

12 December 2005

THE SECRETARY OF STATE FOR TRANSPORT

and

FIRST GREATER WESTERN LIMITED

**GREATER WESTERN
FRANCHISE AGREEMENT**

**incorporating by reference the
National Rail Franchise Terms (First Edition)**



FRESHFIELDS BRUCKHAUS DERINGER

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THIS AGREEMENT is dated 12 December 2005.

BETWEEN

- (1) **THE SECRETARY OF STATE FOR TRANSPORT**, whose principal address is at 76 Marsham Street, London SW1P 4DR (the *Secretary of State*); and
- (2) ¹**FIRST GREATER WESTERN LIMITED**, whose registered office is at Milford House, 1 Milford Street, Swindon, Wiltshire, SN1 1HL (the *Franchisee*).

WHEREAS

(A) The Secretary of State wishes to appoint a franchisee to provide railway passenger services within the Franchise and expects his franchisee, on the terms of this Agreement, actively to seek, in all reasonable business ways, greatly improved performance over the Franchise Term from its employees, its Train Fleet and other assets, and from Network Rail and its other suppliers, so as to deliver to the passenger the best railway passenger service that can be obtained from the resources that are available to it.

(B) The Franchisee wishes to be appointed as the Secretary of State's franchisee for the Franchise and intends, on the terms of this Agreement, actively to seek, in all reasonable business ways, greatly improved performance over the Franchise Term from its employees, its Train Fleet and other assets, and from Network Rail and its other suppliers, so as to deliver to the passenger the best railway passenger service that can be obtained from the resources that are available to it.

(C) This Agreement has been entered into pursuant to and incorporates by reference the Terms. This Agreement specifies the matters which the Terms require to be addressed in a franchise agreement and which are to be agreed between the parties or prescribed by the Secretary of State, together with any other provisions that the parties have agreed should amend or supplement the Terms.

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

1. INTERPRETATION AND DEFINITIONS

1.1 In this Agreement:

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

Terms means the National Rail Franchise Terms (First Edition) attached to this Agreement.

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

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

¹ Date of change 31/3/2009

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

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

2. COMMENCEMENT

2.1 The provisions of the Terms listed in clauses 2.1(a) to 2.1(m) (inclusive) together with such provisions of this Agreement as may be required to give effect to the same, shall take effect and be binding upon each of the Secretary of State and the Franchisee immediately upon signature of this Agreement:

- (a) paragraph 5.3 of Schedule 1.4 (*Passenger Facing Obligations*);
- (b) paragraph 2 of Schedule 2.2 (*Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases*);
- (c) paragraph 2 of Schedule 2.3 (*Third Party Delivery of Passenger Services and Other Franchisees*);
- (d) Schedule 5.1 (*Purpose, Structure and Construction*);
- (e) Schedule 5.3 (*Allocation of Fares to Fares Baskets*);
- (f) Schedule 5.7 (*Changes to Fares and Fares Regulation*);
- (g) Schedule 9 (*Changes*);
- (h) Schedule 10 (*Remedies, Termination and Expiry*);
- (i) paragraphs 1 to 3 (inclusive) of Schedule 11 (*Agreement Management Provisions*);
- (j) paragraphs 1, 2, 5, 6, 7 and 8 of Schedule 13 (*Information and Industry Initiatives*);
- (k) Schedule 14.3 (*Key Contracts*);
- (l) Schedule 17 (*Confidentiality*); and
- (m) Schedule 19 (*Other Provisions*).

2.2 The other provisions of this Agreement and of the Terms shall take effect and become binding upon the parties on the Start Date, as stated in the Certificate of Commencement issued pursuant to the Conditions Precedent Agreement.

3. TERM

This Agreement shall terminate on the Expiry Date or on the date of any earlier termination pursuant to clause 4.2 or 4.3 of the Conditions Precedent Agreement or pursuant to Schedule 10 (*Remedies, Termination and Expiry*) of the Terms.

4. GENERAL OBLIGATIONS

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

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

4.3 The Franchisee shall co-operate with the Secretary of State and act reasonably and in good faith in and about the performance of its obligations and the exercise of its rights pursuant to this Agreement.

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

5. SPECIFIC OBLIGATIONS

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

Clause 3 (*Definitions*)

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

- (a) the prescribed month for the purpose of the definition of ***Bond Year*** is March;
- (b) the prescribed stations for the purpose of the definition of ***Commuter Fare*** are:
 - (i) London Stations; and
 - (ii) Suburban Stations;
- (c) the prescribed period for the purpose of the definition of ***Evening Peak*** is the period between 1600 and 1859 during a Weekday or such other continuous evening three hour period as the Secretary of State may specify from time to time;
- (d) the prescribed date for the purpose of paragraph (b) of the definition of ***Expiry Date*** is 31 March 2016;
- (e) for the purposes of the definition of ***Franchise***:
 - (i) the prescribed date is 1 June 2005; and
 - (ii) the prescribed places are London, Oxford, Reading, Bristol, Plymouth and Cardiff, amongst others;
- (f) the date for the purposes of the definition of ***Franchise Letting Process Agreement*** is 2 February 2005;
- (g) each ***Franchisee Year*** shall, subject to the terms of that definition, begin on 1 April and end on 31 March;
- (h) the ***Initial Business Plan*** in the agreed terms is attached to this Agreement marked ***IBP***;

- (i) the date for the purpose of the definition of **Initial Expiry Date** is 31 March 2013;
- (j) the prescribed stations for the purpose of the definition of **Major Station** are London Paddington and Gatwick Airport;
- (k) the prescribed amount for the purpose of the definition of **Minor Works' Budget** is £250,000 for each Franchisee Year;
- (l) the prescribed period for the purpose of the definition of **Morning Peak** is the period between 0700 and 0959 during a Weekday or such other continuous morning three hour period as the Secretary of State may specify from time to time;
- (m) the **Operational Model** in the agreed terms is attached to this Agreement marked **OM**;
- (n) **Parent** means, in the context of Schedule 10.3 (*Events of Default and Termination Event*)², either FirstGroup plc or First Rail Holdings Limited, and in the context of Schedule 13 (*Information and Industry Initiatives*)³ both of those persons;
- (o) the **Passenger's Charter** in the agreed terms is attached to this Agreement marked **PC**;
- (p) the **Power of Attorney** in the agreed terms is attached to this Agreement marked **POA**;
- (q) for the purpose of the definition of **Qualifying Change**, the prevailing discount rate is 3.5 per cent. per annum (in real terms) at the date of this Agreement;
- (r) the **Record of Assumptions** in the agreed terms is attached to this Agreement marked **ROA**;
- (s) the **Reporting Accountants** are Ernst & Young LLP;
- (t) the date for the purposes of paragraph (a) of the definition of **Review Date** is 1 March 2006;
- (u) the agreed assumptions for the purpose of the definition of **Secretary of State Risk Assumptions** are set out in Appendix 1 (*Secretary of State Risk Assumptions*);
- (v) the **Service Level Commitments** in the agreed terms are attached to this Agreement marked **SLC 1** and **SLC 2**;
- (w) **Service Quality Audit Programme** in the agreed terms is attached to this Agreement marked **SQAP**;
- (x) the **Service Quality Management System** in the agreed terms is attached to this Agreement marked **SQMS**;
- (y) the **Service Quality Standards** in the agreed terms are attached to this Agreement marked **SQS**;
- (z) **SLC 1** in the agreed terms is attached to this Agreement marked **SLC1**;

² DATE IF DELETION 31.3.2006

³ DATE IF DELETION 31.3.2006

- (aa) **SLC2** in the agreed terms is attached to this Agreement marked SLC2;
- (ab) the time and date for the purposes of paragraph (a) of the definition of **Start Date** is 0200 hours on 1 April 2006;
- (ac) the agreed amounts of “TR” for the purpose of the definition of **Target Revenue** are set out in Appendix 2 (*Target Revenue (expressed in real terms)*);
- (ad) for the purposes of the formula set out in the definition of **Threshold Amount**:
- (i) ⁴**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.**

Franchisee Year	FAT (£k expressed in real terms)

- (ii) the prescribed month for the purpose of the definition of “CRPI” is November; and
- (iii) the prescribed base month and year for the purpose of the definition of “ORPI” are November 2005; and
- (ae) the **Train Plan** in the agreed terms is attached to this Agreement marked **TP**.

⁴ Date of exclusion 27.7.06

Changes to the Terms

5.2(a) The following Terms shall not apply to the Franchise:

- (i) the following words and expressions or parts thereof contained in clause 3.1 thereof: (A) the reference to “Capacity Benchmark” in the definition of **Benchmark**; (B) paragraph (b) of the definition of **Benchmark Table**; (C) **Capacity Benchmark**; and (D) **Capacity Benchmark Table**; and
- (ii) the following provisions or parts thereof: (A) Appendix 6 (*Capacity Benchmark Table*); (B) paragraphs 1.2, 2.3 to 2.6 (inclusive), 4.1(b) and 4.4(b) of Schedule 7.1 (*Performance Benchmarks*) of the Terms; and (C) the reference to the “Capacity Benchmark” in paragraph 1.2(a) of Schedule 18 (*Franchise Continuation Criteria*) of the Terms.

(b) The following Terms shall be amended by:

- (i) the insertion in clause 3.1 thereof of the following definitions:

⁵**Additional Capacity** means the FGW30 Additional Capacity and/or the Bristol Additional Capacity (as applicable);

⁶**Additional LTV Capacity** means the additional passenger carrying capacity required to be provided (pursuant to the provisions inserted into the Franchise Agreement by the LTV HLOS Deed of Amendment) using the Extra LTV Vehicles, the cascade of Class 16x vehicles already in the Train Fleet and the creation of 18 Super High Capacity HSTs in accordance with paragraph 14 of Appendix 13 (*Greater Western Specific Provisions*);

⁷**Bristol Additional Capacity** means the additional passenger carrying capacity required to be provided using the Extra Bristol Vehicles in accordance with paragraph 11 of Appendix 13 (*Greater Western Specific Provisions*);

⁸**Bristol HLOS Deed of Amendment** means the Deed of Amendment dated on or around 1 August 2011 entitled ‘Deed of Amendment relating to the Greater Western Franchise Agreement dated 12 December 2005 (as subsequently amended)’ made between the Secretary of State and the Franchisee;

Committed Obligation Payment Adjustment has the meaning given to it in paragraph 1.2 of Part 3 of Appendix 11 (*Committed Obligations and Related Provisions*) to the Franchise Agreement;

Crossrail Scheme means the scheme known as ‘Crossrail’ which is the subject of the Crossrail Bill before Parliament as at the date of this Agreement;

⁵ Date of change 04/08/2011

⁶ Date of Change 21/11/2011

⁷ Date of Change 04/08/2011

⁸ Date of Change 04/08/2011

ERTMS has the meaning given to it in paragraph 3 of Appendix 1 (*Secretary of State Risk Assumptions*) to the Franchise Agreement;

⁹**Extra Bristol Vehicles** has the meaning attributed to it in paragraph 1.1 of Part 4 of Appendix 11 (*Committed Obligations and HLOS Committed Obligations and Related Provisions*);

¹⁰**“Extra Class 150 Vehicle has the meaning attributed to it in paragraph 1.1 of Part 4 of Appendix 11 (Committed Obligations and HLOS Committed Obligations and Related Provisions);”**

¹¹**Extra HLOS Vehicles** means the Extra Class 150 Vehicles and/or the Extra Bristol Vehicles;

¹²**Extra LTV Vehicles** means the LTV HST Former Buffet Vehicles, the LTV Class 180 Vehicles, the LTV Class 150 Vehicles and the Orphan Class 150 Vehicles;

¹³**FGW30 Additional Capacity** means the additional passenger carrying capacity required to be provided using the Extra Class 150 Vehicles in accordance with paragraph 11 of Appendix 13 (*Greater Western Specific Provisions*);

¹⁴**FGW30 HLOS Deed of Amendment** means the Deed of Amendment dated 2 March 2010 entitled ‘Deed of Amendment relating to the Greater Western Franchise Agreement dated 12 December 2005 (as subsequently amended)’ made between the Secretary of State and the Franchisee;

Full Agreement has the meaning given to it in paragraph 13 of the Appendix to the Conditions Precedent Agreement;

GSM-R has the meaning given to it in paragraph 3 of Appendix 1 (*Secretary of State Risk Assumptions*) to the Franchise Agreement;

Hire Agreement has the meaning given to it in paragraph 13 of the Appendix to the Conditions Precedent Agreement;

¹⁵**“HLOS Committed Obligations means any of the Franchisee’s obligations listed in Part 4 of Appendix 11 (Committed Obligations and HLOS Committed Obligations and Related Provisions);”**

“HLOS Committed Obligation Payment Adjustment has the meaning attributed to it in paragraph 1.1 of Part 6 of Appendix 11 (Committed Obligations and HLOS Committed Obligations and Related Provisions);”

⁹ Date of Change 04/08/2011

¹⁰ Date of change 02/03/2010

¹¹ Date of change 04/08/2011

¹² Date of Change 21/11/2011

¹³ Date of change 04/08/2011

¹⁴ Date of Change 04/08/2011

¹⁵ Date of new texts 02/03/2010

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“HLOS Franchise Payment Adjustment has the meaning attributed to it in paragraph 1.1 of Part 6 of Appendix 11 (Committed Obligations and HLOS Committed Obligations and Related Provisions);”

“HLOS Other Lump Sum Payment has the attributed to it in paragraph 1.1 of Part 6 of Appendix 11 (Committed Obligations and HLOS Committed Obligations and Related Provisions);”

HST means the high speed trains forming part of the Train Fleet referred to as **HST** in Column 1 of Table 1.1 in Appendix 3 (*The Train Fleet*) and as **HST** in Column 2 of Table 1.2 in Appendix 3 (*The Train Fleet*);

HST2 means the HST replacement vehicles;

¹⁷***Initial Strengthened Services*** means the services to be strengthened in accordance with paragraph 11.1(b)(i) and/or (ii) of Appendix 13 (Greater Western Specific Provisions);

“London Midland Franchisee means the franchisee under the franchise agreement dated 20 June 2007 and made between the Secretary of State and London & Birmingham Railway Limited (Company Registration Number :05814584 and includes any successor operator to that Franchisee;” and

¹⁸***LTV Class 150 Vehicles*** has the meaning attributed to it in paragraph 11.1(c) of Part 4 of Appendix 11 (Committed Obligations and HLOS Committed Obligations and Related Provisions);

¹⁹***LTV Class 180 Vehicles*** has the meaning attributed to it in paragraph 11.1(b) of Part 4 of Appendix 11 (Committed Obligations and HLOS Committed Obligations and Related Provisions);

²⁰***LTV HLOS Deed of Amendment*** means the Deed of Amendment dated on or around 21st November 2011 entitled ‘Deed of Amendment relating to the Greater Western Franchise Agreement dated 12 December 2005 (as subsequently amended)’ made between the Secretary of State and the Franchisee;

²¹***LTV HST Former Buffet Vehicles*** has the meaning attributed to it in paragraph 11.1(a) of Part 4 of Appendix 11 (Committed Obligations and HLOS Committed Obligations and Related Provisions);

¹⁶ Date of deletion 04/08/2011

¹⁷ Date of Change 04/08/2011

¹⁸ Date of Change 21/11/2011

¹⁹ Date of Change 21/11/2011

²⁰ Date of Change 21/11/2011

²¹ Date of Change 21/11/2011

²² ***LTV HST Former First Class Vehicle*** has the meaning attributed to it in paragraph 11.2(b) of Part 4 of Appendix 11 (Committed Obligations and HLOS Committed Obligations and Related Provisions);

²³ ***LTV Initial Strengthened Services*** means the services to be strengthened in accordance with paragraph 14 of Appendix 13 (Greater Western Specific Provisions);

NFRIP means the National Fleet Reliability Improvement Programme;

²⁴ ***Off-peak Return Fare 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 and 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.***

²⁵ ***Orphan Class 150 Vehicles*** has the meaning attributed to it in paragraph 11.1(d) of Part 4 of Appendix 11 (Committed Obligations) and HLOS Committed Obligations and Related Provisions);

Previous Passenger Service means any railway passenger service operated under the Previous Franchise Agreement that is the same as or substantially the same as any Passenger Service in terms of departure and arrival times and stopping patterns;

Profit Share Threshold has the meaning given to it in paragraph 5 of Appendix 13 (*Greater Western Specific Provisions*) to the Franchise Agreement;

²⁶ ***Relevant HLOS Deed of Amendment*** means, in relation to the FGW30 Additional Capacity or the Extra Class 150 Vehicles, the FGW30 HLOS Deed of Amendment and, in relation to the Bristol Additional Capacity or the Extra Bristol Vehicles, the Bristol HLOS Deed of Amendment;

Relevant Profit has the meaning given to it in paragraph 5 of Appendix 13 (*Greater Western Specific Provisions*) to the Franchise Agreement;

²⁷ ***Remedial Period means the period from and including 1 April 2008 until the cessation of the Remedial Period in accordance with paragraph 2.5 of Schedule 2 to the Deed of Amendment between the Secretary of State and the Franchisee pursuant to which this definition was included in the Franchise Agreement;***

²² Date of Change 21/11/2011

²³ Date of Change 21/11/2011

²⁴ Date of Change 04/08/2006

²⁵ Date of Change 21/11/2011

²⁶ Date of Change 04/08/2011

²⁷ Insert new text wef 17/03/08

Remedial Plan means the Remedial Plan as presented by the Franchisee to the Secretary of State dated 11th March 2008 as it may be amended from time to time in accordance with the terms of Schedule 2 to the Deed of Amendment between the Secretary of State and the Franchisee pursuant to which this definition was included in the Franchise Agreement;

Single Track Access Agreement means the single Greater Western Track Access Agreement to be entered into between Network Rail and the Franchisee in December 2006 replacing the three Track Access Agreements existing as at the Start Date;

SLC1 means the first Service Level Commitment specified and issued by the Secretary of State under this Agreement;

SLC2 means the second Service Level Commitment specified by the Secretary of State under this Agreement;

²⁸***Super High Capacity HST*** means an HST formed of two power cars and eight Mark III trailer coaches having an aggregate seating and standing capacity of 650 passengers including 465 in standard class;

²⁹***Supplement to the Record of Assumptions*** means the supplement to the Record of Assumptions referred to in Clause 3.2(b) of the FGW30³⁰ HLOS Deed of Amendment.

³¹***Supplement to the Record of Assumptions (Bristol Vehicles)*** means the supplement to the Record of Assumptions referred to in Clause 3.2(a)(ii) of the HLOS Deed of Amendment;

³²***Supplement to the Record of Assumptions (LTV)*** means the supplement to the Record of Assumptions referred to in clause 3.2(a)(ii) of the LTV HLOS Deed of Amendment; and

³³***“SWT Deed of Amendment means the Deed of Amendment dated 11 December 2009 entitled ‘Deed of Amendment relating to the Greater Western Franchise Agreement dated 12 December 2005 (as subsequently amended)’ made between the Secretary of State and the Franchisee;”.***

³⁴***Trajectory means the Trajectory set out in the Exhibit to Schedule 2 to the Deed of Amendment between the Secretary of State and the Franchisee pursuant to which this definition was included in the Franchise Agreement.***

²⁸ Date of Change 21/11/2011

²⁹ Date of change 02/03/2010

³⁰ Date of Change 04/08/2011

³¹ Date of Change 04/08/2011

³² Date of Change 21/11/2011

³³ Date of change 11/12/2009

³⁴ Insert new text wef 17/03/08

³⁵ ***Two plus Seven HST*** means an HST formed of two power cars and seven Mark III trailer coaches.

- (ii) the amendment to clause 3.1 thereof of the following definitions:
 - (A) the definition of ***Change*** shall be amended by:
 - (x) the insertion of a new paragraph (c) as follows:
 - “(c) the Secretary of State’s proposals referred to in paragraph 2.1 of Appendix 13 (*Greater Western Specific Provisions*) to the Franchise Agreement are implemented and the costs relating to rolling stock vehicle leasing and/or maintenance arrangements payable by the Franchisee under any Rolling Stock Related Contract are reduced as a consequence or a competition authority directs such reduction (in each case subject and having regard to the terms of paragraph 2.4 of Appendix 13);”
 - (y) the renumbering of all subsequent paragraphs within that definition accordingly;
 - (z) the deletion of paragraph (f) (old paragraph (e)) thereof and its replacement with the following:
 - “(f) a change to the Service Level Commitment previously in force pursuant to the issue of a new Service Level Commitment in accordance with paragraph 9 of Schedule 1.1 (*Service Development*), other than the issue of SLC2 for the purposes of securing a Timetable to be operated on and from the Passenger Change Date occurring in December 2006;”;
 - (B) the definition of ***Charging Review*** shall be amended by deleting paragraph (a)(i) and replacing it with the following paragraph:
 - “(i) Part 7 of Schedule 7 of any or all of the three Track Access Agreements to which the Franchisee is a party as at the Start Date (where such agreements are changed after the date of the Franchise Agreement by the exercise of those powers whether before, on or after the Start Date) or any Replacement Agreement which is or is deemed to be a Relevant Agreement in accordance with the definition of that Term;”
 - (C) the definition of ***Committed Obligations*** shall be deleted and replaced by the following:

³⁵ Date of Change 21/11/2011

³⁶“*Committed Obligations means any of the Franchisee’s obligations listed in Part 1 (List of Committed Obligations) of Appendix 11 (Committed Obligations and HLOS Committed Obligations and Related Provisions);*”

- (D) the definition of *Commuter Fares Document* shall be deleted and replaced with the following:

³⁷“*Commuter Fares Document means the document marked CFD to be agreed by the parties on or prior to 11 June 2006 or such other date as the Secretary of State and the Franchisee shall agree, and pending such agreement, shall consist of the commuter fares documents relating to the franchise services provided by Wales & West Passenger Trains Limited, Great Western Trains Company Limited and First Great Western Link Limited applying immediately prior to the Start Date under their respective franchise agreements with the Secretary of State.*

- (E) the definition of *Expiry Date* shall be amended by the insertion of “clause 5.1(d) of” after “the date prescribed as such in” in line one of paragraph (b);
- (F) the definition of *Protected Fares Document* shall be deleted and replaced with the following:

³⁸“*Protected Fares Document means the document marked PFD to be agreed by the parties on or prior to 11 June 2006 or such other date as the Secretary of State and the Franchisee shall agree, and pending such agreement, shall consist of the protected fares documents relating to the franchise services provided by Wales & West Passenger Trains Limited, Great Western Trains Company Limited and First Great Western Link Limited applying immediately prior to Start Date under their respective franchise agreements with the Secretary of State.*

- (G) the definition of *Service Level Commitment* shall be amended by inserting “and the second such service level commitment” before “prescribed” in the third line;

- ³⁹(H) *the definition of Revenue means the gross revenue (without any deduction for operating costs or charges except for commission charged to revenue in the normal course of business) of the Franchisee, as stated in the audited or management accounts and statements submitted to the Secretary of State in accordance with Schedule 13 (Information and Industry Initiatives), relating to:*

³⁶ Date of change 02/03/2010

³⁷ date of change 31.3.2006

³⁸ date of change 31.3.2006

³⁹ Insert new text wef 17/03/08

- (a) *the sale of tickets of any type for the carriage of passengers by railway (including revenue allocated to the Franchisee through the Ticketing and Settlement Agreement or otherwise);*
- (b) *in relation to Schedule 4 (Rules of the Route, Rules of the Plan and Restrictions of Use) to the Track Access Agreement:*
 - (i) *the Marginal Revenue Effect (MRE) element of any payments to the Franchisee by Network Rail; and*
 - (ii) *the revenue element of any payments to the Franchisee by Network Rail or a “Competent Authority” in compensation for a “Competent Authority Restriction of Use” (as such terms are defined in Schedule 4 to the Track Access Agreement) relating to the sale of tickets of any type for the carriage of passengers by railway (including revenue allocated to the Franchisee through the Ticketing and Settlement Agreement or otherwise);*
- (c) *the MRE element of any payments to the Franchisee by Network Rail as provided for under Schedule 8 (Performance Regime) to the Track Access Agreement, net of MRE payments to Network Rail thereunder;*
- (d) *the revenue element of any payments to the Franchisee by Network Rail under Condition G (Network Change) of the Network Code relating to the sale of tickets of any type for the carriage of passengers by railway (including revenue allocated to the Franchisee through the Ticketing and Settlement Agreement or otherwise);*
- (e) *retail commission;*
- (f) *the sale of any Discount Card;*
- (g) *the imposition of any penalty upon any person making a journey on the Passenger Services without a ticket which is valid for such journey;*

but shall not include any Franchise Payment;

- (iii) (A) deleting paragraph 1.4(a) of Schedule 7.1 and replacing it with the following paragraph “1.4(a) the Cancellations Benchmark and the Service Delivery Benchmark shall be recalibrated in accordance with paragraph 1 of Appendix 14 (*Recalibration of Benchmarks*) to the Franchise Agreement”; and (B) replacing the words “Appendices 5 to 7 (inclusive)” in paragraph 1.4(b) of Schedule 7.1 with “Appendices 5 and 7”;
- (iv) the deletion of “no later than 28 days thereafter” in paragraph 2.9(b) of Schedule 7.2 (*Service Quality Management*) thereof and its replacement with “no less than 28 days and no more than 90 days thereafter (having regard to the scope of the amendment notified by the Secretary of State)”; and
- (v) the amendment to Schedule 8.1 (*Franchise Payments*) thereof of the following:

- (A) the deletion of the formula in paragraph 1.1 and its replacement with the following:

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

- (B) the deletion of “and” at the end of the factor explaining “TAA” in that paragraph;
- (C) the deletion of the full stop at the end of the factor explaining “SCA” in that paragraph and its replacement with “; and”; and
- (D) the insertion of the following after the factor explaining “SCA” in that paragraph:

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

- “(vi) *the following further amendments to Schedule 8.1 (Franchise Payments) of the Terms shall be made (in addition to those already made in Clause 5.2(b) (v)):*

In paragraph 1.1 (Franchise Payments):

- (i) *the components “ + HLOSFPA + HLOSCOPA + HLOSMP + HLOSOLSP” shall be added to the formula after the component “ + ASP2”;*
- (ii) *the words;*
- (A) *“HLOSFPA means the aggregate of all HLOS Franchise Payment Adjustments to be made on that Reporting Period’s Payment Date. For the purpose of such aggregation and of the operation of the formula for determining £FP in this paragraph 1.1, it is acknowledged that individual HLOS Franchise Payment Adjustments may be payable (1) to the Secretary of State by the Franchisee (in which case they shall be input into formula as negative numbers); or 92) by the Secretary of State to the Franchisee (in which case they shall be input into the formula as positive numbers)”;* and
- (B) ⁴⁰;
- (C) *“HLOSMP means the aggregate of all HLOS Milestone Payments to be made on that Reporting Period’s Payment Date”;* and
- (D) ⁴¹;

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

- (iii) *the punctuation of the list shall be corrected such that each paragraph ends with a semi-colon and the word “and appears at the end of the penultimate paragraph only after its semi-colon; and*
- (iv) *In paragraph 1.3 the addition of the following words after the word “number” in paragraph 1.3(a):*

“and COPA shall only be a negative number for the purposes of this formula notwithstanding that any COPA is expressed as a positive number in Part 3 of Appendix 11 of the Franchise Agreement.”.

Schedule 1.1 (*Service Development*)

- 5.3(a) For the purpose of paragraph 3.1 of Schedule 1.1 (*Service Development*) of the Terms, Tables 1 and 2 are set out in Appendix 3 (*The Train Fleet*).
- (b) For the purpose of paragraph 1 of Schedule 1.1 (*Service Level Commitment*) of the Terms, as at the date of signing of this Franchise Agreement, the relevant Service Level Commitment in respect of the period up to but excluding the Passenger Change Date occurring in December 2006 is SLC1 and in respect of the period from that Passenger Change Date is SLC2.

Schedule 1.5 (*Information about Passengers*)

- 5.4 The technology to be used for the purpose of paragraph 1.2 of Schedule 1.5 (*Information about Passengers*) of the Terms is:
- (a) manual passenger counts;
 - (b) information to the extent available from automatic ticket gates operated by the Franchisee; and
 - (c) passenger counting equipment to be fitted to 16 Class 16x vehicles in the Train Fleet within two years of the Start Date.

Schedule 1.6 (*Franchise Services*)

- 5.5 The prescribed percentages for the purposes of paragraphs 5(d)(i) and (ii) of Schedule 1.6 (*Franchise Services*) of the Terms are, respectively:
- (a) two per cent.; and
 - (b) two per cent.
- 5.6 The relevant Depots for the purpose of paragraph 5(e) of Schedule 1.6 of the Terms are as follows:

Bristol St Philips Marsh

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

Plymouth Laira
Reading
Old Oak Common
Landore

5.7 The relevant property for the purpose of paragraph 5(n) of Schedule 1.6 of the Terms is as follows: the Franchisee's office and training accommodation from time to time.

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

- (a) £25,000 per annum per item; and
- (b) £250,000 per annum in aggregate.

Schedule 2.1 (*Asset Vesting and Transfer*)

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

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

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

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

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

The integrated transport schemes:

- (a) identified as such in the "Rail Links" supplement to edition 91 of the "National Fares Manual"; and
- (b) operated by the Train Operators under the Previous Franchise Agreements.

5.12 The prescribed concessionary travel schemes for the purpose of paragraph 2.1(a) of Schedule 2.5 of the Terms are as follows:

Token Schemes with the following Local Authorities:

Cotswold District Council

42

Stroud District Council

43

5.13 The prescribed multi-modal schemes for the purpose of paragraph 3.1(a) of Schedule 2.5 of the Terms are as follows:

⁴² date of deletion 31.3.2006

⁴³ date of deletion 31.3.2006

Scholar Season Ticket Schemes with the following Local Authorities:

Devon County Council

44

5.14 The prescribed Discount Fare Schemes for the purpose of paragraph 4.1 of Schedule 2.5 of the Terms are as follows:

- (a) ATOC Disabled Persons Railcard Scheme dated 23 July 1995 between the participants named therein;
- (b) ATOC Young Persons Railcard Scheme dated 23 July 1995 between the participants named therein; and
- (c) ATOC Senior Railcard Scheme dated 23 July 1995 between the participants named therein.

5.15 The prescribed Inter-Operator Schemes for the purpose of paragraph 5.1 of Schedule 2.5 of the Terms are as follows:

- (a) ATOC Staff Travel Scheme dated 23 July 1995 between the participants named therein;
- (b) Ticketing and Settlement Agreement;
- (c) ATOC LRT Scheme dated 23 July 1995 between the participants named therein;
- (d) Travelcard Agreement dated 15 October 1995 between London Regional Transport and the parties named therein;
- (e) Through Ticketing (Non-Travelcard) Agreement dated 15 October 1995 between London Regional Transport and the parties named therein; and
- (f) National Rail Enquiry Scheme dated 11 June 1996 between the participants named therein.

Schedule 3 (*Priced Options*)

5.16 The Priced Options and the terms upon which the Secretary of State may exercise each Priced Option for the purpose of Schedule 3 (*Priced Options*) of the Terms, are set out in Appendix 4 (*List of Priced Options*).

Schedule 7.1 (*Performance Benchmarks*)

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

5.18 Intentionally left blank.

5.19 The Service Delivery Benchmarks for the purpose of paragraph 1.4 of Schedule 7.1 of the Terms are set out in Appendix 7 (*Service Delivery Benchmark Table*).

⁴⁴ date of deletion 31.3.2006

Schedule 8.1 (*Franchise Payments*)

⁴⁵5.19A ⁴⁶ Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁴⁷5.19B *In paragraph 1.1:*

- (a) *insert in the opening formula after NRR06/07 the entry “+ ASP”; and*
- (b) *after the definition NRR06/7 delete the full stop and substitute “and” and then insert a new definition as follows:*

“ASP” means an amount in respect of the additional service described in, and calculated in accordance with, paragraph 6 of Appendix 13 to the Franchise Agreement (Greater Western Specific Provisions).

6 Final Reporting Period Payment

6.1 The Final Reporting Period Payment for each Reporting Period other than the last Reporting Period of the Franchise Term shall be nil.

6.2 The Final Reporting Period Payment in respect of the last Reporting Period of the Franchise Term shall be an amount calculated as follows:

$$FRPP = PMC \times [\{180 - n\} \div 180]$$

where

FRPP means the amount of the Final Reporting Period Payment;

PMC means the costs incurred by the Franchisee in connection with the merger of the Franchise Sections as envisaged in paragraph 1.2 (Franchise Sections) of Schedule 16 (Pensions) which it would not have incurred in the absence of any such merger, with those costs calculated without netting off any amount of those costs off-set against the Profit Share in accordance with paragraph 5 of Appendix 13 to the Franchise Agreement; and

n means the number of months elapsed between the date on which the costs reflected in PMC were incurred by the Franchisee and the end of the Franchise Term.

5.20A In paragraph 1.1 of Schedule 8.1:⁴⁸

- (a) *in the formula after “+SCA” insert “+ASP + ASP2”; and*

⁴⁵ Date of change 6.6.2006

⁴⁶ date of exclusion 27.7.06

⁴⁷ Date of change 15/05/2009

⁴⁸ Date of change 11/12/2009

- (b) delete “and” at the end of the definition of “TAA”;
- (c) replace the full stop at the end of the definition of SCA with a semi-colon, and
- (d) insert after the definition of SCA, the following:

“ASP means for any Reporting Period the amount (if any) payable in respect of that Reporting Period in accordance with paragraph 6 of Appendix 13;

ASP2 means for any Reporting Period the amount (if any) payable in respect of that Reporting Period in accordance with paragraph 8 of Appendix 13.”

5.20 The prescribed percentage for the purpose of paragraph 3.1 of Schedule 8.1 (*Franchise Payments*) of the Terms is two per cent.

5.21 The prescribed percentages to be applied to the formula set out in paragraph 3.2(c) of Schedule 8.1 of the Terms are, respectively:

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

⁵⁰ *5.21A In paragraph 4.1, 4.2 and 4.3 of Schedule 8.1 of the Terms references to "fourth" shall be replaced with "second", so that the general entitlement to Revenue Support Adjustments applies with effect from the second anniversary of the Start Date.*

5.21B ⁵¹

⁵² *5.21C Notwithstanding the other provisions of Schedule 8.1 of the Terms, in calculating the amount of the Revenue Share Adjustment or Revenue Support Adjustment in any Franchisee Year under paragraphs 3, 4 and 5 of Schedule 8.1 of the Terms, the amount of Revenue used to make the relevant calculations shall be subject to such further adjustment as is required to ensure that the effects on Revenue of the Committed Obligations set out in paragraphs 20 to 26 inclusive of Appendix 11 to the Franchise Agreement are disregarded.*

⁴⁹ date of exclusions 27.7.2006

⁵⁰ Date of change 6.6.2006

⁵¹ **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.**

⁵² Insert new text wef 17/03/2008

⁵³ ⁵⁴ **5.21D** *Notwithstanding the other provisions of Schedule 8.1 of the Terms, in calculating the amount of the Revenue Share Adjustment or Revenue Support Adjustment in any Franchisee Year under paragraphs 3, 4 and 5 of Schedule 8.1 of the Terms, the amount of Revenue used to make the relevant calculations shall be subject to such further adjustment as is required to ensure that there are disregarded the effects on Revenue of the revenue generated as a result of deployment on or before 31st March 2012 of any of the additional revenue protection and collection inspectors the object of paragraph 16 of Part 4 of Appendix 11. For these purposes the Franchisee shall report the amount of such revenue to the Secretary of State within 14 days after the end of the 2011/2012 Franchisee Year. The Franchisee shall provide such information as the Secretary of State shall reasonably require for the purposes of verifying such information.*

Schedule 8.2 (Annual Franchise Payments)

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

5.23 The prescribed month and the prescribed date for the purposes of the definitions of “RPI” and “AEI” in the formula set out in Schedule 8.2 of the Terms are, respectively, November and 2005.

Schedule 9.3 (Runs of the Financial Model)

5.24 ⁵⁵ **Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

Schedule 12 (Financial Obligations and Covenants)

5.25 The agreed amounts of any Performance Bond for the purposes of paragraphs 4.4(a), (b) and (c) of Schedule 12 (Financial Obligations and Covenant) of the Terms are, respectively:

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

(a) X⁵⁶, being 1.5 per cent. of the aggregate forecast operating costs of the Franchisee for the period referred to in sub-paragraph (a), as forecast in the Initial Business Plan;

⁵³ Insert new text wef 21/11/2011

⁵⁴ Date of Change 04/05/2012

⁵⁵ date of deletion 27.7.2006

⁵⁶ **Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

- (b) X⁵⁷, being 3.0 per cent. of the annual aggregate forecast operating costs of the Franchisee for the year referred to in sub-paragraph (b), as forecast in the Initial Business Plan; and
- (c) X⁵⁸, being 5.5 per cent. of the annual aggregate forecast operating costs of the Franchisee for the third year following the Start Date, and for each subsequent year during the Franchise Term, 5.5 per cent. of the annual aggregate forecast operating costs of the Franchisee for each such year, as forecast in the latest available Business Plan.

⁵⁹ *"Appendix 3 to Schedule 13 (Operational Information)*

5.25A *The table in Appendix 3 to Schedule 13 (Operational Information) shall be amended by the addition at the end of the table of the following rows:*

<i>Information to be provided</i>	<i>Information (format)</i>	<i>When information to be provided</i>
<i>Weekday Regime and High Summer Regime (paragraph 12 of Appendix 13 (Great Western Specific Provisions))</i>		
<i>The information required under paragraph 12.8 of Appendix 13</i>	<i>See paragraph 12 of Appendix 13</i>	<i>B</i>

Schedule 14.3 (Key Contracts)

5.26 Key Contracts as at the date of this Agreement for the purpose of paragraph 1.2 of Schedule 14.3 (*Key Contracts*) of the Terms are set out in Appendix 9 (*List of Key Contracts*).

Schedule 14.4 (Designation of Franchise Assets)

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

⁵⁷ 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.

⁵⁸ 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.

⁵⁹ Date of change 2/3/2009

Schedule 16 (Pensions)

5.28 *The relevant sections of the Railways Pension Scheme for the purpose of paragraph 1 of Schedule 16 (Pensions) of the Terms are:*

(a) *First Great Western Section.*⁶⁰

⁶¹ 5.28A *In paragraph 1 (Franchise Sections) of Schedule 16 (Pensions) of the Terms:*

(a) *the existing paragraph shall be numbered "1.1", and*

(b) *after the end of that paragraph 1.1 a new paragraph shall be inserted as follows:*

1.2 *Notwithstanding the other terms of this Schedule, the Franchisee shall be permitted to merge any two or more of the Franchise Sections with the approval of the Trustee of the Railways Pension Scheme. Such merger shall take effect from Start Date or such later date as the Franchisee and the Trustee may agree and shall be implemented by the transfer of the assets and liabilities of one or more Franchise Sections to one ongoing Franchise Section. References in this Schedule to "a Franchise Section" shall exclude a Franchise Section once it has transferred all its assets and liabilities to another Franchise Section.*

Schedule 18 (Franchise Continuation Criteria)

5.29 The relevant date for the purpose of paragraph 1.2 of Schedule 18 (*Franchise Continuation Criteria*) of the Terms is the date prescribed in paragraph (b) of the definition of Expiry Date.

Schedule 19 (Other Provisions)

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

Name:	<i>The Secretary of State</i>
Address:	<i>Department for Transport Great Minster House 33 Horseferry Road⁶³ London SW1P 4DR</i>
Facsimile:	<i>020 7944 2446⁶⁴</i>
E-mail:	<i>Franchise.notices@dft.gsi.gov.uk⁶⁵</i>

⁶⁰ Insert change text wef 01/08/07

⁶¹ Date of change 6.6.2006

⁶² Date of change 13.4.2006

⁶³ Date of Change 01/10/2011

⁶⁴ Date of change 01/08/2011

Attention: **Director, Rail Commercial Contracts**⁶⁶

Name: **First Greater Western Limited**

Address: **Milford House,
1 Milford Street
Swindon
SN1 1HL**

Facsimile: **01793 499569**

E-mail: **mark.hopwood@firstgroup.com**⁶⁷

Attention: **Managing Director**

⁶⁸*Schedule 5.2 (Franchisee's obligation to Create Fares)*

5.31 The following paragraph 3 shall be added in Schedule 5.2 of the Terms:

3. Fares between London Stations

- 3.1 The Franchise Operator shall negotiate each Fares Setting Round with each other train operator and agree the prices to be charged for Single Fares, Return Fares, Season Ticket Fares and Off-peak Return Fares for travel between each London Station and each other London Station.**
- 3.2 With effect from 1 January 2007, unless otherwise agreed with the Department for Transport, Single Fares, Return Fares and Off-peak Return Fares set in accordance with paragraph 3.1 above shall be set so that the same price shall apply for any journey which involves travel within or across the same Zone or Zones. The Franchisee shall agree with other operators any terms and conditions necessary for these fares or for these journeys, including the time period to be designated as 'off-peak', so that the same terms, conditions and (in the case of Off-peak Returns) time restrictions shall apply to journeys between any two London Stations and for these purposes shall exchange such information as may be reasonably necessary for or associated with reaching and reviewing such agreement;**
- 3.3 With effect from 1 January 2010, unless otherwise agreed with the Department for Transport, Season Ticket Fares set in accordance with paragraph 3.1 above shall be set so that the same price shall apply for any journey which involves travel within or across the same Zone or Zones. The Franchisee shall agree with other operators any terms and conditions necessary for these fares or for these journeys so that the same terms and conditions shall apply to Season Ticket Fares between any two London Stations;**

⁶⁵ Date of change 01/08/2011

⁶⁶ Date of change 01/08/2011

⁶⁷ Date of change 3/3/2009

⁶⁸ date of change 4.8.2006

3.4 *The Single Fares, Return Fares and Season Ticket Fares (but, for the avoidance of doubt, not Off-peak Return Fares) set in line with paragraphs 3.1 to 3.3 above shall remain subject to the fares regulation set out in this Schedule 5. [However, the Department for Transport may grant such derogations from the terms of this Schedule 5 as are reasonably necessary to accommodate the requirements of paragraph 3.2 and 3.3.*

3.5 *The Franchisee shall use all reasonable endeavours to negotiate the fares set under paragraphs 3.1 to 3.3 above, and shall adjust other fares within its control as necessary within the requirements of this Schedule 5, so as to ensure that there is no Qualifying Change as a result of the amendment of this Schedule 5.2 to include this paragraph 3, but this paragraph 3.5 is without prejudice to the operation of Schedule 9 if, having exercised all reasonable endeavours, any adjustment made by the Franchisee at any time during the Franchise Term under this paragraph 3 is a Qualifying Change.*

6. COMMITTED OBLIGATIONS⁶⁹

“The Franchisee shall deliver the Committed Obligations and the HLOS Committed Obligations that are set out in Appendix 11 in accordance with the terms thereof.”

7. SUPPLEMENTAL TERMS

7.1 The provisions of Appendix 12 (*2012 Olympic Games*) shall apply.

7.2 The provisions of Appendix 13 (*Greater Western Specific Provisions*) and Appendix 14 (*Recalibration of Benchmarks*) shall apply.

8. DOCUMENTS IN THE AGREED TERMS

The parties hereby acknowledge that the list of documents in the agreed terms is set out in Appendix 15 (*List of Documents in the Agreed Terms*).

9. ENTIRE AGREEMENT

9.1 This Agreement, the Conditions Precedent Agreement, the pensions side letter from the Secretary of State to the Franchisee dated the same date as this Agreement and the Terms contain the entire agreement between the parties in relation to the subject matter of this Agreement and supersede all prior agreements and arrangements between the parties other than any confidentiality agreements or undertakings which the Franchisee may have entered into with the Secretary of State in connection with his proposal to secure the provision of the Passenger Services under this Agreement.

9.2 The Franchisee hereby acknowledges that it is not entering into this Agreement, and the other documents referred to in Clause 9.1 in reliance on any warranties, representations or undertakings howsoever or to whomsoever made except in so far as such warranties, representations or undertakings are:

- (a) contained in this Agreement; or
- (b) embodied in any warranties, representations or undertakings contained in the long form reports provided by the Reporting Accountants in respect of Great Western

⁶⁹ Date of change 02/03/2009

Trains Company Limited, First Great Western Link Limited and Wales and West Passenger Trains Limited, dated 18 April 2005.

9.3 The Franchisee hereby acknowledges and agrees with the Secretary of State (for himself and as trustee for each of the other persons referred to therein) to the disclaimer of liability which is contained in the section entitled "Important Notice" contained in any document supplied by or on behalf of the Secretary of State in connection with this Agreement, the process leading to the entering into of this Agreement, or the Franchise Services (including any "Invitation to Tender" issued in connection therewith).

9.4 The Franchisee irrevocably and unconditionally waives any right which it may otherwise have to claim damages in respect of and/or to rescind this Agreement, and the other documents referred to in Clause 9.1 on the basis of any warranty, representation (whether negligent or otherwise, and whether made prior to and/or in this Agreement and the other documents referred to in Clause 9.1) or undertaking howsoever or to whomsoever made unless and to the extent that such warranty, representation or undertaking was made fraudulently.

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

}

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

[Secretary of State seal attached]

Richard Horton

Authenticated by authority of the
Secretary of State for Transport

SIGNED FOR AND ON
BEHALF OF **FIRST GREATER
WESTERN LIMITED**

DIRECTOR:

P Furze-Waddock

}

APPENDIX 1

Secretary of State Risk Assumptions (*Clause 5.1(u)*)

A Change shall occur if and whenever any of the events set out in any of the following risk assumptions (*Secretary of State Risk Assumptions*) occur during the Franchise Term:

1. FARES

The Franchisee is required pursuant to any Transport for London initiative to:

- (a) structure its Prices or Child Prices for Fares by reference to zones within which a station falls, rather than by reference to Flows between individual stations; and/or
- (b) issue, validate or accept tickets in a dematerialised form (for example, 'Oyster Cards'),

in each case, affecting any area where Travelcards (as defined under the Travelcard Agreement) apply, provided that no Secretary of State Risk Assumption is made to the extent that the Secretary of State uses his powers pursuant to paragraph 5 of Schedule 5.7 (*Changes to Fares and Fares Regulation*) of the Terms to alter the obligations of and restrictions on the Franchisee under Schedules 5.2 (*Franchisee's Obligations to Create Fares*) to 5.8 (*Fares Regulation Information Monitoring*) (inclusive) of the Terms as a result of any such initiative.

2. CROSSRAIL SCHEME

The Franchisee is affected by the implementation of the Crossrail Scheme, provided that no Secretary of State Risk Assumption is made to the extent that the Franchisee is capable of being compensated for the effects of the implementation and operation of any such scheme on the basis that that scheme is a Network Change under the Network Code (including Condition G2.2 of that code).

3. GSM-R AND ERTMS

There is a requirement on the Franchisee to implement or be involved in the implementation of:

- (a) the radio communication system known as the Global Standard for Mobile Communications – Radio (*GSM-R*); and/or
- (b) the national automatic train protection and signalling project known as the European Rail Traffic Management System (*ERTMS*),

provided that no Secretary of State Risk Assumption is made to the extent that the Franchisee is capable of being compensated for the effects of the implementation or involvement in the implementation of GSM-R or ERTMS (as the case may be) on the basis that GSM-R or ERTMS (as the case may be) is a Network Change under the Network Code (including Condition G2.2 of that code).

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

⁷⁰ date of deletion 27.7.2006

5. **⁷¹Where 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.**

⁷¹ date of change 27.7.06

APPENDIX 2

⁷²Target Revenue (expressed in real terms) (*Clause 5.1(ac)*)

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.

⁷² date of exclusion 27.7.2006

APPENDIX 3

The Train Fleet (*Clause 5.3*)

1. THE COMPOSITION OF THE TRAIN FLEET

The Train Fleet consists of:

- (a) (i) from the Start Date to 31 December 2007, the rolling stock vehicles specified in Table 1.1, with the capacity characteristics referred to there, subject to the notes to that Table; and
- (ii) with effect from and including 1 January 2008 until the lease expiry dates specified in Table 1.2, the rolling stock vehicles specified in Table 1.2, with the capacity characteristics referred to there, subject to the notes to that Table;
- (b) following any such lease expiry, substitute rolling stock vehicles having:
 - (i) at least the capacity specified in respect of the original rolling stock vehicles being substituted; and
 - (ii) reliability, capability and quality that is at least equal to the reliability, capability and quality of the original rolling stock vehicles being substituted; and
- (c) from the dates specified in Table 2, the additional rolling stock vehicles referred to against those dates, having:
 - (i) in the case of any additional rolling stock vehicles of the same class as any original rolling stock vehicles:
 - (A) at least the capacity specified in respect of such original rolling stock vehicles; and
 - (B) reliability, capability and quality that is at least equal to the reliability, capability and quality of such original rolling stock vehicles; and
 - (ii) in the case of any other additional rolling stock vehicles:
 - (A) at least the capacity specified in respect of any original rolling stock vehicles that are, in the reasonable opinion of the Secretary of State, most similar to such additional rolling stock vehicles; and
 - (B) reliability, capability and quality that is, in the reasonable opinion of the Secretary of State, at least equal to the reliability, capability and quality of any original rolling stock vehicles that are, in the reasonable opinion of the Secretary of State, most similar to such additional rolling stock vehicles.

Table 1.1 (existing vehicles as at the Start Date)^{73 74}

<i>Column 1</i>	<i>Column 2</i>						<i>Column 3</i>		
<i>Class of vehicle</i>	<i>Number of vehicles and unit configuration</i>						<i>Capacity of vehicles</i>		
			<i>Seats</i>	<i>Standing</i>	<i>Total</i>	<i>Standard Class</i>			
<i>HST Note 1</i>	<i>348 (2+8)</i>		<i>471</i>	<i>72</i>	<i>543</i>	<i>358</i>	<i>Porterbrook /Angel</i>	<i>03/16</i>	
<i>180 Note 2</i>	<i>70 (5 car)</i>		<i>284</i>	<i>48</i>	<i>332</i>	<i>242</i>	<i>Angel</i>	<i>12/07</i>	
<i>165 Note 11</i>	<i>40 (2 car)</i>		<i>186</i>	<i>65</i>	<i>251</i>	<i>186</i>	<i>Angel</i>	<i>03/16</i>	
<i>165 Note 11</i>	<i>48 (3 car)</i>		<i>270</i>	<i>95</i>	<i>381</i>	<i>270</i>	<i>Angel</i>	<i>03/16</i>	
<i>166 Note 3</i>	<i>63 (3 car)</i>		<i>257</i>	<i>79</i>	<i>336</i>	<i>225</i>	<i>Angel</i>	<i>03/16</i>	
<i>143</i>	<i>16 (2 car)</i>		<i>104</i>	<i>36</i>	<i>140</i>	<i>104</i>	<i>Porterbrook /Wessex</i>	<i>03/16</i>	
<i>150 Note 4</i>	<i>50 (2 car)</i>		<i>139</i>	<i>49</i>	<i>188</i>	<i>139</i>	<i>Porterbrook</i>	<i>03/16</i>	
<i>153 Note 5 Note 7</i>	<i>15 (1 car)</i>		<i>75</i>	<i>8</i>	<i>83</i>	<i>75</i>	<i>Porterbrook Angel</i>	<i>03/16</i>	
<i>158 Note 6</i>	<i>24 (2 car)</i>		<i>140</i>	<i>14</i>	<i>154</i>	<i>140</i>	<i>Porterbrook /Angel/First ScotRail/Northern</i>	<i>03/16</i>	
<i>158</i>	<i>28 (3 car)</i>		<i>219</i>	<i>22</i>	<i>241</i>	<i>219</i>	<i>Porterbrook /Angel</i>	<i>03/16</i>	
<i>Mark III Day Coaches</i>	<i>8 (3 vehicles in sleeper set configuration)</i>		<i>105</i>	<i>-</i>	<i>105</i>	<i>69</i>	<i>Porterbrook</i>	<i>03/16</i>	

⁷³ Date of Change 31.3.2006⁷⁴ Date of Second Change 14/06/07

<i>Column 1</i>	<i>Column 2</i>						<i>Column 3</i>		
<i>Class of vehicle</i>	<i>Number of vehicles and unit configuration</i>						<i>Capacity of vehicles</i>		
			<i>Seats</i>	<i>Standing</i>	<i>Total</i>	<i>Standard Class</i>			
<i>Mark III Sleeper stock Note 10</i>	8							<i>Porterbrook</i>	<i>03/16</i>

Notes:

- Note 1 This row represents 42 (2 +8) HST sets plus 12 spare passenger vehicles. Power cars are not counted. During the period to 31st December 2007 56 additional HST passenger vehicles will be introduced following modification work and the entire fleet of HSTs (53 sets) will be re-configured over this period to achieve the configuration as shown in Table 1.2. During this period, 27 caterer vehicles will become surplus to requirements and, unless otherwise agreed with the Secretary of State, will cease to be part of the Train Fleet and will either be returned to their owner/lessor or stored, without being subject to any substitution requirement.
- Note 2 The Class 180 fleet will be displaced by additional HSTs as referred to in Note 1 and the lease with Angel Trains will terminate accordingly in December 2007. They will not be subject to any substitution requirement.
- Note 3 ⁷⁵⁷⁶ ***6 x Class 166 vehicles may be returned to Angel Trains in December 2006, in which case the lease of those vehicles will terminate without their being subject to any substitution requirement. If and to the extent they are retained on lease by the Franchisee those vehicles will be treated as comprising Additional Rolling Stock Investment." ; and***
- Note 4 16 x Class 150 vehicles will be returned to Porterbrook in December 2006 and the lease in respect of those vehicles will terminate. They will not be subject to any substitution requirement.
- Note 5 ⁷⁷ ***7x Class 153 vehicles will be returned to Porterbrook (2 vehicles) and Angel Trains (5 vehicles) in December 2006 and the lease in respect of those vehicles will terminate. in December 2006 (for the 2 Porterbrook vehicles) and December 2007 (for the 5 Angel vehicles). They will not be subject to any substitution requirement.***

⁷⁵ date of deletion 31.3.2006

⁷⁶ date of change 6.6.2006

⁷⁷ date of change 31.3.2006

Note 6 ⁷⁸ *2 x Class 158 vehicles will be sub-leased from the First ScotRail franchise from April 2006 until June 2006 (to be replaced by 2 cascaded vehicles from the Transpennine Express franchise) and 10 x Class 158 vehicles will be sub-leased from the Northern franchise between April 2006 and August 2006 (to be replaced by 10 x Class 158 vehicles cascaded from the Transpennine Express franchise).*

28 x Class 158 vehicles will be returned to Angel Trains in December 2006 following the transfer of Class 158 stock owned by Porterbrook from the Transpennine Express franchise as detailed in Table 1.2 (although the lease with Angel Trains in respect of these vehicles will continue until December 2007).

Note 7 The numbers of Class 153 units are shown before taking account of the return of one Class 153 unit to be returned to its lessor and the numbers of dmu units generally are shown before taking into account of the lease of one further two car dmu unit (which may potentially be achieved by reducing the numbers of dmu units otherwise returned) in connection with changes made to the SLC2 associated with Severn Beach and Bicester services.

⁷⁹ *It is acknowledged that in fulfilling its commitments under paragraph 18 of Appendix 11 (Committed Obligations and Related Provisions) one additional Class 153 unit beyond that envisaged in the Financial Model as at the Start Date is being retained through to December 2007, but at that date will be returned to its lessor/hirer without being subject to any substitution requirement.*

Note 8 The information in this column is subject to (i) further information in the Notes to the table regarding earlier termination of the leases of specific rolling stock and (ii) lease provisions for early termination, including on the earlier termination of the Franchise.

Note 9 Table 1.1 excludes the four-car Class 360/2 electric multiple units provided by Heathrow Airport Limited to the Franchisee under the Hire Agreement. On expiry or termination of the Hire Agreement the Franchisee shall use all reasonable endeavours to procure substitute rolling stock vehicles complying with the requirements set out in paragraph 1(b) of this Appendix 3 (*Train Fleet*).

Note 10 The Mark III sleeper stock and associated ⁸⁰ **Mark III** rolling stock in sleeper configuration is intended for use only on the Franchisee's sleeper services and is not required to be used in delivering the Peak Passenger Services.

Note 11 The number of standard class seats for Class 165 units is shown after completion of the process of de-designation of first class seats which will be undertaken following the Start Date and completed prior to 1 January 2008.

⁷⁸ date of deletion 31.3.2006

⁷⁹ date of added text 6.6.2006

⁸⁰ Date of Change 31.3.2006

"Table 1.2 (Train Fleet from 1 July 2008 to March 2016)"^{81 82}
^{83 84 85 86}

Column 1	Column 2	Column 3	Column 4				Column 5	Column 6
Lease start date(s) <i>Note 1</i>	Class of vehicle	Number of vehicles and unit configuration	Capacity of vehicles				Owner / Lessor	Lease expiry date(s) <i>Note 2</i>
			Seats	Standing	Total	Standard Class		
04/06	HST <i>Note 3</i> <i>Note 12</i>	128 (2 + 8)	490	76	565	378	FirstGroup/Angel / Porterbrook	03/16
04/06	HST (high capacity) <i>Note 3</i> <i>Note 12</i>	160 (2 + 8) becoming 152 (2 + 8) <i>Note 15.3</i>	514	79	593	395	FirstGroup/Angel / Porterbrook	03/16
04/06	HST (high capacity) <i>Note 3</i> <i>Note 12</i>	126 (2 + 7) becoming nil (2 + 7) <i>Note 15.2</i>	476	76	552	381	FirstGroup/Angel / Porterbrook	03/16
04/06 and 12/11 <i>Note 15.1</i>	HST (super high capacity) <i>Note 3</i> <i>Note 12</i>	144 (2+8) formed from 2 + 7 HSTs and one 2 + 8 HST and 15 additional vehicles <i>Note 15.1</i>	560	90	650	465	FirstGroup/Angel / Porterbrook	03/16
<i>Note 16</i>	180	25 (5 car)	284	48	332	242	Angel	03/16
04/06	165 <i>Note 10</i>	40 (2 car)	186	59	245	170	Angel	03/16
04/06	165 <i>Note 10</i>	48 (3 car)	286	97	383	270	Angel	03/16
04/06	166 <i>Note 10</i>	57 (3 car)	259	79	338	227	Angel	03/16
04/06	143	16 (2 car)	104	36	140	104	Porterbrook/Wess ex	03/16
04/06	150/2	34 (2 car)	139	49	188	139	Porterbrook	03/16

⁸¹ DATE OF CHANGE 31.3.2006

⁸² Date of Second Change 14/06/07

⁸³ Date of Third Change 18/09/07

⁸⁴ Date of Fourth Change 26/09/07

⁸⁵ Date of Change 21/11/2011

⁸⁶ Date of Change 04/05/2012

Column 1	Column 2	Column 3	Column 4				Column 5	Column 6
Lease start date(s) <i>Note 1</i>	Class of vehicle	Number of vehicles and unit configuration	Capacity of vehicles				Owner / Lessor	Lease expiry date(s) <i>Note 2</i>
			Seats	Standing	Total	Standard Class		
04/06	153 <i>Note 4</i>	9 (1 car)	75	8	83	75	Angel/Porterbrook	03/16
04/06	158 <i>Note 13</i>	40 (2 car)	140	14	154	140	Porterbrook/Angel	03/16
04/06	158	3 (3 car)	219	22	241	219	Porterbrook/Angel	03/16
04/06	Mark III	8 (3 vehicles in sleeper set configuration)	123	-	123	70	Porterbrook ⁸⁷	03/16
04/06	Mark III	8					Porterbrook	03/16
<i>Note 8 and 9</i>	150/1 <i>Note 11</i>	18 (2 car)	147	59	206	147	Angel Trains	03/16
<i>Note 14</i>	150/1 <i>Note 11</i>	12 (2 car)	135	59	194	135	Angel Trains	03/16
<i>Note 14</i>	150/2 <i>Note 14</i>	4 (2 car)	147	49	196	147	Angel Trains	03/16
<i>Note 14</i>	153 <i>Note 14</i>	2 (1 car)	75	8	83	75	Porterbrook	03/16
<i>Note 17</i>	150/0 <i>Note 17</i>	6 (3 car)	234	81	315	234	Angel Trains	03/16
<i>Note 18</i>	150/2 <i>Note 18</i>	2 (1 car)	76	27	103	76	Angel Trains	03/16

Note 1 The Lease Start Date reflects the date by which the lease is expected to be entered into. The commencement of vehicles in operation will occur over the period to 1st January 2008 (unless otherwise stated).

Note 2 The information in this column is subject to (i) further information in the Notes to the table regarding earlier termination of the leases of specific rolling stock and (ii) lease provisions for early termination, including on the earlier termination of the Franchise.

Note 3 In addition there will be 7 spare passenger vehicles to operate as a common float across the three different configurations, with this number being increased by a further five spares as referred to in the last paragraph of Note 15.1.

Note 4 The overall number of Class 153 vehicles has been amended to reflect the retention of the 'Ivybridge unit' required under the Amendment Agreement of 6 June 2006.

Note 5 Table 1.2 excludes the four-car Class 360/2 electric multiple units provided by Heathrow Airport Limited to the Franchisee under the Hire Agreement. On expiry or termination of the Hire Agreement the Franchisee shall use all reasonable endeavours to procure substitute rolling stock vehicles complying with the requirements set out in paragraph 1(b) of this Appendix 3 (*Train Fleet*).

Note 6 The Table is subject to further amendment to reflect the outcome of the Secretary of State's proposed procurement of new trains to replace HSTs. It is anticipated that these will substitute for HSTs on a one for one basis and provide at least equivalent capacity.

Note 7 The Mark III sleeper stock and associated ⁸⁸Mark III rolling stock in sleeper configuration is intended for use only on the Franchisee's sleeper services and is not required to be used in delivering the Peak Passenger Services.

⁸⁹Note 8 The Lease start dates will be in accordance with the Franchisee's obligations pursuant to Part 4 of Appendix 11 (Committed Obligations and HLOS Committed Obligations and Related Provisions), with each unit available for service from the dates seven days after the hire of each relevant unit commences provided that where any of the units are sub-leased by the Franchisee with the approval of the Secretary of State to another franchisee such obligation shall not apply in respect of any relevant vehicle concerned during the period of that sub-lease and for seven days after the end of that sub-lease. It is acknowledged that the figures for the capacity of the vehicles are the estimated numbers as at the date of the FGW30 HLOS Deed of Amendment and are subject to verification on delivery of the vehicles to the Franchisee. The Franchisee shall notify the actual figures for capacity of the vehicles as soon as reasonably practicable following such delivery, with such capacity being calculated using a methodology which is consistent with that used for the balance of the Table. Subject to resolution of any issues raised by the Secretary of State, following such notification the Table shall be and shall be deemed to have been amended to reflect such actual figures.

⁹⁰Note 9 A class 150/1 is a class 150 without end gangways. These are the Extra Class 150 Vehicles which are subject to the Franchisee's obligations in respect of those vehicles pursuant to Part 4 of Appendix 11 and are not subject to paragraphs 5.11 to 5.16 and paragraph 5.19 of Part 1 of Appendix 11.

⁸⁸ DATE OF CHANGE 31.3.2006

⁸⁹ Date of change 02/03/2010

⁹⁰ Date of Change 04/08/2011

Note 10 Amended to correct errors in capacities shown in the previous versions of the Table.

Note 11 Amended to correct an error in the number of vehicles shown in the Deed of Amendment of 2 March 2010.

Note 12 Amended to reflect the addition to the Fleet of HST set EC64 in line with the Remedial Agreement of 17 March 2008 and to reflect the fact that original plans were not fully followed through, being replaced instead by a reconfiguration of certain standard class vehicles in connection with the provision of additional buffet facilities.

Note 13 15 Class 158 2-car units have been reformed into 10 3-car units in line with the requirements of the Remedial Agreement of 17 March 2008 and the further requirements of the Deed of Amendment of 2 March 2010.

⁹¹Note 14: The Lease start dates will be in accordance with the Franchisee's obligations pursuant to Part 4 of Appendix 11 (Committed Obligations and HLOS Committed Obligations and Related Provisions), with each unit available for service from the dates seven days after the hire of each relevant unit commences. It is acknowledged that the figures for the capacity of the vehicles are the estimated numbers as at the date of the Bristol HLOS Deed of Amendment and are subject to verification on delivery of the vehicles to the Franchisee. The Franchisee shall notify the actual figures for capacity of the vehicles as soon as reasonably practicable following such delivery, with such capacity being calculated using a methodology which is consistent with that used for the balance of the Table. Subject to resolution of any issues raised by the Secretary of State, following such notification the Table shall be and shall be deemed to have been amended to reflect such actual figures. These are the Extra Bristol Vehicles which are subject to the Franchisee's obligations in respect of those vehicles pursuant to Part 4 of Appendix 11 and are not subject to paragraphs 5.11 to 5.16 and paragraph 5.19 of Part 1 of Appendix 11.

Note

15.1 The Super High Capacity HST row shall apply to describe the corresponding part of the Train Fleet from 3rd September 2012 (subject to any adjustment under paragraph 11.4 or 12.4 of Part 4 of Appendix 11 and earlier application of the Super High Capacity HST row where Super High Capacity HSTs are introduced into passenger service earlier than 3rd September 2012 pursuant to the all reasonable endeavours obligation of

⁹¹ Date of Change 04/08/2011

the Franchisee to introduce into passenger service as many Super High Capacity HSTs as reasonably practicable by ⁹² under paragraph 11.2 (b) of Part 4 of Appendix 11). When all required Super High Capacity HSTs are introduced into passenger service the HST 2 + 7 High Capacity Row shall cease to apply and the HST 2 + 8 High Capacity Row shall be amended, both as set out in Notes 15.2 and 15.3.

Of the vehicles referred to in the Super High Capacity HST row, 15 are additional Mark III buffet vehicles to be taken on lease from ⁹³ and converted in accordance with paragraph 12 of Part 4 of Appendix 11 to standard class vehicles and the balance are made up of vehicles included in the preceding HST High Capacity 2+8 and HST High Capacity 2+7 rows.

One HST 2 + 7 formation referred to in the HST 2 + 7 High Capacity row will be broken up over the period between the date of the LTV HLOS Deed of Amendment and the earlier of the date that the Franchisee complies with its relevant obligations pursuant to paragraph 11.2 (b) of Part 4 of Appendix 11 and 3rd September 2012 with three of its vehicles used to make Super High Capacity HSTs.

The HST 2 + 8 formations referred to in the Super High Capacity HST row will then be made up from a combination of all the previous HST 2 + 7 High Capacity formation vehicles (less the one formation being broken up) and one HST 2 + 8 high capacity formation. The three vehicles from the broken up HST 2 + 7 formation and the fifteen converted buffet vehicles will be used to increase all those formations of HST 2 + 7 vehicles to HST 2 + 8 formations and to change the one HST 2 + 8 High Capacity formation into a 2 + 8 Super High Capacity formation, with a standard class buffet in place of a first class buffet. The 2 + 8 Super High Capacity HSTs are to be in operation and form part of the Train Fleet from 3rd September 2012 subject to relevant Super High Capacity HSTs being included in the Train Fleet earlier where introduction takes place prior to 3rd September 2012 pursuant to the all reasonable endeavours obligation of the Franchisee under paragraph 11.2 (b) of Part 4 of Appendix 11 to introduce into passenger service as many Super High

⁹² **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.**

⁹³ **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.**

Capacity HST as reasonably practicable by ⁹⁴ (subject to any adjustment under paragraph 11.4 or 12.4 of Part 4 of Appendix 11).

The combination of the additional Mark III buffet vehicles taken on lease, the break up of the one HST 2 + 7 High Capacity set and the conversion of the first class buffet from the 2 + 8 High Capacity formation will result in five vehicles for use as spares across the Train Fleet after the 18 Super High Capacity HSTs have been formed.

Note

- 15.2 The HST 2 + 7 High Capacity formation row will be subject to change as set out in Note 15.1 (with one 2+7 formation being broken up and 17 2 + 7 formations being converted to 2 + 8 Super High Capacity HSTs) and the row shall cease to apply with effect from the earlier of the date that the Franchisee complies with its relevant obligations pursuant to paragraph 11.2 (b) of Part 4 of Appendix 11 and 3rd September 2012 (subject to any adjustment under paragraph 11.4 or 12.4 of Part 4 of Appendix 11) , when it is replaced by the Super High Capacity HST row.

Note

- 15.3 The HST 2 + 8 High Capacity formation row will be subject to change as set out in Note 15.1, so that the number of HST 2 + 8 High Capacity formations is reduced by one with effect from the earlier of the date that the Franchisee complies with its relevant obligations pursuant to paragraph 11.2 (b) of Part 4 of Appendix 11 and 3rd September 2012 (subject to any adjustment under paragraph 11.4 or 12.4 of Part 4 of Appendix 11) with the one HST 2 + 8 High Capacity formation removed being reformed as a 2 + 8 Super High Capacity HST by its first class buffet being converted to a standard trailer vehicle and replaced with the standard buffet vehicle from the 2 + 7 HST being broken up.

Note 16: These are the LTV Class 180 Vehicles which are subject to the Franchisee's obligations in respect of those vehicles pursuant to Part 4 of Appendix 11. The Lease start dates will be in accordance with the Franchisee's obligations pursuant to paragraph 11.1(b) of Part 4 of Appendix 11, with each unit available for service as part of the Train Fleet from the earlier of the date that the Franchisee complies with its obligations pursuant to paragraph 11.2 (a) (i) of Part 4 of Appendix 11

⁹⁴ **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.**

and 3 September 2012 (subject to any adjustment under paragraph 11.4 of that Part 4).

Note 17: These are the LTV Class 150 Vehicles which are subject to the Franchisee's obligations in respect of those vehicles pursuant to Part 4 of Appendix 11 and are not subject to paragraphs 5.11 to 5.16 and paragraph 5.19 of Part 1 of Appendix 11. The Lease start dates will be in accordance with the Franchisee's obligations pursuant to paragraph 11.1(c) of Part 4 of Appendix 11, with each unit available for service as part of the Train Fleet from 29 February 2012 in accordance with paragraph 11.2 of that Part 4 (subject to any adjustment under paragraph 11.4 of that Part 4).

It is acknowledged that the figures for the capacity of the vehicles are the estimated numbers as at the date of the LTV HLOS Deed of Amendment and are subject to verification on delivery of the vehicles to the Franchisee. The Franchisee shall notify the actual figures for capacity of the vehicles as soon as reasonably practicable following such delivery, with such capacity being calculated using a methodology which is consistent with that used for the balance of the Table. Subject to resolution of any issues raised by the Secretary of State, following such notification the Table shall be and shall be deemed to have been amended to reflect such actual figures.

Note 18: These are the Orphan Class 150 Vehicles which are subject to the Franchisee's obligations in respect of those vehicles pursuant to Part 4 of Appendix 11 and are not subject to paragraphs 5.11 to 5.16 and paragraph 5.19 of Part 1 of Appendix 11. The Lease start dates will be in accordance with the Franchisee's obligations pursuant to paragraph 11.1(d) of Part 4 of Appendix 11, with each unit available for service as part of the Train Fleet from 29 February 2012 in accordance with paragraph 11.2 of that Part 4 (subject to any adjustment under paragraph 11.4 of that Part 4).

It is acknowledged that the figures for the capacity of the vehicles are the estimated numbers as at the date of the LTV HLOS Deed of Amendment and are subject to verification on delivery of the vehicles to the Franchisee. The Franchisee shall notify the actual figures for capacity of the vehicles as soon as reasonably practicable following such delivery, with such capacity being calculated using a methodology which is consistent with that used for the balance of the Table. Subject to resolution of any issues raised by the Secretary of State, following such notification the Table shall be and shall be deemed to have been amended to reflect such actual figures."

Table 2 (additional vehicles)

Column 1	Column 2	Column 3	Column 3				Column 5	Column 6
Lease start date(s)	Class of vehicle	Number of vehicles and unit configuration	Capacity of vehicles				Owner / Lessor	Lease expiry date(s)
			Seats	Standing	Total	Standard Class		
This table is left intentionally blank								

APPENDIX 4

List of Priced Options (*Clause 5.16*)

1. EXTENSION OF PORTSMOUTH-CARDIFF SERVICES TO SERVE CARDIFF AIRPORT

Description, Objective and Specification

1.1 This is a Priced Option to change the Service Level Commitment to amend the SLC2 by extending the current Portsmouth to Cardiff Central Service to Rhoose station with effect from the Timetable Change Date in December 2006, with the extension to be funded by the Welsh Assembly Government (*WAG*) through a separate funding agreement to be entered into between the Secretary of State and WAG.

1.2 Where this Priced Option is called after the signature of the Franchise Agreement, it is conditional on the Franchisee being able to secure before the date of the Timetable Conference in February 2006 an option to an additional Class 158 unit at the price specified in the Financial Model, unless the Secretary of State agrees to fund any incremental price (which will in turn be funded by WAG).

1.3 If the Secretary of State elects to call this Priced Option, he shall attach to the written notice he serves pursuant to paragraph 2 of Schedule 3 (*Priced Options*) of the Terms, a Service Level Commitment that takes account of the extension of the current Portsmouth to Cardiff Central Service to Rhoose station with effect from the Timetable Change Date in December 2006.

⁹⁵Price for exercising this Priced Option (in £k base date)

1.4 Where this Priced Option is called in accordance with its terms and the condition specified in paragraph 1.2 is met, the price for this Priced Option payable by the Secretary of State to the Franchisee, subject to adjustment in accordance with Schedule 9 (*Changes*) of the Terms to reflect any Change that occurs prior to its exercise, shall be as set out in the Financial Model and corresponds to the adjustments set out in the table below. That price shall be indexed in accordance with the principles set out in Schedule 8.2 (*Annual Franchise Payments*) of the Terms.

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.

⁹⁵ date of exclusion 27.7.2006

- 1.5 ⁹⁶The Target Revenue set out in Appendix 2 will be subject to adjustment by the application of the following increments (expressed in real terms) where this Priced Option is called and becomes unconditional in all respects:

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.

Timescale for implementing the Priced Option from the date it is called

1.6 Provided the Secretary of State has called this Priced Option by the 31 January 2006, the Franchisee shall procure that this Priced Option is implemented on and from the Timetable Change Date in December 2006.

1.7 If and to the extent that the Franchisee is not able to secure a Timetable enabling it to operate railway passenger services that comply with the Service Level Commitment issued pursuant to paragraph 1.3 as a result of not being able to obtain the timetable development rights that it requires for that purpose:

- (a) the provisions of paragraph 10 of Schedule 1.1 (*Service Development*) of the Terms shall apply; and

⁹⁶ date of exclusion 27.7.2006

- (b) the Threshold Amount shall be zero for the purposes of paragraph 10.7 of Schedule 1.1 (*Service Development*) of the Terms.

Other effects on the Franchise Agreement

1.8 With effect from the Timetable Change Date in December 2006, Table 1.1 in Appendix 3 (*Train Fleet*) shall be amended by the addition of one two-car Class 158 unit and that additional unit shall also be included in Table 1.2 in Appendix 3.

Latest date for exercising the Priced Option in order to maintain the price detailed in Paragraph 1.4

1.9 The Secretary of State may call this Priced Option up to and including 31 January 2006.

APPENDIX 5

Cancellations Benchmark Table (Clause 5.17)⁹⁷

<i>Franchisee Year / Reporting Period</i>		<i>Remapped target</i>	<i>Improvement Plan Level</i>	<i>Breach Performance Level</i>	<i>Default Performance Level</i>
<i>Year 1</i>	<i>Period 1</i>	<i>1.05</i>	<i>1.13</i>	<i>1.21</i>	<i>1.26</i>
<i>Year 1</i>	<i>Period 2</i>	<i>1.05</i>	<i>1.13</i>	<i>1.21</i>	<i>1.26</i>
<i>Year 1</i>	<i>Period 3</i>	<i>1.05</i>	<i>1.13</i>	<i>1.21</i>	<i>1.26</i>
<i>Year 1</i>	<i>Period 4</i>	<i>1.05</i>	<i>1.13</i>	<i>1.21</i>	<i>1.26</i>
<i>Year 1</i>	<i>Period 5</i>	<i>1.05</i>	<i>1.13</i>	<i>1.21</i>	<i>1.26</i>
<i>Year 1</i>	<i>Period 6</i>	<i>1.05</i>	<i>1.13</i>	<i>1.21</i>	<i>1.26</i>
<i>Year 1</i>	<i>Period 7</i>	<i>1.05</i>	<i>1.13</i>	<i>1.21</i>	<i>1.26</i>
<i>Year 1</i>	<i>Period 8</i>	<i>1.05</i>	<i>1.13</i>	<i>1.21</i>	<i>1.26</i>
<i>Year 1</i>	<i>Period 9</i>	<i>1.05</i>	<i>1.13</i>	<i>1.21</i>	<i>1.26</i>
<i>Year 1</i>	<i>Period 10</i>	<i>1.05</i>	<i>1.13</i>	<i>1.21</i>	<i>1.26</i>
<i>Year 1</i>	<i>Period 11</i>	<i>1.05</i>	<i>1.13</i>	<i>1.21</i>	<i>1.26</i>
<i>Year 1</i>	<i>Period 12</i>	<i>1.05</i>	<i>1.13</i>	<i>1.21</i>	<i>1.26</i>
<i>Year 1</i>	<i>Period 13</i>	<i>1.05</i>	<i>1.13</i>	<i>1.21</i>	<i>1.26</i>
<i>Year 2</i>	<i>Period 1</i>	<i>1.02</i>	<i>1.10</i>	<i>1.17</i>	<i>1.22</i>
<i>Year 2</i>	<i>Period 2</i>	<i>1.02</i>	<i>1.10</i>	<i>1.17</i>	<i>1.22</i>
<i>Year 2</i>	<i>Period 3</i>	<i>1.02</i>	<i>1.10</i>	<i>1.17</i>	<i>1.22</i>
<i>Year 2</i>	<i>Period 4</i>	<i>1.02</i>	<i>1.10</i>	<i>1.17</i>	<i>1.22</i>
<i>Year 2</i>	<i>Period 5</i>	<i>1.02</i>	<i>1.10</i>	<i>1.17</i>	<i>1.22</i>
<i>Year 2</i>	<i>Period 6</i>	<i>1.02</i>	<i>1.10</i>	<i>1.17</i>	<i>1.22</i>
<i>Year 2</i>	<i>Period 7</i>	<i>1.02</i>	<i>1.10</i>	<i>1.17</i>	<i>1.22</i>
<i>Year 2</i>	<i>Period 8</i>	<i>1.02</i>	<i>1.10</i>	<i>1.17</i>	<i>1.22</i>
<i>Year 2</i>	<i>Period 9</i>	<i>1.02</i>	<i>1.10</i>	<i>1.17</i>	<i>1.22</i>
<i>Year 2</i>	<i>Period 10</i>	<i>1.02</i>	<i>1.10</i>	<i>1.17</i>	<i>1.22</i>
<i>Year 2</i>	<i>Period 11</i>	<i>1.02</i>	<i>1.10</i>	<i>1.17</i>	<i>1.22</i>
<i>Year 2</i>	<i>Period 12</i>	<i>1.02</i>	<i>1.10</i>	<i>1.17</i>	<i>1.22</i>
<i>Year 2</i>	<i>Period 13</i>	<i>1.02</i>	<i>1.10</i>	<i>1.17</i>	<i>1.22</i>
<i>Year 3</i>	<i>Period 1</i>	<i>0.99</i>	<i>1.06</i>	<i>1.13</i>	<i>1.18</i>
<i>Year 3</i>	<i>Period 2</i>	<i>0.99</i>	<i>1.06</i>	<i>1.13</i>	<i>1.18</i>
<i>Year 3</i>	<i>Period 3</i>	<i>0.99</i>	<i>1.06</i>	<i>1.13</i>	<i>1.18</i>
<i>Year 3</i>	<i>Period 4</i>	<i>0.99</i>	<i>1.06</i>	<i>1.13</i>	<i>1.18</i>
<i>Year 3</i>	<i>Period 5</i>	<i>0.99</i>	<i>1.06</i>	<i>1.13</i>	<i>1.18</i>
<i>Year 3</i>	<i>Period 6</i>	<i>0.99</i>	<i>1.06</i>	<i>1.13</i>	<i>1.18</i>
<i>Year 3</i>	<i>Period 7</i>	<i>0.99</i>	<i>1.06</i>	<i>1.13</i>	<i>1.18</i>
<i>Year 3</i>	<i>Period 8</i>	<i>0.99</i>	<i>1.06</i>	<i>1.13</i>	<i>1.18</i>
<i>Year 3</i>	<i>Period 9</i>	<i>0.99</i>	<i>1.06</i>	<i>1.13</i>	<i>1.18</i>
<i>Year 3</i>	<i>Period 10</i>	<i>0.99</i>	<i>1.06</i>	<i>1.13</i>	<i>1.18</i>
<i>Year 3</i>	<i>Period 11</i>	<i>0.99</i>	<i>1.06</i>	<i>1.13</i>	<i>1.18</i>
<i>Year 3</i>	<i>Period 12</i>	<i>0.99</i>	<i>1.06</i>	<i>1.13</i>	<i>1.18</i>
<i>Year 3</i>	<i>Period 13</i>	<i>0.99</i>	<i>1.06</i>	<i>1.13</i>	<i>1.18</i>
<i>Year 4</i>	<i>Period 1</i>	<i>0.95</i>	<i>1.02</i>	<i>1.09</i>	<i>1.14</i>
<i>Year 4</i>	<i>Period 2</i>	<i>0.95</i>	<i>1.02</i>	<i>1.09</i>	<i>1.14</i>

⁹⁷ Insert change text wef 19.02.07

<i>Year 4</i>	<i>Period 3</i>	<i>0.95</i>	<i>1.02</i>	<i>1.09</i>	<i>1.14</i>
<i>Year 4</i>	<i>Period 4</i>	<i>0.95</i>	<i>1.02</i>	<i>1.09</i>	<i>1.14</i>
<i>Year 4</i>	<i>Period 5</i>	<i>0.95</i>	<i>1.02</i>	<i>1.09</i>	<i>1.14</i>
<i>Year 4</i>	<i>Period 6</i>	<i>0.95</i>	<i>1.02</i>	<i>1.09</i>	<i>1.14</i>
<i>Year 4</i>	<i>Period 7</i>	<i>0.95</i>	<i>1.02</i>	<i>1.09</i>	<i>1.14</i>
<i>Year 4</i>	<i>Period 8</i>	<i>0.95</i>	<i>1.02</i>	<i>1.09</i>	<i>1.14</i>
<i>Year 4</i>	<i>Period 9</i>	<i>0.95</i>	<i>1.02</i>	<i>1.09</i>	<i>1.14</i>
<i>Year 4</i>	<i>Period 10</i>	<i>0.95</i>	<i>1.02</i>	<i>1.09</i>	<i>1.14</i>
<i>Year 4</i>	<i>Period 11</i>	<i>0.95</i>	<i>1.02</i>	<i>1.09</i>	<i>1.14</i>
<i>Year 4</i>	<i>Period 12</i>	<i>0.95</i>	<i>1.02</i>	<i>1.09</i>	<i>1.14</i>
<i>Year 4</i>	<i>Period 13</i>	<i>0.95</i>	<i>1.02</i>	<i>1.09</i>	<i>1.14</i>
<i>Year 5</i>	<i>Period 1</i>	<i>0.92</i>	<i>0.99</i>	<i>1.06</i>	<i>1.10</i>
<i>Year 5</i>	<i>Period 2</i>	<i>0.92</i>	<i>0.99</i>	<i>1.06</i>	<i>1.10</i>
<i>Year 5</i>	<i>Period 3</i>	<i>0.92</i>	<i>0.99</i>	<i>1.06</i>	<i>1.10</i>
<i>Year 5</i>	<i>Period 4</i>	<i>0.92</i>	<i>0.99</i>	<i>1.06</i>	<i>1.10</i>
<i>Year 5</i>	<i>Period 5</i>	<i>0.92</i>	<i>0.99</i>	<i>1.06</i>	<i>1.10</i>
<i>Year 5</i>	<i>Period 6</i>	<i>0.92</i>	<i>0.99</i>	<i>1.06</i>	<i>1.10</i>
<i>Year 5</i>	<i>Period 7</i>	<i>0.92</i>	<i>0.99</i>	<i>1.06</i>	<i>1.10</i>
<i>Year 5</i>	<i>Period 8</i>	<i>0.92</i>	<i>0.99</i>	<i>1.06</i>	<i>1.10</i>
<i>Year 5</i>	<i>Period 9</i>	<i>0.92</i>	<i>0.99</i>	<i>1.06</i>	<i>1.10</i>
<i>Year 5</i>	<i>Period 10</i>	<i>0.92</i>	<i>0.99</i>	<i>1.06</i>	<i>1.10</i>
<i>Year 5</i>	<i>Period 11</i>	<i>0.92</i>	<i>0.99</i>	<i>1.06</i>	<i>1.10</i>
<i>Year 5</i>	<i>Period 12</i>	<i>0.92</i>	<i>0.99</i>	<i>1.06</i>	<i>1.10</i>
<i>Year 5</i>	<i>Period 13</i>	<i>0.92</i>	<i>0.99</i>	<i>1.06</i>	<i>1.10</i>
<i>Year 6</i>	<i>Period 1</i>	<i>0.92</i>	<i>0.99</i>	<i>1.06</i>	<i>1.10</i>
<i>Year 6</i>	<i>Period 2</i>	<i>0.92</i>	<i>0.99</i>	<i>1.06</i>	<i>1.10</i>
<i>Year 6</i>	<i>Period 3</i>	<i>0.92</i>	<i>0.99</i>	<i>1.06</i>	<i>1.10</i>
<i>Year 6</i>	<i>Period 4</i>	<i>0.92</i>	<i>0.99</i>	<i>1.06</i>	<i>1.10</i>
<i>Year 6</i>	<i>Period 5</i>	<i>0.92</i>	<i>0.99</i>	<i>1.06</i>	<i>1.10</i>
<i>Year 6</i>	<i>Period 6</i>	<i>0.92</i>	<i>0.99</i>	<i>1.06</i>	<i>1.10</i>
<i>To continue for remainder of Franchise</i>		<i>0.92</i>	<i>0.99</i>	<i>1.06</i>	<i>1.10</i>

1. Start of the Franchise

The Reporting Period in the cells entitled “Year 1 Period 1” shall be the first Reporting Period of the Franchise Term.”

APPENDIX 6

Capacity Benchmark Table (*Clause 5.18*)

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APPENDIX 7 ^{98 99 100 101 102 103}**Service Delivery Benchmark Table (Clause 5.19)**

		Target (rounded to nearest 10)	Improvement Plan Level (rounded to nearest 10)	Breach Performance Level (rounded to nearest 10)	Default Performance Level (rounded to nearest 10)
Year 1	Period 1	31100	33430	35760	37320
Year 1	Period 2	31040	33370	35690	37250
Year 1	Period 3	30980	33310	35630	37180
Year 1	Period 4	30920	33240	35560	37100
Year 1	Period 5	30860	33170	35490	37030
Year 1	Period 6	30800	33110	35430	36960
Year 1	Period 7	30740	33050	35350	36890
Year 1	Period 8	30690	32980	35280	36820
Year 1	Period 9	30630	32920	35210	36750
Year 1	Period 10	37470	40290	43090	44970
Year 1	Period 11	37400	40200	43010	44870
Year 1	Period 12	37320	40120	42920	44790
Year 1	Period 13	37250	40040	42840	44700
Year 2	Period 1	37180	39970	42750	44620
Year 2	Period 2	37110	39880	42670	44530
Year 2	Period 3	37030	39810	42580	44440
Year 2	Period 4	36960	39730	42510	44350
Year 2	Period 5	36880	39640	42420	44260
Year 2	Period 6	36810	39570	42330	44180
Year 2	Period 7	36740	39490	42240	44080
Year 2	Period 8	36650	39420	42170	44000
Year 2	Period 9	36590	39340	42080	43910
Year 2	Period 10	37290	40070	42870	44740
Year 2	Period 11	37220	40000	42790	44660
Year 2	Period 12	37130	39910	42710	44560
Year 2	Period 13	37060	39840	42620	44480
Year 3	Period 1	36970	39770	42520	44380
Year 3	Period 2	36910	39680	42450	44300
Year 3	Period 3	36840	39590	42360	44210
Year 3	Period 4	36770	39510	42270	44110
Year 3	Period 5	36680	39440	42180	44030
Year 3	Period 6	36610	39350	42110	43930

⁹⁸ Date of Change 05/05/2006⁹⁹ Date of Change 19/02/2007¹⁰⁰ Date of Change 20/03/2008¹⁰¹ Date of Change 31/03/2010¹⁰² Date of Change 04/05/2012¹⁰³ Date of Change 31/08/2012

Year 3	Period 7	36530	39280	42010	43850
Year 3	Period 8	36450	39200	41930	43760
Year 3	Period 9	36390	39110	41840	43650
Year 3	Period 10	36840	39590	42360	44190
Year 3	Period 11	36750	39510	42260	44100
Year 3	Period 12	36680	39440	42180	44010
Year 3	Period 13	36600	39330	42100	43920
Year 4	Period 1	36520	39260	42010	43820
Year 4	Period 2	36440	39190	41910	43730
Year 4	Period 3	36380	39110	41830	43640
Year 4	Period 4	36300	39020	41750	43560
Year 4	Period 5	36230	38940	41660	43470
Year 4	Period 6	36140	38860	41560	43360
Year 4	Period 7	36060	38760	41490	43280
Year 4	Period 8	35990	38690	41390	43190
Year 4	Period 9	35930	38620	41300	43100
Year 4	Period 10	36700	39450	42190	44030
Year 4	Period 11	36620	39350	42110	43930
Year 4	Period 12	36530	39270	42010	43830
Year 4	Period 13	36450	39190	41920	43740
Year 5	Period 1	36370	39100	41830	43650
Year 5	Period 2	36300	39020	41750	43560
Year 5	Period 3	36790	39540	42290	44130
Year 5	Period 4	36690	39440	42190	44030
Year 5	Period 5	36620	39360	42120	43940
Year 5	Period 6	36540	39280	42020	43850
Year 5	Period 7	36460	39200	41930	43750
Year 5	Period 8	36380	39110	41830	43660
Year 5	Period 9	36290	39020	41750	43560
Year 5	Period 10	35470	38130	40790	42570
Year 5	Period 11	35390	38040	40710	42480
Year 5	Period 12	35320	37970	40610	42380
Year 5	Period 13	35240	37890	40540	42290
Year 6	Period 1	35160	37810	40430	42190
Year 6	Period 2	35090	37710	40350	42110
Year 6	Period 3	35700	38380	41060	42850
Year 6	Period 4	35620	38300	40980	42750
Year 6	Period 5	35910	38590	41290	43080
Year 6	Period 6	35820	38510	41180	42990
Year 6	Period 7	35460	38130	40770	42560
Year 6	Period 8	35460	38130	40770	42560
Year 6	Period 9	35460	38130	40770	42560
Year 6	Period 10	35190	37830	40460	42230
Year 6	Period 11	35190	37830	40460	42230
Year 6	Period 12	35190	37830	40460	42230
Year 6	Period 13	35190	37830	40460	42230
Year 7	Period 1	35190	37830	40460	42230
Year 7	Period 2	35190	37830	40460	42230
Year 7	Period 3	36530	39270	42000	43830
Year 7	Period 4	36530	39270	42000	43830
Year 7	Period 5	36500	39240	41960	43800
Year 7	Period 6	36500	39240	41960	43800

Year 7	Period 7	36530	39270	42000	43830
Year 7	Period 8	36530	39270	42000	43830
Year 7	Period 9	36530	39270	42000	43830
To continue for remainder of Franchise			36530	39270	42000

1. Start of the Franchise

The Reporting Period in the cells entitled “Year 1 Period 1” shall be the first Reporting Period of the Franchise Term.

APPENDIX 8

¹⁰⁴Figures for Calculation of Annual Franchise Payments (Clause 5.22)

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

¹⁰⁴ date of change 27.7.2006

APPENDIX 9**List of Key Contracts (Clause 5.26)**

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

1. Any Access Agreement to which the Franchisee is a party other than in its capacity as a Facility Owner.
2. Any Property Lease.
3. Any contract or arrangement for the lending, seconding, hiring, contracting out, supervision, training, assessment, or accommodation by another Train Operator of any train drivers, conductors or other train crew used by the Franchisee in the provision of the Passenger Services.
4. Any contract or arrangement for the subcontracting or delegation to another Train Operator of the provision of any of the Passenger Services (whether or not the consent of the Secretary of State is required to such subcontracting or delegation under paragraph 1 of Schedule 2.3 (*Third Party Delivery of Passenger Services and Other Franchisees*)).
5. Any contract or arrangement with a Train Operator (other than an Access Agreement) for the provision to the Franchisee of train dispatch, performance or supervision of platform duties, security activities, evacuation procedures, advice or assistance to customers, assistance to disabled customers, operation of customer information systems, cash management or ticket issuing systems administration.
6. Any contract or arrangement with a Train Operator for the provision of breakdown or recovery, and track call services to assist in the provision of the Passenger Services.
7. Any contract or arrangement for the supply of spare parts or Spares.
8. Any contract or arrangement for the maintenance of track and other related infrastructure.
9. Any licences of Marks to the Franchisee.
10. Any Rolling Stock Lease including the Rolling Stock Leases listed in Table 1.1 and Table 1.2 of Appendix 3 (*The Train Fleet*) but excluding any Rolling Stock Lease relating only to rolling stock vehicles funded by Additional Rolling Stock Investment.
11. The Hire Agreement and the Full Agreement.

APPENDIX 10**List of Primary Franchise Assets (Clause 5.27)****A. Shunting Locomotives**

- (1) Class 08: 08410
- (2) Class 08: 08483
- (3) Class 08: 08836
- (4) Class 08: 08795
- (5) Class 08: 08822
- (6) Class 08: 08663
- (7) Class 08: 08641
- (8) Class 08: 08644
- (9) Class 08: 08645

B. Railway Vehicles

- (1) ADB 787 133 4 Wheeled Wagon - Power Units Plymouth Laira Depot
- (2) Class 143 unit: 143617
- (3) Class 143 unit: 143618
- (4) Class 143 unit: 143619
- (5) [Deleted]¹⁰⁵

C. Rights and Liabilities under Intellectual Property Contracts

- (1) The rights and liabilities of the Franchisee under the Universal Licence Agreement between the British Railways Board and Great Western Trains Company Limited dated 21 October 1995.
- (2) The rights and liabilities of the Franchisee under the Sub-licence Deed between the Board and Great Western Trains Company Limited dated 21 October 1995.
- (3) The rights and liabilities of the Franchisee under the Master Software Licence between the Board and Great Western Trains Company Limited dated 21 October 1995.
- (4) The rights and liabilities of the Franchisee under the Computer Services Agreement between the Board and Great Western Trains Company Limited dated 21 October 1995.

¹⁰⁵ Date of change 13/07/2012

- (5) The rights and liabilities of the Franchisee under the Universal Licence Agreement between the Board and Thames Trains Limited dated 10 December 1995.
- (6) The rights and liabilities of the Franchisee under the Sub-licence Deed between the Board and Thames Trains Limited dated 10 December 1995.
- (7) The rights and liabilities of the Franchisee under the Master Software Licence between the Board and Thames Trains Limited dated 10 December 1995.
- (8) The rights and liabilities of the Franchisee under the Computer Services Agreement between SEMA UK Limited and Thames Trains Limited dated 1 April 1995.
- (9) The rights and liabilities of the Franchisee under the Universal Licence Agreement between the British Railways Board and Wales & West Passenger Trains Limited dated 23 July 1995.
- (10) The rights and liabilities of the Franchisee under the Sub-licence Deed between the Board and Wales & West Passenger Trains Limited dated 23 July 1995.
- (11) The rights and liabilities of the Franchisee under the Master Software Licence between the Board and Wales & West Passenger Trains Limited dated 23 July 1995.
- (12) The rights and liabilities of the Franchisee under the Computer Services Agreement between the Board and Wales & West Passenger Trains Limited dated 23 July 1995.
- (13) ¹⁰⁶*The Rights and Liabilities of the Franchisee under the agreement between First Greater Western Limited and Bombardier Transportation UK Limited for the supply of T&RS Components Overhauls dated 31 May 2006.*

¹⁰⁶ Date of change 06/11/2012

“APPENDIX 11¹⁰⁷

**(Committed Obligations and HLOS Committed Obligations and Related Provisions)”
(Clause 6)**

CONTENTS

Part 1 – List of Committed Obligations

- 1 Performance Improvement Measures
- 2 Stations
- 3 Car Parks
- 4 Depots
- 5 Rolling Stock
- 6 Security
- 7 Revenue Protection
- 8 HR/Training
- 9 Customer Services
- 10 Customer Information Centre
- 11 Quality
- 12 Environmental
- 13 Branding
- 14 Social Inclusion
- 15 Integration
- 16 Systems
- 17 Access for All

Part 2 – Miscellaneous Provisions

Part 3 – Late Completion of Committed Obligations

Part 4 List of HLOS Committed Obligations¹⁰⁸

Part 5 Miscellaneous Provisions relating to HLOS Committed Obligations and Related Obligations.

¹⁰⁷ Date of change 02/03/2010

¹⁰⁸ Date of change 02/03/2010

Part 6 Timely/Late/Non Completion of HLOS Committed Obligations and Related Financial Provisions.

Part 7– Initial Indicative Programme of Works

Part 8 – Specifications for Fleet Modifications

Part 9 Service Changes and Additional Service Changes

Part 1 of Appendix 11

List of Committed Obligations

The Franchisee commits to the terms set out in this Part 1 of Appendix 11 subject to the terms provided in Part 2 (*Miscellaneous Provisions*) and Part 3 (*Late Completion of Committed Obligations*).

1. PERFORMANCE IMPROVEMENT MEASURES

1.1 The Franchisee shall establish an 'Executive Performance Group' within one month of the Start Date, which shall be chaired by its Managing Director and meet on a monthly basis to discuss the Franchisee's performance in respect of its operational obligations under this Agreement, in particular, those specified in Schedule 1.2 (*Operating Obligations*) and Schedule 7.1 (*Performance Benchmarks*) of the Terms.

1.2 The Franchisee shall work with Network Rail to establish (when it does not already exist) and operate a joint performance improvement process, also ensuring that there is a performance management process in place with Network Rail.

1.3 Subject to agreement with Network Rail, the Franchisee shall establish an Integrated Control Centre (*ICC*) with Network Rail incorporating the former Wales and West Passenger Trains Limited control organisation within 9 months of the Start Date, and then keep its control arrangements with Network Rail under regular review for the remainder of the Franchise Term.

1.4 Within six months of the Start Date the Franchisee shall establish an Emergency Response Room to support its control centre in instances of severe disruption.

1.5 The Franchisee shall liaise and co-operate with Network Rail to develop and implement a joint competence framework that will apply to the ICC, and implement a joint ICC procedure and control manual.

1.6 The Franchisee shall endeavour to agree with Network Rail on how the Franchisee can train staff in competencies in bridge bashes and point winding (in order to help speed responses to relevant incidents) and then to establish a training commitment in respect of those competencies.

Line Speed Improvements¹⁰⁹

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.

1.7(a) The Franchisee shall within 27 months of the Start Date provide £¹¹⁰ of funding towards the costs associated with carrying out the relief line speed improvement project defined in paragraph 1.7(c) and/or the amended, additional or alternative

¹⁰⁹ date of exclusion 27.7.06

¹¹⁰ **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.**

performance improvements which are covered by objectives agreed with the Secretary of State under paragraph 1.7(d).ⁱ

- (b) If the relief line speed improvement project cannot be delivered within the funding committed under paragraph 1.7(a), the Franchisee shall seek additional funding from Network Rail and to the extent that Network Rail agrees to provide funding towards the relief line speed improvement project the Franchisee shall match Network Rail's investment in the project up to a sum of £¹¹¹ in addition to the investment to be provided under 1.7(a), such that the Franchisee's total investment committed to the project shall not exceed £¹¹².
- (c) For the purposes of this paragraph 1.7 the *relief line speed improvement project* means procuring a series of track cant and track realignment works on the relief lines between Reading Station and London Paddington Station to increase the proportion of those relief lines with a 90mph line speed with a target of achieving 90mph line speed on 90% of the relief lines.
- (d) ¹¹³If:

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

- (i) the relief line speed improvement project can be delivered by the Franchisee expending less than the £¹¹⁴ committed under paragraph 1.7(a);
- (ii) the relief line speed improvement project is unable to proceed within 27 months of the Start Date; or
- (iii) the relief line speed improvement project is able to proceed only on the basis of a reduction in the proportion of the relief lines targeted for improvement such that the Franchisee considers it prudent to deploy the funding committed under paragraph 1.7(a) wholly or partly on an alternative performance improvement scheme,

the Franchisee will liaise with the Secretary of State and propose an amended, additional or alternative performance improvement scheme for approval by the

¹¹¹ **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.**

¹¹² **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.**

¹¹³ date of exclusion 27.7.06

¹¹⁴ **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.**

Secretary of State (such approval not to be unreasonably withheld or delayed) as objectives on which the funding committed under paragraph 1.7(a) may be deployed, so that (unless otherwise agreed by the Secretary of State) all the funding committed to be provided under paragraph 1.7(a) is invested within 27 months of the Start Date.

Maidenhead Station^{ii iii}

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.

- 1.8 The Franchisee shall by the second anniversary of the Start Date:
- (a) reinstate the down main platform (platform 1) at Maidenhead Station so that it can accommodate up to a six-car Class 16X train;
 - (b) subject to the costs to the Franchisee when aggregated with the cost of performing its obligations under paragraph 1.8(a) not exceeding £¹¹⁵, further extend the down main platform (platform 1) at Maidenhead Station to accommodate an HST in power car plus 7 coaches formation.

If the Franchisee is not able to fulfil its commitment under paragraph 1.8(a) and (b) within the cost budget referred to in paragraph 1.8(b), the Franchisee shall:

- (i) promptly notify the Secretary of State;
- (ii) continue to fulfil its obligations under paragraph 1.8(a);
- (iii) propose, as soon as reasonably practicable and in any event within three months of such notification to the Secretary of State a substitute commitment to paragraph 1.8(b) which involves an expenditure of £¹¹⁶ and consult with the Secretary of State regarding such proposal; and
- (iv) subject to the consent of the Secretary of State to such variants to the proposal as the Secretary of State may reasonably notify to the Franchisee (provided always that the costs to the Franchisee of the proposal as varied shall not exceed £¹¹⁷), undertake such proposal in substitution for its Committed Obligation under paragraph 1.8(b).

¹¹⁵ **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.**

¹¹⁶ **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.**

¹¹⁷ **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.**

2. STATIONS

2.1 Without limiting paragraph 2.7 of Schedule 4 (*Persons with Disabilities and Disability Discrimination*) or any other committed obligation in this Part 1 to Appendix 11, the Franchisee shall spend not less than £¹¹⁸ on a station improvement programme within 51 months of the Start Date, with at least £¹¹⁹ of such investment being spent within 27 months of the Start Date, covering the areas described in this paragraph 2.1 as amended from time to time in accordance with paragraph 2.4:

Major investment at 28 Stations

- (a) The Franchisee shall carry out major investment to create integrated passenger facilities, and improve the overall Station environment and Station security at the following 28 Stations:

Bath Spa	Bristol Temple Meads
Burnham	Cheltenham Spa
Chippenham	Didcot Parkway
Ealing Broadway	Exeter Central
Exeter St Davids	Gloucester
Hayes and Harlington	Hungerford
Maidenhead	Newbury
North Camp	Oxford
Plymouth	Reading
Slough	Southall
Swindon	Taunton
Tiverton Parkway	Trowbridge
Truro	Twyford
Weston-super-Mare	Westbury

This investment shall include:

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¹¹⁹ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (i) congestion relief investment;
- (ii) alteration and refurbishment of ticket offices;
- (iii) alteration and refurbishment of booking halls;
- (iv) alteration and refurbishment of toilets;
- (v) alteration and refurbishment of waiting rooms;
- (vi) creation of retail and catering facilities; and
- (vii) alteration and refurbishment of platforms and access ways.

(Each of the 28 selected Stations will benefit from improvement, but (for the avoidance of doubt) the above-mentioned improvements and listed items may not all be undertaken at each of the 28 Stations.)

Paddington Station

- (b) At Paddington Station the Franchisee shall work with Network Rail to:
 - (i) establish a new first class lounge with business and meeting facilities;
 - (ii) either encourage new retailing opportunities in the Span 4 roof area or carry out a programme of refurbishments including new lighting, decoration of cladding and improved signage;
 - (iii) enhance the provision of customer information, including by installing information pods and additional public display screens; and
 - (iv) provide additional trolley points and improved cycle parking facilities.

Other Station improvements

- (c) The Franchisee shall also carry out improvements at other of its Stations. These improvements shall include (but not at each Station):
 - (i) provision of toilet facilities where reasonably practicable at staffed Stations;
 - (ii) replacement of seating;
 - (iii) installation of automatic doors;
 - (iv) installation of new platform canopies and/or shelters;
 - (v) installation of taxi shelters;
 - (vi) refurbishment of ramps, handrails, stair treads and risers;
 - (vii) enhancement of signage; and
 - (viii) provision of cycle facilities.

2.2 The expenditure taken into account for the purposes of paragraph 2.1 above shall include costs and expenses properly incurred by the Franchisee in fulfilling its obligations

under paragraph 2.1 in relation to design, project management, securing consents and approvals, procurement of relevant works and supplies, legal expenses, surveys and investigations, preliminary works, the costs of putting in place the improvements (including increased costs of working associated with putting in place the improvements and costs of restrictions of use of the Network required in connection with putting in place the improvements and equipment leasing costs) and compensation payable to third parties (for example as part of a Station Change (as that term is defined under the Stations Access Conditions) or Network Change) as a consequence of putting in place the improvements

2.3 The Franchisee shall maintain a record of the costs and expenses referred to in paragraph 2.2 and shall promptly make that record available to the Secretary of State when so requested.

2.4 Unless something else is agreed with the Secretary of State, the Franchisee shall carry out the programme referred to in this paragraph 2 in accordance with a programme of works which will be established, reviewed and revised in accordance with this paragraph as follows:

- (a) an initial indicative programme of works is set out in Part 7 of this Appendix 11;
- (b) within six months of the Start Date the Franchisee shall provide a draft programme of items to the Secretary of State comprising (aa) a detailed programme for the first Franchisee Year and (bb) an indicative programme for the second, third and fourth Franchisee Years;
- (c) at least three months before the second, third and fourth Franchisee Year the Franchisee shall provide a draft programme of items to the Secretary of State comprising (xx) any revision to the outline programme for the balance then remaining of the then current Franchisee Years, (yy) a detailed programme for the forthcoming Franchisee Year (which will replace the indicative programme for that year previously provided), and (zz) an indicative programme for the Franchisee Year after next (where that is the third or the fourth Franchisee Year);
- (d) the detailed programme of items referred to in (aa) and (yy) will include identification of the items to be programmed for expenditure under this paragraph 2 during the relevant Franchisee Year(s) and a brief description of the works so programmed;
- (e) the Franchisee shall liaise and consult with the Secretary of State regarding each programme issued under this paragraph with a view to the Franchisee issuing a revised programme for the information of the Secretary of State within 30 days after the issue of the draft programme. The Secretary of State shall not unreasonably withhold its approval, or otherwise object to, the revised programme, subject to that programme being on a basis which (aa) is consistent with the commitments under this paragraph 2 and (bb) is consistent with the conduct of the programme in a prudent and diligent manner;
- (f) the parties acknowledge that the consultation process may involve the parties in review and amendment by agreement to the commitments in this paragraph 2, having regard to changing circumstances and priorities. The process envisaged in this subparagraph shall not prevent consultation taking place at other times or the advance approval of future detailed programmes (in which case the programmes so approved in respect of future Franchisee Years will not be subject to re-opening except by agreement or in accordance with the terms of their approval); and
- (g) following the establishment of any detailed programme under this paragraph 2, the Franchisee may propose amendments to the detailed programme to add additional

works, to substitute works or to reflect changing circumstances (including opportunities for increased efficiencies). The Secretary of State shall not unreasonably withhold its approval or otherwise object to any amendment to the detailed programme proposed by the Franchisee, subject to that amendment being on a basis which (aa) is consistent with the commitments under this paragraph 2 and (bb) is consistent with the conduct of the programme in a prudent and diligent manner.

Security^{120 iv 121}

2.5 *The Franchisee shall carry out or procure the following security enhancements:*

- (a) installing 131 new CCTV cameras at no fewer than 32 Stations, including digital recording facilities by 31 December 2011;*
- (b) upgrading existing CCTV equipment so that substantially all existing CCTV equipment at Stations includes digital recording facilities by 31 December 2011;*
- (c) creating a control centre to monitor substantially all CCTV on Stations by 31 December 2011;*
- (d) installing 358 Help Points by 31 December 2011 with the anticipated details of the installation being that 209 of those Help Points will be replacements of existing Help Points and 149 of those Help Points will be new installations at 98 Stations, including 50 Stations which did not have Help Points at the Franchise Commencement Date. The Franchisee may not vary the overall number of Help Points to be installed below 358. The Franchisee may adjust the anticipated allocation of those 358 Help Points between replacements and new installations, provided that the number allocated to new installations does not fall below 142. Any proposed greater variation to the anticipated details of the installation shall be subject to the agreement of the Secretary of State; and*
- (e) in addition to the obligations set out in (a), (b) and (c) the Franchisee shall undertake a further spend of £¹²² on enhancing CCTV*

PROVIDED THAT where and to the extent the commitments described in this paragraph 2.5 are being carried out on Network Rail assets and the Franchisee despite all reasonable endeavours is unable to secure its cooperation to carry out those works within the committed timescale, the Franchisee shall be entitled to request an extension to the timescales for such works and, subject to its establishing to the reasonable satisfaction of the Secretary of State that it is using all reasonable

¹²⁰ Insert change text wef 20/03/08

¹²¹ Date of Change 30/12/2010

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.

endeavours to secure such cooperation by Network Rail as soon as reasonably practicable, the Secretary of State shall not unreasonably withhold his consent to such request.

Information¹²³

2.6 *The Franchisee shall carry out or procure the following information enhancements:*

- (a) *replacing 299 current CIS monitors with new flat screen 20 inch TFT, LED displays or equivalents of either by 31 December 2011;*
- (b) *installing at selected Stations 74 new flat screen 20 inch TFT, LED displays or equivalents 31 December 2011;*
- (c) *providing one hundred PDAs for use by its customer facing staff within four years of the Start Date; and*
- (d) *in addition to its other obligations under this Franchise Agreement, the Franchisee shall facilitate the delivery of third party funded additional enhancements to the value of £¹²⁴ (with this sum being a nominal value, not subject to indexation reflecting arrangements already agreed with relevant third parties as at 31 December 2010) by 31 December 2011 on the following (which may include Help Points being installed under paragraph 2.5):*
 - (i) *WebCIS enhancements to 77 Help Points;*
 - (ii) *WebCIS enhancements to 14 Help Points on the Severn Beach Line;*
 - (iii) *Computer systems to provide train status content for WebCIS and 3-button Help Points;*
 - (iv) *new CIS, PA, and CCTV at Digby & Sowton Station, new CIS at Barnstaple Station and new CCTV at Radley Station; and*
 - (v) *WebCIS enhancements on 3 Help Points on the line between Barnstaple and Exeter St Davids.*

(e) *the Franchisee shall use all reasonable endeavours to facilitate the delivery of Network Rail funded renewals and replacements in modern equivalent form to the value*

¹²³ Date of change 30/12/2010

¹²⁴ 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.

of £¹²⁵ (with this sum being a nominal value, not subject to indexation) by 31 December 2011 on renewals of safety, security and information systems on certain of its Stations, it being acknowledged that this sum may be applied towards matters covered by paragraph 2.5 and this paragraph 2.6

PROVIDED THAT where and to the extent the commitments described in this paragraph 2.6 are being carried out on Network Rail assets and the Franchisee despite all reasonable endeavours is unable to secure its cooperation to carry out those works within the committed timescale, the Franchisee shall be entitled to request an extension to the timescales for such works and, subject to its establishing to the reasonable satisfaction of the Secretary of State that it is using all reasonable endeavours to secure such cooperation by Network Rail as soon as reasonably practicable, the Secretary of State shall not unreasonably withhold his consent to such request.

2.6A The Franchisee shall use all reasonable endeavours to secure third party funding in addition to that contemplated in paragraphs 2.5 and 2.6 for further Station security and information enhancements of a similar nature to those addressed in paragraphs 2.5 and 2.6 for delivery during the period from 1 April 2011 to 31 March 2013.

Ticket office investment

- 2.7 The Franchisee shall invest in the following ticketing enhancements at Stations:
- (a) installation of 124 new ticket vending machines within 27 months of the Start Date;
 - (b) subject to a successful trial of the equipment and the introduction of penalty fare schemes in the Bristol, Exeter and Plymouth areas, installation of 60 new PERTIS machines and 12 new pay at destination machines within two years of the Start Date; and
 - (c) the replacement of APTIS machines in Station ticket offices with modern replacement machines within two years of the Start Date.

Investment funding

- 2.8 The Franchisee shall work to facilitate investment from third parties on schemes to redevelop:
- (a) Reading Station; and
 - (b) Bristol Temple Meads Station

¹²⁵ **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.**

and shall expend £50,000 in support of those initiatives to facilitate redevelopment, including by seeking to leverage investment by reference to the expenditure commitments referred to in paragraph 2.1.

Station Cleaning

2.9 Within nine months of the Start Date the Franchisee shall put in place arrangements to clean all Stations on an output specification basis as follows:

Station (by Network Rail category)	Cleaning Frequency
A/B	Continuous cleaning programme throughout opening hours plus deep cleans at the rate of four per year
C	Two cleans per day plus deep cleans at the rate of three per year
D	One roughly 1 hour clean per day plus deep cleans at the rate of three per year
E1	Between four and seven roughly ½ hour cleans per week plus deep cleans at the rate of two per year
E, F1	Three roughly ½ hour cleans per week plus deep cleans at the rate of two per year where the previous SFO was First Great Western Link Limited; and one roughly ½ hour clean per week plus deep cleans at the rate of two per year where the previous SFO was Wales and West Passenger Trains Limited
F	Two roughly ½ hour cleans per week plus deep cleans at the rate of two per year

The Franchisee shall keep the specification set out in this paragraph under regular ongoing review and shall be entitled with the prior consent of the Secretary of State (which is not to be unreasonably withheld or delayed) to amend or re-prioritise the specification to take account of the requirements at the relevant Stations and changing circumstances.

2.10 The Franchisee shall also endeavour to develop this arrangement to include some minor maintenance, fault reporting and minor vegetation and graffiti removal.

2.11 The Franchisee shall implement clearly defined specifications for the removal of graffiti within nine months of the Start Date and shall endeavour to work with industry partners regarding the development of chemicals for graffiti removal.

2.12 The Franchisee shall implement an appropriate management and audit system within one year of the Start Date to ensure effective management in relation to Station cleaning.

Maintenance and decoration

2.13 The Franchisee shall implement a preventative maintenance programme and a reactive maintenance procedure within six months of the Start Date.

2.14 The Franchisee shall establish a property help desk facility to which maintenance faults and failures can be reported by staff and customers.

2.15 The Franchisee shall appoint two additional in-house painting teams within six months of the Start Date.

2.16 The Franchisee shall ensure that during the Franchise Term each Station is repainted at least once every complete 5 year period.

Major Events Management

2.17 The Franchisee shall extend current practices and develop its strategy for managing special events, including sporting and entertainment events, VIP travel and engineering works.

3. CAR PARKS

3.1 The Franchisee will provide an additional 1700 spaces by the end of the Franchise Term with 500 of those spaces to be provided within 27 months of the Start Date and an additional 700 of those spaces to be provided within 51 months of the Start Date.

3.2 The Franchisee shall invest £1,400,000 (in addition to the investment required to meet the commitment under paragraph 3.1) within 21 months of the Start Date on upgrading car parks including:

- (a) installation of payment machines (including machines accepting payment by credit card) and help points;
- (b) improvements to signage;
- (c) application of branding;
- (d) improvements to car park surfaces and spaces; and
- (e) creation of new and/or upgrade of existing control rooms.

3.3 The Franchisee shall establish or procure that there is established a website which may be used for renewing parking season tickets, and which may also communicate space availability, by the second anniversary of the Start Date.

4. DEPOTS

4.1 The Franchisee shall within one year of the Start Date carry out the following improvements at St Philips Marsh Depot to establish a DMU maintenance and servicing facility:

- (a) conversion of the Marsh Junction site into a DMU depot;
- (b) conversion of the Coalfield Sidings into carriage cleaning roads;
- (c) establishment of an underframe cleaning facility;
- (d) conversion of the outside pits into an additional three car stabling road; and
- (e) establishment of a new carriage washing facility.

4.2 The Franchisee shall undertake a survey of Exeter Depot to assess "single points of failure" which may cause derailment and put in place a suitable action plan to minimise the risk within one year of the Start Date.

4.3^v The Franchisee shall within two years of the Start Date establish new carriage wash plants at each of Exeter Depot and Old Oak Common Depot. ^{vi}

5. ROLLING STOCK

Express Fleet

5.1 *The Franchisee shall procure a number of reliability modifications to the HST fleet as detailed in paragraph 2 of Part 8¹²⁶ to this Appendix 11 within 27 months of the Start Date.*^{127 vii}

5.2 The Franchisee shall complete HST life extension programmes as detailed in paragraph 1.3 of Part 8¹²⁸ to this Appendix 11 within 27 months of the Start Date.

5.3 The Franchisee shall complete a series of overhaul activities and measures to be carried out in conjunction with a revised heavy maintenance programme over the course of the Franchise Term as detailed in paragraph 1.4 of Part 8¹²⁹ to this Appendix 11.

5.4 The Franchisee shall complete an interior redesign of the HST fleet as described in Table 1.2 of Appendix 3 within 27 months of the Start Date, as detailed in paragraph 3.1 of Part 8¹³⁰ to this Appendix 11.

Sleeper Stock

5.5 *The Franchisee shall complete within 24 months of the Start Date:*

- (a)** *a full C3 overhaul of the Mark III vehicles as described in Table 1.2 of Appendix 3 within 24 months of the Start Date, implementing improvements to the CDL system, toilets, vestibules and carpets;*
- (b)** *a full C3 overhaul of the eight Mark III sleeper coaching stock vehicles, including improvements to skirts and wheel slide protection.*¹³¹

Link Fleet

5.6 The Franchisee shall procure a number of reliability modifications to the Class 16X fleet within 24 months of the Start Date, as detailed in paragraph 4 of Part 8¹³² to this Appendix 11.

5.7 The Franchisee shall fit an Automatic Passenger Counting System to 16 of the Class 16X fleet within 24 months of the Start Date. (This is the same commitment as referred to in Clause 5.4 of the Franchise Agreement.)

¹²⁶ Date of change 02/03/2010

¹²⁷ Insert change text wef 25/09/07

¹²⁸ Date of change 02/03/2010

¹²⁹ Date of change 02/03/2010

¹³⁰ Date of change 02/03/2010

¹³¹ Insert change text wef 29/08/07

¹³² Date of change 02/03/2010

5.8 The Franchisee shall fit CCTV to its Class 16X fleet so that within 36 months of the Start Date all of its Class 16X fleet is fitted with CCTV.

5.9 The Franchisee shall complete an exterior re-livery of the Class 16X fleet with the new First brand within 18 months of the Start Date.

5.10 ¹³³

Local Fleet^{viii}

5.11 The Franchisee shall procure a number of reliability modifications to the Classes 143, 150, 153 and 158 fleets (which form part of the Train Fleet and which together form the "Local Fleet") within 24 months of the Start Date, as detailed in paragraph 5.1 of Part 8¹³⁴ to this Appendix 11.^{ix x}

5.12 The Franchisee shall complete an interior refresh of the Local Fleet within 18 months of the Start Date.^{ix x}

5.13 The Franchisee shall complete an interior refresh of the Local Fleet between the sixth and eighth Franchisee Years.

5.14 The Franchisee shall complete an exterior re-livery of the Local Fleet with the new First brand within 18 months of the Start Date.^{ix x}

5.15 The interior refreshes referred to in paragraphs 5.10, 5.12 and 5.13 shall be in relation to floor coverings, interior trim, seat covers and interior painting as required and do not extend to refurbishment. The obligations on the Franchisee under this paragraph 5 do not extend to rolling stock which is not part of the Train Fleet as set out in Table 1.2 of Appendix 3 (so that rolling stock described as in store is not covered by the obligations).

5.16 The Franchisee shall fit CCTV to the Local Fleet so that within 36 months of the Start Date all of its Local Fleet is fitted with CCTV.

Cleaning

5.17 Within one year of the Start Date the Franchisee shall implement a programme such that each rolling stock vehicle in the Train Fleet receives an exterior wash at least every two days, subject to weather and other factors beyond its reasonable control allowing this to be reasonably practicable.

Air Conditioning

5.18 The Franchisee shall procure the fitment of air conditioning in the driver cabs of all its Class 16X vehicles as identified in Table 1.2 of Appendix 3, with the Franchisee using all reasonable endeavours to complete the fitment programme within two years of the Start Date.

Performance

5.19 If and to the extent that any rolling stock vehicle referred to in Table 1.2 of Appendix 3 is not in operation by the Franchisee at the Start Date the obligation of the Franchisee to perform any Committed Obligation under this paragraph 5 in respect of that rolling stock

¹³³ Delete Text wef 17/03/08

¹³⁴ Date of change 02/03/2010

vehicle shall be carried out by the later of the date specified by the performance obligation of that Committed Obligation in the relevant paragraph and twelve months after that rolling stock commences operation by the Franchisee.

6. SECURITY

6.1 The Franchisee shall review its security plans annually and within a reasonable period following a major security incident.

Station Security

6.2 The Franchisee shall implement a security strategy to work towards reducing the number of recorded crime incidents and the number of customer and staff assaults. The Franchisee shall undertake within one year of the Start Date an independent customer survey to establish how customers feel when using a Franchise Service and the Franchisee shall periodically update this research to identify the progress of the security strategy.

6.3 For the duration of the Franchise Term, the Franchisee shall:

- (a) fund the cost of 12 'Police Community Support Officers' to carry out security activities in relation to the relevant Franchise Services; and
- (b) work with the British Transport Police (*BTP*) to support the delivery of the Franchisee's security strategy,

but the Franchisee may propose a variation to the security solution specified in paragraph 6.3(a) to take account of adjustments in outputs under its contract with the BTP, changing security requirements and other alternative means of security provision which may be available. Such variations may be implemented with the consent of the Secretary of State. The Secretary of State will not unreasonably withhold such consent where there is no reduction in the Franchisee's overall spend on security or the then current overall levels of security provision.

6.4 The Franchisee shall, in respect of the Secure Station Scheme:

- (a) seek to maintain accreditation of Stations accredited as at the Start Date;
- (b) seek to increase the aggregate number of Stations accredited to 105 Stations within two years of the Start Date; and
- (c) seek to attain accreditation at an additional 63 Stations within three years of the Start Date.

The commitment of the Franchisee to "seek" to attain or maintain accreditation shall be fulfilled by the Franchisee providing at the relevant number of Stations the level of on station equipment commensurate with meeting the requirements as at September 2005 of the Secure Station Scheme in respect of such equipment and acting as a prudent and diligent Franchisee in its management of the Stations and in its making relevant applications to the Secure Station Scheme. Where the Franchisee carries out actions or investments which are relevant in connection with Secure Station Scheme status, those actions and investments may be taken into account both in connection with this paragraph 6.4 and the other applicable paragraphs of this Appendix 11.

Car Park Security

6.5 The Franchisee shall use all reasonable endeavours to achieve Park Mark Safer Parking accreditation to cover two thirds of car parking spaces as at the Start Date which the Franchisee provides on a fee charging basis over the course of the Franchise Term.

6.6 In order to achieve the objective set out in paragraph 6.5, the Franchisee shall carry out a review of all Station car parks within one year of the Start Date to identify areas of vulnerability, and shall draw up plans to improve real and perceived levels of security in such areas where this is reasonably practicable, prudent and efficient.

6.7 The Franchisee shall implement security measures based on the plans described in paragraph 6.6 and having regard to the objective set out in paragraph 6.5, including installing CCTV where identified in the plans as an appropriate solution.

6.8 The Franchisee's total expenditure in relation to the Committed Obligations in paragraph 6.5 to 6.7 shall not be required to exceed £5,800,000 over the first seven years of the Franchise Term.

Staff Security

6.9 The Franchisee shall continue to support its frontline staff through the extension of successful initiatives, including the establishment of an Assault Working Group and the provision where appropriate of:

- (a) DNA swab kits;
- (b) two-way radios; and
- (c) personal attack alarms.

7. REVENUE PROTECTION

Portable ticket machines

7.1 The Franchisee shall invest in the provision of 370 portable ticket machines consisting of:

- (a) new portable ticket machines for use by revenue protection staff within 15 months of the Start Date; and
- (b) replacement or upgraded portable ticket machines used by train managers within 27 months of the Start Date.

Ticket barriers and gating

7.2¹³⁵ ¹³⁶ The Franchisee shall continue to operate manual ticket gates for a total of 75 hours per week in aggregate across the following stations: Chippenham, Thatcham or Theale and Twyford. The Franchisee may with the approval of the Secretary of State operate manual ticket gates at other locations.

¹³⁵ Date of Change 21/11/2011

¹³⁶ Date of Change 04/05/2012

¹³⁷7.3 The Franchisee shall introduce an additional manual ticket gate during Peak hours at Exeter Central within six months of the Start Date.

“The Franchisee shall cease to operate this manual ticket gate from such time as it is replaced with an automatic ticket gate in accordance with paragraph 7 of Part 4 (List of HLOS Committed Obligations) in Appendix 11 (Committed Obligations and HLOS Committed Obligations and Related Provisions).”;

7.3A ¹³⁸;

7.4 Subject to paragraph 7.5 the Franchisee shall introduce additional automatic ticket gates as follows:

- (a) at Plymouth and Exeter St Davids within 18 months of the Start Date;
- (b) at Paddington (platforms 9-14) within 24 months of the Start Date; and
- (c) at Bath Spa and Swindon within 24 months of the Start Date.

7.5 If and for so long as the Franchisee is delayed or otherwise unable to introduce automatic ticket gates at any location set out in paragraph 7.4, the Franchisee shall instead by the date specified for the fitment of the automatic gates at that location, either operate staffed ticket gates at those locations (to be staffed during Peak hours), or introduce such automatic ticket gates at an alternative location or locations.

Other revenue protection measures

7.6 The Franchisee shall:

- (a) subject to obtaining the necessary consent of the Secretary of State introduce Penalty Fares Schemes on the Bristol, Plymouth and Exeter commuter routes¹³⁹ **by 31 March 2007**
- (b) introduce Zifa ticket checking stampers for all revenue protection staff, conductors and train managers within six months of the Start Date;
- (c) reinforce the correct application of the National Rail Conditions of Carriage (**NRCC**) through a staged approach from the Start Date, involving a series of publicity campaigns to improve public awareness and understanding and staff briefings; and
- (d) implement a staff training programme for all staff involved in revenue protection activities.

¹³⁷ DATE OF CHANGE 02/03/2010

¹³⁸ **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.**

¹³⁹ date of change 29.09.2006

8. HR/TRAINING

Investors in People (IIP)

8.1 *The Franchisee shall use all reasonable endeavours to achieve IIP status within three years of the Start Date and, once achieved, shall maintain such status.*¹⁴⁰

Staff communication

8.2 The Franchisee shall undertake staff surveys to assess staff commitment, morale and obtain feedback which shall include:

- (a) staff commitment/morale survey undertaken within six months of the Start Date;
- (b) in addition to the survey undertaken pursuant to paragraph (a) above undertake annual employee surveys; and
- (c) hold staff listening groups to consult on issues regarding the operation of the Franchise.

8.3 The Franchisee shall discuss the results from these staff surveys at Franchisee board level and devise action plans based on the results and discussions.

Training and development

8.4 The Franchisee shall:

- (a) conduct a skills gap analysis to establish training requirements for existing staff within one year of the Start Date;
- (b) develop a strategy to meet the training requirements identified and provide a copy of that strategy to the Secretary of State within three months of the first anniversary of the Start Date;
- (c) implement that strategy in accordance with its terms subject to any reasonable changes identified following the analysis described in paragraph 8.4(d);
- (d) regularly carry out a training needs analysis for all staff and new staff, referring to, where appropriate, the latest National Passenger Survey results and other customer feedback; and
- (e) carry out for staff of management grade, annual appraisals in order to identify the training required to facilitate staff development.

8.6 The Franchisee shall continue the existing Engineering Apprenticeship Scheme and Graduate Management Trainee Scheme over the course of the Franchise Term.

8.7 The Franchisee shall provide training to engineering staff to improve skills in maintenance and fault finding within three years of the Start Date.

¹⁴⁰ Insert change text wef 20/03/08

Training Academy

8.8 The Franchisee shall, within 18 months of the Start Date, consolidate the provision of training across the Franchise within a multi-site Training Academy.

Vocational Qualifications (NVQ)

8.9 The Franchisee shall, through a structured, staged programme, provide opportunities for Station and on board staff to train for NVQs within 18 months of the Start Date.

Welcome and induction training

8.10 The Franchisee shall within nine months of the Start Date have made available to all staff, and have required all staff to have attended welcome training to introduce staff to the Franchisee's vision, brand values and First ways of working.

8.11 The Franchisee shall ensure that all new staff after the Start Date are provided with training within a reasonable time after they become members of staff in the relevant role to equip them with skills to perform those elements of the Authority's Service Quality Standards that form part of their normal operational role. All new staff will also receive appropriate safety briefings within a reasonable time after they become members of staff.

Work Place Learning and Life Long Learning

8.12 The Franchisee shall liaise and co-operate with Trade Unions and appropriate government and industry bodies to provide access to learning for all staff.

8.13 The Franchisee shall introduce basic skills assessments and factor the results into Life Long Learning programmes offered.

Refresher training

8.14 The Franchisee shall provide refresher training to address deficiencies highlighted through the appraisal system or where Group Standards require it.

8.15 There shall also be mandatory refresher training, re-qualification, or competence assessment for appropriate grades on certain issues such as routes and PTS.

Ongoing training

8.16 The Franchisee shall use all reasonable endeavours to provide the training to staff of management grade identified through the annual appraisals under 8.4(e) relevant to the function that they perform within the Franchisee's organisation.

8.17 The Franchisee shall provide ongoing training to staff as follows:

- (a) train managers shall receive one training session every 10 weeks; and
- (b) customer hosts shall receive three training sessions per year.

8.18 The training referred to in paragraph 8.16 may include the training described in paragraphs 8.14 and 8.15.

9. CUSTOMER SERVICES

Website development

9.1 The Franchisee shall progressively extend the functionality of the website specified in paragraph 10.1 of Schedule 1.4 (*Passenger Facing Obligations*) of the Terms to provide customers with a range of information, including about ticket retailing, Stations and station location maps, Integrated transport, real time travel information, engineering works and service disruptions, timetables, the Passenger's Charter, the Franchisee's business and performance, contact details, policies, email bulletins, and links to third party sites.

Meet the Manager

9.2 From the Start Date and throughout the duration of the Franchise Term the Franchisee shall:

- (a) provide at least 24 Meet the Manager sessions per year at Stations or on board trains to receive customer feedback; and
- (b) advertise those sessions on customer information systems and announcements and on the Franchisee's website referred to in paragraph 9.1.

Catering services

9.3 The Franchisee shall keep its on train catering provision under regular review throughout the Franchise Term, taking into account all relevant circumstances including the costs, revenues, level of demand and availability of catering provision on stations.

9.4 The Franchisee shall spend £250,000 within two years of the Start Date on new train catering trolleys.^{xi}

9.5 As part of the ongoing review process referred to in 9.3 the Franchisee will commence the following catering service trials within one year of the Start Date, each trial to last at least six months:

- (a) a brasserie style service providing service of food at seat to first class passengers and with dishes available to standard class customers, with the trial including initially 32 services each Weekdays;
- (b) an Express Café service on selected longer distance routes; and
- (c) provision of an at seat catering service to standard class customers on selected services.

The duration of each trial beyond its initial six months and whether and if so on what basis each trial may be taken forward is subject to the ongoing review process referred to in paragraph 9.3.

9.6 Notwithstanding the outcome of any review under paragraph 9.3, the Franchisee shall throughout the Franchise Term maintain an on train service to provide refreshment covering at least:

- (a) Franchise Services departing Cardiff, Exeter or Bristol for a timetabled arrival at London Paddington in the Morning Peak; and

- (b) Franchise Services departing London Paddington in the Evening Peak and timetabled to call at Cardiff, Exeter and Bristol

in each case in respect of that portion of their journey between London Paddington and Cardiff, Exeter and Bristol (as the case may be).

Ease of buying a ticket

9.7 The Franchisee shall within two years of the Start Date spend £1,000,000 in developing and promoting the online retailing of tickets and its new website.

Timetable information

9.8 The Franchisee shall, with effect from the Timetable Change Date in Summer 2006, provide specific pocket sized timetables which together cover all the Franchise Services.

9.9 Without prejudice to the provisions in Schedule 14 of the Terms, the Franchisee shall communicate timetable information to customers by:

- (a) within six months of the Start Date developing the website to enable customers to create and print their own timetable of their regular journey;
- (b) within six months of the Start Date making timetable downloads available on the website;
- (c) providing email alerts to regular travellers;
- (d) delivering new timetables to all Stations at least 28 days in advance of the relevant Passenger Change Date; and
- (e) raising awareness of new or altered timetables at staffed Stations through posters and CIS screens.

Service disruption

9.10 The Franchisee shall manage service disruption by doing the following:

- (a) within six months of the Start Date introduce a comprehensive Disruption Management and Information Plan;
- (b) within six months of the Start Date provide all levels of station and on train staff with comprehensive training in all aspects of service delivery, the handling of disruption, the provision of customer information during disruption and improved use of public announcement systems; and
- (c) with effect from the Start Date provide real-time information on the prevailing state of service on particular Routes and particular trains on the website.

Service recovery and contingency planning

9.11 The Franchisee shall extend across the Franchise a series of plans to mitigate the effects of snow and ice, hot weather, high winds and flooding on the network.

9.12 The Franchisee shall employ a range of measures to mitigate the effects of leaf fall across the Franchise, including:

- (a) leaf fall and low adhesion booklet and DVD; and
- (b) leaf fall area notice boards.

9.13 The Franchisee shall ensure all contingency plans are reviewed prior to the Start Date and again before the new timetable commences in December 2006.

9.14 The Franchisee shall liaise and co-operate with Network Rail to ensure service recovery plans are agreed and in place ready to be implemented on the Start Date.

10. CUSTOMER INFORMATION CENTRE

10.1 The Franchisee shall establish a customer information centre to provide retailing and information provision services in relation to the Franchise, including:

- (a) timetable information;
- (b) ticketing options;
- (c) special offers; and
- (d) pricing options.

10.2 The customer information centre shall be in operation at least from 07:00 to 22:00 Monday to Saturday (inclusive) and 08:00 to 21:00 on Sundays, 364 days a year.

11. QUALITY

11.1 The Franchisee shall work towards achieving "Committed to Excellence" status within two years of the Start Date, and shall achieve "Recognised for Excellence" status within 51 months of the Start Date.

11.2 The Franchisee shall carry out self-assessment of the organisation as a whole and separate departments using the EFQM framework within 18 months of the Start Date, devising and implementing an improvement plan based on the results.

Welsh Assembly Government

11.3 The Franchisee shall offer the Welsh Assembly Government the opportunity to take part in quarterly meetings, with the Franchisee being represented by its regional director for Wales.

Rail Passenger Council and User Groups

11.4 The Franchisee shall liaise and co-operate with the Rail Passenger Council and user groups which the Franchisee reasonably considers representative of users of the Franchise Services, including the London Transport TravelWatch, to identify areas of quality improvement and shall, during the Franchise Term:

- (a) hold fora every six months to update and discuss issues with a range of stakeholders;
- (b) invite community members to take part in quality improvement teams; and
- (c) hold ad hoc formal and informal discussions with a variety of user groups.

Community Rail Partnerships

11.5 The Franchisee shall liaise and co-operate with local authorities to explore and promote community rail partnerships and other schemes that enhance community involvement with the railway during the Franchise Term.

11.6 The Franchisee shall establish an annual budget of £50,000 to spend on promoting Community Rail, including the following projects:

- (a) working to achieve Community Rail Designation for all its branch line operations in the South West region;
- (b) holding an annual Community Rail Conference which will be open to a wide external audience;
- (c) liaising and cooperating with local schools, clubs, societies, local authorities and the Devon and Cornwall Rail Partnership to develop and create campaigns, events and PR opportunities; and
- (d) undertaking, in partnership with Devon and Cornwall Rail Partnership and other stakeholders, a review of the main attractions on each local line and producing promotional guides.

Local Community Initiatives

11.7 The Franchisee shall develop marketing campaigns to increase local awareness of the Franchise Services available and the benefits of using it to commuters.

11.8 The Franchisee shall undertake a campaign to promote rail travel including Franchise Services within, to and from Wales.

11.9 The Franchisee shall liaise and co-operate with stakeholders and the local community on a programme of community station adoption schemes in Devon and Cornwall.

11.10 The Franchisee shall support the station adoption scheme with an annual "Best Loved Station" award.

11.11 The Franchisee shall support Cornwall County Council's initiative to improve interchange and transport integration facilities at St Erth Station.

12. ENVIRONMENTAL

Environment Representatives

12.1 The Franchisee shall within six months of the Start Date appoint two environmental representatives who have had specialist environmental training.

Annual environmental plan

12.2 The Franchisee shall produce an annual environmental plan setting out its approach to managing its business in accordance with then current and anticipated legislation and produce an annual progress statement against that plan.

ISO14001

12.3 The Franchisee shall use its reasonable endeavours to achieve ISO14001 accreditation for all Depots within two years of the Start Date.

13. BRANDING**Published material**

13.1 The Franchisee shall re-brand published materials such as timetables, statutory notices and promotional material with the Franchisee's own brand within one month of the Start Date. On line communications shall be re-branded to be effective from the Start Date.

Uniforms for employees

13.2 New name badges and uniforms shall be issued to all customer facing staff within three months of the Start Date, with priority for early issue going to staff transferring to the Franchisee from the former Wales and West Passenger Trains Limited.

14. SOCIAL INCLUSION

14.1 The Franchisee shall implement a Community Support Policy within one year of the Start Date which will give sponsorship through financial assistance or provision of tickets, and practical support by staff to community organisations associated with routes served by the Franchise Services.

15. INTEGRATION**Investments**

15.1 The Franchisee shall work to promote transport integration through measures including:

- (a) the display, advertising and promotion of integrated tickets and integrated services;
- (b) establishing Area Integration Partnerships with local authorities and transport operators to develop integrated schemes, information and marketing;
- (c) integration through staff training to assist customers with their onward journey;
- (d) access integration, with disability groups and organisations;
- (e) continuing existing PlusBus arrangements relevant to the Franchise Services immediately prior to the Start Date and using reasonable endeavours to extend the PlusBus arrangements with third party bus operators in areas served by the Franchise Services; and
- (f) liaising and cooperating with bus operators and other TOCs to develop multi-modal, multi-operator Travelcards.

Transport Integration Manager

15.2 The Franchisee shall maintain the appointment of a dedicated transport integration manager in order to further, across the whole franchise, the promotion of transport integration described in paragraph 15.1 and liaise with Local Authorities and other Stakeholders.

Third party operators

15.3 The Franchisee will actively engage with non-FirstGroup local bus operators to maintain and enhance the awareness of other existing and future bus and other integrated transport links from Stations.

Improved Connections

15.4 The Franchisee shall invest in improving connections including the following:

- (a) continuing to work in partnership with Transport for London to improve information regarding ongoing service connections from Stations within London;
- (b) developing and promoting an interurban network for Cornwall to be known as "Network Kernow";
- (c) exploring opportunities to extend Park&Ride services to Stations;
- (d) liaising and cooperating with CTRL/Eurostar on joint marketing programmes;
- (e) trialing extended hours of operation of the Reading RailAir service; and
- (f) liaising and cooperating with local taxi operators to roll out the provision of taxi free-phone facilities at Stations with no taxi facilities in the proximity.

Cycle facilities

15.5 The Franchisee shall liaise and co-operate with local authorities to secure investment in local cycling infrastructure and other access improvement measures.

15.6 The Franchisee shall produce an annual guide "Cycle by Train" to keep customers advised on facilities for cycle storage at Stations and on its trains.

Combined Rail&Bus ticketing

15.7 The Franchisee shall liaise and co-operate with third party operators to establish combined Rail&Bus tickets in areas served by the Franchise Services.

16. SYSTEMS

Yield Management Systems

16.1 The Franchisee shall spend £1,000,000 within 18 months of the Start Date in the establishment, introduction and operation of a yield management system.

IT Systems

16.2 The Franchisee shall spend at least £5,000,000 during the Franchise Term on the renewal, replacement and upgrading of the Franchisee's IT systems, with at least £2,000,000 of such expenditure being spent within 27 months of the Start Date and £4,000,000 of such expenditure being spent within 51 months of the Start Date.

17. ACCESS FOR ALL

17.1 The Franchisee will ensure at least one member of staff is available at each of the Stations identified in paragraph 17.4 during the whole time period during which each such

Station is open for train services to arrive or depart (including for an appropriate time before the first train to call and after the last train to call), with such member of staff to provide advice and assistance (including physical assistance) to passengers throughout the public areas of the station and on/off trains, whether or not assistance has been pre-booked.

- 17.2 The assistance to be provided as referred to in paragraph 17.1 shall be achieved by:
- (a) the direct physical presence of the member of staff at the time and place specified in the case of pre-booked assistance; and
 - (b) a clear and obvious means by which unbooked passengers can summon assistance from elsewhere on the Station within a reasonable time.

17.3 The members of staff involved may have other duties but shall be available as and when required to provide the advice and assistance referred to in paragraph 17.1. Staff cover will be provided for annual leave, sickness and training. The Franchisee will regularly review the level of staff provision having regard to the extent of usage of the service. Staff deployed to fulfil this function will be trained to the standards set out in the Code of Practice "Train and Station Services for Disabled Passengers".

17.4 The Stations at which this paragraph 17 applies are as follows:

- (a) *Bath Spa;*
- (b) *Slough; and*
- (c) *Chippenham.*¹⁴¹

18¹⁴² SERVICE CHANGES AND ADDITIONAL SERVICE CHANGES

18.1 The Franchisee shall work to achieve the service changes (the Service Changes) described in Section 1 of Part 6 to this Appendix, with those changes being implemented on the Passenger Change Date in December 2006. The action which the Franchisee shall take to achieve those changes will include the negotiation of the necessary Timetable Development Rights and associated timetabling processes and also has included prior to the date on which the Franchise Agreement was amended to include this paragraph the negotiation of rolling stock leases for an additional two three-car Class 166 rolling stock units and, in respect of the period to December 2007, one Class 153 unit.

18.2 In addition the Franchisee will work to achieve further service changes (the Additional Service Changes) described in Section 2 of Part 6 to this Appendix with a view to those changes being implemented on the Passenger Change Date in December 2006 as Additional Passenger Services. If the Franchisee concludes that it wishes to undertake the Additional Service Changes, it will notify the Secretary of State, who will not object to their being undertaken.

18.3 SLC2 shall be amended in respect of Passenger Services to be provided with effect from the Passenger Change Date in December 2006 to incorporate the

¹⁴¹ Insert change text wef 28/08/07

¹⁴² DATE OF CHANGE 6.6.2006

Service Changes and any changes consequential on the Additional Service Changes.

- 18.4** *The Financial Model shall be revised as soon as reasonably practicable after the date on which this Appendix is amended to include this paragraph 18 so that the Financial Model reflects the changes to the Franchisee's costs and revenues as a result of the Service Changes including, inter alia, in such a manner that:*
- (a) (save in respect of the changes identified in Section 4 of Part 6 to this Schedule, which shall be treated as a Qualifying Change) the change does not affect the overall level of Franchise Payments (before taking account of any subsequent Change, including for these purposes the Change in respect of the Charging Review which is effective from 1 April 2006), which shall be achieved by reflecting the changes to costs and revenues and then adjusting the Profit Margin to maintain the premium/subsidy profile;*
 - (b) the changes to the Franchisee's costs and revenues will be in accordance with indicative numbers in Sections 3 and 4 of Part 6 to this Appendix;*
 - (c) (save in respect of the changes identified in Section 4 of Part 6 to this Schedule) the increase in revenues is not reflected in the Target Revenues; and*
 - (d) the Profit Margin to be used for the purpose of any subsequent Change subject to any variation which may be agreed or determined to that margin as a consequence of any later Change) shall be as set out in clause 5.24 of the Franchise Agreement (that is without taking account of the adjustment referred to in paragraph 18.4(a), but taking account of the changes identified in Section 4 of Part 6 of this Schedule).*
- 18.5** *If despite the Franchisee's reasonable endeavours any Service Change cannot be introduced on the Passenger Change Date in December 2006 (for example due to non-availability of the necessary track access rights), the Franchisee shall review the Service Changes with the Secretary of State and, subject to any further change to the Service Level Commitment, seek to introduce those Service Changes as soon as reasonably practicable thereafter. If the Financial Model is adjusted to reflect the delay in introducing any Service Change, this shall be on the basis that there is no affect on the level of Franchise Payments (before taking account of any subsequent Change), reflecting the fact that no adjustment was made to the Franchise Payments consequent on those changes being included in the Service Level Commitment."*
- 19** *Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.*
- 20** *Passenger's Charter Compensation*¹⁴³
- The Franchisee shall:*
- (a) double the compensation rates applying under its Passenger's Charter for claims arising in the period 27th January 2008 to 26th January 2009, so that*

¹⁴³ Insert new text wef 17/03/08

monthly and longer season tickets renewed in the period have rates of discount increased from 5% and 10% to 10% and 20% respectively and the compensation paid under the Passenger's Charter to holders of other tickets suffering relevant disruption in the period is double the amount provided for immediately before 27th January 2008; and

- (b) *increase by 50% the compensation rates applying under its Passenger's Charter for claims arising in the period 27th January 2009 to 26th January 2010, so that monthly and longer season tickets renewed in the period have rates of discount increased from 5% and 10% to 7.5% and 15% respectively and the compensation paid under the Passenger's Charter to holders of other tickets suffering relevant disruption in the period is increased by 50% the amount provided for immediately before 27th January 2008.*

For the purposes of paragraphs 6.3 and 6.4 of Part 2 of Appendix 11 of the Franchise Agreement it is expected that the Passenger's Charter Compensation Committed Obligation will have a net cost to the Franchisee of £¹⁴⁴.

21 *Fares Offers*

- (a) *Subject to paragraph 21(b) below, the Franchisee will offer 500,000 additional tickets at its cheapest rates to a selection of its most popular destinations for travel outside the Peak, with the offer commencing no later than 1 April 2008 and continuing to 31st March 2009 (or until the additional tickets have been sold).*
- (b) *If following consultation with Passenger Focus the Franchisee determines that a more appropriate Fare Offer should be offered to passengers then subject to the approval of the Secretary of State (such approval not to be unreasonably withheld) the Fare Offer in paragraph 21(a) above may be substituted for a Fare Offer of equivalent net cost (estimated at £¹⁴⁵).*

For the purposes of paragraphs 6.3 and 6.4 of Part 2 of Appendix 11 of the Franchise Agreement it is expected that the additional discount represented by the additional tickets sold at the cheapest rates will have a net cost to the Franchisee of £¹⁴⁶.

22 *Fares Simplification Cooperation*

The Franchisee will actively participate, liaise and cooperate with the Secretary of State in the study and development of fares simplification proposals involving single leg pricing. (This commitment does not include the implementation or financial implications of any such fares simplification, which it is anticipated

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¹⁴⁶ 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.

would probably be introduced as a further Variation, subject to the details of the eventual scheme.)

For the purposes of paragraph 6.3 of Part 2 of Appendix 11 of the Franchise Agreement the Fares Simplification Cooperation Committed Obligation will have a net cost of zero.

23 Strengthening Cardiff-Portsmouth

- (a) *The Franchisee will as soon as reasonably practicable take on lease five two car Class 150 units and use those units to release two car Class 158 units for use in strengthening the Cardiff-Portsmouth service, with effect from the Summer Passenger Change Date in 2008 until the Summer Passenger Change Date in 2011, so that the service is planned to be operated by a three car Class 158 rather than a two car Class 158.*
- (b) *The commitment under paragraph 23(a) applies subject to the following:*
- (i) *the Franchisee is able (through the exercise of all reasonable endeavours) to secure a sub-lease of the five two car Class 150 units from Arriva Train Wales ("ATW") for the period to June 2010 and then and to the extent that that sub-lease is not subject to the exercise of any early break option by ATW;*
 - (ii) *the Franchisee is able with effect from June 2010 (through the exercise of all reasonable endeavours, and with the support of the Secretary of State as appropriate) to secure either the continued sub-lease of the five two car Class 150 units from ATW or the sub-lease of replacement two car Class 150 units (or suitable equivalents) for the period up to the Summer Passenger Change Date in 2011; and*
 - (iii) *a derogation or other amendment to the Service Level Commitment is made to permit the Franchisee to break at Bristol Temple Meads one morning and one evening Cardiff-Portsmouth service, to provide for maintenance (if such a derogation or other amendment is required to allow such breaks).*
- (c) *Continuation of the strengthened Cardiff-Portsmouth service and the continued leasing of the five two car Class 150 Units beyond the Summer Passenger Change Date in 2011 will be subject to a further Variation or other provision of funding by the Secretary of State in respect of the units.*
- (d) *For the purposes of paragraph 6.3 of Part 2 of Appendix 11 of the Franchise Agreement the net cost to the Franchisee of the Strengthening Cardiff-Portsmouth Committed Obligation is deemed to be a minimum of £¹⁴⁷.*

¹⁴⁷ 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.

(e) ¹⁴⁸ *Following the date of the FGW30 HLOS Deed of Amendment, paragraphs 23(a) - (d) above shall be subject to the following provisions:-*

(i) *it is acknowledged that Part 4 of Appendix 11 (Committed Obligations and HLOS Committed Obligations and Related Provisions) contains arrangements for securing Extra Class 150 Vehicles to replace the Class 150 Units to be taken on lease by the Franchisee pursuant to paragraph 23(a) prior to the Summer Passenger Change Date in 2011. Accordingly it is agreed by each of the Secretary of State and the Franchisee that:*

(1) ¹⁴⁹

(2) ¹⁵⁰

24 *Customer Services Training Package*

The Franchisee will spend £¹⁵¹ over the Franchise Term in providing enhanced customer services training for its passenger facing staff in addition to those Committed Obligations set out in paragraphs 8.4 to 8.18 above.

For the purposes of paragraph 6.3 of Part 2 of Appendix 11 of the Franchise Agreement the Customer Services Training Package Committed Obligation will have a minimum incremental net cost to the Franchisee of £¹⁵².

¹⁴⁸ Date of change 02/03/2010

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¹⁵² Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

25 *Station Information Systems CIS Upgrade*¹⁵³

- (a) *The Franchisee will procure by the end of December 2011 the expenditure of £¹⁵⁴ on an enhanced CIS system for its Stations in addition to the Committed Obligation set out in paragraph 2.6 above. The CIS system will include system enhancements, improved consistency of systems, coverage of an increased number of Stations, increased equipment at some Stations and training and support on use of the system and provision of information in times of disruption.*
- (b) *The Franchisee will develop the specification for the enhanced CIS system for approval by the Secretary of State (such approval not to be unreasonably withheld).*
- (c) *It is acknowledged that in preparing the specification for the enhanced CIS system, the Franchisee may review and take into account other related Committed Obligations which may appropriately be combined with the enhanced CIS system and make proposals for an integrated approach to the delivery of those Committed Obligations and the enhanced CIS system, and the Secretary of State shall not unreasonably withhold consent to such a revised approach provided that the level of expenditure then procured by the Franchisee is not reduced below the aggregate of what would have been procured under the relevant Committed Obligations and the incremental expenditure committed under paragraph 25(a).*
- (d) *For the purposes of paragraph 6.3 of Part 2 of Appendix 11 of the Franchise Agreement the Station Information Systems CIS Upgrade Committed Obligation will have a minimum incremental net cost to the Franchisee of £155.*

26 *Class 16X (Turbo Fleet) Refresh*

The Franchisee will procure the expenditure of £¹⁵⁶ between the third and sixth Franchisee Year on an enhanced interior refresh of the Class 16X fleet. The details of the refresh will be subject to prior approval with the Secretary of State (such approval not to be unreasonably withheld) and may include fitment of a passenger information system.

¹⁵³ Date of Change 30/12/2010

¹⁵⁴ Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

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¹⁵⁶ 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.

The Class 16X (Turbo Fleet) Refresh will have a minimum net cost to the Franchisee of £¹⁵⁷ which is represented by a previous commitment to spend an estimated £¹⁵⁸ plus an additional estimated net cost of £¹⁵⁹. For the purposes of paragraph 6.3 of Part 2 of Appendix 11 of the Franchise Agreement the Class 16X (Turbo Fleet) Committed Obligation will have a minimum net cost to the Franchisee of £¹⁶⁰.

27 *The Franchisee will take on:*

- (a) ¹⁶¹ *new drivers who were not employed as drivers by the Franchisee as at the end of Reporting Period 4 in the second Franchisee Year; and*
- (b) ¹⁶² *new guards who were not employed as guards by the Franchisee as at the end of Reporting Period 4 in the second Franchisee Year*

over the period from the start of Reporting Period 5 in the second Franchisee Year to the end of the Remedial Period. In assessing compliance with this commitment drivers and guards with trainee status shall be included.

28 *The Franchisee shall with effect from 1 April 2008 take on lease an additional high speed train for the remainder of the Franchise Term, which additional high speed train may be delivered through the retention of Class 180 units which might otherwise have been returned to their lessor or the lease of an HST, with the additional train to be used for performance resilience at least during the Remedial Period PROVIDED THAT it shall not be treated as a contravention of this obligation to the extent that the Franchisee is unable through the exercise of all appropriate endeavours to conclude a lease for the retention of the relevant Class*

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180 units in respect of the period prior to the additional HST referred to as EC64 entering service (which is expected in April 2009).

Part 2 – Miscellaneous Provisions

Application

1. Part 2 of this Appendix sets out further terms which apply to the Committed Obligations set out in Part 1 (*List of Committed Obligations*) of this Appendix 11 and the references to Committed Obligations in each Part of this Appendix 11 are only to the Committed Obligations in Part 1 of this Appendix 11.

Continuation of Availability

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

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

Annual Expenditure

3. Where this Appendix 11 provides for the expenditure of an annual amount (or an amount over some other period) by the Franchisee, that amount:

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

Liaison and Co-operation

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

Nature of Commitment

5.1 Any commitment in terms of this Appendix 11 shall be in addition to any obligation of the Franchisee elsewhere in this Agreement and nothing in this Appendix 11 shall limit or restrict an obligation imposed on the Franchisee elsewhere in this Agreement.

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

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

Expenditure Commitments

- 6.1 All expenditure commitments set out in this Appendix 11 are expressed in nominal amounts.
- 6.2 All amounts which the Franchisee has committed (whether unconditionally or otherwise) pursuant to Part 1 of this Appendix 11 to expend in connection with improvements to track or Stations shall be in addition to any expenditure made by Network Rail as part of its infrastructure improvements or maintenance programme to the extent such expenditure is not directly funded or reimbursed by the Franchisee.

¹⁶³ 6.3 *The Committed Obligations set out in paragraphs 20 to 26 inclusive of Part 1 of Appendix 11 shall have a minimum net aggregate cost to the Franchisee of £¹⁶⁴ (the “Expenditure”). The Expenditure is calculated by reference to:*

- (a) *the net cost of each individual Committed Obligation set out in paragraphs 22 to 26 inclusive of Part 1 of Appendix 11, being an aggregate minimum net cost to the Franchisee of £¹⁶⁵; and*
- (b) *the aggregate net cost of the Committed Obligations set out in paragraphs 20 and 21 of Part 1 of Appendix 11, together with the net costs of any additional passenger benefits committed to be implemented in accordance with paragraph 6.4.*

Subject to the approval of the Secretary of State (which shall not be unreasonably withheld) the Franchisee may apply net costs incurred on any of the Committed Obligations set out in paragraphs 20 to 26 of Part 1 of Appendix 11 in excess of the relevant minimum net costs against any shortfall against the relevant minimum net costs incurred on any other of those Committed Obligations.

- 6.4 *If and to the extent that the aggregate net cost to the Franchisee in respect of the Committed Obligations set out in paragraphs 20 and 21 of Part 1 of Appendix 11 is less than the estimated net cost of £¹⁶⁶, the Franchisee shall propose to the Secretary of State for approval (which shall not be unreasonably withheld) additional passenger benefits to be provided by it with an additional net cost to the Franchisee equivalent to the amount of the shortfall below £¹⁶⁷ and, subject to the approval of the Secretary of State, shall implement those additional passenger benefits. If there is any such shortfall, the Franchisee shall make the proposal at*

¹⁶³ Insert new text wef 17/03/08

¹⁶⁴ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

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¹⁶⁷ 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.

the latest by 30th June 2010, but this shall not preclude earlier proposals being made which may then be offset against any such shortfall.

Review of Compliance

- 7.1 Progress with Committed Obligations is an agenda item for Franchise Performance Meetings and the Franchisee shall ensure that at such meetings the Secretary of State is given such progress reports as he may reasonably request.
- 7.2 In addition to its obligation under paragraph 7.1, the Franchisee shall from time to time promptly provide such evidence of its compliance with its Committed Obligations as the Secretary of State may reasonably request.
- ¹⁶⁸ 7.3 *In addition to its obligations under paragraphs 7.1 and 7.2 and unless and until otherwise agreed with the Secretary of State, the Franchisee shall with effect from 1 April 2008 agree with the Secretary of State a quarterly programme for reporting Expenditure. Expenditure shall be reported by reference to:*
- (a) the minimum net cost set out in the Committed Obligations in paragraphs 22 to 26 inclusive of Part 1 of Appendix 11 of the Franchise Agreement;*
 - (b) the individual estimated net costs of the Committed Obligations as set out in paragraphs 20 and 21 of Part 1 of Appendix 11 of the Franchise Agreement; and*
 - (c) the net costs of any additional passenger benefits agreed to be implemented under paragraph 6.4.*

¹⁶⁸ Insert new text wef 17/03/08

Part 3 – Late/Non Completion of Committed Obligations

Late Completion or Non-Delivery of Committed Obligations

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

1.2 In addition to being a contravention of this Agreement, if any of the Committed Obligations referred to in Table 1 or Table 2 below is not delivered in full by the deadline specified for that Committed Obligation in column 3 of the relevant table, the Franchisee shall pay to the Secretary of State in respect of each Reporting Period commencing on or after that deadline until the specific Committed Obligation is discharged in full the amount set out in column 4 of the relevant Table (a *Committed Obligation Payment Adjustment*).

Table 1¹⁶⁹

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.

¹⁶⁹ date of deletion 27.7.2006

Table 2¹⁷⁰

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¹⁷⁰ date of exclusion 27.7.2006

Part 4 –List of HLOS Deed of Amendments¹⁷¹

1. Acquisition and introduction into service of Extra HLOS Vehicles^{172 173}

¹⁷⁴ **1.1** The Franchisee shall acquire on lease:

- (a) 30 additional Class 150 vehicles (“the Extra Class 150 Vehicles”); and
- (b) a further 4 additional Class 150 vehicles and 2 additional Class 153 vehicles (together “the Extra Bristol Vehicles”),

in each case subject to the terms and in accordance with the timescales set out in this paragraph 1.”.

1.2 The parties acknowledge that the Extra Class 150 Vehicles are intended to replace the following:

- (a) 8 Class 150 vehicles (“the ATW Vehicles”) sub-leased from Arriva Trains Wales/Trenau Arriva Cymru Limited (“ATW”) and two Class 158 vehicles sub-leased from South West Trains (“the SWT Vehicles”) in each case as at the date of the FGW30 HLOS Deed of Amendment;**
- (b) 14 Class 142 vehicles sub-leased from Northern Rail Limited as at the date of the FGW30 HLOS Deed of Amendment (“the Northern Class 142 Vehicles”);**
- (c) the locomotives and loco-hauled coaching stock (“the Paragraph 6 Vehicles”) described in paragraph 6 of Appendix 13 (Greater Western Specific Provisions) (“the Paragraph 6 Vehicles”); and**
- (d) ¹⁷⁵**

1.3 The Franchisee shall use all reasonable endeavours to introduce the Extra HLOS¹⁷⁶ Vehicles into use in the provision of the Passenger Services in accordance with the following timescales and in any event as soon as reasonably practicable:

¹⁷¹ Date of change 02/03/2010

¹⁷² Date of amendment 02/03/2010

¹⁷³ Date of Change 04/08/2011

¹⁷⁴ Date of Change 04/08/2011

¹⁷⁵ **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.**

¹⁷⁶ Date of Change 04/08/2011

- (a) *12 Extra Class 150 Vehicles (“the LOROL Vehicles”) by ¹⁷⁷. The parties anticipate that the LOROL Vehicles will become available by no later than such date, following their release by London Overground Rail Operations Limited (“LOROL”) and will be used by the Franchisee, together with the SWT Vehicles (which the Franchisee agrees that it will use all reasonable endeavours to continue to make available) for this purpose pending their release pursuant to paragraph 1.3(c) to replace the Northern Class 142 Vehicles;*
- (b) *6 Extra Class 150 Vehicles (“the 1st LM Vehicles”) by ¹⁷⁸. The parties anticipate that the 1st LM Vehicles will become available by no later than that date following their release by the London Midland Franchisee and will be used by the Franchisee to replace the Paragraph 6 Vehicles and the Paragraph 8 Vehicles;¹⁷⁹*
- (c) *12 Extra Class 150 Vehicles (“the 2nd LM Vehicles”) by ¹⁸⁰. The parties anticipate that the 2nd LM Vehicles will become available by no later than that date following their release by the London Midland Franchisee and will be used by the Franchisee to replace the ATW Vehicles and the SWT Vehicles (but without limiting the Franchisee’s obligations pursuant to paragraph 2.8 to retain the SWT Vehicles in order to provide cover for Extra Class 150 Units undergoing modification pursuant to paragraph 2 of this Part 4); and ¹⁸¹*
- (d)¹⁸² *the Extra Bristol Vehicles by the Passenger Change Date in December 2011.*

References to an “LM Vehicle” are to an Extra Class 150 Vehicle which is either a 1st LM Vehicle or a 2nd LM Vehicle.

The Franchisee may with the consent of, and shall at the direction of, the Secretary of State sub-lease LM Vehicles to the London Midland Franchisee on such terms as the Secretary of State may approve or reasonably direct (and subject to the London Midland Franchisee also agreeing) for a period from the commencement of the leasing of the LM Vehicles concerned to the Franchisee.

¹⁷⁷ 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.

¹⁷⁸ 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.

¹⁷⁹ Date of Change 04/08/2011

¹⁸⁰ 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.

¹⁸¹ Date of Change 04/08/2011

¹⁸² Date of Change 04/08/2011

References in this paragraph to the LM Vehicles becoming available or delivered to the Franchisee are, in the case of any LM Vehicle subject to such sub-leasing, to the relevant LM Vehicle being delivered back to the Franchisee at the end of the sub-leasing arrangement in respect of that vehicle.

1.4 *It is acknowledged that with effect from seven days after each Extra HLOS¹⁸³ Vehicle is delivered to the Franchisee and accepted by it on lease, that vehicle will (in accordance with Note 8 or Note 14 (as applicable)¹⁸⁴ to Table 1.2 of Appendix 3 (the Train Fleet)) form part of the Train Fleet and will in accordance with and subject to paragraph 1.2 of Schedule 1.2 of the Terms be taken into account in the Train Plan and be included in the rolling stock to be operated in delivering the Peak Passenger Services. The Franchisee:-*

- (a) shall act reasonably to ensure the prompt acceptance of Extra HLOS¹⁸⁵ Vehicles which are tendered for acceptance by it; and*
- (b) in particular will not reject rolling stock which is reasonably capable of being operated to provide the relevant Passenger Services provided that the Franchisee is able to secure (using all reasonable endeavours to do so) such protection of its position as it reasonably requires in respect of any failure by the lessor (or sub-lessor) to tender the rolling stock in accordance with the conditions of the lease (or sub-lease). This may include, but not be limited to, making acceptance conditional on defaults being remedied and/or otherwise reserving its rights in respect of any remedy or relief which the Franchisee may have against the lessor (or sub-lessor).*

Notwithstanding paragraph 1.3 and this paragraph 1.4, if the Franchisee with the approval of or upon direction of the Secretary of State sub-leases any of the LM Vehicles to the London Midland Franchisee, the Franchisee's obligations to introduce that vehicle into service shall not apply until seven days after its re-delivery to the Franchisee at the end of the relevant sub-leasing arrangement.

1.5 *The Franchisee shall promptly notify the Secretary of State if the Franchisee becomes aware of any delay or potential delay in the delivery to the Franchisee and/or introduction of any of the Extra HLOS Vehicles¹⁸⁶ in accordance with the anticipated timescales set out in paragraph 1.3 above. The Secretary of State agrees likewise to notify the Franchisee of any such delay or potential delay of which he becomes aware.*

1.6 *The Franchisee shall ensure that it continues to provide the Passenger Services, and in so doing maintains the level of passenger carrying capacity provided prior to the FGW30*

¹⁸³ Date of Change 04/08/2011

¹⁸⁴ Date of Change 04/08/2011

¹⁸⁵ Date of Change 04/08/2011

¹⁸⁶ Date of Change 04/08/2011

*HLOS Deed of Amendment by the rolling stock vehicles referred to in paragraph 1.2 above until the Extra Class 150 Vehicles are all introduced into the operation of Passenger Services.*¹⁸⁷ *The Franchisee:-*

- (a)¹⁸⁸ *has produced contingency plans to enable it to seek to continue to provide the Passenger Services and capacity required by the first paragraph above in this paragraph 1.6 in the case of any delay in the delivery to the Franchisee of the Extra Class 150 Vehicles beyond the intended dates referred to in paragraph 1.3 and detailed in the Supplement to the Record of Assumptions, ("the Contingency Plan"). These Contingency Plans are in Agreed Terms marked "Contingency Plan";*
- (b)¹⁸⁹ *shall keep the Secretary of State informed as soon as it becomes aware of any prospect that it may need to implement a Contingency Plan, in which case it shall also keep the Secretary of State informed of the extent to which the Contingency Plan may need to be invoked and any proposal which it may have for further revision to the Contingency Plan. Any implementation or revision (in whole or in part) of the Contingency Plan shall be subject to the agreement of the Secretary of State (not to be unreasonably withheld or delayed);*
- (c)¹⁹⁰ *shall use all reasonable endeavours to implement any Contingency Plan approved pursuant to paragraph 1.6(b) subject to paragraph 1.6(d) below;*
- (d) *shall*¹⁹¹ *if, despite the exercise by the Franchisee of its reasonable endeavours pursuant to paragraph 1.6(c), the Franchisee is not able to implement a Contingency Plan in whole or in part because it is not able to procure the use of the rolling stock envisaged by the Contingency Plan, the Franchisee shall:-*
- (i) *without limiting paragraph 1.6(d)(ii) use all reasonable endeavours to procure the use of such other rolling stock as are reasonably required to mitigate that shortfall under this paragraph 1.6; and*

¹⁸⁷ Date of Change 04/08/2011

¹⁸⁸ Date of Change 04/08/2011

¹⁸⁹ Date of Change 04/08/2011

¹⁹⁰ Date of Change 04/08/2011

¹⁹¹ Date of Change 04/08/2011

(ii) liaise and co-operate with the Secretary of State regarding measures to mitigate any resulting shortfall in the rolling stock vehicles available to it to fulfil its obligations under this paragraph 1.6;

(e)¹⁹² will not be in breach of its obligation under (i)¹⁹³ the first paragraph of this paragraph 1.6 (to provide the Passenger Services and maintain the level of passenger carrying capacity provided by the rolling stock vehicles referred to in paragraph 1.2 above until the Extra Class 150 Vehicles are all introduced into the operation of Passenger Services) or (ii) paragraph 1.3(d) (to introduce the Extra Bristol Vehicles into Passenger Service) (as applicable)¹⁹⁴ if:-

(i) the failure is solely attributable to Lessor Entitlement. "Lessor Entitlement" means that the lessor or sub-lessor of any Extra HLOS¹⁹⁵ Vehicle exercises its rights to delay the delivery of that vehicle to the Franchisee beyond the date for delivery anticipated in paragraph 1.3 and the Supplement to the Record of Assumptions (or, in respect of the Extra Bristol Vehicles, the Supplement to the Record of Assumptions (Bristol Vehicles))¹⁹⁶ for reasons other than breach or default on the part of the Franchisee and shall include where any LM Vehicle is sub-leased with the approval of the Secretary of State by the Franchisee to the London Midland Franchisee the period of any such sub-lease and any subsequent delay in the sub-lessee delivering the relevant vehicle back to the Franchisee if and to the extent the delay is not due to breach or default on the part of the Franchisee; and/or

(ii) to the extent the failure is due to the proper exercise by the Franchisee of its rights to reject any Extra HLOS Vehicles¹⁹⁷ tendered for acceptance on lease by reason of the rolling stock not being in a state which

¹⁹² Date of Change 04/08/2011

¹⁹³ Date of Change 04/08/2011

¹⁹⁴ Date of Change 04/08/2011

¹⁹⁵ Date of Change 04/08/2011

¹⁹⁶ Date of Change 04/08/2011

¹⁹⁷ Date of Change 04/08/2011

*is reasonably capable of being operated to provide the relevant Passenger Services;*¹⁹⁸

- (iii) in relation to the Extra Class 150 Vehicles only¹⁹⁹, the Franchisee has complied with its obligations pursuant to paragraphs 1.6(c) and (d);*

where sub-paragraph (e)(i) or (e)(ii) applies and the Franchisee uses all reasonable endeavours to mitigate the consequent shortfall or delay²⁰⁰, then the circumstances specified in sub-paragraph (e)(i) or (e)(ii) (as the case shall be) shall be treated as the sole cause of any consequent shortfall or delay²⁰¹ notwithstanding any failure in the attempted mitigation;

- (f) where paragraph 1.6(e) applies in respect of the Extra Class 150 Vehicles²⁰², then if and to the extent that the Franchisee is not able to provide such capacity despite fulfillment of its obligations in paragraph 1.6(c) and 1.6(d), the Secretary of State shall not unreasonably withhold his consent under Schedule 1.2 of the Terms to such amendments to the Timetable and Train Plan as the Franchisee may reasonably propose in order to take account of the consequent shortfall in rolling stock such proposal to be consistent (to the extent applicable) with the Franchisee's obligations in Schedule 1.2 of the Terms;*

- (g)²⁰³ shall take reasonable steps to recover any liquidated or other damages which it may be entitled to claim in respect of any delay in the Extra Class 150 Vehicles entering into service and the amounts recovered shall be taken into account in any adjustment payments to be made under paragraph 1.8(e);*

- (h) it is acknowledged by the Secretary of State and the Franchisee that the primary purpose of the Franchisee's obligation in this paragraph 1.6 is to ensure that the Franchisee continues to provide the Passenger Services and maintains the level of*

¹⁹⁸ Date of Change 04/08/2011

¹⁹⁹ Date of Change 04/08/2011

²⁰⁰ Date of Change 04/08/2011

²⁰¹ Date of Change 04/08/2011

²⁰² Date of Change 04/08/2011

²⁰³ Date of Change 04/08/2011

passenger carrying capacity provided by the rolling stock vehicles referred to in paragraph 1.2 above until the Extra Class 150 Vehicles are all introduced into the operation of the Passenger Services. Accordingly in circumstances of delay in the delivery of such Extra Class 150 Vehicles and without prejudice to the other obligations of the Franchisee in this paragraph 1.6:

- (i) the Secretary of State shall liaise and co-operate with the Franchisee regarding measures that enable such continued provision of the Passenger Services by the Franchisee; and*
- (ii) nothing in this paragraph 1.6 shall preclude the Secretary of State and the Franchisee from identifying, agreeing and implementing suitable alternative arrangements to those already provided for in the Contingency Plans that assist or enable such continued provision of the Passenger Services by the Franchisee.*

For the purposes of this paragraph 1.6 the Paragraph 6 Vehicles and the Paragraph 8 Vehicles shall each be treated as having the capacity of a two car Class 150/1 unit (as defined in note 9 of the table in Appendix 3 (Train Fleet)).

1.7 The parties acknowledge and agree that the adjustments to the Annual Franchise Payments:

- (a) introduced by the FGW30 HLOS Deed of Amendment have been based on the following assumptions: ;*
- (i) that the LOROL Vehicles will be leased by the Franchisee by no later than ²⁰⁴ and the Franchisee's commitments in respect of the Northern Class 142 Vehicles will have ended at the same date;*
- (ii) that the Franchisee's commitments in respect of procurement of the Paragraph 6 Vehicles and Paragraph 8 Vehicles (together the "LHCS Vehicles") will have ended by ²⁰⁵;*

²⁰⁴ 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.

²⁰⁵ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

(iii) that in respect of the ATW Vehicles the Franchisee's commitments to ATW in respect of the procurement of the ATW Vehicles will have ended by ²⁰⁶ (consistent with the assumption in paragraph 1.7(d) below about the timing of the delivery of (and assumption by the Franchisee of responsibility for payment for) the 1st LM Vehicles and 2nd LM Vehicles);

(iv) that the 1st LM Vehicles and the 2nd LM Vehicles will be delivered to the Franchisee on a phased basis from ²⁰⁷ without any sub-leasing of those vehicles by the Franchisee to the London Midland Franchisee which is inconsistent with the LM Vehicles being available to the Franchisee in accordance with that phasing and free of any sub-lease; and

1.7(b)²⁰⁸ introduced by the Bristol HLOS Deed of Amendment have been based on the assumption that the Extra Bristol Vehicles will be leased by the Franchisee by no later than the Passenger Change Date in December 2011,

with the detail of all the assumptions being as set out in the Supplement to the Record of Assumptions (or, in respect of the Extra Bristol Vehicles, the Supplement to the Record of Assumptions (Bristol Vehicles))²⁰⁹.

Save as provided in paragraph 1.8 (and without prejudice to Parts 5 and 6 of this Appendix 11 and such other rights as the Secretary of State may have), there shall be no adjustment to Franchise Payments if these assumptions are incorrect, nor shall a Change be triggered by any of these assumptions being incorrect, nor shall any of these assumptions relieve the Franchisee of any of its obligations under the Franchise Agreement.

1.8 The parties acknowledge that the Extra HLOS Vehicles may be delivered to the Franchisee on dates different from the intended dates referred to in paragraph 1.7 and detailed in the Supplement to the Record of Assumptions (or, in respect of the Extra

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²⁰⁷ 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.

²⁰⁸ Date of Change 04/08/2011

²⁰⁹ Date of Change 04/08/2011

Bristol Vehicles, the Supplement to the Record of Assumptions (Bristol Vehicles)²¹⁰, and have accordingly agreed the following:

- (a) *the Franchisee will use all reasonable endeavours to manage the replacement of the Northern Class 142 Vehicles, the ATW Vehicles and the LHCS Vehicles in such a way so as to minimise the extent to which it retains those vehicles following the delivery to it of the Extra Class 150 Vehicles which are intended to replace them (including, but not limited to, by the timely giving of notice to terminate the arrangements under which the Franchisee is entitled to the use of those vehicles);*
- (b) *if any of the Franchisee's commitments in respect of the Northern Class 142 Vehicles, LHCS Vehicles or ATW Vehicles end at a date ("the early date") prior to the date stated in paragraph 1.7 and detailed in the Supplement to the Record of Assumptions, ("the anticipated date"), the Secretary of State shall make an HLOS Franchise Payment Adjustment in respect of the period between the early date and the anticipated date, such adjustment to be a payment to the Secretary of State of the difference between the applicable respective rate for a Class 142 Vehicle, LHCS Vehicle or ATW Vehicle (as the case may be) as set out in Annex 1 to the Contingency Plan and the corresponding applicable rate for a Extra Class 150 Vehicle as set out in that Annex;*
- (c) ²¹¹;
- (d) *If:*
 - (i) ²¹²*the implementation of the Contingency Plans requires the continued availability to the Franchisee of any or all of the ATW Vehicles, the LHCS Vehicles and/or the Northern Class 142 Vehicles after the date(s) referred to in paragraph 1.7; and*
 - (ii) *to the extent the delay in the availability of any of the Extra Class 150 Vehicles is solely attributable to any or*

²¹⁰ Date of Change 04/08/2011

²¹¹ 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.

²¹² 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.

all of (i) ²¹³ (ii) the proper exercise by the Franchisee of its rights to reject any Extra Class 150 Vehicles ²¹⁴ tendered for acceptance on lease by reason of the rolling stock not being in a state which is reasonably capable of being operated to provide the relevant Passenger Services or (iii) ²¹⁵,

and provided the Franchisee has complied and continues to comply with its obligations under this Part 4 in respect of the Extra Class 150 Vehicles, then the Franchise Payments shall be adjusted to the extent provided in paragraph 1.8(e) below;

(e) where this paragraph 1.8(e) applies in relation to any Extra Class 150 Vehicle, then subject to paragraph 1.8(f) below the Secretary of State shall make an HLOS Franchise Payment Adjustment in respect of any period beyond the relevant date assumed in the Supplement to the Record of Assumptions for which the Franchisee is required by the Contingency Plan to retain any of the ATW Vehicles, the LHCS Vehicles and/or the Northern Class 142 Vehicles (as the case may be), such adjustment to be a payment to the Franchisee calculated using the principles set out in the Contingency Plan and using the applicable respective rates set out in Annex 1 to the Contingency Plan, subject in the case of the LHCS Vehicles to adjustment for any days on which those vehicles are not made available on lease to the Franchisee as referred to in paragraph 10.2(c) of Appendix 13;

(f) ²¹⁶

(g) ²¹⁷

²¹³ 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.

²¹⁴ Date of Change 04/08/2011

²¹⁵ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

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(h) where and to the extent that:-

- (i) the Secretary of State directs the Franchisee to enter into a sub-lease in respect of any LM Vehicles with the London Midland Franchisee: and**
- (ii) the rental amount payable by the sub-lessee to the Franchisee in respect of the sub-lease is not equivalent to the rental amount payable by the Franchisee to the lessor in respect of the LM Vehicle under the terms of the lease of the relevant LM Vehicle in respect of the corresponding period (it being acknowledged that there may be differences in payments due under the lease and sub lease for example in relation to recovery of costs of insurance and liability in relation to breach or default or under indemnity provisions),**

the Secretary of State will make an HLOS Franchise Payment Adjustment in respect of the difference, such adjustment to be a payment to the Franchisee if the rental amount payable by the sub-lessee under the sub-lease is less than the rental amount payable under the Lease, and a payment to the Secretary of State if the rental amount payable by the sub-lessee under the sub-lease is more than the rental amount payable under the Lease.

2. Extra HLOS Vehicles²¹⁸ Rolling Stock Reliability and Associated Modifications

2.1²¹⁹ Subject to paragraph 2.5 of Part 6 of Appendix 11 in respect of the Extra HLOS Vehicles²²⁰, the Franchisee shall procure that reliability and light refresh modifications are made to the Extra HLOS Vehicles²²¹. The modifications will include the following (to be made on each vehicle except where otherwise stated below):-

- (a) in respect of the Extra Class 150 Vehicles:**

²¹⁷ 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.

²¹⁸ Date of Change 04/08/2011

²¹⁹ Date of Change 04/08/2011

²²⁰ Date of Change 04/08/2011

²²¹ Date of Change 04/08/2011

- (i) *Step 2 sanding modifications;*
- (ii) *Selective replacement of current relays with new sealed relays, with the Franchisee making the selection based on an assessment of reliability;*
- (iii) *AWS alarm and indicator unit renewal;*
- (iv) *Solid State AWS Receiver (LM Vehicles only);*
- (v) *Laminated glass installation;*
- (vi) *Installation of conductor operated saloon door controls;*
- (vii) *Coupler modifications;*
- (viii) *Replacement of life-expired batteries (LOROL Vehicles only);*
- (ix) *Installation of CCTV to each vehicle;*
- (x) *Deep-clean of the vehicle interiors (including cabs), making good damaged panels and seating (and, on LOROL Vehicles only, restoring seat layout to provide requisite capacity if not rectified by LOROL);*
- (xi) *Re-labelling and new signage on each vehicle;*
- (xii) *Installation of cab air cooling;*
- (xiii) *Improved windscreen wiper motors, arms and jets;*
- (xiv) *Replacement of accessible saloon heater hoses (LOROL Vehicles only);*
- (xv) *Access panels for cleaning door trough/bottom runner (LM Vehicles only);*
- (xvi) ²²²*Install driver vigilance device;*
- (xvii) ²²³*Renewal of additional electrical relays (LM Vehicles only);*
- (xviii) *Saloon lighting (replace tubes, inverters and fittings only);*
- (xix) ²²⁴ *fit finless radiators to a further eight class 150/1 sets (Ex-LOROL sets and the 2 sets formerly operated by Silverlink);*

²²² Date of Change 04/05/2012

²²³ Date of Change 04/05/2012

²²⁴ Date of Change 04/05/2012

- (xx) *Fire retardant toilet paper holder;*
 - (xxi) *Drivers seat improvements;*
 - (xxii) *Modification of non-drivers seat;*
 - (xxiii) *Replace existing radiators (LM Vehicles only);*
 - (xxiv) *Spirex autodrain valves on main reservoir;*
 - (xxv) *Standardise operation of destination indicators; and*
 - (xxvi) *Standardise (across sub fleets) wheel chair storage and safety equipment cupboard arrangements.*
- (b) *in respect of the Extra Bristol Vehicles which are Class 150 vehicles, the modifications listed in paragraph 2.1(a) (including those modifications referred to as “LOROL Vehicles only” or “LM Vehicles only”) except to the extent that any relevant vehicle has previously had any of such modifications fitted to it.*
- (c) *in respect of the Extra Bristol Vehicles which are Class 153 vehicles:*
- (i) *installation of forward facing CCTV to each vehicle; and*
 - (ii) *installation of cab air cooling.*

2.2 *In addition the Franchisee:-*

- (a)²²⁵ *will as part of the programme committed in paragraph 2.1 (a) carry out deep clean and minor refresh (consistent with the deep clean and making good to be undertaken on the Extra Class 150 Vehicles pursuant to paragraph 2.1(a)(x) above) to four Class 150 Vehicles on lease to the Franchisee and which were formerly operated by Silverlink Train Services Limited;*
- (b) *may, subject to paragraph 2.5 of Part 6 of Appendix 11, make such further reliability and light refresh modifications to the Extra Class 150 Vehicles as it considers appropriate provided that expenditure on any such modifications shall not be counted as expenditure incurred by the Franchisee for the purposes of this paragraph 2 if and to the extent it exceeds £²²⁶.*

²²⁵ Date of Change 04/08/2011

²²⁶ 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.

2.3²²⁷ Unless paragraph 2.4 applies, the Franchisee shall:

(a) commence the programme of modifications referenced in paragraph 2.1(a) by ²²⁸ and shall complete those modifications by ²²⁹; and

(b) complete the programme of modifications referenced in paragraphs 2.1(b) and 2.1(c) by the Passenger Change Date in December 2012 unless, despite the Franchisee complying with its obligations under this paragraph 2, the modifications to the Extra Class 150 Vehicles are not completed in accordance with this Agreement.

2.4²³⁰ This paragraph 2.4 applies in the circumstances set out in paragraph 2.3(b) (in relation to the Extra Bristol Vehicles only) or if and to the extent there is a delay in the programme of modifications attributable solely to any or all of (a) the lessor or sub-lessor of the relevant Extra HLOS Vehicles being entitled and exercising its rights to (i) withhold those vehicles or (ii) in the case of the LM Vehicles or the Extra Bristol Vehicles, to constrain the extent to which the modifications can be undertaken whilst those vehicles are leased or sub-leased, other than due to the Franchisee's breach or default or (b) to any LM Vehicle being sub-leased with the approval of or at the direction of the Secretary of State by the Franchisee to the London Midland Franchisee in either case such that the Extra HLOS Vehicles are not all available to the Franchisee and able to be subjected to the modifications works by:

2.4.1²³¹ in respect of the Extra Class 150 Vehicles:

2.4.1(i) ²³²; or

2.4.1(ii) ²³³; and

²²⁷ Date of Change 04/08/2011

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²³⁰ Date of Change 04/08/2011

²³¹ Date of Change 04/08/2011

²³² 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.

2.4.2²³⁴ in respect of the Extra Bristol Vehicles, the Passenger Change Date in December 2012.

In those circumstances:-

(a)²³⁵ *where sub-paragraph 2.4.1(i) applies, the Franchisee shall use all reasonable endeavours to complete the programme in relation to the Extra Class 150 Vehicles (the “Extra Class 150 Programme”) as soon as reasonably practicable and shall keep the Secretary of State informed in reasonable detail of the affects on the Extra Class 150 Programme but may suspend the Extra Class 150 Programme on ²³⁶ and recommence it from ²³⁷, subject to establishing to the reasonable satisfaction of the Secretary of State that the nature and extent of the delayed availability of the Extra Class 150 Vehicles after ²³⁸ is such as to reasonably justify that extension and/or suspension taking into account that it is accepted that Extra Class 150 Vehicles are not to be available for works in the High Summer (as such term is defined in paragraph 11.5 of Appendix 13 (Greater Western Specific Provisions));*

(b)²³⁹ *the Franchisee will complete the Extra Class 150 Programme by ²⁴⁰ or, where sub-paragraph 2.4.1(ii) also applies, such later date as the Franchisee may propose for completion of the Extra Class 150 Programme and as is reasonably required to complete the Extra Class 150 Programme assuming that the Franchisee is acting in a prudent and diligent manner to complete the works as soon as reasonably practicable while safeguarding availability of the Train Fleet over the High Summer (as such term is defined in paragraph 11.5 of Appendix 13 (Greater Western Specific*

²³³ 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.

²³⁴ Date of Change 04/08/2011

²³⁵ Date of Change 04/08/2011

²³⁶ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

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²³⁹ Date of Change 04/08/2011

²⁴⁰ 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.

Provisions)), such extension to be subject to the Secretary of State's consent which he shall not unreasonably withhold. It is acknowledged that the entitlement of the Franchisee to an extension beyond ²⁴¹ is subject to its establishing to the reasonable satisfaction of the Secretary of State that the nature and extent of the delayed availability of the Extra Class 150 Vehicles after ²⁴² is such as to reasonably justify that extension (taking into account the non-availability of the vehicles for works during the High Summer); and

(c)²⁴³ where sub-paragraph 2.4.1 or 2.4.2 applies or in the circumstances set out in paragraph 2.3(b):

- (i) the Franchisee shall use all reasonable endeavours to complete the programme in respect of the Extra Bristol Vehicles (the "Bristol Programme") as soon as reasonably practicable and shall keep the Secretary of State informed in reasonable detail of the affects on the Bristol Programme; and*
- (ii) the Franchisee will complete the Bristol Programme by such later date as the Franchisee may propose for completion of the Bristol Programme and as is reasonably required to complete the Bristol Programme assuming that the Franchisee is acting in a prudent and diligent manner to complete the works as soon as reasonably practicable.*

Where the date for completion of the modifications is subject to change due to circumstances described in this paragraph 2.4 or paragraph 2.3(b),²⁴⁴ the Franchisee shall propose to the Secretary of State for his approval (such approval not to be unreasonably withheld or delayed) a revised date for completion of the programme for the completion of the modification programme, identifying the vehicles affected by those circumstances and the vehicles not affected by those circumstances.

2.5²⁴⁵ Subject to paragraph 2.6 and in relation to the Extra Class 150 Vehicles only, paragraph 2.5 of Part 6 of Appendix 11, the Franchisee shall incur expenditure of not less than:

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²⁴² 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.

²⁴³ Date of Change 04/08/2011

²⁴⁴ Date of Change 04/08/2011

²⁴⁵ Date of Change 04/08/2011

- (a) £²⁴⁶ in procuring the modifications referenced in paragraphs 2.1(a) and 2.2(b); and
- (b) £²⁴⁷ in procuring the modifications referenced in paragraphs 2.1(b) and (c).

2.6 If the expenditure incurred by the Franchisee in procuring the modifications referenced in:

- (a) paragraph 2.1(a) and 2.2 is less than £²⁴⁸; and/or
- (b) paragraph 2.1(b) and (c) is less than £²⁴⁹,

the provisions of paragraph 4 of Part 6 of this Appendix 11 shall apply.

2.7²⁵⁰ If the date for completion of the modifications referenced in paragraphs 2.3 is amended in accordance with paragraph 2.4, then the date referred to in the Table to Part 6 by which the relevant modifications were to be completed shall be similarly amended provided that such amendment shall only be made in respect of those of the Extra HLOS Vehicles subject to a delay described in this paragraph 2.4²⁵¹:

- (a) ²⁵²;

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²⁴⁷ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

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²⁵⁰ Date of Change 04/08/2011

²⁵¹ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

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- (b) *in respect of vehicles whose modifications are completed after the originally specified date but which are not affected by the circumstances described in paragraph 2.4, the level of pro rata share of the Milestone Payment shall be reduced (for completions within 90 days of the originally specified date) or eliminated (for completions after the expiry of that 90 days) in accordance with the provisions of paragraph 3.2 of Part 6 of this Appendix 11; and*
- (c) *in respect of vehicles whose modifications are completed after the originally specified date but which are affected by circumstances described in paragraph 2.4, the relevant pro rata share of the Milestone Payment will be payable in accordance with the provisions of paragraph 3.2 of Part 6 of this Appendix 11, with reference to such revised dates for the completion of the modifications of the vehicles concerned as are determined pursuant to paragraph 2.4.*

2.8²⁵³ ²⁵⁴

3. *Enhanced facilities at Exeter Depot*

3.1 *The Franchisee shall procure, implement and bring into full operational use the improvements to Exeter Depot described in paragraph 3.2 by no later than ²⁵⁵ and in doing so the Franchisee shall incur expenditure of not less than £²⁵⁶.*

3.2 *The improvements described in paragraph 3.1 are:-*

- (a) *Extension to the single-road maintenance shed by approximately 6 metres;*
- (b) *Provision of new centre inspection pit, together with side pits;*
- (c) *Provision of two new suspended walkways;*
- (d) *New extended fuel apron including three covered fuel points, a fuel interceptor and associated pipe, drainage and service works;*
- (e) *Lighting and walkway improvements;*

²⁵³ Date of Change 04/08/2011

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(f) Provision of a toilet flush apron and associated pumping station.

3.3 257

3.4 258

3.5 259

3.6 260

3.7 261

3A²⁶² St Philips Marsh Depot

The Franchisee shall use all reasonable endeavours to enter into an agreement with Network Rail pursuant to which the former Jarvis shed at the St Philips Marsh depot will be brought into full operational use in order to support the operation of the Extra Bristol Vehicles provided that this paragraph 3A shall not oblige the Franchisee to enter into such an agreement with Network Rail other than on reasonable commercial terms. If, despite complying with its obligations under this paragraph 3A, the Franchisee is unable to enter into such an agreement with Network Rail, the Franchisee will propose and the parties will seek to agree (such

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²⁶² Date of change 04/08/2011

agreement not to be unreasonably withheld or delayed) alternative maintenance arrangements to support the operation of the Extra Bristol Vehicles. ²⁶³.

4. *Additional Marketing Spend*

4.1 *The HLOS Marketing Plan as at the date of the FGW30 HLOS Deed of Amendment is as set out in a document dated ²⁶⁴ entitled “First Great Western Marketing Activity 2010/11 v1 - 17/02/2011” where it is identified as “FGW30” and provided by the Franchisee to the Secretary of State and is subject to amendment and development as set out in this paragraph 4. The Franchisee shall spend in each Franchisee Year not less than the amount set out in the table below on marketing activities as identified in the HLOS Marketing Plan as so amended, provided that:*

- (a) *where and to the extent agreed in the relevant HLOS Marketing Plan, the Franchisee may carry expenditure from a later year to an earlier year, in which case the expenditure required for the later year shall be reduced by a corresponding amount;*
- (b) *if the Franchise terminates part way through a Franchisee Year, the commitment will be regarded as fulfilled where the expenditure to the date of termination is consistent with fulfillment of the HLOS Marketing Plan over the entire Franchisee Year if there had been no such termination (and to the extent that the expenditure is less than is so consistent, the amount of the shortfall shall be regarded as an underspend and be recoverable by the Secretary of State); and*
- (c) ^{265 266} *the amounts in the table are subject to indexation by the Retail Prices Index in the same way as Variable Costs are indexed in Schedule 8.2 (Annual Franchise Payment) of the Terms.*

²⁶³ **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.**

²⁶⁴ **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.**

²⁶⁵ Date of Change 04/08/2011

²⁶⁶ Date of Change 21/11/2011

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4.2 The current marketing activities are:

- (a) *as set out in paragraphs 11.5-11.11 (inclusive), 15.1 and 15.4 of Part 1 (List of Committed Obligations) of Appendix 11; and*
 - (b) *the activities specified in the document in Agreed Terms marked “CMA”*
- together the “Current Marketing Activities”.***

4.3 As part of each Updated Business Plan submitted after the FGW30 HLOS Deed of Amendment under paragraph 2.3 of Schedule 13 (Information and Industry Initiatives) of the Terms the Franchisee shall deliver to the Secretary of State an updated version of the HLOS Marketing Plan in respect of the remainder of the Franchise Term:

- (a) *in substantially the same form as the immediately preceding HLOS Marketing Plan delivered to the Secretary of State in accordance with the Franchise Agreement;*
- (b) *revised to:*
 - (i) *describe the Franchisee’s planned expenditure and activities to advertise, market and promote the Passenger Services for each Franchisee Year (or part Franchisee Year) during the remainder of the Franchise Term (such description being in detail for the next Franchisee Year and in outline for subsequent Franchisee Years); and*
 - (ii) *include details of the Franchisee’s planned arrangements to measure the effectiveness of such expenditure and activities; and*
 - (iii) *confirm how the Franchisee will improve the HLOS Marketing Plan and increase the effectiveness of its expenditure and activities; and*

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- (c) *containing a statement of the differences between such updated HLOS Marketing Plan and the immediately preceding HLOS Marketing Plan delivered to the Secretary of State in accordance with the Franchise Agreement, together with an explanation of such differences.*

The Franchisee may also apply to the Secretary of State to make interim revisions to the HLOS Marketing Plan in the course of any Franchisee Year.

4.4 *The updated HLOS Marketing Plan:*

- (a) *may be revised to reflect changing circumstances and opportunities for more efficient delivery in the marketing fields covered by the then existing HLOS Marketing Plan;*
- (b) *may also include planned expenditure in areas outside the HLOS Marketing Activities (including areas listed in the Current Marketing Activities) provided that the Franchisee demonstrates to the Secretary of State's satisfaction that such expenditure is incremental to and not in substitution for the Franchisee's expenditure on the Current Marketing Activities; and*
- (c) *shall not include planned expenditure which is in substitution for and not incremental to the Franchisee's expenditure on the Current Marketing Activities and if requested by the Secretary of State the Franchisee shall demonstrate to the Secretary of State's satisfaction that this is not the case.*

4.5 *The HLOS Marketing Plan shall be reviewed by the Franchisee and the Secretary of State every 6 months, or more frequently upon the Secretary of State's request, at a meeting called by the Secretary of State for this purpose at which the Franchisee shall:*

- (a) *produce evidence to the Secretary of State's satisfaction that it has incurred the expenditure and carried out the activities shown in the HLOS Marketing Plan for the period under review;*
- (b) *report on the effectiveness of such expenditure and activities; and*
- (c) *confirm how the effectiveness of the expenditure and activities could be further improved by explaining the successes and failures of the HLOS Marketing Plan and how the Franchisee plans to address and rectify such successes and failures going forward.*

5. *New Sales Staff*

5.1 *From ²⁶⁸ and for the remainder of the Franchise Period the Franchisee shall employ 5 new sales staff (who may have taken up post before that date) to carry out field sales activities, which staff shall be in addition to and perform a different role from the base establishment number of the Franchisee's marketing team as at the date of the FGW30 HLOS Deed of Amendment.*

6. *Decision Support Yield Management System*

6.1 *The Franchisee will procure and implement, use and maintain the decision support yield management system described in paragraph 6.2 ("the DSYM System").*

6.2 *The DSYM System is a computerised system which shall meet the following specification:*

- (a) *provide forecast loadings for yield managed services;***
- (b) *recommend allocations for products on yield managed services, based on projected demand/forecast loadings;***
- (c) *extract sales data from UK Rail's New Reservations System (NRS) overnight, at times when NRS is available; and***
- (d) *provide a reporting database.***

6.3 *The DSYM System shall be implemented with effect from no later than ²⁶⁹. For the purposes of this paragraph, "implemented" means in use and effective for the purpose of generating revenue in respect of Passenger Services operating on and after that date.*

6.4 *The Franchisee shall spend not less than:-*

- (a) *£ ²⁷⁰ on the procurement of the DSYM System (which may include costs of hardware, systems and business integration, management information systems, software development, integration and licensing); and***
- (b) *£²⁷¹ in internal and third party operating costs in respect of the DSYM system (which may include hosting fees, licence fees, maintenance, upgrade***

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and support fees and costs of support staff) for each 12 month period of operation of the DSYM following its installation (“the Annual Running Costs”). The Annual Running Costs are subject to indexation by the Retail Prices Index in the same way as Variable Costs are indexed in Schedule 8.2 (Annual Franchise Payments) of the Terms.

The Franchisee shall maintain records to demonstrate the costs incurred by it in fulfilment of its commitments under paragraph 6.4(b) and make them available to the Secretary of State in accordance with paragraph 6.2 of Part 5 of this Appendix 11.

6.5 *From the date of effective implementation of the DSYM System, the Franchisee shall have no further obligation pursuant to paragraph 16.1 of Part 1 of this Appendix 11 to maintain in operation the yield management system introduced in accordance with that paragraph.*

7. New Gating Schemes

7.1 *Subject to paragraph 7.5, the Franchisee will procure and implement and maintain in operation a system of automatic ticket gates at each of Exeter Central and Truro Stations (“the New Gating Schemes”), with the system at Exeter Central involving no fewer than five gates and with the system at Truro involving no fewer than seven gates.*

7.2 *The New Gating Schemes shall comprise what is reasonably required to create an operationally effective gating scheme for the purpose of protecting revenue, (which for the avoidance of doubt shall include the provision of such staff as are required to ensure the safe operation of the automatic ticket gates at each of Exeter Central and Truro Stations for seven hours each Weekday, four hours each Saturday and two hours each Sunday).*

7.3 *Subject to paragraph 7.5, the New Gating Schemes shall be implemented with effect from no later than ²⁷².*

7.4 *The Franchisee shall spend not less than £²⁷³ on the procurement of the New Gating Schemes.*

7.5 *The Franchisee’s obligations in this paragraph 7 are subject to obtaining the required planning and other approvals (including where required utilities in relation to adequacy of power supplies) which the Franchisee shall use all reasonable endeavours to obtain. If the Franchisee is unable to do so at all or within a timescale which is consistent with the timescales in paragraph 7.3 the Franchisee shall:*

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- (a) *as soon as reasonably practicable notify the Secretary of State;*
- (b) *if requested by the Secretary of State propose alternative location(s) for the implementation of the schemes. If the Secretary of State (in his discretion) approves such location(s) then this paragraph 7 shall continue to apply with the substituted location(s) subject to such changes (if any) as may be reasonably required in relation to timescales (such agreement not to be unreasonably withheld or delayed); and*
- (c) *to the extent required by the Secretary of State (and at his absolute discretion) ensure that any amount that cannot be spent due to the failure to obtain the required planning and/or other approvals is expended as soon as reasonably practicable on such other enhancements as are approved by the Secretary of State or paid by the Franchisee to the Secretary of State at the next Payment Date or such other date as the Secretary of State may specify.*

8. Enhanced Gating Schemes

- 8.1 *The Franchisee will replace the existing manual wide ticket gate(s) with automatic wide ticket gates at each of Bristol Parkway and Bristol Temple Meads Stations (“the Enhanced Gating Schemes”).*
- 8.2 *The Franchisee will implement and maintain in operation the Enhanced Gating Schemes with effect from no later than ²⁷⁴.*
- 8.3 *The Franchisee shall spend not less than £²⁷⁵ on the procurement of the Enhanced Gating Schemes.*
- 8.4 *With effect from the completion of introduction of the Enhanced Gating Schemes, the Franchisee shall apply the consequent saving of three full-time equivalent members of staff in or towards revenue collection and protection activities on the Franchise in the Bristol area.*

9. Enhanced West Country Revenue Protection and Collection

- 9.1 *The Franchisee shall by ²⁷⁶:*

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- (a) *have ²⁷⁷ additional revenue protection and collection inspectors who are based in Exeter and who will predominantly carry out revenue protection and collection activities in the Devon area;*
- (b) *increase its compliment of Avantix portable machines by six machines so that the additional inspectors referred to in paragraph 9.1(a) are each able to be equipped with a machine; and*
- (c) *introduce into service four ticket vending machines (with canopy and CCTV) in addition to those in operation at the date of the FGW30 HLOS Deed of Amendment, with such machines located as follows:*
- (i) *two at Exeter Central;*
 - (ii) *one at Truro; and*
 - (iii) *one at Exmouth.*

9.2 *The Franchisee shall spend not less than £ ²⁷⁸ on the procurement of the ticket vending machines (including the associated canopy and CCTV) referred to in paragraph 9.1(b) and (c).*

10²⁷⁹ New Revenue Protection Staff

10.1 From 30 January 2012 and for the remainder of the Franchise Period the Franchisee shall:

- (a) have an additional ²⁸⁰ full time equivalent revenue protection staff (who may have taken up post before that date) to carry out revenue protection activities predominantly in the area bounded by and including Taunton, Swindon, Weymouth, Worcester, Westbury and Cardiff, which staff shall be in

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addition to the base establishment number of the Franchisee's revenue protection staff as at 14 July 2011 (being 5 full time equivalent revenue protection staff); and

- (b) increase its compliment of portable ticket machines by ²⁸¹ machines so that the additional revenue protection staff referred to in paragraph 10.1(a) are each able to be equipped with a machine while on duty.

11. *Acquisition and introduction into service of Extra LTV Vehicles*²⁸²

11.1 *The Franchisee shall acquire on lease the following:*

- (a) *15 additional HST Mark III coaches which are configured at the date of leasing as buffet cars ("LTV HST Former Buffet Vehicles") to be leased from 1st December 2011;*
- (b) *25 additional Class 180 vehicles (in 5 car formation) ("LTV Class 180 Vehicles") with three five car units to be leased from 11th December 2011, one five car unit to be leased from 2nd March 2012 and one five car unit to be leased from 19th May 2012;*
- (c) *6 additional Class 150 vehicles (in 3 car formation) ("LTV Class 150 Vehicles") with one 3 car unit to be leased from 1st December 2011 and the other from 11th December 2011; and*
- (d) *2 additional Class 150 vehicles (in single car formation) ("Orphan Class 150 Vehicles") to be leased from 1st December 2011*

in each case subject to the terms and in accordance with the timescales set out in this paragraph 11.

11.2 (a) *The Franchisee shall:*

- (i) introduce the LTV Class 180 Vehicles into use in the provision of the Passenger Services by 3rd September 2012²⁸³; and*

²⁸¹ **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.**

²⁸² Insert change text wef 21/11/2011

(ii) introduce the LTV Class 150 Vehicles into use in the provision of the Passenger Services by 29th February 2011; and

(iii) introduce the Orphan Class 150 Vehicles into use in the provision of the Passenger Services by 29th February 2012. The parties acknowledge that the Orphan Class 150 Vehicles shall be used to strengthen multiple units that are likely to be operating on a different maintenance cycle to the Orphan Class 150 Vehicles and that this may mean that there may be circumstances when the Orphan Class 150 Vehicles are not able to be used during maintenance work on other vehicles of the multiple unit within which they are formed. The Franchisee agrees that it shall act reasonably as a skilled and experienced train operator to minimise the occurrence of such periods when the Orphan Class 150 Vehicles cannot be used.

It is acknowledged that the introduction of the LTV Class 150 Vehicles and the Orphan Class 150 Vehicles to these timescales with the refresh and reliability works required to be carried out on them under paragraph 12 duly completed will involve those activities being prioritised ahead of the reliability and refresh activities to be carried out on the Extra Class 150 Vehicles and the Extra Bristol Vehicles under this Part 4. The proper and reasonable consequences of this prioritisation will be taken into account by the Secretary of State and the Franchisee in agreeing a revised programme for those activities in relation to the Extra Class 150 Vehicles and the Extra Bristol Vehicles in accordance with the provisions of the Franchise Agreement.

(b) The Franchisee shall by 3rd September 2012 reform its HST fleet so that it includes 18 Super High Capacity HSTs and use such Super High Capacity HSTs in the provision of the Passenger Services.²⁸⁴ The Super High Capacity HSTs shall be created by:

(i) adding one LTV Former Buffet HST Vehicle to 15 Two plus Seven HSTs to make 15 Super High Capacity HSTs;

(ii) breaking up one existing Two Plus Seven HST into its constituent vehicles, using the standard class buffet from that set to replace a first class buffet vehicle (the "LTV HST Former First Class Vehicle") in an HST already formed from 8 Mark III coaches to make 1 Super High Capacity HST;

(iii) converting the LTV HST Former First Class Vehicle as set out in paragraph 12.1(b) and re-forming the balance of its Two Plus Seven HST fleet using a combination of the LTV HST Former First Class Vehicle and the vehicles from the Two Plus Seven HST broken up as it sees fit to create a further two Super High Capacity HSTs

and so that there are otherwise no changes to the number and configuration of HSTs in the Train Fleet and that the power cars from the existing Two Plus Seven

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HST broken up into its constituent vehicles pursuant to paragraph 11.2(ii), together with the five further spare trailer Mark III coaches resulting from the combination of measures described in paragraph 11.2(b) shall be retained as spare vehicles for use across the HST fleet of the Franchisee as required.

11.3 *The parties acknowledge and agree that the adjustments to the Annual Franchise Payments introduced by the LTV HLOS Deed of Amendment have been based on the assumption that:*

- (a) *the LTV HST Former Buffet Vehicles will be leased by the Franchisee²⁸⁵;*
- (b) *the LTV Class 180 Vehicles will be leased by the Franchisee²⁸⁶ in respect of fifteen vehicles formed into four five car units,²⁸⁷ in respect of five vehicles formed into one five car unit and²⁸⁸ in respect of five vehicles formed into one five car unit²⁸⁹;*
- (c) *one unit of LTV Class 150 Vehicles will be leased by the Franchisee²⁹⁰ and the second unit²⁹¹ and so that all of the LTV Class 150 Vehicles enter into service²⁹²; and*
- (d) *the Orphan Class 150 Vehicles will be leased by the Franchisee²⁹³ and enter into service by 29th February 2012,*

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with the detail of all the assumptions being as set out in the Supplement to the Record of Assumptions (LTV). Save as provided in paragraph 11.4 (and without prejudice to Parts 5 and 6 of this Appendix 11 and such other rights as the Secretary of State may have), there shall be no adjustment to Franchise Payments if these assumptions are incorrect, nor shall a Change be triggered by any of these assumptions being incorrect, nor shall any of these assumptions relieve the Franchisee of any of its obligations under the Franchise Agreement.

11.4 (a) *Where and to the extent that the Extra LTV Vehicles are delayed in entering into service on the Passenger Services on the dates anticipated in paragraph 11.2 solely because any of the Force Majeure Events referred to in paragraph 1(c) of Schedule 10.4 of the Terms have occurred in relation to any of the Extra LTV Vehicles (subject to paragraph 11.4 (b) below) then:*

(i) The date referred to in Table 1.2 of Appendix 3 for the vehicles to be taken on lease shall be amended to reflect the date on which the vehicles concerned are taken on lease;

(ii) the date referred to in the relevant row in the Table to Part 6 of this Appendix 11 by which the relevant Extra LTV Vehicles were expected to enter into service on the Passenger Services and the corresponding date referred to in table 1.2 of Appendix 3 for the vehicles to enter into service shall be revised by such period as is fairly and reasonably required to take account of that delay, such that the date will be achievable by the Franchisee where it fulfils its obligations under paragraphs 11.2 and 11.3;

(iii) the Franchisee shall notify the Secretary of State of its proposals for any such revised date together with supporting reasons and the Secretary of State shall not unreasonably withhold or delay his approval to any change which is in accordance with the terms of this sub-paragraph; and

(iv) where this paragraph 11.4 applies in relation to some only and not all of the Extra LTV Vehicles referred to in the relevant row in the Table to Part 6 of this Appendix or Table 1.2 of Appendix 3 (as the case may be), then the date in the Table(s) shall be revised only in respect of the vehicles delayed solely for the reasons described in this paragraph 11.4 and the applicable ²⁹⁴ in respect of the relevant tranche of vehicles shall be pro-rated accordingly on a per vehicle basis such that:

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(x)²⁹⁵(y)²⁹⁶(z)²⁹⁷

(b) For the purposes of this paragraph 11.4 only:

(i) paragraph 1(c) (ii) of Schedule 10.4 of the Terms shall be deemed to be amended to state “any Rolling Stock Units are damaged by fire, vandalism, sabotage or a collision and are in consequence reasonably required to be unavailable for Passenger Service whilst repair works are carried out to a reasonable timescale taking into account the obligation of the Franchisee to ensure that such repair works are carried out as soon as reasonably practicable”; and

(ii) the requirement in paragraph 1(c) of Schedule 10.4 of the Terms in relation to the number of Rolling Stock Units unavailable for use in the provision of the passenger Services as a result of the occurrence or a relevant event shall be one Extra LTV Vehicle.

12. Extra LTV Vehicles Rolling Stock Reliability and Associated Modifications

12.1 The Franchisee shall procure that:

- (h) The LTV HST Former Buffet Vehicles are converted and reconfigured to a standard HST Mark III coach with one toilet and 84 seats, with the livery, seating and fit out of each vehicle being substantially in accordance with that for the Franchisee’s other standard HST Mark III coaches with no buffet.***
- (i) The LTV HST Former First Class Vehicle is converted and reconfigured to the configuration of a standard HST Mark III coach with two toilets and 84 seats, with the livery, seating and fit out of such vehicle being substantially in accordance with that for the Franchisee’s other standard HST Mark III coaches with no buffet.***
- (j) The LTV Class 180 Vehicles will be subject to refresh works carried out to the interior and exterior of the vehicles substantially to the same specification as the refresh recently carried out as at the date of the LTV HLOS Deed of Amendment to the Class 180 units operated by First Hull Trains.***

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- (k) *The LTV Class 150 Vehicles will be subject to refresh and reliability works (in so far as each item has not already been provided or undertaken) in order to bring them substantially to the same state of refresh and reliability as the Extra Class 150 vehicles when the reliability and refresh works required to be carried out on them pursuant to the FGW 30 Deed of Amendment have just been completed.*
- (l) *The Orphan Class 150 Vehicles will be subject to refresh and reliability works (in so far as each item has not already been provided or undertaken) in order to bring them substantially to the state of refresh and reliability as the Extra Bristol Vehicles when the reliability and refresh works required to be carried out on them pursuant to the Bristol HLOS Deed of Amendment have just been completed, together with such minor works as may be required to enable them to be joined with two car Class 150 units as selected by the Franchisee to form three car units.*

12.2 *Unless paragraph 12.3 applies, the Franchisee shall complete the programme referenced in:*

- (a) *paragraph 12.1(a) by 3rd September 2012²⁹⁸;*
- (b) *paragraph 12.1(b) by 3rd September 2012²⁹⁹;*
- (c) *paragraph 12.1(c) by 3rd September 2012³⁰⁰;*
- (d) *paragraph 12.1 (d) by 29th February 2012; and*
- (e) *paragraph 12.1 (e) by 29th February 2012.*

12.3 *This paragraph 12.3 applies if in the course of carrying out any of the conversion and/or modification works specified in paragraph 12.1(a) (“Works”) on an LTV HST Former Buffet Vehicle the Franchisee discovers that the condition of such LTV HST Former Buffet Vehicle is subject to a significant existing physical*

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defect (“Defect”) such that the cost to the Franchisee to carry out the Works in the manner required for the safe and lawful operation of the relevant LTV HST Former Buffet Vehicle as envisaged in paragraph 12.1(a) exceeds ³⁰¹ % of £³⁰² (not subject to indexation), and both:

(i) the nature of the Defect is such that a competent train operator and/or contractor could not reasonably be expected to have discovered such defect by undertaking a physical inspection of the relevant LTV HST Former Buffet Vehicle prior to taking the same on lease; and

(ii) despite using all reasonable endeavours (including by exercising all relevant contractual and other legal rights) the Franchisee has been unable to ensure that costs of required works to remedy any such Defect are borne in whole or in part by the lessor of such LTV HST Former Buffet Vehicle or a contractor engaged to carry out the conversion and/or modification works so that the cost to the Franchisee of the Works (including dealing with the Defect) to the timescales required remains less than ³⁰³ % of £³⁰⁴ (not subject to indexation).

12.4 *(a) Where paragraph 12.3 applies the Franchisee shall:*

(i) promptly notify the Secretary of State and provide a detailed report in support of its assessment in relation to the LTV HST Former Buffet Vehicle and Defect concerned; and

(ii) use all reasonable endeavours to determine an alternative course of action which will still deliver the Additional LTV Capacity in full.

The Secretary of State will consider the Franchisee's report and, subject to any alternative course of action which the parties may agree and the rights of the Secretary of State pursuant to paragraph 12.4(b), the Secretary of State will not unreasonably withhold his agreement to the LTV HST Former Buffet Vehicle concerned being removed from the obligation under paragraph 12.1(a) and from the Train Fleet such that the Franchisee is under no ongoing obligation under the Franchise Agreement to carry out

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the Works on the LTV HST Former Buffet Vehicle concerned or to operate it in service.³⁰⁵

(b) Where it would be possible to complete the conversion and/or modification works in relation to any LTV HST Former Buffet Vehicle so that the cost to the Franchisee of the Works (including dealing with the Defect) remains less than ³⁰⁶ % of £³⁰⁷ (not subject to indexation) by granting a reasonable extension of time to carry out the Works the Secretary of State shall have the right to require that such Works are carried out by the end of such reasonable extension of time as he shall reasonably determine. Where such an extension of time is made by the Secretary of State, the Secretary of State shall make such further adjustments as are reasonable to reflect the extension to the Franchisee's commitments to introduce the vehicles concerned into operation and include them in the Train Plan and to the related HLOS ³⁰⁸ column in the table at the Annex to Part 6 of this Appendix 11.

12.5 ³⁰⁹*Subject to paragraph 12.4 and paragraph 4 of part 6, the Franchisee shall incur expenditure (not subject to indexation) of not less than:*

(a) £³¹⁰ on the matters referenced in paragraph 12.2(a) and paragraph 12.2(b);

(b) £³¹¹ on the matters referenced in paragraph 12.2(c); and

(c) £³¹² on the matters referenced in paragraph 12.2(d) and paragraph 12.2(e)

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³⁰⁹ Date of Change 04/05/2012

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provided that it is acknowledged that the Franchisee may apply any underspend in fulfilment of its commitments under the Remedial Agreement of 17th March 2008 towards the refresh works in respect of the LTV Class 150 Vehicles, in which case any consequent underspend on the LTV Class 150 Vehicles shall then be applied in accordance with paragraph 4 of Part 6.

13 Class 180 Fuelling Provisions

13.1 *The Franchisee shall ensure that operationally robust and effective provisions are made for the fuelling of the LTV Class 180 Vehicles from the date that they are required to be introduced into use in the provision of the Passenger Services on the basis that their use is as envisaged in paragraph 14 of Appendix 13 (Greater Western Specific Provisions).*

13.2 *To deliver its obligation under paragraph 13.1 the Franchisee shall use all reasonable endeavours to procure, implement and bring into full operational use enhanced fuelling facilities at Old Oak Common Depot (such facilities to be fuelling points on sidings 4 and 6 in the carriage shed) by no later than 31st March 2012 and in doing so the Franchisee shall incur expenditure of not less than £³¹³ (not subject to indexation).*

13.3 *If the Franchisee is unable despite the use of all reasonable endeavours to deliver the additional fuel points at Old Oak Common to the required timescales and on a basis consistent with its expenditure commitment as set out in paragraph 13.2 the Franchisee shall:*

- (a) *as soon as reasonably practicable notify the Secretary of State; and*
- (b) *propose alternative fuelling arrangements for the LTV Class 180 Vehicles consistent with:*
 - (i) *their being operated as envisaged in paragraph 14 of Appendix 13 (Greater Western Specific Provisions) and not involving increased cost to the Secretary of State; and*
 - (ii) *the obligation of the Franchisee pursuant to paragraph 13.1.*

The Secretary of State shall not unreasonably withhold his consent to such revised arrangements and paragraph 13.2 shall then continue to apply with the substituted arrangements subject to such changes (if any) as may be reasonably required in

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relation to timescales (such agreement not to be unreasonably withheld or delayed) and to the extent required by the Secretary of State (and at his absolute discretion) the Franchisee shall ensure that any amount that cannot be spent on the additional fuel points is spent on the revised arrangements, with any amount left over being applied as an underspend in accordance with paragraph 4 of Part 6 of Appendix 11. This paragraph 13.3 is without prejudice to the obligation of the Franchisee to at all times comply with its obligations under paragraph 13.1 and it is agreed that if the timescales for delivery of substituted arrangements are amended pursuant to this paragraph 13.3 the Franchisee shall be required to implement other measures on a temporary basis to ensure that its obligation under paragraph 13.1 is complied with.

14 LTV New Gating Schemes

- 14.1 *Subject to paragraph 14.5, the Franchisee shall procure and implement and maintain in operation a system of automatic ticket gates at each of Didcot Parkway, Newbury, Gloucester, Cheltenham Spa and Taunton Stations (“the LTV New Gating Schemes).*
- 14.2 *The LTV New Gating Schemes shall comprise what is reasonably required to create an operationally effective gating scheme for the purpose of protecting revenue (which for the avoidance of doubt shall include the provision of such staff as are required to ensure the safe operation of the automatic ticket gates at each of Didcot Parkway, Newbury, Gloucester, Cheltenham Spa and Taunton Stations for at least seven hours each Weekday, four hours each Saturday and two hours each Sunday). It is acknowledged that the new gating scheme in respect of Didcot Parkway may be delivered by relocating gating equipment from Slough Station and providing replacement gating equipment at Slough Station.*
- 14.3 *Subject to paragraph 14.5, the LTV New Gating Schemes shall be implemented with effect from no later than the following dates:*
- (a) Didcot Parkway Station 11th November 2012;*
 - (b) Newbury Station 11th November 2012;*
 - (c) Taunton Station 6th January 2013;*
 - (d) Cheltenham Spa Station 31st March 2013;*
 - (e) Gloucester Station 31st March 2013.*

- 14.4 *The Franchisee shall spend not less than £³¹⁴ (not subject to indexation) on the procurement of the LTV New Gating Schemes.*
- 14.5 *The Franchisee's obligations in this paragraph 14 are subject to obtaining the required planning and other approvals (including where required utilities in relation to adequacy of power supplies) which the Franchisee shall use all reasonable endeavours to obtain. If the Franchisee is unable to do so at all or within a timescale which is consistent with the timescales in paragraph 14.3 the Franchisee shall:*
- (a) *as soon as reasonably practicable notify the Secretary of State;*
 - (b) *if requested by the Secretary of State propose alternative location(s) for the implementation of the relevant LTV New Gating Schemes. If the Secretary of State (in his discretion) approves such location(s) then this paragraph 14 shall continue to apply with the substituted location(s) subject to such changes (if any) as may be reasonably required in relation to timescales (such agreement not to be unreasonably withheld or delayed); and*
 - (c) *to the extent required by the Secretary of State (and at his absolute discretion) ensure that any amount that cannot be spent due to the failure to obtain the required planning and/or other approvals is expended as soon as reasonably practicable on such other enhancements as are approved by the Secretary of State or paid by the Franchisee to the Secretary of State at the next Payment Date or such other date as the Secretary of State may specify.*
- 14.6 *For the purposes of paragraph 14.2 a gating scheme shall be treated as operationally effective where:*
- (a) *the automatic ticket gates cover in respect of all the platforms at the relevant Station the public means of access or egress which are normally used during the hours of operation of the automatic ticket gates; or*
 - (b) *on the application of the Franchisee, the Secretary of State is reasonably satisfied that the combination of the automatic ticket gates and such other measures as the Franchisee commits to provide result in an operationally effective gating scheme which is wholly or substantially based on automatic ticket gates during the hours of operation of those gates.*

³¹⁴ **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.**

- 15 *LTV Enhanced Gating Schemes and transfer of relevant assets on franchise termination***
- 15.1 *The Franchisee will replace the existing manual wide ticket gate(s) with automatic wide ticket gates at each of Slough, Reading and Oxford Stations (“the LTV Enhanced Gating Schemes”).*
- 15.2 *The Franchisee will implement and maintain in operation the LTV Enhanced Gating Schemes with effect from no later than 22nd July 2012.*
- 15.3 *The Franchisee shall spend not less than £³¹⁵ (not subject to indexation) on the procurement of the LTV Enhanced Gating Schemes.*
- 15.4 *With effect from the completion of introduction of the LTV Enhanced Gating Schemes, the Franchisee shall apply the consequent saving of two full-time equivalent members of staff in or towards revenue collection and protection activities on the Franchise in the London Thames Valley area.*
- 15.5 *If on any termination of the Franchise Agreement any gates and related equipment and assets acquired by the Franchisee pursuant to its obligations in relation to the LTV New Gating Schemes or the LTV Enhanced Gating Schemes are included in the Primary Franchise Assets transferred under the relevant Transfer Scheme to a Successor Operator, they shall be attributed a nil asset value for the purposes of the relevant Supplemental Agreement.*
- 16 *Enhanced LTV Revenue Protection and Collection***
- 16.1 *The Franchisee shall by 1st April 2012:*
- (a) *have 52 full time equivalent revenue protection and collection inspectors (of whom four will be support staff) additional to those employed on 15th October 2011 with a further four to be added by no later than 1st July 2012 (being staff provided pursuant to the obligation of the Franchisee under paragraph 7.2 of part 4 of Appendix 11 and redeployed). All such revenue protection and collection inspectors shall predominantly carry out revenue protection and collection activities (and in the case of support staff associated supporting roles) in the area bounded by and including London Paddington, Worcester Foregate Street, Chippenham, Westbury, Basingstoke, Gatwick Airport, Banbury, Henley on Thames, Marlow, Windsor & Eton Central and Greenford; and*

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- (b) *increase its compliment of Avantix portable machines by 67 machines so that the additional inspectors referred to in paragraph (a) (excluding the support staff) are each able to be equipped with a machine and machines are available for use at the gatelines to be established under paragraph 14.*

16.2 *If on any termination of the Franchise Agreement the Avantix portable machines referred to in paragraph 16.1 are included in the Primary Franchise Assets transferred under the relevant Transfer Scheme to a Successor Operator, they shall be attributed a nil asset value for the purposes of the relevant Supplemental Agreement.*

17.³¹⁶ Proposed PAYG Extension

17.1 *References in this paragraph 17 to (“Proposed PAYG Extension) are to proposed arrangements for the extension of Oyster Pay as You Go ³¹⁷(the “Proposed New PAYG Stations”), so that passengers travelling between those Stations or between those Stations and the PAYG Zones may do so using Oyster Pay as You Go ticketing media.*

17.2 *The Franchisee shall negotiate in good faith with the Secretary of State with the intention of reaching agreement to implement the Proposed PAYG Extension as soon as practicable. Where such agreement is reached it is anticipated that the Franchisee shall:*

- (a) *use reasonable endeavours to obtain the required planning and other approvals (including where required utilities in relation to adequacy of power supplies); and*
- (b) *use reasonable endeavours to obtain such consents and agreements as are reasonably required in connection with the agreements, schemes and arrangements related to Oyster PAYG to permit the Proposed PAYG Extension.*

17.3 *The Secretary of State and the Franchisee anticipate that any agreement involving the implementation of the Proposed PAYG Extension is likely to involve equipment being installed at the New PAYG Stations, such as:*

- (a) *Oyster validators to be fitted to existing gatelines;*
- (b) *Pearl devices to be fitted to ticket vending machines;*
- (c) *replacement of readers at gatelines with Oyster/EMV/ITSO readers; and*

³¹⁶ Insert new text 04/05/2012

³¹⁷ **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.**

(d) *FASTis machines for ticket offices.*

17.4 This paragraph 17:

- (a) *is without prejudice to the Franchisee's rights under the Franchise Agreement in relation to the structure of fares;*
- (b) *shall not oblige the Franchisee to alter the structure of its fares without agreement;*
- (c) *without prejudice to the other rights and obligations of the parties, neither obliges the Secretary of State to indemnify the Franchisee in relation to any agreement which pursuant to this paragraph it may negotiate nor obliges the Franchisee to enter into any such agreement on terms which would adversely affect its financial position.*

17.5 *The parties anticipate at the date of the LTV HLOS Deed of Amendment that if agreement is reached pursuant to paragraph 17.2 the PAYG Extension will be implemented from either ³¹⁸. It is further expected that under each such scenario the incremental adjustments to Appendix 8 shall be as shown in Appendix 4 to the LTV HLOS Deed of Amendment and the incremental adjustments to Target Revenue shall be as shown in Appendix 5 to the LTV HLOS Deed of Amendment. The actual incremental adjustments may be subject to such further details as may be agreed between the parties in accordance with this paragraph 17 and to such arrangements as may be necessary depending on the timing of incorporation of such incremental adjustments to ensure the full amount of the incremental adjustments necessary in respect of the Franchise Year in which it is introduced and which relates to capital expenditure is paid in the Franchise Year. The Annex to this Part 4 of Appendix 11 headed "PAYG Extension" provides further details of the parties' expectations relating to the relevant incremental adjustments.*

18. ³¹⁹ *Seats funded by the Secretary of State*

18.1 *The Secretary of State has funded the acquisition of seats to be fitted to the LTV Former Buffet Vehicles and the LTV Former First Class Vehicle. It is possible that all of such seats shall not be required to be fitted to the LTV Former Buffet Vehicles and the LTV Former First Class Vehicle including in the circumstances specified in paragraph 12.4. The Franchisee shall notify the Secretary of State forthwith if after the completion of relevant works on the LTV Former Buffet Vehicles and the LTV Former First Class Vehicle any seats remain unused and the number of such seats. Where the number of seats is less than 84 the Franchisee shall be entitled to retain such seats as spares for use in its fleet. In such circumstances if any spare seats are included in the Primary Franchise Assets transferred under the relevant Transfer Scheme to a Successor Operator, such number of seats as are equivalent to the number of seats retained by the*

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³¹⁹ Insert new text 04/05/2012

Franchisee (or the total number of seats transferred if less) shall have a nil asset value for the purposes of the relevant Supplemental Agreement.

Where the number of spare seats is 84 or greater the Secretary of State shall have the right to require the Franchisee to transfer to him all legal and beneficial title to all such seats free from all charges, liens or any other encumbrance to him. The Secretary of State further has the right to require the Franchisee to:

- (a) deliver such seats to an address in the United Kingdom that he specifies without cost to the Secretary of State; and/or***
- (b) actively market such seats on his behalf to potential purchasers and use reasonable endeavours to obtain the best price reasonably obtainable acting as a skilled and experienced participant in the UK railway industry.***

Part 5 – (Miscellaneous Provisions relating to HLOS Committed Obligations and Related Provisions)³²⁰

1. Application

This Part 5 sets out further terms which apply to the HLOS Committed Obligations set out in Part 4 (List of HLOS Committed Obligations) of Appendix 11 (Committed Obligations and HLOS Committed Obligations and Related Provisions). The references to HLOS Committed Obligations in this Part 5 are to the HLOS Committed Obligations in Part 4 (List of HLOS Committed Obligations) of Appendix 11 (Committed Obligations and HLOS Committed Obligations and Related Provisions).

2. Continuation of Availability

2.1 *Save as expressly provided in this Appendix 11 (Committed Obligations and HLOS Committed Obligations and Related Provisions), the Franchisee shall maintain facilities established in accordance with its HLOS Committed Obligations throughout the remainder of the Franchise Term.*

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

2.3 *Where Part 4 (List of HLOS Committed Obligations) of Appendix 11 (Committed Obligations and HLOS Committed Obligations and Related Provisions) includes a commitment regarding staffing or particular appointments it plans to make:*

(a) the obligation of the Franchisee applies, but shall not be regarded as being contravened by:

(i) temporary absences (for example for sickness or holiday); or

³²⁰ Date of change 02/03/2010

(ii) temporary non-fulfilment of a relevant post whilst the Franchisee is recruiting for that post, subject to the Franchisee using all reasonable endeavours to keep the duration between appointments as short as reasonably practicable;

(b) the Franchisee's rights and obligations in relation to the numbers or deployment of its other staff remain unaffected; and

(c) except where this paragraph 2.3(c) is disapplied, the Secretary of State shall not unreasonably withhold its consent to proposals by the Franchisee to reallocate staff or posts the subject of the HLOS Committed Obligations, where the reallocation is to take account of changing circumstances or improve efficiency and such reallocation does not result in an overall reduction in the number of Franchisee posts or a reduction in the Franchisee's total payroll costs.

3. Expenditure Commitments

Annual Expenditure

3.1 *Where Part 4 of this Appendix 11 (Committed Obligations and HLOS Committed Obligations and Related Provisions) provides for the expenditure of an annual amount (or an amount over some other period) by the Franchisee, that amount:*

(a) is assessed net of Value Added Tax; and

(b) is the amount required to be expended by the Franchisee itself or (subject, where applicable, to the provisions of paragraph 2.2 of Part 6 of this Appendix 11) procured by the Franchisee to be expended.

Expenditure Commitments not subject to indexation

3.2 *Unless otherwise expressly provided, all expenditure commitments set out in Part 4 of this Appendix 11 (Committed Obligations and HLOS Committed Obligations and Related Provisions) shall not be subject to indexation. Where costs are stated to be subject to indexation in the same way as Variable Costs are indexed in Schedule 8.2 (Annual Franchise Payments) of the Terms, those costs are stated before any indexation which shall be applied from the date prescribed for the purpose in the Franchise Agreement, being November 2005.*

Expenditure by Network Rail

- 3.3 *All amounts which the Franchisee has committed (whether unconditionally or otherwise) pursuant to Part 4 (List of HLOS Committed Obligations) of Appendix 11 (Committed Obligations and HLOS Committed Obligations and Related Provisions) to expend in connection with improvements to track or Stations shall be in addition to any expenditure that Network Rail has made or is required to make as part of its infrastructure improvements or maintenance programme to the extent such expenditure is not directly funded or reimbursed by the Franchisee.*

Liaison and Co-operation

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

5. Nature of Commitment

- 5.1 *Any commitment in terms of this Appendix 11 (Committed Obligations and HLOS Committed Obligations and Related Provisions) shall be in addition to any obligation of the Franchisee elsewhere in this Agreement and (save as otherwise expressly provided) nothing in this Appendix 11 shall limit or restrict an obligation imposed on the Franchisee elsewhere in this Agreement.*
- 5.2 *Where in this Appendix 11 (Committed Obligations and HLOS Committed Obligations and Related Provisions), references are made to particular manufacturers or suppliers of equipment or services, the Franchisee may fulfil its relevant commitment by using reasonable equivalents.*

5.3 *Each commitment under Part 4 (List of HLOS Committed Obligations) of Appendix 11 (Committed Obligations and HLOS Committed Obligations and Related Provisions) shall come to an end on expiry of the Franchise Term for whatever reason, save in respect of any accrued payments owed pursuant to Part 6 (Timely/Late/Non Completion of HLOS Committed Obligations) of Appendix 11 (Committed Obligations and HLOS Committed Obligations and Related Provisions) but not yet paid.*

6. *Review of Compliance*

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

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

7. *Transfer of Franchise Assets arising from HLOS Committed Obligations*

Notwithstanding any provision to the contrary in any Supplemental Agreement, the Franchisee shall transfer to a Successor Operator for nil value any Franchise Asset arising from the delivery by the Franchisee of its HLOS Committed Obligations which is made the subject of a Transfer Scheme and continues as a Franchise Asset at the point when the Transfer Scheme takes effect. It is acknowledged that this obligation does not affect the obligations of a successor operator to assume with effect from the date of transfer liabilities in respect of Franchise Assets which comprise leases, hire agreements or other contractual arrangements to the extent that such liabilities are transferred to the successor operator pursuant to such a Transfer Scheme. Such liabilities shall be valued in accordance with the terms of the Supplemental Agreement. The Supplemental Agreement shall be amended to the extent required to give effect to this paragraph 7.

³²¹ *Part 6 (Timely/Late/Non Completion of HLOS Committed Obligations and Related Financial Provisions)*

1. Definitions and references to the Table

1.1 In this Part 6:

HLOS Committed Obligation Payment Adjustment means, for any relevant HLOS Committed Obligation, the amount specified as such for that HLOS Committed Obligation in Column 7 of the Table;

HLOS Franchise Payment Adjustment means for any relevant HLOS Committed Obligation the amount specified for that HLOS Committed Obligation in Column 5 of the Table;

³²²

³²³

HLOS Other Lump Sum Payment means the amounts in respect of any Reporting Period calculated in accordance with or otherwise set out in paragraph 2 of this Part 6;

Net Subsidy Amount means, for any relevant HLOS Committed Obligation, the amount specified as such for that HLOS Committed Obligation in Column 4 of the

³²¹ Date of change 02/03/2010

³²² 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.

³²³ 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.

Table.

1.2 *In this Part 6 references to the Table are references to the Table entitled ‘HLOS Committed Obligations where HLOS Incentive Payments, HLOS Committed Obligation Payment Adjustments, HLOS Milestone Payments, HLOS Franchise Payment Adjustments and/or Net Subsidy Amounts apply’ as set out in the Annex to this Part 6.*

2. ³²⁴

2.1 *The Secretary of State shall pay to the Franchisee the following additional amounts in each case on the Payment Date in respect of the Reporting Period to which they relate:-*

- (a) £³²⁵ (subject to indexation in the same way as Variable Costs are indexed in Schedule 8.2 (Annual Franchise Payments) of the Terms) to be paid in a single instalment in relation to the last Reporting Period of the Franchisee Year ending on ³²⁶, being the amount in respect of the Year 4 Incremental Adjustment (as such term is defined in paragraph 2.5 of Schedule 1 of the FGW30 HLOS Deed of Amendment);*
- (b) [Not Used];*
- (c) in respect of its obligations in respect of modifications to Exeter Depot under paragraph 3 of Part 4 of Appendix 11 £³²⁷ each Reporting Period for the thirteen successive Reporting Periods commencing from and including the first Reporting Period commencing after the date of the FGW30 HLOS Deed of Amendment;*

³²⁴ 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.

³²⁵ 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.

³²⁶ 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.

- (d) *in respect of its obligations in respect of modifications to Extra Class 150 Vehicles under paragraph 2 of Part 4 of Appendix 11 and subject to the provisions of paragraph 2.5, £³²⁸ on each of the following Reporting Periods:*

	<i>Reporting Period</i>	<i>Franchisee Year, commencing 1 April in</i>
<i>1</i>	<i>First</i>	<i>2010</i>
<i>2</i>	<i>Fourth</i>	<i>2010</i>
<i>3</i>	<i>Seventh</i>	<i>2010</i>
<i>4</i>	<i>Tenth</i>	<i>2010</i>
<i>5</i>	<i>First</i>	<i>2011</i>
<i>6</i>	<i>Fourth</i>	<i>2011</i>

- (e) *in respect of its obligations in respect of new gating schemes at Exeter Central and Truro under paragraph 7 of Part 4 of Appendix 11 £³²⁹ on each of the six successive Reporting Periods commencing from and including the first Reporting Period commencing after the date of the FGW30 HLOS Deed of Amendment;*

³²⁷ 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.

³²⁸ 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 respect of its obligations in respect of automatic wide ticket gates at Bristol Parkway and Bristol Temple Meads under paragraph 8 of Part 4 of Appendix 11 £³³⁰ on each of the six successive Reporting Periods commencing from and including the first Reporting Period commencing after the date of the FGW30 HLOS Deed of Amendment;*
- (g) *in respect of its obligations in respect of a Decision Support Yield Management System under paragraph 6.4(a) of Part 4 of Appendix 11 £³³¹ on each of the six successive Reporting Periods commencing from and including the first Reporting Period commencing after the date of the FGW30 HLOS Deed of Amendment;*
- (h) *in respect of its obligations in respect of portable ticket machines and ticket vending machines under paragraphs 9.1(b) and 9.1(c) of Part 4 of Appendix 11 £³³² on each of the fifth and the sixth Reporting Period in the Franchisee Year commencing on 1 April 2010;* ³³³
- (i)³³⁴ ³³⁵ ³³⁶

³²⁹ 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.

³³⁰ 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.

³³¹ 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.

³³² 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.

³³³ Date of Change 21/11/2011

³³⁴ Date of Change 04/08/2011

³³⁵ Date of Change 21/11/2011

³³⁶ 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.

(j) ^{337 338} £³³⁹ in four equal instalments of £³⁴⁰, one such instalment to be paid in each of the four consecutive Reporting Periods commencing with the 10th Reporting Period in the Franchisee Year commencing on 1st April 2011, being the amount in respect of the LTV Year 6 Incremental Adjustments (as such term is defined in paragraph 2.2 of Schedule 1 of the LTV HLOS Deed of Amendment).

2.2. ³⁴¹

2.3 It is acknowledged that, save as expressly provided in this paragraph 2, costs related to obligations funded by HLOS Other Lump Sum Payments will not be included in the Financial Model but may be referred to in the Record of Assumptions.

2.4 Where any costs related to obligations funded by HLOS Other Lump Sum Payments are affected by a Qualifying Change, then the consequences of that change on those costs shall be taken into account in the Financial Model in accordance with Schedule 9 (Changes) of the Terms (so that the affect of the change on the costs, but not the underlying costs before the change, is included in any Estimated Revision or revised Run of the Financial Model).

2.5 Funding of the Class 150 Rolling Stock Reliability and Associated Modifications

(a) ^{342 343}

³³⁷ Date of Change 21/11/2011

³³⁸ Date of Change 04/05/2012

³³⁹ 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.

³⁴⁰ 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.

³⁴¹ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

(b) It is agreed by the Franchisee that:

- (i) the terms of any funding agreement shall be subject to the prior approval of the Secretary of State with such modifications or additions as the Secretary of State may at his discretion require (including, but without limitation, in respect of (1) whether the Secretary of State wishes to enter into any arrangement for the funding of any expenditure above the amount of the Class 150 Minimum Expenditure; and/or (2) the period over which the Franchisee and the Class 150 Lessor agree that the relevant capital expenditure shall be amortised) and any modifications or additions to the funding agreement required by the Secretary of State pursuant to this paragraph (b)(i) shall be subject to the agreement of the Franchisee (such agreement not to be unreasonably withheld or delayed) and the agreement of the Class 150 Lessor (which such agreement the Franchisee shall use all reasonable endeavours to obtain);**
- (ii) in no circumstances shall the funding agreement provide (without the prior approval of the Secretary of State) for the Franchisee to receive from the Class 150 Lessor an amount in excess of the amount of the Class 150 Minimum Expenditure in respect of the Class 150 Modification Commitment;**
- (iii) if the Franchisee is not able to secure an offer from the Class 150 Lessor under a proposed funding agreement by ³⁴⁴ (or by such later date as the Secretary of State may agree) in respect of the Class 150 Modification Commitment or the amount of such**

³⁴² Date of Change 04/08/2011

³⁴³ 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.

³⁴⁴ 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.

funding offered by the Class 150 Lessor is less than £³⁴⁵ or if before³⁴⁶ the Secretary of State following consultation with the Franchisee reasonably forms the opinion that either of such outcomes is likely, then:

- (aa)³⁴⁷ the Secretary of State may by notice to the Franchisee served before 1 June 2010 require the parties to review the modifications programme as set out in paragraph 2.1(a) and 2.2(b) of Part 4 (the “Class 150 Modification Programme”);*
- (bb) the purpose of such review will be to establish a revised programme of modifications (the “Revised Modification Commitment”) which is consistent with the expenditure of the greater of (i) an amount equivalent to the aggregate of any funding offered by the Class 150 Lessor under the proposed funding agreement plus £³⁴⁸ and (ii) £³⁴⁹ (such greater amount being the “Revised Minimum Expenditure”);*
- (cc) the Franchisee will as soon as reasonably practicable provide to the Secretary of State its proposed revised programme of modifications for this purpose and in doing so will give priority to the retention of modifications which are most effective in improving the reliability of the Extra Class 150 Vehicles and provide evidence to demonstrate that the revised programme is proportionate to the proposed revised level of expenditure, having regard to the costs reasonably forecast to be involved in the revised programme. Any such revised programme of modifications shall be subject to the approval of the Secretary of State;*

³⁴⁵ 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.

³⁴⁶ 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.

³⁴⁷ Date of Change 04/08/2011

³⁴⁸ 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.

³⁴⁹ 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.

- (dd) *if the parties are unable to agree the revised programme of modifications, then the Secretary of State shall have the right to reasonably determine the Revised Modification Commitment which shall be consistent with the amount of the Revised Minimum Expenditure;*
- (ee) *if the review and the arrangements consequent upon the review are not finalised by ³⁵⁰, it is acknowledged that this may result in delay to the timescales for the Class 150 Modification Programme and have implications for the programme costs and the dates for the delivery of the Class 150 Modification Programme. In these circumstances, subject to the Franchisee demonstrating to the reasonable satisfaction of the Secretary of State that the fact of the review and the arrangements consequent upon the review not being finalised by ³⁵¹ has resulted in a delay to the timescales and in consequence has an adverse impact on the programme costs and the dates for the delivery of the Class 150 Modification Programme, the parties shall undertake a further review of the Class 150 Modifications Programme to take into account such adverse impacts to the programme content, costs and dates of delivery such that the programme is reasonably deliverable for the Revised Minimum Expenditure.*
- (iv) *if the Secretary of State requires the review described in sub paragraph (iii)(aa) then:*
- (aa) *the Revised Modification Commitment and the Revised Minimum Expenditure as agreed or determined pursuant to sub paragraph (iii)(cc) or (iii)(dd) shall replace the Class 150 Modification Commitment and the Class 150 Minimum Expenditure respectively for all purposes of Parts 4, 5 and 6 of this Appendix 11;*
- (bb) *the HLOS Other Lump Sum Payments referred to in paragraph 2.1(d) shall be adjusted such that each individual payment referred to in that paragraph shall be one-sixth of the Revised Minimum Expenditure. In so far as any payment has already been made under that paragraph 2.1(d) before the adjustment referred to in this sub paragraph (2), then the adjustment shall instead be applied in equal instalments over the balance of the relevant HLOS Other Lump Sum Payments still to be paid.*

³⁵⁰ 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.

³⁵¹ 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.

- (v) *any amount received from the Class 150 Lessor under a funding agreement in relation to the Class 150 Modification Commitment which is in relation to the funding or purchase of the relevant modification shall be reimbursed to the Secretary of State on the next Payment Date following receipt of such amount from the Class 150 Lessor;*
- (vi) *for the purposes of determining whether the obligations of the Franchisee to incur the Class 150 Minimum Expenditure in satisfaction of the Class 150 Modification Commitment has been satisfied:-*
 - (aa) *in calculating the expenditure incurred by the Franchisee in respect of the Class 150 Modification Commitment there shall be disregarded (1) any new amount received as referred to in paragraph 2.5(b)(v) and (2) the amount of any increase in amounts or any new amounts payable by the Franchisee to the Class 150 Lessor, in each case consequent upon the funding agreement;*
 - (bb) *where the Franchisee has completed the Class 150 Modification Commitment but incurred expenditure of less than the Class 150 Minimum Expenditure (disregarding any sum received or receivable from the Class 150 Lessor under a funding agreement), the provisions of paragraph 4 of this Part 6 shall apply in respect of the amount of the underspend but otherwise the obligations of the Franchisee to incur expenditure in respect of the relevant obligation shall be treated as satisfied.*
- (c) *It is agreed by the Secretary of State and the Franchisee that the Financial Model, Appendix 8.2 (Annual Franchise Payments) and the consequent value of VCRPI or FXD (as applicable) used to calculate the value of Annual Franchise Payments shall be amended, with effect from the date on which the increased rental in respect of the Class 150 Modification Expenditure becomes payable by the Franchisee to the Class 150 Lessor in accordance with the terms of the relevant lease and the funding agreement to reflect the consequent amounts, or adjustment in the amounts, payable by the Franchisee to the Class 150 Lessor over the remainder of the Franchise Term in relation to the Class 150 Modification Commitment and the value of Annual Franchise Payments shall be adjusted accordingly provided that:*
 - (i) *as at such date the Franchisee has reimbursed to the Secretary of State all the amounts then received from the Class 150 Lessor under a funding agreement as required by paragraph 2.5(b)(v);*

- (ii) where the change takes effect part way through a Franchisee Year, then (i) the Secretary of State will adjust the Franchise Payments for each remaining Reporting Period in that Franchisee Year such that the full amount of the costs or the change in costs (as the case may be) incurred by the Franchisee in that Franchisee Year is recovered by the Franchisee over the course of that Franchisee Year and (ii) the amendment to VCRPI or FXD, as the case may be shall be made with effect from the start of the next full Franchisee Year in respect of the costs or the change in costs (as the case may be) incurred from that date. Such amendments shall not constitute a Change; and*
- (iii) unless otherwise reasonably required by either party, the adjustments to the Financial Model referred to in this paragraph shall be treated as if made at the date the relevant costs to the Franchisee change (or, if that date is part way through a year, the start of the next Franchisee Year) and the consequent amendments to Appendix 8.2 and the level of Franchise Payments shall apply with effect from the first Reporting Period in which the revised costs apply but the Financial Model shall not be revised and re-run until the first Run of the Financial Model next to be undertaken.*
- (d) For the purposes of paragraph 8 and Column 4 of the Table, the Net Subsidy Amount in respect of paragraph 2 of Part 4 of this Appendix 11 shall be adjusted first by revising it to reflect any Revised Modification Commitment and secondly by deducting any amounts reimbursed by the Franchisee to the Secretary of State in accordance with paragraph 2.5(b)(v).*

3. ³⁵²

4. *Underspend in fulfilling HLOS Committed Obligations*

³⁵² 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.

- 4.1** *Where in relation to any HLOS Committed Obligation that is expressed in terms of a requirement to spend not less than a specified sum in fulfilling its stated objective, the Franchisee is able to achieve that stated objective without incurring the full amount referred to in that HLOS Committed Obligation, whether because of cost savings or otherwise, the Franchisee shall apply to the Secretary of State for the consent referred to in paragraph 4.3. If, in respect of the LOROL Vehicles, LOROL (or any other third party other than the Class 150 Lessor (as defined in paragraph 2.5)) pays the Franchisee to restore the seat layout as set out in paragraph 2(j) of Part 4 of Appendix 11 then the amount so paid by LOROL (or such other third party) for such restoration of the seat layout shall be deducted from the amount expended by the Franchisee in fulfilling its obligations under paragraph 2.1 when assessing the amount of the Franchisee's expenditure for the purposes of paragraph 2.5 of Part 4 of Appendix 11.*
- 4.2**³⁵³ ³⁵⁴ *In assessing whether there is an underspend or saving for the purposes of paragraph 4.1, the parties shall assess together all the HLOS Committed Obligations under paragraphs 2, 3, 6.4(a), 7, 8, 9, 12, 13, 14, 15, and 17 of Part 4 of Appendix 11 ("the HLOS Capital Projects") so that there shall not be treated as being an underspend unless there is an underspend when assessed in aggregate across the HLOS Capital Projects. The Franchisee shall notify the Secretary of State where it has incurred an overspend on an HLOS Capital Project to which it wishes to apply an underspend or saving which has already been achieved or which may be achieved in the future or where it has achieved an underspend or saving which it wishes to apply to an actual or expected overspend on an HLOS Capital Project. The Secretary of State shall not object to the allocation of underspends or savings to overspends on HLOS Capital Projects, as notified by the Franchisee provided that the Franchisee shall apply any savings or underspends first towards meeting any increased costs of addressing contamination under paragraph 3 of Part 4 of Appendix 11. Where any savings or underspends are allocated to meet expenditure on HLOS Capital Projects in excess of the amount required to be spent, the amount required to be spent shall be increased by the amount of the underspend or saving so allocated and the provisions of this paragraph 4 shall apply mutatis mutandis if there is subsequently an underspend or saving as compared with that increased amount.*

³⁵³ Date of Change 21/11/2011

³⁵⁴ Date of Change 04/05/2012

4.3 *The Secretary of State's consent for the purposes of paragraph 4.1 is his consent for the Franchisee to invest any unspent or saved amount towards the fulfillment of other HLOS Committed Obligations or such other additional commitments for the benefit of passengers as the Franchisee proposes at that time, on such terms as he may require. If the Secretary of State so consents, the Franchisee shall undertake such investment and corresponding commitment in compliance with such terms (if any).*

4.4 *If the Secretary of State does not consent to an application pursuant to paragraph 4.1 in respect of any HLOS Committed Obligation, then the Franchisee shall pay to the Secretary of State any such unspent or saved amount at the next Payment Date or such other date as the Secretary of State may specify.*

4.5 *Subject to paragraph 4.6, no HLOS Committed Obligation Payment Adjustment (as appropriate) shall be payable in respect of the unspent or saved amount that relates to an HLOS Committed Obligation where that amount is addressed in accordance with this paragraph 4.*

4.6 *It shall not be a contravention of the Franchise Agreement where there is an underspend or saving which is addressed in accordance with this paragraph 4.*

5. *HLOS Franchise Payment Adjustments*

5.1 *This paragraph 5 applies:*

- (a) *in respect of each HLOS Committed Obligation in respect of which the Table indicates an HLOS Franchise Payment Adjustment is payable; and*
- (b) *in accordance with paragraph 1.8 of Part 4 where there is a difference in the expected profile for the Extra Class 150 Vehicles to be taken on lease by the Franchisee.*

5.2 *Subject to paragraph 5.4, in addition to any contravention of this Agreement as referred to in paragraph 6, and without prejudice to any other rights of the Secretary of State, if (disregarding any underspend or saving addressed under paragraph 4) any HLOS Committed*

Obligation is not performed or delivered in full by the date specified for that HLOS Committed Obligation in Column 3 of the Table, the Franchisee shall:

- (a) pay to the Secretary of State for each Reporting Period, or part thereof, for which that HLOS Committed Obligation remains unperformed or undelivered in full an HLOS Franchise Payment Adjustment of the amount set out in Column 5 of the Table in respect of that HLOS Committed Obligation; or*
- (b) where so specified in Column 5 of the Table as an alternative, the Franchisee may propose that it incur additional expenditure on HLOS Committed Obligations or on other incremental passenger benefits of the amount set out in Column 5 and, if such proposal is agreed, the Franchisee shall implement such proposal and the obligation to pay under paragraph 5.2(a) shall not apply. If and to the extent the Secretary of State and the Franchisee do not settle a proposal for additional expenditure the obligation under paragraph 5.2(a) shall continue to apply.*

5.3 Any HLOS Franchise Payment Adjustment payable in accordance with this paragraph 5 shall be paid in accordance with Schedule 8.1 (Franchise Payments) unless an available option to incur additional expenditure on HLOS Committed Obligations or on other incremental passenger benefits as specified in Column 5 of the Table is taken up.

5.4 This paragraph applies in respect of the HLOS Committed Obligations relating to the leasing and introduction into use in the provision of Passenger Services of the Extra Class 150 Vehicles in accordance with paragraphs 1.1 and 1.3 of Part 4. The HLOS Franchise Payment Adjustment in respect of such HLOS Committed Obligations shall be payable in the circumstances and in the amounts and by the relevant party determined pursuant to paragraphs 1.8 of Part 4.

6. Late Completion or Non-Delivery of HLOS Committed Obligations

6.1 Subject to paragraph 6.3, if the Franchisee fails to perform or deliver in full an HLOS Committed Obligation in accordance with and by the timeframe specified for its performance or delivery in Part 4 (List of HLOS Committed Obligations) of Appendix 11 (Committed Obligations and HLOS Committed Obligations and Related Provisions), such late, partial or non-performance/delivery shall constitute a contravention of this Agreement. Where in respect of the HLOS Committed Obligations set out in paragraph 1, 2 and 3 of Part 4 of

Appendix 11 the timeframe for performance or delivery of any such HLOS Committed Obligation is amended as contemplated by those paragraphs then references to timeframe in this paragraph 6.1 will be to the timeframe as so amended.

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

6.3 It shall not be treated as a failure to perform or deliver in full if and to the extent there is an underspend or saving which is addressed in accordance with paragraph 4.

7. ³⁵⁵

8. *Payment of Net Subsidy Amounts*

8.1 This paragraph 8 applies in respect of each HLOS Committed Obligation in respect of which the Table indicates a Net Subsidy amount is payable.

8.2 If, in respect of any relevant HLOS Committed Obligation referred to in the Table, it becomes evident, or is agreed, or the Secretary of State in his reasonable opinion considers that the HLOS Committed Obligation has not been or will not be performed or delivered in full by ³⁵⁶ the Franchisee shall pay to the Secretary of State a sum equal to the Net Subsidy Amount for that HLOS Committed Obligation referenced in Column 4 of the Table less:

³⁵⁵ 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.

³⁵⁶ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (a) *any proportion of that sum which the Franchisee has applied towards other HLOS Committed Obligations in accordance with paragraph 4 or agreed with the Secretary of State to expend on alternative commitments (including in the case of its obligations under paragraph 3 of Part 4 the incremental operating costs incurred or reasonably forecast to be incurred over the balance of the Franchise Term in connection with any failure to complete the works for reasons associated with contamination);*
- (b) *such allowance as is fair and reasonable in relation to:-*
- (i) any part of the output of the relevant HLOS Committed Obligation which has been delivered; and*
- (ii) such investment which the Franchisee has made in seeking to deliver such HLOS Committed Obligation*
- which has ongoing value to the Franchise or to the rail industry; and*
- (c) *HLOS Committed Obligation Payment Adjustments already paid by the Franchisee in respect of that HLOS Committed Obligation and any other payments referable to recovery of subsidy paid or expended by the Franchisee in connection with any contravention proceedings in connection with the delay or failure in delivery of the relevant HLOS Committed Obligation.*

Any such payment shall be paid in accordance with Schedule 8.1 (Franchise Payments) as if it were an HLOS Committed Obligation Payment Adjustment.

8. *This paragraph 8 shall not apply in relation to paragraph 3 of Part 4 where paragraph 3.6 of Part 4 of this Appendix applies.*

9. *Miscellaneous Payment Provisions*

9.1 *Save as may be otherwise expressly provided in the Table, any HLOS Committed Obligation Payment Adjustment, Net Subsidy Amount, HLOS Franchise Payment Adjustment or HLOS Milestone Payment to which a party is entitled shall be paid in accordance with Schedule 8.1 (Franchise Payments) of the Terms on the Payment Date of the Reporting Period during which it becomes due, or on the Payment Date*

of the next Reporting Period if the date on which it becomes due is after the date on which the Secretary of State has notified the Franchisee of the amount of the Franchise Payment payable in respect of that Reporting Period pursuant to paragraph 2.1 of the Schedule 8.1.

10. Waiver and adjustment of payments under this Part 6 and extension of time for delivery

10.1 *The Secretary of State may at his reasonable discretion decide to waive his rights to receive any payments payable under this Part 6 in respect of a late, partial or non-performance or delivery of any HLOS Committed Obligation.*

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

11.³⁵⁷ Revenue Protection and Collection Inspectors

It is assumed that in aggregate the additional revenue protection and collection inspectors to be provided in accordance with paragraph 16 of Part 4 of Appendix 11 will generate revenue in the 2012/13 Franchisee Year of £³⁵⁸ and in each subsequent Franchisee Year will generate revenue as set out for them in respect of that year in the Financial Model, with such amount being pro-rated to the extent being assessed in respect of any period less than a full year. The Franchisee shall with effect from 1st April 2012 report to the Secretary of State within 30 days of the end of the sixth and thirteenth Reporting Period in each Franchisee Year and the end of the final Reporting Period in the Franchise Period, the aggregate amount of revenue assumed to be generated by the

³⁵⁷ Date of Change 21/11/2011

³⁵⁸ 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.

additional inspectors (the "assumed revenue") and the actual aggregate amount of revenue actually generated by the additional inspectors (the "actual revenue") in each case in the period (the "reference period") from 1st April 2012 or (if later) the end of the period covered by the last report under this provision until the date to which such report is required to be made. If in respect of any reference period the actual revenue is less than an amount corresponding to the assumed revenue divided by 1.2 (the "reference amount"), the Franchisee shall make an HLOS Franchise Payment Adjustment to the Secretary of State equal to 80% of the difference between the actual revenue and the reference amount."

**Annex to Part 6 (Timely/Late/Non Completion of HLOS Committed Obligations and Related Financial Provisions)
of Appendix 11 (Committed Obligations and HLOS Committed Obligations and Related Provisions)**

Table: ³⁵⁹ ³⁶⁰

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.

³⁵⁹ Date of Change 04/08/2011

³⁶⁰ Date of Change 04/05/2012

³⁶¹**Part 7 –Initial Indicative Programme of Works**

³⁶¹ Date of change 02/03/2009F

Part 8 – Specification for Fleet Modification ³⁶²

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³⁶² date of exclusion 27.7.2006

³⁶³Part 9 Service Changes and Additional Service Changes³⁶⁴

The changes set out in this section are described as against the draft timetable consulted on by the Franchisee in February - March 2006.

Section 1 - Service Changes***1 Bristol, Swindon, Didcot, Reading***

An early morning service at around 0500 from Bristol Parkway to London Paddington to operate. This service will arrive in time to cycle into the morning departures from London Paddington.

2 Bedwyn

The Westbury services are to call at Kintbury and Bedwyn, with the potential performance risk through a reduction in turnaround time at Westbury being mitigated through cycling an additional unit into the pattern. This generates an hourly service at Kintbury and Bedwyn throughout the day with one two-hour gap between 1230 and 1430 in both directions. This Service Change will be substituted by Additional Service Change ref 2 where and for so long as that is taken up.

3 Maidenhead & Twyford

Additional dedicated service formed of two 3-car turbo units for Twyford & Maidenhead starting from Reading and then running non-stop from Maidenhead to London Paddington arriving at around 0730.

4 Slough

Reduce the number of calls at Ealing Broadway from "fast" relief line services, thereby improving the journey time from Slough to London Paddington. Ealing Broadway service quantum will be at least no worse than the current quantum in the December 2005 timetable.

5 Slough

Insert a call in the 0530 Bristol Temple Meads to London Paddington service to provide a fast early morning peak service (c0655) between Slough and London Paddington

³⁶³ Date of Change 6.6.2006

³⁶⁴ Date of change 02/03/2009

6 Thames Valley Branches*

Services on the branches to be retimed to call at all stations en route (except the 05.56 Maidenhead to Marlow service which will NOT call at Furze Platt or Cookham) and also provide a connection with the mainline.

7 Wargrave & Shiplake*

Services on the Henley branch are to be retimed to increase the service level at these stations with contra peak flows adjusted to cater for schools traffic.

8 Basingstoke

Convert the planned empty early morning service between Reading and Basingstoke and the empty late service in the alternate direction to passenger service, to provide an earlier and later passenger service respectively.

9 Severn Beach Branch*

Services will be retimed along the branch to provide trains to meet the local requirements including schools flows.

10 North Downs

To provide a service between local stations along this line similar to the current timetable, whilst retaining the half hour service pattern, a new service proposal in each half hour will be introduced with trains running faster one side of Guilford and stopping the other side. This calling pattern will alternate in each half hour.

11 North Downs*

The alteration in 16a will ensure that the local college traffic between Crowthorne, Sandhurst and Farnborough North will be accommodated.

12 Bristol to Taunton

The London Paddington to Bristol services that are extended to Weston super Mare in the evening peak will be retimed with the extensions taking place 30 minutes later, providing greater capacity at the critical times from Bristol. All other services of the Franchisee on this route will also be retimed to provide an even spread of services.

- 13 *West of England*
The current proposed departure from London to Plymouth will be retimed from 2018 to 2035.
- 14 *Abbot to Exeter stations*
Subject to satisfactory "back-timing" an additional call at Dawlish Warren and Starcross will be made in the morning peak in the 0746 Paignton to London Paddington service and 1733 London Paddington to Paignton service.
Furthermore, subject to the above and the successful introduction of SDO an additional call will be made at Torre in both services.
- 15 *Saltash and St Germans**
Additional calls will be inserted in other services to increase the number of services to 9 each way and provide a later evening service.
- 16 *Plymouth*
The first early morning stopping service from Penzance to Plymouth will be retimed to arrive at 0820 instead of 0826 to connect with Virgin services.
- 17 *Truro to West Cornwall*
The 1600 Plymouth - Liskeard service will be extended to Penzance to provide an evening peak service.
- 18 *Barnstaple*
Services extended from Exeter St Davids to terminate at and start from Exeter Central.
- 19 *Barnstaple (First & Last Services)**
The first service to Exeter from Barnstaple will be retimed 30 minutes later and the last train from Exeter to Barnstaple retimed 20 minutes later.
The Franchisee and Secretary of State will monitor passenger reaction and may reconsider if appropriate.
- 20 *Barnstaple (calling pattern)**
Change intermediate calling pattern (Yeoford, Coplestone and Umberleigh).
- 21 *Devon & Cornwall Branchline Connections*
Branches will be retimed to provide connections with the mainline services. The last train from Plymouth to Gunnislake to be re-timed to connect out of the Golden Hind.

Whilst maintaining the same quantum of services as included in the timetable on the date that this Appendix is amended to include this provision (so that the quantum of services from Calstock to Plymouth is 8 per day), the Franchisee will use all reasonable endeavours to operate the first service from Calstock

to Plymouth at a time similar to the December 2005 Timetable service.

22 Exmouth Branch*

Re-timing to better meet local needs, including later last train.

23 Weymouth – Bristol*

Service will be retimed away from a standard two hour pattern, providing the same quantum of service, but at times better suited to the leisure and commuter market requirements. This will include provision of a morning commuter service from Frome to Bristol.

24 Weymouth – Bristol*

Through introducing the new service pattern (issue 34a) connections at Castle Cary for the West of England will be improved.

25 Iver, Langley & West Drayton

An additional call at each of the above stations will be inserted into the 0359 Oxford to Paddington service.

26 Bristol to Southampton

Introduce a shuttle service between Westbury and Southampton operating 5 return trips per day including calls and Dean and Dunbridge, until December 2007 taking into account local flows including schools traffic.

27 Didcot

The calling pattern from London to Didcot in the evening peak will be altered with additional services calling. The above changes will give fast (but not “non-stop”) trains from Paddington to Didcot at 1548, 1615, 1622, 1645, 1652, 1700, 1715, 1748, 1752, 1800, 1815, 1830, 1845, 1848, 1900, 1915, 1948 and 2000.

28 Didcot to Oxford*

Calling pattern at stations between Didcot and Oxford is amended to provide service levels similar to the current December 2005 timetable. The pattern has also been retimed to provide services at times commensurate with local requirements.

Also, taken from the Schedule 1 attachment to the Franchisee's letter to the Secretary of State dated 20 March 2006:

- 29 *Tackley, Heyford, Kings Sutton & Banbury*
Introduce an evening service from Oxford to Banbury, departing Oxford at around 2050.
- 30 *Newton Abbott – Paignton**
The Franchisee will continue to investigate the extension of the shuttle services to Exeter.
- 31 *Falmouth Branch**
Times of trains on the Falmouth Branch to be optimised to local requirements (in discussion with council and Partnership).
- 32 *Sunday Services**
To be reinstated at Patchway and smaller stations in the Oxford area
- 33 *Hayle**
The Franchisee to investigate reducing the service gap from 1103 to 1830 westwards from Hayle, and commits to introduce at least one additional stop in an existing service to Penzance.
- 34 *Ivybridge*
An additional four services in each direction shall serve Ivybridge. These additional services will operate between Plymouth and Totnes, and may be extended in either direction to start or terminate at an alternative location.

The commitment of the Franchisee in relation to the changes marked “ ” is to achieve them through re-timing, making additional calls and/or amending service patterns within existing timetabled services but without providing additional resources. The Franchisee is not committing to make these changes if additional resources would be required.*

SECTION 2 – ADDITIONAL SERVICE CHANGES

- 1 *Westbury*
Reinstate the current quantum (December 2005 timetable) of Paddington to Exeter services by extending two Paddington – Westbury services in each direction. Bedwyn and Kintbury calls will then be added to all relevant services (other than West of England services) in order to restore the current hourly service (except for the two hour gap between 1230 and 1430 in both directions).

2 *Plymouth Journey Time*

Through delivery of issue 2, there will be adjustments to other West of England services. This will provide faster journey times between Plymouth and London, through removal of calls at Taunton. This station will have calls replaced by services between London and Exeter.

3 *Tiverton*

The number of London trains calling at Tiverton will be increased to a level similar to the current December 2005 timetable.

4 *Totnes*

The number of London trains calling at Totnes will be increased to a level similar to the current December 2005 timetable.

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SECTION 3 – INDICATIVE NUMBERS FOR CHANGES IN COSTS AND REVENUES

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.

The indicative NPV of the net costs of the Service Changes (before taking account of the Additional Service Changes and the changes referred to in Section 4) is £³⁶⁶.

These net costs are before taking account of the Charging Review which is effective from 1 April 2006 and which, together with other Changes, will be addressed in accordance with Schedule 9 of the Franchise Terms.

SECTION 4 – REVENUE AND COSTS ADJUSTMENTS IN RESPECT OF QUALIFYING CHANGE

The following elements of the Service Changes shall be treated as a Qualifying Change:

- (i) in respect of item 21 of the Service Changes, operating the first service from Gunnislake to Plymouth at a time similar to the December 2005 Timetable service; and*
- (ii) item 34 of the Service Changes.
The costs and revenues in respect of those Service Changes for input into the Financial Model (before taking account of any other Changes, including any relating to any Charges Review) are as follows:*

³⁶⁵ date of exclusion 27.7.2006

³⁶⁶ **Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

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³⁶⁷ Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

APPENDIX 12

2012 Olympic Games (*Clause 7.1*)

1. ACKNOWLEDGEMENT

The parties acknowledge that:

- (a) a successful bid was submitted by the UK Government to the Olympic Committee for London to host the Olympic Games in 2012 (the *Games*); and
- (b) as a key provider of public transport services into and out of London and the surrounding area, the Franchisee will have an important role to play during the Franchise Term in helping to make the staging of the Games successful.

2. FRANCHISEE CO-OPERATION

The Franchisee shall, at its own cost, co-operate and consult as reasonably required with the ³⁶⁸"*Olympic Delivery Authority*" the Secretary of State, Transport for London, Network Rail, the British Transport Police and any other relevant party in connection with any arrangements directly or indirectly connected with the Games, including:

- (a) the provision of additional and/or specific railway passenger services;
- (b) the carrying out of necessary works to the network;
- (c) the provision of additional and/or specific security arrangements at stations at which the Passenger Services call and on the Passenger Services;
- (d) the provision of specific integrated ticketing in relation to the Passenger Services; and
- (e) advertising and marketing of the Games in relation to the Franchise Services.

3. ENTRY INTO THE OLYMPIC SERVICES DELIVERY PLAN

3.1 During the Franchise Term the Secretary of State shall give the Franchisee reasonable notice of:

- (a) his intention to enter into a plan for the implementation of:
 - (i) any or all of the matters referred to in paragraph 2; and
 - (ii) any other matter relevant to the award, planning or staging of the Games, (the *Olympic Services Delivery Plan*); and
- (b) the terms of the Olympic Services Delivery Plan he wishes to enter into.

3.2 The Franchisee may make representations to the Secretary of State in respect of the Secretary of State's proposed terms of the Olympic Services Delivery Plan.

³⁶⁸ date of change 31.3.2006

3.3 If the Secretary of State and the Franchisee cannot agree on the terms of the Olympic Services Delivery Plan the Secretary of State shall reasonably determine such terms.

3.4 At a date to be notified to the Franchisee by the Secretary of State, the Secretary of State and the Franchisee shall enter into the Olympic Services Delivery Plan.

4. FINANCIAL EFFECTS OF THE OLYMPIC SERVICES DELIVERY PLAN

For the purpose of paragraph (j) of the definition of *Change*, the cost and revenue effects of the Franchisee's implementation of the Olympic Services Delivery Plan shall be a Change.

5. IMPLEMENTATION OF THE OLYMPIC SERVICES DELIVERY PLAN

The Franchisee shall implement the Olympic Services Delivery Plan in accordance with its terms.

APPENDIX 13**Greater Western Specific Provisions (Clause 7.2)****1. ELECTRONIC ADVERTISING MEDIA**

1.1 The Franchisee shall not install or procure the installation of electronic advertising media (including video or audio broadcast systems but excluding at seat electronic media devices which are able to be controlled by the customer) on any rolling stock vehicle within the Train Fleet without the prior written consent of the Secretary of State (such consent not to be unreasonably withheld).

1.2 In seeking the Secretary of State's consent to the installation of such media, the Franchisee shall provide to the Secretary of State:

- (a) the results of representative surveys carried out on no less than two separate occasions that demonstrate that the users of the Passenger Services are in favour of the installation and proposed content of such media; and
- (b) a detailed report of its proposals, explaining, amongst other things:
 - (i) the impact on the passenger environment of the relevant rolling stock vehicles within the Train Fleet; and
 - (ii) the forecast net financial benefit to the Franchisee of installing such media.

2. ROLLING STOCK COSTS

2.1 The Franchisee shall co-operate with the reasonable requirements of the Secretary of State in implementing any proposals he may have to:

- (a) reduce costs relating to leasing and/or maintenance arrangements in respect of relevant rolling stock vehicles under any Rolling Stock Related Contract without any corresponding reduction in the specification or quantum of or associated services that are available for those rolling stock vehicles; and
- (b) enable the Secretary of State to realise any consequent savings that arise.

In assessing the Secretary of State's proposals due regard will be had to the Franchisee's rolling stock proposals reflected in the Financial Model.

- 2.2 Without limiting paragraph 2.1, the Franchisee shall, to the extent requested by the Secretary of State from time to time, amongst other things:
- (a) attend meetings with the Secretary of State and any or all of the rolling stock leasing companies to discuss those proposals;
 - (b) provide the Franchisee's opinion on those proposals;
 - (c) review and comment on implementation timetables and programmes for any reductions in costs relating to the operation of rolling stock vehicles;
 - (d) agree, and where required use all reasonable endeavours to achieve, any amendments to any Rolling Stock Related Contract which the Secretary of State considers to be necessary or desirable, and in such form as he may specify, in order to facilitate the implementation of those proposals and use all reasonable endeavours to maximise the reductions referred to in paragraph 2.1(a);
 - (e) where and to the extent that the Secretary of State considers it requisite for the purpose of implementing or facilitating the implementation of those proposals, to exercise any or all of the Franchisee's rights under any Rolling Stock Related Contract or any related rights which the Franchisee may have, in each case as the Secretary of State may specify. The Franchisee's obligations under this paragraph 2.2 include, where the Secretary of State so requires, the pursuit of any disputed issue by litigation or other form of dispute resolution provided for by the relevant Rolling Stock Related Contract. The Franchisee shall comply with the requirements of the Secretary of State in respect of the prosecution and resolution or determination of any such disputed issue. The Secretary of State shall reimburse any reasonable out-of-pocket expenses that the Franchisee may incur in complying with its obligations under this paragraph 2.2(e) (including legal expenses and the costs of any additional resources properly and reasonably required to conduct such dispute) subject (if and to the extent required by the Secretary of State from time to time) to prior notice of the nature and likely extent of the expense being given by the Franchisee to the Secretary of State and shall reimburse any liability which the Franchisee may be ordered to pay in connection with such dispute in connection with the costs of any third party, subject (if and to the extent required by the Secretary of State from time to time) to prior notice being given by the Franchisee to the Secretary of State that the action being taken may give rise to such liability; and
 - (f) make available to the Secretary of State on an open book basis as and when reasonably requested, full information and explanation as to the extent of the costs that may be saved by the implementation of any such proposals.
- 2.3 The parties hereby agree that to the extent costs relating to rolling stock vehicle leasing and/or maintenance arrangements payable by the Franchisee under any Rolling Stock Related Contract are reduced as a consequence of:
- (a) the implementation of any or all of the Secretary of State's proposals referred to in paragraph 2.1 including:

- (i) the entering into of any agreement between the counterparty to any Rolling Stock Related Contract and the Secretary of State or any other government instrumentality under which it has been agreed to alter amounts payable under the relevant contract;
 - (ii) any revision (with the agreement of the ORR, where applicable) of any existing code of practice which the counterparty has in place, or the creation of a new code of practice, where the effect of the revision or new code is to change, directly or indirectly, the basis upon which rentals or other payments are fixed, determined, set or agreed under rolling stock leases or other Rolling Stock Related Contracts whether entered into before or after the coming into effect of the revised or new code of practice; and/or
 - (iii) the giving by the counterparty of any undertaking to any competition authority whether voluntarily or as required by law in respect of its participation in the rolling stock leasing and/or maintenance market in Great Britain; and/or
- (b) the determination, finding, decision or requirements of any competition authority,

then, in either case, a Change shall occur and that Change shall be a Qualifying Change.

2.4 For the purposes of paragraph 2.3:

- (a) the reference to a Rolling Stock Related Contract includes any such contract which is in place at the Start Date and also any further replacement or additional such contract to which the Franchisee is a party at any time during the Franchise Term;
- (b) the additional assumptions which the parties shall agree or the Secretary of State shall reasonably determine pursuant to paragraph 5.2 of Schedule 9.3 (*Runs of the Financial Model*) shall include those necessary in order to ascertain the extent of the reduction in costs payable under any Rolling Stock Related Contract:
 - (i) to which the Franchisee is not a party as at the date of this Franchise Agreement; and
 - (ii) in respect of which no relevant assumption has been included in the Record of Assumptions;
- (c) the reference to costs payable by the Franchisee under any Rolling Stock Related Contract shall be deemed to include any introduction of or increase in amounts paid by any party to the Franchisee the effect of which, taken together with the costs payable by the Franchisee under the relevant contract, is to produce a net reduction in costs incurred by the Franchisee in relation to that Rolling Stock Related Contract; and

- (d) due regard will be had to the Franchisee's rolling stock proposals included in its Financial Model (which provide the reference point from which savings will be assessed) and to any other effects of the proposals on the other costs and risks of the Franchisee in connection with the leasing, operation and maintenance of the relevant rolling stock vehicles.

3. REPLACEMENT OF HST VEHICLES

3.1 The Franchisee shall co-operate with the Secretary of State's development and implementation of a programme to replace the existing HST vehicles with the HST2 vehicles. In particular, the Franchisee shall:

- (a) make its relevant personnel available to sit on the Secretary of State's steering group in relation to the HST2 project;
- (b) co-operate with the Secretary of State in:
 - (i) developing the commercial strategy for the replacement of the HST vehicles;
 - (ii) commenting on the specification for the trains, including the passenger interface and the operational and maintenance requirements;
 - (iii) advising on the operational implications and risks and estimated costs associated with possible alternative locations for maintenance, servicing and stabling;
 - (iv) commenting on the design and specification of the depots and the facilities and plant required for the maintenance, servicing and stabling of the HST2 vehicles;
 - (v) commenting on the programme for trialling, testing, commissioning and introducing the HST2 vehicles into passenger service;
 - (vi) commenting on the construction and commissioning programme of the appropriate facilities for their maintenance, servicing and stabling; and
 - (vii) advising on any transitional issues during the introduction of the HST2 vehicles;
- (c) co-operate with the Secretary of State in undertaking all activities which are necessary and are required to be undertaken and which a competent Train Operator would undertake to facilitate the timely and cost effective introduction of the HST2 into passenger service on the rail network;

- (d) provide as soon as reasonably practicable following any request for the same by the Secretary of State all information under its possession or control related to the operation of any depot or location which may be considered for maintenance, servicing or stabling of HST2 vehicles and provide complete transparency of the Franchisee's costs (and any revenues) associated with any such depot or location;
- (e) allow bidders for the HST2 vehicles reasonable access to any depot or location under the control of the Franchisee which may be considered for maintenance, servicing or stabling of HST2 vehicles;
- (f) if the results of the competition for the HST2 determine that best value for money is achieved by the implementation of a train service or train availability contract, cooperate to facilitate a timely and orderly handover of responsibility to the successful bidder for the HST2 in accordance with any programme for such handover;
- (g) act in such a manner so as not to constrain the procurement or maintenance options for the HST2 vehicles; and
- (h) provide complete transparency of the Franchisee's costs related to the introduction of HST2 vehicles or of any transfer of depot maintenance, servicing or stabling facilities or staff to the successful supplier of the HST2.

3.2 The Franchisee's obligations under paragraph 3.1 shall not require it to take or omit to take, nor excuse it from taking or omitting to take, any action that would be prejudicial to:

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

4. CROSSRAIL

4.1 Without prejudice to the Franchisee's obligations under Schedule 1.7 (*Extended Restrictions of Use*) to the Terms, the Franchisee shall co-operate with Network Rail, the Secretary of State and/or any other relevant third party in the development and implementation of the Crossrail Scheme with a view to achieving the best overall solution for that scheme, and in so doing, the Franchisee shall use all reasonable endeavours to optimise the Secretary of State's potentially competing needs to:

- (a) minimise disruption to the Passenger Services during the implementation of associated works;
- (b) secure the best service level output for passengers from that programme; and

(c) maximise value for money for the taxpayer from that programme.

4.2 In fulfilling its obligation to co-operate pursuant to paragraph 4.1, the Franchisee shall, amongst other things seek to (i) participate in a positive and constructive manner and in a way which offers full transparency of information available to the Franchisee to the Secretary of State; and (ii) identify solutions that minimise overall rail industry costs.

4.3 The Franchisee's obligations under paragraphs 4.1 and 4.2 shall not require it to take or omit to take, nor excuse it from taking or omitting to take, any action that would be prejudicial to:

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

5. ³⁶⁹Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

6 ***17:55 PLYMOUTH TO PENZANCE SERVICE***³⁷⁰

6.1 ***In respect of the period from 18 May 2009 to “³⁷¹”³⁷²; inclusive the Franchisee shall use all reasonable endeavours to secure a timetable (the "Relevant Timetable") which includes for each Weekday a service from Plymouth to Penzance scheduled to depart from Plymouth at 17:55 (the "Additional Service") and then include that service in its Plan of the Day.***

6.2 ***The exercise of all reasonable endeavours in accordance with paragraph 6.1 relates to the Franchisee's obligation to seek from Network Rail the relevant Train Slots and the amendment of the Track Access Agreement to provide for the relevant rights, and to***

³⁶⁹ date of exclusions 27.7.2006

³⁷⁰ Date of change 16/09/2009

³⁷¹ **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.**

³⁷² Date of change 02/03/2010

pay the relevant charges in accordance with the terms of the Track Access Agreement in respect of the Additional Service, but is subject to the exercise by Network Rail of its rights including in relation to emergencies and engineering works.

6.3 *Subject to compliance with paragraph 2 of Schedule 2.2 of the Terms, the Franchisee will during the period of the Relevant Timetable hire locomotives and loco-hauled coaching stock to provide Passenger Services in the Bristol area in order to make available rolling stock to operate the Plymouth to Penzance Service. Within fourteen days of the end of each Reporting Period which includes any part of the Relevant Timetable the Franchisee shall notify to the Secretary of State the number (if any) of Weekdays in that Reporting Period which fall within the Relevant Timetable and on which all the Passenger Services scheduled in the Plan of the Day to be operated by that loco-hauled set are Cancellations as a result of the non-availability to the Franchisee of that loco-hauled set on that day.*

6.4³⁷³ *“The Secretary of State shall pay the Franchisee in respect of the provision of the Additional Service and subject to adjustment as set out in this paragraph:*

(i) ³⁷⁴

(ii) ³⁷⁵

with the amount payable in respect of each Reporting Period being calculated as set out below and included in the value of ASP in the calculation of Franchise Payments under Schedule 8.1 (Franchise Payments) of the Terms, as amended with effect from
³⁷⁶”

³⁷³ Date of amendment 02/03/2010

³⁷⁴ 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.

³⁷⁵ 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.

³⁷⁶ 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) *paragraph 6.4(c) shall be amended by deleting “³⁷⁷” and substituting “(£³⁷⁸)”.*
- (d) *It is acknowledged that the payments referred to in the amended paragraph 6.4 are each calculated taking account of any Change in connection with the Control Period 4 Charging Review and accordingly are not subject to adjustment in accordance with Schedule 9 of the Terms to take account of that Change.*
- 6.5 *For the avoidance of doubt, the amendment of the Franchise Agreement by virtue of which this paragraph is included in the Franchise Agreement will not constitute a Change under the Franchise Agreement. The amount stated in paragraph 6.4 is calculated before taking account of any Change which takes effect after 18th May 2009. Accordingly where a Change (other than the introduction of the Additional Service) applies during the period of the Relevant Timetable, the effect of that Change on the Additional Service will be taken into account for the purposes of calculating the financial consequences of that Change in accordance with Schedule 9 of the Terms.*
- 6.6 *Without prejudice to the calculation of NCD under paragraph 6.4, where despite the exercise of all reasonable endeavours and compliance by the Franchisee with its obligations in connection with the hire of the relevant vehicles, the Franchisee is unable to operate any Passenger Service due to the non-availability of the loco and loco hauled stock referred to in paragraph 6.3, then for the purposes of Schedule 7.1 of the Terms and subject to compliance by the Franchisee with the terms of paragraph 2 of Schedule 10.4 of the Terms in connection with that non-availability, any consequent Cancellation or Partial Cancellation shall be treated as caused by a Force Majeure Event. "*
- “7 *The Franchisee shall use all reasonable endeavours to procure from its supplier of rolling stock the provision of a DVT in lieu of the second locomotive, the second locomotive being the additional locomotive required to provide Passenger Services in the Bristol*

³⁷⁷ *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.*

³⁷⁸ *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.*

area. If a DVT is not procured from the rolling stock supplier an additional amount per period from and including Reporting Period 3 2009/2010 of £16,231.90 shall be payable.”

“8. PAIGNTON AND PLYMOUTH SERVICES³⁷⁹

8.1 In respect of the period from the December 2009 Passenger Change Date to 18 September 2010 inclusive (“the Interim Period”):

- (a) it is acknowledged by the parties that the Franchisee has exercised its Timetable Development Rights in order to secure a Timetable (the “Paragraph 8 Timetable”) which includes passenger rail services each way between Exeter and Paignton/Plymouth which are consistent with the proposed SWT Replacement Specifications set out in the Annex to this Appendix 13 (the “Additional Exeter –Paignton/Plymouth services”);*
- (b) the Franchisee shall continue to use all reasonable endeavours to secure the Paragraph 8 Timetable for the Interim Period to the extent that it is not so secured as at the date of the SWT Deed of Amendment. The exercise of all reasonable endeavours in accordance with this paragraph relates to the Franchisee’s obligation to seek from Network Rail the relevant Train Slots and the amendment of the Track Access Agreement to provide for the relevant rights and to pay the relevant charges in accordance with the terms of the Track Access Agreement in respect of the Additional Exeter – Paignton/Plymouth Services, but is subject to the exercise by Network Rail of its rights including in relation to emergencies and engineering works; and*
- (c) the Franchisee shall include the Additional Exeter – Paignton/Plymouth Services as so secured in the Paragraph 8 Timetable in its Train Plan, subject to such amendments as may be made from time to time to the Train Plan in accordance with Schedule 1.2 of the Terms.*

8.2 Subject to compliance with paragraph 2 of Schedule 2.2 of the Terms (to the extent it applies), the Franchisee will during the Interim Period hire 2 locomotives together with 4 loco hauled vehicles (configured with 2 locomotives and 4 coaches per train) (the “Paragraph 8 Vehicles”).

8.3 Within fourteen days of the end of each Reporting Period which includes any part of the Paragraph 8 Timetable the Franchisee shall notify to the Secretary of State the number (if any) of days in that Reporting Period which fall within the Paragraph 8 Timetable and on which all the Passenger Services scheduled in the Plan of the Day to be operated by the Paragraph 8 Vehicles are Cancellations as a result of the non-availability to the Franchisee of such Paragraph 8 Vehicles on that day.

³⁷⁹ Date of change 11/12/2009

8.4 *The Secretary of State shall pay the Franchisee the sum of £³⁸⁰ (subject to adjustment as set out in this paragraph) in respect of the provision of the Additional Exeter – Paignton/Plymouth Services during the Interim Timetable, with the amount payable in respect of each Reporting Period being calculated as set out below and included as the value ASP2 in the calculation of Franchise Payments under Schedule 8.1 of the Terms, as amended. In particular:*

- (a) *in respect of each Reporting Period which either ends before the Interim Timetable starts or starts one Reporting Period or more after the Interim Timetable ends, the value of ASP2 shall be nil;*
- (b) *in respect of each other Reporting Period the value of ASP2 shall be calculated as follows:*

$$ASP2 = [£^{381} \times (RPD/rTD)] - [£^{382} \times NCD]$$

where

rTD is the number of days in the Interim Timetable;

RPD is the number of days in the relevant Reporting Period which are also in the Interim Timetable; and

NCD is the number (if any) of days in the preceding Reporting Period which fall within the Interim Timetable and on which all the Passenger Services scheduled in the Plan of the Day to be operated by the Paragraph 8 Vehicles are Cancellations as a result of the non-availability to the Franchisee of the Paragraph 8 Vehicles on that day (so that where there are no such Cancellations in that Reporting Period the value of NCD is nil).

³⁸⁰ 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.

³⁸¹ 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.

³⁸² Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- 8.5 *In addition to the amounts payable by the Secretary of State pursuant to paragraph 8.4, the Secretary of State shall pay the Franchisee £³⁸³ between Reporting Periods 1 and 10³⁸⁴ in respect of preparatory costs associated with the introduction of the Paragraph 8 Vehicles (£³⁸⁵ of which the Franchisee acknowledges has been paid prior to the date of the SWT Deed of Amendment and £³⁸⁶ shall be paid at the same time as the first payment is made by the Secretary of State pursuant to paragraph 8.4(b).*
- 8.6 *For the avoidance of doubt, the amendment of the Franchise Agreement to include this paragraph 8 will not constitute a Change under the Franchise Agreement. The amount stated in paragraph 8.4 is calculated after and taking into account the effect of the Charging Review in respect of Control Period 4 but before taking account of any other Change which takes effect after the date of the SWT Deed of Amendment. Accordingly where a Change (other than the introduction of the Additional Exeter- Paignton/Plymouth Services) applies during the period of the Interim Timetable, the effect of that Change on the Additional Exeter Paignton/Plymouth Services will be taken into account for the purposes of calculating the financial consequences of that Change in accordance with Schedule 9 of the Terms.*
- 8.7 *Without prejudice to the calculation of NCD under paragraph 8.4, where despite the exercise of all reasonable endeavours and compliance by the Franchisee with its obligations in connection with the hire of the Paragraph 8 Vehicles, the Franchisee is unable to operate any Passenger Service due to non-availability of any Paragraph 8 Vehicles, then for the purposes of Schedule 7.1 of the Terms and subject to compliance by the Franchisee with the terms of paragraph 2 of Schedule 10.4 of the Terms in connection with that non-availability, any consequent Cancellation or Partial Cancellation shall be treated as caused by a Force Majeure Event.”*

³⁸³ 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.

³⁸⁴ 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.

³⁸⁵ 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.

³⁸⁶ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

9. “[Not Used]”³⁸⁷

10. FURTHER CHANGES TO SERVICE LEVEL COMMITMENT³⁸⁸

10.1 *In addition and without prejudice to such changes to the Service Level Commitment as have been effected prior to the date of the FGW30 HLOS Deed of Amendment (including but not limited to those made pursuant to paragraph 18 of Part 1 (List of Committed Obligations) to Appendix 11 (Committed Obligations and HLOS Committed Obligations and Related Provisions) the Service Level Commitment as at the date of the FGW30 HLOS Deed of Amendment shall be further amended in respect of Passenger Services to be provided with effect from the Passenger Change Date in December 2010 to incorporate those service changes (“the 2010 Service Changes”) described in the Annex 1 to this Appendix 13 (2010 Service Changes).*

10.2 *In respect of paragraph 6, 7 and 8 only of Appendix 13:-*

(a) *the Franchisee’s obligations pursuant to the following paragraphs shall continue from ³⁸⁹ until the Passenger Change Date in December 2010:-*

(i) *paragraphs 6.1, 6.2 and 6.6; and*

(ii) *paragraphs 8.1 and 8.7;*

³⁸⁷ Date of change 02/03/2010

³⁸⁸ Date of insertion 02/03/2010

³⁸⁹ **Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

(b) it is acknowledged that, subject to paragraph 10.2(c), the arrangements for the leasing and financing of the rolling stock in connection with the provision of the services referred to in paragraphs 6 and 8 are provided for in Part 4 of Appendix 11 (Committed Obligations and HLOS Committed Obligations and Related Provisions); and

(c) ³⁹⁰

10.3 *It is acknowledged and agreed that the financial and other effects of the changes to the Service Level Commitment provided for in paragraphs 10.1 and 10.2 are fully taken into account in the variations to the Franchise Agreement effected by the FGW30 HLOS Deed of Amendment, and that those changes shall, notwithstanding any other provision of this Franchise Agreement but without prejudice to the terms of the FGW30 HLOS Deed of Amendment, not themselves trigger a Change or Run of the Financial Model pursuant to or for the purposes of the Franchise Agreement."*

"11 *The Timetable Planning of HLOS Capacity*³⁹¹

11.1 *The parties acknowledge that:-*

*(a)*³⁹² *the intention of the introduction of the Extra Class 150 Vehicles and the Extra Bristol Vehicles is to enable additional passenger carrying capacity to be provided when compared to the Train Fleet as set out in Table 1.2 in Appendix 3 (The Train Fleet) prior to the Relevant HLOS Deed of Amendment;*

³⁹⁰ **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.**

³⁹¹ Date of insertion 02/03/2010

³⁹² Date of Change 04/08/2011

“(b) ³⁹³ ³⁹⁴

(c)³⁹⁵ the strengthening of the Initial Strengthened Services pursuant to the FGW30 HLOS Deed of Amendment involves the deployment of 18 more vehicles in the Morning Peak and 17 more vehicles in the Evening Peak than the Franchisee would have been capable of deploying as at the date of the FGW30 HLOS Deed of Amendment using the Train Fleet as then set out in Table 1.2 in Appendix 3, without the Extra Class 150 Vehicles; and

(d)³⁹⁶ the strengthening of the Initial Strengthened Services pursuant to the Bristol HLOS Deed of Amendment involves the deployment of 7 more vehicles in the Morning Peak and 3 more vehicles in the Evening Peak than the Franchisee was deploying as at the date of the Bristol HLOS Deed of Amendment using the Train Fleet as then set out in Table 1.2 in Appendix 3, without the Extra Bristol Vehicles.

³⁹³ Date of Change 04/08/2011

³⁹⁴ **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.**

³⁹⁵ Date of Change 04/08/2011

³⁹⁶ Date of Change 04/08/2011

11.2 With effect from and including the Timetable and the Train Plan for the period from and including the Passenger Change Date in ³⁹⁷ (or ³⁹⁸ in relation to the Extra Bristol Vehicles)³⁹⁹, in the preparation of the Train Plan to be submitted by it pursuant to paragraph 13.1 of Schedule 1.1 (Service Development) of the Terms, the Franchisee will (in addition and without prejudice to its obligations under paragraphs 6.3 - 6.6 of Schedule 1.1 (Service Development) of the Terms):-

(a) actively consider and specify in its Train Plan what it considers to be the best allocation of the Additional Capacity to meet the objectives described in paragraph 6.4 (or as the case may be) paragraph 6.5 of Schedule 1.1;

(b)⁴⁰⁰ subject to paragraph 11.3, provide for all the Additional Capacity to be utilised for the purposes of strengthening Passenger Services (in the case of the FGW30 Additional Capacity) arriving in Bristol and Exeter in the Morning Peak and departing from Bristol and Exeter in the Evening Peak and (in the case of the Bristol Additional Capacity) arriving in and/or departing from Bristol in the Morning Peak and/or the Evening Peak, through the deployment of not less than:

- (i) 18 more vehicles on those Passenger Services in the Morning Peak and 17 more vehicles on those Passenger Services in the Evening Peak than the Franchisee would have been capable of deploying as at the date of the

³⁹⁷ 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.

³⁹⁸ 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.

³⁹⁹ Date of Change 04/08/2011

⁴⁰⁰ Date of Change 04/08/2011

FGW30 HLOS Deed of Amendment using the Train Fleet then set out in Table 1.2 in Appendix 3 without the Extra Class 150 Vehicles; and

- (ii) 7 more vehicles on those Passenger Services in the Morning Peak and 3 more vehicles on those Passenger Services in the Evening Peak than the Franchisee was deploying as at the date of the Bristol HLOS Deed of Amendment using the Train Fleet then set out in Table 1.2 in Appendix 3 without the Extra Bristol Vehicles; and

(c) will indicate in its Train Plan which Passenger Services have been strengthened by the utilisation of the Additional Capacity (“the Timetabled Strengthened Services”). Where the Timetabled Strengthened Services are different from the:

(i) Initial Strengthened Services; or

(ii) the Passenger Services strengthened by the Franchisee pursuant to the operation of this paragraph 11 in the previous Train Plan submitted by the Franchisee pursuant to paragraph 13 of Schedule 1.1 (Service Development) of the Terms where those previously strengthened services are different from the Initial Strengthened Services,

then the Franchisee will describe and provide an explanation of the change.

11.3 It shall not be a contravention by the Franchisee if the Train Plan it submits does not comply with paragraph 11.2(b) to the extent that the Franchisee:-

- (a) has not been able to secure a Timetable which enables it to operate the Passenger Services required in order to comply with paragraph 11.2(b) provided the Franchisee:-**

- (i) would not have been liable for failure to secure such a Timetable if it had been required to do so to comply with the Service Level Commitment; and*
 - (ii) has complied with its obligations under paragraph 10 of Schedule 1.1 of the Terms (Service Development) as if the obligation to secure such a Timetable had been included in its Service Level Commitment; or*
- (b)⁴⁰¹ is not able to deploy the required number of additional vehicles in the Morning Peak and the Evening Peak in accordance with paragraph 11.2(b) because of any reasonable planning for rolling stock vehicles to be out of service due to Mandatory Modifications or any other reasons agreed with the Secretary of State (such agreement not to be unreasonably withheld) with legitimate reasons including by way of example:-*
- (i) loss or damage to vehicles; and*
 - (ii)⁴⁰² such changes to maintenance regimes affecting vehicle availability as would be made by a skilled and experienced Train Operator acting with all due efficiency and economy with the objective of so deploying the required number of additional vehicles in the Morning Peak and in the Evening Peak in accordance with paragraph 11.2(b) and disregarding for this purpose any changes as may be required as a consequence of the negligence or other default of the Franchisee); or*

⁴⁰¹ Date of Change 04/08/2011

⁴⁰² Date of Change 04/08/2011

- (c) *is able to demonstrate to the reasonable satisfaction of the Secretary of State that its Train Plan represents the best allocation of the Additional Capacity to meet the objectives described in paragraph 6.4 or (as the case may be) paragraph 6.5 of Schedule 1.1 of the Terms.*

11.4 *The revisions to the Train Plan which the Secretary of State may require pursuant to paragraph 13.2 of Schedule 1.1 of the Terms shall include revisions to the Timetabled Strengthened Services which the Secretary of State considers to be required to ensure compliance with this paragraph 11, in which case:-*

- (a) *references in paragraph 12 to the Timetabled Strengthened Services shall be to those services as so revised; and*
- (b) *the Franchisee's rights under paragraph 13.3 of Schedule 1.1 shall apply in respect of any such revisions in the same way as they apply to any other revisions made by the Secretary of State under paragraph 13.2 of Schedule 1.1.*

11.5 *The following further provisions shall apply in respect of High Summer:-*

- (a) *in this paragraph 11.5:-*
- (i) *"High Summer" means the period from and including the last Sunday in ⁴⁰³ up to and including the first Saturday in the immediately following ⁴⁰⁴;*

⁴⁰³ 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.

⁴⁰⁴ Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (ii)** *“South West DMU Diagram” means a rolling stock diagram timed to DMU timings or a standby diagram (as the case may be), to be operated by the Franchisee in connection with the provision of Passenger Services in the South West of England, which for these purposes includes services which serve any station west of (or including) Swindon Station;*
- (b)** *it is acknowledged that:*

 - (i)** *prior to the date of the FGW30 HLOS Deed of Amendment the Franchisee has varied its arrangements in respect of the maintenance and deployment of Rolling Stock (including in relation to stand-by diagrams) so as to enable the Franchisee to increase the number of South Western DMU diagrams operated during the High Summer; and*
 - (ii)** *as at the date of the FGW30 HLOS Deed of Amendment the parties anticipate that by continuing such approach after the date of the FGW30 HLOS Deed of Amendment, the Franchisee will be able to operate on each Weekday and Saturday 61 South West DMU Diagrams in the High Summer;*
- (c)** *with effect from and including the Timetable and the Train Plan for the period from and including the Passenger Change Date in December 2010 in the preparation of the Train Plan to be submitted by it pursuant to paragraph 13.1 of Schedule 1.1 (Service Development) of the Terms, the Franchisee will:-*

 - (i)** *specify the total number of South West DMU Diagrams which it proposes to operate on each Weekday and Saturday in High Summer (“the Total Planned Diagrams”);*
 - (ii)** *if the Total Planned Diagrams in High Summer are different from 61 on a Weekday or a Saturday, the Franchisee shall demonstrate to the Secretary of State the reason for the change*

and how the Franchisee has complied with its obligations in paragraphs 6.3 - 6.6 of Schedule 1.1 in relation to the number of South West DMU Diagrams to be operated in the High Summer.

12 The Operation of HLOS Capacity⁴⁰⁵

12.1⁴⁰⁶ In this paragraph 12:

- (a) "High Summer";**
- (b) "South West DMU Diagram"; and**
- (c) "Timetabled Strengthened Service", subject to the operation of paragraph 12.3; and**
- (d) "Total Planned Diagrams"**

shall have the meanings given to those expressions in paragraph 11 of this Appendix 13.

12.2⁴⁰⁷ This paragraph 12 shall take effect as follows:

- (a) paragraphs 12.3 to 12.8 shall apply with effect from the first Reporting Period to occur on or after ⁴⁰⁸;**
- (b) paragraph 12.9 shall apply in respect of each Reporting Period from and including**
 - (i) ⁴⁰⁹; or**

⁴⁰⁵ Date of insertion 02/03/2010

⁴⁰⁶ Date of Change 04/08/2011

⁴⁰⁷ Date of Change 04/08/2011

⁴⁰⁸ **Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

- (ii) *if the date for the completion of the modifications to the Extra Class 150 Vehicles or the Extra Bristol Vehicles has been extended pursuant to paragraph 2 of Part 4 of Appendix 11, the first Reporting Period which commences on or after that extended date.*

12.3 *The Timetable and the Train Plan are subject to development and amendment as envisaged in the Franchise Agreement and it is acknowledged that:-*

- (a) *there may be differences between the Plan of the Day and the Timetable and the Train Plan as originally notified by the Franchisee to the Secretary of State under Schedule 1.1 (Service Development) of the Terms;*
- (b) *save as expressly provided in this paragraph 12, those changes (including any changes to the allocation of Train Fleet to the Timetabled Strengthened Service) will be addressed by the other terms of the Franchise Agreement;*
- (c) *where there are any such changes which affect the Timetabled Strengthened Services, the Franchisee shall at the Secretary of State's request identify where and to the extent reasonably ascertainable the different services which are Timetabled Strengthened Services where Additional Capacity is to be deployed, and "Timetabled Strengthened Services" shall be interpreted accordingly.*

12.4 *This paragraph 12 establishes a regime first for providing reports and second, from the date provided in paragraph 12.2(b), for payments to be made by the Franchisee to the Secretary of State where:*

- (a) *on any Weekday, a Timetabled Strengthened Service is included in the Plan of the Day but is operated with less than the number of vehicles included in the Plan of the Day (the "Weekday Regime"); and*
- (b) *on any Weekday or Saturday in High Summer the number of the South West DMU Diagrams is lower than that anticipated in paragraph 11.5 of this Appendix 13 (the "High Summer Regime").*

12.5 *For the Weekday Regime, the Franchisee shall for each Weekday:*

⁴⁰⁹ [Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.](#)

- (a) identify in the Plan of the Day each service which is a Timetabled Strengthened Service;
- (b) record the number of vehicles which operates each Timetabled Strengthened Service and (where applicable) the number of vehicles by which this is less than the number provided for in the Plan of the Day;
- (c) record with suitable supporting evidence:
- (i) any incident where the shortfall in the number of vehicles operated is due to a circumstance referred to in paragraph 12.7; and
- (ii) any day on which the operation of the relevant Passenger Services is so disrupted for any reason such that in respect of a Timetabled Strengthened Services there is no Passenger Service actually operated which reasonably corresponds to that Timetabled Strengthened Service;
- (d) calculate in respect of each Reporting Period an amount in respect of any shortfall in capacity provided as follows:

$$WRP = \sum WRV \times (WRS - WRE)$$

where

WRP is the Weekday Regime Payment in respect of the Reporting Period;

\sum is the summation in respect of each Weekday in the Reporting Period;

WRV is £⁴¹⁰, subject to indexation by the Retail Prices Index in the same way as Variable Costs are indexed in Schedule 8.2 (Annual Franchise Payments) of the Terms;

WRS is the number of vehicles shortfall as recorded under paragraph 12.5(b) in respect of the relevant Weekday in the Reporting Period; and

⁴¹⁰ 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.

WRE is the number of any shortfall vehicles counted in the value **WRS** on the relevant Weekday in the Reporting Period which is due to circumstances referred to in paragraph 12.7 as recorded under paragraph 12.5(c)(i) or due to circumstances as recorded under paragraph 12.5(c)(ii).

12.6 For the High Summer Regime, the Franchisee shall:

- (a) identify in the Plan of the Day for each Weekday and each Saturday in the High Summer the South West DMU Diagrams;
- (b) calculate on each Weekday and each Saturday in the High Summer the number of South West DMU Diagrams which are operated before noon and those operated after noon on that day. For this purpose, the number of diagrams shall be measured by the Franchisee at or within one hour of:
 - (i) 0500, in the case of diagrams operated before noon; and
 - (ii) 1600, in the case of diagrams operated after noon

or in either case at such other time as the parties may agree from time to time (such agreement not to be unreasonably withheld or delayed);
- (c) record with appropriate evidence any Weekday or any Saturday in the High Summer in which the number of diagrams able to be operated is restricted by any circumstances as referred to in paragraph 12.7; and
- (d) calculate in respect of each Reporting Period including a High Summer day the High Summer Strengthening Shortfall Amount as follows:

$$HSSSA = \sum HSSFV \times DS$$

where

HSSSA is the High Summer Strengthening Shortfall Amount, provided that if this is a negative value, it shall be deemed to be zero;

Σ is the summation across each Weekday and each Saturday in the relevant Reporting Period, which day also falls in High Summer;

HSSFV is £⁴¹¹, subject to indexation by the Retail Prices Index in the same way as Variable Costs are indexed in Schedule 8.2 (Annual Franchise Payments) of the Terms;

DS is the shortfall in strengthening on any High Summer Day calculated as the lesser of 10 and the amount calculated as follows:

$$DS = TPD - (ADAM + ADPM)$$

where

TPD is two times the Total Planned Diagrams on the relevant High Summer day in the Reporting Period;

ADAM is (subject to paragraph 12.7) the actual number of South West DMU Diagrams operated in the morning of the relevant High Summer day; and

ADPM is (subject to paragraph 12.7) the actual number of South West DMU Diagrams operated in the afternoon of the relevant High Summer day.

12.7 In performing the calculations referred to in paragraphs 12.5 and 12.6 there shall be disregarded:

- (a) any failure to operate a vehicle or a diagram or part thereof due to the implementation of a Service Recovery Plan or the occurrence or continuation of a Force Majeure Event;
- (b) for the purposes of the calculation referred to in paragraph 12.6:-

⁴¹¹ Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (i) *on any High Summer Day for which fewer South West DMU Diagrams are contained in the Plan of the Day than in the Train Plan, a number of South West DMU Diagrams equivalent to the shortfall; and*
- (ii) *where on any High Summer Day the number of South West DMU Diagrams operated is less than the number provided for in the Plan of the Day, any South West DMU Diagram whose failure to operate is caused by (1) any restriction of use of the Network (including any emergency timetable to the extent it is imposed by Network Rail) or (2) any shortfall in the number of diagrams operated to the extent due to the loss of any vehicle or to damage suffered by any vehicle which cannot reasonably be repaired without affecting vehicle availability in the normal course of scheduled maintenance;*
- (c) *for the purposes of the calculation referred to in paragraph 12.5 only, Passenger Services which are Cancellations or Partial Cancellations (without prejudice to the operation of Schedule 7 of the Terms) or would be treated as such but for the fact that the cancellation or partial cancellation was not attributed to the Franchisee pursuant to its Track Access Agreement. For the purposes of the calculation referred to in paragraph 12.5, a Timetabled Strengthened Service described in paragraph 12.5(c)(ii) shall be treated as a Cancellation.*

For the purposes of the High Summer Regime, “disregarded” means that the relevant diagram shall be deemed to have operated as planned.

12.8 *The Franchisee shall within 17 days of the last day of each Reporting Period notify the Secretary of State in respect of:*

- (a) *the Weekday Regime, a report on the matters recorded under paragraph 12.5 for that Reporting Period, including the calculation under paragraph 12.5(d); and*
- (b) *(for Reporting Periods including High Summer days only) the High Summer Regime, a report on the matters recorded under paragraph 12.5 for that Reporting Period, including the calculation under paragraph 12.6(d).*

The Franchisee shall on request provide such further information in connection with the reports provided under this paragraph 12.8 as the Secretary of State may reasonably require.

12.9 *The Franchisee shall pay to the Secretary of State in respect of each Reporting Period falling on or after the date on which paragraph 12.2 provides for this paragraph to take effect:*

- (a) *the Weekday Regime payment amount calculated in accordance with paragraph 12.5(d); and*

(b) (for Reporting Periods including High Summer days only), the High Summer Strengthening Shortfall Amount calculated in accordance with paragraph 12.6(d)

with such payment being made as an HLOS Committed Obligation Payment Adjustment in accordance with paragraph 7 of Part 6 of Appendix 11”.

13 NRFT Yield Management Provisions ⁴¹²

13.1 *In this paragraph 13 the following terms shall have the meaning set out opposite them below:*

“Yield Management Data”

means data collected by or on behalf of the Franchisee for the purpose of or in connection with managing or setting the prices at which any tickets for travel on the Passenger Services are sold and/or any quotas and/or restrictions applying to such tickets including:

- (a) the number of passengers travelling upon any particular Passenger Service;*
- (b) the ticket types held by such passengers;*
- (c) the prices paid by such passengers for such tickets; and*
- (d) the dates and/or times between which such tickets were made available to*

⁴¹² Date of insertion 02/03/2010

purchase at such prices; and

“Yield Management System”

means the DYSM System (as such term is defined in paragraph 6.1 of Part 4 to Appendix 11 (Committed Obligations and HLOS Committed Obligations and Related Provisions)) for the collection of Yield Management Data and/or onto which Yield Management Data is input, processed and/or held which is to be procured by the Franchisee in accordance with paragraph 6 of Part 4 of Appendix 11 (Committed Obligations and HLOS Committed Obligations and Related Provisions), as such system may be amended or altered from time to time.

- 13.2** *The Franchisee shall ensure that any Yield Management Data and Yield Management System are the property of the Franchisee or are licensed to the Franchisee or made available to the Franchisee (including via third party hosting arrangements) on terms which have been approved by the Secretary of State (such approval not to be unreasonably withheld or delayed).*
- 13.3** *The Yield Management Data shall (to the extent that they constitute Franchise Assets) be designated as Primary Franchise Assets with effect from the date on which such Yield Management Data is collected.*
- 13.4** *The Franchisee hereby agrees that:*
- (a)** *the Yield Management Data to the extent transferred to a Successor Operator whether pursuant to the Transfer Scheme or otherwise shall be valued at nil; and*
 - (b)** *the obligations of the Franchisee in paragraphs 2.1 and 2.2 of Schedule 15.1 (Reletting Provisions) of the Terms shall be construed as including an obligation to grant access to and make available the Yield Management Data as specified in paragraph 2 of Schedule 15.1 (Reletting Provisions) (but shall not require the Franchisee to go beyond what is required to provide access and make available such Yield Management Data unless as may otherwise be required by paragraph 2.2 of Schedule 15.1).*

14. The Timetable Planning of LTV HLOS Capacity ⁴¹³

14.1 The parties acknowledge that:-

- (a) *the intention of the introduction of the Extra LTV Vehicles and the creation of additional Super High Capacity HSTs is to enable additional passenger carrying capacity to be provided when compared to the Train Fleet as set out in Table 1.2 in Appendix 3 (The Train Fleet) prior to the LTV HLOS Deed of Amendment; and*
- (b) *as at the date of the LTV HLOS Deed of Amendment the parties anticipate that the best use of the Additional LTV Capacity is the provision of additional capacity as set out in Annex 4 to this Appendix 13 (the “LTV Initial Strengthened Services”).*

14.2 With effect from and including the Timetable and the Train Plan for the period from and including 29th February 2012 in respect of the LTV Class 150 Vehicles and Orphan Class 150 Vehicles and ⁴¹⁴ in respect of the LTV Class 180 Vehicles and the additional Super High Capacity HSTs formed pursuant to paragraph 11.3 of part 4 of Appendix 11 (Committed Obligations and HLOS Committed Obligations and Related Provisions), in the preparation of the Train Plan to be submitted by it pursuant to paragraph 13.1 of Schedule 1.1 (Service Development) of the Terms, the Franchisee will (in addition and without prejudice to its obligations under paragraphs 6.3 to 6.6 of Schedule 1.1 (Service Development) of the Terms):-

- (a) *actively consider and specify in its Train Plan what it considers to be the best allocation of the Additional LTV Capacity to meet the objectives described in paragraph 6.4 (or as the case may be) paragraph 6.5 of Schedule 1.1;*
- (b) *will indicate in its Train Plan which Passenger Services have been strengthened by the utilisation of the Additional LTV Capacity (“the LTV Timetabled Strengthened Services”); and*
- (c) *where the LTV Timetabled Strengthened Services are different from the:*

⁴¹³ Date of change 21/11/2011

⁴¹⁴ [Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.](#)

- (i) *LTV Initial Strengthened Services; or*
- (ii) *the Passenger Services strengthened by the Franchisee pursuant to the operation of this paragraph 14 in the previous Train Plan submitted by the Franchisee pursuant to paragraph 13 of Schedule 1.1 (Service Development) of the Terms where those previously strengthened services are different from the LTV Initial Strengthened Services,*

then the Franchisee will describe and provide an explanation of the change.

14.3 Entirely without prejudice to the obligations of the Franchisee pursuant to paragraphs 11.2 (a) (i) and 11.2(b) of Part 4 of Appendix 11 (Committed Obligations and HLOS Committed Obligations and Related Provisions) it is agreed that the Franchisee is not required prior to 3rd September 2012 to include in the Train Plan those LTV Class 180 Vehicles and Super High Capacity HSTs that have not yet been introduced into use in the delivery of the Passenger Services.

ANNEX 1 to Appendix 13 (2010 Service Changes)⁴¹⁵

**A H1a Exeter St David's – Plymouth
(SWT Replacement Specification)**

1 Route Definition

1.1 Services shall be provided between Exeter St David's and Plymouth calling at Dawlish Warren, Dawlish, Teignmouth, Newton Abbot, Totnes, Ivybridge and Plymouth.

1.2 Services may operate to and from Exmouth to Exeter St David's and Cardiff Central to Exeter St David's, please refer to Routes H3 and F2a respectively.

5. Frequency

2.1 Mondays to Fridays

(a) Between and including the Early and Late Service, two services shall be provided from Exeter St David's to Plymouth calling at the stations specified in Paragraph 1.1. One service may omit to call at Dawlish Warren, Dawlish and Teignmouth.

(b) One further service shall be provided from Newton Abbot to Plymouth calling as specified in Paragraph 1.1, to arrive Plymouth no later than 1700. This service may⁴¹⁶ be extended to Liskeard.

(c) Between and including the Early and Late Service, one service shall be provided from Plymouth to Exeter St David's calling at the stations specified in Paragraph 1.1.

⁴¹⁵ Date of insertion 02/03/2010

⁴¹⁶ to give flexibility at time goes on to meet emerging needs.

(d) One further service shall be provided from Plymouth to Newton Abbot calling at the stations specified in Paragraph 1.1.

2.2 Saturdays

(a) Between and including the Early and Late Service, two services shall be provided from Exeter St David's to Plymouth calling at the stations specified in Paragraph 1.1. One of these services may⁴¹⁷ continue to Penzance, calling at Liskeard.

(b) One further service shall be provided from Newton Abbot to Plymouth calling at the stations specified in Paragraph 1.1.

(c) Between and including the Early and Late Service, one service shall be provided from Plymouth to Exeter St David's calling at the stations specified in Paragraph 1.1.

(d) One further service shall be provided from Plymouth to Newton Abbot calling at the stations specified in Paragraph 1.1.

2.3 Sundays

(a) Between and including the Early and Late Service, one service shall be provided from Exeter St David's to Plymouth calling at Newton Abbot, Totnes and Ivybridge.

(b) Between and including the Early and Late Service, two services shall be provided from Plymouth to Exeter St David's calling at the stations specified in Paragraph 1.1. One service may⁴¹⁸ start from Penzance calling at Liskeard and may omit to call at all stations between Newton Abbot and Exeter St David's.⁴¹⁹

3. Early and Late Services

⁴¹⁷ to give flexibility at time goes on to meet emerging needs.

⁴¹⁸ to give flexibility at time goes on to meet emerging needs.

⁴¹⁹ not required as not in route calling pattern

<i>Early Service arrives at destination no later than:</i>			
<i>Route</i>	<i>Monday - Friday</i>	<i>Saturday</i>	<i>Sunday</i>
<i>Exeter St David's - Plymouth</i>	<i>1300</i>	<i>1415</i>	<i>1315</i>
<i>Plymouth – Exeter St David's</i>	<i>1915⁴²⁰</i>	<i>1915</i>	<i>1520</i>

<i>Late Service departs no earlier than:</i>			
<i>Route</i>	<i>Monday - Friday</i>	<i>Saturday</i>	<i>Sunday</i>
<i>Exeter St David's - Plymouth</i>	<i>1545⁴²¹</i>	<i>1730</i>	<i>1145</i>
<i>Plymouth – Exeter St David's</i>	<i>1730⁴²²</i>	<i>1730</i>	<i>1545⁴²³</i>

4 *Maximum Journey Times*

<i>Route</i>	<i>Monday - Friday</i>	<i>Saturday</i>	<i>Sunday</i>
<i>Exeter St David's - Plymouth</i>	<i>1 hour 12⁴²⁴ minutes</i>	<i>1 hour 12 minutes</i>	<i>1 hour 6 minutes</i>

⁴²⁰ to give fifteen minutes or so to ease flexibility otherwise with so few services becomes hardwired

⁴²¹ now 16.05 departure.

⁴²² to give fifteen minutes or so to ease flexibility otherwise with so few services becomes hardwired

⁴²³ to give fifteen minutes or so to ease flexibility otherwise with so few services becomes hardwired

⁴²⁴ now 11.34 - 12.42; and 16.05- 17.17

<i>Route</i>	<i>Monday - Friday</i>	<i>Saturday</i>	<i>Sunday</i>
<i>Plymouth – Exeter St David’s</i>	<i>1 hour 10⁴²⁵ minutes</i>	<i>1 hour 20 minutes</i>	<i>1 hour 10 minutes</i>

***H4a Exeter St Davids – Paignton
(SWT Replacement Specification)***

1 Route Definition

1.1 Services shall be provided between Exeter St David’s and Paignton calling at Exeter St Thomas, Starcross, Dawlish Warren, Dawlish, Teignmouth, Newton Abbot, Torre, Torquay and Paignton.

1.2 Services may operate to and from Exmouth to Exeter St David’s and Cardiff Central to Exeter St David’s, please refer to Routes H3 and F2a respectively.

1.3 Services may be provided by services provided by Route H4⁴²⁶.

2 Frequency

2.1 Mondays to Fridays

(a) Between and including the Early and Late Service, two services shall be provided from Exeter St David’s to Paignton calling at the stations specified in Paragraph 1.1. One⁴²⁷ service may omit to call at Exeter St Thomas, Starcross, Dawlish Warren and Torre⁴²⁸.

⁴²⁵ 17.48 - 18.58

⁴²⁶ The SWT services fulfil some of the “other operator” trains permitted and required already in H4.

⁴²⁷ Reflects current 17.49 Exeter - Paignton SWT service calling all stations, and may start St James’ Park @ 1739.

(b) Between and including the Early and Late Service, two services shall be provided from Paignton to Exeter St David's calling at the stations specified in Paragraph 1.1. Services may omit to call at Torre, Dawlish Warren, Starcross and Exeter St Thomas⁴²⁹.

2.2 Saturdays

(a) Between and including the Early and Late Service, four services shall be provided from Exeter St David's to Paignton calling at the stations specified in Paragraph 1.1. Services may omit to call at Exeter St Thomas, Starcross, Dawlish Warren and Torre⁴³⁰.

(b) Between and including the Early and Late Service, four services shall be provided from Paignton to Exeter St David's calling at the stations specified in Paragraph 1.1. Services may omit to call at Torre, Dawlish Warren, Starcross and Exeter St Thomas⁴³¹.

2.3 Sundays

(a) Between and including the Early and Late Service, five services shall be provided from Exeter St David's to Paignton calling at the stations specified in Paragraph 1.1. Services may omit to call at Exeter St Thomas, Starcross, Dawlish Warren and Torre⁴³². One service may omit to call at Dawlish and one service may omit to call at Teignmouth⁴³³.

(b) Between and including the Early and Late Service, five services shall be provided from Paignton to Exeter St David's calling at the stations specified in Paragraph 1.1. Services may omit to call at Torre, Dawlish Warren, Starcross and Exeter St Thomas⁴³⁴. One service may omit to call at Teignmouth and one service may omit to call at Dawlish⁴³⁵.

⁴²⁸ This reflects the allowance permitted for such services in H4.

⁴²⁹ This reflects the allowance permitted for such services in H4.

⁴³⁰ This reflects the allowance permitted for such services in H4.

⁴³¹ This reflects the allowance permitted for such services in H4.

⁴³² This reflects the allowance permitted for such services in H4.

⁴³³ This reflects the allowance permitted for such services in H4 (including current 14.52 Exeter - Paignton SWT service calling only at Torquay and Newton Abbot).

3. *Early and Late Services*

<i>Early Service arrives at destination no later than:</i>			
<i>Route</i>	<i>Monday - Friday</i>	<i>Saturday</i>	<i>Sunday</i>
<i>Exeter St David's – Paignton</i>	<i>1145</i>	<i>0945⁴³⁶</i>	<i>1230</i>
<i>Paignton – Exeter St David's</i>	<i>1345</i>	<i>1030</i>	<i>1330</i>

<i>Late Service departs no earlier than:</i>			
<i>Route</i>	<i>Monday - Friday</i>	<i>Saturday</i>	<i>Sunday</i>
<i>Exeter St David's – Paignton</i>	<i>1730</i>	<i>1745</i>	<i>2045</i>
<i>Paignton – Exeter St David's</i>	<i>1830⁴³⁷</i>	<i>1900</i>	<i>2145</i>

⁴³⁴ This reflects the allowance permitted for such services in H4.

⁴³⁵ This reflects the allowance permitted for such services in H4 (including current 16.10 Paignton - Exeter SWT service calling only at Torquay and Newton Abbot).

⁴³⁶ service arrives 09.23, so to provide some (around 15 mins) flexibility as in other boxes.

⁴³⁷ service departs 18.52, so to provide some (around 15 mins) flexibility as in other boxes.

4 *Maximum Journey Times*

<i>Route</i>	<i>Monday - Friday</i>	<i>Saturday</i>	<i>Sunday</i>
<i>Exeter St David's – Paignton</i>	<i>1 hour (46 minutes if not calling at Exeter St Thomas, Starcross, Dawlish Warren and Torre)</i>	<i>1 hour (46 minutes if not calling at Exeter St Thomas, Starcross, Dawlish Warren and Torre)</i>	<i>1 hour (46 minutes if not calling at Exeter St Thomas, Starcross, Dawlish Warren and Torre)</i>
<i>Paignton – Exeter St David's</i>	<i>1 hour (51 minutes if not calling at Torre, Dawlish Warren, Starcross and Exeter St Thomas)</i>	<i>1 hour (51 minutes if not calling at Torre, Dawlish Warren, Starcross and Exeter St Thomas)</i>	<i>1 hour (51 minutes if not calling at Torre, Dawlish Warren, Starcross and Exeter St Thomas)</i>

Annex 2 to Appendix 13 Initial Strengthened Services⁴³⁸

The Initial Strengthened Services agreed as at the date of the FGW30 HLOS Deed of Amendment are set out below:

Incremental Capacity Bristol & Exeter Morning Peak with Additional Vehicles (LOROL and Second LM 150s) Compared to the Base Fleet

<i>Origin</i>	<i>Departure</i>	<i>Destination</i>	<i>Arrival</i>	<i>Monitored Location</i>	<i>Arrival at Monitored Location</i>	<i>Vehicles per Peak Service - Base</i>	<i>Vehicles per Peak Service - Revised Fleet</i>
		<i>Portsmouth</i>					
<i>Cardiff Central</i>	<i>06:28</i>	<i>Harbour</i>	<i>09:54</i>	<i>Bristol Temple Meads</i>	<i>07:18</i>	<i>2</i>	<i>3</i>
<i>Frome</i>	<i>06:45</i>	<i>Cardiff Central</i>	<i>09:01</i>	<i>Bristol Temple Meads</i>	<i>07:45</i>	<i>2</i>	<i>3</i>
<i>Weymouth</i>	<i>05:35</i>	<i>Bristol Parkway</i>	<i>08:29</i>	<i>Bristol Temple Meads</i>	<i>08:06</i>	<i>2</i>	<i>4</i>
		<i>Portsmouth</i>					
<i>Cardiff Central</i>	<i>07:30</i>	<i>Harbour</i>	<i>10:54</i>	<i>Bristol Temple Meads</i>	<i>08:18</i>	<i>2</i>	<i>3</i>
<i>Portsmouth</i>							
<i>Harbour</i>	<i>06:00</i>	<i>Cardiff Central</i>	<i>09:43</i>	<i>Bristol Temple Meads</i>	<i>08:40</i>	<i>2</i>	<i>4</i>
<i>Weymouth</i>	<i>06:40</i>	<i>Bristol Parkway</i>	<i>09:28</i>	<i>Bristol Temple Meads</i>	<i>09:04</i>	<i>2</i>	<i>2</i>
		<i>Portsmouth</i>					
<i>Cardiff Central</i>	<i>08:30</i>	<i>Harbour</i>	<i>11:54</i>	<i>Bristol Temple Meads</i>	<i>09:18</i>	<i>2</i>	<i>3</i>
<i>Portsmouth</i>	<i>06:51</i>	<i>Cardiff Central</i>	<i>10:42</i>	<i>Bristol Temple Meads</i>	<i>09:39</i>	<i>2</i>	<i>3</i>

⁴³⁸ Date of insertion 02/03/2010

Harbour							
Paignton	06:34	Exmouth	08:18	Exeter St Davids	07:32	1	2
Exmouth	06:46	Paignton	08:12	Exeter St Davids	07:16	1	4
Exmouth	07:15	Paignton	08:42	Exeter St Davids	07:46	2	2
Exmouth	08:23	Paignton	09:57	Exeter St Davids	08:54	1	2
Paignton	08:23	Exmouth	09:48	Exeter St Davids	09:15	1	4
Barnstaple	08:43	Exmouth	10:15	Exeter St Davids	09:49	1	2
						23	41
		Portsmouth					
Cardiff Central	1530	Harbour	1858	Bristol Temple Meads	16:22	2	3
Portsmouth							
Harbour	1422	Cardiff Central	1746	Bristol Temple Meads	16:54	2	3
Bristol Temple M	1710	Bristol Parkway	1727	Bristol Temple Meads	17:10	2	2
		Portsmouth					
Cardiff Central	1630	Harbour	1954	Bristol Temple Meads	17:22	3	5
Portsmouth							
Harbour	1522	Cardiff Central	1845	Bristol Temple Meads	17:54	2	3
		Portsmouth					
Cardiff Central	1730	Harbour	2054	Bristol Temple Meads	18:22	2	3
Portsmouth							
Harbour	1622	Cardiff Central	1944	Bristol Temple Meads	18:54	2	3
Barnstaple	15:43	Exmouth	17:21	Exeter St Davids	16:48	1	3
Paignton	16:12	Exmouth	17:51	Exeter St Davids	17:10	2	4
Paignton	16:54	Exmouth	18:21	Exeter St Davids	17:48	2	2
Exmouth	16:56	Paignton	18:28	Exeter St Davids	17:25	1	2
Exmouth	17:26	Barnstaple	19:11	Exeter St Davids	17:55	1	3
Exmouth	17:56	Paignton	19:27	Exeter St Davids	18:25	2	4
Exmouth	18:26	Barnstaple	20:08	Exeter St Davids	18:55	1	2
						25	42
			Total			71	124

Increment

53

Notes:

- 1. Base Fleet is the DMU vehicles that FGW has on lease (as of September 2009) until the end of the franchise which it uses to operate South West DMU Diagrams***
- 2. Revised Fleet is the Base Fleet plus the LOROL and Second LM Class 150s which will be used to operate South West DMU Diagrams***
- 3. Departure and Arrival times and Origin and Destination points are indicative and may be subject to alteration, notwithstanding the Franchisees obligations with regard to timetable processes***

Annex 3 to Appendix 13 Initial Strengthened Services (Bristol) ⁴³⁹

The Initial Strengthened Services referred to in paragraph 11.1(b)(ii) of Appendix 13 agreed as at the date of the Bristol HLOS Deed of Amendment are set out below:

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.

⁴³⁹ Date inserted 04/08/2011

*Annex 4 to Appendix 13*⁴⁴⁰*LTV Initial Strengthened Services*

The LTV Initial Strengthened Services referred to in paragraph 2(b) of Appendix 13 agreed as at the date of the LTV HLOS Deed of Amendment are set out below:

List of Peak Services Strengthened by Thames Valley HLOS Intervention				
Thames Valley - Morning Peak				
Origin	Origin Time	Destination	Arrival Time	New Formation
Worcester Shrub Hill	0502	Paddington	0729	2+8 SHC
Plymouth	0510	Paddington	0944	2+8 SHC
Great Malvern	0517	Paddington	0759	2+8 SHC
Gatwick	0531	Reading	0700	166(3)
Cheltenham Spa	0553	Paddington	0806	2+8 SHC
Bristol Temple Meads	0600	Paddington	0744	2+8 SHC
Frome	0607	Paddington	0809	2+8 SHC
Bristol Temple Meads	0630	Paddington	0813	2+8 SHC
Cheltenham Spa	0630	Paddington	0840	2+8 SHC
Banbury	0630	Paddington	0850	180
Reading	0632	Paddington	0731	165(2) + 165(3)
Reading	0637	Paddington	0744	165(3) + 165(3)
Reading	0657	Paddington	0747	165(2) + 165(3)
Westbury	0658	Paddington	0753	2+8 SHC
Reading	0702	Paddington	0802	165(2) + 165(3)
Bedwyn	0707	Reading	0756	166(3)
Didcot Parkway	0715	Paddington	0826	2+8 SHC

⁴⁴⁰ Date of Change 21/11/2011

Oxford	0721	Paddington	0858	180
Shalford	0721	Reading	0817	166(3)
Cheltenham Spa	0729	Paddington	0939	2+8 SHC
Oxford	0731	Paddington	0830	2+8 SHC
Basingstoke	0737	Reading	0800	150(3)
Henley on Thames	0744	Paddington	0829	165(2) + 165(2)
Oxford	0806	Paddington	0906	2+8 SHC
Basingstoke	0807	Reading	0830	150(3)
Slough	0825	Paddington	0901	165(2) + 165(3)
Redhill	0833	Reading	1000	166(3)
Basingstoke	0837	Reading	0900	150(3)
Basingstoke	0907	Reading	0930	150(3)
Basingstoke	0937	Reading	1000	150(3)
Worcester Shrub Hill	0502	Paddington	0729	2+8 SHC
Thames Valley Evening Peak				
Origin	Origin Time	Destination	Arrival Time	New Formation
Paddington	1600	Bristol Temple Meads	1741	2+8 SHC
Reading	1604	Redhill	1732	166(3)
Reading	1607	Basingstoke	1631	150(3)
Paddington	1612	Reading	1716	165(2) + 165(3)
Paddington	1622	Oxford	1723	180
Paddington	1627	Oxford	1750	165(2) + 165(3)
Paddington	1630	Taunton	1928	2+8 SHC
Paddington	1636	Exeter St Davids	1914	2+8 SHC
Reading	1639	Basingstoke	1703	150(3)
Paddington	1649	Oxford	1750	2+8 SHC
Reading	1654	Shalford	1748	166(3)
Paddington	1655	Reading	1800	165(2) + 165(3)
Paddington	1706	Westbury	1852	2+8 SHC
Reading	1707	Basingstoke	1731	150(3)
Reading	1712	Newbury	1744	166(3)
Paddington	1712	Henley on Thames	1813	165(2) + 165(3)
Paddington	1718	Oxford	1845	180
Paddington	1722	Hereford	2034	2+8 SHC
Paddington	1725	Banbury	1948	165(2) + 165(3)
Paddington	1733	Oxford	1906	2+8 SHC

Reading	1741	Basingstoke	1805	150(3)
Paddington	1750	Worcester Shrub Hill	2023	2+8 SHC
Paddington	1806	Frome	2002	2+8 SHC
Reading	1807	Basingstoke	1831	150(3)
Reading	1812	Newbury	1844	166(3)
Paddington	1812	Henley on Thames	1913	165(2) + 166(3)
Paddington	1822	Hereford	2131	2+8 SHC
Paddington	1833	Exeter St Davids	2115	2+8 SHC
Reading	1841	Basingstoke	1905	150(3)
Paddington	1845	Reading	1945	165(2) + 165(3)
Paddington	1845	Swansea	2143	2+8 SHC
Paddington	1851	Oxford	1950	2+8 SHC
<u>Bristol Morning Peak</u>				
Origin	Origin Time	Destination	Arrival Time	New Formation
Plymouth	0510	Paddington	0944	2+8 SHC
Paddington	0527	Swansea	0857	2+8 SHC
Paddington	0715	Cardiff	0924	2+8 SHC
Paddington	0700	Bristol Temple Meads	0844	2+8 SHC
Paddington	0630	Bristol Temple Meads	0817	2+8 SHC
Swansea	0758	Paddington	1107	2+8 SHC
Paignton	0740	Paddington	1138	2+8 SHC
<u>Bristol Evening Peak</u>				
Origin	Origin Time	Destination	Arrival Time	New Formation
Paddington	1530	Weston super Mare	1751	2+8 SHC
Paddington	1545	Swansea	1848	2+8 SHC
Weston super Mare	1809	Paddington	2014	2+8 SHC
Paddington	1630	Taunton	1843	2+8 SHC
<u>Falmouth & Torbay Morning Peak</u>				
Origin	Origin Time	Destination	Arrival Time	New Formation
Falmouth	0747	Truro	0815	2 x 153
Falmouth	0850	Truro	0918	2 x 153
Exmouth	0612	Barnstaple	0801	2 x 153
Exmouth	0714	Paignton	0844	2 x 143
Barnstaple	0843	Exmouth	1019	2 x 153

<u>Falmouth & Torbay Evening Peak</u>				
Origin	Origin Time	Destination	Arrival Time	New Formation
Truro	1620	Falmouth	1620	2 x 153
Truro	1727	Falmouth	1751	2 x 153
Truro	1831	Falmouth	1855	2 x 153
Barnstaple	1543	Exmouth	1722	2 x 153
Exmouth	1725	Barnstaple	1913	2 x 153
Paignton	1613	Exmouth	1751	2 x 143
Exmouth	1755	Paignton	1930	2 x 143
<u>Falmouth & Torbay Saturday All Day</u>				
Origin	Origin Time	Destination	Arrival Time	New Formation
Truro	1620	Falmouth	1644	2 x 153
Truro	1727	Falmouth	1751	2 x 153
Falmouth Docks	0850	Truro	0918	2 x 153
Falmouth Docks	0950	Truro	1018	2 x 153
Paignton	0613	Exmouth	0743	2 x 143
Paignton	0904	Exmouth	1050	2 x 143
Paignton	1213	Exmouth	1350	2 x 153
Paignton	1613	Exmouth	1750	2 x 153
Paignton	1713	Exmouth	1852	2 x 143
Paignton	1752	Exmouth	1922	2 x 143
Paignton	2113	Exeter St Davids	2205	2 x 143
Barnstaple	1543	Exmouth	1719	2 x 153
Barnstaple	1243	Exmouth	1419	2 x 153
Barnstaple	0708	Exmouth	0848	2 x 153
Barnstaple	0843	Exmouth	1019	2 x 143
Exmouth	0715	Paignton	0844	2 x 143
<u>Falmouth & Torbay Sunday All Day</u>				
Origin	Origin Time	Destination	Arrival Time	New Formation
Truro	1700	Falmouth Docks	1724	2 x 153
Truro	1946	Falmouth Docks	2010	2 x 153
Falmouth Docks	1110	Truro	1136	2 x 153
Falmouth Docks	1236	Truro	1302	2 x 153
Barnstaple	1720	Exeter Central	1837	2 x 153

Paignton	1257	Exmouth	1418	2 x 153
Paignton	1655	Exmouth	1818	2 x 143
Paignton	1554	Exmouth	1718	2 x 153
Paignton	1749	Exmouth	1918	2 x 143

APPENDIX 14

Recalibration of Benchmarks (Clause 7.2)

1. FRANCHISE COMMENCEMENT RECALIBRATION

1.1 Within one Reporting Period after the Start Date:

- (a) the Cancellations Benchmark and the Service Delivery Benchmark shall be recalibrated in accordance with paragraphs 1.2 to 1.12 inclusive; and
- (b) Appendices 5 and 7 to the Franchise Agreement shall be amended accordingly.

Cancellations Benchmark Table – Target Performance Level

1.2 In respect of the Cancellations Benchmark Table, the Target Performance Level specified therein for the first Reporting Period of the Franchise Agreement shall be recalibrated by:

- (a) taking the number of instances where a Previous Passenger Service was cancelled in accordance with the definitions of Cancellation and Partial Cancellation during the 13 Reporting Periods prior to the Start Date, where a cancellation satisfying the definition of Cancellation shall count as 1 and a cancellation satisfying the definition of Partial Cancellation shall count as 0.5;
- (b) dividing the sum of that number by 13; and
- (c) calculating a percentage in accordance with the following:

$$\frac{A}{B} \times 100$$

where:

- A equals the number determined in accordance with paragraph 1.2(a), as divided in accordance with paragraph 1.2(b); and
- B equals the total number of Previous Passenger Services that were scheduled to be operated during the last Reporting Period prior to the Start Date.

Target Performance Levels for all subsequent Reporting Periods for Cancellations Benchmark

1.3 The Target Performance Level for each Reporting Period in the first Franchisee Year of the Franchise Term (A in the formula below), as determined pursuant to paragraph 1.2, shall be used to determine the relevant Target Performance Level for each of Franchisee Years 2 to 4 (inclusive) by decreasing the Target Performance Level for the first and each subsequent Reporting Period ending in each of those Franchisee Years (so that Target Performance Levels for all Reporting Periods in the same Franchisee Year are identical) from the level applying in the immediately preceding Franchisee Year by an amount calculated in accordance with the following formula, so that the Target Performance Level adjusts on a

straight-line basis, Franchisee Year by Franchisee Year, from the value A in the first Franchisee Year to 0.89 in Franchisee Year 5:

$$\frac{A - 0.89}{4}$$

1.4 The Target Performance Level for all Reporting Periods in Franchisee Years 5 to 10 shall be 0.89.

Service Delivery Benchmark Table – Target Performance Level

1.5 In respect of the Service Delivery Benchmark Table, the Target Performance Level specified therein for the first Reporting Period of the Franchise Term shall be recalibrated by:

- (a) taking the minutes of delay attributed to the relevant Train Operator under its track access agreement with Network Rail in respect of the Previous Passenger Services for the 13 Reporting Periods prior to the Franchise Agreement; and
- (b) dividing the sum of those minutes of delay by 13.

Target Performance Levels for all subsequent Reporting Periods for Service Delivery Benchmark

1.6 The Target Performance Level for the Service Delivery Benchmark for the first Reporting Period of the Franchise Term, as determined pursuant to paragraph 1.5, shall be used to determine the relevant Target Performance Level for the Service Delivery Benchmark for each Reporting Period from the second Reporting Period of Franchisee Year 1 to Period 5 of Franchisee Year 6 by decreasing each such level on a straight-line basis from the level set for the first Reporting Period of the Franchise Term to a level of 26,290 for Reporting Period 6 of Franchisee Year 6.

1.7 The Target Performance Level for the Service Delivery Benchmark for all Reporting Periods after Reporting Period 5 of Franchisee Year 6 shall be 26,290.

Improvement Plan Performance Levels for all Reporting Periods for each Benchmark

1.8 The Improvement Plan Performance Level for each Reporting Period of the Franchise Term shall be calculated in accordance with the following formula:

$$\frac{(100 + 7.5)}{100} \times \text{TPL}$$

where:

TPL equals the relevant Target Performance Level for the relevant Reporting Period as determined pursuant to this paragraph 1.

Breach Performance Levels for all Reporting Periods for each Benchmark

1.9 The Breach Performance Level for each Reporting Period of the Franchise Term shall be calculated in accordance with the following formula:

$$\frac{(100 + 15)}{100} \times \text{TPL}$$

where:

TPL equals the relevant Target Performance Level for the relevant Reporting Period as determined pursuant to this paragraph 1.

Default Performance Levels for all Reporting Periods for each Benchmark

1.10 The Default Performance Level for each Reporting Period of the Franchise Term shall be calculated in accordance with the following formula:

$$\frac{(100 + 20)}{100} \times \text{TPL}$$

where:

TPL equals the relevant Target Performance Level for the relevant Reporting Period as determined pursuant to this paragraph 1.

Roundings

1.11 The Cancellations Benchmark percentages recalibrated pursuant to this paragraph 1 shall be rounded to two decimal places, with the midpoint (that is, 0.835) rounded upwards (that is, 0.84). "A" in the formula set out in paragraph 1.3 above shall not be rounded.

1.12 The Service Delivery Benchmark percentages recalibrated pursuant to this paragraph 1 shall be rounded to the nearest ten minutes of delay, with the midpoint (that is, 5,005) rounded upwards (that is, 5,010).

2. RECALIBRATION TO REFLECT REMAPPING

2.1 The Cancellations Benchmark and the Service Delivery Benchmark as set out in the Franchise Agreement on signing and as subsequently recalibrated under paragraph 1 are each established on the basis of the three Track Access Agreements existing as at the Start Date and Network Rail has committed to continue to attribute performance under the three Track Access Agreements as if there were three separate train operators during the period from the Start Date to the Passenger Change Date in December 2006.

2.2 The Franchisee is expected to enter into the Single Track Access Agreement with Network Rail, under which it will have permission to use the Network Rail network to operate the Passenger Services with effect from the Passenger Change Date in December 2006 and under this agreement performance will be attributed with effect from that date on the basis of there being a single train operator.

2.3 This paragraph sets out the methodology by which the Cancellations Benchmark and the Service Delivery Benchmark will be recalibrated with effect from the Single Track Access Agreement taking effect in order to take account of the change in attribution of performance from the basis of three separate train operators to one of a single train operator.

2.4 As soon as reasonably practicable after the Start Date, the parties shall:

- (a) take the performance data under the three Track Access Agreements in respect of the thirteen consecutive Reporting Periods ending immediately prior to the Start Date and re-attribute that data to determine what would have been the number of Cancellations, Partial Cancellations and Minutes Delay attributed to the Franchisee if the three Track Access Agreements had instead been operated throughout that period by the same train operator under a single track access agreement. For these purposes a cancellation satisfying the definition of Cancellation shall count as 1 and a cancellation satisfying the definition of Partial Cancellation shall count as 0.5;
- (b) compare the results of such re-attribution with the results of the Franchise Commencement Recalibration under paragraph 1 and determine the ratio by which each of the number of Cancellations and Partial Cancellations and the number of Minutes Delay attributed to the Franchisee is increased;
- (c) apply the resultant ratio to amend with effect from the Passenger Change Date in December 2006 (or such other date on which Passenger Services commence being operated under the Single Track Access Agreement) the Cancellations Benchmarks and the Service Delivery Benchmarks respectively, as recalibrated under paragraph 1 and as they may otherwise have been amended, and Appendices 5 and 7 of the Franchise Agreement shall be amended accordingly to reflect those recalibrated Benchmarks;
- (d) take the performance data under the three Track Access Agreements in respect of each of the Reporting Periods from and including the Start Date up to but excluding the Passenger Change Date in December 2006 (or such other date on which Passenger Services commence being operated under the Single Track Access Agreement) and re-attribute that data to determine what would have been the number of Cancellations, Partial Cancellations and Minutes Delay attributed to the Franchisee if the three Track Access Agreements had instead been operated throughout that period by the same train operator under a single track access agreement;
- (e) for the purposes of the calculations required to be carried out under paragraphs 2.4 and 2.7 of Schedule 7.1 in respect of Reporting Periods commencing on or after the Passenger Change Date in December 2006 (or such other date on which Passenger Services commence being operated under the Single Track Access Agreement):
 - (i) the values of Cancellations and Minutes Delay in respect of prior Reporting Periods which commence on or after the Start Date shall be determined using the re-attributed performance data referred to in paragraph 2.4(d); and
 - (ii) for the purposes of paragraph 2.12 of Schedule 7.1, the assumed level of performance for Reporting Periods which precede the Start Date shall be the relevant Target Performance Level as recalibrated under paragraph 2.4(c).

3. COMMON PROVISIONS

3.1 The provisions in this Appendix 14 are without prejudice to paragraph 3 (*Service Delivery Benchmark Adjustments*) of Schedule 7.1 of the Terms (*Performance Benchmarks*), so that:

- (a) Benchmarks recalibrated under this Appendix 14 shall continue to be subject to adjustment under that paragraph 3; and

- (b) if an adjustment is made to the Benchmarks under that paragraph 3 before the calibration under paragraph 2 is completed, then the calibration methodology set out in paragraph 2 shall be subject to such amendment as is reasonably required to take account of that adjustment.

3.2 The parties shall cooperate with regard to recalibration and, whichever party performs the recalibration, the other party shall have a reasonable opportunity to attend the recalibration and receive prompt notification of the workings and results.

3.3 The Franchisee shall carry out:

- (a) the recalibration referred to in paragraph 1 of this Appendix 14, within the timescale set out in paragraph 1.1 above; and
- (b) the recalibration referred to in paragraph 2 of this Appendix 14, in accordance with the following timescales:
 - (i) on or before 15 September 2006 the Franchisee shall provide to the Secretary of State details of its proposed methodology for carrying out the remapping recalibration in accordance with paragraph 2 of this Appendix 14;
 - (ii) promptly following receipt of a notice from the Secretary of State requiring it to do so and in any event by 15 October 2006 the Franchisee shall carry out the remapping recalibration and shall provide to the Secretary of State all workings and results of such recalibration;
 - (iii) on or before 15 November 2006 the parties shall agree or the Secretary of State shall reasonably determine the amendments to the Cancellations Benchmark and Service Delivery Benchmark in accordance with paragraph 2 of this Appendix 14; and
 - (iv) with effect from and including the date on which the Single Track Access Agreement takes effect such that the performance of trains operated under it is monitored and attributed in accordance with its terms, Appendices 5 and 7 to the Franchise Agreement shall be amended accordingly.

3.4 If the Franchisee fails to carry out the recalibration within the timescales set out in paragraph 3.3 above, or if the Secretary of State is not satisfied as to (a) compliance of the proposed methodology with paragraph 2 of this Appendix 14; (b) how such recalibration has been performed; or (c) the results of such recalibration, the Secretary of State may carry out the recalibration in accordance with paragraph 2 and his recalibration shall inform his reasonable determination of the Benchmarks under paragraph 3.3(iii) of this Appendix 14.

APPENDIX 15

List of Documents in the Agreed Terms (*Clause 8*)

<i>Terms</i>	National Rail Franchise Terms
⁴⁴¹ <i>Contingency Plan</i>	<i>The contingency Plan required pursuant to paragraph 1.6 of Part 4 to Appendix 11 (Committed Obligations and HLOS Committed Obligations and Related Provisions)</i>
<i>CMA</i> ⁴⁴²	<i>Current Marketing Activities</i>
<i>FM</i>	Financial Model
<i>IBP</i>	Initial Business Plan
<i>OM</i>	Operational Model
<i>PC</i>	Passenger's Charter
<i>POA</i>	Power of Attorney
<i>ROA</i>	Record of Assumptions
<i>SLC1</i>	First Service Level Commitment
<i>SLC2</i>	Second Service Level Commitment
<i>SQAP</i>	Service Quality Audit Programme
<i>SQMS</i>	Service Quality Management System
<i>SQS</i>	Service Quality Standards
<i>TP</i>	Train Plan
<i>DL</i>	Depot Lease
<i>SL</i>	Station Lease
<i>CF</i>	Major Station Area Lease
<i>DAA</i>	Depot Access Agreement
<i>SAA</i>	Station Access Agreement

⁴⁴¹ Date of change 02/03/2010

⁴⁴² Date of change 02/03/2010

<i>LULSL</i> Note 1	London Underground Limited Station Lease
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Note 1: Whilst the parties agree that the LULSL documents referred to above are agreed form documents, the parties agree that the Franchisee shall not be precluded from further discussions with London Underground Limited (***LUL***) on the following issues:

- (a) LUL's entitlement to close the stations or withdraw any amenities and/or services for specific projects contemplated by the PPP contracts between LUL and Metronet Rail SSL Limited, Metronet Rail BCV Limited and Tubelines Limited and/or PFI contracts between LUL and Citylink Telecommunications Limited, Transactions Systems Limited and EDF Energy Powerlink Limited.
- (b) The amounts of any Common Charge, Exclusive Charges and or Long Term Charges (as each of those terms is defined in the LULSL documents) and provisions dealing with any review of these charges in the event of changes in numbers of vehicle departures.

Derogation Page

ⁱ ~~By virtue of a derogation, the Secretary of State has granted the Franchise Operator the following: An extension to the project completion date for the Relief Line Speed Improvement Project owing to Network Rail delays.~~

~~Start Date 06/03/08 End Date 30/09/08~~

ⁱⁱ ~~By virtue of a derogation, the Secretary of State has granted the Franchise Operator the following: Further time to complete the obligated Platform Extension works at Maidenhead Station.~~

~~Start Date 01/04/08 End Date 31/07/08~~

ⁱⁱⁱ ~~By virtue of a derogation, the Secretary of State has granted the Franchise Operator the following: Further time to complete the obligated Platform Extension works at Maidenhead Station.~~

~~Start Date 01/08/08 End Date 31/12/08~~

^{iv} ~~By virtue of a derogation the Secretary of State has granted the Franchise Operator a derogation against the completion dates for the Committed Obligations contained in paragraphs 2.5 and 2.6.~~

~~Start Date 22/6/2009 End Date 31/12/2010~~

^{*} ~~By virtue of a derogation the Secretary of State has granted the Franchise Operator the following: against the completion date of the new carriage wash plant at Old Oak Common Depot.~~

~~Start Date 30/11/2008 End Date 28/2/2009~~

^{vi} ~~By virtue of a derogation, the Secretary of State has granted the Franchise Operator the following: Further time to install the new carriage wash plants at Exeter and Old Oak Common owing to manufacturer delays and Network Rail delays.~~

~~Exeter Start Date 05/03/08 End Date 30/09/08~~

~~Old Oak Common Start Date 05/03/08 End Date 30/11/08~~

^{vii} ~~By virtue of a derogation, the Secretary of State has granted the Franchise Operator the following: Further time to renew the National Radio Network telephone owing to supplier problems.~~

~~Start Date 01/07/08 End Date 31/10/08~~

^{viii} ^{viii} ~~By virtue of a derogation the Secretary of State has granted the Franchise Operator the following: against the completion work dates on the West DMU fleet in paragraphs 5.11, 5.12, 5.14 and 5.16.~~

~~Start Date 25/5/2009 End Date 30/06/2009~~

^{ix} ~~By virtue of a derogation, the Secretary of State has granted the Franchise Operator the following: A further twelve months to complete the West DMU fleet refresh work.~~

~~Start Date 30/09/07 End Date 30/09/08~~

^{*} ~~By virtue of a derogation, the Secretary of State has granted the Franchise Operator the following: A further six months to complete the West DMU fleet refresh work.~~

~~Start Date 01/10/08 End Date 31/03/09~~

^{xi} ~~By virtue of a derogation, the Secretary of State has granted the Franchise Operator the following: Owing to postponement of HST rolling stock trials, the acquisition of catering trolleys is suspended pending the outcome of the trials.~~

~~Start Date 01/04/08 End Date 01/04/09~~

