

We will always do our best to satisfy all complaints. If you still wish to take the matter further you can refer it to your local Rail Passengers (RPC) Committee, an independent consumer body set up under The Railways Act 1993 to protect rail users’ interests.

It has the legal right to make recommendations for changes. They take up complaints and assess hardship when lines or stations are proposed for closure.

The addresses of the RPCs for the areas we serve are:

RPC North Eastern England

Ground Floor
Unit 2
Holgate Court
Holgate Park
Poppleton Road
YORK

YO26 4GB
Phone: 01904 787711

RPC North Western England

9th Floor
Rail House
Store Street
Manchester
M1 2RP
Phone: 0161 244 5982 Fax: 0161 244 5981

1.16 National Rail Conditions of Carriage

This Passengers Charter does not affect your legal rights as set out in the National Rail Conditions of Carriage. Copies of the National Rail Conditions of Carriage are available from staffed stations or from the Customer Relations Team at the address shown in section 1.13 above.

APPENDIX 2 TO SCHEDULE 1.4

Alternative Transport

1. References in this Appendix 2 to passengers are references to passengers with disabilities who are wheelchair users or otherwise severely mobility impaired.
2. Subject to paragraph 4, where:
 - (a) a passenger wants to travel on a Passenger Service; and
 - (b) the design of the station at which the Passenger Service is to start, (the *Departure Station*) or finish (the *Destination Station*) prevents the passenger from using that station to access or disembark from that Passenger Service,the Franchisee shall provide alternative transport for that passenger in accordance with paragraph 3.
3. The Franchisee shall provide alternative transport for the passenger referred to in paragraph 2:
 - (a) from the Departure Station to the next station at which the Passenger Service is scheduled to call and at which it is possible for the passenger to access that Passenger Service;
 - (b) to the Destination Station, from the station closest to such station at which the Passenger Service is scheduled to call and which it is possible for the passenger to use to disembark from that Passenger Service; and/or
 - (c) to or from such other station as the Franchisee may, having regard to the journey and the needs of the passenger, agree,and, in any case, at no cost additional to the price of the Fare which would otherwise be payable for the passenger's rail journey.
4. The Franchisee's obligations under this Appendix 2 are subject to:
 - (a) reasonable prior notice of the passenger's requirement for alternative transport; and
 - (b) the availability of suitable alternative transport (provided that the Franchisee has used all reasonable endeavours to ensure that it has arrangements in place to meet requirements for the provision of such alternative transport).

SCHEDULE 1.5

Information about Passengers

1. PASSENGER NUMBERS INFORMATION

1.1 The Franchisee shall, as and when reasonably requested by the Authority or any Executive provide information to the Authority or such Executive (as appropriate) on the extent of the use by passengers of the Passenger Services (provided that the rights of any Executive under this paragraph 1.1 will be limited to information relating to such Passenger Services which commence or terminate in or pass through the Passenger Transport Area of such Executive. In particular and when so requested, the Franchisee shall provide information relating to:

- (a) the number of passengers travelling in each class of accommodation:
 - (i) on each Passenger Service;
 - (ii) on each Route; and/or
 - (iii) at any station or between any stations; and
 - (b) the times of the day, week or year at which passengers travel,
- (together, Actual Passenger Demand).

1.2 The Franchisee shall obtain the information specified in paragraph 1.1 by using the most accurate commercially available technology (as at the Franchise Commencement Date) for determining the number of passengers travelling in each class of accommodation:

- (a) on each Passenger Service;
- (b) on each Route; and
- (c) at any station or between any stations.

1.3 The information specified in paragraph 1.1 shall:

- (a) in the case of information provided by the Franchisee to the Authority, be in such format and to such level of disaggregation as the Authority may reasonably require in order to assist the Authority's decision-making on infrastructure, station and rolling stock vehicle investment, the best use of the network and the alleviation of overcrowding;
- (b) in the case of information provided by the Franchisee to any Executive, be in such format and to such level of disaggregation as such Executive may reasonably require in order to assist such Executive in keeping under review railway passenger services; and
- (c) be provided by the Franchisee to the Authority or any Executive, in each case, within 14 days of any request by the Authority or such Executive pursuant to paragraph 1.1.

1.4 At the same time as the Franchisee provides any information in accordance with paragraph 1.1, it shall (if the Authority or any Executive requests it to do so):

- (a) update any Forecast Passenger Demand accordingly in the same format and to the same level(s) of disaggregation as the Authority or any Executive (as the case may be) required pursuant to paragraph 1.3(a) or (b) (as the case may be); and
- (b) notify the Authority and such Executive of any such update.

2. NATIONAL PASSENGER SURVEYS

2.1 The Authority may measure the level of passenger satisfaction with the Franchise Services through National Passenger Surveys.

2.2 The Authority shall determine how, when (normally twice per annum) and where National Passenger Surveys are to be carried out.

2.3 The Franchisee shall grant access on trains or at stations to the Authority (or its representatives and agents) to carry out National Passenger Surveys.

2.4 The Franchisee shall co-operate with the Authority (in such manner as it may reasonably require) in order to enable the Authority to carry out National Passenger Surveys. The Authority will make available the relevant survey findings to the Franchisee and each Executive within a reasonable period of time after the completion of such surveys.

2.5 The Authority may from time to time publish the results of each National Passenger Survey.

2.6 If any National Passenger Survey includes a comparison between such National Passenger Survey and any earlier National Passenger Survey, the Authority will use all reasonable endeavours to ensure that such comparisons form a reasonable basis for monitoring the trends of passenger satisfaction over time.

3. EXECUTIVE SURVEYS

3.1 Any Executive may, at its own cost and in such manner as that Executive determines, conduct surveys or related research, with access to the services and stations referred to in paragraph 3.2, in relation to matters relevant to its statutory functions.

3.2 The Franchisee shall, upon reasonable notice, allow any Executive for the purpose of enabling such Executive to carry out such surveys or related research, reasonable access to:

- (a) the Executive Passenger Services relevant to such Executive;
- (b) where relevant to such services, continuations thereof;
- (c) the Executive Stations relevant to such Executive;
- (d) any Non-Executive Passenger Services which operate within the Passenger Transport Area relevant to such Executive, subject to the prior consent of the Franchisee (such consent not to be unreasonably withheld or delayed); and
- (e) any Non-Executive Stations at which any Executive Passenger Services relevant to such Executive call, subject to the prior consent of the Franchisee (such consent not to be unreasonably withheld or delayed).

SCHEDULE 1.6

Committed Obligations

Part 1: Preliminary

1. Reasonable Endeavours

Where in this Schedule 1.6 the Franchisee is obliged to use all reasonable endeavours to do or procure that something is done by a certain date then, without prejudice to such obligation (and any liquidated damages payable by the Franchisee to the Authority pursuant to Appendix 2 to Schedule 1.6 in respect of such obligation), if the same is not achieved by the date specified in respect of such obligation under Appendix 1 of Schedule 1.6 the Franchisee shall be required to consult with Authority and if required by the Authority use all reasonable endeavours to do or procure that the obligation in question is fulfilled as soon as possible thereafter.

2. Expenditure

For the avoidance of doubt all amounts which the Franchisee has committed (whether unconditionally or otherwise) pursuant to this Schedule 1.6 to expend in connection with improvements to network or stations shall be in addition to any expenditure made by Network Rail as part of its infrastructure improvement or maintenance programme. Where any category of expenditure described in this Schedule 1.6 is referred to in more than one expenditure commitment set out in this Schedule 1.6 expenditure on such category shall not be counted more than once in assessing compliance by the Franchisee with such expenditure commitments.

3. Continuing Provision

Where the Franchisee is obliged under this Schedule 1.6 to provide, implement or install something (whether a service, facility or otherwise) the Franchisee shall ensure that once the same is provided, implemented or installed that it continues to be provided and made available (and where relevant, effectively maintained) for the remainder of the Franchise Period unless the contrary is expressly stated.

Part 2: Committed Obligations

1. Public Performance Measure

- 1.1 The Franchisee shall ensure that the percentage for the Public Performance Measure measured as a moving annual average for each Reporting Period falling between the dates specified in the left hand column of the table below exceeds or is at the percentage stated in the right hand of the table below for such period.

Dates	Percentage %
From 1 April 2006 to 31 March 2009	82.9
From 1 April 2009 to 31 March 2012	83.3
From 1 April 2012 to end of Franchise Term	84.0

- 1.2 In addition and without prejudice to its obligation in paragraph 1.1 the Franchisee shall use all reasonable endeavours to ensure that the percentage for the Public Performance Measure measured as a moving annual average for each Reporting Period falling between the dates specified in the left hand column of the table below exceeds or is at the percentage stated in the right hand of the table below for such period.

Dates	Percentage %
From 1 April 2006 to 31 March 2009	84.5
From 1 April 2009 to 31 March 2012	86.1
From 1 April 2012 to end of Franchise Term.	86.8

- 1.3 If :

- (a) at any time and from time to time there is a Change to the Service Level Commitment previously in force; and
- (b) the Authority reasonably considers that a revision to the percentages set out in the tables in paragraph 1.1 and 1.2 is required to hold constant the risk of the Franchisee failing to satisfy the requirements of paragraphs 1.1 and 1.2;

then the Authority shall make such revisions to the percentages in paragraphs 1.1 and 1.2 as it reasonably considers appropriate to hold constant such risk. The Authority shall immediately notify the Franchisee of the revised percentages.

2. Service Delivery Assurance Plan

- 2.1 The Franchisee shall prepare and submit to the Authority and each Executive the Draft Service Delivery Assurance Plan as soon as the Franchisee has received the information it reasonably considers is necessary to prepare the Draft Service Delivery Assurance Plan but in any event no later than three months following the Franchise Commencement Date.
- 2.2 No later than fourteen working days after the Draft Service Delivery Assurance Plan is submitted to the Authority and each of the Executives (the “*Specified Period*”), the Authority and each of the Executives will either:
 - (a) confirm that they have no comments on the Draft Service Delivery Assurance Plan; or
 - (b) notify the Franchisee of their comments on the Draft Service Delivery Assurance Plan and/or request such information relating to such plan (including information on any assumptions made in such plan) as it may reasonably require. The Franchisee shall provide any further information requested by the Authority or any Executive under this paragraph within five working days from the date of such request.
- 2.3 If either of the Authority or any of the Executives fails to provide the confirmation or notification required pursuant to paragraph 2.2 within the Specified Period, the Authority or the affected Executive will be deemed to have confirmed that it has no comments on the Draft Service Delivery Assurance Plan.
- 2.4 If the Franchisee receives any notification under paragraph 2.2(b) from the Authority or any of the Executives, then within fourteen working days after the Specified Period or the date on which the last notification is received by the Franchisee pursuant to paragraph 2.2, whichever is earlier (the “*Consultation Period*”), the Authority, the Executives and the Franchisee shall consult in a reasonable manner on the comments received by the Franchisee on the Draft Service Delivery Assurance Plan with a view to agreeing the contents of such Draft Service Delivery Assurance Plan within the Consultation Period. The Franchisee shall have due regard to the opinions of the Authority and the Executives and may amend the Draft Service Delivery Assurance Plan during the Consultation Period in a manner which reasonably reflects such opinions.
- 2.5 The Draft Service Delivery Assurance Plan (as it may be amended pursuant to paragraph 2.4) shall become the Service Delivery Assurance Plan:
 - (a) where the Authority and all of the Executives give the confirmation referred to in paragraph 2.2(a), on the date of receipt of such confirmation; or
 - (b) where there is a Consultation Period, on the working day following the end of the Consultation Period.
- 2.6 The Franchisee shall use reasonable endeavours in accordance with the terms of the Service Delivery Assurance Plan (as such plan may be varied from time to time in accordance with paragraphs 2.10 and 2.12) to:

- (a) improve the productivity of those Franchisee Employees who are train drivers; and/or
 - (b) (to the extent that any such requirement has been agreed between the Authority and the Franchisee or as is otherwise determined pursuant to paragraph 2.14) comply with any increased recruitment that may be proposed by the Authority under paragraph 2.11.
- 2.7 At least five working days before each Franchise Performance Meeting (or such other less frequent interval as the Authority may from time to time determine) the Franchisee shall produce a report (such report to be discussed at the Franchise Performance Meeting) which sets out:
- (a) the progress it has made in implementing the Service Delivery Assurance Plan since the previous Franchise Performance Meeting or in the case of the first Franchise Performance Meeting, since the Franchise Commencement Date;
 - (b) any material change to any of the assumptions made in the Service Delivery Assurance Plan (whether explicit or implicit) which is reasonably likely to make such plan inconsistent with the Franchisee's obligations under this Agreement (including under Schedules 1.1(*Service Development*) and 1.2 (*Operating Obligations*));
 - (c) the occurrence or non-occurrence (as the case may be) of any event or series of events which were anticipated or not anticipated (as the case may be) at the time the Service Delivery Assurance Plan was being finalised and, in both cases, reasonably likely to make such plan inconsistent with the Franchisee's obligations under this Agreement (including under Schedules 1.1 (*Service Development*) and 1.2 (*Operating Obligations*)); and
 - (d) its informed opinion as to any amendments to the Service Delivery Assurance Plan that it considers would be required to enable it to fulfil its obligations under this Agreement (including under Schedules 1.1(*Service Development*) and 1.2 (*Operating Obligations*)) (the "Proposed Amendments")
- 2.8 The Authority and each Executive shall consider the Proposed Amendments and within fourteen days (the "**Required Period**") from the date of the Franchise Performance Meeting shall either:
- (a) consent to the Proposed Amendments (consent shall be deemed to be granted by the Authority and any Executive if the Authority or any Executive fails to provide a response to the Proposed Amendments within the timescales specified in this paragraph);
 - (b) notify the Franchisee of any comments on the Proposed Amendments or require the Franchisee to provide any further information as the Authority or the affected Executive may reasonably require in respect of the Proposed Amendments.
- 2.9 If the Franchisee receives any notification under paragraph 2.8(b) from either the Authority or any of the Executives then it shall:
- (a) provide any further information requested under such notification within 5 working days from date of receipt; and
 - (b) within fourteen working days from the date of receipt of the last notification or the expiry of the Required Period, whichever is earlier, consult with the

Authority and the Executives on their comments in respect of the Proposed Amendments. The Franchisee shall have due regard to any opinions the Authority or any of the Executives may have and may alter the Proposed Amendments in a manner which reasonably reflects such opinions;

- 2.10 The Franchisee shall amend the Service Delivery Assurance Plan to reflect the Proposed Amendments (as it may be altered pursuant to paragraph 2.9(b)):
- (a) where the Authority and all of the Executives consent to the Proposed Amendments, on the date of receipt of such consent pursuant to paragraph 2.8(a); or
 - (b) where paragraph 2.9(b) applies, on the working day following the end of the period specified in paragraph 2.9(b).
- 2.11 If, at any time, the Authority (after consultation with the Executives) or any Executive (after consultation with the Authority and the other Executives) is of the opinion, that the implementation of the Service Delivery Assurance Plan will be reasonably likely to have an adverse effect on the Franchisee's ability to fulfil its obligations under this Agreement, it shall immediately, in writing, notify the Franchisee of that fact. The Authority or such Executive shall set out in such notification the reasons for its opinion and may propose amendments to the Service Delivery Assurance Plan which in its view would address the concern.
- 2.12 Within fourteen days of receipt of the notification under paragraph 2.11 the Franchisee shall either:
- (a) amend the Service Delivery Assurance Plan as proposed by the Authority or Executive in its notification issued pursuant to paragraph 2.11; or
 - (b) object in writing to the Authority or Executive, such objection to be made solely on the basis that the notification by the Authority or Executive under paragraph 2.11 is unreasonable or the amendments proposed by the Authority or Executive will not in its reasonable opinion sufficiently address the concerns raised by the Authority or Executive.
- 2.13 If the Franchisee's objection cannot be resolved by agreement between the Authority or Executive and the Franchisee within fourteen working days from the date of receipt of such objection, the matter shall be referred for resolution in accordance with such dispute resolution rules as the Authority or Executive and the Franchisee may agree (or in the absence of agreement, in accordance with the Dispute Resolution Rules). Provided that:
- (a) the Franchisee and an Executive shall not agree any amendment to the Service Delivery Assurance Plan other than that proposed by the Executive under paragraph 2.12(a), without the prior agreement of the Authority; and
 - (b) the Authority shall be entitled, but not obliged, to be a party to any dispute between the Franchisee and an Executive referred for resolution under this paragraph 2.13.

Following the determination of any such dispute the Service Delivery Assurance Plan shall be amended in the manner required to give effect to such determination.

- 2.14 Pending the determination of any dispute under paragraph 2.13 the Franchisee shall cease to implement the Service Delivery Assurance Plan (including any reduction in the number of its Franchisee Employees as specified in such plan) to the extent that such implementation will not be consistent with the amendments proposed by the Authority under

paragraph 2.11 or would likely affect the Franchisee's ability to fulfil its obligations under this Agreement (including under Schedules 1.1 (*Service Development*) and 1.2 (*Operating Obligations*)).

2.15 The Authority, the Executives and the Franchisee hereby agree that any amendments to the Service Delivery Assurance Plan pursuant to paragraphs 2.10(a) or 2.12 shall not be a Change for the purposes of this Agreement.

2.16 The Authority, the Executives and the Franchisee further agree that any amendment to the Service Delivery Assurance Plan proposed by the Authority under paragraph 2.11 may include:

- (a) an increase in planned recruitment; and
- (b) a reduction in scope or the abandonment of any programme of early retirement or redundancy in relation to Franchise Employees who are train drivers.

2.17 If the Authority and the Franchisee acting reasonably (and following consultation with the Executives) agree that the Service Delivery Assurance Plan, as it may have been amended from time to time has been completed, then the provisions of paragraphs 2.6 to 2.17 shall cease to have effect. In deciding whether the Service Delivery Assurance Plan has been completed the Authority and the Franchisee agree that such plan should not be regarded as completed in circumstances where the Franchisee is not fulfilling its obligations under this Agreement (including its obligations under Schedule 1.1 and 1.2) or it is reasonably likely that the Franchisee will not be able to fulfil such obligations in the foreseeable future for reasons connected with a shortage of train drivers available to be rostered.

3 **Replacement of Ticket machines**

3.1 The Franchisee shall undertake a review of its retail distribution strategy which shall take into account all factors necessary to enable the Franchisee to deliver its objectives as set out in its Initial Business Plan in respect of the sale of Fares. Such review shall take account of:

- (a) the need to replace ticket machines currently used at Stations or by the Franchise Employees on board the Passenger Services where such ticket machines will not be accredited by the RSP or where the associated software, hardware or accountancy systems will cease to be supported by the RSP;
- (b) the emergence of new retailing requirements such as "Chip and Pin" mandated by banks in respect of the acceptance of credit and debit cards; and
- (c) any requirement such as the use of smart cards or other technology that the Franchisee may be committed to undertake under separate arrangements with other third parties including the Executives and Local Authorities.

3.2 On completion of the review pursuant to paragraph 3.1 the Franchisee shall develop and implement a strategy ("**Retail Strategy**") which shall:

- (a) include a schedule for the replacement of any ticket machine that will cease to be accredited by RSP or any where the associated, software, hardware or accountancy systems will cease to be supported; and
- (b) provide for that all ticket machines are replaced prior to such ticket machines ceasing to be so accredited or supported.

The Franchisee shall provide a copy of the Retail Strategy to the Authority and at the Authority's request shall provide an update on progress made in the implementation of such plan.

- 3.3 The Franchise shall ensure that ticket machines are replaced:
- (a) on or before the dates specified in its Retail Strategy;
 - (b) with ticket machines that will be RSP accredited and have at least the same level of functionality and capability as each ticket machine that is so replaced. Such ticket machines shall also be compatible with "Chip and Pin" requirements in respect of the acceptance of credit and debit cards.

- 3.4 The Franchisee shall ensure that all the Franchisee Employees that will operate the new ticketing systems introduced pursuant to paragraph 3.3 are adequately trained to use such new ticketing systems.

4. Automatic Passenger Counting System

- 4.1 Without prejudice to the obligation of the Franchisee pursuant to paragraph 1.2 of Schedule 1.5 (*Information about Passengers*) the Franchisee shall procure that 25% in aggregate of the Train Fleet (the 25% to be calculated after the exclusion of the rolling stocks units pursuant to paragraph 4.2) are fitted with the most accurate commercially available technology (as at 16 January 2004) for determining Actual Passenger Demand being infra red reading equipment.
- 4.2 Without prejudice to the obligation of the Franchisee pursuant to paragraph 1.1 of Schedule 1.5 (*Information About Passengers*) the parties agree that for the purposes of paragraph 4.1 25% in aggregate of the Franchisees Train Fleet shall exclude all:
- (a) the class 14x rolling stock units;
 - (b) rolling stock units that are subject to flexible lease arrangements; and
 - (c) rolling stock units that are on lease for a duration of less than three years from the Franchise Commencement Date;

provided that the exclusion in respect of the rolling stock units specified in paragraphs 4.2(b) and 4.2(c) shall cease to apply to any rolling stock unit if that rolling stock unit ceases to be subject to a flexible lease arrangement or a further lease is acquired in respect of that rolling stock unit for a duration longer than three years from the Franchise Commencement Date.

5. Performance Initiatives

- 5.1 Without prejudice to its obligations under Schedule 1.2(*Operating Obligations*) and Schedule 7.1(*Performance Benchmarks*) and in order to improve the Public Performance Measure in respect of the Northern Franchise through better co-operation and liaison with Network Rail the Franchisee hereby agrees to use all reasonable endeavours to discuss and agree with Network Rail a plan ("**Joint Performance Improvement Plan**").
- 5.2 The Joint Performance Improvement Plan referred to in paragraph 5.1 shall:
- (a) be consistent with any policy, objectives and priorities for the railway industry as may be set by the Secretary of State for Transport from time to time;
 - (b) be agreed with Network Rail on or before the 31 May 2005;

- (c) identify and set out measurable action plans which will include the:
- (i) **introduction within the Franchisee's organisation of a Performance and Service Quality Manager in each of the three Area Director teams (whereby one Area Director will be responsible for the Manchester & Liverpool Performance Management Unit, one Area Director will be responsible for the North & West Yorkshire and South & East Yorkshire Performance Management Units and one Area Director will be responsible for the Tyne, Tees Wear and Lancashire & Cumbria Performance Management Units) who will be responsible for analysing and monitoring the performance of the Passenger Services and developing implementation plans jointly with the relevant Network Rail Managers.¹³**
 - (ii) development of a "Green Route Strategy" which will cater for increased engineering access to the infrastructure in return for pre-agreed levels of performance/punctuality from Network Rail (in excess of their otherwise committed Local Output Commitments or equivalent as may be determined from time to time); and
 - (iii) opportunity, on a controlled and site specific basis, for Franchise Employees to provide support to Network Rail in order to assist in the recovery and delivery of Passenger Services in particular where there is severe disruption to Passenger Services.

5.3 At least 15 working days before the first Franchise Performance Meeting to be held during the second Franchisee Year (and thereafter at least 15 working days before each Franchise Performance Meeting or at such other less interval as the Authority may from time to time determine), the Franchisee shall produce a report for discussion at such Franchise Performance Meeting identifying the progress it has made in the implementation of any Joint Performance Improvement Plan developed with Network Rail pursuant to paragraph 5.1 and in particular any progress it has made in respect of any action plans forming part of the Joint Performance Improvement Plan.

5.4 The Authority agrees that, where it is reasonable and proper for it to do so and at the request of the Franchisee, it will use any influence it may have on Network Rail in order to assist the Franchisee in respect of the Franchisee's implementation of the Joint Performance Improvement Plan.

6. **Bicycle Users Forum**

- 6.1 On or before the 16 December 2005 the Franchisee shall establish and thereafter maintain throughout the Franchise Period a forum dedicated to passengers who use bicycles ("***Bicycle Users Forum***").
- 6.2 Subject to paragraph 7 of Schedule 1.4 (*Passenger Facing Obligations*), the Bicycle Users Forum will have the objective of maximising the facilities for, and the promotion of, the use of bicycles and pedestrian access to Stations, and for the accompanied carriage of bicycles on Passenger Services.

¹³ Text inserted wef 8 April 2005.

- 6.3 The Bicycle Forum will be chaired by a representative of the Franchisee and will include invited representatives from the Executives, other Local Authorities, Sustrans, Network Rail and relevant interest groups.
- 6.4 The Bicycle Users Forum will:
- (a) identify and where relevant transfer best practice and knowledge from relevant experience in both Great Britain and the Netherlands;
 - (b) seek to harmonise existing efforts to improve the accessibility of the Northern Franchise for cyclists and pedestrians;
 - (c) identify sources of funding necessary to implement programmes that would encourage cyclists and pedestrians to use the Passenger Services; and
 - (d) without prejudice to the Franchisee's obligations under paragraph 7 of Schedule 1.4(*Passenger Facing Obligations*) the Franchisee will, within two years of the Franchise Commencement Date, review the charging policy for the storage and carriage of cycles at Stations and on Passenger Services and if appropriate (after consultation with the relevant Executives and the Authority) propose changes to the charging policy which would, in the reasonable opinion of the Franchisee, provide funding for implementation of initiatives developed in accordance with the Bicycle Users Forum's objective.
- 6.5 The parties acknowledge that improvements to provisions for users of bicycles and pedestrians arising from the Bicycle Users Forum will properly be limited by considerations of value for money and affordability.

7. Community Rail Partnerships

- 7.1 The Franchisee shall, at the request of the Authority, co-operate with the Authority, Network Rail, the Association of Community Rail Partnership and/or any other person as the Authority may nominate in the development of the initiative to examine:
- (a) options for a more cost effective delivery of the railway passenger services operated on any Community Rail Route (such options to include changes in work practices of the relevant Franchise Employees, reducing rolling stock lease costs and maximising opportunities for obtaining local funding of development at relevant stations, developing new ways of maintaining and renewing relevant railway infrastructure);
 - (b) the actual costs incurred in operating, maintaining and renewing the infrastructure relevant for such Community Rail Route.
- 7.2 The Authority may at any time, by proposing a Variation pursuant to paragraph 1.1(a) of Schedule 19 (*Other Provisions*) require the Franchisee to develop and/or implement any changes to Franchise Services and/or transfer of any Franchise Service to another Train Operator in order to deliver any of the initiatives that were examined pursuant to paragraph 7.1.

8. Marketing/Fares Promotion

Marketing Strategy

- 8.1(a) On or before 16 February 2005 (and after consultation with the Authority, relevant Executives and relevant Stakeholders) the Franchisee shall develop a marketing strategy which sets out the Franchisee's plans for the development and implementation of the Northern Franchise brand. The Franchisee shall implement such plan from 16 February 2005.
- 8.1(b) At the request of the Authority, the Franchisee shall provide an update on progress made in the implementation of such plan (including against any targets contained in such plan) at each Franchise Performance Meeting.

Off Peak Fares Promotion

- 8.2 The Franchisee shall, after conducting appropriate research and satisfying itself that there is a market for such Fares, introduce and offer for sale to passengers a range of reduced Fares available for use during the Off-Peak when the Forecast Passenger Demand for such Off -Peak Passenger Services operate at less than 25% of Actual Passenger Demand.

Joint Promotion of Passenger Services

- 8.3 The Franchisee shall use all reasonable endeavours to enter into agreements for the joint promotion of the Passenger Services with at least 50% of the "Rail Partnerships" and "Rail Development Companies" related to the Franchisee's activities and who are members of the Association of Community Rail Partnerships.

Customer Information

- 8.4 The Franchisee shall publish at the Principal Stations, by making available to passengers, customer information which includes the following:
- (a) a regional network map;
 - (b) an outline of the Passenger Services provided by the Franchisee;
 - (c) an outline of the Station Services provided by the Franchisee;
 - (d) a summary of the bus and taxi interchange facilities and services;
 - (e) an example for Fares available to key destinations; and
 - (f) information on how to obtain train times and Fares by telephone, WAP, internet or from information centres and local libraries.

Customer Relationship Strategy

- 8.5 The Franchisee shall develop a customer relationship management strategy which amongst others will identify how the Franchisee will maintain and develop customer relations with the regular users of its Passenger Services (including Season Ticket holders). The Franchisee shall implement any customer relationship management strategy it develops pursuant to this paragraph 8.5.

Merseyrail Fares

- 8.6 The Franchisee shall offer for sale to passengers the same range of tickets (including “Saveaway” and “Trio”) as is available at the Franchise Commencement Date at Stations operated by Merseyrail Electrics 2002 Ltd.

Transfare Tickets

- 8.7 The Franchisee shall co-operate with the Tyne & Wear Passenger Transport Executive with the intention that by the 1st anniversary of the Franchise Commencement Date the “Transfare” ticket is valid for travel on the Passenger Services between Newcastle upon Tyne and Blaydon.

9. Sheffield/Leeds Semi Fast Services

- 9.1 In respect of the Passenger Services set out in Route WY8 and Route SY3 of the Service Level Commitment (“*Semi Fast Services*”), the Franchisee’s obligations set out in paragraph 11 of Schedule 1.1 in respect of such Semi Fast Services shall continue:

- (a) (unless the Authority otherwise directs), until the Passenger Change Date commencing in December 2007; and
- (b) thereafter, but without limitation to the Authority’s right to propose a Change, if the Authority gives notice to the Franchisee pursuant to paragraph 9.6 that it will require the Franchisee to continue to provide the Semi Fast Services beyond the date specified in paragraph 9.1(a).

- 9.2 The Franchisee shall provide to the Authority by no later than 2 months following the end of each Franchisee Year the MOIRA report in respect of the Semi-Fast Services. If the MOIRA report identifies that there has been an abstraction of revenue from any other Train Operator in favour of the Franchisee then the Authority shall set off an amount equal to the abstracted revenue identified from the MOIRA report against the Authority Franchise Payments due on the next Payment Date.

- 9.3 Unless as otherwise directed by the Authority, the Franchisee shall, by no later than 31 December 2006, provide to the Authority, the West Yorkshire Passenger Transport Executive and the South Yorkshire Passenger Transport Executive an analysis of the financial and operational performance and level of patronage in respect of the Semi-Fast Services to enable the Authority, the West Yorkshire Passenger Transport Executive and the South Yorkshire Passenger Transport Executive to carry out a review for the purposes of ascertaining whether the Semi Fast Services can continue to be provided by the Franchisee beyond the date specified in paragraph 10.1(a) without the need for additional resources and/or any additional Franchise Payments (other than the amount paid as component CS under part 2 of Schedule 8.1 (*Franchise Payments*)).

- 9.4 If the outcome of the review undertaken pursuant to paragraph 9.3 is that the Franchisee will require additional resources and/or additional Franchise Payments (other than the amount paid as component CS under part 2 of Schedule 8.1 (*Franchise Payments*)) in order to continue to provide the Semi Fast Services then the Authority shall, by no later than a date which is 1 month prior to the commencement of the period during which the Franchisee is required to seek Train Slots from Network Rail in order to secure the Timetable Development Rights required by the Franchisee to enable the provision of the Semi Fast Services, give notice to the Franchisee confirming whether or not it will require the Semi Fast Services to continue to be provided beyond the date specified in paragraph 9.1(a).

9.5 If, after consultation with the West Yorkshire Passenger Transport Executive and the South Yorkshire Passenger Transport Executive, the Authority gives notice to the Franchisee that it does not require the Semi Fast Services to continue to be provided beyond the dates specified in paragraph 9.1(a) then it shall amend:

(a) the Service Level Commitment by amending Routes WY8 and SY3. Such amendment to the Service Level Commitment shall be a Change; and

(b) part 2 of Schedule 8.1 by deleting the component of CS so that the Authority shall no longer be liable to pay to the Franchisee the sum paid as component CS under part 2 of Schedule 8.1 (*Franchise Payments*).

9.6 If, after consultation with the West Yorkshire Passenger Transport Executive and the South Yorkshire Passenger Transport Executive, the Authority gives notice to the Franchisee that it shall require the Semi Fast Services to continue to be provided beyond the date specified in paragraph 9.1(a) and the outcome of the review pursuant to paragraph 9.3 is that the Franchisee will require additional resources and/or additional Franchise Payments (other than the amount paid as component CS under part 2 of Schedule 8.1 (*Franchise Payments*)) in order to continue to provide the Semi Services then the Authority shall propose a Variation pursuant to paragraph 1.1(a) of Schedule 19 (Other Provisions) so that the Franchisee shall be obliged to continue to provide the Semi Fast Services beyond the date specified in paragraph 9.1(a) until the date to be agreed by the Authority, the West Yorkshire Passenger Transport Executive and the South Yorkshire Passenger Transport Executive.

10. Glasshoughton Station

10.1 The Authority and the Franchisee hereby acknowledge that a station is currently being built at Glasshoughton ("***Glasshoughton Station***").

10.2 Accordingly, the Franchisee hereby agrees that on completion of Glasshoughton Station the Authority may require the Franchisee to become the Facility Owner at Glasshoughton Station (and such other changes to the Franchise Agreement that the Authority considers necessary or desirable in connection therewith) by proposing a Variation pursuant to paragraph 1.1(a)(ii) of Schedule 19 (*Other Provisions*).

10.3 The Authority and the Franchisee hereby agree that the Variation contemplated under paragraph 10.2 shall not be a Change for the purposes of this Agreement.

11 Oldham Loop

11.1 It is acknowledged that there is an aspiration for the Passenger Services currently operated on the line between Manchester and Rochdale via Oldham (the "***Oldham Loop***") to be withdrawn to permit conversion of the Oldham Loop to Manchester Metrolink light rail operation.

11.2 Accordingly, the Greater Manchester Passenger Transport Executive ("***GMPT***") shall give the Franchisee and the Authority at least 6 months notice of its requirement for the Passenger Services using the Oldham Loop to be withdrawn. Subject to compliance with all relevant statutory closure procedures:-

(a) the relevant Passenger Services using the Oldham Loop shall be withdrawn by an amendment to the Service Level Commitment,

(b) the Franchisee shall no longer provide Station Services at the Executive Stations named Dean Lane, Derker, Failsworth, Hollinwood, Milnrow, New Hey, Oldham Mumps, Oldham Werneth and Shaw (the “*Oldham Loop Stations*”);

(c) (except to the extent it has already done so) the Franchisee shall agree to surrender its interest in the Station Leases relating to the Oldham Loop Stations to Network Rail as soon as reasonably practicable; and

(d) paragraph 4.2 of Appendix 2 to the Conditions Precedent Agreement shall be amended by the deletion of the names of the Oldham Loop Stations,

with effect from the date specified in the notice from GMPTE as required in this paragraph 11.2 or, if later, the date on which such closure is permitted under the statutory closure conditions.

11.3 Upon notification from GMPTE pursuant to paragraph 11.2, the Franchisee shall (after consultation with GMPTE, the Authority and the other Executives) provide to the Authority and GMPTE its informed opinion on:

(a) whether or not the Rolling Stock Units and the other resources used for the provision of the Passenger Services on the Oldham Loop are capable of redeployment and might sensibly be redeployed in order to meet or assist in meeting the capacity requirements in paragraph 7.6 of Schedule 1.1 (*Service Development*) firstly, in respect of the Executive Passenger Service relating to GMPTE and secondly in respect of the other Passenger Services; and

(b) information (including information on costs) that will reasonably be likely to assist the decision as to if, and if so how, the Rolling Stock Units and/or other resources used for the provision of Passenger Services on the Oldham Loop could be redeployed.

11.4 On receipt of the information from the Franchisee pursuant to paragraph 11.3 the Authority shall consult with GMPTE.

11.5 If following such consultation the Authority determines (taking into account all relevant factors) that it:

(a) will not provide continued funding to enable the Rolling Stock Units and other resources referred to in paragraph 11.3 to be used for the provision of the Executive Passenger Services relating to GMPTE; or

(b) will provide continued funding to enable only some of such Rolling Stock Units and other resources to be used for the provision of Executive Passenger Services relating to GMPTE;

it shall first inform GMPTE.

11.6 Subject to GMPTE providing an undertaking to the Authority that it will fund from sources other than grant funding provided by the Authority, Executive Franchise Payments to the extent those are at a higher level than they would otherwise have been if the Authority had served notice either under paragraph 11.7(a) or 11.7(b), the Authority shall give a direction in a form approved by GMPTE pursuant to paragraph 11.7(c) provided that it shall not be required to give such direction in the circumstances described in Sections 34(8A), 34(8B) and 34(8C) of the Act..

11.7 Following receipt, either of an undertaking from GMPTE pursuant to paragraph 11.6 or notification from GMPTE that it declines to give such undertaking, the Authority shall give notice to the Franchisee and GMPTE that either:

- (a) continued funding for the Rolling Stock Units and other resources used for the provision of the Passenger Services on the Oldham Loop will not be available and accordingly the resources shall not be redeployed and the rolling stock units will be redelivered to the relevant rolling stock providers; or
- (b) continued funding for the Rolling Stock Units and other resources used for the provision of the Passenger Services on the Oldham Loop will only be available in respect of part of such rolling stock units and such other resources and accordingly the remaining resources shall not be redeployed and the remaining rolling stock units will be redelivered to the relevant rolling stock providers; or
- (c) there is a good business case for the retention of the rolling stock units and the redeployment of the other resources used in the provision of the Oldham Loop Passenger Services and accordingly they will be retained and redeployed to the extent and in the manner directed in such notice.

The Franchisee shall (subject to paragraph 11.8) comply with any direction given by the Authority under this paragraph 11.7.

11.8 The cessation of the Oldham Loop Services and the cessation of Station Services at the Oldham Stations pursuant to paragraph 11.2 shall be a Change. Such Change shall take into account any direction given by the Authority to the Franchisee pursuant to paragraph 11.7(a), 11.7(b) or 11.7(c).

11.9 The Authority and GMPTE acknowledge that the rolling stock leases relevant to the operation of the Passenger Services on the Oldham Loop will continue in force until expiry in accordance with their terms and that the Franchisee is under no obligation to incur any cost pursuant to any early termination of such rolling stock leases.

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

Part 2A HLOS Committed Obligations ¹⁵

1. Class 142 Vehicles

- 1.1** *The Franchisee shall by no later than 31st March 2010 exercise its option under the Rolling Stock Lease in respect of all of the Class 142 Vehicles in the Train Fleet to require an extension to the lease term such that the leasing of all such Class 142 Vehicles shall expire on 18th September 2011. In the event that pursuant to Schedule 18 of the Franchise Agreement the Expiry Date is confirmed as being 15th September 2013 the Franchisee will extend the lease term to 15th September 2013.*
- 1.2** *In accordance with paragraph 2 of Schedule 2.2 (Security of Access Assets, Rolling Stock Leases, Station and Depot Leases) of the Franchise Agreement, the Authority hereby grants his approval to the Franchisee to exercise its option to extend the Rolling Stock Lease in respect of Class 142 Vehicles which are the subject of paragraph 1.1 of this Part 2A.*
- 1.3** *The parties acknowledge that the effect of the HLOS Deed of Amendment 1A is to fund the delivery of the 1A HLOS Capacity Requirements by the Franchisee using five two car Class 142 Vehicles (“the 1A Class 142 Units”) which the Franchisee would not otherwise retain in the Train Fleet by exercise of the relevant option in the rolling stock lease and which the Franchisee is not required under the Franchise Agreement to use in the delivery of the Passenger Services prior to the date of the HLOS Deed of Amendment 1A. From the date of the HLOS Deed of Amendment 1A and notwithstanding that the Franchisee is not required to deliver the 1A HLOS Capacity Requirements until 1st July 2010 (but without prejudice to arrangements existing at such date between the Franchisee and Greater Manchester Passenger Transport Executive in relation to any of the Class 142 Vehicles) the Franchisee shall use all reasonable endeavours to effectively utilise and diagram the 1A Class 142 Units in addition to all other Class 142 Vehicles in the Train Fleet (excluding the seven two car units sub leased to First Greater Western Limited) for the purposes of meeting its obligation under the Franchise Agreement including without limitation its obligations under paragraphs 7.4, 7.5 and 7.6 of Schedule 1.1 and shall make alterations to its Train Plan current at the date of HLOS Deed of Amendment 1A to include the 1A Class 142 Vehicles as may be reasonably required to meet its obligation under this paragraph 1.3.*

2. HLOS Reporting Arrangements

In exercise of its rights pursuant to paragraph 1.3 of Appendix 3 to Schedule 13.2 (Operational Information) the Franchisee shall, in providing to the Authority the operational information required by Appendix 3 to Schedule 13.2, ensure that such information is further disaggregated by separately identifying the Passenger

¹⁵ Date of Change 02/03/2010

Services required to be strengthened as specified in the 1A HLOS Capacity Requirements

3.¹⁶ Acquisition and Introduction in Passenger Service of the Extra Class 150 Vehicles

3.1 The Franchisee shall enter into a Rolling Stock Lease in relation to the Extra Class 150 Vehicles by no later than 31st March 2010.

3.2 The Franchisee shall:

(a) *use reasonable endeavours to extend its sub lease with East Coast Main Line Company Limited in respect of 15 Class 180 vehicles until 31st December 2010. Any such extended sub lease shall be on the basis that the Franchisee shall have the right to return individual units of Class 180 vehicles to East Coast Main Line Company Limited and consequently avoid the requirement to pay further sub lease rentals prior to 31st December 2010; and*

(b) *terminate its lease with Angel Trains Limited in respect of 8 Class 156 Vehicles subleased to East Midlands Trains Limited at the date of the HLOS Deed of Amendment 1B on or before the later of 22 April 2011 and the date that the last unit forming part of Tranche B Extra Class 150 Vehicles becomes Available. If, between 1st December 2010 and 22 April 2011 the Franchisee leases from Angel Trains Limited fewer than 8 Tranche B Extra Class 150 Vehicles, the Franchisee shall pay to the Authority in respect of each such Unit not so leased, the sum of £530 per day (such amount being stated for indexation purposes at a base uninflated amount consistent with Franchise Payments and to be indexed in a manner consistent with the provisions applicable in respect of the indexation of Franchise Payments pursuant to Schedule 8.2 of the Franchise Agreement).*

3.3 The Franchisee shall use all reasonable endeavours to effectively utilise and diagram each unit of Extra Class 150 Vehicles and account for them in the preparation of its Train Plan from the date 14 days after such Vehicle becomes Available, provided that:

(a) *if the Franchisee can demonstrate to the reasonable satisfaction of the Secretary of State that utilisation within 14 days of a Vehicle becoming Available is not reasonably practicable, the Franchisee shall utilise such Vehicle as soon as reasonably practicable*

¹⁶ Date of Change 12/03/2010

thereafter and in any event within two calendar months of the Vehicle becoming Available; and

- (b) nothing in this paragraph 3.3 shall require the Franchisee to utilise the Tranche C Extra Class 150 Vehicles prior to the Subsidiary Change Date in May 2011.*

Notwithstanding the inclusion of all of the Extra Class 150 Vehicles in Table 1 in Appendix 1 to Schedule 1.1 (and entirely without prejudice to the obligations of the franchisee to pay HLOS Franchise Payment Adjustment in the prescribed circumstances), such Vehicles shall only form part of the Train Fleet for the purposes of the obligations of the Franchisee under the Franchise Agreement in relation to the delivery of Passenger Services (including for the purposes of Schedule 1.1 of the Franchise Agreement) from the date that the Franchisee begins to utilise and diagram such Extra Class 150 Vehicles or, if earlier, should have begun to utilise and diagram such Extra Class 150 Vehicles pursuant to the provisions of this paragraph 3.3.

3.4

- (a) The Train Plan of the Franchisee shall assume that three five car Class 180 Units will be included in the Train Plan until the Principal Change Date occurring in December 2010 and that they will be replaced by Tranche A Extra Class 150 Vehicles from that date. The Franchisee and the Authority agree that such Train Plan may be modified by the Franchisee prior to the Principal Change Date occurring in December 2010 to provide for one five car unit of Class 180 rolling stock to be removed from the Train Plan from the date that 2 two car units of Tranche A Extra Class 150 Vehicles are Available to replace them. The Franchisee and the Authority agree that if all of the Tranche A Extra Class 150 Vehicles have not become Available by the Principal Change Date in December 2010 then:*

- (i) this will be a Change (which for these purposes shall be a Qualifying Change irrespective of whether such Change meets the requirements of the definition of Qualifying Change);*
- (ii) the Authority and the Franchisee will co-operate in good faith with the intention of agreeing an effective plan to mitigate the impact of any shortfall in rolling stock vehicles at a reasonable cost on a basis that minimises where reasonably practicable any change to the Timetable and takes into account the obligations of the Franchisee with regard to Executive Passenger Services (including any consultation requirements with the Executives) (“Mitigation Plan”). Once the Franchisee and the Authority have agreed a Mitigation Plan (with the Executives where appropriate) (including*

the funding of such a Mitigation Plan) the Franchisee shall implement such Mitigation Plan as soon as reasonably practicable. The cost and revenue implications of the Mitigation Plan shall be taken into account for the purposes of agreeing or determining Revised Inputs in respect of the Qualifying Change referred to in sub paragraph (i) above;

(iii) the Franchisee shall not be regarded as being in breach or contravention of any provision of the Franchise Agreement which it is not reasonably able to comply with in consequence of any of the Tranche A Extra Class 150 Vehicles not being Available in circumstances where the Mitigation Plan does not provide a reasonable means of permitting the Franchisee to comply with the relevant Franchise Agreement obligations. The Authority shall amend the Service Level Commitment and/or the Train Plan or grant derogations in relation to the same to the extent necessary for these purposes. In determining any such amendments and/or derogations, the Authority shall, in relation to any such amendments and/or derogations:

(A) take in account the timescales required for consultations including in relation to any consultation with the Executives;

(B) ensure that such amendments and/or derogations are consistent with the Mitigation Plan; and

(C) are reasonably determined by the Authority for the purpose of addressing the impacts of the Tranche A Extra Class 150 Vehicles not being Available for the period that some or all of the Tranche A Extra Class 150 Vehicles are not so Available;

- (iv) *the Authority shall have the right to make such subsequent amendments to the Service Level Commitment and Train Plan or revoke or amend derogations (as the case may be) as it shall reasonably determine to take account of one or more units of rolling stock within the definition of Tranche A Extra Class 150 vehicles becoming Available in circumstances where after any such delivery not all of the Tranche A Extra Class 150 Vehicles are Available;*
 - (v) *the Franchisee shall continue to use all reasonable endeavours to ensure that the Tranche A Extra Class 150 Vehicles are Available as soon as reasonably practicable; and*
 - (vi) *the Franchisee and Authority shall co-operate on a public communications strategy in relation to any adjustments to the Passengers Services arising out of the Mitigation Plan.*
- (b) *In the event that there is a Qualifying Change pursuant to paragraph 3.4(a)(i) above there will be a further Change (which for these purposes shall be a Qualifying Change irrespective of whether such Change meets the requirements of the definition of Qualifying Change) on the date that the final Tranche A Extra Class 150 Vehicle becomes Available.*

3.5

- (a) *The Franchisee shall use reasonable endeavours to ensure that:*
- (i) *Tranche A Extra Class 150 Vehicles become Available as soon as reasonably practicable; and*
 - (ii) *five car Class 180 units are returned to East Coast Main Line Company Limited as soon as reasonably practicable following Tranche A Extra Class 150 Vehicles becoming Available on the basis that 2 two car units of Tranche A Extra Class 150 Vehicles being Available will permit the Franchisee to return one five car Class 180 Unit to East Coast Mainline Company Limited.*
- (b)
- (i) *If prior to 31st December 2010 the Franchisee sub leases from East Coast Main Line Company Limited:*
 - (A) *fewer than three five car Class 180 Units the Franchisee shall pay to the Authority in respect of each such unit not so sub leased the sum of £1,868 per day (such amount being stated for indexation purposes at a base uninflated amount consistent with Franchise Payments and to be indexed in a manner consistent with the provisions applicable in respect of the indexation of Franchise*

Payments pursuant to Schedule 8.2 of the Franchise Agreement); and

(B) no five car Class 180 Units in addition to the amount specified in sub paragraph (A) above, the Franchisee shall pay to the Authority the sum of £2,691 per calendar month (such amount being stated for indexation purposes at a base uninflated amount consistent with Franchise Payments and to be indexed in a manner consistent with the provisions applicable in respect of the indexation of Franchise Payments pursuant to Schedule 8.2 of the Franchise Agreement)

until 31st December 2010;

- (ii) If prior to 1st December 2010 any units of Tranche A Extra Class 150 vehicles have become Available the Authority shall pay to the Franchisee in respect of each such unit which has been made Available from the date that rentals become due the sum of £530 per day (such amount being stated for indexation purposes at a base uninflated amount consistent with Franchise Payments and to be indexed in a manner consistent with the provisions applicable in respect of the indexation of Franchise Payments pursuant to Schedule 8.2 of the Franchise Agreement) until 1st December 2010*

provided that if the Qualifying Change referred to in paragraph 3.4 (a) (i) occurs no amount will be paid pursuant to this paragraph 3.5 (b) and the relevant financial effects will be addressed pursuant to such Qualifying Change in accordance with the provisions of Schedule 9.3 of the Franchise Agreement.

- (c) (i) Subject to sub paragraph (ii) below if after 1st December 2010, any one or more units of the Tranche A Extra Class 150 Vehicles have not become Available the Franchisee shall pay to the Authority in respect of each two car unit of such Tranche A Extra Class 150 Vehicles the sum of £530 per day (such amount being stated for indexation purposes at a base uninflated amount consistent with Franchise Payments and to be indexed in a manner consistent with the provisions applicable in respect of the indexation of Franchise Payments pursuant to Schedule 8.2 of the Franchise Agreement) from 1st December 2010 until the date that such unit of Tranche A Extra Class 150 vehicles becomes Available.*
- (ii) if the Qualifying Change referred to in paragraph 3.4 (a) (i) occurs no amount will be paid pursuant to paragraph 3.5 (c)(i) and*

the relevant financial effects will be addressed pursuant to such Qualifying Change in accordance with the provisions of Schedule 9.3 of the Franchise Agreement.

3.6 *The Timetable Planning of Additional HLOS Capacity*

- (a) *The Authority and the Franchisee each acknowledge that:***
 - (i) *the intention of the introduction of the Tranche C Extra Class 150 Vehicles is to enable additional passenger carrying capacity to be provided when compared to the Train Fleet as set out in the Table 1 in Appendix 1 to Schedule 1.1 immediately prior to the HLOS Deed of Amendment 1B; and***
 - (ii) *as at the date of the HLOS Deed of Amendment 1B the best use of the Tranche C Extra Class 150 Vehicles is the provision of additional capacity as specified in the 1B HLOS Capacity Requirements.***
- (b) *Accordingly the Franchisee agrees that, with effect from and including the Timetable and the Train Plan for the period from and including the Subsidiary Change Date in May 2011, in the preparation of its Train Plan in accordance with paragraphs 7.4, 7.5 and 7.6 of Schedule 1.1 of the Franchise Agreement the Franchisee shall use all reasonable endeavours to ensure that such Train Plan includes at least the 1B HLOS Capacity Requirements. The provisions of paragraph 7.8 shall apply mutatis mutandis to the obligations of the Franchisee under this paragraph 3.6(b).***

3.6A *If the Franchisee cannot include all of the Tranche C Extra Class 150 Vehicles in its Train Plan in accordance with paragraph 3.6 as a result of one or more of the Tranche C Extra Class 150 Vehicles not being Available, until the date that all Tranche C Extra Class 150 vehicles are Available:*

- (a) *the Franchisee shall not be required to comply with paragraph 3.6(b); and***
- (b) *the Franchisee instead shall, with effect from and including the Timetable and Train Plan for the period from and including the Subsidiary Change Date in May 2011, in the preparation of its Train Plan in accordance with paragraph 7.4, 7.5 and 7.6 of Schedule 1.1 of the Franchise Agreement, use all reasonable endeavours to ensure that its Train Plan utilises any Tranche C Extra Class 150 Vehicles which are Available towards meeting, to the greatest extent reasonably practicable, the 1B HLOS Capacity Requirements. The provisions of paragraph 7.8 shall apply mutatis***

mutandis to the obligation of the Franchisee under paragraph 3.6A(b).

3.7 *Extra Class 150 Vehicles Reliability/Associated Modifications*

The Franchisee shall:

- (a) carry out inter unit coupler remediation work;*
- (b) fit the “Richmond Kit of Parts” (bike rack, call for aid and priority seating);*
- (c) add vinyl logos of the Franchisee;*
- (d) carry out “door key switch reversal modifications”; and*
- (e) carry out below sole bar investigations*

in respect each of the Extra Class 150 Vehicles by no later than 31st December 2012 and in so doing shall incur expenditure of not less than £186,769 (such amount being stated in 2009/2010 amounts and not to be subject to indexation) in aggregate.

3.8 *HLOS 1B Reporting Arrangements*

In exercise of its rights pursuant to paragraph 1.3 of Appendix 3 to Schedule 13.2 (Operational Information) the Franchisee shall, in providing to the Authority the operational information required by Appendix 3 to Schedule 13.2, ensure that such information is further disaggregated by separately identifying the Passenger Services to be strengthened as set out in the 1B HLOS Capacity Requirements

APPENDIX 1 TO SCHEDULE 1.6

Programme of Committed Obligations

1. The Franchisee shall ensure that the Committed Obligations specified in part 2 of Schedule 1.6 (*Committed Obligations*) are fulfilled on or before the dates specified in the right hand column of the table below in respect of such obligation.

COMMITTED OBLIGATION REFERENCE	Due date
Paragraph 1 (<i>Public Performance Measure</i>) of part 2 of Schedule 1.6 (<i>Committed Obligations</i>).	As specified in paragraph 1.1 and paragraph 1.2.
Paragraph 2 (<i>Service Delivery Assurance Plan</i>) of part 2 of Schedule 1.6 (<i>Committed Obligations</i>).	As specified in paragraph 2.
Paragraph 3 (<i>Replacement of Ticket Machines</i>) of part 2 of Schedule 1.6 (<i>Committed Obligations</i>).	In respect of paragraph: 3.1 (completion of review), on or before 17 March 2005; 3.4 (replacement of ticket machines) as specified in retail strategy but all identified ticket machines to be replaced by no later than 31 March 2007¹⁷ .
Paragraph 4 (<i>Automatic Passenger Counting System</i>) of part 2 of Schedule 1.6 (<i>Committed Obligations</i>).	(a) In respect of paragraph 4.1, on or before 31 March 2006¹⁸ ; (b) In respect of the proviso in paragraph 4.2, the date which is 18 months from the date: (i) effective notice is given to the relevant rolling stock providers that such rolling stock unit should cease to be subject to flexible lease arrangements; and/or (ii) that a further rolling stock lease is acquired in respect of any rolling stock unit for a duration that is longer than three years from the Franchise Commencement Date.
Paragraph 5 (<i>Performance Initiatives</i>) of part 2 of Schedule 1.6 (<i>Committed Obligations</i>).	As specified in paragraph 5.
Paragraph 6 (<i>Bicycle Users Forum</i>) of part 2 of Schedule 1.6 (<i>Committed Obligations</i>).	As specified in paragraph 6.
Paragraph 7 (<i>Community Rail Partnerships</i>) of part 2 of Schedule 1.6 (<i>Committed Obligations</i>).	Ongoing from Franchise Commencement Date.

¹⁷ Text inserted wef 8 August 2005.

¹⁸ Text inserted wef 8 August 2005.

Paragraph 8 (<i>Marketing</i>) of part 2 of Schedule 1.6 (<i>Committed Obligations</i>).	<p>In respect of paragraph:</p> <p>8.1(a), as specified in that paragraph;</p> <p>8.2, on or before 16 December 2005;</p> <p>8.3, on or before on or before September 2005;</p> <p>8.4, on or before 16 December 2005;</p> <p>8.5, on or before 16 December 2005;</p> <p>8.6, on or before 16 May 2005;</p> <p>8.7, on or before 16 December 2005.</p>
Paragraph 9 (<i>Sheffield/Leeds Semi Fast Services</i>) of part 2 of Schedule 1.6 (<i>Committed Obligations</i>)	As specified in paragraph 9.

APPENDIX 2 TO SCHEDULE 1.6

Replacement Appendix 2 to Schedule 1.6 ¹⁹²⁰

Late/Non Completion of HLOS Committed Obligations and Related Financial Provisions

1. Definitions and references to the Table

1.1 In this Appendix 2:

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

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

1.2 In this Appendix 2 references to the Table are references to the Table entitled “HLOS Committed Obligations” where HLOS Franchise Payment Adjustments and Net Subsidy Amounts apply as set out in the Table.

2. Late/Non Delivery of HLOS Committed Obligations

2.1 If the Franchisee fails to deliver in full any HLOS Committed Obligation in accordance with and by the timeframe specified for its delivery such late, partial or non-delivery shall constitute a contravention of the Franchise Agreement.

2.2 For the avoidance of doubt if and to the extent that an HLOS Committed Obligation is an obligation to use all reasonable endeavours to achieve an objective then subject to the Franchisee complying with all its obligations in that respect, the non achievement of the objective shall not in itself constitute a contravention of the Franchise Agreement.

3. Franchise Payment Adjustments

3.1 In addition to being a contravention of this Franchise Agreement if an HLOS Committed Obligation is not performed or delivered in full by the date specified for that HLOS Committed Obligation in column 3 of the Table (if any), the Franchisee shall pay to the Authority for each Reporting Period, or part thereof, for which the HLOS Committed Obligation remains unperformed or

¹⁹ Date of Change 02/03/2010

²⁰ Date of Change 12/03/2010

undelivered (whether or not there has been a contravention of the Franchise Agreement) in full an HLOS Franchise Payment Adjustment of the amount and subject to the conditions set out in column 5 of the Table (if any).

- 3.2 *Any HLOS Franchise Payment Adjustment payable in accordance with this paragraph 3 shall be paid in accordance with Schedule 8.1 of the Franchise Agreement.*

4. *Payment of Net Subsidy Amounts*

- 4.1 *If, in respect of any relevant HLOS Committed Obligation referred to in the Table, it becomes evident, or is agreed, or the Authority in its reasonable opinion considers that the HLOS Committed Obligation has not been or will not be performed or delivered in full by the Expiry Date the Franchisee shall pay to the Authority a sum equal to the Net Subsidy Amount for that HLOS Committed Obligation referenced in column 4 of the Table (if any) less any HLOS Franchise Payment Adjustments already paid by the Franchisee in respect of that HLOS Committed Obligation.*

Any such payment shall be paid in accordance with Schedule 8.1 as if it were a HLOS Franchise Payment Adjustment.

5. *Miscellaneous Payment Provisions*

- 5.1 *All Net Subsidy Amounts and HLOS Franchise Payment Adjustments set out in the Table (if any) shall be indexed in a manner consistent with the provisions applicable in respect of the indexation of Franchise Payments pursuant to Schedule 8.2 of the Franchise Agreement with the Retail Prices Index or the Average Earnings Index being applied accordingly.*
- 5.2 *Any Net Subsidy Amount to which a party is entitled shall be paid in accordance with Schedule 8.1 of the Franchise Agreement on the Payment Date of the Reporting Period during which such payment becomes due, or on the next Payment Date of the next Reporting Period if the date on which such payment becomes due is after the date on which the Authority has notified the Franchisee of the amount of the Franchise Payment payable in respect of that Reporting Period pursuant to paragraph 1.1 of Schedule 8.1.*

6. Waiver and adjustments of payments under this Appendix 2 and extension of time for delivery

6.1 *The Authority may at its reasonable discretion decide to waive his rights to receive any payments payable under this Appendix 2 in respect of a late, partial or non performance or delivery of any HLOS Committed Obligation.*

6.2 *In deciding whether to waive such rights the Authority may, but shall not be obliged to, take into consideration the circumstances under which the late, partial or non-performance or delivery of any HLOS Committed Obligation arose.*

7²¹ Underspends in Fulfilling any HLOS Committed Obligations

7.1 *Where in relation to any HLOS Committed Obligation that is expressed in terms of a requirement to spend not less than a specified sum in fulfilling its stated objective, the Franchisee is able to achieve that stated objective without incurring the full amount referred to in that HLOS Committed Obligation, whether because of cost savings or otherwise, the Franchisee shall apply to the Authority for the consent referred to in paragraph 7.2.*

7.2 *The Authority's consent for the purposes of paragraph 7.1 is its consent for the Franchisee to invest any unspent or saved amount towards the fulfillment of other HLOS Committed Obligations or such other additional commitments for the benefit of passengers as the Franchisee proposes at that time, on such terms as the Authority may require. If the Authority so consents, the Franchisee shall undertake such investment and corresponding commitment in compliance with such terms (if any).*

7.3 *If the Authority does not consent to an application pursuant to paragraph 7.1 in respect of any HLOS Committed Obligation, then the Franchisee shall pay to the Authority any such unspent or saved amount at the next Payment Date or such other date as the Authority may specify.*

8 Target Revenue Adjustments

In addition to any contravention of this Agreement pursuant to paragraph 3 if and for so long as any HLOS Committed Obligation referred to in the Table (set out in Appendix 2) is not performed or delivered in full by the date specified for that HLOS Committed Obligation in column 3 of the Table, the Target Revenue shall be reduced by the relevant Target Revenue Adjustment specified in Column 6 of the Table set out in Appendix 2. It is agreed that no amendment to the Financial Model or the Record of Assumptions will be required to be made in the event that a Target Revenue Adjustment is made but the Target Revenue shall be regarded as amended accordingly for the purposes of the Franchise Agreement.

²¹ Date of Change 12/03/2010

The Table: HLOS Committed Obligations ²²²³

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>	<i>Column 6</i>
<i>Reference in respect of the HLOS Committed Obligation</i>	<i>Summary Description</i>	<i>Deadline</i>	<i>Net Subsidy Amount</i>	<i>HLOS Franchise Payment Adjustment</i>	
<i>Schedule 1.1 Appendix 3 part 1</i>	<i>Commencement of delivery of 1A HLOS Capacity Requirements</i>	<i>1st July 2010</i>	<i>N/A</i>	<i>An amount equal to:</i> <i>£73,496 in respect of a Reporting Period in Year 7</i> <i>£70,971 in respect of a Reporting Period in Year 8</i> <i>£71,388 in respect of a Reporting Period in Year 9</i> <i>£67,680 in respect of a Reporting Period in Year 10</i> <i>£67,449 in respect of a Reporting period in the up to seven Reporting Period extension.</i>	
<i>Reference in respect of the</i>	<i>Summary Description</i>	<i>Deadline</i>	<i>Net Subsidy Amount</i>	<i>HLOS Franchise Payment Adjustment per Reporting Period</i>	<i>Target Revenue Adjustment per Reporting Period</i>

²² Date of Change 02/03/2010

²³ Date of Change 12/03/2010

<i>HLOS Committed Obligation</i>				6.	
<i>Paragraph 3.6 (b) of part 2A of Schedule 1.6</i>	<i>Delivery of 1B HLOS Capacity Requirements</i>	<i>The Subsidiary Change Date occurring in May 2011</i>	<i>£5,901,190</i>	<p><i>In respect of any Reporting Period in which all of the Tranche C Extra Class 150 Vehicles have become Available the following amounts per Reporting Period to which such circumstances apply:</i></p> <p><i>£nil in respect of a Reporting Period in Year 7</i></p> <p><i>£196,706 in respect of a Reporting Period in Year 8</i></p> <p><i>£196,706 in respect of a Reporting Period in year 9</i></p> <p><i>£196,706 in respect of a Reporting Period in Year 10 up to 13th September 2013; and</i></p>	<p><i>£nil in respect of a Reporting Period in Year 7</i></p> <p><i>£9,283 in respect of a Reporting Period in Year 8</i></p> <p><i>£9,574 in respect of a Reporting Period in year 9</i></p> <p><i>£10,346 in respect of a Reporting Period in Year 10 up to 13th September 2013; and</i></p>

				<p><i>£196,706 in respect of Reporting Period in the up to seven Reporting Period extension; and/or</i></p> <p><i>in respect of any Reporting Period in which all of the Tranche C Extra Class 150 Vehicles have not become Available the following amounts per Reporting Period to which such circumstances apply:</i></p> <p><i>£nil in respect of a Reporting Period in Year 7</i></p> <p><i>£101,646 in respect of a Reporting Period in Year 8</i></p> <p><i>£102,798 in respect of a Reporting Period in year 9</i></p> <p><i>£99,620 in respect of a Reporting Period in Year 10 up to 13th September 2013; and</i></p>	<p><i>£10,871 in respect of Reporting Period in the up to seven Reporting Period extension</i></p>
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				<i>£100,883 in respect of Reporting Period in the up to seven Reporting Period extension.</i>	
<i>Paragraph 3.6A(b) of part 2A of Schedule 1.6</i>	<i>Using all reasonable endeavours to ensure that the Franchisee's Train Plan utilises any Tranche C Extra 150 Vehicles which are Available towards meeting, as far as reasonably practicable, the 1B HLOS Capacity Requirements</i>	<i>The Subsidiary Change Date occurring in May 2011</i>	<i>5,901,190</i>	<p><i>The following amount per unit per Reporting Period for Tranche C Extra Class 150 Vehicles which are not Available:</i></p> <p><i>£nil in respect of a Reporting Period in Year 7</i></p> <p><i>£25,412 in respect of a Reporting Period in Year 8</i></p> <p><i>£25,699 in respect of a Reporting Period in year 9</i></p> <p><i>£24,905 in respect of a Reporting Period in Year 10 up to 13th September 2013; and</i></p>	<p><i>£nil in respect of a Reporting Period in Year 7</i></p> <p><i>£2,320.84 per unit not deployed in respect of a Reporting Period in Year 8</i></p> <p><i>£2,393.67 per unit not deployed in respect of a Reporting Period in year 9</i></p> <p><i>£2,586.53 per unit not deployed in respect of a Reporting Period in Year 10 up to 13th September</i></p>

				<p><i>£25,221 in respect of Reporting Period in the up to seven Reporting Period extension.</i></p> <p><i>PLUS, where the Franchisee does not use such reasonable endeavours as set out in that Paragraph, the following amount per unit per Reporting Period for Tranche C Extra Class 150 Vehicles which are Available:</i></p> <p><i>£nil in respect of a Reporting Period in Year 7</i></p> <p><i>£49,177 in respect of a Reporting Period in Year 8</i></p> <p><i>£49,177 in respect of a Reporting Period in year 9</i></p> <p><i>£49,177 in respect of a Reporting Period in Year 10 up to 13th September 2013; and</i></p>	<p><i>2013; and</i></p> <p><i>£2,717.72 per unit not deployed in respect of Reporting Period in the up to seven Reporting Period extension</i></p>
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				<i>£49,177 in respect of Reporting Period in the up to seven Reporting Period extension; and/or</i>	
<i>Paragraph 3.7 of Part 2A of Schedule 1.6</i>	<i>Extra Class 150 Vehicles Reliability and Associated Modifications</i>	<i>31st December 2012</i>	<i>£186,769 (such amount being stated in 2009/2010 amounts and not to be subject to indexation) payable by the Franchisee to the Authority if the Franchisee does not carry out the modification required in paragraph 2.5 of Part 2A of Schedule 1.6.</i>	<i>N/A</i>	<i>N/A</i>

Payment of Net Subsidy Amounts for 1B HLOS Capacity Requirements

If, in respect of any relevant HLOS Committed Obligation in relation to the 1B HLOS Capacity Requirements referred to in the Table above (part 3.6(b) and 3.6A(b) of Part 2A of Schedule 1.6), it becomes evident, or is agreed, or the Authority in its reasonable opinion considers that such HLOS Committed Obligation has not been or will not be performed or

delivered in full by the Expiry Date the Franchisee shall pay to the Authority a sum equal to:

- (a) the Net Subsidy Amount for that HLOS Committed Obligation referenced in column 4 of the Table (if any); LESS*
- (b) any HLOS Franchise Payment Adjustments already paid by the Franchisee in respect of that HLOS Committed Obligation; LESS*
- (c) (without double counting) any costs that the Franchisee can reasonably demonstrate that it has reasonably incurred in relation to any Tranche C Extra 150 Vehicles which were not Available (if any); LESS*
- (d) any amounts of subsidy which the Franchisee has yet to receive in respect of such HLOS Committed Obligation, provided that the Secretary of State shall be relieved in such circumstances from paying any future subsidy in respect of such HLOS Committed Obligation and accordingly there will be a Qualifying Change the only Revised Inputs being to remove the obligation to pay future subsidy. For the avoidance of doubt the Net Subsidy Amount will always be a sum paid by the Franchisee to the Authority.*

Any such payment shall be paid in accordance with Schedule 8.1 as if it were a HLOS Franchise Payment Adjustment and paragraph 4 of Appendix 2 to Schedule 1.6 shall be replaced by this paragraph in circumstances to which this paragraph applies.

Notes: Column 2 (Summary Description) in the Table should be read in conjunction with the relevant HLOS Committed Obligation in Part 2A of Schedule 1.6 set out at paragraph specified in Column 1;

The abatements specified in relation to paragraph 3.6 and 3.6A are mutually exclusive. Only one of either paragraph 3.6 or 3.6A can apply at any one time.

SCHEDULE 1.7

Franchise Services

1. FRANCHISE SERVICES

The Franchisee may at all times during the Franchise Term provide and operate the Franchise Services specified in this Schedule 1.7 and the Passenger Services.

2. RESTRICTIONS RELATING TO FRANCHISE SERVICES

2.1 The Franchisee shall not directly or indirectly, without the prior written consent of the Authority, carry on any business or activity other than the provision and operation of the Franchise Services.

2.2 Such consent shall not be unreasonably withheld where the other business or activity proposed to be carried on by the Franchisee could not reasonably be so carried on by an Affiliate of the Franchisee unless, in the Authority's reasonable opinion, such additional business or activity:

- (a) might prejudice the continuity of the provision of the Franchise Services by a Successor Operator at the end of the Franchise Term; or
- (b) might result in additional liabilities and obligations being assumed by such a Successor Operator.

2.3 The Authority may impose such conditions to its consent as it considers appropriate for the purpose of securing the continuity of the provision of the Franchise Services at the end of the Franchise Term.

2.4 The Franchisee shall not during the Franchise Term, without the consent of the Authority:

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

2.5 The Franchisee shall not engage any Franchise Employee in any activity or business which it may not conduct or engage in under this paragraph 2.

3. STATION SERVICES

3.1 The Station Services shall comprise:

- (a) the provision of any services to persons at the Stations listed in paragraphs 4.1 and 4.2 of Appendix 2 (*List of Conditions Precedent Documents*) to the Conditions Precedent Agreement or to Train Operators whose trains call at such Stations, provided that such services:
 - (i) are made available only or principally to passengers alighting from or joining trains calling at such Stations and to such Train Operators;
 - (ii) are provided in connection with the calling of trains at such Stations and are not designed to encourage passengers or other persons to use such Station Services other than in connection with a journey on a train calling at such Stations;
 - (iii) exclude the sale or issue (for a charge) of any goods other than passenger timetables and any items included in the price of a Fare; and
 - (iv) may include car parking; and
- (b) the provision of access to any person under an Access Agreement at the Stations listed in paragraphs 4.1 and 4.2 of Appendix 2 to the Conditions Precedent Agreement.

3.2 The Station Services shall include the provision of any service which the Franchisee may provide, or may be required to provide, under any Access Agreement in effect on the Franchise Commencement Date or as lawfully directed by the Regulator from time to time.

4. LIGHT MAINTENANCE SERVICES

4.1 Light Maintenance Services shall comprise:

- (a) the provision of access to any other person under an Access Agreement;
- (b) the carrying out of inspections of rolling stock vehicles;
- (c) the carrying out of maintenance work on rolling stock vehicles of a kind which is normally carried out at regular intervals of 12 months or less;
- (d) replacement of failed components and consumables on rolling stock vehicles;
- (e) the preparation of rolling stock vehicles for service;
- (f) the stabling or other temporary holding of rolling stock vehicles;
- (g) the refuelling of rolling stock vehicles;
- (h) the replenishment of water tanks; and
- (i) the cleaning of the exterior or the interior of rolling stock vehicles,

in each case for itself and/or other Train Operators, at the Stations and at the Depots listed in paragraphs 4.1 to 4.3 inclusive of Appendix 2 (*List of Conditions Precedent Documents*) to the Conditions Precedent Agreement.

4.2 Light Maintenance Services shall include the provision of any service which the Franchisee may provide, or may be required to provide, under any Access Agreement in effect on the Franchise Commencement Date or as lawfully directed by the Regulator from time to time.

5. ANCILLARY SERVICES

The Franchisee may carry out the following Ancillary Services:

- (a) the selling, lending or hiring of any goods or rights and the provision of any services (whether for a charge or not) on any train used in the provision of the Passenger Services where such goods or services are sold or provided principally for consumption or use on the relevant train, including the sale of any Fares, meals, light refreshments, newspapers, magazines, books, entertainment materials or phone cards;
- (b) the provision of any service at any station which, if provided on a train used in the provision of the Passenger Services, would fall within paragraph 5(a) or which, if provided at a Station, would fall within paragraph 3 and which, in each case, is made available only or principally to persons at such Stations who either are about to travel or have recently travelled on a train used in the provision of the Passenger Services;
- (c) in any Reporting Period, the subleasing, hiring or licensing of up to 10 per cent. of the rolling stock vehicles used in the provision of the Passenger Services (such percentage to be determined by reference to the aggregate period of time for which such rolling stock vehicles are sub-let, hired or licensed and the aggregate period of time for which they are used in the provision of the Passenger Services);
- (d) the lending, seconding, hiring or contracting out during any Reporting Period to another person or persons (whether for a charge or not) of:
 - (i) up to 1 per cent. of the number of Franchise Employees as at the Franchise Commencement Date, for over 90 per cent. of their normal working hours during such Reporting Period (including on a full-time basis); and
 - (ii) up to 1 per cent. of any other Franchise Employees as at the Franchise Commencement Date,

provided that this paragraph shall not apply to any employee lent, seconded, hired or contracted out under any of paragraphs 5(a) to (c) inclusive and (e) to (p) inclusive, or engaged in any other activity which is permitted under this Schedule 1.7;

- (e) any heavy maintenance of rolling stock vehicles which does not fall within the Light Maintenance Services on behalf of any other person at the following Depots, subject to the number of persons engaged or employed in such activity not exceeding by more than 10 per cent. the number so engaged or employed on the Franchise Commencement Date:
 - (i) Heaton;
 - (ii) Neville Hill;

- (iii) Newton Heath;
- (f) the selling at any location of any Fare which is valid, in whole or in part, on the Passenger Services and the selling of any other Fare at any location where such Fares may be purchased from the Franchisee on or before the date of signature of this Agreement or at any other location, provided that the majority of Fares sold at any such other location shall be Fares which are valid, in whole or in part, on the Passenger Services;
- (g) the selling, in conjunction with any Fare, of any other rights which entitle the purchaser thereof to:
 - (i) travel on any other train or light rail service;
 - (ii) travel on any aircraft;
 - (iii) travel on any shipping or ferry service;
 - (iv) travel on any bus; or
 - (v) attend any event or attraction or enter any location;
- (h) the lending, seconding, hiring or contracting out of Franchise Employees to other Train Operators in order to enable such Train Operators to provide services at the Stations to passengers travelling on such operators' trains;
- (i) the provision of telephone information relating to railway passenger services within Great Britain to passengers;
- (j) the supervision, management and training of train crew of other Train Operators provided such activity is necessarily incidental to the provision of the Passenger Services and could not reasonably be carried out by or through an Affiliate of the Franchisee;
- (k) the subleasing, hiring, licensing, lending, selling of any rolling stock vehicles or other assets of the Franchisee or the lending, hiring or contracting out of any employees of the Franchisee or the provision of any other services to Network Rail or any other Train Operator on an emergency basis;
- (l) the licensing or permitting of any other person (including an Affiliate of the Franchisee) to carry out any activity or business, in connection with the provision of the Franchise Services, or otherwise, on any rolling stock vehicle operated by the Franchisee, at any Station served by the Passenger Services, at any Depot, or otherwise (including the letting, leasing or licensing (on an exclusive basis or otherwise) of any part or all of a Station or Depot to such other person);
- (m) such other activity or business as may be reasonably necessary for the purpose of providing any other Franchise Services or complying with this Agreement, provided that it could not reasonably be carried out by or through an Affiliate of the Franchisee;
- (n) The subleasing to any other person of the following property which is not comprised in a Station or Depot:

- (i) Aintree House, York Place, Leeds;
 - (ii) First Floor and/or Storage Area SB.05, Bridgewater House, 58 Whitworth Street, M1 6LT;
 - (iii) Basement, ground, third and/or fourth floors, Main Headquarters, Tanner Row, York, YO1 1HT; and
 - (iv) Basement, ground, second and/or third floors, West Offices, Off Station Rise, York, YO1 1HT;
- (o) the provision or operation of Charter Services, subject to the Train Mileage of such Charter Services not exceeding in any Reporting Period 2 per cent. of the scheduled Train Mileage of Passenger Services provided by the Franchisee in such Reporting Period;
 - (p) the provision of consultancy services reasonably ancillary to the provision of the other Franchise Services; and
 - (q) any services or activity not falling within paragraphs 3, 4 or 5(a) to (p), subject to the gross value of any such services or activity (excluding any attribution of costs) not exceeding £25,000 per annum each and in aggregate no more than £250,000 per annum in each Franchisee Year, provided that in the second and each subsequent Franchisee Year, these amounts will be adjusted in accordance with the following formula:

Adjusted Amount = Original Amount \times RPI

where RPI is the quotient of the Retail Prices Index for the March which immediately precedes the commencement of the relevant Franchisee Year divided by the Retail Prices Index for March 2004

6. AFFILIATES OF THE FRANCHISEE

Nothing in this Schedule 1.7 shall restrict any Affiliate of the Franchisee from having an interest in or participating in any business or activity.

SCHEDULE 1.8

Major Projects

1. Implementation of Major Projects

1.1 The Franchisee shall co-operate with Network Rail, the Authority and any other relevant party in connection with each Major Project.

1.2 The Franchisee shall co-operate with Network Rail in Network Rail's endeavours to obtain all necessary consents required for the carrying out of each Major Project, including any approval of any major project under Part D of the Network Code and any network change under Part G of the Network Code, in each case relating to the relevant Major Project.

1.3 The Franchisee's obligations under paragraphs 1.1 and 1.2 shall not require it to take or omit to take, nor excuse it from taking or omitting to take, any action that would be prejudicial to:

- (a) proper performance of its obligations under this Agreement; or
- (b) the pursuit of reasonable profit from the proper performance of its obligations under this Agreement.

2. Notification to the Authority of a Network Change Proposal

2.1 The Franchisee shall immediately notify the Authority upon receiving any notification from Network Rail (including pursuant to Part D or Part G of the Network Code) of any proposal to implement a Major Project.

2.2 If and to the extent requested by the Authority, the Franchisee shall:

- (a) consult the Authority in advance in respect of any response or proposal which the Franchisee is required or otherwise proposes to make to Network Rail relating to that Major Project; and
- (b) provide to the Authority copies of any notices, correspondence or other information exchanged between Network Rail and the Franchisee in respect of that Major Project.

SCHEDULE 2

Assets, Leases, Third Parties, Other Franchise Operations and Schemes

Schedule 2.1:	Asset Vesting and Transfer
Schedule 2.2:	Security of Access Assets, Rolling Stock Leases, Station and Depot Leases
Schedule 2.3:	Third Party Delivery of Passenger Services and Other Franchisees
Schedule 2.4:	Other Franchise Operations
Schedule 2.5	Transport, Travel and Other Schemes
Appendix:	List of Transport, Travel and Other Schemes

SCHEDULE 2.1

Asset Vesting and Transfer

1. VESTING OF PROPERTY LEASES

1.1 The Franchisee shall not without the prior written consent of the Authority (such consent not to be unreasonably withheld), whether generally or on a case-by-case basis:

- (a) enter into any new Property Lease; or
- (b) effect any amendment to any Property Lease, except to the extent that the Franchisee is required to do so by virtue of any station or depot access conditions to which it is a party.

1.2 In respect of any new Property Leases with Network Rail, the Franchisee shall enter into such Property Leases:

- (a) with the intent that Section 31 of the Act shall apply to such leases; and
- (b) substantially in the agreed terms marked ***SL*** and ***DL*** (as appropriate).

1.3 In respect of any assignment or amendment of any Property Lease to which Section 31 of the Act applied on its grant, each of the Authority and the Franchisee acknowledge that it is their intention that Section 31 of the Act shall continue to apply to such assigned or amended lease.

SCHEDULE 2.2

Security of Access Assets, Rolling Stock Leases, Station and Depot Leases

1. NOVATION OF ACCESS AGREEMENTS DURING THE FRANCHISE TERM

1.1 The Franchisee shall, to the extent so requested by the Authority (other than on termination of this Agreement, for which the provisions of paragraph 1 of Schedule 15.4 (*Provisions Applying on and after Termination*) apply:

(a) following receipt of a notice purporting to terminate any Access Agreement to which it is a party, in relation to such Access Agreement; or

(b) following receipt of a notice purporting to terminate a Station Lease or Depot Lease in whole or in part or on becoming aware of any proceedings or any other steps having or purporting to have similar effect, in relation to any Access Agreement under which it is a Facility Owner by virtue of a Property Lease,

novate its interest under any relevant Access Agreement (and any related Collateral Agreement) to the Authority or as it may direct.

1.2 Such novation shall be subject to the agreement of any counterparty to such Access Agreement or Collateral Agreement and, to the extent applicable, the Regulator.

1.3 Such novation shall be on such terms as the Authority may reasonably require, including:

(a) that the Franchisee shall not be released from any accrued but unperformed obligation, the consequences of any breach of the relevant agreement which is the subject of arbitration or litigation between the parties thereto or any liability in respect of any act or omission under or in relation to the relevant agreement prior to, or as at the date of, any such novation (except to the extent that the Authority or its nominee agrees to assume responsibility for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant novation); and

(b) that neither the Authority nor its nominee shall be obliged, in connection with the novation, to agree to assume responsibility for any unperformed obligation, liability or consequences of a breach referred to in paragraph 1.3(a),

but shall not, unless the Franchisee otherwise agrees, be on terms which release any counterparty to the relevant agreement from any liability to the Franchisee arising prior to the date of such novation.

1.4 The Franchisee shall, on the occurrence of any of the circumstances specified in paragraph 1.1 in relation to any other Train Operator who is a party to an Access Agreement to which the Franchisee is also party, agree to the novation of the relevant Train Operator's interest under the relevant Access Agreement to the Authority or as it may direct, subject, to the extent applicable, to the consent of the Regulator. The provisions of paragraph 1.3 shall apply to any such novation.

1.5 The Franchisee shall notify the Authority on becoming aware of any circumstances which might lead to the Authority being able to require the Franchisee to novate its interest or agree to the novation of another Train Operator's interest under this paragraph 1.

2. ROLLING STOCK RELATED CONTRACTS AND INSURANCE ARRANGEMENTS

2.1 The Franchisee shall not:

- (a) execute any Rolling Stock Related Contract;
- (b) exercise any option or other discretion in any Rolling Stock Related Contract that would result in any increased payment or delay in delivery being made by the Franchisee to the relevant counterparty or which may result in it being reasonably likely to be unable to comply with the terms of this Agreement; or
- (c) amend or waive the terms of any Rolling Stock Related Contract,

without, in each case, the prior written consent of the Authority (not to be unreasonably withheld) and shall supply a copy of all draft and all executed Rolling Stock Related Contracts (including any agreement amending any Rolling Stock Related Contract) to the Authority.

2.2 The Franchisee shall not, without the prior written consent of the Authority:

- (a) amend the terms of any insurance arrangements which relate to rolling stock vehicles used by it in the provision of the Passenger Services to which it is a party on the Franchise Commencement Date; or
- (b) enter into any new insurance arrangements after the Franchise Commencement Date which relate to rolling stock vehicles used or to be used by it in the provision of the Passenger Services (*new insurance arrangements*).

2.3 The Franchisee shall, in addition, if it enters into any new insurance arrangements, use all reasonable endeavours to ensure that the relevant insurers waive their rights of subrogation against any Train Operator which may have equivalent insurance arrangements providing for a similar waiver of rights of subrogation against the Franchisee, whether on a reciprocal basis or otherwise.

3. ASSIGNMENT OF PROPERTY LEASES DURING FRANCHISE TERM

3.1 The Franchisee shall (other than on termination of this Agreement, for which the provisions of paragraph 4.6 of Schedule 15.4 (*Provisions Applying on and after Termination*) shall apply) following receipt of a notice purporting to terminate a Property Lease or on becoming aware of any proceedings or any other steps having or purporting to have similar effect, if requested by the Authority, assign its interest under all or any Property Leases to the Authority or as it may direct, subject where applicable to the agreement of any other party to such Property Lease or the Regulator.

3.2 Such assignment shall be on such terms as the Authority may reasonably require, including:

- (a) that the Franchisee shall not be released from any accrued but unperformed obligation, the consequences of any antecedent breach of a covenant or obligation in the Property Leases or any liability in respect of any act or omission under or in relation to the Property Lease prior to, or as at the date of, any such assignment (except to the extent that the Authority or its nominee agrees to assume responsibility for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant assignment); and

- (b) that neither the Authority nor its nominee shall be obliged, in connection with such assignment, to agree to assume responsibility for any unperformed obligation, liability or consequences of a breach referred to in paragraph 3.2(a), and the Franchisee shall indemnify the Authority or its nominee, as the case may be, on an after-tax basis against any costs, losses, liabilities or expenses suffered or incurred in relation thereto.
- 3.3 The Franchisee shall, on the occurrence of any of the circumstances specified in paragraph 3.1 in relation to any other Train Operator who is a party to a Property Lease to which the Franchisee is also party, agree to the assignment of such Train Operator's interest under the relevant Property Lease to the Authority or as it may direct, subject, where applicable, to the consent of Network Rail. The provisions of paragraph 3.2 shall apply to any such assignment.
- 3.4 The Franchisee shall notify the Authority on becoming aware of any circumstances which might lead to the Authority being able to require the Franchisee to assign its interest or agree to the assignment of another Train Operator's interest under this paragraph 3.

4. STATION AND DEPOT LEASES

- 4.1 The Franchisee shall at all times enforce its rights under each Station Lease and Depot Lease.
- 4.2 The Franchisee shall not:
 - (a) terminate or agree to terminate in whole or in part, or take or omit to take any other action which might result in the termination of any Station Lease or Depot Lease;
 - (b) assign all or part of its interest under any Station Lease or Depot Lease; or
 - (c) sublet the whole or substantially the whole of the property comprised in any Station Lease or Depot Lease,

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

5. STATION SUBLEASES

- 5.1 Unless the Authority agrees otherwise, the Franchisee shall not sublet to any of its Affiliates any part of the property comprised in any Property Lease except on terms that any such subletting:
 - (a) (other than any subletting to an Affiliate which is a Train Operator) is terminable without compensation immediately upon the termination of this Agreement; and
 - (b) is excluded from the provisions of Part II of the Landlord and Tenant Act 1954 and the Tenancy of Shops (Scotland) Act 1949.
- 5.2 If so requested by the Authority, the Franchisee shall:

- (a) extend each Station Sublease on the same terms for such period as the Authority may request (including a period equivalent to the franchise term of the Train Operator who is the lessee under such Station Sublease); and
- (b) if such Station Sublease terminates (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 sublease in respect of which the Franchisee was the lessor), grant a new Station Sublease on the same terms to such Train Operator and for such period as the Authority may request (including a period equivalent to the franchise term of the Train Operator who is the lessee under such Station Sublease),

subject, where required, to the consent of Network Rail (and, if required, the relevant sub-lessee) and to the duration of the relevant Station Lease.

5.3 The Franchisee shall notify the Authority immediately on it becoming aware of any event which might give the Franchisee a right to forfeit or terminate any Station Sublease. The Franchisee shall notify the Authority if it wishes to forfeit or terminate any such Station Sublease but shall not (without the Authority's prior written consent) effect such forfeiture or termination until the date which occurs 3 months after the date of such notice.

SCHEDULE 2.3

Third Party Delivery of Passenger Services and Other Franchisees

1. SUBCONTRACTING ANY PASSENGER SERVICES

1.1 Subject to paragraph 1.2, the Franchisee may not subcontract or delegate the provision of the Passenger Services without the prior written consent of the Authority.

1.2 The Franchisee may subcontract or delegate the provision of the Passenger Services, provided that:

- (a) the Authority receives prior written notice of any such subcontracting or delegation;
- (b) the Franchisee continues to be party to all Access Agreements and Property Leases necessary to provide such Passenger Services and to enjoy all relevant access and operational rights thereunder;
- (c) the Franchisee continues to specify and control the terms and conditions (subject to the requirements of the Inter-Operator Schemes) on which such Passenger Services are to be provided, including the determination of the Price or Child Price (as the case may be) of any Fares;
- (d) the Train Mileage of the Passenger Services so delegated or subcontracted does not exceed 5 per cent. of the aggregate scheduled Train Mileage of the Franchisee in any Reporting Period; and
- (e) the Franchisee continues to perform its obligations under Schedule 1.1 (*Service Development*) in respect of any subcontracted or delegated services.

1.3 Any such subcontracting or delegation shall not relieve the Franchisee from any of its obligations under this Agreement, including its obligations under this paragraph 1 and Schedule 14 (*Preservation of Assets*).

2. OTHER FRANCHISEES

2.1 If the franchise agreement of another franchisee terminates or a railway administration order is made in respect of another franchisee, the Franchisee shall co-operate with any reasonable request of the Authority to ensure:

- (a) that the services provided or operated by such other franchisee may continue to be provided or operated by any successor Train Operator or the railway administrator; and
- (b) that the benefit of any arrangements between the Franchisee and such other franchisee which were designated as a key contract under such franchise agreement immediately prior to its termination or to a railway administration order being made will continue to be provided to any successor Train Operator or to the railway administrator.

2.2 The benefit of any arrangements of the type referred to in paragraph 2.1(b) shall be provided on substantially the same terms as previously obtained by the relevant franchisee, subject to clause 5 and paragraph 2.3, provided that the Authority may exclude or modify any terms agreed or amended by such franchisee in the 12 months preceding the date on which such franchisee's franchise was terminated or the date on which the relevant railway

administration order was made which were, in the Authority's reasonable opinion, to the material detriment of such franchisee's business. The benefit of such arrangements shall be provided for such period as the Authority may reasonably require to allow the relevant Train Operator or railway administrator to renegotiate such arrangements or make alternative arrangements.

2.3 The Franchisee shall notify the Authority of its intention to terminate any contract with any other Train Operator which is designated as a "Key Contract" under that Train Operator's franchise agreement and shall give that Train Operator sufficient notice to enable it to make suitable alternative arrangements for its passengers without causing disruption to the railway passenger services provided by such Train Operator.

2.4 If the franchise agreement of another franchisee terminates in contemplation of the entry into or entry into effect of a new franchise agreement with the same franchisee in respect of all or a material part of the relevant railway passenger services, the Franchisee shall waive any event of default or other right it may have to terminate any agreement with such franchisee arising out of such termination, provided that the entry into or entry into effect of such new franchise agreement takes place.

2.5 References in this paragraph 2 to a franchisee include references to any franchise operator of that franchisee.

SCHEDULE 2.4

Other Franchise Operations

1. ROLLING STOCK TESTING AND COMMISSIONING

The Franchisee shall, to the extent reasonably requested by the Authority and subject to payment of any reasonable costs by the relevant third party, co-operate with any third party which the Authority may specify (including a Successor Operator, a rolling stock vehicle manufacturer, Network Rail or the Authority) in connection with the testing and commissioning of new rolling stock vehicles or any new equipment to be fitted to rolling stock vehicles (whether such rolling stock vehicles are new or otherwise). Such co-operation shall not unreasonably disrupt the provision and operation of the Franchise Services and may include:

- (a) the movement of test trains within and around depots;
- (b) making available suitably qualified personnel to operate test trains along the Routes and provide information on the Routes;
- (c) making Train Slots available for such purposes;
- (d) granting or procuring the grant of access to the third party and its representatives to any relevant facilities; and
- (e) the delivery of rolling stock vehicles to specific locations.

2. RESTRICTIONS ON CLOSURES OF RAILWAY PASSENGER SERVICES OR RAILWAY FACILITIES

2.1 Except to the extent that the Authority agrees otherwise, the Franchisee shall not:

- (a) cease to operate;
- (b) cease to secure the operation of; or
- (c) propose to terminate the use of,

any Station or Depot (or part of a Station or Depot) or any railway passenger service over a Route where such cessation or proposal might result in a Closure.

2.2 If any procedures are commenced under Part I of the Act in relation to a Closure, the Franchisee shall, at its own cost and to the extent so requested by the Authority, take such action as the Authority may require in order to enable the Authority to comply with any duty imposed on it under Part I of the Act in relation to such Closure.

3. RESTRICTIONS ON DE-STAFFING STATIONS

3.1 If the Franchisee proposes to take any step on or after the Franchise Commencement Date which would result in a Station:

- (a) ceasing to be staffed at all times of the day at which railway passenger services are scheduled to call; or
- (b) being staffed at times which are less than the scheduled staffing times at the Franchise Commencement Date,

it shall provide at least 8 weeks' written notice of such proposal to the Authority, the relevant Executive and the relevant Rail Passengers' Committee.

3.2 The Franchisee shall have regard to the views and representations of the Authority, the relevant Executive and the relevant Rail Passengers' Committee's before implementing any proposals pursuant to paragraph 3.1.

4. ROYAL TRAIN

4.1 The Franchisee shall, if and to the extent requested by any person (including Rail Express Systems Limited (or its successors)) and subject to the payment by such person of any reasonable costs of the Franchisee, co-operate in the provision by such person of railway passenger services for Her Majesty Queen Elizabeth II or any successor head of state or members of the family or representatives of either of them.

4.2 The provision of railway services for Her Majesty Queen Elizabeth II or any successor head of state or members of the family or representatives of either of them may include:

- (a) running a "sweeper" train in front of the royal train;
- (b) having spare locomotives on standby as rescue traction; and/or
- (c) carrying out security requirements or co-operating with other persons in ensuring that security requirements are carried out prior to calling at any station on the Routes.

SCHEDULE 2.5

Transport, Travel and Other Schemes

1. INTEGRATED TRANSPORT SCHEMES

1.1 The Franchisee shall participate in and comply with its obligations under the Integrated Transport Schemes listed in paragraph 1 of the Appendix (*List of Transport, Travel and Other Schemes*), including by co-operating in the implementation of any smart card technology pursuant to any such Integrated Transport Scheme.

1.2 As and when required by the Authority, the Franchisee shall co-operate with any schemes proposed by any Executive or third party (including any Stakeholder) and which relate to the integration of any other form of transport with the Franchise Services, including by co-operating in the implementation of any smart card technology pursuant to any such Integrated Transport Scheme. If the Authority reasonably considers that the Franchisee's participation in any such scheme would have no adverse financial effect on the Franchisee, the Authority shall be entitled, but not obliged, to designate any such scheme as an Integrated Transport Scheme.

1.3 If and to the extent that the Authority designates any further integrated transport scheme or proposed scheme as an Integrated Transport Scheme for the purposes of this paragraph 1, then the Franchisee shall participate in and comply with its obligations under such scheme and take such other steps as the Authority may reasonably require.

1.4 The Authority shall consult the Franchisee before designating any scheme an Integrated Transport Scheme under paragraph 1.3 and shall allow the Franchisee a reasonable opportunity to make representations to it with respect to any such designation.

2. LOCAL AUTHORITY CONCESSIONARY TRAVEL SCHEMES

2.1 The Franchisee shall:

(a) subject to paragraph 2.2, participate in and comply with its obligations under:

(i) the concessionary travel schemes set out in paragraph 2 of the Appendix (*List of Transport, Travel and Other Schemes*); and

(ii) any other concessionary travel scheme which the Franchisee is required to participate in during the Franchise Term pursuant to paragraph 2.1(b),

including by co-operating in the implementation of any smart card technology pursuant to any such concessionary travel scheme; and

(b) subject to paragraph 2.3, if so requested by the Authority, participate in and comply with its prospective obligations under:

(i) any concessionary travel scheme set out in paragraph 2 of the Appendix, the terms of which have been amended since the date of signature of this Agreement; and

(ii) such other concessionary travel schemes as any relevant Local Authority may require or request it to participate in.

2.2 Subject to the terms of the relevant concessionary travel scheme, the Franchisee shall be entitled to cease to participate in any scheme referred to in paragraph 2.1(a) where, in the reasonable opinion of the Authority:

- (a) the Franchisee's continuing participation in such scheme; and/or
- (b) the obligations assumed by the relevant Local Authority in connection therewith,

would fail to render the Franchisee financially no worse off, to the extent required by and in accordance with the reimbursement arrangements applying to such scheme under Part II of the Travel Concession Schemes Regulations 1986 (SI 1986/77) (the "**Regulations**").

2.3 The Authority shall not require the Franchisee to participate in any scheme referred to in paragraph 2.1(b) where the Authority is reasonably satisfied that:

- (a) the reimbursement arrangements with respect to the Franchisee's participation in any such scheme; and/or
- (b) the obligations to be assumed by such Local Authority in connection therewith,

would fail to render the Franchisee financially no worse off as a result of such participation, to the extent required by and in accordance with the reimbursement arrangements applying to such scheme under Part II of the Regulations.

2.4 The Authority shall consult the Franchisee before making any request of the Franchisee to participate in any amended or new concessionary travel scheme pursuant to paragraph 2.1(b) and shall allow the Franchisee a reasonable opportunity to make representations to it with respect to any such participation.

2.5 The Franchisee shall supply to the Authority, in respect of any concessionary travel schemes referred to in paragraph 2.1, such information within such period as the Authority may reasonably require for the purposes of determining whether or not the Franchisee is or will be financially no worse off as a consequence of its participation in any such scheme, and/or the obligations assumed by such Local Authority in connection therewith.

2.6 If the Authority and the Franchisee are unable to agree whether the Franchisee will be financially no worse off, the Authority and the Franchisee may resolve such dispute in accordance with the Dispute Resolution Rules.

3. MULTI-MODAL FARES SCHEMES

3.1 The Franchisee shall:

- (a) subject to paragraph 3.2, participate in and comply with its obligations under:
 - (i) the multi-modal fares schemes set out in paragraph 3 of the Appendix (*List of Transport, Travel and Other Schemes*); and
 - (ii) any other multi-modal fares scheme which the Franchisee is required to participate in during the Franchise Term pursuant to paragraph 3.1(b);

including by co-operating in the implementation of any smart card technology pursuant to any such multi modal fares schemes; and

(b) subject to paragraph 3.3, if so requested by the Authority, participate in and comply with its prospective obligations under:

(i) any multi-modal fares scheme set out in paragraph 3 of the Appendix, the terms of which have been amended since the date of signature of this Agreement; and

(ii) such other multi-modal fares schemes as any relevant Local Authority may require or request it to participate in.

3.2 Subject to the terms of the relevant multi-modal fares scheme, the Franchisee shall be entitled to cease to participate in any scheme referred to in paragraph 3.1(a) where, in the reasonable opinion of the Authority:

(a) the Franchisee's continuing participation in such scheme; and/or

(b) the obligations assumed by the relevant Local Authority in connection therewith,

would fail, by way of distribution of income or otherwise, to render the Franchisee financially no worse off.

3.3 The Authority shall not require the Franchisee to participate in any scheme referred to in paragraph 3.1(b) where the Authority is reasonably satisfied that the Franchisee's participation in any such scheme and/or the obligations to be assumed by the relevant Local Authority in connection therewith, would fail, by way of distribution of income or otherwise, to render the Franchisee financially no worse off.

3.4 In determining whether the Franchisee shall, pursuant to paragraph 3.2, continue to participate or, pursuant to paragraph 3.3, participate in any multi-modal fares scheme, the Authority shall construe the term *financially no worse off* to mean:

(a) in respect of any multi-modal fares scheme set out in paragraph 3 of the Appendix, that the Franchisee incurs no greater financial loss than the financial loss (if any) incurred by the Franchisee at the Franchise Commencement Date under that scheme, as adjusted by reference to any change in the level of prices according to the Retail Prices Index since such date;

(b) in respect of any multi-modal fares scheme which replaces and (in the Authority's reasonable opinion) is reasonably similar to any such scheme as may be set out in paragraph 3 of the Appendix, that the Franchisee incurs no greater financial loss than the financial loss (if any) incurred by the Franchisee at the Franchise Commencement Date under the replaced scheme, as adjusted by reference to any change in the level of prices according to the Retail Prices Index since such date; and

(c) in respect of any multi-modal fares scheme which does not replace or which does replace but which is not (in the Authority's reasonable opinion) reasonably similar to any such scheme or schemes as may be set out in paragraph 3 of the Appendix, such reimbursement arrangements as agreed by the relevant parties to such multi-modal fares schemes (or on failure to agree, as determined by the Authority).

3.5 The Authority shall consult the Franchisee before making any request of the Franchisee to participate in any amended or new multi-modal fares scheme pursuant to paragraph 3.1(b) and shall allow the Franchisee a reasonable opportunity to make representations to it with respect to any such participation.

3.6 The Franchisee shall supply to the Authority, in respect of any multi-modal fares schemes referred to in paragraph 3.1 such information within such period as the Authority may reasonably require for the purposes of determining whether or not the Franchisee is or will be financially no worse off as a consequence of its participation in any such scheme and/or the obligations to be assumed by the relevant Local Authority in connection therewith.

3.7 If the Authority and the Franchisee are unable to agree whether the Franchisee will be financially no worse off, the Authority and the Franchisee may resolve such dispute in accordance with the Dispute Resolution Rules.

4. DISCOUNT FARE SCHEMES

4.1 The Franchisee shall participate in and comply with its obligations under the Discount Fares Schemes set out in paragraph 4 of the Appendix (*List of Transport, Travel and Other Schemes*).

4.2 If the Authority:

- (a) effects, or proposes to effect, an amendment to a Discount Fare Scheme;
- (b) introduces any new Discount Fare Scheme; or
- (c) ceases to approve a Discount Fare Scheme for the purposes of Section 28 of the Act,

such amendment, intended amendment, introduction or cessation of approval shall be a Change.

4.3 The Authority shall provide a reasonable opportunity to the Franchisee to make representations to it before amending, introducing or ceasing to approve a Discount Fare Scheme pursuant to paragraph 4.2.

5. INTER-OPERATOR SCHEMES

5.1 The Franchisee shall participate in and comply with its obligations under and the terms of each of the Inter-Operator Schemes set out in paragraph 5 of the Appendix (*List of Transport, Travel and Other Schemes*).

5.2 The Franchisee agrees to be bound by Parts IV and V of Chapter 4 of the Ticketing and Settlement Agreement and shall not amend, or agree or propose to amend, the Ticketing and Settlement Agreement without the prior written consent of the Authority.

5.3 The Franchisee shall not amend, or agree or propose to amend, any Inter-Operator Scheme other than in accordance with its terms.

5.4 The Franchisee shall:

- (a) provide reasonable notice to the Authority and any affected Executive of any proposal to amend any Inter-Operator Scheme which it intends to make or of which it receives notification and which is reasonably likely materially to affect the provision of the Franchise Services; and
- (b) have regard to the Authority's and such Executive's views in respect of any such proposal.

5.5 If an amendment is effected or proposed to be effected to an Inter-Operator Scheme which requires the consent or approval of the Authority in accordance with the terms thereof, such amendment shall be treated as a Change to the extent and only to the extent that the Franchisee makes a saving as a consequence of such amendment or proposed amendment.

APPENDIX TO SCHEDULE 2.5

List of Transport, Travel and Other Schemes

1. integrated transport schemes

None

2. LOCAL AUTHORITY CONCESSIONARY TRAVEL SCHEMES

2.1 Greater Manchester Passenger Transport Executive: Concessionary Fares Scheme (free, half price or flat fares for elderly, disabled and young persons).

2.2 Merseyside Passenger Transport Executive: Concessionary Fares Scheme (free or half price travel for elderly, disabled and young persons).

2.3 West Yorkshire Passenger Transport Executive: Concessionary Fares Scheme (free or half price travel for senior citizens, blind, disabled and students).

2.4 South Yorkshire Passenger Transport Executive: Concessionary Fares Scheme.

2.5 Tyne & Wear Passenger Transport Executive Concessionary Fare Scheme.

2.6 Education season ticket schemes also operate with the following:

Lancashire county council, Cheshire county council, Derbyshire county council, and Cumbria county council.

2.7 Concessionary schemes with the following bodies:

Durham County Council, North Lincolnshire County Council, North East Lincolnshire County Council, Selby District Council, Hull City Council and Derbyshire County Council.

2.8 Scholar Season Ticket schemes with the following authorities:

North Lincolnshire County Council, North East Lincolnshire County Council, West Yorkshire Passenger Transport Executive, Lincolnshire County Council, North Yorkshire County Council (one scheme on the Whitby branch line and one relating to the Esk Valley Rail Partnership), Northumberland County Council, Hull City Council.

3. MULTI-MODAL FARES SCHEMES

3.1 Greater Manchester Passenger Transport Executive:

- (a) County Cards (Greater Manchester Travel Ltd. season tickets);
- (b) Metrolink tickets (Metro and train);
- (c) Wayfarer tickets (bus and train);
- (d) Day Saver (Off peak Rover ticket with bus, train and tram combinations); and
- (e) Rail Ranger.

- 3.2 Merseyside Passenger Transport Executive:
 - (a) TRIO, TRIO Plus and Saveaway- Multi-modal season tickets and off peak Rovers.
- 3.3 West Yorkshire Passenger Transport Executive:
 - (a) Metro Cards (Multi modal season tickets and off peak Rovers);
 - (b) Metro Dayrover tickets (daily off-peak);
 - (c) Metro Saverstrip (bus/train carnets); and
 - (d) Metrorover tickets (half-price travel for the unemployed).
- 3.4 Tyne & Wear Passenger Transport Executive:
 - (a) Network Travel tickets .
- 3.5 South Yorkshire Passenger Transport Executive
 - (a) Travelmaster (Multi modal Season tickets and off peak Rovers);
 - (b) Railmaster.
- 3.6 Derbyshire County Council
 - (a) Derbyshire Wayfarer - off peak Rover
- 4. DISCOUNT FARE SCHEMES**
 - 4.1 ATOC Disabled Persons Railcard Scheme dated 23 July 1995 between the participants named therein;
 - 4.2 ATOC Young Persons Railcard Scheme dated 23 July 1995 between the participants named therein; and
 - 4.3 ATOC Senior Railcard Scheme dated 23 July 1995 between the participants named therein.
- 5. INTER-OPERATOR SCHEMES**
 - 5.1 ATOC Staff Travel Scheme dated 23 July 1995 between the participants named therein;
 - 5.2 Ticketing and Settlement Agreement;
 - 5.3 ATOC LRT Scheme dated 23 July 1995 between the participants named therein;
 - 5.4 Travelcard Agreement dated 15 October 1995 between London Regional Transport and the parties named therein;
 - 5.5 Through Ticketing (Non-Travelcard) Agreement dated 15 October 1995 between London Regional Transport and the parties named therein; and

- 5.6 National Rail Enquiry Scheme dated 11 June 1996 between the participants named therein.

SCHEDULE 3

Priced Option

1. This Schedule 3 contains the Priced Option agreed as at the date of this Agreement and the terms upon which the Authority may exercise such Priced Option.

2. Clitheroe Services

2.1 It is acknowledged by the parties that in respect of the Passenger Services set out in paragraph 2.2(b) and 2.2(d) of Route B4 (and the specification for Sunday passenger services in Table 3 of Route B4) of the Service Level Commitment (“**Clitheroe Services**”) the Franchisee’s obligations specified in paragraph 11 of Schedule 1.1 (*Service Development*) and Schedule 1.2 (*Operating Obligations*) in respect of such Clitheroe Services shall, if the Priced Option contained in this Schedule 3 is not exercised, cease on the 22 May 2005.

2.2 Notwithstanding the provisions of paragraph 2.1 the Authority may by notice in writing require the Franchisee to continue to provide the Clitheroe Services after the date specified in paragraph 2.1 by calling the Priced Option the terms of which are set out in paragraph 2.3 (“**Clitheroe Priced Option**”). Such notice may specify that the Clitheroe Priced Option is exercised at any time during the Franchise Term including circumstances where the Clitheroe Services have (or will be when the Clitheroe Priced Option is exercised) been withdrawn.

2.3 The Franchisee hereby agrees that (subject to the Franchisee being given sufficient time to obtain the relevant Timetable Development Rights) it will from the date specified in the notice from the Authority issued pursuant to paragraph 2.2 implement the Clitheroe Priced Option in accordance with the following terms:

(a) the Service Level Commitment shall be amended from the date specified in the notice so that it continues to include the specification for the Clitheroe Services;

(b) the provisions of paragraph 11 of Schedule 1.1 (*Service Development*) shall apply with regard to the Clitheroe Services from the date the Service Level Commitment is amended pursuant to paragraph 2.3(a);

(c) the specification for the Passenger Services in respect of the Clitheroe Services will be the same as specified in the Service Level Commitment applicable as at the Franchise Commencement Date; and

(d) the price for exercising the Clitheroe Priced Option shall be the same additional quantum of Franchise Payments per Reporting Period (or part Reporting Period as the case may be) as was paid by the Authority in respect of the provision of the Clitheroe Services from the Franchise Commencement Date until 22 May 2005.

2.4 If the rate of fixed access charges and the variable access charges payable by the Franchisee under the Track Access Agreement and relating to the Timetable Development Rights required for the continued operation of the Clitheroe Services beyond 22 May 2005 is not the same as that payable by the Franchisee under the Track Access Agreement to which the Franchisee is a party on the Franchise Commencement Date then this shall be a Change. The Franchisee agrees to use reasonable endeavours to avoid or minimise such increases in the rate of the fixed access charges and the variable access charges.

2.5 The Authority may at any time call the Clitheroe Priced Option on different terms from that specified in paragraph 2.3 in which case such call of the Clitheroe Priced Option shall be a Change.

SCHEDULE 4

Maintaining and Enhancing Stations, Depots and Trains

Schedule 4.1: Franchise Facilities

Appendix: Station Surveys

Schedule 4.2: Persons with Disabilities and Disability Discrimination

Appendix: Minor Works

SCHEDULE 4.1

Franchise Facilities

1. FRANCHISE FACILITIES SURVEYS PRIOR TO FRANCHISE COMMENCEMENT DATE

1.1 The Franchisee, the Authority and each Executive (in relation to the rolling stock vehicles to be deployed in delivering the Executive Passenger Services and the Executive Stations relevant to each such Executive) shall undertake joint surveys that record:

- (a) the interior and exterior condition of each of the rolling stock vehicles comprising the Train Fleet;
- (b) the facilities available at each Station and their operational status and condition;
- (c) the information provision facilities at each Station and their operational status and condition;
- (d) the facilities available at each Station car park and their operational status and condition;
- (e) the ticket selling facilities of each Station and their operational status and condition;
- (f) the aesthetic condition of each Station and the state of repair of each Station, including the buildings, roofs, station shelters, guttering, glazing, painted surfaces, tiled surfaces, floor surfaces and signage;
- (g) the facilities available at each Depot and their operational status and condition; and
- (h) the aesthetic condition of each Depot and the state of repair of each Depot, including the buildings, roofs, guttering, glazing, painted surfaces, tiled surfaces, floor surfaces and signage.

1.2 Each of the Franchisee, the Authority and each Executive shall be entitled to use photographic or video recording equipment in the carrying out of any survey pursuant to paragraph 1.1, but in any event each of them shall record the results of such surveys in accordance with paragraph 2.

1.3 The surveys shall be completed within 2 months of the date of signature of this Agreement but by no later than the Franchise Commencement Date. The Franchisee shall co-operate with the Authority and each Executive in relation to the surveys in order to, as far as possible, carry out such surveys in conjunction with:

- (a) in respect of the Train Fleet, the owner(s) of any rolling stock vehicles within the Train Fleet;
- (b) in respect of the Stations and Depots, representatives from Network Rail; and
- (c) in respect of the matters referred to in paragraphs 1.3(a) and (b), representatives of the previous franchisee under the Previous Franchise Agreement.

1.4 In respect of the matters referred to in paragraphs 1.1(f) and 1.1(h), each Station and Depot shall be further categorised by the Authority, the relevant Executive and the Franchisee (and in the absence of agreement, the Authority shall reasonably determine the categories) in accordance with the following condition standard:

Condition status at time of survey completion	Description of condition status	Characteristics of condition status
1	Excellent	As new or recently refurbished, no attention required
2	Good	Good aesthetic appearance, a few minor aesthetic issues requiring attention, no concerns as to repair of fabric of building
3	Satisfactory	Generally acceptable appearance, a few minor aesthetic issues requiring attention, a few minor deficiencies in condition where delay in remedying would not damage the fabric of the building
4	Poor	Shabby, aesthetically poor, attention required to a few deficiencies where delay in remedying would increase the cost of repair
5	Extremely poor	Dilapidated, urgent attention required to a significant number of deficiencies or a few deficiencies where delay in remedying would cause significant additional cost

2. THE FRANCHISE FACILITIES BOOK

2.1 Within 1 month of the completion of the last survey pursuant to paragraph 1.1, the Authority, each Executive (in relation to the rolling stock vehicles to be deployed in delivering the Executive Passenger Services and the Executive Stations relevant to each such Executive) and the Franchisee shall agree, or in the absence of such agreement, the Authority shall reasonably determine the extent of the items listed in paragraph 1.1 and their condition.

2.2 The record of the extent and condition of the items listed in paragraph 1.1, as agreed by the parties or determined by the Authority, shall be compiled in and known as the *Franchise Facilities Book*, as more particularly described in paragraph 2.3.

2.3 The Franchise Facilities Book shall contain the following, including:

- (a) a list of:
 - (i) the items identified pursuant to paragraph 1.1;
 - (ii) the items which, from time to time, replace any facilities specified therein; and
 - (iii) any:
 - (A) additional rolling stock vehicles, which are, from time to time, used by the Franchisee in the provision of the Passenger Services; and

- (B) additional facilities, which are, from time to time, made available in the provision of the Franchise Services by the Franchisee at the Stations, the Station car parks and the Depots,

(together the *Franchise Facilities*);

- (b) a summary of the operational status and condition of each Franchise Facility at the date of such facility's inclusion within the Franchise Facilities Book; and
 - (c) a list of Stations in the format set out in the Appendix (*Station Surveys*) and listing the following:
 - (i) the banding of each Station according to each such Station's:
 - (A) size;
 - (B) annual origin and destination revenue; and
 - (C) annual origin and destination journey numbers,by the allocation of a letter, A to F (inclusive), to each such Station in accordance with the criteria used by Network Rail for this purpose from time to time;
 - (ii) the standard of each such Station according to the categories determined pursuant to paragraph 1.4 ; and
 - (iii) in respect of each such Station, the aesthetic condition of the items referred to in paragraph 1.1(f); and
 - (d) a list of Depots and the aesthetic condition of the items listed in paragraph 1.1(h).
- 2.4 The Franchisee shall compile and maintain the Franchise Facilities Book:
- (a) in a fair, true and diligent manner; and
 - (b) in accordance with any reasonable guidance issued to it by the Authority from time to time.

3. OBLIGATIONS DURING THE FRANCHISE TERM

3.1 Within 6 months of the Franchise Commencement Date the Franchisee shall devise a programme for the maintenance and refurbishment of Stations to ensure that:

- (a) in aggregate across the Northern Franchise; and
- (b) in aggregate across each banding of Stations determined pursuant to paragraph 2.3(c)(i),

there is no degradation of the condition of Stations (the *Station Condition Maintenance Programme*) during the Franchise Term from the conditions determined pursuant to paragraph 1.4.

3.2 The Station Condition Maintenance Programme shall identify the categories of work to be undertaken at each Station and the timetable for completing each category of such work.

3.3 Within 6 months of the Franchise Commencement Date the Franchisee shall devise a programme to ensure that maintenance of Depot buildings is carried out in a timely manner and not delayed, so that additional costs are not incurred when maintenance is actually carried out (the ***Depot Condition Maintenance Programme***).

3.4 The Depot Condition Maintenance Programme shall identify the categories of work to be undertaken at each Depot and the timetable for completing each category of such work.

3.5 The Franchisee shall use all reasonable endeavours to procure that each of the Station Condition Maintenance Programme and the Depot Condition Maintenance Programme are implemented in accordance with their respective terms.

3.6 The Franchisee shall review the content and implementation of the Station Condition Maintenance Programme and the Depot Condition Maintenance Programme at least once every 13 Reporting Periods and shall make the results of such review available to the Authority and each Executive at the next Franchise Performance Meeting following completion of such review.

3.7 If and to the extent the Franchisee replaces any of the facilities specified in the Franchise Facilities Book or makes available for use any additional facilities at the locations referred to in paragraph 1.1, the Franchisee shall maintain such replacement or additional facilities in accordance with this Schedule 4.1.

4. FRANCHISE FACILITIES SURVEYS PRIOR TO END OF THE FRANCHISE TERM

4.1 For the purpose of determining prior to end of the Franchise Term:

- (a) the extent and condition of the Franchise Facilities; and
- (b) in the case of the Stations, whether, in aggregate across the Northern Franchise or in aggregate across each banding of Stations determined pursuant to paragraph 2.3(c)(i), there has been any degradation of the condition of the Stations from the conditions determined pursuant to paragraph 1.4,

the Authority, each Executive (in relation to the rolling stock vehicles that have been deployed in delivering the Executive Passenger Services and the Executive Stations relevant to each such Executive) and the Franchisee shall conduct surveys similar to those referred to in paragraph 1 in accordance with the requirements of this paragraph 4.

4.2 The surveys referred to in paragraph 4.1 shall be conducted:

- (a) no more than 12 months prior to and no less than 6 months prior to the Expiry Date; or
- (b) following service of a Termination Notice, within such period as the Authority may reasonably specify.

4.3 Within 1 month of the completion of the last survey pursuant to paragraph 4.1, the Authority, each Executive (in relation to the relevant matters referred to in paragraph 4.1) and the Franchisee shall agree, or in the absence of such agreement, the Authority shall reasonably determine:

- (a) the extent and prevailing condition of the Franchise Facilities, including:

- (i) in respect of each Station and Depot, the prevailing condition according to the condition standards set out in paragraph 1.4;
 - (ii) in respect of each Station, the aesthetic condition of the items referred to in paragraph 1.1(f); and
 - (iii) in respect of each Depot, the aesthetic condition of the items referred to in paragraph 1.1(h); and
- (b) the banding of each Station according to that Station's:
- (i) size;
 - (ii) annual origin and destination revenue; and
 - (iii) annual origin and destination journey numbers,
- by the allocation of a letter, A to F (inclusive), to each such Station in accordance with the criteria used by Network Rail for this purpose from time to time; and
- (c) the prevailing condition of each Station and Depot according to the condition standards set out in paragraph 1.4.

4.4 It shall be a contravention of this Agreement if there is any degradation, either in aggregate across the Northern Franchise or in aggregate across each banding of Stations determined pursuant to paragraph 2.3(c)(ii), in the conditions of the Stations from the conditions determined pursuant to paragraph 1.4.

APPENDIX TO SCHEDULE 4.1

Station Surveys

Station Categorisation and Condition																														
Category	A					B					C					D					E					F				
Condition	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5
Station name																														
[Station 1]																														
[Station 2]																														
[Station 3]																														
...																														
...																														
...																														
...																														
...																														
[Station X]																														
[Station Y]																														

SCHEDULE 4.2

Persons with Disabilities and Disability Discrimination

1. RELATIONSHIP WITH OTHER OBLIGATIONS RELATING TO PERSONS WITH DISABILITIES

1.1 The Franchisee acknowledges that its obligations in this Schedule 4.2 are in addition to and do not limit its obligations to comply with:

- (a) the DDA;
- (b) any applicable condition(s) in any of its Licences (including in respect of persons with disabilities); and
- (c) any other of the requirements of this Agreement.

1.2 This Schedule 4.2 sets out:

- (a) specific arrangements which apply in respect of physical alterations to stations to facilitate accessibility and use by Disabled Persons; and
- (b) specific obligations of the Franchisee directed at meeting the needs of persons with disabilities.

2. PHYSICAL ALTERATIONS AND ACCESSIBILITY OF STATIONS

2.1 In respect of physical alteration works at stations to facilitate accessibility and use by Disabled Persons, it is acknowledged by the Franchisee that:

- (a) there is limited funding available to the Authority to assist franchisees and/or franchise operators with the carrying out of those works;
- (b) consequently, there is a need for such works to be carried out over a period of time to reflect the availability of funding, and for such works to be prioritised with regard to where there is the greatest need and/or where physical alterations can have the greatest effect; and
- (c) the Authority's national programme of works of physical alterations at stations addresses these issues in a structured way.

2.2 The Franchisee will:

- (a) co-operate reasonably with and assist the Authority in the development and furtherance by the Authority of the programme described in paragraph 2.1(c) by providing to the Authority:
 - (i) information concerning the usage of Stations (including, where and to the extent reasonably practicable, usage of Stations by Disabled Persons); and
 - (ii) advice as to the most economic way in which accessibility for Disabled Persons could, in the Franchisee's reasonable opinion, be improved at Stations;
- (b) co-operate reasonably with other Train Operators and/or Network Rail to seek to ensure that, where it would be advantageous to do so, having regard to the needs of

Disabled Persons, any planned work on the Stations to facilitate accessibility and use by Disabled Persons is, so far as reasonably practicable, co-ordinated with other work to be carried out at the Stations and/or other parts of the network; and

- (c) use all reasonable endeavours to secure sources of grant funding (other than from itself or an Affiliate) for improving accessibility for Disabled Persons at Stations (in addition to any funding secured through the Authority pursuant to paragraph 2.5), including from Local Authorities, local development agencies and the Lottery Commission. The Franchisee shall notify the Authority of:
 - (i) any such additional funding which it secures; and
 - (ii) the terms on which such additional funding has been granted.

2.3 In participating in any multi-modal fares scheme or Integrated Transport Schemes, the Franchisee shall, subject to paragraph 1 and 3 of Schedule 2.5 (*Transport, Travel and Other Schemes*), use all reasonable endeavours to secure, through the planning and development of such scheme, improvements in disabled access to the entrances of any relevant station, including within and in the immediate proximity of such station.

2.4 If, during the Franchise Term:

- (a) the Franchisee has complied with its obligations in Section 21(2)(d) of the DDA (to take such steps as are reasonable to provide a reasonable alternative method of making services at a Station accessible to a Disabled Person) and its obligations in paragraph 2.7 concerning Minor Works; and
- (b) notwithstanding such compliance, the Franchisee reasonably considers it is still required to carry out or procure physical works of alteration at a Station in order to comply with the DDA Requirements in respect of that Station, and, in so carrying out or procuring, would incur expenditure which it would not otherwise have an obligation to incur,

the Franchisee may seek funding from the Authority in respect of that expenditure.

2.5 If the Franchisee seeks funding from the Authority under paragraph 2.4, and demonstrates to the Authority's satisfaction that the criteria in paragraph 2.4 have been satisfied, then the Authority may agree to adjust the amount of Franchise Payments in respect of some or all of the works and/or expenditure. In considering its response to any such request, the Authority will have regard to the availability of funding and the priorities set out in the national programme described in paragraph 2.1(c), together with any other available sources of funding described in paragraph 2.2(c). If and to the extent the Authority agrees to adjust Franchise Payments in accordance with this paragraph 2.5 in any Franchisee Year:

- (a) the Authority shall make such adjustment to the Franchise Payments; and
- (b) the Franchisee shall spend such additional funds:
 - (i) in order to comply with the DDA Requirements referred to in paragraph 2.4(b); and
 - (ii) in accordance with any conditions the Authority may notify the Franchisee of.

2.6 If and to the extent the Franchisee is required to pay any increased access charges as a result of additional expenditure required to be incurred by another station Facility Owner for

the purpose of complying with the DDA Requirements in respect of a station at which the Passenger Services are permitted to call under this Agreement, provided that the Franchisee:

- (a) notifies the Authority within 7 days of becoming aware of any proposal for the increase in such charges (or the works to which they relate); and
- (b) complies with the Authority's reasonable directions regarding the exercise of any rights the Franchisee may have in respect thereof,

the imposition of the increased access charges shall be a Change.

2.7 The Franchisee shall: ^{v vi}

- (a) establish and manage the Minor Works' Budget to fund the carrying out of Minor Works. For the purposes of this paragraph 2.7, **Minor Works** means small scale physical alterations or additions to improve accessibility of Stations to Disabled Persons, not involving substantial works of construction or reconstruction. The Minor Works:
 - (i) may, but shall not necessarily include, the Minor Works described in the Appendix (*Minor Works*);
 - (ii) shall not include any works which Network Rail, the Franchisee or any other person has a separate obligation to carry out, except where:
 - (A) such obligation is an obligation of the Franchisee under the DDA; or
 - (B) the inclusion of such works would lead to the acceleration of the timescale for their completion and the Authority gives its consent pursuant to paragraph 2.7(a)(iii);
 - (iii) shall only include works other than those permitted by paragraphs 2.7(a)(i) and (ii) with the prior consent of the Authority; and
 - (iv) must comply with the standards provided for in the Code of Practice, unless otherwise agreed with the prior consent of the Authority;
- (b) before the start of each Franchisee Year:
 - (i) develop a Minor Works' Programme and consult with the Disabled Persons Transport Advisory Committee, relevant Rail Passenger's Committees and in respect of the Executive Stations each affected Executive in relation thereto;
 - (ii) in conjunction with its activities in paragraph 2.7(b)(i), and, consistent with its obligations under paragraph 2.2(b), liaise with Network Rail and other Train Operators as necessary with regard to the determination and implementation of each Minor Works' Programme; and
 - (iii) following the consultation and liaison described in paragraphs 2.7(b)(i) and (ii), obtain the Authority's prior approval (such approval not to be unreasonably withheld) of each Minor Works' Programme;
- (c) carry out or procure the carrying out of the Minor Works' Programme in each Franchisee Year and in doing so, spend at least the amount of the Minor Works'

Budget for the relevant Franchisee Year in such Franchisee Year (unless otherwise agreed by the Authority);

- (d) report progress to the Authority, and in respect of the Executive Stations each affected Executive, in determining and carrying out the Minor Works' Programme no less than once every 3 Reporting Periods; and
- (e) co-operate, as the Authority may reasonably require, with Network Rail or any other person seeking to carry out or procure Minor Works at the Stations or any other stations.

3. DEALING WITH CLAIMS RELATING TO STATIONS

3.1 If during the Franchise Period the Franchisee receives notification of a claim under the DDA in respect of any alleged non-compliance with the DDA Requirements or otherwise in respect of any Station (a **DDA Claim**) then the Franchisee shall:

- (a) notify the Authority within 7 days of receiving notification of the DDA Claim. The Franchisee shall at the same time notify the Authority of any reasonable alternative methods of making services at the Station accessible to Disabled Persons that it has considered and/or put in place pursuant to Section 21(2)(d) of the DDA;
- (b) if required by the Authority, defend the DDA Claim or any aspect of the DDA Claim (which may include appealing the judgment). The Authority will, subject to paragraph 3.4, pay the Franchisee's reasonable costs of:
 - (i) any defence or appeal required by the Authority; and/or
 - (ii) compliance with the Authority's instructions in accordance with paragraph 3.1(c); and
- (c) act in accordance with the reasonable instructions of the Authority to defend the DDA Claim (or any aspect of it) as required under paragraph 3.1(b) and shall not (without the prior consent of the Authority) settle or enter into any compromise in relation to the DDA Claim (or the relevant aspect of it), including by entering into mediation.

3.2 If, in the reasonable opinion of the Franchisee, it will be more cost effective to settle the DDA Claim rather than act in accordance with the Authority's requirement under paragraph 3.1, it shall produce for the Authority's approval a settlement proposal (the *Settlement Proposal*).

3.3 If the Authority does not accept the Settlement Proposal and still requires the Franchisee to defend the DDA Claim (or any aspect of it) then the Franchisee shall defend the DDA Claim in accordance with paragraph 3.1.

3.4 If the Franchisee is required to defend a DDA Claim where it has submitted a Settlement Proposal to the Authority and an award is made in respect of the DDA Claim in favour of the person bringing it which is higher than the figure set out in the Settlement Proposal, then, subject to paragraph 3.5, the Authority shall pay to the Franchisee:

- (a) the difference between such an award and the figure set out in the Settlement Proposal; and

(b) the further reasonable costs incurred or payable by the Franchisee in defending the DDA Claim, to the extent that such costs have not already been paid by the Authority under paragraph 3.1(b).

3.5 The Authority shall not have any obligation to make the payments described in paragraphs 3.1(b) or 3.4 where it is determined or, if no declaration or determination by the court on this point has been sought or made, the Authority, in its reasonable opinion, considers that the Franchisee has not taken such steps as it is reasonable, in all the circumstances of the case, for it to take to provide a reasonable alternative method of making services at the Station accessible to Disabled Persons.

APPENDIX TO SCHEDULE 4.2

Minor Works

1. Providing additional signage, where it does not currently exist, to allow better way finding around the station by Disabled Persons.
2. Removing:
 - (a) thresholds (above 15 millimetres) which do not comply with the Code of Practice; or
 - (b) less than 3 steps,from the entrances to booking halls or platforms to enable those facilities to have step-free access.
3. Providing contrasting manifestations on glazed areas where contrasting manifestations do not currently exist.
4. Providing additional handrails around the station where handrails do not currently exist and where the Franchisee reasonably believes they may be required by a Disabled Person.
5. Providing new accessible stair nosings where stair nosings do not currently exist.
6. Providing new tactile surfaces, including at the top and bottom of flights of steps (but excluding at platform edges) where tactile surfaces do not currently exist.
7. Providing additional seating that is accessible to Disabled Persons, but not replacing existing seating.
8. Providing induction loops for ticket office windows where induction loops do not currently exist.
9. Replacing non-standard fittings with fittings that are compliant with the Code of Practice in existing disabled toilets, which would include replacing non-standard fittings in respect of toilet bowls and sinks, but would not include making major changes to plumbing or to the dimensions of the toilet area.
10. Providing dropped kerbs at drop off/set down points or station car parks to enable access/egress thereto where dropped kerbs do not currently exist.
11. Marking out existing car-parking bays for use by persons with disabilities which comply with the Code of Practice, where such car parking bays do not currently comply.
12. Providing portable light-weight ramps (and appropriate restraining devices for such ramps) and any required assistance with the use of such ramps. Any such ramps shall be:
 - (a) compliant with the Rail Vehicle Accessibility Regulations 1998; and
 - (b) carried on board trains to provide a method of facilitating access to or egress from a rolling stock vehicle, acknowledging that their use is subject to availability of staff:
 - (i) on the train of which the rolling stock vehicle comprises part; or
 - (ii) at the station.

SCHEDULE 5

Fares

Schedule 5.1:	Purpose, Structure and Construction
Schedule 5.2:	Franchisee's Obligation to Create Fares
Schedule 5.3:	Allocation of Fares to Fares Baskets
Schedule 5.4:	Regulation of Fares Basket Values
Schedule 5.5:	Regulation of Individual Fares and T&WPTE Fares
Schedule 5.6:	Exceeding the Regulated Value, Regulated Price or Regulated Child Price
Schedule 5.7:	Changes to Fares and Fares Regulation
Schedule 5.8:	Fares Regulation Information and Monitoring

SCHEDULE 5.1

Purpose, Structure and Construction

1. PURPOSE OF SCHEDULE 5

Purpose of provisions relating to Creating Fares

1.1 The purpose of Schedule 5.2 (*Franchisee's Obligation to Create Fares*) is to ensure that Protected Fares and PTE Fares (other than T&WPTE Fares) are Created in accordance with the Ticketing and Settlement Agreement and appropriate restrictions are placed on the Franchisee's ability to Create Fares.

Purpose of Fares Regulation

1.2 The purpose of Schedules 5.3 (*Allocation of Fares to Fares Baskets*) to 5.8 (*Fares Regulation Information and Monitoring*) (inclusive) is to provide for the regulation of Fares by:

- (a) the Authority pursuant to Section 28 of the Act; and
- (b) the Executives pursuant to Section 34(6)(c) of the Act.

1.3 For purposes of regulating Fares, each Fare that is to be regulated shall be allocated in accordance with this Schedule 5 to one of the following Fares Baskets:

- (a) the Protected Fares Basket;
- (b) the GMPTE Fares Basket;
- (c) the MPTE Fares Basket;
- (d) the SYPTE Fares Basket;
- (e) the T&WPTE Fares Basket; and
- (f) the WYPTE Fares Basket.

1.4 The regulation of Fares places a limit on the Price or Child Price of each Fare that is allocated to a Fares Basket (other than T&WPTE Fares). The limit on the Price or Child Price of each such Fare is set by reference to:

- (a) the overall increase of Prices and Child Prices of all such Fares in a Fares Basket; and
- (b) the individual increase in Price and Child Price of each such Fare in the Fares Basket.

1.5 Subject to the more detailed provisions of Schedules 5.4 (Regulation of Fares Basket Values) and 5.5 (Regulation of Individual Fares and T&WPTE Fares):

- (a) ***the overall increase of Prices and Child Prices of all Fares in a Fares Basket (other than T&WPTE Fares and WYPTE Fares) may not exceed RPI + 1 per cent. Per annum*** ²⁴

²⁴ Replacement text inserted wef 20 July 2006

- (b) the increase in the Price or the Child Price of any individual Fare in a Fares Basket (other than T&WPTE Fares) may not exceed $RPI + 6$ per cent. per annum; and
- (c) T&WPTE may specify the Prices and Child Prices to be set for T&WPTE Fares and are required to compensate the Franchisee if the overall increase of Prices and Child Prices of all T&WPTE Fares in the T&WPTE Fares Basket is less than $RPI + 1$ per cent. per annum.
- (d) ***the overall increase of Prices and Child Prices of all Fares in the WYPTE Fares Basket may not exceed $RPI + K_{WYPTE}$ per cent per annum where K_{WYPTE} has the value specified in paragraph 4.2 of Schedule 5.4 (Regulation of Fares Basket Values).***²⁵

1.6 The Authority and the Executives may alter these limits, and other aspects of the regulation of Fares, in accordance with the more detailed provisions of Schedule 5.7 (*Changes to Fares and Fares Regulation*).

2. STRUCTURE OF SCHEDULE 5

2.1 Schedule 5.2 (*Franchisee's Obligation to Create Fares*) sets out or refers to the Franchisee's obligations to Create Fares.

2.2 Schedule 5.3 (*Allocation of Fares to Fares Baskets*) sets out the allocation of Fares to Fares Baskets.

2.3 Schedule 5.4 (*Regulation of Fares Basket Values*) sets out the limits applicable to the overall increase in Prices and Child Prices of all Fares in a Fares Basket (other than T&WPTE Fares).

2.4 Schedule 5.5 (*Regulation of Individual Fares and T&WPTE Fares*) sets out the limits applicable to the increase in the Price or Child Price of any individual Fare in a Fares Basket (other than T&WPTE Fares) and sets out the obligations of the Franchisee and T&WPTE in respect of T&WPTE Fares.

2.5 Schedule 5.6 (*Exceeding the Regulated Value, Regulated Price or Regulated Child Price*) sets out the consequences of the Franchisee exceeding:

- (a) the Regulated Value of any Fares Basket (other than the T&WPTE Fares Basket); or
- (b) the Regulated Price or Regulated Child Price of any Fare (other than a T&WPTE Fare).

2.6 Schedule 5.7 (*Changes to Fares and Fares Regulation*) sets out the Authority's and each Executive's ability to vary the forgoing provisions.

2.7 Schedule 5.8 (*Fares Regulation Information and Monitoring*) sets out Fares regulation information and monitoring provisions.

3. CONSTRUCTION

References to "Fare"

3.1 For the purposes of:

²⁵ Text inserted wef 20 July 2006

(a) Schedule 5.2 (*Franchisee's Obligation to Create Fares*), *Fare* shall have the wide meaning given to it in paragraph (b) of that definition; and

(b) Schedules 5.3 (*Allocation of Fares to Fares Baskets*) to 5.8 (*Fares Regulation Information and Monitoring*) (inclusive), **Fare** shall have the narrow meaning given to it in paragraph (a) of that definition.

3.2 References in this Schedule 5 to a Fare shall, except to the extent the context otherwise requires, be construed as references to the Fare which is or can be Created by the Lead Operator for the Flow to which the Fare relates or, if such Flow is not a Compulsory Inter-available Flow, any Fare which the Franchisee has Created or can Create in respect of that Flow as the Authority may specify.

Fares Documents

3.3 In the event of an immaterial inconsistency between the Fares, the maximum Price or Child Price (as the case may be) for any Fare recorded by RSP in 2003 or the 2003 Nominal Ticket Sales:

(a) described in or determined in accordance with this Schedule 5; and

(b) described in the relevant Fares Document,

the relevant Fares Document shall prevail.

3.4 In the event of a material inconsistency between the Fares, the maximum Price or Child Price (as the case may be) for any Fare recorded by RSP in 2003 or the 2003 Nominal Ticket Sales:

(a) described in or determined in accordance with this Schedule 5; and

(b) described in the relevant Fares Document, this Schedule 5 shall prevail. Setting of Child Prices

3.5 Any requirement under this Schedule 5 to set a Child Price in respect of a Fare (other than a T&WPTE Fare) shall be satisfied by the Franchisee Creating either:

(a) a Fare which is only valid for use by persons under the age of 16; or

(b) a Fare which is valid for use:

(i) by any person at a price; and

(ii) only by persons under the age of 16 and at a discounted price relative to the price set pursuant to paragraph 3.5(b)(i).

New Stations

3.6 Subject to paragraph 3.2, the Authority may, in respect of any New Station, and each Executive may, in respect of any New Station within such Executive's Passenger Transport Area, include within the definitions of:

(a) Fares Basket;

(b) Protected Fare;

(c) PTE Fare,

Fares to or from any New Station, on such basis as it may, after consultation with the Franchisee, reasonably determine and references in this Schedule 5 to Fares Basket, Protected Fare, PTE Fare and Fares and other relevant definitions shall be construed accordingly.

SCHEDULE 5.2

Franchisee's Obligation to Create Fares

1. CREATION OF PROTECTED FARES AND PTE FARES

1.1 The Franchisee shall ensure that each Protected Fare and each PTE Fare (other than T&WPTE Fares) has been Created, to the extent it is entitled to do so under the terms of the Ticketing and Settlement Agreement.

1.2 The Franchisee's obligations in relation to the Creation of T&WPTE Fares are, amongst other things, set out in paragraph 3 of Schedule 5.5 (*Regulation of Individual Fares and T&WPTE Fares*).

2. RESTRICTIONS ON CREATION OF FARES

2.1 The Franchisee shall set the Child Price for any Fare so that that Fare may be purchased by or for a person under the age of 16 for an amount which is no greater than the lowest amount that would be paid if that person were the holder of a Young Person's Railcard (as amended or replaced from time to time) and whose purchase was made without condition.

2.2 The Franchisee shall not Create or agree to Create any Fare or Discount Card with a validity of 13 or more months without the consent of the Authority (such consent not to be unreasonably withheld). In relation to T&WPTE Fares, T&WPTE shall not require the Franchisee to do anything which is inconsistent with this paragraph 2.2.

SCHEDULE 5.3

Allocation of Fares to Fares Baskets

1. ALLOCATION OF FARES TO FARES BASKETS

- 1.1 On or prior to the Franchise Commencement Date the Authority shall allocate each Protected Fare and each PTE Fare to the relevant Fares Basket in accordance with this Schedule 5.3.
- 1.2 Subject to paragraph 2:
- (a) every Protected Fare shall be allocated by the Authority to the Protected Fares Basket;
 - (b) every GMPTE Fare shall be allocated by the Authority to the GMPTE Fares Basket;
 - (c) every SYPTE Fare shall be allocated by the Authority to the SYPTE Fares Basket; and
 - (d) every WYPTE Fare shall be allocated by the Authority to the WYPTE Fares Basket.
- 1.3 Every MPTE Fare shall be allocated by the Authority to the MPTE Fares Basket.
- 1.4 Every T&WPTE Fare shall be allocated by the Authority to the T&WPTE Fares Basket.

2. DESIGNATION OF NON-FARES BASKET FARES

- 2.1 On or prior to the Franchise Commencement Date, the Authority shall:
- (a) separately rank, in descending order according to their Gross Revenue for the financial year which ended 31st March 2003:
 - (i) all Protected Fares;
 - (ii) all GMPTE Fares;
 - (iii) all SYPTE Fares; and
 - (iv) all WYPTE Fares;
 - (b) aggregate, following such ranking:
 - (i) those Protected Fares with the lowest Gross Revenue, until the total of the aggregated Gross Revenue of such fares accounts for up to 5 per cent. of the aggregate Reference Revenue of all Protected Fares;
 - (ii) those GMPTE Fares with the lowest Gross Revenue, until the total of the aggregated Gross Revenue of such fares accounts for up to 5 per cent. of the aggregate Reference Revenue of all GMPTE Fares;
 - (iii) those SYPTE Fares with the lowest Gross Revenue, until the total of the aggregated Gross Revenue of such fares accounts for up to 5 per cent. of the aggregate Reference Revenue of all SYPTE Fares; and

- (iv) those WYPTE Fares with the lowest Gross Revenue, until the total of the aggregated Gross Revenue of such fares accounts for up to 5 per cent. of the aggregate Reference Revenue of all WYPTE Fares; and
- (c) designate, following such aggregation:
 - (i) those Protected Fares referred to in paragraph 2.1(b)(i) as Non-Fares Basket Fares;
 - (ii) those GMPTE Fares referred to in paragraph 2.1(b)(ii) as Non-Fares Basket Fares;
 - (iii) those SYPTE Fares referred to in paragraph 2.1(b)(iii) as Non-Fares Basket Fares; and
 - (iv) those WYPTE Fares referred to in paragraph 2.1(b)(iv) as Non-Fares Basket Fares.
- 2.2 Without prejudice to the Authority's and to each Executive's right to require the content of a Fares Basket to change at any time prior to the Franchise Commencement Date, or, thereafter, prior to the commencement of any Fares Setting Round pursuant to paragraph 1 of Schedule 5.7 (*Changes to Fares and Fares Baskets*), any Protected Fare, GMPTE Fare, SYPTE Fare or WYPTE Fare that is designated as a Non-Fares Basket Fare shall not be allocated to the relevant Fares Basket. For the avoidance of doubt, MPTE Fares and T&WPTE Fares shall not be designated as Non-Fares Basket Fares.
- 2.3 The Authority may de-designate any Non-Fares Basket Fare pursuant to paragraphs 1.1 to 1.3 of Schedule 5.7 (*Changes to Fares and Fares Regulation*).
- 2.4 GMPTE, SYPTE or WYPTE may de-designate any relevant Non-Fares Basket Fare pursuant to paragraph 1.1 or 1.3 of Schedule 5.7 (*Changes to Fares and Fares Regulation*).

SCHEDULE 5.4

Regulation of Fares Basket Values

1. VALUE OF FARES BASKET NOT TO EXCEED REGULATED VALUE

The Franchisee shall procure that the Value of a Fares Basket (other than the T&WPTE Fares Basket) at any time in any Fare Year does not exceed its Regulated Value for that Fare Year.

2. VALUE

The Value of a Fares Basket at any time for any Fare Year shall be the aggregate of the Projected Revenue at that time for that Fare Year of each Fare in that Fares Basket.

3. PROJECTED REVENUE

Subject to the provisions of Schedule 5.7 (*Changes to Fares and Fares Regulations*) the Projected Revenue of any Fare for any Fare Year shall be an amount equal to:

$$P \times 2003 \text{ Nominal Ticket Sales}$$

where:

P is the Price or Child Price (as the case may be) of that Fare at that time; and

2003 Nominal Ticket Sales is the number of nominal ticket sales of that Fare for 2003, ascertained as follows:

$$\frac{A}{B}$$

where:

A is the aggregate Gross Revenue recorded by RSP as attributable to sales of that Fare for the financial year which ended 31 March 2003; and

B is the Price or Child Price (as the case may be) for that Fare recorded by RSP in February 2003.

4. REGULATED VALUE

4.1 Subject to the provisions of Schedule 5.7 (*Changes to Fares and Fares Regulations*) the Regulated Value of a Fares Basket for any Fare Year shall be an amount equal to:

$$2003 \text{ Ticket Revenue} \times \text{PPAI}$$

where:

2003 Ticket Revenue is the aggregate Gross Revenue recorded by RSP as attributable to sales of all Fares in that Fare Basket for the financial year which ended 31 March 2003;

PPAI is:

(a) in respect of the Fare Year commencing 1st January 2004, the

Permitted Aggregate Increase for that Fare Year; and

(b) in respect of each Fare Year commencing on or after 1st January 2005, the product of the Permitted Aggregate Increase for each Fare Year between that Fare Year and the Fare Year which begins on 1st January 2004 (inclusively).

4.2²⁶ The Permitted Aggregate Increase in any Fare Year shall be an amount equal to:

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

where:

PAI is the Permitted Aggregate Increase in that Fare Year;

RPI is an amount equal to:

$$\frac{RPI - 1}{RPI - 2}$$

where:

RPI₋₁ is the Retail Prices Index for the July of the calendar year preceding that Fare Year; and

RPI₋₂ is the Retail Prices Index for the July of the calendar year preceding the calendar year referred in the definition of RPI-1; and

k Is an amount equal to:

+3 for each Fares Basket other than the TWPTE Fares Basket and the WYPTE Fares Basket;

+3 for the WYPTE Fares Basket in respect of each Fare Year commencing on or after 1st January 2005 but before 31 December 2006;

+K_{WYPTE} for the WYPTE Fares Basket where K_{WYPTE} in respect of the Fare Year commencing on or after 1 January 2007 is equal to +3.0 and for subsequent Fare Years is equal to +3.0 or such other figure as agreed between the west Yorkshire Passenger Transport Executive and the Franchisee provided that if the value of “K” for each Fares Basket other than the WYPTE Fares Basket is increased by the Authority at any time, the value of K_{WYPTE} shall be increased by an equivalent amount for each relevant Fare Year.

²⁶ As a result of a Notice of Variation issued on 05 August 2011, RP1+3 applies only for Fares Years 2012, 2013, 2014. This amendment will be removed on 1 January 2015 and the original wording then re-instated. For ease of reference the original wording has been retained below in italics.

4.2 *The Permitted Aggregate Increase in any Fare Year shall be an amount equal to:*

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

where:

PAI *is the Permitted Aggregate Increase in that Fare Year;*

RPI *is an amount equal to:*

$$\frac{RPI - 1}{RPI - 2}$$

where:

RPI - 1 *is the Retail Prices Index for the July of the calendar year preceding that Fare Year; and*

RPI - 2 *is the Retail Prices Index for the July of the calendar year preceding the calendar year referred in the definition of RPI-1; and*

*k*²⁷ *Is an amount equal to:*

+1 for each Fares Basket other than the TWYTE Fares Basket and the WYTE Fares Basket;

+1 for the WYTE Fares Basket in respect of each Fare Year commencing on or after 1st January 2005 but before 31 December 2006;

+K_{WYTE} for the WYTE Fares Basket where K_{WYTE} in respect of the Fare Year commencing on or after 1 January 2007 is equal to +3.0 and for subsequent Fare Years is equal to +3.0 or such other figure as agreed between the west Yorkshire Passenger Transport Executive and the Franchisee provided that if the value of “K” for each Fares Basket other than the WYTE Fares Basket is increased by the Authority at any time, the value of K_{WYTE} shall be increased by an equivalent amount for each relevant Fare Year.

5. APPLICATION TO T&WYTE FARES BASKET

For the avoidance of doubt, except as provided in paragraph 3.9 of Schedule 5.5, this Schedule 5.4 shall not apply to the T&WYTE Fares Basket.

²⁷ replacement text inserted wef 20 July 2006.

SCHEDULE 5.5

Regulation of Individual Fares and T&WPTE Fares

1. PRICE OR CHILD PRICE NOT TO EXCEED REGULATED PRICE OR REGULATED CHILD PRICE

The Franchisee shall procure that the Price or Child Price (as the case may be) of:

- (a) any Protected Fare included in the Protected Fares Basket;
- (b) any GMPTE Fare included in the GMPTE Fares Basket;
- (c) any MPTE Fare;
- (d) any SYPTE Fare included in the SYPTE Fares Basket;
- (e) any WYPTE Fare included in the WYPTE Fares Basket,

in any Fare Year does not exceed the Regulated Price or Regulated Child Price (as the case may be) for each such Fare in that Fare Year.

2. REGULATED PRICE

2.1 The Regulated Price or the Regulated Child Price (as the case may be) for any Fare in any Fare Year shall be an amount equal to the greater of:

- (a) Preceding Year Ticket Price + £0.10p ; and
- (b) Preceding Year Ticket Price \times PII

where:

Preceding Year Ticket Price for the Fare Year commencing 1 January 2004, is the maximum Price or Child Price (as the case may be) for that Fare recorded by RSP in 2003 or, for any subsequent Fare Year, the Fare Year preceding that Fare Year, provided that such maximum Price or Child Price (as the case may be) complied with the requirements of this Schedule 5. If such maximum Price or Child Price (as the case may be) did not so comply, then such maximum Price or Child Price (as the case may be) shall be the last Price or Child Price (as the case may be) for such Fare recorded by RSP which did so comply; and

PII²⁸ With the exception of the Regulated Price of Metrocard for which PII shall be 1.0938 for the Fare Year commencing on 1 January 2006, PII is the Permitted Individual Increase in any Fare Year, as determined in accordance with paragraph 2.2.

2.2²⁹ The Permitted Individual Increase in any Fare Year shall be determined in accordance with the following:

²⁸ Replacement text inserted wef 20 July 2006.

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

where:

PII is the Permitted Individual Increase in that Fare Year;

RPI is an amount equal to:

$$\frac{RPI - 1}{RPI - 2}$$

where:

$RPI - 1$ is the Retail Prices Index for the July of the calendar year preceding that Fare Year; and

$RPI - 2$ is the Retail Prices Index for the July of the calendar year preceding the calendar year referred in the definition of $RPI - 1$; and

k is equal to + 3.

2.2 *The Permitted Individual Increase in any Fare Year shall be an amount equal to:*

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

where:

PII is the Permitted Individual Increase in that Fare Year;

RPI is an amount equal to:

$$\frac{RPI - 1}{RPI - 2}$$

where:

$RPI - 1$ is the Retail Prices Index for the July of the calendar year preceding that Fare Year; and

²⁹ As a result of a Notice of Variation issued on 05 August 2011, RP1+3 applies only for Fares Years 2012, 2013, 2014. This amendment will be removed on 1 January 2015 and the original wording then re-instated. For ease of reference the original wording has been retained below in italics.

RPI₋₂ is the Retail Prices Index for the July of the calendar year preceding the calendar year referred in the definition of RPI-1; and

k is equal to + 1.

2.3 Where:

(a) the Franchisee sets the Price or Child Price (as the case may be) of any Protected Fare or PTE Fare (other than a T&WPTE Fare) in any Fare Year; and

(b) the Authority reasonably determines that the Price or Child Price (as the case may be) of such Protected Fare or PTE Fare (other than a T&WPTE Fare) was set solely for the purpose of increasing the value of the Preceding Year Ticket Price in the next Fare Year,

the Preceding Year Ticket Price for the purposes of determining the Regulated Price or the Regulated Child Price (as the case may be) pursuant to paragraph 2.1 in the next Fare Year shall be the maximum Price or Child Price (as the case may be) prior to such setting that complied with the requirements of this Schedule 5, as recorded by RSP in such preceding Fare Year.

3. T&WPTE

3.1 The Franchisee shall comply with its obligations under this paragraph 3, when Creating or setting the Price or Child Price for any T&WPTE Fare or otherwise.

3.2 T&WPTE shall specify to the Franchisee all T&WPTE Fares and the Price and Child Price of all T&WPTE Fares and the Franchisee shall, to the extent it is entitled to do so under the terms of the Ticketing and Settlement Agreement, ensure that such T&WPTE Fares are Created and that such Prices and Child Prices are charged in respect of each such T&WPTE Fare. The Price and Child Price of all T&WPTE Fares specified to the Franchisee shall be in multiples of 5p except in the case of a T&WPTE Season Ticket Fare when it shall be in multiples of 10p.

3.3 If from time to time T&WPTE wishes to alter its specification of T&WPTE Fares and/or the Price and Child Price of any T&WPTE Fares it may make a further specification in terms of paragraph 3.2. Once such further specification has been made the Franchisee shall, to the extent it is entitled to do so under the terms of the Ticketing and Settlement Agreement, ensure that such alterations are given effect.

3.4 If T&WPTE wishes to Create Temporary Fares, T&WPTE shall specify to the Franchisee such Temporary Fares and the Price and Child Price thereof and the Franchisee shall thereafter follow the procedures set out in the Ticketing and Settlement Agreement in respect of such Temporary Fares and the Franchisee shall, to the extent it is entitled to do so under the terms of the Ticketing and Settlement Agreement, ensure that such Temporary Fares are Created and that the Prices and Child Prices thereof specified by T&WPTE are charged in respect of such Temporary Fares. The provisions of paragraphs 3.2 to 3.6 of Schedule 1.4 (*Passenger Facing Obligations*) shall apply to Temporary Fares in the same way as they apply to other T&WPTE Fares.

3.5 The Price and Child Price of all T&WPTE Fares specified in the T&WPTE Fares Document shall be deemed to have been specified by T&WPTE to the Franchisee for the purposes of paragraph 3.2 as at the Franchise Commencement Date.

3.6 T&WPTE acknowledges that it is aware of the terms of the Ticketing and Settlement Agreement.

3.7 Nothing in this paragraph 3 shall prevent the giving by the Franchisee of any discount or reduction to which the purchaser of a T&WPTE Fare may be entitled by virtue of:

- (a) presenting a Discount Card issued by the Franchisee or a Train Operator pursuant to any scheme in force at the Franchise Commencement Date or to the operation of Law or any other Discount Card permitted by T&WPTE;
- (b) the Passenger's Charter or the passenger's charter of any other Train Operator; or
- (c) any relevant conditions of carriage.

3.8 The charges for the carriage of bicycles and other accompanied items on T&WPTE Executive Passenger Services and for the parking of cars, bicycles and any other vehicles at car parks at T&WPTE Stations under the control of the Franchisee shall be nil, unless otherwise specified by T&WPTE from time to time.

3.9 Paragraph 3.10 shall apply if at any time the Value of the T&WPTE Fares Basket is less than the Regulated Value of the T&WPTE Fares Basket for that Fare Year. For the purposes of this paragraph 3.9 and paragraph 3.10, the Value and the Regulated Value of the T&WPTE Fares Basket shall be calculated in accordance with Schedule 5.4 (*Regulation of Fares Basket Values*).

3.10 Where this paragraph 3.10 applies, T&WPTE shall compensate the Franchisee for the amount of revenue lost by the Franchisee as a result of the Value of the T&WPTE Fare Basket being less than the Regulated Value of the T&WPTE Fares Basket. In calculating the amount of revenue so lost by the Franchisee consideration shall be given to:

- (a) the actual pattern of travel on the relevant Railway Passenger Services at the relevant time; and
- (b) the effect upon demand for the relevant Railway Passenger Services of the Value of the T&WPTE Fares Basket being less than the Regulated Value of the T&WPTE Fares Basket.

Any compensation payable by T&WPTE under this paragraph 3.10 in respect of any Reporting Period shall be added to the Tyne & Wear Share for such Reporting Period and shall not be a Change. T&WPTE and the Franchisee may resolve any dispute in relation to any compensation payable under this paragraph 3.10 in accordance with the Dispute Resolution Rules.

3.11 Tickets which are valid for travel on Tyne & Wear Metro on the T&WPTE Flows (being those Flows referred to in the definition of T&WPTE Fare) shall be accepted by the Franchisee, without further charge, for travel on the Passenger Services on the T&WPTE Flows.

3.12 T&WPTE shall reimburse the Franchisee with the amount of any additional direct costs (excluding any costs ordinarily incurred as a result of a change in the price of a T&WPTE Fare) incurred by the Franchisee as a result of any change in the specification of a T&WPTE Fare, provided that no such reimbursement shall be made where such reimbursement would in any Franchise Year amount to less than £50,000. Any amounts payable by T&WPTE under this paragraph 3.12 shall be added to the Tyne & Wear Share and shall not be a Change.

3.13 For the avoidance of doubt, the provisions of paragraphs 1 and 2 of this Schedule 5.5 shall not apply to T&WPTE Fares.

4 Through Fares Between City Line Stations And Northern or Wirral Line Stations

Where the Franchisee is the Lead Operator in respect of a Flow in either direction between any City Line Station and any Northern Line Station or Wirral Line Station, the Franchisee shall not set the Price or Child Price of any Fare between any City Line Station and any Northern Line Station or Wirral Line Station in either direction at an amount which is greater than the sum of the Price or Child Price (as the case may be) of the same or equivalent Fare for that part of the journey which is between City Line Stations and the Price or the Child Price (as the case may be) of the same or equivalent Fare for that part of the journey which is between Northern Line Stations and/or Wirral Line Stations.

SCHEDULE 5.6

Exceeding the Regulated Value, Regulated Price or Regulated Child Price

1. EXCEEDING THE REGULATED VALUE

1.1 If the Franchisee is in contravention of paragraph 1 of Schedule 5.4 (*Regulation of Fares Basket Values*) in respect of any Fares Basket:

- (a) it shall reduce the Price or Child Price of any relevant Fare at the next available opportunity and, in any event, at the next Fares Setting Round, so as to comply with the requirements of paragraph 1 of Schedule 5.4 from such date; and
- (b) the Authority may adjust the Franchise Payments by an amount equivalent in its opinion to the sum of:
 - (i) any additional gross revenue accruing to the Franchisee or any person selling Fares on its behalf as a result of the Value of any Fares Basket exceeding its Regulated Value permitted under Schedule 5.4; and
 - (ii) any costs incurred by the Authority in determining the amount of such additional gross revenue.

1.2 Any adjustment to Franchise Payments by the Authority pursuant to paragraph 1.1:

- (a) shall not be treated as a Change; and
- (b) shall be without prejudice to any other rights or remedies of the Authority under the Act or this Agreement in respect of such contravention.

1.3 It shall not be a contravention of paragraph 1 of Schedule 5.4 if and to the extent that:

- (a) the Value of any PTE Fares Basket exceeds its Regulated Value in any Fare Year;
- (b) such excess is caused by the Price or Child Price of any relevant PTE Fare being set pursuant to the terms of the Ticketing and Settlement Agreement by another person (other than an Affiliate); and
- (c) the Franchisee does not have a reasonable opportunity, under any procedure for consulting or notifying Train Operators of alterations to the Prices and Child Prices of Fares under the Ticketing and Settlement Agreement or otherwise, to alter some or all of the other PTE Fares in any relevant PTE Fares Basket so as to avoid the Value of any relevant PTE Fares Basket exceeding its Regulated Value.

1.4 If and to the extent that the circumstances described in paragraph 1.3 prevail in any Fare Year, the Franchisee shall not subsequently increase during that Fare Year, or any subsequent year, the Price or Child Price of any PTE Fare in any relevant PTE Fares Basket which it is entitled to set pursuant to the terms of the Ticketing and Settlement Agreement, unless, following such increase, the Franchisee would, otherwise than under paragraph 1.3, comply with the provisions of paragraph 1 of Schedule 5.4 in relation to the relevant PTE Fares Basket.

1.5 Where circumstances described in paragraph 1.3 prevail in any Fare Year, the Franchisee shall not be required to reduce the Price or Child Price of any other PTE Fare at any time during that Fare Year, or any subsequent year, where such Price or Child Price has previously been set in a Fares Setting Round.

2. EXCEEDING THE REGULATED PRICE OR REGULATED CHILD PRICE

2.1 If the Franchisee is in contravention of paragraph 1 of Schedule 5.5 (*Regulation of Individual Fares and T&WPTE Fares*):

- (a) it shall reduce the Price or Child Price of any relevant Fare at the next available opportunity and, in any event, at the next Fares Setting Round, so as to comply with the requirements of paragraph 1 of Schedule 5.5 from such date; and
- (b) the Authority may adjust Franchise Payments by an amount equivalent in its opinion to the sum of:
 - (i) any additional gross revenue accruing to the Franchisee or any person selling Fares on its behalf as a result of the sale of Fares at Prices and/or Child Prices in excess of the relevant amounts permitted under Schedule 5.5; and
 - (ii) any costs incurred by the Authority in determining the amount of such additional gross revenue.

2.2 Any adjustment to Franchise Payments by the Authority pursuant to paragraph 2.1:

- (a) shall not be a Change; and
- (b) shall be without prejudice to any other rights or remedies of the Authority under the Act or this Agreement in respect of such contravention.

3. APPLICATION TO T&WPTE FARES

For the avoidance of doubt, this Schedule 5.6 shall not apply to the T&WPTE Fares Basket or the T&WPTE Fares.

SCHEDULE 5.7

Changes to Fares and Fares Regulation

1. CHANGES TO FARES BASKETS

1.1 The Authority or the relevant Executive (as the case may be) may require the content of any Fares Basket to change in accordance with the following:

(a) where the Authority (in respect of any Fares Basket) or GMPTE, SYPTE or WYPTE (in respect of the relevant PTE Fares Basket) is not satisfied that the Price or Child Price of any Non-Fares Basket Fare is reasonably constrained by the Price or Child Price of other Fares which:

(i) have been set in respect of the same, or part of the same, Flow as such Non-Fares Basket Fare, or a Flow which is reasonably proximate to the Flow on which such Non-Fares Basket Fare has been set; and

(ii) have been included in the relevant Fares Basket,

the Authority or the relevant Executive (as the case may be) may de-designate any relevant Non-Fares Basket Fare and include such Non-Fares Basket Fare in the relevant Fares Basket;

(b) where any PTE Fare for a Flow has been included in a PTE Fares Basket, the Authority (in respect of any PTE Fares Basket) or GMPTE, SYPTE or WYPTE (in respect of the relevant PTE Fares Basket) may require the inclusion in the relevant PTE Fares Basket of any Weekly Season Ticket, Monthly Season Ticket, Quarterly Season Ticket, Annual Season Ticket, unrestricted Single Fare or unrestricted Return Fare that existed on that Flow in February 2003.

1.2 Where any Protected Fare for a Flow has been included in the Protected Fares Basket, the Authority may require the inclusion in the Protected Fares Basket of any Protected Return Fare or a Protected Weekly Season Ticket that existed on that Flow in February 2003.

1.3 Where the Authority changes the Reference Revenue and/or the Gross Revenue of any Fare pursuant to paragraph 3.1(a) and/or (b) then, in relation to the Fares Basket in which such Fare is or could be included and without limiting paragraphs 1.1 and 1.2:

(a) the Authority may make any of the changes to such Fares Basket contemplated by paragraph 1.1 or 1.2; and/or

(b) the relevant Executive make any of the changes to such Fares Basket contemplated by paragraph 1.1; and/or

(c) the Authority may designate any Fare as a Non-Fares Basket Fare in accordance with the provisions (other than the requirement that such designation occurs on or prior to the Franchise Commencement Date) of paragraph 2 of Schedule 5.3 (*Allocation of Fares to Fares Baskets*).

1.4 The Authority or the relevant Executive (as the case may be) shall serve notice in writing on the Franchisee:

(a) at any time prior to the Franchise Commencement Date; and

(b) thereafter, no later than the commencement of any Fares Setting Round,

to require any Fare to be included in a Fares Basket or designating any Fare as a Non-Fares Basket Fare pursuant to paragraph 1.1 to 1.3 (as applicable).

2. CHANGES TO THE 2003 NOMINAL TICKET SALES

2.1 The Franchisee may, in the event of significant changes to the pattern of travel on the Passenger Services during the Franchise Term, apply to the Authority in relation to any Protected Fares or to the Authority and the relevant Executive in relation to any PTE Fares, for the value of factors *A* and/or *B* in the formula for determining the 2003 Nominal Ticket Sales in paragraph 3 of Schedule 5.4 (*Regulation of Fares Basket Values*) to be adjusted in respect of any such Fares to take account of such changes, such that:

- (a) the value of factor *A* is re-calculated by using the Gross Revenue in respect of the sales of the relevant Fares for the most recently completed period of 12 months ending 31 March; and/or
- (b) the value of factor *B* is recalculated by using the Price or Child Price (as the case may be) of the relevant Fares recorded by RSP in the month of February during such period.

2.2 The Authority and the relevant Executive shall act reasonably in relation to any such application but shall not under any circumstances be obliged to accept any such application in whole or in part. The Authority and the relevant Executive shall be entitled to impose conditions upon any such acceptance, including that the value of both factors *A* and *B* are adjusted and/or that the value of factors *A* and/or *B* are adjusted in respect of any or all Fares in the relevant Fares Basket.

3. CHANGES TO THE REFERENCE REVENUE, GROSS REVENUE, 2003 NOMINAL TICKET SALES AND/OR 2003 TICKET REVENUE

3.1 The Authority may (with the prior approval of the relevant Executive(s) where the alteration affects the regulation of any PTE Fares), by notice in writing served on the Franchisee no later than the date of commencement of any Fares Setting Round, require:

- (a) the Reference Revenue of all Protected Fares, GMPTE Fares, SYPTE Fares and/or WYPTE Fares to be re-calculated for the purposes of paragraph 2 of Schedule 5.3 (*Allocation of Fares to Fares Baskets*) by reference to a different reference period than the financial year ended 31st March 2003; and/or
- (b) the Gross Revenue of all Protected Fares, GMPTE Fares, SYPTE Fares and/or WYPTE Fares to be re-calculated for the purposes of paragraph 2 of Schedule 5.3 (*Allocation of Fares to Fares Baskets*) by reference to a different reference period than the financial year ended 31st March 2003; and/or
- (c) the value of factor *A* in the formula for determining the 2003 Nominal Ticket Sales in paragraph 3 of Schedule 5.4 (*Regulation of Fares Basket Values*) to be re-calculated in respect of any Fare by reference to a different reference period than the financial year ended 31st March 2003; and/or
- (d) the value of factor *B* in the formula for determining the 2003 Nominal Ticket Sales in paragraph 3 of Schedule 5.4 (*Regulation of Fares Basket Values*) to be re-calculated in respect of any Fare by reference to a different reference date other than February 2003; and/or
- (e) the 2003 Ticket Revenue in respect of any Fares Basket to be re-calculated for the purpose of paragraph 4 of Schedule 5.4 (*Regulation of Fares Basket Values*) by reference to a different reference period than the financial year ended 31st March 2003.

3.2 Where, in accordance with paragraph 3.1(e), the 2003 Ticket Revenue in respect of any Fares Basket is re-calculated by reference to a different reference period, the value of “PPAI” in paragraph 4 of Schedule 5.4 (*Regulation of Fares Basket Values*) shall be determined solely by reference to the product of the Permitted Aggregate Increase for each Fare Year beginning after the end of such reference period.

3.3 Any revision pursuant to paragraph 3.1 or 3.2 shall take effect upon commencement of the next Fare Year to commence after the Fares Setting Round referred to in paragraph 3.1.

4. CHANGES TO PRICES

The Franchisee may request permission from the Authority, and in relation to any Executive Passenger Services, the Authority and the relevant Executive from time to time to increase any Prices or Child Prices beyond the levels permitted under Schedules 5.4 (*Regulation of Fares Basket Values*) and 5.5 (*Regulation of Individual Fares and T&WPTE Fares*) in connection with any proposed or actual improvement in any aspect of the Passenger Services relating to such Fares. The Authority and the relevant Executive shall act reasonably in relation to any such request but shall not under any circumstances be obliged to accept any such request in whole or in part.

5. CHANGES TO FARES REGULATION

5.1 The parties agree that the Authority shall (with the prior approval of the relevant Executives(s) where the alteration affects the regulation of any PTE Fares) have the power at any time and on more than one occasion during the Franchise Term to alter the obligations of, and restrictions on, the Franchisee under Schedules 5.2 (*Franchisee’s Obligation to Create Fares*) to 5.8 (*Fares Regulation Information and Monitoring*) inclusive for any Fare Year, or part thereof (including alteration of the value of *k* under paragraph 4.2 of Schedule 5.4 (*Regulation of Fares Basket Values*) and/or paragraph 2.2 of Schedule 5.5 (*Regulation of Individual Fares and T&WPTE Fares*)). The exercise by the Authority of its powers under this paragraph 5 shall be a Change.

5.2 Without limiting paragraph 13 of Schedule 19 (*Other Provisions*), each Executive’s rights to approve the exercise by the Authority of its rights under this paragraph 5 shall be subject always to the Authority’s right under paragraph 13 of Schedule 19 (*Other Provisions*) to implement any proposed revised service specification including in relation to the regulation of Fares relating to the operation of the Executive Passenger Services and the Executive Stations of the relevant Executive.

6. CHANGES TO COMPULSORY INTER-AVAILABLE FLOWS

6.1 Where:

(a) pursuant to Clause 4-7 of the Ticketing and Settlement Agreement, the consent of the Authority is requested for the abolition of a Compulsory Inter-available Flow (the **Reference Flow**) in respect of which any Fare Created would be a PTE Fare or a Protected Fare (the **Reference Fare**); and

(b) a Flow exists, which, in the Authority’s opinion, is substantially similar to the Reference Flow (the **Equivalent Flow**),

the Authority may, as a condition of granting its consent to the abolition of the Reference Flow, by written notice to the Franchisee, require any Fare Created in respect of the Equivalent Flow which has substantially the same characteristics as the Reference Fare to be included in a Fares Basket (the **Equivalent Fare**).

6.2 The Authority shall not issue any such notice in respect of an Equivalent Fare unless the provisions of such notice have first been approved by the Ticketing and Settlement Scheme Council (as defined in the Ticketing and Settlement Agreement) or a delegate of such council.

6.3 The Price and Child Price of any Equivalent Fare in the first Fare Year in which it is to be introduced shall be no greater than the maximum permitted Price or Child Price in that Fare Year of the relevant Reference Fare, as if such Reference Fare had not been abolished.

7. CHANGE OF LEAD OPERATOR / MAJOR FLOW OPERATOR

7.1 The Franchisee shall not without the Authority's prior approval, agree to any request under the Ticketing and Settlement Agreement that it cease to be Lead Operator in respect of any Flow.

7.2 The Franchisee shall inform the Authority if it becomes the Lead Operator in respect of any Flow. Upon the Franchisee becoming the Lead Operator in respect of any Flow, the Authority may, without limiting paragraph 3, exercise its rights under paragraph 3 in relation to the relevant Fares Basket.

7.3 The Franchisee shall inform the Authority if it ceases to be a Major Flow Operator in respect of any Flow.

8. CHANGES TO FARES DOCUMENTS

Following:

- (a) any allocation of Fares to any Fares Basket pursuant to Schedule 5.3 (*Allocation of Fares to Fares Baskets*); or
- (b) any subsequent adjustment thereof pursuant to this Schedule 5.7,

the Authority shall set out in the Protected Fares Document and/or the relevant PTE Fares Document (as the case may be) all Fares then included in the relevant Fares Basket and, as soon as reasonably practicable thereafter, the Authority shall issue or reissue (as the case may be) such Fares Document(s) to the Franchisee and the relevant Executive.

SCHEDULE 5.8

Fares Regulation Information and Monitoring

1. INFORMATION

1.1 The Franchisee shall provide to the Authority (and, in respect of any PTE Fares, to the relevant Executive) by no later than week 12 of each Fares Setting Round, a summary (to such level of detail or generality as the Authority or the relevant Executive (as applicable) may reasonably require) of the Prices and Child Prices of the Protected Fares and/or PTE Fares it is intending to set.

1.2 The Franchisee shall notify, or procure the notification to, the Authority (and, in respect of any PTE Fares, to the relevant Executive) of any proposed increase to the Price or Child Price of any Protected Fare or any PTE Fare and shall provide such details of any such proposal at such times (including before and during each Fares Setting Round) and in such form (including by electronic data transfer) as the Authority (or the relevant Executive) may reasonably request from time to time.

1.3 The Franchisee shall make available, or procure that RSP makes available, to the Authority (and, in respect of any PTE Fares, to the relevant Executive), for any Fares Setting Round during the Franchise Term, such details (including the proposed Prices or Child Prices) of the Initial Permanent Fare of any Protected Fare and/or PTE Fare for each such Fares Setting Round.

2. MONITORING

2.1 The Franchisee shall provide to the Authority (and, in respect of any PTE Fares, to the relevant Executive):

(a) such access as the Authority or the relevant Executive (as applicable) may require to information pertaining to the Prices or Child Prices of Protected Fares and PTE Fares from time to time; and

(b) such further information as the Authority or the relevant Executive may require for the purpose of determining the Gross Revenue of the Franchisee in relation to any particular Fare or Fares or any particular period.

2.2 By no later than week 17 of each Fares Setting Round the Franchisee will provide to the Authority (and, in respect of any PTE Fares, to the relevant Executive) written confirmation from a statutory director of the Franchisee of whether the Franchisee has complied with its obligations under this Schedule 5 during each such Fares Setting Round.

2.3 The Franchisee shall take such action as the Authority may require following receipt of any details from the Franchisee pursuant to paragraph 1 in order to ensure that the Franchisee will comply with the provisions of Schedule 5.3 (*Allocation of Fares to Fares Baskets*) to this Schedule 5.8 (inclusive).

SCHEDULE 6

Farebox Securitisation

1.1 The Franchisee agrees that the Authority may, for the purposes of, or in connection with, any securitisation or proposed securitisation of any passenger revenue and/or any access charges or any other form of indebtedness raised or to be raised against the credit of any such revenues or charges, by notice to the Franchisee, require the Franchisee to:

- (a) divest itself of its rights to receive all or any part of the passenger revenue attributable to any of its Passenger Services now or in the future in favour of the Authority or any person that the Authority may nominate;
- (b) pay to the Authority or any person that the Authority may nominate for the recipient's own use, all or any part of the passenger revenue received in respect of its Passenger Services now or in the future;
- (c) (subject to the consent, if required, of the Regulator and Network Rail) pay to any person that the Authority may nominate, all or any part of access charges payable by it under any Access Agreement to which it and Network Rail are parties; and/or
- (d) enter into and validly execute any such agreements and/or (subject to the consent, if required, of the Regulator and/or Network Rail) amendments to agreements and do all such other acts and things as in the opinion of the Authority may be necessary in connection with any such securitisation and/or raising of indebtedness.

1.2 The Franchisee shall comply with the requirements of any such notice.

1.3 The Authority agrees that any requirement it may impose on the Franchisee pursuant to paragraph 1.1 shall entitle the Franchisee to such adjustment to the Franchise Payments as may be necessary to ensure that the Franchisee is placed in the financial position that it would have been in if such requirement had not been imposed.

SCHEDULE 7

Performance Benchmarks/Key Performance Indicators

Schedule 7.1: Performance Benchmarks

Appendix 1: Cancellations Benchmark Tables

Appendix 2: Capacity Benchmark Tables

Appendix 3: Network Rail Benchmark Tables

Appendix 4: Service Delivery Benchmark Tables

Schedule 7.2: Key Performance Indicators

Appendix: Average Profit Table

SCHEDULE 7.1³⁰

Performance Benchmarks

1. Benchmarks

1.1 The PMU Cancellations Benchmarks are set out parts 1 to 5 of Appendix 1 (Cancellations Benchmark Tables).

1.2 The PMU Capacity Benchmarks are set out in parts 1 to 5 of Appendix 2 (Capacity Benchmark Tables).

1.3 The PMU Network Rail Benchmarks are set out in Appendix 3 (Network Rail Benchmark Tables).

1.4 The PMU Service Delivery Benchmarks are set out in parts 1 to 5 of Appendix 4 (Service Delivery Benchmark Tables).

1.5 The Franchise Wide Cancellations Benchmark is set out in part 6 of Appendix 1 (Cancellations Benchmark Tables).

1.6 The Franchise Wide Capacity Benchmark is set out in part 6 of Appendix 2 (Capacity Benchmark Tables).

1.7 The Franchise Wide Service Delivery Benchmark is set out in part 6 of Appendix 4 (Service Delivery Benchmark Tables).

2. Information Provisions

PMU Cancellations Benchmarks

2.1 At the end of each Reporting Period the Franchisee shall, in accordance with the relevant requirements of Appendix 3 (Operational Information) to Schedule 13.2 (Information), report:

(a) to the Authority in respect of each Performance Management Unit; and

(b) to each affected Executive in respect of the Performance Management Units relevant to such Executive,

the total number of Cancellations or Partial Cancellations in that Reporting Period. In addition to its obligations in this paragraph 2.1, the Franchisee shall, at the Authority's request, provide to the Authority the information required in this paragraph 2.1 in respect of the relevant and/or preceding Reporting Periods on a franchise wide level to enable the Authority to analyse the Franchisee's performance towards the Franchise Wide Cancellations Benchmark.

2.2 For each Reporting Period, the Authority shall calculate a moving annual average of the Franchisee's performance within any Performance Management Unit against the PMU Cancellations Benchmark relevant to such Performance Management Unit in accordance with the following formula:

³⁰ Date of change 27/4/2009

$$\frac{A + D}{13}$$

where:

A is ascertained as follows:

$$\frac{B}{C} \times 100$$

where:

B is the total number of Cancellations or Partial Cancellations of Passenger Services operated within that Performance Management Unit during that Reporting Period, on the basis that:

- (a) a Cancellation shall count as 1;*
- (b) a Partial Cancellation shall count as 0.5; and*
- (c) any Cancellations or Partial Cancellations within that Performance Management Unit during that Reporting Period which were caused by:*
 - (i) the Franchisee's implementation of a Service Recovery Plan during that Reporting Period; or*
 - (ii) the occurrence or continuing effect of a Force Majeure Event, shall be disregarded in determining such total number;*

C is the total number of Passenger Services scheduled to be operated in that Performance Management Unit during that Reporting Period, disregarding any Cancellations or Partial Cancellations within that Performance Management Unit during that Reporting Period which were caused by:

- (a) the Franchisee's implementation of a Service Recovery Plan during that Reporting Period; or*
- (b) the occurrence or continuing effect of a Force Majeure Event; and*

D is the sum of the values of A in each of the 12 preceding Reporting Periods.

PMU Capacity Benchmarks

2.3 *At the end of each Reporting Period the Franchisee shall, in accordance with the relevant requirements of Appendix 3 (Operational Information) to Schedule 13.2 (Information), report:*

- (a) to the Authority in respect of each Performance Management Unit; and*
- (b) to each affected Executive in respect of the Performance Management Units relevant to such Executive,*

the total number of Passenger Services in that Reporting Period operated with less than the passenger carrying capacity specified for each such Passenger Service in the Train Plan. In addition to its obligations in this paragraph 2.3, the Franchisee shall, at the Authority's request, provide to the Authority the information required in this paragraph 2.3 in respect of the relevant and/or preceding Reporting Periods on a franchise wide level to enable the Authority to analyse the Franchisee's performance towards the Franchise Wide Capacity Benchmark.

2.4 *For each Reporting Period, the Authority shall calculate a moving annual average of the Franchisee's performance within any Performance Management Unit against the PMU Capacity Benchmark relevant to such Performance Management Unit in accordance with the following formula:*

$$\frac{A + D}{13}$$

where:

A *is ascertained as follows:*

$$\frac{B}{C} \times 100$$

where:

B *is the total number of Passenger Services in that Reporting Period which were operated within that Performance Management Unit with less than the passenger carrying capacity specified for each such Passenger Service in the Train Plan, disregarding any such Passenger Services which were operated in that way as a result of:*

(a) the Franchisee's implementation of a Service Recovery Plan during that Reporting Period; or

(b) the occurrence or continuing effect of a Force Majeure Event;

C *is the total number of Passenger Services scheduled to be operated in that Performance Management Unit during that Reporting Period, disregarding any Passenger Services operated within that Performance Management Unit with less passenger carrying capacity than the passenger carrying capacity specified for each such Passenger Service in the Train Plan as a result of:*

(a) the Franchisee's implementation of a Service Recovery Plan during that Reporting Period; or

(b) the occurrence or continuing effect of a Force Majeure Event; and

D *is the sum of the values of A in each of the 12 preceding Reporting Periods.*

2.5 *If and to the extent that any Passenger Service is operated with passenger carrying capacity in excess of the passenger carrying capacity specified for that Passenger Service in the Train Plan, the excess capacity shall be disregarded for the purposes of the calculation referred to in paragraph 2.4.*

2.6 *Any Passenger Service that is the subject of a Cancellation or a Partial Cancellation shall be disregarded altogether for the purposes of the calculations referred to in paragraph 2.4.*

PMU Network Rail Benchmarks and PMU Service Delivery Benchmarks

2.7 *At the end of each Reporting Period the Franchisee shall, in accordance with the relevant requirements of Appendix 3 (Operational Information) to Schedule 13.2 (Information), report to the Authority, relating to each Performance Management Unit and to each affected Executive in respect of the Performance Management Units relevant to it, the total number of Minutes Delay:*

- (a) in that Reporting Period attributable to the Franchisee and Network Rail;*
- (b) in that Reporting Period for which the attribution is in dispute between Network Rail and the Franchisee;*
- (c) from the 12 preceding Reporting Periods for which the attribution remains in dispute; and*
- (d) from the 12 preceding Reporting Periods for which disputed attributions have been resolved or determined since the Franchisee's last report pursuant to this paragraph 2.7, and the number of such Minutes Delay attributed to each of the Franchisee and Network Rail as a result of such resolution or determination.*

In addition to its obligations in this paragraph 2.7, the Franchisee shall, at the Authority's request, provide to the Authority the information required in this paragraph 2.7 in respect of the relevant and/or preceding Reporting Periods on a franchise wide level to enable the Authority to analyse the Franchisee's performance towards the Franchise Wide Service Delivery Benchmark.

2.8 *For each Reporting Period, the Authority shall calculate a moving annual average of the Franchisee's performance against:*

(a) the PMU Network Rail Benchmark relating to each Performance Management Unit by calculating the sum of the number of Minutes Delay that are attributable to Network Rail:

- (i) in such Reporting Period; and*
- (ii) in the 12 preceding Reporting Periods,*

and dividing the sum by 13; and

(b) the PMU Service Delivery Benchmark relating to each Performance Management Unit by calculating the sum of the number of Minutes Delay that are attributable to the Franchisee:

- (i) in such Reporting Period; and*
- (ii) in the 12 preceding Reporting Periods,*

and dividing the sum by 13.

2.9 *In performing the calculations pursuant to paragraph 2.8(b), the Authority shall disregard any Minutes Delay that are caused by the occurrence or continuing effect of a Force Majeure Event.*

2.10 *Where the attribution of any Minutes Delay is in dispute between Network Rail and the Franchisee at the end of a Reporting Period the Authority shall, for the purpose of performing the calculations referred to in paragraph 2.8, allocate any disputed Minutes Delay between the Franchisee and Network Rail in the proportions of:*

A to B

where:

A *is the total number of undisputed Minutes Delay from the 12 preceding Reporting Periods that are attributable to the Franchisee; and*

B *is the total number of undisputed Minutes Delay from the 12 preceding Reporting Periods that are attributable to Network Rail.*

2.11 *The Franchisee agrees with the Authority to comply with the requirements of the Track Access Agreement in respect of Minutes Delay attribution.*

First 12 Reporting Periods of the Franchise Term

2.12 *For as long as fewer than 13 Reporting Periods have elapsed following the Franchise Commencement Date, the Authority shall, for the purposes of performing the calculations referred to in paragraphs 2.2, 2.4 and 2.8(b), assume performance at the Target Performance Level in respect of any of the 13 reporting periods that precede the Franchise Commencement Date.*

Calculations

2.13 *The Authority shall perform the calculations referred to in paragraphs 2.2, 2.4 and 2.8 rounded to 2 decimal places, with the midpoint (that is, 11.115) rounded upwards (that is, 11.12).*

Notice of Performance Results

2.14 *As soon as reasonably practicable after the end of each Reporting Period, the Authority shall notify:*

(a) *the Franchisee of the results of the calculations performed pursuant to this paragraph 2; and*

(b) *each Executive of the results of the calculation of the Franchisee's performance in respect of the Performance Management Unit relevant to such Executive.*

Further Performance Information, Records and Documents

2.15 *The Franchisee shall provide to any Executive such further information, records or documents relating to the Franchisee's performance under this Schedule 7.1 as such Executive reasonably requests.*

Meaning of Train Plan

2.16 For the purposes of this Schedule 7.1, Train Plan shall, unless otherwise stated, mean the then current train plan which has been finalised pursuant to paragraph 14.2 of Schedule 1.1 (Service Development) and which includes any amendments thereto:

- (a) pursuant to paragraphs 3.2 and 3.5 of Schedule 1.2 (Operating Obligations); and***
- (b) pursuant to paragraph 4 of Schedule 1.2, where:***
 - (i) such amendments are required as a consequence of Network Rail exercising its rights pursuant to the Track Access Agreement; and***
 - (ii) the Franchisee has complied with the provisions of such paragraph in respect thereof; and***
- (c) pursuant to paragraph 3.3 of Schedule 1.2, where such amendments are agreed by the Authority in accordance with such paragraph.***

3. Benchmark Adjustments

3.1

(a) Each PMU Network Rail Benchmark and each PMU Service Delivery Benchmark for any Reporting Period commencing next after a Passenger Change Date; and

(b) the Franchise Wide Service Delivery Benchmark following each Passenger Change Date prior to the Continuation Review Period and then also for any Reporting Period during the Continuation Review Period which commences after a Passenger Change Date occurring during the Continuation Review Period

shall be revised as follows:

$$NB = OB \times \frac{NM}{OM}$$

where:

NB is the new PMU Network Rail Benchmark or PMU Service Delivery Benchmark or Franchise Wide Service Delivery Benchmark (as the case may be) after revision in accordance with this paragraph 3.1;

OB is the old PMU Network Rail Benchmark or PMU Service Delivery Benchmark or Franchise Wide Service Delivery Benchmark (as the case may be) prior to revision in accordance with this paragraph 3.1;

NM is the scheduled Train Mileage of the Passenger Services in the Timetable immediately after the Passenger Change Date; and

OM is the scheduled Train Mileage of the Passenger Services in the Timetable immediately before the Passenger Change Date.

3.2 If:

- (a) *there is a Change to the Service Level Commitment previously in force; and*
- (b) *the Authority reasonably considers that any revision to:*
 - (i) *any PMU Network Rail Benchmark, any PMU Service Delivery Benchmark and/or the Franchise Wide Service Delivery Benchmark (as the case may be) pursuant to paragraph 3.1 is insufficient; and/or*
 - (ii) *any PMU Cancellations Benchmark, any PMU Capacity Benchmark, the Franchise Wide Cancellations Benchmark and/or the Franchise Wide Capacity Benchmark (as the case may be) is necessary;*

to hold constant the risk of the Franchisee failing to satisfy the requirements of such Benchmark, then the Authority shall make such revisions to such PMU Network Rail Benchmark, PMU Service Delivery Benchmark, the Franchise Wide Service Delivery Benchmark (as the case may be) and/or such PMU Cancellations Benchmark, PMU Capacity Benchmark, the Franchise Wide Cancellations Benchmark and/or the Franchise Wide Capacity Benchmark (as the case may be) as it reasonably considers appropriate to hold constant such risk.

3.3 *The Authority shall notify the Franchisee and each affected Executive of any revision to any Benchmark or Franchise Wide Benchmark (as the case may be) made pursuant to paragraph 3.2 in accordance with the procedural stipulations pursuant to paragraph 5.2 of Schedule 1.1 (Service Development).*

4. Performance Levels

Expectation and Rewards for Good Performance

4.1 *Without prejudice to any other obligation of the Franchisee under this Agreement, the Authority and each Executive (in relation to the Benchmark Tables relevant to each such Executive) separately expect the Franchisee to use all reasonable endeavours to procure that in each Reporting Period during the Franchise Term, the moving annual average of the number of:*

- (a) *Cancellations and Partial Cancellations will be equal to or better than the Target Performance Level specified in the cell relating to each such Reporting Period in each PMU Cancellations Benchmark Table;*
- (b) *Passenger Services operated with less passenger carrying capacity than the passenger carrying capacity specified for each such Passenger Service in the Train Plan will be equal to or better than the Target Performance Level specified in the cell relating to each such Reporting Period in each PMU Capacity Benchmark Table;*
- (c) *Minutes Delay occurring in respect of the Passenger Services which are attributable to Network Rail, will be equal to or better than the Target Performance Level specified in the cell relating to each such Reporting Period in each PMU Network Rail Benchmark Table; and*
- (d) *Minutes Delay occurring in respect of the Passenger Services which are attributable to the Franchisee, will be equal to or better than the Target Performance Level specified in the cell relating to each such Reporting Period in each PMU Service Delivery Benchmark Table.*

4.2 *The rewards for the Franchisee's performance equalling or bettering the Franchise Wide Cancellations Benchmark, the Franchise Wide Capacity Benchmark and the Franchise Wide Service Delivery Benchmark are set out in Schedule 18 (Franchise Continuation Criteria).*

Consequences for Poor Performance

4.3 *The consequences of the Franchisee's performance exceeding (that is, equalling or being worse than) the Improvement Plan Performance Levels relating to each Benchmark are set out in paragraph 3.14 of Schedule 13.2 (Information).*

4.4 *The Franchisee shall, subject to paragraph 1.6 of Schedule 1.2 (Operating Obligations) in respect of paragraph 4.4(c), procure that in each Reporting Period the moving annual average of the number of:*

(a) Cancellations and Partial Cancellations does not exceed (that is, is neither equal to nor worse than) either the Breach Performance Levels or the Default Performance Levels specified in the cells relating to each such Reporting Period in each PMU Cancellations Benchmark Table;

(b) Passenger Services operated with less passenger carrying capacity than the passenger carrying capacity specified for each such Passenger Service in the Train Plan does not exceed (that is, is neither equal to nor worse than) either the Breach Performance Levels or the Default Performance Levels specified in the cells relating to such Reporting Period in each PMU Capacity Benchmark Table;

(c) Minutes Delay occurring in respect of the Passenger Services which are attributable to Network Rail does not exceed (that is, is neither equal to nor worse than) either the Breach Performance Levels or the Default Performance Levels specified in the cells relating to such Reporting Period in each PMU Network Rail Benchmark Table; and

(d) Minutes Delay occurring in respect of the Passenger Services which are attributable to the Franchisee does not exceed (that is, is neither equal to nor worse than) either the Breach Performance Levels or the Default Performance Levels specified in the cells relating to such Reporting Period in each PMU Service Delivery Benchmark Table.

4.5 *Certain consequences of the Franchisee's performance exceeding (that is, equalling or being worse than):*

(a) the Breach Performance Levels relating to each:

(i) PMU Cancellations Benchmark;

(ii) PMU Capacity Benchmark; and

(iii) PMU Service Delivery Benchmark,

are set out in Schedule 10 (Remedies, Termination and Expiry);

(b) the Breach Performance Levels relating to the PMU Network Rail Benchmark are referred to in paragraph 1.6 of Schedule 1.2 (Operating Obligations); and

(c) the Default Performance Levels relating to each Benchmark are set out in Schedule 10.

5. *Right of Assessment /Inspection*

5.1 *The provisions of paragraph 7 of Schedule 11 (Agreement Management Provisions) shall apply to records kept by or on behalf of the Franchisee that relate to any information supplied by the Franchisee to the Authority or each Executive pursuant to paragraphs 2.1, 2.3 and 2.7.*

APPENDIX 1 TO SCHEDULE 7.1

Part 1

PMU Cancellations Benchmark Table - Lancashire & Cumbria

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	0510	1.59%	1.71%	1.83%	1.91%
Year 1	0511	1.59%	1.71%	1.83%	1.91%
Year 1	0512	1.58%	1.70%	1.82%	1.90%
Year 1	0513	1.58%	1.70%	1.82%	1.90%
Year 2	0601	1.58%	1.70%	1.81%	1.89%
Year 2	0602	1.57%	1.69%	1.81%	1.89%
Year 2	0603	1.57%	1.69%	1.80%	1.88%
Year 2	0604	1.57%	1.68%	1.80%	1.88%
Year 2	0605	1.56%	1.68%	1.80%	1.87%
Year 2	0606	1.56%	1.67%	1.79%	1.87%
Year 2	0607	1.55%	1.67%	1.79%	1.86%
Year 2	0608	1.55%	1.67%	1.78%	1.86%
Year 2	0609	1.55%	1.66%	1.78%	1.86%
Year 2	0610	1.54%	1.66%	1.77%	1.85%
Year 2	0611	1.54%	1.65%	1.77%	1.85%
Year 2	0612	1.53%	1.65%	1.76%	1.84%
Year 2	0613	1.53%	1.65%	1.76%	1.84%
Year 3	0701	1.53%	1.64%	1.76%	1.83%
Year 3	0702	1.52%	1.64%	1.75%	1.83%
Year 3	0703	1.52%	1.63%	1.75%	1.82%
Year 3	0704	1.52%	1.63%	1.74%	1.82%
Year 3	0705	1.51%	1.62%	1.74%	1.81%
Year 3	0706	1.51%	1.62%	1.73%	1.81%
Year 3	0707	1.50%	1.62%	1.73%	1.80%
Year 3	0708	1.50%	1.61%	1.72%	1.80%
Year 3	0709	1.50%	1.61%	1.72%	1.79%
Year 3	0710	1.49%	1.60%	1.72%	1.79%
Year 3	0711	1.49%	1.60%	1.71%	1.79%
Year 3	0712	1.48%	1.60%	1.71%	1.78%
Year 3	0713	1.48%	1.59%	1.70%	1.78%
Year 4	0801	1.48%	1.59%	1.70%	1.77%
Year 4	0802	1.47%	1.58%	1.69%	1.77%
Year 4	0803	1.47%	1.58%	1.69%	1.76%
Year 4	0804	1.46%	1.57%	1.68%	1.76%
Year 4	0805	1.46%	1.57%	1.68%	1.75%
Year 4	0806	1.46%	1.57%	1.68%	1.75%
Year 4	0807	1.45%	1.56%	1.67%	1.74%
Year 4	0808	1.45%	1.56%	1.67%	1.74%
Year 4	0809	1.45%	1.55%	1.66%	1.73%
Year 4	0810	1.44%	1.55%	1.66%	1.73%

Part 1 of Appendix 1 to

Schedule 7.1

Lancashire & Cumbria PMU
(Cancellations)

<i>Column 1</i>		<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>
<i>Reporting Period</i>		<i>Target Performance Level (%)</i>	<i>Improvement Plan Performance Level (%)</i>	<i>Breach Performance Level (%)</i>	<i>Default Performance Level (%)</i>
Year 4	0811	1.44%	1.55%	1.65%	1.73%
Year 4	0812	1.43%	1.54%	1.65%	1.72%
Year 4	0813	1.43%	1.54%	1.64%	1.72%
Year 5	0901	1.43%	1.53%	1.64%	1.71%
Year 5	0902	1.42%	1.53%	1.64%	1.71%
Year 5	0903	1.42%	1.53%	1.63%	1.70%
Year 5	0904	1.41%	1.52%	1.63%	1.70%
Year 5	0905	1.41%	1.52%	1.62%	1.69%
Year 5	0906	1.41%	1.51%	1.62%	1.69%
Year 5	0907	1.40%	1.51%	1.61%	1.68%
Year 5	0908	1.40%	1.50%	1.61%	1.68%
Year 5	0909	1.40%	1.50%	1.60%	1.67%
Year 5	0910	1.39%	1.50%	1.60%	1.67%
Year 5	0911	1.39%	1.49%	1.60%	1.67%
Year 5	0912	1.38%	1.49%	1.59%	1.66%
Year 5	0913	1.38%	1.48%	1.59%	1.66%
Year 6	1001	1.38%	1.48%	1.58%	1.65%
Year 6	1002	1.37%	1.48%	1.58%	1.65%
Year 6	1003	1.37%	1.47%	1.57%	1.64%
Year 6	1004	1.36%	1.47%	1.57%	1.64%
Year 6	1005	1.36%	1.46%	1.56%	1.63%
Year 6	1006	1.36%	1.46%	1.56%	1.63%
Year 6	1007	1.35%	1.45%	1.56%	1.62%
Year 6	1008	1.35%	1.45%	1.55%	1.62%
Year 6	1009	1.35%	1.45%	1.55%	1.61%
Year 6	1010	1.34%	1.44%	1.54%	1.61%
Year 6	1011	1.34%	1.44%	1.54%	1.61%
Year 6	1012	1.33%	1.43%	1.53%	1.60%
Year 6	1013	1.33%	1.43%	1.53%	1.60%
Year 7	1101	1.33%	1.43%	1.53%	1.60%
Year 7	1102	1.33%	1.43%	1.53%	1.60%
Year 7	1103	1.33%	1.43%	1.53%	1.60%
Year 7	1104	1.33%	1.43%	1.53%	1.60%
Year 7	1105	1.33%	1.43%	1.53%	1.60%
Year 7	1106	1.33%	1.43%	1.53%	1.60%
Year 7	1107	1.33%	1.43%	1.53%	1.60%
Year 7	1108	1.33%	1.43%	1.53%	1.60%
Year 7	1109	1.33%	1.43%	1.53%	1.60%
Year 7	1110	1.33%	1.43%	1.53%	1.60%
Year 7	1111	1.33%	1.43%	1.53%	1.60%
Year 7	1112	1.33%	1.43%	1.53%	1.60%
Year 7	1113	1.33%	1.43%	1.53%	1.60%
Year 8	1201	1.33%	1.43%	1.53%	1.60%
Year 8	1202	1.33%	1.43%	1.53%	1.60%
Year 8	1203	1.33%	1.43%	1.53%	1.60%

<i>Column 1</i>		<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>
<i>Reporting Period</i>		<i>Target Performance Level (%)</i>	<i>Improvement Plan Performance Level (%)</i>	<i>Breach Performance Level (%)</i>	<i>Default Performance Level (%)</i>
<i>Year 8</i>	<i>1204</i>	<i>1.33%</i>	<i>1.43%</i>	<i>1.53%</i>	<i>1.60%</i>
<i>Year 8</i>	<i>1205</i>	<i>1.33%</i>	<i>1.43%</i>	<i>1.53%</i>	<i>1.60%</i>
<i>Year 8</i>	<i>1206</i>	<i>1.33%</i>	<i>1.43%</i>	<i>1.53%</i>	<i>1.60%</i>

1. START OF THE NORTHERN FRANCHISE

The contents of the above table shall be completed in accordance with the letter of even date made between the parties concerning this Schedule 7.1. The first Reporting Period of the Franchise Term for the purposes of this Benchmark Table will be the Reporting Period which commences on the Franchise Commencement Date (or if the Franchise Commencement Date is not the first day of a Reporting Period, the first Reporting Period which commences next after the Franchise Commencement Date).

Part 2

PMU Cancellations Benchmark Table - Manchester & Liverpool

<i>Column 1</i>		<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>
<i>Reporting Period</i>		<i>Target Performance Level (%)</i>	<i>Improvement Plan Performance Level (%)</i>	<i>Breach Performance Level (%)</i>	<i>Default Performance Level (%)</i>
<i>Year 1</i>	0510	0.94%	1.01%	1.08%	1.13%
<i>Year 1</i>	0511	0.94%	1.01%	1.08%	1.13%
<i>Year 1</i>	0512	0.94%	1.01%	1.08%	1.13%
<i>Year 1</i>	0513	0.94%	1.01%	1.08%	1.12%
<i>Year 2</i>	0601	0.93%	1.00%	1.07%	1.12%
<i>Year 2</i>	0602	0.93%	1.00%	1.07%	1.12%
<i>Year 2</i>	0603	0.93%	1.00%	1.07%	1.12%
<i>Year 2</i>	0604	0.93%	1.00%	1.07%	1.11%
<i>Year 2</i>	0605	0.92%	0.99%	1.06%	1.11%
<i>Year 2</i>	0606	0.92%	0.99%	1.06%	1.11%
<i>Year 2</i>	0607	0.92%	0.99%	1.06%	1.10%
<i>Year 2</i>	0608	0.92%	0.99%	1.06%	1.10%
<i>Year 2</i>	0609	0.92%	0.98%	1.05%	1.10%
<i>Year 2</i>	0610	0.91%	0.98%	1.05%	1.10%
<i>Year 2</i>	0611	0.91%	0.98%	1.05%	1.09%
<i>Year 2</i>	0612	0.91%	0.98%	1.05%	1.09%
<i>Year 2</i>	0613	0.91%	0.97%	1.04%	1.09%
<i>Year 3</i>	0701	0.90%	0.97%	1.04%	1.09%
<i>Year 3</i>	0702	0.90%	0.97%	1.04%	1.08%
<i>Year 3</i>	0703	0.90%	0.97%	1.03%	1.08%
<i>Year 3</i>	0704	0.90%	0.96%	1.03%	1.08%
<i>Year 3</i>	0705	0.90%	0.96%	1.03%	1.07%
<i>Year 3</i>	0706	0.89%	0.96%	1.03%	1.07%
<i>Year 3</i>	0707	0.89%	0.96%	1.02%	1.07%
<i>Year 3</i>	0708	0.89%	0.95%	1.02%	1.07%
<i>Year 3</i>	0709	0.89%	0.95%	1.02%	1.06%
<i>Year 3</i>	0710	0.88%	0.95%	1.02%	1.06%
<i>Year 3</i>	0711	0.88%	0.95%	1.01%	1.06%
<i>Year 3</i>	0712	0.88%	0.95%	1.01%	1.06%
<i>Year 3</i>	0713	0.88%	0.94%	1.01%	1.05%
<i>Year 4</i>	0801	0.87%	0.94%	1.01%	1.05%
<i>Year 4</i>	0802	0.87%	0.94%	1.00%	1.05%
<i>Year 4</i>	0803	0.87%	0.94%	1.00%	1.04%
<i>Year 4</i>	0804	0.87%	0.93%	1.00%	1.04%
<i>Year 4</i>	0805	0.87%	0.93%	1.00%	1.04%
<i>Year 4</i>	0806	0.86%	0.93%	0.99%	1.04%
<i>Year 4</i>	0807	0.86%	0.93%	0.99%	1.03%
<i>Year 4</i>	0808	0.86%	0.92%	0.99%	1.03%
<i>Year 4</i>	0809	0.86%	0.92%	0.98%	1.03%
<i>Year 4</i>	0810	0.85%	0.92%	0.98%	1.02%
<i>Year 4</i>	0811	0.85%	0.92%	0.98%	1.02%
<i>Year 4</i>	0812	0.85%	0.91%	0.98%	1.02%

Part 2 of Appendix 1 to

Schedule 7.1

Manchester & Liverpool PMU
(Cancellations)

<i>Column 1</i>		<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>
<i>Reporting Period</i>		<i>Target Performance Level (%)</i>	<i>Improvement Plan Performance Level (%)</i>	<i>Breach Performance Level (%)</i>	<i>Default Performance Level (%)</i>
<i>Year 4</i>	<i>0813</i>	<i>0.85%</i>	<i>0.91%</i>	<i>0.97%</i>	<i>1.02%</i>
<i>Year 5</i>	<i>0901</i>	<i>0.84%</i>	<i>0.91%</i>	<i>0.97%</i>	<i>1.01%</i>
<i>Year 5</i>	<i>0902</i>	<i>0.84%</i>	<i>0.91%</i>	<i>0.97%</i>	<i>1.01%</i>
<i>Year 5</i>	<i>0903</i>	<i>0.84%</i>	<i>0.90%</i>	<i>0.97%</i>	<i>1.01%</i>
<i>Year 5</i>	<i>0904</i>	<i>0.84%</i>	<i>0.90%</i>	<i>0.96%</i>	<i>1.01%</i>
<i>Year 5</i>	<i>0905</i>	<i>0.84%</i>	<i>0.90%</i>	<i>0.96%</i>	<i>1.00%</i>
<i>Year 5</i>	<i>0906</i>	<i>0.83%</i>	<i>0.90%</i>	<i>0.96%</i>	<i>1.00%</i>
<i>Year 5</i>	<i>0907</i>	<i>0.83%</i>	<i>0.89%</i>	<i>0.96%</i>	<i>1.00%</i>
<i>Year 5</i>	<i>0908</i>	<i>0.83%</i>	<i>0.89%</i>	<i>0.95%</i>	<i>0.99%</i>
<i>Year 5</i>	<i>0909</i>	<i>0.83%</i>	<i>0.89%</i>	<i>0.95%</i>	<i>0.99%</i>
<i>Year 5</i>	<i>0910</i>	<i>0.82%</i>	<i>0.89%</i>	<i>0.95%</i>	<i>0.99%</i>
<i>Year 5</i>	<i>0911</i>	<i>0.82%</i>	<i>0.88%</i>	<i>0.95%</i>	<i>0.99%</i>
<i>Year 5</i>	<i>0912</i>	<i>0.82%</i>	<i>0.88%</i>	<i>0.94%</i>	<i>0.98%</i>
<i>Year 5</i>	<i>0913</i>	<i>0.82%</i>	<i>0.88%</i>	<i>0.94%</i>	<i>0.98%</i>
<i>Year 6</i>	<i>1001</i>	<i>0.82%</i>	<i>0.88%</i>	<i>0.94%</i>	<i>0.98%</i>
<i>Year 6</i>	<i>1002</i>	<i>0.81%</i>	<i>0.87%</i>	<i>0.93%</i>	<i>0.98%</i>
<i>Year 6</i>	<i>1003</i>	<i>0.81%</i>	<i>0.87%</i>	<i>0.93%</i>	<i>0.97%</i>
<i>Year 6</i>	<i>1004</i>	<i>0.81%</i>	<i>0.87%</i>	<i>0.93%</i>	<i>0.97%</i>
<i>Year 6</i>	<i>1005</i>	<i>0.81%</i>	<i>0.87%</i>	<i>0.93%</i>	<i>0.97%</i>
<i>Year 6</i>	<i>1006</i>	<i>0.80%</i>	<i>0.86%</i>	<i>0.92%</i>	<i>0.96%</i>
<i>Year 6</i>	<i>1007</i>	<i>0.80%</i>	<i>0.86%</i>	<i>0.92%</i>	<i>0.96%</i>
<i>Year 6</i>	<i>1008</i>	<i>0.80%</i>	<i>0.86%</i>	<i>0.92%</i>	<i>0.96%</i>
<i>Year 6</i>	<i>1009</i>	<i>0.80%</i>	<i>0.86%</i>	<i>0.92%</i>	<i>0.96%</i>
<i>Year 6</i>	<i>1010</i>	<i>0.79%</i>	<i>0.85%</i>	<i>0.91%</i>	<i>0.95%</i>
<i>Year 6</i>	<i>1011</i>	<i>0.79%</i>	<i>0.85%</i>	<i>0.91%</i>	<i>0.95%</i>
<i>Year 6</i>	<i>1012</i>	<i>0.79%</i>	<i>0.85%</i>	<i>0.91%</i>	<i>0.95%</i>
<i>Year 6</i>	<i>1013</i>	<i>0.79%</i>	<i>0.85%</i>	<i>0.91%</i>	<i>0.95%</i>
<i>Year 7</i>	<i>1101</i>	<i>0.79%</i>	<i>0.85%</i>	<i>0.91%</i>	<i>0.95%</i>
<i>Year 7</i>	<i>1102</i>	<i>0.79%</i>	<i>0.85%</i>	<i>0.91%</i>	<i>0.95%</i>
<i>Year 7</i>	<i>1103</i>	<i>0.79%</i>	<i>0.85%</i>	<i>0.91%</i>	<i>0.95%</i>
<i>Year 7</i>	<i>1104</i>	<i>0.79%</i>	<i>0.85%</i>	<i>0.91%</i>	<i>0.95%</i>
<i>Year 7</i>	<i>1105</i>	<i>0.79%</i>	<i>0.85%</i>	<i>0.91%</i>	<i>0.95%</i>
<i>Year 7</i>	<i>1106</i>	<i>0.79%</i>	<i>0.85%</i>	<i>0.91%</i>	<i>0.95%</i>
<i>Year 7</i>	<i>1107</i>	<i>0.79%</i>	<i>0.85%</i>	<i>0.91%</i>	<i>0.95%</i>
<i>Year 7</i>	<i>1108</i>	<i>0.79%</i>	<i>0.85%</i>	<i>0.91%</i>	<i>0.95%</i>
<i>Year 7</i>	<i>1109</i>	<i>0.79%</i>	<i>0.85%</i>	<i>0.91%</i>	<i>0.95%</i>
<i>Year 7</i>	<i>1110</i>	<i>0.79%</i>	<i>0.85%</i>	<i>0.91%</i>	<i>0.95%</i>
<i>Year 7</i>	<i>1111</i>	<i>0.79%</i>	<i>0.85%</i>	<i>0.91%</i>	<i>0.95%</i>
<i>Year 7</i>	<i>1112</i>	<i>0.79%</i>	<i>0.85%</i>	<i>0.91%</i>	<i>0.95%</i>
<i>Year 7</i>	<i>1113</i>	<i>0.79%</i>	<i>0.85%</i>	<i>0.91%</i>	<i>0.95%</i>
<i>Year 8</i>	<i>1201</i>	<i>0.79%</i>	<i>0.85%</i>	<i>0.91%</i>	<i>0.95%</i>
<i>Year 8</i>	<i>1202</i>	<i>0.79%</i>	<i>0.85%</i>	<i>0.91%</i>	<i>0.95%</i>
<i>Year 8</i>	<i>1203</i>	<i>0.79%</i>	<i>0.85%</i>	<i>0.91%</i>	<i>0.95%</i>
<i>Year 8</i>	<i>1204</i>	<i>0.79%</i>	<i>0.85%</i>	<i>0.91%</i>	<i>0.95%</i>
<i>Year 8</i>	<i>1205</i>	<i>0.79%</i>	<i>0.85%</i>	<i>0.91%</i>	<i>0.95%</i>

<i>Column 1</i>		<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>
<i>Reporting Period</i>		<i>Target Performance Level (%)</i>	<i>Improvement Plan Performance Level (%)</i>	<i>Breach Performance Level (%)</i>	<i>Default Performance Level (%)</i>
<i>Year 8</i>	<i>1206</i>	<i>0.79%</i>	<i>0.85%</i>	<i>0.91%</i>	<i>0.95%</i>

1. START OF THE NORTHERN FRANCHISE

The contents of the above table shall be completed in accordance with the letter of even date made between the parties concerning this Schedule 7.1. The first Reporting Period of the Franchise Term for the purposes of this Benchmark Table will be the Reporting Period which commences on the Franchise Commencement Date (or if the Franchise Commencement Date is not the first day of a Reporting Period, the first Reporting Period which commences next after the Franchise Commencement Date).

Part 3

PMU Cancellations Benchmark Table - South & East Yorkshire

<i>Column 1</i>		<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>
Reporting Period		Target Performance Level (%)	Improvement Plan Performance Level (%)	Breach Performance Level (%)	Default Performance Level (%)
<i>Year 1</i>	0510	1.24%	1.33%	1.43%	1.49%
<i>Year 1</i>	0511	1.24%	1.33%	1.42%	1.49%
<i>Year 1</i>	0512	1.23%	1.33%	1.42%	1.48%
<i>Year 1</i>	0513	1.23%	1.32%	1.42%	1.48%
<i>Year 2</i>	0601	1.23%	1.32%	1.41%	1.47%
<i>Year 2</i>	0602	1.23%	1.32%	1.41%	1.47%
<i>Year 2</i>	0603	1.22%	1.31%	1.41%	1.47%
<i>Year 2</i>	0604	1.22%	1.31%	1.40%	1.46%
<i>Year 2</i>	0605	1.22%	1.31%	1.40%	1.46%
<i>Year 2</i>	0606	1.21%	1.30%	1.40%	1.46%
<i>Year 2</i>	0607	1.21%	1.30%	1.39%	1.45%
<i>Year 2</i>	0608	1.21%	1.30%	1.39%	1.45%
<i>Year 2</i>	0609	1.20%	1.30%	1.39%	1.45%
<i>Year 2</i>	0610	1.20%	1.29%	1.38%	1.44%
<i>Year 2</i>	0611	1.20%	1.29%	1.38%	1.44%
<i>Year 2</i>	0612	1.20%	1.29%	1.38%	1.44%
<i>Year 2</i>	0613	1.19%	1.28%	1.37%	1.43%
<i>Year 3</i>	0701	1.19%	1.28%	1.37%	1.43%
<i>Year 3</i>	0702	1.19%	1.28%	1.36%	1.42%
<i>Year 3</i>	0703	1.18%	1.27%	1.36%	1.42%
<i>Year 3</i>	0704	1.18%	1.27%	1.36%	1.42%
<i>Year 3</i>	0705	1.18%	1.27%	1.35%	1.41%
<i>Year 3</i>	0706	1.17%	1.26%	1.35%	1.41%
<i>Year 3</i>	0707	1.17%	1.26%	1.35%	1.41%
<i>Year 3</i>	0708	1.17%	1.26%	1.34%	1.40%
<i>Year 3</i>	0709	1.17%	1.25%	1.34%	1.40%
<i>Year 3</i>	0710	1.16%	1.25%	1.34%	1.40%
<i>Year 3</i>	0711	1.16%	1.25%	1.33%	1.39%
<i>Year 3</i>	0712	1.16%	1.24%	1.33%	1.39%
<i>Year 3</i>	0713	1.15%	1.24%	1.33%	1.38%
<i>Year 4</i>	0801	1.15%	1.24%	1.32%	1.38%
<i>Year 4</i>	0802	1.15%	1.23%	1.32%	1.38%
<i>Year 4</i>	0803	1.14%	1.23%	1.32%	1.37%
<i>Year 4</i>	0804	1.14%	1.23%	1.31%	1.37%
<i>Year 4</i>	0805	1.14%	1.22%	1.31%	1.37%
<i>Year 4</i>	0806	1.14%	1.22%	1.31%	1.36%
<i>Year 4</i>	0807	1.13%	1.22%	1.30%	1.36%
<i>Year 4</i>	0808	1.13%	1.21%	1.30%	1.36%
<i>Year 4</i>	0809	1.13%	1.21%	1.30%	1.35%
<i>Year 4</i>	0810	1.12%	1.21%	1.29%	1.35%
<i>Year 4</i>	0811	1.12%	1.20%	1.29%	1.34%
<i>Year 4</i>	0812	1.12%	1.20%	1.29%	1.34%

Part 3 of Appendix 1 to

Schedule 7.1

South & East Yorkshire PMU
(Cancellations)

<i>Column 1</i>		<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>
<i>Reporting Period</i>		<i>Target Performance Level (%)</i>	<i>Improvement Plan Performance Level (%)</i>	<i>Breach Performance Level (%)</i>	<i>Default Performance Level (%)</i>
<i>Year 4</i>	<i>0813</i>	<i>1.11%</i>	<i>1.20%</i>	<i>1.28%</i>	<i>1.34%</i>
<i>Year 5</i>	<i>0901</i>	<i>1.11%</i>	<i>1.20%</i>	<i>1.28%</i>	<i>1.33%</i>
<i>Year 5</i>	<i>0902</i>	<i>1.11%</i>	<i>1.19%</i>	<i>1.28%</i>	<i>1.33%</i>
<i>Year 5</i>	<i>0903</i>	<i>1.11%</i>	<i>1.19%</i>	<i>1.27%</i>	<i>1.33%</i>
<i>Year 5</i>	<i>0904</i>	<i>1.10%</i>	<i>1.19%</i>	<i>1.27%</i>	<i>1.32%</i>
<i>Year 5</i>	<i>0905</i>	<i>1.10%</i>	<i>1.18%</i>	<i>1.26%</i>	<i>1.32%</i>
<i>Year 5</i>	<i>0906</i>	<i>1.10%</i>	<i>1.18%</i>	<i>1.26%</i>	<i>1.32%</i>
<i>Year 5</i>	<i>0907</i>	<i>1.09%</i>	<i>1.18%</i>	<i>1.26%</i>	<i>1.31%</i>
<i>Year 5</i>	<i>0908</i>	<i>1.09%</i>	<i>1.17%</i>	<i>1.25%</i>	<i>1.31%</i>
<i>Year 5</i>	<i>0909</i>	<i>1.09%</i>	<i>1.17%</i>	<i>1.25%</i>	<i>1.31%</i>
<i>Year 5</i>	<i>0910</i>	<i>1.08%</i>	<i>1.17%</i>	<i>1.25%</i>	<i>1.30%</i>
<i>Year 5</i>	<i>0911</i>	<i>1.08%</i>	<i>1.16%</i>	<i>1.24%</i>	<i>1.30%</i>
<i>Year 5</i>	<i>0912</i>	<i>1.08%</i>	<i>1.16%</i>	<i>1.24%</i>	<i>1.29%</i>
<i>Year 5</i>	<i>0913</i>	<i>1.08%</i>	<i>1.16%</i>	<i>1.24%</i>	<i>1.29%</i>
<i>Year 6</i>	<i>1001</i>	<i>1.07%</i>	<i>1.15%</i>	<i>1.23%</i>	<i>1.29%</i>
<i>Year 6</i>	<i>1002</i>	<i>1.07%</i>	<i>1.15%</i>	<i>1.23%</i>	<i>1.28%</i>
<i>Year 6</i>	<i>1003</i>	<i>1.07%</i>	<i>1.15%</i>	<i>1.23%</i>	<i>1.28%</i>
<i>Year 6</i>	<i>1004</i>	<i>1.06%</i>	<i>1.14%</i>	<i>1.22%</i>	<i>1.28%</i>
<i>Year 6</i>	<i>1005</i>	<i>1.06%</i>	<i>1.14%</i>	<i>1.22%</i>	<i>1.27%</i>
<i>Year 6</i>	<i>1006</i>	<i>1.06%</i>	<i>1.14%</i>	<i>1.22%</i>	<i>1.27%</i>
<i>Year 6</i>	<i>1007</i>	<i>1.05%</i>	<i>1.13%</i>	<i>1.21%</i>	<i>1.27%</i>
<i>Year 6</i>	<i>1008</i>	<i>1.05%</i>	<i>1.13%</i>	<i>1.21%</i>	<i>1.26%</i>
<i>Year 6</i>	<i>1009</i>	<i>1.05%</i>	<i>1.13%</i>	<i>1.21%</i>	<i>1.26%</i>
<i>Year 6</i>	<i>1010</i>	<i>1.05%</i>	<i>1.12%</i>	<i>1.20%</i>	<i>1.25%</i>
<i>Year 6</i>	<i>1011</i>	<i>1.04%</i>	<i>1.12%</i>	<i>1.20%</i>	<i>1.25%</i>
<i>Year 6</i>	<i>1012</i>	<i>1.04%</i>	<i>1.12%</i>	<i>1.20%</i>	<i>1.25%</i>
<i>Year 6</i>	<i>1013</i>	<i>1.04%</i>	<i>1.11%</i>	<i>1.19%</i>	<i>1.24%</i>
<i>Year 7</i>	<i>1101</i>	<i>1.04%</i>	<i>1.11%</i>	<i>1.19%</i>	<i>1.24%</i>
<i>Year 7</i>	<i>1102</i>	<i>1.04%</i>	<i>1.11%</i>	<i>1.19%</i>	<i>1.24%</i>
<i>Year 7</i>	<i>1103</i>	<i>1.04%</i>	<i>1.11%</i>	<i>1.19%</i>	<i>1.24%</i>
<i>Year 7</i>	<i>1104</i>	<i>1.04%</i>	<i>1.11%</i>	<i>1.19%</i>	<i>1.24%</i>
<i>Year 7</i>	<i>1105</i>	<i>1.04%</i>	<i>1.11%</i>	<i>1.19%</i>	<i>1.24%</i>
<i>Year 7</i>	<i>1106</i>	<i>1.04%</i>	<i>1.11%</i>	<i>1.19%</i>	<i>1.24%</i>
<i>Year 7</i>	<i>1107</i>	<i>1.04%</i>	<i>1.11%</i>	<i>1.19%</i>	<i>1.24%</i>
<i>Year 7</i>	<i>1108</i>	<i>1.04%</i>	<i>1.11%</i>	<i>1.19%</i>	<i>1.24%</i>
<i>Year 7</i>	<i>1109</i>	<i>1.04%</i>	<i>1.11%</i>	<i>1.19%</i>	<i>1.24%</i>
<i>Year 7</i>	<i>1110</i>	<i>1.04%</i>	<i>1.11%</i>	<i>1.19%</i>	<i>1.24%</i>
<i>Year 7</i>	<i>1111</i>	<i>1.04%</i>	<i>1.11%</i>	<i>1.19%</i>	<i>1.24%</i>
<i>Year 7</i>	<i>1112</i>	<i>1.04%</i>	<i>1.11%</i>	<i>1.19%</i>	<i>1.24%</i>
<i>Year 7</i>	<i>1113</i>	<i>1.04%</i>	<i>1.11%</i>	<i>1.19%</i>	<i>1.24%</i>
<i>Year 8</i>	<i>1201</i>	<i>1.04%</i>	<i>1.11%</i>	<i>1.19%</i>	<i>1.24%</i>
<i>Year 8</i>	<i>1202</i>	<i>1.04%</i>	<i>1.11%</i>	<i>1.19%</i>	<i>1.24%</i>
<i>Year 8</i>	<i>1203</i>	<i>1.04%</i>	<i>1.11%</i>	<i>1.19%</i>	<i>1.24%</i>
<i>Year 8</i>	<i>1204</i>	<i>1.04%</i>	<i>1.11%</i>	<i>1.19%</i>	<i>1.24%</i>
<i>Year 8</i>	<i>1205</i>	<i>1.04%</i>	<i>1.11%</i>	<i>1.19%</i>	<i>1.24%</i>

<i>Column 1</i>		<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>
<i>Reporting Period</i>		<i>Target Performance Level (%)</i>	<i>Improvement Plan Performance Level (%)</i>	<i>Breach Performance Level (%)</i>	<i>Default Performance Level (%)</i>
<i>Year 8</i>	<i>1206</i>	<i>1.04%</i>	<i>1.11%</i>	<i>1.19%</i>	<i>1.24%</i>

1. START OF THE NORTHERN FRANCHISE

The contents of the above table shall be completed in accordance with the letter of even date made between the parties concerning this Schedule 7.1. The first Reporting Period of the Franchise Term for the purposes of this Benchmark Table will be the Reporting Period which commences on the Franchise Commencement Date (or if the Franchise Commencement Date is not the first day of a Reporting Period, the first Reporting Period which commences next after the Franchise Commencement Date).

Part 4

PMU Cancellations Benchmark Table - Tyne, Tees & Wear

<i>Column 1</i>		<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>
<i>Reporting Period</i>		<i>Target Performance Level (%)</i>	<i>Improvement Plan Performance Level (%)</i>	<i>Breach Performance Level (%)</i>	<i>Default Performance Level (%)</i>
<i>Year 1</i>	<i>0510</i>	<i>1.04%</i>	<i>1.12%</i>	<i>1.19%</i>	<i>1.25%</i>
<i>Year 1</i>	<i>0511</i>	<i>1.03%</i>	<i>1.11%</i>	<i>1.19%</i>	<i>1.24%</i>
<i>Year 1</i>	<i>0512</i>	<i>1.03%</i>	<i>1.11%</i>	<i>1.19%</i>	<i>1.24%</i>
<i>Year 1</i>	<i>0513</i>	<i>1.03%</i>	<i>1.11%</i>	<i>1.18%</i>	<i>1.24%</i>
<i>Year 2</i>	<i>0601</i>	<i>1.03%</i>	<i>1.10%</i>	<i>1.18%</i>	<i>1.23%</i>
<i>Year 2</i>	<i>0602</i>	<i>1.02%</i>	<i>1.10%</i>	<i>1.18%</i>	<i>1.23%</i>
<i>Year 2</i>	<i>0603</i>	<i>1.02%</i>	<i>1.10%</i>	<i>1.18%</i>	<i>1.23%</i>
<i>Year 2</i>	<i>0604</i>	<i>1.02%</i>	<i>1.10%</i>	<i>1.17%</i>	<i>1.22%</i>
<i>Year 2</i>	<i>0605</i>	<i>1.02%</i>	<i>1.09%</i>	<i>1.17%</i>	<i>1.22%</i>
<i>Year 2</i>	<i>0606</i>	<i>1.01%</i>	<i>1.09%</i>	<i>1.17%</i>	<i>1.22%</i>
<i>Year 2</i>	<i>0607</i>	<i>1.01%</i>	<i>1.09%</i>	<i>1.16%</i>	<i>1.21%</i>
<i>Year 2</i>	<i>0608</i>	<i>1.01%</i>	<i>1.09%</i>	<i>1.16%</i>	<i>1.21%</i>
<i>Year 2</i>	<i>0609</i>	<i>1.01%</i>	<i>1.08%</i>	<i>1.16%</i>	<i>1.21%</i>
<i>Year 2</i>	<i>0610</i>	<i>1.00%</i>	<i>1.08%</i>	<i>1.16%</i>	<i>1.21%</i>
<i>Year 2</i>	<i>0611</i>	<i>1.00%</i>	<i>1.08%</i>	<i>1.15%</i>	<i>1.20%</i>
<i>Year 2</i>	<i>0612</i>	<i>1.00%</i>	<i>1.07%</i>	<i>1.15%</i>	<i>1.20%</i>
<i>Year 2</i>	<i>0613</i>	<i>1.00%</i>	<i>1.07%</i>	<i>1.15%</i>	<i>1.20%</i>
<i>Year 3</i>	<i>0701</i>	<i>0.99%</i>	<i>1.07%</i>	<i>1.14%</i>	<i>1.19%</i>
<i>Year 3</i>	<i>0702</i>	<i>0.99%</i>	<i>1.07%</i>	<i>1.14%</i>	<i>1.19%</i>
<i>Year 3</i>	<i>0703</i>	<i>0.99%</i>	<i>1.06%</i>	<i>1.14%</i>	<i>1.19%</i>
<i>Year 3</i>	<i>0704</i>	<i>0.99%</i>	<i>1.06%</i>	<i>1.14%</i>	<i>1.18%</i>
<i>Year 3</i>	<i>0705</i>	<i>0.98%</i>	<i>1.06%</i>	<i>1.13%</i>	<i>1.18%</i>
<i>Year 3</i>	<i>0706</i>	<i>0.98%</i>	<i>1.06%</i>	<i>1.13%</i>	<i>1.18%</i>
<i>Year 3</i>	<i>0707</i>	<i>0.98%</i>	<i>1.05%</i>	<i>1.13%</i>	<i>1.18%</i>
<i>Year 3</i>	<i>0708</i>	<i>0.98%</i>	<i>1.05%</i>	<i>1.12%</i>	<i>1.17%</i>
<i>Year 3</i>	<i>0709</i>	<i>0.97%</i>	<i>1.05%</i>	<i>1.12%</i>	<i>1.17%</i>
<i>Year 3</i>	<i>0710</i>	<i>0.97%</i>	<i>1.05%</i>	<i>1.12%</i>	<i>1.17%</i>
<i>Year 3</i>	<i>0711</i>	<i>0.97%</i>	<i>1.04%</i>	<i>1.12%</i>	<i>1.16%</i>
<i>Year 3</i>	<i>0712</i>	<i>0.97%</i>	<i>1.04%</i>	<i>1.11%</i>	<i>1.16%</i>
<i>Year 3</i>	<i>0713</i>	<i>0.96%</i>	<i>1.04%</i>	<i>1.11%</i>	<i>1.16%</i>
<i>Year 4</i>	<i>0801</i>	<i>0.96%</i>	<i>1.03%</i>	<i>1.11%</i>	<i>1.15%</i>
<i>Year 4</i>	<i>0802</i>	<i>0.96%</i>	<i>1.03%</i>	<i>1.10%</i>	<i>1.15%</i>
<i>Year 4</i>	<i>0803</i>	<i>0.96%</i>	<i>1.03%</i>	<i>1.10%</i>	<i>1.15%</i>
<i>Year 4</i>	<i>0804</i>	<i>0.95%</i>	<i>1.03%</i>	<i>1.10%</i>	<i>1.15%</i>
<i>Year 4</i>	<i>0805</i>	<i>0.95%</i>	<i>1.02%</i>	<i>1.09%</i>	<i>1.14%</i>
<i>Year 4</i>	<i>0806</i>	<i>0.95%</i>	<i>1.02%</i>	<i>1.09%</i>	<i>1.14%</i>
<i>Year 4</i>	<i>0807</i>	<i>0.95%</i>	<i>1.02%</i>	<i>1.09%</i>	<i>1.14%</i>
<i>Year 4</i>	<i>0808</i>	<i>0.94%</i>	<i>1.02%</i>	<i>1.09%</i>	<i>1.13%</i>
<i>Year 4</i>	<i>0809</i>	<i>0.94%</i>	<i>1.01%</i>	<i>1.08%</i>	<i>1.13%</i>
<i>Year 4</i>	<i>0810</i>	<i>0.94%</i>	<i>1.01%</i>	<i>1.08%</i>	<i>1.13%</i>
<i>Year 4</i>	<i>0811</i>	<i>0.94%</i>	<i>1.01%</i>	<i>1.08%</i>	<i>1.12%</i>
<i>Year 4</i>	<i>0812</i>	<i>0.93%</i>	<i>1.00%</i>	<i>1.07%</i>	<i>1.12%</i>

<i>Column 1</i>		<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>
<i>Reporting Period</i>		<i>Target Performance Level (%)</i>	<i>Improvement Plan Performance Level (%)</i>	<i>Breach Performance Level (%)</i>	<i>Default Performance Level (%)</i>
<i>Year 4</i>	<i>0813</i>	<i>0.93%</i>	<i>1.00%</i>	<i>1.07%</i>	<i>1.12%</i>
<i>Year 5</i>	<i>0901</i>	<i>0.93%</i>	<i>1.00%</i>	<i>1.07%</i>	<i>1.12%</i>
<i>Year 5</i>	<i>0902</i>	<i>0.93%</i>	<i>1.00%</i>	<i>1.07%</i>	<i>1.11%</i>
<i>Year 5</i>	<i>0903</i>	<i>0.92%</i>	<i>0.99%</i>	<i>1.06%</i>	<i>1.11%</i>
<i>Year 5</i>	<i>0904</i>	<i>0.92%</i>	<i>0.99%</i>	<i>1.06%</i>	<i>1.11%</i>
<i>Year 5</i>	<i>0905</i>	<i>0.92%</i>	<i>0.99%</i>	<i>1.06%</i>	<i>1.10%</i>
<i>Year 5</i>	<i>0906</i>	<i>0.92%</i>	<i>0.99%</i>	<i>1.05%</i>	<i>1.10%</i>
<i>Year 5</i>	<i>0907</i>	<i>0.91%</i>	<i>0.98%</i>	<i>1.05%</i>	<i>1.10%</i>
<i>Year 5</i>	<i>0908</i>	<i>0.91%</i>	<i>0.98%</i>	<i>1.05%</i>	<i>1.09%</i>
<i>Year 5</i>	<i>0909</i>	<i>0.91%</i>	<i>0.98%</i>	<i>1.05%</i>	<i>1.09%</i>
<i>Year 5</i>	<i>0910</i>	<i>0.91%</i>	<i>0.97%</i>	<i>1.04%</i>	<i>1.09%</i>
<i>Year 5</i>	<i>0911</i>	<i>0.90%</i>	<i>0.97%</i>	<i>1.04%</i>	<i>1.09%</i>
<i>Year 5</i>	<i>0912</i>	<i>0.90%</i>	<i>0.97%</i>	<i>1.04%</i>	<i>1.08%</i>
<i>Year 5</i>	<i>0913</i>	<i>0.90%</i>	<i>0.97%</i>	<i>1.03%</i>	<i>1.08%</i>
<i>Year 6</i>	<i>1001</i>	<i>0.90%</i>	<i>0.96%</i>	<i>1.03%</i>	<i>1.08%</i>
<i>Year 6</i>	<i>1002</i>	<i>0.89%</i>	<i>0.96%</i>	<i>1.03%</i>	<i>1.07%</i>
<i>Year 6</i>	<i>1003</i>	<i>0.89%</i>	<i>0.96%</i>	<i>1.03%</i>	<i>1.07%</i>
<i>Year 6</i>	<i>1004</i>	<i>0.89%</i>	<i>0.96%</i>	<i>1.02%</i>	<i>1.07%</i>
<i>Year 6</i>	<i>1005</i>	<i>0.89%</i>	<i>0.95%</i>	<i>1.02%</i>	<i>1.06%</i>
<i>Year 6</i>	<i>1006</i>	<i>0.88%</i>	<i>0.95%</i>	<i>1.02%</i>	<i>1.06%</i>
<i>Year 6</i>	<i>1007</i>	<i>0.88%</i>	<i>0.95%</i>	<i>1.01%</i>	<i>1.06%</i>
<i>Year 6</i>	<i>1008</i>	<i>0.88%</i>	<i>0.95%</i>	<i>1.01%</i>	<i>1.06%</i>
<i>Year 6</i>	<i>1009</i>	<i>0.88%</i>	<i>0.94%</i>	<i>1.01%</i>	<i>1.05%</i>
<i>Year 6</i>	<i>1010</i>	<i>0.87%</i>	<i>0.94%</i>	<i>1.01%</i>	<i>1.05%</i>
<i>Year 6</i>	<i>1011</i>	<i>0.87%</i>	<i>0.94%</i>	<i>1.00%</i>	<i>1.05%</i>
<i>Year 6</i>	<i>1012</i>	<i>0.87%</i>	<i>0.93%</i>	<i>1.00%</i>	<i>1.04%</i>
<i>Year 6</i>	<i>1013</i>	<i>0.87%</i>	<i>0.93%</i>	<i>1.00%</i>	<i>1.04%</i>
<i>Year 7</i>	<i>1101</i>	<i>0.87%</i>	<i>0.93%</i>	<i>1.00%</i>	<i>1.04%</i>
<i>Year 7</i>	<i>1102</i>	<i>0.87%</i>	<i>0.93%</i>	<i>1.00%</i>	<i>1.04%</i>
<i>Year 7</i>	<i>1103</i>	<i>0.87%</i>	<i>0.93%</i>	<i>1.00%</i>	<i>1.04%</i>
<i>Year 7</i>	<i>1104</i>	<i>0.87%</i>	<i>0.93%</i>	<i>1.00%</i>	<i>1.04%</i>
<i>Year 7</i>	<i>1105</i>	<i>0.87%</i>	<i>0.93%</i>	<i>1.00%</i>	<i>1.04%</i>
<i>Year 7</i>	<i>1106</i>	<i>0.87%</i>	<i>0.93%</i>	<i>1.00%</i>	<i>1.04%</i>
<i>Year 7</i>	<i>1107</i>	<i>0.87%</i>	<i>0.93%</i>	<i>1.00%</i>	<i>1.04%</i>
<i>Year 7</i>	<i>1108</i>	<i>0.87%</i>	<i>0.93%</i>	<i>1.00%</i>	<i>1.04%</i>
<i>Year 7</i>	<i>1109</i>	<i>0.87%</i>	<i>0.93%</i>	<i>1.00%</i>	<i>1.04%</i>
<i>Year 7</i>	<i>1110</i>	<i>0.87%</i>	<i>0.93%</i>	<i>1.00%</i>	<i>1.04%</i>
<i>Year 7</i>	<i>1111</i>	<i>0.87%</i>	<i>0.93%</i>	<i>1.00%</i>	<i>1.04%</i>
<i>Year 7</i>	<i>1112</i>	<i>0.87%</i>	<i>0.93%</i>	<i>1.00%</i>	<i>1.04%</i>
<i>Year 7</i>	<i>1113</i>	<i>0.87%</i>	<i>0.93%</i>	<i>1.00%</i>	<i>1.04%</i>
<i>Year 8</i>	<i>1201</i>	<i>0.87%</i>	<i>0.93%</i>	<i>1.00%</i>	<i>1.04%</i>
<i>Year 8</i>	<i>1202</i>	<i>0.87%</i>	<i>0.93%</i>	<i>1.00%</i>	<i>1.04%</i>
<i>Year 8</i>	<i>1203</i>	<i>0.87%</i>	<i>0.93%</i>	<i>1.00%</i>	<i>1.04%</i>
<i>Year 8</i>	<i>1204</i>	<i>0.87%</i>	<i>0.93%</i>	<i>1.00%</i>	<i>1.04%</i>
<i>Year 8</i>	<i>1205</i>	<i>0.87%</i>	<i>0.93%</i>	<i>1.00%</i>	<i>1.04%</i>

<i>Column 1</i>		<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>
<i>Reporting Period</i>		<i>Target Performance Level (%)</i>	<i>Improvement Plan Performance Level (%)</i>	<i>Breach Performance Level (%)</i>	<i>Default Performance Level (%)</i>
<i>Year 8</i>	<i>1206</i>	<i>0.87%</i>	<i>0.93%</i>	<i>1.00%</i>	<i>1.04%</i>

1. START OF THE NORTHERN FRANCHISE

The contents of the above table shall be completed in accordance with the letter of even date made between the parties concerning this Schedule 7.1. The first Reporting Period of the Franchise Term for the purposes of this Benchmark Table will be the Reporting Period which commences on the Franchise Commencement Date (or if the Franchise Commencement Date is not the first day of a Reporting Period, the first Reporting Period which commences next after the Franchise Commencement Date).

Part 5

PMU Cancellations Benchmark Table - West & North Yorkshire

<i>Column 1</i>		<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>
Reporting Period		Target Performance Level (%)	Improvement Plan Performance Level (%)	Breach Performance Level (%)	Default Performance Level (%)
<i>Year 1</i>	0510	0.51%	0.54%	0.58%	0.61%
<i>Year 1</i>	0511	0.51%	0.54%	0.58%	0.61%
<i>Year 1</i>	0512	0.50%	0.54%	0.58%	0.60%
<i>Year 1</i>	0513	0.50%	0.54%	0.58%	0.60%
<i>Year 2</i>	0601	0.50%	0.54%	0.58%	0.60%
<i>Year 2</i>	0602	0.50%	0.54%	0.58%	0.60%
<i>Year 2</i>	0603	0.50%	0.54%	0.57%	0.60%
<i>Year 2</i>	0604	0.50%	0.54%	0.57%	0.60%
<i>Year 2</i>	0605	0.50%	0.53%	0.57%	0.60%
<i>Year 2</i>	0606	0.50%	0.53%	0.57%	0.59%
<i>Year 2</i>	0607	0.49%	0.53%	0.57%	0.59%
<i>Year 2</i>	0608	0.49%	0.53%	0.57%	0.59%
<i>Year 2</i>	0609	0.49%	0.53%	0.57%	0.59%
<i>Year 2</i>	0610	0.49%	0.53%	0.56%	0.59%
<i>Year 2</i>	0611	0.49%	0.53%	0.56%	0.59%
<i>Year 2</i>	0612	0.49%	0.52%	0.56%	0.59%
<i>Year 2</i>	0613	0.49%	0.52%	0.56%	0.58%
<i>Year 3</i>	0701	0.49%	0.52%	0.56%	0.58%
<i>Year 3</i>	0702	0.48%	0.52%	0.56%	0.58%
<i>Year 3</i>	0703	0.48%	0.52%	0.56%	0.58%
<i>Year 3</i>	0704	0.48%	0.52%	0.55%	0.58%
<i>Year 3</i>	0705	0.48%	0.52%	0.55%	0.58%
<i>Year 3</i>	0706	0.48%	0.52%	0.55%	0.58%
<i>Year 3</i>	0707	0.48%	0.51%	0.55%	0.57%
<i>Year 3</i>	0708	0.48%	0.51%	0.55%	0.57%
<i>Year 3</i>	0709	0.48%	0.51%	0.55%	0.57%
<i>Year 3</i>	0710	0.47%	0.51%	0.55%	0.57%
<i>Year 3</i>	0711	0.47%	0.51%	0.54%	0.57%
<i>Year 3</i>	0712	0.47%	0.51%	0.54%	0.57%
<i>Year 3</i>	0713	0.47%	0.51%	0.54%	0.57%
<i>Year 4</i>	0801	0.47%	0.51%	0.54%	0.56%
<i>Year 4</i>	0802	0.47%	0.50%	0.54%	0.56%
<i>Year 4</i>	0803	0.47%	0.50%	0.54%	0.56%
<i>Year 4</i>	0804	0.47%	0.50%	0.54%	0.56%
<i>Year 4</i>	0805	0.46%	0.50%	0.53%	0.56%
<i>Year 4</i>	0806	0.46%	0.50%	0.53%	0.56%
<i>Year 4</i>	0807	0.46%	0.50%	0.53%	0.55%
<i>Year 4</i>	0808	0.46%	0.50%	0.53%	0.55%
<i>Year 4</i>	0809	0.46%	0.49%	0.53%	0.55%
<i>Year 4</i>	0810	0.46%	0.49%	0.53%	0.55%
<i>Year 4</i>	0811	0.46%	0.49%	0.53%	0.55%
<i>Year 4</i>	0812	0.46%	0.49%	0.52%	0.55%

<i>Column 1</i>		<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>
<i>Reporting Period</i>		<i>Target Performance Level (%)</i>	<i>Improvement Plan Performance Level (%)</i>	<i>Breach Performance Level (%)</i>	<i>Default Performance Level (%)</i>
<i>Year 4</i>	<i>0813</i>	<i>0.46%</i>	<i>0.49%</i>	<i>0.52%</i>	<i>0.55%</i>
<i>Year 5</i>	<i>0901</i>	<i>0.45%</i>	<i>0.49%</i>	<i>0.52%</i>	<i>0.54%</i>
<i>Year 5</i>	<i>0902</i>	<i>0.45%</i>	<i>0.49%</i>	<i>0.52%</i>	<i>0.54%</i>
<i>Year 5</i>	<i>0903</i>	<i>0.45%</i>	<i>0.49%</i>	<i>0.52%</i>	<i>0.54%</i>
<i>Year 5</i>	<i>0904</i>	<i>0.45%</i>	<i>0.48%</i>	<i>0.52%</i>	<i>0.54%</i>
<i>Year 5</i>	<i>0905</i>	<i>0.45%</i>	<i>0.48%</i>	<i>0.52%</i>	<i>0.54%</i>
<i>Year 5</i>	<i>0906</i>	<i>0.45%</i>	<i>0.48%</i>	<i>0.51%</i>	<i>0.54%</i>
<i>Year 5</i>	<i>0907</i>	<i>0.45%</i>	<i>0.48%</i>	<i>0.51%</i>	<i>0.54%</i>
<i>Year 5</i>	<i>0908</i>	<i>0.45%</i>	<i>0.48%</i>	<i>0.51%</i>	<i>0.53%</i>
<i>Year 5</i>	<i>0909</i>	<i>0.44%</i>	<i>0.48%</i>	<i>0.51%</i>	<i>0.53%</i>
<i>Year 5</i>	<i>0910</i>	<i>0.44%</i>	<i>0.48%</i>	<i>0.51%</i>	<i>0.53%</i>
<i>Year 5</i>	<i>0911</i>	<i>0.44%</i>	<i>0.47%</i>	<i>0.51%</i>	<i>0.53%</i>
<i>Year 5</i>	<i>0912</i>	<i>0.44%</i>	<i>0.47%</i>	<i>0.51%</i>	<i>0.53%</i>
<i>Year 5</i>	<i>0913</i>	<i>0.44%</i>	<i>0.47%</i>	<i>0.51%</i>	<i>0.53%</i>
<i>Year 6</i>	<i>1001</i>	<i>0.44%</i>	<i>0.47%</i>	<i>0.50%</i>	<i>0.53%</i>
<i>Year 6</i>	<i>1002</i>	<i>0.44%</i>	<i>0.47%</i>	<i>0.50%</i>	<i>0.52%</i>
<i>Year 6</i>	<i>1003</i>	<i>0.44%</i>	<i>0.47%</i>	<i>0.50%</i>	<i>0.52%</i>
<i>Year 6</i>	<i>1004</i>	<i>0.43%</i>	<i>0.47%</i>	<i>0.50%</i>	<i>0.52%</i>
<i>Year 6</i>	<i>1005</i>	<i>0.43%</i>	<i>0.47%</i>	<i>0.50%</i>	<i>0.52%</i>
<i>Year 6</i>	<i>1006</i>	<i>0.43%</i>	<i>0.46%</i>	<i>0.50%</i>	<i>0.52%</i>
<i>Year 6</i>	<i>1007</i>	<i>0.43%</i>	<i>0.46%</i>	<i>0.50%</i>	<i>0.52%</i>
<i>Year 6</i>	<i>1008</i>	<i>0.43%</i>	<i>0.46%</i>	<i>0.49%</i>	<i>0.52%</i>
<i>Year 6</i>	<i>1009</i>	<i>0.43%</i>	<i>0.46%</i>	<i>0.49%</i>	<i>0.51%</i>
<i>Year 6</i>	<i>1010</i>	<i>0.43%</i>	<i>0.46%</i>	<i>0.49%</i>	<i>0.51%</i>
<i>Year 6</i>	<i>1011</i>	<i>0.43%</i>	<i>0.46%</i>	<i>0.49%</i>	<i>0.51%</i>
<i>Year 6</i>	<i>1012</i>	<i>0.42%</i>	<i>0.46%</i>	<i>0.49%</i>	<i>0.51%</i>
<i>Year 6</i>	<i>1013</i>	<i>0.42%</i>	<i>0.45%</i>	<i>0.49%</i>	<i>0.51%</i>
<i>Year 7</i>	<i>1101</i>	<i>0.42%</i>	<i>0.45%</i>	<i>0.49%</i>	<i>0.51%</i>
<i>Year 7</i>	<i>1102</i>	<i>0.42%</i>	<i>0.45%</i>	<i>0.49%</i>	<i>0.51%</i>
<i>Year 7</i>	<i>1103</i>	<i>0.42%</i>	<i>0.45%</i>	<i>0.49%</i>	<i>0.51%</i>
<i>Year 7</i>	<i>1104</i>	<i>0.42%</i>	<i>0.45%</i>	<i>0.49%</i>	<i>0.51%</i>
<i>Year 7</i>	<i>1105</i>	<i>0.42%</i>	<i>0.45%</i>	<i>0.49%</i>	<i>0.51%</i>
<i>Year 7</i>	<i>1106</i>	<i>0.42%</i>	<i>0.45%</i>	<i>0.49%</i>	<i>0.51%</i>
<i>Year 7</i>	<i>1107</i>	<i>0.42%</i>	<i>0.45%</i>	<i>0.49%</i>	<i>0.51%</i>
<i>Year 7</i>	<i>1108</i>	<i>0.42%</i>	<i>0.45%</i>	<i>0.49%</i>	<i>0.51%</i>
<i>Year 7</i>	<i>1109</i>	<i>0.42%</i>	<i>0.45%</i>	<i>0.49%</i>	<i>0.51%</i>
<i>Year 7</i>	<i>1110</i>	<i>0.42%</i>	<i>0.45%</i>	<i>0.49%</i>	<i>0.51%</i>
<i>Year 7</i>	<i>1111</i>	<i>0.42%</i>	<i>0.45%</i>	<i>0.49%</i>	<i>0.51%</i>
<i>Year 7</i>	<i>1112</i>	<i>0.42%</i>	<i>0.45%</i>	<i>0.49%</i>	<i>0.51%</i>
<i>Year 7</i>	<i>1113</i>	<i>0.42%</i>	<i>0.45%</i>	<i>0.49%</i>	<i>0.51%</i>
<i>Year 8</i>	<i>1201</i>	<i>0.42%</i>	<i>0.45%</i>	<i>0.49%</i>	<i>0.51%</i>
<i>Year 8</i>	<i>1202</i>	<i>0.42%</i>	<i>0.45%</i>	<i>0.49%</i>	<i>0.51%</i>
<i>Year 8</i>	<i>1203</i>	<i>0.42%</i>	<i>0.45%</i>	<i>0.49%</i>	<i>0.51%</i>
<i>Year 8</i>	<i>1204</i>	<i>0.42%</i>	<i>0.45%</i>	<i>0.49%</i>	<i>0.51%</i>
<i>Year 8</i>	<i>1205</i>	<i>0.42%</i>	<i>0.45%</i>	<i>0.49%</i>	<i>0.51%</i>

<i>Column 1</i>		<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>
<i>Reporting Period</i>		<i>Target Performance Level (%)</i>	<i>Improvement Plan Performance Level (%)</i>	<i>Breach Performance Level (%)</i>	<i>Default Performance Level (%)</i>
<i>Year 8</i>	<i>1206</i>	<i>0.42%</i>	<i>0.45%</i>	<i>0.49%</i>	<i>0.51%</i>

1. START OF THE NORTHERN FRANCHISE

The contents of the above table shall be completed in accordance with the letter of even date made between the parties concerning this Schedule 7.1. The first Reporting Period of the Franchise Term for the purposes of this Benchmark Table will be the Reporting Period which commences on the Franchise Commencement Date (or if the Franchise Commencement Date is not the first day of a Reporting Period, the first Reporting Period which commences next after the Franchise Commencement Date).

Part 6

Franchise Wide Cancellations Benchmark Table

<i>Column 1</i>	<i>Column 2</i>
<i>Reporting Period</i>	<i>Franchise Wide Cancellations Benchmark (%)</i>
<i>Every Reporting Period during the Continuation Review Period</i>	<i>0.91%</i>

1. START OF THE NORTHERN FRANCHISE

The contents of the above table shall be completed in accordance with the letter of even date made between the parties concerning this Schedule 7.1.

APPENDIX 2 TO SCHEDULE 7.1

<i>Column 1</i>		<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>
Reporting Period		Target Performance Level (%)	Improvement Plan Performance Level (%)	Breach Performance Level (%)	Default Performance Level (%)
<i>Year 3</i>	<i>0710</i>	8.23	8.78	9.32	9.68
<i>Year 3</i>	<i>0711</i>	8.21	8.75	9.30	9.66
<i>Year 3</i>	<i>0712</i>	8.19	8.73	9.28	9.64
<i>Year 3</i>	<i>0713</i>	8.17	8.71	9.25	9.62
<i>Year 4</i>	<i>0801</i>	8.15	8.69	9.23	9.59
<i>Year 4</i>	<i>0802</i>	8.13	8.67	9.21	9.57
<i>Year 4</i>	<i>0803</i>	8.10	8.65	9.19	9.55
<i>Year 4</i>	<i>0804</i>	8.08	8.63	9.17	9.53
<i>Year 4</i>	<i>0805</i>	8.06	8.60	9.15	9.51
<i>Year 4</i>	<i>0806</i>	8.04	8.58	9.12	9.49
<i>Year 4</i>	<i>0807</i>	8.02	8.56	9.10	9.46
<i>Year 4</i>	<i>0808</i>	8.00	8.54	9.08	9.44
<i>Year 4</i>	<i>0809</i>	7.97	8.52	9.06	9.42
<i>Year 4</i>	<i>0810</i>	7.95	8.50	9.04	9.40
<i>Year 4</i>	<i>0811</i>	7.93	8.47	9.02	9.38
<i>Year 4</i>	<i>0812</i>	7.91	8.45	8.99	9.36
<i>Year 4</i>	<i>0813</i>	7.89	8.43	8.97	9.33
<i>Year 5</i>	<i>0901</i>	7.87	8.41	8.95	9.31
<i>Year 5</i>	<i>0902</i>	7.84	8.39	8.93	9.29
<i>Year 5</i>	<i>0903</i>	7.82	8.37	8.91	9.27
<i>Year 5</i>	<i>0904</i>	7.80	8.34	8.89	9.25
<i>Year 5</i>	<i>0905</i>	7.78	8.32	8.86	9.23
<i>Year 5</i>	<i>0906</i>	7.76	8.30	8.84	9.21
<i>Year 5</i>	<i>0907</i>	7.74	8.28	8.82	9.18
<i>Year 5</i>	<i>0908</i>	7.71	8.26	8.80	9.16
<i>Year 5</i>	<i>0909</i>	7.69	8.24	8.78	9.14
<i>Year 5</i>	<i>0910</i>	7.67	8.21	8.76	9.12
<i>Year 5</i>	<i>0911</i>	7.65	8.19	8.74	9.10
<i>Year 5</i>	<i>0912</i>	7.63	8.17	8.71	9.08
<i>Year 5</i>	<i>0913</i>	7.61	8.15	8.69	9.05
<i>Year 6</i>	<i>1001</i>	7.59	8.13	8.67	9.03
<i>Year 6</i>	<i>1002</i>	7.56	8.11	8.65	9.01
<i>Year 6</i>	<i>1003</i>	7.54	8.08	8.63	8.99
<i>Year 6</i>	<i>1004</i>	7.52	8.06	8.61	8.97
<i>Year 6</i>	<i>1005</i>	7.50	8.04	8.58	8.95
<i>Year 6</i>	<i>1006</i>	7.48	8.02	8.56	8.92
<i>Year 6</i>	<i>1007</i>	7.46	8.00	8.54	8.90
<i>Year 6</i>	<i>1008</i>	7.43	7.98	8.52	8.88

Part 1 of Appendix 2 to

Schedule 7.1

Lancashire & Cumbria PMU
(Capacity)

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 6	1009	7.41	7.96	8.50	8.86
Year 6	1010	7.39	7.93	8.48	8.84
Year 6	1011	7.37	7.91	8.45	8.82
until Expiry Date					

1. Start of the Northern Franchise

The contents of the above table shall be completed in accordance with the letter of even date made between the parties concerning this Schedule 7.1. The first Reporting Period of the Franchise Term for the purposes of this Benchmark Table will be the Reporting Period which commences on the Franchise Commencement Date (or if the Franchise Commencement Date is not the first day of a Reporting Period, the first Reporting Period which commences next after the Franchise Commencement Date).

Part 2

Franchise Wide Capacity Benchmark Table

<i>Column 1</i>	<i>Column 2</i>
<i>Reporting Period</i>	<i>Franchise Wide Capacity Benchmark (%)</i>
<i>Every Reporting Period during the Continuation Review Period</i>	<i>7.37</i>

1. Start of the Northern Franchise

The contents of the above table shall be completed in accordance with the letter of even date made between the parties concerning this Schedule 7.1.

PART 3³¹³²

Fixed Train Plan^{vii}

(only Monday to Friday services are monitored)

Train ID	Depart	From	To	Arrive	Minimum Formation (unit type/s)	Minimum Passenger Carrying Capacity
1B15GZ	05:22	Preston	Carlisle	09:19	150	219
1B17GZ	05:29	Blackpool North	York	08:16	150	219
1B20FA	06:00	Barrow-in-Furness	Carlisle	08:34	150	219
1B22FA	06:03	Leeds	Manchester Victoria	07:36	150	219
1B33GZ	06:13	Leeds	Manchester Victoria	07:52	144	219
1B35GZ	06:17	Manchester Victoria	Selby	08:33	158	219
1B38FA	06:19	Blackpool North	Manchester Victoria	07:45	156	219
1B40FA	06:23	Southport	Manchester Airport	07:50	142+142	274
1F01FA	06:23	Buxton	Wigan North Western	08:14	150/1	219
1F02FA	06:25	Doncaster	Leeds	07:13	150/1	219
1F91FB	06:26	Chesterfield	Leeds	07:51	150/1	219
1F92FA	06:28	Blackpool North	York	09:19	158/8	219
1H43FA	06:28	Sheffield	Leeds	07:41	144+142	274
1J01FA	06:30	Stoke-on-Trent	Manchester Piccadilly	07:25	323	357
1J02FA	06:30	Worksop	Leeds	08:24	150	219
1J22GV	06:37	Leeds	Manchester Victoria	08:13	158	219
1J23GV	06:38	Leeds	Sheffield	07:57	142	137
1L71GD	06:42	Skipton	Leeds	07:23	156	219
1L74GZ	06:43	Manchester Victoria	Selby	08:55	142+150	356
1L94GZ	06:46	Manchester Piccadilly	Manchester Piccadilly	08:03	156	219
1W46GZ	06:49	Marsden	Leeds	07:37	158/9	219
1Y44GA	06:50	Scarborough	Doncaster	09:31	156	219
1Y49EA	06:50	Buxton	Blackpool North	09:15	150	219
1Y70GP	06:52	York	Leeds	08:17	150+153	317
2A00FA	06:53	Southport	Manchester Victoria	08:06	150+153	317
2A01GN	06:53	Blackpool North	Hazel Grove	08:45	150	219
2A02FA	06:58	Manchester Victoria	Leeds	08:31	158/8	219
2A18FA	07:00	Knaresborough	Leeds	07:46	153+155	317
2A32GN	07:00	Hadfield	Manchester Piccadilly	07:43	150	219
2A62FA	07:02	Blackpool North	Liverpool Lime Street	08:35	156	219
2A82FA	07:03	Retford	Leeds	08:48	142	137
2A91FB	07:03	Manchester Piccadilly	Manchester Piccadilly	08:25	323	357

³¹ Date of change 27/4/2009

³² Date of change 15/12/2010

2A92FB	07:04	Goole	Leeds	08:18	150	219
2A93FB	07:06	York	Blackpool North	09:57	150	219
2B02GZ	07:06	Halifax	Leeds	07:54	158	219
2B04GZ	07:07	Clitheroe	Manchester Victoria	08:23	153+150	317
2B06GZ	07:08	Skipton	Leeds	07:49	333/0	357
2B08GZ	07:08	Leeds	Manchester Victoria	08:37	155	219
2B23GZ	07:09	Manchester Victoria	Liverpool Lime Street	08:11	156	219
2B25GZ	07:10	Huddersfield	Sheffield	08:28	144	137
2B33GA	07:10	Ilkley	Leeds	07:37	150	219
2B54GA	07:11	Chathill	Newcastle	08:13	156	219
2B56GA	07:11	Kirkby	Rochdale	08:49	142+142	274
2C05GZ	07:12	Sheffield	Manchester Piccadilly	08:33	150	219
2C07GZ	07:13	Liverpool Lime Street	Manchester Airport	08:21	156	219
2C09GZ	07:13	Leeds	Manchester Victoria	08:52	144	137
2C11GZ	07:14	Bridlington	Sheffield	09:23	142	137
2C23GV	07:14	Doncaster	Leeds	08:01	321/9	467
2C33FA	07:14	Ribblehead	Leeds	08:36	156	219
2C33FD	07:15	Sheffield	Leeds	08:24	153+150	317
2C34FB	07:15	Wigan Wallgate	Stalybridge	08:16	150	219
2C35FA	07:16	Liverpool Lime Street	Huddersfield	09:10	150/1	219
2C38FB	07:17	Manchester Victoria	Leeds	08:56	158	219
2C46GZ	07:17	Stoke-on-Trent	Manchester Piccadilly	08:19	323	357
2C48GZ	07:18	Manchester Piccadilly	Manchester Piccadilly	08:41	323	357
2C50GZ	07:18	Blackpool North	Manchester Victoria	08:45	156	219
2C52GZ	07:21	Southport	Manchester Airport	08:52	150+150	438
2C54GZ	07:22	Ilkley	Bradford Forster Square	07:54	333	467
2C56GZ	07:22	Crewe	Manchester Oxford Road	08:31	142+142	274
2C67GZ	07:22	Wigan North Western	Manchester Victoria	08:10	150	219
2C70GZ	07:24	Buxton	Manchester Piccadilly	08:24	156	219
2C72GZ	07:24	Skipton	Leeds	08:04	333	467
2C76GX	07:26	Liverpool Lime Street	Manchester Oxford Road	08:34	150	219
2D33GY	07:26	Selby	Manchester Victoria	09:32	158	219
2D35GY	07:29	Adwick	Sheffield	08:14	142	137
2D72GY	07:29	Huddersfield	Leeds	08:27	150	219
2E03GZ	07:30	Alderley Edge	Manchester Piccadilly	07:57	142	137
2E05GZ	07:32	Skipton	Bradford Forster Square	08:08	333/0	467
2E07GZ	07:33	Huddersfield	Manchester Victoria	08:29	150+142	356
2E09GZ	07:37	Leeds	Manchester Victoria	09:08	150	219
2E37GZ	07:38	Wigan North Western	Liverpool Lime Street	08:26	150	219
2E41GZ	07:40	Ilkley	Leeds	08:08	333	467
2E43GZ	07:41	Manchester Airport	Liverpool Lime Street	08:59	156	219
2E45GZ	07:41	Clitheroe	Manchester Victoria	08:50	150	219
2E47GZ	07:42	Knaresborough	Leeds	08:29	144	219

2E49GZ	07:43	Selby	Wakefield Westgate	10:09	155+153	317
2E51GZ	07:44	Todmorden	Wigan Wallgate	09:12	150	219
2E70GT	07:46	Manchester Airport	Manchester Piccadilly	08:10	323	357
2E72GT	07:47	Skipton	Leeds	08:26	333	467
2E74GZ	07:48	Manchester Victoria	Selby	09:53	155	219
2E76GT	07:48	Hazel Grove	Manchester Piccadilly	08:09	156	219
2E78GT	07:48	Buxton	Manchester Piccadilly	08:37	150	219
2F04FD	07:48	Manchester Piccadilly	Manchester Piccadilly	09:04	150	219
2F06GZ	07:48	York	Leeds	08:34	144+153	317
2F08GZ	07:50	Ilkley	Bradford Forster Square	08:21	333	467
2F25GZ	07:53	Alderley Edge	Manchester Piccadilly	08:41	150	219
2F27FA	07:54	Adwick	Sheffield	08:58	142	137
2F27GZ	07:55	Crewe	Manchester Piccadilly	08:43	323	357
2F33FA	07:56	Knaresborough	Leeds	08:40	150+153	317
2F59FA	07:57	Stoke-on-Trent	Manchester Piccadilly	08:54	156	219
2F61FA	07:58	Doncaster	Leeds	08:45	158+153	317
2F63FA	07:58	Wigan North Western	Liverpool Lime Street	08:48	156	219
2F83FF	07:58	Southport	Manchester Victoria	09:09	142	137
2F87FA	07:59	Bradford Forster Square	Leeds	08:21	333	467
2F87FF	08:00	Wigan Wallgate	Manchester Victoria	08:36	150	219
2F89FF	08:02	Huddersfield	Manchester Victoria	08:52	150	219
2H04FA	08:02	Skipton	Bradford Forster Square	08:37	333	467
2H05FA	08:05	Ilkley	Leeds	08:32	333	467
2H06FA	08:06	Macclesfield	Manchester Piccadilly	08:40	156	219
2H07FA	08:08	Bridlington	Sheffield	10:17	158	219
2H09FA	08:12	Selby	Blackpool North	10:57	158	219
2H11FB	08:13	Huddersfield	Leeds	08:51	150	219
2H13FA	08:15	Harrogate	Leeds	08:52	150+142	356
2H15GY	08:15	Skipton	Leeds	08:55	333	467
2H17FA	08:16	Knottingley	Leeds	08:53	150	219
2H17GY	08:17	Preston	Hazel Grove	09:43	150	219
2H19FA	08:17	Ilkley	Leeds	08:46	333	467
2H19GY	08:22	Stalybridge	Liverpool Lime Street	09:41	150	219
2H21FB	08:26	Doncaster	Leeds	09:13	150	219
2H21GY	08:26	Bradford Forster Square	Leeds	08:49	333	467
2H23GY	08:32	Hazel Grove	Preston	09:48	150	219
2H25GY	08:42	Ilkley	Leeds	09:11	150	219
2H27FA	08:43	Skipton	Leeds	09:22	333	467
2H27FE	14:20	Carlisle	Barrow-in-Furness	16:59	156	219
2H29FA	14:29	Blackpool North	York	17:17	158	219
2H46FA	14:48	Manchester Victoria	Selby	16:54	150	219
2H54GY	15:12	Carlisle	Preston	19:28	156	219
2H56GY	15:17	Scunthorpe	Lincoln	18:04	142	137

2H58GY	15:20	Blackpool North	Manchester Victoria	16:49	150	219
2H60GY	15:23	Preston	Buxton	17:20	150	219
2H62GY	15:24	Southport	Manchester Airport	16:52	156	219
2H64GY	15:27	Buxton	Barrow-in-Furness	18:57	156	219
2H75FA	15:27	Lincoln	Adwick	17:46	142/0	137
2H81FA	15:29	Blackpool North	York	18:17	158/8	219
2H81FC	15:46	Liverpool Lime Street	Huddersfield	17:41	156/2	219
2H81GZ	15:48	Manchester Victoria	Selby	17:53	158/8	219
2H83FA	15:57	Liverpool Lime Street	Blackpool North	17:22	150/1	219
2H83FC	16:03	Manchester Airport	Southport	17:35	150/1	219
2H85FA	16:06	Sheffield	Leeds	17:25	150	219
2H85FC	16:08	Leeds	Manchester Victoria	17:32	150	219
2H87FA	16:11	Bradford Forster Square	Skipton	16:48	333	467
2H87FB	16:12	York	Hull	17:25	158	219
2H89FB	16:13	York	Blackpool North	19:00	158	219
2H90FC	16:15	Nottingham	Leeds	18:18	158	219
2H90FD	16:16	Liverpool Lime Street	Manchester Victoria	17:18	150	219
2H94FC	16:18	Scunthorpe	Lincoln	19:07	142	137
2H96FC	16:19	Leeds	Doncaster	17:06	158	219
2H96FY	16:20	Blackpool North	Manchester Victoria	17:45	156	219
2H98FC	16:23	Preston	Buxton	18:15	150	219
2J00FA	16:23	Manchester Victoria	Clitheroe	17:42	156	219
2J04GD	16:24	Manchester Victoria	Leeds	17:57	158	219
2J06GA	16:26	Leeds	Skipton	17:07	333	467
2J08GD	16:26	Newcastle	Whitehaven	19:22	156	219
2J26FB	16:27	Lincoln	Hull	19:48	142	137
2J40FA	16:27	Manchester Victoria	Huddersfield	17:11	150	219
2J40FC	16:29	Leeds	York	17:46	150	219
2J42FA	16:29	Wakefield Westgate	Leeds	18:27	144	219
2J47GD	16:30	Huddersfield	Manchester Victoria	17:22	150	219
2J48FB	16:30	Hazel Grove	Preston	17:48	156+153	317
2J54FA	16:30	Buxton	Blackpool North	18:53	156	219
2J56FA	16:31	Bradford Forster Square	Leeds	16:52	333	467
2J76FA	16:32	Leeds	Ilkley	16:59	333	467
2K12EC	16:36	Sheffield	Huddersfield	17:50	150	219
2K14EC	16:36	Manchester Piccadilly	Manchester Piccadilly	17:55	150	219
2K16EC	16:37	Leeds	Manchester Victoria	18:07	155	219
2K18EC	16:40	Bradford Forster Square	Skipton	17:18	150	219
2K22FE	16:41	Manchester Airport	Liverpool Lime Street	17:46	156	219
2K22GZ	16:41	Sheffield	Bridlington	18:58	158	219
2K24FE	16:42	Stalybridge	Southport	18:12	150+142	317
2K26FE	16:46	Manchester Piccadilly	Crewe	17:44	150/1	219
2L09GZ	16:46	Liverpool Lime Street	Huddersfield	18:42	150/1	219

2L12GZ	16:48	Manchester Victoria	Selby	18:50	155/1	219
2L46GZ	16:48	Manchester Piccadilly	Stoke-on-Trent	17:41	150/1	219
2L50GZ	16:48	Leeds	Sheffield	17:58	144+142	356
2L57GZ	16:50	Crewe	Manchester Piccadilly	17:42	150	219
2M04FA	16:56	Leeds	Skipton	17:36	333	467
2M06FA	16:57	Liverpool Lime Street	Blackpool North	18:23	150	219
2M08FA	16:59	Leeds	Knaresborough	17:45	155	219
2M10FA	16:59	Manchester Piccadilly	Manchester Piccadilly	18:10	150	219
2M12FA	16:59	Buxton	Blackpool North	19:16	156	219
2M34FV	17:00	Metro Centre	Chathill	18:33	156	219
2M44FA	17:00	Manchester Victoria	Clitheroe	18:16	150	219
2M46FA	17:02	Leeds	Ilkley	17:29	333	467
2M48FA	17:03	Manchester Airport	Southport	18:33	150	219
2M50FA	17:03	Manchester Piccadilly	Crewe	18:00	323/0	357
2M52FA	17:05	Leeds	Nottingham	18:57	158	219
2M57FA	17:06	Sheffield	Leeds	18:25	142	137
2M59FA	17:08	York	Blackpool North	19:57	158	219
2M77FA	17:08	Leeds	Manchester Victoria	18:31	158	219
2N12GZ	17:10	Manchester Deansgate	Stoke-on-Trent	18:08	150	219
2N14GZ	17:10	Leeds	Bradford Forster Square	17:30	333	467
2N20FB	17:11	Bradford Forster Square	Skipton	17:48	156	219
2N22FA	17:13	Leeds	Knaresborough	17:58	144	219
2N33GZ	17:13	Leeds	Manchester Victoria	18:53	144	219
2N34GZ	17:15	Manchester Piccadilly	Manchester Piccadilly	18:34	150	219
2N35GZ	17:15	Sheffield	Leeds	18:39	142	137
2N36GZ	17:16	Bradford Forster Square	Ilkley	17:50	150	219
2N57FB	17:16	Leeds	Goole	18:26	153+150	317
2N58FB	17:16	Leeds	Ilkley	17:42	156	219
2N59FB	17:18	Manchester Victoria	Leeds	18:56	155	219
2N70FC	17:19	Leeds	Doncaster	18:05	321	467
2N72FC	17:22	Leeds	Wakefield Westgate	19:08	158	219
2N74FC	17:26	Leeds	Skipton	18:07	321	467
2N84FB	17:27	Liverpool Lime Street	Preston	18:29	156	219
2N88FB	17:27	Sheffield	Doncaster	18:06	144	219
2N91FD	17:28	Leeds	York	18:10	150	219
2N95FA	17:29	Leeds	York	18:45	150+142	438
2N99FC	17:32	Leeds	Sheffield	18:55	144	219
2O65GD	17:36	Manchester Victoria	Wigan Wallgate	18:20	156	219
2O83GD	17:36	Leeds	Bradford Forster Square	17:58	156	219
2P23GY	17:37	Leeds	Sheffield	18:38	158	219
2P25GY	17:37	Sheffield	Huddersfield	18:57	144	219
2P59GY	17:37	Manchester Piccadilly	Manchester Piccadilly	19:01	150	219
2P62GY	17:37	Leeds	Manchester Victoria	19:10	158	219

2P64GY	17:38	Manchester Piccadilly	Crewe	18:24	150	219
2P75GZ	17:38	Bradford Forster Square	Skipton	18:15	150	219
2P79GZ	17:39	Wigan Wallgate	Buxton	19:20	156	219
2R31GZ	17:40	Manchester Victoria	Southport	18:53	150+142	219
2R54GZ	17:43	Manchester Victoria	York	19:52	155	219
2R56GZ	17:43	Leeds	Sheffield	19:40	144	219
2R83GY	17:44	Leeds	Knaresborough	18:25	142+142	274
2R97GA	17:44	Liverpool Lime Street	Blackpool North	19:22	156	219
2S11GY	17:46	Manchester Piccadilly	Crewe	18:45	150	219
2S13GY	17:48	Manchester Piccadilly	Stoke-on-Trent	18:40	150	219
2S15FA	17:48	Leeds	Sheffield	19:00	158	219
2S40GY	17:49	Leeds	Selby	18:23	158	219
2S42GY	17:51	Sheffield	Leeds	18:49	142	219
2S44GY	17:51	Leeds	Skipton	18:32	333	219
2S46GY	17:52	Manchester Piccadilly	Buxton	18:52	156+150	438
2T87GZ	17:56	Leeds	Carlisle	20:44	158	219
2T94GN	17:59	Leeds	Knaresborough	18:45	155	219
2U01GZ	17:59	Manchester Piccadilly	Manchester Piccadilly	19:13	150	219
2U02FA	18:00	Leeds	Knottingly	18:34	150	219
2U04FA	18:00	Manchester Victoria	Clitheroe	19:12	150	219
2U24FA	18:01	Liverpool Lime Street	Preston	19:13	156	219
2V07GY	18:02	Leeds	Ilkley	18:30	333	467
2V09GY	18:08	Manchester Piccadilly	Crewe	19:04	150	219
2V11GY	18:08	Leeds	Manchester Victoria	19:31	158	219
2V13GY	18:15	Sheffield	Leeds	19:30	142	137
2V15GY	18:21	Manchester Victoria	Leeds	19:55	155	219
2V46GY	18:26	Leeds	Skipton	19:06	333	467
2V48GY	18:27	Manchester Victoria	Huddersfield	19:11	150	219
2V50GY	18:29	Leeds	York	19:45	150	219
2V54GY	18:32	Leeds	Ilkley	19:00	333	467
2V56GY	18:46	Manchester Piccadilly	Alderley Edge	19:31	150	219
2W24FA	18:48	Manchester Piccadilly	Stoke-on-Trent	19:40	150	219
2W62FA	18:50	Leeds	Skipton	19:32	150	219
2W64GD	18:52	Manchester Piccadilly	Buxton	19:51	150	219
2W86GD	18:59	Leeds	Knaresborough	19:45	144	219

APPENDIX 3 TO SCHEDULE 7.1

Part 1

PMU Network Rail Benchmark Table – Lancashire & Cumbria

<i>Column 1</i>		<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>
<i>Reporting Period</i>		<i>Target Performance Level (Minutes Delay)</i>	<i>Improvement Plan Performance Level (Minutes Delay)</i>	<i>Breach Performance Level (Minutes Delay)</i>
<i>Year 1</i>	<i>0510</i>	<i>12837</i>	<i>13800</i>	<i>14763</i>
<i>Year 1</i>	<i>0511</i>	<i>12739</i>	<i>13694</i>	<i>14650</i>
<i>Year 1</i>	<i>0512</i>	<i>12640</i>	<i>13588</i>	<i>14536</i>
<i>Year 1</i>	<i>0513</i>	<i>12542</i>	<i>13483</i>	<i>14423</i>
<i>Year 2</i>	<i>0601</i>	<i>12483</i>	<i>13419</i>	<i>14355</i>
<i>Year 2</i>	<i>0602</i>	<i>12424</i>	<i>13356</i>	<i>14288</i>
<i>Year 2</i>	<i>0603</i>	<i>12366</i>	<i>13293</i>	<i>14221</i>
<i>Year 2</i>	<i>0604</i>	<i>12307</i>	<i>13230</i>	<i>14153</i>
<i>Year 2</i>	<i>0605</i>	<i>12248</i>	<i>13167</i>	<i>14085</i>
<i>Year 2</i>	<i>0606</i>	<i>12189</i>	<i>13103</i>	<i>14017</i>
<i>Year 2</i>	<i>0607</i>	<i>12131</i>	<i>13041</i>	<i>13951</i>
<i>Year 2</i>	<i>0608</i>	<i>12072</i>	<i>12977</i>	<i>13883</i>
<i>Year 2</i>	<i>0609</i>	<i>12013</i>	<i>12914</i>	<i>13815</i>
<i>Year 2</i>	<i>0610</i>	<i>11954</i>	<i>12851</i>	<i>13747</i>
<i>Year 2</i>	<i>0611</i>	<i>11896</i>	<i>12788</i>	<i>13680</i>
<i>Year 2</i>	<i>0612</i>	<i>11837</i>	<i>12725</i>	<i>13613</i>
<i>Year 2</i>	<i>0613</i>	<i>11778</i>	<i>12661</i>	<i>13545</i>
<i>Year 3</i>	<i>0701</i>	<i>11733</i>	<i>12613</i>	<i>13493</i>
<i>Year 3</i>	<i>0702</i>	<i>11688</i>	<i>12565</i>	<i>13441</i>
<i>Year 3</i>	<i>0703</i>	<i>11643</i>	<i>12516</i>	<i>13389</i>
<i>Year 3</i>	<i>0704</i>	<i>11598</i>	<i>12468</i>	<i>13338</i>
<i>Year 3</i>	<i>0705</i>	<i>11553</i>	<i>12419</i>	<i>13286</i>
<i>Year 3</i>	<i>0706</i>	<i>11508</i>	<i>12371</i>	<i>13234</i>
<i>Year 3</i>	<i>0707</i>	<i>11463</i>	<i>12323</i>	<i>13182</i>
<i>Year 3</i>	<i>0708</i>	<i>11418</i>	<i>12274</i>	<i>13131</i>
<i>Year 3</i>	<i>0709</i>	<i>11373</i>	<i>12226</i>	<i>13079</i>
<i>Year 3</i>	<i>0710</i>	<i>11328</i>	<i>12178</i>	<i>13027</i>
<i>Year 3</i>	<i>0711</i>	<i>11283</i>	<i>12129</i>	<i>12975</i>
<i>Year 3</i>	<i>0712</i>	<i>11238</i>	<i>12081</i>	<i>12924</i>
<i>Year 3</i>	<i>0713</i>	<i>11193</i>	<i>12032</i>	<i>12872</i>
<i>Year 4</i>	<i>0801</i>	<i>11149</i>	<i>11985</i>	<i>12821</i>
<i>Year 4</i>	<i>0802</i>	<i>11104</i>	<i>11937</i>	<i>12770</i>
<i>Year 4</i>	<i>0803</i>	<i>11060</i>	<i>11890</i>	<i>12719</i>
<i>Year 4</i>	<i>0804</i>	<i>11016</i>	<i>11842</i>	<i>12668</i>
<i>Year 4</i>	<i>0805</i>	<i>10971</i>	<i>11794</i>	<i>12617</i>
<i>Year 4</i>	<i>0806</i>	<i>10927</i>	<i>11747</i>	<i>12566</i>
<i>Year 4</i>	<i>0807</i>	<i>10883</i>	<i>11699</i>	<i>12515</i>
<i>Year 4</i>	<i>0808</i>	<i>10839</i>	<i>11652</i>	<i>12465</i>
<i>Year 4</i>	<i>0809</i>	<i>10794</i>	<i>11604</i>	<i>12413</i>
<i>Year 4</i>	<i>0810</i>	<i>10750</i>	<i>11556</i>	<i>12363</i>
<i>Year 4</i>	<i>0811</i>	<i>10706</i>	<i>11509</i>	<i>12312</i>
<i>Year 4</i>	<i>0812</i>	<i>10661</i>	<i>11461</i>	<i>12260</i>

<i>Column 1</i>		<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>
<i>Reporting Period</i>		<i>Target Performance Level (Minutes Delay)</i>	<i>Improvement Plan Performance Level (Minutes Delay)</i>	<i>Breach Performance Level (Minutes Delay)</i>
<i>Year 4</i>	<i>0813</i>	<i>10617</i>	<i>11413</i>	<i>12210</i>
<i>Year 5</i>	<i>0901</i>	<i>10578</i>	<i>11371</i>	<i>12165</i>
<i>Year 5</i>	<i>0902</i>	<i>10540</i>	<i>11331</i>	<i>12121</i>
<i>Year 5</i>	<i>0903</i>	<i>10501</i>	<i>11289</i>	<i>12076</i>
<i>Year 5</i>	<i>0904</i>	<i>10463</i>	<i>11248</i>	<i>12032</i>
<i>Year 5</i>	<i>0905</i>	<i>10424</i>	<i>11206</i>	<i>11988</i>
<i>Year 5</i>	<i>0906</i>	<i>10386</i>	<i>11165</i>	<i>11944</i>
<i>Year 5</i>	<i>0907</i>	<i>10347</i>	<i>11123</i>	<i>11899</i>
<i>Year 5</i>	<i>0908</i>	<i>10309</i>	<i>11082</i>	<i>11855</i>
<i>Year 5</i>	<i>0909</i>	<i>10270</i>	<i>11040</i>	<i>11811</i>
<i>Year 5</i>	<i>0910</i>	<i>10232</i>	<i>10999</i>	<i>11767</i>
<i>Year 5</i>	<i>0911</i>	<i>10193</i>	<i>10957</i>	<i>11722</i>
<i>Year 5</i>	<i>0912</i>	<i>10155</i>	<i>10917</i>	<i>11678</i>
<i>Year 5</i>	<i>0913</i>	<i>10116</i>	<i>10875</i>	<i>11633</i>
<i>Year 6</i>	<i>1001</i>	<i>10092</i>	<i>10849</i>	<i>11606</i>
<i>Year 6</i>	<i>1002</i>	<i>10068</i>	<i>10823</i>	<i>11578</i>
<i>Year 6</i>	<i>1003</i>	<i>10044</i>	<i>10797</i>	<i>11551</i>
<i>Year 6</i>	<i>1004</i>	<i>10020</i>	<i>10772</i>	<i>11523</i>
<i>Year 6</i>	<i>1005</i>	<i>9996</i>	<i>10746</i>	<i>11495</i>
<i>Year 6</i>	<i>1006</i>	<i>9972</i>	<i>10720</i>	<i>11468</i>
<i>Year 6</i>	<i>1007</i>	<i>9947</i>	<i>10693</i>	<i>11439</i>
<i>Year 6</i>	<i>1008</i>	<i>9923</i>	<i>10667</i>	<i>11411</i>
<i>Year 6</i>	<i>1009</i>	<i>9899</i>	<i>10641</i>	<i>11384</i>
<i>Year 6</i>	<i>1010</i>	<i>9875</i>	<i>10616</i>	<i>11356</i>
<i>Year 6</i>	<i>1011</i>	<i>9851</i>	<i>10590</i>	<i>11329</i>
<i>Year 6</i>	<i>1012</i>	<i>9827</i>	<i>10564</i>	<i>11301</i>
<i>Year 6</i>	<i>1013</i>	<i>9803</i>	<i>10538</i>	<i>11273</i>
<i>Year 7</i>	<i>1101</i>	<i>9784</i>	<i>10518</i>	<i>11252</i>
<i>Year 7</i>	<i>1102</i>	<i>9764</i>	<i>10496</i>	<i>11229</i>
<i>Year 7</i>	<i>1103</i>	<i>9745</i>	<i>10476</i>	<i>11207</i>
<i>Year 7</i>	<i>1104</i>	<i>9726</i>	<i>10455</i>	<i>11185</i>
<i>Year 7</i>	<i>1105</i>	<i>9706</i>	<i>10434</i>	<i>11162</i>
<i>Year 7</i>	<i>1106</i>	<i>9687</i>	<i>10414</i>	<i>11140</i>
<i>Year 7</i>	<i>1107</i>	<i>9668</i>	<i>10393</i>	<i>11118</i>
<i>Year 7</i>	<i>1108</i>	<i>9649</i>	<i>10373</i>	<i>11096</i>
<i>Year 7</i>	<i>1109</i>	<i>9629</i>	<i>10351</i>	<i>11073</i>
<i>Year 7</i>	<i>1110</i>	<i>9610</i>	<i>10331</i>	<i>11052</i>
<i>Year 7</i>	<i>1111</i>	<i>9591</i>	<i>10310</i>	<i>11030</i>
<i>Year 7</i>	<i>1112</i>	<i>9571</i>	<i>10289</i>	<i>11007</i>
<i>Year 7</i>	<i>1113</i>	<i>9552</i>	<i>10268</i>	<i>10985</i>
<i>Year 8</i>	<i>1201</i>	<i>9534</i>	<i>10249</i>	<i>10964</i>
<i>Year 8</i>	<i>1202</i>	<i>9517</i>	<i>10231</i>	<i>10945</i>
<i>Year 8</i>	<i>1203</i>	<i>9499</i>	<i>10211</i>	<i>10924</i>
<i>Year 8</i>	<i>1204</i>	<i>9482</i>	<i>10193</i>	<i>10904</i>
<i>Year 8</i>	<i>1205</i>	<i>9464</i>	<i>10174</i>	<i>10884</i>
<i>Year 8</i>	<i>1206</i>	<i>9446</i>	<i>10154</i>	<i>10863</i>

1. START OF THE NORTHERN FRANCHISE

The contents of the above table shall be completed in accordance with the letter of even date made between the parties concerning this Schedule 7.1. The first Reporting Period of the Franchise Term for the purposes of this Benchmark Table will be the Reporting Period which commences on the Franchise Commencement Date (or if the Franchise Commencement Date is not the first day of a Reporting Period, the first Reporting Period which commences next after the Franchise Commencement Date).

Part 2

PMU Network Rail Benchmark Table – Manchester & Liverpool

<i>Column 1</i>		<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>
Reporting Period		Target Performance Level (Minutes Delay)	Improvement Plan Performance Level (Minutes Delay)	Breach Performance Level (Minutes Delay)
<i>Year 1</i>	0510	42844	46057	49271
<i>Year 1</i>	0511	42516	45705	48893
<i>Year 1</i>	0512	42188	45352	48516
<i>Year 1</i>	0513	41860	45000	48139
<i>Year 2</i>	0601	41664	44789	47914
<i>Year 2</i>	0602	41468	44578	47688
<i>Year 2</i>	0603	41272	44367	47463
<i>Year 2</i>	0604	41076	44157	47237
<i>Year 2</i>	0605	40880	43946	47012
<i>Year 2</i>	0606	40684	43735	46787
<i>Year 2</i>	0607	40487	43524	46560
<i>Year 2</i>	0608	40291	43313	46335
<i>Year 2</i>	0609	40095	43102	46109
<i>Year 2</i>	0610	39899	42891	45884
<i>Year 2</i>	0611	39703	42681	45658
<i>Year 2</i>	0612	39507	42470	45433
<i>Year 2</i>	0613	39311	42259	45208
<i>Year 3</i>	0701	39161	42098	45035
<i>Year 3</i>	0702	39010	41936	44862
<i>Year 3</i>	0703	38860	41775	44689
<i>Year 3</i>	0704	38710	41613	44517
<i>Year 3</i>	0705	38559	41451	44343
<i>Year 3</i>	0706	38409	41290	44170
<i>Year 3</i>	0707	38259	41128	43998
<i>Year 3</i>	0708	38109	40967	43825
<i>Year 3</i>	0709	37958	40805	43652
<i>Year 3</i>	0710	37808	40644	43479
<i>Year 3</i>	0711	37658	40482	43307
<i>Year 3</i>	0712	37507	40320	43133
<i>Year 3</i>	0713	37357	40159	42961
<i>Year 4</i>	0801	37209	40000	42790
<i>Year 4</i>	0802	37061	39841	42620
<i>Year 4</i>	0803	36913	39681	42450
<i>Year 4</i>	0804	36765	39522	42280
<i>Year 4</i>	0805	36617	39363	42110
<i>Year 4</i>	0806	36469	39204	41939
<i>Year 4</i>	0807	36321	39045	41769
<i>Year 4</i>	0808	36173	38886	41599
<i>Year 4</i>	0809	36025	38727	41429
<i>Year 4</i>	0810	35877	38568	41259
<i>Year 4</i>	0811	35729	38409	41088
<i>Year 4</i>	0812	35581	38250	40918
<i>Year 4</i>	0813	35433	38090	40748
<i>Year 5</i>	0901	35304	37952	40600

Part 2 of Appendix 3 to
Schedule 7.1
Manchester & Liverpool PMU
(Network Rail)

<i>Column 1</i>		<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>
<i>Reporting Period</i>		<i>Target Performance Level (Minutes Delay)</i>	<i>Improvement Plan Performance Level (Minutes Delay)</i>	<i>Breach Performance Level (Minutes Delay)</i>
<i>Year 5</i>	<i>0902</i>	<i>35176</i>	<i>37814</i>	<i>40452</i>
<i>Year 5</i>	<i>0903</i>	<i>35047</i>	<i>37676</i>	<i>40304</i>
<i>Year 5</i>	<i>0904</i>	<i>34919</i>	<i>37538</i>	<i>40157</i>
<i>Year 5</i>	<i>0905</i>	<i>34790</i>	<i>37399</i>	<i>40009</i>
<i>Year 5</i>	<i>0906</i>	<i>34661</i>	<i>37261</i>	<i>39860</i>
<i>Year 5</i>	<i>0907</i>	<i>34533</i>	<i>37123</i>	<i>39713</i>
<i>Year 5</i>	<i>0908</i>	<i>34404</i>	<i>36984</i>	<i>39565</i>
<i>Year 5</i>	<i>0909</i>	<i>34275</i>	<i>36846</i>	<i>39416</i>
<i>Year 5</i>	<i>0910</i>	<i>34147</i>	<i>36708</i>	<i>39269</i>
<i>Year 5</i>	<i>0911</i>	<i>34018</i>	<i>36569</i>	<i>39121</i>
<i>Year 5</i>	<i>0912</i>	<i>33890</i>	<i>36432</i>	<i>38974</i>
<i>Year 5</i>	<i>0913</i>	<i>33761</i>	<i>36293</i>	<i>38825</i>
<i>Year 6</i>	<i>1001</i>	<i>33681</i>	<i>36207</i>	<i>38733</i>
<i>Year 6</i>	<i>1002</i>	<i>33601</i>	<i>36121</i>	<i>38641</i>
<i>Year 6</i>	<i>1003</i>	<i>33520</i>	<i>36034</i>	<i>38548</i>
<i>Year 6</i>	<i>1004</i>	<i>33440</i>	<i>35948</i>	<i>38456</i>
<i>Year 6</i>	<i>1005</i>	<i>33360</i>	<i>35862</i>	<i>38364</i>
<i>Year 6</i>	<i>1006</i>	<i>33280</i>	<i>35776</i>	<i>38272</i>
<i>Year 6</i>	<i>1007</i>	<i>33199</i>	<i>35689</i>	<i>38179</i>
<i>Year 6</i>	<i>1008</i>	<i>33119</i>	<i>35603</i>	<i>38087</i>
<i>Year 6</i>	<i>1009</i>	<i>33039</i>	<i>35517</i>	<i>37995</i>
<i>Year 6</i>	<i>1010</i>	<i>32959</i>	<i>35431</i>	<i>37903</i>
<i>Year 6</i>	<i>1011</i>	<i>32878</i>	<i>35344</i>	<i>37810</i>
<i>Year 6</i>	<i>1012</i>	<i>32798</i>	<i>35258</i>	<i>37718</i>
<i>Year 6</i>	<i>1013</i>	<i>32718</i>	<i>35172</i>	<i>37626</i>
<i>Year 7</i>	<i>1101</i>	<i>32654</i>	<i>35103</i>	<i>37552</i>
<i>Year 7</i>	<i>1102</i>	<i>32589</i>	<i>35033</i>	<i>37477</i>
<i>Year 7</i>	<i>1103</i>	<i>32525</i>	<i>34964</i>	<i>37404</i>
<i>Year 7</i>	<i>1104</i>	<i>32460</i>	<i>34895</i>	<i>37329</i>
<i>Year 7</i>	<i>1105</i>	<i>32396</i>	<i>34826</i>	<i>37255</i>
<i>Year 7</i>	<i>1106</i>	<i>32331</i>	<i>34756</i>	<i>37181</i>
<i>Year 7</i>	<i>1107</i>	<i>32267</i>	<i>34687</i>	<i>37107</i>
<i>Year 7</i>	<i>1108</i>	<i>32202</i>	<i>34617</i>	<i>37032</i>
<i>Year 7</i>	<i>1109</i>	<i>32138</i>	<i>34548</i>	<i>36959</i>
<i>Year 7</i>	<i>1110</i>	<i>32073</i>	<i>34478</i>	<i>36884</i>
<i>Year 7</i>	<i>1111</i>	<i>32009</i>	<i>34410</i>	<i>36810</i>
<i>Year 7</i>	<i>1112</i>	<i>31944</i>	<i>34340</i>	<i>36736</i>
<i>Year 7</i>	<i>1113</i>	<i>31880</i>	<i>34271</i>	<i>36662</i>
<i>Year 8</i>	<i>1201</i>	<i>31821</i>	<i>34208</i>	<i>36594</i>
<i>Year 8</i>	<i>1202</i>	<i>31762</i>	<i>34144</i>	<i>36526</i>
<i>Year 8</i>	<i>1203</i>	<i>31703</i>	<i>34081</i>	<i>36458</i>
<i>Year 8</i>	<i>1204</i>	<i>31645</i>	<i>34018</i>	<i>36392</i>
<i>Year 8</i>	<i>1205</i>	<i>31586</i>	<i>33955</i>	<i>36324</i>
<i>Year 8</i>	<i>1206</i>	<i>31527</i>	<i>33892</i>	<i>36256</i>

1. START OF THE NORTHERN FRANCHISE

The contents of the above table shall be completed in accordance with the letter of even date made between the parties concerning this Schedule 7.1. The first Reporting Period of the Franchise Term for the purposes of this Benchmark Table will be the Reporting Period which commences on the Franchise Commencement Date (or if the Franchise Commencement Date is not the first day of a Reporting Period, the first Reporting Period which commences next after the Franchise Commencement Date).

Part 3

PMU Network Rail Benchmark Table – South & East Yorkshire

Column 1		Column 2	Column 3	Column 4
Reporting Period		Target Performance Level (Minutes Delay)	Improvement Plan Performance Level (Minutes Delay)	Breach Performance Level (Minutes Delay)
Year 1	0510	26333	28308	30283
Year 1	0511	26132	28092	30052
Year 1	0512	25930	27875	29820
Year 1	0513	25728	27658	29587
Year 2	0601	25607	27528	29448
Year 2	0602	25487	27399	29310
Year 2	0603	25366	27268	29171
Year 2	0604	25246	27139	29033
Year 2	0605	25125	27009	28894
Year 2	0606	25005	26880	28756
Year 2	0607	24884	26750	28617
Year 2	0608	24764	26621	28479
Year 2	0609	24643	26491	28339
Year 2	0610	24523	26362	28201
Year 2	0611	24402	26232	28062
Year 2	0612	24282	26103	27924
Year 2	0613	24161	25973	27785
Year 3	0701	24069	25874	27679
Year 3	0702	23977	25775	27574
Year 3	0703	23884	25675	27467
Year 3	0704	23791	25575	27360
Year 3	0705	23699	25476	27254
Year 3	0706	23607	25378	27148
Year 3	0707	23514	25278	27041
Year 3	0708	23422	25179	26935
Year 3	0709	23330	25080	26830
Year 3	0710	23237	24980	26723
Year 3	0711	23145	24881	26617
Year 3	0712	23052	24781	26510
Year 3	0713	22960	24682	26404
Year 4	0801	22869	24584	26299
Year 4	0802	22778	24486	26195
Year 4	0803	22687	24389	26090
Year 4	0804	22596	24291	25985
Year 4	0805	22505	24193	25881
Year 4	0806	22414	24095	25776
Year 4	0807	22324	23998	25673
Year 4	0808	22233	23900	25568
Year 4	0809	22142	23803	25463
Year 4	0810	22051	23705	25359
Year 4	0811	21960	23607	25254
Year 4	0812	21869	23509	25149
Year 4	0813	21778	23411	25045
Year 5	0901	21699	23326	24954

Part 3 of Appendix 3 to

Schedule 7.1

South & East Yorkshire PMU
(Network Rail)

<i>Column 1</i>		<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>
<i>Reporting Period</i>		<i>Target Performance Level (Minutes Delay)</i>	<i>Improvement Plan Performance Level (Minutes Delay)</i>	<i>Breach Performance Level (Minutes Delay)</i>
<i>Year 5</i>	<i>0902</i>	<i>21620</i>	<i>23242</i>	<i>24863</i>
<i>Year 5</i>	<i>0903</i>	<i>21541</i>	<i>23157</i>	<i>24772</i>
<i>Year 5</i>	<i>0904</i>	<i>21462</i>	<i>23072</i>	<i>24681</i>
<i>Year 5</i>	<i>0905</i>	<i>21383</i>	<i>22987</i>	<i>24590</i>
<i>Year 5</i>	<i>0906</i>	<i>21304</i>	<i>22902</i>	<i>24500</i>
<i>Year 5</i>	<i>0907</i>	<i>21224</i>	<i>22816</i>	<i>24408</i>
<i>Year 5</i>	<i>0908</i>	<i>21145</i>	<i>22731</i>	<i>24317</i>
<i>Year 5</i>	<i>0909</i>	<i>21066</i>	<i>22646</i>	<i>24226</i>
<i>Year 5</i>	<i>0910</i>	<i>20987</i>	<i>22561</i>	<i>24135</i>
<i>Year 5</i>	<i>0911</i>	<i>20908</i>	<i>22476</i>	<i>24044</i>
<i>Year 5</i>	<i>0912</i>	<i>20829</i>	<i>22391</i>	<i>23953</i>
<i>Year 5</i>	<i>0913</i>	<i>20750</i>	<i>22306</i>	<i>23863</i>
<i>Year 6</i>	<i>1001</i>	<i>20701</i>	<i>22254</i>	<i>23806</i>
<i>Year 6</i>	<i>1002</i>	<i>20651</i>	<i>22200</i>	<i>23749</i>
<i>Year 6</i>	<i>1003</i>	<i>20602</i>	<i>22147</i>	<i>23692</i>
<i>Year 6</i>	<i>1004</i>	<i>20553</i>	<i>22094</i>	<i>23636</i>
<i>Year 6</i>	<i>1005</i>	<i>20503</i>	<i>22041</i>	<i>23578</i>
<i>Year 6</i>	<i>1006</i>	<i>20454</i>	<i>21988</i>	<i>23522</i>
<i>Year 6</i>	<i>1007</i>	<i>20405</i>	<i>21935</i>	<i>23466</i>
<i>Year 6</i>	<i>1008</i>	<i>20356</i>	<i>21883</i>	<i>23409</i>
<i>Year 6</i>	<i>1009</i>	<i>20306</i>	<i>21829</i>	<i>23352</i>
<i>Year 6</i>	<i>1010</i>	<i>20257</i>	<i>21776</i>	<i>23296</i>
<i>Year 6</i>	<i>1011</i>	<i>20208</i>	<i>21724</i>	<i>23239</i>
<i>Year 6</i>	<i>1012</i>	<i>20158</i>	<i>21670</i>	<i>23182</i>
<i>Year 6</i>	<i>1013</i>	<i>20109</i>	<i>21617</i>	<i>23125</i>
<i>Year 7</i>	<i>1101</i>	<i>20069</i>	<i>21574</i>	<i>23079</i>
<i>Year 7</i>	<i>1102</i>	<i>20030</i>	<i>21532</i>	<i>23035</i>
<i>Year 7</i>	<i>1103</i>	<i>19990</i>	<i>21489</i>	<i>22989</i>
<i>Year 7</i>	<i>1104</i>	<i>19951</i>	<i>21447</i>	<i>22944</i>
<i>Year 7</i>	<i>1105</i>	<i>19911</i>	<i>21404</i>	<i>22898</i>
<i>Year 7</i>	<i>1106</i>	<i>19871</i>	<i>21361</i>	<i>22852</i>
<i>Year 7</i>	<i>1107</i>	<i>19832</i>	<i>21319</i>	<i>22807</i>
<i>Year 7</i>	<i>1108</i>	<i>19792</i>	<i>21276</i>	<i>22761</i>
<i>Year 7</i>	<i>1109</i>	<i>19752</i>	<i>21233</i>	<i>22715</i>
<i>Year 7</i>	<i>1110</i>	<i>19713</i>	<i>21191</i>	<i>22670</i>
<i>Year 7</i>	<i>1111</i>	<i>19673</i>	<i>21148</i>	<i>22624</i>
<i>Year 7</i>	<i>1112</i>	<i>19634</i>	<i>21107</i>	<i>22579</i>
<i>Year 7</i>	<i>1113</i>	<i>19594</i>	<i>21064</i>	<i>22533</i>
<i>Year 8</i>	<i>1201</i>	<i>19558</i>	<i>21025</i>	<i>22492</i>
<i>Year 8</i>	<i>1202</i>	<i>19522</i>	<i>20986</i>	<i>22450</i>
<i>Year 8</i>	<i>1203</i>	<i>19486</i>	<i>20947</i>	<i>22409</i>
<i>Year 8</i>	<i>1204</i>	<i>19449</i>	<i>20908</i>	<i>22366</i>
<i>Year 8</i>	<i>1205</i>	<i>19413</i>	<i>20869</i>	<i>22325</i>
<i>Year 8</i>	<i>1206</i>	<i>19377</i>	<i>20830</i>	<i>22284</i>

1. START OF THE NORTHERN FRANCHISE

The contents of the above table shall be completed in accordance with the letter of even date made between the parties concerning this Schedule 7.1. The first Reporting Period of the Franchise Term for the purposes of this Benchmark Table will be the Reporting Period which commences on the Franchise Commencement Date (or if the Franchise Commencement Date is not the first day of a Reporting Period, the first Reporting Period which commences next after the Franchise Commencement Date).

Part 4

PMU Network Rail Benchmark Table – Tyne, Tees & Wear

Column 1		Column 2	Column 3	Column 4
Reporting Period		Target Performance Level (Minutes Delay)	Improvement Plan Performance Level (Minutes Delay)	Breach Performance Level (Minutes Delay)
Year 1	0510	10155	10917	11678
Year 1	0511	10078	10834	11590
Year 1	0512	10000	10750	11500
Year 1	0513	9922	10666	11410
Year 2	0601	9876	10617	11357
Year 2	0602	9829	10566	11303
Year 2	0603	9783	10517	11250
Year 2	0604	9736	10466	11196
Year 2	0605	9690	10417	11144
Year 2	0606	9643	10366	11089
Year 2	0607	9597	10317	11037
Year 2	0608	9550	10266	10983
Year 2	0609	9504	10217	10930
Year 2	0610	9457	10166	10876
Year 2	0611	9411	10117	10823
Year 2	0612	9364	10066	10769
Year 2	0613	9318	10017	10716
Year 3	0701	9282	9978	10674
Year 3	0702	9247	9941	10634
Year 3	0703	9211	9902	10593
Year 3	0704	9176	9864	10552
Year 3	0705	9140	9826	10511
Year 3	0706	9104	9787	10470
Year 3	0707	9069	9749	10429
Year 3	0708	9033	9710	10388
Year 3	0709	8997	9672	10347
Year 3	0710	8962	9634	10306
Year 3	0711	8926	9595	10265
Year 3	0712	8891	9558	10225
Year 3	0713	8855	9519	10183
Year 4	0801	8820	9482	10143
Year 4	0802	8785	9444	10103
Year 4	0803	8750	9406	10063
Year 4	0804	8715	9369	10022
Year 4	0805	8680	9331	9982
Year 4	0806	8645	9293	9942
Year 4	0807	8609	9255	9900
Year 4	0808	8574	9217	9860
Year 4	0809	8539	9179	9820
Year 4	0810	8504	9142	9780
Year 4	0811	8469	9104	9739
Year 4	0812	8434	9067	9699
Year 4	0813	8399	9029	9659
Year 5	0901	8369	8997	9624

Part 4 of Appendix 3 to

Schedule 7.1

Tyne, Tees & Wear PMU

(Network Rail)

<i>Column 1</i>		<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>
<i>Reporting Period</i>		<i>Target Performance Level (Minutes Delay)</i>	<i>Improvement Plan Performance Level (Minutes Delay)</i>	<i>Breach Performance Level (Minutes Delay)</i>
<i>Year 5</i>	<i>0902</i>	<i>8338</i>	<i>8963</i>	<i>9589</i>
<i>Year 5</i>	<i>0903</i>	<i>8308</i>	<i>8931</i>	<i>9554</i>
<i>Year 5</i>	<i>0904</i>	<i>8277</i>	<i>8898</i>	<i>9519</i>
<i>Year 5</i>	<i>0905</i>	<i>8247</i>	<i>8866</i>	<i>9484</i>
<i>Year 5</i>	<i>0906</i>	<i>8216</i>	<i>8832</i>	<i>9448</i>
<i>Year 5</i>	<i>0907</i>	<i>8186</i>	<i>8800</i>	<i>9414</i>
<i>Year 5</i>	<i>0908</i>	<i>8155</i>	<i>8767</i>	<i>9378</i>
<i>Year 5</i>	<i>0909</i>	<i>8125</i>	<i>8734</i>	<i>9344</i>
<i>Year 5</i>	<i>0910</i>	<i>8094</i>	<i>8701</i>	<i>9308</i>
<i>Year 5</i>	<i>0911</i>	<i>8064</i>	<i>8669</i>	<i>9274</i>
<i>Year 5</i>	<i>0912</i>	<i>8033</i>	<i>8635</i>	<i>9238</i>
<i>Year 5</i>	<i>0913</i>	<i>8003</i>	<i>8603</i>	<i>9203</i>
<i>Year 6</i>	<i>1001</i>	<i>7984</i>	<i>8583</i>	<i>9182</i>
<i>Year 6</i>	<i>1002</i>	<i>7965</i>	<i>8562</i>	<i>9160</i>
<i>Year 6</i>	<i>1003</i>	<i>7946</i>	<i>8542</i>	<i>9138</i>
<i>Year 6</i>	<i>1004</i>	<i>7927</i>	<i>8522</i>	<i>9116</i>
<i>Year 6</i>	<i>1005</i>	<i>7908</i>	<i>8501</i>	<i>9094</i>
<i>Year 6</i>	<i>1006</i>	<i>7889</i>	<i>8481</i>	<i>9072</i>
<i>Year 6</i>	<i>1007</i>	<i>7870</i>	<i>8460</i>	<i>9051</i>
<i>Year 6</i>	<i>1008</i>	<i>7851</i>	<i>8440</i>	<i>9029</i>
<i>Year 6</i>	<i>1009</i>	<i>7832</i>	<i>8419</i>	<i>9007</i>
<i>Year 6</i>	<i>1010</i>	<i>7813</i>	<i>8399</i>	<i>8985</i>
<i>Year 6</i>	<i>1011</i>	<i>7794</i>	<i>8379</i>	<i>8963</i>
<i>Year 6</i>	<i>1012</i>	<i>7775</i>	<i>8358</i>	<i>8941</i>
<i>Year 6</i>	<i>1013</i>	<i>7756</i>	<i>8338</i>	<i>8919</i>
<i>Year 7</i>	<i>1101</i>	<i>7741</i>	<i>8322</i>	<i>8902</i>
<i>Year 7</i>	<i>1102</i>	<i>7725</i>	<i>8304</i>	<i>8884</i>
<i>Year 7</i>	<i>1103</i>	<i>7710</i>	<i>8288</i>	<i>8867</i>
<i>Year 7</i>	<i>1104</i>	<i>7695</i>	<i>8272</i>	<i>8849</i>
<i>Year 7</i>	<i>1105</i>	<i>7679</i>	<i>8255</i>	<i>8831</i>
<i>Year 7</i>	<i>1106</i>	<i>7664</i>	<i>8239</i>	<i>8814</i>
<i>Year 7</i>	<i>1107</i>	<i>7649</i>	<i>8223</i>	<i>8796</i>
<i>Year 7</i>	<i>1108</i>	<i>7634</i>	<i>8207</i>	<i>8779</i>
<i>Year 7</i>	<i>1109</i>	<i>7618</i>	<i>8189</i>	<i>8761</i>
<i>Year 7</i>	<i>1110</i>	<i>7603</i>	<i>8173</i>	<i>8743</i>
<i>Year 7</i>	<i>1111</i>	<i>7588</i>	<i>8157</i>	<i>8726</i>
<i>Year 7</i>	<i>1112</i>	<i>7572</i>	<i>8140</i>	<i>8708</i>
<i>Year 7</i>	<i>1113</i>	<i>7557</i>	<i>8124</i>	<i>8691</i>
<i>Year 8</i>	<i>1201</i>	<i>7543</i>	<i>8109</i>	<i>8674</i>
<i>Year 8</i>	<i>1202</i>	<i>7529</i>	<i>8094</i>	<i>8658</i>
<i>Year 8</i>	<i>1203</i>	<i>7515</i>	<i>8079</i>	<i>8642</i>
<i>Year 8</i>	<i>1204</i>	<i>7501</i>	<i>8064</i>	<i>8626</i>
<i>Year 8</i>	<i>1205</i>	<i>7487</i>	<i>8049</i>	<i>8610</i>
<i>Year 8</i>	<i>1206</i>	<i>7473</i>	<i>8033</i>	<i>8594</i>

1. START OF THE NORTHERN FRANCHISE

The contents of the above table shall be completed in accordance with the letter of even date made between the parties concerning this Schedule 7.1. The first Reporting Period of the Franchise Term for the purposes of this Benchmark Table will be the Reporting Period which commences on the Franchise Commencement Date (or if the Franchise Commencement Date is not the first day of a Reporting Period, the first Reporting Period which commences next after the Franchise Commencement Date).

Part 5

PMU Network Rail Benchmark Table – West & North Yorkshire

Column 1		Column 2	Column 3	Column 4
Reporting Period		Target Performance Level (Minutes Delay)	Improvement Plan Performance Level (Minutes Delay)	Breach Performance Level (Minutes Delay)
Year 1	0510	26124	28083	30043
Year 1	0511	25924	27868	29813
Year 1	0512	25724	27653	29583
Year 1	0513	25524	27438	29353
Year 2	0601	25404	27309	29215
Year 2	0602	25285	27181	29078
Year 2	0603	25165	27052	28940
Year 2	0604	25046	26924	28803
Year 2	0605	24926	26795	28665
Year 2	0606	24807	26668	28528
Year 2	0607	24687	26539	28390
Year 2	0608	24568	26411	28253
Year 2	0609	24448	26282	28115
Year 2	0610	24329	26154	27978
Year 2	0611	24209	26025	27840
Year 2	0612	24090	25897	27704
Year 2	0613	23970	25768	27566
Year 3	0701	23878	25669	27460
Year 3	0702	23787	25571	27355
Year 3	0703	23695	25472	27249
Year 3	0704	23604	25374	27145
Year 3	0705	23512	25275	27039
Year 3	0706	23420	25177	26933
Year 3	0707	23329	25079	26828
Year 3	0708	23237	24980	26723
Year 3	0709	23145	24881	26617
Year 3	0710	23054	24783	26512
Year 3	0711	22962	24684	26406
Year 3	0712	22871	24586	26302
Year 3	0713	22779	24487	26196
Year 4	0801	22689	24391	26092
Year 4	0802	22599	24294	25989
Year 4	0803	22508	24196	25884
Year 4	0804	22418	24099	25781
Year 4	0805	22328	24003	25677
Year 4	0806	22238	23906	25574
Year 4	0807	22147	23808	25469
Year 4	0808	22057	23711	25366
Year 4	0809	21967	23615	25262
Year 4	0810	21877	23518	25159
Year 4	0811	21786	23420	25054
Year 4	0812	21696	23323	24950
Year 4	0813	21606	23226	24847
Year 5	0901	21528	23143	24757

<i>Column 1</i>		<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>
Reporting Period		Target Performance Level (Minutes Delay)	Improvement Plan Performance Level (Minutes Delay)	Breach Performance Level (Minutes Delay)
<i>Year 5</i>	<i>0902</i>	<i>21449</i>	<i>23058</i>	<i>24666</i>
<i>Year 5</i>	<i>0903</i>	<i>21371</i>	<i>22974</i>	<i>24577</i>
<i>Year 5</i>	<i>0904</i>	<i>21292</i>	<i>22889</i>	<i>24486</i>
<i>Year 5</i>	<i>0905</i>	<i>21214</i>	<i>22805</i>	<i>24396</i>
<i>Year 5</i>	<i>0906</i>	<i>21135</i>	<i>22720</i>	<i>24305</i>
<i>Year 5</i>	<i>0907</i>	<i>21057</i>	<i>22636</i>	<i>24216</i>
<i>Year 5</i>	<i>0908</i>	<i>20978</i>	<i>22551</i>	<i>24125</i>
<i>Year 5</i>	<i>0909</i>	<i>20900</i>	<i>22468</i>	<i>24035</i>
<i>Year 5</i>	<i>0910</i>	<i>20821</i>	<i>22383</i>	<i>23944</i>
<i>Year 5</i>	<i>0911</i>	<i>20743</i>	<i>22299</i>	<i>23854</i>
<i>Year 5</i>	<i>0912</i>	<i>20664</i>	<i>22214</i>	<i>23764</i>
<i>Year 5</i>	<i>0913</i>	<i>20586</i>	<i>22130</i>	<i>23674</i>
<i>Year 6</i>	<i>1001</i>	<i>20537</i>	<i>22077</i>	<i>23618</i>
<i>Year 6</i>	<i>1002</i>	<i>20488</i>	<i>22025</i>	<i>23561</i>
<i>Year 6</i>	<i>1003</i>	<i>20439</i>	<i>21972</i>	<i>23505</i>
<i>Year 6</i>	<i>1004</i>	<i>20390</i>	<i>21919</i>	<i>23449</i>
<i>Year 6</i>	<i>1005</i>	<i>20341</i>	<i>21867</i>	<i>23392</i>
<i>Year 6</i>	<i>1006</i>	<i>20292</i>	<i>21814</i>	<i>23336</i>
<i>Year 6</i>	<i>1007</i>	<i>20244</i>	<i>21762</i>	<i>23281</i>
<i>Year 6</i>	<i>1008</i>	<i>20195</i>	<i>21710</i>	<i>23224</i>
<i>Year 6</i>	<i>1009</i>	<i>20146</i>	<i>21657</i>	<i>23168</i>
<i>Year 6</i>	<i>1010</i>	<i>20097</i>	<i>21604</i>	<i>23112</i>
<i>Year 6</i>	<i>1011</i>	<i>20048</i>	<i>21552</i>	<i>23055</i>
<i>Year 6</i>	<i>1012</i>	<i>19999</i>	<i>21499</i>	<i>22999</i>
<i>Year 6</i>	<i>1013</i>	<i>19950</i>	<i>21446</i>	<i>22943</i>
<i>Year 7</i>	<i>1101</i>	<i>19911</i>	<i>21404</i>	<i>22898</i>
<i>Year 7</i>	<i>1102</i>	<i>19871</i>	<i>21361</i>	<i>22852</i>
<i>Year 7</i>	<i>1103</i>	<i>19832</i>	<i>21319</i>	<i>22807</i>
<i>Year 7</i>	<i>1104</i>	<i>19793</i>	<i>21277</i>	<i>22762</i>
<i>Year 7</i>	<i>1105</i>	<i>19753</i>	<i>21234</i>	<i>22716</i>
<i>Year 7</i>	<i>1106</i>	<i>19714</i>	<i>21193</i>	<i>22671</i>
<i>Year 7</i>	<i>1107</i>	<i>19675</i>	<i>21151</i>	<i>22626</i>
<i>Year 7</i>	<i>1108</i>	<i>19636</i>	<i>21109</i>	<i>22581</i>
<i>Year 7</i>	<i>1109</i>	<i>19596</i>	<i>21066</i>	<i>22535</i>
<i>Year 7</i>	<i>1110</i>	<i>19557</i>	<i>21024</i>	<i>22491</i>
<i>Year 7</i>	<i>1111</i>	<i>19518</i>	<i>20982</i>	<i>22446</i>
<i>Year 7</i>	<i>1112</i>	<i>19478</i>	<i>20939</i>	<i>22400</i>
<i>Year 7</i>	<i>1113</i>	<i>19439</i>	<i>20897</i>	<i>22355</i>
<i>Year 8</i>	<i>1201</i>	<i>19403</i>	<i>20858</i>	<i>22313</i>
<i>Year 8</i>	<i>1202</i>	<i>19367</i>	<i>20820</i>	<i>22272</i>
<i>Year 8</i>	<i>1203</i>	<i>19331</i>	<i>20781</i>	<i>22231</i>
<i>Year 8</i>	<i>1204</i>	<i>19295</i>	<i>20742</i>	<i>22189</i>
<i>Year 8</i>	<i>1205</i>	<i>19259</i>	<i>20703</i>	<i>22148</i>
<i>Year 8</i>	<i>1206</i>	<i>19223</i>	<i>20665</i>	<i>22106</i>

1. START OF THE NORTHERN FRANCHISE

The contents of the above table shall be completed in accordance with the letter of even date made between the parties concerning this Schedule 7.1. The first Reporting Period of the Franchise Term for the purposes of this Benchmark Table will be the Reporting Period which commences on the Franchise Commencement Date (or if the Franchise Commencement Date is not the first day of a Reporting Period, the first Reporting Period which commences next after the Franchise Commencement Date).

APPENDIX 4 TO SCHEDULE 7.1

Part 1

PMU Service Delivery Benchmark Table – Lancashire & Cumbria

Column 1		Column 2	Column 3	Column 4	Column 5
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	0510	10750	11556	12363	12900
Year 1	0511	10750	11556	12363	12900
Year 1	0512	10750	11556	12363	12900
Year 1	0513	10750	11556	12363	12900
Year 2	0601	10750	11556	12363	12900
Year 2	0602	10750	11556	12363	12900
Year 2	0603	10750	11556	12363	12900
Year 2	0604	10750	11556	12363	12900
Year 2	0605	10750	11556	12363	12900
Year 2	0606	10750	11556	12363	12900
Year 2	0607	10750	11556	12363	12900
Year 2	0608	10750	11556	12363	12900
Year 2	0609	10750	11556	12363	12900
Year 2	0610	10750	11556	12363	12900
Year 2	0611	10750	11556	12363	12900
Year 2	0612	10750	11556	12363	12900
Year 2	0613	10500	11288	12075	12600
Year 3	0701	10500	11288	12075	12600
Year 3	0702	10500	11288	12075	12600
Year 3	0703	10500	11288	12075	12600
Year 3	0704	10500	11288	12075	12600
Year 3	0705	10500	11288	12075	12600
Year 3	0706	10500	11288	12075	12600
Year 3	0707	10500	11288	12075	12600
Year 3	0708	10500	11288	12075	12600
Year 3	0709	10500	11288	12075	12600
Year 3	0710	10500	11288	12075	12600
Year 3	0711	10500	11288	12075	12600
Year 3	0712	10500	11288	12075	12600
Year 3	0713	10500	11288	12075	12600
Year 4	0801	10500	11288	12075	12600
Year 4	0802	10500	11288	12075	12600
Year 4	0803	10500	11288	12075	12600
Year 4	0804	10500	11288	12075	12600
Year 4	0805	10500	11288	12075	12600
Year 4	0806	10500	11288	12075	12600
Year 4	0807	10500	11288	12075	12600
Year 4	0808	10500	11288	12075	12600
Year 4	0809	10500	11288	12075	12600
Year 4	0810	10500	11288	12075	12600

Part 1 of Appendix 4 to

Schedule 7.1

Lancashire & Cumbria PMU
(Service Delivery)

<i>Column 1</i>		<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>
<i>Reporting Period</i>		<i>Target Performance Level (Minutes Delay)</i>	<i>Improvement Plan Performance Level (Minutes Delay)</i>	<i>Breach Performance Level (Minutes Delay)</i>	<i>Default Performance Level (Minutes Delay)</i>
<i>Year 4</i>	<i>0811</i>	<i>10500</i>	<i>11288</i>	<i>12075</i>	<i>12600</i>
<i>Year 4</i>	<i>0812</i>	<i>10500</i>	<i>11288</i>	<i>12075</i>	<i>12600</i>
<i>Year 4</i>	<i>0813</i>	<i>10500</i>	<i>11288</i>	<i>12075</i>	<i>12600</i>
<i>Year 5</i>	<i>0901</i>	<i>10500</i>	<i>11288</i>	<i>12075</i>	<i>12600</i>
<i>Year 5</i>	<i>0902</i>	<i>10500</i>	<i>11288</i>	<i>12075</i>	<i>12600</i>
<i>Year 5</i>	<i>0903</i>	<i>10500</i>	<i>11288</i>	<i>12075</i>	<i>12600</i>
<i>Year 5</i>	<i>0904</i>	<i>10500</i>	<i>11288</i>	<i>12075</i>	<i>12600</i>
<i>Year 5</i>	<i>0905</i>	<i>10500</i>	<i>11288</i>	<i>12075</i>	<i>12600</i>
<i>Year 5</i>	<i>0906</i>	<i>10500</i>	<i>11288</i>	<i>12075</i>	<i>12600</i>
<i>Year 5</i>	<i>0907</i>	<i>10500</i>	<i>11288</i>	<i>12075</i>	<i>12600</i>
<i>Year 5</i>	<i>0908</i>	<i>10500</i>	<i>11288</i>	<i>12075</i>	<i>12600</i>
<i>Year 5</i>	<i>0909</i>	<i>10500</i>	<i>11288</i>	<i>12075</i>	<i>12600</i>
<i>Year 5</i>	<i>0910</i>	<i>10250</i>	<i>11019</i>	<i>11788</i>	<i>12300</i>
<i>Year 5</i>	<i>0911</i>	<i>10250</i>	<i>11019</i>	<i>11788</i>	<i>12300</i>
<i>Year 5</i>	<i>0912</i>	<i>10250</i>	<i>11019</i>	<i>11788</i>	<i>12300</i>
<i>Year 5</i>	<i>0913</i>	<i>10250</i>	<i>11019</i>	<i>11788</i>	<i>12300</i>
<i>Year 6</i>	<i>1001</i>	<i>10250</i>	<i>11019</i>	<i>11788</i>	<i>12300</i>
<i>Year 6</i>	<i>1002</i>	<i>10250</i>	<i>11019</i>	<i>11788</i>	<i>12300</i>
<i>Year 6</i>	<i>1003</i>	<i>10250</i>	<i>11019</i>	<i>11788</i>	<i>12300</i>
<i>Year 6</i>	<i>1004</i>	<i>10250</i>	<i>11019</i>	<i>11788</i>	<i>12300</i>
<i>Year 6</i>	<i>1005</i>	<i>10250</i>	<i>11019</i>	<i>11788</i>	<i>12300</i>
<i>Year 6</i>	<i>1006</i>	<i>10250</i>	<i>11019</i>	<i>11788</i>	<i>12300</i>
<i>Year 6</i>	<i>1007</i>	<i>10250</i>	<i>11019</i>	<i>11788</i>	<i>12300</i>
<i>Year 6</i>	<i>1008</i>	<i>10250</i>	<i>11019</i>	<i>11788</i>	<i>12300</i>
<i>Year 6</i>	<i>1009</i>	<i>10250</i>	<i>11019</i>	<i>11788</i>	<i>12300</i>
<i>Year 6</i>	<i>1010</i>	<i>10250</i>	<i>11019</i>	<i>11788</i>	<i>12300</i>
<i>Year 6</i>	<i>1011</i>	<i>10250</i>	<i>11019</i>	<i>11788</i>	<i>12300</i>
<i>Year 6</i>	<i>1012</i>	<i>10250</i>	<i>11019</i>	<i>11788</i>	<i>12300</i>
<i>Year 6</i>	<i>1013</i>	<i>10250</i>	<i>11019</i>	<i>11788</i>	<i>12300</i>
<i>Year 7</i>	<i>1101</i>	<i>10250</i>	<i>11019</i>	<i>11788</i>	<i>12300</i>
<i>Year 7</i>	<i>1102</i>	<i>10250</i>	<i>11019</i>	<i>11788</i>	<i>12300</i>
<i>Year 7</i>	<i>1103</i>	<i>10250</i>	<i>11019</i>	<i>11788</i>	<i>12300</i>
<i>Year 7</i>	<i>1104</i>	<i>10250</i>	<i>11019</i>	<i>11788</i>	<i>12300</i>
<i>Year 7</i>	<i>1105</i>	<i>10250</i>	<i>11019</i>	<i>11788</i>	<i>12300</i>
<i>Year 7</i>	<i>1106</i>	<i>10250</i>	<i>11019</i>	<i>11788</i>	<i>12300</i>
<i>Year 7</i>	<i>1107</i>	<i>10250</i>	<i>11019</i>	<i>11788</i>	<i>12300</i>
<i>Year 7</i>	<i>1108</i>	<i>10250</i>	<i>11019</i>	<i>11788</i>	<i>12300</i>
<i>Year 7</i>	<i>1109</i>	<i>10250</i>	<i>11019</i>	<i>11788</i>	<i>12300</i>
<i>Year 7</i>	<i>1110</i>	<i>10250</i>	<i>11019</i>	<i>11788</i>	<i>12300</i>
<i>Year 7</i>	<i>1111</i>	<i>10250</i>	<i>11019</i>	<i>11788</i>	<i>12300</i>
<i>Year 7</i>	<i>1112</i>	<i>10250</i>	<i>11019</i>	<i>11788</i>	<i>12300</i>
<i>Year 7</i>	<i>1113</i>	<i>10250</i>	<i>11019</i>	<i>11788</i>	<i>12300</i>
<i>Year 8</i>	<i>1201</i>	<i>10250</i>	<i>11019</i>	<i>11788</i>	<i>12300</i>
<i>Year 8</i>	<i>1202</i>	<i>10250</i>	<i>11019</i>	<i>11788</i>	<i>12300</i>
<i>Year 8</i>	<i>1203</i>	<i>10250</i>	<i>11019</i>	<i>11788</i>	<i>12300</i>

<i>Column 1</i>		<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>
<i>Reporting Period</i>		<i>Target Performance Level (Minutes Delay)</i>	<i>Improvement Plan Performance Level (Minutes Delay)</i>	<i>Breach Performance Level (Minutes Delay)</i>	<i>Default Performance Level (Minutes Delay)</i>
<i>Year 8</i>	<i>1204</i>	<i>10250</i>	<i>11019</i>	<i>11788</i>	<i>12300</i>
<i>Year 8</i>	<i>1205</i>	<i>10250</i>	<i>11019</i>	<i>11788</i>	<i>12300</i>
<i>Year 8</i>	<i>1206</i>	<i>10250</i>	<i>11019</i>	<i>11788</i>	<i>12300</i>

1. START OF THE NORTHERN FRANCHISE

The contents of the above table shall be completed in accordance with the letter of even date made between the parties concerning this Schedule 7.1. The first Reporting Period of the Franchise Term for the purposes of this Benchmark Table will be the Reporting Period which commences on the Franchise Commencement Date (or if the Franchise Commencement Date is not the first day of a Reporting Period, the first Reporting Period which commences next after the Franchise Commencement Date).

Part 2

PMU Service Delivery Benchmark Table – Manchester & Liverpool

<i>Column 1</i>		<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>
Reporting Period		Target Performance Level (Minutes Delay)	Improvement Plan Performance Level (Minutes Delay)	Breach Performance Level (Minutes Delay)	Default Performance Level (Minutes Delay)
<i>Year 1</i>	0510	18750	20156	21563	22500
<i>Year 1</i>	0511	18750	20156	21563	22500
<i>Year 1</i>	0512	18750	20156	21563	22500
<i>Year 1</i>	0513	18750	20156	21563	22500
<i>Year 2</i>	0601	18750	20156	21563	22500
<i>Year 2</i>	0602	18750	20156	21563	22500
<i>Year 2</i>	0603	18750	20156	21563	22500
<i>Year 2</i>	0604	18750	20156	21563	22500
<i>Year 2</i>	0605	18750	20156	21563	22500
<i>Year 2</i>	0606	18750	20156	21563	22500
<i>Year 2</i>	0607	18500	19888	21275	22200
<i>Year 2</i>	0608	18500	19888	21275	22200
<i>Year 2</i>	0609	18500	19888	21275	22200
<i>Year 2</i>	0610	18500	19888	21275	22200
<i>Year 2</i>	0611	18500	19888	21275	22200
<i>Year 2</i>	0612	18500	19888	21275	22200
<i>Year 2</i>	0613	18500	19888	21275	22200
<i>Year 3</i>	0701	18500	19888	21275	22200
<i>Year 3</i>	0702	18500	19888	21275	22200
<i>Year 3</i>	0703	18500	19888	21275	22200
<i>Year 3</i>	0704	18500	19888	21275	22200
<i>Year 3</i>	0705	18500	19888	21275	22200
<i>Year 3</i>	0706	18500	19888	21275	22200
<i>Year 3</i>	0707	18500	19888	21275	22200
<i>Year 3</i>	0708	18500	19888	21275	22200
<i>Year 3</i>	0709	18500	19888	21275	22200
<i>Year 3</i>	0710	18500	19888	21275	22200
<i>Year 3</i>	0711	18500	19888	21275	22200
<i>Year 3</i>	0712	18500	19888	21275	22200
<i>Year 3</i>	0713	18250	19619	20988	21900
<i>Year 4</i>	0801	18250	19619	20988	21900
<i>Year 4</i>	0802	18250	19619	20988	21900
<i>Year 4</i>	0803	18250	19619	20988	21900
<i>Year 4</i>	0804	18250	19619	20988	21900
<i>Year 4</i>	0805	18250	19619	20988	21900
<i>Year 4</i>	0806	18250	19619	20988	21900
<i>Year 4</i>	0807	18250	19619	20988	21900
<i>Year 4</i>	0808	18250	19619	20988	21900
<i>Year 4</i>	0809	18250	19619	20988	21900
<i>Year 4</i>	0810	18250	19619	20988	21900
<i>Year 4</i>	0811	18250	19619	20988	21900
<i>Year 4</i>	0812	18250	19619	20988	21900

<i>Column 1</i>		<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>
<i>Reporting Period</i>		<i>Target Performance Level (Minutes Delay)</i>	<i>Improvement Plan Performance Level (Minutes Delay)</i>	<i>Breach Performance Level (Minutes Delay)</i>	<i>Default Performance Level (Minutes Delay)</i>
<i>Year 4</i>	<i>0813</i>	<i>18250</i>	<i>19619</i>	<i>20988</i>	<i>21900</i>
<i>Year 5</i>	<i>0901</i>	<i>18250</i>	<i>19619</i>	<i>20988</i>	<i>21900</i>
<i>Year 5</i>	<i>0902</i>	<i>18250</i>	<i>19619</i>	<i>20988</i>	<i>21900</i>
<i>Year 5</i>	<i>0903</i>	<i>18250</i>	<i>19619</i>	<i>20988</i>	<i>21900</i>
<i>Year 5</i>	<i>0904</i>	<i>18250</i>	<i>19619</i>	<i>20988</i>	<i>21900</i>
<i>Year 5</i>	<i>0905</i>	<i>18250</i>	<i>19619</i>	<i>20988</i>	<i>21900</i>
<i>Year 5</i>	<i>0906</i>	<i>18250</i>	<i>19619</i>	<i>20988</i>	<i>21900</i>
<i>Year 5</i>	<i>0907</i>	<i>18000</i>	<i>19350</i>	<i>20700</i>	<i>21600</i>
<i>Year 5</i>	<i>0908</i>	<i>18000</i>	<i>19350</i>	<i>20700</i>	<i>21600</i>
<i>Year 5</i>	<i>0909</i>	<i>18000</i>	<i>19350</i>	<i>20700</i>	<i>21600</i>
<i>Year 5</i>	<i>0910</i>	<i>18000</i>	<i>19350</i>	<i>20700</i>	<i>21600</i>
<i>Year 5</i>	<i>0911</i>	<i>18000</i>	<i>19350</i>	<i>20700</i>	<i>21600</i>
<i>Year 5</i>	<i>0912</i>	<i>18000</i>	<i>19350</i>	<i>20700</i>	<i>21600</i>
<i>Year 5</i>	<i>0913</i>	<i>18000</i>	<i>19350</i>	<i>20700</i>	<i>21600</i>
<i>Year 6</i>	<i>1001</i>	<i>18000</i>	<i>19350</i>	<i>20700</i>	<i>21600</i>
<i>Year 6</i>	<i>1002</i>	<i>18000</i>	<i>19350</i>	<i>20700</i>	<i>21600</i>
<i>Year 6</i>	<i>1003</i>	<i>18000</i>	<i>19350</i>	<i>20700</i>	<i>21600</i>
<i>Year 6</i>	<i>1004</i>	<i>18000</i>	<i>19350</i>	<i>20700</i>	<i>21600</i>
<i>Year 6</i>	<i>1005</i>	<i>18000</i>	<i>19350</i>	<i>20700</i>	<i>21600</i>
<i>Year 6</i>	<i>1006</i>	<i>18000</i>	<i>19350</i>	<i>20700</i>	<i>21600</i>
<i>Year 6</i>	<i>1007</i>	<i>18000</i>	<i>19350</i>	<i>20700</i>	<i>21600</i>
<i>Year 6</i>	<i>1008</i>	<i>18000</i>	<i>19350</i>	<i>20700</i>	<i>21600</i>
<i>Year 6</i>	<i>1009</i>	<i>18000</i>	<i>19350</i>	<i>20700</i>	<i>21600</i>
<i>Year 6</i>	<i>1010</i>	<i>18000</i>	<i>19350</i>	<i>20700</i>	<i>21600</i>
<i>Year 6</i>	<i>1011</i>	<i>18000</i>	<i>19350</i>	<i>20700</i>	<i>21600</i>
<i>Year 6</i>	<i>1012</i>	<i>18000</i>	<i>19350</i>	<i>20700</i>	<i>21600</i>
<i>Year 6</i>	<i>1013</i>	<i>18000</i>	<i>19350</i>	<i>20700</i>	<i>21600</i>
<i>Year 7</i>	<i>1101</i>	<i>18000</i>	<i>19350</i>	<i>20700</i>	<i>21600</i>
<i>Year 7</i>	<i>1102</i>	<i>18000</i>	<i>19350</i>	<i>20700</i>	<i>21600</i>
<i>Year 7</i>	<i>1103</i>	<i>18000</i>	<i>19350</i>	<i>20700</i>	<i>21600</i>
<i>Year 7</i>	<i>1104</i>	<i>18000</i>	<i>19350</i>	<i>20700</i>	<i>21600</i>
<i>Year 7</i>	<i>1105</i>	<i>18000</i>	<i>19350</i>	<i>20700</i>	<i>21600</i>
<i>Year 7</i>	<i>1106</i>	<i>18000</i>	<i>19350</i>	<i>20700</i>	<i>21600</i>
<i>Year 7</i>	<i>1107</i>	<i>18000</i>	<i>19350</i>	<i>20700</i>	<i>21600</i>
<i>Year 7</i>	<i>1108</i>	<i>18000</i>	<i>19350</i>	<i>20700</i>	<i>21600</i>
<i>Year 7</i>	<i>1109</i>	<i>18000</i>	<i>19350</i>	<i>20700</i>	<i>21600</i>
<i>Year 7</i>	<i>1110</i>	<i>18000</i>	<i>19350</i>	<i>20700</i>	<i>21600</i>
<i>Year 7</i>	<i>1111</i>	<i>18000</i>	<i>19350</i>	<i>20700</i>	<i>21600</i>
<i>Year 7</i>	<i>1112</i>	<i>18000</i>	<i>19350</i>	<i>20700</i>	<i>21600</i>
<i>Year 7</i>	<i>1113</i>	<i>18000</i>	<i>19350</i>	<i>20700</i>	<i>21600</i>
<i>Year 8</i>	<i>1201</i>	<i>18000</i>	<i>19350</i>	<i>20700</i>	<i>21600</i>
<i>Year 8</i>	<i>1202</i>	<i>18000</i>	<i>19350</i>	<i>20700</i>	<i>21600</i>
<i>Year 8</i>	<i>1203</i>	<i>18000</i>	<i>19350</i>	<i>20700</i>	<i>21600</i>
<i>Year 8</i>	<i>1204</i>	<i>18000</i>	<i>19350</i>	<i>20700</i>	<i>21600</i>
<i>Year 8</i>	<i>1205</i>	<i>18000</i>	<i>19350</i>	<i>20700</i>	<i>21600</i>

<i>Column 1</i>		<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>
<i>Reporting Period</i>		<i>Target Performance Level (Minutes Delay)</i>	<i>Improvement Plan Performance Level (Minutes Delay)</i>	<i>Breach Performance Level (Minutes Delay)</i>	<i>Default Performance Level (Minutes Delay)</i>
<i>Year 8</i>	1206	18000	19350	20700	21600

1. START OF THE NORTHERN FRANCHISE

The contents of the above table shall be completed in accordance with the letter of even date made between the parties concerning this Schedule 7.1. The first Reporting Period of the Franchise Term for the purposes of this Benchmark Table will be the Reporting Period which commences on the Franchise Commencement Date (or if the Franchise Commencement Date is not the first day of a Reporting Period, the first Reporting Period which commences next after the Franchise Commencement Date)..

Part 3

PMU Service Delivery Benchmark Table – South & East Yorkshire

<i>Column 1</i>		<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>
Reporting Period		Target Performance Level (Minutes Delay)	Improvement Plan Performance Level (Minutes Delay)	Breach Performance Level (Minutes Delay)	Default Performance Level (Minutes Delay)
<i>Year 1</i>	0510	10250	11019	11788	12300
<i>Year 1</i>	0511	10250	11019	11788	12300
<i>Year 1</i>	0512	10250	11019	11788	12300
<i>Year 1</i>	0513	10250	11019	11788	12300
<i>Year 2</i>	0601	10250	11019	11788	12300
<i>Year 2</i>	0602	10250	11019	11788	12300
<i>Year 2</i>	0603	10250	11019	11788	12300
<i>Year 2</i>	0604	10250	11019	11788	12300
<i>Year 2</i>	0605	10250	11019	11788	12300
<i>Year 2</i>	0606	10250	11019	11788	12300
<i>Year 2</i>	0607	10250	11019	11788	12300
<i>Year 2</i>	0608	10250	11019	11788	12300
<i>Year 2</i>	0609	10250	11019	11788	12300
<i>Year 2</i>	0610	10250	11019	11788	12300
<i>Year 2</i>	0611	10250	11019	11788	12300
<i>Year 2</i>	0612	10250	11019	11788	12300
<i>Year 2</i>	0613	10250	11019	11788	12300
<i>Year 3</i>	0701	10250	11019	11788	12300
<i>Year 3</i>	0702	10250	11019	11788	12300
<i>Year 3</i>	0703	10250	11019	11788	12300
<i>Year 3</i>	0704	10250	11019	11788	12300
<i>Year 3</i>	0705	10250	11019	11788	12300
<i>Year 3</i>	0706	10250	11019	11788	12300
<i>Year 3</i>	0707	10250	11019	11788	12300
<i>Year 3</i>	0708	10250	11019	11788	12300
<i>Year 3</i>	0709	10250	11019	11788	12300
<i>Year 3</i>	0710	10250	11019	11788	12300
<i>Year 3</i>	0711	10250	11019	11788	12300
<i>Year 3</i>	0712	10250	11019	11788	12300
<i>Year 3</i>	0713	10250	11019	11788	12300
<i>Year 4</i>	0801	10250	11019	11788	12300
<i>Year 4</i>	0802	10250	11019	11788	12300
<i>Year 4</i>	0803	10250	11019	11788	12300
<i>Year 4</i>	0804	10000	10750	11500	12000
<i>Year 4</i>	0805	10000	10750	11500	12000
<i>Year 4</i>	0806	10000	10750	11500	12000
<i>Year 4</i>	0807	10000	10750	11500	12000
<i>Year 4</i>	0808	10000	10750	11500	12000
<i>Year 4</i>	0809	10000	10750	11500	12000
<i>Year 4</i>	0810	10000	10750	11500	12000
<i>Year 4</i>	0811	10000	10750	11500	12000
<i>Year 4</i>	0812	10000	10750	11500	12000

Part 3 of Appendix 4 to

Schedule 7.1

South & East Yorkshire PMU
(Service Delivery)

<i>Column 1</i>		<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>
<i>Reporting Period</i>		<i>Target Performance Level (Minutes Delay)</i>	<i>Improvement Plan Performance Level (Minutes Delay)</i>	<i>Breach Performance Level (Minutes Delay)</i>	<i>Default Performance Level (Minutes Delay)</i>
<i>Year 4</i>	<i>0813</i>	<i>10000</i>	<i>10750</i>	<i>11500</i>	<i>12000</i>
<i>Year 5</i>	<i>0901</i>	<i>10000</i>	<i>10750</i>	<i>11500</i>	<i>12000</i>
<i>Year 5</i>	<i>0902</i>	<i>10000</i>	<i>10750</i>	<i>11500</i>	<i>12000</i>
<i>Year 5</i>	<i>0903</i>	<i>10000</i>	<i>10750</i>	<i>11500</i>	<i>12000</i>
<i>Year 5</i>	<i>0904</i>	<i>10000</i>	<i>10750</i>	<i>11500</i>	<i>12000</i>
<i>Year 5</i>	<i>0905</i>	<i>10000</i>	<i>10750</i>	<i>11500</i>	<i>12000</i>
<i>Year 5</i>	<i>0906</i>	<i>10000</i>	<i>10750</i>	<i>11500</i>	<i>12000</i>
<i>Year 5</i>	<i>0907</i>	<i>10000</i>	<i>10750</i>	<i>11500</i>	<i>12000</i>
<i>Year 5</i>	<i>0908</i>	<i>10000</i>	<i>10750</i>	<i>11500</i>	<i>12000</i>
<i>Year 5</i>	<i>0909</i>	<i>10000</i>	<i>10750</i>	<i>11500</i>	<i>12000</i>
<i>Year 5</i>	<i>0910</i>	<i>10000</i>	<i>10750</i>	<i>11500</i>	<i>12000</i>
<i>Year 5</i>	<i>0911</i>	<i>10000</i>	<i>10750</i>	<i>11500</i>	<i>12000</i>
<i>Year 5</i>	<i>0912</i>	<i>10000</i>	<i>10750</i>	<i>11500</i>	<i>12000</i>
<i>Year 5</i>	<i>0913</i>	<i>10000</i>	<i>10750</i>	<i>11500</i>	<i>12000</i>
<i>Year 6</i>	<i>1001</i>	<i>10000</i>	<i>10750</i>	<i>11500</i>	<i>12000</i>
<i>Year 6</i>	<i>1002</i>	<i>10000</i>	<i>10750</i>	<i>11500</i>	<i>12000</i>
<i>Year 6</i>	<i>1003</i>	<i>10000</i>	<i>10750</i>	<i>11500</i>	<i>12000</i>
<i>Year 6</i>	<i>1004</i>	<i>10000</i>	<i>10750</i>	<i>11500</i>	<i>12000</i>
<i>Year 6</i>	<i>1005</i>	<i>10000</i>	<i>10750</i>	<i>11500</i>	<i>12000</i>
<i>Year 6</i>	<i>1006</i>	<i>10000</i>	<i>10750</i>	<i>11500</i>	<i>12000</i>
<i>Year 6</i>	<i>1007</i>	<i>10000</i>	<i>10750</i>	<i>11500</i>	<i>12000</i>
<i>Year 6</i>	<i>1008</i>	<i>10000</i>	<i>10750</i>	<i>11500</i>	<i>12000</i>
<i>Year 6</i>	<i>1009</i>	<i>10000</i>	<i>10750</i>	<i>11500</i>	<i>12000</i>
<i>Year 6</i>	<i>1010</i>	<i>10000</i>	<i>10750</i>	<i>11500</i>	<i>12000</i>
<i>Year 6</i>	<i>1011</i>	<i>10000</i>	<i>10750</i>	<i>11500</i>	<i>12000</i>
<i>Year 6</i>	<i>1012</i>	<i>10000</i>	<i>10750</i>	<i>11500</i>	<i>12000</i>
<i>Year 6</i>	<i>1013</i>	<i>10000</i>	<i>10750</i>	<i>11500</i>	<i>12000</i>
<i>Year 7</i>	<i>1101</i>	<i>10000</i>	<i>10750</i>	<i>11500</i>	<i>12000</i>
<i>Year 7</i>	<i>1102</i>	<i>10000</i>	<i>10750</i>	<i>11500</i>	<i>12000</i>
<i>Year 7</i>	<i>1103</i>	<i>10000</i>	<i>10750</i>	<i>11500</i>	<i>12000</i>
<i>Year 7</i>	<i>1104</i>	<i>10000</i>	<i>10750</i>	<i>11500</i>	<i>12000</i>
<i>Year 7</i>	<i>1105</i>	<i>10000</i>	<i>10750</i>	<i>11500</i>	<i>12000</i>
<i>Year 7</i>	<i>1106</i>	<i>10000</i>	<i>10750</i>	<i>11500</i>	<i>12000</i>
<i>Year 7</i>	<i>1107</i>	<i>10000</i>	<i>10750</i>	<i>11500</i>	<i>12000</i>
<i>Year 7</i>	<i>1108</i>	<i>10000</i>	<i>10750</i>	<i>11500</i>	<i>12000</i>
<i>Year 7</i>	<i>1109</i>	<i>10000</i>	<i>10750</i>	<i>11500</i>	<i>12000</i>
<i>Year 7</i>	<i>1110</i>	<i>10000</i>	<i>10750</i>	<i>11500</i>	<i>12000</i>
<i>Year 7</i>	<i>1111</i>	<i>10000</i>	<i>10750</i>	<i>11500</i>	<i>12000</i>
<i>Year 7</i>	<i>1112</i>	<i>10000</i>	<i>10750</i>	<i>11500</i>	<i>12000</i>
<i>Year 7</i>	<i>1113</i>	<i>10000</i>	<i>10750</i>	<i>11500</i>	<i>12000</i>
<i>Year 8</i>	<i>1201</i>	<i>10000</i>	<i>10750</i>	<i>11500</i>	<i>12000</i>
<i>Year 8</i>	<i>1202</i>	<i>10000</i>	<i>10750</i>	<i>11500</i>	<i>12000</i>
<i>Year 8</i>	<i>1203</i>	<i>10000</i>	<i>10750</i>	<i>11500</i>	<i>12000</i>
<i>Year 8</i>	<i>1204</i>	<i>10000</i>	<i>10750</i>	<i>11500</i>	<i>12000</i>
<i>Year 8</i>	<i>1205</i>	<i>10000</i>	<i>10750</i>	<i>11500</i>	<i>12000</i>

<i>Column 1</i>		<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>
<i>Reporting Period</i>		<i>Target Performance Level (Minutes Delay)</i>	<i>Improvement Plan Performance Level (Minutes Delay)</i>	<i>Breach Performance Level (Minutes Delay)</i>	<i>Default Performance Level (Minutes Delay)</i>
<i>Year 8</i>	1206	10000	10750	11500	12000

1. START OF THE NORTHERN FRANCHISE

The contents of the above table shall be completed in accordance with the letter of even date made between the parties concerning this Schedule 7.1. The first Reporting Period of the Franchise Term for the purposes of this Benchmark Table will be the Reporting Period which commences on the Franchise Commencement Date (or if the Franchise Commencement Date is not the first day of a Reporting Period, the first Reporting Period which commences next after the Franchise Commencement Date).

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Part 4

PMU Service Delivery Benchmark Table – Tyne, Tees & Wear

<i>Column 1</i>		<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>
Reporting Period		Target Performance Level (Minutes Delay)	Improvement Plan Performance Level (Minutes Delay)	Breach Performance Level (Minutes Delay)	Default Performance Level (Minutes Delay)
<i>Year 1</i>	0510	3250	3494	3738	3900
<i>Year 1</i>	0511	3250	3494	3738	3900
<i>Year 1</i>	0512	3250	3494	3738	3900
<i>Year 1</i>	0513	3250	3494	3738	3900
<i>Year 2</i>	0601	3250	3494	3738	3900
<i>Year 2</i>	0602	3250	3494	3738	3900
<i>Year 2</i>	0603	3250	3494	3738	3900
<i>Year 2</i>	0604	3250	3494	3738	3900
<i>Year 2</i>	0605	3250	3494	3738	3900
<i>Year 2</i>	0606	3250	3494	3738	3900
<i>Year 2</i>	0607	3250	3494	3738	3900
<i>Year 2</i>	0608	3250	3494	3738	3900
<i>Year 2</i>	0609	3250	3494	3738	3900
<i>Year 2</i>	0610	3250	3494	3738	3900
<i>Year 2</i>	0611	3250	3494	3738	3900
<i>Year 2</i>	0612	3250	3494	3738	3900
<i>Year 2</i>	0613	3250	3494	3738	3900
<i>Year 3</i>	0701	3250	3494	3738	3900
<i>Year 3</i>	0702	3250	3494	3738	3900
<i>Year 3</i>	0703	3250	3494	3738	3900
<i>Year 3</i>	0704	3250	3494	3738	3900
<i>Year 3</i>	0705	3250	3494	3738	3900
<i>Year 3</i>	0706	3250	3494	3738	3900
<i>Year 3</i>	0707	3250	3494	3738	3900
<i>Year 3</i>	0708	3250	3494	3738	3900
<i>Year 3</i>	0709	3250	3494	3738	3900
<i>Year 3</i>	0710	3250	3494	3738	3900
<i>Year 3</i>	0711	3250	3494	3738	3900
<i>Year 3</i>	0712	3250	3494	3738	3900
<i>Year 3</i>	0713	3250	3494	3738	3900
<i>Year 4</i>	0801	3250	3494	3738	3900
<i>Year 4</i>	0802	3000	3225	3450	3600
<i>Year 4</i>	0803	3000	3225	3450	3600
<i>Year 4</i>	0804	3000	3225	3450	3600
<i>Year 4</i>	0805	3000	3225	3450	3600
<i>Year 4</i>	0806	3000	3225	3450	3600
<i>Year 4</i>	0807	3000	3225	3450	3600
<i>Year 4</i>	0808	3000	3225	3450	3600
<i>Year 4</i>	0809	3000	3225	3450	3600
<i>Year 4</i>	0810	3000	3225	3450	3600
<i>Year 4</i>	0811	3000	3225	3450	3600
<i>Year 4</i>	0812	3000	3225	3450	3600

<i>Column 1</i>		<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>
<i>Reporting Period</i>		<i>Target Performance Level (Minutes Delay)</i>	<i>Improvement Plan Performance Level (Minutes Delay)</i>	<i>Breach Performance Level (Minutes Delay)</i>	<i>Default Performance Level (Minutes Delay)</i>
<i>Year 4</i>	<i>0813</i>	<i>3000</i>	<i>3225</i>	<i>3450</i>	<i>3600</i>
<i>Year 5</i>	<i>0901</i>	<i>3000</i>	<i>3225</i>	<i>3450</i>	<i>3600</i>
<i>Year 5</i>	<i>0902</i>	<i>3000</i>	<i>3225</i>	<i>3450</i>	<i>3600</i>
<i>Year 5</i>	<i>0903</i>	<i>3000</i>	<i>3225</i>	<i>3450</i>	<i>3600</i>
<i>Year 5</i>	<i>0904</i>	<i>3000</i>	<i>3225</i>	<i>3450</i>	<i>3600</i>
<i>Year 5</i>	<i>0905</i>	<i>3000</i>	<i>3225</i>	<i>3450</i>	<i>3600</i>
<i>Year 5</i>	<i>0906</i>	<i>3000</i>	<i>3225</i>	<i>3450</i>	<i>3600</i>
<i>Year 5</i>	<i>0907</i>	<i>3000</i>	<i>3225</i>	<i>3450</i>	<i>3600</i>
<i>Year 5</i>	<i>0908</i>	<i>3000</i>	<i>3225</i>	<i>3450</i>	<i>3600</i>
<i>Year 5</i>	<i>0909</i>	<i>3000</i>	<i>3225</i>	<i>3450</i>	<i>3600</i>
<i>Year 5</i>	<i>0910</i>	<i>3000</i>	<i>3225</i>	<i>3450</i>	<i>3600</i>
<i>Year 5</i>	<i>0911</i>	<i>3000</i>	<i>3225</i>	<i>3450</i>	<i>3600</i>
<i>Year 5</i>	<i>0912</i>	<i>3000</i>	<i>3225</i>	<i>3450</i>	<i>3600</i>
<i>Year 5</i>	<i>0913</i>	<i>3000</i>	<i>3225</i>	<i>3450</i>	<i>3600</i>
<i>Year 6</i>	<i>1001</i>	<i>3000</i>	<i>3225</i>	<i>3450</i>	<i>3600</i>
<i>Year 6</i>	<i>1002</i>	<i>3000</i>	<i>3225</i>	<i>3450</i>	<i>3600</i>
<i>Year 6</i>	<i>1003</i>	<i>3000</i>	<i>3225</i>	<i>3450</i>	<i>3600</i>
<i>Year 6</i>	<i>1004</i>	<i>3000</i>	<i>3225</i>	<i>3450</i>	<i>3600</i>
<i>Year 6</i>	<i>1005</i>	<i>3000</i>	<i>3225</i>	<i>3450</i>	<i>3600</i>
<i>Year 6</i>	<i>1006</i>	<i>3000</i>	<i>3225</i>	<i>3450</i>	<i>3600</i>
<i>Year 6</i>	<i>1007</i>	<i>3000</i>	<i>3225</i>	<i>3450</i>	<i>3600</i>
<i>Year 6</i>	<i>1008</i>	<i>3000</i>	<i>3225</i>	<i>3450</i>	<i>3600</i>
<i>Year 6</i>	<i>1009</i>	<i>3000</i>	<i>3225</i>	<i>3450</i>	<i>3600</i>
<i>Year 6</i>	<i>1010</i>	<i>3000</i>	<i>3225</i>	<i>3450</i>	<i>3600</i>
<i>Year 6</i>	<i>1011</i>	<i>3000</i>	<i>3225</i>	<i>3450</i>	<i>3600</i>
<i>Year 6</i>	<i>1012</i>	<i>3000</i>	<i>3225</i>	<i>3450</i>	<i>3600</i>
<i>Year 6</i>	<i>1013</i>	<i>3000</i>	<i>3225</i>	<i>3450</i>	<i>3600</i>
<i>Year 7</i>	<i>1101</i>	<i>3000</i>	<i>3225</i>	<i>3450</i>	<i>3600</i>
<i>Year 7</i>	<i>1102</i>	<i>3000</i>	<i>3225</i>	<i>3450</i>	<i>3600</i>
<i>Year 7</i>	<i>1103</i>	<i>3000</i>	<i>3225</i>	<i>3450</i>	<i>3600</i>
<i>Year 7</i>	<i>1104</i>	<i>3000</i>	<i>3225</i>	<i>3450</i>	<i>3600</i>
<i>Year 7</i>	<i>1105</i>	<i>3000</i>	<i>3225</i>	<i>3450</i>	<i>3600</i>
<i>Year 7</i>	<i>1106</i>	<i>3000</i>	<i>3225</i>	<i>3450</i>	<i>3600</i>
<i>Year 7</i>	<i>1107</i>	<i>3000</i>	<i>3225</i>	<i>3450</i>	<i>3600</i>
<i>Year 7</i>	<i>1108</i>	<i>3000</i>	<i>3225</i>	<i>3450</i>	<i>3600</i>
<i>Year 7</i>	<i>1109</i>	<i>3000</i>	<i>3225</i>	<i>3450</i>	<i>3600</i>
<i>Year 7</i>	<i>1110</i>	<i>3000</i>	<i>3225</i>	<i>3450</i>	<i>3600</i>
<i>Year 7</i>	<i>1111</i>	<i>3000</i>	<i>3225</i>	<i>3450</i>	<i>3600</i>
<i>Year 7</i>	<i>1112</i>	<i>3000</i>	<i>3225</i>	<i>3450</i>	<i>3600</i>
<i>Year 7</i>	<i>1113</i>	<i>3000</i>	<i>3225</i>	<i>3450</i>	<i>3600</i>
<i>Year 8</i>	<i>1201</i>	<i>3000</i>	<i>3225</i>	<i>3450</i>	<i>3600</i>
<i>Year 8</i>	<i>1202</i>	<i>3000</i>	<i>3225</i>	<i>3450</i>	<i>3600</i>
<i>Year 8</i>	<i>1203</i>	<i>3000</i>	<i>3225</i>	<i>3450</i>	<i>3600</i>
<i>Year 8</i>	<i>1204</i>	<i>3000</i>	<i>3225</i>	<i>3450</i>	<i>3600</i>
<i>Year 8</i>	<i>1205</i>	<i>3000</i>	<i>3225</i>	<i>3450</i>	<i>3600</i>

<i>Column 1</i>		<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>
<i>Reporting Period</i>		<i>Target Performance Level (Minutes Delay)</i>	<i>Improvement Plan Performance Level (Minutes Delay)</i>	<i>Breach Performance Level (Minutes Delay)</i>	<i>Default Performance Level (Minutes Delay)</i>
<i>Year 8</i>	1206	3000	3225	3450	3600

1. START OF THE NORTHERN FRANCHISE

The contents of the above table shall be completed in accordance with the letter of even date made between the parties concerning this Schedule 7.1. The first Reporting Period of the Franchise Term for the purposes of this Benchmark Table will be the Reporting Period which commences on the Franchise Commencement Date (or if the Franchise Commencement Date is not the first day of a Reporting Period, the first Reporting Period which commences next after the Franchise Commencement Date).

Part 5

PMU Service Delivery Benchmark Table – West & North Yorkshire

<i>Column 1</i>		<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>
Reporting Period		Target Performance Level (Minutes Delay)	Improvement Plan Performance Level (Minutes Delay)	Breach Performance Level (Minutes Delay)	Default Performance Level (Minutes Delay)
<i>Year 1</i>	0510	19250	20694	22138	23100
<i>Year 1</i>	0511	19250	20694	22138	23100
<i>Year 1</i>	0512	19250	20694	22138	23100
<i>Year 1</i>	0513	19250	20694	22138	23100
<i>Year 2</i>	0601	19250	20694	22138	23100
<i>Year 2</i>	0602	19250	20694	22138	23100
<i>Year 2</i>	0603	19250	20694	22138	23100
<i>Year 2</i>	0604	19250	20694	22138	23100
<i>Year 2</i>	0605	19250	20694	22138	23100
<i>Year 2</i>	0606	19250	20694	22138	23100
<i>Year 2</i>	0607	19250	20694	22138	23100
<i>Year 2</i>	0608	19250	20694	22138	23100
<i>Year 2</i>	0609	19250	20694	22138	23100
<i>Year 2</i>	0610	19250	20694	22138	23100
<i>Year 2</i>	0611	19000	20425	21850	22800
<i>Year 2</i>	0612	19000	20425	21850	22800
<i>Year 2</i>	0613	19000	20425	21850	22800
<i>Year 3</i>	0701	19000	20425	21850	22800
<i>Year 3</i>	0702	19000	20425	21850	22800
<i>Year 3</i>	0703	19000	20425	21850	22800
<i>Year 3</i>	0704	19000	20425	21850	22800
<i>Year 3</i>	0705	19000	20425	21850	22800
<i>Year 3</i>	0706	19000	20425	21850	22800
<i>Year 3</i>	0707	19000	20425	21850	22800
<i>Year 3</i>	0708	19000	20425	21850	22800
<i>Year 3</i>	0709	19000	20425	21850	22800
<i>Year 3</i>	0710	19000	20425	21850	22800
<i>Year 3</i>	0711	19000	20425	21850	22800
<i>Year 3</i>	0712	19000	20425	21850	22800
<i>Year 3</i>	0713	19000	20425	21850	22800
<i>Year 4</i>	0801	19000	20425	21850	22800
<i>Year 4</i>	0802	19000	20425	21850	22800
<i>Year 4</i>	0803	19000	20425	21850	22800
<i>Year 4</i>	0804	18750	20156	21563	22500
<i>Year 4</i>	0805	18750	20156	21563	22500
<i>Year 4</i>	0806	18750	20156	21563	22500
<i>Year 4</i>	0807	18750	20156	21563	22500
<i>Year 4</i>	0808	18750	20156	21563	22500
<i>Year 4</i>	0809	18750	20156	21563	22500
<i>Year 4</i>	0810	18750	20156	21563	22500
<i>Year 4</i>	0811	18750	20156	21563	22500
<i>Year 4</i>	0812	18750	20156	21563	22500

Part 5 of Appendix 4 to
Schedule 7.1

<i>Column 1</i>		<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>
<i>Reporting Period</i>		<i>Target Performance Level (Minutes Delay)</i>	<i>Improvement Plan Performance Level (Minutes Delay)</i>	<i>Breach Performance Level (Minutes Delay)</i>	<i>Default Performance Level (Minutes Delay)</i>
<i>Year 4</i>	<i>0813</i>	<i>18750</i>	<i>20156</i>	<i>21563</i>	<i>22500</i>
<i>Year 5</i>	<i>0901</i>	<i>18750</i>	<i>20156</i>	<i>21563</i>	<i>22500</i>
<i>Year 5</i>	<i>0902</i>	<i>18750</i>	<i>20156</i>	<i>21563</i>	<i>22500</i>
<i>Year 5</i>	<i>0903</i>	<i>18750</i>	<i>20156</i>	<i>21563</i>	<i>22500</i>
<i>Year 5</i>	<i>0904</i>	<i>18750</i>	<i>20156</i>	<i>21563</i>	<i>22500</i>
<i>Year 5</i>	<i>0905</i>	<i>18750</i>	<i>20156</i>	<i>21563</i>	<i>22500</i>
<i>Year 5</i>	<i>0906</i>	<i>18750</i>	<i>20156</i>	<i>21563</i>	<i>22500</i>
<i>Year 5</i>	<i>0907</i>	<i>18750</i>	<i>20156</i>	<i>21563</i>	<i>22500</i>
<i>Year 5</i>	<i>0908</i>	<i>18750</i>	<i>20156</i>	<i>21563</i>	<i>22500</i>
<i>Year 5</i>	<i>0909</i>	<i>18750</i>	<i>20156</i>	<i>21563</i>	<i>22500</i>
<i>Year 5</i>	<i>0910</i>	<i>18750</i>	<i>20156</i>	<i>21563</i>	<i>22500</i>
<i>Year 5</i>	<i>0911</i>	<i>18500</i>	<i>19888</i>	<i>21275</i>	<i>22200</i>
<i>Year 5</i>	<i>0912</i>	<i>18500</i>	<i>19888</i>	<i>21275</i>	<i>22200</i>
<i>Year 5</i>	<i>0913</i>	<i>18500</i>	<i>19888</i>	<i>21275</i>	<i>22200</i>
<i>Year 6</i>	<i>1001</i>	<i>18500</i>	<i>19888</i>	<i>21275</i>	<i>22200</i>
<i>Year 6</i>	<i>1002</i>	<i>18500</i>	<i>19888</i>	<i>21275</i>	<i>22200</i>
<i>Year 6</i>	<i>1003</i>	<i>18500</i>	<i>19888</i>	<i>21275</i>	<i>22200</i>
<i>Year 6</i>	<i>1004</i>	<i>18500</i>	<i>19888</i>	<i>21275</i>	<i>22200</i>
<i>Year 6</i>	<i>1005</i>	<i>18500</i>	<i>19888</i>	<i>21275</i>	<i>22200</i>
<i>Year 6</i>	<i>1006</i>	<i>18500</i>	<i>19888</i>	<i>21275</i>	<i>22200</i>
<i>Year 6</i>	<i>1007</i>	<i>18500</i>	<i>19888</i>	<i>21275</i>	<i>22200</i>
<i>Year 6</i>	<i>1008</i>	<i>18500</i>	<i>19888</i>	<i>21275</i>	<i>22200</i>
<i>Year 6</i>	<i>1009</i>	<i>18500</i>	<i>19888</i>	<i>21275</i>	<i>22200</i>
<i>Year 6</i>	<i>1010</i>	<i>18500</i>	<i>19888</i>	<i>21275</i>	<i>22200</i>
<i>Year 6</i>	<i>1011</i>	<i>18500</i>	<i>19888</i>	<i>21275</i>	<i>22200</i>
<i>Year 6</i>	<i>1012</i>	<i>18500</i>	<i>19888</i>	<i>21275</i>	<i>22200</i>
<i>Year 6</i>	<i>1013</i>	<i>18500</i>	<i>19888</i>	<i>21275</i>	<i>22200</i>
<i>Year 7</i>	<i>1101</i>	<i>18500</i>	<i>19888</i>	<i>21275</i>	<i>22200</i>
<i>Year 7</i>	<i>1102</i>	<i>18500</i>	<i>19888</i>	<i>21275</i>	<i>22200</i>
<i>Year 7</i>	<i>1103</i>	<i>18500</i>	<i>19888</i>	<i>21275</i>	<i>22200</i>
<i>Year 7</i>	<i>1104</i>	<i>18500</i>	<i>19888</i>	<i>21275</i>	<i>22200</i>
<i>Year 7</i>	<i>1105</i>	<i>18500</i>	<i>19888</i>	<i>21275</i>	<i>22200</i>
<i>Year 7</i>	<i>1106</i>	<i>18500</i>	<i>19888</i>	<i>21275</i>	<i>22200</i>
<i>Year 7</i>	<i>1107</i>	<i>18500</i>	<i>19888</i>	<i>21275</i>	<i>22200</i>
<i>Year 7</i>	<i>1108</i>	<i>18500</i>	<i>19888</i>	<i>21275</i>	<i>22200</i>
<i>Year 7</i>	<i>1109</i>	<i>18500</i>	<i>19888</i>	<i>21275</i>	<i>22200</i>
<i>Year 7</i>	<i>1110</i>	<i>18500</i>	<i>19888</i>	<i>21275</i>	<i>22200</i>
<i>Year 7</i>	<i>1111</i>	<i>18500</i>	<i>19888</i>	<i>21275</i>	<i>22200</i>
<i>Year 7</i>	<i>1112</i>	<i>18500</i>	<i>19888</i>	<i>21275</i>	<i>22200</i>
<i>Year 7</i>	<i>1113</i>	<i>18500</i>	<i>19888</i>	<i>21275</i>	<i>22200</i>
<i>Year 8</i>	<i>1201</i>	<i>18500</i>	<i>19888</i>	<i>21275</i>	<i>22200</i>
<i>Year 8</i>	<i>1202</i>	<i>18500</i>	<i>19888</i>	<i>21275</i>	<i>22200</i>
<i>Year 8</i>	<i>1203</i>	<i>18500</i>	<i>19888</i>	<i>21275</i>	<i>22200</i>
<i>Year 8</i>	<i>1204</i>	<i>18500</i>	<i>19888</i>	<i>21275</i>	<i>22200</i>
<i>Year 8</i>	<i>1205</i>	<i>18500</i>	<i>19888</i>	<i>21275</i>	<i>22200</i>

<i>Column 1</i>		<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>
<i>Reporting Period</i>		<i>Target Performance Level (Minutes Delay)</i>	<i>Improvement Plan Performance Level (Minutes Delay)</i>	<i>Breach Performance Level (Minutes Delay)</i>	<i>Default Performance Level (Minutes Delay)</i>
<i>Year 8</i>	1206	18500	19888	21275	22200

1. START OF THE NORTHERN FRANCHISE

The contents of the above table shall be completed in accordance with the letter of even date made between the parties concerning this Schedule 7.1. The first Reporting Period of the Franchise Term for the purposes of this Benchmark Table will be the Reporting Period which commences on the Franchise Commencement Date (or if the Franchise Commencement Date is not the first day of a Reporting Period, the first Reporting Period which commences next after the Franchise Commencement Date).

Part 6

Franchise Wide Service Delivery Benchmark Table

Column 1	Column 2
Reporting Period	Franchise Wide Service Delivery Benchmark (Minutes Delay)
Every Reporting Period during the Continuation Review Period.	51,668

1. START OF THE NORTHERN FRANCHISE

The contents of the above table shall be completed in accordance with the letter of even date made between the parties concerning this Schedule 7.1.

SCHEDULE 7.2

Key Performance Indicators

1. INTRODUCTION

This Schedule 7.2 provides for:

- (a) the service quality management arrangements to be put in place by the Franchisee for the management and delivery of service quality for the Franchise Term in respect of:
 - (i) the Authority, the Franchise Services to be operated and provided within the Northern Franchise; and
 - (ii) each Executive, the Franchise Services to be operated and provided within the Passenger Transport Area relevant to each such Executive;
- (b) the responsibilities and reporting lines for the Service Quality Manager;
- (c) the SQ Audits to be carried out by the Franchisee;
- (d) the PR Audits that may be carried out by the Authority;
- (e) the KPI Audits that may be carried out by the Authority independently of any SQ Audits;
- (f) the rights of the Authority and each Executive to witness SQ Audits;
- (g) the role of the Executives in carrying out PR Audits and KPI Audits on behalf of and as agents of the Authority;
- (h) the means of calculating incentive payments payable by the Authority to the Franchisee and performance failure payments payable by the Franchisee to the Authority in accordance with the defined KPI measurement criteria;
- (i) the remedies available to the Authority if the Franchisee under-performs against the defined KPI measurement criteria;
- (j) the remedies available to the Authority if there are discrepancies between the audit scoring of the SQ Audits and the PR Audits; and
- (k) the remedies available to the Authority if the Franchisee fails to carry out the required number of SQ Audits.

2. SERVICE QUALITY MANAGEMENT ARRANGEMENTS

2.1 The Franchisee shall:

- (a) employ a Service Quality Manager with reporting lines to the managing director within the Franchisee;
- (b) ensure that sufficient persons are appointed for the purposes of carrying out the required number of SQ Audits pursuant to paragraph 7 and such employees shall:

- (i) be properly trained and carry out the SQ Audits in a diligent, consistent, objective and fair manner; and
- (ii) report directly to the Service Quality Manager;
- (c) ensure that the Service Quality Manager provides to the board of directors of the Franchisee every Reporting Period, a summary report in respect of the Franchisee's performance against the KPIs;
- (d) co-operate with the Authority and/or each Executive in allowing the Authority's employees (or its agents) and/or each Executive's employees (when acting in each such Executive's own respective right) to witness SQ Audits;
- (e) ensure that the Authority is allowed (or its agents are allowed) to conduct the PR Audits and KPI Audits; and
- (f) ensure that the Service Quality Manager fulfils his duties as specified in paragraph 2.2.

2.2 The Service Quality Manager shall be responsible to the Franchisee for ensuring that:

- (a) the number of SQ Audits required pursuant to paragraph 7 is undertaken;
- (b) the SQ Audit Programme is developed and implemented in accordance with paragraphs 4.1(a) and 7;
- (c) the SQ Audit Programme for each Performance Management Unit is made available to the Authority and to each Executive in respect of each Performance Management Unit relevant to it in accordance with paragraph 4.1(a) and not to those Franchise Employees at those locations where SQ Audits are due to take place;
- (d) any remedial actions identified pursuant to paragraph 4.1(g) are diligently and promptly dealt with and that it has adequate resources, monitoring processes and procedures and appropriate third-party contractual arrangements in place to do so; and
- (e) the other reporting arrangements set out in paragraph 4 are complied with.

3. REPORTING ARRANGEMENTS FOR FRANCHISE EMPLOYEES AND PASSENGERS

The Franchisee shall procure that:

- (a) there is a register for the persons mentioned in paragraph 2(b) to record the incidence of:
 - (i) faulty train or Station equipment or facilities;
 - (ii) on train or Station graffiti; and
 - (iii) damage or disrepair to any part of a train or Station that requires remedial action;
- (b) such register shall, in addition, record:
 - (i) the date when the incidence was first reported;

- (ii) a brief description of the incidence, including the location, the time the incidence was reported and, in the case of any equipment or facility, the fault or necessary remedial action and the proposed date and/or time for rectification; and
- (iii) the date and/or time (as appropriate) any fault was rectified or remedial action carried out;
- (c) there is a means for passengers to report incidences of the kind described in paragraph 3(a) either to Franchise Employees employed at staffed Stations or to an incidence-reporting centre and that such reporting arrangements are appropriately advertised to that end; and
- (d) the Service Quality Manager is made aware in summary of the details of any incidences reported under this paragraph 3 and has access to such information when requested.

4. REPORTING ARRANGEMENTS FOR THE SERVICE QUALITY MANAGER

4.1 The Franchisee shall procure that the Service Quality Manager shall:

- (a) in respect of each Performance Management Unit, ensure that the SQ Audit Programme is:
 - (i) updated and made available to the Authority and each Executive in respect of each Performance Management Unit relevant to such Executive at the end of each Reporting Period; and
 - (ii) subject to paragraph 4.2, amended in accordance with:
 - (A) the Authority's reasonable requirements; and
 - (B) each Executive's reasonable requirements in respect of the SQ Audits to be conducted in respect of the Executive Stations relevant to it and in respect of each rolling stock vehicle in each train that calls at such Executive Stations,

having regard to the purpose of such programme and the requirements of paragraph 7;

- (b) ensure that any person appointed by the Franchisee pursuant to paragraph 2.1(b) to carry out a SQ Audit shall, in scoring the condition of any facility of a train or Station:
 - (i) provide all information required by the relevant KPI Audit Score Card; and
 - (ii) score the condition of such facility in accordance with the definitions of each condition of such facility set out in the relevant KPI Audit Score Card;
- (c) report the incidence of failed audits and make recommendations to reduce such failures directly to the chief executive officer of the Franchisee;
- (d) within 7 days of the last day of each Reporting Period, send to the Authority for each Performance Management Unit:
 - (i) a reconciliation of:

- (A) the SQ Audits that were due to have been carried out in such Reporting Period in accordance with the SQ Audit Programme and finalised pursuant to paragraph 4.1(a); and
 - (B) those which were actually carried out;
 - (ii) a statement detailing the SQ Audits where a fail has been recorded in such Reporting Period and setting out (to the extent known) the reasons why such failures occurred, copying such statement to the chief executive officer of the Franchisee; and
 - (iii) in respect of each Performance Management Unit, its calculation of:
 - (A) the Train KPI Performance Ratio and the Station KPI Performance Ratio; and
 - (B) any incentive payment payable by the Authority and each of the Executives to the Franchisee or any performance failure payment payable by the Franchisee to the Authority or each of the Executives in accordance with paragraph 9;
- (e) within 7 days of the last day of each Reporting Period, send to each Executive in respect of each Performance Management Unit relevant to such Executive:
 - (i) a reconciliation of:
 - (A) the SQ Audits that were due to have been carried out in such Reporting Period in accordance with the SQ Audit Programme and finalised pursuant to paragraph 4.1(a); and
 - (B) those which were actually carried out
 - (ii) a statement detailing the SQ Audits where a fail has been recorded in such Reporting Period and setting out (to the extent known) the reasons why such failures occurred, copying such statement to the chief executive officer of the Franchisee; and
 - (iii) its calculation of:
 - (A) the Train KPI Performance Ratio and the Station KPI Performance Ratio in respect of that Performance Management Unit, and
 - (B) the amount of any incentive payment payable by the relevant Executive to the Franchisee or any performance failure payment payable by the Franchisee to the relevant Executive;
- (f) send as soon as reasonably practicable, a summary of the statement provided to the Authority and each relevant Executive pursuant to paragraphs 4.1(d)(ii) and 4(e)(ii) to the relevant Rail Passengers' Committee;
- (g) ensure that there is a process for recording, carrying out and monitoring the implementation of remedial actions where:

- (i) a fail has been recorded in an audit; or
 - (ii) any incidence is reported by a Franchise Employee or passenger in accordance with paragraph 3; and
 - (h) provide to any Executive such further information, records or documents relating to the Franchisee's performance under this Schedule 7.2 as such Executive reasonably requests.
- 4.2 The Franchisee shall inform the Authority and the relevant Executive in the event that there are any material differences between the reasonable requirements of the Authority and such Executive in respect of any amendments to the SQ Audit Programme. In the event that:
- (a) there are such material differences, the Authority and such Executive shall use all reasonable endeavours to resolve such differences; and
 - (b) such material differences cannot be resolved, the Franchisee shall amend the SQ Audit Programme in accordance with the Authority's reasonable requirements.

5. THE RIGHTS OF THE AUTHORITY AND ITS AGENTS

- 5.1 The Authority and the Authority's agents on its behalf shall have the right to:
- (a) witness SQ Audits;
 - (b) carry out PR Audits of the consistency and accuracy of the results of SQ Audits with, subject to paragraph 12, the expected frequency specified in paragraph 5.2(a); and
 - (c) carry out KPI Audits of the service quality provided in respect of the services monitored by any SQ Audit independently of such SQ Audit with, subject to paragraph 12, the expected frequency specified in paragraph 5.2(b). The Authority reserves the right to undertake KPI Audits of those individual items that have been assigned a fail in a previous SQ Audit within a reasonable time after such SQ Audit is undertaken to ascertain whether appropriate remedial action has been taken by the Franchisee in accordance with paragraph 2.2(d).
- 5.2 In the absence of any of the circumstances referred to in paragraph 12, in any Reporting Period, the Authority's expected level of auditing of the Franchisee's performance shall be as follows:
- (a) in respect of PR Audits, up to 6 per cent. of the number of SQ Audits due to be conducted in respect of each Performance Management Unit; and
 - (b) in respect of KPI Audits:
 - (i) up to 3 percent of the number of SQ Audits of trains due to be conducted in respect of each Performance Management Unit;
 - (ii) up to 100 percent of the minimum number of SQ Audits of Stations due to be conducted in respect of each Performance Management Unit (provided that in the case of KPI Audit of Stations the expected level of auditing shall be up to 3 percent of the minimum number of SQ Audits due to be conducted for so long as PTE SQ

Audits of Stations within the relevant Performance Management Unit are carried out as referred to in paragraph 13.1).

5.3 The Authority shall use all reasonable endeavours to ensure that the persons employed in undertaking:

- (a) PR Audits, carry out such audits diligently, objectively and as soon as reasonably practicable after the time at which the Franchisee carries out the relevant SQ Audits (but taking into account the desirability of ensuring that the persons carrying out the relevant SQ Audits are not made aware that such PR Audits are about to take place); and
- (b) KPI Audits, carry out such audits diligently and objectively.

5.4 The Authority shall use all reasonable endeavours to notify the Franchisee of the result of any PR Audit or KPI Audit (as the case may be) that is undertaken in any Reporting Period no later than the last day of such Reporting Period where any such PR Audit or KPI Audit (as the case may be) is conducted 5 days or more prior to the last day of such Reporting Period.

5.5 The provisions of paragraph 8.8 shall apply where:

- (a) any:
- (i) KPI Audit that is undertaken in such Reporting Period pursuant to paragraph 12.2 or 12.8; or
- (ii) PR Audit where there are material discrepancies between such PR Audit and the relevant SQ Audit and the effect of those material discrepancies is that the result of such SQ Audit is more favourable to the Franchisee than the result of such PR Audit,

is conducted less than 5 days prior to the last day of any Reporting Period; or

- (b) the Authority is otherwise unable to notify the Franchisee of the result of any KPI Audit or PR Audit in accordance with paragraph 5.4.

5.6 The parties agree that the Authority may appoint any Executive(s) to exercise the Authority's rights under this paragraph 5 to witness SQ Audits or carry out PR Audits or KPI Audits on the Authority's behalf.

5.7 The Franchisee shall grant such access to the facilities under its control as is necessary to enable the Authority and the Authority's agents on its behalf to witness SQ Audits and exercise its audit rights under paragraph 5.1.

5.8 In carrying out any PR Audit or KPI Audit, or witnessing any SQ Audit, the Authority and each Executive shall, subject to paragraph 5.9, be responsible for ensuring that its employees or agents:

- (a) are appropriately trained and briefed with respect to any location-specific safety rules and regulations; and
- (b) obey any location-specific rules and regulations in respect of security and access.

5.9 The Franchisee shall provide notice from time to time of current location-specific access, security and safety rules and regulations to the Authority, its employees or agents and each Executive for the purpose of ensuring that such parties can carry out their respective auditing rights in an efficient, secure and safe manner.

6. THE RIGHTS OF THE EXECUTIVES

6.1 Each Executive shall have the right to witness SQ Audits conducted in respect of each Executive Station that is relevant to such Executive and each rolling stock vehicle in each train that calls at such Executive Station.

6.2 The Authority shall notify the Franchisee if and when it appoints any Executive as its agent pursuant to paragraph 5.6.

6.3 Each Executive so appointed by the Authority shall:

- (a) act as the Authority's agent; and
- (b) ensure that any of its employees who carry out PR Audits or KPI Audits pursuant to paragraph 5.6:
 - (i) comply with the requirements of paragraph 5.3;
 - (ii) are appropriately trained and briefed in respect of the matters referred to in paragraph 5.8; and
 - (iii) comply with the requirements of paragraph 5.8(b).

6.4 To the extent not already provided for pursuant to paragraph 5.7, the Franchisee shall grant the same level of access to the facilities under its control required pursuant to paragraph 5.7:

- (a) to enable any Executive to witness a SQ Audit; and
- (b) to any Executive appointed pursuant to paragraph 5.6.

7. THE REQUIREMENTS FOR (AND FREQUENCY OF) SQ AUDITS

7.1 The Franchisee shall develop and implement an SQ Audit Programme for each Performance Management Unit and each SQ Audit Programme shall:

- (a) be developed and implemented in accordance with the requirements of paragraphs 7.3 to 7.7 (inclusive); and
- (b) provide for the auditing by random selection of:
 - (i) the Stations comprised within such Performance Management Unit; and
 - (ii) the rolling stock vehicles.

7.2 Each SQ Audit Programme shall also provide for the auditing of the KPIs specified in Part 3 (*Management Processes*) of the KPI Audit Score Cards once every 13 Reporting Periods. The first such audits shall be carried out no later than the last day of the 6th Reporting

Period following the Franchise Commencement Date and thereafter once every 13 Reporting Periods.

Train Audits

- 7.3 Each SQ Audit Programme shall, in respect of the Train Fleet, ensure that:
- (a) the auditing of any rolling stock vehicle shall be carried out in accordance with Part 1 (*Train Presentation Specification*) of the KPI Audit Score Cards;
 - (b) the carrying out of any SQ Audit shall not interfere with the timely entry of any train into railway passenger service;
 - (c) every rolling stock vehicle in any train that is the subject of a SQ Audit is included in such audit and each KPI Audit Score Card used shall identify each such vehicle's unique vehicle identification number;
 - (d) both Peak Passenger Services and Off-Peak Passenger Services are the subject of SQ Audits; and
 - (e) SQ Audits conducted pursuant to this paragraph 7.3 are carried out with the frequency specified in paragraph 7.4.
- 7.4(a) Each SQ Audit Programme shall specify the number of rolling stock vehicles within the relevant Performance Management Unit to be audited in each Reporting Period to which that SQ Audit Programme applies by reference to the following formula:

$$RSV = ((WDV \times WD) + (S_a V \times S_a) + (S_u V \times S_u)) \times 0.04$$

where:

- RSV is the total number of rolling stock vehicles within such Performance Management Unit to be the subject of SQ Audits in any Reporting Period;
- WDV is the total number of rolling stock vehicles scheduled to be deployed in accordance with the Train Plan within such Performance Management Unit on the weekday in such Reporting Period on which the greatest number of rolling stock vehicles is scheduled to be deployed in accordance with the Train Plan within such Performance Management Unit;
- WD is the total number of weekdays in such Reporting Period;
- S_aV is the total number of rolling stock vehicles scheduled to be deployed in accordance with the Train Plan within such Performance Management Unit on the Saturday in such Reporting Period on which the greatest number of rolling stock vehicles is scheduled to be deployed in accordance with the Train Plan within such Performance Management Unit;
- S_a is the total number of Saturdays in such Reporting Period;
- S_uV is the total number of rolling stock vehicles scheduled to be deployed in accordance with the Train Plan within such Performance Management Unit on the Sunday in such Reporting Period on which the greatest number of

rolling stock vehicles is scheduled to be deployed in accordance with the Train Plan within such Performance Management Unit; and

S_u is the total number of Sundays in such Reporting Period.

If the number of rolling stock vehicles resulting from such calculation is not a whole number, such number shall be rounded up to the nearest whole number.

- (b) Each SQ Audit Programme shall also provide that during each Reporting Period:
- (i) 15 per cent. of SQ Audits in respect of the relevant Performance Management Unit shall take place on a Saturday and 10 per cent. of SQ Audits shall take place on a Sunday; and
 - (ii) the number of SQ Audits to be carried out in the Peak and the Off-Peak in respect of the relevant Performance Management Unit shall be proportionate to the number of rolling stock vehicles deployed by the Franchisee in the provision of the Passenger Services within such Performance Management Unit in such time periods.
- (c) In any period of 13 consecutive Reporting Periods, the SQ Audit Programmes relating to such period shall provide that the level of auditing at each location where trains enter railway passenger service shall reflect the number of rolling stock vehicles entering railway passenger service from that location.
- (d) Each SQ Audit Programme relevant to each Performance Management Unit shall also provide that the number of rolling stock vehicles to be audited in each Reporting Period to which that SQ Audit Programme applies which are to be the subject of turnaround cleaning and servicing is, as a minimum, the number determined by reference to the following formula:

$$TC = RSV \times 0.20$$

where:

TC is the minimum number of SQ Audits to be undertaken in any Reporting Period in respect of rolling stock vehicles immediately after turnaround cleaning and servicing of such rolling stock vehicles; and

RSV is the number of rolling stock vehicles determined pursuant to paragraph 7.4(a).

If the number of rolling stock vehicles resulting from such calculation is not a whole number, such number shall be rounded up to the nearest whole number.

- (e) Train Plan shall mean for the purposes of this paragraph 7.4, the Train Plan finalised pursuant to Schedule 1.1 (*Service Development*) and where applicable finalised as revised in accordance with paragraph 14.2 of Schedule 1.1 (*Service Development*).
- (f) For the purposes of this paragraph 7.4 and paragraph 8 a rolling stock vehicle subject to an SQ Audit shall be classified as being within the Performance Management Unit where the depot that is responsible for carrying out overnight cleaning and maintenance of the rolling stock vehicle is located or, in the case of SQ Audits on rolling stock vehicles carried out immediately after turnaround cleaning and

servicing, within the Performance Management Unit where the Station or Depot where such cleaning and servicing occurs is located.

Station Audits

- 7.5 Each SQ Audit Programme shall, in respect of the Stations, ensure that:
- (a) each Station is audited in accordance with Part 2 (*Station Environment Specification*) to the KPI Audit Score Cards;
 - (b) the undertaking of any SQ Audit at a Station does not interfere with the delivery of railway passenger services to passengers at such Station;
 - (c) SQ Audits are carried out in both the Peak and Off-Peak; and
 - (d) SQ Audits conducted pursuant to this paragraph 7.5 are carried out with the frequency specified in paragraph 7.6.

- 7.6(a) Each SQ Audit Programme shall specify the number of Stations within the relevant Performance Management Unit to be audited in each Reporting Period to which that SQ Audit Programme applies and shall ensure that such number is at least equal to the number calculated in accordance with the following formula:

$$SA = S \times 0.16$$

where:

SA is the total number of Stations within such Performance Management Unit to be the subject of SQ Audits in any Reporting Period; and

S is the total number of Stations within such Performance Management Unit.

If the number of Stations resulting from such calculation is not a whole number, such number shall be rounded up to the nearest whole number.

- (b) Each SQ Audit Programme shall also provide that during each Reporting Period:
 - (i) 15 per cent. of SQ Audits in respect of the relevant Performance Management Unit shall take place on a Saturday and 10 per cent. of SQ Audits shall take place on a Sunday; and
 - (ii) the number of SQ Audits to be carried out in the Peak and the Off-Peak shall, in respect of any Station, be proportionate to the number of rolling stock vehicles deployed by the Franchisee in the provision of the Passenger Services which call at such Station in such time periods.
- (c) In any period of 13 consecutive Reporting Periods, the SQ Audit Programmes relating to such period shall provide that all Stations shall be audited at least once.

- 7.7 Where it is necessary to access a Station in order to conduct a SQ Audit pursuant to KPI Audit Score Card B of Part 3 to the KPI Audit Score Cards, the SQ Audit Programme may permit such SQ Audit to be carried out on the same day as any SQ Audit conducted pursuant to Part 2 to the KPI Audit Score Cards.

8. THE MEANS OF MEASUREMENT FOR THE KPIS

General Measurement and Scoring

8.1 The means of measurement for each of the KPIS shall be as set out in the KPI Audit Score Cards.

8.2 A separate calculation for each Performance Management Unit shall be performed in accordance with:

(a) paragraph 9.1 in respect of the results of any SQ Audit conducted pursuant to Part 1 (*Train Presentation Specification*) or KPI Audit Score Card A of Part 3 (*Management Processes*) to the KPI Audit Score Cards; and

(b) paragraph 9.2 in respect of the results of any SQ Audit conducted pursuant to Part 2 (*Station Environment Specification*) or KPI Audit Score Card B of Part 3 to the KPI Audit Score Cards.

8.3 The Franchisee shall ensure that any person appointed by it to carry out a SQ Audit shall, in completing any KPI Audit Score Card, awards:

(a) zero service points in the column adjacent to the description of the condition of any facility set out therein or the description of any action or procedure set out therein where (as the case may be):

(i) the condition of such facility meets or is better than the pass criteria defined therein; or

(ii) the action or procedure set out therein has been undertaken or followed; or

(b) the service points specified in the column heading or the column adjacent to the description of the condition of such facility or the description of any action or procedure set out therein where (as the case may be):

(i) the condition of such facility fails to meet the pass criteria defined therein; or

(ii) the action or procedure set out therein has not been undertaken or followed.

Train Audit Population

8.4 The Franchisee shall for each Reporting Period calculate the Train Audit Population in respect of each Performance Management Unit by:

(a) including in such calculation the potential service points of the SQ Audits in respect of trains within such Performance Management Unit and undertaken in such Reporting Period, except that the Franchisee shall:

(i) substitute the potential service points of any such SQ Audit with the potential service points of any PR Audit that is undertaken to ascertain the consistency and accuracy of such SQ Audit and where:

(A) there are material discrepancies between such PR Audit and SQ Audit and the effect of those material discrepancies is that the result

of such SQ Audit is more favourable to the Franchisee than the result of such PR Audit; and

(B) the results of such PR Audit have been notified to the Franchisee pursuant to paragraph 5.4 by the last day of such Reporting Period; and

(ii) disregard the potential service points of any such SQ Audit where the person appointed by the Franchisee to carry out such SQ Audit fails to provide all information required by the relevant KPI Audit Score Card; and

(b) adding to the potential service points determined pursuant to paragraph 8.4(a) the potential service points:

(i) of any KPI Audit in respect of trains within such Performance Management Unit that is undertaken in such Reporting Period pursuant to paragraph 12.2 or 12.8 where the results of such KPI Audit have been notified to the Franchisee pursuant to paragraph 5.4 by the last day of such Reporting Period;

(ii) of any KPI Audit in respect of trains within such Performance Management Unit that is undertaken in any previous Reporting Period pursuant to paragraph 12.2 or 12.8, the results of which are carried over pursuant to paragraph 8.8;

(iii) of any PR Audit in respect of trains within such Performance Management Unit that is undertaken in any previous Reporting Period, the results of which are carried over pursuant to paragraph 8.8; and

(iv) of any additional SQ Audit in respect of trains within such Performance Management Unit that is undertaken in such Reporting Period pursuant to paragraph 12.7.

Train Audit Score

8.5 The Franchisee shall for each Reporting Period calculate the *Train Audit Score* in respect of each Performance Management Unit by:

(a) including in such calculation the service points recorded during the SQ Audits in respect of trains within such Performance Management Unit undertaken in such Reporting Period except that the Franchisee shall:

(i) substitute the service points recorded during any such SQ Audit with the service points recorded during any PR Audit that is undertaken to ascertain the consistency and accuracy of such SQ Audit and where:

(A) there are material discrepancies between such PR Audit and SQ Audit and the effect of those material discrepancies is that the result of such SQ Audit is more favourable to the Franchisee than the result of such PR Audit; and

(B) the results of such PR Audit have been notified to the Franchisee pursuant to paragraph 5.4 by the last day of such Reporting Period; and

- (ii) disregard the service points recorded during such SQ Audit where the person appointed by the Franchisee to carry out such SQ Audit fails to provide all information required by the relevant KPI Audit Score Card; and
- (b) adding to the service points determined pursuant to paragraph 8.5(a) the service points recorded during:
 - (i) any KPI Audit in respect of trains within such Performance Management Unit that is undertaken in such Reporting Period pursuant to paragraph 12.2 or 12.8 where the results of such KPI Audit have been notified to the Franchisee pursuant to paragraph 5.4 by the last day of such Reporting Period;
 - (ii) any KPI Audit in respect of trains within such Performance Management Unit that is undertaken in such Reporting Period pursuant to paragraph 12.2 or 12.8, the results of which are carried over pursuant to paragraph 8.8;
 - (iii) any PR Audit in respect of trains within such Performance Management Unit that is undertaken in any previous Reporting Period, the results of which are carried over pursuant to paragraph 8.8; and
 - (iv) any additional SQ Audit in respect of trains within such Performance Management Unit that is undertaken in such Reporting Period pursuant to paragraph 12.7.

Station Audit Population

8.6 The Franchisee shall for each Reporting Period calculate the *Station Audit Population* in respect of each Performance Management Unit by:

- (a) including in such calculation the potential service points of the SQ Audits in respect of the Stations within such Performance Management Unit undertaken in such Reporting Period except that the Franchisee shall:
 - (i) substitute the potential service points of any such SQ Audit with the potential service points of any PR Audit that is undertaken to ascertain the consistency and accuracy of such SQ Audit and where:
 - (A) there are material discrepancies between such PR Audit and SQ Audit and the effect of those material discrepancies is that the result of such SQ Audit is more favourable to the Franchisee than the result of such PR Audit; and
 - (B) the results of such PR Audit have been notified to the Franchisee pursuant to paragraph 5.4 by the last day of such Reporting Period; and
 - (ii) disregard the potential service points of any such SQ Audit where the person appointed by the Franchisee to carry out such SQ Audit fails to provide all information required by the relevant KPI Audit Score Card; and
- (b) adding to the potential service points determined pursuant to paragraph 8.6(a) the potential service points:

- (i) of any KPI Audit in respect of the Stations within such Performance Management Unit that is undertaken in such Reporting Period pursuant to paragraph 12.2 or 12.8 where the results of such KPI Audit have been notified to the Franchisee pursuant to paragraph 5.4 by the last day of such Reporting Period;
- (ii) of any KPI Audit in respect of the Stations within such Performance Management Unit that is undertaken in any previous Reporting Period pursuant to paragraph 12.2 or 12.8, the results of which are carried over pursuant to paragraph 8.8;
- (iii) of any PR Audit in respect of the Stations within such Performance Management Unit that is undertaken in any previous Reporting Period, the results of which are carried over pursuant to paragraph 8.8; and
- (iv) of any additional SQ Audit in respect of the Stations within such Performance Management Unit that is undertaken in such Reporting Period pursuant to paragraph 12.7.

Station Audit Score

8.7 The Franchisee shall for each Reporting Period calculate the *Station Audit Score* in respect of each Performance Management Unit by:

- (a) including in such calculation the service points recorded during the SQ Audits in respect of the Stations, within such Performance Management Unit undertaken in such Reporting Period except that the Franchisee shall:
 - (i) substitute the service points recorded during any such SQ Audit with the service points recorded during any PR Audit that is undertaken to ascertain the consistency and accuracy of such SQ Audit and where:
 - (A) there are material discrepancies between such PR Audit and SQ Audit and the effect of those material discrepancies is that the result of such SQ Audit is more favourable to the Franchisee than the result of such PR Audit; and
 - (B) the results of such PR Audit have been notified to the Franchisee pursuant to paragraph 5.4 by the last day of such Reporting Period; and
 - (ii) disregard the service points recorded during any such SQ Audit where the person appointed by the Franchisee to carry out such SQ Audit fails to provide all information required by the relevant KPI Audit Score Card; and
- (b) adding to the service points determined pursuant to paragraph 8.7(a) the service points recorded during:
 - (i) any KPI Audit in respect of the Stations within such Performance Management Unit that is undertaken in such Reporting Period pursuant to paragraph 12.2 or 12.8 where the results of such KPI Audit have been notified to the Franchisee pursuant to paragraph 5.4 by the last day of such Reporting Period;

- (ii) any KPI Audit in respect of the Stations within such Performance Management Unit that is undertaken in any previous Reporting Period pursuant to paragraph 12.2 or 12.8, the results of which are carried over pursuant to paragraph 8.8;
- (iii) any PR Audit in respect of the Stations within such Performance Management Unit that is undertaken in any previous Reporting Period, the results of which are carried over pursuant to paragraph 8.8; and
- (iv) any additional SQ Audit in respect of the Stations within such Performance Management Unit that is undertaken in such Reporting Period pursuant to paragraph 12.7.

Carrying Over the Results of any Audits

8.8 The results of:

- (a) any KPI Audit that has been carried out in any Reporting Period pursuant to paragraph 12.2 or 12.8; and
- (b) any PR Audit that has been carried out in any Reporting Period where there are material discrepancies between such PR Audit and the relevant SQ Audit and the effect of those material discrepancies is that the result of such SQ Audit is more favourable to the Franchisee than the result of such PR Audit,

which have not been notified by the Authority to the Franchisee by the last day of such Reporting Period pursuant to paragraph 5.4, shall be included in the calculations pursuant to paragraphs 8.4 to 8.7 (inclusive) for the next Reporting Period to the extent the Authority subsequently notifies the Franchisee of the result of such KPI Audit or PR Audit (as the case may be) prior to the last day of such next Reporting Period.

9. INCENTIVE PAYMENTS AND PERFORMANCE FAILURE PAYMENTS

Train KPI Performance Ratio

9.1 In respect of the results of audits conducted on and about trains referred to in paragraphs 8.4 and 8.5, incentive payments shall be payable by the Authority to the Franchisee and/or by any of the Executives to the Franchisee (as the case may be) and performance failure payments shall be payable by the Franchisee to the Authority and/or by the Franchisee to any of the Executives (as the case may be) in accordance with the following:

- (a) in respect of each Performance Management Unit, the Franchisee shall calculate the Train KPI Performance Ratio for each Reporting Period:
 - (i) in the Reporting Period after the Reporting Period in which the relevant audits were conducted in sufficient time to comply with the notification requirements referred to in paragraph 4.1(d); and
 - (ii) in accordance with the following formula:

$$\frac{\text{Train Audit Population} - \text{Train Audit Score}}{\text{Train Audit Population}}$$

- (b) if the Train KPI Performance Ratio in respect of any Performance Management Unit is between 0.80 and 0.90 then no incentive payment or performance failure payment shall be payable between the Authority, the Executives and the Franchisee in respect of that Performance Management Unit;
- (c) if the Train KPI Performance Ratio in respect of any Performance Management Unit is greater than 0.90 then the Authority and/or the relevant Executive(s) (as the case may be and in the proportions provided for in Part 2 of Schedule 8.2 (*Annual Franchise Payments/Appportionment of Payments*)) shall make an incentive payment in respect of that Performance Management Unit to the Franchisee in accordance with the following formula:

$$IP = (R - 0.9) \times 100 \times PR$$

where:

IP is the incentive payment in respect of that Performance Management Unit expressed in £;

R is the Train KPI Performance Ratio in respect of that Performance Management Unit for the relevant Reporting Period;

PR is the payment rate in respect of that Performance Management Unit ascertained in accordance with paragraph 10.1;

- (d) if the Train KPI Performance Ratio in respect of any Performance Management Unit is lower than 0.80 then the Franchisee shall make a performance failure payment in respect of that Performance Management Unit to the Authority and/or the relevant Executive(s) (as the case may be and in the proportions provided for in Part 2 of Schedule 8.2 (*Annual Franchise Payments/Appportionment of Payments*)) ascertained as follows:

$$PFP = (0.8 - R) \times 100 \times PR$$

where:

PFP is the performance failure payment in respect of that Performance Management Unit expressed in £;

R is the Train KPI Performance Ratio in respect of that Performance Management Unit for the relevant Reporting Period;

PR is the payment rate in respect of that Performance Management Unit ascertained in accordance with paragraph 10.1; and

- (e) performance failure payments and incentive payments shall be made as adjustments to the Franchise Payment payable on the Payment Date of the Reporting Period in which the calculation is performed in accordance with paragraph 9.1(a).

Station KPI Performance Ratio

9.2 In respect of the results of audits conducted at Stations referred to in paragraphs 8.6 and 8.7, incentive payments shall be payable by the Authority to the Franchisee and/or by any of the Executives to the Franchisee (as the case may be) and performance failure payments

shall be payable by the Franchisee to the Authority and/or by the Franchisee to any of the Executives (as the case may be) in accordance with the following:

- (a) in respect of each Performance Management Unit, the Franchisee shall calculate the Station KPI Performance Ratio for each Reporting Period:
 - (i) in the Reporting Period after the Reporting Period in which the relevant audits were conducted in sufficient time to comply with the notification requirements referred to in paragraph 4.1(d); and
 - (ii) in accordance with the following formula:

$$\frac{\text{Station Audit Population} - \text{Station Audit Score}}{\text{Station Audit Population}}$$

- (b) if the Station KPI Performance Ratio in respect of any Performance Management Unit is between 0.80 and 0.90 then no incentive payment or performance failure payment shall be payable between the Authority, the Executives and the Franchisee in respect of that Performance Management Unit;
- (c) if the Station KPI Performance Ratio in respect of any Performance Management Unit is greater than 0.90 then the Authority and/or the relevant Executive(s) (as the case may be and in the proportions provided for in Part 2 of Schedule 8.2 (*Annual Franchise Payments/Appportionment of Payments*)) shall make an incentive payment in respect of that Performance Management Unit to the Franchisee in accordance with the following formula:

$$IP = (R - 0.9) \times 100 \times PR$$

where:

IP is the incentive payment in respect of that Performance Management Unit expressed in £;

R is the Station KPI Performance Ratio in respect of that Performance Management Unit for the relevant Reporting Period;

PR is the payment rate in respect of that Performance Management Unit ascertained in accordance with paragraph 10.2;

- (d) if the Station KPI Performance Ratio in respect of any Performance Management Unit is lower than 0.80 then the Franchisee shall make a performance failure payment in respect of that Performance Management Unit to the Authority and/or the relevant Executive(s) (as the case may be and in the proportions provided for in Part 2 of Schedule 8.2 (*Annual Franchise Payments/Appportionment of Payments*)) ascertained as follows:

$$PFP = (0.8 - R) \times 100 \times PR$$

where:

PFP is the performance failure payment in respect of that Performance Management Unit expressed in £;

R is the Station KPI Performance Ratio in respect of that Performance Management Unit for the relevant Reporting Period;

PR is the payment rate in respect of that Performance Management Unit ascertained in accordance with paragraph 10.2; and

- (e) performance failure payments and incentive payments shall be made as adjustments to the Franchise Payment payable on the Payment Date of the Reporting Period in which the calculation is performed in accordance with paragraph 9.2(a).

10. CALCULATION OF THE VALUE OF SERVICE POINTS

Value of Train Service Points

10.1 In respect of the results of the audits conducted on and about trains referred to in paragraphs 7.4 and 7.5, the value of the service points in each Reporting Period in respect of each Performance Management Unit shall be calculated as follows:

$$PR = \left(\frac{AP}{30} \right)$$

where:

PR is the payment rate for a service point in respect the relevant Performance Management Unit; and

AP is the amount calculated as follows:

$$AVP \times \left(\frac{T}{P} \right)$$

Where:

AVP is the Reporting Period KPI Risk Element £ (Trains) that is set out in column 4 of the relevant Table in the Appendix (*Average Profit Table*);

T is, in respect of the first Franchisee Year, the scheduled train miles of the Passenger Services as are provided by the relevant Performance Management Unit as stated in the Timetable in force as at the Franchise Commencement Date, and, in respect of each subsequent Franchisee Year, is the scheduled train miles of the Passenger Services as are provided by the relevant Performance Management Unit as stated in the Timetable in force as at the last day of the previous Franchisee Year; and

P is, in respect of the first Franchisee Year, the scheduled train miles of all Passenger Services as stated in the Timetable in force as at the Franchise Commencement Date, and, in respect of each subsequent Franchisee Year, is the scheduled train miles of all Passenger Services as stated in the Timetable in force as at the last day of the previous Franchisee Year.

Value of Station Service Points

10.2 In respect of the results of the audits conducted at Stations referred to in paragraphs 7.6 and 7.7, the value of the service points in each Reporting Period and in respect of each Performance Management Unit shall be calculated as follows:

$$PR = \left(\frac{AP}{30} \right)$$

where:

PR is the payment rate for a service point in respect of the relevant Performance Management Unit; and

AP is the amount calculated as follows:

$$AVP \times \left(\frac{S}{P} \right)$$

Where:

AVP is the Reporting Period KPI Risk Element £ (Stations) that is set out in column 5 of the relevant Table in the Appendix (*Average Profit Table*);

S is the number of Stations within the relevant Performance Management Unit; and

P is the total number of Stations.

11. LIMITATION OF LIABILITY OF THE FRANCHISEE UNDER THE KPI MEASUREMENT REGIME

Save in respect of any costs owing to the Authority pursuant to paragraphs 12.3(a) and 12.4(b), in any Franchisee Year the Franchisee shall not be liable under this Schedule 7.2 for substandard performance for any amount greater than the sum of the Reporting Period KPI Risk Element in columns 4 and 5 of the Table in the Appendix (*Average Profit Table*), multiplied by 13.

12. REMEDIES AVAILABLE TO THE AUTHORITY

KPI Performance Ratios Below Agreed Ratios

12.1 It shall be a contravention of this Agreement if the Train KPI Performance Ratio, the Station KPI Performance Ratio, or, in the case of paragraphs 12.1(b) or (c), any combination of such ratios, is:

- (a) below 0.50 in any Reporting Period;
- (b) between 0.50 and 0.60 in any 2 consecutive Reporting Periods; or
- (c) between 0.50 and 0.65 in any 3 consecutive Reporting Periods;

provided that, for the purposes of this paragraph only, Train KPI Performance Ratio and Station KPI Performance Ratio shall be calculated in each Reporting Period in accordance with paragraph 8 but at a Franchise wide level using the aggregate of the Train Audit Scores, Station Audit Scores, Train Audit Population and Station Audit Population for all the Performance Management Units for the relevant Reporting Period.

12.2 If, in respect of any Performance Management Unit, the Train Performance KPI Performance Ratio, the Station KPI Performance Ratio, or, in the case of paragraph 12.2(b) or (c) any combination of such ratios, is:

- (a) below 0.50 in any Reporting Period;**
- (b) between 0.50 and 0.60 in any 2 consecutive Reporting Periods; or**
- (c) between 0.50 and 0.65 in any 3 consecutive Reporting Periods;**

the Authority may increase the frequency of the KPI Audits to the frequency of the SQ Audits to be conducted by the Franchisee in any 1 Reporting Period pursuant to paragraph 7 until such time as both of the KPI Performance Ratios are above 0.65 in 3 consecutive Reporting Periods.⁴⁵

12.3 During any period where additional KPI Audits are carried out in accordance with paragraph 12.2 or paragraph 12.8:

- (a) the Franchisee shall pay to the Authority the actual cost of undertaking such additional KPI Audits; and**
- (b) the results of such additional KPI Audits shall be used in the calculation of the Train KPI Performance Ratio and the Station KPI Performance Ratio as appropriate.**

Discrepancies between SQ Audits and PR Audits

12.4 In any Reporting Period, if there are material discrepancies between the results of any SQ Audit and the results of any PR Audit relevant to it and if the effect of those material discrepancies is that the result of such SQ Audit is more favourable to the Franchisee than the result of such PR Audit:

- (a) a contravention of this Agreement (but no Event of Default) shall have occurred;**
- (b) the Authority may increase the frequency of PR Audits it carries out in the next 3 Reporting Periods up to the frequency of the SQ Audits to be conducted by the Franchisee in any 1 Reporting Period pursuant to paragraph 7 and the Franchisee shall pay to the Authority the actual cost of undertaking such additional PR Audits; and**
- (c) the results of any SQ Audit where such material discrepancies are found shall be substituted with the results of the relevant PR Audit in accordance with paragraphs 8.4 to 8.8 (inclusive).**

12.5 If material discrepancies between the results of the SQ Audits and the PR Audits relevant to them having the effect referred to in paragraph 12.4 are observed in any 3 Reporting Periods within a period of 13 consecutive Reporting Periods, the Authority may:

- (a) require the Franchisee, at the Franchisee's cost, to remove or replace the person or persons conducting the relevant SQ Audits;**

⁴⁵ Insert change text wef 21/06/07

- (b) recover from the Franchisee any KPI-related incentive payments made by the Authority to the Franchisee in respect of such 3 Reporting Periods; and/or
- (c) impose on the Franchisee any KPI-related performance failure payments which should have been made by the Franchisee to the Authority, but were not made due to the material discrepancies in such SQ Audits.

12.6 If material discrepancies between the results of the SQ Audits and the PR Audits relevant to them having the effect referred to in paragraph 12.4 are observed in any 4 consecutive Reporting Periods, the Authority may:

- (a) exercise any of its rights pursuant to paragraph 12.5, to the extent not already exercised pursuant to that paragraph; and
- (b) require the Franchisee, at the Franchisee's cost, to remove or replace the Service Quality Manager immediately.

SQ Audits Not Conducted by the Franchisee

12.7 If the Franchisee fails to carry out the required number of SQ Audits in any Reporting Period then the Franchisee shall carry out an equivalent additional number of SQ Audits in the following Reporting Period so that the average number of SQ Audits performed per Reporting Period during any consecutive 13 Reporting Periods meets the requirements of this Schedule 7.2.

12.8 If the Franchisee fails to carry out the required number of SQ Audits for 3 consecutive Reporting Periods then the Authority may increase the frequency of the KPI Audits to the frequency of SQ Audits to be conducted by the Franchisee in any 1 Reporting Period pursuant to paragraph 6 for the next 6 Reporting Periods, and the provisions of paragraph 12.3 shall apply during such period of increased auditing.

Executive SQ Audits

13.1 The parties agree that the Franchisee may agree with an Executive to conduct additional audits of Stations in a Performance Management Unit ("**PTE SQ Audits**"). Where such PTE SQ Audits are to be carried out:

- (a) those PTE SQ Audits shall be at no cost to the Franchisee;
- (b) subject to paragraphs 13.1(c) and (d), each PTE SQ Audit and the result of such audit shall be an SQ Audit for the purposes of this Schedule 7.2 (*Key Performance Indicators*);
- (c) paragraphs 12.4 to 12.6 shall not apply if there is any discrepancy between a PR Audit and a PTE SQ Audit; and
- (d) paragraphs 12.7 and 12.8 shall not apply if the Franchisee fails to carry out the agreed number of PTE SQ Audits.

APPENDIX TO SCHEDULE 7.2

Average Profit Table⁴⁶

1. Year 1 and Year 10 of the Franchisee Year Columns

In respect of the Franchisee Year 1, Franchisee Year 10 and the 7 Reporting Period Extension the figures in columns 2 to 5 above have been pro-rated to account for the part years in respect of such Franchisee Years.

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.

SCHEDULE 8

Payments

Schedule 8.1: Franchise Payments

- Part 1: General Provisions Applicable to Franchise Payments**
- Part 2: Authority Franchise Payments**
- Part 3: Executive Franchise Payments**

Schedule 8.2: Annual Franchise Payments/Appportionment of Payments

- Part 1: Annual Franchise Payments**
- Part 2: Annual Franchise Payments/Appportionment of Payments**
- Appendix 1: Target Revenue (expressed in real terms)**
- Appendix 2: Figures for Calculation of Annual Franchise Payments**

Schedule 8.3: Miscellaneous Payment Provisions

Schedule 8.4: Track Access Adjustments and Station Charge Adjustments

SCHEDULE 8.1

Franchise payments

PART 1: GENERAL PROVISIONS APPLICABLE TO FRANCHISE PAYMENTS

1.1 The Authority shall notify the Franchisee, and each of the Executives, no less than 7 days prior to the end of each Reporting Period, of the amount of the Authority Franchise Payment and each of the Executive Franchise Payments payable in respect of that Reporting Period.

1.2 Each such notification shall set out in reasonable detail how the Authority Franchise Payment and the Executive Franchise Payment have been calculated.

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

1.4 Each Authority Franchise Payment and each Executive Franchise Payment shall be payable in the amount notified by the Authority in accordance with paragraph 1.1 on the Payment Date of the Reporting Period to which it relates.

1.5 Each Authority Franchise Payment and each Executive 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.

1.6 If any party 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 party to pay a Franchise Payment notified in accordance with paragraph 1.1.

1.7 If any party fails to pay any amount to the relevant 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.

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

- (a) any party has made a payment to any 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 3 business days of the agreement or determination; or
- (b) any party has made a payment to the any 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 3 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.

1.9 The payment obligations of the Authority and each of the Executives under this Schedule 8 are several. None of them shall have any liability in respect of the performance or non-performance of any one or more of the others of them, nor shall the Franchisee be entitled to withhold from any payment to any party to this Agreement any amount that is owing from or payable by any other party to the Franchisee.

PART 2 AUTHORITY FRANCHISE PAYMENTS

35 1.1 The Authority Franchise Payment for any Reporting Period shall be an amount equal to:

$$\begin{aligned} \text{£AuFP} = & \text{AS} - \text{RShA} - \text{RShRA} + \text{RSuA} + \text{RSuRA} + \text{TAA} + \text{SCA} + \text{TSQ} + \text{SSQ} + \text{CS} + \text{DD} \\ & + \text{PFA} - \text{HLOSFP} - \text{NRR08/09} \end{aligned} \quad 36$$

where:

£AuFP means the Franchise Payment payable by the Authority to the Franchisee or the Franchisee to the Authority (as the case may be) for that Reporting Period;

AS means the Authority Share of the value of PFP as determined pursuant to paragraph 1 of part 2 Schedule 8.2 (*Annual Franchise Payments/Appportionment of Payments*);

PFA means any payment to be made by the Authority to the Franchisee or the Franchisee to the Authority (as the case may be) pursuant to the side letter referred to in clause 7.1(j) of this Agreement, which shall have a positive or a negative value;

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

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

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

RSuRA 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;

TSQ means the aggregate of the Authority's proportion of those incentive payments or performance failure payments (if any) in respect of train KPIs and individual Performance Management Units to be made on that Reporting Period's Payment Date, such proportion to be determined in respect of each Performance Management Unit in accordance with paragraph 2 of part 2 of Schedule 8.2 (*Annual Franchise Payments/Appportionment of Payments*) provided that, in calculating such aggregate, the Authority's proportion of any performance failure payment shall have a negative value;

³⁵ Date of Change 02/03/2010

³⁶ DATE OF CHANGE 1/4/2008

SSQ means the aggregate of the Authority's proportion of those incentive payments or performance failure payments (if any) in respect of Station KPIs and individual Performance Management Units to be made on that Reporting Period's Payment Date, such proportion to be determined in respect of each Performance Management Unit in accordance with paragraphs 3 of part 2 of Schedule 8.2 (*Annual Franchise Payments/Appportionment of Payments*) provided that, in calculating such aggregate, the Authority's proportion of any performance failure payment shall have a negative value;

DD means any payment to be made by the Authority to the Franchisee pursuant to paragraph 2(h) of the Schedule 7.2 Side Letter which shall have a positive value; and

CS is the amount equal to $\left(\frac{RPD}{FYD} \times CSP \right)$

where

RPD means the number of days in that Reporting Period;

FYD is equal to 365 or, if February 29 occurs during the Franchisee Year in which that Reporting Period falls, 366; and

CSP is the amount of £25k payable by the Authority to the Franchisee in respect of the provision of the Semi Fast Services ; and³⁷

³⁸HLOS FPA means the aggregate of all HLOS Franchise Payment Adjustments to be made on that Reporting Period's Payment Date

NRR008/09 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.³⁹

1.2 Where a Franchisee Year starts or ends during a Reporting Period, £AuFP shall be determined as if references in paragraph 2.1 to a Reporting Period were to each of the separate sections of 2 such Reporting Periods which fall either side of such Franchisee Year 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 The Authority and the Franchisee both agree that each of £AuFP, AS, RShRA, RSuA, RSuRA, TAA, SCA, TSQ and SSQ may have a positive or negative value;

1.4 The Authority shall pay to the Franchisee any Franchise Payment which has a positive value and the Franchisee shall pay to the Authority any Franchise Payment which has a negative value in accordance with the payment provisions set out in Part 1 of Schedule 8.1 (*Franchise Payments*).

³⁷ Date of Change 02/03/2010

³⁸ Date of Change 02/03/2010

³⁹ DATE OF CHANGE 4/3/2009

2. REVENUE SHARE

Entitlement to Revenue Share Adjustments

2.1 A Revenue Share Adjustment shall be made in accordance with paragraphs 2.2, 2.3 and 4.4 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 by more than 5 per cent. for that Franchisee Year.

Amount of Revenue Share Adjustments

2.2 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:

$$RS_{hA} = (A \times 20\%) + (B \times 40\%)$$

where:

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

A is the amount of Revenue for that Franchisee Year which is:

- (a) greater than 105 per cent. of Target Revenue; and
- (b) less than or equal to 110 per cent. of Target Revenue; and

B is the amount of Revenue for that Franchisee Year which is greater than 110 per cent. of Target Revenue.

Revenue Share Adjustment Date

2.3 Each Revenue Share Adjustment in respect of any Franchisee Year shall be payable by the Franchisee and, subject to paragraph 4, be made to the Franchise Payment payable on the next Revenue Share Adjustment Date.

Revenue Share Reconciliation Amount

2.4 After each Franchisee Year, the Authority shall, following receipt by the Authority of the Annual Financial Statements in respect of that Franchisee Year, calculate the Revenue Share Reconciliation Amount in accordance with paragraph 2.5.

2.5 The Authority 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 2.2 but by reference to the Annual Financial Statements (instead of the 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 2.2.

Revenue Share Reconciliation Date

2.6 Any Revenue Share Reconciliation Amount shall be payable by the Authority or the Franchisee (as the case may be) and, subject to paragraph 4, be applied to the Franchise Payment payable on the next Revenue Share Reconciliation Date.

3. REVENUE SUPPORT

Entitlement to Revenue Support Adjustments

3.1 A Revenue Support Adjustment shall be made in accordance with paragraphs 3.2, 3.5 to 3.7 (inclusive) and 4.4 in respect of any Reporting Period which starts after the 4th anniversary of the Franchise Commencement Date if:

- (a) subject to paragraph 3.2, the Management Accounts for that Reporting Period disclose cumulative, year to date Revenue up to the end of that Reporting Period as being less than 98 per cent. of Target Revenue for that corresponding, year to date period; and
- (b) within 7 days of delivery to the Authority of the Management Accounts for such Reporting Period, the Franchisee requests that a Revenue Support Adjustment be made by the Authority.

3.2 If any Revenue Support Adjustment is made in respect of any Reporting Period that starts during the Franchisee Year in which the 4th anniversary of the Franchise Commencement Date occurs, any such Revenue Support Adjustment shall be made by reference to:

- (a) the cumulative Revenue for the period from the first Reporting Period that starts after the 4th anniversary of the Franchise Commencement Date up to the end of the Reporting Period in respect of which such Revenue Support Adjustment is to be made; and
- (b) the cumulative Target Revenue for those Reporting Periods.

3.3 If:

- (a) the conditions specified in paragraph 3.1 are met prior to the 4th anniversary of the Franchise Commencement Date; and
- (b) the deficit is directly attributable to one or more Force Majeure Events,

then, subject to paragraph 3.4, the Franchisee may claim a Revenue Support Adjustment in accordance with paragraph 3.1 notwithstanding the fact that the claim arises prior to the 4th anniversary of the Franchise Commencement Date.

3.4 If and to the extent that the deficit referred to in paragraph 3.3 is directly attributable to a Force Majeure Event 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 1.3 of Schedule 8.3 (*Miscellaneous Payment Provisions*) shall apply.

3.5 If a Revenue Support Adjustment is requested and made pursuant to paragraphs 3.1 to 3.3 (inclusive) in any Reporting Period in any Franchisee Year, a further Revenue Support Adjustment shall be made (whether or not requested) in accordance with paragraphs 3.6 and 3.7 in each subsequent Reporting Period in that Franchisee Year.

Amount of Revenue Support Adjustments

3.6 Each Revenue Support Adjustment in respect of any Reporting Period, shall be determined by reference to:

- (a) subject to paragraph 3.2, the cumulative, year to date Revenue up to the end of that Reporting Period, reported in the latest Management Accounts referred to in paragraph 3.1;
- (b) the 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:

$$RS_{uE} = (A \times 50\%) + (B \times 80\%)$$

where:

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

- (a) less than 98 per cent. of Target Revenue; and
- (b) equal to or greater than 95 per cent. of 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 95 per cent. of 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.

Revenue Support Adjustment Date

3.7 Each Revenue Support Adjustment in respect of any Reporting Period shall be payable by the Authority or the Franchisee (as the case may be) and, subject to paragraph 5, made to the Authority Share payable on the Revenue Support Adjustment Date.

Revenue Support Reconciliation Amount

3.8 After each Franchisee Year in which any Revenue Support Adjustment has been made, the Authority shall, following receipt by the Authority of the Annual Financial Statements in respect of that Franchisee Year, calculate the Revenue Support Reconciliation Amount in accordance with paragraph 3.9.

3.9 The Authority shall calculate the Revenue Support Reconciliation Amount in respect of any Franchisee Year in accordance with the following formula:

$$RS_{uRA} = RS_{uA(FS)} - PRS_{uA}$$

where:

RS_{uRA} is the Revenue Support Reconciliation Amount for that Franchisee Year;

$RS_{uA(FS)}$ is the Revenue Support Adjustment for that Franchisee Year determined in accordance with the following formula:

$$RS_{uA(FS)} = (A \times 50\%) + (B \times 80\%)$$

where:

A is the amount by which Revenue for that Franchisee Year as reported in the Annual Financial Statements is:

- (a) less than 98 per cent. of Target Revenue; and
- (b) equal to or greater than 95 per cent. of Target Revenue, for that Franchisee Year; and

B is the amount by which Revenue for that Franchisee Year as reported in the Annual Financial Statements is less than 95 per cent. of Target Revenue for that Franchisee Year; and

PRS_{uA} is the sum of each Revenue Support Adjustment determined pursuant to paragraph 4.6 in respect of any Reporting Period in that Franchisee Year.

Revenue Support Reconciliation Date

3.10 The Revenue Support Reconciliation Amount shall be payable by the Authority or the Franchisee (as the case may be) and, subject to paragraph 4, applied to the Authority Share payable on the Revenue Support Reconciliation Date.

Revenue Support Adjustment where Franchisee is in Contravention of its Performance Obligations

3.11 If a Revenue Support Adjustment is to be made in accordance with this paragraph 3 in circumstances where the Franchisee is performing its obligations in contravention of any Breach Performance Level, then the provisions of Schedule 15.1 (*Reletting Provisions*) and, notwithstanding that the last 12 or 13 months of the Franchise Period have not commenced at such time, the provisions of Schedule 15.2 (*Last 12 or 13 Months of Franchise Period*) shall apply.

4. FINAL FRANCHISEE YEAR

Revenue Share

4.1 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 2.2 and 2.6 respectively but shall be paid within 30 days of the Authority giving written notice to the Franchisee of the amount of such Revenue Share Adjustment and/or Revenue Share Reconciliation Amount.

Revenue Support

4.2 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 3.6 and 3.9 respectively but shall be paid within 30 days of the Authority giving written notice to the Franchisee of the amount of such Revenue Support Adjustment and/or Revenue Support Reconciliation Amount.

Annual Financial Statements

4.3 If the Franchisee fails to provide the Annual Financial Statements for the final Franchisee Year within 3 Reporting Periods of the expiry of the final Franchisee Year pursuant to paragraph 3.7 of Schedule 13.2 (*Information*), the Authority shall be entitled (but not obliged) to determine:

- (a) any Revenue Share Adjustment in accordance with paragraph 2.2;
- (b) any Revenue Share Reconciliation Amount in accordance with paragraph 2.5;
- (c) any Revenue Support Adjustment in accordance with paragraph 3.6; and/or
- (d) any Revenue Support Reconciliation Amount in accordance with paragraph 3.9,

but by reference to any relevant information available to the Authority 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.

Target Revenue

4.4 If this Agreement terminates early, Target Revenue shall be pro-rated for the year of termination.

PART 3: EXECUTIVE FRANCHISE PAYMENTS

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

$$£EFP = ES + ETSQ + ESSQ + Z + EDD$$

where:

£EFP	means the Executive Franchise Payment relevant for that Reporting Period;
ES	means the relevant Executive Share of the value of PFP as determined pursuant to paragraph 1 of part 2 of Schedule 8.2 (<i>Annual Franchise Payments/Appportionment of Payments</i>);
ETSQ	means the aggregate of the relevant Executive's proportion of those incentive payments or performance failure payments (if any) in respect of train KPIs and individual Performance Management Units to be made on that Reporting Period's Payment Date, such proportion to be determined in respect of each Performance Management Unit in accordance with paragraph 2 of part 2 of Schedule 8.2 (<i>Annual Franchise Payment/Appportionment of Payments</i>) provided that, in calculating such aggregate, the relevant Executive's proportion of any performance failure payment shall have a negative value;
ESSQ	means the aggregate of the relevant Executive's proportion of those incentive payments or performance failure payments (if any) in respect of Station KPIs and individual Performance Management Units to be made on that Reporting Period's Payment Date, such proportion to be determined in respect of each Performance Management Unit in accordance with paragraph 3 of part 2 of Schedule 8.2 (<i>Annual Franchise Payments/Appportionment of Payments</i>) provided that, in calculating such aggregate, the relevant Executive's proportion of any performance failure payment shall have a negative value;
Z	means the relevant Executive's proportion of the additional payments to be made by such Executive pursuant to paragraphs 7.13 of Schedule 1.1 (<i>Service Development</i>) (including any Retrospective Payment) which shall have a positive value; and
EDD	means any payment to be made by any Executive to the Franchisee pursuant to paragraph 2(h) of the Schedule 7.2 Side Letter which shall have a positive value.

1.2 The Executives and the Franchisee each agree that each of £EFP, ETSQ and ESSQ may have a positive or negative value.

1.3 Each Executive shall pay to the Franchisee any Executive Franchise Payment in respect of that Executive which has a positive value and the Franchisee shall pay to the relevant Executive any such Executive Franchise Payment which has a negative value in accordance with the payment provisions set out in Part 1 of Schedule 8.1 (*Franchise Payments*).

SCHEDULE 8.2

Annual Franchise Payments/Appportionment of Payments

PART 1: ANNUAL FRANCHISE PAYMENTS

1.1 The Annual Franchise Payment for any Franchisee Year is an amount equal to:

$$AFP = FXD + (VCRPI \times RPI) + (VCAEI \times AEI) + (PRPI \times RPI) - (TRRPI \times RPI)$$

where:

AFP equals the Annual Franchise Payment in the relevant Franchisee Year;

FXD means the figure shown in respect of the relevant Franchisee Year in column 2 of the table set out in Appendix 2 (*Figures for Calculation of Annual Franchise Payments*);

VCRPI means the figure shown in respect of the relevant Franchisee Year in column 3 of the table set out in Appendix 2;

RPI is the quotient of the Retail Prices Index for the March which immediately precedes the commencement of the relevant Franchisee Year divided by the Retail Prices Index for March 2004;

VCAEI means the figure shown in respect of the relevant Franchisee Year in column 4 of the table set out in Appendix 2;

AEI is the quotient of the Average Earnings Index for the March which immediately precedes the commencement of the relevant Franchisee Year divided by the Average Earnings Index for March 2004;

PRPI means the figure shown in respect of the relevant Franchisee Year in column 5 of the table set out in Appendix 2; and

TRRPI means the figure shown in respect of the relevant Franchisee Year in column 6 of the table set out in Appendix 2 .

PART 2: APPORTIONMENT OF PAYMENTS

1. Apportionment of Value of PFP

1.1 The Shares for the purposes of paragraph 1.1 of part 2 of Schedule 8.1 and paragraph 1.1 of part 3 of Schedule 8.1 shall be a proportion of the value of PFP where:

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

where:

RPD means the number of days in that Reporting Period;

FYD equals in respect of the first Franchisee Year 110, in respect of the tenth Franchisee Year 167, and for the other Franchisee Years 365 (or, if February

29 occurs during the Franchise Year in which that Reporting Period falls 366), provided that if this Agreement continues after the Initial Expiry Date in accordance with paragraph 1.4 of Schedule 18 (*Continuation Criteria*) and the Authority subsequently gives notice pursuant to paragraph 1.7 Schedule 18 (*Continuation Criteria*) so that this Agreement continues for an additional 7 Reporting Periods then FYD for those additional 7 Reporting Periods shall equal 198;

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/Appportionment of Payments*);

except that where a Franchisee Year starts or ends during a Reporting Period, PFP shall be determined as if references in paragraph 1.1 to a Reporting Period were to each of the separate sections of 2 such Reporting Periods which fall either side of such Franchisee Year end, and the value of PFP for such Reporting Period shall be the sum of PFP as determined for each such section of such Reporting Period.

1.2 Subject to paragraph 6 of Schedule 9.1 (*Financial Consequences of Change*) the proportion of PFP payable by the Authority and each of the Executives shall be determined by the Authority in accordance with paragraphs 1.3 and 1.4 and notified to each of the parties on the Franchise Commencement Date.

1.3 Subject to paragraph 6 of Schedule 9.1 (*Financial Consequences of Change*) the Share payable by each of the Executives shall be determined by the Authority using the following formula:

$$\text{PFP} \times \left(\frac{A}{B} \right)$$

where:

A is the scheduled train miles of such Executive's Passenger Services as at the Franchise Commencement Date; and

B is the scheduled train miles of all Passenger Services as at the Franchise Commencement Date.

1.4 Subject to paragraph 6 of Schedule 9.1 (*Financial Consequences of Change*) the Authority's Share shall equal the balance of PFP after deducting the Shares of each Executive as determined pursuant to paragraph 1.3.

2. Apportionment of Incentive and performance failure payments in respect of Train KPIs.

2.1 In the case of each Performance Management Unit, the proportion of any train KPIs incentive payment payable by the Authority and by any relevant Executive(s) to the Franchisee and the proportion of any train KPIs performance failure payment payable by the Franchisee to each of the Authority and any relevant Executive(s) shall be determined as follows:

(a) the proportion of each relevant Executive's incentive payment or performance failure payment (as the case may be) shall equal:

$$\text{ETSQ} \times \left(\frac{A}{B} \right)$$

where:

ETSQ is the incentive payment or performance failure payment (as the case may be) relating to the relevant Performance Management Unit and determined in accordance with paragraphs 9.1(c) and 9.1(d) of Schedule 7.2 (*Key Performance Indicators*) respectively;

A is, in respect of the first Franchisee Year, the scheduled train miles of those of the relevant Executive's Executive Passenger Services as are provided by the relevant Performance Management Unit as stated in the Timetable in force as at the Franchise Commencement Date, and, in respect of each subsequent Franchisee Year, is the scheduled train miles of those of the relevant Executive's Executive Passenger Services provided by the relevant Performance Management Unit as stated in the Timetable in force as at the last day of the previous Franchisee Year; and

B is, in respect of the first Franchisee Year, the scheduled train miles of all Passenger Services provided by the relevant Performance Management Unit as stated in the Timetable in force as at the Franchise Commencement Date, and, in respect of each subsequent Franchisee Year, is the scheduled train miles of all Passenger Services provided by the relevant Performance Management Unit as stated in the Timetable in force as at the last day of the previous Franchisee Year.

(b) The Authority's proportion of the incentive payment or performance failure payment (as the case may be) in respect of the relevant Performance Management Unit shall equal the balance of TSQ after deducting the proportions of each of the relevant Executives determined in accordance with paragraph (a).

3. Apportionment of Incentive and performance failure payments in respect of Station KPIs.

3.1 In the case of each Performance Management Unit, the proportion of any Station KPIs incentive payment payable by the Authority and any relevant Executive(s) to the Franchisee and the proportion of any or performance failure payment payable by the Franchisee to each of the Authority and any Executive(s) shall be determined as follows:

(a) the proportion of each relevant Executive's incentive payment or performance failure payment (as the case may be) shall equal:

$$\text{ESSQ} \times \left(\frac{C}{D} \right)$$

where:

ESSQ is the incentive payment or performance failure payment (as the case may be) relating to the relevant Performance Management Unit and determined in accordance with paragraphs 9.2(c) and 9.2(d) of Schedule 7.2 (*Key Performance Indicators*) respectively;

C is the number of Executive Stations of such Executive within the Performance Management Unit;

D is the total number of Stations within the Performance Management Unit.

(b) The Authority's proportion of the incentive payment or performance failure payment (as the case may be) in respect of the relevant Performance Management Unit shall equal the balance of SSQ after deducting the proportions of each of the relevant Executives determined in accordance with paragraph (a).

APPENDIX 1 TO SCHEDULE 8.2

Target Revenue (expressed in real terms)⁴⁰

1. YEAR 1 AND YEAR 10 OF THE FRANCHISEE YEAR COLUMNS

In respect of Franchisee Year 1, Franchisee Year 10 and the 7 Reporting Period Extension the figures in column 2 above have been pro-rated to account for the part years in respect of such Franchisee Years.

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.

APPENDIX 2 TO SCHEDULE 8.2

Figures for Calculation of Annual Franchise Payments (£)⁴¹

1. YEAR 1 AND YEAR 10 OF THE FRANCHISEE YEAR COLUMNS

In respect of the Franchisee Year 1, Franchisee Year 10 and the 7 Reporting Period Extension the figures in columns 2 to 6 above have been pro-rated to account for the part years in respect of such Franchisee Years.

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.

SCHEDULE 8.3

Miscellaneous Payment Provisions

1.1 [NOT USED]

1.2 [NOT USED]

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

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

SCHEDULE 8.4

Track Access Adjustments and Station Charge Adjustments

1. TRACK ACCESS ADJUSTMENTS

1.1 The Track Access Adjustment to be made in respect of any Reporting Period shall be determined in accordance with the following formula:

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

where:

TAA means the Track Access Adjustment to be made in that Reporting Period;

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

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

FYD means the number of days in the Franchisee Year in which that Reporting Period falls,

except that, where a Reporting Period falls during 2 Franchisee Years, TAA shall be determined as if the references to Reporting Period were to each of the 2 periods within such Reporting Period which fall wholly within one of such Franchisee Years and the Track Access Adjustment to be made in that Reporting Period shall reflect the sum of TAA as determined for each such period.

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

1.3 The Franchisee shall provide such evidence of payment as the Authority may require (including any certificates) for the purpose of determining the value of L under paragraph 1.1.

1.4 If no value is ascertained for L prior to the date on which the Franchise Payment for the relevant Reporting Period is determined, then a Track Access Adjustment shall only be determined to the extent such value can be ascertained at such time and, when such value is subsequently ascertained, adjustment shall be made to reflect the full Track Access Adjustment for such Reporting Period.

1.5 The value of L when used in the computation in paragraph 1.1 shall be taken to exclude any input Value Added Tax which is recoverable in respect of the payments they represent by the Franchisee under Sections 24 to 26 of the Value Added Tax Act 1994.

1.6 References in this paragraph 1 to “ L_t ” and Part 3 of Schedule 7 of the Track Access Agreement shall be deemed also to be references to such other provisions, and such other

algebra under any such other provisions, of any Track Access Agreement as the Authority may reasonably consider have an equivalent effect, or are intended to fulfil the same function, as “L_t” and Part 3 of Schedule 7 of the Track Access Agreement to which the Franchisee is a party on the Franchise Commencement Date.

2. STATION CHARGE ADJUSTMENT

2.1 The Station Charge Adjustment to be made in respect of any Reporting Period shall be the aggregate of the Individual Station Charge Adjustments as determined in accordance with the following formula for each Station and each other station at which the Passenger Services call:

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

where:

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

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

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

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

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

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

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

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

FYD means the number of days in the Franchisee Year in which that Reporting Period falls except that, where a Reporting Period falls during 2 Franchisee Years, the Station Charge Adjustment shall be determined as if the references to Reporting Period were to each of the two periods within such Reporting Period which fall wholly within one of such Franchisee

Years and the Station Charge Adjustment for such Reporting Period shall be the sum of the Station Charge Adjustment as determined for each such period.

2.2 The Franchisee shall notify the Authority upon becoming aware that any Station Charge Adjustment is to be made and shall supply such information as the Authority may require in relation thereto. The Franchisee shall exercise such rights as it may have under any relevant Station Lease or Access Agreement in such manner and take such other action as the Authority may reasonably require in connection with any related payment thereunder (including in relation to any agreement of the amount of any such payment and including submitting any relevant dispute to any relevant dispute resolution procedures). The Franchisee shall not, without the consent of the Authority, agree or propose to agree a value for “ L_t ” or “ P_t ” under any relevant Station Lease or Access Agreement.

2.3 The Franchisee shall provide such evidence of payment as the Authority may require (including any certificates) for the purpose of determining the value of L and P under paragraph 2.1.

2.4 If no value is ascertained for any of L or P prior to the date on which the Franchise Payment for the relevant Reporting Period is determined, then a Station Charge Adjustment shall only be determined to the extent such values can be ascertained at such time and, when such values are subsequently ascertained, an adjustment shall be made to reflect the full Station Charge Adjustment for such Reporting Period.

2.5 The values of L and P when used in the computation in paragraph 2.1 shall be taken to exclude any input Value Added Tax which is recoverable in respect of the payments they represent by the Franchisee under Sections 24 to 26 of the Value Added Tax Act 1994.

2.6 For the purposes of this paragraph 2, *Independent Station* shall mean:

(a) as at the date hereof, Birmingham New Street, Edinburgh Waverley, Gatwick Airport, Glasgow Central High Level, London Bridge, London Cannon Street, London Charing Cross, London Euston, London King’s Cross, London Liverpool Street, London Paddington, London Victoria, London Waterloo (excluding Waterloo International), Leeds, Liverpool Lime Street and Manchester Piccadilly; and

(b) any other station of which Network Rail may from time to time be the Facility Owner.

2.7 References in this paragraph 2 to “ L_t ”, “ P_t ”, Condition F11.2 of the Franchise Station Access Conditions and Condition 42.3 of the Independent Station Access Condition shall be deemed also to be references to such other provisions, and such other algebra under any such other provisions, of any relevant station access conditions as the Authority may reasonably consider have an equivalent effect, or are intended to fulfil the same function as, “ L_t ”, “ P_t ” and Condition F11.2 of the Franchise Station Access Conditions and Condition 42.3 of the Independent Station Access Conditions which are in effect on the Franchise Commencement Date.

SCHEDULE 9

Changes

Schedule 9.1:	Financial Consequences of Change
Schedule 9.2:	Identity of the Financial Model etc.
Schedule 9.3:	Runs of the Financial Model
	Appendix: Incentivising Long-Term Investment
Schedule 9.4	Authority Risk Assumptions

SCHEDULE 9.1

Financial Consequences of Change

1. FINANCIAL CONSEQUENCES OF A CHANGE

1.1 When there is or is to be a Qualifying Change, the following shall be restated in the amounts and values ascertained by a Run of the Financial Model in accordance with Schedule 9.3 (*Runs of the Financial Model*):

(a) the amounts of Target Revenue for each Franchisee Year specified in Appendix 1 (*Target Revenue*) to Schedule 8.2 (*Annual Franchise Payments/Appportionment of Payments*);

(b) the values of FXD, VCRPI, VCAEI, PRPI, and TRRPI specified for each Franchisee Year in Appendix 2 (*Figures for Calculation of Annual Franchise Payments*) to Schedule 8.2 (*Annual Franchise Payments/ Appportionment of Payments*);

(c) the values of:

(i) annual profit in column 2;

(ii) average profit in column 3;

(iii) KPI Risk Element (Trains) in column 4; and

(iv) KPI Risk Element (Stations) in column 5,

specified for each Franchisee Year in the Appendix (*Average Profit Table*) to Schedule 7.2 (*Key Performance Indicators*).

1.2 Where a Run of the Financial Model is required it shall be performed:

(a) where it is reasonably practicable to do so, at least 3 Reporting Periods prior to the Change; or

(b) as soon as reasonably practicable thereafter.

1.3 The restated amounts and values shall have effect on and from the later of:

(a) the date on which the Change comes into effect; and

(b) the date on which the Authority approves or the auditor certifies the results of the Run of the Financial Model.

1.4 The Authority may stipulate (on or before the date on which the Authority approves or the auditor certifies the results of the Run of the Financial Model) that those amounts and values are to apply for a limited period of time only, with provision thereafter for a further Run of the Financial Model with new Revised Inputs based on information available at that time.

2. ESTIMATED FINANCIAL CONSEQUENCES

2.1 Where:

(a) there is or is to be a Change before there is a Run of the Financial Model in relation to it; and

- (b) the Authority reasonably determines that the Change is likely to be a Qualifying Change,

then the Authority shall notify to the Franchisee a reasonable estimate of:

- (i) the amounts of Target Revenue specified for each Franchisee Year in Appendix 1 (*Target Revenue*) to Schedule 8.2(*Annual Franchise Payments/ Apportionment of Payments*);
 - (ii) the values of FXD, VCRPI, VCAEI, PRPI and TRRPI specified for each Franchisee Year in Appendix 2 (*Figures for Calculating the Annual Franchise Payments*); and
 - (iii) the following values specified for each Franchisee Year in the Appendix (*Average Profit Table*) to Schedule 7.2 (*Key Performance Indicators*):
- (A) annual profit in column 2;
 - (B) average profit in column 3;
 - (C) KPI Risk Element (Trains) in column 4; and
 - (D) KPI Risk Element (Stations) in column 5,

which a Run of the Financial Model using the Authority's view of Revised Inputs and any Model Changes would produce (*Estimated Revisions*).

2.2 In the circumstances described in paragraph 2.1:

- (a) the amounts of Target Revenue specified for each Franchisee Year in Appendix 1 (*Target Revenue*) to Schedule 8.2 (*Annual Franchise Payments/ Apportionment of Payments*);
 - (b) the values of FXD, VCRPI, VCAEI, PRPI and TRRPI specified for each Franchisee Year in Appendix 2 (*Figures for Calculating the Annual Franchise Payments*); and
 - (c) the following values specified for each Franchisee Year in the Appendix (*Average Profit Table*) to Schedule 7.2 (*Key Performance Indicators*):
- (i) annual profit in column 2;
 - (ii) average profit in column 3;
 - (iii) KPI Risk Element (Trains) in column 4; and
 - (iv) KPI Risk Element (Stations) in column 5,

shall be restated in the amounts and values of the Estimated Revisions, and Franchise Payments shall be paid accordingly until the Run of the Financial Model has taken place and its results have been put into effect.

2.3 The Authority shall use all reasonable endeavours to provide the notification required by paragraph 2.1 at least 2 Reporting Periods before it considers the Change is likely to occur. If, having exercised all reasonable endeavours, the Authority cannot provide 2 Reporting Periods' notice, it shall provide such notification as soon as reasonably practicable afterwards.

3. CHANGES BENEATH THRESHOLD AMOUNT

3.1 Paragraph 1 shall also apply to any 2 or more Changes of which the Franchisee is notified of or of which it becomes aware in any Franchisee Year which do not exceed the Threshold Amount taken alone but which do exceed it when taken together.

3.2 If either the Authority or the Franchisee wish to be able to claim an adjustment pursuant to paragraph 3.1 as and when the cumulative Threshold Amount is exceeded, such 'party shall notify the other party after the individual Change occurs within the time limit prescribed in paragraph 4.1(b)(ii) that such party reserves its rights to accumulate that Change with others pursuant to paragraph 3.1.

4. TIME LIMITS

4.1 Either the Authority or the Franchisee may require there to be a Run of the Financial Model in respect of a Change provided that:

- (a) there are good reasons for considering that a Change is likely to be a Qualifying Change; and
- (b) that party notifies the other party of its requirement within 6 months of:
 - (i) the notification or agreement of any Change that is a Variation pursuant to paragraph 1.1(b) of Schedule 19 (*Other Provisions*);
 - (ii) becoming aware of any other Change; or
 - (iii) where the claim is pursuant to paragraph 3.1, the occurrence of the last Qualifying Change.

4.2 Unless otherwise agreed between the parties, there shall be no entitlement to a Run of the Financial Model unless the claiming party has notified the other party within the 6-month period referred to in paragraph 4.1

5. PROPOSED CHANGES

5.1 In order to assist the Authority and/or each of the Executives in the assessment of the financial consequences of a proposed Change the Authority may by notice in writing require the Franchisee to perform a Preliminary Run of the Financial Model in respect of such a proposed Change.

5.2 The provisions of paragraph 1.4 of Schedule 9.1 (*Financial Consequences of Change*) and paragraphs 1 to 5 and 7 of Schedule 9.3 (*Runs of the Financial Model*) shall apply in respect of any Preliminary Run of the Financial Model performed by the Franchisee pursuant to paragraph 5.1. Except as otherwise provided in this paragraph 5.2, the provisions of paragraph 1 to 4 of this Schedule 9.1 (*Financial Consequences of Change*) shall not apply to a Preliminary Run of the Financial Model unless and until the Authority notifies the Franchisee in accordance with paragraph 5.3 in respect of such Preliminary Run of the Financial Model.

5.3 Where paragraph 5.1 applies the Authority may, within 6 months from the date on which the Authority approves or the auditor certifies the results of any Preliminary Run of the Financial Model pursuant to paragraph 1.3 or 1.4 of Schedule 9.3 (*Runs of the Financial Model*), notify the Franchisee that the Authority requires such proposed Change to be implemented. If the Authority so notifies the Franchisee then, for the purposes of Schedule 9.1 (*Financial Consequences of Change*) and in respect of any proposed Change that is a

Qualifying Change, the Preliminary Run of the Financial Model shall be the Run of the Financial Model and the provisions of paragraphs 1 to 4 of this Schedule 9.1 (*Financial Consequences of Change*) shall thereafter apply to such Preliminary Run of the Financial Model.

6. Effect of Changes on Shares of Annual Franchise Payments Payable by the Authority and the Executives.

6.1 Where a Change is a Qualifying Change and the Annual Franchise Payment for any Franchise Year determined in accordance with Part 1 of Schedule 8.2 (*Annual Franchise Payments/Appportionment of Payments*) is increased or decreased as a result of the Qualifying Change, the Shares of PFP payable by the Authority and each of the Executives pursuant to Part 2 of Schedule 8.2 (*Annual Franchise Payments/Appportionment of Payments*) shall be revised and determined by the Authority on the following basis:-

(a) in the case of a Qualifying Change that has been implemented solely as a consequence of an Executive requiring it to be implemented pursuant to paragraph 12 of Schedule 19 (*Other Provisions*) only the Share of that Executive shall be increased or decreased as a consequence of the Change.

(b) in the case of any other Qualifying Change, the Shares payable by each of the Executives and/or the Authority shall be adjusted in a fair and equitable manner, which shall where relevant be commensurate with the extent to which the Change affects and/or relates to (including by way of changing forecast costs and revenues) the Executive Passenger Services and/or Executive Stations of an Executive (in the case of an Executive) and other Passenger Services and/or Stations (in the case of the Authority) and separate Runs of the Financial Model shall where appropriate be carried out in order to identify the individual financial consequences of changes to the operation of Executive Passenger Services and/or Executive Stations of each of the Executives and/or changes to the operation of other Passenger Services and/or Stations, as an aid to determining the consequential adjustments to be made to such Shares.

6.2 Where a Change is not a Qualifying Change but the Change has a material effect on:

(a) the operation of the Executive Passenger Services and/or Executive Stations of more than one of the Executives; or

(b) the operation of the Executive Passenger Services and/or Executive Stations of at least one of the Executives and the operation of the non-Executive Passenger Services and/or non-Executive Stations.

then the Shares of PFP payable by the Authority and each of the Executives pursuant to Part 2 of Schedule 8.2 (*Annual Franchise Payments/Appportionment of Payments*) shall be revised and determined by the Authority in a fair and equitable manner commensurate with the extent to which the Change affects and/or relates to (including by way of changing forecast costs and revenues) Executive Passenger Services and/or Executive Stations of an Executive (in the case of an Executive) and other Passenger Services and/or Stations (in the case of the Authority) and separate Runs of the Financial Model shall where appropriate be carried out in order to identify the individual financial consequences of changes to the operation of Executive Passenger Services and/or Executive Stations of each of the Executives and any changes to the operation of other Passenger Services and/or Stations, as an aid to determining the consequential adjustments to be made to such Shares.

6.3 The Authority shall notify the Franchisee and each of the Executives of the revised Shares determined by the Authority under paragraph 6.1 or paragraph 6.2 in good time before the revised Shares take effect.

6.4 If any Executive is dissatisfied with the way in which the Authority has determined the revised Shares under paragraph 6.1 or paragraph 6.2 and the Executive seeks to further adjust the revised Shares by agreement with the Authority or the Executive refers the matter to the Secretary of State pursuant to Section 34(17) of the Act then:-

(a) the Authority's determination shall prevail until such time as the Authority agrees that the revised Shares require further adjustment or the Secretary of State determines the relevant dispute;

(b) where the Shares are subsequently agreed by the Authority or determined by the Secretary of State to require further adjustment, an appropriate retrospective adjustment payment shall be made between the Authority and the relevant Executive(s) and the Franchisee shall not be entitled to any retrospective additional payment from the Authority or any Executive or be obliged to reimburse any overpayment to the Authority or any Executive.

SCHEDULE 9.2

Identity of the Financial Model etc.

1. FRANCHISEE'S OBLIGATIONS

1.1 The Franchisee shall deliver 2 copies of each of the Financial Model, the Operational Model and the Record of Assumptions (each such copy in electronic format on CD-ROM and in hard format) (the *Escrow Documents*) to the Authority in the agreed form, accompanied by a notice that the Escrow Documents are to be Placed in Escrow:

- (a) on the date of this Agreement;
- (b) within 7 days of the Franchise Commencement Date, but updated only as strictly necessary for any elapsed time between the actual Franchise Commencement Date and the date assumed to be the Franchise Commencement Date in the Initial Business Plan; and
- (c) within 7 days of any approval or audit of a Run of the Financial Model as provided for in paragraph 1.3 of Schedule 9.3 (*Runs of the Financial Model*), but updated with the Revised Inputs and any Model Changes.

1.2 The Franchisee shall deliver with each such deposit of the Escrow Documents all of the following information to the extent that it is relevant:

- (a) details of the Escrow Documents deposited (including full filename and version details, any details required to access the Escrow Documents including media type, backup command/software used, compression used, archive hardware and operating system details);
- (b) the names and contact details of persons who are able to provide support in relation to accessing and interpreting the Escrow Documents; and
- (c) if required by the Authority, a certificate from independent auditors approved by the Authority, confirming that the deposited version of the Escrow Documents is in the agreed form in accordance with paragraph 1.1(a) or (as the case may be) is in accordance with paragraphs 1.1(b) or (c).

2. AUTHORITY'S OBLIGATIONS

The Authority shall:

- (a) within 3 days, acknowledge receipt to the Franchisee of any version of the Escrow Documents delivered to it for the purposes of being Placed in Escrow;
- (b) save as provided under paragraph 2(c), store each copy of the Escrow Documents in a different physical location from any other copy of each such document and use all reasonable endeavours to ensure that each copy of the Escrow Documents is at all times kept in a safe and secure environment. In so doing the Authority shall be deemed to have Placed in Escrow the Escrow Documents for the purposes of this Agreement;
- (c) notify the Franchisee if it becomes aware at any time during the term of this Agreement that any copy of the Escrow Documents held by it has been lost, damaged or destroyed; in such an event, the Authority shall be permitted to create a new copy

of the Escrow Documents from any other copy thereof that it retains and shall within 7 days notify the Franchisee accordingly and afford it the right to make reasonable inspections in order to satisfy itself that a true and faithful copy has been made. Following the making of such a new copy of the Escrow Documents, the Authority shall retain all copies of the Escrow Documents in accordance with paragraph 2(b);

- (d) within 7 days of receipt of a notice from the Franchisee stating that the Escrow Documents are required for the purposes of a Preliminary Run of the Financial Model or actual or indicative Run of the Financial Model in relation to any proposed Change or Change (as the case may be), or should the Authority itself so decide, release 1 copy of the Escrow Documents to the Franchisee and retain 1 copy of each such model Placed in Escrow;
- (e) maintain a record of any release of any copy of any version of the Escrow Documents made, including details of any version released and the date of release as well as the identity of the person to whom the Escrow Documents are released;
- (f) have no obligation or responsibility to any person whatsoever to determine the existence, relevance, completeness, accuracy, effectiveness or any other aspect of the Escrow Documents; and
- (g) not be liable for any loss or damage caused to the Franchisee arising from any loss of or damage to the Escrow Documents.

SCHEDULE 9.3

Runs of the Financial Model

1. RUN OF THE FINANCIAL MODEL

1.1 Any Run of the Financial Model that is required for the purposes of this Agreement shall be performed after making any Model Changes and utilising the Revised Inputs and shall be performed by:

- (a) the Franchisee promptly on receiving notification of the Revised Inputs and any Model Changes from the Authority pursuant to paragraph 2.3; or
- (b) the Authority if the Franchisee fails to do so.

1.2 The party that performs the Run of the Financial Model pursuant to paragraph 1.1 shall provide the other party referred to in paragraph 1.1 with a reasonable opportunity to be in attendance and shall promptly notify such other party of the New Results.

1.3 The Authority, as soon as reasonably practicable after receiving or generating the New Results pursuant to paragraph 1.2, shall either:

- (a) certify to the Franchisee its approval of the New Results; or
- (b) notify the Franchisee that it requires the Run of the Financial Model and its results to be audited by an independent auditor appointed by the Authority with the approval (not to be unreasonably withheld or delayed) of the Franchisee.

1.4 For purposes of paragraph 1.3(b), the requirement for an audit is one that requires the auditor either to certify:

- (a) that the New Results have been produced by applying the Revised Inputs (as provided to the Franchisee by the Authority pursuant to paragraph 2.3) to the Financial Model after making the Model Changes (as provided to the Franchisee by the Authority pursuant to paragraph 2.3) ; or
- (b) the following, by itself applying the Revised Inputs (as provided to the Franchisee by the Authority pursuant to paragraph 2.3) to the Financial Model after making the Model Changes (as provided to the Franchisee by the Authority pursuant to paragraph 2.3):
 - (i) the restated amounts of Target Revenue to be specified for each Franchisee Year in Appendix 1 (*Target Revenue*) to Schedule 8.2(*Annual Franchise Payments/ Apportionment of Payments*);
 - (ii) the restated values of FXD, VCRPI, VCAEI, PRPI and TRRPI to be specified for each Franchisee Year in Appendix 2 (*Figures for Calculation of Annual Franchise Payments*) to Schedule 8.2 (*Annual Franchise Payments/ Apportionment of Payments*); and
 - (iii) the restated values to be specified for each Franchisee Year in the Appendix (*Average Profit Table*) to Schedule 7.2 (*Key Performance Indicators*):
 - (A) annual profit in column 2;
 - (B) average profit in column 3;
 - (C) KPI Risk Element (Trains) in column 4; and

(D) KPI Risk Element (Stations) in column 5.

1.5 The Franchisee and the Authority shall procure that any auditor is, as soon as reasonably practicable after his appointment, able to discharge the audit requirements.

1.6 The results as certified by the Authority pursuant to paragraph 1.3 or by the auditor pursuant to paragraph 1.4 shall be final and binding on the Franchisee and the Authority, except in the case of manifest error.

1.7 The costs of any audit shall be met as the auditor may direct.

2. REVISED INPUTS AND MODEL CHANGES

2.1 Revised Inputs means:

(a) the data that the Financial Model utilised in order to produce the Old Results, as such data is recorded in the Financial Model released to the Franchisee by the Authority pursuant to paragraph 2(d) of Schedule 9.2 (*Identity of the Financial Model etc.*) for the purposes of a Run of the Financial Model; but

(b) amended, whether by way of increase, reduction or other alterations to such data, (if at all) only as the parties may agree or the Authority may reasonably determine is required by the provisions of paragraphs 3 to 8 (inclusive) of this Schedule 9.3 in respect of a Change in order to produce the New Results.

2.2 **Model Changes** means any changes that the Franchisee and the Authority may agree or the Authority may reasonably determine are required to the Financial Model and/or the Operational Model, as released to the Franchisee by the Authority pursuant to paragraph 2(d) of Schedule 9.2 (*Identity of the Financial Model etc.*) for purposes of a Run of the Financial Model, as a consequence of and in order to give effect to the Revised Inputs.

2.3 The Authority shall provide a written statement of the Revised Inputs and any Model Changes to the Franchisee for purposes of paragraph 1.1 promptly after they have been agreed or determined.

3. AGREEMENT OR DETERMINATION OF REVISED INPUTS

3.1 The Franchisee and the Authority shall agree or the Authority shall reasonably determine the Revised Inputs that are required in respect of a Change:

(a) on the basis:

(i) of the general adjustments and/or assumptions referred to in paragraph 4; and

(ii) that references in paragraph 4 to costs include, where and to the extent relevant, transitional costs (including any one off lump sum payment in to the Franchise Sections the requirement for which arises directly out of the Change and is required by the Trustee of the Railways Pension Scheme) which arise as a result of the implementation of a Change but which would not, in the absence of this paragraph 3(a)(ii), otherwise be taken into account;

(b) on the basis of the assumptions in the Record of Assumptions as added to and/or amended (if at all) in accordance with paragraph 5;

(c) so as to provide:-

(i) for Traction Electricity Charges in accordance with paragraph 6;

(ii) to the extent necessary, for the treatment of the row entitled “Compensation for CP2/CP3” in the “Input” sheet of the Financial Model in accordance with paragraph 6A;

(d) so as to provide for profit in accordance with paragraph 7; and

(e) so as to provide for Estimated Revisions in accordance with paragraph 8.

3.2 The Authority shall consult and take into account the representations of the Executives when agreeing or determining Revised Inputs in respect of any Change that will or may affect the quantum of Franchise Payments payable by the Executives.

4. GENERAL ADJUSTMENTS/ASSUMPTIONS

4.1 Revised Inputs are to be agreed between the Franchisee and the Authority or reasonably determined by the Authority on the basis that:

(a) any increase in costs relating to a Change; and/or

(b) any reduction in revenues relating to a Change,

that is attributable to any activities, actions or omissions of the Franchisee which are not permitted under, or would otherwise constitute a contravention of, the terms of this Agreement, is to be disregarded.

4.2 Revised Inputs are to be agreed between the Franchisee and the Authority or reasonably determined by the Authority on the basis that:

(a) any reduction in costs relating to a Change; and/or

(b) any increase in revenues relating to a Change,

that is attributable to any activities, actions or omissions of the Franchisee which are not permitted under, or would otherwise constitute a contravention of, the terms of this Agreement, is to be taken account of.

4.3 Revised inputs are also to be agreed between the Franchisee and the Authority or reasonably determined by the Authority on the basis that:

(a) the Franchisee will use all reasonable endeavours to:

(i) reduce any costs that may arise or income that may be foregone; and

(ii) increase any revenue that may arise or avoid any cost that may be avoided, as a consequence of a Change; and

(b) any requirement for borrowing in respect of Capital Expenditure by the Franchisee is dealt with in accordance with paragraph 2 of Schedule 19 (*Other Provisions*).

5. ASSUMPTIONS IN THE RECORD OF ASSUMPTIONS

5.1 The Franchisee and the Authority shall (unless to do so would be contrary to paragraph 4) agree or the Authority shall reasonably determine Revised Inputs that are in accordance with the assumptions that are contained in the Record of Assumptions, as added to or modified pursuant to paragraph 5.2 or paragraph 5.3.

5.2 Where the Authority reasonably considers that additional assumptions are required in relation to circumstances not dealt with by the assumptions in the Record of Assumptions, the Franchisee and the Authority shall agree or the Authority shall reasonably determine additional assumptions for this purpose.

5.3 Where the Authority reasonably considers that:

- (a) a Change is likely to result in an increase in either or both of the costs of the Franchisee and the revenues of the Franchisee; and
- (b) an assumption relevant to the Change contained in the Record of Assumptions does not accord with what would be achievable by, or experienced by, an economic and efficient franchisee,

then the Franchisee and the Authority shall agree or the Authority shall reasonably determine a modification to the assumption so that, as modified, it does accord with what would be achievable by, or experienced by, an economic and efficient franchisee.

6. TRACTION ELECTRICITY CHARGES

6.1 This paragraph 6 applies only in relation to Charge Variations.

6.2 No Revised Inputs shall be made to the extent that a Charge Variation relates, directly or indirectly and however it may be effected, to the amount payable (in pence per kwh or otherwise) for traction current consumed by rolling stock vehicles operated by or on behalf of the Franchisee unless and to the extent that paragraph 6.4 applies.

6.3 As at the date of this Agreement, the amount payable for traction current consumed is reflected in the component E_{git} referred to in paragraph 4 of Part 2 of Schedule 7 of the Track Access Agreement to which the Franchisee is a party on the Franchise Commencement Date.

6.4 The Franchisee and the Authority shall agree or the Authority shall reasonably determine Revised Inputs to reflect any change in the basis of calculation of the margin or premium (if any) which the counterparty to the Relevant Agreement is entitled to charge in respect of traction current.

6A. TREATMENT OF CP2/CP3 ROW

6A.1 This paragraph 6A concerns the treatment of the row entitled “Compensation for CP2/CP3” in the “Input” sheet of the Financial Model (the **CP2/CP3 Row**). The CP2/CP3 Row has been included in the Financial Model to capture:-

- (a) the effect (subject to the CP2/3 Wash-Up described in paragraph 6A.3 below) on the Franchisee’s profit of the adjustment of the Financial Model, prior to the date of this Franchise Agreement, to incorporate the effect of the Charging Review 2004; and
- (b) the profiling of that effect across the Franchise term, as agreed by the Authority and the Franchisee.

6A.2 It is acknowledged that the inputs contained in the CP2/CP3 Row are treated as costs for the purposes of the Financial Model but are not costs to which any profit margin is attached. Those inputs are therefore constant and will not be revised as a consequence of any Change except to the extent provided in paragraphs 6A.3 and 6A.4.

6A.3 The Revised Inputs in respect of the Change described in sub-paragraph (p) of the definition of “**Change**” (“the **CP2/CP3 Wash-Up**”) shall be limited to adjustments to:

- (a) those rows in the Financial Model dealing with payments under the Track Access Agreement where and to the extent necessary to reflect the differences described in sub-paragraph (p) of the definition of “**Change**”; and
- (b) the CP2/CP3 Row, profiled across the Franchise Term using the same methodology as was used to profile the values in the CP2/CP3 Row as at the date of the Franchise Agreement.

6A.4 In respect of any Change (other than a Charge Variation and the CP2/CP3 Wash-Up) which results in a net increase or decrease in the amount payable by the Franchisee under the Track Access Agreement, then in agreeing or determining Revised Inputs in respect of that Change (which, for the avoidance of doubt, will not limited to those inputs relating to the amount payable under the Track Access Agreement) :-

- (a) the Revised Inputs consequent upon that Change which would apply in the absence of this paragraph 6A.4 will first be calculated, with no adjustment to the CP2/CP3 Row;
- (b) subject to paragraph (c) below, the values for all future years in the CP2/CP3 Row will then:-
 - (i) in the case of an increase in the amount payable under the Track Access Agreement, be increased; and
 - (ii) in the case of a decrease in the amount payable under the Track Access Agreement, be decreased

in the same proportion for each such future year such that the 8 ¾ year present value (“**PV**”) of the row entitled “Compensation for CP2/CP3 @ RPI” on the “Calc P&L” sheet of the Financial Model is the same as the 8 ¾ year PV of the row entitled “Revised YoY profit impact of CP2/CP3 change on that “Calc P&L” sheet. This is with the intention and effect that there will be an increase or reduction in the amount of the CP2/CP3 Row values commensurate with the fact that the cost base on which the CP2/3 Row values were originally calculated has been increased or reduced (as the case may be). For the purposes of this paragraph 6A, “present value” or “PV” shall be ascertained using the same discount rate as that used in the Financial Model.

Agreed terms document **WE** contains worked examples of how the increases and/or decreases referred to in this paragraph 6A will be calculated; and

- (c) where a Change to which this paragraph 6A.4 applies occurs in the last year of the Franchise Term for the purposes of the Financial Model, then the adjustment described in paragraph (b) will be made mutadis mutandis, such that the effect is pro-rated over the remaining Reporting Periods of that last year.

6A.5 It is acknowledged that:-

- (a) (i) the effect of the profiling referred to in paragraph 6A.1(b) is that a proportion of the impact of the Charging Review 2004 on the Franchisee’s profit is deferred to later years in the Franchise Term; and

(ii) consequently, if the Franchise Agreement terminates before 15 September 2013, then the Franchisee may not have received the amounts to which it would, but for the profiling, have been entitled;

(b) accordingly, if the Franchise Agreement terminates before 15 September 2013 the difference between:-

(i) the PV of the actual year on year profit impact of the Charging Review 2004 from the Franchise Commencement Date to the actual date of termination; and

(ii) the PV of the amount otherwise received or receivable by the Franchisee up to the date of termination by virtue of the CP2/CP3 Row

shall be calculated, and be payable by way of a lump sum adjustment to the Franchise Payment for the final Reporting Period of the Franchise Term which has the same PV as that difference as determined pursuant to paragraphs 6A.5(b)(i) and (ii). Example 3 in the document in the agreed terms marked **WE** contains a worked example of how the effect of an early termination, as described in this paragraph 6A.5, will be calculated.

6A.6 This paragraph 6A shall be construed in a manner consistent with and having regard to, the methodology inherent in the worked examples comprised in the document in agreed terms marked **WE**.

7. REVISED INPUT FOR PROFIT

7.1 The Franchisee and the Authority shall agree or the Authority shall reasonably determine Revised Inputs in relation to profit:

(a) for a Change (other than a Change which is a Charge Variation or which is the CP2/CP3 Wash-Up described in paragraph 6A.3) which is forecast to result in an increase to the Franchisee's cost, that provide for an increase in the amount of profit in any Franchisee Year equal to 4.9869 per cent. of the forecast increase in cost for that Franchisee Year; and/or

(b) for a Change (other than a Change which is a Charge Variation or which is the CP2/CP3 Wash-Up described in paragraph 6A.3) which is forecast to result in a reduction in the Franchisee's cost, that provide for a decrease in the amount of profit in any Franchisee Year equal to the lower of:

(i) 4.9869 per cent; or

(ii) the average profit margin in the current Business Plan for the remaining Franchise Term;

of the forecast reduction in cost for that Franchisee Year.

7.2 There shall be no Revised Inputs in relation to profit, pursuant to paragraph 7.1 or otherwise, in respect of a Change which is:-

(a) a Charge Variation:-

(i) notwithstanding and without limiting the other adjustments to be made to other inputs in the Financial Model, in respect of the Franchisee's costs or otherwise, as a consequence of the Charge Variation; and

(ii) except for the insertion of a line in the Financial Model required to neutralise the effect on the absolute amount of profit in £ for £ terms which the adjustments to the other inputs would otherwise have, such that there is no change in that absolute amount of profit as a result of the Charge Variation; or

(b) the CP2/CP3 Wash-Up (as described in paragraph 6A.3).

Agreed terms document **WE** contains worked examples of how the effect of a Charge Variation will be calculated. This paragraph 7.2 shall be construed in a manner consistent with and having regard to, the methodology inherent in the worked examples comprised in the document in agreed terms marked **WE**.

7.3 In agreeing or determining Revised Inputs in respect of any Change, the parties or the Authority shall effect such change (if any) in the amount attributable to profit in paragraph 7.1 as they agree or the Authority reasonably determines to reflect:

(a) the risk for the Franchisee in continuing to operate the Northern Franchise on the terms of this Agreement after and as a result of the Change; and

(b) the likelihood of:

(i) material benefit from such Change arising after expiry of the Franchise Term; and

(ii) material detriment from such Change arising prior to the expiry of the Franchise Term.

7.4 In agreeing or determining Revised Inputs for the purposes of any Protected Proposal, the parties or the Authority shall effect such change (if any) to the amount attributable to profit as they agree or the Authority reasonably determines:

(a) fairly rewards the Franchisee for proposing the Protected Proposal; and

(b) reasonably incentivises the Franchisee to propose further Protected Proposals,

by sharing with the Franchisee a reasonable amount of the additional profit that is expected to arise from implementing the Protected Proposal.

7.5 The Appendix (*Incentivising Long Term Investment*) to this Schedule 9.3 sets out the Authority's guidance on how it approaches incentivising long term investment.

8. ESTIMATED REVISIONS

8.1 This paragraph applies only where and to the extent that, prior to the Run of the Financial Model, payments made between the Authority and the Franchisee have been altered in accordance with Estimated Revisions notified by the Authority to the Franchisee pursuant to paragraph 2 of Schedule 9.1 (*Financial Consequences of Change*).

8.2 Where payments between the Authority and the Franchisee have been altered in accordance with Estimated Revisions, the amount of the alteration shall be included in the Revised Input that relates to (as the case may be) the Franchisee's receipts from or payments to the Authority.

APPENDIX TO SCHEDULE 9.3

Incentivising Long-Term Investment

This Appendix sets out the Authority's guidance on how it approaches incentivising long term investment.

1. The Authority wishes to encourage the Franchisee to:
 - (a) improve the efficiency;
 - (b) reduce the cost; and
 - (c) enhance the revenue earning potential of the delivery of services to passengers, from the commencement of the Northern Franchise, through the Franchise Term and into the successor franchises.
2. It is recognised however, that the Franchise Term may be perceived to be a barrier to undertaking investment or change programmes where:
 - (a) the time scale for implementation limits the benefit to the Franchisee; or
 - (b) the business case for such investment or change has a payback period longer than the Franchise Term.
3. In this context investment or change may be considered to encompass:
 - (a) capital investments undertaken solely by the Franchisee;
 - (b) capital investments undertaken in association with others;
 - (c) total or partial substitution of certain train services by bus services where an enhanced service level could be provided for reduced cost or where the provision of bus services improves the overall capacity of the network or delivers other benefits;
 - (d) changes in working practices of the Franchisee's employees; and
 - (e) changes in the contracted roles and responsibilities between the Franchisee and its major suppliers.
4. Accordingly, the Franchisee is encouraged to propose schemes that seek to achieve the objectives set out in paragraph 1 for consideration by the Authority during the Franchise Term.
5. In considering the Franchisee's proposals for any investment or change proposed to be undertaken, the Authority will recognise:
 - (a) the capital cost and proposed payment profile;
 - (b) legitimate costs of the Franchisee in developing, procuring, delivering and project managing the project;
 - (c) the life of any capital assets and the duration of the benefits stream arising;
 - (d) the remaining Franchise Term and the projected payback period;

- (e) the benefits associated with undertaking the investment early rather than waiting until the Northern Franchise is re-let;
 - (f) the risks of cost overrun or under performance of the projected benefits;
 - (g) a profit element for undertaking the project commensurate with the risks of the proposed project; and
 - (h) alternative benefit sharing arrangements which could be based on:
 - (i) a capital lump sum when the expenditure is incurred;
 - (ii) an enhanced Franchise Payment over the Franchise Term;
 - (iii) a balloon payment on expiry of the Franchise which allocates a proportion of future benefits to the Franchisee;
 - (iv) an ongoing payment if the benefits materialise after the Franchise Term; and/or
 - (v) any combination of any of paragraphs 5(h)(i) to (h)(iv) inclusive.
6. In evaluating the Franchisee's proposals for any investment or change proposed to be undertaken and to enable best value for money to be obtained from third party financiers, the Authority shall also give consideration to the appropriateness of the provision, by the Authority, of an undertaking (or other form of comfort) pursuant to Section 54 of the Act.

SCHEDULE 9.4

Authority Risk Assumptions⁴²

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.

SCHEDULE 10

Remedies, Termination and Expiry

Schedule 10.1:	Remedial Plans and Remedial Agreements
Schedule 10.2:	Termination and Expiry
Schedule 10.3:	Events of Default and Termination Event
Schedule 10.4:	Force Majeure
Schedule 10.5	Liability

SCHEDULE 10.1

Remedial Plans and Remedial Agreements

1. REMEDIES FOR CONTRAVENTIONS OF THIS AGREEMENT

1.1 If the Authority is satisfied that the Franchisee is contravening or is likely to contravene any term of this Agreement it may serve a notice on the Franchisee requiring it to propose such steps as the Franchisee considers appropriate for the purpose of securing or facilitating compliance with the term in question (a *Remedial Plan Notice*).

Contents of Remedial Plan Notices

1.2 Each Remedial Plan Notice shall specify the following:

- (a) the term or terms of this Agreement that the Authority is satisfied that the Franchisee is contravening or is likely to contravene (each a ***Relevant Term***); and
- (b) the time period within which the Authority requires the Franchisee to provide an appropriate plan for the purpose of facilitating or securing compliance with any Relevant Term (a ***Remedial Plan***).

Contents of Remedial Plans

1.3 If the Authority issues a Remedial Plan Notice, the Franchisee shall submit a Remedial Plan to the Authority within the period specified in such Remedial Plan Notice.

1.4 Each Remedial Plan shall set out:

- (a) the Relevant Term which has caused a Remedial Plan to be required;
- (b) an explanation of the reasons for the contravention or likely contravention of the Relevant Term;
- (c) the steps proposed for the purposes of securing or facilitating compliance with the Relevant Term; and
- (d) the time period within which the Franchisee proposes to implement those steps.

Remedial Agreements

1.5 If the Authority is satisfied that the matters referred to in paragraph 1.4(c) and (d) are appropriate (with or without further modification as the Authority and the Franchisee may agree) it may require the Franchisee to enter into a supplemental agreement (the *Remedial Agreement*) with the Authority to implement those matters.

1.6 It is a term of this Agreement that the Franchisee (at its own cost) complies with the Remedial Agreement in accordance with its terms.

Effect of Force Majeure Event

1.7 Without prejudice to the operation of paragraph 3.2 of Schedule 10.4 (*Force Majeure*), the following provisions shall apply in relation to Force Majeure Events affecting performance of a Remedial Agreement:

- (a) the Franchisee shall give written notice to the Authority and the affected Executive promptly after it becomes aware (and in any event within 24 hours after becoming aware) of the occurrence or likely occurrence of a Force Majeure Event which will or is likely to affect the Franchisee's ability to comply with a Remedial Agreement within the period specified therein;
- (b) each notice submitted in accordance with paragraph 1.7(a) shall state the extent or likely extent of the relevant Force Majeure Event and, in the case of a Force Majeure Event which has not occurred at such time, the reasons why the Franchisee considers it likely to occur;
- (c) the Franchisee shall use, and shall continue to use, all reasonable endeavours to avoid or reduce the effect or likely effect of any Force Majeure Event on its ability to comply with any Remedial Agreement; and
- (d) the Franchisee shall be entitled to a reasonable extension of the remedial period applicable to a Remedial Agreement in order to take account of the effect of a Force Majeure Event which has occurred on the Franchisee's ability to comply with any Remedial Agreement.

Occurrence of a Contravention

1.8 Without prejudice to its rights under Schedule 7.2 (*Key Performance Indicators*), following the occurrence of a contravention of this Agreement, each of the Authority and any Executive may at its option (but shall not be obliged to) commence or increase the level and/or frequency of monitoring (whether by inspection, audit or otherwise) of the Franchisee's performance of any relevant obligation until such time as the Franchisee demonstrates, to the Authority's or such Executive's reasonable satisfaction (as the case may be), that it is capable of performing and will perform such obligation as required by this Agreement.

1.9 The Franchisee shall co-operate fully with the Authority and any Executive in relation to such monitoring referred to in paragraph 1.8.

1.10 The results of such monitoring will be reviewed at each Franchise Performance Meeting held pursuant to Schedule 11 (*Agreement Management Provisions*).

1.11 The Franchisee shall compensate the Authority and/or any Executive, as the case may be, for all reasonable costs incurred by such party in carrying out such monitoring.

SCHEDULE 10.2

Termination and Expiry

1. TERMINATION NOTICES

1.1 The Authority may, on and at any time after the occurrence of:

- (a) an Event of Default (subject to paragraphs 1.3 and 1.4) which is unremedied or continuing and which the Authority considers to be material; or
- (b) a Termination Event which is unremedied or continuing,

terminate this Agreement by serving a Termination Notice on the Franchisee. This Agreement shall terminate with effect from the date specified in any such Termination Notice.

1.2 The Authority shall copy any Termination Notice to the Executives as soon as reasonably practicable after service of such on the Franchisee in accordance with paragraph 1.1.

1.3 The Authority may not serve a Termination Notice in respect of an Event of Default in relation to which a Remedial Plan Notice has been issued until the period has expired within which the Franchisee is required to deliver to the Authority the Remedial Plan specified in such Remedial Plan Notice.

1.4 The Authority may not serve a Termination Notice in respect of an Event of Default for which the Franchisee is implementing a Remedial Agreement in accordance with its terms.

2. CONSEQUENCES OF TERMINATION OR EXPIRY

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

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

2.2 Nothing in this paragraph 2 shall prevent the Authority from bringing an action against the Franchisee in connection with the termination of this Agreement prior to the expiry of the Franchise Term.

3. AMENDMENT OR EARLY TERMINATION IN THE EVENT THAT THE TERMS OF THIS FRANCHISE AGREEMENT BECOME INAPPROPRIATE

3.1 In the event that the Authority reasonably concludes that the terms of the Franchise Agreement are no longer appropriate taking into account the conclusions of the Rail Industry Review it shall serve a notice (a “**Review Notice**”) on the Franchisee. Such Review Notice shall be copied to each of the Executives. No Review Notice shall be capable of being served

upon the Franchisee until the second anniversary of the Franchise Commencement Date. The Review Notice will state that the terms of the Franchise Agreement are no longer appropriate taking into account the conclusions of the Rail Industry Review and that, having regard to its duties under UK and EU law and its directions and guidance from the Secretary of State, the Authority either:

- (a) believes that it may be possible for it to properly renegotiate the terms of the Franchise Agreement in which case the Review Notice will set out the proposals of the Authority to amend the Franchise Agreement to bring this about; or
- (b) is not able to renegotiate the terms of the Franchise Agreement and accordingly the Franchise Agreement will terminate on a date specified in the Review Notice such date to be a date at least three months after the date of the Review Notice.

3.2 Where a Review Notice is served in accordance with the provisions of paragraph 3.1(b) the Franchisee and the Authority will consult in good faith about the view of the Authority that it is not able to renegotiate the terms of the Franchise Agreement and following such consultation the Authority shall have the right, within a period of one month from the issue of the Review Notice, to withdraw it and issue a further Review Notice complying with the provisions of paragraph 3.1(a).

3.3 Where a Review Notice is issued in accordance with paragraph 3.1 (a) the parties to the Franchise Agreement will seek in good faith to agree changes to the Franchise Agreement which are in the opinion of the Authority required or desirable to reflect changed circumstances taking into account the outcome of the Rail Industry Review. The basis of such negotiation will be the proposal of the Authority to amend the Franchise Agreement contained in the Review Notice. The Franchisee recognises the limits upon the ability of the Authority and the Executives to negotiate changes to the Franchise Agreement which bring about significant changes to its terms arising out their duties under UK and EU Law and, in the case of the Authority, its Directions and Guidance from the Secretary of State. If agreement is not reached between the parties to amend the Franchise Agreement within three months of the service of the Review Notice (or such later date as the parties may agree) the Authority shall serve a notice upon the Franchisee stating a date upon which the Franchise Agreement will terminate such date to be at least three months after the date of such notice.

3.4 In the event that the Authority exercises its rights to terminate the Franchise Agreement pursuant to paragraphs 3.1 or 3.3 above the Franchisee shall not be entitled to any compensation from the Authority or any Executive or any instrumentality of government in respect of such early termination whether in respect of loss of profit or otherwise.

SCHEDULE 10.3

Events of Default and Termination Event

1. PROVISIONS RELATING TO EVENTS OF DEFAULT

Contravention

1.1 The occurrence of an Event of Default shall constitute a contravention of this Agreement by the Franchisee.

Notification of Event of Default

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

Consequences of Event of Default

1.3 On the occurrence of an Event of Default, the provisions of Schedule 10.1 (*Remedial Plans*) shall also apply.

2. EVENTS OF DEFAULT

Each of the following is an Event of Default:

Insolvency

- 2.1(a) **Administration:** Any step being taken by any person with a view to the administration of the Franchisee or the Parent or any Bond Provider under Part II of the Insolvency Act 1986;
- (b) **Insolvency:** Any of the Franchisee or the Parent or Bond Provider stopping or suspending or threatening to stop or suspend payment of all or a material part of (or a particular type of) its debts, or being unable to pay its debts, or being deemed unable to pay its debts under Section 123(1) or (2) of the Insolvency Act 1986 except that in the interpretation of this paragraph:
- (i) the words “it is proved to the satisfaction of the court that” in sub-section (1)(e) and sub-section (2) of Section 123 shall be deemed to be deleted;
 - (ii) Section 123(1)(a) of the Insolvency Act 1986 shall have effect as if for “£750” there was substituted “£100,000” or such higher figure as the Authority may from time to time notify in writing to the Franchisee; and
 - (iii) any of the Franchisee or the Parent or any Bond Provider shall not be deemed to be unable to pay its debts for the purposes of this paragraph if any such demand as is mentioned in Section 123(1)(a) of the Insolvency Act 1986 is being contested in good faith by such person with recourse to all appropriate measures and procedures and such person has adequate funds to discharge the amount of such demand or if any such demand is satisfied before the expiration of 21 days from such demand;

- (c) **Arrangements with Creditors:** The directors of the Franchisee or the Parent or any Bond Provider making any proposal under Section 1 of the Insolvency Act 1986, or any of the Franchisee or the Parent or any Bond Provider proposing or making any agreement for the deferral, rescheduling or other readjustment (or proposing or making a general assignment or an arrangement or composition with or for the benefit of creditors) of all or a material part of (or of a particular type of) its debts, or a moratorium being agreed or declared in respect of or affecting all or a material part of (or of a particular type of) its debts;
- (d) **Security Enforceable:** Any step being taken to enforce security over or a distress, execution or other similar process being levied or served against any property of the Franchisee or the whole or a substantial part of the assets or undertaking of the Franchisee, the Parent or any Bond Provider, including the appointment of a receiver, administrative receiver, manager or similar person to enforce that security;
- (e) **Stopping Business/Winding-Up:** Any step being taken by the Franchisee, the Parent or any Bond Provider with a view to its winding-up or any person presenting a winding-up petition or any of the Franchisee or the Parent or any Bond Provider ceasing or threatening to cease to carry on all or a material part of its business, except for the purpose of and followed by a reconstruction, amalgamation, reorganisation, merger or consolidation on terms approved by the Authority before that step is taken;
- (f) **Railway Administration Order:** A railway administration order being made in relation to the Franchisee under Sections 60 to 62 of the Act; and
- (g) **Analogous Events:** Any event occurring which, under the Law of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed in this paragraph 2.1,

unless, in the case of paragraphs 2.1(a), (d) and (e), the relevant petition, proceeding or other step is being actively contested in good faith by the relevant person with recourse to all appropriate resources and procedures and such person has adequate funds to discharge the relevant debt and subject, in the case of any relevant event occurring in relation to a Bond Provider where no other Event of Default has occurred and is unremedied or continuing at such time, to a period of 20 business days having elapsed in order to allow the Franchisee to replace the relevant Bond Provider.

Non-payment

2.2 The Franchisee failing to pay to the Authority any amount due under this Agreement within 28 days of the due date for such payment.

Change of Control

2.3 Without the prior consent of the Authority, a change occurring in the identity of any 1 person, or 2 or more persons acting by agreement, who may Control the Franchisee on and from the date of this Agreement and during the Franchise Term, which shall include a person, or 2 or more persons acting by agreement, ceasing to Control the Franchisee at any time during the Franchise Term, whether or not any other person Controls the Franchisee at the same time and, for the purposes of this paragraph 2, 2 or more persons shall be deemed to be acting by agreement in relation to the Franchisee if, assuming the Franchisee was a target company as defined in Section 204(1) of the Companies Act 1985, such persons would be under an obligation to disclose an interest in shares in such company by virtue of an agreement between such persons.

Revocation of Licence

2.4 Revocation of any Licence required to be held by the Franchisee in order to comply with its obligations under this Agreement.

Safety Case

2.5 The Safety Case of the Franchisee being withdrawn or terminated.

Passenger Service Performance

2.6 The Franchisee's performance in relation to any Benchmark contravenes the Default Performance Level for that Benchmark for:

- (a) any 3 consecutive Reporting Periods;
- (b) any 4 Reporting Periods within a period of 13 consecutive Reporting Periods; or
- (c) any 5 Reporting Periods within a period of 26 consecutive Reporting Periods.

Remedial Agreements and Enforcement Orders

- 2.7(a) Non-compliance by the Franchisee with a Remedial Agreement, where such non-compliance is material.
- (b) Non-compliance by the Franchisee with:
 - (i) a provisional order;
 - (ii) a final order;
 - (iii) a penalty; or
 - (iv) any other order made relating to contravention of either a relevant condition or requirement (as defined in Section 55 of the Act) or another order, in each case made by the Authority under the Act.

Other Franchises

2.8 Termination, as a result of an event of default (excluding termination as a result of non-satisfaction of a condition precedent), of any other franchise agreement to which the Franchisee or an Affiliate of the Franchisee is a party.

Financial Ratios

2.9 Breach by the Franchisee of either or both of the financial ratios specified in paragraph 2 of Schedule 12 (*Financial Obligations and Covenants*).

Breach of Law

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

- (b) The Franchisee or any of the directors or senior managers of the Franchisee being convicted of manslaughter, fraud or any other indictable criminal offence in each case relating directly to the provision and operation of the Franchise Services.
- (c) The Franchisee being in material non-compliance with a prohibition or enforcement order (or the equivalent thereof) of the HSE. If the Franchisee makes an appeal against such prohibition or enforcement order (or such equivalent thereof) in accordance with its terms, no Event of Default shall have occurred under this paragraph 2.10(c) until such appeal has been determined to be unsuccessful.

Contravention of Other Obligations

2.11 The occurrence of the following:

- (a) the Franchisee contravening to a material extent any one or more of its obligations under this Agreement (other than such non-performance or non-compliance as may constitute an Event of Default under the provisions of this Schedule 10.3 other than this paragraph 2.11);
- (b) the service by the Authority on the Franchisee of a written notice specifying:
 - (i) such contravention; and
 - (ii) to the extent the contravention is capable of being remedied, the reasonable period within which the Franchisee is required to so remedy; and
- (c) the Franchisee contravening such obligation or obligations again to a material extent or permitting the contravention to continue or, if the contravention is capable of remedy, failing to remedy such contravention within such period as the Authority has specified in the notice served pursuant to paragraph 2.11(b).

Non-membership of Inter-Operator Schemes

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

Bonds

- 2.13(a) Any Performance Bond or Season Ticket Bond ceasing to be a legal, valid and binding obligation on the relevant Bond Provider (other than in accordance with its terms) or it otherwise becoming unlawful or impossible for any Bond Provider to perform its obligations thereunder;
- (b) A failure by the Franchisee to provide to the Authority a Performance Bond which fulfils the requirements of Schedule 12 (*Financial Obligations and Covenants*); or
- (c) A failure by the Franchisee to provide to the Authority a Season Ticket Bond which fulfils the requirements of Schedule 12.

Key Contracts

2.14 Termination of any Key Contract except where requested by the Authority or to the extent that the Franchisee has demonstrated to the reasonable satisfaction of the Authority that

it is no longer necessary for it to be party to such Key Contract or that it has made adequate alternative arrangements in order to be able to continue to provide and operate the Franchise Services.

3. TERMINATION EVENT

The Authority may terminate this Agreement in accordance with Schedule 10.2 (*Termination and Expiry*) if any Force Majeure Event continues with the effect of preventing the Franchisee from delivering, wholly or mainly, the Passenger Services for more than 6 consecutive months (a *Termination Event*).

SCHEDULE 10.4

Force Majeure

1. FORCE MAJEURE EVENTS

1.1 The following events shall constitute Force Majeure Events, subject to the conditions specified in paragraph 2 being satisfied:

- (a) the Franchisee or any of its agents or subcontractors is prevented or restricted by Network Rail (including by virtue of the implementation of any Contingency Plan) from gaining access to any section or part of track (including any track running into, through or out of a station). For the purposes of this paragraph 1:
 - (i) references to a party being prevented or restricted from gaining access to any section or part of track shall mean that such party is not permitted to operate any trains on the relevant section or part of track, or is only permitted to operate a reduced number of trains from that which it was scheduled to operate;
 - (ii) the period of such prevention or restriction shall be deemed to commence with effect from the first occasion on which the Franchisee is prevented or restricted from operating a train on such section or part of track;
 - (iii) references in paragraphs 1(a)(i) and (ii) to the operation of trains include scheduled empty rolling stock vehicle movements; and
 - (iv) **Contingency Plan** means a contingency plan (as defined in Condition H of the Network Code) implemented by and at the instigation of Network Rail, or such other contingency or recovery plan as the Authority may agree from time to time;
- (b) the Franchisee or any of its agents or subcontractors is prevented or restricted by Network Rail or any Facility Owner (other than a Facility Owner which is an Affiliate of the Franchisee) from entering or leaving:
 - (i) any station or part thereof (excluding, any prevention or restriction from gaining access to any section or part of track running into, through or out of a station); or
 - (ii) any depot or part thereof (including the movement of trains on tracks within any depot but excluding any prevention or restriction from gaining access to any track outside such depot running into or out of that depot);
- (c) any of the following events occurs:
 - (i) a programme of Mandatory Modifications commences;
 - (ii) any Rolling Stock Units are damaged by fire, vandalism, sabotage or a collision and are beyond repair or beyond economic repair; or
 - (iii) a government authority prevents the operation of Rolling Stock Units on the grounds of safety,

and, in each case, the greater of 2 Rolling Stock Units and 10 per cent. of all rolling stock vehicles used by the Franchisee in the provision of the Passenger Services in relation to any Service Group are unavailable for use in the provision of the Passenger Services as a result of the occurrence of such event;

- (d) the Franchisee prevents or restricts the operation of any train on safety grounds provided that:
 - (i) the Franchisee has, either before or as soon as reasonably practicable after initiating such prevention or restriction, sought the confirmation of the HSE, or any other body with statutory responsibility for safety in the circumstances, of the necessity of such prevention or restriction; and
 - (ii) if and to the extent that the HSE or other relevant body indicates that such prevention or restriction is not necessary, then no Force Majeure Event under this paragraph 1(d) shall continue in respect of that restriction or prevention after the receipt of such indication from the HSE or other relevant body;
- (e) act of God, war damage, enemy action, terrorism or suspected terrorism, riot, civil commotion, rebellion or the act of any government instrumentality (including the Regulator and the HSE but excluding the Authority), 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;
 - (ii) the activities of the police, fire service, ambulance service or other equivalent emergency service; or
 - (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; and
- (f) any strike or other industrial action by any or all of the employees of the Franchisee or any or all of the employees of:
 - (i) Network Rail;
 - (ii) the operator of any other railway facility; or
 - (iii) any person with whom the Franchisee has a contract or arrangement for the lending, seconding, hiring, contracting out or supervision by that person of train drivers, conductors, other train crew or station or depot staff used by the Franchisee in the provision of the Franchise Services (except where such contract or arrangement is with an Affiliate of the Franchisee),

or of the agents or sub-contractors of any such person and for the purposes of this clause **industrial action** shall include any concerted action taken in connection with the employment of such employees (whether or not that action involves any breach of such employees' conditions of employment, and including any action taken in furtherance of a dispute, or with a view to improving the terms of employment of the relevant employees or by way of support for any other person) subject always, in the case of any unofficial industrial action, to the Franchisee being able to demonstrate the occurrence of such unofficial industrial action to the reasonable satisfaction of the Authority.

2. CONDITIONS TO FORCE MAJEURE EVENTS

2.1 The occurrence, and continuing existence of a Force Majeure Event shall be subject to satisfaction of the following conditions:

- (a) in relation to an event occurring under paragraph 1.1(a), that event has continued for more than 12 consecutive hours;
- (b) the Franchisee notifies the Authority within 2 business days of it becoming aware of:
 - (i) the occurrence or likely occurrence of the relevant event; and
 - (ii) the effect or the anticipated effect of such event on the Franchisee's performance of the Passenger Services;
- (c) at the same time as the Franchisee serves notification on the Authority under paragraph 2.1(b), it informs the Authority of the steps taken and/or proposed to be taken by the Franchisee to prevent the occurrence of, and/or to mitigate and minimise the effects of, the relevant event and to restore the provision of the Passenger Services;
- (d) the relevant event did not occur as a result of:
 - (i) any act or omission to act by the Franchisee or its agents or subcontractors, save that in respect of the occurrence of industrial action in accordance with paragraph 1(f), the provisions of paragraph 2.2 apply; or
 - (ii) the Franchisee's own contravention of, or default under, this Agreement, any Access Agreement, Rolling Stock Lease, Property Lease or any other agreement;
- (e) the Franchisee used and continues to use all reasonable endeavours to avert or prevent the occurrence of the relevant event and/or to mitigate and minimise the effects of such event on its performance of the Passenger Services and to restore the provision of the Passenger Services as soon as reasonably practicable after the onset of the occurrence of such event; and
- (f) the Franchisee shall, to the extent reasonably so requested by the Authority, exercise its rights and remedies under any relevant agreement to prevent the occurrence or recurrence of any such event and to obtain appropriate redress or compensation from any relevant person.

2.2 Where:

- (a) industrial action in accordance with paragraph 1(f) occurs as a result of an act or omission to act by the Franchisee or its agents or subcontractors;
- (b) the Authority reasonably believes that it was reasonable for the Franchisee, its agents or subcontractors (as the case may be) to take or omit to take such act; and
- (c) the other conditions specified in paragraph 2.1 have been satisfied, such occurrence shall be a Force Majeure Event.

3. CONSEQUENCES OF FORCE MAJEURE EVENTS

On Obligations

3.1 The Franchisee shall not be responsible for any failure to perform any of its obligations under this Agreement, nor shall there be any contravention of this Agreement if and to the extent that such failure is caused by any Force Majeure Event.

3.2 If any Force Majeure Event continues, with the effect of preventing the Franchisee from delivering, wholly or mainly, the Passenger Services for more than 6 consecutive months, it shall be a Termination Event in accordance with paragraph 3 of Schedule 10.3 (*Events of Default and Termination Event*).

On Payments

3.3 Following the occurrence of a Force Majeure Event, the payment of Franchise Payments shall continue unaffected unless the provisions of paragraph 3 of Schedule 8.1 (*Franchise Payments*) apply.

SCHEDULE 10.5

Liability

1. EXCLUSION OF LIABILITY

Liability with respect to Passengers and Third Parties

1.1 The Franchisee hereby acknowledges that neither the Authority nor the Executives will be responsible for the actions of the Franchisee or any Affiliate of the Franchisee and that, except as expressly provided in this Agreement, the Franchisee shall provide and operate the Franchise Services at its own cost and risk without recourse to the Authority, the Executives or government funds or guarantees. The Franchisee shall hold the Authority and the Executives fully protected and indemnified in respect of all losses, liabilities, costs, charges, expenses, actions, proceedings, claims or demands incurred by or made on the Authority or any Executive in connection with any death, personal injury, loss or damage suffered by passengers or by any third party using or affected by the Franchise Services which is caused or contributed to by the Franchisee, any Affiliate of the Franchisee, or any employee, agent, contractor or sub-contractor of the Franchisee or of any Affiliate of the Franchisee.

Liability of Authority

1.2 Neither the Authority nor any of its officers, agents or employees shall in any circumstances be liable to the Franchisee for any loss or damage caused by the negligent exercise of any powers reserved to the Authority under this Agreement, except to the extent that such negligence also constitutes a contravention of an obligation of the Authority under this Agreement. The Franchisee may not recover from the Authority or any of its officers, agents, or employees any amount in respect of loss of profit or consequential loss.

1.3 The Authority shall have no liability to the Franchisee in respect of obligations which are, or are expressed to be, those of any Executive under this Agreement.

Liability of any Executive

1.4 Neither any Executive nor any of its officers, agents or employees shall in any circumstances be liable to the Franchisee for any loss or damage caused by the negligent exercise of any powers reserved to such Executive under this Agreement, except to the extent that such negligence also constitutes a contravention of an obligation of such Executive under this Agreement. The Franchisee may not recover from such Executive or any of its officers, agents, or employees any amount in respect of loss of profit or other consequential loss.

1.5 No Executive shall have any liability to the Franchisee in respect of obligations which are, or are expressed to be, those of the Authority or any other Executive under this Agreement.

Liability Several

1.6 The obligations of the Authority and the Executives under this Agreement shall be several.

2. REVIEW OR MONITORING BY THE AUTHORITY AND/OR THE EXECUTIVE

2.1 Each of the Authority and/or any Executive may for its own purposes (whether under this Agreement or under any other arrangement or otherwise and whether before or after the date of this Agreement) monitor or review any proposals, plans or projects (or any aspect thereof) of the Franchisee under this Agreement, but no review, enquiry, comment, statement, report or undertaking, made or given by or on behalf of the Authority and/or such Executive during such review or monitoring (and no failure to undertake, make or give any review, enquiry, comment or statement) shall operate to exclude or relieve any party from or reduce or otherwise affect the obligations of such party under this Agreement.

2.2 The exercise by or on behalf of each of the Authority and/or any Executive of (or, as the case may be, any failure to exercise) any of its functions, rights or obligations in respect of any review or monitoring process shall not in any way impose any liability, express or implied, on the Authority or such Executive to any other party save to the extent that the exercise (or failure to exercise) of any of such functions, rights or obligations results in a contravention by the Authority or such Executive of an express provision of this Agreement and the Authority or such Executive does not make or give any representation or warranty, either express or implied, as to whether any proposal, plan or project will enable any party to comply with its obligations under this Agreement.

SCHEDULE 11

Agreement Management Provisions

1. AUTHORITY'S FRANCHISE MANAGER

1.1 The Authority shall appoint a competent Franchise Manager who shall have power and authority delegated to him by the Authority to act and to make decisions on behalf of the Authority in relation to this Agreement and amend this Agreement on behalf of the Authority. The principal responsibilities of the Franchise Manager to the Authority shall be, amongst other things:

- (a) to manage this Agreement on behalf of the Authority;
- (b) to monitor the Franchisee's performance of its obligations under this Agreement;
- (c) to ensure that the necessary resources within the Authority are made available expeditiously for the performance of Authority's obligations under this Agreement; and
- (d) to facilitate the Authority in fulfilling its obligations under this Agreement to each Executive and the Franchisee.

1.2 The Franchise Manager may from time to time delegate any of the powers, functions and authorities vested in him to an assistant or agent and may at any time revoke any such delegation. Any such delegation or revocation shall be in writing signed by the Franchise Manager and shall state which power, function or authority is thereby delegated or revoked and the persons to whom or from whom the same are delegated or revoked respectively. No such delegation or revocation shall have effect until each Executive (where relevant) and the Franchisee are deemed to have received notice of it in writing in accordance with paragraph 5 of Schedule 19 (*Other Provisions*).

1.3 Except in cases of emergency, or as a consequence of the proper exercise of disciplinary procedures of the Authority, the Authority shall give each Executive point of contact and the Contract Manager reasonable notice of a proposal to replace the Franchise Manager.

2. EACH EXECUTIVE'S POINT OF CONTACT

2.1 Each Executive shall notify each of the other parties to this Agreement of the appropriate contact person or persons who shall be responsible for the management and implementation of this Agreement (but who shall not have the power to amend this Agreement) on behalf of such Executive.

2.2 Where appropriate, the notification to be sent by each Executive pursuant to paragraph 2.1 shall identify the responsibilities of each contact person or persons in relation to specific provisions of this Agreement.

2.3 Except in cases of emergency, or as a consequence of the proper exercise of disciplinary procedures of the Executive, each Executive shall give each of the other parties to this Agreement reasonable notice of the replacement of, or of any change to any previously notified responsibilities of, any such contact person or persons.

3. FRANCHISEE'S CONTRACT MANAGER

3.1 The Franchisee shall appoint a competent Contract Manager who shall have power and authority delegated to him by the Franchisee to act and to make decisions on behalf of the Franchisee in relation to this Agreement (but who shall not have power to amend this Agreement). The principal responsibilities of the Contract Manager to the Franchisee shall be, amongst other things:

- (a) to manage this Agreement on behalf of the Franchisee;
- (b) to ensure that the necessary resources within the Franchisee's organisation are made available expeditiously for the performance of Franchisee's obligations under this Agreement;
- (c) to ensure that any necessary sub-contracts are placed and managed so that the requirements of this Agreement are fully met; and
- (d) to facilitate the Franchisee in fulfilling its obligations under this Agreement to the Authority and the Executives.

3.2 The Contract Manager may from time to time delegate any of the powers, functions and authorities vested in him to an assistant or agent and may at any time revoke any such delegation. Any such delegation or revocation shall be in writing signed by the Contract Manager and shall state which power, function or authority is thereby delegated or revoked and the persons to whom or from whom the same are delegated or revoked respectively. No such delegation or revocation shall have effect until the Authority and the affected Executive is deemed to have received notice of it in writing in accordance with paragraph 5 of Schedule 19 (*Other Provisions*).

3.3 Except in cases of emergency, or as a consequence of the proper exercise of disciplinary procedures of the Franchisee, a minimum of 1 month's notice must be given to the Franchise Manager and each Executive's appropriate point of contact of a proposal to replace the Contract Manager.

3.4 The Franchisee shall identify a schedule of Key Personnel who shall be employed by the Franchisee in the performance of this Agreement. This shall include but not be limited to the following persons:

- (a) a Contract Manager;
- (b) a train service delivery manager, whose role will include responsibility for ensuring compliance by the Franchisee with Schedule 7.1 (*Performance Benchmarks*);
- (c) a Service Quality Manager, whose role will include responsibility for ensuring compliance by the Franchisee with Schedule 7.2 (*Key Performance Indicators*);
- (d) a safety manager, whose role will include responsibility for ensuring that the Franchisee complies with its legal obligations in relation to the Franchise Services including the Safety Case; and
- (e) a finance manager, whose role will include responsibility in relation to the Financial Model.

3.5 The Franchisee shall provide to the Authority and the Executives an organisation chart detailing the responsibilities and reporting lines of each of the Key Personnel within

2 Reporting Periods of the Franchise Commencement Date and shall update such chart (and provide a copy to the Authority promptly thereafter) as and when any changes occur.

4. CONTROL OF COMMUNICATIONS, INFORMATION AND DOCUMENTS

4.1 All correspondence between the Franchisee and the Authority (other than correspondence in connection with the matters referred to in paragraph 5.1(a) of Schedule 19 (*Other Provisions*)) shall be sent to the Contract Manager and/or the Franchise Manager (as appropriate) in accordance with the terms of paragraph 5.1(b) of Schedule 19.

4.2(a) The Franchisee shall use a logical and structured system for correspondence reference. All correspondence between the Franchisee and the Authority shall be given a unique reference number and, wherever possible, correspondence shall be cross-referenced to the relevant clause or paragraph of or schedule to this Agreement.

(b) The Franchisee shall maintain a sequentially numbered register of all correspondence. Such register shall record the reference number for each piece of correspondence, its date, a brief description of the topic covered in the correspondence, the date on which a response is due and the date on which a response was made or received.

(c) The correspondence register referred to in paragraph 4.2(b) and any outstanding items shall be reviewed at each Franchise Performance Meeting.

5. FRANCHISE PERFORMANCE MEETINGS

5.1(a) The Authority, the Franchisee and the Executives (to the extent referred to in paragraph 5.1(e)) shall hold a Franchise Performance Meeting once in each Reporting Period at a time and location notified to the Executives and the Franchisee by the Authority.

(b) At each Franchise Performance Meeting:

(i) Authority, the Franchisee and the Executives shall review the operational performance of the Franchisee; and

(ii) Authority and the Franchisee shall review the financial performance of the Franchisee;

(c) Each Franchise Performance Meeting shall be minuted by the Franchise Manager and the minutes shall be published within 7 business days of each such meeting.

(d) The Franchise Manager shall chair all Franchise Performance Meetings.

(e) Each Executive shall have the right to attend a Franchise Performance Meeting to the extent such meeting or part thereof relates to:

(i) the operation or performance of:

(A) Executive Passenger Services relevant to it;

(B) Executive Stations relevant to it;

- (C) Passenger Services which operate within the Passenger Transport Area relevant to it;
or
- (D) Passenger Transport Area Stations; or
- (ii) any adjustment to the Executive Share relating to any such Executive.

5.2 The Franchisee shall ensure that each of its representatives at all Franchise Performance Meetings have full power and authority delegated to them by the Franchisee to act and to make binding decisions on behalf of the Franchisee and shall include such directors and/or senior managers of the Franchisee and the Parent as the Authority may require.

5.3 Each Franchise Performance Meeting shall include as a minimum the following agenda items:

- (a) confirmation of the accuracy of the minutes of the previous Franchise Performance Meeting;
- (b) service delivery performance by the Franchisee by reference to the Benchmarks;
- (c) service quality performance against Schedule 7.2 (*Key Performance Indicators*);
- (d) performance by the Franchisee of its financial obligations under Schedule 12 (*Financial Obligations and Covenants*);
- (e) compliance by the Franchisee with its obligations under Schedule 13 (*Franchise Management and Information Obligations*);
- (f) any Remedial Plans and/or Remedial Agreements discussed at a previous Franchise Performance Meeting and any suggested improvements to the Franchisee's performance;
- (g) the results of any review of the Depot Condition Maintenance Programme and the Station Condition Maintenance Programme;
- (h) a review of the progress of the implementation of the Committed Obligations or any Variations previously authorised;
- (i) adjustments to Franchise Payments;
- (j) outstanding correspondence and identification of matters in dispute and actions towards resolution;
- (k) any obligations of the Franchisee which the Authority and/or any Executive is monitoring following a contravention of this Agreement;
- (l) a review of the progress of decisions on authorisation of Variations or Changes, and any new or proposed Variations or Changes;
- (m) any outstanding action of the Authority identified in previous Franchise Performance Meetings;
- (n) any outstanding action of any Executive identified in previous Franchise Performance Meetings; and

- (o) such other matters as may from time to time be determined to be necessary by the Franchisee, the Authority or any Executive.
- 5.4 No later than the 3rd business day prior to each Franchise Performance Meeting, the Franchisee shall provide:
- (a) to the Authority, in accordance with any guidance the Authority may issue to the Franchisee from time to time, a report detailing the Franchisee's performance with respect to the items referred to in paragraphs 5.3(b) to (l) inclusive and paragraph 5.3(o) (if appropriate); and
 - (b) to each Executive a report detailing the Franchisee's performance with respect to the items referred to:
 - (i) in paragraphs 5.3(b), (c), (f), (g), (h), (j), (k), (l) and (n) (if appropriate); and
 - (ii) in paragraph 5.3(e) in respect of compliance by the Franchisee with its obligations under Schedule 13.2 (*Information*) to the extent that such compliance relates to information to which each Executive is entitled pursuant to paragraph 2.6 therein,
- each such report to be in accordance with any guidance the Authority may issue to the Franchisee from time to time.

5.5 The Franchisee shall prepare and present such additional reports to each Franchise Performance Meeting as the Authority or any Executive (as the case may be) may reasonably request. The Franchisee's obligations under this paragraph 5.5 are subject to the Franchisee receiving at least 28 days' notice of the requirement to prepare and present any such additional report.

5.6 No comment or failure to comment nor any agreement or approval, implicit or explicit by the Authority and/or any Executive at such meetings will relieve the Franchisee of any of its obligations under this Agreement.

6. MEETINGS WITH EACH EXECUTIVE

Executive Operational Meetings

6.1 The Franchisee shall, in addition to attending Franchise Performance Meetings attend and participate in such further meetings as any Executive may reasonably require for the purpose of discussing with such Executive, and/or with members or representatives of the relevant Passenger Transport Authority, or such other persons as such Executive reasonably considers fit:

- (a) the operation and performance of the Executive Passenger Services relevant to that Executive;
- (b) the operation and performance of the other Passenger Services which operate within the Performance Management Unit relevant to that Executive to the extent the operation and performance of such other Passenger Services has a bearing on the operation and performance of the Executive Passenger Services referred to in paragraph 6.1(a);
- (c) the operation and performance of the Executive Stations relevant to that Executive;

- (d) the operation and performance of the Passenger Transport Area Stations to the extent the operation and performance of such stations has a bearing on the operation and performance of the Executive Passenger Services referred to in paragraph 6.1(a); or
 - (e) any other matter which is likely to have a significant effect on such services or stations, the operation and performance of the Executive Passenger Services referred to in paragraph 6.1(a).
- 6.2 Each Executive shall give reasonable notice to the Franchisee of each such meeting other than in the case of any meeting which such Executive reasonably considers necessary in the event of an emergency.

7. RIGHT OF ASSESSMENT OR INSPECTION

- 7.1 The Franchisee shall, if requested by the Authority, allow the Authority:
- (a) to inspect and copy any records referred to in Schedule 13 (*Franchise Management and Information Obligations*) and the Authority may verify any such records; and
 - (b) to inspect and copy at any reasonable time any books, records and any other material kept by or on behalf of the Franchisee and/or its auditors and any assets (including the Franchise Assets) used by the Franchisee in connection with the Franchise Services.
- 7.2 The Franchisee shall make available to the Authority the information referred to in paragraph 7.1 and grant or procure the grant of such access (including to or from third parties) as the Authority shall reasonably require in connection therewith.
- 7.3 The Authority shall be permitted to take photographs, film or make a video recording, or make any other kind of record of any such inspection.
- 7.4 If any inspection reveals that information previously supplied to the Authority was in any material respect inaccurate or if such inspection reveals any other material contravention of the Franchisee's obligations under this Agreement, the costs of any such inspection shall be borne by the Franchisee.

SCHEDULE 12

Financial Obligations and Covenants

1. OBLIGATIONS

Except to the extent that the Authority may otherwise agree from time to time, the Franchisee shall not:

- (a) incur any liability or financial indebtedness except in the ordinary course of providing and operating the Franchise Services;
- (b) make any loan or grant any credit, or have or permit to subsist any loan or any credit, to any person (other than the deposit of cash with a Bank as permitted under paragraph 1(d) or to an employee in the ordinary course of its business);
- (c) create or permit to subsist any Security Interest over any of its assets or property or give any guarantee or indemnity to or for the benefit of any person or otherwise assume liability or become obliged (actually or contingently) in respect of any obligation of any other person, in each case other than in the ordinary course of the business of providing and operating the Franchise Services; or
- (d) create or acquire any subsidiary or make or have any investment in any other entity, except for the deposit of cash with a Bank.

2. FINANCIAL RATIOS

The Franchisee covenants that as at the end of each Reporting Period during the Franchise Term:

- (a) the ratio of its Modified Revenue to its Actual Operating Costs during the preceding 6 Reporting Periods 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 6 Reporting Periods will equal or exceed the ratio of 1.05:1.

3. BREACH OF FINANCIAL RATIOS

3.1 The Franchisee shall not during any Lock-up Period, do any of the following without the Authority's consent:

- (a) declare or pay any dividend (equity or preference) or make any other distribution including surrendering any taxable losses to any of its Affiliates or pay any of its Affiliates in respect of taxable losses that they wish to surrender to the Franchisee, without the prior written consent of the Authority;
- (b) make payment of any management charges to any of its Affiliates in excess of those specified in the Initial Business Plan; or
- (c) make payment under any intra-group borrowings.

3.2 **Lock-up Period** means any period from the time when either of the ratios referred to in paragraphs 2(a) and (b) falls below the ratio of 1.07:1 until the time at which the Authority is satisfied that the relevant ratio is again above the ratio of 1.07:1.

3.3 Failure by the Franchisee at any time to comply with either of the ratios referred to in paragraph 2 shall be an Event of Default under paragraph 2.9 of Schedule 10.3 (*Events of Default and Termination Event*).

4. PERFORMANCE BOND

Provision of Initial Performance Bond

4.1 The Franchisee shall procure that there shall be a valid and effective Performance Bond:

- (a) with effect:
 - (i) from the date of this Agreement;
 - (ii) throughout the Franchise Term; and
 - (iii) for a period of 7 Reporting Periods after the end of the Franchise Period;
- (b) substantially in the form of Appendix 1 (*Form of Performance Bond*);
- (c) with a minimum initial duration of 3 years; and
- (d) having a value equal to the amount determined under paragraph 4.4.

Provision of Replacement Performance Bond

4.2 The Franchisee may replace the Performance Bond at any time, provided that the Authority receives a replacement Performance Bond:

- (a) substantially in the form of Appendix 1 (or in any other form acceptable to the Authority in its discretion);
- (b) duly executed and delivered by a Bond Provider acceptable to the Authority;
- (c) with a minimum initial duration of 3 years; and
- (d) in an amount determined in accordance with paragraph 4.4.

4.3 The Franchisee shall replace any Performance Bond at least 6 months prior to its scheduled expiry with a replacement that complies with the requirements of paragraph 4.2.

Amount of Performance Bond

4.4 Subject to paragraph 4.9, the amount of any Performance Bond shall be as follows:

- (a) in the period from the date of signature of this Agreement until the first anniversary of the Franchise Commencement Date, £⁴³;
- (b) in the second year following the Franchise Commencement Date, £⁴⁴; and

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.

- (c) in the third year following the Franchise Commencement Date and in each subsequent year during the Franchise Term, £⁴⁵.

Demands under the Performance Bond

4.5(a) The Performance Bond shall be on terms that it is payable without further enquiry by the Bond Provider to the Authority in full in London on first written demand by the Authority on the Bond Provider, certifying as to any 1 or more of the following:

- (i) that this Agreement has:
 - (A) either terminated early or expired and, in either case, there are liabilities or obligations outstanding from the Franchisee to the Authority; or
 - (B) terminated early (solely as a consequence of the occurrence of one or more Events of Default) in circumstances where the Authority has incurred or expects to incur additional costs in connection with early termination of the Northern Franchise;
- (ii) that a railway administration order has been made in relation to the Franchisee pursuant to Sections 60 to 62 of the Act;
- (iii) that an Event of Default:

(A) under paragraph 2.13(a) of Schedule 10.3 (*Events of Default and Termination Event*) in relation to the Performance Bond; or

(B) under paragraph 2.13(b) of Schedule 10.3,

has occurred (whether or not this Agreement is, or is to be, terminated as a result thereof);

- (iv) the Franchisee has failed to perform or comply with its obligations under any Supplemental Agreement;
 - (v) that the Franchisee has failed to provide a replacement Performance Bond complying with this paragraph 4; or
 - (vi) that the Franchisee has failed to procure the execution and delivery of a new Performance Bond by a Bond Provider acceptable to the Authority when required to do so in accordance with paragraph 4.8.
- (b) If the Authority makes a demand under the Performance Bond, it shall account to the Franchisee for the proceeds of such Performance Bond remaining following settlement of all liabilities or obligations from the Franchisee to the Authority and

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.

reimbursement of all additional costs incurred by the Authority in connection with early termination of the Northern Franchise within a reasonable period.

Characteristics of Performance Bond Provider

4.6 In determining whether a Bond Provider under any replacement Performance Bond is acceptable, the Authority may exercise its discretion and shall not be obliged to accept a Bond Provider accepted under any previous Performance Bond.

4.7 The Franchisee shall provide such information relating to any Bond Provider or proposed Bond Provider as the Authority may require from time to time.

4.8 If at any time the Authority reasonably considers the Bond Provider under the then current Performance Bond to be unacceptable, the Authority may require the Franchisee within 20 business days to procure the execution and delivery of a new Performance Bond by a Bond Provider acceptable to the Authority. This applies:

- (a) notwithstanding the other provisions of this paragraph 4; and
- (b) irrespective of the scheduled expiry date of the then current Performance Bond.

Other Changes to Amount of Performance Bond

4.9 If there is a Qualifying Change the Authority and the Franchisee agree that:

- (a) the amount of the Performance Bonds specified in paragraph 4.4 shall, if relevant, be restated as follows:
 - (i) in the case of a Qualifying Change which affects the aggregate Forecast Operating Costs in respect of the period commencing on the Franchise Commencement Date until the first anniversary of the Franchise Commencement Date, the restated amount in respect of that period shall be the amount that is 1.5 percent of the revised aggregate Forecast Operating Costs for that period as ascertained by a Run of the Financial Model;
 - (ii) in the case of a Qualifying Change which affects the aggregate Forecast Operating Costs in respect of the period commencing on the first anniversary of the Franchise Commencement Date until the end of the second year following the Franchise Commencement Date the restated amount in respect of that period shall be the amount that is 3.0 percent of the revised aggregate Forecast Operating Costs for that period as ascertained by a Run of the Financial Model; and
 - (iii) in the case of a Qualifying Change which affects the aggregate Forecast Operating Costs for the period commencing on the second anniversary of the Franchise Commencement Date until the end of the Franchise Term the restated amount in respect of that period shall be the amount that is 5.5 percent of the average revised annual aggregate Forecast Operating Costs over each remaining year (or part year) of the Franchise Term, commencing on the second anniversary of the Franchise Commencement Date. The average shall be calculated by (1) establishing the revised aggregate Forecast Operating Costs for each such year or part year (as ascertained by a Run of the Financial Model), then (2) aggregating them, and then (3) dividing the

sum by the number of years remaining in the Franchise Term (expressing any part years as a fraction of a year for this purpose).

For the purposes of this paragraph 4.9(a) “*year*” means any period of 12 months commencing on an anniversary of the Franchise Commencement Date.

- (b) the Franchisee shall at its own cost immediately (and in any event no later than 20 business days after the date on which the restated amount of the Performance Bond is agreed or determined pursuant to paragraph 4.9(a)) procure that there shall be a valid and effective Performance Bond:
 - (i) having a value equal to that determined in accordance with paragraph 4.9(a);
 - (ii) which complies with the provisions of paragraphs 4.1(a) and (b) and (c); and
 - (iii) duly delivered and executed by a Bond Provider acceptable to the Authority.

5. SEASON TICKET BOND

Provision of Season Ticket Bond

5.1 The Franchisee shall procure that, for each Franchisee Year following and with effect from the Franchise Commencement Date and at all times throughout the Franchise Term and during the relevant call period specified in clauses 4 and 5 of the Season Ticket Bond, there shall be in place a valid and effective Season Ticket Bond substantially in the form of Appendix 2 (*Form of Season Ticket Bond*).

Provision of Replacement Season Ticket Bond

5.2 No later than 1 Reporting Period before the expiry of each Bond Year, the Franchisee shall provide to the Authority (or procure that the Authority receives) a Season Ticket Bond for the following Bond Year:

- (a) substantially in the form of Appendix 2 (or in any other form acceptable to the Authority in its discretion);
- (b) duly executed and delivered by a Bond Provider acceptable to the Authority; and
- (c) in an amount determined in accordance with paragraph 5.3.

Amount of Season Ticket Bond

5.3 The amount of any Season Ticket Bond shall vary for each Reporting Period during the Bond Year to which the Season Ticket Bond relates in accordance with the following formula:

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

where:

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

STL equals, in respect of such Reporting Period, the maximum amount which would be payable by the Franchisee:

(a) if this Agreement were to terminate on any day during the Reporting Period (the *relevant Reporting Period*) falling 13 Reporting Periods before such Reporting Period; and

(b) in respect of Season Ticket Fares under and in accordance with a Supplemental Agreement and paragraph 3.3 of Schedule 15.4 (*Provisions Applying on and after Termination*) and the rights and liabilities of the Franchisee relating to an obligation of carriage under the terms of any Season Ticket Fares which were designated as Primary Franchise Assets and transferred under a Transfer Scheme relating to that Supplemental Agreement to a Successor Operator at that time, provided that for these purposes only:

- (i) **Season Ticket Fares** shall mean any Season Ticket Fare which expires more than 7 days after it first comes into effect;
- (ii) the Franchise Commencement Date shall be assumed, where relevant, to have occurred before the commencement of the relevant Reporting Period; and
- (iii) if STL cannot reasonably be determined at the time at which the Franchisee is required under paragraph 5.4 to provide its estimate of the amount of the relevant Season Ticket Bond (including because the relevant Reporting Period has not yet occurred), the relevant Reporting Period shall be the Reporting Period falling 26 Reporting Periods before the Reporting Period in the relevant Bond Year;

RPI equals the quotient of the Retail Prices Index for the month for which the Retail Prices Index has most recently been determined at the time the Franchisee is required under paragraph 5.4 to provide its estimate of the amount of the relevant Season Ticket Bond divided by the Retail Prices Index for the month falling 12 months before such month;

k has the value attributed to it in Schedule 5 (*Fares*) for the Fare Year in which the Reporting Period in the relevant Bond Year falls; and

Z equals +1 or, if the relevant Reporting Period falls 26 Reporting Periods before such Reporting Period, an amount equal to:

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

where RPI and k are determined for the 12 months and the Fare Year preceding the 12 months and the Fare Year for which RPI and k are respectively determined above.

5.4 The Franchisee shall supply to the Authority, not later than 3 Reporting Periods before the end of each Bond Year, its estimate of the amount of the Season Ticket Bond for each Reporting Period during the following Bond Year and shall supply such details as the Authority may request in connection therewith.

5.5 The Franchisee and the Authority shall endeavour to agree the amount of such Season Ticket Bond by no later than 2 Reporting Periods before the end of each Bond Year. If the parties are unable to agree the amount of the Season Ticket Bond in respect of any Reporting Period during the following Bond Year, the matter shall be resolved in accordance with the Dispute Resolution Rules.

5.6 If the amount of the Season Ticket Bond for each Reporting Period during a Bond Year has not been agreed 2 Reporting Periods before the end of the preceding Bond Year, then, until the amount is agreed or determined in accordance with the Dispute Resolution Rules, the amount thereof shall be the amount determined by the Authority.

5.7 The Authority and the Franchisee may agree to increase or reduce the amount covered or required to be covered under a Season Ticket Bond from time to time.

Demands under the Season Ticket Bond

5.8(a) The Season Ticket Bond shall be on terms that it is payable without further enquiry by the Bond Provider to the Authority in full in London on first written demand by the Authority on the Bond Provider, certifying as to any 1 or more of the following:

- (i) that this Agreement has terminated or expired;
- (ii) that a railway administration order has been made in relation to the Franchisee pursuant to Sections 60 to 62 of the Act; or
- (iii) that an Event of Default:
 - (A) under paragraph 2.13(a) of Schedule 10.3 (*Events of Default and Termination Event*) in relation to the Season Ticket Bond; or
 - (B) under paragraph 2.13(c) of Schedule 10.3,

has occurred (whether or not this Agreement is, or is to be, terminated as a result thereof).

(b) If the Authority makes a demand under the Season Ticket Bond, it shall account to the Franchisee for the proceeds of such Season Ticket Bond remaining following settlement of all liabilities or obligations of the Franchisee in respect of the Season Ticket Fares that were designated as Primary Franchise Assets and transferred under a Transfer Scheme to a Successor Operator within a reasonable period.

Characteristics of Season Ticket Bond Provider

5.9 In determining whether a Bond Provider under any replacement Season Ticket Bond is acceptable, the Authority may exercise its discretion and shall not be obliged to accept a Bond Provider accepted under any previous Season Ticket Bond.

5.10 The Franchisee shall provide such information relating to any Bond Provider or proposed Bond Provider as the Authority may require from time to time.

5.11 The Authority agrees that, subject to receipt of a Season Ticket Bond in an amount determined in accordance with paragraph 5.3 in respect of any Bond Year, it shall release the relevant Bond Provider from any liability under the Season Ticket Bond provided in relation to the preceding Bond Year on the expiry of such Bond Year, provided that no Event of Default has occurred and is unremedied or continuing.

Meaning of Reporting Period

5.12 References in this paragraph 5 to a *Reporting Period* shall be construed, where the Franchisee so requests and the Authority consents (such consent not to be unreasonably withheld) to be references to each consecutive 7-day period (or such other period as may be

agreed) during such Reporting Period. The Franchisee may only make such a request in respect of a maximum of 2 Reporting Periods in each Bond Year and only where the amount of the Season Ticket Bond over any such period would differ materially if determined by reference to such 7-day periods.

APPENDIX 1 TO SCHEDULE 12

Form of Performance Bond

[DOCUMENT “PB” - PERFORMANCE BOND]

Dated _____ **20[•]**

[BOND PROVIDER]

PERFORMANCE BOND

Strategic Rail Authority
55 Victoria Street
London SW1H 0EU

To: Strategic Rail Authority(the *Authority*)

55 Victoria Street

LONDON SW1H 0EU

Whereas:

We are informed that the Authority has entered into a franchise agreement dated [●] (the ***Franchise Agreement***) with Greater Manchester Passenger Transport Executive, Merseyside Passenger Transport Executive, South Yorkshire Passenger Transport Executive, Tyne & Wear Passenger Transport Executive, West Yorkshire Passenger Transport Executive and [name of Franchisee] (the ***Franchisee***) under which the Franchisee will provide certain railway passenger services.

We are further informed that the Franchise Agreement requires that the Authority receives a duly executed performance bond of up to [maximum amount] (the ***Bond Value***) to secure the performance by the Franchisee of and its compliance with its obligations under the Franchise Agreement and any Supplemental Agreement (as defined under the Franchise Agreement) (any such agreement, a ***Supplemental Agreement***).

Accordingly:

We hereby unconditionally and irrevocably undertake to pay to the Authority in full in London, immediately upon receipt of your first written demand on us in the form set out in the attached 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.

The Authority may call on us for the whole or part of the amount of our liability hereunder and the Authority 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 the Authority may notify us of from time to time in writing 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 6 months after the date on which any railway administration order is made in relation to the Franchisee pursuant to Sections 60 to 62 of the Railways Act 1993;
- (ii) the later of:
 - (A) the date falling 1 month after the determination of the Purchase Price (as defined in any Supplemental Agreement) under each relevant Supplemental Agreement; and
 - (B) the date falling 7 days from the end of the Franchise Term (as defined in the Franchise Agreement); and
- (iii) a date that is 3 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 Franchisee to the Authority;
- (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 Authority has incurred or expects to incur additional costs in connection with termination of the Northern Franchise;
- (c) the making of a railway administration order in relation to the Franchisee 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*) in relation to the Performance Bond (as defined in the Franchise Agreement); or
 - (ii) paragraph 2.13(b) of Schedule 10.3 (*Events of Default and Termination Event*)
 (whether or not the Franchise Agreement is, or is to be, terminated as a result thereof);
- (e) the failure by the Franchisee to perform or comply with its obligations under any Supplemental Agreement;
- (f) the failure by the Franchisee to provide the Authority with a replacement Performance Bond which complies with paragraph 4 of Schedule 12 (*Financial Obligations and Covenants*) of the Franchise Agreement; or
- (g) the failure by the Franchisee to procure the execution and delivery of a new Performance Bond by a Bond Provider in favour of and acceptable to the Authority when required to do so in accordance with paragraphs 4.8 and 4.9 of Schedule 12 (*Financial Obligations and Covenants*) of the Franchise Agreement.

3. This undertaking is made to the Authority, its successors and its 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 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. The Authority may make demand or give notice to us under this Bond in writing delivered by hand or post to us as follows:

Address: [Bond Provider's address]

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 and terms defined therein shall have the same meaning in this Bond.
7. This Bond shall be governed by and construed in accordance with the laws of England and Wales and shall be subject to the exclusive jurisdiction of the Courts 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 franchise agreement entered into between the Strategic Rail Authority (the *Authority*), Greater Manchester Passenger Transport Executive, Merseyside Passenger Transport Executive, South Yorkshire Passenger Transport Executive, Tyne & Wear Passenger Transport Executive, West Yorkshire Passenger Transport Executive and [name of Franchisee] (the *Franchisee*) on [Franchise Agreement signature date] (the *Franchise Agreement*).

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 Franchisee to the Authority.]

[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 Authority has incurred or expects to incur additional costs in connection with termination of the franchise.]

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

[That an Event of Default under the Franchise Agreement in respect of:

- (a) paragraph 2.13(a) of Schedule 10.3 (Events of Default and Termination Event) in relation to the Performance Bond (as defined in the Franchise Agreement); or
- (b) paragraph 2.13(b) of Schedule 10.3,

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

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

[The Franchisee has failed to provide the Authority with a replacement Performance Bond which complies with paragraph 4 of Schedule 12 (Financial Obligations and Covenants) of the Franchise Agreement.]

[The Franchisee has failed to procure the execution and delivery of a new Performance Bond by a Bond Provider (as defined in the Franchise Agreement) in favour of and acceptable to the Authority when required to do so in accordance with paragraphs 4.8 and 4.9 of Schedule 12 (Financial Obligations and Covenants) of the Franchise Agreement.]

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]

For and on behalf of the Strategic Rail Authority

APPENDIX 2 TO SCHEDULE 12

Form of Season Ticket Bond

DOCUMENT “STB” - SEASON TICKET BOND

Dated _____ **20[●]**

[BOND PROVIDER]

SEASON TICKET BOND

Strategic Rail Authority
55 Victoria Street
London SW1H 0EU

To: Strategic Rail Authority

(the Authority)

55 Victoria Street

LONDON SW1H 0EU

Whereas:

We are informed that the Authority has entered into a franchise agreement dated [●] (the *Franchise Agreement*) with Greater Manchester Passenger Transport Executive, Merseyside Passenger Transport Executive, South Yorkshire Passenger Transport Executive, Tyne & Wear Passenger Transport Executive, West Yorkshire Passenger Transport Executive and [name of Franchisee] (the *Franchisee*) under which the Franchisee will provide certain railway passenger services for the Northern Franchise.

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

Accordingly:

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

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

The Authority may call on us for the whole or part of the amount of our liability hereunder and the Authority 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 the Authority's written demand on us;
 - (b) if a Call Event occurs on a date for which no Bond Value is specified in Schedule 2 then we will have no liability to the Authority in respect of such Call Event; and

- (c) the Authority may only call on us (whether on 1 or more occasions) in relation to 1 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 the attached 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 Franchisee pursuant to Sections 60 to 62 of the Railways Act 1993; or
 - (c) the occurrence of an Event of Default under paragraph 2.13(a) (in relation to a Season Ticket Bond (as defined in the Franchise Agreement)) or 2.13(c) of Schedule 10.3 (*Events of Default and Termination Event*) of the Franchise Agreement (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 clauses 1(b) and 5, our liability hereunder in respect of any Call Event shall expire:
- (a) in relation to a Call Event specified in clauses 2(a) and (b), at noon (London time) on the date falling 3 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 1 month after the last date for which a Bond Value is assigned under Schedule 2;
- unless the Authority notifies us in writing prior to the relevant expiry time that the relevant Call Event has occurred (whether or not the Authority calls on us at the same time under this Bond).
5. If the Authority does notify us under clause 4 our liability shall expire on:
- (a) if the Call Event in respect of which the Authority may call on us under this Bond is the termination or expiry of the Franchise Agreement, the date falling 1 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 the Authority may call on us under this Bond is the making of a railway administration order in relation to the Franchisee pursuant to Sections 60 to 62 of the Railways Act 1993, the date falling 3 months after the making of such railway administration order; or
 - (c) if the Call Event in respect of which the Authority 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 (as defined in the Franchise Agreement)) or paragraph 2.13(c) of Schedule 10.3 (*Events of Default and Termination Event*) of the Franchise Agreement (whether or not the Franchise Agreement is, or is to be, terminated as a result

thereof), the date falling 1 month after the Authority's 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 the Authority, its successors and its 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 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. The Authority may make demand or give notice to us under this Bond in writing delivered by hand or post to us as follows:

Address: [Bond Provider's address]

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. This Bond shall be governed by and construed in accordance with the laws of England and Wales and shall be subject to the exclusive jurisdiction of the Courts 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 franchise agreement entered into between the Strategic Rail Authority (the *Authority*), Greater Manchester Passenger Transport Executive, Merseyside Passenger Transport Executive, South Yorkshire Passenger Transport Executive, Tyne & Wear Passenger Transport Executive, West Yorkshire Passenger Transport Executive and *[name of Franchisee]* (the *Franchisee*) on *[Franchise Agreement signature date]* (the *Franchise Agreement*).

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 early/expired] on [date of termination/expiry]

[A railway administration order has been made in relation to the Franchisee 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 (as defined in the Franchise Agreement)) or paragraph 2.13(c) of Schedule 10.3 (Events of Default and Termination Event) of the Franchise Agreement.]

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]

For and on behalf of the Strategic Rail Authority

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 last date	
<i>[Dates to be specified]</i>	

SCHEDULE 13

Franchise Management and Information Obligations

Schedule 13.1: Franchise Management

Schedule 13.2: Information

Appendix 1: Efficient Franchisee

Appendix 2: Key Assets

Appendix 3: Operational Information

**Appendix 4: Passenger Journeys, Miles and Earnings
Information**

SCHEDULE 13.1

Franchise Management

1. GENERAL MANAGEMENT OBLIGATIONS

Human Resources

1.1 The Franchisee shall deliver the HR Strategy to the Authority on or before the Franchise Commencement Date.

1.2 The HR Strategy shall:

- (a) describe the roles and contribution of the Franchisee's directors and the Franchise Employees in the delivery of the Franchisee's obligations under this Agreement;
- (b) define the human resources policies, procedures and processes that are required to deliver the vision, business strategy and goals of the Franchisee;
- (c) set measurable targets (where appropriate) for each aspect of the HR Strategy;
- (d) define how the HR Strategy will be delivered over the Franchise Term;
- (e) define how the delivery of the HR Strategy will be monitored and managed over the Franchise Term; and
- (f) define how the HR Strategy may be varied to take account of changing circumstances or legislation.

1.3 The HR Strategy will comprise as a minimum:

- (a) an **Organisational Development Strategy** incorporating:
 - (i) a manpower planning process on a rolling 5-year basis, updated annually and identifying areas where management action will be required to maintain the efficiency of the Franchisee;
 - (ii) a commitment by the Franchisee to achieve "Investors in People" accreditation within the Franchise Term; and
 - (iii) appropriate performance management processes that embrace all Franchise Employees and provide individual feedback on personal performance;
- (b) a **Recruitment, Retention & Resourcing Strategy** incorporating:
 - (i) an objective, transparent and fair recruitment process;
 - (ii) a succession-planning process for key grades / posts on a rolling 5-year basis, updated annually ensuring that there is resilience in the staffing levels of key posts;
 - (iii) a statistical framework for the monitoring of recruitment and Franchise Employees turnover by gender, ethnic category, disability, function, grade, length of service; and

- (iv) a diversity plan;
- (c) a **Reward & Recognition Strategy** for each grade group which supports the vision, business strategy and goals and provides for motivation, reward and retention of Franchise Employees and incorporates:
 - (i) base salary and earnings data by key grade group;
 - (ii) earnings and hours-worked data;
 - (iii) previous information;
 - (iv) relevant comparator data;
 - (v) non-financial reward and recognition initiatives; and
 - (vi) pensions benefits;
- (d) a **Training & Development Strategy** incorporating:
 - (i) a commitment to become an active and subscribing member of the Centre for Rail Skills and maintain membership for the Franchise Term;
 - (ii) the provision of induction training for all new Franchise Employees that incorporates:
 - (A) all necessary safety training;
 - (B) all task-specific training;
 - (C) training in order to make such Franchise Employees aware of the obligations required of the Franchisee under this Agreement and of the Franchisee's vision, business strategy and goals;
 - (D) training to provide understanding of the Franchisee's obligations under its Licences and the penalty fares schemes to which it is a party (if any);
 - (E) training to provide understanding of the wider context of the railway; and
 - (F) training for Franchise Employees who have a passenger interface in:
 - (aa) how to deliver excellent customer service to all types of passengers including passengers with special requirements; and
 - (bb) how to deal with dissatisfied or disruptive passengers;
 - (iii) the provision of refresher training and the circumstances when such would be provided;
 - (iv) a competence framework based upon National Occupational Standards;

- (v) an assessment and verification framework consistent with the delivery of National Vocational Qualifications and/or Scottish Vocational Qualifications;
 - (vi) a commitment by the Franchisee to encourage all Franchise Employees (where appropriate) to achieve an appropriate National Vocational Qualification (or equivalent accredited qualification) within defined timescales; and
 - (vii) the means by which the Franchisee will make available other structured training and development opportunities, using approved training schemes such as “Modern Apprenticeships” and “Graduate Apprenticeships” where appropriate;
- (e) an **Involvement Strategy** incorporating:
- (i) appropriate “Collective Consultation and Bargaining Frameworks”; and
 - (ii) the planned linkages to the wider local community that the Franchisee has through its Franchise Employees; and
- (f) a **Franchise Employee Communications Strategy** which defines the means and frequency with which the Franchisee will provide:
- (i) information and feedback to Franchise Employees on the Franchisee’s performance, including whether good or bad performance;
 - (ii) information as to changes in management policy, personnel, organisational structure, reporting lines and responsibilities; and
 - (iii) the conduct, publication and actions to be taken as a result of an annual Franchise Employee attitude survey.

2. QUALITY MANAGEMENT

2.⁴⁶ Quality Assurance Plan

- 2.1 The Franchisee shall deliver to the Authority on or before 2 January 2009 a Quality Assurance Plan. The Quality Assurance Plan shall cover all of the obligations of the Franchisee under this Agreement. The purpose of the Quality Assurance Plan is to ensure that the Franchisee manages in a systematic and structured manner the quality and delivery of its obligations under this Agreement so that they are delivered to a consistent quality in accordance with the terms of this Agreement.
- 2.2 The Franchisee shall deliver to the Authority by a time which is not more than 5 Reporting Periods and not less than 3 Reporting Periods prior to the start of the 2010/11 Franchisee Year and on the same timescales in each subsequent Franchisee Year, an Updated Quality Assurance Report. The Updated Quality Assurance Report shall set out the Franchisee’s
- a) processes for delivering contractual compliance.

⁴⁶ Date of new text 19/12/2008

- b) plans for delivering contractual compliance where it feels that the process is not sufficiently robust, or where there is currently no process;
 - c) assessment of its performance against that Quality Assurance Plan; and
 - d) (where applicable) a list of specific corrective actions which the Franchisee believes are necessary to remedy, as soon as reasonably practicable, issues of concern identified in the Franchisee's assessment.
- 2.3 The Franchisee shall implement the Quality Plan throughout the Franchise Term. The Franchisee shall ensure that sufficient, adequately trained Franchise Employees are allocated to the management of quality and the delivery of the Franchise Services.
- 2.4 The Franchisee shall deliver to the Authority a Quality Report, at least once every 13 Reporting Periods during the Franchise Term (the first such report no later than the end of the 13th Reporting Period following the Franchise Commencement Date), which shall provide:
- (a) the Franchisee's own assessment of the Franchisee's performance of its obligations under this Agreement;
 - (b) (where applicable) a list of specific corrective actions which the Franchisee believes are necessary to remedy, as soon as reasonably practicable, issues of concern identified in the Franchisee's assessment;
 - (c) (where applicable) a list of specific actions for improvement identified in the Franchisee's assessment that the Franchisee intends to target so as to bring about continuous improvement of performance, in particular the delivery of the key performance results derived from the application of the Business Excellence Model of the British Quality Foundation or the EFQM Excellence Model of the European Foundation for Quality Management;
 - (d) a list of actions intended to maintain current areas of excellence identified in the Franchisee's assessment;
 - (e) a programme which specifies:
 - (i) the time within which the corrective action identified pursuant to paragraph 2.4(b) will be complete;
 - (ii) the time within which the continuous improvement actions identified pursuant to paragraph 2.4(c) will be complete; and
 - (iii) the time within which the maintenance actions necessary for maintaining the current areas of excellence identified pursuant to paragraph 2.4(d) will be complete; and
 - (f) any amendments to the Quality Plan necessary to ensure that the Franchisee manages in a systematic and structured manner the quality and delivery of its obligations under this Agreement so that they are delivered to a consistent quality in accordance with the terms of this Agreement.

SCHEDULE 13.2

Information

1. GENERAL INFORMATION

Corporate Information

1.1 The Franchisee shall provide the following information to the Authority and the Executives on or before the Franchise Commencement Date and shall notify the Authority and the Executives of any change to such information within 21 days of such change:

- (a) its name;
- (b) its business address and registered office;
- (c) its directors and company secretary;
- (d) its auditors;
- (e) its trading name or names; and
- (f) to the best of the Franchisee's knowledge and belief having made due and diligent enquiry, the identity of all persons holding, separately or acting by agreement, directly or indirectly, the right to cast more than 20 per cent. of the votes at general meetings of the Franchisee.

1.2 The Franchisee shall inform:

- (a) the Authority of any material change or proposed material change in its business (including the employment or the termination of employment of any Key Personnel, the termination of any Key Contract, any litigation or other dispute which may have a material effect on its business) and any material change in or restructuring of the capitalisation or financing of the Franchisee or the Parent; and
- (b) each Executive of any employment or termination of employment of any Key Personnel.

Operational and Performance-related Information to be provided by the Franchisee

1.3 The Franchisee shall provide to the Authority and the Executives the information specified in the Appendices to this Schedule 13.2 at the times specified therein.

1.4 The Appendices to this Schedule 13.2 shall be interpreted in accordance with any guidance issued by the Authority from time to time for that purpose.

Maintenance of Records

1.5 The Franchisee shall maintain true, up to date and complete records of all of the information required to be provided by the Franchisee under this Agreement.

1.6 Each record required to be maintained by the Franchisee in accordance with this Schedule 13.2 shall be held for a period of 6 years following the date on which such record was required to be created.

1.7 References to records in this Schedule 13.2 shall include records maintained under any Previous Franchise Agreement to the extent that such records relate to the Franchise Services and the Franchisee has access to them (which it shall use all reasonable endeavours to secure).

1.8 The Franchisee shall not be responsible for any records maintained under any Previous Franchise Agreement, as referred to in paragraph 1.7, being true, up to date and complete. As soon as reasonably practicable after becoming aware that any such records are not true, complete and up to date, the Franchisee shall take all reasonable steps to remedy any such deficiency, and shall thereafter maintain such records in accordance with paragraph 1.5.

Information to Stakeholders

1.9 The Franchisee shall comply with any reasonable requests and guidance issued by the Authority from time to time in respect of the provision of information to and co-operation and consultation with Stakeholders.

2. BUSINESS PLANS ⁴⁷ viii

Initial Business Plan

2.1 On or before the date of this Agreement, the Franchisee shall deliver to the Authority and, subject to paragraph 2.8, the Executives, its Initial Business Plan, describing its planned activities for each Franchisee Year during the Franchise Term, which shall include:

- (a) a description as to how the Franchisee will be able to meet its obligations under this Agreement for the Franchise Term, supported by operational plans demonstrating this;***
- (b) details of any investments proposed to be made or procured by the Franchisee in relation to the Franchise Services during the Franchise Term;***
- (c) a summary of the Franchisee's plans for marketing and developing the Franchise Services;***
- (d) a Financial Model, Operational Model and Record of Assumptions in the agreed form; and***
- (e) a profit and loss forecast, cash flow forecast and forecast balance sheet for each of the first 13 Reporting Periods following the Franchise Commencement Date, together with a list of assumptions on the basis of which each such forecast has been prepared.***

2.2 The Authority may require the resubmission of the Initial Business Plan to the Authority and, subject to paragraph 2.8, the Executives on the Franchise Commencement Date, adjusted to the extent necessary to reflect any difference between the actual

⁴⁷ Insert change text wef 17/01/08

Franchise Commencement Date and the date assumed to be the Franchise Commencement Date in the Initial Business Plan submitted in accordance with paragraph 2.1.

Updated Business Plans

2.3 *Not more than 5 Reporting Periods and not less than 3 Reporting Periods prior to the start of each Franchisee Year (other than the first Franchisee Year), the Franchisee shall deliver to the Authority and, subject to paragraph 2.8, the Executives, an Updated Business Plan:*

- (a) in substantially the same form as the agreed form of Updated Business Plan set out in Appendix 5 to Schedule 13.2 of this Agreement, revised to include the information available to the Franchisee as at the date of its delivery, describing the Franchisee's planned activities for each year during the remainder of the Franchise Term;*
- (b) containing a statement of the differences between such Updated Business Plan and the immediately preceding Business Plan delivered to the Authority and the Executives in accordance with this Agreement together with an explanation of such differences;*
- (c) containing revised financial and operational models, together with a detailed statement and explanation of any material difference in the outputs provided by such financial and operational models and any such models provided in the immediately preceding Business Plan;*
- (d) containing details of any Business Action Plan notified to the Authority and any progress made in respect of such Business Action Plans;*
- (e) containing a revised profit and loss forecast, cash flow forecast and forecast balance sheet for each of the 13 Reporting Periods in that Franchisee Year; and*
- (f) containing a revised profit and loss forecast, cash flow forecast and forecast balance sheet for each subsequent Franchisee Year of the Franchise Term.*

Further Updated Business Plans

2.4 *The Franchisee shall:*

- (a) notify the Authority as soon as reasonably practicable if the business outlook or prospective financial results of the Franchisee are likely to be materially different from those specified in the most recent Business Plan; and*
- (b) within 1 month of any request by the Authority following receipt of a notification in accordance with paragraph 2.4(a), supply the Authority and, subject to paragraph 2.8, the Executives, with a revised Updated Business Plan for the remainder of the Franchise Term which reflects the latest view of its business.*

Provisions relating to Business Plans

2.5 *The Franchisee shall:*

- (a) comply with any guidance issued by the Authority from time to time as to its reasonable requirements for the format of any Business Plan. The contents and*

assumptions to be included in any Business Plan, shall, unless the Authority and the Franchisee otherwise agree, be consistent with the Record of Assumptions; and

- (b) attend such meetings and make such presentations as the Authority shall request in connection with any Business Plan. Each of the Executives shall be entitled to attend such meetings at the discretion of the Authority.*

2.6 *The Franchisee shall not be relieved of any of its obligations under this Agreement as a result of any comment or failure to comment by the Authority or any Executive on any Business Plan or any agreement with or approval, implicit or explicit, of any Business Plan by the Authority or any Executive at any time.*

2.7 *The Authority may at any time require the Franchisee to produce a Business Action Plan in respect of any aspect of any Business Plan. Such Business Action Plan may include steps relating to:*

- (a) timetable development;*
- (b) performance management improvement;*
- (c) customer service improvement; and*
- (d) improvements in the quality of service delivery or the efficiency of delivery of the Franchise Services.*
- (e) Any Executive may at any time require the Franchisee to produce a Business Action Plan in respect of the following items contained in any Business Plan to which such Executive has access:*
 - (i) timetable development;*
 - (ii) operational performance management improvement;*
 - (iii) customer service improvement; and*
 - (iv) improvements in the quality of service delivery or the efficiency of delivery of the Executive Passenger Services relevant to such Executive.*

Executive Entitlement

2.8 *Where any reference is made in this paragraph 2 to the provision of any Business Plan to any Executive by the Franchisee, such Executive shall only be entitled to:*

- (a) the information referred to in paragraphs 2.1(a), (b) and (c); and*
- (b) the information referred to in paragraph 2.1(d), insofar as it relates to the numbers, types and values of tickets sold in respect of the Executive Passenger Services relevant to it.*

3. FINANCIAL AND OPERATIONAL INFORMATION

Accounting Records

3.1 The Franchisee shall prepare and at all times during the Franchise Term maintain true, up to date and complete accounting records as are required to be kept under Section 221 of the Companies Act 1985. Such records shall be prepared on a consistent basis for each Reporting Period.

Reporting Period Financial Information

3.2 The Franchisee shall deliver to the Authority, within 2 weeks of the end of each Reporting Period, Management Accounts for such Reporting Period, setting out a cashflow statement, profit and loss account and balance sheet for that Reporting Period and cumulatively for the Franchisee Year to date.

3.3 The Management Accounts shall also set out:

- (a) sufficient information to enable the Authority to calculate Actual Operating Costs and Modified Revenue on a cumulative basis for the previous 6 Reporting Periods;
- (b) a statement of calculation demonstrating the Franchisee's performance against the financial covenants in paragraph 2 of Schedule 12 (*Financial Obligations and Covenants*) during that Reporting Period;
- (c) a comparison of the Franchisee's performance during such period against the forecast provided by the Franchisee in the then current Business Plan;
- (d) a comparison of the Franchisee's cumulative performance during the Franchisee Year in which such period occurs against the forecast referred to in paragraph 3.3(c);
- (e) a detailed statement and explanation of any material difference between such Management Accounts and the forecast referred to in paragraph 3.3(c), cross-referring to deviations from the applicable operational models; and
- (f) where the level of financial performance specified in the Management Accounts is worse than forecast by the Franchisee in its current Business Plan, a Financial Action Plan to ensure that the level of financial performance forecast in its current Business Plan for the remainder of the currency of that Business Plan is achieved and the Franchisee shall use all reasonable endeavours to implement such Financial Action Plan.

Quarterly Financial Information

3.4 Within 4 weeks after the end of the 3rd, 6th, 9th and 12th Reporting Periods in each Franchisee Year, the Franchisee shall deliver to the Authority the following information:

- (a) an updated version of the profit and loss forecast, cash flow forecast and forecast balance sheet provided in accordance with paragraph 2.1(e), for each of the following 13 Reporting Periods; and
- (b) a statement of calculation demonstrating the Franchisee's performance against each of the financial covenants in paragraph 2 of Schedule 12 (*Financial Obligations and Covenants*) and a forecast of performance against such covenants for the following 13 Reporting Periods.

3.5 Where any Reporting Period falls partly within one Franchisee Year and partly within another, the results for each section of such Reporting Period falling either side of such Franchisee Year end shall be prepared on an accruals basis for each such section of such Reporting Period.

Annual Financial Information

3.6 Within 3 weeks of the end of each Franchisee Year, the Franchisee shall deliver to the Authority its Annual Management Accounts for that Franchisee Year.

3.7 The Franchisee shall deliver to the Authority:

- (a) in respect of any Franchisee Year other than the final Franchisee Year, its Annual Financial Statements for that Franchisee Year within 3 Reporting Periods of the end of that Franchisee Year; and
- (b) in respect of the final Franchisee Year, its Annual Financial Statements for the period from the start of that Franchisee Year to the end of the Franchise Period within 3 Reporting Periods of the end of the Franchise Period.

3.8 The Franchisee shall deliver to the Authority at the same time as it delivers the relevant Annual Financial Statements pursuant to paragraph 3.7, an unqualified written report from the Franchisee's auditors which confirms that such Annual Financial Statements:

- (a) comply with paragraph 3.11;
- (b) give a fair and true view of the amount of Revenue (including each revenue flow separately identified therein) earned by the Franchisee during the relevant Franchisee Year, excluding:
 - (i) any Revenue Share Adjustments paid or payable in respect of that Franchisee Year; and
 - (ii) any Revenue Support Adjustments received or receivable in respect of that Franchisee Year; and
- (c) detail that the amount of Revenue referred to in paragraph 3.8(b) comprises only some or all of those revenue flows specified in the definition of Revenue.

3.9^{ix x xi} ⁴⁸Within 4 Reporting Periods after the end of each Franchisee Accounting Reference Period, the Franchisee shall deliver the following information:

- (a) to the Authority and the Executives, certified true copies of its annual report and Annual Audited Accounts for that Franchisee Accounting Reference Period, together with copies of all related directors' and auditors' reports;
- (b) *to the Authority, a reconciliation to the Management Accounts for the same period (including any reconciliation required for the purposes of paragraphs 2.4 to 2.6 inclusive and 3.6 to 3.10 inclusive of Schedule 8.1 (Franchise Payments)); and*

⁴⁸ Insert change text wef 5.1.07

- (c) *to the Authority, a statement from the Franchisee's auditors confirming compliance with the financial covenants in paragraph 2 of Schedule 12 (Financial Obligations and Covenants).*

⁴⁹3.9A Within 4 Reporting Periods after the end of each Franchisee Year, the Franchisee shall deliver to the Authority a reconciliation between the Franchisee's Revenue as stated in its Annual Audited Accounts and the Annual Financial Statements.

Accounting Standards and Practices

3.10 Each set of Management Accounts and Annual Management Accounts shall be:

- (a) drawn up in a form consistent with the Franchisee's profit and loss account, cashflow projection and balance sheets contained in the Financial Model (or such form as may reasonably be required from time to time by the Authority); and
- (b) prepared consistently in accordance with the Franchisee's normal accounting policies, details of which shall be supplied, on request, to the Authority and any changes to which shall be notified to the Authority on submission of such accounts.

3.11 Each set of Annual Financial Statements and Annual Audited Accounts shall, save as stated in the notes thereto, be prepared and audited in accordance with GAAP and consistently applied and in accordance with the Companies Act 1985 and, together with those notes and subject to any qualifications contained in any relevant auditors' report, shall give a true and fair view of the state of affairs and profits of the Franchisee for the period covered by such accounts.

Parent Accounts

3.12 The Franchisee shall in addition deliver to, or procure delivery to, the Authority, certified true copies of the annual reports and audited accounts of the Parent, together with copies of all related directors' and auditors' reports, within 5 Reporting Periods of the end of each accounting reference period of the Parent or, if the Parent is domiciled outside England and Wales, the equivalent documents in the jurisdiction of residence of the Parent.⁵⁰

Performance Improvement Plans for Passenger Service Delivery

3.13 Notwithstanding the provisions of Schedule 7.1 (*Performance Benchmarks*) and the other provisions of this Schedule 13.2, the Franchisee shall:

- (a) develop and prepare a plan (a ***Performance Improvement Plan***) which:
 - (i) contains details of the issues in relation to the improvement of delivery of Passenger Services which the Franchisee will address;
 - (ii) sets out the assumptions and prevailing conditions at the commencement of such plan;

⁴⁹ Insert new text wef 5.1.07

⁵⁰ Insert Change Text wef 31/10/07

- (iii) contains a list of actions to be undertaken by the Franchisee, each with a forecast completion date;
 - (iv) specifies the improvement to its delivery of the Passenger Services expected to result from taking each of the actions identified in the plan; and
 - (v) shall be in a format and with a start date and a duration specified by the Authority and consistent with the format, start date and duration of similar plans which the Authority requires from other train operators from time to time;
- (b) provide a copy of the Performance Improvement Plan to the Authority and each Executive no later than 6 months after the Franchise Commencement Date;
 - (c) use all reasonable endeavours to implement such Performance Improvement Plan;
 - (d) promptly after the end of each Reporting Period, deliver to the Authority a report, in a format specified by the Authority, detailing the steps taken pursuant to the Performance Improvement Plan;
 - (e) use all reasonable endeavours to take any corrective actions identified during the course of carrying out the Performance Improvement Plan to deliver the improvements identified in such Performance Improvement Plan; and
 - (f) revise and update the Performance Improvement Plan at least once every 13 Reporting Periods, providing a copy up such revised and updated plan to the Authority and each Executive as soon as reasonably practicable following completion thereof.

Improvement Plans for exceeding Improvement Plan Performance Levels

3.14 If and whenever the Franchisee's performance in respect of a Reporting Period, calculated as a moving annual average in accordance with Schedule 7.1 (*Performance Benchmarks*), exceeds (that is, is equal to or worse than) the Improvement Plan Performance Level for any Benchmark, the Franchisee shall promptly:

- (a) notify the Authority and the affected Executive of that fact;
- (b) prepare and provide to the Authority and such Executive a plan that it proposes to implement to ensure that its future performance does not exceed (that is, is neither equal to or worse than) the Improvement Plan Performance Level (an ***Improvement Plan***);
- (c) implement such Improvement Plan; and
- (d) advise the Authority and such Executive from time to time of the results of the implementation of such Improvement Plan.

4. SAFETY INFORMATION

4.1 The Franchisee shall co-operate with any request of the Authority from time to time for provision of information and/or preparation and submission of reports detailing or identifying compliance with safety obligations set out in the Safety Case including any breaches of the Safety Case.

4.2 The Franchisee shall notify the Authority as soon as practicable of the receipt and contents of any formal notification relating to safety or the HSE or any formal notification or improvement or prohibition notice received from HMRI. Immediately upon receipt of such notification or notice, the Franchisee shall provide the Authority with a copy of such notification or notice.

5. FURTHER INFORMATION

5.1 The Franchisee shall:

- (a) deliver to the Authority, or procure the delivery to the Authority of, such information, records or documents as the Authority may request within such period as the Authority may reasonably require and which relates to or is connected with the Franchisee's performance of this Agreement; and
- (b) procure that each Affiliate of the Franchisee complies with paragraph 5.1(a) in respect of any information, records or documents that relate to its dealings with the Franchisee in connection with the Franchisee's performance of this Agreement.

5.2 The information referred to in paragraph 5.1(a) shall include:

- (a) any agreement, contract or arrangement to which the Franchisee is a party in connection with any rolling stock vehicles used in the operation of the Passenger Services;
- (b) in so far as the Franchisee has or is able to obtain the same, any other agreement contract or arrangement which may be associated with the procurement, leasing, financing or maintenance of any such rolling stock vehicles;
- (c) any agreement for the manufacture or supply of any rolling stock vehicles; or
- (d) any arrangements for the securitisation of any lease granted in respect of such rolling stock vehicles.

5.3 The Authority may require the Franchisee to provide:

- (a) the information required to be provided under this Schedule 13 more frequently than set out in this Schedule 13.2;
- (b) the information required to be provided under this Schedule 13.2, or, in the Authority's discretion, more detailed financial information, at any time in connection with the re-letting of the Franchise; and
- (c) such unaudited accounts under such accounting policies as may be prescribed by the Authority, acting reasonably, from time to time.

6. CONTRAVENTIONS OF THIS AGREEMENT

6.1 The Franchisee shall notify the Authority, so far as possible before it may occur and in any event as soon as reasonably practicable thereafter, of any contravention by the Franchisee of any provision of this Agreement. This includes where the Franchisee is under an obligation to use all reasonable endeavours to achieve a particular result by a particular time, where such result is not achieved by such time.

6.2 The Franchisee shall notify any relevant Executive, so far as possible before it may occur and in any event as soon as reasonably practicable thereafter, of any contravention by the Franchisee of any provision of this Agreement where such contravention affects:

- (a) the performance of the Executive Passenger Services; or
- (b) the operation of or quality of facilities at the Executive Stations, relevant to such Executive.

6.3 The Franchisee shall deliver to the Authority, or procure the delivery to the Authority of, such information, records or documents as the Authority may request within such period as the Authority may reasonably require for the purpose of determining the existence, likelihood, nature or scope of any contravention of, Event of Default or Termination Event under, this Agreement.

7. INFORMATION FROM THIRD PARTIES

7.1 The Franchisee shall, if the Authority and/or any Executive so requests, use all reasonable endeavours to ensure that the Authority and/or such Executive (as the case may be) has direct access to any information, data or records relating to the Franchisee which is or are maintained by third parties and to which the Authority and/or such Executive (as the case may be) is entitled to have access, or of which the Authority and/or such Executive (as the case may be) is entitled to receive a copy under this Agreement.

7.2 The Franchisee shall, if the Authority and/or any Executive so requests, procure the provision by RSP to the Authority and/or such Executive (as the case may be) of such information, data and records as the Franchisee is entitled to receive under the Ticketing and Settlement Agreement, in such form as the Authority may specify from time to time. Such obligation shall be subject to the payment by the Authority and/or such Executive (as the case may be) of the costs incurred by RSP in providing such information.

7.3 The obligations of the Franchisee under this Schedule 13.2 to provide information to the Authority and/or any Executive (as the case may be) shall not apply if the Authority and/or such Executive (as the case may be) notifies the Franchisee that it has received the relevant information directly from any other person (including Network Rail or RSP). The Franchisee shall, if the Authority and/or such Executive (as the case may be) so requests, confirm or validate any such information which is received from any such other person.

8. COMPATIBILITY OF INFORMATION

8.1 All financial, operational or other information, and any data and records required to be provided to the Authority under this Agreement shall be provided, if so requested by the Authority, in a form compatible with the Authority's electronic data and records systems on the Franchise Commencement Date, as modified from time to time in accordance with paragraph 9.

8.2 The Franchisee shall ensure that the interconnection of such systems or the provision of such information, data and records to the Authority under this Agreement will not result in any infringement of any third party intellectual property rights to which its systems or such information, data or records may be subject.

9. DEVELOPMENT OF COMPUTER SYSTEMS

9.1 The Franchisee shall at all times during the Franchise Term, subject to paragraph 9.4, have the necessary Computer Systems to enable it to comply with its information-provision obligations in paragraph 8.

9.2 The Franchisee shall co-operate in accordance with paragraph 9.3 with the Authority and any third party that the Authority may reasonably specify in the development of:

- (a) the Franchisee's Computer System;
- (b) the Authority's Computer System;
- (c) any railway industry-wide Computer System; and/or
- (d) any other Computer System, including any new Computer System, the Authority may specify,

in order that Computer Systems within the railway industry use (where appropriate) the same or compatible computer language, format, networks and protocols.

9.3 In co-operating with the Authority and/or any third party in developing any of the Computer Systems specified by the Authority in accordance with paragraph 9.2, the Franchisee shall, when requested by the Authority:

- (a) make appropriately skilled and qualified Franchise Employees reasonably available, free of charge to:
 - (i) attend meetings with the Authority and/or such third party to discuss and review the need for enhancement or replacement of any Computer System;
 - (ii) provide the Franchisee's opinion on any updated specifications for the enhancement of any Computer System;
 - (iii) provide the Franchisee's opinion on any specifications for any replacement Computer System;
 - (iv) review and comment upon implementation timetables and programmes for any enhancement of any Computer System or any replacement Computer System;
 - (v) make available files and data from existing Computer Systems for downloading onto any enhanced or new Computer System installed;
 - (vi) assist with the commissioning of and fault finding with any enhanced or new Computer System installed; and
 - (vii) make recommendations for modifications to any existing (whether enhanced or otherwise) or new Computer System in the light of operational experience; and
- (b) allow the Authority's employees, agents and contractors access to any existing Computer System to effect any necessary change-over arrangements before the introduction of any enhanced or new Computer System.

9.4 If and to the extent requested by the Authority, the Franchisee shall:

- (a) carry out the procurement, project management and acceptance of any enhancement of any existing Computer System, or replacement of an existing Computer System with a new Computer System; and
- (b) enter into such maintenance or support contracts as are necessary to maintain or support any enhanced or new Computer System,

and the cost and revenue effects arising from the Franchisee's compliance with this paragraph 9.4 shall be a Change.

9.5 The Franchisee shall use any enhanced or new Computer System developed with the co-operation of the Authority in accordance with paragraph 9.3 for the purposes for which such Computer System was intended.

10. DEVELOPMENT OF RAILWAY INDUSTRY STANDARDS

10.1 The Franchisee shall at all times during the Franchise Term co-operate with the Authority and any other competent authority in the development, modification, agreement and implementation of railway industry standards. References to *railway industry standards* in this paragraph 10 shall include Railway Group Standards, TSIs, recommendations following accident investigations and any consultation documents on any proposed legislative change affecting the railway industry.

10.2 In co-operating with the Authority and/or any third party in developing any railway industry standards, the Franchisee shall make appropriately skilled and qualified Franchise Employees reasonably available, free of charge to:

- (a) attend meetings with the Authority and/or such third party to discuss and review the need for the development, agreement, amendment or need for derogation from any railway industry standards;
- (b) provide the Franchisee's opinion on any proposed railway industry standards;
- (c) provide the Franchisee's opinion on any existing railway industry standards or any replacement railway industry standards;
- (d) review and comment upon implementation timetables and programmes for any railway industry standards or any replacement railway industry standards;
- (e) make recommendations for modifications to any existing or new railway industry standards in the light of operational experience;
- (f) make representations to competent authorities to prevent the introduction of new railway industry standards where in the Franchisee's opinion the introduction of such new railway industry standards would cause disproportionate additional cost; and
- (g) make representations to competent authorities to seek derogations from the application of new railway industry standards where such new railway industry standards are judged inappropriate by the Franchisee.

11. WYPTE Project Incremental Revenue⁵¹

- 11.1** *From the Project Start Date until the Project Expiry Date, Actual WYPTE Project Incremental Revenue shall be shown separately in the Management Accounts for each Reporting Period, and shown separately in the Annual management Accounts and the Annual Financial Statements for each Franchisee Year.*
- 11.2** *For the purposes of paragraphs 2 and 3 of Schedule 8.1 only, the amount of Revenue that may be compared with Target Revenue from time to time shall exclude Actual WYPTE Project Incremental Revenue for the relevant period for which the comparison is being made.*

⁵¹ New paragraph 11 to Schedule 13.2 inserted wef 20 July 2006.

APPENDIX 1 TO SCHEDULE 13.2

Efficient Franchisee

1. INFORMATION ABOUT THE EFFICIENCY OF THE FRANCHISEE

1.1 The Franchisee shall:

(a) at all times during the Franchise Term maintain records in relation to its efficiency in respect of its obligations under this Agreement, covering the areas and the information described in this Appendix 1; and

(b) subject to paragraph 1.2, provide to:

(i) the Authority the information set out in the following tables at the frequency specified in the column of each such table headed “When information to be provided” by reference to each Performance Management Unit;

(ii) each Executive the information set out in Tables 1, 2, 4 and 5 at the frequency specified in the column of such tables headed “When information to be provided” by reference to any Performance Management Unit relevant to it; and

(iii) each Executive, in respect of the Executive Passenger Services relevant to such Executive, the information set out in Table 3A at the frequency specified in the column of such tables headed “When information to be provided”.

1.2 When so requested by the Authority or any Executive, the Franchisee shall make such information available for review by the Authority or such Executive (as the case may be) by reference to:

(a) such other level of disaggregation (including by Route or Service Group) as is specified by the Authority or such Executive (as the case may be) from time to time; and

(b) any particular day, week or other longer period as is specified by the Authority or such Executive (as the case may be) from time to time.

1.3 The following key shall apply to the tables in this Appendix 1:

A = Information in respect of each period shall be provided not later than 10 days after the relevant Passenger Change Date;⁵²

B = Information to be provided for every Reporting Period within 10 days of the last day of each Reporting Period; and

C = Information to be provided annually within 10 days of the last day of each Franchisee Year.

Table 1 Rolling Stock Vehicles

Information to be provided	Class of Rolling Stock Vehicle	When
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⁵² Text inserted wef 13 February 2006

	Class [aaa]	Class [bbb]	Class [xxx]	information to be provided
Number of rolling stock vehicles in the Train Fleet	[number]	[number]	[number]	A

Information to be provided	Class of Rolling Stock Vehicle			When information to be provided
	Class [aaa]	Class [bbb]	Class [xxx]	
Number of rolling stock vehicles scheduled to be in service in peak hour as a percentage of the number of rolling stock vehicles in the Train Fleet	[%]	[%]	[%]	A
Number of rolling stock vehicle hours scheduled in service per Reporting Period as a percentage of number of rolling stock vehicles in the Train Fleet x 24 hours x 28 days (total rolling stock vehicle hours)	[%]	[%]	[%]	A
Total standard time scheduled preventative maintenance rolling stock vehicle hours per Reporting Period as a percentage of total rolling stock vehicle hours	[%]	[%]	[%]	A

1.4 Where trains operated by the Franchisee consist of locomotive(s) and coaches, the Franchisee shall separate the information provided for locomotive(s) and coaches.

Table 2 Information related to Efficiency of Operation

Information to be provided	When information to be provided
Total passenger journey kilometres divided by total staff hours plus contractor hours	A
Number of scheduled diagrams per Reporting Period divided by the number of drivers employed	A
The number of depot maintenance employees (including train maintenance staff and supervisory and administrative staff at the relevant depot) divided by the number of rolling stock vehicles in the Train Fleet	A
Scheduled driving/train crew in service time compared to total employed driver/ train crew time expressed as a percentage	A
Total number of employees divided by the number of rolling stock vehicles in the Train Fleet	A
Number of indirect employees (head office, management and supervisory and administrative staff) relative to the number of direct employees (drivers, train crew, station staff and train maintainers), expressed as a percentage	A

Table 3 Financial Efficiency Ratios

Information to be provided	When information to be provided
Total cost of service operations (all Franchisee's costs excluding head office, management and supervisory and administrative staff costs and head office lease and facilities costs) divided by total scheduled vehicle miles	A
Total maintenance cost (including depot costs, spare parts replacement train maintenance staff and depot supervisory costs, interior and exterior cleaning costs, depot maintenance costs excluding any vehicle fuel costs) divided by total scheduled vehicle miles	A
Total cost (sum of all Franchisee's costs) divided by total number of total passenger journey kilometres	A
Total cost of service operations (all Franchisee's costs excluding head office, management and supervisory and administrative staff costs and head office lease and facilities costs) divided by total passenger journeys	A
Administrative costs (head office, management and supervisory and administrative staff costs and head office lease and facilities costs) divided by total scheduled vehicle miles	A
Total fares revenue divided by the total number of total passenger journey kilometres	A
Ticket selling and revenue protection costs as a percentage of total revenue. Ticket selling and revenue protection costs shall include ticket office staff costs, ticket machine and ticket validation equipment maintenance costs, ticket procurement and ticket costs, revenue protection staff costs (less penalty fare (if any) receipts), costs associated with RSP and Ticketing and Settlement Agreement compliance, and commissions paid to third parties in respect of ticket sales	A
Percentage of ticket sales revenue collected by ticket office staff	A
Percentage of ticket sales revenue collected by on train staff	A
Percentage of ticket sales revenue collected by automatic ticket machines	A
Percentage of total revenue obtained from season tickets	A

Table 3A Financial Efficiency Ratios in respect of the Executive Passenger Services

Information to be provided	When information to be provided
Total cost of service operations for the Executive Passenger Services (all Franchisee's costs in delivering such Executive Passenger Services excluding head office, management and supervisory and administrative staff costs and head office lease and facilities costs) divided by total scheduled vehicle miles for such Executive Passenger Services.	A
Total maintenance cost for the delivery of the Executive Passenger Services (including, where appropriate, depot costs, spare parts replacement train maintenance staff and depot supervisory costs, interior and exterior cleaning costs, depot maintenance costs excluding any vehicle fuel costs) divided by total scheduled vehicle miles for such Executive Passenger Services.	A
Total cost for the delivery of the Executive Passenger Services (sum of all Franchisee's costs in respect of the Executive Passenger Services) divided by total number of total passenger journey kilometres for such Executive Passenger Services	A
Total cost of service operations for the delivery of the Executive Passenger Services (all Franchisee's costs in respect of the delivery of the Executive Passenger Services excluding head office, management and supervisory and administrative staff costs and head office lease and facilities costs) divided by total passenger journeys for such Executive Passenger Services	A
Administrative costs directly incurred in the delivery of the Executive Passenger Services (including, where appropriate, head office, management and supervisory and administrative staff costs and head office lease and facilities costs) divided by total scheduled vehicle miles for such Executive Passenger Services.	A
Total fares revenue for the Executive Passenger Services divided by the total number of total passenger journey kilometres for such Executive Passenger Services.	A
Ticket selling and revenue protection costs in respect of the Executive Passenger services as a percentage of total revenue for such Executive Passenger Services. Ticket selling and revenue protection costs shall, where appropriate, include ticket office staff costs, ticket machine and ticket validation equipment maintenance costs, ticket procurement and ticket costs, revenue protection staff costs (less penalty fare (if any) receipts), costs associated with RSP	A

and Ticketing and Settlement Agreement compliance, and commissions paid to third parties in respect of ticket sales	
Percentage of ticket sales revenue for the Executive Passenger Services collected by ticket office staff.	A
Percentage of ticket sales revenue for the Executive Passenger Services collected by on train staff	A
Percentage of ticket sales revenue for the Executive Passenger Services collected by automatic ticket machines.	A
Percentage of total revenue in respect of the Executive Passenger Services obtained from season tickets	A

Table 4 Safety^{xii}

Information to be provided	When information to be provided
Accidents reported (staff and passengers) divided by the number of passenger journeys	C
Crime incidents reported (staff and passengers) divided by the number of passenger journeys	C

Table 5 HR Information

Information to be provided	When information to be provided
Evidence of Franchisee's vision, company goals and HR Strategy that supports it	C
Evidence of a human resource database capable of informing the operation of the Franchisee and supporting the production of a manpower plan	C
Evidence of a 5 year manpower plan, rolling forward and updated annually	C
Evidence of working towards "Investors in People" accreditation	C
Evidence of a performance management process applicable to all staff	C
Evidence of an objective, transparent and fair recruitment process	C
Evidence of analysis of employment and recruitment data by gender, ethnic category, disability function and grade	C
Evidence of analysis of turnover by cause, retirement, dismissal, redundancy, ill health retirement, death	C
Evidence of succession planning, identification of prospective "hot spots" and actions taken to address them	C
Evidence of a diversity plan and impact of implementing it	C
Evidence of historical and current data on salaries, earnings, hours of work, overtime worked, free day/rest day working, and other main terms and conditions for all key grade groups	C
Evidence of benchmark comparator data	C
Evidence of non-financial reward and recognition initiatives	C
Evidence of a competence framework in place based on national occupational standards	C
Evidence of an assessment and verification framework to enable the delivery of NVQs and SVQs	C
Evidence of a structured induction programme (supported by hard data) incorporating a railway industry perspective to all new entrants	C

Information to be provided	When information to be provided
Evidence (supported by hard data (numbers / %)) of staff with NVQs / SVQs (or equivalent externally recognised qualification) by grade against target	C
Evidence (supported by hard data (numbers / %)) of structured training and development for “Strategic”, “Supervisory” and “Operational” managers as well as the wider workforce	C
Evidence of a collective “consultation and bargaining framework”	C
Evidence (supported by hard data (numbers / %)) of people days lost through industrial action and a record of industrial action short of strike action	C
Evidence of an annual staff attitude survey	C
Evidence of actions taken arising from feedback received from the staff attitude survey	C
Evidence of company links to the community through its staff	C
Evidence of a company communication and briefing strategy	C
Evidence of a robust process of briefing, core briefing material and 2-way communication and feedback	C
Evidence of staff hours lost through sickness and other absence	C
Evidence of staff hours lost through training	C

APPENDIX 2 TO SCHEDULE 13.2

Key Assets

1. INFORMATION ABOUT ASSETS USED IN THE NORTHERN FRANCHISE

1.1 The Franchisee shall at all times during the Franchise Term maintain (and shall provide copies to the Authority when required to do so from time to time) records covering the following information:

- (a) for each Primary Franchise Asset or other asset which is the subject of, or operated under, a Key Contract:
 - (i) the progress and completion of all work described in the maintenance schedules and manuals;
 - (ii) all operating manuals (including any safety related regulations); and
 - (iii) all permits, licences, certificates or other documents required to operate such asset; and
 - (b) a printed or electronic list of all assets owned by the Franchisee from time to time (excluding, unless otherwise requested by the Authority, any office furniture and consumable items).
- 1.2 The Franchisee shall provide copies of:
- (a) the records referred to in paragraph 1.1(a) to the Authority; and
 - (b) the records referred to in paragraph 1.1(b) to the Authority and each Executive, when requested to do so from time to time by the party entitled to receive such records.

APPENDIX 3 TO SCHEDULE 13.2

Operational Information⁵³

1. INFORMATION ABOUT THE PERFORMANCE OF THE FRANCHISEE

1.1 The Franchisee shall at all times during the Franchise Term maintain records in relation to its operational performance under this Agreement, covering the areas and the information described in this Appendix 3. Such information shall include details as to whether or not any curtailment, diversion, delay or failure to attain any connection is attributable, in the Franchisee's opinion, to either a Force Majeure Event or the implementation of a Service Recovery Plan.

1.2 The Franchisee shall, subject to paragraph 1.3, provide to the Authority and each Executive the information set out in the following table at the frequency specified in the column of each such table headed "When information to be provided" by reference to:

- (a) in respect of the Authority, each Performance Management Unit; and
- (b) in respect of any Executive, any Performance Management Unit relevant to it.

1.3 When so requested by the Authority or any Executive, the Franchisee shall, within such reasonable period as the Authority or any Executive may specify, make such information available for review by the Authority or such Executive (as the case may be) by reference to:

- (a) such other level of disaggregation (including by Route or Service Group) as is specified by the Authority or such Executive (as the case may be) from time to time; and
- (b) any particular day, week or other longer period as is reasonably specified by the Authority or such Executive (as the case may be) from time to time.

1.4 The following key shall apply to the Table in this Appendix 3:

A = Information in respect of each period shall be provided not later than 10 days after the relevant Passenger Change Date⁵⁴

B = Information to be provided for every Reporting Period within 20 days of the last day of each Reporting Period; and

C = Information to be provided annually within 10 days of the last day of each Franchisee Year.

1.5 For the purpose of this Appendix 3, a business day is any day between Monday to Friday (inclusive) excluding public holidays.

Table Operational Information per Reporting Period

⁵³ Date of change 27/4/2009

⁵⁴ Replacement text inserted wef 16 February 2006.

Information to be provided per Reporting Period	Information (format)	When information to be provided
Number of Passenger Services		
Number of Passenger Services in the Timetable	[number]	B

Information to be provided per Reporting Period	Information (format)	When information to be provided
Number of Cancellations and Partial Cancellations		
Number of Passenger Services in the Plan of the Day which were the subject of a Cancellation	[number]	B
Number of Passenger Services in the Plan of the Day which were the subject of a Partial Cancellation	[number]	B
Number of Passenger Services in the Plan of the Day which were the subject of a Cancellation attributable to the Franchisee's implementation of a Service Recovery Plan	[number]	B
Number of Passenger Services in the Plan of the Day which were the subject of a Partial Cancellation attributable to the Franchisee's implementation of a Service Recovery Plan	[number]	B
Any instance of 50 per cent. or more of the Passenger Services in the Timetable being the subject of a Cancellation on any day on any line or route or in any Service Group	[number]	Within 2 business days of the occurrence
Where there is a difference between the Timetable and the Plan of the Day on any day which is attributable to the introduction, removal or alteration of a Passenger Service by the Franchisee (or with the agreement of the Franchisee in contravention of its obligations under Schedule 1 (<i>Passenger Service Obligations</i>)), the following: (a) the fact of such difference; (b) the number of: (i) Passenger Services affected; and (ii) Cancellations or Partial Cancellations which would have arisen if the Timetable on that day had been the same as the Plan of the Day	[number]	B

Information to be provided per Reporting Period	Information (format)	When information to be provided
Number of Passenger Services in the Plan of the Day which were the subject of a cancellation and which satisfied the conditions of the term <i>Cancellation</i> , except that such cancellations occurred for reasons attributable to the occurrence of a Force Majeure Event	[number]	B
Number of Passenger Services in the Plan of the Day which were the subject of a partial cancellation and which satisfied the conditions of the term <i>Partial Cancellation</i> , except that such partial cancellations occurred for reasons attributable to the occurrence of a Force Majeure Event	[number]	B
Number of Passenger Services in the Plan of the Day which were the subject of a cancellation and which satisfied the conditions of the term <i>Cancellation</i> , except that such cancellations occurred for reasons attributable to the exercise by Network Rail of its rights pursuant to the Track Access Agreement	[number]	B
Number of Passenger Services in the Plan of the Day which were the subject of a partial cancellation and which satisfied the conditions of the term <i>Partial Cancellation</i> , except that such partial cancellations occurred for reasons attributable to the exercise by Network Rail of its rights pursuant to the Track Access Agreement	[number]	B
Capacity		
Number of Passenger Services that have less than the required passenger carrying capacity specified in the Train Plan	[number]	B
Number of Passenger Services that have less than the required passenger carrying capacity specified in the Train Plan attributable to the Franchisee's implementation of a Service Recovery Plan	[number]	B
Number of Passenger Services that have less than the required passenger carrying capacity specified in the Train Plan attributable to the occurrence of a Force Majeure Event	[number]	B
Minutes Delay and Punctuality		
Number of Minutes Delay attributable to the Franchisee	[minutes]	B
Number of Minutes Delay attributable to Network Rail	[minutes]	B
Number of Minutes Delay for such Reporting Period for which the attribution is in dispute between Network Rail	[minutes]	B

Information to be provided per Reporting Period	Information (format)	When information to be provided
and the Franchisee		
Number of Minutes Delay for the 12 preceding Reporting Periods for which the attribution remains in dispute between Network Rail and the Franchisee	[minutes]	B
Number of Minutes Delay from the 12 preceding Reporting Periods for which the attribution remains in dispute between Network Rail and the Franchisee	[minutes]	B
Number of Minutes Delay from the 12 preceding Reporting Periods for which disputed attribution has been resolved or determined since the Franchisee's previous report pursuant to paragraph 2.7 of Schedule 7.1 (<i>Performance Benchmarks</i>) and the number of such Minutes Delay attributed to each of the Franchisee and Network Rail as a result of such resolution or determination	[minutes]	B
Number of Minutes Delay attributed to the occurrence of a Force Majeure Event	[minutes]	B
Passenger Services arriving at terminus stations less than 5 minutes late (or 10 minutes late in the case of designated long distance services) as a percentage of total number of scheduled passenger service arrivals at terminus stations	[%]	B
Average duration of delay per delayed Passenger Service	[minutes]	B
<p>Number of Passenger Services in the Timetable which arrive at their scheduled final destination:</p> <p>(a) Early</p> <p>(b) On time</p> <p>(c) 1 to 4.59 minutes late</p> <p>(d) 5 to 9.59 minutes late</p> <p>(e) 10 to 14.59 minutes late</p> <p>(f) 15 to 19.59 minutes late</p> <p>(g) 20 to 29.59 minutes late</p> <p>(h) 30 to 59.59 minutes late</p> <p>(i) 60 or more minutes late,</p>	[number]	B

Information to be provided per Reporting Period	Information (format)	When information to be provided
measured against scheduled arrival time of such Passenger Services in the Timetable (any Passenger Services which suffers a Cancellation will be recorded as having arrived at destination 20 to 29.59 minutes late)		
Passenger delay per Passenger Service	[minutes]	A
Train Mileage		
Aggregate Train Mileage scheduled in the Timetable	[mileage]	B
Aggregate Train Mileage operated	[mileage]	B
Passenger's Charter Information		
In respect of each Charter Group (and in each case, consistent with the Passenger's Charter Guidelines) for such Reporting Period:		
(a) the number of Passenger Services planned for the purpose of the Passenger's Charter;	[number]	B
(b) the number of such Passenger Services run as defined in the Passenger's Charter;	[number]	
(c) the percentage of Passenger Services as defined in the Passenger's Charter;	[%]	
(d) the calculated Reliability Moving Annual Average as defined in the Passenger's Charter;	[maa]	
(e) the number of Passenger Services having a punctuality target for the purpose of the Passenger's Charter;	[number]	
(f) the number of Passenger Services achieving the punctuality target as defined in the Passenger's Charter;	[number]	B
(g) the percentage of Passenger Services achieving the punctuality target as defined in the Passenger's Charter; and	[%]	
(h) the calculated Punctuality Moving Annual Average as defined in the Passenger's Charter	[maa]	

APPENDIX 4 TO SCHEDULE 13.2

Passenger Journeys, Miles and Earnings Information

1. INFORMATION ABOUT JOURNEY NUMBERS AND EARNINGS

1.1 The Franchisee shall:

(a) at all times during the Franchise Term maintain records in relation to the information specified in the following table; and

(b) subject to paragraph 1.2, provide such information to the Authority at the frequency specified in the column of such table headed “When information to be provided” by reference to each Performance Management Unit.

1.2 When so requested by the Authority, the Franchisee shall make such information available for review by the Authority by reference to:

(a) such other level of disaggregation (including by Route or Service Group) as is specified by the Authority from time to time; and

(b) any particular day, week or other longer period as is specified by the Authority from time to time.

1.3 The following key shall apply to the Table in this Appendix 4:

A = Information to be provided on or before any Passenger Change Date;

B = Information to be provided for every Reporting Period within 10 days of the last day of each Reporting Period; and

C = Information to be provided annually within 10 days of the last day of each Franchisee Year.

Table Passenger Journey Information

Information to be provided	Information (format)	When information to be provided
Number of national passenger rail journeys (meaning the number of journeys by passengers from the station where such passengers join the railway passenger services to the station where such passengers exit the railway passenger services). A national passenger rail journey may encompass more than one passenger rail train journey (meaning the number of journeys by passengers on any one train between stations, which travel may form the whole or part of a national passenger rail journey)	[number]	B
Number of passenger rail train journeys	[number]	B
Number of passenger miles (meaning the total number of passengers transported over the distance of one mile on the	[number /	B

Information to be provided	Information (format)	When information to be provided
Passenger Services)	mileage]	
Earnings (meaning all income received from passengers. Earnings shall not be limited to income from Fares)	[£]	B
Farebox income (meaning income from Fares which are valid for travel on the Passenger Services, or having such other meaning as the Authority may determine from time to time in its reasonable discretion)	[£]	B
Other passenger revenue (meaning Earnings less Farebox income)	[£]	B

1.4 Where the information referred to in this Appendix 4 is held in a system operated by RSP (or any other system), the Franchisee may fulfil its obligations under paragraph 1.1 by procuring that the Authority shall be granted access free of charge to such records in a readily accessible manner and in a format acceptable to the Authority.

1.5 The Franchisee shall advise the Authority of any changes made to its systems or processes or those of RSP which materially change or affect the continuity of the records maintained pursuant to this Appendix 4. Such advice shall include an assessment of the materiality of the relevant change.

APPENDIX 5 TO SCHEDULE 13.2⁵⁵

Updated Business Plan

AGREED FORM: UPDATED BUSINESS PLAN

The Updated Business Plan should have sections covering the following areas:

1. Executive Summary

2. Background

Introduction

Franchise Objectives

Present Position vis a vis Initial Business Model

Purpose of This Document

3. The Market and Developing the Franchise

Market Analysis

Competitor Analysis

Demographics

Economic Assumptions

Traffic Forecasts

Prospects for the current year (Franchisee's financial year)

Strengths, Weaknesses, Opportunities and Threats ('SWOT') Analysis

4. Running the Business

4.1 Key Issues and Activities/Outputs in previous year

Revenue

Marketing Strategy

Performance

Customer Service/Satisfaction

On-Board Services

Fleet

Stations

⁵⁵ Insert new text wef 17/01/08

4.2 *Safety and Security*

Update on provisions of Safety and Security at Stations

4.3 *Measuring Performance Against Targets*

Key Performance Indicators or Critical Success Factors

Review Process

4.4 *Financial*

Income

Costs

Investment

Cash Flow, Profit and Balance Sheets

Risks and Sensitivities

Outlook for the following two years (Franchisee's financial years)

SCHEDULE 14

Preservation of Assets

Schedule 14.1:	Maintenance of Franchise
Schedule 14.2:	Maintenance of Operating Assets
Schedule 14.3:	Key Contracts
	Appendix: List of Key Contracts
Schedule 14.4:	Designation of Franchise Assets
	Appendix: List of Primary Franchise Assets
Schedule 14.5:	Dealings with Franchise Assets

SCHEDULE 14.1

Maintenance of Franchise

1. The Franchisee shall maintain and manage the business of providing the Franchise Services so that, to the greatest extent possible and practicable:
 - (a) the Franchisee is able to perform its obligations under this Agreement; and
 - (b) a Successor Operator would be able to take over the business of providing the Franchise Services immediately at any time.
2. The Franchisee shall use all reasonable endeavours to ensure that such Successor Operator would have immediate access to all Franchise Employees and Primary Franchise Assets for such purpose.
3. The Franchisee shall maintain and manage the business of providing the Franchise Services on the basis that such business will be transferred, in the manner contemplated under this Agreement, as a going concern at the end of the Franchise Period to, and continued immediately thereafter by, a Successor Operator.
4. The Franchisee shall use all reasonable endeavours to ensure that an appropriate number of employees (having sufficient skills, qualifications and experience) will transfer by operation of Law to any Successor Operator following the expiry of the Franchise Period.
5. The Franchisee shall comply with all reasonable requirements of the Authority to obtain or maintain the property and rights that a Successor Operator would require, or that it would be convenient for it to have, on the basis that the same will transfer by operation of Law to any Successor Operator following the expiry of the Franchise Period.

SCHEDULE 14.2

Maintenance of Operating Assets

1. OPERATING ASSETS

1.1 The Franchisee shall maintain, protect and preserve the assets (including any intellectual property or intangible assets) employed in the performance of its obligations under this Agreement (the “*Operating Assets*”) in good standing or good working order, subject to fair wear and tear.

1.2 The Franchisee shall carry out its obligations under paragraph 1.1 so that the Operating Assets may be transferred at the end of the Franchise Period to a Successor Operator and used by such Successor Operator in the provision or operation of similar services to the Franchise Services.

1.3 Where any operating asset is lost, destroyed or otherwise beyond repair, the Franchisee shall replace the operating asset with property, rights or liabilities in modern equivalent form to the operating asset to be replaced. The Franchisee shall at all times maintain an appropriate volume of Spares, and/or an appropriate level of access to Spares from a third party, to enable it to perform its obligations under this Agreement.

1.4 The Authority may at any time require the Franchisee to provide to the Authority a schedule specifying the condition of any asset or class of assets that it specifies for this purpose. Such schedule shall cover such aspects of asset condition as the Authority may reasonably require. If the Authority and the Franchisee are unable to agree the content of such schedule of condition, either of them may refer the dispute for resolution in accordance with the Dispute Resolution Rules. Until such dispute is resolved, the Franchisee shall comply with the Authority’s requirements in respect of such schedule of condition.

1.5 The Franchisee shall keep vested in it at all times during the Franchise Period all Franchise Assets designated as such pursuant to Schedule 14.4 (*Designation of Franchise Assets*) as it may require in order to comply with:

- (a) the Licences;
- (b) any contracts of employment with Franchise Employees;
- (c) any relevant Fares;
- (d) any Key Contracts; and
- (e) any applicable safety legislation regulations or safety standards and the Safety Case, in order to ensure that the Authority may designate such assets as Primary Franchise Assets.

2. BRAND LICENCES AND BRANDING

Brand Licences

2.1 The Franchisee shall comply with its obligations under each of the Brand Licences.

Branding

2.2 Subject to any applicable obligations or restrictions on the Franchisee (including the terms of the Rolling Stock Leases), the Franchisee:

- (a) may apply at its own cost registered or unregistered trade marks (including company names, livery and other distinctive get-up) to:
 - (i) any assets used by it predominantly in the operation and provision of any Executive Passenger Services with the consent of the relevant Executive (such consent not to be unreasonably withheld); and
 - (ii) any other assets owned or used by it in the operation and provision of the Franchise Services; and
- (b) shall use all reasonable endeavours to apply at the Authority's cost such registered or unregistered trade marks (including company names, livery and other distinctive get-up) to any assets owned or used by it in the operation and provision of the Franchise Services as the Authority may direct.

2.3(a) Subject to paragraphs 2.3(c) and (g), the Franchisee may:

- (i) in respect of unregistered Marks, provide or procure the provision of an irrevocable undertaking to any relevant Successor Operator to the effect that neither it nor the owner of the Marks will enforce such rights as it may have or may in the future have in respect of such Marks against such Successor Operator and its successors; and
- (ii) in respect of registered Marks, grant or procure the grant of an irrevocable licence to use such Marks to such Successor Operator and its successors.
- (b) Any such licence or undertaking under paragraph 2.3(a) shall be in such form as the Authority shall reasonably require except that the terms of any such licence and, to the extent appropriate, any such undertaking shall accord with the provisions of paragraphs 5.1(a)(i) to 5.1(a)(iv) of Schedule 15.4 (*Provisions Applying on and after Termination*).
- (c) Subject to paragraph 2.3(g), to the extent that:
 - (i) the Franchisee does not provide a relevant undertaking or licence in accordance with paragraph 2.3(a);
 - (ii) the Authority considers the relevant Marks to be so distinctive or otherwise such that a Successor Operator could not reasonably be asked to use the relevant assets to which the Marks are applied; or
 - (iii) the Franchisee has not otherwise removed or covered such Marks in such a way as may be reasonably acceptable to the Authority prior to the expiry of the Franchise Period,

then the Franchisee shall pay to the relevant Successor Operator such amount as may be agreed between the Franchisee and such Successor Operator, as being the reasonable cost (including any Value Added Tax for which credit is not available under Sections 25 and 26 of the Value Added Tax Act 1994) of covering such Marks

or otherwise removing all indications of or reference to the Marks in a manner reasonably acceptable to the Authority. Such amount shall not in any event exceed the cost to the Successor Operator of replacing such Marks with its own. If the Franchisee and the relevant Successor Operator fail to agree such cost within 28 days of the expiry of the Franchise Period, the Franchisee shall submit such dispute for resolution in accordance with such dispute resolution procedures as the Authority may require.

- (d) The amount to be paid to a Successor Operator under paragraph 2.3(c) may include the reasonable cost of:
 - (i) removing or covering Marks from the exterior of any rolling stock vehicle;
 - (ii) removing or covering interior indications of the Marks including upholstery and carpets;
 - (iii) replacing or covering all station or other signs including bill boards; and
 - (iv) otherwise ensuring that such removal, covering or replacement is effected with all reasonable care and in such manner that the relevant assets may reasonably continue to be used by a Successor Operator in the provision of the Franchise Services.
- (e) The Franchisee shall, in addition to making a payment under paragraph 2.3(c), grant or procure the grant of a licence or undertaking complying with paragraphs 2.3(a) and (b) except that such licence shall only be for such period as may be agreed between the Franchisee and the Successor Operator as being reasonably required by the Successor Operator to remove the Marks from all relevant assets without causing excessive disruption to the operation of services similar to the Franchise Services provided by such Successor Operator. If such period cannot be agreed, the Franchisee shall submit such dispute for resolution in accordance with such dispute resolution procedures as the Authority may require.
- (f) The Authority shall determine at or around the end of the Franchise Period, and after consultation with the Franchisee and, where relevant, the Executives, the maximum liability of the Franchisee under paragraph 2.3(c) and the maximum length of licence or undertaking under paragraph 2.3(e).
- (g) The provisions of paragraphs 2.3(a) to (f) shall not apply to the extent that the relevant asset is not to be used by a Successor Operator in the provision of services similar to the Franchise Services. The Authority shall notify the Franchisee as soon as it becomes aware of whether or not any such asset is to be so used.

Non-designation of New Brands

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

SCHEDULE 14.3

Key Contracts

1. KEY CONTRACTS

- 1.1 The provisions of this Schedule 14.3 apply to all Key Contracts from time to time.
- 1.2 The Key Contracts as at the date of this Agreement are set out in the Appendix (*List of Key Contracts*).
- 1.3 ⁵⁶*Without prejudice to the preceding provisions of this Schedule, the Appendix to Schedule 14.3 shall be amended as necessary from time to time to take account of any designation or de-designation of any Contract*

2. DESIGNATION OF KEY CONTRACTS

2.1 Where the Authority considers that it is reasonably necessary for securing the continued provision of the Franchise Services or the provision of services similar to the Franchise Services by a Successor Operator in accordance with this Agreement, it may make a designation pursuant to paragraph 2.2.

2.2 The Authority may at any time, by serving notice on the Franchisee, designate as a Key Contract:

- (a) any actual or prospective agreement, contract, licence or other arrangement; and
- (b) any category of agreement, contract, licence or other arrangement, to which or under which the Franchisee is (or may become) a party or a beneficiary,

with effect from the date specified in such notice.

2.3 Key Contracts may include any agreement, contract, licence or other arrangement whether in written, oral or other form, whether formal or informal and whether with an Affiliate of the Franchisee or any other person and may include any arrangement for the storage of assets (including electronic systems or Computer Systems) or accommodation of employees.

3. DE-DESIGNATION OF KEY CONTRACTS

The Authority may at any time, by serving a notice on the Franchisee, de-designate any Key Contract from continuing to be a Key Contract with effect from the date specified in such notice.

4. RE-DESIGNATION OF KEY CONTRACTS

The Authority may at any time, by serving notice on the Franchisee, re-designate as a Key Contract anything which has ceased to be designated as a Key Contract in accordance with paragraph 3 with effect from the date specified in such notice.

⁵⁶ Insert new text wef 14.12.06

5. DIRECT AGREEMENTS

5.1 Unless the Authority otherwise agrees, or unless lawfully directed to do so by the Regulator, the Franchisee shall not enter into any prospective Key Contract unless the counterparty to that prospective Key Contract:

- (a) is a Train Operator; or
- (b) has entered into a Direct Agreement with the Authority in respect of that prospective Key Contract, providing on a basis acceptable to the Authority, amongst other things, for the continued provision of the Passenger Services and/or the continued operation of the Stations and Depots in the event of:
 - (i) breach, termination or expiry of such Key Contract;
 - (ii) termination or expiry of this Agreement; or
 - (iii) the making of a railway administration order in respect of the Franchisee.

5.2 Where the Authority designates or re-designates as a Key Contract:

- (a) any agreement, contract, licence or other arrangement to which the Franchisee is already a party; or
- (b) any category of agreement, contract, licence or other arrangement where the Franchisee is already a party to a contract, licence or other arrangement which, by virtue of the Authority's designation or re-designation, is classified in such category,

the Franchisee shall use all reasonable endeavours to assist the Authority in entering into a Direct Agreement as envisaged by paragraph 5.1(b).

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

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

6. EMERGENCIES

Where any emergency may arise in connection with the provision and operation of the Franchise Services, the Franchisee:

- (a) may enter into on a short-term basis such contracts, licences or other arrangements as it considers necessary or appropriate to deal with the emergency;
- (b) need not procure that the Authority enters into a Direct Agreement in respect of such contracts;

- (c) shall promptly inform the Authority of any such emergency and contracts, licences or other arrangements which it proposes to enter into; and
- (d) shall take such action in relation to such emergency, contracts, licences or other arrangements as the Authority may request.

7. NO AMENDMENT

The Franchisee shall not without the prior consent of the Authority (which shall not be unreasonably withheld or delayed) vary, or purport to vary, the terms or conditions of any Key Contract at any time, unless lawfully directed to do so by the Regulator.

8. REPLACEMENT OF KEY CONTRACTS

The Franchisee shall, prior to the scheduled expiry date of any Key Contract (or, if earlier, such other date on which it is reasonably likely that such Key Contract will terminate), take all reasonable steps to enter an appropriate replacement contract (whether with the counterparty to the existing Key Contract or not) and shall comply with the reasonable instructions of the Authority in relation to such replacement contract.

9. TERMINATION OF KEY CONTRACTS

Whether or not this Agreement is continued after the Initial Expiry Date in accordance with Schedule 18 (*Franchise Continuation Criteria*), the Franchisee shall, to the extent so requested by the Authority, exercise its right to terminate any Key Contract on the Expiry Date.

APPENDIX TO SCHEDULE 14.3

List of Key Contracts

⁵⁷The following items been agreed between the authority and the Franchisee to be Key Contracts:

1. Any Access Agreement to which the Franchisee is a party other than in its capacity as a Facility Owner.
2. Any Property Lease including the Property Leases listed in paragraph 4 of Appendix 2 (*List of Conditions Precedent Documents*) to the Conditions Precedent Agreement.
3. Any contract or arrangement for the lending, seconding, hiring, contracting out, supervision, training, assessment, or accommodation by another Train Operator of any train drivers, conductors or other train crew used by the Franchisee in the provision of the Passenger Services.
4. Any contract or arrangement for the subcontracting or delegation to another Train Operator of the provision of any of the Passenger Services (whether or not the consent of the Authority is required to such subcontracting or delegation under paragraph 1 of Schedule 2.3 (*Third Party Delivery of Passenger Services and Other Franchisees*)).
5. Any contract or arrangement with a Train Operator (other than an Access Agreement) for the provision to the Franchisee of train dispatch, performance or supervision of platform duties, security activities, evacuation procedures, advice or assistance to customers, assistance to disabled customers, operation of customer information systems, cash management or ticket issuing systems administration.
6. 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.
7. Any contract or arrangement for the supply of spare parts or Spares.
8. Any contract or arrangement for the maintenance of track and other related infrastructure.
9. Any licences of Marks to the Franchisee.
- 10. *All Rolling Stock Related Contracts***⁵⁸

⁵⁷ Text deleted wef 14/12/06

⁵⁸ Insert new text wef 22/02/07

SCHEDULE 14.4

Designation of Franchise Assets

1. FRANCHISE ASSETS

1.1 Subject to paragraph 1.2, all property, rights and liabilities of the Franchisee from time to time during the Franchise Period shall be designated as Franchise Assets and shall constitute Franchise Assets for the purposes of Section 27(11) of the Act.

1.2 The rights and liabilities of the Franchisee in respect of the following items shall not be designated as Franchise Assets and shall not constitute franchise assets for the purposes of Section 27(11) of the Act:

- (a) any contracts of employment;
- (b) this Agreement and any Transfer Scheme or Supplemental Agreement;
- (c) the Ticketing and Settlement Agreement;
- (d) any sums placed on deposit with a bank or other financial institution; and
- (e) such other property, rights and liabilities as the Franchisee and Authority may agree from time to time or as the Authority may de-designate as Franchise Assets under paragraph 10.2.
- (f) *any Rolling Stock Leases.*⁵⁹

2. PRIMARY FRANCHISE ASSETS

The following property, rights and liabilities shall (to the extent that they constitute Franchise Assets) be designated as Primary Franchise Assets with effect from the following dates:

- (a) the property, rights and liabilities listed in the Appendix (*List of Primary Franchise Assets*) (which constitutes a list of Primary Franchise Assets agreed between the Authority and the Franchisee as at the date of this Agreement), on the Franchise Commencement Date;
- (b) any additional property, rights and liabilities designated under paragraph 3 during the Franchise Period, on the date of such designation;
- (c) any property or right which is vested in the Franchisee and used for the purpose of maintaining, replacing, repairing or renewing any property designated as Primary Franchise Assets and which forms or replaces part or all of such designated property on completion of such maintenance, replacement, repair or renewal, on the date of its use for such purpose;
- (d) the rights and liabilities of the Franchisee under any Key Contract designated in accordance with Schedule 14.3 (*Key Contracts*), on the date of such designation; and

⁵⁹ Date of change 31/3/2010

- (e) the rights and liabilities of the Franchisee in respect of the terms of any Fare or Discount Card designated under paragraph 6, on the date of such designation.

3. DESIGNATION OF ADDITIONAL PRIMARY FRANCHISE ASSETS

The Authority may at any time and from time to time during the Franchise Period, by serving notice on the Franchisee, designate any or all of the Franchise Assets as Primary Franchise Assets. Such designation shall take effect from the delivery of such notice and may refer to all or certain categories of property, rights or liabilities. Any such notice shall specify the reasons for such designation.

4. DESIGNATION DURING LAST 12 MONTHS OF FRANCHISE PERIOD

If the Authority designates a Franchise Asset as a Primary Franchise Asset under paragraph 3 at any time during the last 12 months of the Franchise Period then, within 28 days of such designation, the Authority may de-designate such Primary Franchise Asset by serving notice on the Franchisee. Such de-designation shall take effect upon delivery of such notice.

5. DESIGNATION OF KEY CONTRACTS AS PRIMARY FRANCHISE ASSETS

The Authority shall, subject to paragraphs 1.2(b) and 7, be entitled to designate any Key Contract as a Primary Franchise Asset at any time during the Franchise Period by serving notice on the Franchisee. Such designation shall take effect from delivery of such notice.

6. DESIGNATION OF FARES AND DISCOUNT CARDS

The Authority may designate any Fare or Discount Card as a Primary Franchise Asset at any time during the Franchise Period by serving a notice on the Franchisee. Such designation shall take effect from delivery of such notice.

7. RIGHTS AND LIABILITIES

The Authority, in designating the rights and liabilities of the Franchisee (whether under a particular contract other arrangement) as a Primary Franchise Asset may, in its discretion, elect to designate some but not all of the rights and liabilities under a particular contract or other arrangement, or to designate only those rights and liabilities arising after or otherwise relating to a period after a particular time (including the period after the expiry of the Franchise Period) or to those relating only to the Franchise Services or a particular part thereof.

8. DISPUTES OVER DESIGNATION

8.1 The Franchisee may object in writing to the Authority to any designation pursuant to paragraph 3 or 4.

8.2 Such objection may be made solely on the grounds that the designation of the relevant property, rights or liabilities specified in the objection is not, in the Franchisee's opinion, reasonably necessary to secure the continued provision of the Franchise Services by a Successor Operator on the expiry of the Franchise Period on a basis reasonably acceptable to the Authority or to facilitate the transfer to such Successor Operator of the provision of the Franchise Services at such time.

8.3 Any such objection may only be made within 28 days of a designation under paragraph 3 or 14 days of a designation under paragraph 4.

8.4 The Authority shall respond to any such objection as soon as reasonably practicable and shall take account of any representations made by the Franchisee regarding the use of the relevant Primary Franchise Asset otherwise than in the provision and operation of the Franchise Services.

8.5 If any dispute as to any designation pursuant to paragraph 3 or 4 remains outstanding on the expiry of the Franchise Period then such dispute shall be deemed to cease immediately before the expiry of the Franchise Period and the relevant Franchise Assets shall continue to be designated as Primary Franchise Assets on and after the expiry of the Franchise Period.

9. PROVISION OF INFORMATION TO AUTHORITY

9.1 The Franchisee shall provide such information as the Authority may reasonably require in order to satisfy the Authority that any Franchise Assets which are to be designated as Primary Franchise Assets after the Franchise Commencement Date under this Schedule 14.4 will at the time of such designation be vested in the Franchisee. Such information may include details of any Security Interests over such property, rights and liabilities.

9.2 The Franchisee shall further provide such information as to the property, rights and liabilities of the Franchisee as the Authority may reasonably require in connection with the designation of Primary Franchise Assets. Such information shall be supplied to the Authority within such timescale as the Authority may reasonably require.

10. DE-DESIGNATION OF FRANCHISE ASSETS AND PRIMARY FRANCHISE ASSETS

10.1 The Authority and the Franchisee may agree in writing at any time during the Franchise Period that a Franchise Asset shall cease to be so designated as a Franchise Asset or that a Primary Franchise Asset shall cease to be so designated as a Primary Franchise Asset, and the relevant Franchise Asset shall cease to be designated upon such agreement coming into effect.

10.2 The Authority may in addition at any time during the Franchise Period, by serving notice on the Franchisee, cause a Franchise Asset which is not a Primary Franchise Asset to cease to be so designated as a Franchise Asset. Such Franchise Asset shall cease to be so designated on the date specified in such notice.

10.3 The Authority may in addition, at any time during the Franchise Period, by serving notice on the Franchisee, cause a particular Primary Franchise Asset to cease to be designated as such. Such Primary Franchise Asset shall cease to be so designated on the date specified in such notice. Such right may be exercised, in respect of any rights and liabilities in respect of a Fare or Discount Card, at any time and, in respect of any other Primary Franchise Asset, no later than 1 year prior to the expiry of the Franchise Term.

11. SPARES

The obligation of the Franchisee to maintain, preserve and protect Primary Franchise Assets under this Schedule 14.4 shall, in respect of Spares, include the obligation to replace any Spare which has been designated as a Primary Franchise Asset, which subsequent to its designation ceases to be part of the stock of Spares available to the Franchisee for use in the provision of the Franchise Services, with an equivalent Spare of equal or better quality than the Spare so replaced.

APPENDIX TO SCHEDULE 14.4

List of Primary Franchise Assets

The following items have as at the date of this Agreement been agreed between the Authority and the Franchisee to be Primary Franchise Assets:

1. Equipment at Newton Heath
 - (i) NH 0131 - NH0134 & NH0172: Somer vehicle lifting jacks and consoles (2 sets).
 - (ii) NH 503 - Air system flushing machine.
 - (iii) Simret brake meter.
 - (iv) Schlumberger NRN radio test box.
 - (v) FA 04 - Forklift attachment for lifting 156 radiators.
 - (vi) FA 05 - Forklift attachment for lifting L10 engines.
 - (vii) 15X Compressor lifting trolley.
 - (viii) TMD 959/1-2 Adaptor bracket for body lifting.
 - (ix) 801-802 Adaptor bracket for body lifting.
 - (x) FA 01 - Forklift attachment for lifting engines.
 - (xi) FA 02- Forklift attachment for lifting gearboxes.
 - (xii) FA 03, FA 03/1 - Forklift attachment for lifting alternators.
 - (xiii) FA/s - Forklift attachments support rod.
 - (xiv) MC1 - Wheelset lifting beam.
 - (xv) Engine lifting frame.
 - (xvi) 434/5/6/7 - Bodyside lifting bracket for 142's.
2. Equipment at Longsight:
 - (i) Simret brake meter.
 - (ii) 2 Diagnostic LCB cards for Holec 323 traction equipment.

SCHEDULE 14.5

Dealing with Franchise Assets

1. ASSETS NOT DESIGNATED AS PRIMARY FRANCHISE ASSETS

1.1 This paragraph 1 relates to any Franchise Assets that are property or rights and are not designated as Primary Franchise Assets.

1.2 For the purposes of Section 27(3) of the Act, the Authority consents to the Franchisee:

- (a) transferring or agreeing to transfer any such Franchise Assets or any interests in, or right over, any such Franchise Assets; and
- (b) creating or extinguishing, or agreeing to create or extinguish, any interest in, or right over, any such Franchise Assets.

2. LIABILITIES NOT DESIGNATED AS PRIMARY FRANCHISE ASSETS

2.1 This paragraph 2 relates to any liabilities which are not designated as Primary Franchise Assets.

2.2 For the purposes of Section 27(3) of the Act, the Authority consents to the Franchisee entering into any agreement under which any such liability is released or discharged, or transferred to another person.

3. FRANCHISE ASSETS AND PRIMARY FRANCHISE ASSETS

3.1 This paragraph 3 relates to Franchise Assets (whether or not designated as Primary Franchise Assets) which are property or rights.

3.2 The Authority hereby consents to the installation of Spares which have been designated as Primary Franchise Assets on any rolling stock vehicles. Any Spare which is so installed shall cease to be so designated on such installation.

3.3 For the purposes of Section 27(3) of the Act, the Authority hereby consents to the Franchisee creating or agreeing to create any Security Interest over any of these Franchise Assets to the extent that the terms of any such Security Interest provide that:

- (a) if the relevant Franchise Asset becomes the subject of a transfer scheme made under Schedule 21 of the Transport Act, it shall be fully and automatically released from the relevant Security Interest immediately before the coming into force of such transfer scheme;
- (b) if the relevant Franchise Asset is assigned, novated or otherwise transferred to another person pursuant to and in accordance with this Agreement, it shall be fully and automatically released from the relevant Security Interest immediately before such assignment, novation or transfer; and
- (c) such Security Interest shall not be enforced or enforceable until the date on which such Franchise Asset ceases to be designated as a Franchise Asset.

4. PROHIBITION ON OTHER SECURITY INTERESTS

The Franchisee shall not create or agree to create a Security Interest over any Franchise Asset except on the terms permitted under paragraph 3.3(a).

5. MISCELLANEOUS

The Franchisee shall promptly inform the Authority of any Security Interest arising at any time over any of its property or rights and shall provide the Authority with such information in relation thereto as it may reasonably require.

SCHEDULE 15

Obligations Associated with Termination

Schedule 15.1:	Reletting Provisions
Schedule 15.2:	Last 12 or 13 Months of Franchise Period
Schedule 15.3:	Handover Package
	Appendix: Form of Handover Package
Schedule 15.4:	Provisions Applying on and after Termination
	Appendix 1: Form of Transfer Scheme
	Appendix 2: Form of Supplemental Agreement

SCHEDULE 15.1

Reletting Provisions

1. RELETTING OF FRANCHISE

1.1 The Franchisee acknowledges that the Authority may wish, at or before the expiry of the Franchise Period, either to invite persons (including the Franchisee) to tender for the right to provide all or some of the Passenger Services under a franchise agreement or alternatively to enter into a franchise agreement in respect of the Passenger Services without having gone through a tendering process.

1.2 The Franchisee further acknowledges that the Authority is under a duty under Section 30 of the Act to secure in certain circumstances the provision of the Passenger Services, including if no further franchise agreement is entered into on the termination of this Agreement in respect of such Passenger Services. The Franchisee accordingly accepts and agrees to the restrictions and obligations imposed on it under Schedule 1.7 (*Franchise Services*), Schedule 14 (*Preservation of Assets*) and this Schedule 15.

2. PREPARATION FOR RELETTING

2.1 The Franchisee shall, if so requested by the Authority, provide the Authority and its representatives and advisers with access to the Franchise Employees and all books, records and other materials kept by or on behalf of the Franchisee in connection with the Franchise Services for the purpose of assisting such representatives and advisers:

- (a) to prepare reports or other documents in connection with any invitation to potential Successor Operators to tender for the right and obligation to operate all or any of the Franchise Services;
- (b) to prepare invitations to other potential franchisees to tender for the right and obligation to provide any other railway passenger services or operate any other additional railway asset; or
- (c) to enter into any franchise agreement or other agreement relating to the Franchise Services, without undergoing a tendering process,

provided that the exercise of such access rights by the Authority and its representatives and advisers shall not unduly interfere with the continuing provision and operation of the Franchise Services by the Franchisee.

- 2.2(a) The Franchisee shall make available to the Authority and its representatives and advisers such information (including financial and operational information) as they shall reasonably require in connection with the matters referred to in paragraph 2.1.
- (b) The Franchisee shall prepare and present such information in such manner (including in disaggregated form) as the Authority may require, and shall provide such assistance as the Authority may require in connection with the verification of such information.
- (c) The Franchisee shall, when requested to do so, provide such confirmation in relation to the accuracy of the contents of the documents referred to in paragraph 2.1 as the Authority shall require from time to time.

2.3 In connection with any proposal (whether or not yet finalised) to enter into separate franchise agreements and/or other agreements with more than one Successor Operator, each relating to some only of the Franchise Services (whether or not together with other railway passenger services) at or following the end of the Franchise Period, the Franchisee agrees and acknowledges that the Authority may require:

- (a) that the Franchisee provides the Authority with additional information and reports and analysis in respect of such Service Groups as the Authority may specify. This may include:
 - (i) information relating to the operational and financial performance of the Franchisee in relation to such Service Groups; and
 - (ii) identification of those employees, assets and liabilities which relate to such Service Groups together with an indication of the extent to which the same are shared between the operation of different Service Groups; and
- (b) subject to paragraph 2.4, that the Franchisee reorganises the business of providing the Franchise Services in order to facilitate the transfer anticipated by this Schedule 15.1 on an ongoing basis of the business of providing the Franchise Services within each of such Service Groups to separate Successor Operators. This may include, to the extent reasonably practicable:
 - (i) the re-organisation of personnel such that an appropriate number of employees (having sufficient skills, qualifications and experience) will transfer by operation of Law to each Successor Operator of each such Service Group; and/or
 - (ii) entering into additional or clarificatory contractual or other arrangements so that the Successor Operator of each such Service Group will have the necessary assets and rights to operate the Franchise Services within that Service Group.

2.4 The Authority shall reimburse any reasonable out-of-pocket expenses that the Franchisee may incur in complying with its obligations under this paragraph 2.

3. NON-FRUSTRATION OF TRANSFER TO SUCCESSOR OPERATOR

3.1 The Franchisee shall take no action or steps which is or are designed, directly or indirectly:

- (a) to prevent, prejudice or frustrate the transfer as a going concern of the business of providing the Franchise Services at the end of the Franchise Period to a Successor Operator; or
- (b) to avoid, frustrate or circumvent any provision of this Agreement (including in particular the provisions of Schedule 14 (*Preservation of Assets*) and this Schedule 15) which is included in whole or in part for the purpose of preventing any such preventive, prejudicial or frustrating action or steps.

3.2 Subject to the restrictions set out in paragraph 3.1 and the other provisions of this Agreement, the Franchisee may take such action as it may require for the purposes of bidding to become, or becoming, a Successor Operator.

SCHEDULE 15.2

Last 12 or 13 Months of Franchise Period

1. LAST 12 OR 13 MONTH PERIOD

1.1 Where reference is made in this Agreement to the last 12 or 13 months of the Franchise Period, such period shall be deemed (except where the actual date of expiry of the Franchise Period is known) to commence on the earliest of the following dates:

- (a) the date which is 12 or 13 months, as the case may be, prior to the Expiry Date;
- (b) the date on which the Authority notifies the Franchisee that such period of 12 or 13 months shall be deemed to commence on the grounds that the Authority reasonably considers that an Event of Default may occur within the following 12 months; or
- (c) the date on which the Authority notifies the Franchisee that such period of 12 or 13 months shall be deemed to commence on the grounds that the Authority considers it reasonably likely that this Agreement will be terminated by agreement between the Authority and the Franchisee within such period.

1.2 Any such period (which may be longer or shorter than 12 or 13 months, as the case may be) shall expire on the Expiry Date or, if earlier, in the case of periods commencing under paragraph 1.1(b) or (c), the date falling 12 or 13 months after the date of any notice under paragraph 1.1(b) or (c) or, in each case, such earlier date as the Authority may determine.

1.3 If the last 12 or 13 months of the Franchise Period has commenced (or has been deemed to have commenced) and the notice referred to in paragraph 1.5 of Schedule 18 (*Franchise Continuation Criteria*) is given, then the last 12 or 13 months of the Franchise Period (as the case may be) shall not be interrupted, but shall continue to the Expiry Date.

2. FRANCHISE EMPLOYEES

Terms of Employment of Existing Employees

2.1 The Franchisee shall not, and shall secure that each other relevant employer shall not, without the prior consent of the Authority (which shall not be unreasonably withheld or delayed), vary or purport or promise to vary the terms or conditions of employment of any Franchise Employee (in particular, the Franchisee shall not promise to make any additional payment or provide any additional benefit or vary any term or condition relating to holiday, leave or hours to be worked) where such variation or addition:

- (a) takes effect in the last 12 months of the Franchise Period unless it is in the ordinary course of business and, when aggregated with any other variation or addition which takes effect during such period, represents an increase in the remuneration of a Franchise Employee of no more than the amount determined in accordance with the following formula:

$$\frac{\text{MAEI} + \text{JAEI} + \text{SAEI} + \text{DAEI}}{4}$$

where:

MAEI is the increase in the Average Earnings Index between March in the preceding 12 months and the corresponding March 1 year before, expressed as a percentage;

JAEI is the increase in the Average Earnings Index between June in the preceding 12 months and the corresponding June 1 year before, expressed as a percentage;

SAEI is the increase in the Average Earnings Index between September in the preceding 12 months and the corresponding September 1 year before, expressed as a percentage; and

DAEI is the increase in the Average Earnings Index between December in the preceding 12 months and the corresponding December 1 year before, expressed as a percentage;

- (b) wholly or partly first takes effect after the end of the Franchise Period;
- (c) results in any such employment not being terminable by the Franchisee or other relevant employer within 6 months of the expiry of the Franchise Period;
- (d) relates to a payment or the provision of a benefit triggered by termination of employment;
- (e) relates to the provision of a benefit (excluding base salary) which any such employee will or may have a contractual right to receive after the expiry of the Franchise Period; or
- (f) prevents, restricts or hinders any such employee from working for a Successor Operator or from performing the duties which such employee performed for the Franchisee.

2.2 Without limiting the foregoing, the Franchisee shall consult the Authority as soon as reasonably practicable in any circumstances in which the Authority's consent under paragraph 2.1 may be required. Further, it shall always be deemed to be reasonable for the Authority to withhold its consent to a variation or addition which is prohibited without such consent under paragraph 2.1(a) provided the Authority:

- (a) makes an overall increase in Franchise Payments equal to the amount of the direct net losses suffered by the Franchisee on the days (**Relevant Days**) when the Passenger Services are affected by industrial action taken by the Franchise Employees which is a consequence of a refusal by the Authority to agree to the variation or addition; and
- (b) agrees that during the Relevant Days there shall be no application of the regime by which the Franchisee is required to make payments to the Authority in respect of poor performance to the extent that such poor performance is a consequence of the industrial action referred to in paragraph 2.2(a). Further, to the extent that the Franchisee may be in contravention of this Agreement (excluding contraventions in relation to safety requirements) as a consequence of the industrial action referred to in this paragraph, such contravention shall be waived by the Authority.

2.3 The Franchisee shall consult with the Authority as soon as reasonably practicable in any circumstances in which the Authority's consent under paragraph 2.1 may be required. The expression "promise to vary" when used in paragraph 2.1 includes any offer or indication of willingness to vary (whether or not such offer or willingness is made conditional upon obtaining the Authority's consent).

Terms of Employment of New Employees

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

- (a) such terms or conditions are materially different from the terms or conditions of employment of equivalent or nearest equivalent Franchise Employees at the date on which such employment is scheduled to commence; and
- (b) if such terms or conditions were granted to such equivalent Franchise Employees already employed by the Franchisee by way of variation to their terms or conditions of employment, the Franchisee would be in contravention of paragraph 2.1.

Changes in Numbers and Total Cost of Employees

2.5 Subject to and excluding any increase in the remuneration of Franchise Employees permitted under paragraph 2.1, the Franchisee shall not, and shall secure that each other relevant employer shall not, without the prior written consent of the Authority (which shall not be unreasonably withheld or delayed) increase or decrease in the last 12 months of the Franchise Period the number of Franchise Employees such that:

- (a) the total number of Franchise Employees or the total cost per annum to the Franchisee and each other relevant employer of employing all Franchise Employees is increased; or
- (b) the total number of Franchise Employees is decreased, in each case, by more than 5 per cent. during such period of 12 months.

3. FARES

Reduction in Prices of Fares

- 3.1(a) During the last 13 months of the Franchise Period the Franchisee shall not, without the prior written consent of the Authority (not to be unreasonably withheld), set the Price or Child Price of or sell (except to the extent required to do so under the terms of the Ticketing and Settlement Agreement as a result of the Price or Child Price of a Fare being set by another person) any Fare which would entitle the purchaser of such Fare to travel on all or any of the Passenger Services after the Franchise Period for an amount which is less than the Price or the Child Price of that Fare immediately before the commencement of such 13 month period or, in the case of a new Fare, the Price of its nearest equivalent immediately before the commencement of such period.
- (b) Paragraph 3.1(a) shall not prevent the Franchisee from giving any discount or reduction to which the purchaser of a Fare may be entitled by virtue of:
 - (i) presenting a Discount Card (or any equivalent replacement thereof) issued by the Franchisee before the commencement of such 13 month period and to which the purchaser would have been entitled before the commencement of such period;

- (ii) presenting a Discount Card issued by another train operator;
 - (iii) the Passenger's Charter or the passenger's charter of any other train operator;
or
 - (iv) any relevant conditions of carriage.
- (c) The Franchisee shall procure that persons acting as its agent (except persons acting in such capacity by virtue of having been appointed under Parts II to VI of Chapter 9 of the Ticketing and Settlement Agreement or by being party to the Ticketing and Settlement Agreement) shall comply with the provisions of paragraph 3.1(a) to the extent that such provisions apply to the selling of Fares by the Franchisee.

Percentage Allocations

- 3.2(a) Except to the extent that the Authority may consent from time to time (such consent not to be unreasonably withheld), the Franchisee shall not, in the last 13 Reporting Periods of the Franchise Period, take any action or step which may result in its Percentage Allocation (as defined in the Ticketing and Settlement Agreement) in respect of any Rail Product (as defined in the Ticketing and Settlement Agreement) being reduced.
- (b) The Franchisee shall notify the Authority before taking any such action or step in the last 13 Reporting Periods of the Franchise Period and upon becoming aware of any other person proposing to take any action or step which may have the same effect. The Franchisee shall take such action as the Authority may reasonably request in order to prevent any such reduction, including submitting any dispute to any relevant dispute resolution procedures.

4. INTER-OPERATOR SCHEMES

Voting on Scheme Councils

- 4.1 Subject to paragraph 4.3, during the last 12 months of the Franchise Period the Franchisee shall give the Authority reasonable notice of:
- (a) any meeting of:
 - (i) a scheme council of an Inter-Operator Scheme on which the Franchisee is represented; or
 - (ii) a scheme management group of any Inter-Operator Scheme:
 - (A) in which the Franchisee has a permanent position; or
 - (B) where the Franchisee employs a member of such group;
 - (b) the resolutions to be voted upon at any such meeting; and
 - (c) the Franchisee's voting intentions.
- 4.2 Subject to paragraph 4.3, the Franchisee shall vote at any such meeting in the manner required by the Authority.

Successor Operator

- 4.3 Where the Franchisee has been notified by the Authority that a Successor Operator has been selected (whether a franchisee or otherwise and whether or not such selection is conditional), the Franchisee shall give such Successor Operator reasonable notice of:
- (a) any meeting referred to in paragraph 4.1(a);
 - (b) any resolutions to be voted upon at any such meeting where such resolutions might reasonably be considered to affect the interests of such Successor Operator; and
 - (c) the Franchisee's voting intentions.
- 4.4 The Franchisee shall discuss with the Successor Operator in good faith with a view to agreeing the way the Franchisee should vote on the resolutions referred to in paragraph 4.3(b). In the absence of any agreement, the Franchisee shall, as soon as reasonably practicable thereafter, having regard to the deadline for voting on such resolutions, refer the matter to the Authority for determination.
- 4.5 The Authority shall reasonably determine the way the Franchisee should vote on any resolutions referred to it in accordance with paragraph 4.4, having regard to the transfer of the Franchise Services as a going concern at the end of the Franchise Period.
- 4.6 The Franchisee shall vote at any meeting referred to in paragraph 4.1(a) in accordance with any agreement pursuant to paragraph 4.4 or determination pursuant paragraph 4.5

SCHEDULE 15.3

Handover Package

1. HANDOVER PACKAGE STATUS

1.1 The Franchisee shall maintain the Handover Package and shall update it at least every 3 Reporting Periods.

1.2 The Franchisee shall ensure that any Successor Operator will have immediate access to the Handover Package on the expiry of the Franchise Period and shall accordingly agree with the Authority from time to time a location at which such Handover Package should be kept which, unless otherwise agreed, shall be the offices of a solicitor approved by the Authority.

2. DIRECTOR'S CERTIFICATE

Once in each Franchisee Year, the Franchisee shall provide to the Authority a certificate signed by a nominated and duly authorised director of the Franchisee, addressed to the Authority, which confirms that the Handover Package contains the information and objects specified in the Appendix (*Form of Handover Package*). The Franchisee shall make the Handover Package available for inspection or audit by the Authority or its representative whenever requested.

3. HANDOVER PACKAGE INFORMATION

Without prejudice to the preceding provisions of this Schedule 15.3, the Franchisee shall provide to the Authority the following information and letters, and shall supply revised information and/or letters to the Authority as and when required in order to ensure that such information and letters remain accurate and up to date:

- (a) details of the location of the Handover Package, which details shall include one or more contact name, address and telephone number enabling contact during, and outside, normal office hours with persons authorised and able to release the Handover Package;
- (b) a letter in a form approved by the Authority:
 - (i) from the Franchisee to the Authority confirming that an irrevocable instruction has been given to the solicitor holding (or other persons authorised by the Authority for such purpose) the Handover Package that any of the Authority, a Successor Operator or its agent, is entitled at any time to require access to and delivery of the Handover Package on demand, and confirming the Authority's right to audit the Handover Package at any time; and
 - (ii) from the solicitor holding the Handover Package (or other person authorised by the Authority for such purpose) to the Authority confirming that he or she will release the Handover Package to any of the Authority, a Successor Operator or its agent, on demand, and confirming that the Handover Package will be made available for the purposes of auditing its contents when so required by the Authority;
- (c) a list of all key contacts, as set out in the Appendix (*Form of Handover Package*); and

- (d) a letter in a form approved by and addressed to the Authority confirming the details of any insurer providing insurance to the Franchisee, and authorising the insurer (and any relevant broker) to release any insurance-related information to any of the Authority, a Successor Operator or its agent on demand.

4. ACTIONS REQUIRED IMMEDIATELY ON HANDOVER

4.1 The Franchisee shall immediately on the expiry of the Franchise Period make available to the Authority:

- (a) information as to the status of each purchase order or contract, including its award date, anticipated delivery date, confirmation of receipt of goods or services and the payment records for each purchase order, together with any matters in dispute with the appointed subcontractor and, to the extent that the Franchisee is a subcontractor to another Train Operator, equivalent information in respect of that Train Operator; and
- (b) information concerning any contract necessary for the continued operation of the franchise where a procurement or bidding process has been initiated.

4.2 The Franchisee agrees that the Authority or its agents may have access to and use free of charge any information contained in any computer system or in hard copy format as it sees fit (for the purposes of continuing the operation of the Franchise Services).

5. MAINTENANCE RECORDS

The Franchisee shall immediately on expiry of the Franchise Period provide:

- (a) records of the status of the maintenance of the rolling stock vehicles used in the provision of the Passenger Services;
- (b) records of the status of the maintenance of any lifting equipment;
- (c) a list of any deferred maintenance; and
- (d) records of the status of the maintenance of any depot or station which is a Franchise Asset,

including the extent of completion of examinations and the modification status of each such rolling stock vehicle.

6. TICKETING ARRANGEMENTS

The Franchisee shall provide immediately on expiry of the Franchise Period a statement certifying:

- (a) all ticketing transactions with the public or credit card agencies that are in process and not yet complete, together with any allocations on multi-modal travel with other agencies or local authorities;
- (b) the extent of any outstanding claims with ticketing settlement agencies;
- (c) refund arrangements (whether under the Passenger's Charter or not) with members of the public or other Train Operators or ticketing settlement agencies that are in process and not yet complete; and
- (d) commissions owed and/or due.

APPENDIX TO SCHEDULE 15.3

Form of Handover Package

1. KEY CONTACTS

A list of key contacts to include all directors (statutory or otherwise) and all managers with responsibility for a department/function within the Franchisee's business. This must include operations, commercial, personnel and public affairs departments (or in each case their nearest equivalents). This list must include the name, address, home, office and mobile telephone numbers, and a brief description of the person's role and responsibilities in the business.

2. PROPERTY

A list of all property owned, leased, operated or occupied by the Franchisee which shall include the address, telephone number and contact telephone number of each property. Where applicable, the list will also include the name, address and telephone number of the lessor and/or the party which has granted authority to use or occupy the property, and any relevant reference numbers applicable to that lease or occupation.

3. CONTRACTS

A printed or electronic list (in a format acceptable to the Authority) of all contracts (sales, purchases or otherwise including leases and licences) between the Franchisee and the counterparty or counterparties to each such contract, showing the name, address and telephone number of each counterparty; the contract reference number of the Franchisee and each counterparty (if any); and the contract price/value, term and expiry date. This requirement shall apply to all contracts unless otherwise agreed by the Authority.

4. SYSTEMS

A list of the electronic systems in use by the Franchisee, together with the name of the Franchisee's Information Technology Manager (or the holder of any equivalent post), office address and telephone number who is responsible for administration of each such system.

5. DAILY OPERATIONS

A printed or electronic list (in a format acceptable to the Authority) of all assets owned or operated by the Franchisee, together with their location.

6. INSURANCE

A list of the names, addresses and telephone numbers of all insurers and any relevant broker providing insurance to the Franchisee, together with the relevant policy numbers and other references and details of any outstanding claims or unresolved disputes.

SCHEDULE 15.4

Provisions Applying on and after Termination

1. NOVATION OF ACCESS AGREEMENTS ON TERMINATION OF THIS AGREEMENT

1.1 The Franchisee shall, to the extent so requested by the Authority on termination of this Agreement, in relation to any Access Agreement to which it is a party, novate its interest under any relevant Access Agreement (and any related Collateral Agreement) to the Authority or as it may direct.

1.2 Such novation shall be subject to the agreement of any counterparty to such Access Agreement or Collateral Agreement and, to the extent applicable, the Regulator.

1.3 Such novation shall be on such terms as the Authority may reasonably require, including:

- (a) that the Franchisee shall not be released from any accrued but unperformed obligation, the consequences of any breach of the relevant agreement which is the subject of arbitration or litigation between the Authority and the Franchisee or any liability in respect of any act or omission under or in relation to the relevant agreement prior to, or as at the date of, any such novation (except to the extent that the Authority or its nominee agrees to assume responsibility for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant novation); and
- (b) that neither the Authority nor its nominee shall be obliged, in connection with such novation, to agree to assume responsibility for any unperformed obligation, liability or consequences of a breach referred to in paragraph 1.3(a),

but shall not, unless the Franchisee otherwise agrees, be on terms which release any counterparty to the relevant agreement from any liability to the Franchisee arising prior to the date of such novation.

2. CO-OPERATION WITH SUCCESSOR OPERATOR

2.1 In order to ensure the continuity of, and an orderly handover of control over, the Franchise Services, the Franchisee shall co-operate with:

- (a) where a Successor Operator has been appointed, such Successor Operator; or
- (b) where a Successor Operator has not been so appointed, the Authority,

and shall take such steps as may be reasonably requested by the Authority in connection therewith.

2.2 In satisfaction of its obligations under paragraph 2.1, the Franchisee shall bid for and secure the Timetable and the Train Plan for the Franchise Services to be operated by the Successor Operator (whether or not a Successor Operator has been identified and whether or not there is in place an Access Agreement relating to the relevant period).

3. TRANSFER OF PRIMARY FRANCHISE ASSETS

Option Arrangements

- 3.1(a) The Authority hereby grants to the Franchisee the right to require the Authority to make, and the Franchisee hereby grants to the Authority the right to make, a Transfer Scheme in accordance with Schedule 21 of the Transport Act for the transfer of any or all Primary Franchise Assets on the expiry of the Franchise Period.
- (b) On or within 14 days before the expiry of the Franchise Period, either party may serve notice on the other party specifying the Primary Franchise Assets to be transferred.
- (c) The Authority may (and shall if required by the Franchisee) make one or more such Transfer Schemes for the transfer of the Primary Franchise Assets specified in any such notice within 14 days after service of such notice.
- (d) Any Franchise Assets or Primary Franchise Assets which are not so transferred shall cease to be designated as such 14 days after service of such notice.

Supplemental Agreement

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

Payment of Estimated Transfer Price

- 3.3(a) The Authority may require the Franchisee to pay to any transferee under a Transfer Scheme, or may require any such transferee to pay to the Franchisee, on the day on which the Transfer Scheme comes into force such sum as the Authority may determine should be so paid having regard to:
- (i) its estimate of the sum likely to be paid under the relevant Supplemental Agreement in respect of the Primary Franchise Assets being transferred under the relevant Transfer Scheme;
 - (ii) its estimate of any other sums likely to be paid thereunder;
 - (iii) the financial condition of the Franchisee and the transferee and whether any estimate so paid would be likely to be repaid, if in excess of the sums eventually payable thereunder; and
 - (iv) such other matters as the Authority may consider appropriate.
- (b) The Franchisee shall pay to any such transferee the sum determined by the Authority in accordance with paragraph 3.3(a) on the day on which the relevant Transfer Scheme comes into force.

Possession of Franchise Assets

3.4 On the coming into force of a Transfer Scheme, the Franchisee shall deliver up to the Authority (or its nominee) possession of the Primary Franchise Assets transferred under such Transfer Scheme.

4. ASSOCIATED OBLIGATIONS ON TERMINATION

Assistance in Securing Continuity

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

Access

4.2 On the expiry of the Franchise Period, the Franchisee shall grant the Authority and its representatives such access as the Authority may reasonably request to any property owned, leased or operated by the Franchisee at such time, for the purpose of facilitating the continued provision of the Franchise Services.

Key Contracts

- 4.3(a) The Franchisee shall provide such assistance to any Successor Operator as the Authority may reasonably require in ensuring that, pursuant to any Direct Agreements, such Successor Operator may enter into (or enjoy the benefit of) contracts equivalent to the relevant Key Contracts (or part thereof).
- (b) In satisfaction of its obligations under paragraph 4.3(a), the Franchisee shall terminate, surrender, cancel or undertake not to enforce its rights under any Key Contract (or part thereof) provided that nothing in this paragraph shall require the Franchisee to undertake not to enforce any rights under a Key Contract relating to the period prior to the expiry of the Franchise Period.

Change of Name

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

Licences

4.5 On the expiry of the Franchise Period, the Franchisee shall assign the Licences to the Authority's nominee, to the extent and in the manner requested by the Authority, and to the extent permitted by the Regulator.

Property Leases

- 4.6(a) The Franchisee shall, on the expiry of the Franchise Period, if requested by the Authority, assign its interest under all or any Property Leases to the Authority or as it may direct, subject where applicable to the agreement of any other party to such Property Lease or the Regulator.
- (b) Such assignment shall be on such terms as the Authority may reasonably require, including:
- (i) that the Franchisee shall not be released from any accrued but unperformed obligation, the consequences of any antecedent breach of a covenant or obligation in the Property Leases or any liability in respect of any act or omission under or in relation to the Property Lease prior to, or as at the date of, any such assignment (except to the extent that the Authority or its nominee agrees to assume responsibility for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant assignment); and
 - (ii) that neither the Authority nor its nominee shall be obliged, in connection with such assignment, to agree to assume responsibility for any unperformed obligation, liability or consequences of a breach referred to in paragraph 4.6(b)(i), and the Franchisee shall indemnify the Authority or its nominee, as the case may be, on an after-tax basis against any costs, losses, liabilities or expenses suffered or incurred in relation thereto.
- (c) The Franchisee shall, on the occurrence of any of the circumstances specified in paragraph 4.6(a) in relation to any other Train Operator who is a party to a Property Lease to which the Franchisee is also party, agree to the assignment of such Train Operator's interest under the relevant Property Lease to the Authority or as it may direct, subject, where applicable, to the consent of Network Rail. The provisions of paragraph 4.6(b) shall apply to any such assignment.
- (d) The Franchisee shall notify the Authority on becoming aware of any circumstances which might lead to the Authority being able to require the Franchisee to assign its interest or agree to the assignment of another Train Operator's interest under this paragraph 4.

5. FRANCHISEE'S INTELLECTUAL PROPERTY

- 5.1(a) On the expiry of the Franchise Period, the Franchisee will grant to any Successor Operator licences of any intellectual property which:
- (i) is owned by or licensed to the Franchisee;
 - (ii) was not owned by or licensed to it immediately prior to the Franchise Commencement Date;
 - (iii) has not been designated as a Primary Franchise Asset;
 - (iv) does not represent or constitute a Mark; and
 - (v) which may, in the reasonable opinion of the Authority, be necessary for any Successor Operator to operate the Franchise Services on an efficient and economic basis after the expiry of the Franchise Period.

- (b) When agreeing the terms on which intellectual property is to be licensed to it, the Franchisee shall use all reasonable endeavours to ensure that such terms include the right to sub-license such intellectual property in accordance with this paragraph 5.1. The Franchisee shall not enter into a licence that does not include such a provision without first obtaining the Authority's prior written consent (such consent not to be unreasonably withheld).
- 5.2(a) Any such licence shall be granted to the relevant Successor Operator for such period as the Authority may determine to be reasonably necessary for the purpose of securing continuity of the provision of the Franchise Services and shall be free of charge and royalty-free for a period of 1 month or less.
- (b) If such licence is for a period in excess of 1 month, the grant of the licence shall be subject to payment of a reasonable royalty (backdated to the expiry of the Franchise Period) on the basis of a willing licensor and licensee entering into a licence on comparable terms to similar licences of such intellectual property. If the Franchisee and the relevant Successor Operator are unable to agree such royalty, the Franchisee shall submit such dispute for resolution in accordance with such dispute resolution rules as the Authority may require.
- 5.3 Any such licence shall be in such form as the Authority shall reasonably determine and shall:
- (a) be non-exclusive and limited to use solely for the purposes of the provision and operation of the Franchise Services and will not provide for any right to use such intellectual property for any other purpose (including its marketing or exploitation for any other purpose);
 - (b) be terminable on material breach by the Successor Operator;
 - (c) contain an indemnity from the Franchisee to the effect that to the best of its knowledge and belief it owns the relevant intellectual property or has the right to license it and the licensing of it and the subsequent use of the intellectual property will not infringe any third part intellectual property rights; and
 - (d) require the Successor Operator, to the extent that it relates to any trade marks, to use such trade marks in such manner as may reasonably be required by the Franchisee provided that it shall not be reasonable for the Franchisee to require any such trade mark to be used in a manner materially different from its use during the Franchise Period.

APPENDIX 1 TO SCHEDULE 15.4

Form of Transfer Scheme

Dated _____ 20[●]

**TRANSFER SCHEME
OF
THE STRATEGIC RAIL AUTHORITY
MADE PURSUANT TO SCHEDULE 21 OF THE
TRANSPORT ACT 2000**

**IN FAVOUR OF
[*SUCCESSOR OPERATOR*]**

**IN RESPECT OF
CERTAIN PROPERTY, RIGHTS AND LIABILITIES
OF
[*FRANCHISEE*]**

Strategic Rail Authority
55 Victoria Street
London SW1H 0EU

TRANSFER SCHEME

Whereas:

(A) [Franchisee] (the *Transferor*) has been providing certain services for the carriage of passengers by railway and operating certain stations and light maintenance depots pursuant to a franchise agreement with the Strategic Rail Authority (the *Authority*), Greater Manchester Passenger Transport Executive, Merseyside Passenger Transport Executive, South Yorkshire Passenger Transport Executive, Tyne & Wear Passenger Transport Executive and West Yorkshire Passenger Transport Executive dated [●] (the *Franchise Agreement*).

(B) The Franchise Agreement terminated or is to terminate on [●] and [Successor Operator] (the *Transferee*) is to continue the provision of all or part of such services or the operation of all or some of such stations and light maintenance depots under a new franchise agreement or in connection with the performance or exercise of the duties and powers of the Authority to secure the provision of such services or the operation of such stations or light maintenance depots.

(C) Certain property, rights and liabilities of the Transferor which were designated as franchise assets for the purpose of the Franchise Agreement are to be transferred to the Transferee under a transfer scheme made by the Authority under Schedule 21 of the Transport Act 2000.

The Authority, in exercise of the powers conferred on it by Schedule 21 of the Transport Act 2000, hereby makes the following scheme:

1. DEFINITIONS AND INTERPRETATION

In this Transfer Scheme *functions* has the meaning ascribed to it in the Transport Act 2000 and *statutory provision* has the meaning ascribed to it in paragraph 7 of Schedule 21 of the Transport Act 2000.

2. TRANSFER OF PROPERTY, RIGHTS AND LIABILITIES

The property, rights and liabilities of the Transferor specified or described in the Schedule shall be transferred to, and vest in, the Transferee.

3. STATUTORY FUNCTIONS

Subject to any amendment to the relevant statutory provisions which comes into force on or after the date on which this Transfer Scheme is made, there shall be transferred to the Transferee all the functions of the Transferor under any statutory provisions if and to the extent that any such statutory provision:

- (a) relates to any property which is to be transferred by this Transfer Scheme; or
- (b) authorises the carrying out of works designed to be used in connection with any such property or the acquisition of land for the purpose of carrying out any such works.

4. SUPPLEMENTAL AGREEMENT

Each of the Transferor and the Transferee shall enter into the Supplemental Agreement (as defined in the Franchise Agreement) on the coming into force of this Transfer Scheme.

This Transfer Scheme is made by the Authority on [●]

THE CORPORATE SEAL
OF THE **STRATEGIC RAIL**
AUTHORITY
HEREUNTO AFFIXED IS

AUTHENTICATED BY:



SCHEDULE TO THE TRANSFER SCHEME

[List relevant Franchise Assets to be transferred to Successor Operator]

APPENDIX 2 TO SCHEDULE 15.4

Form of Supplemental Agreement

Dated _____ 20[•]

[*OUTGOING FRANCHISEE*]

and

[*SUCCESSOR OPERATOR*]

SUPPLEMENTAL AGREEMENT

to the transfer scheme dated [•] made
by the Strategic Rail Authority in respect of
certain property rights and liabilities of
[*OUTGOING FRANCHISEE*]

Strategic Rail Authority
55 Victoria Street
London SW1H 0EU

This Agreement is made on [●] 20[●]

BETWEEN

- (1) [OUTGOING FRANCHISEE] whose registered office is at [registered office] (the **Transferor**); and
- (2) [SUCCESSOR OPERATOR] whose registered office is at [registered office] (the **Transferee**).

WHEREAS

- (A) The Transferor has been providing certain services and the carriage of passengers by railway and operating certain stations and light maintenance depots pursuant to a franchise agreement with the Strategic Rail Authority (the **Authority**) Greater Manchester Passenger Transport Executive, Merseyside Passenger Transport Executive, South Yorkshire Passenger Transport Executive, Tyne & Wear Passenger Transport Executive and West Yorkshire Passenger Transport Executive dated [●] (the **Franchise Agreement**).
- (B) The Franchise Agreement terminated on [●] and the Transferee has been selected by the Authority to continue the provision of all or part of such services pursuant either to a franchise agreement with the Authority or arrangements made with the Authority in connection with the Authority's duties and powers.
- (C) Certain property, rights and liabilities of the Transferor are to be transferred to the Transferee pursuant to a transfer scheme made by the Authority on [●] under Schedule 21 of the Transport Act 2000 (the **Transfer Scheme**).
- (D) This agreement is supplemental to the Transfer Scheme and sets out certain terms between the Transferor and the Transferee in relation to the transfer of such property, rights and liabilities under the Transfer Scheme and the transfer of certain other property, rights and liabilities at the same time.
- (E) If the Transferor is in breach of its obligations under this Supplemental Agreement the Authority is entitled under Paragraph 4.5(a)(iv) of Schedule 12 (*Financial Obligations and Covenants*) of the Franchise Agreement to make a demand under the Performance Bond.

IT IS AGREED THAT

1. DEFINITIONS AND INTERPRETATION

Definitions

- 1.1 The following words and expressions shall have the following meaning:

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

Completion Payment has the meaning ascribed to that term in clause 2.1;

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

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

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

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

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

Relevant Contract Liabilities means such rights and liabilities of the Transferor as may be transferred to the Transferee on the expiry of the Franchise Period in relation to any Licence, Access Agreement or Property Lease under paragraphs 1, 4.5 and 4.6 of Schedule 15.4 (*Provisions Applying on and after Termination*) of the Franchise Agreement;

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

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

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

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

Reporting Accountants means such firm of accountants as may be selected by agreement between the parties within 4 weeks of the preparation of the Net Asset Statement or, in the absence of such agreement, selected by the Authority;

Season Ticket Fare means a Fare which entitles the purchaser to make an unlimited number of journeys in any direction during the period for which, and between the stations and/or the zones for which such Fare is valid;

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

TOGC has the meaning assigned to that term in clause 6.2;

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

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

Transferring Assets and Liabilities has the meaning assigned to that term in clause 2.1;

Undisclosed Employee has the meaning assigned to that term in clause 7.1(e); and

Value Added Tax means value added tax.

Construction and Interpretation

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

2. TRANSFER PRICE

Amount and Payment

- 2.1 The price for the transfer of:
- (a) the Relevant Franchise Assets;
 - (b) the Relevant Contract Liabilities;
 - (c) the Relevant Debits and Credits; and
 - (d) the Relevant Employee Liabilities,

(together the ***Transferring Assets and Liabilities***) shall (subject to adjustment as expressly provided in this Agreement) be an amount equal to the Net Asset Value of which the sum of £[amount], as determined under paragraph 3.3 of Schedule 15.4 (*Provisions Applying on and after Termination*) of the Franchise Agreement (the ***Completion Payment***) shall be paid in immediately available funds by the Transferor to the Transferee, or by the Transferee to the Transferor, as determined under paragraph 3.3 of Schedule 15.4 of the Franchise Agreement, on the Transfer Date and the balance (if any) shall be paid in accordance with clause 2.5.

Net Asset Statement

- 2.2 The Transferee shall procure that, as soon as practicable and in any event not later than 2 months following the Transfer Date, there shall be drawn up a statement showing a true and fair view of the aggregate of the amount of each separate asset and liability of the Transferring Assets and Liabilities as at the Transfer Date.
- 2.3 The Net Asset Statement shall be:
- (a) drawn up in the manner described in the Schedule;
 - (b) prepared on such basis as would enable the Transferee’s auditors, if so requested, to give an unqualified audit report thereon to the effect that it had been drawn up in accordance with the Schedule; and
 - (c) presented, initially as a draft, to the Transferor immediately following its preparation for review in conjunction with its auditors.
- 2.4 If the Transferor and the Transferee have failed to agree the Net Asset Statement within 4 weeks following such presentation, the matter shall be referred to the Reporting Accountants who shall settle and complete the Net Asset Statement as soon as practicable and shall determine the amount of the Net Asset Value as shown by the Net Asset Statement.

Adjustment of Price

- 2.5 If the Purchase Price exceeds or is less than the Completion Payment, the Transferee shall pay to the Transferor or, as the case may be, the Transferor shall pay to the Transferee, in either case within 14 days of the agreement or determination of the Net Asset Value, an amount equal to such excess or deficiency together in either case with interest thereon calculated from the Transfer Date at the Interest Rate.

3. REFERENCES TO THE REPORTING ACCOUNTANTS

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

- (a) the Reporting Accountants shall be engaged jointly by the parties on the terms set out in this Agreement and otherwise on such terms as shall be agreed; provided that neither party shall unreasonably (having regard, amongst other things, to the provisions of this Agreement) refuse its agreement to terms proposed by the Reporting Accountants or by the other party. If the terms of engagement of the Reporting Accountants have not been settled within 14 days of their appointment having been determined (or such longer period as the parties may agree) then, unless one party is unreasonably refusing its agreement to those terms, such accountants shall be deemed never to have been appointed as Reporting Accountants, save that the accountants shall be entitled to their reasonable expenses under clause 3(d), and new Reporting Accountants shall be selected in accordance with the provisions of this Agreement;
- (b) if Reporting Accountants acting or appointed to act under this Agreement resign, withdraw, refuse to act, or are disqualified for any reason from performing their duties then, except as may be agreed between the parties, the parties shall appoint a replacement in accordance with the definition of **Reporting Accountants**;
- (c) the Reporting Accountants shall be deemed to act as experts and not as arbitrators;
- (d) the Reporting Accountants shall have power to allocate their fees and expenses for payment in whole or in part by any party at their discretion. If not otherwise allocated they shall be paid as to half by the Transferor and as to half by the Transferee;
- (e) each of the parties shall promptly on request supply to the Reporting Accountants all such documents and information as they may require for the purpose of the reference; and
- (f) the decision of the Reporting Accountants shall (in the absence of objection on the grounds of any error discovered within 14 days of the issue of their decision) be conclusive and binding and shall not be the subject of any appeal by way of legal proceeding or arbitration or otherwise.

4. WARRANTY

The Transferor warrants and represents to the Transferee that the Relevant Contract Liabilities and the Relevant Franchise Assets are, to the extent they are property or rights, transferring to the Transferee free and clear of all Security Interests.

5. INTEREST

If the Transferor or the Transferee defaults in the payment when due of any sum payable under this Agreement (whether determined by agreement or pursuant to an order of a court or

otherwise) the liability of the Transferor or the Transferee (as the case may be) shall be increased to include interest on such sum from the date when such payment is due until the date of actual payment (after as well as before judgement) at a rate equal to the Interest Rate. Such interest shall accrue from day to day.

6. VALUE ADDED TAX

6.1 All amounts under this agreement are expressed as exclusive of Value Added Tax where Value Added Tax is applicable.

6.2 The Transferor and the Transferee shall use all reasonable endeavours to secure that the transfer of the Relevant Franchise Assets, Relevant Contract Liabilities, Relevant Debits and Credits and Relevant Employee Liabilities is treated for Value Added Tax purposes as the transfer of all or part of a business as a going concern ("**TOGC**") and accordingly as neither a supply of goods nor a supply of services for the purposes of Value Added Tax.

6.3 If HM Customs & Excise direct that the transfer of all or part of the Relevant Franchise Assets, Relevant Contract Liabilities, Relevant Debits and Credits and Relevant Employee Liabilities cannot be treated as a TOGC, the Transferor shall provide the Transferee with a copy of such direction within 5 days of receipt thereof by the Transferor. The Transferee shall thereafter pay upon the receipt of a valid tax invoice the amount of any Value Added Tax which HM Customs & Excise has said is chargeable on the transfer of the Relevant Franchise Assets, Relevant Contract Liabilities, Relevant Debits and Credits and Relevant Employee Liabilities. If the transfer of the Transferring Assets and Liabilities does not constitute a TOGC solely as a result of any action or inaction of the Transferee (other than any action or inaction taken at the request of or with the agreement of the Transferor) then the Transferee shall in addition to paying an amount equal to the Value Added Tax indemnify the Transferor for any penalties and interest that may be incurred (save to the extent that such interest and penalties are incurred as a result of the Transferor's delay in paying Value Added Tax in respect of which the Transferee has already paid the Transferor) upon receipt of evidence of payment of such penalties and interest by the Transferor.

6.4 If the Transferee considers the direction issued by HM Customs & Excise referred to in clause 6.3 to be incorrect then, without prejudice to the Transferee's obligation under clause 6.3 to pay to the Transferor the amount of any Value Added Tax which HM Customs & Excise have said is chargeable on the transfer of the Relevant Franchise Assets, Relevant Contract Liabilities, Relevant Debits and Credits and Relevant Employee Liabilities, the Transferee may, within 30 days of receipt of such direction by the Transferor, give notice to the Transferor that it requires the Transferor to challenge such direction. Upon requesting such a challenge the Transferee shall agree to indemnify the Transferor for all reasonable costs that the Transferor may incur in taking such action upon receipt of evidence of those costs.

6.5 To the extent that there is any Value Added Tax finally determined to be payable on the transfer of the Relevant Franchise Assets, Relevant Contract Liabilities, Relevant Debits and Credits and Relevant Employee Liabilities in respect of which the Transferee has not previously made a payment to the Transferor, the Transferee shall, upon receipt of a valid tax invoice, pay an amount equal to such Value Added Tax to the Transferor.

6.6 If following the payment of any amount by the Transferee to the Transferor in respect of Value Added Tax pursuant to this Agreement it transpires that the whole or any part of that amount paid in respect of Value Added Tax that was not properly payable by the Transferor, the Transferor shall, if the Transferor has not accounted for such Value Added Tax to HM Customs & Excise, repay such amount to the Transferee and if the Transferor has already so accounted then the Transferor shall at the expense of the Transferee use all reasonable

endeavours to obtain repayment thereof from HM Customs & Excise (together with any interest which may be payable by HM Customs & Excise on the amount in question) and forthwith on receiving repayment from HM Customs & Excise shall pay to the Transferee the amount (including any such interest) that has been repaid.

6.7 If any amount is payable by the Transferor to the Transferee pursuant to this Agreement, it shall be exclusive of Value Added Tax and the Transferor shall, in addition, pay to the Transferee an amount equal to any Value Added Tax for which the Transferee is liable to account in respect of any supply made by the Transferee to the Transferor pursuant to this Agreement against delivery of an appropriate Value Added Tax invoice.

6.8 The Transferor shall on the Transfer Date deliver to the Transferee such of those records referred to in Section 49 of the Value Added Tax Act 1994 as relate exclusively to the Business or the part of the Business being transferred on condition that the Transferee undertakes to preserve those records in such manner and for such periods as may be required by law. Subject to HM Customs & Excise so permitting, all of the records referred to in Section 49 of the Value Added Tax Act 1994 which relate only partly to the Business shall be retained by the Transferor, the Transferor undertaking to the Transferee to preserve those records in such manner and for such periods as may be required by law and to give the Transferee as from the Transfer Date reasonable access during normal business hours to such records and to take copies of such records.

6.9 Prior to or on the Transfer Date the Transferor warrants to notify the Transferee of any election to waive exemption that has or will be made pursuant to Schedule 10 Paragraph 2 of the 1994 Value Added Tax in respect of any supply of land falling within Schedule 9 Group 1 of the aforementioned Act that forms part of the Transfer Scheme.

6.10 Where the Transferee has been notified by the Transferor that an election pursuant to clause 6.9 has been made in respect of any relevant assets within the Transfer Scheme the Transferee warrants to also elect to waive exemption as defined in clause 6.9 in respect of those relevant assets within the Transfer Scheme.

6.11 Where relevant to the Transfer Scheme the Transferee warrants that Article 5(2B) of the 1995 Value Added Tax (Special Provisions) Order does not apply to any of the assets within the Transfer Scheme.

7. EMPLOYEES

Transfer Regulations

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

(a) the contract of employment of each of the Relevant Employees (save insofar as such contract relates to any occupational pension scheme) shall be transferred to the Transferee with effect from the Transfer Date which shall be the “time of transfer” under the Transfer Regulations and the Transferee shall employ each such Relevant Employee on the terms of those contracts of employment (save insofar as such contract relates to any occupational pension scheme) with effect from the Transfer Date;

(b) the Transferor shall perform and discharge all its obligations in respect of all the Relevant Employees for its own account up to and including the Transfer Date including,

without limitation, discharging all wages and salaries of the Relevant Employees, all employer's contributions to any relevant occupational pension scheme and all other costs and expenses related to their employment (including, without limitation, any Taxation, accrued bonus, commission or other sums payable in respect of service prior to the close of business on the Transfer Date) and shall indemnify the Transferee and keep the Transferee indemnified against each and every action, proceeding, liability (including, without limitation, any Taxation), cost, claim, expense (including, without limitation, reasonable legal fees) or demand arising from the Transferor's failure so to discharge;

(c) the Transferee will assume the outstanding obligations of the Transferor in respect of the accrued but untaken holiday entitlements to the Transfer Date of the Relevant Employees and, in consideration, the Transferor will pay the Transferee within 14 days of the Transfer Date the full amount necessary to enable the Transferee to meet the cost of providing such accrued but untaken holiday entitlements as at the Transfer Date;

(d) the Transferor shall indemnify the Transferee and keep the Transferee indemnified against each and every action, proceeding, cost, claim, liability (including, without limitation, any Taxation), expense (including, without limitation, reasonable legal fees) or demand which relates to or arises out of any act or omission by the Transferor or any other event or occurrence prior to the Transfer Date and which the Transferee may incur in relation to any contract of employment or collective agreement concerning one or more of the Relevant Employees pursuant to the provisions of the Transfer Regulations or otherwise including, without limitation, any such matter relating to or arising out of:

(i) the Transferor's rights, powers, duties and/or liabilities (including, without limitation, any Taxation) under or in connection with any such contract of employment or collective agreement, which rights, powers, duties and/or liabilities (as the case may be) are or will be transferred to the Transferee in accordance with the Transfer Regulations; or

(ii) anything done or omitted before the Transfer Date by or in relation to the Transferor in respect of any such contract of employment or collective agreement or any Relevant Employee, which is deemed by the Transfer Regulations to have been done or omitted by or in relation to the Transferee save where the thing done or omitted to be done before the Transfer Date relates to the Transferee's failure to comply with its obligations referred to in clause 7.4;

(e) if any contract of employment or collective agreement which is neither disclosed in writing to the Transferee by the Transferor prior to the Transfer Date nor made available to the Authority under Schedule 15.3 (*Handover Package*) of the Franchise Agreement prior to the Transfer Date shall have effect as if originally made between the Transferee and any employee (the *Undisclosed Employee*) or a trade union or employee representatives as a result of the provisions of the Transfer Regulations (without prejudice to any other right or remedy which may be available to the Transferee):

(i) the Transferee may, upon becoming aware of the application of the Transfer Regulations to any such contract of employment or collective agreement terminate such contract or agreement forthwith;

(ii) the Transferor shall indemnify the Transferee against each and every action, proceeding, cost, claim, liability (including, without limitation, any Taxation), expense (including, without limitation, reasonable legal fees) or demand relating to or arising out of such termination and reimburse the Transferee for all costs and expenses (including, without limitation, any Taxation) incurred in employing such employee in respect of his employment following the Transfer Date; and

(iii) the Transferor shall indemnify the Transferee in respect of any Undisclosed Employee on the same terms *mutatis mutandis* as the Transferor has indemnified the Transferee in respect of a Relevant Employee pursuant to the terms of clauses 7.1(b) and 7.1(d); and

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

Transferee's Indemnity

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

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

Details of Relevant Employees

7.3 The Transferor warrants to the Transferee that it has (to the extent not made available to the Authority under Schedule 15.4 (*Provisions Applying on and after Termination*) of the Franchise Agreement prior to the Transfer Date) provided the Transferee prior to the Transfer Date with full particulars of:

- (a) each Relevant Employee, including name, sex, and the date on which continuity of employment began for each Relevant Employee for statutory purposes;
- (b) terms and conditions of employment of each such person;
- (c) all payments, benefits or changes to terms and conditions of employment promised to any such person;
- (d) dismissals of Relevant Employees or termination of employment effected within 12 months prior to the Transfer Date including the Transfer Date;

(e) all agreements or arrangements entered into in relation to the Relevant Employees between the Transferor, any Affiliate of the Transferor or any other relevant employer and any trade union or association of trade unions or organisation or body of employees including employee representatives and elected representatives; and

(f) all strikes or other industrial action taken by any Relevant Employee within 12 months prior to the Transfer Date including the Transfer Date.

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

Transferor's Indemnity

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

8. MISCELLANEOUS PROVISIONS

Variations in Writing

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

Partial Invalidity

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

Further Assurance

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

Notices

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

(a) in the case of the Transferor to [*name of Transferor*] at:

[address]

[fax]

Attention: [*name*]

(a) in the case of the Transferee to [*name of Transferee*] at:

[address]

[fax]

Attention: [*name*]

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

Counterparts

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

Third Parties

8.7 This Agreement does not create any rights under the Contracts (Rights of Third Parties) Act 1999 which is enforceable by any person who is not a party to it.

Governing Law

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

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

SIGNED FOR AND ON
BEHALF OF THE
TRANSFEROR

DIRECTOR:

DIRECTOR/SECRETARY:

}

SIGNED FOR AND ON
BEHALF OF THE
TRANSFeree

DIRECTOR:

DIRECTOR/SECRETARY:

}

SCHEDULE TO THE SUPPLEMENTAL AGREEMENT

NET ASSET STATEMENT

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

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

$$(C - D) \times \frac{A}{B} + E$$

where:

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

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

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

$\frac{A}{B}$ equals:

- (a) in the case of a Season Ticket Fare, the number of journeys which the purchaser of the Fare is estimated to make from (and including) the Transfer Date to (and including) the last day on which the Fare is valid (including any extensions to its original period of validity) divided by the total number of journeys which the purchaser of the Fare is estimated to make with that Fare (as determined in each case in accordance with Schedule 28 of the Ticketing and Settlement Agreement);
- (b) in the case of any other Fare which entitles the holder thereof to make more than two journeys, the number of days for which the Fare continues to be valid after the Transfer Date

(including any extensions to its original period of validity) divided by the total number of days for which such Fare is valid on issue (except to the extent that it can reasonably be estimated what proportion of the journeys which could be made on issue of the Fare have not been made prior to the Transfer Date); or

(c) in the case of any other Fare, zero; and

E equals, if $\frac{A}{B}$ is greater than zero:

the amount of any discount to which it can be reasonably estimated that the purchaser of the Fare would be entitled pursuant to the Passenger's Charter or any other passenger's charter of the Transferor on purchasing an equivalent Fare on the expiry of the relevant Fare,

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

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

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

$$(C - D) \times \frac{A}{B}$$

where:

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

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

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

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

4. Relevant Debits and Credits shall be valued at the full amount of such Debits and Credits (inclusive of any Value Added Tax) but excluding any Debits and Credits arising in respect of Adjustment Amounts (as defined in the Ticketing and Settlement Agreement) which are received by the Transferee in respect of a change to the Credit

which is used to value any relevant Season Ticket Fare under paragraph 1 of this Schedule to the extent such Adjustment Amounts relate to a period after the Transfer Date.

5. Rights and liabilities in respect of any contract, lease, licence or other equivalent arrangement (excluding rights and liabilities valued under paragraphs 1 to 4) shall be valued at nil except to the extent that the relevant rights and liabilities include matters specified in the left hand column of the following table, which shall be valued on the basis specified in the right hand column of the following table:

RIGHTS AND LIABILITIES	VALUE
Any accrued rights to receive payment	Monetary amounts so accrued, subject to any provision being made for payment not being received from any other person
Any right to receive payment in respect of goods and/or services provided by the Transferor prior to the Transfer Date where the due date for such payment is after the Transfer Date	Amount payable under such contract, lease, licence or other equivalent arrangement for the goods and/or services so provided by the Transferor, subject to any provision being made for payment not being received from any other person
Any accrued liabilities to make payment	Monetary amounts so accrued
Any liability to make payment in respect of goods and/or services provided to the Transferor prior to the Transfer Date where the due date for such payment is after the Transfer Date	Amount payable under such contract, lease, licence or other equivalent arrangement for the goods and/or services provided to the Transferor
Any rights in respect of which payment has already been made by the Transferor	Monetary amounts so paid, subject to any provision being made for such rights not being exercisable against any other person
Any liabilities in respect of which payment has already been received by the Transferor	Monetary amounts so received
Any liability resulting from any breach of or failure by the Transferor to comply with the terms of any such contract, lease, licence or other equivalent arrangement	Amount of such liability or, to the extent that such amount is not ascertained, the parties reasonable estimate of the amount of such liability

6. Any other property, rights or liabilities shall be valued on the basis of a willing vendor and purchaser and ongoing usage within the railway industry.

SCHEDULE 16

Pensions⁶⁰

1 FRANCHISE SECTIONS

The Franchisee shall participate in and become the Designated Employer in relation to the Northern (ex-North East) Section and the Northern (ex-North West) Section of the Railways Pension Scheme (the Franchise Sections) in respect of the Franchise Services. Subject to paragraphs 2 and 3.2(d) membership of a Franchise Section will be offered to each employee of a Franchisee only.

2 CLOSED SCHEMES

- 2.1 *Subject to any requirements of Her Majesty's Revenue and Customs, the Franchisee shall take any necessary steps (including entering into any relevant deed of participation) to allow Closed Scheme Employees to continue in membership of the British Railways Superannuation Fund or the BR (1974) Pension Fund in accordance with their terms during the Franchise Period.*
- 2.2 *For the purposes of this paragraph 2, Closed Scheme Employees means such of the employees of the Franchisee who were, immediately prior to the commencement of their employment with the Franchisee, members of either of the British Railways Superannuation Fund or the BR (1974) Pension Fund.*

3 VARIATIONS IN BENEFITS AND CONTRIBUTIONS; INVESTMENT

- 3.1. *If a Franchisee is considering making a proposal that it considers would fall within the scope of paragraphs 3.2(a) to 3.2(f) inclusive, it shall promptly consult with the Authority in relation to that proposal prior to putting such a proposal to the Pensions Committee of any Franchise Section, the Trustee of the Railways Pension Scheme ("the Trustee"), or to any trade union. The Franchisee must otherwise consult in good time with the Authority in relation to any proposal it considers would fall within the scope of paragraphs 3.2(a) to 3.2(f) inclusive.*
- 3.2. *The Franchisee shall not, without the prior written consent of the Authority (which may be given on such terms and subject to such conditions as the Authority thinks fit):*
- (a) *restructure or change the composition of the earnings of employees of the Franchisee in such a way as to increase the part of those earnings which qualifies as pensionable earnings under the Rules applicable to any Franchise Section or take any action (or consent to the taking of any action) which could detrimentally affect the funding of any Franchise Section, including varying or providing different or additional benefits under that Franchise Section or promising to do so, unless this change:*
 - (i) *is required by Law; or*
 - (ii) *only affects benefits payable in respect of past service of members of that Franchise Section and on or prior to the effective date of the change the Franchisee pays an additional cash payment to the Trustee which, in the opinion of the Actuary, meets in full the additional funding cost imposed on that Franchise Section; or*
 - (iii) *would not lead to substantial changes in the funding of any Franchise Section and is the result of the normal application of that Franchise Section's Rules in the ordinary day to day running of the business of the Franchisee;*

⁶⁰ Insert Change Text wef 01/05/07

- (b) *make or consent to any proposal to change any of the provisions of the Pension Trust in respect of the Franchise Sections unless the change is required by Law;*
- (c) *provide retirement, death or life assurance benefits in respect of any of its employees other than under any Franchise Section or as provided in paragraph 2;*
- (d) *omit to provide the above-mentioned benefits in respect of its employees save that, without prejudice to any rights which any such employee may otherwise have, the Franchisee shall not under this Schedule 16 be obliged for the purposes of the Franchise Agreement to offer such benefits to any employee employed on a fixed term contract of 12 months or less;*
- (e) *take any action (or consent to the taking of any action) which could affect the contributions payable by Participating Employers under any Franchise Section, including exercising any discretion allowed to the Franchisee as Designated Employer arising out of any actuarial valuation of a Franchise Section, and varying or providing different or additional benefits under the Franchise Sections in respect of future service, unless such action is required by Law; close a Franchise Section to new members; or*
- (f) *take (or omit to take) any action which could result in any Franchise Section being wound up, in whole or in part.*

3.3. *The Franchisee shall consult with the Authority 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.*

3.4. *The Franchisee shall also consult with the Trustee on the basis of any response it receives from the Authority in relation to any such proposal.*

4 FUNDING LIABILITIES

4.1. *The Franchisee shall pay the employer contributions required under the schedule of contributions applicable to each Franchise Section and either of the British Railways Superannuation Fund or the BR (1974) Pension Fund in which it participates in respect of the Franchise Term subject to the provisions of paragraph 4.2 below.*

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

5 DISCHARGE OF OBLIGATIONS

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

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

5.3. *The Franchisee shall, in respect of the Franchise Term, use all reasonable endeavours to provide to the Authority:*

(a) *within one month of the expiry of each Franchisee Year; and*

(b) *at other times as soon as practicable following a request by the Authority.*

a certificate signed by the Trustee in relation to the Franchise Sections stating either that the Franchisee has fully complied with its obligations under the Railways Pensions Scheme, including its obligation to contribute to the Franchise Sections or, if it has not so complied, stating the extent to which it has not done so. Where the certificate is given pursuant to paragraph 5.3(a), it shall cover the relevant Franchisee Year; where the certificate has been given pursuant to paragraph 5.3(b), it shall cover such period as the Authority shall specify.

5.4 *If the Trustee does not certify under paragraph 5.3 in relation to the Franchise Sections that the Franchisee has fully complied with its obligations under the Railways Pension Scheme or if the Authority otherwise reasonably considers that the Franchisee has not complied with such obligations, the Authority may withhold from any Franchise Payments payable by him under Schedule 8 (Payments) - an amount which is, in his opinion, no greater than the amount of any contribution that the Franchisee has thereby failed to make or avoided making.*

5.5. *The Authority may, under paragraph 5.4, withhold such amount until such time as it reasonably determines that the relevant contributions have been made in full by the Franchisee. Following that determination, the amount withheld shall become payable (without interest) on the next day on which a Franchise Payment becomes payable under Schedule 8 (Payments), being a day which falls no less than seven days after such determination or, if there is no such day, 14 days after the date of such determination. To the extent that the Authority has not so determined within four weeks after the expiry of the Franchise Period, the Franchisee's right to receive the amount so withheld under the Franchise Agreement shall lapse and the Authority shall not be obliged to pay such amount.*

6 *TERMINATION OF FRANCHISE*

The Authority shall at the end of the Franchise Term ensure that the Franchisee has no liability for any deficit in the Franchise Sections (other than for contributions due and payable by the Franchisee to the Franchise Sections for any period prior to the end of the Franchise Term) and shall have no right to benefit from any surplus which may exist in the Franchise Sections. For the avoidance of doubt, this paragraph 6 shall apply where the Franchise Services are either aggregated or disaggregated (for example, as a result of remapping).

7 *DEFINITIONS*

Unless otherwise defined in the Franchise Agreement, terms used in this Schedule 16 shall have the meanings given to them in the Railways Pension Scheme.

SCHEDULE 17

Confidentiality

1. CONFIDENTIALITY

Subject to the provisions of the Act, the Transport Act and paragraphs 2 to 8, each party shall hold in confidence all documents, materials and other information, whether technical or commercial, supplied by or on behalf of the other party (including all documents and information supplied in the course of proceedings under the Dispute Resolution Rules or the rules of any other dispute resolution procedures to which a dispute is referred in accordance with this Agreement) and shall not, except with the other party's written authority, publish or otherwise disclose the same otherwise than as expressly provided for in this Agreement unless or until the recipient party can demonstrate that any such document, material or information is in the public domain through no fault of its own and through no contravention of this Agreement, whereupon to the extent that it is in the public domain this obligation shall cease.

2. DISCLOSURE OF CONFIDENTIAL INFORMATION

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

- (a) to any Affiliate of such party, upon obtaining from such Affiliate an undertaking of confidentiality equivalent to that contained in paragraph 1;
- (b) to any outside consultants or advisers engaged by or on behalf of such party and acting in that capacity, upon obtaining from such consultants or advisers an undertaking of confidentiality equivalent to that contained in paragraph 1;
- (c) to any lenders, security trustee, bank or other financial institution (and its or their advisers) from which such party is seeking or obtaining finance, upon obtaining from any such person an undertaking of confidentiality equivalent to that contained in paragraph 1;
- (d) to the extent required by Law or pursuant to an order of any court of competent jurisdiction or under the Dispute Resolution Rules or the rules of any other dispute resolution procedures to which a dispute is referred in accordance with this Agreement or the rules of a recognised stock exchange or a formal or informal request of any taxation authority;
- (e) to any insurer, upon obtaining from such insurer an undertaking of confidentiality equivalent to that contained in paragraph 1;
- (f) to any director, employee or officer of such party, to the extent necessary to enable such party to perform its obligations under this Agreement or to protect or enforce its rights under this Agreement; or
- (g) by the Franchisee, to the Regulator, a Rail Passengers' Committee or a Local Authority.

3. PUBLICATION OF CERTAIN INFORMATION

3.1 Notwithstanding the provisions of paragraph 1, the Authority and/or any Executive may publish (in each case, whether to the press, the public or to one or more individuals, companies or other bodies, including to any prospective Successor Operator) in such form and at such times as each sees fit, the following (irrespective of whether the same was provided to the Authority and/or such Executive by the Franchisee or a third party):

- (a) the amount of any Franchise Payments payable under this Agreement and the aggregate amount of Franchise Payments paid in each year under this Agreement;
- (b) such information as the Authority may consider reasonably necessary to publish in connection with the performance of its functions in relation to any Closure or proposed Closure;
- (c) any Passenger's Charter Statistics and the amount of any payments by the Franchisee under the Passenger's Charter;
- (d) such information as may reasonably be required in connection with the retendering or reletting of the franchise or any part thereof, provided that such information may only be published during the period of, or during the period leading up to, such retendering or reletting;
- (e) any reports and accounts delivered to the Authority and/or any Executive under Schedule 13 (*Franchise Management and Information Obligations*);
- (f) the results of any monitoring or measurement of the performance of the Franchisee in the provision of the Franchise Services (including any information provided under Schedule 11 (*Agreement Management Provisions*));
- (g) the results, on a Performance Management Unit, Service Group, Route, station or other comparable basis, of any calculation of passenger numbers under Schedule 1.5 (*Information about Passengers*);
- (h) the results of any survey under Schedule 1.5;
- (i) the results of any assessment or inspection under Schedule 11;
- (j) details of the Franchisee's plans and performance in respect of safety;
- (k) such information as the Authority may reasonably require to publish in connection with Schedule 3 (*Priced Option*);
- (l) subject to Section 75(3) of the Act, such information as the Authority may reasonably require to include in its annual report in respect of the Franchisee;
- (m) such information as the Authority may reasonably require to publish at or around the expiry or possible termination of the Franchise Period in order to secure continuity of the provision and operation of the Franchise Services; and
- (n) such passenger information as such Executive reasonably requires.

3.2 Without prejudice to any other provision of this Schedule 17, the Authority and/or any Executive may publish any other information relating to the Franchisee if the Authority

and/or such Executive has previously notified the Franchisee and the Franchisee does not demonstrate to the reasonable satisfaction of the Authority and/or such Executive within 14 days of such notification that the publication of such information would be materially detrimental to its business. If the Franchisee attempts so to demonstrate to the Authority and/or such Executive but any such party is not so satisfied, the Authority and/or such Executive shall allow 7 more days before publishing the relevant information.

4. SERVICE DEVELOPMENT INFORMATION

Nothing in this Schedule 17 shall be deemed to prohibit, prevent or hinder, or render any party liable for, the disclosure by any party to Network Rail, the Regulator, other Train Operators, any operators of services for the carriage of goods by rail and/or any Stakeholder of any information relating to the development of the Service Level Commitment in accordance with Schedule 1.1 (*Service Development*).

5. PUBLICATION BY AUTHORITY

Nothing in this Schedule 17 shall be deemed to prohibit, prevent or hinder, or render the Authority liable for, the disclosure of any information by the Authority to the Regulator, the Parliamentary Commissioner for Administration, a Minister of the Crown, any department of the government of the United Kingdom, the Scottish Parliament, the National Assembly of Wales, the Mayor of London, Greater London Authority or any department or officer of any of them or of information which is otherwise disclosed for the purpose of facilitating the carrying out of its functions. The Authority may, in its discretion, also make such information available to any Executive.

6. PUBLICATION BY ANY EXECUTIVE

6.1 Nothing in this Schedule 17 shall be deemed to prohibit, prevent or hinder, or render any Executive liable for, the disclosure of information by it to any party for the purpose of discharging such Executive's statutory duties (in particular under the Transport Act 1983), provided that where information is made available to such Executive pursuant to Schedule 13.2 (*Information*) (other than information falling within paragraph 3) which the Franchisee reasonably believes could, if made public, cause the Franchisee commercial damage, the Franchisee may so notify such Executive and such Executive shall treat the information as commercially sensitive.

6.2 The information referred to in paragraph 6.1 shall not be disclosed to any Passenger Transport Authority by any method of transmission to which members of the public may have access and each Executive shall use all reasonable endeavours to ensure that such information is not discussed in any session of a meeting of the relevant Passenger Transport Authority to which members of the public have access or reports of which may be made available to members of the public.

7. PROVISION OF INFORMATION TO REGULATOR

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

8. DISCLOSURE BY COMPTROLLER AND AUDITOR GENERAL

The parties recognise:

- (a) that the Comptroller and Auditor General may, in pursuance of his functions under the Exchequer and Audit Department Act 1921, the National Audit Act 1983 and the Government Resources and Accounts Act 2000, disclose information which he has obtained pursuant to those acts and which a party to this Agreement would not be able to disclose otherwise than under this Schedule 17; and
- (b) the provisions of the Local Government Act 1999 in respect of best value reviews and the publication of objective performance plans and the possibility of any Executive being designated as a best value authority for the purposes of the Local Government Act 1999.

9. CONTINUING OBLIGATION

This Schedule 17 (and any other provisions necessary to give effect hereto) shall survive the termination of this Agreement, irrespective of the reason for termination.

SCHEDULE 18⁶¹

Franchise Continuation Criteria

1. Continuation of Term

Continuation to Expiry Date

1.1 The Authority shall calculate the number of Reporting Periods during the Continuation Review Period in which the Franchisee has performed at a level which is equal to or better than each of the Franchise Wide Cancellations Benchmark, the Franchise Wide Capacity Benchmark and the Franchise Wide Service Delivery Benchmark within 28 days of the receipt by the Authority of the information required to perform such calculation.

1.2 The Authority shall perform such calculations using the information provided by the Franchisee pursuant to paragraph 1.3 and using the same method of calculation specified in paragraph 2.2 of Schedule 7.1(Performance Benchmarks) in respect of the PMU Cancellations Benchmarks, paragraphs 2.4 to 2.7 of Schedule 7.1(Performance Benchmarks) in respect of the Capacity Benchmarks and paragraphs 2.9 to 2.12 of Schedule 7.1(Performance Benchmarks) in respect of the PMU Service Delivery Benchmarks.

1.3 The Franchisee shall, in accordance with the relevant requirements of Appendix 3 (Operational Information) to Schedule 13.2 (Information), provide to the Authority for the purposes of paragraph 1.2 the following information:

- (a) In respect of the Franchise Wide Cancellations Benchmark, the total number of Cancellations or Partial Cancellations of Passenger Services operated in respect of the 13 Reporting Periods preceding the Continuation Review Period and each of the Reporting Periods in respect of the Continuation Review Period;
- (b) In respect of the Franchise Wide Capacity Benchmark, the total number of Monitored Passenger Services in respect of the 13 Reporting Periods preceding the Continuation Review Period and each of the Reporting Periods in respect of the Continuation Review Period for which the Franchisee operated less than the minimum passenger carrying capacity specified for each such Monitored Passenger Service in the Fixed Train Plan applicable to the relevant Reporting Periods;
- (c) In respect of the Franchise Wide Service Delivery Benchmark, the total number of Minutes Delay in respect of the 13 Reporting Periods preceding the Continuation Review Period and each of the Reporting Periods in respect of the Continuation Review Period:
 - (i) which are attributable to the Franchisee;
 - (ii) for which the attribution is in dispute between Network Rail and the Franchisee; and

⁶¹ Date of change 27/4/2009

(iii) for which disputed attributions have been resolved or determined and the number of such Minutes Delay attributed to each of the Franchisee and Network Rail as a result of such resolution or determination.

1.4 If, during the Continuation Review Period, the Franchisee's performance has been at a level which is equal to or better than:

- (a) the Franchise Wide Capacity Benchmark for 12 or more Reporting Periods;
- (b) the Franchise Wide Service Delivery Benchmark for 12 or more Reporting Periods; and
- (c) the Franchise Wide Cancellations Benchmark for 11 or more Reporting Periods

and provided that no Event of Default has occurred and is continuing as at the Continuation Review Date, the Authority shall notify the Franchisee and the Executives and this Agreement shall continue after the Initial Expiry Date on the terms set out in this Agreement until 15 September 2013, subject to paragraph 1.6.

1.5 If, during the Continuation Review Period, the Franchisee's performance has been at a level which does not satisfy the criteria specified in paragraphs 1.4(a), 1.4(b) and 1.4(c), the Authority may, but shall not be obliged to, notify the Franchisee and the Executives and this Agreement shall continue in accordance with paragraph 1.4, subject to paragraph 1.6. If no notice is given by the Authority, this Agreement shall, subject to paragraph 1.7, terminate on the Initial Expiry Date.

1.6 If, within 14 days of receipt of notice from the Authority under paragraph 1.4, the Franchisee notifies the Authority and the Executives that it does not wish to continue this Agreement beyond the Initial Expiry Date on the terms set out in this Agreement, this Agreement shall, subject to paragraph 1.7, terminate on the Initial Expiry Date.

Continuation for Additional 7 Reporting Periods

1.7 If the Authority gives notice to the Franchisee and the Executives not less than 3 months before the Initial Expiry Date or, if this Agreement is continued beyond the Initial Expiry Date in accordance with paragraph 1.4, not less than 3 months before the date on which this Agreement is due to expire following such continuation, this Agreement shall continue after such date on the terms set out in this Agreement for not less than 1 and not more than 7 Reporting Periods, as the Authority may stipulate.

Key Contracts

1.8 The Franchisee shall enter into any and all Key Contracts which are necessary for this Agreement to continue in accordance with this Schedule 18.

SCHEDULE 19

Other Provisions

1. VARIATIONS TO THIS AGREEMENT

1.1 The terms of this Agreement may be varied as follows but not otherwise:

(a) by the Authority, in relation to:

- (i) any aspect of the Franchise Services; and
- (ii) any provision of this Agreement other than those provisions specified in paragraph 1.2,

by service of a notice on the other parties hereto referring to this paragraph 1.1(a) and setting out the variation to the terms of this Agreement;

- (b) by the Authority and the Franchisee, to the extent such variation does not have an adverse effect on any Executive Passenger Services or Executive Stations, by agreement between such parties and service of a notice on the Executives, referring to this paragraph 1.1(b) and setting out the variation to the terms of this Agreement; and
- (c) in relation to any other provision of this Agreement, by agreement in writing between the parties to that effect,

(each a *Variation*).

1.2 Without prejudice to the Authority's rights under paragraph 1.1, the terms of each of clause 3 (*Term*), Schedules 8 (*Franchise Payments*), 9 (*Changes*), 10 (*Remedies and Termination*), 12 (*Financial Obligations and Covenants*), 14 (*Preservation of Assets*), 18 (*Franchise Continuation Criteria*) and this Schedule 19 shall not be varied at any time other than in accordance with the terms of this Agreement or with the agreement of the parties.

1.3 The Authority shall, to the extent reasonably practicable, allow the Franchisee and any affected Executive a reasonable opportunity to make representations to the Authority concerning any Variation to be made in accordance with paragraph 1.1(a), prior to making any such Variation.

1.4 The Authority may:

- (a) issue, revise and withdraw from time to time procedures that it requires to be followed for the purposes of orderly consideration of Variations. This will include for the purpose of establishing in relation to any Change whether it is a Qualifying Change; and
- (b) require the Franchisee to provide any information that the Authority reasonably requires for this purpose (including in relation to prospective change to profit, costs and revenue as a consequence of proceeding with the Variation).

1.5 Procedures issued pursuant to paragraph 1.4 may provide for indicative iterations of Runs of the Financial Model in relation to 1 or more Changes that the Authority is considering and may also provide for any number of Changes to be grouped together as a single Change for the purposes of agreeing or determining Revised Inputs and then performing a Run of the Financial Model.

1.6 Procedures issued pursuant to paragraph 1.4 shall have contractual effect between the parties in accordance with their terms.

1.7 The Franchisee may notify the Authority of any proposal for a Variation by notice setting out the proposed method of implementing such Variation including:

- (a) the time scale for doing so;
- (b) the effect (if any) on the timing of the performance of its other obligations under this Agreement;
- (c) the impact of effecting the proposed Variation on the provision of the Franchise Services and the Franchisee's proposals as to how to minimise such impact; and
- (d) the financial consequences of implementing the proposed Variation proposed by the Franchisee in terms of the Revised Inputs that the Franchisee considers the Variation would require.

1.8 The Authority shall be under no obligation to consider a Variation proposed by the Franchisee but if it wishes to do so, it shall do so pursuant to paragraph 1.1 of this Schedule 19.

1.9 Where the Franchisee proposes a Variation in sufficient detail for it to be apparent that its implementation is likely to result in an increase in the overall profitability of the Franchisee through costs saving measures (a *Protected Proposal*), the Authority may not proceed with the Protected Proposal or seek to implement the substance of it by proposing a Variation of its own without complying with the provisions of paragraph 8.3 of Schedule 9.3 (*Runs of the Financial Model*).

2. CAPITAL EXPENDITURE

Capital Expenditure Threshold

2.1 The Franchisee shall notify the Authority promptly if it reasonably expects that a Change to which paragraph 1 relates would require it to incur, singly or in aggregate with other Changes from time to time, Capital Expenditure in excess of 1 per cent. of its annual Turnover in any Franchisee Year as disclosed by its latest available audited accounts and, when so notified, the Authority shall either:

- (a) withdraw the Change;
- (b) undertake to meet the excess through additional funding as and when such Capital Expenditure is incurred; or
- (c) direct the Franchisee to use all reasonable endeavours to borrow or otherwise raise the money required to fund any Change on commercial terms and at rates which are consistent with market conditions at the time, unless borrowing or otherwise raising such money would result in the Franchisee failing to comply with the financial covenants contained in Schedule 12 (*Financial Obligations and Covenants*).

Franchisee to Seek Finance

2.2 If the Authority elects to require the Franchisee to use all reasonable endeavours as described in paragraph 2.1(c) then the Franchisee shall:

- (a) seek finance from a representative range of lending institutions and other financial institutions including those which at that time provide finance to the Franchisee and the Parent;
- (b) if it is unable to raise funding, provide the Authority with all information the Authority may reasonably require in relation to the efforts made by the Franchisee and the reasons for a failure to raise additional finance;
- (c) so far as it is able (having used all reasonable efforts to do so), the Franchisee shall provide to the Authority letters from lenders and financiers it has approached for finance stating their reasons for refusing to provide it and if the Authority so requires, arrange and attend meetings with them for the Authority to discuss those reasons; and
- (d) if funding is not available, or is not available on terms that the Authority considers to be commercial terms or at rates which are consistent with market conditions at that time the Authority may:
 - (i) withdraw the Change; or
 - (ii) undertake to fund the Capital Expenditure as and when such Capital Expenditure is incurred.

Treatment of Borrowings in Revised Inputs

2.3 In calculating the Revised Inputs for the purposes of any Change referred to in this paragraph 2, the Franchisee shall account for the Capital Expenditure in accordance with GAAP, taking into account the basis on which such Capital Expenditure has been financed.

Meaning of Capital Expenditure

2.4 The expression *Capital Expenditure* when used in this Schedule 19 refers to the nature of the expenditure incurred by the Franchisee and, accordingly, does not include expenditure incurred under operating leases.

3. RIGHTS CUMULATIVE

The rights of the Authority and each Executive under this Agreement are cumulative, may be exercised as often as each considers appropriate and are in addition to the rights of each under the general Law. The exercise of such rights shall not limit the Authority's right to make payment adjustments, or the Authority's and each Executive's rights to claim damages in respect of contraventions of this Agreement or pursue any available remedies under general Law.

4. DISPUTES

Disputes under this Agreement

4.1 Wherever this Agreement provides that the Authority may reasonably determine any matter, the Franchisee may, unless this Agreement expressly provides otherwise, dispute whether a determination made by the Authority is reasonable, but the Authority's determination shall prevail unless and until it is agreed or found to have been unreasonable.

4.2 Where any party is entitled, pursuant to the terms of this Agreement, to refer a dispute arising out of or in connection with this Agreement for resolution or determination in

accordance with the Dispute Resolution Rules, then such dispute shall, unless the parties otherwise agree and subject to any duty of the Authority under Section 55 of the Act, be resolved or determined by arbitration pursuant to the Dispute Resolution Rules.

4.3 The arbitrator in any dispute referred for resolution or determination under the Dispute Resolution Rules shall be a suitably qualified person chosen by agreement between the parties to such dispute or, in default of agreement, chosen by the Disputes Secretary from a panel of persons agreed from time to time for such purposes between the parties to the relevant dispute or, in default of agreement as to the arbitrator or as to such panel, selected on the application of any party by the President of the Law Society or the President of the Institute of Chartered Accountants in England and Wales from time to time (or such other person to whom they may delegate such selection).

Disputes under Other Agreements

4.4 The Franchisee shall notify the Authority and each Executive of any disputes to which it is a party under any Inter-Operator Scheme, Access Agreement, Property Lease or Rolling Stock Related Contract, or under any other agreement in circumstances where the relevant dispute could have an adverse effect on the Franchisee's ability to comply with its obligations under this Agreement or on the provision of the Franchise Services and which have been submitted for resolution either to the courts or to any other procedure for dispute resolution provided for under such agreements.

4.5 Such notification shall be made both:

- (a) at the time of such submission (and such submission shall include reasonable details of the nature of the dispute); and
- (b) at the time of the resolution of the dispute (whether or not subject to appeal) (and such submission shall include reasonable details of the result of the dispute, any associated award and whether it is subject to appeal).

4.6 The Franchisee shall provide such further details of any dispute referred to in paragraph 4.4 as the Authority or any Executive (as the case may be) may reasonably request from time to time.

5. NOTICES

5.1(a) *5.1(a) Any notice, notification or other communication under or in connection with the matters specified in Schedule 10.2 (Termination and Expiry), Schedule 18 (Franchise Continuation Criteria) or any dispute under or in connection with this Agreement shall be in writing and shall be delivered by hand or recorded delivery or sent by pre-paid first class post to the relevant party at the address for service set out below, or to such other address in the United Kingdom as each party may specify by notice in writing to the other party.*^{62 6364}

Name: **Department for Transport**

Address: **Great Minster House, 33 Horseferry Road, London SW1P 4DR**

⁶² Date of Change 09/04/2010

⁶³ Date of Change 09/12/2010

⁶⁴ Date of Change 03/04/2012

Facsimile: 0207 944 2446
Email: franchise.notices@dft.gsi.gov.uk
Attention: The Secretary of State, care of The Director General, Major Projects & London
(Copy to Haydon Walker, Commercial Manager)

Name: Transport for Greater Manchester
Address: 2 Piccadilly Place, Manchester, M1 3BG
Facsimile: 0161 244 1303
Email: David.leather@tfgm.com
Attention: Attention: David Leather
(Copy to Michael Renshaw)

Name: South Yorkshire Passenger Transport Executive
Address: 11, Broad Street West, Sheffield, S1 2BQ
Facsimile: 0141 221 1427
Email: David.young@syppte.co.uk
Attention: David Young, Director of Customer Experience
(Copy to Lorraine Gandy)

Name: NEXUS Tyne & Wear Passenger Transport Executive
Address: Nexus House, St James' Boulevard, Newcastle Upon Tyne NE1 4AX
Facsimile: 0191 203 3180
Email: b.garner@nexus.org.uk
Attention: Bernard Garner, Director General

Name: Northern Rail Limited
Address: Northern House, 7-9 Rougier Street, York YO1 6HZ
Facsimile: 01904 568 555
Email: ian.bevan@northernrail.org
Attention: Ian Bevan, Company Secretary
(Copy to Jonathan Stewart, Commercial Director)

Name: West Yorkshire Passenger Transport Executive
Address: Wellington House, 40-50 Wellington Street, Leeds LS1 2DE
Facsimile: 0113 251 7333
Email: kieran.preston@wypte.gov.uk
Attention: Kieran Preston, Director General

Name: Merseyside Passenger Transport Executive
Address: Number 1 Mann Island, Liverpool L3 1BP
Facsimile: 0151 236 2457
Email: jim.barclay@merseytravel.gov.uk
Attention: Jim Barclay, Interim Chief Executive and Director General

- (b) Any other notice, notification or other communication under or in connection with this Agreement shall be in writing and shall be delivered:
- (i) in accordance with paragraph 5.1(a);
 - (ii) by facsimile; or
 - (iii) by electronic data transfer,
- except that it shall be marked for the attention of the Contract Manager, the Franchise Manager or the relevant Executive's point of contact, as appropriate.

Deemed Receipt

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

- (a) if sent by hand or recorded delivery, when delivered;
- (b) if sent by pre-paid first class post, from and to any place within the United Kingdom, 3 business days after posting unless otherwise proven;
- (c) if sent by facsimile, upon sending, subject to confirmation of completed transmission to the intended recipient; and
- (d) if sent by electronic data transfer, upon sending, subject to receipt by the sender of a "delivered" confirmation (provided that the sender shall not be required to produce a "read" confirmation).

6. ASSIGNMENT

The Franchisee shall not without the prior written consent of the Authority assign, hold in trust for any other person, or grant a Security Interest in or over, this Agreement or any part hereof or any benefit or interest or right herein or hereunder (other than any right of the Franchisee to receive monies under a Supplemental Agreement).

7. SET OFF

7.1 The Authority may set off against any amounts payable by it under this Agreement:

- (a) any outstanding amounts or liabilities payable or due to it under this Agreement;
- (b) any other amount payable to or due to the Authority under or in relation to this Agreement; and
- (c) any monetary penalty payable under the Act.

7.2 Each Executive may set off against any amounts payable or due by any of them under this Agreement any outstanding amounts or liabilities payable or due to them under this Agreement.

8. MISCELLANEOUS PROVISIONS

Waivers

- 8.1(a) Each party may at any time waive any obligation owed to it by any other party under this Agreement and the obligations of the parties hereunder shall be construed accordingly.
- (b) No waiver by any party of any default by any other party in the performance of such party's obligations under this Agreement shall operate or be construed as a waiver of any other or further such default, whether of a like or different character. A failure to exercise or delay in exercising a right or remedy under this Agreement shall not constitute a waiver of any right or remedy or a waiver of any other rights or remedies and no single or partial exercise of any right or remedy under this Agreement shall prevent any further exercise of such right or remedy or the exercise of any other right or remedy.

Time Limits

8.2 Where in this Agreement any obligation of a party is required to be performed within a specified time limit (including an obligation to use all reasonable endeavours or best endeavours to secure a particular result within such time limit) that obligation shall be deemed to continue after the expiry of such time limit if such party fails to comply with that obligation (or secure such result, as appropriate) within such time limit.

Partial Invalidity

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

Further Assurance

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

Rights of Third Parties

8.5(a) A person who is not a party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement except to the extent set out in this paragraph 8.5.

- (b) Any Successor Operator or potential Successor Operator nominated by the Authority and notified to the Franchisee for the purposes of this paragraph 8.5 may enforce and rely on the provisions of Schedule 15 (*Obligations Associated with Termination*) to the same extent as if it were a party but subject to paragraphs 8.5(c) and (d).
- (c) This Agreement may be terminated, and any term may be amended or waived, in each case in accordance with the terms of this Agreement, without the consent of any person nominated under paragraph 8.5(b).

- (d) The person nominated under paragraph 8.5(b) shall only be entitled to enforce and rely on Schedule 15 to the extent determined by the Authority (whether at the time of nomination or at any other time) and, to the extent that any such person is entitled to enforce and rely on Schedule 15, any legal proceedings in relation thereto must be commenced within 1 year of the expiry of the Franchise Period and any such person shall not be entitled to enforce or rely on Schedule 15 to the extent that it has consented to any particular act or omission of the Franchisee which may constitute a contravention of Schedule 15 or has been afforded a reasonable opportunity to indicate to the Franchisee that it is not so consenting and has not so indicated (the extent of such reasonable opportunity to be determined by the Authority unless otherwise agreed).

Authority's Consent or Approval

8.6 Where any provision of this Agreement provides for any matter to be subject to the consent or approval of the Authority, then (subject only to the express terms of that provision as to the basis on which that consent or approval may be given or withheld) the Authority shall be entitled to give that consent or approval subject to any condition or conditions as it considers appropriate, which may include the adjustment of any of the terms of this Agreement.

9. ENFORCEMENT COSTS

The Franchisee shall compensate the Authority for all reasonable costs incurred by the Authority as a result of the Franchisee failing to perform its obligations under this Agreement in accordance with their terms in the exercise of the Authority's rights under Schedule 10 (*Remedies and Termination*).

10. CURRENCY

If at any time the Bank of England or other competent monetary authority of the United Kingdom or competent organ of H.M. Government of the United Kingdom recognises the Euro as lawful currency and tender of the United Kingdom, the Authority may, by reasonable notice to the Franchisee and the Franchisee may by reasonable notice to the Authority, elect that all payment obligations arising under this Agreement shall be denominated and/or constituted in Euros on the basis that all outstanding amounts and obligations previously denominated and/or constituted in pounds sterling shall be translated into Euros at the exchange rate applied or recognised by the United Kingdom authority or organ which granted recognition of the Euro for the purpose of such translation on the date on which it granted recognition of the Euro.

11. OPT OUT BY AN EXECUTIVE

Opt Out Notice

11.1 Any Executive may serve notice on the Authority and the Franchisee in accordance with this paragraph 11 to opt out of this Agreement (an *Opt Out Notice*). Any Opt Out Notice shall specify the date from which the relevant Executive will opt out (the *Opt Out Effective Date*).

11.2 Subject to paragraph 11.3:

- (a) an Opt Out Notice may be served on the Authority and the Franchisee at any time during the Franchise Period; and

(b) the Opt Out Effective Date specified in any such Opt Out Notice shall be 1st April in any Franchisee Year and which shall be no less than 3 months from the date of the Opt Out Notice.

11.3 Where an Executive has not received on or before 31st December in any financial year, reasonably satisfactory confirmation from the Authority of funding in respect of the Executive Passenger Services relevant to such Executive for the next financial year, such Executive may specify in any Opt Out Notice it serves in accordance with paragraph 11.1 that the Opt Out Effective Date shall be 1 month from the date of such Opt Out Notice.

Effect on Authority

11.4 Following service of an Opt Out Notice in accordance with this paragraph 11 and as from any Opt Out Effective Date, the Authority shall:

- (a) enjoy the rights of the relevant Executive under this Agreement; and
- (b) perform all the obligations and discharge all the liabilities of the relevant Executive under this Agreement,

which would arise after such Opt Out Effective Date.

11.5 As from any Opt Out Effective Date, references to the relevant Executive shall be construed accordingly.

Effect on Executive Rights and Obligations

11.6 Following service of an Opt Out Notice in accordance with this paragraph 11 and as from any Opt Out Effective Date, the Franchisee shall release and discharge the relevant Executive from:

- (a) further performance of such Executive's obligations under this Agreement, save as herein expressly provided; and
- (b) all claims and demands in respect of this Agreement,

which arise after such Opt Out Effective Date.

11.7 The Franchisee may not, without the written consent of the Authority, release and discharge any Executive from:

- (a) performance of such Executive's obligations under this Agreement, save as expressly provided in this Agreement; and
- (b) all claims and demands in respect of this Agreement,

which arise prior to any Opt Out Effective Date.

Effect on the Franchisee

11.8 Following service of an Opt Out Notice in accordance with this paragraph 11 and as from any Opt Out Effective Date the Franchisee shall:

- (a) perform and discharge all its duties and obligations under this Agreement; and

(b) be bound by the terms of this Agreement in favour of the Authority as if the Authority was a party to this Agreement from the date of its signature in place of the relevant Executive.

11.9 The Authority shall have the right to pursue all claims and demands in respect of this Agreement:

(a) which arise on or after the relevant Opt Out Effective Date; and

(b) which the relevant Executive would have been entitled to make, but for the service of the relevant Opt Out Notice.

11.10 Any Executive that serves an Opt Out Notice in accordance with this paragraph 11 shall continue to have the right to pursue any claim or demand which arose prior to the Opt Out Effective Date specified in such Opt Out Notice. Such Executive shall keep the Authority informed in respect of any such claims or demands.

Effects of the New Legislation

11.11 The Authority and each of the Executives will in good faith seek to agree the appropriate changes to be made to the Franchise Agreement, the Side Agreement and related documents to which the Executives are a party, in order to reflect the coming into force of the New Legislation and the implementation of the proposals set out in the Rail Industry Review.

11.12 If Authority and each of the Executives fail to agree within three months of the coming into force of the New Legislation, then the Authority can make such changes to the Franchise Agreement, the Side Agreement and related documents (to which the Executives are a party) as it reasonably determines will put the Executives, so far as reasonably possible, in the same position as they would have been had the Franchise Agreement been entered into after the New Legislation came into force. These changes may include, should the New Legislation so provide, the Executives ceasing to be a party to the Franchise Agreement, Side Agreement and/or related documents to which the Executives are a party.

12. Rights of Executives to require Changes.

12.1 Each of the Executives shall be entitled to submit proposals to the Authority and to the Franchisee for revised service specifications effecting changes to the operation of their Executive Passenger Services and their Executive Stations including, where appropriate, proposals to:

(a) alter the requirements in respect of the use of the Executive Rolling Stock at paragraph 7.5(a) of Schedule 1.1 (*Service Development*) and the specification of rolling stock used to provide the Executive Passenger Services at paragraph 7.5(b) of Schedule 1.1 (*Service Development*);

(b) alter the requirements in respect of the specification of capacity provided on the Executive Passenger Services contained at paragraph 7.7 of Schedule 1.1 (*Service Development*);

(c) alter the Service Level Commitment or Train Plan, the Service Quality Standards and the regulation of Fares relating to the Executive Passenger Services and/or Executive Stations; and

(d) alter or vary any other provision of the Franchise Agreement relating to the operation of the Executive Passenger Services and/or Executive Stations;

in any such case, to the extent that the Executive would have been entitled to include such service specifications (as proposed to be revised):

- (i) in the statement it submitted to the Authority in respect of the Northern Franchise pursuant to section 34(5) of the Act; or
- (ii) in any amendment to that statement which it would have been entitled to make in respect of the Northern Franchise pursuant to section 34(7) of the Act.

12.1A Except to the extent otherwise provided in paragraph 12.2, the Authority shall, where required by the relevant Executive, ensure that proposals made under paragraph 12.1 are implemented as soon as is reasonably practicable, where applicable, by amending or varying:

- (a) the requirements in respect of the use of the Executive Rolling Stock at paragraph 7.5(a) of Schedule 1.1 (*Service Development*) and the specification of rolling stock used to provide the Executive Passenger Services contained in paragraph 7.5(b) of Schedule 1.1 (*Service Development*) in order to give effect to any proposal under paragraph 12.1(a);
- (b) the requirements in respect of the specification of capacity provided on the Executive Passenger Services contained in paragraph 7.7 of Schedule 1.1 (*Service Development*) in order to give effect to any proposal under paragraph 12.1(b);
- (c) the Service Level Commitment, Train Plan, Service Quality Standards or the regulation of Fares relating to the Executive Passenger Services in order to give effect to any proposal under paragraph 12.1(c); and
- (d) any other provision of the Franchise Agreement pursuant to paragraph 1.1 of Schedule 19 in order to give effect to any proposal under paragraph 12.1(d);

Any implementation of such proposed revised service specification shall, where relevant, be a Change.

12.2 The Authority may not be required by an Executive to ensure the implementation of any proposals submitted by it under paragraph 12.1:-

- (a) if or to the extent that such implementation would prevent or seriously hinder the Authority:-
 - (i) from complying with any directions given to it by the Secretary of State under section 207(5) of the Transport Act 2000 or from having regard to any guidance so given;
 - (ii) from complying with any directions given to it by the Scottish Ministers under section 208 of that Act with which it must comply or from having regard to any guidance so given to which it must have regard; or
 - (iii) from exercising any of its functions in a manner which is consistent with its financial framework;
- (b) if or to the extent that such implementation would have an adverse effect on the provision of services for the carriage of passengers or goods by railway (whether inside or outside the relevant Executive's Passenger Transport Area);

(c) if or to the extent that such implementation would increase the amount of any expenditure of the Authority under agreements or other arrangements entered into (in accordance with a franchise agreement) with:

- (i) the Franchisee or any other franchisee; or
- (ii) any franchise operator; or
- (iii) any servant, agent or independent contractor of the Franchisee or any other franchisee or franchise operator.

12.3 When submitting proposals to the Authority and to the Franchisee under paragraph 12.1 the relevant Executive shall set out:-

- (a) the date or dates by which it is proposed that the proposals would be implemented; and
- (b) the particulars of the proposed revised service specifications, so far as reasonably practicable in sufficient detail so as to enable, if the implementation of the proposals would be likely to constitute a Qualifying Change, the Revised Inputs relevant to such proposed Qualifying Change to be agreed or determined pursuant to paragraph 3 of Schedule 9.3 (*Runs of the Financial Model*).

12.4 The Authority and the Franchisee shall co-operate as reasonably required by an Executive in exploring the feasibility and financial impact of any proposals that the Executive has submitted or is considering submitting under paragraph 12.1 and following the submission of any proposals under that paragraph shall provide to the Executive any information in their possession that the Executive reasonably requires in relation to those proposals, including information relevant to any consequential changes to the Franchisee's profits, costs and revenues and other information and the agreement or determination of Revised Inputs in circumstances where the implementation of the proposals would be likely to constitute or cause a Qualifying Change.

12.5 The provisions of paragraph 7 of Schedule 11 (Right of Assessment or Inspection) shall apply to records kept by or on behalf of the Franchisee that relate to any information supplied by the Franchisee to an Executive pursuant to paragraph 12.4 on the basis that the relevant Executive shall be entitled to exercise the rights of the Authority under that paragraph.

12.6 The Authority shall, at the request of an Executive that has submitted proposals under paragraph 12.1, require the Franchisee to perform a Preliminary Run of the Financial Model pursuant to paragraph 5 of Schedule 9.1 (*Financial Consequences of Change*) in order to enable the Executive to assess the financial consequences (if any) of any of those proposals in which case:

- (a) in agreeing (or determining) the Revised Inputs for the Preliminary Run of the Financial Model pursuant to paragraph 3 of Schedule 9.3 (*Runs of the Financial Model*) the Authority shall act in accordance with the reasonable directions of the Executive and shall ensure that due account is taken of any grant or capital funding proposed to be made available to the Franchisee by the Executive if the proposals are implemented;
- (b) the Authority shall, as soon as reasonably practicable after receiving the New Results from the Preliminary Run of the Financial Model, notify the Executive of the New Results (together with such supporting information as the Executive may reasonably require in order

to assess and interpret the New Results) and the consequential change (if any) to the Executive's Share were the Executive to require the proposals to be implemented; and

(c) where required by the Executive, the Authority shall require the Preliminary Run of the Financial Model to be audited under paragraph 1.3 of Schedule 9.3 (*Runs of the Financial Model*) (and the Executives hereby agree that, in accordance with paragraph 1.6 of that Schedule, the results as certified by the auditor shall be final and binding except in the case of manifest error);

and for the avoidance of doubt an Executive may require successive or separate Preliminary Runs of the Financial Model to be performed in relation to one or more proposals for revised service specifications submitted under paragraph 12.1 and may also require any number of such proposals to be grouped together as a single prospective Change for the purposes of agreeing or determining Revised Inputs and then performing a Preliminary Run of the Financial Model.

12.7 Where an Executive resolves whether or not to require the implementation of any proposals submitted by it under paragraph 12.1 it shall notify the Authority and the Franchisee as soon as reasonably practicable that it requires the implementation of such proposals or that it does not require such implementation. This shall not prevent the Executive from subsequently proposing and/or requiring the implementation of the same or similar proposals.

12.8 It is:

(a) acknowledged by the parties that the Authority and each of the Executives may agree (or that as between them it may be determined) to amend or replace paragraph 12.2(c), so as to include a different provision (*the Replacement Provision*) setting out circumstances in which the Authority may not be required by an Executive to ensure the implementation of any proposals submitted by it under paragraph 12.1;

(b) agreed by the parties that the Authority may by notice to the Franchisee (copied to the Executives) amend this Agreement by inserting the Replacement Provision in place of paragraph 12.2(c). The Authority's notice under this paragraph shall set out the Replacement Provision, and the date (and time) from which the amendment to the Franchise Agreement shall be effective.

13. Right of the Authority to amend Executive Service Specifications

13.1 The Authority shall be entitled, having regard to its statutory duties and directions and guidance from the Secretary of State, to submit proposals to any Executive and to the Franchisee for revised service specifications effecting changes to the operation of the Executive Passenger Services and the Executive Stations of the relevant Executive including, where appropriate, proposals to alter or vary the:

(a) requirements in respect of the use of the Executive Rolling Stock at paragraph 7.5(a) of Schedule 1.1 (*Service Development*) and the specification of rolling stock used to provide the Executive Passenger Services at paragraph 7.5(b) of Schedule 1.1 (*Service Development*)

(b) requirements in respect of the specification of capacity provided on the Executive Passenger Services contained at paragraph 7.7 of Schedule 1.1 (*Service Development*);

(c) Service Level Commitment or Train Plan, the Service Quality Standards and the regulation of Fares relating to the Executive Passenger Services and/or the Executive Stations; and

(d) any other provision of the Franchise Agreement relating to the operation of the Executive Passenger Services and/or the Executive Stations.

13.2 The Authority will, after consulting in relation to the proposed revised service specification with the relevant Executive and having due regard to its views, be entitled to implement the proposed revised service specification as soon as reasonably practicable, where applicable, by amending or varying:

(a) the requirements in respect of the use of the Executive Rolling Stock at paragraph 7.5(a) of Schedule 1.1 (*Service Development*) and the specification of rolling stock used to provide the Executive Passenger Services contained in paragraph 7.5(b) of Schedule 1.1 (*Service Development*) in order to give effect to any proposal under paragraph 13.1(a);

(b) the requirements in respect of the specification of capacity provided on the Executive Passenger Services contained in paragraph 7.7 of Schedule 1.1 (*Service Development*) in order to give effect to any proposal under paragraph 13.1(b);

(c) the Service Level Commitment, Train Plan, Service Quality Standards or the regulation of Fares relating to the Executive Passenger Services in order to give effect to any proposal under paragraph 13.1(c); and

(d) any other provision of the Franchise Agreement pursuant to paragraph 1.1 of Schedule 19 (*Other Provisions*) in order to give effect to any proposal under paragraph 13.1(d);

Any implementation of such proposed revised service specification shall, where relevant, be a Change.

13.3 Where an Executive is entitled to require revised service specifications to be implemented in respect of Executive Passenger Services or Executive Stations pursuant to paragraph 12, the Authority agrees that it shall not exercise its rights under this paragraph 13 in a manner which would have the effect of reversing in whole or in part or otherwise materially prejudicing the implementation of such revised service specification provided that nothing in this paragraph shall prevent the Authority, at a later date, from exercising its rights under paragraph 13 where there has been a material change of circumstance since the implementation of any Executive's revised service specification and such material change in circumstance reasonably justifies the exercise of such rights by the Authority.

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STRATEGIC RAIL AUTHORITY

and

GREATER MANCHESTER PASSENGER TRANSPORT EXECUTIVE

and

MERSEYSIDE PASSENGER TRANSPORT EXECUTIVE

and

SOUTH YORKSHIRE PASSENGER TRANSPORT EXECUTIVE

and

TYNE & WEAR PASSENGER TRANSPORT EXECUTIVE

and

WEST YORKSHIRE PASSENGER TRANSPORT EXECUTIVE

and

NORTHERN RAIL LIMITED

THE NORTHERN FRANCHISE AGREEMENT

Derogation Page

ⁱ ~~By virtue of a derogation, the Secretary of State for Transport has granted the Franchise Operator the following: In acknowledgement that Northern Rail are facilitating the increased Intercity West Coast Services, a derogation from those requirements contained within Schedule 1.1 and 1.2 of the Franchise Agreement where the Franchisee is required to bid for a timetable in accordance with the service levels and specifications contained in the SLC.~~

~~Start Date 31/1/08 End Date 7/12/08~~

ⁱⁱ **By virtue of a derogation the Secretary of State has granted the Franchise Operator permission against Schedule 1.2 paragraph 1.1 for amendments to be made on selected peak services in Manchester and Liverpool PMU.**

Start Date 27/12/2011 End Date 30/12/2011

ⁱⁱⁱ **By virtue of a derogation the Secretary of State has granted the Franchise Operator permission against Schedule 1.2 paragraph 1.1 for amendments to be made on selected peak services in Manchester and Liverpool PMU.**

Start Date 27/12/2011 End Date 30/12/2011

~~^{iv, iv} By virtue of a derogation the Secretary of State has granted the Franchise Operator the following; against Schedule 1.4 paragraph 1.2 a 3 week derogation on the production of printed timetable booklets. This derogation takes into account the delay in your receipt of the Timetable information from Network Rail.~~

~~Start Date 23/04/2010 End Date 16/05/2010~~

^v ~~By virtue of a derogation, the Secretary of State for Transport has granted the Franchise Operator the following: A full response from DPTAC (Disabled Persons Transport Advisory Committee) to be received before developing the Minor Works Programme.~~

~~Start Date 31/03/08 End Date 11/04/08~~

^{vi} ~~By virtue of a derogation, the Secretary of State for Transport has granted the Franchise Operator the following: A derogation until November 2008 on the basis that should the projects under the Minor Work's Programme prove to be less expensive than originally estimated or not capable of delivery within the derogated timescale, a scheme or schemes from the reserve list will be added to the programme.~~

~~Start Date 28/03/08 End Date 01/11/08~~

^{vii} **By virtue of a derogation the Secretary of State has granted the Franchise Operator permission to provide increased passenger capacity on selected routes on the Fixed Train Plan at Part 3 of Appendix 2 to Sch. 7.1.**

Start Date 27/12/2011 End Date 30/12/2011

~~^{viii} By virtue of a derogation, the Secretary of State for Transport has granted the Franchise Operator the following: further time to provide the annual update to the Quality Plan.~~

~~Start Date 16/09/08 End Date 13/12/08~~

~~^{ix} By virtue of a derogation, the Secretary of State for Transport has granted the Franchise Operator the following: Owing to new reporting requirements and additional Corporate governance responsibilities, copies of the signed accounts will not be available until 25th May 2007~~

~~Start Date 27/04/07 End Date 25/05/07~~

~~* By virtue of a derogation, the Secretary of State for Transport has granted the Franchise Operator the following: Owing to new reporting requirements and additional Corporate governance responsibilities, copies of the signed accounts will not be available until 1st June 2007~~

~~Start Date 25/5/07 End Date 1/6/07~~

~~*ⁱ By virtue of a derogation, the Secretary of State for Transport has granted the Franchise Operator the following: Owing to new reporting requirements and additional Corporate governance responsibilities, copies of the signed accounts will not be available until 15th June 2007~~

~~Start Date 1/6/07 End Date 15/6/07~~

~~*ⁱ By virtue of a derogation the Secretary of State has granted the Franchise Operator the following:
further time to provide the annual update to the Quality Plan~~

~~Start Date 12/12/2008 End Date 19/12/2008~~

~~*ⁱⁱ ^{xii} By virtue of a derogation the Secretary of State has granted the Franchise Operator the following;
against Schedule 13.2 Appendix 1 Table 4 due to a delay in receiving crime statistics from British
Transport Police a derogation is granted until 1st June 2010 for you to provide information on Crime
Incidents as specified.~~

~~Start Date 10/04/2010 End Date 01/06/2010~~