

Dated

2009

National Rail Franchise Terms

Fourth Edition

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THE NATIONAL RAIL FRANCHISE TERMS

Fourth Edition

1. PREFACE

This edition of the National Rail Franchise Terms (the Terms) applies to each franchise agreement made between the Secretary of State for Transport (the Secretary of State) and a Train Operator which is expressed to be made pursuant to these Terms and which incorporates these Terms by reference. Each such franchise agreement specifies the matters which these Terms require to be addressed in a franchise agreement and which are to be agreed between the parties or prescribed by the Secretary of State, together with any other provisions that the parties have agreed should amend or supplement these Terms.

2. INTERPRETATION

2.1 The Franchise Agreement and the Conditions Precedent Agreement, together with the Terms (as amended or supplemented), constitute a single agreement, which is a “franchise agreement” for the purposes of the Act, and shall be interpreted in accordance with the Terms. Accordingly, references in these Terms to “the Franchise Agreement” shall include the Terms.

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

- (a) words and expressions defined in Part I of the Act have the same meanings when used therein provided that, except to the extent expressly stated, “railway” shall not have the wider meaning attributed to it by Section 81(2) of the Act;
- (b) words and expressions defined in the Interpretation Act 1978 have the same meanings when used in the Franchise Agreement;
- (c) the words “include”, “including” and “in particular” are to be construed without limitation;
- (d) references to any person include its successors, transferees or assignees;

- (e) the words “subsidiary” and “wholly owned subsidiary” have the same meaning in the Franchise Agreement as in Section 736 of the Companies Act 1985 and the word “parent undertaking” has the same meaning in the Franchise Agreement as in Section 1162 of the Companies Act 2006;
- (f) references to documents “in the agreed terms” are references to documents initialled by or on behalf of the Secretary of State and the Franchisee;
- (g) references in any of the agreements comprising the Franchise Agreement to Recitals, clauses, Schedules, Parts, paragraphs and Appendices are to Recitals, clauses, Schedules, Parts of Schedules, paragraphs of Schedules and Appendices of Schedules of that agreement, unless expressly specified to the contrary, and the Schedules and Appendices form part of the agreement in which they appear;
- (h) references in any Schedule in any of the agreements comprising the Franchise Agreement to a Part, paragraph or Appendix are references to a Part, paragraph or Appendix of that Schedule (or the relevant Part of a Schedule), unless expressly specified to the contrary;
- (i) headings and references to headings shall be disregarded in construing the Franchise Agreement;
- (j) references to any enactment include any subordinate legislation made from time to time under such enactment and are to be construed as references to that enactment as for the time being amended or modified or to any enactment for the time being replacing or amending it and references to any subordinate legislation are to be construed as references to that legislation as for the time being amended or modified or to any legislation for the time being replacing or amending it;
- (k) references to an agreement or any other document shall be construed as referring to that agreement or document as from time to time supplemented, varied, replaced, amended, assigned or novated;

- (l) references to any particular provisions of any agreement or any other document shall be construed to include any other provisions of, or incorporated in, that agreement or other document which the Secretary of State reasonably considers have an equivalent effect or are intended to fulfil the same function;
- (m) words importing the masculine gender include the feminine and vice-versa, and words in the singular include the plural and vice-versa;
- (n) wherever provision is made for the giving or issuing of any notice, endorsement, consent, approval, waiver, certificate or determination by any person, unless otherwise specified, such notice, endorsement, consent, approval, waiver, certificate or determination shall be in writing and the words “notify”, “endorse”, “consent”, “approve”, “waive”, “certify” or “determine” and other cognate expressions shall be construed accordingly;
- (o) references to materials, information, data and other records shall be to materials, information, data and other records whether stored in electronic, written or other form;
- (p) references to the Franchisee bidding for Train Slots or a Timetable shall mean the final action incumbent on the Franchisee under the Network Code to confirm to Network Rail its interests in the Train Slots to which that confirmation relates, and “bid” shall be construed accordingly;
- (q) references to the period of validity of any Fare are references to its period of validity excluding any rights of any purchaser thereof to extend such period under the Passenger’s Charter, any equivalent document, or the terms and conditions attaching to such Fare (including any applicable conditions of carriage) in the event of the cancellation or delay of any of the railway passenger services for which such Fare is valid;
- (r) references to stations at which any train calls include stations at which such train commences or terminates its journey;
- (s) references to “railway passenger services” are to be construed subject to Section 40 of the Railways Act 2005;

- (t) references to the provision of railway passenger services include the organisation of the relevant train movements and making the necessary arrangements with Network Rail or any other relevant Facility Owner;
- (u) references in lower case letters to terms defined in clause 3.1 shall be construed, where relevant, as being references to the terms defined as such in the franchise agreement or relevant agreement made under Section 30 of the Act or Section 6 of the Railways Act 2005 with any other Train Operator;
- (v) amendments to or variations of contracts or arrangements include assignments, novations or other transfers of rights and/or obligations (in whole or in part) under such contracts or arrangements;
- (w) references to sums of money being expended by the Franchisee shall be to such sums exclusive of Value Added Tax;
- (x) the words “shall not be liable” are to be construed as meaning that no contravention of the Franchise Agreement and no Event of Default shall arise as a result of the occurrence of the matter to which such words relate;
- (y) references to a “contravention of the Franchise Agreement” (and cognate expressions) are to be construed as meaning a breach of the Franchise Agreement; and
- (z) wherever provision is made for the Franchisee to “procure” or “ensure” the delivery of an obligation under the Franchise Agreement, unless otherwise specified, that provision shall be construed as a primary obligation on the Franchisee to deliver that obligation.

3. DEFINITIONS

3.1 In the Franchise Agreement, except to the extent the context otherwise requires, the following words and expressions have the following meanings:

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| “2003 Nominal Ticket Sales” | has the meaning given to it in paragraph 3 of Schedule 5.4 (Regulation of Fares Basket |
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| | Values); |
| “2003 Ticket Revenue” | has the meaning given to it in paragraph 4.1 of Schedule 5.4 (Regulation of Fares Basket Values); |
| “Access Agreement” | has the meaning given to the term “access agreement” in Section 83(1) of the Act; |
| “Act” | means the Railways Act 1993 and any regulations or orders made thereunder; |
| “Actual Operating Costs” | <p>means:</p> <ul style="list-style-type: none"> (a) the Franchisee’s total operating expenses for the period being reviewed as stated in its profit and loss account, including any of the following operating expenses that are payable during that period: <ul style="list-style-type: none"> (i) amounts payable to the Secretary of State and Network Rail; (ii) taxation; (iii) dividends; (iv) interest; (v) capital expenditure (net of grants received); and (vi) lease payments in relation to on-balance sheet leased assets, <p>but excluding any of the following expenses that are payable in that period:</p> |

- (A) interest relating to on-balance sheet leased assets;
 - (B) depreciation;
 - (C) amortisation; and
 - (D) bad debt provisions; and
- (b) either:
- (i) plus any reduction in the total amount owing by the Franchisee to creditors over that period; or
 - (ii) less any increase in the total amount owing by the Franchisee to creditors over that period,

where creditors:

- (A) include any persons owed amounts by the Franchisee in respect of operating expenses, including the types of expenses set out in paragraphs (a)(i) to (iv) inclusive, provisions and deferred income balances; but
- (B) exclude persons owed amounts by the Franchisee in respect of season ticket liabilities, lease liabilities in relation to on-balance sheet leased assets and liabilities in relation to grants received for the purchase of fixed

assets;

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| “Actual Passenger Demand” | has the meaning given to it in paragraph 1 of Schedule 1.5 (Information about Passengers); |
| “Actuary” | has the meaning given to it in the Pension Trust; |
| “Additional Call Centre Investment” | means investment by the Franchisee in Additional Call Centres not expressly required by the terms of the Franchise Agreement on the Start Date or by any subsequent Change; |
| “Additional Call Centres” | means telephone or internet based call centres for selling tickets to the general public that are provided by the Franchisee making Additional Call Centre Investment; |
| “Additional Investment” | means Additional Call Centre Investment or Additional Rolling Stock Investment; |
| “Additional Passenger Services” | means such of the Passenger Services as the Franchisee is neither required to secure in the Timetable for purposes of complying with the Service Level Commitment nor required to operate pursuant to paragraph 6.1(a) of Schedule 1.2 (Operating Obligations); |
| “Additional Rolling Stock Investment” | means investment by the Franchisee: (a) in the provision of rolling stock vehicles additional to the rolling stock vehicles comprised in the Train Fleet on the Start Date, including subsequent investment in those additional rolling stock vehicles; |

- (b) not expressly required by the terms of the Franchise Agreement on the Start Date or any subsequent Change; and
- (c) which the parties agree or, in the absence of agreement, the Secretary of State reasonably determines are rolling stock vehicles that the Franchisee proposes to use in order to provide Additional Passenger Services;

“Additional Timetable Development Rights”

means any Timetable Development Rights that the Franchisee does not require for purposes of securing a Timetable that complies with the Service Level Commitment and to operate the services contemplated thereby;

“Affiliate”

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

“Aggregate Forecast Operating Costs”

means the items specified in the definition of Actual Operating Costs, with the exclusion of the following:

- (a) if relevant, any amounts payable by the Franchisee to the Secretary of State pursuant to Schedule 8.1;
- (b) corporation tax;
- (c) dividends;
- (d) costs incurred by the Franchisee as fees for putting the Performance Bond in place; and

- (e) costs to be incurred or incurred by the Franchisee as fees for putting the Season Ticket Bond in place;

“Ancillary Service”

means any service specified in paragraph 5 of Schedule 1.6 (Franchise Services);

“Annual Audited Accounts”

means the accounts of the Franchisee which:

- (a) comply with paragraph 3.11 of Schedule 13 (Information and Industry Initiatives); and
- (b) are delivered to the Secretary of State by the Franchisee in accordance with paragraph 3.9 of Schedule 13 and certified by the Franchisee’s auditors as true and fair;

“Annual Financial Statements”

means the final draft financial statements of the Franchisee which:

- (a) comply with paragraph 3.11 of Schedule 13 (Information and Industry Initiatives);
- (b) give a true and fair view of the amount of Revenue earned by the Franchisee during any Franchisee Year (or part thereof), excluding:
 - (i) any Revenue Share Adjustments paid or payable by the Franchisee to the Secretary of State in respect of that Franchisee Year; and
 - (ii) any Revenue Support Adjustments received or

receivable from the Secretary of State by the Franchisee in respect of that Franchisee Year;

- (c) contain:
 - (i) a breakdown of the amount of Revenue referred to in paragraph (b), identifying the amount earned of each revenue flow specified in the definition of Revenue; and
 - (ii) any explanatory notes which the Franchisee reasonably believes would assist the Secretary of State in fulfilling the purpose referred to in paragraph (d); and
- (d) are delivered to the Secretary of State by the Franchisee in accordance with paragraph 3.7 of Schedule 13 for the sole purpose of calculating any Revenue Share Reconciliation Amount or any Revenue Support Reconciliation Amount;

“Annual Franchise Payment”

means, in relation to any Franchisee Year, the amount determined in accordance with Schedule 8.2 (Annual Franchise Payments);

“Annual Management Accounts”

means the management accounts of the Franchisee which:

- (a) comply with paragraph 3.10 of Schedule 13 (Information and

Industry Initiatives); and

- (b) are delivered to the Secretary of State by the Franchisee in accordance with paragraph 3.6 of Schedule 13;

“Annual Season Ticket” means a Season Ticket Fare which is valid in Standard Class Accommodation from (and including) the day on which it first comes into effect until (but excluding) the day which falls 12 months after such day;

“ATOC” means the Association of Train Operating Companies;

“Average Earnings Index” means the average earnings index:

- (a) for the whole economy of Great Britain;
- (b) seasonally adjusted; and
- (c) excluding bonuses,

as published from time to time by the Office for National Statistics or, if such index shall cease to be published or if there is a material change in the basis of the index, such other average earnings index as the Secretary of State may, after consultation with the Franchisee, determine to be appropriate in the circumstances;

“Bank” means a person which has a permission under Part IV of the Financial Services and Markets Act 2000 to carry on one or more of the regulated activities provided thereunder and which is reasonably acceptable to the Secretary of State;

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| “Bank Holiday” | means any day other than a Saturday or Sunday on which banks in the City of London are not open for business; |
| “Benchmark” | means any of the Cancellations Benchmark, Capacity Benchmark and Service Delivery Benchmark; |
| “Benchmark Table” | means, in relation to: <ul style="list-style-type: none"> (a) any Cancellations Benchmark, the Cancellations Benchmark Table; (b) any Capacity Benchmark, the Capacity Benchmark Table; and (c) any Service Delivery Benchmark, the Service Delivery Benchmark Table; |
| “Bond Provider” | means any person or persons who may provide or be an obligor under a Performance Bond or Season Ticket Bond from time to time and who shall, unless the Secretary of State otherwise agrees, be a Bank; |
| “Bond Year” | means the period beginning on the Start Date and ending at the end of the first Reporting Period to end in the month prescribed for such purpose in the Franchise Agreement and any subsequent period of 13 Reporting Periods beginning on the day after the end of the preceding Bond Year provided that: <ul style="list-style-type: none"> (a) the Franchisee and the Secretary of State may agree to vary the Reporting Period in which a Bond Year ends from time to time; and |

(b) the last Bond Year shall expire on the expiry of the Franchise Period and may be a period of less than 13 Reporting Periods;

“Brand Licence”

means a licence between the Secretary of State (or any company wholly owned by the Secretary of State) and the Franchisee in respect of any registered or unregistered trade marks;

“Breach Performance Level”

means, in relation to a Benchmark for any Reporting Period, the number set out in column 4 of the Benchmark Table relating to that Benchmark and in the row of that table for that Reporting Period;

“Business Action Plan”

means an action plan produced by the Franchisee in relation to the delivery of any outcome anticipated by its Business Plan, in accordance with paragraph 2.7 of Schedule 13 (Information and Industry Initiatives);

“Business Plan”

means the Initial Business Plan or any Updated Business Plan, as the context requires, to be delivered in accordance with paragraphs 2.1 to 2.4 of Schedule 13 (Information and Industry Initiatives);

“CRM Data”

means data (including name, address, e-mail address and ticket purchasing history) collected by or on behalf of the Franchisee relating to persons travelling on or purchasing tickets for travel on the Passenger Services or other services for the carriage of passengers by railway;

“CRM Data Processor”

means any Data Processor who, from time to time, is processing or has processed CRM Data on behalf of the Franchisee;

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| “CRM System” | means any system (whether a Computer System or otherwise) for the collection of CRM Data and/or onto which CRM Data is input, processed and/or held as such system may be amended or altered from time to time; |
| “Cancellation” | means a Passenger Service: <ul style="list-style-type: none"> (a) which is included in the Plan of the Day and which is cancelled and attributed to the Franchisee pursuant to its Track Access Agreement; (b) which is included in the Plan of the Day and which operates less than 50 per cent. of its scheduled mileage for reasons attributed to the Franchisee pursuant to its Track Access Agreement; or (c) which is omitted from the Plan of the Day, or included in it in a modified form that does not enable the Franchisee to operate more than 50 per cent. of such Passenger Service's scheduled mileage, without the Franchisee discharging its obligations under Schedule 1.2 (Operating Obligations) in relation thereto; |
| “Cancellations Benchmark” | means any of the performance levels in respect of Cancellations and Partial Cancellations set out in the Cancellations Benchmark Table; |
| “Cancellations Benchmark Table” | means the table set out in Appendix 5 (Cancellations Benchmark Table) to the |

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| | Franchise Agreement; |
| “Capacity Benchmark” | means any of the performance levels in respect of the capacity operated in delivering the Passenger Services set out in the Capacity Benchmark Table; |
| “Capacity Benchmark Table” | means the table set out in Appendix 6 (Capacity Benchmark Table) to the Franchise Agreement; |
| “Capital Expenditure” | has the meaning given to it in paragraph 2.4 of Schedule 19 (Other Provisions); |
| “Certificate of Commencement” | means the certificate to be issued by the Secretary of State pursuant to the Conditions Precedent Agreement; |
| “Change” | means if and whenever any of the following occurs: <ul style="list-style-type: none"> (a) an event set out in any Secretary of State Risk Assumption specified in Appendix 1 (Secretary of State Risk Assumptions) to the Franchise Agreement; (b) the Secretary of State and the Franchisee agree or the Secretary of State serves written notice on the Franchisee, exercising the Secretary of State’s right to call any Priced Option: <ul style="list-style-type: none"> (i) on different terms from those specified in respect of that Priced Option in Appendix 4 (List of Priced Options) to the Franchise Agreement; and/or |

- (ii) at any time after the last date for exercise of such Priced Option,

in each case, only to the extent of the difference from the price quoted in Appendix 4 to the Franchise Agreement caused by the difference in terms and/or the late timing of the agreement or call;

- (c) a Charge Variation;
- (d) a Change of Law (excluding any Change of Law to the extent that it results in an adjustment to the Franchise Payments pursuant to Schedule 8.4 (Track Access Adjustments and Station Charge Adjustments));
- (e) a change to the Service Level Commitment previously in force pursuant to the issue of an amended or new Service Level Commitment in accordance with paragraph 4.12 of Schedule 1.1 (Service Development);
- (f) a change to the railway passenger services required to be operated by another franchisee or franchise operator by direction of the Secretary of State which may reasonably be expected to have a material effect on the cost of and revenues derived from providing the Passenger Services that are required to be operated pursuant to the Service Level Commitment;

- (g) the Franchisee is required to take any action pursuant to paragraph 12.2(a) and/or 12.2(b) of Schedule 1.1;
- (h) a change effected pursuant to paragraph 6.1 of Schedule 1.2 (Operating Obligations), including as a result of any action that the Franchisee is required to take pursuant to paragraph 8.1(b) of Schedule 1.2 in respect of any Strategy or plan referred to in paragraph 8.1(b) of Schedule 1.2 published, endorsed or varied by the Secretary of State after the Start Date, except where that change is effected pursuant to paragraph 6.2 of Schedule 1.2 in respect of any Additional Passenger Services;
- (i) a change to the Secretary of State's standards in respect of alternative transport arrangements, as referred to in paragraph 8.2(b) of Schedule 1.2, from the Secretary of State's standards which are current as at the date of signature of the Franchise Agreement;
- (j) the Franchisee is required by the Franchise Agreement to implement the Olympic Services Delivery Plan insofar as such implementation results in the imposition of costs on and/or the receipt of revenue by the Franchisee;
- (k) the imposition of any costs associated with Traveline attributed

to the Franchisee in accordance with a national settlement plan approved by the Secretary of State;

- (l) the Secretary of State effects an amendment to a Discount Fare Scheme, introduces a new Discount Fare Scheme or ceases to approve a Discount Fare Scheme for the purposes of Section 28 of the Act;
- (m) the Secretary of State approves an amendment or proposed amendment to an Inter-Operator Scheme, as referred to in clause 5.1(l) to the Franchise Agreement, to the extent and only to the extent that the Franchisee makes a saving as a consequence of such amendment or proposed amendment;
- (n) the imposition, subject to the provisions of paragraph 2.6 of Schedule 4 (Persons with Disabilities and Disability Discrimination), of any increased access charges in respect of DDA Requirements at Franchisee Access Stations;
- (o) the Secretary of State exercises his power pursuant to paragraph 5 of Schedule 5.7 (Changes to Fares and Fares Regulation) to alter the obligations of and restrictions on the Franchisee under Schedule 5 (Fares);
- (p) the Franchisee is obliged to charge

Value Added Tax on a Fare or there is an increase or decrease in the rate of Value Added Tax which it must charge on such Fare, in either case due to a change in the Value Added Tax treatment of the provision of Passenger Services;

- (q) the Secretary of State notifies the Franchisee of any amendment to either Service Quality Standard pursuant to paragraph 2.8 of Schedule 7.2 (Service Quality Management);
- (r) the Secretary of State requests the Franchisee to take any action under paragraph 9.4 of Schedule 13 (Information and Industry Initiatives) in accordance with its terms, save that any adjustment to the Franchise Payments under Schedule 9 (Changes) in respect of any maintenance or support costs incurred pursuant to such paragraph 9.4 shall only be made to the extent that such maintenance and support costs are over and above the maintenance and support costs of any Computer System that is replaced;
- (s) the Franchisee is required to take any action under paragraph 9.5 of Schedule 13 in accordance with its terms;
- (t) a Variation to the terms of the Franchise Agreement pursuant to paragraph 1 of Schedule 19 (Other

Provisions);

- (u) the issue of any SLC (TDR) Amendments pursuant to paragraph 8.7 of Schedule 1.1 (Service Development) or, subject to paragraph 8.10(b) of Schedule 1.1, any SLC (TDR) Amendments ceasing to have effect in accordance with paragraph 8.9 of Schedule 1.1; or
- (v) any two or more of the foregoing that the Secretary of State groups together in accordance with any procedures issued by him pursuant to paragraph 1.4 of Schedule 19;

“Change of Law”

means the coming into effect after the date of the Franchise Agreement of:

- (a) Legislation; or
- (b) any applicable judgment of a court of Law which changes a binding precedent,

the terms of which apply only to the railway industry, a particular section of the railway industry or the provision of services to the railway industry and not to other transport modes or to industries other than the railway industry, and without limitation:

- (i) excluding any changes in Taxation;
- (ii) excluding any changes which were foreseeable at the date of the Franchise Agreement, and for this

purpose, but without limitation, there shall be regarded as foreseeable any Legislation which on the date of the Franchise Agreement has been published:

- (A) in a draft parliamentary bill as part of a government departmental consultation paper;
- (B) in a parliamentary bill;
- (C) in a draft statutory instrument; or
- (D) as a proposal in the Official Journal of the European Communities except to the extent that such proposal is intended to apply solely within member states other than the United Kingdom,

to the extent that the same is subsequently enacted in substantially the same form as the form in which it was previously so published. In relation to the application of this sub

paragraph (ii), each TSI shall be considered separately.

Change of Law (1) includes any Legislation, which only applies to the railway industry, which is made under the Health and Safety at Work etc. Act 1974 and which is not excluded under (i) and (ii) (a ***Specifically Included Change of Law***), but (2) excludes any Legislation (other than a Specifically Included Change of Law) which is made with the intention or effect of specifically applying to (or disapplying in relation to) the railway industry any other Legislation which does not apply only to the railway industry;

“Charge Variation”

means a variation:

- (a) to a Relevant Agreement; and
- (b) which is effected as a result of a Charging Review (including any variation in connection with an Incremental Output Statement Charge),

but excluding any such variation to a Relevant Agreement to the extent that it applies to any payments (other than the Fixed Track Charge (as such term is defined in part 1 of Schedule 7 of the Track Access Agreement)) relating to Additional Passenger Services or Additional Timetable Development Rights;

“Charging Review”

means:

- (a) the exercise by the ORR of its powers under:

- (i) Part 7 of Schedule 7 of the Track Access Agreement to which the Franchisee is a party on the Start Date or any Replacement Agreement which is or is deemed to be a Relevant Agreement in accordance with the definition of that term;
 - (ii) Condition F11.5 of the Franchise Station Access Conditions in relation to any station which is not an Independent Station; or
 - (iii) Condition 42.5 of the Independent Station Access Conditions in relation to any station which is an Independent Station;
- (b) the following by the ORR of the procedure in Schedule 4A of the Act;
- (c) the exercise by the ORR of any of its powers or the following of any other procedure, which, in the Secretary of State's reasonable opinion:
 - (i) has an equivalent effect to; or
 - (ii) is intended to fulfil the same function as,

any of the powers referred to in paragraphs (a) or (b) in relation to

any Relevant Agreement. For this purpose, Relevant Agreement includes any Relevant Agreement which is not the subject of any previous Charging Review; or

- (d) any amendment to a Relevant Agreement, or entry into a new Relevant Agreement which is approved by the ORR to the extent that it relates to an Incremental Output Statement Charge or a scheme to which that charge relates;

“Charter Service”

means a railway passenger service, whether operated on the same routes as the Passenger Services or not:

- (a) which is not reflected in the Timetable;
- (b) which does not conform to the pattern of railway passenger services normally provided by the Franchisee;
- (c) for which the advance booking or booking arrangements for seats on the relevant service are materially different from those generally applicable to the Passenger Services;
- (d) for which tickets are available on a restricted basis or on terms and conditions materially different from those generally applicable to the Passenger Services; and/or

(e) for which the departure time, journey time and calling pattern are materially different from those of the Passenger Services,

and which, in the opinion of the Secretary of State, is not a railway passenger service provided by the Franchisee as part of the Passenger Services;

“Child Price”

means, in relation to any Fare, the amount charged or chargeable to a person under the age of 16 in respect of such Fare;

“Closed Scheme Employees”

has the meaning given to it in paragraph 2.2 of Schedule 16 (Pensions);

“Closure”

means a closure under Part 4 of the Railways Act 2005 of any of the Passenger Services or of any network on which the Passenger Services may be operated or of any of the Stations or of any part of such network or Station;

“Code of Practice”

means the code of practice for protecting the interests of users of railway passenger services or station services who have disabilities, as prepared, revised from time to time and published by the Secretary of State pursuant to Section 71B of the Act;

“Collateral Agreement”

means an agreement which is required to be entered into by the Franchisee with Network Rail or any other franchisee as a condition to any Access Agreement of which the Franchisee is the beneficiary;

“Committed Obligations”

means any of the Franchisee’s obligations listed in Part 1 (List of Committed Obligations) to Appendix 11 (List of Committed Obligations and Related

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| | Provisions) to the Franchise Agreement; |
| “Committed Obligation Payment Adjustment” | means a payment adjustment made to Franchise Payments pursuant to Part 3 (Late/Non Completion of Committed Obligations) to Appendix 11 (List of Committed Obligations and Related Provisions) to the Franchise Agreement; |
| “Community Rail Partnership” | means any not-for-profit organisation of the same name that has an interest in the development of responsive and good quality railway passenger services; |
| “Community Rail Route” | means any Route in respect of which the Secretary of State determines that any relevant Community Rail Partnership has an interest; |
| “Commuter Fare” | means any: <ul style="list-style-type: none"> (a) Weekly Season Ticket, Monthly Season Ticket, Quarterly Season Ticket and Annual Season Ticket between each station prescribed for the purpose in clause 5.1(b)(i) of the Franchise Agreement and any other such station or other station; (b) ¹ <i>means, on and from 2nd January 2010 any unrestricted Single Fare and unrestricted Return Fare between each station set out in clause 5.1(b)(i) of the Franchise Agreement;</i> (c) any unrestricted Single Fare and unrestricted Return Fare from each |

¹ Date of change 16/10/2009

station prescribed for the purpose in clause 5.1(b)(ii) of the Franchise Agreement to each station prescribed for the purpose in clause 5.1(b)(i) of the Franchise Agreement (but not in the other direction),

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

“Commuter Fares Basket”

means the grouping of Commuter Fares:

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

“Commuter Fares Document”

means the document prescribed as such in the Franchise Agreement as the same may be amended from time to time in accordance with Schedule 5.7 (Changes to Fares and Fares Regulation);

“Compulsory Inter-available Flow”

has the meaning given to it in the Ticketing and Settlement Agreement;

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| “Computer System” | means computer hardware and computer software, including licensed third party software and data protocols; |
| “Conditions Precedent Agreement” | means the agreement between the Secretary of State and the Franchisee dated the date of the Franchise Agreement, specifying the conditions to be satisfied or waived by the Secretary of State prior to the issue of a Certificate of Commencement; |
| “Connection” | means a connection (however described) between any of the Passenger Services provided by the Franchisee and any other railway passenger service provided by it or any other Train Operator or any bus, ferry or shipping service and cognate phrases shall be construed accordingly; |
| “Connection Agreement” | means any agreement entered into by the Franchisee and Network Rail on or before the Start Date relating to the connection of a Depot to the relevant part of the network; |
| “Contingency Plan” | has the meaning given to it in paragraph 1(a)(iv) of Schedule 10.4 (Force Majeure); |
| “Continuation Review Date” | means the date which occurs 18 Reporting Periods prior to the Initial Expiry Date; |
| “Continuation Review Period” | means the 13 Reporting Periods prior to the Continuation Review Date; |
| “Contract Manager” | means a person appointed by the Franchisee to undertake the responsibilities of such person set out in Schedule 11 (Agreement Management Provisions); |
| “Control” | means, in respect of a person, that another person (whether alone or with others and whether directly or indirectly and whether by |

the ownership of share capital, the possession of voting power, contract or otherwise):

- (a) has the power to appoint and/or remove all or the majority of the members of the board of directors or other governing body of that person or of any other person which Controls that person;
- (b) controls or has the power to control the affairs and policies of that person or of any other person which Controls that person;
- (c) is the parent undertaking of that person or of any other person which Controls that person; or
- (d) possesses or is, or will be at a future date, entitled to acquire:
 - (i) 30 per cent. or more of the share capital or issued share capital of, or of the voting power in, that person or any other person which Controls that person;
 - (ii) such part of the issued share capital of that person or any other person which controls that person as would, if the whole of the income of such person were distributed, entitle him to receive 30 per cent. or more of the amount so distributed; or

- (iii) such rights as would, in the event of the winding-up of that person or any other person which controls that person or in any other circumstances, entitle him to receive 30 per cent. or more of the assets of such person which would then be available for distribution;

“Cost Savings”

means, in circumstances where the Franchisee is entitled to a Revenue Support Adjustment pursuant to paragraph 4 or 5 of Schedule 8.1 (Franchise Payments):

- (a) any cost savings made by the Franchisee where the dominant cause of such cost savings is the occurrence of one or more:
 - (i) Revenue Support Triggering Force Majeure Events (in the case of Revenue Support Adjustments under paragraph 4 of Schedule 8.1 (Franchise Payments)); or
 - (ii) Force Majeure Events (in the case of Revenue Support Adjustments under paragraph 5 of Schedule 8.1 (Franchise Payments)).

“dominant cause” shall have the same meaning as “Dominant Cause” as if references in that definition to decline in Revenue

were references to cost savings;
plus

- (b) any other amounts payable to the Franchisee by a third party (including under a policy of insurance or by way of damages, whether contractual or otherwise) in connection with or as a result of the occurrence of one or more:

- (i) Revenue Support Triggering Force Majeure Events (in the case of Revenue Support Adjustments under paragraph 4 of Schedule 8.1 (Franchise Payments));
or

- (ii) Force Majeure Events (in the case of Revenue Support Adjustments under paragraph 5 of Schedule 8.1 (Franchise Payments)),

(but excluding any such amounts to the extent already taken into account in the definition of Revenue),

such amounts to be as reasonably determined by the Secretary of State;

“Creating”

has the meaning given to it in the Ticketing and Settlement Agreement and cognate expressions shall be construed accordingly;

“Cumulative Year-to-Date Revenue”

means:

- (a) other than where paragraph (b) of this definition applies, cumulative year-to-date Revenue for the Franchisee Year to Date;
- (b) in relation to a Revenue Support Triggering Force Majeure Event or Revenue Support Triggering Force Majeure Events which occurred during Year 0, cumulative year-to-date revenue achieved by the Train Operator under the Previous Franchise Agreement, or the Train Operators under the Previous Franchise Agreements if services equivalent to the Passenger Services were previously provided by more than one Train Operator, during the Pre Force Majeure Event Period in respect of the operation of equivalent Passenger Services as reasonably determined by the Secretary of State, and for this purpose “revenue” shall be calculated by taking account of the same elements as are specified in the definition of Revenue;

“DDA”

means the Disability Discrimination Act 1995;

“DDA Claim”

has the meaning given to it in paragraph 3.1 of Schedule 4 (Persons with Disabilities and Disability Discrimination);

“DDA Requirements”

means the duties of a provider of services under Sections 21(2)(a), 21(2)(b) and 21(2)(c) of the DDA;

“Data Controller”

has the same meaning as in the Data

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| | Protection Act 1998; |
| “Data Processor” | has the same meaning as in the Data Protection Act 1998; |
| “Data Protection Act” | means the Data Protection Act 1998 and any guidance issued from time to time by the Information Commissioner’s Office; |
| “Data Subject” | has the same meaning as in the Data Protection Act 1998; |
| “Default Performance Level” | means, in relation to a Benchmark for any Reporting Period, the numbers set out in column 5 of the Benchmark Table relating to that Benchmark and in the row of that table for that Reporting Period; |
| “Defined Contribution Arrangement” | has the meaning given to it in the Railways Pensions Scheme; |
| “Departure Station” | has the meaning given to it in paragraph 2(b) of the Appendix (Alternative Transport) to Schedule 1.4 (Passenger Facing Obligations); |
| “Depot” | means a depot in respect of which the Franchisee has entered into a Depot Lease; |
| “Depot Lease” | means: <ul style="list-style-type: none"> (a) any lease of a depot to which the Franchisee is a party as at the Start Date; or (b) any other lease of a depot in relation to which the Franchisee becomes the Facility Owner at any time during the Franchise Period; |
| “Designated Employer” | has the meaning given to it in the Pension Trust; |

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| “Destination Station” | has the meaning given to it in paragraph 2(b) of the Appendix (Alternative Transport) to Schedule 1.4 (Passenger Facing Obligations); |
| “Direct Agreement” | means any agreement made, or to be made, from time to time between the Secretary of State and the counterparty of a Key Contract in relation to such Key Contract, including any agreement entered into by the Secretary of State under Schedule 14.3 (Key Contracts); |
| “Disabled People’s Protection Policy” | means the Franchisee’s policy for the protection of persons with disabilities which the Franchisee is required to establish and review from time to time in accordance with the conditions of its Licences in respect of the operation of railway passenger services and/or stations; |
| “Disabled Person” | has the meaning given to it in the DDA; |
| “Disabled Person’s Reporting System” | means the system known as the Disabled Person’s Reporting System (forming part of the national rail “Computer Reservation System”) as described in the Code of Practice as published on 22 March 2005; |
| “Discount Card” | has the meaning given to it in the Ticketing and Settlement Agreement; |
| “Discount Fare Scheme” | means: <ul style="list-style-type: none"> (a) a discount fare scheme set out in clause 5.1(d) to the Franchise Agreement; or (b) any other discount fare scheme approved from time to time by the Secretary of State for the purposes |

of Section 28 of the Act,

in each case until such time as it may cease to be approved by the Secretary of State for the purposes of Section 28 of the Act;

“Dispute Resolution Rules” means the procedures for the resolution of disputes known as “The Railway Industry Dispute Resolution Rules”, as amended from time to time in accordance with the terms thereof;

“Disputes Secretary” means the person appointed as Disputes Secretary from time to time in accordance with the Dispute Resolution Rules;

“Dominant Cause” means, in respect of any one or more Revenue Support Triggering Force Majeure Events, either:

(a) the relevant Revenue Support Triggering Force Majeure Event or Revenue Support Triggering Force Majeure Events is/are the sole cause of the relevant decline in Revenue; or

(b) if there are other causes, that decline is at least 51 per cent. attributable to such Revenue Support Triggering Force Majeure Event or Revenue Support Triggering Force Majeure Events,

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

“Environmental Information Regulations” means the Environmental Information Regulations 2004;

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| “Equivalent Fare” | has the meaning given to it in paragraph 6.1 of Schedule 5.7 (Changes to Fares and Fares Regulation); |
| “Equivalent Flow” | has the meaning given to it in paragraph 6.1(b) of Schedule 5.7 (Changes to Fares and Fares Regulation); |
| “Escrow Documents” | has the meaning given to it in paragraph 1.1 of Schedule 9.2 (Identity of the Financial Model etc.); |
| “Estimated Revisions” | has the meaning given to it in paragraph 2.1 of Schedule 9.1 (Financial Consequences of Change); |
| “Evening Peak” | means, in relation to any Passenger Service, the period prescribed as such in the Franchise Agreement; |
| “Event of Default” | means any of the events set out in paragraph 2 of Schedule 10.3 (Events of Default and Termination Event); |
| “Expiry Date” | means the later of: <ul style="list-style-type: none"> (a) the Initial Expiry Date; (b) the time and date prescribed as such in the Franchise Agreement if: <ul style="list-style-type: none"> (i) the conditions in paragraph 1.2 of Schedule 18 (Franchise Continuation Criteria) are satisfied; or (ii) the Secretary of State exercises his discretion to continue the Franchise Agreement pursuant to paragraph 1.3 of Schedule |

18; or

- (c) the time and date to which the Franchise Agreement is continued in accordance with paragraph 1.4 of Schedule 18;

“Facility Owner”

has the meaning given to the term facility owner in Section 17(6) of the Act;

“Fare”

means:

- (a) the right, exercisable against one or more Train Operators, subject to any applicable rights or restrictions and the payment of the relevant price, to make one or more journeys on the network or to carry on such a journey an item of luggage or an animal (where this right does not arise under the relevant conditions of carriage except on the payment of a fee) and, where applicable, to obtain goods or services from a person; and
- (b) for the purposes only of Schedules 5.3 (Allocation of Fares to Fares Baskets) to 5.8 (Fares Regulation Information and Monitoring) (inclusive) and the definitions of Commuter Fare, Protected Fare, Return Fare, Single Fare, Protected Weekly Season Ticket, Protected Return Fare and paragraph (b) of the definition of Season Ticket Fare, a Fare as defined under paragraph (a) that is:
 - (i) valid for a journey or journeys on the Passenger

Services included in the Timetable or other railway passenger services which are required to be included in another relevant Train Operator's passenger timetable by the Secretary of State;

- (ii) sold under the Travelcard Agreement; or
- (iii) a Cross London Ticket (as defined in the Through Ticketing (Non Travelcard) Agreement);

²***(iv) sold under the PAYG Agreement using TTL Smartmedia as defined in that agreement.***

“Fare Year”

means the period from 1 January in any year to 31 December in the same year;

“Fares Basket”

means either the Commuter Fares Basket or the Protected Fares Basket;

“Fares Document”

means any of the Commuter Fares Document and the Protected Fares Document;

“Fares Setting Round”

has the meaning given to it in the Ticketing and Settlement Agreement;

“Financial Action Plan”

means any action plan produced by the Franchisee pursuant to paragraph 3.3(f) of Schedule 13 (Information and Industry Initiatives), where the level of its financial performance specified in the Management

² Date of change 16/10/2009

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| | Accounts is worse than forecast by the Franchisee in its current Business Plan; |
| “Financial Model” | means the Franchisee’s financial model deposited with the Secretary of State on the date of the Franchise Agreement and as subsequently revised in each case in accordance with Schedule 9.2 (Identity of the Financial Model etc.); |
| “Financial Services Authority” | means the independent non-governmental body given statutory powers by the Financial Services and Markets Act 2000; |
| “Flow” | has the meaning given to it in the Ticketing and Settlement Agreement; |
| “Force Majeure Event” | means any of the events described as such in paragraph 1 of Schedule 10.4 (Force Majeure) where the conditions specified in paragraph 2 of Schedule 10.4 are satisfied; |
| “Forecast Modified Revenue” | means, in relation to any Reporting Period, the items specified in the definition of Modified Revenue, as most recently forecast for that Reporting Period pursuant to paragraph 3.4 of Schedule 13 (Information and Industry Initiatives); |
| “Forecast Operating Costs” | means, in relation to any Reporting Period, the items specified in the definition of Actual Operating Costs, as most recently forecast for that Reporting Period pursuant to paragraph 3.4 of Schedule 13 (Information and Industry Initiatives); |
| “Forecast Passenger Demand” | means the forecast by the Franchisee pursuant to paragraph 4.1(a) of Schedule 1.1 (Service Development) and paragraph 1.4 of Schedule 1.5 (Information about |

Passengers) in respect of:

- (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 day, week or year at which passengers travel,

for the period in respect of which the next Timetable is to apply and for five years following the date of the forecast, even if such five year period extends beyond the Franchise Term;

“Franchise”

means the rights tendered by the Secretary of State on the date prescribed for the purpose in the Franchise Agreement to operate railway passenger services to and from and between the places prescribed for that purpose in the Franchise Agreement;

“Franchise Agreement”

means the agreement between the Secretary of State and the Franchisee, which constitutes a single agreement together with the Conditions Precedent Agreement and the Terms and which is a “franchise agreement” for the purposes of the Act;

“Franchise Assets”

means the property, rights and liabilities designated as such pursuant to paragraph 1 of Schedule 14.4 (Designation of Franchise Assets) but excluding such property, rights or liabilities as shall, in accordance with the terms of the Franchise Agreement, cease to

be so designated;

“Franchise Employee”

means:

- (a) any employee of the Franchisee from time to time; and
- (b) any other person employed by the Franchisee or any of its Affiliates or any subcontractor or delegate of any of the Franchise Services whose contract of employment may be transferred to a Successor Operator following the expiry of the Franchise Period by virtue of the operation of Law (including the Transfer of Undertakings (Protection of Employment) Regulations 1981 (as amended, replaced or substituted from time to time)) or in respect of whom liabilities arising from a contract of employment or employment relationship may be so transferred;

“Franchise Letting Process Agreement”

means the agreement so entitled dated the date prescribed for this purpose in the Franchise Agreement between the Secretary of State and the Franchisee entered into by the Franchisee as part of its proposal to secure the provision and operation of the Franchise Services;

“Franchise Manager”

means a person appointed by the Secretary of State to undertake the responsibilities of such person set out in Schedule 11 (Agreement Management Provisions);

“Franchise Payment”

means, in relation to any Reporting Period, the amount determined in accordance with paragraph 1.1 of Schedule 8.1 (Franchise

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| | Payments); |
| “Franchise Performance Meeting” | means a meeting between the Secretary of State and the Franchisee to be held in each Reporting Period in accordance with paragraph 4 of Schedule 11 (Agreement Management Provisions); |
| “Franchise Period” | means the period commencing on the Start Date and ending on the Expiry Date or, if earlier, the date of termination of the Franchise Agreement pursuant to clauses 4.2(b) or 4.3(b) of the Conditions Precedent Agreement or Schedule 10 (Remedies, Termination and Expiry); |
| “Franchise Sections” | has the meaning given to it in paragraph 1 of Schedule 16 (Pensions); |
| “Franchise Services” | means such of the Passenger Services, the Light Maintenance Services, the Station Services and the Ancillary Services as the Franchisee may provide or operate from time to time, including any of such services as the Franchisee may delegate or subcontract or otherwise secure through any other person from time to time in accordance with the Franchise Agreement; |
| “Franchise Station Access Conditions” | has the meaning given to it in the relevant Access Agreement to which it relates; |
| “Franchise Term” | means the period commencing on the Start Date and expiring on the Expiry Date; |
| “Franchisee” | has the meaning given to it in the Franchise Agreement; |
| “Franchisee Access Station” | means any station at which the Passenger Services call (other than any Station); |

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| “Franchisee Year” | means any period of 12 months during the Franchise Period, beginning and ending on the dates prescribed for these purposes in the Franchise Agreement, except that the first and last Franchisee Years may be for a period of less than 12 months and the first Franchisee Year shall begin on the Start Date and the last Franchisee Year shall end on the last day of the Franchise Period; |
| “Franchisee Year to Date” | has the meaning given in paragraph 4.2(b)(i) of Schedule 8.1 (Franchise Payments); |
| “Freedom of Information Act” | means the Freedom of Information Act 2000; |
| “GAAP” | means generally accepted accounting principles in the United Kingdom, as derived from and including the accounting requirements of the Companies Act 2006, ‘Statements of Standard Accounting Practice’, ‘Financial Reporting Standards’, abstracts issued by the Urgent Issues Task Force of the Accounting Standards Board and, where appropriate, International Financial Reporting Standards and the listing rules of the Financial Services Authority, in each case, as at the date of the Franchise Agreement; |
| “Games” | means the Olympic Games and Paralympic Games to be held in London and other venues in the United Kingdom in 2012, the Franchisee’s obligations in respect of which are specified in Appendix 12 (2012 Olympic Games and Paralympic Games) to the Franchise Agreement; |
| Gross Revenue | means, in relation to any period and any |

Fare, the gross revenue to the Franchisee attributable to such Fare over the relevant period, excluding any applicable Value Added Tax, costs, commissions or other expenses which may be paid or incurred in connection with such Fare;

“Handover Package”

means a package containing the information and objects specified in the Appendix (Form of Handover Package) to Schedule 15.3 (Handover Package) and such other information and objects as the Secretary of State may reasonably specify from time to time;

“Hot Standby”

means any rolling stock vehicle specified in the Train Plan which:

- (a) is operationally ready to provide the Passenger Services in the Timetable;
- (b) is not already assigned to the delivery of any Passenger Service in the Timetable; and
- (c) will only be used to deliver such Passenger Services if:
 - (i) a rolling stock vehicle scheduled to deliver such Passenger Services is unable to so deliver; and
 - (ii) Actual Passenger Demand could only be met by the deployment in service of such rolling stock vehicle;

“Improvement Plan”

has the meaning given to it in paragraph 3.13(b) of Schedule 13 (Information and

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| | Industry Initiatives); |
| “Improvement Plan Performance Level” | means, in relation to a Benchmark for any Reporting Period, the number set out in column 3 of the Benchmark Table relating to that Benchmark and in the row of that table for that Reporting Period; |
| “Incremental Output Statement Charge” | means the charge to which that description is commonly given, first introduced into Relevant Agreements in April 2001; |
| “Independent Station” | has the meaning given to it in paragraph 2.6 of Schedule 8.4 (Track Access Adjustments and Station Charge Adjustments); |
| “Independent Station Access Conditions” | has the meaning given to it in the Access Agreement to which it relates; |
| “Individual Station Charge Adjustment” | has the meaning given to it in paragraph 2.1 of Schedule 8.4 (Track Access Adjustments and Station Charge Adjustments); |
| “industrial action” | has the meaning given to it in paragraph 1(f) of Schedule 10.4 (Force Majeure); |
| “Information Network” | has the meaning given to it in paragraph 13.1 of Schedule 13 (Information and Industry Initiatives); |
| “Initial Business Plan” | means the business plan to be provided by the Franchisee to the Secretary of State on or before the date of signature of the Franchise Agreement, as described in paragraph 2.1 of Schedule 13 (Information and Industry Initiatives), including any adjusted version of such plan resubmitted to the Secretary of State in accordance with paragraph 2.2 of that Schedule; |
| “Initial Expiry Date” | means the time and date prescribed as |

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| | such in the Franchise Agreement; |
| “Initial Permanent Fare” | has the meaning given to it in the Ticketing and Settlement Agreement; |
| “Integrated Transport Schemes” | means those schemes which relate to the integration of any other form of transport with the Franchise Services: <ul style="list-style-type: none"> (a) listed in clause 5.11 of the Franchise Agreement; or (b) designated as such in accordance with paragraph 1.2 of Schedule 2.5 (Transport, Travel and Other Schemes); |
| “Invitation to Tender” | means the Invitation to Tender issued by the Secretary of State as part of the procurement process pursuant to which the Franchise Agreement was entered into; |
| “ITSO” | means the organisation created by passenger transport executives, bus operators and Train Operators for the development and promotion of smartcards for use on transport; |
| “Interest Rate” | means a rate equivalent to two per cent. per annum above the base lending rate published by Royal Bank of Scotland plc (or such other bank as the Secretary of State may, after consultation with the Franchisee, determine from time to time) during any period in which an amount payable under the Franchise Agreement remains unpaid; |
| “Inter-Operator Schemes” | means: <ul style="list-style-type: none"> (a) the schemes, agreements and/or contracts set out in clause 5.1(l) of the Franchise Agreement and which |

relate to arrangements between the Franchisee and other participants in the railway industry;

(b) any other scheme, agreement and/or contract of a similar or equivalent nature as may from time to time during the Franchise Period amend, replace or substitute, in whole or in part, any of such schemes, agreements and/or contracts; and

(c) any Discount Fare Scheme;

“Joint Performance Improvement Plan”

has the meaning given to it in the Network Code;

“Key Contract”

means:

(a) each agreement and contract listed in Appendix 9 (List of Key Contracts) to the Franchise Agreement as at the date of the Franchise Agreement; and

(b) any other agreement, contract, licence or other arrangement to which the Franchisee is a party or under which the Franchisee is the beneficiary from time to time which is designated as such pursuant to Schedule 14.3 (Key Contracts),

but excluding any such agreement, contract, licence or other arrangement which ceases, in accordance with the terms of the Franchise Agreement, to be designated as a Key Contract;

“Key Personnel”

means those persons identified by the

Franchisee in accordance with paragraph 2.4 of Schedule 11 (Agreement Management Provisions);

“Law”

includes any enactment, subordinate legislation, rule, regulation, order, directive or other provision, including those of the European Community, and any judicial or administrative interpretation or application thereof, which has, in each case, the force of law in the United Kingdom or any part of it (including the Act, the Transport Act, the Transport Safety Act 2003 and the Railways Act 2005);

“Lead Operator”

has the meaning given to it in the Ticketing and Settlement Agreement;

“Legislation”

means any enactment or subordinate legislation, rule, regulation, order, directive or other provision including those of the European Community, which has, in each case, the force of Law in the United Kingdom or any part of it, but excluding any order under Section 1 of the Transport and Works Act 1992;

“Licences”

means such licences and/or statements of national regulatory provisions granted or to be granted under applicable law as the Franchisee may be required from time to time to hold under the Act or under the Railway (Licensing of Railway Undertakings) Regulations 2005 in order to provide or operate the Franchise Services;

“Light Maintenance Service”

means any service specified in paragraph 4 of Schedule 1.6 (Franchise Services) which may be provided by the Franchisee at the Depots and Stations;

“Local Authority”

means:

- (a) in England, a county council, a district council, a unitary authority, a passenger transport executive, a London borough council, the common council of the City of London, or a council which is established under the Local Government Act 1992 and which is either an authority responsible for expenditure on public passenger transport services within the meaning of Section 88 of the Transport Act 1985 or a local authority for the purposes of Section 93 of the Transport Act 1985;
- (b) in Wales, a county council, a district council or a council which is established under the Local Government Act 1972 or the Local Government (Wales) Act 1994;
- (c) in Scotland, the Strathclyde Passenger Transport Executive, or a district council or a unitary authority which is established under the Local Government (Scotland) Act 1973 or the Local Government, etc. (Scotland) Act 1994;
- (d) in London, the Mayor of London and Transport for London established under the Greater London Authority Act 1999;
- (e) any other body or council replacing any of the above from time to time; and

- (f) any other body or instrument of local or regional government specified by the Secretary of State from time to time;

“Lock-up Period”

has the meaning given to it in paragraph 3.2 of Schedule 12 (Financial Obligations and Covenants);

“LOCOG”

means the London Organising Committee of the Olympic Games Limited, a company limited by guarantee and acting as the organising committee for the Games;

“LOCOG Option Agreement”

means any agreement entered into by the Franchisee and/or any advertising sales agency it appoints with LOCOG, granting LOCOG an option in respect of the use of the Media Space for a limited period before, during and a limited period after the Games;

“London Station”

means any station served by the Railway Passenger Services in the Zones and any Zone to or from which a passenger may travel from or to such station;

“Maintenance Contract”

means any contract or arrangement to which the Franchisee is a party, which includes the carrying out for the Franchisee of any maintenance work (including light maintenance services) or service provision in respect of rolling stock vehicles used by the Franchisee in the provision of the Passenger Services or for the enforcement of warranties or other rights against a manufacturer in respect of any such rolling stock vehicles;

“Major Flow Operator”

has the meaning given to it in the Ticketing and Settlement Agreement;

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| “Managed Station” | means the stations prescribed as such in the Franchise Agreement or any other station used in connection with the provision of the Franchise Services where Network Rail becomes the Facility Owner during the Franchise Period; |
| “Managed Station Area” | means the premises comprising part or parts of a Managed Station to be occupied by the Franchisee on or after the Start Date and to be used for or in connection with the provision of the Franchise Services; |
| “Management Accounts” | means, in relation to any Reporting Period, the Franchisee’s management accounts which: <ul style="list-style-type: none"> (a) comply with paragraph 3.10 of Schedule 13 (Information and Industry Initiatives); and (b) are required to be delivered to the Secretary of State by the Franchisee in accordance with paragraphs 3.2 and 3.3 of Schedule 13; |
| “Mandatory Modification” | means a modification or addition to any rolling stock vehicle which is required to be made under any applicable Law or any directive of the Rail Safety and Standards Board Limited or any government authority; |
| “Marks” | means such trade marks as the Franchisee may apply to any Primary Franchise Asset or other asset used by it under a Key Contract, which are applied on the expiry of the Franchise Period and are not the subject of a Brand Licence; |

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| “Media Space” | has the meaning given to it in the form of option agreement in the agreed terms marked OOA; |
| “Minor Works” | has the meaning given to it in paragraph 2.7(a) of Schedule 4 (Persons with Disabilities and Disability Discrimination); |
| “Minor Works’ Budget” | <p>means the amount prescribed as such in the Franchise Agreement allocated by the Franchisee for the purpose of facilitating Minor Works at Stations to improve accessibility of the Stations to persons with disabilities, save that:</p> <p>(a) for any Franchisee Year which is shorter than 12 months, the amount shall be reduced pro rata; and</p> <p>(b) for each Franchisee Year after the first Franchisee Year, the amount specified in paragraph (a) shall be subject to adjustment as follows:</p> $\text{Minor Works Budget} \times \text{RPI}$ <p>where RPI has the meaning given to it in Schedule 8.2 (Annual Franchise Payments);</p> |
| “Minor Works’ Programme” | means the Franchisee’s programme of Minor Works at Stations to improve accessibility of the Stations to persons with disabilities, developed prior to the start of each Franchisee Year pursuant to paragraph 2.7(b) of Schedule 4 (Persons with Disabilities and Disability Discrimination); |
| “Minutes Delay” | means the minutes of delay to the Passenger Services that are attributed to |

the Franchisee or Network Rail (as the case may be) pursuant to the Track Access Agreement and disregarding any minutes of delay that are imputed to Passenger Services that were cancelled;

“Model Changes”

has the meaning given to it in paragraph 2.2 of Schedule 9.3 (Runs of the Financial Model);

“Modified Revenue”

means:

- (a) the sum of:
 - (i) the Franchisee’s total revenue for the period being reviewed as stated in its profit and loss account:
 - (A) including any amounts receivable from the Secretary of State, Network Rail and any interest; but
 - (B) excluding the proportion of income recognised in the profit and loss account in relation to grants received from capital expenditure; and
 - (ii) the opening cash balance for the period being reviewed, excluding:
 - (A) any cash held for

the exclusive purpose of the provision of the Performance Bond;

(B) any cash that is held pursuant to any restrictive terms under any agreement and that, consequently, cannot be used for general operating purposes; and

(C) the amount of the opening season ticket liabilities which relate to Passenger Services yet to be delivered; and

(b) either:

(i) plus any reduction in total debtors over that period; or

(ii) less any increase in total debtors over that period,

where total debtors exclude any bad debts provision or write off and any capital-related debtors;

“Monthly Season Ticket”

means a Season Ticket Fare which is valid in Standard Class Accommodation from (and including) the day it first comes into effect until (but excluding) the day which falls one month after such day;

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| “Morning Peak” | means, in relation to any Passenger Service, the period prescribed as such in the Franchise Agreement; |
| “MRE” | has the meaning give to it in the definition of Revenue; |
| “National Passenger Survey” | means a passenger satisfaction survey in respect of the Franchise Services which may be carried out by the Rail Passengers’ Council as described in paragraph 2 of Schedule 1.5 (Information about Passengers); |
| “National Rail Enquiry Scheme” | means the telephone information scheme run by ATOC, providing information to callers regarding rail journeys throughout the country; |
| “National Rail Timetable” | means the passenger timetable published by Network Rail (currently twice per annum) specifying the timings and stopping patterns of all passenger railway services in Great Britain; |
| “network agreements” | has the meaning given to it in paragraph 3.1 of the Appendix (Conditions Precedent) to the Conditions Precedent Agreement; |
| “Network Change” | has the meaning given to it in the Network Code; |
| “Network Code” | means the document known as the Network Code and formerly known as the Railtrack Track Access Conditions 1995 (as subsequently replaced or amended from time to time) or any equivalent code or agreement; |

³ **“Network Rail”**

means in respect of:

- (a) the network or any relevant facility:
 - (i) Network Rail Infrastructure Limited, a company registered in England with registered number 02904587 whose registered office is at **Kings Place, 90 York Way, London N1 9AG**; and
 - (ii) any successor in title to the network or any relevant railway facility; or
- (b) any new or other sections of network or any relevant new or other railway facilities, the owner (if different);

“new insurance arrangements”

shall have the meaning given to it in paragraph 2.2(b) of Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases);

“New Results”

means, in relation to any Change, the following, as restated following a Run of the Financial Model in relation to that Change:

- (a) the restated amounts of Target Revenue to be specified for each Franchisee Year in Appendix 2 (Target Revenue (expressed in real terms)) to the Franchise Agreement; and

³ Date of Change 05./05/2011

- (b) the restated values of FXD, VCRPI, VCAEI, PRPI and TRRPI to be specified for each Franchisee Year in Appendix 8 (Figures for Calculation of Annual Franchise Payments) to the Franchise Agreement;

“New Station”

means:

- (a) a station not served by railway passenger services as at February 2003, but which has since that time been, or is subsequently, served by railway passenger services which have been, or are subsequently to be, included in the Timetable or in another relevant Train Operator’s timetable; and/or
- (b) if the Secretary of State requires, a station, other than a Station, at which, with the consent of the Secretary of State (whether by amendment to the Franchise Agreement or otherwise) railway passenger services operated by the Franchisee call;

“Non-Fares Basket Fare”

means a Fare that is designated as such by the Secretary of State pursuant to paragraph 2.1 of Schedule 5.3 (Allocation of Fares to Fares Baskets) and which has not been de-designated as such pursuant to paragraph 1.1 of Schedule 5.7 (Changes to Fares and Fares Regulation);

NRR0/11 ⁴

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

“Off-Peak”

means, in relation to any Passenger Service, the period of time outside of the Peak;

“Off-Peak Passenger Services”

means Passenger Services other than Peak Passenger Services;

“Old Results”

means, in relation to any Change, the following, as produced by the Run of the Financial Model in respect of the immediately preceding Change, or, in relation to the first Change only, the following as at the date hereof:

- (a) the amounts of Target Revenue to be specified for each Franchisee Year in Appendix 2 (Target Revenue (expressed in real terms)) to the Franchise Agreement; and
- (b) the values of FXD, VCRPI, VCAEI, PRPI and TRRPI to be specified for each Franchisee Year in Appendix 8 (Figures for Calculation of Annual Franchise Payments) to the Franchise Agreement;

“Olympic Delivery

means the Olympic Delivery Authority

⁴ Date of Change 23/03/2011

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| Authority” | established under Section 3 of the Olympic Games Act; |
| “Olympic Games Act” | means the London Olympic Games and Paralympic Games Act 2006; |
| “Olympic Services Delivery Plan” | has the meaning given to it in paragraph 3.1 of Appendix 12 (2012 Olympic Games and Paralympic Games) to the Franchise Agreement; |
| “Olympic Transport Plan” | means the Olympic Delivery Authority’s transport plan required pursuant to Section 10 of the Olympic Games Act; |
| “Operating Assets” | has the meaning given to it in paragraph 1.1 of Schedule 14.2 (Maintenance of Operating Assets); |
| “Operational Model” | <p>means the operational model of any of:</p> <ul style="list-style-type: none"> (a) the revenue model; (b) the performance model; (c) all cost models; and (d) any other relevant models that have generated input to the Financial Model, <p>as prescribed in the Franchise Agreement;</p> |
| “ORR” | means the Office of Rail Regulation established by Section 15 of the Railways and Transport Safety Act 2003 and having duties and obligations as set out in the Act; |
| “Parent” | means any person prescribed as such in the Franchise Agreement; |
| “Partial Cancellation” | means a Passenger Service which is included in the Plan of the Day and which |

Passenger Service:

- (a) misses a stop;
- (b) completes 50 per cent. or more, but less than 100 per cent. of its scheduled journey; or
- (c) arrives at its final destination scheduled in the Timetable more than 120 minutes late,

in each case, for reasons which are attributed to the Franchisee pursuant to its Track Access Agreement;

“Participating Employer”

has the meaning given to it in the Pension Trust;

“passenger carrying capacity”

means, in relation to a Passenger Service, the capacity of the rolling stock vehicles (as stated in Appendix 3 (The Train Fleet) to the Franchise Agreement) from which the Passenger Service is formed;

“Passenger Change Date”

means a date upon which significant changes may be made to the Timetable in accordance with or by virtue of the Network Code;

“Passenger Services”

means the Franchisee’s railway passenger services specified in any Timetable and/or in any Plan of the Day, including those railway passenger services which the Franchisee may delegate or subcontract or otherwise secure through any other person from time to time in accordance with the Franchise Agreement;

“Passenger’s Charter”

means the Franchisee’s service commitments to its passengers prescribed as such in the Franchise Agreement, as

amended or replaced from time to time with the prior written consent of the Secretary of State in accordance with paragraph 4 of Schedule 1.4 (Passenger Facing Obligations);

“Passenger’s Charter Guidelines”

means the document of the same name issued by or on behalf of the Secretary of State containing the methodology for compiling performance statistics and Passenger’s Charter compensation, as amended or replaced from time to time by the Secretary of State after consultation with the Franchisee and with other franchisees whose franchise agreements contain a similar or equivalent obligation for consultation;

“Passenger’s Charter Statistics”

means the record of the Franchisee’s performance against the standards specified in the Passenger’s Charter for each Reporting Period as published in accordance with paragraph 4.8 of Schedule 1.4 (Passenger Facing Obligations);

⁵“PAYG Agreement”

means an agreement between TTL and the participants in the PAYG Scheme providing for the acceptance by those participants of Pay As You Go (utilising TTL smartrmedia) as a payment medium for journeys on the participant’s services;

⁶“PAYG Launch Date”

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

⁵ Date of change 16/10/.2009

⁶ Date of change 16/10/2009

“⁷ PAYG Peak Fare”

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

“PAYG Off-Peak Fare”

means a Fare which is a Permanent Fare and which entitles the purchaser to make a single journey under the PAYG Agreement in Standard Class Accommodation between and within the PAYG Zones for which the fare is valid, at any time on Saturdays and Sundays and at such times as the Franchisee may designate on Mondays to Fridays (where such Fare need not be valid between 6.30 a.m. and 9.30 a.m. or between 4.00p.m. and 7p.m. but must be valid at all other times) and which may take into account the different directions of travel;

“PAYG ZONE”⁸

***shall have the same meaning as “Zone” with the addition of the following stations:
Rickmansworth,
Carpenders Park,
Chorleywood,
Chalfont and Latimer,
Amersham,
Bushey
Watford Junction
Watford High Street.***

“Payment Date”

means the date for the payment of Franchise Payments in accordance with paragraph 2.3 of Schedule 8.1 (Franchise Payments);

⁷ Date of Change 16/10/2009

⁸ Date of change 16/10/2009

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| “Peak” | means the Morning Peak and the Evening Peak; |
| “Peak Passenger Service” | means any Passenger Service operated in the Peak; |
| “Pension Trust” | means the pension trust governing the Railways Pension Scheme; |
| “Pensions Committee” | has the meaning given to it in the Railways Pension Scheme; |
| “Performance Bond” | means the performance bond to be provided to the Secretary of State in the form set out in Appendix 1 (Form of Performance Bond) to Schedule 12 (Financial Obligations and Covenants), as replaced or amended from time to time in accordance with Schedule 12; |
| “Performance Measurement Period” | means the thirteen consecutive Reporting Periods up to and including the last Reporting Period ending prior to the Start Date; |
| “Permitted Aggregate Increase” | has the meaning given to it in paragraph 4.2 of Schedule 5.4 (Regulation of Fares Basket Values); |
| “Permitted Individual Increase” | has the meaning given to it in paragraph 2.2 of Schedule 5.5 (Regulation of Individual Fares); |
| <i>“Permanent Fare”</i>⁹ | <i>has the meaning given to it in the Ticketing and Settlement Agreement; and</i> |
| “Personal Data” | has the same meaning as in the Data Protection Act 1998 and includes Sensitive |

⁹ Date of change 16/10/2009

Personal Data as defined therein;

“Placed in Escrow”

means:

- (a) in respect of the Financial Model, delivery of the Financial Model:
 - (i) dated the date of the Franchise Agreement;
 - (ii) adjusted to the extent necessary to reflect any time elapsed between the actual Start Date and the date assumed to be the Start Date in the Initial Business Plan; and
 - (iii) audited following a Run of the Financial Model and updated with any Revised Inputs; and
- (b) in respect of the Operational Model, delivery of:
 - (i) the Operational Model dated the date of the Franchise Agreement;
 - (ii) the Operational Model adjusted to the extent necessary to reflect any time elapsed between the actual Start Date and the date assumed to be the Start Date in the Initial Business Plan; and
 - (iii) the inputs to the Financial Model derived therefrom following an audit of a Run

of the Financial Model; and

- (c) in respect of the Record of Assumptions, delivery thereof,

each in accordance with Schedule 9.2 (Identity of the Financial Model etc.);

“Plan of the Day”

means, in relation to each day during the Franchise Term, the Passenger Services scheduled to be operated on that day through specification in the Timetable or as notified to the Franchisee by Network Rail from time to time prior to 2200 on the previous day;

“Possessions Strategy Notice”

has the meaning given to it in the Network Code;

“Power of Attorney”

means the power of attorney prescribed as such in the Franchise Agreement, granted by the Franchisee in favour of the Secretary of State;

“Pre Force Majeure Event Period”

in respect of any one or more Revenue Support Triggering Force Majeure Events, means:

- (a) other than where paragraph (b) of this definition applies, the period:

- (i) commencing on:

- (1) the first day of the Franchisee Year during which such Revenue Support Triggering Force Majeure Event or the first of such Revenue Support Triggering Force

Majeure Events first occurred; or

- (2) if such Revenue Support Triggering Force Majeure Event or the first of such Revenue Support Triggering Force Majeure Events first occurred during the first Reporting Period of the Franchisee Year, the first day of the last Reporting Period in the previous Franchisee Year or such earlier Reporting Period as the Secretary of State reasonably selects; and

(ii) ending on the final day of:

- (1) the Reporting Period immediately prior to the Reporting Period in which such Revenue Support Triggering Force Majeure Event or the first of such Revenue Support Triggering Force Majeure Events

occurred; or

- (2) such earlier Reporting Period as the Secretary of State reasonably selects, following consultation with the Franchisee, if the Franchisee demonstrates to the Secretary of State's reasonable satisfaction that the percentage achieved in the Reporting Period referred to in paragraph (a)(ii)(1) of this definition is not reasonably representative of the Franchisee's overall Revenue performance; or

- (b) if such Revenue Support Triggering Force Majeure Event or Revenue Support Triggering Force Majeure Events occurred during Year 0, the period:

- (i) commencing on:

- (1) the date prescribed for such purpose in the Franchise Agreement; or
 - (2) if such Revenue

Support Triggering
Force Majeure
Event or the first of
such Revenue
Support Triggering
Force Majeure
Events first
occurred during the
Reporting Period in
which the date
prescribed for such
purpose in the
Franchise
Agreement falls,
such earlier date as
the Secretary of
State reasonably
selects; and

- (ii) ending on the final day of:
 - (1) the Reporting
Period immediately
prior to the
Reporting Period in
which such
Revenue Support
Triggering Force
Majeure Event or
the first of such
Revenue Support
Triggering Force
Majeure Events
occurred; or
 - (2) such earlier
Reporting Period as
the Secretary of
State reasonably
selects, following

consultation with the Franchisee, if the Franchisee demonstrates to the Secretary of State's reasonable satisfaction that the percentage achieved in the Reporting Period referred to in paragraph (b)(ii)(1) of this definition is not reasonably representative of the Franchisee's overall Revenue performance.

“Preceding Year Ticket Price”

has the meaning given to it in paragraph 2.1 of Schedule 5.5 (Regulation of Individual Fares);

“Previous Franchise Agreement”

means any franchise agreement under which services equivalent to the Franchise Services (or a material proportion thereof) were provided by a Train Operator on or about the day prior to the Start Date;

“Price”

means, in respect of any Fare, the price of such Fare before the deduction of any applicable discount to which a purchaser may be entitled, as notified to RSP in accordance with Schedule 5 to the Ticketing and Settlement Agreement;

“Priced Option”

means any of the options set out in Appendix 4 (List of Priced Options) to the Franchise Agreement;

“Primary Franchise Assets” means:

- (a) the property, rights and liabilities of the Franchisee listed in Appendix 10 (List of Primary Franchise Assets) to the Franchise Agreement; and
- (b) any other property, rights and liabilities of the Franchisee which is or are designated as such pursuant to Schedule 14.4 (Designation of Franchise Assets),

but excluding such property, rights or liabilities as may, in accordance with the terms of the Franchise Agreement, cease to be so designated;

“Process” has the same meaning as in the Data Protection Act 1998;

“profit” means profit before corporation tax, determined in accordance with GAAP;

“Projected Revenue” means the revenue in any Fare Year which is projected to be attributable to any Fare, determined in accordance with paragraph 3 of Schedule 5.4 (Regulation of Fares Basket Values);

“Property Lease” means any Depot Lease, Managed Station Area Lease, any lease in respect of Shared Facilities or Station Lease and any agreement or lease of a similar or equivalent nature (whether in respect of any such facility or otherwise) which the Franchisee may enter into with a person who has an interest in a network or a railway facility which is to be used for or in connection with the provision or operation of

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| | the Franchise Services; |
| “Protected Employees” | has the meaning given to it in the Railways Pension (Protection and Designation of Schemes) Order 1994; |
| “Protected Fare” | means a Protected Return Fare or a Protected Weekly Season Ticket; |
| “Protected Fares Basket” | means the grouping of Protected Fares: <ul style="list-style-type: none"> (a) determined by the Secretary of State pursuant to Schedule 5.3 (Allocation of Fares to Fares Baskets); (b) for the purposes of regulating their aggregate Prices or Child Prices, as the case may be, in accordance with Schedule 5.4 (Regulation of Fares Basket Values); (c) amended by the Secretary of State from time to time in accordance with Schedule 5.7 (Changes to Fares and Fares Regulation); and (d) set out in the Protected Fares Document; |
| “Protected Fares Document” | means the document prescribed as such in the Franchise Agreement, as the same may be amended from time to time in accordance with Schedule 5.7 (Changes to Fares and Fares Regulation); |
| “Protected Proposal” | has the meaning given to it in paragraph 1.9 of Schedule 19 (Other Provisions); |
| “Protected Return Fare” | means in respect of a Fare for a Flow: <ul style="list-style-type: none"> (a) for which there was a Saver Return |

Fare in February 2003, a Return Fare for each such Flow in respect of which the Franchisee is entitled or obliged from time to time to set the Price or Child Price under the Ticketing and Settlement Agreement, subject to the following additional rights and restrictions:

- (i) it shall be valid for no less than one month;
- (ii) it shall be valid all day on a Saturday or Sunday and from no later than 1030 on any other day;
- (iii) it need not be valid for any journey:
 - (A) beginning between 1500 and 1900 on any day other than a Saturday or Sunday;
 - (B) where such journey begins from a London Station or any station between any London Station and Reading station, Watford station, Luton station, or Stevenage station (inclusively); and
 - (C) which is in a direction away from

London; or

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

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

“Protected Weekly Season Ticket”

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

“Public Sector Operator”

means any person (other than a franchisee or franchise operator in relation to the services provided or operated under its franchise agreement) who provides railway passenger services or operates any station or light maintenance depot pursuant to or under Section 30 of the Act or Section 6 of the Railways Act 2005;

“Qualifying Change”

means a Change which would (if it were subject to a Run of the Financial Model in accordance with Schedule 9 (Changes)) result in adjustments in Franchise Payments over the remaining life of the Franchise

Agreement that have a net present value as at the date of the Change in excess of the Threshold Amount for the Franchisee Year during which the relevant Change arises, and for the purposes of ascertaining a net present value of the amount of any adjustment in any Franchise Payment, it shall be discounted at the prevailing discount rate per annum (in real terms) stated in HM Treasury's "Green Book Appraisal Guidelines" (such rate as at the date of the Franchise Agreement being specified in the Franchise Agreement) from the date of receipt of that adjusted Franchise Payment to the date of the Change;

"Quality Plan"

means the plan specified in paragraph 4.3 of Schedule 13 (Information and Industry Initiatives);

"Quarterly Season Ticket"

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

"Rail Passengers' Council"

means the passengers' council established under Section 19 of the Railways Act 2005;

"Railway Group Standards"

has the meaning given to it in the Network Code;

"railway industry standards"

has the meaning given to it in paragraph 10.1 of Schedule 13 (Information and Industry Initiatives);

"Railway Passenger Services"

means, for the purposes of Schedule 5 (Fares) only, services for the carriage of passengers by railway which are provided by a person who is bound by the Ticketing

and Settlement Agreement, or any part of it, and including the Franchisee and any other Train Operator from time to time;

“Railways Pension Scheme”

means the pension scheme established by the Railways Pension Scheme Order 1994 (No. 1433);

“Reconciliation Amount”

has the meaning given to it in paragraph 8.3 of Schedule 9.3 (Runs of the Financial Model);

“Record of Assumptions”

means a document prepared by the Franchisee and prescribed as such in the Franchise Agreement or as may be revised in accordance with Schedule 9 (Changes) and Placed in Escrow providing:

- (a) detailed assumptions, explanations of assumptions and parameters underlying the Financial Model;
- (b) details of how Franchise Payments have been calculated (including by reference to a defined annual profit margin);
- (c) a description of the functionality, operation and structure of the Financial Model; and
- (d) a description of each input cell, its requirements and its inter-relationship with the Financial Model;

“Reference Fare”

has the meaning given to it in paragraph 6.1(a) of Schedule 5.7 (Changes to Fares and Fares Regulation);

“Reference Flow”

has the meaning given to it in paragraph 6.1(a) of Schedule 5.7 (Changes to Fares

and Fares Regulation);

“Reference Revenue”

means the aggregate Gross Revenue recorded by RSP as attributable to sales of all Commuter Fares or Protected Fares for the period of 12 months which ended 31 March 2003 or such other reference period as the Secretary of State may require pursuant to paragraph 3.1(a) of Schedule 5.7 (Changes to Fares and Fares Regulation);

“Regulated Child Price”

means the Child Price that is permitted to be charged by the Franchisee in respect of any Fare in any Fare Year, determined in accordance with paragraph 2.1 of Schedule 5.5 (Regulation of Individual Fares);

“Regulated Price”

means the Price that is permitted to be charged by the Franchisee in respect of any Fare in any Fare Year, determined in accordance with paragraph 2.1 of Schedule 5.5 (Regulation of Individual Fares);

“Regulated Value”

means the Value of any Fares Basket that is permitted in any Fare Year, determined in accordance with paragraph 4.1 of Schedule 5.4 (Regulation of Fares Basket Values);

“Regulations”

has the meaning given to it in paragraph 2.2 of Schedule 2.5 (Transport, Travel and Other Schemes);

“Relevant Agreement”

means any Property Lease or Access Agreement in relation to any stations or network which may be used from time to time by the Franchisee in connection with the Franchise Services, as replaced or amended from time to time. If and to the extent that:

- (a) following the effective date of any Charge Variation, the Franchisee enters into any Replacement Agreement;
- (b) the effect of that Charge Variation is reflected in the terms of the Replacement Agreement; and
- (c) the Secretary of State has consented to such Replacement Agreement being entered into and constituting a Replacement Agreement for the purposes of this definition,

then the Replacement Agreement shall be deemed to be a Relevant Agreement;

“Relevant FME Reporting Period”

has the meaning given in paragraph 4.2(b)(i) of Schedule 8.1 (Franchise Payments);

“relevant Reporting Period”

has, for the purposes of paragraph 5.3 of Schedule 12 (Financial Obligations and Covenants) only, the meaning given to it in that paragraph;

“Relevant Term”

has the meaning given to it in paragraph 1.2 of Schedule 10.1 (Remedial Plans and Remedial Agreements);

“Remedial Agreement”

has the meaning given to it in paragraph 1.5 of Schedule 10.1 (Remedial Plans and Remedial Agreements);

“Remedial Plan”

has the meaning given to it in paragraph 1.2 of Schedule 10.1 (Remedial Plans and Remedial Agreements);

“Remedial Plan Notice”

has the meaning given to it in paragraph 1.1 of Schedule 10.1 (Remedial Plans and

Remedial Agreements);

“Replacement Agreement” means an agreement entered into as a replacement for any Relevant Agreement;

“Replacement Copy” has the meaning given to it in paragraph 2.2(b) of Schedule 9.2 (Identity of the Financial Model etc.);

“Reporting Accountants” means the firm of accountants prescribed as such in the Franchise Agreement;

“Reporting Period” means:

- (a) for the purposes of the Season Ticket Bond, any consecutive seven-day period or any other period, each within a Reporting Period (as defined in paragraph (b)) agreed in accordance with paragraph 5.12 of Schedule 12 (Financial Obligations and Covenants); or
- (b) for all other purposes, a period of 28 days, provided that:
 - (i) the first such period during the Franchise Period shall exclude any days up to but not including the Start Date;
 - (ii) the first and last such period in any Reporting Year may be varied by up to seven days by notice from the Secretary of State to the Franchisee;
 - (iii) each such period shall start on the day following the last day of the preceding such

period; and

- (iv) the last such period during the Franchise Period shall end at the end of the Franchise Period;

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| “Reporting Year” | means a period normally commencing on 1 April in each calendar year, comprising 13 consecutive Reporting Periods; |
| “Request for Information” | means a request for information or an apparent request under the Freedom of Information Act or the Environmental Information Regulations; |
| “Restriction of Use” | has the meaning given to it in the Track Access Agreement to which the Franchisee is a party on the Start Date; |
| “Retail Prices Index” | means the retail prices index for the whole economy of the United Kingdom and for all items as published from time to time by the Office for National Statistics or, if such index shall cease to be published or there is a material change in the basis of the index or if, at any relevant time, there is a delay in the publication of the index, such other retail prices index as the Secretary of State may, after consultation with the Franchisee, determine to be appropriate in the circumstances; |
| “Return Fare” | means a Fare which entitles the purchaser to make, without further restrictions as to the time of day for which the Fare is valid, a journey in each direction in Standard Class Accommodation between the stations and/or the zones for which such Fare is valid and which expires no earlier than 0200 on the day after the day of the outward |

journey or, if later, the time the relevant return journey may be completed if commenced before 0200;

“Revenue”

means the gross revenue (without any deduction for operating costs or charges except for commission charged to revenue in the normal course of business) of the Franchisee, as stated in the audited or management accounts and statements submitted to the Secretary of State in accordance with Schedule 13 (Information and Industry Initiatives), relating to:

- (a) the sale of tickets of any type for the carriage of passengers by railway (including revenue allocated to the Franchisee through the Ticketing and Settlement Agreement or otherwise);
- (b) in relation to Schedule 4 (Rules of the Route, Rules of the Plan and Restrictions of Use) to the Track Access Agreement:
 - (i) the Marginal Revenue Effect (MRE) element of any payments to the Franchisee by Network Rail; and
 - (ii) the revenue element of any payments to the Franchisee by Network Rail or a “Competent Authority” in compensation for a “Competent Authority Restriction of Use” (as such terms are defined in Schedule 4 to the Track

Access Agreement) relating to the sale of tickets of any type for the carriage of passengers by railway (including revenue allocated to the Franchisee through the Ticketing and Settlement Agreement or otherwise);

- (c) the MRE element of any payments to the Franchisee by Network Rail as provided for under Schedule 8 (Performance Regime) to the Track Access Agreement, net of MRE payments to Network Rail thereunder;
- (d) the revenue element of any payments to the Franchisee by Network Rail under Condition G (Network Change) of the Network Code relating to the sale of tickets of any type for the carriage of passengers by railway (including revenue allocated to the Franchisee through the Ticketing and Settlement Agreement or otherwise);
- (e) retail commission;
- (f) the sale of any Discount Card; and
- (g) the imposition of any penalty upon any person making a journey on the Passenger Services without a ticket which is valid for such journey,

but shall not include any Franchise

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| | Payment; |
| “Revenue Share Adjustment” | means the amount of an adjustment to a Franchise Payment determined in accordance with paragraph 3.2 of Schedule 8.1 (Franchise Payments); |
| “Revenue Share Adjustment Date” | means the Payment Date for the third Reporting Period in any Franchisee Year, except in respect of any Revenue Share Adjustment falling due in respect of the final Franchisee Year, for which the provisions of paragraph 8.1 of Schedule 8.1 (Franchise Payments) shall apply; |
| “Revenue Share Reconciliation Amount” | means the amount determined in accordance with paragraph 3.5 of Schedule 8.1 (Franchise Payments); |
| “Revenue Share Reconciliation Date” | means the first Payment Date falling no less than seven days after a determination pursuant to paragraph 3.4 of Schedule 8.1 (Franchise Payments), except in respect of any Revenue Share Reconciliation Amount falling due in respect of the final Franchisee Year, for which the provisions of paragraph 8.1 of Schedule 8.1 shall apply; |
| “Revenue Support Adjustment” | means an adjustment to a Franchise Payment determined pursuant to either paragraph 4 or paragraph 5 of Schedule 8.1 (Franchise Payments); |
| “Revenue Support Adjustment Date” | means <ul style="list-style-type: none"> (a) in the case of a Revenue Support Adjustment determined pursuant to paragraph 4 of Schedule 8.1 (Franchise Payments), the first Payment Date falling no less than |

seven days after that determination;

- (b) in the case of a Revenue Support Adjustment determined pursuant to paragraph 5 of Schedule 8.1, the first Payment Date falling no less than seven days after the Franchisee claims revenue support pursuant to paragraph 5.2 of Schedule 8.1; or
- (c) in the case of any Revenue Support Adjustment falling due in respect of the final Franchisee Year and which has not been made during the Franchise Period, the date determined in accordance with paragraph 8.2 of Schedule 8.1;

**“Revenue Support
Reconciliation Amount”**

means an amount determined pursuant to either paragraph 7.1 or paragraph 7.2 of Schedule 8.1 (Franchise Payments);

**“Revenue Support
Reconciliation Date”**

means either:

- (a) in the case of a Revenue Support Reconciliation Amount determined pursuant to paragraph 7.1 or calculated pursuant to paragraph 7.2 of Schedule 8.1 (Franchise Payments), the first Payment Date falling no less than seven days after the relevant determination; or
- (b) in the case of any Revenue Support Reconciliation Amount falling due in respect of the final Franchisee Year and which has not been made during the Franchise Period, the date determined in accordance with

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| | paragraph 8.2 of Schedule 8.1; |
| “Revenue Support Triggering Force Majeure Event” | means a Force Majeure Event other than a Force Majeure Event referred to in paragraphs 1(a), 1(b) or 1(f) of Schedule 10.4 (Force Majeure); |
| “Review Date” | means: <ul style="list-style-type: none"> (a) the date prescribed for such purpose in the Franchise Agreement; or (b) such later date as may be notified to the Franchisee by the Secretary of State pursuant to clause 4.2 or 4.3 of the Conditions Precedent Agreement; |
| “Revised Inputs” | has the meaning given to it in paragraph 2.1 of Schedule 9.3 (Runs of the Financial Model); |
| “Rolling Stock Lease” | means any agreement for the leasing of rolling stock vehicles to which the Franchisee is a party as at the Start Date and any agreement of a similar or equivalent nature (including, any agreement or arrangement for the subleasing, hiring, licensing or other use of rolling stock vehicles) to which the Franchisee is a party from time to time during the Franchise Term whether in addition to, or replacement or substitution for, in whole or in part, any such agreement; |
| “Rolling Stock Related Contract” | means any Rolling Stock Lease, Maintenance Contract or Technical Support Contract; |
| “Rolling Stock Unit” | means the smallest number of rolling stock |

vehicles which are normally comprised in a train used by the Franchisee in the provision of the Passenger Services;

“Route”

means any route specified in the Service Level Commitment which the Franchisee has permission to operate the Passenger Services over pursuant to any Track Access Agreement;

“Route Utilisation Strategy”

means any route utilisation strategy or any document of a similar or equivalent nature notified to the Franchisee by the Network Rail on or before the Start Date or as developed by the Network Rail from time to time and notified to the Franchisee for the purposes of the Franchise Agreement;

“RSP”

means Rail Settlement Plan Limited;

“Rules of the Plan”

has the meaning given to it in the Network Code;

“Run of the Financial Model”

means an operation of the Financial Model with the Revised Inputs and which complies with the requirements of Schedule 9.3 (Runs of the Financial Model);

“Safety Certificate”

means the certificate issued by the ORR under the Safety Regulations, certifying its acceptance of the Franchisee’s safety management system (as defined in those regulations) and the provisions adopted by the Franchisee to meet the requirements that are necessary to ensure safe operation on the Routes;

“Safety Regulations”

means The Railways and Other Guided Transport Systems (Safety) Regulations 2006;

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| “Saver Return Fare” | means a return fare which is shown as a saver fare in the fares manuals and systems of the RSP as at the date of such manuals; |
| “Seasonally Adjusted Target Revenue” | means Target Revenue, as seasonally adjusted in accordance with the relevant Seasonally Adjusted Target Revenue Table; |
| “Seasonally Adjusted Target Revenue Table” | means Table 1 (in relation to Year 0) or Table 2 (in relation to any Franchisee Year) in the agreed terms marked SATRT as replaced or modified from time to time pursuant to paragraph 4.8(b) or (c) of Schedule 8.1 (Franchise Payments); |
| “Season Ticket Bond” | means the season ticket bond to be provided to the Secretary of State in respect of the Franchisee’s liabilities under certain Fares and Season Ticket Fares in the form set out in Appendix 2 (Form of the Season Ticket Bond) to Schedule 12 (Financial Obligations and Covenants) and such other bond as may replace it from time to time under Schedule 12; |
| “Season Ticket Fare” | means: <ul style="list-style-type: none"> (a) for the purposes of Schedule 12 (Financial Obligations and Covenants) and the definition of Season Ticket Bond only, 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; and (b) for all other purposes, a Fare which entitles the purchaser to make, without further restriction except as |

to class of accommodation, an unlimited number of journeys in any direction during the period for which, and between the stations and/or the zones for which, such Fare is valid;

“Secretary of State Risk Assumptions”

means those assumptions set out in Appendix 1 (Secretary of State Risk Assumptions) to the Franchise Agreement;

“Security Interest”

means any mortgage, pledge, lien, hypothecation, security interest or other charge or encumbrance or any other agreement or arrangement having substantially the same economic effect;

“Service Delivery Benchmark”

means any of the performance levels in respect of Minutes Delay attributable to the Franchisee set out in the Service Delivery Benchmark Table;

“Service Delivery Benchmark Table”

means the table set out in Appendix 7 (Service Delivery Benchmark Table) to the Franchise Agreement;

“Service Group”

has the meaning given to it in the Passenger’s Charter when used in relation to the Passenger’s Charter, and when used in the Franchise Agreement it has the meaning given to it in the Track Access Agreement, or as specified by the Secretary of State from time to time;

“Service Level Commitment”

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

“SLC (TDR) Amendment”

has the meaning given in paragraph 8.7 of

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| | Schedule 1.1 (Service Development); |
| “Service Quality Audit Programme” | means the programme of auditing of the Service Quality Management System that has the characteristics set out in paragraph 3.1 of Schedule 7.2 (Service Quality Management) and is prescribed as such in the Franchise Agreement; |
| “Service Quality Management System” | means the Franchisee’s system that: <ul style="list-style-type: none"> (a) has, as a minimum, the characteristics set out in paragraph 2.1 of Schedule 7.2 (Service Quality Management) for ensuring and measuring the provision by it of a level of service quality across the Franchise that is consistent with the level specified in the Service Quality Standards; and (b) is prescribed as such in the Franchise Agreement; |
| “Service Quality Plan” | means the Franchisee’s plan for ensuring that its future performance is at all times equal to or better than the benchmark set out in the Service Quality Management System in respect of which the requirement to submit such a plan under paragraph 4.1(d) of Schedule 7.2 (Service Quality Management) arose; |
| “Service Quality Reporting Period” | means any period of six consecutive Reporting Periods during the Franchise Term, the first such Service Quality Reporting Period commencing on the Start Date; |

“Service Quality Standard”

means either of:

- (a) the Train Presentation Specification Standard; or
- (b) the Station Environment Specification Standard,

prescribed as such in the Franchise Agreement;

“Service Recovery Plan”

means, in the event of a prevention or restriction of access to the track or a section of the track (howsoever caused) which results in any Cancellation, Partial Cancellation, and/or any Passenger Service being operated with less passenger carrying capacity than the passenger carrying capacity specified for such Passenger Service in the Train Plan, a plan implemented by the Franchisee:

- (a) to minimise the disruption arising from such prevention or restriction of access by operating, during such period of disruption, the best possible level of service given such disruption, including by:
 - (i) keeping service intervals to reasonable durations;
 - (ii) keeping extended journey times to reasonable durations; and
 - (iii) managing any resulting overcrowding;
- (b) to:

- (i) return the level of service to that level specified in the Timetable as soon as reasonably practicable; and
 - (ii) prior to the attainment of the level of service specified in paragraph (b)(i), operate any reduced level of service agreed with Network Rail for the purpose of minimising such disruption pursuant to paragraph (a);
- (c) in accordance with the principles of service recovery set out in the ATOC “Approved Code of Practice: Contingency Planning for Train Service Recovery – Service Recovery 2003” or any document of a similar or equivalent nature; and
- (d) where the particulars of such plan in relation to the requirements of paragraphs (a) and (b) have been:
 - (i) agreed at an initial and, where required, subsequent telephone conference between the Franchisee, Network Rail and any other affected Train Operator; and
 - (ii) on each occasion, recorded in an official control log by the relevant Region Control Manager of Network Rail,

and prevention or restriction of access to the track or a section of the track shall have the meaning given to that term in paragraph

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| | 1(a)(i) of Schedule 10.4 (Force Majeure); |
| “Settlement Proposal” | has the meaning given to it in paragraph 3.2 of Schedule 4 (Persons with Disabilities and Disability Discrimination); |
| “Shared Cost Arrangement” | has the meaning given to it in the Railways Pension Scheme; |
| “Shared Facilities” | means those facilities in respect of which the Franchisee and Network Rail carry out their respective activities concurrently; |
| “significant alterations” | <p>shall, in relation to a Timetable, include alterations to the Timetable which result in:</p> <ul style="list-style-type: none"> (a) the addition or removal of railway passenger services; (b) changes to stopping patterns or destinations or origin; (c) changes of timings for first/last trains by more than ten minutes; (d) changes to clockface (or near clockface) service patterns (meaning the provision of railway passenger services at a specified time or times relative to the hour); and (e) significant changes to journey times and/or key connections at the Station or at other stations at which relevant railway passenger services call; |
| “Single Fare” | means a Fare which entitles the purchaser to make, without further restrictions as to the time of day for which the Fare is valid, on any one day, one journey in Standard |

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| | Class Accommodation between the stations and/or the zones for which the Fare is valid; |
| “Spares” | means parts and components of rolling stock vehicles which are available for the purpose of carrying out maintenance services on rolling stock vehicles; |
| “Specifically Included Change of Law” | has the meaning given to it in the definition of Change of Law; |
| “Stakeholder” | means the Rail Passenger’s Council and any relevant Local Authority; |
| “Standard Class Accommodation” | means, in respect of any train or service, accommodation which is available to the purchaser of any Fare which, taking into account any rights or restrictions relating to that Fare (other than restrictions relating to accommodation on that train or service), entitles such purchaser to make a journey on that train or service (provided that any accommodation on such train which may have been reserved by such purchaser shall be deemed to have been made so available if, had it not been so reserved, it would have been available for use by such purchaser); |
| “Start Date” | means the time and date stated in the Certificate of Commencement as being the time at and date on which the Franchisee is to commence operating the Franchise Services, which shall either be: <ul style="list-style-type: none"> (a) the time and date prescribed for such purpose in the Franchise Agreement; or (b) such later time and date as may be notified to the Franchisee by the Secretary of State pursuant to |

clause 4.2 or 4.3 of the Conditions
Precedent Agreement;

**“Start Date Transfer
Scheme”**

has the meaning given to it in clause 5.1 of
the Conditions Precedent Agreement;

“Station”

means:

- (a) any station in respect of which the
Franchisee has entered into a
Station Lease; or
- (b) any New Station at which the
Franchisee becomes the Facility
Owner;

**“Station Charge
Adjustment”**

means any adjustment to payments under
an Access Agreement determined in
accordance with paragraph 2 of Schedule
8.4 (Track Access Adjustments and Station
Charge Adjustments);

**“Station Environment
Specification Standard”**

means the Service Quality Standard in
respect of the environment of the Stations
as at the date of the Franchise Agreement,
or as amended by the Secretary of State
and notified to the Franchisee from time to
time in accordance with paragraph 2.8 of
Schedule 7.2 (Service Quality
Management);

“Station Lease”

means:

- (a) any lease of a station that the
Franchisee is a party to as at the
Start Date; or
- (b) a lease of any other station to which
the Franchisee becomes the Facility
Owner at any time during the
Franchise Period;

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| “Station Service” | means any service specified in paragraph 3 of Schedule 1.6 (Franchise Services) which may be provided by the Franchisee at the Stations; |
| “Station Sublease” | means a lease or sub lease of premises comprising part or parts of a Station exclusively occupied by another Train Operator; |
| “Strategy” | means any policy statement of the Secretary of State relating to his duties, functions and powers in respect of railways that he publishes and calls a “Strategy”; |
| “Suburban Station” | <p>means any station which is not a London Station and which is listed below or which is closer to London than (and on the same line as) the following stations:</p> <p>Shoeburyness, Southend Victoria, Southminster, Marks Tey (excluding Sudbury branch), Audley End (but not including Stansted Airport), Ashwell and Morden, Arlesey, Harlington, Bletchley (excluding Bedford branch), Aylesbury, Haddenham & Thame Parkway, Twyford (including Henley branch), Earley, Fleet, Alton, Whitley, Christ's Hospital, Brighton (excluding Coastway), Windsor & Eton Riverside, East Grinstead, Crowborough, Wadhurst, Paddock Wood (including the line between Strood and Paddock Wood), Maidstone East, Canterbury East, Margate;</p> |
| “Successor Operator” | means a Train Operator succeeding or intended by the Secretary of State to succeed (and whose identity is notified to the Franchisee by the Secretary of State) the Franchisee in the provision or operation |

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| | of all or any of the Franchise Services including, where the context so admits, the Franchisee where it is to continue to provide or operate the Franchise Services following termination of the Franchise Agreement; |
| “Successor Operator Timetable” | has the meaning given to it in paragraph 7(a) of Schedule 14.1 (Maintenance of Franchise); |
| “Supplemental Agreement” | means a supplemental agreement between the Franchisee and a Successor Operator to be entered into pursuant to a Transfer Scheme, being substantially in the form of Appendix 2 (Form of Supplemental Agreement) to Schedule 15.4 (Provisions Applying on and after Termination), but subject to such amendments as the Secretary of State may reasonably make thereto as a result of any change of circumstances (including any Change of Law) affecting such supplemental agreement between the date of the Franchise Agreement and the date on which the relevant Transfer Scheme is made and subject further to paragraph 3.2 of Schedule 15.4; |
| “System Interface Committee” | means any committee of representatives of the railway industry established to consider system interface issues across the railway industry and which is designated as such by the Secretary of State; |
| “Target Passenger Demand” | means: <ul style="list-style-type: none"> (a) the greater of Actual Passenger Demand or Forecast Passenger Demand; or |

- (b) as directed by the Secretary of State, either:
 - (i) the lower of such levels of passenger demand; or
 - (ii) any intermediate level of passenger demand;

“Target Performance Level” means, in relation to a Benchmark for any Reporting Period, the number set out in column 2 of the Benchmark Table relating to that Benchmark and in the row of that table for that Reporting Period;

“Target Revenue” means, in relation to:

- (a) any Franchisee Year, an amount equal to:

TR x RPI

where:

TR is the amount specified as Target Revenue in Appendix 2 (Target Revenue (expressed in real terms)) of the Franchise Agreement prepared consistently with the definition of Revenue. If the Secretary of State reasonably determines that it has not been prepared consistently with the definition of Revenue the Secretary of State shall have the right to rectify such amount so that it is consistent but the Secretary

of State shall be under no obligation to so rectify where the effect of rectification would have a net positive financial impact on the Franchisee; and

RPI has the meaning given to it in Schedule 8.2 (Annual Franchise Payments);

- (b) any Reporting Period wholly within a Franchisee Year other than the first and last Franchisee Years, one thirteenth of the amount determined pursuant to paragraph (a) for that Franchisee Year;
- (c) any Reporting Period wholly within the first or last Franchisee Year, the amount determined pursuant to paragraph (a) for that Franchisee Year divided by the number of Reporting Periods wholly within that Franchisee Year; and
- (d) any Reporting Period partly within one Franchisee Year and partly within the next Franchisee Year, an amount equal to:

$A + B$

where:

A is the amount which would be determined pursuant to paragraph (b) or (c) (as the case may be) in respect of a Reporting Period wholly within the earlier Franchisee

Year, multiplied by the following:

$$\frac{X}{28}$$

where:

X is the number of days of the Reporting Period that are in the earlier Franchisee Year; and

B is the amount which would be determined pursuant to paragraph (b) or (c) (as the case may be) in respect of a Reporting Period wholly within the later Franchisee Year, multiplied by the following:

$$\frac{Y}{28}$$

where:

Y is the number of days of the Reporting Period that are in the later Franchisee Year;

“Taxation”

means any kind of tax, duty, levy or other charge whether or not similar to any in force at the date of the Franchise Agreement and whether imposed by a local, governmental or other competent authority in the United Kingdom or elsewhere;

“Technical Support Contract”

means a contract for technical support to which the Franchisee is a party, relating to the rolling stock vehicles used in the provision of the Passenger Services;

“Termination Event”

has the meaning given to it in paragraph 3 of Schedule 10.3 (Events of Default and Termination Event);

“Termination Notice”

means a notice from the Secretary of State to the Franchisee terminating the Franchise Agreement following an Event of Default or a Termination Event in accordance with Schedule 10.2 (Termination and Expiry);

“Threshold Amount”

means, for any Franchisee Year:

- (a) in respect of the alteration or discontinuance of any Additional Passenger Services in accordance with the terms of paragraph 12.2 of Schedule 1.1 (Service Development), zero; and
- (b) in respect of any other circumstance, an amount, whether positive or negative, which is determined in accordance with the following formula:

$$TA = FAT \times RPI$$

where:

TA is the Threshold Amount for any Franchisee Year;

FAT is the amount prescribed as such for that Franchisee Year in the Franchise Agreement; and

RPI is ascertained as follows:

$$\frac{\text{CRPI}}{\text{ORPI}}$$

where:

CRPI means the Retail Prices Index published in the month prescribed as such in the Franchise Agreement immediately preceding the commencement of that Franchisee Year; and

ORPI means the Retail Prices Index for the month and year prescribed as such in the Franchise Agreement,

provided that, for the first Franchisee Year RPI shall be one;

“Through Ticketing (Non-Travelcard) Agreement”

means the agreement of that name referred to in clause 5.1(l)(v) of the Franchise Agreement;

“Ticketing and Settlement Agreement”

means the Ticketing and Settlement Agreement dated 23 July 1995 between RSP, the Franchisee and the other Train Operators named therein, as amended from time to time with the approval of the Secretary of State;

“Timetable”

means the timetable which reflects the working timetable issued by Network Rail at the conclusion of its timetable development process, containing the departure and arrival times of:

- (a) all Passenger Services which call at Stations and Franchisee Access Stations; and
- (b) principal Connections at those stations and other stations;

“Timetable Development Rights”

means all or any of the rights of the Franchisee under any Track Access Agreement to:

- (a) operate Passenger Services and ancillary movements by virtue of that Track Access Agreement;
- (b) deliver any required notification and/or declaration to Network Rail in respect of its intention to exercise any rights;
- (c) make or refrain from making any bids for Train Slots, in each case before any relevant priority dates provided for in, and in accordance with, the Network Code;
- (d) surrender any Train Slots allocated to the Franchisee by Network Rail in accordance with the Network Code;
- (e) object to, make representations, appeal or withhold consent in respect of any actual or proposed act or omission by Network Rail; and

- (f) seek from Network Rail additional benefits as a condition to granting any consent to any actual or proposed act or omission by Network Rail;

“Track Access Adjustment” means any adjustment to payments under a Track Access Agreement determined in accordance with paragraph 1 of Schedule 8.4 (Track Access Adjustments and Station Charge Adjustments);

“Track Access Agreement” means each Access Agreement between Network Rail and the Franchisee which permits the Franchisee to provide the Passenger Services on track operated by Network Rail;

“Train Fleet” means the rolling stock vehicles specified in or required by Appendix 3 (The Train Fleet) to the Franchise Agreement, any other rolling stock vehicles the Secretary of State consents to in accordance with paragraph 13 of Schedule 1.1 (Service Development) from time to time and any additional rolling stock vehicles funded by Additional Rolling Stock Investment;

“Train Mileage” means, in relation to any period, the aggregate train mileage covered during such period by each train used in the provision of the Passenger Services (excluding, any train mileage covered as a result of positioning or other movements of rolling stock vehicles outside the Timetable);

“Train Operator” means a franchisee or franchise operator, either of which operate railway passenger services pursuant to a franchise agreement or a Public Sector Operator;

“Train Plan”

means the plan of the Franchisee for the operation of trains and train formations under the Timetable prescribed as such in the Franchise Agreement and any other train plan developed in accordance with Schedule 1.1, except that when used in Schedule 7.1 (Performance Benchmarks), it shall have the meaning given to it in paragraph 2.15 of Schedule 7.1;

“Train Presentation Specification Standard”

means the Service Quality Standard in respect of the condition of rolling stock vehicles when presented for railway passenger service as at the date of the Franchise Agreement, or as amended by the Secretary of State and notified to the Franchisee from time to time in accordance with paragraph 2.8 of Schedule 7.2 (Service Quality Management);

“Train Slots”

shall have the meaning given to it in the Network Code;

“Transfer Scheme”

means a transfer scheme made by the Secretary of State under Section 12 and Schedule 2 of the Railways Act 2005 (or equivalent statutory provision) pursuant to paragraph 3.1 of Schedule 15.4 (Provisions Applying on and after Termination), being substantially in the form of Appendix 1 (Form of Transfer Scheme) to Schedule 15.4, but subject to such amendments as the Secretary of State may make thereto as a result of any change of Law affecting such transfer scheme or other change of circumstances between the date of the Franchise Agreement and the date on which such scheme is made;

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| “Transport Act” | means the Transport Act 2000; |
| “Travelcard Agreement” | means the agreement of that name referred to in clause 5.1(l)(iv) of the Franchise Agreement; |
| “Traveline” | means the telephone enquiry service providing information on all public transport across the United Kingdom; |
| “TSI” | means any Technical Standard for Interoperability with which the Franchisee is required to comply pursuant to Directives EU 96/48 and EU 2001/16 and related legislation; |
| <i>“TTL”</i>¹⁰ | <i>means Transport Trading Limited (company number 03914810). ”</i> |
| “Turnaround Time” | means the time specified in the Train Plan between the completion of a Passenger Service in accordance with the Timetable and the commencement of the next Passenger Service in accordance with the Timetable on the same day using some or all of the same rolling stock vehicles; |
| “Turnover” | means, in relation to any period, the aggregate revenue (excluding any applicable Value Added Tax) accruing to the Franchisee from the sale of Fares and the receipt of Franchise Payments during such period; |
| “Updated Business Plan” | means the revised business plan to be provided prior to the start of each Franchisee Year (other than the first Franchisee Year) in accordance with |

¹⁰ Date of change 16/10/2009

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| | paragraph 2.3 of Schedule 13 (Information and Industry Initiatives); |
| “Value” | means at any time the aggregate of the Projected Revenue of each Fare in a Fares Basket at that time; |
| “Value Added Tax” | means value added tax as provided for in the Value Added Tax Act 1994; |
| “Variation” | means a variation to the terms of the Franchise Agreement pursuant to paragraph 1 of Schedule 19 (Other Provisions); |
| “Weekday” | means any day other than a Saturday, a Sunday or a Bank Holiday; |
| “Weekly Season Ticket” | means a Season Ticket Fare which is valid in Standard Class Accommodation from (and including) the day it first comes into effect until (but excluding) the day which falls seven days after such day; |
| “Year 0” | means, for the purposes of paragraph 4.2(b)(ii) of Schedule 8.1 (Franchise Payments), the period commencing on the date prescribed for such purpose in the Franchise Agreement and ending at 0159 on the Start Date; |
| “Yield Management Data” | <p>means data collected by or on behalf of the Franchisee for the purpose of or in connection with managing or setting the prices at which any tickets for travel on the Passenger Services are sold and/or any quotas and/or restrictions applying to such tickets including:</p> <p>(a) the number of passengers travelling upon any particular Passenger</p> |

Service;

- (b) the ticket types held by such passengers;
- (c) the prices paid by such passengers for such tickets; and
- (d) the dates and/or times between which such tickets were made available to purchase at such prices;

“Yield Management System”

means any system (whether a Computer System or otherwise) for the collection of Yield Management Data and/or onto which Yield Management Data is input, processed and/or held as such system may be amended or altered from time to time;

“Young Person’s Railcard”

means a Discount Card issued under the Discount Fare Scheme referred to in clause 5.1(d)(ii) of the Franchise Agreement; and

“Zone”

means a zone set out in the map in Schedule 2 of the Travelcard Agreement on the date such agreement came into effect ***or as amended by agreement with the Secretary of State¹¹***.

- 3.2 The Franchise Agreement shall confirm the non applicability to the Franchise of any of the words and expressions set out in clause 3.1.

¹¹ Date of amendment 16/10/2009

SCHEDULE 1

Passenger Service Obligations

Schedule 1.1: Service Development

Appendix: Service Development Additional Factors

Schedule 1.2: Operating Obligations

Schedule 1.3: Ticket Collection and Ticketing

Schedule 1.4: Passenger Facing Obligations

Appendix: Alternative Transport

Schedule 1.5: Information about Passengers

Schedule 1.6: Franchise Services

Schedule 1.7: Extended Restrictions of Use

SCHEDULE 1.1

Service Development

1. Service Level Commitment – Purpose And Responsibility

- 1.1 A Service Level Commitment is the means by which the Secretary of State specifies the level, frequency, maximum journey times and stopping patterns of the railway passenger services that the Franchisee is to:
- (a) seek Train Slots for from Network Rail; and
 - (b) operate pursuant to the working timetable issued by Network Rail at the end of its timetable development process.
- 1.2 The Service Level Commitment as at the date of the Franchise Agreement is in the agreed terms marked SLC, attached to the Franchise Agreement. Such Service Level Commitment shall remain in force unless and until amended or replaced pursuant to this Schedule 1.1.
- 1.3 A Service Level Commitment may be expressed in whole or in part at any level of generality or to any level of detail the Secretary of State 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 Secretary of State a Train Plan in respect of:
- (a) the Service Level Commitment and any Additional Passenger Services that it intends to operate; and
 - (b) subsequently, each Timetable in accordance with this Schedule 1.1.
- 2.3 In preparing any Train Plan, the Franchisee shall do so by reference to the timetable that it envisages operating in order to comply with the Service Level Commitment.

- 2.4 The Train Plan for the Timetable as at the Start Date is in the agreed terms marked TP, attached to the Franchise Agreement.
- 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 number and class of rolling stock vehicles allocated to each such railway passenger service;
 - (d) the passenger carrying capacity that each such railway passenger service, as formed, is to have;
 - (e) the indicative formation of each such railway passenger service which has a Target Passenger Demand greater than 75 per cent. of its 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 Secretary of State may reasonably specify for this purpose.

3. Train Fleet

- 3.1 The Franchisee's Train Fleet as at the Start Date is as set out in Table 1 contained in Appendix 3 (The Train Fleet) to the Franchise Agreement.
- 3.2 The Franchisee shall comply with its obligations under:
- (a) paragraph 13 concerning changes to the composition and characteristics of the Train Fleet; and
 - (b) paragraph 2 of Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases) with respect to the Train Fleet.

4. **Franchisee Opinions, Amended and New Service Level Commitment and Additional Timetable Development Rights**

4.1 As and when required whether for the purposes of considering alterations to the Service Level Commitment or otherwise, the Franchisee shall provide to the Secretary of State:

- (a) its informed estimate of Forecast Passenger Demand, in such format and to such level of disaggregation as the Secretary of State may reasonably require in order to assist the Secretary of State's 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;
- (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 relative to Target Passenger Demand; 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;

- (d) its informed opinion as to any changes that the Secretary of State ought to make to the Benchmarks pursuant to paragraph 3.2 of Schedule 7.1 (Performance Benchmarks) as a result of each set of proposed changes; and
- (e) a draft of the Train Plan that it considers that each set of proposed changes would require.

4.2 The Franchisee may at any time (and, if requested to do so by the Secretary of State, shall as soon as reasonably practicable after such request) propose amendment to the then current Service Level Commitment for the purpose of optimising the delivery of railway passenger service patterns relative to Target Passenger Demand (or, where proposed amendment to the then current Service Level Commitment is requested by the Secretary of State, for such other purpose as the Secretary of State may specify in such request). Any such proposal shall be provided with:

- (a) the Franchisee's reasons why it believes that the proposed amendment would optimise the delivery of railway passenger services relative to Target Passenger Demand or meet such other purpose as the Secretary of State may have specified in accordance with paragraph 4.2 (as applicable) and, unless the date is specified by the Secretary of State, the date upon which it proposes that such amended Service Level Commitment should take effect;
- (b) its informed opinion with supporting reasons as to the changes to resources and adjustment to Franchise Payments (if any) which would be required in consequence of the proposed amendments and any implications for Additional Timetable Development Rights and Additional Passenger Services;
- (c) its informed opinion with supporting reasons as to the changes (if any) to the Benchmarks that should in consequence be made pursuant to paragraph 3.2 of Schedule 7.1 (Performance Benchmarks);
- (d) a draft of the Train Plan that it considers that the proposed amendment would require;

- (e) its informed opinion as to the process required to implement the proposed amendment to the Service Level Commitment together with a plan for the implementation of the amendment to the Service Level Commitment (including all steps required to ensure that the Franchisee can deliver a Timetable compliant with such Service Level Commitment) prepared in accordance with procedural arrangements specified by the Secretary of State pursuant to paragraph 5.
- 4.3 The Secretary of State shall be permitted to carry out indicative Runs of the Financial Model for the purposes of considering the effects of amendments to the Service Level Commitment proposed by the Franchisee.
- 4.4 The Secretary of State will give consideration to proposals made by the Franchisee but shall be under no obligation to make any change to the Service Level Commitment in consequence. If the Secretary of State agrees the proposed amendment he shall issue an amended Service Level Commitment pursuant to paragraph 4.12. The Secretary of State shall be permitted to incorporate amendments to the Service Level Commitment suggested by the Franchisee in any amended or new Service Level Commitment that he may subsequently propose.
- 4.5 The Franchisee agrees to co-operate with the Secretary of State in developing any amended or new Service Level Commitment in accordance with this Schedule 1.1.
- 4.6 Prior to issuing any amended or new Service Level Commitment the Secretary of State shall provide to the Franchisee his draft of any proposed amended or new Service Level Commitment stating the date upon which he proposes that such amended or new Service Level Commitment should take effect along with the Secretary of State's view as to the changes (if any) that he proposes to make to the Benchmarks pursuant to paragraph 3.2 of Schedule 7.1 (Performance Benchmarks).

On receipt of any such draft of a proposed amended or new Service Level Commitment the Franchisee shall provide to the Secretary of State if so requested:

- (a) its informed opinion with supporting reasons as to the impact of the proposed amended or new Service Level Commitment on the

delivery of an optimal range of railway passenger services patterns relative to Target Passenger Demand;

- (b) its informed opinion with supporting reasons as to the changes to resources and adjustment to Franchise Payments (if any) which would be required in consequence of the proposed amended or new Service Level Commitment and any implications for Additional Timetable Development Rights and Additional Passenger Services;
- (c) its informed option with supporting reasons as to changes (if any) to the Benchmarks that should in consequence be made pursuant to paragraph 3.2 of Schedule 7.1 (Performance Benchmarks);
- (d) a draft of the Train Plan that it considers that the proposed amended or new Service Level Commitment would require; and
- (e) its informed opinion of the process to be required to implement the proposed amendment to the Service Level Commitment together with a plan for the implementation of the amendment to the Service Level Commitment (including all steps required to ensure that the Franchisee can deliver a Timetable compliant with such amended or new Service Level Commitment) prepared in accordance with procedural arrangements specified by the Secretary of State pursuant to paragraph 5.

- 4.7 There may be iterations of drafts of the proposed amended or new Service Level Commitment and the Franchisee shall to the extent required by the Secretary of State have the obligations described in this paragraph 4 in respect of all such iterations.
- 4.8 The Secretary of State shall be permitted to carry out indicative Runs of the Financial Model for the purposes of considering the effects of his proposed amended or new Service Level Commitment.
- 4.9 Processes contained in this paragraph 4 shall take place in accordance with procedural arrangements and timescales stipulated by the Secretary of State pursuant to paragraph 5.2.
- 4.10 Any opinions of the Franchisee provided pursuant to this paragraph 4 shall be provided with due regard to:

- (a) any Route Utilisation Strategy and any strategy published by the Secretary of State;
- (b) the additional factors set out in the Appendix (Service Development Additional Factors); and
- (c) any other constraints or considerations (including affordability constraints and value for money considerations) that the Secretary of State has notified to it.

4.11 If and to the extent that the Franchisee reasonably considers that any Service Level Commitment issued by the Secretary of State 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 Secretary of State and the Secretary of State shall provide such further information as is reasonably required.

4.12 The Secretary of State may, in accordance with any stipulation made under paragraph 5.2, issue to the Franchisee any amended or new Service Level Commitment that he requires the Franchisee to operate and notice of the changes (if any) to the Benchmarks that he will make pursuant to paragraph 3.2 of Schedule 7.1 (Performance Benchmarks). Such amended or new Service Level Commitment will be issued prior to the commencement of the timetable development process of Network Rail for the Timetable in respect of which it is proposed to implement the change to Passenger Services arising from the amended or new Service Level Commitment. In the absence of the Secretary of State issuing any amended or new Service Level Commitment the existing Service Level Commitment will remain in full force and effect. The degree of variation from any Service Level Commitment specified when the Franchise Agreement was entered into in respect of any particular period and brought about by any amended or new Service Level Commitment issued pursuant to this paragraph 4.12 shall (where relevant) be of a magnitude no greater than that contemplated by the Invitation to Tender.

4.13 Prior to seeking any Additional Timetable Development Rights, the Franchisee shall provide to the Secretary of State details of its proposals to seek such Additional Timetable Development Rights, including:

- (a) the existing or additional resources that the Franchisee intends to use in exercising such Additional Timetable Development Rights;

- (b) the impact (if any) of operating any Additional Passenger Services on:
 - (i) its ability to deliver the current Service Level Commitment; and
 - (ii) the level of performance that it achieves in respect of the Passenger Services it currently operates.

4.14 At the same time as the Secretary of State provides the Franchisee with a draft of any proposed amended or new Service Level Commitment pursuant to paragraph 4.6, the Secretary of State shall also provide to the Franchisee:

- (a) his opinion of the effect of any Additional Timetable Development Rights that the Franchisee has or (to the extent known by the Secretary of State) that the Franchisee intends to seek;
- (b) his opinion on any changes that he reasonably considers are required to the Train Plan for such Train Plan:
 - (i) to satisfy the capacity requirements referred to in paragraph 6.3; or
 - (ii) to satisfy the capacity requirements referred to in paragraphs 6.4 and 6.5 if he reasonably considers that the capacity requirements referred to in paragraph 6.3 cannot be met; and
- (c) his opinion of any changes that are required to the Service Delivery Benchmarks pursuant to paragraph 3.2 of Schedule 7.1 (Performance Benchmarks).

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 Secretary of State, the Franchisee and others.
- 5.2 The Franchisee agrees that the Secretary of State may stipulate any reasonable procedural arrangements and timescales that are to be followed

by the Secretary of State and the Franchisee for these purposes (which shall be consistent with any relevant standard railway industry processes for timetable development) and that the Secretary of State may amend any such stipulation from time to time.

5.3 The Secretary of State agrees to consult 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 Secretary of State pursuant to paragraph 5.2:

- (a) shall be at the reasonable discretion of the Secretary of State;
- (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 the Service Level Commitment; and
- (c) may provide for iterations of drafts of any amended or new 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 Secretary of State pursuant to paragraph 5.2 shall have contractual effect between the Franchisee and the Secretary of State in accordance with the terms of such stipulation.

6. Considerations and Planning

6.1 Considerations

The Franchisee shall:

- (a) determine the extent to which it wishes to seek and retain Additional Timetable Development Rights; and
- (b) prepare its draft Train Plan,

each with due regard to:

- (i) any Route Utilisation Strategy and any Strategy published by the Secretary of State;

- (ii) the additional factors set out in the Appendix (Service Development Additional Factors); and
- (iii) any other constraints or considerations (including affordability constraints and value for money considerations) that the Secretary of State has notified to it.

6.2 **Planning to Operate the Train Plan in the Peak**

The Franchisee shall prepare its Train Plan so as to operate the entire Train Fleet in delivering Passenger Services during each Peak, save for:

- (a) any additional rolling stock vehicles funded by Additional Rolling Stock Investment; and
- (b) any reasonable planning requirements for:
 - (i) the allocation of Hot Standbys; or
 - (ii) other rolling stock vehicles to be out of service due to maintenance requirements, Mandatory Modifications or any other reasons agreed with the Secretary of State (such agreement not to be unreasonably withheld).

6.3 **Planning to meet Target Passenger Demand**

The Franchisee shall also, in preparing its Train Plan, unless the Secretary of State otherwise agrees, use all reasonable endeavours to:

- (a) provide for passenger carrying capacity on each Passenger Service that meets as a minimum the Target Passenger Demand for that Passenger Service; and
- (b) provide passengers with a reasonable expectation of a seat:
 - (i) on boarding in respect of any Off-Peak Passenger Service; and
 - (ii) 20 minutes after boarding (or such other time period as the Secretary of State may stipulate) in respect of any Peak Passenger Service.

6.4 Allocation of rolling stock if unable to meet capacity requirements of paragraph 6.3

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 6.3, then 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 is 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 Secretary of State may stipulate) in respect of any Peak Passenger Service.

6.5 **Proposals to address shortfalls in capacity**

Where paragraph 6.4 applies, the Franchisee shall propose to the Secretary of State:

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

that it considers would most efficiently address the shortfall in passenger carrying capacity and meet Target Passenger Demand.

7. **Indicative Timetable and Consultation**

- 7.1 The Franchisee shall, as and when required pursuant to any stipulation made under paragraph 5.2, provide the Secretary of State with a summary (in such

form as the Secretary of State may specify) of any material changes that it would expect there to be to the Passenger Services from the then current Timetable if any of the following were implemented:

- (a) the Secretary of State's Service Level Commitment issued pursuant to paragraph 4.6 or 4.12 and the Franchisee's proposed Train Plan;
- (b) any amended Service Level Commitment proposed by the Franchisee pursuant to paragraph 4.2; and/or
- (c) the Franchisee's proposals (if any) for operating Additional Passenger Services.

7.2 Notwithstanding any consultation the Secretary of State might separately undertake in respect of any amended or new draft Service Level Commitment issued pursuant to paragraph 4, the Franchisee shall in respect of changes to the Passenger Services proposed in any Timetable:

- (a) as soon as reasonably practicable after:
 - (i) first providing a summary to the Secretary of State, 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 Secretary of State 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 7.2(d);
- (c) inform the Secretary of State of any material changes that it would expect there to be to the Passenger Services and/or Additional Passenger Services if the views of such bodies were accommodated; and
- (d) comply with such reasonable requirements and guidance as the Secretary of State may notify to it from time to time in respect of giving notice to and consulting such Stakeholders in accordance with this paragraph 7.2.

8. Timetable Development Rights

8.1 The Franchisee shall 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.

8.2 The Franchisee shall:

- (a) exercise its Timetable Development Rights; and/or
- (b) exercise or refrain from exercising its Additional 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 10.

8.3 Unless the Secretary of State 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.

8.4 Subject to the Franchisee complying with its obligations under paragraph 8.3, 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 and, unless otherwise agreed by the Secretary of State, is continuing to exercise all reasonable endeavours to obtain the requisite timetable development rights in accordance with paragraph 8.1;
- (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 ORR of its powers pursuant to Section 22C of the Act.

8.5 If the Secretary of State does not consider that the Franchisee has taken sufficient steps under paragraph 8.3, he may require the Franchisee to exercise its rights referred to in paragraph 8.3 in such manner as he 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 ORR.

8.6 The Secretary of State shall, to the extent reasonably practicable, allow the Franchisee a reasonable opportunity to make representations to him concerning the exercise by the Franchisee of any of its rights referred to in paragraph 8.3 before requiring the Franchisee to take any action referred to in paragraph 8.5.

8.7 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, then the Secretary of State may issue (and, provided that the Franchisee:

- (a) has exercised all reasonable endeavours to obtain the requisite timetable development rights in accordance with paragraph 8.1; and
- (b) is relieved from liability for such failure to secure a Timetable that enables the Franchisee to operate railway passenger services that comply with the Service Level Commitment pursuant to paragraph 8.4,

the Secretary of State shall issue) to the Franchisee such amendments to the Service Level Commitment ("SLC (TDR) Amendment") as the Secretary of State considers necessary such that the Franchisee is able to secure a

Timetable in compliance with the Service Level Commitment as amended by the SLC (TDR) Amendments by exercise of the Timetable Development Rights that the Franchisee does have or the timetable development rights that the Franchisee would have had the Franchisee properly performed its obligations under the Franchise Agreement.

- 8.8 Following issue of any SLC (TDR) Amendment pursuant to paragraph 8.7 the Franchisee shall, unless otherwise agreed by the Secretary of State, continue to 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 without such SLC (TDR) Amendment.
- 8.9 Any SLC (TDR) Amendment issued pursuant to paragraph 8.7 shall:
- (a) unless otherwise required by the Secretary of State, cease to have effect on the date (if any) on which the first Timetable comes into effect after the Franchisee has obtained 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 without any such SLC (TDR) Amendment; and
 - (b) amount to a Change.
- 8.10 With effect from the date on which any SLC (TDR) Amendment ceases to have effect in accordance with paragraph 8.9:
- (a) the Service Level Commitment without such SLC (TDR) Amendment shall thereafter apply; and
 - (b) there shall be a further Change to the extent necessary so as, with effect from such date, to disapply the effect of the Change referred to in paragraph 8.9(b) in respect of such SLC (TDR) Amendment.
- 8.11 The Secretary of State shall be permitted to direct the Franchisee as to the manner in which it will exercise or not exercise Additional Timetable Development Rights for the purpose of altering, amending or deleting the Franchisee's proposals in respect of Additional Passenger Services where such Additional Passenger Services, if they were operated in the manner

proposed by the Franchisee, would be likely to result in the Secretary of State being required to increase payments to any other Train Operator under another Franchise Agreement or result in the Secretary of State receiving reduced payments from any other Train Operator under another Franchise Agreement if the Additional Passenger Services were operated in the manner proposed by the Franchisee.

9. Certification and Notification by Franchisee of Timetable Bids

9.1 Before exercising any Timetable Development Right to bid for Train Slots, the Franchisee shall provide a certificate addressed to the Secretary of State confirming that its proposed exercise of that Timetable Development Right will be compliant with its obligation specified in paragraph 8.2.

9.2 If requested by the Secretary of State, the Franchisee agrees to demonstrate to the reasonable satisfaction of the Secretary of State that the Franchisee's certificate referred to in paragraph 9.1 is a true and accurate confirmation of compliance with its obligation specified in paragraph 8.2. The Secretary of State agrees that the certificate will be acceptable if:

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

9.3 The Franchisee shall:

- (a) keep the Secretary of State 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 Secretary of State, supply copies of any related correspondence to the Secretary of State; and
- (b) update any notification under this paragraph 9.3 and/or certification under paragraph 9.1 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.

10. 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).

11. Finalising the Train Plan

11.1 The Franchisee shall submit its Train Plan to the Secretary of State as soon as reasonably practicable after Network Rail has published the working timetable on which the Timetable is to be based.

11.2 The Secretary of State may notify the Franchisee of:

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

and the Franchisee shall revise the Train Plan in accordance with the Secretary of State's requirements.

11.3 If the Franchisee considers that any of the revisions that the Secretary of State requires pursuant to paragraph 11.2(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 the parties 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.

12. **Provisions relating to Access Agreements and Property Leases**

12.1 Subject to paragraph 6.2 of Schedule 8.1 (Franchise Payments), the Franchisee shall be entitled to seek and/or exercise Additional Timetable Development Rights without the Secretary of State's consent, but it shall not seek and/or exercise any such rights where to do so would prevent or hinder it securing a Timetable that enables it to operate railway passenger services that comply with the Service Level Commitment.

12.2 Where the Secretary of State considers it requisite for the purposes of better securing the delivery of railway passenger services under the Franchise Agreement, or any other franchise agreement, or for the better achievement by him of any of his duties, functions and powers in relation to railways, the Secretary of State may require the Franchisee:

- (a) to exercise or refrain from exercising any or all of its rights under any Access Agreement or any Property Lease, or any related rights under such other agreements as the Secretary of State 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.

- 12.3 Except to the extent that the Secretary of State otherwise indicates from time to time, the Franchisee shall notify the Secretary of State of its intention to enter into or amend any Access Agreement:
- (a) where the approval of the ORR is required under the Act, not less than ten business days before the submission to the ORR; and
 - (b) where no such approval is required, not less than ten business days prior to entering into such amendment or Access Agreement.
- 12.4 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 Secretary of State 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 Secretary of State or which are otherwise expressly included in that Access Agreement or Property Lease for the benefit of the Secretary of State.
- 12.5 If and to the extent that:
- (a) the Secretary of State exercises his rights pursuant to paragraph 12.2;
 - (b) the Franchisee's compliance with the Secretary of State's requirements pursuant to paragraph 12.2 would lead to the unavoidable consequence of the Franchisee contravening any other terms of the Franchise Agreement or the occurrence of an Event of Default; and
 - (c) the Franchisee duly complies with such requirements,
- no such contravention of the Franchise Agreement or Event of Default shall have occurred.

13. Changes to the Train Fleet

- 13.1 Subject to paragraph 13.2, the Franchisee shall maintain the composition of the Train Fleet during the Franchise Term, unless the Secretary of State 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.

13.2 Subject to paragraph 6.2 of Schedule 8.1 (Franchise Payments), the Franchisee shall be entitled at any time without the agreement of the Secretary of State to:

- (a) procure rolling stock vehicles in order to provide Additional Passenger Services provided that the total amounts payable pursuant to the terms of all Rolling Stock Related Contracts entered into pursuant to this paragraph 13.2(a) do not exceed five per cent. of the total amounts payable under the terms of Rolling Stock Related Contracts for the existing Train Fleet in respect of the unexpired Franchise Term; and/or
- (b) discontinue the arrangements (including the leasing, maintenance support services or technical support services) in respect of any rolling stock vehicles used in the provision of Additional Passenger Services.

13.3 The Franchisee shall procure that the rolling stock vehicles specified in the Tables contained in Appendix 3 (The Train Fleet) to the Franchise Agreement, with the capacity and other characteristics referred to there, are available for deployment in the provision of the Passenger Services during the periods referred to there.

13.4 During the Franchise Term, the Franchisee shall advise the Secretary of State of any rolling stock vehicles damaged beyond economic repair or likely to be unavailable for service for a period of three consecutive Reporting Periods or more.

13.5 If any change is made to the Train Fleet in accordance with this paragraph 13, the Secretary of State may, after consulting the Franchisee, notify the Franchisee of the passenger carrying capacity of any rolling stock vehicles or class of rolling stock vehicles comprising the Train Fleet following such change.

14. The Timetable and the Working Timetable

- 14.1 Any specification of railway passenger services in a Service Level Commitment shall (unless the Secretary of State 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.
- 14.2 Accordingly, the Franchisee's obligations specified in paragraph 8.2 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.
- 14.3 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 TO SCHEDULE 1.1

Service Development Additional Factors

1. The Franchisee, in formulating its service development opinion pursuant to paragraph 4.1 of Schedule 1.1 (Service Development), in addition to having regard to any Route Utilisation Strategy or any Strategy published by the Secretary of State and any other constraints or considerations notified to it pursuant to paragraph 6.1(iii) of Schedule 1.1, 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:
 - (i) the Service Level Commitment; or
 - (ii) any Additional Passenger Service,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 long-term interests of passengers in using railway passenger services on the Routes, and for the purposes of this paragraph 1(l), the Franchisee shall have regard to this additional factor as if it operated the Passenger Services in perpetuity, and not for the Franchise Term only;
- (m) 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;
- (n) the impact of Restrictions of Use extending over the periods specified in condition D2.2.1 of the Network Code or other Restrictions of Use that may affect Forecast Passenger Demand; and
- (o) such other matters as the Secretary of State may notify to the Franchisee from time to time.

SCHEDULE 1.2

Operating Obligations

1. Daily Operating Obligations

- 1.1 The Franchisee agrees to use all reasonable endeavours to operate on each day of the Franchise Term each 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 for that Passenger Service.
- 1.2 The Franchisee agrees to use all reasonable endeavours to operate during the Peak the entire Train Fleet in delivering the Peak Passenger Services, save for:
- (a) any additional rolling stock vehicles funded by Additional Rolling Stock Investment; and
 - (b) any reasonable requirements:
 - (i) for the deployment of Hot Standbys; or
 - (ii) for other rolling stock vehicles to be out of service due to maintenance requirements, Mandatory Modifications or for any other reason agreed with the Secretary of State (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 then 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 pursuant to Schedule 7.2 (Service Quality Management).
- 1.5 The Franchisee shall ensure that its performance 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. It shall be a contravention by the Franchisee of the terms of the

Franchise Agreement if its performance exceeds (that is, is equal to or worse than) any Breach Performance Level in any Reporting Period.

2. The Train Plan

2.1 References in this Schedule 1.2 to the Train Plan are to the Train Plan as issued by the Franchisee to the Secretary of State pursuant to paragraph 11.1 of Schedule 1.1 (Service Development), and as amended:

- (a) to comply with any requirements of the Secretary of State pursuant to paragraph 11.2 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 Secretary of State 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); and/or
 - (ii) attributable to seasonal or exceptional factors.

3.2 The Franchisee shall amend the Train Plan in accordance with the Secretary of State's response to its proposal.

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 Secretary of State in accordance with paragraph 3.1, it may amend the Train Plan prior to the submission of its proposal, but shall notify the Secretary of State as soon as reasonably practicable afterwards and shall subsequently amend the Train

Plan in accordance with the Secretary of State'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 for any Passenger Service exceeds the provision of passenger carrying capacity on such Passenger Service;
 - (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) for more than 20 minutes after boarding (or such other time period as the Secretary of State may stipulate) in respect of any Peak Passenger Service.
- 3.5 If the Secretary of State does not consider that the Franchisee has exercised all reasonable endeavours to make proposals as required by paragraph 3.1, the Secretary of State may require the Franchisee to amend the Train Plan in accordance with his requirements.

4. Timetable changes proposed by Network Rail

- 4.1 The Franchisee shall notify the Secretary of State 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,
- 4.2 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 capacity requirements of paragraphs 3.1 and 3.4, 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 capacity requirements of paragraphs 3.1 and 3.4.
- 4.3 The Franchisee agrees to supply to the Secretary of State from time to time, in the format required by the Secretary of State, such details of any actual or proposed omission or rescheduling of Passenger Services by Network Rail as the Secretary of State 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 Secretary of State specifically agrees otherwise) to exercise its rights under the Track Access Agreement (including the Network Code) to:
- (a) object (including submitting its objection to any relevant dispute resolution arrangements or procedures and appealing against any award or determination under such arrangements or procedures, including to the ORR);
 - (b) make representations; and

- (c) withhold consent,

in respect of any actual or proposed omission or rescheduling of Passenger Services by Network Rail.

4.5 If the Secretary of State does not consider that the Franchisee has taken sufficient steps under paragraph 4.4, the Secretary of State may require the Franchisee to exercise its rights referred to in paragraph 4.4 in such manner as the Secretary of State 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 ORR.

4.6 The Secretary of State shall, to the extent reasonably practicable, allow the Franchisee a reasonable opportunity to make representations to the Secretary of State 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 Secretary of State's prior consent.

5.2 Subject to paragraph 6.2 of Schedule 8.1 (Franchise Payments), paragraph 5.1 shall not apply to the proposed:

- (a) addition, omission or rescheduling of any Additional Passenger Service provided that:
 - (i) the proposal's implementation would not:
 - (A) prevent or hinder the Franchisee from delivering those Passenger Services included in the Plan of the Day that are required by the Service Level Commitment; or
 - (B) be likely to result in the Secretary of State being required to increase payments to or decrease payments from any other Train Operator under another franchise agreement; and
 - (ii) in relation to any alteration, the proposal is made on terms such that it is certain to enable the Franchisee to provide, in accordance paragraph 2.1 of Schedule 1.4 (Passenger Facing Obligations), not less than 7 days' notice to passengers of the alteration in advance of the alteration coming into effect; and
- (b) addition of railway passenger services to meet passenger demand that the Franchisee anticipates from special events (and any related omissions and/or rescheduling of Passenger Services) which:
 - (i) when operated, still permit the Franchisee 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; and
 - (ii) are compliant with any framework that the Secretary of State 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(m) of the Appendix (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.

6. Timetable changes requested by the Secretary of State

- 6.1 Subject to paragraph 6.2, the Franchisee agrees, as and when requested by the Secretary of State, 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. The Franchisee shall, following a request by the Secretary of State to operate additional railway passenger services under this paragraph 6.1(a), provide to the Secretary of State a train plan which complies with the requirements of paragraph 2.5 and 2.6 of Schedule 1.1 (Service Development);
 - (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.
- 6.2 The provisions of paragraph 6.1(b) and (c) shall apply in respect of Additional Passenger Services only to the extent of enabling the Secretary of State to require omission or rescheduling where he reasonably concludes that the Additional Passenger Services concerned are the cause of any increased payments to or decreased payments from any other Train Operator under another franchise agreement.

7. Additional Railway Passenger Services

7.1 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 Secretary of State 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 Secretary of State promptly where such disruption would materially (having regard to both duration and scale) prejudice the Franchisee's ability to deliver the Timetable or deliver the Timetable in accordance with the Train Plan;
- (b) use all reasonable endeavours to act in accordance with any Strategy or plan published or endorsed by the Secretary of State in relation to such disruption notified to it by the Secretary of State 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) use all reasonable endeavours to 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 provide or secure the provision of alternative transport arrangements to enable passengers affected by any 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 Secretary of State 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 and the servicing or cleaning of any rolling stock vehicles

in accordance with the then 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 the development, agreement and implementation of:
 - (i) Joint Performance Improvement Plans; and
 - (ii) recovery plans in response to failures to achieve the performance levels specified in any Joint Performance Improvement Plans;
- (b) 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;
- (c) undertaking a weekly review of:
 - (i) the ten most common causes of delay to the Passenger Services; and

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

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

- (d) 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(c)(i) and (c)(ii) and seeking to identify and implement actions that reduce the delay effect of such events;
- (e) 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 parties;
- (f) 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;
- (g) 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 and/or information;
- (h) co-operating with Network Rail in other delay management initiatives, including the use of virtual general managers and, where appropriate, the establishment of integrated control centres;
- (i) regularly reviewing (at least every Reporting Period) the imposition and clearance of temporary speed restrictions;
- (j) regularly reviewing (at least every Reporting Period) the timely and efficient handover and hand-back of possessions; and
- (k) 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 the Franchise 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 Secretary of State, enforcing its rights against Network Rail under any such agreement.
- 9.7 When and to the extent reasonably requested by the Secretary of State, the Franchisee shall provide to the Secretary of State evidence of the steps taken by it in order to comply with its obligations under this paragraph 9.

SCHEDULE 1.3

Ticket Collection and Ticketing

1. Revenue collection and protection against ticketless travel

1.1 The Franchisee shall, within four Reporting Periods of the Start Date, provide to the Secretary of State:

- (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.

1.2 The Franchisee shall:

- (a) implement the plan to be provided in accordance with paragraph 1.1(b) and report in writing to the Secretary of State every three 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 Secretary of State in accordance with paragraph 1.2(a) as if such revised plan was referred to therein.

2. **Smartcards**

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 ITSO.

SCHEDULE 1.4

Passenger Facing Obligations

1. Publishing the Timetable

1.1 The First Timetable

The Franchisee shall publish on the Start Date:

- (a) the Timetable:
 - (i) at each staffed Station, by making the relevant information available upon request and free of charge in one or more booklets or in other similar form;
 - (ii) at each Station, by displaying the relevant information on information displays;
 - (iii) at each Franchisee Access Station, by providing to the operator of each such station the departure and arrival times of the Passenger Services that call at each such station and the principal Connections to any other transport services relevant to each such station in the same forms as are 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.

1.2 Timetable Revisions and Alterations

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 four weeks before the changes come into effect;ⁱ
- (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 four 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 two Passenger Change Dates to railway passenger services calling at that Station, no later than four 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 two 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).

1.4 **Other Train Operators' Timetables**

The Franchisee shall also comply with the requirements of paragraphs 1.1 to 1.3 inclusive by making available booklets and displaying information in information displays and otherwise displaying posters 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 and to the extent that such other Train Operator delivers to the Franchisee the relevant information and materials in sufficient time for the Franchisee to so publish; and
- (b) as soon as reasonably practicable thereafter where and to the extent that such other Train Operator delivers the relevant information and materials late to the Franchisee.

1.5 National Rail Timetable and National Rail Enquiry Scheme

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.

1.6 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 two Passenger Change Dates,

is available to passengers through the National Rail Enquiry Scheme (or any replacement) not less than four 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 1.6 shall apply, the Franchisee shall inform passengers, so far as possible on not less than seven 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; and
- (c) 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

3.1 Restrictions on Sales

The Franchisee shall ensure that the purchaser of any Commuter Fare or Protected 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 Commuter Fare or Protected 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 may reasonably require; and
- (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 Commuter Fare or Protected Fare (as the case may be) on a Passenger Service.

3.2 The Franchisee shall procure that for any:

- (a) Protected Return Fare, Single Fare which is a Commuter Fare or Return Fare which is a Commuter 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 Commuter 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).

3.3 Where the Franchisee sets a limit on the number of Commuter 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 the tables set out in Appendix 3 (The Train Fleet) to the Franchise Agreement.

3.4 The Franchisee shall not sell or offer to sell:

- (a) any Fare in respect of which the:
 - (i) Prices are regulated under Schedules 5.4 (Regulation of Fares Basket Values) and 5.5 (Regulation of Individual Fares), at prices that are greater than the Prices set for such Fares from time to time in accordance with Schedules 5.4 and 5.5; and
 - (ii) Child Prices are regulated under Schedules 5.4 and 5.5, at prices that are greater than the Child Prices set for such Fares from time to time in accordance with Schedules 5.4 and 5.5;

- (b) 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.

3.5 **Agents of the Franchisee**

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 in respect of which the:
 - (i) Prices are regulated under Schedules 5.4 and 5.5, 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; and
 - (ii) Child Prices are regulated under Schedules 5.4 and 5.5, 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;
- (b) for Fares in respect of which the Child Price has been set pursuant to paragraph 2.1 of Schedule 5.2 (Franchisee's Obligation to Create Fares), 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; 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 Secretary of State (such consent not to be unreasonably withheld); 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.

3.6 Additional Ancillary Services

The Franchisee shall, subject to this paragraph 3, be entitled to charge a purchaser of any Commuter Fare or Protected Fare for any additional services:

- (a) which are ancillary to the railway passenger service for which such Commuter 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

4.1 Content

The Franchisee shall:

- (a) publish its Passenger's Charter:
 - (i) in substantially the form marked PC, appended to the Franchise Agreement; 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 three years, in consultation with the Rail Passengers' Council, 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 Secretary of State; 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 Secretary of State's prior written consent (which is not to be unreasonably withheld).

4.3 **Publishing the Passenger's Charter**

The Franchisee shall publicise its Passenger's Charter by:

- (a) providing copies to the Secretary of State and the Rail Passengers' Council at least seven 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 seven 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 seven days before such revision comes into effect,

save in respect of the Passenger's Charter which is effective on the Start 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 Start Date.

4.4 The Franchisee shall also provide at each staffed Station the then 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.

4.6 **Passenger's Charter Payments and Other Obligations**

The Franchisee shall:

- (a) make all payments and provide 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 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.

4.8 **Passenger's Charter Statistics**

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 Secretary of State 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 Secretary of State and the Rail Passengers' Council.

4.9 The obligation under paragraph 4.8(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.

4.10 The Franchisee shall provide Passenger's Charter Statistics in a format approved by the Secretary of State 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 4.8.

4.11 Audit of the Passenger's Charter Statistics

The Franchisee shall procure that:

- (a) the Passenger's Charter Statistics published in accordance with paragraphs 4.8 and 4.10 are audited by an independent person or persons acceptable to the Secretary of State;
- (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 Secretary of State within 28 days of receipt by the Franchisee.

4.12 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 publish revised Passenger's Charter Statistics reflecting such corrections in the manner specified in paragraph 4.8; 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 the Franchise 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 Secretary of State'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 Secretary of State on his request.

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

- (a) has been established before the date of the Franchise Agreement; and
- (b) has not been revised and approved by the Secretary of State to take into account the Secretary of State's most recent published Guidance on Disabled People's Protection Policies as at the date of the Franchise Agreement,

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

- 5.4 The Franchisee shall comply with the requirements set out in the Appendix (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), 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), to passengers using the Passenger Services.
- 7.3 The Franchisee shall not, except to the extent the Secretary of State 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 Start Date.
- 7.4 Except to the extent that the Secretary of State 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. Traveline

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

9. Statutory Notices

If requested by the Secretary of State, 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 of) such statutory

notices as the Secretary of State may wish to publish from time to time in the exercise of his functions (including in relation to Closures or any enforcement or penalty orders).

10. Website

- 10.1 The Franchisee shall publish and maintain a website throughout the Franchise Term.
- 10.2 Any such publication and maintenance and the general content of the website shall be in accordance with any guidance issued by the Secretary of State to the Franchisee from time to time.

APPENDIX TO SCHEDULE 1.4

Alternative Transport

1. References in this Appendix 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's journey on such 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 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 Secretary of State, provide information to the Secretary of State on the extent of the use by passengers of the Passenger Services. In particular and when so requested, the Franchisee shall 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:

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

by using the technology for determining the number of passengers travelling in each class of accommodation prescribed for the purpose in the Franchise Agreement.

1.3 The information specified in paragraph 1.1 shall be provided by the Franchisee:

- (a) using such systems, in such a format and to such level of disaggregation as the Secretary of State may reasonably require in order to assist the Secretary of State's 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; and

- (b) at a frequency and within timescales that the Secretary of State may reasonably request 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 Secretary of State requests it to do so):

- (a) update any Forecast Passenger Demand accordingly in the same format and to the same level of disaggregation as the Secretary of State required pursuant to paragraph 1.3(a); and
- (b) notify the Secretary of State of any such update.

2. **National Passenger Surveys**

2.1 The Franchisee agrees with the Secretary of State that:

- (a) the Rail Passengers' Council may measure the level of passenger satisfaction with the Franchise Services through National Passenger Surveys;
- (b) the Rail Passengers' Council shall determine how, when (normally twice per annum) and where National Passenger Surveys are to be carried out;
- (c) the Franchisee shall grant access on trains or at stations to the Rail Passengers' Council (or its representatives and agents) to carry out National Passenger Surveys;
- (d) the Franchisee shall co-operate with the Rail Passengers' Council (in such manner as the Rail Passengers' Council may reasonably request or as the Secretary of State may reasonably direct) in order to enable the Rail Passengers' Council to carry out National Passenger Surveys; and
- (e) the Rail Passengers' Council and/or the Secretary of State may, from time to time, publish the results of each National Passenger Survey.

2.2 The Secretary of State shall procure that:

- (a) the findings of any National Passenger Survey are made available by the Rail Passengers' Council to the Franchisee within a reasonable period of time after the completion of each such survey and shall use all reasonable endeavours to procure that those findings are made available in a timely manner to enable the Franchisee to make reasonable publicity arrangements (if required); and
- (b) if any such survey includes a comparison between its findings and the findings of any equivalent earlier survey, such comparison forms a reasonable basis for monitoring the trends of passenger satisfaction over time.

3. **CRM Data**

3.1 The Franchisee shall ensure that any CRM System is the property of the Franchisee or is licensed to the Franchisee on terms which have been approved by the Secretary of State (such approval not to be unreasonably withheld or delayed) and that any CRM Data obtained by or on behalf of the Franchisee shall be:

- (a) obtained on terms such that the Franchisee shall be the Data Controller of such data; and
- (b) the property of the Franchisee.

3.2 In relation to any CRM Data obtained by or on behalf of the Franchisee, the Franchisee shall ensure or procure that at the same time as the Franchisee seeks consent to Process such CRM Data, the consent of the Data Subject is also sought to such CRM Data being disclosed to any Successor Operator and/or the Secretary of State and Processed by any Successor Operator for the same purposes as the Franchisee sought consent to Process such CRM Data.

3.3 Any consent referred to in paragraph 3.2 shall be sought in such manner as shall from time to time be approved by the Secretary of State (such approval not to be unreasonably withheld or delayed) and shall be on terms such as shall permit, in each case in compliance with the Data Protection Act:

- (a) the Franchisee to disclose such CRM Data to any Successor Operator and/or the Secretary of State; and
- (b) any such Successor Operator to process such CRM Data in the manner contemplated by paragraph 3.2.

4. Yield Management Data

- 4.1 The Franchisee shall ensure that any Yield Management Data and Yield Management System are the property of the Franchisee or are licensed to the Franchisee on terms which have been approved by the Secretary of State (such approval not to be unreasonably withheld or delayed).
- 4.2 If and to the extent that the collection, use and/or processing of any Yield Management Data is subject to the Data Protection Act then paragraphs 3.1(a), 3.2 and 3.3 of this Schedule 1.5 shall apply in respect of Yield Management Data in the same way as they apply to CRM Data.

5. Personal Data - General Provisions

- 5.1 In respect of any Personal Data processed by the Franchisee, including CRM Data, the Franchisee agrees that it shall (i) comply with the Data Protection Act and all other legislation relating to the protection and use of personal information (including the Privacy and Electronic Communications (EC Directive) Regulations 2003) (all such legislation collectively being “the Legislation”) to the extent that such legislation applies to it and (ii) procure that its agents or sub-contractors shall do the same.
- 5.2 Pursuant to paragraph 5.1, the Franchisee agrees to comply with the Legislation in respect of its Processing of CRM Data and in particular, but without limitation, the Franchisee shall:
 - (a) ensure that CRM Data is Processed fairly and lawfully (in accordance with part 1 of Schedule 1 of the Data Protection Act);
 - (b) ensure that CRM Data is obtained only for one or more specified and lawful purposes, and shall not be further Processed in any manner incompatible with that purpose or those purposes (in accordance with part 2 of Schedule 1 of the Data Protection Act);and

- (c) obtain and maintain all appropriate notifications as required under the Data Protection Act.

5.3 In accordance with its capacity as Data Controller of CRM Data and in accordance with the ensuing obligations under the Data Protection Act:

- (a) the Franchisee shall procure that any CRM Data Processor which it appoints shall Process CRM Data only on behalf of the Franchisee, only for the purpose(s) as defined by the Franchisee and only in accordance with instructions received from the Franchisee from time to time;
- (b) the Franchisee shall, and shall procure that any CRM Data Processor which it appoints shall, at all times have in place appropriate technical and organisational measures against unauthorised or unlawful processing of CRM Data and against accidental loss or destruction of, or damage to, CRM Data and that such measures shall:
 - (i) reflect the level of harm, damage and /or distress that might be suffered by the Data Subject to whom the CRM Data relates in the event of a breach of the measures as set out herein; and
 - (ii) ensure that only authorised personnel have access to CRM Data and that any persons authorised to have access to CRM Data will respect and maintain all due confidentiality;
- (c) the Franchisee shall, and shall procure that any CRM Data Processor which it appoints shall, not cause or permit the CRM Data to be transferred to any location outside the European Economic Area (as defined in the Data Protection Act) without the prior written permission of:
 - (i) (in the case of the Franchisee) the Secretary of State; or
 - (ii) (in the case of any Data Processor appointed by the Franchisee) the Franchisee provided that the

Franchisee shall not give any such consent without the prior written permission of the Secretary of State;

and in any case without first executing the Standard Contractual Clauses for Data Processors established in Third Countries pursuant to the Commission Decision (2002/16/EC) of 27 December 2001 under the EU Directive 95/46/EC.

SCHEDULE 1.6

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 1.6 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 Secretary of State, 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 Secretary of State'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 Secretary of State may impose such conditions to his consent as he considers appropriate for the purpose of securing the continuity of the provision of the Franchise Services at the end of the Franchise Term.

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

(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 Stations 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 the provision of car parking spaces; and
- (b) the provision of access to any person under an Access Agreement at any Station.

- 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 Start Date or as lawfully directed by the ORR 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 any Station or Depot.

- 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 Start Date or as lawfully directed by the ORR 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 ten 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 the percentage prescribed for this purpose in the Franchise Agreement of the number of Franchise Employees as at the Start Date, for over 90 per cent. of their normal working hours during such Reporting Period (including on a full-time basis); and
 - (ii) the percentage prescribed for this purpose in the Franchise Agreement of any other Franchise Employees as at the Start 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 1.6;

- (e) any heavy maintenance of rolling stock vehicles which does not fall within the Light Maintenance Services, carried out on behalf of any other person at the Depot(s) prescribed for this purpose in the Franchise Agreement, subject to the number of persons engaged or employed in such activity not exceeding by more than ten per cent. the number so engaged or employed on the Start Date;
- (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 the Franchise 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 any such operator's 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 the Franchise 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 property specified for this purpose in the Franchise Agreement which is not comprised in a Station or Depot;
- (o) the provision or operation of Charter Services, subject to the Train Mileage of such Charter Services not exceeding in any Reporting Period two 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 such amounts per annum in each Franchisee Year, per item and in aggregate, respectively prescribed for this purpose in the Franchise Agreement, 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 x RPI

where:

Original Amount means the relevant amount prescribed for the purpose in the Franchise Agreement; and

RPI has the meaning given to it in Schedule 8.2 (Annual Franchise Payments).

6. Affiliates of the Franchisee

Nothing in this Schedule 1.6 shall restrict any Affiliate of the Franchisee from having an interest in or participating in any business or activity.

SCHEDULE 1.7

Extended Restrictions of Use

1. Notice of Proposed Possessions Strategy and Network Change

1.1 The Franchisee shall notify the Secretary of State:

- (a) as soon as reasonably practicable upon receiving any notification from Network Rail (including pursuant to Part D or Part G of the Network Code) of any proposal to implement works which require a programme of co-ordinated Restrictions of Use extending over the periods specified in condition D2.2.1 of the Network Code; and
- (b) a reasonable period in advance of:
 - (i) responding to Network Rail in respect of any notification referred to in paragraph 1.1(a);
 - (ii) appealing against any aspect of the proposed extended Restriction of Use specified in any Possessions Strategy Notice;
 - (iii) submitting any notification to Network Rail (pursuant to Part G of the Network Code) of any proposal to implement a Network Change; and
 - (iv) notifying Network Rail that it believes that a Network Change has occurred due to any change to the operation of the network,

in order to allow the consultation pursuant to paragraph 1.2 to take place in a timely manner should it be required.

1.2 If and to the extent requested by the Secretary of State, the Franchisee shall:

- (a) consult him in relation to any of the matters referred to in paragraph 1.1; and
- (b) provide to the Secretary of State copies of any notices, correspondence or other information exchanged between Network Rail and the Franchisee in respect of those matters.

2. Implementation of Works Specified in any Possessions Strategy Notice

- 2.1 The Franchisee shall co-operate with Network Rail, the Secretary of State and any other relevant party in connection with any proposed extended Restriction of Use specified in any Possessions Strategy Notice.
- 2.2 The Franchisee shall co-operate with Network Rail in Network Rail's endeavours to obtain all consents required for the carrying out of each such extended Restriction of Use, including any required consent under Part D of the Network Code and under Part G of the Network Code in respect of any related Network Change.
- 2.3 The Franchisee's obligations under paragraphs 2.1 and 2.2 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 the Franchise Agreement; or
 - (b) the pursuit of reasonable profit from the proper performance of its obligations under the Franchise Agreement.

SCHEDULE 2

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

- | | |
|----------------------|--|
| Schedule 2.1: | Asset Vesting and Transfer |
| Schedule 2.2: | Security of Access Agreements, 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 |

SCHEDULE 2.1

Asset Vesting and Transfer

The Franchise Agreement shall specify which of Part 1 or Part 2 of this Schedule 2.1 shall apply.

PART 1

1. Vesting of Property Leases¹²

- 1.1 The Franchisee shall not without the prior written consent of the Secretary of State (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 the new Property Leases specified in paragraph 1.3 or any other new Property Lease 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) in the agreed terms marked SL and DL (as appropriate) attached to the Franchise Agreement.
- 1.3 The Franchisee shall enter into the following leases with Network Rail:
- (a) a lease of each Station, on or before the expiry of the Station Lease relating to each such Station (each such lease, once granted, shall be a Station Lease for the purposes of the Franchise Agreement);
 - (b) a lease of each Depot, on or before the expiry of the Depot Lease relating to each such Depot (each such lease, once granted, shall be a Depot Lease for the purposes of the Franchise Agreement);

¹² If Franchisee to enter into Property Leases during Franchise Term.

- (c) a supplemental lease relating to any Station or Depot, as soon as practicable following the successful completion of any procedure (including obtaining any requisite approval from the ORR) for including additional land within the demise of such Station or Depot (as the case may be) and each such supplemental lease, once granted, shall be a Station Lease or a Depot Lease (as the case may be) for the purposes of the Franchise Agreement; and
- (d) a lease of any Network Rail owned station or depot, which:
 - (i) the Secretary of State consents to or requires the Franchisee to be a party to; and
 - (ii) the Franchisee was not a party to on the date hereof, but which has been contemplated by the Franchise Agreement,

and the Franchisee shall enter into such lease as soon as practicable after its terms and form have been agreed and all applicable preconditions to its granting have been satisfied or waived (including obtaining any requisite approval of the ORR). Any such supplemental lease, once granted, shall be a Station Lease or a Depot Lease (as the case may be) for the purposes of the Franchise Agreement and any such station or depot (as the case may be) shall be a Station or Depot for the purposes of the Franchise Agreement.

- 1.4 The Franchisee shall not be in contravention of paragraph 1.3 if and to the extent that Network Rail refuses to enter into any leases specified therein.
- 1.5 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 Secretary of State and the Franchisee acknowledges that it is their intention that Section 31 of the Act shall continue to apply to such assigned or amended lease.

PART 2

1. Property Leases¹³

- 1.1 The Franchisee shall not without the prior written consent of the Secretary of State (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) 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 Secretary of State 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.

¹³ If Franchisee to enter into new Property Leases on the Start Date.

SCHEDULE 2.2

Security of Access Agreements, 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 Secretary of State (other than on termination of the Franchise 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 such Station Lease or Depot Lease,

novate its interest under any such relevant Access Agreement (and any related Collateral Agreement) to the Secretary of State or as he may direct.

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

1.3 Such novation shall be on such terms as the Secretary of State 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 Secretary of State or his 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 Secretary of State nor his 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 Secretary of State or as he may direct, subject, to the extent applicable, to the consent of the ORR. The provisions of paragraph 1.3 shall apply to any such novation.
- 1.5 The Franchisee shall notify the Secretary of State on becoming aware of any circumstances which might lead to the Secretary of State 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 Subject to paragraph 2.3, 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 or to the Franchisee or the relevant counterparty or which may result in it being reasonably likely to be unable to comply with the terms of the Franchise Agreement; or
- (c) amend or waive the terms of any Rolling Stock Related Contract,

without, in each case, the prior written consent of the Secretary of State (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 Secretary of State.

- 2.2 Subject to paragraph 2.3, the Franchisee shall not, without the prior written consent of the Secretary of State:
- (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 Start Date; or
 - (b) enter into any new insurance arrangements after the Start 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 provisions of paragraph 2.1 and 2.2 shall not apply to any Rolling Stock Related Contract that relates only to any rolling stock vehicles funded by Additional Rolling Stock Investment.
- 2.4 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 the Franchise Term**
- 3.1 The Franchisee shall (other than on termination of the Franchise Agreement, for which the provisions of paragraph 4.5 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 Secretary of State, assign its interest under all or any Property Leases to the Secretary of State or as he may direct, subject where applicable to the agreement of any other party to such Property Lease or the ORR.
- 3.2 Such assignment shall be on such terms as the Secretary of State 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 Secretary of State or his 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 Secretary of State nor his 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 Secretary of State or his 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 Secretary of State or as he 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 Secretary of State on becoming aware of any circumstances which might lead to the Secretary of State 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 Secretary of State may otherwise agree from time to time (such agreement not to be unreasonably withheld if the Franchisee has made arrangements, reasonably satisfactory to the Secretary of State, 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 Secretary of State 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 the Franchise 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 Secretary of State, the Franchisee shall:

- (a) extend each Station Sublease on the same terms for such period as the Secretary of State 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 Secretary of State 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 Secretary of State 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 Secretary of State if it wishes to forfeit or terminate any such Station Sublease but shall not (without the Secretary of State's prior written consent) effect such forfeiture or termination until the date which occurs three 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 Secretary of State.
- 1.2 The Franchisee may subcontract or delegate the provision of the Passenger Services, provided that:
- (a) the Secretary of State 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 the percentage of the aggregate scheduled Train Mileage of the Franchisee in any Reporting Period prescribed for this purpose in the Franchise Agreement; 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 the Franchise 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 Secretary of State 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 of the Franchise Agreement and paragraph 2.3, provided that the Secretary of State 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 agreement was terminated or the date on which the relevant railway administration order was made which were, in the Secretary of State'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 Secretary of State 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 Secretary of State 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 Secretary of State and subject to payment of the Franchisee's reasonable costs by the relevant third party, co-operate with any third party which the Secretary of State may specify (including a Successor Operator, a rolling stock vehicle manufacturer, Network Rail or the Secretary of State) 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 Secretary of State 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 part of a Station) 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 4 of the Railways Act 2005 in relation to a Closure, the Franchisee shall, at its own cost and to the extent so requested by the Secretary of State, take such action as the Secretary of State may require in order to enable the Secretary of State to comply with any duty imposed on him under Part 4 of the Railways Act 2005 in relation to such Closure.

3. **Proposals to de-staff Stations**

- 3.1 If the Franchisee proposes to take any step on or after the Start 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 Start Date,

it shall provide at least eight weeks' written notice of such proposal to the Secretary of State and the relevant Rail Passengers' Council.

- 3.2 The Franchisee shall have regard to the views and representations of the Secretary of State and the Rail Passengers' Council 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) 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 the Franchise Agreement.
- 1.2 As and when required by the Secretary of State, the Franchisee shall co-operate with any schemes proposed by any third party (including any Local Authority) which relate to the integration of any other form of transport with the Franchise Services. If the Secretary of State reasonably considers that the Franchisee's participation in any such scheme would have no adverse financial effect on the Franchisee, the Secretary of State 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 Secretary of State designates any further integrated transport scheme or proposed scheme as an Integrated Transport Scheme in accordance with paragraphs 1.2 and 1.4 of this Schedule 2.5, then the Franchisee shall participate in and comply with its obligations under such scheme and take such other steps as the Secretary of State may reasonably require.
- 1.4 The Secretary of State shall consult the Franchisee before designating any scheme an Integrated Transport Scheme under paragraph 1.2 and shall allow the Franchisee a reasonable opportunity to make representations to him 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 listed in the Franchise Agreement; 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); and
- (b) subject to paragraph 2.3, if so requested by the Secretary of State, participate in and comply with its prospective obligations under:
 - (i) any concessionary travel scheme listed in the Franchise Agreement the terms of which have been amended since the date of the Franchise 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 Secretary of State:

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

each pursuant to Part II of the Travel Concession Schemes Regulations 1986 (SI 1986/77) (the Regulations), would fail to leave the Franchisee financially no worse off (within the meaning of the Regulations) than it was immediately following the Start Date.

2.3 The Secretary of State shall not require the Franchisee to participate in any scheme referred to in paragraph 2.1(b) where the Secretary of State 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,

each pursuant to the Regulations would fail to leave the Franchisee financially no worse off (within the meaning of the Regulations) as a result of such participation.

- 2.4 The Secretary of State 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 him with respect to any such participation.
- 2.5 The Franchisee shall supply to the Secretary of State, in respect of any concessionary travel schemes referred to in paragraph 2.1, such information within such period as the Secretary of State may reasonably require for the purposes of determining whether or not the Franchisee is or will be financially no worse off (within the meaning of the Regulations) 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 Secretary of State and the Franchisee are unable to agree whether the Franchisee will be financially no worse off (within the meaning of the Regulations), the Secretary of State 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 listed in the Franchise Agreement; 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); and
 - (b) subject to paragraph 3.3, if so requested by the Secretary of State, participate in and comply with its obligations under:

- (i) any multi-modal fares scheme listed in the Franchise Agreement, the terms of which have been amended since the date of the Franchise 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 Secretary of State:

- (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 leave the Franchisee financially no worse off.

3.3 The Secretary of State shall not require the Franchisee to participate in any scheme referred to in paragraph 3.1(b) where the Secretary of State 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 leave the Franchisee financially no worse off.

3.4 In determining whether the Franchisee shall participate or continue to participate in any multi-modal fares scheme, the term financially no worse off shall be construed by the Secretary of State:

- (a) in respect of any multi-modal fares scheme listed in the Franchise Agreement, to mean that the Franchisee incurs no greater financial loss than the financial loss (if any) incurred by the Franchisee from the Start Date under that scheme, as adjusted by reference to any change in the Retail Prices Index since such date;
- (b) in respect of any multi-modal fares scheme which replaces and (in the Secretary of State's reasonable opinion) is reasonably similar to any such scheme as may be listed in the Franchise Agreement, to mean that the Franchisee incurs no greater financial loss than the

financial loss (if any) incurred by the Franchisee from the Start Date under the replaced scheme, as adjusted by reference to any change in 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 Secretary of State's reasonable opinion) reasonably similar to any such scheme or schemes as may be listed in the Franchise Agreement, as having the same meaning given to that term in the Regulations, as if the Regulations applied to such multi modal fares scheme.

- 3.5 The Secretary of State 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 him with respect to any such participation.
- 3.6 The Franchisee shall supply to the Secretary of State, in respect of any multi-modal fares schemes referred to in paragraph 3.1 such information within such period as the Secretary of State may reasonably require for the purposes of determining whether or not the Franchisee is or will be financially no worse off (as defined in paragraph 3.4) 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 Secretary of State and the Franchisee are unable to agree whether the Franchisee will be financially no worse off, the Secretary of State and the Franchisee may resolve such dispute in accordance with the Dispute Resolution Rules.

4. Discount Fare Schemes

- 4.1 If the Secretary of State:
 - (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.

4.2 The Secretary of State shall provide a reasonable opportunity to the Franchisee to make representations to him before amending, introducing or ceasing to approve a Discount Fare Scheme pursuant to paragraph 4.1.

4.3 The Franchisee shall supply to the Secretary of State, in respect of any Discount Fare Scheme referred to in paragraph 4.1, such information within such period as the Secretary of State may reasonably require for the purposes of determining the financial effect of any such amendment, intended amendment, introduction or cessation of approval.

5. Inter-Operator Schemes

5.1 The Franchisee shall participate in and comply with its obligations under the terms of each of the Inter-Operator Schemes listed in the Franchise Agreement.

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 Secretary of State.

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 Secretary of State 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 Secretary of State'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 Secretary of State 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.

SCHEDULE 3

Priced Options

1. List of Priced Options

The Franchise Agreement contains a list of Priced Options agreed as at the date of the Franchise Agreement, and the terms upon which the Secretary of State may exercise each Priced Option.

2. Terms on which Priced Options may be called

2.1 The Secretary of State may call any Priced Option by serving written notice on the Franchisee:

- (a) at any time on or prior to the last date for the call of such Priced Option and on the terms of such Priced Option, in which case the terms of such Priced Option, including the agreed cost and revenue amounts for that Priced Option, shall apply and the Franchisee shall implement such Priced Option in accordance with those terms; and
- (b) at any time after the last date for the call of such Priced Option and/or on different terms to those specified within such Priced Option, in which case such call shall be a Change.

SCHEDULE 4

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 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 the Franchise Agreement.

1.2 This Schedule 4 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 Secretary of State 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 Secretary of State's national programme of works of physical alterations at stations addresses these issues in a structured way.

2.2 The Franchisee shall:

- (a) co-operate reasonably with and assist the Secretary of State in the development and furtherance by the Secretary of State of the programme described in paragraph 2.1(c) by providing to the Secretary of State:
 - (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 Secretary of State pursuant to paragraph 2.5), including from Local Authorities, local development agencies and the Lottery Commission. The Franchisee shall notify the Secretary of State 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, the Franchisee shall, subject to paragraph 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 Secretary of State in respect of that expenditure.

2.5 If the Franchisee seeks funding from the Secretary of State under paragraph 2.4, and demonstrates to the Secretary of State's satisfaction that the criteria in paragraph 2.4 have been satisfied, then the Secretary of State may agree to adjust the amount of Franchise Payments in respect of some or all of the works and/or expenditure. In considering his response to any such request, the Secretary of State 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 Secretary of State agrees to adjust Franchise Payments in accordance with this paragraph 2.5 in any Franchisee Year:

- (a) the Secretary of State 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 Secretary of State 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 Franchisee Access Station, provided that the Franchisee:

- (a) notifies the Secretary of State within seven 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 Secretary of State'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:

- (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 Secretary of State gives his consent pursuant to paragraph 2.7(a)(iii);

- (iii) shall only include works other than those permitted by paragraphs 2.7(a)(i) and (a)(ii) with the prior consent of the Secretary of State; and
 - (iv) must comply with the standards provided for in the Code of Practice, unless otherwise agreed with the prior consent of the Secretary of State;
- (b) as soon as reasonably practicable (and in any event within four months) after the Start Date and thereafter before the start of each Franchisee Year:
 - (i) develop a Minor Works' Programme and consult with the Disabled Persons Transport Advisory Committee and relevant Rail Passengers' Council 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 (b)(ii), obtain the Secretary of State'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 Secretary of State);
- (d) report progress to the Secretary of State in determining and carrying out the Minor Works' Programme no less than once every three Reporting Periods; and

- (e) co-operate, as the Secretary of State 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 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 Secretary of State within seven days of receiving notification of the DDA Claim. The Franchisee shall at the same time notify the Secretary of State 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 Secretary of State, defend the DDA Claim or any aspect of the DDA Claim (which may include appealing the judgment). The Secretary of State will, subject to paragraph 3.4, pay the Franchisee's reasonable costs of:
 - (i) any defence or appeal required by the Secretary of State; and/or
 - (ii) compliance with the Secretary of State's instructions in accordance with paragraph 3.1(c); and
- (c) act in accordance with the reasonable instructions of the Secretary of State 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 Secretary of State) 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 Secretary of State's requirement under paragraph 3.1, it shall produce for the Secretary of State's approval a settlement proposal, setting out the terms of the Franchisee's proposals to make an offer to the Disabled Person making the DDA Claim and its reasons for making such offer (the Settlement Proposal).

- 3.3 If the Secretary of State 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 Secretary of State 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 Secretary of State 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 Secretary of State under paragraph 3.1(b).
- 3.5 The Secretary of State 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 Secretary of State, in his 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

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) fewer than three 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**
- 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 Commuter Fares and Protected 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 the Secretary of State pursuant to Section 28 of the Act.
- 1.3 For the purpose 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 Commuter Fares Basket; or
 - (b) the Protected Fares Basket.
- 1.4 The Secretary of State's regulation of Fares places a limit on the Price or Child Price of each Fare that is allocated by the Secretary of State to a Fares Basket. The limit on the Price or Child Price of each Fare is set by reference to:
- (a) the overall increase of the Prices and the Child Prices of all Fares in a Fares Basket; and
 - (b) the individual increase in the Price or the Child Price of each Fare in a 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):

- (a) the overall increase of the Prices and the Child Prices of all Fares in a Fares Basket may not exceed the Retail Prices Index + 1 per cent. per annum; and
 - (b) the increase in the Price or the Child Price of any individual Fare in a Fares Basket may not exceed the Retail Prices Index + 6 per cent. per annum.
- 1.6 The Secretary of State 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.
- 2.4 Schedule 5.5 (Regulation of Individual Fares) sets out the limits applicable to the increase in the Price or Child Price of any individual Fare in a Fares Basket.
- 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; or
 - (b) the Regulated Price or Regulated Child Price of any Fare.
- 2.6 Schedule 5.7 (Changes to Fares and Fares Regulation) sets out the Secretary of State's ability to vary the foregoing 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:

- (a) Schedule 5.2 (Franchisee's Obligation to Create Fares), Fare shall have the wide meaning given to it in paragraph (a) 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 (b) 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 Secretary of State 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 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 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 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) by persons under the age of 16 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 Secretary of State may include within the definitions of:

- (a) Fares Basket;
- (b) Commuter Fare; and
- (c) Protected Fare,

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

SCHEDULE 5.2

Franchisee's Obligation to Create Fares

1. Creation of Commuter Fares and Protected Fares

The Franchisee shall ensure that each Commuter Fare and each Protected Fare has been Created, to the extent it is entitled or obliged to do so under the terms of the Ticketing and Settlement Agreement.

2. Restrictions on Creation of Fares

- 2.1 The Franchisee shall set the Child Price for any Fare that it Creates 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 Secretary of State (such consent not to be unreasonably withheld).

3. Fares between London Stations

3.1 *The Franchisee shall negotiate during each Fares Setting Round with TTL as applicable and each other Train Operator or other licensed train operator that is a Lead Operator in respect of services that call at or operate between any London Stations on which Fares are to be set and in any case set and agree the prices to be charged for Single Fares, Return Fares, and Season Ticket Fares for travel between (i) each station which is a London Station or a station (other than Watford Junction) in Zones 7, 8, and 9 as defined in the PAYG Agreement and (ii) every other such station.*

3.2, *Unless otherwise agreed with the Secretary of State, Single Fares and Return Fares shall be set so that the same price shall apply for any journey which involves travel within or across the same Zone or Zones. The Franchisee shall:*

- (a) *use all reasonable endeavours to agree with such other Lead Operators, any terms and conditions necessary for those Fares or for those journeys, so that the same terms and conditions shall apply to journeys between any two London Stations; and***
- (b) *for those purposes, exchange such information as may be reasonably necessary for or associated with reaching and reviewing such agreement***

3.3 The Single Fares and Return Fares set in line with paragraphs 3.1 and 3.2 (inclusive) shall remain subject to the Fares regulation set out in this Schedule 5 (Fares). The Secretary of State shall, where reasonably necessary to enable the Franchisee to comply with its obligations under this paragraph 3, grant such waivers of the terms of Schedule 5.5 (Regulation of Individual Fares) as are reasonably necessary in respect of the Fare Year in which Fares are first set on a zonal basis in order to comply with the provisions of paragraph 3.2.”

“Fares in PAYG Zones¹⁴

4.1 The Franchisee shall negotiate during each Fares Setting Round with TTL as applicable and each other Train Operator or other licensed train operator that is a Lead Operator in respect of services that call at or operate between any London Stations and agree the prices to be charged for PAYG Peak Fares and PAYG Off-Peak Fares and the terms and conditions and ancillary charges as envisaged by the PAYG Agreement.

4.2 With effect from 2nd January 2010 (or if later the PAYG Launch Date), PAYG Peak Fares and PAYG Off-Peak Fares shall be set so that the same price shall apply for any rail journey (being a journey on railway passenger services operated by a Train Operator pursuant to a franchise agreement with the Secretary of State) which involves travel within or across the same PAYG Zone or PAYG Zones except to the extent that where such Fares are valid on Inter-Available Routes as defined in the Through Ticketing (non-Travelcard) Agreement they are set in accordance with the terms of that Agreement. The Franchisee shall:

(a) use all reasonable endeavours to agree with TTL as applicable and such other Lead Operators, any terms and conditions necessary for those Fares or for those rail journeys, including the time period to be designated “Off-peak”, so that the same terms, conditions and (in the case of PAYG Off-Peak Fares) time restrictions shall apply to journeys within or across the PAYG Zone or Zones and that for the Fare Year commencing 1st January 2010 the prices of such Fares are as set out in the Annex to this paragraph 4; and

(b) for those purposes, exchange such information as may be reasonably necessary for or associated with reaching and reviewing such agreement.

4.3 The PAYG Peak Fares and PAYG Off-Peak Fares set in line with paragraphs 4.1 and 4.2 shall be subject to the Fares regulation set out in this Schedule 5 (Fares) in relation only to rail journeys (being

¹⁴ Date of change 16/10/2009

journeys on railway passenger services operated by a Train Operator pursuant to a franchise agreement with the Secretary of State) within or across the Zones and shall not be subject to the restrictions set out in paragraph 3.1 (a) and (b) of Schedule 1.4 of the Terms to the extent that any of the characteristics of such Fare which would otherwise breach the restrictions set out therein is contemplated under the PAYG Agreement.

- 4.4 The Secretary of State shall, where reasonably necessary to enable the Franchisee to comply with its obligations under this paragraph 4, grant such waivers of the terms of Schedule 5.5 (Regulation of Individual Fares) as are reasonably necessary in respect of the Fare Year in which PAYG Peak Fares and PAYG Off-Peak Fares are first set on a zonal basis pursuant to the provisions of this paragraph 4.**

SCHEDULE 5.3

Allocation of Fares to Fares Baskets

1. Allocation of Fares to Fares Baskets

- 1.1 On or prior to the Start Date the Secretary of State shall allocate each Commuter Fare and each Protected Fare to the relevant Fares Basket in accordance with this Schedule 5.3.
- 1.2 Subject to paragraph 2, every Commuter Fare shall be allocated by the Secretary of State to the Commuter Fares Basket and every Protected Fare shall be allocated by the Secretary of State to the Protected Fares Basket.

2. Designation of Non-Fares Basket Fares

- 2.1 On or prior to the Start Date, the Secretary of State shall:
- (a) separately rank, in descending order according to their Gross Revenue for the period of 12 months which ended 31 March 2003:
 - (i) all Commuter Fares; and
 - (ii) all Protected Fares;
 - (b) aggregate, following such ranking:
 - (i) those Commuter Fares with the lowest Gross Revenue, until the total of the aggregated Gross Revenue of such fares accounts for up to five per cent. of the aggregate Reference Revenue of all Commuter Fares; and
 - (ii) those Protected Fares with the lowest Gross Revenue, until the total of the aggregated Gross Revenue of such fares accounts for up to five per cent. of the aggregate Reference Revenue of all Protected Fares; and
 - (c) designate, following such aggregation:
 - (i) those Commuter Fares referred to in paragraph 2.1(b)(i) as Non-Fares Basket Fares; and
 - (ii) those Protected Fares referred to in paragraph 2.1(b)(ii) as Non-Fares Basket Fares.

- 2.2 Without prejudice to the Secretary of State's right to require the content of a Fares Basket to change at any time prior to the Start 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 Commuter Fare or Protected Fare that is also designated as a Non-Fares Basket Fare shall not be allocated to the relevant Fares Basket.
- 2.3 The Secretary of State may de-designate any Non-Fares Basket Fare pursuant to paragraph 1.1 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

Subject to paragraph 1.3 of Schedule 5.6 (Exceeding the Regulated Value, Regulated Price or Regulated Child Price) the Franchisee shall procure that the Value of a 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 shall be the aggregate of the Projected Revenue of each Fare in that Fares Basket at that time.

3. Projected Revenue¹⁵

“3.1 The Projected Revenue of any Fare for any Fare Year shall be an amount equal to:

P x 2003 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 which in the case of a PAYG Peak Fare or a PAYG Off-Peak Fare from January 2010 (or the PAYG Launch Date if later) until the end of the Fare Year 2012 shall be calculated as set out in paragraph 3.2 below and in all other cases shall be ascertained otherwise as follows;

$$\frac{A}{B}$$

where:

A is the aggregate Gross Revenue recorded by RSP as attributable to sales of that Fare (including any Commuter 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.

¹⁵ Date of change 16/10/2009

3.2 (a) In the case of any PAYG Peak Fare the 2003 Nominal Ticket Sales will be calculated as the sum of :

(i) 1.6 times the sum of the ratio A/B as defined in paragraph 3.1 above of all the Return Fares in the Commuter Fares Basket on 31st December 2009 (at the Price or Child Price as the case may be) in both directions between the stations in the origin Zone and the stations in the destination Zone between which such PAYG Peak Fare is valid; and

(ii) 0.6 times the sum of the ratio A/B as defined in paragraph 3.1 above of all Single Fares in the Commuter Fares Basket on 31st December 2009 (at the Price or Child Price as the case may be) in both directions between the stations in the origin Zone and the stations in the destination Zone between which such PAYG Peak Fare is valid.

(b) In the case of any PAYG Off-Peak Fare the 2003 Nominal Ticket Sales will be calculated as the sum of:

(i) 0.4 times the sum of the ratio A/B as defined in paragraph 3.1 above of all the Return Fares in the Commuter Fares Basket on 31st December 2009 (at the Price or Child Price as the case may be) in both directions between the stations in the origin Zone and the stations in the destination Zone between which such PAYG Off-Peak Fare is valid; and

(ii) 0.4 times the sum of the ratio A/B as defined in paragraph 3.1 above of all Single Fares in the Commuter Fares Basket on 31st December 2009 (at the Price or Child Price as the case may be) in both directions between the stations in the origin Zone and the stations in the destination Zone between which such PAYG Off-Peak Fare is valid.

4. Regulated Value

4.1 The Regulated Value of a Fares Basket for any Fare Year shall be an amount equal to:

2003 Ticket Revenue x PPAI

where:

¹⁶ **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 except that for the**

¹⁶ Date of new text 16/10/2009

purposes of this calculation the contribution from the PAYG Peak Fares and PAYG Off-Peak Fares shall be deemed to be the Price of that Fare as set out in the Annex attached to paragraph 4 of Schedule 5.2 of the Terms multiplied by the relevant 2003 Nominal Ticket Sales as calculated in paragraph 3.2 of Schedule 5.4 of the Terms until the Fare Year 2012 or such time as the Secretary of State invokes paragraph 3.1 of Schedule 5.7 of the Terms whichever is the later.

PPAI

is:

- (a) in respect of the Fare Year commencing 1 January 2004, the Permitted Aggregate Increase for that Fare Year; and
- (b) in respect of each Fare Year commencing on or after 1 January 2005, the product of the Permitted Aggregate Increase for each Fare Year between that Fare Year and the Fare Year which begins on 1 January 2004 (inclusively).

4.2¹⁷ 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:

¹⁷ As a result of a Notice of Variation issued on 11 August 2011, RPI+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.

$$\frac{RPI_{-1}}{RPI_{-2}}$$

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.

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 is equal to + 1.

SCHEDULE 5.5

Regulation of Individual Fares

1. Price or Child Price not to exceed Regulated Price or Regulated Child Price

1.1 The Franchisee shall procure that the Price or Child Price (as the case may be) of:

- (a) ⁱⁱ each Commuter Fare included in the Commuter Fares Basket; and
- (b) each Protected Fare included in the Protected Fares Basket,
- (c) **any Cash Commuter Fare¹⁸**

in any Fare Year does not exceed the Regulated Price or Regulated Child Price (as the case may be) for such Fare in that Fare Year¹⁹ ***provided that, for the Fare Year 2010, the Regulated Price or Regulated Child Price (as the case may be) for each Cash Commuter Fare shall be as specified for such Cash Commuter Fare in the Annex to paragraph 4 of Schedule 5.2 to the Terms except where such Fares are valid on Inter-Available Routes as defined in the Through Ticketing (non-Travelcard) Agreement such Fares are set in accordance with the terms of that agreement.***

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 x 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 and, for any subsequent Fare Year, is the maximum Price or Child |
|-----------------------------|--|

¹⁸ Date of change 16/10/2009

¹⁹ Date of change 16/10/2009

Price (as the case may be) recorded by RSP in 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) recorded by RSP which did so comply; and

PII is the Permitted Individual Increase in any Fare Year, as determined in accordance with paragraph 2.2.

2.2²⁰ The Permitted Individual Increase in any Fare Year shall be determined in accordance with the following formula:

$$PII = \frac{(100 \times RPI) + k + 2}{100}$$

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

²⁰ As a result of a Notice of Variation issued on 11 August 2011, RPI+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.

RPI₂ 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^{iiiiv} *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

RPI₂ 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 Commuter Fare or Protected Fare in any Fare Year; and
- (b) the Secretary of State reasonably determines that the Price or Child Price (as the case may be) of such Commuter Fare or Protected 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 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 the relevant preceding Fare Year.

3. **Compulsory Inter-available Flows**

Where the Franchisee:

- (a) as Lead Operator for a Compulsory Inter-available Flow, is responsible for setting the Price or Child Price (as the case may be) of a Commuter Fare for that Flow; and
- (b) has notified RSP of the Price or Child Price (as the case may be) of that Commuter Fare in any Fares Setting Round,

the Franchisee shall not increase the Price or Child Price (as the case may be) of that Commuter Fare in the same Fares Setting Round without the consent of either the Secretary of State or each other Train Operator which provides railway passenger services for such Flow.

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 either the Commuter Fares Basket or the Protected Fares Basket:

- (a) it shall reduce the Price or Child Price of Fares in the relevant Fares Basket 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 Secretary of State may adjust Franchise Payments by an amount equivalent in his 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 Secretary of State in determining the amount of such additional gross revenue.

1.2 Any adjustment to Franchise Payments by the Secretary of State 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 Secretary of State under the Act or the Franchise 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 the Commuter Fares Basket exceeds its Regulated Value in any Fare Year;

- (b) such excess is caused by the Price or Child Price of any relevant Commuter 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 Commuter Fares in the Commuter Fares Basket so as to avoid the Value of the Commuter 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 Fare Year, the Price or Child Price of any Commuter Fare in the Commuter 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 Commuter 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 Commuter Fare at any time during that Fare Year, or any subsequent Fare 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):

- (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 Secretary of State may adjust Franchise Payments by an amount equivalent in his 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 Secretary of State in determining the amount of such additional gross revenue.

2.2 Any adjustment to Franchise Payments by the Secretary of State 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 Secretary of State under the Act or the Franchise Agreement in respect of such contravention.

SCHEDULE 5.7

Changes to Fares and Fares Regulation

1. Changes to Fares Baskets

1.1 The Secretary of State may require the content of the Commuter Fares Basket or the Protected Fares Basket (as the case may be) to change in accordance with the following:

- (a) where the Secretary of State 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 Secretary of State may de-designate any Non-Fares Basket Fare and include such Non-Fares Basket Fare in the relevant Fares Basket;
- (b) where any Commuter Fare for a Flow has been included in the Commuter Fares Basket, the Secretary of State may require the inclusion in the Commuter Fares Basket of any Weekly Season Ticket, Monthly Season Ticket, Quarterly Season Ticket, Annual Season Ticket, unrestricted Single Fare or unrestricted Return Fare that existed on that Flow in February 2003;
- (c) where any Protected Fare for a Flow has been included in the Protected Fares Basket, the Secretary of State may require the inclusion in the Protected Fares Basket of any Protected Return Fare or Protected Weekly Season Ticket that existed on that Flow in February 2003; and/or
- (d) where the Secretary of State 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 would be included, and without limiting paragraphs 1.1(a) to (c) inclusive, the Secretary of State may also:

- (i) make any of the changes to such Fares Basket contemplated by this paragraph 1.1;
- (ii) 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 Start Date) of paragraph 2 of Schedule 5.3 (Allocation of Fares to Fare Baskets); and/or
- (iii) de-designate any Non-Fares Basket Fare and include such Non-Fares Basket Fare in the relevant Fares Basket.

1.2 The Secretary of State shall serve notice in writing on the Franchisee:

- (a) at any time prior to the Start 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 to designate any Fare as a Non-Fares Basket Fare pursuant to paragraph 1.1.

2. Changes to the 2003 Nominal Ticket Sales

2.1 The Franchisee may, in the event of any significant change to the pattern of travel on the Passenger Services during the Franchise Term, apply to the Secretary of State for the value of factors A and/or B in the formula for determining 2003 Nominal Ticket Sales in paragraph 3 of Schedule 5.4 (Regulation of Fares Basket Values) to be adjusted 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 Secretary of State 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 Secretary of State shall be entitled to impose conditions upon any such acceptance, including conditions requiring that the value of both factors A and B are adjusted and/or that the value of factors A and 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 Secretary of State may, 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 any Fares Basket to be calculated by reference to a different reference period for the purpose of paragraph 2 of Schedule 5.3 (Allocation of Fares to Fares Baskets) than the period of 12 months ended 31 March 2003;
- (b) the Gross Revenue of all Commuter Fares and Protected Fares to be re-calculated for the purpose of paragraph 2 of Schedule 5.3 by reference to a different reference period than the period of 12 months ended 31 March 2003;
- (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 period of 12 months ended 31 March 2003;
- (d) the value of factor B in the formula for determining the 2003 Nominal Ticket Sales in paragraph 3 of Schedule 5.4 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 by reference to a different reference period than the period of 12 months ended 31 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 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.

“3.4 Where, in accordance with paragraph 3.1(b) the Gross Revenue of Commuter Fares is recalculated by reference to a different reference period, the Secretary of State is not obliged to designate any PAYG Fares referred to in paragraph 2.1 (b) (i) of Schedule 5.3 as Non-Fares Basket Fares,”²¹

4. Changes to Prices

The Franchisee may request permission from the Secretary of State 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) in connection with any proposed or actual improvement in any aspect of the Passenger Services relating to such Fares. The Secretary of State 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

The parties agree that the Secretary of State shall 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

²¹ Date of change 16/10/2009

(Regulation of Individual Fares)). The exercise by the Secretary of State of his powers under this paragraph 5 shall be a Change.

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 Secretary of State is requested for the abolition of a Compulsory Inter-available Flow (the Reference Flow) in respect of which any Fare Created would be a Commuter Fare or a Protected Fare (the Reference Fare); and

(b) a Flow exists, which, in the Secretary of State's opinion, is substantially similar to the Reference Flow (the Equivalent Flow),

the Secretary of State may, as a condition of granting his 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 Secretary of State 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 Secretary of State'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 Secretary of State if it becomes the Lead Operator in respect of any Flow. Upon the Franchisee becoming the Lead Operator in respect of any Flow, the Secretary of State may without limiting

paragraph 3, exercise his rights pursuant to paragraph 3 in relation to the relevant Fares Basket.

- 7.3 The Franchisee shall inform the Secretary of State if it ceases to be a Major Flow Operator in respect of any Flow.

8. Changes to Fares Documents

- 8.1 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 Secretary of State shall set out in the Commuter Fares Document and/or the Protected Fares Document (as the case may be) all Fares then included in the relevant Fares Basket and, as soon as reasonably practicable thereafter, the Secretary of State shall issue or reissue (as the case may be) such Fares Document(s) to the Franchisee.

SCHEDULE 5.8

Fares Regulation Information and Monitoring

1. Information

- 1.1 The Franchisee shall provide to the Secretary of State by no later than week 12 of each Fares Setting Round, a summary (to such level of detail or generality as the Secretary of State may reasonably require) of the Prices and Child Prices of the Commuter Fares or Protected Fares it is intending to set.
- 1.2 The Franchisee shall notify, or procure the notification to, the Secretary of State of any proposed increase to the Price or Child Price of any Commuter Fare or any Protected Fare and shall provide such details of any such proposal at such times (including before and during each Fares Setting Round) and in such form (including by electronic data transfer) as the Secretary of State may reasonably request from time to time.
- 1.3 The Franchisee shall make available, or procure that RSP makes available, to the Secretary of State, 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 Commuter Fare or Protected Fare for each such Fares Setting Round as the Secretary of State may reasonably request from time to time.

2. Monitoring

- 2.1 The Franchisee shall provide to the Secretary of State:
 - (a) such access as the Secretary of State may require to information pertaining to the Prices or Child Prices of Commuter Fares and Protected Fares from time to time; and
 - (b) such further information as the Secretary of State 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^v By no later than week 17 of each Fares Setting Round, the Franchisee will provide to the Secretary of State 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 Secretary of State 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 5.9²²

PAYG Arrangements

A. PAYG Ancillary Agreement

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

B. Introduction of Tickets in IOP

B.1 *The Franchisee will co-operate with all other Train Operators and with TfL to facilitate the use of ITSO Certified Smartmedia within the Zones for tickets sold under the Travelcard Agreement and Through Ticketing (Non-Travelcard) Agreement utilising the ITSO on Prestige (IOP) infrastructure and services which are within the scope of agreement between the Secretary of State and Transport for London (“TfL”) for the acceptance of ITSO (“IOP Agreement”).*

B.2 *The Franchisee shall use all reasonable endeavours to agree with relevant Train Operators and TfL reasonable commercial terms for an IOP Services Agreement under which TfL will provide services to the Franchisee associated with the operation of IOP in accordance with the provisions of paragraph B.1.*

²² Date of new text 16/10/2009

B.3 These clause B.1 and B.2 are without prejudice to any other agreement with the Franchisee relating to the implementation of ITSO smart card ticketing which latter shall prevail in the case of any inconsistency.

C. TfL's costs for operation of IOP

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

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

D.PAYG Set Up Costs

The Secretary of State shall pay to the Franchisee the Oyster PAYG set up costs, within 21 days of the date of signature of the PAYG Agreement (or such later date as agreed between the Secretary of State and the Franchisee which reflects the date when the Franchisee will have paid all of the Oyster PAYG set up costs), provided and to the extent that:

- a) the Franchisee can show that it has paid these costs;***
- b) they fall within the categories labelled as "Set up" costs in the Annex to this paragraph D;***

c) *the total amount payable by the Secretary of State does not exceed £²³ and*

d) *the costs have not been paid by another party such as London Overground Rail Operations Ltd.*

The Franchisee acknowledges that the total Oyster PAYG set up costs may be paid by the Secretary of State to either New Southern Railway Limited (under the relevant terms of the Previous Franchise Agreement) or to the Franchisee under this paragraph D provided that no part of the Oyster PAYG set up costs shall be paid twice under both mechanisms”.

E PAYG Scheme

There shall be added to the list of schemes in clause 5.1 (m) of the Franchise Agreement for the purpose of the definition of Inter-Operator Scheme in clause 3.1 of the terms

“(viii) the PAYG Scheme date 16 October 2009 between the participants listed therein”.

F. No Event of Default

There shall be added to the end of paragraph 2.12 of Schedule 10.3 of the Terms the words:

“provided that it shall not be an Event of Default if the Franchisee ceases to be a member of, or ceases to participate in or to be a party to the PAYG Scheme if the Franchisee has been directed to do so by the Secretary of State.”

²³ [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 6

Farebox Securitisation

1. Notice of Requirements

- 1.1 The Franchisee agrees that the Secretary of State 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 Secretary of State or any person that the Secretary of State may nominate;
 - (b) pay to the Secretary of State or any person that the Secretary of State 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 ORR and Network Rail, pay to any person that the Secretary of State may nominate, all or any part of the 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 ORR and/or Network Rail) amendments to agreements and do all such other acts and things as in the opinion of the Secretary of State 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.

2. Adjustment to Franchise Payments

The Secretary of State agrees that any requirement he 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/Service Quality Management

Schedule 7.1: Performance Benchmarks

Schedule 7.2: Service Quality Management

SCHEDULE 7.1

Performance Benchmarks

1. Benchmarks

Location of Benchmarks

- 1.1 The Cancellations Benchmarks are set out in the table in Appendix 5 (Cancellations Benchmark Table) to the Franchise Agreement.
- 1.2 The Capacity Benchmarks are set out in the table in Appendix 6 (Capacity Benchmark Table) to the Franchise Agreement.
- 1.3 The Service Delivery Benchmarks are set out in the table in Appendix 7 (Service Delivery Benchmark Table) to the Franchise Agreement.

Post Start Date Recalibration

- 1.4 No later than one Reporting Period after the Start Date:
 - (a) the Benchmarks shall be recalibrated in accordance with Appendix 14 (Recalibration of the Benchmarks) to the Franchise Agreement; and
 - (b) Appendices 5 to 7 (inclusive) to the Franchise Agreement shall be amended accordingly.

2. Information Provisions

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 (Information and Industry Initiatives), report to the Secretary of State the total number of Cancellations or Partial Cancellations in that Reporting Period.
- 2.2 For each Reporting Period, the Secretary of State shall calculate a moving annual average of the Franchisee's performance against the Cancellations Benchmark 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 Cancellations or Partial Cancellations of Passenger Services operated in that Reporting Period, on the basis that:

- (a) Cancellation shall count as 1;
- (b) a Partial Cancellation shall count as 0.5; and
- (c) any Cancellations or Partial Cancellations 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, if the Franchisee has complied with paragraph 4.6, be disregarded in determining such total number;

C is the total number of Passenger Services scheduled to be operated in that Reporting Period, disregarding, if the Franchisee has complied with paragraph 4.6, any Cancellations or Partial Cancellations 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.

Capacity Benchmarks

2.3 At the end of each Reporting Period the Franchisee shall, in accordance with the relevant requirements of Appendix 3 to Schedule 13, report to the Secretary of State 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.

2.4²⁴ For each Reporting Period, the Secretary of State shall calculate a moving annual average of the Franchisee's performance against the Capacity Benchmark in accordance with the following formula:

$$\frac{A + D}{B + C} \times 100$$

where

A is total number of Passenger Services in that Reporting Period operated with less than the number of vehicles specified for each such Passenger Service in the Train Plan, disregarding, if the Franchisee has complied with paragraph 4.6, 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) a shortfall in the number of vehicles available to the Franchisee on any date after the Principal Change Date occurring in December 2013 as a result of the FCC Franchisee not having redelivered all of the Hand Back Units in circumstances where the Franchisee is deemed to have used all reasonable endeavours to provide the number of vehicles specified in the Train Plan in respect of relevant Passenger Services in consequence of the**

²⁴ Date of Change 16/12/2010

operation of paragraph 1.1A of Schedule 1.2 (Operating Obligations) provided that no Passenger Services will be disregarded pursuant to this paragraph (c) at any time following the date upon which all of the Hand Back Units have been redelivered to the Franchisee;

B *is the total number of Passenger Services scheduled in the Train Plan to be operated in that Reporting Period, disregarding, if the Franchisee has complied with paragraph 4.6, any Passenger Services operated 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;*
- (c) a shortfall in the number of vehicles available to the Franchisee on any date after the Principal Change Date occurring in December 2013 as a result of the FCC Franchisee not having redelivered all of the Hand Back Units in circumstances where the Franchisee is deemed to have used all reasonable endeavours to provide the number of vehicles specified in the Train Plan in respect of relevant Passenger Services in consequence of the operation of paragraph 1.1A of Schedule 1.2 (Operating Obligations) provided that no Passenger Services will be disregarded pursuant to this paragraph (c) at any time following the date upon which all of the Hand Back Units have been redelivered to the Franchisee;*

C *is the sum of the values of B in each of the 12 preceding Reporting Periods.*

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.

Service Delivery Benchmarks

2.7 At the end of each Reporting Period the Franchisee shall, in accordance with the relevant requirements of Appendix 3 to Schedule 13, report to the Secretary of State the total number of Minutes Delay:

- (a) in that Reporting Period attributable to the Franchisee;
- (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.

2.8 For each Reporting Period, the Secretary of State shall calculate a moving annual average of the Franchisee's performance against the Service Delivery Benchmark by calculating the sum of the number of Minutes Delay that are attributable to the Franchisee:

- (a) in such Reporting Period; and
- (b) in the 12 preceding Reporting Periods,

and dividing the sum by 13.

2.9 In performing the calculation pursuant to paragraph 2.8, the Secretary of State 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 Secretary of State shall, for the purpose of performing the calculation 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 including any disputed attributions which were resolved or determined during such 12 preceding Reporting Periods; and

B is the total number of undisputed Minutes Delay from the 12 preceding Reporting Periods that are attributable to Network Rail including any disputed attributions which were resolved or determined during such 12 preceding Reporting Periods.

2.11 The Franchisee agrees with the Secretary of State 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 Start Date, the Secretary of State shall, for the purposes of performing the calculations referred to in paragraphs 2.2, 2.4 and 2.8, assume performance at the Target Performance Level in respect of any of the 13 reporting periods that precede the Start Date.

Calculations

2.13 The Secretary of State shall perform the calculations referred to in paragraphs 2.2, 2.4 and 2.8 rounded to two 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 Secretary of State shall notify the Franchisee of the results of the calculations performed pursuant to this paragraph 2.

Meaning of Train Plan

- 2.15 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 11.2 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);
- (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 Secretary of State in accordance with such paragraph.

3. Service Delivery Benchmark Adjustments

- 3.1 The Service Delivery Benchmark for any Reporting Period commencing on or at any time after a Passenger Change Date shall be revised as follows:

$$NB = OB \times \frac{NM}{OM}$$

where:

NB is the new Benchmark after revision in accordance with this paragraph 3.1;

OB is the old Benchmark 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 Secretary of State reasonably considers that any revision to the Service Delivery Benchmark pursuant to paragraph 3.1 is insufficient to hold constant the risk of the Franchisee failing to satisfy the requirements of such Benchmark,

then the Secretary of State shall make such revisions to the Service Delivery Benchmark as he reasonably considers appropriate to hold constant such risk.

3.3 The Secretary of State shall notify the Franchisee of any revision to the Service Delivery Benchmark 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 The Secretary of State expects 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 the Cancellations Benchmark Table;

(b) Passenger Services operated with less passenger carrying capacity than the passenger carrying capacity specified for 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 the Capacity Benchmark Table; and

- (c) Minutes Delay occurring in respect of the Passenger Services which are attributable to the Franchisee (including in accordance with paragraph 2.10) will be equal to or better than the Target Performance Level specified in the cell relating to each such Reporting Period in the Service Delivery Benchmark Table.

4.2 The rewards for the Franchisee's performance equalling or bettering the Target Performance Levels relating to each 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 3.13 of Schedule 13 (Information and Industry Initiatives).

4.4 The Franchisee shall 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) the Breach Performance Levels and the Default Performance Levels specified in the cells relating to each such Reporting Period in the Cancellations Benchmark Table;
- (b) Passenger Services operated with less passenger carrying capacity than the passenger carrying capacity specified for such Passenger Service in the Train Plan, does not exceed (that is, is neither equal to nor worse than) the Breach Performance Levels and the Default Performance Levels specified in the cells relating to such Reporting Period in the Capacity Benchmark Table; and
- (c) Minutes Delay occurring in respect of the Passenger Services which are attributable to the Franchisee (including in accordance with paragraph 2.10) does not exceed (that is, is neither equal to nor worse than) the Breach Performance Levels and the Default Performance Levels specified in the cells relating to such Reporting Period in the Service Delivery Benchmark Table.

4.5 Certain consequences of the Franchisee's performance exceeding (that is, equalling or being worse than) the Breach Performance Levels and Default

Performance Levels relating to each Benchmark are set out in Schedule 10 (Remedies, Termination and Expiry).

4.6 Submission of Records Relating to the Implementation of a Service Recovery Plan

The Franchisee shall, within 8 weeks of the end of each Reporting Period for which a Service Recovery Plan has been implemented (or such other period as may be agreed by the Secretary of State), submit to the Secretary of State all the comprehensive records (as more particularly described in paragraph 5.25 of the ATOC “Approved Code of Practice : Contingency Planning for Train Service Recovery - Service Recovery 2003”) which relate to the implementation of such Service Recovery Plan during that Reporting Period.

SCHEDULE 7.2

Service Quality Management

1. Introduction

1.1 This Schedule 7.2 provides for:

- (a) the Service Quality Management System arrangements to be put in place by the Franchisee for the management and delivery of service quality during the Franchise Term;
- (b) the responsibilities, including auditing, and reporting requirements of the Franchisee;
- (c) the audits that may be carried out by the Secretary of State;
- (d) the right of the Secretary of State to witness any audit carried out by the Franchisee;
- (e) the remedies available to the Secretary of State if the Franchisee under-performs against the measurement criteria set out in the Service Quality Management System; and
- (f) the remedies available to the Secretary of State if the Franchisee fails to submit a Service Quality Plan when required to do so or implement any Service Quality Plan in accordance with its terms.

2. Service Quality Arrangements

Service Quality Management System

2.1 The Service Quality Management System shall:

- (a) be capable of measuring the Franchisee's compliance with the standards set out in the Service Quality Standards;
- (b) contain distinct benchmarks against which the Franchisee's performance can be monitored each Reporting Period and any other performance criteria agreed between the parties;
- (c) set out procedures, including in respect of the auditing requirements specified in paragraph 3, for identifying and rectifying failures against those benchmarks; and

- (d) provide details of the resources allocated by the Franchisee, including any contractual arrangements in place, to ensure the provision by it of a level of service quality across the Franchise that is consistent with the level specified in the Service Quality Standards.
- 2.2 The Franchisee shall implement the Service Quality Management System in accordance with its terms.
- 2.3 The Franchisee shall review the effectiveness of the Service Quality Management System, including the Service Quality Audit Programme, at reasonable intervals throughout the Franchise Term (each such interval being no more than 12 months), and propose changes to the Secretary of State as appropriate with a view to ensuring the level of service quality provided across the Franchise is consistent with the level specified in the Service Quality Standards. In considering changes to the Service Quality Audit Programme, the Franchisee shall have regard to the need to maintain a reasonable spread and frequency of audits across the Franchise and across those facilities that are the subject of the Service Quality Standards.
- 2.4 The prior consent of the Secretary of State (such consent not to be unreasonably withheld) must be obtained to any changes to either the Service Quality Management System or the Service Quality Audit Programme that the Franchisee considers appropriate in order to continue to provide the level of service quality referred to in paragraph 2.3.

Service Quality Plans

- 2.5 Any Service Quality Plan submitted under paragraph 4.1(e) requires approval by the Secretary of State. The Secretary of State and the Franchisee shall act in good faith to agree the Service Quality Plan and in the event that no such agreement can be reached, the Secretary of State shall reasonably determine the Service Quality Plan.
- 2.6 The Franchisee shall implement any Service Quality Plan agreed with or determined by the Secretary of State pursuant to paragraph 2.5 in accordance with its terms.

Service Quality at Franchisee Access Stations

2.7 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) enforce any rights it may have under any Access Agreement in respect of any Franchisee Access Station,

in order that any services equivalent to the Franchise Services that are provided by the Facility Owner at any Franchisee Access Station are provided at a level of service quality that is consistent with the level specified in the Service Quality Standards.

Service Quality Standards

2.8 The Secretary of State may amend the Service Quality Standards from time to time and shall promptly notify the Franchisee of any such amendment.

2.9 If the Secretary of State notifies the Franchisee of an amendment to the Service Quality Standards:

- (a) a Change shall occur; and
- (b) without prejudice to paragraph 2.3, the Franchisee shall advise the Secretary of State no later than 28 days thereafter of those amendments (if any) it believes are reasonably required to the Service Quality Management System and/or the Service Quality Audit Programme in order that that system and/or programme continue to meet the requirements specified in paragraphs 2.1 and 2.3.

2.10 The Secretary of State shall approve any such amendments in accordance with paragraph 2.4.

3. **Auditing**

- 3.1 The Service Quality Audit Programme shall provide for a reasonable spread and frequency of audits across the Franchise and across those facilities that are the subject of the Service Quality Standards in order to ascertain the extent to which the Franchisee is implementing the Service Quality Management System in accordance with its terms.
- 3.2 The Franchisee shall implement the Service Quality Audit Programme in accordance with its terms.
- 3.3 The Secretary of State, and his employees and agents on his behalf, shall have the right (at his own cost) to:
- (a) witness any audits carried out by the Franchisee under the Service Quality Audit Programme; and
 - (b) carry out his own independent audits of the extent to which the Franchisee implements the Service Quality Management System in accordance with its terms, in addition to any further independent audits he may carry out pursuant to paragraph 1.8 of Schedule 10.1 (Remedial Plans and Remedial Agreements).
- 3.4 The Franchisee shall cooperate with the Secretary of State, and his employees and agents on his behalf, in permitting the Secretary of State to exercise his rights under paragraph 3.3.
- 3.5 The Secretary of State shall use all reasonable endeavours to ensure that the persons employed in undertaking independent audits, carry out such audits diligently and objectively.
- 3.6 The Secretary of State shall use all reasonable endeavours to notify the Franchisee of the result of any independent audit that is undertaken within any Service Quality Reporting Period no later than the last day of such Service Quality Reporting Period where any such audit is conducted five days or more prior to the last day of such Service Quality Reporting Period. Otherwise, the Secretary of State shall notify the Franchisee as soon as reasonably practicable thereafter.
- 3.7 The Franchisee shall grant such access to the facilities under its control as is necessary to enable the Secretary of State and the Secretary of State's employees and agents on his behalf to witness any audits conducted by the

Franchisee pursuant to the Service Quality Audit Programme and exercise his independent audit rights under paragraph 3.3(b).

3.8 In carrying out any independent audit, or witnessing any audits conducted by the Franchisee pursuant to the Service Quality Audit Programme, the Secretary of State shall, subject to paragraph 3.9, ensure that his 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.

3.9 The Franchisee shall provide notice from time to time of current location-specific access, security and safety rules and regulations to the Secretary of State, his employees or agents for the purpose of ensuring that the Secretary of State, his employees and agents can carry out the Secretary of State's auditing rights in an efficient, secure and safe manner.

4. **Reporting Arrangements for the Franchisee**

4.1 The Franchisee shall:

- (a) calculate its performance every Reporting Period as a moving annual average against the benchmarks set out in the System Quality Management System taking account of the results of any independent audits referred to in paragraphs 5.4 and 5.5;
- (b) self-certify the extent of its compliance against those benchmarks to the Secretary of State no later than seven days after each Service Quality Reporting Period, disaggregating the results of its performance by Service Group where required to do so from time to time by the Secretary of State;
- (c) promptly provide to the Secretary of State, following his request, copies of the records of any of the audits carried out pursuant to the Service Quality Audit Programme;
- (d) promptly notify the Secretary of State if and whenever its performance in any Reporting Period in respect of any standard set out in the Service Quality Standards, when expressed as a moving

annual average, is worse than the benchmark relating to that standard; and

- (e) promptly submit to the Secretary of State a Service Quality Plan where it is required to notify the Secretary of State under paragraph 4.1(d).

4.2 Each Service Quality Plan shall detail:

- (a) the benchmark and standard in respect of which it has been submitted;
- (b) the remedial actions that the Franchisee intends to take, including the resources it intends to allocate, in order to ensure that its future performance in respect of that standard is better than that benchmark; and
- (c) the anticipated time it will take to achieve the objective referred to in paragraph 4.2(b).

5. **Remedies available to the Secretary of State**

Contraventions

5.1 It shall be a contravention of the Franchise Agreement if:

- (a) the Franchisee fails to implement the Service Quality Audit Programme in accordance with its terms;
- (b) the Franchisee is required to notify the Secretary of State pursuant to paragraph 4.1(d);
- (c) the Franchisee fails to submit a Service Quality Plan in accordance with paragraph 4.1(e);
- (d) the Franchisee fails to implement a Service Quality Plan in accordance with its terms; or
- (e) there are material discrepancies which are favourable to the Franchisee between the results of any audit carried out pursuant to the Service Quality Audit Programme and the results of any independent audit relevant to it except where the Franchisee can

demonstrate to the reasonable satisfaction of the Secretary of State that the results of that independent audit are inaccurate.

- 5.2 Without prejudice to the provisions of paragraph 2.11 of Schedule 10.3 (Events of Default and Termination Event), no Event of Default shall have occurred if any of the circumstances referred to in paragraph 5.1 occur.

Results of independent audits

- 5.3 Subject to paragraph 5.5, the results of any independent audits that are carried out in specific response to the occurrence of any of the circumstances described in paragraphs 5.1(a) to 5.1(d) inclusive shall be included in the calculation pursuant to paragraph 4.1(a) of the Franchisee's performance against the relevant benchmarks in the Service Quality Management System.
- 5.4 Subject to paragraph 5.5, the results of any independent audits that are carried out in specific response to the occurrence of the circumstance described in paragraph 5.1(e) shall be substituted for the results of any corresponding audit carried out pursuant to the Service Quality Audit Programme in the calculation pursuant to paragraph 4.1(a) of the Franchisee's performance against the relevant benchmarks in the Service Quality Management System.
- 5.5 Only the results of those independent audits:
- (a) carried out pursuant to paragraph 1.8 of Schedule 10.1 (Remedial Plans and Remedial Agreements) in specific response to the occurrence of any of the circumstances described in paragraphs 5.1(a) to 5.1(e) inclusive; and
 - (b) notified by the Secretary of State to the Franchisee by the end of the Service Quality Reporting Period during which they were conducted,

shall be included in the calculation in respect of those Reporting Periods that form part of that Service Quality Reporting Period pursuant to paragraph 4.1(a).

Franchisee's right to make representations

- 5.6 The Franchisee shall have the right to:
- (a) inspect the results of any independent audit carried out by the Secretary of State pursuant to this Schedule 7.2; and
 - (b) make representations to the Secretary of State in respect of any of those results.
- 5.7 The Secretary of State shall have regard to, but not be bound by, any representation made by the Franchisee pursuant to paragraph 5.6(b).

SCHEDULE 8

Payments

- Schedule 8.1: Franchise Payments**
- Schedule 8.2: Annual Franchise Payments**
- Schedule 8.3: Miscellaneous Payment Provisions**
- Schedule 8.4: Track Access Adjustments and Station Charge Adjustments**

SCHEDULE 8.1

Franchise Payments

1. Franchise Payments

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

$$\text{£FP} = \text{PFP} - \text{RShA} - \text{RShRA} + \text{RSuA} + \text{RSuRA} + \text{TAA} + \text{SCA} - \text{COPA}$$

NRR10/11²⁵

where:

£FP means the Franchise Payment for that Reporting Period;

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

where

RPD means the number of days in that Reporting Period

FYD means the number of days in the Franchisee Year in which that Reporting Period occurs provided that in respect of any Reporting Period occurring during:

- (a) any Franchisee Year in which the Franchise Agreement terminates early pursuant to Schedule 10 (Remedies, Termination and Expiry), FYD shall mean the number of days there would have been in such Franchisee Year had such early termination not occurred; and
- (b) the period of any continuation of the Franchise Agreement pursuant to paragraph 1.4(b) of Schedule 18 (Franchise Continuation Criteria), FYD shall mean the number of days which there would have been in such Franchisee Year had the Secretary of State exercised his right

²⁵ Date of Change 23/03/2011

pursuant to paragraph 1.4(b) of Schedule 18 to require that the Franchise Agreement continued for 7 Reporting Periods; and

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

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

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

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

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

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

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

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

NRR0/11²⁶ means an amount equivalent to the amount received by the Franchisee from Network Rail in that Reporting Period by way of Network Rail Rebate. For this purpose, "Network Rail Rebate" has the meaning given to it in the Track Access Agreement.

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

²⁶ Date of Change 23/03/2011

Payment for such Reporting Period shall be the sum of £FP as determined for each such section of such Reporting Period.

1.3 The parties agree that:

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

2. **Payment of Franchise Payments**

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

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

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

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

2.5 Each Franchise Payment shall be made:

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

- 2.6 If either party disputes the amount of a Franchise Payment, the dispute shall (unless it is a dispute about the meaning or construction of any provision of the Franchise Agreement) be resolved in accordance with the Dispute Resolution Rules. Any such dispute to be dealt with under the Dispute Resolution Rules shall not affect the obligation of either party to pay a Franchise Payment notified in accordance with this paragraph 2.
- 2.7 If either party fails to pay any amount to the other party on its due date, it shall in addition pay interest on such amount at the Interest Rate, calculated on a daily basis, from the due date for payment to the date on which payment is made.
- 2.8 If the amount of any Franchise Payment is agreed or determined to be incorrect and:
- (a) either party has made a payment to the other party which is greater than it would have made if the amount of the Franchise Payment had been correct, then the recipient shall repay the excess within three business days of the agreement or determination; or
 - (b) either party has made a payment to the other party which is less than it would have made if the amount of the Franchise Payment had been correct, then the payer shall pay the amount of any shortfall to the payee within three business days of the agreement or determination,

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

3. Revenue Share

Entitlement to Revenue Share Adjustments

- 3.1 A Revenue Share Adjustment shall be made in accordance with paragraphs 3.2, 3.3 and 5.4 in respect of any Franchisee Year if the Annual Management Accounts for that Franchisee Year disclose Revenue for that Franchisee Year as exceeding Target Revenue by more than the percentage prescribed for this purpose in the Franchise Agreement for that Franchisee Year.

Amount of Revenue Share Adjustments

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

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

$$RS_hA = (A \times X\%) + (B \times Y\%)$$

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 the percentage of Target Revenue prescribed for this purpose in the Franchise Agreement; and
- (b) less than or equal to the percentage of Target Revenue prescribed for this purpose in the Franchise Agreement;

X is the percentage prescribed for the purpose in the Franchise Agreement;

B is the amount of Revenue for that Franchisee Year which is greater than the percentage of Target Revenue prescribed for this purpose in the Franchise Agreement; and

Y is the percentage prescribed for the purpose in the Franchise Agreement.

Revenue Share Adjustment Date

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

Revenue Share Reconciliation Amount

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

$$RS_hRA = RS_hA_{(FS)} - RS_hA$$

where:

RS_hRA is the Revenue Share Reconciliation Amount for any Franchisee Year;

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

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

Revenue Share Reconciliation Date

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

Meaning of Revenue for the purposes of paragraph 3

- 3.7 For the purposes of this paragraph 3 only, the amount of Revenue that may be compared with Target Revenue from time to time shall, subject to paragraph 3.9, exclude any Revenue that is wholly attributable to:

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

Additional Investment

- 3.8 The Franchisee shall be entitled to notify the Secretary of State before making any Additional Investment. In so notifying, the Franchisee shall provide full details of the investment contemplated, together with the reasons why it considers that such investment constitutes Additional Investment.
- 3.9 To the extent that the Franchisee makes any Additional Investment without first notifying the Secretary of State, then any Revenue accruing from any related Additional Passenger Services or commission accruing from the Additional Call Centre Investment (as the case may be) shall be included in the amount of Revenue that may be compared with Target Revenue for the purposes of this paragraph 3.
- 3.10 Within 28 days of receipt of any notice given in accordance with paragraph 3.9, the Secretary of State shall notify the Franchisee whether or not he considers that the investment constitutes Additional Investment, providing reasons for the decision.

Accounting for Revenue attributable to Additional Investment

- 3.11 In respect of any Franchisee Year, the Franchisee shall demonstrate to the Secretary of State the amount (if any) of accrued Revenue that the Franchisee believes falls within paragraph 3.7(a) and/or (b) by:
 - (a) separately accounting for those amounts in any accounts or statements required pursuant to Schedule 13 (Information and Industry Initiatives); and
 - (b) providing such other information as the Secretary of State reasonably requires.
- 3.12 The Secretary of State shall reasonably determine in accordance with established industry procedures (including those prescribed in the Ticketing and Settlement Agreement), where applicable, the amount of accrued

Revenue that is attributable to the activities referred to in paragraphs 3.7(a) and/or (b).

4. Revenue Support in relation to Revenue Support Triggering Force Majeure Events

Purpose of Revenue Support before end of Fourth Year

- 4.1 The purpose of Revenue Support Adjustments under this paragraph 4 is, in prescribed circumstances, to mitigate the impact on the Franchisee of Revenue decline below Target Revenue caused by Revenue Support Triggering Force Majeure Events occurring prior to the fourth anniversary of the Start Date. No Revenue Support Adjustment may be claimed pursuant to this paragraph 4 in respect of any Reporting Period starting on or after the fourth anniversary of the Start Date.

Conditions for Revenue Support Adjustments in relation to Revenue Support Triggering Force Majeure Events

4.2

- (a) Eligibility for Revenue Support Adjustments in relation to Revenue Support Triggering Force Majeure Events is calculated by reference to the difference between Target Revenue and actual Revenue in respect of a Franchisee Year in circumstances where the Dominant Cause of actual Revenue being less than Target Revenue is, subject to paragraph 4.3, the occurrence of a Revenue Support Triggering Force Majeure Event or Revenue Support Triggering Force Majeure Events. The calculation of the amount of any Revenue Support Adjustment payable is made on an individual Reporting Period basis by reference to any shortfall of cumulative actual Revenue below Seasonally Adjusted Target Revenue (which is a cumulative measure by reference to Reporting Periods of Revenue accruing during the Franchisee Year) and taking into account Revenue Support Adjustments already paid in previous Reporting Periods in the same Franchisee Year but with adjustment at the end of the Franchisee Year on the basis of Audited Accounts and by reference to actual Revenue and Target Revenue for the entire Franchisee Year.

- (b) Accordingly a Revenue Support Adjustment in a Reporting Period prior to the fourth anniversary of the Start Date in relation to a Revenue Support Triggering Force Majeure Event or Revenue Support Triggering Force Majeure Events is made (subject to paragraph 4.2(c)) only if all of the following criteria are satisfied (except as provided in paragraph 4.3 and subject to and in accordance with the rest of this paragraph 4 and paragraphs 6 and 8):
- (i) the Management Accounts for any Reporting Period which starts prior to the fourth anniversary of the Start Date (a “**Relevant FME Reporting Period**”), together with any supporting information (including Management Accounts for prior Reporting Periods), disclose that:
 - (1) the cumulative year-to-date Revenue for the period commencing on the first day of the Franchisee Year within which the Relevant FME Reporting Period starts and ending on the final day of the Relevant FME Reporting Period (the “**Franchisee Year to Date**”) is less than 98 per cent. of cumulative year-to-date Seasonally Adjusted Target Revenue for the Franchisee Year to Date; and
 - (2) the amount of such shortfall is equal to or greater than 1% of Seasonally Adjusted Target Revenue for the Relevant FME Reporting Period;
 - (ii) (subject to paragraph 4.3) one or more Revenue Support Triggering Force Majeure Events has or have occurred in the Relevant FME Reporting Period, or in any prior Reporting Period or Reporting Periods (including any Reporting Period in a previous Franchisee Year or in Year 0), and the effects on Revenue of that Revenue Support Triggering Force Majeure Event or Revenue Support Triggering Force

Majeure Events are or were continuing during all or part of the Relevant FME Reporting Period; and

(iii) the Secretary of State reasonably determines that:

- (a) Cumulative Year-to-Date Revenue, expressed as a percentage of cumulative Seasonally Adjusted Target Revenue for the Franchisee Year to Date, has declined below the Cumulative Year-to-Date Revenue for the Pre Force Majeure Event Period, expressed as a percentage of cumulative Seasonally Adjusted Target Revenue for the Pre Force Majeure Event Period; and
- (b) such Revenue Support Triggering Force Majeure Event or Revenue Support Triggering Force Majeure Events is/are (subject to paragraph 4.3) the Dominant Cause of such decline,
- (c) Where in respect of any Relevant FME Reporting Period the Revenue Support Triggering Force Majeure Event or Revenue Support Triggering Force Majeure Events which are the Dominant Cause of Revenue being less than Seasonally Adjusted Target Revenue occurred in a previous Franchisee Year and Revenue Support Adjustments were paid in consequence in the immediately preceding Franchisee Year then there is no requirement to satisfy the criteria referred to in paragraph 4.2(b) in circumstances where the Franchisee can demonstrate that the Dominant Cause of cumulative year to date Revenue for the then current Franchisee Year being less than Seasonally Adjusted Target Revenue is the Revenue Support Triggering Force Majeure Event or Revenue Support Triggering Force Majeure Events which occurred in an earlier Franchisee Year and in respect of which Revenue Support Adjustments were paid in the immediately preceding Franchisee Year.

Industrial Action

4.3

- (a) In assessing whether:
 - (i) any Revenue Support Triggering Force Majeure Event or Revenue Support Triggering Force Majeure Events

have occurred or the effect on Revenue of any such Revenue Support Triggering Force Majeure Event or Revenue Support Triggering Force Majeure Events which have occurred for the purpose of paragraph 4.2(b)(ii); or

- (ii) the Dominant Cause of any decline in Revenue was a Revenue Support Triggering Force Majeure Event or Revenue Support Triggering Force Majeure Events,

any Revenue Support Triggering Force Majeure Event or Revenue Support Triggering Force Majeure Events arising as a result of industrial action (howsoever caused and of whatever nature) shall be disregarded and the provisions of paragraph 1.1 of Schedule 8.3 (Miscellaneous Payment Provisions) shall apply;

- (b) In calculating the amount of any Revenue Support Adjustment pursuant to paragraph 4.9, any reduction in Revenue caused by any Revenue Support Triggering Force Majeure Event or Revenue Support Triggering Force Majeure Events arising as a result of industrial action (howsoever caused and of whatever nature) shall be disregarded and the provisions of paragraph 1.1 of Schedule 8.3 (Miscellaneous Payment Provisions) shall apply.

Timing for Claims

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

Timing for Determinations

- 4.5 The Secretary of State shall reasonably determine, and notify to the Franchisee, whether the conditions specified in paragraph 4.2(b)(iii) are satisfied, as soon as reasonably practicable, and in any event no more than three Reporting Periods after the later of:
 - (a) the date on which any such claim by the Franchisee is made; and
 - (b) the date on which the Franchisee supplies any further information requested by the Secretary of State pursuant to paragraph 4.7.

Relevant Information

- 4.6 The Secretary of State shall make any determination pursuant to paragraph 4.5 having due regard to:
- (a) the Management Accounts referred to in paragraph 4.2(b)(i);
 - (b) any supporting information referred to in paragraph 4.2(b)(i);
 - (c) any information provided pursuant to paragraph 4.7;
 - (d) the actual duration of the Revenue impact of the Revenue Support Triggering Force Majeure Event; and
 - (e) any other relevant information.

Further Information from Franchisee

- 4.7 The Franchisee shall, as soon as reasonably practicable after receipt of any notice requiring it to do so, provide such further information to the Secretary of State as he reasonably requires in order to make the determination referred to in paragraph 4.5. The Secretary of State shall not be obliged to determine entitlement to, and the amount of, any Revenue Support Adjustment claimed pursuant to paragraph 4.2 unless and until such further information is supplied.

Determination of Seasonally Adjusted Target Revenue

- 4.8
- (a) The “Seasonal Factor” percentages for (a) each Reporting Period in Year 0 and (b) each Reporting Period in the first Franchisee Year are set out in the Seasonally Adjusted Target Revenue Table.
 - (b) For each Franchisee Year other than the first Franchisee Year (the Next Year), the Franchisee shall issue to the Secretary of State, not less than one Reporting Period prior to the commencement of that Next Year, the “Seasonal Factor” percentages for each Reporting Period in that Next Year, in the form of the Seasonally Adjusted Target Revenue Table, and (subject to paragraph 4.8(c)) such percentages shall, for the Next Year, replace the percentages in relation to the current Franchisee Year specified in column 2 of the

Seasonally Adjusted Target Revenue Table for the current Franchisee Year.

- (c) However, if a Revenue Support Triggering Force Majeure Event or Revenue Support Triggering Force Majeure Events has occurred prior to the issue of such percentages and the Secretary of State, acting reasonably, determines that the effects of such Revenue Support Triggering Force Majeure Event or Revenue Support Triggering Force Majeure Events are likely to continue into the Next Year, then such percentages for the Next Year shall be subject to the approval of the Secretary of State. If the Secretary of State does not approve such percentages, or if the Franchisee fails to submit proposed percentages, then (pending agreement between the parties) the current Franchisee Year's "Seasonal Factor" percentages will apply to the Next Year, except that:
- (i) if the Easter weekend in the Next Year falls in a different Reporting Period from the then current Franchisee Year, then the Secretary of State, acting reasonably, shall, by notice to the Franchisee issued prior to the commencement of the Next Year, modify the Seasonal Factor percentages for the two relevant Reporting Periods to the extent appropriate to reflect that change; and
 - (ii) if any Reporting Period in the Next Year has a different number of days from the corresponding Reporting Period in the current Franchisee Year, then the Secretary of State, acting reasonably, shall, by notice to the Franchisee issued prior to the commencement of the Next Year, modify the Seasonal Factor percentages for the relevant Reporting Periods to the extent appropriate to reflect that difference.

Amount of Revenue Support Adjustments in relation to Revenue Support Triggering Force Majeure Events

- 4.9 Any Revenue Support Adjustment under this paragraph 4 in respect of a Reporting Period shall be paid in accordance with paragraph 6.1 and, subject to paragraph 4.3, determined by reference to:

- (a) the cumulative, year-to-date Revenue up to the end of that Reporting Period, reported in the Management Accounts for that Reporting Period and prior Reporting Periods;
- (b) the amount of any Cost Savings made by the Franchisee;
- (c) the Seasonally Adjusted Target Revenue for the year-to-date; and
- (d) 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 the aggregate of cumulative, year-to-date Revenue plus Cost Savings up to the end of that Reporting Period is:

- (a) less than 98 per cent. of Seasonally Adjusted Target Revenue; and
- (b) equal to or greater than 94 per cent. of Seasonally Adjusted Target Revenue,

for the year-to-date; and

B is the amount by which the aggregate of cumulative, year-to-date Revenue plus Cost Savings up to the end of that Reporting Period is less than 94 per cent. of Seasonally

Adjusted Target Revenue for the year-to-date;
and

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

Information about Cost Savings

- 4.10 The Franchisee shall, as soon as reasonably practicable after receipt of any notice requiring it to do so, provide such information regarding any Cost Savings made or anticipated to be made by it to the Secretary of State as he reasonably requires in order to determine the amount of any Revenue Support Adjustment pursuant to paragraph 4.9. The Secretary of State shall not be obliged to pay any amount by way of Revenue Support Adjustment unless and until such information is supplied.

5. Revenue Support after Fourth Year

Purpose of Revenue Support after Fourth Year

- 5.1 The purpose of Revenue Support Adjustments under this paragraph 5 is to mitigate the impact on the Franchisee of Revenue shortfalls against Target Revenue occurring after the first four years of the Franchise Period, in view of the inherent difficulty of accurately forecasting Target Revenue after such first four years.

Entitlement to Revenue Support Adjustments after Fourth Year

- 5.2 A Revenue Support Adjustment shall be made in accordance with paragraphs 5.3 and 6.1 in respect of any Reporting Period which starts on or after the fourth anniversary of the Start Date if:
- (a) the Management Accounts for that Reporting Period disclose that the cumulative year-to-date Revenue for the period commencing on the first day of the Franchisee Year within which that Reporting Period starts and ending on the final day of that Reporting Period is less than 98 per cent. of Target Revenue for that period provided that if the first day of such Franchisee Year occurs prior to the fourth anniversary of the Start Date then for the purposes of the calculation of any Revenue Support Adjustment in respect of such Franchisee Year it shall be assumed that cumulative year to date

Revenue for the period from the first day of such Franchisee Year to the day before the date which is the fourth anniversary of the Start Date was the higher of Revenue actually achieved during such period and Target Revenue for such period; and

- (b) within seven days of delivery to the Secretary of State of the Management Accounts for that Reporting Period, the Franchisee requests that a Revenue Support Adjustment be made by the Secretary of State.

Amount of Revenue Support Adjustments

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

- (a) the cumulative, year-to-date Revenue up to the end of that Reporting Period, reported in the Management Accounts for that Reporting Period and prior Reporting Periods;
- (b) the aggregate Target Revenue for each Reporting Period in the year to-date up to the end of that Reporting Period; and
- (c) the formula specified in paragraph 4.9(d), but with references to Target Revenue being substituted for references to Seasonally Adjusted Target Revenue.

Further Revenue Support Adjustments

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

6. General Provisions In Relation to Revenue Support

Payment on Revenue Support Adjustment Date

6.1 Each Revenue Support Adjustment in respect of any Reporting Period shall be payable by the Secretary of State or the Franchisee (as the case may be)

and, subject to paragraph 8, made to the Franchise Payment payable on the Revenue Support Adjustment Date (or, in the case of further Revenue Support Adjustments made pursuant to paragraph 5.4, on each subsequent Payment Date).

Revenue Support Adjustment and Additional Passenger Services

- 6.2 For so long as a Revenue Support Adjustment is to be made, or has been claimed by the Franchisee, in accordance with this Agreement, then the Franchisee shall not be entitled, without the prior consent of the Secretary of State, to take any steps to operate any new Additional Passenger Services additional to those which it is already operating, including:
- (a) seeking or exercising any new Additional Timetable Development Rights in accordance with paragraph 12.1 of Schedule 1.1 (Service Development);
 - (b) procuring new rolling stock vehicles in accordance with paragraph 13.2(a) of Schedule 1.1; and
 - (c) proposing to Network Rail the addition of any new Additional Passenger Service in accordance with paragraph 5.2 of Schedule 1.2 (Operating Obligations).

Revenue Support Adjustment where Franchisee is in Contravention of its Performance Obligations

- 6.3 If the Franchisee is being paid or is entitled to claim a Revenue Support Adjustment at any time when the Franchisee is failing to perform its obligations in contravention of any Breach Performance Level, then the provisions of Schedule 15.1 (Reletting Provisions) shall apply.

Obligations of the Franchisee where Franchisee is being paid or is entitled to claim Revenue Support Adjustment

- 6.4 At all times whilst the Franchisee is being paid or is entitled to claim a Revenue Support Adjustment:
- (a) the provisions of Schedule 15.2 (Last 12 Months or 13 Months of Franchise Period and other conduct of business provisions) shall apply notwithstanding that the last 12 or 13 months of the Franchise Period may not have commenced at such time;

- (b) the Franchisee shall use all reasonable endeavours to increase Revenue and to mitigate any shortfall in Revenue against Target Revenue;
- (c) in addition to its obligations in paragraph 2.5 of Schedule 15.2 (Changes in Numbers and Total Cost of Employees), the Franchisee shall procure that the aggregate number of Franchise Employees, calculated on a full-time equivalent basis, engaged in each of (a) revenue protection, (b) gating and (c) ticket office duties is no less than 90% of the number of full-time equivalent Franchise Employees specified as such in the Financial Model and the Records of Assumption for the relevant period;
- (d) the Franchisee shall not, and shall procure that any relevant contractor shall not, reduce or take any action which is likely to have the effect of reducing the range, availability or quality of facilities available to passengers for the purchase of tickets (including self service ticket machines and the ability of passengers to purchase tickets from train crew on trains); and
- (e) the Secretary of State may give written consent to the Franchisee or any other relevant person taking, or refraining from taking, any action which would otherwise not be in accordance with the Franchisee's obligations under this paragraph.

7. Revenue Support Reconciliation Amount

Calculation for First Four Years

- 7.1 Where any Revenue Support Adjustment has been made in respect of a Franchisee Year pursuant to paragraph 4, the Secretary of State shall, following receipt by him of the Annual Audited Accounts in respect of that Franchisee Year, calculate the Revenue Support Reconciliation Amount in respect of that Franchisee Year by reasonably determining the extent to which the aggregate Revenue Support Adjustments paid by reference to that Franchisee Year would have differed if they had been determined by reference to (i) the relationship between Revenue for the full Franchisee Year (as specified in the Annual Audited Accounts, but adjusted to exclude any Revenue Support Reconciliation Amount paid in respect of a prior Franchisee Year) and Target Revenue for the full Franchisee Year (expressed as a percentage) and the information available to the Secretary of State at the

time of the reconciliation (including any information previously supplied and not superseded), rather than (ii) the relevant Management Accounts and the information available to the Secretary of State at the time the Revenue Support Adjustments were paid. Either party may require that, in respect of any such Franchisee Year, further Revenue Support Reconciliation Amounts are subsequently calculated and paid if and to the extent that any Cost Saving in relation to such Franchisee Year arises or is determined after the date on which the initial Revenue Support Reconciliation Amount was calculated.

Calculation for Subsequent Years

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

$$RS_uRA = RS_uA_{(FS)} - PRS_uA$$

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 94 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 94 per cent. of Target Revenue for that Franchisee Year; and

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

Either party may require that, in respect of any such Franchisee Year, further Revenue Support Reconciliation Amounts are subsequently calculated and paid if and to the extent that any Cost Saving in relation to such Franchisee Year arises or is determined after the date on which the initial Revenue Support Reconciliation Amount was calculated.

Revenue Support Reconciliation Date

7.3 The Revenue Support Reconciliation Amount shall be payable:

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

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

8. Final Franchisee Year

Revenue Share

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

Revenue Support

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

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

shall be determined in accordance with paragraphs 4.9, 5.3, 7.1 and 7.2 respectively, but shall be paid within 30 days of the Secretary of State giving written notice to the Franchisee of the amount of such Revenue Support Adjustment and/or Revenue Support Reconciliation Amount.

Annual Audited Accounts

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

- (a) any Revenue Support Adjustment in accordance with paragraph 4.9; and/or
- (b) any Revenue Support Reconciliation Amount in accordance with paragraph 7.1,

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

Annual Financial Statements

8.4 If the Franchisee fails to provide the Annual Financial Statements for the final Franchisee Year within three Reporting Periods of the expiry of the final Franchisee Year pursuant to paragraph 3.7 of Schedule 13, the Secretary of State shall be entitled (but not obliged) to determine:

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

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

Target Revenue

8.5 If the Franchise Agreement terminates or is terminated early, Target Revenue shall be pro-rated for the Franchisee Year in which termination occurs.

SCHEDULE 8.2

Annual Franchise Payments

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 8 (Figures for Calculation of Annual Franchise Payments) to the Franchise Agreement; |
| VCRPI | means the figure shown in respect of the relevant Franchisee Year in column 3 of the table set out in Appendix 8 to the Franchise Agreement; |
| RPI | is the quotient of the Retail Prices Index for the month prescribed for this purpose in the Franchise Agreement which immediately precedes the commencement of the relevant Franchisee Year divided by the Retail Prices Index for the date prescribed for this purpose in the Franchise Agreement provided that, for the first Franchisee Year, RPI shall be one; |
| VCAEI | means the figure shown in respect of the relevant Franchisee Year in column 4 of the table set out in Appendix 8 to the Franchise Agreement; |
| AEI | is the quotient of the Average Earnings Index for the month prescribed for this purpose in the Franchise Agreement which immediately precedes the commencement of the relevant Franchisee Year divided by the Average Earnings Index for the date prescribed for this purpose in the Franchise Agreement, provided that, for the first Franchisee Year, AEI shall be one; |

| | |
|-------|---|
| PRPI | means the figure shown in respect of the relevant Franchisee Year in column 5 of the table set out in Appendix 8 to the Franchise Agreement; and |
| TRRPI | means the figure shown in respect of the relevant Franchisee Year in column 6 of the table set out in Appendix 8 to the Franchise Agreement (and which shall always be expressed as a negative number). |

SCHEDULE 8.3

Miscellaneous Payment Provisions

1.
 - 1.1 The Secretary of State, in his 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 Secretary of State 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.
 - 1.2 All sums payable by either party under the Franchise Agreement shall be paid free and clear of any deductions, withholdings, set-offs or counter-claims, save only as may be required by Law or as expressly permitted or required under the Franchise 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:

$$TAA = (L + GCA - W) \times \frac{RPD}{FYD}$$

where:

TAA means the Track Access Adjustment to be made in that Reporting Period;

L is the value of "Lt" for the Franchisee Year in which the Reporting Period falls under Part 3 of Schedule 7 of the Track Access Agreement;

GCA is the value of "GC" for the Franchisee Year in which the Reporting Period falls under Part 3A of Schedule 7 of the Track Access Agreement;

W is the value of "Wt" for the Franchisee Year in which the Reporting Period falls under Part 2 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 two Franchisee Years, TAA shall be determined as if the references to Reporting Period were to each of the two periods within such Reporting Period which fall wholly within one of such 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 Secretary of State upon becoming aware that any Track Access Adjustment is to be made and shall supply such

information as the Secretary of State 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 Secretary of State 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 Secretary of State, agree or propose to agree a value for "Wt", "Lt" or "GC" under Parts 2, 3 or 3A of Schedule 7 of the Track Access Agreement.

- 1.3 The Franchisee shall provide such evidence of payment as the Secretary of State may require (including any certificates) for the purpose of determining the value of W, L and GCA under paragraph 1.1.
- 1.4 If no value is ascertained for W, L or GCA 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 values can be ascertained at such time and, when such values are subsequently ascertained, adjustment shall be made to reflect the full Track Access Adjustment for such Reporting Period.
- 1.5 The values of W, L and GCA 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 "Wt", "Lt" and "GC" and Parts 2, 3 and 3A 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 Secretary of State may reasonably consider have an equivalent effect, or are intended to fulfil the same function, as "Wt", "Lt" or "GC" and Parts 2, 3 or 3A of Schedule 7 of the Track Access Agreement to which the Franchisee is a party on the Start 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:

$$\text{ISCA} = L \times \frac{\text{RPD}}{\text{FYD}}$$

where:

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

L is the value of “Lt” 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 two 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 Secretary of State upon becoming aware that any Station Charge Adjustment is to be made and shall supply such information as the Secretary of State 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 Secretary of State 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 Secretary of State, agree or propose to agree a value for “Lt” under any relevant Station Lease or Access Agreement.

- 2.3 The Franchisee shall provide such evidence of payment as the Secretary of State may require (including any certificates) for the purpose of determining the value of L under paragraph 2.1.
- 2.4 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 Station Charge Adjustment shall only be determined to the extent such value can be ascertained at such time and, when such value is subsequently ascertained, an adjustment shall be made to reflect the full Station Charge Adjustment for such Reporting Period.
- 2.5 The value of L 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 it represents 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, at any time, any station of which Network Rail is the Facility Owner at that time. As at the date of the Franchise Agreement, the Independent Stations are Birmingham New Street, Edinburgh Waverley, Fenchurch Street, 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.

References in this paragraph 2 to “Lt”, Condition F11.2 of the Franchise Station Access Conditions and Condition 42.3 of the Independent Station Access Conditions 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 Secretary of State may reasonably consider have an equivalent effect, or are intended to fulfil the same function as, “Lt” 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 Start 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 9.1

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) after taking into account any reconciliation payment relating to Estimated Revisions pursuant to paragraph 8 of Schedule 9.3:
- (a) the amounts of Target Revenue for each Franchisee Year specified in the table set out in Appendix 2 (Target Revenue (expressed in real terms)) to the Franchise Agreement; and
 - (b) the values of FXD, VCRPI, VCAEI, PRPI and TRRPI specified for each Franchisee Year in the table set out in Appendix 8 (Figures for Calculation of Annual Franchise Payments) to the Franchise Agreement.
- 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 three Reporting Periods prior to the Qualifying 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 of the Qualifying Change or the date of the last Change pursuant to paragraph 3.1 (as the case may be); and
 - (b) the date on which the Secretary of State approves or the auditor certifies the results of the Run of the Financial Model.
- 1.4 The Secretary of State may stipulate (on or before the date on which the Secretary of State 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, if appropriate, 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 Secretary of State reasonably determines that the Change is likely to be a Qualifying Change,

then the Secretary of State shall notify to the Franchisee a reasonable estimate of:

- (i) the amounts of Target Revenue specified for each Franchisee Year in the table set out in Appendix 2 (Target Revenue (expressed in real terms)) to the Franchise Agreement (Annual Franchise Payments); and
- (ii) the values of FXD, VCRPI, VCAEI, PRPI and TRRPI specified for each Franchisee Year in the table set out in Appendix 8 (Figures for Calculation of Annual Franchise Payments) to the Franchise Agreement,

which a Run of the Financial Model using the Secretary of State'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 the table set out in Appendix 2 to the Franchise Agreement; and
- (b) the values of FXD, VCRPI, VCAEI, PRPI and TRRPI specified for each Franchisee Year in the table set out in Appendix 8 to the Franchise Agreement,

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 Secretary of State shall use all reasonable endeavours to provide the notification required by paragraph 2.1 at least two Reporting Periods before

he considers the Change is likely to occur. If, having exercised all reasonable endeavours, the Secretary of State cannot provide two Reporting Periods' notice, he shall provide such notification as soon as reasonably practicable afterwards.

- 2.4 The restated amounts and values shall have effect on and from the later of:
- (a) the date of the Change; and
 - (b) the date on which the Secretary of State notifies the Franchisee of the Estimated Revisions.

3. Changes Beneath Threshold Amount

- 3.1 Paragraph 1 shall also apply to any two or more Changes of which the Franchisee is notified 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 party wishes to be able to claim an adjustment pursuant to paragraph 3.1 as and when the 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)(iii) that such party reserves its rights to accumulate that Change with others pursuant to paragraph 3.1.

4. Time Limits

- 4.1 Either party 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 six months of:
 - (i) the notification or agreement of any Change that is a Variation pursuant to paragraph 1.1 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 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 six month period referred to in paragraph 4.1.

SCHEDULE 9.2

Identity of the Financial Model etc.

1. Franchisee's Obligations

- 1.1 The Franchisee shall deliver two 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 Secretary of State in the agreed form, accompanied by a notice that the Escrow Documents are to be Placed in Escrow:
- (a) on the date of the Franchise Agreement;
 - (b) within seven days of the Start Date, but updated only as strictly necessary for any elapsed time between the actual Start Date and the date assumed to be the Start Date in the Initial Business Plan; and
 - (c) within seven 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 Secretary of State, a certificate from independent auditors approved by the Secretary of State, 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. **Secretary of State's Obligations**

2.1 The Secretary of State shall:

- (a) within three days following receipt, acknowledge receipt to the Franchisee of any version of the Escrow Documents delivered to him for the purposes of being Placed in Escrow;
- (b) save as provided under paragraph 2.1(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 Secretary of State shall be deemed to have Placed in Escrow the Escrow Documents for the purposes of the Franchise Agreement;
- (c) notify the Franchisee if he becomes aware at any time during the term of the Franchise Agreement that any copy of the Escrow Documents or part thereof stored in a particular location has been lost, damaged or destroyed; in such an event, the Secretary of State shall be permitted to create a new copy of the Escrow Documents or part thereof from the other copy Placed in Escrow and shall within seven days notify the Franchisee accordingly and afford it the right to make reasonable inspections in order to satisfy itself that a "complete and accurate" copy has been made. Following the making of such a new copy of the Escrow Documents, the Secretary of State shall retain all copies of the Escrow Documents in accordance with paragraph 2.1(b);
- (d) within seven days of receipt of a notice from the Franchisee stating that the Escrow Documents are required for the purposes of an indicative or actual Run of the Financial Model in relation to any Change, or should the Secretary of State himself so decide release one copy of the Escrow Documents to the Franchisee and retain one copy of the Escrow Documents in escrow in accordance with paragraph 2.1(b);
- (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, damage or destruction caused to the Franchisee arising from any loss of, damage to or destruction of the Escrow Documents.

2.2 If the Franchisee fails to perform a Run of the Financial Model pursuant to paragraph 1.1(a) of Schedule 9.3 (Runs of the Financial Model) and fails to return the copy of the Escrow Documents released pursuant to paragraph 2.1(d):

- (a) such failure to return the released copy to the Secretary of State shall be a contravention of the Franchise Agreement;
- (b) the Secretary of State may release the other copy of the Escrow Documents Placed in Escrow and take a copy thereof (the Replacement Copy) in order that the Secretary of State may perform a Run of the Financial Model pursuant to paragraph 1.1(b) of Schedule 9.3 (Runs of the Financial Model);
- (c) once copied, the second copy of the Escrow Documents released pursuant to this paragraph 2.2 shall be Placed in Escrow; and
- (d) once the Run of the Financial Model has been approved or audited as provided for in paragraph 1.3 of Schedule 9.3 (Runs of the Financial Model), the Replacement Copy shall also be Placed in Escrow.

3. **Errors in Escrow Documents**

3.1 Any feature of the Escrow Documents which is in the reasonable opinion of the Secretary of State an error will be addressed as follows:

- (a) if rectification of such an error would (as the case may be) over the Franchise Term result in a net increase in the amount of Franchise Payments payable by the Secretary of State to the Franchisee or a net decrease in the amount of Franchise Payments payable by the Franchisee to the Secretary of State then such error shall be rectified provided that there shall not be a restatement of the:

- (i) values of FXD, VCRPI, VCAEI, PRPI and TRRPI specified for each Franchisee Year in the table set out in Appendix 8 (Figures for Calculation of Annual Franchise Payments) to the Franchise Agreement;
 - (ii) amounts of Target Revenue specified for each Franchisee Year in the table set out in Appendix 2 (target Revenue (expressed in real terms)) to the Franchise Agreement;
- (b) if rectification of such an error would (as the case may be) over the Franchise Term result in a net decrease in the amount of Franchise Payments payable by the Secretary of State to the Franchisee or a net increase in the amount of Franchise Payments payable by the Franchisee to the Secretary of State then such error shall be rectified and the:
 - (i) values of FXD, VCRPI, VCAEI, PRPI and TRRPI specified for each Franchisee Year in the table set out in Appendix 8 (Figures for Calculation of Annual Franchise Payments) to the Franchise Agreement; and
 - (ii) amounts of Target Revenue specified for each Franchisee Year in the table set out in Appendix 2 (target Revenue (expressed in real terms)) to the Franchise Agreement,

shall be restated where appropriate.
- (c) A record of the error shall be noted in the Record of Assumptions and, if applicable, the Financial Model.
- (d) As soon as reasonably practicable after the date of the rectification of the error, the Franchisee shall (unless otherwise agreed by the Secretary of State) deliver to the Secretary of State a certificate from independent auditors approved by the Secretary of State confirming that the error has been rectified as required by this paragraph 3 and is now in the agreed form in accordance with paragraph 1.1(a), 1.1(b) or 1.1(c) as the case may be.

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 the Franchise 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 Secretary of State pursuant to paragraph 2.3 or within such period of time as the Secretary of State shall reasonably determine; or
 - (b) the Secretary of State 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 non performing party with a reasonable opportunity to be in attendance and shall promptly notify such other party of the New Results.
- 1.3 The Secretary of State, as soon as reasonably practicable after receiving or generating the New Results pursuant to paragraph 1.2, shall either:
- (a) certify to the Franchisee his approval of the New Results; or
 - (b) notify the Franchisee that he requires the Run of the Financial Model and its results to be audited by an independent auditor appointed by the Secretary of State with the approval (not to be unreasonably withheld) 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 Secretary of State pursuant to paragraph 2.3) to the Financial Model after making the Model Changes (as provided to the Franchisee by the Secretary of State pursuant to paragraph 2.3) ; or
 - (b) the following, by itself applying the Revised Inputs (as provided to the Franchisee by the Secretary of State pursuant to paragraph 2.3)

to the Financial Model after making the Model Changes (as provided to the Franchisee by the Secretary of State pursuant to paragraph 2.3):

- (i) the restated amounts of Target Revenue to be specified for each Franchisee Year in the table set out in Appendix 2 (Target Revenue (expressed in real terms)) to the Franchise Agreement; and
- (ii) the restated values of FXD, VCRPI, VCAEI, PRPI and TRRPI to be specified for each Franchisee Year in the table set out in Appendix 8 (Figures for Calculation of Annual Franchise Payments) to the Franchise Agreement.

1.5 The parties 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 Secretary of State pursuant to paragraph 1.3 or by the auditor pursuant to paragraph 1.4 shall be final and binding on the parties, 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 Secretary of State pursuant to paragraph 2.1(d) of Schedule 9.2 (Identity of the Financial Model etc.) or released by the Secretary of State pursuant to paragraph 2.2 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 Secretary of State 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 parties may agree or the Secretary of State may reasonably determine are required to the Financial Model and/or the Operational Model, as released to the Franchisee by the Secretary of State pursuant to paragraph 2.1(d) of Schedule 9.2 (Identity of the Financial Model etc.) or released by the Secretary of State pursuant to paragraph 2.2 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 Secretary of State 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**

The parties shall agree or the Secretary of State shall reasonably determine the Revised Inputs that are required in respect of a Change:

- (a) on the basis of the general adjustments and/or assumptions referred to in paragraph 4;
- (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 for Traction Electricity Charges in accordance with paragraph 6;
- (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.

4. **General Adjustments/Assumptions**

- 4.1 Revised Inputs are to be agreed between the parties or reasonably determined by the Secretary of State 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 the Franchise Agreement, is to be disregarded.

4.2 Revised Inputs are to be agreed between the parties or reasonably determined by the Secretary of State 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 the Franchise Agreement, is to be taken into account.

4.3 Revised Inputs are also to be agreed between the parties or reasonably determined by the Secretary of State 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 and 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 parties shall (unless to do so would be contrary to paragraph 4) agree or the Secretary of State 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 Secretary of State reasonably considers that additional assumptions are required in relation to circumstances not dealt with by the assumptions in the Record of Assumptions, the parties shall agree or the

Secretary of State shall reasonably determine additional assumptions for this purpose.

5.3 Where the Secretary of State 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 parties shall agree or the Secretary of State 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 the Franchise Agreement, the amount payable for traction current consumed is reflected in the component Egit 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 Start Date.

6.4 The parties shall agree or the Secretary of State 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.

7. Revised Input for Profit

7.1 The parties shall agree or the Secretary of State shall reasonably determine Revised Inputs in relation to profit:

- (a) where a Change is forecast to result in an increase to the Franchisee's revenue, that provide for an increase in the amount of profit in any Franchisee Year equal to the percentage agreed profit margin specified for this purpose in the Franchise Agreement of the forecast increase in revenue for that Franchisee Year; and/or
- (b) where a Change is forecast to result in a reduction in the Franchisee's revenue, that provide for a decrease in the amount of profit in any Franchisee Year equal to the lower of:
 - (i) the percentage agreed profit margin specified for this purpose in the Franchise Agreement; or
 - (ii) the average profit margin in the current Business Plan for the remaining Franchise Term,

of the forecast reduction in revenue for that Franchisee Year.

7.2 In agreeing or determining Revised Inputs in respect of any Change, the parties or the Secretary of State shall effect such change (if any) in the amount attributable to profit in paragraph 7.1 as they agree or the Secretary of State reasonably determines to reflect:

- (a) the risk for the Franchisee in continuing to operate the Franchise on the terms of the Franchise 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.

7.3 In agreeing or determining Revised Inputs for the purposes of any Protected Proposal, the parties or the Secretary of State shall effect such change (if any) to the amount attributable to profit as they agree or the Secretary of State 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.

- 7.4 The Appendix (Incentivising Long Term Investment) to this Schedule 9.3 sets out the Secretary of State's guidance on how he approaches incentivising long term investment.

8. **Estimated Revisions**

- 8.1 This paragraph 8 applies only where and to the extent that, prior to the Run of the Financial Model, payments made between the Secretary of State and the Franchisee have been altered in accordance with Estimated Revisions notified by the Secretary of State to the Franchisee pursuant to paragraph 2 of Schedule 9.1 (Financial Consequences of Change).

- 8.2 No Revised Inputs shall be made for Estimated Revisions that have been paid or are to be paid in respect of any Change.

- 8.3 Where Estimated Revisions have been paid and/or are to be paid then, as soon as reasonably practicable after the performance of the related Run of the Financial Model, the parties shall agree or the Secretary of State shall reasonably determine the difference (the Reconciliation Amount) between:

- (a) the total amount of Estimated Revisions paid and/or to be paid; and
- (b) the total amount of the payments, as determined by that Run of the Financial Model, in respect of the same period as the period over which Estimated Revisions have been paid/or are to be paid.

- 8.4 The Reconciliation Amount shall be paid by the Franchisee to the Secretary of State where it is positive and paid by the Secretary of State to the Franchisee where it is negative, in either case, on the first Payment Date after agreement or determination (or if none, within 14 days after such agreement or determination).

APPENDIX TO SCHEDULE 9.3

Incentivising Long-Term Investment

This Appendix sets out the Secretary of State's guidance on how he approaches incentivising long term investment.

1. The Secretary of State 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 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 by the Franchisee 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 Secretary of State during the Franchise Term.
5. In considering the Franchisee's proposals for any investment or change proposed to be undertaken, the Secretary of State 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 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 Secretary of State shall also give consideration to the appropriateness of the provision, by the Secretary of State, of an undertaking (or other form of comfort) pursuant to Section 54 of the Act.

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 the Franchise Agreement

- 1.1 If the Secretary of State is satisfied that the Franchisee is contravening or is likely to contravene any term of the Franchise Agreement he 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 the Franchise Agreement that the Secretary of State is satisfied that the Franchisee is contravening or is likely to contravene (each a Relevant Term); and
 - (b) the time period within which the Secretary of State 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 Secretary of State issues a Remedial Plan Notice, the Franchisee shall submit a Remedial Plan to the Secretary of State 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 Secretary of State is satisfied that the matters referred to in paragraph 1.4(c) and (d) are appropriate (with or without further modification as the parties may agree) he may require the Franchisee to enter into a supplemental agreement (the Remedial Agreement) with the Secretary of State to implement those matters.
- 1.6 It is a term of the Franchise 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 Secretary of State 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) Subject to Franchisee having complied with its obligations under paragraphs 1.7(a) to 1.7(c) (inclusive) 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 Following the occurrence of a contravention of the Franchise Agreement, the Secretary of State may at his 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 obligations until such time as the Franchisee demonstrates, to the Secretary of State's reasonable satisfaction, that it is capable of performing and will perform such obligations as required by the Franchise Agreement.
- 1.9 The Franchisee shall co-operate fully with the Secretary of State in relation to the 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 Secretary of State for all reasonable costs incurred by the Secretary of State in carrying out such monitoring.

SCHEDULE 10.2

Termination and Expiry

1. Termination Notices

1.1 The Secretary of State may, on and at any time after the occurrence of:

(a) an Event of Default (subject to paragraphs 1.2 and 1.3) which is unremedied or continuing and which the Secretary of State considers to be material; or

(b) a Termination Event which is unremedied or continuing,

terminate the Franchise Agreement by serving a Termination Notice on the Franchisee. The Franchise Agreement shall terminate with effect from the date specified in any such Termination Notice.

1.2 The Secretary of State 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 Secretary of State the Remedial Plan specified in such Remedial Plan Notice.

1.3 The Secretary of State 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 the Franchise 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 the Franchise Agreement;

(b) any obligations which are expressed to continue in accordance with the terms of the Franchise Agreement; and

(c) any other obligations which give effect to such termination or to the consequences of such termination or which otherwise apply (expressly or impliedly) on or after such termination.

- 2.2 Nothing in this paragraph 2 shall prevent the Secretary of State from bringing an action against the Franchisee in connection with the termination of the Franchise Agreement prior to the expiry of the Franchise Term.

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 the Franchise Agreement by the Franchisee.

Notification of Event of Default

- 1.2 The Franchisee shall notify the Secretary of State 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 Secretary of State 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 and Remedial Agreements) shall 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 of 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 Secretary of State 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 Secretary of State 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 Secretary of State any amount due under the Franchise Agreement within 28 days of the due date for such payment.

Change of Control

- 2.3 Otherwise than in accordance with a prior consent of the Secretary of State given under paragraph 4 of this Schedule 10.3, a change occurring in the identity of any one person, or two or more persons acting by agreement, who may Control the Franchisee on and from the date of the Franchise Agreement and during the Franchise Term, which shall include a person, or two or more persons acting by agreement, ceasing to Control the Franchisee at any time during the Franchise Term, whether or not any other person Controls the Franchisee at the same time (any such change a “**Change of**

Control") and for the purposes of this paragraph 2.3, two or more persons shall be deemed to be acting by agreement in relation to the Franchisee if, assuming the Franchisee was a target company as defined in the Companies Act 2006, 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 the Franchise Agreement.

Safety Certificate

- 2.5 The Safety Certificate of the Franchisee being withdrawn or terminated.

Passenger Service Performance

- 2.6 The Franchisee's performance in relation to any Benchmark exceeds (that is, is equal to or worse than) the Default Performance Level for that Benchmark for:
- (a) any three consecutive Reporting Periods;
 - (b) any four Reporting Periods within a period of 13 consecutive Reporting Periods; or
 - (c) any five 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 Secretary of State 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 the Franchise 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) issued by the ORR pursuant to its safety functions. 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 the Franchise 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 Secretary of State 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 Secretary of State has specified in the notice served pursuant to paragraph 2.11(b)(ii).

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 procure the provision to the Secretary of State of a Performance Bond which fulfils the requirements of Schedule 12 (Financial Obligations and Covenants); or
- (c) A failure by the Franchisee to procure the provision to the Secretary of State of a Season Ticket Bond which fulfils the requirements of Schedule 12 (Financial Obligations and Covenants).

Key Contracts

- 2.14 Termination of any Key Contract, or the failure by the Franchisee to take all reasonable steps to enter into an appropriate replacement contract prior to the scheduled expiry date of any Key Contract, except where requested by the Secretary of State or to the extent that the Franchisee has demonstrated to the reasonable satisfaction of the Secretary of State 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 Secretary of State may terminate the Franchise 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 six consecutive months (a Termination Event).

4. Facilitation Fee

- 4.1 The Franchisee may at any time apply in writing to the Secretary of State for his consent to a Change of Control.
- 4.2 The Secretary of State may require the Franchisee to pay a fee in consideration of the grant of such consent (the “**Facilitation Fee**”).
- 4.3 The Secretary of State may require the Franchisee to pay an additional fee in respect of the staff, professional and other costs incurred by the Secretary of State in connection with the Franchisee’s application (the “**Administration Fee**”). The Administration Fee shall be payable whether or not the Secretary of State consents to the proposed Change of Control.
- 4.4 On or after submitting such application to the Secretary of State, the Franchisee will provide, and will procure that the Seller and the Buyer provide, the Secretary of State with such documentation and information as the Secretary of State may require to assess such application and the amount of the Facilitation Fee. It shall be deemed to be reasonable for the Secretary of State to delay or withhold consent to the Change of Control where any such documentation is not provided.

4.5 The Facilitation Fee shall be a sum equal to the greater of:

- (a) one million pounds sterling (£1,000,000); or
- (b) 5% of the amount calculated by:
 - (i) taking the aggregate value (in any form whatsoever including, cash consideration in any denomination, shares, securities, consideration in kind and any value resulting from any reduction in or elimination of any liability or potential liability) received by or accruing to any person or persons where that value is received or accrued in direct or indirect consequence of the Change of Control (the Aggregate Value”); and
 - (ii) subtracting from it such part of the Aggregate Value that cannot be reasonably attributed to the consent to the Change of Control of the Franchisee,

in both cases as determined by the Secretary of State.

4.6 The Administration Fee shall be determined by the Secretary of State on the basis of:

- (a) the aggregate time spent by officials within the Secretary of State’s Department on matters relating to such application;
- (b) the Secretary of State’s hourly scale rates for such officials, as varied from time to time; and
- (c) the aggregate costs and disbursements, including where applicable VAT and professional costs, incurred by the Secretary of State in connection with such application.

4.7 Any determination by the Secretary of State for the purposes of paragraphs 4.5 or 4.6 shall in the absence of manifest error be final and binding as between the Secretary of State and the Franchisee.

4.8 Any consent by the Secretary of State to a Change of Control may be given subject to such conditions as the Secretary of State sees fit and the Franchisee shall, as applicable, comply with, and/or procure that the Seller and/or the Buyer comply with, any such conditions.

- 4.9 The Secretary of State shall have absolute discretion as to the grant of consent to any Change of Control and may accordingly refuse such consent for any reason he sees fit.
- 4.10 The Secretary of State shall have no liability whatever to the Franchisee in respect of any refusal of consent to a Change of Control, any delay in providing such consent, or any condition of such consent.

SCHEDULE 10.4

Force Majeure

1. Force Majeure Events

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 Secretary of State 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 two Rolling Stock Units and ten 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 ORR in exercise of its safety functions, or any relevant 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 ORR, or other relevant body with statutory responsibility for safety in the circumstances, in exercise of its safety functions 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 ORR or other relevant body;

- (e) act of God, war damage, enemy action, terrorism or suspected terrorism, riot, civil commotion or rebellion (together 'Emergency Events') or the act of any government instrumentality (including the ORR but excluding the Secretary of State) in so far as the act of government instrumentality directly relates to any of the Emergency Events, provided that there shall be no Force Majeure Event under this paragraph 1(e) by reason of:
 - (i) the suicide or attempted suicide of any person that does not constitute an act of terrorism;
 - (ii) the activities of the police, fire service, ambulance service or other equivalent emergency service that are not in response to acts of terrorism or suspected terrorism; 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,

or of the agents or sub-contractors of any such person listed in paragraphs 1(f)(i) to (iii) and for the purposes of this paragraph

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

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(a), that event has continued for more than 12 consecutive hours;
- (b) the Franchisee notifies the Secretary of State within two business days of it becoming aware or, if circumstances dictate, as soon as reasonably practicable thereafter, 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 Secretary of State under paragraph 2.1(b), it informs the Secretary of State 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, the Franchise Agreement, any Access Agreement, Rolling Stock Related Contract, 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 Secretary of State, exercise its rights and remedies under any relevant agreement to prevent the occurrence or recurrence of any such event and to obtain appropriate redress and/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 Secretary of State reasonably believes that it was reasonable for the Franchisee, its agents or subcontractors (as the case may be) so to act or omit to 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 the Franchise Agreement, nor shall there be any

contravention of the Franchise 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 six 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 4 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 the Secretary of State will not be responsible for the actions of the Franchisee or any Affiliate of the Franchisee and that, except as expressly provided in the Franchise Agreement, the Franchisee shall provide and operate the Franchise Services at its own cost and risk without recourse to the Secretary of State or government funds or guarantees.
- 1.2 The Franchisee, on demand, shall hold the Secretary of State fully protected and indemnified in respect of all losses, liabilities, costs, charges, expenses, actions, proceedings, claims or demands incurred by or made on the Secretary of State 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 the Secretary of State

- 1.3 Neither the Secretary of State nor any of his 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 Secretary of State under the Franchise Agreement, except to the extent that such negligence also constitutes a contravention of an obligation of the Secretary of State under the Franchise Agreement. The Franchisee may not recover from the Secretary of State or any of his officers, agents, or employees any amount in respect of loss of profit or consequential loss.

2. Review or Monitoring by the Secretary of State

- 2.1 The Secretary of State may for his own purposes (whether under the Franchise Agreement or under any other arrangement or otherwise and whether before or after the date of the Franchise Agreement) monitor or review any proposals, plans or projects (or any aspect thereof) of the Franchisee under the Franchise Agreement, but no review, enquiry,

comment, statement, report or undertaking, made or given by or on behalf of the Secretary of State 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 either party from or reduce or otherwise affect the obligations of such party under the Franchise Agreement.

- 2.2 The exercise by or on behalf of the Secretary of State of (or, as the case may be, any failure to exercise) any of his 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 Secretary of State 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 Secretary of State of an express provision of the Franchise Agreement and the Secretary of State does not make or give any representation or warranty, either express or implied, as to whether any proposal, plan or project will enable either party to comply with its obligations under the Franchise Agreement.

SCHEDULE 11

Agreement Management Provisions

1. Secretary of State's Franchise Manager

- 1.1 The Secretary of State shall appoint a competent Franchise Manager who shall have power and authority delegated to him by the Secretary of State to act and to make decisions on behalf of the Secretary of State in relation to the Franchise Agreement and amend the Franchise Agreement on behalf of the Secretary of State. The principal responsibilities of the Franchise Manager to the Secretary of State shall be, amongst other things:
- (a) to manage the Franchise Agreement on behalf of the Secretary of State;
 - (b) to monitor the Franchisee's performance of its obligations under the Franchise Agreement;
 - (c) to ensure that the necessary resources within the Secretary of State are made available expeditiously for the performance of the Secretary of State's obligations under the Franchise Agreement; and
 - (d) to facilitate the Secretary of State in fulfilling his obligations under the Franchise Agreement to 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 the Franchisee is deemed to have received notice of it in writing in accordance with paragraph 5.2 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 Secretary of State, the Secretary of State shall give the Contract Manager reasonable notice of a proposal to replace the Franchise Manager.

2. Franchisee's Contract Manager

- 2.1 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 the Franchise Agreement (but who shall not have power to amend the Franchise Agreement). The principal responsibilities of the Contract Manager to the Franchisee shall be, amongst other things:
- (a) to manage the Franchise 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 the Franchisee's obligations under the Franchise Agreement;
 - (c) to ensure that any necessary sub-contracts are placed and managed so that the requirements of the Franchise Agreement are fully met; and
 - (d) to facilitate the Franchisee in fulfilling its obligations under the Franchise Agreement to the Secretary of State.
- 2.2 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 Secretary of State is deemed to have received notice of it in writing in accordance with paragraph 5.2 of Schedule 19 (Other Provisions).
- 2.3 Except in cases of emergency, or as a consequence of the proper exercise of disciplinary procedures of the Franchisee, a minimum of one month's notice must be given to the Franchise Manager of a proposal to replace the Contract Manager.
- 2.4 The Franchisee shall identify a schedule of Key Personnel who shall be employed by the Franchisee in the performance of the Franchise 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 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 Certificate; and
 - (d) a finance manager, whose role will include responsibility in relation to the Financial Model.
- 2.5 The Franchisee shall provide to the Secretary of State an organisation chart detailing the responsibilities and reporting lines of each of the Key Personnel within two Reporting Periods of the Start Date and shall update such chart (and provide a copy to the Secretary of State promptly thereafter) as and when any changes occur.

3. Control of Communications, Information and Documents

- 3.1 All correspondence between the Franchisee and the Secretary of State (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.
- 3.2 (a) The Franchisee shall use a logical and structured system for correspondence reference. All correspondence between the Franchisee and the Secretary of State 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 the Franchise Agreement or of or to these Terms, as the context may require.
- (b) The Franchisee shall maintain a sequentially numbered register of all correspondence relating to the Franchise. 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 3.2(b) and any outstanding items shall be reviewed at each Franchise Performance Meeting.

4. Franchise Performance Meetings

- 4.1
 - (a) The parties shall hold a Franchise Performance Meeting once in each Reporting Period at a time and location notified to the Franchisee by the Secretary of State.
 - (b) The parties shall review the financial, operational and contractual performance of the Franchisee at each Franchise Performance Meeting.
 - (c) Each Franchise Performance Meeting shall be minuted by the Franchise Manager and the minutes shall be published within seven business days of each such meeting.
 - (d) The Franchise Manager shall chair all Franchise Performance Meetings.
- 4.2 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 Secretary of State may require.
- 4.3 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 (Service Quality Management);
 - (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 (Information and Industry Initiatives);
- (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) adjustments to Franchise Payments;
- (h) outstanding correspondence and identification of matters in dispute and actions towards resolution;
- (i) any obligations of the Franchisee which the Secretary of State is monitoring following a contravention of the Franchise Agreement;
- (j) a review of the progress of Variations or Changes, and any new or proposed Variations or Changes;
- (k) any outstanding action of the Secretary of State identified in previous Franchise Performance Meetings; and
- (l) such other matters as may from time to time be determined to be necessary by the Franchisee or the Secretary of State.

4.4 No later than the third business day prior to each Franchise Performance Meeting, the Franchisee shall provide to the Secretary of State, in accordance with any guidance the Secretary of State may issue to the Franchisee from time to time, a report detailing the Franchisee's performance with respect to the items referred to in paragraphs 4.3(b) to (j) inclusive.

4.5 The Franchisee shall prepare and present such additional reports to each Franchise Performance Meeting as the Secretary of State may reasonably request. The Franchisee's obligations under this paragraph 4.5 are subject to the Franchisee receiving at least 28 days' notice of the requirement to prepare and present any such additional report.

4.6 No comment or failure to comment nor any agreement or approval, implicit or explicit by the Secretary of State at such meetings will relieve the Franchisee of any of its obligations under the Franchise Agreement.

5. Right of Assessment or Inspection

- 5.1 The Franchisee shall, if requested by the Secretary of State, allow the Secretary of State:
- (a) to inspect and copy any records referred to in Schedule 13 (Information and Industry Initiatives) and the Secretary of State 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.
- 5.2 The Franchisee shall make available to the Secretary of State the information referred to in paragraph 5.1 and grant or procure the grant of such access (including to or from third parties) as the Secretary of State shall reasonably require in connection therewith.
- 5.3 The Secretary of State shall be permitted to take photographs, film or make a video recording, or make any other kind of record of any such inspection.
- 5.4 If any inspection reveals that information previously supplied to the Secretary of State was in any material respect inaccurate or if such inspection reveals any other material contravention of the Franchisee's obligations under the Franchise 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 Secretary of State 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 13 Reporting Periods of the Franchise Term (or, prior to the end of the thirteenth such Reporting Period, during all preceding 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 13 Reporting Periods (or, where there are less than 13 Reporting Periods remaining in the Franchise Term, for all

such remaining Reporting Periods) will equal or exceed the ratio of 1.05:1; and

- (c) For the purposes of this paragraph 2 “preceding 13 Reporting Periods” means the Reporting Period just ended and the preceding 12 Reporting Periods of the Franchise Term.

3. Breach of Financial Ratios

3.1 The Franchisee shall not during any Lock-up Period, do any of the following without the Secretary of State’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 Secretary of State;
- (b) pay 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 Secretary of State 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 in place:

- (a) with effect:
 - (i) from the date of the Franchise Agreement;

- (ii) throughout the Franchise Term; and
 - (iii) for a period of seven Reporting Periods after the end of the Franchise Period;
- (b) substantially in the form of Appendix 1 to this Schedule 12 (Form of Performance Bond);
- (c) having a value equal to the amount determined under paragraph 4.4; and
- (d) having a minimum duration of at least three years.

Provision of Replacement Performance Bond

4.2 The Franchisee may replace the Performance Bond at any time, provided that the Secretary of State receives a replacement Performance Bond:

- (a) substantially in the form of Appendix 1 to this Schedule 12 (or in any other form acceptable to the Secretary of State in his discretion);
- (b) duly executed and delivered by a Bond Provider acceptable to the Secretary of State; and
- (c) in an amount determined in accordance with paragraph 4.4.

4.3 The Franchisee shall replace any Performance Bond at least six months prior to its scheduled expiry with a replacement that complies with the requirements of paragraph 4.2.

Amount of Performance Bond

4.4 The amount of any Performance Bond shall be the amount prescribed for this purpose in the Franchise Agreement.

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 Secretary of State in full in London on first written demand by the Secretary of State on the Bond Provider, certifying as to any one or more of the following:

- (i) that the Franchise Agreement has:

- (A) either terminated or expired and, in either case, there are liabilities or obligations outstanding from the Franchisee to the Secretary of State; and/or
 - (B) terminated solely as a consequence of the occurrence of one or more Events of Default in circumstances where the Secretary of State has incurred or expects to incur additional costs in connection with early termination of the 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) the occurrence of 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 (Events of Default and Termination Event),

whether or not the Franchise Agreement is, or is to be, terminated as a result thereof;
- (iv) that 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 at least six months prior to the scheduled expiry of the existing Performance Bond; 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 Secretary of State when required to do so in accordance with paragraph 4.8.

- (b) If the Secretary of State makes a demand under the Performance Bond, he shall, within a reasonable period, account to the Franchisee for the proceeds of such Performance Bond remaining following settlement of all liabilities or obligations from the Franchisee to the Secretary of State and reimbursement of all additional costs incurred by the Secretary of State in connection with or as a result of early termination of the Franchise.

Characteristics of Performance Bond Provider

- 4.6 In determining whether a Bond Provider under any replacement Performance Bond is acceptable, the Secretary of State may exercise his 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 Secretary of State may require from time to time.
- 4.8 If at any time the Secretary of State reasonably considers the Bond Provider under the then current Performance Bond to be unacceptable, the Secretary of State 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 Secretary of State. 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.

5. Season Ticket Bond

Provision of Season Ticket Bond

- 5.1 The Franchisee shall procure that, for each Franchisee Year 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 to this Schedule 12 (Form of Season Ticket Bond).

Provision of Replacement Season Ticket Bond

5.2 No later than one Reporting Period before the expiry of each Bond Year, the Franchisee shall provide to the Secretary of State (or procure that the Secretary of State receives) a Season Ticket Bond for the following Bond Year:

- (a) substantially in the form of Appendix 2 to this Schedule 12 (or in any other form acceptable to the Secretary of State in his discretion);
- (b) duly executed and delivered by a Bond Provider acceptable to the Secretary of State; 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 the Franchise 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 seven days after it first comes into effect;
- (ii) the Start 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, provided that, for the first Franchisee Year, RPI shall be one;

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 Secretary of State, not later than three Reporting Periods before the end of each Bond Year, its estimate of the amount of the Season Ticket Bond for each Reporting Period during the following Bond Year and shall supply such details as the Secretary of State may request in connection therewith.
- 5.5 The Franchisee and the Secretary of State shall endeavour to agree the amount of such Season Ticket Bond by no later than two Reporting Periods before the end of each Bond Year. If the parties are unable to agree the amount of the Season Ticket Bond in respect of any Reporting Period during the following Bond Year, 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 two Reporting Periods before the end of the preceding Bond Year, then, until the amount is agreed or determined in accordance with the Dispute Resolution Rules, the amount thereof shall be the amount determined by the Secretary of State.
- 5.7 The Secretary of State 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 Secretary of State in full in London on first written demand by the Secretary of State on the Bond Provider, certifying as to any one or more of the following:
- (i) that the Franchise 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 (Events of Default and Termination Event),has occurred (whether or not the Franchise Agreement is, or is to be, terminated as a result thereof).
- (b) If the Secretary of State makes a demand under the Season Ticket Bond, he 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 any Season Ticket Fares that may be designated as Primary Franchise Assets and transferred under a Transfer Scheme to a Successor Operator.

Characteristics of Season Ticket Bond Provider

- 5.9 In determining whether a Bond Provider under any replacement Season Ticket Bond is acceptable, the Secretary of State may exercise his 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 Secretary of State may require from time to time.
- 5.11 The Secretary of State 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, he 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 Secretary of State consents (such consent not to be unreasonably withheld) to be references to each

consecutive seven-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 two 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 seven-day periods.

APPENDIX 1 TO SCHEDULE 12

Form of Performance Bond

[DOCUMENT “PB” - PERFORMANCE BOND]

Dated

2009

[*BOND PROVIDER*]

Performance Bond

*Secretary of State for Transport
76 Marsham Street
London SW1P 4DR*

To: Secretary of State for Transport
76 Marsham Street
London
SW1P 4DR
(the Secretary of State)

Whereas:

We are informed that you have entered into a franchise agreement dated [_____] (the Franchise Agreement, incorporating by reference the National Rail Franchise Terms, Fourth Edition (the Terms)) with [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 Secretary of State receives a duly executed performance bond in the amount of [*insert 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.

Accordingly:

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

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

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

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

- (a) our maximum liability shall be limited to a sum or sums not exceeding in the aggregate the amount of the Bond Value or such lesser amount as you may notify us of from time to time in writing, separately from any demand, shall constitute the Bond Value of this Bond; and
- (b) notwithstanding anything contained herein, our liability hereunder shall expire on the earlier of:
 - (i) the date falling six months after the date on which any railway administration order is made in relation to the Franchisee pursuant to Sections 60 to 62 of the Railways Act 1993;
 - (ii) the later of:
 - (A) the date falling one month after the determination of the Purchase Price (as defined in any Supplemental Agreement) under each relevant Supplemental Agreement; and
 - (B) the end of the Franchise Term; and
 - (iii) a date at least three years after the date of the bond,

except in respect of any written demand for payment complying with all the requirements hereof which is received by us on or before such date for either the Bond Value, or for such lesser amount which, when aggregated with any previous demands, amounts to the Bond Value or less, 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 termination or expiry of the Franchise Agreement in circumstances where there are liabilities or obligations outstanding from the Franchisee to the Secretary of State;
- (b) the termination of the Franchise Agreement solely as a consequence of the occurrence of one or more Events of Default in circumstances where the Secretary of State has incurred or expects

to incur additional costs in connection with termination of the [name of franchise] 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) of the Terms in relation to the Performance Bond; or
 - (ii) paragraph 2.13(b) of Schedule 10.3 (Events of Default and Termination Event) of the Terms,

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

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

- 3. This undertaking is made to you, your successors and your assigns.
- 4. This undertaking shall not be discharged or released by time, indulgence, waiver, alteration or release of, or in respect to, the obligations of the Franchisee under the Franchise Agreement or any Supplemental Agreement or any other circumstances that might operate as a release of a guarantor at law or in equity.

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

Address: [Bond Provider's address]

Facsimile Number: [Bond Provider's fax number]

6. References in this Bond to the Franchise Agreement and the Supplemental Agreement are to the Franchise Agreement and any Supplemental Agreement as amended from time to time.
7. Where used in this Bond, capitalised terms have the same meanings as in the Terms.
8. This Bond shall be governed by and construed in accordance with the laws of England and Wales.

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

SCHEDULE TO THE PERFORMANCE BOND

SPECIMEN DEMAND NOTICE

To: [name and address of Bond Provider]
[date of demand notice]

We refer to the performance bond issued by you on [date of Bond] (the Performance Bond) in connection with the franchise agreement (the Franchise Agreement) entered into between the Secretary of State for Transport (the Secretary of State) and [name of Franchisee] (the Franchisee) on [Franchise Agreement signature date], incorporating by reference the National Rail Franchise Terms, Fourth Edition (the Terms)).

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

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

[The Franchise Agreement has terminated solely as a consequence of the occurrence of one or more Events of Default on [date of termination] in circumstances where the Secretary of State has incurred or expects to incur additional costs in connection with the termination of the [name of franchise] 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 has occurred under:

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

[(b) paragraph 2.13(b) of Schedule 10.3 (Events of Default and Termination Event) of the Terms.]]

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

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

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

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

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

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

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

For and on behalf of
Secretary of State for Transport

APPENDIX 2 TO SCHEDULE 12

Form of Season Ticket Bond

DOCUMENT “STB” - SEASON TICKET BOND

Dated

2009

[*BOND PROVIDER*]

Season Ticket Bond

*Secretary of State for Transport
76 Marsham Street
London SW1P 4DR*

To: Secretary of State for Transport
76 Marsham Street
London
SW1P 4DR
(the Secretary of State)

Whereas:

We are informed that you have entered into a franchise agreement dated [_____] (the Franchise Agreement) incorporating by reference the National Rail Franchise Terms, Fourth Edition (the Terms)) with [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 Secretary of State 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.

Accordingly:

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

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

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

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

- (a) our maximum liability shall be limited to a sum or sums not exceeding in the aggregate the amount of the Bond Value on the date of occurrence of the Call Event stated in your written demand on us; and
 - (b) you may only call on us (whether on one or more occasions) in relation to one Call Event, such Call Event to be determined by reference to the first written demand which is received by us in the form set out in Schedule 1.
- 2. Call Event means, in this Bond, any of:
 - (a) the termination or expiry of the Franchise Agreement;
 - (b) the making of a railway administration order in relation to the Franchisee pursuant to Sections 60 to 62 of the Railways Act; or
 - (c) the occurrence of an Event of Default under paragraph 2.13(a) (in relation to a Season Ticket Bond) or 2.13(c) of Schedule 10.3 (Events of Default and Termination Event) of the Terms (whether or not the Franchise Agreement is, or is to be, terminated as a result thereof).
- 3. Bond Value shall mean, in respect of any date, the amount specified in Schedule 2 as being the value of this Bond for such date (provided that for these purposes the date of occurrence of the Call Event specified in clause 2(c) shall be deemed to be the last date for which a Bond Value is assigned under Schedule 2 of this Bond).
- 4. Notwithstanding anything contained herein, but subject to clause 5, our liability hereunder in respect of any Call Event shall expire no later than the end of the Franchise Term and:
 - (a) in relation to a Call Event specified in clauses 2(a) and (b), at noon (London time) on the date falling three business days after the date of occurrence of such Call Event (business day being a day on which banks are open for business in the City of London); and
 - (b) in relation to any other Call Event, on the day falling one month after the last date for which a Bond Value is assigned under Schedule 2 of this Bond, unless you notify us in writing prior to the

relevant expiry time that the relevant Call Event has occurred (whether or not you call on us at the same time under this Bond).

5. If you do notify us under clause 4 our liability shall expire on:
- (a) if the Call Event in respect of which you may call on us under this Bond is the termination of the Franchise Agreement, the date falling one month after the determination of the Purchase Price (as defined in the Supplemental Agreement) under each relevant Supplemental Agreement;
 - (b) if the Call Event in respect of which you may call on us under this Bond is the making of a railway administration order in relation to the Franchisee pursuant to Sections 60 to 62 of the Railways Act 1993, the date falling three months after the making of such railway administration order; or
 - (c) if the Call Event in respect of which you may call on us under this Bond is the occurrence of an Event of Default under paragraph 2.13(a) (in relation to a Season Ticket Bond) or paragraph 2.13(c) of Schedule 10.3 (Events of Default and Termination Event) of the Terms (whether or not the Franchise Agreement is, or is to be, terminated as a result thereof), the date falling one month after your notification to us under clause 4,

except, in each case, in respect of any written demand for payment complying with all the requirements hereof which is received by us on or before the relevant date, after which date this undertaking shall be void whether returned to us or not.

6. This undertaking is made to you, your successors and your assigns.
7. This undertaking shall not be discharged or released by time, indulgence, waiver, alteration or release of, or in respect to, the obligations of the Franchisee under the Franchise Agreement or any Supplemental Agreement or any other circumstances that might operate as a release of a guarantor at law or in equity.
8. You may make demand or give notice to us under this Bond in writing by hand or facsimile transmission to us as follows:

Address: [Bond Provider's address]

Facsimile Number: [Bond Provider's fax number]

9. References in this Bond to the Franchise Agreement and the Supplemental Agreement are to the Franchise Agreement and the Supplemental Agreement as amended from time to time and terms defined therein shall have the same meaning in this Bond.
10. Where used in this Bond, capitalised terms have the same meanings as in the Terms.
11. This Bond shall be governed by and construed in accordance with the laws of England and Wales.

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

SCHEDULE 1 TO THE SEASON TICKET BOND

SPECIMEN DEMAND NOTICE

To: [Name and address of Bond Provider]
[date of demand notice]

We refer to the season ticket bond issued by you on [date of Bond] (the Season Ticket Bond) in connection with the franchise agreement (the Franchise Agreement) entered into between the Secretary of State for Transport (the Secretary of State) and [name of Franchisee] (the Franchisee) on [Franchise Agreement signature date], incorporating by reference the National Rail Franchise Terms, Fourth Edition (the Terms)).

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

[The Franchise Agreement [terminated][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) or paragraph 2.13(c) of Schedule 10.3 (Events of Default and Termination Event) of the Terms.]

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

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

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

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

For and on behalf of
Secretary of State for Transport

SCHEDULE 2 TO THE SEASON TICKET BOND

BOND VALUE

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

SCHEDULE 13

Information and Industry Initiatives

1. General Information

Corporate Information

- 1.1 The Franchisee shall provide the following information to the Secretary of State on or before the Start Date and shall notify the Secretary of State 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 the Secretary of State 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 and 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.

Operational and Performance-related Information to be provided by the Franchisee

- 1.3 The Franchisee shall provide to the Secretary of State the information specified in the Appendices to this Schedule 13 at the times specified therein.

- 1.4 The Appendices to this Schedule 13 shall be interpreted in accordance with any guidance issued by the Secretary of State 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 the Franchise Agreement.
- 1.6 Each record required to be maintained by the Franchisee in accordance with this Schedule 13 shall be held for a period of six years following the date on which such record was required to be created.
- 1.7 References to records in this Schedule 13 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, complete and up to date. 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 the Rail Passengers' Council and Local Authorities

- 1.9 The Franchisee shall comply with any reasonable requests and guidance issued by the Secretary of State from time to time in respect of the provision of information to and co-operation and consultation with the Rail Passengers' Council and Local Authorities.

2. Business Plans

Initial Business Plan

- 2.1 On or before the date of the Franchise Agreement, the Franchisee shall deliver to the Secretary of State 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 the Franchise 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 (in addition to the two copies of each such document required pursuant to Schedule 9.2 (Identity of the Financial Model etc.)); and
- (e) a profit and loss forecast, cash flow forecast and forecast balance sheet for each of the first 13 Reporting Periods following the Start Date, together with a list of assumptions on the basis of which each such forecast has been prepared.

2.2 The Secretary of State may require the resubmission of the Initial Business Plan on the Start Date, adjusted to the extent necessary to reflect any difference between the actual Start Date and the date assumed to be the Start Date in the Initial Business Plan submitted in accordance with paragraph 2.1.

Updated Business Plans

2.3 Not more than three Reporting Periods and not less than one Reporting Period prior to the start of each Franchisee Year (other than the first Franchisee Year), the Franchisee shall deliver to the Secretary of State an Updated Business Plan in respect of the remainder of the Franchise Term:

- (a) in substantially the same form as the immediately preceding Business Plan delivered to the Secretary of State in accordance with the Franchise 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 Franchisee 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 Secretary of State in accordance with the Franchise 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 Secretary of State and any progress made in respect of such Business Action Plans; and
- (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 each subsequent Franchisee Year of the Franchise Term.

Further Updated Business Plans

2.4 The Franchisee shall:

- (a) notify the Secretary of State 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 one month of any request by the Secretary of State following receipt of a notification in accordance with paragraph 2.4(a), supply the Secretary of State 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 Secretary of State from time to time as to his reasonable requirements for the format and content of any Business Plan or Business Action Plan. The contents and assumptions to be included in any Business Plan

shall, unless the parties otherwise agree, be consistent with the Record of Assumptions; and

- (b) attend such meetings and make such presentations as the Secretary of State shall request in connection with any Business Plan or Business Action Plan.

- 2.6 The Franchisee shall not be relieved of any of its obligations under the Franchise Agreement as a result of any comment or failure to comment by the Secretary of State on any Business Plan or any agreement with or approval, implicit or explicit, of any Business Plan by the Secretary of State at any time.
- 2.7 The Secretary of State 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 and service pattern development;
 - (b) Station facility improvement;
 - (c) performance management improvement;
 - (d) customer service improvement; and
 - (e) improvements in the quality of service delivery or the efficiency of delivery of the Franchise Services.
- 2.8 The Franchisee shall comply with any guidance issued by the Secretary of State about how and with whom any consultation on the content of a Business Action Plan is to take place.
- 2.9 Any proposal in a Business Action Plan shall only be implemented if and to the extent that the Secretary of State decides it is appropriate to do so and subject to any conditions which he may impose.
- 2.10 The Secretary of State shall be permitted to carry out indicative Runs of the Financial Model for the purpose of considering whether or not to implement any proposal in a Business Action Plan.

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 386 of the Companies Act 2006. 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 Secretary of State, within two 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 Secretary of State to calculate Actual Operating Costs and Modified Revenue on a cumulative basis for the previous thirteen 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 save that the timely provision of the statement required pursuant to paragraph 3.4(b) shall satisfy the requirement to provide a statement under this paragraph 3.3(b) in respect only of those Reporting Periods referred to in paragraph 3.4;
 - (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 four weeks after the end of the third, sixth, ninth and twelfth Reporting Periods in each Franchisee Year, the Franchisee shall deliver to the Secretary of State 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 at the beginning of each Reporting Period and a forecast of performance against such covenants for each of 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 three weeks of the end of each Franchisee Year, the Franchisee shall deliver to the Secretary of State its Annual Management Accounts for that Franchisee Year.

3.7 The Franchisee shall deliver to the Secretary of State:

- (a) in respect of any Franchisee Year other than the final Franchisee Year, its Annual Financial Statements for that Franchisee Year within three 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 three Reporting Periods of the end of the Franchise Period,

each together with a reconciliation to the Management Accounts for the same period.

3.8 The Franchisee shall deliver to the Secretary of State 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 true and fair 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 ***Within seven Reporting Periods after the end of each Franchisee Year, the Franchisee shall deliver to the Secretary of State the following information:***

- (a) ***certified true copies of its annual report and Annual Audited Accounts for its most recently ended financial year, together with copies of all related directors' and auditors' reports;***
- (b) ***a reconciliation to the Management Accounts; and***
- (c) ***a statement from the Franchisee's auditors confirming compliance with the financial covenants in paragraph 2 of Schedule 12.***

Accounting Standards and Practices

3.10 Each set of Management Accounts and Annual Management Accounts shall:

- (a) be in such format as the Secretary of State may reasonably specify from time to time;
- (b) be prepared consistently in accordance with the Franchisee's normal accounting policies, details of which shall be supplied on request to the Secretary of State; and
- (c) identify to the reasonable satisfaction of the Secretary of State, any changes in such accounting policies from those policies that were applied in preparing each of the profit and loss account, the cashflow projection and the balance sheet contained in the Financial Model Placed in Escrow on the date of the Franchise Agreement.

3.11 Each set of Annual Financial Statements and Annual Audited Accounts shall:

- (a) save as stated in the notes thereto, be prepared and audited in accordance with GAAP, consistently applied and in accordance with the Companies Act 2006; and
- (b) together with those notes and subject to any qualifications contained in any relevant auditors' report, 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, upon the request of the Secretary of State, promptly deliver to, or procure delivery to, the Secretary of State, certified true copies of the annual reports and audited accounts of the Parent, together with copies of all related directors' and auditors' reports. If the Parent is domiciled outside England and Wales, the equivalent documents in the jurisdiction of residence of the Parent shall be delivered to the Secretary of State.

Improvement Plans for exceeding Improvement Plan Performance Levels

- 3.13 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 Secretary of State of that fact;
 - (b) prepare and provide to the Secretary of State 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 Secretary of State from time to time of the results of the implementation of such Improvement Plan.

4. Safety and Quality Information

Safety

- 4.1 The Franchisee shall co-operate with any request from any relevant competent authority for provision of information and/or preparation and submission of reports detailing or identifying compliance with safety obligations set out in the Safety Regulations including any breaches of the Safety Regulations.
- 4.2 The Franchisee shall notify the Secretary of State as soon as practicable of the receipt and contents of any formal notification relating to safety or any improvement or prohibition notice received from ORR. Immediately upon

receipt of such notification or notice, the Franchisee shall provide the Secretary of State with a copy of such notification or notice.

Quality Management

- 4.3 The Franchisee shall deliver to the Secretary of State on or before the Start Date the Quality Plan. The Quality Plan shall cover all of the obligations of the Franchisee under the Franchise Agreement. The purpose of the Quality Plan is to ensure that the Franchisee manages in a systematic and structured manner the quality and delivery of its obligations under the Franchise Agreement so that they are delivered to a consistent quality in accordance with the terms of the Franchise Agreement.
- 4.4 The Quality Plan shall be of a standard to the reasonable satisfaction of the Secretary of State.
- 4.5 The Franchisee shall implement the Quality Plan in accordance with its terms throughout the Franchise Term.

5. Further Information

- 5.1 The Franchisee shall:
- (a) deliver to the Secretary of State, or procure the delivery to the Secretary of State of, such information, records or documents as he may request within such period as he may reasonably require and which relate to or are connected with the Franchisee's performance of the Franchise 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 the Franchise 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 Secretary of State may require the Franchisee to provide:

- (a) the information required to be provided under Schedule 13 more frequently than set out in this Schedule 13;
- (b) the information required to be provided under this Schedule 13, or, in the Secretary of State'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 Secretary of State, acting reasonably, from time to time.

6. **Contraventions of the Franchise Agreement**

6.1 The Franchisee shall notify the Secretary of State, 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 the Franchise 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 deliver to the Secretary of State, or procure the delivery to the Secretary of State of, such information, records or documents as the Secretary of State may request within such period as the Secretary of State 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, the Franchise Agreement.

7. **Information from Third Parties**

- 7.1 The Franchisee shall, if the Secretary of State so requests, use all reasonable endeavours to ensure that the Secretary of State 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 Secretary of State is entitled to have access, or of which the Secretary of State is entitled to receive a copy under the Franchise Agreement.
- 7.2 The Franchisee shall, if the Secretary of State so requests, procure the provision by RSP to the Secretary of State of such information, data and records as the Franchisee is entitled to receive under the Ticketing and Settlement Agreement, in such form as the Secretary of State may specify from time to time.
- 7.3 The obligations of the Franchisee under this Schedule 13 to provide information to the Secretary of State shall not apply if the Secretary of State notifies the Franchisee that he has received the relevant information directly from any other person (including Network Rail or RSP). The Franchisee shall, if the Secretary of State so requests, confirm or validate any such information which is received from any such other person.
- 7.4 The Franchisee shall promptly advise the Secretary of State of any changes that are to be made to its systems or processes or the systems and processes of the RSP that will materially affect the continuity of any of the records that are provided pursuant to this Schedule 13. Any such advice shall include an assessment of the materiality of the relevant change.

8. Compatibility of Information

- 8.1 All financial, operational or other information, and any data and records required to be provided to the Secretary of State under the Franchise Agreement shall be provided, if so requested by the Secretary of State, in a form compatible with the Secretary of State's electronic data and records systems on the Start 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 Secretary of State under the Franchise Agreement will not result in any infringement of any third party intellectual property rights to which its systems or such information, data or records may be subject.

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 Secretary of State and any third party that the Secretary of State may reasonably specify in the development of:

- (a) the Franchisee's Computer System;
- (b) the Secretary of State's Computer System;
- (c) any railway industry-wide Computer System; and/or
- (d) any other Computer System, including any new Computer System, the Secretary of State 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 Secretary of State and/or any third party in developing any of the Computer Systems specified by the Secretary of State in accordance with paragraph 9.2, the Franchisee shall, when requested by the Secretary of State:

- (a) make appropriately skilled and qualified Franchise Employees reasonably available, free of charge to:
 - (i) attend meetings with the Secretary of State 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 down-loading 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 Secretary of State'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 Secretary of State, 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 Secretary of State 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 Secretary of State 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 Secretary of State 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 Secretary of State 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. System Interface Committees

- 11.1 The Franchisee shall at all times during the Franchise Term co-operate with the reasonable requirements of any relevant System Interface Committees in the development, modification, agreement and implementation of system any interface recommendations made by those committees.
- 11.2 In co-operating with any relevant System Interface Committee, the Franchisee shall make appropriately skilled and qualified Franchise Employees reasonably available, free of charge to:
- (a) attend meetings with that committee to discuss and review the need for the development, agreement, amendment or need for derogation from any recommendations made by that committee;
 - (b) provide the Franchisee's opinion on any such proposed recommendations;
 - (c) review and comment upon implementation timetables and programmes for any such recommendations;
 - (d) make recommendations for modifications to any existing or system interface recommendations in the light of operational experience; and
 - (e) make representations to competent authorities to seek derogations from the application of such recommendations where the Franchisee reasonably believes that such derogations are appropriate.

12. Development of Business Cases

The Franchisee shall co-operate with the Secretary of State in the development of business cases connected with the improvement of the network (including any in respect of inter-modal schemes).

13. Development of Railway Industry Information Network

- 13.1 The Franchisee shall at all times during the Franchise Term, co-operate with the reasonable requirements of the Secretary of State and the ORR in the development, modification, agreement and implementation of the central

source of railway industry data and analytical tools to support decision-making (the Information Network).

13.2 In co-operating with the Secretary of State and/or the ORR in developing the Information Network, the Franchisee shall make appropriately skilled and qualified Franchise Employees reasonably available, free of charge to:

- (a) attend meetings with the Secretary of State and/or the ORR to discuss and review the development of the Information Network, including:
 - (i) the requirements (if any) to be placed on the Franchisee to provide information from time to time for inclusion within the Information Network;
 - (ii) the extent, nature and accessibility of the information to be stored at the Information Network; and
 - (iii) the timescales for the establishment of the Information Network; and
- (b) comply with any such requirements or to make representations to the ORR where any such requirements, in the Franchisee's reasonable opinion, would cause disproportionate additional cost.

14. **Community Rail Partnerships**

14.1 The Franchisee shall, at the request of the Secretary of State, co-operate with the Secretary of State, Network Rail, the 'Association of Community Rail Partnerships', the relevant Community Rail Partnership and/or any other person as the Secretary of State may nominate in the development of the Secretary of State's initiatives 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); and

- (b) the actual costs incurred in operating, maintaining and renewing the infrastructure relevant for such Community Rail Route.

14.2 The Secretary of State 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 the transfer of any Franchise Service to another Train Operator in order to deliver either of the initiatives that were examined pursuant to paragraph 14.1.

15. **Station Investment**

15.1 The Franchisee shall at all times during the Franchise Term, co-operate with the Secretary of State and any third party nominated by the Secretary of State and notified to the Franchisee in developing opportunities for financing investment at Stations and Franchisee Access Stations in order to improve the station environment at such stations.

15.2 In co-operating with the Secretary of State and/or any nominated third party in developing any such financing opportunities, the Franchisee shall:

- (a) attend meetings with the Secretary of State and/or such third party to discuss such opportunities;
- (b) provide the Franchisee's opinion on those opportunities;
- (c) review and comment on implementation timetables and programmes for any such opportunities; and
- (d) use all reasonable endeavours to achieve any necessary amendments to any Station Leases in order to facilitate the implementation of those opportunities.

APPENDIX 1 TO SCHEDULE 13

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 the areas and the information described in this Appendix 1; and
- (b) subject to paragraph 1.2, provide to the Secretary of State 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".

1.2 When so requested by the Secretary of State, the Franchisee shall, within such reasonable period as the Secretary of State may specify, make such information available for review by the Secretary of State by reference to:

- (a) such level of disaggregation (including by Route or Service Group) as is reasonably specified by the Secretary of State; and
- (b) any particular day, week or other longer period as is reasonably specified by the Secretary of State.

1.3 The following key shall apply to the tables in this Appendix 1:

- A = Information to be provided on or before any Passenger Change Date;
- B = Information to be provided for every Reporting Period within ten days of the last day of each Reporting Period;
- C = Information to be provided annually within ten days of the last day of each Franchisee Year; and
- D = Information to be provided whenever a change to the information contained in Appendix 3 (The Train Fleet) to the Franchise Agreement occurs.

Table 1 Rolling Stock Vehicles

| Information to be provided | Class of Rolling Stock Vehicle | | | When information to be provided |
|--|--------------------------------|-------------|-------------|---------------------------------|
| | Class [aaa] | Class [bbb] | Class [xxx] | |
| Total of rolling stock vehicles in the Train Fleet | [number] | [number] | [number] | D |
| Total 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 |

- 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 |
|--|---------------------------------|
| Number of scheduled unit diagrams per Reporting Period divided by the number of drivers employed | A |
| The number of depot maintenance employees (including train maintenance staff, depot drivers and supervisory and administrative staff at the relevant depot) divided by the number of rolling stock vehicles in the Train Fleet | A |

APPENDIX 2 TO SCHEDULE 13

Key Assets

1. Information About Assets Used In The Franchise

The Franchisee shall at all times during the Franchise Term maintain (and shall provide copies to the Secretary of State when requested 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 Secretary of State, any office furniture and consumable items).

APPENDIX 3 TO SCHEDULE 13

Operational Information

- 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 the Franchise 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 Secretary of State 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".
- 1.3 When so requested by the Secretary of State, the Franchisee shall, within such reasonable period as the Secretary of State may specify, make such information available for review by the Secretary of State by reference to:
 - (a) such level of disaggregation (including by Route or Service Group) as is reasonably specified by the Secretary of State; and
 - (b) any particular day, week or other longer period as is reasonably specified by the Secretary of State.
- 1.4 The following key shall apply to the table in this Appendix 3:
 - A = Information to be provided on or before any Passenger Change Date;
 - B = Information to be provided for every Reporting Period within 17 days of the last day of each Reporting Period; and
 - C = Information to be provided annually within ten 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

| Information to be provided | Information (format) | When information to be provided |
|---|-----------------------------|--|
| Number of Passenger Services | | |
| Number of Passenger Services in the Timetable | [number] | B |
| 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 two 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 | [number] | B |

| Information to be provided | Information (format) | When information to be provided |
|--|----------------------|---------------------------------|
| <p>Service by the Franchisee (or with the agreement of the Franchisee in contravention of its obligations under Schedule 1 (Passenger Service Obligations)), the following:</p> <p>(a) the fact of such difference;</p> <p>(b) the number of:</p> <p>(i) Passenger Services affected; and</p> <p>(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</p> | | |
| <p>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 Cancellation, except that such cancellations occurred for reasons attributable to the occurrence of a Force Majeure Event</p> | [number] | B |
| <p>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 Partial Cancellation, except that such partial cancellations occurred for reasons attributable to the occurrence of a Force Majeure Event</p> | [number] | B |
| <p>Number of Passenger Services in the Plan of the Day which were the subject of a cancellation and which satisfied the</p> | [number] | B |

| Information to be provided | Information (format) | When information to be provided |
|---|-----------------------------|--|
| conditions of the term Cancellation, except that such cancellations occurred for reasons attributable to the exercise by Network Rail of its rights pursuant to the Track Access Agreement | | |
| 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 Partial Cancellation, 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 for such | [minutes] | B |

| Information to be provided | Information (format) | When information to be provided |
|---|-----------------------------|--|
| Reporting Period for which the attribution is in dispute between Network Rail 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 (Performance Benchmarks) 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 |
| Train Mileage | | |
| Aggregate Train Mileage scheduled in the Timetable | [mileage] | A |
| Aggregate Train Mileage operated | [mileage] | A |

SCHEDULE 14

Preservation of Assets

Schedule 14.1: Maintenance of Franchise

Schedule 14.2: Maintenance of Operating Assets

Schedule 14.3: Key Contracts

Schedule 14.4: Designation of Franchise Assets

Schedule 14.5: Dealings with Franchise Assets

SCHEDULE 14.1

Maintenance of Franchise

Maintenance as going concern

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 the Franchise 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 the Franchise 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 Secretary of State 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.

Post-Franchise timetables

6. Both prior to and following the selection of a Successor Operator (whether a franchisee or otherwise and whether or not subject to the satisfaction of any conditions), the Franchisee shall:

- (a) co-operate with, where a Successor Operator has been appointed, that Successor Operator, or where not, the Secretary of State; and
- (b) take such steps as may reasonably be requested by the Secretary of State,

so as to ensure the continuity of, and orderly handover of control over of the Franchise Services.

7. The steps that the Secretary of State may reasonably request the Franchisee to take pursuant to paragraph 6 include:

- (a) participating in any timetable development process that takes place during the Franchise Period, but which relates to any timetable period applying wholly or partly after the expiry of the Franchise Term (Successor Operator Timetable), including bidding for and securing any Successor Operator Timetable, whether or not:
 - (i) the Successor Operator has been identified; or
 - (ii) there is in place an Access Agreement relating to the period over which that Successor Operator Timetable is intended to be operated;
- (b) using reasonable endeavours to seek amendments to and/or extensions of Access Agreements which can be transferred to the Successor Operator on expiry of the Franchise Period;
- (c) assisting the Secretary of State or the Successor Operator (as the case may be) in the preparation and negotiation of any new Access Agreement relating to any Successor Operator Timetable; and/or
- (d) entering into that Access Agreement in order to secure the relevant priority bidding rights required by the Successor Operator to operate that Successor Operator Timetable, provided that the Franchisee shall not be required to enter into any such Access Agreement unless the Secretary of State has first provided to it confirmation in writing that he will include that Access Agreement in any Transfer Scheme pursuant to paragraph 3.1 of Schedule 15.4 (Provisions Applying on and after Termination).

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 the Franchise 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 the Franchise Agreement.
- 1.4 The Secretary of State may at any time require the Franchisee to provide to the Secretary of State a schedule specifying the condition of any asset or class of assets that he specifies for this purpose. Such schedule shall cover such aspects of asset condition as the Secretary of State may reasonably require. If the parties are unable to agree the content of such schedule of condition, either party may refer the dispute for resolution in accordance with the Dispute Resolution Rules. Until such dispute is resolved, the Franchisee shall comply with the Secretary of State'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 Certificate,

in order to ensure that the Secretary of State 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 may apply 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.
 - (a) Subject to paragraphs 2.2(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 2.2(a) shall be in such form as the Secretary of State 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 paragraph

8.3 of Schedule 15.4 (Provisions Applying on and after Termination).

- (c) Subject to paragraph 2.2(g), to the extent that:
- (i) the Franchisee does not provide a relevant undertaking or licence in accordance with paragraph 2.2(a);
 - (ii) the Secretary of State 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 Secretary of State 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 Secretary of State. 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 Secretary of State may require.

- (d) The amount to be paid to a Successor Operator under paragraph 2.2(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 2.2(c) grant or procure the grant of a licence or undertaking complying with paragraphs 2.2(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 Secretary of State may require.
- (f) The Secretary of State shall determine at or around the end of the Franchise Period, and after consultation with the Franchisee, the maximum liability of the Franchisee under paragraph 2.2(c) and the maximum length of licence or undertaking under paragraph 2.2(e);
- (g) The provisions of paragraphs 2.2(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 Secretary of State shall notify the Franchisee as soon as he becomes aware of whether or not any such asset is to be so used.

Non-designation of New Brands

- 2.3 The Secretary of State 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 contracts designated as Key Contracts from time to time.
- 1.2 The Key Contracts as at the date of the Franchise Agreement are set out in Appendix 9 (List of Key Contracts) to the Franchise Agreement.
- 1.3 Without prejudice to the provisions of paragraphs 2, 3 and 4 of this Appendix 14.3, Appendix 9 (List of Key Contracts) to the Franchise Agreement shall be amended as considered necessary from time to time to take account of any:
 - (a) designation by the Secretary of State of any actual or prospective agreement, contract, licence or other arrangement or 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 pursuant to paragraph 2 of this Schedule 14.3; or
 - (b) de-designation by the Secretary of State of any Key Contract pursuant to paragraph 3 of this Schedule 14.3; or
 - (c) re-designation by the Secretary of State pursuant to paragraph 4 of this Schedule 14.3.

2. Designation of Key Contracts

- 2.1 Where the Secretary of State 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 the Franchise Agreement, he may make a designation pursuant to paragraph 2.2.
- 2.2 The Secretary of State 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/or

- (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 Secretary of State 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 Secretary of State 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.

5. **Direct Agreements**

- 5.1 Unless the Secretary of State otherwise agrees, or unless directed to do so by the ORR, 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 Secretary of State in respect of that prospective Key Contract, providing on a basis acceptable to the Secretary of State, 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 the Franchise Agreement; or

- (iii) the making of a railway administration order in respect of the Franchisee.

5.2 Where the Secretary of State 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 Secretary of State's designation or re-designation, is classified in such category,

the Franchisee shall use all reasonable endeavours to assist the Secretary of State in entering into a Direct Agreement as envisaged by paragraph 5.1(b).

5.3 The Franchisee shall pay to the Secretary of State an amount equal to any losses, costs, liabilities, charges or expenses which may be suffered or incurred by the Secretary of State under the provisions of any Direct Agreement and 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 relevant counterparty enters into a Direct Agreement in respect of such contracts or use all reasonable endeavours to assist the Secretary of State in entering into the same;

- (c) shall promptly inform the Secretary of State 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 Secretary of State may request.

7. No Amendment

The Franchisee shall not without the prior consent of the Secretary of State (which shall not be unreasonably withheld) vary, or purport to vary, the terms or conditions of any Key Contract at any time, unless directed to do so by the ORR.

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 into an appropriate replacement contract (whether with the counterparty to the existing Key Contract or not) and shall comply with the reasonable instructions of the Secretary of State in relation to such replacement contract.

9. Termination of Key Contracts

Whether or not the Franchise 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 Secretary of State, exercise its right to terminate any Key Contract on the Expiry Date.

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) the Franchise 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;
- (e) such other property, rights and liabilities as the Franchisee and the Secretary of State may agree from time to time or as the Secretary of State may de-designate as Franchise Assets under paragraph 10.2; and
- (f) any Rolling Stock Leases.

2. Primary Franchise Assets

2.1 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 as such in Appendix 10 (List of Primary Franchise Assets) to the Franchise Agreement (which constitute Primary Franchise Assets agreed between the parties as at the date of the Franchise Agreement), on the Start 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;
- (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;
- (f) any CRM Data and/or Yield Management Data and, to the extent that any CRM System and/or Yield Management System is the property of the Franchisee, such CRM System and/or Yield Management System on the later of the Start Date and:
 - (i) in relation to CRM Data or Yield Management Data, the date on which such CRM Data or Yield Management Data (as applicable) is collected; or
 - (ii) in relation to any such CRM System or Yield Management System, the date on which such CRM System or Yield Management System is created,

save, in relation to CRM Data and Yield Management Data, any data in respect of which the Data Subject has not consented to such data being disclosed and Processed by any Successor Operator and/or the Secretary of State; and
- (g) any licence of any CRM System and/or Yield Management System, on the date of such licence.

3. Designation of Additional Primary Franchise Assets

The Secretary of State 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. On or before designation of any Franchise Asset as a Primary Franchise Asset, the Secretary of State may agree not to subsequently de-designate such Primary Franchise Asset without the prior written consent of the Franchisee. If the Secretary of State so agrees, the notice designating the relevant Franchise Asset as a Primary Franchise Asset shall state that the Secretary of State shall not de-designate such Primary Franchise Asset without the prior written consent of the Franchisee.

4. Designation during last 12 Months of Franchise Period

If the Secretary of State 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 Secretary of State may de-designate such Primary Franchise Asset by serving notice on the Franchisee provided that, in relation to any Primary Franchise Asset in respect of which the Secretary of State agreed pursuant to paragraph 3 that he would not de designate without the prior written consent of the Franchisee, such consent has been obtained. Such de-designation shall take effect upon delivery of such notice.

5. Designation of Key Contracts as Primary Franchise Assets

The Secretary of State 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 Secretary of State 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 Secretary of State, in designating the rights and liabilities of the Franchisee (whether under a particular contract or other arrangement) as a Primary Franchise Asset may, in his 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 Secretary of State 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 Secretary of State 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 made more than 12 months prior to the end of the Franchise Period or 14 days of a designation made during the last 12 months of the Franchise Period.
- 8.4 The Secretary of State 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 the Franchisee's objection cannot be resolved by agreement within a period of 14 days from the date of submission of that objection, the Franchisee may refer the dispute for resolution in accordance with the Dispute Resolution Rules.
- 8.6 Any body duly appointed to resolve such dispute shall determine whether or not the designation of the relevant property, rights or liabilities was reasonably necessary for securing that the Franchise Services may continue

to be provided by a Successor Operator on the expiry of the Franchise Period on a basis reasonably acceptable to the Secretary of State or otherwise facilitating the transfer of the provision of the Franchise Services at such time, and accordingly whether or not they should cease to be so designated.

- 8.7 If any dispute as to any designation pursuant to paragraph 3 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 the Secretary of State

- 9.1 The Franchisee shall provide such information as the Secretary of State may reasonably require in order to satisfy the Secretary of State that any Franchise Assets which are to be designated as Primary Franchise Assets after the Start 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 Secretary of State may reasonably require in connection with the designation of Primary Franchise Assets. Such information shall be supplied to the Secretary of State within such timescale as the Secretary of State may reasonably require.

10. De-Designation of Franchise Assets and Primary Franchise Assets

- 10.1 The Secretary of State 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 or Primary Franchise Asset (as the case may be) shall cease to be designated upon such agreement coming into effect.
- 10.2 The Secretary of State 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 Secretary of State 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 provided that, in relation to any Primary Franchise Asset in respect of which the Secretary of State agreed pursuant to paragraph 3 that he would not de designate without the prior written consent of the Franchisee, such consent has been obtained. 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 one year prior to the expiry of the Franchise Term.

11. Amendment of Appendix 10 to the Franchise Agreement

Appendix 10 (List of Primary Franchise Assets) to the Franchise Agreement shall be amended as the Secretary of State considers necessary or desirable from time to time to take account of designation and de-designation of Primary Franchise Assets pursuant to this Schedule 14.4.

12. 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.

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 Secretary of State 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 Secretary of State 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 Secretary of State 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 Secretary of State 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 provided that:

- (a) if the relevant Franchise Asset becomes the subject of a transfer scheme made under Section 12 and Schedule 2 of the Railways Act 2005, 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 the Franchise 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 Secretary of State of any Security Interest arising at any time over any of its property or rights and shall provide the Secretary of State with such information in relation thereto as he 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 Secretary of State may wish, at or before the expiry of the Franchise Period, either to invite persons 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 Secretary of State has in certain circumstances a duty under Section 30 of the Act to secure the continued provision of the Passenger Services on expiry or termination of the Franchise Agreement. The Franchisee accordingly accepts and agrees to the restrictions and obligations imposed on it under Schedule 1.6 (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 Secretary of State, provide the Secretary of State and his 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 (including electronic or magnetic records, any CRM System and any Yield Management System) 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 (including any agreement entered into by the Secretary of State in fulfilment of his duties under section 30 of the Act) relating to the Franchise Services, without undergoing a tendering process,

provided that the exercise of such access rights by the Secretary of State and his 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 Secretary of State and his representatives and advisers such Data Site Information (as defined at paragraph (e)) 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 Secretary of State may require, and shall provide such assistance as the Secretary of State may require in connection with the verification of such information.
- (c) The Franchisee shall provide such confirmation in relation to the accuracy of the contents of the documents referred to in paragraph 2.1 as the Secretary of State shall require from time to time.
- (d) The Franchisee shall upload such Data Site Information as the Secretary of State may require to such electronic data site as he may specify and shall make a sufficient number of appropriate staff available for that purpose. The Franchisee shall ensure that such staff are trained in the use of such data site (such training to be at the expense of the Secretary of State). For the avoidance of doubt, the Data Site Information required by the Secretary of State under this paragraph may cover the entire Franchise Period or any part of it.
- (e) "Data Site Information" means information relating to any of the following:
 - (i) the Franchise or the Franchisee, any Affiliate of the Franchisee or their respective businesses (including their audited and management accounts, asset registers and contract lists);

- (ii) past and present demand for the Franchise Services or any similar services (including passenger count data, Yield Management Data and CRM Data);
- (iii) the Revenue received or which the Franchisee expects to receive during the Franchise Period;
- (iv) the Franchisee's safety authorisation, safety certificate or safety management system (in each case as defined in the Safety Regulations);
- (v) any other safety matter;
- (vi) the arrangements contained within the Railways Pension Scheme, the Pension Trust, the Franchise Sections, or any other pension arrangement in respect of employees of the Franchisee or employees of any person who was a franchisee or franchise operator in relation to a Previous Franchise Agreement;
- (vii) the management structure of the Franchisee's business (including organograms and any planned changes);
- (viii) employees and contractors (including details of responsibilities, job title, remuneration, grade, qualifications and any other personnel records);
- (ix) terms and conditions of employment and human resources policies;
- (x) public and working timetables;
- (xi) driver, other train crew and rolling stock diagrams;
- (xii) rolling stock (including train and vehicle miles, restrictions of use, fleet examinations and servicing, fleet performance, casualty data, and any relevant reports);
- (xiii) any station (including any leases, documents of title, maintenance arrangements, station facilities, plans and contingency or security plans relating to any station);

- (xiv) health and safety, and environmental information;
- (xv) copies of contracts (including Access Agreements, policies of insurance, property, rolling stock and other leases, catering contracts, contracts for outsourced services, and rolling stock maintenance and spares contracts);
- (xvi) Network Rail charges and requirements (including rules of the route/plan);
- (xvii) any information technology system (hardware or software) used or owned by the Franchisee or any Affiliate of the Franchisee (including any software licences);
- (xviii) performance data;
- (xix) customer service (including staffing levels, call volumes and opening hours);
- (xx) fares and fares baskets;
- (xxi) relationships with stakeholders (including minutes of meetings with unions, Passenger Transport Executives, local authorities or Transport for London); or
- (xxii) any other matter which the Secretary of State may specify from time to time;

and in this paragraph (e) the term “employee” includes any person engaged by the Franchisee pursuant to a contract of personal service.

(f) The Franchisee shall:

- (i) comply with its obligations under paragraph 2.1 or this paragraph 2.2 promptly and in any case in accordance with any reasonable timetable with which the Secretary of State requires the Franchisee by notice in writing to comply; and

- (ii) where the Secretary of State raises with the Franchisee any query in relation to any Data Site Information, make a full and substantive response to such query within 10 Working Days. Such response shall include any further information requested by the Secretary of State in relation to such query.

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 Secretary of State may require:

- (a) that the Franchisee provides the Secretary of State with additional information and reports and analysis in respect of such Service Groups as the Secretary of State 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; and
 - (c) that the Franchisee uploads Data Site Information to more than one data site.
- 2.4 The Secretary of State 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 the Franchise 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 the Franchise 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 and other conduct of business provisions

1. Last 12 or 13 Month Period

- 1.1 Where reference is made in the Franchise Agreement to the last 12 or 13 months of the Franchise Period, such period shall be deemed 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 or if the actual date of expiry of the Franchise Period is known the date which is 12 or 13 months prior to that date;
 - (b) the date on which the Secretary of State notifies the Franchisee that such period of 12 or 13 months shall be deemed to commence on the grounds that the Secretary of State reasonably considers that an Event of Default may occur within the following 12 months;
 - (c) the date on which the Secretary of State notifies the Franchisee that such period of 12 or 13 months shall be deemed to commence on the grounds that the Secretary of State considers it reasonably likely that the Franchise Agreement will be terminated by agreement between the parties within such period; or
 - (d) any date during the Franchise Period on which the Franchisee begins to be paid or becomes entitled to claim a Revenue Support Adjustment.
- 1.2 Subject to paragraph 1.3 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:
- (a) 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
 - (b) in the case of periods commencing under paragraph 1.1(d), the date on which the Franchisee ceases to be paid or ceases to be entitled to claim a Revenue Support Adjustment (but without prejudice to the recommencement of the deemed last 12 months or

13 months provisions if the Franchisee again begins to be paid or becomes entitled to claim Revenue Support Adjustment); or

(c) such earlier date as the Secretary of State 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 1.3 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 Secretary of State (which shall not be unreasonably withheld), 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 change in the Average Earnings Index between March in the preceding 12 months and the corresponding March one year before, expressed as a percentage;

JAEl is the change in the Average Earnings Index between June in the preceding 12 months and the corresponding June one year before, expressed as a percentage;

SAEl is the change in the Average Earnings Index between September in the preceding 12 months and the corresponding September one year before, expressed as a percentage; and

DAEl is the change in the Average Earnings Index between December in the preceding 12 months and the corresponding December one 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 six 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.

It is agreed that the Franchisee will be permitted to make a decrease in the remuneration of any Franchisee Employee that takes effect in the last 12 months of the Franchise Period without first obtaining the consent of the Secretary of State in circumstances where such decrease is in the ordinary course of business and when aggregated with any other variation which takes effect during such period, represents a decrease in the remuneration of a Franchise Employee of no more than the amount determined in accordance with the formula contained in paragraph 2.1(a) where a calculation pursuant to such formula gives rise to a negative percentage. In

any other circumstances the prior consent of the Secretary of State will be required to any decrease in the remuneration of a Franchise Employee in the last 12 months of the Franchise Period.

2.2 Without limiting the foregoing, the Franchisee shall consult the Secretary of State as soon as reasonably practicable in any circumstances in which the Secretary of State's consent under paragraph 2.1 may be required. Further, it shall always be deemed to be reasonable for the Secretary of State to withhold his consent to a variation or addition which is prohibited without such consent under paragraph 2.1(a) provided the Secretary of State:

- (a) makes an overall increase in Franchise Payments equal to the amount of the direct net losses suffered by the Franchisee on the days when the Passenger Services are affected by industrial action taken by the Franchise Employees which is a consequence of a refusal by the Secretary of State to agree to the variation or addition; and
- (b) agrees that, to the extent that the Franchisee would otherwise be in contravention of the Franchise Agreement as a consequence of the industrial action referred to in this paragraph 2.2, no such contravention shall have occurred, save where such contravention relates to safety requirements.

2.3 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 Secretary of State'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 Secretary of State (which shall not be unreasonably withheld), 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 Start 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 Secretary of State (which shall not be unreasonably withheld) 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 five per cent. during such period of 12 months provided that where the last 12 months or 13 months of the Franchise Period has been deemed to have commenced under paragraph 1.1(d) and the period of the restriction contemplated by this paragraph 2.5 lasts longer than 12 months such restriction shall apply in respect of the longer period.

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 Secretary of State (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 Secretary of State 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 Secretary of State 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 Secretary of State may reasonably request in order to prevent any such reduction, including submitting any dispute to any relevant dispute resolution procedures.

3.3

- (a) It is acknowledged that the Franchisee will make available for sale prior to the end of the Franchise Period Advance Purchase Train - specific Fares (as defined in the Ticketing and Settlement Agreement) which are valid for travel after the end of the Franchise Period.
- (b) In making such Advance Purchase Train-specific Fares available for purchase the Franchisee shall not change its commercial practice in terms of the number of such Advance Purchase Train-specific Fares made available or the Passenger Services on which they are valid for use when compared with its previous commercial practice in respect of Advance Purchase Train-specific Fares valid for travel prior to the end of the Franchise Period.
- (c) The Franchisee will be permitted to take into account reasonable seasonal factors in determining its previous commercial practice. In assessing reasonableness, account will be taken of the Franchisee's practice in addressing such seasonal factors in the corresponding period in the previous year.

4. **Inter-Operator Schemes**

Voting on Scheme Councils

- 4.1 Subject to paragraph 4.6, during the last 12 months of the Franchise Period the Franchisee shall give the Secretary of State 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 Secretary of State.

Successor Operator

- 4.3 Where the Franchisee has been notified by the Secretary of State 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 Secretary of State for determination.
- 4.5 The Secretary of State shall reasonably determine the way the Franchisee should vote on any resolutions referred to him 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.

Where paragraph 4.3 applies, 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:

- (a) maintain the Handover Package;
- (b) update it at least every three Reporting Periods; and
- (c) make it available to the Secretary of State for inspection or audit by the Secretary of State or his representatives whenever requested.

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 Secretary of State 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 Secretary of State.

2. Director's Certificate

Once in each Franchisee Year, the Franchisee shall provide to the Secretary of State a certificate signed by a nominated and duly authorised director of the Franchisee, addressed to the Secretary of State, which confirms that the Handover Package contains the information and objects specified in the Appendix (Form of Handover Package) and that such information is accurate as at the date of the certificate.

3. Handover Package Information

Without prejudice to the preceding provisions of this Schedule 15.3, the Franchisee shall provide to the Secretary of State the following information and letters on or prior to the Start Date, and shall supply revised information and/or letters to the Secretary of State 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 Secretary of State:
 - (i) from the Franchisee to the Secretary of State confirming that an irrevocable instruction has been given to the solicitor holding the Handover Package (or other persons authorised by the Secretary of State for such purpose) that any of the Secretary of State, 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 Secretary of State'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 Secretary of State for such purpose) to the Secretary of State confirming that he or she will release the Handover Package to any of the Secretary of State, 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 Secretary of State;
- (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 Secretary of State 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 Secretary of State, a Successor Operator or its agent on demand.

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 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 Secretary of State) 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 Secretary of State.

4. Systems

A list of the electronic systems in use by the Franchisee, together with the name, office address and telephone number of the Franchisee's Information Technology Manager (or the holder of any equivalent post) who is responsible for administration of each such system.

5. **Daily Operations**

A printed or electronic list (in a format acceptable to the Secretary of State) 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 the Franchise Agreement

1.1 The Franchisee shall, to the extent so requested by the Secretary of State on termination of the Franchise 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 Secretary of State or as he may direct.

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

1.3 Such novation shall be on such terms as the Secretary of State 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 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 Secretary of State or his 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 Secretary of State nor his 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.

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 Secretary of State or as he may direct, subject, to the extent applicable, to the consent of the ORR. The provisions of paragraph 1.3 shall apply to any such novation.

- 1.5 The Franchisee shall notify the Secretary of State on becoming aware of any circumstances which might lead to the Secretary of State 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. 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 Secretary of State,

and shall take such steps as may be reasonably requested by the Secretary of State in connection therewith.

- 2.2 In satisfaction of its obligations under paragraph 2.1, the Franchisee shall:

- (a) bid for and use reasonable efforts to secure the Timetable and the Train Plan for the railways passenger 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); and
- (b) make appropriately skilled and qualified Franchise Employees reasonably available to attend such meetings with the Secretary of State, the Successor Operator, Network Rail, any rolling stock lessor and/or and other relevant third party as are reasonably required in order to determine:
 - (i) those actions that are required in order to facilitate such continuity and orderly handover, in particular those actions arising under, but not limited to, the following agreements:

- (A) Access Agreements;
 - (B) Property Leases;
 - (C) Shares Facility Agreements;
 - (D) Rolling Stock Leases;
 - (E) Rolling Stock Related Contracts; and
 - (F) any other Key Contract; and
- (ii) without prejudice to the Secretary of State's rights under this Schedule 15.4, those rights and liabilities as may be specified in any Transfer Scheme.

3. Transfer of Primary Franchise Assets

Option Arrangements

3.1

- (a) The Secretary of State hereby grants to the Franchisee the right to require the Secretary of State to make, and the Franchisee hereby grants to the Secretary of State the right to make, a Transfer Scheme in accordance with Section 12 and Schedule 2 of the Railways Act 2005 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:
 - (i) either party may serve notice on the other party specifying the Primary Franchise Assets to be transferred; and
 - (ii) the other party may (within such timescale) serve a subsequent notice specifying any additional Primary Franchise Assets to be transferred.
- (c) The Secretary of State 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 (except in relation to any such

Primary Franchise Assets which are, in accordance with Schedule 14.4 (Designation of Franchise Assets), de-designated as such prior to the end of the Franchise Period).

- (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 Secretary of State under the Railways Act 2005 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 Secretary of State 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 Secretary of State may determine should be so paid having regard to:
 - (i) his estimate of the sum likely to be paid under the relevant Supplemental Agreement in respect of the Primary Franchise Assets being transferred under the relevant Transfer Scheme;
 - (ii) his estimate of any other sums likely to be paid thereunder;
 - (iii) the 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 Secretary of State may consider appropriate.
- (b) The Franchisee shall pay to any such transferee the sum determined by the Secretary of State 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 Secretary of State (or his 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 Secretary of State 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 Secretary of State 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 Secretary of State and his representatives such access as the Secretary of State 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 Secretary of State 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.

Property Leases

4.5

- (a) The Franchisee shall, on the expiry of the Franchise Period, if requested by the Secretary of State, assign its interest under all or any Property Leases to the Secretary of State or as he may direct, subject where applicable to the agreement of any other party to such Property Lease or the ORR.
- (b) Such assignment shall be on such terms as the Secretary of State 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 Secretary of State or his 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 Secretary of State nor his 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 4.5(b)(i), and the Franchisee shall indemnify the Secretary of State or his nominee, as the case may be, on demand, 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 4.5(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 Secretary of State or as he may direct, subject, where applicable, to the consent of Network Rail. The provisions of paragraph 4.5(b) shall apply to any such assignment.
- (d) The Franchisee shall notify the Secretary of State on becoming aware of any circumstances which might lead to the Secretary of State 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. Actions required immediately on Handover

- 5.1 The Franchisee shall immediately on the expiry of the Franchise Period make available to the Secretary of State:
 - (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.

5.2 The Franchisee agrees that the Secretary of State or his agents may have access to and use free of charge any information contained in any Computer System or in hard copy format as he sees fit (for the purposes of continuing the operation of the Franchise Services).

6. **Maintenance Records**

The Franchisee shall immediately on expiry of the Franchise Period provide to the Secretary of State:

- (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

7. **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.

8. **Franchisee's Intellectual Property**

8.1

- (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 Start Date;
 - (iii) has not been designated as a Primary Franchise Asset;
 - (iv) does not represent or constitute a Mark; and
 - (v) may, in the reasonable opinion of the Secretary of State, 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 8.1. The Franchisee shall not enter into a licence that does not include such a provision without first obtaining the Secretary of State's prior written consent (such consent not to be unreasonably withheld).

8.2

- (a) Any such licence shall be granted to the relevant Successor Operator for such period as the Secretary of State 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 one month or less.

- (b) If such licence is for a period in excess of one 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 Secretary of State may require.

8.3 Any such licence shall be in such form as the Secretary of State 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 party 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 SECRETARY OF STATE FOR TRANSPORT

MADE PURSUANT TO SCHEDULE 2 OF THE RAILWAYS ACT 2005

IN FAVOUR OF

[*SUCCESSOR OPERATOR*]

IN RESPECT OF

CERTAIN PROPERTY, RIGHTS AND LIABILITIES

OF

[*FRANCHISEE*]

Secretary of State for Transport
76 Marsham Street
London SW1P 4DR

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 Secretary of State for Transport (the Secretary of State) 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 Secretary of State 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 Secretary of State under Schedule 2 of the Railways Act 2005.

The Secretary of State, in exercise of the powers conferred on him by Schedule 2 of the Railways Act 2005, hereby makes the following scheme:

1. **Definitions and Interpretation**

In this Transfer Scheme functions has the meaning ascribed to it in the Railways Act 2005 and relevant enactment has the meaning ascribed to it in paragraph 6 of Schedule 2 of the Railways Act 2005.

2. **Transfer of Property, Rights and Liabilities**

With effect from [_____] 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 enactment 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 relevant enactments if and to the extent that any such relevant enactment:

- (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 Secretary of State on [____ ____].

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

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

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 Secretary of State for Transport in respect of
certain property rights and liabilities of
[OUTGOING FRANCHISEE]

Secretary of State for Transport
76 Marsham Street
London SW1P 4DR

This Supplemental 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 Secretary of State for Transport (the Secretary of State) dated [_____] (the Franchise Agreement).
- (B) The Franchise Agreement terminated or is to terminate on [_____] and the Transferee has been selected by the Secretary of State to continue the provision of all or part of such services pursuant either to a franchise agreement with the Secretary of State or arrangements made with the Secretary of State in connection with the Secretary of State'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 Secretary of State on [_____] under Schedule 2 of the Railways Act 2005 (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.

IT IS AGREED THAT

1. Definitions And Interpretation

Definitions

- 1.1 The following words and expressions shall have the following meaning:

Advance Purchase Train-specific Fare has the meaning assigned to that term in the Ticketing and Settlement Agreement;

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 Terms;

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 11-33 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 at any time 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 four weeks of the preparation of the Net Asset Statement or, in the absence of such agreement, selected by the Secretary of State;

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; and

Undisclosed Employee has the meaning assigned to that term in clause 7.1(d).

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 Terms, 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 two 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 four 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 Transferring Assets and Liabilities is treated for Value Added Tax purposes as the transfer 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 Revenue & Customs direct that the transfer of the Transferring Assets and Liabilities cannot be treated as a TOGC, the Transferor shall provide the Transferee with a copy of such direction within five days of receipt thereof by the Transferor.
- 6.4 The Transferee shall thereafter pay upon the receipt of a valid tax invoice the amount of any Value Added Tax which as a result of that direction may be chargeable on the transfer of the Transferring Assets and Liabilities. If the aforementioned direction was issued as a result of any action or inaction of the Transferee then the Transferee shall in addition to the Value Added Tax indemnify the Transferor for any penalties and interest that may be incurred upon receipt of such evidence from HM Revenue & Customs.
- 6.5 If the Transferee considers the direction issued by HM Revenue & Customs referred to in clause 6.3 to be incorrect then, without prejudice to the Transferee's obligation under clause 6.4 to pay to the Transferor the amount of any Value Added Tax which as a result such direction may be chargeable on the transfer of the Transferring Assets and 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 appeal such direction. Upon requesting such an appeal the Transferee agrees to indemnify the Transferor for all reasonable costs that the Transferor may incur in taking such action upon receipt of evidence of those costs. If such an appeal is successful the Transferor agrees to reimburse the Transferee for such reasonable costs and penalties and interest to the extent that those costs have been reimbursed by HM Revenue & Customs.

- 6.6 If any amount paid by the Transferee to the Transferor in respect of Value Added Tax pursuant to this Agreement is subsequently found to have been paid in error the Transferor shall issue a valid tax credit note for the appropriate sum to the Transferee and promptly repay such amount to the Transferee.
- 6.7 If any amount is payable by the Transferor to the Transferee in respect of the transfer of the Relevant Franchise Assets, Relevant Contract Liabilities, Relevant Debits and Credits and Relevant Employee Liabilities pursuant to this Agreement, clauses 6.3 to 6.6 inclusive shall apply mutatis mutandis to such payment substituting Transferor for Transferee and vice versa.
- 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 on condition that the Transferee undertakes to preserve those records in such manner and for such periods as may be required by law.
- 6.9 Subject to HM Revenue & Customs so permitting, all of the records referred to in Section 49 of the Value Added Tax Act 1994 relating to the Business (being the purchase records) shall be retained by the Transferor and the Transferor shall undertake to the Transferee to:
- (a) preserve those records in such manner and for such periods as may be required by law; and
 - (b) give the Transferee as from the Transfer Date reasonable access during normal business hours to such records and to take copies of such records.

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 holiday pay, 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 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;

(d) 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 Secretary of State under Schedule 15.3 (Handover Package) of the Terms 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(c); and
- (e) 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 Indemnities

- 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 the Franchise 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 Secretary of State 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.

- 7.3 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.

Details of Relevant Employees

- 7.4 The Transferor warrants to the Transferee that it has (to the extent not made available to the Secretary of State under Schedule 15.4 (Provisions Applying on and after Termination) of the Terms 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.

7.5 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).

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]

(b) 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:

$$(C - D) \times \frac{A}{B} + E + AP$$

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,

AP equals the amount of any Credit received by the Transferor in respect of any Advance Purchase Train-specific Fare which continues to be valid after the Transfer Date provided that:

- (a) such Credit shall be deemed not to include any reduction in respect of a discount allowed to the purchaser of such Advanced Purchase Train-specific Fare pursuant to the Passenger Charter or any other Passenger Charter of the Transferor;
- (b) such Credit shall be net of any Private Settlement Credit (as defined in the Ticketing and Settlement Agreement) arising in respect of that Advance Purchase Train-specific Fare;
- (c) such Credit shall be deemed to exclude any Credit received by the Transferor in respect of any commission due in respect of sale of such Advance Purchase Train-specific 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 such Advance Purchase Train-specific 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 Start 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. CRM Data and Yield Management Data shall be valued at nil.
7. 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

Pensions

1. Franchise Sections

The Franchisee shall participate in and become the Designated Employer in relation to the sections of the Railways Pension Scheme listed in the Franchise Agreement (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 (f) inclusive, it shall promptly consult with the Secretary of State in relation to that proposal prior to putting such a proposal to the Pensions Committee of 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 Secretary of State in relation to any proposal it considers would fall within the scope of paragraphs 3.2(a) to (f) inclusive.

3.2 The Franchisee shall not, without the prior written consent of the Secretary of State (which may be given on such terms and subject to such conditions as the Secretary of State thinks fit):

- (a) restructure or change the composition of the earnings of employees of the Franchisee in such a way as to increase the part of those earnings which qualifies as pensionable earnings under the Rules applicable to 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 Franchise, for example, where individual employees are, from time to time promoted or transferred to higher paid or different employment which has a different composition of earnings;
- (b) make or consent to any proposal to change any of the provisions of the Pension Trust in respect of the Franchise 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;
- (f) close a Franchise Section to new members; or
- (g) 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 Secretary of State on:

- (a) any proposal made by the Trustee to change the statement of investment principles applicable to any Franchise Section; and
- (b) any proposal to alter the rate of contributions payable by the Franchisee or its employees under a new schedule of contributions for the Franchise Section.

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

4. **Funding liabilities**

4.1 The Franchisee shall pay the employer contributions required under the schedule of contributions applicable to each Franchise Section (or either of the British Railways Superannuation Fund or the BR (1974) Pension Fund in which it participates) in respect of the Franchise Term subject to the provisions of paragraph 4.2 below.

4.2 Where, during the Franchise Term, Franchise Services are aggregated or disaggregated by the Secretary of State (for example, as a result of remapping) and, as a consequence, 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 Secretary of State shall ensure that the Franchisee has no liability for any resulting deterioration immediately arising in the funding level of the Franchise Section measured in accordance with the Franchise 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 Secretary of State shall have no liability for any future deterioration in the funding levels of the Franchise Section linked to such transfer in or out of members.

5. Discharge of obligations

5.1 The Secretary of State may at any time during the Franchise Term seek information from the Trustee with a view to satisfying himself that the Franchisee and the other Participating Employers (if any) have fully discharged their respective obligations under the Railways Pension Scheme, including their obligations in respect of the payment of contributions to 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 Secretary of State may from time to time request and shall authorise and consent to the Trustee doing so.

5.3 The Franchisee shall, in respect of the Franchise Term, use all reasonable endeavours to provide to the Secretary of State:

- (a) within one month of the expiry of each Franchisee Year; and
- (b) at other times as soon as practicable following a request by the Secretary of State,

a certificate signed by the Trustee in relation to the Franchise 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 Secretary of State 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 Secretary of State otherwise reasonably considers that the Franchisee has not complied with such

obligations, the Secretary of State may withhold from any Franchise Payments payable by him under Schedule 8 (Payments) an amount which is, in his opinion, no greater than the amount of any contribution that the Franchisee has thereby failed to make or avoided making.

- 5.5 The Secretary of State may, under paragraph 5.4, withhold such amount until such time as he reasonably determines that the relevant contributions have been made in full by the Franchisee. Following that determination, the amount withheld shall become payable (without interest) on the next day on which a Franchise Payment becomes payable under Schedule 8, being a day which falls no less than seven days after such determination or, if there is no such day, 14 days after the date of such determination. To the extent that the Secretary of State has not so determined within four weeks after the expiry of the Franchise Period, the Franchisee's right to receive the amount so withheld under the Franchise Agreement shall lapse and the Secretary of State shall not be obliged to pay such amount.

6. Termination of Franchise

The Secretary of State shall at the end of the Franchise Term ensure that the Franchisee has no liability for any deficit in the Franchise 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 and Freedom of Information

1. Confidentiality

Subject to the provisions of the Act, the Transport Act, the Railways Act 2005, the Environmental Information Regulations, the Freedom of Information Act (and any code of practice or other guidance related to the same) and paragraphs 2 to 8 of this Schedule 17 inclusive, 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 the Franchise Agreement) (all together the "Confidential Information") and shall not, except with the other party's prior written authority, publish or otherwise disclose any Confidential Information otherwise than as expressly provided for in the Franchise 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 the Franchise 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 the Franchise Agreement or information relating to a dispute arising under the Franchise 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 or outside consultants or advisers of such Affiliate, upon obtaining from such Affiliate and/or such outside consultants or advisers of 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 the Franchise 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 the Franchise Agreement or to protect or enforce its rights under the Franchise Agreement; or
- (g) by the Franchisee, to the ORR, the Rail Passengers' Council or a Local Authority.

3. Publication of Certain Information

3.1 Notwithstanding the provisions of paragraph 1, the Secretary of State may publish (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 he sees fit, the following (irrespective of whether the same was provided to the Secretary of State by the Franchisee or a third party):

- (a) the amount of any Franchise Payments payable under the Franchise Agreement and the aggregate amount of Franchise Payments paid in each year under the Franchise Agreement;
- (b) such information as the Secretary of State may consider reasonably necessary to publish in connection with the performance of his 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 (including CRM Data and Yield Management Data) as may reasonably be required in connection with the retendering or reletting of the Franchise or any part thereof or the retendering or reletting of any other railway passenger services, 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 him under Schedule 13 (Information and Industry Initiatives);
- (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 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 (Information about Passengers);
- (i) the results of any assessment or inspection under Schedule 11 (Agreement Management Provisions);
- (j) details of the Franchisee's plans and performance in respect of safety;
- (k) such information as the Secretary of State may reasonably require to publish in connection with any Priced Option;
- (l) such information as the Secretary of State may reasonably require to include in his annual report in respect of the Franchisee provided that, in preparing that report, the Secretary of State shall have regard to the need for excluding, so far as is practicable, the matters specified in paragraphs (a) and (b) of Section 71(2) of the Act for this purpose, taking references in those paragraphs to the ORR as references to the Secretary of State; and

- (m) such information as the Secretary of State 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.

3.2 Without prejudice to any other provision of this Schedule 17, the Secretary of State may publish any other information relating to the Franchisee if he has previously notified the Franchisee and the Franchisee does not demonstrate to the reasonable satisfaction of the Secretary of State 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 Secretary of State but he is not so satisfied, the Secretary of State shall allow seven 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 either party liable for, the disclosure by either party to Network Rail, the ORR, other Train Operators, any operators of services for the carriage of goods by rail, the Rail Passengers' Council and/or any Local Authority of any information relating to the development of the Service Level Commitment in accordance with Schedule 1.1 (Service Development).

5. Publication by Secretary Of State

Nothing in this Schedule 17 shall be deemed to prohibit, prevent or hinder, or render the Secretary of State liable for, the disclosure of any information by the Secretary of State to the ORR, 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, the 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 his functions.

6. Provision of Information to the ORR

The Franchisee hereby authorises the Secretary of State to provide to the ORR, to the extent so requested by the ORR, such information as may be provided to the Secretary of State in relation to the Franchisee under the Franchise Agreement.

7. Disclosure by Comptroller and Auditor General

The parties recognise 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 the Franchise Agreement would not be able to disclose otherwise than under this Schedule 17.

8. Continuing Obligation

This Schedule 17 (and any other provisions necessary to give effect hereto) shall survive the termination of the Franchise Agreement, irrespective of the reason for termination.

9. Freedom of Information - General Provisions

9.1 The Franchisee acknowledges and shall procure that its agents and subcontractors acknowledge that the Secretary of State is subject to the requirements of the Freedom of Information Act and the Environmental Information Regulations and accordingly the Franchisee shall and shall procure that its agents and subcontractors shall assist and cooperate with the Secretary of State to enable the Secretary of State to comply with his information disclosure obligations under the Freedom of Information Act and/or the Environmental Information Regulations.

9.2 The Franchisee shall and shall procure that its agents and subcontractors shall:

- (a) transfer to the Secretary of State any Requests for Information received by the Franchisee (or its agents or subcontractors) as soon as practicable and in any event within two Working Days of receiving any such Request for Information;
- (b) provide the Secretary of State with a copy of all information in its (or their) possession or power in the form that the Secretary of State requires within five Working Days of the Secretary of State's request (or within such other period as he may specify); and
- (c) provide all necessary assistance as reasonably requested by the Secretary of State to enable him to respond to any Request for Information within the time for compliance set out in section 10 of

the Freedom of Information Act or regulation 5 of the Environmental Information Regulations as applicable.

- 9.3 The Secretary of State shall be responsible for determining in his absolute discretion, and notwithstanding any other provision in the Franchise Agreement or any other agreement, whether Confidential Information (as such term is defined in paragraph 1 of this Schedule 17) and/or any other information is exempt from disclosure in accordance with the provisions of the Freedom of Information Act and/or the Environmental Information Regulations.
- 9.4 The Franchisee shall not and shall procure that its agents and subcontractors shall not respond directly to any Request for Information unless expressly authorised to do so by the Secretary of State.
- 9.5 The Franchisee acknowledges and shall procure that its agents and subcontractors acknowledge that notwithstanding any provision to the contrary in the Franchise Agreement the Secretary of State may be obliged under the Freedom of Information Act and/or the Environmental Information Regulations and any related Code of Practice or other guidance to disclose information concerning the Franchisee and/or its agents and subcontractors:
- (a) in certain circumstances without consulting the Franchisee (or its agents and/or subcontractors where applicable); or
 - (b) following consultation with the Franchisee and having taken its views into account (and the views of its agents and/or subcontractors where applicable);

provided always that where applicable the Secretary of State shall in accordance with the provisions of the Freedom of Information Act and/or the Environmental Information Regulations take reasonable steps where appropriate to give the Franchisee advance notice or failing that to draw the disclosure to the Franchisee's attention after any such disclosure.

SCHEDULE 18

Franchise Continuation Criteria

1. Continuation of Term

Continuation to Expiry Date

- 1.1 The Secretary of State 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 the Target Performance Level for each Benchmark within 28 days of the receipt by the Secretary of State of the information required to perform such calculation.
- 1.2 If, during the Continuation Review Period, the Franchisee's performance has been at a level which is equal to or better than the Target Performance Level:
- (a) for 12 or more Reporting Periods in respect of the Capacity Benchmarks and the Service Delivery Benchmarks; and
 - (b) for 11 or more Reporting Periods in respect of the Cancellations Benchmarks,
- and provided that no Event of Default has occurred which is continuing and/or is not capable of being remedied as at the Continuation Review Date, the Secretary of State shall notify the Franchisee and the Franchise Agreement shall continue after the Initial Expiry Date on the terms set out in the Franchise Agreement until the time and date specified for this purpose in the Franchise Agreement.
- 1.3 If, during the Continuation Review Period, the Franchisee's performance has been at a level which does not satisfy the criteria specified in paragraphs 1.2(a) and/or 1.2(b), the Secretary of State may, but shall not be obliged to, notify the Franchisee that the Franchise Agreement shall continue in accordance with paragraph 1.2 and upon such notice, the Franchise Agreement shall continue in accordance with paragraph 1.2. If the Secretary of State serves no such notice, the Franchise Agreement shall terminate on the Initial Expiry Date.

Continuation for Additional Seven Reporting Periods

1.4

- (a) The Secretary of State's rights pursuant to this paragraph 1.4 shall apply regardless of whenever the Franchise Agreement is scheduled to terminate.
- (b) If the Secretary of State gives notice to the Franchisee not less than three months before the Initial Expiry Date or, if the Franchise Agreement is continued beyond the Initial Expiry Date in accordance with paragraph 1.2 or 1.3, not less than three months before the date on which the Franchise Agreement is due to expire following such continuation, the Franchise Agreement shall continue after such date on the terms set out in the Franchise Agreement for not less than one and not more than seven Reporting Periods, as the Secretary of State may stipulate.

Key Contracts

- 1.5 The Franchisee shall enter into any and all Key Contracts which are necessary for the Franchise Agreement to continue or be extended in accordance with this Schedule 18.

SCHEDULE 19

Other Provisions

1. Variations to the Franchise Agreement

1.1 The terms of the Franchise Agreement may be varied as follows but not otherwise:

(a) by the Secretary of State as contemplated (where relevant) in the Invitation to Tender, in relation to:

- (i) any aspect of the Franchise Services; and/or
- (ii) any provision of the Franchise Agreement other than those provisions specified in paragraph 1.2,

by service of a notice on the Franchisee referring to this paragraph 1.1(a) and setting out the variation to the terms of the Franchise Agreement; and

(b) in relation to any other provision of the Franchise Agreement, by agreement in writing between the parties to that effect,

(each a **Variation**).

1.2 Without prejudice to the Secretary of State's rights under paragraph 1.1(a), the terms of each of:

- (a) clause 3 (Term) of the Franchise Agreement;
- (b) Schedules 8 (Payments), 9 (Changes), 10 (Remedies and Termination), 12 (Financial Obligations and Covenants), 14 (Preservation of Assets), 18 (Franchise Continuation Criteria) and this Schedule 19; and
- (c) the definitions set out at clause 3.1 of these Terms insofar as such affect the respective rights and obligations of the Secretary of State and the Franchisee pursuant to the provisions referred to at (a) and (b) above

shall not be varied at any time other than in accordance with the terms of the Franchise Agreement or with the agreement of the parties.

- 1.3 The Secretary of State shall, to the extent reasonably practicable, allow the Franchisee a reasonable opportunity to make representations to the Secretary of State concerning any Variation to be made in accordance with paragraph 1.1(a), prior to making any such Variation.
- 1.4 The Secretary of State may:
- (a) issue, revise and withdraw from time to time procedures that he 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 Secretary of State 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 one or more Changes that the Secretary of State 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 Secretary of State 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 the Franchise 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 Variation proposed by the Franchisee in terms of the Revised Inputs that the Franchisee considers the Variation would require.

1.8 The Secretary of State shall be under no obligation to consider a Variation proposed by the Franchisee but if he wishes to do so, he 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 Secretary of State may not proceed with the Protected Proposal or seek to implement the substance of it by proposing a Variation of his own without complying with the provisions of paragraph 7.3 of Schedule 9.3 (Runs of the Financial Model).

2. **Capital Expenditure**

Capital Expenditure Threshold

2.1 The Franchisee shall notify the Secretary of State 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 one per cent. of its annual Turnover as disclosed by its latest available Annual Audited Accounts and, when so notified, the Secretary of State 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 Secretary of State 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 Secretary of State with all information the Secretary of State 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 Secretary of State letters from lenders and financiers it has approached for finance stating their reasons for refusing to provide it and if the Secretary of State so requires, arrange and attend meetings with them for the Secretary of State to discuss those reasons; and
- (d) if funding is not available, or is not available on terms that the Secretary of State considers to be commercial terms or at rates which are consistent with market conditions at that time the Secretary of State 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 Secretary of State under the Franchise Agreement are cumulative, may be exercised as often as he considers appropriate and are in addition to his rights under the general Law. The exercise of such rights shall not limit the Secretary of State's right to make payment adjustments, claim damages in respect of contraventions of the Franchise Agreement or pursue any available remedies under general Law.

4. Disputes

Disputes under the Franchise Agreement

- 4.1 Wherever the Franchise Agreement provides that the Secretary of State may reasonably determine any matter, the Franchisee may, unless the Franchise Agreement expressly provides otherwise, dispute whether a determination made by the Secretary of State is reasonable, but the Secretary of State's determination shall prevail unless and until it is agreed or found to have been unreasonable.
- 4.2 Where either party is entitled, pursuant to the terms of the Franchise Agreement, to refer a dispute arising out of or in connection with the Franchise Agreement for resolution or determination in accordance with the Dispute Resolution Rules, then such dispute shall, unless the parties otherwise agree and subject to any duty of the Secretary of State 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 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 Secretary of State and the Franchisee 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 Secretary of State 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 the Franchise 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 notification 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 notification 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 Secretary of State may reasonably request from time to time.

5. Notices

Notices

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 the Franchise 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 specified in the Franchise Agreement, or to such other

address in the United Kingdom as each party may specify by notice in writing to the other party.

- (b) Any other notice, notification or other communication under or in connection with the Franchise 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 or the Franchise Manager 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, three 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 Secretary of State assign, hold in trust for any other person, or grant a Security Interest in or over, the Franchise 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

The Secretary of State may set off against any amounts payable by him under the Franchise Agreement:

- (a) any outstanding amounts or liabilities payable or due to him under the Franchise Agreement;
- (b) any other amount payable to or due to the Secretary of State under or in relation to the Franchise Agreement; and
- (c) any monetary penalty payable under the Act.

8. Miscellaneous Provisions

Waivers

8.1

- (a) Either party may at any time waive any obligation of the other party under the Franchise Agreement and the obligations of the parties hereunder shall be construed accordingly.
- (b) No waiver by either party of any default by the other party in the performance of such party's obligations under the Franchise 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 the Franchise 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 the Franchise 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 the Franchise 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 the Franchise 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 the Franchise Agreement but the legality, validity and enforceability of the remainder of the Franchise 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 the Franchise Agreement.

Rights of Third Parties

8.5

- (a) A person who is not a party to the Franchise Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Franchise Agreement except to the extent set out in this paragraph 8.5.
- (b) Any Successor Operator or potential Successor Operator nominated by the Secretary of State 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) The Franchise Agreement may be terminated, and any term may be amended or waived, in each case in accordance with the terms of the Franchise 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 Secretary of State (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 one 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 Secretary of State unless otherwise agreed).

Secretary of State's Consent or Approval

- 8.6 Where any provision of the Franchise Agreement provides for any matter to be subject to the consent or approval of the Secretary of State, 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 Secretary of State shall be entitled to give that consent or approval subject to any condition or conditions as he considers appropriate, which may include the adjustment of any of the terms of the Franchise Agreement.

9. Enforcement Costs

The Franchisee shall compensate the Secretary of State for all reasonable costs incurred by the Secretary of State as a result of the Franchisee failing to perform its obligations under the Franchise Agreement in accordance with their terms in the exercise of the Secretary of State'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 Secretary of State may, by reasonable notice to the Franchisee and the Franchisee may by reasonable notice to the Secretary of State, elect that all payment obligations arising under the Franchise 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. 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 the Franchise Agreement with any person is on bona fide arm's length terms.

12. Compliance with Laws

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

13. Governing Law

The Franchise 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 the Franchise Agreement, except as expressly set out in the Franchise Agreement.

DEROGATION PAGE

^{i i} By virtue of a derogation the Secretary of State has granted the Franchise Operator the following; a derogation for Southern to have a derogation against Timetable Publications due to Network Rail experiencing problems with their new IT systems, this is affecting the delivery of information to TOCs which is impacting on their ability to publication deadlines.

Start Date 25/4/2010 End Date 23/5/2010

ⁱⁱ By virtue of a derogation the Secretary of State for Transport has granted the Franchise Operator the following; against Schedule 5.5 Clause 1.1(a) to accommodate the 7 day Travelcard covering "2-zone not zone 1" Travelcard season flows in your commuter basket. Transport for London has proposed to increase this fare by 14.5% to £19.00, the proposed increases breach the regulation of individual fares within fares basket set out in Schedule 5.7. This applies from 2 January 2010 and does not affect any other obligations or conditions contained in the franchise agreement.

For the avoidance of doubt Southern must continue to meet the overall RPI +1% limit on the aggregate increase in each Fare Basket, inclusive of the revised prices for these flows.

Start Date 02/01/2010 End Date 01/01/2011

ⁱⁱⁱ By virtue of a derogation the Secretary of State has granted the Franchise Operator the following; The Secretary of State has granted the Franchise Operator a derogation against Clause 2.2 of Schedule 5.5 of the Terms, Regulation of Individual Fares. A number of Oyster fares administered by ATOC and fares administered by other Train Operating Companies which feature within fares baskets set out in Schedule 5 of the Franchise Agreement, breach the requirements of fares regulation from 2 January 2011 to 1 January 2012. For the avoidance of doubt the Franchise Operator must continue to meet the overall limit on the aggregate increase in each fares basket.

Start Date 02/01/2011 End Date 01/01/2012

| Origin NLC | Origin Description | Dest NLC | Destination Description | Route Code | Ticket Type | Status | Current Fare | Jan 2011 Fare | Change |
|--------------|-------------------------------|--------------|----------------------------------|------------|-------------------------|----------------|------------------|-------------------|----------------|
| 1548 1072 | ST ALBANS LONDON TERMINALS | 0449 5024 | CROYDON STNS RYE SUSSEX | 0 130 | SINGLE 7DS | Adult Adult | £11.50 £97.50 | £12.50 £108.20 | 8.7% 10.97% |
| 5177 5685 | RAINHAM KENT WOKING | 0449 1072 | CROYDON STNS LONDON TERMINALS | 0 0 | DAY RETURN SINGLE | Adult Adult | £33.40 £8.70 | £36.50 £9.40 | 9.28% 8.05% |

^{iv} By virtue of a derogation the Secretary of State has granted the Franchise Operator the following; The Secretary of State has granted the Franchise Operator a derogation against Clause 2.2 of Schedule 5.5 of the Terms, Regulation of Individual Fares. A number of Oyster fares administered by ATOC and fares administered by other Train Operating Companies which feature within fares baskets set out in Schedule 5 of the Franchise Agreement, breach the requirements of fares regulation from 2 January 2012 to 1 January 2013. For the avoidance of doubt the Franchise Operator must continue to meet the overall limit on the aggregate increase in each fares basket.

Start Date 02/01/2012 End Date 01/01/2013

| Origin NLC | Origin Description | Dest NLC | Destination Description | Route Code | Ticket Type | Status | Current Fare | Jan 2012 Fare | Change |
|------------|--------------------|----------|-------------------------|------------|-------------|--------|--------------|---------------|--------|
|------------|--------------------|----------|-------------------------|------------|-------------|--------|--------------|---------------|--------|

| | | | | | | | | | |
|------|-------------|------|--------------|---|---------------------|-------|-------|-------|-------|
| 5433 | SANDERSTEAD | 5355 | EAST CROYDON | 0 | PAYG PEAK SINGLE | Adult | £1.90 | £2.10 | 10.5% |
| 5434 | SELHURST | 449 | CROYDON STNS | 0 | PAYG PEAK SINGLE | Adult | £1.90 | £2.10 | 10.5% |
| 5434 | SELHURST | 5399 | BALHAM | 0 | PAYG PEAK SINGLE | Adult | £1.90 | £2.10 | 10.5% |
| 5434 | SELHURST | 5428 | NORBURY | 0 | PAYG PEAK SINGLE | Adult | £1.90 | £2.10 | 10.5% |

^ By virtue of a derogation the Secretary of State has granted the Franchise Operator the following;

A one week extension for the Fares Setting Round for January 2011(NFM 08) to provide the Secretary of state with written confirmation from the Statutory Director that the Franchisee has complied with it's obligations under Schedule 5.

Start date: 12/11/10 End date: 19/11/10

Start Date : 12/11/2010 End Date: 19/11/2010