

Dated _____ **2002**

(1) THE STRATEGIC RAIL AUTHORITY
and
(2) M40 TRAINS LIMITED
and
(3) THE CHILTERN RAILWAY COMPANY LIMITED

FRANCHISE AGREEMENT

relating to the services for the carriage of
passengers by railway to be provided by
THE CHILTERN RAILWAY COMPANY LIMITED

Strategic Rail Authority
55 Victoria Street
London SW1H 0EU

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This Franchise Agreement is made the _____ day of _____ 2002 between:

- (1) **M40 Trains Limited whose registered number is 3005018 and registered office is at Great Central House, Marylebone Station, Melcombe Place, London, NW1 6JJ (the "Franchisee");**¹
- and
- (2) **The Chiltern Railway Company Limited whose registered number is 3007939 and registered office is at Great Central House, Marylebone Station, Melcombe Place, London, NW1 6JJ (the "Franchise Operator").**²
- (3) **The Chiltern Railway Company Limited** whose registered number is 3007939 and registered office is at 133 Page Street, London NW7 2ER (the "Franchise Operator").

Whereas:

- (A) The Franchisee made a proposal on 5 May 2000 to the Authority to replace the franchise relating to certain services for the carriage of passengers by railway which are currently operated by the Franchise Operator.
- (B) Pursuant to section 23(1) of the Railways Act 1993 the Authority designated on 5 February 2002 such services as eligible for provision under franchise agreements.
- (C) The Secretary of State issued a direction under section 26(1) of the Act on 9 August 2000 that the Franchisee who is to be the franchisee under the franchise agreement relating to such services did not need to be selected from among those who submit tenders in response to an invitation to tender.
- (D) The Franchise Operator is a wholly-owned subsidiary of the Franchisee.
- (E) The parties have agreed terms on which the Franchise Operator will provide such services and wish to record their agreement.

Now therefore it is hereby agreed as follows:

Part I — Preliminary

1 Definitions and Interpretation

1.1 Definitions

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

"Access Agreement"	has the meaning ascribed to the term "access agreement" in section 83(1) of the Act.
³"Acceptance Date"	<i>has the meaning ascribed to it in the Co-ordination Agreement;</i>
"Acquired Fixed Assets"	has the meaning ascribed to that term in the Funder's Direct Agreement.
"Acquired Leased Assets"	has the meaning ascribed to that term in the Funder's

¹ Date of Change 13/09/2010

² Date of Change 13/09/2010

³ Date of new Insertion DOA 2004

Direct Agreement.

“Act”

means the Railways Act 1993 (as modified, amended or replaced by the Transport Act 2000) and any regulations or orders made under it.

“Actionable National Passenger Survey”

has the meaning given in Clause 8.4(a)

“Actual Capacity”

means:

- (i) in relation to any train for which the capacity is specified in the Train Plan, the number of seats in Standard Class Accommodation (together with the amount of standing capacity where applicable as determined in accordance with the Rolling Stock Capacities) which is or are provided on any relevant train in accordance with the Train Plan at each relevant Capacity Monitoring Point (and not exceeding the Planned Capacity of any such train at such Capacity Monitoring Point) provided that, if the relevant Planned Capacity for such train is included in the Train Plan pursuant to Clause 5.1(a)(i) and not Clause 5.1(a)(ii) and such train fails to pass any relevant Capacity Monitoring Point, the Actual Capacity of such train at such Capacity Monitoring Point shall be deemed to be its Planned Capacity; and
- (ii) in relation to any train which is one of a group of trains in relation to which the Train Plan specifies an aggregate capacity, the aggregate of the number of seats in Standard Class Accommodation (together with the amount of standing capacity where applicable as determined in accordance with the Rolling Stock Capacities) which is or are provided on all of the trains in such group in accordance with the Train Plan at each relevant Capacity Monitoring Point (and not exceeding the Planned Capacity in respect of all of such trains at such Capacity Monitoring Point) provided that, if the relevant Planned Capacity for such group of trains is included in the Train Plan pursuant to Clause 5.1(a)(i) and not Clause 5.1(a)(ii) and any train in such group fails to pass any relevant Capacity Monitoring Point, the number of seats in Standard Class Accommodation (together with the amount of standing capacity where applicable as determined in accordance with the Rolling Stock Capacities) provided in relation to such train at such Capacity Monitoring Point shall be deemed to be as provided for that train in the diagram underlying the Train Plan.

“Actuary”	has the meaning ascribed to that term in the Pension Trust.
⁴Actual Opening Date	<i>means the Required Opening Date or (if later) the date upon which the Franchise Operator holds a Safety Certificate and Licence in respect of the facilities then comprising Aylesbury Vale Parkway station such that they may be legally operated by the Franchise Operator as a railway station;</i>
⁵“Additional O & M Charge”	<i>has the meaning ascribed to it in the Fourth Supplemental;</i>
“Additional Service Commitment” and “ASC”	means the quantity and quality of, and other specifications and requirements for, the Passenger Services contained in Part 6 of Schedule 3, as the same may be varied in accordance with the terms of this Franchise Agreement.
“Adjustment Payment”	means a payment either by the Authority to the Franchise Operator or by the Franchise Operator to the Authority, as the case may be, which is determined in accordance with paragraph 3 of Part 2 of Schedule 6.
“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.
“Agreed Capacity Plan”	<p>means (where applicable):</p> <ul style="list-style-type: none">(a) the railway passenger services and capacity to be included in the Timetable and Train Plan of the Franchise Operator pursuant to Clause 6.5(c) or an Implementation Plan under Clause 6.7 or as may be otherwise agreed between the Authority and the Franchise Operator; or(b) in respect of the period from the Franchise Commencement Date to the date a capacity plan is agreed under paragraph (a) following a programme of passenger counts under Clause 6.2, the relevant agreed capacity plan under the Previous Franchise Agreement; <p>in each case, subject to any relevant PSR/ASC Change.</p>
“Amended Timetable”	means, in respect of any particular day, the passenger timetable which reflects the working timetables for the Passenger Services required to be drawn up by Railtrack or LUL in accordance with the Railtrack Track Access Conditions or the LUL Track Access Conditions (as appropriate), as at 2200 on the immediately preceding

⁴ date of change nov 2007

⁵ Date of Change DOA 2004

day, being the Timetable for that particular day, as amended from time to time (including to reflect the following:

- (a) any amendment to the working timetable for the Passenger Services under the applicable Railtrack Rules of the Route or Railtrack Rules of the Plan or the applicable LUL Rules of the Route or LUL Rules of the Plan;
- (b) any amendment to the working timetable for the Passenger Services under Condition H of the Railtrack Track Access Conditions or the LUL Track Access Conditions ; and
- (c) any amendment which is required to the Timetable to reflect the introduction, removal or alteration of a service by the Franchise Operator).

“Ancillary Services”

means the services and activities specified in Part 4 of Schedule 2.

“Annual Business Plan”

means the plan to be prepared under Clause 15.3.

“Annual Franchise Payment”

has the meaning ascribed to that term in Part 1 of Schedule 6.

“Applicable Timetable”

means, in respect of any particular day, the Timetable for such day or, if an Amended Timetable is in effect for such day, the Amended Timetable for such day.

⁶“Asset Purchase Agreement”

has the meaning ascribed to it in the Co-ordination Agreement;

“Average Earnings Index”

means the average earnings index for the whole economy as published from time to time by the Central Statistical Office of the Chancellor of the Exchequer 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 Authority may, after consultation with the Franchise Operator, determine to be appropriate in the circumstances.

⁷“AVP Output Study”

means the Output Study submitted by the Franchise Operator as referred to in recital (C) of this Deed;

“Bank”

means a bank authorised under Part I of the Banking Act 1987 and reasonably acceptable from time to time to the Authority.

“Board”

means the British Railways Board.

“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

⁶ Date of Change DOA 2004

⁷ date of change DOA 2007

Authority otherwise agrees, be a Bank.

“Bond Year”

means the period beginning on the Franchise Commencement Date and ending at the end of the first Reporting Period to end on or around 1 January and any subsequent period of thirteen Reporting Periods beginning on the day after the end of a preceding Bond Year provided that:

- (a) the Franchise Operator and Authority 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 less than thirteen Reporting Periods.

“Brand Licence”

means a licence between the Authority or any company wholly owned by it and the Franchise Operator in respect of any registered or unregistered trade marks, including the licences set out in Part 6 of Schedule 1.

“Breach Threshold”

means:

- (a) in relation to Cancellations, the percentage specified in Part 2A(a) (ii) of Schedule 3 and, in relation to Total Cancellations, the percentage specified in Part 2A(b)(ii) of Schedule 3, in each case of trains which are scheduled to be provided under the Enforcement Timetable in the relevant Reporting Period; and
- (b) in relation to Planned Capacity, the percentage specified in Part 2A(c)(ii) of Schedule 3 of the aggregate of the Planned Capacity of each relevant train in the relevant Reporting Period

as the same may be varied in accordance with the terms of this Agreement.

“Call-in Threshold”

means:

- (a) in relation to Cancellations, the percentage specified in Part 2A(a)(i) of Schedule 3 and, in relation to Total Cancellations, the percentage specified in Part 2A(b)(i) of Schedule 3, in each case of trains which are scheduled to be provided under the Enforcement Timetable in the relevant Reporting Period; and
- (b) in relation to the Planned Capacity, the percentage specified in Part 2A(c)(i) of Schedule 3 of the aggregate of the Planned Capacity of each relevant train in the relevant Reporting Period

as the same may be varied in accordance with the terms

	of this Agreement.
“Cancellation”	means a Total Cancellation or an Other Cancellation.
“Capacity Change”	means a Capacity Increase or Capacity Reduction.
“Capacity Increase”	means an increase in the capacity required to be provided pursuant to an Implementation Plan from that required to be provided under the Agreed Capacity Plan immediately preceding such Implementation Plan.
“Capacity Monitoring Points”	means such points as the Authority may reasonably determine from time to time for the monitoring or measuring of the provision of capacity under this Franchise Agreement by the Franchise Operator, being on the Franchise Commencement Date the points, if any, specified in Part 2A(d) of Schedule 3 and references to a relevant Capacity Monitoring Point are references to a Capacity Monitoring Point which a train is scheduled to pass under the Timetable.
“Capacity Reduction”	means a reduction in the capacity required to be provided pursuant to an Implementation Plan from that required to be provided under the Agreed Capacity Plan immediately preceding such Implementation Plan.
“Certificate of Commencement”	means the certificate to be issued by the Authority pursuant to Clause 2.2.
“Change”	means a PSR/ASC Change or a Capacity Change or an Other Demand Management Action
“Change Certificate”	<p>means a certificate issued by the Authority under Clause 6.7(b) or Clause 11.5(b) which states:</p> <ul style="list-style-type: none">(a) the relevant Change;(b) the date of issue of the certificate; and(c) the adjustments, if any, to be made to the provisions of this Franchise Agreement in respect of the relevant Change in accordance with the relevant Implementation Plan and Part 1 of Schedule 9.
“Change of Law”	<p>means the coming into effect after the date of this Franchise Agreement of:</p> <ul style="list-style-type: none">(a) Legislation; or(b) any applicable judgement of a relevant court of law which changes a binding precedent <p>the relevant 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:-</p>

- (c) excluding any changes in Taxation;
- (d) excluding any which were foreseeable at the date of this Franchise Agreement (and for this purpose, but without limitation, there shall be regarded as foreseeable any Legislation which on the date of this Franchise Agreement has been published:
 - (i) in a draft Bill as part of a Government Departmental Consultation Paper;
 - (ii) in a Bill;
 - (iii) in a draft statutory instrument; or
 - (iv) 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). For the avoidance of doubt, in relation to the application of this sub-paragraph (d), each TSI shall be considered separately.

Change of Law includes any Legislation or applicable judgment of a relevant court of law which changes a binding precedent, 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 (d) (each a "Specifically Included Change of Law"); but excludes any (other than a Specifically Included Change of Law) Legislation or applicable judgment of a relevant court of law which changes a binding precedent, which is made with the intention or effect of specifically applying to (or disapplying from) the railway industry, any other Legislation which does not apply only to the railway industry.

“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; or
- (b) which does not conform to the pattern of railway passenger services normally provided by the Franchise Operator; or
- (c) for which the advance booking or booking arrangements for seats on the relevant service are materially different from those generally applicable to the railway passenger services normally provided by the Franchise Operator; or

- (d) for which tickets are available on a restricted basis or on terms and conditions materially different from those generally applicable to comparable railway passenger services provided by the Franchise Operator; or
- (e) for which the departure time, journey time and calling pattern are materially different from those of comparable railway passenger services provided by the Franchise Operator

and which, in the opinion of the Authority, is not a railway passenger service provided by the Franchise Operator as part of its regular scheduled service.

“Child Price”

means, in relation to any Fare, the amount charged or chargeable (including any applicable Value Added Tax) to a person under the age of 16 in respect of such Fare.

“Closure”

means a closure under Part I of the Act 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 Depots or of any part of such network or Depot or Station.

“Collateral Agreement”

means an agreement which is required to be entered into by the Franchise Operator with Railtrack, LUL, or any other Facility Owner as a condition of any Access Agreement of which the Franchise Operator may be the beneficiary.

⁸ “Compensation on Termination”

has the meaning ascribed to it in the Co-ordination Agreement;

“Co ordination Agreement”

means the agreement dated on or about 16th December 2004 entered into between, inter alia, Laing Rail Project Evergreen Limited, the Authority, Network Rail Infrastructure Limited, Laing Rail Limited, the Franchisee, the Franchise Operator and the Enhancement Contractor;

“Connection”

means a connection (however described) between any of the Passenger Services provided by the Franchise Operator and any other railway passenger service provided by it or any other passenger train operator or any bus, ferry or shipping service.

“Committed Outputs Business Plan”

has the meaning ascribed to such term in the definition of Long-Term Business Plan in Schedule 14.

“Control”

means, in respect of a person by another, that that other (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):

⁸ Date of Change DOA 2004

- (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; or
- (b) controls or has the power to control the affairs and policies of that person or of any other person which Controls that person; or
- (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; or
 - (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 in fact 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

and, for these purposes, there shall be attributed to any person the rights or powers of any nominee of his and the rights and powers of any one or more persons which he, or he and associates of his, Controls and of any one or more associates of his (and for these purposes an associate of a person shall mean a relative of his (as defined in section 417(4) of the Income and Corporation Taxes Act 1988), a partner of his or a trustee of a settlement (as defined in section 681(4) of the Income and Corporation Taxes Act 1988) of which he is a beneficiary) and cognate expressions of Control shall be construed accordingly.

“Creating”

has the meaning ascribed to that term in the Ticketing and Settlement Agreement and cognate expressions shall be construed accordingly.

“Customer Satisfaction Target”

has the meaning ascribed to such term in Schedule 15.

“Default Threshold”

means:

- (a) in relation to Cancellations, the percentage specified in Part 2A(a)(iii) of Schedule 3 and, in relation to Total Cancellations, the percentage specified in Part 2A(b)(iii) of Schedule 3, in each case of trains which are scheduled to be provided under the Enforcement Timetable in the relevant Reporting Period; and
- (b) in relation to Planned Capacity, the percentage specified in Part 2A(c)(iii) of Schedule 3 of the aggregate of the Planned Capacity of each relevant train in the relevant Reporting Period

as the same may be varied in accordance with the terms of this Franchise Agreement.

“Depot”

means a light maintenance depot listed in Part 3 of Schedule 2.

“Depot Lease”

means a Property Lease set out in Part 4(b) of Schedule 1 and such other Property Leases in respect of Depots as the Franchise Operator may enter into from time to time.

“Designated Employer”

has the meaning ascribed to that term in the Pension Trust.

“Designated Spares Contract”

means any contract or arrangement to which the Franchise Operator may be a party which includes the supply to the Franchise Operator of any parts and components of rolling stock (including Spares) which are available for the purpose of carrying out any maintenance on rolling stock, except to the extent that the Authority may have otherwise determined, in accordance with the procedure in Clause 33.3, that the contract or arrangement is not at that time a Designated Spares Contract.

“Direct Agreement”

means any agreement made, or to be made, from time to time between the Authority and the counterparty of a Key Contract in relation to such Key Contract, including any such agreement as may be entered into by the Authority under Clause 27.1.

“Discount Card”

has the meaning ascribed to that term in the Ticketing and Settlement Agreement.

“Discount Fare Scheme”

means:

- (a) a discount fare scheme set out in Part 3(b) of Schedule 1; or
- (b) any other discount fare scheme approved from time to time for the purposes of section 28 of the Act by the Authority

in each case until such time as it may cease to be approved by the Authority 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.
- “Eligible Person”** has the meaning ascribed to that term in the Funder’s Direct Agreement.
- “Endemic Fault”** means a defect in the design, construction or materials used in the manufacture or modification of rolling stock which is used in the provision of the Passenger Services which:
- (a) renders such rolling stock either unfit for such use or incapable of meeting the performance specifications for such rolling stock;
 - (b) is not a defect which was known, or ought reasonably to have been known, by the person by whom the rolling stock was first accepted for delivery at the time the relevant rolling stock was first accepted for delivery by that person following any such manufacture or modification or was known, or ought reasonably to have been known by any person who subsequently accepts such rolling stock for delivery;
 - (c) has not been caused by accidental damage to such rolling stock or as a result of the failure by the Franchise Operator to comply with its obligations under any relevant Rolling Stock Lease or any programme for the maintenance of such rolling stock;
 - (d) is not scheduled to be corrected under the terms of, or in the course of, any heavy or running maintenance programme for such rolling stock; and
 - (e) affects in the same manner at least 10 per cent. Of any rolling stock of the same class which is operated by any Train Operator

Provided always that the inclusion of any matter within the definition of “Accepted Fault” or the equivalent thereof for the purposes of any Rolling Stock Lease shall not of itself mean for the purpose of this definition that there is a defect in the design, construction or materials used in the

manufacture or modification of the relevant rolling stock.

⁹ **"Enhancement Agreement"** *has the meaning ascribed to it in the Co-ordination Agreement;*

¹⁰ **"Enhancement Contractor"** *has the meaning ascribed to it in the Co-ordination Agreement;*

"Enforcement Timetable" means the Applicable Timetable excluding, where the Applicable Timetable is an Amended Timetable, any amendment to the Timetable to reflect the introduction, removal or alteration of a service:

- (a) by the Franchise Operator; or
- (b) with the agreement of the Franchise Operator in breach of its obligations under Clause 5.2 of this Agreement.

"Evening Peak" has, if applicable, the meaning ascribed to that term in Part 1 of Schedule 3.

"Event of Default" means any of the events described as such in Clause 21.

¹¹ **"FGW Franchisee"** *means First Greater Western Limited a company registered in England and Wales whose registered number is 05113733 and whose registered address is Milford House, 1 Milford Street, Swindon Wiltshire SN1 1HL and any successor operator (directly or indirectly) of all or any part of the franchise services operated by First Greater Western Limited.*

"Facility Agreement" means an agreement entered into between the Franchisee, the Franchise Operator and the Royal Bank of Scotland Plc whereby certain credit facilities are to be made available to the Franchisee and the Franchise Operator to provide funds for the financing and/or refinancing the construction of certain Franchise Assets.

¹² **"Facility Charge"** *has the meaning ascribed to it in the Fourth Supplemental;*

"Facility Owner" has the meaning ascribed to the term "facility owner" in section 17(6) of the Act.

"Fare" means the right, exercisable against one or more passenger 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

⁹ Date of Change DOA 2004

¹⁰ Date of Change DOA 2004

¹¹ Date of Change 06/01/2010

¹² Date of Change DOA 2004

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.

“Fare Year”	means the period from 1 January in any year to 31 December in the same year.
“Feasibility Study”	means a feasibility study prepared in relation to a Change by or on behalf of the Franchise Operator or the Authority, as provided for under this Franchise Agreement, which study shall be subject to the provisions of Part 1 of Schedule 9.
“Financial Year”	means the period from 1 April in any year to 31 March in the following year.
“Fixed Franchise Payment”	has the meaning ascribed to that term in Part 1 of Schedule 6.
¹³ “Fourth Supplemental”	<i>means the Fourth Supplemental SG Agreement to the Track Access Agreement of the Franchise Operator on or about 16th December 2004;</i>
“Force Majeure Event”	means any of the events described as such in Clause 5.4I.
“Forecast Demand”	means, where applicable, the number of passengers reasonably expected to travel in Standard Class Accommodation on the Passenger Services provided by the Franchise Operator for the remainder of the Franchise Term, having regard to the level of demand for the Passenger Services at the relevant time (the relevant time being, for this purpose, the time at which the Forecast Demand is being, or is due to be, forecast following the relevant passenger counts under this Franchise Agreement) and any information available as to the likely future level of demand, including such information as the Authority may indicate to the Franchise Operator from time to time.
“Forecast Period”	has the meaning ascribed to that term under Clause 6.6(a)(i).
“Franchise Agreement”	means this agreement, as amended from time to time, whether by the addition of the Franchise Operator as a party or otherwise.
“Franchise Assets”	means the property, rights and liabilities designated as such pursuant to Clause 32.1 but excluding such property, rights or liabilities as may, in accordance with the terms of, or by an amendment made to, this

¹³ Date of Change DOA 2004

	Franchise Agreement, cease to be so designated.
“Franchise Commencement Date”	means the date and, where relevant, the time of issue of the Certificate of Commencement.
“Franchise Default Milestone”	means any event designated as such under an Output Plan under Schedule 14.
“Franchise Employees”	means (i) the employees of the Franchise Operator from time to time and (ii) 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 transferred as described above.
“Franchise Operator Year”	means any period of 12 months during the Franchise Period beginning on 1 January in any year, subject to amendment in accordance with Clause 15.13, except that the first and last such periods may be for a period of less than 12 months and the first such period shall begin on the Franchise Commencement Date and end on 31 December and the last such period shall end on the date of expiry of the Franchise Period.
“Franchise Payment”	means a payment either by the Authority to the Franchise Operator or by the Franchise Operator to the Authority, as the case may be, which is determined, subject to adjustment in accordance with the other terms of this Franchise Agreement, in accordance with paragraph 1 of Part 2 of Schedule 6.
“Franchise Period”	means the period commencing on the Franchise Commencement Date and ending on the date of expiry of the Franchise Term or, if earlier, the date of termination of this Franchise Agreement pursuant to Clause 22 or Part 4 of Schedule 14.
“Franchise Plan”	means the Franchisee’s plan for improvement and investment in the Franchise Services, as set out in Schedule 13 (as amended from time to time).
“Franchise Section”	has the meaning ascribed to it in Clause 13.1.
“Franchise Services”	means such of the Passenger Services, the Light Maintenance Services, the Station Services and the Ancillary Services as the Franchise Operator may provide or operate from time to time, including such of such services as the Franchise Operator may delegate or subcontract or otherwise secure through any other

	person from time to time under this Franchise Agreement.
“Franchise Term”	means the period commencing on the Franchise Commencement Date and expiring in accordance with Clause 20.
“Funder’s Direct Agreement”	means the Direct Agreement entered into between the Authority, the Franchise Operator, the Franchisee and the Royal Bank of Scotland Plc under which the parties have, inter alia, agreed certain provisions in relation to payments to be made in respect of certain Franchise Assets whose construction was financed or refinanced pursuant to the Credit Agreement.
“GAAP”	means the normal accounting requirements for companies in the United Kingdom, including the statements of standard accounting practice and financial reporting standards of the Accounting Standards Board.
“Implementation Agreement”	means an agreement entered into between Railtrack, the Franchisee, the Franchise Operator and the Authority pursuant to which Railtrack will procure the carrying out of certain works on the network including the addition of a second running line between Bicester North and Aynho Junction.
“Implementation Agreement Direct Agreement”	means an agreement entered into between Railtrack and the Authority under which the Authority and Railtrack have, inter alia, agreed certain provisions in respect of a breach of the Implementation Agreement by the Franchise Operator.
“Implementation Plan”	means in relation to any Change, the plan for the implementation of such Change, which plan shall be subject to, and determined in accordance with, the provisions of Part 2 of Schedule 9.
“Incentive Payment”	means a payment to be made subject to and in accordance with the provisions of Clause 17 and Schedule 7 either by the Authority to the Franchise Operator or by the Franchise Operator to the Authority, as the case may be.
¹⁴“Incremental Access Charge”	<i>has the meaning ascribed to it in the Fourth Supplemental;</i>

¹⁴ Date of Change DOA 2004

“Incremental Output Statement”

means any project included as part of a programme of incremental outputs issued from time to time by the Authority, as amended and updated from time to time and, for the purposes of this Franchise Agreement, as defined in the project output requirements issued by the Authority, as amended and updated from time to time, in respect of each such output (and such other statements as the Authority may issue from time to time in respect of incremental improvements to the network and which it may designate as an Incremental Output Statement for the purposes of this Franchise Agreement).

¹⁵ **“Incremental O&M Charge”** *has the meaning ascribed to it in the Fourth Supplemental;*

“Initial Number of Vehicles”

means the number of vehicles specified in Part 5 of Schedule 3, as the same may be varied in accordance with the terms of this Franchise Agreement.

“Intellectual Property”

means all legal and/or equitable interests in registered or unregistered trade marks, patents, registered and unregistered designs, applications for any of the foregoing, trading names, get-up, copyrights (including computer software), topographies of semi-conductor products, inventions, confidential information and any other similar intellectual property.

“Inter-Operator Schemes”

means:

- (a) the schemes, agreements and/or contracts set out in Part 3(a) of Schedule 1 which have been approved by the Authority and which relate to arrangements between the Franchise Operator and other participants in the railway industry for the provision of railway services;
- (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.

“Interest Rate”

means a rate equivalent to 2 per cent. per annum above the base lending rate published by National Westminster Bank Plc (or such other bank as the Authority may, after consultation with the Franchise Operator, determine from time to time) during any period in which an amount payable under this Franchise Agreement remains unpaid.

“Key Contract”

means:

¹⁵ Date of Change DOA 2004

- (a) the agreements and contracts listed in Part 3 of Schedule 11 as at the date of this Franchise Agreement; and
- (b) any other agreement, contract, licence or other arrangement (whether in written, oral or other form) to which the Franchise Operator may be party or under which the Franchise Operator may be the beneficiary from time to time which is designated as such pursuant to Clause 27.3

excepting any such agreement, contract, licence or other arrangement as may, in accordance with the terms of, or by an amendment to, this Franchise Agreement, cease to be designated as a Key Contract.

“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 and the Transport Act).

“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, but excluding:

- (a) any order under Section 1 of the Transport and Works Act 1992;
- (b) any objectives, instructions, directions or guidance given from time to time to the Authority.

“Licences”

means such licences granted under section 8 of the Act as the Franchise Operator may be required from time to time to hold under the Act in order to provide or operate the Franchise Services.

“Light Maintenance Services”

means the services at the Depots and Stations specified in Part 3 of Schedule 2.

“Load Factor Specifications”

means the load factor and other specifications, if any, for the Passenger Services which are set out in Part 3 of Schedule 3, as the same may be varied in accordance with the terms of this Franchise Agreement.

“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 the Greater London Authority 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 Authority from time to time.

“Local Authority Schemes”

means:

- (a) any concessionary travel schemes described in Part 7(a) of Schedule 1 and any other concessionary travel schemes in which the Franchise Operator shall participate pursuant to Clause 9.4(a); and
- (b) any multi-modal schemes described in Part 7(b) of Schedule 1 and any other multi-modal schemes in which the Franchise Operator shall participate pursuant to Clause 9.5(a).

“Long Stop Date”

means two months after the execution of the Franchise Agreement or such other date as is agreed between the Franchisee and the Authority.

“Long-Term Business Plan”

has the meaning assigned to it in Schedule 14.

¹⁶“LRPE Agreed Liability Cap”

has the meaning ascribed to it in the Co-ordination Agreement;

“LUL”

means London Underground Limited, a company limited by shares with registered number 1900907 and having its registered office at 55 Broadway, London SW1H 0BD.

“LUL Agreements”

means any LUL Track Agreement or any LUL Station Agreement.

“LUL Initial Flexing Rights”

means the Flexing Rights of LUL to the extent they entitle

¹⁶ Date of Change DOA 2004

LUL to vary a bid of the Franchise Operator for train slots in any way within and consistent with:-

- (a) subject to paragraph (b), the Franchise Operator's Firm Contractual Rights on the date of signature of this Franchise Agreement; or
- (b) any new or amended Track Agreement in respect of which the Authority's consent or approval is required and has been requested by the Franchise Operator and given pursuant to Clause 12.3 and/or 12.7 of this Franchise Agreement.

For the purposes of this definition, Flexing Rights and Firm Contractual Rights have the meaning assigned to those terms in Part D of the LUL Track Access Conditions.

“LUL Network Change”	has the meaning assigned to the term in the LUL Track Access Conditions.
“LUL Rules of the Plan”	has the meaning assigned to that term in the LUL Track Access Conditions.
“LUL Rules of the Route”	has the meaning assigned to that term in the LUL Track Access Conditions.
“LUL Station Agreement”	means any agreement(s) between LUL and the Franchise Operator which permits the Franchise Operator to use any station in respect of which LUL is the facility owner.
“LUL Track Access Conditions”	means the London Underground Track Access Conditions 1995 (as subsequently replaced or amended from time to time) which, as at the date of signature of this Franchise Agreement, are set out in Schedule 10 to the LUL Track Agreement.
“LUL Track Agreement”	means any agreement(s) between LUL and the Franchise Operator which permits the Franchise Operator to provide the Passenger Services or part of them on track owned by LUL between Amersham and Harrow-on-the-Hill, being, on the date of signature of this Franchise Agreement, the agreement specified in Part 2A(a) of Schedule 1.
“LUL Working Timetable”	means, in relation to the period between any two Passenger Change Dates, the working timetable in respect of the Passenger Services or part of them for such period as notified by LUL to the Franchise Operator under the LUL Track Access Conditions in advance of such period (being, on the date of this Franchise Agreement, under Condition D2.5.2 of the LUL Track Access Conditions).
“Maintenance Contract”	means any contract or arrangement to which the Franchise Operator may be a party which includes the carrying out for the Franchise Operator of any

maintenance work (including light maintenance services) or service provision in respect of rolling stock used by the Franchise Operator in the provision of the Passenger Services or for the enforcement of warranties or other rights against a manufacturer in respect of any rolling stock.

“Major Project”

has the meaning ascribed to that term in Clause 12.14.

“Mandatory Modification”

means a modification or addition to rolling stock which is required to be made under any applicable Law or any directive of Railtrack, any government authority or the Health & Safety Executive.

“Marks”

means such trade marks as the Franchise Operator may apply to any Primary Franchise Assets or other assets used by it under a Key Contract, which are so applied on the expiry of the Franchise Period and are not the subject of a Brand Licence.

“Maximum Capacity Limit”

means (if applicable) the amount of capacity (determined in accordance with the Rolling Stock Capacities) on the relevant Passenger Services in either (1) the Morning Peak or (2) the Evening Peak (whenever the level of passenger demand is greater) that the Franchise Operator considers that it will need to satisfy the Passenger Demand Limit without exceeding the Load Factor Specifications, such capacity being that required for the number of passengers in Standard Class Accommodation specified in Part 4© of Schedule 3, as the same may be varied in accordance with the terms of this Franchise Agreement.

“Morning Peak”

has, if applicable, the meaning ascribed to that term in Part 1 of Schedule 3.

“Net Loss” or “Net Gain”

means the net financial loss or the net financial gain, as the case may be, which it is reasonably considered would be suffered or made by the Franchise Operator (as determined in each case in accordance with, and subject to, Part 1 of Schedule 9 as a result of:

- (a) a Change;
- (b) participation in a Local Authority Scheme;
- (c) the amendment of a Discount Fare Scheme, the introduction of a new Discount Fare Scheme or any Discount Fare Scheme ceasing to be approved by the Authority for the purposes of section 28 of the Act;
- (d) an amendment to an existing Inter-Operator Scheme (as provided in Clause 9.7(a));
- (e) an increase or reduction in the rate of Value Added Tax on the provision of Passenger

Services (as provided in Clause 9.8);

- (f) actions taken under Clause 12.14© in respect of a Major Project (as provided in Clause 12.14 (d));
- (g) a reorganisation of the Franchise Services under Clause 25.3(b);
- (h) an alteration to the obligations of the Franchise Operator under Schedule 5 which is made pursuant to paragraph 25 of Part 2 of Schedule 5;
- (i) a Change of Law;
- (j) certain integrated transport schemes under Clause 12.17(b);
- (k) ¹⁷***changes to the railway passenger services operated or to be operated by any of the FGW Franchisee and/or the West Coast Franchisee as set out in clause 11.7; or***
- (l) ***an alteration to the obligations of the Franchise Operator under the Franchise Plan or any Output Plan in accordance with the terms of such documents***

together with, where applicable, any other adjustment to the terms of this Franchise Agreement which may be made in connection therewith, (each such Change, participation, introduction, cessation, amendment, increase, reduction, project reorganisation, or alteration being a "Variation").

"No Net Loss No Net Gain Regime"

means the regime provided for in Part 1 of Schedule 9.

"NPS" or "National Passenger Survey"

means a customer satisfaction survey to be carried out by or on behalf of the Authority as described in Clause 8.4.

"NPS Benchmarks"

means:

- (a) in relation to the aspects of the Franchise Services contained in the document in the agreed terms marked **"NPS"**, the levels of customer satisfaction set out therein; and
- (b) in relation to any new aspects of the Franchise Services which may be included within the National Passenger Survey from time to time, the level of satisfaction ratings determined in accordance with Clause 8.4(k)

in each case as may be revised from time to time in accordance with Clause 8.4(l).

¹⁷ Date of Change 6/01/2010

“Other Cancellation”	<p>means a train which is scheduled to be provided under the Enforcement Timetable and which:</p> <ul style="list-style-type: none">(a) begins its journey after its scheduled departure point in the Enforcement Timetable or terminates its journey before its scheduled destination point in the Enforcement Timetable; or(b) does not call at any station at which it is scheduled to call in the Enforcement Timetable (or fails to call at a relevant Request Stop Station which it passes but at which a passenger or intending passenger has indicated he wishes to join or leave such train); or(c) arrives at its final destination scheduled in the Enforcement Timetable more than 120 minutes late.
“Other Demand Management Actions”	<p>means actions (other than the actions to provide or facilitate provision of additional or reduced railway passenger services or capacity, however provided) directed at the management or control of demand for the Passenger Services and may include changes to the pricing of Fares for, or the marketing of, the Passenger Services (subject always to and consistent with the Franchise Operator’s other obligations under this Franchise Agreement).</p>
“Output Plan”	<p>has the meaning ascribed to such term in Schedule 14.</p>
“Output Plan Related Contract”	<p>means, except to the extent the Authority otherwise indicates or agrees, any contract or other arrangement from time to time between the Franchise Operator and any other party relating to any of the obligations of the Franchise Operator under Part 2 of Schedule 14 or any Output Plan including without limitation any Property Leases, Access Agreements, Rolling Stock Related Contracts or other usage contracts which the Franchise Operator may enter into in relation to such obligations (provided that the fact that any Property Lease, Access Agreement or Rolling Stock Related Contract is an Output Plan Related Contract shall not prevent the other provisions of this Franchise Agreement which relate to such agreements applying to it).</p>
“Parent”	<p>means any person (other than the Franchisee) which Controls the Franchise Operator.</p>
“Participating Employer”	<p>has the meaning ascribed to that term in the Pension Trust.</p>
“Passenger Change Date”	<p>means a date upon which significant changes may be made to the Timetable in accordance with or by virtue of the Railtrack Track Access Conditions.</p>

“Passenger Demand Limit”	<p>means (if applicable) the maximum number of passengers that the Franchise Operator may be required to plan to carry:</p> <ul style="list-style-type: none">(a) on the relevant Passenger Services in either (1) the Morning Peak or (2) the Evening Peak (whenever the level of passenger demand is greater);(b) in Standard Class Accommodation;(c) without exceeding the Load Factor Specifications; and(d) without an adjustment to the terms of this Franchise Agreement (if appropriate) in accordance with Schedule 9 (including, without limitation, any adjustment to the Franchise Payments) <p>such number of passengers being as specified in Part 4(a) of Schedule 3, as the same may be varied in accordance with the terms of this Franchise Agreement.</p>
“Passenger’s Charter”	<p>means the Franchise Operator’s service commitments to its passengers in the agreed terms and marked “PC”, as amended or replaced from time to time in accordance with Clause 8.1.</p>
“Passenger’s Charter Guidelines”	<p>means the document of the same name issued by or on behalf of the Authority containing the methodology for compiling performance statistics and Passenger’s Charter compensation as amended or replaced from time to time by the Authority after consultation with the Franchise Operator and with other franchise operators whose franchise agreements contain a similar or equivalent obligation for consultation.</p>
“Passenger’s Charter Statistics”	<p>means the record of performance against Passenger’s Charter standards for each Reporting Period to be compiled and published pursuant to Clauses 8.1(j) and 8.1(k).</p>
“Passenger Services”	<p>means the railway passenger services specified in Part 1 of Schedule 2 and, unless the context otherwise requires, as provided by the Franchise Operator from time to time, including such of such services as the Franchise Operator may delegate or subcontract or otherwise secure through any other person from time to time under this Franchise Agreement.</p>
“Passenger Service Requirement”	<p>means the quantity and quality of, and other specifications and requirements for, the Passenger Services contained in Parts 1 and, where applicable, 3 of Schedule 3, as the same may be varied in accordance with the terms of this Franchise Agreement.</p>

“Payment Default Notice”	has the meaning ascribed to that term in the Funder’s Direct Agreement.
“Pension Trust”	means the pension trust governing the Railways Pension Scheme.
“Performance Bond”	means the performance bond to be provided to the Authority in the agreed terms and marked “PB” , as replaced or amended from time to time.
“Performance Bond Adjustment Date”	means each Evaluation Date (as defined in Schedule 14) and, if the period between each such date (including the period between the Franchise Commencement Date and the first Evaluation Date) exceeds 5 years, the fifth anniversary of the preceding Evaluation Date or Franchise Commencement Date, as the case may be, and every third anniversary of such fifth anniversary until the next Evaluation Date.
“Planned Capacity”	<p>means:</p> <ul style="list-style-type: none">(i) in relation to any train for which the capacity is specified in the Train Plan, the number of seats in Standard Class Accommodation (together with the amount of standing capacity where applicable as determined in accordance with the Rolling Stock Capacities) which is or are planned in accordance with the Train Plan to be provided on such train in the Train Plan at each relevant Capacity Monitoring Point; and(ii) in relation to any train which is one of a group of trains in relation to which the Train Plan specifies an aggregate capacity, the aggregate of the number of seats in Standard Class Accommodation (together with the amount of standing capacity where applicable as determined in accordance with the Rolling Stock Capacities) which is planned in accordance with the Train Plan to be provided on all of the trains in such group in the Train Plan at each relevant Capacity Monitoring Point.
“Power of Attorney”	means the power of attorney of the Franchise Operator in the agreed terms and marked “POA” .
“Previous Franchise Agreement”	means the franchise agreement (as amended) dated 24 June 1996 relating to the services provided by the Franchise Operator and made between the Director of Passenger Rail Franchising, the Authority’s predecessor and the Franchisee.
“Previous Franchise Commencement Date”	means the franchise commencement date of the franchise constituted by the Previous Franchise Agreement.

“Price”	means, in respect of any Fare, the price of such Fare, including any applicable Value Added Tax but before the deduction of any applicable discount to which a purchaser may be entitled, as notified to RSP in accordance with Schedule 5 of the Ticketing and Settlement Agreement.
“Primary Franchise Assets”	means the property, rights and liabilities designated as such pursuant to Clause 32.2 but excluding such property, rights or liabilities as may, in accordance with the terms of, or by an amendment made to, this Franchise Agreement, cease to be so designated.
“Profit” or “Loss”	means, subject to the other provisions of this Franchise Agreement, profit or loss before corporation tax determined in accordance with GAAP.
¹⁸ <i>“Project Documents”</i>	<i>has the meaning ascribed to it in the Co-ordination Agreement;</i>
¹⁹ <i>“Project Termination Charge”</i>	<i>has the meaning ascribed to it in the Fourth Supplemental;</i>
“Property Leases”	means the leases set out in Part 4 of Schedule 1 and any agreement or lease of a similar or equivalent nature which the Franchise Operator 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 the Franchise Services.
“PSR/ASC Change”	means a variation of, or amendment to, either or both of the Passenger Service Requirement and the Additional Service Commitment under Clause 11 (whether of the quality, quantity or other specification thereof and whether by increase, decrease, introduction or removal of any Passenger Service or any such specification or otherwise and whether or not involving a Closure) (including for the avoidance of doubt any change to Part 1 or Part 3 of Schedule 3).
“Public Performance Measure”	<p>means the measure of the number of trains (expressed as a percentage of the number of trains which are scheduled to be provided under the Applicable Timetable) which arrive punctually at their final scheduled destination in the Applicable Timetable measured on the basis that:</p> <p>(i) for this purpose, “punctually” means within 4 minutes 59 seconds of the scheduled arrival time as shown in the Applicable Timetable;</p> <p>(ii) any train which is a Cancellation (or would have</p>

¹⁸ Date of Change DOA 2004

¹⁹ Date of Change DOA 2004

been a Cancellation if Cancellations were measured by reference to the Applicable Timetable rather than the Enforcement Timetable) will be regarded as not arriving punctually;

- (iii) where any train is scheduled to depart from its point of origin on one day and arrive at its destination point on the following day, any failure to arrive punctually will be treated as occurring on the day on which the train was scheduled to depart from its point of origin (and for this purpose “day” shall have the meaning given in Schedule 7)

as produced and/or published by the Authority from time to time.

“Public Sector Operator”

means any person (other than a 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 sections 211 or 213 of the Transport Act.

“Qualifying Works”^{20 21}

means the works set out in the Joint Master Plan dated 31st March 2009 agreed between The Franchise Operator and Network Rail in respect of Aylesbury, Leamington Spa, Warwick, Wendover, Gerrards Cross, Princes Risborough and Solihull Stations.

“Rail Passengers’ Committee”

means a passengers’ committee established under section 2 of the Act.

“Railtrack”²²

means Railtrack PLC, a public company limited by shares with registered number 2904587 and having its registered office at King Place, 90 York Way, London, N1 and any successor in title to the network or any relevant railway facility or, as the case may be, the owner (if different) of any new sections of network or any relevant new railway facilities.

“Railtrack Initial Flexing Rights”

means the Flexing Rights of Railtrack to the extent they entitle Railtrack to vary a bid of the Franchise Operator for train slots in any way within and consistent with:

(a) subject to paragraph (b), the Franchise Operator’s Firm Contractual Rights on the date of signature of this Franchise Agreement; or

(b) any new or amended Track Access Agreement in respect of which the Authority’s consent or approval is required and has been requested by the Franchise

²⁰ Date of change 11/11/2008

²¹ Date of Change 16/02/2011

²² Date of Change 20/01/2011

Operator and given pursuant to Clause 12.3 and/or 12.7 of this Franchise Agreement.

For the purposes of this definition, Flexing Rights and Firm Contractual Rights have the meaning assigned to those terms in Part D of the Railtrack Track Access Conditions.

“Railtrack Network Change”	has the meaning assigned to that term in the Railtrack Track Access Conditions.
“Railtrack Rules of the Plan”	has the meaning assigned to that term in the Railtrack Track Access Conditions.
“Railtrack Rules of the Route”	has the meaning assigned to that term in the Railtrack Track Access Conditions.
“Railtrack Track Access Agreement”	means any Access Agreement(s) between Railtrack and the Franchise Operator which permits the Franchise Operator to provide the Passenger Services or part of them on track owned by Railtrack, being, on the date of signature of this Franchise Agreement the agreement specified in Part 2(a) of Schedule 1.
“Railtrack Track Access Conditions”	means the Railtrack Track Access Conditions 1995 (as subsequently replaced or amended from time to time) as incorporated into any Railtrack Track Access Agreement.
“Railtrack Working Timetable”	means, in relation to the period between any two Passenger Change Dates, the working timetable in respect of the Passenger Services or part of them for such period as notified by Railtrack to the Franchise Operator under the Railtrack Track Access Conditions in advance of such period (being, on the date of signature of this Franchise Agreement, under Condition D1.5.3 of the Railtrack Track Access Conditions).
“Railways Pension Scheme”	means the pension scheme established by the Railways Pension Scheme Order 1994 (No. 1433).
²³ “Regulatory Value”	<i>means the amount added to the regulatory asset base of Network Rail in consequence of the Transfer Price or Compensation on Termination being paid by Network Rail to the Enhancement Contractor;</i>
“Relevant IOS Outputs”	in relation to any Specified IOS Project, means the outputs contained in the Incremental Output Statement which such Specified IOS Project is intended to deliver, and “Relevant IOS Output” means any of them.
“Reporting Period”	means a period of 28 days, provided that: (a) the first such period during the Franchise Period shall exclude any days up to but excluding the

²³ Date of Change DOA 2004

	Franchise Commencement Date;
	(b) the first and last such period in any Reporting Year may be varied by up to 7 days by notice from the Authority to the Franchise Operator;
	(c) each such period shall start on the day following the last day of the preceding such period; and
	(d) the last such period during the Franchise Period shall end on the expiry of the Franchise Period.
“Reporting Year”	means a period normally commencing on 1 April in each calendar year, comprising 13 consecutive Reporting Periods.
“Request Stop Station”	means, in relation to any particular train or Passenger Service, a station at which such train or service need only call when a passenger or intending passenger wishes to join such train or service or leave such train or service at such station.
“Residual Value Amount”	has the meaning ascribed to that term in the Funder’s Direct Agreement
“Retail Prices Index”	means the retail prices index for all items as published from time to time by the Central Statistical Office of the Chancellor of the Exchequer 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 Authority may, after consultation with the Franchise Operator, determine to be appropriate in the circumstances.
²⁴ “Required Opening Date”	<i>means 14 December 2008 or, if different, the Passenger Change Date occurring in or around December 2008;</i>
“Rolling Stock Capacities”	means, where applicable: (a) in relation to the rolling stock and configurations of rolling stock used in the provision of the Passenger Services on the date of this Franchise Agreement, the deemed capacities of such rolling stock and configurations as contained in the document in the agreed terms marked “ RSC ”, which capacities shall be deemed, for the purposes of Clause 6.8(b), to have been notified to the Franchise Operator on the Franchise Commencement Date; and (b) in relation to any other rolling stock or configurations of rolling stock used in the provision of the Passenger Services, the deemed

²⁴ Date of DOA nov 2007

capacities thereof as determined by the Authority and notified to the Franchise Operator from time to time under Clause 6.8(b).

“Rolling Stock Leases”

means the agreements for the leasing of rolling stock set out in Part 5 of Schedule 1 and such agreements of a similar or equivalent nature (including, for the avoidance of doubt, any agreements or arrangements for the subleasing, hiring, licensing or other use of rolling stock) as the Franchise Operator may be party to from time to time during the Franchise Period 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 Designated Spares Contract.

“Rolling Stock Unit”

means the smallest number of rolling stock vehicles which are normally comprised in a train used by the Franchise Operator in the provision of the Passenger Services.

“RSP”

means Rail Settlement Plan Limited.

“Safety Case”

means the statement of procedures, standards and internal regulations designed to achieve the safe provision or operation of the Franchise Services prepared by the Franchise Operator and accepted by Railtrack and by LUL (or any successor thereto) under The Railways (Safety Case) Regulations 1994 or by the Health and Safety Executive (or any successor thereto) under the Railways (Safety Case) Regulations 2000.

²⁵**“Safety Certificate”**

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

“Season Ticket Bond”

means the season ticket bond to be provided to the Authority in respect of the Franchise Operator’s liabilities under certain Fares and Season Ticket Fares in the agreed terms and marked “**STB**” and such other bond as may replace it from time to time under Clause 14.4.

“Season Ticket Fare”

means, other than in Schedule 5, 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.

²⁵ date of DOA Nov 2007

“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 and includes any security as defined in section 248(b) of the Insolvency Act 1986.
“Security Trustee”	has the meaning ascribed to that term in the Funder’s Direct Agreement
“Spares”	means parts and components of rolling stock which are available for the purpose of carrying out maintenance services on rolling stock.
“Specified Franchise Assets”	means the Primary Franchise Assets designated as such pursuant to Clause 32.8 but excluding such Primary Franchise Assets as may, in accordance with the terms of, or by an amendment made to, this Franchise Agreement, cease to be designated as either Primary Franchise Assets or Specified Franchise Assets.
“Specified IOS Project”	means a project of Railtrack (or any other relevant person) to deliver one or more outputs contained in the Incremental Output Statement, and listed as a Specified IOS Project in Part 9 of Schedule 1 as that list may be amended or deemed to be amended from time to time in accordance with Clause 12.15.
²⁶ “Stakeholders Interface Agreement”	<i>has the meaning ascribed to it in the Co-ordination Agreement;</i>
²⁷ “Standby Facility”	<i>has the meaning ascribed to it in the Co-ordination Agreement;</i>
“Standard Class Accommodation”	means, in respect of any train or service, accommodation which is available to the purchasers 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 purchasers to make a journey on that train or service (provided that any accommodation on such train which may have been reserved by such purchasers 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 purchasers).
“Station”	means a station listed in Part 2 of Schedule 2.
“Station Lease”	means a Property Lease set out in Part 4(a) of Schedule 1 and such other Property Leases in respect of Stations as the Franchise Operator may enter into from time to time.

²⁶ Date of Change DOA 2004

²⁷ Date of Change DOA 2004

“Station Services”	means the services at the Stations specified in Part 2 of Schedule 2.
“Station Sublease”	means a lease or sub-lease of premises comprising part or parts of a Station exclusively occupied by another Train Operator.
“Successor Operator”	means a Train Operator succeeding the Franchise Operator in the provision or operation of all or any of the Franchise Services including, where the context so admits, the Franchise Operator where the franchise operator is to remain the same following termination of this Franchise Agreement but there is a change in Control of the Franchise Operator within the terms of Clause 21.2 of this Franchise Agreement.
“Supplemental Agreement”	<p>Means:</p> <p>(a) where the Funder’s Direct Agreement is not in force the supplemental agreement between the Franchise Operator and a Successor Operator entered into pursuant to a Transfer Scheme, being substantially in the form of the agreement in the agreed terms and marked “SA”; or (b) where paragraph (a) above does not apply, the supplemental agreement between the Franchise Operator, a Successor Operator and the Eligible Person (as such term is defined in the Funder’s Direct Agreement) in the form of the agreement in the agreed terms and marked “FSA”</p> <p>but, in each case, subject to such amendments as the Authority may reasonably make thereto as a result of any Change of Law or other change of circumstance between the date of this Franchise Agreement and the date the relevant Transfer Scheme is made and subject further to Clause 35.2(b)</p>
“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.
“Ticketing and Settlement Agreement”	means the Ticketing and Settlement Agreement dated 23 July 1995 between RSP, the Franchise Operator and the other Train Operators named therein.
“Timetable”	<p>means the passenger timetable of the Franchise Operator in respect of the Passenger Services provided by it under this Franchise Agreement, as in force from the Passenger Change Date immediately preceding the Franchise Commencement Date and as subsequently amended, updated or renewed either:</p> <p>(a) on each subsequent Passenger Change Date during the Franchise Term following receipt from</p>

Railtrack of the Railtrack Working Timetable and from LUL of the LUL Working Timetable for the period between any two consecutive Passenger Change Dates (excluding, for the avoidance of doubt, such minor or emergency amendments as may be made or imposed between such dates; or

- (b) to reflect a PSR/ASC Change (if such PSR/ASC Change is not implemented on a Passenger Change Date),

each such amended, updated or renewed Timetable constituting a new Timetable for the purpose of Clause 7.1.

“Total Cancellation”

means a train which is scheduled to be provided under the Enforcement Timetable and which is cancelled or does not otherwise operate for more than half its scheduled mileage under the Enforcement Timetable.

“Track Access Agreement”

means any of the Railtrack Track Access Agreements or the LUL Track Agreements (as applicable).

“Train Mileage”

means, in relation to any period, the aggregate train mileage covered or scheduled to be covered under the Timetable during such period by each train used by the Franchise Operator in the provision of the Passenger Services (excluding, for the avoidance of doubt, any train mileage covered as a result of positioning or other movements of rolling stock outside the Timetable).

“Train Operator”

means a franchise operator or a Public Sector Operator.

“Train Plan”

means the plan or diagram of the Franchise Operator for the operation of trains and train formations under the Timetable, to the extent (if any) such plan and/or diagram relates to capacity which is required to be included in such plan and/or diagram pursuant to Clause 5.1 of this Franchise Agreement, each such plan or diagram to be in the form (if any) specified by the Authority from time to time and in any event to comply with the requirements of Clause 5.2.

²⁸ ***“Transfer price”***

has the meaning ascribed to that term in the Co-ordination Agreement.

“Transfer Scheme”

means a transfer scheme made by the Authority under section 220 and Schedule 21 of the Transport Act (or equivalent statutory provision) pursuant to Clause 35.1 being substantially in the form of the scheme in the agreed terms and marked “**TS**” but subject to such amendments as the Authority may make thereto as a result of any change of Law or other change of circumstances between the date of this Franchise

²⁸ Date of Change DOA 2004

	Agreement and the date such scheme is made.
“Transport Act”	means the Transport Act 2000.
“TSI”	means any Technical Standard for Interoperability which the Franchise Operator is required to comply with pursuant to Directives EU 96/48 and EU 2001/16 and related legislation.
“Turnover”	means, in relation to any period, the aggregate revenue (excluding any applicable Value Added Tax) accruing to the Franchise Operator from the sale of Fares and the receipt of Franchise Payments during such period.
²⁹ “Underlease Completion Date”	<i>means the date upon which a underlease of the completed Aylesbury Vale Parkway Station is made between Aylesbury Vale Parkway Limited and the Franchise Operator;</i>
“Value Added Tax”	means value added tax as provided for in the Value Added Tax Act 1994.
“Variation”	has the meaning ascribed to that term in the definition of Net Loss and Net Gain in this Clause 1.1.
“Vehicle”	means an item of rolling stock used in the provision of the Passenger Services which is designed principally for the carriage of passengers (including any rolling stock which provides seating accommodation and catering facilities but excluding any rolling stock which is designed principally for passengers to sleep in).
“West Coast Franchisee”³⁰	<i>means West Coast Trains Limited a company registered in England and Wales whose registered number is 3007940 and whose registered address is The School House, 50 Brook Green, London W6 7RR and any successor operator (directly or indirectly) of all or any part of the franchise services operated by West Coast Trains Limited.</i>
“Young Person’s Railcard”	means a Discount Card issued under the Discount Fare Scheme referred to in Part 3(b)(ii) of Schedule 1.

1.2 Construction and Interpretation

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

- (a) words and expressions defined in Part I of the Railways Act 1993 shall have the same meaning in this Franchise Agreement provided that, except to the extent expressly stated, “railway” shall not have the wider meaning attributed by section 81(2) of the Railways Act 1993;

²⁹ date of DOA nov 2007

³⁰ Date of change 06/01/2010

- (b) words and expressions defined in the Interpretation Act 1978 shall have the same meaning in this Franchise Agreement;
- (c) the words “include” and “including” are to be construed without limitation;
- (d) the words “subsidiary”, “holding company”, “wholly owned subsidiary” and “parent undertaking” shall have the same meaning in this Franchise Agreement as in sections 258 and 736 of the Companies Act 1985;
- (e) references to documents “in the agreed terms” are references to documents initialled by or on behalf of the Authority and the Franchisee;
- (f) references to Recitals, Clauses, Parts, paragraphs, Schedules and Parts of Schedules are to Recitals, Clauses, Parts, paragraphs, Schedules and Parts of Schedules of this Franchise Agreement, unless expressly specified to the contrary, and the Schedules form part of this Franchise Agreement;
- (g) headings and references to headings shall be disregarded in construing this Franchise Agreement;
- (h) references to any enactment include any subordinate legislation made from time to time under it 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;
- (i) 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 or amended;
- (j) words importing the masculine gender include the feminine and vice-versa, and words in the singular include the plural and vice-versa;
- (k) wherever provision is made for the giving or issuing of any notice, consent, approval, certificate or determination by any person, unless otherwise specified, such notice, endorsement, consent, approval, certificate or determination shall be in writing and the words “notify”, “consent”, “approval”, “certify” or “determine” and other cognate expressions shall be construed accordingly;
- (l) 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;
- (m) references to the period of validity of any Fare are references to its period of validity excluding any rights of any purchasers 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;
- (n) references to stations at which any train calls include stations at which such train commences or terminates its journey;
- (o) references to “railway passenger services” includes bus substitution services required to be provided in place of any such services;
- (p) references to the provision of railway passenger services include the organisation of the relevant train movements and making the necessary arrangements with Railtrack, LUL or any other relevant infrastructure controller;

- (q) references in lower case letters to terms defined under Clause 1.1 of this Franchise Agreement shall be construed, where relevant, as being the terms defined as such in the franchise agreement or relevant agreement made under section 30 of the Act or section 211 or 213 of the Transport Act with any other relevant Train Operator;
- (r) references to amendments or variations of contracts or arrangements include assignments, novations or other transfers of rights or obligations (in whole or in part) under such contracts or arrangements; and
- (s) references in this Franchise Agreement to sums of money being expended by the Franchise Operator shall be to such sums exclusive of Value Added Tax.

2 Conditions Precedent

2.1 Entry into Effect

The provisions of Parts I and VI of this Franchise Agreement shall take effect and be binding upon the Authority and the Franchisee immediately upon signature of this Franchise Agreement. The provisions of Parts II, III, IV and V of this Franchise Agreement shall enter into effect and become binding upon such parties and the Franchise Operator on the Franchise Commencement Date.

2.2 Conditions Precedent

- (a) Following signature of this Franchise Agreement, the Franchisee shall procure the satisfaction of the following conditions precedent (as soon as reasonably practicable and so far as within its control), and further that the Authority receives evidence, satisfactory to it in form and substance, that the conditions precedent will continue to be satisfied before the proposed commencement of the Franchise Term (including under such escrow arrangements as the Authority may consider appropriate for the purpose):
 - (i) receipt by the Authority and the Franchisee of a notice from the Regulator which states that he is not aware of any reason why any of the Licences set out in Part 1 of Schedule 1 should be revoked;
 - (v) receipt by the Authority of confirmation from the Franchisee that it has received:
 - (x) from Railtrack a written waiver of any and all applicable events of default, rights or re-entry and other rights of termination and any associated rights under all Property Leases, Access Agreements or Collateral Agreements to which Railtrack and the Franchise Operator may be party which arise in connection with the termination of the Previous Franchise Agreement; and
 - (y) from Angel Train Contracts Limited, Porterbrook Leasing Company Limited and HSBC Rail Limited a written waiver of any and all applicable events of default, and other rights of termination and any associated rights under any Rolling Stock Lease/Rolling Stock Related Contract to which the Franchise Operator may be party which arise in connection with the termination of the Previous Franchise Agreement;
 - (vi) receipt by the Authority of confirmation from the Franchisee that it has received from LUL a written waiver of any and all applicable events of default, rights of re-entry and other rights of termination and any

associated rights under all LUL Agreements which arise in connection with the termination of the Previous Franchise Agreement or receipt by the Authority from the Franchisee of such evidence as may satisfy the Authority that there will be no termination of the LUL Agreements or any associated rights under them;

- (vii) the execution and delivery of the Power of Attorney by the Franchise Operator;
- (viii) receipt by the Authority of evidence, satisfactory to it in form and substance, that the property, rights and liabilities designated as Franchise Assets under Clause 32.1 or listed in Parts 1 and 2 of Schedule 11 will be vested in the Franchise Operator on the Franchise Commencement Date free of all Security Interests (except to the extent that the Authority has expressly agreed to the grant of a Security Interest) provided that if the Authority is not satisfied that the property, rights and liabilities listed in Parts 1 and 2 of Schedule 11 will be vested in the Franchise Operator free of all Security Interests, the Authority may alter Parts 1 and 2 of Schedule 11 until it can be so satisfied and the Franchisee shall accept any such alteration;
- (ix) receipt by the Authority of evidence, satisfactory to it in form and substance, that the Franchise Operator is a wholly owned subsidiary of the Franchisee and will be so on the Franchise Commencement Date;
- (x) receipt by the Authority of the Performance Bond and the Season Ticket Bond duly executed and delivered by the relevant Bond Providers;
- (xi) the Authority being satisfied that no event or matter has occurred or arisen which is or ought to be notified to the Authority under Clause 3.2(b) and which, if it had been known to the Authority before the signature of this Franchise Agreement, would, in its reasonable opinion, have resulted in it not entering into this Franchise Agreement with the Franchisee or in it entering into this Franchise Agreement on materially different terms (including, for the avoidance of doubt, a change in the identity of any one person, or two or more persons acting by agreement, who may Control the Franchisee between the date of this Franchise Agreement and the Franchise Commencement Date other than as agreed with the Authority prior to the date of this Franchise Agreement);
- (xii) receipt by the Authority of evidence, satisfactory to it in form and substance, that the Franchise Operator is a party to the Inter-Operator Schemes listed in Part 3 of Schedule 1;
- (xiii) receipt by the Authority of evidence, satisfactory to it in form and substance, that the Franchise Operator and the Franchisee will comply with their obligations in Part 1 of Schedule 10 on and from the Franchise Commencement Date;
- (xiv) the Authority being satisfied that there is no subsisting non-trivial breach of or Event of Default under the Previous Franchise Agreement and that there is not likely to be any such breach or Event of Default prior to the Franchise Commencement Date;

- (xv) the Authority being satisfied that there will not be an Event of Default under Clause 21.9 after the Franchise Commencement Date as a result of the termination of the Previous Franchise Agreement;
 - (xvi) the execution and delivery by Railtrack, the Franchisee and the Franchise Operator of the Implementation Agreement and the execution and delivery by Railtrack of the Implementation Agreement Direct Agreement;
 - (xvii) receipt by the Authority of confirmation, satisfactory to it in form and substance, that the Facility Agreement has been duly executed by all parties to it and that all conditions to its effectiveness have been satisfied and that no such conditions have been waived save for the condition precedent set out at Schedule 2 of the Facility Agreement relating to the coming into force of the Franchise Documents (as such term is defined in the Facility Agreement);
 - (xviii) the execution and delivery by Angel Trains Limited, the Franchisee and the Franchise Operator of a side letter relating to payment of RSTP (as such term is defined in each of Schedules 9 and 14), such side letter being in the form approved by the Authority;
- (b) As soon as the Authority is satisfied that each of the conditions precedent in Clauses 2.2(a)(i) to (xiv) have been satisfied (except to the extent waived by the Authority itself) it shall issue to the Franchisee and the Franchise Operator a Certificate of Commencement, which shall state the Franchise Commencement Date. If any such conditions precedent have not been so satisfied before the issue of the Certificate of Commencement, the Franchisee shall procure their satisfaction immediately thereafter.
- (c) This Clause 2.2 shall be construed subject to the Authority's right to take such actions or steps as it considers appropriate to ensure that the issue of the Certificate of Commencement occurs on such day as may, in its opinion, be convenient or desirable bearing in mind the interests of the Authority, the Franchisee, the Franchise Operator and other persons likely to be affected by the day on which that occurs (including on a day which falls at the end of a Reporting Period). The Authority may accordingly permit the Franchisee to delay satisfaction of conditions precedent or compliance with any obligation under this Clause 2.2 until such day as the Authority may notify the Franchisee and shall only be obliged to give notification under Clause 2.2(b) on such day.
- (d) Where agreements or deeds are required to be entered into or executed and delivered or any steps required to be taken under this Clause 2.2 by the Franchisee, the Franchise Operator (under Clause 2.2(a) only) or the Bond Providers, the Authority may require, to the extent appropriate and as an additional condition precedent, such evidence (including a legal opinion) of the power and authorisation of the relevant person to enter into, execute or deliver any such agreement or deed or take any such steps and the Franchisee shall supply such additional evidence.

2.3 [Intentionally not used]

2.4 Consequences of non-fulfilment

- (a) The Authority will give notice to the Franchisee terminating this Franchise Agreement if the Certificate of Commencement has not been issued on or before the Long Stop Date or if the Authority reasonably considers that any relevant condition precedent in

Clause 2.2 will not be satisfied before the Long Stop Date. If such notice is given, this Franchise Agreement shall terminate on the Long Stop Date.

- (b) On termination of this Franchise Agreement under this Clause 2.4, no party shall have any liability to any of the other parties to this Franchise Agreement save only in respect of its obligations under Clause 39 and any antecedent breach of its obligations hereunder.

3 Warranty

3.1 Franchise replacement process

The Franchisee represents and warrants to the Authority, subject only to any matter fully and fairly disclosed to the Authority in writing (and accepted by it) or expressly referred to in the audited accounts of the Franchisee or expressly provided for under the terms of this Franchise Agreement:

- (a) that it has not acted in breach of any of the terms of the Franchise Replacement Process Agreement signed by it as part of its proposal to secure the provision and operation of the Franchise Services; and
- (b) that all of the information, representations and other matters of fact communicated in writing to the Authority and/or its advisers by the Franchisee, its directors, officers, employees, servants or agents in connection with or arising out of the Franchisee's proposal to secure the provision and operation of the Franchise Services were (at the dates submitted to the Authority) and remain, in all material respects, true, accurate and not misleading (to the extent that such communication has not been amended by a later communication in writing).

3.2 Updating of warranty

The Franchisee further undertakes to the Authority, subject to Clause 3.3, that:

- (a) subject as provided in Clause 3.1, the representations and warranties contained in Clause 3.1 will be fulfilled down to, and will be true and accurate in all material respects and not misleading in any material respect at, the Franchise Commencement Date as if they had been entered into afresh at the Franchise Commencement Date; and
- (b) if after the signing of this Franchise Agreement and before the Franchise Commencement Date any event shall occur or matter arise which results or may result in any of the warranties in Clause 3.1 being unfulfilled, untrue, misleading or incorrect in any material respect at the Franchise Commencement Date, the Franchisee shall immediately notify the Authority in writing thereof and the Franchisee shall provide such information concerning the event or matter as the Authority may require.

3.3 Exceptions

Without prejudice to Clause 2.2, no right to damages or compensation shall arise in favour of the Authority under Clause 3.2 in consequence only of an event occurring or matter arising after the signing of this Franchise Agreement but before the Franchise Commencement Date which constitutes a breach or non-fulfilment of any of the warranties in Clause 3.1 (whether or not this Franchise Agreement is terminated in consequence thereof) if:

- (a) the event or matter could not reasonably have been avoided or prevented by the Franchisee; and

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- (b) the event or matter was duly notified to the Authority in accordance with Clause 3.2.

Part II — Operation of the Franchise

4 The Franchisee

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

5 Passenger Service Requirement

5.1 Preparation of Timetable and Train Plan

(a) The Franchise Operator shall procure that the Passenger Services contained in the Timetable and the Train Plan include and provide at all times during the Franchise Term at least:

- (i) the railway passenger services, the Connections and the capacity (if any) on such services specified in the Passenger Service Requirement in Part 1 of Schedule 3;
- (xix) where applicable, such railway passenger services and such capacity as the Franchise Operator may be required to include from time to time in the Timetable and the Train Plan under an Agreed Capacity Plan;
- (xx) where applicable, the railway passenger services, the capacity and the Train Mileage specified in the Additional Service Commitment in Part 6 of Schedule 3; and
- (xxi) the railway passenger services and the capacity which and to the extent the Franchise Operator is required to provide from time to time pursuant to Schedule 13 and/or any Output Plan (which for the avoidance of doubt includes the railway passenger services defined as Timetable Outputs in the First Output Plan referred to in Schedule 14). For this purpose, where in Schedule 13 or in any Output Plan, the Franchise Operator is under an obligation to use reasonable endeavours to provide railway passenger services and/or capacity, then this clause shall be construed as an obligation for the Franchise Operator to use those endeavours to procure that the Passenger Services contained in the Timetable and the Train Plan include and provide such services and capacity.

(b) Subject to the Franchise Operator taking all reasonable steps to ensure that it will be able to comply with its obligations under this Clause 5.1 (including the notification or declaration of the intention to exercise any rights and the making of bids to Railtrack for relevant train slots, in each case, before any relevant priority dates provided for in the Railtrack Track Access Conditions and, if necessary, the making of requests to LUL for Timetable Change ("Timetable Change" having the meaning ascribed to that term in the LUL Track Agreement) in accordance with the procedures set out in the LUL Track Access Conditions) and otherwise complying with its obligations under Clause 5.2, it shall not be responsible for any failure to perform its obligations hereunder (and shall be deemed not to be in breach hereof) to the extent that such failure is caused by:

- (i) the exercise by Railtrack of Railtrack Initial Flexing Rights or the exercise by LUL of LUL Initial Flexing Rights; or

- (xxii) the exercise by Railtrack of such rights as it may have from time to time under the Railtrack Track Access Conditions in respect of any applicable Railtrack Rules of the Route or Railtrack Rules of the Plan or Railtrack Network Change or the exercise by LUL of such rights as it may have from time to time under the LUL Track Access Conditions in respect of any applicable LUL Rules of the Route or LUL Rules of the Plan or LUL Network Change.
- (c) The Franchise Operator shall ensure that, for each period between two consecutive Passenger Change Dates during the Franchise Term, the Timetable for such period is not materially different from the relevant LUL Working Timetable or Railtrack Working Timetable (as applicable).

5.2 Notification to the Authority

- (a) Before making any notification or declaration to Railtrack under the Railtrack Track Access Conditions of the extent of the Franchise Operator's intention to exercise its rights to make bids for train slots or make a request to LUL for Timetable Change ("Timetable Change" having the meaning ascribed to that term in the LUL Agreement) in accordance with the procedures set out in the LUL Track Access Conditions which, in either case, relate to a Timetable which is to come into effect on a Passenger Change Date, the Franchise Operator shall provide the Authority with:
 - (i) a summary (in such form as the Authority may reasonably require) of any significant differences from its then current Timetable and Train Plan which would result; and
 - (ii) details of any instances where the Franchise Operator would not be able to comply with its obligations under Clause 5.1(a)

if those intentions were reflected in the Timetable and Train Plan coming into effect on that Passenger Change Date. The Franchise Operator and the Authority shall discuss the contents of such notification in order to consider the extent to which any derogation from the Franchise Operator's obligations under Clause 5.1(a) would be necessary if those intentions were so reflected and the extent to which the Authority may (in its absolute discretion) be prepared to grant such a derogation.

Before making any bid to Railtrack under the Railtrack Track Access Conditions for train slots, or making any request to LUL for Timetable Change, which, in either case, relate to a Timetable which is to come into effect on a Passenger Change Date, the Franchise Operator shall notify the Authority of the proposed Timetable and Train Plan which it will be able to provide and operate if such bid or request is accepted by Railtrack or LUL respectively (and, for the avoidance of doubt, such notification of the proposed Timetable and Train Plan shall also be given in circumstances where the Franchise Operator does not intend to make any request to LUL for Timetable Change). Such notification shall be accompanied by a certificate addressed to the Authority to the effect that such proposed Timetable and Train Plan will enable it to comply with its obligations under Clause 5.1 or, if and to the extent relevant, the derogation from such obligations agreed under Clause 5.2(a)). To the extent that the Franchise Operator cannot so certify, it shall provide reasonable details thereof to the Authority, including such detail as the Authority may require from time to time of the reasons for the inability to comply with the Franchise Operator's obligations under Clause 5.1. For the avoidance of

doubt, the proposed Train Plan which the Franchise Operator is required to supply to the Authority under this Clause 5.2 (and any revision to that Train Plan which is required to be supplied or is otherwise supplied to the Authority from time to time by the Franchise Operator) shall (except to the extent otherwise agreed by the Authority) be a train plan and/or diagram which the Franchise Operator is capable (or will be capable, at the time that the Train Plan is to be operated) of operating in the provision of the relevant Passenger Services and the Franchise Operator shall:-

- (i) (except to the extent otherwise agreed by the Authority) include in the certificate to be delivered pursuant to this Clause 5.2(a) a statement to that effect;
 - (xxiii) if requested by the Authority, demonstrate to the reasonable satisfaction of the Authority that the Franchise Operator is or will be so capable of operating that Train Plan; and
 - (xxiv) if requested by the Authority, and without prejudice to the foregoing, submit to the Authority the train plan or diagram which the Franchise Operator actually plans to operate, if that train plan and/or diagram is different to the Train Plan and/or diagram previously supplied to the Authority by the Franchise Operator pursuant to this Clause 5.2(a).
 - (b)** The Franchise Operator shall update such notification and certification under Clause 5.2(a) as soon as reasonably practicable in the event that at any time it modifies its proposed Timetable, or is required to modify its proposed Timetable following Railtrack's or LUL's rejection or modification of its bid or any part of it or of its request or any part of it (as applicable), and in either case such modification means that the Franchise Operator will not be able to comply with its obligations under Clause 5.1 or otherwise materially affects the proposed Timetable.
 - (c)** The Franchise Operator shall in addition notify the Authority as soon as reasonably practicable upon it becoming aware that:
 - (i) it may not be able to comply with its obligations under Clause 5.1 (whether such non-compliance may occur at the time of such notification or in the future); or
 - (ii) the passenger timetable of the Franchise Operator may be, or may be required to be, amended between any two consecutive Passenger Change Dates which, if such amendment had been made in connection with the setting of the Timetable in effect on the preceding Passenger Change Date, would have resulted in non-compliance with Clause 5.1 (the expression "amended between any two consecutive Passenger Change Dates" including, for the purposes of this Clause 5.2, any amendment which may be made after the Timetable has been set by reference to and in accordance with either the Railtrack Working Timetable or the LUL Working Timetable, but before the Passenger Change Date on which such Timetable is intended to take effect)
- in either case, whether as a result or by virtue of:
- (x) any amendment to, or the exercise of any rights of Railtrack or of LUL, under any applicable Railtrack Rules of the Route or Railtrack Rules of the Plan or LUL Rules of the Route or LUL Rules of the Plan or otherwise. For the avoidance of doubt, this shall include any such amendment or exercise

which, before the commencement of any timetable development period under the Railtrack Track Access Conditions or the LUL Track Access Conditions relating to a particular Timetable, may be proposed or contemplated in connection with any Major Project (as defined in the Railtrack Track Access Conditions or the LUL Track Access Conditions) or similar project from time to time; or

- (y) any supplemental timetable revision process or equivalent process under the Railtrack Track Access Conditions or the LUL Track Access Conditions whereby Railtrack or LUL may propose changes to bids for train slots after those bids have been accepted, or changes to requests for Timetable Changes after those requests have been accepted (as applicable); or
- (z) any modification to the Timetable initiated by the Franchise Operator or determined by agreement between the Franchise Operator and Railtrack or between the Franchise Operator and LUL (it being acknowledged that any such modification made without the prior consent of the Authority will constitute a breach of this Agreement).

The Franchise Operator shall supply such details thereof as the Authority may reasonably require. This shall include details of the steps which the Franchise Operator proposes to take in order to comply with its obligations under Clause 5.2(e).

- (d) Without limiting Clause 5.1, the Franchise Operator shall use all reasonable endeavours to ensure that:
 - (i) its ability to comply with its obligations under Clause 5.1 at any time will not be affected; and
 - (ii) the passenger timetable of the Franchise Operator will not be required to be amended between any two consecutive Passenger Change Dates such that, if such amendment had been made in connection with the setting of the Timetable in effect on the preceding Passenger Change Date, would have resulted in non-compliance with Clause 5.1

in either case, by virtue of any of the matters referred to in Clause 5.2(c). Unless otherwise expressly agreed by the Authority in advance, the Franchise Operator shall accordingly, whether requested by the Authority or not, and subject always to Clause 5.2(f), exercise all relevant rights it may have under any relevant agreement (including any rights under the Railtrack Track Access Conditions or the LUL Track Access Conditions) to object and not to consent to any act or omission, or proposed act or omission, of Railtrack, LUL or any relevant other person which might result in it being unable to comply with its obligations under Clause 5.1, whether at the relevant time or in the future, or in its passenger timetable being so amended between two Passenger Change Dates. For the avoidance of doubt, the exercise of such rights may require the Franchise Operator to dispute any act or omission or proposed act or omission of Railtrack or LUL, to submit such dispute to any relevant dispute resolution arrangements or procedures and to appeal against any relevant award or determination under such arrangements or procedures, including to the Regulator.

- (e) The Authority:
 - (i) if it does not consider that the Franchise Operator has taken sufficient steps under Clause 5.2(d), may require the Franchise Operator to exercise

such rights in such manner as it may consider reasonable in the circumstances; and/or

- (ii) may require the Franchise Operator to seek from Railtrack, LUL or any relevant other person such additional benefits directly or indirectly for the benefit of passengers, as the Authority may consider appropriate in the circumstances as a condition of the Franchise Operator consenting to any act or omission referred to in Clause 5.2(d)

and the Franchise Operator shall comply with any such requirement. The Authority shall, to the extent reasonably practicable, allow the Franchise Operator a reasonable opportunity to make any representations to the Authority concerning the exercise of such powers before requiring the Franchise Operator to take any such action.

- (f) The provisions of Clause 5.1(b) shall be ignored for the purposes of determining whether, under the provisions of this Clause 5.2, the Franchise Operator is or will be able to comply with its obligations under Clause 5.1 and/or whether such obligations will be complied with.
- (g) The following provisions shall apply as regards co-operation by the Franchise Operator with other Train Operators in connection with development of the Timetable:
 - (i) the Franchise Operator shall co-operate with other Train Operators in the development of its working timetable and such other Train Operators' working timetables to ensure that users of the Passenger Services are provided with reasonable Connections to and from the other Train Operators' railway passenger services which serve the same stations as the Passenger Services. Such obligation on the Franchise Operator shall be in addition to any express obligations regarding Connections in the Passenger Service Requirement or the Additional Service Commitment but be subject to the practicalities for the Franchise Operator and the Train Operators in altering or adjusting their respective timetables to provide such reasonable Connections;
 - (ii) subject to such restrictions or obligations as may be imposed on the Franchise Operator under the Licences, the Franchise Operator shall co-operate with such other Train Operators as may provide railway passenger services which use all or a material part of the same track or route or a route which has the same originating and finishing points as any of the Passenger Services to ensure that passengers travelling or intending to travel on such services are provided with a reasonable pattern of service, taking into account the reasonable needs of such passengers and the different types of railway passenger services provided by the relevant other Train Operators and the Franchise Operator.
- (h) Without prejudice to any other obligation of the Franchise Operator pursuant to this Agreement:
 - (i) the Franchise Operator shall use reasonable endeavours to give all relevant Rail Passengers' Committees and Local Authorities sufficient notice of all significant proposed changes to the pattern of Passenger Services (other than any such changes as are to be made on a temporary basis) so that it can take due account of such bodies' views before making a bid to Railtrack under the Railtrack Track Access Conditions for the train

slots or making a request to LUL under the LUL Track Access Conditions for Timetable Changes ("Timetable Change" having the meaning ascribed to that term in the LUL Agreement), which, in either case, would enable it to implement such proposed changes, assuming any such views are submitted to the Franchise Operator within a reasonable period from the time of such notification. Any such notification shall be copied to the Authority at the same time. Nothing in this Clause 5.2(h)(i) shall restrict the Franchise Operator from requesting the relevant Rail Passengers' Committees and Local Authorities to keep any such notification confidential;

- (ii) the Franchise Operator shall comply with such reasonable requirements and guidance as the Authority may notify to it from time to time in respect of giving notice to and consulting the Rail Passengers' Committees and Local Authorities under Clause 5.2(h)(i).

5.3 Compliance with Timetable and Train Plan

- (a) ^aThe Franchise Operator shall use all reasonable endeavours to provide the Passenger Services in accordance with the Timetable and the Train Plan, except to the extent the Authority may, in exceptional circumstances, otherwise agree.

- (b) In relation to the obligation to use all reasonable endeavours under Clause 5.3(a):

- (i) such obligation includes the obligation to plan and resource its operations and implement those plans and resources to take account of the risk of disruption to the Franchise Services to the greatest extent reasonably practicable having regard to all the circumstances (including the ability of the Franchise Operator to finance the provision of the Franchise Services), including the reasonably foreseeable risks arising from:

- (a) variations in weather and operating conditions (which may include but shall not be limited to seasonal variations);
- (b) default by, or other restrictions imposed by, suppliers to the Franchise Operator;
- (c) shortages of appropriately skilled or qualified employees;
- (d) disputes with employees;
- (e) shortage of or defects in rolling stock;

- (xxv) for the purpose of assessing the extent of any such risk referred to in Clause 5.3(b)(i), and the extent to which it is reasonably foreseeable, regard shall be had both:

- (a) to the historical levels of incidence of disruption in the operation of the Franchise Services (both by the Franchise Operator and its predecessors) and in the operation of other passenger rail services of a type similar to the Franchise Services; and
- (b) to potential changes in circumstances which may affect those levels;

- (xxvi) references in Clause 5.3(b)(i) to plans and resources to take account of disruption shall include both:

- (a) those directed at preventing any disruption; and

- (b) without limiting sub-Clause (a) above or any other obligation of the Franchise Operator, those directed at minimising the extent of any disruption;
 - (xxvii) when and to the extent reasonably requested by the Authority, the Franchise Operator will provide evidence of the steps taken by it in order to comply with its obligations under Clause 5.3(b)(i).
- (c) Except to the extent that the Authority may otherwise agree from time to time, at least two thirds of the seats on any train which is used in the provision of the Passenger Services by the Franchise Operator shall be located in Standard Class Accommodation.
- (d) The Franchise Operator shall notify the Authority immediately (and provide such further information and attend such meetings as it may request in relation thereto) if, in relation to any Reporting Period during the Franchise Term any or all of the following occur:
 - (i) there are more Cancellations during such Reporting Period than the Call-in Threshold of Cancellations;
 - (xxviii) there are more Total Cancellations during such Reporting Period than the Call-in Threshold of Total Cancellations; or
 - (xxix) where applicable, the aggregate of the Actual Capacity of each train included in the Train Plan in such Reporting Period is less than the Call-in Threshold of the aggregate of the Planned Capacity of each such train.
- (e) The Franchise Operator shall provide the Passenger Services in such a manner that no notice will be required to be given under Clause 5.3(d) in respect of three or more separate Reporting Periods in any period of thirty-nine consecutive Reporting Periods during the Franchise Term. If such number of notices is required to be given during any such periods, the Franchise Operator shall be deemed to be in breach of this Franchise Agreement. The Authority may determine, in the light of the circumstances giving rise to any obligation under Clause 5.3(d), that the occurrence of such obligation is to be disregarded for the purposes of this Clause 5.3(e) and references to such an obligation arising three or more times shall be construed accordingly.
- (f) Without prejudice to the generality of Clause 5.3(a), the Franchise Operator shall ensure that in each Reporting Period during the Franchise Term:
 - (i) there are fewer Cancellations during such Reporting Period than the Breach Threshold of Cancellations;
 - (xxx) there are fewer Total Cancellations during such Reporting Period than the Breach Threshold of Total Cancellations; and
 - (xxxi) where applicable, the aggregate of the Actual Capacity of each train included in the Train Plan in such Reporting Period is more than the Breach Threshold of the aggregate of the Planned Capacity of each such train.

5.4 Force Majeure

- (a) The Franchise Operator shall not be responsible for any failure to perform its obligations under Clause 5.3(c), 5.3(e) nor shall there be an Event of Default under Clause 21.7 if, and to the extent that, such failure is caused by or is due to any *Force Majeure* Event.

- (b) As soon as practicable after the Franchise Operator becomes aware of the occurrence or likely occurrence of any *Force Majeure* Event which has had or might reasonably be expected to have an effect on the Franchise Operator's ability to perform its obligations under Clause 5.3, it shall give notice to the Authority of:
- (i) the occurrence or likely occurrence of the event;
 - (xxxii) the effect of the event or the anticipated effect of any likely event, as the case may be, on the Franchise Operator's performance of its obligations under Clause 5.3; and
 - (xxxiii) the steps taken by the Franchise Operator to prevent the occurrence of, and/or to mitigate and minimise the effects of, such event and to restore normal operations.
- (c) The following events shall constitute *Force Majeure* Events:
- (i) the Franchise Operator or its agents or subcontractors is or are prevented or restricted by Railtrack or LUL (including by virtue of the implementation of any Contingency Plan) from gaining access to any relevant section or part of track (including any track running into, through or out of a station) for a period in excess of 12 hours. For the purposes of this Clause 5.4.c(i):
 - (aa) references to the prevention or restriction from gaining access to any relevant section or part of track shall mean that no trains are permitted to be operated on the relevant section or part of track, or the number of trains so permitted is reduced from that which, but for the prevention or restriction, would have been scheduled to operate;
 - (bb) the period of the prevention or restriction shall be deemed to commence with the first train of the Franchise Operator, the operation of which was prevented or restricted;
 - (cc) references in sub-clauses (aa) and (bb) to the operation of trains include relevant scheduled empty stock train movements; and
 - (dd) "Contingency Plan" means a contingency plan (as defined in Condition H of the Railtrack Track Access Conditions or the LUL Track Access Conditions (as applicable)) implemented by and at the instigation of Railtrack or LUL (as appropriate), or such other contingency or recovery plan as the Authority may agree from time to time;
 - (xxxiv) the Franchise Operator or its agents or subcontractors is or are prevented or restricted by Railtrack or LUL or any relevant Facility Owner (other than a Facility Owner which is an Affiliate of the Franchise Operator and which is acting principally or partly to prevent it from performing its obligations under this Franchise Agreement or in bad faith) from entering or leaving:
 - (x) any relevant station (excluding, for the avoidance of doubt, any prevention or restriction from gaining access to any section or part of track running into, through or out of a station); or
 - (y) any relevant light maintenance depot or part thereof (including, for the avoidance of doubt, the movement of trains on tracks within such depots but excluding any prevention or restriction from

gaining access to any track outside the light maintenance depot running into or out of that depot);

(xxxv) one or more Endemic Faults or Mandatory Modifications which affects or affect the greater of two Rolling Stock Units of the Franchise Operator and 10 per cent. of all rolling stock used by the Franchise Operator in the provision of the Passenger Services;

(xxxvi) the greater of two Rolling Stock Units of the Franchise Operator and 10 per cent. of all rolling stock used by the Franchise Operator in the provision of the Passenger Services being damaged beyond repair or beyond economic repair;

(xxxvii) the Franchise Operator prevents or restricts the operation of any train on safety grounds provided that:-

- (a) the Franchise Operator has, either before or as soon as reasonably practicable after initiating such prevention or restriction, sought the confirmation of the Health and Safety Executive, or other relevant body with statutory responsibility for safety in the relevant circumstances, of the necessity of such prevention or restriction; and
- (b) without limiting the Franchise Operator's obligations under Clause 5.3(c), if and to the extent that the Health and Safety Executive or other relevant body (as the case may be) indicates that such prevention or restriction is not necessary, then no *Force Majeure* Event under this sub-Clause (v) shall continue in respect of that restriction or prevention after the receipt of that indication unless the Authority otherwise agrees;

(xxxviii) act of God, war damage, enemy action, terrorism or suspected terrorism, riot, civil commotion, rebellion or the act or omission of any government instrumentality (including the Regulator and the Health and Safety Executive but excluding the Authority) provided, for the avoidance of doubt, that there shall be no *Force Majeure* Event under this sub-Clause (vi) by reason of:

- (a) vandalism;
- (b) the suicide or attempted suicide of any person;
- (c) the activities of the police, fire service, ambulance service or other equivalent emergency service (except where those activities are in respect of any act of God, war damage, enemy action, terrorism or suspected terrorism, riot, civil commotion or rebellion which, but for this sub-clause (c), would otherwise constitute a *Force Majeure* Event); or
- (d) act of God which results in the Franchise Operator or its agents or subcontractors being prevented or restricted by Railtrack or LUL from gaining access to any relevant section or part of track;

(xxxix) any strike or other industrial action by any or all of the employees of the Franchise Operator or any or all of the employees of:

- (a) Railtrack;
- (b) LUL;

- (c) the operator of any other relevant railway facility;
- (d) any person with whom the Franchise Operator 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 Franchise Operator in the provision of the Franchise Services

or of the agents or sub-contractors of any such person and for the purposes of this Clause “industrial action” shall include any concerted action taken in connection with the employment of such employees (whether or not that action involves any breach of the 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 Franchise Operator being able to demonstrate the occurrence of such unofficial industrial action to the reasonable satisfaction of the Authority.

PROVIDED and to the extent in each case that:

- (xl) such events and/or the failure of the Franchise Operator to comply with its obligations under Clause 5.3 did not occur as a result of:
 - (a) the Franchise Operator’s or its agents’ or subcontractors’ actions or omissions; or
 - (b) the Franchise Operator’s own breach of, or default under, any Access Agreement, Rolling Stock Lease, Property Lease or any other agreement; and
- (xli) the Franchise Operator used and uses all reasonable endeavours to avert or prevent the occurrence of the event and/or to mitigate and minimise the effects of such event on the performance of its obligations under Clause 5.3 despite the occurrence of the event and to restore normal operations as soon as reasonably practicable after the onset of the occurrence of such event.

(d) The Franchise Operator shall:

- (i) use all reasonable endeavours to prevent the occurrence of any of the events in Clause 5.4(c) above, to mitigate and minimise the effects of any such event on the performance of its obligations under Clause 5.3 (including by reference to its obligations under Clause 5.3(b))and to restore normal operations in the event of the occurrence of any such event; and
- (xlii) to the extent it is reasonable to do so or to the extent reasonably so requested by the Authority, exercise all relevant rights and remedies under any relevant agreement to prevent the occurrence or recurrence of any such event and to obtain appropriate redress or compensation from any relevant person.

5.5 Closures

Except to the extent that the Authority may otherwise agree from time to time, the Franchise Operator shall not cease to provide or withdraw or propose to discontinue any

railway passenger service which might result in a Closure. In the event of a Closure or any procedures being commenced under Part I of the Act in relation to a Closure as a result of any such cessation or withdrawal or proposal or any proposed cessation or withdrawal, the Franchise Operator shall, to the extent so requested by the Authority and at its own cost, provide such railway passenger services or take such other action as the Authority may require it to take on its behalf in order for the Authority to comply with any duty imposed on it under Part I of the Act in relation to the Closure.

5.6 INTENTIONALLY NOT USED

5.7 Safety

- (a) Without prejudice to its other obligations under this Agreement, the Franchise Operator shall use all reasonable endeavours to improve the safety record and safety standards of the Franchise Services on a continuous basis over the duration of the Franchise Term. The Franchise Operator shall submit to the Authority on an annual basis (and whenever else reasonably requested) a plan which will identify specific measurable targets for improvement and will enable it to secure such improvement and shall comply with any such plan to the extent consistent with its obligation to use all reasonable endeavours under this Clause. When and to the extent reasonably requested by the Authority, the Franchise Operator will produce evidence of the improvements in safety records and standards secured pursuant to any such plan.
- (b) The Franchise Operator shall co-operate with such statutory or non-statutory inquiries or reports into safety issues (including any such inquiries or reports which commenced prior to the date of this Franchise Agreement) as the Authority may specify from time to time in so far as they affect, directly or indirectly, or are applicable to, directly or indirectly, the Franchise Services and, without prejudice to its other obligations under this Franchise Agreement and subject to any funding requirements being agreed with the Authority, shall implement the conclusions and recommendations of any such inquiries and reports.
- (c) The Franchise Operator shall orally notify the Authority, as soon as practicable following receipt, of the receipt and contents of any formal notification relating to safety which it may receive from the Health and Safety Executive or any formal notification or improvement or prohibition notice received from Her Majesty's Rail Inspectorate or the successor of either of them. As soon as practicable thereafter, the Franchise Operator shall provide to the Authority a copy of such notification or notice.

5.8 Targets and Performance Reviews

Schedule 15 shall have effect between the parties, and the Authority and the Franchise Operator shall each comply with their respective obligations thereunder.

5.9 Permitted subcontracting

- (a) The Franchise Operator may subcontract or delegate, subject to prior notification being received by the Authority, the provision of any of the Passenger Services which are to be provided under this Franchise Agreement provided that:

 - (i) it continues to be party to all Access Agreements and Property Leases reasonably necessary to provide such Passenger Services and to enjoy all relevant access and operational rights thereunder;

- (xliii) it continues to specify and control, subject to any right of Railtrack or LUL, the Timetable, Train Plan and any bids for train slots which may be required in order to provide such Passenger Services;
- (xliv) it 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 of any Fares; and
- (xlv) the Train Mileage of the Passenger Services so delegated or subcontracted does not exceed 5 per cent. of the aggregate scheduled Train Mileage of the Franchise Operator in any Reporting Period.

For the avoidance of doubt, any such subcontracting or delegation shall not relieve the Franchise Operator from its obligations in respect of such Passenger Services under this Franchise Agreement, including its obligations under Clauses 5 and 25.1.

- (b) Any subcontracting or delegation of the provision of the Passenger Services other than in accordance with Clause 5.9(a) shall require the consent of the Authority.
- (c) The obligation on the Franchise Operator under this Franchise Agreement to procure that the Timetable includes railway passenger services specified in the Passenger Service Requirement and the Additional Service Commitment and to provide and operate such services in accordance with the Timetable applies regardless of what other services may be provided or operated by any other train operator along the same or similar route. Accordingly, the subcontracting or delegation to any other person of any of the Passenger Services which are contained in the Passenger Service Requirement or the Additional Service Commitment shall not be effective to the extent that the relevant subcontracted or delegated Passenger Service operated by such other person or persons pursuant to the relevant subcontracting or delegation arrangements is also a railway passenger service which is required to be provided under a passenger service requirement, additional service commitment or other similar requirement (whether subcontracted, delegated or not) imposed on another Train Operator.
- (d) Subject to Clause 5.9(c), references in Clause 5.1 to the Timetable and the Train Plan include, where the Authority has agreed to the provision of the relevant services, capacity and mileage by another Train Operator, the timetable and train plan of such Train Operator in so far as they relate to such provision.
- (e) References in Clause 5.2 to Clause 5.1 and compliance with Clause 5.1 shall include, where the Franchise Operator has agreed to provide services, capacity or mileage which are included in the passenger service requirement or additional service commitment of another Train Operator, clause 5.1 (or its equivalent) of the franchise agreement (or equivalent) of the other Train Operator and compliance therewith to the extent such clause relates to the relevant services, capacity or mileage.
- (f) References in this Franchise Agreement to the Train Plan include, where the Franchise Operator has agreed to provide capacity which is included in the passenger service requirement or additional service commitment of another Train Operator, the capacity so agreed to be provided.

6 Provision Of Capacity

6.1 General provision of capacity

- (a) The Franchise Operator shall use all reasonable endeavours to ensure that sufficient capacity is provided, on each train used in the provision of any Passenger Services, to carry, without excessive overcrowding, all passengers intending to travel on such train and holding a valid Fare (and, if required, a reservation) for such train.
- (b) Without limiting Clause 6.1(a), the Franchise Operator shall be deemed not to have used all reasonable endeavours in relation to any Passenger Services which are not subject to any Load Factor Specifications if and to the extent that there is excessive overcrowding on such services and, other than as a result of a Force Majeure Event not resulting from its own or its agents' or subcontractors' actions or omissions or its own breach of, or default under, any Access Agreement, LUL Agreement, Rolling Stock Lease, Property Lease or any other agreement, it includes in its plan and/or diagram for the operation of trains and train formations under the Timetable at the time of such overcrowding and persistently operates at such time and at times when similar overcrowding may occur fewer Vehicles than the Initial Number of Vehicles.
- (c) The Franchise Operator will establish and implement arrangements which are reasonably satisfactory to the Authority to monitor the extent to which there is or is likely to be excessive overcrowding on any Passenger Services which are not subject to any Load Factor Specifications. When and to the extent reasonably requested by the Authority, the Franchise Operator will produce evidence (i) that none of such Passenger Services have been, are, or are likely to be subject to excessive overcrowding; or (ii) of the extent of the actual or likely excessive overcrowding on any such Passenger Services and of the reasonable endeavours used by the Franchise Operator to ensure that sufficient capacity has been or is provided to avoid such excessive overcrowding. Where the Authority makes such a reasonable request it shall also have the right to obtain from the Franchise Operator the results of all monitoring activities carried out by the Franchise Operator pursuant to this Clause 6.1(c). Such results will be provided in such reasonable forms as the Authority may stipulate.

6.2 Passenger Counts

- (a) When so requested by the Authority, the Franchise Operator shall carry out a programme of passenger counts, or secure that a programme of passenger counts is carried out, in respect of the Passenger Services at such times as may be required and in such manner (including as to levels of accuracy and the number of days (not being more than 7 consecutive days) over which the programme of counts is carried out) as may be approved from time to time by the Authority, subject to a maximum of:
 - (i) four such programmes in any twelve month period (and a minimum of one such programme in any fifteen month period) during the Franchise Term in respect of the Passenger Services subject to any Load Factor Specification; and
 - (xlvi) four such programmes in any twelve month period during the Franchise Term in respect of such of the Passenger Services that are not subject to any Load Factor Specification as the Authority may reasonably specifyprovided that:
 - (x) the Franchise Operator shall not be required to carry out in aggregate more than four programmes of passenger counts in any twelve month period during the Franchise Term; and

- (y) a request by the Authority for the Franchise Operator to carry out a programme of passenger counts in relation to Passenger Services specified by the Authority, some of which are subject to Load Factor Specifications and some of which are not, shall count as one programme of passenger counts for the purposes of this Clause 6.2(a)

The manner of such counts (including their timing and location) shall be designed to ensure so far as practicable, that the counts are typical of demand for the Passenger Services provided by the Franchise Operator at the relevant time of year and for the relevant day of the week. Where applicable, any such count shall be carried out by a person or persons approved by the Authority (such approval not to be unreasonably withheld).

- (b) The Franchise Operator shall supply such details as may be reasonably required in respect of the results of such counts to the Authority in such reasonable form as the Authority may stipulate. The Franchise Operator shall draw the Authority's attention at the time to any particular factors which the Franchise Operator considers relevant to whether the results of such counts are typical of demand for the Passenger Services at that time.
- (c) The Authority shall be entitled to audit such counts (whether by specimen checks at the time of such counts, verification of proper compliance with the manner approved by it or otherwise). In the event that such audit reveals material error, or a reasonable likelihood of material error, in such counts, the Authority may require the counts to be repeated or the results adjusted as it considers reasonably appropriate, and in these circumstances the Franchise Operator shall pay to the Authority the costs of any such audit.
- (d) Save to the extent the Authority otherwise agrees, the Franchise Operator's obligations under this Clause 6.2 are separate from and in addition to any requirement for the Franchise Operator to conduct passenger counts for the purposes of Clause 6.1(c).
- (e) For the avoidance of doubt, all references to passenger demand and numbers of passengers in this Clause 6 (and in Schedule 9) shall refer to the demand for travel, or the number of passengers (as appropriate) in Standard Class Accommodation.

6.3 Non-applicability

The provisions of Clauses 6.4 to 6.10 shall not apply where Parts 3 and 4 of Schedule 3 have been left intentionally blank.

6.4 Load Factor Specifications

The Franchise Operator shall use all reasonable endeavours to ensure that in providing the Passenger Services it provides sufficient capacity thereon such that it does not exceed the Load Factor Specifications. The Franchise Operator shall be deemed to have complied with its obligations under this Clause 6.4 to the extent it complies with its obligations under Clause 6.2 and Clauses 6.5 to 6.7.

6.5 Preliminary statement

- (a) Within one month of any programme of counts under Clause 6.2 being completed (or such longer period as the Authority may determine), or at any other time as the parties may agree, the Franchise Operator shall submit to the Authority a preliminary statement. Such preliminary statement shall:-

- (i) include the Franchise Operator's assessment, following such count, of the Forecast Demand, together with details of how such Forecast Demand has been determined;
 - (xlvi) specify:
 - (x) what railway passenger services and capacity are, in its opinion, required to be included in its Timetable and Train Plan and what Other Demand Management Actions (if any) are required to be taken in order to ensure that, on the basis of such Forecast Demand, it does not exceed the Load Factor Specifications in providing the Passenger Services over the remainder of the Franchise Term; and
 - (y) the extent to which such services and/or capacity and/or Other Demand Management Actions will require the Franchise Operator to secure:
 - (1) agreement with or consent from any other person; and/or
 - (2) the use of alternative and/or additional rolling stock; and/or
 - (3) enhancements or other changes to the network or other railway facilities; and
 - (xlviii) indicate what other changes may be proposed to its existing Timetable and Train Plan at such time.
- (b)** For the avoidance of doubt, if in the opinion of the Franchise Operator the Forecast Demand is such that it will not in any circumstances be feasible to specify sufficient railway passenger services and capacity in its Timetable and Train Plan and/or to take any Other Demand Management Actions to ensure that the Load Factor Specifications will not be exceeded, then
 - (i) the Franchise Operator will state this in the preliminary statement; and
 - (xlix) in such a case the Franchise Operator will specify in the preliminary statement:
 - (1) what railway passenger services and capacity are, in its opinion, required to be included in its Timetable and Train Plan; and/or
 - (2) what Other Demand Management Actions are, in its opinion, required to be taken,

in order to ensure that, on the basis of the Forecast Demand following such programme of passenger counts, the extent of non-compliance with the Load Factor Specifications in respect of the whole or part of the period to which any Timetable applies during the Franchise Term shall be mitigated to the greatest extent possible.
- (c)** The Authority and the Franchise Operator may agree on the basis of such preliminary statement:
 - (i) an Agreed Capacity Plan specifying what railway passenger services and capacity are to be included in its Timetable and Train Plan;
 - (l) an Implementation Plan for the Agreed Capacity Plan;
 - (li) what Other Demand Management Actions (if any) are to be taken; and

- (lii) an Implementation Plan for any such Other Demand Management Actions.

6.6 Feasibility Study

- (a) If the Authority so requests following the submission of any statement under Clause 6.5(a) or the expiry of the period for delivering such statement, the Franchise Operator shall, within one month of such request (or such longer period as the Authority may determine), submit to the Authority a Feasibility Study. If the parties are otherwise unable to agree what railway passenger services and capacity are to be included (and what Other Demand Management Actions (if any) are to be taken) under Clause 6.5(c), the Franchise Operator may submit to the Authority a Feasibility Study.
- (b) The provisions of Schedule 9 shall have effect for the purpose of determining the contents of any such Feasibility Study, the details of any Implementation Plan and the calculation of any Net Loss or Net Gain, and the Franchise Operator and the Authority will comply with their respective obligations thereunder.
- (c) Subject to the provisions of Schedule 9, including, without limitation, in relation to:
 - (i) the level of passenger demand compared to the Passenger Demand Limit; and
 - (liii) the capacity forecast to be required as compared to (1) the capacity provided (or to be provided) under the previous Agreed Capacity Plan (2) the capacity required to meet the Passenger Demand Limit such that the Load Factor Specifications are not exceeded and (3) the Maximum Capacity Limit

the No Net Loss No Net Gain Regime shall apply to any Capacity Change and/or the taking of any Other Demand Management Actions.

6.7 Implementation

- (a) The Franchise Operator shall implement each Agreed Capacity Plan (or each part thereof) and/or take the Other Demand Management Actions (if any) agreed or determined under Clause 6.5(c) or Part 2 of Schedule 9 in accordance with the relevant Implementation Plan as soon as reasonably practicable but no later than the date specified in the relevant Implementation Plan for the relevant Agreed Capacity Plan (or part thereof) and/or the Other Demand Management Actions, and shall notify the Authority on such implementation.
- (b) The Authority shall, as soon as it is reasonably satisfied that an Agreed Capacity Plan (or part thereof) and/or Other Demand Management Action(s) comprised in the relevant Implementation Plan has been implemented, issue a Change Certificate and the provisions of this Franchise Agreement shall be adjusted as from the date specified in such certificate in accordance with the Change Certificate.

6.8 Rolling Stock Capacities

- (a) The Rolling Stock Capacities shall be used to determine whether under this Clause 6 the Franchise Operator exceeds or will exceed the Load Factor Specifications in providing the Passenger Services.
- (b) The Authority shall notify the Franchise Operator from time to time of the Rolling Stock Capacities. No such notification shall, except in the case of patent error,

amend any previous notification in respect of the same type of rolling stock or configuration of rolling stock.

- (c) the Franchise Operator shall inform the Authority in advance of the introduction of any new rolling stock or any different configurations of rolling stock or any different configuration of seating within any rolling stock, and may request the Authority to notify it of the deemed capacities of any new rolling stock or configurations of rolling stock or configurations of seating within rolling stock it may wish to use and shall supply such information as the Authority may reasonably request in relation thereto.

6.9 Other Train Operators

If and to the extent that the Franchise Operator provides Passenger Services which are subject to the Load Factor Specifications and another Train Operator also provides railway passenger services over the same section of track or route or over a route with the same originating and finishing points, then, except to the extent that the other Train Operator has previously consented, the Franchise Operator shall take no action or step or series of actions or steps (including by way of adjustment to the Timetable or Train Plan or to the quality of the Passenger Services) which might reasonably be considered to result in a material number of passengers who would otherwise use the Passenger Services provided by the Franchise Operator using the services provided by the other Train Operator and for the purposes of this clause 6.9 only, the term "Train Operator" shall include LUL.

- 6.10** Nothing in Clauses 6.5 or 6.7 shall prevent the Franchise Operator from planning or implementing any change to its Timetable or Train Plan which would result in more capacity being provided by the Franchise Operator on the Passenger Services than the capacity required to ensure that, on the basis of the Forecast Demand following any relevant passenger count, it does not exceed the Load Factor Specifications in providing the Passenger Services over the remainder of the Franchise Term and the obligation in Clause 6.7 to implement an Agreed Capacity Plan (or part thereof) or an Implementation Plan shall be construed accordingly.
- 6.11** For the avoidance of doubt, nothing in this Clause 6 will relieve the Franchise Operator of any obligations it may have under any other provision of this Franchise Agreement (including the Franchise Plan and Schedule 14), or limit the rights of the Authority or the action which may be taken by the Authority in respect of any breach by the Franchise Operator of any other such obligations.

7 The Timetable

7.1 Publication of Timetable

- (a)^{b c} The Franchise Operator shall send to the Authority as soon as practicable but no less than 7 weeks prior to the implementation thereof, any new Timetable and related Train Plan. Any such new Timetable shall be sent at the same time to all relevant Rail Passengers' Committees and any relevant Local Authorities that may have requested a copy from the Franchise Operator.
- (b) The Franchise Operator shall publish at each Station, to the extent reasonably practicable, and in accordance with the ATOC Code of Practice on Presentation of Timetable Information, the times (as amended from time to time) of all passenger trains departing from such Station (including for the avoidance of doubt passenger trains operated by other Train Operators), the times of arrival of all such trains at all

other stations at which they call, and details of the principal Connections at such other stations to other passenger trains. For the purpose of this Clause 7.1(b) the “ATOC Code of Practice on Presentation of Timetable Information” is the code of practice on presentation of timetable information issued by the Association of Train Operating Companies and in force from time to time or, in the absence of which, such other code as the Authority may specify.

- (c) ^{def}The Franchise Operator shall publish such information from the commencement of the Franchise Term and subsequently publish updates or replacements to such information to the extent necessary to reflect any changes made to such information which comes into effect on a Passenger Change Date:

- (i) in the case of the booklets referred to in Clause 7.1(e)(i), such publication to be no later than 4 weeks in advance of the date the changes come into effect; and
- (iv) in the case of the information displays in Clause 7.1(e)(ii), such publication to be no later than the date on which the changes come into effect.

In addition, the Franchise Operator shall display a poster at each Station advising customers of all significant alterations to trains serving that Station no later than 4 weeks in advance of the date on which the changes come into effect.

- (d) The obligations under Clause 7.1(b) and Clause 7.1(c) shall be subject to the provision of the relevant information or booklets at the relevant time by the relevant other train operators. The Franchise Operator shall provide the equivalent information and booklets to the operators of other stations which are served by the Passenger Services and which are not Stations in sufficient time for the information to be published by such other operators within the time limits provided for in Clause 7.1(c).

- (e) For the purposes of this Clause 7.1, “publish” shall mean:

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

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

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

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

- (g) The Franchise Operator shall use all reasonable endeavours to procure that information in relation to the Timetable is available to passengers through the National Rail Enquiry Scheme (or any replacement of it), and that information in relation to any new or

amended Timetable is available to passengers through such Scheme not less than 4 weeks prior to its implementation.

7.2 Notification of revisions to Timetable

- (a)** The Franchise Operator shall inform passengers, so far as possible on 7 days' prior notice, if it will be unable to operate its trains in accordance with the Timetable. Such information shall include any revised timetable or travelling arrangements.
- (b)** The relevant information shall be provided by revising or adding to the information displays referred to in Clause 7.1(e) and notifying the operators of other stations served by the Passenger Services as appropriate. The Franchise Operator 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.
- (c)** The time limits contained in Clause 7.2(a) shall not apply to any revisions which are made on an emergency basis, but the Franchise Operator shall in such circumstances notify or publish the relevant revisions as soon as reasonably practicable.
- (d)** Notwithstanding the above obligations the Franchise Operator shall ensure that so far as reasonably practicable (including by communication of the relevant information to persons likely to field relevant enquiries) passengers making enquiries regarding the Passenger Services can be informed of the planned timetable of the Franchise Operator as far in advance as is reasonably practicable.

8 Passengers

8.1 Passenger's Charter

- (a)** The Franchise Operator shall publish the Passenger's Charter from the commencement of the Franchise Term and subsequently publish updates or replacements to the Passenger's Charter to the extent necessary to reflect any changes to the Passenger's Charter which come into effect after such commencement, such publication to be no later than the date on which the changes come into effect. The date of publication of the Passenger's Charter and of subsequent updates or replacements shall be clearly marked on the front cover.
- (b)** The Franchise Operator:
 - (i)** may from time to time review the need for changes to the Passenger's Charter in consultation with relevant Rail Passengers' Committees; and
 - (ii)** shall in any case carry out a consultation and review prior to each Performance Review Date (as described in, and as may be adjusted in accordance with, Schedule 15), such review to be carried out in sufficient time so as to enable any changes resulting from the review in accordance with Clause 8.1(c) to take effect on the date required by Clause 8.1(d).
- (c)** The Franchise Operator shall submit, following such review as is referred to in (b) above, a draft revised Passenger's Charter complying with the requirements of Clause 8.1(e) (or proof of consultation together with the Franchise Operator's conclusion, if that conclusion would comply with Clause 8.1(e), not to amend the then current Passenger's Charter) to the Authority for approval. The Authority shall respond to such submission within one month. The Franchise Operator shall make no amendments to the Passenger's Charter without the prior written approval of the Authority (which shall not be unreasonably withheld). For the avoidance of doubt, but

without prejudice to Clause 8.1(e), nothing in this Franchise Agreement shall entitle the Authority unreasonably to require any amendment to be made to the Passenger's Charter whether as a condition of such approval or otherwise.

- (d) The revised Passenger's Charter, as approved by the Authority, shall come into effect as soon as practicable following such approval or on the date specified by the Authority in such approval. Where the revisions are to be made pursuant to a review required by Clause 8.1(b)(ii), then unless otherwise agreed by the Authority, the revised Passenger's Charter shall come into effect no later than the relevant Performance Review Date in respect of which the review has been undertaken under Clause 8.1(b)(ii) or (if later) the date on which the performance standards referred to in Clause 8.1(e) are agreed or determined.
- (e) Unless otherwise agreed by the Authority, the performance standards in the revised Passenger's Charter are to be no lower than the higher of (i) the performance standards in the then current Passenger's Charter and (ii) such performance standards as are determined in accordance with Part 2 paragraph 7 of Schedule 15.
- (f) The Franchise Operator shall provide, at each main Station (as listed in the Passenger's Charter) and so far as reasonably practicable, at each staffed Station, copies of the Passenger's Charter and the passenger's charters of other train operators whose trains call at such Station. Passengers shall not be charged for copies of such documents.
- (g) The obligation under Clause 8.1(f) shall be subject to the provision of the relevant passenger's charter at the relevant time by the relevant other train operators. The Franchise Operator shall provide copies of the Passenger's Charter to the operators of other stations which are served by the Passenger Services and which are not Stations in sufficient time for the information to be published by such other operators within the time limits provided for in Clause 8.1(a). The Franchise Operator shall at the same time provide copies of the Passenger's Charter to relevant Rail Passengers' Committees.
- (h) The Franchise Operator shall make all payments and all extensions to Fares and provide all discounts on the price of Fares which may be due to be made, offered or provided from time to time under the terms of the Passenger's Charter (whether or not the Franchise Operator is legally obliged to do so).
- (i) The Franchise Operator shall, in respect of all other obligations or statements of intention or other representations under the Passenger's Charter, use all reasonable endeavours to comply with such obligations, statements and representations and to meet such standards or targets of performance as may be comprised in the Passenger's Charter from time to time.
- (j) The Franchise Operator shall procure that the Passenger's Charter Statistics detailing the performance of the Franchise Operator with respect to the standards in the Passenger's Charter is prepared in respect of every Reporting Period in accordance with the Passenger's Charter Guidelines. The Passenger's Charter Statistics and the passenger's charter statistics of other train operators whose trains call at such Station shall be displayed on information displays at all main Stations by midnight on the Saturday following the end of such Reporting Period. So far as reasonably practicable, copies of the same shall be available on request at each staffed Station. Where such Station is served by only one or more service groups (as defined in the Passenger's Charter) ("**Charter Groups**") and not others, the Passenger's Charter Statistics relating to such other Charter Groups need not be published there.

- (k) The obligation under Clause 8.1(j) shall be subject to the provision of the passenger's charter statistics at the relevant time by the relevant other train operators in the appropriate format. The Franchise Operator shall provide the Passenger's Charter Statistics in the appropriate format to the operators of other stations which are served by the Passenger Services and which are not Stations in sufficient time for the information to be displayed by and available from such other operators within the time limits provided for in Clause 8.1(j). The Franchise Operator shall at the same time provide copies of the Passenger's Charter Statistics to relevant Rail Passengers' Committees.
- (l) The Franchise Operator shall procure that the Passenger's Charter Statistics shall be audited from time to time by an independent person or persons reasonably acceptable to the Authority. Such audit shall be conducted at least once in each calendar year and the results shall be provided to the Authority by the Franchise Operator, as shall (if so requested by the Authority) details of the methodology used in such audit.
- (m) To the extent any such audit reveals inaccuracies in the data and information used to measure the performance of the Franchise Operator:
 - (i) the Franchise Operator shall ensure so far as reasonably practicable that the production of such inaccurate data and information is not repeated;
 - (ii) the Franchise Operator shall (as soon as reasonably practicable) implement any corrections arising out of the findings of the audit but not on a retrospective basis; and
 - (lvi) insofar as any errors in data and information result in compensation that should have been given not being given, the Franchise Operator shall so far as reasonably possible make such compensation available.

8.2 Disruptions to Passenger Services

- (a) In the event of a disruption to the Passenger Services (whether occurring on the day or previously expected and whether or not reflected in the Timetable) the Franchise Operator shall use its best endeavours to provide or secure the provision of such alternative transport arrangements as passengers might reasonably expect (whether or not notified in advance of the disruption) and as are reasonably feasible (having regard, *inter alia*, to the length of notice of disruption received by the Franchise Operator and the frequency, duration and extent of any previous such disruptions and to safety and cost) such that passengers who would otherwise have travelled on the Passenger Services are transported by such alternative transport to (or as near as reasonably practicable to) the end of their intended journeys on the Passenger Services.
- (b) Where any Passenger Services are required to be cancelled or delayed or short formations are required to be operated, the Franchise Operator shall use all reasonable endeavours to ensure that any such cancellations, delays or short formations are not concentrated on a particular route on which the Passenger Services are operated save where such concentration either:
 - (i) would be in the overall interest of passengers using the Passenger Services and would not result in disproportionate inconvenience to any group of passengers; or
 - (lvii) is reasonably necessary as a result of the cause or the location of the cancellation, delay or short formation.

- (c) The Franchise Operator shall have in place reasonable contingency arrangements for the provision of alternative transport arrangements under this Clause in the event of a disruption to the Passenger Services.

8.3 Bicycles

- (a) The Franchise Operator shall have a policy setting out the services and facilities it provides for bicycles both on the Passenger Services and at the Stations. Such policy shall reflect the Franchise Operator's obligations under this Franchise Agreement and shall include any restrictions on bicycles. The Franchise Operator shall publish (as defined in Clause 7.1(e) of this Franchise Agreement) such policy, as in force from time to time.
- (b) The Franchise Operator shall, so far as reasonably practicable and subject to the availability of appropriate space on its rolling stock and sub-Clause (f) below, ensure that facilities for the transport of bicycles on trains are made available, at reasonable charges (if any), to passengers using or intending to use the Passenger Services provided that no charge shall be made to passengers for the reservation of space in designated bicycle storage facilities on trains.
- (c) No charge shall be made to passengers using or intending to use the Passenger Services for the use of facilities provided in accordance with paragraph 6 of Schedule 4, except to the extent the Authority otherwise agrees.
- (d) The Franchise Operator shall, except to the extent the Authority otherwise agrees, not cease to provide the level of facilities for the carriage and storage of bicycles on trains used in the Passenger Services as was provided prior to the Previous Franchise Commencement Date on the Passenger Services.
- (e) Except to the extent the Authority otherwise agrees having regard to, *inter alia*, the likely use of such facilities (such agreement not to be unreasonably withheld), any new rolling stock which is procured directly or indirectly by the Franchise Operator shall include facilities for the carriage and storage of bicycles.
- (f) Notwithstanding any of the above, the Franchise Operator shall not be in breach of any of its obligations under this Clause 8.3 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 travelling with them.

8.4 National Passenger Surveys

- (a) The Authority shall carry out National Passenger Surveys in respect of such aspects of the Franchise Services and in such form and manner and at such time as the Authority may determine from time to time provided that:
 - (i) subject to Clause 8.4(c), as at the date of this Franchise Agreement, the Authority proposes to carry out two National Passenger Surveys in each calendar year; one during the first six months and one during the second six months of any year;
 - (lviii) the National Passenger Surveys described in Clause 8.4(a)(i) are "Actionable National Passenger Surveys" for the purposes of this Clause 8.4 and Schedule 15;

- (lix) nothing shall prevent the Authority from carrying out such further National Passenger Surveys as it may require from time to time;
- (lx) subject to Clause 8.4(a)(v), a National Passenger Survey carried out by the Authority shall be deemed to be an Actionable Passenger Survey unless the Authority notifies the Franchise Operator to the contrary or unless two Actionable National Passenger Surveys have already been completed in the relevant calendar year;
- (lxi) if the Authority commences but subsequently discontinues and determines not to complete any National Passenger Survey which would otherwise be an Actionable National Passenger Survey, that survey will not count as an Actionable National Passenger Survey for the purposes of this Clause 8.4(a).

The Authority will use reasonable endeavours to procure that the manner in which the National Passenger Surveys are carried out shall be designed to ensure, so far as is reasonably practicable, that the results of the surveys form a reasonable basis for monitoring the trends of customer satisfaction across successive National Passenger Surveys (having regard always to the fact that National Passenger Surveys are intended to be national and are not designed with specific reference to the Franchise Services operated by the Franchise Operator).

- (b) Without limiting Clause 8.4(a), where the Authority reasonably considers it necessary to do so from time to time, the Authority will be entitled to make changes in the manner of conducting National Passenger Surveys including any change in the timing of the surveys or in the aspects of the Franchise Services to be included within the scope of the surveys. The Authority will:
 - (i) in response to any reasonable request from the Franchise Operator from time to time, make available to the Franchise Operator summary details of the methodology utilised in the design of National Passenger Surveys;
 - (lxii) if and to the extent that it is reasonably practicable to do so having regard to all the circumstances (including the nature of any such change and the timescales within which the same is required to be made) consult with the Franchise Operator in connection with any such change which it proposes to make and which it reasonably considers to be material; and
 - (lxiii) notify the Franchise Operator in relation to any such change which is made and which it reasonably considers to be material

provided that no failure to so provide such details or notification will invalidate any National Passenger Surveys for the purposes of this Agreement or otherwise.

- (c) For the avoidance of doubt, the Authority may (but shall not be obliged to) determine not to carry out, or to suspend or delay or discontinue any National Passenger Survey planned or commenced if it considers that in the circumstances it is inappropriate or impractical to carry out or continue that survey.
- (d) The Authority may from time to time publish or otherwise disclose such results of each National Passenger Survey carried out as it considers is appropriate and in any event shall disclose to the Franchise Operator such results as are necessary to give effect to the terms of this Clause 8.4 and Schedule 15.
- (e) After the relevant results of an Actionable National Passenger Survey have been made available to the Franchise Operator pursuant to Clause 8.4(d) representatives of the

Franchise Operator shall attend a meeting with the Authority or its representatives for the specific purpose of enabling those results to be reviewed with the Franchise Operator. Unless otherwise agreed by the Authority, such meeting shall be separate from and in addition to the quarterly review meetings referred to in Clause 15.8.

The following provisions will apply to such meeting:

- (i) Unless otherwise required by the Authority, the meeting shall take place within 6 weeks after the date on which the relevant results have been made available to the Franchise Operator. The Authority will give to the Franchise Operator not less than seven days' prior notice of the date of the meeting.
 - (lxiv) The persons attending the meeting on behalf of the Franchise Operator shall be of appropriate seniority and responsibility as the Authority may reasonably require and shall include the customer satisfaction representative referred to in Clause 8.4(f) below together with such other directors and/or senior managers of the Franchise Operator, Franchisee and any Parent as the Authority may reasonably require in the circumstances.
 - (lxv) The Authority may invite such third parties (including representatives of any relevant Rail Passengers' Committee or Local Authority) as it reasonably considers appropriate to attend the meeting.
 - (lxvi) The Franchise Operator shall ensure that its representatives are in a position at the meeting to discuss all aspects of the relevant results, the Franchise Operator's assessment of them, and any proposed action plan as required by and described in Clause 8.4(h) (in the case of any such action plan, in such detail as is consistent with the timing of the meeting relative to the time by which the action plan is required to be produced and implemented).
 - (lxvii) Following the meeting, the Authority shall have the right to require such further meetings as it reasonably considers necessary in relation to the review of the National Passenger Survey results and the steps to be taken under this Clause 8.4 in response to those results, and the provisions of this Clause 8.4(e) shall apply equally to all such further meetings.
- (f) The Franchise Operator shall from time to time designate an individual to be its customer satisfaction representative for the purposes of this Clause. Unless otherwise agreed by the Authority, such person shall be a registered director of the Franchise Operator with overall responsibility at board level within the Franchise Operator for customer service and satisfaction. The Authority reserves the right to approve such representative (such approval not to be unreasonably withheld).
- (g) If the results of any Actionable National Passenger Survey show that:
- (i) the level of customer satisfaction in respect of any aspect of the Franchise Services has remained below the relevant NPS Benchmark; or
 - (lxviii) there has been a decline in the level of customer satisfaction in respect of any particular aspect of the Franchise Services from or below the level of the relevant NPS Benchmark and that decline is statistically significant; or
 - (lxix) where the level of customer satisfaction in respect of any particular aspect of the Franchise Services identified in that Actionable National Passenger

Survey remains above the relevant NPS Benchmark, but there has been a statistically significant decline from the level achieved by the Franchise Operator in respect of the Actionable National Passenger Survey in the previous calendar year which the Authority reasonably considers most closely corresponds (in terms of the time in the year when it is carried out) with the Actionable National Passenger Survey being considered in the current year

then the Franchise Operator shall, unless the Authority otherwise requires and subject to Clauses 8.4(h) and 8.4(i)(iii), use its best endeavours to secure the required improvement by the required time.

(h) It is acknowledged that:

(i) it may in some circumstances be the case that the performance by the Franchise Operator, in accordance with this Franchise Agreement, of its Output Commitments (as defined in Schedule 14) causes the results of an Actionable National Passenger Survey to fall within the scope of Clause 8.4(g) for one or more aspects of the Franchise Services;

(lxx) where and to the extent that the Franchise Operator can demonstrate to the reasonable satisfaction of the Authority that:

(x) the circumstances in Clause 8.4(h)(i) apply;

(y) the performance by the Franchise Operator of such Output Commitments in accordance with its other obligations under this Agreement would reasonably be expected to result in the required improvement

then the provisions of Clause 8.4(h)(iii) will apply;

(lxxi) where this Clause 8.4(h)(iii) applies:

(x) the Franchise Operator shall use its reasonable endeavours to improve the level of customer satisfaction for the relevant aspect of the Franchise Services, in so far as is consistent with the carrying out of the relevant Output Commitment(s); and

(y) subject to (x) above, the Franchise Operator will not have any separate obligation pursuant to Clause 8.4(g) to use its best endeavours to secure the required improvement for that aspect by the required time (provided that nothing in this Clause 8.4(h) will relieve the Franchise Operator of its obligations in respect of the relevant Output Commitment(s)).

(i) Without limiting Clause 8.4(g) on each occasion that the Franchise Operator becomes obliged under that clause to use its best endeavours to secure a required improvement, the Franchise Operator will produce an action plan which is consistent with its obligations in Clause 8.4(g) and in compliance with the following provisions:

(i) the Franchise Operator will (1) produce, (2) obtain the Authority's approval of, and (3) commence the implementation of the action plan, within 12 weeks after the date on which the results of such Actionable National Passenger Survey which triggered the requirement for the required improvement were published or otherwise made available to the Franchise Operator;

- (lxxii) the action plan will contain specific tangible action points and indicate in the case of each action point:
 - (v) how that action will contribute to meeting the required level of customer satisfaction;
 - (w) where the action is to be implemented;
 - (x) how and by whom the action is to be implemented, with a named manager responsible for each action;
 - (y) when the action is to commence and by when it is to be implemented provided always that where any action is expressed to be ongoing, the plan shall include specific review dates; and
 - (z) how performance of the action is to be measured;
 - (lxxiii) the action plan will identify the expenditure associated with each action on the basis that, for the purpose of satisfying its obligation to use best endeavours under Clause 8.4(g), the Franchise Operator will not be required to make additional expenditure of more than the capped expenditure in relation to any Performance Review Period:
- (j) The Franchise Operator will, except to the extent otherwise agreed by the Authority in advance, implement and comply with and not discontinue each action plan referred to in Clause 8.4(i). Approval or lack of approval by the Authority in accordance with Clause 8.4(h) shall not relieve the Franchise Operator of its obligations under this Clause or any other provision of this Franchise Agreement.
 - (k) For the purpose of this Clause 8.4 and subject to Clause 8.4(l) the NPS Benchmark shall, for any new aspect of the Franchise Services which the Authority may include within the scope of the National Passenger Survey from time to time, be determined on a basis equivalent to that on which the original NPS Benchmarks as at the Franchise Commencement Date were derived from the Autumn 1999 and Spring 2000 National Passenger Surveys. The parties may refer any dispute relating to such determination for resolution in accordance with the Dispute Resolution Rules.
 - (l) If at any time the Authority reasonably considers that the NPS Benchmarks are no longer appropriate or robust for the purposes of this Clause 8.4 as a result of any changes in circumstances (which may include but shall not be limited to any change in the nature of the Franchise Services or any change in the way that National Passenger Surveys are to be carried out) then the Authority may re-set the levels of the NPS Benchmarks to such level as it reasonably considers appropriate in order to give effect to this Clause 8.4 and, so far as it is possible to do so, replicate (in terms of the level of customer satisfaction required) the effect of any NPS Benchmark as previously set for the purposes of this Clause. The Franchise Operator shall be entitled to refer for determination in accordance with the Dispute Resolution Rules any dispute as to whether the revised NPS Benchmark has been set at a reasonable level by the Authority in accordance with this Clause 8.4(l).
 - (m) In any case where the Authority determines for any reason not to carry out any Actionable National Passenger Survey, then:
 - (i) for the avoidance of doubt, the procedures described in Clauses 8.4(d) to (l) will not have any effect in relation to the survey which has not been carried out but will take effect again in relation to the next National Passenger Survey which is carried out; and

- (lxxiv) for the purposes of giving effect to the provisions of this Clause 8.4, where any provision of this Clause 8.4 refers for purposes of comparison to an Actionable National Passenger Survey carried out previously, and that Actionable National Passenger Survey was not actually carried out, that reference shall be deemed to be a reference to such Actionable National Passenger Survey carried out in the calendar year preceding the year of the cancelled Actionable National Passenger Survey as most closely corresponds (in terms of the time of the year at which it is carried out) to the Actionable National Passenger Survey to which it is being compared.

A reference in this Clause 8.4(m) to an Actionable National Passenger Survey which is “not carried out” or “cancelled” is a reference to a survey which is either not carried out at all, or is not carried out at all in relation to the Franchise Operator, in either case:

- (1) during the first 6 months of a calendar year (where the survey is intended to correspond to a “Spring” survey); or
- (2) during the second 6 months of a calendar year (where the survey is intended to correspond to an “Autumn” survey)

but not to any survey which has been suspended or delayed but which has been carried out in whole or in part.

- (n) The Franchise Operator shall co-operate with the Authority as it may reasonably request from time to time to allow or facilitate the carrying out of the National Passenger Surveys. When so requested by the Authority, the Franchise Operator shall permit the Authority or its representatives and agents to have access to passengers and other persons who use Franchise Services (such access to be provided on relevant trains or at relevant stations or as otherwise reasonably required by the Authority) for the purposes of the Authority carrying out National Passenger Surveys.

- (o) For the purpose of this Clause 8.4:

- (i) “additional expenditure” means, in respect of any action plan, expenditure additional to:
 - (x) any sums provided for expenditure in respect of the same or similar commitments in the budget of the Franchise Operator for the Franchise Operator Year (the “First Franchise Operator Year”) in which the obligation to produce the relevant action plan first arises (the “Existing Expenditure”), and in any subsequent Franchise Operator Year, shall be in addition to the amount of the Existing Expenditure as increased by an amount equivalent to any increase in the Retail Price Index between the beginning of the First Franchise Operator Year of the expenditure and the beginning of that subsequent Franchise Operator Year; and
 - (y) without limiting the preceding Clause 8.4(o)(i)(x), any expenditure made or to be made by the Franchise Operator for the purpose of complying with the following provisions of this Franchise Agreement: Clause 5 (excluding 5.8) and Schedule 3; Clause 6; Clause 7; Clauses 8.1, 8.2 and 8.3; Clause 10.3 and Schedule 4; Schedule 13; and Schedule 14.

unless the Authority otherwise consents to the amount of any expenditure described in (x) or (y) being counted as additional expenditure for the purposes of this Clause 8.4 (such consent not to be unreasonably withheld);

(lxxv) the “capped expenditure” (“CE”) shall mean £2,500,000 provided that:

(x) such amount shall be adjusted at the beginning of each calendar year during the Franchise Period in accordance with the following formula:

$$CE = £2,500,000 \times RPI$$

where CE is the adjusted amount of the capped expenditure and RPI means the quotient of the Retail Prices Index for the November which precedes the start of that year divided by the Retail Prices Index for November 1999 and any amount already expended during the relevant Performance Review Period shall be deducted from such adjusted amounts; and

(y) the “capped expenditure” has been calculated on the basis of a Performance Review Period of five calendar years and will be adjusted pro rata if the relevant Performance Review Period is longer or shorter than five calendar years;

(lxxvi) “Performance Review Period” has the meaning ascribed to that term in Schedule 15;

(lxxvii) the “relevant NPS Benchmark” for any National Passenger Survey wholly or mainly carried out in the first 6 months of any calendar year, shall be that for Spring 2000 and, for any National Passenger Survey wholly or mainly carried out in the second six months of a calendar year, shall be that for Autumn 1999 subject to any rebenchmarking in accordance with Clause 8.4(l);

(lxxviii) the “required improvement” will be an improvement in the level of customer satisfaction for the relevant aspect, as measured by a National Passenger Survey, so that such level reverts to whichever is the higher of:

(x) the relevant NPS Benchmark; and

(y) the highest level for that aspect recorded by the Franchise Operator in any National Passenger Survey carried out during the term of this Agreement, or, if lower, the relevant Customer Satisfaction Target then applicable for that aspect, if any;

(lxxix) the “required time” is by the time of the National Passenger Survey in the next calendar year which most closely corresponds (in terms of the time of year when the survey is carried out) with the National Passenger Survey being considered in the current year (with the intention and effect that the required improvement will be achieved by the time of, and be demonstrated by the results of, that National Passenger Survey in the next calendar year) or such longer period as the Authority may in its absolute discretion specify or agree;

(lxxx) “statistically significant” means statistically significant at the 95% confidence level in the reasonable opinion of the Authority having regard to the advice to this effect received by the Authority.

9 Fares and Fare Schemes

9.1 Fare Regulation

Schedule 5 shall have effect between the parties, and the Authority and the Franchise Operator shall each comply with their respective obligations thereunder.

9.2 Reduced Fares for Children

The Franchise Operator shall, where it Creates or has Created a Fare, set the Child Price for that Fare in such a way that the Fare may be purchased by or for a person under the age of 16 on terms which are no less favourable than would apply if that person were the holder of a Young Person's Railcard (as amended or replaced from time to time).

9.3 Agents of the Franchise Operator

The Franchise Operator 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 agent or otherwise):

- (a) for Fares whose Prices or Child Prices are regulated under Clause 9.2 or Schedule 5, do so at prices no greater than the Prices or, if the Fare is to be used by a person under the age of 16, the Child Prices set for such Fares from time to time in accordance with Clause 9.2 or Schedule 5, as the case may be; and
- (b) for all Fares, comply with the provisions of Clause 30.1 of this Franchise Agreement to the extent they apply to the selling of Fares by the Franchise Operator.

9.4 Local Authority Concessionary Travel Schemes

- (a) The Franchise Operator shall participate in the concessionary travel schemes described in Part 7(a) of Schedule 1 and, if so requested by the Authority, such other concessionary travel schemes as any relevant Local Authority may require or request it to participate in, provided that the terms of any such scheme or the obligations assumed by the Local Authority in connection therewith are such as to result, by way of distribution of income or otherwise, in the reasonable opinion of the Authority, in the Franchise Operator incurring no Net Loss as a result of any such participation.
- (b) The Authority shall consult with the Franchise Operator before making any request for it to participate in any new schemes under Clause 9.4(a) and shall allow the Franchise Operator a reasonable opportunity to make representations to it with respect to any such participation.
- (c) Subject to the terms of the relevant scheme, the Franchise Operator shall be entitled to cease to participate in any concessionary travel scheme under Clause 9.4(a) if, in the opinion of the Authority (which shall be required to act reasonably), continuing participation would result in the Franchise Operator incurring any Net Loss.
- (d) The No Net Loss No Net Gain Regime shall apply to the extent required to determine whether the Franchise Operator would incur any Net Loss as a result of participation in the relevant scheme (and, for the avoidance of doubt, no adjustment shall be required to be made to the terms of this Franchise Agreement).
- (e) The Net Loss of the Franchise Operator as a result of participation in a new scheme shall include the reasonable agreed direct costs of the Franchise Operator (exclusive of

any Value Added Tax for which credit is available under sections 25 and 26 of the Value Added Tax Act 1994).

9.5 Local Authority Multi-modal Schemes

- (a) The Franchise Operator shall participate in the multi-modal schemes described in Part 7(b) of Schedule 1 and, if so requested by the Authority, such multi-modal travel schemes as any relevant Local Authority may require or request it to participate in, provided that the terms of any such scheme or the obligations assumed by the Local Authority in connection therewith are such as to result, by way of distribution of income or otherwise, in the reasonable opinion of the Authority and subject to Clause 9.5(b), in the Franchise Operator incurring no Net Loss as a result of any such participation.
- (b) For the purposes of this Clause 9.5, the Franchise Operator shall be deemed to incur no Net Loss as a result of participation in any scheme which is reasonably similar to or replaces any such scheme or schemes as may be listed in Part 7(b) of Schedule 1 if and to the extent that the Net Loss caused as a result of such participation is no greater than the Net Loss (if any) incurred by the Franchise Operator at the date of signature of this Franchise Agreement under the relevant scheme or schemes listed in Part 7(b) of Schedule 1 as adjusted by reference to any change in the level of prices according to the Retail Prices Index since such date.
- (c) The Authority shall consult with the Franchise Operator before making any request under Clause 9.5(a) and shall allow the Franchise Operator a reasonable opportunity to make representations to it with respect to any such participation.
- (d) Subject to the terms of the relevant scheme, the Franchise Operator shall be entitled to cease to participate in any multi-modal scheme under Clause 9.5(a) if, in the opinion of the Authority, continuing participation would result in the Franchise Operator incurring:

 - (i) in the case of any such scheme listed in Part 7(b) of Schedule 1 (or any scheme which is reasonably similar to or replaces any such scheme), any more Net Loss than the Net Loss incurred by the Franchise Operator at the date of signature of this Franchise Agreement under such scheme (or any scheme so replaced) as adjusted by reference to any change in the level of prices according to the Retail Prices Index since such date; and
 - (lxxxi) in the case of any other such schemes which the Franchise Operator may be required to participate in under Clause 9.5(a), any Net Loss.
- (e) The No Net Loss No Net Gain Regime shall apply to the extent required to determine whether the Franchise Operator would incur any Net Loss as a result of participation in the relevant scheme (and, for the avoidance of doubt, no adjustment shall be required to be made to the terms of this Franchise Agreement).

9.6 Discount Fare Schemes

- (a) If the Authority effects, or proposes to effect, an amendment to a Discount Fare Scheme or introduces any new Discount Fare Schemes or ceases to approve a Discount Fare Scheme for the purposes of section 28 of the Act, then the No Net Loss No Net Gain Regime shall apply.
- (b) The Authority shall provide a reasonable opportunity to the Franchise Operator to make representations to it before amending, introducing or ceasing to approve a Discount Fare Scheme under Clause 9.6(a).

- (c) No adjustment shall be made to the terms of this Franchise Agreement unless the Net Loss or Net Gain resulting from the amendment, introduction or cessation of approval will exceed, in the year following its implementation, 0.1 per cent. of the annual Turnover of the Franchise Operator as disclosed by its latest available audited accounts.

9.7 Inter-Operator Schemes

- (a) If an amendment is effected or proposed to be effected to an Inter-Operator Scheme which requires the consent or approval of the Authority in accordance with the terms thereof, then, the No Net Loss No Net Gain Regime shall apply except that adjustments shall only be made in respect of the Net Gain resulting from the Variation (or a proportion of such Net Gain as determined by the Authority) and not any Net Loss as a result thereof.
- (b) No adjustment shall be made to the terms of this Franchise Agreement unless the Net Gain resulting from any amendment of an Inter-Operator Scheme will exceed, in the year following the implementation of the amendment, 0.1 per cent of the annual Turnover of the Franchise Operator as disclosed by its latest available audited accounts.

9.8 Value Added Tax

If Value Added Tax treatment of the provision of Passenger Services by the Franchise Operator changes on or before the expiry of the Franchise Period (including but not limited to an increase or reduction in the rate of Value Added Tax applying to the provision of such Passenger Services) the No Net Loss No Net Gain Regime shall apply in respect of any Net Loss or Net Gain suffered or made (as applicable) as a result of such increase or reduction.

10 Stations and Depots

10.1 Closures

Except to the extent that the Authority may otherwise agree from time to time, the Franchise Operator shall not cease to operate, or cease to secure the operation of, or propose to terminate the use of, any Station or Depot, or some part of a Station or Depot, where such cessation or proposal might result in a Closure. In the event of a Closure or any procedures being commenced under Part I of the Act in relation to a Closure in connection with any such cessation or proposed cessation or termination, the Franchise Operator shall, at its own cost and to the extent so requested by the Authority, take such action as the Authority may require it to take on its behalf in order for the Authority to comply with any duty imposed on it under Part I of the Act in relation to the Closure.

10.2 Station and Depot Leases

- (a) The Authority shall, as soon as practicable following the Franchise Commencement Date, request Railtrack to enter into good faith negotiations with the Franchise Operator with a view to agreeing the details of new leases for each of the Stations which comply with the terms of the agreement between the Director of Passenger Rail Franchising and Railtrack dated 31 October 2000 concerning the grant of leases of Franchise Stations and certain areas at Major Stations ("the Station Leases Agreement"), pursuant to Clause 6 of the Station Leases Agreement.

(b) Subject to receipt from the Franchise Operator of evidence which shows to the Authority's reasonable satisfaction that the Franchise Operator has used all reasonable endeavours to negotiate a new lease with Railtrack in respect of any Station and that Railtrack has acted unreasonably or has otherwise failed or refused to comply with the Authority's request made pursuant to Clause 10.2(a) in relation to all or any such new leases, the Authority shall authorise the Franchise Operator to serve an Option Notice (as defined in the Station Leases Agreement) in respect of such Station(s) in accordance with the terms of the Station Leases Agreement, having first served a copy of such authority on Railtrack.

(c) The Franchise Operator shall not:

(i) terminate or agree to terminate, or take or omit to take any other action which might result in the termination of any Station Lease or Depot Lease; or

(lxxxii) assign all or part of its interest under any Station Lease or Depot Lease; or

(lxxxiii) sublet the whole or substantially the whole of the property comprised in any Station Lease or Depot Lease

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

10.3 Station standards

(a) Subject to:

(i) the provisions of Clause 10.4;

(lxxxiv) any applicable Law; and

(lxxxv) the rights of Railtrack under any relevant Station Lease, or any other person under any other contract to which the Franchise Operator or Railtrack may have been party immediately before the Previous Franchise Commencement Date, to prohibit, restrict, approve or consent to the performance of the obligations of the Franchise Operator under this Clause 10.3

the Franchise Operator shall:

(x) use all reasonable endeavours to procure that, as a minimum at each Station, the requirements of paragraph 6 of Schedule 4 are complied with on and from the date 18 months after the Franchise Commencement Date;

(y) procure that, as a minimum at each Station, the requirements of paragraph 6 of Schedule 4 are complied with on and from the date 2 years after the Franchise Commencement Date; and

(z) procure that, as a minimum at each Station, the remaining requirements of Schedule 4 are complied with on and from the

Franchise Commencement Date or such other date as may be specified in Schedule 4.

- (b) Where compliance by the Franchise Operator with the requirements of Schedule 4 would:
- (i) either, under any applicable Law, require the consent or approval of any other person; or
- (lxxxvi) be so subject to the rights of Railtrack or any other person,
- the Franchise Operator shall use all reasonable endeavours to ensure that Railtrack or such other person consents to and approves, and does not prohibit or restrict, the performance of such obligations, whether in whole or in part and shall take such other steps and exercise such other rights as the Authority may reasonably require in relation thereto.
- (c) The Franchise Operator shall notify the Authority as soon as reasonably practicable upon it becoming aware that it may not be able to comply with its obligations under Clause 10.3(a) and shall supply such details thereof as the Authority may reasonably require.

10.4 Derogation

The Franchise Operator shall not be required to comply with the provisions of Clause 10.3 if and to the extent that the Authority granted a derogation from compliance with the equivalent provision under the Previous Franchise Agreement and has not withdrawn such derogation (any such withdrawal to be on at least six months' notice).

10.5 Rail Passenger's Committees

If the Franchise Operator proposes to take any step on or after the Franchise Commencement Date which would result in a Station ceasing to be staffed at all times of the day at which passenger trains are scheduled to call at such Station, it shall provide at least 8 weeks' written notice of such proposal to the relevant Rail Passengers' Committee.

10.6 Statutory notices

If and to the extent so requested by the Authority, the Franchise Operator shall publish and display at the Stations (and shall use all reasonable endeavours to procure the publication and display at any other stations served by the Passenger Services) of such notices as the Authority may wish to publish from time to time in exercise of its functions (including in relation to Closures or any enforcement or penalty orders).

10.7 Double arrow symbol

The Franchise Operator shall procure that the symbol known as the double arrow symbol (and registered with trade mark numbers 1275675, 1276989, 1276991, 1276992, 1276993, 1276994 and 1293165) shall be displayed at or near the entrance or entrances to all Stations in order to indicate the availability of access to such stations at such locations. Such display shall be in accordance with the Traffic Signs Regulations and General Directions 1994 and any guidelines laid down by the Secretary of State from time to time. In the event that it requires the users of such symbol to enter into a licence in respect of such symbol, the Franchise Operator shall enter into such licence and shall comply with its terms.

11 PSR/ASC Changes

11.1 Proposals for PSR/ASC Changes

- (a)** If the Authority or the Franchise Operator wishes to propose a PSR/ASC Change, it shall give notice of the proposal to the other in accordance with this Clause 11.
- (b)** Any notice which proposes a PSR/ASC Change shall:
 - (i)** set out the particulars of the proposed PSR/ASC Change (including in such format as may be reasonably requested by the Authority);
 - (lxxxvii)** set out the date or dates on which it is proposed that the PSR/ASC Change will take effect; and
 - (lxxxviii)** subject to Clause 11.1(c), be accompanied by a Feasibility Study for such PSR/ASC Change.
- (c)** In respect of a PSR/ASC Change proposed by the Authority, the Authority may request the Franchise Operator to prepare the relevant Feasibility Study. Any such Feasibility Study shall be prepared within 28 days of such request or such longer period as the parties may agree. The Authority shall be entitled to request the Franchise Operator to prepare such a Feasibility Study before the Authority gives any notice proposing a PSR/ASC change.

11.2 Consideration of proposals

- (a)** The Authority and the Franchise Operator shall give due consideration to the proposals contained in any notice of a proposed PSR/ASC Change and the related Feasibility Study.
- (b)** The Authority or the Franchise Operator, as appropriate, shall notify the other of its preliminary response to any such proposals as soon as reasonably practicable and, subject to Clause 11.2(d), they shall procure a meeting of their respective representatives within 21 days of the date of receipt of the Feasibility Study to discuss the proposals.
- (c)** Subject as provided in Clause 11.2(d) and Clause 11.4, the Authority and the Franchise Operator shall discuss the relevant proposals in good faith and use all reasonable endeavours to agree an Implementation Plan for the relevant PSR/ASC Change and the provisions of Part 1 of Schedule 9 shall apply for determining the Implementation Plan for any PSR/ASC Change.
- (d)** The Authority shall be entitled at any stage to withdraw or not to accept, and not to enter into any negotiations or meetings in respect of, a PSR/ASC Change or an Implementation Plan which involves, in the Authority's opinion, either a reduction in the level of service or the quality of any aspect of the service under the Passenger Service Requirement or Additional Service Commitment or an increase in any Franchise Payments payable, or a reduction in any Franchise Payments receivable, by the Authority.
- (e)** Notwithstanding the other requirements of this Clause 11, the Authority and the Franchise Operator shall be entitled to agree to a PSR/ASC Change on the basis that no adjustment or such adjustment as they may agree be made to the terms of this Franchise Agreement.

- (f) If the Authority requests the Franchise Operator to prepare a Feasibility Study under Clause 11.1(c) and the relevant PSR/ASC Change is not implemented, the Authority will pay to the Franchise Operator its reasonable agreed direct costs in preparing the Feasibility Study (exclusive of any Value Added Tax for which credit is available under sections 25 and 26 of the Value Added Tax Act 1994).

11.3 Sharing of Net Gain

- (a) If the Franchise Operator proposes a PSR/ASC Change which is accepted by the Authority other than pursuant to Clause 11.2(e) and which would result in a Net Gain, then such Net Gain shall be shared between the Franchise Operator and the Authority in such proportions as the Authority shall determine.
- (b) If the Franchise Operator proposes a PSR/ASC Change in good faith in accordance with Clause 11.1, together with a Feasibility Study which complies with the provisions of Part 1 of Schedule 9, and such PSR/ASC Change would result in a Net Gain, the Authority shall not, within a period of two years from the date of submission of such proposal with such a Feasibility Study be entitled to require the Franchise Operator to accept the same or a substantially similar PSR/ASC Change under Clause 11.4(a) unless a proportion of the Net Gain (if any) for such PSR/ASC Change is shared with the Franchise Operator.
- (c) For the avoidance of doubt, Net Gain in this Clause 11.3 means an aggregate Net Gain between the date of implementation of the relevant PSR/ASC Change and the expiry of the Franchise Term, having regard to any net gains or net losses that may be forecast to be made or incurred, in accordance with Schedule 9, in respect of such Change at any time during such period.

11.4 Certain proposals to be accepted

- (a) Subject to any requirement to share a proportion of any Net Gain under Clause 11.3(b) and also to Clauses 11.2(d), 11.4(b) and 11.4(c), the Authority may require, and, if the Authority so requires, the Franchise Operator shall accept, any PSR/ASC Change. The parties may resolve any dispute regarding whether Clauses 11.4(b) and 11.4(c) are applicable in accordance with the Dispute Resolution Rules. Subject to the other provisions of this Clause 11, the No Net Loss No Net Gain Regime shall apply.
- (b) The Franchise Operator shall not be required to accept a PSR/ASC Change which would reasonably be expected to result in the Train Mileage being required to be included by the Franchise Operator in the Timetable under Clause 5.1(a) in the twelve months following the implementation of the PSR/ASC Change being more than 20 per cent. above the Train Mileage scheduled to be covered under the Timetable for the twelve months beginning on the Franchise Commencement Date or, if greater, such Train Mileage as may subsequently be scheduled to be covered by the Franchise Operator under the Timetable in any twelve month period pursuant to the requirements of Clause 6, where applicable.
- (c) The Franchise Operator shall not be required to accept any PSR/ASC Change which, when aggregated with any previous PSR/ASC Changes, could reasonably be expected to require it to incur capital expenditure in excess of 0.5 per cent. of the annual Turnover of the Franchise Operator, as disclosed by its latest available audited accounts.

(d)

- (i) Nothing in this Clause 11 shall prevent the Authority from requiring a PSR/ASC Change to be made such that the Passenger Services which would be required to be contained in all or part of its Timetable and Train Plan under Clause 5.1(a) would be equivalent to the Passenger Services in fact contained in all or the relevant part of its Timetable and Train Plan before such PSR/ASC Change was implemented.
- (lxxxix) If the Authority does so require, the Franchise Operator may either:
 - (x) within 28 days of receipt of notice of the PSR/ASC Change under Clause 11.1, require the No Net Loss No Net Gain Regime to apply (in which case it shall apply but not otherwise); or
 - (y) on one occasion thereafter and subject to Clause 11.4(d)(iii), require a PSR/ASC Change to be made which would have the effect of reversing the previous PSR/ASC Change on the basis that no Net Loss or Net Gain would arise from such further PSR/ASC Change and so no other adjustments would be made to the terms of this Franchise Agreement.
- (xc) If and to the extent that the Authority does not accept the Franchise Operator's requirement under Clause 11.4(d)(ii)(y), the No Net Loss No Net Gain Regime shall apply to the Net Loss suffered by the Franchise Operator as a result thereof as if such non-compliance was a PSR/ASC Change under this Clause 11.
- (xci) Nothing in this Clause 11.4(d) shall apply to any PSR/ASC Change to the extent it would require Passenger Services to be included in the Timetable and Train Plan under Clause 5.1(a) beyond those contained in the Timetable and Train Plan at the time of the PSR/ASC Change.

11.5 Implementation of PSR/ASC Changes

- (a) The Franchise Operator shall amend its Timetable and Train Plan to reflect a PSR/ASC Change as soon as reasonably practicable but no later than the date specified in the relevant Implementation Plan and shall notify the Authority as soon as it can so do.
- (b) The Authority, as soon as it is reasonably satisfied that the Franchise Operator has amended its Timetable and Train Plan, shall issue a Change Certificate and the PSR/ASC Change shall take effect from the date specified in such certificate and the terms of this Franchise Agreement shall be adjusted as from such date in accordance with such certificate.
- (c) In complying with Clause 11.5(a) and for the avoidance of doubt, the Franchise Operator shall use all reasonable endeavours to procure as soon as reasonably practicable:
 - (i) the consent or agreement of any person whose consent or agreement is necessary to give effect to the PSR/ASC Change; and
 - (xcii) the completion of such other steps as may be required for the purposes of implementing the PSR/ASC Change (including the satisfaction of any safety related requirements, the securing of any additional employees and consultation with such persons and bodies as may be appropriate).

11.6 Further investment or improvement or alteration

If the Franchise Operator or the Authority wishes to make an investment or improvement relating to the Franchise Services or other alteration to this Franchise Agreement (which would not otherwise constitute a PSR/ASC Change), it may make proposals to the other, and supply such reasonable details as the other may require, in connection therewith. The parties may, following such exchange of information, agree to amend the Franchise Plan or Schedule 14, adjust the Franchise Payments and make such other amendments to the terms of this Franchise Agreement as they may consider appropriate to reflect such investment, improvement or alteration.

11.7³¹ Changes to Railway Passenger Services Operated by the FGW Franchisee and/or West Coast Franchisee

- (a) ***The Authority and the Franchise Operator each agree that the No Net Loss No Net Gain Regime shall apply if the Authority requires a change to the railway passenger services operated or to be operated by:***
- (i) ***the West Coast Franchisee between London Euston, Coventry, Birmingham International and Birmingham New Street and such change results in an increase in the frequency of such railway passenger services over and above the frequency provided by the West Coast Franchisee in respect of the timetable applicable from the passenger change date in December 2009; or***
- (ii) ***the FGW Franchisee between London Paddington and Oxford and such change results in an increase to the frequency of such railway passenger services by more than one train per hour when compared to the frequency provided by the FGW Franchisee in respect of the timetable applicable from the passenger change date in December 2009.***

12 Industry Arrangements

12.1 Inter-Operator Schemes

- (a) The Franchise Operator shall participate in, and comply with its obligations under, and the terms of, each of the Inter-Operator Schemes.
- (b) The Franchise Operator agrees to be bound by Parts IV and V of Chapter 4 of the Ticketing and Settlement Agreement.
- (c) The Franchise Operator shall not amend, or agree or propose to amend, any of the Inter-Operator Schemes other than in accordance with its terms.

12.2 Licences

The Franchise Operator shall, to the extent and in the manner so requested by the Authority and to the extent so permitted by the Regulator, on termination of this Franchise Agreement assign to the Authority or as it may direct the Licences.

³¹ Date of Change 06/01/2010

12.3 Access Agreements and LUL Agreements

- (a) ⁹Except to the extent the Authority otherwise indicates, the Franchise Operator shall notify the Authority of its intention to enter into or amend any Access Agreement or LUL Agreement before the submission of such amendment or Access Agreement or LUL Agreement to the Regulator for approval under the Act, or where no such approval is required, not less than 14 days prior to entering into such amendment or Access Agreement or LUL Agreement. When and to the extent that the Authority so requires by notice, the Franchise Operator shall not submit to the Regulator for approval and (where the Regulator's approval is not required) shall not enter, or consent to, any amendment to, any Access Agreement or LUL Agreement (or, if such notice specified a particular Access Agreement or LUL Agreement or particular class of Access Agreements or LUL Agreements, any such Access Agreement or LUL Agreement) without the consent of the Authority (such consent not to be unreasonably withheld).
- (b) The Franchise Operator shall comply with such obligations as it may have under any Access Agreement or LUL Agreement to which it may be party from time to time:
- (i) to notify or consult with the Authority on any matter or proposal relating to that Access Agreement or LUL Agreement; or
 - (xciii) which are contingent on a particular course of action being taken by the Authority or which may otherwise be expressly included in that Access Agreement or LUL Agreement for the benefit of the Authority.
- (c) The Franchise Operator shall, to the extent so requested by the Authority:
- (i) on termination of this Franchise Agreement, in relation to any Access Agreement or LUL Agreement to which it may be party;
 - (xciv) following receipt of a notice purporting to terminate any particular Access Agreement or LUL Agreement to which it may be party, in relation to such Access Agreement or LUL Agreement as the case may be; or
 - (xcv) following receipt of a notice purporting to terminate a Station Lease or Depot Lease 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 Property Lease
- novate its interest under any such relevant Access Agreement (and any related Collateral Agreement or LUL Agreement) to the Authority or as it may direct.
- (d) Such novation shall be subject to the agreement of the other party to the relevant Access Agreements, Collateral Agreements or LUL Agreements and, to the extent applicable, the Regulator. Such novation shall be on such terms as the Authority may reasonably require, including the following:
- (i) that the Franchise Operator 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 Authority or its nominee agrees to assume and be responsible for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant novation); and

- (xcvi) that neither the Authority nor its nominee shall be obliged, in connection with the novation, to agree to assume and be responsible for any unperformed obligation, liability or consequences of a breach referred to in paragraph (i).
- (e) The Franchise Operator shall, in the event of any of the circumstances specified in Clause 12.3(c) happening in relation to any other Train Operator who may be party to an Access Agreement to which the Franchise Operator is also party, agree to the novation of the relevant Train Operator's interest under the relevant Access Agreement to the Authority or as it may direct, subject, to the extent applicable, to the consent of the Regulator. Such novation shall be on such terms as the Authority may reasonably require, including the terms set out in Clause 12.3(d).
- (f) The Franchise Operator shall notify the Authority on becoming aware of any circumstances which might lead to the Authority being able to require the Franchise Operator to novate its interest or agree to the novation of another Train Operator's interest under this Clause 12.3.
- (g) Except to the extent that the Authority may otherwise agree from time to time (such agreement not to be unreasonably withheld), the Franchise Operator shall not, in relation to any LUL Agreement to which it may be a party from time to time:
- (i) amend the terms of any such LUL Agreement; or
 - (ii) waive the obligations of any other relevant party thereunder which arise in the last twelve months of the Franchise Period (as defined in Clause 25.6); or
 - (iii) consent or agree (in accordance with any relevant provisions) that any other relevant party may perform or comply in a particular way with any relevant obligation thereunder in the last twelve months of the Franchise Period (as defined in Clause 25.6).

12.4 Property Leases

- (a) Except to the extent that the Authority may otherwise agree from time to time (such agreement not to be unreasonably withheld) and except to the extent required so to do by virtue of any relevant station or depot access conditions, the Franchise Operator shall not enter into, or consent to any amendment to, any Property Lease, without the consent of the Authority (such consent not to be unreasonably withheld). The Franchise Operator shall obtain such consent prior to submitting any such Property Lease or amendment thereto to the Regulator for approval.
- (b) The Franchise Operator shall, on termination of this Franchise Agreement (in relation to all Property Leases) or 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 (in relation to such Property Lease), to the extent so requested by the Authority, assign its interest under each relevant Property Lease to the Authority or as it may direct, subject, where applicable, to the agreement of any other party or the Regulator.
- (c) Such assignment shall be on such terms as the Authority may reasonably require, including the following:
- (i) that the Franchise Operator shall not be released from any accrued but unperformed obligation, the consequences of any antecedent breach of a

covenant or obligation in the Property Leases or any liability in respect of any act or omission under or in relation to the Property Lease prior to, or as at the date of, any such assignment (except to the extent that the Authority or its nominee agrees to assume and be responsible for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant assignment); and

- (xcvii) that neither the Authority nor its nominee shall be obliged, in connection with the assignment, to agree to assume and be responsible for any unperformed obligation, liability or consequences of a breach referred to in paragraph (i), and the Franchise Operator shall indemnify the Authority or its nominee, as the case may be, on an after tax basis against any costs, losses, liabilities or expenses suffered or incurred in relation thereto.
- (d) The Franchise Operator shall, in the event of any of the circumstances specified in Clause 12.4(b) happening in relation to any other Train Operator who may be party to a property lease to which the Franchise Operator is also party, agree to the assignment of the relevant Train Operator's interest under the relevant property lease to the Authority or as it may direct, subject, to the extent applicable, to the consent of Railtrack. Such assignment shall be on such terms as the Authority may reasonably require, including the terms set out in Clause 12.4(c).
- (e) The Franchise Operator shall notify the Authority on becoming aware of any circumstances which might lead to the Authority being able to require the Franchise Operator to assign its interest or agree to the assignment of another Train Operator's interest under this Clause 12.4.
- (f) In respect of any new Property Lease which the Franchise Operator enters into pursuant to Clause 12.4(a) above, each of the parties acknowledges that Section 31 of the Act shall, so far as possible, apply to any such Property Lease. The parties may amend this Clause 12.4(f) to refer to specific Property Leases to the extent they so agree.
- (g) ³² ***Subject to first obtaining such consent from the Authority as may be required by this Agreement, that the Franchise Operator shall enter into:***
- (i) ***(in respect of each Station) a lease with Network Rail on or before the expiry of the Station Lease relating to such Station (each such lease once granted to be deemed for the purposes of this Franchise Agreement to be a Station Lease);***
 - (ii) ***(in respect of each Depot) a lease with Network Rail on or before the expiry of the Depot Lease relating to such Depot (each such lease once granted to be deemed for the purposes of this Franchise Agreement to be a Depot Lease);***
 - (iii) ***(in respect of any Station or Depot and following the successful completion of any procedure for including additional land with the demise to the Franchise Operator set out in the relevant Station Lease or Depot Lease as appropriate (including obtaining any requisite approval of the Regulator)) a supplemental lease with Network Rail; and***
 - (iv) ***(in respect of any Network Rail owned Station or Depot the operation of which by the Franchise Operator is consistent with the Franchise***

³² New Clauses 12.4(g) through to 12.4(k) inserted wef 4th November 2003

Services and for which there was no Station Lease or Depot Lease in place as at the 1st September 2003), a lease with Network Rail as soon as practicable after the terms and form of such lease have been agreed and all applicable preconditions to its completion have been satisfied or waived (including obtaining any requisite approval of the Regulator), such lease once granted to be deemed for the purposes of this Franchise Agreement to be a Station Lease or a Depot Lease (as appropriate).

With the intent that as the areas to be demised are property which constitutes, or are comprised in, a network or railway facility, and are to be used for or in connection with the provision of Franchised Services by the Franchise Operator pursuant to this Franchise Agreement, section 31 of the Act shall apply to the leases so granted.

- (h)** *The Franchise Operator shall not be held to be in breach of Clause 12.4(g)(i) as a consequence of Network Rail refusing to enter into any leases as identified in that Clause.*
- (i)** *Each lease (including any supplemental lease) to be entered into pursuant to clause 12.4(g)(i) (unless otherwise agreed by Network Rail and the Franchise Operator) shall be based on the template recognised by the Authority as being applicable to such lettings, customised to reflect such terms as have been agreed between Network Rail and the Franchise Operator.*
- (j)** *In respect of any assignment or variation of any Property Lease (to which section 31 of the Act applied on its grant), each of the parties to this Franchise Agreement acknowledge that it is their intention that section 31 of the Act shall continue to apply to such Property Lease notwithstanding such assignment or variation.*
- (k)** *For the avoidance of doubt, any lease referred to in Clause 12.4(g) has been contemplated by this Agreement.*

12.5 Station Subleases

- (a)** The Franchise Operator shall not sublet to any Affiliate any part of the property comprised in any Property Lease (including, for the avoidance of doubt, any Station Lease) except on terms that (except to the extent the Authority may otherwise agree):
 - (i)** any such subletting (other than to an Affiliate which is a Train Operator) is terminable without compensation immediately upon the termination of this Franchise Agreement; and
 - (xcviii)** any such subletting is excluded from the provisions of Part II of the Landlord and Tenant Act 1954 and the Tenancy of Shops (Scotland) Act 1949.
- (b)** To the extent so requested by the Authority, the Franchise Operator shall, in relation to any Station Sublease and subject, to the extent relevant, to the consent of Railtrack and to the duration of the relevant Station Lease:
 - (i)** extend such Station Sublease on the same terms for such period as the Authority may request (including a period equivalent to the franchise term of the Train Operator who is the tenant of such Sublease); and

- (xcix) if such Station Sublease terminates (which for the purposes of this sub-Clause 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 Franchise Operator was the lessor), grant a new Station Sublease on the same terms to such Train Operator and for such period as the Authority may request (including a period equivalent to the franchise term of the Train Operator who is the tenant of such Sublease).
- (c) The Franchise Operator shall notify the Authority immediately on it becoming aware of any event which might give rise to the right for the Franchise Operator to forfeit or terminate any Station Sublease. The Franchise Operator shall notify the Authority if it wishes to forfeit or terminate any such Station Sublease but shall not (without the Authority's written consent) effect forfeiture or termination until three months from the date of such notice.

12.6 Rolling Stock Related Contracts

- (a) Except to the extent that the Authority may otherwise agree from time to time (such agreement not to be unreasonably withheld), the Franchise Operator shall not, in relation to any Rolling Stock Related Contract to which it may be party or propose to become a party from time to time:
 - (i) execute any Rolling Stock Related Contract until approval of the terms of such contract has been given by the Authority, and shall supply a copy of all draft and all executed Rolling Stock Related Contracts (including any agreements amending any Rolling Stock Related Contract) to the Authority;
 - (ii) exercise any option or other discretion in any Rolling Stock Related Contract that would result in any increased payment being made by the Franchise Operator to the relevant counterparty or which may result in it being reasonably likely to be unable to comply with the terms of this Franchise Agreement;
 - (c) amend the terms of any such Rolling Stock Related Contract;
 - (ci) waive the obligations of any other relevant party thereunder which arise in the last twelve months of the Franchise Period (as defined in Clause 25.6); or
 - (cii) consent or agree (in accordance with any relevant provisions) that any other relevant party may perform or comply in a particular way with any relevant obligation thereunder in the last twelve months of the Franchise Period (as defined in Clause 25.6).
- (b) Except to the extent that the Authority may otherwise agree from time to time, the Franchise Operator shall not amend the terms of any insurance arrangements which relate to loss of or damage to rolling stock used by it in the provision of the Passenger Services ("relevant insurance arrangements") and to which it may be party on the Franchise Commencement Date or to which it may, with the consent of the Authority, under this Clause 12.6(b), have subsequently become a party. The Franchise Operator shall, in addition, in the event that it enters into any new relevant insurance arrangements, use its best endeavours to ensure that the terms of such arrangements are such that the relevant insurers waive any rights of subrogation they may have by virtue of such arrangements against any other Train Operator or other passenger train

operator which may have any other equivalent insurance arrangements which provide for a similar waiver of any rights of subrogation against the Franchise Operator, whether on a reciprocal basis or otherwise.

12.7 Output Plan Related Contracts

Except to the extent that the Authority may otherwise agree from time to time (such agreement not to be unreasonably withheld), the Franchise Operator shall not, in relation to any Output Plan Related Contract to which it may be party or propose to become a party from time to time:

- (a) execute any Output Plan Related Contract until approval of the terms of such contract has been given by the Authority, and shall supply a copy of all draft and all executed Output Plan Related Contracts (including any agreements amending any Output Plan Related Contract) to the Authority;
- (b) amend the terms of any such Output Plan Related Contract;
- (c) waive the obligations of any other relevant party thereunder which arise in the last twelve months of the Franchise Period (as defined in Clause 25.6); or
- (d) exercise any other right under any Output Plan Related Contract to the extent so reasonably required by the Authority and notified to the Franchise Operator.

For the avoidance of doubt, the fact that any Property Lease, Access Agreement or Rolling Stock Related Agreement is also an Output Plan Related Contract shall not prevent any other provisions of this Franchise Agreement which apply to such agreements from applying to it.

12.8 The Authority's Consent

Where the consent or agreement or consultation of the Authority is required to the entry into or variation of a contract under any of Clauses 12.3, 12.4, 12.6(a), 12.7 or 27.2, it shall only be reasonable for the Authority to withhold, or impose conditions on, such consent or agreement, or respond to any consultation, where it reasonably considers that such contract or variation may:

- (a) restrict the Franchise Operator's ability to comply with its obligations under this Franchise Agreement;
- (b) adversely affect the ability of a Successor Operator to continue to provide and operate the Franchise Services on a basis acceptable to the Authority;
- (c) restrict the ability of the Authority to fulfil its functions and duties; or
- (d) adversely affect the implementation of a Major Project

and the Authority shall not unreasonably withhold or delay such consent or agreement or response to any consultation.

12.9 Brand Licences

The Franchise Operator shall comply with its obligations under each of the Brand Licences for so long as it is party to each such licence.

12.10 Other Franchise Operators

- (a) The Franchise Operator shall, in the event of the termination of the franchise agreement of another franchise operator or the making of a railway administration order in respect of another franchise operator, co-operate with the Authority, to the extent so requested, in ensuring that the relevant services provided or operated by the franchise operator may continue to be provided or operated by any successor Train Operator or the railway administrator.
- (b) The Franchise Operator shall, to the extent reasonably so requested by the Authority, ensure that, in the event of the termination of the franchise agreement of another franchise operator or the making of a railway administration order in respect of another franchise operator, the benefit of any arrangements between it and such other franchise operator which it may have designated as a key contract under the relevant franchise agreement will continue to be provided to the Train Operator or Train Operators who may succeed such franchise operator in the provision of the relevant passenger services or the operation of the relevant stations or light maintenance depots or to the relevant railway administrator.
- (c) Such benefit shall be provided on substantially the same terms as the relevant franchise operator previously obtained such benefit subject to Clauses 12.10(d) and 25.5 and subject further to the right of the Authority to exclude or modify any terms which were agreed or amended by the relevant franchise operator in the preceding twelve months which were, in the reasonable opinion of the Authority, to the material detriment of its business. Such benefit shall be provided for such period as the Authority may consider reasonably necessary to allow the relevant Train Operator or railway administrator to renegotiate such arrangements or make alternative arrangements.
- (d) The Franchise Operator shall notify the Authority of its intention to terminate any such key contract of any other Train Operator (whether such Train Operator is a current or successor Train Operator) and shall give that Train Operator sufficient notice to enable it to make suitable alternative arrangements without causing disruption to the services provided by such Train Operator.
- (e) The Franchise Operator shall, in the event of termination of the franchise agreement of another franchise operator in contemplation of the entry into or entry into effect of a new franchise agreement with the same franchise operator in respect of all or a material part of the relevant passenger services, waive any event of default or other rights it may have to terminate any agreements with such franchise operator by reason of such termination.

12.11 Direct agreements

The Franchise Operator shall pay to the Authority an amount equal to any losses, costs, liabilities, charges or expenses which may be suffered or incurred by the Authority under the provisions of any Direct Agreement which may be notified to the Franchise Operator as a result of, or in connection with:

- (a) any breach by the Franchise Operator of the terms of the Key Contract to which the relevant Direct Agreement relates; or
- (b) any unsuccessful claim being brought by the Franchise Operator against the counterparty of any such Key Contract in relation to the termination of such Key Contract.

12.12 Royal Train

The Franchise Operator shall, if and to the extent requested by any relevant person (including Rail Express Systems Limited (or its successors)) and subject to the payment by any such person of any reasonable costs of the Franchise Operator, co-operate in the provision by such person of railway services for Her Majesty Queen Elizabeth II or members of her family or her representatives.

12.13 Disputes

The Franchise Operator shall notify the Authority of any disputes to which it is a party under any Inter-Operator Scheme, Access Agreement, LUL Agreement, Property Lease, Rolling Stock Related Contract or Output Plan Related Contract, or under any other agreement in circumstances where the relevant dispute could have an adverse effect on the Franchise Operator's ability to comply with its obligations under this 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 arrangements. Such notification shall be made both at the time of such submission (and include reasonable details of the nature of the dispute) and at the time of the resolution of the dispute (whether or not subject to appeal) (and include reasonable details of the result of the dispute, any associated award and whether it is subject to appeal). The Franchise Operator shall provide such further details of any such dispute as the Authority may reasonably request from time to time.

12.14 Major Projects

(a) Specification of Major Project

In addition to the Major Projects, if any, specified in Part 8 of Schedule 1, the Authority may at any time following consultation with the Franchise Operator and other Train Operators likely to be affected by the major project, by notice to the Franchise Operator specify a major project to which this Clause 12.14 will apply (a "Major Project").

(b) Implementation of Major Project

The Franchise Operator shall, to the extent so requested by the Authority following consultation with the Franchise Operator and other Train Operators likely to be affected by the major project, co-operate with Railtrack, LUL, the Authority and any other relevant party in connection with each Major Project. Without prejudice to the generality of the foregoing, the Franchise Operator:

- (i) shall co-operate with Railtrack or LUL in Railtrack's or LUL's endeavours to obtain all necessary consents required for the carrying out of the Major Project, including any approval of any major project under Part D of the Railtrack Track Access Conditions or the LUL Track Access Conditions (as applicable) and any network change under Part G of the Railtrack Track Access Conditions or the LUL Track Access Conditions (as applicable) in each case relating to the Major Project;
- (ii) shall use all reasonable endeavours to ensure that proposals for any vehicle change under Part F of the Railtrack Track Access Conditions or the LUL Track Access Conditions (as applicable) or any network change under Part G of the Railtrack Track Access Conditions or the LUL Track Access Conditions (as applicable) proposed by the Franchise Operator (if any) which are required to permit the introduction of any new rolling stock required under the Major Project are submitted to Railtrack or LUL (as

appropriate) and that all information necessary for the approval and implementation of any such vehicle change and / or network change is provided to Railtrack or LUL (as appropriate) in accordance with the relevant provisions of Parts F and/or G of the Railtrack Track Access Conditions or the LUL Track Access Conditions (as applicable); and

- (iii) subject to any necessary approval of the Regulator, agrees that its rights of compensation or otherwise in connection with the carrying out of the Major Project shall be limited to compensation calculated in accordance with Part G of the Railtrack Track Access Conditions or the LUL Track Access Conditions (as applicable).

(c) Completion of Major Project

In the event of the commencement or proposed commencement of new railway passenger services or the alteration or proposed alteration of existing passenger services on completion of a Major Project, and to the extent and the manner the Authority reasonably so requires in writing following consultation with the Franchise Operator, the Franchise Operator shall:

- (i) exercise such rights as it may have under Part 9 of Schedule 7 of the Track Access Agreement or assign, vary or surrender its rights under any Track Access Agreement or Station Access Agreement in order to permit or facilitate the introduction of new services in connection with such commencement, proposed commencement, alteration or proposed alteration (including for the purposes of allocating to the operator of any such railway passenger services train slots to which the Franchise Operator may be entitled under the Track Access Agreement and including for the purposes of taking into account the consequences of such commencement, proposed commencement, alteration or proposed alteration);
- (ii) assign or surrender, subject to the consent of Railtrack or LUL, any Station Leases at which the Franchise Operator may cease or be likely to cease to be the principal provider of railway passenger services in consequence of such commencement, proposed commencement, alteration or proposed alteration (and shall in relation thereto novate or agree to novate any Access Agreements or LUL Agreements relating to the relevant Stations);
- (iii) in connection with such commencement, proposed commencement, alteration or proposed alteration, exercise its rights under Part D of the Railtrack Track Access Conditions or the LUL Track Access Conditions as reasonably required by the Authority;
- (iv) exercise such rights as it may have to waive or release its rights (if any) to restrict Railtrack's or LUL's ability to grant any permission to use the Network (whether under the terms of Schedule 10 to the Track Access Agreement or any equivalent or similar provision in the Track Access Agreement or any other agreement) including for the purposes of allocating to the operator of any such railway passenger service train slots to which the Franchise Operator may be entitled under the Track Access Agreement and including for the purposes of taking into account the consequences of such commencement, proposed commencement, alteration or proposed alteration; and

- (v) exercise or not exercise such other related rights under any relevant agreement as reasonably required by the Authority.

(d) No Net Loss or Gain

In respect of any Major Project except those specified in paragraphs (b)-(f) and (h)-(j) of Part 8 of Schedule 1, in respect of which the Authority requires the Franchise Operator to take actions under sub-Clause (c) above the No Net Loss No Net Gain Regime shall apply to such actions.

12.15 Specified IOS Projects

(a) Agreement and Delivery of Specified IOS Projects

The Authority shall consult with the Franchise Operator in relation to any proposal for a Specified IOS Project in respect of which the Authority wishes the provisions of this Clause 12.15 to apply and the Franchise Operator shall use all reasonable endeavours to agree the specification in relation to such proposed Specified IOS Project. Where the specification has been agreed the proposal shall become a Specified IOS Project and the list of Specified IOS Projects set out in Part 9 of Schedule 1 shall be amended accordingly and in that event the Franchise Operator:

- (i) shall take such steps as may be reasonably requested by the Authority to enter into or amend any relevant Track Access Agreement or other relevant agreement (including any agreement relating to a station), subject where applicable to the approval of the Regulator, in relation to the delivery of and utilisation of any output specified in the Incremental Output Statement;
- (ciii) shall use all reasonable endeavours to ensure:
 - (a) performance by Railtrack (or any other relevant person) of its obligations in relation to all Specified IOS Projects; and
 - (b) delivery by Railtrack (or any other relevant person) of the Relevant IOS Outputs in relation to all Specified IOS Projects,in each case, in the timeframe contained in the Incremental Output Statement;
- (ii) to the extent reasonably so requested, shall exercise any related rights it may have under any agreement with Railtrack or otherwise in connection with such Specified IOS Projects; and
- (iii) subject to any necessary approval of the Regulator, agrees that its right of compensation or otherwise in connection with the carrying out of the Specified IOS Project, or the specified IOS project of any other Train Operator, shall be limited to compensation calculated in accordance with Part G of the Railtrack Track Access Conditions or the LUL Track Access Conditions (as applicable).

(b) Information to Authority

- (i) The Franchise Operator shall keep the Authority reasonably informed of the progress of implementation and/or development and/or completion of all Specified IOS Projects. The Franchise Operator shall use all reasonable endeavours to keep itself informed of the state of progress regarding the

same in order to enable it to fulfil its obligations under this Clause 12.15(b)(i).

- (civ) Without prejudice to sub-Clause (i) above, within 14 days (or such longer period as the parties may agree) of a request from the Authority for any information regarding the progress of implementation and/or development and/or completion of one or more Specified IOS Projects, the Franchise Operator shall use all reasonable endeavours to obtain such information and deliver such information to it in such format, if any, as the Authority may reasonably have requested. Without prejudice to the generality of the previous sentence, the Franchise Operator shall use such rights as it has against Railtrack and as are reasonable to use in the circumstances to obtain any such information.

(c) Utilisation of output

On the next Passenger Change Date following completion by Railtrack (or any other relevant person) of the Specified IOS Project:

- (i) the Franchise Operator shall, to the extent reasonably so requested, use the Relevant IOS Output or Outputs in connection with the provision of the Franchise Services; and
- (cv) the Authority may make such amendments to any relevant provisions of this Franchise Agreement including, but not limited to, the Call-in Thresholds, Default Thresholds and Breach Thresholds, the PSR and the ASC as it considers reasonable to reflect the improvement which can reasonably be expected from the completed Specified IOS Project for the provision of improved Franchise Services by the Franchise Operator. If the Franchise Operator disagrees that any or all of the amendments proposed by the Authority is reasonable for the Authority to propose, and if it shall have notified the Authority accordingly within 14 days of the Authority's determination, then either of the parties may refer that issue for determination in accordance with the Dispute Resolution Rules. Until any such amendment is agreed or determined to be reasonable in accordance with this paragraph, this Franchise Agreement shall continue to apply without such amendment.

Completion of any Specified IOS Project shall be deemed to have taken place for the purposes of this Clause upon Railtrack (or any other relevant person) being able to demonstrate to the satisfaction of the Franchise Operator, failing which to the satisfaction of an independent expert as provided for in the relevant Track Access Agreement, that the Specified IOS Project is capable of delivering the Relevant IOS Output or Outputs.

(d) Specification of further Incremental Outputs

Subject to Clause 12.15(a), the Authority may amend any Specified IOS Project previously designated or amend the Incremental Output Statement (including by the addition of further outputs) and designate further Specified IOS Projects in relation to any outputs amended or added by such amendment, and the list in Part 9 of Schedule 1 shall be deemed amended accordingly. The provisions of this Clause 12.15 shall apply to any new or amended Specified IOS Project from the date of such specification or such other date as may be specified by the Authority.

12.16 Rolling Stock Testing and Commissioning

The Franchise Operator shall, to the extent reasonably requested by the Authority and subject to payment of any reasonable costs by the relevant third party, co-operate with such third parties as the Authority may indicate in connection with the testing and commissioning of new rolling stock. Such third parties may include, without limitation, a Successor Operator, a rolling stock manufacturer or the Authority. The co-operation (which shall not disrupt the provision and operation of the Franchise Services) may include:

- (a) the movement of test trains within and around depots;
- (b) making available suitably qualified personnel to operate the test trains along the routes of the Passenger Services and provide information on such routes;
- (c) making available of train paths;
- (d) granting or procuring of access to the third party and its representatives at relevant facilities;
- (e) the delivery of rolling stock to specific locations.

12.17 Integrated transport schemes

- (a) Unless otherwise agreed by the Authority, the Franchise Operator shall co-operate with any schemes which may be proposed by any third party (including any Local Authority) and which relate principally to the integration of any other form of transport with the Franchise Services.
- (b) Where any such scheme or proposed scheme is designated by the Authority for the purposes of this Clause 12.17 then the Franchise Operator shall participate in the relevant scheme and take such other steps as the Authority may require in setting up such scheme and the No Net Loss No Net Gain Regime shall apply to such participation and other steps in relation to such scheme.
- (c) In determining the amount of any Net Loss, there shall be excluded any costs which it would not be unreasonable to expect the Franchise Operator to bear in the context of its wider obligations under this Franchise Agreement (including without limitation) where any costs are wholly immaterial or where the requirements imposed on the Franchise Operator in connection with such scheme are not materially different from its existing activities (whether required or not under this Franchise Agreement).
- (d) The Authority shall consult with the Franchise Operator before designating any scheme under Clause 12.17(b) and shall allow the Franchise Operator a reasonable opportunity to make representations to it with respect to any such designation.

13 Pensions³³

13.1 Franchise Sections

The Franchise Operator 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 Clauses 13.2 and 13.3.2.4 membership of a Franchise Section will be offered to each employee of a Franchise Operator only.

³³ Insert new clause wef 06/08/07

13.2 Closed Schemes

13.2.1. *Subject to any requirements of Her Majesty's Revenue and Customs, the Franchise Operator shall take any necessary steps (including entering into any relevant deed or 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.*

13.2.2. *For the purposes of this Clause 13.2, Closed Scheme Employees means such of the employees of the Franchise Operator who were, immediately prior to the commencement of their employment with the Franchise Operator, members of either of the British Railways Superannuation Fund or the BR (1974) Pension Fund.*

13.3 Variations in Benefits and Contributions; Investment

13.3.1. *If a Franchise Operator is considering making a proposal that it considers would fall within the scope of paragraphs 13.3.2.1 to 13.3.2.6 inclusive, it shall promptly consult with the Authority in relation to that proposal prior to putting such a proposal to the Pensions Committee of any Franchise Section, the Trustee of the Railways Pension Scheme ("the Trustee"), or to any trade union. The Franchise Operator must otherwise consult in good time with the Authority in relation to any proposal it considers would fall within the scope of paragraphs 13.3.2.1 to 13.3.2.6 inclusive.*

13.3.2. *The Franchise Operator shall not, without the prior written consent of the Authority (which may be given on such terms and subject to such conditions as the Authority thinks fit):*

13.3.2.1. *restructure or change the composition of the earnings of employees of the Franchise Operator 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:*

13.3.2.1.1. *is required by Law; or*

13.3.2.1.2. *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 Franchise Operator 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*

13.3.2.1.3. *on 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;*

13.3.2.2. *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;*

13.3.2.3. provide retirement, death or life assurance benefits in respect of any of its employees other than under any Franchise Section or as provided in Clause 13.2;

13.3.2.4. 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 Franchise Operator shall not under this Clause 13 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;

13.3.2.5. 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 Franchise Operator as Designated Employer arising out of any actuarial valuation of a Franchise Section, and varying or providing different or additional benefits under the Franchise Sections in respect of future service, unless such action is required by Law; close a Franchise Section to new members; or

13.3.2.6. take (or omit to take) any action which could result in any Franchise Section being wound up, in whole or in part.

13.3.3. The Franchise Operator shall consult with the Authority on:

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

13.3.3.2 any proposal to alter the rate of contributions payable by the Franchise Operator or its employees under a new schedule of contributions for the Franchise Section.

13.3.4. The Franchise Operator shall also consult with the Trustee on the basis of any response it receives from the Authority in relation to any such proposal.

13.4 Funding Liabilities

13.4.1 The Franchise Operator 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 13.4.2 below.

13.4.2 Where, during the Franchise Term, Franchise Services are aggregated or disaggregated by the Authority (for example, as a result of remapping) and, as a consequence, a Franchise Section of which the Franchise Operator is the Designated Employer is required to accept a transfer in or to make a transfer out of members, the Authority shall ensure that the Franchise Operator has no liability for any resulting deterioration immediately arising in the funding level of the Franchise Section measured in accordance with the Franchise Sections' technical provisions in Part 3 of the Pensions Act 2004, or for any amount arising under article 7(4) of the Railway Pensions (Protection and Designation of Schemes) Order 1994 Notwithstanding the above the Authority shall have no liability for any future deterioration in the funding levels of the Franchise Section linked to such transfer in or out of members.

13.5 Discharge of Obligations

13.5.1. The Authority may at any time during the Franchise Term seek information from the Trustee with a view to satisfying himself that the Franchise Operator 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.

13.5.2. The Franchise Operator shall, at its expense, promptly provide such information in relation to any Franchise Section, including actuarial advice and information, as the Authority may from time to time request and shall authorise and consent to the Trustee doing so.

13.5.3. The Franchise Operator shall, in respect of the Franchise Term, use all reasonable endeavours to provide to the Authority:

13.5.3.1. within one month of the expiry of each Franchise Operator Year; and

13.5.3.2. at other times as soon as practicable following a request by the Authority.

a certificate signed by the Trustee in relation to the Franchise Sections stating either that the Franchise Operator 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 Clause 13.5.3(a), it shall cover the relevant Franchise Operator Year; where the certificate has been given pursuant to Clause 13.5.3(b), it shall cover such period as the Authority shall specify.

13.5.4. If the Trustee does not certify under Clause 13.5.3 in relation to the Franchise Sections that the Franchise Operator has fully complied with its obligations under the Railways Pension Scheme or if the Authority otherwise reasonably considers that the Franchise Operator has not complied with such obligations, the Authority may withhold from any Franchise Payments payable by him under Part III – Financial Provisions - an amount which is, in his opinion, no greater than the amount of any contribution that the Franchise Operator has thereby failed to make or avoided making.

13.5.5. The Authority may, under Clause 13.5.4, withhold such amount until such time as it reasonably determines that the relevant contributions have been made in full by the Franchise Operator. Following that determination, the amount withheld shall become payable (without interest) on the next day on which a Franchise Payment becomes payable under Part III – Financial Provisions, being a day which falls no less than seven days after such determination or, if there is no such day, 14 days after the date of such determination. To the extent that the Authority has not so determined within four weeks after the expiry of the Franchise Period, the Franchise Operator's right to receive the amount so withheld under the Franchise Agreement shall lapse and the Authority shall not be obliged to pay such amount.

13.6 Discharge of obligations

The Authority shall at the end of the Franchise Term ensure that the Franchise Operator has no liability for any deficit in the Franchise Sections (other than for contributions due and payable by the Franchise Operator 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 Clause 13.6 shall apply where the Franchise Services are either aggregated or disaggregated (for example, as a result of remapping).

13.7 Definitions

Unless otherwise defined in the Franchise Agreement, terms used in this Clause 13 shall have the meanings given to them in the Railways Pension Scheme.

14 Other Covenants

14.1 Franchise Plan and Output Plan

- (a) The Franchise Operator and the Franchisee shall each comply with their respective obligations under the Franchise Plan set out in Schedule 13.
- (b) The Franchise Operator and the Authority shall each comply with their respective obligations under Schedule 14.

14.2 Financial Covenants

The Franchise Operator and the Franchisee shall each comply with their respective obligations in Schedule 10. The Authority may alter and amend the provisions of Schedule 10 after notifying the Franchise Operator and the Franchisee of such alterations and amendments. In such circumstances the No Net Loss No Net Gain Regime shall apply to ensure that the Franchise Operator and the Franchisee suffers no Net Loss and enjoys no Net Gain as a direct result of such alterations and amendments.

14.3 Performance Bond

- (a) The Franchise Operator shall procure that, at any one time during the Franchise Period, there shall be in place a valid and effective Performance Bond or Performance Bonds scheduled to remain valid and effective until the earlier of the date three years after such time and the date falling one year and seven months after the end of the Franchise Term (ignoring for these purposes any extension of the Franchise Term pursuant to Clause 20.2(a)) and having a value equal to the amount determined under Clause 14.3(d).
- (b) The Authority may, if so requested by the Franchise Operator, reduce the amount required to be guaranteed under a Performance Bond at any time. It shall be under no obligation to do so in any circumstances and may reduce such amount subject to compliance with other conditions as may be appropriate in the circumstances.
- (c) The Franchise Operator shall ensure that, where any new or replacement Performance Bond or any extension or amendment to an existing Performance Bond is proposed or becomes necessary in order to comply with the Franchise Operator's obligations under Clause 14.3(a), the Authority receives no less than three years before the scheduled expiry of the then current Performance Bond a new Performance Bond or instrument extending or amending the existing Performance Bond, in either case in a form acceptable to it, duly executed and delivered by a Bond Provider acceptable to the Authority. A Performance Bond in the same form as the Performance Bond in existence on the Franchise Commencement Date (other than as to its expiry date and any amendments necessary as a result of any change of Law between the date of this Franchise Agreement and the date of such Performance Bond) shall be deemed to be

acceptable to the Authority for such purposes. For the avoidance of doubt, the then current Bond Provider need not be acceptable to the Authority for such purposes. The Authority may require, and the Franchise Operator shall provide, such information relating to any Bond Provider or proposed Bond Provider and such evidence (including any legal opinions) of the power and authorisation of the Bond Provider to execute any such Performance Bond and to comply with its obligations thereunder as the Authority may require.

- (d) The amount of any Performance Bond provided under this Clause 14.3 shall be £6,698,000 (six million six hundred and ninety-eight thousand) in respect of the period until the first Performance Bond Adjustment Date. To the extent not agreed prior to each Performance Bond Adjustment Date, the amount of the Performance Bond shall be adjusted within one month of such date, if such Performance Bond Adjustment Date is an Evaluation Date, to an amount equal to 7.5 per cent. of the average annual aggregate forecast operating costs of the Franchise Operator for the next 5 years as set out in the Committed Outputs Business Plan which forms part of the Output Plan for the next Phase or, in the event of there being no agreed Output Plan, the Do Minimum Business Plan as agreed or determined by the Panel in respect of the new Phase under Schedule 14, or, if such Performance Bond Adjustment Date is not an Evaluation Date, to an amount equal to 7.5 per cent. of the average annual aggregate forecast operating costs of the Franchise Operator in the most recent Annual Business Plan for the period covered by such Annual Business Plan (as each such term not defined in Clause 1.1, is defined in Schedule 14). Any dispute relating thereto shall be settled in accordance with the Dispute Resolution Rules provided that if the relevant amount has not been settled within 2 months of the relevant Performance Bond Adjustment Date, the amount shall be determined by the Authority pending resolution of the dispute.
- (e) If the principal amount of the Performance Bond is to be amended under Clause 14.3(d) then, as soon as practicable following the determination of the required amount, the Franchise Operator shall procure the amendment of the then current Performance Bond or the delivery of a new Performance Bond to reflect such revised amount and the delivery to the Authority of such amended or new Performance Bond. Until such revised amount is determined, there shall be no requirement to provide a new or amended Performance Bond provided the existing Performance Bond otherwise complies with the requirements of Clause 14.3(a). Such amendment need not be approved previously in writing by the Authority but any other amendment to the Performance Bond undertaken at the same time shall constitute an amendment for the purposes of Clause 14.3(c).
- (f) Notwithstanding the other provisions of this Clause 14.3 and irrespective of the scheduled expiry date of the then current Performance Bond, the Authority may at any time, on giving the Franchise Operator not less than three months notice or such shorter period as is reasonably necessary in the circumstances, require the Franchise Operator to procure the execution and delivery of a new Performance Bond under Clause 14.3(c) by a Bond Provider acceptable to the Authority, if it reasonably considers that the Bond Provider under the then current Performance Bond would not be acceptable to the Authority were it the proposed Bond Provider under a new Performance Bond.

14.4 Season Ticket Bond

- (a) The Franchise Operator shall maintain the continuing validity and effectiveness of the Season Ticket Bond provided to the Authority under Clause 2.2 and any subsequent Season Ticket Bond received by it under Clause 14.4(b).
- (b) The Franchise Operator shall ensure that, for each Bond Year during the Franchise Term, the Authority receives no less than one Reporting Period before the expiry of the preceding Bond Year a Season Ticket Bond in a form acceptable to the Authority, duly executed and delivered by a Bond Provider acceptable to it and in an amount determined under Clause 14.4(c) and (d). A Season Ticket Bond in the same form as the Season Ticket Bond provided under Clause 2.2 of this Franchise Agreement (other than as to its expiry date and any amendments necessary as a result of any change of Law between the date of this Franchise Agreement and the date of such Season Ticket Bond) shall be deemed to be acceptable to the Authority for such purposes. For the avoidance of doubt, the then current Bond Provider need not be acceptable to the Authority for such purposes. The Authority may require, and the Franchise Operator shall provide, such information relating to any Bond Provider or proposed Bond Provider and such evidence (including any legal opinions) of the power and authorisation of the Bond Provider to execute any such Season Ticket Bond and to comply with its obligations thereunder as the Authority may require.
- (c) The amount of any Season Ticket Bond provided under Clause 14.4(b) shall be an amount which varies for each Reporting Period during the Bond Year to which the Season Ticket Bond relates, which amount shall be determined for each such Reporting Period 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 have been payable by the Franchise Operator in respect of Season Ticket Fares under and in accordance with a Supplemental Agreement and Clause 35.3 of this Franchise Agreement if this Franchise Agreement were to terminate on any day during the Reporting Period (the “relevant Reporting Period”) falling thirteen Reporting Periods before such Reporting Period and the rights and liabilities of the Franchise Operator relating to an obligation of carriage under the terms of any Season Ticket Fares 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 Franchise Commencement Date shall be assumed, where relevant, to have occurred before the relevant Reporting Period; and

if STL cannot reasonably be determined at the time the Franchise Operator is required under Clause 14.4(d) 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 twenty six 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 Franchise Operator is required under Clause 14.4(d) to provide its estimate of the amount of the relevant Season Ticket Bond divided by the Retail Prices Index for the month falling twelve months before such month.

k has the value attributed to it in paragraph 4 of Part 2 of Schedule 5 of this Franchise Agreement for the Fare Year in which the Reporting Period in the relevant Bond Year falls.

z equals 1 or, if the relevant Reporting Period falls twenty six Reporting Periods before such Reporting Period, an amount equal to

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

where RPI and k are determined for the twelve months and the Fare Year preceding the twelve months and the Fare Year for which RPI and k are respectively determined above.

(d)

- (i) The Franchise Operator shall supply to the Authority 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 Authority may request in connection therewith.
- (cvi) The Franchise Operator and Authority shall endeavour to agree with each other 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, they may resolve the matter in accordance with the Dispute Resolution Rules.
- (cvii) If the amount of the Season Ticket Bond for each Reporting Period during a Bond Year is not 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 Authority.

- (e) The Authority agrees that, subject to receipt of a Season Ticket Bond in accordance with Clause 14.4(b) in respect of any Bond Year, it will release the relevant Bond Provider from any liability under any relevant Season Ticket Bond provided in relation to the preceding Bond Year on the expiry of such preceding Bond Year and subject to no Event of Default having occurred.
- (f) References in this Clause 14.4 to Reporting Period shall be construed, where the Franchise Operator so requests and the Authority consents (such consent not to be unreasonably withheld) to be references to each consecutive 7 day period (or such other period as may be agreed) during such Reporting Period. The Franchise Operator may only so request in respect of 2 Reporting Periods in each Bond Year and only where the amount of the Season Ticket Bond over any such period would differ materially if determined by reference to such 7 day periods.
- (g) The Franchise Operator and the Authority may agree to increase or reduce the amount covered or required to be covered under a Season Ticket Bond from time to time.

14.5 Supplier Accreditation

- (a) The Franchise Operator shall put in place by no later than 31 March 2002 and retain, an Approved Model for the self-assessment of its performance in respect of its obligations under this Franchise Agreement and the provision and operation of the Franchise Services.
- (b) The Franchise Operator shall deliver to the Authority on an annual basis its self-assessment of its performance under the relevant Approved Model and its plans for continuous improvements in relation to the provision and operation of the Franchise Services, the first such assessment to be completed within twelve months of the Franchise Commencement Date (or such other date as may be agreed).
- (c) In this Clause 14.5, an "Approved" Model means the Business Excellence Model of the British Quality Foundation or the EFQM Excellence Model of the European Foundation for Quality Management or any other comparable model which the Authority may approve from time to time for the purposes of this Clause 14.5.
- (d) The Franchise Operator shall not be expected to have obtained formal accreditation of the Approved Model prior to 31 March 2002 but shall obtain such accreditation as soon as practicable thereafter.

15 Monitoring and provision of information

15.1 Maintenance of records

- (a) The Franchise Operator shall maintain true, up to date and complete financial and planning records and accounts in accordance with the requirements set out in Part 1 of Schedule 8, as such requirements may reasonably be amended from time to time by the Authority.
- (b) The Franchise Operator shall maintain true, up to date and complete records relating to the operation and maintenance of assets which it owns or operates in accordance with the requirements set out in Part 2 of Schedule 8, as such requirements may reasonably be amended from time to time by the Authority.

- (c) The Franchise Operator shall maintain true, up to date and complete records relating to the operational performance of the Franchise Operator in accordance with the requirements set out in Part 3 of Schedule 8, as such requirements may reasonably be amended from time to time by the Authority.
- (d) The Franchise Operator shall maintain true, up to date and complete records relating to the passenger journeys and miles provided by the Franchise Operator and the earnings of the Franchise Operator in accordance with the requirements set out in Part 5 of Schedule 8, as such requirements may reasonably be amended from time to time by the Authority.
- (e) The Franchise Operator shall comply with such reporting requirements as are set out in Parts 1 to 3 and 5 of Schedule 8 and in addition shall make available, and, if requested by the Authority, provide copies of, on reasonable notice by the Authority and at reasonable times, the records and accounts referred to in Clauses 15.1(a), (b), (c) and (d) for inspection by the Authority. The Authority shall be entitled to appoint one or more suitable representatives to check, verify and take copies of any such records and accounts.
- (f) All records and accounts required to be maintained in accordance with this Clause 15.1 and Clause 15.1 of the Previous Franchise Agreement shall be held for a period of six years or until transferred to a Successor Operator whichever is the earlier.
- (g) The obligations of the Franchise Operator under this Clause 15.1 may be waived by the Authority to the extent it notifies the Franchise Operator that it is receiving the relevant information directly from any other relevant person (including Railtrack, LUL and RSP). The Franchise Operator shall, to the extent so requested by the Authority, confirm or validate any such information which is received from any other such person.
- (h) References to records and accounts in this Clause 15 shall include records and accounts maintained under the Previous Franchise Agreement to the extent they relate to the Franchise Services and the Franchise Operator has access to them (which it shall use all reasonable endeavours to obtain).

15.2 Provision of accounts

- (a) The Franchisee and the Franchise Operator shall each deliver to the Authority as soon as they are available but no later than 4 months after the end of each of their respective accounting reference periods, beginning with the first accounting reference period which ends within the Franchise Period, certified true copies of their respective annual reports and audited accounts as at the end of and for that accounting period, together with copies of all related directors' and auditors' reports.
- (b) Each set of accounts delivered under Clause 15.2(a) shall, save as stated in the notes thereto, be prepared and audited in accordance with GAAP and consistently applied and in accordance with the Companies Act 1985 and, together with those notes and subject to any qualifications contained in any relevant auditors' report, shall give a true and fair view of the state of affairs and profits for the period covered by such accounts.
- (c) The Franchise Operator shall in addition deliver to, or procure due delivery to, the Authority, certified true copies of the annual reports and audited accounts together with copies of all related directors' and auditors' reports in respect of each Parent within four months of the end of each accounting reference period of such Parent or, in the case of any Parent domiciled outside England and Wales, the equivalent documents in the jurisdiction of residence of such Parent.

- (d) The Franchise Operator shall in addition deliver to the Authority, within one month of the end of each relevant period, unaudited accounts for each Reporting Period (or other period agreed by the Authority) during the Franchise Term. Each set of accounts shall be drawn up in the form required under Part 4 of Schedule 8 (or such form as may reasonably be amended from time to time by the Authority) and shall be prepared, subject to Clause 15.2(e) consistently in accordance with the Franchise Operator's normal accounting policies, details of which shall be supplied, on request, to the Authority and any changes to which should be notified to it on submission of such accounts. The Franchise Operator shall in addition provide, at the same time as delivery of the audited accounts under Clause 15.2(a), a reconciliation to such accounts of the figures for the Reporting Period ending on or about the end of the relevant Franchise Operator Year and the preceding twelve Reporting Periods, delivered under this Clause 15.2(d).
- (e) The Authority shall be entitled to require preparation of such unaudited accounts under such accounting policies as may be prescribed by it from time to time.

15.3 Annual Business Plan

- (a) The Franchise Operator shall have at all times during the Franchise Period, a business plan covering the current Franchise Operator Year and the longer of (a) the period up to the expected date of the next Update Point (as defined in Schedule 14) and (b) the subsequent three Franchise Operator Years (the "**Annual Business Plan**").
- (b) ³⁴*The first Annual Business Plan shall be the Committed Outputs Business Plan agreed between the Authority and the Franchisee prior to the date of this Franchise Agreement (except that the details required in (c)(v) below may be provided 3 months after the Franchise Commencement Date for this first Annual Business Plan only). Each subsequent Annual Business Plan shall be provided by the Franchise Operator to the Authority no more than six months and no later than 20TH December prior to the start of each subsequent Franchise Operator Year (unless in any case the Authority grants a derogation to the Franchise Operator on the grounds that a replacement Long-Term Business Plan will be prepared at approximately the same time and accordingly obviate the need for a separate Annual Business Plan). Each such Annual Business Plan shall comply with Clause 15.3(c) below. The Franchise Operator and the Franchisee will attend such meetings and make such presentations as the Authority shall request in connection with any proposed Annual Business Plan. The persons attending such meetings on behalf of the Franchise Operator and Franchisee shall be appropriate seniority and responsibility and shall include such directors and/or senior managers of the Franchise Operator, Franchisee and any Parent as the Authority may require. Any agreement or approval, implicit or explicit, of the Annual Business Plan will not relieve the Franchise Operator or the Franchisee of any of their obligations under this Franchise Agreement.*
- (c) Each Annual Business Plan shall describe the Franchise Operator's planned activities for the period covered by such Annual Business Plan, including:
 - (i) a summary of the Passenger Services which the Franchise Operator plans to operate over the period of the Annual Business Plan (including any changes in the pattern of Passenger Services provided at the time of

³⁴ DATE OF CHANGE 23.3.2006

preparation of the Annual Business Plan) and how the Franchise Operator proposes to deliver them;

- (cviii) a summary of the other services which the Franchise Operator plans to operate over the period of the Annual Business Plan and how the Franchise Operator proposes to deliver them;
 - (cix) details of any investments proposed to be made or procured by the Franchisee or the Franchise Operator in relation to the Franchise Services over the period of the Annual Business Plan;
 - (cx) a summary of the Franchise Operator's plans for marketing and developing the Franchise Services;
 - (cxi) profit and loss, balance sheet and cash flow projections and supporting revenue, cost and resource analyses in reasonable detail for the period of the Annual Business Plan (on the same basis as is required under Schedule 14 in respect of a Long-Term Business Plan) including a reasonable forecast of the operating costs of the Franchise Operator for the period covered by the Annual Business Plan.
- (d) The Annual Business Plan shall take account of and demonstrate to the reasonable satisfaction of the Authority how the Franchise Operator will be able to meet its obligations under this Franchise Agreement for the period of the Annual Business Plan.
- (e) The Franchise Operator shall notify the Authority as soon as reasonably practicable if the business outlook or prospective financial results of the Franchise Operator are likely to be materially different from the Annual Business Plan for such period. Following such notification, the Franchise Operator shall, to the extent requested to do so by the Authority and within one month thereof, supply the Authority with a revised Annual Business Plan for the remainder of the period which reflects the latest view of business and otherwise complies with this Clause 15.3.

15.4 Provision of registered details

- (a) The Franchisee and the Franchise Operator shall inform the Authority on or before the Franchise Commencement Date of the following information relating to each of them and, subsequently, of any change thereto within 21 days of the occurrence of any such change:
- (i) name;
 - (cxii) business address and registered office;
 - (cxiii) directors and company secretary;
 - (cxiv) auditors;
 - (cxv) trading name or names; and
 - (cxvi) 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 (as defined in Clause 21.2), directly or indirectly, the right to cast more than 20 per cent. of the votes capable of being cast on a poll at general meetings of the Franchisee.
- (b) The Franchisee and the Franchise Operator shall in addition provide to the Authority on or before the Franchise Commencement Date a certified copy of their memorandum

and articles of association, and subsequently at the same time as the relevant issue or delivery (or, if effected by another person, as soon as practicable thereafter), a copy of each notice or circular or other document issued to its shareholders or to the shareholders of any Parent and a copy of any document relating to it which is delivered to the Registrar of Companies in England and Wales.

15.5 Changes in business

The Franchisee and the Franchise Operator shall inform the Authority of any material change or proposed material change in its business (including the employment or the termination of employment of any key employees, the termination of any Key Contracts, 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, the Franchise Operator or any Parent.

15.6 Contraventions of Franchise Agreement

The Franchisee and the Franchise Operator shall notify the Authority, so far as possible before it may occur and, in any event, as soon as reasonably practicable after its occurrence, of any contravention by the Franchisee or the Franchise Operator of any provision of this Franchise Agreement or the exceeding of any Call-in Threshold referred to in this Franchise Agreement. For the purposes of the notification obligation under this Clause 15.6 (but for no other purposes except where expressly stated in this Franchise Agreement) the Franchisee and the Franchise Operator shall be in contravention of this Franchise Agreement if, being under an obligation to use reasonable endeavours (or similar expression) to achieve a particular result by a particular certain time, such result is not achieved by such time.

15.7 Passenger statistics

[Intentionally not used]

15.8 Quarterly review meetings

The Franchise Operator and Franchisee shall attend quarterly review meetings with the Authority or its representatives for the purpose of enabling the Authority to conduct regular reviews of the financial and operational performance and any other obligations of the Franchise Operator and Franchisee in relation to this Franchise Agreement (including, for the avoidance of doubt, Schedules 13 and 14 of this Franchise Agreement). The persons attending such meetings on behalf of the Franchise Operator and Franchisee shall be of appropriate seniority and responsibility and shall include such directors and/or senior managers of the Franchise Operator, Franchisee and any Parent as the Authority may require. If requested to do so by the Authority the Franchise Operator and Franchisee shall prepare and present such reports at these meetings as the Authority may request. The obligations under this Clause 15.8 are subject to the Franchisee and Franchise Operator receiving at least 28 days notice of the date of the meeting and the reports required in the case of meetings where the reports required are to be based to a material extent on information, records or documents not held or maintained by the Franchise Operator or Franchisee and seven days (or such longer period as the parties may agree in the circumstances) in all other cases.

15.9 Further information

- (a) The Franchise Operator and the Franchisee shall deliver, or procure the delivery of, such other information, records or documents relating to, or connected with, the operation of the Franchise Services or this Franchise Agreement to the Authority, and within such period, as the Authority may in each case reasonably require (not to exceed seven days, in the case of information, records or documents held or maintained by the Franchise Operator or Franchisee (as appropriate) and twenty-eight days in any other case).
- (b) The information shall include any agreement, contract or arrangement to which the Franchise Operator or the Franchisee is a party in connection with any rolling stock used in the operation of the Passenger Services and (in so far as the Franchise Operator or the Franchisee has or is otherwise 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, including by way of example any agreement for the manufacture or supply of any rolling stock, or any arrangements for the securitisation of any lease granted in respect of such rolling stock.
- (c) The Franchise Operator shall comply with such reasonable requests and guidance as the Authority may notify to it from time to time in respect of the provision of information to and cooperation and consultation with Rail Passengers' Committees and Local Authorities.
- (d) The Franchisee and the Franchise Operator shall upon request provide or procure the provision to the Authority of such information, records and documents as the Authority shall reasonably request for the purposes of determining the existence, likelihood, nature or scope of any breach of, or Event of Default under, this Franchise Agreement.

15.10 Right of audit or inspection

- (a) The Authority and its representatives shall be permitted to inspect at any time the books, records and any other material kept by or on behalf of each of the Franchisee and the Franchise Operator:
 - (i) in order to check or audit any information supplied to it under this Franchise Agreement; or
 - (ii) to monitor compliance with its obligations under this Franchise Agreement; or
 - (iii) for the purposes of facilitating the carrying out of the Authority's functions.

Each of the Franchisee and the Franchise Operator shall make available to the Authority and its representatives such information and grant such access or procure the grant of such access (including to or from third parties) as they shall reasonably require in connection therewith. In the event that any such exercise reveals that information previously supplied to the Authority was in any material respect inaccurate on the basis of information available to the Franchise Operator (or the Franchisee, as the case may be) at the time (or reveals any other non-trivial breach of obligation by the Franchisee or the Franchise Operator, as the case may be), the costs of any such exercise shall be borne by the Franchise Operator (or the Franchisee, as the case may be).

- (b) The Authority and its representatives shall be permitted to inspect at any reasonable time any assets (including but not limited to Franchise Assets) used by the Franchise Operator in the operation of the Franchise Services:

- (i) in order to check or audit any information supplied to it under this Franchise Agreement;
- (ii) in order to monitor compliance with its obligations under this Franchise Agreement; or
- (iii) for the purpose of facilitating the carrying out of the Authority's functions.

The Authority and its representatives shall be permitted to take photographs, film or make a video recording, or make any other kind of record of any such inspection. The Franchise Operator shall grant such access or procure the grant of such access (including to or from third parties) as the Authority shall reasonably require in connection therewith. In the event that any such exercise reveals that any information previously supplied to the Authority was in any material respect inaccurate on the basis of information available to the Franchise Operator at the time or any other breach of its obligations by the Franchise Operator, the costs of any such exercise shall be borne by the Franchise Operator.

15.11 Access to third parties

- (a) The Franchise Operator shall, where so requested by the Authority, use all reasonable endeavours to ensure that the Authority may have direct access to such information, data or records relating to the Franchise Operator which is maintained by third parties and which the Authority is entitled to have access to, or have copies of, from the Franchise Operator under this Franchise Agreement.
- (b) The Franchise Operator shall, if and to the extent the Authority so requests, procure the provision by RSP to the Authority of such information, data and records as it may be entitled to receive under the Ticketing and Settlement Agreement and in such form as the Authority may specify from time to time. Such obligation shall be subject to the payment by the Authority of the costs incurred by RSP in providing such information.

15.12 Compatibility of information systems

- (a) Any financial, operational or other information, data and records required to be provided to the Authority under this Franchise Agreement shall be provided, if so requested by the Authority, in such a form as may be compatible with the Authority's electronic data and records systems on the Franchise Commencement Date as modified from time to time. In the event of such a modification, the Authority shall pay to the Franchise Operator the agreed reasonable costs (excluding any Value Added Tax) to the Franchise Operator of updating its systems or any relevant interconnection in order to be able to continue so to provide such information, data and records, to the extent that such costs exceed in any year the higher of (i) £10,000, and (ii) the amount calculated in accordance with the following formula:

$$\text{Costs} = \text{£10,000} \times \text{RPI}$$

where 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 Franchise Operator incurs the costs divided by the Retail Prices Index for the month falling six months after the Franchise Commencement Date.

- (b) The Franchise Operator shall ensure that the interconnection of such systems or the provision of such information, data and records to the Authority under this 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.

15.13 Franchise Operator Year

If the financial year of the Franchise Operator (as determined under section 223 of the Companies Act 1985) is at any time different from the Franchise Operator Year, the parties may agree to change the dates of the Franchise Operator Year, and to shorten or elongate the then current Franchise Operator Year as appropriate, subject to such changes to this Franchise Agreement as may be appropriate (including without limitation to Franchise Payments or any Annual Business Plan or Long-Term Business Plan).

Part III — Financial Provisions

16. Franchise Payments

16.1 Franchise Payments

Schedule 6 shall have effect for the purpose of determining the Franchise Payments to be paid during the Franchise Term, subject to and in accordance with this Clause 16 and the other provisions of this Franchise Agreement and the Authority and the Franchise Operator shall comply with their respective obligations thereunder.

16.2 Set-off

The Authority shall be entitled to set off against any Franchise Payment payable by it under Schedule 6 any Incentive Payment or Adjustment Payment payable or due to it under this Franchise Agreement, any monetary penalty payable under the Act and any other amount payable to or due to it under or in relation to this Franchise Agreement.

16.A *The Authority, in its sole discretion, may decide to reimburse or ameliorate net losses of the Franchise Operator arising from industrial action (howsoever caused and of whatever nature) in circumstances where the Franchise Operator has demonstrated to the satisfaction of the Authority that it has taken all reasonable steps to avoid the industrial action and, industrial action having nevertheless occurred, the Franchise Operator has taken all reasonable steps to mitigate its effects.*³⁵

17. Incentive Payments

Schedule 7 shall have effect for the purpose of the determination and payment of the Incentive Payments to be paid during the Franchise Term, subject to and in accordance with the other provisions of the Franchise Agreement and the Authority and the Franchise Operator shall each comply with their respective obligations thereunder.

18. Financial Review

18.1 Track access and station charging reviews

- (a) For the purposes of this Clause 18.1, the following definitions shall apply:
- (i) "Charge Variation" shall mean a variation to a Relevant Agreement which is effected as a result of a Charging Review (including any variation effected in connection with the Incremental Output Statement, in its current or any amended form, whether or not with immediate effect). For the avoidance of doubt, "Charge Variation" shall not include:-
 - (x) any such variation effected as a result of the 2001 Review. For this purpose, "2001 Review" does not include any Interim Review except to the extent provided in paragraph (y) below; or
 - (y) any such variation to the extent it is in the form set out in Appendix 3 of the document entitled "The Possessions Review: Provisional Conclusions on the Schedule 4 Incentives Structure" as published by the Regulator in December 2001,

³⁵ New text inserted wef 3rd July 2003

on the basis that the terms of this Franchise Agreement (including the Franchise Payments and Schedule 7) have already been amended to take account of such variations;

- (ii) “Charging Review” shall mean either the exercise by the Regulator of:
 - (x) his powers under:-
 - (aa) Part 7 of Schedule 7 of the Track Access Agreement specified in Part 2(a) of Schedule 1;
 - (bb) Condition F 11.5 of the Franchise Station Access Conditions in relation to any station which is not an Independent Station; and
 - (cc) Condition 42.5 of the Independent Station Access Conditions in relation to any station which is an Independent Station
 - (y) the powers he has by virtue of Section 231 of the Transport Act 2000; or
 - (z) any other powers of the Regulator which the Authority notifies the Franchise Operator that they, in its reasonable opinion, have an equivalent effect to, or are intended to fulfil the same function as, the powers referred to in Clause 18.1(a)(ii)(x) or (y) in relation to any Relevant Agreements (for the avoidance of doubt, including Relevant Agreements which are not the subject of any preceding Charging Review)
- or any amendment to a, or entry into a new, Relevant Agreement which is approved by the Regulator to the extent that it relates to the implementation of a Relevant IOS Output.
- (iii) “Final Conclusions” means the document “Periodic Review of Railtrack’s Access Charges Final Conclusions” published in October 2000 as amended by the new templates for Schedule 4, 7 and 8 published on 23 February 2001 being the completed and published conclusions of the 2001 Review.
 - (iv) “Interim Review” means an interim review of Railtrack’s charges during the Second Control Period which runs from 1 April 2001 to 31 March 2006 as provided for in Chapter 16 of the Final Conclusions.
 - (v) “Independent Station” shall mean any of the stations known as Birmingham New Street, London Charing Cross, Edinburgh Waverley, London Euston, Gatwick Airport, Glasgow Central, London Kings Cross, Leeds, London Liverpool Street, London Bridge, Manchester Piccadilly, London Paddington, London Victoria, London Waterloo (excluding Waterloo International) and such other stations in respect of which Railtrack may have become, and at the relevant time be, the Facility Owner.
 - (vi) “Relevant Agreements” shall mean any Property Leases or Access Agreements in relation to any stations or track which may be used from time to time by the Franchise Operator in connection with the Franchise Services, as replaced or amended from time to time.

- (vii) "2001 Review" means the review of the Railtrack's access charges embodied in the Final Conclusions and effective from 1 April 2001.
- (b) In the event of a Charge Variation the No Net Loss No Net Gain Regime shall apply subject to the other provisions of this Clause 18.1.
- (c) No adjustment to the terms of this Franchise Agreement will be required to be made under Clause 18.1(b) in respect of any Franchise Operator Year if the amount of Net Loss or Net Gain in that Franchise Operator Year would be less than 0.1 per cent of the annual Turnover of the Franchise Operator as disclosed by its latest available audited accounts.
- (d) For the purposes of Clause 18.1(b) and Schedule 9, the Net Loss and Net Gain shall be determined on the basis:
 - (i) that the level of service provided by the Franchise Operator is that:-
 - (x) required to be provided under the Passenger Service Requirement and Additional Service Commitment (including any changes thereto which have been agreed in connection with any Output Commitments under Schedule 14); and
 - (y) otherwise expressly required to be provided pursuant to any other obligation of the Franchise Operator (if any) pursuant to this Franchise Agreement

(together "the prescribed level of service") and, subject as may be otherwise agreed as the prescribed level of service is expected to be provided under the then current Timetable and Train Plan, the then current Franchise Plan and/or the then current Committed Outputs Business Plan;
 - (ii) of such assumptions (if any) as the Authority may, after consultation with the Franchise Operator, reasonably determine to be fair at the time provided that if the Franchise Operator disagrees that any or all of the assumptions proposed by the Authority is reasonable for the Authority to determine to be fair, and if it shall have notified the Authority accordingly within 60 days of the Authority's determination, then either of the parties may refer that issue for determination in accordance with the Dispute Resolution Rules.
 - (iii) that, except as expressly provided in this Clause 18.1(d)(iii), no adjustment shall be made under Clause 18.1(b) to the extent a Charge Variation relates, directly or indirectly and however it may be effected:-
 - (v) Traction Electricity Charge

to the Traction Electricity Charge (as defined in the Track Access Agreement specified in Part 2(a) of Schedule 1), or any equivalent charges, payable by the Franchise Operator, under any Relevant Agreement to the extent such Charge Variation relates to a variation in the amount payable (in pence per kwh or otherwise) for traction current consumed by railway vehicles operated by or on behalf of the Franchise Operator (except to the extent that such variation reflects 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 that traction current);

(w) Number of Services or Passengers

to any change in the actual or estimated average number of passenger rail services per day operated by the Franchise Operator, or the average number of passengers per service, or any other change which reflects the level of demand, or change in the level of demand, for the Passenger Services. It is acknowledged that, as at the date of this Franchise Agreement, the average number of passenger rail services per day and the average number of passengers per service is reflected in Appendix 1 of Schedule 8 of the Track Access Agreement specified in Part 2(a) of Schedule 1, by virtue of being taken account of in the “societal value” element of the Railtrack Payment Rate;

(x) Calculation of “Marginal Revenue Effect”

to any change in the basis of the calculation of the level or amount of the actual or estimated effect on the revenue of any train operator which arises from a change in operational performance of passenger rail services. It is acknowledged that, as at the date of this Franchise Agreement, such effect on revenue is known as “the Marginal Revenue Effect” and is reflected in Appendix 1 of Schedule 8 of the Track Access Agreement specified in Part 2(a) of Schedule 1, by virtue of the “MRE” element of the Railtrack Payment Rate;

(y) Monitoring Points and Weightings

to any change to:-

(1) the Monitoring Points (as defined in the Track Access Agreement specified in Part 2(a) of Schedule 1) or to any equivalent monitoring points under any Track Access Agreement from time to time (each such Monitoring Point and/or equivalent monitoring point being referred to in this paragraph (y) as a “measuring point”); and/or

(2) the weightings attributable to any such measuring point

to the extent that the change is made to reflect any change in the nature or pattern of passenger rail services operated by the Franchise Operator, or in the actual or estimated numbers of passengers travelling on such services;

(z) Changes in Drafting or Structure

to any other amendment to the drafting or structure of any Relevant Agreement to the extent that the Authority may, after consultation with the Franchise Operator, reasonably determine that such amendment has no material effect on the Relevant Agreement, the charges payable thereunder or the relationship between any Relevant Agreement and this Franchise Agreement provided that if the Franchise Operator disagrees that it is reasonable for the Authority to determine that any such amendment has no such material effect, and if it shall have notified the Authority accordingly within 60 days of the Authority's

determination, then either of the parties may refer that issue for determination in accordance with the Dispute Resolution Rules. For the purpose of this Clause 18.1(d)(iii)(z), it will be reasonable for the Authority to determine that an amendment has no material effect to the extent that it alters the procedural, operational, mechanical or other similar relationship between any relevant parties (but not, for the avoidance of doubt, to the extent that it affects the financial relationship between any relevant parties, or the balance or allocation of risks between any relevant parties);

(cxvii) The Authority shall be entitled to make such consequential amendments to Schedule 7 of this Franchise Agreement as the Authority may consider appropriate to reflect any Charge Variation described in any of Clauses 18.1(d)(iii)(w), (y) and/or (z). For the avoidance of doubt, there will be no Net Loss or Net Gain attributable to any such consequential amendments under Clause 18.1(b).

³⁶"(e) ***The cessation of payments by the Franchise Operator to Network Rail pursuant to the Fourth Supplemental in respect of any of the Facility Charge, the Incremental Access Charge, the Incremental O & M Charge, the Additional O & M Charge and the Project Termination Charge shall not be treated as a Charge Variation as the reduction in access charges payable by the Franchise Operator will be reflected in a commensurate alteration to Franchise Payments as a result of the removal of the Evergreen Component from the calculation on Franchise Payments.***

(f) ***For the avoidance of doubt if pursuant to a Charging Review the regulated return received by Network Rail in respect of the Regulatory Value is hypothecated in whole or in part to charges payable by the Franchise Operator under the Track Access Agreement such hypothecated charges will be taken into account for the purposes of the application of the No Net Loss No Net Gain Regime."***

19.2 [Intentionally not used]

18.3 Change of Law Review

- (a) In the event of a Change of Law, and if so requested by the Franchise Operator or the Authority, the No Net Loss No Net Gain Regime shall apply subject to Clause 18.3(b), (c), (d) and (e) so that:-
- (i) Subject to Clause 18.3(b) below the Franchise Operator shall for each Change of Law bear or receive (as the case may be) the first £300,000 of the Net Loss or Net Gain (if any) which results from that Change of Law, provided that with effect from the start of the second and each subsequent Franchise Operator Year this amount will be increased by RPI (where RPI is the quotient of the Retail Prices Index for the month falling two months before the relevant Franchise Operator Year divided by the Retail Prices Index for the month falling two months before the first Franchise Operator Year); and

³⁶ Date of Change DOA 2004

- (ii) the balance of each such Net Loss or Net Gain shall be borne or received (as the case may be) by the Authority.

- (b) The Franchise Operator shall not be required to bear or entitled to receive (as the case may be) an aggregate Net Loss or Net Gain in excess of the Capped Amount during the Franchise Term as a result of Changes of Law. Any Net Loss or Net Gain in excess of the Capped Amount shall be borne or received (as the case may be) by the Authority. The No Net Loss No Net Gain Regime shall be applied in respect of each Change of Law to reflect this Clause 18.3(b). The "Capped Amount" shall mean £5,000,000 provided that such amount shall be adjusted each time a request is made by the Franchise Operator pursuant to Clause 18.3(a) in accordance with the following formula:

$$CA = £5,000,000 \times RPI$$

Where CA is the adjusted amount of the Capped Amount and RPI means the quotient of the Retail Prices Index for the month falling two months prior to the date that the No Net Loss No Net Gain Regime calculation is made divided by the Retail Prices Index for November 1999.

- (c) Any such request by the Franchise Operator or the Authority must, unless otherwise agreed by the Authority, be made within 12 months after the date on which the Change of Law first takes effect.

- (d) The Franchise Operator shall:-

- (i) use all reasonable endeavours to minimise any increase and maximise any reduction in costs associated with any Change of Law and to procure that its suppliers, sub-contractors and agents do so;
- (ii) without limiting Clause 18.3(d)(i), ensure that when any expenditure is incurred or any commitment is entered into in relation to any Franchise Services, foreseeable Changes in Law at that time are taken into account.

The Franchise Operator shall consult with the Authority in respect of the Franchise Operator's proposals for compliance with this Clause 18.3. In any event, for the purpose of Clause 18.3 the Net Loss or Net Gain (as the case may be) will be the lowest aggregate Net Loss that can be incurred, or the highest aggregate Net Gain that can be made, in respect of the Change of Law taking into account any appropriate alternative methods of dealing with the Change of Law (irrespective of the actual actions or steps which the Franchise Operator may take in respect thereof).

- (e) This Clause 18.3 shall not apply to any Change of Law which is anticipated by or provided for in any other provision of this Franchise Agreement. In particular, but without limitation, this Clause 18.3 shall not apply at all in the case of any Change of Law which results in:-

- (i) a Track Access Adjustment Payment or a Station Access Adjustment Payment under paragraphs 7 and 8 of Part 2 of Schedule 6; or
- (ii) a Mandatory Modification falling within the scope of paragraph 9 of Part 2 of Schedule 6.

19. Franchise Viability

19.1 Threat to viability of franchise

The Franchise Operator may request the Authority to review the terms of this Franchise Agreement if it considers that if it is to be required to continue to comply with its obligations hereunder until the end of the Franchise Term, there would either be an Event of Default under Clause 21.1 before the end of the Franchise Term or its financial status would otherwise be threatened. Any such request shall be accompanied by a report prepared by an appropriate independent adviser of recognised standing which confirms, in the adviser's opinion, the extent to which the financial status of the Franchise Operator is threatened and any countervailing measures that might be taken by the Franchise Operator in order to improve or preserve its financial position.

19.2 Review of terms of Franchise Agreement

If the Franchise Operator so requests, the Authority may, but shall not be obliged to, offer to adjust the terms of this Franchise Agreement (including the Passenger Service Requirement, the Additional Service Commitment and the level of Franchise Payments) to such extent as the Authority considers appropriate having regard to:

- (a) whether it considers there would either be an Event of Default under Clause 21.1 before the end of the Franchise Term or the financial status of the Franchise Operator would otherwise be threatened;
- (b) any proposed adjustment to the other terms of this Franchise Agreement, the level of Annual Franchise Payments which would reasonably be expected to be set for a period equivalent to the balance of the Franchise Term if the Authority were to invite by competitive tender other persons (including persons who would provide and operate the relevant services on an economic and efficient basis) to provide, or secure the provision of, the Passenger Services under a franchise agreement for a term equivalent to the original duration of the Franchise Term;
- (c) the cost of inviting other persons to provide, or secure the provision of, the Passenger Services before the expiry of the Franchise Term;
- (d) whether the threat to the financial status of the Franchise Operator has arisen as a result of circumstances beyond its control and which it could not reasonably have been expected to counteract;
- (e) whether it would be in the interests of passengers using the Passenger Services to adjust the terms of this Franchise Agreement, having regard to the quality of service provided by the Franchise Operator;
- (f) the continued motivation of the Franchise Operator following any such adjustment; and
- (g) such other matters as the Authority may consider appropriate at the time.

19.3 Acceptance of offer

If the Authority does so offer, the Franchise Operator may accept such offer and the Franchise Agreement shall be amended accordingly subject to such other variations as the parties may agree.

Part IV — Term and Termination

20 Franchise Term

20.1 Expiry of term

Subject to Clauses 20.2 and 20.4, the Franchise Term shall expire at 2.00 a.m. on 31 December 2021. Subject to Clause 23 or any prior termination hereof, this Franchise Agreement shall terminate on the expiry of the Franchise Term.

20.2 Extension of term

- (a) If the Authority gives notice to the Franchise Operator not less than three months before the date on which the Franchise Term would have otherwise expired in accordance with Clause 20.1, the Franchise Term shall, subject to Clauses 20.2(b) and (d), expire at 2.00 a.m. on such date as may be specified by the Authority in such notice subject to the right of the Authority to terminate at any prior time subject always to it keeping the Franchise Operator reasonably informed of the likely date of any such earlier termination. The latest date specified in such notice shall be not less than one and not more than seven Reporting Periods after the date on which the Franchise Term would have otherwise expired in accordance with Clause 20.1.
- (b) Any such extension shall be subject to the availability to the Franchise Operator of the relevant rolling stock to be able to continue to provide the Passenger Services. The Franchise Operator shall use all reasonable endeavours to obtain such rolling stock and shall, if so requested by the Authority, use such rolling stock as would have been used by the relevant Successor Operator if no such extension had been made.
- (c) Whether or not such notice is given under Clause 20.2(a) the Franchise Operator shall, to the extent so requested by the Authority, exercise such rights of termination as it may have under any Key Contract to terminate such Key Contract on the expiry of the Franchise Term.
- (d) The Franchise Operator and the Authority may agree, not less than three months before the date on which the Franchise Term would have otherwise expired in accordance with Clause 20.1, to extend the Franchise Term for a period of not more than sixty-five Reporting Periods and subject to such conditions as they may consider to be appropriate at the time. If they do so agree, the Authority shall not be entitled to extend the Franchise Term under Clause 20.2(a).
- (e) The Franchise Operator shall enter into such Property Leases as it and the Authority may agree for it to be desirable or appropriate for it to do so in connection with its continuation of the Franchise Services for the duration of any extension under this Clause 20.2.

20.3 Financial arrangements

- (a) If and only if the Franchise Operator so requests within two weeks of being notified of any such extension under Clause 20.2(a), the Fixed Franchise Payments payable for the period of such extension shall be adjusted to such amount as would reasonably be expected to result in the Franchise Operator making no Profit or Loss in respect of such period.
- (b) Except to the extent the parties otherwise agree, the amount of such Fixed Franchise Payments shall be determined by reference only to the information available to both

parties at the time of the Franchise Operator's request. The Franchise Operator shall provide such information in relation thereto as the Authority may reasonably request. If the Authority so requests where the Franchise Operator is party to any arrangements with Affiliates which are not on arm's length terms the Profit or Loss of the Franchise Operator for the purposes of this Clause 20.3 shall be determined as if the Franchise Operator had entered into such arrangements on arm's length terms. If the parties are unable to agree the amount of such Fixed Franchise Payments on the basis of such information, they may refer the dispute for resolution in accordance with the Dispute Resolution Rules.

- (c) If no request is made under Clause 20.3(a), then, unless the parties otherwise agree, the provisions of Schedule 6 shall continue to apply for the period of any extension under Clause 20.2 except that the Annual Franchise Payment in respect of the period of such extension shall be the same as the Annual Franchise Payment for the preceding Franchise Operator Year multiplied by the quotient of the Retail Prices Index for the month falling two months before the start of such period of extension divided by the Retail Prices Index for the month falling twelve months before such month falling two months before the start of such period of extension.
- (d) For the purposes of calculating the adjustment to be made (if any) pursuant to Clause 20.3(a);
 - (i) unless otherwise agreed by the Authority, the Franchise Operator will not be expected to incur any additional costs, liabilities and expenses in relation to the operation of the Franchise Services which are of a type not previously incurred by the Franchise Operator under the Franchise Agreement in the normal provision of the Franchise Services;
 - (ii) no account will be taken of any payment or other obligation or liability which has accrued or arisen or is expected to accrue or arise otherwise than in respect of the period by which the Franchise Term is to be extended as specified under Clause 20.2(a). Without limiting the foregoing, the Franchise Operator shall take no action or steps which are designed, directly or indirectly, to transfer any costs, liabilities and expenses which properly relate to the period prior to the date on which the Franchise Term would (but for the extension pursuant to Clause 20.2(a)), have expired such that those costs, liabilities and expenses shall not be taken into account for the purposes of calculating the adjustment to be made (if any) pursuant to Clause 20.3(a);
 - (iii) no account will be taken of any liability which the Franchise Operator may be expected to incur as a result of any breach (whenever arising) by the Franchise Operator of this Agreement; and
 - (iv) unless otherwise agreed by the Authority, the payments which the Franchise Operator may be expected to make or receive, in respect of any Reporting Period during the period by which the Franchise Term is extended, pursuant to Schedule 7 or under the Track Access Agreement relating to the performance of Railtrack, LUL or the Franchise Operator, shall be equivalent to the payments (if any) which the Franchise Operator was liable to make or receive thereunder in respect of the corresponding Reporting Period in the previous Franchise Operator Year.

20.4 Amendment of Term³⁷

The Authority shall have the right to review and amend the period of the Franchise Term in accordance with the provision of paragraph 7.3(e) of part 4 of Schedule 14.

21. Events Of Default

The following are Events of Default and the occurrence of an Event of Default shall constitute a breach and contravention of this Franchise Agreement by the Franchise Operator and the Franchisee:

21.1 Insolvency

- (a) *Administration*: Any step being taken by any person with a view to the administration of the Franchise Operator, Franchisee or any Parent or Bond Provider under Part II of the Insolvency Act 1986;
- (b) *Insolvency*: Any of the Franchise Operator, Franchisee or any Parent or Bond Provider stopping or suspending or threatening to stop or suspend payment of all or a material part of (or a particular type of) its debts, or being unable to pay its debts, or being deemed unable to pay its debts under section 123(1) or (2) of the Insolvency Act 1986 except that in the interpretation of this paragraph:
 - (i) the words "it is proved to the satisfaction of the court that" in sub-section (1)(e) and sub-section (2) of section 123 shall be deemed to be deleted;
 - (cxviii) section 123(1)(a) of the Insolvency Act 1986 shall have effect as if for "£750" there was substituted "£100,000" or such higher figure as the Authority may from time to time determine by notice in writing to the Franchise Operator and the Franchisee; and
 - (cxix) any of the Franchise Operator, Franchisee or any Parent or 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 Franchise Operator, Franchisee or any Parent or Bond Provider making any proposal under section 1 of the Insolvency Act 1986, or any of the Franchise Operator, Franchisee or any Parent or 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 the relevant 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 out against any property of the Franchise Operator or the whole or a substantial part of the assets or undertaking of the Franchisee or any Parent or Bond Provider, including the appointment of a receiver, administrative receiver, manager or similar person to enforce that security;

³⁷ Date of Change 06/01/2010

- (e) *Stopping Business/Winding-Up:* Any step being taken by the Franchise Operator, Franchisee or any Parent or Bond Provider with a view to its winding-up or any person presenting a winding up petition or any of the Franchise Operator, Franchisee or any Parent or Bond Provider ceasing or threatening to cease to carry on all or a material part of its business, except for the purpose of and followed by a reconstruction, amalgamation, reorganisation, merger or consolidation on terms approved by the Authority before that step is taken;
- (f) *Railway Administration Order:* A railway administration order being made in relation to the Franchise Operator under sections 60 to 62 of the Act;
- (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 above

unless, in the case of paragraphs (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 and there being no other Event of Default at such time, to a period of 7 days having elapsed in order to allow the Franchise Operator a reasonable period to replace the relevant Bond Provider.

21.2 Change of Control

Without the prior consent of the Authority:

- (a) the Franchise Operator ceasing to be a wholly owned subsidiary of the Franchisee; or
- (b) a change in the identity of any one person, or two or more persons acting by agreement, who may Control the Franchisee during the Franchise Term which, for the avoidance of doubt, 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

and, for the purposes of this Clause 21.2, 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 section 204(1) of the Companies Act 1985, such persons would be under an obligation to disclose an interest in shares in such company by virtue of an agreement between such persons.

21.3 Revocation of Licence

Revocation of any Licence held by the Franchise Operator which it may be required to hold in order to comply with its obligations under this Franchise Agreement.

21.4 Breach of Law

- (a) It becoming unlawful for the Franchise Operator to provide all or a material part of the Passenger Services or to operate all or a material number of the Stations or Depots (except to the extent not required so to do under this Franchise Agreement).
- (b) The Franchise Operator or any of the directors or senior managers of the Franchise Operator being convicted of manslaughter, fraud or any other indictable criminal offence in each case relating to the provision and operation of the Franchise Services.
- (c) The Franchise Operator being in material non-compliance with a prohibition or enforcement order (or the equivalent thereof) of the Health and Safety Executive (or

any successor thereto) and which is not the subject of an appeal which turns out to be successful.

21.5 Breach of Passenger Service Requirement

The Franchise Operator failing to comply, subject to Clause 5.1(b), with its obligations under Clause 5.1(a).

21.6 Non-membership of Inter-Operator Schemes

The Franchise Operator 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.

21.7 Ceasing to provide Passenger Services

Other than with the agreement in writing of the Authority or to the extent excused under Clause 5.4 as a result of a *Force Majeure* Event, in relation to the Timetable and Train Plan, in any Reporting Period during the Franchise Term:

- (a) there being more Cancellations during such Reporting Period than the Default Threshold of Cancellations;
- (b) there being more Total Cancellations during such Reporting Period than the Default Threshold of Total Cancellations; or
- (c) where applicable, the aggregate of the Actual Capacity of each train included in the Train Plan in such Reporting Period being less than the Default Threshold of the aggregate of the Planned Capacity of each such train.

21.8 Bonds and Liquidity Maintenance

- (a) Any Performance Bond or Season Ticket Bond ceasing to be a legal, valid and binding obligation on the relevant Bond Providers (other than in accordance with their terms) or it otherwise becoming unlawful or impossible for the Bond Providers to perform their respective obligations thereunder.
- (b) The Authority failing to receive a Season Ticket Bond in accordance with Clause 14.4(b).
- (c) There ceasing or failing to be a Performance Bond which fulfils the requirements of Clause 14.3.
- (d) The Franchise Operator being in breach of any of its obligations under paragraph 2 of Part 1 of Schedule 10, which breach is not remedied within 7 days of a notice from the Authority requiring the breach to be remedied.

21.9 Key Contracts

Termination of any of the Key Contracts except where requested by the Authority or to the extent that the Franchise Operator has demonstrated to the reasonable satisfaction of the Authority that it is no longer necessary for it to be party to such Key Contracts or it has made adequate alternative arrangements in order to be able to continue to provide and operate the Franchise Services.

21.10 Enforcement orders

Non-compliance by the Franchisee or the Franchise Operator with (i) a provisional order or (ii) a final order or (iii) a penalty or (iv) any other order made relating to contravention of either a relevant condition or requirement (as defined in Section 55 of the Act) or another order, in each case made by the Authority under the Act.

21.11 Other Franchises

Termination, as a result of an event of default (excluding, for the avoidance of doubt, termination as a result of non-satisfaction of a condition precedent) of any other franchise agreement in respect of which the franchisee is the Franchisee or an Affiliate of the Franchisee.

21.12 Safety Case

The Franchise Operator commits a serious breach of the Railways (Safety Case) Regulations 2000.

21.13 Franchise Default Milestones

The Franchise Operator fails to achieve one or more of the Franchise Default Milestones.

21.14 Non-payment under the Implementation Agreement

The Authority becoming liable to make a payment to Railtrack as referred to in paragraph 1.10.2 of Part 2 of the First Output Plan (as referred to in Schedule 14).

21.15 Funder's Direct Agreement

- (a) Receipt by the Authority of a Payment Default Notice (as such term is defined in the Funder's Direct Agreement).
- (b) The Authority being required to make a payment in respect of the Residual Value Amount (either in whole or in part) under the terms of the Funder's Direct Agreement.

21.16 Breach of other obligations

The Franchisee or Franchise Operator not performing or complying to a material extent with any one or more of its obligations under this Franchise Agreement (other than such non-performance or non-compliance as may constitute an Event of Default under Clauses 21.1 to 21.15) and, after a written notice from the Authority specifying such non-performance or non-compliance, breaching such obligation again to a material extent or permitting the breach to continue or, if the breach is capable of remedy, failing to remedy such breach within such reasonable period as the Authority may specify in such written notice.

22 Consequences Of Events Of Default

22.1 Notification of Event of Default

The Franchisee and the Franchise Operator shall notify the Authority as soon as reasonably practicable on, and, in any event, within 24 hours of, it becoming aware of the occurrence of an Event of Default or an event which is likely to result in the occurrence of an Event of Default. The Franchisee and the Franchise Operator shall take such action or

steps as the Authority may require for any Event of Default or potential Event of Default to be remedied.

22.2 Termination

The Authority shall be entitled, on the occurrence of an Event of Default which it reasonably considers to be material, to terminate this Franchise Agreement forthwith on written notice. This Franchise Agreement shall terminate on the date specified in any such notice which terminates or purports to terminate this Franchise Agreement.

23 Consequences of Termination

Upon termination of this Franchise Agreement (whether through default or effluxion of time or otherwise) the obligations of the parties hereunder shall cease except for:

- (a)** any obligations arising as a result of any antecedent breach of this Franchise Agreement;
- (b)** any obligations which are expressed to continue in accordance with the terms of this 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.

Nothing in this Clause 23 shall prevent the Authority from bringing an action against the Franchisee or the Franchise Operator in connection with the termination of this Franchise Agreement prior to the expiry of the Franchise Term.

Part V — Obligations associated with change of Franchise Operator

24 Reletting of Franchise

The Franchise Operator acknowledges that the Authority may wish, at or before the expiry of the Franchise Period, either to invite persons, who may include the Franchisee or the Franchise Operator, 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. The Franchise Operator further acknowledges that the Authority is under a duty under section 30 of the Act to secure in certain circumstances the provision of the Passenger Services including if no further franchise agreement is entered into on the termination of this Franchise Agreement in respect of such Passenger Services. The Franchise Operator accordingly accepts and agrees to the restrictions and obligations imposed on it under this Part V of this Franchise Agreement.

25 Maintenance of Franchise

25.1 Maintenance as going concern

- (a) The Franchise Operator shall maintain and manage the business of providing the Franchise Services with the intent that a Successor Operator would be able to take over the business of providing the Franchise Services immediately at any time. The Franchise Operator 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.
- (b) The Franchise Operator shall maintain and manage the business of providing the Franchise Services on the basis that, to the extent possible and practicable, such business will be transferred, in the manner contemplated under this Franchise Agreement, as a going concern at the end of the Franchise Period to, and continued immediately thereafter by, a Successor Operator. The Franchise Operator shall accordingly 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.
- (c) Both prior to and following the selection of a Successor Operator (whether a franchise operator or otherwise and whether or not subject to the satisfaction of any conditions), the Franchise Operator shall co-operate with, where a Successor Operator has been so appointed, such Successor Operator or, where not, the Authority, and shall take such steps as may be reasonably requested by the Authority so as to ensure the continuity of, and an orderly handover of control over, the Franchise Services (including, without limitation, bidding for and securing the Timetable and the Train Plan for the Franchise Services to be operated by the Successor Operator (whether or not a Successor Operator has been identified and whether or not there is in place an Access Agreement relating to the relevant period)).

25.2 Handover packages

- (a) The Franchise Operator shall maintain and keep up to date a handover package, which shall contain the information and objects set out in Schedule 12 and such other information and objects as the Authority may reasonably specify from time to time.
- (b) The Franchise Operator shall ensure that any Successor Operator will have immediate access to such package on the expiry of the Franchise Period and shall accordingly agree with the Authority from time to time a location at which such package should be kept, which unless otherwise agreed, shall be the offices of a solicitor approved by the Authority.
- (c) Once in each Franchise Operator Year, the Franchise Operator shall provide a report from its auditors addressed to the Authority which confirms that the package maintained by the Franchise Operator pursuant to Clause 25.2(a) contain the information and objects required thereunder. The Franchise Operator shall make such package available for inspection to the Authority or its representative whenever so reasonably requested.
- (d) Without prejudice to the preceding provisions of this Clause 25.2, the Franchise Operator shall provide to the Authority the following information and letters, and shall supply revised information and/or letters to the Authority as and when required to ensure they remain accurate and up to date:
 - (i) Details of the location of the Handover Package which details shall include one or more contact name(s), address(es) and telephone number(s) enabling contact during, and outside of, normal office hours with person(s) authorised and able to release the package.
 - (ii) A letter in a form approved by the Authority:
 - (1) from the Franchise Operator confirming that an irrevocable instruction has been given to the holder of the Handover Package that any of the Authority, a Successor Operator or their agent, is entitled to require access to and delivery of the Handover Package on demand, and confirming the Authority's right to audit the Handover Package;
 - (2) to the Authority from the solicitor, or other person authorised by the Authority, holding the Handover Package confirming that they will release the Package to the Authority, a Successor Operator or their agent, on demand, and confirming that the Handover Package will be made available for the purposes of auditing its contents when so required by the Authority.
 - (iii) A list of all directors and function managers of the Franchise Operator, together with details of the means of contacting them, or their deputies, during, and outside of, normal working hours.
 - (cxx) ***A letter, or letters, in a form approved by and addressed to the Authority, either (1) authorising each of the Franchise Operator's insurers to release any insurance related information to the Authority, or its agents on demand; or (2) authorising the Franchise Operator's insurance broker to release any insurance related information to the Authority, or its agents on demand. The letter(s) shall also include (1) confirmation from each of the Franchise Operator's insurers that they***

*agree to release such insurance related information, or (2) confirmation from the Franchise Operator's insurance broker that all insurers agree to release such insurance related information and that they will not enlist any insurer on behalf of the Franchise Operator who has not first agreed to release such information.*³⁸

25.3 Preparation for reletting

- (a) The Franchise Operator, if and to the extent so requested by the Authority, shall provide the Authority and its representatives and advisers with reasonable access to the Franchise Employees and the books, records and other material kept by or on behalf of the Franchise Operator in connection with the Franchise Services for the purpose of such representatives and advisers preparing any reports or other documents in connection with any invitation to potential Successor Operators to tender for the right and obligation to provide or operate all or any of the Franchise Services or any invitation 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 the entering into of any franchise agreement or other agreement relating to the Franchise Services, without having gone through a tendering process. The Franchise Operator shall make available to the Authority and its representatives and advisers such information (including, without limitation, financial and operational information), shall prepare and present such information in such manner (including in disaggregated form), and shall assist in the verification of such information (including the provision of answers to verification questions), as they shall reasonably require in connection with such exercise provided that such exercise shall not unduly interfere with the continuing provision and operation of the Franchise Services by the Franchise Operator.
- (b) Without limiting Clause 25.3(a), if and to the extent the Authority requires in connection with any proposal (whether or not yet finalised) to enter into separate franchise and/or other agreements with one or more Successor Operators, each relating to some only of the Franchise Services (whether or not together with other passenger rail services) at or following the end of the Franchise Period and whether or not the agreement of the Franchise Operator will be required to bring into effect any such proposals (including the early termination of this Franchise Agreement), the Franchise Operator agrees and acknowledges that the Authority may require:
 - (i) that the Franchise Operator provides the Authority with such additional information and reports and analysis as the Authority may require in respect of such different groups of Franchise Services as the Authority may identify ("**Franchise Service Groups**"). This may include information relating to the operational and financial performance of Franchise Service Groups, and identification of those employees, assets and liabilities which relate to the Franchise Service Groups together with an indication of the extent to which the same are shared between the operation of different Franchise Service Groups;
 - (ii) subject to (c) below, that the Franchise Operator shall reorganise the business of providing the Franchise Services in such manner as is agreed by the Authority to be necessary or desirable to facilitate the transfer anticipated by this Clause 25.1(b) on an ongoing basis of the business of providing the Franchise Services within each of the Franchise Service

³⁸ Replacement of text w.e.f 12th September 2003

Groups to separate Successor Operators. This may include, to the extent reasonably practicable:

- (a) the re-organisation of personnel such that an appropriate number of employees (having sufficient skills, qualifications and experience) will transfer by operation of law or otherwise be available as necessary to each Successor Operator of each Franchise Service Group;
 - (b) entering into additional or clarificatory contractual or other arrangements such that the Successor Operator of each Franchise Service Group will have the necessary assets and rights to operate the Franchise Services within that Franchise Service Group.
- (c) Where the Franchise Operator reasonably considers that any requirement of the Authority pursuant to Clause 25.3(b) (ii) will result in a material additional cost to the Franchise Operator, the Franchise Operator shall give notice to this effect to the Authority. The notice will be accompanied by the Franchise Operator's forecast of the Net Loss which will result from the Franchise Operator carrying out the Authority's requirements. If the Authority advises the Franchise Operator that it still wishes the Franchise Operator to carry out its requirements, the No Net Loss No Net Gain Regime shall apply to the requirements of the Authority under Clause 25.3(b).

25.4 Non-frustration of transfer

The Franchise Operator shall take no action or steps which is or are designed, directly or indirectly, to 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. In particular the Franchise Operator shall take no action or steps which is or are designed, directly or indirectly, to avoid, frustrate or circumvent any provision of this Franchise Agreement which is included in whole or in part for the purpose of preventing any such prejudicial or frustrating action or steps (including those contained in this Part V of the Franchise Agreement). Subject to such restrictions and the other provisions of this Franchise Agreement, the Franchise Operator shall be entitled to take such action as it may require for the purposes of bidding to become, or becoming, such a Successor Operator.

25.5 Arrangements with Affiliates

- (a) The Franchise Operator shall ensure that every contract or other arrangement or transaction to which it may be party with any Affiliate for the supply of goods, the provision of services (including the licensing of any Intellectual Property) or otherwise, is on arm's length terms.
- (b) For the avoidance of doubt, in the event that any such arrangement is a Key Contract and is not on arm's length terms, the Authority may require the Franchise Operator to terminate (at its own cost) such arrangement and the Franchise Operator shall comply with any such requirement.

25.6 Last twelve months of Franchise Period

Where reference is made in this Part V of this Franchise Agreement to the last twelve or thirteen months of the Franchise Period, such period shall be deemed to commence on the following dates (except and until the actual date of expiry of the Franchise Period is known):

- (a) the date which is twelve or thirteen months, as the case may be, prior to the date of expiry of the Franchise Term under Clause 20.1 assuming that the Authority does not elect to give notice of extension under Clause 20.2(a);
- (b) the date on which the Authority reasonably considers that an Event of Default may occur within the following twelve months and notifies the Franchise Operator that such period of twelve or thirteen months shall be deemed to commence;
- (c) the date any notice of non-acceptance of a Panel decision is given by either the Franchise Operator or the Authority under paragraphs 9.6 or 9.7 of Part 4 of Schedule 14; and
- (d) the date on which the Authority notifies the Franchise Operator that such period of twelve or thirteen months shall be deemed to commence on the grounds that the Authority considers it reasonably likely that this Franchise Agreement will be terminated by agreement between the parties within such period.

Any such period (which may be longer or shorter than twelve or thirteen months, as the case may be) shall expire on the date of termination of the Franchise Agreement or, if earlier, in the case of periods commencing under paragraph (b), the date falling twelve months after the date of any notice under paragraph (b) or, in each case, such earlier date as the Authority may determine.

26 Restrictions On Activities

26.1 Affiliates of Franchise Operator

Nothing in this Clause 26 shall restrict any Affiliate of the Franchise Operator (including the Franchisee) from having an interest in or participating in any business or activity other than the Franchise Services.

26.2 Restrictions on Franchise Operator

- (a) The Franchise Operator shall have the right to provide and operate the Franchise Services during the Franchise Period and shall not directly or indirectly, without the prior written consent of the Authority, carry on any business or activity other than the provision and operation of the Franchise Services.
- (b) Such consent shall not be unreasonably withheld where the other business or activity proposed to be carried on by the Franchise Operator could not reasonably be so carried on by an Affiliate of the Franchise Operator unless, in the Authority's reasonable opinion:
 - (i) such additional business or activity might prejudice the continuity of the provision of the Franchise Services by a Successor Operator at the end of the Franchise Period; or
 - (cxi) might result in additional liabilities and obligations being assumed by such a Successor Operator.
- (c) The Authority, to the extent that it does so consent, may do so on such conditions agreed with the Franchise Operator at the time of the grant of its consent as the Authority considers appropriate for the purpose of securing the continuity of the provision of the Franchise Services at the end of the Franchise Period.
- (d) Without prejudice to the foregoing provisions of this Clause 26.2 the Authority agrees that it shall not unreasonably delay giving its decision under Clause 26.2(b) where such

delay would prejudice the Franchise Operator's performance of its obligations under and in accordance with this Franchise Agreement.

26.3 Specific restrictions

Without prejudice to the generality of the provisions of Clause 26.2 and for the avoidance of doubt, the Franchise Operator shall not during the Franchise Period, without the consent of the Authority:

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

26.4 Employees

The Franchise Operator shall not engage any Franchise Employee in any activity or business which it may not conduct or engage in under this Clause 26.

27 Key Contracts

27.1 Key Contracts

Save in respect of any contract to which the Franchise Operator may have been party on the Previous Franchise Commencement Date, the Franchise Operator shall not enter into, be party to or be beneficiary under any Key Contract, unless the relevant counterparty is a Train Operator or the Authority has previously entered into a Direct Agreement in respect of such Key Contract with the relevant counterparty on terms acceptable to the Authority and any such Direct Agreement has been amended as required by the Authority for the purposes in each case of ensuring that the Passenger Services may continue to be provided on a basis acceptable to the Authority and that the Stations and Depots may continue to be operated in the event of breach or termination of such Key Contract, termination of this Franchise Agreement or the making of a railway administration order in respect of the Franchise Operator on a basis acceptable to the Authority.

27.2 No amendment

Without prejudice to Clauses 12.3(a), 12.4(a), 12.6 and 12.7 and subject to Clause 12.8:

- (a) the Franchise Operator shall not without the prior consent of the Authority (which shall not be unreasonably withheld or delayed) vary, or purport to vary, the terms or conditions of any Key Contract where such variation first takes effect in the last 12 months of the Franchise Period or where all or part of such variation first takes effect after the end of the Franchise Period; and
- (b) in addition, when and to the extent that the Authority so requires by notice, the Franchise Operator shall not vary, or purport to vary, the terms of any Key Contract (or if such notice specified a particular Key Contract or class of Key Contracts, any such Key Contract as specified) without the consent of the Authority.

27.3 Designation

The Authority may, subject to Clause 27.4, designate at any time as a Key Contract any agreement, contract, licence or other arrangement (whether in written, oral or other form) which the Franchise Operator is party to or beneficiary under or which it may propose to be party to or beneficiary under, where the Authority considers that such designation is reasonably necessary for securing that the Franchise Services may continue to be provided by a Successor Operator on the expiry of the Franchise Period or otherwise facilitating the transfer of the provision of the Franchise Services at such time. For the avoidance of doubt such arrangements may include any informal or formal arrangement that the Franchise Operator may have with any other person from time to time (including an Affiliate and including any arrangement for the storage or accommodation of any employees or assets (including any relevant electronic or computer systems)).

27.4 Notification of categories of Key Contracts

The Authority may from time to time notify the Franchise Operator of those types or categories of contracts or arrangements which it considers may be Key Contracts and those which it does not. The Franchise Operator shall be entitled to rely on such notifications until amended or revoked on reasonable notice. The Franchise Operator shall inform the Authority from time to time of any arrangements which it may be intending to enter into (or, without prejudice to the foregoing, to which it is at that time already a party) which it believes the Authority may reasonably wish to designate under Clause 27.3, and shall give the Authority a reasonable opportunity to so designate such arrangements. In any event, and without prejudice to its obligations hereunder, the Franchise Operator shall notify the Authority as and when the Franchise Operator enters into any such arrangements.

27.5 Designation of existing Contracts

If the Authority designates as a Key Contract any contract or arrangement to which the Franchise Operator may already be party and which the Authority has previously notified the Franchise Operator would not be considered to be a Key Contract under Clause 27.4 (and in respect of which such notice has not been revoked), the Franchise Operator shall be deemed not to be in breach of its obligations under Clause 27.1 but shall, where so reasonably requested by the Authority, use its reasonable endeavours to procure that the Authority may enter into a Direct Agreement with the relevant counterparty as soon as practicable.

27.6 Emergencies

Nothing in this Clause 27 or Clause 12 shall prevent the Franchise Operator from entering into on a short term basis such contracts or arrangements as it may consider necessary or appropriate to deal with any emergency which may arise in connection with the provision and operation of the Franchise Services nor shall it be required to procure that the Authority enters into a Direct Agreement in respect of such contracts.

27.7 De-designation of Key Contracts

The Authority may at any time during the Franchise Period, by serving a notice on the Franchise Operator specifying the Key Contracts in question (whether specifically or by reference to any type or category of Key Contract or both), cause the agreements, contracts, licences or other arrangements forming those Key Contracts to cease to be designated as Key Contracts. Such Key Contracts shall cease to be so designated on the

date specified in such notice. Any such notice under this Clause shall be without prejudice to the Authority's rights under Clauses 27.3, 27.4 and 27.5, to redesignate any such agreement, contract, licence or other arrangement as a Key Contract.

27.8 Amendments to Schedule 11

Without prejudice to the preceding provisions of this Clause 27, Part 3 of Schedule 11 shall be amended as necessary from time to time to take account of any designation or de-designation hereunder of any Key Contracts.

27.9 Replacement of Key Contracts

The Franchise Operator shall, prior to the due date of expiry of such Key Contracts as the Authority may specify to the Franchise Operator (or, if earlier, such other date as it may be reasonably likely that any such Key Contract will terminate), enter into and conduct negotiations which will enable it to secure appropriate replacement arrangements (whether with the same counterparty to the old Key Contract or not) prior to the date of expiry or termination, as the case may be, of the relevant Key Contract.

28 [Intentionally Not Used]

29 Franchise Employees

29.1 Terms of employment of existing employees

The Franchise Operator shall not, and shall secure that each other relevant employer shall not, without the prior consent of the Authority (which shall not be unreasonably withheld or delayed), vary, or purport or promise to vary, the terms or conditions (as amended from time to time) of employment of any Franchise Employee (including promise to make any additional payment or provide any additional benefit and including for the avoidance of doubt any term or condition relating to holiday, leave or hours to be worked) where such variation or addition:

- (a) takes effect in the last twelve 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 the Franchise Employee of no more than the percentage increase in the level of the Average Earnings Index between the month for which such index was last published at the time the variation or addition is made or proposed and the month falling twelve months before such month; or
- (b) all or part of it first takes effect after the end of the Franchise Period; or
- (c) results in any such employment not being terminable by the employer within six months of the expiry of the Franchise Period; or
- (d) relates to a payment or the provision of a benefit triggered by termination of employment; or
- (e) relates to the provision of a benefit (but 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 such employee performed for the Franchise Operator.

Without limiting the foregoing, the Franchise Operator shall consult with the Authority as soon as reasonably practicable in any circumstances in which the Authority's consent under this Clause 29.1 may be required. For the avoidance of doubt, "promise to vary" includes any offer or indication of willingness to vary (whether or not such offer or willingness is made conditional upon obtaining the Authority's consent).

Without limiting the foregoing the Franchise Operator shall consult the Authority as soon as reasonably practicable in any circumstances in which the Authority's consent under this Clause 29.1 may be required. Further, it shall always be deemed to be reasonable for the Authority to withhold its consent to a variation or addition which is prohibited without such consent under Clause 29.1 (a) provided the Authority:

- (i) makes an overall increase in Franchise Payments equal to the amount of the direct net losses suffered by the Franchise Operator on the days ("Relevant Days") when the Passenger Services are affected by industrial action taken by the Franchise Employees which is a consequence of a refusal by the Authority to agree to the variation or addition; and*
- (ii) agrees that during the Relevant Days there shall be no application of the regime by which the Franchise Operator is required to make payments to the Authority in respect of poor performance to the extent that such poor performance is a consequence of the industrial action referred to in subparagraph (i) above. Further, to the extent that the Franchise Operator may be in breach of the Franchise Agreement (excluding breaches in relation to safety requirements) or the call-in, breach and/or default thresholds in Part 2 Schedule 3 of the Franchise Agreement and in each case as a consequence of the industrial action referred to in this paragraph, such breach shall be waived by the Authority³⁹*

29.2 Terms of employment of new employees

The Franchise Operator shall not, and shall secure that each other relevant employer shall not, without the prior consent of the Authority (which shall not be unreasonably withheld or delayed), create or grant, or promise to create or grant, terms or conditions of employment for any Franchise Employee where such employment by the Franchise Operator or such other relevant employer may commence on or after the Franchise Commencement Date if and to the extent that:

- (a)** such terms or conditions are materially different to the terms or conditions of employment of equivalent or nearest equivalent Franchise Employees at the date of commencement of employment of such new Franchise Employee; and
- (b)** if such terms or conditions were granted to such equivalent Franchise Employees already employed by the Franchise Operator by way of variation to their terms or conditions of employment, the Franchise Operator would be in breach of Clause 29.1.

29.3 Changes in numbers and total cost of employees

Subject to and excluding any increase in the remuneration of Franchise Employees permitted under Clause 29.1, the Franchise Operator shall not, and shall secure that each other relevant employer shall not, without the prior consent of the Authority (which shall not

³⁹ New text inserted wef 3rd July 2003

be unreasonably withheld or delayed) increase or decrease in the last twelve months of the Franchise Period the number of Franchise Employees either such that the total number of Franchise Employees or the total cost per annum to the Franchise Operator and each other relevant employer of employing all Franchise Employees is increased or such that the total number of Franchise Employees is decreased, in each case, by more than 5 per cent. During such period of twelve months.

30. Fares

30.1 Period of validity of Fares

The Franchise Operator shall not, without the consent of the Authority (not to be unreasonably withheld) Create or agree to Create any Fares or Discount Cards which do not expire or otherwise cease to be valid within thirteen months of the sale of such Fare or Discount Cards and shall not, except to the extent required to do so under the terms of the Ticketing and Settlement Agreement as a result of the Creation of a Fare or Discount Card by another person, sell any such Fare or Discount Card.

30.2 Reduction in Prices of Fares

- (a) During the last thirteen months of the Franchise Period the Franchise Operator shall not, without the consent of the Authority (not to be unreasonably withheld), set the Price or Child Price of, or sell (except to the extent required to do so under the terms of the Ticketing and Settlement Agreement as a result of the Price or Child Price, as the case may be, of a Fare being set by another person), any Fare which would entitle the purchaser thereof 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, as the case may be, of that Fare immediately before the commencement of such thirteen month period or, in the case of a new Fare, the Price of its nearest equivalent immediately before the commencement of such period.
- (b) Clause 30.2(a) shall not prevent the giving of any discount or reduction to which the purchaser of that Fare may be entitled by virtue of:

 - (i) presenting a Discount Card issued by the Franchise Operator before the commencement of such period (or any equivalent replacement thereof) and to which the purchaser would have been entitled before the commencement of such period;
 - (cxxii) presenting a Discount Card of another train operator;
 - (cxxiii) the Passenger's Charter or the passenger's charter of any other train operator; or
 - (cxxiv) any relevant conditions of carriage.
- (c) The Franchise Operator shall procure, to the extent applicable, 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 Clause 30.2(a) to the extent they apply to the selling of Fares by the Franchise Operator.

30.3 Percentage allocations

- (a) Except to the extent that the Authority may consent from time to time (such consent not to be unreasonably withheld), the Franchise Operator shall not, in the last thirteen months 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 Franchise Operator shall notify the Authority before taking any such action or step in the last thirteen months 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 Franchise Operator shall take such action as the Authority may reasonably request in order to prevent any such reduction, including submitting any dispute to any relevant dispute resolution procedures.

31. Inter-Operator Schemes

31.1 Voting on scheme councils

Subject to Clause 31.2, during the last twelve months of the Franchise Period the Franchise Operator shall give the Authority reasonable notice of any meeting of a scheme council of an Inter-Operator Scheme on which the Franchise Operator is represented or a scheme management group of any Inter-Operator Scheme on which the Franchise Operator has a permanent position or employs a member and of the resolutions to be voted upon thereat and shall notify the Authority at the same time of its voting intentions. The Franchise Operator shall not without the consent of the Authority (not to be unreasonably withheld or delayed) cast its vote in favour of or against any resolution to be decided at any such meeting. Once consent has been given, the Franchise Operator shall vote in the manner so approved by the Authority.

31.2 Successor Operator

Where the Franchise Operator has been notified by the Authority that a Successor Operator has been selected (whether a franchise operator or otherwise and whether or not subject to the satisfaction of any conditions), the Franchise Operator shall notify and consult with any such Successor Operator on any decisions to be taken by the scheme council of an Inter-Operator Scheme on which the Franchise Operator is represented or a scheme management group of any Inter-Operator Scheme on which the Franchise Operator has a permanent position or employs a member, where such decision might reasonably be considered to affect the interests of the Successor Operator. The parties shall agree on which way to vote on each such decision and, failing agreement, shall refer the matter to the Authority who shall determine the manner in which the Franchise Operator shall vote having regard to the transfer of the Franchise Services as a going concern at the end of the Franchise Period and the Franchise Operator shall vote accordingly.

32. Franchise Assets

32.1 Designation as Franchise Assets

- (a) Subject to Clause 32.1(b), all property, rights and liabilities of the Franchise Operator 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.

- (b) The following property, rights and liabilities shall not be designated as Franchise Assets and shall not constitute franchise assets for the purposes of section 27(11) of the Act:
- (i) the rights and liabilities of the Franchise Operator under any contract of employment;
 - (cxxv) the rights and liabilities of the Franchise Operator under the Rolling Stock Leases specified in Part 5 of Schedule 1;
 - (cxxvi) the rights and liabilities of the Franchise Operator under this Franchise Agreement or any Transfer Scheme or Supplemental Agreement;
 - (cxxvii) the rights and liabilities of the Franchise Operator under the Ticketing and Settlement Agreement;
 - (cxxviii) the rights and liabilities of the Franchise Operator in respect of any sums placed on deposit with a bank or other financial institution; and
 - (cxxix) such other property, rights and liabilities as the Franchise Operator and Authority may agree from time to time under Clause 32.13(a) or as the Authority may de-designate as Franchise Assets under Clause 32.13(b).

32.2 Designation as Primary Franchise Assets

The following property, rights and liabilities shall (to the extent they are also Franchise Assets under Clause 32.1 above) be designated as Primary Franchise Assets with effect from the following dates:

- (a) the property, rights and liabilities listed in Parts 1 and 2 of Schedule 11, on the Franchise Commencement Date;
- (b) any additional property, rights and liabilities designated under Clause 32.5 during the Franchise Period, on the date of their designation;
- (c) any additional property, rights and liabilities designated under Clause 32.6 during the Franchise Period, on the date of their designation;
- (d) any property or right which is vested in the Franchise Operator and used for the purpose of maintaining, replacing, repairing or renewing any property designated as Primary Franchise Assets pursuant to Clause 32.2(a), (b) or (c) (whether pursuant to Clause 32.7 or not) and which forms or replaces part or all of such designated property on completion of such maintenance, replacement, renewal or repair, on the date of their use for such purpose;
- (e) the rights and liabilities of the Franchise Operator under any Key Contract designated under Clause 32.9, on the date of their designation; and
- (f) the rights and liabilities of the Franchise Operator in respect of the terms of any Fare or Discount Card designated under Clause 32.10, on the date of their designation.

32.3 Consent of Authority to certain transactions

For the purposes of section 27(3) of the Act and subject to Clause 32.4(d), the Authority hereby gives its consent to the Franchise Operator:

- (a) if and to the extent that the Franchise Assets are property or rights and are not designated as Primary Franchise Assets:

- (i) to transfer or agree to transfer any such Franchise Assets or any interests in, or right over, any such Franchise Assets;
 - (cxxx) to create or extinguish, or agree to create or extinguish, any interest in, or right over, any such Franchise Assets; and
- (b) if and to the extent that the Franchise Assets are liabilities and are not designated as Primary Franchise Assets, to enter into any agreement under which any such liability is released or discharged, or transferred to some other person.

32.4 Security interests

- (a) For the purpose of section 27(3) of the Act, the Authority hereby gives its consent to the Franchise Operator, if and to the extent that the Franchise Assets are property or rights (and whether or not designated as Primary Franchise Assets), creating or agreeing to create any Security Interest over any Franchise Asset to the extent that the terms of any such Security Interest are such that:
 - (i) if the relevant Franchise Asset becomes the subject of a transfer scheme made under Schedule 21 of the Transport Act, it shall be fully and automatically released from the relevant Security Interest immediately before the coming into force of such a transfer scheme; and
 - (cxxxi) if the relevant Franchise Asset is assigned, novated or otherwise transferred to another person under Clauses 12.2, 12.3 or 12.4 of this Franchise Agreement or by virtue of any other amendment to this Franchise Agreement, it shall be fully and automatically released from the relevant Security Interest immediately before such assignment, novation or transfer; and
 - (cxxxii) it shall not be enforced or enforceable until the date of such Franchise Asset ceasing to be designated as a Franchise Asset (whether under Clauses 32.13 or 35.1 or otherwise).
- (b) The Franchise Operator shall accordingly not create or agree to create a Security Interest over any Franchise Assets except on the terms permitted under Clause 32.4(a) or on such other terms as the Authority may expressly agree in writing.
- (c) The Franchise Operator shall provide the Authority with such information as it may reasonably require in relation to any Security Interest over any of its property or rights.
- (d) Nothing in Clause 32.3 shall be deemed to constitute the giving of the Authority's consent to the creation of, or the agreement to create, a Security Interest to which it would not give its consent under this Clause 32.4.

32.5 Designation of additional property, rights and liabilities

- (a) The Authority may at any time and from time to time during the Franchise Period other than, subject to Clause 32.6(b), during the last twelve months of such Franchise Period, by serving a notice on the Franchise Operator specifying the property, rights or liabilities in question, 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, right or liabilities.

- (b) Any such notice shall be accompanied by a statement of the reasons why the Authority has so designated such property, rights or liabilities and shall specify the time (not being less than 28 days from the date of giving the notice) within which the Franchise Operator may make representations or objections with respect to the designation. If the Franchise Operator makes representations or objections which cannot be resolved by agreement within a period of 56 days from the date of the Authority's notice, the Franchise Operator may refer the dispute for resolution in accordance with the Dispute Resolution Rules for determination of whether or not the relevant property, rights or liabilities should cease to be so designated.
- (c) Any such determination shall be made only on the basis that the designation of such property, rights or liabilities was not 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 acceptable to the Authority or otherwise facilitating the transfer of the provision of the Franchise Services at such time. In the event of there being any outstanding dispute on the expiry of the Franchise Period in respect of any such designation, then, except to the extent that the Authority and the Franchise Operator may otherwise agree, such dispute shall be deemed to cease immediately before the expiry of the Franchise Period and the relevant property, rights and liabilities shall not cease to be designated as Primary Franchise Assets on or after the expiry of the Franchise Period.

32.6 Designation at expiry of Franchise Period

- (a) The Franchise Operator shall, for the purpose of ensuring that the Authority may designate as Primary Franchise Assets under this Clause 32.6 the relevant property, rights and liabilities, keep vested in it at all times during the Franchise Period such property, rights and liabilities as it may reasonably require in order to be able to comply with:
 - (i) the Licences;
 - (cxxxiii) any contracts of employment with Franchise Employees;
 - (cxxxiv) any relevant Fares;
 - (cxxxv) any Key Contracts; and
 - (cxxxvi) any applicable safety legislation regulations or safety standards and the Safety Case.
- (b) The Authority may at any time during the last 12 months of the Franchise Period (including, for the avoidance of doubt and notwithstanding the other provisions of this Clause 32.6, on or before the date of termination of this Franchise Agreement), by serving a notice on the Franchise Operator specifying the property, rights or liabilities in question, 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.
- (c) The Authority may within 28 days of so designating such Primary Franchise Assets cause such Primary Franchise Assets to cease to be designated by serving a notice on the Franchise Operator specifying the property, rights or liabilities in question. Such ceasing to be designated shall take effect upon delivery of such notice.
- (d) The Franchise Operator may in addition, within 14 days of such designation, object in writing to the Authority to such designation. Such objection may be made solely on the

grounds that the designation of the relevant property, rights or liabilities specified in the objection was not 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 acceptable to the Authority or otherwise facilitating the transfer of the provision of the Franchise Services at such time. The Authority shall respond to any such objection as soon as reasonably practicable and shall take account of any representations made by the Franchise Operator regarding the use of the relevant Primary Franchise Assets otherwise than in the provision and operation of the Franchise Services.

- (e) If the Franchise Operator's objections cannot be resolved by agreement within a period of 14 days from the date of the submission of the objection, the Franchise Operator may refer the dispute for resolution in accordance with the Dispute Resolution Rules which 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 after the Franchise Period on a basis acceptable to the Authority 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. In the event of there being any outstanding dispute on the expiry of the Franchise Period in respect of any such designation, then, except to the extent that the Authority and the Franchise Operator may otherwise agree, such dispute shall be deemed to cease immediately before the expiry of the Franchise Period and the relevant property, rights and liabilities shall not cease to be designated as Primary Franchise Assets on or after the expiry of the Franchise Period.

32.7 Maintenance of Primary Franchise Assets

- (a) The Franchise Operator shall, to the extent relevant and subject to Clauses 32.8, 33.2 and 34.2, maintain, protect and preserve the Primary Franchise Assets in good working order having regard to their state and condition at their date of designation and in accordance with the degree of skill, diligence, prudence and operating practice which would be reasonably expected of a skilled and experienced operator of railway assets engaged in the same undertaking under the same or similar circumstances.
- (b) The Franchise Operator shall so maintain, protect and preserve the Primary Franchise Assets on the assumption that they will 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 the Franchise Services.
- (c) Where any such Primary Franchise Assets are lost, destroyed or otherwise beyond repair, the Franchise Operator shall, subject to Clauses 32.8 and 33.2, replace such Primary Franchise Assets with equivalent property, rights or liabilities of equal or better quality than the replaced Primary Franchise Assets. Any Primary Franchise Asset so replaced shall cease to be designated as such on such replacement.
- (d) Subject to Clause 32.8, nothing in this Clause 32.7 shall require the Franchise Operator to provide replacement property, rights or liabilities in a better state or condition than that which the Primary Franchise Assets they replaced were in on the date of their designation.

32.8 Specified Franchise Assets

- (a) The Authority may designate at any time a property, right or liability which has been designated as a Primary Franchise Asset as a Specified Franchise Asset. Such

- (b)(i) In respect of each such Specified Franchise Asset (except for Specified Franchise Assets which were specified franchise assets under the Previous Franchise Agreement), the Franchise Operator shall prepare a schedule of condition specifying its condition as at the date of such designation. Such schedule shall be agreed with the Authority and shall be in respect of such aspects of the Specified Franchise Asset as the Authority may reasonably require. If the Franchise Operator and Authority are unable to agree the relevant schedule of condition, they may refer the dispute to the Dispute Resolution Rules for determination of the condition of the relevant Specified Franchise Asset at the date of designation in respect of the aspects specified by the Authority.
- (ii) The schedules of condition prepared in respect of Specified Franchise Assets which were specified franchise assets under the Previous Franchise Agreement shall apply to such Specified Franchise Assets as if they had been agreed between the Franchise Operator and the Authority in respect of this Franchise Agreement.
- (c) The obligation of the Franchise Operator to maintain, preserve and protect the Franchise Assets under Clause 32.7 shall, in respect of the Specified Franchise Assets, include the obligation to maintain the Specified Franchise Assets, subject to fair wear and tear, in at least as good a condition as the condition specified in the relevant schedule of condition.
- (d) The Authority may not object to any proposal to replace a Specified Franchise Asset but the Franchise Operator shall obtain the approval of the Authority of any proposed replacement (which shall not be unreasonably withheld) before so replacing the Specified Franchise Asset in question under Clause 32.7.

32.9 Designation of Key Contracts

The Authority shall, subject to Clause 32.11, be entitled to designate the rights and liabilities of the Franchise Operator under any Key Contract as a Primary Franchise Asset at any time during the Franchise Period by serving a notice on the Franchise Operator specifying the relevant rights or liabilities. Such designation shall take effect from delivery of such notice.

32.10 Designation of Fares and Discount Cards

The Authority shall be entitled to designate all or any rights and liabilities of the Franchise Operator under the terms of any Fare or Discount Card as a Primary Franchise Asset at any time during the Franchise Period by serving a notice on the Franchise Operator specifying the relevant rights or liabilities. Such designation shall take effect from delivery of such notice.

32.11 Rights and liabilities

The Authority in designating as a Primary Franchise Asset the rights and liabilities of the Franchise Operator (whether under a contract or otherwise) may restrict such rights and liabilities so designated to such extent as the Authority may consider appropriate, including

to 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.

32.12 Provision of information to the Authority

- (a) The Franchise Operator shall provide such information as the Authority may reasonably require in order to satisfy itself, before any property, rights or liabilities are designated as Franchise Assets or Primary Franchise Assets under this Clause 32 after the Franchise Commencement Date, that, if they are so designated, they will be vested in the Franchise Operator. Such information may include details of any Security Interests over such property, rights and liabilities.
- (b) The Franchise Operator shall further provide such information as to the property, rights and liabilities of the Franchise Operator as the Authority may reasonably require in connection with the designation of Primary Franchise Assets. Such information shall be supplied to the Authority within such timescales as it may reasonably require in the circumstances.

32.13 De-Designation

- (a) The Authority and the Franchise Operator may agree in writing at any time during the Franchise Period that a Franchise Asset shall cease to be designated as a Franchise Asset or that a Primary Franchise Asset shall cease to be designated as a Primary Franchise Asset, and the relevant property, right or liability shall cease to be designated upon such agreement coming into effect.
- (b) The Authority may in addition at any time during the Franchise Period, by serving notice on the Franchise Operator specifying the Franchise Assets in question, cause such Franchise Assets to cease to be designated. Such Franchise Assets shall cease to be so designated on the date specified in such notice. Such right may only be exercised in respect of Franchise Assets which are not Primary Franchise Assets.
- (c) The Authority may in addition, by serving notice on the Franchise Operator specifying the Primary Franchise Assets or Specified Franchise Assets in question, cause such Primary Franchise Assets or Specified Franchise Assets to cease to be designated. Such Primary Franchise Assets or Specified Franchise Assets shall cease to be so designated on the date specified in such notice. Such right may be exercised, in respect of any Specified Franchise Assets or any rights and liabilities in respect of a Fare or Discount Card, at any time and, in respect of any other Primary Franchise Assets, no later than one year prior to the expiry of the Franchise Term.
- (d) Without prejudice to the preceding provisions of this Clause 32, Parts 1 and/or 2 (as the case may be) of Schedule 11 shall be amended as necessary from time to time to take account of any designation or de-designation hereunder of any Primary Franchise Assets or Specified Primary Franchise Assets.

32.14 Implementation Agreement

- (a) In accordance with Section 27(9) of the Act but strictly subject to the other provisions of this clause 32.14 the Authority agrees, on or before the date the Franchise Period expires to designate the rights and Future Liability of the Franchise Operator under the Implementation Agreement as a Primary Franchise Asset Provided that for the avoidance of doubt nothing in this clause or otherwise shall require the Authority to include within and the Authority shall be entitled to exclude from such designation any

rights or liabilities to the extent that they relate to the period prior to the expiry of the Franchise Period The Authority shall have no obligation pursuant to this Clause 32.14 if the terms or conditions of the Implementation Agreement have been varied without the consent of the Authority

- (b) Instead of designating the Implementation Agreement the Authority may satisfy its obligations by:
- (i) novating the Implementation Agreement pursuant to its terms; or
 - (cxxxvii) by making or entering into any other agreement, deed or arrangement which the Authority in its reasonable opinion determines has an equivalent effect to the arrangements proposed in clauses a) and b)i) above for the purpose of providing that, with effect from the expiry of the Franchise Period the Franchise Operator will be released from the Future Liability in respect of the Implementation Agreement or that as between the Franchise Operator and the Authority the Authority will be liable in respect of any such Future Liability. This may include but shall not be limited to the making of a transfer scheme in respect of the Implementation Agreement in favour of a person other than a Successor Operator. In such a case it is agreed the provisions of this Franchise Agreement shall apply mutatis mutandis as if such other person were a "Successor Operator" for the purposes of this Franchise Agreement.

The Franchise Operator undertakes to co-operate with the Authority to facilitate any alternative arrangement including, without limitation by entering into such deeds or documents as the Authority may require for such purpose.

- (c) For the purposes of this clause 32.14 "Future Liability" means any liability of the Franchise Operator in respect of the performance of the Franchise Operator's obligations under the Implementation Agreement in so far as these obligations first arise and solely relate to the period after the expiry of the Franchise Period. "Future Liability" shall exclude any accrued but unperformed obligation, the consequence of any antecedent breach of covenant or obligation, or any liability in respect of any act or omission under or in relation to the Implementation Agreement prior to or as at the expiry of the Franchise Period.

33 Spares

33.1 Maintenance of spares

The Franchise Operator shall maintain an appropriate level of Spares or an appropriate level of access to Spares from a third party for use in connection with the Franchise Services in accordance with the degree of skill, diligence, prudence and practice which would reasonably be expected of a skilled and experienced operator of railway assets engaged in the same undertaking in the same or similar circumstances.

33.2 Franchise Assets

- (a) The obligations of the Franchise Operator to maintain, preserve and protect Primary Franchise Assets under Clause 32.7 shall, in respect of Spares, include the obligation to replace any Spare which has been so designated, which subsequent to its designation ceases to be part of the stock of Spares available to the Franchise Operator for use in the provision of the Franchise Services, with an equivalent Spare of equal or better quality than the Spare so replaced.

- (b) The Authority hereby consents to the installation of Spares which have been designated as Primary Franchise Assets on rolling stock. Subject to Clause 32.2(d), any Spare which is so installed shall cease to be so designated on such installation.

33.3 Designation and De-designation of Spares Contracts

The following provisions will apply in relation to Designated Spares Contracts:

- (a) The Authority may from time to time notify the Franchise Operator of types or categories of agreements, contracts or arrangements which it has determined shall not for the time being be Designated Spares Contracts for the purpose of this Franchise Agreement. Such determination may be made by reference to:
 - (i) any type or category of Spares;
 - (cxxxviii) any type or category of agreement, contract or arrangementor any other matter, in the Authority's absolute discretion.
- (b) The effect of a notice by the Authority under Clause 33.3(a) is that, with effect from the date stated in such notice, and subject to Clause 33.3(c), any reference in this Franchise Agreement to a Designated Spares Contract shall exclude any agreement, contract or arrangement to which the notice refers Provided always that nothing in this Clause 33.3(b) shall prevent the Authority from taking any action in respect of any breach arising before the date stated in the notice.
- (c) Notwithstanding any notice issued by the Authority pursuant to Clause 33.3(a), the Authority may at any time thereafter, by further notice to the Franchise Operator, reverse the effect of any determination made under Clause 33.3(a).
- (d) The effect of a notice by the Authority under Clause 33.3(c) is that, with effect from the date stated in such notice, any reference in this Franchise Agreement to a Designated Spares Contract shall include any agreement, contract or arrangement to which the notice refers irrespective of when such agreement, contract or arrangement was entered into Provided always that:
 - (i) no notice under Clause 33.3(c) shall have retrospective effect; and
 - (cxxxix) if, after the effective date of a notice under Clause 33.3(a) and before the effective date of a notice under Clause 33.3(c), the Franchise Operator has become a party to an agreement, contract or arrangement which was excluded from the definition of Designated Spares Contracts by the Clause 33.3(a) notice and subsequently included in that definition by the Clause 33.3(c) notice, then unless a Direct Agreement has already been entered into in relation to that agreement, contract or arrangement, the Franchise Operator shall, where so reasonably requested by the Authority, use its reasonable endeavours to procure that the Authority may enter into a Direct Agreement with the relevant counterparty as soon as practicable.

34 Intellectual Property

34.1 Franchise Operator's Intellectual Property

- (a) On the expiry of the Franchise Period the Franchise Operator will grant to any Successor Operator such licences of any Intellectual Property which:
 - (i) is owned by or licensed to the Franchise Operator;

- (cxi) was not owned by or licensed to it immediately prior to the Previous Franchise Commencement Date;
- (cxli) has not been designated as a Primary Franchise Asset; and
- (cxlii) does not represent or constitute a Mark,

as may, in the reasonable opinion of the Authority, be reasonably necessary for any such Successor Operator to operate the Franchise Services on an efficient and economic basis after the expiry of the Franchise Period. When agreeing the terms on which Intellectual Property is to be licensed to it, the Franchise Operator shall use all reasonable endeavours to ensure that such terms include the right to sub-license such Intellectual Property to enable it to comply with this clause 34.1. The Franchise Operator shall not enter into a licence that does not include such a provision without first obtaining the Authority's prior written consent.

- (b) Any such licence shall be granted to any such Successor Operator for such period as the Authority may determine to be reasonably necessary for the purpose of securing continuity of the provision of the Franchise Services and shall be free of charge and royalty free for a period of 1 month or less. If such licence is for a period in excess of 1 month the grant of the licence shall be subject to payment of a reasonable royalty (backdated to the expiry of the Franchise Period) on the basis of a willing licensor and licensee entering into a licence on comparable terms to similar licences of such Intellectual Property. If the Franchise Operator and the relevant Successor Operator are unable to agree such royalty, the Authority or the Franchise Operator may resolve the dispute in accordance with the Dispute Resolution Rules.
- (c) Any such licence shall be in such form as the Authority shall reasonably determine except that it shall:
 - (i) 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);
 - (cxliii) be terminable on material breach by the Successor Operator;
 - (cxliv) contain an indemnity from the Franchise Operator 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 in such Intellectual Property;
 - (cxlv) require the Successor Operator, to the extent it relates to any trade marks, to use such marks in such manner as may reasonably be required by the Franchise Operator provided that it shall not be reasonable for the Franchise Operator to require such marks to be used in a manner materially different to their use during the Franchise Period.

34.2 Intellectual Property Franchise Assets

- (a) The obligation of the Franchise Operator to maintain, preserve and protect the Primary Franchise Assets under Clause 32.7 shall, subject to Clause 34.2(b), in respect of Primary Franchise Assets which constitute Intellectual Property, include the obligation to:

- (i) maintain, preserve, and renew any registrations thereof (including payment of any renewal or other fee);
 - (cxlvi) where appropriate, procure and prosecute the application for their registration or the registration of any appropriate licences in all relevant registers of such Intellectual Property;
 - (cxlvii) take such action as may be reasonably necessary to prevent or prohibit the infringement of any such Intellectual Property by third parties, by the taking of legal proceedings or otherwise; and
 - (cxlviii) where appropriate, take such action as may be reasonably necessary to defend any challenge to the validity or ownership of such Intellectual Property by third parties, by the taking of legal proceedings or otherwise.
- (b) The Franchise Operator shall be excused performance of its obligations under Clause 34.2(a) to the extent that in the opinion of the Authority the cost of so doing would be unreasonably high or that full performance would not be commercially reasonable having regard to the use of the relevant Intellectual Property in the provision and operation of the Franchise Services.

34.3 Branding

- (a) Subject to any applicable obligations or restrictions on the Franchise Operator (including the terms of the Rolling Stock Leases), the Franchise Operator shall be entitled to apply registered or unregistered trade marks (including company names, livery and other distinctive get-up) to such assets as it may use or own in the operation and provision of the Franchise Services.
- (b) Subject to Clauses 34.3(d) and 34.3(h), the Franchise Operator 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
 - (cxlix) in respect of registered Marks, grant or procure the grant of an irrevocable royalty-free licence to use such Marks to such Successor Operator and its successors.
- (c) Any such licence or undertaking under Clause 34.3(b) shall be in such form as the Authority shall reasonably determine except that the terms of any such licence and, to the extent appropriate, any such undertaking shall accord with the provisions of sub-Clauses 34.1(c)(i) to 34.1(c)(iv).
- (d) Subject to Clause 34.3(h), to the extent that:
 - (i) the Franchise Operator does not provide a relevant licence or undertaking under Clause 34.3(b); or
 - (cl) the Authority considers the relevant Marks to be so distinctive or otherwise such that a Successor Operator could not reasonably be asked to use the relevant assets to which the Marks are applied; or
 - (cli) the Franchise Operator has not otherwise removed or covered such Marks in such a way as may be reasonably acceptable to the Authority prior to the expiry of the Franchise Period,

the Franchise Operator shall pay to the relevant Successor Operator such amount as may be agreed between the Franchise Operator and such Successor Operator, subject to Clause 34.3(g), as being the reasonable cost (including any Value Added Tax for which credit is not available under sections 25 and 26 of the Value Added Tax Act 1994) of covering such Marks or otherwise removing all indications of or reference to the Marks in a manner reasonably acceptable to the Authority. Such cost shall not in any event exceed the cost to the Successor Operator of replacing such Marks with its own. In the event that the Franchise Operator and the relevant Successor Operator fail to agree such cost within 28 days of the expiry of the Franchise Period, the Franchise Operator or the Authority may refer such dispute for resolution, subject to Clause 34.3(g), in accordance with the Dispute Resolution Rules.

- (e) Such costs under Clause 34.3(d) may include the reasonable cost of:
 - (i) removing or covering Marks from the exterior of a train;
 - (clii) removing or covering interior indications of the Marks including upholstery and carpets;
 - (cliii) replacing or covering all station or other signs including bill boards; and
 - (cliv) 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.
- (f) The Franchise Operator shall, in addition to making a payment under Clause 34.3(d), grant or procure the grant of a licence or undertaking complying with Clauses 34.3(b) and (c) except that it shall only be for such period as may be agreed between the Franchise Operator 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 the Franchise Services. In the event that such period cannot be agreed, the Authority or the Franchise Operator may refer such dispute for resolution, subject to Clause 34.3(g), in accordance with the Dispute Resolution Rules.
- (g) The Authority shall determine at or around the end of the Franchise Period, and after consultation with the Franchise Operator, the maximum liability of the Franchise Operator under Clause 34.3(d) and the maximum length of licence or undertaking under Clause 34.3(f).
- (h) The provisions of Clauses 34.3(b) to (g) shall not apply to the extent the relevant asset is not to be used by a Successor Operator. The Authority shall notify the Franchise Operator as soon as it is aware of whether or not any such asset is to be so used.

34.4 Non-designation of new brands

The Authority agrees not to designate as a Primary Franchise Asset any registered or unregistered trade mark which is developed by the Franchise Operator.

35 Transfer of Primary Franchise Assets

35.1 Option Arrangements

The Authority hereby grants to the Franchise Operator the right to require it to make, and the Franchise Operator hereby grants to the Authority the right to make, a Transfer Scheme in accordance with Schedule 21 of the Transport Act for the transfer of any or all of such property, rights or liabilities as may be designated as Primary Franchise Assets on the expiry of the Franchise Period. Each such right may be exercised on, or within 14 days before, the expiry of the Franchise Period by serving notice on the other party specifying the Primary Franchise Assets in question. Following any such exercise of such rights the Authority may and shall make one or more such Transfer Schemes for the transfer of the Primary Franchise Assets specified in any such notice before, or within 14 days after the expiry of the Franchise Period. Any Franchise Assets or Primary Franchise Assets which are not so transferred shall cease to be designated as such 14 days after the expiry of the Franchise Period.

35.2 Supplemental Agreement

- (a) Without prejudice to the duties, powers, rights and obligations of the Authority under the Transport Act in respect of any Transfer Scheme, any Transfer Scheme shall impose on the Franchise Operator 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 the relevant Transfer Scheme. The Franchise Operator shall enter into any such agreement and shall comply with its obligations thereunder.
- (b) Notwithstanding Clause 35.2(a) above, where this Franchise Agreement is terminated pursuant to Part 4 of Schedule 14, the relevant Supplemental Agreement shall be amended in accordance with Part 5 of Schedule 14.

35.3 Payment of estimated transfer price and the Estimated RVA

- (a) Without prejudice to the terms of the Supplemental Agreement where such document is in the form marked "FSA", the Authority may require the Franchise Operator to pay to any relevant transferee under a Transfer Scheme or any relevant transferee under a Transfer Scheme to pay to the Franchise Operator, as the case may require, on the day on which the Transfer Scheme comes into force such sum as it may determine should be so paid between them having regard to:
 - (i) its estimate of the sum likely to be paid under the relevant Supplemental Agreement in respect of the Primary Franchise Assets being transferred under the relevant Transfer Scheme;
 - (clv) its estimate of any other sums likely to be paid thereunder (including under Part 5 of Schedule 14);
 - (clvi) the status of the Franchise Operator and the transferee and whether any estimate so paid would be likely to be repaid, if in excess of the sums eventually payable thereunder;
 - (clvii) the amount of the Estimated RVA (as such term is defined in the Funder's Direct Agreement) (if any) or, if known, the amount of the Residual Value Amount, to be paid by the Authority or which the Authority is to procure that the Successor Operator pays in accordance with the terms of the Funder's Direct Agreement; and
 - (clviii) such other matters as it may consider appropriate to have regard to at the time.

- (b) The Franchise Operator shall pay to any such transferee such sum as the Authority may determine under Clause 35.3(a) on the day any relevant Transfer Scheme comes into force.
- (c) The parties acknowledge the following matters in respect of the Funder's Direct Agreement:
 - (i) the Funder's Direct Agreement has been entered into by the Authority to facilitate the provision of the Franchise Operator's loan finance facilities which facilities are to be used to fund the financing and/or refinancing of certain of the Franchise Assets.
 - (clix) save where the circumstances referred to in Clause 35.3(c)(iii) apply, the Authority has agreed under the Funder's Direct Agreement to require the Successor Operator to pay the Residual Value Amount directly to the Security Trustee, such amount being that part of the transfer price required to release the Franchise Assets from the Security Interest created by the Franchise Operator.
 - (ii) the Authority has further agreed in the Funder's Direct Agreement that under certain circumstances it will pay to the Security Trustee the Residual Value Amount notwithstanding the fact that no Transfer Scheme has been made.
 - (iii) the payment of the Residual Value Amount pursuant to the terms of the Funder's Direct Agreement will relieve the Franchise Operator from its obligation to make an identical payment to the Security Trustee under the Facility Agreement.
- (d) In consideration of the matters referred to in Clause 35.3(c) and notwithstanding the other provisions of this Clause 35.3, the Franchise Operator agrees that if a Residual Value Amount is payable to the Security Trustee under the terms of the Funder's Direct Agreement then an amount equal to any Residual Value Amount paid shall:
 - (i) where the Purchase Price (as such term is defined in the Supplemental Agreement) is payable by the Successor Operator to the Franchise Operator, be deducted from the Purchase Price payable by the Successor Operator to the Franchise Operator under any Supplemental Agreement so as make the Purchase Price payable either a smaller positive amount or, if applicable, a sum owed to the Successor Operator; or,
 - (ii) where the Purchase Price is payable by the Franchise Operator to the Successor Operator, be added to the Purchase Price

the manner in which such deduction or addition, as applicable, shall be made shall be as provided in the Supplemental Agreement. The Franchise Operator acknowledges that prior to the determination of the Residual Value Amount an Estimated RVA (as such term is defined in the Funder's Direct Agreement) may be payable and that any such additions or deductions made shall initially be based on the value of the Estimated RVA.

35.4 Possession of Franchise Assets

On the coming into force of a Transfer Scheme, the Franchise Operator shall deliver up to the Authority (or such other person as it may specify) possession of such Primary Franchise Assets as may be transferred under such Transfer Scheme.

35.5 Repayment of Bond monies

The Authority shall pay to the Franchise Operator, within six months of the last date any demand can be made on the relevant Bond Provider under the Performance Bond, an amount equal to:

- (a) the aggregate of any monies paid to the Authority under the Season Ticket Bond and the Performance Bond; less
- (b) the amount, in the Authority's reasonable opinion, of the losses, liabilities, costs or expenses (if any) which the Authority, the Secretary of State or a Successor Operator may have incurred or suffered or may be reasonably likely to incur or suffer as a result of:
 - (i) the failure of the Franchise Operator to perform or comply with its obligations under any Supplemental Agreement or Part V or Clauses 12.2, 12.3(a) or (c), 12.4(a) or (b), 12.5(a), 12.6(a), 12.7(a), 12.11 or 13.4 of this Franchise Agreement; or
 - (clx) termination of this Franchise Agreement as a result of an Event of Default; or
 - (clxi) the making of a railway administration order in relation to the Franchise Operator pursuant to sections 60 to 62 of the Act; or
 - (clxii) the failure of the Franchise Operator to comply with any of its' obligations under the Implementation Agreement.

36 Associated Obligations on Termination

36.1 Assistance in securing continuity

In order to facilitate the continuity of the Franchise Services on expiry of the Franchise Period the Franchise Operator shall take such steps, both before and after the expiry of the Franchise Period, as the Authority may reasonably require, having regard to the cost to the Franchise Operator, to assist and advise any Successor Operator in providing and operating the Franchise Services. In particular, the Franchise Operator shall provide any Successor Operator with such records and information relating to or connected with the Franchise Services as the Authority may reasonably request (other than confidential financial information but including all relevant records relating to the Franchise Employees).

36.2 Access

The Franchise Operator hereby authorises the Authority and its representatives to have such access as it may reasonably request on the expiry of the Franchise Period to such property as it may own, lease or operate at such time, for the purpose of facilitating the continuity of the Franchise Services.

36.3 Key Contracts

The Franchise Operator shall provide such assistance to any Successor Operator as the Authority may reasonably require in ensuring that pursuant to any Direct Agreements any such Successor Operator may enter into (or enjoy the benefit of) contracts equivalent to the relevant Key Contracts (or parts thereof) with the relevant counterparties including, without limitation, terminating, surrendering, cancelling or undertaking not to enforce its rights under any Key Contract (or parts thereof) provided that nothing in this Clause shall require the Franchise Operator to undertake not to enforce its rights under a Key Contract in so far as and to the extent only that those rights relate to the period prior to the expiry of the Franchise Period.

36.4 Change of Name

The Franchise Operator and the Franchisee shall cease to use any trade marks which are licensed to the Franchise Operator 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.

Part VI — General Provisions

37 Compliance With Laws

The Franchise Operator shall comply with all applicable Laws relating to the provision and operation of the Franchise Services and the conduct of the Franchise Operator's business under this Franchise Agreement.

38 Exclusion of Liability

38.1 Liability with respect to Passengers and Third Parties

The Franchisee and Franchise Operator each hereby acknowledge that the Authority will not be responsible for the actions of the Franchisee, Franchise Operator or any Affiliate of the Franchisee and that, otherwise than as expressly provided in this Franchise Agreement, the Franchise Operator will provide and operate the Franchise Services at its own cost and risk without recourse to the Authority or government funds or guarantees. The Franchisee and the Franchise Operator will accordingly hold the Authority fully protected and indemnified in respect of all losses, liabilities, costs, charges, expenses, actions, proceedings, claims or demands incurred by or made on the Authority 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 caused or contributed to by the Franchisee, the Franchise Operator, any Affiliate of the Franchisee, their employees, agents, contractors or sub-contractors.

38.2 Liability of the Authority

Neither the Authority nor any of its officers, agents or employees shall in any circumstances be liable to the Franchisee or the Franchise Operator for any loss or damage caused by the negligent exercise of any powers reserved to the Authority under this Franchise Agreement, except to the extent that such negligence also constitutes a breach of an obligation of the Authority under this Franchise Agreement. Neither the Franchisee nor the Franchise Operator may recover from the Authority or any of its officers, agents, or employees any amount in respect of loss of profit or other consequential loss.

38.3 Entire Agreement

- (a) This Franchise Agreement contains the entire agreement between the parties in relation to the subject matter of this Franchise Agreement and supersedes all prior agreements and arrangements other than such confidentiality agreements or undertakings as the Franchisee may have entered into in connection with its proposal to secure the provision of the Passenger Services under this Franchise Agreement.
- (b) The Franchisee and Franchise Operator each hereby acknowledges that it is not entering into this Franchise Agreement in reliance on any warranties, representations or undertakings howsoever or to whomsoever made except in so far as such are contained in this Franchise Agreement. The Franchisee and Franchise Operator each hereby acknowledges and agrees with the Authority (for itself and as trustee for each of the other persons referred to therein) to the disclaimer of liability which is contained in the section entitled "Important Notice" contained in the document entitled "Instructions to Counterparties" relating to the Franchise Operator and dated 22 December 1999.

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

38.4 Liability in relation to projects

- (a) The Authority may for its own purposes (whether under this Franchise Agreement or under any other arrangement or otherwise and whether before or after the date of this Franchise Agreement) monitor or review any proposals, plans or projects (or any aspect thereof) of the Franchise Operator under this Agreement, but no review, enquiry, comment, statement or report undertaken, made or given by or on behalf of the Authority during such review or monitoring (nor the failure to undertake, make or give any review, enquiry, comment or statement), shall operate to exclude or relieve any other party from or reduce or otherwise affect their obligations under this Agreement.
- (b) The exercise by or on behalf of the Authority of (or, as the case may be, any failure to exercise) any of its functions, rights or obligations under any review or monitoring process shall not in any way create any liability, express or implied, on behalf of the Authority to any other party save to the extent that the exercise (or failure to exercise) any of such functions, rights or obligations results in a breach by the Authority of an express provision of this Agreement and the Authority does not make or give any representation or warranty, either expressed or implied, as to whether any proposal, plan or project will enable any other party to comply with their obligations under this Agreement.

39 Confidentiality

39.1 Confidentiality

Subject to the provisions of the Act, the Transport Act and Clauses 39.2 to 39.7, each party shall hold in confidence all documents, materials and other information, whether technical or commercial, supplied by or on behalf of another party to this Franchise Agreement (including without limitation all documents and information supplied in the course of proceedings under the Dispute Resolution Rules) and shall not, except with that other party's written authority, publish or otherwise disclose the same otherwise than as expressly provided for in this Franchise Agreement unless or until the party proposing to make such publication or other disclosure can reasonably demonstrate that any such document, material or information is in the public domain other than as the result of a breach of this Franchise Agreement, whereupon to the extent that it is in the public domain this obligation shall cease.

39.2 Disclosure of Confidential Information

A party shall be entitled to disclose any data or information acquired by it under or pursuant to this Franchise Agreement or information relating to a dispute arising under this Franchise Agreement without the prior written consent of any other party if such disclosure is made in good faith:

- (a) to any Affiliate of such party upon obtaining from such Affiliate an undertaking of confidentiality equivalent to that contained in Clause 39.1;

- (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 Clause 39.1, provided that no such undertaking need be obtained where the person making the disclosure is satisfied that the relevant advisor owes a professional duty of confidentiality in respect of that data or information;
- (c) to any lenders, security trustee, bank or other financial institution (and 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 Clause 39.1, provided that:
 - (i) any such lender, security trustee, bank or other financial institution (or any adviser to any such party on its behalf) may additionally disclose any such data or information to an Affiliate or to any person with whom it proposes to enter into, or has entered into, any kind of transfer, participation or other agreement or refinancing arrangement in relation to the documentation under which such finance is or may be provided (or its advisers) upon obtaining from each such person an undertaking of confidentiality equivalent to that contained in Clause 39.1;
 - (clxiii) each person to whom any data or information is disclosed under paragraph (i) above shall be entitled to make any disclosure permitted by and on the terms of this paragraph (c) as if it were included in the phrase “any such lender, security trustee, bank or other financial institution”; and
 - (clxiv) where there is any reference to advisers throughout this paragraph (c), any such data or information may be disclosed to any such advisers without obtaining any confidentiality undertaking if the person making the disclosure is satisfied that the relevant advisor owes a professional duty of confidentiality in respect of that data or information;
- (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 a recognised stock exchange or a formal or informal request of any taxation authority;
- (e) to any person in connection with any legal or arbitration proceedings to the extent reasonably believed by the party making the disclosure to be necessary for establishing, exercising or defending legal rights for the purposes of such legal or arbitration proceedings.
- (f) to any insurer upon obtaining from such insurer an undertaking of confidentiality equivalent to that contained in Clause 39.1;
- (g) to directors, employees and officers of such party, to the extent necessary to enable such party to perform its obligations under this Franchise Agreement or to protect or enforce its rights under this Franchise Agreement; or
- (h) by the Franchise Operator, to the Regulator, a Rail Passengers’ Committee or a Local Authority.

39.3 Publication of certain information

- (a) Notwithstanding the provisions of Clause 39.1 above, the Authority shall be entitled to publish (whether to the press, the public or to one or more individuals, companies or other bodies, including to prospective Successor Operators) in such form and at such

times as it sees fit, the following (for the avoidance of doubt, irrespective of whether the same was provided to the Authority by the Franchisee or Franchise Operator or a third party):

- (i) the amount of Franchise Payments payable under this Franchise Agreement and the aggregate amount of Franchise Payments and Incentives paid in each year under this Franchise Agreement;
- (clxv) such information as the Authority may consider reasonably necessary to publish in connection with the performance of its functions in relation to any Closures or proposed Closures;
- (clxvi) any Passenger's Charter Statistics and the amounts of any payments by the Franchise Operator under the Passenger's Charter;
- (clxvii) such information as the Authority may reasonably require to publish in order to explain the nature of, and reasons for, or to consult on any PSR/ASC Changes or proposed PSR/ASC Changes;
- (clxviii) such information as may reasonably be required in connection with the retendering or reletting of the franchise or any part thereof, provided that such information may only be published during the period of, or during the period leading up to, such retendering or reletting;
- (clxix) any reports and accounts delivered to it under Clause 15.2(a);
- (clxx) the results of any monitoring or measurement of the performance of the Franchise Operator in the provision of the Franchise Services (including any information provided under Clause 15.1(c) or (d) of this Franchise Agreement and including the Public Performance Measure);
- (clxxi) the results, on a service group, route, station or other comparable basis, of any passenger counts under Clause 15.7;
- (clxxii) such information as the Authority may reasonably require to publish in connection with the provision of the Passenger Services by the Franchise Operator in accordance with the Load Factor Specifications;
- (clxxiii) the results of any surveys under Clause 8.4;
- (clxxiv) details of the Franchise Operator's plans and performance in respect of safety;
- (clxxv) such information as the Authority may reasonably require to publish in connection with the implementation of any Major Projects;
- (clxxvi) such information as the Authority may reasonably require to publish in connection with Parts 2, 3 and 4 of Schedule 14;
- (clxxvii) subject to section 75(3) of the Act, such information as the Authority may reasonably require to include in its annual report in respect of all franchise operators; and
- (clxxviii) such information as the Authority may reasonably require to publish at or around the expiry or possible termination of the Franchise Period in order to secure continuity of the provision and operation of the Franchise Services.

- (b) Except to the extent permitted above or otherwise under this Clause 39, the Authority may publish any other information relating to the Franchise Operator if it has previously notified the Franchise Operator and the Franchise Operator does not demonstrate to the reasonable satisfaction of the Authority within 14 days of such notification that the publication of such information would be materially detrimental to its business. If the Franchisee or Franchise Operator attempts so to demonstrate to the Authority but it is not so satisfied, the Authority shall allow seven more days before publishing the relevant information.

39.4 Publication by the Authority

Nothing in this Clause 39 shall be deemed to prohibit, prevent or hinder, or render the Authority liable for, the disclosure of any information by the Authority to the Regulator, the Parliamentary Commissioner for Administration, a Minister of the Crown or any department of the government of the United Kingdom or the Scottish Parliament, National Assembly of Wales, Mayor of London, Greater London Authority or any department or officer of any of them or of information which is otherwise disclosed for the purpose of facilitating the carrying out of its functions.

39.5 Provision of information to Regulator

The Franchise Operator hereby authorises the Authority to provide to the Regulator, to the extent so requested by the Regulator, such information as may be provided to the Authority in relation to the Franchise Operator under this Franchise Agreement.

39.6 Disclosure by Comptroller and Auditor General

The parties to this agreement recognise that the Comptroller and Auditor General may in pursuance of his functions under the Exchequer and Audit Department Acts 1866 and 1921 and the National Audit Act 1983 disclose information which he has obtained pursuant to those Acts and which a party to this Franchise Agreement would not be able to disclose otherwise than under this Clause 39.

39.7 Continuing Obligation

This Clause 39 (and any other Clauses necessary to give effect thereto) shall survive the termination of this Franchise Agreement irrespective of the reason for termination.

40 Notices

40.1 Notices

Any notice, notification or other communication under or in connection with this Franchise Agreement shall be in writing and shall be delivered by hand or recorded delivery or sent by pre-paid first class post, or by electronic data transfer (subject to notification by the recipient of any facility it may operate for receipt of such data transfers) to the relevant parties at the relevant address for service set out below, or to such other address in the United Kingdom as each party may specify by notice in writing to the other parties to this Franchise Agreement (provided that the Franchisee and Franchise Operator agree to keep the same address for service as each other throughout the Franchise Period).

Name:⁴⁰ **Director, Rail Commercial Contracts**

Address: **Department for Transport**
Great Minster House
33 Horseferry Road⁴¹
London
SW1P 4DR

Attention: **Director, Rail Commercial Contracts**

E-mail Franchise.notices@dft.gsi.gov.uk.

Name: The Franchisee and the Franchise Operator

Address: **Great Central House⁴²**
Marylebone Station
Melcombe Place
London
NW1 6JJ

Attention: Managing Director

40.2 Deemed Receipt

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 so 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; and
- (c) if by electronic data transfer, upon sending.

41 Assignment

The Franchisee and the Franchise Operator shall not without the prior written consent of the Authority assign, hold in trust for any other person, or grant a Security Interest in or over, this Franchise Agreement or any part thereof or any benefit or interest or rights therein or thereunder (other than any rights that the Franchise Operator may have to receive monies under a Supplemental Agreement or Clause 35.5).

42 Delegation

Anything authorised or required to be done by or under this Franchise Agreement by the Authority may be done by any member of its staff who is authorised generally or specially in that behalf by the Authority or any of its or their agents or representatives.

⁴⁰ DATE OF CHANGE 24/11/2005

⁴¹ Date of Change 01/10/2011

⁴² Date of Change 25/10/2010

43 Settlement Of Disputes

Where any of the parties are entitled, pursuant to the terms of this Franchise Agreement, to refer a dispute arising out of or in connection with this 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 Authority under section 55 of the Act, be resolved or determined by arbitration pursuant to the Dispute Resolution Rules, save that the arbitrator 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 Authority and the Franchise Operator 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). This Clause 43 shall not apply to any dispute where a different procedure is expressly provided for under Part 4 of Schedule 14 of this Franchise Agreement.

44 Miscellaneous Provisions

44.1 Variations in Writing

- (a) Subject to Clause 44.1(b), no variation of this Franchise Agreement (other than pursuant to a Change Certificate or otherwise expressly contemplated under this Franchise Agreement) shall be effective unless in writing and signed by duly authorised representatives of the parties.
- (b) The consent or approval of the Franchisee shall not be required for any variation or amendment of the rights or obligations of the Authority and Franchise Operator under this Franchise Agreement.
- (c) Subject thereto, the parties may make such variations as they may consider appropriate from time to time.

44.2 Waivers

- (a) The Authority may at any time waive the obligations of the Franchisee and the Franchise Operator under this Franchise Agreement and their obligations hereunder shall be construed accordingly.
- (b) No waiver by any party of any default by another in the performance of any of the provisions of this Franchise Agreement shall operate or be construed as a waiver of any other or further default whether of a like or different character. The failure to exercise or delay in exercising a right or remedy under this Franchise Agreement shall not constitute a waiver of the right or remedy or a waiver of any other rights or remedies and no single or partial exercise of any right or remedy under this Franchise Agreement shall prevent any further exercise of the right or remedy or the exercise of any other right or remedy.

44.3 Disregard Tolerances

- (a) The Authority may by notice to the Franchise Operator from time to time specify Disregard Tolerances which shall apply for the purposes of the Franchise Agreement to the extent specified in such notice.

- (b) For the purpose of this Clause 44.3, "Disregard Tolerances" shall mean specified parameters within which any act or omission by the Franchise Operator or any other occurrence or matter which would, but for this Clause, constitute a breach of the Franchise Operator's obligations under this Franchise Agreement, shall be disregarded by the Authority and shall not constitute such a breach. For the avoidance of doubt, the Authority may make the application of any Disregard Tolerance conditional upon any matter as may be specified by the Authority in the notice. This may include the Franchise Operator taking such steps as the Authority considers appropriate to rectify or otherwise secure future compliance with the relevant obligations.
- (c) The obligations of the Franchise Operator in respect of which Disregard Tolerances may be specified by the Authority may relate to:
 - (i) the Passenger Service Requirement and/or the Additional Service Commitment;
 - (ii) Fares; and
 - (iii) such other matters as the Authority may notify the Franchise Operator from time to time.
- (d) The Authority may at any time by notice to the Franchise Operator amend or withdraw, with effect from the date stated in the notice, any Disregard Tolerances previously specified. No such notice shall have retrospective effect.

44.4 Change of Framework

- (a) Subject to Clause 44.4(f) on the occurrence of any Change of Framework the Authority may (but shall not be obliged to), after consultation with the Franchise Operator and other franchise operators whose franchise agreements contain an equivalent clause to this Clause 44.4, make such modifications to the Relevant Provisions as may reasonably be necessary to ensure that the commercial effect of such provisions is preserved and not affected as a result of the relevant Change of Framework and the Franchisee and Franchise Operator hereby irrevocably consent to such changes.
- (b) For the purposes of this Clause 44.4, "**Change of Framework**" means:
 - (aa) any change which results in a loss or reduction in the independence or change in jurisdiction of the Regulator; or
 - (bb) any alteration in the procedural, operational, mechanical or other similar relationship between any relevant railway industry parties (including Railtrack, LUL and the Franchise Operator) (but not, for the avoidance of doubt, the financial relationship between the relevant parties (including any incentive or performance regime) nor any type of relationship in so far as it relates to the balance or allocation of risks between the relevant parties) including as a result of:
 - (i) a change of Law (which may include, but shall not be limited to, a Change of Law);
 - (clxxix) any amendment, alteration, termination (in whole or in part) or modification to or change of interpretation of or entry into any contract or agreement between any relevant industry parties;
 - (clxxx) any change of practice or custom of relevant industry parties (whether or not reflected in any amendment to any relevant agreement); or
 - (clxxxi) the change of identity of any particular party

which, in any case, affects or restricts the commercial effect of any Relevant Provisions of this Franchise Agreement as in effect prior to the relevant Change of Framework.

- (c) For the purposes of this Clause 44.4, the “**Relevant Provisions**” are:
- (i) Clauses 5.1 and 5.2 (which relate to the procedure for creating the Timetable);
 - (clxxxii) Clause 5.4(c)(i), (ii) and (vi) (being certain *Force Majeure* Events);
 - (clxxxiii) Clause 7 (which relates to the publication of the Timetable);
 - (clxxxiv) Clauses 11.4 and 11.5 (which relate to PSR/ASC Changes)
 - (clxxxv) Clause 12.14 (which relates to Major Projects);
 - (clxxxvi) Clause 12.15 (which relates to Incremental Output Statements);
 - (clxxxvii) Clause 13 (which relates to the railway industry pension arrangements);
 - (clxxxviii) Clause 28.1 (which relates to permitted subcontracting);
 - (clxxxix) paragraphs 13 to 19 of Part 2 of Schedule 5 and Clauses 9.2, 9.3 and 30 (which relate to the creation and sale of Fares);
 - (cxc) Part 3 of Schedule 7 (which relates to the determination of the performance of the Franchise Operator);
 - (cxci) the definitions of “Collateral Agreement”, “Creating”, “LUL Agreements”, “LUL Initial Flexing Rights”, “LUL Network Change”, “LUL Rules of the Plan”, “LUL Rules of the Route”, “LUL Track Access Conditions”, “LUL Working Timetable”, “Passenger Change Date”, “Pension Trust” and related definitions, “Railtrack Initial Flexing Rights”, “Railtrack Network Change”, “Railtrack Rules of the Plan”, “Railtrack Rules of the Route”, “Railtrack Track Access Conditions”, “Railtrack Working Timetable”, “Safety Case”, “Timetable” and “Track Access Agreement” and other definitions relating to the other Relevant Provisions set out above;
 - (cxcii) Schedule 3, Parts 1 and 3 (PSR);
 - (cxciii) Schedule 3, Part 6 (ASCs);
 - (cxciv) Schedule 7, Parts 1 and 4 (Incentive Regime);
 - (cxcv) Schedule 13 (Franchise Plan);
 - (cxcvi) Schedule 14 (Output Plan).
- (d) Nothing in this Clause 44.4 shall be construed to mean that any other provisions of this Franchise Agreement should cease to be effective on a Change of Framework.
- (e) Insofar as any Change in Framework also constitutes a Change of Law then the provisions of Clause 18.3 shall apply.
- (f) If the Franchisee or Franchise Operator believe that a Change of Framework and the modifications (if any) proposed or made by the Authority in response to such Change of Framework will have or has a material adverse effect on it then it may make representations to the Authority. The Authority will consider whether it agrees that there would be or is a material adverse effect on the Franchisee and/or Franchise Operator

(as applicable). If agreement cannot be reached upon whether there would be or is such a material adverse effect upon the Franchisee and/or the Franchise Operator then either party may refer the matter to dispute resolution under the Dispute Resolution Rules. If it is determined that there would be or is a material adverse effect the Authority may, but shall not be obliged to, propose modifications or alternative modifications (as applicable) to the Relevant Provisions in accordance with Clause 44.4(a) and which do not in its opinion give rise to a material adverse effect or, if the Authority does not wish to propose modifications or alternative modifications (as applicable), then Clause 44.4.(g) shall apply.

- (g) If it is agreed or determined that the modifications made or proposed by the Authority in accordance with Clause 44.4(a) have or will have a material adverse effect on the Franchisee and/or the Franchise Operator or, where no modifications were proposed, that the Change of Framework will have or has a material adverse effect on the Franchisee or Franchise Operator, and the Authority does not wish to propose modifications or alternative modifications (as applicable) then the No Net Loss No Net Gain Regime will apply to ensure that the Franchisee and/ or the Franchise Operator suffer No Net Loss as a result of the Change of Framework or any such modification.

44.5 Time Limits

Where in this Franchise Agreement, any obligation of a party is required to be performed within a specified time limit (including, for the avoidance of doubt, an obligation to use reasonable endeavours or all reasonable endeavours to secure a particular result within such time limit) that obligation shall be deemed to continue after that time limit if the party fails to comply with that obligation (or secure the result, as appropriate) within the time limit.

44.6 Payments to be Free and Clear

All sums payable by any party under this 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 this Franchise Agreement.

44.7 Partial Invalidity

If any provision in this Franchise 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 Franchise Agreement but the legality, validity and enforceability of the remainder of this Franchise Agreement shall not be affected.

44.8 Further Assurance

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 Franchise Agreement.

44.9 Rights of Third Parties

- (a) A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement except to the extent set out in this Clause 44.9.

- (b) Any Successor Operator or potential Successor Operator nominated by the Authority and notified to the Franchise Operator for the purposes of this Clause 44.9 may enforce and rely on the provisions of Part V of this Agreement to the same extent as if it were a party but subject to Clause 44.9(d).
- (c) This Agreement may be terminated and any term may be amended or waived without the consent of any person nominated under Clause 44.9(b).
- (d) The person nominated under Clause 44.9(b) shall only be entitled to enforce and rely on Part V of this Agreement to the extent determined by the Authority (whether at the time of nomination or at any other time) except that, to the extent any such person is entitled to enforce and rely on Part V of this Agreement, 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 Part V of this Franchise Agreement to the extent that it has consented to any particular act or omission of the Franchise Operator which may constitute a breach of Part V or has been afforded a reasonable opportunity to indicate to the Franchise Operator that it is not so consenting and has not so indicated (such reasonable opportunity to be determined by the Authority unless otherwise agreed) and any such person shall not be entitled to bring claim in respect of a breach of Part V of this Franchise Agreement unless the amount of the Franchise Operator's liability in respect of such claim is in excess of a threshold amount, such threshold amount to be determined by the Authority in its reasonable discretion.

44.10 Relationship with Previous Franchise Agreement

- (a) Anything done or omitted to be done by the Franchise Operator under or in relation to or during the term of the Previous Franchise Agreement shall be regarded for the purpose of this Franchise Agreement as if it had been done or omitted to be done by the Franchise Operator under or in relation to and (only to the extent necessary to give effect to this Clause) during the term of this Franchise Agreement.
- (b) Without limiting the generality of Clause 44.10(a):
 - (i) any obligation of the Franchise Operator to notify the Authority pursuant to Clause 5.3(e) of the Previous Franchise Agreement shall (except to the extent already disregarded by the Authority pursuant to that Clause) be counted towards the number of times the Franchise Operator is obliged to notify the Authority for the purpose of Clause 5.3(e) of this Agreement. To give effect to this Clause 44.10(b), the reference in Clause 5.3(e) to 39 consecutive Reporting Periods in the Franchise Term shall be construed as including any 39 consecutive Reporting Periods falling wholly or partly during the term of the Previous Franchise Agreement and/or the Franchise Term;
 - (cxcvii) any breach or contravention of the Previous Franchise Agreement by the Franchise Operator shall be a breach and contravention of this Franchise Agreement, in so far as is necessary to ensure that the Authority shall have the same rights under and in respect of this Agreement in respect of that breach or contravention as it would have had under or in respect of the Previous Franchise Agreement had the Previous Franchise Agreement continued in force.

44.11 Authority's consent or approval

For the avoidance of doubt, where any provision of this Agreement (other than a provision to which Clause 12.8 applies) provides for any matter to be subject to the consent or approval of the Authority, then (subject only to the express terms (if any) of that provision as to the basis on which that consent or approval may be given or withheld) the Authority shall be entitled to make that consent or approval subject to any such condition or conditions as it considers appropriate, which may include, but shall not be limited to, the adjustment of any other terms of this Agreement.

45 Governing Law

This Franchise Agreement shall be governed by and construed in accordance with the laws of England and Wales and, subject to the provisions of Clause 43 and Schedule 14, 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 Franchise Agreement.

In witness whereof the parties hereto have executed this Franchise Agreement the day and year first before written.

Schedule 1 —

Conditions Precedent and Other Documents (Clause 2.2)

Part 1 — Licences

- (a) Passenger Train Operators Licence granted to the Franchise Operator on 28 April 1995.
- (b) Station Operators Licence granted to the Franchise Operator on 28 April 1995.
- (c) Depot Operators Licence granted to the Franchise Operator on 28 April 1995.

Part 2 — Access Agreements

- (a) Track Access
 - (1) Track Access Agreement dated 30 April 1995 between Railtrack and the Franchise Operator.
- (b) ***Independent station access***
 - (1) Station Access Agreement relating to Paddington station between Railtrack and the Board (for Chiltern TOU) and dated 1 April 1995 (as amended)
 - (2) Station Access Agreement relating to Birmingham New Street station between Railtrack and the Board (for Chiltern TOU) and dated 1 April 1995 (as amended)

Part 2A — LUL Agreements

- (a) ***Track Access***
 - (1) Track Agreement dated 29 February 1996 between LUL and the Franchise Operator

Part 3(a) — Inter-Operator Schemes

- (i) ATOC Staff travel scheme dated 23 July 1995, between the Franchise Operator and the other participants named therein;
- (ii) Ticketing and Settlement Agreement;
- (iii) ATOC LRT Scheme dated 23 July 1995, between the Franchise Operator and the other participants named therein;
- (iv) Travelcard Agreement dated 15 October 1995, between London Regional Transport, the Franchise Operator and the other train operators named therein;
- (v) Through Ticketing (Non-Travelcard) Agreement dated 15 October 1995, between London Regional Transport, the Franchise Operator and the other train operators named therein;
- (vi) ATOC Telephone Enquiry Bureaux Scheme dated 23 July 1995, between the Franchise Operator and the other participants named therein;
- (vii) National Rail Enquiry Scheme dated 11 June 1996, between the Franchise Operator and the other participants named therein; and

- (viii) Travel Trade Scheme dated 23 July 1995, between the Franchise Operator and the other participants named therein.

Part 3(b) — Discount Fare Schemes

- (i) ATOC Disabled Persons Railcard Scheme dated 23 July 1995, between the Franchise Operator and the other participants named therein;
- (ii) ATOC Young Persons Railcard Scheme dated 23 July 1995, between the Franchise Operator and the other participants named therein; and
- (iii) ATOC Senior Railcard Scheme dated 23 July 1995, between the Franchise Operator and the other participants named therein.

Part 4 — Property Leases

- ⁴³ **1.1.1** *If the Actual Opening Date precedes the Underlease Completion Date the following shall be added at the end of the list set out in paragraph (a) of Part 4 of Schedule 1 as a new paragraph:*

“Licence to occupy entered into on [date of licence] between Aylesbury Vale Parkway Limited and the Franchise Operator in respect of Aylesbury Vale Parkway Station”.

- 1.1.2** *On the Underlease Completion Date the following shall be added at the end of the list set out in paragraph (a) of part 4 of Schedule 1 and any paragraph added pursuant to paragraph 1.1.1 above shall be deleted.*

“Underlease entered into on [underlease Completion Date] between Aylesbury Vale Parkway Limited and the Franchise Operator in respect of Aylesbury Vale Parkway station”.

(a) Stations

- (1) Lease dated 21 July 1996 between Railtrack and the Franchise Operator in respect of Aylesbury station.
- (2) Lease dated 21 July 1996 between Railtrack and the Franchise Operator in respect of Banbury station.
- (3) Lease dated 21 July 1996 between Railtrack and the Franchise Operator in respect of Beaconsfield station.
- (4) Lease dated 21 July 1996 between Railtrack and the Franchise Operator in respect of Bicester North station.
- (5) Lease dated 21 July 1996 between Railtrack and the Franchise Operator in respect of Denham station.
- (6) Lease dated 21 July 1996 between Railtrack and the Franchise Operator in respect of Denham Golf Club station.
- (7) Lease dated 21 July 1996 between Railtrack and the Franchise Operator in respect of Gerrards Cross station.

⁴³ date of DOA NOV 2007

- (8) Lease dated 21 July 1996 between Railtrack and the Franchise Operator in respect of Great Missenden station.
- (9) Lease dated 21 July 1996 between Railtrack and the Franchise Operator in respect of Haddenham & Thame Parkway station.
- (10) Lease dated 21 July 1996 between Railtrack and the Franchise Operator in respect of High Wycombe station.
- (11) Lease dated 21 July 1996 between Railtrack and the Franchise Operator in respect of Kings Sutton station.
- (12) Lease dated 21 July 1996 between Railtrack and the Franchise Operator in respect of Little Kimble station.
- (13) Lease dated 21 July 1996 between Railtrack and the Franchise Operator in respect of Marylebone station.
- (14) Lease dated 21 July 1996 between Railtrack and the Franchise Operator in respect of Monks Risborough station.
- (15) Lease dated 21 July 1996 between Railtrack and the Franchise Operator in respect of Northolt Park station.
- (16) Lease dated 21 July 1996 between Railtrack and the Franchise Operator in respect of Princes Risborough station.
- (17) Lease dated 21 July 1996 between Railtrack and the Franchise Operator in respect of Saunderton station.
- (18) Lease dated 21 July 1996 between Railtrack and the Franchise Operator in respect of Seer Green station.
- (19) Lease dated 21 July 1996 between Railtrack and the Franchise Operator in respect of South Ruislip station.
- (20) Lease dated 21 July 1996 between Railtrack and the Franchise Operator in respect of Stoke Mandeville station.
- (21) Lease dated 21 July 1996 between Railtrack and the Franchise Operator in respect of Sudbury & Harrow Road station.
- (22) Lease dated 21 July 1996 between Railtrack and the Franchise Operator in respect of Sudbury Hill Harrow station.
- (23) Lease dated 21 July 1996 between Railtrack and the Franchise Operator in respect of Wembley Stadium station.
- (24) Lease dated 21 July 1996 between Railtrack and the Franchise Operator in respect of Wendover station.
- (25) Lease dated 21 July 1996 between Railtrack and the Franchise Operator in respect of West Ruislip station.
- (26) License to occupy entered into on 7th October 2000 between the Franchisee and the Franchise Operator in respect of Warwick Parkway.

(b) **Depots**

- (1) Lease dated 21 July 1996 between Railtrack and the Franchise Operator in respect of Aylesbury Maintenance Depot.

- (2) Lease dated 21 July 1996 between Railtrack and the Franchise Operator in respect of Marylebone Down Sidings.

Part 5 — Rolling Stock Leases

- (a) Master Operating Lease Agreement between Angel Train Contracts Limited and the British Railways Board (acting by and through its operating division known as Chiltern Lines) dated 14 March 1995.
- (b) Amended and Restated Master Operating Lease Agreement between Angel Trains Contracts Limited and the Franchise Operator (the successor in title to the British Railways Board (acting by and through its operating division known as Chiltern lines) dated 16 October 1996.
- (c) Operating Sub-Lease Agreement between Thames Trains Limited and the Franchise Operator dated 31 May 1996.
- (d) Master Agreement between Porterbrook Leasing Company Limited and the Franchise Operator dated 22 August 1996.
- (e) Master Agreement between Porterbrook Leasing Company Limited and the Franchise Operator dated 10 December 1999.
- (f) Rolling Stock Operating Lease Agreement between HSBC (UK) Limited and the Franchise Operator dated 15 August 2000.

Part 6 — Brand Licences

- (a) Exclusive Trade Mark Licence Agreement dated 10 December 1995 between the Director of Passenger Rail Franchising and the Franchise Operator in respect of certain trade marks relating exclusively to the Franchise Operator.
- (b) Non-exclusive Trade Mark Licence Agreement dated 10 December 1995 between the Director of Passenger Rail Franchising and the Franchise Operator in respect of certain other trade marks not relating exclusively to the Franchise Operator.

Part 7 — Local Authority Schemes

- (a) Concessionary Fare Schemes
 - London Concessionary Fares Scheme
- (b) Multi-modal Travel Schemes
 - Birmingham PTE Centrocarril Scheme
 - Buckinghamshire County Council Sunday Rover Ticket Scheme

Part 8 - Major Projects

- (a) West Midlands Capacity - the options identified by the West Midlands Rail Network Capacity Review to address the capacity requirements of the rail network in the West Midlands to the year 2020 as identified in the Summary Report published by the consultants and the Next Steps Paper published by the steering group, in each case in June 2000;

- (b) Channel Tunnel Rail Link (CTRL) - high speed rail link between the Channel Tunnel and London St Pancras station, including capacity for domestic services in Kent as well as international services;
- (c) East Coast Main Line upgrade - a number of phased infrastructure and rolling stock projects to increase route capacity, reduce journey times and deliver better operational performance by major works at Leeds, Peterborough and Doncaster, the upgrading of diversionary routes for freight and the construction of new tunnels and a viaduct at Welwyn;
- (d) East London Line - a northern extension (to the North London Line near Dalston) and a southern extension (to the national rail network south of the Thames) to the East London Line, in order to enable services to operate between Willesden Junction, Finsbury Park and Highbury & Islington north of the Thames, and Wimbledon, West Croydon and Crystal Palace to the south;
- (e) Leeds First - a comprehensive resignalling and track enhancement scheme. Key features involve a doubling of the approach tracks into Leeds from the east and the abolition of several conflicting movements which have historically limited capacity. Extra capacity is included within the scheme through the commissioning of new platforms and the overall speed of trains through the layout is increased;
- (f) Line 9 works at London Bridge station - an amendment to the planned Thameslink 2000 works at London Bridge, including an additional through route and ninth platform to augment the eight high-level platforms already proposed under Thameslink 2000;
- (g) London Cross Rail - a project integrating main line services to the west and east of London via new tunnels between Paddington and Liverpool Street, and to include new stations with Underground connections at Bond Street, Tottenham Court Road and Farringdon;
- (h) Thameslink 2000 - a project to increase the capacity of the route between London St Pancras and Blackfriars stations to permit the operation of up to 24 services per hour in each direction of trains of up to 12 cars in length and to construct a new connection on to the East Coast Main Line permitting the operation of services on the East Coast as well as the Midland Main Lines via London Bridge or Elephant and Castle to a range of destinations in southern England. The project also includes the provision of a new subterranean station below St Pancras and the enhancement of a number of stations to permit the operation of 12-car trains;
- (i) West Coast Main Line upgrade - works planned in two phases to deliver (at Phase 1) infrastructure works to enable tilting trains to travel at up to 125 mph, and to enable one extra train to be run on the line per hour, and (at Phase 2), *inter alia*, works to enable tilting trains to travel at up to 140 mph, and to enable further trains to be run between London and Birmingham, Manchester and Holyhead / Chester, and the fitting of Automatic Train Protection to the infrastructure throughout the core route; and
- (j) Edinburgh Cross-Rail - a scheme to provide a new half-hourly passenger service (to be operated by two Class 158 units) from the west of Edinburgh via Haymarket and Waverley Station to new stations at Brunstane and Kinnaird Park in the east and south-east of the city, including the upgrade of existing freight railway from Portobello Junction and a park and ride facility at Kinnaird Park.

Part 9 - Specified IOS Projects

- (a) Ref: 30.001 – Operational Flexibility at Kidderminster

«COPY»

(b) Ref: 30.003 – Capacity at Stourbridge Junction

**Schedule 2 —
Franchise Services (Clause 26 and others)**

Part 1 — Passenger Services⁴⁴

Railway passenger services (excluding any Charter Services) in each direction via the following routes (and, in the event of a disruption, any reasonable diversionary route):

- (1) Marylebone to Aylesbury via Amersham;***
- (2) Marylebone to Birmingham Snow Hill via High Wycombe and Solihull;***
- (3) Princes Risborough to Aylesbury;***
- (4) Paddington to South Ruislip via Old Oak Common West Junction, Greenford East Junction and Greenford West Junction;***
- (5) Birmingham Snow Hill to Kidderminster***
- (6) Hatton to Stratford-upon-Avon***

and calling at those stations listed in Part 2 of Schedule 2 and:

<i>Acocks Green</i>	<i>Langley Green</i>
<i>Amersham</i>	<i>Lye</i>
<i>Bearley</i>	<i>Moor Park</i>
<i>Birmingham Snow Hill</i>	<i>Old Hill</i>
<i>Blakedown</i>	<i>Olton</i>
<i>Chalfont & Latimer</i>	<i>Paddington</i>
<i>Chorleywood</i>	<i>Rowley Regis</i>
<i>Claverdon</i>	<i>Rickmansworth</i>
<i>Cradley Heath</i>	<i>Small Heath</i>
<i>Dorridge</i>	<i>Solihull</i>
<i>Hagley</i>	<i>Smethwick Galton Bridge</i>
<i>Harrow on the Hill</i>	<i>Stourbridge Junction</i>
<i>Heyford⁴⁵</i>	<i>Stratford-upon-Avon</i>
<i>The Hawthorns</i>	<i>Tackley⁴⁶</i>
<i>Jewellery Quarter</i>	<i>Tyseley</i>
<i>Kidderminster</i>	<i>Widney Manor</i>
	<i>Wilmcote</i>

⁴⁴ Replacement Part 1 inserted wef 3rd December 2004.

⁴⁵ Date of Change 12/12/2010

⁴⁶ Date of Change 12/12/2010

Part 2 — Station Services

- (a) The provision of any services to persons at the following stations or to train operators whose trains call at the following 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 services other than in connection with a journey on a train calling at such stations; and
 - (iii) exclude the selling or issuing (for a charge) of any goods other than railway timetables); and
- (b) the provision of access to any person under an Access Agreement at the following stations:

⁴⁷ ***On the Actual Opening Date, the following shall be added to the list set out in paragraph (b) of Part 2 of Schedule 2 in the appropriate alphabetical position:***

Aylesbury	Monks Risborough
Aylesbury Vale Parkway	Northolt Park
Banbury	Princes Risborough
Beaconsfield	Saunderton
Bicester North	Seer Green and Jordans
Bicester Town ⁴⁸	Solihull ⁵⁴
Birmingham Moor Street ⁴⁹	South Ruislip
Denham	Stoke Mandeville
Denham Golf Club	Sudbury & Harrow Road
Dorridge ⁵⁰	Sudbury Hill Harrow
Gerrards Cross	Warwick ⁵⁵
Great Missenden	Warwick Parkway
Haddenham & Thame Parkway	Wembley Stadium
Hatton ⁵¹	Wendover
High Wycombe	West Ruislip
Kings Sutton	
Lapworth ⁵²	

⁴⁷ Date of DOA Nov 2007

⁴⁸ Insertion of new station 22nd May 2011

⁴⁹ Insertion of station w.e.f 22nd June 2003

⁵⁰ Date of Change 14/11/2010

⁵¹ Insertion of new station w.e.f 27th July 2004

⁵² Insertion of new station w.e.f 27th July 2004

Leamington Spa⁵³

Little Kimble

Marylebone

For the avoidance of doubt Station Services shall include the provision of any service which the Franchise Operator may provide, or may be required to provide, under any Access Agreement in effect on the Franchise Commencement Date.

Part 3 ⁵⁶ — **Light Maintenance Services**

The provision of access to any other person under an Access Agreement and the carrying out to rolling stock of maintenance work of a kind which is normally carried out at regular intervals of twelve months or less to prepare such rolling stock for service, the stabling or other temporary holding of rolling stock, the refuelling of rolling stock and the cleaning of the exterior or the interior of rolling stock, in each case for itself and/or other train operators, at the Stations, at stations served by Passenger Services (in respect of rolling stock used in the operation of the Passenger Services by the Franchise Operator only) and at the following light maintenance depots:

Aylesbury Maintenance Depot

Marylebone Down Sidings

⁵⁷***Wembley Maintenance Depot***

For the avoidance of doubt Light Maintenance Services shall include the provision of any service which the Franchise Operator may provide, or may be required to provide, under any Access Agreement in effect on the Franchise Commencement Date.

Part 4 — 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 or phone cards.
- (b) The provision of any service at any station served by the Passenger Services which, if provided on a train used in the provision of the Passenger Services, would fall within paragraph (a) of this Part 4 of Schedule 2, or which, if provided at a Station, would fall within Part 2 of Schedule 2 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 by the Franchise Operator in the provision of the Passenger Services.
- (c) In any Reporting Period, the subleasing, hiring or licensing of up to 15 per cent. of the rolling stock used by the Franchise Operator from time to time in the provision of the Passenger Services (such percentage to be determined by reference to the aggregate

⁵³ Insertion of new station wef 27th July 2004

⁵⁴ Date of Change 14/11/2010

⁵⁵ Insertion of new station wef 27th July 2004

⁵⁶ Date of change 19.1.2006

⁵⁷ Date of change 19.1.2006

period of time for which such rolling stock is sub-let, hired or licensed and the aggregate period of time for which it is 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 one per cent. of the number of employees of the Franchise Operator during such Reporting Period (or, if greater, on the Franchise Commencement Date) for over 90 per cent. of their normal working hours during such Reporting Period (including on a full-time basis); and
 - (ii) up to one per cent. of any other employees of the Franchise Operator during such Reporting Period (such percentage to be determined on the basis of the aggregate number of hours in such Reporting Period for which each employee is employed by the Franchise Operator (or, if greater, such aggregate number of hours in the first Reporting Period under this Franchise Agreement pro rata to the number of days in the relevant Reporting Period) and the aggregate number of hours in such Reporting Period for which any such employee is so lent, seconded, hired or contracted out)

(provided that no employee lent, seconded, hired or contracted out under any other paragraph of this Part 4 and, for the avoidance of doubt, no employee who is engaged in any other activity which is permitted under this Schedule 2 shall constitute an employee who is lent, seconded, hired or contracted out under this paragraph).

For the purpose of Clause 26 of the Franchise Agreement, the Authority consents to the seconding of up to a further three per cent of the number of employees of the Franchise Operator during such Reporting Period subject to the following conditions:-

(A) such employees are seconded to the Franchisee to undertake work in relation to:

- (i) bidding for; and/or
- (ii) carrying out of developments in respect of

franchised passenger rail services included or intended to be included in one or more franchise agreements other than this Franchise Agreement;

(B) the Authority shall be entitled, from time to time, to give notice to the Franchise Operator withdrawing such consent in whole or in part if, in the opinion of the Authority, some or all of such number of employees are reasonably required for the provision of the Franchise Services, in accordance with this Agreement; and

(C) the activities referred to in sub-paragraph (A) are not included in the "Franchise Services" for the purpose of this Franchise Agreement, and accordingly:-

- (i) except to the extent that such employees are, at the expiry of the Franchise Period, engaged in the provision of the Franchise Services, the contract of employment and/or liabilities arising from a contract of employment or employment relationship in respect of any of such employees is not intended by the parties to transfer 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)); and
- (ii) except as aforesaid, if any such contract of employment or liability shall, notwithstanding (i) above, transfer to a Successor Operator, then such employees shall not be "Relevant Employees" and shall be regarded as "Undisclosed

Employees" for the purposes of the Supplemental Agreement, with the intention and effect that the Franchise Operator shall indemnify the Successor Operator in accordance with the Supplemental Agreement in respect of liabilities incurred by the Successor Operator in relation to such employees. The Authority shall be entitled to amend the Supplemental Agreement to the extent necessary to give effect to this sub-paragraph (C).

The restrictions set out in this paragraph (d) shall not be applicable to employees of the Franchise Operator who are lent, seconded, hired or contracted out to the Franchisee provided that such employees remain exclusively engaged in the provision of such services as are necessary to enable the Franchise Operator to perform its obligations under this Franchise Agreement.

- (e) The heavy maintenance of rolling stock and other railway vehicles on behalf of any other person at the following light maintenance depots:

Aylesbury Maintenance Depot

subject to the number of persons engaged or employed in such activity in relation to rolling stock and other railway vehicles which are not operated by the Franchise Operator not exceeding by more than 10 per cent. the numbers so engaged or employed on the Previous Franchise Commencement 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 Franchise Operator on or before the date of signature of this Franchise Agreement or at any new location provided that the majority of Fares sold at any such new 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 within Great Britain; or
 - (cxcviii) travel on any shipping or ferry service within or from within Great Britain; or
 - (cxcix) travel on any train whose journey commences or ends within the European Union; or
 - (cc) travel on any bus whose journey commences or ends at, or at a location reasonably proximate to, a station served by the Passenger Services;
 - (cci) attend any event or attraction or enter any location which is situated reasonably proximate to the end of an intended journey by train within Great Britain.
- (h) The lending, seconding, hiring or contracting out of employees of the Franchise Operator to other train operators in order to enable such persons to provide services at the Stations to passengers travelling on their 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 Franchise Operator.
- (k) The subleasing, hiring, licensing, lending, selling of any rolling stock or other assets of the Franchise Operator or the lending, hiring or contracting out of any employees of the

Franchise Operator or the provision of any other services to Railtrack or any other train operator on an emergency basis.

- (l) The licensing or permitting of any other person (including Affiliates of the Franchise Operator) to carry out any activity or business, in connection with the provision of the Franchise Services or otherwise, on any train operated by the Franchise Operator, 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 the other Franchise Services specified in this Schedule 2 or complying with this Franchise Agreement provided that it could not reasonably be carried out by or through an Affiliate of the Franchise Operator.
- (n) The provision or operation of Charter Services, subject to the Train Mileage of such Charter Services not exceeding in any Reporting Period 2 per cent. of the scheduled Train Mileage of Passenger Services provided by the Franchise Operator in such Reporting Period.
- (o) Any services or activity not falling within Parts 1 to 3 of this Schedule 2 or paragraphs (a) to (n) above, subject to the gross value of any such services or activity (excluding any attribution of costs) not exceeding £50,000 per annum each and in aggregate no more than £250,000 per annum in each Franchise Operator Year, provided that in the second and each subsequent Franchise Operator Year these amounts will be increased by RPI where RPI is the quotient of the Retail Prices Index for the month falling two months before the relevant Franchise Operator Year divided by the Retail Prices Index for the month falling two months before the first Franchise Operator Year.

Schedule 3⁵⁸ —

Passenger Service Requirement

Part 1 — Passenger Service Requirement (Clause 5.1)

1 Definitions

The following definitions shall apply in this Part 1 of Schedule 3 except to the extent that the context otherwise requires:-

“Bank Holiday”	means a Weekday on which banks in the City of London are not open for business;
“Christmas”	means 25 and 26 December in any year;
“Christmas Eve”	means 24 December in any year;
“Journey Time”	means the time in the Timetable to be taken by a service in travelling between the specified departure point and specified destination for that service;
“Leaf Fall Period”	means the period in any Reporting Year between the final Sunday in September and seven days after the end of the 9 th Reporting Period of such Reporting Year;
“New Year”	means 1 January in any year;
“Off-Peak”	means, in relation to any service, a service which is not a Peak service;
“Peak”	means, in relation to any service, a Weekday service (except services at Christmas or New Year or on a Bank Holiday) which arrives at London Marylebone between 0700 and 0959 (the “Morning Peak”) or departs from London Marylebone between 1600 and 1859 (the “Evening Peak”) and references to “Peak”, “Morning Peak” and “Evening Peak” periods shall be construed accordingly;
“Summer”	means the period in any calendar year between the two Passenger Change Dates falling during that year;
“Weekday”	means any day other than a Saturday or Sunday; and

⁵⁸ Date of change 31/08/2012

“Winter” means any period which is not Summer.

2. General Provisions and Construction

2.1 Days and Times of day

- (a) For the purposes of this Part 1 of Schedule 3 only and except to the extent the context otherwise requires, references to a day mean the period commencing at 0200 on one day and ending at 0159 on the following day and references to Weekdays and particular days of the week shall be construed accordingly.
- (b) References to periods of times and periods of days in this Part 1 of Schedule 3 include the times and days such periods start and finish.
- (c) All references to time are to the twenty-four hour clock.

2.2 Services

- (a) Except where expressly indicated to the contrary, references to services, all services or any part or any proportion of services in this Part 1 of Schedule 3 are to be construed as references to the Passenger Services (or the relevant part or proportion thereof) required to be included by the Franchise Operator in its Timetable pursuant to Clause 5.1(a) of this Franchise Agreement and do not include such additional railway passenger services as may be provided from time to time by the Franchise Operator.
- (b) Except where expressly indicated to the contrary, where an interval or frequency is specified for a service, such specification shall apply at the departure point for the relevant service.
- (c) Except where expressly indicated to the contrary, all services are to run in both directions and the requirements of this Part 1 of Schedule 3 (including any interval between services, frequency of service or stopping pattern) are to apply in each direction.

2.3 Stations

- (a) Except where expressly indicated to the contrary and subject always to compliance with the other provisions of this Part 1 of Schedule 3 (including any maximum Journey Times) and any restrictions placed on the Franchise Operator under Part 1 of Schedule 2 of this Franchise Agreement, nothing in this Part 1 of Schedule 3 shall prevent services which are required to be included by, or on behalf of, the Franchise Operator in the Timetable pursuant to Clause 5.1(a) of this Franchise Agreement calling at any stations which are not specified in this Part 1 of Schedule 3 or any relevant part of it.
- (b) Stations where demand for a particular service is such that there are often no passengers wishing to leave or join the relevant service may be designated as a Request Stop Station for that service. Any such designation shall be clearly advertised in advance to intending passengers (including in the Timetable).

2.4 Connections

- (a) Except where expressly indicated to the contrary, a service which is required

to be included in the Timetable shall be provided so as to enable travel between the stations specified without change of train. Where a service may be provided by a Connection or where a Connection is required to be provided between two services, such service or combination of services may be provided without a change of train being required.

- (b) Except where expressly indicated to the contrary, where Connections are required to be provided by the Franchise Operator, it shall ensure that the interval or waiting period between the two relevant services is of a sufficient duration to allow passengers a reasonable period of time to transfer between the two relevant services.
- (c) Except where expressly indicated to the contrary, where services are subject to maximum Journey Times, such Journey Times shall not apply where the services are required to be, or may be, provided by Connections.

2.5 Bank Holidays

On Bank Holidays, and on each day between Christmas and New Year, the service required to be included in the Timetable for such day shall, except to the extent the Authority otherwise agrees and subject to the inclusion in the Timetable of such additional services as the Authority may require, be the service required to be included in the Timetable on a Saturday for each station unless such day is a Sunday in which case a Sunday service shall operate. The Franchise Operator shall give notice to the Authority prior to the commencement of the timetable development process under the Railtrack Track Access Conditions and the LUL Track Access Conditions of the service which it proposes to include in the Timetable on Bank Holidays and on each Weekday between Christmas and New Year (to the extent any such days fall during the period in respect of which such Timetable shall apply). The period of such notice shall be reasonable having regard to the extent to which the level of service proposed to be included in the Timetable by the Franchise Operator on each such day falls below the normal level of service on Weekdays specified in this Part 1 of Schedule 3. There is no requirement to provide any services at Christmas or New Year.

2.6 Service Intervals

- (a) Except where expressly indicated to the contrary, where services are required to be included in the Timetable for a specified period of time with a specified interval between each service during such period (and for the purposes of this paragraph 2.6(a) "specified period of time" shall include any period which commences and/or ends with a specified service), then the following shall apply:-
 - (i) the minimum number of services to be included in the Timetable in such period shall be the quotient of the number of minutes in the period divided by the number of minutes in the specified interval, rounded down to the nearest whole number;
 - (ii) the interval between any two services during such period may be extended, subject to the other provisions of this paragraph 2.6(a), by five minutes or, if greater, an amount of minutes equivalent to one sixth of the specified interval between each service rounded down to the nearest whole number and subject to such extension not

exceeding ten minutes;

- (iii) the interval between any two services may be reduced, subject to the other provisions of this paragraph 2.6(a), below the interval between each service specified for such period by such amount as the Franchise Operator may determine;
 - (iv) the interval between services during such specified period of time shall be such that, for any period which occurs during such specified period and has a duration equivalent to $((4 \times I) + E)$ minutes (where I is equal to the specified interval and E is equal to the extension permitted to such interval under paragraph 2.6(a)(ii)), at least four services shall be included in the Timetable in such period; and
 - (v) the intervals between the start of such period of time and the first service in such period (save where such period of time starts with a specified service) and between the last service in such period and the end of such period (save where such period of time ends with a specified service) shall each be no more than the interval between each service specified for such period and (save where such period of time starts and/or ends with a specified service) one of such intervals shall be no more than half such interval between each service.
- (b) Except where expressly indicated to the contrary, where one period ends and another period begins immediately thereafter and services are specified at different intervals for each such period, the maximum interval between the last service in the first period and the first service in the second period shall be the longer of the maximum intervals allowed for each such period.

2.7 Headings

All headings used in Flows 1 to 5 in paragraph 4 shall form part of the Passenger Service Requirement.

2.8 Christmas Eve

Services may be wound down for close of service at or after 1930, except as otherwise agreed by the Authority, or as otherwise specified in each flow.

3 Leaf Fall

- 3.1** The Franchise Operator shall be permitted, subject to the consent of the Authority, to include in the Timetable services which do not comply with the Passenger Services specified in this Franchise Agreement to the extent that this is reasonable for the purposes of ensuring the safe operation of services during the Leaf Fall Period each year.
- 3.2** At the same time that it provides the information required pursuant to Clause 5.2(a) of this Franchise Agreement in respect of the relevant Timetable, the Franchise Operator shall give notice in writing to the Authority of the services which it proposes to include in the Timetable during the next Leaf Fall Period (the "Proposed Leaf Fall Period Services") and full details of the extent to which such services fail to comply with the provisions of paragraph 4 of this

Part 1 of Schedule 3; such period of notice shall allow the Authority reasonable time to consider, and to consult with appropriate persons on, whether or not to permit the inclusion in the Timetable of the Proposed Leaf Fall Period Services.

- 3.3** The Authority shall be entitled to consent to the inclusion in the Timetable of the Proposed Leaf Fall Period Services subject to such amendments or conditions as it may think appropriate.
- 3.4** The Authority will be deemed to consent to an additional three minutes in each service specified in paragraph 4 of this Part 1 of Schedule 3 for the purposes of the Proposed Leaf Fall Period Services up to the first Performance Review Date only. The Authority may review at the performance review on or following the first Performance Review Date, or if appropriate, any subsequent Performance Review Date whether, in all the circumstances, such an allowance will be necessary in future.

4 Passenger Service Requirement

Subject to the Franchise Operator receiving the access rights necessary to perform the PSR Flows 6 and 7 from the December 2004 Passenger Change Date, the Franchise Operator shall include in the Timetable the services specified in Flows 1 to 7 set out below:

- 4.1** The Franchise Operator shall include in the Timetable the services specified for each of Tables 1 to 6 in each Flow below, the following shall apply:
- (i) the Early Service shall arrive at the stated destination at or before the time specified in column B;
 - (ii) the Late Service shall depart from the stated station of departure at or after the time specified in Column C;
 - (iii) the maximum length of intervals between services in minutes, subject to paragraph 2.6, shall be as specified in column D;
 - (iv) the percentage of services to be provided per day whose journey time shall not exceed the Maximum Journey Time in minutes (specified in column F) shall be as specified in column E;
 - (v) the Maximum Journey Time in minutes that shall not be exceeded by any service which fulfils the requirements of Columns B-D shall be as specified in Column G;
 - (vi) it shall be understood that wherever 'N/A' appears, this Passenger Service Requirement does not specify any requirement.
 - (vii) the minimum number of services to run in each Morning or Afternoon Peak period and in each time period outside of the Morning or Afternoon Peak shall be specified in Columns H and I respectively. Columns H and I shall not be additionally subject to the requirements of Columns B-G, even though they may cover some of the requirements of Columns B-G.
 - (viii) Individual services may fulfil the requirements of more than one Flow.

4.2 FLOW A: London Marylebone to Birmingham Snow Hill-Mondays to Fridays**Table 1: Monday to Friday services to London Marylebone from stations specified in Column A**

Station of Departure/Core Calling Pattern	Early Service to London Marylebone from Station in column A, shall arrive at London Marylebone no later than	Late Service to London Marylebone from station in column A, shall depart no earlier than	Maximum intervals between services, including Early and Late Services (minutes)	% of services which cannot exceed the maximum Journey Time specified in column F	Maximum Journey Time of services specified in column E (minutes)	Maximum Journey Time of all services (minutes)	Morning Peak number of services arriving London Marylebone, between 0700-0959	Number of trains per hour arriving at London Marylebone between 0700-2100 (excluding peak hours)
A	B	C	D	E	F	G	H	I
Birmingham Snow Hill	1015	2115	60	N/A	N/A	N/A	3	1
Birmingham Moor Street	1015	N/A	60	90%	115	135	6	2
Solihull	1015	N/A	60	N/A	N/A	N/A	6	2
Warwick Parkway	1015	N/A	60	N/A	N/A	N/A	9	2
Leamington Spa	1015	N/A	60	N/A	N/A	N/A	9	2
Banbury	0730	N/A	60	75%	75	85	9	2½(a)

Table 2: Monday to Friday from London Marylebone to stations specified in Column A

Station of Arrival/Core Calling Pattern	Early Service from London Marylebone to station in column A, shall arrive no later than	Late Service from London Marylebone to station in column A, shall depart no earlier than	Maximum intervals between Early and Late Services (minutes)	% of services which cannot exceed the maximum Journey Time specified in column F	Maximum Journey Time of services specified in column E (minutes)	Maximum Journey Time of all services (minutes)	Evening Peak number of services departing London Marylebone, between 1600-1915	Trains per hour departing from London Marylebone between 0700-2100 (excluding peak hours)
A	B	C	D	E	F	G	H	I
Banbury	N/A	2230	60	75%	75	85	9	2½(a)
Leamington Spa	N/A	2030	60	N/A	N/A	N/A	9	2
Warwick Parkway	N/A	2030	60	N/A	N/A	N/A	9	2
Solihull	N/A	2030	60	N/A	N/A	N/A	7	2
Birmingham Moor Street	N/A	2030	60	90%	115	135	7	2
Birmingham Snow Hill	1030	2030	60	N/A	N/A	N/A	3	1

Footnotes to Column 1 in Tables 1 and 2:

(a)5 every 2 hours, which may include trains serving Stratford-upon Avon.

4.2.1 Additional Early Services (Flow A, Table 1 and Table 2);

- (a) Two services from Birmingham Snow Hill arrive at London Marylebone no later than 0900, at a minimum interval of 45 minutes between arrivals.
- (b) Three services from Leamington Spa shall arrive at London Marylebone between 0745-0915, with the interval between arrivals being not less than 15 minutes.
- (c) A service from London Marylebone to Snow Hill shall arrive no later than 0910.
- (d) Two services from Banbury shall arrive at Birmingham Snow Hill between 0800-0930, at a minimum interval of 45 minutes between arrivals.

4.2.2 Additional Late Evening Services (Flow A, Table 1 and Table 2):

- (a) Two services from Birmingham Snow Hill to Leamington Spa shall depart after the Late Service as specified in Table 1, Column C, with the last train being no later than 2330. Both services shall call at all stations between Birmingham Snow Hill and Leamington Spa, except Bordesley and Small Heath.

4.2.3 Widney Manor and Dorridge (Flow A Table 1 and Table 2) shall be served by:

- (a) One service departing Birmingham Moor Street between 1700-1800.
- (b) Both additional late evening services departing from Birmingham Snow Hill to Leamington Spa specified in Paragraph 4.2.2(a), after the Late Service from Birmingham Snow Hill to London Marylebone.
- (c) One service to arrive at Birmingham Snow Hill between 0800-0830.
- (d) Late Service from London Marylebone to Birmingham Snow Hill as specified in Table 2, Column C.
- (e) Dorridge shall be served by 5 services to London Marylebone in the Morning Peak & 7 services from London Marylebone in the Evening Peak.
- (f) Dorridge shall be served by 1 trains per hour arriving at or departing from London Marylebone between 0700-2100 (excluding the Morning Peak and Evening Peak hours).
- (g) Dorridge shall be served by the eight further services in each direction specified in Clause 4.2.4(a) at regular intervals calling at Birmingham Moor Street, Solihull, Warwick and Leamington Spa

4.2.4 Lapworth and Hatton (Flow A, Table 1 and Table 2) shall be served by:

- (a) Eight services at regular intervals between Birmingham Moor Street and Leamington Spa, calling at Solihull, Dorridge, Warwick, Lapworth and Hatton.
- (b) Early Service from Birmingham Snow Hill to London Marylebone as specified in Table 1, Column C.
- (c) Two services departing Birmingham Moor Street between 1700-2000

- (d) A service to arrive at Birmingham Snow Hill between 0915-0945.
- (e) Late Service from London Marylebone to Birmingham Snow Hill as specified in Table 1, Column C
- (f) Both additional late evening services departing from Birmingham Snow Hill to Leamington Spa specified in para 4.2.2(a), after the Late Service from Birmingham Snow Hill to London Marylebone.
- (g) In all cases, services specified in (b) to (e) can be provided by the services specified in (a) and need not be through services to or from London Marylebone, but may be provided by means of a connection at Leamington Spa, so long as the connection time does not exceed 15 minutes.

4.2.5 Warwick (Flow A, Table 1 and Table 2) shall be served by:

- (a) Hourly between and including the Early and Late Services specified in each direction.
- (b) Two services from Banbury shall arrive at Birmingham Snow Hill between 0800-0930, at a minimum interval of 45 minutes between arrivals.
- (c) Both additional late evening services departing from Birmingham Snow Hill to Leamington Spa specified in Paragraph 4.2.2(a), after the Late Service from Birmingham Snow Hill to London Marylebone.

4.2.6 Warwick Parkway, Tyseley, Acocks Green and Olton (Flow A, Table 1 and Table 2) shall be served by:

- (a) Both additional late evening services departing Birmingham Snow Hill to Leamington Spa specified in Paragraph 4.2.2(a), after the Late Service from Birmingham Snow Hill to London Marylebone.

4.2.7 Kidderminster and Stourbridge Junction (Flow A, Table 1 and Table 2) shall be served by:

- (a) Three services shall arrive in London Marylebone between 0700-0959.
- (b) Three services shall depart London Marylebone between 1615-1915.

4.2.8 The Stratford-upon-Avon branch (Flow A, Table 1 and Table 2)

- (a) The following number of services between London Marylebone and Stratford-upon Avon shall be provided at the following stations:

Station	Number of services from London Marylebone to Stratford-upon-Avon	Number of services from Stratford-upon-Avon to London Marylebone
Banbury	7(a)	7(a)
Leamington Spa	7(a,c)	7(a,c)
Warwick	7(a,b,c)	7(a,b,c)
Hatton	4(a,c)	4(a,c)
Claverdon	3(a,c)	4(a,c)
Bearley	4(a,c)	5(a,c)
Wilmcote	2(a,c)	2(a,c)
Stratford-upon-Avon	7(a,c)	7(a,c)

Footnotes

- (a) up to three trains in each direction may be provided by a dedicated connection at Leamington Spa.
 (b) one service in each direction may call at Warwick Parkway instead of Warwick.
 (c) two services in each direction shall call at each of these stations (in the Stratford-upon-Avon -Leamington Spa direction one service need not call at Bearley and Claverdon & one service may be provided by means of a maximum 12 minute connection at Hatton).

(b) Early and Late Services between Stratford-upon Avon and London Marylebone

- (i) Two services shall depart from London Marylebone to Stratford-upon-Avon no later than 1130.
 (ii) A late service shall depart from London Marylebone to Stratford-upon-Avon no earlier than 1830.
 (iii) An early service from Stratford-upon Avon shall arrive at London Marylebone no later than 1000.
 (iv) A late service shall depart from Stratford-upon Avon to London Marylebone no earlier than 1900.
 (v) The Maximum Journey Time between Stratford-upon-Avon and London Marylebone in either direction shall not exceed 150 minutes.

(c) Early and Late Services between Stratford-upon-Avon and Leamington Spa

- (i) An early service shall depart from Stratford-upon-Avon between 0600-0630.
 (ii) An early service shall depart from Leamington Spa no later than 0800.
 (iii) A late service shall depart from Stratford-upon-Avon no earlier than 1900 & connect with a train to London Marylebone.
 (iv) The Maximum Journey Time between Stratford-upon-Avon and Leamington Spa in either direction shall not exceed 35 minutes.
 (v) All reasonable endeavours shall be made to time services to meet the needs of students travelling to school.

4.3 Flow A: London Marylebone to Birmingham Snow Hill-Saturdays

Table 3: Saturday services to London Marylebone from stations specified in Column A

Station of Departure/Core Calling Pattern	Early Service to London Marylebone from station in column A, shall arrive at London Marylebone no later than	Late Service to London Marylebone from station in column A, shall depart no earlier than	Maximum intervals between Early and Late Services (minutes)	% of services which cannot exceed the maximum Journey Time specified in column F	Maximum Journey Time of services specified in column E (minutes)	Maximum Journey Time of all services (minutes)	Number of trains per hour arriving at London Marylebone between 0700-2100
A	B	C	D	E	F	G	I
Birmingham Snow Hill	1015	1915	60	N/A	N/A	N/A	1(a)
Birmingham Moor Street	1015	N/A	60	90%	115	135	2(a)
Solihull	1015	N/A	60	N/A	N/A	N/A	2(a)
Warwick Parkway	1015	N/A	60	N/A	N/A	N/A	2(a)
Leamington Spa	1015	N/A	60	N/A	N/A	N/A	2(a)
Banbury	0815	2215	60	75%	75	85	2.5(b,d)

Table 4: Saturday services from London Marylebone to stations specified in Column A

Station of Departure/Core Calling Pattern	Early Service from London Marylebone to station in column A, shall depart London Marylebone no later than	Late Service from London Marylebone to station in column A, shall depart London Marylebone no earlier than	Maximum intervals between Early and Late Services (minutes)	% of services which cannot exceed the maximum Journey Time specified in column F	Maximum Journey Time of services specified in column E (minutes)	Maximum Journey Time of all services (minutes)	Number of trains per hour departing from London Marylebone between 0700-2100
A	B	C	D	E	F	G	I
Banbury	N/A	2230	60	75%	75	85	2.5 (c,d)
Leamington Spa	N/A	1830	60	N/A	N/A	N/A	2(c)
Warwick Parkway	N/A	1830	60	N/A	N/A	N/A	2(c)
Solihull	N/A	1830	60	N/A	N/A	N/A	2(c)
Birmingham Moor Street	N/A	1830	60	90%	115	135	2(c)
Birmingham Snow Hill	1030	1830	60	N/A	N/A	N/A	1(c)

Footnotes to Column 1 in Tables 3 and Table 4:

- (a) Two services shall arrive at London Marylebone from these stations in the time period 0700-0900. One service shall arrive at London Marylebone from these stations in the time period 2000-2100.
- (b) Two services shall arrive at London Marylebone from Banbury in the time period 0700-0900. One service shall arrive at London Marylebone from Banbury in the time period 2000-2100.
- (c) One service shall depart London Marylebone for these stations in each of the time periods 0700-0800 and 2000-2100.
- (d) 5 trains every 2 hours, which may include trains serving Stratford-upon-Avon, except in the hours covered by footnotes (b) and (c) above.

4.3.1 Additional Early Services (Flow A, Table 3 and Table 4):

- (a) A service from Snow Hill shall arrive at London Marylebone no later than 0915.
- (b) A service from London Marylebone to Birmingham Snow Hill shall arrive no later than 0910.

4.3.2 Additional Late Evening Services (Flow A, Table 3 and Table 4):

- (a) Two services from Birmingham Snow Hill to Leamington Spa at 60 minute intervals after the departure of the Late Service from Birmingham Snow Hill to London Marylebone as specified in Table 3, Column C.

4.3.3 Widney Manor and Dorridge (Flow A, Table 3 and Table 4) shall be served by:

- (a) Both additional late evening services from Snow Hill to Leamington Spa specified in Paragraph 4.3.2(a), after the Late Service from Birmingham Snow Hill to London Marylebone.

4.3.4 Lapworth and Hatton (Flow A, Table 3 and Table 4) shall be served by:

- (a) Eight services at regular intervals between Birmingham Moor Street and Leamington Spa, calling at Solihull, Dorridge, Warwick, Lapworth and Hatton and Leamington Spa.
- (b) Early Service from Birmingham Snow Hill to London Marylebone as specified in the table above.
- (c) Both additional late evening services from Snow Hill to Leamington Spa specified in para 4.3.2(a), after the Late service from Birmingham Snow Hill to London Marylebone
- (d) In all cases, services specified in (b) can be provided by the services specified in (a), and need not be through services to or from London Marylebone, but may be provided by means of a connection at Leamington Spa, so as long as the connection time does not exceed 15 minutes

4.3.5 Warwick (Flow A, Table 3 and Table 4) shall be served by:

- (a) Hourly between Early and Late Services specified in each direction in the table above.
- (b) Both additional late evening services from Snow Hill to Leamington Spa specified in Paragraph 4.3.2(a), after the Late Service from Birmingham Snow Hill to London Marylebone.

4.3.6 The Stratford-upon-Avon branch (Flow A, Table 3 and Table 4)

- (a) The following number of services between London Marylebone and Stratford-upon-Avon shall be provided at the following stations:

Station	Number of services from London Marylebone to Stratford-upon-Avon	Number of services from Stratford-upon-Avon to London Marylebone
Banbury	5	5
Leamington Spa	5(a)	5 (a)
Warwick	5(a)	5(a)
Hatton	4(a)	4(a)
Claverdon	2(a)	2(a)
Bearley	3(a)	3(a)
Wilmcote	3(a)	3(a)
Stratford-upon-Avon	5(a)	5(a)

- (a) one additional service to the number of services shown in the table above shall be provided in each direction between Leamington Spa and Stratford-upon-Avon, calling at each of these stations, but need not be a service that originates from or terminates at London Marylebone.

(b) Early and Late Services between Stratford-upon-Avon and London Marylebone:

- (i) An early service shall depart from London Marylebone to Stratford-upon-Avon no later than 0900.
- (ii) A late service shall depart from London Marylebone to Stratford-upon-Avon no earlier than 1830.
- (iii) An early service shall depart from Stratford-upon-Avon to London Marylebone no later than 0800.
- (iv) A late service shall depart from Stratford-upon-Avon to London Marylebone no earlier than 1730.
- (v) The Maximum Journey Time between Stratford-upon-Avon and London Marylebone in either direction shall not exceed 150 minutes.

4.4 Flow A: London Marylebone to Birmingham Snow Hill- Sundays

Table 5: Sunday services to London Marylebone from stations specified in Column A

Station of Departure/Core Calling Pattern	Early Service to London Marylebone from station in column A, shall arrive at London Marylebone no later than	Late Service to London Marylebone from station in column A, shall depart no earlier than	Maximum intervals between services, including Early and Late Services (minutes)	Maximum Journey Time of all services (minutes)	Number of trains per hour arriving at London Marylebone between 1200 and 2100
A	B	C	D	G	I
Birmingham Snow Hill	1200	2105	60	N/A	1
Birmingham Moor Street	1200	N/A	60	135	2
Solihull	1200	N/A	60	N/A	2
Warwick Parkway	1200	N/A	60	N/A	2
Leamington Spa	1200	N/A	60	N/A	2
Banbury	1045	2215	60	85	2

Table 6: Sunday services from London Marylebone to stations specified in Column A

Station of Arrival/Core Calling Pattern	Early Service from London Marylebone to station in column A, shall arrive no later than	Late Service from London Marylebone to station in column A, shall depart no earlier than	Maximum intervals between services, including Early and Late Services (minutes)	Maximum Journey Time of all services (minutes)	Number of trains per hour departing from London Marylebone between 1200 and 2100
A	B	C	D	G	I
Banbury	0925	2330	60(a)	85	2
Leamington Spa	N/A	2130	60	N/A	2
Warwick Parkway	N/A	2130	60	N/A	2
Solihull	N/A	2130	60	N/A	2
Birmingham Moor Street	N/A	2130	60	135	2
Birmingham Snow Hill	1050	2130	60	N/A	1

Footnotes to Column D in Table 6:

- (a) An interval of 80 minutes is permitted before 0900

4.4.1 Warwick (Flow A, Table 5 and Table 6) shall be served by:

Hourly between Early and Late Services specified in each direction.

4.4.2 The Stratford-upon Avon branch (Flow a, Table 5 and Table 6)

(a) Summer Services

Between June and September five services shall run in each direction between Stratford-upon-Avon and the following stations: Wilmcote, Hatton, Warwick, Leamington Spa, Banbury, and London Marylebone.

(b) Early and Late Summer Departures between Stratford-upon-Avon and London Marylebone

- (i) An early service shall depart from Stratford-upon-Avon to London Marylebone no later than 1200.
- (ii) An early service shall depart from London Marylebone to Stratford-upon-Avon no later than 1000.
- (iii) A late service shall depart from Stratford-upon-Avon to London Marylebone no earlier than 1930.
- (iv) A late service shall depart from London Marylebone to Stratford-upon-Avon no earlier than 1700.

(c) Winter Services

Between October and May five services shall run in each direction between Stratford-upon-Avon and the following stations: Wilmcote, Warwick, and Leamington Spa.

4.5 Flow B: London Marylebone to Bicester-Monday to Fridays

Table1: Monday to Friday services to London Marylebone from stations specified in Column A

Station of Departure /Core Calling Pattern	Early Service to London Marylebone from station in column A, shall arrive no later than	Late Service to London Marylebone from station in column A, shall depart no earlier than	Maximum intervals between services, including Early and Late Services (minutes)	Maximum Journey Time of all services (minutes)	Morning Peak number of services arriving London Marylebone, between 0700-0959	Number of trains per hour arriving at London Marylebone between 0700-2100 (excluding peak hours)
A	B	C	D	G	H	I
Bicester North or Town	0730	2225(a)	60	N/A	12	3.5(c) ^{hi}
Haddenham & Thame Parkway	0730	2240(a)	60	N/A	9	2.5(d) ^k
Princes Risborough	0700	2310(b)	60	N/A	12	3

^lTable 2: Monday to Friday services from London Marylebone to stations specified in Column A

Station of Arrival /Core Calling Pattern	Early Service from London Marylebone to station in column A, shall arrive no later than	Late Service from London Marylebone to station in column A, shall depart no earlier than	Maximum intervals between services, including Early and Late Services (minutes)	Maximum Journey Time of all services (minutes)	Evening Peak number of services departing London Marylebone, between 1600-1915	Trains per hour departing from London Marylebone between 0700- 2100 (excluding peak hours)
A	B	C	D	G	H	I
Princes Risborough	0740	2330	60	N/A	12	3
Haddenham & Thame Parkway	0750	2230	60	N/A	9	2.5(d) ^m
Bicester North or Town	0800	2230	60	N/A	12	3.5(c) ⁿ

Footnotes to Columns C and I in Table 1 and Table 2:

- (a) The Late Service is the same service that has to depart Snow Hill for London Marylebone no earlier than 2115 (Flow A, Table 1).
- (b) The Late Service is the same service that has to depart Aylesbury for London Marylebone no earlier than 2300 (Flow B, Paragraph 4.5.3 (c)).
- (c) 7 trains every 2 hours.
- (d) 5 trains every 2 hours.

4.5.1 Kings Sutton (Flow B, Table 1 and Table 2) shall be served by:

- (a) Nine services in each direction shall call at regular intervals.
- (b) A service from Kings Sutton shall be provided that arrives at London Marylebone no later than 0730.
- (c) A service from Kings Sutton shall be provided that arrives at Banbury no later than 0800.
- (d) A service from London Marylebone shall depart London Marylebone no earlier than 2230.
- (e) A service from Banbury shall depart no earlier than 2100.

4.5.2 Little Kimble (Flow B, Table 1 and Table 2) shall be served by:

- (a) 10 services in each direction shall call at this station.
- (b) In all cases, services need not be through services, but may be provided by means of a connection at Princes Risborough, so long as the connection does not exceed 10 minutes.

4.5.3 Monks Risborough (Flow B, Table 1 and Table 2) shall be served by:

- (a) An Early Service from Aylesbury to London Marylebone arriving at London Marylebone no later than 0700 and a Late Service departing Aylesbury no earlier than 2300, shall call at this station.
- (b) Between the Early and Late Services from Aylesbury to London Marylebone, an hourly service shall be provided, with one interval of up to 120 minutes permitted and one interval of up to 75 minutes permitted after 1900.
- (c) An Early Service from London Marylebone to Aylesbury arriving at Aylesbury no later than 0845 and a Late Service departing London Marylebone to Aylesbury no earlier than 2300, shall call at this station.
- (d) Between the Early and Late Services from London Marylebone to Aylesbury, an hourly service shall be provided, with one interval of up to 75 minutes permitted after 1900.
- (e) In all cases, services need not be through services, but may be provided by means of a connection at Princes Risborough, so long as the connection does not exceed 10 minutes.

4.5.4 Saunderton (Flow B, Table 1 and Table 2) shall be served by:

- (a) Hourly departures to London Marylebone shall be provided between 0540 and 2240. One interval of 105 minutes is permitted after 1900.
- (b) Hourly departures from London Marylebone shall be provided between 0700 and 2330.

4.5.5 Maximum Journey Time for Services between London Marylebone and Aylesbury (via Princes Risborough)

«COPY»

- (a) The Maximum Journey Time for services from London Marylebone to Aylesbury via Princes Risborough shall not exceed 81 minutes.
- (b) The Maximum Journey Time for services from Aylesbury to London Marylebone via Princes Risborough shall not exceed 83 minutes.

4.5.6 Oxford - Bicester Town –Mondays to Fridays

- (a) The following number of services between Bicester Town and Oxford shall be provided at the following stations:

Station	Number of services from Oxford to Bicester Town		Number of services from Bicester Town to Oxford	
	Monday to Thursday	Friday	Monday to Thursday	Friday
BicesterTown	11	12	11	12
Islip	11	12	11	12
Oxford	11	12	11	12

(b) Service Requirement from Oxford to Bicester Town

- (i) An Early Service shall arrive at Bicester Town from Oxford no later than 0645
- (ii) One service shall depart from Oxford to Bicester Town between 1645-1800.
- (iii) A Late Service shall depart from Oxford to Bicester Town no earlier than 2045 Monday to Thursday and 2300 on Fridays.

(c) Service Requirement from Bicester Town to Oxford

- (i) An Early Service shall arrive at Oxford from Bicester Town no later than 0715
- (ii) One service from Bicester Town shall arrive at Oxford before 0930.
- (iii) A Late Service shall depart from Bicester Town to Oxford no earlier than 2115 Monday to Friday and 2330 on Fridays.

(d) Maximum Journey Time

The Maximum Journey Time between Oxford and Bicester Town in either direction shall not exceed 26 minutes.

4.6 Flow B: London Marylebone to Bicester – SaturdaysTable 3: Saturday services to London Marylebone from stations specified in Column A

Station of Departure /Core Calling Pattern	Early Service to London Marylebone from station in column A, shall arrive at London Marylebone no later than	Late Service to London Marylebone from station in column A, shall depart no earlier than	Maximum intervals between services, including Early and Late Services (minutes)	Maximum Journey Time of all services (minutes)	Number of trains per hour arriving at from London Marylebone between 0700-2100
A	B	C	D	G	I
Bicester North	0815	2220	60	N/A	3(a)
Haddenham & Thame Parkway	0815	2230	60	N/A	2(b)
Princes Risborough	0815	2240	60	N/A	2(c)

Table 4: Saturday services from London Marylebone to stations specified in Column A

Station of Arrival /Core Calling Pattern	Early Service from London Marylebone to station in column A, shall arrive no later than	Late Service from London Marylebone to station in column A, shall depart no earlier than	Maximum intervals between services, including Early and Late Services (minutes)	Maximum Journey Time of all services (minutes)	Number of trains per hour departing from London Marylebone between 0700- 2100
A	B	C	D	G	I
Princes Risborough	0830	2230	60	N/A	2(d)
Haddenham & Thame Parkway	0840	2230	60	N/A	2(e)
Bicester North	0850	2230	60	N/A	3(f)

Footnotes to Column I in Tables 3 and 4:

- (a) The number of services required to arrive at London Marylebone from Bicester North is one per hour between 0700-0900, two per hour between 0900-1100, and one per hour between 2000-2100.
- (b) The number of services required to arrive at London Marylebone from Haddenham & Thame Parkway is one per hour between 0700-0900 and 2000-2100.
- (c) The number of services required to arrive at London Marylebone from Princes Risborough is three per hour between 0900-1100 and one per hour between 2000-2100.
- (d) The number of services required to depart London Marylebone for Princes Risborough is one per hour between 0700-0800.
- (e) The number of services required to depart London Marylebone for Haddenham & Thame Parkway is one per hour between 0700-0800 and 2000-2100.
- (f) The number of services required to depart London Marylebone for Bicester North is one per hour between 0700-0800, two per hour between 0800-1000 and 1900-2000, and one per hour between 2000-2100.

4.6.1 Kings Sutton (Flow B, Table 3 and Table 4) shall be served by:

- (a) Nine services in each direction shall call at regular intervals.
- (b) A service from Kings Sutton shall be provided that arrives at London Marylebone no later than 0900.
- (c) A service from Kings Sutton shall be provided that arrives at Banbury no later than 0830.
- (d) A service from London Marylebone shall depart London Marylebone no earlier than 2230.
- (e) A service from Banbury shall depart no earlier than 2100 (unless this service is provided by another TOC).

4.6.2 Little Kimble (Flow B, Table 3 and Table 4) shall be served by:

- (a) 10 services in each direction shall call at this station.
- (b) In all cases, services need not be through services, but may be provided by means of a connection at Princes Risborough, so long as the connection does not exceed 10 minutes.

4.6.3 Monks Risborough (Flow B, Table 3 and Table 4) shall be served by:

- (a) An Early Service from Aylesbury to London Marylebone arriving at London Marylebone no later than 0730 and a Late Service departing Aylesbury no earlier than 1900, shall call at this station.
- (b) Between the Early and Late Services from Aylesbury to London Marylebone, an hourly service shall be provided.
- (c) An Early Service from London Marylebone to Aylesbury arriving Aylesbury no later than 0945 and a Late Service departing London Marylebone no earlier than 2300, shall call at this station.
- (d) Between the Early and Late Services from Marylebone to Aylesbury, an hourly service shall be provided. One interval of up to 120 minutes is permitted after 1900.
- (e) In all cases, services need not be through services, but may be provided by means of a connection at Princes Risborough, so long as the connection does not exceed 10 minutes.

4.6.4 Saunderton (Flow B, Table 3 and Table 4) shall be served by:

- (a) Hourly departures to London Marylebone between 0615 and 1930.
- (b) Hourly departures from London Marylebone between 0700 and 2230.

4.6.5 Maximum Journey Time for Services between London Marylebone and Aylesbury (via Princes Risborough)

- (a) The Maximum Journey Time for services from London Marylebone to Aylesbury via Princes Risborough shall not exceed 81 minutes.
- (b) The Maximum Journey Time for services from Aylesbury to London Marylebone via Princes Risborough shall not exceed 83 minutes.

4.6.6 Oxford - Bicester Town –Saturdays

- (a) The following number of services between Bicester Town and Oxford shall be provided at the following stations:

Station	Number of services from Oxford to Bicester Town	Number of services from Bicester Town to Oxford
BicesterTown	13	13
Islip	13	13
Oxford	13	13

- (b) Service Requirement from Oxford to Bicester Town

- (i) An Early Service shall arrive at Bicester Town from Oxford no later than 0730
 - (ii) One service shall depart from Oxford to Bicester Town between 1645-1800.
 - (iii) A Late Service shall depart from Oxford to Bicester Town no earlier than 2200.

- (c) Service Requirement from Bicester Town to Oxford

- (i) An Early Service shall arrive at Oxford from Bicester Town no later than 0815
 - (ii) One service from Bicester Town shall arrive at Oxford before 0930.
 - (iii) A Late Service shall depart from Bicester Town to Oxford no earlier than 2245.

- (d) Maximum Journey Time

The Maximum Journey Time between Oxford and Bicester Town in either direction shall not exceed 26 minutes.

4.7 Flow B: London Marylebone to Bicester – SundaysTable 5: Sunday services to London Marylebone from stations specified in Column A

Station of Departure /Core Calling Pattern	Early Service to London Marylebone from station in column A, shall arrive at London Marylebone no later than	Late Service to London Marylebone from station in column A, shall depart no earlier than	Maximum intervals between services, including Early and Late Services (minutes)	Maximum Journey Time of all services (minutes)	Number of trains per hour arriving at London Marylebone between 1200 and 2100
A	B	C	D	G	I
Bicester North	1045	2220	60	N/A	3
Haddenham & Thame Parkway	1045	2230	60	N/A	2
Princes Risborough	1045	2240	60	N/A	3

Table 6: Sunday services from London Marylebone to stations specified in Column A

Station of Arrival /Core Calling Pattern	Early Service from London Marylebone to station in column A, shall arrive no later than	Late Service from London Marylebone to station in column A, shall depart no earlier than	Maximum intervals between Early and Late Services (minutes)	Maximum Journey Time of all services (minutes)	Number of trains per hour departing from London Marylebone between 1200 and 2100
A	B	C	D	G	I
Princes Risborough	0840	2330	60(a)	N/A	3
Haddenham & Thame Parkway	0850	2330	60(a)	N/A	2
Bicester North	0900	2330	60(a)	N/A	3(b)

Footnotes to Columns D and I in Tables 5 and 6

(a) An interval of 80 minutes is permitted before 0900.

(b) In one of the specified hours there may be two trains departing London Marylebone.

4.7.1 Kings Sutton (Flow B, Table 5 and Table 6) shall be served by:

- (a) Seven services in each direction shall call at regular intervals.

4.7.2 Little Kimble / Monks Risborough (Flow B, Table 5 and Table 6) shall be served by:

- (a) An Early Service from Aylesbury to London Marylebone departing Aylesbury no later than 0730 and a Late Service departing Aylesbury no earlier than 2215 shall call at these two stations.
- (b) Between the Early Service and 1900, an hourly service shall be provided from Aylesbury to London Marylebone. One further service shall be provided from Aylesbury to London Marylebone between 1900 and the Late Service specified in Paragraph 4.7.2(a).
- (c) An Early Service from London Marylebone to Aylesbury departing London Marylebone no later than 0830 and a Late Service departing London Marylebone no earlier than 2300 are to call at these two stations.
- (d) Between the Early and Late Services, an hourly service shall be provided from London Marylebone to Aylesbury.
- (e) In all cases services need not be through services, but may be provided by means of a connection at Princes Risborough, so long as the connection does not exceed 10 minutes.

4.7.3 Saunderton (Flow B, Table 5 and Table 6) shall be served by:

- (a) Hourly departures to London Marylebone between 0730 and 2300, with one interval of 90 minutes permitted after 1900.
- (b) Hourly departures from London Marylebone between 0815 and 2315.

4.7.4 Oxford - Bicester Town – Sundays

No services are required on Sundays.

4.8 Flow C: London Marylebone to High Wycombe – Monday to Fridays

Table 1: Monday to Friday services to London Marylebone from stations specified in Column A

Station of Departure /Core Calling Pattern	Early Service to London Marylebone from station in column A, shall arrive at London Marylebone no later than	Late Service to London Marylebone from station in column A, shall depart no earlier than	Maximum intervals between services, including Early and Late Services (minutes)	Maximum Journey Time of all services (minutes)	Morning Peak number of services arriving London Marylebone 0700-0959	Number of trains per hour arriving at London Marylebone between 0700-2100(excluding peak hours)
A	B	C	D	G	H	I
High Wycombe	0645	2230	60	56	18	5(c)
Beaconsfield	0645	N/A	60	N/A	12	3(c)
Gerrards Cross	0645	N/A	60	N/A	15	4(c)
Denham	0645	N/A	60	N/A	6	1(a)
South or West Ruislip	0645	N/A	60	N/A	6(d)	1(a)
Wembley Stadium	0645	N/A	60	N/A	6	2(b)

Table 2: Monday to Friday services from London Marylebone to stations specified in Column A

Station of Departure /Core Calling Pattern	Early Service from London Marylebone to station in column A, shall arrive no later than	Late Service from London Marylebone to station in column A, shall depart no earlier than	Maximum intervals between Early and Late services, (minutes)	Maximum Journey Time of all services (minutes)	Evening Peak number of services departing London Marylebone 1600-1859	Trains per hour departing from London Marylebone between 0700 -2100 (excluding peak hours)
A	B	C	D	G	H	I
Wembley Stadium	N/A	2330	60	N/A	6	2(b)
South or West Ruislip	N/A	2330	60	N/A	6(d)	1(a)
Denham	N/A	2330	60	N/A	6	1(a)
Gerrards Cross	N/A	2330	60	N/A	15	4(c)
Beaconsfield	N/A	2330	60	N/A	12	3(c)
High Wycombe	0715	2330	60	49	18	5(c)

Footnotes to Columns H and I in Tables 1 and 2

- (a) An hourly service is to be provided between the early service and 2230, except that one interval of up to 120 minutes is permitted.
- (b) One service may be provided after 1900.
- (c) Two services per hour shall be provided between 2000 up to and including the Late Service.
- (d) see Paragraph 4.8.5 requirements.

4.8.1 Additional Late Evening Service (Flow C, Table 1 and Table 2)

A service from High Wycombe to London Marylebone shall depart High Wycombe no earlier than 2300 and call at all stations to London Marylebone, except Sudbury Hill and Sudbury & Harrow Road.

4.8.2 Sudbury & Harrow Road Flow C, Table 1 and Table 2) shall be served by:

- (a) **Three** services to London Marylebone shall call at this station during the Morning Peak.
- (b) Three services from London Marylebone shall call at this station during the Evening Peak, provided that the interval between departures at London Marylebone does not exceed 80 minutes.

4.8.3 Sudbury Hill Harrow (Flow C, Table 1 and Table 2) shall be served by:

- (a) Fifteen services in total shall call at this station between 0615 and 1915.
- (b) **Three** services to London Marylebone shall call at this station during the Morning Peak.
- (c) Three services from London Marylebone shall call at this station during the Evening Peak, provided that the interval between departures from London Marylebone does not exceed 80 minutes.

4.8.4 Northolt Park (Flow C, Table 1 and Table 2) shall be served by:

- (a) Hourly between the Early Service specified and 2230, except that one interval of up to 120 minutes is permitted.
- (b) **Six** services shall call at this station during each of the Morning and Evening Peaks.

4.8.5 South Ruislip and West Ruislip (Flow C, Table 1 and Table 2) shall be served by:

- (a) Hourly between the Early Service specified and 2230, except that one interval of up to 120 minutes is permitted.
- (b) **Six** services shall call at West Ruislip during each of the Morning and Evening Peaks.
- (c) The Evening Peak may be extended to include departures up to 1915 for calls at West Ruislip from London Marylebone.
- (d) Six services shall call at South Ruislip during each of the Morning and Evening Peaks.

4.8.6 Denham Golf Club (Flow C, Table 1 and Table 2) shall be served by:

- (a) Hourly between the Early Service specified and 2230, except that one interval of up to 120 minutes is permitted.
- (b) **Three** services shall call at this station during each of the Morning and Evening Peaks. The Evening Peak may be extended to include departures up to 1915 for calls at this station from London Marylebone.

4.8.7 Seer Green and Jordans (Flow C, Table 1 and Table 2) shall be served by:

- (a) Hourly between the early service specified and 2230, except that one interval of up to 120 minutes is permitted.
- (b) Six services shall call at this station during each of the Morning and Evening Peaks.

4.8.8 Connectional Policy & Journey Opportunities

- (a) Reasonable endeavours shall be made to provide reasonable connections from stations within this flow with services operated to and from Aylesbury (Flow B), Banbury (Flow A) and Birmingham (Flow A).
- (b) Journey Opportunities requiring not more than one connection shall be made

available between any two of the stations specified in this flow C, except that connections between the following stations shall not apply:

- (i) Sudbury & Harrow Road and Sudbury Hill
 - (ii) South Ruislip and West Ruislip
 - (iii) Denham and Denham Golf Club
- (c) The Maximum Journey Time for any such journey between stations in this Flow shall not exceed 60 minutes, except where defined in paragraph 4.8.8 (b).

4.9 Flow C: London Marylebone to High Wycombe – Saturdays

Table 3: Saturday services to London Marylebone from stations specified in Column A

Station of Departure /Core Calling Pattern	Early Service to London Marylebone from station in column A, shall arrive at London Marylebone no later than	Late Service to London Marylebone from station in column A, shall depart no earlier than	Maximum intervals between services, including Early and Late Services (minutes)	Maximum Journey Time of all services (minutes)	Number of trains per hour arriving at London Marylebone between 0700 - 2100
A	B	C	D	G	I
High Wycombe	0745	2230	60(a)	54	3(e)
Beaconsfield	0745	N/A	60(a)	N/A	2
Gerrards Cross	0745	N/A	60(a)	N/A	2
Denham	0745	N/A	60(b)	N/A	N/A
South or West Ruislip	0745	N/A	60	N/A	N/A
Wembley Stadium	0745	N/A	60	N/A	N/A

Table 4: Saturday services from London Marylebone to stations specified in Column A

Station of Arrival /Core Calling Pattern	Early Service from London Marylebone to station in column A, shall arrive no later than	Late Service from London Marylebone to station in column A, shall depart no earlier than	Maximum intervals between Early and Late services, (minutes)	Maximum Journey Time of all services (minutes)	Trains per hour departing from London Marylebone between 0700 -2100
A	B	C	D	G	I
Wembley Stadium	N/A	2330	60	N/A	N/A
South or West Ruislip	N/A	2330	60	N/A	N/A
Denham	N/A	2330	60(c)	N/A	N/A
Gerrards Cross	N/A	2330	60(d)	N/A	2(f)
Beaconsfield	N/A	2330	60(d)	N/A	2(f)
High Wycombe	0715	2330	60(d)	48	3(f)

Footnotes to Column D and I in Tables 3 and 4:

- (a) A minimum of two trains an hour shall depart for London Marylebone from these stations between the Early and Late Service.
- (b) A minimum of two trains an hour shall depart for London Marylebone from this station between 0830-1230 and 1530-1930.
- (c) A minimum of two trains an hour shall depart London Marylebone for this station between 0915-1115 and 1415-2015.
- (d) A minimum of two trains an hour shall depart London Marylebone for these stations between 2100 and the Late Service.
- (e) The number of trains required to arrive at London Marylebone from High Wycombe is two per hour between 0700-0900.
- (f) The number of trains required to depart London Marylebone for these stations is one per hour between 0700-0800.

4.9.1 Northolt Park, Denham Golf Club, Seer Green and Jordans (Flow C, Table 3 and Table 4) shall be served by:

(a) Hourly between the first and last train specified in each direction.

4.9.2 Connectional Policy

Reasonable endeavours shall be made to provide reasonable connections from stations within this flow with services operated to and from Aylesbury (Flow B), Banbury (Flow A) and Birmingham (Flow A).

4.10 Flow C: London Marylebone to High Wycombe - SundaysTable 5: Sunday services to London Marylebone from stations specified in Column A

Station of Departure /Core Calling Pattern	Early Service to London Marylebone from station in column A, shall arrive at London Marylebone no later than	Late Service to London Marylebone from station in column A, shall depart no earlier than	Maximum intervals between services, including Early and Late Services (minutes)	Maximum Journey Time of all services (minutes)	Number of trains per hour arriving at London Marylebone between 1200 and 2100
A	B	C	D	G	I
High Wycombe	0945	2300	60	54	3(b)
Beaconsfield	0945	N/A	60	N/A	3(b)
Gerrards Cross	0945	N/A	60	N/A	3(b)
Denham	0945	N/A	60(a)	N/A	N/A
South Ruislip	0945	N/A	60	N/A	N/A
Wembley Stadium	0945	N/A	60	N/A	N/A

Table 6: Sunday services from London Marylebone to stations specified in Column A

Station of Arrival /Core Calling Pattern	Early Service from London Marylebone to station in column A, shall arrive no later than	Late Service from London Marylebone to station in column A, shall depart no earlier than	Maximum intervals between Early and Late services, (minutes)	Maximum Journey Time of all services (minutes)	Number of trains per hour departing from London Marylebone between 1200 and 2100-
A	B	C	D	G	I
Wembley Stadium	N/A	2315	60	N/A	N/A
South Ruislip	N/A	2315	60	N/A	N/A
Denham	N/A	2315	60(a)	N/A	N/A
Gerrards Cross	N/A	2315	60	N/A	3(c)
Beaconsfield	N/A	2315	60	N/A	3(c)
High Wycombe	0830	2315	60	48	3(c)

Footnotes to Columns D and I in Tables 5 and 6:

- (a) One interval of up to 90 minutes is permitted at Denham
- (b) A minimum of two trains an hour shall depart for London Marylebone from these stations between the additional early service specified in Paragraph 4.10.1 and 2200.
- (c) A minimum of two trains an hour shall depart London Marylebone for these stations between the Early Service and 2230.

4.10.1 Additional Early Service (Flow C, Table 5 and Table 6):

A service from High Wycombe to London Marylebone shall depart High Wycombe no later than 0800 and call at all stations to London Marylebone, except Sudbury Hill Harrow and Sudbury & Harrow Road.

4.10.2 West Ruislip, Denham Golf Club, Seer Green and Jordans (Flow C, Table 5 and Table 6) shall be served by:

Services shall call at these stations such that the interval between services does not exceed 120 minutes, except that after 1500 one interval of up to 160 minutes shall be permitted between northbound services at Denham Golf Club and Seer Green & Jordans.

4.10.3 Connectional Policy

Reasonable endeavours shall be made to provide reasonable connections from stations within this Flow with services operated to and from Banbury (Flow A) and Birmingham (Flow A).

4.11 Flow D: London Marylebone to Aylesbury via Amersham-Mondays to Fridays

Table 1: Monday to Friday services to London Marylebone from stations specified in Column A

Station of Departure /Core Calling Pattern	Early Service to London Marylebone from station in column A, shall arrive at London Marylebone no later than	Late Service to London Marylebone from station in column A, shall depart no earlier than	Maximum intervals between services, including Early and Late Services (minutes)	Maximum Journey Time of all services (minutes)	Morning Peak number of services arriving London Marylebone between 0700-0959	Number of trains per hour arriving at London Marylebone between 0700-2100 (excluding peak hours)
A	B	C	D	G ^o	H	I
Aylesbury	0730	2230	30(a)	60	10	2
Stoke Mandeville	0730	N/A	30(a)	N/A	10	2
Wendover	0730	N/A	30(a)	N/A	10	2
Great Missenden	0730	N/A	30(a)	N/A	10	2
Amersham	0730	N/A	30(a)	N/A	8	2
Chalfont & Latimer	0730	N/A	30(a)	N/A	6	2
Chorleywood	0730	N/A	30(a)	N/A	6	2
Rickmansworth	0730	N/A	30(a,b)	N/A	0(b)	2
Harrow-on-the-Hill	0730	N/A	30(a)	N/A	6	2

Table 2: Monday to Friday services from London Marylebone to stations specified in Column A

Station of Arrival /Core Calling Pattern	Early Service from London Marylebone shall arrive at station in Column A, no later than	Late Service from London Marylebone to station in column A, shall depart no earlier than	Maximum intervals between Early and Late services, (minutes)	Maximum Journey Time of all services (minutes)	Evening Peak number of services departing London Marylebone 1600-1859	Trains per hour departing from London Marylebone between 0700 -2100 (excluding peak hours)
A	B	C	D	G ^p	H	I
Harrow-on-the Hill	N/A	2345	30(a)	N/A	6	2
Rickmansworth	N/A	2345	30(a,b)	N/A	0(b)	2
Chorleywood	N/A	2345	30(a)	N/A	6	2
Chalfont & Latimer	N/A	2345	30(a)	N/A	6	2
Amersham	N/A	2345	30(a)	N/A	8	2
Great Missenden	N/A	2345	30(a)	N/A	10	2
Wendover	N/A	2345	30(a)	N/A	10	2
Stoke Mandeville	N/A	2345	30(a)	N/A	10	2
Aylesbury	0845	2345	30(a)	59	10	2

Footnotes to Columns D and H in Tables 1 and 2

- (a) One interval of 40 minutes is permitted between 1900-2000 and after 2200 may increase to 60 minutes.
(b) Peak services may omit to call at Rickmansworth.

4.11.1 Additional Early Services (Flow D, Table 1 and Table 2):

- (a) A service from Aylesbury shall arrive at Amersham no later than 0630.
- (b) A service from Aylesbury shall arrive at London Marylebone no later than 0700.
- (c) Two early services from Amersham shall arrive at Aylesbury no later than 0815, with a minimum interval between departures from Amersham of 25 minutes.

4.11.2 Services from Aylesbury Vale Parkway to London Marylebone (Flow D)

Mondays-Fridays (Table 1)

- (a) One service per hour shall be provided from Aylesbury Vale Parkway to London Marylebone in each direction between 05:00 and 22:00.
- (b)^g An additional service per hour shall be provided from Aylesbury Vale Parkway to London Marylebone on Weekdays during the Morning Peak

Services to Aylesbury Vale Parkway from London Marylebone (Flow D):

Mondays-Fridays (Table 2)

- (c) One service per hour shall be provided from London Marylebone to Aylesbury Vale Parkway between 06.00 and 22.00
- (d)^f An additional service per hour shall be provided from London Marylebone to Aylesbury Vale Parkway on Weekdays during the Evening Peak

4.12 Flow D: London Marylebone to Aylesbury via Amersham - SaturdaysTable 3: Saturday services to London Marylebone from stations specified in Column A

Station of Departure /Core Calling Pattern	Early Service to London Marylebone from station in column A, shall arrive at London Marylebone no later than	Late Service to London Marylebone from station in column A, shall depart no earlier than	Maximum intervals between services, including Early and Late Services (minutes)	Maximum Journey Time of all services (minutes)	Number of trains per hour arriving at London Marylebone between 0700-2100
A	B	C	D	G	I
Aylesbury	0815	2200	30(a)	60	2(c)
Stoke Mandeville	0815	N/A	30(a)	N/A	2(c)
Wendover	0815	N/A	30(a)	N/A	2(c)
Great Missenden	0815	N/A	30(a)	N/A	2(c)
Amersham	0815	N/A	30(a)	N/A	2(c)
Chalfont & Latimer	0815	N/A	30(a)	N/A	2(c)
Chorleywood	0815	N/A	30(a)	N/A	2(c)
Rickmansworth	0815	N/A	30(a)	N/A	2(c)
Harrow-on-the-Hill	0815	N/A	30(a)	N/A	2(c)

Table 4: Saturday services from London Marylebone to stations specified in Column A

Station of Arrival /Core Calling Pattern	Early Service from London Marylebone to station in Column A, shall arrive no later than	Late Service from London Marylebone to station in column A, shall depart no earlier than	Maximum intervals between Early and Late services, (minutes)	Maximum Journey Time of all services (minutes)	Trains per hour departing from London Marylebone between 0700 - 2100
A	B	C	D	G	I
Harrow-On-the-Hill	N/A	2345	30(b)	N/A	2(c)
Rickmansworth	N/A	2345	30(b)	N/A	2(c)
Chorleywood	N/A	2345	30(b)	N/A	2(c)
Chalfont & Latimer	N/A	2345	30(b)	N/A	2(c)
Amersham	N/A	2345	30(b)	N/A	2(c)
Great Missenden	N/A	2345	30(b)	N/A	2(c)
Wendover	N/A	2345	30(b)	N/A	2(c)
Stoke Mandeville	N/A	2345	30(b)	N/A	2(c)
Aylesbury	0845	2345	30(b)	59	2(c)

Footnotes to Column I in Tables 3 and 4:

- (a) The interval between services after 1900 may increase to 60 minutes.
 (b) The interval between services after 2000 may increase to 60 minutes.
 (c) Only one service per hour is required between 0700-0900 and 2000-2100.

4.12.1 Additional Early Services (Flow D, Table 3 and Table 4):

- (a) A service from Aylesbury shall arrive at Amersham no later than 0715.
 (b) A service from Aylesbury shall arrive at London Marylebone no later than 0730
 (c) An early service from Amersham shall arrive at Aylesbury no later than 0745.

4.12.2 Additional Late Evening Service (Flow D, Table 3 and Table 4):

A service from Aylesbury shall depart no earlier than 2315.

4.12.3⁵⁹ Services from Aylesbury Vale Parkway to London Marylebone (Flow D)**Saturdays (Table 3):**

One service per hour shall be provided from Aylesbury Vale Parkway and London

⁵⁹ Date of change 26/08/2010

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Marylebone between 07:00 and 22:00.

Services to Aylesbury Vale Parkway from London Marylebone (Flow D)

Saturdays (Table 4):

One service per hour shall be provided to Aylesbury Vale Parkway from London Marylebone between 07:00 and 22:00.

4.13 Flow D: Amersham to Aylesbury – Sundays

Table 5: Sunday services to Amersham from stations specified in Column A

Station of Departure/Core Calling Pattern	Early Service to Amersham from station in Column A, shall arrive at Amersham no later than	Late Service to Amersham from station in Column A, shall depart no earlier than	Maximum intervals between services, including Early and Late Services (minutes)	Maximum Journey Time of all services (minutes)	Number of trains per hour arriving at London Marylebone between 1200 and 2100
A	B	C	D	G	I
Aylesbury	0815	2230	60(a)	23	1
Stoke Mandeville	0815	N/A	60(a)	N/A	1
Wendover	0815	N/A	60(a)	N/A	1
Great Missenden	0815	N/A	60(a)	N/A	1

Table 6: Sunday services from Amersham to stations specified in Column A

Station of Arrival/Core Calling Pattern	Early Service from Amersham to station in Column A, shall arrive no later than	Late Service from Amersham to station in Column A, shall depart no earlier than	Maximum intervals between Early and Late Services (minutes)	Maximum Journey Time of all services (minutes)	Number of trains per hour departing from London Marylebone between 1200 and 2100
A	B	C	D	G	I
Great Missenden	N/A	2330	60(a)	N/A	1
Wendover	N/A	2330	60(a)	N/A	1
Stoke Mandeville	N/A	2330	60(a)	N/A	1
Aylesbury	0900	2330	60(a)	24	1

Footnote to Column D in Tables 5 and 6:

(a) Between 1530 and 2230 the interval between services shall be 30 minutes.

- 4.13.1 In all cases reasonable endeavours should be made to ensure that services connect at Amersham with services operated by the LUL between Amersham and London Baker Street, with a maximum connection of 10 minutes between trains. However, in the event of running a through service to/from London Marylebone, a connection need not be provided, so long as the service calls at Chalfont, Chorleywood, Rickmansworth & Harrow-on-the Hill.

4.13.2 Services to Aylesbury Vale Parkway from London Marylebone (Flow D)

Sundays (Tables 5 and Table 6):

(a) One service per hour shall be provided from London Marylebone to Aylesbury Vale Parkway between 08:00 and 21:00

Services from Aylesbury Vale Parkway to London Marylebone (Flow D)

Sundays (Tables 5 and Table 6):

(b) One service per hour shall be provided from Aylesbury Vale Parkway to London Marylebone between 07.00 and 21.00

Part 2A —

Cancellations, Capacity and PPM Thresholds - across all Passenger Services (Clauses 5.3 and 21.7)

- (a)
 - (i) The Call-in Threshold percentage of Cancellations shall be 1.7 per cent.
 - (ii) The Breach Threshold percentage of Cancellations shall be 2.5 per cent.
 - (iii) The Default Threshold percentage of Cancellations shall be 10 per cent.
- (b)
 - (i) The Call-in Threshold percentage of Total Cancellations shall be 1 per cent.
 - (ii) The Breach Threshold percentage of Total Cancellations shall be 2.25 per cent.
 - (iii) The Default Threshold percentage of Total Cancellations shall be 10 per cent.
- (c)
 - (i) The Call-in Threshold percentage of Planned Capacity shall be 97.8 per cent.
 - (ii) The Breach Threshold percentage of Planned Capacity shall be 97 per cent.
 - (iii) The Default Threshold percentage of Planned Capacity shall be 88 per cent.
- (d) The initial Capacity Monitoring Points shall be London Marylebone.

**Part 3 – Load Factor Specifications
(Clause 6)**

- (c) The Load Factor Specifications are as follows:

In respect of all Morning Peak services or Evening Peak services operated by the Franchise Operator, (i) the PIXC in the Morning Peak shall not exceed 3.5 per cent., (ii) the PIXC in the Evening Peak shall not exceed 3.5 per cent., (iii) the PIXC in the Morning Peak and the Evening Peak shall not exceed 2.4 per cent. and (iv) the PIXC shall not be unduly concentrated on any particular route or service.

- (d) For the purposes of this Part 3 of Schedule 3:

“PIXC” shall mean

$$\frac{\Sigma(P-C)}{\Sigma(P)} \times 100 \text{ per cent.}$$

$$\Sigma(P)$$

where:

$\Sigma(P-C)$ is the aggregate of (P-C) determined for all relevant trains operated by the Franchise Operator during the relevant period;

(P-C) is for each train the greater of:

- (ii) the greatest number of passengers at any point during the journey of such train who have been travelling in Standard Class Accommodation for a period of more than 20 minutes, less the number of seats in Standard Class Accommodation on such train; and
- (iii) the greatest number of passengers travelling in Standard Class Accommodation on such train, at any point during the journey of such train, less the capacity of such accommodation based on the Rolling Stock Capacities

provided that for any train (P-C) shall not be less than zero;

$\Sigma(P)$ is the aggregate of P determined for all relevant trains operated by the Franchise Operator during the relevant period; and

P is, for each train, the greatest number of passengers travelling in Standard Class Accommodation at any time on such train.

Part 4 — Capacity Limits (Clause 6)

- (a) The Passenger Demand Limit at the Franchise Commencement Date is 13,000 passengers in Standard Class Accommodation on trains comprised in the Passenger Services arriving at London Marylebone Station in the Morning Peak.
- (b) 80 per cent.
- (c) The Maximum Capacity Limit at the Franchise Commencement Date is 20,073 passengers in Standard Class Accommodation on trains comprised in the Passenger Services arriving at London Marylebone Station in the Morning Peak.

Part 5 — Initial Number of Vehicles (Clause 6)

The Initial Number of Vehicles is 118 Vehicles.

Part 6 – Additional Service Commitment

The ASC are as set out below:

1. The total Train Mileage (for this purpose meaning the train mileage scheduled to be covered) in any pair of consecutive Summer and Winter Timetables shall not be less than the aggregate train mileage which was scheduled to be covered under the Summer 2000 Timetable and the Winter 2000/2001 Timetables, by each train used in the provision of those railway passenger services which are to be comprised in the Passenger Services.
2. For each consecutive 12 month period following the introduction of the Project Evergreen Timetable Outputs (as such term is defined in the First Output Plan referred to in Schedule 14) the Train Mileage shall be not less than 5.2 million.
3. The journey times required in the Passenger Service Requirement for each relevant flow by direction and day of week also apply to all the services specified in this ASC. Except where otherwise stated, services specified in this ASC may be met by services required by the Passenger Service Requirement and/or the Franchise Plan and/or the Output Commitments (as defined in Schedule 14).

Except where otherwise stated, services specified in this ASC are not required to stop at intermediate stations or to meet the stopping pattern of similar services specified within the Passenger Service Requirement and/or the Franchise Plan.

Schedule 4 —

Station Standards (Clause 10.3)

1 Communication and Information Systems

Each Station shall have a public address and/or a public information display and/or a freephone link/help point communications system for use in an emergency and so that passengers may obtain information about train delays and cancellations. Such communication links shall be maintained in working order and shall be used effectively by the Franchise Operator's staff to provide, in the event of a delay or cancellation, details of the delay or cancellation and any alternative journey arrangements (and any other relevant information).

⁶⁰If public telephones are provided within the station lease area the Franchise Operator shall be required to seek the prior written approval of the Authority if it intends to allow the removal of all of the public telephones from within that station^s

2 Waiting Accommodation

2.1 Each Station shall have weather proof covered waiting accommodation or other adequate shelter which offers reasonable protection from the weather. Adequate alternative shelter shall be available when such waiting accommodation is temporarily out of use. Seating shall also be provided, where reasonably practicable, in such waiting accommodation and shelter and on station platforms.

2.2 Within 18 months from the Franchise Commencement Date, each platform in normal use at a Station shall have waiting accommodation and seating which complies with the requirements of paragraph 2.1. For the purpose of this paragraph, "normal use" means that the platform is scheduled for use or is reasonably likely to be used by passenger rail services (excluding Charter Services) which call at the Station.

3 Display of Information and Signing

3.1 Each Station shall have information displays and/or signing which provide the following information:

- (a)** The name, address and telephone number of the customer services manager (or his equivalent) under whose control the Station rests.
- (b)** The location of the nearest public telephone or "freephone" if provided (unless such telephone or "freephone" is located within the Station and is adequately signed).
- (c)** The telephone number of the National Rail Enquiry Service (or successor facility).
- (d)** The telephone number of an alternative location from which current train running information can be obtained if a public address or "freephone" facility is not provided at the Station.
- (e)** Wherever appropriate, the location and telephone number of the nearest taxi rank or operator, other public transport services, and, for Stations which are not staffed at all times of the day at which passenger trains are scheduled to call, the nearest person authorised to sell tickets for use on the Passenger Services.
- (f)** A list of tickets which may be purchased on trains calling at that Station at times at which such Station is not staffed (if at all).

⁶⁰ Replacement of text WEF 18 January 2005

- (g) Arrangements for the issue of season tickets, railcards and other facilities relating to trains calling at such Station and which cannot be purchased at the Station.
- (h) For Stations which have two or more platforms, customer information displays or directional signs indicating the destinations served by trains calling at each platform.
- (i) The nearest station with access for mobility-impaired customers if no such access is provided at the Station.
- (j) The location of bicycle storage facilities at the Station.

3.2 Within 9 months from the Franchise Commencement Date, each Station shall have information and/or signing which provide the following additional items of information:

- (i) the telephone number and textphone number of National Rail Enquiries (or successor facility), or such other appropriate number as may be approved by the Authority for this purpose, which provides information on rail services for passengers with special needs;
- (ii) the telephone number and textphone number of the Public Transport Information enquiry line (however it may be known) or such other enquiry line as the Authority may approve for this purpose, to facilitate the ability of passengers to transfer easily to other modes of transport;
- (iii) arrangements for the purchase of any tickets when they are not available for purchase from the Station. This shall include arrangements for the issue of season tickets, railcards and other facilities relating to trains calling at such Station which are not normally available for purchase at that station;
- (iv) if no access for mobility impaired customers is provided at the Station, a telephone hotline number for such passengers and/or information as to the nearest station with such access;
- (v) a map of the locality served by that Station.

4 Regular Cleaning and Maintenance

All Stations shall be kept reasonably clean. Poster displays and other items of an informational nature shall be regularly monitored and shall be replaced promptly in the event of changes to the information shown or on it becoming defaced or maliciously removed.

5 Lighting

Each Station shall have adequate lighting which shall be switched on throughout the hours of darkness during which trains are scheduled to call at the relevant Station (including for a reasonable period of time before and after the first and last scheduled train in order to allow passengers to await the first scheduled train at the Station or depart from the Station following the departure of the last scheduled train).

6 Bicycles

There shall be adequate and reasonably secure bicycle storage facilities at each Station which shall be maintained to a reasonable standard. For these purposes, facilities shall be deemed reasonably secure if they are under the supervision of staff when the Station is manned or monitored by closed-circuit television cameras (where fitted). So far as practicable at Stations where passengers make Connections, passengers with bicycles shall be able to transport their bicycles reasonably easily between relevant platforms.

Schedule 5 — Fares (Clause 9.1)

Part 1 — Definitions and Construction

1 Definitions

The following definitions shall apply in this Schedule 5 and the Fare Document except to the extent the context otherwise requires:

“Adult Weighting”⁶¹	<i>means, in respect of any Fare, the Gross Revenue in respect of the sales of such Fare to individuals of the age of sixteen or over for the Financial Year ended 31 March 2003 divided by the Initial Adult Price of such Fare, except for Fares Documents created in the Fare Years 2010 to 2012 and to the extent that such Fare is a PAYG Peak Fare or a PAYG Off-Peak Fare in which case the weighting is calculated as per paragraph 2 (f) below, which weighting is, in respect of any Fare which is included in a Fare Basket, set out in the relevant Fare Document.</i>
“Annual Season Ticket”	<i>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 twelve months after such day.</i>
“Cash Commuter Fare”⁶²	<i>means, on and from 2nd January 2010 any unrestricted Single Fare and unrestricted Return Fare between each London Station and each other London station; and</i>
“Child Weighting”⁶³	<i>means, in respect of any Fare, the Gross Revenue in respect of the sales of such Fare to individuals under the age of sixteen for the Financial Year ended 31 March 2003 divided by the Initial Child Price of such Fare, except for Fares Documents created in the Fare Years 2010 to the end of Fare Year 2012 and to the extent that such Fare is a PAYG Peak Fare or a PAYG Off-Peak Fare in which case the weighting is calculated as per paragraph 2 (f) below, which weighting is, in respect of any Fare which is included in a Fare Basket, set out in the relevant Fare Document.</i>
“Commuter Fare”⁶⁴	<i>has the meaning specified in paragraph 1 of Part 3 of this Schedule 5.</i>
“Commuter Fare Basket”⁶⁵	<i>means the group of Commuter Fares determined in accordance with paragraph 2 of Part 3 of this Schedule 5, which Fares are listed in the Commuter Fare Document.</i>

⁶¹ Date of Change 16/10/2009

⁶² Date of Change 16/10/2009

⁶³ Date of Change 16/10/2009

⁶⁴ Date of Change 24/12/2003

⁶⁵ Date of Change 24/12/2003

“Commuter Fare Document”⁶⁶	<i>means the document in the agreed terms marked “Commuter Fare Document” as the same may be amended from time to time in accordance with Part 3 of this Schedule 5.</i>
“Compulsory Inter-available Flow”	has the meaning ascribed to that term in the Ticketing and Settlement Agreement.
“Deed of Amendment”	means the deed entered into between the Franchisee, the Franchise Operator and the Authority dated 30th March 2001.
“Fare”⁶⁷	<i>means, for the purposes of this Schedule 5 only, a Fare (as defined in Clause 1.1 of this Franchise Agreement) which is:</i> <i>(a) valid for a journey or journeys on railway passenger services which are provided on that part of the network either on which railway passenger services are provided which are required to be included in the Timetable pursuant to Clause 5.1 of this Franchise Agreement or are required to be included in another relevant Train Operator’s passenger timetable under a passenger service requirement imposed on them by the Authority;</i> <i>(b) sold under the Travelcard Agreement referred to in Part 3(a)(iv) of Schedule 1 of this Franchise Agreement; or</i> <i>(c) a Cross-London Ticket (as defined in the Through Ticketing (Non-Travelcard) Agreement referred to in Part 3(a)(v) of such Schedule 1).</i> <i>or⁶⁸</i> <i>(d) sold under the Pay as You Go Agreement using TTL Smartmedia as defined in that agreement.”</i> <i>“Zone” shall be added “or as amended by agreement with the Secretary of State</i>
“Fare Basket”⁶⁹	<i>means any of the Commuter Fare Basket or the Protected Fare Basket..</i>
“Fare Document”⁷⁰	<i>means any of the “Commuter Fare Document” or the “Protected Fare Document”.</i>
“Fares Setting Round”	has the meaning ascribed to that term in the Ticketing and Settlement Agreement.
“Flow”	has the meaning ascribed to that term in the Ticketing and Settlement Agreement.

⁶⁶ Date of Change 24/12/2003

⁶⁷ Date of Change 24/12/2003

⁶⁸ Date of Change 16/10/2009

⁶⁹ Date of Change 24/12/2003

⁷⁰ Date of Change 24/12/2003

“Gross Revenue”	means, in relation to any period and any Fare, the gross revenue (excluding any applicable Value Added Tax) to the Franchise Operator attributable to such Fare over the relevant period, excluding any costs, commissions or other expenses which may be paid or incurred in connection with such Fare.
“Initial Adult Price”⁷¹	<i>means, in respect of any Fare, the Price of such Fare as shown in the fares manuals and systems of the RSP in February 2003, which Price is, in respect of any Fare which is included in a Fare Basket, set out in the relevant Fare Document.</i>
“Initial Child Price”	means, in respect of any Fare, the Child Price attributable to such Fare in accordance with Part 3 of this Schedule, which Child Price is set out in the Fare Document.
“Initial Permanent Fare”	has the meaning ascribed to that term in the Ticketing and Settlement Agreement.
“Initial Price”	means an Initial Adult Price or an Initial Child Price, as the case may be.
“Inter-available Fare”	has the meaning ascribed to that term in the Ticketing and Settlement Agreement.
“ITSO”⁷²	<i>means the Integrated Transport Smartcard Organisation</i>
“ITSO-certified”⁷³	<i>means for the purposes of paragraph 33 of Part 2 to this Schedule 5 that ITSO has tested the device in accordance with the testing requirements applicable to the device category and had awarded the device full certification to the standard of ITSO specification as required by the IOP Agreement (such agreement as defined in paragraph 33 of Part 2 to this Schedule 5) (or such subsequent ITSO specification as the Franchise Operator and Secretary of State may agree).</i>
“Lead Operator”⁷⁴	<i>has the meaning ascribed to that term in the Ticketing and Settlement Agreement.</i>
“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.
“Major Flow Operator”⁷⁵	<i>has the meaning ascribed to that term in the Ticketing and Settlement Agreement.</i>
“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.

⁷¹ Date of Change 24/12/2003

⁷² Date of Change 16/10/2009

⁷³ Date of Change 16/10/2009

⁷⁴ Date of Change 24/12/2003

⁷⁵ Date of Change 24/12/2003

"New Station"

means a station not served by railway passenger services as at June 2010⁷⁶, but which has since that time been, or is subsequently, served by railway passenger service which have been, or are subsequently to be, included in the Timetable or in another relevant Train Operator's timetable. "New Station" may, if the Authority requires, also include any station other than those set out in Part 1 of Schedule 2 of which, with the consent of the Authority, (whether by amendment to this Franchise Agreement or otherwise), railway passenger services operated by the Franchise Operator call.

"Off-peak Return Fare"⁷⁷

Means a Fare which is a Permanent Fare and which entitles the purchaser to make a journey in each direction in Standard Class Accommodation between the stations and/or the zones for which the fare is valid, at any time on Saturdays & Sundays and at such times as the Franchise Operator may designate on Mondays to Fridays, and which expires no earlier than 02:00 on the day after the day of the outward journey, or if later, the time the relevant journey may be completed if commenced before 02:00.

"Pay As You Go Agreement"⁷⁸

means an agreement between Transport Trading Limited ("TTL") and the participants in the PAYG Scheme providing for the acceptance by those participants of Pay As You Go (utilising TTL smartmedia) as a payment medium for journeys on the participant's services

"PAYG Launch Date"⁷⁹

means the Franchise Operator's Operator Launch Date (as the same is defined in its PAYG Agreement

"PAYG Peak Fare"⁸⁰

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

"PAYG Off-Peak Fare"⁸¹

means a Fare which is a Permanent Fare and which entitles the purchaser to make a single journey under the Pay As You Go 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 Franchise Operator may designate on Mondays to Fridays (where such Fare need not be valid between 6.30am 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

⁷⁶ Date of Change 11/11/2010

⁷⁷ Date of change 26.7.2006

⁷⁸ Date of Change 16/10/2009

⁷⁹ Date of Change 16/10/2009

⁸⁰ Date of Change 16/10/2009

⁸¹ Date of Change 16/10/2009

“PAYG Zone”⁸²

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

“Permanent Fare”⁸³

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

“Permitted Aggregate Increase”

has the meaning ascribed to that term in paragraph 4 of Part 2 of this Schedule.

“Permitted Individual Increase”

has the meaning ascribed to that term in paragraph 8 of Part 2 of this Schedule.

“Protected Fare”

means a Protected Return Fare or a Protected Weekly Season Ticket.

“Protected Fare Basket”⁸⁴

means the group of Protected Fares determined in accordance with paragraph 3 of Part 3 of this Schedule 5, which Fares are listed in the Protected Fare Document.

“Protected Fare Document”⁸⁵

means the document in the agreed terms marked “Protected Fare Document” as the same may be amended from time to time in accordance with Part 3 of this Schedule 5.

“Protected Fare Increase”

has the meaning ascribed to that term in paragraph 11 of Part 2 of this Schedule.

“Protected Return Fare”⁸⁶

means:

(a) in respect of a Fare for a Flow for which there was a Saver Return Fare in February 2003, a Return Fare for each such Flow in respect of which the Franchise Operator is entitled 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;

⁸² Date of Change 16/10/2009

⁸³ Date of Change 16/10/2009

⁸⁴ Date of Change 24/12/2003

⁸⁵ Date of Change 24/12/2003

⁸⁶ Date of Change 24/12/2003

(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 beginning between 1500 and 1900 on any day other than a Saturday or Sunday where the journey begins from a London Station or any station between London and Reading station, Watford station, Luton station or Stevenage station (inclusively) which in each case is in a direction away from London; or*

(b) *in respect of a Fare for a Flow for which there was no Saver Return Fare in February 2003, a Return Fare for each such Flow in respect of which the Franchise Operator is entitled 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”⁸⁷

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 for which the Franchise Operator is entitled 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..

“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.

“Railway Passenger Services”

means 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 Franchise Operator and any other Train Operator from time to time.

“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.

⁸⁷ Date of Change 24/12/2003

“Saver Return Fare”	means a return fare which is shown as a saver fare in the fares manuals and systems of the British Railways Board at the relevant time.
“Season Ticket Fare”	means, for the purposes of this Schedule 5 only, 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.
“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 Class Accommodation between the stations and/or the zones for which the Fare is valid.
“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 origin 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>
“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.
“Weighted Adult Price”	means, in respect of any Fare, the Price of such Fare at the relevant time multiplied by the Adult Weighting attributable to such Fare.
“Weighted Child Price”	means, in respect of any Fare, the Child Price of such Fare at the relevant time multiplied by the Child Weighting attributable to such Fare.
“Weighted Initial Adult Price”	means, in respect of any Fare, the Initial Adult Price of such Fare multiplied by the Adult Weighting attributable to such Fare.
“Weighted Initial Child Price”	means, in respect of any Fare, the Initial Child Price of such Fare multiplied by the Child Weighting attributable to such Fare.

“Weighted Initial Price”⁸⁸

means a weighted Adult Price or a Weighted Child except where the relevant fare is a PAYG Peak Fare or a PAYG Off Peak fare where the PAYG Fares shall be deemed to be replaced by the Commuter Fares which applied before January 2010.

“Weighted Price”

means a Weighted Adult Price or a Weighted Child Price.

“Weighting”

means an Adult Weighting or a Child Weighting, as the case may be.

“Zone”

means a zone set out in the map in Schedule 2 of the Travelcard Agreement referred to in Part 3(a)(iv) of Schedule 1 on the date such Agreement came into effect.

2 Construction⁸⁹

- (a)** *In the event of an immaterial inconsistency between the Fares, Weightings or Initial Prices described in or determined in accordance with this Schedule 5 and the Fares, Weightings or Initial Prices described in the relevant Fare Document the relevant Fare Document shall prevail except to the extent that the inconsistency is material in which case this Schedule 5 shall prevail.*
- (b)** *References in this Schedule 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 shall not be a Compulsory Inter-available Flow, any Fare which the Franchise Operator has Created or can Create in respect of that Flow as the Authority may specify.*
- (c)** *Any requirement under this Schedule to set a Child Price in respect of a Fare may be satisfied by the Creation of a Fare which is only valid for use by persons under the age of sixteen and the setting of a Price for that new Fare at a level which, if set as a Child Price for the original Fare, would comply with the restrictions on such Child Price under this Schedule.*
- (d)** *Subject to paragraph (b) above, the Authority shall be entitled to include within the definitions of Fare Baskets, Commuter Fares or Protected Fares, Fares to or from any New Station on such basis as it may, after consultation with the Franchise Operator, reasonably determine and references in this Schedule 5 to Fares, Fare Baskets, Commuter Fares and Protected Fares and other relevant definitions shall be construed accordingly*
- (f)⁹⁰** *The Adult Weighting for a PAYG Peak Fare will each be calculated as the sum of:*

 - (i)** *1.6 times the sum of the Adult Weightings of all the Return Fares in the Commuter Fares Basket on 31st December 2009 in both directions between the stations in the origin Zone and the stations in the destination Zone between which the PAYG Peak Fare is valid; and*

⁸⁸ Date of Change 16/10/2009

⁸⁹ Date of Change 24/12/2003

⁹⁰ Date of Change 16/10/2009

- (ii) *0.6 times of the sum of the Adult Weightings of all the Single Fares in the Commuter Fares Basket on 31st December 2009 in both directions between the stations in the origin Zone and the stations in the destination Zone between which the PAYG Peak Fare is valid*

The Adult Weighting for a PAYG Off-Peak Fare will each be calculated as the 0.4 times of the sum of the Adult Weightings of all the Return Fares and the Single Fares in the Commuter Fares Basket on 31st December 2009 in both directions between the stations in the origin Zone and the stations in the destination Zone between which the PAYG Peak Fare is valid.

The Child Weighting for a PAYG Peak Fare will each be calculated as the sum of:

- (i) *1.6 times the sum of the Child Weightings of all the Return Fares in the Commuter Fares Basket on 31st December 2009 in both directions between the stations in the origin Zone and the stations in the destination Zone between which the PAYG Peak Fare is valid; and*
- (ii) *0.6 times the sum of the Child Weightings of all the Single Fares in the Commuter Fares Basket on 31st December 2009 between the stations in the origin Zone and the stations in the destination Zone between which the PAYG Peak Fare is valid.*

The Child Weighting for a PAYG Off-Peak Fare will each be calculated as the 0.4 times the sum of the Child Weightings of all the Return Fares and the Single Fares in the Commuter Fares Basket on 31st December 2009 between the stations in the origin Zone and the stations in the destination Zone between which the PAYG Peak Fare is valid .

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Part 2 — Fare Regulation⁹¹

1. *^tThe Franchise Operator shall comply with its obligations under this Schedule 5, when Creating or setting the Price or Child Price for any relevant Fare or otherwise. By no later than week 17 of each Fares Setting Round the Franchise Operator will provide the Authority with written confirmation from a statutory director of the Franchise Operator of whether the Franchise Operator complied with its obligations under this Schedule 5 during such Fares Setting Round.*

Creation of Fares

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

Restrictions on Fare Baskets

3. *The Franchise Operator shall procure that, for each Fare Basket and for each Fare Year during the Franchise Term, the aggregate of all the Weighted Prices of all the Fares in each such Fare Basket shall not exceed an amount equal to (WIP x PPAI x V) where:*

“WIP” is the aggregate of all the Weighted Initial Prices of all the Fares in that Fare Basket;

“PPAI” is:

- (i) *in respect of the Fare Year commencing 1 January 2004, the Permitted Aggregate Increase for that Fare Year; and*
- (ii) *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); and*

“V” equals the rate of Value Added Tax on the provision of Passenger Services at the relevant time, expressed as the quotient of the price of a Fare (inclusive of Value Added Tax) divided by the price of a Fare (exclusive of Value Added Tax).

4. ^{92 93}*The Permitted Aggregate Increase in any Fare Year shall be determined in accordance with the following formula:*

$$\text{PAI} = \frac{(100 \times \text{RPI}) + k}{100}$$

where:

- PAI** is the Permitted Aggregate Increase in that Fare Year;
- RPI** is the quotient of the Retail Prices Index for the July of the calendar year preceding that Fare Year divided by the Retail Prices Index for the July of the calendar year preceding that calendar year;

⁹¹ Date of Change 24/12/2003

⁹² Deleted – the position has been reversed by the agreement to a Deed of Amendment dated 30/10/2012, whereby the value of ‘K’ was confirmed to be equal to ‘+1’.

⁹³ As a result of the agreed Deed of Amendment dated 30/10/2012, the value of ‘K’ is equal to ‘+1’ and the original wording confirmed and restated.

k equals, subject to paragraph 25, +1.

5. *The Franchise Operator shall be deemed not to be in breach of paragraph 3 if and to the extent that such breach results from the Price or Child Price for any relevant Commuter Fare being set by another person (not being an Affiliate of the Franchise Operator) pursuant to the terms of the Ticketing and Settlement Agreement in circumstances where the Franchise Operator does not have a reasonable opportunity, under any procedure for consulting or notifying operators of alterations to the Prices or Child Prices of Fares under the Ticketing and Settlement Agreement or otherwise, to alter some or all of the other Commuter Fares in the relevant Commuter Fare Basket in order to avoid being so in breach. If and to the extent that the Franchise Operator is so in breach, it shall not subsequently increase the Prices or Child Prices of any Commuter Fares in the Commuter Fare Basket which are not set by another such person pursuant to the terms of the Ticketing and Settlement Agreement unless, following such increase, it would, otherwise than under this paragraph 5, comply with the provisions of paragraph 3 in relation to the Commuter Fare Basket.*
6. *Nothing in paragraph 5 shall require the Franchise Operator to reduce the Price or Child Price of any Commuter Fare at any time where such Price or Child Price has previously been set in a Fares Setting Round.*

Restriction on individual Fares in Fare Baskets

7. *“The Franchise Operator shall for any Fare Year commencing on or after 1 January 2004 during the Franchise Period, set the Price and Child Price of each Fare in a Fare Basket ⁹⁴ and for any Fare Year Commencing on or after 1 January 2011 set the Price and Child Price of each Cash Commuter Fare provided that, for the Fare Year 2010, the Price or 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 31.2 of Part 2 of Schedule 5 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*
- (i) *P + £0.10p; and*
- (ii) *(P x PII x V) where:*
- “P” is the maximum Price or Child Price, as the case may be, for the relevant Fare during the immediately preceding Fare Year as shown in the fares manuals and systems of the RSP;*
- “PII” is the Permitted Individual Increase in any Fare Year as determined in accordance with paragraph 8 of this Part 2; and*
- “V” has the value attributed to it in paragraph 3 of this Part 2 of Schedule 5.*

The Authority may disregard for the purpose of the definition of “P” in paragraph 7(ii) any Price or Child Price of any Fare which the Authority, acting reasonably, considers was set by the Franchise Operator in order to allow the Franchise Operator to increase the Price or Child Price of such Fare in any

⁹⁴ Date of Change 16/10/2009

subsequent Fare Year by a greater amount than it would otherwise have been entitled to.

8. ^{95 96} *The Permitted Individual Increase in any Fare Year commencing on or after 1 January 2004 shall be determined in accordance with the following formula:*

$$\text{PII} = \frac{(100 \times \text{RPI}) + k + 5}{100}$$

where:

- PII** is the Permitted Individual Increase in such Fare Year; and
RPI is the quotient of the Retail Prices Index for the July of the calendar year preceding that Fare Year divided by the Retail Prices Index for the July of the calendar year preceding that calendar year.
k has the value attributed to it in paragraph 4 of this Part 2 of Schedule 5.

9. **[NOT USED]**

Change of Lead Operator / Major Flow Operator

10. *The Franchise Operator shall not in respect of any Flow in respect of which it is the Lead Operator, agree to any request under the Ticketing and Settlement Agreement that the identity of the Lead Operator for such Flow be changed without the Authority's prior approval.*
11. *The Franchise Operator shall inform the Authority if it ceases to be a Major Flow Operator in respect of any Flow.*
12. *The Franchise Operator shall inform the Authority if it becomes the Lead Operator in respect of any Flow. Upon the Franchise Operator becoming the Lead Operator in respect of any Flow the Authority may exercise its rights under paragraph 5 of Part 3 to require the Fares included in any Fare Basket to be revised by reapplying the rules set out in Part 3 of this Schedule 5.*

Fares Setting Rounds

13. *If the Franchise Operator is in breach of paragraph 3 or 7 (and to the extent not excused under paragraph 5), it shall reduce the Price or Child Price of any relevant Fare at the next Fares Setting Round or, if earlier, at the next available opportunity so as to comply with the requirements of paragraph 3 or 7 (as appropriate) from such date.*
14. *Where the Franchise Operator is a Lead Operator in respect of a Compulsory Inter-available Flow and a Fare for such Flow is a Commuter Fare, it shall not increase the Price or Child Price of the relevant Fare in a Fares Setting Round after it has initially notified RSP of such Price or Child Price in such Fares Setting Round without the consent of either the Authority or each other Train Operator which provides railway passenger services for such Flow.*

⁹⁵ Deleted – the position has been reversed by the agreement to a Deed of Amendment dated 30/10/2012, whereby the value of 'K' was confirmed to be equal to '+1'.

⁹⁶ As a result of the agreed Deed of Amendment dated 30/10/2012, the value of 'K' is equal to '+1' and the original wording confirmed and restated.

Sale of Fares

15. ***The Franchise Operator shall ensure that the purchaser of any Commuter Fare or any Protected Fare 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. Such obligation shall not preclude the Franchise Operator from charging any purchaser for such additional services as may not be so necessary but which any such purchaser may choose to use (including any car parking, catering or other similar ancillary services).***
16. ***The Franchise Operator shall ensure that no purchaser of any Commuter Fare or any Protected Fare shall be required to incur any cost or take any action beyond the payment of an amount not exceeding the Price or Child Price of such 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 Franchise Operator may reasonably require.***
17. ***The Franchise Operator shall not require any purchaser of any Commuter Fare or any Protected Fare to pay any 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 Fare on a Passenger Service provided by the Franchise Operator. Where the Franchise Operator sets a limit on the number of Protected Fares or Commuter Fares that may be used on any particular train, such limit shall be not less than the number of seats in Standard Class Accommodation on such train or, if greater, the deemed capacity of such train in Standard Class Accommodation according to the Rolling Stock Capacities.***
18. ***The Franchise Operator shall procure that, for any Protected Return Fare or for any Single Fare or Return Fare which is a Commuter Fare, 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 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).***
19. ***The Franchise Operator shall procure that, for any Season Ticket Fare which is a Commuter Fare or for any Protected Weekly Season Ticket, 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 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).***

Monitoring

20. ***The Franchise Operator shall notify, or procure the notification to, the Authority of any proposed increase to the Price and Child Price of any Commuter Fare or 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 Authority may reasonably request from time to time. In particular, the Franchise Operator shall make available, or procure that RSP makes available, to the Authority, for any Fare Setting Round falling during the Franchise Term, such details (including the proposed Prices and Child Prices) of the Initial Permanent Fares for such Fares Setting Round of such Commuter Fares or Protected Fares as the Authority may notify the Franchise Operator. The Franchise Operator shall take such action as the Authority may require***

following receipt of such details in order to ensure that it will comply with the provisions of this Schedule 5.

21. *The Franchise Operator shall provide the Authority with such access as it may require to the Prices and Child Prices of Commuter Fares and Protected Fares from time to time.*
22. *The Franchise Operator shall provide such information as the Authority may require for the purpose of determining the Gross Revenue of the Franchise Operator in relation to any particular Fare or Fares or in any particular period.*

Changes in restrictions and weightings

23. *The Franchise Operator may request permission from the Authority from time to time to increase any Prices or Child Prices beyond the levels permitted under this Schedule in connection with any proposed or actual improvement in any aspect of the Passenger Services relating to such Fares. The Authority 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.*
24. *The Franchise Operator may, in the event of significant changes to the pattern of travel on the Passenger Services during the Franchise Period, apply to the Authority for the Weightings attributable to the Fares in any Fare Basket to be altered (by such Weightings being re-calculated using the Gross Revenue in respect of the sales of the relevant Fares for the most recent Financial Year to have ended) to take account of such changes. The Authority shall act reasonably in relation to any such application but shall not under any circumstances be obliged to accept such application in whole or in part.*
25. *The Authority shall have the power at any time and on more than one occasion to alter the obligations of, and restrictions on, the Franchise Operator under this Schedule 5 for any Fare Year (or any part thereof) (whether by alteration of the value of “k” under paragraph 4 or otherwise) and the Franchise Operator shall accept any such alteration. In the event of such power being exercised the No Net Loss No Net Gain Regime will apply.*
26. ***Where:***

- (a) *pursuant to Clause 4-7 of the Ticketing and Settlement Agreement the consent of the Authority is requested for the abolition of a Compulsory Inter-available Flow in respect of which any Fares Created would be Protected Fares or included in a Fare Basket (the “Reference Fares”); and*
- (b) *a Flow exists which, in the Authority’s opinion, is substantially similar to the Flow to which the request relates (the “Equivalent Flow”),*

then the Authority may, as a condition of granting this consent to the abolition of such Flow, by written notice to the Train Operators, deem any Fares Created in respect of the Equivalent Flow which have substantially the same characteristics as the Reference Fares to be to be included in a Fare Basket. The Initial Price of any such Fare shall be the Initial Price of the equivalent Reference Fare (and, for the purpose of paragraph 7 of this Part 2, “P” construed accordingly). However, the Authority shall not issue such a notice unless its provisions have first been approved by the Ticketing and Settlement Scheme Council (as defined in the Ticketing and Settlement Agreement) or a delegate of it.

Financial consequences of breach

27. ***The Franchisee and Franchise Operator each hereby acknowledges that:***

- (a) *in the event that Fares are sold for amounts in excess of the Prices or Child Prices which should be set for such Fares in accordance with this Schedule 5, no loss may be suffered by the Authority as a result thereof;*
 - (b) *the Authority has a duty under section 28 of the Act in certain circumstances to include provision in the Franchise Agreement to secure that the amounts to be charged for certain Fares are reasonable in all the circumstances of the case;*
 - (c) *such a duty arises where the Authority considers that the interests of persons who use, or who are likely to use, the Passenger Services so require;*
 - (d) *such persons would be directly affected by the sale of Fares other than in accordance with this Schedule 5; and*
 - (e) *the Authority has agreed to enter into this Franchise Agreement in reliance on the Franchise Operator's acknowledgement and agreement that the Authority shall be entitled to adjust Franchise Payments as provided in paragraph 28 even though it may suffer no loss as a result of any non-compliance with the provisions of this Schedule 5.*
28. *The parties accordingly agree that the Authority shall be entitled to adjust the Franchise Payments payable under Clause 16 and Schedule 6 by an amount equivalent in its opinion to the sum of:*
- (i) *any additional gross revenue accruing to it or any person selling Fares on its behalf as a result of the sale of Fares in excess of the Prices or Child Prices set (or which should have been) for such Fares in accordance with Schedule 5; and*
 - (ii) *any costs incurred by the Authority in determining the amount of such additional revenue.*

Such adjustment shall be made without prejudice to any other rights or remedies of the Authority under the Act or this Franchise Agreement in respect of such non-compliance.

29. *Fares between London Stations*^{97v98}

29.1 *The Franchise Operator shall negotiate during each Fares Setting Round with Transport Trading Limited 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 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.*

29.2 *With effect from 1 January 2007, 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 Franchise Operator shall:*

⁹⁷ date of change 26.7.2006

⁹⁸ Date of Change 16/10/2009

(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, conditions and 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.

29.3 The Single Fares and Return Fares set in line with paragraphs 29.1 and 29.2 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 Franchise Operator to comply with its obligations under this paragraph 29, 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 Season Ticket Fares are first set on a zonal basis in order to comply with the provisions of paragraph 29.2

30.^{99 100} Nothing in this Schedule 5 shall restrict the Franchise Operator's discretion and ability to set and increase from time to time any Fare for any journey which has Aylesbury Vale Parkway or Water Eaton Parkway as its starting or destination station.

31¹⁰¹ Fares in PAYG Zones

31.1 The Franchise Operator shall negotiate during each Fares Setting Round with Transport Trading Limited 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.

31.2 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 Franchise Operator shall:

(a) use all reasonable endeavours to agree with Transport Trading Limited 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 PAYG Zones and that for the Fare Year commencing 1st January 2010 the prices of these fares are as set out in the Annex to this paragraph 31; and

⁹⁹ date of DOA Nov 2007

¹⁰⁰ Date of Change 06/01/2010

¹⁰¹ Date of Change 16/10/2009

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

31.3 *The PAYG Peak Fares and PAYG Off-Peak Fares and ancillary charges set in line with paragraphs 31.1 and 31.2 shall be subject to the Fares regulation set out in this Schedule 5 (Fares) but in relation only to rail journeys (being 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 paragraphs 15 and 16 of Part 2 of Schedule 5 to the extent anticipated under the PAYG Agreement.*

32.¹⁰² *The Secretary of State shall, where reasonably necessary to enable the Franchise Operator to comply with its obligations under this Schedule 5, grant such waivers of the terms of Schedule 5 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*

33. A. PAYG Ancillary Agreement¹⁰³

The Secretary of State shall comply with his obligations under Clause 3 of an agreement dated [16th October 2009] between the Secretary of State and Transport Trading Limited (the PAYG Ancillary Agreement”) and acknowledges that the Franchise Operator 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 Franchise Operator 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 Franchise Operator.

B. Set Up Cost

Only in circumstances where the PAYG Agreement terminates either in its entirety or in relation to the Franchise Operator otherwise than on the expiry or early termination of the Franchise Agreement and in either case such termination is as required by the Secretary of State, the Secretary of State will reimburse to the Franchise Operator within 60 days the amount of the “Set Up Cost” unamortised as at the date of termination on the basis that the total amount Set Up Cost is equal to £¹⁰⁴ and is deemed to be amortised on a straight line basis over a period commencing on the Franchise Operator’s Operator Launch Date (as the same is defined in the PAYG Agreement) and ending on 31st December 2015 or the Expiry Date whichever is the earlier.

¹⁰² Date of Change 16/10/2009

¹⁰³ Date of Change 16/10/2009

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

C. Introduction of Tickets on IOP

C.1. The Franchise Operator will co-operate with all other Train Operators and TfL to facilitate the use of ITSO-certified smartmedia within the Zones of 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 an agreement between the Secretary of State and Transport for London ("TfL") for the acceptance of ITSO ("IOP Agreement").

C.2 The Franchise Operator will co-operate with all other Train Operators and TfL and with the Secretary of State in agreeing its reasonable costs associated with the acceptance on ITSO of the tickets in paragraph C.1 above, including but not limited to all activities defined in this paragraph and any ongoing operating costs.

C.3 Provided that the costs referred to in paragraph C2 above are agreed to be met (by any person or persons) then the Franchise Operator shall use all reasonable endeavours to take all agreed actions (including but not limited to implementation works, negotiation of any consequential derogations to its ITSO licence, any necessary testing and operational readiness activities) for the acceptance on ITSO of the products defined in paragraph C1 above by the date that IOP is accepted under the IOP Agreement (currently expected to be 31st August 2011) or as soon as reasonably practicable thereafter.

C.4 The Franchise Operator 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 Franchise Operator associated with the operation of IOP in accordance with the provisions of paragraph C.1

C.5 The Franchise Operator is not obliged to accept on ITSO the tickets in accordance with paragraph C.1 above until the requirements of paragraphs C.3 and C.4 above have been completed and are in place and the IOP scope as defined in the IOP Agreement has been implemented in full. For the avoidance of doubt the IOP scope shall include but not be limited to all the stations listed in Annex 1 of the IOP agreement as of 28 May 2009.

C.6 These clauses C.1 to C.5 are without prejudice to any other agreement with the Franchise Operator relating to the implementation of ITSO smart card ticketing which latter shall prevail in the case of any inconsistency.

D. TfL's costs for operation of IOP

The Franchise Operator 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 Franchise Operator'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;***
- (ii) any necessary changes to, or derogations from, fares regulation being granted by the Secretary of State; and.***

- (iii) *The Franchise Operator 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 Franchise Operator has agreed to pay for all or part of TfL's operating and maintenance costs associated with that change.*

E. PAYG Funding

E.1 *Provided that from 2nd January 2010 or the PAYG Launch Date if later for the remainder of the Fare Year in respect of 2010*

(i) The prices of PAYG Peak Fares and PAYG Off-Peak Fares are set at the price in the Annex to this Appendix 1 ("the Annex") or where such fares are valid on Inter-Available Routes as defined under the Through Ticketing (Non-Travelcard) Agreement and are set in accordance with the terms of that agreement; and

(i) The Prices for Fares valid for travel solely within the Zones (including but not limited to Cash Commuter Fares and Season Ticket Fares) are set at the same price as for the Fares Year 2009 (where the prices of the Cash Commuter Fares and the relevant Fares sold under the Travelcard Agreements are set out in the Annex)

then the Secretary of State shall pay to the Franchise Operator an amount equal to £¹⁰⁵ in each Reporting Period of the 2010 Fare Year after 2nd January (or PAYG Launch date whichever is the later) at the same time as the Franchise Payment due for that Reporting Period where RPD and FYD have the same meanings as given to them in paragraph 4 of Schedule 6 of the Franchise Agreement.

F. PAYG Scheme

There shall be added to the list of Inter-Operator Schemes set out in Part 3(a) of Schedule 1

"the PAYG Scheme dated [16th October 2009] between the participants listed therein.

¹⁰⁵ *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*

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ANNEX TO APPENDIX 1

'ODT' is the one day travelcard, 'ADT' is the All day Travelcard, 'SDS' is the Standard Day Single, 'SDR' is the Standard Day Return

PAYG		DAILY CAPS			PAYG RAIL ONLY Category 1 Fares		PAYG RAIL TUBE category 3 Fares	
	Number of Zones Validity		Peak	Off-Peak	PAYG Peak Fare	PAYG Off-Peak Fare	Peak	Off-Peak
Including Z1	1		£7.20	£5.60	£1.90	£1.50	£3.00	£2.60
	2		£7.20	£5.60	£2.10	£1.70	£3.20	£2.80
	3		£8.60	£6.30	£2.60	£2.00	£3.70	£3.10
	4		£10.00	£6.30	£3.10	£2.30	£4.20	£3.40
	5		£12.60	£7.50	£3.90	£2.60	£5.00	£3.70
	6		£14.80	£7.50	£4.90	£3.20	£6.00	£4.30
Excluding Zone 1	1		£9.00	£5.10	£1.40	£1.30	£1.40	£1.30
	2		£9.00	£5.10	£1.80	£1.50	£1.80	£1.50
	3		£9.00	£5.10	£2.20	£1.70	£2.20	£1.70
	4		£9.00	£5.10	£2.70	£2.00	£2.70	£2.00
	5		£9.00	£5.10	£3.20	£2.20	£3.20	£2.20
CASH		TRAVELCARD			Cash Commuter Fares		Traintube/Rail-Tube-Rail	
	Number of Zones Validity	Weekly Season Ticket	ADT	ODT	Single	Return	SDS	SDR
Including Zone1	1	-	-	-	£2.00	£3.90	£4.00	£7.20
	2	£25.80	£7.20	£5.60	£2.40	£4.30	£4.40	£7.20
	3	£30.20	£8.60	-	£3.10	£5.30	£5.10	£8.60
	4	£36.80	£10.00	£6.30	£3.70	£6.20	£5.60	£10.00
	5	£44.00	£12.60	£7.50	£4.40	£7.90	£6.30	£11.90
	6	£47.60	£14.80	£7.50	£5.00	£9.80	£7.00	£13.80
Excluding Zone 1	1	-	-	-	£1.70	£2.90	£3.20	£5.90
	2	£16.60	-	-	£2.10	£3.70	£3.60	£6.70
	3	£21.40	-	-	£2.60	£4.50	£4.10	£7.50
	4	£25.60	-	-	£3.00	£5.40	£4.50	£8.30

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	5	£32.40	£9.00	£5.10	£3.40	£6.40	£4.90	£9.00
Travelcard Railcard discounted (only Z1-6 ODT)				£5.00				

Annex to paragraph 31.2 of Part 2 of Schedule 5 of the Franchise Agreement

PAYG		DAILY CAPS			PAYG RAIL ONLY Category 1 Fares		PAYG RAIL TUBE category 3 Fares	
	Number of Zones Validity		Peak	Off-Peak	PAYG Peak Fare	PAYG Off-Peak Fare	Peak	Off-Peak
Including Z1	1		£7.20	£5.60	£1.90	£1.50	£3.00	£2.60
	2		£7.20	£5.60	£2.10	£1.70	£3.20	£2.80
	3		£8.60	£6.30	£2.60	£2.00	£3.70	£3.10
	4		£10.00	£6.30	£3.10	£2.30	£4.20	£3.40
	5		£12.60	£7.50	£3.90	£2.60	£5.00	£3.70
	6		£14.80	£7.50	£4.90	£3.20	£6.00	£4.30
Excluding Zone 1	1		£9.00	£5.10	£1.40	£1.30	£1.40	£1.30
	2		£9.00	£5.10	£1.80	£1.50	£1.80	£1.50
	3		£9.00	£5.10	£2.20	£1.70	£2.20	£1.70
	4		£9.00	£5.10	£2.70	£2.00	£2.70	£2.00
	5		£9.00	£5.10	£3.20	£2.20	£3.20	£2.20
CASH		TRAVELCARD			Cash Commuter Fares		Traintube/Rail-Tube-Rail	
	Number of Zones Validity	Weekly Season Ticket	ADT	ODT	Single	Return	SDS	SDR
Including Zone1	1	-	-	-	£2.00	£3.90	£4.00	£7.20
	2	£25.80	£7.20	£5.60	£2.40	£4.30	£4.40	£7.20
	3	£30.20	£8.60	-	£3.10	£5.30	£5.10	£8.60
	4	£36.80	£10.00	£6.30	£3.70	£6.20	£5.60	£10.00
	5	£44.00	£12.60	£7.50	£4.40	£7.90	£6.30	£11.90
	6	£47.60	£14.80	£7.50	£5.00	£9.80	£7.00	£13.80
Excluding Zone 1	1	-	-	-	£1.70	£2.90	£3.20	£5.90
	2	£16.60	-	-	£2.10	£3.70	£3.60	£6.70
	3	£21.40	-	-	£2.60	£4.50	£4.10	£7.50
	4	£25.60	-	-	£3.00	£5.40	£4.50	£8.30
	5	£32.40	£9.00	£5.10	£3.40	£6.40	£4.90	£9.00

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Travelcard Railcard discounted (only Z1-6 ODT)			£5.00				
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¹⁰⁶ **Part 3 — Fare Basket**

Commuter Fares

1. For the purpose of this Schedule 5 a “Commuter Fare” means:

- (a) any Weekly Season Ticket, Monthly Season Ticket, Quarterly Season Ticket and Annual Season Ticket between each London Station and any other station or London Station;**
- (b) any unrestricted Single Fare and unrestricted Return Fare between each London Station and each other London Station; and**
- (c) any unrestricted Single Fare and unrestricted Return Fare from each Suburban Station to each London Station (but not in the other direction),**

for which the Franchise Operator is entitled to be allocated all or part of the revenue therefrom pursuant to the Ticketing and Settlement Agreement.

Commuter Fare Basket

- 1 Subject to paragraphs 4 and 5 of this Part 3, the Commuter Fare Basket shall include all Commuter Fares excluding those Commuter Fares with the lowest Gross Revenue up to 5% of the total Gross Revenue generated by all Commuter Fares during the Financial Year ended 31 March 2003.**

Protected Fare Basket

- 2 Subject to paragraphs 4 and 5 of this Part 3, the Protected Fare Basket shall include all Protected Fares excluding those Protected Fares with the lowest Gross Revenue up to 5% of the total Gross Revenue generated by all Protected Fares during the Financial Year ended 31 March 2003.**

Adjustment of Fare Baskets

- 3 Following determination of each Fare Basket in accordance with paragraph 2 or 3 of this Part, the Authority may review the Fares included in each Fare Basket to ensure that:**

- 4.1 for each Flow in respect of which a Commuter Fare is included in the Commuter Fare Basket in accordance with paragraph 2, there is also included in the Commuter Fare Basket one of each of the other types of Commuter Fare which existed on that Flow in February 2003;**
- 4.2 for each Flow in respect of which a Protected Fare is included in the Protected Fare Basket in accordance with paragraph 3, there is also included in the Protected Fare Basket one of each of the other types of Protected Fare which existed on that Flow in February 2003; and**

the Franchise Operator's ability to increase the Price or Child Price of any Fare which is excluded from a Fare Basket pursuant to paragraph 2 or 3 of this Part, is effectively regulated by the geographic spread of the Fares

¹⁰⁶ Date of Change 24/12/03

which are included in the relevant Fare Basket.

If the Authority is not satisfied as to the matters referred to in paragraphs 4.1, 4.2 and 4.3 the Authority may include any Fare excluded from a Fare Basket by the operation of paragraph 2 or 3 in the relevant Fare Basket.

5. *The Authority may, by notice in writing served upon the Franchise Operator no later than the commencement of any Fares Setting Round, require the Fares included in any Fare Basket to be revised by reapplying the rules set out in paragraphs 2 or 3 of this Part by reference to the Gross Revenue generated during such revised period as the Authority may specify in such notice and/or by adjusting any Fare Basket in accordance with paragraph 4 of this Part. Any Fare Basket which is revised in accordance with this paragraph shall take effect upon commencement of the next Fare Year to commence after such Fares Setting Round.*

Fare Documents

6. *Following any determination of the Fares to be included in any Fare Basket pursuant to paragraphs 2 or 3 of this Part, or any subsequent adjustment thereof pursuant to paragraphs 4 or 5 of this Part, the Authority shall produce or revise (as appropriate) the relevant Fare Documents showing the Fares included in each Fare Basket.*

Schedule 6

— Franchise Payments

Part 1 — Definitions

The following definitions shall apply in this Schedule 6 except to the extent the context otherwise requires:

“Actual Modified EBDIT”	means the Modified EBDIT of the Franchise Operator for the relevant period as shown by the Actual Modified EBDIT Statement.
“Actual Modified EBDIT Statement”	means the statement provided by the Franchise Operator pursuant to paragraph 1.3(i) of Part 4 of this Schedule 6 showing the calculation of the Actual Modified EBDIT for the most recent Franchise Operator Year, being in such form as the Authority may require.
“Annual Benefit Share”	means, in relation to any Benefit Share Year, the amount determined in accordance with Part 4 of this Schedule for such Benefit Share Year.
“Annual Franchise Payment”	means an amount attributed to a Franchise Operator Year as set out in Part 3 of this Schedule (as amended from time to time in accordance with the other terms of this Franchise Agreement).
“Applicable Rolling Stock Payment”	means, in relation to any Reporting Period, the amount determined as such in accordance with paragraph 12 of Part 2 of this Schedule for such Reporting Period.
“Benefit Share Payment”	means, in relation to any Reporting Period, the amount determined as such in accordance with paragraph 10 of Part 2 of this Schedule for such Reporting Period.
“Benefit Share Year”	means, in relation to a Franchise Operator Year, each period of twelve months (which may fall wholly or partly outside the Franchise Period) beginning four calendar months after the end of such Franchise Operator Year.
“EBDIT”	has the meaning ascribed to such term in Schedule 14.
¹⁰⁷ “Evergreen Component”	<i>means in relation to any Reporting Period the amount determined in accordance with paragraph 14 of Part 2 of this Schedule for such Reporting Period.</i>
“Fares Review Adjustment Payment”¹⁰⁸	<i>means, in relation to any Reporting Period, the amount determined as such in accordance with paragraph [No.] of Part 2 of this Schedule for such Reporting Period.</i>
“Financial Statements”	mean the audited financial statements of the Franchise Operator for the relevant Franchise Operator Year as prepared

¹⁰⁷ Date of Change DOA 2004

¹⁰⁸ Date of Change 24/12/2003

in accordance with the Companies Act 1985 and GAAP.

“Fixed Franchise Payment”	means, in relation to any Reporting Period, the amount determined as such in accordance with paragraph 4 of Part 2 of this Schedule for such Reporting Period on the basis of the Annual Franchise Payments for any relevant Franchise Operator Year.
“Fixed Sum Payment” ¹⁰⁹	<i>means the amount payable by the Franchise Operator to the Authority as determined in accordance with paragraph 17 of part 2 of this Schedule 6;</i>
“Force Majeure Payment”	means an amount determined as such in accordance with paragraph 6 of Part 2 of this Schedule.
“Forecast Modified EBDIT”	means an amount determined as such in accordance with paragraph 5 of Part 4 of this Schedule.
“Modified EBDIT”	means EBDIT, but subject as provided in paragraphs 2.2 and 5 of Part 4 of this Schedule.
“NRR10/11” ¹¹⁰	<i>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.</i>
“Rolling Stock Mandatory Modification Payment”	means, in relation to any Reporting Period, the amount determined as such in accordance with paragraph 9 of Part 2 of this Schedule for the Reporting Period preceding such Reporting Period or, if such Reporting Period ends on the expiry of the Franchise Period, the amount determined for such Reporting Period and the Reporting Period preceding it.
“RTTIRPP Payment”	<i>means a sum not exceeding £2,013,000</i> ¹¹¹
“RTTI Offer Letter”	<i>means the letter from the Authority to the Franchising Operator dated 15th January 2003.</i> ¹¹²
“Station Charge Adjustment Payment”	means, in relation to any Reporting Period, the amount determined as such in accordance with paragraph 8 of Part 2 of this Schedule for such Reporting Period.
“Strategic Route Add On Payments” ¹¹³	<i>means the amounts payable by the Authority to the Franchise Operator as determined in accordance with paragraph 18 of part 2 of this Schedule 6; and</i>
“System”	<i>has the meaning given to it in Part 7 of the Schedule 13 to the Franchise Agreement.</i> ¹¹⁴

¹⁰⁹ Date of Change 06/01/2010

¹¹⁰ Insert new text wef 23/03/11

¹¹¹ New text inserted wef 18th June 2003

¹¹² New text inserted wef 18th June 2003

¹¹³ Date of Change 06/01/2010

¹¹⁴ New text inserted wef 18th June 2003

"Track Access Adjustment Payment"	means, in relation to any Reporting Period, the amount determined as such in accordance with paragraph 7 of Part 2 of this Schedule for such Reporting Period.
"VFM Transport and Works Order" ¹¹⁵	<i>has the meaning given to such term in paragraph 7.3(e) of Schedule 14."</i>
"11th September Adjustment Payment"	means, in relation to any Reporting Period, the amount determined as such in accordance with paragraph 11 of Part 2 of this Schedule for such Reporting Period.

Part 2 — Franchise Payments

1 **Principal Formula**¹¹⁶

For each Reporting Period during the Franchise Term, a Franchise Payment shall be made which shall be determined in accordance with the following formula:

$$FP = (FF - (FM + BS + 11thSA)) + TAA + SCA + RSMM + ARSP + EC + EIP + RTTIRPP^{15+} CR2008 + C^{117}$$

where:

ARSP ¹¹⁸

BS means the Benefit Share Payment (if any) for such Reporting Period (which may have a positive or negative value)

CR 2008¹¹⁹ means any adjustment for the Franchise Payments for such Reporting Period pursuant to clause 18.1 of the Franchise Agreement in respect of the 2008 Review calculated in accordance with Part 5 of this Schedule 6

EC means the Evergreen Component Payment (if any) for such Reporting Period (which may have a positive or a negative value)

EIP means the Evergreen Incentive Payment (if any) for such Reporting Period (which may have a positive value)

FP means the Franchise Payment payable in that Reporting Period (which may have a positive or negative value)

¹¹⁵ Date of Change 06/01/2010

¹¹⁶ Date of Change DOA 2004

¹¹⁷ Date of Change 24/05/2011

¹¹⁸ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹¹⁹ Date of change 24/05/2011

- FF** means the Fixed Franchise Payment for such Reporting Period (which may have a positive or negative value)
- FM** means the sum of any Force Majeure Payments payable in respect of any Force Majeure Event occurring during such Reporting Period (which may have only a positive value)
- FRA¹²⁰** means the Fares Review Adjustment Payment for such Reporting Period [(which may only have a positive value)]
- SCA** means the Station Charge Adjustment Payment (if any) for such Reporting Period (which may have a positive or negative value)
- RSMM** means the Rolling Stock Mandatory Modification Payment (if any) for such Reporting Period (which may have a positive or negative value)
- TAA** means the Track Access Adjustment Payment (if any) for such Reporting Period (which may have a positive or negative value)
- C** means such adjustment (if any) to the Franchise Payments for such Reporting Period as may be made in accordance with the other provisions of this Franchise Agreement except to the extent that any such adjustment has already been made to the Annual Franchise Payments (and which may have a positive or negative value)
- 11thSA** means the 11th September Adjustment Payment (if any) for such Reporting Period (which may have only a positive value)
- RTTIRPP** means the RTTIRPP Payment (if any) for the Reporting Period in which it falls due
- and each of FF, FM, BS, 11thSAS, SCA, RSMM, TAA, ARSP, EC, EIP, RTTIRPP, CR2008¹²¹ and C shall be deemed to be a “component” of a Franchise Payment for the purposes of paragraph 3.

Payment of Franchise Payments

- 2.1** The Authority shall notify the Franchise Operator, no less than 7 days prior to the end of each Reporting Period, of the Franchise Payment payable for such Reporting Period (to the extent that it can be reasonably determined at such time) and of any Adjustment Payment becoming payable for such Reporting Period. Each such notification shall set out in reasonable detail the basis of the determination of the Franchise Payment and any Adjustment Payment.
- 2.2** Any Franchise Payment or Adjustment Payment so notified shall be payable in the absence of manifest error agreed between the parties and shall be payable even if the Authority has made a mistake in calculating the relevant amounts.
- 2.3** The Authority shall pay to the Franchise Operator any Franchise Payment which has a positive value and the Franchise Operator shall pay to the Authority any Franchise Payment which has a negative value.

¹²⁰ Date of Change 24/12/2003

¹²¹ Date of change 24/05/2011

- 2.4** Each Franchise Payment shall be payable by the relevant person in the amount notified by the Authority under paragraph 2.1 on the last day of the Reporting Period to which the Franchise Payment relates.
- 2.5** Any payment of a Franchise Payment or Adjustment Payment shall be made 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 shall be made so that cleared funds are received in that account on or before the date such payment becomes payable under this Schedule 6.
- 2.6** In the event that there is a dispute as to the amount of a Franchise Payment or Adjustment Payment, such dispute shall be resolved in accordance with the Dispute Resolution Rules but shall not affect the obligation of any party to pay a Franchise Payment or Adjustment Payment notified under paragraph 2.2.
- 2.7** If following resolution of a dispute as to the amount of a Franchise Payment or an Adjustment Payment under the Dispute Resolution Rules, any amounts are required to be paid by any party, such amounts shall become payable on the next day a Franchise Payment becomes payable under this Schedule 6 which falls no less than 7 days after such resolution or, if there is no such day, 14 days after the date of such resolution.
- 2.8** Without prejudice to any payee's right to receive payment of a Franchise Payment or Adjustment Payment in accordance with this Schedule 6, interest shall accrue on any sum due and owing to the Authority at the Interest Rate calculated on a daily basis if and to the extent that payment is not received in accordance with this Schedule 6 from the Franchise Operator (except to the extent set off by the Authority under Clause 16.2). For the avoidance of doubt, no interest shall accrue on any part of a Franchise Payment which is not received in accordance with this paragraph 2, if and to the extent that it is subsequently payable as an Adjustment Payment under paragraph 3.

3 Adjustment Payments

- 3.1** If any component (or part of a component) of a Franchise Payment is not, or cannot reasonably be, determined more than 7 days before the end of the Reporting Period in which the Franchise Payment becomes payable, then no amount in respect of such component (or part of a component) will be included in the Franchise Payment for such Reporting Period. As soon as such component (or part of a component) has been determined in accordance with this Franchise Agreement, it shall become payable as an Adjustment Payment on the next day on which a Franchise Payment becomes payable under this Franchise Agreement which is no less than 7 days after the date of such determination.
- 3.2** If the Authority determines that there has been a mistake in the calculation or payment of a Franchise Payment or an Adjustment Payment, it shall notify the Franchise Operator of such mistake. The mistake shall be rectified by the payment of an Adjustment Payment of the relevant amount on the next day on which a Franchise Payment becomes payable under this Franchise Agreement which is no less than 7 days after the date of such notification.
- 3.3** If there is no such day on which a subsequent Franchise Payment is to become payable (including because this Franchise Agreement has terminated) the Adjustment Payment will become payable 14 days after the date of determination.

- 3.4** The Authority shall pay to the Franchise Operator any Adjustment Payment which would have increased the positive value or reduced the negative value of a Franchise Payment or an Adjustment Payment and the Franchise Operator shall pay to the Authority any Adjustment Payment which would have reduced the positive value or increased the negative value of a Franchise Payment or an Adjustment Payment.

4 Fixed Franchise Payments

The Fixed Franchise Payment payable in respect of any Reporting Period shall be determined in accordance with the following formula:

$$FF = \left(\frac{RPD}{FYD} \times AFP \right)$$

where:

FF means the Fixed Franchise Payment for such Reporting Period

RPD means the number of days in that Reporting Period

FYD is equal to 365, or if February 29 falls during the Franchise Operator Year in which that Reporting Period falls, 366

AFP means the Annual Franchise Payment for the Franchise Operator Year in which that Reporting Period falls, as determined in accordance with Part 3 of this Schedule

except that, where a Reporting Period falls during two Franchise Operator Years, FF 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 Franchise Operator Years and the Fixed Franchise Payment for such Reporting Period shall be the sum of FF as determined for each such period.

5 [Intentionally not used]

6 Force Majeure Payments

- 6.1** Subject to paragraph 6.4 a *Force Majeure* Payment shall be determined in respect of each *Force Majeure* Event occurring during a Reporting Period in accordance with the following formula:

$$FM = \left(P - \frac{NP}{2} \right) \times \left(\frac{CTM}{STM} \right)$$

where:

FM is the *Force Majeure* Payment in respect of any *Force Majeure* Event;

P is an amount equal to the Profit of the Franchise Operator during the period of such *Force Majeure* Event;

NP is an amount equal to the Profit which the Franchise Operator would have made during the period of such *Force Majeure* event if such *Force Majeure* Event had not taken place;

STM is the aggregate Train Mileage scheduled to be covered under the Timetable during the period of such *Force Majeure* Event;

CTM is the aggregate Train Mileage which is scheduled to be covered but which is not covered during the period of such *Force Majeure* Event as a result of such *Force Majeure* Event;

provided that where P is less than NP/2 or where CTM/STM is less than 0.05, FM shall be deemed to equal zero.

- 6.2** The Franchise Operator shall provide to the Authority such information as it may reasonably require for the purpose of enabling it to determine the amount of any such *Force Majeure* Payment.
- 6.3** The Authority shall, in computing the Profit of the Franchise Operator for the purposes of this paragraph 6 and where the Franchise Operator has entered into arrangements with Affiliates other than on arm's length terms, be entitled to determine the amount of such Profit as if the Franchise Operator had entered into any such arrangements on arm's length terms. The Authority shall accordingly be entitled, except to the extent that the Franchise Operator is otherwise able to establish to its reasonable satisfaction, to substitute reasonable arm's length terms in place of such terms on which the Franchise Operator may have entered into any relevant contract or arrangement with any Affiliate.
- 6.4** No *Force Majeure* Payment shall be payable unless the sum of all *Force Majeure* Payments in the relevant Reporting Period would exceed £50,000.

7 Track Access Adjustment Payment

- 7.1** Subject to compliance by the Franchise Operator with its obligations under paragraph 7.2, the Track Access Adjustment Payment payable in respect of any Reporting Period shall be determined in accordance with the following formula:

$$TAA = (L - P) \times \frac{RPD}{TYD}$$

where:

- TAA means the Track Access Adjustment Payment for that Reporting Period;
- L is the value of "L_t" for the Financial Year in which the Reporting Period falls under Part 3 of Schedule 7 of the Track Access Agreement;
- P is the value of "P_t" for the Financial Year in which the Reporting Period falls under Part 4 of Schedule 7 of the Track Access Agreement;
- RPD means the number of days in that Reporting Period;
- FYD means the number of days in the Financial Year in which that Reporting Period falls;

except that, where a Reporting Period falls during two Financial 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 Financial Years and the Track Access Adjustment Payment for such Reporting Period shall be the sum of TAA as determined for each such period.

- 7.2** The Franchise Operator shall notify the Authority upon becoming aware that any Track Access Adjustment Payment may be payable and shall supply such information as the Authority may require in relation thereto. The Franchise Operator shall exercise such rights as it may have under the Track Access Agreement in such manner and take such other action as the Authority may reasonably require in connection with any related payment thereunder (including in relation to any agreement of the amount of any such payment and including submitting any relevant dispute to any relevant dispute resolution procedures). The Franchise Operator shall not, without the consent of the Authority, agree or propose to agree a value for “L_t” or “P_t” under Part 3 or 4 of Schedule 7 of the Track Access Agreement.
- 7.3** The Franchise Operator shall provide such evidence of payment as the Authority may require (including any certificates) for the purpose of determining the value of L and P under paragraph 7.1 above.
- 7.4** The Franchise Operator shall not amend, agree or propose to amend, the provisions of Part 3 and 4 of Schedule 7 of the Track Access Agreement without the consent of the Authority.
- 7.5** For the avoidance of doubt, in the event that no value is ascertained for any of L or P prior to the date the Franchise Payment for the relevant Reporting Period is determined, then a Track Access Adjustment Payment shall only be determined to the extent such values can be ascertained at such time and, when such values are subsequently ascertained, an Adjustment Payment shall be made to reflect the full Track Access Adjustment Payment for such Reporting Period.
- 7.6** The values of L and P when used in the computation in paragraph 7.1 above shall be taken to exclude any input Value Added Tax which is recoverable in respect of the payments they represent by the Franchise Operator under sections 24 to 26 of the Value Added Tax Act 1994.
- 7.7** References in this paragraph 7 to “L_t”, “P_t” and Parts 3 and 4 of Schedule 7 of the Track Access Agreement shall be deemed also to be references to such other provisions, and such other algebra under any such other provisions, of any Track Access Agreement as the Authority may reasonably consider have an equivalent effect, or are intended to fulfil the same function, as “L_t”, “P_t” and Parts 3 and 4 of Schedule 7 of the Track Access Agreement which is in place on the Franchise Commencement Date.

8 Station Charge Adjustment Payment

- 8.1** Subject to compliance by the Franchise Operator with its obligations under paragraph 8.2, the Station Charge Adjustment Payment payable 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:

$$ISCA = (L - P) \times \frac{RPD}{FYD}$$

where:

ISCA means the Individual Station Charge Adjustment Payment for the relevant station for that Reporting Period;

L is the value of “ L_t ” for the Financial 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 Railtrack or any other relevant Facility Owner by or to the Franchise Operator on its own behalf under the relevant Station Lease or Access Agreement (and excluding for the avoidance of doubt any amount payable to Railtrack by the Franchise Operator in its capacity as Facility Owner of a station on behalf of a beneficiary which is party to an Access Agreement in respect of that Station);

P is the value of “ P_t ” for the Financial 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 Railtrack or any other relevant Facility Owner by or to the Franchise Operator on its own behalf under the relevant Station Lease or Access Agreement (and excluding for the avoidance of doubt any amount payable to Railtrack by the Franchise Operator 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;

FYD means the number of days in the Financial Year in which that Reporting Period falls except that, where a Reporting Period falls during two Financial Years, the Station Charge Adjustment Payment 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 Financial Years and the Station Charge Adjustment Payment for such Reporting Period shall be the sum of the Station Charge Adjustment Payment as determined for each such period.

- 8.2** The Franchise Operator shall notify the Authority upon becoming aware that any Station Charge Adjustment Payment may be payable and shall supply such information as the Authority may require in relation thereto. The Franchise Operator shall exercise such rights as it may have under any relevant Station Lease or Access Agreement in such manner and take such other action as the Authority may reasonably require in connection with any related payment thereunder (including in relation to any agreement of the amount of any such payment and including submitting any relevant dispute to any relevant dispute resolution procedures). The Franchise Operator shall not, without the consent of

the Authority, agree or propose to agree a value for “L_t” or “P_t” under any relevant Station Lease or Access Agreement.

- 8.3** The Franchise Operator shall provide such evidence of payment as the Authority may require (including any certificates) for the purpose of determining the value of L and P under paragraph 8.1 above.
- 8.4** The Franchise Operator shall not amend, agree or propose to amend, the provisions of any relevant part of a Station Lease or Access Agreement without the consent of the Authority.
- 8.5** For the avoidance of doubt, in the event that no value is ascertained for any of L or P prior to the date for Franchise Payment for the relevant Reporting Period is determined, then a Station Charge Adjustment Payment shall only be determined to the extent such values can be ascertained at such time and, when such values are subsequently ascertained, an Adjustment Payment shall be made to reflect the full Station Charge Adjustment Payment for such Reporting Period.
- 8.6** The values of L and P when used in the computation in paragraph 8.1 above shall be taken to exclude any input Value Added Tax which is recoverable in respect of the payments they represent by the Franchise Operator under sections 24 to 26 of the Value Added Tax Act 1994.
- 8.7** For the purposes of this paragraph 8, “Independent Station” shall mean any of the stations known as Birmingham New Street, London Charing Cross, Edinburgh Waverley, London Euston, Gatwick Airport, Glasgow Central, London King’s Cross, Leeds, London Liverpool Street, London Bridge, Manchester Piccadilly, London Paddington, London Victoria and London Waterloo (excluding Waterloo International).
- 8.8** References in this paragraph 8 to “L_t”, “P_t”, Condition F11.2 of the Franchise Station Access Conditions and Condition 42.3 of the Independent Station Access Condition shall be deemed also to be references to such other provisions, and such other algebra under any such other provisions, of any relevant station access conditions as the Authority may reasonably consider have an equivalent effect, or are intended to fulfil the same function as, “L_t”, “P_t” and Condition F11.2 of the Franchise Station Access Conditions and Condition 42.3 of the Independent Station Access Conditions which are in effect on the Franchise Commencement Date.

9 Rolling Stock Mandatory Modifications

- 9.1** Subject to compliance by the Franchise Operator with its obligations under paragraph 9.4 and Clause 12.6 of this Franchise Agreement, a Rolling Stock Mandatory Modification Payment shall be payable in respect of each Reporting Period during the Franchise Term or the Initial Lease Periods, whichever is the shorter, in the circumstances set out in this paragraph 9.
- 9.2** For the purpose of this paragraph 9 of Part 2 of Schedule 6:
- (a)** “Relevant Rolling Stock” shall mean any rolling stock which was leased to a Train Operator on 16 October 1995 by any of Angel Train Contracts Limited, Eversholt Leasing Limited or Porterbrook Leasing Company Limited or any operationally comparable items of rolling stock which are provided at any time in accordance with the terms of the relevant MOLA (as defined below); and

- (b) "Initial Lease Period" means, in relation to any rolling stock the period ending on the expiry date specified in the lease supplement which related to such rolling stock on 16 October 1995 (as extended in accordance with any such lease supplement) but so that any Initial Lease Period will not last beyond the earlier of the scheduled expiry date of the Previous Franchise Agreement and 31 March 2004.

- 9.3 The Rolling Stock Mandatory Modification Payment payable in respect of any Reporting Period during the Initial Lease Periods shall be determined in accordance with the following formula:

$$\text{RSMM} = (\text{AMM} - (\text{AR} \times 5/100)) - \text{PRSM}$$

where

RSMM equals the Rolling Stock Mandatory Modification Payment for that Reporting Period.

AMM equals (subject as below) the aggregate amount of any payments made by the Franchise Operator under paragraph 11(e) of Schedule 3 of the Master Operating Lease Agreements specified in Part 5 of Schedule 1 of this Franchise Agreement (the "**MOLAs**") in respect of any Mandatory Modification (as defined in such MOLAs) ("**Mandatory Modification**") in relation to Relevant Rolling Stock during the respective Initial Lease Periods of such Relevant Rolling Stock in such Reporting Period and any preceding Reporting Period in the Reporting Year in which such Reporting Period falls.

AR equals the aggregate amount of Rent (as defined in each such Rolling Stock Lease) which is payable by the Franchise Operator in respect of Relevant Rolling Stock in the Reporting Year in which such Reporting Period falls.

PRSM equals the aggregate of any other Rolling Stock Mandatory Modification Payments in any preceding Reporting Period in the Reporting Year in which such Reporting Period falls.

provided always that $(\text{AMM} - (\text{AR} \times 5/100))$ shall never be less than zero.

9.4

- (a) The Franchise Operator shall notify the Authority upon becoming aware of any, or the possibility of any, Mandatory Modification, and shall supply such information and invoices as the Authority may require in relation thereto.
- (b) The Franchise Operator shall exercise such rights as it may have under the MOLAs and any relevant Rolling Stock Lease in such manner and take such other action as the Authority may reasonably require in connection with any Mandatory Modification (including in relation to any agreement of or consultation on the extent of any Mandatory Modification, the manner in which it is to be carried out and the time at which the Franchise Operator may be obliged to pay for it).
- (c) The Franchise Operator shall include such representatives as the Authority may request in any discussion or meeting with any relevant lessor in relation to any Mandatory Modification.
- (d) The Franchise Operator shall provide such evidence of payment by it as the Authority may require (including any certificates or invoices) for the purpose of determining the value of AMM and AR under paragraph 9.3 above.

- (e) For the purposes of the calculation in paragraph 9.3 above the amount of any payment made by the Franchise Operator shall be taken after excluding any input Value Added Tax relating to that payment which is recoverable under sections 24 to 26 of the Value Added Tax Act 1994.

10 Benefit Share Payments

- 10.1** The Benefit Share Payment payable in respect of any Reporting Period shall be determined in accordance with the following formula:

$$BS = \left(\frac{RPD}{BSD} \times ABS \right)$$

where:

- BS means, subject to paragraph 10.2, the Benefit Share Payment for such Reporting Period
- RPD means the number of days in that Reporting Period
- BSD is equal to 365, or, if 29 February falls during the Benefit Share Year in which that Reporting Period falls, 366.
- ABS means the Annual Benefit Share for that Benefit Share Year, as determined in accordance with Part 4 below

except that, where a Reporting Period falls during two Benefit Share Years, BS 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 Benefit Share Years and the Benefit Share Payment for such Reporting Period shall be the sum of BS as determined for each such period.

- 10.2** Where the relevant Reporting Period ends on the date of expiry of the Franchise Period, the Benefit Share Payment for such Reporting Period in respect of any Benefit Share Year already commenced and not finishing on or before the end of such Reporting Period shall be the Annual Benefit Share for that Benefit Share Year less any amounts already taken into account in previous Benefit Share Payments for that Benefit Share Year.
- 10.3** In respect of any Benefit Share Year commencing on or after the expiry of the Franchise Period, the Annual Benefit Share shall be payable in one instalment on the date falling four calendar months after the expiry of the Franchise Period and the provisions of this Schedule 6 shall apply to such payment as if such payment was due to be made in respect of a Reporting Period.
- 10.4** Notwithstanding the provisions of paragraphs 10.2 and 10.3, if the Annual Benefit Share in any Benefit Share Year is amended under paragraph 3 of Part 4 below, any prior payment of Benefit Share Payment shall be recalculated and the difference payable by the Franchise Operator on the next date for payment of a Benefit Share Payment, or if none, within 14 days of notification of such difference by the Authority to the Franchise Operator together with an amount equivalent to interest at the Interest Rate calculated on a daily basis for the period from the date the original lower Benefit Share Payment was made to the date of payment.

11 11th September Adjustment Payments

- 11.1** Subject to the other provisions of this paragraph 11 and in particular the maximum amounts specified in paragraph 11.10, the 11th September Adjustment Payment shall be made only in respect of each of the Franchise Operator Years ended on 31 December 2002 and 31 December 2003 in accordance with the following formula:

$$11\text{thSA} = \text{APR} - (\text{FPR} \times \text{RPI})$$

Where:-

11thSA means the 11th September Adjustment Payment

APR means the actual Passenger Revenue of the Franchise Operator attributable to the relevant Franchise Operator Year or, if the Franchise Period terminates during such a Franchise Operator Year, the actual Passenger Revenue attributable to that part of the Franchise Operator Year during which the Franchise Period subsisted (and, for the avoidance of doubt, calculated in the same manner as the forecast Passenger Revenue for the equivalent period comprised in the definition of “FPR” below)

FPR subject to paragraph 11.2, means the forecast Passenger Revenue of the Franchise Operator attributable to that Franchise Operator Year, as set out in the following table:-

Franchise Operator Year	Forecast Passenger Revenue
Franchise Operator Year ended 31 December 2002	£55,384,941
Franchise Operator Year ended 31 December 2003	£63,732,830

“Passenger Revenue” means all passenger revenues of the Franchise Operator (as set out in the computer analysis of passenger revenue information product level report (CAPM690/1)) less the income attributed to car parking (reference code: GL in the aforementioned report)

“RPI” is the quotient of the Retail Prices Index for November which immediately precedes the commencement of the relevant Franchise Operator Year divided by the Retail Prices Index for November 2001.

- 11.2** In the event that the Franchise Period ends during a Franchise Operator Year in respect of which an 11th September Adjustment Payment might be payable, Forecast Passenger Revenue shall be reduced so that it is equal to the same proportion of the amount it would otherwise have been as is equal to the proportion of the relevant Franchise Operator Year during which the Franchise Period subsisted.

- 11.3** In order to determine the 11th September Adjustment Payment, within four months of the end of each Franchise Operator Year, the Franchise Operator shall send to the Authority:

- (i) a statement of actual Passenger Revenue for the relevant Franchise Operator Year;

(ccii) such other information as the Authority may reasonably request.

11.4 Subject to paragraph 11.5, the Franchise Operator shall ensure that the statement of actual Passenger Revenue is determined in accordance with GAAP provided that the Authority may, subject to paragraph 11.5 specify in writing to the Franchise Operator any accounting principles, policies or practices consistent with GAAP which it reasonably requires the Franchise Operator to apply in the preparation of the statement of Passenger Revenue for the relevant Franchise Operator Year.

11.5 In computing the actual Passenger Revenue of the Franchise Operator:-

11.5.1 where the Franchise Operator has entered into transactions or arrangements with Affiliates or its managers or employees or those of an Affiliate other than on arm's length terms, the Authority shall be entitled to require that such Actual Passenger Revenue be determined as if the Franchise Operator had not so entered into any such arrangements and to require reasonable arm's length terms to be substituted in place of the terms on which the Franchise Operator may have entered into any such transaction or arrangement;

11.5.2 where the Authority reasonably considers that any particular item or transaction has not been accounted for on a reasonable basis (including where the accounting treatment looks to the form, rather than the substance, of the item or transaction) it shall be entitled to require it to be accounted for on such other basis (which basis shall be consistent with GAAP) as it may reasonably determine and notify the Franchise Operator.

11.6 Without prejudice to the above or to any other powers of the Authority under this Franchise Agreement (including under Clause 15 of this Franchise Agreement):-

11.6.1 the Authority and its representatives shall be permitted to inspect at any time the books, records and any other material kept by or on behalf of the Franchise Operator in order to check or audit any item contained in the statement of actual Passenger Revenue provided by the Franchise Operator and any other matter in connection with the obligations of the Franchise Operator under this paragraph 11; and

11.6.2 the Franchise Operator shall make available to the Authority and its representatives such information and grant such access or procure the grant of such access (including to or from third parties) as they shall reasonably require in connection therewith. In the event that any such exercise reveals any inaccuracy in the amount of the actual Passenger Revenue previously determined for the purposes of this paragraph 11, the Authority shall be entitled to make such further adjustments to the Franchise Payments as necessary to take account of the inaccuracy.

11.7 In the event that any such exercise referred to in paragraph 6 reveals a material error or mistake in information previously supplied to the Authority, the Franchise Operator shall pay the costs of such exercise.

11.8 Any dispute in connection with the amount of the actual Passenger Revenue shall be resolved in accordance with the Dispute Resolution Rules.

11.9 The 11th September Adjustment Payment will be payable in respect of each relevant Franchise Operator Year (or part of a relevant Franchise Operator Year) in which the Franchise Period subsists. It shall be paid (if payable) in respect of the Reporting Period following that in which the amount of the 11th September

Adjustment Payment is properly determined in accordance with this paragraph 11 Provided That if the amount of 11th September Adjustment Payment is not known until after the end of the Franchise Period and no further Franchise Payments are due to be made, it shall be paid by a direct payment in immediately available funds from the Franchise Operator to the Authority.

- 11.10** The maximum amount of 11th September Adjustment Payment in respect of each relevant Franchise Operator Year shall not exceed the Maximum Adjustment Payment which shall be calculated in accordance with the following formula:

$$\text{MAP} = \text{RPI} \times \text{RMA}$$

Where

MAP means the Maximum Adjustment Payment

RPI is the quotient of the Retail Prices Index for November which immediately precedes the commencement of the relevant Franchise Operator Year divided by the Retail Prices Index for November 2001

RMA means the Maximum Adjustment in real figures attributable to that Franchise Operator Year, as set out in the following table:-

Franchise Operator Year	Maximum amount of 11 th September Adjustment Payment in respect of such Franchise Operator Year
Franchise Operator Year ended 31 December 2002	£2,175,688
Franchise Operator Year ended December 2003	£2,157,604

Provided that if the Franchise Period ends during any such Franchise Operator Year, the relevant amount referred to above shall be reduced so it is equal to the same proportion of the amount it would otherwise have been as is equal to the proportion of the relevant Franchise Operator Year in which the Franchise Period subsisted.

12 Applicable Rolling Stock Payment¹²²

13 RTTIRPP Payment

- 13.1** *If the Authority is satisfied that the conditions precedent contained in the RTTI Offer Letter have been fulfilled or waived by the Authority the RTTIRPP Payment shall be payable:-*

- 13.1.1** *as to the amounts specified in paragraph 13.2 in the Reporting Period provided that ATOC Limited has first certified to the Authority that each of the milestones set out in paragraph 13.2 has been achieved and the Authority is satisfied with that certificate; and*

- 13.1.2** *as to £25,946 per Reporting Period during each of the Reporting Periods in the three year period beginning when the System first becomes operational*

¹²² Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

provided that National Rail Enquiry Service has first certified to the Authority that the System is operational and the Authority is satisfied with that certificate.

13.2 *The milestones referred to in paragraph 13.1 are:*

		<i>Amount</i>
Milestone 1	<i>Completion and acceptance of the functional design specification detailed hardware specification, detailed system design work and purchase of system hardware.</i>	£220,406
Milestone 2	<i>Supply of Theseus Feed, including system design, hardware procurement, implementation, testing and delivery.</i>	£139,805
Milestone 3	<i>Supply of TRUST feed, including system design, hardware procurement, implementation, testing and delivery.</i>	£117,560
Milestone 4	<i>Service Release 1, covering the availability of a service on the National Rail web site, offering all National Rail stations, with data drawn from TSDB, TRUST and Theseus only and including the cost of operating the Pilot system (supplied by SchlumbergerSema) from 17th September 2002 to Service Release 1.</i>	£367,448
Milestone 5	<i>Service Release 2, covering the integration of the first CIS as an RTTI data source and the availability of the first Output Port (with associated communications) for acceptance trials.</i>	£76,098
Milestone 6	<i>Service Release 3, covering the integration of up to four CIS installations as RTTI data sources and full service availability of Output Ports (up to ten ports available) and including ATOC Limited management costs and cost of index pages for National Rail web site to support the new service.</i>	£79,583¹²³

"14. Evergreen Component¹²⁴

14.1 *The Evergreen Component payable in respect of a Reporting Period shall be an amount equivalent to the sum of the Facility Charge, the Incremental Access Charge, the Incremental O & M Charge, the Additional O & M Charge, and the Project Termination Charge payable by the Franchise Operator to Network Rail pursuant to the Fourth Supplemental in respect of such Reporting Period.*

14.2 *The Evergreen Component shall cease to be payable from the date that the Regulatory Value is reflected in the charges payable generally by users of the*

¹²³ New Paragraph 13 "RTTIRPP Payment inserted wef 18th June 2003

¹²⁴ Date of new text DOA 2004

network in consequence of the Regulatory Value being added to the regulatory asset base of Network Rail."

14a¹²⁵ Fares Review Adjustment Payment

14.a(i) *The Fares Review Adjustment Payment payable in respect of any Reporting Period shall be determined in accordance with the following formula:*

$$FRA = \left(\frac{RPD}{FYD} \right) \times AFRA \times RPI$$

where:

FRA means the Fares Review Adjustment Payment for such Reporting Period

RPD means the number of days in the Reporting Period

FYD is equal to the number of days in the relevant Financial Year (or part thereof)

AFRA in respect of any Financial Year (or part thereof) has the value specified in paragraph [].2 in respect of such Financial Year (or part thereof)

RPI is:

- (i) in respect of the part Financial Year from 1 January 2004 to 31 March 2004 (inclusive), the quotient of the Retail Prices Index for July 2003 divided by the Retail Prices Index for July 2002;*
- (ii) in respect of each subsequent Financial Year, the quotient of the Retail Prices Index for the January of the calendar year in which the relevant Financial Year commences divided by the Retail Prices Index for January 2003.*

14.a(ii)

Financial Year	AFRA
1 January 2004 - 31 March 2004	£61,000
1 April 2004 - 31 March 2005	£487,000
1 April 2005 - 31 March 2006	£950,000
1 April 2006 - 31 March 2007	£1,511,000

¹²⁵ Date of Change 24/12/2003

1 April 2007 - 31 March 2008	£2,064,000
1 April 2008 - 31 March 2009	£2,619,000
1 April 2009 - 31 March 2010	£3,219,000
1 April 2010 - 31 March 2011	£3,651,000
1 April 2011 - 31 March 2012	£4,457,000
1 April 2012 - 31 March 2013	£5,110,000
1 April 2013 - 31 March 2014	£5,763,000
1 April 2014 - 31 March 2015	£6,416,000
1 April 2015 - 31 March 2016	£7,069,000
1 April 2016 - 31 March 2017	£7,723,000
1 April 2017 - 31 March 2018	£8,377,000
1 April 2018 - 31 March 2019	£9,030,000
1 April 2019 - 31 March 2020	£9,683,000
1 April 2020 - 31 March 2021	£10,336,000
1 April 2021 - 31 December 2021	£8,085,000

14(iii) By the First Update Point and by each Subsequent Update Point (as defined in schedule 14 of this Franchise Agreement), the Authority shall adjust the AFRA amounts set out above for the Financial Years immediately following the relevant update point if:

a) *there has been a material change in the business circumstances of the Franchise Operator; and*

b) *such adjustments are, in the reasonable opinion of the Authority, necessary to ensure that the Franchise Operator suffers no Net Loss and makes no Net Gain from the changes that were made to schedule 5 of this Franchise Agreement with effect from 1 January 2004.*

"15. Evergreen Incentive Payment

15.1 *The Evergreen Incentive Payment shall be determined in accordance with the following formula*

$$EIP = (A-B) \times 10\%$$

Where

A = £6,000,000

B = the amount of the Standby Facility applied in funding Project Variations provided that if this amount is more than £6,000,000 B shall be £6,000,000

No Evergreen Incentive Payment shall be payable in the event that the amount of the Standby Facility is increased after the Commencement Date pursuant to Clause 4.5 of the Co-ordination Agreement or otherwise.

15.2 *If the Evergreen Incentive Payment is payable it shall be paid in a single instalment in the Reporting Period following that during which the Transfer Price is paid by Network Rail to the Enhancement Contractor.*

16¹²⁶ VWC Revenue Abstraction Event

16.1 *It is acknowledged by the Authority and the Franchise Operator that there will be disruptions to the Passenger Services between London Marylebone and Birmingham during the period of construction of the Birmingham Mainline Robust Outputs and Oxford Robust Outputs (as that term is defined in the Second Output Plan) which may have the effect of:*

(a) reducing the passenger revenue earned by the Franchise Operator in respect of its passenger services operated between London Marylebone and Birmingham; and

¹²⁶ Date of Change 06/01/2010

(b) increasing the passenger revenue earned by the West Coast Franchisee in respect of its passenger services operated between London Euston and Birmingham (the “Revenue Abstraction Event”).

16.2 The effect of the Revenue Abstraction Event shall be determined by the Authority and the Franchise Operator by reference to an appropriate passenger demand forecasting tool or other reasonable methodology (as agreed by the parties, or on failing to agree, as determined pursuant to clause 43 of the Franchise Agreement) and the Authority shall, in accordance with the provisions of paragraph 16.7, make a payment to the Franchise Operator such that the Franchise Operator makes no Net Loss as a consequence of such Revenue Abstraction Event.

Effects of a Change under the VWC Franchise Agreement

16.3 From the date of commencement of operation of the Birmingham Main Line Timetable Outputs (as that term is defined in the Second Output Plan) there may be a material effect on the costs of and revenues earned by the West Coast Franchisee in respect of its passenger services between London Euston and Birmingham which may trigger a Change pursuant to paragraph (f) of the definition of Change under the franchise agreement dated 12 December 2006 and made between the Secretary of State for Transport and the West Coast Franchisee (the “VWC Franchise Agreement”).

16.4 The Authority and the Franchise Operator hereby agree that if the Change contemplated under paragraph 16.3 is a Qualifying Change (the “VWC Qualifying Change”) and a Run of the Financial Model results in an increase to the franchise payments payable by the Authority to the West Coast Franchisee under the VWC Franchise Agreement then the Franchise Operator shall make a payment to the Authority, in accordance with the provisions of paragraph 16.7, such payment to be equal to the increase in Franchise Payments properly payable by the Authority to the West Coast Franchisee as a direct result of the VWC Qualifying Change in respect of the period commencing on the date of operation of the passenger services comprised in the Birmingham Main Line Timetable Outputs (as that term is defined in the Second Output Plan) and ending on 31 March 2012.

16.5 In recognition of the fact that the Franchise Operator is obliged to make certain payments to the Authority as contemplated under paragraph 16.4 in respect of a franchise agreement to which it is not a party, the Authority will provide to the Franchise Operator such information as it is reasonable to provide to it in relation to the VWC Qualifying Change and will acting reasonably take full account of the reasonable comments of the Franchise Operator in agreeing and/or determining any Revised Inputs in respect of the VWC Qualifying Change. In providing reasonable information to the Franchise Operator and considering its reasonable comments the Authority shall take full account of the reasonable, proper and legitimate interests of the

Franchise Operator in the context of the financial risk that it is exposed to under this paragraph 16.

- 16.6** ***For the purposes of this paragraph 16, the definitions of Change, Qualifying Change, Revised Inputs and Run of the Financial Model shall each have the meanings attributed to such terms under the VWC Franchise Agreement.***

16.7 Where:

- (a) *the amount payable by the Franchise Operator to the Authority pursuant to paragraph 16.4 is greater than the amount payable by the Authority to the Franchise Operator pursuant to paragraph 16.2 the Franchise Operator shall pay to the Authority, by way of adjustment to Franchise Payments and on the next date after 31 March 2012 on which a Franchise Payment is due, the amount that is equal to the difference between the amounts payable by the Franchise Operator pursuant to paragraph 16.4 and the amounts payable by the Authority pursuant to paragraph 16.2; and*
- (b) *the amount payable by the Franchise Operator to the Authority pursuant to paragraph 16.4 is less than the amounts payable by the Authority to the Franchise Operator pursuant to paragraph 16.2 the Authority shall pay to the Franchise Operator, by way of adjustment to Franchise Payments and on the next date after 31 March 2012 on which a Franchise Payment is due, the amount that is equal to the difference between the amounts payable by the Authority pursuant to paragraph 16.2 and the amounts payable by the Franchise Operator pursuant to paragraph 16.4.*

Provided that no amount will be payable by the Authority to the Franchise Operator or the Franchise Operator to the Authority under this paragraph 16 if there is no VWC Qualifying Change.

17. Fixed Sum Payment

17.1 The Fixed Sum Payment shall be determined as follows:

$$FSP = AD \times RPIZ$$

where:

FSP is the Fixed Sum Payment payable on the relevant termination date; AD is the percentage of £30,000,000 specified in column 2 of the table below applicable to the calculation of FSP if the date of termination of the Franchise Agreement falls within the calendar year specified in column 1 of such table:

<i>Year of Termination</i>	<i>Percentage of £30,000,000</i>
2017	20%
2018	30%
2019	50%
2020	75%
2021	100%

RPIZ is the quotient of the Retail Prices Index for the November immediately preceding the date of termination of the Franchise Agreement divided by the Retail Prices Index for November 2009.

17.2 The Fixed Sum Payment calculated in accordance with paragraph 17.1 shall be paid by the Franchise Operator to the Authority, by way of adjustment to Franchise Payments, on the Last Payment Date. For the purposes of this paragraph 17.2 the "Last Payment Date" means the date on which the last Franchise Payment on or prior to the relevant date of termination is due. For the avoidance of doubt no Fixed Sum Payment shall be paid by the Franchise Operator to the Secretary of State if the Franchise Agreement is terminated on or before 31 December 2016.

18. Strategic Route Add On Payments

18.1 The Strategic Route Add On Payments payable in respect of each of the Franchise Operator Years ending on 31 December 2011 and 31 December 2012 (respectively) shall be determined in accordance with the following formula:

$$\text{SRAO} = \text{PS} \times \text{RPIY}$$

Where:

SRAO means the Strategic Route Add On Payment in respect of the relevant Franchise Operator Year;

PS equals¹²⁷; and

RPIY is the quotient of the Retail Prices Index for the November which immediately precedes the commencement of the relevant Franchise Operator Year in which a Strategic Route Add On Payment is due divided by the Retail Prices Index for November 2009.

The Strategic Route Add On Payments as determined pursuant to this paragraph 18.1 shall be paid by the Authority to the Franchise Operator, by way of adjustment to Franchise Payments, on the date on which a Franchise Payment is due and payable in respect of the Reporting Periods falling in June 2011 and June 2012 respectively. If on any such date a VFM Transport and Works Act Order has not been obtained the obligation of the Authority to pay the Franchise Operator shall be deferred to the next date on which a Franchise Payment is due following the date on which a VFM Transport and Works Act Order is obtained provided that if the date on which a VFM Transport and Works Act Order is obtained is a date after June 2012 then the Authority shall pay to the Franchise Operator, on the next date on which a Franchise Payment is due following the date on which a VFM Transport and Works Act Order is obtained, the amount that is equal to:

¹²⁸ x RPIQ, where RPIQ is the quotient of the Retail Prices Index for the

¹²⁷ 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

November immediately preceding the month on which such VFM Transport and Works Act Order is obtained divided by the Retail Prices Index for November 2009.

18.2 If the Franchise Agreement is terminated at any time prior to 31 December 2021 (for whatever reason) (the “Termination Date”) and as at such Termination Date any Strategic Route Add On Payment has been paid by the Authority to the Franchise Operator pursuant to paragraph 18.1 then the Franchise Operator shall pay to the Authority on such Termination Date an amount that is calculated as follows:

$$\text{SRAOr} = \text{SRAOtd} \times \frac{(\text{PFD} - \text{SFD})}{\text{PFD}}$$

Where:

SRAOr is the amount of the Strategic Route Add On Payment to be paid by the Franchise Operator to the Authority;

SRAOtd is the aggregate amount of the Strategic Route Add On Payments that have been paid by the Authority to the Franchise Operator as at such Termination Date;

SFD is the number of days between the date on which the Franchise Operator is obliged under the 73rd Supplemental Agreement to accrue the EG3 SRAO Accrued DFC and the Termination Date; and

PFD is the number of days between the date on which the Franchise Operator is obliged under the 73rd Supplemental Agreement to accrue the EG3 SRAO Accrued DFC and the date on which the Franchise Term should have expired by effluxion of time (being 31 December 2021).

For the purposes of this paragraph 18.2:

“73rd Supplemental Agreement” means the Seventy Third Supplemental Agreement to be entered into between Network Rail and the Franchise Operator; and

“EG3 SRAO Accrued DFC” has the meaning given to such term under the 73rd Supplemental Agreement.

¹²⁸ 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

¹²⁹19 BIOX Subsidy Payment

19.1 *The Authority shall pay to the Franchise Operator a BIOX Subsidy Payment of £¹³⁰ (2010/11 prices) per period, in respect of the Oxford to Bicester Town via Islip services transferred from First Great Western Limited to the Franchise Operator on 22 May 2011, with effect from 22 May 2011 until the commencement of the blockade to be made in respect of the construction of the Oxford Robust Outputs, determined in accordance with the following formula:*

$$OXBI = RA \times RPIW$$

where:

OXBI equals the OXBI Subsidy Payment in the relevant Franchise Operator Year;

RA equals the Real Amount of £¹³¹ for that Franchise Operator Year;

RPIW is the quotient of the Retail Prices Index for November which immediately precedes the commencement of the relevant Franchise Operator Year divided by the Retail Prices Index for November 2010.

¹³²20 Fares Adjustment Incentive Payment

The Authority shall pay to the Franchise Operator a Fares Adjustment Incentive Payment, determined in accordance with the following formula (except for the payment in respect of the period 1 April 2009 – 31 March 2012 which no Retail Price Index adjustment will be applied):

$$FIAP = RA \times RPIV$$

where:

RA equals the Real Amount for that Franchise Operator Year as set out at in table 20.1 of this Part 2 of Schedule 6.

RPIV is the quotient of the Retail Prices Index for November which immediately precedes the commencement of the relevant Franchise Operator Year divided by the Retail Prices Index for November 2003.

¹²⁹ Date of new text 11/06/2012

¹³⁰ 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

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

¹³¹

¹³² Date of new text 11/06/2012

Table 20.1

Financial Year	
1 April 2009 – 31 March 2012 <i>This payment shall be paid by the Authority to the Franchise Operator, by way of adjustment to Franchise Payments, on the date on which a Franchise Payment is due and payable in respect of the Reporting Period falling in June 2012.</i>	
<i>The remainder of the payments set out below will be payable at the end of the relevant financial year.</i> 1 April 2012 – 31 March 2013	
1 April 2013 – 31 March 2014	
1 April 2014 – 31 March 2015	
1 April 2015 – 31 March 2016	
1 April 2016 – 31 March 2017	
1 April 2017 – 31 March 2018	
1 April 2018 – 31 March 2019	
1 April 2019 – 31 March 2020	
1 April 2020 – 31 March 2021	
1 April 2021 – 31 December 2012	

¹³³ **21 Station Commercial Project Facility**

The Franchise Operator shall pay to the Authority a Station Commercial Project Facility (SCPF) payment.

SCPF payment equals the sums set out in table 21.1 of this Part 2 of Schedule 6 to which indexation shall not be applied

¹³³ Date of new text 11/06/2012

Table 21.1

Financial Year	
1 April 2013 – 31 March 2014 <i>This payment shall be paid by the Franchise Operator to the Authority, by way of adjustment to Franchise Payments, on the date on which a Franchise Payment is due and payable in respect of the Reporting Period falling in March 2014.</i>	
<i>The remainder of the payments set out below will be payable at the end of the relevant financial year.</i> 1 April 2014 – 31 March 2015	
1 April 2015 – 31 March 2016	
1 April 2016 – 31 March 2017	
1 April 2017 – 31 March 2018	
1 April 2018 – 31 March 2019	
1 April 2019 – 31 March 2020	
1 April 2020 – 31 March 2021	
1 April 2021 – 31 December 2021	

Part 3 — Annual Franchise Payments¹³⁴

1. Minimum Franchise Term¹³⁵

- 1.1 The Annual Franchise Payment in each Franchise Operator Year shall be determined in accordance with the following formula:**

$$AFP = RA \times RPI$$

where:

AFP equals the Annual Franchise Payment in the relevant Franchise Operator Year;

RA equals the Real Amount for that Franchise Operator Year as set out at paragraph 1.2 of this Part 3 of Schedule 6.

RPI is the quotient of the Retail Prices Index for November which immediately precedes the commencement of the relevant Franchise Operator Year divided by the Retail Prices Index for November 2001.

1.2 Real Amounts

Franchise Operator Year	Real Amount
1 January 2004 – 31 December 2004	19,514,804
1 January 2005 – 31 December 2005	16,112,097
1 January 2006 – 31 December 2006	13,915,813
1 January 2007 – 31 December 2007	9,145,527
1 January 2008 – 31 December 2008	2,975,639
1 January 2009 – 31 December 2009	-320,116
1 January 2010 – 31 December 2010	-2,653,913
1 January 2011 – 31 December 2011	-4,559,466
1 January 2012 – 31 December 2012	-6,532,075
1 January 2013 – 31 December 2013	-8,705,725
1 January 2014 – 31 December 2014	-11,627,678
1 January 2015 – 31 December 2015	-14,977,586
1 January 2016 – 31 December 2016	-18,139,357

¹³⁴ Date of Change DOA 2004

¹³⁵ Date of Change 06/01/2010

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<i>1 January 2017 – 31 December 2017</i>	<i>-21,142,988</i>
<i>1 January 2018 – 31 December 2018</i>	<i>-24,377,899</i>
<i>1 January 2019 – 31 December 2019</i>	<i>-27,716,185</i>
<i>1 January 2020 – 31 December 2020</i>	<i>-30,926,556</i>
<i>1 January 2021 – 31 December 2021</i>	<i>-29,559,997</i>

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Part 4 - Annual Benefit Share

1 Determination of Annual Benefit Share

1.1

- (a) The following Annual Benefit Share calculations shall be made on a retrospective five Franchise Operator Years basis. Accordingly when calculating the Annual Benefit Share in respect of any Franchise Operator Year recourse shall be had to the Actual Modified EBDIT Statement & Financial Statements for such Franchise Operator Year and the immediately preceding four Franchise Operator Years (or, all preceding Franchise Operator Years if the calculation is made prior to the end of the fifth Franchise Operator Year) and references to 'relevant Franchise Operator Years' in this Part 4 shall be construed accordingly.
- (b) The Annual Benefit Share calculation assumes that each Franchise Operator Year will (save in respect of the first Franchise Operator Year) begin on 1 January. The parties agree that where the period of the Franchise Operator Year is to be amended in accordance with Clause 15.13 of this Franchise Agreement changes to the Annual Benefit Share calculation will be appropriate.

1.2 The Annual Benefit Share payment in respect of:

1.2.1 each of the first four Franchise Operator Years shall be £nil unless this Franchise Agreement has been terminated in which case paragraph 1.2.2 shall apply

1.2.2 the fifth Franchise Operator Year or, where this Franchise Agreement terminates prior to the end of the fifth Franchise Operator Year, the final Franchise Operator Year shall be CPS_n

the sixth or any subsequent Franchise Operator Year shall be PS_n

Where

- (a) n is the calendar year in which the last day of the Franchise Operator Year falls
- (b) PS_n , the Annual Profit Share for the year n is calculated as follows:

$$PS_n = CPS_n - PYPS_n$$

Where $PYSP_n$, (which represents the aggregate Annual Benefit Share paid during the previous four years), for the year n is calculated as follows:

(i) for $n = 2002$, nil; and

(ii) for $n > 2002$, the maximum of zero and $\sum_{i=a}^{n-1} PS_i$

where

a is an integer and is the maximum of 2002 and $n-4$.

$\sum_{i=a}^b X_i$ means the sum of all the values of X_i with i taking each integer value from a to b inclusive.

- (c) The value of CPS_n , (which represents the aggregate Annual Benefit Share payable in respect of the five year period to the end of year n or from the Franchise Commencement Date to the end of year n (whichever is the shorter)), for the year n varies depending on the value of m_n

$$m_n = \sum_{i=a}^n mEBDIT_i$$

where a is an integer and is the maximum of 2002 and $n-4$

where $mEBDIT_n$ is the Actual Modified EBDIT for the Franchise Operator Year which ends in the same calendar year as the relevant value of n

and where:

if m_n is equal to or greater than v_n then

$$CPS_n = (u_n - t_n) \times 25\% + (v_n - u_n) \times 37.5\% + (m_n - v_n) \times 50\%$$

if m_n is equal to or greater than u_n but less than v_n then

$$CPS_n = (u_n - t_n) \times 25\% + (m_n - u_n) \times 37.5\%$$

if m_n is equal to or greater than t_n but less than u_n then

$$CPS_n = (m_n - t_n) \times 25\%$$

if m_n is less than t_n then

$$CPS_n = \text{£nil}$$

and in respect of each value of n :

$$t_n = 1.25 \times s_n$$

$$u_n = 1.5 \times s_n$$

$$v_n = 1.8 \times s_n$$

where

$$s = \sum_{i=a}^n bEBDIT_i$$

where a is an integer and is the maximum of 2002 and $n-4$

where $bEBDIT_n$ is the Forecast Modified EBDIT for the Franchise Operator Year which ends in the same calendar year as the relevant value of n .

- 1.3** In order to determine the Annual Benefit Share at any time within four months of the end of each Franchise Operator Year, the Franchise Operator shall send to the Authority:

- (i) the Actual Modified EBDIT Statement for the relevant Franchise Operator Years;

- (ii) a copy of the Financial Statements for the relevant Franchise Operator Years (for the avoidance of doubt whether or not each such Franchise Operator Year covers the same period as an accounting reference period of the Franchise Operator);
- (iii) ^wa reconciliation of the Financial Statements to the Actual Modified EBDIT Statement and a certificate from the auditors of the Franchise Operator addressed to the Authority confirming in terms reasonably acceptable to the Authority such reconciliation to be correct and accurate and that the Forecast Modified EBDIT has been calculated using the same accounting policies as the Actual Modified EBDIT; and
- (ii) such other information as the Authority may reasonably request.

2 Accounting Policies

- 2.1** Subject to paragraph 2.2, the Franchise Operator shall ensure that Actual Modified EBDIT Statement is determined in accordance with GAAP as if it were the Financial Statements for the relevant period, provided that the Authority may, subject to paragraph 2.2, specify in writing to the Franchise Operator any accounting principles, policies or practices consistent with GAAP which it reasonably requires the Franchise Operator to apply in the preparation of the Actual Modified EBDIT Statement for the relevant Franchise Operator Years.
- 2.2** In computing the Actual Modified EBDIT or Forecast Modified EBDIT of the Franchise Operator:
 - 2.2.1** where the Franchise Operator has entered into transactions or arrangements with Affiliates or its managers or employees or those of an Affiliate other than on arm's length terms, the Authority shall be entitled to require that such Actual Modified EBDIT or Forecast Modified EBDIT be determined as if the Franchise Operator had not so entered into any such arrangements and to require reasonable arm's length terms to be substituted in place of the terms on which the Franchise Operator may have entered into any such transaction or arrangement;
 - 2.2.2** any leases which are accounted for as operating or finance leases under the Committed Outputs Business Plan, (and which therefore form part of the Forecast Modified EBDIT) shall be accounted for on the same basis when calculating the Actual Modified EBDIT.
 - 2.2.3** where the Authority reasonably considers that any particular item or transaction has not been accounted for on a reasonable basis (including where the accounting treatment looks to the form, rather than the substance, of the item or transaction) it shall be entitled to require it to be accounted for on such other basis (which basis shall be consistent with GAAP) as it may reasonably determine and notify the Franchise Operator.
 - 2.2.4** where if the Franchise Operator wishes to undertake capital investment outside of the Committed Outputs or Franchise Plan commitments which would involve capitalising assets onto the balance sheet of the Franchise Operator then it may seek the Authority's consent (which shall not be unreasonably withheld) to exclude such capital sum from the calculation of the Actual Modified EBDIT.

3 Authority audit

- 3.1** Without prejudice to the above or to any other powers of the Authority under this Franchise Agreement (including under Clause 15), the Authority and its representatives shall be permitted to inspect at any time the books, records and any other material kept by or on behalf of the Franchise Operator in order to check or audit any item contained in the Financial Statements of the Franchise Operator, the calculation of Actual Modified EBDIT, the consistency of the Financial Statements for any Franchise Operator Year with any preceding Franchise Operator Year and any other matter in connection with the obligations of the Franchise Operator under this Part 4.
- 3.2** The Franchise Operator shall make available to the Authority and its representatives such information and grant such access or procure the grant of such access (including to or from third parties) as they shall reasonably require in connection therewith. In the event that any such exercise reveals any inaccuracy in the amount of the Annual Benefit Share determined under paragraph 1, the Annual Benefit Share shall be amended accordingly.
- 3.3** In the event that any such exercise reveals a material error or mistake in information previously supplied to the Authority, the Franchise Operator shall pay the costs of such exercise.

4 Disputes

Any dispute in connection with the amount of the EBDIT Excess shall be resolved in accordance with the Dispute Resolution Rules.

5 Forecast Modified EBDIT

- 5.1** Subject to the remainder of this paragraph 5, the Forecast Modified EBDIT shall be Modified EBDIT for the relevant Franchise Operator Year as forecast in the then current Committed Outputs Business Plan of the Franchise Operator.
- 5.2** In computing the Forecast Modified EBDIT in any proposed Committed Output Business Plan the Franchise Operator shall only make such adjustments as shall reflect the incremental impact of any new or varied Proposals on the Committed Output Business Plan as compared to the current Committed Outputs Business Plan.
- 5.3** The Forecast Modified EBDIT shall be subject to any adjustments required to be made to ensure that it is calculated using the same accounting policies and otherwise on the same basis as any Actual Modified EBDIT to which it may relate.

5.4¹³⁶ *Subject to paragraphs 5.2 and 5.3, the Forecast Modified EBDIT shall be:*

<i>Franchise Operator Year</i>	<i>Real Amount</i>
<i>1 January 2002 – 31 December 2002</i>	<i>4,150,510</i>
<i>1 January 2003 – 31 December 2003</i>	<i>8,952,974</i>
<i>1 January 2004 – 31 December 2004</i>	<i>11,768,892</i>
<i>1 January 2005 – 31 December 2005</i>	<i>11,882,178</i>
<i>1 January 2006 – 31 December 2006</i>	<i>13,713,734</i>

¹³⁶ Date of Change 06/01/2010

1 January 2007 – 31 December 2007	15,159,367
1 January 2008 – 31 December 2008	12,513,819
1 January 2009 – 31 December 2009	12,785,573
1 January 2010 – 31 December 2010	13,747,001
1 January 2011 – 31 December 2011	14,842,889
1 January 2012 – 31 December 2012	16,254,920
1 January 2013 – 31 December 2013	17,563,177
1 January 2014 – 31 December 2014	19,404,557
1 January 2015 – 31 December 2015	20,023,304
1 January 2016 – 31 December 2016	21,093,518
1 January 2017 – 31 December 2017	21,813,004
1 January 2018 – 31 December 2018	22,459,246
1 January 2019 – 31 December 2019	22,712,523
1 January 2020 – 31 December 2020	23,620,020
1 January 2021 – 31 December 2021	31,885,941

5.4 where the Franchise Term is due to expire on 31 December 2011:

Franchise Operator Year	Forecast Modified EBDIT
1 January 2002 – 31 December 2002	4,044,595
1 January 2003 – 31 December 2003	10,248,230
1 January 2004 – 31 December 2004	14,894,268
1 January 2005 – 31 December 2005	15,141,796
1 January 2006 – 31 December 2006	13,766,566
1 January 2007 – 31 December 2007	15,101,369
1 January 2008 – 31 December 2008	17,589,852
1 January 2009 – 31 December 2009	19,912,256
1 January 2010 – 31 December 2010	23,148,222
1 January 2011 – 31 December 2011	26,410,256

5.4.1 where the Franchise Term is due to expire on 31 December 2013:

Franchise Operator Year	Forecast Modified EBDIT
1 January 2002 – 31 December 2002	4,078,795
1 January 2003 – 31 December 2003	8,860,736
1 January 2004 – 31 December 2004	11,656,743

1 January 2005 – 31 December 2005	13,644,820
1 January 2006 – 31 December 2006	16,211,935
1 January 2007 – 31 December 2007	14,036,890
1 January 2008 – 31 December 2008	15,505,116
1 January 2009 – 31 December 2009	17,224,056
1 January 2010 – 31 December 2010	19,192,704
1 January 2011 – 31 December 2011	21,428,647
1 January 2012 – 31 December 2012	23,251,163
1 January 2013 – 31 December 2013	23,836,564

¹³⁷ **PART 5 - 2008 REVIEW**

1. Definitions

1.1 In this Part 5:

- 1.1.1** *“2003 Review” means the Regulator’s review of the amounts payable by Network Rail and franchise operators to each other under track access agreements during the period 1 April 2004 to 31 March 2009 in respect of which the Regulator issued a review implementation notice pursuant to paragraph 7 of Schedule 4A of the Railways Act 1993 on 10 March 2004;*
- 1.1.2** *“2006 Review” means the Regulator’s review of the performance regime and of the amounts payable by Network Rail and franchise operators to each other under Schedule 8 of the track access agreements in respect of which the Regulator issued a review notice (the “Review Notice”) pursuant to paragraph 4 of Schedule 4A of the Railways Act 1993 on 20 December 2005 specifying those amendments to track access agreements which the Regulator proposed to direct were made;*
- 1.1.3** *“2008 Review” means the Regulator’s review of the amounts payable by Network Rail and franchise operators to each other under the terms of the access agreements during the period from 1 April 2009 to 31 March 2014 in respect of which the Regulator issued a review implementation notice pursuant to paragraph 7 of Schedule 4A of the Railways Act 1993 on 19 March 2009 directing that the amendments to track access agreements specified in the review notice were made;*
- 1.1.4** *“CP2” means the period which was expected to be from 1 April 2001 to 31 March 2006, but which ended on 31 March 2004 as a result of the 2003 Review;*
- 1.1.5** *“CP3” means the period from 1 April 2004 to 31 March 2009.*

¹³⁷ Date of Change 24/05/2011

1.1.6 “CP4” means the period from 1 April 2009 to the earlier of:

1.1.6.1 the date on which the Franchise Agreement expires or terminates; and

1.1.6.2 31 March 2014;

1.1.7 “Prior Charging Reviews” means the 2003 Review, the 2006 Review and the 2008 Review;

1.1.8 “Reporting Year” means the period commencing 1 April in each calendar year and comprising 13 consecutive Reporting Periods. The last Reporting Year will, where applicable, comprise the actual number of Reporting Periods in that year where that is less than 13;

1.1.9 “TAA” means the Track Access Agreement incorporating all supplemental agreements up to and including 31 March 2009 and, to the extent the same are in effect during CP4, such further supplemental agreements as may be concluded during CP4 as are advised by the Franchise Operator to the Authority prior to their conclusion (and, for this purpose, Clause 1.2(i) of the Franchise Agreement will not apply);

1.1.10 the expressions “Capacity Charge”, “Fixed Track Charge” and “Railway Safety Charge” will have the meanings given to them in Schedule 7 to the TAA;

1.1.11 the expressions “Access Charge Supplement for Possessions” shall mean the charge of that name referred to in Part 5 of Schedule 4 to the TAA;

1.1.12 the expression “Access Charge Supplement for Passengers Charter” shall mean the charge of that name referred to in paragraph 14.10 of Schedule 8 to the TAA;

1.1.13 the expression “Service Group” will have the meaning set out in Schedule 8 to the TAA.

2. 2008 Review

For the purpose of the Principal Formula in paragraph 1 of Part 2 of Schedule 6 of the Franchise Agreement:

CR2008 means an adjustment to the Franchise Payments for such Reporting Period pursuant to Clause 18.1 of the Franchise Agreement, calculated according to the following formula:

$$\text{CR2008} = \text{AFTC} + \text{AVC} + \text{ACC} + \text{ARSC} + \text{AS4} + \text{ACSPC} + \text{AS8} + \text{ASAC}$$

Where:

AFTC means the adjustment in relation to Fixed Track Charges calculated in accordance with

	<i>paragraph 3 of this Part;</i>
AVC	<i>means the adjustment in relation to Variable Track Usage Charges calculated in accordance with paragraph 4 of this Part;</i>
ACC	<i>means the adjustment in relation to Capacity Charges calculated in accordance with paragraph 5 of this Part;</i>
ARSC	<i>means the adjustment in relation to Railway Safety Charges calculated in accordance with paragraph 6 of this Part;</i>
AS4	<i>means the adjustment in relation to Schedule 4 of the TAA calculated in accordance with paragraph 11 of this Part; and</i>
ACSPC	<i>means the adjustment in relation to the Access Charge Supplement for Passengers Charter calculated in accordance with paragraph 12 of this Part.</i>
AS8	<i>means the adjustment in relation to Schedule 8 calculated in accordance with paragraph 13 of this Part; and</i>
ASAC	<i>means the adjustment in relation to Station Access Charges (Also referred to as the long term charge (LTC) for the stations calculated in accordance with paragraph 14 of this Part.</i>

3. Fixed Track Charge

For each Reporting Period commencing on or after 1 April 2009, AFTC referred to in the formula in paragraph 2 of this Part shall be calculated according to the following formula:

$$AFTC = F_{newRP} - F_{RP}$$

Where:

AFTC	<i>means AFTC referred to in paragraph 2 of this Part;</i>
F_{RP}	<i>means the amount of the Fixed Track Charge which would have been payable after indexation under the TAA in respect of the relevant Reporting Period had the Prior Charging Reviews resulted in unchanged Fixed Track Charges and indexation thereof; and</i>
F_{newRP}	<i>means the amount of the Fixed Track Charge actually payable after indexation under the TAA in respect of such Reporting</i>

Period.

4. Variable Track Usage Charges

- 4.1** For each Reporting Period commencing on or after 1 April 2009, AVC referred to in the formula in paragraph 2 of this Part shall be calculated according to the following formula:

$$AVC = \Sigma((VCUP_{new} - VCUP_{old}) \times AVM_{RP})$$

Where:

Σ means the aggregate for all types of vehicles;

$VCUP_{old}$ means the Variable Track Usage Charge for vehicles of a particular type (expressed as the price per vehicle mile) which would have applied after indexation had the Prior Charging Reviews resulted in unchanged Variable Track Usage Charges and indexation thereof;

$VCUP_{new}$ means the Variable Track Usage Charge for such type of vehicle (expressed as the price per vehicle mile) actually payable after indexation under the TAA; and

AVM_{RP} means the assumed number of vehicle miles anticipated to be operated by the Franchise Operator using such type of vehicle in respect of the relevant Reporting Period which, unless otherwise agreed between the Franchise Operator and the Authority and subject to correction under paragraph 4.3 of this Part, are as set out in Appendix 1 to this Part 5 of Schedule 6.

- 4.2** The assumed vehicle mileages set out in Appendix 1 to this Part 5 of Schedule 6 are based on information as to the Franchise Operator's service proposals available as at 1 April 2009. Without prejudice to any obligation the Franchise Operator may have under the Franchise Agreement (including the Franchise Plan) and to paragraph 4.3 of this Part, the Franchise Operator shall not by virtue of paragraph 4.1 of this Part or Appendix 1 to this Part 5 of Schedule 6 be under any obligation to operate any particular mileage.

- 4.3** AVC specified in paragraph 4.1 of this Part shall be corrected at the end of each Reporting Year by reference to the actual vehicle mileage operated by the Franchise Operator during such Reporting Year in accordance with the following formula:

$$CF = \Sigma((AVM_{RY} - MO_{RY}) \times (VCUP_{new} - VCUP_{old}))$$

Where

CF	<i>means the annual correction in respect of the relevant Reporting Year;</i>
Σ	<i>means the aggregate for all types of vehicles;</i>
AVM_{RY}	<i>means the assumed number of vehicle miles anticipated to be operated by the Franchise Operator using the relevant vehicle type in respect of the relevant Reporting Year, as set out in Appendix 1 to this Part 5 of Schedule 6;</i>
MO_{RY}	<i>means the number of vehicle miles actually operated by the Franchise Operator using the relevant vehicle type in respect of the relevant Reporting Year;</i>
VCUP_{old}	<i>has the meaning set out in paragraph 4.1 of this Part; and</i>
VCUP_{new}	<i>has the meaning set out in paragraph 4.1 of this Part.</i>

- 4.4. *The Franchise Operator shall supply data to the Authority sufficient to calculate CF within 30 days of the end of each Reporting Year.*
- 4.5. *If CF is a negative number, the Authority shall pay the amount of CF to the Franchise Operator and if CF is a positive number the Franchise Operator shall pay the amount of CF to the Authority, provided that if CF is a positive or negative number but is less than £50,000 CF shall be deemed to equal zero, but once the positive or negative number exceeds £50,000, then the full amount of CF becomes payable. CF shall be payable by way of adjustment to the Franchise Payments payable in the Reporting Period following submission by the Franchise Operator to the Authority of the data pursuant to paragraph 4.4 of this Part (or if, by reason of the termination or expiry of the Franchise Agreement, there are no such Franchise Payments, by way of payment by the Authority or the Franchise Operator as appropriate).*

5. Capacity Charges

For each Reporting Period commencing on or after 1 April 2009, ACC referred to in the formula in paragraph 2 of this Part shall equal the amount of the Capacity Charge payable (after indexation) by the Franchise Operator pursuant to the TAA in respect of that Reporting Period. The Franchise Operator shall provide to the Authority as soon as practicable after receipt copies of invoices from Network Rail specifying Capacity Charges.

6. Railway Safety Charges

With effect from 1 April 2009, ARSC referred to in the formula in paragraph 2 of this Part in respect of the relevant Reporting Period shall be calculated according to the following formula:

$$\text{ARSC} = ((\text{FTC}_{\text{CP4\%}} - \text{FRC}_{\text{CP2\%}}) \times \text{TRSC})$$

Where:

- ARSC** means ARSC referred to in paragraph 2 of this Part;
- FTC_{CP4%}** means the percentage of the total Fixed Track Charges payable (after indexation) by all franchise operators during the Reporting Year in which that Reporting Period falls which is payable by the Franchise Operator;
- FRC_{CP2%}** means the percentage of the total Fixed Track Charges payable by all franchise operators during CP2 which is payable by the Franchise Operator; and
- TRSC** means the total Railway Safety Charge payable by all franchise operators (after indexation) during the Reporting Year in which that Reporting Period falls.

7. Not used.
8. Not used.
9. Not used.
10. Not used.
11. Schedule 4
- 11.1 For each Reporting Period commencing on or after 1 April 2009, AS4 referred to in the formula in paragraph 2 of this Part shall be calculated in accordance with the following formula:

$$AS4 = ACSP - APMR$$

Where:

- AS4** means AS4 referred to in paragraph 2 of this Part;
- ACSP** shall be an amount equal to ACSP_{new} – ACSP_{old} where:
- ACSP_{new}** means the amount of the Access Charge Supplement for Possessions payable (after indexation) by the Franchise Operator under the TAA in that Reporting Period; and
- ACSP_{old}** means the amount of the Access Charge Supplement for Possessions which would have been payable (after indexation) by the Franchise Operator in that Reporting Period had the Prior Charging Reviews resulted in no change to the amount of the Access Charge Supplement for Possessions payable by the Franchise Operator.

APMR shall be an amount equal to $S4_{new} - S4_{old}$ where:

$S4_{new}$ means the amount which the Franchise Operator would have been entitled to receive from Network Rail in that Reporting Period (after indexation) under Schedule 4 of the TAA if such amount had been calculated in accordance with Schedule 4 of the TAA but using the marginal revenue effect element of the Network Rail payment rate which would have applied had the Prior Charging Reviews made no changes to such marginal revenue effect element; and

$S4_{old}$ means the amount which the Franchise Operator would have been entitled to receive from Network Rail in that Reporting Period (after indexation) under Schedule 4 of the TAA as that Schedule existed immediately prior to implementation of the 2003 Review,

provided that where any amounts paid or payable to the Franchise Operator under Schedule 4 of the TAA in respect of any Restriction of Use (which shall have the meaning given in Part 3 of Schedule 4 of the TAA) are, in accordance with paragraph 2.5 of Part 3 of Schedule 4 of the TAA, deducted from the amount payable by Network Rail to the Franchise Operator in respect of such Restriction of Use, $S4_{new}$ and $S4_{old}$ shall be reduced to the extent necessary to ensure that the amount which the Franchise Operator is or would have been entitled to receive from Network Rail under Schedule 4 of the TAA in respect of such Restriction of Use is not included in $S4_{new}$ and $S4_{old}$.

11.2 The Authority and the Franchise Operator shall continue to use the agreed methodology by which $S4_{old}$ referred to in paragraph 12.1 will be calculated.

12. Access Charge Supplement for Passenger Charter

12.1 For each Reporting Period commencing on or after 1 April 2009, ACSPC referred to in the formula in paragraph 2 of this Part shall be calculated in accordance with the following formula:

$$ACSPC = ACSPC_{CP4} - ACSPC_{CP2}$$

Where:

ACSPC means ACSPC referred to paragraph 2 of this Part;

$ACSPC_{CP4}$ means the Access Charge Supplement for Passengers Charter which is or would have been payable in

respect of that Reporting Period if the Access Charge Supplement for Passengers Charter payable during CP4 had been calculated:

(i) using the methodology used by the Regulator for the purpose of setting the Access Charge Supplement for Passengers Charter for CP4 as part of the 2008 Review: but

(ii) using the TAA passengers charter triggers used by the Regulator for the purpose of setting the Access Charge Supplement for Passengers Charter for CP2 as part of the 2001 Review;

ACSPC_{CP2} *means the Access Charge Supplement for Passengers Charter which would have been payable in that Reporting Period had the Access Charge Supplement for Passengers Charter published by the Regulator as part of the 2001 Review still applied.*

13. Schedule 8

13.1 *For each Reporting Period commencing on or after 1 April 2009, AS8 referred to in the formula in paragraph 2 of this Part shall be calculated in accordance with the following formula:*

$$AS8 = AS8_{new} - AS8_{old}$$

Where:

AS8 *means AS8 referred to in paragraph 2 of this Part;*

AS8_{new} *means the amount of the Access Charge Supplement payable (after indexation) by the Franchise Operator in that Reporting Period; and*

AS8_{old} *means the amount of the Access Charge Supplement which would have been payable (after indexation) by the Franchise Operator in that Reporting Period had the Prior Charging Reviews resulted in no change to the amount payable by the Franchise Operator.*

13.2 *The Authority and the Franchise Operator shall continue to use the agreed methodology by which AS8_{old} referred to in paragraph 13.1 will be calculated.*

14. Station Access Charges

14.1 *For each Reporting Period commencing on or after 1 April 2009, ASAC referred to in the formula in paragraph 2 of this Part shall be calculated in accordance with the following formula:*

$$ASAC = ASAC_{new} - ASAC_{old}$$

Where:

- ASAC** means ASAC referred to in paragraph 2 of this Part;
- ASAC_{new}** means the amount of the Station Access Charges payable (after indexation) by the Franchise Operator as published by Network Rail in that Reporting Period; and
- ASAC_{old}** means the amount of the Station Access Charges which would have been payable (after indexation) by the Franchise Operator in that Reporting Period had the Prior Charging Reviews resulted in no change to the amount of the Station Access Charges payable by the Franchise Operator.

14.2 The Authority and the Franchise Operator shall continue to use the agreed methodology by which ASAC_{old} referred to in paragraph 14.1 will be calculated.

15. Payment Provisions

15.1 CR2008 (as defined in paragraph 2 of this Part) is a component of the Franchise Payments to which paragraph 3.1 of Part 2 of this Schedule 6 applies. Accordingly, if any part of CR2008 (each such part being referred to as an “18.1 Adjustment”) is not, or cannot reasonably be, determined more than 7 days before the end of the Reporting Period to which it relates, then, unless paragraph 15.2 applies, no amount in respect of such 18.1 Adjustment shall be included in CR2008, and therefore in the Franchise Payment, for such Reporting Period.

15.2 Where any 18.1 Adjustment is not, or cannot reasonably be, determined more than 7 days before the end of the Reporting Period to which it relates, the Authority and the Franchise Operator may agree a good faith best estimate of such 18.1 Adjustment. If such an estimate is agreed:

15.2.1 CR2008, and therefore the Franchise Payment, for such Reporting Period, shall be calculated by reference to such estimate; and

15.2.2 further adjustment shall be made to the Franchise Payments as soon as reasonably practicable to the extent necessary to correct any difference between the estimate so used and the actual 18.1 Adjustment.

15.3 If no such good faith best estimate is agreed, the relevant 18.1 Adjustment shall become payable in accordance with paragraph 3.1 of Part 3 of this Schedule 6 once it has been determined.

Appendix 1 to Part 5 of Schedule 6¹³⁸

Vehicle Mileages (paragraph 4 of Part 5 - Variable Track Usage Charges)

<i>Vehicle Type</i>	<i>Assumed Vehicle Miles</i>
<i>121/m</i>	<i>26,980</i>
<i>165/m</i>	<i>7,328,599</i>
<i>168/m</i>	<i>10,678,695</i>

Schedule 7 —

Incentive Regime (Clause 17)

Part 1 — Definitions and Construction

1 Definitions

The following definitions shall apply in this Schedule 7 except to the extent the context otherwise requires:

“Allowable Change”	<p>(i) in respect of the period commencing on the Franchise Commencement Date up to (but not including) the Possessions Regime Review Date, means a change to the Timetable which is caused by:</p> <p>(a) any Railtrack Possession notified to the Franchise Operator on notice of more than 28 days; or</p> <p>(b) any other matter which may be specified from time to time by the Authority; and</p> <p>(ii) with effect from the Possessions Regime Review Date means a change to the Timetable which is caused by:</p> <p>(c) any Railtrack Possession or LUL Possession notified to the Franchise Operator or included in the Timetable; or</p> <p>(d) any other matter which may be specified from time to time by the Authority.</p>
“Capacity”	<p>means, in respect of any train and any Formation Monitoring Point, the number of seats in Standard Class Accommodation on such train which the Franchise Operator provides or (as the case may be) plans to provide under any relevant Train Plan, on such train at such Formation Monitoring Point, provided that to the extent that a Train Plan specifies an aggregate capacity for a number of trains, the Capacity in respect of such trains and any Formation Monitoring Point will be the aggregate of that which the Franchise Operator provides or (as the case may be) plans to provide under any relevant Train Plan, on each of such trains.</p>
“Charge Variation”	<p>has the meaning given in Clause 18.1 of this Franchise Agreement.</p>
“Competent Authority Possession”	<p>has the meaning specified in Part 3 of Schedule 4 of the Track Access Agreement specified in Part 2(a) of Schedule 1.</p>

“Formation Monitoring Point”	means the point (not being more than one per train) for each train which the Authority may designate as such by notice to the Franchise Operator from time to time (being the point at which it considers that passenger numbers are likely to be most concentrated for that train).
“LUL Possession”	means, in respect of any day, any restriction on use of any relevant section of track notified by LUL to the Franchise Operator which necessitates any difference between the Applicable Timetable on that day as compared to the Timetable in respect of that day.
“Maximum Lateness”	means, in respect of any train, the number of minutes specified in Part 4 of this Schedule 7.
“Pass”	means, in relation to any Formation Monitoring Point, the act of a train arriving at, passing or departing from (as the context may require) such Formation Monitoring Point.
“Possession”	for the purposes only of paragraph (ii) of the definition of “Railtrack Possession”, means, in respect of any day, any restriction on use of any relevant section of track notified by Railtrack to the Franchise Operator which necessitates any difference between the Applicable Timetable on that day as compared to the Timetable in respect of that day.
“Possessions Regime Review Date”	means the Passenger Change Date in or about May 2002 or such later date as the Regulator may specify for the coming into effect of the Part 3 of Schedule 4 of the Track Access Agreement under the 2002 Schedule 4 Interim Review (such Part 3 of Schedule 4 being as described in the document entitled “The Possessions Review: Provisional Conclusions on the Schedule 4 Incentives Structure” as published by the Regulator in December 2001). For the purpose of this definition, “the Track Access Agreement” means the Track Access Agreement specified in Part 2(a) of Schedule 1.
“Railtrack Possession”	(i) in respect of the period commencing on the Franchise Commencement Date up to (but not including) the Possessions Regime Review Date, means any restriction of use of any relevant section of track, imposed by or at the direction of Railtrack for the purpose of inspection, maintenance, renewal, repair, enhancement or other modification of the network or track, including each of the following types of restriction where imposed for any such purpose:

- (a) blockage;
 - (b) temporary speed restriction;
 - (c) single line working;
 - (d) interruption to power supplied;
 - (e) deviation;
- but excluding any restriction of use imposed by reason of the condition of the network or track and not for or in association with any of the aforementioned purposes
- (ii) with effect from the Possessions Regime Review Date, means any Possession including, without limitation;
 - (a) a Competent Authority Possession;
 - (b) any Possession to implement a network change in accordance with part G of the Access Conditions; and
 - (c) (for the avoidance of doubt) any Possession notified by Railtrack for the purpose of the carrying out of any work necessary to enable the Franchise Operator to comply with its obligations under the First Output Plan (as defined in Schedule 14).

“Railtrack Systems”

has the meaning ascribed to that term in paragraph 1(a) of Part 3 of this Schedule 7.

¹³⁹ **“Service Group”**

has the meaning given in Schedule 8 of the Franchise Operator's track access agreement with Network Rail;

“SFIP Cap”

means, in respect of any train, the value, in pounds and pence, specified in Part 4 of this Schedule 7.

“SFIP Services”

means the Passenger Services described in Part 4 of this Schedule 7.

“SRA Systems”

has the meaning ascribed to that term in paragraph 1(b) of Part 3 of this Schedule 7.

“Systems”

means the SRA Systems and the Railtrack Systems.

“the 2002 Schedule 4 Interim Review”

means the interim review proposed to be undertaken by the Regulator, as described in the document entitled “The Possessions Review: Provisional Conclusions on the Schedule 4 Incentives Structure” published by the Regulator in December 2001.

¹³⁹ date of change 8.9.2004

¹⁴⁰ "2003 Review

has the meaning given in Part 5 of Schedule 6 of this Franchise Agreement;

"2006 Review"¹⁴¹

Review by the Office of Rail Regulation of Schedule 8 of the Track Access Agreement in respect of the performance regime and the amounts payable by Network Rail and franchise operators to each other.

"2006 Review"

means 1 April 2006

2 Construction

- (a)** For the purposes of this Schedule 7, a day shall be deemed to begin at 0200 and end at 0159 on the next day, and all references to a day in this Schedule 7 shall be construed accordingly.
- (b)** Subject to paragraph 2(a) above, where any train is scheduled to depart from its point of origin on one day and arrive at its destination point on the following day, any minutes late recorded or deemed in respect of the train on the day shall be treated as occurring on the day on which the train was scheduled to depart from its point of origin.
- (c)** References in this Schedule 7 to "trains" do not include Charter Services or other movements of rolling stock outside the Timetable (but which may be included in any relevant working timetable).

¹⁴⁰ date of change 8.9.2004

¹⁴¹ date of change 29.9.2006

Part 2 — Determination of Incentive Payment

Total Incentive Payment¹⁴²

- 1 The Incentive Payment for each Reporting Period during the Franchise Term shall be determined in accordance with the following formula:

$$I = TPIP - (TTCIP + TSFIP + TDP + TTOIP)$$

Where

- I equals the Incentive Payment for the relevant Reporting Period (and may be either a positive or a negative number);
- TPIP equals the Total Punctuality Incentive Payment for the relevant Reporting Period, as determined in accordance with paragraph 2 of this Part 2 (and may be either a positive or a negative number);
- TTCIP equals the Total Timetable Change Incentive Payment (if any) for the relevant Reporting Period, as determined in accordance with paragraph 3 of this Part 2 (and may be only a positive number);
- TSFIP equals the Total Short Formation Incentive Payment (if any) for the relevant Reporting Period, as determined in accordance with paragraph 5 of this Part 2 (and may be only a positive number).
- TDP** *means the Track Doubling Payment in respect of any Reporting Period, commencing on or after the Passenger Change Date for the Winter 2002/2003 Timetable, as calculated in accordance with paragraph 8 of Part 2 of Schedule 7.*
- TTOP** *means the Total Timetable Outputs Incentive Payment in respect of any Reporting Period as calculated in accordance with paragraph 9 of Part 2 of Schedule 7.*

Punctuality Incentive Payment

- 2 The Total Punctuality Incentive Payment in each Reporting Period shall be determined on the basis of the Public Performance Measure in that Reporting Period as follows:
- (a) for each Reporting Period for which the Public Performance Measure (specified to 2 decimal places) equals the PPM Benchmark for that Reporting Period, TPIP shall equal zero;
- (b) for each Reporting Period for which the Public Performance Measure (specified to 2 decimal places) is less than the PPM Benchmark for that Reporting Period, TPIP shall be determined in accordance with paragraphs 2.1 to 2.3 below; and

¹⁴² Date of changes 25.7.2006

- (c) for each Reporting Period for which the Public Performance Measure (specified to 2 decimal places) is greater than the PPM Benchmark for that Reporting Period, TPIP shall be determined in accordance with paragraph 2.4 below.

Where:

“**PPM Benchmark**” means, in respect of any Reporting Period, the percentage specified in Part 4 of this Schedule 7 in respect of that Reporting Period.

- 2.1** The Total Punctuality Incentive Payment for each Reporting Period for which the Public Performance Measure is less than the PPM Benchmark for that Reporting Period shall be determined in accordance with the following formula:

$$\text{TPIP} = (\text{APIP} \times \text{PPMF}) \times (-1)$$

Where:

APIP equals the aggregate of the Punctuality Incentive Payment for each train which is included in the Applicable Timetable during that Reporting Period. The Punctuality Incentive Payment in respect of each such train shall be determined in accordance with paragraphs 2.2 and 2.3 below.

PPMF equals the factor to be applied to the APIP which depends on the extent to which the Public Performance Measure is less than the PPM Benchmark for that Reporting Period, and is determined in accordance with the following formula:

$$\text{PPMF} = \frac{(\text{PPMB} - \text{PPMP})}{(100\% - \text{PPMP})}$$

Where

PPMB equals the PPM Benchmark percentage for the Reporting Period;
and

PPMP equals the Public Performance Measure percentage (specified to 2 decimal places) for the Reporting Period

Provided that TPIP for any Reporting Period for which the Public Performance Measure is less than the PPM Benchmark for that Reporting Period shall always be a negative number.

- 2.2** The Punctuality Incentive Payment in respect of each train which is included in the Applicable Timetable and is not a cancellation (as defined below) shall be calculated as follows:

- (a) For each train that arrives punctually (as defined below) at its final destination as scheduled in the Applicable Timetable:

$$\text{PIP} = 0$$

- (b) For each train that arrives at the final destination 5 minutes or more after the scheduled arrival time as shown in the Applicable Timetable, shall be as determined in accordance with the following formula:

$$\text{PIP} = (\text{L} \times \text{T}) \times \text{RPI}$$

- 2.3** The Punctuality Incentive Payment in respect of each train which is included in the Applicable Timetable but is a cancellation (as defined below) shall be calculated as follows:

- (a) For each train that is a total cancellation:

$$\text{PIP} = \text{TCM} \times \text{T} \times \text{RPI}$$

- (b) For each train that is a cancellation but is not a total cancellation:

$$\text{PIP} = \text{CM} \times \text{T} \times \text{RPI}$$

Where for the purposes of paragraphs 2.2 and 2.3:

PIP	equals the Punctuality Incentive Payment in respect of a train
L	means, in relation to any train, the number of minutes (not being less than zero and rounded down to nearest whole minute) by which such train arrives at its final destination after the time it was scheduled so to do in the Applicable Timetable, provided that if such number is greater than the Maximum Lateness, the number of minutes shall be deemed to equal the Maximum Lateness
T	equals the value, in pounds and pence, attributed to a minute late for a train as set out in Part 4 of this Schedule 7
RPI	equals the quotient of the Retail Prices Index for the November of the Reporting Year prior to the Reporting Year in which such Reporting Period falls divided by the Retail Prices Index for November 2000.
TCM	means the number of minutes attributed to the total cancellation of a train as set out in Part 4 of this Schedule 7
CM	means the number of minutes attributed to the cancellation (other than the total cancellation) of a train as set out in Part 4 of this Schedule 7
"cancellation"	means a train which is scheduled to be provided under the Applicable Timetable and which: <div style="margin-left: 20px;"><p>(c) is totally cancelled; or</p><p>(b) begins its journey after its scheduled departure point in the Applicable Timetable or terminates its journey before its scheduled destination point in the Applicable Timetable</p></div>
"punctually"	has the meaning set out in sub-paragraph (i) of the definition of Public Performance Measure in Clause 1.1, being arrival at the final destination within 4 minutes and 59 seconds of the scheduled arrival time as shown in the Applicable Timetable
"total cancellation"	means a train which is scheduled to be provided under the Applicable Timetable and which is cancelled or does not otherwise operate for more than half its scheduled mileage under the Applicable Timetable.

2.4

- (a) The Total Punctuality Incentive Payment for each Reporting Period for which the Public Performance Measure is greater than the PPM Benchmark for that Reporting Period shall be determined in accordance with the following formula:

$$\text{TPIP} = (\text{PPMP} - \text{PPMB}) \times \text{BR} \times \text{RPI}$$

Where

PPMP means the Public Performance Measure percentage (specified to 2 decimal

places) for the Reporting Period;

PPMB means the PPM Benchmark percentage for the Reporting Period;

BR means the bonus rate, being the value, in pounds and pence, attributed to each percentage point increase in the Public Performance Measure (specified to 2 decimal places) above the PPM Benchmark in respect of a Reporting Period, as set out in Part 4 of this Schedule 7; and

RPI equals the quotient of the Retail Prices Index for the November of the Reporting Year prior to the Reporting Year in which such Reporting Period falls divided by the Retail Prices Index for November 2000

Provided that subject to paragraph 2.4(b) below, TPIP for any Reporting Period for which the Public Performance Measure is greater than the PPM Benchmark for that Reporting Period shall always be a positive number; and

- (b) where the Public Performance Measure for Peak Services for that Reporting Period is 2% or more below the PPM Benchmark, then TPIP shall be zero. The Public Performance Measure for Peak Services shall be calculated in the same way as the Public Performance Measure, but by reference only to the number of Peak Services scheduled to be provided under the Applicable Timetable and the number of Peak Services which arrive punctually at their final scheduled destination in the Applicable Timetable. "Peak Services" has the meaning given in Part 1 of Schedule 3.

Timetable Change Incentive Payment

- 3 The Total Timetable Change Incentive Payment for each Reporting Period shall be the aggregate of the Timetable Change Incentive Payments (if any) determined for each day in that Reporting Period on which the Applicable Timetable is an Amended Timetable. If an Amended Timetable is in effect the Timetable Change Incentive Payment for such day shall be, subject to paragraph 4, determined in accordance with the following formula:

$$TCIP = [(TC \times TCM \times T) + (C \times CM \times T)] \times I \times RPI$$

Where

TCIP equals the Timetable Change Incentive Payment for any relevant day

TC is the number (if any) of Passenger Services in the Timetable, looked at by reference to the ultimate destination point of those Passenger Services, in respect of which the same or a comparable service is not scheduled to operate in the Applicable Timetable. For this purpose, a service will be regarded as scheduled to operate if the same or comparable service is scheduled in the Applicable Timetable to operate for more than half the scheduled mileage of the original Passenger Service in the Timetable to which it is being compared. Where the intermediate section of a service is provided by a substitute bus service or other rail service:

- (i) the mileage run by the bus or other rail service shall not be counted as having been run for the purpose of calculating whether the train providing the service has operated for more than half of its scheduled mileage under the Timetable: but
- (ii) if, after disregarding the mileage run by the substitute bus or other rail

service, the service (or comparable service) is scheduled in the Applicable Timetable to operate for more than half the scheduled mileage of the original Passenger Service in the Timetable to which it is being compared, the full service shall be treated as provided for the purposes of calculating TC

- TCM means the number of minutes attributed to the total cancellation of a train as set out in Part 4 of this Schedule 7
- T equals the value, in pounds and pence, attributed to a minute late for a train as set out in Part 4 of this Schedule 7
- C is the number (if any) of Passenger Services in the Timetable in respect of which the same or comparable service in the Applicable Timetable:
- (a) begins its journey after the scheduled departure point or terminates its journey before the scheduled destination point for the original Passenger Service in the Timetable to which it is being compared; and
 - (b) is not included in the number of total cancellations in the calculation of TC
- CM means the number of minutes attributed to the cancellation (other than the total cancellation) of a train as set out in Part 4 of this Schedule 7
- RPI equals the quotient of the Retail Prices Index for the November of the Reporting Year prior to the Reporting Year in which such Reporting Period falls divided by the Retail Prices Index for November 2000; and
- I equals 1.0 if there are no trains scheduled in the Applicable Timetable for that day, but otherwise equals 0.8.

Reductions in the Timetable Change Incentive Payment ^{x y z aa bb cc dd ee ff gg hh ii jj kk ll mm nn oo pp qq rr ss tt uu}

- 4** To the extent that any part of the Total Timetable Change Incentive Payment for any day relates to a difference between the Timetable and Amended Timetable caused by an Allowable Change, then that part of such payment shall be:
- (c)** in respect of any day falling within the period commencing on the Franchise Commencement Date up to (but not including) the Possessions Regime Review Date:
- (ii) where the Allowable Change is a Railtrack Possession notified to the Franchise Operator in accordance with the criteria contained in paragraphs 4.2 (c) or 4.2 (d) of Schedule 4 Part 2 of the Railtrack Track Access Agreement specified in Part 2(a) of Schedule 1, an amount equal to that proportion of payments, if any, received by the Franchise Operator for such possession which is equivalent to the “societal value” element of the Railtrack Payment Rate (as specified in Appendix 1 of Schedule 8 of that Track Access Agreement); and
 - (iii) reduced by such proportion as the Authority may decide (having regard to any compensation received therefor by the Franchise

Operator under the relevant track access agreement) where the Allowable Change is any other matter.

in respect of any day falling on or after the Possessions Regime Review Date:

- (iv) reduced by 100 per cent. where the Allowable Change is a Railtrack Possession or LUL Possession; and
- (v) reduced by such proportion as the Authority may decide (having regard to any compensation received therefor by the Franchise Operator under the relevant track access agreement) where the Allowable Change is any other matter.

Short Formation Incentive Payment Error Bookmark not defined. vv ww xx yy zz aaa bbb ccc ddd eee fff ggg

- 5** The Total Short Formation Incentive Payment in each Reporting Period shall be the aggregate of the Short Formation Incentive Payment for each train included in the SFIP Services which is included in the Train Plan of the Franchise Operator during that Reporting Period, as determined in accordance with the following formula:

$$\text{SFIP} = (\text{PTC} - \text{ATC}) \times \text{SFV} \times \text{RPI}$$

Where

- SFIP** equals the Short Formation Incentive Payment (which, if SFIP is a negative number, shall be deemed to be zero);
- ATC** equals the Capacity provided at the Formation Monitoring Point for that train, provided that, if such train does not Pass such Formation Monitoring Point and such train is part of the SFIP Services, SFIP shall be deemed to be zero for such train;
- PTC** equals the Capacity planned to be provided at the Formation Monitoring Point for that train in accordance with the Train Plan;
- SFV** equals the value, in pounds and pence, attributed to any seat not provided below the Capacity planned to be provided at the Formation Monitoring Point for that train in accordance with the Train Plan, as set out in Part 4 of this Schedule 7;
- RPI** equals the quotient of the Retail Prices Index for the November of the Reporting Year prior to the Reporting Year in which such Reporting Period falls divided by the Retail Prices Index for November 2000.

Provided that:

- 5.1** where SFIP for an individual train exceeds the SFIP Cap, SFIP shall be equal to the SFIP Cap;
- 5.2** subject to paragraph 5.3, to the extent that a Train Plan specifies an aggregate capacity for a number of trains, there will be one Short Formation Incentive Payment in respect of all such trains, and in respect of such calculation:

ATC equals the aggregate Capacity provided at the Formation Monitoring Point for all such trains, provided that, if any of such trains do not Pass such Formation Monitoring Point, the Capacity of such train shall be deemed to be as provided for that train in the diagram underlying the Train Plan;

PTC equals the aggregate of the Capacity planned to be provided at the Formation

Monitoring Point for all such trains in accordance with the Train Plan;

- 5.3** in respect of the Specified Birmingham Moor Street Services the Formation Monitoring Point shall be Birmingham Moor Street, and an aggregate capacity shall apply as follows:

- (a)** in respect of all trains falling within paragraph (a) of the definition of the Specified Birmingham Moor Street Services below in respect of any day:^{bbb}

ATC equals the aggregate Capacity provided at the Formation Monitoring Point for all such trains, provided that, if any of such trains do not Pass such Formation Monitoring Point, the Capacity of such train shall be deemed to be as provided for that train in the diagram underlying the Train Plan; and

PTC equals the aggregate of:

- (i) 200 seats in Standard Class Accommodation up until twelve months after the Franchise Commencement Date;
- (ii) 320 seats in Standard Class Accommodation from twelve months after the Franchise Commencement Date until the Backstop Delivery Date for the Cherwell Valley Robust Outputs; and
- (iii) 520 seats in Standard Class Accommodation from the Backstop Delivery Date for the Cherwell Valley Robust Outputs

and there will be one Short Formation Incentive Payment (if appropriate) in respect of all such trains for any day; and

- (b)** in respect of all trains falling within paragraph (b) of the definition of the Specified Birmingham Moor Street Services below in respect of any day:^{bbb}

ATC equals the aggregate Capacity provided at the Formation Monitoring Point for all such trains, provided that, if any of such trains do not Pass such Formation Monitoring Point, the Capacity of such train shall be deemed to be as provided for that train in the diagram underlying the Train Plan; and

PTC equals the aggregate of:

- (i) 200 seats in Standard Class Accommodation from the Franchise Commencement Date until the Backstop Delivery Date for the Cherwell Valley Robust Outputs; and
- (ii) 370 seats in Standard Class Accommodation from the Backstop Delivery Date for the Cherwell Valley Robust Outputs

and there will be one Short Formation Incentive Payment (if appropriate) in respect of all such trains for any day;

- (c)** in respect of all trains falling within paragraph (c) of the definition of the Specified Birmingham Moor Street Services below in respect of any day:^{bbb}

ATC equals the aggregate Capacity provided at the Formation Monitoring Point for all such trains, provided that, if any of such trains do not Pass such Formation Monitoring Point, the Capacity of such train shall be deemed to be as provided for that train in the diagram underlying the Train Plan; and

PTC equals the aggregate of 200 seats in Standard Class Accommodation from the Passenger Change Date for the Winter 2002/2003 Timetable.

and there will be one Short Formation Incentive Payment (if appropriate) in respect of all such trains for any day;

Where:

“Specified Birmingham Moor Street Services” means:

- (a) trains scheduled to arrive at Birmingham Moor Street station between 0800 and 0900 on Weekdays (excluding Bank Holidays) and which have previously called at Leamington Spa station;
- (b) trains scheduled to depart from Birmingham Moor Street station between 1700 and 1800 on Weekdays (excluding Bank Holidays) to destinations which include Leamington Spa; and
- (c) trains scheduled to depart from Birmingham Moor Street Station between 1700 and 1800 on Weekdays (excluding Bank Holidays) to destinations which include Stourbridge Station.

“Backstop Delivery Date for the Cherwell Valley Robust Outputs” has the meaning specified in the First Output Plan referred to in Schedule 14.

6. [NOT USED]

7. [NOT USED]

8.¹⁴³ **Track Doubling Payment**

8.1 Terms used in this paragraph 8 have the meaning given to them in the First Output Plan referred to in Schedule 14.

8.2 Provided that the Track Doubling Payment shall not be payable or shall cease to be payable (as applicable) from the date that the Track Doubling Annual Charges begin to accrue then the Track Doubling Payment in respect of any Reporting Period commencing on or after the Passenger Change Date for the Winter 2002/3 Timetable shall be determined in accordance with the following formula:

$$TDP = \frac{N}{RPD} \times \frac{\text{Annual Charge}}{13} - z \times RPI$$

where:

“Annual Charge” means:

¹⁴³ date of change 29.9.2006

- (a) *in respect of the period to (and including) 4 January 2003, £4,924,000; and*
- (b) *in respect of the period from (and including) 5 January 2003, £5,376,000*

“N” means the number of days in the relevant Reporting Period in respect of which the Track Doubling Timetable Outputs have not been included in the Timetable. In addition “N” shall exclude days in respect of which the Track Doubling Annual Charges (as such term is defined in the First Output Plan) are accruing.

“RPI” equals the quotient of the Retail Prices Index for the November of the Reporting Year prior to the Reporting Year in which such Reporting Period falls divided by the Retail Prices Index for November 2001.

“RPD” equals the number of days in that Reporting Period.

The value of “z” will vary depending on the Reporting Period in respect of which the calculation is made, as follows:

- (i) where the Reporting Period falls between 15 September 2002 and 21 June 2003 (inclusive), z equals £134, 000;*
- (ii) where the Reporting Period falls between 22 June 2003 and 6 December 2003 (inclusive), z equals £230,500;*
- (iii) where the Reporting Period falls between 7 December 2003 and 26 June 2004 (inclusive), z equals £287,700; and*
- (iv) where the Reporting Period falls between 27 June 2004 and 12 December 2004 (inclusive), z equals £360,800.*

For the avoidance of doubt, TDP shall equal zero where Track Doubling Annual Charges are payable in respect of each day of the Reporting Period.

- 3.1 *The following paragraph shall be added as paragraph 9 of Part 2 of Schedule 7:*

9. Total Timetable Output Incentive Payment

- 9.1 *Terms used in this paragraph 9 have the meaning given to them in the First Output Plan referred to in Schedule 14.*
- 9.2 *Subject to the maximum amounts referred to in paragraph 9.3 and the cut-off date referred to in paragraph 9.4, the Total Timetable*

Outputs Incentive Payment for each Reporting Period shall be the aggregate of the Timetable Outputs Incentive Payments (if any) determined for each day of that Reporting Period in accordance with the following formula:

$$TOIP = KTOIP + PTOIP + OTOIP$$

Where:

TOIP equals the Timetable Outputs Incentive Payment for any relevant day;

KTOIP equals the Timetable Outputs Incentive Payment in respect of stops at Kidderminster and Stourbridge stations determined in accordance with the following formula:

$$KTOIP = (KV \times RPI) \times (SSK - ASK)$$

where:-

KV equals £53 unless Network Rail refuses to make sufficient personnel available, or frustrates the availability of such personnel, to perform the necessary signalling works required to enable the Franchise Operator to comply with the Kidderminster Robust Infrastructure Outputs (as such term is defined in the First Output Plan) or where the Authority is of the reasonable opinion that the slippage in the Franchise Commencement Date from the anticipated date of commencement on 1 October 2001 has caused undue difficulty to the Franchise Operator in meeting its reasonable endeavours obligation to comply with the Kidderminster Timetable Outputs and/or the Kidderminster Sunday Timetable Outputs in which cases KV shall equal £26.50. After the May 2003 Passenger Change Date KV shall equal zero. RPI equals the quotient of the Retail Prices Index for the November of the Reporting Year prior to the Reporting Year in which such Reporting Period falls divided by the Retail Prices Index for November 2001. SSK equals the aggregate number of Required Stops at Kidderminster and Stourbridge stations for the relevant day

ASK equals the actual aggregate number of stops at Kidderminster and Stourbridge stations scheduled in the Timetable for the relevant day provided that if ASK is greater than SSK, then ASK shall be deemed to have the same value as SSK.

PTOIP equals the Timetable Outputs Incentive Payment in respect of stops at Specified Stations by Peak services determined in accordance with the following formula:

$$PTOIP = (PV \times RPI) \times (SSP - ASP)$$

where:-

PV equals £255 until 31 December 2004 and, thereafter, £375

RPI equals the quotient of the Retail Prices Index for the November of the Reporting Year prior to the Reporting Year in which such Reporting Period falls divided by the Retail Prices Index for November 2001.

SSP equals the aggregate number of Required Stops at Specified Stations by Peak services for the relevant day.

ASP equals the actual aggregate number of stops at Specified Stations scheduled in the Timetable by Peak services for the relevant day provided that if ASP is greater than SSP, then ASP shall be deemed to have the same value as SSK.

OTOIP equals the Timetable Outputs Incentive Payment in respect of stops at Specified Stations by Off-Peak services determined in accordance with the following formula:

$$\text{OTOIP} = (\text{OV} \times \text{RPI}) \times (\text{SSO} - \text{ASO})$$

where:-

OV equals £127.50 until 31 December 2004 and, thereafter, £187.50.

RPI equals the quotient of the Retail Prices Index for the November of the Reporting Year prior to the Reporting Year in which such Reporting Period falls divided by the Retail Prices Index for November 2001.

SSO equals the aggregate number of Required Stops at Specified Stations by Off-Peak services for the relevant day.

ASO equals the actual aggregate number of stops at Specified Stations scheduled in the Timetable by Off-Peak services for the relevant day provided that if ASO is greater than SSO, then ASO shall be deemed to have the same value as SSO.

and where:-

“Required Stops” means the number of stops at each relevant station which the Franchise Operator is required to include in the Timetable for the relevant day pursuant to this Franchise Agreement, as shown in Column 3 of Tables 1, 3, 5 and 7 (and the accompanying notes) included in Annex 1 to paragraph 1 of Part 2 of the First Output Plan). Provided that for the purpose of this paragraph 9 only, the Franchise Operator is deemed to be required to include a Timetable Output (as defined in the First Output Plan) in the Timetable with effect from the applicable Likely Delivery Date for that Timetable Output (with the intention and effect that the relevant TOIP payment will be payable in respect of any Timetable Output not so included at the Likely Delivery Date, until such time as the same is included in the Timetable):-

“Specified Station” means each of the stations listed in the Tables forming Annex 1 to paragraph 1 of Part 2 of the First Output Plan but excluding Kidderminster and Stourbridge;

“Peak” has the meaning given in Part 1 of Schedule 3 subject always to the notes and the titles accompanying the relevant Tables forming Annex 1 to paragraph 1 of part 2 of the First Output Plan;

“Off-Peak” means a service arising at or departing from London Marylebone station between 0700 and 2100 excluding Peak services and subject always to the notes and the titles accompanying the relevant Tables forming Annex 1 to paragraph 1 of Part 2 of the First Output Plan.

- 9.3 Subject to paragraph 9.5, the Timetable Outputs Incentive Payments payable in respect of each of the following periods shall not exceed the relevant maximum amounts shown in the table below:-**

<i>Period</i>	<i>1/9/03 – 31/12/03 (inc)</i>	<i>1/1/04 – 31/12/04 (inc)</i>	<i>1/1/05 – 31/12/05 (inc)</i>
<i>Maximum Amount</i>	<i>NIL</i>	<i>£ 1,913,000 x RPI</i>	<i>£ 3,456,000 x RPI</i>

where RPI has the same meaning as in the definition of KTOIP, PTOIP and OTOIP in paragraph 9.2.

Provided that where one of the periods referred to in this paragraph 9.3 ends or starts part way through a Reporting Period, then for the purpose of determining whether the maximum amount has been reached for that period, only the Timetable Outputs Incentive Payments attributable to the days falling before the end of that period or on or after the start of that period (as the case shall be) shall be taken into account.

- 9.4 Subject to paragraph 9.5, no Timetable Outputs Incentive Payment shall be payable in respect of any day falling on or after the Passenger Change Date for the Winter 2005/6 Timetable (being the Backstop Delivery Date for the Evergreen Timetable Outputs). Without prejudice to any other provision of the Franchise Agreement or any Output Plan, or the Authority's rights thereunder, it is acknowledged that this cut-off is on the basis that:-**

- (i) failure to comply with the relevant Timetable Outputs in accordance with the Franchise Agreement will be a breach of the Franchise Agreement by the Franchise Operator ;***
- (ii) the level of TOIP payments has been determined by reference to the level of the Fixed Franchise Payments in respect of the periods referred to in paragraph 9.2, and that after this cut-off date such payments will no longer represent a reasonable pre-estimate of the damage suffered by the Authority in respect of the non-provision of the Timetable Outputs, having regard to the level of Fixed Franchise Payments after the cut-off date.***

- 9.5 The:-**

- and
- (i) maximum amounts and periods referred to in paragraph 9.3;
 - (ii) the cut-off date referred to in paragraph 9.4

have been calculated by reference to the Likely Delivery Dates and the Backstop Delivery Dates for the relevant Timetable Outputs included in the First Output Plan, and the incremental amount of subsidy attributed to each relevant Timetable Output. If any of the Likely Delivery Dates or Backstop Delivery Dates is to be adjusted pursuant to the Special Output Review, then it shall be a pre-condition of such adjustment that the periods and maximum amounts referred to in paragraph 9.3 and/or the cut-off date referred to in paragraph 9.4 (as the case may be) are adjusted accordingly.

¹⁴⁴ **Part 2A Adjustment of Incentive Payment**

The amount of the Incentive Payment determined in respect of any Reporting Period accordance with Part 2 shall be subject to adjustment to take further account of the 2006 Review, in accordance with the following formula:

$$CP3A = CP2SR + (TRTMRE - TTS8A)$$

Where for the purposes of this Part 2A Only:

CP3A	equals the Control Period 3 Adjustment for the relevant Reporting Period (and may be either a positive or a negative number);	
CP2SR	is the aggregate of CP2SR for each Service Group for that Reporting Period, where CP2SR is determined in accordance with the following formula: $CP2SR = (RB_2 - ARL_2) \times P_2 \times V_2 \times RPI_2 \times BF \times (-1)$	
TRTMRE	is the aggregate of RTMRE for each Service Group for that Reporting Period, where RTMRE is determined in accordance with the following formula:- $RTMRE = ((RB - ARL) - (RB_2 - ARL_2) \times P_2 \times MRE_2 \times RPI_2 \times BF)$	
TTS8A	is the aggregate of TS8A for each Service Group for that Reporting Period, where TS8A is determined in accordance with the following formula:- $TS8A = ((TB - ATL) \times (TS8 \times RPI) \times BF) - ((TB_2 - ATL_2) \times (TS8_2 \times RPI_2) \times BF)$	
	Where in each case:	
	RB	equals the Network Rail performance point number of minutes late for that Service Group for the time being in force under the Franchise Operator's track access agreement with Network Rail, as set out in Part 4 of Schedule 7;

¹⁴⁴ date of change 29.9.2006

	RB₂	<i>equals the Network Rail performance point number of minutes late for that Service Group (if any) under the Franchise Operator's track access agreement with Network Rail applicable immediately before the 2003 Review Date, as set out in Part 4 of Schedule 7 and if no such value is set out RB₂ shall be zero;</i>
	ARL	<i>is (subject to paragraph 24 of Part 3 of this Schedule 7) the average Network Rail lateness for that Service Group for that Reporting Period (expressed as a number of minutes late) as determined under, and used for the purpose of calculating the Network Rail performance payment under, the Franchise Operator's track access agreement with Network Rail. For the avoidance of doubt, it is acknowledged that the average Network Rail lateness is described as "RWAML" in paragraph 9 of Schedule 8 of the Franchise Operator's track access agreement with Network Rail as at immediately after the implementation of the 2006 Review, and shall be the total of Network Rail Lateness Performance minutes plus Network Rail Reliability Event Performance Minutes, provided that, if and to the extent that any amounts paid or payable to the Franchise Operator under Schedule 8 of the Track Access Agreement in respect of Network Rail's performance in relation to that Service Group are deducted from the amount of any compensation payable by Network Rail to the Franchise Operator under Part G of the Track Access Conditions, for the purpose of the calculation of RTMRE ARL in respect of that Service Group shall be reduced by the corresponding number of minutes late, which in the Authority's reasonable opinion, reflect the amount of such deduction. The Franchise Operator shall notify the Authority of any amounts paid or payable under Schedule 8 of the Track Access Agreement which are so deducted and shall supply the Authority with such supporting documentation in relation thereto as the Authority may reasonably require;</i>
	ARL₂	<i>ARL₂=(NR Lateness Performance minutes + (NR Reliability Event _____ Performance Minutes x (TCML₂))</i> <i>(TCML } Where } TCML TCML₂ take the values as detailed in Part 4 of this Schedule 7</i>
	RPI	<i>equals the quotient of the Retail Prices Index for the November of the Reporting Year prior to the Reporting Year in which such Reporting Period falls divided by the Retail Prices Index for November 2003 (and for the avoidance of doubt shall equal 1 in respect of the Reporting Year commencing 1 April 2004);</i>
	RPI₂	<i>equals the quotient of the Retail Prices Index for the November of the Reporting Year prior to the Reporting Year in which such Reporting Period falls divided by the Retail Prices Index for November 2000;</i>
	P₂	<i>equals the average number of passengers per day for that Service Group (if any) under the Franchise Operator's track access agreement with Network Rail applicable immediately before the 2003 Review Date, as set out in Part 4 of this Schedule 7 and if no such value is set out P₂ shall be</i>

		zero;
	MRE₂	<i>equals the per passenger marginal revenue effect element of the Network Rail payment rate for that Service Group (if any) under the Franchise Operator's track access agreement with Network Rail applicable immediately before the 2003 Review Date, as set out in Part 4 of this Schedule 7, and if no such value is set out MRE₂ shall be zero.</i>
	BF	<i>is (subject to paragraph 24 of Part 3 of this Schedule 7) the value of the relevant 'busyness factor' for that Service Group for that Reporting Period, as determined under and used for the purpose of calculating both Network Rail's and the Franchise Operator's performance payments under the Franchise Operator's track access agreement with Network Rail. For the avoidance of doubt, it is acknowledged that this "busyness factor" is the value described in the Franchise Operator's track access agreement with Network Rail as at immediately after implementation of the 2003 Review;</i>
	TB	<i>equals the train operator performance point number of minutes late for that Service Group under the Franchise Operator's track access agreement with Network Rail as set out in Part 4 of Schedule 7;</i>
	TB₂	<i>equals the train operator performance point number of minutes late for that Service Group (if any) applicable immediately before the 2003 Review Date, under the Franchise Operator's track access agreement with Network Rail, as set out in Part 4 of this Schedule, and if no such value is set out TB₂ shall be zero;</i>
	ATL	<i>is (subject to paragraph 24 of Part 3 of this Schedule 7) the average train operator lateness for that Service Group for that Reporting Period (expressed as a number of minutes late) determined under, and used for the purpose of calculating the train operator performance payment under, the Franchise Operator's track access agreement with Network Rail. For the avoidance of doubt, it is acknowledged that the average train operator lateness is described as "TWAML" in paragraph 10 of Schedule 8 of the Franchise Operator's track access agreement with Network Rail as at immediately after implementation of the 2006 Review and shall be the total of TOC Lateness Performance Minutes plus TOC Reliability Event Performance Minutes.</i>
	ATL₂	$ATL_2 = (TOC \text{ Lateness Performance Minutes} + (TOC \text{ Reliability Event Performance Minutes} \times (TCML_2))$ <div style="margin-left: 40px;"> $(TCA \quad \quad \quad)$ </div> <p>Where:</p> <p>TCML</p> <p>TCML₂ <i>take the values as detailed in Part 4 of this Schedule 7</i></p>

	TS8	<i>equals the train operator payment rate for that Service Group under the Franchise Operator's track access agreement with Network Rail, as set out in Part 4 of this Schedule 7;</i>
	TS8₂	<i>equals the train operator payment rate for that Service Group (if any) applicable immediately before the 2001 Review Date, under the Franchise Operator's track access agreement with Network Rail, as set out in Part 4 of this Schedule, and if no such value is set out TS8₂ shall be zero;"</i>

Part 3 — Systems and Payment

Systems

- 1 The Authority and Franchise Operator agree that the Incentive Payment in each Reporting Period shall be determined by reference to:
 - (a) such systems as may be used by Railtrack from time to time for recording or monitoring the operation of the Passenger Services and may be selected by the Authority and notified to the Franchise Operator by the Authority from time to time (the “Railtrack Systems”);
 - (b) such systems as the Authority may put in place for determining the amount of Incentive Payments on the basis of the information and data in the Railtrack Systems and the other information and data available to it (the “SRA Systems”);
 - (c) such other systems as the Authority and the Franchise Operator may agree; and
 - (d) such other relevant information, data and records as may be available to the Authority or which the Authority may reasonably require the Franchise Operator to provide to it from time to time, including the information specified in paragraphs 2 and 3 of this Part 3.
- 2 The Franchise Operator shall, except where the Authority otherwise agrees, use all reasonable endeavours to procure that there are entered into the Railtrack Systems and/or provided to the Authority:
 - (a) each Timetable and/or Amended Timetable; and
 - (b) each Train Plan;
 - (c) each item of rolling stock used in the provision of the Passenger Services which is planned under a Train Plan to Pass a relevant Formation Monitoring Point but does not so Pass at such Formation Monitoring Point (except in circumstances where the whole train of which such rolling stock forms part does not Pass such Formation Monitoring Point); and
 - (d) such other information and data as the Authority may require to facilitate the proper or efficient determination of Incentive Payments under this Schedule 7.
- 3 The Franchise Operator shall provide such information as the Authority may require in relation to any differences between a Timetable and an Amended Timetable for any day which result from an Allowable Change, such information to include, without limitation:
 - (a) where the Allowable Change is a Railtrack Possession, details of compensation therefor under the Franchise Operator’s track access agreement; and
 - (b) evidence of the manner and time of publication to passengers of details of such difference from the Timetable.
- 4 The Franchise Operator shall provide to the Authority the information required under paragraphs 2 and 3 in such form and format as the Authority may require from time to time. The Franchise Operator shall provide to the Authority such further details or information as the Authority may reasonably require in relation to such information.

- 5 The Authority and the Franchise Operator will co-operate with each other to ensure that Incentive Payments payable under this Schedule 7 are determined correctly and efficiently on the basis of the information available to each of them from time to time.

Access and review of systems

- 6 The Franchise Operator and the Authority each agree to use all reasonable endeavours to ensure that each other may have such access to the Railtrack Systems as they may be able to procure during the Franchise Period.
- 7 The Authority agrees to permit the Franchise Operator to inspect the SRA Systems at any reasonable time during the Franchise Period and on reasonable notice if the Franchise Operator has reasonable grounds to believe that a fault in the SRA Systems is resulting in the incorrect determination of the Incentive Payments payable under this Schedule 7.
- 8 If either the Authority or the Franchise Operator notifies the other that it has reasonable grounds to believe that either of the Systems is not satisfying any relevant requirements and it is established, following any investigation or inspection, that such Systems are not satisfying any relevant requirements, the information or determination obtained from the relevant System for any relevant Reporting Periods commencing after the date which is two months prior to such notification may be adjusted in such a manner which is fair and reasonable to correct such information or determination, and any Incentive Payments previously paid under this Schedule 7 may be adjusted accordingly. The parties may refer any dispute relating thereto for resolution in accordance with the Dispute Resolution Rules.
- 9 Any inspection or investigation of any System shall be carried out at the cost of the party conducting the investigation or inspection.

Failure to record or supply information

- 10 If the Franchise Operator fails to comply with its obligations under paragraphs 2, 3 or 4 of this Part 3, the Authority may, if it reasonably considers that Incentive Payments have been incorrectly calculated as a result of such non-compliance (whether as a result of new information or data becoming available or otherwise), require any relevant Incentive Payments which may be affected by such non-compliance to be adjusted in a manner which is fair and reasonable to reflect the Incentive Payments which, so far as reasonably determinable on the basis of any relevant data (including any new information or data), should have been calculated. The parties may refer any dispute relating thereto for resolution in accordance with the Dispute Resolution Rules.
- 11 In the event that the Systems fail to record the time at which a train that is included in the Applicable Timetable (i) departs from its origin, (ii) arrives at its final destination or (iii) is cancelled, the Punctuality Incentive Payment in respect of that train will be determined:
 - (a) in the case of a non report by the Systems at the origin of a train, according to the lateness of the train on arrival at the first reporting point after the origin at which Railtrack may record information regarding the punctuality of the train, or
 - (b) in the case of a non report by the Systems at the final destination of a train, according to the lateness of the train on departure from the last reporting point before the final destination at which Railtrack may record information regarding the punctuality of the train.

- 12** If, as a result of any fault in the Systems or failure to record any or all relevant information (and where estimated records cannot be determined by the method described in paragraph 11), Incentive Payments cannot be reasonably determined then the parties shall use all reasonable endeavours to determine the relevant Incentive Payment on the basis of such manual information as may have been recorded by Railtrack and other relevant sources, including those of the Franchise Operator or on the basis of information recorded by the Systems for the train at other reporting points. Nothing in this paragraph 12 shall however prevent the Authority from determining any Incentive Payment on the basis of information available to it at any relevant time.

Payment

- 13** ¹⁴⁵*The Authority shall as soon as reasonably practicable after the end of each Reporting Period notify the Franchise Operator of each component of the Incentive Payment payable in respect of such Reporting Period. Each such notification shall set out in reasonable detail the basis of the determination of such Incentive Payment. Nothing in this paragraph 13 shall require the Authority to notify the Franchise Operator of:*

13(a) *(subject to sub-paragraphs 13(b) and 13(c)), any Incentive Payment less than 21 days after the end of each relevant Reporting Period;*

13(b) *the TTCIP component of any Incentive Payment less than 21 days after the end of the next succeeding Reporting Period; and*

13(c) *any of:-*

- i. the RTMRE component of the adjustment to Incentive payment under Part 2A of this Schedule 7; or*
- ii. the TS8A component of the adjustment to Incentive Payment under Part 2A of this Schedule 7.*

until the elements which the Authority considers necessary to calculate such components have been agreed or determined under and for the purposes of the Franchise Operator's track access agreement with Network Rail, and where applicable notified by the Franchise Operator under paragraph 24 of this Part 3. Such elements shall include the 'average train operator lateness' and the 'average train operator lateness value' described in the definition of "ATL" in Part 2A of this Schedule 7, and in the definition of "ARL" in Part 2A of this Schedule 7, and the 'busyness factor' described in the definition of "BF" in Part 2A of this Schedule 7."

- 14** Any Incentive Payment (or component thereof) so notified shall be payable in the absence of manifest error agreed between the parties and shall be payable even if the Authority has made a mistake in calculating the relevant amounts.
- 15** The Authority shall pay to the Franchise Operator any Incentive Payment (or component thereof) which has a positive value and the Franchise Operator shall pay to the Authority any Incentive Payment (or component thereof) which has a negative

¹⁴⁵ date of change 29.9.2006

value or, if such Incentive Payment (or component thereof) is payable on the same day as a Franchise Payment and the Authority so elects, shall be paid by way of adjustment to such Franchise Payment.

- 16** Each Incentive Payment (or component thereof) shall become payable by the relevant person on the last day of the Reporting Period immediately succeeding the Reporting Period to which the Incentive Payment (or component thereof) relates or, if the Authority does not notify the Franchise Operator of the relevant Incentive Payment (or component thereof) more than 4 days before the last day of such Reporting Period, 7 days after the Authority shall have notified the Franchise Operator under paragraph 13 or, if the Authority so elects, on the next day a Franchise Payment becomes payable under Schedule 6. For the purposes of this paragraph 16 an Incentive Payment relating to a Reporting Period shall be treated as having been notified even if the TTCIP component of that Incentive Payment has not been notified.
- 17** Any payment of an Incentive Payment (or component thereof) shall be made 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 shall be made so that cleared funds are received in that account on or before the date such payment becomes payable under this Schedule 7.

Disputes

- 18** In the event that there is a dispute as to the amount of an Incentive Payment, the parties shall use their best endeavours to resolve such dispute for 28 days following the date of notification under paragraph 13. If such dispute is not resolved by the end of such period, it shall be resolved in accordance with the Dispute Resolution Rules.
- 19** The amount of any Incentive Payment may not be disputed by the Authority or the Franchise Operator unless it has notified the other within 28 days of notification of the amount of the Incentive Payment under paragraph 13 or such dispute arises as a result of a fault in any System or failure to record information under paragraphs 8 or 10. For the avoidance of doubt, the Authority shall be entitled to dispute the amount of an Incentive Payment of which it may have notified the Franchise Operator under paragraph 13 within 28 days of such notification.
- 20** If following resolution of a dispute under the Dispute Resolution Rules or by agreement between the parties, any amounts are required to be repaid or additional amounts paid or if any adjustments are to be made to previous Incentive Payments under paragraph 8 or 10, such amounts shall become payable on the next day an Incentive Payment becomes payable under this Schedule 7 which falls no less than 4 days after such resolution or the date of the determination of such adjustment or, if there is no such day, 14 days after the date of such resolution or such date of determination.
- 21** Interest shall accrue on any sum due and owing to the Authority at the Interest Rate calculated on a daily basis if and to the extent that payment is not received by the Authority on the date such payment becomes payable under this Schedule 7.

Miscellaneous

- 22** Except as provided for in paragraph 3 of part 2, the operation of any bus by the Franchise Operator under the Timetable shall be ignored for the purposes of

23 The Franchise Operator will promptly notify the Authority if schedule 8 to its track access agreement with Railtrack (including, without limitation, appendix I of such schedule) is amended, or it forms an intention to make such an amendment.

23.1 Within 60 days of service of any notice under this paragraph 23, (subject to paragraph 23.2) the Authority may by notice to the Franchise Operator, if the track access agreement with Railtrack is amended with the approval of the Rail Regulator, make such changes to this Schedule 7 as the Authority may consider appropriate in consequence of such amendment. Without limitation, such changes may include such amendment to the value attributed to a minute late for a train as the Authority may consider appropriate.

23.2 Paragraph 23.1 above is subject to the proviso that where any such changes arise from a Charging Review (as such term is defined in Clause 18.1), any change to this Schedule 7, or any other term of this Agreement, shall be taken into account for the purpose of determining any Net Loss or Net Gain suffered or made by the Franchise Operator for the purposes of, and to the extent provided in, Clause 18.1, as if such changes had been made pursuant to a Charge Variation.

24.¹⁴⁶ *The following procedure will apply where it is necessary, for the purposes of Part 2 and Part 2A of this Schedule 7, to determine in respect of any Reporting Period the number of minutes late responsibility for which is attributed to Network Rail or to the Franchise Operator and/or to determine the 'busyness factor', in each case under the Franchise Operator's track access agreement with Network Rail:-*

24(a) *the Franchise Operator will promptly and in any event within 17 days of the end of that Reporting Period notify the Authority, in respect of that Reporting Period, of:-*

- (i) *the average train operator lateness value ("ATL") referred to in Part 2A of this Schedule 7;***
- (ii) *the average Network Rail lateness value ("ARL") referred to in Part 2A of this Schedule 7; and***
- (iii) *the busyness factor ("BF") referred to in Part 2A of this Schedule 7.***

shown *calculated under and for the purpose of the Franchise Operator's track access agreement with Network Rail. In the case of ATL, the value must be based on the number of minutes late which are undisputed ("the Undisputed Minutes") and must exclude (and show separately) the number of minutes late which are subject to dispute ("Disputed Minutes"). Where there are Disputed Minutes, the Franchise Operator will include in the notice a description of each incident giving rise to Disputed Minutes, and the number of Disputed Minutes referable to each incident.*

24(b) *unless otherwise agreed by the Authority, such advice will be accompanied by a copy of the statement supplied by Network Rail to the Franchise Operator under the Franchise Operator's track access agreement with*

¹⁴⁶ date of change 29.9.2006

Network Rail after the end of the relevant Reporting Period, identifying the number of minutes late for which Network Rail and the Franchise Operator are respectively attributed responsibility, and the corresponding "ATL" and "ARL" values and "BF" value referred to in paragraph 24(a) (It is acknowledged that as at immediately after implementation of the 2006 Review, such statement is known as the 'Day 42' statement and is provided by Network Rail under paragraph 11 of Schedule 8 of the Franchise Operator's then current track access agreement with Network Rail. If the nature of the statement or NetworkRail's obligation to supply such information is amended, then without limiting paragraph 24(g) below, the Authority shall be entitled to request such other evidence of the attribution of responsibility of minutes late and/or the calculation of average Network Rail lateness and average train operator lateness and/or the calculation of the busyness factor for the purposes of the Franchise Operator's track access agreement with Network Rail as it considers reasonably necessary for the purposes of determining the amount of the Incentive Payments).

24(c) the Franchise Operator shall further notify the Authority of any aspects of the Network Rail (i.e. Day 42) statement referred to in paragraph 24(b) which it disputes. Such notice will be given no later than 2 days after the date by which the Franchise Operator is required to notify Network Rail of any disputes under the Franchise Operator's track access agreement with Network Rail, and will be accompanied by a copy of any notice given by the Franchise Operator under that track access agreement. Where the dispute concerns the number of minutes late for which either of Network Rail or the Franchise Operator is allocated responsibility under that track access agreement (and the consequential value of "ATL" and "ARL"), such number of minutes shall be regarded as "Disputed Minutes" for the purposes of this paragraph 24 and the Franchise Operator will provide the detail required under paragraph 24(a) in respect of Disputed Minutes, to the extent it has not already done so.

24(d) For the purposes of the notification to be given by the Authority under paragraph 13 of this Part 3, the Authority shall be entitled (but not obliged) provisionally to determine and notify any relevant component or adjustment to the Incentive Payment on the basis of the Undisputed Minutes notified in accordance with paragraph 24(a) or (if applicable) the adjusted number of Undisputed Minutes after taking account of any further Disputed Minutes notified by the Franchise Operator under paragraph 24(c). In such a case, the Incentive Payment (or relevant component or adjustment) will be subject to further adjustment by the Authority upon the resolution or determination of the dispute in respect of the relevant Disputed Minutes, notwithstanding paragraph 19 of this Part 3. For the avoidance of doubt, it is acknowledged that any adjustment to the respective values of average Network Rail lateness or average train operator lateness will require an adjustment to the Punctuality Incentive Payment component under Part 2 of this Schedule 7.

24(e) The Franchise Operator shall notify the Authority as soon as is reasonably practicable of the resolution of any dispute in respect of any Disputed Minutes, and provide such evidence of the resulting attribution as the Authority may require.

24(f) [NOT USED]

24(g) *It is acknowledged that the provisions of this Schedule 7 (and in particular the calculation of the Punctuality Incentive Payment under Part 2) are based on the understanding and agreement that the allocation of responsibility for minutes late, the calculation of the value equivalent to "ARL" and "ATL" and/or the calculation of the busyness factor, and all compensation or payments associated therewith (however described) are determined as between Network Rail and the Franchise Operator solely on the terms of the Franchise Operator's track access agreement with Network Rail as at immediately after the implementation of the 2006 Review. Accordingly, the Franchise Operator agrees that (except where directed to do so by the Regulator) the Franchise Operator will not without the Authority's prior consent:-*

- (i) agree any amendment to such track access agreement; or*
- (ii) enter into any other agreement, compromise, settlement or other arrangement with Network Rail*

which would or might affect the relationship described in this paragraph 25(g) between the components of the Incentive Payment and/or the mechanisms for the adjustment of the Incentive Payment, identified in this paragraph 25(g) and such track access agreement;

24(h) *In any case where the Regulator does so direct or the Authority does so consent, the Authority shall be entitled to make such adjustments to this Schedule 7 as the Authority reasonably considers appropriate in consequence of such amendment, agreement, compromise, settlement or other arrangement.*

24(i) *Where under and in accordance with this paragraph 24, the Authority is entitled to adjust any Incentive Payments already paid, then paragraph 20 of this Part 3 shall apply."*

Part 4 – Service Groups¹⁴⁷

SERVICE GROUP: H001. MET OFF PEAK

Period	RB	RB₂
From 1 April 2004	0.344 minutes	0.228 minutes
From 1 April 2005	0.322 minutes	0.224 minutes
From 1 April 2006	0.306 minutes	0.224 minutes
From 1 April 2007	0.287 minutes	0.224 minutes
From 1 April 2008	0.270 minutes	0.224 minutes
From 1 April 2009	0.2385 minutes	0.224 minutes
From 1 April 2010	0.2256 minutes	0.224 minutes
From 1 April 2011	0.2147 minutes	0.224 minutes

¹⁴⁷ Date of Change 24/05/2011

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From 1 April 2012	0.2085 minutes	0.224 minutes
From 1 April 2013	0.2025 minutes	0.224 minutes

MRE_2	£0.106
P_2	4378
TB	0.8925
TB_2	1.221
$TS8$	0.12
$TS8_2$	£0.00
V_2	£0.09

TCML	TCML₂	Maximum Lateness
45 Minutes	30 Minutes	180 Minutes

SERVICE GROUP: HO01 MET PEAK

Period	RB	RB₂
From 1 April 2004	0.388 minutes	0.272 minutes
From 1 April 2005	0.363 minutes	0.267 minutes
From 1 April 2006	0.345 minutes	0.267 minutes
From 1 April 2007	0.324 minutes	0.267 minutes
From 1 April 2008	0.304 minutes	0.267 minutes
From 1 April 2009	0.3577 minutes	0.267 minutes
From 1 April 2010	0.3385 minutes	0.267 minutes
From 1 April 2011	0.3221 minutes	0.267 minutes
From 1 April 2012	0.3129 minutes	0.267 minutes
From 1 April 2013	0.3039 minutes	0.267 minutes

MRE_2	£0.120
P_2	3166
TB	1.5349
TB_2	1.856
$TS8$	£0.01
$TS8_2$	£0.00
V_2	£0.18

TCML	TCML₂	Maximum Lateness
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<i>TCML</i>	<i>TCML₂</i>	<i>Maximum Lateness</i>
<i>45 minutes</i>	<i>30 minutes</i>	<i>180 minutes</i>

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SERVICE GROUP: NO02 BIRMINGHAM OFF PEAK

SERVICE GROUP: NO02 BIRMINGHAM OFF PEAK

Period	RB	RB₂
From 1 April 2004	1.969 minutes	1.571 minutes
From 1 April 2005	1.843 minutes	1.482 minutes
From 1 April 2006	1.752 minutes	1.482 minutes
From 1 April 2007	1.646 minutes	1.482 minutes
From 1 April 2008	1.543 minutes	1.482 minutes
From 1 April 2009	1.4411 minutes	1.482 minutes
From 1 April 2010	1.3798 minutes	1.482 minutes
From 1 April 2011	1.3257 minutes	1.482 minutes
From 1 April 2012	1.2948 minutes	1.482 minutes
From 1 April 2013	1.2654 minutes	1.482 minutes

MRE₂	£0.151
P₂	5722
TB	0.6078
TB₂	0.781
TS8	£1012.14
TS8₂	£600.45
V₂	£0.09

TCML	TCML₂	Maximum Lateness
78 minutes	52 minutes	270 minutes

SERVICE GROUP 4: HO02 BIRMINGHAM PEAK

Period	RB	RB₂
From 1 April 2004	1.998 minutes	1.315 minutes
From 1 April 2005	1.871 minutes	1.290 minutes
From 1 April 2006	1.778 minutes	1.290 minutes
From 1 April 2007	1.670 minutes	1.290 minutes
From 1 April 2008	1.566 minutes	1.290 minutes
From 1 April 2009	1.6146 minutes	1.290 minutes
From 1 April 2010	1.5431 minutes	1.290 minutes
From 1 April 2011	1.4819 minutes	1.290 minutes
From 1 April 2012	1.4471 minutes	1.290 minutes
From 1 April 2013	1.4134 minutes	1.290 minutes

MRE₂	£0.145
P₂	2510
TB	0.8554
TB₂	1.182
TS8	£142.99
TS8₂	£85.16
V₂	£0.18

TCML	TCML₂	Maximum Lateness
77 minutes	51 minutes	270 minutes

SERVICE GROUP: HO03 JOINT OFF PEAK

<i>Period</i>	<i>RB</i>	<i>RB₂</i>
<i>From 1 April 2004</i>	<i>0.746 minutes</i>	<i>0.509 minutes</i>
<i>From 1 April 2005</i>	<i>0.698 minutes</i>	<i>0.500 minutes</i>
<i>From 1 April 2006</i>	<i>0.664 minutes</i>	<i>0.500 minutes</i>
<i>From 1 April 2007</i>	<i>0.623 minutes</i>	<i>0.500 minutes</i>
<i>From 1 April 2008</i>	<i>0.584 minutes</i>	<i>0.500 minutes</i>
<i>From 1 April 2009</i>	<i>0.5639 minutes</i>	<i>0.500 minutes</i>
<i>From 1 April 2010</i>	<i>0.5354 minutes</i>	<i>0.500 minutes</i>
<i>From 1 April 2011</i>	<i>0.5112 minutes</i>	<i>0.500 minutes</i>
<i>From 1 April 2012</i>	<i>0.4974 minutes</i>	<i>0.500 minutes</i>
<i>From 1 April 2013</i>	<i>0.4841 minutes</i>	<i>0.500 minutes</i>

<i>MRE₂</i>	<i>£0.099</i>
<i>P₂</i>	<i>6434</i>
<i>TB</i>	<i>0.4520</i>
<i>TB₂</i>	<i>0.633</i>
<i>TS8</i>	<i>£73.12</i>
<i>TS8₂</i>	<i>£36.65</i>
<i>V₂</i>	<i>£0.09</i>

<i>TCML</i>	<i>TCML₂</i>	<i>Maximum Lateness</i>
<i>39 minutes</i>	<i>26 minutes</i>	<i>156 minutes</i>

SERVICE GROUP: HO01 JOINT PEAK

<i>Period</i>	<i>RB</i>	<i>RB₂</i>
<i>From 1 April 2004</i>	<i>0.590 minutes</i>	<i>0.524 minutes</i>
<i>From 1 April 2005</i>	<i>0.552 minutes</i>	<i>0.514 minutes</i>
<i>From 1 April 2006</i>	<i>0.525 minutes</i>	<i>0.514 minutes</i>
<i>From 1 April 2007</i>	<i>0.493 minutes</i>	<i>0.514 minutes</i>
<i>From 1 April 2008</i>	<i>0.462 minutes</i>	<i>0.514 minutes</i>
<i>From 1 April 2009</i>	<i>0.6988 minutes</i>	<i>0.514 minutes</i>
<i>From 1 April 2010</i>	<i>0.6619 minutes</i>	<i>0.514 minutes</i>
<i>From 1 April 2011</i>	<i>0.6304 minutes</i>	<i>0.514 minutes</i>
<i>From 1 April 2012</i>	<i>0.6127 minutes</i>	<i>0.514 minutes</i>
<i>From 1 April 2013</i>	<i>0.5953 minutes</i>	<i>0.514 minutes</i>

<i>MRE₂</i>	<i>£0.109</i>
<i>P₂</i>	<i>4243</i>
<i>TB</i>	<i>0.6643</i>
<i>TB₂</i>	<i>0.871</i>
<i>TS8</i>	<i>£5.02</i>
<i>TS8₂</i>	<i>£7.55</i>
<i>V₂</i>	<i>£0.18</i>

<i>TCML</i>	<i>TCML₂</i>	<i>Maximum Lateness</i>
<i>32 minutes</i>	<i>21 minutes</i>	<i>126 minutes</i>

<i>T</i>	<i>TCM</i>	<i>CM</i>	
<i>£12.15</i>	<i>40 minutes</i>	<i>24 minutes</i>	
<i>Maximum Lateness</i>	<i>SFV</i>	<i>BR</i>	<i>SFIP Cap</i>
<i>60 minutes</i>	<i>£4.00</i>	<i>£11,242</i>	<i>£388</i>

PPM Benchmarks

<i>Reporting Period</i>	<i>PPM Benchmark</i>
<i>Reporting Periods in the period from 6 December 2001 to the closest date (“W”) which is the last day of a Reporting Period and is X days after 7 December 2002</i>	<i>90.6%</i>
<i>Reporting Periods in the period from the day after W to:</i> (iii) <i>where paragraph 5 of the Special Output Review applies, the closest date (“Y”) which is the last day of a Reporting Period and is X days after 6 December 2003; or</i> (iv) <i>where the Franchise Operator is required to comply with the Evergreen Timetable Outputs (as defined in the First Output Plan referred to in Schedule 14), the date (“Z”) being the last day of a Reporting Period which is closest to the date which falls six months before the Anticipated Delivery Date applicable to the Evergreen Phase B Robust Outputs (as defined in the First Output Plan or referred to in Schedule 14 (as applicable))</i>	<i>92.4%</i>
<i>Reporting Periods in the period from:</i> (v) <i>where paragraph 5 of the Special Output Review applies, the day after Y; or</i> (vi) <i>where the Franchise Operator is required to comply with the Evergreen Outputs, the day after Z.</i>	<i>93.75%</i>

For the purpose of the table above, X shall be determined as follows:

Under Clause 3.3(C) and 3.3(D) of the Implementation Agreement (as defined in the First Output Plan referred to in Schedule 14) Railtrack are permitted to re-deploy personnel of Westinghouse Rail Systems Limited. If such re-deployment occurs it may affect the Franchise Operator’s ability to comply with the Track Doubling Robust Outputs by the relevant Likely Delivery Date (as such terms are defined in the First Output Plan referred to in Schedule 14). The Franchise Operator shall be under a duty to use reasonable endeavours to mitigate the effect of such re-deployment. If, despite having exercised its duties, the Franchise Operator is unable to comply with the Track

Doubling Robust Outputs by the relevant Likely Delivery Date then, for the purposes of Schedules 7 and 15 and without prejudice to the Authority's rights and remedies under paragraph 1 of Part 2 of the Output Plan, the date on which the Public Performance Measure shall increase to 92.4% shall be postponed by a period equal to the delay caused by such re-deployment. The parties may resolve any dispute regarding the period of such delay in accordance with the Dispute Resolution Rules. The period of the delay (which shall be expressed in days) shall be known as "X".

SFIP Services

means all of the following:-

- 1. Passenger Services departing from London Marylebone on Weekdays (except services at Christmas or New Year or on a Bank Holiday) between 1600 and 1859.***
- 2. Passenger Services arriving at London Marylebone on Weekdays (except services at Christmas or New Year or on a Bank Holiday) between 0700 and 0959.***

The Formation Monitoring Point in relation to each of the above services is London Marylebone.

- 3. The Specified Birmingham Moor Street Services described in paragraph 5.3 of Part 2 of this Schedule 7. The Formation Monitoring Point in relation to such services is Birmingham Moor Street.***

For this purpose:-

- (vii) "Bank Holiday" means a Weekday on which banks in the City of London are not open for business;***
- (viii) "Christmas" means 25 and 26 December in any year;***
- (ix) "New Year" means 1 January in any year***
- (x) "Weekday" means any day other than a Saturday or a Sunday."***

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Schedule 8 —

Franchise Records (Clauses 15.1 and 15.2)

Part 1 — Financial and Planning Information

- (a) Such accounting records as are required to be kept under section 221 of the Companies Act 1985. Such records shall be prepared on a consistent basis for each consecutive period not exceeding one month.
- (b) Such records shall include an analysis of revenue and costs of commercially identifiable segments of the business of the Franchise Operator both in terms of the activity such as commercial, fleet, operations and general, but also by service group or other suitable analysis of the Franchise Operator's operations.
- (c) Such records shall also include for each period at least the following measures:
 - (i) Revenue analysis by ticket type;
 - (i) Staff cost analysis by activity and number of employees;
 - (iv) Measures of cost efficiency;
 - (v) Aged debtor and maintenance stock turnover analyses.
- (d) Such records shall be available no later than one month after the end of each relevant period.
- (e) Such records shall include details of any arrangements or contracts with Affiliates which fall within the terms of Clause 25.5 of this Franchise Agreement (including the subject matter of such arrangements, their duration and any associated charges or payment obligations).

Part 2 — Key Assets

- (a) For each tangible Primary Franchise Asset or other asset which is the subject of, or operated under, a Key Contract or other contract the rights and liabilities of the Franchise Operator under which have been designated as a Primary Franchise Asset:
 - (i) all relevant maintenance schedules;
 - (i) all operating manuals (including any safety related regulations); and
 - (vi) all permits, licences, certificates or other documents required to operate it.
- (b) A printed or electronic list (in a format reasonably acceptable to the Authority) of all assets owned by the Franchise Operator from time to time (excluding, unless otherwise reasonably requested by the Authority, any office furniture and consumable items).

Part 3 — Operational Information

The Franchise Operator shall maintain records of operational performance covering the areas and the information described in paragraphs (a) to (f) below. In the case of (a), (c) and (d), this will be kept at individual train level and will include reasonable details of the cause of any relevant cancellation, curtailment, diversion or delay or failure to maintain connection. Records shall be kept, in each case, in such form that it is available for review by the Authority by reference to any particular day, week or other longer period and for such lines of route or

groups of services as are notified by the Authority from time to time. Such information shall include details of whether or not any such cancellation, curtailment, diversion or delay is attributable to a *Force Majeure* Event within the terms of Clause 5.4 of this Franchise Agreement.

(a) **Cancellations**

The Franchise Operator shall notify to the Authority within 2 working days of the occurrence of any instance of 50 per cent. or more of the services in the Applicable Timetable on any line of route or in any service group being the subject of a Cancellation on any day in the Reporting Period. For the purpose of this Schedule 8, a working day is Monday to Friday (inclusive) excluding public holidays.

The Franchise Operator shall notify to the Authority within 10 days of the Reporting Period end:

- (i) The number of services in the Applicable Timetable for that Reporting Period.
- (vii) The number of services in the Applicable Timetable for that Reporting Period which are Total Cancellations.
- (viii) The number of services in the Applicable Timetable for that Reporting Period which are Total Cancellations for which a *Force Majeure* Event claim has been submitted to the Authority.
- (ix) The number of services in the Applicable Timetable for that Reporting Period which are Other Cancellations.
- (x) The number of services in the Applicable Timetable for that Reporting Period which are Other Cancellations for which a *Force Majeure* Event claim has been submitted to the Authority.

If any difference between the Applicable Timetable and the Timetable on any day is attributable to the introduction, removal or alteration of a service by the Franchise Operator or with the agreement of the Franchise Operator in breach of its obligations under Clause 5.2 of the Franchise Agreement, then the Franchise Operator will notify the Authority of that fact within 10 days of the Reporting Period end, together with the numbers of services so affected and the numbers of Total Cancellations and Cancellations which would have arisen if the Applicable Timetable on that day had been the Enforcement Timetable.

(b) **Punctuality**

The Franchise Operator shall notify to the Authority within 10 days of Reporting Period end the number of services in the Applicable Timetable for that Reporting Period which arrive at their scheduled final destination:

- On time
- Early
- 1 to 4.59 minutes late
- 5 to 9.59 minutes late
- 10 to 14.59 minutes late
- 15 to 19.59 minutes late
- 20 to 29.59 minutes late
- 30 to 59.59 minutes late

60 or more minutes late,

measured against their scheduled arrival time in the Applicable Timetable except that any train which is a Cancellation for the purposes of notification under paragraph (a) of this Part 3 shall not be allocated to a punctuality band based on arrival time at destination but will instead be recorded as having arrived at destination 20 to 29.59 minutes late.

(c) **Connections^{hhh}**

The Franchise Operator shall notify to the Authority within 10 days of Reporting Period end the percentage of Connections scheduled in an Applicable Timetable in the Reporting Period which were not provided by the Franchise Operator.

For the purposes of this Part 3(c) of Schedule 8, "Connection" means a Connection which is either included in the Passenger Service Requirement (however described therein) or which is otherwise provided by the Franchise Operator and is notified to it by the Authority from time to time as constituting a Connection for the purposes of this Part 3(c) of Schedule 8.

(d) **Capacity**

The Franchise Operator shall notify to the Authority within 10 days of Reporting Period end at each Capacity Monitoring Point:

- (i) The Capacity planned under the Train Plan. For the avoidance of doubt, this shall be the Planned Capacity;
- (ii) The Capacity actually provided under the Train Plan. For the avoidance of doubt, this shall be the Actual Capacity.

(e) **Passenger's Charter**

The Franchise Operator shall notify to the Authority within 10 days of Reporting Period end in respect of each Charter Group as defined in Clause 8.1 (and in each case, consistent with the Passenger's Charter Guidelines):

- (i) The number of trains planned in the Reporting Period for the purpose of the Passenger's Charter.
- (i) The number of such trains run in the Reporting Period as defined in the Passenger's Charter.
- (ii) The percentage of trains run in the Reporting Period as defined in the Passenger's Charter.
- (iii) The Reliability Moving Annual Average as defined in the Passenger's Charter calculated for the Reporting Period.
- (iv) The number of trains having a punctuality target in the Reporting Period for the purpose of the Passenger's Charter.
- (v) The number of trains achieving punctuality target in the Reporting Period as defined in the Passenger's Charter.
- (vi) The percentage of trains achieving punctuality target in the Reporting Period as defined in the Passenger's Charter.
- (vii) The Punctuality Moving Annual Average as defined in the Passenger's Charter calculated for the Reporting Period.

(f) **Train Mileage**

The Franchise Operator shall notify to the Authority within 10 days of Reporting Period end:

- (i) the aggregate Train Mileage scheduled in the Timetable for that Reporting Period.
- (ii) the aggregate Train Mileage operated for that Reporting Period.

Part 4 — Reporting Accounts

The Reporting Accounts to be delivered for each Reporting Period during the Franchise Term shall comprise a profit and loss account and supporting analyses (including key performance indicators, staff numbers and payroll costs), a balance sheet, and a cash flow statement, together with a statement of transactions and balances with Affiliates of the Franchise Operator, and a commentary on major trends and variances. The Reporting Accounts shall be in the formats set out in the document in the agreed terms and marked “**RA**” or, by agreement with or at the reasonable request of the Authority, in formats containing the equivalent information.

For the purposes of the formats set out in the document in the agreed terms and marked “**RA**” the following definitions and interpretations shall apply:

- (i) “This Period” means one of the thirteen Reporting Periods in the Reporting Year and is the one for which the Reporting Accounts are being delivered.
- (ii) “Year to Date” means the sum of This Period and all earlier Reporting Periods in the Franchise Operator Year since the commencement of the Franchise Operator Year which includes This Period.
- (iii) “Full Year” means the sum of all Reporting Periods since the commencement of the Franchise Operator Year which includes This Period.
- (iv) “Next Year” means the Franchise Operator Year which next follows the Franchise Operator Year which includes This Period.
- (v) “Variance” means calculated by comparing “Actual” with “Budget” taking Budget as the base.
- (vi) “Change” (as used in the Balance Sheet format) is calculated by comparing Actual for This Period End with Actual at the end of the previous Reporting Period and Forecast for the Full Year and Outlook for Next Year with Actual or Forecast at the end of the immediately previous Franchise Operator Year.
- (vii) Line items of information shown in normal type are requirements in so far as they are relevant; those shown in italics are suggestions for analyses which should and can be tailored to provide information which is relevant and material.
- (viii) Amounts and percentages should be signed as follows:
 - positive - assets, income, cash receipts, favourable variances;
 - negative - liabilities, costs, cash payments, unfavourable variances.

Part 5 - Passenger journeys, miles and earnings information

- (a) For each Reporting Period:

- (i) National Passenger Rail Journeys;
 - (ii) Passenger Rail Train Journeys;
 - (iii) Passenger Miles;
 - (iv) Earnings (separately identifying Farebox income and Other Passenger Revenue).
- (b) The items referred to in paragraphs (a) (i), (ii), (iii) and (iv) above shall be calculated in the manner specified by the Authority from time to time and be presented in a manner and format reasonably acceptable to the Authority.
- (c) Where the records are held in a system operated by RSP or any other system, the Franchise Operator may fulfil its obligations under Clause 15.1(d) by procuring that the Authority shall be granted access to such records in a readily accessible manner and in a format acceptable to the Authority. The Franchise Operator shall in addition provide the Authority with all information necessary to access, retrieve and understand such records (including any additions or adjustments made to the records from time to time). The Franchise Operator shall pay to the Authority the costs incurred by the Authority as a consequence of accessing and retrieving such records in this manner.
- (d) The Franchise Operator shall advise the Authority of any changes made to its systems or process or those of RSP which materially change or affect the continuity of records maintained pursuant to Clause 15.1(d) such advice to include an assessment of the materiality of the change.
- (e) The Franchise Operator shall deliver to the Authority no later than 14 days after the end of each Reporting Period, a copy of the records referred to in Clause 15.1(d) relating to such Reporting Period.
- (f) For the purpose of this Part 5 of Schedule 8:
 - (i) “Earnings” shall mean all income received from passengers. For the avoidance of doubt Earnings shall not be limited to income from Fares.
 - (ii) “Farebox income” shall mean income from Fares which are valid for travel on the Passenger Services or shall have such other meaning as the Authority may determine from time to time in its reasonable discretion.
 - (iii) “National Passenger Rail Journey” shall mean travel by a passenger from the station where the passenger joins the railway passenger services to the station where the passenger exits the railway passenger services. For the avoidance of doubt a National Passenger Rail Journey may encompass more than one Passenger Rail Train Journey.
 - (iv) “Other Passenger Revenue” shall mean Earnings less Farebox income.
 - (v) “Passenger Rail Train Journey” shall mean travel by a passenger on any one train between stations serviced by the Passenger Services which travel may form the whole or part of a National Passenger Rail Journey.
 - (vi) “Passenger Mile” shall mean the transport of a passenger over the distance of one mile on the Passenger Services.

Schedule 9

— Change Assessment Procedures and Accounting (Clauses 6, 9.4, 9.5, 9.6, 9.7, 9.8, 11, 12.14, 12.17, 14.2, 18.1, 18.3, 25.3, 44.4, Schedules 5 and 13 and, where applicable, any Output Plan)

Part 1 — No Net Loss and No Net Gain Regime

Where the No Net Loss No Net Gain regime is expressed to apply in respect of a Variation under this Franchise Agreement the following shall apply (subject as may be expressly provided elsewhere in this Franchise Agreement in respect of an individual Variation):

1 Requirement to make adjustment

The Authority shall make (and the other parties hereby agree to) such adjustments to the terms of this Franchise Agreement as will reasonably ensure, on the basis of, and in accordance with, this Part 1 of Schedule 9, that the Franchise Operator suffers no Net Loss and enjoys no Net Gain as a result of the relevant Variation.

2 Types of adjustment

The adjustments which the Authority may make under paragraph 1 are:

- 2.1** an adjustment to the Franchise Payments payable under this Franchise Agreement such that the amount of the adjustment in each relevant Reporting Period between the date of implementation of the relevant Variation and the end of the Franchise Term is equal to a reasonable estimate of the Net Loss or Net Gain expected to be suffered or enjoyed in such Reporting Period as a result of the Variation (with the adjustment reducing Franchise Payments payable by the Authority in the case of a Net Gain and increasing them in the case of a Net Loss);
- 2.2** the inclusion of a provision similar to paragraph 7 of Part 2 of Schedule 6 (such that the financial effects of the Variation result in a direct adjustment to the Franchise Payments as soon as they are known);
- 2.3** the inclusion of a provision whereby the Franchise Payments payable under this Franchise Agreement are adjusted by an estimate of the Net Loss or Net Gain on the basis set out in paragraph 2.1 but then with provision for the actual amount of the Net Loss or Net Gain to be audited or otherwise checked at a later date and for further adjustments to be made to the extent to such audit or other process reveals any inaccuracies (or inaccuracies over a certain materiality threshold).
- 2.4** an adjustment to the other terms of this Franchise Agreement, a reasonable estimate of the Net Loss or Net Gain arising out of which is equal to a reasonable estimate of the Net Gain or Net Loss arising out of the Variation (or is so equal when taken together with any adjustment to the Franchise Payments payable under this Franchise Agreement), and for adjustments of this type (or any adjustment under paragraph 2.7 which incorporates an adjustment of this type in part), references to Net Loss and Net Gain in this Part 1 of Schedule 9 shall include, unless the context otherwise requires, the Net Loss or Net Gain resulting from the other adjustments to be made to this Franchise Agreement by the Authority;
- 2.5** an adjustment to the Franchise Payments payable under this Franchise Agreement on the same basis as any of the above paragraphs but with provision

for such adjustment to run only for a limited period after which another adjustment will be made under Part 1 of this Schedule 9 based on information available at that time;

- 2.6** such other adjustments as the Authority may determine; or
- 2.7** a combination or all or some or parts of the above as the Authority may determine

Provided that, without prejudice to the rights of the Authority under the other provisions of this Franchise Agreement (including the right to make a PSR/ASC change under Clause 11), the Authority shall only be entitled to make an adjustment under paragraphs 2.4, 2.6 or 2.7 (where the combination or all or some of the parts include paragraphs 2.4 and/or 2.6) where:

- (i) the No Net Loss or No Net Gain Regime applies pursuant to Clause 9.8, 12.14, 18.1, 18.3 or Schedule 5; or
- (xi) the Franchise Operator agrees.

3 Process for determining adjustments for Variations other than Changes

The process for determining the adjustments to be made to the terms of this Franchise Agreement (other than for Variations which are Changes) shall be as set out in this paragraph 3. The process for determining the adjustments to be made to the terms of this Franchise Agreement for Variations which are Capacity Changes and/or Other Demand Management Actions is set out in Clause 6 and paragraphs 7 and 8 of this Part 1 and Part 2 of this Schedule 9, provided that paragraphs 5 and 6 of this Part 1 shall apply to Capacity Changes and/or Other Demand Management Actions as well as for other Variations (except PSR/ASC Changes). The process for determining the adjustments to be made to the terms of this Franchise Agreement for Variations which are PSR/ASC Changes is set out in Clause 11 and Part 2 of this Schedule 9.

- 3.1** either the Authority or the Franchise Operator may serve notice on the other before, or within six months after, the date of implementation of the relevant Variation indicating that adjustments are required to be made under paragraph 1 (and no adjustments shall be made unless any such notice is served);
- 3.2** the Franchise Operator and the Authority shall use all reasonable endeavours to agree the adjustments to be made to the terms of this Franchise Agreement within three months of any notice under paragraph 3.1 or, if later, the date of implementation of the Variation;
- 3.3** if not so agreed and the Franchise Operator disputes any adjustments made by the Authority under paragraph 1, the Franchise Operator may refer such dispute for resolution in accordance with the Dispute Resolution Rules within 60 days of any such adjustments being made;
- 3.4** any adjustments shall be made in respect of each Reporting Period between the date of implementation of the relevant Variation and the end of the Franchise Term for which there is a Net Loss or a Net Gain, provided that:
 - (a) the Authority shall, to the extent the relevant adjustments have not been agreed or determined within three months of any notice under paragraph 3.1 or, if later, on the date of implementation of the Variation and subject to subparagraph (b) below not applying, make such provisional adjustments to the terms of this Franchise Agreement as it considers at that time will reasonably

ensure, on the basis of, and in accordance with, this Part 1 of Schedule 9, that the Franchise Operator suffers no Net Loss and enjoys no Net Gain as a result of the relevant Variation;

- (b) the Authority shall, to the extent the relevant adjustments have not been agreed or determined within six months of any notice under paragraph 3.1 or, if later, on the date of implementation of the Variation, make such final (subject to paragraph 3.3) adjustments to the terms of this Franchise Agreement as it considers will reasonably ensure, on the basis of, and in accordance with, this Part 1 of Schedule 9, that the Franchise Operator suffers no Net Loss and enjoys no Net Gain as a result of the relevant Variation;
- (c) to the extent a payment or other adjustment is made (either under this paragraph 3.4 or following settlement of any dispute under paragraph 3.3) after the Reporting Period during which the relevant Net Loss or Net Gain is suffered or enjoyed, no adjustment will be made in respect of such delay.

The Authority shall have no liability in respect of any adjustment under paragraphs (a) or (b) which does not reasonably ensure, on the basis of, or in accordance with, this Part 1 of Schedule 9, that the Franchise Operator suffers no Net Loss and enjoys no Net Gain as a result of the relevant Variation.

4 Information required for determining adjustments for Variations other than Changes

4.1 Following the delivery of any notice in respect of a Variation under paragraph 3.1, and in addition to any express requirements of Part 2 of this Schedule 9, the Franchise Operator shall provide to the Authority, within 28 days of any request or as otherwise may be agreed, such accounts, projections or other documents or information as the Authority may reasonably require in connection with the relevant Variation including:

- (a) information prepared by the Franchise Operator on the basis of such assumptions or principles as the Authority may specify; and
- (b) the Franchise Operator's own estimate of the Net Loss or Net Gain resulting from the relevant Variation together with supporting calculations (such estimate to (unless the Authority otherwise agrees) show the revenues and costs on which the estimate of Net Loss or Net Gain has been based in a format consistent with the format and content required for the accounts to be provided in accordance with Clause 15.2(c) of this Franchise Agreement).

4.2 The Franchise Operator shall further, whenever the Authority may so require, grant access to, and, where requested, supply copies of, such books, records and other material kept by or on behalf of the Franchise Operator or otherwise as the Authority or its representatives may reasonably require in order to enable them to check, verify or audit accounts, projections or other documents or information prepared by the Franchise Operator.

5 Calculation of the Net Loss or Net Gain arising from Variations

Subject as below and as expressly provided in this Franchise Agreement in respect of any particular Variation, the Net Loss or Net Gain, as the case may be, shall be measured by reference to the Profit or Loss of the Franchise Operator in each Reporting Period for the period between the date of implementation of the relevant Variation and the end of the Franchise Term. In addition:

5.1 the Net Loss or Net Gain shall be determined by reference to:

- (a)** the latest Annual Business Plan of the Franchise Operator (updated for any events since the date of its preparation);
- (b)** the accounts prepared by the Franchise Operator under Clause 15.2(c) of this Franchise Agreement; and
- (c)** the obligations and commitments of the Franchise Operator under this Franchise Agreement.

5.2 the Profit or Loss of the Franchise Operator shall be determined in accordance with GAAP provided that the Authority may specify in writing to the Franchise Operator any accounting principles, policies or practices which, consistent with GAAP, it requires the Profit or Loss to be determined by reference to;

5.3 no account shall be taken of any activities, actions or omissions of the Franchise Operator which are not permitted under, or would otherwise constitute a breach or contravention of, the terms of this Franchise Agreement (including Schedule 2);

5.4 the Net Loss or Net Gain shall be determined on the basis that the Franchise Operator will use all reasonable endeavours to reduce any costs arising and to increase any income arising out of the Variation or adjustment to the terms of this Franchise Agreement (subject to any costs and benefits in so doing being taken into account in the Net Loss or Net Gain);

5.5 except where the Variation is a PSR Change requested by the Franchise Operator, a Charge Variation under Clause 18.1, an amendment to an Inter-Operator Scheme under Clause 9.7 or any other Variation requested by the Franchise Operator, the calculation of the Net Loss or Net Gain of the Franchise Operator as a result of the relevant Variation shall include the reasonable agreed direct costs of the Franchise Operator (exclusive of any Value Added Tax for which credit is available under sections 25 and 26 of the Value Added Tax Act 1994) in determining the Net Loss to be caused to it as a result of such Variation;

5.6 in computing the Net Gain or Net Loss of the Franchise Operator and where the Franchise Operator has entered into arrangements with Affiliates other than on arm's length terms, the Authority shall be entitled to require that such Net Loss or Net Gain be determined as if the Franchise Operator had not so entered into any such arrangements and to require reasonable arm's length terms to be substituted in place of such terms on which the Franchise Operator may have entered into any relevant contract or arrangement with any Affiliate;

5.7 Net Loss and Net Gain shall be determined on the basis of such other assumptions (if any) as the Authority may, after consultation with the Franchise Operator, reasonably determine to be fair at the time provided that if the Franchise Operator disagrees that any or all of the assumptions proposed by the Authority is reasonable for the Authority to determine to be fair, it may refer that issue for determination in accordance with the Dispute Resolution Rules within the timescales specified in paragraph 3.3;

5.8 Future Liabilities (as such term is defined in paragraph 9.1) shall be taken into account when determining the Net Loss or Net Gain and shall be calculated and paid in accordance with paragraph 9.

6 Implementation of Variation

Subject to Part 2 of Schedule 9, the following shall apply in implementing any Variation:

- 6.1** where all or any part of a Net Loss (but not any Net Gain) is dependent on a particular action, step or omission being made or taken, or being continued to be made or taken, by the Franchise Operator (including, without limitation, the hiring of any rolling stock or the provision of any Passenger Services), any adjustment under paragraph 2, 7 or 8 may be expressed to be conditional on the relevant action, step or omission being taken or made, or being continued to be made or taken, as the case may be;
- 6.2** where agreed between the parties or where reasonably required by the Authority (including where the parties have been unable to reach agreement on some but not all of a Variation or where the Authority considers that part of a Variation can be implemented in advance of the remainder), there may be more than one Implementation Plan in respect of any one Variation and references to Implementation Plan and Variation in this Franchise Agreement shall be construed accordingly.

7 Calculation of the Net Loss or Net Gain arising from Capacity Changes or Other Demand Management Actions

The following provisions shall apply for the purposes of determining the Net Loss or the Net Gain (if any and as the case may be) arising from any Capacity Change and/or the taking of any Other Demand Management Actions:-

- 7.1** for the purposes of any Capacity Change:-
 - (a)** provided that the level of passenger demand (as shown by the agreed Forecast Demand) for the new Agreed Capacity Plan is higher than the Passenger Demand Limit, then the Net Loss of the Franchise Operator shall be the Net Loss from increasing capacity at any particular time above the highest of (1) the capacity provided (or to be provided) under the immediately preceding Agreed Capacity Plan (2) the capacity required to meet the Passenger Demand Limit such that the Load Factor Specifications are not exceeded and (3) the Maximum Capacity Limit; and
 - (b)** the Net Gain of the Franchise Operator shall be the Net Gain from reducing capacity at any particular time from the capacity provided (or to be provided) under the immediately preceding Agreed Capacity Plan down to the highest of (1) the capacity to be provided under the new Agreed Capacity Plan, or (2) the Maximum Capacity Limit, provided that if the level of passenger demand is at or less than the Passenger Demand Limit the Net Gain shall be the Net Gain from reducing capacity down to the Maximum Capacity Limit.
- 7.2** for the purposes of the taking of any Other Demand Management Actions, the Net Loss or Net Gain of the Franchise Operator shall be the Net Loss or Net Gain (as the case may be) incurred or received by the Franchise Operator as a result of taking such actions to the extent and for so long as the capacity provided under the new Agreed Capacity Plan is higher than whichever is higher of the level of capacity required to meet the Passenger Demand Limit such that the Load Factor Specifications are not exceeded and the Maximum Capacity Limit.
- 7.3** any other:
 - (a)** net loss relating to an increase in capacity or the taking of any Other Demand Management Actions where passenger demand is below the Passenger Demand Limit; and/or

- (b) net loss or net gain relating to a change in capacity below the Maximum Capacity Limit or relating to the taking of any Other Demand Management Action(s) for so long as capacity remains below the Maximum Capacity Limit shall be ignored.

7.4 for the purposes of determining whether there is a Net Loss in relation to any Capacity Increase or Net Gain in relation to any Capacity Reduction (or a Net Loss or a Net Gain in relation to any Other Demand Management Action), the effect of the Capacity Change or Other Demand Management Action shall, except to the extent the parties may otherwise agree, be determined in consecutive twelve month periods over the duration of the relevant Capacity Change or Other Demand Management Action (or, if the Forecast Period is a period less than twelve months, the Forecast Period).

7.5 Where it is determined pursuant to this paragraph 7 that there is a Net Loss or Net Gain in relation to any Capacity Change or Other Demand Management Action, and such Capacity Change and/or Other Demand Management Action is implemented and a Change Certificate issued in relation to it:

- (a) prior to the first anniversary of the date of issue of the Change Certificate in relation to the relevant Capacity Change or Other Demand Management Action (or at such other time as the Authority and the Franchise Operator may agree), the Franchise Operator and the Authority will review the Net Loss or Net Gain in relation to the relevant Capacity Change or Other Demand Management Action in respect of the following 12 month period (or such other period as the Authority and the Franchise Operator may agree);
- (b) the Authority may require an update of the Feasibility Study in respect of the relevant Capacity Change or Other Demand Management Action for the purposes of the review referred to in paragraph (a), and the provisions of Part 2 of this Schedule 9 will apply to the provision of such updated Feasibility Study;
- (c) the Authority and the Franchise Operator may agree on the basis of such review the amount of Net Loss or Net Gain in respect of the relevant Capacity Change or Other Demand Management Action for the period covered by the review. In these circumstances, the provisions of this Franchise Agreement will be adjusted (if appropriate) in accordance with the provisions of paragraph 8;
- (d) any dispute regarding the Net Loss or Net Gain in respect of the relevant Capacity Change or Other Demand Management Action for the period covered by the review may be resolved in accordance with the Dispute Resolution Rules; and
- (e) the review procedure described in paragraphs (a) to (d) will be repeated at intervals of 12 months (or such other interval as the Authority and the Franchise Operator may agree) throughout the duration of the relevant Capacity Change or Other Demand Management Action.

7.6 subject always to paragraphs 7.1 to 7.3 above, for the purpose of determining the change in Fare revenue on the Passenger Services which are the subject of the Load Factor Specifications (but not any other Passenger Services) under Parts 2 and 3 of Schedule 9 as a result of any Capacity Change, only the change in revenue accruing to the Franchise Operator due to the difference between:-

- (a) the number of passengers travelling, or predicted to travel, on the Passenger Services according to the Forecast Demand for the new Agreed Capacity Plan (as agreed or determined in relation to the Implementation Plan for the new Agreed Capacity Plan) or, if higher, the number of passengers comprised in the Passenger Demand Limit; and

- (b) the number of passengers travelling, or predicted to travel, on the Passenger Services according to the Forecast Demand for the immediately preceding Agreed Capacity Plan (as agreed or determined in relation to the Implementation Plan for that immediately preceding Agreed Capacity Plan) or, if higher, the number of passengers comprised in the Passenger Demand Limit (provided that where the immediately preceding Agreed Capacity Plan was the first Agreed Capacity Plan under this Franchise Agreement then the number of passengers for the purpose of this paragraph 7.6(b) shall in any case be deemed to be the number of passengers comprised in the Passenger Demand Limit)

shall be taken into account, and the Franchise Operator shall be deemed to receive such revenue as a result of a Capacity Increase and to lose such revenue as a result of a Capacity Reduction. Where any Other Demand Management Action is taken in addition to any Capacity Change, then the effect of such action shall be taken into account in the assessment of the Forecast Demand for the new Agreed Capacity Plan and the assessment of the change in revenue accruing to the Franchise Operator. Where any Other Demand Management Action is taken instead of a Capacity Change, only the change in revenue accruing to the Franchise Operator due to the difference between the number of passengers travelling, or predicted to travel, on the Passenger Services according to the Forecast Demand for the current Agreed Capacity Plan with the Other Demand Management Action being taken and the number of such passengers according to the Forecast Demand for that plan without such action being taken (or in each case, if higher, the number of passengers comprised in the Passenger Demand Limit) shall be taken into account.

7.7 For the purposes of determining the change in costs under Parts 2 and 3 of Schedule 9 as a result of any Capacity Change, only the change in such costs accruing to the Franchise Operator due:-

- (a) in the case of a Capacity Increase, to the difference between the costs of provision of capacity for the new Agreed Capacity Plan and the costs incurred in providing capacity required at whichever is the highest of the level of the capacity to be provided (1) under the preceding Agreed Capacity Plan; (2) to meet the Passenger Demand Limit such that the Load Factor Specifications are not exceeded or (3) at the Maximum Capacity Limit shall be taken into account, and the Franchise Operator shall be deemed to expend such costs as a result of such Capacity Increase; and
- (b) in the case of a Capacity Reduction, to the difference between the costs of the provision of capacity under the preceding Agreed Capacity Plan and the costs of providing capacity at whichever is the highest of the level of capacity required to be provided (1) under the new Agreed Capacity Plan and (2) at the Maximum Capacity Limit shall be taken into account, and the Franchise Operator shall be deemed to save such costs as a result of a Capacity Reduction save that if the level of passenger demand is at or less than the Passenger Demand Limit, it is the difference between the costs of provision of capacity under the preceding Agreed Capacity Plan and the provision of capacity at the Maximum Capacity Limit which shall be taken into account.

7.8 For the purposes of this paragraph 7:

- (a) no Timetable or Train Plan agreed under Clause 6 will constitute a new Agreed Capacity Plan for the purposes of this paragraph 7 unless the same would, if implemented under an Implementation Plan have represented a Capacity Increase or a Capacity Reduction (and references to the “new” or “immediately preceding” Agreed Capacity Plan will be construed accordingly); and

- (b) in order to give effect to the provisions of paragraph 7.4, if and where the parties agree any new Agreed Capacity Plan pursuant to Clause 6.5(b) they shall also agree the Forecast Demand for such Agreed Capacity Plan and in the absence of any such agreed Forecast Demand, the Forecast Demand for the new Agreed Capacity Plan may be referred by either party for resolution in accordance with the Dispute Resolution Rules.
- 8 For the purposes of determining the adjustments (if any) to be made to the provisions of this Franchise Agreement as a result of a Capacity Change or any Other Demand Management Action, the Authority shall bear the percentage specified in Part 4(b) of Schedule 3 of any Net Loss and shall receive the percentage specified in Part 4(b) of Schedule 3 of any Net Gain, provided always that the Authority shall not be entitled to receive any amount (or make any adjustment to the provisions of this Franchise Agreement) in respect of a Net Gain to the extent that it results from Other Demand Management Actions, unless such Other Demand Management Actions required an amendment to the terms of the Franchise Agreement.

9 Relevant Contracts

9.1 For the purpose of this paragraph 9:

- (a) **“Future Liability”** means any liability of the Franchise Operator in respect of the performance of the Franchise Operator’s obligations under a Relevant Contract in so far as those obligations solely relate to the period after the expiry of the Franchise Term. “Future Liability” shall exclude any accrued but unperformed obligation, the consequences of any antecedent breach of covenant or obligation or any liability in respect of any act or omission under or in relation to a Relevant Contract prior to or as at the expiry of the Franchise Term; and
- (b) **“Relevant Contract”** means any contract (excluding the MOLA) which does or may give rise to a Future Liability entered into, or amended (to the extent such amendment extends the term of a contract), after the Franchise Commencement Date which the Franchise Operator notifies to the Authority together with such supporting information as the Authority shall reasonably require and which the Authority in its absolute and unfettered discretion shall permit to be regarded as a Relevant Contract;
- (c) **“RSTP”** is an amount equal to the sum of (i) “B - C” and (ii) any additional indemnity payments, in each case as may be payable by the Franchise Operator to Angel Trains Limited under (and as defined in) Clause 13.7 of the MOLA in respect of the Applicable Rolling Stock;
- (d) **“MLEA”** means a master lease extension agreement entered into or to be entered into between the Franchise Operator and Angel Trains Limited in respect of the Applicable Rolling Stock;
- (e) **“MOLA”** means a master operating lease agreement dated 15 March 1995 between the Franchise Operator and Angel Trains Limited amended and supplemented by various lease supplements thereto (and by the MLEA) and as further amended, varied and supplemented from time to time;
- (f) **“Applicable Rolling Stock”** means such of the class 165 rolling stock units specified in Appendix 1 to the First Output Plan as are leased to the Franchise Operator at the Relevant Date pursuant to the MOLA;

9.2 If the Franchise Term is reduced as a result of an adjustment made by the Authority under paragraph 1 of this Part 1 then upon expiry of such reduced

Franchise Term (and for the avoidance of doubt excluding any termination of the Franchise Agreement prior to expiry of such reduced Franchise Term) the Authority will, subject to paragraphs 9.3 and 9.6 below:

- (a) pay to the Franchise Operator an amount equal to RSTP; and
- (b) subject to the Franchise Operator complying with paragraph 9.5 below, reimburse the Franchise Operator with such part of the costs of terminating the Relevant Contracts as is calculated in accordance with paragraph 9.4 below.

9.3 The Franchise Operator agrees:

- (a) to challenge the value of “C” and/or the additional indemnity (each as referred to in the definition of RSTP above) in accordance with the provisions of the MOLA if required to do so by the Authority or, at the Authority’s request, to assign its rights, to challenge the value of such amounts to the Authority or its nominees; and
- (b) that if at any time the MOLA is amended or varied (a “Lease Amendment”) without the prior written consent of the Authority and such Lease Amendment has the effect of increasing the value of RSTP, then such Lease Amendment shall be disregarded for the purposes of calculating the value of RSTP.

9.4 The amount payable by the Authority under paragraph 9.2(b) above will be the aggregate of the following for each Relevant Contract:

$$TC \times \frac{DFA}{DC}$$

where:

- (i) “**TC**” means the termination costs payable by the Franchise Operator as a result of the termination of the Relevant Contract;
- (cciii) “**DFA**” means the number of days between the date of expiry of the Franchise Term and the date on which the Minimum Franchise Term would have expired;
- (cciv) “**DC**” means the number of days between the date of termination of the Relevant Contract and the date on which the Relevant Contract would have expired in accordance with its terms; and
- (ccv) if DFA/DC is greater than 1 it will equal 1 for the purposes of this formula.

9.5 The Franchise Operator will:

- (a) use all reasonable endeavours to minimise the costs of terminating any Relevant Contract;
- (b) not amend the terms of any Relevant Contract without the Authority’s prior written consent (such consent not to be unreasonably delayed or withheld) but without prejudice to clauses 12.3(a), 12.4(a), 12.6 and 12.7 and subject to clause 12.8 of the Franchise Agreement.

9.6 For the avoidance of doubt, the Authority will not be required to make any payment to the Franchise Operator under paragraph 9.2(b) above in respect of any Relevant Contract:

- (a) if the Franchise Operator’s rights and Future Liability under such Relevant Contract are designated as Primary Franchise Assets on the expiry of the Franchise Term;

- (b)** which is an Access Agreement (or any related Collateral Agreement) or a Property Lease if the Authority exercises its rights, pursuant to Clause 12.3(c) or 12.4(b) respectively of this Franchise Agreement, to require (subject to the receipt by the Franchise Operator of all necessary third party consents) the Franchise Operator to novate or assign (as the case may be) its interest in that agreement to the Authority or as it may direct;
- 9.7** Nothing in this paragraph 9 will require the Authority to (1) make any payment in respect of or (2) designate as a Primary Franchise Asset any rights or liabilities arising under a Relevant Contract to the extent they relate to the period prior to the date of termination of the Franchise Agreement.

Part 2 — Feasibility Study and Implementation Plan

Feasibility Study

- 1 In certain circumstances under this Franchise Agreement, the Authority and Franchise Operator are required to or may prepare a Feasibility Study with respect to, inter alia, the likely financial effect on the Franchise Operator of a Change.
- 2 Each such Feasibility Study shall contain:
 - (a) details of the relevant Change and, in the case of a Capacity Change, an Other Demand Management Action, or where otherwise requested by the Authority, details of the relevant Forecast Demand that has resulted, or may result, in the need for the Change and the assumptions underlying such Forecast Demand;
 - (b) a proposed manner of implementation for the Change and, where the Change could be implemented in more than one manner, any reasonable alternatives (except that, where the Feasibility Study is being prepared by or at the request of the Authority, it may specify one or more manners of implementation);
 - (c) a statement of the steps which it is reasonably estimated will be necessary to take to implement the proposed Change for each proposed manner of implementation including:-
 - (i) a proposed Timetable and Train Plan; and
 - (ccvi) details of any amendments that will be required to the terms of any Access Agreement, Rolling Stock Lease or other relevant agreement to which the Franchise Operator is party; and
 - (ccvii) any other agreements or consents that may be required, including, without limitation, in connection with the use of alternative or additional rolling stock and/or the enhancement or any other change to the network or other railway facilities;
 - (d) a reasonable estimate of the time within which the Change can be implemented for each of such alternatives (if any) which, for the avoidance of doubt, may be, so far as practicable, at a time falling between two Passenger Change Dates;
 - (e) a reasonable estimate of the Net Loss or Net Gain to be incurred or made by the Franchise Operator as a result of the proposed Change (together with all relevant supporting information and calculations) except that in the case of
 - (i) a Capacity Change:-
 - (x) involving an increase in capacity where passenger demand is below the Passenger Demand Limit: or
 - (y) involving an increase or reduction in capacity below the Maximum Capacity Limit, or
 - (ii) an Other Demand Management Action where passenger demand is below the Passenger Demand Limit

the Franchise Operator need not include any such estimate. Where the estimate is included, the Franchise Operator shall (unless the Authority otherwise agrees) show the revenues and costs on which the estimate of Net Loss or Net Gain has been based in a format consistent with the format and

content required for the financial and planning information to be provided in accordance with Clause 15.2(c) of the Franchise Agreement; and

- (f) any other matter which the person preparing the Feasibility Study may consider appropriate to include or which, if prepared by the Franchise Operator, the Authority may reasonably request should be so included.

3 Where the Feasibility Study is to be prepared pursuant to Clause 6.6, the provisions of this paragraph 3 shall also apply. Any such Feasibility Study shall propose (in addition to the information required under paragraph 2 above):

- (i) what railway passenger services and capacity are reasonably required to be included in the Franchise Operator's Timetable and Train Plan (and what Other Demand Management Actions (if any) are reasonably required to be taken) over the remainder of the Franchise Term or such shorter period as the Authority may at any time notify the Franchise Operator (the "Forecast Period"), in order to ensure that, on the basis of the Forecast Demand following the relevant programme of passenger counts, it does not exceed the Load Factor Specifications in providing the Passenger Services over the Forecast Period. For the avoidance of doubt, if in the opinion of the Franchise Operator the Forecast Demand is such that it will not in any circumstances be feasible to specify sufficient railway passenger services and capacity in its Timetable and Train Plan and/or to take any Other Demand Management Actions to ensure that the Load Factor Specifications will not be so exceeded, then the Franchise Operator will state this in the Feasibility Study. In such a case the Franchise Operator will propose in the Feasibility Study:

- (1) what railway passenger services and capacity are, in its opinion, required to be included in its Timetable and Train Plan; and
- (2) what Other Demand Management Actions (if any) are required to be taken

in order to ensure that, on the basis of the Forecast Demand following such programme of passenger counts, the extent of non-compliance with the Load Factor Specifications in respect of the whole or part of the period to which any Timetable applies during the Franchise Term shall be mitigated to the greatest extent possible;

- (xii) To the extent that the Franchise Operator has proposed any Other Demand Management Action pursuant to sub-paragraph (i) above, details of the Franchise Operator's expectation of the effect of such action on passenger demand during the Forecast Period and/or how such action will assist with compliance with the Load Factor Specifications;
- (xiii) the extent to which the provision of such railway passenger services and capacity and/or the taking of demand management actions would, if implemented under an Implementation Plan, represent a Capacity Increase or Capacity Reduction and/or an Other Demand Management Action; and
- (xiv) where appropriate and subject to the other provisions of this Part 2 of Schedule 9, the Net Loss arising out of any such Capacity Increase or Other Demand Management Action or the Net Gain arising out of any such Capacity Reduction or Other Demand Management Action over the duration of the Forecast Period

Provided that, notwithstanding paragraph 3(i), the Authority reserves the right to require the Franchise Operator to submit such separate Feasibility Studies as it may

specify to reflect a phased and/or partial compliance with the Load Factor Specifications on the basis of the Forecast Demand over the Forecast Period (each of which will, unless otherwise specified by the Authority, count as a separate Feasibility Study for the purposes of this Agreement).

- 4 Where the Feasibility Study has been prepared by the Franchise Operator and whenever the Authority may so require, it shall prepare and deliver or procure the preparation and delivery of such further reports, documents or information relating to the Feasibility Study as the Authority may reasonably consider to be required in order to enable the Authority properly to consider it. The Franchise Operator shall further, whenever the Authority may so require, grant access to, and, where requested, supply copies of, such books, records and other material kept by or on behalf of the Franchise Operator or otherwise as the Authority or its representatives may reasonably require in order to enable them to prepare a Feasibility Study to be prepared by the Authority and to check, verify or audit a Feasibility Study prepared by the Franchise Operator.

Implementation Plan

- 5 In certain circumstances under the Franchise Agreement and for certain Changes, the Authority and Franchise Operator are required to endeavour to agree or to determine an Implementation Plan. Each such Implementation Plan shall specify:
- (a) the relevant Change;
 - (b) the time within which it is reasonably considered the Franchise Operator should be obliged to implement the Change (or times within which each part of the Change should be implemented) having regard to the time within which the Franchise Operator may procure:
 - (i) the consent or agreement of any person whose consent or agreement is necessary to give effect to the Change; and
 - (ccviii) the completion of such other steps as may be required for the purposes of implementing the Change (including the procuring of any additional or alternative rolling stock, the carrying out of any enhancements or other changes to the network or other railway facilities, the satisfaction of any safety related requirements, the securing of any additional employees and consultation with such persons and bodies as may be appropriate);
 - (c) in the case of a Capacity Change, the Agreed Capacity Plan to be implemented, being, except to the extent the parties may otherwise agree or the Franchise Agreement otherwise provides, the railway passenger services and capacity to be included in the Franchise Operator's Timetable and Train Plan which it is reasonably considered will ensure that, on the basis of the Forecast Demand contained in the Feasibility Study or otherwise agreed or determined in connection with the Agreed Capacity Plan ("the Agreed Forecast Demand"), the Franchise Operator will not exceed the Load Factor Specifications in providing the Passenger Services for the Forecast Period. For the avoidance of doubt, in any case where the Agreed Capacity Plan is agreed or determined on the basis that it will provide less capacity than the capacity which, on the basis of the Agreed Forecast Demand, would reasonably be considered necessary to ensure that the Load Factor Specifications will not be exceeded, then the Forecast Demand for the Agreed Capacity Plan shall, if necessary, be adjusted so that it reflects the impact (if

any) on the Agreed Forecast Demand of the provision of the lower level of capacity.

- (d) except in the case of a Capacity Change involving:-
 - (i) an increase in capacity where passenger demand is below the Passenger Demand Limit; or
 - (ccix) an increase or reduction in capacity below the Maximum Capacity Limit,

the Net Loss and/or Net Gain which it is reasonably considered will result from the Change (or, where relevant, each part thereof), being (except to the extent that the Authority may specify the manner of implementation of the Change under paragraph 2(b)) the lowest aggregate Net Loss that can be incurred, or the highest aggregate Net Gain that can be made, in respect of the Change taking into account any alternative methods of implementing the Change;

- (e) any Other Demand Management Actions to be carried out by the Franchise Operator; and
- (f) the consequential adjustment (if any) to be made to the Franchise Payments (or other provisions of this Franchise Agreement) in accordance with Part 1 of this Schedule 9.

6 Where the Authority and Franchise Operator are required to endeavour to agree or to determine an Implementation Plan in a relation to a Feasibility Study prepared pursuant to Clause 6.6, the provisions of this paragraph 6 shall also apply. The Authority and the Franchise Operator shall use all reasonable endeavours to agree, on the basis of such Feasibility Study, an Implementation Plan for the Capacity Change and/or for the taking of Other Demand Management Actions as soon as practicable provided that:

- (i) if the Agreed Capacity Plan for such Implementation Plan would provide capacity in excess of (1) the Maximum Capacity Limit; and/or (2) the capacity required to meet the Passenger Demand Limit without the Load Factor Specifications being exceeded, then the Authority may reduce the capacity to be provided under the Agreed Capacity Plan to a level no lower than the Maximum Capacity Limit or the capacity required to meet the Passenger Demand Limit without the Load Factor Specifications being exceeded (whichever is the highest), and the relevant Agreed Capacity Plan shall be determined accordingly; and
- (xv) the Authority shall be entitled to reduce the Forecast Period to such shorter period as he may consider appropriate at any time; and/or
- (xvi) where, and for so long as, passenger demand for the relevant Passenger Services and/or the capacity to be provided under the Agreed Capacity Plan is below the Passenger Demand Limit or the Maximum Capacity Limit respectively, then the Authority shall be entitled but not obliged to require that, instead of, or in addition to, the taking of any of Other Demand Management Actions, the Implementation Plan provides for capacity to be provided under the Agreed Capacity Plan to a level no higher than whichever is the higher of the capacity required to meet (1) the Passenger Demand Limit such that the Load Factor Specifications are not exceeded, and (2) the Maximum Capacity Limit.

7 Disputes in relation to the Implementation Plan

Where the Authority and Franchise Operator are required to endeavour to agree or to determine an Implementation Plan pursuant to the terms of this Franchise Agreement, the Franchise Operator and the Authority shall use all reasonable endeavours to agree or to determine such Implementation Plan as soon as reasonably practicable. In the event that there is a dispute over any aspect of the Implementation Plan including, without limitation:

- (a) subject to paragraph 6 above, if the Change is a Capacity Change, any dispute regarding the relevant Forecast Demand, the level of capacity required to meet the Passenger Demand Limit without the Load Factor Specifications being exceeded, the Change, the "Other Demand Management Actions" (if any) to be taken by the Franchise Operator or the manner of implementation of the Change;
- (b) any dispute regarding the Net Loss or Net Gain, as the case may be, resulting from the Change or any dispute regarding any adjustments to the provisions of this Franchise Agreement following the Change; and
- (c) any dispute regarding the time within which the Change is to be implemented

such dispute may be resolved in accordance with the Dispute Resolution Rules.

- 8 For the avoidance of doubt, any obligation to comply with or implement an Implementation Plan (or any part thereof) shall not include any obligation to take any action or step which it may have been assumed the Franchise Operator would take in determining the amount of any Net Loss or Net Gain that may be incurred in connection with a Change except to the extent that such action or step forms part of the Implementation Plan set out in paragraph 6 or 7 above.

Schedule 10 —

Financial Covenants (Clause 14.2)

Part 1 — Liquidity Maintenance

1 Definitions

In this Schedule 10, except to the extent the context otherwise requires:

“Acceptable Guarantee” means a guarantee from a Bank reasonably acceptable to the Authority in favour of the Franchise Operator in the form of the document in the agreed terms and marked **“DG”**;

“Applicable Percentage” means the percentage of the Forecast Cash Outflows applicable to the relevant Reporting Period as shown in the appropriate table set out in paragraph 2.1 of this Schedule 10;

“Approved Bank Facility” means an unconditionally committed unsecured loan facility from a Bank reasonably acceptable to the Authority in a form acceptable to the Authority and in respect of which the Authority has received a Facility Certificate;

“Available Assets” means the aggregate of:

- (a) the amount of cash on deposit with a Bank which is accessible by the Franchise Operator on 3 or less Business Days notice and which is not the subject of any Security Interest;
- (b) the total undrawn commitment which can be drawn on 3 or less Business Days notice under any Approved Bank Facility or Guaranteed Parent Facility;
- (c) any cash available from the Franchisee in respect of monies unpaid on shares in issue (whether in respect of nominal value or premium) which sums the Franchise Operator is entitled to call for in full on 3 or less Business Days notice without the need for satisfaction of any conditions, the payment of which is guaranteed by means of an Acceptable Guarantee;
- (d) any cash available to the Franchise Operator under any other arrangement equivalent or similar to the above, the terms and conditions of which have been approved in advance by the Authority in its absolute discretion;

“Business Day” means a day other than a Saturday or Sunday on which banks are normally open for business in London;

“Cash Outflows” means, in relation to any Reporting Period, the amounts paid by the Franchise Operator during the Reporting Period in respect of operating costs (including payments under any Access Agreement, Property Lease, Rolling Stock Related Contract or Output Plan Related Contract and any Franchise Payments or Incentive Payments), interest and tax;

“Facility Certificate” means a certificate in a form acceptable to the Authority and signed on behalf of the relevant lender:

- (a) confirming the existence of the loan facility;
- (b) confirming the satisfaction of all conditions precedent to the making of advances under such facility;

- (c) confirming the amount available to be drawn under the facility;
- (d) confirming, and undertaking to the Authority, that the facility can only be withdrawn on 6 months notice to the Authority (including in the event of an intervening insolvency);

“Forecast Cash Outflows” means, in relation to any Reporting Period, the amount due or otherwise reasonably expected to be paid by the Franchise Operator during the Reporting Period in respect of operating costs (including payments under any Access Agreement, Property Lease, Rolling Stock Related Contract or Output Plan Related Contract and any Franchise Payments or Incentive Payments), interest and tax;

“Guaranteed Parent Facility” means an unconditionally committed unsecured loan facility from an Affiliate in a form acceptable to the Authority and in respect of which the Authority has received a Facility Certificate and under which the obligations of the Affiliate are guaranteed by an Acceptable Guarantee;

2 Liquidity Maintenance

- 2.1** The Franchise Operator shall procure that, at opening of its business on the first Business Day of every Reporting Period, its Available Assets at such time equal or exceed the Applicable Percentage shown below of its Forecast Cash Outflows in relation to such Reporting Period and the next following Reporting Period:

Period	Applicable Percentage
1 January 2002 – 31 December 2002	H1: 5%; H2: 20%
1 January 2003 – 31 December 2003	H1: 30%; H2: 35%
1 January 2004 – 31 December 2004	H1: 35%; H2: 35%
1 January 2005 – 31 December 2005	H1: 45%; H2: 45%
1 January 2006 – 31 December 2006	H1: 55%; H2: 60%
1 January 2007 – 31 December 2007	H1: 75%; H2: 85%
From 1 January 2008	100%

Provided that where the Franchise Term is due to expire at 2 a.m. on 31 December 2013, the Applicable Percentage shall be as shown in the following table:

Period	Applicable Percentage
1 January 2002 – 31 December 2002	H1: 5%; H2: 20%
1 January 2003 – 31 December 2003	H1: 30%; H2: 35%
1 January 2004 – 31 December 2004	H1: 35%; H2: 35%
1 January 2005 – 31 December 2005	H1: 45%; H2: 45%
1 January 2006 – 31 December 2006	H1: 70%; H2: 75 %
From 1 January 2007	100%

Provided further that where the Franchise Term has been reduced pursuant to paragraph 5 of the Special Output Review, the Applicable Percentage shall be as shown in the following table:

Period	Applicable Percentage
1 January 2002 – 31 December 2002	H1: 5% ; H2: 20%
1 January 2003 – 31 December 2003	H1: 30%; H2: 35%
1 January 2004 – 31 December 2004	H1: 35%; H2: 50%
1 January 2005 – 31 December 2005	H1: 65%; H2: 75%
From 1 January 2006	100%

Where:

H1 designates the Applicable Percentage in the first half of the Franchise Operator Year being 1 January to 30 June of the relevant Franchise Operator Year; and

H2 designates the Applicable Percentage in the second half of the Franchise Operator Year being 1 July to 31 December of the relevant Franchise Operator Year.

2.2 The Franchise Operator shall no less than 7 days prior to the commencement of each Reporting Period, provide a certificate to the Authority confirming:

- (a) the Forecast Cash Outflows for the next two Reporting Periods;
- (b) the expected Available Assets of the Franchise Operator at the opening of business on the first Business Day of the next Reporting Period;
- (c) the expected minimum and maximum amount (to the nearest £1,000) of Available Assets during the course of the next Reporting Period ; and
- (d) in respect of the Reporting Period last ended before the date of such certificate the actual level of:-
 - (i) Cash Outflows; and
 - (ii) Available Assets at the opening of business on the first Business Day; and
 - (iii) minimum and maximum amounts of Available Assets at any time; and
 - (iv) amounts which were or became due and payable but were not paid though they are not disputed by the Franchise Operator; and
 - (v) amounts which were or became or were alleged by a third party to be or have become due and payable but were not paid because they are disputed by the Franchise Operator. In relation to Cash Outflows referred to in this paragraph (v) the Franchise Operator will confirm the total amount in dispute and provide details of the reasons why any material amounts comprised within such total together with any other amount(s) which comprise a substantial part of such total are disputed.

Provided that where pursuant to this paragraph 2.2 the Franchise Operator is required to provide information in respect of the amount of Available Assets it shall in addition to the Available Assets include the total of each of the amounts comprising items (a), (b), (c) and (d) of the definition 'Available Assets'.

2.3 Where so requested by the Authority, the Franchise Operator shall provide, or procure the provision of, such information as the Authority may require in connection with this paragraph 2. Such information shall be supplied as soon as reasonably practicable and in any event within 48 hours. Such information may include:

- (a) any supporting information for the matters referred to in paragraph 2.2;
- (b) an updated Facility Certificate from the relevant lender dated the date of the first Business Day of the next Reporting Period; and
- (c) the actual Available Assets of the Franchise Operator on the first Business Day of the next Reporting Period.

2.4 Any inaccuracy in information provided under this paragraph 2 which is not wholly immaterial shall constitute a breach of this Franchise Agreement.

2.5 If any certificate provided by the Franchise Operator pursuant to Paragraph 2.2 shows that the Franchise Operator will breach its obligations under Paragraph 2.1 it shall include with the certificate a full explanation of the reasons for the anticipated breach and a description of the steps it proposes to take to rectify it including, if relevant, revisions to the Applicable Percentage ("a Rectification Plan.") If the Authority, in its reasonable opinion, believes that the Rectification Plan will provide a robust and credible remedy for the anticipated breach by the commencement of the Reporting Period in respect of which the next following certificate is due to be provided to the Authority under paragraph 2.1 (or such later date as the Authority shall in its unfettered discretion agree) it shall so notify the Franchise Operator. The Franchise Operator shall be regarded as having been granted a derogation in respect of its obligation under Paragraph 2.1 until the date agreed by the Authority for remedy. If the Authority acting reasonably believes it has become materially less likely for any reason that the Rectification Plan will lead to the rectification of the anticipated or actual breach in the timescale anticipated in the Rectification Plan it shall notify the Franchise Operator and the derogation shall forthwith lapse (but without prejudice to the ability of the parties to agree a further or amended Rectification Plan.) The Franchise Operator will notify the Authority forthwith if it becomes aware of circumstances which make it materially less likely for any reason that the Rectification Plan will lead to the rectification of the anticipated or actual breach in the timescale anticipated in the Rectification Plan. For the avoidance of doubt during the period of any such derogation the Franchise Operator will be relieved of any obligation to increase the amount of the Guaranteed Parent Facility or the Approved Bank Facility which would otherwise be required to remedy the potential breach in respect of which the derogation has been granted.

3 Realisation of Available Assets

The Franchise Operator shall, to the extent so requested by the Authority and when so requested by it (including following the expiry of the Franchise Period), immediately call and immediately exercise such rights as it may have to call for the release and payment to it from the relevant other parties of the cash and funds represented by the Available Assets and, where appropriate, to enforce any relevant guarantee. To the extent the other party is the Franchisee, the Franchisee shall comply with any such

requirement and shall pay the relevant moneys in cash immediately upon such requirement being notified to it.

4 ¹⁴⁸ The Secretary of State, the Franchisee and the Franchise Operator have agreed that from the date on which the first Strategic Route Add On Payment (as such term is defined in Schedule 6 of the Franchise Agreement (as amended by the Deed of Amendment which introduced this paragraph into the Franchise Agreement)) is due pursuant to paragraph 18 of Schedule 6 of the Franchise Agreement (as amended by the Deed of Amendment which introduced this paragraph into the Franchise Agreement), the Franchise Operator shall increase the amount of its Performance Bond by £4,800,000 (the "Increased Performance Bond Amount") and in consequence the Secretary of State hereby agrees that for the purposes of paragraph 2 of Schedule 10 of the Franchise Agreement Forecast Cash Outflows shall, from the Reporting Period in which the Performance Bond is increased by the Increased Performance Bond Amount, be deemed to be reduced by £4,800,000 per Reporting Period for the purposes of calculating the Applicable Percentage

¹⁴⁸ Date of Change 06/01/2010

Part 2 — Other Obligations

1 Except to the extent the Authority may otherwise agree from time to time, the Franchise Operator shall not, and, in relation to paragraph (vi) below, the Franchisee shall not and shall procure that the Franchise Operator shall not:

- (i) incur any liability or financial indebtedness except in the ordinary course of providing and operating the Franchise Services;
- (ccx) make any loan or grant any credit, or have or permit to subsist any loan or any credit, to any person (other than as permitted under paragraph (v) below or to a director or employee in the ordinary course of its business);
- (ccxi) create or permit to subsist any Security Interest over any of its assets and 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;
- (ccxii) create or permit to subsist any right of set off or other equivalent right or any other circumstance which may, in each case, result in all or part of any uncalled element of the Available Assets not being available, when called, to the Franchise Operator for use in the business of providing and operating the Franchise Services;
- (ccxiii) create or acquire any subsidiary or make or have any investment in any other entity, except for the deposit of cash with a Bank;
- (ii) purchase, redeem, cancel, waive, amend or alter any of the terms or rights relating to the power of, or the terms on which, the Franchise Operator may call any uncalled element of the Available Assets;

and in this paragraph 1 references to the “calling of” or “uncalled” Available Assets include the drawing of, or any undrawn, Approved Bank Facility or Guaranteed Parent Facility and provided also that nothing in this Schedule 10 shall restrict the Franchise Operator from calling any Available Assets at any time.

2 Nothing in this Part 2 of Schedule 10 shall prevent the Franchise Operator depositing cash with, making a loan to, or having a deposit of cash or loan with any persons at any time, to the extent that the aggregate amount of any such cash and any such loan is an amount equal to the amount of the distribution which the Franchise Operator could make at that time in accordance with the Companies Act 1985 or paragraph 1(vii) above and the provisions of Clause 25.5 of this Franchise Agreement shall not apply to any such deposit or loan.

Schedule 11 — Franchise Assets and Key Contracts

Part 1 — Primary Franchise Assets (Clause 32.2(a))

If the Actual Opening Date precedes the Underlease Completion Date the following shall be added to the list appearing in Part 1 of Schedule 11:

¹⁴⁹ ***“Licence to occupy entered into on [date of licence] between Aylesbury Vale Parkway Limited and the Franchise Operator in respect of Aylesbury Vale Parkway station.”***

On the Underlease Completion Date, the following shall be added to the list appearing in Part 1 of Schedule 11 and any paragraph added pursuant to paragraph 5.1 above shall be deleted:

¹⁵⁰ ***“Underlease entered into on [underlease completion date] between Aylesbury Vale Parkway Limited and the Franchise Operator in respect of Aylesbury Vale Parkway station.”***

- (a) The rights and liabilities of the Franchise Operator under the LUL Track Agreement specified in Part 2A(a) of Schedule 1.
- (b) The rights and liabilities of the Franchise Operator under an agreement pursuant to Section 35 and the Sixth Schedule to the Transport Act 1962 between the Board and the London Transport Board dated 31 December 1962.
- (c) The rights and liabilities of the Franchise Operator under the Universal Licence Agreement between the Board and the Franchise Operator dated 8 December 1995.
- (d) The rights and liabilities of the Franchise Operator under the Sub-licence Deed between the Board and the Franchise Operator dated 8 December 1995.
- (e) The rights and liabilities of the Franchise Operator under the Master Software Licence between the Board and the Franchise Operator dated 8 December 1995.
- (f) The rights and liabilities of the Franchise Operator under the Computer Services Agreement between the Board and the Franchise Operator dated 8 December 1995.

¹⁴⁹ date of DOA Nov 2007

¹⁵⁰ date of DOA Nov 2007

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Part 2 – Specified Franchise Assets (Clause 32.8)

None

Part 3 – Key Contracts (Clause 27)

The following contracts shall be Key Contracts:

- (1) Any Access Agreement to which the Franchise Operator may be a party other than in its capacity as Facility Owner.
- (2) Any Property Lease including the Property Leases listed in Part 4 of Schedule 1.
- (3) Any Rolling Stock Related Contract including the Rolling Stock Leases listed in Part 5 of Schedule 1.
- (4) Any LUL Agreements.
- (5) Any contract or arrangement for the lending, seconding, hiring, contracting out, supervision, training, assessment, or accommodation by another Train Operator of any train drivers, conductors or other train crew used by the Franchise Operator in the provision of the Passenger Services.
- (6) Any contract or arrangement for the subcontracting or delegation to another Train Operator of the provision of any of the Passenger Services (whether or not the consent of the Authority is required to such subcontracting or delegation under Clause 5.9).
- (7) Any contract or arrangement for the leasing, subleasing, hiring or licensing by another Train Operator to the Franchise Operator of rolling stock used by the Franchise Operator in the provision of the Passenger Services.
- (8) Any contract or arrangement with a Train Operator (other than an Access Agreement) for the provision to the Franchise Operator of train dispatch, performance or supervision of platform duties, security activities, evacuation procedures, advice or assistance to customers, assistance to disabled customers, operation of customer information systems, cash management or ticket issuing systems administration.
- (9) Any contract or arrangement with a Train Operator for the provision of breakdown or recovery and track call services to assist in the provision of the Passenger Services.
- (10) ⁱⁱⁱAny contract or arrangement for the supply of spare parts.
- (11) Any contract or arrangement for the maintenance of track and structure.
- (12) ⁱⁱⁱAny Output Plan Related Contract.
- (13) Any licences of Marks to the Franchise Operator.
- (14) Any licences or contracts in respect of telecommunication or computer services which are material to the operational requirements of the Passenger Services.
- (15) Any Agreement relating to infrastructure inspection and/or maintenance at Depots.

Schedule 12 — Handover Packages (Clause 25.2)

(a) **Key Personnel**

A list of key personnel to include all directors (statutory or otherwise) and all managers with responsibility for a department/function within the 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.

(b) **Property**

A list of all property owned, leased, operated or occupied by the Franchise Operator which shall include the address, telephone number and contact telephone number of each property. Where applicable, the list will also include the name, address and telephone number of the lessor and/or the party which has granted authority to use or occupy the property, and any relevant reference numbers applicable to that lease or occupation.

(c) **Contracts**

A printed or electronic list (in a format acceptable to the Authority) of all contracts (sales, purchase or otherwise including leases and licences) between the Franchise Operator and any other party showing the name, address and telephone number of the counterparty; the contract reference number of the Franchise Operator and the counterparty (if any); contract price/value, term and expiry date. This requirement applies to all contracts unless otherwise agreed by the Authority.

(d) **Systems**

A list of the electronic systems in use by the Franchise Operator together with the name, office address and telephone number of the person responsible for administration of each system.

(e) **Daily Operations**

A printed or electronic list (in a format acceptable to the Authority) of all assets owned or operated by the Franchise Operator which are essential to the effective operation of the business.

(f) **Insurance**

A list of names, addresses and telephone numbers of all the insurers providing insurance to the Franchise Operator, or where appropriate the name, address and telephone number of the Franchise Operator's insurance broker, together with the relevant policy numbers and other references for each policy of insurance¹⁵¹

¹⁵¹ Date of replacement of text w.e.f 12th September 2003.

Schedule 13 —Franchise Plan (Clause 14.1)

Part 1 - Preliminary

1 Definitions and Interpretation

1.1 Definitions

In this Franchise Plan except to the extent that the context otherwise requires:

"Accredited Voluntary User Groups"	means those voluntary user groups who comply with the criteria set out in Appendix 1 to this Schedule.
"ATP"	means automatic train protection equipment (constituting a system which provides continuous monitored train protection and speed supervision) as may be approved from time to time by the Authority.
"Centro PTE"	means West Midlands Passenger Transport Executive.
"Centro Area"	means the passenger transport area of Centro PTE
"Dedicated Bus Feeder Service"	<p>means a service which complies with the following requirements:</p> <ul style="list-style-type: none">(i) all bus vehicles and bus services shall have the following characteristics:<ul style="list-style-type: none">(a) modern, accessible (for disabled passengers), low emission vehicles of a capacity suited to both the traffic levels and road layouts of the individual routes, laid out to meet legislative requirements for disabled access and with adequate room for luggage and baby buggies;(b) bus vehicles equipped to issue Through Tickets and with a communication link between the bus vehicle and the bus controller (the bus controller as described in paragraph 3.14);(c) global positioning satellite equipment;(d) bus and rail information monitors at rail stations and bus and rail timetable displays at bus stops which they serve;(e) comprehensive marketing and publicity as an integral part of the rail service;(ii) all buses and bus stops which they serve shall be clearly identified as a Dedicated Bus Feeder Service;(iii) all bus drivers shall be trained by the Franchise Operator's trainers in respect of rail-related products and service issues as appropriate; and(iv) the Franchise Operator shall set out the times or

frequencies (as appropriate) of the bus services in the pocket timetables it produces and advertise such bus services in other of its written material, including but not limited to posters at Stations.

- (v) passengers shall be able to purchase a minimum range of rail tickets (the range to be agreed with the Authority) on the bus.

For the avoidance of doubt, relevant Through Tickets will be accepted for journeys on Dedicated Feeder Bus Services and Dedicated Feeder Bus Services may incorporate a service to the general public so long and to the extent that this is consistent with the requirements to connect with Passenger Services. The Franchise Operator shall provide sufficient passenger carrying capacity on Dedicated Bus Feeder Services to ensure that demand (to the extent that it could reasonably have been anticipated) will be met without excessive overcrowding.

“ERTMS”	means the European Rail Traffic Management System (comprising ETCS, GSM-R and ETML) being developed to provide an interoperable European rail network pursuant to Directive 96/48EU.
“ETML”	means the rail traffic management element of ERTMS.
“ETCS”	means the train control element of ERTMS.
“Fares Manual”	has the meaning accorded to that term in the Ticketing and Settlement Agreement.
“Flows”	has the meaning accorded to that term in the Ticketing and Settlement Agreement.
“GSM-R”	means the satellite communication element of ERTMS.
“Improvement Plan”	means the plan described in paragraph 19.
“Lead Operator”	has the meaning accorded to that term in the Ticketing and Settlement Agreement.
“Midland Metro”	means the light rapid transport system operating (as at the Franchise Commencement Date) between Wolverhampton town centre and Birmingham Snow Hill station.
“Permanent Fare”	has the meaning accorded to that term in the Ticketing and Settlement Agreement.
“Rail Head Station”	means any station served by the Passenger Services and which has links to a bus-rail scheme as described in Part 3 of this Franchise Plan (including but not limited to Solihull and Dorridge).
“Stage Bus Service”	is a stage carriage bus service operated by a third party operator (and which is not a Dedicated Bus Feeder

Service).

“Through-Tickets”

means a ticket valid for travel, in addition to the relevant Passenger Services, on local bus services. The Through-Ticket shall enable passengers to travel on the Passenger Services ending or commencing at a Rail Head Station together with travel by bus from or to such Rail Head Station to the appropriate locations linked with such Rail Head Stations as specified in Part 3 of this Franchise Plan. In respect of Flows where the Permanent Fare is set by the Franchise Operator as Lead Operator such tickets shall be created as a Permanent Fare and shall be included in the Fares Manual.

“Track Doubling Timetable Outputs”

has the meaning set out in paragraph 1 of the Output Plan.

1.2 Construction and Interpretation

References in this Franchise Plan to sums of money shall be to such sums exclusive of Value Added Tax.

1.3 Third Party Consents/Agreements and Conditions

1.3.1 Where, in this Franchise Plan any obligation or commitment of the Franchise Operator is expressed to be conditional upon the satisfaction of any condition (including, without limitation the occurrence of any event or the obtaining of any third party consent and/or entering into any agreement or arrangement with a third party) the Franchise Operator shall use all reasonable endeavours to procure that such condition is satisfied within such time scales (if any) as are set out in this Franchise Plan in relation to such obligations.

1.3.2 Without limiting paragraph 1.3.1 or any other obligation of the Franchise Operator, in the event that (a) any commitment or obligation of the Franchise Operator under this Franchise Plan to expend or procure expenditure is expressly subject to the satisfaction of any condition(s) and (b) the total amount of such expenditure cannot be expended within the timescales as are set out in this Franchise Plan (or otherwise within such time as the Authority agrees is a reasonable time) due to the non-fulfilment of such condition(s), then paragraph 1.3.3 shall apply.

1.3.3 The Franchise Operator shall:

- (i) as soon as reasonably practicable, notify the Authority to that effect; and
- (ccxiv) to the extent required by the Authority at the Authority's absolute discretion ensure that such amount as cannot be spent as required (or, where the commitment was one of those referred to in Appendix 2, ensure that such amount as was estimated as being required to fulfil the commitment and which was not spent), due to the non-fulfilment of necessary condition(s), is expended as soon as reasonably practicable within the Franchise Term on such other improvements in the quality of Passenger Services and/or Station Services as are approved by the Authority.

1.4 Expenditure

- 1.4.1** All expenditure commitments set out in this Franchise Plan shall be in addition to any sums provided for in respect of the same or similar commitments in the budget of The Chiltern Railway Company Limited for 1999/2000 ("the Base Provisions") for the purposes of the first Franchise Operator Year and for the purposes of any subsequent Franchise Operator Year shall be in addition to the Base Provisions (pro rated if the relevant Franchise Operator Year is for a period of less than 12 months) as increased by any increase in the Retail Price Index between 31 March 2000 and the beginning of that Franchise Operator Year.
- 1.4.2** For the avoidance of doubt, all amounts which the Franchise Operator has committed (whether unconditionally or otherwise) pursuant to this Franchise Plan to expend (or to procure the expenditure of) in connection with improvements to track or stations shall be in addition to any expenditure made by Railtrack as part of its infrastructure, improvement or maintenance programme.
- 1.4.3** All amounts which the Franchise Operator has committed (whether unconditionally or otherwise) pursuant to this Franchise Plan to expend (or to procure the expenditure of) shall be in addition to any amounts which another Train Operator has committed or any Affiliate has committed on behalf of another Train Operator (in each case whether unconditionally or otherwise) to expend (or to procure the expenditure of).
- 1.4.4** Where any category of expenditure described in this Franchise Plan is referred to in more than one expenditure commitment set out in this Franchise Plan, expenditure on such category shall not be counted more than once in assessing compliance by the Franchise Operator with such expenditure commitments.
- 1.4.5** In this Franchise Plan, where sums of money are specified (a) in respect of a Franchise Operator Year (whether specified as obligations or payment thresholds or otherwise); or (b) in respect of a Fare then in respect of any Franchise Operator Year, such sums shall be interpreted as being the specified sum multiplied by the Retail Prices Index for 1 April of that year divided by the Retail Prices Index for 1 April 2000.
- 1.4.6** Where a sum of money is specified in respect of the Franchise Term, that sum of money (to the extent that it has not been expended) shall be subject to adjustment on the first day of each Franchise Operator Year commencing on or after 1 April 2001 by taking such sum as it stood (after adjustment under this provision) on the first day of the preceding Franchise Operator Year, deducting the part of that sum spent in the preceding Franchise Operator Year, multiplying the result by the Retail Prices Index for 1 April of the current Franchise Operator Year and divided by the Retail Prices Index for the first day of the previous Franchise Operator Year.
- 1.4.7** To the extent that the expenditure of any capital sum provided for in the Franchise Plan is reflected in lease or access charges payable by the Franchise Operator to a third party then for the purposes of calculating the capital sum the expenditure of which has been procured by the Franchise Operator, only that amount of capital expenditure which is amortised by the third party over the Franchise Term shall be taken into account. The Franchise Operator shall ensure that the third party issues a certificate to the Authority certifying the amount so amortised.
- 1.4.8** For the avoidance of doubt, all amounts which the Franchise Operator has committed (whether unconditionally or otherwise) pursuant to this Franchise Plan

- 1.4.9** Where an obligation is placed on the Franchise Operator to “spend” or “invest” amounts in this Franchise Plan, such amounts shall be cash expenditure borne by the Franchise Operator on items having a capital value and which are intended for use on a continuous basis. Where the Franchise Operator wishes to “spend” or “invest” such amounts on items not having a capital value then such expenditure may only be made with the prior consent of the Authority such consent not to be unreasonably withheld.

1.5 Feasibility Studies and Implementation Dates

Each feasibility study required under this Franchise Plan shall be carried out, at the cost of the Franchise Operator, as follows:

- 1.5.1** By the dates indicated below in relation to each feasibility study, the Franchise Operator shall agree terms of reference for the feasibility study with the Authority, undertake the feasibility study and send a report and evaluation to the Authority containing a reasonable number of proposals which explore all the relevant issues, including the wider effects of each proposal and a reasonable date for the implementation for each proposal which, for the avoidance of doubt, should be as soon as reasonably practicable following the completion of the feasibility study;
- 1.5.2** In the event that the parties fail to agree the terms of reference pursuant to paragraph 1.5.1, the terms of reference shall be such as the Authority may reasonably require;
- 1.5.3** Following discussions between the Franchise Operator and the Authority, the Franchise Operator will adopt such proposal(s) as the Authority may reasonably require and unless and to the extent that the Franchise Operator can demonstrate that the introduction of the proposal or proposals will result in a Net Loss to the Franchise Operator (as to which see paragraph 1.5.4 below), the Franchise Operator shall implement the Franchise Operator’s proposal or proposals by the relevant date indicated as the implementation date under the terms of the feasibility study.
- 1.5.4** If the Franchise Operator demonstrates that such a Net Loss would result from the introduction of any proposal or proposal then it will nonetheless implement the agreed proposal or proposals and the No Net Loss No Net Gain Regime shall apply;

1.6 Continuing Obligations

Where the Franchise Operator is obliged under this Franchise Plan to provide or implement or install something (whether a service or facility or otherwise) the Franchise Operator shall ensure that once the same is provided, implemented or installed that it (or its replacement) continues to be provided and maintained (allowing for reasonable wear and tear) to the standards to which it was provided, implemented or installed and made available as anticipated by this Franchise Plan (and, where relevant, effectively maintained) for the remainder of the Franchise Period unless the contrary is expressly stated.

1.7 Scale of Commitments

- 1.7.1** Where, in relation to the commitment set out in the paragraphs referred to in Appendix 2 there is any dispute as regards the scale of the investment envisaged, regard shall be had to the capital cost which the Franchise Operator had estimated that it would spend in relation to such commitment as set out against such paragraph in Appendix 2.
- 1.7.2** Paragraph 1.4 shall apply in relation to the amounts set out in Appendix 2.
- 1.7.3** In the event that any commitment referred to in Appendix 2 is expressly subject to the satisfaction of any condition(s) and cannot be completed due to the non-fulfilment of such condition(s), then the Franchise Operator shall:
- (i) as soon as reasonably practicable, notify the Authority to that effect; and
 - (ccxv) ensure that such amount as was estimated as being required to fulfil the commitment and which was not spent (or such other amount as the Authority may agree), is expended as soon as reasonably practicable within the Franchise Term on such other improvements in the quality of Passenger Services and/or Station Services as are approved by the Authority (such approval not to be unreasonably withheld or delayed).
- 1.7.4** For the avoidance of doubt, the Franchise Operator accepts the risk that the actual cost of delivery of the commitments specified could be more or less than the estimated amount.

Part 2 – Passenger Services

2 Additional Passenger Services

- 2.1** The Franchise Operator shall comply with its obligations in Clause 5 of the Franchise Agreement as if the requirements set out in this paragraph 2 were specified in Part 1 of Schedule 3 of the Franchise Agreement, all of the Services specified in paragraphs 2.2.1 to 2.2.3 and three of the services specified in paragraphs 2.2.4 to 2.2.6 being additional to those otherwise required to be provided by the Franchise Operator pursuant to the Passenger Service Requirement.
- 2.2** Prior to the Franchise Operator fulfilling its obligations in respect of the Track Doubling Timetable Outputs (and for the avoidance of doubt without prejudice to the obligations of the Franchise Operator in respect of achieving the Likely Delivery Date and Backstop Delivery Date applicable to the Track Doubling Timetable Outputs) the Franchise Operator will provide the following services:
- 2.2.1** two services on Weekdays from Aylesbury to London Marylebone via Amersham arriving at London Marylebone during the Morning Peak and two services on Weekdays from London Marylebone to Aylesbury via Amersham departing London Marylebone during the Evening Peak. Such services shall each have a Journey Time of less than 50 minutes;
 - 2.2.2** not less than five services in each direction on Sundays between London Marylebone and Birmingham via Banbury or London Marylebone and Aylesbury via High Wycombe so as to provide a half-hourly service in each direction from Princes Risborough, High Wycombe, Beaconsfield and Gerrards Cross between 1300 and 2200 on Sundays (and during such period the extension permitted to the service interval for the purposes of paragraph 2.6(a)(ii) of Part 1 of Schedule 3 of the Franchise Agreement shall be 10 minutes);

- 2.2.3** not less than six services in each direction on Sundays between Aylesbury and London Marylebone via Amersham;
- 2.2.4** not less than two services on Weekdays from Birmingham Snow Hill to London Marylebone arriving at London Marylebone during the Morning Peak and not less than two services on Weekdays from London Marylebone to Birmingham Snow Hill departing from London Marylebone during the Evening Peak. Such services shall each have a Journey Time of less than 120 minutes;
- 2.2.5** not less than one service shall be provided by the Franchise Operator on Weekdays from London Marylebone arriving at Birmingham Snow Hill before 1000. Such service shall have a Journey Time of less than 130 minutes;
- 2.2.6** not less than one service on Weekdays from Birmingham Snow Hill to London Marylebone departing from Birmingham Snow Hill between 1600 and 1900. Such service shall have a Journey Time of less than 120 minutes;
- 2.2.7** PROVIDED that the Journey Times referred to in paragraphs 2.2.4 – 2.2.6 may be exceeded by a maximum of 3 minutes for each station (as specified in parts 1 or 2 of schedule 2 of the Franchise Agreement) at which the service stops to allow passengers to embark and disembark in addition to the stations referred to in paragraphs 2.2.4 – 2.2.6, subject to a maximum of 4 additional stations.
- 2.2.8** Until the Franchise Operator fulfils its obligations in respect of the Track Doubling Timetable Outputs the Franchise Operator will ensure that the average Journey Time specified in the Timetable for all Passenger Services on the relevant Flows shown in column 1 below is no higher than the Journey Time shown in column 2 below.

Column 1 – Flow	Column 2 – Journey Time
London Marylebone/ Birmingham Snow Hill	138 minutes
London Marylebone/ Banbury via High Wycombe	84 minutes
London Marylebone/ Aylesbury via Amersham	55.4 minutes

Part 3 – Additional Transport Services

3 Inter-modal Transport

3.1 Haddenham and Thame Bus Links

The Franchise Operator shall use all reasonable endeavours to ensure that a bus service operating between Oxford and Aylesbury in both directions continues to be

diverted in the forecourt of Haddenham and Thame Parkway Station for the Franchise Term.

3.2 Princes Risborough and Chinnor Bus links

The Franchise Operator shall procure a bus service on Weekdays (as such term is defined in Schedule 3) between Princes Risborough Station and Chinnor to the extent that six buses arrive at Princes Risborough Station between ten minutes before the time in the relevant day that Passenger Services begin to serve such station and 10.00 and that a further six buses leave the station between 16.00 and 10 minutes after the time in the relevant day that Passenger Services cease to serve such station other than Bank Holidays (as such term is defined in Schedule 3).

3.3 *Deliberately not used*¹⁵²

3.4 *Deliberately not used*¹⁵³

3.5 Bicester or Banbury to Brackley Bus Links

On 28 December 2001 the Franchise Operator submitted to the Authority a feasibility study into a Dedicated Bus Feeder Link between Bicester North Station and Brackley or Banbury Station and Brackley. The Franchise Operator shall no later than 31 December 2002 submit an updated business case in respect of such feasibility study to the Authority for evaluation with a view to implementing the proposals by the Passenger Change Date for the Winter 2003/2004 Timetable. The terms of reference for such feasibility study will unless otherwise agreed be those contained in the letter from the Franchise Operator to the Authority dated 21 March 2001. For the avoidance of doubt, paragraph 1.5 shall apply in relation to such business case and feasibility study.

3.5.1 *Further to the receipt for the updated business case in respect of such feasibility study to the Authority on 31 December 2002, the Franchise Operator shall no later than 31 December 2007 submit an updated feasibility study to the authority for evaluation with a view to implementing the proposals by the Passenger Change Date for the Winter 2007/2008 Timetable. The terms of reference for such feasibility study will unless otherwise agreed be those contained in the letter from the Franchise Operator to the Authority dated 21 March 2001. For the avoidance of doubt, paragraph 1.5 shall apply in relation to such business case and feasibility study.*¹⁵⁴

3.5.2 *The Franchise Operator shall, at its own cost, implement and operate for at least one year from January 31 2008 a 'Lift Share' scheme which allows intending passengers to make arrangements to share lifts to the station with other intending passengers between Bicester North and, Brackley or Banbury. The share scheme shall be advertised on the Franchise Operator's website.*¹⁵⁵

3.6 *Bus Links*¹⁵⁶

¹⁵² Text deleted wef 3rd December 2004

¹⁵³ Text deleted wef 3rd December 2004

¹⁵⁴ Insertion of new paragraph w.e.f 30th September 2003.

¹⁵⁵ Date of change 19/11/2008

¹⁵⁶ Date of change 26/6/2009

3.6.1 Aylesbury Bus Links

3.6.1 Aylesbury Bus Links^{kkk}

The Franchise Operator shall procure, in partnership with Buckinghamshire County Council and relevant property developers, the provision of a network of feeder bus services connecting with the Passenger Services at Aylesbury Station and providing a link with the following new housing developments:

- (a) North West to Fairford Leys – the Silver Rider service shall continue;*
- (b) North East to Watermead – the bus link shall commence no later than 6 November 2006;*
- (c) North East to Weedon Hil – the bus link shall commence within six months of the resumption of building works at Weedon Hill or on the 30th April 2010 (“the bus link commencement date”), whichever is the earlier. In the event that Buckinghamshire County Council is not willing to fund the bus link at the bus link commencement date, the Franchise Operator shall meet with the Department for Transport and Buckinghamshire County Council and agree a revised commencement date.”*
- (d)^{lll} “North to Berryfields – the bus link shall commence no later than 1st February 2012. The Franchise Operator and Buckinghamshire County Council will review the estimated occupancy rate on 1st November 2011 and in the event that the 150th occupancy within the development is not estimated to be achievable by 1st February 2012, the Franchise Operator shall meet with the Department for Transport and Buckinghamshire County Council and agree a revised commencement date. In the meantime, the Franchise Operator shall continue to subsidise the existing bus link to Aylesbury Vale Parkway Station referred to in clause 3.6.1 (e)”¹⁵⁷*
- (e)¹⁵⁸ The Franchise Operator shall from 14 December, 2008 until the conditions stated in clause 3.6.1(d) are fulfilled procure through payment of a subsidy in conjunction with Buckinghamshire County Council that the existing Route 16 bus service be diverted to call at Aylesbury Vale Parkway Station at least four times per weekday in each direction, so as to provide a bus link between Aylesbury Vale Parkway Station and Quainton three times per weekday in each direction and Aylesbury Vale Parkway and Waddesdon at least four times per weekday in each direction. The Franchise Operator shall ensure that passengers holding rail season tickets valid at Aylesbury Vale Parkway Station for a period of one month or longer shall be able to use this bus service at no charge.*

For each of the schemes referred to in 3.6.1 above, with the exception of (ii) which only refers to clauses 3.6.1(a) – 3.6.1 (d) inclusive, the Franchise Operator shall ensure that:

- (i) Rail tickets valid to Aylesbury and Aylesbury Vale Parkway stations for one month or more shall entitle passengers to travel on the buses at no additional charge to the passenger;*

¹⁵⁷ Date of Change 29/7/2010

¹⁵⁸ Date of Change 27/01/2012

- (ii) *the buses used on these services shall be modern low emission vehicles which are accessible for disabled passengers, including those who need to use a wheelchair, and have adequate room for luggage and baby buggies/pushchairs;*
- (iii) *the bus stops served by these buses shall make clear that regular connecting buses run to the railway station;*
- (iv) *the bus routes and current timetables shall be available at Aylesbury and Aylesbury Vale Parkway Stations and on the Franchise Operator's website, and referred to in other relevant publicity.*
- (V) ¹⁵⁹ *The services shall run as follows:*

	Mondays to Fridays		Saturdays	
Scheme	Hours of Operation	Minimum Frequency	Hours of Operation	Minimum Frequency
Silver Rider (Clause 3.6.1(a))	06:05-20:00	Every 20 Minutes	08:00-20:00	Every 15 minutes between 08:00 and 18:00. Every 30 minutes from 18:00 – 20:00
Water Rider Clause 3.6.1(b))	06:05-20:35	Every 20 minutes	08:05-20:30	Every 20 minutes
Weedon Hill (Clause 3.6.1(c))	To be decided in accordance with Clause 3.11			
Berryfields (Clause 3.6.1(d))	To be decided in accordance with Clause 3.11			

3.6.2 High Wycombe bus link

The Franchise Operator shall subsidise the High Wycombe Park and Ride (formerly Cressex Express) from 1 April 2006.

The Franchise Operator shall ensure that:

- (i) *Rail Tickets valid to the station for one month or more shall entitle passengers to travel on the buses at no additional charge to the passenger;*
- (ii) *the bus stops served by these bus services shall make clear that regular, connecting buses run to the railway station;*
- (iii) *the bus routes and current timetables shall be published at High Wycombe Station and shall be available on the Franchise Operator's website, and referred to in other relevant publicity.*

¹⁵⁹ Date of change 19/05/2011

3.7 High Wycombe Bus Links

Provided that the Franchise Operator is able to create a transport interchange as described in paragraph 4.2.1(a) below, the Franchise Operator shall use all reasonable endeavours to procure by 30 June 2004 the provision of Stage Bus Services or (at its option) Dedicated Feeder Bus Services connecting with the Passenger Services at High Wycombe Station providing a link with the following main residential areas:

- (a) North to Totteridge
- (b) East to Micklefield
- (c) South west to Booker
- (d) West to Desborough Park
- (e) North west to Downley

Without limiting the preceding provisions of this paragraph 3.7, it is acknowledged that the extent to which there will be separate services to these areas and/or a service which combines more than one will be subject to the Franchise Operator testing the demand for the relevant services.

Developments to High Wycombe Station to enable the bus service to operate into High Wycombe Station are referred to in paragraph 4.2.1 below. If the Franchise Operator is unable to create a transport interchange as described in paragraph 4.2.1(a) then paragraph 3.13 below will apply.

3.8 Bicester Bus Links

The Franchise Operator shall procure:

3.8.1 ¹⁶⁰ *This paragraph has intentionally been left blank.*

3.8.2 ¹⁶¹ *a Dedicated Feeder Bus Services connecting with Passenger Services at Bicester North Station providing a link with the following areas of Bicester:*

- (a) *Greenwood,*
- (b) *Langford*
- (c) *Bure Park*

The buses will connect at Bicester North with 6 morning peak departures between 06:00 – 8:15 Monday – Friday and 7 evening peak arrivals between 17:30- 20:00 Monday-Friday

- d) *Bicester Village*

A continuous loop will operate Monday – Saturday between 09:00 – 19:30, Sunday between 09:00 – 18:30 and 09:00 – 20:30 on days where Bicester Village opening hours are extended.

¹⁶⁰ Text deleted wef 22nd September 2004.

¹⁶¹ DATE OF CHANGE 05/02/2009

These services shall operate so as to connect with Passenger Services operating between Bicester North Station and London Marylebone station. Without limiting the preceding provisions of this paragraph 3.8, it is acknowledged that the extent to which there will be separate services to these areas and/or a service which combines more than one will be subject to the Franchise Operator testing the demand for the relevant services.

The Franchise Operator will not be required to operate a timetable in respect of other bus services, which services shall be provided as required to meet passenger demand. During the period in which the Franchise Operator is not required to operate a timetable passengers who telephone the Franchise Operator to indicate that they wish to make use of one of the relevant Dedicated Bus Feeder Services will be enabled to do so as soon as is reasonably practicable. At any time intending passengers who require a ramp to access the bus will be provided with an appropriate accessible Dedicated Feeder Bus Service within 60 minutes of them telephoning to request one and for the purposes of this paragraph 3.8.2 not all bus vehicles shall be required to be accessible to disabled passengers.

3.9 Banbury Bus Links

The Franchise Operator shall use all reasonable endeavours to procure by 31 December 2005 and in any event shall procure by 30 June 2006 the provision of new Dedicated Feeder Bus Services or (at its option) Stage Bus Services connecting with the Passenger Services at Banbury Station and providing a link with:

- (a) the town centre
- (b) North west (Hardwick)
- (c) North east (Nethercote)
- (d) South east (Cherwell Heights)
- (e) South (Bodicote)
- (f) West (Bretch Hill)

These services shall operate so as to connect with Passenger Services calling at Banbury Station.

Developments to Banbury Station to enable the bus service to operate into Banbury Station are referred to in paragraph 4.2.2 below.

3.10 Through-ticketing

3.10.1 The Franchise Operator shall

- (a) continue to make available for sale and make available for other Train Operators to sell, from Stations Through-Tickets on Travel West Midlands Bus services (or any other equivalent bus service) to any destination in the Centro Area for a nominal charge. The Franchise Operator shall ensure that it has arrangements in place with Travel West Midlands (or its equivalent, as applicable) to ensure that such Through-Tickets are accepted. For the avoidance of doubt the Franchise Operator shall ensure that such Through-Tickets shall also be valid on the services required by paragraphs 3.3 and 3.4. In

addition the Franchise Operator shall ensure that such Through-Tickets are also available for purchase via its telesales operation; and

- (b) co-operate with Travel West Midlands (or in each case in this paragraph, an equivalent bus operator) in order to facilitate the sale of tickets to the national rail network on board Travel West Midlands as soon as appropriate technology to achieve such a scheme becomes available. For the avoidance of doubt, the implementation of this scheme shall be conditional upon the co-operation of Travel West Midlands and the Franchise Operator shall not be required to fund such ticketing system.

3.10.2 The Franchise Operator shall make available Through-Tickets to passengers travelling between any station served by Midland Metro and London Marylebone station at a price equal to the Fare for an equivalent ticket between Birmingham Snow Hill station and London Marylebone station. The Franchise Operator's obligation in this paragraph shall include all reasonable endeavours to make such Through-Tickets available from Midland Metro outlets.

3.10.3 *The Franchise Operator shall use all best endeavours to maintain a scheme which allows all Passengers holding Monthly Season Tickets (as such term is defined in Schedule 5) or season tickets of longer duration for the Wycombe area or the Aylesbury area as shown in both cases on the maps attached at Appendix 3 free travel on local bus services operated by Arriva The Shires Limited ("Arriva") and Wycombe Bus Company Limited ("Wycombe Bus"), or their successor operator(s), in the said areas subject to Arriva, Wycombe Bus, or their successor operator(s) continuing to offer materially similar terms to the Franchise Operator as those offered at the introduction of the benefit. In the event that other bus operators provide a significant level of local bus services which would be reasonably beneficial to Passengers, the Franchise Operator shall use all reasonable endeavours to procure a similar arrangement with them. In the event that the Franchise Operator is unable to fulfil its obligations within this paragraph 3.10.3 then it shall revert to the Authority as soon as reasonably practicable with alternative proposals for discussion¹⁶².*

3.11 Frequency of Bus Links

The parties acknowledge that the aim of the inter-modal transport schemes within this Part 3 is to provide passengers with a genuine choice of means of travel in connecting the Passenger Services and the frequency of the bus services described linking with the stations will, so far as reasonably practicable, reflect this aim. In respect of the bus services described in paragraphs 3.6 (Aylesbury), 3.7 (High Wycombe), 3.8 (Bicester) and 3.9 (Banbury) the Franchise Operator will provide the Authority, 3 months before the introduction of the bus services and from time to time on request, with its proposed bus services timetable and its assessment of passenger demand. The Franchise Operator will introduce and maintain such bus service timetable as the Authority reasonably approves.

3.12 New Proposals and Continuation of Schemes

3.12.1 Following its implementation, each of the schemes referred to in paragraphs 3.3 to 3.9 shall continue in operation for a minimum period of two years from the date of the relevant scheme's implementation. The Franchise Operator shall continue

¹⁶² Insertion of replacement text w.e.f. 13.06.2002.

each scheme after such minimum period until the Franchise Operator is able to demonstrate to the Authority that the incremental revenue derived from the scheme is materially less than the incremental cost and that its withdrawal would not unduly prejudice the interests of a material number of passengers using the relevant Rail Head Station. In addition, the Franchise Operator shall in such circumstances use its reasonable endeavours to procure a Dedicated Bus Feeder Service, where a reasonable passenger demand would be expected, connecting alternative locations to replace the scheme being terminated, the details of such Dedicated Bus Feeder Service to be agreed with the Authority.

- 3.12.2** Without prejudice to the Franchise Operator's obligations under 3.12.1, the Franchise Operator will implement such bus scheme proposals as the Authority may reasonably require unless the Franchise Operator can demonstrate that the introduction of the proposal or proposals will result in a Net Loss to the Franchise Operator. If the Franchise Operator demonstrates that such a Net Loss would result then it will nonetheless implement the proposal or proposals and the No Net Loss No Net Gain Regime shall apply.

3.13 Alternative Arrangements

If the Franchise Operator cannot reach, or maintain, agreement with the relevant local bus operators and local authorities in relation to these schemes within the required timescales, or, in respect to the bus services described in paragraph 3.7 above, if the Franchise Operator is unable to create a transport interchange as described in paragraph 4.2.1(a), then the Franchise Operator shall consult with the Authority and shall either continue to use its reasonable endeavours to reach an appropriate agreement as soon as practicable or establish a suitable alternative which shall be agreed with the Authority. If such agreement cannot be reached within the required timescales or maintained, the Franchise Operator shall consult with the Authority and shall either continue to use its reasonable endeavours to reach an appropriate agreement as soon as practicable or establish a suitable alternative which shall be agreed with the Authority.

3.14 Bus Controller

The Franchise Operator shall use all reasonable endeavours to introduce, by 30 December 2002 and, in any event shall introduce by no later than 30 June 2003, a bus controller who shall assist the effective provision of the Dedicated Bus Feeder Services for the benefit of passengers by, inter alia, optimising the service at times of unanticipated disruption to Passenger Services or disruption caused by planned engineering work and providing accurate, up to date information to passengers. The Bus Controller shall be provided with a telephone or radio link with each bus providing a Dedicated Bus Feeder Service and global positioning satellite equipment to establish the accurate location of each such bus.

Part 4 – Customer Services

4 Improved Station Facilities and Environment

4.1 Improved Station Facilities

4.1.1 *The Franchise Operator shall use all reasonable endeavours to obtain all necessary consents and approvals to enable it to complete the following by 31 March 2005 and, in any event, shall complete the following by 31 March 2006: provided that for Leamington Spa 31 March 2005 and 31 March 2006 shall be 31 December 2006 and 31 March 2007 respectively:*¹⁶³

(i) **Warwick**

Provide passenger waiting facilities and toilets, which toilets will include baby changing facilities and a toilet for the disabled at Warwick station by 31 March 2005 and in any event by 31 March 2006.

(ii) **Leamington Spa**

*Create glazed, heated waiting facilities on the up and down main line platforms, improve lighting in the subway and provide new toilets, which toilets will include baby changing facilities and facilities for the disabled, at Leamington Spa station by 31 December 2006 and in any event by 31 March 2007. Provided that the Franchise Operator shall not be obliged to spend more than £0.5 million in respect of such improvements at Leamington Spa.*¹⁶⁴

4.1.2 *The Franchise Operator shall deliver the following by no later than 1 October 2007.*

(i) **Dorridge**

Provide a canopy on the London-bound platform and refurbish the toilets, which refurbished toilets will include baby changing facilities and a toilet for the disabled at Dorridge station by no later than 1 October 2007.

(ii) **Solihull**

*Provide a glazed canopy on the London-bound platform and refurbish the toilets which toilets will include a toilet for the disabled, at Solihull station by no later than 1 October 2007.*¹⁶⁵

4.2 Improved Transport Interchanges and Station Environment

4.2.1 ¹⁶⁶*The Franchise Operator shall by 31 March 2011 at High Wycombe station:*

- (a) *purchase the goods shed (“the goods shed”) and the surrounding land at High Wycombe in Buckinghamshire, registered at HM Land Registry under title number BM 265778, as delineated on the Land Registry plan and edged red. The goods shed is to be designated as a Primary Asset under clause 32.5 (a). The Franchise Operator shall at the end of the*

¹⁶³ Insertion of new text w.e.f 24th December 2002.

¹⁶⁴ Insert change text wef 14/12/06

¹⁶⁵ Insert new text wef 14/12/06

¹⁶⁶ Date of change of new text 11/11/2008

- Franchise Term pay to the Authority the sum of £2.55 million (plus an uplift to reflect RPI from 1 October, 2008) from the proceeds of sale of the goods shed, provided that the goods shed is a Primary Asset at that time;*
- (aa) the Franchise Operator shall ensure that the goods shed is used as soon as possible to improve passenger facilities for the remainder of the Franchise Term, such facilities, if practicable, to include a shop and/or a café/restaurant;*
 - (b) construct in the station forecourt a transport interchange which shall as a minimum provide a forecourt canopy, 3 bus bays, a taxi rank, and space for cars to stop to pick up and set down passengers;*
 - (c) procure that general traffic between the station car park and the highway is routed via the rear of the goods shed;*
 - (d) construct a permanent bay platform structure to accommodate 6x23 metre length cars to replace the temporary structure which currently constitutes bay platform number 1. ^{mmm}*
 - (dd) in seeking to carry out the works referred to in (a to d) of this clause 4.2.1, the Franchise Operator shall take into account the draft drawing (ref. 21073/001/017B) and side letter between Wycombe District Council, Buckinghamshire County Council and the Chiltern Railway Company Limited, dated 1 September 2008;*
 - (e) In the event that despite having used all reasonable endeavours to secure all necessary planning consents, full planning consent is not forthcoming by 30 September 2009, the following provisions shall apply:*
 - (i) The Franchise Operator shall notify the Secretary of State immediately; and*
 - (ii) The Franchise Operator's obligations in clauses 4.2.1 (a to d) shall cease to apply and shall be replaced with the provisions of clause 4.2.1 (f).*
 - . (f) In the event that the circumstances set out in clause 4.2.1(e) apply, the Franchise Operator shall expend a capital sum not exceeding £6.27 million (plus an uplift to reflect RPI from 1 October 2008) on improvements to the Franchise Services not required elsewhere in this Franchise Agreement, the scope of which is to be approved by the Secretary of State. Representatives of the Franchise Operator shall meet with representatives of the Secretary of State, and shall agree the scope of these works, and contract for their delivery, by no later than 30 January 2010.*

4.2.2 ^{nnn ooo} Banbury

The Franchise Operator shall create a new transport interchange in the station forecourt at Banbury Station by no later than 30 September 2007. The transport interchange will allow for a taxi rank and short stay/drop off car parking and will provide for access for buses.

The Franchise Operator will co-operate fully with Cherwell District Council with regard to the regeneration of the station area.¹⁶⁷

4.2.3 Aylesbury

The Franchise Operator shall:

- (a) use all reasonable endeavours to obtain all necessary consents and approvals to enable it to make alterations to the station forecourt at Aylesbury Station to allow buses (as described in paragraph 3.6) to call there by 31 December 2004 and in any event shall make such alterations so as to allow buses to call there by 30 June 2005.
- (b) install electronic screens at Aylesbury Station showing bus departures from Aylesbury bus station by 30 June 2002.
- (c) ensure that electronic screens at Aylesbury bus station summarising the departures of Passenger Services from Aylesbury Station are provided by 30 June 2002.
- (d) ensure that the pedestrian signage between Aylesbury Station and Aylesbury bus station is enhanced by 31 March 2002.
- (e) from the Franchise Commencement Date until the Franchise Operator complies with its obligations set out in paragraph 4.2.3(b) the Franchise Operator shall display accurate and up to date posters giving details of bus services from Aylesbury bus station.
- (f) from the Franchise Commencement Date until the Franchise Operator complies with its obligations set out in paragraph 4.2.3(c) the Franchise Operator shall ensure that posters giving accurate and up to date details of the Passenger Services from Aylesbury Station are displayed at Aylesbury Bus Station.

4.2.4 Haddenham and Thame

The Franchise Operator shall use all reasonable endeavours to obtain all necessary consents and approvals to enable it to provide additional facilities for passengers at Haddenham and Thame Parkway Station, including a retail unit, toilet facilities (including disabled facilities) and an expanded, covered station building by **31 December 2006¹⁶⁸** and shall use best endeavours to provide such additional facilities by **31 March 2007¹⁶⁹**.

The specification for these additional facilities will be subject to the Authority's prior written approval (such approval not to be unreasonably withheld).

4.2.5 Moor Street and Snow Hill

- (i) The Franchise Operator shall commission feasibility studies into significant upgrades in respect of passenger facilities to the existing (as at the Franchise Commencement Date) through platforms at Moor Street and Snow Hill stations.

(The Franchise Operator shall complete these feasibility studies by the end of 2001 for submission to the Authority. Subject to paragraph 1.5,

¹⁶⁷ Insert replacement text wef 31/1/07

¹⁶⁸ Insertion of new date w.e.f 24th December 2002.

¹⁶⁹ Insertion of new date w.e.f. 24th December 2002.

the Franchise Operator and the Authority shall agree an implementation date for completion of these schemes. It is anticipated that the implementation date will be a date no later than 31 December 2005. Any calculation of Net Loss for the purpose of paragraphs 1.5.3 and for 1.5.4 shall take account of the availability of funding and from interested third parties where available and the terms on which such funding is made available (and the Franchise Operator shall use all reasonable endeavours to secure such funding).

(ii) The Franchise Operator shall use all reasonable endeavours to obtain all necessary consents and approvals to enable it to procure the installation of:-

- (a) a high quality pedestrian link between Moor Street Station and Birmingham New Street Station available 24 hours a day, 7 days a week. It will be "step free", well lit, and covered over substantial sections.
- (b) an alternative route in respect of part of the pedestrian link which shall be available during the hours that Moor Street Station is open. It will consist of a walkway via the new Bull Ring shopping centre which will :
 - have real time train running information monitors at its entrance/exits
 - be under cover for the vast majority of the route (it is agreed that there will be 2 or 3 sections of approx. 10 – 20 metres that will not be covered)
 - be step free, pleasant, safe, well lit and regularly and frequently patrolled by security staff.

(iii) The Franchise Operator shall use all reasonable endeavours to

- (a) obtain all necessary consents and approvals to permit the refurbishment and shall refurbish to a high standard the disused part of Moor Street Station (as it is at the Franchise Commencement Date) so as to allow for full integration into the development of the Bull Ring (which is, at the Franchise Commencement Date, being undertaken and which at such date is due for completion in 2003); and
- (b) provide a taxi rank and bus interchange on Moor Street Queensway.

The Franchise Operator shall use all reasonable endeavours to complete the refurbishment and provide the taxi rank and bus interchange referred to in this paragraph 4.2.5.(iii) by the Passenger Change Date for the Summer 2003 Timetable and in any event will complete the refurbishment and provide the taxi rank and bus interchange by the Passenger Change Date for the Summer 2004 Timetable. Where the slippage in the Franchise Commencement Date from the anticipated date of commencement on 1 October 2001 causes undue difficulty to the Franchise Operator in meeting its reasonable endeavours obligation under this paragraph 4.2.5(iii) then the Authority shall take this into account when determining whether the Franchise Operator has used such reasonable endeavours.

- (iv)¹⁷⁰ *The Franchise Operator shall install a new real time passenger information display on the concourse at Birmingham Moor Street station by 31 August 2005.*
- (v) *The Franchise Operator shall replace the canopies and walls on Platforms 1 and 2 at Birmingham Moor Street station with new heritage style canopies and walls by 30 November 2005.*
- (vi) *The Franchise Operator shall install a new footbridge linking Platforms 1 and 2 at Birmingham Moor Street by 30 November 2005.*
- (vii) *The Franchise Operator shall ensure that lifts to the footbridge required by Clause 4.2.5(vi) are in passenger use by 31 January 2006.*
- (viii) *The works required pursuant to clauses 4.2.5 (iv) to 4.2.5 (vii) shall ensure that Platforms 1 and 2 are fully integrated into the restored concourse. The works shall incorporate the CCTV commitment as detailed in clause 5.2 of Schedule 13.*

4.2.6 Innovation Station^{ppp}

*Not Used*¹⁷¹

4.2.7 Passenger Information

The Franchise Operator shall ensure that:

- (i) all stations referred to in paragraph 4.2.9 have a “real time” passenger information monitor on each platform regularly used by the Passenger Services;
- (iv) all staffed stations referred to in paragraph 4.2.9 will have a passenger information monitor positioned so as to enable the ticket office staff to view the information.

Prior to installing any such monitor the Franchise Operator will consult with relevant parties (including, for the avoidance of doubt, Centro PTE and the Facility Owner of the station where appropriate).

4.2.8 ^{qqq} If and when, from time to time, new platforms are brought into operation at any Station the Franchise Operator shall install a passenger information monitor on each such platform to be operational at the time such platform is opened.

4.2.9 ^{172 rrr}

- (i) *The Franchise Operator shall use all reasonable endeavours to obtain all necessary consents and approvals to enable it to ensure that by 31 March 2003, and in any event will ensure that by 30 September 2003 the obligations set out in paragraph 4.2.7 are fulfilled in relation to the stations between London Marylebone and Banbury inclusive, Great Missenden to Aylesbury inclusive and Monks Risborough and Little Kimble.*

¹⁷⁰ Date of new text 4.8.2005

¹⁷¹ Delete text wef 30/04/07

¹⁷² Date of change 8.8.2005

(ii) *The Franchise Operator shall ensure that new “real time” passenger information monitors are installed on each platform regularly used by the Passenger Services at Leamington Spa, Warwick, Hatton and Lapworth, and shall ensure that the existing passenger information monitors at Warwick Parkway are upgraded to “real time” operation by 30 April 2005. The Authority acknowledge that the scheme may be partially funded by Warwickshire County Council.*

(iii) ¹⁷³*The Franchise Operator shall ensure that by 31 July 2008, the following works shall be completed and brought into use at London Marylebone Station:*

(a) Replacement of the current bi-facial departure board with a new main departure board capable of simultaneously displaying six departures;

(b) installation of an additional board showing train arrivals; and

(c) installation of a summary screen at the Melcombe Place entrance to the station.

The Franchise Operator shall ensure that by 30 June 2008, the following shall be brought to use:

(a) An electronic system for providing advance warning for annual season ticket holders of delays and disruption to the Franchise Operator’s services; and

(b) Customer information screens in car parks at three stations (to be determined by the Franchise Operator) which display details of the next train to London and details of any service perturbations.

The Franchise Operator shall ensure that these systems remain in use for the duration of the Franchise Term.¹⁷⁴

(v) ¹⁷⁵*The Franchise Operator shall by 30 October 2009 install and maintain in full working order for the duration of the Franchise Term, new, real time double-sided dot matrix passenger information monitors at 6 of the following Stations, in replacement for existing single screen televisions; the Franchise Operator shall do so at 7 more of the Stations by 30 April 2010, and at the remaining 12 Stations by 30 November 2010:*

Wembley Stadium

Sudbury & Harrow Road

Sudbury Hill Harrow

Northolt Park

South Ruislip (Chiltern Railways platforms)

West Ruislip (Chiltern Railways platforms)

Denham Golf Club

Gerrards Cross

Seer Green & Jordans

¹⁷³ date of change 26.6.2008

¹⁷⁴ Insert change text wef 9/2/07

¹⁷⁵ Date of new text 11/11/2008

Beaconsfield
Suanderton
Princes Risborough
Monks Risborough
Little Kimble
Great Missenden
Wendover
Stoke Mandeville
Haddenham & Thame Parkway
Bicester North
Kings Sutton
Leamington Spa
Warwick
Warwick Parkway
Hatton
Lapworth

vi) **Customer information screens**^{176 sss}

By 20th December 2010 the Franchise Operator shall replace the customer information screens on the platforms at Marylebone Station with new double-sided dot matrix passenger information monitors and shall ensure that the images on the screens are clear and easily legible.

4.2.10 Waiting rooms

The Franchise Operator shall on and from the Franchise Commencement Date at each of the stations listed in Part A of Appendix 4 ensure that the waiting room is normally open between 0700 and 2100 on Weekdays.

4.2.11 Station clocks

The Franchise Operator shall replace all station clocks with new clocks or, where there is no station clock, install a new station clock (and shall ensure that the specification for such new clocks will provide a means of ensuring the accuracy of these clocks):

- (i) on every platform at all Stations **with the exception of Warwick Parkway**;¹⁷⁷
- (vi) on every platform at Warwick, Lapworth, Dorridge, Solihull, Jewellery Quarter, The Hawthorns, Rowley Regis, Cradley Heath, and Kidderminster stations; and
- (vii) on the main line platforms at Hatton and Stourbridge Junction stations;

and in relation to such obligations:

- (a) **shall use all reasonable endeavours to obtain all necessary consents and approvals to enable it to comply with such obligations by 30 September 2003 and, in any event, shall complete such clock replacement or installation by the Passenger**

¹⁷⁶ DATE OF CHANGE 30/01/2009

¹⁷⁷ Insertion of new text w.e.f 2 September 2002.

Change Date for the Summer 2003 Timetable in relation to the Stations and by the 30 September 2004 in relation to Warwick, Hatton, Dorridge, Lapworth and Solihull stations;¹⁷⁸

- (b) shall use all reasonable endeavours to obtain all necessary consents and approvals to enable it to comply with such obligations by the Passenger Change Date for the Winter 2002/3 Timetable and, in any event, shall complete such clock replacement or installation by **30 September 2004**¹⁷⁹ in relation to the Jewellery Quarter, The Hawthorns, Rowley Regis, Cradley Heath, Kidderminster and Stourbridge Junction stations.

Where the slippage in the Commencement Date from the anticipated date of commencement on 1 October 2001 causes undue difficulty to the Franchise Operator in meeting its reasonable endeavours obligation under this paragraph 4.2.11 then the Authority shall take this into account when determining whether the Franchise Operator has used such reasonable endeavours.

4.2.12 Cycle storage

The Franchise Operator shall use all reasonable endeavours to obtain all necessary consents and approvals to enable it to install, six secure cycle storage facilities at each of Leamington Spa, Warwick, Hatton and Lapworth and three secure cycle storage facilities at each of Moor Street and Snow Hill stations as soon as reasonably practicable and, in any event, it shall install such secure cycle storage facilities by 1 April 2002.

4.2.13 ¹⁸⁰Warwick Station Subway Refurbishment and Security improvements

The Franchise Operator shall refurbish the subway and stairwells at Warwick Station by 31 December 2004. This improvement shall include, but not be limited to, the following:

- (a) ***Cleaning the existing walls and applying an anti-graffiti coating;***
- (b) ***Cleaning, painting and waterproofing the ceiling;***
- (c) ***Cleaning the floor and applying a non-slip surface;***
- (d) ***Installing a new lighting system;***
- (e) ***Installing a new canopy to cover the stairwell to the London bound platform; and***
- (f) ***Reviewing the existing CCTV system and enhancing it as necessary to ensure full coverage for passengers using the subway and stairwells.***

¹⁷⁸ Replacement of Paragraph (a) w.e.f 29th September 2003

¹⁷⁹ Date replaced w.e.f 30th September 2003

¹⁸⁰ New Clause inserted w.e.f 25th August 2004.

4.2.14 ¹⁸¹ *The Franchise Operator shall by 31 August 2008 bring into use new and refurbished, extended and upgraded passenger toilets at London Marylebone Station. The works shall provide:*

- (i) Facilities for disabled passengers in the ladies and gents toilets;*
- (ii) a baby change facility in the ladies and gents toilets;*
- (iii) facilities to ensure that station announcements are audible in the toilets;*
- (iv) appropriate signage; and*
- (v) all necessary works including without limitation drainage, plumbing and electrical works.*

4.2.15 *The Franchise Operator shall by 30 June 2007 complete and bring into use the following works at Aylesbury Station:*

- (a) Repaint all areas below 3 metres in Chiltern Railways corporate colours;*
- (b) carry out a heavy clean of all public areas including the toilets; and*
- (c) carry out repairs and refurbishments to the waiting area and shop area.*

The Secretary of State acknowledges and consents to the use of a grant from the DfT's Mobility and Inclusion Unit to part fund the works listed in Clauses 4.2.16 and 4.2.17

4.2.16 *The Franchise Operator shall by 30 June 2007 complete and bring into use the following works at Beaconsfield Station:*

- (a) Refurbish the booking office and waiting rooms with new paintwork and décor;*
- (b) Replace and automate the public doors to the booking office;*
- (c) Refurbish the ladies and gents toilets;*
- (d) Install facilities for disabled passengers into the ladies and gents toilets'*
- (e) Install baby changing facilities into the ladies and gents toilets; and*
- (f) Refurbish the waiting shelter.¹⁸²*

4.2.17 *The Franchise Operator shall by 30 June 2007 complete and bring into use the following works at Gerrards Cross Station:*

- (a) Refurbish the booking office and waiting rooms with new paintwork and décor;*
- (b) Replace and automate the public doors to the booking office;*
- (c) Refurbish the ladies and gents toilets;*

¹⁸¹ Date of change 26.6.2008

¹⁸² Insert new text wef 9/2/07

(d) Install facilities for disabled passengers into the ladies and gents toilets'

(e) Install baby changing facilities into the ladies and gents toilets; and

(f) Refurbish the seating in the booking hall and waiting rooms.¹⁸³

4.2.18 *The Franchise Operator shall spend £1.5 million (at April 2008 prices) by 31 March 2011 On Qualifying Works to upgrade the passenger facilities at Aylesbury, Leamington Spa, Warwick, Wendover, Gerrards Cross, Princes Risborough and Solihull. The Franchise Operator shall work with Network Rail and the relevant Local Authorities to secure matched funding through Network Rail's National Stations Improvement Programme. The Qualifying Works shall in addition to the Franchise Operator's and Network Rail's maintenance and renewal obligations.*

4.2.19 ¹⁸⁴*The Franchise Operator shall by 31 October 2009 complete and bring into use three additional passenger shelters at Stations to be agreed by the Authority and the Franchise Operator by 20 February 2009.*

4.2.20 *Installation of bar code readers¹⁸⁵*
By the 30th June 2010, the Franchise Operator shall install bar code readers which comply with RSP standards RSPS 2000 01-00 or better on ticket gates at London Marylebone, Gerrards Cross, Beaconsfield, High Wycombe, Aylesbury and Leamington Spa stations, to enable mobile telephone tickets automatically to be processed through the barriers.

4.2.21 *Ticket vending machines at Marylebone*
By 1st September 2009, the Franchise Operator shall provide two additional ticket vending machines at Marylebone Station.

4.2.22 *Replacement of Station CCTV image recording equipment*
By 30th April 2009, the Franchise Operator shall replace all existing Station closed-circuit television recording equipment with digital systems which comply with the NRI Working Group, CCTV Guidance Note For Stations CCTV/GN002 or better.

4.2.23 *Upgrade of on-train passenger information systems*
By 30th April 2010, the Franchise Operator shall upgrade all of the on-train passenger information systems ("PIS") on its Class 168 vehicles. As part of the upgrade, the Franchise Operator shall:

(i) Investigate the reliability of the current systems, report in writing to the Authority on its findings, and make all such improvements to reliability as are reasonably practicable;

(ii) Undertake all necessary works to make the system reliable and customer friendly;

(iii) provide maintenance and fault finding training for staff, to be provided by a suitably qualified person, sufficient to ensure that all relevant staff are competent in use of the PIS equipment; the

¹⁸³ Insert new text wef 9/2/07

¹⁸⁴ Date of new text 12/12/2008

¹⁸⁵ Dta of new text 30/1/2009

Franchise Operator shall provide evidence to the Authority of compliance with this requirement;

- (iv) Procure sufficient spares to ensure consistent working of the pis;***
- (v) Procure additional functionality to allow the PIS to receive and display real-time messages such as service disruption information.***

5 Security

5.1 Security attendant

The Franchise Operator shall:

- 5.1.1** ¹⁸⁶***use all reasonable endeavours to ensure that a security attendant is available to monitor the station (including the car park of such stations) on a continuous basis between 0700 and the last train departure at each of the following stations:***

- (ii) Monday to Saturday; Banbury Beaconsfield, Bicester North, Gerrards Cross, Haddenham & Thame Parkway, High Wycombe, Leamington Spa, Princes Risborough, Solihull; and***
- (iii) Monday to Friday; Aylesbury, Great Missenden, Stoke Mandeville, Wendover.***

- 5.1.2** use all reasonable endeavours to ensure that at Haddenham and Thame Parkway Station a security attendant is available to monitor the Station (including the car park of such Station) on a continuous basis between 06.00 on Monday until 23.00 on Saturday. The Franchise Operator may terminate its obligations under this paragraph in respect of monitoring the car park of the station between the hours of 23:00 and 06:00 only, if the Franchise Operator demonstrates to the reasonable satisfaction of the Authority that the number of cars parked in the car park over a consecutive 28 day period falls below an average of 10 cars between the hours of 23.00 and 06.00 and the Authority consents to such termination, such consent not to be unreasonably delayed or withheld.

- 5.1.3** on and from the Franchise Commencement Date at each of the stations listed in Part A of Appendix 4 use reasonable endeavours to provide assistance to passengers who are disabled, elderly or with heavy luggage or pushchairs.

- 5.1.4** subject to the obtaining of the relevant consents referred to in paragraph 5.1.1(ii), on and from 1 October 2002 at each of the stations listed in Part B of Appendix 4 use reasonable endeavours to provide assistance to passengers using the Passenger Services who are disabled, elderly or with heavy luggage or pushchairs.

5.2 CCTV

After undertaking such consultation as may be necessary, the Franchise Operator shall ensure the provision of CCTV equipment (which, where CCTV is not already installed will include the obligation to install the same) to monitor, and will then arrange

¹⁸⁶ Date of Change 01/09/2011

to monitor (during the period commencing ten minutes before the first Passenger Service of the day is due to arrive and ending ten minutes after the last Passenger Service of the day actually departs from the relevant stations) from one or more central monitoring points, the following:

- 5.2.1 all platforms at the Stations;
- 5.2.2 all platforms at Leamington, Warwick, Dorridge, Solihull, Lapworth, Moor Street, Rowley Regis and Cradley Heath stations; and
- 5.2.3 the car parks at Hatton, Dorridge and Lapworth

in order to procure a secure environment for passengers using the stations and car parks and in relation to such obligations:

- (a) shall use all reasonable endeavours to obtain all necessary consents and approvals to enable it to fulfil such obligations by **30 September 2003**¹⁸⁷ and in any event shall ensure such CCTV provision and monitoring is operational by the Passenger Change Date for the Summer 2003 Timetable in relation to the Stations, Warwick, Hatton, Dorridge, Lapworth and Solihull stations and at the car parks at Hatton, Dorridge and Lapworth. Where the slippage in the Commencement Date from the anticipated date of commencement on 1 October 2001 causes undue difficulty to the Franchise Operator in meeting its reasonable endeavours obligation under this paragraph **5.2.(a)**¹⁸⁸ then the Authority shall take this into account when determining whether the Franchise Operator has used such reasonable endeavours;
- (b) ***shall ensure such CCTV provision and monitoring is operational by 30 September 2003 in relation to Cradley Heath station and by 31 January 2004 in relation to Rowley Regis station. Where the slippage in the Franchise Commencement Date from the anticipated date of commencement on 1 October 2001 causes undue difficulty to the Franchise Operator in meeting its reasonable endeavours obligation under this paragraph 5.2.(b) then the Authority shall take this into account when determining whether the Franchise Operator has used such reasonable endeavours; and***¹⁸⁹
- (c) shall ensure such CCTV provision and monitoring is operational in relation to all platforms at Moor Street by the implementation date agreed pursuant to paragraph **4.2.5(iv)**¹⁹⁰.

The standard of CCTV equipment and monitoring shall be at least equivalent to the specification of the CCTV equipment most recently installed at any of the Stations and

¹⁸⁷ Insertion of new text w.e.f. 29.09.2002.

¹⁸⁸ Insertion of new text w.e.f 29.09.2002.

¹⁸⁹ Replacement of Paragraph (b) w.e.f 29th September 2003

¹⁹⁰ Insertion of 4.2.5(iv) w.e.f 24th December 2002.

in any event the specification shall require a standard of CCTV recordings which comply with such standards as may be required for evidence in criminal proceedings.

5.3 Secure Stations and Car Parks

The Franchise Operator shall use all reasonable endeavours to obtain all necessary consents and approvals to enable it to:

- (a) *improve passenger security in stations and car parks at stations served by the Passenger Services; and***
- (b) *reduce incidences of trespass and vandalism on the rail network and at stations and depots, in each case over or from which the Passenger Services operate; and***

subject to obtaining such consents, shall implement such improvements. The Franchise Operator shall incur capital expenditure of £1.2 million to achieve this on commitments which are not covered elsewhere in this Franchise Plan. Provided that the Franchise Operator shall spend a minimum of £300,000 during the period from 1 April 2001 to 31 March 2003 (of which £150,000 shall be spent by 30 June 2002) and shall spend at least a further £150,000 per annum from 1 April 2003 until the capital expenditure requirement has been fulfilled.¹⁹¹

5.4 On train

5.4.1 The Franchise Operator shall plan to provide and use all reasonable endeavours to ensure that all Passenger Services it operates between Dorridge and Stourbridge Junction will have a second person on the train who shall be required actively to look after passengers and check tickets.

5.4.2 The obligation to use reasonable endeavours in paragraph 5.4.1 shall require the Franchise Operator to:

- (i) maintain and implement an appropriate staffing plan (which shall make provision for adequate alternative resources); and**
- (viii) maintain a roster which allocates a second person on each service.**

5.4.3 The Franchise Operator shall be required to monitor its compliance with this obligation and supply reports to the Authority in relation to the extent of its compliance on request.

5.4.4 If less than 99% of trains operating between Dorridge and Stourbridge Junction have a second person on board to look after passengers and check tickets, the Franchise Operator will attend a meeting with the Authority where the Franchise Operator will be required to demonstrate to the Authority's reasonable satisfaction that it had implemented the measures described in paragraph 5.4.2 and that the failure to achieve the 99% level referred to in this paragraph 5.4 was due to events which were outside of the Franchise Operator's reasonable control and not reasonably foreseeable. The percentage shall be measured at each Reporting Period based on the Franchise Operator's compliance with this paragraph 5.4 over the 13 immediately preceding Reporting Periods.

5.5 Station lighting

The Franchise Operator shall use all reasonable endeavours to obtain all necessary consents and approvals to enable it to ensure that the lighting at stations served by

¹⁹¹ Insertion of new text w.e.f. 02.12.2002

the Passenger Services between Banbury (inclusive) and Birmingham Moor Street (inclusive) accords with railway Group Standard GM/TT0118 (Driver Only Operated Passenger Trains – Station Platform Lighting and Electrical Supplies) by 1 December 2003 but in any event shall ensure this standard of lighting by 30 June 2004.

5.6 ^{ttt}Ticket gates

The Franchise Operator shall install and operate automatic ticket gates and carry out the other station security works reasonably required to prevent ticketless travellers entering or leaving the stations listed other than by way of the automatic ticket gate by the following dates:

- (i) at Aylesbury by 31 March 2006***
- (ii) at gerrards Cross by 31 december 2007***
- (iii) at Beaconsfield by 31 december 2007***
- (iv) at Leamington Spa by 31 December 2007***

And shall ensure that such automatic ticket gates remain operational during the Franchise Term.¹⁹²

5.7 ^{uuu 193 194}Replacement of subwayError! Bookmark not defined.

Without prejudice to the Franchise Operator's obligations under paragraph 6.2, the Franchise Operator shall use all reasonable endeavours to obtain all necessary consents and approvals to enable it to replace the existing passenger subway at High Wycombe Station with a footbridge and lifts and, subject to obtaining any such consents and approvals shall do so with a footbridge and lifts by 31 March 2005.

6 Mobility Impaired Passengers

6.1 Disabled assistance

Without limiting paragraphs 5.1.3 and 5.1.4, the Franchise Operator shall require a notice period of not more than 24 hours for providing assistance to disabled passengers and shall use all reasonable endeavours to accommodate such passengers where a shorter period of notice has been given.

6.2 Level access

In order to facilitate access to and within the station for mobility impaired passengers the Franchise Operator shall:

- 6.2.1 ¹⁹⁵Ensure that there is step free access to all platforms used by the Passenger services at all stations by 31 December 2004. The Franchise Operator acknowledges its obligations at its sole cost to use reasonable endeavours to enable disabled passengers to have access to the Passenger Services in an appropriate manner. The following stations are excluded from the December 2004 deadline:**

6.2.1.1 Saunderton, South Ruislip, West Ruislip, Wendover, Sudbury Hill Harrow and Sudbury Harrow Road, as it will not be possible to provide level access at a reasonable cost given the levels of usage of such stations and their physical configuration;

¹⁹² Insert change text wef 13/12/06

¹⁹³ see derogation referes 4.2.1 and 5.7

¹⁹⁴ Delete text wef 30/04/07

¹⁹⁵ Replacement text inserted wef 24th August 2004.

6.2.1.2 ¹⁹⁶ ¹⁹⁷ *Denham Station, in relation to which there shall be step free access provided by no later than ¹⁹⁸ 31 July 2008.*

Until such time the Franchise Operator shall have discharged its obligations under Clause 6.2.1.2 the Franchise Operator shall provide a taxi service free of charge for all disabled persons wishing to gain access to the down platform at Denham Station, The taxi service shall take them to the nearest and most suitable accessible station. The service shall be clearly communicated to passengers.

6.2.1.3 *Gerrards Cross Station, in relation to which there shall be step free access provided by 28 February 2005.*¹⁹⁹

6.2.2 ²⁰⁰ *use all reasonable endeavours to obtain all necessary consents and approvals to enable it to ensure that by 30 September 2002, but in any event by 28 February 2005 shall ensure, there is level access to platforms at Dorridge station. This will be achieved by installing lifts that are expected to be connected to the existing over bridge by a short walkway. Once the lift is opened for passenger use the Franchise Operator will no longer need to provide the taxi service for disabled passengers using Dorridge station as specified under 6.2.3 below. Where the slippage in the Commencement Date from the anticipated date of commencement on 1 October 2001 causes undue difficulty to the Franchise Operator in meeting its reasonable endeavours obligation under this paragraph 6.2.2 then the Authority shall take this into account when determining whether the Franchise Operator has used such reasonable endeavours.*

6.2.3 *From 1st June 2003 the Franchise Operator shall provide a taxi service to disabled passengers unable to access either Warwick or Dorridge stations. The taxi will take disabled passenger(s) to the closest accessible station to enable them to make their journey at no extra cost to the passenger(s) and the passengers will not be charged on additional fare for this service. The Franchise Operator will ensure this service is publicised at the station and other relevant places e.g. Chiltern Railways Website.*²⁰¹

6.2.4 ²⁰² *From 1 January 2005 the Franchise Operator shall provide a taxi service to disabled passengers unable to access Saunderton Station. The taxi will take disabled passengers to the closest accessible station to enable them to make their journey at no extra cost to the passenger and the passengers will not be charged an additional fare for this service. The Franchise operator will ensure this service is publicised at this station and other relevant places, for example the Chiltern railways Website.*

6.2.5 *The Franchise Operator shall procure and complete the installation of two passenger lifts at Aylesbury Station, on either side of the footbridge*

¹⁹⁶ Date of change 10.2.2006

¹⁹⁷ Insert second change wef 18/05/07

¹⁹⁸ date of change 26.6.2008

¹⁹⁹ New Clause 6.2.1.3 inserted wef 20th December 2005.

²⁰⁰ Replacement text inserted wef 20th December 2004.

²⁰¹ New text inserted wef 14th August 2003

²⁰² New Clause 6.2.4 of this Schedule 13 inserted wef 24th August 2004.

between platforms 1, 2 and 3. The lifts shall be made available to passengers by no later than 30th November 2009.

- 6.2.6** ²⁰³*The Franchise Operator shall conduct an internal inquiry into the causes of the failure to meet the previous 31st December 2007 deadlines for complying with its obligations under Clauses 4.2.9 (iii), 4.2.14 and 6.2.1.2 of this Schedule; the inquiry shall cover the followings:*

Capital Programme Specific

- *Internal Approval process (board paper approval);*
 - *Resource Planning (internal/external);*
 - *What procurement process was undertaken;*
 - *Details of stakeholder engagement/approvals;*
 - *When did Chiltern engage with the suppliers;*
 - *When were Designs completed and approved;*
 - *Were Key milestones agreed with contractors;*
 - *Frequency of progress reviews against the plan;*
 - *Reporting structure (internal/external);*
 - *Delegated authority/responsibility for the project delivery;*
 - *Whether delivery dates agreed with the Authority were realistic achievable;*
- and***
- *Contracting strategy with Builders – were there any short comings in this which contributed to the delays; and*
 - *Actions/lessons learnt/remedial plans.*

In addition the Franchise Operator shall provide the Authority with a detailed report into the way all of its projects are managed, including:

- *Approvals process (Deutsche Bahn/Chiltern Board);*
- *Resource Planning (internal/external);*
- *Procurement process;*
- *Contractualisation of Key Delivery Milestones;*
- *Stakeholder engagement/approvals process;*
- *Frequency of progress reviews against the plan;*
- *Reporting structure (internal/external); and*
- *Delegated authority/responsibility for the project delivery;*

A report of all of the Franchise Operator's findings shall be sent to the Authority by no later than 25th July 2008.

²⁰³ date of new text 26.6.2008

6.3 Parking for the disabled

The Franchise Operator shall provide in each Station which has a car park at least two dedicated parking bays for disabled badge holders as near to the station platform as reasonably practicable. The Franchise Operator shall monitor the usage of the dedicated parking bays and use all reasonable endeavours to increase the number of such dedicated parking bays if there is demand for the same.

6.4 Guide for the disabled

The Franchise Operator shall publish a guide for disabled passengers which will set out the facilities available and the level of accessibility at all Stations. The guide shall be compatible with the Franchise Operator's Disabled Persons Protection Policy and shall be reviewed and revised from time to time to reflect changes to such facilities and accessibility as are necessary.

6.5 Wheelchair ramps

The Franchise Operator shall at each of the stations listed in Part A of Appendix 4 provide wheelchair ramps, which shall be capable of being used by employees of the Franchise Operator to assist disabled passengers in getting on and off trains.

6.6 Disabled Passengers Protection Policy

The Franchise Operator and the Authority have agreed pursuant to paragraphs 4.1.1 - 4.1.4, 4.2.1, 5.1.3, 5.1.4 and 6.1 - 6.5 of this Schedule 13 to implement improvements benefiting disabled passengers. The Disabled Passengers Protection Policy (which term is defined in the Licences) of the Franchise Operator is a condition of its Licences. Where the Franchise Operator is required to change its Disabled Passengers Protection Policy and the effect is that the improvements referred to in the paragraphs of this Franchise Plan referred to above are insufficient to comply with the revised Disabled Passengers Protection Policy then, where the changes are not required as a consequence of a Change of Law, the No Net Loss and No Net Gain Regime shall apply in respect of any Net Loss the Franchise Operator suffers. Where the changes are required as a consequence of a Change of Law, the provisions of Clause 18.3 of the Franchise Agreement shall apply.

7 Rapid Response Teams

The Franchise Operator shall maintain an on-call team of staff members who shall be available to assist passengers at times of disruption. The members of such teams shall be given appropriate training and shall be properly equipped in order to carry out their function.

8 Free Car Parking

The Franchise Operator shall provide, subject to availability, free car parking at High Wycombe and Aylesbury Stations for cars carrying three or more persons who will be continuing their journey by rail.

8A²⁰⁴ The Franchise Operator shall provide 1,444 new car parking spaces with a life expectancy of 25 years, at Stations by 31 March 2011; of which 200 shall be provided by 30 October 2009; 200 by 31 January 2010; 200 by 31 March 2010 and the remaining 844 by 31 March 2011. The Franchise Operator shall ensure that all of the parking space areas have appropriate levels of lighting and

²⁰⁴ DATE OF CHANGE 340/01/2009

security. The Franchise Operator shall ensure that of the 1,444 space total, that the following minimum number of additional spaces is created at the following Stations:

Station	Minimum number of new Car Parking Spaces
Gerrards Cross	80
Haddenham & Thame Parkway	200
Bicester North	150
Warwick Parkway	100
Leamington Spa	80
Banbury	200
High Wycombe	200

The Franchise Operator shall on 31st March and 30th September each year, until all of the car parking spaces have been delivered, provide to the Authority a progress report which sets out the number of car parking spaces delivered against the 1,444 new car parking spaces required, and identifies them on plans of the relevant Stations.

8.1 The Franchise Operator shall provide 707 new car parking spaces at Banbury station by 30 November 2013. Terms of this scheme will be set out in an Asset Purchase Agreement to be entered into between the Franchise Operator and Network Rail.²⁰⁵

8.2 The Franchise Operator shall provide, with a life expectancy of 25 years, 222 new car parking spaces at Warwick Parkway station by 20 December 2012. The Franchise Operator shall ensure that all car parking areas have appropriate levels of lighting and security.²⁰⁶

9 Road signage

Following introduction of the hourly Passenger Service to Kidderminster station pursuant to the Franchise Operator's commitment in the First Output Plan, and subject to obtaining all necessary consents and approvals, which the Franchise Operator shall use all reasonable endeavours to obtain, the Franchise Operator shall provide comprehensive local signage to the stations at The Hawthorns, Rowley Regis, Cradley Heath, Stourbridge Junction and Kidderminster.

10 Improvements in Quality after 31 March 2006

The parties acknowledge that improvements in quality and the investment to meet reasonable passenger expectations must continue throughout the whole Franchise Term, although it is not necessary or desirable for the parties to have agreed by the Franchise Commencement Date the items which will require improvement and/or

²⁰⁵ Date of new text 11/06/2012

²⁰⁶ Date of new text 11/06/2012

investment. The Franchise Operator will spend £2 million in each year of the Franchise Term commencing 1 April 2006 (by way either of capital investment spending or increased operating expenditure) on projects that are to achieve one or more of the following outputs or such other output proposals as the Franchise Operator may submit to the Authority to review and approve (such approval not to be unreasonably withheld):-

10A²⁰⁷ The Franchise Operator shall agree with the Authority by 10 November 2008 improvements/investments of £1.5 million to be made by the Franchise Operator no later than 31 March 2011.

- 10.1** Provide substantial and continuing improvement in station facilities and/or journey experience by the extension of the concept of the Innovation Station to all other stations leased to the Franchise Operator.
- 10.2** Provide improved ticketing and information systems.
- 10.3** Provide integrated transport interchanges.
- 10.4** Provide additional parking facilities pursuant to the Franchise Operator's commitment in paragraph 4 of Part II of the First Output Plan.
- 10.5** Provide additional parking facilities for stations.

10.5(a)²⁰⁸ Provide refurbished Mark 3 coaches in volumes agreed by the Authority on an annual basis in advance of the commencement of any work. In considering its agreement, the Authority shall consider :

1. Chiltern compliance with Load Factor Specifications contained in Schedule 3 Part 3 over the previous 12 months.

2. if the additional coaches proposed in any year are required to assure compliance with Load Factor Specifications while accommodating reasonably anticipated demand growth .

3. if the capacity and demand growth is required in order to deliver the Annual Business Plan revenue targets [Clause 15.3] and the contracted premia to the Secretary of State.

- 10.6** Provided that the Franchise Operator is not entitled to expend more than a maximum of 25% of the expenditure per annum required by this paragraph 10 on providing additional car parking facilities under paragraph 10.4 and 10.5 without first obtaining the Authority's consent which may be withheld in its absolute discretion.
- 10.7** Without limiting the foregoing, at each Update Point the Franchise Operator will submit detailed proposals for the expenditure of these sums for review and approval by the Authority (such approval not to be unreasonably withheld).
- 10.8** *The parties acknowledge that the improvements to stations required under paragraphs 4.1.4, 4.2.4 and 4.2.6 of Part 4 of Schedule 13 shall count*

²⁰⁷ Date of Change 11/11/2008

²⁰⁸ Date of new text 11/06/2012

*towards the expenditure requirements of this paragraph 10 for the year of the Franchise Term commencing on 1 April 2006.*²⁰⁹

11 Stakeholder Interfaces/Consultation

11.1 Passenger Report

The Franchise Operator shall publish a quarterly report for passengers which will include, but shall not be limited to, progress in relation to the Franchise Operator's operational performance, service development and plans for the future. Such reports shall be available to passengers free of charge at all staffed stations where the Passenger Services call within eight weeks of the end of each quarter.

11.2 Meetings with Managers^{210 211}

11.2.1 *The Franchise Operator shall use all reasonable endeavours to continue to continue to have a meeting scheme whereby at least one manager of the Franchise Operator shall visit each of High Wycombe, Banbury, Aylesbury, Leamington Spa, Warwick Parkway and Birmingham Moor Street stations annually to meet with passengers. Each meeting shall be publicised at least 2 weeks in advance online and through the use of Customer Information Screens at those stations where the meeting is due to take place. A record of comments made at each meeting and the response of the Franchise Operator shall be produced in poster form and displayed at the station where the meeting occurred within 2 weeks of the meeting and the results published online within the same timescale.*

11.2.2 *The Franchise Operator shall use all reasonable endeavours to have a meeting scheme whereby at least one manager of the Franchise Operator shall hold a meeting session at Marylebone station on at least a quarterly basis. Each meeting shall be publicised, both online and through the use of Customer Information Screens at Marylebone station at least 2 weeks in advance. A record of comments made at each meeting and the response of the Franchise Operator shall be produced in poster form and displayed at Marylebone station within 2 weeks of the meeting and the results published online within the same timescale.*

11.2.3 *The programme of meetings will be supported by annual market research, which will look into comments and suggestions made by passengers, the results of which will be shared with the SRA.*

11.3 Passenger Fora Passenger Fora

The Franchise Operator shall use all reasonable endeavours to host a minimum of 8 'online' passenger consultation meetings of no less than 1 hour in duration for the purpose of allowing its passengers to ask questions and give feedback on the quality and suitability of the services provided by it. The Franchise Operator shall ensure that such meetings are publicised at least 2 weeks in advance on its website, are delivered by at least one manager and that the comments and responses are published on the Franchise Operators website

²⁰⁹ Insertion of new text w.e.f 24th December 2002.

²¹⁰ Replacement text inserted wef 11th October 2004.

²¹¹ Date of new text 10/05/2011

within two weeks of the event being held. It is envisaged that the events will be hosted using the online Social Networking service “Twitter”, or other suitable alternatives as agreed by the authority.²¹²

11.4 Passenger User Group

The Franchise Operator shall use all reasonable endeavours to maintain a passenger user group for the London and Aylesbury via Amersham Flow (that is, Flow 1 of Part 1 of Schedule 3). The Franchise Operator shall use its reasonable efforts to involve and obtain the assistance of LTUC in the establishment of the passenger user group. The Franchise Operator shall provide support to the group as may be reasonably necessary to meet the needs of the group. The support envisaged in this paragraph 11.4 for example, is by way of the provision of meeting rooms, refreshments and attendance at group meetings by Franchise Operator Managers where appropriate.

11.5 School Visits

The Franchise Operator shall maintain a programme of 20 visits per year by the Franchise Operator's staff to schools in the vicinity of the Passenger Services to discuss safety issues.

11.6 Voluntary User Groups

The Franchise Operator shall use reasonable endeavours to expend up to £50,000 per annum for distribution amongst those Accredited Voluntary User Groups who apply to the Franchise Operator for funding. Further details of the criteria for the Accredited Voluntary User Groups is set out in Appendix 1.

11.7 Advisory Board

The Franchise Operator shall use all reasonable endeavours to implement within 12 months from the Franchise Commencement Date and, in any event, by no later than 18 months from the Franchise Commencement Date an advisory board. Such board to include (but not be limited to) representatives from user groups, local authorities, Centro PTE and Transport for London and to be formally constituted to advise the Franchise Operator on strategic and policy issues (“the Advisory Board”). Although the advice and recommendations of the Advisory Board shall not be binding on the Franchise Operator, the Franchise Operator shall have due regard to the same. The Franchise Operator shall ensure that the Advisory Board:

- 11.7.1** is formally consulted on the draft submission that the Franchise Operator intends to make to the Authority for review at any Update Point a reasonable period prior to the submission being lodged;
- 11.7.2** meets at least once every 12 months;
- 11.7.3** monitors that the Franchise Operator is carrying out its duties in a manner consistent with the public interest and publishes an annual report to the Franchise Operator detailing its findings and conclusions in this regard;
- 11.7.4** develops proposals for integrated transport in accordance with existing plans for local transport in the relevant areas.

For the avoidance of doubt the provisions of this paragraph 11.7 shall not override the Franchise Operator's other obligations to consult contained elsewhere in this Franchise Agreement and in the Licences.

²¹² Date of new text 06/05/2011

12 Fares and Ticketing

12.1 Direct Debit Facility

12.1.1 Subject to paragraph 12.1.2, the Franchise Operator shall maintain for the remainder of the Franchise Term, a facility (the "Direct Debit Facility") whereby purchasers of annual season tickets are able to make monthly payments to the Franchise Operator in respect of such tickets by way of direct debit.

12.1.2 The Franchise Operator shall make the Direct Debit Facility available to passengers at all staffed Stations (other than London Marylebone and West Ruislip, and London Marylebone and Harrow-on-the-Hill, and all Stations between them ("London Stations")) for the remainder of the Franchise Term unless it can demonstrate to the reasonable satisfaction of the Authority that the operating income which it could reasonably expect to receive during the remainder of the Franchise Term would be less than its operating costs (taking into account bad debts) in each case arising as a consequence of the operation of the Direct Debit Facility in which case it shall be entitled to terminate the Direct Debit Facility at all stations.

12.2 Saver Tickets

The Franchise Operator shall maintain Saver Return Fares (as such term is defined in Schedule 5) which are valid for passengers for journeys between staffed stations (other than London Stations) and London Marylebone for all those journeys in respect of which such Fares exist as at the Franchise Commencement Date.

12.3 Group and Family Travel

12.3.1 The Franchise Operator shall maintain a ticket which will permit return travel from stations north of Banbury by a group of passengers comprising two adult passengers aged 16 and over and up to four child passengers aged under 16 and the price of such ticket shall be not more than 75 per cent of the aggregate price of two individual adult Saver Return Tickets permitting equivalent travel, provided that when more than two child passengers aged under 16 travel the Franchise Operator may charge a supplement not exceeding £5 in respect of each such additional child passenger.

12.3.2 The Franchise Operator shall maintain an offer which allows three or four adults to travel on Passenger Services to and from a London Station, other than those stations operated by LUL, for a price equal to the Fare of two adults travelling on the same journey. This offer shall apply to those Fares known as Cheap Day Returns, Stayaways, Savers, and Network Awaybreaks and any equivalent or replacement Fares, but shall not be valid for travel before 10.00 and for travel from a London Station between 16.45 and 19.00 in both cases from Mondays to Fridays (inclusive). The Franchise Operator may amend time restrictions and levels of discount from time to time with prior consent of the Authority, such consent not to be unreasonably delayed or withheld.

12.3.3 The Franchise Operator shall maintain a ticket for children aged between 5 and 15 at a price of £1 which is valid for journeys between all Stations provided that the child is accompanied by an adult holding a ticket of the type described in paragraph 12.3.2. Up to two children shall be entitled to travel with each adult on such terms. The Franchise Operator may vary the price of such ticket with the Authority's prior written consent, such consent not to be unreasonably withheld.

12.4 Telephone Sales

The Franchise Operator shall operate a facility (the "Telephone Sales Facility") which will enable passengers to purchase tickets for Passenger Services by credit card or debit card over the telephone. The Telephone Sales Facility shall be open between 0800 and 2000 (inclusive) on weekdays and between 0900 and 1700 (inclusive) on Saturdays and Sundays and shall be advertised to passengers in the timetables produced by the Franchise Operator for use by passengers.

12.5 Smartcards²¹³

The Franchise Operator will use all reasonable endeavours to introduce electronic proximity "smartcards" to allow the discounted pre-purchase of journeys by 31 March 2004 and in any event shall introduce such smartcards by 30 September 2004. The Franchise Operator will upgrade existing equipment and/or introduce new equipment, to enable smartcards to be accepted.

Subject to the resolution of technical issues of compatibility, the Franchise Operator will ensure that the smartcards are compatible with LUL's 'PRESTIGE' system and the smartcard system being developed for use in PTE areas.

12.6 ²¹³New generation passenger operated ticket machines and information systems

In order to improve the quality and ease of use of passenger information and ticket machines, the Franchise Operator will use all reasonable endeavours to obtain all consents and approvals required to enable it to equip all the following Stations with new generation passenger operated ticket machines (which are to be subject to the Authority's approval which is not to be unreasonably withheld or delayed) by the stated dates at the following Stations, and shall in any event equip such Stations by 31 March 2006.

*Reasonable endeavours to be completed by 30 April 2005:
Bicester North, Haddenham & Thame, Banbury and Kings Sutton*

*Reasonable endeavours to be completed by 30 June 2005:
Warwick, Birmingham Moor Street, Leamington Spa and Warwick Parkway*

*Reasonable endeavours to be completed by 31 July 2005:
Aylesbury, Wendover, Stoke Mandeville and Great Missenden*

*Reasonable endeavours to be completed by 30 September 2005:
Gerrards Cross, Beaconsfield, High Wycombe, Princes Risborough*

*Reasonable endeavours to be completed by 30 October 2005:
Denham, Seer Green, Monks Risborough, Saunderton*

*Reasonable endeavours to be completed by 30 November 2005:
London Marylebone (4 machines), Wembley Stadium, West Ruislip*

The Franchise Operator shall install PERTIS machines at Hatton, Lapworth, Sudbury Hill Harrow, Sudbury Harrow Road, Denham Golf Club and Little Kimble by no later than 31 March 2006.

In addition, the Operator shall ensure that LUL add the following destinations to their ticket machine at South Ruislip by the date of the January 2006 fares

²¹³ Date of change 10.2.2006

change: Saunderton, Princes Risborough, Haddenham & Thame Parkway, Bicester North, Banbury, Leamington Spa, Warwick, Warwick Parkway, Birmingham stations.

Subject to obtaining the consent of LUL, which the Franchise Operator shall use all reasonable endeavours to obtain by 31 March 2003 and best endeavours to obtain by 30 September 2003, the Franchise Operator will procure that the largest range of national rail tickets reasonably practicable are sold from stations owned and operated by LUL between Rickmansworth and Amersham inclusive.

12.7.1²¹⁴ Website sales

The Franchise Operator will continue to sell tickets for the Passenger Services on the website of the Franchise Operator and will ensure that such website incorporates real time train information by 31 March 2002.

12.7.2 The Franchise Operator shall ensure that by 2 January 2007 a website is maintained which sells season ticket renewals on line.²¹⁵

12.7.3 The Franchise Operator shall launch a redesigned website by 31 December 2007 which will be easy to navigate, provide customers with a range of information, including without limitation, ticket retailing, stations and station location maps, integrated transport, travel information, engineering works and service disruptions, timetables, Passenger's Charter, business contact details, policies and performance.²¹⁶

13 Training

13.1 Human Resources

13.1.1^{www} Management Trainees

The Franchise Operator shall commencing in April 2002 recruit 2 management trainees a year for the purposes of developing new talent in the industry.

13.1.2 Drivers

The Franchise Operator shall maintain a staffing plan on an ongoing basis which forecasts the driver requirements against the actual number of drivers by weekly forecast to be available for work. The plan shall take into account issues such as natural wastage, retirements and annual leave. The training requirements for new drivers will be assessed against this plan. This is to mitigate against potential driver shortages and the effect this would have on the provision of the Passenger Services.

The staffing plan shall be reviewed and updated throughout the Franchise Term in conjunction with the Authority.

13.2 Training School

The Franchise Operator will use all reasonable endeavours to build or procure a new training school (the "Training School") by 30 December 2002, but in any event shall so build or procure by 30 June 2003. The Training School shall be

²¹⁴ Insert change text wef 9/2/07

²¹⁵ Insert change text wef 9/2/07

²¹⁶ Insert change text wef 9/2/07

operated to train the Franchise Operator's employees so as to improve their standard of understanding of their respective safety related, customer service and retailing duties.

13.3 Ongoing Staff Training Expenditure

Without prejudice to the Franchise Operator's obligations under paragraph 13.2.1 above, from and including the period commencing 1 April 2001, the Franchise Operator will expend £300,000 per annum (on items not of a capital nature) on training its employees and management development in each year of the Franchise Term (the "Annual Training Expenditure").

13.3.1 The Annual Training Expenditure shall exclude:

- (a) the costs of training new drivers in relation to driving duties;*
- (b) (subject to paragraph 13.3.3(b)) the salary costs of any employee who has completed any probationary period in accordance with the terms of his contract of employment (each a "Permanent Employee");*
- (c) the associated accommodation, travel and subsistence costs of any employees.*

13.3.2 For the avoidance of doubt, the Annual Training Expenditure may include:

- (a) the salary costs of any employee who has yet to complete any probationary period in accordance with the terms of his contract of employment and is not a Permanent Employee;*
- (b) the salary costs of any Permanent Employee who is a Trainer;*
- (c) the reasonable costs of training materials;*
- (d) the reasonable costs of procuring external trainers to train the Franchise Operator's employees, including, such trainer's fees, accommodation, travel and subsistence costs;*
- (e) the reasonable costs of accommodation for training the Franchise Operator's employees (in accordance with this paragraph 13.3) until the earlier of 30 June 2003 and the building or procurement of the Training School (as defined in paragraph 13.2) whereupon such costs shall be excluded.*

13.4 ²¹⁷Driving Simulator

²¹⁷ Replacement text

In order to increase the competency levels of new and existing drivers and to improve safety standards, the Franchise Operator shall procure a driving simulator for the training school (as defined in paragraph 13.2) by 31st March 2005. The simulator will be used by the Franchise Operator in the provision of driver training to its employees.

14 Employee Participation

The Franchise Operator shall maintain a profit related pay scheme by which the Franchise Operator shall distribute annually to all its employees who wish to participate not less than 10 per cent of its profits before dividends after taxation, or such other profit related pay scheme as the Authority may from time to time in its absolute discretion agree.

15 Passenger's Charter

Without prejudice to the Franchise Operator's obligations under Clause 8.1 of the Franchise Agreement, the Franchise Operator shall increase the trigger levels for punctuality with the Passenger's Charter to 92% by the first of the Annual Target Dates (as such term is defined in Schedule 15) in respect of which the Operational Performance Target (as such term is defined in Schedule 15) is 93.75% so that holders of a monthly or longer period season ticket will receive a discount of 5% on renewal of their ticket where punctuality is on average lower than 92%, calculated against the last 12 calendar months. (The trigger level within the Passenger's Charter on the Franchise Commencement Date is 90%).

Part 5 – Other Committed Outputs

16 Improved Train Performance and Safety

- 16.1** In order to improve performance of Passenger Services by ensuring a step change in integrated planning and to improve train performance and safety, the Franchise Operator shall:

16.1.1 Integrated Control Centre²¹⁸

- (g) *Use its reasonable endeavours to obtain all necessary consents and approvals to enable it to create and introduce into its operations an integrated control centre, by 31 December 2001 and in any event shall create and introduce such a centre by 30 June 2002, in which the appropriate staff of Network Rail and the relevant infrastructure and train maintainers can be accommodated with the staff of the Franchise Operator in order to assist the planning and delivery of the Passenger Services. Following the withdrawal of Network Rail staff from the integrated control centre on 8 June 2003, Chiltern shall use its reasonable endeavours to procure that the appropriate staff of Network Rail are re-located in the integrated control centre as soon as is possible.*²¹⁹
- (h) ^{xxx}*The Franchise Operator shall by no later than 30 June 2008 spend £1million on improvements to Banbury Integrated Control Centre (ICC) to:*
 - (i) *Improve the provision of passenger information by:*
 - a) *Automating the long line PA system;*
 - b) *enhancing the capacity of data links to the data Control Centre to facilitate the simultaneous provision of help point calls and long line announcements; and*
 - c) *expand the capacity of the CCTV viewing system.*
 - (ii) *improve the effectiveness of the Control Centre through the integration of IT systems; and*
 - (iii) *improve the responsiveness of the Control Centre to disruption by revising the floor layout and co-locating non ICC staff capable of providing assistance to the ICC staff at times of disruption.*

16.1.2 Early Warning Systems

Ensure that all new cab-end Vehicles ordered and delivered after the Franchise Commencement Date are provided with diagnostic facilities in order to relay information about the train's performance to the driver of the train and also automatically to the integrated control centre from the train when in service in such manner as is most technically appropriate provided that in respect only of orders placed by the Franchise Operator for Class 168 Vehicles for delivery prior to 31 December 2003 the Franchise Operator's

²¹⁸ Insert change text wef 08/06/07

²¹⁹ New text wef 8th June 2003

obligation shall be to fit diagnostic facilities if reasonably practicable. In determining reasonable practicability account will be taken of the technical feasibility of fitting such equipment at a reasonable cost and the importance of not prejudicing planned delivery dates and the fitting of ERTMS or any component of ERTMS.

16.1.3 Track Monitoring Systems

Ensure that at least one Vehicle used in the provision of the Passenger Services is by 30 December 2002 installed with a system which monitors and records the quality of the track from the train when in service. The Franchise Operator shall use reasonable endeavours to ensure that such Vehicle is diagrammed for use in regular routine service in the provision of the Passenger Services over all of the routes served by the Franchise Operator so that it runs over and records information in respect of all of the principal running lines used by the Passenger Service approximately once every seven days. Information obtained by the Vehicles should be of a type and quality reasonably acceptable to Railtrack and its relevant contractors as an accurate indication of track and infrastructure condition. Information recorded shall be made directly available to the Franchise Operator's controller of operations and it is agreed that such information will be relevant to the operation of the Integrated Control Centre referred to in paragraph 16.1.1 and accordingly will be supplied to it.

16.1.4 Secure Radio System

Within 6 months (or such other time as the parties may agree) of being notified by the SRA of the system that provides a secure method of communication between train driver and signaller that the SRA require to be installed and utilised (which as at the date of this Agreement is expected to be the GSM-R system), the Franchise Operator shall submit proposals for the installation and utilisation of technology which accords with the required system and provides a secure method of communication between train driver and signaller and on the route between Banbury and Birmingham for the Authority's approval. If such proposals are approved, the parties shall at the same time, agree appropriate timescales for the installation and utilisation of such technology, provided that the Franchise Operator shall not be required to expend capital sums exceeding £3 million in the discharge of this obligation.

16.1.5 Stourbridge Stabling Facility

The Franchise Operator shall use all reasonable endeavours to obtain all necessary consents and approvals to enable it to ensure that by 15 August 2003, but in any event by 30 September 2003 it opens a new Train Stabling Facility at Stourbridge and that the facility provides as a minimum the following:

- a) 4 roads allowing for 32 carriages to be stabled;***
- b) cleaning facilities (i.e for cleaning interiors and windscreens, but not a carriage wash) for 32 carriages;***
- c) Water tanks to allow for water levels to be replenished (there is no train fuelling facility); and***

- d) *fitters and Train Care staff rostered to meet demand.*²²⁰

16.1.6²²¹ Improvements in Operational Management and Passenger Information

The Franchise operator shall expend not less than £80,370 on the following by 31 March 2012:

- (a) *the construction of a Control Centre at London Marylebone station to assist in the management of service disruption and station operations.*
- (b) *The procurement of PDA devices with the capability to access train running information in real time for all front line staff to improve the provision of information to passengers during periods of service disruption.*

17 Train Protection

The Franchise Operator shall:

- 17.1** Ensure that no train providing Passenger Services commences its journey on any part of the network fitted with a compatible ATP system if ATP in the leading cab is not working.
- 17.2** Ensure that any infrastructure alterations and additions it makes or procures (pursuant to its obligations under this Franchise Agreement or otherwise) to any part of the existing network which is already fitted with ATP (i.e. south of Aynho Junction) are such that the network continues to be fitted with ATP.
- 17.3** Ensure that all new Vehicles ordered after the Commencement Date (to the extent ATP is relevant to the operation of such Vehicle) (i) are fitted with ATP and (ii) have space provision for subsequent re-equipment with ERTMS (unless an agreement to vary this requirement is granted by the Authority).
- 17.4** Project manage with all reasonable skill and care a pilot scheme for the installation of ERTMS on infrastructure used by the Passenger Services. The scope of the pilot scheme will be reasonably agreed between the Franchise Operator and the Authority in light of advice from, if appropriate, the ERTMS National Programme Board. The Franchise Operator will bear the costs it incurs in carrying out its obligations under this paragraph but, for the avoidance of doubt, it will not be responsible for the cost of any technical equipment fitted to Vehicles or infrastructure or the costs of fitting such technical equipment. In the event that the ERTMS National Programme Board advises that a specialised non passenger carrying test train is required and if the Authority requires the Franchise Operator to do so, the Franchise Operator, subject to reimbursement of the cost of the same, will co-operate in the procurement, operation and maintenance of such test train.

18 Enhancements to Rolling Stock in 2011

- 18.1** The Franchise Operator will in or around 2011 replace/refurbish its rolling stock as necessary to ensure that (except to the extent the Authority may otherwise agree) there is no rolling stock in use in the provision of the Passenger Services which has not been replaced or refurbished during the previous 7 years.

²²⁰ New text inserted wef 14th August 2003

²²¹ New text inserted 09/01/2012

- 18.2** The stock will be refurbished or replaced to a standard to be approved in advance by the Authority (not to be unreasonably withheld or delayed) but in any event to reflect the then current passenger expectations and appropriate technological advances.

19 Improvement Plan

The Franchise Operator shall use reasonable endeavours to co-operate with Railtrack in order to establish and maintain a joint performance Improvement Plan by 1st December 2001 and, in any event, shall establish such Plan by 1st March 2002. The purpose of the Improvement Plan shall be to manage operational performance in order to comply with its obligations in relation to the Public Performance Measure targets as set out in the Franchise Agreement. Such Improvement Plan shall identify specific actions being taken, or to be taken, to achieve performance improvements above a defined base line performance. The Improvement Plan shall be updated quarterly by the Franchise Operator and shall be available for review by the Authority upon its reasonable request.

20 Wheel Profile Monitoring

The Franchise Operator shall use reasonable endeavours to co-operate with Railtrack in order to deliver an automated wheel profile monitoring device at an appropriate location on a route on which the Franchise Services operate by 1st September 2002 and, in any event, shall deliver such device by 1st March 2003. The purpose of such device shall be to detect sub-standard conditions on profiles of wheels of trains which pass the device in order to minimise the risk of infrastructure damage caused by wheel profile defects. The device shall be initially put into trial use to confirm that it is appropriate for its purpose. If the Franchise Operator concludes (acting reasonably) that the device is not appropriate for its purpose then it shall notify the Authority of the reasons for such conclusion. The Franchise Operator agrees to consult the Authority as to whether the device should be continued to be used. If, after such consultation, the Authority agrees that the device is not appropriate for its purpose then the Franchise Operator shall discontinue using the device. If the parties are unable to agree then the matter shall be resolved in accordance with the Dispute Resolution Rules.

Part 6 – General

- 21** The Franchise Operator shall prepare and submit to the Authority a formal written report at not less than three monthly intervals providing reasonable details as to the progress made by the Franchise Operator in complying with its obligations under this Franchise Plan, including details of investment made or committed, and shall provide informal reports on such progress on a more frequent basis together with such other information as the Authority may reasonably request in relation to this Franchise Plan.
- 22** As part of the three monthly report provided under paragraph 21 the Franchise Operator shall certify that it is not party to any formal or informal agreement with Railtrack or any other third party, the purpose or the effect of which is to allow the Franchise Operator to save whether by failing to spend, reimbursement or otherwise either directly or indirectly any sums of investment committed by the Franchise Operator in accordance with the Franchise Plan.

Part 7 – RPP Real TIME TRAIN INFORMATION SYSTEM

23 Interpretation

In this Part 7 the following definitions shall, except where the context otherwise requires, have the following meanings:-

“RTTI Offer Letter” means the letter from the Authority to the Franchise Operator dated 15th January 2003 relating to the RTTI Rail Passenger Partnership Scheme Application.

“RTTI Rail Partnership Scheme Application” means the application for Rail Passenger Partnership Scheme funding made on 6th June 2002 by the Franchise Operator on behalf of the Franchisee to the Authority.

“RTTIRPP Period” means the period commencing on 18th June 2003 and ending on the expiry of the Franchise Term.

“RTTI Project” means the project relating to the provision and operation of a real train time information system covering all stations on the national rail network in accordance with the specification published by Thales Information Systems Limited entitled “Project 753 Real Train Time Running Information Services – Functional Design Specification” Reference P75301001 Issue 2 dated 19th December 2002.

“System” means the real train time information system to be provided as part of the RTTI Project.

24 Warranty

The Franchise Operator warrants to the Authority (subject only to any matter fully and fairly disclosed to the Authority in writing and accepted by it) or expressly provided for under these conditions or under the terms of the Franchise Agreement) that all the information, representations and other matters of fact communicated in writing to the Authority and/or its advisers by the Franchisee or Franchise Operator, its directors, employees, servants or agents in connection with or arising out of the RTTI Rail Passenger Partnership Scheme Application were at the date the RTTI Rail Passenger Partnership Scheme Application was submitted to the Authority, and remain as at 18th June 2003 in all material respects, true, accurate and not misleading.

25 Notification of Certain Events

The Franchise Operator, to the extent that it becomes aware of them, shall without delay inform the Authority in writing of the occurrence of a material change in the facts advanced in support of the RTTI Rail Passenger Partnership Scheme Application occurring at any stage during the RTTIRPP Period.

26 Provision of information

The Franchise Operator will procure that a report is produced and submitted by ATOC Limited to the Authority each Reporting Period relating to the development and implementation of the RTTI Project such report to be in a form reasonably specified by the Authority. The report shall be supplied until the Authority notifies the Franchise Operator in writing that it is no longer required. It is expected that such notices will be given once the Authority is satisfied that the system has been implemented.

27 Obligations relating to RTTI Project

The Franchise Operator shall procure:

27.1 *the carrying out of the RTTI Project;*

- 27.2 *that the System is made available no later than 31st July 2003 and remains available until at least 31st March 2006 on a licence-free basis to the public through as many channels as possible (including the internet) to all those wishing to obtain access to it or to use it and that the System is maintained until at least 31st March 2006;*
- 27.3 *that the funding by the Authority is acknowledged on the System in a manner first approved by the Authority and that a disclaimer of any liability for the Authority in relation to the information provided on the System in a form first approved by the Authority accompanies the acknowledgement;*
- 27.4 *that the System provides a link into the "Transport Direct" System, which is being sponsored by the Department of Transport so as to provide integrated public transport information through a single web resource and that ATOC Limited will not make any charge to the Department of Transport for the provision of such link other than by way of reimbursement of any direct costs actually incurred in the provision of such link, and for the avoidance of doubt will not seek to charge the public for accessing the information provided on the System;*
- 27.5 *that all necessary information and assistance will be provided to ensure consistency between the system and the system known as "Real Time Train Movements" to enable such system to become a data source for the System; and*
- 27.6 *the internet website on which the System is available is published widely as approved by the Authority and referred to in the advertising material published by train operating companies.*
- 28.6 **Repayment**
- 28.1 *The Authority may by notice to the Franchise Operator terminate the payment of the component RTTIRPP of the Franchise Payment ("the Funding") which is payable to the Franchise Operator in accordance with Part 2 of Schedule 6 to the Franchise Agreement, from a date specified by the Authority and issue a demand for repayment of the Funding (or such part of it as had on the relevant date been paid to the Franchise Operator) if*
- 28.1.1 *the funding is used at any time for anything other than the purpose referred to in the RTTI Offer Letter; or*
- 28.1.2 *if the Franchise Operator fails to comply with any provisions of the RTTI Offer Letter or of this Part 7 and if remediable such failure is not remedied within 14 days following notice of such failure from the Authority or notice given pursuant to clause 6.2 of the RTTI Offer Letter; or*
- 28.1.3 *any circumstance which would in the Authority's opinion adversely affect the Franchise Operator's ability to perform the obligations under this Part 7.*
- 28.2 *If the Franchising Operator has paid the Funding (or such part of it as had on the relevant date been paid to the Franchising Operator) to ATOC Limited the Franchising Operator shall notify ATOC Limited, in writing forthwith upon receipt of a demand from the Authority for repayment of the Funding (or appropriate part of it) issued pursuant to clause 28.1 of this Part 7.*

28.3 *Forthwith upon receipt of the Funding (or appropriate part of it) from ATOC Limited, such sum shall be repaid by the Franchising Operator to the Authority.*

28.4 *If the Franchising Operator has not paid the Funding (or of such part of it as had on the relevant date been paid to the Franchising Operator) to ATOC Limited, the Franchising Operator shall repay such sum to the Authority forthwith upon receipt of the demand for repayment from the Authority.*

29 *Monitoring*

The Franchise Operator shall procure that following request by the Authority ATOC Limited provides to the Authority details of:-

29.1 *any problems encountered with the operation of the System from time to time; and*

29.2 *details of the use made of the System including the amount and nature of the use and details of any downtime.²²²*

²²² Insertion of new Part 7 wef 18th June 2003

Appendix 1 - Criteria for Accredited Voluntary User Group

To be accredited as an Accredited Voluntary User Group and therefore to be deemed eligible to bid for part of the £50,000 to be made available for the Accredited Voluntary User Groups in any given calendar year, a rail user group must demonstrate that it is able to meet the following criteria:

29. The group must be formally constituted, with a clear statement of purpose and a committee elected by its members.
30. The group should have at least 20 members.
31. The group must be able to demonstrate it is representative of the views of passengers:
 - Its committee members must travel 2 or more times each month on the Passenger Services
 - The group must have a robust communication plan in place to ensure open dialogue between passengers and the user group is positively encouraged and easily done
 - The group must have a plan which actively encourages the recruitment of a good cross-section of passengers e.g. leisure, commuting, business, mix of sexes and ages.
32. The group must meet a minimum of 4 times per year and keep full written notes of these meetings. A copy of these notes will be provided to the Managing Director of the Franchise Operator and the LTUC or Midlands RPC as appropriate.
33. Accreditation is granted by the Franchise Operator who will take into account the views of LTUC and Midlands RPC as appropriate.
34. A rail user group accreditation will be reviewed annually by the Franchise Operator at which time the group will be required to demonstrate its continued compliance with the above criteria.
35. Bids for funding should be developed in consultation with the Franchise Operator and submitted to the Managing Director of the Franchise Operator. To be successful, a bid must deliver a benefit to the passengers represented by the group.
36. In the event of dispute between the Rail User Group and the Franchise Operator over expenditure proposals, the Franchise Operator shall take into account the views LTUC or Midlands RPC as appropriate.

A maximum of 10 rail user groups will be granted accreditation in any one calendar year with the aim of gaining passenger representation across the whole of the Passenger Services' route. No two rail user groups will be permitted to represent any one station.

Appendix 2 – Estimated Expenditure

Paragraph	Brief Description of Commitment	Estimated Capital Cost
4.2.1(a)	Creation of transport interchange at High Wycombe	£0.62 million
4.2.1(b)	Construction of dedicated busway at High Wycombe	£0.35 million
4.2.1(c)	Demolition and construction of station at High Wycombe	£5 million
4.2.2	Creation of new transport interchange at Banbury	£0.5 million
4.2.3(a)	Alterations to station forecourt at Aylesbury	£0.2 million
4.2.3(b)	Installation of departure screens at Aylesbury	£0.1 million
4.2.4	Improved facilities at Haddenham & Thame Station	£0.2 million
²²³ 4.2.5 (iv)	Passenger Facility Enhancements at Moor Street	£2.2 million
4.2.6	Establishment of Innovation Station	£0.75 million
²²⁴ 4.2.13	Subway and stairwell improvement at Warwick station	£0.1 million
5.6	Installation of automatic ticket gates	£0.6 million
5.7	Replacement of subway at High Wycombe with footbridge and lifts	£0.3 million
6.2.1	Creation of level access to platforms at Stations	£1.6 million
²²⁵ 6.2.2	Creation of level access to platforms at Dorridge	£0.9 million
12.6.1	Installation of new ticket machines	£2 million
13.3	Installation of driving simulator	£0.5 million
16.1.1 (a) and (b)	Creation of and improvements to integrated control centre	£2 million

²²³ Insertion of new text w.e.f. 24th December 2002.

²²⁴ New text inserted w.e.f. 14th August 2003

²²⁵ New text inserted w.e.f. 14th August 2003

16.1.3	Installation of secure method of communication between train driver and signaller on the route between Banbury and Birmingham	£3 million
²²⁶ 16.1.5	<i>Provision of new Train Stabling Facility Depot at Stourbridge</i>	<i>£1.4 million</i>

²²⁶ New text inserted wef 14th August 2003

Appendix 3 - Maps

See attached

Appendix 4 – Innovation Station

1. Overview

The 'Innovation Station' is intended to be the 'model' station and will be designed to meet the needs of the rail passenger, both as at the date of this Agreement and going forward, using existing best practice in design and construction and up-to-date technology.

2. Design Criteria

In drawing up designs, the Franchise Operator will take into account (insofar as practicable and having regard to the scale of the investment envisaged for this project, as specified in Appendix 2 to this Schedule 13) the following matters:

- 2.1 The Innovation Station will include, where possible:
 - 2.1.1 a clearly defined, safe, well lit pedestrian footway into the Station;
 - 2.1.2 adequate secure, weatherproof cycle storage;
 - 2.1.3 disabled parking facilities adjacent to the main Station entrance;
 - 2.1.4 taxi rank facilities that accommodate the safe movement of taxi vehicles into and out of the Station avoiding, where practicable, conflict with other passenger or vehicular movement;
 - 2.1.5 facilities for a bus interchange; and
 - 2.1.6 easily accessible car parking facilities which have sufficient space for passengers using the Station outside of the Morning Peak or the Evening Peak.
- 2.2 Retention of existing railway architecture where appropriate to preserve railway heritage.
- 2.3 Assessment of utility services serving the Station and upgrading of the same where necessary.
- 2.4 Clearly defined, signed, and well lit Station access and egress points.
- 2.5 Planning of the layout of the Station to ensure sufficient space is afforded to areas in which passengers congregate, such as in front of ticket windows, waiting room areas and platform accesses.
- 2.6 Location of passenger information boards and screens in positions that ensure that they can clearly be seen without creating congestion.
- 2.7 Where subways or footbridges are present, the maintenance of clear access at all times to them, ensuring that they are waterproof, or provided with weather protection, as appropriate and free from trip or slip hazards.
- 2.8 Taking into account the needs of disabled passengers.
- 2.9 Provision of sufficient toilet facilities of an appropriate standard.
- 2.10 Review of the effectiveness of 'Help Points' and CCTV previously installed at other Stations to ensure that passenger security is optimised at the Innovation Station.

- 2.11 Provision of retail facilities, to provide passenger benefits.
- 2.12 Where the existing road network and forecourt of the Station allow this, taking account of possible future integration of other forms of transport at the Station to ensure that these are not compromised.
- 2.13 Use of materials that are designed to aid maintenance and the provision of facilities enabling the Station to be kept clean.

3. **Design Stage**

Some information as to needs of the Franchise Operator's passengers has been obtained from the results of the passenger surveys undertaken by the Franchise Operator prior to the date of this Agreement. In order to complete the research into these needs, the Franchise Operator intends to seek the views of those listed below (in addition to the Authority) at various appropriate stages of the design works, as such works are progressed. The Franchise Operator will produce the specification for the Innovation Station after having had due regard to the reasonable comments received from the consulted parties.

- 3.1 The Franchise Operator's passengers
- 3.2 Accredited Voluntary Passenger User Groups and disabled passengers user groups
- 3.3 The Franchise Operator's staff
- 3.4 Railtrack
- 3.5 The Regulator
- 3.6 Relevant local authorities
- 3.7 Relevant local transport authorities.
- 3.8 Relevant local bus companies
- 3.9 Other train operating companies and other bodies who have experience in this type of station development

4. **Implementation**

Once a specification and programme of works for the implementation of the works for the development of the Innovation Station, with which the Franchise Operator is satisfied, has been produced, subject to the required consents and approvals having been obtained implementation works will commence in accordance with the timescales set out in paragraph 4.2.6 of this Schedule 13.

5. **Review of Works Undertaken**

Upon expiry of a reasonable period during which the Innovation Station was fully open to the public following completion of the development works, a review of the Innovation Station will be undertaken. This review will take into account:-

- 5.1 experiences during the course of the project;
- 5.2 problems encountered during the course of the project;
- 5.3 overall satisfaction of the Franchise Operator and those bodies referred to in paragraph 2 above with the Innovation Station; and

- 5.4 any modifications which could be made to rectify any reasonable dissatisfaction indicated pursuant to paragraph 5.3 above with the Innovation Station.

To the extent practicable the 'blueprint' established by the Innovation Station will be changed to accommodate the issues highlighted by the above review, prior to the extension of the concept of Innovation Station to other Stations pursuant to paragraph 10.1 of this Schedule 13.

Appendix 5 - Stations

Part A

Aylesbury
Banbury
Beaconsfield
Bicester North
Gerrards Cross
Great Missenden
Haddenham and Thame Parkway
High Wycombe
Princes Risborough
Stoke Mandeville
Wendover
Solihull

Part B

Kidderminster
Stourbridge Junction
Cradley Heath
The Hawthorns.

Schedule 14

- Passenger Service Output Plans and Updates (Clause 14.1)

Part 1 - Definitions

The following definitions shall apply in this Schedule 14, except to the extent the context otherwise requires:

"Borrowings"

means, as at any particular time, the aggregate outstanding principal, capital or nominal amount (and any fixed or minimum premium payable on prepayment or redemption) of the Financial Indebtedness of the Franchise Operator.

For this purpose, any amount outstanding or repayable in a currency other than sterling shall on that day be taken into account:

- (a) if an audited balance sheet of the Franchise Operator has been prepared as at that day, in their sterling equivalent at the rate of exchange used for the purpose of preparing that balance sheet; and
- (b) in any other case, in their sterling equivalent at the rate of exchange that would have been used had an audited balance sheet of the Franchise Operator been prepared as at that day in accordance with GAAP.

"Do Minimum EBDIT"

means the EBDIT of the Franchise Operator for the relevant period as shown by the First Do Minimum Business Plan.

"EBDIT"

means, in relation to any period, the total operating profit of the Franchise Operator for that period:

- (a) before taking into account:
 - (i) Interest Expense;
 - (ii) Tax;
 - (iii) any share of the profit of any associated company or undertaking, except dividends received in cash; and
 - (iv) all extraordinary and exceptional items for which there is not a corresponding cash flow; and
- (b) after adding back all amounts provided for depreciation, amortisation and write downs of goodwill;
- (c) after adding back any new provisions or increases in provisions and after deducting any reduction in provisions;
- (d) for the avoidance of doubt, after taking into account

Franchise Payments, Incentive Payments and payments under a Supplemental Agreement (even if due after the end of the Franchise Period) but ignoring for these purposes the provisions of Part 5 of this Schedule 14; and

- (e) after taking into account all extraordinary and exceptional items for which there is a corresponding cash flow.

“Evaluation Date”

means, in relation to any Update Point and any Output Plan relating to that Update Point, the later of:

- (a) the Update Point; and
- (b) the date on which the Output Plan is determined by the Panel under Part 4 of this Schedule 14.

²²⁷ **“Evergreen Charge”**

means the annual cost to the Franchise Operator arising out of Project Evergreen Phases A and B being the sum of;

- (i) ***the annual charge calculated in accordance with the method contained in the First Long Term Business Plan using, as the capital value element of the calculation;***
- (a) ***the Transfer Price payable by Network Rail to the Enhancement Contractor pursuant to the Enhancement Agreement and the Asset Purchase Agreement on the basis set out in Schedule 7 of the Enhancement Agreement and assuming the Standby Facility is fully utilised; and***
- (b) ***the total Additional O & M Charge; and***
- (ii) ***the annual Incremental O & M Charge***
and calculated on the basis that the Acceptance Date occurs during 2006.

“Financial Indebtedness”

means any indebtedness for or in respect of:

- (a) moneys borrowed;
- (b) any amount raised by acceptance under any acceptance credit facility;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with GAAP, be treated as a finance or capital lease;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);

²²⁷ Date of Change DOA 2004

- (f) any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of a borrowing;
- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value shall be taken into account);
- (h) shares which are expressed to be redeemable;
- (i) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and
- (j) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (i) above.

“First Do Minimum Business Plan” means the do minimum business plan comprised in the First Long-Term Business Plan.

“First Long-Term Business Plan” means the Long-Term Business Plan in the agreed form and marked **“LTBP1”**. The First Long-Term Business Plan will include a Committed Outputs Business Plan which reflects each of the following scenarios:

- (a) that the Franchise Term will expire on 31 December 2021 and, pursuant to the Special Output Review, the Franchise Operator will be required to comply with the Evergreen Outputs (as such term is defined and described in the First Output Plan) (Model 3);
- (b) that the Franchise Term will expire on 31 December 2011 and, pursuant to the Special Output Review, the Franchise Operator will not be required to comply with the Evergreen Outputs (Model 2);
- (c) that the Franchise Term will expire on 31 December 2013 and, pursuant to the Special Output Review, the Franchise Operator will be required to comply with the Evergreen Outputs (Model 3); and
- (d) for the purposes referred to in the First Output Plan, Model 2 adapted to show the effects of the Franchise Operator not being required to comply with the Track Doubling Timetable Outputs (Model 2 – also known as Model 2 minus).

“First Output Plan” means the Output Plan in the agreed form and marked **“OP1”**.

“First Update Point” means the date set out in paragraph 1 of Part 4 of this Schedule 14.

“Interest Expense” means, in relation to any period, the aggregate amount of interest and any other finance charges (whether or not paid, payable or capitalised) accrued by the Franchise Operator in

that period in respect of Borrowings including:

- (a) the interest element of leasing and hire purchase payments;
- (b) commitment fees, commissions, arrangement fees and guarantee fees; and

amounts in the nature of interest payable in respect of any shares other than equity share capital,

adjusted (but without double counting) by adding back the net amount payable (or deducting the net amount receivable) to the Franchise Operator in respect of that period under any interest or (so far as they relate to interest) currency hedging arrangements.

“Long-Term Business Plan”

means the First Long-Term Business Plan and any replacement business plan which is agreed or determined pursuant to this Schedule 14 substantially in the format of the First Long-Term Business Plan (but subject to such amendments as the Authority may reasonably require), detailing the agreed forecasts relating to the business of the Franchise Operator from the Update Point until the date of expiry of the Franchise Term prepared on each of the following assumptions:

- (a) that none of the then current Proposals are implemented but prior Output Commitments (whether the commitment takes effect before or after the date of the plan) are complied with (the **“Do Minimum Business Plan”**) in relation to which plan;
 - (i) the application of Schedule 15 of this Franchise Agreement to any period after the date of such plan shall be ignored;
 - (ii) any monetary penalty or other enforcement action which may be taken by the Authority in relation to breach of this Franchise Agreement shall be ignored;
 - (iii) the level of performance over the preceding twelve months of both Railtrack and the Franchise Operator shall be assumed to continue for the purposes of Schedule 7 of this Agreement and Schedule 8 of the Track Access Agreement (except to the extent that such performance was the result of exceptional events and it would be unreasonable to assume that it would continue until the expiry of the Franchise Term); and
 - (iv) for the avoidance of doubt the plan shall take into account any costs reasonably required to complete prior Output Commitments which are not yet completed and any net benefits reasonably likely to accrue on and after

completion (but not for the avoidance of doubt on the basis that any Output Aspiration will become an Output Commitment); and

- (b) that all then current Proposals contained in the relevant Output Plan and prior and current Output Commitments are implemented and complied with together with such breakdown between the different elements thereof as the Authority may reasonably require (the “**Committed Outputs Business Plan**”).

(together in each case with all relevant supporting information and calculations).

“Mediator”	means a mediator appointed under Part 6 of this Schedule 14.
“Metropolitan Line Outputs”	means the Metropolitan Line Robust Outputs and the Metropolitan Line Timetable Outputs.
“Metropolitan Line Robust Outputs”	means those Primary Aspirations specified in paragraph 1.1.1(ii) of Part 3 of this Schedule 14.
“Metropolitan Line Timetable Outputs”	means those Timetable improvements and changes proposed in paragraph 1.1.1(i) of Part 3 of this Schedule 14.
“Minimum Franchise Term”²²⁸	<i>means the period commencing on the Franchise Commencement Date and expiring at 2.00am on 31 December 2021 or such other period as may be determined by the Authority in accordance with the terms of paragraph 7.3(e) of part 4 of this Schedule 14.</i>
“Net Present Value”	means, in relation to any item, the net present value of such item as at the relevant date using a discounted cashflow methodology and discount factors determined in accordance with paragraph 4 of Part 5 of this Schedule 14.
“Original Franchise Term”	means the period commencing on the Franchise Commencement Date and expiring at 2.00 am on 31 December 2021.
“Output Aspirations”	means the Primary Aspirations and the Secondary Aspirations.
“Output Commitments”	means the obligations of the Franchise Operator under any Output Plan.
“Output Plan”	means the First Output Plan or any plan agreed or determined under, and complying with, Part 4 of this Schedule 14.
“Output Study”	means the study of the Franchise Operator of the Proposals, prepared pursuant to paragraph 7.1 of Part 4 of this Schedule 14 and containing the items in paragraph 7.2 of Part 4 of this Schedule 14.
“Panel”	means a panel appointed under Part 7 of this Schedule 14.
“Panel Matter”	means a matter referred to the Panel by the Authority under this Schedule 14.

²²⁸ Date of Change 06/01/2010

"Phase"	means a period commencing: <ul style="list-style-type: none"> (a) in the case of the first Phase, on the Franchise Commencement Date and ending on the First Update Point; (b) in the case of any subsequent Phase, on the day after an Update Point and ending on the earlier of the next Update Point or the date of expiry of the Franchise Period.
"Primary Aspirations"	means, subject to paragraph 4 of Part 3 and paragraph 9.2 of Part 4 of this Schedule 14, the output aspirations referred to in paragraph 1 of Part 3 of this Schedule 14.
"Project Evergreen Phases"	<i>has the meaning ascribed to it in the First Output Plan; A and B"</i>
"Proposal"	means, except as otherwise agreed, any proposal of the Franchise Operator under paragraph 5 of Part 4 or of the Authority under paragraph 6 of Part 4.
"Reletting Costs"	shall mean the costs and expenses reasonably estimated by the Authority to be incurred by it or on its behalf in securing, following the Termination Date, the provision or operation of the Franchise Services (or any part of them), and including the fees of all relevant advisers, but excluding for the avoidance of doubt any amounts paid or payable by the Authority to a Successor Operator to secure the provision or operation of the relevant Franchise Services.
"Relevant Date"	means (a) where this Franchise Agreement is terminated pursuant to paragraph 9.6(a) or 9.7(a) of Part 4 following the determination of the Panel made in respect of the Output Plan prepared for the First Update Point, the end of the Minimum Franchise Term (being the Minimum Franchise Term which was applicable immediately prior to the First Update Point); (b) where this Franchise Agreement is terminated pursuant to paragraph 9.6(a) or 9.7(a) of Part 4 following the determination of the Panel made in respect of the Output Plan prepared for any Subsequent Update Point, the end of the Franchise Term which, where the period of the Franchise Term has been specified pursuant to paragraph 9.5(c) of Part 4 shall be the Franchise Term so specified.
"Second Output Plan"²²⁹	<i>means the Output Plan in the agreed form marked "OP2."</i>
"Second Update Point"	means the first Subsequent Update Point as referred to in paragraph 2 of Part 4 of this Schedule 14.
"Secondary Aspirations"	means the output aspirations referred to in paragraph 2 of Part 3 of this Schedule 14.
"Special Output Review"	has the meaning ascribed to that term in paragraph 1.1 of Part

²²⁹ Date of Change 06/01/2010

	8 of this Schedule 14.
"Subsequent Update Point"	means a date determined under paragraph 2 of Part 4 of this Schedule 14.
"Tax"	means corporation tax as defined in section 6 of the Income and Corporation Taxes Act 1988.
"Termination Date"	means the date of termination of this Franchise Agreement.
"Termination Payment"	means the appropriate termination payment calculated under Part 5 of this Schedule 14.
"Update Point"	means the First Update Point or a Subsequent Update Point, as appropriate.

Part 2 - Output Commitments

1. Output Obligations²³⁰

The Franchisee and the Franchise Operator agree to procure the Output Commitments described in the First Output Plan and the Second Output Plan (respectively) in relation to the Franchise Services.

2 Development Obligations

In relation to the Primary Aspiration set out in paragraph 1.1 of Part 3, the Franchise Operator shall undertake the development obligations set out in Part 2 of paragraph 6 of the First Output Plan.

2 Amendments

The parties may make such variations as they may consider appropriate from time to time to any Output Commitments under this Part 2 of Schedule 14 or any Output Plan.

²³⁰ Date of Change 06/01/2010

Part 3 - Output Aspirations

1 (intentionally not used)

2 Secondary Aspirations

The parties have agreed that, in addition to the Primary Aspirations, it may be appropriate for the following additional outputs ("**Secondary Aspirations**") to be made or procured by the Franchise Operator over the course of the Franchise Term in relation to the Franchise Services:

2.1 Crossrail

The "Crossrail Project" involves the diversion of trains on the High Wycombe line or (if appropriate) on the Aylesbury line away from Marylebone through the Crossrail tunnel or such other east/west tunnel through central London that may be built. The Franchise Operator proposes to participate in the Crossrail Project with a view to operating enhanced passenger services after completion.

2.2 Great Central

The Franchise Operator proposes to operate a new passenger service between an M1/M6 Parkway Station and London Marylebone. It is envisaged that in order to comply with this output that the Franchise Operator would open a new line between Aylesbury (or Calvert if the East – West line has been opened) and Leicester, including new parkway stations on the A43T at Brackley and near the intersection of the M1 and M6 north of Rugby. The line would integrate at each end with the national rail network.

2.3 Project Evergreen Phase C

The Franchise Operator proposes to increase capacity and reduce journey times on the section of line between High Wycombe and South Ruislip ('Project Evergreen Phase C'). The Franchise Operator envisages that this would involve, inter alia, an increase in the number of tracks from two to four by reinstating the fast lines between West Ruislip and Northolt Junction and through Beaconsfield Station ²³¹ **and the addition of a loop at Denham**

2.4 Project Evergreen Phase D

The Franchise Operator proposes to increase service frequency and reduce journey times over the Franchise Term on the High Wycombe line, including the provision of passenger services between London Marylebone and the new parkway stations referred to in paragraph 2.2 above. In order to comply with this output it is envisaged that the Franchise Operator would carry out additional infrastructure works which may include doubling of the line between Aylesbury and Princes Risborough and quadrupling of parts of the line south of High Wycombe.

2.5 Electrification

The Franchise Operator envisages that it may be economically advantageous to the Franchise Operator and to the ²³² **Secretary of State** and may bring benefits of reduced journey times to passengers if some or all of the routes over which the Passenger Services operate were to be electrified.

²³¹ DOA Nov 2007

²³² Date of change nov2007

2.6 West Midlands Capacity

The Franchise Operator proposes to play a key role in the implementation of the West Midlands Capacity Study (commissioned by the Authority in October 1999) in respect of the routes over which the Passenger Services operate.

2.7 Ardley Parkway

The Franchise Operator proposes to build and open a new station at Ardley between Aynho and Bicester.

2.8 Oxford line

²³³*The Franchise Operator proposes to open a new route to Oxford, either between Princes Risborough and Oxford via Wheatley, with new stations at M40 Junction and South Oxford; or via a new south to east curve at Bicester, with new stations at Bicester Village and Water Eaton Parkway.*

Once opened, the Franchise Operator proposes to operate Passenger Services between Oxford and London Marylebone. It is envisaged that these Passenger Services would be a mixture of new Passenger Services and extensions of existing Passenger Services. It is acknowledged that Project Evergreen Phase C (as such term is defined in Paragraph 2.3 above) (or broadly equivalent works) will be required before the Oxford line can be completed.

2.9 New Route (East – West)

²³⁴*The Franchise Operator proposes to operate new and additional Passenger Services between Milton Keynes /Bletchley and London Marylebone via Aylesbury and also Bedford – Bletchley – Oxford. In order to comply with this output it is envisaged that the Franchise Operator will open a railway line between Aylesbury and Bletchley and Bicester and Bletchley with new stations at Aylesbury North, Bletchley North and Winslow. In due course, the Franchise Operator anticipates expanding the services over this route to encompass Milton Keynes to Heathrow Airport service.*

2.10 ²³⁵New Interchange at West Hampstead

The Franchise Operator proposes to facilitate the implementation of a new transport interchange at West Hampstead. This interchange will be a new major rail hub providing an alternative to road transport and linking deprived areas to areas offering employment and educational opportunities. It will allow passengers to change between platforms on the Midland Main line, North London line and Chiltern line and the LUL Jubilee and Metropolitan line and providing direct rail services to over 250 stations (which figure will increase after the completion of the ‘Thameslink and ‘Airtrack’ projects).

2.11 Chiltern Metro

The Franchise Operator proposes to operate at least 2 trains per hour between West Ruislip and London Marylebone calling at all stations. The Franchise Operator proposes that this output will be achieved in either of two ways:

²³³ DOA Nov2007

²³⁴ DOA Nov 2007

²³⁵ DOA Nov2007

- if Crossrail proceeds, with one of its arms being between Old Oak Junction and High Wycombe or further north, capacity between Northolt Junction and Marylebone would be released, allowing the operation of the local service; or
- an infrastructure upgrade of the line between Northolt Junction and Neasden Junction, involving sections of 4 track railway, could allow the introduction of the local service in addition to other Committed Outputs, Primary Aspirations and Secondary Aspirations using London Marylebone.

2.12 ²³⁶Bordesley Junction

The Franchise Operator proposes to carry out enhancements to the infrastructure and/or other works to:-

- (a) enable Rules of the Plan headways between Tyseley and Moor Street to be reduced to 3 minutes on each track and to provide independent up and down train movements between the fast lines at Bordesley Junction through to Snow Hill Station***
- (b) increase terminal capacity at Moor Street Station to accommodate one additional six vehicle train, the requisite connection to the through lines not to have an adverse impact on the design capacity for services to and from Snow Hill; and***
- (c) to reinstate facilities to provide movements on four independent tracks from Small Heath through to Moor Street at an approximate Rules of the Plan headway of two minutes in the normal direction.***

In each case. Modified as appropriate to fit any prevailing Centro PTE plan.

2.13 ²³⁷London to Birmingham Capacity

The Franchise Operator notes that the Department for Transport's July 2007 White Paper "Delivering a Sustainable Railway" recognises that there might in future be the need for additional interventions to meet demand growth on the London to Birmingham corridor. The Franchise Operator proposes to procure enhancements to the Chiltern route infrastructure to facilitate the Department for Transport's objective, and anticipates that this will entail investment in line speed improvements, additional loops, and train lengthening.

2.14 ²³⁸Shorter Journey Times to Aylesbury

The Franchise Operator proposes to reduce journey times between London Marylebone and Aylesbury via Amersham through entering into an agreement with London Underground Limited which enables Chiltern Railways services to operate at a maximum speed higher than the current 60mph limit.

²³⁶ DOA Nov 2007

²³⁷ doa Nov2007

²³⁸ DOA Nov 2007

3 Timing

3.1 The parties acknowledge their mutual current intention that the Franchise Operator should:

- (a) develop the Primary Aspirations so that the relevant outputs can be included in an Output Plan at the appropriate Update Point (in line with the obligations set out in the First Output Plan); and
- (b) consider, develop and bring forward the Secondary Aspirations, as appropriate in the context of the development of Franchise Services over the Franchise Period, so that, where appropriate, they may be the subject of an agreed Output Plan at the relevant time at which it is anticipated they will become Output Commitments.

4 Other Aspirations

All parties recognise that the pattern, shape and demand for the Franchise Services is likely to change over the course of the Franchise Term. All parties agree to consider in good faith whether any additional outputs need to become Output Aspirations or whether any existing Output Aspirations should be withdrawn or modified, in each case in order to reflect such changes.

5 Amendments

The parties may make such variations as they may consider appropriate from time to time to any Output Aspiration (whether by the addition of further Output Aspirations, amendments to existing Output Aspirations or the conversion of an Output Aspiration into an Output Commitment other than under Part 4 of this Schedule 14).

Part 4 - Passenger Service Output Updates²³⁹

“1^{240 241 242 243} Establishment of First Update Point

Subject to paragraph 3, the First Update Point shall be 10 May 2007.”

2 Next Update Period

Subject to paragraphs 3, 9.6 and 9.7, each Subsequent Update Point shall be set as part of the Output Plan relating to the preceding Update Point.

3 Postponement of Update

The Authority may by notice to the Franchise Operator at any time and more than once in respect of any Update Point postpone an Update Point by up to one year in total (in respect of any Update Point) if in the Authority's reasonable opinion:

- 3.1 the Franchise Operator has failed to meet one or more of the Targets in respect of the Performance Review Period ending on the last Performance Review Date (as such terms are defined in Schedule 15) before the Update Point and the Authority has determined in accordance with Schedule 15 either (i) that failing to meet such Target(s) constitutes a breach of the Franchise Agreement, or (ii) to extend the period for the achievement of the relevant Target(s);
- 3.2 it has published any notice which has not expired of an intention to make or confirm an order under the Act or there is at the time outstanding and unsatisfied any order made by the Authority under the Act;
- 3.3 the Franchise Operator has failed to, or is reasonably likely to fail to, comply with any Output Commitment to the extent such obligation is due to have been complied with by the relevant Update Point and such failure is likely to prevent the Franchise Operator delivering in a timely and satisfactory manner the matters expected to be the subject of the next Output Plan; or
- 3.4 there is subsisting or is likely to be in the period up to one year after the Update Point an Event of Default which would entitle the Authority to terminate this Franchise Agreement.

4 Exchange of Views²⁴⁴

Except in respect of the period prior to the First Update Point (in respect of which no exchange of views shall be required) or as otherwise agreed, not more than 21 but not less than 20 months before each Update Point the Authority and the Franchise Operator shall exchange views as to what Output Aspirations and any other matters should be implemented or developed as part of an Output Plan following the relevant Update Point.”

5 Franchise Operator Proposals²⁴⁵

Not less than 19 months before each Update Point or, in respect of the First Update Point by no later than 31st October 2005 (or such later as may be

²³⁹ DATE OF NEW TEXT 30.6.2005

²⁴⁰ First Changed text wef 13.12.2006

²⁴¹ Second Changed text wef 27/02/07

²⁴² Third Changed text wef 29/03/07

²⁴³ Fourth Changed text wef 12/04/07

²⁴⁴ date of change 30.6.2005

²⁴⁵ date of change 30.6.2005

agreed), the Franchise Operator shall by written notice served on the Authority propose to the Authority in reasonable detail:

- (a) the Output Commitments the Franchise Operator proposes to assume and commence during the next Phase;*
- (b) the Output Aspirations the Franchise Operator proposes to develop during the next Phase for implementation in the following Phase;*
- (c) any proposed new Output Aspirations;*
- (d) any other related matters which the Franchise Operator wishes to include.”*

6 Authority Proposals

With regard to the First Update Point by 30th November 2005, and otherwise not less than one month following receipt of the Franchise Operator's Proposals under paragraph 5 or, if none are received in accordance with such paragraph, not less than 18 months prior to the relevant Update Point, the Authority may propose to the Franchise Operator:

- (e) a specified preferred manner or manners of implementation of any of the Franchise Operator's Proposals;*
- (f) its own proposals in relation to any of the Output Aspirations; and*
- (g) such other matters as the Franchise Operator may agree.”*

7 Evaluation of Proposals

7.1 Output Study^{yyy 246}

- (h) Within two months of the later of the delivery of the Franchise Operator's Proposals under paragraph 5 and the Authority's Proposals under paragraph 6, or in respect of the First Update Point by 31 December 2005 (or such later date or longer period as the parties may agree), the Franchise Operator shall submit to the Authority an Output Study in respect of the Proposals in the form (if any) reasonably specified by the Authority following consultation with the Franchise Operator and complying with the requirements of paragraph 7.2 below.*
- (i) The Authority shall have the right at any reasonable time prior to submission of the Output Study to require the Franchise Operator to consult it regarding the progress of the Output Study (including, if the Authority so requests, the right to require the Franchise Operator to provide it with up-to-date drafts of the Output Study up to once every two weeks).”*

7.2 Contents of Output Study

- (a) The Output Study shall so far as practicable be prepared as a draft Output Plan but shall at least contain:*
 - (i) a proposed manner of implementation for each of the Proposals and, where any Proposal could be implemented in more than one manner,*

²⁴⁶ date of change 30.6.2005

any reasonable alternatives (except to the extent that the Authority specifies, pursuant to paragraph 6(a), one or more manners of implementation in which case at least such manners shall be included);

- (ii) a statement of the steps which it is reasonably estimated will be necessary to take to implement each Proposal for each proposed manner of implementation including where relevant:
 - (a) any consents that may be required;
 - (b) the Franchise Operator's proposals for funding each Proposal (including the length of time reasonably anticipated to be required in order to secure such funding);
 - (c) details of any amendments that will be required to the terms of any Access Agreement, Rolling Stock Lease or other relevant agreement to which the Franchise Operator is party;
 - (d) details of its Timetable and Train Plan at all relevant times;
 - (iii) a reasonable estimate of the time in which each Proposal (and any steps constituting such Proposal) can be implemented for each of such alternatives (if any);
 - (iv) the Franchise Operator's draft Long-Term Business Plan for the period from the Update Point to the expiry of the Franchise Term (such draft to be provided in such formats (including on disc) as the Authority may require);
 - (v) the Franchise Operator's proposed adjustments to Franchise Payments as a result of each Proposal (together in each case with all relevant supporting information and calculations);
 - (vi) the steps which it is proposed should be taken to develop any Output Aspirations in the next Phase prior to them becoming part of an Output Plan in the following Phase;
 - (vii) any proposed consequential amendments to the Franchise Agreement; and
 - (viii) any other matter which the Franchise Operator may consider appropriate to include, or which the Authority may reasonably request should be so included.
- (b) The Franchise Operator may at any time engage a suitable third party to prepare any part of the Output Study.

7.3 Consideration

- (a) The Authority shall give due consideration to the Output Study and, the Authority and Franchise Operator shall procure a meeting of their respective representatives as soon as reasonably practicable after the date of submission to the Authority of such Output Study to discuss the Proposals and the Output Study.
- (b) The Authority and the Franchise Operator shall discuss the relevant Proposals in good faith and use all reasonable endeavours to agree an Output Plan for such Proposals prior to the Update Point.

- (c) In respect of the Output Study prepared for the First Update Point and (where applicable) Subsequent Update Points, the Authority shall consider whether the Output Commitments and Output Aspirations set out in such Output Study and which the Franchise Operator proposes to assume or develop (as applicable) during the Franchise Term are sufficient. If the Authority in its absolute discretion determines that such Proposals are not sufficient then the Authority shall be entitled to amend the Franchise Term provided that such amended Franchise Term shall be no shorter than the period of the Minimum Franchise Term and, without prejudice to the Authority's right to extend the Franchise Term further pursuant to Clause 20.2 of this Franchise Agreement, shall not exceed the period of the Original Franchise Term. Alternatively, the Authority may determine that the Franchise Term (including any amended Franchise Term) is conditional upon further Proposals becoming Output Commitments following Subsequent Update Points and, where the Authority makes such a determination, then the provisions of this paragraph 7.3(c) shall also apply in respect of such Subsequent Update Point(s). The Authority may, in addition, amend the period of the Minimum Franchise Term provided that such amended Minimum Franchise Term shall be no shorter than the period of the then current Minimum Franchise Term. Without prejudice to the above, the Authority shall be entitled at any time to request any further information or calculations (including studies of possible alternative manners of implementation of any of the Proposals and any sensitivities relating thereto) which it reasonably considers necessary for the evaluation of the Output Study and, where applicable, determination of the duration of the Franchise Term, the Franchise Operator shall deliver such information or calculations to the Authority as soon as practicable but in any case within seven days or such other period as the parties may agree.
- (d) ²⁴⁷ ***In consideration of the Output Commitments specified in the Second Output Plan the Authority hereby agrees that, without prejudice to its rights under clause 22 of this Franchise Agreement, it has ceased to have any right whether under paragraph 7.3(c) of part 4 of Schedule 14 of the Franchise Agreement or otherwise to require any amendment to the Franchise Term to a period that is shorter than the Original Franchise Term unless the circumstances referred to in paragraph 7.3(e) apply.***
- (e) ***It is agreed by the Authority, the Franchisee and the Franchise Operator that the Minimum Franchise Term will be amended to mean the period commencing on the Franchise Commencement Date and ending on 31st December 2016 in circumstances where:***
- (i) ***the Oxford Robust Outputs and the Oxford Timetable Outputs are not delivered by the relevant Backstop Delivery Date for the Oxford Robust Outputs and the Oxford Timetable in circumstances where the Franchise Operator has not obtained a VFM Transport and Works Act Order despite it having used reasonable endeavours to obtain a VFM Transport and Works Act Order; or***
 - (ii) ***the Franchise Operator has not delivered the Oxford Robust Outputs and the Oxford Timetable Outputs by the relevant Backstop Delivery Date because it has not proceeded with, or has suspended, the relevant works (the "Evergreen 3 Works") because the cost of delivering the***

²⁴⁷ Date of Change 06/01/2010

works associated with the delivery of the Birmingham Mainline Robust Outputs has exceeded the £122,600,000 budget for such works excluding the Standby Facility and in consequence the Franchise Operator is not able to proceed to deliver the Evergreen 3 Works in a way that maintains the risk to the Franchise Operator at the level the Franchise Operator reasonably anticipated when it entered into the deed of amendment that introduced this wording into the Franchise Agreement because all of the following circumstances, if relevant, have arisen:

- (A) the contractor's limit of liability ⁽²⁴⁸⁾ to the Franchise Operator under the construction contract dated the date hereof and made between BAM Nuttall Limited (Company number 00305189) and the Franchise Operator has been exhausted; and*
- (B) such Standby Facility has been exhausted or cannot be utilised in accordance with the terms of the Asset Purchase Agreement; and*
- (C) there is no further recourse to the insurance arrangements relating to the implementation of the Evergreen 3 Works; and*

the Franchise Operator has other wise not been able to hold such risk constant including because:

- (1) the Franchise Operator's request for a specified further increase to the value attributable to the Birmingham Robust Outputs and/or the Oxford Robust Outputs in Network Rail's regulatory asset base has been declined by any of the Authority, the Office of Rail Regulation or Network Rail; or*
- (2) having failed to secure the request referred to in (1) above, it has not, in the reasonable opinion of the Franchise Operator (having consulted the Authority), been possible to re-design or re-scope the Birmingham Robust Outputs and/or Oxford Robust Output for the purposes of achieving appropriate cost savings or cost reductions.*

For this purposes of this paragraph "Standby Facility" is defined in the asset purchase agreement dated on or about the date of the deed that introduced this wording into this Franchise Agreement and made between Network Rail and the Franchise Operator (the "Asset Purchase Agreement") and the Franchise Operator agrees that a certified copy of the Asset Purchase Agreement will be provided to the Authority as soon as reasonably practicable.

²⁴⁸ 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

(f) In the event that the Minimum Franchise Term is adjusted pursuant to paragraph 7.3(e):

(1) the rights of the Authority under paragraph 7.3(c) of part 4 of Schedule 14 of the Franchise Agreement shall be restored in relevant circumstances in accordance with the provisions of the said part 4 but under no circumstances shall the Minimum Franchise Term be capable of being set to expire on a date prior to 31st December 2016 ; and

(2) the non delivery of the Oxford Robust Outputs and the Oxford Timetable Outputs by the relevant Likely Delivery Dates and Backstop Delivery Dates shall not constitute a breach or contravention of this Franchise Agreement.

For the purposes of paragraph 7.3(e) a “VFM Transport and Works Act Order” means an Transport and Works Act Order in respect of the Oxford to Bicester works granted in the Form applied for by no later than 31 October 2012 without modification to scope or conditions (including without limitation planning conditions) except modifications that do not materially increase the cost of delivering the Oxford Robust Outputs or Oxford Timetable Outputs.

7.4 Contents of Output Plan

The Output Plan shall be prepared as an amendment to this Franchise Agreement to be executed by each of the parties and shall specify:

- (i) the agreed Proposals and all steps constituting such Proposals (including the manner of implementation thereof which, in the absence of agreement, may be specified by the Authority);
- (ii) the time within which the Franchise Operator is obliged to implement the Proposals (and the times within which constituent parts of such Proposals should be implemented);
- (iii) the obligations of the Franchise Operator to be incorporated into the Franchise Agreement in respect of the Proposals (including any Franchise Default Milestones in respect of any Proposal);
- (iv) the adjustments to be made to Franchise Payments as a result of the Proposals (including the adjustments (if any) to be made to paragraph 12 of Part 2 of Schedule 6 (Applicable Rolling Stock Payment) to reflect the decrease (if any) in the rental payments payable by the Franchise Operator in respect of the Applicable Rolling Stock (as such term is defined in paragraph 3.2 of Part 5 of this Schedule 14) as a result of any amendment to the Minimum Franchise Term);

- (v) a replacement Long-Term Business Plan for the period from the Update Point until the expiry of the Franchise Term. For the avoidance of doubt, in relation to the Committed Outputs Business Plan, the principles referred to in paragraph 5.2 of Part 4 of Schedule 6 shall apply;
- (vi) revised thresholds and proportions for the benefit sharing provisions of Part 4 of Schedule 6;
- (vii) any development obligations to be imposed on the Franchise Operator in respect of the Output Aspirations scheduled for the next Phase;
- (viii) the date of the next Update Point for the purposes of paragraph 2 which, unless otherwise agreed, shall fall at the beginning of a Franchise Operator Year;
- (ix) any other amendments to be made to the Franchise Agreement in respect of and in consequence of the Proposals (including, without limitation, to Schedules 3, 4, 5, 7 and 15); and
- (x) any other matters which are considered reasonably necessary by the parties or, in the event of a reference to the Panel, the Panel; and
- (xi) in respect of the Output Plan prepared for the First Update Point and any applicable Subsequent Update Points, the Franchise Term specified by the Authority.

8 Reference to Mediator

8.1 Matters to be referred to Mediator

If the parties are unable to agree a Output Plan at any time following the earlier of:

- (i) one month after the delivery of the Output Study by the Franchise Operator to the Authority; or
- (xii) twelve months before the Update Point

either party may refer any matter relating to such Output Plan to the Mediator provided that the Franchise Operator may not refer any matter to the Mediator prior to the date referred to in (i) above.

8.2 Mediation

The provisions of Part 6 of this Schedule 14 shall apply in the appointment and procedure of the Mediator.

9 Reference to Panel

9.1 Matters to be referred to Panel

If, two months after commencement of a mediation under paragraph 8, the parties are unable to agree an Output Plan, the Authority may and, if so requested by the Franchise Operator on 2 weeks notice, shall refer any part of the Output Plan which has not been agreed to a Panel by means of a notice to the Franchise Operator, to be copied to the Panel, once the Chairman has been appointed under Part 7, identifying:

- (a) the Proposal(s) to be referred;
- (b) a preferred or various alternative manners of implementation of such Proposal(s);
- (c) any areas on which agreement has been reached (whether such agreement is legally binding or not)

provided that, unless the parties otherwise agree:

- (w) any Primary Aspiration scheduled to be commenced or developed during the next Phase shall be included in a Proposal for its commencement or development as the case may be;
- (x) any Secondary Aspirations may, but need not, be included;
- (y) the Authority shall be entitled to specify the manner of implementation of any Proposal referred to the Panel; and
- (z) in respect of the Output Plan prepared for and/or determined in respect of the First Update Point and any applicable Subsequent Update Points, the Authority shall be entitled to specify the period of the Franchise Term and/or the Minimum Franchise Term, provided that such period(s) shall not be shorter than the then current Minimum Franchise Term or, without prejudice to the Authority's rights under Clause 20.2 of this Franchise Agreement, longer than the Original Franchise Term.

9.2 Change in circumstances

- (a) If so requested by the Authority at any time, the Panel shall in addition consider whether circumstances have changed so much since the date of this Franchise Agreement such that any Primary Aspirations ought not be developed or implemented on the basis that the cost to the Authority of the relevant matter cannot be justified by the social and strategic benefits expected to result from such matter, having regard to the Authority's functions and duties (including any relating to value for money). If the Authority does so request, the Panel shall make its determination in respect of the matter as soon as it reasonably can having regard to the extent to which any relevant Proposal has at that time been sufficiently costed. If the Panel does determine that circumstances have changed to the extent described above, the relevant Primary Aspiration shall cease to be designated as a Primary Aspiration for the purposes of this Schedule 14.
- (b) In addition, if the Authority determines, having had regard to its statutory powers and obligations, that it does not have the funds available to it to finance any Primary Aspiration, the relevant Primary Aspiration shall cease to be designated as a Primary Aspiration for the purposes of this Schedule 14 and the Authority shall notify the Franchise Operator accordingly.

9.3 Determination of Panel Matters

- (a) The provisions of Part 7 of this Schedule 14 will apply in the appointment, procedure and determinations of the Panel.
- (b) The Panel shall be required to determine, in its opinion, the Output Plan or such parts of the Output Plan as are referred to it and any other matter referred to it under this Schedule 14.
- (c) The Panel's determination shall provide a breakdown between individual Proposals where so reasonably requested by the Authority.

9.4 Post-determination negotiation

Following the delivery of the Panel's decision pursuant to paragraph 9.3 above in relation to an Output Plan, the parties shall use all reasonable endeavours to agree an Output Plan taking into account the findings of the Panel.

9.5 Authority specification

The Authority may, within 4 weeks of the determination of the Panel, specify:

- (a) one or more Proposals (other than any Proposal reflecting a Primary Aspiration) which it considers should not form part of the Output Plan;
- (b) where a Proposal which has been referred to the Panel has more than one manner of implementation, the manner of implementation of such Proposal; and
- (c) in respect of the Output Plan determined in respect of the First Update Point and any applicable Subsequent Update Points, the period of the Franchise Term and/or the Minimum Franchise Term provided that such period(s) shall not be shorter than the then current Minimum Franchise Term or, without prejudice to the Authority's rights under Clause 20.2 of this Franchise Agreement, longer than the Original Franchise Term.

The Output Plan determined by the Panel shall be deemed amended accordingly (including, for the avoidance of doubt, the Long Term Business Plan). If there is any doubt as to how the Output Plan should be amended, the matter shall be remitted to the Panel to be determined.

9.6 Franchise Operator's option

- (a) If the Franchise Operator does not wish to accept the determination of the Panel, taking into account the provisions of paragraph 9.5, and is unable to agree an Output Plan with the Authority within 6 weeks of the delivery of the Panel's decision (or such longer period as the parties may agree), it may give notice to that effect within such 6 weeks (or such longer period as may be agreed) to the Authority.
- (b) Following receipt of such notice, the Authority shall within one month give notice to the Franchise Operator either:
 - (i) stating that this Franchise Agreement shall continue in force on its existing terms (for the avoidance of doubt without prejudice to the powers of the Authority to bring forward any Proposals relating to other Output Aspirations at the next Update Point (which, unless the parties otherwise agree or, on reference of the matter to the Panel by any party, the Panel determines that another date would be more reasonable having regard to the notice given under this paragraph and the Output Aspirations scheduled for the next Update Point, shall be the date 5 years after the preceding Update Point)); or
 - (ii) stating that this Franchise Agreement shall continue in force as set out in paragraph (i) above except that the Authority will from a date stated in such notice have the right and obligation to terminate the Franchise Agreement on one month's notice within one year of such date.
- (c) If the Authority gives notice to the Franchise Operator under paragraph (b)(ii) above, this Franchise Agreement shall, unless otherwise agreed, terminate on the date set out in any such subsequent notice.

9.7 Authority's option

If the Franchise Operator does not serve notice under paragraph 9.6 above within the time limit set out in such paragraph and the Authority does not wish to accept the determination of the Panel, taking into account the provisions of paragraph 9.5, the Authority shall within one month of the expiry of such time limit either:

- (a) give notice to the Franchise Operator terminating this Franchise Agreement. If such notice is given, the Authority shall terminate this Franchise Agreement on one month's notice within one year after the later of the Update Point and the date of such notice and this Franchise Agreement shall, unless otherwise agreed, terminate on the date set out in such later notice; or
- (b) give notice to the Franchise Operator stating that this Franchise Agreement shall continue in force on its existing terms (for the avoidance of doubt without prejudice to the powers of the Authority to bring forward any Proposals relating to other Output Aspirations at the next Update Point (which, unless the parties otherwise agree or, on reference of the matter to the Panel by any party, the Panel determines that another date would be more reasonable having regard to the notice given under this paragraph and the Output Aspirations scheduled for the next Update Point, shall be the date 5 years after the preceding Update Point)). In such an event the Franchise Payments payable for the remainder of the Franchise Term (as amended, where applicable) shall, unless otherwise agreed, be adjusted by an amount equal to the difference between the EBDIT of the Franchise Operator under the Committed Outputs Business Plan and the EBDIT of the Franchise Operator under the Do Minimum Business Plan, in each case as determined by the Panel and in each case for the period from the Evaluation Date until the expiry of the Franchise Term. Such amount shall be determined for each Franchise Operator Year (or part thereof) within such period and Schedule 6 shall be adjusted accordingly. If there is any dispute as to the amount of any such adjustment, the matter shall be resolved in accordance with the Dispute Resolution Rules.

9.8 Agreement of Output Plan

If both the Franchise Operator and the Authority fail to give notice under paragraphs 9.6 and 9.7 above within the time limits in such paragraphs each shall be deemed to have agreed to the decision of the Panel (as adjusted, if relevant, by the Authority's specification under paragraph 9.5 above) and the Output Plan shall be deemed agreed in the form of the determination of the Panel (as adjusted as above if appropriate) and the parties shall enter into the amendment agreement comprised in the Output Plan forthwith or, if later, on the Update Point.

10 First Update Point

If the parties agree that no Proposals shall be taken forward in respect of the Output Study (if any) prepared for the First Update Point then the Franchise Term will be amended to expire at 2a.m. on 31 December 2013 and the provisions of paragraph 4 of Part 3 of Schedule 6 (Twelve Year Franchise) shall apply.

11 Determination of Franchise Term

For the avoidance of doubt, wherever the duration of the Franchise Term and/ or the Minimum Franchise Term is subject to the determination of the Authority in this Schedule 14 then, provided that the period of each of the Franchise Term and the Minimum Franchise Term are no shorter than the then current Minimum Franchise Term or, without prejudice to the Authority's rights under Clause 20.2 of this Franchise Agreement, longer than the Original Franchise Term, the duration of the Franchise Term and the Minimum Franchise Term shall not be subject to review by the Panel or determination by the Dispute Resolution Rules.

Part 5 - Termination Payments

1 Payment of Termination Payment

In the event of the termination of this Franchise Agreement under Part 4:

1.1 the Supplemental Agreement shall be amended such that:

- (a)** the Successor Operator pays the Termination Payment to the Franchise Operator under the provisions of the Supplemental Agreement on the later of the date falling 2 months after the Termination Date and the date on which all payments under or in respect of paragraph 10 of Part 2 of Schedule 6 have been paid to the Authority; and
 - (b)** the Successor Operator shall make no payment to the Franchise Operator in respect of Primary Franchise Assets under the Supplemental Agreement other than under paragraphs 1 to 5 of the Schedule to the Supplemental Agreement and, if any Residual Value Amount is payable by the Successor Operator and/or the Authority to the Security Trustee in accordance with the provisions of the Funder's Direct Agreement and the Supplemental Agreement, then an amount equal to the Residual Value Amount shall immediately become payable by the Franchise Operator to the Successor Operator.
- 1.2** the Authority shall procure that the Successor Operator pays the amount referred to in paragraph 1.1(a) above at the time provided in such paragraph, subject to payment by the Franchise Operator of any amount being due from it to the Successor Operator at such time under the Supplemental Agreement.

2 Termination - Franchise Operator

2.1 Applicability

This paragraph 2 shall apply where the Authority serves notice terminating this Franchise Agreement under paragraph 9.6(b)(ii) of Part 4 of this Schedule 14.

2.2 Abatement

- (a)** Within one month of the date of the Franchise Operator's notice under paragraph 9.6(a) of Part 4 of this Schedule 14, if the Authority considers that an abatement in the Termination Payment due under this paragraph is appropriate it shall notify the Franchise Operator of its proposed level of abatement. If the Franchise Operator does not agree the amount of the proposed abatement, it may refer the matter to the Panel.
- (b)** The percentage of the abatement shall be determined by reference to the extent to which the Franchise Operator (whether under an obligation to do so or not):
 - (i)** has taken steps to bring forward, progress and develop all Output Aspirations in a timely manner; and
 - (ii)** has otherwise conducted itself and taken the steps which might reasonably be expected from an operator in developing and investing in the Franchise Services in order to meet the changing demands of passengers over the Franchise Term and thereafter

on that basis that the percentage shall be 0 per cent. if the Franchise Operator has complied with any obligations under this Franchise Agreement to develop the Output Aspirations and has taken all steps which might be expected from the type of operator referred to in sub-paragraph (ii) and shall be 20 per cent.

if the Franchise Operator has failed to take any such steps. In no event shall the percentage exceed 20 per cent. In determining the extent of the abatement to be agreed or determined regard shall also be had to any other similar abatement which may have been agreed or determined under any other franchise agreement.

- (c) Subject to the above, the provisions of Part 7 of this Schedule 14 shall apply to the determination by the Panel of abatement. For the avoidance of doubt the Panel's determination shall be final and binding on the parties.
- (d) In the event of a reference to the Panel, the Termination Payment shall initially be paid on the basis of the Authority's level of abatement. If different when determined by the Panel, no interest shall be payable in respect of the difference except to the extent not paid within a period of 14 days after the Panel's determination or, if later, the date for payment of the Termination Payment under the Supplemental Agreement.

2.3 Calculation of payment

On termination of this Franchise Agreement pursuant to such notice as is referred to in paragraph 2.1 above, the Termination Payment shall be an amount calculated in accordance with the following formula

$$((RDME - DME) \times (100\% - PA)) - RLC$$

where

RDME is the Net Present Value on the Termination Date of the EBDIT of the Franchise Operator for the period from the Termination Date to the Relevant Date under the Relevant Do Minimum Business Plan;

DME is the Net Present Value on the Termination Date of the Do Minimum EBDIT for the period from the Termination Date to the Relevant Date;

PA is either zero or the percentage abatement agreed between the parties or determined by the Panel as set out pursuant to paragraph 2.2 above;

RLC is the Reletting Costs in relation to the termination occurring on the Termination Date; and

the Relevant Do Minimum Business Plan is the Do Minimum Business Plan determined by the Panel or agreed between the parties if the Termination Date falls within 18 months of the relevant Evaluation Date or, if not, a Do Minimum Business Plan prepared in compliance with the requirements of a Long-Term Business Plan as at a date falling not more than one year prior to the Termination Date and, if not agreed between the parties, settled in accordance with the Dispute Resolution Rules. The Franchise Operator shall prepare such a Do Minimum Business Plan as and when so requested by the Authority.

3 Termination - Authority

3.1 Applicability

This paragraph 3 shall apply where the Authority serves notice terminating this Franchise Agreement under paragraph 9.7 of Part 4 of this Schedule 14.

3.2 Calculation of payment

On termination of this Franchise Agreement pursuant to such notice as is referred to in paragraph 3.1 above, the Termination Payment shall be an amount calculated in accordance with the following formula

$$(COE + RSTP) - DME$$

where

COE is the Net Present Value as at the Evaluation Date of the EBDIT of the Franchise Operator under the Committed Outputs Business Plan determined by the Panel or agreed between the parties for the period from the Evaluation Date to the Relevant Date.

RSTP is an amount equal to the sum of (i) "B - C" and (ii) any additional indemnity payments, in each case as may be payable by the Franchise Operator to Angel Trains Limited under (and as defined in) Clause 13.5 of the MOLA in respect of the Applicable Rolling Stock;

"MLEA" means a master lease extension agreement entered into or to be entered into between the Franchise Operator and Angel Trains Limited in respect of the Applicable Rolling Stock;

"MOLA" means a master operating lease agreement dated 15 March 1995 between the Franchise Operator and Angel Trains Limited amended and supplemented by various lease supplements thereto (and by the MLEA) and as further amended, varied and supplemented from time to time;

"Applicable Rolling Stock" means such of the class 165 rolling stock units specified in Appendix 1 to the First Output Plan as are leased to the Franchise Operator at the Relevant Date pursuant to the MOLA;

DME is the Net Present Value as at the Evaluation Date of the Do Minimum EBDIT for the period from the Evaluation Date to the Relevant Date.

PROVIDED THAT

- (a) The Franchise Operator agrees to challenge the value of "C" and/or the additional indemnity (each as referred to in the definition of RSTP above) in accordance with the provisions of the MOLA if required to do so by the Authority or, at the Authority's request, to assign its rights, to challenge the value of such amounts to the Authority or its nominees.
- (b) The Franchise Operator agrees that if at any time the MOLA is amended or varied (a "Lease Amendment") without the prior written consent of the Authority and such Lease Amendment has the effect of increasing the value of RSTP, then such Lease Amendment shall be disregarded for the purposes of calculating the value of RSTP.

4 Discount Factors

In determining the discount factor to be used in assessing the Net Present Value of any matter under this Schedule 14 the following matters shall be taken into account:

- 4.1 the then current risk-free rate of return;
- 4.2 the market risk premium over the then current risk-free rate of return;
- 4.3 the relative risk of the Franchise Operator in relation to the market as a whole;

4.4 any Financial Indebtedness in the Franchise Operator (other than amounts relating to an Affiliate);

4.5 any other appropriate matter

provided always that (a) the discount factor in relation to the Net Present Value of a matter in any Committed Outputs Business Plan shall be greater than that for a Do Minimum Business Plan, (b) the application of any such factor and the outcome shall, overall, be reasonable having regard to any other alternative methods of valuation which might have been used to value the Franchise Operator, (c) adjustments to the discount factor to remove the impact of tax shall be made using the statutory rate of Tax at the Termination Date, and (d) in determining the amount of any one Termination Payment under paragraph 2.3 where the commitments and risks under the relevant business plans are not materially different, the same discount factor shall be used in calculating the Net Present Value of each item.

5 Disputes

Any dispute under this Part 5, except as set out in paragraph 2.2, shall be settled in accordance with the Dispute Resolution Rules.

Part 6 - Mediator

1 Appointment of Mediator

In any matter to which this Part 6 applies, the parties shall use all reasonable endeavours to appoint the Mediator as soon as possible. The identity of the Mediator shall be agreed between the Authority and the Franchise Operator within seven days of the reference to a Mediator under paragraph 8 of Part 4 of this Schedule 14 or, failing such an agreement, nominated on the application of either of them by the Centre for Dispute Resolution (or, in the absence of which, any equivalent or similar body nominated by the Authority).

2 Terms of Engagement

The Mediator shall be engaged jointly by the parties on the terms set out in this Part 6 and Part 4 of this Schedule 14 and otherwise on such terms as shall be agreed; provided that neither party shall unreasonably (having regard, *inter alia*, to the provisions of this Part 6 and Part 4 of this Schedule 14) refuse its agreement to terms proposed by the Mediator or by the other party. If the terms of engagement of the Mediator have not been settled within 14 days of his 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 person shall be deemed never to have been appointed as Mediator, save that the person shall be entitled to their reasonable expenses, and a new Mediator shall be selected in accordance with the provisions of this Franchise Agreement.

3 Incapacity of Mediator

If a Mediator acting or appointed to act under this Franchise Agreement resigns, withdraws, dies, refuses to act, becomes unable by reason of mental or physical infirmity to perform the duties to his office, or is disqualified for any reason from performing the duties of his office then, except as may be agreed between the parties, the parties shall appoint a replacement in accordance with paragraph 1 above.

4 Procedure

- 4.1** Immediately on his appointment, the Mediator shall contact the parties and arrange to meet them. He may require each of them to provide him with a brief summary of the dispute and their contentions in relation to it. The Mediator shall, at his discretion, be entitled to send a copy of such summary to the other party to the dispute.
- 4.2** Two representatives of each party shall attend each meeting with the Mediator, at least one of whom shall be a senior manager with decision-making authority in relation to the dispute. No other persons may attend without the Mediator's agreement.
- 4.3** The parties shall explain their respective positions to the Mediator. He may see each on his own if he sees fit. The Mediator shall not be entitled to disclose matters told to him in confidence without the permission of the party in question. He shall encourage the parties to resolve the dispute by agreement and may also discuss informally with any party his own views as to the merits of the dispute.
- 4.4** Within seven days of termination of the mediation in accordance with paragraph 7, if the parties have not resolved the dispute by agreement, the Mediator may advise the parties of his views as to the likely outcome of the dispute if it were to be referred to the Panel and/or what he considers would be a fair settlement of

the dispute. No party shall be bound to adopt the views expressed, or accept the advice provided, by the Mediator.

5 Confidentiality

- 5.1** The parties, their representatives and advisers and the Mediator shall keep confidential all documents, submissions, statements and other information disclosed in the mediation except as required by law or regulation or as permitted under Clause 39.
- 5.2** Its use in the mediation shall not affect the extent to which any document, submission, statement or other information disclosed in the mediation is admissible or subject to disclosure or production (or, in Scotland, recoverable by commission and due diligence under section I of the Administration of Justice (Scotland) Act 1972 or otherwise) in any subsequent arbitration, legal or other proceedings involving the parties.
- 5.3** Any document, submission, statement or other information disclosed during or in anticipation of the mediation shall be so disclosed on a “without prejudice” basis.
- 5.4** Each of the parties and the Mediator:
- (a)** shall not disclose to any third party any document, submission, statement or other information disclosed or created during or in anticipation of the mediation (save for the circumstances contemplated in paragraph 5.1), unless such document, submission, statement or other information would in any event have to be disclosed during the course of any Panel proceedings;
 - (b)** shall not disclose to any third party the form or content of any advice given by the Mediator pursuant to paragraph 4.4;
 - (c)** shall not, in any future proceedings, seek to compel:
 - (i)** any of the other parties or the Mediator to disclose any document, submission, statement or other information disclosed or created during or in anticipation of the mediation, unless such document, submission or other information would in any event have to be disclosed during the course of any Panel proceedings; or
 - (ii)** the Mediator to give evidence as a witness in relation to any document, submission or other information disclosed or created during or in anticipation of the mediation; and
 - (d)** promises and undertakes that in the event of any third party seeking to compel a party or the Mediator to disclose to any third party any document, submission, statement or other information disclosed or created during or in anticipation of the mediation, it will immediately notify the other parties and the Mediator of all the relevant circumstances and make all reasonable efforts and assert all available rights and privileges to resist disclosure.

6 Costs

Unless the parties otherwise agree, each party shall bear its own costs of the mediation. The parties shall share equally the Mediator's fees and expenses (including the cost of obtaining any legal or expert advice), the costs of his appointment and all other administrative costs of the procedure.

7 Termination of the mediation

The mediation shall terminate on the date falling 60 days after the appointment of the Mediator unless extended by agreement of all parties, or, at any time, upon service by any party to the mediation on the Mediator and other parties of a notice of withdrawal from the mediation.

8 Mediator barred from further proceedings

The Mediator shall not be entitled to act in any capacity in relation to the subject matter of the mediation in which he acted as Mediator in any subsequent arbitration, legal or other similar proceedings (including being a member of the Panel in relation to any Output Plan under this Franchise Agreement).

Part 7 - Panel

1 Appointment of Panel

1.1 Appointment

In any matter to which this Part 7 applies, the parties shall use all reasonable endeavours to appoint the Panel as soon as practicable.

1.2 Composition - Chairman

Except to the extent the parties otherwise agree, the Panel shall comprise firstly a lawyer or other legally qualified person who shall be the Chairman of the Panel. The identity of such person shall be agreed by the Franchise Operator and the Authority within seven days of the referral under this Schedule 14 or, failing such an agreement, be nominated on the application of either of them by or on behalf of the President for the time being of the Law Society.

1.3 Composition – remainder

The remaining members of the Panel (not to exceed four in number) shall be agreed between the Authority and the Franchise Operator or, in the absence of such agreement within 14 days of the appointment of the Chairman and unless the parties otherwise agree, be nominated by the Chairman (or such other persons to whom he may delegate such power of nomination) in consultation with the parties and in compliance with such agreed directions as they may give him and having regard to such lists of potential nominees, if any, as the parties shall provide to him. No other members need be appointed but the expertise of any members shall so far as possible reflect the matters to be determined by the Panel. The parties and the Chairman shall accordingly (without limitation) give due consideration to the appointment of an engineer where the feasibility of a Proposal is an issue, and to the appointment of an accountant and/or an investment banker in relation to the determination of any Long-Term Business Plan and/or any adjustments to the Franchise Payments.

2 Panel's Terms of Engagement

Each member of the Panel shall be engaged jointly by the parties on the terms set out in this Part 7 and the relevant Part of this Schedule 14 and otherwise on such terms as shall be agreed; provided that neither party shall unreasonably (having regard, *inter alia*, to the provisions of this Part 7 and the relevant Part of this Schedule 14) refuse its agreement to terms proposed by the member or by the other party. If the terms of engagement of any member of the Panel 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 member shall be deemed never to have been appointed to the Panel, save that the person or persons shall be entitled to their reasonable expenses, and a new member shall be selected in accordance with the provisions of this Franchise Agreement.

3 Change of Panel

If a Panel acting or appointed to act under this Franchise Agreement fails to notify the parties of its award within 2 months after receiving the last submission requested by it and delivered to it (or such other period as may be agreed or as the Panel may determine having received all relevant submissions), that Panel shall be deemed never to have become the Panel, save that it shall be entitled to its reasonable

expenses, and a new Panel shall be selected in accordance with the provisions of this Agreement.

4 Incapacity of Panel Member

If a member of a Panel acting or appointed to act under this Franchise Agreement resigns, withdraws, dies, refuses to act, becomes unable by reason of mental or physical infirmity to perform the duties to his office, or is disqualified for any reason from performing the duties of his office then, except as may be agreed between the parties, the Chairman shall appoint a replacement in accordance with paragraph 1 above. If the member of the Panel in question is the Chairman, a new Chairman shall be appointed in accordance with paragraph 1.2 above (and for the avoidance of doubt the composition of the remainder of the Panel shall not change).

5 Procedure

5.1 General

Except to the extent that the parties agree otherwise, the Chairman shall determine the procedure of the Panel (including how and by whom decisions shall be taken and powers shall be exercised) in consultation with the other members of the Panel and the parties but:

- (a) shall have regard to the procedures set out in Part C3 of the Dispute Resolution Rules (as modified by Part D);
- (b) the Panel shall make its determination as soon as is reasonably practicable;
- (c) the procedure of the Panel shall:
 - (i) give the parties a reasonable opportunity to make written and oral representations to it;
 - (ii) require that each party supply the other with a copy of any written representations at the same time as they are made to the Panel;
 - (iii) permit each party to be present while oral submissions are being made by the other party;
- (d) to the extent the Chairman determines to be appropriate, each member of the Panel shall be given responsibility for one or more appropriate matters falling to be determined by the Panel as a whole so that any decision of the Panel shall comprise a collection of decisions by members in their own assigned area of responsibilities and need not be a joint decision;
- (e) for the avoidance of doubt, the Panel shall not be entitled to determine the scope of its own jurisdiction.

5.2 Availability of information

The parties shall co-operate with the Panel and comply with its reasonable requests made in connection with the carrying out of its functions. The Panel shall be entitled to release any information received to the other party.

5.3 Panel's right to obtain advice

The Panel shall have the right to conduct research and seek and obtain any independent advice it reasonably considers necessary or desirable for its consideration and determination of the dispute.

5.4 Legal drafting

To the extent any relevant Panel matter requires legal drafting to be prepared, unless the other parties otherwise agree, the Authority shall provide on request at the appropriate time proposed drafting and the Panel shall allow the Franchise Operator to comment on the relevant drafting.

5.5 Issue of Panel's award

The award of the Panel shall (i) be made in writing and made available for collection by the parties and (ii) unless otherwise agreed by the parties include reasons for each relevant decision.

6 Status of Panel's award

The Panel shall act as expert and not as arbitrator. The Panel's determination of any matter falling within its jurisdiction shall be final and binding on the parties except as set out in this Schedule 14 and save where a court holds it to be so clearly erroneous on its face that it would be unconscionable for it to stand (when the relevant part of its award shall be void and the matter shall be remitted to the Panel for correction).

7 Panel's fees and expenses

Whether or not the Panel determination reaches the stage of a final award, the Panel may order any party to pay all or some of the Panel's fees and expenses (including the cost of obtaining any advice or considering any research) and any costs of their appointment, assessed in such a manner as the Panel shall determine. Failing such direction, the Panel's fees and expenses (including the cost of obtaining any advice or considering any research) and any costs of their appointment shall be borne equally between the Franchise Operator and the Authority. If either party fails to pay its share of the Panel's fees and expenses within a reasonable time after the Panel requests such payment, the other party may pay such fees and expenses and recover the money so paid from the first party. Each party shall otherwise bear their own costs and expenses.

8 Confidentiality

Subject to the provisions of Clause 39, each party and the Panel shall, and shall procure that its accountants and other advisers shall, keep all information and documents provided to them pursuant to this Schedule 14 confidential and shall not use the same for any purpose, except for disclosure or use in connection with the proceedings of the Panel or another matter arising out of this Schedule 14 or in defending any claim or argument or alleged claim or argument relating to this Schedule 14 or its subject matter.

9 Principles applying to Output Plan

In determining an Output Plan, the Panel shall ensure that it shall be consistent with the following principles (provided always that the fact that an Output Plan does not comply with any or some of these principles shall not render any decision of the Panel open to challenge) construed, where applicable, in the context of the factors set out in paragraph 10:

- (a) any adjustments to the Franchise Payments in respect of a Proposal shall:
 - (i) be based on the assumption that the Franchise Operator is and will be an economic and efficient operator;
 - (ix) be consistent with the duty of the Authority to make payments which are value for money;

- (x) be appropriate to the risks and rewards associated with the Proposal (and in determining the Output Plan consideration shall be given to the risks accepted by the Franchise Operator and the return anticipated to be earned by the Franchise Operator as at the date of signature of this Franchise Agreement as reflected in the Committed Outputs Business Plan in place on signature of this Franchise Agreement);
 - (xi) be consistent with the anticipated method of financing for the Proposal (which shall be determined having regard to proposals put forward by the Authority and the Franchise Operator and on the basis that, unless the Authority otherwise indicates, each Proposal shall be financed on a stand-alone basis);
 - (xii) only take into account the Proposal and its incremental effect on the Franchise Operator.
- (b) no obligations, other than payments of Franchise Payments, shall be imposed on the Authority which, unless it otherwise agrees, may:
 - (i) guarantee, or have the effect of guaranteeing, an obligation of the Franchise Operator or any other person;
 - (ii) be considered to be an agreement falling within Section 54(2) of the Act;
 - (iii) require the prior consent of any other person, including the Secretary of State;
- (c) any consequential amendment to the Franchise Agreement in respect of the Proposals shall be specified by the Authority;
- (d) unless otherwise agreed, all payments by the Franchise Operator, directly or indirectly, to a person who may be investing in any relevant aspect of the Franchise Services (including payments under a Rolling Stock Lease) shall be spread evenly so as to allow the relevant person to recover their investment over the life of the asset;
- (e) it shall be enforceable by the Authority;
- (f) it shall impose obligations on the Franchise Operator which are reasonable having regard to the nature of the Proposals and any anticipated difficulties in implementing the Proposals;
- (g) it shall provide for the delivery of the relevant Proposals within a defined timescale, such timescale to be reasonable having regard to the Authority's strategic plan for the railway network in Great Britain;
- (h) it shall ensure that the Authority has a reasonable degree of control over the terms of the implementation of each Proposal having regard to its functions under the Act, its financial contribution to the Proposal and the effect on its financial position following implementation of the Proposal;
- (i) it may provide where appropriate for certain obligations to be conditional on other events happening;
- (j) it shall impose appropriate and reasonable obligations on the Franchise Operator which will incentivise it to implement the Proposals (including where appropriate Franchise Default Milestones);

- (k) the Authority shall not be required to pay additional Franchise Payments or receive less Franchise Payments in circumstances where there is no reasonable certainty that the relevant monies will be used to fund or pay for the relevant Proposal;
- (l) unless otherwise stated, all Output Aspirations shall be implemented prior to the expiry of the Franchise Term;
- (m) Part 4 of Schedule 6 (including the Franchise Operator's Forecast Modified EBDIT (as defined in Schedule 6)) shall be adjusted to provide for a sharing of the incremental benefits accruing to the Franchise Operator in excess of an appropriate rate of return, such sharing to be consistent with that applying on the signature of this Franchise Agreement;
- (n) it shall ensure that by the following Update Point the Output Aspirations scheduled for the next Phase will have been sufficiently developed in order to be agreed and implemented as part of an Output Plan;
- (o) the assumptions in any Long-Term Business Plan shall be reasonable and, unless the Authority otherwise specifies, consistent with the Annual Business Plan of the Franchise Operator from time to time;
- (p) where the Minimum Franchise Term and/or the Franchise Term has been amended, paragraph 12 of Part 2 of Schedule 6 (Applicable Rolling Stock Payment) shall be adjusted to reflect the decrease (if any) in the rental payments payable by the Franchise Operator in respect of the Applicable Rolling Stock (as such term is defined in paragraph 3.2 of Part 5 of this Schedule 14) as a result of such amendments;

recognising that not all such principles may be consistent with each other and, except for paragraphs 9(a), (b) and (c) (which shall be paramount provided always that the Authority's specifications in respect of paragraphs 9(b) and (c) need to be taken into account in respect of paragraph (a)), and as such, may be applied to a greater or lesser extent as considered appropriate by the Panel.

10 Factors

The principles outlined in paragraph 9 shall be considered in the light of the following non-exhaustive factors:

- (a) the Directions and Guidance of the Authority;
- (b) the terms of Part 2 of this Schedule and any preceding Output Plan;
- (c) the terms of other equivalent arrangements under any other franchise agreement;
- (d) in relation to the next Update Point, the time within which the Output Commitments are expected to be complied with and the originally scheduled date;
- (e) any material changes in circumstances since the date of this Franchise Agreement;
- (f) the relevant Annual Business Plans of the Franchise Operator;
- (g) the practical feasibility of the relevant Proposals;
- (h) the availability of funding from any relevant persons or bodies (other than the Authority);
- (i) what the parties might have reasonably agreed to if the Proposals had been Output Commitments on signature of the Franchise Agreement.

Part 8 Special Output Review ²⁴⁹

1 Purpose of Special Output Review

- 1.1** *The purpose of the provisions of this Part 8 is to set out the arrangements which are to govern a review ("the Special Output Review") of the Franchise Operator's commitments in respect of the "Evergreen Outputs" (as defined and described in the First Output Plan).*
- 1.2** *For the avoidance of doubt, the purpose of the Special Output Review is to:-*
- 1.2.1** *ascertain whether the criteria in paragraph 4.5 have been met;*
- 1.2.2** *where the criteria in paragraph 4.5 have not been met then to allow alternative proposals to be made in accordance with paragraph 4.7; and*
- 1.2.3** *where no alternative proposals are made or the parties are unable to agree then to apply the provisions of paragraph 5.*

Unless otherwise agreed, the Special Output Review is not intended to review or amend the nature or timing of the Evergreen Outputs or any other of the obligations of the Franchisee or the Franchise Operator under or in respect of the Franchise Agreement or the First Output Plan.

2. Information for Special Output Review

By 16th December 2004 (or such later date as the Authority may agree) ("the Special Output Review Point") the Franchise Operator shall:-

2.1 supply to the Authority:-

- (a)** *the estimated Evergreen Charge;*
- (b)** *the Franchise Operator's draft supplement to the Long-Term Business Plan as relevant for the Evergreen Outputs for:-*
- (i)** *the period from the Special Output Review Point to the expiry of the Franchise Term; and*
- (ii)** *the period from the Special Output Review Point to the expiry of the Minimum Franchise Term.*

In each case such supplement to the Long-Term Business Plan shall be prepared to take account of the fact that the finally agreed basis for the delivery of Project Evergreen Phases A and B, as embodied in the Project Documents, only involves the Franchise Operator incurring a financial cost in respect of Project Evergreen Phases A and B until such time as the Regulatory Value is added to the regulatory asset base and, in consequence, is reflected in the charges payable generally by users of the network. Prior to this occurring the Franchise Operator will contribute to such cost through the payment of any of the Facility Charge, the Incremental Access Charge, the Incremental O & M Charge, the Additional O & M Charge and the Project Termination Charge pursuant to the Fourth Supplemental. Such draft supplement will be provided in such formats (including on disc) as the Authority may reasonably require;

²⁴⁹ Date of Change DOA 2004

(c) the Franchise Operator's estimate of the amount of the Evergreen Component of Franchise Payments together with all relevant supporting information and calculations;

(d) the date by which the Franchise Operator must have secured the agreement of the Authority under this Part 8 in order to be able to comply with its obligations under the First Output Plan in respect of the dates for the delivery of the Evergreen Outputs; and

(e) the Franchise Operator's project plan prepared in accordance with Part 3 of the First Output Plan and such plan shall specify the Franchise Operator's proposed delivery date for the Evergreen Outputs provided that:

(i) the Authority and the Franchise Operator shall endeavour to agree the date by which compliance with the Evergreen Robust Outputs is anticipated for the purposes of

(a) defining "z" (as referred to when describing the Reporting Periods in respect of which each PPM Benchmark relates in Part 4 of Schedule 7 and the Annual Target Dates in Part 3 of Schedule 15); and,

(b) monitoring the Committed Outputs in accordance with Part 3 of the First Output Plan,

this date shall be the "Anticipated Delivery Date". If the parties dispute such date then the matter may be referred for resolution in accordance with the Dispute Resolution Rules; and

(ii) the Anticipated Delivery Date shall be no later than the Backstop Delivery Date applicable to the Evergreen Robust Outputs

(f) any other matter which the Franchise Operator may consider appropriate to include or which the Authority may reasonably request should be so included.

Without prejudice to the above, the Authority shall be entitled at any time to request any further information or calculations which it reasonably considers necessary and the Franchise Operator shall deliver such information or calculations to the Authority as soon as practicable or within such other period as the parties may agree. Without limiting the foregoing, the Franchise Operator agrees that, for the purpose of reviewing and agreeing the revised Evergreen Charge estimates, the Franchise Operator will allow the Authority (including the Authority's accountants and other professional advisers) full access (including the right to take copies) to its relevant records (both financial and otherwise).

2.2 subject always to Clause 38.4 of this Franchise Agreement, have demonstrated to the Authority's reasonable satisfaction (having used such methodology as may have been reasonably specified by the Authority) that the infrastructure works which the Franchise Operator proposes to carry out or procure (as briefly described in the First Output Plan) to enable the Franchise Operator to comply with its obligations in the First Output Plan in respect of the Evergreen Outputs and with its associated obligations in this Franchise Agreement (including, without limitation its obligations under Clause 5.3 in respect of the provision of the Passenger Services):

2.2.1 will have a reasonable prospect of complying with the Robust Outputs and the Timetable Outputs;

2.2.2 will not result in shortening of the headways in the First Output Plan by an unnecessary margin; and

2.2.3 will have an appropriate but not excessive margin of operational resilience to enable the Franchise Operator to deliver the Evergreen Outputs.

If any of the matters in paragraph 2.2 are disputed the matter may be referred for resolution in accordance with the Dispute Resolution Rules.

3. Parameters of Special Output Review

The supplement to the Long-Term Business Plan, the Evergreen Charge, the estimated value of the Evergreen Component of Franchise Payments and other information to be supplied by the Franchise Operator pursuant to paragraph 2.1 shall all be prepared and calculated on the basis of the following principles:-

3.1 *nothing in this paragraph 3 will require the Authority to accept any Evergreen Charge shown by the revised capital cost and Additional O & M Charge and Incremental O & M Charge estimate except to the extent that the Authority, acting reasonably, is satisfied that:-*

(a) all steps which could properly be taken to minimise such Evergreen Charge have been taken; and

(b) all costs comprised within such Evergreen Charge estimate have been negotiated and determined (as between the persons respectively charging and paying those costs) on an arms length basis.

3.2 *[not used]*

3.3 *[not used]*

3.4 *In respect of the supplement to the Long Term Business Plan:*

(a) it shall (unless otherwise agreed) be determined using the same principles and methodology used in the preparation of the First Long-Term Business Plan except for revisions required as a result of:

(i) changes to GAAP;

(ii) the changes consequent upon the finally agreed basis for the delivery of Project Evergreen Phases A and B as embodied in the Project Documents being different to that assumed when the First Long Term Business Plan was prepared; or

(iii) any other changes which may be agreed, or which have been agreed, by the parties since the date of signature of the Franchise Agreement.

(b) at the Authority's request the parties shall jointly commission an independent audit of the supplement to the Long-Term Business Plan in order to review the changes it makes to the relevant sections of the financial model which shall be paid for by the Franchise Operator. The identity of the auditor shall be subject to the Authority's reasonable approval. The auditor's terms of reference shall be determined by the Franchise Operator (subject to the Authority's reasonable approval) and shall place the auditor under an obligation to report to both the Franchise Operator and the Authority.

4. Consideration and agreement of proposed revisions

- 4.1** *The Authority and the Franchise Operator shall, from time to time, meet and discuss the preparation of the proposals referred to in paragraph 2. The Authority shall give due consideration to the information and proposals supplied by the Franchise Operator under paragraph 2 and the Authority and the Franchise Operator shall procure a meeting of their respective representatives as soon as reasonably practicable after the date of the submission of the information and proposals to discuss the same.*
- 4.2** *The Authority and the Franchise Operator shall discuss the Franchise Operator's information and proposals in good faith and, subject to and in accordance with the parameters contained in paragraph 3 and this paragraph 4, use all reasonable endeavours to agree any required revisions to the First Long-Term Business Plan without undue delay.*
- 4.3** *For the avoidance of doubt, the Authority shall not be obliged to consider or agree any revisions to the First Long-Term Business Plan or any consequential or other amendments to the Franchise Agreement except for those supplements or revisions to the First Long-Term Business Plan anticipated by, and required in order to give effect to the principles referred to in paragraph 3, and paragraph 4.5.*
- 4.4** *If there is any dispute as to the financial assumptions made in the supplement to the First Long-Term Business Plan required to give effect to the principles referred to in paragraph 3 and paragraph 4.5, any such dispute may be referred by either the Authority or the Franchise Operator for resolution in accordance with the Dispute Resolution Rules.*
- 4.5** *If the Franchise Operator:*
- 4.5.1** *complies with the requirements to provide information as specified in paragraph 2.1;*
- 4.5.2** *satisfies the test specified in paragraph 2.2;*
- 4.5.3** *ensures that the Evergreen Charge is equal to or less than £7,363,625 and confirms that it has been calculated on the basis set out in paragraph 3;*
- 4.5.4** *confirms that it is able to comply with the Evergreen Outputs by the applicable Backstop Delivery Dates; and*
- 4.5.5** *demonstrates that the supplement to the Long Term Business Plan has been prepared in accordance with paragraph 3.4*
- then the Authority shall issue a notice in the form set out at the Annex to this Schedule 14 stating that the Franchise Operator may proceed with Project Evergreen. If the Authority either fails to, or refuses to, issue such a notice where this paragraph 4.5 applies on or before 20 December 2003 (or such later date as the parties have agreed in writing) then the Franchise Operator may refer the matter for resolution in accordance with the Dispute Resolution Rules. For the avoidance of doubt if, prior to such date the parties agree that the issue of whether the Franchise Operator has complied with this paragraph 4.5 is disputed then either party may refer the matter for resolution in accordance with the Dispute Resolution Rules. If the matter is resolved in favour of the Franchise Operator then the Likely Delivery Dates and Backstop Delivery Dates applicable to the Evergreen Outputs shall be adjusted to take account of such delay. For the avoidance of doubt, the adjusted Likely Delivery Dates and Backstop Delivery Dates applicable to the Evergreen Outputs shall fall on a Passenger Change Date.*
- 4.6** *[Not used]*

4.7 *If the information supplied by the Franchise Operator demonstrates that the Franchise Operator is unable to comply with paragraph 4.5 then the information and proposals supplied by the Franchise Operator under paragraph 2 may indicate alternative proposals which the Franchise Operator is prepared to make.*

4.8 *Where:-*

(a) the Franchise Operator has made alternative proposals in accordance with paragraph 4.7; or

(b) the Authority notifies the Franchise Operator that the requirements of paragraph 2.2 have not been met, and accordingly that the Authority is not reasonably satisfied for the purposes that paragraph,

then the Authority and the Franchise Operator may but shall not be obliged to agree such revisions to the First Long Term Business Plan, the First Output Plan and any other amendments to the Franchise Agreement as they agree are necessary or desirable. This may include, but need not be limited to amending the Evergreen Outputs and/or timing and/or any of the works to be carried out in connection with the Evergreen. Outputs.

4.9 *For the avoidance of doubt, nothing in paragraph 4.8 shall require the Authority to agree to issue a notice under paragraph 4.5. Accordingly, if the parties have not reached agreement under paragraph 4.8 within three months after the Authority determines whether the Franchise Operator shall proceed with Project Evergreen (or such later date as the Authority may agree) the Authority may at any time thereafter (and if requested by the Franchise Operator to do so, shall) serve notice on the Franchise Operator stating that the provisions of paragraph 5 shall apply.*

5. Effect of Failure to Agree Proposed Revisions

If the Authority serves a notice under paragraph 4.9 the following provisions shall take immediate effect:-

5.1 *The Franchise Term shall expire at 2.00am on 31 December 2011 and Clause 20.1 of the Franchise Agreement shall be adjusted accordingly subject to the following:-*

(a) any extension of the Franchise Term in accordance with Clause 20.2 of the Franchise Agreement;

(b) nothing shall prevent the Authority at any future date agreeing to reinstate the Original Franchise Term in which case the Franchise Payments paid since the Franchise Commencement Date shall be taken into account for the purposes of calculating any future Franchise Payment

5.2 *The Franchise Payments shall be calculated in accordance with paragraph 2 of Part 3 of Schedule 6 of the Franchise Agreement.*

5.3 *[not used]*

5.4 *In Schedule 14 of the Franchise Agreement:*

5.4.1 In Part 1 the reference to "31 December 2013" in the definition of Minimum Franchise Term shall be deleted and replaced with a reference to "31 December 2011".

5.4.2 Paragraph 10 of Part 4 shall be replaced with the following:

"First Update Point

If the parties agree that no Proposals shall be taken forward in respect of the Output Study (if any) prepared for the First Update Point then the Franchise Term will be amended to expire at 2a.m. on 31 December 2011 and the provisions of paragraph 2 of Part 3 of Schedule 6 (Ten Year Franchise) shall supply."

5.5 In relation to the Franchise Plan:-

5.5.1 Delete paragraph 18 (Enhancements to Rolling Stock 2011).

5.6 In relation to the First Output Plan:-

5.6.1 The provisions of paragraph 1.2 of Part 2 shall not apply and consequently the Franchise Operator shall not be required to comply with the Evergreen Outputs.

Part 9 Additional Provisions for First Update Point and Scheme Specific Reviews

1. New definitions

In this Part 9 the following definitions shall apply:

“Ardley Parkway” means a new interchange station proposed to be constructed at Ardley between Aynho and Bicester.

“Aylesbury Vale Parkway” means a new interchange station proposed to be constructed at Aylesbury Vale between Aylesbury and Claydon North Junction.

“Conditional Extension” means in respect of each First Update Point Scheme an extension to the Minimum Franchise Term being conditional upon satisfaction of the applicable Scheme Pre-Conditions as at the relevant Scheme Specific Review.

“First Update Point Schemes” means each of Ardley Parkway, Aylesbury Vale Parkway and West Hampstead Interchange.

“Scheme Pre-Conditions” means the pre-conditions to an extension to the Minimum Franchise Term that apply to each of the First Update Point Schemes as agreed or determined at, or following, the First Update Point, which shall be detailed in the Output Plan prepared for the First Update Point.

“Scheme Specific Review” means in respect of each First Update Point Scheme, such date as may have been agreed or determined at, or following, the First Update Point, which shall be detailed in the Output Plan prepared for the First Update Point.

“West Hampstead Interchange” means a new transport interchange proposed to be constructed at West Hampstead which will allow passengers to change between Network Rail’s Midland Main Line, North London Line and Chiltern Line and LUL’s Jubilee and Metropolitan Lines.

2. Amendment of Schedule 14

The parties have agreed that the matters set out in this Part 9 shall apply in connection with the First Update Point and the three Scheme Specific Reviews and that Part 4 of Schedule 14 of the Franchise Agreement shall be amended and supplemented (to the extent required to reflect this Part 9) for the purposes of the First Update Point and the three Scheme Specific Reviews.

3. Franchise Operator Proposals

3.1 The Franchise Operator shall be required to submit to the Authority:

- (a) Pursuant to paragraph 5 of Part 4 of Schedule 14, Output Commitments that it proposes to assume and commence during the next Phase in connection with all of the First Update Point Schemes; and*
- (b) Pursuant to paragraph 7.1 of Part 4 of Schedule 14, an Output Study incorporating those proposals made in connection with the First Update Point Schemes, which Output Study shall include the Franchise Operator’s proposals for the Scheme Pre-Conditions and date for the Scheme Specific Review for each First Update Point Scheme.*

- 3.2 *For the avoidance of doubt, the Franchise Operator's obligations set out in paragraph 3.1 above are without prejudice to the Franchise Operator's right to submit proposals in connection with additional schemes or projects, not being First Update Point Schemes, pursuant to paragraph 5 of Part 4 of Schedule 14 and to submit an Output Study that incorporates Output Commitments in respect of such additional schemes and projects.*
4. *Review of Franchise Operator's Proposals*
- 4.1 *The Authority shall give due consideration to the Output Study prepared for the First Update Point including, without limitation, proposals for Scheme Pre-Conditions and the date for each Scheme Specific Review for each First Update Point Scheme. The Authority shall consider whether the Output Commitments and Output Aspirations set out in such Output Study and which the Franchise Operator proposes to assume or develop (as applicable) during the Franchise Term are sufficient. If the Authority in its absolute discretion determines that such proposals are not sufficient then the Authority shall (in accordance with paragraph 7.3(c) of Part 4 of Schedule 14) be entitled to amend the Franchise Term provided that such amended Franchise Term shall be no shorter than the period of the Minimum Franchise Term.*
- 4.2 *In addition to the matters listed in paragraph 7.4 of Part 4 of Schedule 14 the Output Plan will set out Scheme Pre-Conditions and the date for each Scheme Specific Review and in the event of disagreement as to whether there should be Scheme Pre-Conditions and /or what such Scheme Pre-Conditions should be and the date for any Scheme Specific Review the matter may be referred to the Mediator or the Panel pursuant to paragraphs 8 and 9 of Part 4 of Schedule 14.*
- 4.3 *Following agreement or determination of an Output Plan the Franchise Agreement shall be amended to reflect any unconditional extension to the Minimum Franchise Term and any Conditional Extensions which in either case the Authority, in its absolute discretion, shall determine to be appropriate as a consequence of the Output Commitments undertaken by the Franchise Operator in the Output Plan.*
5. *Scheme Specific Reviews*
- 5.1 *The purpose of each Scheme Specific Review is to ascertain whether the Scheme Pre-Conditions applicable to the relevant First Update Point Scheme have already or will have been satisfied at that point and accordingly whether the Minimum Franchise Term may be extended by the applicable Conditional Extension.*
- 5.2 *No later than two months prior to the date of a Scheme Specific Review, the Franchise Operator shall notify the Authority whether in connection with the relevant First Update Point Scheme it considers that the applicable Scheme Pre-Conditions have been satisfied and shall provide supporting information with such notification. The Authority shall be entitled to request such further information or calculations that it reasonably considers necessary and the Franchise Operator shall deliver such information or calculations to the Authority as soon as practicable following receipt of such request.*
- 5.3 *Within one month of the delivery of the Franchise Operator's notification pursuant to paragraph 5.2 above, the Franchise Operator and the Authority shall procure a meeting of their respective representatives to discuss the notification and supporting information.*

5.4 *Subject to the Franchise Operator having demonstrated to the Authority's reasonable satisfaction, by the applicable Scheme Specific Review, that the relevant Scheme Pre-Conditions have been satisfied then the Minimum Franchise Term shall be extended by the applicable Conditional Extension.*

5.5 *Upon a Conditional Extension becoming unconditional the Franchise Agreement shall be amended to reflect the revised unconditional Minimum Franchise Term.*

6. No Reduction in Minimum Franchise Term

For the avoidance of doubt nothing in this Part 9 of Schedule 14 shall entitle the Authority at any time to seek to reduce the Minimum Franchise Term to a period expiring prior to the expiry of the unconditional or conditional Minimum Franchise Term as at the relevant time."

ANNEX

Date 2004

From: The Strategic Rail Authority

To; The Chiltern Railway Company Limited at M40 Trains Limited

Franchise Agreement dated 1st March 2002 made between (1) The Strategic Rail Authority Limited (2) M40 Trains Limited (3) The Chiltern Railway Company Limited ("the Franchise Agreement")

1. Except where the context otherwise requires terms defined and references construed in the Franchise Agreement (including the Schedules thereto) shall have the same meaning and construction in this Notice.
2. The Authority hereby confirms that in accordance with paragraph 4.5 of Part 8 of Schedule 14 of the Franchise Agreement the Franchise Operator may proceed with Project Evergreen
3. The Authority hereby confirms that the Franchise Operator and the Franchisee are authorised to enter into such of the Project Documents as provide for them to be a party.

For and behalf of the Strategic Rail Authority

APPENDIX 5

First Output Plan

- a) Paragraph 1.3.1 (a) of Part 2 of the first Output Plan shall be deleted and replaced with:

"The Likely Delivery Date for the Evergreen Timetable Output shall be the Passenger Change Date for the Winter 2006/2007 Timetable"

- b) Paragraph 1.3.1(c) of Part 2 of the First Output Plan shall be deleted and replaced with:

"The Backstop Delivery Date for the Evergreen Timetable Outputs shall be the Passenger Change Date for the Winter 2007/2008 Timetable"

- c) Paragraphs 1.3.2(c) and (b) of Part 2 of the First Output Plan shall be deleted and replaced with:

a. The Likely Delivery Date for the Evergreen Robust Outputs shall be the Passenger Change Date for the Winter 2006/2007 Timetable

b. The Backstop Delivery Date for the Evergreen Robust Outputs shall be the Passenger Change Date for the Winter 2007/2008 Timetable

SECOND OUTPUT PLAN²⁵⁰

PART 1: DEFINITIONS

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

“Backstop Delivery Date” means the final date by which the relevant Output Commitments must be complied with by the Franchise Operator as specified in this Output Plan;

“Birmingham Mainline Robust Outputs” means the Output Commitments specified in paragraphs 1.1 of Part 2;

“Birmingham Mainline Timetable Outputs” means the Output Commitments specified in paragraph 1.3 of Part 2;

“DfT Specified Freight Robust Outputs” means the Output Commitments specified in paragraphs 1.13 of Part 2;

“Evergreen 3 Robust Outputs” means the Birmingham Mainline Robust Outputs and the Oxford Robust Outputs;

“Likely Delivery Date” means the date by which the Franchise Operator is required to have used its reasonable endeavours to comply with the relevant Output Commitments as specified in this Output Plan;

“Oxford Robust Outputs” means the Output Commitments specified in paragraph 1.7 of Part 2;

“Oxford Timetable Outputs” means the Output Commitments specified in paragraph 1.9 of Part 2; and

“Subsidiary Change Date” has the meaning given that term in Part D of the Network Rail Network Code.

2. Construction and Interpretation

In this Output Plan:

²⁵⁰ Date of Change 06/01/2010

2.1 *Terms and expressions defined in the Franchise Agreement shall have the same meaning and the rules of construction and interpretation set out in the Franchise Agreement shall apply unless the context otherwise requires.*

2.2 *Unless otherwise specified:*

- (a)** *any reference to a Schedule shall be a reference to the corresponding Schedule to the Franchise Agreement;*
- (b)** *any reference to a paragraph or Part shall be a reference to the corresponding paragraph or Part of this Output Plan;*

2.2 *Where the context so admits any reference to the Franchise Agreement shall be a reference to the Franchise Agreement as the same may be modified or deemed modified, by this Output Plan or otherwise, from time to time.*

PART 2: OUTPUT COMMITMENTS

1. Committed Outputs

Birmingham Mainline Robust Outputs

1.1 *For the purposes of the fulfilment of its obligations in paragraph 1.2 the Franchise Operator shall provide or procure the following enhancements to the network on which the Passenger Services operate:*

1.1.2 *Track geometry and signalling improvements to increase the length of route over which 100mph running can be achieved. Enhanced line speeds and changes to stopping patterns of trains will achieve a Marylebone to Birmingham Moor St journey time of 100 minutes.*

1.1.3 *The line speed improvements are to be achieved by a combination of junction improvements, general track realignments and signalling alterations in order to remove a number of restrictive speed limits.*

Willesden Green to Neasden South Junction

1.1.4 *The linespeed will be increased from 60mph to 75mph*

Neasden South Junction Area

1.1.5 *The junction is to be reconfigured in order for the Birmingham line to become the main route and the Harrow line to become the diverging route. The line speed to Harrow will remain at 60mph. The line speed to Birmingham will increase to 75mph (from 40mph). Beyond the junction, the line speed on the Birmingham line will then increase to 85mph and then 100mph by Wembley Stadium station.*

Wembley Stadium to Northolt Park

- 1.1.6** *The line speed on both lines will be increased from 60mph to 100mph by means of signalling enhancements and localised track realignment.*

Northolt Park to South Ruislip

- 1.1.7** *A new down line will be created, paralleling the existing up line and avoiding the Greenford line intersection bridge. The new down line and existing Up line will have a line speed of 100mph. The existing down line will be retained to provide a passing loop. Northolt Junction will be reconfigured to reflect the revised layout, with retention of existing functionality towards Paddington and for freight trains entering and leaving the West Waste terminal.*

South Ruislip to West Ruislip

- 1.1.8** *The speed limits on the down and up lines will be increased to 100mph by a combination of upgrading pointwork, plain line realignment and signalling improvements. A new facing crossover is proposed close to London Underground Limited's Ruislip Gardens station to enable terminating trains to access West Ruislip up platform and to accommodate potential future lengthening of the up loop at West Ruislip to accommodate 775m freight trains.*

West Ruislip to Beaconsfield

- 1.1.9** *The line speeds to be increased to 100mph in each direction. Approximately 12 miles of plain line is to be upgraded in order to achieve these speeds. The track slews required at Beaconsfield will necessitate alterations to the station platforms.*

High Wycombe Area

- 1.1.10** *It is anticipated that the general speeds on both lines will increase to 100mph with exceptions of 80mph around Saunderton and 60mph through High Wycombe.*

Princes Risborough Area

- 1.1.11** *A new 85mph up through line, with the down main line also raised to 85mph. New turnouts at 40mph giving access to the Up loop and platform. The 25mph crossover at the London end will remain, and a new 40mph trailing crossover at the country end will replace the existing 25mph crossover.*

Bicester Area

- 1.1.12** *The existing speed limit of 25mph on the up line will be overcome by the realignment of the up line in order to remove the severe deviation to both the north and south of the station. This work will necessitate the widening of the*

platform in order that passengers may alight from stopping trains on the up line. This work, together with signalling alterations in the area, will result in 100mph line speeds for both up and down trains.

Aynho Area

1.1.13 *Aynho Junction will be remodelled to enhance Marylebone route speeds to 90mph on the up line (currently 65mph) and 85mph on the down line (currently 40mph).*

1.2 *Unless as may otherwise be agreed by the Authority and the Franchise Operator:*

(a) the Likely Delivery Date for the Birmingham Mainline Robust Outputs shall be the Passenger Change Date occurring in or around December 2011; and

(b) the Backstop Delivery Date Birmingham Mainline Robust Outputs shall be the Passenger Change Date occurring in or around December 2012.

Birmingham Mainline Timetable Outputs

1.3 *Clause 5 of the Franchise Agreement shall apply and the Franchise Operator shall to the extent required by that clause include each of the Birmingham Mainline Timetable Outputs in the Timetable and Train Plan as if the Birmingham Mainline Timetable Outputs described in tables attached as annex 1 to this Part 2 were specified in part 1 of Schedule 3 of the Franchise Agreement.*

1.4 *The Franchise Operator shall negotiate (and subject to the agreement of Network Rail and the approval of the Regulator) shall amend the Track Access Agreement so as to enable it secure the rights required in order to comply with its obligations paragraph 1.3.*

1.5 *The Franchise Operator shall (subject to the agreement of Network Rail) procure that the Rules of the Plan are as soon as reasonably practicable amended as required to allow the introduction of a Timetable and Train Plan which includes the Birmingham Mainline Timetable Outputs.*

1.6 *Unless as may otherwise be agreed by the Authority and the Franchise Operator:*

(a) the Likely Delivery Date for the Birmingham Mainline Timetable Outputs shall be the Passenger Change Date occurring in or around December 2011; and

(b) the Backstop Delivery Date for the Birmingham Mainline Timetable Outputs shall be the Passenger Change Date occurring in or around December 2012.

Oxford Robust Outputs

- 1.7** *For the purposes of the fulfilment of its obligations in paragraph 1.8 the Franchise Operator shall provide or procure the following enhancements to the network on which the Passenger Services operate:*

Bicester

- 1.7.1** *A new double track ladder junction is to be inserted on the main line south of Bicester North Station, a double track chord line is to be constructed on new formation connecting to the existing Bletchley – Oxford single track railway which will be relaid in double track through the existing Bicester Town station. This station will be reconstructed and extended to accommodate 6 cars and to serve Bicester Village. The double track will continue through the station and revert to single line with a 50mph turnout. Throughout where single track is specified the single track and cableways, amongst others, are to be positioned such that the line may be double tracked in future without affecting the operating railway and track and services positions. Line speeds through this section to be 40mph on the chord and 50mph through the station accelerating to 100mph on the single line section.*

Bicester Ministry of Defence Depot (“MOD”)

- 1.7.2** *The MOD connection will be reconfigured to provide a 775m long passing loop connected to the MOD network at the Oxford end of the MOD Exchange Sidings. This facility will provide standage for full length MOD trains awaiting access to MOD sidings and will replace the existing arrangements located at the Bicester end of the site.*

Islip

- 1.7.3** *The existing station platforms to be extended to 6 car length. 100mph running is to be maintained through the station.*

Islip to Water Eaton

- 1.7.4** *West of Islip the line is to be re-laid for approximately 2 miles as double track railway with a new parkway station at Water Eaton with two 6-car platforms and similar facilities to Warwick Parkway. 100mph running is to be provided at the Islip end of this section reducing to 70mph towards Water Eaton.*

Water Eaton to Oxford

- 1.7.5** *The double track railway will revert to single track at Wolvercot Tunnel with 70mph running through the tunnel, increasing to 75mph to Oxford. At Oxford the tracks will terminate via a 25mph turnout in the two new platforms on the site of old parcels bays. Both platforms will be able to accommodate a 6-car train.*

- 1.8** *Unless as may otherwise be agreed by the Authority and the Franchise Operator:*
- (a) the Likely Delivery Date for the Oxford Robust Outputs shall be the Passenger Change Date occurring in or around December 2012; and*
 - (b) the Backstop Delivery Date Oxford Robust Outputs shall be the Subsidiary Change Date occurring in or around May 2014.*

Oxford Timetable Outputs

- 1.9** *Clause 5 of the Franchise Agreement shall apply and the Franchise Operator shall to the extent required by that clause include each of the Oxford Timetable Outputs in the Timetable and Train Plan as if the Oxford Timetable Outputs described in tables attached as annex 2 to this Part 2 were specified in part 1 of Schedule 3 of the Franchise Agreement.*
- 1.10** *The Franchise Operator shall negotiate (and subject to the agreement of Network Rail and the approval of the Regulator) shall amend the Track Access Agreement so as to enable it secure the rights required in order to comply with its obligations paragraph 1.8.*
- 1.11** *The Franchise Operator shall (subject to the agreement of Network Rail) procure that the Rules of the Plan are as soon as reasonably practicable amended as required to allow the introduction of a Timetable and Train Plan which includes the Oxford Timetable Outputs.*
- 1.12** *Unless as may otherwise be agreed by the Authority and the Franchise Operator:*
- (a) the Likely Delivery Date for the Oxford Timetable Outputs shall be the Passenger Change occurring in or around December 2012; and*
 - (b) the Backstop Delivery Date for the Oxford Timetable Outputs shall be the Subsidiary Change Date occurring in or around May 2014.*

DfT Specified Freight Robust Outputs

- 1.13** *For the purposes of the fulfilment of its obligations in paragraph 1.15 the Franchise Operator shall:*
- (a) provide or procure enhancements to the network between Oxford North Junction and Bicester Gavray Junction to enable trains to run with structure clearances sufficient for W12 gauge with OLE as set out in Network Rail Company Standard NR/L2/TRK/2049 entitled "Track Design Handbook." It is agreed that following completion of the Oxford Robust Outputs there will only be a single track through Wolvercot Tunnel. The Franchise Operator agrees that such track shall be aligned to permit a second track to be laid without any requirements to realign the existing track and so that, if a second track is laid, both tracks will have structure clearances sufficient for W12 gauge with OLE;*

- (b) *procure that any new structures constructed over the network between Oxford North Junction and Bicester Gavray Junction will comply with “TENs Gauge” as set out in the Network Rail Company Standard NR/L2/TRK/2049 A 8.1c entitled “ Track Design Handbook”; and*
- (c) *procure that the route between Oxford North Junction to Bicester Gavray Junction will following completion of the Oxford Robust Outputs have axle load capability of RA10 up to 75 mph and RA8 up to 100mph and have signalling and a track layout capable of handling 775 metre freight trains (including the Ministry of Defence loop at Bicester and the standage area between Oxford North Junction and Woodstock Road Junction).*
- 1.14 *For the avoidance of doubt no work or enhancements will be undertaken between Oxford North Junction (inclusive) and Oxford Station (inclusive) by the Franchise Operator for the purpose of fulfilment of its obligations in paragraph 1.13.*
- 1.15 *Unless as may otherwise be agreed by the Authority and the Franchise Operator:*
 - (a) *the Likely Delivery Date for the DfT Specified Freight Robust Outputs shall be the Passenger Change Date occurring in or around December 2012; and*
 - (b) *the Backstop Delivery Date DfT Specified Freight Robust Outputs shall be the Subsidiary Change Date occurring in or around May 2014.*
- 2. *Proposed amendments to Evergreen 3 Robust Outputs*
 - 2.1 *The Franchise Operator may propose amendments to any of the Evergreen 3 Robust Outputs (including the Backstop Delivery Date applicable to such Evergreen 3 Robust Outputs) where for material reasons beyond the control of the Franchise Operator, and despite the Franchise Operator having used its reasonable endeavours, it cannot comply with its obligations in paragraph 1.*
 - 2.2 *Any such amendment shall require the Authority’s approval (such approval not to be unreasonably withheld or delayed) in writing.*
 - 2.3 *The Authority and the Franchise Operator shall discuss any such proposed amendments to the Evergreen 3 Robust Outputs in good faith.*
Monitoring delivery of Outputs
 - 2.3 *The provisions of paragraph 1.4 of part 2 and part 3 of the First Output Plan shall apply mutatis mutandis to this Output Plan.*

PART 4: NEXT PSOU

- 1. *In accordance with paragraph 2 of Part 4 of Schedule 14 of the Franchise Agreement it is agreed that there will only be a further Update Point if the Minimum Franchise Term is adjusted from 2am on 31st December 2021 pursuant to the provisions of paragraph 7.3(e) of Part 4 of Schedule 14 of the*

Franchise Agreement. In the event that the Minimum Franchise Term is so adjusted the next Update Point will be 1 December 2014.

PART 5: NEW STATIONS

- 1. From the Likely Delivery Date relating to the Oxford Timetable Change Outputs or (if later) the date upon which the Franchise Operator holds a Safety Certificate and Licence in respect of the following stations such that they can be operated by the Franchise Operator as a railway station paragraph (b) of part 2 of Schedule 2 shall be amended by the addition of such stations in alphabetical order:***

- (a) Bicester Town;***
- (b) Islip;***
- (c) Oxford; and***
- (d) Water Eaton Parkway.***

ANNEX 1: Birmingham Mainline Timetable Outputs.

Replaces Flow A, Tables 1-6 in Output Plan from the Passenger Change Date or Subsidiary Change Date on which the Franchise Operator begins to deliver the Passenger Services comprised in the Birmingham Mainline Timetable Outputs.

4.2 FLOW A: London Marylebone to Birmingham Snow Hill-Mondays to Fridays¹**Table 1: Monday to Friday services to London Marylebone from stations specified in Column A**

Station of Departure / Core Calling Pattern	Early Service to London Marylebone from Station in column A, shall arrive at London Marylebone no later than	Late Service to London Marylebone from station in column A, shall depart no earlier than	Maximum intervals between services, including Early and Late Services (minutes)	% of services which cannot exceed the maximum Journey Time specified in column F	Maximum Journey Time of services specified in column E (minutes)	Maximum Journey Time of all services (minutes)	Morning Peak number of services arriving London Marylebone, between 0700-0959	Number of trains per hour arriving at London Marylebone between 0700-2100 (excluding peak hours)
A	B	C	D	E	F	G	H	I
Birmingham Snow Hill	1015	2115	60	N/A	N/A	N/A	3	1
Birmingham Moor Street	1015	N/A	60	90%	115	135	5	2
Solihull	1015	N/A	60	N/A	N/A	N/A	5	2
Warwick Parkway	1015	N/A	60	N/A	N/A	N/A	7	2
Leamington Spa	1015	N/A	60	N/A	N/A	N/A	8	2
Banbury	0730	N/A	60	75%	75	85	11	2 ½ (a)

Table 2: Monday to Friday from London Marylebone to stations specified in Column A

Station of Arrival / Core Calling Pattern	Early Service from London Marylebone to station in column A, shall arrive no later than	Late Service from London Marylebone to station in column A, shall depart no earlier than	Maximum intervals between Early and Late Services (minutes)	% of services which cannot exceed the maximum Journey Time specified in column F	Maximum Journey Time of services specified in column E (minutes)	Maximum Journey Time of all services (minutes)	Evening Peak number of services departing London Marylebone, between 1600-1859	Trains per hour departing from London Marylebone between 0700-2100 (excluding peak hours)
A	B	C	D	E	F	G	H	I
Banbury	N/A	2230	60	75%	75	85	11	2½ (a)
Leamington Spa	N/A	2030	60	N/A	N/A	N/A	9	2
Warwick Parkway	N/A	2030	60	N/A	N/A	N/A	8	2
Solihull	N/A	2030	60	N/A	N/A	N/A	7	2
Birmingham Moor Street	N/A	2030	60	90%	115	135	7	2
Birmingham Snow Hill	1030	2030	60	N/A	N/A	N/A	3	1

Footnotes to Column I in Tables 1 and 2:

(a) 5 services every 2 hours, which may include trains serving Stratford-upon Avon.

4.2.1 Additional Early Services (Flow A, Table 1 and Table 2):

- (a) Two services from Birmingham Snow Hill arrive at London Marylebone no later than 0900, at a minimum interval of 45 minutes between arrivals.**
- (b) Three services from Leamington Spa shall arrive at London Marylebone between 0745-0915, with the interval between arrivals being not less than 15 minutes.**
- (c) A service from London Marylebone to Snow Hill shall depart no later than 0650.**
- (d) Two services from Banbury shall arrive at Birmingham Snow Hill between 0800-0930, at a minimum interval of 45 minutes between arrivals.**

4.2.2 Additional Late Evening Services (Flow A, Table 1 and Table 2):

- (a) Two services from Birmingham Snow Hill to Leamington Spa shall depart after the Late Service as specified in Table 1, Column C, with the last train being no later than 2330. Both services shall call at all stations between Birmingham Snow Hill and Leamington Spa, except Bordesley and Small Heath.**

4.2.3 Widney Manor and Dorridge (Flow A Table 1 and Table 2) shall be served by:

- (a) One service departing Birmingham Snow Hill between 1700-1800.**
- (b) Both additional late evening services departing from Birmingham Snow Hill to Leamington Spa specified in Paragraph 4.2.2(a), after the Late Service from Birmingham Snow Hill to London Marylebone.**
- (c) One service to arrive at Birmingham Snow Hill between 0800-0830.**
- (d) Late Service from London Marylebone to Birmingham Snow Hill as specified in Table 2, Column C.**
- (e) Dorridge shall be served by 5 services to London Marylebone in the Morning Peak & 7 services from London Marylebone in the Evening Peak.**
- (f) Dorridge shall be served by 2 trains per hour arriving at or departing from London Marylebone between 0700-2100 (excluding the Morning Peak and Evening Peak hours).**

4.2.4 Lapworth and Hatton (Flow A, Table 1 and Table 2) shall be served by:

- (a) An hourly service departing Birmingham Snow Hill for London Marylebone at or after 1700.**
- (b) Early Service from Birmingham Snow Hill to London Marylebone as specified in Table 1, Column C.**
- (c) Both additional late evening services departing from Birmingham Snow Hill to Leamington Spa specified in Paragraph 4.2.2(a), after the**

Late Service from Birmingham Snow Hill to London Marylebone.

- (d) A service to arrive at Birmingham Snow Hill between 0900-0930.***
- (e) An hourly service departing Marylebone for Birmingham Snow Hill at or after 1520 (Lapworth) and 1630 (Hatton).***
- (f) Late Service from London Marylebone to Birmingham Snow Hill as specified in Table 1, Column C.***

4.2.5 Warwick (Flow A, Table 1 and Table 2) shall be served by:

- (a) Hourly between and including the Early and Late Services specified in each direction.***
- (b) Two services from Banbury shall arrive at Birmingham Snow Hill between 0800-0930, at a minimum interval of 45 minutes between arrivals.***
- (c) Both additional late evening services departing from Birmingham Snow Hill to Leamington Spa specified in Paragraph 4.2.2(a), after the Late Service from Birmingham Snow Hill to London Marylebone.***

4.2.6 Warwick Parkway, Tyseley, Acocks Green and Olton (Flow A, Table 1 and Table 2) shall be served by:

- (a) Both additional late evening services departing Birmingham Snow Hill to Leamington Spa specified in Paragraph 4.2.2(a), after the Late Service from Birmingham Snow Hill to London Marylebone.***

4.2.7 Kidderminster and Stourbridge Junction (Flow A, Table 1 and Table 2) shall be served by:

- (a) Three services shall arrive in London Marylebone between 0700-0959.***
- (b) Three services shall depart London Marylebone between 1600-1859.***

4.2.8 The Stratford-upon-Avon branch (Flow A, Table 1 and Table 2)

- (a) *The following number of services between London Marylebone and Stratford-upon Avon shall be provided at the following stations:*

Station	Number of services from London Marylebone to Stratford-upon-Avon	Number of services from Stratford-upon-Avon to London Marylebone
Banbury	7(a)	7(a)
Leamington Spa	7(a,c)	7(a,c)
Warwick	7(a,b,c)	7(a,b,c)
Hatton	4(a,c)	4(a,c)
Claverdon	3(a,c)	4(a,c)
Bearley	4(a,c)	5(a,c)
Wilmcote	2(a,c)	2(a,c)
Stratford-upon-Avon	7(a,c)	7(a,c)

Footnotes

- (a) *up to three trains in each direction may be provided by a dedicated connection at Leamington Spa.*
 (b) *one service in each direction may call at Warwick Parkway instead of Warwick.*
 (c) *two services in each direction shall call at each of these stations (in the Stratford-upon-Avon -Leamington Spa direction (one service need not call at Bearley and Claverdon & one service may be provided by means of a maximum 12 minute connection at Hatton).*

(b) Early and Late Services between Stratford-upon Avon and London Marylebone

- (i) *Two services shall depart from London Marylebone to Stratford-upon-Avon no later than 1130.*
 (ii) *A late service shall depart from London Marylebone to Stratford-upon-Avon no earlier than 1830.*
 (iii) *An early service from Stratford-upon Avon shall arrive at London Marylebone no later than 1000.*
 (iv) *A late service shall depart from Stratford-upon Avon to London Marylebone no earlier than 1900.*
 (v) *The Maximum Journey Time between Stratford-upon-Avon and London Marylebone in either direction shall not exceed 150 minutes.*

(c) Early and Late Services between Stratford-upon-Avon and Leamington Spa

- (i) *An early service shall depart from Stratford-upon-Avon between 0600-0630.*
 (ii) *An early service shall depart from Leamington Spa no later than 0800.*
 (iii) *A late service shall depart from Stratford-upon-Avon no earlier than 1900 & connect with a train to London Marylebone.*
 (iv) *The Maximum Journey Time between Stratford-upon-Avon and Leamington Spa in either direction shall not exceed 35 minutes.*
 (v) *All reasonable endeavours shall be made to time services to meet the needs of students travelling to school.*

4.3 Flow A: London Marylebone to Birmingham Snow Hill-Saturdays

Table 3: Saturday services to London Marylebone from stations specified in Column A

Station of Departure/Core Calling Pattern	Early Service to London Marylebone from station in column A, shall arrive at London Marylebone no later than	Late Service to London Marylebone from station in column A, shall depart no earlier than	Maximum intervals between Early and Late Services (minutes)	% of services which cannot exceed the maximum Journey Time specified in column F	Maximum Journey Time of services specified in column E (minutes)	Maximum Journey Time of all services (minutes)	Number of trains per hour arriving at London Marylebone between 0700-2100
A	B	C	D	E	F	G	I
Birmingham Snow Hill	1015	1915	60	N/A	N/A	N/A	1(a)
Birmingham Moor Street	1015	N/A	60	90%	115	135	2(a)
Solihull	1015	N/A	60	N/A	N/A	N/A	2(a)
Warwick Parkway	1015	N/A	60	N/A	N/A	N/A	2(a)
Leamington Spa	1015	N/A	60	N/A	N/A	N/A	2(a)
Banbury	0815	2215	60	75%	75	85	2½ (b d)

Table 4: Saturday services from London Marylebone to stations specified in Column A

Station of Departure/Core Calling Pattern	Early Service to London Marylebone from station in column A, shall arrive at London Marylebone no later than	Late Service to London Marylebone from station in column A, shall depart no earlier than	Maximum intervals between Early and Late Services (minutes)	% of services which cannot exceed the maximum Journey Time specified in column F	Maximum Journey Time of services specified in column E (minutes)	Maximum Journey Time of all services (minutes)	Number of trains per hour arriving at London Marylebone between 0700-2100
A	B	C	D	E	F	G	I
Banbury	N/A	2230	60	75%	75	85	2½ (c d)
Leamington Spa	N/A	1830	60	N/A	N/A	N/A	2(c)
Warwick Parkway	N/A	1830	60	N/A	N/A	N/A	2(c)
Solihull	N/A	1830	60	N/A	N/A	N/A	2(c)
Birmingham Moor Street	N/A	1830	60	90%	115	135	2(c)
Birmingham Snow Hill	1030	1830	60	N/A	N/A	N/A	1(c)

Footnotes to Column I in Tables 3 and Table 4:

- (a) Two services shall arrive at London Marylebone from these stations in the time period 0700-0900. One service shall arrive at London Marylebone from these stations in the time period 2000-2100.
- (b) Two services shall arrive at London Marylebone from Banbury in the time period 0700-0900. One service shall arrive at London Marylebone from Banbury in the time period 2000-2100.
- (c) One service shall depart London Marylebone for these stations in each of the time periods 0700-0800 and 2000-2100.
- (d) 5 trains every 2 hours, which may include trains serving Stratford-upon-Avon, except in the hours covered by footnotes (b) and (c) above.

4.3.1 Additional Early Services (Flow A, Table 3 and Table 4):

- (a) A service from Snow Hill shall arrive at London Marylebone no later than 0915.
- (b) A service from London Marylebone to Birmingham Snow Hill shall depart no later than 0645.

4.3.2 Additional Late Evening Services (Flow A, Table 3 and Table 4):

- (a) Two services from Birmingham Snow Hill to Leamington Spa at 60 minute intervals after the departure of the Late Service from Birmingham Snow Hill to London Marylebone as specified in Table 3, Column C.

4.3.3 Widney Manor and Dorridge (Flow A, Table 3 and Table 4) shall be served by:

- (a) Both additional late evening services from Snow Hill to Leamington Spa specified in Paragraph 4.3.2(a), after the Late Service from Birmingham Snow Hill to London Marylebone.

4.3.4 Lapworth and Hatton (Flow A, Table 3 and Table 4) shall be served by:

- (a) An hourly service departing London Marylebone to Birmingham Snow Hill at or after 1430.
- (b) Early Service from Birmingham Snow Hill to London Marylebone as specified in the table above.
- (c) An hourly service departing Birmingham Snow Hill to London Marylebone at or after 1700.
- (d) Both additional late evening services from Snow Hill to Leamington Spa specified in Paragraph 4.3.2(a), after the Late Service from Birmingham Snow Hill to London Marylebone.

4.3.5 Warwick (Flow A, Table 3 and Table 4) shall be served by:

- (a) Hourly between Early and Late Services specified in each direction in the table above.
- (b) Both additional late evening services from Snow Hill to Leamington Spa specified in Paragraph 2.2(a), after the Late Service from Birmingham Snow Hill to London Marylebone.

4.3.6 The Stratford-upon-Avon branch (Flow A, Table 3 and Table 4)

- (a) The following number of services between London Marylebone and Stratford-upon-Avon shall be provided at the following stations:**

Station	Number of services from London Marylebone to Stratford-upon-Avon	Number of services from Stratford-upon-Avon to London Marylebone
Banbury	5	5
Leamington Spa	5(i)	5(i)
Warwick	5(i)	5(i)
Hatton	4(i)	4(i)
Claverdon	2(i)	2(i)
Bearley	3(i)	3(i)
Wilmcote	3(i)	3(i)
Stratford-upon-Avon	5(i)	5(i)

- (i) one additional service to the number of services shown in the table above shall be provided in each direction between Leamington Spa and Stratford-upon-Avon, calling at each of these stations, but need not be a service that originates from or terminates at London Marylebone.**

(b) Early and Late Services from Stratford-upon-Avon and London Marylebone:

- (i) An early service shall depart from London Marylebone to Stratford-upon-Avon no later than 0900.**
- (ii) A late service shall depart from London Marylebone to Stratford-upon-Avon no earlier than 1830.**
- (iii) An early service shall depart from Stratford-upon-Avon to London Marylebone no later than 0800.**
- (iv) A late service shall depart from Stratford-upon-Avon to London Marylebone no earlier than 1730.**
- (v) The Maximum Journey Time between Stratford-upon-Avon and London Marylebone in either direction shall not exceed 150 minutes.**

4.4 Flow A: London Marylebone to Birmingham Snow Hill- Sundays

Table 5: Sunday services to London Marylebone from stations specified in Column A

Station of Departure/Core Calling Pattern	Early Service to London Marylebone from station in column A, shall arrive at London Marylebone no later than	Late Service to London Marylebone from station in column A, shall depart no earlier than	Maximum intervals between services, including Early and Late Services (minutes)	Maximum Journey Time of all services (minutes)	Number of trains per hour arriving at London Marylebone between 1200 and 2100
A	B	C	D	G	I
Birmingham Snow Hill	1200	2105	60	N/A	1
Birmingham Moor Street	1200	N/A	60	135	2
Solihull	1200	N/A	60	N/A	2
Warwick Parkway	1200	N/A	60	N/A	2
Leamington Spa	1200	N/A	60	N/A	2
Banbury	1045	2215	60	85	2

Table 6: Sunday services from London Marylebone to stations specified in Column A

Station of Arrival/Core Calling Pattern	Early Service from London Marylebone to station in column A, shall arrive no later than	Late Service from London Marylebone to station in column A, shall depart no earlier than	Maximum intervals between services, including Early and Late Services (minutes)	Maximum Journey Time of all services (minutes)	Number of trains per hour departing from London Marylebone between 1200 and 2100
A	B	C	D	G	I
Banbury	0925	2330	60(a)	85	2
Leamington Spa	N/A	2130	60	N/A	2
Warwick Parkway	N/A	2130	60	N/A	2
Solihull	N/A	2130	60	N/A	2
Birmingham Moor Street	N/A	2130	60	135	2
Birmingham Snow Hill	1050	2130	60	N/A	1

Footnotes to Column D in Table 5 and Table 6:

(a) An interval of 80 minutes is permitted before 0900

4.4.1 Warwick (Flow A, Table 5 and Table 6) shall be served by:

Hourly between Early and Late Services specified in each direction.

4.4.2 The Stratford-upon Avon branch (Flow A, Table 5 and Table 6)

(a) Summer Services

Between June and September five services shall run in each direction between Stratford-upon-Avon and the following stations: Wilmcote, Hatton, Warwick, Leamington Spa, Banbury, and London Marylebone.

(b) Early and Late Summer Departures from Stratford-upon-Avon and London Marylebone

(i) An early service shall depart from Stratford-upon-Avon to London Marylebone no later than 1200.

(ii) An early service shall depart from London Marylebone to Stratford-upon-Avon no later than 1000.

(iii) A late service shall depart from Stratford-upon-Avon to London Marylebone no earlier than 1930.

(iv) A late service shall depart from London Marylebone to Stratford-upon-Avon no earlier than 1700.

(c) Winter Services

Between October and May five services shall run in each direction between Stratford-upon-Avon and the following stations: Wilmcote, Warwick, and Leamington Spa.

ANNEX 2: Oxford Timetable Outputs

Replaces Flow B in Output Plan from the Passenger Change Date or Subsidiary Change Date on which the Franchise Operator begins to deliver the Oxford Timetable Outputs

4.5 Flow B: London Marylebone to Bicester-Monday to Fridays

Table1: Monday to Friday services to London Marylebone from stations specified in Column A

Station of Departure /Core Calling Pattern	Early Service to London Marylebone from station in column A, shall arrive no later than	Late Service to London Marylebone from station in column A, shall depart no earlier than	Maximum intervals between services, including Early and Late Services (minutes)	Maximum Journey Time of all services (minutes)	Morning Peak number of services arriving London Marylebone, between 0700-0959	Number of trains per hour arriving or departing from London Marylebone between 0700-2100 (excluding peak hours)
A	B	C	D	G	H	I
Oxford	0745	2210	60	80	6	2
Water Eaton Parkway	0745	2210	60	N/A	6	2
Bicester (c)	0730	2225(a)	60	N/A	11	4
Haddenham & Thame Parkway	0730	2240(a)	60	N/A	10	2 ½ (d)
Princes Risborough	0700	2310(b)	60	N/A	11	3

Table 2: Monday to Friday services from London Marylebone to stations specified in Column A

Station of Arrival /Core Calling Pattern	Early Service from London Marylebone to station in column A, shall arrive no later than	Late Service from London Marylebone to station in column A, shall depart no earlier than	Maximum intervals between services, including Early and Late Services (minutes)	Maximum Journey Time of all services (minutes)	Evening Peak number of services departing London Marylebone, between 1600-1859	Trains per hour arriving or departing from London Marylebone between 0700- 2100 (excluding peak hours)
A	B	C	D	G	H	I
Princes Risborough	0740	2330	60	N/A	14	3
Haddenham & Thame Parkway	0750	2230	60	N/A	10	2 ½ (d)
Bicester (c)	0800	2230	60	N/A	11	4
Water Eaton Parkway	0725	2215	60	N/A	6	2
Oxford	0730	2215	60	80	6	2

Footnotes to Columns C and I in Table 1 and Table 2:

- (a) *The Late Service is the same service that has to depart Snow Hill for London Marylebone no earlier than 2115 (Flow A, Table 1).*
- (b) *The Late Service is the same service that has to depart Aylesbury for London Marylebone no earlier than 2300 (Flow B, Paragraph 4.5.3(c)).*
- (c) *Bicester North or Bicester Town*
- (d) *5 trains every 2 hours*

4.5.1 Kings Sutton (Flow B, Table 1 and Table 2) shall be served by:

- (a) *Nine services in each direction shall call at regular intervals.***
- (b) *A service from Kings Sutton shall be provided that arrives at London Marylebone no later than 0730.***
- (c) *A service from Kings Sutton shall be provided that arrives at Banbury no later than 0800.***
- (d) *A service from London Marylebone shall depart London Marylebone no earlier than 2230.***
- (e) *A service from Banbury shall depart no earlier than 2100.***

4.5.2 Little Kimble (Flow B, Table 1 and Table 2) shall be served by:

- (a) *10 services in each direction shall call at this station.***
- (b) *In all cases, services need not be through services, but may be provided by means of a connection at Princes Risborough, so long as the connection does not exceed 10 minutes.***

4.5.3 Monks Risborough (Flow B, Table 1 and Table 2) shall be served by:

- (a) *An Early Service from Aylesbury to London Marylebone arriving at London Marylebone no later than 0700 and a Late Service departing Aylesbury no earlier than 2300, shall call at this station.***
- (b) *Between the Early and Late Services from Aylesbury to London Marylebone, an hourly service shall be provided, with one interval of up to 120 minutes permitted and one interval of up to 75 minutes permitted after 1900.***
- (c) *An Early Service from London Marylebone to Aylesbury arriving at Aylesbury no later than 0845 and a Late Service departing London Marylebone to Aylesbury no earlier than 2300, shall call at this station.***
- (d) *Between the Early and Late Services from London Marylebone to Aylesbury, an hourly service shall be provided, with one interval of up to 75 minutes permitted after 1900.***
- (e) *In all cases, services need not be through services, but may be provided by means of a connection at Princes Risborough, so long as the connection does not exceed 10 minutes.***

4.5.4 Saunderton (Flow B, Table 1 and Table 2) shall be served by:

- (a) *Hourly departures to London Marylebone shall be provided between 0540 and 2240. One interval of 105 minutes is permitted after 1900.***
- (b) *Hourly departures from London Marylebone shall be provided between 0700 and 2330.***

4.5.5 Maximum Journey Time for Services between London Marylebone and Aylesbury (via Princes Risborough)

- (a) The Maximum Journey Time for services from London Marylebone to Aylesbury via Princes Risborough shall not exceed 81 minutes.**
- (b) The Maximum Journey Time for services from Aylesbury to London Marylebone via Princes Risborough shall not exceed 83 minutes.**

4.5.7 Islip (Flow B, Table 1 and Table2) shall be served by:

- (a) Seven services in each direction shall call at regular intervals.**
- (b) A service from Islip shall be provided that arrives at Oxford no later than 0830.**
- (c) A service from Oxford to Islip shall be provided that departs between 1700 and 1800.**

4.6 Flow B: London Marylebone to Bicester – Saturdays

Table 3: Saturday services to London Marylebone from stations specified in Column A

Station of Departure /Core Calling Pattern	Early Service to London Marylebone from station in column A, shall arrive at London Marylebone no later than	Late Service to London Marylebone from station in column A, shall depart no earlier than	Maximum intervals between services, including Early and Late Services (minutes)	Maximum Journey Time of all services (minutes)	Number of trains per hour arriving or departing from London Marylebone between 0700-2100
A	B	C	D	G	I
Oxford	0830	2205	60	80	2
Water Eaton Parkway	0830	2210	60	N/A	2
Bicester (g)	0815	2220	60	N/A	4(a)
Haddenham & Thame Parkway	0815	2230	60	N/A	2(b)
Princes Risborough	0815	2240	60	N/A	2(c)

Table 4: Saturday services from London Marylebone to stations specified in Column A

Station of Arrival /Core Calling Pattern	Early Service from London Marylebone to station in column A, shall arrive no later than	Late Service from London Marylebone to station in column A, shall depart no earlier than	Maximum intervals between services, including Early and Late Services (minutes)	Maximum Journey Time of all services (minutes)	Number of trains per hour at London Marylebone between 0700- 2100
A	B	C	D	G	I
Princes Risborough	0830	2230	60	N/A	2(d)
Haddenham & Thame Parkway	0840	2230	60	N/A	2(e)
Bicester (g)	0850	2230	60	N/A	4(f)
Water Eaton Parkway	0725	2215	60	N/A	2
Oxford	0730	2215	60	80	2

Footnotes to Column I in Tables 3 and 4:

- (a) The number of services required to arrive at London Marylebone from Bicester North is one per hour between 0700-0900, two per hour between 0900-1100, and one per hour between 2000-2100.
- (b) The number of services required to arrive at London Marylebone from Haddenham & Thame Parkway is one per hour between 0700-0900 and 2000-2100.
- (c) The number of services required to arrive at London Marylebone from Princes Risborough is three per hour between 0900-1100 and one per hour between 2000-2100.
- (d) The number of services required to depart London Marylebone for Princes Risborough is one per hour between 0700-0800.
- (e) The number of services required to depart London Marylebone for Haddenham & Thame Parkway is one per hour between 0700-0800 and 2000-2100.
- (f) The number of services required to depart London Marylebone for Bicester North is one per hour between 0700-0800, two per hour between 0800-1000 and 1900-2000, and one per hour between 2000-2100.
- (g) Bicester North or Bicester Town

4.6.1 Kings Sutton (Flow B, Table 3 and Table 4) shall be served by:

- (a) *Nine services in each direction shall call at regular intervals.***
- (b) *A service from Kings Sutton shall be provided that arrives at London Marylebone no later than 0900.***
- (c) *A service from Kings Sutton shall be provided that arrives at Banbury no later than 0830.***
- (d) *A service from London Marylebone shall depart London Marylebone no earlier than 2230.***
- (e) *A service from Banbury shall depart no earlier than 2100 (unless this service is provided by another TOC).***

4.6.2 Little Kimble (Flow B, Table 3 and Table 4) shall be served by:

- (a) *10 services in each direction shall call at this station.***
- (b) *In all cases, services need not be through services, but may be provided by means of a connection at Princes Risborough, so long as the connection does not exceed 10 minutes.***

4.6.3 Monks Risborough (Flow B, Table 3 and Table 4) shall be served by:

- (a) *An Early Service from Aylesbury to London Marylebone arriving at London Marylebone no later than 0730 and a Late Service departing Aylesbury no earlier than 1900, shall call at this station.***
- (b) *Between the Early and Late Services from Aylesbury to London Marylebone, an hourly service shall be provided.***
- (c) *An Early Service from London Marylebone to Aylesbury arriving Aylesbury no later than 0945 and a Late Service departing London Marylebone no earlier than 2300, shall call at this station.***
- (d) *Between the Early and Late Services from Marylebone to Aylesbury, an hourly service shall be provided. One interval of up to 120 minutes is permitted after 1900.***
- (e) *In all cases, services need not be through services, but may be provided by means of a connection at Princes Risborough, so long as the connection does not exceed 10 minutes.***

4.6.4 Saunderton (Flow B, Table 3 and Table 4) shall be served by:

- (a) *Hourly departures to London Marylebone between 0615 and 1930.***
- (b) *Hourly departures from London Marylebone between 0700 and 2230.***

4.6.5 Maximum Journey Time for Services between London Marylebone and Aylesbury (via Princes Risborough)

- (a) The Maximum Journey Time for services from London Marylebone to Aylesbury via Princes Risborough shall not exceed 81 minutes.**
- (b) The Maximum Journey Time for services from Aylesbury to London Marylebone via Princes Risborough shall not exceed 83 minutes.**

4.6.6 Bicester Town and Water Eaton Parkway Services (Flow B, Table 4):

- (a) Two services from Bicester Town and Water Eaton Parkway shall arrive at Oxford between 0800 and 0900. These services may be formed of services specified in Table 4.**

4.6.7 Islip (Flow B, Table 3 and Table 4) shall be served by:

- (a) Seven services in each direction shall call at regular intervals.**

4.7 Flow B: London Marylebone to Bicester – Sundays

Table 5: Sunday services to London Marylebone from stations specified in Column

A					
Station of Departure /Core Calling Pattern	Early Service to London Marylebone from station in column A, shall arrive at London Marylebone no later than	Late Service to London Marylebone from station in column A, shall depart no earlier than	Maximum intervals between services, including Early and Late Services (minutes)	Maximum Journey Time of all services (minutes)	Number of trains per hour arriving at London Marylebone between 1200 and 2100
A	B	C	D	G	I
Oxford	1100	2205	60	90	2(d)
Water Eaton Parkway	1100	2210	60	N/A	2(d)
Bicester (c)	1045	2220	60	N/A	3
Haddenham & Thame Parkway	1045	2230	60	N/A	2
Princes Risborough	1045	2240	60	N/A	3

Table 6: Sunday services from London Marylebone to stations specified in Column

A					
Station of Arrival /Core Calling Pattern	Early Service from London Marylebone to station in column A, shall arrive no later than	Late Service from London Marylebone to station in column A, shall depart no earlier than	Maximum intervals between Early and Late Services (minutes)	Maximum Journey Time of all services (minutes)	Number of trains per hour departing from London Marylebone between 1200 and 2100
A	B	C	D	G	I
Princes Risborough	0840	2330	60(a)	N/A	3
Haddenham & Thame Parkway	0850	2330	60(a)	N/A	2
Bicester (c)	0900	2330	60(a)	N/A	3(b)
Water Eaton Parkway	0910	2315	60(e)	N/A	2(f)
Oxford	0915	2215	60(e)	90	2(f)

Footnotes to Columns D and I in Tables 5 and 6:

- (a) An interval of 80 minutes is permitted before 0900.
- (b) In one of the specified hours there may be two trains departing London Marylebone.
- (c) Bicester North or Bicester Town
- (d) The number of services required to arrive at London Marylebone from Oxford is one per hour between 1800-2100.
- (e) An interval of 80 minutes is permitted before 1015.
- (f) The number of services required to depart London Marylebone for Oxford is one per hour between 1200 and 1300 and between 1900 and 2100.

4.7.1 Kings Sutton (Flow B, Table 5 and Table 6) shall be served by:

- (a) Seven services in each direction shall call at regular intervals.**

4.7.2 Little Kimble / Monks Risborough (Flow B, Table 5 and Table 6) shall be served by:

- (a) An Early Service from Aylesbury to London Marylebone departing Aylesbury no later than 0730 and a Late Service departing Aylesbury no earlier than 2215 shall call at these two stations.**
- (b) Between the Early Service and 1900, an hourly service shall be provided from Aylesbury to London Marylebone. One further service shall be provided from Aylesbury to London Marylebone between 1900 and the Late Service specified in Paragraph 4.7.2 (a).**
- (c) An Early Service from London Marylebone to Aylesbury departing London Marylebone no later than 0830 and a Late Service departing London Marylebone no earlier than 2300 are to call at these two stations.**
- (d) Between the Early and Late Services, an hourly service shall be provided from London Marylebone to Aylesbury.**
- (e) In all cases services need not be through services, but may be provided by means of a connection at Princes Risborough, so long as the connection does not exceed 10 minutes.**

4.7.3 Saunderton (Flow B, Table 5 and Table 6) shall be served by:

- (a) Hourly departures to London Marylebone between 0730 and 2300, with one interval of 90 minutes permitted after 1900.**
- (b) Hourly departures from London Marylebone between 0815 and 2315.**

Schedule 15

- Targets and Performance Reviews

Part 1 - Definitions

In this Schedule 15, except to the extent the context otherwise requires:

“Annual Target Date”²⁵¹	<i>means until 7 December 2003 the closest date to 7 December in each Franchise Operator Year which is the first day of a Reporting Period, as the same may be adjusted in accordance with this Franchise Agreement, and after 7 December 2003 means the closest date to 31 March in each Franchise Operator Year which is the first day of a Reporting Period, as the same may be adjusted in accordance with this Franchise Agreement.</i>
“Aspirational Target(s)”	means those aspirational target(s) as at the Franchise Commencement Date set out in Part 3 of Schedule 15.
“Customer Satisfaction Target”	means each of the targets in respect of customer satisfaction in connection with the Franchise Services, as set out in Part 3 of Schedule 15, or as re-set from time to time pursuant to this Agreement.
“Measurement Period”	means, in relation to each Annual Target Date, the 13 Reporting Periods immediately preceding such Annual Target Date
“Operational Performance Target”	means the target(s) in respect of the operational performance of the Passenger Services, as set out in Part 3 of Schedule 15, or as re-set from time to time pursuant to this Agreement.
“Performance Review Date”	<p>Means each and any of the following dates:</p> <p>1 April 2006</p> <p>1 April 2011, and</p> <p>1 April 2016</p> <p>as the same may be adjusted in accordance with this Franchise Agreement.</p>
“Performance Review Period”	means the period between Performance Review Dates, (except in the case of the first Performance Review Period, which shall mean the period commencing on the Franchise Commencement Date and ending on the first Performance Review Date and the fourth Performance Review Period, which shall

²⁵¹ Replacement text inserted wef 18th November 2003

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mean the period commencing on the last Performance Review Date and ending on the last day of the Franchise Term).

“Target”

means each and any of a Customer Satisfaction Target and an Operational Performance Target.

Part 2 – Operation of Targets and Performance Review Provisions

- 1** The Franchise Operator will use all reasonable endeavours to achieve each Target set in accordance with this Agreement as soon as is reasonably practicable and by no later than the relevant Annual Target Date or (as applicable) the relevant Performance Review Date.
- 2** If the Franchise Operator has failed, as at an Annual Target Date to achieve any Operational Performance Target set in respect of the Measurement Period applicable to such Annual Target Date or, as at a Performance Review Date to achieve any Customer Satisfaction Target set in respect of the Performance Review Period which ends on such Performance Review Date, or if at any time it is likely that the Franchise Operator will fail to achieve such Target, the Franchise Operator will immediately notify the Authority. Provided further that:
 - 2.1** In any event, where and to the extent reasonably requested by the Authority to do so, the Franchise Operator shall provide such further information and attend such meetings as the Authority may request in relation to the Franchise Operator's attempts to achieve the Targets and any failure or likely failure to do so. Such meetings may include such meetings with third parties as the Authority considers appropriate. Where there has been a failure to achieve any Target, such meetings may include, by way of example only, meetings with Local Authorities and/or groups representing the interests of passengers.
 - 2.2** Where it is likely that the Franchise Operator will fail to achieve any Operational Performance Target the Franchise Operator shall submit a recovery plan which shall include a full explanation of the reasons for the anticipated failure, a description of the steps the Franchise Operator proposes to take to achieve such Target and its proposals for how the Annual Target Date(s) and/or the Performance Review Date may be adjusted. The Authority shall take the Franchise Operator's recovery plan into account when determining what action to take under paragraph 3 PROVIDED THAT where the Franchise Operator demonstrates that it has used all reasonable endeavours to achieve such Target the following provisions shall apply:
 - (a)** the parties shall each use reasonable endeavours to agree the recovery plan;
 - (b)** where the parties agree the recovery plan and the Franchise Operator subsequently fails to achieve the relevant Target by the Annual Target Date (as amended) then paragraph 3 shall apply;
 - (c)** where the parties agree the recovery plan then the Franchise Operator shall be obliged to comply with such recovery plan and the provisions of paragraph 3.2 below shall apply;
 - (d)** where the parties are unable to agree the recovery plan then paragraph 3 shall apply;
- 3** If the Franchise Operator has failed, as at an Annual Target Date to achieve any Operational Performance Target set in respect of the Measurement Period applicable to such Annual Target Date or, as at a Performance Review Date to achieve any Customer Satisfaction Target set in respect of the Performance Review Period which ends on such Performance Review Date, or if the Authority reasonably determines that it is not possible for the Franchise Operator to achieve a Target by

the applicable Annual Target Date or Performance Review Date, the Authority may determine:

- 3.1** that the relevant Target shall be deemed to have been achieved. If the Authority so determines, then such non-achievement of Target will not constitute a breach or contravention of this Franchise Agreement and the following provisions of this paragraph 3 shall not apply in respect of such non-achievement;
- 3.2** to extend the period for the achievement of the relevant Target (in which case, the Authority may adjust the level of that Target to such less demanding level and/or make such adjustments to the mechanism by which achievement will be measured at the end of the extended period, as in each case the Authority may in its absolute discretion determine to be appropriate). If it so determines to extend the period then:

 - (a)** non-achievement of the relevant original Target as at the relevant original Annual Target Date or Performance Review Date (as applicable) shall not of itself be regarded as a breach or contravention of this Franchise Agreement subject to paragraph 3.2(b) below;
 - (b)** for the avoidance of doubt, at the end of the extended period specified by the Authority, the provisions of this paragraph 3 shall apply, mutatis mutandis as if that date was the original Annual Target Date or Performance Review Date (as applicable) (and, if the Authority has specified a less demanding target, as if that target were the original Target); and
 - (c)** the Authority shall be entitled to re-set the dates of any or all of the subsequent Annual Target Dates and/or Performance Review Dates (as applicable) to such later date as it may consider appropriate to take account of the postponement of that Annual Target Date and/or Performance Review Date (as applicable) (for the avoidance of doubt, on the basis that such revised date(s) will then constitute the Annual Target Date and/or Performance Review Date (as applicable)) for all Targets for the purposes of this Schedule 15. The Authority shall notify the Franchise Operator of any such revision to any subsequent Annual Target Date and/or Performance Review Date at the same time as it notifies the Franchise Operator of the extension to the then current Annual Target Date and/or Performance Review Date; or
- 3.3** that the non-achievement of the relevant Target shall constitute a breach and a contravention of the Franchise Agreement for all purposes (including, without limitation, the Act).
- 4** The Authority, in considering what determination to make (if any) in relation to paragraph 3 shall take into consideration the following matters:

 - 4.1** the number and nature of the Target(s) which have not been achieved;
 - 4.2** the extent of the margin by which any Target has not been achieved;
 - 4.3** the extent to which it appears to the Authority (in its reasonable opinion) that the Franchise Operator's ability to achieve any Target has been materially affected by any *Force Majeure* Event or by the frequency, number and materiality of any emergency and/ or temporary speed restrictions imposed by Railtrack or LUL;
 - 4.4** the extent to which it appears to the Authority (in its reasonable opinion) that the Franchise Operator's performance as against any Target (as shown by and measured in accordance with the provisions of Part 3 of this Schedule 15) is or may be materially unrepresentative of its actual performance against that Target

(whether as a result of the manner in which that performance has been measured or otherwise);

4.5 the extent to which an Action Plan has been proposed or is in operation under Clause 8.4 which addresses the matter in respect of which there has been a non-achievement of a Target (but having regard to any difference in the levels of customer satisfaction which the Franchise Operator is required to achieve under Clause 8.4 as compared with the relevant Target level(s) in this Schedule 15);

4.6 the extent to which:-

- (a)** the non-achievement of a Target has been affected by the performance by the Franchise Operator in accordance with the Franchise Agreement, of its Output Commitments (as defined in Schedule 14 and the Output Plan);
- (b)** the performance by the Franchise Operator of such Output Commitments in accordance with such obligations under this Agreement would reasonably be expected to result in the Target being achieved;
- (c)** the Franchise Operator has used its reasonable endeavours to achieve the Target in so far as consistent with the carrying out of the relevant Output Commitments; and
- (d)** the non-achievement of a Target has been affected by any delay in the Franchise Operator's compliance with the Depot Robust Outputs (as such term is defined in the First Output Plan) and, where there has been a delay, the extent to which such delay is attributable to Railtrack refusing to make sufficient personnel available, or frustrating the availability of such personnel, to perform the signalling works required to enable the Franchise Operator to comply with the Depot Robust Outputs (as such term is defined in the First Output Plan).

any other matters which it may consider appropriate to take into consideration from time to time.

5 The Authority shall have the right to re-set the Targets on or following a Performance Review Date, in accordance with the following provisions:

5.1 following any Performance Review Date (and subject to and without limiting any rights of the Authority under paragraph 3), the Authority shall determine, having regard to the matters referred to in paragraph 5.2, what adjustment (if any) shall be made to the Targets for the Performance Review Period immediately following that Performance Review Date. For the avoidance of doubt, where the Authority has, in accordance with paragraph 3.2, extended the period for the achievement of any Target, the Authority will determine the adjustments applicable to that Target following the extended date for achievement of that Target and may delay the adjustment of any other Target until that time.

5.2 In determining what adjustment (if any) shall be made to any Target pursuant to this paragraph, the Authority will have regard to the following:

- (a)** the acknowledgement by the parties that this Franchise Agreement has been entered into on the basis of the principle and expectation of a trend of continuous improvement by the Franchise Operator in the provision of the Franchise Services, and the parties' expectation that such improvement will be reflected in the establishment under this Schedule 15 of successively more demanding Targets. For the avoidance of doubt, it is recognised that, in some respects, the provision of improved Franchise Services will be achieved through, and be dependent upon, discrete incremental improvements (including those comprised in the Output

Commitments) which deliver a progressive improvement in the Franchise Services. Reference in this paragraph 5.2(a) to “continuous improvement” shall be construed accordingly.

- (b) the Aspirational Target(s) and, where an Aspirational Target has not been achieved, the trend of improvement in performance which the Authority considers is reasonably required if the Aspirational Targets are to be met by the last Performance Review Date due to occur prior to the expiry of the Franchise Term;
- (c) the level of performance of other Train Operators;
- (d) the level of performance against the relevant Target already achieved by the Franchise Operator and the extent to which that level of performance is or is likely to be sustainable;
- (e) the improvement in performance which the Franchise Operator might reasonably be expected to achieve in the next Performance Review Period;
- (f) the effect (or likely effect) of any investments or improvements made or due to be made which can reasonably be expected to affect the performance of the Franchise Services;
- (g) the fact that the Authority will not make any Target more demanding than:
 - (i) in the case of any Operational Performance Target, the corresponding Aspirational Target; or
 - (ii) in the case of any Customer Satisfaction Target, the levels set out in Part 3(d) of this Schedule 15

unless the Authority is reasonably satisfied that the more demanding Target is consistent with levels of performance which:

- (i) have already been achieved by the Franchise Operator and are likely to be sustainable for the next Performance Review Period; or
- (ii) are likely to be achievable and sustainable by the Franchise Operator during the next Performance Review Period such that the Franchise Operator will achieve the more demanding Target

and for this purpose the level of performance “likely to be achievable/sustainable” means the level of performance which a reasonably experienced, efficient and competent passenger rail operator would ordinarily and properly be expected to achieve in relation to passenger rail services comparable in size, scope and complexity to the Passenger Services (including the effect (or likely effect) of any investments or improvements made or due to be made), taking into account any factors specific to the Passenger Services and the actual performance of other Train Operators (including the effect (or likely effect) of any investment or improvements made or due to be made).

- 6** The Authority shall have the right, on or following a Performance Review Date, to reset each and any Call-in Threshold, Breach Threshold and, where applicable, Default Threshold if and to the extent it considers reasonable to do so in accordance with and subject to the following provisions:

- 6.1** In determining what adjustment (if any) shall be made to any such Threshold, the Authority shall have regard to the following:

- (a) the acknowledgement of the principle and expectation of a trend of continuous improvement referred to in paragraph 5.2(a);
- (b) the level of any Operational Performance Target and any adjustment to an Operational Performance Target(s) determined in accordance with paragraph 5;
- (c) the level of performance of other Train Operators;
- (d) the levels of performance by the Franchise Operator, in respect of each of the areas to which such thresholds apply, during the Performance Review Period which precedes the Performance Review Date and the extent to which that level of performance is likely to be sustainable;
- (e) the effect (or likely effect) of any investments or improvements made or due to be made which can reasonably be expected to affect the performance of the Franchise Services;
- (f) the improvement in performance which the Franchise Operator might reasonably be expected to achieve in the next Performance Review Period;
- (g) the extent of the protection available to the Franchise Operator through the operation of Clause 5.4 (Force Majeure);
- (h) the fact that the Authority would not expect to adjust the level of any such Threshold unless the Authority is reasonably satisfied that the revised Thresholds are consistent with sustainable levels of performance already achieved by the Franchise Operator having regard to the then existing level of the Thresholds and the corresponding level of the Franchise Operator's performance at the time such Thresholds were set.

6.2 If the Franchise Operator disagrees that any or all of any revisions to Thresholds proposed by the Authority in accordance with paragraph 6.1 is reasonable for the Authority to propose and if it shall have notified the Authority accordingly within 14 days of the Authority's determination, then either of the parties may refer that issue for determination in accordance with the Dispute Resolution Rules. Until any revision to a Threshold is agreed or otherwise determined in accordance with this paragraph 6, the relevant existing Threshold shall continue to apply.

6.3 For the avoidance of doubt, unless otherwise agreed by the Authority, in no circumstances shall any Threshold be set at a level which is less onerous than the then existing Threshold.

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7.1 For the purpose of this paragraph 7 (and Clause 8.1 of the Franchise Agreement), "performance standards" means standards of operational reliability and punctuality in respect of the Passenger Services which trigger the payment of discounts to season ticket holders (or other forms of compensation to affected passengers which, in the reasonable opinion of the Authority, replace those provisions of the Passenger's Charter which, as at the date of this Agreement, provide for discounts to season ticket holders).

7.2 The Authority shall have the right to reset, with effect from each Performance Review Date, the performance standards then contained in the Passenger's Charter if and to the extent it considers reasonable in accordance with and subject to the following provisions.

7.3 In determining what adjustment (if any) shall be made to the performance standards contained in the Passenger's Charter prior to the relevant Performance Review Date, the Authority shall have regard to the following:

- (a) the acknowledgement of the principle that, subject to the other provisions of this paragraph 7.3:
 - (i) the performance standards are to be reset at a raised level, with the extent of the adjustment to be proportionate to and consistent with the Relevant Operational Target;
 - (xiii) in determining what adjustment is proportionate and consistent, regard will be had to the improvement in performance represented by the difference (if any) between the Relevant Operational Target and the previous Operational Target (except where the Relevant Operational Target is the first Operational Target in the Franchise Term, in which case, regard shall be had to the difference between the Relevant Operational Target and the level of the Franchise Operator's performance as at the date of the Franchise Agreement).

For this purpose, "the Relevant Operational Target" is the Operational Performance Target against which the Franchise Operator's performance is to be measured at Annual Target Date which most closely coincides with the Performance Review Date in respect of which the performance standards are being reset (and not the Operational Performance Target(s) as reset at that Performance Review Date);

- (b) the extent to which the Relevant Operational Target has or has not been (or is likely to have or not to have been) achieved, the reasons for any non-achievement, where applicable, and any determination made by the Authority pursuant to paragraph 3 of this Part 2 in respect of any non-achievement;
- (c) the adjustment, if any, to the Relevant Operational Target determined by the Authority under paragraph 5 of this Part 2;
- (d) without limiting paragraphs 7.3(b) and 7.3(c), the matters described in paragraphs 5.2(d), (e) and (f);

7.4 If the Franchise Operator disagrees that any of the reset performance standards proposed by the Authority in accordance with paragraph 7.2 is reasonable for the Authority to propose, and if it shall have notified the Authority accordingly within 14 days of the Authority's determination, then either of the parties may refer that issue for determination in accordance with the Dispute Resolution Rules. Until any revision to any performance standard is agreed or otherwise determined in accordance with this paragraph 7, the relevant existing performance standard will continue to apply.

8 If in any case referred for resolution in accordance with the Dispute Resolution Rules pursuant to paragraph 6 or 7 it is determined that it is not reasonable for the Authority to have proposed the relevant Threshold or performance standard (as the case may be) then the Arbitrator appointed to determine the dispute may, as part of its determination, determine the level of the relevant Threshold or performance standard for the purpose of this Part.

9 The rights of the Authority under this Schedule 15 are in addition and without prejudice to any other rights which the Authority may have whether pursuant to this Franchise Agreement or otherwise, including such rights and powers as it may have pursuant to the Act.

Part 3 – Targets

(a) Aspirational Target

The Aspirational Target for operational performance (for achievement by no later than the last Performance Review Date due to occur prior to the expiry of the Franchise Term) is a Public Performance Measure of 93.75%.

(b) Operational Performance Target

The Operational Performance Targets at the Franchise Commencement Date for each Annual Target Date is an average Public Performance Measure (averaged over the Measurement Period applicable to such Annual Target Date) calculated in accordance with the following formula:

$$\text{OPT} = \frac{(N1 \times T1) + (N2 \times T2) + (N3 \times T3)}{13}$$

where

OPT equals the Operational Performance Target for the relevant Annual Target Date

N1 equals the number of Reporting Periods of the applicable Measurement Period which fall within Period 1 being the period described as such in the table below

N2 equals the number of Reporting Periods of the applicable Measurement Period which fall within Period 2 being the period described as such in the table below

N3 equals the number of Reporting Periods of the applicable Measurement Period which fall within Period 3 being the period described as such in the table below

T1, T2 and T3 have the values shown in the table below

Period Number	Period	
1	6 December 2001 to the closest date ("W") which is the last day of a Reporting Period and is X days after 6 December 2003 ²⁵²	T1 = 90.6%
2	the day after W to: (i) where paragraph 5 of the Special Output Review applies, the closest date ("Y") which is the last day of a Reporting Period and is X days after 31 March 2005 ²⁵³ ; or (ii) where the Franchise Operator is required to comply with the Evergreen Timetable Outputs (as defined in the First Output Plan referred to in	T2 = 92.4%

²⁵² Replacement text inserted wef 18th November 2003

²⁵³ Replacement text inserted wef 18th November 2003

	Schedule 14), the date ("Z") being the last day of a Reporting Period which is closest to the date which falls six months before the Anticipated Delivery Date applicable to the Evergreen Phase B Robust Outputs (as defined in the First Output Plan or referred to in Schedule 14 (as applicable))	
3	(i) where paragraph 5 of the Special Output Review applies, from the day after Y; or (ii) where the Franchise Operator is required to comply with the Evergreen Outputs, from the day after Z.	T3 = 93.75%

For the purpose of the table above, X shall be determined as follows:

Under Clause 3.3(C) and 3.3(D) of the Implementation Agreement (as defined in the First Output Plan referred to in Schedule 14) Railtrack are permitted to re-deploy personnel of Westinghouse Rail Systems Limited. If such re-deployment occurs it may affect the Franchise Operator's ability to comply with the Track Doubling Robust Outputs by the relevant Likely Delivery Date (as such terms are defined in the First Output Plan referred to in Schedule 14). The Franchise Operator shall be under a duty to use reasonable endeavours to mitigate the effect of such re-deployment. If, despite having exercised its duties, the Franchise Operator is unable to comply with the Track Doubling Robust Outputs by the relevant Likely Delivery Date then, for the purposes of Schedules 7 and 15 and without prejudice to the Authority's rights and remedies under paragraph 1 of Part 2 of the Output Plan, the date on which the Public Performance Measure shall increase to 92.4% shall be postponed by a period equal to the delay caused by such re-deployment. The parties may resolve any dispute regarding the period of such delay in accordance with the Dispute Resolution Rules. The period of the delay (which shall be expressed in days) shall be known as "X".

The average Public Performance Measure shall be calculated for this purpose in accordance with the following formula:

$$APPM = \frac{PST}{TST} \times 100$$

TST

where:

APPM is the average Public Performance Measure;

PST means the total aggregate number of trains during the Measurement Period which arrive at their scheduled final destination punctually, within the meaning, and consistent with the definition, of the Public Performance Measure; and

TST means the total aggregate number of trains scheduled to run under every Applicable Timetable during the Measurement Period.

(c) **Customer Satisfaction Target^{zzz}**

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- (i) The Customer Satisfaction Targets at the Franchise Commencement Date for the first Performance Review Date

during the Franchise Term are shown below:

Overall Satisfaction

Required Improvement	Franchise Operator Score % Fairly or Very Satisfied (which at Franchise Commencement Date is based on the aggregate of Autumn 1999 and Spring 2000)	Target % Fairly or Very Satisfied
Maintain or improve on NPS Benchmark level	90%	90%

Other Factors**Generic Factors**

Factor	Class Target % Fairly or Very Satisfied as at the date of the Franchise Agreement	Franchise Operator Score % Fairly or Very Satisfied (which at Franchise Commencement Date is based on the aggregate of Autumn 1999 and Spring 2000)	Target % Fairly or Very Satisfied
Information about train times & platforms	84%	80%	82%
Upkeep & repair of train	82%	77%	79%
Comfort of seating area	74%	67%	71%
Station ticket buying facilities	81%	76%	78%
Appropriate environment to catch train	82%	78%	80%
Station Cleanliness	84%	80%	82%
Attitude & helpfulness of station staff	82%	77%	79%
Attitude & helpfulness of train staff	74%	67%	71%
Train cleanliness	82%	78%	80%
On-Train Toilet Facilities	60%	48%	54%
Information during Journey	70%	61%	65%

Specific Factors

Factor	Class Target % Fairly or Very Satisfied as at the date of the Franchise Agreement	Franchise Operator Score % Fairly or Very Satisfied (which at Franchise Commencement Date is based on the aggregate of Autumn 1999 and Spring 2000)	Target % Fairly or Very Satisfied
Space for Luggage	61%	50%	56%

(xiii) The Franchise Operator's performance against each Target shall be calculated by aggregating (in accordance with paragraph (e)(ii) of this Part 3 the results obtained by the Franchise Operator under the last two Actionable National Passenger Surveys carried out before the Performance Review Date at which the Target is being measured.

(xiv) It is acknowledged that the initial Target % Fairly or Very Satisfied specified above in this Part 3(c) for each "Other Factor" (that is to say, each factor other than Overall Satisfaction) has been derived in accordance with the following mechanism:-

$$ICST = IFOS + \left(\frac{ICT - IFOS}{2} \right)$$

where:

ICST is the initial Customer Satisfaction Target for that factor;

IFOS is (i) the aggregate score of % Fairly or Very Satisfied achieved by the Franchise Operator for that factor in the last two National Passenger Surveys carried out prior to the date of the Franchise Agreement or (ii) TM (whichever is the lower);

ICT is the initial Class Target for that factor calculated in accordance with the formula:-

$$ICT = IBOS + \left(\frac{TM - IBOS}{4} \right)$$

IBOS is (i) the highest aggregate score of % Fairly or Very Satisfied achieved for that factor by any franchise operator (including the Franchise Operator) in the Franchise Operator's Class in the last two National Passenger Surveys carried out prior to the date of the Franchise Agreement or (ii) TM (whichever is the lower);

TM is the theoretical maximum score of % Fairly or Very Satisfied which shall be 95%

(d) **Levels of re-set Customer Satisfaction Targets on or following a Performance Review Date**

- (i) Overall Satisfaction – a score equivalent to whichever is the higher of (1) the then existing Customer Satisfaction Target for Overall Satisfaction and (2) a score which is equal to the aggregate score of % Fairly or Very Satisfied for Overall Satisfaction obtained by the Franchise Operator under the last two Actionable National Passenger Surveys carried out prior to that Performance Review Date;

Each other factor – shall be calculated in accordance with the following formula:-

$$FCST = PCST + \left(\frac{CT - PCST}{2} \right)$$

where:-

FCST is the reset Customer Satisfaction Target for that factor;

PCST is (i) the previous Customer Satisfaction Target set for that factor at the immediately preceding Performance Review Date; or (ii) TM (whichever is the lower) except that for the purposes of the first Performance Review Date, PCST shall be equal to ICST (the initial Customer Satisfaction Target) as defined in paragraph (c) of this Part 3;

CT is the Class Target for that factor calculated in accordance with the formula:-

$$CT = BOS + \left(\frac{TM - BOS}{4} \right)$$

BOS is (i) the highest aggregate score of % Fairly or Very Satisfied achieved for that factor by any franchise operator (including the Franchise Operator) in the Franchise Operator's Class in the last two National Passenger Surveys carried out immediately prior to that Performance Review Date; or (ii) TM (whichever is the lower);

TM is the theoretical maximum score of % Fairly or Very Satisfied, which shall be 95%

provided that, unless otherwise determined by the Authority in accordance with paragraph 5 of Part 2 of this Schedule 15 or otherwise agreed by it, in no circumstances shall FCST be less than PCST.

- (e) Provided that for the purposes of this Part 3:

- (i) references to the “% Fairly or Very Satisfied” mean the percentage of passenger who indicated in the relevant survey(s) that they were Fairly or Very Satisfied with the relevant factor or rated the relevant factor as Fairly or Very Good (as the case may be);

- (xv) the aggregate score of % Fairly or Very Satisfied in the last two National Passenger Surveys (or Actionable National Passenger Surveys, as the case may be) shall be calculated by treating the results of those surveys as if they were a single survey, and calculating the % Fairly or Very Satisfied as a percentage of the aggregate number of passengers surveyed (rather than taking the average of the percentage score from each survey).
- (xvi) “Class” means the class in which the Franchise Operator’s National Passenger Survey results are included and published from time to time by the Authority;
- (xvii) in no circumstances shall any Customer Satisfaction Target exceed the theoretical maximum score obtainable of 95%; and
- (ii) if the Authority has introduced, in accordance with Clause 8.4 of the Franchise Agreement, a new factor into the National Passenger Survey for which there is no existing Target, the Target for that factor will be set at the first Performance Review Date which follows the introduction of that Target in accordance with Part 3(d)(ii); save that in any such case, “PCST” shall mean the aggregate score of % Fairly or Very Satisfied achieved by the Franchise Operator for that factor in the last two Actionable National Passenger Surveys carried out prior to the Performance Review Date at which the Target is being set, and “BOS” shall mean (i) the highest aggregate score of % Fairly or Very Satisfied achieved for that factor by any other franchise operator (including the Franchise Operator) in the Franchise Operator’s Class in such National Passenger Surveys or (ii) TM (whichever is the lower).

«COPY»

In witness whereof this Agreement has been duly executed by the parties hereto and is intended to be and is hereby delivered on the date first above written.

This Corporate Seal of
THE STRATEGIC RAIL AUTHORITY
hereto affixed is authenticated by

.....
Authorised by the Strategic Rail Authority

SIGNED by:)
)
for and on behalf of **M40 TRAINS LIMITED**)
)
In the presence of:)

SIGNED by:)
)
for and on behalf of **THE CHILTERN**)
RAILWAY COMPANY LIMITED)
)
In the presence of:)

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Derogation Page

^a By virtue of a derogation the Secretary of State has granted the Franchise Operator a derogation against clause 5.3(a).

Start Date 03 October 2011 End Date 11 December 2012

^b By virtue of a derogation the Secretary of State has granted the Franchise Operator the following derogations against clause 7.1(a) – Train Plan from 18 July 2011 to 01 August 2011 and Clause 7.1(a) Timetable from July 18 2011 to 25 July 2011.

Start Dates 18/07/2011 End Date 25 July 2011 and 01/08/2011

^c By virtue of a derogation the Secretary of State has granted the Franchise Operator the following derogation against clause 7.1(a).

Start Date 03/10/2011 End Date 11/12/2012

~~^d By virtue of a derogation the Secretary of State has granted the Franchise Operator the following; against clause 7.1© as a result from notification from Chiltern that NR is experiencing several systems problems with their new Long Term Planning database which has resulted in various issues, this is affecting Chilterns ability to produce pocket timetables to the timescale in the Franchise Agreement.~~

~~Start Date 23/04/2010 End Date 30/04/2010~~

^e By virtue of a derogation the Secretary of State has granted the Franchise Operator the following derogation against clause 7.1(c) – Timetable booklets from 08 August 2011 to 15 August 2011.

Start Dates 08/08/2011 End Date 15/08/2011

^f By virtue of a derogation the Secretary of State has granted the Franchise Operator the following derogation against clause 7.1(c) – Timetable booklets from 15 August 2011 to 22 August 2011.

Start Dates 15/08/2011 End Date 22/08/2011

~~^g By virtue of a derogation the Authority has granted the Franchise Operator the following, with regards to Clause 12.3(a) of the Franchise Agreement the Franchise Operator will only be required to notify the Authority where:~~

- ~~• the amendment or new agreement has, or is likely to have, a material effect on the timetable or access rights of itself or other operators, both freight and passenger; or~~
- ~~• the amendment or new agreement has, or is likely to have, a material adverse effect on any facility used by itself or other operators, both freight and passenger.~~

~~Start Date 1st April 2005 End date 31st March 2008.~~

^h By virtue of a derogation the Secretary of State has granted the Franchise Operator a PSR derogation against Table 1 to provide 3 trains per hour to Bicester North between 11:45 and 16:00.

Start date: 11/12/2011 End date: 09/12/2012

ⁱ By virtue of a derogation the Secretary of State has granted the Franchise Operator a PSR derogation against Table 1 Column I to provide 3 trains per hour at Bicester North.

Start date: 13/05/2012 End date: 13/05/2014

^j By virtue of a derogation the Secretary of State has granted the Franchise Operator a PSR derogation against Table 2 to provide 2 trains per hour to Haddenham & Thame Parkway between 10:00 and 14:15.

Start date: 11/12/2011 End date: 09/12/2012

^k By virtue of a derogation the Secretary of State has granted the Franchise Operator a PSR derogation against Table 1 Column I to provide 2 trains per hour at Haddenham & Thames Parkway.

Start date: 13/05/2012 End date: 08/12/2012

^l By virtue of a derogation the Secretary of State has granted the Franchise Operator a derogation against Schedule 3 , Flow B, Table 2 in order to run in the evening peak 9 trains to Haddenham and 13 trains to Princes Risborough.

Start date: 03/10/11 End date: 11/12/2012

^m By virtue of a derogation the Secretary of State has granted the Franchise Operator a PSR derogation against Table 2 Column I to provide 2 trains per hour at Haddenham & Thames Parkway.

Start date: 13/05/2012 End date: 13/05/2014

ⁿ By virtue of a derogation the Secretary of State has granted the Franchise Operator a PSR derogation against Table 2 Column I to provide 3 trains per hour at Bicester North.

Start date: 13/05/2012 End date: 08/12/2012

^q By virtue of a derogation the Secretary of State has granted the Franchise Operator a derogation against Aylesbury Vale Parkway PSR requirement for an additional service per hour in the morning and evening peak.

Start date: 20/01/2012 End date: 08/12/2012

^r By virtue of a derogation the Secretary of State has granted the Franchise Operator a derogation against Aylesbury Vale Parkway PSR requirement for an additional service per hour in the morning and evening peak.

Start date: 20/01/2012 End date: 08/12/2012

~~^s By virtue of a derogation the Authority has granted the Franchise Operator the following: A derogation against Clause 1 of Schedule 4 in the Franchise Agreement. Chiltern Railway are permitted to use the Help Point at Kings Sutton and Little Kimble stations in place of the telephone required by Schedule 4 at or in the vicinity of the station. This is conditional upon the fact that there is a low passenger usage at the station, and Chiltern Railways have assured the SRA that passengers seeking to make telephone calls can have messages relayed via the Help Point. This derogation only applies to Kings Sutton and Little Kimble stations.~~

~~Start date 29th March 2004 End date 31st March 2007.~~

^t 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 Authority 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

^u By virtue of a derogation the Secretary of State has granted the Franchise Operator the following;.

To allow Chiltern to increase eleven Oyster Pay as you Go('PAYG') fares in 2011 by more than the maximum RP1 +6% for individual fares in their commuter fares basket.

Origin Description	Dest NLC	Dest Description	Route Code	Owning TOC	Ticket Type	CTOT
LONDON TERMINALS	1478	NORTHOLT PARK	0	ATO	POP	20BE
LONDON TERMINALS	1478	NORTHOLT PARK	0	ATO	POP	20BE
LONDON TERMINALS	1478	NORTHOLT PARK	0	ATO	POP	20BE
LONDON TERMINALS	3057	SOUTH RUISLIP.	0	ATO	POP	20BE
LONDON TERMINALS	3057	SOUTH RUISLIP.	0	ATO	POP	20BE
LONDON TERMINALS	3057	SOUTH RUISLIP.	0	ATO	POP	20BE
LONDON TERMINALS	3057	SOUTH RUISLIP.	0	ATO	POP	20BE
LONDON MARYLEBNE	598	HARROW-HILL UND	0	ATO	POP	20BE
LONDON MARYLEBNE	598	HARROW-HILL UND	0	ATO	POP	20BE
LONDON MARYLEBNE	598	HARROW-HILL UND	0	ATO	POP	20BE
LONDON MARYLEBNE	598	HARROW-HILL UND	0	ATO	POP	20B

Start Date 02/01/2011 End Date 01/01/2012

^v By virtue of a derogation the Secretary of State has granted the Franchise Operator the following:

A Derogation from the Permitted Individual Increase at the January 2007 Fares Setting Round for the following fares and routes:

Origin NLC	Origin Description	Dest NLC	Dest Description	Route Code	CTOT	Status	Annual Base Fare	Actual Fare Value	Annual Base Fare Actual % Inc	Max Permitted Fare	Diff between Max Permitted & Actual Fare
1072	LONDON TERMINALS	1509	WEMBLEY STADIUM	0	2AAA	0	280	310	10.71	306	-4
1072	LONDON TERMINALS	1509	WEMBLEY STADIUM	0	2AAA	4	140	155	10.71	153	-2
1072	LONDON TERMINALS	3059	WEST RUISLIP.	0	2AAA	0	400	480	20	437	-43
1072	LONDON TERMINALS	3059	WEST RUISLIP.	0	2BAF	0	800	920	15	874	-46
1072	LONDON TERMINALS	3059	WEST RUISLIP.	0	2AAA	4	200	240	20	218	-22
1509	WEMBLEY STADIUM	1072	LONDON TERMINALS	0	2AAA	0	280	310	10.71	306	-4
1509	WEMBLEY STADIUM	1072	LONDON TERMINALS	0	2AAA	4	140	155	10.71	153	-2
3059	WEST RUISLIP.	1072	LONDON TERMINALS	0	2AAA	0	400	480	20	437	-43
3059	WEST RUISLIP.	1072	LONDON TERMINALS	0	2BAF	0	800	920	15	874	-46
3059	WEST RUISLIP.	1072	LONDON TERMINALS	0	2AAA	4	200	240	20	218	-22
3059	WEST RUISLIP.	1072	LONDON TERMINALS	0	2AAA	4	400	460	15	437	-23

Start Date 1/1/07 End Date 31/12/07

^w By virtue of a derogation the Secretary of State has granted the Franchise Operator the following:

- (i) a derogation to Part 2, Clause 15.2, (a) (b) (c) regarding the provision of statutory accounts to the department by the end of April 2011.

(ii) a derogation to Schedule 6, Clause 1.5 (iii) to provide the department with a reconciliation of the financial statements and certificate to be provided regarding the statements and EBDIT for 2011.

Start Date 30/04/2011 End Date 31/05/2011.

^x By virtue of a derogation the Secretary of State has granted the Franchise Operator the following:

~~The department approves a derogation to provide relief to any TCIP penalties incurred from (a) the running of additional services providing additional capacity to serve Wembley Stadium. (b) amendment to retiming of normal timetabled services connected with the provision of extra capacity to carry extra passengers to or from Wembley Stadium. Also the Secretary of State has granted a derogation against SCH 7 part 2 SFIP to allow the re-~~

~~declaration of the formation for the 1750 Marylebourne Aylesbury service and waiving of any SFIP penalties incurred for this train for the evening peak 3/12/08 only.~~

~~Start Date 3/12/08 End Date 3/12/08~~

^y ~~By virtue of a derogation the Secretary of State has granted the Franchise Operator the following: against Sch 7 Part 2 Clause 4 a proposed timetable to Saturday 28 March 2009 is approved to provide relief to any TCIP penalties incurred on Saturday 28 March 2009 shall apply to~~

- ~~(a) the running of additional services providing additional capacity to serve Wembley Stadium~~
- ~~(b) amendment to or retiming of normal timetabled services connected with the provision of extra capacity to carry extra passengers to or from Wembley Stadium.~~

~~Start Date 28/03/2009 End Date 28/03/2009.~~

^y ~~By virtue of a derogation the Secretary of State has granted the Franchise Operator the following: against any TCIP penalties incurred on 1/4/2009 is specific to timetable changes associated with Wembley Stadium special events, and to allow the formation for 1750 Marylebone to Aylesbury service waiving any SFIP Penalties.~~

~~Start Date 1/4/2009 End Date 1/4/2009~~

^{aa} ~~By virtue of a derogation the Secretary of State has granted the Franchise Operator the following: against Sch 7 Part 2 for any TCIP Penalties incurred on 5/4/2009 associated with Wembley Stadium special event and does not apply to any other normally timetabled services unaffected by these timetable changes.~~

~~Start Date 5/4/2009 End Date 5/4/2009~~

^{bb} ~~By virtue of a derogation the Secretary of State has granted the Franchise Operator the following: against Sch 7 Part 2 Clause 4 an amended timetable to Saturday 18 and Sunday 19 April 2009 is approved to provide relief to any TCIP penalties incurred on these two days shall apply to~~

- ~~(c) the running of additional services providing additional capacity to serve Wembley Stadium~~
- ~~(d) amendment to or retiming of normal timetabled services connected with the provision of extra capacity to carry extra passengers to or from Wembley Stadium.~~

~~Start Date 18/4/2009 End Date 19/4/2009~~

^{cc} ~~By virtue of a derogation the Secretary of State has granted the Franchise Operator the following against Sch 7 part 4 Clause 4 to provide relief to any TCIP penalties incurred on Sunday 17 May 2009 only shall apply to the running of additional services providing additional capacity to serve Wembley Stadium~~

~~Amendment to or retiming of normal timetabled services connected with the provision of extra capacity to carry extra passengers to or from Wembley Stadium.~~

~~Start Date 17 May 2009 End Date 17 May 2009.~~

^{dd} ~~By virtue of a derogation the Secretary of State has granted the Franchise Operator the following; a derogation to provide relief to any TCIP penalties incurred between 23-25 May to provide additional capacity to serve Wembley Stadium from the 23-25 May.~~

~~Start Date 23/05/2009 End Date 25/05/2009~~

^{ee} ~~By virtue of a derogation the Secretary of State has granted the Franchise Operator the following; a derogation to provide relief to any TCIP Penalties incurred on Saturday 30 May only shall apply~~

~~The running of additional services providing additional capacity to serve Wembley Stadium associated with the Wembley Stadium special event and does not apply to normally-timetabled services unaffected by these timetable changes.~~

~~Start Date 30/5/2009 End Date 30/5/2009~~

^{ff} ~~By virtue of a derogation the Secretary of State has granted the Franchise Operator the following; against Schedule 7 Clause 4 Timetable Change Incentive Payment and Short Formation Incentive Payment. A proposed amended timetable for summer 2009 to run on Friday 26 June, 1st, 3rd, 4th, 5th, 9th, 11th and 12th July 14th, 15th August and 18th, 19th September the derogation to relief to any TCIP penalties incurred on these dates.~~

~~Start Date 26/06/2009 End Date 19/09/2009.~~

^{gg} ~~By virtue of a derogation the Secretary of State has granted the Franchise Operator the following; to provide relief to any TCIP penalties incurred on Sunday 9th August 2009 and shall apply to running additional services providing additional capacity to serve Wembley Stadium.~~

~~Start Date 9 August 2009 End Date 9th August 2009~~

^{hh} ~~By virtue of a derogation the Secretary of State has granted the Franchise Operator the following; against Schedule 7 Patr 2 4(a) a proposed amended timetable for Saturday August 29th to provide relief to any TCIP penalties incurred due to additional services providing additional capacity to serve Wembley Stadium.~~

~~Start Date 29/8/2009 — End Date 29/8/2009~~

ⁱⁱ ~~By virtue of a derogation the Secretary of State has granted the Franchise Operator the following; the proposed amended timetables fro 5/9-12/9 which will provide relief to any TCIP penalties incurred from the running of additional services providing additional capacity to serve Wembley Stadium.~~

~~Start Date 05/09/2009 End Date 12/09/2009~~

^{jj} ~~By virtue of a derogation the Secretary of State has granted the Franchise Operator the following; against Schedule 7 Part 2 to provide relief to any TCIP penalties incurred from the running of additional services providing additional capacity to serve Wembley Stadium on 9 September 2009. This does not apply to other normally timetabled services unaffected by these timetable changes.~~

This also applies to SFIP as this is a weekday game Chiltern will have to use there own rolling stock from within its own resources, by reducing the planned formation on a number of services from Marylebone in order to run additional shuttle services between Marylebone and Wembley Stadium.

Start Date 09/09/2009 End Date 09/09/2009

^{kk} By virtue of a derogation the Secretary of State has granted the Franchise Operator the following; the proposed amended timetable for Friday 18 and 19 Sept 2009 is approved to provide relief to any TCIP penalties incurred from the running of additional services providing additional capacity to serve Wembley Stadium and amendment to or retiming of normal timetabled services connected with the provision of extra capacity to carry extra passengers to or from Wembley Stadium. The relief against any TCIP penalties incurred on these days is specific to timetabled changes associated with the Wembley Stadium special event and does not apply to other normally timetabled services unaffected by these timetable changes.

Start Date 18/9/2009 End Date 19/9/2009.

^{ll} By virtue of a derogation the Secretary of State has granted the Franchise Operator the following; for Saturday 19 June (Green Day Concert at Wembley Stadium) as an allowable change and grants relief from the Timetable Change Incentive Payment.

Start Date 19 June 2010 End Date 19 June 2010

^{mm} By virtue of a derogation the Secretary of State has granted the Franchise Operator the following; to amend timetables for Sunday 6 June 2010 for the Capital Summertime Ball at Wembley Stadium to carry extra passengers to or from Wembley Stadium.

Start Date 6/6/2010 End Date 6/6/2010

ⁿⁿ By virtue of a derogation the Secretary of State has granted the Franchise Operator the following;

To amend timetables from Friday 30th July (for the global gathering at Long Marston) as an allowable change and grants relief from the Timetable Change Incentive Payment

Start date 30 July 2010 End date 1 August 2010

^{oo} By virtue of a derogation the Secretary of State has granted the Franchise Operator the following; against Sch 7 Part 2 Clause 4 a proposed timetable to Sunday 26th October 2008 is approved to provide relief to any TCIP penalties incurred on Sunday 26/10/08 shall apply to

(a) the running of additional services providing additional capacity to serve Wembley Stadium

(b) amendment to or retiming of normal timetabled services connected with the provision of extra capacity

Start Date 26/10/2008 End Date 26/10/2008

^{pp} By virtue of a derogation the Secretary of State has granted the Franchise Operator the following; to provide relief to any TCIP penalties incurred on Friday 24 July and Sunday 26th

~~July 2009 and shall apply to running additional services providing additional capacity to serve Wembley Stadium.~~

~~Start Date 27 July 2009 End Date 26 July 2009~~

^{qq} By virtue of a derogation the Secretary of State has granted the Franchise Operator the following;

Approvals for the proposed amended timetable for Wembley special events between 22 May 2011 and 11 December 2011 (inclusive) against Schedule 7, Para 4(a)(ii)(TCIP) and Schedule 7 Paragraph 2 Part 5 (SFIP) subject to:

- 1) Any changes to special events to be notified to DfT in advance of event and
- 2) The timetable (and any amendments to the Train Plan, if applicable) for each individual event to be supplied in advance (5 working days at the latest) to DfT, to ensure correct Schedule 7 payments for TCIP and SFIP are calculated, as appropriate.

Start Date 22 May 2011 End Date 11 December 2011

^{rr} By virtue of a derogation the Secretary of State has granted the Franchise Operator a derogation to its PSR and reduction in TCIP against Paragraph 4(a)(ii).

Start Date 29 July 2011 End Date 31 July 2011

^{ss} By virtue of a derogation the Secretary of State has granted the Franchise Operator a derogation to its PSR and reduction in TCIP against Paragraph 4(a)(ii).

Start Date 29 July 2011 End Date 31 July 2011

^{tt} By virtue of a derogation the Secretary of State has granted the Franchise Operator the following;

Approvals for the proposed amended timetable for Wembley special events between 28 March 2012 and 11 December 2012 (inclusive) against Schedule 7, Para 4(a)(ii)(TCIP) and Schedule 7 Paragraph 2 Part 5 (SFIP) subject to:

- 1) Any changes to special events to be notified to DfT in advance of event and
- 2) The timetable (and any amendments to the Train Plan, if applicable) for each individual event to be supplied in advance (5 working days at the latest) to DfT, to ensure correct Schedule 7 payments for TCIP and SFIP are calculated, as appropriate.

Start Date 29 March 2012 End Date 11 December 2012

^{uu} By virtue of a derogation the Secretary of State has granted the Franchise Operator the following against Schedule 7, Para 4(a)(ii), a derogation and reduction in TCIP for allowable change for special event – “Global Gathering” 2012.

Start Date 27 July 2012 End Date 29 July 2012

~~^{vv} By virtue of a derogation the Secretary of State has granted the Franchise Operator the following:
To allow for additional capacity following an international football match on 22nd August 2007, redeployment of Chiltern's rolling stock for the evening peak, reducing services from London Marylebone. This refers to paragraph 5 of Schedule 7 Part 2.
Start Date: 22nd August 2007 End Date 22nd August 2007~~

~~^{ww} By virtue of a derogation the Secretary of State has granted the Franchise Operator the following:
a derogation against Schedule 7 Part 2 Clause 5 (Short Form Incentive Payment) to cover a special event at Wembley on the evening of 12th September 2007.
Start date 12th September 2007 End date 12th September 2007.~~

~~^{xx} By virtue of a derogation the Secretary of State has granted the Franchise Operator the following: Amendment to May 2007 Train Plan for the evening peak on Friday 12 October only as follows:~~

Departure Time	To	Revised Planned & Actual Formation	Usual Planned Formation
1741	Bicester North	3-168	4-168

~~And the waiving of any SFIP penalties incurred for this train for the evening peak of Friday 12 October 2007 only.~~

~~Start Date 12/10/07 End Date 12/10/07~~

~~^{yy} By virtue of a derogation the Secretary of State has granted the Franchise Operator the following: Amendments to Chiltern's Train Plan for the evening peak of Wednesday 21st November only:~~

Departure Time	To	Revised Planned Formation	Usual Planned Formation
1706	Bicester North	3-165	3-165
1720	Princes Risborough	2-165	3-165
1733	High Wycombe	3-165	4-165
1803	Bicester North	2-165	3-168
1806	Aylesbury	5-165	6-165
1824	Aylesbury	3-165	4-165
1840	Aylesbury	4-165	6-165

~~And the redeclaration of the formation for the 1750 Marylebone Aylesbury & 1833 Marylebone Bicester North services and waiving of any SFIP penalties incurred for these trains on 21/11/07 as follows:~~

Departure Time	To	Revised Planned & Actual Formation	Usual Planned Formation
1750	Aylesbury	4 165	3 165
1833	Bicester North	2 165 + 2 168	3 165

Start Date 21st November 2007 End Date 21st November 2007

^{zz} By virtue of a derogation, the Secretary of State has granted the Franchise Operator the following:

Amendments to the afternoon peak on Monday 24th December 2007 only. All formations to be declared as the minimum formulation for the evening peak (services departing Marylebone between 1600-1859) to be formed of a 2-car 165 unit, with the following exceptions:

Departure	Origin	Destination	Destination
1703	Marylebone	Bicester North	All services in this table to be declared as a 3-car 168 unit, vice their normal formation
1724	Marylebone	Birmingham Snow Hill	
1727	Marylebone	Aylesbury	
1741	Marylebone	Stratford upon Avon	
1803	Marylebone	Aylesbury	
1840	Marylebone	Aylesbury	
1843	Marylebone	Aylesbury	

Also, a derogation against any SFIP penalties incurred on Monday 24th December in respect of the train formations normally provided within Chiltern's Winter 2007 Train Plan, and that any SFIP penalties incurred during the PM Peak on Monday 24th December are calculated against the revised Train Plan in operation for that day.

Start Date 24/12/07 End Date 24/12/07

^{aaa} By virtue of a derogation, the Secretary of State has granted the Franchise Operator the following:

Amendments to the evening peak on Wednesday 6th February 2008 only as follows:

Departure	Destination	Revised Planned Formation	Usual Planned Formation
1706	Bicester North	3 168	3 165
1733	Birmingham Snow Hill	3 165	4 165
1750	Aylesbury	3 165	4 165
1803	Stratford upon Avon	2 165	3 168
1806	Aylesbury	5 165	6 165
1824	Aylesbury	3 165	4 165
1833	Aylesbury	3 165	4 165

Also, the redeclaration of the formation for the 1750 Marylebone Aylesbury and 1833 Marylebone Bicester North Services and the waiving of any SFIP penalties incurred for these trains for the evening peak of Wednesday 6th February to both turn from 4 165 formations to 3 165s.

Start Date 06/02/08 End Date 06/02/08

By virtue of a derogation the Secretary of State has granted the Franchise Operator the following: against Sch 7 Part 2 Clause 4 a proposed timetable to Sunday 26th October 2008 is approved to provide relief to any TCIP penalties incurred on Sunday 26/10/08 shall apply to

- (a) the running of additional services providing additional capacity to serve Wembley Stadium
- (b) amendment to or retiming of normal timetabled services connected with the provision of extra capacity

Start Date 26/10/2008 — End Date 26/10/2008

^{bbb} By virtue of a derogation, the Secretary of State has granted the Franchise Operator the following:

Amendments to the morning peak between Monday 11th to Friday 15th February 2008 as follows:

Departure Time	From	To	Usual Declared Formation	Revised Declared and Planned Formation
0610	High Wycombe	Birmingham Snow Hill	3 165	4 168 — terminates at Warwick Parkway
0646	Stratford upon-Avon	Marylebone	4 168	3 168

This includes waiving any SFIP penalties incurred for the above services:

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

^{ccc} By virtue of a derogation the Secretary of State has granted the Franchise Operator the following: amendments to Chilterns May 2008 train plan for the evening peak on WED 1.10.08.

Start Date 1.10.2008 — End Date 2.10.2008

^{ddd} By virtue of a derogation the Secretary of State has granted the Franchise Operator the following; that all formations to be declared as the omnium formation for the evening peak (services departing Marylebone between 1600-1859) to be formed of a 2-car 165 unit, with the following exceptions

Depart	Origin	Destination	Amended formation
1703	Marylebone	Aylesbury (instead of Banbury)	All services in this table to be declared as a 3-car 168 unit, vice their normal formations
1724	Marylebone	Aylesbury	
1727	Marylebone	Aylesbury	
1744	Marylebone	Stratford upon-Avon	
1803 (amended from 1806)	Marylebone	Aylesbury	
1840	Marylebone	Aylesbury	
1843 (amended from 1840)	Marylebone	Aylesbury	

All formations to be declared as the minimum formation for the morning peak (services arriving at Marylebone between 0700-0959) and evening peak (services departing Marylebone

between 1600-1859) to be formed of a 2-car unit, with the following exceptions in the evening peak:

Depart	Origin	Destination	Amended formation
1703	Marylebone	Aylesbury (instead of Banbury)	All services in this table to be declared as a 3-car 168 unit, vice their normal formations
1724	Marylebone	Aylesbury	
1727	Marylebone	Aylesbury	
1741	Marylebone	Stratford-upon-Avon	
1803 (amended from 1806)	Marylebone	Aylesbury	
1840	Marylebone	Aylesbury	
1843 (amended from 1840)	Marylebone	Aylesbury	

Start Date 24/12/2008 e End Date 02/01/2009

eee By virtue of a derogation the Secretary of State has granted the Franchise Operator the following; to allow Chiltern to temporarily revise its approved May 2010 Train Plan and operate an amended timetable during the October half-term to account for the need to provide additional capacity to meet extra passenger demand during the off-period that week.

Start Date: 25th October 2010 End Date: 29th October 2010

fff By virtue of a derogation the Secretary of State has granted the Franchise Operator the following; to allow Chiltern to temporarily operate a revised timetable during 5th November 2010 due to Network Rail engineering work.

Start Date: 5th November 2010 End Date: 5th November 2010

ggg By virtue of a derogation the Secretary of State has granted the Franchise Operator the following; to allow Chiltern to temporarily operate a revised timetable, to its December 2010 Train Plan, between 21st and 25th February 2011 inclusive to provide additional capacity to meet extra passenger demand that week.

Start Date: 21st February 2011 End Date: 25th February 2011

hhh ~~By virtue of a derogation the Authority has granted the Franchise Operator the following; a derogation against Part 3 (c) of Schedule 8 of the Franchise Agreement. This derogation has been granted to allow Chiltern Railways not to comply with this clause. This derogation has been granted on the condition that if this clause is required in the future, the Authority has the right to withdraw this derogation giving reasonable notice.~~

~~Start date: 16th February 2005 End date: Rolling~~

iii ~~By Virtue of a derogation the Authority has granted the Franchise Operator the following; such that the following contracts or arrangements for the supply of spare parts shall not be Key Contracts:~~

~~any contract or arrangement for the supply of spare parts where all of the spare parts to be supplied under such contract or arrangement are obtainable on an "open market" basis from more than one supplier without undue difficulty.~~

~~This is given on the condition that the Franchise Operator will notify the Authority if, at any time after the Franchise Operator enters into a contract or arrangement for the supply of spare parts, such spare parts cease to be obtainable on an "open Market" basis from more~~

~~than one supplier with out undue difficulty. This refers to paragraph 10 of Part 3 of Schedule 11 of the Franchise Agreement.~~

~~Start date 1st April 2005, End date 31st March 2008.~~

~~iii By virtue of a derogation the Authority has granted the Franchise Operator the following, any Output Plan Related contract is designated as a Key Contract, it is hereby agreed that the following Output Plan Related contract shall not be Key Contracts:~~

~~Any Output Plan related contract where all of the goods or services to be supplied under such contract are obtainable on an "open market" basis from more than one supplier without undue difficulty.~~

~~This is given on the condition that the Franchise Operator will notify the Authority if, at any time after the Franchise Operator enters into an Output Plan related contract, such goods or services cease to be obtainable on an "open market" basis from more than one supplier without undue difficulty. This refers to paragraph 12 of Part 3 of Schedule 11 of the Franchise Agreement.~~

~~Start date 1st April 2005, End date 31st March 2008.~~

~~kkk By virtue of a derogation the Secretary of State has granted the Franchise Operator the following; a derogation against clause 3.6.1(d) of Schedule 13 that requires Chiltern to provide a bus service link to passengers at Aylesbury Station with new housing developments to the north as at present there are no houses for occupancy by the obligation a date, therefore a 3 month derogation to ensure Chiltern remain within the parameters of this obligation.~~

~~Start Date 30/4/2010 End Date 31/07/2010~~

~~lll By virtue of a derogation the Secretary of State has granted the Franchise Operator a derogation to Sch. 13 Cl. 3.6.1(d).~~

~~Start date: 01/02/2012 End Date: 01/02/2013~~

~~mmm By virtue of a derogation the Secretary of State has granted the Franchise Operator the following; an extension to the deadline to construct the permanent bay platform due to equipment failures from 31st March to the end of 3rd April.~~

~~Start Date:01/04/2011 End Date: 03/04/2011~~

~~nnn By virtue of a derogation the Authority has granted the Franchise Operator the following; against Clause 4.2.2 of the Franchise Agreement (Banbury Transport interchange). Start Date 30 June 2006 End Date 31 August 2006.~~

~~ooo By virtue of a derogation the Secretary of State has granted the Franchise Operator the following: A derogation against Clause 4.2.2 of the Franchise Agreement (Banbury Transport interchange). This will be the final derogation granted on these obligations. Start Date 13/12/06 End Date 31/1/07~~

~~ppp By virtue of a derogation the Secretary of State has granted the Franchise Operator the following: The obligations within paragraph 4.2.6 of Schedule 3 may be fulfilled with the redevelopment of High Wycombe Station which is scheduled to be completed by 30th April 2007.~~

~~Start Date 29/03/07 End Date 30/04/07~~

^{qqq} By virtue of derogation the Secretary of State has granted the Franchise Operator the following:

An extension to the obligation deadline from 12th December 2010 to 31st March 2011 to install customer information screens at Birmingham Moor Street for the operation of a new platform.
Start date: 12/12/10 End Date: 31/03/2011

~~^{fff} By virtue of a derogation the Secretary of State has granted the Franchise Operator the following: Passenger Information System (CIS North). This refers to Clause 4.2.9(iii) of the Franchise Agreement.~~

~~Start Date 30/11/2006 End Date 31/12/2006~~

^{sss} By virtue of derogation the Secretary of State has granted the Franchise Operator the following:

An extension to the obligation deadline from 20th December 2010 to 25th February 2011 to replace the customer information screens on the platforms at Marylebone Station with new double-sided dox matrix passenger information monitors and to ensure that the images on the screen are clear and easily legible.

Start date: 20/12/10 End Date: 25/02/11

~~^{ttt} By virtue of a derogation the Secretary of State has granted the Franchise Operator the following: Ticket Gates at Beaconsfield, Gerrards Cross and Banbury Stations. This refers to Clause 5.6 of the Franchise Agreement.~~

~~Start Date 30/11/2006 End Date 31/12/2006~~

~~^{uuu} By virtue of a derogation the Secretary of State has granted the Franchise Operator the following: Replacement of Subway at High Wycombe of the Franchise Plan from 30 August 2006 to 31 December 2006. This refers to Clause 5.7 of the Franchise Agreement.~~

~~Start Date 30/08/2006 End Date 31/12/2006~~

~~^{vvv} By virtue of a derogation the Authority has granted the Franchise Operator the following: A derogation against Clause 12.5 of Schedule 13 for the introducing of Smartcards to the Chiltern Network, and as the final phase for the Greater London completion is scheduled for 30 September 2007 this will then be same for Chiltern.~~

~~Start Date 31.5.2006 End Date 30/09/2007~~

~~^{www} By virtue of a derogation the Authority has granted the Franchise Operator the following: in respect of Clause 13.1.1 of Schedule 13 in respect of recruiting two management trainees in the year 2006/7, such that the Authority agrees that only one trained need be recruited by Chiltern in 2006/7. This is in return for three management trainees being recruited in the 2005/6.~~

~~Start Date 8. End Date 31.3.2007~~

~~xxx~~ By Virtue of a derogation the Authority grants the Franchise Operator the following: to defer the requirement of Clause 16.1.1(b) Schedule 13 of the Franchise Agreement until June 2007 subsidiary Change Date
Start Date 17 October 2005 End Date 09 June 2007.

~~yyy~~ By virtue of a derogation the Secretary of State has granted the Franchise Operator the following: A derogation extending the dates by which Chiltern has to submit an Output Study to DfT from 30/6/06 to 31/7/06 and deferring the First Update Point from 31/12/06 to 31/1/07.
Start Date 30/06/06 End Date 31/01/07

~~zzz~~ By virtue of a derogation the Authority has granted the Franchise Operator the following: to allow Chiltern to extend the dates by which the NPS targets are achieved by six months from 1 April 2006 to 31 October 2006. This will mean that the surveys which contribute to the target are Spring 2006 and Autumn 2006.
Start Date 1.4.2006 End Date 31.10.2006

~~zzz~~ By virtue of a derogation the Secretary of State has granted the Franchise Operator the following; Against Schedule 7 Part 2 Clause 5 (Short Formation Incentive Payment). This includes amendments to Chiltern's May 2008 Train Plan, for the evening peak on Wednesday 20 August 2008 only.
Start Date 20 August 2008 End Date 20 August 2008

~~zzz~~ By virtue of a derogation the Secretary of State has granted the Franchise Operator the following: a derogation to provide relief to any TCIP penalties incurred on Sunday 1 March 2009 shall apply to: (a) the running of additional services providing additional capacity to serve Wembley Stadium (b) amendment to or retiming of normal timetabled services connected with the provision of extra capacity to carry extra passengers to or from Wembley Stadium. This applies to timetable changes associated with the Wembley Stadium special event and does not apply to other normal timetabled services.
Start Date 1/3/2009 End Date 1/3/2009

~~zzz~~ By virtue of a derogation the Secretary of State has granted the Franchise Operator the following: against Schedule 7 Part 2 4(a) a proposed amended timetable for Saturday August 29th to provide relief to any TCIP penalties incurred due to additional services providing additional capacity to serve Wembley Stadium.
Start Date 29/8/2009 End Date 29/8/2009

~~zzz~~ By virtue of a derogation the Secretary of State has granted the Franchise Operator the following;
To amend timetables from Friday 30th July (for the global gathering at Long Marston) as an allowable change and grants relief from the Timetable Change Incentive Payment
Start date 30 July 2010 End date 1 August 2010