
THE SCOTTISH MINISTERS

and

ABELLIO SCOTRAIL LIMITED

DEFINITIONS AGREEMENT

relating to

THE SCOTRAIL FRANCHISE AGREEMENT

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AGREEMENT

BETWEEN

- (1) **THE SCOTTISH MINISTERS**, Victoria Quay, Edinburgh EH6 6QQ acting through Transport Scotland, Buchanan House, 58 Port Dundas Road, Glasgow, G4 0HF or such other agency, department or other organisational unit of the Scottish Government as they may from time to time nominate (who and whose successors are referred to as *the Authority*); and
- (2) **ABELLIO SCOTRAIL LIMITED**, whose registered number is SC450732 and registered office is at 10th Floor, 133 Finnieston Street, Glasgow, G3 8HB (the *Franchisee*),

WHEREAS

- (A) The Authority and the Franchisee have entered into the Franchise Agreement relating to the ScotRail Franchise.
- (B) The Authority and the Franchisee wish to set out in this Agreement definitions of the terms used in the Franchise Agreement.

1. INTERPRETATION AND DEFINITIONS

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

2. CONSTRUCTION AND INTERPRETATION

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

- (a) words and expressions defined in Part I of the Act have the same meanings when used therein provided that, except to the extent expressly stated, “railway” shall not have the wider meaning attributed to it by Section 81(2) of the Act;
- (b) words and expressions defined in the Interpretation Act 1978 have the same meanings when used in the Franchise Agreement;
- (c) the words “include”, “including” and “in particular” are to be construed without limitation;
- (d) references to any person shall include any individual, firm, company, corporation, body, trust or foundation, or any association, partnership or unincorporated body (whether or not having separate legal

personality) and in each case include that person's successors, transferees or assignees;

- (e) the words "subsidiary", "wholly owned subsidiary" and "parent undertaking" have the same meaning in the Franchise Agreement as in Sections 1159 and 1162 of the Companies Act 2006;
- (f) references to documents "in the agreed terms" are references to documents initialled by or on behalf of the Authority and the Franchisee;
- (g) references in any of the agreements comprising the Franchise Agreement to Recitals, clauses, Schedules, Parts, paragraphs and Appendices are to Recitals, clauses, Schedules, Parts of Schedules, paragraphs of Schedules and Appendices of Schedules of that agreement, unless expressly specified to the contrary, and the Schedules and Appendices form part of the agreement in which they appear;
- (h) references in any Schedule in any of the agreements comprising the Franchise Agreement to a Part, paragraph or Appendix are references to a Part, paragraph or Appendix of that Schedule (or the relevant Part of a Schedule), unless expressly specified to the contrary;
- (i) headings and references to headings shall be disregarded in construing the Franchise Agreement;
- (j) references to any enactment include any subordinate legislation made from time to time under such enactment and are to be construed as references to that enactment as for the time being amended or modified or to any enactment for the time being replacing or amending it and references to any subordinate legislation are to be construed as references to that legislation as for the time being amended or modified or to any legislation for the time being replacing or amending it;
- (k) references to an agreement or any other document shall be construed as referring to that agreement or document as from time to time supplemented, varied, replaced, amended, assigned or novated;
- (l) words importing the masculine gender include the feminine and vice-versa, and words in the singular include the plural and vice-versa;
- (m) wherever provision is made for the giving or issuing of any notice, endorsement, consent, approval, waiver, certificate or determination by any person, unless otherwise specified, such notice, endorsement, consent, approval, waiver, certificate or determination shall be in writing and the words "notify", "consent", "endorse", "approve", "waive", "certify" or "determine" and other cognate expressions shall be construed accordingly;

- (n) references to materials, information, data and other records shall be to materials, information, data and other records whether stored in electronic, written or other form;
- (o) references to the period of validity of any Fare are references to its period of validity excluding any rights of any purchaser thereof to extend such period under the Passenger's Charter, any equivalent document, or the terms and conditions attaching to such Fare (including any applicable conditions of carriage) in the event of the cancellation or delay of any of the railway passenger services for which such Fare is valid;
- (p) references to stations at which any train calls include stations at which such train commences or terminates its journey;
- (q) references to "railway passenger services" are to be construed subject to Section 40 of the Railways Act 2005;
- (r) references to the provision of railway passenger services include the organisation of the relevant train movements and making the necessary arrangements with Network Rail or any other relevant Facility Owner;
- (s) references in lower case letters to terms defined in clause 3 of this Agreement shall be construed, where relevant, as being references to the terms defined as such in the franchise agreement or relevant agreement made under Section 30 of the Act or Section 8 of the Railways Act 2005 with any other Train Operator;
- (t) references to amendments or variations of contracts or arrangements include assignments, novations or other transfers of rights or obligations (in whole or in part) under such contracts or arrangements;
- (u) references to sums of money being expended by the Franchisee shall be to such sums exclusive of Value Added Tax;
- (v) references to "undertakes" and references to "undertakings" are to be construed so as to include the word "covenants";
- (w) references to "assignment" and words deriving meaning therefrom are to be construed so as to include the word "assignment" and words deriving meaning therefrom;
- (x) references to "set-off" are to be construed so as to include both the words "retain" and "compensate" and words deriving meaning therefrom;
- (y) any reference to an arbitrator shall also be taken as a reference to an arbiter;

- (z) references to the words “shall not be liable” are to be construed as meaning that no contravention of the Franchise Agreement and no Event of Default shall arise as a result of the matter to which such words relate; and
- (aa) references to a “contravention of this Agreement” (and cognate expressions) are to be construed as meaning a breach of the Franchise Agreement.

3. DEFINITIONS

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

A9 Dualling means the project to upgrade 80 miles of single carriageway between Perth and Inverness to dual carriageway;

Abellio Transport Holding BV means the company of that name incorporated in the Netherlands with registration number 30182392;

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

Act means the Railways Act 1993 (as modified, amended or replaced by the Transport Act 2000 and/or the Railways Act 2005) and any regulations or orders made thereunder;

Actual Operating Costs means

- (a) the Franchisee’s total operating expenses for the period being reviewed as stated in its profit and loss account, including any of the following operating expenses that are payable during that period:
 - (i) amounts payable to the Authority and Network Rail;
 - (ii) taxation;
 - (iii) shareholder distributions including dividends;
 - (iv) interest;
 - (v) capital expenditure (net of grants received); and
 - (vi) lease payments in relation to on-balance sheet leased assets,but excluding any of the following expenses that are payable in that period:

(A) interest relating on-balance sheet leased assets;

- (B) depreciation;
 - (C) amortisation; and
 - (D) bad debt provisions; and
- (b) either:
- (i) plus any reduction in the total amount owing by the Franchisee to creditors over that period; or
 - (ii) less any increase in the total amount owing by the Franchisee to creditors over that period, where total creditors:
 - (A) include any persons owed amounts by the Franchisee in respect of operating expenses, including the types of expenses set out in paragraphs (a)(i) to (iv) inclusive, provisions and deferred income balances; but
 - (B) exclude persons owed amounts by the Franchisee in respect of season ticket liabilities, lease liabilities in relation to on-balance sheet leased assets and liabilities in relation to grants received for the purchase of fixed assets;

Actual Passenger Demand has the meaning given to it in paragraph 1 of Schedule 1.5 (*Information about Passengers*);

Actuary has the meaning given to it in the Pension Trust;

Additional National Passenger Surveys means the surveys undertaken by the Franchisee pursuant to Committed Obligation reference 16.2;

Adopted Accounting Principles means IFRS;

Advance Ticket shall be interpreted in accordance with the national fares structure and public nomenclature adopted by Train Operators in 2008;

Affiliate means, in respect of any person, any person by which that person is Controlled or which is Controlled by that person, or any person which is Controlled by any other Affiliate of that person, save that for the purposes of determining whether one entity is an Affiliate of another, any transfer of shares by way of security or to a nominee of the transferor shall be disregarded (for the avoidance of doubt Network Rail shall not be construed to be an Affiliate of the Authority);

Agreed Form means in such form as is annexed and executed or initialled by or on behalf of the Authority and the Franchisee as relative to the Franchise Agreement or otherwise as both parties have confirmed in writing to the other is in agreed form;

Agreed Rebasing means an agreement, in writing, between the Parties addressing all of the matters to be considered as part of a Rebasing;

Agreed Rebasing Date means the 5th anniversary of the Franchise Commencement Date except where:

- (a) any issue in relation to the Rebasing is referred by either Party to the Dispute Resolution Procedure for determination prior to the 5th anniversary of the Franchise Commencement Date; or
- (b) the Parties have failed to agree the Revised Inputs within the timescale provided in paragraph 6 of Schedule 8.5 (*Rebasing*) following receipt of the Rebasing Report by the Authority;

in which case the Agreed Rebasing Date shall be the date no later than 6 months after the 5th anniversary of the Franchise Commencement Date;

Alliance means any joint venture, collaboration or co-operation arrangement (whether expressed as an understanding or contract) to which the Franchisee is a party in respect of railway or railway industry matters, excluding any Access Agreement, Brand Licence, Collateral Agreement, Connection Agreement, Franchise Agreement or Property Lease (but for the purposes of the Committed Obligations and the terms defined in this Agreement used in the Committed Obligations means only the Alliance between the Franchisee and Network Rail constituted by the agreement dated 9 and 10 April 2014);

Alliancing Security means the document with that name executed by the Franchisee on the date of the execution of this Agreement;

Allowable Change means in Schedule 7.1 (*Train Operating Performance*) a change to the Passenger Timetable which is caused by:

- (a) any Network Rail Restriction of Use notified to the Franchisee or included in the Timetable; or
- (b) any other matter which may be specified from time to time by the Authority;

Alstom Train Tracer System means the part of the trains faults system allowing train fault data to be processed and transmitted whilst Trains are in service;

Alternative Proposed Location(s) has the meaning given to it in paragraph 2.6 of Part 2 (*Miscellaneous Provisions*) of Schedule 1.6 (*Committed Obligations*)

Ancillary Service means any service specified in paragraph 5 of Schedule 1.7 (*Franchise Services*);

Annual Audited Accounts means the accounts of the Franchisee which:

- (a) comply with paragraph 3.11 of Schedule 13.2 (*Information*); and
- (b) are delivered to the Authority by the Franchisee in accordance with paragraph 3.9 of Schedule 13.2 (*Information*) and certified by its auditors as fair and true;

Annual Audited Financial Statements means the final draft financial statements of the Franchisee which:

- (a) comply with paragraph 3.11 of Schedule 13.2 (*Information*);
- (b) give a true and fair view of the amount of Revenue and Profit earned by the Franchisee during any Franchisee Year (or part thereof), excluding:
 - (i) any Revenue Share Adjustments or Profit Share Adjustments paid or payable by the Franchisee to the Authority in respect of that Franchisee Year; and
 - (ii) any Revenue Support Adjustments received or receivable from the Authority by the Franchisee in respect of that Franchisee Year;
- (c) contain:
 - (i) a breakdown of the amount of Revenue and Profit referred to in paragraph (b), identifying the amount earned of each revenue flow specified in the definition of Revenue and Profit;
 - (ii) costs;
 - (iii) balance sheet performance;
 - (iv) dividends from Affiliates; and
 - (v) any explanatory notes which the Franchisee reasonably believes would assist the Authority in fulfilling the purpose referred to in paragraph (d); and
- (d) are delivered to the Authority by the Franchisee in accordance with paragraph 3.7 of Schedule 13.2 (*Information*) for the sole purpose of calculating any Revenue Share Reconciliation Amount or any Revenue Support Reconciliation Amount;

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

Annual Management Accounts means the management accounts of the Franchisee which:

- (a) comply with paragraph 3.10 of Schedule 13.2 (*Information*); and
- (b) are delivered to the Authority by the Franchisee in accordance with paragraph 3.6 of Schedule 13.2 (*Information*);

Annual Timetable in Schedule 7.1 (*Train Operating Performance*) means, in respect of any Reporting Period, the Franchisee's published passenger timetable in which falls the last day of such Reporting Period, after taking into account any errata published after its initial publication;

Applicable Timetable in Schedule 7.1 (*Train Operating Performance*) means, in respect of any particular day, the Passenger Timetable required to be drawn up by Network Rail in accordance with the Network Code as at 2200 on the immediately preceding day, being the Timetable for that particular day, as amended from time to time, including to reflect the following:

- (a) any amendment to the working timetable for Passenger Services under the applicable Engineering Access Statement or Timetable Planning Rules;
- (b) any amendment to the working timetable for Passenger Services under Condition H of the Network Code; and
- (c) any amendment which is required to the Timetable to reflect the introduction, removal or alteration of a service by the Franchisee;

Anytime Ticket means shall be interpreted in accordance with the national fares structure and public nomenclature adopted by Train Operators in 2008;

Approved Formation means the formation of any train as detailed in the Train Plan approved by the Authority;

Asset Information Management System ("AIMS") means an information management system in respect of data on station assets as referred in Committed Obligation reference 14.3;

Assist-Mi means a smartphone application allowing users or potential users of the Passenger Services to request assistance from the Franchisee in relation to such use directly from their smartphone;

Associate means any party (other than the Franchisee) to any Alliance to which the Franchisee is party and any partnership or joint venture (whether incorporated or not) resulting from such Alliance and the contractors, agents and employees of the same;

ASR Business Card means a smartcard using ITSO Certified Smartmedia the use of which will offer business users of the Passenger Services a pay-per use account-based monthly post-pay Fare billing service;

ATOC means the Association of Train Operating Companies;

Audit Scotland means the statutory body set up under the Public Finance and Accountability (Scotland) Act 2000 and any successor body set up to provide services to the Auditor General of Scotland and/or the Accounts Commission;

Authority Risk Assumptions means those matters set out in Schedule 9.1 (*Authority Risk Assumptions*);

Authority's Brand Guidelines has the meaning given to that term in paragraph 2.7 of Schedule 14.2 (*Maintenance and Operating Assets*);

Authority's Branding means:

- (a) Community Trade Mark Number EU006316707; UK Trade Mark Number UK00001528473; UK Trade Mark Number UK00002012344; and UK Trade Mark Number UK00002468429;
- (b) any other registered or unregistered trade marks which are owned or used by the Authority other than the Marks;
- (c) any registered or unregistered designs, get ups and livery whether distinctive or not; and
- (d) includes any changes to such trade marks or livery as the Authority may reasonably direct;

Authority's Parties means the Authority's representatives, its representatives, consultants, contactors and advisors;

Authority's Representative means an individual or organisation identified as such from time to time, in writing, by the Authority;

Authority's Solicitors means DWF LLP of Dalmore House, 310 St. Vincent Street, Glasgow, G2 5QR or such other solicitors' practise as the Authority may from time to time nominate by notice to the Franchisee for the purpose of holding the Reference Documents;

Authority Systems in Schedule 7.1 (*Train Operating Performance*) has the meaning ascribed to that term in paragraph 1(b) of Part 2 of Appendix 4 to of Schedule 7.1;

Average Journey Time has the meaning given to it in paragraph 7.1 of Schedule 8.1 (*Franchise Payments*);

Average Weekly Earnings means the average weekly earnings:

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

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

BAM Nuttall means the company appointed by Network Rail to construct the Borders Railway Project, which as at the date of this agreement is a company within the BAM Nuttall corporate group;

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

Bank Holiday means, except where otherwise specified in the Service Level Commitment, a Weekday on which banks in Scotland are not open for business;

Benchmark means any of the Cancellations Benchmark, Capacity Benchmark, and PPM Benchmark;

Benchmark Level means the performance level falling somewhere between Floor Level and Ceiling Level set out in paragraph 2 of each SQUIRE Service Schedule;

Benchmark Table means, in relation to:

- (a) the Cancellations Benchmark, the table set out in Appendix 1 (*Cancellations Benchmark Table*) to Schedule 7.1 (*Train Operating Performance*);
- (b) the Capacity Benchmark, the table set out in Appendix 2 (*Capacity Benchmark Table*) to Schedule 7.1; and
- (c) the PPM Benchmark, the tables set out in Appendix 3 (*PPM Benchmark Tables*) to Schedule 7.1.

“Bike & Go” Facilities means Station facilities allowing users of the Passenger Services to hire bicycles to complete their onward journeys;

Bond Provider means any person or persons who may provide or be an obligor under a Performance Bond or Season and Smart Card Ticket Bond (or other bond required by the Authority from or on behalf of the Franchisee under the Franchise Agreement) from time to time and who shall, unless the Authority otherwise agrees, be a Bank;

Bond Year means the period beginning on the Franchise Commencement Date and ending on 31 March 2016 and any subsequent period of 13 Reporting

Periods beginning on the day after the end of the preceding Bond Year provided that:

- (a) the Franchisee and the Authority may agree to vary the Reporting Period in which a Bond Year ends from time to time; and
- (b) the last Bond Year shall expire on the expiry of the Franchise Period and may be a period of less than 13 Reporting Periods unless otherwise agreed;

Borders Railway Project means the re-construction of, commissioning of and introduction of services onto the former Waverley Line from Tweedbank to Edinburgh Waverley including new stations at Shawfair, Eskbank, Newtongrange, Gorebridge, Stow, Galashiels and Tweedbank providing a new Passenger Service from the Scottish Borders and Midlothian into Edinburgh Waverley station with onward journey opportunities to the ScotRail network;

Brand Licence means a licence between Secretary of State or the Authority (or any company wholly owned by Secretary of State or the Authority) and the Franchisee in respect of any registered or unregistered trade marks, including:

- (a) the Exclusive Trade Mark Licence Agreement dated 10 December 1995 between the Franchising Director and ScotRail Railways Limited in respect of certain trademarks relating exclusively to the ScotRail franchise; and
- (b) the non-exclusive Trade Mark Licence Agreement dated 10 December 1995 between the Franchising Director and the ScotRail Railways Limited in respect of certain other trademarks not relating exclusively to the ScotRail franchise;

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

BREEAM means the Building Research Establishment Environmental Assessment Method for buildings;

BS8903 standard means the BSI Group principles and framework for procuring sustainability;

BSI Group means The British Standards Institution, a company incorporated by Royal Charter with Company Number RC000074;

British Transport Police means the police force established by virtue of section 20 of the Railways and Transport Safety Act 2003 and any statutory successor;

British Transport Police Authority means the police authority established by virtue of Section 18 of the Railways and Transport Safety Act 2003 and any statutory successor;

Business Action Plan means an action plan, drawn from the relevant Delivery Plans, to the extent applicable, produced by the Franchisee in relation to the delivery of any outcome anticipated by its Business Plan, in accordance with paragraphs 2.7 or 2.8 of Schedule 13.2 (*Information*);

Business Plan means the Initial Business Plan or any Updated Business Plan, as the context requires, to be delivered in accordance with paragraphs 2.1 to 2.4 of Schedule 13.2 (*Information*);

“Cab & Go” Service means a service allowing users of the Passenger Services to pre-book taxis at Stations using the Website or a smartphone application;

Caledonian Sleeper Franchise means the rights tendered by the Authority on 20th September 2013 to operate railway passenger services comprising sleeper services between specified stations in Scotland and England under the terms and conditions set out in the Caledonian Sleeper Franchise Agreement;

Caledonian Sleeper Franchisee means the Train Operator of the Caledonian Sleeper Franchise;

Caledonian Sleeper Franchise Agreement means the franchise agreement between the Authority and Serco Caledonian Sleepers Limited dated 23 May and 10 June 2014;

Cancellation means a Passenger Service:

- (a) which is included in the Applicable Timetable and which is cancelled;
- (b) which is included in the Applicable Timetable and which operates less than 50 per cent. of its scheduled mileage; or
- (c) which is omitted from the Applicable Timetable, or included in it in a modified form that does not enable the Franchisee to operate more than 50 per cent. of such Passenger Service’s scheduled mileage, without the Franchisee discharging its obligations under Schedule 1.2 (*Operating Obligations*) in relation thereto;

Cancellations Benchmark means any of the performance levels in respect of Cancellations and Partial Cancellations set out in the Cancellations Benchmark Table;

Cancellations Benchmark Table means the table set out in Appendix 1 (*Cancellations Benchmark Table*) to Schedule 7.1 (*Train Operating Performance*);

Capacity in paragraphs 2.3 to 2.5 of Schedule 7.1 (*Train Operating Performance*) means, in respect of any train and any Formation Monitoring Point, the number of seats on such train which the Franchisee provides or (as the case may be) plans to provide under any relevant Train Plan, on such train at such Formation Monitoring Point;

Capacity Benchmark means any of the performance levels in respect of the capacity operated in delivering the Passenger Services set out in the Capacity Benchmark Table;

Capacity Benchmark Table means the table set out in Appendix 2 (*Capacity Benchmark Table*) to Schedule 7.1 (*Train Operating Performance*);

Capital Expenditure has the meaning given to it in paragraph 7.5 of Schedule 9.1 (*Variations and Financial Consequences of Change*);

Carbon Management System means a suite of tools to enable consistent, transparent and objective measurement and reporting of carbon emissions which also supports design and construction optioneering for operations and investments;

Cascade Plan means the plan for the deployment of Cascaded Units to other routes as a consequence of the introduction into service, whether on a phased basis or otherwise, of the Rolling Stock;

Cascaded Units means those diesel units displaced as a function of the electrification of the affected route or routes and the deployment into passenger service of the Rolling Stock;

Ceiling Level means the performance level designated as such and set out in paragraph 2 of each SQUIRE Service Schedule;

Central Belt means for the purposes of Schedule 5.1 (*Purpose, Structure and Construction*), those Routes within the Service Level Commitment known as Routes A1-A3, Routes C1-C6 and Routes D1-D14 in so far as on such Routes both the arrival and departure stations are not within Strathclyde;

Certificate of Commencement means the certificate to be issued by the Authority pursuant to the Conditions Precedent Agreement;

Change means:

- (a) a change to the Service Level Commitment previously in force pursuant to the issue of a new Service Level Commitment in accordance with paragraph 8 of Schedule 1.1 (*Service Development*);
- (b) the occurrence of a change to the railway passenger services required to be operated by another franchisee or franchise operator by direction of the Authority which may reasonably be expected to have a material effect on the cost and revenues of providing the Passenger Services;

- (c) any action that the Franchisee is required to take pursuant to paragraph 6.1(a) and/or 6.1(b) of Schedule 2.2 (*Security of Access Assets, Rolling Stock Leases, Station and Depot Leases*);
- (d) a change effected pursuant to paragraph 6 of Schedule 1.2 (*Operating Obligations*), including as a result of any action that the Franchisee is required to take pursuant to paragraph 8.1(b) of Schedule 1.2; in respect of any Strategy or plan referred to in paragraph 8.1(b) of Schedule 1.2 published, endorsed or varied by the Authority after the Franchise Commencement Date;
- (e) a change to the Authority's standards in respect of alternative transport arrangements, as referred to in paragraph 8.2(b) of Schedule 1.2, from the Authority's standards, as the case may be, which are current as at the date of signature of this Agreement;
- (f) if and whenever there is a Charge Variation;
- (g) if and whenever there is a Change of Law (excluding any Change of Law to the extent that results in an adjustment to the Franchise Payments pursuant to Schedule 8.4 (*Track Access Adjustments and Station Charge Adjustments*));
- (h) if and to the extent that the Authority and the Franchisee agree or the Authority serves written notice on the Franchisee, exercising its right to call any Priced Option:
 - (i) informing the Franchisee that such Priced Option in Schedule 3 (*Priced Options*) is to be exercised on different terms from those specified in respect of that Priced Option in that Schedule; and/or
 - (ii) at any time after the last date for exercise of such Priced Optionexcept that, in these circumstances, any financial consequences pursuant to Schedule 9.1 (*Variations and Financial Consequences of Change*) shall be to the extent, and only to the extent, that the terms are different from what they would have been if the Priced Option had been called on the terms set out Schedule 3 and, if the call is after the last date for exercise of the Priced Option, it had been called on that last date;
- (i) if and whenever an event occurs which represents a change from the Risk Assumptions described in Schedule 9.4 (*Authority Risk Assumptions*);
- (j) if and whenever the Authority approves an amendment or proposed amendment to an Inter-Operator Scheme, as referred to in paragraph 5 of Schedule 2.5 (*Transport, Travel and Other Schemes*), to the extent

and only to the extent that the Franchisee makes a saving as a consequence of such amendment or proposed amendment;

- (k) if and whenever the Authority requests the Franchisee to take any action under paragraph 10.4 of Schedule 13.2 (*Information*) in accordance with its terms, save that any adjustment to the Franchise Payments under Schedule 9 (*Changes*) in respect of any maintenance or support costs incurred pursuant to such paragraph 10.4 shall only be made to the extent that such maintenance and support costs are over and above the maintenance and support costs of any Computer System that is replaced;
- (l) if and whenever the Franchisee is required to take any action under paragraph 10.5 of Schedule 13.2 (*Information*) in accordance with its terms;
- (m) a Variation (other than a Variation as referred to in (t) or (u) below) to the terms of the Franchise Agreement, the Definitions Agreement or the SQUIRE Service Schedules Agreement pursuant to paragraph 1.1 of Schedule 9.1 (*Variations and Financial Consequences of Change*);
- (n) an alteration to the time period of 10 minutes referred to in paragraphs 5.5(b), 5.6(c) of Schedule 1.1 (*Service Development*) and 3.4.(b)(iii) of Schedule 1.2 (*Operating Obligations*);
- (o) the addition or omission of any station from the provisions of paragraph 4.4 of Schedule 1.3 (*Additional Service Specifications*);
- (p) the imposition, subject to the provisions of paragraph 2.6 of Schedule 4.2 (*Persons with Disabilities and Disability Discrimination*), of any increased access charges in respect of EA Requirements at stations at which the Passenger Services call, other than stations where the Franchisee is Facility Owner;
- (q) if and whenever the Authority exercises its powers pursuant to paragraph 2 of Schedule 5.5 (*Changes to Fares and Fares Regulation*) to alter the obligations of and restrictions on the Franchisee under Schedule 5 (*Fares*);
- (r) if and whenever the Franchisee is obliged to charge Value Added Tax on a Fare or there is an increase or decrease in the rate of Value Added Tax which it must charge on such Fare, in either case due to a change in the Value Added Tax treatment of the provision of Passenger Services;
- (s) if and whenever the Authority effects an amendment to a Discount Fare Scheme, introduces a new Discount Fare Scheme or ceases to approve a Discount Fare Scheme for the purposes of Section 28 of the Act;

- (t) if and whenever the Authority has by a Variation regulated and/or specified the Fares, Prices and/or Child Prices on all, or any, Passenger Services and/or Flows (all as referred to in paragraph 4(a) of Schedule 5.5 (*Changes to Fares and Fares Regulation*)) to the extent, and only to the extent, that the Fares, Prices and/or Child Prices are for that Fare Year higher or lower than the applicable Fares, Prices and/or Child Prices which the Authority is, by making such Variation, seeking to regulate and/or specify;
- (u) if and whenever the Authority has by a Variation regulated and/or specified the Fares, Prices and/or Child Prices on any Passenger Services and/or Flows (all as referred to in paragraph 4(a) of Schedule 5.5 (*Changes to Fares and Fares Regulation*)) and the Authority then by a further Variation notifies the Franchisee that the Authority no longer wishes to regulate and/or specify the Fare, Price and/or Child Price; provided that the financial consequences of that Change pursuant to Schedule 9.1 (*Variations and Financial Consequences of Change*) shall be limited to reversing the financial consequences flowing from the original requirement of the Authority;
- (v) if and whenever the Authority requires the Franchisee to participate in a scheme pursuant to paragraph 1.5, 2.8 or 3.9 of Schedule 2.5 (*Transport, Travel and Other Schemes*);
- (w) the costs incurred by the Franchisee in using its reasonable endeavours when required to do so pursuant to paragraph 3.1 in Part 1 of Schedule 1.8 (*Extended Restrictions of Use*);
- (x) if and whenever the Franchisee is required to novate any Access Agreement pursuant to paragraph 1.1 of Schedule 2.2 (*Security of Assets, Rolling Stock Lease, Stations and Depot Leases*) or to assign any Property Lease pursuant to paragraph 3.1 of Schedule 2.2, to the extent and only to the extent that the Franchisee makes a saving as a consequence of such novation or assignation;
- (y) any two or more of the foregoing that the Authority group together in accordance with any procedures issued pursuant to paragraph 1.4 of Schedule 9.1 (*Variations and Financial Consequences of Change*);
- (z) the Franchisee becomes the Station Facility Owner of Dunbar Station in satisfaction of a requirement to do so from the Authority or if the relevant Priced Option is selected by the Authority;
- (aa) in the event that railway passenger services to, from or within Scotland operated by other Train Operators cease to provided in whole or in part the Franchisee shall operate additional Passenger Services to provide a replacement for those railway passenger services which the other Train Operators shall have ceased or shall cease to provide;

- (ab) the costs incurred by the Franchisee in co-operating with the Authority or any other relevant party in connection with a Major Scottish Project when required to do so in terms of paragraph 1 in Part 2 of Schedule 1.8 (*Extended Restrictions of Use*) save to the extent that the Major Scottish Project or any part thereof is addressed directly by any provisions of the Franchise Agreement and where such provisions do not indicate that the Franchisee's efforts or actions in respect of the same (including the granting of permission, taking of no action or simple acquiescence or activity or exercise of a right) shall constitute a Change;
- (ac) subject to paragraph 12 of Appendix 4 of Schedule 7.1 (*Train Operating Performance*) an adjustment to the Cancellations Benchmark, Capacity Benchmark, PPM Benchmark at the Authority's option pursuant to paragraph 2 in each of Appendices 1, 2 and 3 of Schedule 7.1;
- (ad) if and whenever the Authority (whether or not pursuant to any right reserved in Schedule 6 (*Rolling Stock*)) amends any Output Requirement; and
- (ae) if and whenever the Authority exercises any right reserved to it to require amendment to any concept, specification or design except where the exercise of such right is expressed not to constitute a Change;

subject in each instance to the applicable circumstances (including, but not limited to any action or inaction by or financial consequences for the Franchisee) not otherwise being expressly stated in the Franchise Agreement to not constitute a Change.

Change Date means any of the dates on which changes may be made to the working timetable for the Passenger Services under the Network Code, being initially two in number per calendar year and subsequently six in number per calendar year and of which two are Passenger Change Dates;

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

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

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

- (i) excluding any changes in Taxation;

(ii) excluding any changes which were foreseeable at the date of the Franchise Agreement, and for this purpose, but without limitation, there shall be regarded as foreseeable any Legislation which on the date of the Franchise Agreement has been published:

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

to the extent that the same is subsequently enacted in substantially the same form as the form in which it was previously so published. In relation to the application of this sub-paragraph (ii), each TSI shall be considered separately.

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

Charge Variation means a variation:-

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

provided that it will not be treated as a Charge Variation if the Railway Safety Charge levied by Network Rail ceases but is replaced by a levy (whether or not of the same amount) payable by the Franchisee to the Rail Safety and Standards Board

Charging Review means:

- (a) the exercise by the ORR of its powers under:
 - (i) Part 7 of Schedule 7 of the Track Access Agreement to which the Franchisee is a party on the Franchise Commencement Date or any Replacement Agreement which is deemed to be a Relevant Agreement in accordance with the definition of that term;

- (ii) Condition F11.5 of the Franchise Station Access Conditions in relation to any station which is not an Independent Station; and
 - (iii) Condition 42.5 of the Independent Station Access Conditions in relation to any station which is an Independent Station;
- (b) the following by the ORR of the procedure in Schedule 4A of the Act;
- (c) the exercise by the ORR of any powers of the ORR or the following of any other procedure, which, in the Authority's reasonable opinion:
- (i) has an equivalent effect to; or
 - (ii) is intended to fulfil the same function as,
- any of the powers referred to in paragraphs (a) or (b) in relation to any Relevant Agreement. For this purpose, Relevant Agreement includes any Relevant Agreement which is not the subject of any previous Charging Review); or
- (d) any amendment to a Relevant Agreement, or entry into a new, Relevant Agreement which is approved by the ORR to the extent that it relates to an Incremental Output Statement Charge or a scheme to which that charge relates;

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

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

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

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

“City Days Out from...” Marketing Campaign means a marketing campaign targeted at users and potential users of the Passenger Services which promotes visits to the cities of Aberdeen, Dundee, Edinburgh, Glasgow, Inverness, Perth and Stirling;

Closed Scheme Employees has the meaning given to it in paragraph 3(a) of Schedule 16 (*Pensions*);

Closed Schemes has the meaning given to it in paragraph 3(b) of Schedule 16 (*Pensions*);

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

Club 50 Smartcard means a smartcard using ITSO Certified Smartmedia the use of which will offer a discount on specified Off-Peak products to users of the Passenger Services who are 50 years old and over;

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

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

Commencement Transfer Scheme has the meaning given to it in clause 4.1 of the Conditions Precedent Agreement;

Commercial Manager means the commercial manager appointed by the Franchisee in accordance with paragraph 2.1 (a) of Schedule 11 (*Agreement and Service Delivery Management Provisions*);

Commercially Sensitive Information means information which is disclosed or made available directly to one party by the other party and of which the parties consider that disclosure would or would be likely to severely prejudice the commercial interest of either party or a third party;

Commission means the European Commission;

Committed Obligations means any of the Franchisee’s obligations listed in Part 1 of Schedule 1.6 (*Committed Obligations*);

Committed Obligation Payment Adjustment means an amount referred to in paragraph 2 of Part 3 (*Late/Non-Completion of Committed Obligations*) of Schedule 1.6 (*Committed Obligations*);

Common Station Amenities has the meaning given to it in condition 1.2 of the National Station Access Conditions 2013 (Scotland);

Communications and Marketing Strategy means the strategy referred to in paragraph 2.22 of Schedule 1.4 (*Passenger Facing Obligations*) as “**the C&M Strategy**”;

Community Liaison Manager means the community liaison manager appointed by the Franchisee in accordance with paragraph 2.1 (g) of Schedule 11 (*Agreement and Service Delivery Management Provisions*);

Community Rail , when used to describe a project, scheme or initiative, means one which is related to a rail corridor (whether focussed on a rural or local urban line or local stations) which is led by or has the support of the local community which it serves or through which it passes and will benefit that community;

Community Rail Partnership means any not for profit organisation of the same name that has the purposes of:-

- (a) serving a geographical district, with shared needs and aspirations, linked by the railway;
- (b) working with local organisations and businesses to maximise potential benefits of the said district, railway line and community;
- (c) creating and championing plans and programmes which engage with the railway industry to promote and market initiatives offering clear benefits aligned to long term community benefits;

Community Rail Volunteer means a volunteer recruited by the Franchisee pursuant to the Committed Obligation reference 26.4 to support and promote the development of Community Rail Partnership projects in Scotland;

Competition and Markets Authority means the Competition and Markets Authority established by the Enterprise and Regulatory Reform Act 2013 and its statutory successor;

Compulsory Inter-available Flow has the meaning given to it in the Ticketing and Settlement Agreement;

Computer System means computer hardware and computer software, including licensed third party software and data protocols together with any documentation (whether in human or machine readable form) relating to such software;

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

Confidential Information means information which is disclosed or made available directly to one party by the other party and which the parties agree should be treated as confidential for the purposes of paragraph 4 of Schedule 17 (*Confidentiality, FOISA and Data Protection*)

Connection means:-

- (a) in Schedule 7.1 (*Train Operating Performance*), a connection (however described) between any of the Passenger Services provided by the Franchisee and any other railway passenger service provided by it or any other Train Operator or any bus, ferry or shipping service and which is either included in a Service Level Commitment (however described therein) or which is otherwise included by the Franchisee in the Timetable and is notified to the Franchisee by the Authority from time to time as constituting a Connection for the purpose of Schedule 7.1; and
- (b) in the rest of the Franchise Agreement, means a connection (however described) between any of the Passenger Services provided by the Franchisee and any other railway passenger service provided by it or any other Train Operator or any bus, ferry or shipping service and cognate phrases shall be construed accordingly;

Connection Agreement means any agreement entered into by the Franchisee and Network Rail on or before the Franchise Commencement Date relating to the connection of a Depot to the relevant part of the network;

Contingency Plan has the meaning given to it in paragraph 1(a)(iv) of Schedule 10.4 (*Force Majeure*);

Contract Season Tickets means a product enabling users of the Passenger Services to purchase 12, 18 or 24 month Season Tickets at discounted rates of 5% when paying monthly by direct debit together with the capability for opt-out periods (e.g. annual leave);

Control means, in respect of a person, that another person (whether alone or with others and whether directly or indirectly and whether by the ownership of share capital, the possession of voting power, contract or otherwise):

- (a) has the power to appoint and/or remove all or the majority of the members of the board of directors or other governing body of that person or of any other person which Controls that person;
- (b) controls or has the power to control the affairs and policies of that person or of any other person which Controls that person;
- (c) is the parent undertaking of that person or of any other person which Controls that person; or
- (d) possesses or is, or will be at a future date, entitled to acquire:

- (i) 30 per cent. or more of the share capital or issued share capital of, or of the voting power in, that person or any other person which Controls that person;
- (ii) such part of the issued share capital of that person or any other person which Controls that person as would, if the whole of the income of such person were distributed, entitle him to receive 30 per cent. or more of the amount so distributed; or
- (iii) such rights as would, in the event of the winding-up of that person or any other person which Controls that person or in any other circumstances, entitle him to receive 30 per cent. or more of the assets of such person which would then be available for distribution;

Control Period means a period to which an ORR access charges review applies, the length of which is determined by the ORR;

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

CRM Data means Personal Data (including any or all of name, address, email address and ticket purchasing history, credit and debit card details) collected by or on behalf of the Franchisee relating to persons travelling on or purchasing tickets for travel on the Passenger Services or other services for the carriage of passengers by railway;

Customer Complaints Handling Procedure means the Franchisee's policy for the handling of customer complaints which the Franchisee is required to establish and review from time to time in accordance with the conditions of its Licences in respect of the operation of railway passenger services and/or stations;

Customer Contact Centre means the premises from which the Franchisee provides the services referred to at paragraph 13.1 of Schedule 1.4 (*Passenger Facing Obligations*);

Customer Experience Delivery Group means a group comprising a cross functional team from across the Franchisee's organisation, focussed on improving the experiences of the users of the Passenger Services;

Customer Information Screens means electronic displays used to provide passengers with information, along with any necessary supporting systems within the control of the Franchisee and any non-electronic facilities used for similar purposes;

Customer Service Manager means the customer service manager appointed by the Franchisee in accordance with paragraph 2.1 (f) of Schedule 11 (*Agreement and Service Delivery Management Provisions*);

Cycle Innovation Plan means the plan specified in paragraph 9.13 of Schedule 1.4 (*Passenger Facing Obligations*);

Data Controller has the same meaning as in the Data Protection Act;

Data Processor has the same meaning as in the Data Protection Act;

DPA means the Data Protection Act 1998 and any guidance issued from time to time by the Information Commissioner's Office;

Data Site Information has the meaning given to it in paragraph 2.2(e) of Schedule 15.1 (*Reletting Provisions*);

Dealing with Disruption KPI Penalty means the sum of [---REDACTED---] for each percentage point by which the Franchisee falls below the target;

Dealing with Disruption Passenger Satisfaction Table means the table titled Dealing with Disruption Passenger Satisfaction Table set out in Part 2 of Appendix 1 (*Off Peak Patronage Forecast Level Table and Dealing with Disruption Passenger Satisfaction Table*) to Schedule 7.2 (*KPIs and Journey Time Metric*);

Dealing with Disruption Passenger Satisfaction Target means for each Franchisee Year, the score for "How Well the Franchisee Dealt with Disruption" set out in column 2 of the Dealing with Disruption Passenger Satisfaction Table;

Dealing with Disruption Plan has the meaning given to it in paragraph 8.6 of Schedule 1.2 (*Operating Obligations*);

Default Performance Level means, in relation to a Benchmark for any Reporting Period, the numbers set out in column 5 of the Benchmark Table relating to that Benchmark and in the row of that table for that Reporting Period;

Defined Contribution Arrangement has the meaning given to it in the Railways Pension Scheme;

Department for Transport means the UK Government department responsible for the transport network in England and certain reserved transport matters in the rest of the UK, or its successors from time to time;

Departure Station has the meaning given to it in paragraph 2(b) of Appendix 2 (*Alternative Transport and Website Stations Accessibility Information*) to Schedule 1.4 (*Passenger Facing Obligations*);

Depot means a depot in respect of which the Franchisee has entered into a Depot Lease or an Access Agreement;

Depot Access Agreement means each Access Agreement between a Facility Owner and the Franchisee which permits the Franchisee access to a Depot;

Depot Areas means:

- (a) not used or
- (b) any other premises:
 - (i) comprising part or parts of a Depot to be occupied by the Caledonian Sleeper Franchisee after the Franchise Commencement Date; and
 - (ii) used for or in connection with the provision of the Caledonian Sleeper Franchise Services;

Depot Area Lease means any lease or sub-lease between the Franchisee and the Caledonian Sleeper Franchisee of a Depot Area;

Depot Condition Maintenance Programme has the meaning given to it in paragraph 3.3 of Schedule 4.1 (*Franchise Facilities*);

Depot Lease means any lease:

- (a) of the following depots:
 1. Ayr Townhead
 2. Corkehill
 3. Eastfield
 4. Haymarket
 5. Inverness
 6. Perth
 7. Shields
 8. Yoker; or
- (b) of any other depot of which the Franchisee becomes the Facility Owner at any time during the Franchise Period;

Designated Employer has the meaning given to it in the Pension Trust;

Destination Station has the meaning given to it in paragraph 2(b) of Appendix 2 (*Alternative Transport and Website Stations Accessibility Information*) to Schedule 1.4 (*Passenger Facing Obligations*);

Direct Agreement means any agreement made, or to be made, from time to time between the Authority and the counterparty of a Key Contract in relation to such Key Contract, including any agreement entered into by the Authority under paragraph 5 of Schedule 14.3 (*Key Contracts*);

Disabled People's Protection Policy means the Franchisee's policy for the protection of persons with disabilities which the Franchisee is required to establish and review from time to time in accordance with the conditions of its

Licences in respect of the operation of railway passenger services and/or stations;

Disabled Person has the meaning given to it in the EA;

Disabled Persons Transport Advisory Committee or DPTAC means the committee with that name established by the Transport Act 1985 and its statutory successors;

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

Discount Fare Scheme means:

- (a) a discount fares scheme referred to in paragraph 4 of the Appendix (*List of Transport, Travel and Other Schemes*) to Schedule 2.5 (*Transport, Travel and Other Schemes*); or
- (b) any other discount fare scheme approved from time to time by the Authority for the purposes of Section 28 of the Act,

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

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

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

DMUs means a diesel multiple unit Vehicle;

Driver Advisory System means a system within train cabs that provides information to the driver to assist with optimisation of energy usage and carbon dioxide equivalent emissions and timekeeping during operation;

Duke of Edinburgh Scheme Gold Award means the award of that name issued by the Duke of Edinburgh Award a company incorporated by Royal Charter with company number RC000806 having its head office at Gulliver House, Madeira Walk, Windsor, Berkshire SL4 1EU;

EA means the Equality Act 2010;

EA Claim has the meaning given to it in paragraph 3.1 of Schedule 4.2 (*Persons with Disabilities and Disability Discrimination*);

EA Requirements means the duties of a provider of services under Section 20 of the EA;

EFQM means the European Foundation for Quality Management;

EGIP means the Edinburgh Glasgow Improvement Programme being undertaken on the Glasgow to Edinburgh via Falkirk High route;

EGIP and HLOS Rolling Stock means the fleet of Rolling Stock designated in Appendix 1 to Schedule 6.1 (*EGIP & HLOS Rolling Stock*);

EGIP and HLOS Technical Specification means the specification to be submitted to the Authority pursuant to paragraph 1 of Appendix 3 (*New Train Fleets*) to the Conditions Precedent Agreement and as referred to in Schedule 6.1 (*EGIP & HLOS Rolling Stock*);

EIRs means the Environmental Information (Scotland) Regulations 2004;

Emergency Events has the meaning given to it in paragraph 1(f) of Schedule 10.4 (*Force Majeure*);

Emergency Timetable means a temporary amendment to the Timetable, Published no later than 22:00 hours on the date before departure, to alleviate or mitigate the impact of any Force Majeure Event on the Timetable;

Emerging Technologies Services in Schedule 7.3 (*SQUIRE*) and in the SQUIRE Service Schedules Agreement means the services provided by the Franchisee as set out in SQUIRE Service Schedule 35;

EMUs means an electric multiple unit Vehicle;

Engineering Access Statements has the meaning given to it in the Network Code;

Equalities Plan means the Franchisee's Equalities Plan specified in paragraph 1.3(b)(iv) of Schedule 13.1 (*Franchise Management*);

E-reward Scheme means a scheme which shall give each Franchise Employee an account in relation to which points (redeemable for rewards at high street retailers and for other specified services) are accrued for excellent performance, in particular in relation to the quality of service delivered to users of the Passenger Services

Escalation Procedure in Schedule 7.3 (*SQUIRE*) and in the SQUIRE Service Schedules Agreement means the procedure for resolution of disputes set out in Appendix A (*Escalation Procedure*) to Schedule 7.3;

Estimated Revisions has the meaning given to it in paragraph 3.1 of Schedule 9.1 (*Variations and Financial Consequences of Change*);

Evening Peak means:-

- (a) in Schedule 7.1 (*Train Operating Performance*) in relation to any Passenger Service forming part of Service Group HA06 and HA07,

those Weekday periods between 1630 and 1800 inclusive in respect of departures from any of Glasgow Central, Glasgow Central low level or Glasgow Queen Street stations; and

- (b) in the rest of the Franchise Agreement, in relation to any Passenger Service, except where otherwise specified in a Service Level Commitment:
 - (i) those Weekday Periods between 1600 and 1800 in respect of departures from any of Glasgow Central , Glasgow Central low level, Glasgow Queen Street, Argyle Street, High Street or Paisley Gilmour Street stations; and
 - (ii) those Weekday Periods between 1600 and 1859 in respect of departures from Edinburgh (Waverley station or Haymarket station).

Event of Default means any of the events set out in paragraph 2 of Schedule 10.3 (*Events of Default and Termination Event*);

Excluded Liabilities has the meaning given to it in clause 4.2 of the Conditions Precedent Agreement;

Express (E&G) Sector means all Edinburgh to Glasgow Passenger Services operating under the Service Code 23548003;

Express (Other) Sector means all Passenger Services operating under the HA01 Service Group excepting those operating under the Express (E&G) Sector;

Expiry Date means

- (a) the First Expiry Date, where there is no Agreed Rebasing by the Agreed Rebasing Date for whatever reason, including the service of a No Rebasing Notice in accordance with paragraph 1 of Schedule 8.5 (*Rebasing*); or
- (b) the Final Expiry Date, where there is an Agreed Rebasing by the Agreed Rebasing Date; or
- (c) the date to which the Franchise Agreement is continued in accordance with any (or if more than one, the latest) notice served by the Authority on the Franchisee pursuant to paragraphs 1, 2 or 3 of Schedule 18 (*Franchise Continuation*);

Extended Restrictions of Use has the meaning given to it in the Network Code;

Eye Witness Incident Reporting System means a system comprising the setting up of a dedicated email account to allow Franchise Employees to

report to the Franchisee minor damage, vandalism and other issues relating to Franchise Facilities;

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

Factory means the factory authorised for rolling stock assembly specified in Schedule 6.1 (*EGIP and HLOS Rolling Stock*), Schedule 6.2 (*Inter-city Rolling Stock*), Schedule 6.3 (*Scenic Trains Rolling Stock*) and Schedule 6.4 (*Other Rolling Stock*);

Fare means:

- (a) for the purposes of Schedules 5.3 (*Regulation of Individual Fares*) to 5.6 (*Fares Regulation, Information and Monitoring*) (inclusive) only, a Fare which is:
 - (i) valid for a journey or journeys on the Passenger Services included in the Timetable or other railway passenger services which are required to be included in another relevant Train Operator's passenger timetable by the Authority;
 - (ii) sold under the Travelcard Agreement; or
 - (iii) a Cross-London Ticket (as defined in the Through Ticketing (Non-Travelcard) Agreement); and
- (b) for the purposes of paragraph 4 of Schedule 1.4 (*Passenger Facing Obligations*), Schedule 5.2 (*Franchisee's Obligation to Create Fares*) and for all other purposes, the right, exercisable against one or more Train Operators, subject to any applicable rights or restrictions and the payment of the relevant price, to make one or more journeys on the network or to carry on such a journey an item of luggage or an animal (where this right does not arise under the relevant conditions of carriage except on the payment of a fee) and, where applicable, to obtain goods or services from a person;

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

Fares Basket means a basket of fares created in terms of paragraph 4(b) in Schedule 5.5 (*Changes to Fares and Fares Regulations*);

Fares Document means a document (to be prepared by the Authority if it wishes prior to the Franchise Commencement Date) being a document that lists the price as at the Franchise Commencement Date for every Protected Fare and (if the document is not prepared) references to a Fares Document shall be construed as a list of these fares as if it has been prepared;

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

Fast Track means a quicker course of action than that usually taken;

Faults Plan has the meaning set out in paragraph 4.3(d) in Schedule 7.3 (*SQUIRE*);

Faults Reporting Plan has the meaning set out in paragraph 4.3(e) in Schedule 7.3 (*SQUIRE*);

Faults Systems means together the Train Fault System and Station Fault System;

Financial Action Plan means any action plan produced by the Franchisee pursuant to paragraph 3.3(f) of Schedule 13.2 (*Information*), where the level of its financial performance specified in the Management Accounts is worse than forecast by the Franchisee in its current Business Plan;

Financial Conduct Authority means the independent non-governmental body given statutory powers by the Financial Services Act 2012;

Final Expiry Date means, subject to paragraph 2 of Schedule 18 (*Franchise Continuation*), the last day of the tenth Franchisee Year;

Financial Model means the Franchisee's financial model deposited with the Authority on the date of this Agreement and as subsequently revised in each case in accordance with Schedule 9.2 (*Revised Inputs: Identity of the Financial Model etc*);

Financial Ratios means the ratios set out in paragraph 2 of Schedule 12 (*Financial Obligations and Undertakings*);

First Class Ticket means a ticket the terms of which permits the passenger to sit in first class accommodation (as defined in the National Classes of Accommodation in terms of the Ticketing and Settlement Agreement) on the train inclusive in the Fare;

First Expiry Date means, subject to paragraph 1 of Schedule 18 (*Franchise Continuation*), the last day of the seventh Franchisee Year unless (a) the Authority and the Franchisee agree an earlier date (which shall be no sooner than the last day of the fifth Franchisee Year) or (b) the Authority requests and the Franchisee accepts a continuation of the Franchise Agreement until such later date as requested by the Authority (which shall be after the last day of the seventh Franchisee Year, but prior to the last day of the tenth Franchisee Year);

First Time Travellers means potential first time users of the Passenger Services and new users of the Passenger Services;

First Time Traveller Assistance Programme means a programme to encourage First Time Travellers in their use of the Passenger Services, comprising a dedicated telephone enquiry line and social media account designed to assist and deal with the questions of First Time Travellers and deal with their questions in beginning to use those Passenger Services;

Fleet Availability Requirement means the level of availability of each class of vehicle for the delivery of Passenger Services (in line with any given Train Plan) from the Franchise Commencement Date all as the same is set out in Train Fleet Table 4 and from the Timetable Change Date in December 2018 all as the same is set out in Train Fleet Table 5;

Flex Carnet means the brand name of the products to be introduced by the Franchisee in fulfilment of Committed Obligations references 28.4 and 29.14;

Flexipass shall be interpreted in accordance with the national fares structure and public nomenclature adopted by Train Operators in 2008;

Floor Level means the performance level designated as such and set out in paragraph 2 of each SQUIRE Service Schedule;

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

FOISA means the Freedom of Information (Scotland) Act 2002 (as amended or replaced by any successor legislation) and any subordinate legislation made under that Act from time to time, together with any guidance and/or codes of practice issued by the Scottish Information Commissioner (or his successor or replacement from time to time) in relation to such legislation;

Force Majeure Event means any of the events described as such in paragraph 1 of Schedule 10.4 (*Force Majeure*) where the conditions specified in paragraph 2 of Schedule 10.4 are satisfied;

Forecast Modified Revenue means, in relation to any Reporting Period, the items specified in the definition of Modified Revenue, as most recently forecast for that Reporting Period pursuant to paragraph 3.4 of Schedule 13.2 (*Information*);

Forecast Operating Costs means, in relation to any Reporting Period, the items specified in the definition of Actual Operating Costs, as most recently forecast for that Reporting Period pursuant to paragraph 3.4 of Schedule 13.2 (*Information*);

Forecast Passenger Demand means the forecast by the Franchisee pursuant to paragraphs 5.1 of Schedule 1.1 (*Service Development*) and 1.4 of Schedule 1.5 (*Information about Passengers*) in respect of:

- (a) the number of passengers travelling in each class of accommodation:
 - (i) on each Passenger Service;
 - (ii) on each Route; and/or

- (iii) at any station (meaning for this purpose both the numbers of passengers getting on and off at the station and also the numbers of passengers remaining on a train at the station) or between any stations; and

- (b) the times of day, week or year at which passengers travel,

for the period in respect of which the next Timetable is to apply and for 5 years following the date of the forecast, even if such 5 year period extends beyond the Franchise Term;

Formation Monitoring Point in Schedule 7.1 (*Train Operating Performance*) means the point (not being more than one) for every train in each Service Code which the Authority may designate as such by notice to the Franchisee from time to time (being the point at which it considers that passenger numbers are likely to be most concentrated for trains in that Service Code);

Franchise Agreement means the franchise agreement between the parties hereto, executed on the date hereof, which constitutes a single agreement together with the Conditions Precedent Agreement, the SQUIRE Service Schedules Agreement and this Agreement and which is a “franchise agreement” for the purposes of the Act;

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

Franchise Commencement Date means the date and, where relevant, the time stated in the Certificate of Commencement as being the date on which (and, where relevant, the time at which) the Franchisee is to commence operating the Franchise Services;

Franchise Employee means

- (a) any employee of the Franchisee from time to time; and
- (b) any other person employed by the Franchisee or any of its Affiliates or any subcontractor or delegate of any of the Franchise Services whose contract of employment may be transferred to a Successor Operator following the expiry of the Franchise Period by virtue of the operation of Law (including the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended, replaced or substituted from time to time)) or in respect of whom liabilities arising from a contract of employment or employment relationship may be so transferred,

but for the purposes of the Committed Obligations (and the terms defined in this Agreement used in the Committed Obligations) means those employees in limb (a) only;

Franchise Facilities means the facilities described in the Franchise Facilities Book;

Franchise Facilities Book has the meaning given to it in paragraph 2.2 of Schedule 4.1 (*Franchise Facilities*);

Franchise Manager means a person appointed by the Authority to undertake the responsibilities of such person set out in paragraph 1.1 of Schedule 11 (*Agreement and Service Delivery Management Provisions*);

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

Franchise Performance Meeting means any meeting between the Authority and the Franchisee to be held in each Reporting Period in accordance with paragraph 8 of Schedule 11 (*Agreement and Service Delivery Management Provisions*);

Franchise Period means the period commencing on the Franchise Commencement Date and ending on the Expiry Date or, if earlier, the date of termination of the Franchise Agreement pursuant to clause 2.3(a) of the Conditions Precedent Agreement or Schedule 10 (*Remedies, Termination and Expiry*);

Franchise Re-letting Process Agreement means the agreement so entitled dated 29 July 2013 between the Authority and the Franchisee entered into by the Franchisee as part of its proposal to secure the provision and operation of the Franchise Services;

Franchise Section has the meaning given to it in paragraph 1 of Schedule 16 (*Pensions*);

Franchise Services means such of the Passenger Services, the Light Maintenance Services, the Station Services and the Ancillary Services as the Franchisee may provide or operate from time to time, including any of such services as the Franchisee may delegate or subcontract or otherwise secure through any other person from time to time in accordance with the Franchise Agreement;

Franchise Station Access Conditions has the meaning given to it in the relevant Access Agreement to which it relates;

Franchise Systems in Schedule 7.1 (*Train Operating Performance*) has the meaning ascribed to that term in paragraph 1(e) of Part 2 of Appendix 4 to Schedule 7.1;

Franchise Term means the period commencing on the Franchise Commencement Date and expiring on the Expiry Date;

Franchisee Default Termination Sum has the meaning given to it in paragraph 2.4(b) of Schedule 10.2 (*Termination and Expiry*);

Franchisee Parties means the Franchisee's representatives, consultants, contactors and advisors;

Franchisee Year means any period of 12 months during the Franchise Period beginning on 1 April in any year, except that the first and last such periods may be for a period of less than 12 months and the first such period shall begin on the Franchise Commencement Date and end on 31 March 2016 and the last such period shall end on the last day of the Franchise Period;

Fulfilment Service means a customer orientated fulfilment service for the whole of Scotland which undertakes the key functions required to operate a multi-operator, multi-modal smart and integrated ticketing environment across Scotland. The functions such may include:-

- (a) the creation and management of customer accounts;
- (b) the management of a national e-purse;
- (c) the provision of the smart and integrated ticketing infrastructure which supplements that operated by operators or franchisees (including the facilitation of the transfer of smart products purchased by customers from the point of product purchase to the customer's smart media wherever it is offered for update);
- (d) the provision of core ITSO infrastructure such as a HOPS;
- (e) the provision of a single generic smartcard which will operate on all operators' equipment and carry multiple products such as e-purse, concessionary travel products and commercial ticketing products for rail, bus, ferry, subway and tram (this may at a later date carry non-ITSO smart products for travel related products such as parking, catering, guides, event tickets along with discounts for attractions), this card shall be made available to all operators and can be branded should the operators wish to do so;
- (f) the redistribution of funds, initially from e-purse between operators (this may at a later date expand to distribution between operators where a commercial arrangement exists between them based on an area wide or season ticket);
- (g) a customer service function and on-line portal dealing with account maintenance, new and replacement cards, travel planning and advice, retail of commercial products, refunds, etc;
- (h) fraud prevention including hotlisting management; and
- (i) a management information (data) and customer survey service.

Funding Deed means the Inter Company Loan Facility Agreement amongst the Authority, the Franchisee and the Parent dated of even date herewith specifying arrangements relating to the funding of the Franchisee by the Parent and giving rights to the Authority in relation to such funding;

GAAP means UK GAAP as at the date of this Agreement which denotes the corpus of practices forming the basis for determining what constitutes generally accepted accounting practice in the UK based on the requirements of UK accounting standards and, where relevant, the accounting requirements of company law and the listing rules of the Financial Conduct Authority;

Glasgow City Marketing Bureau means the destination marketing organisation established by Glasgow City Council;

Gold and Silver Command locations means Network Rail's office at Buchanan House, 58 Port Dundas, Glasgow, G4 0HP or such other location notified to the Franchisee from time to time;

Great Scenic Railways of Scotland Marketing Campaign means a marketing campaign to encourage use of the Scenic Trains, supported by a new microsite on the Website, and delivered in collaboration with Visit Scotland;

GRIP means Network Rail's Governance for Railway Investment Projects;

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

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

Help/Information Points means the fixed communication points available for passenger assistance and information at Stations linked into Customer Service Centres;

High Speed Train ("HST") means a Train introduced in accordance with the Inter-city Rolling Stock Delivery Schedule at Appendix 1 to Schedule 6.2;

HLOS means:-

- (a) in Schedule 6 (*Rolling Stock*) and the Conditions Precedent Agreement the Dunblane/Alloa/Stirling electrification; and
- (b) otherwise means the High Level Output Specification issued by the Authority from time to time;

HOPS means that element of the ITSO back office system covering message handling, shell and product accounting and asset management functions;

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

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

“How Well the Franchisee Dealt with Disruption” means the National Passenger Survey measure of the same name;

“How Well the Franchisee Dealt with Disruption” KPI means the requirement specified in paragraph 15 of Schedule 7.2 (*KPIs and Journey Time Metric*);

HR Strategy means the Franchisee’s human resources strategy specified in paragraphs 1.2 and 1.3 of Schedule 13.1 (*Franchise Management*);

IFRS means as at the date of this Agreement, the accounting Standards and other accounting guidance issued by the International Financial Reporting Standards Board;

IIP means the Investors in People standard achieved through the accreditation framework of the UK Commission for Employment and Skills trading as Investors in People;

Improvement Plan has:-

- (a) for the purpose of Schedule 7.1 (*Train Operating Performance*) the meaning given to it in paragraph 3.2(b) of Schedule 7.1; and
- (b) for the purpose of Schedule 7.2 (*KPIs and Journey Time Metrics*) the meaning given to it in paragraph 9 of Schedule 7.2;

Improvement Plan Performance Level means, in relation to a Benchmark for any Reporting Period, the number set out in column 3 of the Benchmark Table relating to that Benchmark and in the row of that table for that Reporting Period;

Incremental Output Statement Charge means the charge to which that description is commonly given, first introduced into Relevant Agreements in April 2001;

Independent Station has the meaning given to it in paragraph 2.6 of Schedule 8.4 (*Track Access Adjustments and Station Charge Adjustments*);

Independent Station Access Conditions has the meaning given to it in the Access Agreement to which it relates;

Individual Station Charge Adjustment has the meaning given to it in paragraph 2.1 of Schedule 8.4 (*Track Access Adjustments and Station Charge Adjustments*);

Industrial Action shall include any concerted action taken in connection with the employment of any person (whether or not that action involves any breach of such employees' conditions of employment, and including any action taken in furtherance of a dispute, or with a view to improving the terms of employment of the relevant employees or by way of support for any other person) subject always, in the case of any unofficial industrial action, to the Franchisee being able to demonstrate the occurrence of such unofficial industrial action to the reasonable satisfaction of the Authority.;

Information Away from Station Services in Schedule 7.3 (*SQUIRE*) and in the *SQUIRE Service Schedules Agreement* means the information provided by the Franchisee as set out in service schedule 34 in the *SQUIRE Service Schedules Agreement*;

Information Strategy means the strategy specified in paragraph 9.1 and 9.2 of Schedule 1.3 (*Additional Service Specifications*);

Information Totem means an interactive touchscreen totem, either free standing or integrated into a platform shelter, that will provide information and other services for passengers intending to use the Caledonian Sleeper Franchisee's railway passenger services;

Initial Business Plan means the business plan (in the Agreed Form, and marked *IBP*) to be provided by the Franchisee to the Authority on 15 November 2014, as described in paragraph 2.1 of Schedule 13.2 (*Information*), including any adjusted version of such plan resubmitted to the Authority in accordance with paragraph 2.2 of that Schedule;

Initial ITSO Fares means the following types of fare, whether inter-available or otherwise and whether for travel in Standard Class Accommodation or otherwise:

- (a) Anytime (period and day, single and return);
- (b) Off Peak (period and day, single and return);

- (c) Super Off Peak (period and day, single and return);
- (d) Advance (single and return);
- (e) Season Ticket Fares (which shall include flexipass tickets);
- (f) All ticket types for multi-modal rail and ferry travel on the ferry services operated by the respective holders of the Clyde and Hebrides Ferry Service contract and Northern Isles Ferry Service contract;
- (g) All multi-modal rail and bus products for PlusBus journeys being a Multi Modal Travel Scheme in terms of paragraph 3 of Schedule 2.5 (*Transport, Travel and Other Schemes*) and listed in paragraph 3 of Appendix (*List of Transport, Travel and Other Schemes*) to Schedule 2.5;

where the terms used in paragraphs (a) to (e) shall be interpreted in accordance with the national fares structure and public nomenclature adopted by Train Operators in 2008;

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

Integrated Transport Schemes means those schemes which relate to the integration of any other form of transport with the Franchise Services:

- (a) listed in the Appendix (*List of Transport, Travel and Other Schemes*) to Schedule 2.5 (*Transport, Travel and Other Schemes*); or
- (b) designated as such in accordance with paragraph 1.2 of Schedule 2.5;

Integrated Transport Smartcard Organisation means the organisation created by passenger transport executives, bus operators and Train Operators for the development and promotion of smartcards for use on transport;

Interposing Agreement means an agreement between the Franchisee and Network Rail to enable the grant of a sub-lease to the Caledonian Sleeper Franchisee for the duration of the Caledonian Sleeper Franchise;

Inter-city Rolling Stock means the fleet of rolling stock designated in Appendix 1 to Schedule 6.2 (*Inter-city Rolling Stock*);

Inter-city Rolling Stock Delivery Schedule means the Inter-city Rolling Stock Delivery Schedule set out in Appendix 1 to Schedule 6.2. (*Inter-city Rolling Stock*);

Inter-city Routes has the meaning given to it in paragraph 7.1 of Schedule 8.1 (*Franchise Payments*);

Inter-city Technical Specification means the specification to be submitted to the Authority pursuant to paragraph 1 of Appendix 3 (*New Train Fleets*) to the

Conditions Precedent Agreement and as referred to in Schedule 6.2 (*Inter-city Rolling Stock*);

Inter-Company Loan Facility Agreement means the Funding Deed being the document in Agreed Form marked **ICF**;

Interest Rate means a rate equivalent to 2 per cent. per annum above the base lending rate published by the Royal Bank of Scotland plc (or such other bank as the Authority may, after consultation with the Franchisee, determine from time to time) during any period in which an amount payable under the Franchise Agreement remains unpaid;

Interest Application Date means the date on which the expiry of each Interest Period falls;

Interest Period means the period from the Franchise Commencement Date until 31 March 2016 and thereafter the period from each 1 April until the following 31 March or the date of expiry of the Franchise Period if earlier in a particular year;

Interoperability Regulations means the Railway (Interoperability) Regulations 2011;

Inter-Operator Schemes means:

- (a) the schemes, agreements and/or contracts set out in paragraph 5 of the Appendix (*List of Transport, Travel and Other Schemes*) to Schedule 2.5 (*Transport, Travel and Other Schemes*) which have been approved by the Authority and which relate to arrangements between the Franchisee and other participants in the railway industry;
- (b) any other scheme, agreement and/or contract of a similar or equivalent nature as may from time to time during the Franchise Period amend, replace or substitute, in whole or in part, any of such schemes, agreements and/or contracts; and
- (c) any Discount Fare Scheme;

Investment Fund has the meaning set out in paragraph 10.3 of Schedule 7.3 (*SQUIRE*);

Investment Manager means the investment and project manager appointed by the Franchisee in accordance with paragraph 2.1(c) of Schedule 11 (*Agreement and Service Delivery Management Provisions*);

Investors in People means the standard administered by the UK commission for Employment and Skills of that name;

ITSO means ITSO Limited, the organisation created by passenger transport executives, bus operators and Train Operators for the development and promotion of smartcards for use on transport;

ITSO at Home Scheme means a service enabling users of the Passenger Services to purchase a Fare at home, online, and to download the relevant product to their contactless smartcard using ITSO Certified Smartmedia;

ITSO at Work Service means a service enabling users of the Passenger Services to purchase a Fare at their place of work, online and to download the relevant product to their contactless smartcard using ITSO Certified Smartmedia,

ITSO Certified Smartmedia (“Smartmedia”) means the contactless smartcards, devices or other media designed to hold fare and travel information with the monetary or other value encoded which meet the requirements of paragraph 6 of Schedule 2.5 (*Transport, Travel and Other schemes*) and have been fully certified by ITSO;

ITSO Environment has the meaning ascribed to it in the document titled "ITSO Operating Licence" approved by the members of ITSO at an extraordinary general meeting on 21 December 2006;

ITSO Operating Licence means the contractual undertaking entered into by ITSO members to allow the members to provide services within the ITSO Environment;

ITSO Specification means the UK technical standard for interoperable smart ticketing which defines the key technical items and interfaces required to deliver interoperability between components of a smart ticketing system and between separate ticketing systems;

Journey Time has the meaning given to it in paragraph 16.1 of Part 3 of Schedule 7.2 (*KPIs and Journey Time Metric*);

Journey Time Metric has the meaning given to it in paragraph 16.2 of Part 3 of Schedule 7.2 (*KPIs and Journey Time Metric*);

Key Contract means:

- (a) each agreement and contract listed in the Appendix (*List of Key Contracts*) to Schedule 14.3 (*Key Contracts*) as at the date of the Franchise Agreement; and
- (b) any other agreement, contract, licence or other arrangement to which the Franchisee is a party or under which the Franchisee is the beneficiary from time to time which is designated as such pursuant to Schedule 14.3,

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

Key Personnel has the meaning given to it in paragraph 2 of Schedule 11 (*Agreement and Service Delivery Management Provisions*);

Key Stations means the following Stations:-

Aberdeen;

Argyle Street,

Ayr;

Dundee;

Dunfermline;

Edinburgh Haymarket;

Edinburgh Waverley;

Falkirk High;

Glasgow Central;

Glasgow Central low level;

Glasgow Queen Street;

Inverness;

Kirkcaldy;

Motherwell;

Paisley Gilmour Street;

Partick;

Stirling;

and any other Stations or stations, or any new station in Scotland notified by the Authority to the Franchisee.

KPIs means together the Off-Peak Patronage KPI; the Overall Satisfaction KPI; and the “How Well the Franchisee Dealt with Disruption” KPI;

Law includes any enactment, subordinate legislation, rule, regulation, order, directive or other provision, including those of the European Community, and any judicial or administrative interpretation or application thereof, which has,

in each case, the force of Law in the United Kingdom or any part of it (including the Act, the Railways Act 2005 and the Transport Act);

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

Legislation means any enactment or subordinate legislation, rule, regulation, order, directive or other provision including those of the European Community, which has, in each case, the force of Law in the United Kingdom or any part of it, but excluding:

- (a) any order under Section 1 of the Transport and Works Act 1992 or any order relating to, or matters ancillary to, operation of a transport system at the times mentioned in that Section made under the Private Legislation Procedure (Scotland) Act 1936; and
- (b) any objectives, instructions, directions or guidance given from time to time to the Authority pursuant to the Act;

LENNON means the suite of computer programs originally used by the British Railways Board to collect and process Passenger Revenue and other settlements for passenger train operating companies and third parties and any successor system;

Licences mean such licences granted or to be granted under Section 8 of the Act as the Franchisee may be required from time to time to hold under the Act in order to provide or operate the Franchise Services;

Light Maintenance Service means any service specified in paragraph 4 of Schedule 1.7 (*Franchise Services*) which may be provided by the Franchisee at a depot or station;

Local Authority means:

- (a) in England, a county council, a district council, a unitary authority, a passenger transport executive, a London borough council, the common council of the City of London, or a council which is established under the Local Government Act 1992 and which is either an authority responsible for expenditure on public passenger transport services within the meaning of Section 88 of the Transport Act 1985 or a local authority for the purposes of Section 93 of the Transport Act 1985;
- (b) in Scotland, a Regional Transport Partnership which is established under the Transport Act (Scotland) Act 2005 and a council or islands council which is established or continued under the Local Government, etc. (Scotland) Act 1994;
- (c) any other body or council replacing any of the above from time to time; and

- (d) any other body or instrument of local or regional government specified by the Authority from time to time;

Lock-up Period has the meaning given to it in paragraph 3.2 of Schedule 12 (*Financial Obligations and Undertakings*);

Logan Air means Loganair Limited, incorporated under the Companies Acts with registered number SC170072 and having its registered office at Cirrus Building, 9 Marchburn Drive, Glasgow Airport, Paisley PA3 2SJ, or such other airline operator which operates air services similar to those operated by Logan Air on the date of this Agreement;

Long Stop Date means 31 March 2015 or such other date:

- (a) on or before 30 June 2015 as may be determined by the Authority and notified to the Franchisee if any one or more of the conditions precedent set out in the Conditions Precedent Agreement are not satisfied by 31 March 2015; or
- (b) as is agreed between the parties in any circumstances other than those specified in paragraph (a);

Lottery Commission means the National Lottery Commission established by Section 3A of the National Lottery etc Act 1993 and its statutory successor responsible for licensing and regulating the National Lottery;

MAA means moving annual average;

Maintenance Contract means any contract or arrangement which has a duration of more than 12 Reporting Periods or a value of more than £100,000 to which the Franchisee is a party, which includes the carrying out for the Franchisee of any maintenance work (including light maintenance services) in respect of rolling stock vehicles used by the Franchisee in the provision of the Passenger Services or for the enforcement of warranties or other rights against a manufacturer in respect of any such rolling stock vehicles;

Major Event in Schedule 7.3 (*SQUIRE*) and in the *SQUIRE* Service Schedules Agreement means any of the following:- act of God, war damage, enemy action, terrorism, riot, civil commotion, rebellion, fire, lightning, explosion, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, earthquake, aircraft and other aerial devices or articles dropped therefrom except where that Major Event is caused, or contributed to, by any act or omission of the Franchisee, its agents or employees;

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

Major Scottish Projects means any engineering, maintenance or renewal project within Scotland which requires a possession or series of possessions of one or more sections of track extending over:

- (a) a period of more than one year; or
- (b) a period which contains two or more Timetable Change Dates;

Major Station means Edinburgh Waverley and Glasgow Central;

Major Station Area means:

- (a) the following premises:
 - 1. Reception room on the concourse (part of Caledonia Centre) at Glasgow Central.
 - 2. Crew accommodation and offices at platform 7 at Edinburgh Waverley.
 - 3. Various small stores/bothy units on platforms at Glasgow Central.
 - 4. Travel centre at Glasgow Central.
 - 5. Mail room at Glasgow Central.
 - 6. 2 x Basement stores at Glasgow Central.
 - 7. Office premises at the entrance to platform 14 and extending beneath the exit ramp to platform 11 at Edinburgh Waverley.
 - 8. Office premises at the entrance to platform 14 at Edinburgh Waverley.
 - 9. Ground floor office off platform 11 at Edinburgh Waverley.
 - 10. Cash office in the basement at Glasgow Central.
 - 11. Caledonian Chambers 87 Union Street, Glasgow.
 - 13. Basement, First and Second Floor of Main Office Building at Edinburgh Waverley.
 - 14. Locker Room and Cleaner Store at Platform 11 at Edinburgh Waverley; or
- (b) any other premises:
 - (i) comprising part or parts of a Major Station to be occupied by the Franchisee after the Franchise Commencement Date; and

- (ii) used for or in connection with the provision of the Franchise Services;

Management Accounts means, in relation to any Reporting Period, the Franchisee's management accounts which:

- (a) comply with paragraphs 3.10 and 3.11 of Schedule 13.2 (*Information*); and
- (b) are delivered to the Authority by the Franchisee in accordance with paragraphs 3.2 and 3.3 of Schedule 13.2;

Management and Processes in Schedule 7.3(*SQUIRE*) and in the *SQUIRE* Service Schedules Agreement means the management and processes as set out in paragraph 4.3 of Schedule 7.3;

Mandatory Modification means a modification or addition to any rolling stock vehicle which is required to be made under any applicable Law or any directive of the Rail Safety and Standards Board or any government authority;

Manufacture and Supply Agreement (“MSA”) means a manufacture and supply agreement in respect of the EGIP and HLOS Rolling Stock;

Manufacture and Supply Direct Agreement means a direct agreement in agreed terms in relation to the Manufacture and Supply Agreement to be entered into between the Authority, the Franchisee, the owner, and the manufacturer;

Marks means such registered or unregistered trade marks as the Franchisee may apply to any Primary Franchise Asset or other asset used by it under a Key Contract, which are applied to assets, equipment and others used in the provision of Franchise Services during the Franchise Term and are not the subject of a Brand Licence;

MDBF has the meaning given to it in Appendix 2 to Schedule 6.1;

Member State means a member state of the European Union;

Minor Works has the meaning given to it in paragraph 2.7(a) of Schedule 4.2 (*Persons with Disabilities and Disability Discrimination*);

Minor Works Budget means: £350,000 for each Franchisee Year allocated by the Franchisee for the purpose of facilitating Minor Works at Stations to improve accessibility of the Stations to persons with disabilities, save that:

- (a) for any Franchisee Year which is shorter than 12 months, the amount shall be reduced pro-rata; and
- (b) for each Franchisee Year after the first Franchisee Year, the amount specified in paragraph (a) shall be subject to adjustment as follows:

Minor Works Budget \times RPI

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

Minor Works Programme means the Franchisee's programme of Minor Works at Stations to improve accessibility of the Stations to persons with disabilities, developed prior to the start of each Franchisee Year pursuant to paragraph 2.7(b) of Schedule 4.2 (*Persons with Disabilities and Disability Discrimination*);

Minutes Delay means the minutes of delay to the Passenger Services that are attributed to the Franchisee or Network Rail, as the case may be, in each case pursuant to the Track Access Agreement and disregarding any minutes of delay that are imputed to Passenger Services that were cancelled;

Mobility and Access Committee Scotland or MACS means the body established by the Mobility and Access Committee for Scotland Regulations 2002 and its statutory successors;

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

Modified Revenue means:-

- (a) the sum of:-
 - (i) the Franchisee's total revenue for the period being reviewed as stated in its profit and loss account:
 - (A) including any amounts receivable from the Authority, Network Rail and any interest; but
 - (B) excluding the proportion of income recognised in the profit and loss account in relation to grants received in respect of capital expenditure; and
 - (ii) the opening cash balance for the period being reviewed, excluding:
 - (A) any cash held for the exclusive purpose of the provision of the Season Ticket and Smartcard Bond or the Performance Bond; and
 - (B) the amount equivalent to:
 - (1) any cash that is held pursuant to any restrictive terms under any agreement and that, consequently, cannot be used for general purposes; and
 - (2) any cash capable of being drawn down, but not actually received,

in both cases from an Affiliate pursuant to any loan or funding agreement or arrangements including the Funding Deed; and

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

(b) either

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

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

where total debtors are gross of any bad debts provision or write off and exclude any capital-related debtors

Morning Peak means:

(a) in Schedule 7.1 (*Train Operating Performance*), in relation to any Passenger Service forming part of Service Group HA06 or HA07, those Weekday periods between 0745 and 0915 inclusive in respect of arrivals at any of Glasgow Central, Glasgow Central low level, or Glasgow Queen Street stations; and

(b) in the rest of the Franchise Agreement, except where otherwise specified in a Service Level Commitment:-

(i) those Weekday periods between 0730 and 0930 in respect of arrivals at any of Glasgow Central, Glasgow Central low level, Glasgow Queen Street, Argyle Street, High Street or Paisley Gilmour Street stations; and

(ii) those Weekday periods between 0700 and 0959 in respect of arrivals at Edinburgh (Waverley station or Haymarket station);

MTIN means Miles per Technical Incident;

National Entitlement Card means the Scotland wide scheme for concessionary travel across multi-modes operated by the Scottish Government and administered by Local Authorities (and as at the date of this Agreement branded as the Young Scot National Entitlement Card);

National Events Calendar means a calendar developed to assist in the planning of Passenger Services to meet the needs of special events such as the Edinburgh festivals and the Open Golf Championships;

National Passenger Survey or NPS means a passenger satisfaction survey which may be carried out by or on behalf of the Authority as described in paragraph 2 of Schedule 1.5 (*Information about Passengers*);

National Rail Enquiries means the passenger rail information service for England, Wales and Scotland provided by ATOC;

National Rail Timetable means the passenger timetable issued by Network Rail (currently twice per annum) specifying the timings and stopping patterns of all passenger railway services in Great Britain;

National Rail Travel Vouchers means vouchers issued as compensation under a Train Operator's Passenger Charter that can be exchanged for tickets to travel on railway passenger services;

National Transport Strategy means the National Transport Strategy issued by the Authority from time to time;

Near Field Communication (or NFC) means a set of standards for smartphones and other mobile devices to establish radio communication with each other by touching them together or bringing them into close proximity;

Network Change has the meaning given to it in the Network Code;

Network Change Proposal has the meaning given to it in the Network Code;

Network Code means the document now 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 applying to any party referred to in the definition of "Network Rail" other than Network Rail Infrastructure Limited;

Network Rail means in respect of:

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

Network Rail Systems in Schedule 7.1 (*Train Running Operating Performance*) has the meaning ascribed to that term in paragraph 1(a) of Part 2 of Appendix 4 to Schedule 7.1;

Network Rail Track and Train Graduate Trainee Scheme means the scheme with that name operated by Network Rail;

Network Rail Works means those works undertaken by Network Rail in accordance with Network Rail's engineering requirements detailed in its Train Infrastructure Interface Specification, including platform extension and overhead line electrification works;

New Insurance Arrangements means any insurance arrangements which the Franchisee was not a party to prior to or on the Franchise Commencement Date;

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

- (a) the restated amounts of Target Revenue to be specified for each Franchisee Year in Appendix 1 (*Target Revenue*) (expressed in real terms) to Schedule 8.2 (*Annual Franchise Payments*); and
- (b) the restated values of FXD, VCRPI, VCAWE, PRPI and TRRPI to be specified for each Franchisee Year in Appendix 2 (*Figures for Calculation of Annual Franchise Payments*) to Schedule 8.2;

New Station means:

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

New Train Fleets means EGIP and HLOS Rolling Stock, Inter-city Rolling Stock, Scenic Rolling Stock and the replacements for the Class 314 trains procured pursuant to Schedule 6.4 of the Franchise Agreement;

New Train Lease means an operating lease in respect of any of the New Train Fleet;

New Train Lease Direct Agreement means a direct agreement in agreed terms in relation to a New Train Lease to be entered into between the Authority, the Franchisee and the lessor in respect of any of the New Train Fleets;

Nexus Alpha Tyrell IO-PODD Tool means the software package of the same name developed and distributed by Nexus Alpha Limited;

No Rebasing Notice means a notice by one party to the other party that it does not wish to carry out a Rebasing;

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

Off-Peak Passenger Services means Passenger Services other than Peak Passenger Services;

Off-Peak Patronage the number of journeys allocated to the Franchisee on ticket types that are defined as Reduced within LENNON being any tickets which are not a full ticket or Season Ticket;

Off-Peak Patronage Forecasts means the forecast by the Franchisee to the Authority setting out anticipated Off-Peak Patronage levels for each Franchisee Year set out in the Off-Peak Patronage Forecast Table;

Off-Peak Patronage Forecast Level means, for each Franchisee Year, the level of Off-Peak Patronage stated in column 3 of the Off-Peak Patronage Forecast Table;

Off-Peak Patronage Forecast Table means the table set out in Appendix 1 (Off-Peak Patronage Forecast Table) to Schedule 7.2 (KPIs and Journey Time Metrics);

Off-Peak Patronage KPI means the requirement in respect of Off-Peak Patronage set out at paragraph 2 of Schedule 7.2 (KPIs and Journey Time Metrics);

Off-Peak Ticket shall be interpreted in accordance with the national fares structure and public nomenclature adopted by Train Operators in 2008;

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

- (a) the amounts of Target Revenue to be specified for each Franchisee Year in Appendix 1 (Target Revenue) (expressed in real terms) to Schedule 8.2 (Annual Franchise Payments); and
- (b) the values of FXD, VCRPI, VCAWE, PRPI and TRRPI to be specified for each Franchisee Year in Appendix 2 (Figures for Calculation of Annual Franchise Payments) to Schedule 8.2;

On-Train Services in Schedule 7.3 (SQUIRE) and in the SQUIRE Service Schedules Agreement means the services provided by the Franchisee on Trains as set out in SQUIRE Service Schedules 19 to 33 and 36;

One-Ticket means the travel scheme conducted through a partnership between SESTRAN and transport operators within the SESTRAN area;

Operating Assets has the meaning given to it in paragraph 1.1 of Schedule 14.2 (Maintenance of Operating Assets);

Operational Model means the operational model in the agreed terms and marked *OM* of:

- (a) the revenue model;

- (b) the performance model;
- (c) all cost models; and
- (d) any other relevant models that have generated input to the Financial Model;

ORCATS means the suite of computer programs which provide the LENNON system with a file of allocation factors that may be used to apportion to individual passenger train operating companies passenger revenue on certain flows;

ORCATS Adjustment means any reduction in the Percentage Allocation of inter-available LENNON earnings which the Franchisee receives in accordance with the terms of the Ticketing and Settlement Agreement directly as a result of:-

- (a) The service of a notice on the Franchisee pursuant to Clause 11.17 of the Ticketing and Settlement Agreement (an “**ORCATS Notification**”); or
- (b) a change in the demand profiles chosen by ORCATS to allocate demand to the Passenger Services for passenger flows between London and Edinburgh and Glasgow (an “**ORCATS Profile Change**”); or
- (c) an agreement or settlement between the Franchisee and any other Train Operator or Operators.

ORR means the Office of Rail Regulation established by Section 15 of the Railways and Transport Safety Act 2003 and having duties and obligations as set out in the Act;

Other Rolling Stock means the fleet of Rolling Stock used to provide Passenger Services for those services specified in Column 1 in the Other Rolling Stock Output Requirement;

Other Technical Specification means the specification to be submitted to the Authority pursuant to paragraph 1 of Appendix 3 (*New Train Fleets*) to the Conditions Precedent Agreement and as referred to in Schedule 6.1 (*EGIP & HLOS Rolling Stock*);

Outgoing Franchisee means First ScotRail Limited, whose registered number is SC185018 and whose registered office is at 395 King Street, Aberdeen AB24 5RP;

Outgoing Parent means First Group plc (company number SC157176) and having its registered office at 395 King Street, Aberdeen AB24 5RP;

Output Requirement means the requirements set out in Appendix 2 to each of Schedule 6.1 (*EGIP & HLOS Rolling Stock*), Schedule 6.2 (*Inter-city Rolling*

Stock), Schedule 6.3 (*Scenic Trains Rolling Stock*), Schedule 6.4 (*Other Rolling Stock*) and for each of Schedules 6.1 to 6.4 shall mean the requirements set out in Appendix 2 to that Schedule;

Overall Passenger Satisfaction Target means subject to paragraph 12.2 of Schedule 7.2 (*KPIs and Journey Time Metric*) 88.5%;

Overall Satisfaction means the National Passenger Survey measure of the same name;

Overall Satisfaction KPI means the requirement specified in paragraph 12.1 of Schedule 7.2 (*KPIs and Journey Time Metrics*);

Overall Satisfaction KPI Penalty means

Franchisee Year	Overall Satisfaction KPI Penalty (10% of bid Profit)
Franchisee Year 1	[---REDACTED---
Franchisee Year 2	[---REDACTED---
Franchisee Year 3	[---REDACTED---
Franchisee Year 4	[---REDACTED---
Franchisee Year 5	[---REDACTED---
Franchisee Year 6	[---REDACTED---
Franchisee Year 7	[---REDACTED---
Franchisee Year 8 (Ext1)	[---REDACTED---
Franchisee Year 8	[---REDACTED---
Franchisee Year 9	[---REDACTED---
Franchisee Year 10	[---REDACTED---
Franchisee Year 11 (Ext2)	[---REDACTED---
Franchisee Year 12 (Ext2)	[---REDACTED---

Parent means NS Groep N.V whose registered number is 30124358 and whose registered office is at Laan van Puntenburg 100, 3511 ER Utrecht;

Partial Cancellation means a Passenger Service which is included in the Applicable Timetable and in respect of which the Franchisee:

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

Participating Employer has the meaning given to it in the Pension Trust;

Partnership Centre of Excellence (or PCoE) means a centre of excellence leading partnership development, providing partnership training to integrated teams and instilling a partnership ethic across the Alliance and supply chain;

Party means each and either of the parties to this Agreement and **Parties** shall be construed accordingly;

Pass in Schedule 7.1 (*Train Operating Performance*) means, in relation to any Formation Monitoring Point, the act of a train arriving at, passing or departing from (as the context may require) such Formation Monitoring Point;

Passenger Assist means the system known as Passenger Assist as described in the Code of Practice as at the date of this Agreement;

Passenger Carrying Capacity means, in relation to a Passenger Service, the capacity of the rolling stock vehicles (as stated in Appendix 1 (Train Fleet) to Schedule 1.1 (*Service Development*)) from which the Passenger Service is formed;

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

Passenger Information During Disruption Guidelines means ATOC's Approved Code of Practice Passenger Information During Disruption as amended, updated or replaced from time to time;

Passenger Journey means a journey on a Passenger Service;

Passenger Punctuality Review means the use of the on-line passenger panel (pursuant to Committed Obligation 16.4 and the use of the severe weather roadshows pursuant to Committed Obligation 10.2);

Passenger Satisfaction Targets means the Overall Passenger Satisfaction Target and the Dealing with Disruption Passenger Satisfaction Target;

Passenger Services means the Franchisee's railway passenger services specified in any Timetable and/or in any Applicable Timetable, including those railway passenger services which the Franchisee may delegate or subcontract or otherwise secure through any other person;

Passenger Timetable in Schedule 7.1 (*Train Operating Performance*) means, in respect of any particular day, the passenger timetable in respect of the Passenger Services for such day as determined following receipt from Network Rail, under the Network Code, of the working timetable for the period between the Change Date preceding such day and the next succeeding Change Date, being, where the Change Date preceding such day is a Passenger Change Date, the Timetable;

Passenger View Surveys means the surveys or consultations with users or potential users of the Passenger Services to be commissioned in terms of paragraph 3 of Schedule 1.5 (*Information about Passengers*);

Passenger's Charter means the Franchisee's service commitments to its passengers in the Agreed Form and marked **PC**, as amended or replaced from time to time with the prior written consent of the Authority in accordance with paragraph 5 of Schedule 1.4 (*Passenger Facing Obligations*);

Passenger's Charter Guidelines means the document of the same name issued by or on behalf of the Authority or referred to by the Authority as constituting such, containing the methodology for compiling performance statistics and Passenger's Charter compensation, as amended or replaced from time to time by the Authority after consultation with the Franchisee;

Passenger's Charter Statistics means the record of the Franchisee's performance against the standards specified in the Passenger's Charter for each Reporting Period prepared and Published in accordance with paragraph 5.7 to 5.9 of Schedule 1.4 (*Passenger Facing Obligations*);

Passengers' Council means the passengers' council operating as Passenger Focus established under Section 19 of the Railways Act 2005 and its statutory successors or in substitution any person or body nominated by the Authority as performing similar functions;;

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

PCI means the Payment Card Industry Data Security System;

Peak means the Morning Peak and the Evening Peak;

Peak Passenger Service means any Passenger Service operated on a Weekday which:

- (a) arrives at any of Edinburgh Waverley, Glasgow Central , Glasgow Central low level, Glasgow Queen Street, Argyle Street, High Street, Charing Cross, Anderston, Exhibition Centre, Partick or Paisley Gilmour Street stations in the Morning Peak; or
- (b) first departs from any of Edinburgh Waverley, Glasgow Central and Glasgow Central low level, Glasgow Queen Street, Argyle Street, High Street, Charing Cross, Anderston, Exhibition Centre, Partick or Paisley Gilmour Street stations in the Evening Peak;

Pension Trust means the pension trust governing the Railways Pension Scheme;

Pensions Committee has the meaning given to it in the Railways Pension Scheme;

Performance Bond means the performance bond to be provided to the Authority in the form set out in Appendix 1 (*Form of Performance Bond*) to Schedule 12 (*Financial Obligations and Undertakings*), as replaced or amended from time to time in accordance with Schedule 12;

Performance Management System means systems of recording and measuring delays and cancellations against budgets; understanding root cause of delays and cancellations; developing and implementing plans to tackle root cause and monitoring implementation of these plans;

Performance Points means the number of points incurred by the Franchisee as derived from paragraph 4 of each of the SQUIRE Service Schedules;

Performance Steering Group means the forum for representatives of the Franchisee, the Authority and Stakeholders referred to in paragraph 12 of Schedule 1.2 (*Operating Obligations*);

Permitted Individual Increase has the meanings given to it in paragraphs 2.2 and 2.4, as appropriate, of Schedule 5.3 (*Regulation of Individual Fares*);

Permitted Purpose has the meaning given to it in paragraph 2.7 of Schedule 14.2 (*Maintenance of Operating Assets*);

Permission to Use has the meaning given to it in Condition A1.1.15 of the National Station Access Conditions 2013 (Scotland);

Personal Data has the same meaning as in the DPA and includes Sensitive Personal Data as defined in the DPA;

PICO Mast means a mobile communication mast designed to provide a mobile data signal in areas where there would otherwise be no such coverage;

Placed on Deposit means consigned to the Authority's Solicitors to be held as undelivered and to the Franchisee's order subject to paragraph 2 of Schedule 9.2 (*Revised Inputs: Identity of the Financial Model etc*);

Planned Service Changes means the alterations to the Service Level Commitment set out in the Annex to the Service Level Commitment due to take effect after the Franchise Commencement Date;

PLUSBUS Scheme means the scheme of the same name operated by Journey Solutions Partnership which allows passengers to purchase an integrated bus and rail ticket;

Police Services Agreement means an agreement of that name between British Transport Police Authority and the Franchisee relating to the provision of police services;

Poppy Scotland means the charity of the same name with the Scottish Charity Registration number SC014096;

Possessions Strategy Notice has the meaning given to it in the Network Code;

Power of Attorney means the power of attorney in favour of the Authority to be executed and delivered by the Franchisee in the agreed terms and marked *POA*;

PPM means the public performance measure being the measure of the number of Passenger Services (expressed as a percentage of the number of Passenger Services which are scheduled to be provided under the Applicable Timetable) which arrive punctually at their final scheduled designation in the Applicable Timetable measured on the basis that:

- (a) for this purpose “punctually” means within 5 minutes of the scheduled public arrival time at destination as shown in the Applicable Timetable;
- (b) any train which is a Cancellation or Partial Cancellation as measured by reference to the Applicable Timetable will be regarded as not arriving punctually;

PPM Benchmark means any of the performance levels in respect of PPM set out in the PPM Benchmark Tables;

PPM Benchmark Tables means the tables set out in Appendix 3 (*PPM Benchmark Tables*) to Schedule 7.1 (*Train Operating Performance*);

Preceding Year Ticket Price has the meaning given to it in paragraphs 2.1 and 2.3 of Schedule 5.5 (*Regulation of Individual Fares*);

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

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

Priced Option means any of the options set out in Schedule 3 (*Priced Options*);

Primary Franchise Assets means:

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

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

PRINCE2 means Projects In Controlled Environments;

Principal Change Date has the meaning given to it in the Network Code;

Profit subject to paragraph (b) in respect of any Franchisee Year, the total profit of the Franchisee for that Franchisee Year calculated by applying the Adopted Accounting Principles and applied through the Financial Model:

- (a) after taking into account in respect of that Franchisee Year:
 - (i) interest, finance income and finance charges (other than finance items recognised in respect of retirement benefits);
 - (ii) Franchise Payments; and
 - (iii) all extraordinary and exceptional items, as defined under the Adopted Accounting Principles and standards set out in the Record of Assumptions and applied through the Financial Model;
 - (iv) the Franchisee's normal pension contributions in relation to the Franchisee Section and any other pension schemes to the extent connected with the Franchise; and
 - (v) any payments to Affiliates of the Franchisee (including management fees and royalty fees) except to the extent that such payments exceed an amount determined to be arm's length as determined by the Authority for the purposes of Schedule 13.7 (*Related Parties and Open Bank Accounting*);
 - (vi) any sums payable by or to the Franchisee pursuant to the terms of the Supplemental Agreement; and
 - (vii) any capital expenditure to the extent that it is recognised as an operating cost in the Annual Audited Accounts and any depreciation on capital expenditure that is added to the balance sheet in the Annual Audited Accounts but applying at all times the depreciation policy set out in the Record of Assumptions and applied through the Financial Model rather than any other depreciation policy which may be applied in the Annual Audited Accounts; and
- (b) before taking into account in respect of the Franchisee Year:
 - (i) any taxation on profits including corporation tax;
 - (ii) shares of the profit of any Affiliate of the Franchisee, except dividends received in cash;

- (iii) non cash entries in respect of the Franchisee Section and any other pension schemes to the extent connected with the Franchise, excluding accruals or prepayments of any normal pension contributions due;
- (iv) any payment made by the Franchisee consequent upon any breach or contravention of the Franchise Agreement and/or its Licence in respect of Stations (including as a consequence of any penalty payment paid or payable pursuant to Section 57A of the Railways Act 1993);
- (v) any profit share payments payable to the Authority in relation to any Franchisee Year; and
- (vi) fees, remuneration and pension contributions in respect of any director and officers of the Franchisee in excess of a cap to be determined as follows:

DFR x RPI

where:

DFR is the director funding restriction amount specified in respect of each Franchisee Accounting Year in column 2 of the table set out in the Appendix 1 (*Components of DFR*) to Schedule 8.1 (*Franchise Payments*); and

RPI has the meaning given to it in the definition of Threshold Amount;

Profit Margin has the meaning given to short term in paragraph 7 of Schedule 9.3 (*Runs of the Financial Model*);

Profit Share Adjustment means the amount of an adjustment to the Franchise Payment determined in accordance with paragraph 6.2 of Schedule 8.1 (*Franchise Payment*);

Profit Share Adjustment Date means the Payment Date for the third Reporting Period in any Franchisee Year except in respect of any Profit Share Adjustment falling due in the final Franchisee Year, for which the provisions of paragraph 5 of Schedule 8.1 (*Franchise Payments*) shall apply;

Profit Share Reconciliation Amount means the amount determined in accordance with paragraph 6.5 of Schedule 8.1 (*Franchise Payments*);

Profit Share Reconciliation Date means the first Payment Date falling no less than 7 days after a determination pursuant to paragraph 6.5 of Schedule 8.1 (*Franchise Payments*) except in respect of any Profit Share Reconciliation Amount due in the final Franchisee Year for which the provisions of paragraph 5 of Schedule 8.1 (*Franchise Payments*) shall apply;

Profit Threshold means[---REDACTED---];

Property Lease means each lease of the facilities set out in paragraph 3 of Appendix 2 (*List of Conditions Precedent Documents*) to the Conditions Precedent Agreement and any agreement or lease of a similar or equivalent nature (whether in respect of any such facility or otherwise) which the Franchisee may enter into with a person who has an interest in a network or a railway facility which is to be used for or in connection with the provision or operation of the Franchise Services;

Protected Employees has the meaning given to it in the Railways Pensions (Protection and Designation of Schemes) Order 1994;

Protected Fare means any Off Peak Ticket and Regulated Peak Fares;

Protected Proposal has the meaning given to it in paragraph 1.9 of Schedule 9.1. (*Variations and Financial Consequences of Change*);

Processing and **Process** have the meaning set out in Section 1(1) of the Data Protection Act;

Public Contracts Scotland (or PCS) means the website of that name operated by the Scottish Procurement Directorate;

Public Sector Equality Duty means the duty of that name created by the EA;

Public Sector Operator means any person (other than a franchisee in relation to the services provided or operated under its franchise agreement) who provides railway passenger services or operates any station or light maintenance depot pursuant to or under Section 30 of the Act or Section 8 of the Railways Act 2005;

Publish means the active dissemination and sharing of information by all practicable means including, but not limited to printed booklets, leaflets and posters, information display screens, arrival/departure boards, notices and public address announcements, broadcast media, websites, social media, SMS and MMS messages as shall be practical, appropriate and timely best practice.

Punctuality and Reliability means the National Passenger Survey measure of the same name;

Quality Assurance Plans means the quality assurance plan in Agreed Form and marked *QAP* and set out in Schedule 6 (*Rolling Stock*) of this Agreement;

Qualifying Change means a Change which would (if it were subject to a Run of the Financial Model in accordance with Schedule 9 (*Changes*)) result in adjustments in Franchise Payments over the remaining life of the Franchise Agreement that have net present value as at the date of the Change in excess of the Threshold Amount, and for the purposes of ascertaining a net present value of the amount of any adjustment in any Franchise Payment, it shall be

discounted at the prevailing discount rate per annum (in real terms) stated in HM Treasury's "Green Book Appraisal Guidelines" (which discount rate is 3.5 per cent, per annum (in real terms) at the date of the Franchise Agreement) from the date of receipt of that adjusted Franchise Payment to the date of the Change;

Quality Manager means the quality manager appointed by the Franchisee in accordance with paragraph 2.1(b) of Schedule 11 (*Agreement and Service Delivery Management Provisions*);

Quality Plan means the plan specified in paragraphs 2.1 and 2.2 of Schedule 13.1 (*Franchise Management*);

Quality Report means the report specified in paragraph 2.4 of Schedule 13.1 (*Franchise Management*);

Rail Patronage Manager or ("RPM") means the rail patronage manager appointed by the Franchisee in accordance with paragraph 2.1(e) of Schedule 11 (*Agreement and Service Delivery Management Provisions*)

Rail Safety and Standards Board or ("RSSB") means the Rail Safety and Standard Board Limited (Company Number 54655675) with Registered Office at Block 2, Angel Square, 1 Torrens Square, London or its successors;

Railway Industry Standards has the meaning given to it in paragraph 1.1 of Schedule 13.3 (*Co-operation*);

Railway Group Standards means the standards Published from time to time by the Rail Safety Standards Board;

Railway Management Maturity Model (or RM3) means the ORR's Railway Management Maturity Model

Railway Operational Code has the meaning given to it in Condition H of the Network Code;

Railway Passenger Services means, for the purpose of Schedule 5 (*Fares*) only, services for the carriage of passengers by railway which are provided by a person who is bound by the Ticketing and Settlement Agreement, or any part of it, and including the Franchisee and any other Train Operator from time to time;

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

Rebased Subsidy has the meaning given to it paragraph 1 of Schedule 8.5 (*Rebasing*);

Rebasing means the process for determining the Rebased Subsidy as further detailed in Schedule 8.5 (*Rebasing*);

Rebasing Date means the date 6 months prior to the 5th anniversary of the Franchise Commencement Date;

Rebasing Report means a report to be produced by the Franchisee in respect of its performance over the first five Franchisee Years and it will also set out any non-compliances with the Modelling Requirements and Constraints as identified at the date of signature of this Agreement, such Rebasing Report to be delivered no later than six months after the Rebasing Date;

Record of Assumptions means a document prepared by the Franchisee in the Agreed Form and marked **ROA** or revised in accordance with Schedule 9 (*Changes*) and Placed on Deposit providing:

- (a) detailed assumptions, explanations of assumptions and parameters underlying the Financial Model;
- (b) details of how Franchise Payments have been calculated (including by reference to a defined annual profit margin);
- (c) a description of the functionality, operation and structure of the Financial Model;
- (d) a description of each input cell, its requirements and its inter-relationship with the Financial Model; and
- (e) a description of any Change made in accordance with Schedule 9 (*Changes*);

Reference Documents means two copies of each of the Financial Model, the Operational Model and the Record of Assumptions (each such copy in electronic and hard copy format which the Authority may reasonably specify) which are:

- (a) in respect of the Financial Model, delivery of the Financial Model:
 - (i) dated the date hereof;
 - (ii) adjusted to the extent necessary to reflect any difference between the actual Franchise Commencement Date and the date assumed to be the Franchise Commencement Date in the Initial Business Plan; and
 - (iii) audited following a Run of the Financial Model and updated with any Revised Inputs; and
- (b) in respect of the Operational Model, delivery of:
 - (i) the Operational Model dated the date hereof;

- (ii) the Operational Model adjusted to the extent necessary to reflect any time elapsed between the actual Franchise Commencement Date and the date assumed to be the Franchise Commencement Date in the Initial Business Plan; and
 - (iii) the inputs to the Financial Model derived therefrom following an audit of a Run of the Financial Model; and
- (c) in respect of the Record of Assumptions, delivery thereof.

each in accordance with Schedule 9.2 (*Revised Inputs: Identity of the Financial Model, etc*);

Regional Transport Partnership means a regional transport partnership established under section 1(1) of the Transport (Scotland) Act 2005;

Regulated Child Price means the Child Price that is permitted to be charged by the Franchisee in respect of any Fare in any Fare Year, determined in accordance with paragraph 2.1 of Schedule 5.3 (*Regulation of Individual Fares*);

Regulated Peak Fares means any Season Ticket or Anytime Ticket;

Regulated Price means the Price that is permitted to be charged by the Franchisee in respect of any Fare in any Fare Year, determined in accordance with paragraph 2.1 of Schedule 5.3 (*Regulation of Individual Fares*);

Regulation (EC) 139/2004 means Regulation EC Number 139/2004 of the European Parliament and of the Council of the European Union of 20 January 2004 on the control of concentrations between undertakings;

Regulation (EC) 1370/2007 means Regulation (EC) Number 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70;

Regulations has the meaning given to it in paragraph 2.3 of Schedule 2.5 (*Transport, Travel and other Schemes*);

Related Party Contract means a contract between the Franchisee or any Affiliate with another Affiliate;

Related Party Contract Level means, for each Franchisee Year, the value in pounds sterling set out in column 2 of the Related Party Contract Table;

Related Party Contract Table means the table set out in Appendix 1 (*Related Party Contracts*) to Schedule 13.7 (*Related Party Contracts and Open Book Accounting*);

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

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

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

Relevant Days has the meaning given to it in paragraph 2.2 of Schedule 15.2 (*Last 12 or 13 Months of Franchise Period*);

Relevant Term has the meaning given to it in paragraph 2.1 of Schedule 10.1 (*Remedial Plans*);

Relevant Project Agreements has the meaning given to it in paragraph 4.2 of Appendix 1 (*Conditions Precedent*) to the Conditions Precedent Agreement;

Remedial Agreement has the meaning given to it in paragraph 4.1 of Schedule 10.1 (*Remedial Plans and Remedial Agreements*);

Remedial Plan has the meaning given to it in paragraph 2.2 of Schedule 10.1 (*Remedial Plans and Remedial Agreements*);

Remedial Plan Level means for each Franchisee Year, the level set out in column 3 of the Dealing with Disruption Passenger Satisfaction Table;

Remedial Plan Notice has the meaning given to it in paragraph 1 of Schedule 10.1 (*Remedial Plans and Remedial Agreements*);

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

Reporting Accountants means such chartered accountants as the Authority may appoint for the preparation of the Net Asset Statement as provided for in the Supplemental Agreement;

Reporting Period means:

- (a) for the purposes of the Season Ticket and Smartcard Bond, any consecutive 7-day period or any other period, each within a Reporting Period (as defined in paragraph (b)) agreed in accordance with

paragraph 5.12 of Schedule 12 (*Financial Obligations and Undertakings*); or

- (b) for all other purposes, a period of 28 days, provided that:
- (i) the first such period during the Franchise Period shall exclude any days up to but not including the Franchise Commencement Date;
 - (ii) the first and last such period in any Reporting Year may be varied by up to 7 days by notice from the Authority to the Franchisee;
 - (iii) each such period shall start on the day following the last day of the preceding such period; and
 - (iv) the last such period during the Franchise Period shall end on the end of the Franchise Period;

Reporting Year means a period normally commencing on 1 April in each calendar year, comprising 13 consecutive Reporting Periods;

Request for Information shall have the meaning set out in the FOISA;

Request Stop Station means for any service, a station which is so designated at which Passenger Services shall call only when requested by passengers or intended passengers using such information as the Franchisee may, from time to time provide and/or Publish;

Requested Information has the meaning given to it in paragraph 4.4 of Schedule 17 (*Confidentiality, FOISA and Data Protection*);

Required Commencement Agreements has the meaning given to it in clause 4.1 of the Conditions Precedent Agreement;

Resilience Plan means the resilience plan developed by the Franchisee in terms of paragraphs 11.2, 11.3, 11.4 and 11.9 of Schedule 1.2 (*Operating Obligations*);

Resilience Team has the meaning given to it in paragraph 11.1 of Schedule 1.2 (*Operating Obligations*);

Restriction of Use means in respect of any day, any restriction of use of any relevant section of track notified by Network Rail to the Franchisee which necessitates any difference between the Applicable Timetables;

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, in the reasonable opinion of the Authority, a material change in the basis of the index or if, at any relevant time, there is a delay in the publication

of the index, such other retail prices index as the Authority may, after consultation with the Franchisee, determine to be appropriate in the circumstances;

Return Fare means a Fare which entitles the purchaser to make, without further restrictions as to the time of day for which the Fare is valid, a journey in each direction in Standard Class Accommodation (or, if the Fare relates to a First Class Ticket, in first class accommodation (as defined in the National Classes of Accommodation in terms of the Ticketing and Settlement Agreement)) between the stations and/or the zones for which such Fare is valid and which expires no earlier than 0200 on the day after the day of the outward journey or, if later, the time the relevant return journey may be completed if commenced before 0200;

Revenue means the gross revenue (without any deduction for operating costs or charges except for commission charged to revenue in the normal course of business and also without any deduction for payments by the Franchisee under Schedule 7.3 (*SQUIRE*) when ascertaining Revenue for the purposes of paragraphs 3 and 4 of Schedule 8.1 (*Franchise Payments*)) of the Franchisee, as stated in the audited or management accounts and statements submitted to the Authority in accordance with Schedule 13.2 (*Information*), relating to:

- (a) railway passenger services;
- (b) the provision of catering services (net of direct catering costs) on any Passenger Service;
- (c) charging for the use of station car parks;
- (d) other revenue directly related to passenger demand for railway passenger services;
- (e) amounts receivable from Network Rail (excluding any amounts in terms of any Alliance with Network Rail) and any interest;
- (f) retail commission,

but shall not include any Franchise Payment (and for the avoidance of doubt, as well as not including Franchise Payments, it shall not include payments to the Franchisee under Schedule 7.3 when ascertaining Revenue for the purposes of paragraphs 3 and 4 of Schedule 8.1).

Revenue Share Adjustment means the amount of an adjustment to a Franchise Payment determined in accordance with paragraph 3.2 of Schedule 8.1 (*Franchise Payments*);

Revenue Share Adjustment Date means the Payment Date for the 3rd Reporting Period in any Franchisee Year, except in respect of any Revenue Share Adjustment falling due in the final Franchisee Year, for which the provisions of paragraph 5 of Schedule 8.1 (*Franchise Payments*) shall apply;

Revenue Share Reconciliation Amount means the amount determined in accordance with paragraph 3.5 of Schedule 8.1 (*Franchise Payments*);

Revenue Share Reconciliation Date means the first Payment Date falling no less than 7 days after a determination pursuant to paragraph 3.4 of Schedule 8.1 (*Franchise Payments*), except in respect of any Revenue Share Reconciliation Amount falling due in the final Franchisee Year, for which the provisions of paragraph 5 of Schedule 8.1 shall apply;

Revenue Support Adjustment means an adjustment to a Franchise Payment determined in accordance with paragraph 4.6 of Schedule 8.1 (*Franchise Payments*);

Revenue Support Adjustment Date means the first Payment Date falling no less than 7 days after the Franchisee claims revenue support pursuant to paragraph 4.1 of Schedule 8.1 (*Franchise Payments*), except in respect of any Revenue Support Adjustment falling due in the final Franchisee Year and which has not been made during the Franchise Period, for which the provisions of paragraph 5 of Schedule 8.1 shall apply;

Revenue Support Reconciliation Amount means an amount determined in accordance with paragraph 4.9 of Schedule 8.1 (*Franchise Payments*);

Revenue Support Reconciliation Date means the first Payment Date falling no less than 7 days after a determination pursuant to paragraph 4.8 of Schedule 8.1 (*Franchise Payments*), except in respect of any Revenue Support Reconciliation Amount falling due in the final Franchisee Year and which has not been made during the Franchise Period, for which the provisions of paragraph 5 of Schedule 8.1 shall apply;

Review Date means 28 February 2015 or such later date notified to the Franchisee by the Authority pursuant to Clause 2.2 (b)(i) or Clause 2.2 (c)(i) of the Conditions Precedent Agreement;

Revised Inputs has the meaning given to it in paragraph 2.1 of Schedule 9.3 (*Runs of the Financial Model*);

Risk Assumptions means those assumptions set out in Schedule 9.4 (*Authority Risk Assumptions*);

Rolling Stock in clause 5.3 of the Conditions Precedent Agreement and in Schedule 6 (*Rolling Stock*) means the rolling stock procured or improved pursuant to each of Schedule 6.1 (*EGIP & HLOS Rolling Stock*), Schedule 6.2 (*Inter-City Rolling Stock*), Schedule 6.3 (*Scenic Trains Rolling Stock*) and Schedule 6.4 (*Other Rolling Stock*);

Rolling Stock Commissioning Certificate means a certificate issued by the Franchisee to the Authority confirming that each unit of the Rolling Stock meets the Output Requirement;

Rolling Stock Delivery Schedule means the programme of dates set out in Appendix 1 to each of Schedule 6.1 (*EGIP & HLOS Rolling Stock*) Schedule 6.2 (*Inter-City Rolling Stock*) Schedule 6.3 (*Scenic Trains Rolling Stock*) Schedule 6.4 (*Other Rolling Stock*) and for each of Schedules 6.1 to 6.4 shall mean the Delivery Schedule set out in Appendix 1 to that Schedule;

Rolling Stock Feasibility Study means a feasibility study considering the issues set out in clauses 5.2(a) to (g) of the Conditions Precedent Agreement;

Rolling Stock Lease means any agreement for the leasing of rolling stock vehicles listed in Train Fleet Table 1 and any agreement of a similar or equivalent nature (including, any agreement or arrangement for the subleasing, hiring, licensing or other use of rolling stock vehicles) to which the Franchisee is a party from time to time during the Franchise Term whether in addition to, or replacement or substitution for, in whole or in part, any such agreement;

Rolling Stock Project means the procurement, manufacture, delivery or improvement, refurbishment, delivery and thereafter testing, commissioning and introduction into service of the Rolling Stock and the procurement, design, manufacture, engineer, supply, test, commission, delivery and provision of the Rolling Stock Works;

Rolling Stock Project Key Personnel means the engineering director and the engineering director's direct reports;

Rolling Stock Related Contract means any Rolling Stock Lease, Maintenance Contract or Technical Support Contract;

Rolling Stock Stewardship Report means the stewardship report for the Train Fleet;

Rolling Stock Unit means the smallest number of rolling stock vehicles which are normally comprised in a train used by the Franchisee in the provision of the Passenger Services;

Rolling Stock Works means the test equipment, off train systems, light maintenance depot works and equipment, equipment modifications, strategic spares and other deliverables ancillary to the procurement of the Rolling Stock;

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

Route Utilisation Strategy means any route utilisation strategy notified to the Franchisee by the Authority on or before the Franchise Commencement Date or as developed by Network Rail from time to time and notified to the Franchisee for the purposes of the Franchise Agreement;

RPM means the Rail Patronage Manager;

RSP means Rail Settlement Plan Limited;

RSPS3002 means ITSO in National Rail-Specification Rail Settlement Plan Document reference RSPS3002 version 2.0;

RTP means a Regional Transport Partnership which is established under the Transport Act (Scotland) Act 2005;

Rules means in Schedule 16 (*Pensions*) has the meaning given to it in the Railways Pensions Scheme;

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

Rural Sector means all Passenger Services operating under the HA03 and HA04 Service Groups;

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

Safety Management System shall have the same meaning as in the Railways and Other Guided Transport Systems (Safety) Regulations 2006;

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

Scenic Railways of Scotland Voucher Book means a book containing vouchers allowing users of the Passenger Services on Scenic Trains and users of the Steam Tourist Services to purchase specified items of food and clothing at retailers local to destination Stations served by Scenic Trains or Steam Tourist Services at a discounted rate. The said Voucher Book will be provided to the relevant passengers free of charge;

Scenic Train means trains on Routes that have specific facilities to capitalise on the tourism along those Routes including improving the scenic opportunities for the passengers;

Scenic Train Technical Specification means the specification to be submitted to the Authority pursuant to paragraph 1 of Appendix 3 (*New Train Fleets*) to the Conditions Precedent Agreement and as referred to in Schedule 6.3 (*Scenic Train Rolling Stock*);

ScotRail Deal Campaign means a marketing campaign designed to recruit Community Rail Volunteers and encourage volunteering along the key Community Rail Partnership lines, and other lines identified as potentially benefitting from Station adoption, to be accompanied by specific pages on the

Website and Project Scotland's website, and advertising the specific roles of Station adopters, Community Rail Partnership members, and community ambassadors;

ScotRail Franchise means the rights awarded to the Franchisee to operate railway passenger services under the terms and conditions set out in the Franchise Agreement;

Scottish Accessible Transport Alliance or SATA means the Scottish Charity of that name (Charity Number SC027600);

Scottish Association for Mental Health means the Scottish Association for Mental Health a company limited by guarantee registered in Scotland Number SC082340 Scottish Charity Number SC-008897, having its registered office at Brunswick House, 51 Wilson Street Glasgow G1 1UZ;

Scottish Business in the Community Scheme means Scottish Business in the Community Scheme a company limited by guarantee registered in Scotland Number SC080355 Scottish Charity Number SC-007195, having its registered office at Livingstone House, 43A Discovery Terrace, Herriot Watt University Research Park, Edinburgh EH14 4AP;

Scottish Rail Accessibility Forum or SRAF means the forum established by Transport Scotland to bring together representatives of the Scottish rail industry and Disabled Persons organisation;

Scottish Stations Map means the map or other visual representation Published by the Franchisee of stations in Scotland at which passenger railway services call;

Scottish Qualifications Authority means the non-departmental public body of that name established through section 1 of the Education (Scotland) Act 1996;

Scottish Vocational Qualifications means the qualifications of that name accredited by the Scottish Qualifications Authority;

Scottish Youth Railcard means a Discount Card issued under the Discount Fare Scheme referred to in paragraph 4.4 of the Appendix (*List of Transport, Travel and Other Schemes*) to Schedule 2;

SCRF Principles means the principles for use of the Stations Community Regeneration Fund set out in Appendix to Schedule 13.3 (*Co-Operation*) as updated from time to time;

Season Ticket and Smartcard Bond means the season ticket and smartcard bond to be provided to the Authority in respect of the Franchisee's liabilities under certain Fares and Season Ticket Fares in the form set out in Appendix 2 (*Form of the Season Ticket and Smartcard Bond*) to Schedule 12 (*Financial Obligations and Undertakings*) and such other bond as may replace it from time to time under Schedule 12;

Season Ticket means a ticket to which a Season Ticket Fare applies;

Season Ticket Fare means:

- (a) for the purposes of Schedule 12 (*Financial Obligations and Undertakings*) only, a Fare which entitles the purchaser to make, without further restriction except as to class of accommodation, an unlimited number of journeys in any direction during the period for which, and between the stations and/or the zones for which, such Fare is valid; and
- (b) for all other purposes, a Fare which entitles the purchaser to make an unlimited number of journeys in any direction during the period for which, and between the stations and/or the zones for which, such Fare is valid;

Secretary of State means The Secretary of State for Transport;

Section 54 Agreement means an agreement between the lessor of the EGIP and HLOS Rolling Stock and the Authority in terms of section 54 of the Act;

Sectors means the Express (E&G) Sector, the Express (Other) Sector, the Suburban West Sector, the Suburban (East) Sector and the Rural Sector and **Sector** shall be construed accordingly;

Secure Station Accreditation means accreditation under the Secure Station Scheme or any successor scheme setting a national standard for passenger safety and security at stations;

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

Self Learning Centre means an educational facilities designed for learning that is at least partially, if not fully self-directed with access to a range of resources;

Services means other than in Schedule 7.3 (*SQUIRE*) all those Passenger Services provided and such other Station Services, Depot Services and Ancillary Services as may be provided or operated in connection with the Passenger Services;

Service Code in Schedule 7.1 (*Train Operating Performance*) means the third, fourth and fifth digits of an eight character train service code applied in Network Rail's performance monitoring system to trains and used to identify them;

Service Group has the meaning given to it in the Track Access Agreement, except when used in paragraph 5 of Schedule 1.4 (*Passenger Facing Obligations*) when it shall have the meaning given to it in the Passenger's

Charter; and when used in relation to a Sector or Sectors at the Franchise Commencement Date **Service Group** means any of Service Group A, Service Group B, Service Group C, Service Group D, Service Group E, Service Group F and Service Group G where:-

Service Group A in Schedule 7.1 (*Train Operating Performance*) means the Passenger Services described in Part 3(a), Appendix 4 to Schedule 7.1;

Service Group B in Schedule 7.1 (*Train Operating Performance*) means the Passenger Services described in Part 3(b), Appendix 4 to Schedule 7.1;

Service Group C in Schedule 7.1 (*Train Operating Performance*) means the Passenger Services described in Part 3(c), Appendix 4 to Schedule 7.1;

Service Group D in Schedule 7.1 (*Train Operating Performance*) means the Passenger Services described in Part 3(d), Appendix 4 to Schedule 7.1;

Service Group E in Schedule 7.1 (*Train Operating Performance*) means the Passenger Services described in Part 3(e), Appendix 4 to Schedule 7.1;

Service Group F in Schedule 7.1 (*Train Operating Performance*) means the Passenger Services described in Part 3(f), Appendix 4 to Schedule 7.1;

Service Group G in Schedule 7.1 (*Train Operating Performance*) means the Passenger Services described in Part 3(g), Appendix 4 to Schedule 7.1;

Service Level Commitment means the service level commitment in respect of the Services more particularly described in Schedule 1.1 (*Service Development*), with the first such Service Level Commitment being in the Agreed Form and marked **SLC**, and any other service level commitment developed by the Authority in accordance with Schedule 1.1;

Service Quality Monitoring Plan in Schedule 7.3 (*SQUIRE*) and in the SQUIRE Service Schedules Agreement means a plan which the Authority may require the Franchisee to provide in accordance with paragraph 14 of Schedule 7.3;

Service Quality Payment in Schedule 7.3 (*SQUIRE*) and in the SQUIRE Service Schedules Agreement means any payment payable by the Franchisee to the Authority or any payment payable by the Authority to the Franchisee;

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

- (a) to minimise the disruption arising from such prevention or restriction of access by operating during such period of disruption, the best possible level of service given such disruption, including by:

- (i) keeping service intervals to reasonable durations;
 - (ii) keeping extended journey times to reasonable durations; and
 - (iii) managing any resulting overcrowding;
- (b) to:
- (i) return the level of service to that level specified in the Timetable as soon as reasonably practicable; and
 - (ii) prior to the attainment of the level of service specified in paragraph (b)(i), operate any reduced level of service agreed with Network Rail for the purpose of minimising such disruption pursuant to paragraph (a);
- (c) in accordance with the principles of service recovery set out in the ATOC “Approved Code of Practice: Contingency Planning for Train Service Recovery – Service Recovery 2009” or any document of a similar or equivalent nature; and
- (d) where the particulars of such plan in relation to the requirements of paragraphs (a) and (b) have been:
- (i) agreed at an initial and, where required, subsequent telephone conference between the Franchisee, Network Rail and any other affected Train Operator; and
 - (ii) on each occasion, recorded in an official control log by the relevant Region Control Manager of Network Rail,

and prevention or restriction of access to the track or a section of the track shall have the meaning given to that term in paragraph 1.1(a)(i) of Schedule 10.4 (*Force Majeure*);

Settlement Proposal has the meaning given to it in paragraph 3.2 of Schedule 4.2 (*Persons with Disabilities and Disability Discrimination*);

Shared Cost Arrangement has the meaning given to it in the Railways Pension Scheme;

Significant Alterations shall, in relation to a Timetable, include alterations to the Timetable which result in:

- (a) the addition or removal of railway passenger services; or
- (b) changes to stopping patterns or destinations or origin; or
- (c) changes of timings for first/last trains by more than 10 minutes; or

- (d) changes to clockface (or near clockface) service patterns (meaning the provision of railway passenger services at a specified time or times relative to the hour); or
- (e) significant changes to journey times and/or key connections at the Station or at other stations at which relevant railway passenger services call;

Small and Medium-Sized Enterprises (“SMEs”) means any individual micro, small or medium-sized enterprise meeting the requirements set out in EU Recommendation 2003/36 and broadly falling into one of three categories based on a combination of:-

- (a) the number of employees; and
- (b) either its turnover or its balance sheet total.

The three categories are:-

Company Category	Employees	Turnover	Or Balance Sheet Total
Medium	250	£50m	£43m
Small	50	£10m	£10m
Micro	10	£2m	£2m

Smartcard means a plastic card with an embedded processor chip with memory for storing electronic ticketing products;

SMS means Short Message Service, a text messaging service component of phone, Web, or mobile communication systems;

South East Flexible Ticketing Programme means the Department for Transport’s project of that name;

Spares means parts and components of rolling stock vehicles which are available for the purpose of carrying out maintenance services on rolling stock vehicles;

Special Events means any national or regional sporting or cultural event as shall be so designated by the Authority and shall include, but not be limited to the Edinburgh Festivals, football cup fixtures including for the avoidance of doubt round matches quarter final and semi-final matches and final matches, Six Nations Rugby fixtures, Celtic Connections, Glasgow Film Festival and Glasgow Comedy Festival;

Specifically Excluded Change of Law has the meaning ascribed to it in the definition of Change of Law in this Agreement;

SPT means Strathclyde Partnership for Transport established under section 1(1) of the Transport (Scotland) Act 2005;

SQI in Schedule 4.1 (*Franchise Facilities*) in Schedule 7.3 (*SQUIRE*) and in the SQUIRE Service Schedules Agreement means a service quality inspector appointed in accordance with the paragraphs 5 and 6 of Schedule 7.3;

SQM means the service quality manager appointed by the Franchisee in accordance with paragraph 3.1(e) of Schedule 7.3 (*SQUIRE*);

SQUIRE Benchmark means any of Benchmark Level, Ceiling Level and Floor Level and "SQUIRE Benchmarks" means all of these;

SQUIRE Operations Team means the SQI's and any supervisors and/or managers to whom the SQIs report;

SQUIRE Regime Review means the review of the SQUIRE Regime carried out pursuant and as described in paragraphs 15.2.1 to 15.2.3 of Schedule 7.3 (*SQUIRE*);

SQUIRE Services means the Franchise Services which make up each SQUIRE Service Specification;

SQUIRE Service Schedules Agreement means the agreement between the Authority and the Franchisee of even date with this Agreement setting out, amongst other things, the SQUIRE Service Specifications, the SQUIRE Benchmarks and the Performance Points;

SQUIRE Service Schedules means the service schedules in the Schedule to the SQUIRE Service Schedules;

SQUIRE Service Specification means the service specification set out at paragraph 1 in each of the SQUIRE Service Schedules;

SQUIRE Stations means the Key Stations under exception of the Major Stations, save where the Franchisee has not procured the Station Services in terms of paragraph 1.3 of Schedule 7.3 (*SQUIRE*);

STAG means the Scottish Transport Appraisal Guidance published from time to time by the Authority;

Stakeholder means any relevant Local Authority, the Passenger's Council, Train Operators, bus or ferry operators, airport operators, Glasgow City Marketing Bureau, the Mobility Access Committee Scotland, the Disabled Persons Transport Advisory Committee and Visit Scotland;

Stakeholder Advisory Panel means a group comprising a number of key stakeholders representing passenger watchdogs, rail user groups, business associations, mobility groups and Community Rail Partnerships;

Stakeholder Equality Group means a group comprised of key external equality stakeholders which will be responsible for a programme of activities to monitor the level of use on the Passenger Services by people with reduced mobility;

Standard Class Accommodation means, in respect of any train or service, accommodation which is available to the purchaser of any Fare which, taking into account any rights or restrictions relating to that Fare (other than restrictions relating to accommodation on that train or service), entitles such purchaser to make a journey on that train or service (provided that any accommodation on such train which may have been reserved by such purchaser shall be deemed to have been made so available if, had it not been so reserved, it would have been available for use by such purchaser);

Station means any station, in respect of which the Franchisee has entered or during the Franchise Period enters into a Station Lease; and in Schedule 7.3 (*SQUIRE*) and in the *SQUIRE* Service Schedules Agreement references to a Station are only to those areas of the Station to which the public are granted access including those areas to which the public are granted access in an emergency;

Station Access Agreement means each Access Agreement between a Facility Owner and the Franchisee which permits the Franchisee access to a station;

Station Access Conditions has the meaning given to the term for the purposes of the Station Access Agreement;

Station Areas has the meaning give to it in paragraph 3.5 of Appendix 2 (*List of Condition Precedent Documents*) to the Conditions Precedent Agreement

Station Area Lease means any lease or sub-lease between the Franchisee and the Caledonian Sleeper Franchisee of a Station Area;

Station Asset Management Plan means a physical works plan designed to deliver the joint asset management policy detailed in Committed Obligation reference 14.1 and objectives across the lifecycle of the assets. The plan will collate data on work activities at each location including:

- (a) routine maintenance activities
- (b) inspections, schemes and proposed maintenance renewals plans
- (c) enhancement proposals including improved station retail, customer facilities and major station development schemes as detailed in Committed Obligation references 15.5 to 15.10
- (d) any input from the Authority's business planning process;

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

Station Change has the meaning given to the term for the purposes of the Station Access Agreements;

Station Condition Maintenance Programme has the meaning given to it in paragraph 3.1 of Schedule 4.1 (*Franchise Facilities*);

Station Faults System means a system of incorporating all faults at Stations, incorporating reports from Station staff;

Station Lease means any lease:

- (a) of a station listed in the Schedule to this Agreement; or
- (b) of any other station (including any New Station) of which the Franchisee becomes the Facility Owner at any time during the Franchise Period;

Station Service means (other than in Schedule 7.3 (*SQUIRE*) and the SQUIRE Service Schedules Agreement) any service specified in paragraph 3 of Schedule 1.7 (*Franchise Services*) which may be provided by the Franchisee at the Stations, and, in Schedule 7.3 and the SQUIRE Service Schedules Agreement, means SQUIRE Services provided by the Franchisee at Stations as set out in SQUIRE Service Schedules 1 to 17;

Station Sublease means a lease or sub-lease of premises comprising part or parts of a Station exclusively occupied by another Train Operator;

Stations Community Regeneration Fund means the fund to make sustainable use of Station buildings by third parties for sustainable purposes including:-

- (a) small businesses meeting the needs of passengers or the local community; or
- (b) projects, which contribute to the local community;

Station Travel Plan means a plan bringing together all the stakeholders with an interest in rail stations (rail industry, local authorities, passenger groups, bus and taxi operators, cyclists and others) to develop and agree common objectives and a coordinated approach to delivering them;

Steam Tourist Service means a Charter Service consisting of Vehicles hauled by a steam powered locomotive;

Stop in Schedule 7.1 (*Train Operating Performance*) means, in relation to a Monitoring Point, the act of a train arriving at the station associated with the

Monitoring Point where scheduled in the relevant timetable to stop to set down passengers;

Stored Credit Balance means any monetary amount held by the Franchisee which (the credit being stored in any medium) a passenger can apply at a future date to the purchase of a Fare;

Strategic Rail Delivery Group means a cross-industry advisory panel to the executive team of the Alliance comprising key stakeholders from across the industry;

Strategy means any strategy prepared in accordance with Section 5 of the Railways Act 2005 (*Railway Strategy for Scotland*);

Strathclyde means for the purposes of Schedule 5.1 (*Purchase, Structure and Construction*), those Routes contained within the area defined in west central Scotland designated by the Strathclyde Passenger Transport Area in the Strathclyde Passenger Transport Area (Designation) Order 1995, where a Route does not wholly fall within the said Strathclyde Passenger Transport Area the limit of the boundary of the Route as within Strathclyde shall be defined by the last station before the boundary of the said Strathclyde Passenger Transport Area;

Suburban (East) Sector means all Passenger Services operating under the HA02 Service Group;

Suburban West Sector means together the Suburban West (Off Peak) Sector and the Suburban West (Peak) Sector;

Suburban West (Off Peak) Sector means all Off Peak Passenger Services operating under the HA06 and HA07 Service Group;

Suburban West (Peak) Sector means all Passenger Services operating under the HA06 and HA07 Service Group excepting those operating under the Suburban (West) (Off Peak) Sector;

Successor Operator means a Train Operator or Train Operators succeeding the Franchisee in the provision or operation of all or any of the Franchise Services including, where the context so admits, the Franchisee where it is to continue to provide or operate the Franchise Services following termination of the Franchise Agreement;

Super OFF-Peak tickets shall be interpreted in accordance with the national fares structure and public nomenclature adopted by Train Operators in 2008;

Supplemental Agreement means a supplemental agreement between the Franchisee and a Successor Operator to be entered into pursuant to a Transfer Scheme, being substantially in the form of Appendix 2 (*Form of Supplemental Agreement*) to Schedule 15.4 (*Provisions Applying on and after Termination*), but subject to such amendments as the Authority may reasonably make thereto

as a result of any change of law affecting such supplemental agreement or other change of circumstances between the date of the Franchise Agreement and the date on which the relevant Transfer Scheme is made and subject further to paragraph 3.2 of Schedule 15.4;

Survey Methodology means the survey methodology in Agreed Form marked **SM** used pursuant to the Passenger Views Survey;

SUSTRANS means Sustrans Limited, incorporated under the Companies Acts with registered number 1797726 and having its registered office at 2 Cathedral Square, College Green, Bristol BS1 5DD;

Systems in Schedule 7.1 (*Train Operating Performance*) means the systems described in paragraph 1 of Part 2 of Appendix 4 to Schedule 7.1;

System Interface Committee means any committee of representatives of the railway industry established to consider system interface issues across the railway industry and which is designated as such by the Authority;

Table means for the purposes of Part 3 of Schedule 1.6 (*Committed Obligations*) the table titled Committed Obligations where a Committed Obligation Payment Adjustment applies;

Target Passenger Demand means:

- (a) the greater of Actual Passenger Demand or Forecast Passenger Demand; or
- (b) as directed by the Authority, either:
 - (i) the lower of such levels of passenger demand; or
 - (ii) any intermediate level of passenger demand;

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

Target Revenue means, in relation to:

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

TR x RPI

where

TR is the amount specified as Target Revenue in Appendix 1 (*Target Revenue (expressed in real terms)*) to Schedule 8.2 (*Annual Franchise Payments*) or as revised in accordance with Schedule 9 (*Changes*); and

RPI has the meaning given to it in Schedule 8.2;

- (b) any Reporting Period wholly within a Franchisee Year other than the first and last Franchisee Years, one thirteenth of the amount determined pursuant to paragraph (a) for that Franchisee Year;
- (c) any Reporting Period wholly within the first or last Franchisee Year, the amount determined pursuant to paragraph (a) for that Franchisee Year divided by the number of Reporting Periods wholly within that Franchisee Year; and
- (d) any Reporting Period partly within 1 Franchisee Year and partly within the next Franchisee Year, an amount equal to:

A + B

Where:

A is the amount determined pursuant to paragraphs (b) or (c) (as the case may be) in respect of a Reporting Period wholly within the earlier Franchisee Year, multiplied by the following:

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

where:

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

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

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

where:

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

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

Technical Specification means the EGIP and HLOS Technical Specification, Inter-city Technical Specification, Scenic Train Technical Specification and Other Rolling Stock Technical Specification as appropriate;

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

Term Loan means the term loan facility agreement between the Franchisee and Abellio Transport Holding BV to be dated between the date of execution of this Agreement and the Franchise Commencement Date;.

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

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

Third Party means for the purposes of Schedule 1.6 (*Committed Obligations*) any person who is not a party to this Agreement or who is not an Affiliate to a party to this Agreement;

Threshold Amount means in the First Franchisee Year [---REDACTED---] and in each subsequent Franchisee Year 0.1% of the actual Turnover for the previous Franchisee Year;

Through Ticketing (Non-Travelcard) Agreement means the agreement of that name referred to in paragraph 5.5 of the Appendix (*List of Transport Travel and Other Schemes*) to Schedule 2.5 (*Transport, Travel and Other Schemes*);

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

Timetable means the timetable which reflects the working timetable issued by Network Rail at the conclusion of its timetable development process, published by the Franchisee at the Stations and at other stations in accordance with paragraphs 1, 2 and 3 of Schedule 1.4 (*Passenger Facing Obligations*) containing the departure and arrival times of:

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

Timetable Change has the meaning given to it in the Network Code;

Timetable Change Date has the meaning given to it in the Network Code;

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

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

Timetable Planning Rules has the meaning given to it in the Network Code;

Timetable Year has the meaning given to it in paragraph 7.1 of Schedule 8.1 (*Franchise Payments*);

ToGo Kiosk means a retail outlet which retails hot and cold beverages and snacks and provides a consistent range of drinks, bakery goods, snacks, confectionery, newspapers and convenience products;

Tourism Ambassador means a Franchise Employee or Community Rail Volunteer who has undergone appropriate tourism training;

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

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

Traction Electricity Charges means traction electricity charges calculated in accordance with paragraph 6 of Schedule 9.3 (*Runs of the Financial Model*);

Traffic Management System means the software system to be employed by Network Rail to manage rail traffic from its signalling centres;

Train in Schedule 7.3 (*SQUIRE*) and in the *SQUIRE Service Schedules Agreement* means a train in service on the Services during a Reporting Period;

Train Faults System means a system of recording all faults on Trains incorporating reports from Train crews;

Train Fleet means the rolling stock vehicles specified in or required by Appendix 1 (*The Train Fleet*) to Schedule 1.1 (*Service Development*);

Train Fleet Table 1 means Table 1 in Appendix 1 (*The Train Fleet*) to Schedule 1.1 (*Service Development*);

Train Fleet Table 2 means Table 2 in Appendix 1 (*The Train Fleet*) to Schedule 1.1 (*Service Development*);

Train Fleet Table 3 means Table 3 in Appendix 1 (*The Train Fleet*) to Schedule 1.1 (*Service Development*);

Train Fleet Table 4 means Table 4 in Appendix 1 (*The Train Fleet*) to Schedule 1.1 (*Service Development*);

Train Fleet Table 5 means Table 5 in Appendix 1 (*The Train Fleet*) to Schedule 1.1 (*Service Development*);

Train Fleet Tables means Train Fleet Table 1, Train Fleet Table 2, Train Fleet Table 3, Train Fleet Table 4 and Train Fleet Table 5;

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

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

Train Plan means the plan of the Franchisee for the operation of trains and train formations under the Timetable in the Agreed Form marked **TP** and any other train plan developed in accordance with Schedule 1.1 (*Service Development*) except that when used in Schedule 7.1 (*Train Operating Performance*) it shall have the meaning given to it in paragraph 2.11 of Schedule 7.1;

Train Services Agreement means a train services agreement in respect of any of the New Train Fleet;

Train Services Agreement Direct Agreement means a direct agreement in agreed terms in relation to a Train Services Agreement to be entered into between the Authority, the Franchisee and the counterparty to the Train Services Agreement in respect of any of the New Train Fleets;

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

Transfer Scheme means a transfer scheme made by the Authority under Section 12 and Schedule 2 of the Railways Act 2005 (or equivalent statutory

provision) pursuant to paragraph 3.1 of Schedule 15.4 (*Provisions Applying on and after Termination*), being substantially in the form of Appendix 1 (*Form of Transfer Scheme*) to Schedule 15.4 but subject to such amendments as the Authority may make thereto as a result of any change of Law affecting such transfer scheme or other change of circumstances between the date of the Franchise Agreement and the date on which such scheme is made;

Transport Act means the Transport Act 2000;

Transport Direct means the scheme presently known by that name;

Transport Integration Group means the group of that name relating to addressing transport integration within Scotland (and otherwise known as “**TIG**”) led by the ScotRail Franchisee involving the Authority, Stakeholders and other transport operators;

Transport Integration Manager means the transport integration manager appointed by the Franchisee in accordance with paragraph 2.1(d) of Schedule 11 (*Agreement and Service Delivery Management Provisions*);

Travelcard Agreement means the agreement of that name referred to in paragraph 5.4 of the Appendix (*List of Transport, Travel and Other Schemes*) to Schedule 2.5 (*Transport, Travel and Other Schemes*);

Traveline means the telephone enquiry service providing information on all public transport across the United Kingdom;

Traveline Scotland means the telephone and website enquiry service providing information on all public transport across Scotland;

TSI means any Technical Standard for Interoperability with which the Franchisee is required to comply pursuant to Directives 2008/57/EC and related legislation;

TSI PRM means the TSI on Accessibility to Persons with Reduced Mobility;

Turnaround Time means the time specified in the Train Plan between the completion of a Passenger Service in accordance with the Timetable and the commencement of the next Passenger Service in accordance with the Timetable on the same day using some or all of the same rolling stock vehicles;

Turnover means, in relation to any period, the aggregate revenue (excluding any applicable Value Added Tax) accruing to the Franchisee from the sale of Fares, the receipt of Franchise Payments, and the receipt of payments under Schedule 7.3 (SQUIRE) during such period;

Under-25s Advance Purchase Discount Products means a product offering a minimum discount of 10% to individuals under the age of 25 when buying

Advance Purchase products online, to be fulfilled by a smartcard using ITSO Certified Smartmedia;

Unit in Schedule 1.6 (*Committed Obligations*) and in Schedule 6 (*Rolling Stock*) means a single fixed formation consisting of Vehicles coupled together such that it meets the requirements of the Technical Specification, with two identical driving cabs, one positioned at each end;

Updated Business Plan means the revised business plan to be provided prior to the start of each Franchisee Year (other than the first Franchisee Year) in accordance with paragraph 2.3 of Schedule 13.2 (*Information*);

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

Variation means a variation to the terms of the Franchise Agreement (including in consequence the Franchise Facilities Book in terms of paragraphs 5.3 and 5.5 of Schedule 4.1 (*Franchise Facilities*)), the Definitions Agreement and/or the SQUIRE Service Schedules Agreement pursuant to paragraph 1 of Schedule 9.1 (*Variations and Financial Consequences of Change*);

Vehicle means: -

- (a) in Schedule 1.6 (*Committed Obligations*) and in Schedule 6 (*Rolling Stock*) a single, one piece body together with all supporting running gear and interior, exterior and underframe fittings forming part of a Unit; and
- (b) in the rest of the Franchise Agreement, rolling stock vehicle used in the provision of the Passenger Services which is designed principally for the carriage of passengers (including any rolling stock vehicle which provides seating accommodation and catering facilities but excluding any rolling stock vehicle which is designed principally for passengers to sleep in);

Visit Scotland means an executive non-departmental public body established under the Development of Tourism Act 1969 and having its principal office at Ocean Point One, 94 Ocean Drive, Edinburgh, EH6 6JH;

Website means such website as the Franchisee creates, Publishes and maintains for Passenger Services pursuant to paragraph 2.13 of Schedule 1.4 (*Passenger Facing Obligations*);

Weekday means any day other than a Saturday or Sunday or a Bank Holiday;

Weekend Peak has the meaning set out in paragraph 4.6 of Schedule 1.3 (*Additional Service Specifications*);

Wi-Fi means the provision of public internet access via an on train local area network using latest wireless communication technology;

Working Day in Schedule 7.3 (*SQUIRE*) and in the *SQUIRE* Service Schedules Agreement means any of Monday to Friday inclusive but shall not include a Scottish public holiday nor, when considering the passage of days since an inspection, a re-inspection or the issuing of any notice or report in respect of a Station pursuant to the provisions of Schedule 7.3, any day which is a local public holiday in the Local Authority area in which the relevant Station is located; and

Young Person's Railcard means a Discount Card issued under the Discount Fare Scheme referred to in paragraph 4.2 of the Appendix (*List of Transport, Travel and Other Schemes*) to Schedule 2.5 (*Transport, Travel and Other Schemes*).

4G Connectivity means the ability to connect to the internet by way of fourth generation mobile technology;

4. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of Scotland and the parties irrevocably agree to prorogate the exclusive jurisdiction of the Court of Session to settle any disputes which may arise out of or in connection with this Agreement, except as expressly set out in this Agreement or in the Franchise Agreement. The jurisdiction of the Sheriff Courts in Scotland is expressly excluded by the parties.

IN WITNESS whereof the parties hereto have executed this Agreement as follows:-

Signed for and on behalf of THE SCOTTISH MINISTERS

At

On the day of 2014

By

.....Name (printed)

before this witness:-

..... Witness

..... Full Name

..... Address

.....

Signed for and on behalf of ABELLIO SCOTRAIL LIMITED

At

On the day of 2014

By

..... Director

..... Name (Printed)

before this witness:-

..... Witness

..... Full Name

..... Address

.....

SCHEDULE

THIS IS THE SCHEDULE REFERRED TO IN THE
FOREGOING DEFINITIONS AGREEMENT
BETWEEN THE AUTHORITY AND ABELLIO SCOTRAIL LIMITED

.....

For Scottish Ministers

.....

For ABELLIO SCOTRAIL LIMITED

1. Aberdeen	36. Barassie	75. Carmyle
2. Aberdour	37. Bargeddie	76. Carnoustie
3. Achanalt	38. Barnhill	77. Carntyne
4. Achnasheen	39. Barrhead	78. Carrbridge
5. Achnashellach	40. Barrhill	79. Carstairs
6. Addiewell	41. Barry Links	80. Cartsdyke
7. Airbles	42. Bathgate	81. Cathcart
8. Airdrie	43. Bearsden	82. Charing Cross
9. Alexandra Parade	44. Beasdale	83. Chatelherault
10. Alexandria	45. Beauly	84. Clarkston
11. Alloa	46. Bellgrove	85. Cleland
12. Alness	47. Bellshill	86. Clydebank
13. Altnabreac	48. Bishopbriggs	87. Coatbridge Central
14. Anderston	49. Bishopton	88. Coatbridge Sunnyside
15. Annan	50. Blackridge	89. Coatdyke
16. Anniesland	51. Blair Atholl	90. Connel Ferry
17. Arbroath	52. Blairhill	91. Conon Bridge
18. Ardgay	53. Blantyre	92. Corkerhill
19. Ardlui	54. Bogston	93. Corpach
20. Ardrossan Harbour	55. Bowling	94. Corroul
21. Ardrossan S. Beach	56. Branchton	95. Cowdenbeath
22. Ardrossan Town	57. Breich	96. Craigendoran
23. Argyle Street	58. Bridge of Allan	97. Crianlarich
24. Arisaig	59. Bridge of Orchy	98. Croftfoot
25. Armadale (West Lothian)	60. Bridgeton	99. Crookston
26. Arrochar & Tarbet	61. Brora	100. Crosshill
27. Ashfield	62. Broughty Ferry	101. Crossmyloof
28. Attadale	63. Brunstane	102. Croy
29. Auchinleck	64. Burnside	103. Culrain
30. Aviemore	65. Burntisland	104. Cumbernauld
31. Ayr	66. Busby	105. Cupar
32. Baillieston	67. Caldercruix	106. Curriehill
33. Balloch	68. Cambuslang	107. Dalgety Bay
34. Balmossie	69. Camelon	108. Dalmally
35. Banavie	70. Cardenden	109. Dalmarnock
	71. Cardonald	110. Dalmeny
	72. Cardross	111. Dalmuir
	73. Carfin	
	74. Carluke	

112. Dalreoch	145. Fauldhouse	180. Helensburgh Upper
113. Dalry	146. Fearn	181. Helmsdale
114. Dalwhinnie	147. Forres	182. High Street
115. Dingwall	148. Forsinard	183. Hillfoot
116. Drem	149. Fort Matilda	184. Hillington East
117. Drumchapel	150. Fort William	185. Hillington West
118. Drumfrochar	151. Garelochhead	186. Holytown
119. Drumgelloch	152. Garrowhill	187. Howwood
120. Drumry	153. Garscadden	188. Huntly
121. Duirinish	154. Gartcosh	189. Hyndland
122. Duke Street	155. Garvel	190. IBM Halt
123. Dumbarton Central	156. Georgemas Junction	191. Inch
124. Dumbarton East	157. Giffnock	192. Invergordon
125. Dumbreck	158. Gilshochill	193. Invergowrie
126. Dumfries	159. Girvan	194. Inverkeithing
127. Dunblane	160. Glasgow Central Low Level	195. Inverkip
128. Duncraig	161. Glasgow Queen Street	196. Inverness
129. Dundee	162. Gleneagles	197. Invershin
130. Dunfermline Queen Margaret	163. Glenfinnan	198. Inverurie
131. Dunfermline Town	164. Glengarnock	199. Irvine
132. Dunkeld and Birnam	165. Glenrothes With Thornton	200. Johnstone
133. Dunlop	166. Golf Street	201. Jordanhill
134. Dunrobin Castle	167. Golspie	202. Keith
135. Dyce	168. Gourrock	203. Kelvindale
136. East Kilbride	169. Greenfaulds	204. Kennishead
137. Easterhouse	170. Greenock Central	205. Kildonan
138. Edinburgh Park	171. Greenock West	206. Kilmarnock
139. Elgin	172. Gretna Green	207. Kilmaurs
140. Exhibition Centre	173. Hairmyres	208. Kilpatrick
141. Fairlie	174. Hamilton Central	209. Kilwinning
142. Falkirk Grahamston	175. Hamilton West	210. Kinbrace
143. Falkirk High	176. Hartwood	211. Kinghorn
144. Falls of Cruachan	177. Hawkhead	212. King's Park
	178. Haymarket	213. Kingsknowe
	179. Helensburgh Central	214. Kingussie
		215. Kirkcaldy
		216. Kirkconnel
		217. Kirkhill

218. Kirknewton	255. Mosspark	289. Prestonpans
219. Kirkwood	256. Motherwell	290. Prestwick Town
220. Kyle of Lochalsh	257. Mount Florida	291. Priesthill & Darnley
221. Ladybank	258. Mount Vernon	292. Queens Park
222. Lairg	259. Muir of Ord	293. Rannoch
223. Lanark	260. Muirend	294. Renton
224. Langbank	261. Musselburgh	295. Rogart
225. Langside	262. Nairn	296. Rosyth
226. Larbert	263. Neilston	297. Roy Bridge
227. Largs	264. New Cumnock	298. Rutherglen
228. Larkhall	265. Newcraighall	299. Saltcoats
229. Laurencekirk	266. Newton	300. Sanquhar
230. Lenzie	267. Newtonmore	301. Scotscalder
231. Leuchars	268. Newton-on-Ayr	302. Scotstounhill
232. Linlithgow	269. Nitshill	303. Shawlands
233. Livingston North	270. North Berwick	304. Shettleston
234. Livingston South	271. North Queensferry	305. Shieldmuir
235. Loch Awe	272. Oban	306. Shotts
236. Loch Eil Outwardbound	273. Paisley Canal	307. Singer
237. Lochailort	274. Paisley Gilmour Street	308. Slateford
238. Locheilside	275. Paisley St James	309. South Gyle
239. Lockerbie	276. Partick	310. Spean Bridge
240. Lochgelly	277. Patterton	311. Springburn
241. Lochluichart	278. Perth	312. Springfield
242. Lochwinnoch	279. Pitlochry	313. Stepps
243. Longniddry	280. Plockton	314. Stevenston
244. Mallaig	281. Pollokshaws East	315. Stewarton
245. Markinch	282. Pollokshaws West	316. Stirling
246. Maryhill	283. Pollokshields East	317. Stonehaven
247. Maxwell Park	284. Pollokshields West	318. Stranraer
248. Maybole	285. Polmont	319. Strathcarron
249. Merryton	286. Port Glasgow	320. Stromeferry
250. Milliken Park	287. Portlethen	321. Summerston
251. Milngavie	288. Possilpark & Parkhouse	322. Tain
252. Monifieth		323. Taynult
253. Montrose		324. Thornliebank
254. Morar		325. Thorntonhall
		326. Thurso

- 327. Troon
- 328. Tulloch
- 329. Tyndrum Lower
- 330. Uddingston
- 331. Uphall
- 332. Upper Tyndrum
- 333. Wallyford
- 334. Wemyss Bay
- 335. West Calder
- 336. West Kilbride
- 337. Wester Hailes
- 338. Westerton
- 339. Whifflet
- 340. Whinhill
- 341. Whitecraigs
- 342. Wick
- 343. Williamwood
- 344. Wishaw
- 345. Woodhall
- 346. Yoker