

**THIS AGREEMENT** is made as a deed on \_\_\_\_\_ 200

**BETWEEN:**

- (1) [\_\_\_\_ \_\_\_\_], whose registered address at [\_\_\_\_ \_\_\_\_] (*TSP*); and
- (2) [\_\_\_\_ \_\_\_\_], whose registered address at [\_\_\_\_ \_\_\_\_] (*Operator*).

**WHEREAS:**

(A) The Secretary of State and the Operator have entered into a franchise agreement dated [\_\_\_\_ \_\_\_\_] pursuant to which the Operator has been appointed the Secretary of State's franchisee to provide railway passenger services on the [*relevant Franchise*] (the **Franchise Agreement**).

(B) The Operator wishes to use the Sets to provide the railway passenger services on the [*relevant Franchise*], and the TSP wishes to make the Sets available to the Operator pursuant to and in accordance with the terms of this Agreement.

**NOW THEREFORE** in consideration of the provisions and mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, **IT IS AGREED** as follows:

**1. INTERPRETATION AND DEFINITIONS**

**Interpretation**

- 1.1 In this Agreement, except to the extent the context otherwise requires:
  - (a) any reference to this Agreement includes the Schedules and Appendices, each of which form part of this Agreement;
  - (b) references in this Agreement to Recitals, Parts, clauses, Schedules, paragraphs and Appendices are to Recitals, Parts, clauses, Schedules, paragraphs of Schedules and Appendices of Schedules of this Agreement, unless expressly specified to the contrary;
  - (c) references in any Schedule to a paragraph or Appendix are references to a paragraph or Appendix of that Schedule unless expressly specified to the contrary;
  - (d) references to this Agreement include this Agreement as amended or supplemented in accordance with its terms;
  - (e) references to any enactment or statutory provision shall unless otherwise expressly specified, include any subordinate legislation made from time to time under such enactment or statutory provision and are to be construed as references to that enactment or statutory provision as for the time being amended or modified or to any enactment or statutory provision for the time being replacing or amending it and references to any subordinate legislation are to be construed as references to that legislation as for the time being amended or modified or to any legislation for the time being replacing or amending it;
  - (f) references in this Agreement to any other agreement, document or instrument (other than an enactment or statutory provision) shall be construed as referring to that

- agreement, document or instrument as from time to time amended, varied, supplemented, replaced, assigned or novated;
- (g) the contents page, headings and references to headings are for convenience only and shall be disregarded in construing this Agreement;
  - (h) the words “include”, “including” and “in particular” shall be construed without limitation;
  - (i) words in the singular shall include the plural and vice-versa;
  - (j) words importing one gender shall include other genders;
  - (k) a reference to a person shall include a reference to a firm, body corporate, an unincorporated association, a partnership, limited partnership, limited liability partnership or to an individual’s executors and administrators and references to any person shall include its successors, transferees and assignees;
  - (l) the terms “party” and “parties” shall refer to the TSP and/or the Operator, as appropriate, and references to a “third party” are references to any person who is not a party;
  - (m) unless otherwise stated in this Agreement, the costs of performing an obligation under this Agreement shall be borne by the party required to perform such obligation;
  - (n) words and expressions defined in the Interpretation Act 1978 have the same meanings when used in this Agreement;
  - (o) references to “railway passenger services” are to be construed subject to Section 40 of the Railways Act 2005; and
  - (p) words and expressions defined in Part I of the Act have the same meanings when used therein provided that, except to the extent expressly stated, “railway” shall not have the wider meaning attributed to it by Section 81(2) of that act.

## **TARA Definitions**

1.2 In this Agreement, the following words and expressions shall have the following meanings, except to the extent the context otherwise requires:

***Access Agreement*** has the meaning given to the term “access agreement” in Section 83(1) of the Act;

***Act*** means the Railways Act 1993;

***Actual Acceptance Date*** means, in relation to a Set, the date on which such Set is issued with a Provisional Acceptance Certificate or a Qualified Provisional Acceptance Certificate;

***Actual Operational Mileage*** means, in relation to a Set used to satisfy any Dispatch Requirements, the total miles travelled by that Set between its Entry Point and its Exit Point;

***Additional Performance Review Meeting*** has the meaning given to it in paragraph 5.2(c) of Schedule 4.1 (*Contract Management*);

**Affected Party** means a party whose performance of its obligations under this Agreement is affected by a Force Majeure Event;

**Annual Fleet Efficiency Average** has the meaning given to it in paragraph 1.5 of Schedule 4.2 (*Compliance Testing*);

**Applicable Laws and Standards** means all or any laws, statutes, proclamations, by-laws, directives, regulations, statutory instruments, rules, orders, rules of court, delegated or subordinate legislation, rules of common law, or any European Union legislation at any time or from time to time in force in the United Kingdom which relate to this Agreement or the obligations to be performed under it, any agreement or document referred to in this Agreement or the Sets or Vehicles, including Industry Standards, Environmental Laws, the Railways (Interoperability) Regulations 2006 and the ROGS, in each case to the extent that they are so applicable;

**Assets** means [all Sets and Vehicles, spares, special tools and other relevant assets in each case, from time to time owned by the TSP and in existence];<sup>1</sup>

**ATOC** means the Association of Train Operating Companies;

**Audit and Reporting KPI Standards Failure** means the audit and reporting failures specified in paragraphs 4.3 and 4.4 of Schedule 6.3 (*KPI Regime*);

**Audit and Reporting Payment** means that element of the KPI Payment for any Reporting Period that is calculated pursuant to paragraph 2.4 of Schedule 6.3 (*KPI Regime*);

**Authority to Proceed** means a notice issued by the Secretary of State to the TSP pursuant to the terms of the MARA, authorising a variation to the terms of this Agreement;

**Availability Adjustment** means the adjustment to the Base Period Charge for any Reporting Period referred to in paragraph 2.2 of Schedule 5.1 (*TARA Payments*) and calculated in accordance with paragraph 3 of Schedule 6.1 (*Availability Regime*);

**Available** means the status of a Set as specified in paragraph 2.1 of Schedule 6.1 (*Availability Regime*);

**Average Set Fuel Efficiency Ratio** has the meaning given to it in paragraph 1.1(b) of Schedule 4.2 (*Compliance Testing*);

**Bank** means a person which has a permission under Part IV of the Financial Services and Markets Act 2000 to carry on one or more of the regulated activities provided thereunder;

**Bank Holiday** means any day other than a Saturday or Sunday on which Banks in the City of London are not open for domestic business;

**Base Period Charge** has the meaning given to it in paragraph 2.1 of Schedule 5.1 (*TARA Payments*);

**Bedding In Factor** means:

(a) during the First Bedding In Period, 0.5;

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<sup>1</sup> Definition to be confirmed post tender return. To include any depot assets where relevant.

- (b) during the Second Bedding In Period, 0.75; and
- (c) thereafter, 1;

**Business Day** means a Weekday on which Banks in the City of London are open for domestic business;

**Breach** has the meaning given to it in paragraph 1.1(a) of Schedule 10.1 (*Remedial Plans*);

**Category One Handover Failure** means any Presentation Standards Failure specified in Table 1 (*Category One Handover Failures*) of the Presentation Standards Table in the row corresponding to that Presentation Standards Failure, the occurrence of which before the start of any Operational Day means a Set affected by it (whether wholly or partially, as the relevant presentation standard requires) is not permitted to enter service;

**Category One In-Service Failure** means any Presentation Standards Failure specified in Table 2 (*Category One In-Service Failures*) of the Presentation Standards Table in the row corresponding to that Presentation Standards Failure, the occurrence of which during the Operational Day means a Set affected by it (whether wholly or partially, as the relevant presentation standard requires) is not permitted to remain in service;

**Category Two Handover Failure** means any Presentation Standards Failure specified in Table 3 (*Category Two Handover Failures*) of the Presentation Standards Table in the row corresponding to that Presentation Standards Failure, the occurrence of which before the start of any Operational Day means a Set affected by it (whether wholly or partially, as the relevant presentation standard requires) is permitted to enter service at the Operator's discretion;

**Category Two In-Service Failure** means any Presentation Standards Failure specified in Table 4 (*Category Two In-Service Failures*) of the Presentation Standards Table in the row corresponding to that Presentation Standards Failure, the occurrence of which during any Operational Day means a Set affected by it (whether wholly or partially, as the relevant presentation standard requires) is permitted to remain in service at the Operator's discretion;

**CEDR** means the Centre for Effective Dispute Resolution;

**Certificate of Commencement** means [\_\_\_\_\_];

**Certified Fuel Consumption Rate** means, in respect of a Set, either:

- (a) the Fuel Consumption Rate certified on the Type Acceptance Certificate for that Type of Set; or
- (b) the latest, at any time, Fuel Consumption Rate certified for that Set pursuant to paragraph 2.3, of Schedule 6.4 (*Fuel Regime*);<sup>2</sup>

**Claim** has the meaning given in paragraph 1.4 of Schedule 9 (*Intellectual Property*);

**Cleaning KPI Standards Failure** means any failure to meet the standard required of a Key Performance Indicator:

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<sup>2</sup> Note to Bidders: This is to be determined as part of the testing and acceptance programme, and stated on the Type Acceptance Certificate in relation to each Type of train.

- (a) which is specified in Table 3 of the Appendix (*KPI Scorecards*) to Schedule 6.3 (*KPI Regime*) and occurs at or prior to the Entry Time of a Set; or
- (b) which is specified in Table 4 of the Appendix to Schedule 6.3 and occurs during the Operational Day of a Set;

**Cleaning Payment** means that element of the KPI Payment for any Reporting Period that is calculated pursuant to paragraph 2.3 of Schedule 6.3 (*KPI Regime*);

**Commercially Sensitive Information** means the sub-set of Confidential Information designated as such by agreement between the parties from time to time, for such period as is specified in the Appendix (*Commercially Sensitive Information*) to Schedule 12 (*Confidentiality*) or as otherwise agreed;

**Compliance Notice** means a Fuel Compliance Test Notice or a Standards Test Compliance Notice;

**Compliance Test** means any of:

- (a) Emission Compliance Test;
- (b) Fuel Compliance Test;
- (c) Noise Compliance Test; and
- (d) Ride Compliance Test;

**Confidential Information** means:

- (a) information that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) and may include information whose disclosure would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either party and all personal data and sensitive personal data within the meaning of the Data Protection Act 1988; and
- (b) Commercially Sensitive Information;

**Configuration Database** has the meaning given in paragraph 2 of Schedule 9 (*Intellectual Property*);

**Consumables** means all materials and fluids required on a Set necessary for that Set to deliver the required level of performance and availability and to meet the standards of all Key Performance Indicators, including all toilet cubicle materials (but excluding catering consumables);

**Contract Year** means any period of 12 months during the Term, beginning on 1 April and ending on 31 March, except that the first and last Contract Years may be for a period of less than 12 months and the first Contract Year shall begin on the date of this Agreement and the last Contract Year shall end on the last day of the Term;

**Current Calculation** has the meaning given to it in paragraph 5.7(c) of Schedule 6.3 (*KPI Regime*);

***Current Reporting Period*** has the meaning given to it in paragraph 5.7(c)(i) of Schedule 6.3 (*KPI Regime*);

***Damaged Set*** means a Set that is damaged as a result of a Major Incident such that the TSP cannot make that Set available to the Operator;

***Deduction*** means a deduction to any TARA Payment, being, as appropriate, an Availability Adjustment, a Reliability Adjustment or any deduction to a KPI Payment;

***Deemed Available*** means the status of a Set that is not Available on any day, but to which paragraph 2.1 of Schedule 6.1 (*Availability Regime*) applies;

***Deemed Unavailable*** means the status of a Set, as specified in paragraph 3.1 of Schedule 3.2 (*In-Service Faults*);

***Delay Attribution Guide*** has the meaning given to it in the Network Code;

***Delay Event*** means a Set passing a Recording Point (as defined in the Track Access Agreement) later than scheduled where that lateness was not recorded at the previous Recording Point;

***Delay Incident*** means an incident that causes Minutes Delay to any Passenger Service, as determined in accordance with TRUST;

***Depot*** means [*to be discussed, negotiated and contractualised depending on bid responses*];

***Dispatch Requirements*** has the meaning given to it in paragraph 1.2 of Schedule 2.1 (*Availability Requirements*);

***Dispute*** has the meaning given to it in clause 17.1;

***Dispute Notice*** has the meaning given to it in clause 17.3;

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

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

***Documentation*** means all documentation and information (including manuals, training materials, guidelines, technical information, and design information), that relates to any of the Assets and/or the exercise of rights under, or the performance of obligations under, and/or carrying out activities relating to this Agreement, in hard copy and in an electronic copy format specified by the Operator (to the extent not required to be supplied under any other provision of this Agreement);

***Emission Compliance Test*** means [*test as set out in the tender response, negotiated and contractualised*];

***Emission Standard*** [*to be derived from Train Technical Specification and Bidder response thereto*];

***Endemic Fault*** means any Endemic Fleet Fault or Endemic Type Fault;

***Endemic Fleet Fault*** means a Fault which is reasonably likely to occur and/or has occurred in [REDACTED] per cent. of the Fleet within a 60-month period;

***Endemic Type Fault*** means a Fault which is reasonably likely to occur and/or has occurred in [REDACTED] per cent. of the Sets of a particular Type within a 60-month period;

***Entry Point*** means, in respect of a Set made available by the TSP to satisfy the Dispatch Requirements, the Depot where such Set is to be made available as specified in the relevant Dispatch Requirements;

***Entry Time*** means, in respect of a Set made available by the TSP to satisfy the relevant aspects of the relevant Dispatch Requirements, the time at which such Set is to be made available to depart as specified in those Dispatch Requirements;

***Environment*** means:

- (a) land, including surface land, sub-surface strata, sea bed and river bed under water (as defined in paragraph (b) and natural and man-made structures;
- (b) water, including coastal and inland waters, surface waters, ground waters and waters in sewers and drains;
- (c) air, including air inside buildings and in other natural and man-made structures above or below ground; and
- (d) any and all living organisms or systems supported by those media, including humans;

***Environmental Laws*** means all or any laws (whether civil, criminal or administrative), statutes, proclamations, by-laws, directives, regulations, statutory instruments, rules, orders, rules of court, delegated or subordinate legislation, rules of common law at any time and from time to time in force in the United Kingdom or [additional relevant jurisdictions of testing and manufacturing will be inserted later] relating to any Environmental Matters;

***Environmental Matters*** means:

- (a) pollution or contamination or the threat of pollution or contamination of the Environment;
- (b) the generation, manufacture, processing, handling, storage, distribution, use, treatment, removal, transport, importation, exportation, disposal, release, spillage, deposit, escape, discharge, leak, emission, leaching or migration of any Hazardous Substances;
- (c) exposure of any person to Hazardous Substances or Waste;
- (d) the creation of noise, vibration, common law or statutory nuisance, or other harm to the Environment and/or the health and safety of any human being; and
- (e) the health and safety of any human being;

***Excused Full Set*** means any Excused Set that is a Full Set;

***Excused Half Set*** means any Excused Set that is a Half Set;

**Excused Set** has the meaning given to it in paragraph 3.4 of Schedule 1.2 (*TSP Covenants and Performance*);

**Excused Set Availability Adjustment** means that proportion of the Availability Adjustment for any Reporting Period that relates to Half Sets which is calculated in accordance with paragraph 3.4 of Schedule 6.1 (*Availability Regime*);

**Excusing Event** means:

- (a) a failure by the Operator to fulfil its obligations under this Agreement;
- (b) a Force Majeure Event affecting the TSP; or
- (c) damage caused by Operator Misconduct,

which, in each case, is the direct cause of the TSP's failure to make a Set Available;

**Exit Point** means the Depot at which the Operator returns a Set to the TSP in accordance with Schedule 2.2 (*Handover and Handback*);

**Expected Period Mileage** [*refer to relevant TARA information pack*];

**Expiry Date** means the later of:<sup>3</sup>

- (a) the date this Agreement is terminated in accordance with its terms;
- (b) the Initial Expiry Date; and
- (c) the date to which the Franchise Agreement is continued in accordance with its terms;

**Failed But Used** means the status of a Set as specified in paragraph 3.2 of Schedule 3.2 (*In-Service Faults*);

**Failed Set** has the meaning given to it in paragraph 2.1 of Schedule 3.2 (*In-Service Faults*);

**Failure Event** has the meaning given to it in paragraph 4.1(b) of Schedule 10.1 (*Remedial Plans*);

**Fault** means the cessation or material impairment of the ability of any device, functional unit of equipment, system or component on a Set or Vehicle to perform its intended function;

**Final Acceptance Certificate** means [*definition currently set out in the TARA*];

**final warning notice** has the meaning given to it in paragraph 4.2 of Schedule 10.1 (*Remedial Plans*);

**Financier** means [\_\_\_\_\_];

**First Bedding In Period** means the period from the Initial Deployment Date until the last day of the sixth complete Reporting Period after the Initial Deployment Date;

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<sup>3</sup> Note to Bidders: In relation to subsequent TARAs, the Expiry Date may be the RV Date in accordance with the MARA.



***Fit for Service*** has the meaning given to it in paragraph 1.1 of Schedule 2.2 (*Handover and Handback*);

***Fleet*** means those Sets of which short details are provided in Appendix 3 (*Sets Comprised in the Fleet*) to Schedule 2.1 (*Availability Requirements*);

***Fleet Acceptance Certificate*** means [definition currently set out in the MARA];

***Fleet Fuel Efficiency Benchmark*** has the meaning given to it in paragraph 1.4 of Schedule 4.2 (*Compliance Testing*);

***Fleet Introduction Payment*** means the payment added to the Base Period Charge for any Reporting Period calculated in accordance with paragraph 1.1 of Schedule 5.3 (*Fleet Introduction Payments*);

***Fleet Introduction Period*** means the period from Initial Deployment Date until the Full Deployment Date, being the period in which the Sets will be introduced into service up to full deployment of the Fleet;

***Fleet Retention Amount*** means the retention amount calculated in accordance with paragraph 1.5 of Schedule 5.3 (*Fleet Introduction Payments*);

***Fleet Retention Release Payment*** means the payment payable in accordance with paragraph 1.7 of Schedule 5.3 (*Fleet Introduction Payments*);

***Force Majeure Event*** means any of the following:

- (a) war or civil war (whether declared or undeclared);
- (b) civil unrest;
- (c) any act of terrorism or a specific threat of terrorism;
- (d) nuclear accident;
- (e) lightning, earthquake, or extraordinary storm; or
- (f) fire or flooding,

if and only to the extent that such event is not caused by, and its effects are beyond the reasonable control of, the Affected Party and such event is not one:

- (i) whose adverse effect on the Affected Party's ability to perform this Agreement could reasonably have been avoided or provided against by the Affected Party;
- (ii) whose effect the Affected Party is otherwise required to avoid or provide against (other than by way of insurance) under this Agreement; or
- (iii) which the Affected Party could reasonably have avoided or provided against;

***formal warning notice*** has the meaning given to it in paragraph 4.1 of Schedule 10.1 (*Remedial Plans*);

**Franchise Agreement** has the meaning given to it in Recital (A);

**Fuel Benchmark Testing Period** means the period of 13 consecutive Reporting Periods commencing on the first day of the fourth Reporting Period after the Full Deployment Date;

**Fuel Compliance Test** means [as set out in the tender response, negotiated and contractualised];

**Fuel Compliance Test Notice** has the meaning given to it in paragraph 1.3 of Schedule 4.2 (Compliance Testing);

**Fuel Consumption Adjustment** means the adjustment to the Base Period Charge for any Reporting Period referred to in paragraph 2.5 of Schedule 5.1 (TARA Payments) and calculated in accordance with paragraph 2 of Schedule 6.4 (Fuel Regime);

**Full Deployment Date** [refer to relevant TARA information pack];

**Full Set** means [as set out in the tender response, negotiated and contractualised];

**Full Set Availability Adjustment** means that proportion of the Availability Adjustment for any Reporting Period that relates to Half Sets which is calculated in accordance with paragraph 3.3 of Schedule 6.1 (Availability Regime);

**Government Authority** means:

- (a) any government (*de jure or de facto*) of the United Kingdom or any political subdivision of the United Kingdom or any local jurisdiction in the United Kingdom;
- (b) any governmental authority or statutory, legal, fiscal, monetary or administrative body (whether it be domestic, foreign, international, supranational, state or local and including any such authority or body of the European Union) which operates or has jurisdiction, directly or indirectly, in the United Kingdom;
- (c) any instrumentality, commission, court or agency of any of the above, however constituted; and/or
- (d) any association, organisation, or institution of which any of the above is a member or to whose jurisdiction any of the above is subject or in whose activities any of the above is a participant;

**Group Standards** means, to the extent applicable to the Sets and Vehicles and their operation, those standards (including codes of practice, guidance notes and manuals) to which railway assets or equipment used on or as part of railway assets must conform, and operating procedures with which operators of railway assets must comply, in each case as prepared and updated by RSSB;

**Half Set** means [as set out in the tender response, negotiated and contractualised];

**Half Set Availability Adjustment** means that proportion of the Availability Adjustment for any Reporting Period that relates to Half Sets which is calculated in accordance with paragraph 3.2 of Schedule 6.1 (Availability Regime);

**Handback Certificate** has the meaning given to it in paragraph 6.3(a) of Schedule 2.2 (Handover and Handback);

**Handover Certificate** has the meaning given to it in paragraph 5.1 of Schedule 2.2 (*Handover and Handback*);

**Hazardous Substance** means any substance capable (whether alone or in combination with any other) of causing pollution or contamination, harm or damage to property or the Environment, including any Waste;

**HMRI** means Her Majesty's Railway Inspectorate and includes any successor to all or any of its functions;

**HSE** means the Health & Safety Executive and includes any successor to all or any of its functions;

**Individual Set Fuel Efficiency Ratio** has the meaning given to it in paragraph 1.1(a) of Schedule 4.2 (*Compliance Testing*);

**Industry Standards** means all the laws, rules, regulations, recommendations and instructions including codes of practice and conduct which, from time to time, have force of law or with which it is generally accepted within the rail industry in Great Britain that it is good practice to comply, relating to the performance of this Agreement, the Sets or Vehicles, issued by ATOC, HMRI, HSE, Network Rail, the Notified Body, NRAP, the ORR, RSSB, (in each case to the extent acting in its capacity as a relevant authority under the Applicable Laws and Standards) or any other Government Authority or person from time to time legally authorised to set standards in respect of the rail industry and shall include the Rule Book, Group Standards, Network Rail Company and Group Standards and Notified Standards;

**Infrastructure Monitoring Systems** means those on-Set systems described in [clause/section 4.17]<sup>4</sup> of the Train Technical Specification that collect data on the infrastructure condition;

**Initial Deployment Date** means [\_\_\_\_\_] <sup>5</sup>;

**Initial Expiry Date** means [insert date from relevant Franchise Agreement];

**In-Service Fault** means, in relation to a Set, any Fault that occurs during the Operational Day that was not indicated on the Handover Certificate;

**Intellectual Property Rights** means patents, trade marks, service marks, logos, trade names, copyright (including rights in computer software) and moral rights, database rights, semiconductor topography rights, utility models, rights in designs, rights in get-up, rights in inventions, rights in know-how and other intellectual property rights, in each case whether registered or unregistered, and all rights or forms of protection having equivalent or similar effect anywhere in the world and **registered** includes registrations and applications for registration;

**Interest Rate** means a rate equivalent to two per cent per annum above the base lending rate published by [Bidders to propose] (or such other bank as the TSP may, after consultation with the Operator, determine from time to time from the following: Barclays Bank plc; HBOS plc;

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<sup>4</sup> To be set out in full in TARA before execution with Relevant Operator.

<sup>5</sup> Bidders to populate in relevant TARA information pack. This date will be the first date on which Sets are scheduled to be accepted into service (as extended, where appropriate, under the MARA). Refer to ITT for guidance.

HSBC Bank plc; Lloyds TSB Bank plc; and the Royal Bank of Scotland plc) during any period in which an amount is payable under this Agreement remains unpaid;

**Joint Performance Improvement Plan** has the meaning given to it in the Network Code;

**Key Performance Indicator** means a qualitative measure of the TSP's service quality performance specified in the Appendix (*Key Performance Indicators*) to Schedule 6.3 (*KPI Regime*);

**KPI Failure** means any Audit and Reporting KPI Standards Failure, Cleaning KPI Standards Failure or Presentation KPI Standards Failure;

**KPI Payment** means the payment added to the Base Period Charge for any Reporting Period referred to in paragraph 2.4 of Schedule 5.1 (*TARA Payments*) and calculated in accordance with paragraph 2 of Schedule 6.3 (*KPI Regime*);

**KPI Points** means, in relation to any Key Performance Indicator, any points that are attributable for failing to meet the standard specified in that Key Performance Indicator;

**KPI Regime** means the incentive regime specified in Schedule 6.3 (*KPI Regime*) for measuring the TSP's performance against the Key Performance Indicators specified in the Appendix (*KPI Scorecards*) to that Schedule;

**KPI Scorecard** the scorecard in the agreed form marked **KPI**, on which any KPI Failure shall be recorded which is identified during the carrying out of any TSP KPI Check, any Operator Audit or otherwise by the Operator during the Operational Day;<sup>6</sup>

**Licences** means such licences granted or to be granted under Applicable Law and Standards as the Operator may be required from time to time to hold under the Act in order to provide or operate the Passenger Services;

**Losses** means all damages, losses, liabilities, costs, expenses (including legal and other professional charges and expenses), and charges whether arising under statute, contract or at common law or in connection with judgments, proceedings, internal costs or demands and **Loss** shall be construed accordingly;

**Maintainer** means [\_\_\_\_\_];

**Maintainer IPR** means any Intellectual Property Rights, whether existing at the date of this Agreement or arising thereafter, that are owned by the Maintainer and are used in connection with the performance of this Agreement and/or the [*insert name of train operating, maintaining, manufacturing, etc. agreements*], including for the purposes specified in paragraph 1.1 of Schedule 9 (*Intellectual Property*);

**Major Incident** means any crash, collision or other incident which:

- (a) involves a Set;
- (b) occurs during the Operational Day of that Set;

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<sup>6</sup> Tables in the Appendix to Schedule 6.3 presently contain the KPI Scorecards. It is anticipated that before contract signature the scorecards will migrate to a separate document.

- (c) renders that Set a Damaged Set; and
- (d) is not attributable to the acts or omissions of the TSP;

**Manuals** means [*the operations manual, driver's manual etc, as set out in tender response, negotiated and contractualised*];

**Manufacturer** means [\_\_\_\_\_];

**Manufacturer IPR** means any Intellectual Property Rights, whether existing at the date of this Agreement or arising thereafter, that are owned by the Manufacturer and are used in connection with the performance of this Agreement and/or the [*insert name of train operating, maintaining, manufacturing, etc. agreements*], including for the purposes specified in paragraph 1.1 of Schedule 9 (*Intellectual Property*);

**MARA** means Master Availability and Reliability Agreement between the TSP and the Secretary of State dated [\_\_\_\_\_];

**Marginal Set Payment** means:

- (a) in relation to a Full Set [*bidders to populate in the relevant TARA information packs/proformas*] and
- (b) in relation to a Half Set [*bidders to populate in the relevant TARA information packs/proformas*];

**Marginal Set Payment Adjustment** means the adjustment to the Base Period Charge for any Reporting Period calculated in accordance with paragraph 2.10 of Schedule 5.1 (*TARA Payments*);

**Maximum Available Full Sets** means the maximum number of Full Sets that the Operator can require be made available to it in its Dispatch Requirements, as specified in the Rules of the Fleet;

**Maximum Available Half Sets** means the maximum number of Half Sets that the Operator can require be made available to it in its Dispatch Requirements, as specified in the Rules of the Fleet;

**Maximum Available Sets** means together the Maximum Available Full Sets and the Maximum Available Half Sets;

**MDBF** means the “mean distance between failures” as recorded by NFRIP;

**MDBF Reference Date** means any of the dates specified in column 2 of the table in paragraph 1.3 of Schedule 5.3 (*Fleet Introduction Payments*);

**Measurement Period** has the meaning given to it in paragraph 1.1(a) of Schedule 4.2 (*Compliance Testing*);

**Mileage Adjustment** means any adjustment to the Base Period Charge calculated in accordance with paragraphs 2.7 and 2.8 of Schedule 5.1 (*TARA Payments*);

**Minutes Delay** means the delay minutes to the Passenger Services that are attributed, or to be attributed, by the Operator and Network Rail pursuant to any Track Access Agreement between them;

**Network** means the network in respect of which Network Rail is the facility owner and which is situated in England, Wales and Scotland;

**Network Code** means the document known as the Network Code and formerly known as the Railtrack Track Access Conditions 1995 (as subsequently replaced or amended from time to time) or any equivalent code or agreement;

**Network Rail** means in respect of:

- (a) the network or any relevant facility:
  - (i) Network Rail Infrastructure Limited, a company registered in England with registered number 02904587 whose registered office is at 40 Melton Street, London NW1 2EE; and
  - (ii) any successor in title to the network or any relevant railway facility; or
- (b) any new or other sections of network or any relevant new or other railway facilities, the owner (if different);

**Network Rail Company and Group Standards** means to the extent applicable to the Sets and Vehicles and their operation, those standards (including codes of practice, guidance notes and manuals) to which railway assets or equipment used on or as part of railway assets must conform, and operating procedures with which operators of railway assets must comply, in each case as prepared and updated by Network Rail;

**Network Rail Information** has the meaning given to it in paragraph 2.7 of Schedule 4.1 (*Contract Management*);

**NFRIP** means the National Fleet Reliability Improvement Programme;

**Noise Compliance Test** means [*test as set out in the tender response, negotiated and contractualised*];

**Noise Standard** [*to be derived from Train Technical Specification and Bidder response thereto*];

**Non-Compliant Set** has the meaning given to it in paragraph 3.2 of Schedule 4.2 (*Compliance Testing*);

**Non-Operational Day** means, in relation to each Set, all time other than the Operational Day;

**not confident response** has the meaning given to it in paragraph 3.5(c) of Schedule 10.1 (*Remedial Plans*);

**Notice of TSP Default** has the meaning given to it in paragraph 2.1 of Schedule 10.2 (*TSP Default*);

**Notifiable Event** means any Notifiable Unavailability Event or Notifiable Reliability Event;

**Notifiable Reliability Event** has the meaning given to it in paragraph 4.5 of Schedule 4.1 (*Contract Management*);

**Notifiable Unavailability Event** has the meaning given to it in paragraph 4.2 of Schedule 4.1 (*Contract Management*);

**Notified Body** means any person approved as a notified body for the purposes of acceptance of the Sets;

**Notified Standards** has the meaning given to it in the Railways (Interoperability) Regulations 2006;

**NRAP** means the Network Rail Acceptance Panel and any successor to all or any of its functions;

**Operational Day** means, in relation to each Set on any day or days, the period between the handover of the Set to the Operator in accordance with Schedule 2.2 (*Handover and Handback*) and the handback of the Set to the TSP in accordance with Schedule 2.2;

**Operator Audit** has the meaning given to it in paragraph 6.3 of Schedule 6.3 (*KPI Regime*);

**Operator Default** means any of the events in paragraph 1 of Schedule 10.3 (*Operator Default*);

**Operator Contract Manager** has the meaning given to it in paragraph 1.2 of Schedule 4.1 (*Contract Management*);

**Operator Misconduct** means the gross negligence, wilful misconduct or wilful default of the Operator;

**Operator Property** has the meaning given to it in paragraph 1.1(b) of Schedule 8 (*Indemnities*);

**Operator Responsible Damage** means damage caused to a Set that is:

- (a) directly attributable to Operator Misconduct;
- (b) directly attributable to a Major Incident not caused by vandalism; or
- (c) directly attributable to vandalism (including any Major Incident caused by vandalism) where such vandalism:
  - (i) occurs during the Operational Day of a Set; and
  - (ii) is caused to the interior of that Set (including the interior of any cab of that Set,

and which in each case, is not attributable to the acts or omissions of the TSP;

**ORR** means the Office of Rail Regulation established by section 15 of the Railways and Transport Safety Act 2003 and having the duties and obligations set out in the Act and any successor body thereto;

**Passenger Services** means the Operator's railway passenger services specified in any Timetable and/or in any Plan of the Day;

**Payment Date** means the date for the payment of any TARA Payment specified in accordance with paragraph 3.3 of Schedule 5.1 (*TARA Payments*);

**Performance Regime** means the performance regime set out in Schedule 6 (*Performance Regime*);

**Performance Report** means the report to be provided by the TSP to the Operator pursuant to paragraph 5.3(a) and as specified in paragraph 7 of Schedule 4.1 (*Contract Management*);

**Performance Review Meeting** has the meaning given to it in paragraph 5.2(a) of Schedule 4.1 (*Contract Management*);

**Permitted Use** means the use of the Sets for the provision of Passenger Services on the Relevant Network;

**Persistent Failure** has the meaning given to it in paragraph 3.7 of Schedule 10.1 (*Remedial Plans*);

**Persistent Failure Default Event** has the meaning given to it in paragraph 4.3 of Schedule 10.1 (*Remedial Plans*);

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

**Presentation KPI Standards Failure** means any failure to meet the standard required of a Key Performance Indicator:

- (a) which occurs at or prior to the Entry Time of a Set, as specified in Table 1 of the Appendix (*KPI Scorecards*) to Schedule 6.3 (*KPI Regime*); or
- (b) which occurs during the Operational Day of a Set, as specified in Table 2 of the Appendix to Schedule 6.3;

**Presentation KPI Standards Payment** means that element of the KPI Payment for any Reporting Period that is calculated pursuant to paragraph 2.2 of Schedule 6.3 (*KPI Regime*);

**Presentation Standards Failure** means the occurrence of any of the faults specified in column 2 of any of the tables comprising the Presentation Standards Table;

**Presentation Standards Table** means, together, the tables in the Appendix (*Presentation Standards Table*) to Schedule 2.2 (*Handover and Handback*) and collectively headed "Presentation Standards Table";

**Principals' Meeting** has the meaning given to it in paragraph 5.4 of Schedule 4.1 (*Contract Management*);

**Primary Minutes Delay** means Minutes Delay that arise in relation to any Passenger Service resulting from the occurrence and accumulate during the subsistence of a planned or unplanned incident (the occurrence and duration of which is determined in accordance with the Delay Attribution Guide and recorded by TRUST) that is not specified in the applicable



working timetable that relates to the Timetable, whether those Minutes Delay arise at the location where that incident occurred, or subsequently at any other location on the Relevant Network;

**Prior to Entry Time** has the meaning given to it in paragraph 1.3(b) of Schedule 2.1 (*Availability Requirements*);

**Provisional Acceptance Certificate** means [*definition currently set out in the MARA*];

**Qualified Provisional Acceptance Certificate** means [*definition currently set out in the MARA*];

**Reference Calculation** has the meaning given to it in paragraph 5.7(a) of Schedule 6.3 (*KPI Regime*);

**Reimbursable Items Adjustment** to the Base Period Charge for any Reporting Period, calculated in accordance with paragraph 2.11 of Schedule 5.1 (*TARA Payments*);

**Relevant Approvals** means all consents, approvals, permissions, authorisations, acceptances, certifications, licences, exemptions, filings, registrations, notarisations, declarations and other matters required in relation to the Sets in order to permit the testing and operation of the Sets and Vehicles with or without passengers in revenue earning service and otherwise on the Network including under the ROGS and the Railways (Interoperability) Regulations 2006;

**Relevant Delay Incident** means a Delay Incident that causes three or more Minutes Delay to a Passenger Service;

**Relevant Network** means the Network consisting of the routes specified in the Appendix (*Relevant Network*) to Schedule 1.3 (*Operator Covenants*);

**Relevant Non-Compliant Set** means a Non-Compliant Set that has failed any Compliance Test other than a Fuel Compliance Test;

**relevant Reporting Period** has the meaning given to it in paragraph 1.1 of Schedule 4.2 (*Compliance Testing*);

**Reliability Adjustment** means the adjustment to the Base Period Charge for any Reporting Period referred to in paragraph 2.3 of Schedule 5.1 (*TARA Payments*) and calculated in accordance with paragraph 3 of Schedule 6.2 (*Reliability Regime*);

**Reliability Factor** means the factor specified in paragraph 4.4 of Schedule 4.1 (*Contract Management*);

**Reliability Growth Payment** means the payment calculated and payable in accordance with paragraph 1.2 of Schedule 5.3 (*Fleet Introduction Payments*);

**Remedial Event** means the occurrence of any of the following:

- (a) during any three Reporting Periods in any six consecutive Reporting Periods two or more of the following events occur:
  - (i) greater than [REDACTED] per cent. of Sets required to be made available in accordance with the Operator's Dispatch Requirements are Unavailable;

- (ii) greater than [REDACTED] per cent. of Sets required to be made available in accordance with the Operator's Dispatch Requirements are Deemed Unavailable;
  - (iii) greater than [REDACTED] per cent. of Sets in service during Operational Days suffer a Significant Delay Incident;
  - (iv) the Reliability Factor (calculated in accordance with paragraph 4.5 of Schedule 4.1) exceeds [REDACTED];<sup>7</sup>
- (b) any of the events listed in paragraph 8.1 of Schedule 6.3 (*KPI Regime*);
  - (c) following any calculation performed pursuant to paragraph 1.5 of Schedule 4.2 (*Compliance Testing*), the Annual Fleet Efficiency Average is [REDACTED] higher than the Fleet Fuel Efficiency Benchmark; and
  - (d) the failure of any Compliance Test such that there is a Non-Compliant Set or Non-Compliant Sets;

**Remedial Plan** has the meaning given to it in paragraph 1.1 of Schedule 10.1 (*Remedial Plans*);

**Remedial Plan Notice** has the meaning given to it in paragraph 1.1 of Schedule 10.1 (*Remedial Plans*);

**Reporting Period** means a period of 28 days, provided that:

- (a) the first such period during the Term shall exclude any days up to but not including the Start Date;
- (b) the first and last such period in any Contract Year may be varied by up to seven days by notice from the Secretary of State;
- (c) each such period shall start on the day following the last day of the preceding such period; and
- (d) the last such period during the Term shall end at the end of the Term;

**Required Variation Notice** means a notice issued by the Secretary of State to the TSP pursuant to the terms of the MARA, requiring a variation to the terms of this Agreement;

**Retail Prices Index** means the retail prices index for the whole economy of the United Kingdom and for all items as published from time to time by the Office for National Statistics or, if such index shall cease to be published or there is a material change in the basis of the index or if, at any relevant time, there is a delay in the publication of the index, such other retail prices index as the Secretary of State may, after consultation with the TSP and the Operator, determine to be appropriate in the circumstances;

**Ride Compliance Test** means [test as set out in the tender response, negotiated and contractualised];

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<sup>7</sup> [REDACTED].

**Ride Standard** [to be derived from Train Technical Specification and Bidder response thereto];

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

**RSSB** means the Rail Safety and Standards Board;

**Rule Book** means the document with reference GE/RT 8000 (including all applicable Modules as defined in GE/RT 8051) issued by RSSB;

**Rules of the Depot** means the TSP's Rules of the Depot specified in Appendix 1 (*Rules of the Depot: Availability*) to Schedule 2.1 (*Availability Requirements*);

**Rules of the Fleet** means the TSP's Rules of the Fleet specified in Appendix 2 (*Rules of the Fleet: Requirement Tables*) to Schedule 2.1 (*Availability Requirements*);

**Safety Management System** means the TSP's safety management system, as defined in, and complying with the requirements of, the ROGS, established, or to be established, as the context requires, by the TSP to ensure the safe management of the Services;

**Second Bedding In Period** means the period from the day immediately following the end of the First Bedding In Period until the last day of the seventh Reporting Period after such day;

**Secretary of State** means the Secretary of State for Transport;

**Security Interest** means any mortgage, pledge, lien, assignment, encumbrance, right of set-off, title transfer or retention arrangement, security interest or other arrangement conferring a priority or preference over general creditors;

**Senior Personnel** has the meaning given to it in clause 17.2;

**Set** means a Half Set or a Full Set;

**Set Availability Payment** means the amount that is charged for making a Full Set or Half Set available, as applicable, to the Operator, as specified in Schedule 5.2 (*Set Availability Payments*);

**Set Retention Amount** means the retention amount calculated in accordance with paragraph 1.4 of Schedule 5.3 (*Fleet Introduction Payments*);

**Set Retention Release Payment** means the payment payable in accordance with paragraph 1.6 of Schedule 5.3 (*Fleet Introduction Payments*);

**Shared Remedial Plan** has the meaning given to it in paragraph 2.3 of Schedule 10.1 (*Remedial Plans*);

**Significant Delay Incident** means a Delay Incident that causes 30 or more TSP Minutes Delay;

**Software** means the executable object code version of software that is necessary for the installation, operation and maintenance of any of the Assets (or any part thereof) and/or any equipment used in conjunction with, or for the maintenance of, any Asset (or any part thereof);

**Sole Remedial Plan** has the meaning given to it in paragraph 2.4(b) of Schedule 10.1 (*Remedial Plans*);

**Standards Compliance Test Notice** has the meaning given to it in paragraph 2.2 of Schedule 4.2 (*Compliance Testing*);

**TARA Payment** means, in relation to any Reporting Period, the amount determined in accordance with paragraph 1.1 of Schedule 5.1 (*TARA Payments*);

**Target Fuel Consumption Rate** means a rate of [\_\_\_\_\_] <sup>8</sup> litres per Set mile;

**Technical Inspector** means a technical inspector of the TSP meeting the requirements of paragraph 2.8 of Schedule 3.2 (*In-Service Faults*);

**Term** means the period specified in clause 2 (*Commencement and Term*);

**Third Party IPR** means Intellectual Property Rights, other than Manufacturer IPR and Maintainer IPR, that are owned by a third party and are used in connection with the performance of this Agreement and/or the [*insert name of train operating, maintaining, manufacturing, etc. agreements*], including for the purposes specified in paragraph 1.1 of Schedule 9 (*Intellectual Property*);

**Timetable** means the timetable which reflects the working timetable issued by Network Rail at the conclusion of its timetable development process, containing the departure and arrival times of all Passenger Services which call at stations, and principal connections at those stations and other stations;

**Track Access Agreement** means any Access Agreement between Network Rail and the Operator which permits the Operator to provide the Passenger Services on track operated by Network Rail, incorporating by reference where relevant, the Network Code;

**TRUST** means the ‘Train Running System TOPS’ operated by Network Rail to monitor train running and punctuality on the Network;

**TSP Contract Manager** has the meaning given to it in paragraph 1.1(a) of Schedule 4.1 (*Contract Management*);

**TSP Daily In-Service Check** means any check carried out by the TSP during any Turnaround in relation to the satisfactory completion of any in-service cleaning;

**TSP Daily Set Check** has the meaning given to it in paragraph 1.2 of Schedule 2.2 (*Handover and Handback*);

**TSP Default** means any of the events in paragraph 1 of Schedule 10.2 (*TSP Default*);

**TSP IPR** means Intellectual Property Rights that are owned by the TSP and are used in connection with the performance of this Agreement and/or the [*insert name of train operating, maintaining, manufacturing, etc. agreements*], including for the purposes specified in paragraph 1.1 of Schedule 9 (*Intellectual Property*);

**TSP KPI Check** means:

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<sup>8</sup> To be derived from bids.

- (a) that part of the TSP Daily Set Check that relates to the assessment of the TSP's performance against the KPI Regime; or
- (b) any TSP Daily In-Service Check;

**TSP Minutes Delay** means Minutes Delay resulting from fleet equipment problems or fleet depot delays, as defined in the Delay Attribution Guide, that are recorded as "Primary Minutes Delay" in Network Rail's TRUST system and attributed to the TSP using the relevant responsible manager code;

**TSP Minutes Delay Benchmark** means in relation to any Reporting Period during the Term, [refer to relevant TARA information pack] TSP Minutes Delay;

**TSP Nominated Contact** has the meaning given to it in paragraph 1.1(b)(ii) of Schedule 4.1 (*Contract Management*);

**TSP Representative** has the meaning given to it in paragraph 3.1 of Schedule 4.1 (*Contract Management*);

**Turnaround** means the period specified in the Dispatch Requirements between the completion of a Passenger Service in accordance with the Timetable and the commencement of the next Passenger Service in accordance with the Timetable on the same day using some or all of the same rolling stock vehicles;<sup>9</sup>

**Type** means [to be defined by reference to (i) power source (ii) formation/interior and (iii) size, depending on Bidder solution];

**Type Acceptance Certificate** means [definition currently set out in the MARA];

**Unavailable** means the status of a Set as specified in paragraph 2.5 of Schedule 6.1 (*Availability Regime*);

**Unavailable But Used** means the status of a Set as specified in paragraph 2.3 of Schedule 6.1 (*Availability Regime*);

**VAT** means value added tax as provided for in the Value Added Tax Act 1994;

**Vehicles** means [\_\_\_\_\_];

**Waste** means any waste involving anything which is disposed of or abandoned, unwanted or surplus, irrespective of whether it is capable of being recovered or recycled or has any value; and

**Weekday** means any day other than a Saturday, a Sunday or a Bank Holiday.

## 2. COMMENCEMENT AND TERM

2.1 The Term of this Agreement shall commence on the time and date stated in the Certificate of Commencement issued by the Secretary of State to the Operator pursuant to the Franchise Agreement.

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<sup>9</sup> Bidders are recommended to review the current timetables for an indication of the likely number of Turnarounds on any given day.

2.2 The Term shall end on the Expiry Date.

2.3 The Operator shall promptly notify the TSP if it receives any notice from the Secretary of State that:

- (a) he is extending the term of the Franchise Agreement; or
- (b) he is terminating the Franchise Agreement.

### **3. REPRESENTATIONS AND WARRANTIES**

The provisions of Schedule 1.1 (*Representations and Warranties*) shall apply.

### **4. TSP COVENANTS**

The TSP makes each covenant in, and shall perform its obligations under this Agreement in accordance with Schedule 1.2 (*TSP Covenants and Performance*).

### **5. OPERATOR COVENANTS**

The Operator makes each covenant in, and shall perform its obligations under this Agreement in accordance with Schedule 1.3 (*Operator Covenants and Performance*).

### **6. AVAILABILITY, HANDOVER AND HANDBACK**

The TSP shall make the Sets available to the Operator on a daily basis during the Term in accordance with the provisions of Schedule 2.1 (*Availability Requirements*) and Schedule 2.2 (*Handover and Handback*) and the Operator shall hand back the Sets to the TSP on a daily basis in accordance with the provisions of Schedule 2.2.

### **7. IN-SERVICE PROVISIONS AND FAULTS**

The provisions of Schedule 3 (*In-Service Provisions and Faults*) shall apply.

### **8. CONTRACT MANAGEMENT**

The provisions of Schedule 4 (*Contract Management and Compliance*) shall apply.

### **9. PAYMENT**

9.1 The Operator shall make payments to the TSP as payment for the TSP making the Sets available to the Operator. Such payments will be:

- (a) based upon the amounts specified in Schedule 5.2 (*Set Availability Payments*); and
- (b) calculated and paid in accordance with Schedule 5.1 (*TARA Payments*).

9.2 Subject to the Operator's other express rights under this Agreement, the making of any Deductions to any TARA Payment in accordance with the Performance Regime and the provisions of Schedule 5 (*Payment*) shall, in each case, be the Operator's sole remedy for failure to meet the required levels of availability, reliability and Key Performance Indicators as a result of the event giving rise to those Deductions.

9.3 Nothing in this clause 9 shall prevent or restrict the right of the Operator to seek injunctive relief or a decree of specific performance or other discretionary remedies of court.

#### **10. PERFORMANCE**

The provisions of Schedule 6 (*Performance Regime*) shall apply.

#### **11. INSURANCE**

The parties shall comply with the provisions of Schedule 7 (*Insurance*).

#### **12. INDEMNITIES**

The provisions of Schedule 8 (*Indemnities*) shall apply.

#### **13. INTELLECTUAL PROPERTY RIGHTS**

The provisions of Schedule 9 (*Intellectual Property*) shall apply.

#### **14. REMEDIES, DEFAULT AND TERMINATION**

The provisions of Schedule 10 (*Remedies, Default and Termination*) shall apply.

#### **15. VARIATIONS**

The provisions of Schedule 11 (*Variations*) shall apply.

#### **16. CONFIDENTIALITY**

The provisions of Schedule 12 (*Confidentiality*) shall apply.

#### **17. DISPUTE RESOLUTION**

##### **Escalation Procedure**

17.1 The TSP and the Operator shall use all reasonable endeavours to negotiate in good faith to settle any dispute or difference that may arise out of or in connection with this Agreement (a *Dispute*) before taking any further action.

17.2 If the Dispute is not settled through discussion between the TSP Contract Manager and Operator Contract Manager within a period of seven Business Days of the date on which the Dispute arose, the parties may refer the Dispute in writing to a director or chief executive (or equivalent) (*Senior Personnel*) of each of the parties for resolution.

17.3 If the Dispute is not resolved within 14 Business Days of referral to the Senior Personnel, either party may propose by notice (a *Dispute Notice*) to the other that a structured mediation or negotiation be entered into with the assistance of a mediator.

17.4 At any time prior to a structured mediation or negotiation being entered into in respect of a Dispute, either party may refer the Dispute to the Secretary of State for the Secretary of State's opinion on the Dispute. The Secretary of State's opinion shall not be binding upon either party and shall not limit either party's rights under this Agreement, but both parties agree to consider such opinion in good faith.

## **Principles of Mediation**

17.5 If the parties are unable to agree a mediator, or if the agreed mediator is unable or unwilling to act, within 28 Business Days of service of any Dispute Notice, either party may apply to CEDR in London to appoint a mediator. The costs of that mediator shall be divided equally between the parties or as the parties may otherwise agree in writing.

17.6 Where a Dispute is referred to mediation under clause 17.5, the parties shall attempt to settle such Dispute by mediation in accordance with the model mediation procedures published by CEDR or such other procedures as the mediator may recommend.

17.7 If the parties reach agreement on the resolution of the Dispute, such agreement shall be recorded in writing and once signed by the parties' authorised representatives, shall be final and binding on the parties.

17.8 If either party refuses at any time to participate in the mediation procedure and in any event if the parties fail to reach agreement on the Dispute within 40 Business Days of the service of the relevant Dispute Notice, either party may commence proceedings.

## **Dispute Resolution Rules**

17.9 Where either party is entitled, pursuant to the terms of this Agreement, to refer a Dispute arising out of or in connection with this Agreement for resolution or determination in accordance with the Dispute Resolution Rules, then such Dispute shall, unless the parties otherwise agree, be resolved or determined by arbitration pursuant to the Dispute Resolution Rules.

17.10 The arbitrator in any Dispute referred for resolution or determination under the Dispute Resolution Rules shall be a suitably qualified person chosen by agreement between the parties or, in default of agreement, chosen by the Disputes Secretary from a panel of persons agreed from time to time for such purposes between the TSP and the Operator or, in default of agreement as to the arbitrator or as to such panel, selected on the application of either party by the President of the Law Society or the President of the Institute of Chartered Accountants in England and Wales from time to time (or such other person to whom they may delegate such selection).

## **Continuing obligations and rights**

17.11 The Operator and the TSP shall continue to comply with their respective obligations under this Agreement without delay while any Dispute is being resolved pursuant to this clause 17.

17.12 Neither party shall be prevented from, or delayed in, seeking any order for specific performance or for interim or final injunctive relief as a result of the provisions of this clause 17 nor shall this clause 17 apply in respect of any circumstances where such remedies are sought.

## **18. NOTICES**

### **Notices**

18.1 Any notice, notification or other communication under or in connection with the matters specified in Schedule 10.2 (*TSP Default*) or Schedule 10.3 (*Operator Default*) or any Dispute under or in connection with this Agreement shall be in writing and shall be delivered



by hand or recorded delivery or sent by pre-paid first class post to the relevant party at the following addresses:

To the **TSP** at:

Address: [\_\_\_\_\_] [\_\_\_\_\_]

[\_\_\_\_\_] [\_\_\_\_\_]

[\_\_\_\_\_] [\_\_\_\_\_]

Attention: [\_\_\_\_\_] [\_\_\_\_\_]

To the **Operator** at:

Address: [\_\_\_\_\_] [\_\_\_\_\_]

[\_\_\_\_\_] [\_\_\_\_\_]

[\_\_\_\_\_] [\_\_\_\_\_]

Attention: [\_\_\_\_\_] [\_\_\_\_\_]

or such other address in the United Kingdom as each party may specify by notice in writing to the other party by giving at least five Business Days' notice, and, in either case, with a copy to:

The **Secretary of State for Transport** at:

Address: Great Minster House  
76 Marsham Street  
London SW1P 4DR

Attention: Director – Rail Projects

18.2 Any other notice, request, notification or other communication under or in connection with this Agreement shall be in writing and shall be delivered:

- (a) in accordance with clause 18.1 (except that it shall be marked for the attention of the TSP Contract Manager or the Operator Contract Manager as appropriate);
- (b) by facsimile:
  - (i) if to the TSP, to [\_\_\_\_\_] [\_\_\_\_\_] marked for the attention of the TSP Contract Manager; or
  - (ii) if to the Operator, to [\_\_\_\_\_] [\_\_\_\_\_] marked for the attention of the Operator Contract Manager; or
- (c) by electronic data transfer:
  - (i) if to the TSP, to [\_\_\_\_\_] [\_\_\_\_\_]; or
  - (ii) if to the Operator, to [\_\_\_\_\_] [\_\_\_\_\_],

or such other address in the United Kingdom, email address or facsimile number as each party may specify by notice in writing to the other party by giving at least five Business Days' notice.

### **Deemed Receipt**

18.3 Any such notice or other communication shall be deemed to have been received by the party to whom it is addressed as follows:

- (a) if sent by hand or recorded delivery, when delivered;
- (b) if sent by pre-paid first class post, from and to any place within the United Kingdom, three Business Days after posting unless otherwise proven;
- (c) if sent by facsimile, upon sending, subject to confirmation of completed transmission to the intended recipient; and
- (d) if sent by electronic data transfer, upon sending, subject to receipt by the sender of a "delivered" confirmation (provided that the sender shall not be required to produce a "read" confirmation).

## **19. MISCELLANEOUS**

### **Cumulative Rights**

19.1 Each of the TSP's and the Operator's rights and remedies under this Agreement are cumulative and may be exercised as often as either of them considers appropriate. Any failure to exercise or any delay in exercising any of such rights shall not operate as a waiver or variation of that or any other such right, any defective or partial exercise of any of such rights shall not preclude any other or further exercise of that or any other such right, and no act or course of conduct or negotiation on either party's part or on its behalf shall in any way preclude that party from exercising any such right or constitute a suspension or any variation of any such right.

### **Further Assurance**

19.2 Each of the parties agree, at its own expense, to perform (or procure the performance of) all further acts and things within its control, and execute and deliver (or procure the execution and delivery of) such further documents, as may be required by Applicable Laws and Standards or as may be necessary or reasonably desirable to implement and/or give effect to this Agreement, the transactions contemplated by this Agreement.

### **Waivers**

- 19.3 (a) No term or provision of this Agreement shall be considered waived by any party to it unless a waiver is given in writing by that party.
- (b) No waiver under clause 19.3(a) shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of the remaining parts of this Agreement.

## Severability

19.4 If any term, condition or provision contained in this Agreement shall be held to be void, invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality or enforceability of the remaining parts of this Agreement.

## Entire Agreement

19.5 This Agreement [*and any other relevant agreements*<sup>10</sup>] contains the entire agreement between the parties in relation to the subject matter of this Agreement and supersedes all prior agreements and arrangements between the parties. In addition, so far as permitted by law and except in the case of fraud, each party agrees and acknowledges that its only rights and remedies in relation to any representation, warranty or undertaking made or given in connection with this Agreement shall be for a breach of the terms of this Agreement, to the exclusion of all other rights and remedies (including those arising in tort or arising under statute).

## Counterparts

19.6 This Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

## Third party Rights

19.7 Subject to clause 19.8, a person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement (but this does not affect any right or remedy of a third party which exists or is available apart from under the Contracts (Rights of Third Parties) Act 1999).

19.8 The Secretary of State may enforce the terms of this Agreement expressed to be for the benefit of or given by either party to or in favour of the Secretary of State.

## 20. TRANSFER

20.1 Subject to clause 20.2, neither party to this Agreement may assign, transfer, novate or otherwise dispose of any of its rights and/or obligations under this Agreement without the written consent of the other party, such consent not to be unreasonably withheld.

20.2 The TSP shall be entitled to assign, transfer, novate or otherwise dispose of any of its rights and/or obligations under this Agreement to the extent required to perform its obligations under the MARA as evidenced by a notice issued by the Secretary of State to the TSP, pursuant to the MARA.

## 21. GOVERNING LAW AND JURISDICTION

### Governing Law

21.1 This Agreement shall be governed by and construed in accordance with English law.

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<sup>10</sup> To be confirmed prior to signature.

## **Jurisdiction**

21.2 Subject to clause 17 (*Dispute Resolution*), the parties submit to the exclusive jurisdiction of the courts of England and Wales.

### **[Process Agent**

21.3 (a) *The TSP shall at all times maintain an agent for service of process in England. Such agent shall be [\_\_\_\_], and any claim form, judgement or other notice of legal process shall be sufficiently served on the TSP if delivered to such agent at its address for the time being.*

(b) *If for any reason, such agent no longer serves as agent of the TSP to receive service of process in England, the TSP shall promptly appoint another agent and advise the Operator thereof.]<sup>11</sup>*

## **Waiver of Immunity**

21.4 The TSP irrevocably and unconditionally:

- (a) agrees that if the Operator brings legal proceedings against it or its assets in relation to this Agreement no immunity from such legal proceedings (which will be deemed to include suit, attachment prior to judgement, other attachment, the obtaining of judgement, execution or other enforcement) will be claimed by or on behalf of itself or with respect to its assets;
- (b) waives any such right of immunity which it or its assets now has or may in the future acquire; and
- (c) consents generally in respect of any such proceedings to the giving of any relief or the issue of any process in connection with such proceedings including the making, enforcement or execution against any property whatsoever (irrespective of its use or intended use) of any order or judgement which may be made or given in such proceedings.

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<sup>11</sup> Process Agent language only necessary if the TSP is a non-UK company which does not have an English place of business.

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

SIGNED AS A DEED BY [*TSP*]

DIRECTOR:



.....

DIRECTOR/SECRETARY:

.....

SIGNED AS A DEED BY [*Operator*]

DIRECTOR:



.....

DIRECTOR/SECRETARY:

.....

**SCHEDULE 1**

**GENERAL PROVISIONS**

- Schedule 1.1: Representations and Warranties**
- Schedule 1.2: TSP Covenants and Performance**
- Schedule 1.3: Operator Covenants and Performance**

## SCHEDULE 1.1

### REPRESENTATIONS AND WARRANTIES

#### 1. TSP REPRESENTATIONS AND WARRANTIES

The TSP represents and warrants to the Operator on the date of execution of this Agreement:

- (a) the TSP is a company properly organised and validly existing under the laws of [*England and Wales as a limited liability company*]<sup>12</sup>;
- (b) the TSP has the power to carry on its business as it is now being conducted and has all licences, consents, approvals, permits, authorisations, exemptions, registrations and certifications required for that purpose;
- (c) the TSP has the power to enter into and perform its obligations under this Agreement, and all necessary corporate, shareholder and other action has been taken to authorise the entry into, performance and delivery of this Agreement and this Agreement constitutes its legally valid, binding and enforceable obligations in accordance with its terms; and
- (d) entering into this Agreement and performing its obligations under this Agreement will not:
  - (i) conflict with the TSP's Memorandum and Articles of Association;
  - (ii) conflict with any law or regulation applicable to the TSP; or
  - (iii) conflict with, or result in a breach of, any existing contract which is binding on it.

#### 2. OPERATOR REPRESENTATIONS AND WARRANTIES

The Operator represents and warrants to the TSP on the date of execution of this Agreement:

- (a) the Operator is a company properly organised and validly existing under the laws of [*England and Wales as a limited liability company*];
- (b) the Operator has the power to carry on its business as it is now being conducted and has all licences, consents, approvals, permits, authorisations, exemptions, registrations and certifications required for that purpose;
- (c) the Operator has the power to enter into and perform its obligations under this Agreement, and all necessary corporate, shareholder and other action has been taken to authorise the entry into, performance and delivery of this Agreement and this Agreement constitutes its legally valid, binding and enforceable obligations in accordance with its terms; and
- (d) entering into this Agreement and performing its obligations under this Agreement will not:

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<sup>12</sup> Bidders to customise as appropriate.

- (i) conflict with the Operator's Memorandum and Articles of Association;
- (ii) conflict with any law or regulation applicable to the Operator; or
- (iii) conflict with, or result in a breach of, any existing contract which is binding on it.



## SCHEDULE 1.2

### TSP COVENANTS AND PERFORMANCE

#### 1. PERFORMANCE OF TSP OBLIGATIONS

The TSP will:

- (a) carry out its obligations under this Agreement:
  - (i) in accordance with the best modern principles and practices in the activity concerned and with all due skill, care, diligence, prudence and foresight to be expected of an appropriately qualified and certified maintainer of rolling stock vehicles with demonstrable experience in carrying out work of a similar scope, type, nature and complexity;
  - (ii) so that the Sets and Vehicles function in accordance with the best modern design and engineering principles and practices in the activity concerned; and
  - (iii) in a safe manner and free from any material risk to the health and well-being of any persons using, operating or maintaining, or involved in the management of, the Sets and Vehicles; and
- (b) ascertain, maintain and comply with all Applicable Laws and Standards, Relevant Approvals and perform its obligations in a manner consistent with the Manuals.

#### 2. COST

Without limiting clause 1.1(m), and unless expressly stated otherwise in this Agreement, the TSP shall perform its obligations under this Agreement at its own cost and shall provide or procure, at its own cost, all equipment, support services and other facilities for the full performance by the TSP of its obligations under this Agreement.

#### 3. TSP COVENANTS

##### **Maintenance, Damage, Vandalism**

3.1 The TSP shall at all times maintain each Set in the Fleet so that it is able to make Sets available to the Operator in accordance with the Dispatch Requirements of the Operator.

3.2 The TSP shall be responsible for the maintenance of the Sets and shall carry out all maintenance and all repairs of any damage caused by vandalism, Operator Misconduct or otherwise.

3.3 Without limiting paragraph 2, the TSP shall bear all of the costs of maintenance and repair required for performance of its obligations under this Agreement and without right of reimbursement or contribution from the Operator, save only to the extent provided for in Schedule 6.5 (*Costs Payable by Operator*) in respect of costs attributable to Operator Misconduct, Major Incidents (including certain of those incidents caused by vandalism) or vandalism.

3.4 The TSP's obligation to make Sets available in accordance with the Operator's Dispatch Requirements shall be moderated in respect of any Major Incident to the extent of

reducing the Maximum Available Sets at any time by the number of Damaged Sets at that time and the number of such reductions at any time shall be the number of *Excused Sets* at any time.

3.5 The TSP shall repair any Damaged Set that is capable of economic repair as soon as reasonably practicable. A Set shall cease to be a Damaged Set for the purposes of paragraph 3.4 on the earlier of:

- (a) the date by which the TSP has repaired such Set so that it may be made available to the Operator to satisfy the Dispatch Requirements; or
- (b) the date by which a reasonable train service provider under the obligations imposed on the TSP under this Agreement to repair the Set as soon as reasonably practicable, would have repaired such Set so that it may be made available to the Operator to satisfy the Dispatch Requirements.

3.6 The TSP shall promptly inform the Operator of (and in any event within five Business Days of it becoming aware of):

- (a) any Set becoming a Damaged Set; and
- (b) any Set ceasing to be a Damaged Set in accordance with paragraph 3.5(a).

3.7 If the Operator disputes the information provided to it, and any changes required as a result, it may challenge the TSP's information or decisions in accordance with the Dispute Resolution Rules.

#### **Co-operation with Operator's Performance Improvement Plans**

3.8 The TSP shall co-operate with the Operator's initiatives and plans for performance improvements, including the management of its contractual relationship with Network Rail, and the Operator's and Network Rail's development, agreement and implementation of:

- (a) Joint Performance Improvement Plans; and
- (b) recovery plans in response to failures to achieve the performance levels specified in any Joint Performance Improvement Plans.

3.9 In performing its obligation under paragraph 3.8, the TSP shall, amongst other things:

- (a) provide appropriate management resources for this purpose, and make available relevant personnel to attend any meetings between the Operator and Network Rail;
- (b) seek to participate in a positive and constructive manner; and
- (c) seek to identify solutions that minimise overall rail industry costs (including the TSP's own costs).

#### **4. QUIET ENJOYMENT**

TSP will not, and shall procure that any person claiming through it will not, at any time during the Operational Day in relation to any Set, interfere with the quiet use, possession and enjoyment of that Set by the Operator.

## **SCHEDULE 1.3**

### **OPERATOR COVENANTS AND PERFORMANCE**

#### **1. OPERATOR COVENANTS**

The Operator will not:

- (a) do or omit to do or knowingly permit to be done or omitted any act or thing which might reasonably be expected to jeopardise the property rights of TSP or any Financier in any Set;
- (b) at any time:
  - (i) represent or hold out the TSP or any Financier as carrying goods or passengers on the Sets; or
  - (ii) pledge the credit of the TSP or any Financier;
- (c) create or permit to exist any Security Interest in respect of any Sets;
- (d) do or permit to be done anything which may reasonably be expected to expose any Set to penalty, forfeiture, impounding, detention, appropriation, damage or destruction and without prejudice to the foregoing, if any such event occurs, give the TSP prompt notice thereof and use best endeavours to procure the immediate release of such Set;
- (e) abandon any Set except for such limited and temporary time as is reasonably required where left with no reasonable option by reason of weather or the risk to human lives;
- (f) attempt, or hold itself out as having any power, to sell, lease or otherwise dispose of any Set; and
- (g) remove, or permit or acquiesce in the removal of, any Set from Great Britain without the consent of the TSP.

#### **2. COST**

Without limiting clause 1.1(m), and unless expressly stated otherwise in this Agreement, the Operator shall perform its obligations under this Agreement at its own cost and shall provide or procure, at its own cost, all equipment, support services and other facilities for the full performance by the Operator of its obligations under this Agreement.

#### **3. SUB-LEASING**

The Operator shall not sub-lease the Operator's right to use and operate the Sets under this Agreement.

#### **4. LAWFUL, SAFE AND APPROVED OPERATION**

4.1 The Operator will (at its own cost):

- (a) comply with the law for the time being in force (and in compliance with all the requirements of the law, common law, any Act of Parliament, statutory instrument or order or any other legislation having the force of law or requirement of the Government having the force of law or any European legislation from time to time in force which are or may become) applicable to the Sets or, so far as concerns the use and operation of such Sets, an owner or operator of rolling stock;
- (b) without prejudice to paragraph 4.1(a), comply with any applicable regulations and recommendations of Network Rail, any Government Authority or other competent authority relating to the safety, or the safe operation, of the Sets;
- (c) ensure that the Sets are operated by properly qualified operational personnel in accordance with Applicable Laws and Standards, operating practices set out in the Rule Book and all Manuals for the relevant Sets and any published route restrictions;
- (d) not use any Set in any manner contrary to, or inconsistent with, its Permitted Use;
- (e) ensure that its operational personnel have the qualifications and hold the licences required by the ORR, any relevant Government Authority, Network Rail and Applicable Laws and Standards;
- (f) use the Sets solely in commercial or other operations pursuant to its Franchise Agreement;
- (g) not use any Set for, or in connection with, the carriage of any goods, materials or items of cargo which could reasonably be expected to cause damage to such Sets and which would not be adequately covered by the relevant Insurances; and
- (h) not use any Set for the purposes of training, qualifying or re-confirming the status of operational personnel except:
  - (i) for the benefit of the Operator's operational personnel; and
  - (ii) for the purposes of familiarising properly qualified drivers with routes or the operation of the Sets,

provided always, in any such case, that the Insurances relating to any such Set remain in full force and effect and are not thereby prejudiced.

4.2 The Operator shall notify the TSP of any loss, theft or destruction of, or damage to, the Sets of which it becomes aware.

4.3 The Operator agrees that, if required by the TSP, the TSP shall be permitted to maintain in a prominent position of each Vehicle, an engraved fireproof nameplate having dimensions of not greater than [*eight centimetres by four centimetres*] including words to the effect that such Vehicle is owned by the TSP.

## **APPENDIX TO Schedule 1.3**

### **Relevant Network**

**SCHEDULE 2**  
**AVAILABILITY**

**Schedule 2.1: Availability Requirements**

**Appendix 1: Rules of the Depot: Availability**

**Appendix 2: Rules of the Fleet: Requirement Tables**

**Appendix 3: Sets comprised in the Fleet**

**Schedule 2.2: Handover and Handback**

**Appendix: Presentation Standards Table**

## SCHEDULE 2.1

### Availability Requirements

#### 1. REQUIRED AVAILABILITY

1.1 The TSP shall make Sets available to the Operator in accordance with the Operator's Dispatch Requirements and in compliance with Schedule 2.2 (*Handover and Handback*) and so that each Set is able to operate to the requirements of the working timetable for the relevant day.

1.2 Every Friday before 1400 hours, the Operator shall provide the TSP with its Dispatch Requirements on each day during the seven days commencing 0200 hours on the following Sunday (the *Dispatch Requirements*).

1.3 All Dispatch Requirements provided by the Operator pursuant to paragraph 1.2 shall comply with the constraints set out in the Rules of the Depot and the Rules of the Fleet and, subject to those rules, shall state the following requirements of each Set that it wishes to be made available:

- (a) place of availability;
- (b) the Entry Time, provided that the Operator may require each Set to be made available up to 45 minutes before the Entry Time (the *Prior to Entry Time*); and
- (c) Set formation and the direction that Set is to face ready for operation.

1.4 The Operator may modify its Dispatch Requirements after submission to the TSP only where the modification is required in order to accommodate changes in Relevant Network operation provided to the Operator by Network Rail after those Dispatch Requirements have been submitted to the TSP.

1.5 The constraints of the Rules of the Depot and the Rules of the Fleet are set out in Appendix 1 and Appendix 2.

#### 2. AD-HOC AVAILABILITY

2.1 The Operator may by not less than two days' written notice, request the TSP to make available a Set or Sets in excess of the maximum number of Sets that the Rules of the Fleet or the Rules of the Depot contemplate being in-service at the same time. Any such notice shall provide the same information in respect of the relevant Set or Sets as is required under paragraph 1.3 in respect of Dispatch Requirements.

2.2 The TSP shall use reasonable endeavours to make additional Sets available to satisfy any such Operator request, having regard to the TSP's resilience and maintenance requirements.

2.3 The TSP shall notify the Operator of whether it is able to make any additional Sets Available pursuant to any such request by the Operator and, if it is able to do so, the Operator may require those Sets to be available by including them in its relevant Dispatch Requirements.

2.4 Where the TSP has notified the Operator that it is able to make any Sets available, a Marginal Set Payment Adjustment shall be made pursuant to paragraph 2.9 of Schedule 5.1 (*TARA Payments*) in respect of each such additional Set that the Operator includes in the relevant Dispatch Requirements.



## **APPENDIX 1 TO SCHEDULE 2.1**

### **Rules of the Depot: Availability**

*[Bidders to draft: agreed version to be included at signature.]*

*Rules of the Depot to include:*

- (a) *stabling capacity in respect of the Fleet at each relevant Depot;*
- (b) *maintenance capability and capacity at each Depot;*
- (c) *location of each Depot relative to relevant stations;*
- (d) *rate of entry that can be accepted into, and rate of exit that is permitted out of, each Depot; and*
- (e) *minimum and maximum numbers of Sets to be located at the relevant Depot between xxx hours and xxx hours.*

*Rules of the Depot must, as a minimum, be sufficient to accommodate the sample diagrams sent out with the ITT.]*

**APPENDIX 2 TO SCHEDULE 2.1****Rules of the Fleet: Requirement Tables**

*[Bidders to draft: agreed version to be included at signature*

*Rules of the Fleet shall include, amongst other things:*

- (a) *the total number of Sets in the Fleet (broken down by size, available formation and layout);*
- (b) *the Maximum Available Half Sets and Maximum Available Full Sets that the Operator may specify in its Dispatch Requirements for any day (stated separately by days of the week) at the same time (which may increase over time as a proportion of the number specified in paragraph (a));*
- (c) *the number of additional Sets that the Operator is entitled to require from time to time in response to e.g. special events, with the advance notice that TSP requires and the maximum number of such additional Sets that the Operator may require in any given period and any other limitations on the Operator's ability to request such additional Set; (Note: the cost of such additional Sets should be included in the Set Availability Payment, rather than requiring an additional one off payment);*
- (d) *during the Fleet Introduction Period when Sets are being introduced into service, a table showing how the Maximum Available Sets increases over time until the full deployment of the Fleet;*
- (e) *the schedule of maintenance activity in relation to each Set, and where the maintenance activity must be carried out; and*
- (f) *the frequency with which each specific Set must be located at any specific Depot between xxxx hours and xxxx hours.*

*Rules of the Fleet must, as a minimum, be sufficient to accommodate the sample diagrams sent out with the ITT.]*

**APPENDIX 3 TO SCHEDULE 2.1**

**Sets comprised in the Fleet**

*[to be populated after tender response]*

## SCHEDULE 2.2

### Handover and Handback

#### 1. AVAILABILITY AND TSP DAILY SET CHECKS

1.1 The TSP shall make Sets available to the Operator on each relevant day as follows:

(a) at the Entry Point, Entry Time (or the Prior to Entry Time, as applicable) and in the formation and facing the direction in each case as specified in the relevant Dispatch Requirements;

(b) with in each case:

(i) all fuel tanks full to capacity, or sufficiently full so as to be capable of running the highest mileage diagram from its originating point;

(ii) all water tanks (including both toilet water tanks and catering water tanks) full to capacity or sufficiently full so as to be capable of running the highest mileage diagram from its originating point;

(iii) all sanding equipment adequately replenished with approved consumables;

(iv) adequately stocked with all other Consumables; and

(v) all toilet retention tanks empty,

in the case of (i) to (iv) inclusive, taking into account all reasonably foreseeable operating contingencies;

(c) holding a Provisional Acceptance Certificate, Qualified Provisional Acceptance Certificate or Final Acceptance Certificate;

(d) complying with:

(i) all Applicable Laws and Standards; and

(ii) the Manuals; and

(e) possessing all Relevant Approvals; and

(f) in a condition that enables the Operator to operate each such Set to the requirements of the working timetable for that day and within the parameters of the prevailing Configuration Database and in accordance with the Operator's Safety Management System,

(a Set complying with paragraph 1.1(a) to (f) inclusive is hereafter referred to as ***Fit for Service***).

1.2 Before offering any Set to the Operator pursuant to Schedule 2.1 (*Availability Requirements*), the TSP shall undertake a daily check on that Set (the ***TSP Daily Set Check***) to determine if there are any Presentation Standards Failures, Cleaning KPI Standards Failure or Presentation KPI Standards Failures on that Set.

1.3 The results of the TSP Daily Set Check shall constitute the TSP's representation to the Operator as to whether or to what extent any Presentation Standards Failure, Cleaning KPI Standards Failure and/or Presentation KPI Standards Failure has occurred.

1.4 The TSP Daily Set Check shall consist of:

- (a) conducting a walk-through of the train by a TSP member of staff;
- (b) checking the Set's on-board automated fault-detection systems; and
- (c) such other checks and inspections as are necessary to determine whether and to what extent any Presentation Standards Failure, Cleaning KPI Standards Failure and/or Presentation KPI Standards Failure has occurred.

## **2. TSP NOTIFICATION OF FAILURES**

2.1 The TSP shall, if any Presentation Standards Failure exists following the carrying out of any TSP Daily Set Check:

- (a) in the case of a Set with any Category One Handover Failure, not offer that Set to the Operator to enter into service; and
- (b) in the case of a Set with Category Two Handover Failures only, include full details of each such Category Two Handover Failure on the relevant Set's Handover Certificate before offering that Set to the Operator to enter into service,

and in all cases maintain an accurate record of all Presentation Standards Failures.

2.2 The TSP shall, if any Cleaning KPI Standards Failure or Presentation KPI Standards Failure exists following the carrying out of any TSP Daily Set Check, record that failure in accordance with paragraph 3.1(a) of Schedule 6.3 (*KPI Regime*).

## **3. REJECTIONS OF SETS**

3.1 Subject to paragraph The Operator shall be entitled to reject a Set that the TSP has offered to it for service if:

- (a) that Set has suffered a Category Two Handover Failure;
- (b) that Set is not Fit for Service (other than in respect of the time of handover);
- (c) that Set is offered 15 minutes late (that is, 15 minutes after the Entry Time or (if applicable) 15 minutes after the Prior to Entry Time as, in each case, specified in the Dispatch Requirements);
- (d) the TSP has not provided a Handover Certificate with that Set; or
- (e) the circumstances set out in paragraph 7 apply.

3.2 The Operator may, at its sole discretion, accept a Set into service notwithstanding that it would be entitled to reject that Set under paragraph 3.1.

3.3 The Operator shall promptly inform the TSP of any decision it makes in relation to a Set under this paragraph 3.

#### 4. ALTERNATIVE SETS

If any Set is rejected by the Operator, the TSP shall use all reasonable endeavours to make an alternative Set available.

#### 5. HANDOVER CERTIFICATE

5.1 The TSP shall complete a separate certificate (a *Handover Certificate*) to handover to the Operator in relation to each Set that the TSP offers for service and provide it to the driver of each such Set when it is offered for service (which obligation shall be satisfied by leaving any such Handover Certificate in a prominent position in the driver's cab of each such Set).

5.2 The Handover Certificate shall:

- (a) include:
  - (i) confirmation that the Set is Fit for Service;
  - (ii) confirmation that the TSP Daily Set Check has been carried out;
  - (iii) details of any Presentation Standards Failures; and
  - (iv) details of any other Faults not covered by paragraph 5.2(a)(iii); and
- (b) be in a medium that accords with the prevailing technology of the time.

#### 6. DAILY HANDBACK

6.1 The Operator shall return each Set that has been made available to the Operator and was the subject of a Handover Certificate to the TSP, and the TSP shall take back physical possession and control of each such Set, on a daily basis.

6.2 The Operator may return any such Sets at any location and any time that:

- (a) corresponds with the TSP's obligations to make Sets available the following day in accordance with the Dispatch Requirements; and
- (b) complies with the Rules of the Depot and the Rules of the Fleet.

6.3 The Operator shall:

- (a) complete a certificate to handback to the TSP in relation to each Set that has been made available to the Operator and was the subject of a Handover Certificate (a *Handback Certificate*); and
- (b) record all In-Service Faults on the Handback Certificate, other than any In-Service Faults which also constitute KPI Failures, which shall be recorded on a KPI Scorecard in accordance with Schedule 6.3 (*KPI Regime*), together with any other faults not falling within the definition of a Fault either on the relevant crew log or via the train management system if appropriate.

## 7. ENDEMIC FAULTS

7.1 If either party considers an Endemic Fault may exist, it shall promptly notify the other party.

7.2 Following such notification, the parties shall meet as soon as reasonably practicable thereafter and discuss in good faith to agree:

- (a) whether the Fault notified constitutes an Endemic Fault;
- (b) to the extent that it is agreed (or determined pursuant to paragraph 7.3) that the Fault notified does constitute an Endemic Fault:
  - (i) the likelihood of that Endemic Fault existing in other Sets;
  - (ii) the likely impact upon passenger and third party safety resulting from that Endemic Fault; and
  - (iii) any steps that can be taken to remedy, isolate or otherwise cure or control that Endemic Fault, including the impact upon availability requirements and TARA Payments during the period of such remedies action being undertaken.

7.3 If the parties are unable to agree on the items specified in paragraph 7.2, either party may refer any open items to [*relevant independent expert*] for determination, acting as an expert.

7.4 Until such time as any Endemic Fault that has occurred and is continuing has been cured, or an alternative proposal has been agreed or determined pursuant to paragraph 7.2 or 7.3, the Operator may, without limiting its rights under paragraphs 3.1 and 3.2:

- (a) in respect of an Endemic Fleet Fault, notify the TSP in writing that it will reject all (but not some only) Sets offered to it for service in which the Endemic Fault has not been addressed to its satisfaction; and
- (b) in respect of an Endemic Type Fault, notify the TSP in writing that it will reject all (but not some only) Sets of that Type for service in which the Endemic Fault has not been addressed to its satisfaction,

until the relevant Endemic Fault has been cured to its reasonable satisfaction.

## APPENDIX TO SCHEDULE 2.2

### Presentation Standards Table

<b>TABLE 1: CATEGORY ONE HANDOVER FAILURES</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Train Facility</b>	<b>Set Presentation Output Failure</b>	<b>Set allowed to enter service?</b>
Air Systems	One or more compressors failed [ <i>depending on Set configuration</i> ] – not affecting performance of the Set	No
	Compressor fault on the Set – running continuously	No
	Major air leak – system on the Set cannot maintain minimum air pressure	No
Brake	Friction brake failure on the Set	No
Bogies / Underframe Equipment	Auto coupler (no electrical coupling) on the Set	No
	Wheel flats on the Set – severe (at or above the NR or TSP limits)	No
	Wheel flats on the Set – serious (excessive noise or vibration)	No
	Primary suspension defect/failure on the Set	No
	Secondary suspension defect/failure on the Set	No
	Any equipment cases or covers or skirt missing or not securely closed on the Set	No
Cab Systems and Train Controls	Train control or safety circuits isolated on the Set (broken 'tell tales' or seals on safety circuit switches or circuit breakers)	No
	Emergency equipment missing or damaged on the Set	No
	Driving controls or ancillary equipment on the Set defective, missing or damaged	No
	Driver's cab instrument illumination in the Set not working	No
	DOO dispatch system failure on the Set (if there is DOO CCTV on the Set, in cab display not operational)	No
	SDO system failure on the Set - on routes that do require SDO	No
	Radio System defect/failure on the Set	No
	ERTMS/ETCS failure on the Set - on routes that require ERTMS/ETCS	No
	Train Management System failure/defective on the Set	No
Door Systems	Cab to saloon door of the Set defective – unable to close, open or lock	No
	Gangway doors / interior doors defective on more than one Vehicle of the Set	No
	Saloon external doors defect – more than two doors of the Set out of service	No
Cab Interior	Severe water leak in the cab of the Set	No
	Driver's sun blind in the cab of the Set defective	No
	Driver's seat in the cab of the Set adjustment mechanism defective/failed	No
	HVAC in cab of Set defective – ventilation defective / failed	No
	Cab interior lighting of Set defective	No
	HVAC in cab of Set defective – ventilation defective / failed	No
	Cab interior lighting of Set defective	No



<b>TABLE 1: CATEGORY ONE HANDOVER FAILURES</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Train Facility</b>	<b>Set Presentation Output Failure</b>	<b>Set allowed to enter service?</b>
Saloon Interior Systems	Saloon interior lighting defective – one to three light units defective in more than two passenger Vehicles of the Set	No
	Saloon interior lighting defective – four or more light units defective in any passenger Vehicle of the Set	No
	Broken glass in saloon interior of any passenger Vehicle of the Set	No
	Seat damaged – risk of cutting, abrasion or trapping in any passenger Vehicle of the Set	No
	Equipment cubicle lock failure in any passenger Vehicle of the Set	No
	Floor damaged – trip hazard in any passenger Vehicle of the Set	No
	Saloon CCTV defective – on more than one passenger Vehicle of the Set	No
	Saloon grab rails/handles damaged – risk of cutting, abrasion or trapping in any passenger Vehicle of the Set	No
	Saloon draught screen or partition in any passenger Vehicle of the Set broken	No
	Water ingress into saloon environment of any passenger Vehicle of the Set	No
	Cover missing from emergency device (e.g. door egress handle / passenger alarm unit) in any passenger Vehicle of the Set	No
Customer Information Systems	PA defect – driver or crew PA not available on the Set	No
	PA defect – pre-recorded announcements not available in more than two Vehicles of the Set	No
	Saloon or external Passenger Information Systems displays defective – one or more display units defective on more than two Vehicles on the Set	No
Toilets	Toilet and facilities defective/unavailable (including flush, hand wash/dry, door lock) – in respect of more than two toilets on the Set	No
Saloon HVAC system	HVAC defect – saloon interior of more than one passenger Vehicle on the Set outside of specified temperature range	No
	HVAC defect – noisy unit causes noise level in more than one saloon in any passenger Vehicles on the Set to exceed specification	No
	HVAC defect – ventilation defective / failed in the Set	No

<b>TABLE 2: CATEGORY ONE IN-SERVICE FAILURES</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Train Facility</b>	<b>Set Presentation Output Failure</b>	<b>Set allowed to remain in service?</b>
Air Systems	Major air leak on the Set – system cannot maintain minimum air pressure	No
Brakes	Friction brake failure on the Set	No
Bogies / underframe equipment	Primary suspension unit on the Set defective	No
	Any equipment cases or covers or skirt missing or not securely closed on the Set	No
Cab Systems and Train Controls	Windscreen wipers of cab in the Set to be used for direction of journey defective, either not operating or not clearing windscreen to relevant regulatory standards applicable from time to time	No
	Train control or safety circuits of the Set isolated (broken 'tell tales' or seals on safety circuit switches or circuit breakers)	No
	Emergency equipment in the cab of the Set missing or damaged	No
	Driving controls or ancillary equipment of the Set defective, missing or damaged	No
	DOO dispatch system failure on the Set (if there is DOO CCTV on the Set, in cab display not operational)	No
	SDO system failure on the Set – on routes that do require SDO	No
	Radio system of the Set defect/failure	No
	ERTMS/ETCS failure on the Set – on routes that do require ERTMS	No
Door Systems	Cab to saloon door defect - unable to close, open or lock	No
Cab Interior	Severe water leak in the cab of the Set	No
	Driver's seat in the cab of the Set adjustment mechanism defective/failed	No
	HVAC in cab of Set defective – ventilation defective / failed	No
	Cab interior lighting of Set defective	No
Customer Information Systems	PA defect – driver or crew PA not available on the Set	No
Saloon HVAC system	HVAC defect – ventilation defective / failed in the Set	No

<b>TABLE 3: CATEGORY TWO HANDOVER FAILURES</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Train Facility</b>	<b>Set Presentation Output Failure</b>	<b>Set allowed to enter service?</b>
Cab Systems and Train Controls	Windscreen wipers of cab of the Set to be used for reverse direction journeys defective, either not operating or not sufficiently clearing windscreen	Yes (but Operator veto rights where TSP advises that cannot repair failed wipers before Set reverses direction to be operated)
Door Systems	Gangway doors / interior doors defective on any Vehicle of the Set	Yes (but Operator veto rights)
	Saloon external doors – defect on any Vehicle of the Set	Yes (but Operator veto rights)
Cab Interior	HVAC defect – cab interior of the Set outside of specified temperature range	Yes (but Operator veto rights)
	HVAC defect - noisy unit on the Set, causes noise level to exceed specification	Yes (but Operator veto rights)
Saloon Interior Systems	Saloon interior lighting defective – more than four light units defective in any passenger Vehicle of the Set	Yes (but Operator veto rights)
	Persons of restricted mobility systems failure – Set not meeting requirements for persons of restricted mobility	Yes (but Operator veto rights)
	Saloon CCTV defective – on one passenger Vehicle of the Set	Yes (but Operator veto rights)
Customer Information Systems	PA defect – pre-recorded announcements not available in up to two Vehicles of the Set	Yes (but Operator veto rights)
	Saloon or external Passenger Information Systems displays defective – one or more display units defective on up to two Vehicles of the Set	Yes (but Operator veto rights)
	Passenger Information Systems of the Set defective – [ <i>to be defined by reference to functionality of PIS, but excluding PA and displays function</i> ]	Yes (but Operator veto rights)
Toilets	Toilet and facilities defective/unavailable (including flush, hand wash/dry, door lock) – two or more toilets within a Set	Yes (but Operator veto rights)
Saloon HVAC system	HVAC defect – saloon interior of one passenger Vehicle of the Set outside of specified temperature range	Yes (but Operator veto rights)
	HVAC defect – noisy unit causes noise level in one saloon of any passenger Vehicle of the Set saloon to exceed specification	Yes (but Operator veto rights)
Traction and Auxilliary Systems	Traction failure of the Set – not able to run to timetable	Yes (but Operator veto rights)
	Auxiliary power supply output of the Set defective – affecting on board services	Yes (but Operator veto rights)
	Pantograph or AC current collection circuit of the Set defective – not able to run timetable	Yes (but Operator veto rights)
	AC transformer of the Set defective – not able to run timetable	Yes (but Operator veto rights)
	Self powered energy source of the Set defective	Yes (but Operator veto rights)

<b>TABLE 3: CATEGORY TWO HANDOVER FAILURES</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Train Facility</b>	<b>Set Presentation Output Failure</b>	<b>Set allowed to enter service?</b>
Cleaning	Set unacceptably dirty – 75 per cent. or more of the standards set out in Table 3 of the Appendix ( <i>KPI Scorecards</i> ) to Schedule 6.3 ( <i>KPI Regime</i> ) are not met prior to the Entry Time of that Set.	Yes (but Operator veto rights)
Catering Equipment	Where a full restaurant service or at seat first class service with meals cooked on board is required on the Set – hot food equipment fails	Yes (but Operator veto rights)
	Where a full restaurant service or at seat first class service with meals cooked on board is required on the Set – cold food equipment fails	Yes (but Operator veto rights)
	Where a full restaurant service or at seat first class service with meals cooked on board is required on the Set – hot liquid refreshment equipment fails	Yes (but Operator veto rights)
	Where a full restaurant service or at seat first class service with meals cooked on board is required on the Set – cold liquid refreshment equipment fails	Yes (but Operator veto rights)
	Where re-generated meals served at-seat are required on the Set – hot food equipment fails	Yes (but Operator veto rights)
	Where re-generated meals served at-seat are required on the Set – cold food equipment fails	Yes (but Operator veto rights)
	Where re-generated meals served at-seat are required on the Set – hot liquid refreshment equipment fails	Yes (but Operator veto rights)
	Where re-generated meals served at-seat are required on the Set – cold liquid refreshment equipment fails	Yes (but Operator veto rights)
	Where hot and cold snacks and drinks through a ‘Café-Bar style outlet are required on the Set – hot food equipment fails	Yes (but Operator veto rights)
	Where hot and cold snacks and drinks through a ‘Café-Bar style outlet are required on the Set – cold food equipment fails	Yes (but Operator veto rights)
	Where hot and cold snacks and drinks through a ‘Café-Bar style outlet are required on the Set – hot liquid refreshment equipment fails	Yes (but Operator veto rights)
	Where hot and cold snacks and drinks through a ‘Café-Bar style outlet are required on the Set – cold liquid refreshment equipment fails	Yes (but Operator veto rights)
	Where a trolley service is required on the Set – Catering equipment failure	Yes (but Operator veto rights)

<b>TABLE 4: CATEGORY TWO IN-SERVICE FAILURES</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Train Facility</b>	<b>Set Presentation Output Failure</b>	<b>Set allowed to remain in service?</b>
Cab Systems and Train Controls	Train Management System failure/defective on the Set	Yes (but Operator veto rights)
Door Systems	Gangway doors / interior doors defective on more than one Vehicle of the Set	Yes (but Operator veto rights)
	Saloon external doors defect – more than two doors of the Set out of service	Yes (but Operator veto rights)
Saloon Interior Systems	Saloon interior lighting defective – one to three light units defective per passenger Vehicle in more than two passenger Vehicles of the Set	Yes (but Operator veto rights)
	Saloon interior lighting defective – four or more light units defective in any passenger Vehicle of the Set	Yes (but Operator veto rights)
	Broken glass in any saloon interior in any passenger Vehicle of the Set	Yes (but Operator veto rights)
	Saloon CCTV defective - on more than one passenger Vehicle of the Set	Yes (but Operator veto rights)
	Saloon draught screen or partition broken in any passenger Vehicle of the Set	Yes (but Operator veto rights)
	Water ingress into saloon environment in any passenger Vehicle of the Set	Yes (but Operator veto rights)
	Persons of restricted mobility systems failure – Set not meeting requirements for persons of restricted mobility	Yes (but Operator veto rights)
Customer Information Systems	Equipment cubicle lock failure in any passenger Vehicle of the Set	Yes (but Operator veto rights)
	PA defect – pre-recorded announcements not available in more than two Vehicles of the Set	Yes (but Operator veto rights)
Toilets	Saloon or external Passenger Information Systems displays defective – one or more display units defective on more than two Vehicles of the Set	Yes (but Operator veto rights)
	Toilet & facilities defective/unavailable (including flush, hand wash/dry, door lock) – more than two toilets within the Set	Yes (but Operator veto rights)
Saloon HVAC System	HVAC defect – saloon interior of more than one passenger Vehicle of the Set outside of specified temperature range	Yes (but Operator veto rights)
	HVAC defect - noisy unit, causes noise level in more than one saloon of any passenger Vehicles of the Set to exceed specification	Yes (but Operator veto rights)
Traction and Auxilliary Systems	Traction failure – Set not able to run to timetable	Yes (but Operator veto rights)
	Auxiliary power supply output defective - affecting on board services on the Set	Yes (but Operator veto rights)
	Pantograph or AC current collection circuit defective – Set not able to run timetable	Yes (but Operator veto rights)
	AC transformer defective – Set not able to run timetable	Yes (but Operator veto rights)
	Self powered energy source defective – Set able to run timetable	Yes (but Operator veto rights)
	Self powered energy source defective – Set not able to run timetable	Yes (but Operator veto rights)

**SCHEDULE 3**  
**IN-SERVICE PROVISIONS AND FAULTS**

**Schedule 3.1:**                      **In-Service Provisions**

**Schedule 3.2:**                      **In-Service Faults**

## **SCHEDULE 3.1**

### **In-Service Provisions**

#### **1. CONSUMABLE REPLENISHMENT**

The TSP shall be responsible for:

- (a) replenishing all fuel, water, sand and other Consumables;
- (b) discharging all toilet retention tanks; and
- (c) providing any required shore supply at stations,

as and when required on Sets during the Operational Day, by providing adequate replenishment facilities and discharge facilities on the Relevant Network at [*Turnaround locations, or such other*] locations to be agreed with the Operator.

#### **2. TSP DAILY IN-SERVICE CHECKS**

2.1 The TSP shall, subject to paragraph 3.4 of Schedule 6.3 (*KPI Regime*), carry out TSP Daily In-Service Checks at each Turnaround of each Set to determine if there are any KPI Failures relating to that Set, and shall record any such KPI Failures in accordance with paragraph 3 of Schedule 6.3.

2.2 The Operator shall inform the TSP of the location and timing of each Turnaround a sufficient period in advance to enable the TSP to comply with its obligations under this Schedule 3.1.

## SCHEDULE 3.2

### In-Service Faults

#### 1. FAULT REPORTING

1.1 If at any time during the Operational Day, the Operator becomes aware of any In-Service Fault on any Set, the Operator shall, subject to paragraphs 1.2 and 1.3, promptly inform the TSP Nominated Contact and enter details of that In-Service Fault in the relevant crew log.

1.2 If a Set's train management system provides an indication that the train management system has relayed details of an In-Service Fault to the TSP, the TSP shall be deemed to have notice of that In-Service Fault, and without limiting paragraph 6.3(b) of Schedule 2.2 (*Handover and Handback*), the Operator's obligation under paragraph 1.1 shall have been discharged in respect of that In-Service Fault.

1.3 The Operator's obligation under paragraph 1.1 shall have been discharged in relation to any In-Service Fault that is a KPI Failure where the Operator notifies the TSP thereof in accordance with the requirements of Schedule 6.3 (*KPI Regime*).

#### 2. FAULT INSPECTION AND REMEDY

##### Failed Sets

2.1 In this Schedule 3.2, *Failed Set* means any Set with an In-Service Fault:

- (a) that is a Category One In-Service Failure or Category Two In-Service Failure;
- (b) which has caused that Set to suffer a Delay Event of at least 30 minutes, or which the Operator reasonably believes there is no realistic likelihood of avoiding a Delay Event of at least 30 minutes;
- (c) which actually or potentially creates a hazard to the safety of any person;
- (d) which actually or potentially creates a hazard to the continued operation of any system, assembly or component on that Set or the Network infrastructure; and/or
- (e) which is a hazard or potential hazard identified in operational procedures, the Rule Book, or Applicable Laws and Standards as requiring the Set in question to be removed from service.

##### Withdrawal of Sets from Service

2.2 Without limiting paragraph 2.5, the Operator may withdraw a Failed Set from service, but:

- (a) it shall seek, but not be bound by, the advice of the TSP Nominated Contact before doing so; and
- (b) in making any decision whether and when to do so, the Operator shall act reasonably, and shall take into account, amongst other things:



- (i) the nature of any Presentation Standards Failures that have occurred;
- (ii) the impact that any Presentation Standards Failures are likely to have on the safety and comfort of passengers; and
- (iii) the Network locations where the TSP has resources deployed that are capable of attending to that Set without a withdrawal from service.

2.3 The TSP shall, without limiting paragraph 4.2, use reasonable endeavours to ensure a Technical Inspector attends a Failed Set as soon as reasonably practicable, with a view to enabling that Set to remain In-Service, or, if already withdrawn from service by the Operator, to be returned to a condition in which it can be returned to service.

2.4 It shall in any event be reasonable for the Operator to withdraw a Failed Set from service if:

- (a) a Technical Inspector:
  - (i) is unable to determine the cause of the relevant In-Service Fault and either rectify or isolate that In-Service Fault to the Operator's satisfaction within 30 minutes of the earlier of the Operator's notice pursuant to paragraph 1.1 or the TSP first becoming aware of that In-Service Fault; or
  - (ii) determines that the relevant In-Service Fault is such that that Failed Set cannot continue with that In-Service Fault isolated; or
- (b) Network Rail directs that that Failed Set be removed from service.

2.5 In any event, where a Category One In-Service Failure has occurred and has not been remedied to the Operator's reasonable satisfaction within 30 minutes of such failure occurring, the Operator shall withdraw the relevant Set from service.

### **Provisions Relating to Technical Inspectors**

2.6 The TSP shall employ sufficient Technical Inspectors to respond to the level of In-Service Faults that is likely to occur during the term of this Agreement in relation to rolling stock vehicles of the kind which comprise the Sets.

2.7 The Technical Inspectors shall each be mobile and together, capable of attending a Set anywhere on the Relevant Network, including diversionary and future expansion routes. Their times of working and disposition shall have regard to:

- (a) probability of an In-Service Fault at any given time of day;
- (b) available time to carry out repairs at the locations any Set will visit such as terminals and stations at which Turnarounds are carried out; and
- (c) the probability of more than one In-Service Fault occurring at the same time.

2.8 Technical Inspectors shall be sufficiently trained and skilled to be capable of undertaking rapid fault finding and diagnosis of any type of fault affecting the service, operational capability or safety of a Set and the correction and/or isolation of any components found to be faulty to enable a return of any such Set to service where practicable.

### 3. UNAVAILABILITY FOLLOWING IN-SERVICE FAULT

3.1 Subject to paragraph 3.3, if any Failed Set is removed from service pursuant to paragraph 2.2 or 2.5, that Set shall be *Deemed Unavailable*, provided that if the TSP believes the Operator's decision to remove any Failed Set is unreasonable, the TSP may subsequently refer such decision for resolution in accordance with the Dispute Resolution Rules.

3.2 Subject to paragraph 3.3, if the Operator continues to operate a Failed Set falling within paragraph 2.1(a) that it is entitled to remove from service pursuant to paragraph 2.2, that Set shall be Failed But Used .

3.3 Where a Failed Set has suffered an In-Service Fault that is solely and directly attributable to Operator Responsible Damage and, but for that Operator Responsible Damage, such Set would not be a Failed Set, then it shall not be treated as a Failed Set for the purposes of paragraphs 3.1 and 3.2 only and, accordingly, shall not be treated as Deemed Unavailable or Failed But Used as appropriate.

### 4. SET RECOVERY

4.1 The TSP shall procure that Failed Sets are recovered and incidents that cause them are reported in accordance with all Applicable Laws and Standards.

4.2 If any Failed Set is incapable of moving under its own power, the TSP shall provide a Technical Inspector or other nominated call-out person to attend any such incident promptly upon its occurrence to:

- (a) assist the Operator in ascertaining the root cause of the incident;
- (b) determine the extent of any damage (if any) caused at the time of the incident;
- (c) determine the extent of any damage (if any) caused as a consequence of recovery of that Failed Set;
- (d) advise on changes in procedures, method statements or maintenance practices to prevent recurrence;
- (e) certify as fit to move or supervise the recovery of that Failed Set back to one of the Depots;
- (f) assist with the use of any special tools required for recovery, and advise on the use of lifting and jacking points where necessary; and
- (g) provide to the Operator a report identifying the cause of the incident.

4.3 The physical recovery of any Failed Set following any such incident shall be carried out by the TSP following liaison with the Operator. The TSP shall be responsible for providing rescue traction including necessary drivers.

4.4 Should the Technical Inspector or other call-out person nominated by the TSP not attend any such incident, a statement of damage consequential to the recovery operation shall be provided by the Operator, which shall be deemed to form the record of the event.

4.5 The TSP shall reimburse the Operator for all costs the Operator is charged by Network Rail in accordance with its Track Access Agreement in connection with Network Rail clearing the line of any Failed Set.

**SCHEDULE 4**

**CONTRACT MANAGEMENT AND COMPLIANCE**

**Schedule 4.1: Contract Management**

**Schedule 4.2: Compliance Testing**

## SCHEDULE 4.1

### Contract Management

#### 1. APPOINTMENT OF PERSONNEL

##### **TSP's Personnel**

- 1.1 (a) The TSP shall appoint a contract manager (the *TSP Contract Manager*). The responsibilities of the TSP Contract Manager shall be as set out in this Schedule 4.1. The TSP Contract Manager may from time to time be replaced by the TSP, provided prior written notice of such replacement has been given to the Operator.
- (b) The TSP shall also provide:
- (i) a senior representative, with the appropriate authority, to attend the Principals' Meetings; and
  - (ii) a nominated contact for the purposes of paragraph 1.1 of Schedule 3.2 (*In-Service Faults*), who shall be a person with suitable qualification and experience to perform the TSP's obligations under Schedule 3.2 and co-ordinate the management and, where appropriate, recovery of Failed Sets pursuant to that Schedule (the *TSP Nominated Contact*). The TSP Nominated Contact may, from time to time, be replaced by the TSP provided written notice of such replacement has been given to the Operator.

##### **Operator's Personnel**

- 1.2 (a) The Operator shall appoint a contract manager (the *Operator Contract Manager*). The responsibilities of the Operator Contract Manager shall be as set out in this Schedule 4.1. The Operator Contract Manager may, from time to time, be replaced by the Operator provided prior written notice of such replacement has been given to the TSP.
- (b) The Operator shall also provide a senior representative, with the appropriate authority, to attend the Principals' Meetings.

##### **Responsibilities of the TSP Contract Manager**

- 1.3 The TSP Contract Manager shall be responsible for:
- (a) the day-to-day commercial administration of this Agreement on behalf of the TSP, including the Performance Regime;
  - (b) arranging the Performance Review Meetings and the Principals' Meetings;
  - (c) preparing the Performance Report required pursuant to paragraph 5.3(a) and as specified in paragraph 7;
  - (d) monitoring the performance of the Sets with a view to identifying reliability and operational improvements which will then be considered and discussed between the TSP and the Operator; and

- (e) providing or procuring the provision of engineering support when required.

### **Responsibility of the Operator Contract Manager**

1.4 The Operator Contract Manager shall be responsible for the day-to-day commercial administration of this Agreement on behalf of the Operator, including the Performance Regime.

### **Delegation**

1.5 The TSP Contract Manager, the TSP Nominated Contact or the Operator Contract Manager (as the case may be) may, from time to time, delegate any of the powers, functions and authorities vested in him to assistants and/or agent(s) and may from time to time revoke such delegation. Any such delegation or revocation shall be in writing, shall be signed by the TSP Contract Manager or the Operator Contract Manager (as applicable) and shall state which power, function or authority is thereby delegated or revoked and the persons to whom or from whom the same are delegated or revoked. No such delegation or revocation shall have any effect until written notice thereof has been provided to the TSP (in the case of a delegation or revocation by the Operator Contract Manager) or the Operator (in the case of a delegation or revocation by the TSP Contract Manager).

## **2. MAINTENANCE OF RECORDS**

### **TRUST System**

2.1 The Operator will maintain a daily record of Relevant Delay Incidents and Minutes Delay, in relation to the Sets using the TRUST system.

### **Availability of Records**

2.2 The Operator shall make the records of each of the matters specified in paragraph 2.1 available to the TSP on the request of the TSP.

### **TSP Information**

2.3 The TSP shall collect and retain a record of the following information:

- (a) downloads of on-Set CCTV footage;
- (b) 'On Train Monitoring Recorder' downloads; and
- (c) downloads of each Set's fault-monitoring systems, sufficiently frequently to ensure an accurate and complete history of each Set's fault history is maintained.

2.4 The TSP shall make records of each of the matters listed in paragraph 2.3 available to the Operator and, where relevant, Network Rail, on the request of the Operator.

### **In-Service Fault Response and Records**

2.5 The TSP shall ensure that the TSP Nominated Contact is available, and that its facilities are appropriately resourced at all times during the Operational Day of each Set, such that all notifications pursuant to paragraphs 1.1 and 1.2 of Schedule 3.2 (*In-Service Faults*) are responded to in person within 60 seconds of any such notification.

2.6 Any such notification to the TSP (and subsequent action taken in respect thereof) shall be logged and recorded as follows:

- (a) time of notification;
- (b) time of allocation of staff;
- (c) time of attendance;
- (d) problem reported;
- (e) action taken; and
- (f) time of clearance (where appropriate) of Failed Set or other outcome.

### **Network Rail Information**

2.7 The TSP shall promptly provide to Network Rail the data and information collected by the Infrastructure Monitoring Systems, including, as applicable:

- (a) the 'Intelligent Monitoring System';
- (b) the 'Unattended Overhead Line Measurement System';
- (c) the 'Unattended Geometry Measurement System'; and
- (d) the 'Forward-Facing CCTV',

(together, the *Network Rail Information*).

2.8 The TSP acknowledges that all Network Rail Information shall at all times be the property of Network Rail.

## **3. CONSULTATION, ALLOCATION AND DISPUTES**

### **Consultation**

- 3.1 (a) The TSP shall provide a representative of the TSP during the hours of operation, in the Operator's railway operations control room to provide support and advice in the management of the Fleet, its deployment and maintenance and response to incidents (the *TSP Representative*).
- (b) The Operator shall grant access to, and provide reasonable office facilities in the Operator's railway operations control room to the TSP Representative in order that the TSP Representative may carry out his responsibilities under this Schedule 4.1.
- (c) The Operator shall notify and consult with the TSP Representative in respect of the attribution of Minutes Delay between Network Rail and the Operator immediately upon receipt of notice of any such attribution, to the extent that the Operator intends to attribute all or part of the responsibility for such Minutes Delay to the TSP pursuant to paragraph 3.2.
- (d) The TSP Representative shall be entitled (acting reasonably) to request, within six hours of notification from the Operator in accordance with paragraph 3.1(c), that the

Operator places any of the Minutes Delay referred to in paragraph 3.1(c) into dispute with Network Rail in accordance with the terms of the Track Access Agreement between them in which event the Operator shall:

- (i) accordingly place such Minutes Delay into dispute with Network Rail; or
- (ii) refuse to so place such Minutes Delay into dispute with Network Rail, in which case, the Operator will no longer be entitled to attribute responsibility for the same to the TSP pursuant to paragraph 3.2.

### **Daily Attribution**

3.2 (a) The Operator shall make a daily attribution of responsibility for Minutes Delay attributed to the Operator by Network Rail (other than those attributions which remain in dispute between the Operator and Network Rail). The attribution of responsibility shall be made in the following categories, and shall include the date, time, location and number of Minutes Delay:

- (i) Minutes Delay which are the responsibility of the Operator; and
- (ii) Minutes Delay which are the responsibility of the TSP (*TSP Minutes Delay*).

(b) To the extent that the outcome of any dispute with Network Rail results in Minutes Delay being attributed to the Operator, then the Operator shall attributed responsibility for the same in accordance with paragraph 3.2(a) and update its records accordingly.

### **Disputes**

3.3 (a) Each day, the TSP Contract Manager and the Operator Contract Manager shall work together to establish the cause of and attribute responsibility for any Fault and all Minutes Delay.

(b) If the TSP Contract Manager and the Operator Contract Manager cannot agree whether any Fault is the responsibility of the Operator or the TSP, in respect of the attribution for Minutes Delay, the dispute shall be dealt with at the next Performance Review Meeting.

(c) Paragraph 5.5 shall apply in relation to any failure to reach agreement at such Performance Review Meeting.

### **Reliability Regime**

3.4 In respect of any Minutes Delay which arise from a Fault which has not been agreed or determined to be the TSP's responsibility, no payment shall be made under the provisions of Schedule 6.2 (*Reliability Regime*) and those minutes shall not be taken into account for the purposes of paragraph 4.4 until agreement or determination as aforesaid.

## **4. PERFORMANCE NOTICES**

### **Performance Records**

4.1 The TSP shall at all times maintain an accurate record of all performance data which relate to the performance criteria under this Agreement, including:



- (a) the number of Half Sets and the number of Full Sets which are Unavailable, Deemed Unavailable, Unavailable But Used or Failed But Used for each day; and
  - (b) the number of TSP Minutes Delay for each day,
- and shall share such records with the Operator, on request.

### Unavailability Notices

4.2 If the number of Unavailable or Deemed Unavailable Sets is:

- (a) on any day greater than [REDACTED] of the number of Sets required to be made available in accordance with the Operator's Dispatch Requirements on that day;
- (b) on any five days out of seven consecutive days, greater than [REDACTED] of the number of Sets required to be made available in accordance with the Operator's Dispatch Requirements on those days (but excluding for these purposes, any day that falls within paragraph 4.2(a)); or
- (c) on any 20 days falling within a period of six consecutive Reporting Periods, greater than [REDACTED] of the number of Sets required to be made available in accordance with the Operator's Dispatch Requirements on those days (but excluding for these purposes any days that fall within paragraph 4.2(a) or (b)),

(each of the above being a *Notifiable Unavailability Event*) then, the TSP shall inform the Operator of such level of unavailability by providing written notice within five Business Days of such occurrence, and shall copy any such notice to the Secretary of State.

### Reliability Notices

4.3 The TSP shall calculate the Reliability Factor for each Reporting Period five Business Days after the end of that Reporting Period.

4.4 The *Reliability Factor* for a Reporting Period shall be:

$$RF = \frac{TMD}{TMT}$$

where:

RF means the Reliability Factor for that Reporting Period;

TMD means the total TSP Minutes Delay in that Reporting Period; and

TMT means the total miles travelled by the Fleet in that Reporting Period (during the Operational Day).

4.5 If in respect of any Reporting Period the Reliability Factor exceeds [REDACTED]<sup>13</sup> (such occurrence a *Notifiable Reliability Event*), the TSP shall inform the Operator of such

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<sup>13</sup> [REDACTED].

level of reliability by providing written notice within five Business Days of the end of that Reporting Period, and shall copy such notice to the Secretary of State.

4.6 If in any three Reporting Periods in any six consecutive Reporting Periods the Reliability Factor exceeds [REDACTED]:<sup>14</sup>

- (a) on two or more occasions; or
- (b) occurs once and during the same period, any of the events described in paragraphs (a)(i) to (iii) inclusive of the definition of Remedial Event occurs,

then, a Remedial Event shall occur.

## 5. RELATIONSHIP AND PERFORMANCE REVIEW PROCESS

### Communication

- 5.1 (a) The parties shall ensure that at all reasonable times, the TSP Contract Manager and the Operator Contract Manager, or any other authorised representative, is available to receive, deal with, agree, advise on and explain what the current position is concerning any issues regarding this Agreement, including safety related issues affecting the Sets and day-to-day operational and incident management.
- (b) The parties shall establish appropriate procedures and points of contact for such consultation, liaison and communication.

### Performance Review Meetings

- 5.2 (a) A performance review meeting (*Performance Review Meeting*) shall be held within five Business Days of the end of each Reporting Period and shall be attended by at least the TSP Contract Manager and the Operator Contract Manager.
- (b) The standing agenda for the meeting shall be as set out in paragraph 6. Each party shall give reasonable notice to the other party of any other items it proposes to be added to the Performance Review Meeting agenda.
- (c) Either party may require that a further Performance Review Meeting takes place whenever it reasonably believes that the performance of the other party's obligations has fallen below, in the requiring party's reasonable opinion, an acceptable level (*Additional Performance Review Meeting*). Such meeting shall address initiatives to improve the performance of that other party. The date and location of such Additional Performance Review Meeting shall be as agreed between the parties or, in the absence of such agreement within five Business Days of notice being served requiring such Additional Performance Review Meeting, at a venue and time specified by the party requiring such Additional Performance Review Meeting on not less than five and no more than 30 days' written notice.
- (d) The location of any Performance Review Meeting or Additional Performance Review Meeting shall be in [*specify convenient location*] but otherwise as specified

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<sup>14</sup> [REDACTED].

alternately by the TSP and the Operator unless otherwise agreed, with the location of the first meeting to be specified by the Operator.

### **Performance Reports**

- 5.3 (a) No later than three Business Days prior to any Performance Review Meeting, the TSP Contract Manager shall ensure that the Operator receives two copies of the Performance Report relating to the Reporting Period immediately preceding that Performance Review Meeting and which shall cover the issues set out in paragraph 6.
- (b) The TSP Contract Manager shall provide to the Operator, within a reasonable time following a request, any additional performance and other reports as are required by the Operator.

### **Principals' Meetings**

5.4 In addition to the Performance Review Meetings, the parties shall provide a senior representative, with the appropriate authority, to meet, at a minimum, every four Reporting Periods to review their working relationship in more general terms. Three Business Days before each such meeting (a *Principals' Meeting*) an agenda shall be agreed between the parties.

### **Dispute Resolution**

- 5.5 (a) If agreement cannot be reached on any issue at a Performance Review Meeting then, unless otherwise agreed between the parties, a Dispute shall arise and such Dispute will be resolved in accordance with clause 17 (*Dispute Resolution*).
- (b) When a Dispute has been resolved, the liability, if any, of the TSP under the Performance Regime will be recalculated to reflect the outcome of such Dispute and the timing of the occurrence of the event giving rise to such Dispute.

## **6. STANDING AGENDA FOR PERFORMANCE REVIEW MEETING**

The standing agenda for each Performance Review Meeting shall include:

- (a) the minutes of the previous Performance Review Meeting;
- (b) a review of safety performance (if necessary a separate meeting may be organised to discuss safety performance);
- (c) a review of the relevant Performance Report;
- (d) Fault and incident disputes (including allocation of Minutes Delay for the purposes of the Reliability Adjustment);
- (e) the TSP's performance under the KPI Regime and issues arising from it;
- (f) any forthcoming special events or other events for which the Operator may require or request, as applicable, additional Sets be made available to it;
- (g) any issues that have arisen from the TSP Daily Set Checks and the Handover Certificate and Handback Certificate procedure since the previous Performance Review Meeting;

- (h) continuous improvement initiatives;
- (i) any other business; and
- (j) date and location of next Performance Review Meeting.

## 7. PERFORMANCE REPORT

The Performance Report shall include, but not be limited to, the following:

<b>Subject</b>	<b>Performance Categories</b>	<b>Performance Data</b>
<b>Safety</b>	Safety Incidents Actions Taken NIRS	<ul style="list-style-type: none"> <li>- Issued</li> <li>- Responded</li> </ul>
<b>Maintenance</b>	Planned Work Completed Work Modifications Work Arising Additional Authorised Work	<ul style="list-style-type: none"> <li>- Number and type of repairs</li> <li>- Material Used and Material Supply Performance</li> <li>- Planned</li> <li>- In progress</li> <li>- Completed</li> <li>- Warranty claims</li> </ul>
<b>Cleaning</b>	Planned  Completed  Audits	<ul style="list-style-type: none"> <li>- Interior and Exterior Cleans</li> <li>- Interior and Exterior Cleans as per Performance Regime</li> </ul>
<b>Audits</b>	Internal and External: Safety Quality Environmental	
<b>Performance and related Payments</b>	Availability      Reliability (per period and annual average)	<ul style="list-style-type: none"> <li>- Number of units</li> <li>- Category One and Category Two Handover Failures</li> <li>- Category One and Category Two In-Service Failures</li> <li>- Notifiable Unavailability Events</li> <li>- Delay</li> <li>- Minutes</li> <li>- Notifiable Reliability Events</li> </ul>
	Casualties   Service Defects	<ul style="list-style-type: none"> <li>- Service Failures</li> <li>- Cancellations</li> <li>- Faults</li> </ul>

<b>Subject</b>	<b>Performance Categories</b>	<b>Performance Data</b>
	All Data Required by the Performance Regime	- Cab and Passenger Environment Faults
	In-Service Faults	- Set Failures - Information required pursuant to paragraph 2.6 of Schedule 4.1
<b>Mileage</b>	Per Period Annual Average	On a Set basis
<b>Technical Investigations</b>	In Progress Final Reports	
<b>Performance</b>	Progress	
<b>KPIs</b>	KPI Failures  Trends  Remedial Steps  Other information require pursuant to paragraph 5.3(b) of Schedule 6.3 ( <i>KPI Regime</i> )	

## SCHEDULE 4.2

### Compliance Testing

#### 1. FUEL EFFICIENCY TESTING

##### Periodic Set Testing

1.1 Commencing with the third complete Reporting Period following the first anniversary of the Full Deployment Date, and thereafter, each third Reporting Period (for these purposes a *relevant Reporting Period*) the TSP shall within 10 Business Days of the end of a relevant Reporting Period, provide to the Operator in respect of each Set with self-powered capability in the Fleet with the following:

- (a) an individual fuel efficiency ratio for each such Set, calculated by:
  - (i) taking the total fuel consumed by the relevant Set in all Operational Days occurring in each of the relevant Reporting Period and the two immediately preceding Reporting Periods (the *Measurement Period*); and
  - (ii) dividing that total by the total miles travelled by that Set in that Measurement Period (the *Individual Set Fuel Efficiency Ratio*); and
- (b) an average fuel efficiency ratio for all such Sets, calculated by aggregating each of the Individual Set Fuel Efficiency Ratios derived under paragraph 1.1(a) and dividing this number by the total number of Sets for which an Individual Set Fuel Efficiency Ratio has been calculated, to give an average ratio for that Measurement Period (the *Average Set Fuel Efficiency Ratio*).

1.2 In relation to any Set for which the Individual Set Fuel Efficiency Ratio is more than [[REDACTED]] in excess of the Average Set Fuel Efficiency Ratio in a Measurement Period, the Operator and the TSP shall, if the Operator so requests, consult in good faith to determine the reasons for such excess.

1.3 If the parties are unable to determine the reasons for the excess described in paragraph 1.2 and/or the actions to be taken in response, in each case to the Operator's reasonable satisfaction, the Operator may by written notice (a *Fuel Compliance Test Notice*) require the TSP to undertake a Fuel Compliance Test, and paragraph 3 shall apply.

##### Benchmarking Average Set Fuel Efficiency Ratio

1.4 During the Reporting Period immediately after the Fuel Benchmark Testing Period, the TSP shall calculate a fuel efficiency benchmark for the Fleet by aggregating the total fuel consumed by all self-powered Sets in all Operational Days occurring during the Fuel Benchmark Testing Period and dividing it by the total miles travelled by those Sets during those Operational Days (the *Fleet Fuel Efficiency Benchmark*).

##### Testing against the Fleet Fuel Efficiency Benchmark

1.5 During the Reporting Period immediately after each anniversary of the end of the Fuel Benchmark Testing Period, the TSP shall calculate an annual fleet efficiency average by aggregating the total fuel consumed by all self-powered Sets in all Operational Days occurring during the immediately preceding 13 consecutive Reporting Periods ending on the

relevant anniversary and dividing it by the total miles travelled by those Sets during those Operational Days (the *Annual Fleet Efficiency Average*).

1.6 If as a consequence of that calculation, the Annual Fleet Efficiency Average is [*more than [REDACTED]*] higher than the Fleet Fuel Efficiency Benchmark, then a Remedial Event will occur.

## 2. EMISSION, NOISE AND RIDE STANDARDS

2.1 The Operator may by service of written notice pursuant to paragraph 2.3, require the TSP to demonstrate the compliance of any Set or Sets with any or all of the:

- (a) Emission Standard;
- (b) Noise Standard; and
- (c) Ride Standard.

2.2 A notice pursuant to the requirement in paragraph 2.1 shall specify the Set or Sets to which it relates and such standards concerned (a *Standards Compliance Test Notice*).

2.3 The Operator may serve a Standards Compliance Test Notice in respect of each such standard not more frequently than once in any calendar year, unless the provisions of paragraph 3.3 apply.

## 3. COMPLIANCE TESTING

3.1 The TSP shall perform the relevant Compliance Tests required by a Compliance Notice, and shall provide the Operator with not less than one week's notice of the time and the place where the Compliance Test is to be conducted and shall allow the Operator to be present when the Compliance Test is carried out.

3.2 If the Set or Sets concerned satisfy the requirements of a Compliance Test, then the Operator shall be responsible for the reasonable and proper costs incurred by the TSP in carrying out the relevant compliance test in accordance with paragraphs 5 to 6 of Schedule 6.5 (*Costs payable by Operator*). If the Set or Sets concerned do not satisfy the requirements of the Compliance Test (in each case, a *Non-Compliant Set*) then the costs of the Compliance Test shall be for the TSP.

3.3 If and whenever there is a Relevant Non-Compliant Set, the Operator may within a period of 28 days thereafter serve a further Compliance Notice in respect of the Emission Standard, the Noise Standard or the Ride Standard, as the case may be, in relation to up to three further Sets, if it considers that non-compliance with the relevant standards may be present more widely among the Sets.

## 4. REMEDIES FOR NON-COMPLIANT SETS

4.1 Subject to paragraph 4.2, any Non-Compliant Set shall constitute a Remedial Event and the provisions of Schedule 10.1 (*Remedial Plans*) shall apply.

4.2 If by the end of the [REDACTED] Reporting Period following the date of any Compliance Notice, either:

- (a) the TSP has not yet carried out a Compliance Test in respect of any Set to which such Compliance Notice relates; or
- (b) a Non-Compliant Set has not yet been cured to the reasonable satisfaction of the Operator pursuant to a Remedial Plan or otherwise,

then, in either case, until such time as that Non-Compliant Set has been demonstrated to have been cured to the reasonable satisfaction of the Operator, such Set shall, without limiting the provisions of Schedule 6.1 (*Availability Regime*), on each occasion when made available to the Operator, be deemed Unavailable But Used.



**SCHEDULE 5**

**PAYMENT**

- Schedule 5.1: TARA Payments**
- Schedule 5.2: Set Availability Payments**
- Schedule 5.3: Fleet Introduction Payments**

## SCHEDULE 5.1

### TARA Payments

#### 1. TARA PAYMENTS

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

$$\text{£TP} = (\text{BPC} \times \text{I}_1) + ((-\text{AA} - \text{RA} + \text{KPIP} + \text{MA} + \text{MSPA}) \times \text{I}_2) + \text{RIA} - \text{FCA} + \text{FIP}$$

where:

£TP means the TARA Payment for that Reporting Period;

BPC means the Base Period Charge, calculated in accordance with paragraph 2.1;

I<sub>1</sub> means the first indexation factor, calculated in accordance with paragraph 2.11;

AA means the Availability Adjustment, calculated in accordance with paragraph 2.2;

RA means the Reliability Adjustment, calculated in accordance with paragraph 2.3;

KPIP means the KPI Payment, calculated in accordance with paragraph 2.4;

MA means the Mileage Adjustment, calculated in accordance with paragraphs 2.7 and 2.8 inclusive;

MSPA means the Marginal Set Payment Adjustment, calculated in accordance with paragraph 2.9;

I<sub>2</sub> means the second indexation factor, calculated in accordance with paragraph 2.11;

RIA means the Reimbursable Items Adjustment, calculated in accordance with paragraph 2.10;

FCA means the Fuel Consumption Adjustment, calculated in accordance with paragraph 2.5; and

FIP means the Fleet Introduction Payment calculated in accordance in Schedule 5.3 (*Fleet Introduction Payments*).

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

#### 2. CALCULATION OF TARA PAYMENTS

##### Base Period Charge

2.1 The Base Period Charge for a Reporting Period shall be calculated in accordance with the following:

$$BPC = (SAP_H \times MAS_H) + (SAP_F \times MAS_F)$$

where:

$SAP_H$  means the Set Availability Payment that relates to a Half Set;

$MAS_H$  means the aggregate of the Maximum Available Half Sets and the number of Excused Half Sets on each day of that Reporting Period;<sup>15</sup>

$SAP_F$  means the Set Availability Payment that relates to a Full Set; and

$MAS_F$  means the aggregate of the Maximum Available Full Sets and the number of Excused Full Sets on each day of that Reporting Period.

### Availability Adjustment

2.2 The Availability Adjustment for a Reporting Period shall be calculated in accordance with paragraph 3 of Schedule 6.1 (*Availability Regime*).

### Reliability Adjustment

2.3 The Reliability Adjustment for a Reporting Period shall be calculated in accordance with paragraph 3 of Schedule 6.2 (*Reliability Regime*).

### KPI Payment

2.4 The KPI Payment shall be calculated in accordance with paragraph 2 of Schedule 6.3 (*KPI Regime*).

### Fuel Consumption Adjustment

2.5 The Fuel Consumption Adjustment for a Reporting Period shall be calculated in accordance with paragraph 2 of Schedule 6.4 (*Fuel Regime*).

### Mileage Adjustment<sup>16</sup>

2.6 No Mileage Adjustment shall be made until the Full Deployment Date.

2.7 Thereafter if the aggregate Actual Operational Mileage of the Fleet in a Reporting Period:

- (a) is between  $EPM_1$  and  $EPM_2$  inclusive, no Mileage Adjustment shall be made in respect of that Reporting Period;
- (b) is greater than  $[EPM_2]$ , the Mileage Adjustment for that Reporting Period shall be calculated in accordance with the following:

$$MA = (APM - EPM) \times \pounds[bidders \text{ to populate}]$$

<sup>15</sup> Maximum number of Sets to be specified in Rules of the Fleet.

<sup>16</sup> Please refer to the "IEP TARA Pack Calibration all routes" in the data site for EPM data. Bidder to provide empty coaching stock movements.

where:

MA means the Mileage Adjustment for that Reporting Period;

APM means the aggregate Actual Operational Mileage of the Fleet in that Reporting Period; and

EPM means EPM<sub>2</sub>; and

- (c) is less than [EPM<sub>1</sub>], the Mileage Adjustment for that Reporting Period shall be calculated in accordance with the following:

$$MA = (APM - EPM) \times \text{£}[\textit{bidders to populate}]$$

where:

MA means the Mileage Adjustment for that Reporting Period;

APM means the higher of:

- (i) the aggregate Actual Operational Mileage of the Fleet in that Reporting Period; and
- (ii) EPM<sub>1</sub> x 0.85; and

EPM means EPM<sub>1</sub>.

2.8 For the purpose of paragraph 2.7:

(a) EPM<sub>1</sub> means [EPM x 0.975]; and

(b) EPM<sub>2</sub> means [EPM x 1.025].

### **Marginal Set Payment Adjustment**

2.9 The Marginal Set Payment Adjustment for a Reporting Period shall be calculated in accordance with the following:

$$MSPA = (AS_H \times MSP_H) + (AS_F \times MSP_F)$$

where:

MSPA means the Marginal Set Payment Adjustment for that Reporting Period;

AS<sub>H</sub> means the number of Half Sets made available during that Reporting Period pursuant to paragraph 2 of Schedule 2.1 (*Availability Requirements*);

MSP<sub>H</sub> means the Marginal Set Payment for any Half Set;

AS<sub>F</sub> means the number of Full Sets made available during the Reporting Period pursuant to paragraph 2 of Schedule 2.1; and

MSP<sub>F</sub> means the Marginal Set Payment for any Full Set.

## Reimbursable Items Adjustment

2.10 The Reimbursable Items Adjustment for a Reporting Period shall be calculated in accordance with the following:

$$\text{RIA} = \text{FCP} + \text{CPO}$$

where:

RIA means the Reimbursable Items Adjustment for that Reporting Period;

FCP means the Fuel Consumption Payment calculated in accordance with paragraph 1.5 of Schedule 6.4 (*Fuel Regime*); and

CPO means the costs payable by the Operator pursuant to paragraph 6 of Schedule 6.5 (*Costs Payable by the Operator*).

## Indexation

2.11 The first indexation factor,  $I_1$ , shall be:

$$I_1 = \left( \frac{\text{RPI}_y}{\text{RPI}_x} \times j \right) + (1 - j)$$

and the second indexation factor,  $I_2$ , shall be:

$$I_2 = \frac{\text{RPI}_y}{\text{RPI}_x}$$

where:

$I_1$  means the first indexation factor applied in any calculation performed pursuant to paragraph 1.1;

$I_2$  means the second indexation factor applied in any calculation performed pursuant to paragraph 1.1;

$\text{RPI}_y$  means the value of the Retail Prices Index published in respect of December of the preceding [*financial*] year;

$\text{RPI}_x$  means [*the value of the Retail Prices Index published in respect of December 2008*]; and

$j$  means [*bidders to propose figure between 0 and 1, being the proportion of the BPC that is to be indexed*].

## 3. PAYMENT OF TARA PAYMENTS

3.1 The TSP shall notify the Operator, no more than five days after the end of each Reporting Period, of the amount of the TARA Payment payable in respect of that Reporting Period.

3.2 Each such notification shall set out in reasonable detail how the relevant TARA Payment has been calculated.

3.3 The Payment Date for any TARA Payment in respect of a Reporting Period shall be the day falling 21 days after the end of that Reporting Period (or, if that day is not a Business Day, the next Business Day).

3.4 Each TARA Payment in relation to any Reporting Period shall be payable by the Operator in the amount notified by the TSP in accordance with paragraph 3.1 on the Payment Date relating to that Reporting Period.

3.5 Each TARA Payment shall be made:

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

3.6 If either party disputes the amount of a TARA Payment, the Dispute shall be resolved in accordance with the Dispute Resolution Rules but shall not affect the obligation of either party to pay a TARA Payment notified in accordance with this paragraph 3.

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

3.8 If the amount of any TARA Payment is agreed or determined to be incorrect and:

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

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

#### **4. PAYMENTS FREE AND CLEAR**

All sums payable by either party under this Agreement shall be paid free and clear of any deductions, withholdings, set-offs or counter-claims, save only as may be required by Law or as expressly permitted or required under this Agreement.

#### **5. VAT**

##### **Value Added Tax**

5.1 For the purposes of this paragraph 5:

- (a) VAT means value added tax and any goods and services, sales or turnover tax, imposition or levy of a like nature; and
- (b) supply includes anything on or in respect of which VAT is chargeable.

5.2 The Operator shall pay to the TSP the amount of any VAT chargeable in respect of any supply for VAT purposes under this Agreement.

5.3 All amounts payable under this Agreement are exclusive of VAT (if any), and if VAT is payable in respect of any amount as aforesaid, the Operator, on receipt of a proper VAT invoice, shall pay all such VAT and shall indemnify the TSP against any claims for the same (and where appropriate the Operator shall increase the payments which would otherwise be required to be made hereunder so that the TSP is left in the same position as it would have been in had no VAT been payable); and the Operator shall provide evidence to the TSP, if available, in respect of payment of any such VAT.

## **SCHEDULE 5.2**

### **Set Availability Payments**

**1. SET AVAILABILITY PAYMENTS FOR HALF SETS**

The Set Availability Payments for a Half Set shall be £[\_\_\_\_\_].

**2. SET AVAILABILITY PAYMENTS FOR FULL SETS**

The Set Availability Payments for a Full Set shall be £[\_\_\_\_\_].



## SCHEDULE 5.3

### Fleet Introduction Payments

#### 1. FLEET INTRODUCTION PAYMENTS

##### Calculation of the Fleet Introduction Payments

1.1 The Fleet Introduction Payment for any Reporting Period shall be calculated in accordance with the following formula:

$$\text{FIP} = \text{RGP} - \text{SRA} - \text{FRA} + \text{SRRP} + \text{FRRP}$$

where:

RGP means the Reliability Growth Payment payable for that Reporting Period in accordance with paragraph 1.2;

SRA means the Set Retention Amount calculated for that Reporting Period in accordance with paragraph 1.4;

FRA means the Fleet Retention Amount calculated for that Reporting Period in accordance with paragraph 1.5;

SRRP means the Set Retention Release Payment payable for that Reporting Period in accordance with paragraph 1.6; and

FRRP means the Fleet Retention Release Payment payable for that Reporting Period in accordance with paragraph 1.7.

##### Reliability Growth Payment

1.2 In respect of any Type specified in column 1 in the table in paragraph 1.3:

(a) if the three Reporting Period moving average MDBF relating to that Type is higher than the relevant target MDBF specified in column 3 of that table in each of the three consecutive Reporting Periods ending on the relevant MDBF Reference Date specified in column 2 of that table, then the Operator shall pay to the TSP a Reliability Growth Payment equal to the amount specified in Column 4 of that table on the Payment Date in the next Reporting Period following the relevant MDBF Reference Date; and

(b) if no Reliability Growth Payment is payable under paragraph 1.2(a) in relation to that Type, then:

(i) a Reliability Growth Payment shall only be paid by the Operator to the TSP in accordance with paragraph 1.2(b)(ii) in relation to that Type when the three Reporting Period moving average MDBF relating to that Type is higher than the relevant target MDBF specified in column 3 of that table in each of three consecutive Reporting Periods occurring after the relevant MDBF Reference Date specified in column 2 of that table; and

- (ii) that Reliability Growth Payment shall be paid on the Payment Date of the Reporting Period after the third such consecutive Reporting Period and be calculated in accordance with the following:

**[REDACTED]**

where:

RGP means the Reliability Growth Payment payable on that Payment Date in relation to the relevant Type;

FTP means the full Type payment specified in column four of the table in paragraph 1.3 in relation to that Type; and

RP means the number of full Reporting Periods that have elapsed between the MDBF Reference Date for that Type and the date on which that Reliability Growth Payment becomes payable,

provided that, no such Reliability Growth Payment shall be paid under this paragraph 1.2(b) where the conditions specified in paragraph 1.2(b)(i) have not been satisfied within 19 Reporting Periods of that MDBF Reference Date.

1.3 The table referred to in paragraph 1.2 is as follows: *[insert relevant table]*

**[REDACTED]**

#### **Set Retention Amount**

1.4 The Set Retention Amount for a Reporting Period shall be calculated in accordance with the following:

$$SRA = ((SPQ_H \times SAP_H) + (SPQ_F \times SAP_F)) \times 0.05$$

where:

SRA means the Set Retention Amount for that Reporting Period;

SPQ<sub>H</sub> means the number of Half Sets in the Fleet which have a Provisional Acceptance Certificate or Qualified Provisional Acceptance Certificate;

SPQ<sub>F</sub> means the number of Full Sets in the Fleet which have a Provisional Acceptance Certificate or Qualified Provisional Acceptance Certificate; and

SAP<sub>H</sub> and SAP<sub>F</sub> have the meanings given to them in paragraph 2.1 of Schedule 5.1 (*TARA Payments*).

#### **Fleet Retention Amount**

1.5 The Fleet Retention Amount shall be calculated for each Reporting Period in accordance with the following until a Fleet Acceptance Certificate has been issued in respect of the Fleet:

$$FRA = (T_H \times SAP_H) + (T_F \times SAP_F) \times 0.02$$

where:

- FRA means the Fleet Retention Amount for the relevant Reporting Period;
- $T_H$  means the total number of Half Sets in the Fleet in that Reporting Period;
- $T_F$  means the total number of Full Sets in the Fleet in that Reporting Period; and
- $SAP_H$  and  $SAP_F$  have the meanings given to them in paragraph 2.1 of Schedule 5.1.

### **Set Retention Release Payment**

1.6 A Set Retention Release Payment for a Reporting Period shall be payable for each Set that has received a Final Acceptance Certificate in that Reporting Period, and for each such Set, such payment shall be an amount equal to all amounts calculated in accordance with paragraph 1.4 and deducted in accordance with paragraph 1.1 relating to that Set.

### **Fleet Retention Release Payment**

1.7 A Fleet Retention Release Payment shall be payable in respect of the Reporting Period in which the Fleet Acceptance Certificate is issued, and shall be an amount equal to all amounts calculated in accordance with paragraph 1.5 and deducted in accordance with paragraph 1.1.

**SCHEDULE 6**

**PERFORMANCE REGIME**

**Schedule 6.1: Availability Regime**

**Schedule 6.2: Reliability Regime**

**Schedule 6.3: KPI Regime**

**Appendix: Key Performance Indicators**

**Schedule 6.4: Fuel Regime**

**Schedule 6.5: Costs Payable by Operator**

## SCHEDULE 6.1

### Availability Regime

#### 1. AVAILABILITY ADJUSTMENTS

The Availability Adjustment for any Reporting Period shall be calculated in accordance with this Schedule 6.1 and deducted from the Base Period Charge for that Reporting Period by way of an adjustment in accordance with Schedule 5.1 (*TARA Payments*).

#### 2. AVAILABILITY OF SETS

##### Available Sets

2.1 Subject to paragraphs 2.4 and 2.6, each Set that the TSP offers for service in accordance with the Dispatch Requirements, and which the Operator is not entitled to reject pursuant to paragraph 3.1 of Schedule 2.2 (*Handover and Handback*) is a Set that is **Available**.

##### Deemed Available Sets

2.2 Each Set that would be Available pursuant to paragraph 2.1, but for the occurrence of any of the following events:

- (a) a failure by the Operator to fulfil its obligations under this Agreement;
- (b) a Force Majeure Event affecting the TSP; or
- (c) damage caused by Operator Misconduct,

which, in each case, is the direct cause of the TSP's failure to make Available that Set, shall be a Set that is **Deemed Available**;

##### Unavailable But Used Sets

2.3 Each Set that:

- (a) the Operator accepts into service in accordance with paragraph 3.2 of Schedule 2.2; or
- (b) the Operator accepts into service and to which paragraph 4.2 of Schedule 4.2 (*Compliance Testing*) applies,

shall be a Set that is **Unavailable But Used**.

##### Failed But Used

2.4 Each Set that the Operator continues to run pursuant to paragraph 3.2 of Schedule 3.2 (*In-Service Faults*) shall be a Set that is **Failed But Used**.

### Unavailable Sets

2.5 Each Set that the TSP is required to provide to satisfy the Dispatch Requirements that:

- (a) the TSP fails to provide; or
- (b) the TSP provides, but the Operator rejects pursuant to and in accordance with paragraph 3 of Schedule 2.2,

shall be a Set that is *Unavailable*.

### Deemed Unavailable

2.6 Each Set that is removed from service following an In-Service Fault pursuant to Schedule 3.2 (*In-Service Faults*) shall be a Set that is *Deemed Unavailable*.

### Excused Set

2.7 Each Set is an Excused Set if and for so long as it falls within the scope of paragraph 3.4 of Schedule 1.2 (*TSP Covenants and Performance*).

### Hierarchy of Availability Incidents and TSP Minutes Delay

2.8 Where a Set is the subject of more than one related or unrelated incident in the same Operational Day that affects the availability and/or reliability of that Set and which would require as appropriate, but for this paragraph 2.8:

- (a) more than one abatement in the Availability Adjustment for the Reporting Period in which that Operational Day occurs;
- (b) more than one abatement in the Reliability Adjustment for the Reporting Period in which that Operational Day occurs; or
- (c) any combination of both abatements in that Availability Adjustment and that Reliability Adjustment,

then more than one such abatement or combination thereof shall only be made for the purposes of calculating that Availability Adjustment and/or Reliability Adjustment in accordance with the hierarchy specified in the Appendix.

### Two Coupled Half Sets

2.9 Where pursuant to the Dispatch Requirements in relation to any Operational Day, two Half Sets are to be coupled for the purpose of delivering any Passenger Service, but the TSP offers only one of those Half Sets for service at the Entry Time or Prior to Entry Time (as appropriate) of that Operational Day, then:

- (a) those Half Sets shall together be regarded as a single Full Set for the purpose of paragraph 1.1(a) of Schedule 2.2 (*Handover and Handback*), such that:
  - (i) the Half Set that is not offered for service shall be Unavailable; and

- (ii) the Operator shall be entitled to reject the Half Set that is offered for service under paragraph 3.1(b) of Schedule 2.2; and
- (b) if the Operator accepts into service the Half Set that is made available under paragraph 3.2 of Schedule 2.2, that Half Set shall be regarded as a Half Set in relation to that Operational Day for the purpose of the Availability Adjustment that is made in respect of the relevant Reporting Period.

2.10 Where pursuant to the Dispatch Requirements, two Half Sets are coupled for the purpose of delivering any Passenger Service and an availability incident occurs when coupled, then each such Half Set shall separately contribute to the Half Set Availability Adjustment for the purpose of the calculation in paragraph 3.2 to the extent any such Half Set satisfies any of the availability factors defined in paragraph 3.2 as a consequence of that availability incident.

### 3. CALCULATION OF AVAILABILITY ADJUSTMENTS

#### Availability Adjustments

3.1 The Availability Adjustment for any Reporting Period shall be calculated in accordance with the following:

$$AA = (HSAA + FSAA + ESAA) \times BIF$$

where:

AA means the Availability Adjustment for that Reporting Period;

HSAA means the Half Set Availability Adjustment, calculated in accordance with paragraph 3.2;

FSAA means the Full Set Availability Adjustment, calculated in accordance with paragraph 3.3;

ESAA means the Excused Set Availability Adjustment, calculated in accordance with paragraph 3.4; and

BIF means the Bedding In Factor.

#### Half Set Availability Adjustments

3.2 The Half Set Availability Adjustment for any Reporting Period shall be calculated in accordance with the following:

$$HSAA = SAP_H \times ((U_H \times UM) + (DU_H \times DUM) + (FU_H \times FUM) + (UU_H \times UUM))$$

where:

SAP<sub>H</sub> means the Set Availability Payment for a Half Set;

U<sub>H</sub> means the number of Half Sets which are Unavailable in that Reporting Period;

UM means the multiplier in respect of a Set being Unavailable being [REDACTED];

$DU_H$  means the number of Half Sets which are Deemed Unavailable in that Reporting Period;

$DUM$  means the multiplier in respect of a Set being Deemed Unavailable being [REDACTED];

$FU_H$  means the number of Half Sets which are Failed But Used in that Reporting Period;

$FUM$  means the multiplier in respect of a Set being Failed But Used being [REDACTED];

$UU_H$  means the number of Half Sets which are Unavailable But Used in that Reporting Period; and

$UUM$  means the multiplier in respect of a Set being Unavailable But Used being [REDACTED].

### Full Set Availability Adjustment

3.3 The Full Set Availability Adjustment for any Reporting Period shall be calculated in accordance with the following:

$$FSAA = SAP_F \times ((U_F \times UM) + (DU_F \times DUM) + (FU_F \times FUM) + (UU_F \times UUM))$$

where:

$SAP_F$  means the Set Availability Payment for a Full Set;

$U_F$  means the number of Full Sets which are Unavailable in that Reporting Period;

$DU_F$  means the number of Full Sets which are Deemed Unavailable in that Reporting Period;

$FU_F$  means the number of Full Sets which are Failed But Used in that Reporting Period;

$UU_F$  means the number of Full Sets which are Unavailable But Used in that Reporting Period; and

$UM, DUM, FUM$  and  $UUM$  have the meanings given to them in paragraph 3.2.

### Excused Set Availability Adjustment

3.4 The Excused Set Availability Adjustment for any Reporting Period shall be calculated in accordance with the following:

$$ESAA = [0.2] \times ((ES_H \times SAP_H) + (ES_F \times SAP_H))^{17}$$

where:

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<sup>17</sup> 0.2 is intended to reflect variable costs plus profit to avoid TSP benefiting from Excused Sets.



$ES_H$  means the number of Excused Half Sets;  
 $ES_F$  means the number of Excused Full Sets; and  
 $SAP_H$  and  $SAP_F$  have the meanings given to them in paragraphs 3.2 and 3.3 respectively.

## APPENDIX TO Schedule 6.1

## Hierarchy of Availability and Reliability Deductions

Initial Availability / Reliability Incident		Later failure causes further Availability Incident	Later failure causes further Reliability Incident	KPI Failures	Guidance Note reference
Set is <i>Unavailable</i>	<b>Description of later failure:</b>	N/A – cannot occur	N/A – cannot occur	N/A – cannot occur	<b>1</b>
	<b>Relevant abatement:</b>	<b>Abatement:</b> Unavailable	<b>Abatement:</b> Unavailable	<b>Abatement:</b> Unavailable, but no KPI Failures so no KPI deductions	<b>2</b>
Set is <i>Deemed Unavailable</i> (and not put back into service in same Operational Day)	<b>Description of later failure:</b>	N/A – cannot occur	N/A – cannot occur	Set enters service and is subsequently removed from service due to an In-Service Fault. KPI Failures recorded prior to removal from service	<b>3</b>
	<b>Relevant abatement:</b>	<b>Abatement:</b> Deemed Unavailable	<b>Abatement:</b> Deemed Unavailable	<b>Abatement:</b> Deemed Unavailable and KPI deductions for KPI Failures (not including KPI Failures that lead to Deemed Unavailable status)	<b>4</b>
Set is <i>Deemed Unavailable</i> (and put back into service in same Operational Day)	<b>Description of later failure:</b>	Set is removed from service, but is put back into service later in the day and suffers different failure from one that caused initial Deemed Unavailability. Later failure causes new Availability Incident	Set is removed from service, but is put back into service later in the day and suffers different failure from one that caused initial Deemed Unavailability. Later failure causes Set to incur Minutes Delay	Set is removed from service, but is put back into service later in the day. KPI Failures recorded on Set prior to removal from service and/or after reintroduction in service	<b>5</b>

Initial Availability / Reliability Incident		Later failure causes further Availability Incident	Later failure causes further Reliability Incident	KPI Failures	Guidance Note reference
	<b>Relevant abatement:</b>	<b>Abatement:</b> Deemed Unavailable and further abatement for new Availability Incident	<b>Abatement:</b> Deemed Unavailable and reliability abatement for TSP Minutes Delay	<b>Abatement:</b> Deemed Unavailable and KPI deductions for KPI Failures (not including KPI Failures that lead to Deemed Unavailable status)	<b>6</b>
Set is <i>Unavailable But Used</i>	<b>Description of later failure:</b>	Notwithstanding failure, Operator takes Set into service. Subsequently, different failure causes Set to become Failed But Used, Deed Unavailable or an Excused Set	Notwithstanding failure, Operator takes Set into service. Subsequently, different failure causes Set to incur Minutes Delay	Notwithstanding failure, Operator takes Set into service. KPI Failures also recorded	<b>7</b>
	<b>Relevant abatement:</b>	<b>Abatement:</b> Highest abatement applies	<b>Abatement:</b> Unavailable But Used and reliability abatement for TSP Minutes Delay	<b>Abatement:</b> Unavailable But Used and KPI deductions for KPI Failures	<b>8</b>
Set is <i>Failed But Used</i>	<b>Description of later failure:</b>	Set becomes a Failed Set, having incurred a Presentation Standards Failure, but Operator continues to use Set. Different Presentation Standards Failure or other failure causes Set to become Deemed Unavailable or an Excused Set	Set becomes a Failed Set, having incurred a Presentation Standards Failure, but Operator continues to use Set. Different Presentation Standards Failure or other failure causes Set to incur Minutes Delay	Set becomes a Failed Set, having incurred a Presentation Standards Failure, but Operator continues to use Set. KPI Failures also recorded	<b>9</b>

Initial Availability / Reliability Incident		Later failure causes further Availability Incident	Later failure causes further Reliability Incident	KPI Failures	Guidance Note reference
	<b>Relevant abatement:</b>	<b>Abatement:</b> Highest abatement applies	<b>Abatement:</b> Failed But Used and reliability abatement for TSP Minutes Delay, except if Set eventually Deemed Unavailable, then abatement Deemed Unavailable, no reliability abatement for TSP Minutes Delay	<b>Abatement:</b> Failed But Used and KPI deductions for KPI Failures (not including KPI Failures that lead to Failed But Used status)	<b>10</b>
<i>TSP Minutes Delay</i> caused by Relevant Delay Incidents / <i>Significant Delay Incident</i>	<b>Description of later failure:</b>	Set incurs Minutes Delay during the day or a Significant Delay Incident occurs, in either case, because of a failure. Later in day a different failure occurs, causing Set to become Failed But Used, Deemed Unavailable or an Excused Set	Set incurs Minutes Delay during the day or a Significant Delay Incident occurs, in either case, because of a failure. Later in day a different failure occurs, causing Set to incur further Minutes Delay	Set incurs Minutes Delay during the day or a Significant Delay Incident occurs, in either case, because of a failure. During the day, the Set also incurs KPI Failures.	<b>11</b>
	<b>Relevant abatement:</b>	<b>Abatement:</b> If Set Failed But Used, then abatement is Failed But Used and reliability abatement for TSP Minutes Delay  If the Set is Deemed Unavailable, then abatement is Deemed Unavailable	<b>Abatement:</b> reliability abatement for all TSP Minutes Delay	<b>Abatement:</b> reliability abatement for TSP Minutes Delay and KPI deductions for KPI Failures	<b>12</b>

N/A = Not applicable

## SCHEDULE 6.2

### Reliability Regime

#### 1. RELIABILITY ADJUSTMENTS

The Reliability Adjustment for any Reporting Period shall be calculated in accordance with this Schedule 6.2 and from the Base Period Charge for that Reporting Period by way of an adjustment in accordance with Schedule 5.1 (*TARA Payments*).

#### 2. MINUTES DELAY

All TSP Minutes Delay caused by Relevant Delay Incidents that occur in a Reporting Period shall be aggregated for the purpose of calculating the Reliability Adjustment for that Reporting Period pursuant to paragraph 2.

#### 3. CALCULATION OF RELIABILITY ADJUSTMENTS

In each Reporting Period a Reliability Adjustment shall be payable, calculated in accordance with the following formula:

$$RA = ((MDD - MDB) \times [REDACTED] + (0.7 \times (\pounds SDI_H + \pounds SDI_F))) \times BIF^{18,19}$$

where:

RA means the Reliability Adjustment for that Reporting Period;

MDD means the total TSP Minutes Delay caused by all Relevant Delay Incidents that occur in that Reporting Period, provided that no more than 30 minutes per Relevant Delay Incident shall be included;

MDB means the TSP Minutes Delay Benchmark;<sup>20</sup> and

$\pounds SDI_H$  means the Set Availability Payment for a Half Set multiplied by the number of Significant Delay Incidents occurring in that Reporting Period in relation to any Half Set;

$\pounds SDI_F$  means the Set Availability Payment for a Full Set multiplied by the number of Significant Delay Incidents occurring in that Reporting Period in relation to any Full Set; and

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<sup>18</sup> [REDACTED] is correct for the Pre-Series Fleet, ECML (Phases 1 and 2) and WCML. for GWML, the value is [REDACTED].

<sup>19</sup> Refer to Bidder Calibration Information for TSP Minutes Delay Benchmark.

<sup>20</sup> The TSP Minutes Delay Benchmark for each TARA (for which refer to the "IEP TARA Pack Calibration all routes" in the data site) has been calibrated to reflect full deployment during steady-state of operations. Before contracting, the formula will be amended to allow for the TSP Minutes Delay Benchmark to vary according to actual deployment to allow for (i) a period of introduction where fewer trains are in service than following full deployment, and (ii) during steady-state operations, the consequences of Sets not being made available as required.

BIF means the Bedding in Factor.

#### **4. TSP MINUTES DELAY AND THE AVAILABILITY REGIME**

Paragraph 2.8 of Schedule 6.1 (*Availability Regime*) shall apply where a Set is the subject of more than one incident in the same Operational Day that affects the reliability and/or availability of that Set.

#### **5. TWO COUPLED HALF SETS**

Where pursuant to the Dispatch Requirements during any Operational Day:

- (a) two Half Sets are coupled for the purpose of delivering any Passenger Service, then:
  - (i) whilst those two Half Sets are coupled:
    - (A) if TSP Minutes Delay are incurred, those two Half Sets shall be treated as a single Set for the purpose of the calculation in paragraph 3; and
    - (B) if a Significant Delay Incident occurs, that incident shall be deemed to separately occur in respect of each such Half Set; and
  - (ii) after those two Half Sets have been decoupled for the purpose of delivering two Passenger Services, each such Half Set shall be separately capable of incurring Minutes Delay for the purpose of the calculation in paragraph 3; and
- (b) two Half Sets operate independently for the purpose of delivering two Passenger Services, but subsequently are coupled for the purpose of delivering any Passenger Service, then prior to any such coupling, each such Half Set shall be separately capable of incurring Minutes Delay for the purpose of the calculation in paragraph 3.

#### **6. MINUTES DELAY REPORTING AND CALCULATIONS**

Minutes Delay shall be reported and allocated in accordance with the provisions of Schedule 4.1 (*Contract Management*).

## SCHEDULE 6.3

### KPI Regime

#### 1. KPI PAYMENTS

The KPI Payment for any Reporting Period shall be calculated in accordance with this Schedule 6.3 and paid by way of an adjustment to the Base Period Charge for that Reporting Period in accordance with Schedule 5.1 (*TARA Payments*).

#### 2. CALCULATION OF KPI PAYMENTS

2.1 The KPI Payment for any Reporting Period shall be calculated in accordance with the following formula:

$$KPIP = KPI_{PS} + KPI_{Clean} + KPI_{Audit/Report}$$

where:

**KPIP** means the KPI Payment for that Reporting Period;

**KPI<sub>PS</sub>** means the Presentation KPI Standards Payment for that Reporting Period, calculated in accordance with paragraph 2.2;

**KPI<sub>Clean</sub>** means the Cleaning Payment for that Reporting Period, calculated in accordance with paragraph 2.3; and

**KPI<sub>Audit/Report</sub>** means the Audit and Reporting Payment for that Reporting Period, calculated in accordance with paragraph 2.4.

#### **Presentation KPI Standards Payment**

2.2 The Presentation KPI Standards Payment for any Reporting Period shall be calculated in accordance with the following:

$$KPI_{PS} = \frac{[600,000] - Score_{PS}}{[1,000,000]} \times 0.05 \times BPC^{21}$$

where:

**KPI<sub>PS</sub>** means the Presentation KPI Standards Payment for that Reporting Period;

**Score<sub>PS</sub>** means the KPI Points incurred in relation to all Presentation KPI Standards Failures that are observed in and/or reported in relation to that Reporting Period pursuant to and in accordance with this Schedule 6.3; and

**BPC** means the Base Period Charge.

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<sup>21</sup> Figures in square brackets are illustrative only, but are based on an assumed fleet size of East Coast Phase 1 Routes. Maximum KPI score and proportion relating to the Presentation KPI Standards Payment to be calibrated for appropriate fleet sizes.

## Cleaning Payment

2.3 The Cleaning Payment for any Reporting Period shall be calculated in accordance with the following here:

$$KPI_{\text{Clean}} = \frac{[200,000] - \text{Score}_{\text{Clean}}}{[1,000,000]} \times 0.05 \times \text{BPC}^{22}$$

$KPI_{\text{Clean}}$  means the Cleaning Payment for that Reporting Period;

$\text{Score}_{\text{Clean}}$  means the KPI Points incurred in relation to all Cleaning KPI Standards Failures that are observed in and/or reported in relation to that Reporting Period pursuant to and in accordance with this Schedule 6.3; and

BPC means the Base Period Charge.

## Audit and Reporting Payment

2.4 The Audit and Reporting Payment for each Reporting Period shall be calculated in accordance with the following:

$$KPI_{\text{Audit/Report}} = \frac{[200,000] - \text{Score}_{\text{Audit/Report}}}{[1,000,000]} \times 0.05 \times \text{BPC}^{23}$$

where:

$KPI_{\text{Audit/Report}}$  means the Audit and Reporting Payment for that Reporting Period;

$\text{Score}_{\text{Audit/Report}}$  means the KPI Points incurred in relation to all Auditing and Reporting KPI Standards Failures that are observed in and/or reported in relation to that Reporting Period pursuant to and in accordance with this Schedule 6.3; and

BPC means the Base Period Charge.

## Limitations

2.5 For the purpose of performing the calculation pursuant to:

- (a) paragraph 2.2,  $\text{Score}_{\text{SPS}}$  shall be between zero and [600,000] (inclusive);
- (b) paragraph 2.3,  $\text{Score}_{\text{Clean}}$  shall be between zero and [200,000] (inclusive); and
- (c) paragraph 2.4,  $\text{Score}_{\text{Audit/Report}}$  shall be between zero and [200,000] (inclusive).

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<sup>22</sup> Figures in square brackets are illustrative only, but are based on an assumed fleet size of East Coast Phase 1 Routes. Maximum KPI score and proportion relating to the Cleaning Payment to be calibrated for appropriate fleet sizes.

<sup>23</sup> Figures in square brackets are illustrative only, but are based on an assumed fleet size of East Coast Phase 1 Routes. Maximum KPI score and proportion relating to the Audit and Reporting Payment to be calibrated for appropriate fleet sizes.



### **3. DAILY RECORDING OF KPI FAILURES ON KPI SCORECARDS**

#### **TSP Recording and Checking**

- 3.1 The TSP shall record on any KPI Scorecard the following KPI Failures:
- (a) in relation to any Set that is to be made Available on any day, any KPI Failure that is observed during the carrying out of any TSP Daily Set Check;
  - (b) in relation to any such Set that has entered service on any day, any KPI Failure that is observed during the carrying of any TSP Daily In-Service Check; and
  - (c) any other KPI Failure that the TSP is aware of that has occurred on that day in relation to any such Set, including any such failure that is identified by the train management system of any Set.
- 3.2 In the case of a KPI Scorecard completed pursuant to paragraph 3.1(a), the TSP shall provide that scorecard to the driver of the relevant Set at the same time as the Handover Certificate for that Set is handed over (which obligation shall be satisfied by leaving any such scorecard in a prominent position in the driver's cab of each such Set).
- 3.3 The TSP shall duly record all such KPI Failures in a Reporting Period regardless of whether the maximum possible value of Score<sub>PS</sub>, Score<sub>Clean</sub>, or Score<sub>Audit/Report</sub> (as appropriate) for that Reporting Period as specified in paragraphs 2.5(a), (b) and (c), respectively, has already been reached in that Reporting Period.
- 3.4 The TSP shall not be obliged to carry out a TSP Daily In-Service Check where:
- (a) the Operator has failed to notify the TSP pursuant to paragraph 2.2 of Schedule 3.1 (*In-Service Provisions*) of the locations on the Relevant Network of the Turnarounds where such checks shall be carried out; or
  - (b) the Turnaround in which any such check is to be made is less than [15] minutes.<sup>24</sup>

#### **Operator Recording and Auditing**

- 3.5 The Operator shall have the right to update during the course of any day to take account of any KPI Failure that occurs during the Operational Day of any Set, the KPI Scorecard that the TSP has completed during any TSP Daily Set Check.
- 3.6 The Operator shall record the findings of any Operator Audit and report those findings to the TSP in accordance with paragraph 5.1(ii) to the extent that any KPI Points arising from those findings are to be included in any calculation to be carried out pursuant to paragraph 5.1.

### **4. RECORDING OF KPI POINTS ON KPI SCORECARDS**

#### **Presentation KPI Standards Failures**

- 4.1 For each Presentation KPI Standards Failure, the relevant party shall record on a KPI Scorecard in the cells that are in the columns headed "Per Vehicle", "Per Set" and "Total"

<sup>24</sup> Number to be customised to reflect Turnaround opportunities on given franchise.

Score” and the row that relates to the Key Performance Indicator that is the subject of that Presentation KPI Standards Failure, the number of KPI Points specified in the cell that is in the column headed “Points” and the same row:

- (a) in Table 1 of the Appendix where that Presentation KPI Standards Failure is observed prior to the Entry Time of any Set on any day and that failure is measured on a Set basis;
- (b) in Table 1 of the Appendix multiplied by the number of Vehicles on which that Presentation KPI Standards Failure is observed, where that Presentation KPI Standards Failure is observed prior to the Entry Time of any Set on any day and where that failure is measured on a Vehicle basis;
- (c) in Table 2 of the Appendix where that Presentation KPI Standards Failure is observed during the Operational Day of any Set on any day and where that failure is measured on a Set basis;
- (d) in Table 2 of the Appendix multiplied by the number of Vehicles on which that Presentation KPI Standards Failure is observed, where that Presentation KPI Standards Failure is observed during the Operational Day of any Set on any day and where that failure is measured on a Vehicle basis; and
- (e) in Table 1 or 2 (as appropriate) where the TSP is otherwise aware that a Presentation KPI Standards Failure has occurred in relation to any Set on any day, including any such failure that is identified by the train management system of any Set,

provided that, the maximum number of KPI Points that may be awarded by the TSP or the Operator (as the case may be) for any Set in relation to any Presentation KPI Standards Failure, shall be as stated in the cell that is in the column headed “Max points per Set” and the row that relates to the Key Performance Indicator that is the subject of that Presentation KPI Standards Failure in the relevant table.

### **Cleaning KPI Standards Failures**

4.2 For each Cleaning KPI Standards Failure, the relevant party shall record on a KPI Scorecard in the cells that are in the columns headed “Per Vehicle”, “Per Set” and “Total Score” and the row that relates to the Key Performance Indicator that is the subject of that Presentation KPI Standards Failure, the number of KPI Points specified in the cell that is in the column headed “Points” and the same row:

- (a) in Table 3 of the Appendix where that Cleaning KPI Standards Failure is observed prior to the Entry Time of any Set on any day and that failure is measured on a Set basis;
- (b) in Table 3 of the Appendix multiplied by the number of Vehicles on which that Cleaning KPI Standards Failure is observed, where that Cleaning KPI Standards Failure is observed prior to the Entry Time of any Set on any day and where that failure is measured on a Vehicle basis;
- (c) in Table 4 of the Appendix where that Cleaning KPI Standards Failure is observed during the Operational Day of any Set on any day and where that failure is measured on a Set basis;

- (d) in Table 4 of the Appendix multiplied by the number of Vehicles on which that Cleaning KPI Standards Failure is observed, where that Cleaning KPI Standards Failure is observed during the Operational Day of any Set on any day and where that failure is measured on a Vehicle basis; and
- (e) in Table 3 or 4 (as appropriate) where the TSP is otherwise aware that a Cleaning KPI Standards Failure has occurred in relation to any Set on any day,

provided that, the maximum number of KPI Points that may be awarded by the TSP or the Operator (as the case may be) for any Set in relation to any Cleaning KPI Standards Failure, shall be as stated in the cell that is in the column headed “Max points per Set” and the row that relates to the Key Performance Indicator that is the subject of that Cleaning KPI Standards Failure in the relevant table.

### **Audit and Reporting KPI Standards Failures**

4.3 If the TSP fails to check its performance pursuant to any TSP Daily Set Check or TSP Daily In-Service Check (except where either of the circumstances in paragraph 3.3 apply) or fails to carry out either such check, then the TSP shall include in the next calculation it makes pursuant to paragraph 5.1, the KPI Points that are equal to the KPI Points that would have been recorded had the relevant check been appropriately carried out and the standard of each Key Performance Indicator related thereto not been met.

4.4 If:

- (a) any report produced by the TSP pursuant to paragraph 5.3(b); or
- (b) any investigation carried out by the Operator pursuant to paragraph 6.1,

reveals material inconsistencies in the TSP’s performance in respect of this KPI Regime in relation to any Reporting Period, including failures by the TSP:

- (i) to record accurately its performance on any KPI Scorecard;
- (ii) to calculate accurately its performance in accordance with paragraph 5.1; and/or
- (iii) to take account of and/or report faults recorded by the train management system of any Set,

then, the TSP shall include in the next calculation it makes pursuant to paragraph 5.1, KPI Points that are equal to double the KPI Points that were not recorded in the relevant Reporting Period due to those material inconsistencies.

4.5 If the number of KPI Points recorded by the Operator in relation to any Operator Audit carried out pursuant to paragraph 6.3(a) is greater than the number of KPI Points recorded by the TSP in relation to any TSP KPI Check carried out simultaneously, then, without limiting paragraph 7.1, the TSP shall include in the next calculation it makes pursuant to paragraph 5.1, KPI Points that are equal to the difference.

## 5. REPORTING

### TSP reporting

5.1 Subject to paragraph 5.2, the TSP shall for the purpose specified in paragraph 5.4, separately aggregate the number of KPI Points incurred in any Reporting Period in relation to each of the following:

- (a) Presentation KPI Standards Failures;
- (b) Cleaning KPI Standards Failures; and
- (c) Audit and Reporting KPI Standards Failures,

in each case, including any such KPI Points that relate to failures that have been notified by the Operator to the TSP:

- (i) in accordance with paragraph 5.5(c); or
- (ii) pursuant to any Operator Audit carried out in that Reporting Period and notified to the TSP within two days of the end of that Reporting Period.

5.2 In performing the calculation pursuant to paragraph 5.1, the TSP shall disregard any KPI Points:

- (a) that relate to any such Presentation KPI Standards Failure or Cleaning KPI Standards Failure that occurs during any Operational Day:
  - (i) that is remedied to the reasonable satisfaction of the Operator within three hours of the earlier of first being reported by the Operator to the TSP or the TSP otherwise becoming aware of that failure, except where the same failure has already occurred in the immediately preceding 28 days; or
  - (ii) that is not, where the Operator exercises its right pursuant to paragraph 3.5 to update any KPI Scorecard, recorded by the Operator on that KPI Scorecard on the day on which that Operational Day occurred in accordance with paragraph 5.5(c); and
- (b) that relate to any KPI Failure where that failure is recorded on a day in respect of any Set or any Vehicle comprising a Set which is on that same day, Unavailable, Deemed Unavailable, Unavailable But Used or Failed But Used.

5.3 The TSP shall provide to the Operator:

- (a) within the timescale specified in paragraph 3.1 of Schedule 5.1 (*TARA Payments*), an accurate statement of the amount of the KPI Payment that should be made in respect of that Reporting Period, separately specifying the information required pursuant to paragraph 5.1;
- (b) as part of the Performance Report for that Reporting Period, an accurate report of the TSP's performance over that Reporting Period including:
  - (i) its assessment of any trends in that performance and the TSP's performance over the longer term, including its assessment of the KPI Failures that are

observed in relation to the same Key Performance Indicator on any Set or Sets of the same Type on three or more occasions in the same Reporting Period or ten or more occasions during any period of six consecutive Reporting Periods;

- (ii) a root-cause analysis of the reasons for the occurrence of those trends and/or high-frequency failures;
  - (iii) a detailed account of the steps that the TSP will take in the next and subsequent Reporting Periods to prevent the recurrence of any KPI Failures that have been observed in that Reporting Period; and
  - (iv) if requested by the Operator no later than two days after the end of that Reporting Period, a root-cause analysis of the reasons for the occurrence of any particular KPI Failure that occurred in that Reporting Period; and
- (c) if requested by the Operator no later than two days after the end of that Reporting Period, copies of records of the checks carried out by the TSP in that Reporting Period to ensure its compliance with this KPI Regime, including copies of any KPI Scorecard populated by the TSP in that Reporting Period.

#### **TSP self-certification**

5.4 The TSP shall self-certify (such certification to be made by a director of the TSP) to the Operator every six Reporting Periods, the TSP's compliance with its obligations under this KPI Regime.

#### **Operator reporting**

5.5 The Operator shall:

- (a) inform the TSP of the result of any Operator Audit that is conducted simultaneously with the TSP personnel carrying out any part of a TSP KPI Check at the conclusion of such audit;
- (b) use all reasonable endeavours to notify the TSP a reasonable period in advance of:
  - (i) the Entry Time of the result of any Operator Audit that is conducted Prior to the Entry Time; and
  - (ii) the end of any Turnaround of the result of any Operator Audit that is conducted during that Turnaround,

in each case, in order to permit the TSP, if it so wishes, to verify the results of that Operator Audit; and

- (c) return no later than the time when a Set is returned to the TSP on any day, any KPI Scorecard that has been left in the cab of that Set pursuant to paragraph 3.2 and which the Operator has updated during the course of that day pursuant to paragraph 3.4 to record any KPI Failures that have occurred during the Operational Day in relation to that Set.

## TSP's performance

5.6 The TSP's performance in relation to this KPI Regime shall be tabled for discussion at the next Performance Review Meeting with a view to identifying any issues arising from such performance, and agreeing on how to remedy them.

5.7 If agreement cannot be reached at such Performance Review Meeting, then the resulting Dispute shall be resolved in accordance with clause 17 (*Dispute Resolution*), provided that if the Dispute concerns the number of KPI Points that should be aggregated pursuant to paragraph 5.1:

- (a) and no such agreement or resolution is reached by the time of the next calculation the TSP makes pursuant to paragraph 5.1 (the *Reference Calculation*), the following KPI Points shall be included in the Reference Calculation:
  - (i) any KPI Points recorded by the Operator pursuant to any Operator Audit or paragraph 5.5(c); and
  - (ii) any KPI Points not recorded by the TSP which the Operator believes should have been recorded;
- (b) a Remedial Event shall not occur under paragraph 8.1(a) or (b) if, but for this paragraph 5.7(b), a Remedial Event would have occurred under paragraph 8.1(a) or (b) solely because of the inclusion of those disputed KPI Points in the Reference Calculation;
- (c) upon agreement or resolution of that Dispute, if the parties have agreed or it has been resolved that those KPI Points should not have been incurred, then in the next calculation the TSP makes pursuant to paragraph 5.1 (the *Current Calculation*):
  - (i) the TSP shall reduce the total KPI Points that have been recorded in the Reporting Period that is the subject of the Current Calculation (the *Current Reporting Period*) by an amount equal to those disputed KPI Points and thereby receive, by way of an adjustment to the relevant KPI Payment, an amount that is equal to the difference between the amount it received in the Reporting Period that was the subject matter of the Reference Calculation and the amount it would have received, but for the recording of those disputed KPI Points; and
  - (ii) that reduction in KPI Points shall be disregarded for the purposes of determining whether a Remedial Event under paragraph 8.1(a) or (b) has occurred in relation to the Current Reporting Period; and
- (d) if a Remedial Event would have occurred under paragraph 8.1(a) or (b) as a consequence of those disputed KPI Points being included in the Reference Calculation, but did not occur as a consequence of the application of paragraph 5.7(b), then upon agreement or resolution to include those KPI Points in the Current Calculation, a Remedial Event will have occurred under paragraph 8.1(a) or (b), as the case may be.

5.8 Within the timescales identified by the TSP pursuant to paragraph 5.3(b)(iii), the TSP shall undertake the steps identified by it pursuant to the same paragraph for the purpose of preventing the recurrence of any KPI Failures that have been observed in the relevant Reporting Period.

## 6. OPERATOR VERIFICATION, WITNESSING AND AUDITING

### Right to verify TSP's reporting

6.1 The Operator shall have the right to:

- (a) verify the content of any KPI Scorecards completed by the TSP; and
- (b) verify the content of any reports provided by the TSP pursuant to paragraph 5.3(b).

### Right to witness TSP's procedures

6.2 The Operator shall have the right to witness any part of a TSP KPI Check, including the completion by TSP's personnel or sub-contractors of any KPI Scorecard.

### Right to audit

6.3 The Operator shall have the right, subject to paragraph 6.5, to carry out its own independent audit by itself completing a KPI Scorecard:

- (a) where practicable, but not limiting the Operator's right to carry out independent audits pursuant to paragraph 6.3(b), simultaneously with the TSP personnel carrying out any part of a TSP KPI Check; and
- (b) independently of TSP personnel or sub-contractors:
  - (i) during any Prior to Entry Time period; and
  - (ii) in service, promptly following the completion of any in-service cleaning and during a Turnaround,

(in each case, an *Operator Audit*).

6.4 The Operator:

- (a) shall not be obliged to give the TSP prior written notice of its intention to conduct an Operator Audit; and
- (b) shall, in relation to any Operator Audit, use all reasonable endeavours to ensure that the persons employed carry out such audits diligently and objectively.

6.5 The Operator may only, subject to paragraph 6.6, conduct Operator Audits in relation to a maximum of 10 per cent. of the aggregate of Sets made Available, Unavailable But Used, Failed But Used and Deemed Unavailable, in each case on any given day and on no more than five days in any given Reporting Period.

6.6 Where the TSP is required to include additional KPI Points in the calculation it performs pursuant to paragraph 5.1 as a consequence of the occurrence of any Audit and Reporting KPI Standards Failure in relation to two Reporting Periods in any Contract Year, then:

- (a) the Operator shall be entitled to carry out as many Operator Audits as it determines in its sole discretion in the next three consecutive Reporting Periods after the second

Reporting Period in which an Auditing and Reporting KPI Standards Failure occurred and paragraph 6.5 shall not apply during that time; and

- (b) the TSP shall be liable to the Operator for the costs reasonably incurred by the Operator in carrying out such Operator Audits as are over and above the maximum number of Operator Audits specified in paragraph 6.5 that may be carried out, but for the application of this paragraph 6.6.

### **Representative sample**

6.7 Where the Operator exercises its right pursuant to paragraph 6.6(a) to increase the number of Operator Audits it carries out, and in so doing, it carries out Operator Audits in relation to 20 per cent. or more of the aggregate of Sets made Available, Unavailable But Used, Failed But Used and Deemed Unavailable, in each case on any day, the numbers of each Presentation KPI Standards Failure and Cleaning KPI Standards Failure, in each case, duly recorded by the Operator in relation thereto, shall be increased to reflect the Operator carrying out an Operator Audit in relation to 100 per cent. of those Sets on that day and recording Presentation KPI Standards Failures and Cleaning KPI Standards Failures in the same proportions as those recorded Presentation KPI Standards Failures and Cleaning KPI Standards Failures respectively.

### **Co-operation**

6.8 The TSP shall co operate with the Operator, in permitting the Operator to exercise its rights under this paragraph 6 and shall grant such access to the facilities under its control as is necessary to enable the Operator and its employees and nominees on its behalf:

- (a) to witness any checks conducted by the TSP pursuant to the TSP Daily Set Check or otherwise; and
- (b) to carry out any Operator Audit.

## **7. RESULTS OF OPERATOR AUDITS**

7.1 The results of any Operator Audits that are carried out in any Reporting Period simultaneously with the TSP personnel carrying out any part of a TSP KPI Check shall, if duly notified to the Operator in accordance with paragraph 5.5(a), be substituted for the results of the relevant part of that TSP KPI Check in the calculation the TSP makes pursuant to paragraph 5.1 for that Reporting Period.

7.2 The results of any Operator Audits that are carried out in any Reporting Period independently of the TSP personnel carrying out any part of a TSP KPI Check shall, if duly notified to the Operator in accordance with paragraph 5.5(b), be included in the calculation the TSP makes pursuant to paragraph 5.1 for that Reporting Period.

## **8. OPERATOR REMEDY RIGHTS**

### **Remedial Events**

8.1 It shall be a Remedial Event if:

- (a) any Presentation KPI Standards Payment, Cleaning Payment or Audit and Reporting Payment is less than [REDACTED] per cent. of the maximum Presentation KPI



Standards Payment, Cleaning Payment or Audit and Reporting Payment (as appropriate) in any Reporting Period;

- (b) any Presentation KPI Standards Payment, Cleaning Payment or Audit and Reporting Payment is less than [REDACTED] per cent. of the maximum Presentation KPI Standards Payment, Cleaning Payment or Audit and Reporting Payment (as appropriate) in any three consecutive Reporting Periods in any consecutive period of 12 months;
- (c) the TSP fails to carry out [REDACTED] per cent. or more of required TSP KPI Checks in any Reporting Period;
- (d) the same Presentation KPI Standards Failure or Cleaning KPI Standards Failure remains unremedied in relation to any Set for [REDACTED];
- (e) a KPI Failure is recorded in relation to the same Key Performance Indicator on any Set or Sets comprising the same Type [REDACTED] times in any Reporting Period;
- (f) the TSP fails to provide any of the information specified in paragraph 5.3 in a timely manner;
- (g) [REDACTED] or more Audit and Reporting Failures occur in any consecutive period of 12 months; or
- (h) the TSP fails to self-certify its performance pursuant to paragraph 5.

#### **TSP right to review**

8.2 The TSP shall have the right:

- (a) to review the results of any Operator Audit that has been conducted; and
- (b) to request of the Operator such further additional information as the TSP reasonably requires in order to satisfy itself as to the validity of any such results, including an explanation of the manner in which any such Operator Audit was carried out.

8.3 The Operator shall supply such results and further information as soon as reasonably practicable following receipt by the Operator of any such request from the TSP.

## APPENDIX TO SCHEDULE 6.3

KPI Scorecards<sup>25</sup>

Train Facility	Key Performance Indicators	Points	Set / Vehicle	Max points per Set	Per Vehicle										Per Set	Total Score
					1	2	3	[Complete as many columns as are necessary to match number of Vehicles in the Set]								
Air Systems	Minor leak on air system - not affecting set performance	10	Vehicle	100												
Brake	Dynamic brake failure (rheostatic, regenerative or energy storage)	50	Set	50												
Bogies/Underframe Equipment	Wheel flats – slight	40	Set	40												
Cab Systems & Train Controls	SDO system failure - on routes that do not require SDO	20	Set	20												
	ERTMS / ETCS failure - on routes that do not require ERTMS	20	Set	20												
Door Systems	Bodyside indicator light defective	20	Vehicle	200												
Cab Interior	Minor water leak in the cab, not affecting driver	10	Set	10												
Saloon Interior Systems	Saloon interior lighting defective - 1 to 3 light units defective per Vehicle, in up to two Vehicles	40	Vehicle	400												
	Wireless internet access system defective	40	Set	40												
	Seat Reservation system defective	40	Set	40												

<sup>25</sup> The KPI Scorecards are illustrative only. The DfT has not specified the number of Vehicles per Set, but for ease of reference purposes, the calculation of points in the KPI Scorecards is based on Set configurations of 10 Vehicles per Set. For Set configurations consisting of a different number of Vehicles, bidders should assume that (1) points per Vehicle will remain the same, (2) the maximum points per Set will equal either the points per Set as per the KPI Scorecards, but adjusted on a prorata basis for the number of Vehicles in that Set, or the points per Vehicle, multiplied by the number of Vehicles in a Set.

	Mobile phone connection system defective	40	Set	40												
	At Seat Electrical Supplies failure	40	Vehicle	400												
<b>TABLE 1: HANDOVER PRESENTATION KPI STANDARDS FAILURES</b>																
Train Facility	Key Performance Indicators	Points	Set / Vehicle	Max points per Set	Per Vehicle								Per Set	Total Score		
					1	2	3	[Complete as many columns as are necessary to match number of Vehicles in the Set]								
Saloon Interior Systems (cont.)	Seat covers torn or split	5	Vehicle	50												
	Seat armrests not present or damaged	5	Vehicle	50												
	Floor covering worn or damaged	5	Vehicle	50												
	Seat back tables not present or damaged	5	Vehicle	50												
	Saloon tables damaged	5	Vehicle	50												
	Litter bins not present or damaged	5	Vehicle	50												
	Magazine racks not present or damaged	5	Vehicle	50												
	Seat reclining mechanism (if applicable) not functioning	5	Vehicle	50												
	Signs or posters damaged	5	Vehicle	50												
	Interior panel damaged	5	Vehicle	50												
	Seat shell damaged	5	Vehicle	50												
Saloon grab rails / handles damaged – chipped, coating loss	5	Vehicle	50													
Toilets	Toilet & facilities defective / unavailable (including flush, hand wash / dry, door lock) - one toilet within train	20	Set	20												
	Lavatory seat damaged but useable - in any Vehicle	10	Vehicle	100												
	Toilet bowl damaged but useable - in any Vehicle	10	Vehicle	100												
	Mirror damaged but useable - in any Vehicle	10	Vehicle	100												
Traction & Auxiliary Systems	Traction failure – but still able to run to timetable, but potentially no make up time	60	Set	60												

<b>TABLE 1: HANDOVER PRESENTATION KPI STANDARDS FAILURES</b>															
Train Facility	Key Performance Indicators	Points	Set / Vehicle	Max points per Set	Per Vehicle								Per Set	Total Score	
					1	2	3	[Complete as many columns as are necessary to match number of Vehicles in the Set]							
Traction & Auxiliary Systems (cont.)	Auxiliary power supply output defective - not affecting on board services	10	Set	10											
	Pantograph or AC current collection circuit defective - able to run timetable	10	Set	10											
	AC transformer defective - able to run timetable	10	Set	10											
Monitoring Systems	AWS Infrastructure Monitoring Data	10	Set	10											
	TPWS Infrastructure Monitoring Data	10	Set	10											
	ETCS Infrastructure Monitoring Data	10	Set	10											
	GSM-R Infrastructure Monitoring Data	10	Set	10											
	FFCTV Infrastructure Monitoring Data	10	Set	10											
	UGMS Infrastructure Monitoring Data	10	Set	10											
	UOMS Infrastructure Monitoring Data	10	Set	10											
<b>Maximum score per Set per day</b>				<b>2,440</b>	<b>Total score</b>										

TABLE 2: IN-SERVICE PRESENTATION KPI STANDARDS FAILURES														
Train Facility	Key Performance Indicators	Points	Set / Vehicle	Max points per Set	Per Vehicle								Per Set	Total Score
					1	2	3	[Complete as many columns as are necessary to match number of Vehicles in the Set]						
Air Systems	Minor air leak - not affecting train performance	10	Vehicle	100										
	One or more compressors failed (depending on train configuration) - not affecting performance	20	Set	20										
	Compressor fault - running continuously	20	Set	20										
Brakes	Dynamic brake failure (rheostatic, regenerative or energy storage)	50	Set	50										
Bogies / Underframe Equipment	Auto coupler (no electrical coupling)	20	Set	20										
	Wheel flats - severe (at or above the NR or TSP limits)	20	Set	20										
	Wheel flats - serious (excessive noise or vibration)	20	Set	20										
	Secondary suspension defect / failure	20	Set	20										
Cab Systems & Set Controls	Driver's cab instrument illumination not working	20	Set	20										
	SDO system failure - on routes that do not require SDO	20	Set	20										
	ERTMS/ETCS failure - on routes that do not require ERTMS	20	Set	20										
Door Systems	Bodyside indicator light defective	20	Vehicle	200										
	Gangway doors / interior doors defective on any Vehicle	20	Vehicle	200										
	Saloon external doors – defect on any Vehicle	20	Vehicle	200										
Cab interior	Minor water leak in the cab, not affecting driver	10	Set	10										
	Drivers sun blind defect	10	Set	10										
	HVAC defect - cab interior outside of specified temperature range	60	Set	60										
	HVAC defect - noisy unit, causes noise level to exceed specification	60	Set	60										
Environment	Saloon interior lighting defective - 1 to 3 light units defective per Vehicle, in up to two Vehicles	40	Vehicle	400										

**TABLE 2: IN-SERVICE PRESENTATION KPI STANDARDS FAILURES**

Train Facility	Key Performance Indicators	Points	Set / Vehicle	Max points per Set	Per Vehicle										Per Set	Total Score	
					1	2	3	[Complete as many columns as are necessary to match number of Vehicles in the Set]									
Environment (cont.)	Wireless internet access system defective	40	Set	40													
	Seat Reservation system defective	40	Set	40													
	Mobile phone connection system defective	40	Set	40													
	At Seat Electrical Supplies failure	40	Vehicle	400													
	Seat covers torn or split	5	Vehicle	50													
	Seat armrests not present or damaged	5	Vehicle	50													
	Floor covering worn or damaged	5	Vehicle	50													
	Seat back tables not present or damaged	5	Vehicle	50													
	Saloon tables damaged	5	Vehicle	50													
	Litter bins not present or damaged	5	Vehicle	50													
	Magazine racks not present or damaged	5	Vehicle	50													
	Seat reclining mechanism (if applicable) not functioning	5	Vehicle	50													
	Signs or posters damaged	5	Vehicle	50													
	Interior panel damaged	5	Vehicle	50													
Seat shell damaged	5	Vehicle	50														
Saloon Interior Systems	Saloon CCTV defective - on one passenger Vehicle	40	Vehicle	400													
	Saloon grab rails / handles damaged - chipped, coating loss	10	Vehicle	100													
	Saloon grab rails / handles damaged - risk of cutting, abrasion or trapping	10	Vehicle	100													

TABLE 2: IN-SERVICE PRESENTATION KPI STANDARDS FAILURES																
Train Facility	Key Performance Indicators	Points	Set / Vehicle	Max points per Set	Per Vehicle										Per Set	Total Score
					1	2	3	[Complete as many columns as are necessary to match number of Vehicles in the Set]								
Customer Information Systems	PA defect - pre-recorded announcements not available in up to two Vehicles	10	Vehicle	100												
	Saloon or external Passenger Information Systems (PIS) displays defective - one or more display units defective on up to two Vehicles	10	Vehicle	100												
	Passenger Information Systems (PIS) defective - general, excluding PA & displays function	10	Vehicle	100												
Toilets	Toilet & facilities defective/unavailable (including flush, hand wash/dry, door lock) - one toilet within train	20	Set	20												
	Toilet & facilities defective/unavailable (including flush, hand wash/dry, door lock) - two toilets within train	10	Vehicle	100												
	Lavatory seat damaged but useable - in any Vehicle	10	Vehicle	100												
	Toilet bowl damaged but useable - in any Vehicle	10	Vehicle	100												
	Mirror damaged but useable - in any Vehicle	10	Vehicle	100												
Saloon HVAC System	HVAC defect - saloon interior of one Vehicle outside of specified temperature range	60	Vehicle	600												
	HVAC defect - noisy unit, causes noise level in one Vehicle saloon to exceed specification	60	Vehicle	600												
Traction and Auxiliary Systems	Traction failure - but still able to run to timetable, but potentially no make up time	60	Set	60												
	Auxiliary power supply output defective - not affecting on board services	10	Set	10												
	Pantograph or AC current collection circuit defective - able to run timetable	10	Set	10												
	AC transformer defective - able to run timetable	10	Set	10												

**TABLE 2: IN-SERVICE PRESENTATION KPI STANDARDS FAILURES**

Train Facility	Key Performance Indicators	Points	Set / Vehicle	Max points per Set	Per Vehicle										Per Set	Total Score	
					1	2	3	[Complete as many columns as are necessary to match number of Vehicles in the Set]									
Catering Equipment	Level 1 hot food - equipment failure (e.g. microwave, toaster, griddle etc.)	200	Set	200													
	Level 1 cold food - equipment failure (fridges)	200	Set	200													
	Level 1 no liquid refreshments (applies individually to any hot or hold refreshment equipment)	200	Set	200													
	Level 2 hot food - equipment failure (e.g. microwave, toaster, griddle etc.)	200	Set	200													
	Level 2 cold food - equipment failure (fridges)	200	Set	200													
	Level 2 no liquid refreshments (applies individually to any hot or cold refreshment equipment)	200	Set	200													
	Level 3 hot food - equipment failure (e.g. microwave, toaster, griddle etc.)	100	Set	100													
	Level 3 cold food – equipment failure (e.g. fridges)	100	Set	100													
	Level 3 no liquid refreshments (applies to hot/cold refreshment equipment)	100	Set	100													
	Level 3 cold food - equipment failure (fridges)	100	Set	100													
Level 4 equipment failure (trolleys, hot water etc.)	100	Set	100														
Monitoring Systems	Performance Report to the Operator	10	Set	10													
	AWS Infrastructure Monitoring Data	10	Set	10													
	TPWS Infrastructure Monitoring Data	10	Set	10													
	ETCS Infrastructure Monitoring Data	10	Set	10													
	GSM-R Infrastructure Monitoring Data	10	Set	10													
	FFCTV Infrastructure Monitoring Data	10	Set	10													
	UGMS Infrastructure Monitoring Data	10	Set	10													
UOMS Infrastructure Monitoring Data	10	Set	10														
<b>Maximum score per Set per day</b>				<b>6,930</b>	<b>Total score per set</b>												



**TABLE 3: HANDOVER CLEANING KPI STANDARDS FAILURES**

Train Facility	Key Performance Indicators	Points	Set / Vehicle	Max points per Set	Per Vehicle										Per Set	Total Score	
					1	2	3	[Complete as many columns as are necessary to match number of Vehicles in the Set]									
Saloon	Tables – bay & seat back: free of litter, stains, and smears	2	Vehicle	20													
	Seats general: free of litter stains and smears	2	Vehicle	20													
	Seat soft trim: covers secure, undamaged (not slashed), clean, dry and dust free	2	Vehicle	20													
	Carpets: dry, free of litter, stains and dirt	2	Vehicle	20													
	Litter bins: empty with clean liner	2	Vehicle	20													
	Interior glazing: free of smears	2	Vehicle	20													
	Window blinds (or equivalent): free of dust, dirt or stains	2	Vehicle	20													
	Interior panels: free of stains and smears	2	Vehicle	20													
	Luggage racks: free of litter, stains and smears	2	Vehicle	20													
	Light diffusers, uplighters and reading lights: free from dust and dirt	2	Vehicle	20													
	Ventilation ducts and gills: free from dust and dirt	2	Vehicle	20													
	Antimaccasars: where fitted must be clean and correctly fitted	2	Vehicle	20													
	Magazine racks: full and neatly stowed	2	Vehicle	20													
	Door surfaces: free of stains and smears	2	Vehicle	20													
	Safety & passenger information labels: free from smears, streaks and stains	2	Vehicle	20													
	Passenger Information System Displays (including seat reservation): free from dust, smears, streaks and stains	2	Vehicle	20													
	Graffiti: saloon free from graffiti (see Table 5)	4	Vehicle	40													
Chewing gum: saloon free from chewing gum (see Table 5)	4	Vehicle	40														
Unauthorised labels: saloon free from unauthorised labels (see Table 5)	4	Vehicle	40														

**TABLE 3: HANDOVER CLEANING KPI STANDARDS FAILURES**

Train Facility	Key Performance Indicators	Points	Set / Vehicle	Max points per Set	Per Vehicle										Per Set	Total Score	
					1	2	3	[Complete as many columns as are necessary to match number of Vehicles in the Set]									
Vestibule	Carpets and flooring: dry, free of litter, stains and dirt	2	Vehicle	20													
	Interior glazing free of smears and stains	2	Vehicle	20													
	Interior panels free of stains and smears	2	Vehicle	20													
	Litter bins: empty with clean liner	2	Vehicle	20													
	Ventilation ducts and grills: free from dust, dirt and smears	2	Vehicle	20													
	Light diffusers: free from dust, dirt and smears	2	Vehicle	20													
	Door surfaces: free of stains and smears	2	Vehicle	20													
	Safety & passenger information labels: free from smears, streaks and stains	2	Vehicle	20													
	Passenger Information System Displays (including seat reservation): free from dust, smears, streaks and stains	2	Vehicle	20													
	Gangway: free of dust, dirt and stains	2	Vehicle	20													
	Graffiti: vestibule free from graffiti (see Table 5)	4	Vehicle	40													
	Chewing gum: vestibule free from chewing gum (see Table 5)	4	Vehicle	40													
	Unauthorised labels: vestibule free from unauthorised labels (see Table 5)	4	Vehicle	40													
Toilet	Toilet bowl, rim and seat: free of dirt, stains and smears and disinfected	4	Vehicle	40													
	Atmosphere: no unpleasant odours	4	Vehicle	40													
	Litter bin: empty with clean liner	4	Vehicle	40													
	Baby change table: free of dirt, stains and smears and disinfected	4	Vehicle	40													
	Interior panels: free of sticky stains and smears	2	Vehicle	20													
	Mirror: free of smears and stains	2	Vehicle	20													

**TABLE 3: HANDOVER CLEANING KPI STANDARDS FAILURES**

Train Facility	Key Performance Indicators	Points	Set / Vehicle	Max points per Set	Per Vehicle										Per Set	Total Score
					1	2	3	[Complete as many columns as are necessary to match number of Vehicles in the Set]								
Toilet (cont.)	Hand dryer: nozzle is free of dirt and dust, operating button (if fitted) disinfected	2	Vehicle	20												
	Light diffusers: free from dust, dirt and smears	2	Vehicle	20												
	Interior glazing: free of smears	2	Vehicle	20												
	Safety & passenger information labels: free from smears, streaks and stains	2	Vehicle	20												
	Graffiti: toilet free from graffiti (see Table 5)	4	Vehicle	40												
	Chewing gum: toilet free from chewing gum (see Table 5)	4	Vehicle	40												
	Unauthorised labels: toilet free from unauthorised labels (see Table 5)	4	Vehicle	40												
Staff areas including driving cabs	Seats general: free of litter and stains	5	Set	5												
	Seat soft trim: covers secure, undamaged (not slashed), clean, dry and dust free	5	Set	5												
	Tables and Work Surfaces: free of litter, stains and smears	5	Set	5												
	Dials and other display equipment: clean and free from smears	5	Set	5												
	Communications equipment: handsets clean and disinfected	5	Set	5												
	Carpets and flooring: dry, free of litter and stains	5	Set	5												
	Interior panels: free of stains and smears	5	Set	5												
	Litter bins: empty with clean liner	5	Set	5												
	Interior glazing: free of smears	5	Set	5												
Light diffusers: free from dust, dirt and smears	5	Set	5													

**TABLE 3: HANDOVER CLEANING KPI STANDARDS FAILURES**

Train Facility	Key Performance Indicators	Points	Set / Vehicle	Max points per Set	Per Vehicle										Per Set	Total Score
					1	2	3	[Complete as many columns as are necessary to match number of Vehicles in the Set]								
Staff areas including driving cabs (cont.)	Safety information labels: free from smears, streaks, and stains	5	Set	5												
	Graffiti: staff area free from graffiti (see Table 5)	4	Vehicle	40												
	Chewing gum: staff area free from chewing gum (see Table 5)	4	Vehicle	40												
	Unauthorised labels: staff area free from unauthorised labels (see Table 5)	4	Vehicle	40												
Catering (Level 1, 2, 3 or 4)	Floor covering: dry, free of litter, stains and dirt	10	Set	10												
	Food & drink preparation areas: cleaned to food hygiene regulation standards	10	Set	10												
	Food & drink storage areas: cleaned to food hygiene regulation standards	10	Set	10												
	Food cooking facilities (oven, toaster, hob etc): cleaned to food hygiene regulation standards	10	Set	10												
	Drink facilities (coffee/tea maker etc): cleaned to food hygiene regulation standards	10	Set	10												
	Washing facilities: clean and free of any dirt, and debris	10	Set	10												
	Serving facilities (shop, buffet etc): all surfaces free of dirt, stains and smears. Cleaned to food hygiene regulation standards as required	10	Set	10												
	Interior panels: free of stains and smears	10	Set	10												
	Litter bins: empty with clean liner	10	Set	10												
	Interior glazing: free of smears	10	Set	10												
	Light diffusers: free from dust, dirt and smears	10	Set	10												
	Safety & passenger information labels: free from smears, streaks and stains	10	Set	10												
	Ventilation ducts and grills: free from dust and dirt	10	Set	10												
Graffiti: catering area free from graffiti (see Table 5)	4	Vehicle	40													

<b>TABLE 3: HANDOVER CLEANING KPI STANDARDS FAILURES</b>																
<b>Train Facility</b>	<b>Key Performance Indicators</b>	<b>Points</b>	<b>Set / Vehicle</b>	<b>Max points per Set</b>	<b>Per Vehicle</b>										<b>Per Set</b>	<b>Total Score</b>
					<b>1</b>	<b>2</b>	<b>3</b>	<i>[Complete as many columns as are necessary to match number of Vehicles in the Set]</i>								
Catering (Level 1, 2, 3 or 4) (cont.)	Chewing gum: catering area free from chewing gum (see Table 5)	4	Vehicle	40												
	Unauthorised labels: catering area free from unauthorised labels (see Table 5)	4	Vehicle	40												
Exterior bodyside	External labels, Passenger Information Systems and Bodyside Indicator Lights: free from smears, streaks and stains	5	Set	5												
	Exterior glazing: free from smears, streaks and stains	5	Set	5												
	Exterior bodyside: free from smears, streaks and stains	5	Set	5												
	Exterior Roof: free from heavy stains and dirt deposits	5	Set	5												
	Exterior Inter-car body end and gangway: free from heavy stains and dirt deposits	5	Set	5												
	'Dead' areas - areas which are in the shadow of other items such as yaw damper brackets. These tend to be inaccessible to wash plants and also attract dirt from the airflow: free from heavy oil stains and dirt deposits	5	Set	5												
	Graffiti: catering area free from graffiti (see Table 5)	4	Vehicle	40												
	Chewing gum: catering area free from chewing gum (see Table 5)	4	Vehicle	40												
	Unauthorised labels: catering area free from unauthorised labels (see Table 5)	4	Vehicle	40												
<b>Maximum score per Set per day</b>				<b>1,735</b>	<b>Total score</b>											

TABLE 4: IN-SERVICE CLEANING KPI STANDARDS FAILURES															
Train Facility	Key Performance Indicators	Points	Set / Vehicle	Max points per Set	Per Vehicle								Per Set	Total Score	
					1	2	3	[Complete as many columns as are necessary to match number of Vehicles in the Set]							
Saloon	Tables – bay & seat back: free of litter, stains, and smears	2	Vehicle	20											
	Seats general: free of litter stains and smears	2	Vehicle	20											
	Carpets: dry, free of litter, stains and dirt	2	Vehicle	20											
	Litter bins: empty with clean liner	2	Vehicle	20											
	Interior glazing: free of smears	2	Vehicle	20											
	Interior panels: free of stains and smears	2	Vehicle	20											
	Luggage racks: free of litter, stains and smears	2	Vehicle	20											
	Antimaccasars: where fitted must be clean and correctly fitted	2	Vehicle	20											
	Magazine racks: full and neatly stowed	2	Vehicle	20											
Vestibule	Carpets and flooring: dry, free of litter, stains and dirt	2	Vehicle	20											
	Interior glazing free of smears and stains	2	Vehicle	20											
	Interior panels: free of stains and smears	2	Vehicle	20											
	Litter bins: empty with clean liner	2	Vehicle	20											
Toilet	Toilet bowl, rim and seat: free of dirt, stains and smears and disinfected	2	Vehicle	20											
	Atmosphere: no obvious odours	2	Vehicle	20											
	Litter bin: empty with clean liner	2	Vehicle	20											
	Baby change table: free of dirt, stains and smears and disinfected	2	Vehicle	20											
	Interior panels: free of sticky stains and smears	2	Vehicle	20											
	Mirror: free of smears and stains	2	Vehicle	20											

TABLE 4: IN-SERVICE CLEANING KPI STANDARDS FAILURES														
Train Facility	Key Performance Indicators	Points	Set / Vehicle	Max points per Set	Per Vehicle								Per Set	Total Score
					1	2	3	[Complete as many columns as are necessary to match number of Vehicles in the Set]						
	Interior glazing: free of smears	2	Vehicle	20										
	Flooring: free of litter and sticky stains	2	Vehicle	20										
<b>Maximum Score per Set per Turnaround clean</b>				<b>420</b>	<b>Total score</b>									

TABLE 5: GRADUATED CLEANLINESS RELATING TO GRAFFITI, UNAUTHORISED LABELS AND CHEWING GUM		
Score	Level of presence of graffiti, unauthorised labels or chewing gum	Points per Vehicle
0	None in area	0
1	1 in area	1
2	2-3 in area	2
3	4-5 in area	3
4	More than 5 in area	4

Note: for measurement of graffiti, unauthorised labels and chewing gum in catering areas multiply points per Vehicle by [10] for final score.

## SCHEDULE 6.4

### Fuel Regime

#### 1. FUEL COST

1.1 The TSP shall be responsible for procuring and paying any supplier for a supply of fuel adequate to meet the needs of the Sets. The Operator may at any time, by written notice, mandate the TSP to use a fuel supplier nominated by the Operator, provided that the fuel provided by that supplier is in accordance with type and standard specified by the TSP and the TSP shall do so at the expiry of any reasonable notice period required to terminate any existing supply arrangement.

1.2 The Operator shall bear the costs of all fuel that each Set uses during the Operational Day as provided for pursuant to paragraph 1.5.

1.3 The TSP shall bear, and shall not seek reimbursement from the Operator for, all of the cost of all fuel that each Set uses during the Non-Operational Day.

1.4 The TSP shall record all fuel used by each Set during the Operational Day and the Non-Operational Day. Within five days of the end of each Reporting Period the TSP shall inform the Operator of:

- (a) the total fuel consumed by all Sets during that Reporting Period (disaggregated to show fuel consumption by Type of Set and by Operational Day and Non-Operational Day); and
- (b) the price paid by the TSP for such fuel.

1.5 The Fuel Consumption Payment for a Reporting Period shall be calculated in accordance with the following:

$$\text{£FCP} = \text{TFC} \times \text{£FU}$$

where:

£FCP means the Fuel Consumption Payment for that Reporting Period;

TFC means the total units of fuel used during the Operational Day, as notified by the TSP under paragraph 1.4(a); and

£FU means the price per unit of fuel, as notified by the TSP under paragraph 1.4(b).

#### 2. FUEL CONSUMPTION ADJUSTMENT

2.1 This paragraph 2 shall apply if and for so long as, in respect of any Type of Set, the Certified Fuel Consumption Rate is greater than the Target Fuel Consumption Rate. While this paragraph 2 applies in respect of any Type of Set, a Fuel Consumption Adjustment shall be made in respect of the total fuel consumed during the Operational Day by each Set of that Type.

2.2 The Fuel Consumption Adjustment in each Reporting Period, shall be calculated in accordance with the following:



$$\text{£FCA} = \text{£FCP} \times \left( 1 - \frac{\text{TFR}}{\text{CFR}} \right)$$

where:

£FCA means the Fuel Consumption Adjustment in respect of the relevant Type of Set;

£FCP means the Fuel Consumption Payment calculated in accordance with paragraph 1.5, but in respect only of the total fuel consumed by each Set that is the subject of a Fuel Consumption Adjustment;

TFR means the Target Fuel Consumption Rate; and

CFR means the Certified Fuel Consumption Rate.

2.3 If and for so long as a Fuel Consumption Adjustment is payable in respect of any Type, the TSP may at any time thereafter require the Operator to run a Fuel Compliance Test in respect of a Set of that Type under the same test conditions as pertained at the time of that Set's acceptance testing. The Operator shall assist it in doing so, provided that:

- (a) all costs associated with any such test shall be for the TSP's account; and
- (b) such test shall not cause unreasonable disruption to the Operator's business.

### **3. ELECTRICITY CHARGES**

3.1 The TSP shall bear the cost of all electricity that each Set uses during the Non-Operational Day.

3.2 The Operator shall bear the costs of all electricity that each Set uses during the Operational Day.

## SCHEDULE 6.5

### Costs Payable by Operator

#### 1. COSTS OF REMEDY FOR DAMAGE

1.1 The Operator shall reimburse the TSP for the reasonable and proper costs of remedying any damage caused to the Sets and which is Operator Responsible Damage, provided that the costs that the Operator shall reimburse to the TSP in relation to vandalism within subparagraph (c) of the definition of Operator Responsible Damage are those costs that are in excess of £[*Bidders to propose vandalism threshold above which the Operator becomes responsible for costs*].

#### 2. NOTICE OF DAMAGE AND LIKELY COSTS

Where the TSP considers damage to any Set falls within paragraph 1 it shall give the Operator notice thereof within two days of the damage occurring, together with its best estimate of the likely costs of remedying the damage. Any damage which is not notified in accordance with this paragraph 2 shall be conclusively presumed to be outside the scope of paragraph 1.

#### 3. DAMAGE CAUSED BY TRACK QUALITY

*[Bidders are referred to the provisions of the ITT which explain how Network Rail's delivery of track quality is to be taken forward. Bidders are invited to propose a provision which enables TSP to recover from the Operator in respect of increased maintenance costs that are attributable to deficient track quality, which should be back to back with the Operator's ability to recover from Network Rail under its track access agreement.]*

#### 4. COSTS OF RECOVERY OF FAILED SETS

The Operator shall reimburse the TSP for the TSP's reasonable and proper costs of recovering any Set that the TSP is required to recover pursuant to Schedule 3.2 (*In-Service Faults*) where that Set is being recovered as a result of Operator Responsible Damage.

#### 5. COST CONTROL

The costs recoverable from the Operator by the TSP under this Schedule 6.5 shall be limited to the reasonable and proper cost incurred by the TSP in remedying the relevant damage or, where paragraph 3.2 of Schedule 4.2 (*Compliance Testing*) applies, carrying out the relevant Compliance Test (as appropriate) and the Operator may require the TSP (where appropriate) either:

- (a) to provide an open book account of the costs with benchmarking against reasonable third party comparables; or
- (b) to tender the repair work among two or more external unrelated reputable repairers and to accept the most economically advantageous offer.

#### 6. COST RECOVERY

Costs recoverable under this Schedule 6.5 shall be recovered after they have been agreed or determined and on the Payment Date following such agreement or determination as the value of *CPO* pursuant to paragraph 2.11 of Schedule 5.1 (*TARA Payments*).

**7. OBLIGATION TO REPAIR**

The obligations of the TSP in respect of repair shall not be postponed or suspended pending agreement or determination of any question as to causation or of the amount of recoverable cost.

## **SCHEDULE 7**

### **INSURANCE**

The Operator shall at all times maintain those insurances which it is required to have pursuant to the provisions of its licence requirements under the Act.

## SCHEDULE 8

### INDEMNITIES

#### 1. TSP INDEMNITY

1.1 The TSP shall, subject to paragraph 1.2, be responsible for, and shall release and indemnify the Operator, its employees, agents and contractors on demand from and against, all liability for:

- (a) death or personal injury;
- (b) loss of or damage to property (including property belonging to the Operator or for which it is responsible (*Operator Property*)); and
- (c) actions, claims, demands, costs, charges and expenses (including legal expenses on an indemnity basis),

which, in each case, may arise out of, or in consequence of, the design, construction, operation or maintenance of the Sets or the performance or non-performance by the TSP of its obligations under this Agreement or the presence on Operator Property of the TSP, a sub-contractor of the TSP, their employees or agents.

1.2 The TSP shall not be responsible or be obliged to indemnify the Operator for any injury, loss, damage, cost and expense caused by the negligence or wilful misconduct of the Operator, its employees, agents or contractors or by the breach by the Operator of its obligations under this Agreement.

## SCHEDULE 9

### INTELLECTUAL PROPERTY

#### 1. INTELLECTUAL PROPERTY RIGHTS

##### Licences

1.1 The TSP shall:

- (a) grant to the Operator an irrevocable, royalty-free, transferable and non-exclusive licence of the TSP IPR;
- (b) grant (or procure that the Manufacturer grants) to the Operator an irrevocable, royalty-free, transferable and non-exclusive licence (or sub-licence) of the Manufacturer IPR;
- (c) grant (or procure that the Maintainer grants) to the Operator an irrevocable, royalty-free, transferable and non-exclusive licence (or sub-licence) of the Maintainer IPR; and
- (d) grant (or procure that the relevant third party proprietor grants) to the Operator an irrevocable, royalty-free, transferable and non-exclusive licence (or sub-licence) of the Third Party IPR,

with, in each case, full title guarantee, for the Term, and in each case to the extent reasonably necessary for the purposes of:

- (i) the Operator performing its obligations, and exercising its rights under this Agreement; and
- (ii) using and reproducing the Documentation to the extent reasonably necessary in connection with any of the purposes above,

together with the right to sub-licence (and the right to grant further subordinate licences) for the purposes set out in paragraphs 1.1(i) and (ii).

##### Delivery of Documentation and Software

1.2 Not later than the first day of the Term, and thereafter no less frequently than once every six months, and/or within 14 days of being requested by the Operator, the TSP shall supply and/or communicate to the Operator the latest version of the Documentation and Software.

##### Warranties

1.3 The TSP represents and warrants to the Operator as at the date hereof that:

- (a) the TSP IPR, the Manufacturer IPR, the Maintainer IPR and the Third Party IPR comprise all the Intellectual Property Rights required by the Operator for the purposes set out in paragraphs 1.1(i) and (ii);

- (b) the TSP is entitled, without the need for the consent or waiver of any third party, to license the TSP IPR, and to grant the sub-licence (or procure the licences of) the Manufacturer's IPR, the Maintainer's IPR and the Third Party IPR (and the right to sub-sub license the same) granted pursuant to paragraph 1.1; and
- (c) the use and/or exploitation by the Operator of the Sets, Documentation and/or Software under in accordance with this Agreement will not result in the infringement of any Intellectual Property Rights owned by any third party.

1.4 Without prejudice to paragraphs 1.3 and 1.5(b), the TSP shall indemnify and hold harmless the Operator on demand against each Loss which it incurs arising out of any claim for infringement of any Intellectual Property Rights relating to the use and/or exploitation by the Operator of any of the Assets, Documentation and/or Software under and in accordance with this Agreement (including pursuant to this paragraph 1) (a *Claim*).

#### **Notification and Handling of Claims**

1.5 If either party becomes aware of a matter which might give rise to a Claim:

- (a) that party shall immediately notify the other in writing (giving full particulars);
- (b) and that matter involves, or may involve, a Claim against the TSP, then the Operator shall, at the TSP's cost:
  - (i) take such action as the TSP may reasonably request to:
    - (A) dispute, resist, appeal, compromise, defend, remedy or mitigate that Claim, or
    - (B) enforce the Operator's rights in relation to that Claim; and
  - (ii) subject to paragraphs 1.5(d) and (e), in connection with any proceedings related to that Claim, if the TSP so requests, allow the TSP exclusive conduct of those proceedings,

provided that the TSP shall indemnify and hold harmless the Operator against all Loss incurred by the Operator as a result of such request made by the TSP;

- (c) the Operator shall not admit liability in respect of or settle that Claim without first obtaining the TSP's prior consent, such consent not to be unreasonably withheld;
- (d) where the TSP exercises its right pursuant to paragraph 1.5(b)(ii) to exclusive conduct of any proceedings, the TSP shall keep the Operator informed of the progress of that Claim, and shall consult with the Operator prior to the TSP taking any decision material to the conduct of that Claim, including any admission of liability by the TSP or the settlement or compromise by the TSP of that Claim; and
- (e) where the TSP does not exercise its right pursuant to paragraph 1.5(b)(ii) to exclusive conduct of any proceedings within 30 days of the date of the notification referred to in paragraph 1.5(a), the TSP shall, at its own cost, provide any assistance required by the Operator to:
  - (i) dispute, resist, appeal, compromise, defend, remedy or mitigate that Claim, or

- (ii) enforce the Operator's rights in relation to that Claim.

### **Remedy for Infringement**

1.6 Without prejudice to paragraph 1.4, if the use of any Asset infringes, or in the opinion of the Operator is likely to infringe, the Intellectual Property Rights of a third party, the TSP shall, at its expense, at the election of the Operator:

- (a) procure for the Operator a licence to use those Intellectual Property Rights for the purposes set out in paragraph 1.1; or
- (b) either:
  - (i) modify that Asset so that it no longer infringes those Intellectual Property Rights; or
  - (ii) replace that Asset with a non-infringing unit, part or item,

provided however that that modified or replacement unit, part or item shall comply with all the requirements of this Agreement.

### **Infringement by third parties**

1.7 In relation to infringements by third parties of the TSP IPR, the Manufacturer IPR, the Maintainer IPR and/or the Third Party IPR that:

- (a) have, or are likely to have, a material adverse effect on the Operator and/or any relevant Operator;
- (b) are not actionable by the Operator; and
- (c) the TSP has not, within 90 days (or, in the case of such infringements that the Operator determines are appropriate for urgent and/or interim relief, three days) of being notified by the Operator, remedied to the satisfaction of the Operator,

the TSP shall, at the request of the Operator, take such action as the Operator may request to enforce the TSP's rights in relation to that infringement, provided that, in the event that the TSP takes such action, the Operator shall reimburse the TSP for its costs and expenses reasonably incurred in taking that action.

## **2. CONFIGURATION DATABASE**

In respect of each Set and/or Vehicle accepted by the Operator, no later than the Actual Acceptance Date of such Set or, in the case of a Vehicle, the Actual Acceptance Date of the Set in which that Vehicle was comprised on that date and thereafter no less frequently than once every six months, and/or within 14 days of being requested by the Operator, the TSP shall provide to the Operator a configuration database which, in respect of each Set or Vehicle, shall provide the following information:

- (a) that Set's and that Vehicle's number;
- (b) all Manuals and safety approval documents relating to that Set or Vehicle;



- (c) the Manufacturer's serial numbers of all systems, sub-systems and components and parts, to the extent that these are identified by serial number;
- (d) the position of each part within that Set and/or Vehicle; and
- (e) the modification status of all systems and sub-systems,  
(the *Configuration Database*).

**SCHEDULE 10**

**REMEDIES, DEFAULT AND TERMINATION**

- Schedule 10.1: Remedial Plans**
- Schedule 10.2: TSP Default**
- Schedule 10.3: Operator Default**
- Schedule 10.4: Termination and Consequences of Termination**

## SCHEDULE 10.1

### Remedial Plans

#### 1. REMEDIAL PLAN NOTICES

1.1 Without limiting the Operator's other rights under this Schedule 10.1, if:

- (a) the TSP is in breach of any term of this Agreement (a *Breach*); or
- (b) a Remedial Event has occurred and is continuing,

the Operator may serve a notice on the TSP requiring it to propose a reasonable remedial plan (a *Remedial Plan*) for the purpose of curing (progressively, if need be) the Breach or Remedial Event in a cost effective manner as soon as reasonably practicable (a *Remedial Plan Notice*).

#### Contents of Remedial Plan Notices

1.2 Each Remedial Plan Notice shall specify:

- (a) the Breach, or the Remedial Event that has occurred and is continuing; and
- (b) a reasonable time period (but not, in any event, less than 10 days from receipt of that Remedial Plan Notice) for providing the Remedial Plan.

#### Obligation to submit Remedial Plan

1.3 The TSP shall comply with any Remedial Plan Notice in accordance with its terms. If the TSP considers that the time period for producing the Remedial Plan is not a reasonable one, it shall immediately inform the Operator of its view and of the time period it considers to be reasonable. Pending any agreement on a different period, the TSP shall prepare a Remedial Plan to the timescale notified by the Operator.

#### Contents of Remedial Plans

1.4 Each Remedial Plan shall set out:

- (a) the Breach or Remedial Event to which it relates;
- (b) an explanation of the reasons for the occurrence of that Breach or Remedial Event;
- (c) the steps that the TSP proposes in order to cure the Breach or Remedial Event, with details of the resources required and deployment proposed, sufficient to enable a reasonable assessment of the prospects of success and relevant timescales, and to enable reasonable monitoring of actions taken by the TSP against actions proposed by it in the Remedial Plan; and
- (d) the time period within which the TSP proposes to implement those steps with milestones linked to planned outcomes.

## 2. RESPONSE TO REMEDIAL PLAN

2.1 Within 10 Business Days of receipt of a Remedial Plan, the Operator shall respond in writing to the TSP, specifying:

- (a) that the Operator is satisfied with the contents of that Remedial Plan;
- (b) any amendments to that Remedial Plan that the Operator believes necessary or appropriate in order to achieve the aims of that Remedial Plan; or
- (c) such alternative course of action as the Operator believes necessary or appropriate in order to cure the Breach or Remedial Event.

2.2 If the Operator responds in accordance with paragraph 2.1(b) or (c), the parties shall meet and discuss in good faith the Remedial Plan and the Operator's response to it with a view to agreeing a course of remedial action within 10 Business Days of the date of the Operator's response to the Remedial Plan (or such longer time period as the parties may agree).

2.3 If the Operator responds in accordance with paragraph 2.1(a) or, following the discussions pursuant to paragraph 2.2, the parties agree a documented course of remedial action, then the provisions of the Remedial Plan or the agreed remedial action shall be treated as a shared Remedial Plan (a *Shared Remedial Plan*).

2.4 If, following the discussions pursuant to paragraph 2.2, the parties do not agree a course of remedial action, then:

- (a) the TSP shall provide the Operator with a written reasoned explanation of its reasons for not adopting those of the Operator's proposals that it is unwilling to incorporate with the Remedial Plan; and
- (b) the provisions of the Remedial Plan (including any elements of the Operator's response with which the TSP agrees) shall be treated as the TSP's sole Remedial Plan (a *Sole Remedial Plan*).

## 3. IMPLEMENTATION OF REMEDIAL PLANS

### Shared Remedial Plans

3.1 The TSP shall implement any Shared Remedial Plan in accordance with its terms and shall provide the Operator with reasonable frequency with all reasonable information about progress in and results to date of implementation.

3.2 If the TSP acts in accordance with a Shared Remedial Plan, any failure to cure the Breach or the Remedial Event pursuant to which that Shared Remedial Plan relates by the end of the time period for implementation specified in that Shared Remedial Plan, shall not in itself constitute a breach of this Agreement, provided that:

- (a) where the Breach or the Remedial Event itself constitutes a TSP Default, such TSP Default shall not be cured or waived by virtue of this paragraph 3.2;
- (b) the TSP provides the Operator with a written, reasoned explanation of why it considers the resources deployed pursuant to that Shared Remedial Plan did not

produce the expected results, and proposes reasonable steps and timescales for the deployment of further resource in a cost effective manner to deliver those results; and

- (c) the provisions of this Schedule 10.1 shall apply to any written statement provided pursuant to paragraph 3.2(b) as if it were a Remedial Plan submitted pursuant to paragraph 1.4.

3.3 If the TSP fails to act in accordance with a Shared Remedial Plan without obtaining the Operator's consent, then (if the Breach or Remedial Event is continuing) the provisions of paragraph 3.2 shall apply but with the additional requirements that:

- (a) the explanation required in paragraph 3.2(b) shall also address the reasons for such failure; and
- (b) where the Operator considers that there is no reasonable excuse for the TSP's failure to act in accordance with that Shared Remedial Plan he may require the TSP to remedy such failure and may further stipulate that any neglect to do so within a reasonable period shall constitute a TSP Default.

### **Sole Remedial Plans**

3.4 The TSP shall implement any Sole Remedial Plan in accordance with its terms, provided that if the Operator does not agree with the time period within which the TSP proposes to implement its Sole Remedial Plan, the Operator may, acting reasonably, determine a shorter time period within which the TSP shall implement the Sole Remedial Plan.

3.5 If the TSP acts in accordance with a Sole Remedial Plan, any failure to cure the Breach or the Remedial Event pursuant to which that Sole Remedial Plan relates by the end of the time period for implementation specified in that Sole Remedial Plan, shall not in itself constitute a breach of this Agreement, provided that:

- (a) where the Breach or the Remedial Event, itself constitutes a TSP Default, such TSP Default shall not be cured or waived by virtue of this paragraph 3.5;
- (b) the TSP provides the Operator with a written reasoned explanation of why it considers the resources deployed pursuant to that Sole Remedial Plan did not produce the expected results, and proposes reasonable steps and timescales for the deployment of further resource in a cost effective manner to deliver those results; and
- (c) the provisions of this Schedule 10.1 shall apply to any written statement provided pursuant to paragraph 3.5(b) as if it were a Remedial Plan submitted pursuant to paragraph 1.3; save that a further alternative response shall be available to the Operator pursuant to paragraph 2.1 being: "that the Operator is not confident that the TSP is able to implement a Remedial Plan that will cure that Breach or Remedial Event within a reasonable timescale (a *not confident response*).

3.6 If the TSP fails to act in accordance with a Sole Remedial Plan without obtaining the Operator's consent, then (if the Breach or Remedial Event is continuing) the provisions of paragraph 3.5 shall apply but with the additional requirements that:

- (a) the explanation required in paragraph 3.5(b) shall also address the reasons for such failure; and

- (b) where the Operator considers that there is no reasonable excuse for the TSP's failure to act in accordance with that Sole Remedial Plan he may require the TSP to remedy such failure and may further stipulate that any neglect to do so within a reasonable period shall constitute a TSP Default.

3.7 Where either:

- (a) any Breach or Remedial Event is not cured by the end of the time period for implementation specified in the [REDACTED] or any subsequent Shared Remedial Plan that is applied to it; or
- (b) the Operator delivers a not confident response following the failure of any Sole Remedial Plan to cure the Breach or Remedial Event to which it relates by the end of the time period for implementation specified in that Sole Remedial Plan,

then the Operator may by written notice to the TSP designate that Breach or Remedial Event as a Persistent Failure (a *Persistent Failure*).

#### 4. PERSISTENT FAILURE BY THE TSP

4.1 If:

- (a) any Persistent Failure has continued for more than [REDACTED] days; or
- (b) the underlying events or circumstances that gave rise to the Breach or Remedial Event that was the subject of a Remedial Plan (the *Failure Event*) occurs more than [REDACTED] times in any period of six consecutive Reporting Periods,

then the Secretary of State may serve a notice (a *formal warning notice*) on the TSP:

- (i) specifying that it is a formal warning notice;
- (ii) giving reasonable details of the Persistent Failure or Failure Event; and
- (iii) stating that the occurrence of such Persistent Failure or Failure Event may, subject to paragraph 4.2, entitle the Operator, at the Secretary of State's direction, to terminate this Agreement.

4.2 If, following service of a formal warning notice, the Persistent Failure or Failure Event specified has continued beyond [REDACTED] days or recurred in [REDACTED] or more Reporting Periods within the six Reporting Periods after the date of service, then the Operator may serve another notice (a *final warning notice*) on the TSP:

- (a) specifying that it is a final warning notice;
- (b) stating that the Persistent Failure or Failure Event specified has been the subject of a formal warning notice served in accordance with paragraph 4.1; and
- (c) stating that if such Persistent Failure or Failure Event continues for a further [REDACTED] days or recurs in [REDACTED] or more Reporting Periods within the six Reporting Periods following the date of service of the final warning notice, this Agreement may entitle the Operator, at the Secretary of State's direction, to terminate this Agreement.

4.3 If, following service of a final warning notice either of the circumstances in paragraph 4.2 occurs, the Operator may by written notice to the TSP designate such Persistent Failure a persistent failure default event (a *Persistent Failure Default Event*).

## SCHEDULE 10.2

### TSP Default

#### 1. TSP DEFAULT

1.1 Each of the events set out in this paragraph 1 is a TSP Default.

#### Insolvency

- 1.2 (a) **Administration:** any step being taken by any person with a view to the administration of the TSP under Part II of the Insolvency Act 1986;
- (b) **Insolvency:** the TSP stopping or suspending or threatening to stop or suspend payment of all or a material part of (or of a particular type of) its debts, or being unable to pay its debts, or being deemed unable to pay its debts under Section 123(1) or (2) of the Insolvency Act 1986 except that in the interpretation of this paragraph:
- (i) the words “it is proved to the satisfaction of the court that” in sub-section (1)(e) and sub-section (2) of Section 123 shall be deemed to be deleted;
  - (ii) Section 123(1)(a) of the Insolvency Act 1986 shall have effect as if for “£750” there was substituted “[REDACTED]” or such higher figure as the Operator may from time to time notify in writing to the TSP; and
  - (iii) the TSP shall not be deemed to be unable to pay its debts for the purposes of this paragraph if any such demand as is mentioned in Section 123(1)(a) of the Insolvency Act 1986 is being contested in good faith by such person with recourse to all appropriate measures and procedures and such person has adequate funds to discharge the amount of such demand or if any such demand is satisfied before the expiration of 21 days from such demand;
- (c) **Arrangements with Creditors:** the directors of the TSP making any proposal under Section 1 of the Insolvency Act 1986, or any of the TSP proposing or making any agreement for the deferral, rescheduling or other readjustment (or proposing or making a general assignment or an arrangement or composition with or for the benefit of creditors) of all or a material part of (or of a particular type of) its debts, or a moratorium being agreed or declared in respect of or affecting all or a material part of (or of a particular type of) its debts;
- (d) **Security Enforceable:** any step being taken to enforce security over or a distress, execution or other similar process being levied or served against any property of the TSP or the whole or a substantial part of the assets or undertaking of the TSP, including the appointment of a receiver, administrative receiver, manager or similar person to enforce that security;
- (e) **Stopping Business/Winding-Up:** any step being taken by the TSP with a view to its winding-up or any person presenting a winding-up petition or the TSP ceasing or threatening to cease to carry on all or a material part of its business, except for the purpose of and followed by a reconstruction, amalgamation, reorganisation, merger or consolidation on terms approved by the Operator before that step is taken;



- (f) **Analogous Events:** any event occurring which, under the Law of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed in this paragraph 1.2,

unless, in the case of paragraphs 1.2(d) and (e), the relevant petition, proceeding or other step is being actively contested in good faith by the relevant person with recourse to all appropriate resources and procedures and such person has adequate funds to discharge the relevant debt.

### **Non-payment**

1.3 The TSP failing to pay to the Operator any amount due under this Agreement within [REDACTED] of the due date for such payment.

### **Notifiable Events**

1.4 [REDACTED] or more Notifiable Events (whether or not notified) occur in any two-year period.

### **Persistent Failure Default Event**

1.5 A Persistent Failure Default Event occurs.

### **TSP Covenants**

1.6 Any material breach of the covenants contained in Schedule 1.2 (*TSP Covenants and Performance*).

## **2. CONSEQUENCES OF TSP DEFAULT**

2.1 The TSP shall notify the Operator as soon as reasonably practicable on, and in any event within 24 hours of, it becoming aware of the occurrence of a TSP Default (and shall copy such notice to the Secretary of State). The TSP shall take such action as the Operator may require to remedy any TSP Default.

2.2 On the Operator becoming aware of the occurrence of a TSP Default, it shall promptly notify the Secretary of State.

2.3 On the occurrence of a TSP Default, the provisions of paragraph 2.4 shall apply, but the provisions of Schedule 10.1 (*Remedial Plans*) shall also continue to apply.

2.4 On and at any time after the occurrence of a TSP Default which is unremedied or continuing, the Operator:

- (a) may request the Secretary of State to take enforcement action against the TSP in accordance with the terms of the MARA; and/or
- (b) shall terminate this Agreement if directed to do so by the Secretary of State at a date and time as so directed.

## SCHEDULE 10.3

### Operator Default

#### 1. OPERATOR DEFAULT

1.1 Each of the events set out in this paragraph 1 is an Operator Default.

#### Insolvency

1.2 (a) **Administration:** any step being taken by any person with a view to the administration of the Operator under Part II of the Insolvency Act 1986;

(b) **Insolvency:** any of the Operator stopping or suspending or threatening to stop or suspend payment of all or a material part of (or of a particular type of) its debts, or being unable to pay its debts, or being deemed unable to pay its debts under Section 123(1) or (2) of the Insolvency Act 1986 except that in the interpretation of this paragraph:

(i) the words “it is proved to the satisfaction of the court that” in sub-section (1)(e) and sub-section (2) of Section 123 shall be deemed to be deleted;

(ii) Section 123(1)(a) of the Insolvency Act 1986 shall have effect as if for “£750” there was substituted “[REDACTED]” or such higher figure as the TSP may from time to time notify in writing to the Operator; and

(iii) any of the Operator shall not be deemed to be unable to pay its debts for the purposes of this paragraph if any such demand as is mentioned in Section 123(1)(a) of the Insolvency Act 1986 is being contested in good faith by such person with recourse to all appropriate measures and procedures and such person has adequate funds to discharge the amount of such demand or if any such demand is satisfied before the expiration of 21 days from such demand;

(c) **Arrangements with Creditors:** the directors of the Operator making any proposal under Section 1 of the Insolvency Act 1986, or any of the Operator proposing or making any agreement for the deferral, rescheduling or other readjustment (or proposing or making a general assignment or an arrangement or composition with or for the benefit of creditors) of all or a material part of (or of a particular type of) its debts, or a moratorium being agreed or declared in respect of or affecting all or a material part of (or of a particular type of) its debts;

(d) **Security Enforceable:** any step being taken to enforce security over or a distress, execution or other similar process being levied or served against any property of the Operator or the whole or a substantial part of the assets or undertaking of the Operator, including the appointment of a receiver, administrative receiver, manager or similar person to enforce that security;

(e) **Stopping Business/Winding-Up:** any step being taken by the Operator with a view to its winding-up or any person presenting a winding-up petition or any of the Operator ceasing or threatening to cease to carry on all or a material part of its business, except for the purpose of and followed by a reconstruction, amalgamation,

reorganisation, merger or consolidation on terms approved by the Secretary of State before that step is taken;

- (f) **Railway Administration Order:** a railway administration order (as defined in Section 59 of the Act) being made in relation to the Operator; and
- (g) **Analogous Events:** any event occurring which, under the Law of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed in this paragraph 1.2,

unless, in the case of paragraphs 1.2(d) and (e), the relevant petition, proceeding or other step is being actively contested in good faith by the relevant person with recourse to all appropriate resources and procedures and such person has adequate funds to discharge the relevant debt.

### **Non-payment**

1.3 The Operator failing to pay to the TSP any amount due under this Agreement within [REDACTED] of the due date for such payment.

### **Revocation of Licence**

1.4 Revocation of any Licence required to be held by the Operator in order to comply with its obligations under this Agreement.

### **Operator Covenants**

1.5 Any material breach of the covenants contained in Schedule 1.3 (*Operator Covenants and Performances*).

## **2. CONSEQUENCES OF OPERATOR DEFAULT**

2.1 The Operator shall notify the TSP as soon as reasonably practicable on, and in any event within 24 hours of, it becoming aware of the occurrence of an Operator Default (and shall copy such notice to the Secretary of State). The Operator shall take such action as the TSP may require to remedy any Operator Default.

2.2 On the TSP becoming aware of the occurrence of an Operator Default it shall promptly notify the Secretary of State.

2.3 On the occurrence of an Operator Default, the provisions of paragraph 2.4 shall apply, but the provisions of Schedule 10.1 (*Remedial Plans*) shall also continue to apply.

2.4 On and at any time after the occurrence of an Operator Default which is unremedied or continuing, the TSP:

- (a) may request the Secretary of State to take any available enforcement action against the Operator; and/or
- (b) shall terminate this Agreement if directed to do so by the Secretary of State and at a date and time as so directed.

## SCHEDULE 10.4

### Termination and Consequences of Termination

#### 1. TERMINATION

This Agreement shall only terminate by effluxion of time or because the Secretary of State either:

- (a) requires the Operator pursuant to Schedule 10.2 (*TSP Default*) or requires the TSP pursuant to Schedule 10.3 (*Operator Default*) to exercise the respective party's right to terminate this Agreement; or
- (b) notifies both parties in writing pursuant to this paragraph 1 that he has given notice to the TSP pursuant to the MARA to terminate the MARA.

#### 2. DATE AND TIME OF NOTICE

In imposing any requirement or giving any notice pursuant to paragraph 1, the Secretary of State shall state the date and the time (which shall be not later than [\_\_\_\_\_] hours nor earlier than [\_\_\_\_\_] hours) on which this Agreement is to terminate.

#### 3. OBLIGATIONS PRIOR TO TERMINATION

Prior to any termination of this Agreement:

- (a) the Operator shall deliver up possession of any Sets to the TSP; and
- (b) the Operator shall pay the TSP the aggregate of all TARA Payments (including the apportioned element of the period relating to the Reporting Period during which this Agreement is terminated) which have then fallen due under this Agreement but remain unpaid.

#### 4. ACCRUED RIGHTS AND LIABILITIES

Termination of this Agreement shall be without prejudice to accrued rights and liabilities.

**SCHEDULE 11**

**VARIATIONS**

**Schedule 11.1: Pre-Priced Variations**

**Appendix 1:** [Title]

**Appendix 2:** [Title]

**Schedule 11.2: Other Variations**

## **SCHEDULE 11.1**

### **Pre-Priced Variations**

#### **1. OBLIGATION TO PRICE**

The Operator may require the TSP to provide it with a fixed price quotation and timescale for implementing any one or more of the variations to the Sets, indicative details of which are set out in Appendix 1.

#### **2. BREAKDOWN OF PRICE**

The TSP, in providing its fixed price quotation and timescale for delivery of any variation pursuant to paragraph 1 shall provide a breakdown of the price proposed and explanation of timescale, each by reference to the unit prices, rates and other information set out in Appendix 2.

#### **3. NOTICE AND PROCEDURE**

3.1 Any requirement of the Operator pursuant to paragraph 1 is to be given by written notice, providing all reasonable details that the TSP may require in order to provide a response that complies with paragraph 2, which it shall provide within [\_\_\_\_\_] days thereafter.

3.2 [*Process for translating agreement into commitment and for dealing with disagreement to follow*].

**APPENDIX 1**

*[To follow]*

**APPENDIX 2**

*[To follow]*



## **SCHEDULE 11.2**

### **Other Variations**

#### **1. RESTRICTION ON RIGHT TO VARY**

The parties shall not vary the terms of this Agreement and no such agreement purporting to vary the terms of this Agreement shall be valid other than variations entered into pursuant to paragraph 2 and in accordance with paragraph 3.

#### **2. VARIATIONS APPROVED OR REQUIRED BY THE SECRETARY OF STATE**

2.1 The parties may vary the terms of this Agreement in accordance with paragraph 3:

- (a) pursuant to an Authority to Proceed;
- (b) pursuant to a Required Variation Notice; or
- (c) as otherwise agreed in advance by the Secretary of State.

2.2 The TSP shall upon receipt, promptly forward to the Operator any Authority to Proceed or Required Variation Notice or other consent and, in each case, any information relevant thereto that sets out the terms of the amendment contemplated by such authority, notice or consent (as the case may be).

#### **3. OBLIGATION TO ENTER INTO AN AMENDMENT AGREEMENT**

The parties shall enter into an agreement amending the terms of this Agreement in accordance with the requirements of any Authority to Proceed, Required Variation Notice or other Secretary of State consent as soon as reasonably practicable after the Operator is in receipt of such authority or notice or the parties are aware of such consent (as the case may be).

**SCHEDULE 12**  
**CONFIDENTIALITY**

**Schedule 12:**

**Confidentiality**

**Appendix:      Commercially Sensitive Information**

## SCHEDULE 12

### CONFIDENTIALITY

#### 1. CONFIDENTIALITY

1.1 The parties agree that provisions of this Agreement shall, subject to paragraph 1.2, not be treated as Confidential Information and may be disclosed without restriction.

1.2 Paragraph 1.1 shall not apply to provisions of this Agreement designated as Commercially Sensitive Information which shall, subject to paragraph 1.4, be kept confidential for the periods specified in the Appendix.

1.3 The parties shall keep confidential all Confidential Information received by one party from the other party relating to this Agreement and shall use all reasonable endeavours to prevent their employees and agents from making any disclosure to any person of any such Confidential Information.

1.4 Paragraphs 1.2 and 1.3, shall not apply to:

- (a) any disclosure of information that is reasonably required by any person engaged in the performance of their obligations under this Agreement for the performance of those obligations;
- (b) any matter which a party can demonstrate is already or becomes generally available and in the public domain otherwise than as a result of a breach of this paragraph 1;
- (c) any disclosure to enable a determination to be made under clause 17 (*Dispute Resolution*);
- (d) any disclosure which is required pursuant to any statutory, legal (including any order of a court of competent jurisdiction) or Parliamentary obligation placed upon the party making the disclosure or the rules of any stock exchange or governmental or regulatory authority having the force of law or if not having the force of law, compliance with which is in accordance with the general practice of persons subject to the stock exchange or governmental or regulatory authority concerned;
- (e) any disclosure of information which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
- (f) any provision of information to the parties' own professional advisers or insurance advisers or lenders or their professional advisers or, where it is proposed that a person should or may provide funds to either party (whether directly or indirectly and whether by loan, equity participation or otherwise) to that person or their respective professional advisers but only to the extent reasonably necessary to enable a decision to be taken on the proposal; or
- (g) any disclosure by the Secretary of State.

1.5 Each party acknowledges that the Secretary of State may disclose this Agreement to:

- (a) any potential successor operator under a franchise agreement following the termination or expiry of the franchise Agreement, including any person bidding for the right to become the franchisee under that new franchise agreement; and
- (b) any other operator, or potential operator, of passenger franchise services to whom the Secretary of State is considering deploying some or all of the Sets pursuant to a remapping of the franchise map and/or a redeployment of the Sets.

**APPENDIX**

**Commercially Sensitive Information**

*[to be discussed and agreed at later date]*

\_\_\_\_\_ 200

[ \_\_\_\_\_ ]  
as TSP

and

[ \_\_\_\_\_ ]  
as Operator

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**Train Availability and Reliability Agreement**

**relating to the**

**[NAME OF FRANCHISE]**

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**Note: Subject to further DfT review**



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