

THE SCOTTISH MINISTERS
and
SERCO CALEDONIAN SLEEPERS LIMITED

CALEDONIAN SLEEPER FRANCHISE AGREEMENT

[REDACTED FORM FOR PUBLICATION]

TABLE OF CONTENTS

1. Interpretation and Definitions	1
2. Commencement	2
3. Term	3
4. Franchisee's Obligations	3
5. Unjustified Enrichment	4
6. Arm's Length Dealings	4
7. Compliance with Laws	4
8. Entire Agreement	4
9. Governing Law	5
SCHEDULE 1	6
PASSENGER SERVICE OBLIGATIONS	6
SCHEDULE 1.1	7
SERVICE DEVELOPMENT	7
APPENDIX 1 TO SCHEDULE 1.1	18
INITIAL SERVICE LEVEL COMMITMENT	18
APPENDIX 2 TO SCHEDULE 1.1	23
THE TRAIN FLEET	23
APPENDIX 3 TO SCHEDULE 1.1	28
SERVICE DEVELOPMENT ADDITIONAL FACTORS	28
SCHEDULE 1.2	30
OPERATING OBLIGATIONS	30
SCHEDULE 1.3	43
ADDITIONAL SERVICE SPECIFICATIONS	43
SCHEDULE 1.4	47
PASSENGER FACING OBLIGATIONS	47
APPENDIX 1 TO SCHEDULE 1.4	62
FORM OF PASSENGER'S CHARTER	62
APPENDIX 2 TO SCHEDULE 1.4	63
ALTERNATIVE TRANSPORT AND WEBSITE STATIONS ACCESSIBILITY INFORMATION	63
SCHEDULE 1.5	65
INFORMATION ABOUT PASSENGERS	65
SCHEDULE 1.6	70
COMMITTED OBLIGATIONS	70
PART 1	70
FRANCHISEE'S COMMITTED OBLIGATIONS	70
PART 2	98
MISCELLANEOUS PROVISIONS	98

PART 3	.....	101
LATE/NON-COMPLETION OF COMMITTED OBLIGATIONS	.....	101
APPENDIX 1 TO SCHEDULE 1.6	.....	126
CAPITAL EXPENDITURE TABLE	.....	126
SCHEDULE 1.7	.....	127
FRANCHISE SERVICES	.....	127
SCHEDULE 1.8	.....	131
PART 1	.....	131
MAJOR PROJECTS	.....	131
PART 2	.....	133
MAJOR SCOTTISH PROJECTS	.....	133
SCHEDULE 2	.....	134
ASSETS, LEASES, THIRD PARTIES, OTHER FRANCHISE OPERATIONS AND SCHEMES	.....	134
SCHEDULE 2.1	.....	135
PROPERTY LEASES	.....	135
SCHEDULE 2.2	.....	136
SECURITY OF ACCESS ASSETS, ROLLING STOCK LEASES, STATION AND DEPOT LEASES	.....	136
SCHEDULE 2.3	.....	141
THIRD PARTY DELIVERY OF PASSENGER SERVICES AND OTHER FRANCHISEES	.....	141
SCHEDULE 2.4	.....	143
OTHER FRANCHISE OPERATIONS	.....	143
SCHEDULE 2.5	.....	145
TRANSPORT, TRAVEL AND OTHER SCHEMES	.....	145
APPENDIX TO SCHEDULE 2.5	.....	152
LIST OF TRANSPORT, TRAVEL AND OTHER SCHEMES	.....	152
SCHEDULE 3	.....	156
PRICED OPTIONS		
SCHEDULE 4	.....	156
MAINTAINING AND ENHANCING STATIONS AREAS, DEPOTS AREAS AND TRAINS	.....	157
SCHEDULE 4.1	.....	158
FRANCHISE FACILITIES	.....	158
APPENDIX TO SCHEDULE 4.1	.....	164
STATION AREA SURVEYS	.....	164
SCHEDULE 4.2	.....	165
PERSONS WITH DISABILITIES AND DISABILITY DISCRIMINATION	.....	165
APPENDIX TO SCHEDULE 4.2	.....	170
MINOR WORKS	.....	170
SCHEDULE 5	.....	172
FARES	.....	172
SCHEDULE 5.1	.....	173

FARES ON THE FRANCHISE SERVICES	173
SCHEDULE 5.2	175
FRANCHISEE'S FARES STRUCTURE	175
SCHEDULE 5.3	180
FARES INFORMATION AND MONITORING	180
SCHEDULE 6	181
ROLLING STOCK AND STATION ENHANCEMENTS.....	181
SCHEDULE 6.1	182
ROLLING STOCK	182
Appendix 1 to Schedule 6.1.....	190
COACH LAYOUTS.....	190
Appendix 2 to Schedule 6.1.....	195
PROJECT PLAN	195
Schedule 6.1A.....	196
NEW FLEET OUTPUT SPECIFICATION	196
Schedule 6.1B.....	237
MAINTENANCE OF THE TRAIN FLEET.....	237
SCHEDULE 6.2.....	246
STATIONS ENHANCEMENTS.....	246
SCHEDULE 6.3.....	264
PASSENGER EXPERIENCE AND MARKETING.....	264
Part 1 - PASSENGER EXPERIENCE.....	264
Part 2 - MARKETING	272
SCHEDULE 7.....	275
Benchmarks, KPIs, and SQUIRE.....	275
SCHEDULE 7.1	276
BENCHMARKS	276
APPENDIX 1 TO SCHEDULE 7.1.....	279
RIGHT TIME BENCHMARK TABLE	279
APPENDIX 2 TO SCHEDULE 7.1.....	280
CONSTRUCTION AND SYSTEMS	280
PART 1 — CONSTRUCTION	280
PART 2 – SYSTEMS	280
SCHEDULE 7.2	283
KPIs	283
APPENDIX TO SCHEDULE 7.2	285
PART 1 - PATRONAGE FORECAST AND PASSENGER SATISFACTION TABLES	285
PART 2 – PASSENGER SATISFACTION TABLE	286
SCHEDULE 7.3	287
SQUIRE	287

APPENDIX A TO SCHEDULE 7.3 –	301
ESCALATION PROCEDURE	301
APPENDIX B TO SCHEDULE 7.3	302
MYSTERY SHOPPER TARGET SCORES	302
SCHEDULE 8	306
PAYMENTS	306
SCHEDULE 8.1	307
FRANCHISE PAYMENTS	307
APPENDIX TO SCHEDULE 8.1	314
COMPONENTS OF DFR	314
SCHEDULE 8.2	315
ANNUAL FRANCHISE PAYMENTS	315
APPENDIX TO SCHEDULE 8.2	316
FIGURES FOR CALCULATION OF ANNUAL FRANCHISE PAYMENTS	316
SCHEDULE 8.3	317
MISCELLANEOUS PAYMENT PROVISIONS	317
SCHEDULE 8.4	318
TRACK ACCESS ADJUSTMENTS AND STATION CHARGE ADJUSTMENTS	318
SCHEDULE 8.5	322
CAPITAL PAYMENTS	322
SCHEDULE 8.6	323
THE INVESTMENT FUND	323
SCHEDULE 9	326
CHANGES	326
SCHEDULE 9.1	327
VARIATIONS AND FINANCIAL CONSEQUENCES OF CHANGE	327
SCHEDULE 9.2	333
REVISED INPUTS: IDENTITY OF THE FINANCIAL MODEL ETC.	333
SCHEDULE 9.3	335
RUNS OF THE FINANCIAL MODEL	335
APPENDIX TO SCHEDULE 9.3	342
INCENTIVISING LONG-TERM INVESTMENT	342
SCHEDULE 9.4	344
AUTHORITY RISK ASSUMPTIONS	344
SCHEDULE 10	345
REMEDIES, TERMINATION AND EXPIRY	345
SCHEDULE 10.1	346
REMEDIAL PLANS AND REMEDIAL AGREEMENTS	346
SCHEDULE 10.2	348

TERMINATION AND EXPIRY	348
SCHEDULE 10.3	350
EVENTS OF DEFAULT AND TERMINATION EVENT	350
SCHEDULE 10.4	355
FORCE MAJEURE	355
SCHEDULE 10.5	359
LIABILITY	359
SCHEDULE 11	361
AGREEMENT AND SERVICE DELIVERY MANAGEMENT PROVISIONS	361
SCHEDULE 12	369
FINANCIAL OBLIGATIONS AND UNDERTAKINGS	369
APPENDIX TO SCHEDULE 12	374
FORM OF PERFORMANCE BOND	374
SCHEDULE 13	380
FRANCHISE MANAGEMENT AND INFORMATION OBLIGATIONS	380
SCHEDULE 13.1	381
FRANCHISE MANAGEMENT	381
SCHEDULE 13.2	387
INFORMATION	387
APPENDIX 1 TO SCHEDULE 13.2	397
EFFICIENT FRANCHISEE	397
APPENDIX 2 TO SCHEDULE 13.2	402
KEY ASSETS	402
APPENDIX 3 TO SCHEDULE 13.2	403
OPERATIONAL INFORMATION	403
APPENDIX 4 TO SCHEDULE 13.2	408
PASSENGER JOURNEYS, MILES AND EARNINGS INFORMATION	408
SCHEDULE 13.3	410
Co-operation	410
SCHEDULE 13.4	413
Staff Obligations	413
SCHEDULE 13.5	416
Safety and Personal Security	416
SCHEDULE 13.6	417
Integration	417
SCHEDULE 13.7	419
Related Parties and Open Book Accounting	419
APPENDIX TO SCHEDULE 13.7	421
Related Party Contracts	421
SCHEDULE 14	423
Preservation of Assets	423
SCHEDULE 14.1	424

MAINTENANCE OF FRANCHISE	424
SCHEDULE 14.2	425
MAINTENANCE OF OPERATING ASSETS	425
APPENDIX TO SCHEDULE 14.2	431
MARKS	431
SCHEDULE 14.3	432
KEY CONTRACTS	432
APPENDIX TO SCHEDULE 14.3	435
LIST OF KEY CONTRACTS	435
SCHEDULE 14.4	436
DESIGNATION OF FRANCHISE ASSETS	436
APPENDIX TO SCHEDULE 14.4	440
LIST OF PRIMARY FRANCHISE ASSETS	440
SCHEDULE 14.5	441
DEALING WITH FRANCHISE ASSETS	441
SCHEDULE 15	443
OBLIGATIONS ASSOCIATED WITH TERMINATION	443
SCHEDULE 15.1	444
RELETTING PROVISIONS	444
SCHEDULE 15.2	449
LAST 12 OR 13 MONTHS OF FRANCHISE PERIOD	449
SCHEDULE 15.3	454
HANOVER PACKAGE	454
APPENDIX TO SCHEDULE 15.3	456
FORM OF HANOVER PACKAGE	456
SCHEDULE 15.4	457
PROVISIONS APPLYING ON AND AFTER TERMINATION	457
APPENDIX 1 TO SCHEDULE 15.4	462
FORM OF TRANSFER SCHEME	462
APPENDIX 2 TO SCHEDULE 15.4	466
FORM OF SUPPLEMENTAL AGREEMENT	466
SCHEDULE 16	480
PENSIONS	480
SCHEDULE 17	484
CONFIDENTIALITY, FOISA AND DATA PROTECTION	484
SCHEDULE 18	490
FRANCHISE TERM MODIFICATION	490
SCHEDULE 19	491
OTHER PROVISIONS	491

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 Executive as they may from time to time nominate (who and whose successors are referred to as the **Authority**); and

(2) **SERCO CALEDONIAN SLEEPERS LIMITED**, whose registered number is SC477821 and registered office is at Collins House, Rutland Square, Edinburgh EH1 2AA (the **Franchisee**).

WHEREAS

(A) The Authority wish to appoint a franchisee to provide railway passenger services within the Caledonian Sleeper Franchise and expect their franchisee, on the terms of this Agreement, actively to seek, in all reasonable business ways to deliver the policy objectives referred to in recital (C).

(B) The Franchisee wishes to be appointed as the Authority's franchisee for the Caledonian Sleeper Franchise and intends, on the terms of this Agreement, actively to seek, in all reasonable business ways, to deliver the policy objectives referred to in recital (C).

(C) The policy of objectives of the Franchise Agreement are for Franchise Services to:-

- deliver a compelling product improvement to provide transformed passenger experience;
- combine step-change quality enhancements with improved marketing and retailing to grow patronage on Passenger Services;
- achieve an internationally renowned service that is emblematic of the best of Scotland, shown by strong brand awareness in Britain and among international visitors;
- improve station facilities where the Passenger Services call in Scotland;
- support efficient integrated onward connections by all modes of transport; and
- manage the business and investment to deliver better value for the Authority and/or customers in terms of the benefits achieved through the Franchise Payments.

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

1. Interpretation and Definitions

1.1. In this Agreement:

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

Definitions Agreement means the agreement between the Authority and the Franchisee executed of even date herewith relating to the interpretation of this Agreement, the Conditions Precedent Agreement and the SQUIRE Service Schedules Agreement.

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

- 1.2. This Agreement, the Conditions Precedent Agreement, the Definitions 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 the Definitions Agreement.
- 1.3. The Schedules and Appendices to this Agreement form part of this Agreement.

2. Commencement

- 2.1. The clauses of this Agreement and the provisions listed in clauses 2.1(a) to 2.1(u) inclusive shall take effect and be binding upon each of the parties immediately upon signature of this Agreement:-
 - (a) Schedule 1.1 (*Service Development*);
 - (b) paragraph 7.3 of Schedule 1.4 (*Passenger Facing Obligations*);
 - (c) Schedule 1.6 (*Committed Obligations*);
 - (d) paragraph 2 of Schedule 2.2 (*Security of Access Assets, Rolling Stock Leases, and Station Leases*);
 - (e) paragraph 2 of Schedule 2.3 (*Third Party Delivery of Passenger Services and Other Franchisees*);
 - (f) not used
 - (g) paragraphs 1 and 2 of Schedule 4.1 (Franchise Facilities);
 - (h) Schedule 5 (*Fares*);
 - (i) Schedule 6 (*Rolling Stock and Station Enhancements*);
 - (j) Schedule 9 (*Changes*);
 - (k) Schedule 10 (*Remedies, Termination and Expiry*);
 - (l) paragraphs 1 to 3 (inclusive) of Schedule 11 (*Agreement and Service Delivery Management Provisions*);
 - (m) paragraphs 1 and 5 of Schedule 12 (*Financial Obligations and Undertakings*);
 - (n) Schedule 13.1 (*Franchise Management*);
 - (o) paragraphs 1, 2, 5, 6, 7, 8, 9 and 10 of Schedule 13.2 (*Information*);
 - (p) Schedule 13.3 (*Co-operation*);

- (q) paragraph 8 of Schedule 13.4 (*Staff Obligations*);
- (r) Schedule 13.7 (*Related Parties and Open Book Accounting*);
- (s) Schedule 14.3 (*Key Contracts*);
- (t) Schedule 17 (*Confidentiality, FOISA and Data Protection*); and
- (u) Schedule 19 (*Other Provisions*).

2.2. The other provisions of this Agreement shall subject to the terms of the Conditions Precedent Agreement take effect and become binding upon the parties on the Franchise Commencement Date.

3. Term

- 3.1. This Agreement shall terminate on the Expiry Date or on the date of any earlier termination pursuant to:-
 - 3.1.1. Clauses 2.2(b)(ii), 2.2(c)(ii) and 2.3(a) of the Conditions Precedent Agreement; or
 - 3.1.2. Schedule 10 (*Remedies, Termination and Expiry*).

4. Franchisee's Obligations

- 4.1. The Franchisee shall perform its obligations under this Agreement in accordance with their terms and with that degree of skill, diligence, prudence and foresight which would be exercised by a skilled and experienced Train Operator of the Caledonian Sleeper Franchise.
- 4.2. Any obligation on the part of the Franchisee to use all reasonable endeavours shall extend to consequent obligations adequately to plan and resource its activities, and to implement those plans and resources, with all due efficiency and economy.
- 4.3. The Franchisee shall co-operate with the Authority and act reasonably and in good faith in and about the performance of its obligations and the exercise of its rights pursuant to this Agreement in the interests of the passenger and the sustainable and economic and social development of Scotland through the provision of passenger rail services. In this regard, "sustainable" shall include the meaning of that term when applied in environmental, social and economic contexts.
- 4.4. The Franchisee acknowledges that the Authority's stated policy objectives for the Franchise Agreement are for Franchise Services to:-
 - deliver a compelling product improvement to provide transformed passenger experience;
 - combine step-change quality enhancements with improved marketing and retailing to grow patronage on Passenger Services;
 - achieve an internationally renowned service that is emblematic of the best of Scotland, shown by strong brand awareness in Britain and among international visitors;
 - improve station facilities where Passenger Services call in Scotland;

- support efficient integrated onward connections by all modes of transport; and
- manage the business and investment to deliver better value for the Authority and/or customers in terms of the benefits achieved through Franchise Payments.

4.5. Notwithstanding encouragement whether explicit or implicit in the Franchise Agreement or otherwise for the Franchisee to enter into alliancing arrangements with Network Rail or any other party, the existence of any alliance shall (save as expressly stated in the Franchise Agreement) not provide the Franchisee with any relief from any obligation upon the Franchisee in the Franchise Agreement.

5. Unjustified Enrichment

The Franchisee shall indemnify the Authority against the consequences of any unjustified enrichment that the Franchisee may benefit from due to the application of railway industry regimes (including but not limited to, minutes allocation provisions) or otherwise.

6. Arm's Length Dealings

The Franchisee shall ensure that every contract or other arrangement or transaction to which it may become party in connection with this Agreement with any person is on bona fide arm's length terms.

7. Compliance with Laws

The Franchisee shall at all times during the Franchise Term perform the Franchise Services and all its other obligations under this Agreement in accordance with all applicable Laws.

8. Entire Agreement

8.1. This Agreement, the Definitions Agreement, the Conditions Precedent Agreement and the SQUIRE Service Schedules Agreement comprise the entire agreement between the parties in relation to the subject matter of this Agreement and supersede all prior agreements and arrangements among or between the parties other than any confidentiality agreements or undertakings which the Franchisee may have entered into with the Authority in connection with its proposal to secure the provision of the Passenger Services under this Agreement.

8.2. The Franchisee hereby acknowledges that it is not entering into this Agreement in reliance on any warranties, representations or undertakings howsoever or to whomsoever made except in so far as such are

- (a) contained in this Agreement; or
- (b) embodied in any warranties, representations or undertakings contained in the long form report provided by the Reporting Accountants in respect of the Caledonian Sleeper Franchise dated 12 August 2013.

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

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

9. 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. The jurisdiction of the Sheriff Courts in Scotland is expressly excluded by the parties.

IN WITNESS whereof the parties hereto have executed this Agreement (which includes the 19 Schedules and various appendices) as follows:-

SIGNED for and on behalf of THE SCOTTISH MINISTERS

At

On the day of May 2014

By

.....Name (printed)

Before this witness:-

..... Witness

..... Full Name

..... Address

..... Signed for and on behalf of **SERCO CALEDONIAN SLEEPERS LIMITED**

At

On the day of May 2014

By

..... Director

..... Name (Printed)

Before this witness:-

..... Witness

..... Name

..... Address

SCHEDULE 1

**THIS IS SCHEDULE 1 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT
BETWEEN THE AUTHORITY AND SERCO CALEDONIAN SLEEPERS LIMITED**

Passenger Service Obligations

Schedule 1.1:	Service Development
	Appendix 1: Initial Service Level Commitment
	Appendix 2: The Train Fleet
	Appendix 3: Service Development Additional Factors
Schedule 1.2:	Operating Obligations
Schedule 1.3:	Additional Service Specifications
Schedule 1.4:	Passenger Facing Obligations
	Appendix 1: Form of Passenger's Charter
	Appendix 2: Alternative Transport and Website Stations Accessibility Information
Schedule 1.5:	Information about Passengers
	Appendix: Survey Methodology
Schedule 1.6	Committed Obligations
	Part 1 – Franchisee's Committed Obligations
	Part 2 – Miscellaneous Provisions
	Part 3 – Late/Non-Completion of Committed Obligations
	Appendix 1: Capital Expenditure Table
Schedule 1.7:	Franchise Services
Schedule 1.8	Part 1 – Major Projects
	Part 2 – Major Scottish Projects

SCHEDULE 1.1

THIS IS SCHEDULE 1.1 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT BETWEEN THE AUTHORITY AND SERCO CALEDONIAN SLEEPERS LIMITED

Service Development

1. Service Level Commitment – Purpose and Responsibility

- 1.1. A Service Level Commitment is the means by which the Authority specifies the level, frequency, maximum journey times and stopping patterns of the railway passenger services that the Franchisee is to:
 - (a) seek Train Slots for from Network Rail; and
 - (b) operate pursuant to the Timetable issued by Network Rail at the end of its timetable development process.
- 1.2. The Service Level Commitment as at the date of this Agreement forms Appendix 1 (*Initial Service Level Commitment*) to this Schedule 1.1.
- 1.3. The Authority shall, for Service Level Commitments subsequent to that in place as at the date of this Agreement, issue a document specifying any items to be added or items to be removed from the Service Level Commitment for each timetable development process of Network Rail during the Franchise Term.
- 1.4. A Service Level Commitment may be expressed in whole or in part at any level of generality or to any level of detail the Authority considers appropriate.
- 1.5. A Service Level Commitment developed in accordance with this Schedule 1.1 may include journeys along routes which the Franchisee may not have permission to use at the Franchise Commencement Date and/or along new parts of the network.
- 1.6. A Service Level Commitment may specify capacity for any railway passenger services in the Service Level Commitment.
- 1.7. The Authority may make Service Level Commitment adjustment proposals to improve efficiency of journey times and/or performance criteria and/or to better match capacity to demand.
- 1.8. The Franchisee agrees to co-operate with the Authority to develop the Service Level Commitment in accordance with this Schedule 1.1.

2. Train Plan – Purpose and Responsibility

- 2.1. A Train Plan is the means by which the Franchisee expresses its proposed allocation of the Passenger Carrying Capacity of the Train Fleet to meet passenger demand for the railway passenger services it is to operate.
- 2.2. The Franchisee shall submit to the Authority a Train Plan in respect of the Service Level Commitment and, subsequently, in respect of each Timetable in accordance with this Schedule 1.1.
- 2.3. In preparing a Train Plan in respect of a Service Level Commitment, the Franchisee shall do so by reference to the timetable that it envisages operating in order to comply with that Service Level Commitment.

- 2.4. The Train Plan for the Timetable as at the Franchise Commencement Date is to be delivered to the Authority prior to the Franchise Commencement Date. The Authority accept that this Train Plan may not contain the information referred to in paragraph 2.5(f) to (g). If that is the case, the Franchisee shall within 6 months of the Franchise Commencement Date update the Train Plan so that it contains all of the information required by such Agreement. The Franchisee shall keep the Authority advised as regards this updating and shall promptly supply the Authority with a copy of both any interim drafts of the Train Plan and the updated Train Plan.
- 2.5. Each Train Plan is to set out for each railway passenger service in the Timetable to which it relates:
 - (a) its start point and departure time;
 - (b) its terminating point and arrival time;
 - (c) the class of rolling stock vehicles that the allocated train is to have;
 - (d) the Passenger Carrying Capacity (split between seating accommodation, single berth cabins, two berth cabins, accessible cabins and other sleeping accommodation as set out in Table 1 of Appendix 2 (*The Train Fleet*) until the New Train Fleet Service Date and thereafter as set out in Table 1 of Schedule 6.1 (*Rolling Stock*)) that the allocated train, as formed, is to have;
 - (e) the planned formation of all trains (including details of lounge cars and catering facilities and luggage, bicycles and goods capacity) and points of splitting or joining of formations);
 - (f) traction provision;
 - (g) its Actual Passenger Demand most recently determined in accordance with Schedule 1.5 (*Information about Passengers*); and
 - (h) its Forecast Passenger Demand.
- 2.6. A Train Plan shall be in any format that the Authority may reasonably specify for this purpose.
- 2.7. In the event of the Franchisee proposing seasonal variations to train formations or capacities, such variations shall be detailed in the Train Plan.

3. Train Fleet

- 3.1. The Franchisee's Train Fleet as at the Franchise Commencement Date is as set out in Appendix 2 (*The Train Fleet*).
- 3.2. The Franchisee shall comply with its obligations under:
 - (a) paragraph 3 of Appendix 2 (*The Train Fleet*) to this Schedule 1.1 concerning changes to the composition and characteristics of the Train Fleet; and
 - (b) paragraph 2 of Schedule 2.2 (*Security of Access Assets, Rolling Stock Leases, and Station Leases*) with respect to the Train Fleet.
- 3.3. The Franchisee shall maintain the composition of the Train Fleet during the Franchise Term, unless the Authority otherwise agrees, such that there are no changes to the Train Fleet, including changes:

- (a) to the classes or types;
- (b) to the interior configurations that change the balance of berth to seats and/or facilities outwith the available minimum requirements set out in Schedule 6.1 (including equipment or facilities present and available for use as set out in Schedule 6.1 (*Rolling Stock*)); or
- (c) which may reduce the journey time capabilities

of any rolling stock vehicles specified in the Train Fleet.

3.4. During the Franchise Term, the Franchisee shall advise the Authority of any rolling stock vehicles comprising the Train Fleet damaged beyond economic repair or likely to be unavailable for service for a period of 3 consecutive Reporting Periods or more. The Franchisee shall, pending the return to service of the same, provide the Authority with an update at least once per Reporting Period (or at such other frequency as the Authority may specify) on the anticipated return to service date of any vehicle reported as likely to be unavailable for service for a period of 3 consecutive Reporting Periods or more

3.5. If any change is made to the Train Fleet in accordance with this paragraph 3 the Authority may, after consulting the Franchisee, notify the Franchisee of the Passenger Carrying Capacity of any rolling stock vehicles or class of rolling stock vehicles comprising the Train Fleet following such change.

3.6. The Franchisee shall procure that the rolling stock vehicles specified in the Tables set out in Appendix 2 (*The Train Fleet*), with the capacity and other characteristics referred to therein, are available for deployment in the provision of the Passenger Services during the periods referred to therein and thereafter in substitution therefor the Franchisee shall procure that the rolling stock vehicles specified in Tables 1 and 2 set out in paragraphs 1 and 2 of Schedule 6.1 (*Rolling Stock*), with the capacity and other characteristics referred to therein, are available for deployment in the provision of the Passenger Services.

3.7. The Franchisee shall procure traction for the Train Fleet and the refuelling of locomotives.

4. Procedure

4.1. The parties agree that the effective operation of the provisions of this Schedule 1.1, and of provisions addressing the same or similar matters in other franchise agreements, will require certain procedural arrangements and timescales to be followed to a common timescale by the Authority, the Franchisee and others. The parties agree that such procedural arrangements may need to be modified to reflect changes to railway industry processes. The parties further agree that the procedural arrangements applicable to this franchise may require to be different from those applicable to other franchises.

4.2. The Franchisee agrees that the Authority may stipulate any reasonable procedural arrangements and timescales that are to be followed by the Authority and the Franchisee for these purposes (which shall be consistent with any relevant standard railway industry processes for timetable development) and that the Authority may amend any such stipulation.

4.3. The Authority agrees to consult the Franchisee prior to stipulating or amending any such procedural arrangements and timescales in accordance with paragraph 4.2.

4.4. Any stipulation by the Authority pursuant to paragraph 4.2:

- (a) shall be at the reasonable discretion of the Authority;
- (b) may contain procedural arrangements and timescales to be followed by the Franchisee in relation to other changes to the Franchise Services (pursuant to paragraph 1 of Schedule 9.1 (*Variations and Financial Consequences of Change*) in conjunction with a Service Level Commitment; and
- (c) may provide for iterations of drafts of any Service Level Commitment, Train Plan or Timetable and for indicative Runs of the Financial Model in relation thereto.

4.5. Any procedural arrangements and timescales stipulated by the Authority pursuant to paragraph 4.2 shall have contractual effect between the Franchisee and the Authority in accordance with the terms of such stipulation.

5. Franchisee's Service Development Opinions

5.1. As and when required pursuant to any procedural arrangements stipulated by the Authority pursuant to paragraph 4.2 and in any event no later than 15 months in advance of each Passenger Change Date the Franchisee shall provide to the Authority:

- (a) its informed estimate of Forecast Passenger Demand in such format and to such level of disaggregation as the Authority may reasonably require in order to assist the Authority's decision making on future service level commitments, infrastructure, station and rolling stock, vehicle investment and the best use of the network.
- (b) its informed opinion as to any changes to the current Service Level Commitment which:
 - (i) should be made in order to deliver an optimal range of railway passenger service patterns relative to Target Passenger Demand; and
 - (ii) could be implemented and operated without additional resources and/or an adjustment to the Franchise Payments;
- (c) its informed opinion as to any changes to the current Service Level Commitment which:
 - (i) would deliver an optimal range of railway passenger service patterns in accordance with paragraph 5.1(b)(i); and
 - (ii) could only be implemented and operated with additional resources and/or an adjustment to the Franchise Payments, together with an explanation as to:-
 - (A) what additional resources and/or adjustments are necessary to make such changes; and
 - (B) why such additional resources and/or adjustments are necessary;
- (d) a draft of the Train Plan that it considers that each set of proposed changes to the Service Level Commitment would require.

5.2. The Franchisee shall provide its opinion as to Service Level Commitment changes and prepare its draft Train Plan with due regard to:

- (a) any Route Utilisation Strategy, and any other Strategy published by the Authority;
- (b) the additional factors set out in Appendix 3 (*Service Development Additional Factors*);
- (c) any other constraints or considerations (including affordability constraints and value for money considerations) that the Authority has notified to it.

5.3. The Franchisee shall prepare its Train Plan so as to operate the entire Train Fleet in delivering Passenger Services, save for any reasonable planning requirements for:

- (a) rolling stock vehicles to be out of service due to planned maintenance requirements, Mandatory Modifications or any other reasons agreed with the Authority, (such agreement not to be unreasonably withheld); or
- (b) those out of service due to unplanned maintenance or repair requirements; and/or
- (c) the allocation (if any) of spare or reserve rolling stock.

In any event, the Franchisee shall plan during each day of the Timetable to operate the Train Fleet to satisfy the Fleet Availability Requirement.

5.4. The Franchisee shall use all reasonable endeavours to ensure that its allocation of spare and reserve rolling stock is the most efficient that can reasonably be achieved taking account of all the Passenger Services.

5.5. The Franchisee shall also, in preparing its Train Plan, unless the Authority otherwise agrees, use all reasonable endeavours to:

- (a) provide for Passenger Carrying Capacity on each Passenger Service that meets as a minimum the Target Passenger Demand;
- (b) provide for the Passenger Carrying Capacity (if any) specified for each Passenger Service in a Service Level Commitment; and
- (c) provide for reallocation of Passenger Carrying Capacity to serve Special Events, as agreed with the Authority.

5.6. If, at the time it prepares its Train Plan, having exercised all reasonable endeavours, the Franchisee is unable to prepare a Train Plan having the Passenger Carrying Capacity and meeting the reasonable expectations referred to in paragraph 5.5, then the Train Plan shall specify the best allocation of rolling stock vehicles to Passenger Services that is reasonably practicable with a view to:

- (a) minimising, so far as possible, the amount by which Target Passenger Demand exceeds the provision of Passenger Carrying Capacity on the affected Passenger Services;
- (b) ensuring, so far as possible, that such excess is not unduly concentrated on any particular Route or Passenger Service;

- (c) ensuring, so far as possible, that the Passenger Carrying Capacity specified for each Passenger Service in a Service Level Commitment is provided.

Providing that any Train Plan which does not plan to meet the Fleet Availability Requirement shall not constitute a Train Plan in respect of which the Franchisee shall be said to have exercised all reasonable endeavours in terms of this paragraph.

- 5.7 Where paragraph 5.6 applies, the Franchisee shall propose to the Authority for its consideration and comment:

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

that it considers would most efficiently address the shortfall in Passenger Carrying Capacity and meet Target Passenger Demand.

6. Draft Service Level Commitment

As and when required pursuant to any procedural arrangements stipulated by the Authority pursuant to paragraph 4.2 and in any event no later than 15 months in advance of each Passenger Change Date:-

- 6.1. the Authority shall provide to the Franchisee:

- (a) its draft Service Level Commitment;
- (b) its opinion on any changes that the Authority reasonably considers are required to the Train Plan for such Train Plan:
 - (i) to satisfy the capacity requirements referred to in paragraph 5.5 (a), (b) and (c); or
 - (ii) to satisfy the capacity requirements referred to in paragraphs 5.6 (a) to (c) inclusive and 5.7 if the Authority reasonably considers that the capacity requirements referred to in paragraph 5.5 (a), (b) and (c) cannot be met.

- 6.2. the Franchisee shall provide to the Authority for the Authority's approval, such approval not to be unreasonably withheld, details of any amendments it proposes to the Service Level Commitment that the Franchisee considers would most efficiently address the shortfall in Passenger Carrying Capacity and meet Target Passenger Demand.

7. Indicative Timetable and Consultation

- 7.1. If and to the extent that the Franchisee reasonably considers that any Service Level Commitment issued by the Authority pursuant to this Schedule 1.1 contains insufficient information to enable it to perform its obligations under this Schedule 1.1, it shall promptly notify the Authority and the Authority shall provide such further information as is reasonably required.
- 7.2. The Franchisee shall, as and when required pursuant to any procedural arrangements stipulated by the Authority pursuant to paragraph 4.2 provide the Authority with a summary (in such form as the Authority may specify) of any material changes that it would expect there to be to the Passenger Services from

the current Timetable if both the Authority's draft Service Level Commitment and the Franchisee's proposed Train Plan were to be implemented.

7.3. Notwithstanding any consultation the Authority might undertake in respect of any draft Service Level Commitment issued pursuant to paragraph 6, the Franchisee shall:

(a) as soon as reasonably practicable after:

- (i) first providing a summary to the Authority pursuant to paragraph 7.2, give all Stakeholders notice and consult them in respect of the changes to the Passenger Services specified in such summary; and
- (ii) sending or receiving any correspondence in respect of such notice or consultation, provide the Authority with copies of such correspondence;

take due and timeous account of Stakeholders' views that are submitted to the Franchisee in accordance with the procedural stipulations pursuant to paragraph 4.2, the guidance referred to in paragraph 7.3(c) and the Franchisee's delivery plan for Stakeholder consultation;

(b) promptly inform the Authority of any material changes that it would expect there to be to such draft Service Level Commitment if the views of Stakeholders were accommodated in such draft Service Level Commitment; and

(c) comply timeously with such reasonable requirements and guidance as the Authority may notify to the Franchisee from time to time in respect of giving notice to and consulting Stakeholders in accordance with this paragraph 7.3.

8. Service Level Commitment

8.1. The Authority shall, in accordance with any procedural arrangements stipulated by the Authority pursuant to paragraph 4.2, issue to the Franchisee the Service Level Commitment that it requires the Franchisee to operate.

8.2. Any requirement for the Authority to issue a draft or final Service Level Commitment may be satisfied by it issuing a draft or final statement of how the existing Service Level Commitment is to be changed.

8.3. References in this Schedule 1.1 and in Schedule 1.2 (*Operating Obligations*) to a draft or final Service Level Commitment include a draft or final statement of how the existing Service Level Commitment is to be changed.

9. Timetable Development Rights

9.1. The Franchisee shall:

- (a) use all reasonable endeavours to amend and/or enter into such Access Agreements as may be necessary or desirable from time to time to obtain the timetable development rights that it requires to secure a Timetable that enables it to operate railway passenger services that comply with the Service Level Commitment; and
- (b) if requested by the Authority surrender any Timetable Development Rights that the Authority considers the Franchisee no longer requires.

9.2. The Franchisee shall exercise its Timetable Development Rights so as to secure a Timetable that enables it to operate railway passenger services that comply with the Service Level Commitment in accordance with its obligations under paragraph 11. In that regard:-

9.2.1. Any specification of railway passenger services in the Service Level Commitment shall (unless the Authority states to the contrary) be regarded as relating to how those services are to be provided for in the National Rail Timetable that Network Rail publishes for passengers, and not how they are to be provided for in the working timetable that Network Rail issues to industry parties at the conclusion of its timetable development process.

9.2.2. Accordingly, the Franchisee's obligations specified in this paragraph 9.2 shall be construed as an obligation to secure the requisite Train Slots in the working timetable to be issued by Network Rail at the conclusion of its timetable development process that will permit the Franchisee to operate railway passenger services that comply with the Service Level Commitments provided for in the relevant National Rail Timetable.

9.2.3. The Franchisee shall ensure, for each period between two consecutive Passenger Change Dates during the Franchise Term, that the Timetable for such period is not materially different from the relevant working timetable issued by Network Rail at the conclusion of its timetable development process.

9.3. Unless the Authority otherwise directs, the Franchisee shall, for the purposes of securing a Timetable that complies with the Service Level Commitment, exercise its rights under the Track Access Agreement (including the Network Code) and otherwise to object, to make representations and to withhold consent in respect of any actual or proposed act or omission by Network Rail in relation to such agreement in respect of its Timetable Development Rights and in particular (i) seek the approval of the Authority of the terms of reference or similar and (ii) not settle or compromise any claim.

9.4. Subject to the Franchisee complying with its obligations under paragraph 9.3, it shall not be liable for any failure to secure a Timetable that enables the Franchisee to operate railway passenger services that comply with the Service Level Commitment, to the extent that such failure is caused by:

- (a) the Franchisee's Timetable Development Rights being inadequate to enable it to secure the requisite Train Slots, provided that the Franchisee has exercised all reasonable endeavours to obtain the requisite Timetable Development Rights in accordance with paragraph 9.1;
- (b) Network Rail exercising its flexing rights from time to time under the Track Access Agreement or the Network Code in respect of such Train Slots;
- (c) Network Rail exercising its other rights from time to time under the Track Access Agreement or the Network Code; or
- (d) the exercise by ORR of its powers pursuant to Section 22C of the Act.

9.5. Without prejudice to the provisions in paragraph 9.3, if the Authority does not consider that the Franchisee has taken or is taking sufficient steps under paragraph 9.3, the Authority may require the Franchisee to exercise its rights referred to in paragraph 9.3 in such manner as the Authority reasonably considers appropriate in the circumstances, including:

- (a) disputing any actual or proposed act or omission by Network Rail in respect of any Timetable Development Rights;
- (b) submitting such dispute to any relevant dispute resolution arrangements or procedures and appealing against any award or determination under such arrangements or procedures, including to ORR; and
- (c) not settling any such dispute or appeal without the Authority's written consent;

9.6. The Authority shall, to the extent reasonably practicable, allow the Franchisee a reasonable opportunity to make representations to the Authority concerning the exercise by the Franchisee of any of its rights referred to in paragraph 9.3 before requiring the Franchisee to take any action referred to in paragraph 9.5.

9.7. The Franchisee shall consider in all timetable changes all opportunities to improve boarding and/or alighting times or service reliability and implement such changes. Where any proposal is made by another operator to vary its services or any proposal is made by Network Rail to change access rights in a way which could adversely affect any aspect of delivery of the Franchise Services, the Franchisee shall as soon as reasonably possible inform the Authority and consult the Authority on its proposed response and shall carry out such actions as the Authority shall reasonably require to oppose or influence such changes.

9.8. The provisions of paragraph 4 of Schedule 1.2 (*Operating Obligations*) shall apply to any actual or proposed omission or rescheduling of Passenger Services that originates from any person other than Network Rail, as those provisions apply to Network Rail.

9.9. If and to the extent that the Franchisee is not able to secure a Timetable enabling it to operate railway passenger services that comply with the Service Level Commitments as a result of it not being able to obtain the Timetable Development Rights that it requires for that purpose, the Authority shall issue to the Franchisee a Service Level Commitment in the form required by paragraph 9.9(a), which shall operate between the parties only for the purpose referred to in paragraph 9.9(b):

- (a) any Service Level Commitment issued pursuant to this paragraph 9.9 shall be in a form that:
 - (i) would enable the Franchisee to secure a Timetable in compliance with it by exercise of the Timetable Development Rights that the Franchisee does have or would have had the Franchisee properly performed its obligations under this Agreement; and
 - (ii) in all other respects, is the same as the immediately preceding Service Level Commitment issued to the Franchisee by the Authority; and
- (b) any Service Level Commitment issued pursuant to this paragraph 9.9 shall, for the purpose of Schedule 9 (*Changes*) only, stand in place of the immediately preceding Service Level Commitment issued to the Franchisee by the Authority.

10. Certification and Notification by Franchisee of Timetable Bids

10.1. Before exercising any Timetable Development Right to bid for Train Slots, the Franchisee shall provide a certificate addressed to the Authority confirming that its

proposed exercise of that Timetable Development Right will be compliant with its obligation specified in paragraph 9.2.

10.2. If requested by the Authority, the Franchisee agrees to demonstrate to the reasonable satisfaction of the Authority and/or (as the case may be) Audit Scotland that the Franchisee's certificate referred to in paragraph 10.1 is a true and accurate confirmation of compliance with its obligation specified in paragraph 9.2. The Authority agrees that the certificate will be acceptable if:

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

10.3. The Franchisee shall:

- (a) keep the Authority fully informed of any discussions with Network Rail in relation to the matters referred to in this Schedule 1.1 which may have a material bearing on the ability of the Franchisee to deliver the Service Level Commitment through the Timetable and shall, if required to do so by the Authority supply copies of any related correspondence to the Authority; and
- (b) update any notification under this paragraph 10.3 and/or certification under paragraph 10.1 as soon as reasonably practicable, if at any time it elects or is required to modify any aspect of its exercise of its Timetable Development Rights following Network Rail's proposed or actual rejection or modification of its bid or any part of it or for any other reason.

11. Obligations in relation to Other Train Operators

11.1. Subject to the terms of the Licences and any applicable Law, the Franchisee shall co-operate with other Train Operators and where necessary negotiate with other Train Operators (including resorting to railway industry processes) in respect of their Timetable Development Rights where such other Train Operators provide railway passenger services meeting common or displaced passenger demand, to ensure (in so far as the Franchisee is able) or otherwise influence the same such that:

- (a) a reasonable pattern of railway passenger service is provided on the relevant Route(s) to enable passengers to make Connections (particularly where low frequency railway passenger services are operated or last trains are involved, taking account of seasonal fluctuations in passenger demand and the time needed to make any such Connection) including for:-
 - (i) the timetabled Connection with the ScotRail Franchise railway passenger services to Oban, Mallaig, Kyle of Lochalsh and the Far North Line; and
 - (ii) the timetabled Connection for the ScotRail Franchise railway passenger services allowing commuting between Dalwhinnie and Inverness; and
 - (iii) the timetabled Connection for the ScotRail Franchise railway passenger services to and from Crianlarich; and
- (b) other policy objectives specified by the Authority as referred to in Clause 4.4 of this Agreement are not compromised.

11.2. The Franchisee acknowledges that there are key railway passenger services to, from or within Scotland provided by other Train Operators. Without prejudice to the foregoing generality of paragraph 11.1, the Franchisee shall co-operate with other Train Operators from time to time to ensure (in so far as the Franchisee is able) the continued provision of connecting and consequent passenger rail services to, from and within Scotland, provided as at the date of this Agreement and any improvements thereto. Such co-operation shall include the Franchisee using all reasonable endeavours to work with other Train Operators to exhaust all relevant and available railway industry processes in respect of such continued provision.

12. Finalising the Train Plan

12.1. The Franchisee shall submit its Train Plan prepared pursuant to paragraph 5 to the Authority as soon as reasonably practicable after Network Rail has published the working timetable on which the Timetable is to be based.

12.2. The Franchisee shall, when submitting its Train Plan, certify to the Authority details of how the Train Plan differs from its previous Train Plan in so far as the final Timetable has not been approved by the Authority. The Authority may notify the Franchisee of:

- (a) any respect in which it considers that the Train Plan does not comply with the requirements of this Schedule 1.1; and
- (b) any revisions that the Authority requires to address such non-compliance, and the Franchisee shall revise the Train Plan in accordance with the Authority's requirements.

12.3. If the Franchisee considers that any of the revisions that the Authority requires pursuant to paragraph 12.2(b) are not required for the Train Plan to comply with this Schedule 1.1 then:

- (a) it shall nevertheless make such revisions;
- (b) it may subsequently refer the question as to whether such revisions were so required for resolution in accordance with such dispute resolution procedure as it and the Authority may agree or, in the absence of agreement, in accordance with the Dispute Resolution Rules; and
- (c) following determination of any such dispute, the parties shall take such steps as are required to give effect to such determination.

APPENDIX 1 TO SCHEDULE 1.1**Initial Service Level Commitment**

**SERVICE LEVEL COMMITMENT
relative to
CALEDONIAN SLEEPER FRANCHISE**

Part 1 - General Provisions

1. DEFINITIONS and INTERPRETATION

This Service Level Commitment has been issued by the Authority pursuant to paragraph 9 of Schedule 1.1 (*Service Development*) of the Franchise Agreement.

The following words and expressions have the following meanings in this Service Level Commitment:

Christmas means 25 and 26 December in any calendar year;

Connection means a connection (however described) between any of the Passenger Services provided by the Franchisee and any other railway passenger service provided by it or any other passenger train operator or any bus, ferry or shipping service and where reference is made to a time period in relation to a Connection this refers to a waiting period for such Connection;

Edinburgh means Edinburgh Waverley;

Journey Time means the time in the Timetable to be taken by a service in travelling between the specified departure point and specified destination for that service;

London means London Euston;

New Year means 1 January of any calendar year;

Service means any Passenger Service specified in this Service Level Commitment;

Weekday (notwithstanding any meaning given to that term in the Definitions Agreement) means any day other than a Saturday or Sunday; and

2. DAYS AND TIMES OF DAY

Except where expressly stated to the contrary, references to a day mean the period commencing at 0200 on one day and ending at 0159 on the following day and references to Weekdays and particular days of the week shall be construed accordingly.

References to periods of times and periods of days include the times and days such periods start and finish.

All references to time are to the twenty-four hour clock.

3. STATIONS

Except where expressly stated to the contrary and subject always to compliance with the other provisions of this Service Level Commitment (including any maximum

Journey Times) nothing in this Service Level Commitment shall prevent services which are required to be included by, or on behalf of, the Franchisee in the Timetable pursuant to paragraph 9.2 of Schedule 1.1 (*Service Development*) of the Franchise Agreement calling at any stations which are not specified in this Service Level Commitment or any relevant part of it, subject to obtaining the prior approval of the Authority.

Stations where demand for a particular service is such that there are often no passengers wishing to leave or join the relevant service may be designated as a Request Stop Station for that service. Any such designation shall be clearly advertised in advance to intending passengers (including in the Timetable).

4. CONNECTIONS

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

Except where expressly stated to the contrary, where Connections are required to be provided by the Franchisee in accordance with paragraphs 6.1 and 6.2 of Part 2 to this Appendix 1 to Schedule 1.1, the Franchisee shall ensure that the scheduled interval or scheduled waiting period between the two relevant services as published in the Timetable is of a sufficient duration to allow passengers a reasonable period of time to transfer between such services.

Except where expressly indicated to the contrary, where services are subject to maximum Journey Times, such Journey Times shall not apply where the services are required to be, or may be, provided by Connections.

5. PUBLIC HOLIDAYS

The level of Service required to be included in the Timetable for the following days shall, except to the extent the Authority otherwise agrees, be as follows:

24 December and 31 December:	No Services are required to be operated save in so far as comprising the completion of any Service which departed its Station of origin the preceding day
25 December and 1 Jan	No Services are required to be operated

Part 2 - Sleeper Services between London and Edinburgh/Glasgow and between London and Aberdeen/Inverness/Fort William

1 ROUTE DEFINITION

- 1.1 Overnight sleeper/cabin and seated Services shall be provided between London and each of the following stations:
 - (a) Edinburgh
 - (b) Glasgow
 - (c) Aberdeen
 - (d) Inverness
 - (e) Fort William
- 1.2 The Services specified in paragraph 1.1(a-e) may be combined for part of the journey as the Franchisee may think appropriate.
- 1.3 The Services between London and Edinburgh as specified in paragraph 1.1 shall:
 - 1.3.1 where travelling northbound call and pick up at London and Edinburgh, and call (but not necessarily pick up) at Carstairs; and
 - 1.3.2 where travelling southbound call and pick up at London and Edinburgh;
- 1.4 The Services between London and Glasgow as specified in paragraph 1.1 shall:
 - 1.4.1 where travelling northbound call and pick up at London and Glasgow,
 - 1.4.2 where travelling northbound call (but not necessarily pick up) at Carstairs;
 - 1.4.3 where travelling northbound call (but not necessarily pick up) at Motherwell; and
 - 1.4.4 where travelling southbound call and pick up at London, Glasgow, Carstairs and Motherwell.
- 1.5 The Services between London and Aberdeen as specified in paragraph 1.1 shall:
 - 1.5.1 where travelling northbound call (but not necessarily pick up) at Inverkeithing, Kirkcaldy, Leuchars, Dundee, Carnoustie, Arbroath, Montrose and Stonehaven; and
 - 1.5.2 where travelling southbound call and pick up at Inverkeithing, Kirkcaldy, Leuchars, Dundee, Carnoustie, Arbroath, Montrose and Stonehaven.
- 1.6 The Services between London and Inverness as specified in paragraph 1.1 shall:
 - 1.6.1 where travelling northbound call and pick up at Stirling, Gleneagles, Perth, Dunkeld & Birnam, Pitlochry, Blair Atholl, Dalwhinnie, Newtonmore, Kingussie and Aviemore; and
 - 1.6.2 where travelling southbound call and pick up at Stirling, Gleneagles, Perth, Dunkeld & Birnam, Pitlochry, Blair Atholl, Dalwhinnie, Newtonmore, Kingussie and Aviemore.

The Service travelling southbound from Inverness shall call and pick up additionally at Dunblane and Falkirk Grahamston. The Service travelling northbound from London will call and pick up additionally at Carrbridge.

1.7 The Services between London and Fort William shall:

- 1.7.1 where travelling northbound call and pick up at either Glasgow Central Low Level or Glasgow Queen St Low Level, Dalmuir, Dumbarton Central, Helensburgh Upper, Garelochhead, Arrochar & Tarbet, Ardlui, Crianlarich, Upper Tyndrum, Bridge of Orchy, Rannoch, Corrour, Tulloch, Roy Bridge and Spean Bridge; and
- 1.7.2 where travelling southbound call and pick up at either Glasgow Central Low Level or Glasgow Queen St Low Level, Dalmuir, Dumbarton Central, Helensburgh Upper, Garelochhead, Arrochar & Tarbet, Ardlui, Crianlarich, Upper Tyndrum, Bridge of Orchy, Rannoch, Corrour, Tulloch, Roy Bridge and Spean Bridge.

2 SERVICE PATTERN – MONDAY TO FRIDAY

From London

- 2.1 The Services from London to Edinburgh/Glasgow specified in paragraph 1 shall arrive in Edinburgh and Glasgow respectively at or before 0800.
- 2.2 The Services from London to Aberdeen/Inverness/Fort William specified in paragraph 1 shall each arrive in Aberdeen, Inverness and Fort William at or before 0900, 0900 and 1000 respectively.

To London

- 2.3 The Services from Edinburgh and Glasgow, as specified in paragraph 1, shall arrive in London at or before 0800.
- 2.4 The Service from Aberdeen, as specified in paragraph 1, shall arrive in London at or before 0800.
- 2.5 The Service from Inverness, as specified in paragraph 1, shall arrive in London at or before 0800. This service may omit to call at Dunkeld.
- 2.6 The Service from Fort William, as specified in paragraph 1, shall arrive in London at or before 0800.

3 SERVICE PATTERN – SATURDAYS

- 3.1 There is no requirement for the Services to be provided departing on Saturdays.

4 SERVICE PATTERN – SUNDAYS

From London

- 4.1 The Services from London to Edinburgh/Glasgow specified in paragraph 1 shall arrive in Edinburgh and Glasgow respectively at or before 0800.
- 4.2 The Services from London to Aberdeen/Inverness/Fort William specified in paragraph 1 shall each arrive in Aberdeen, Inverness and Fort William at or before 0900, 0900 and 1000 respectively.

To London

- 4.3 The Services from Edinburgh and Glasgow, as specified in paragraph 1, shall arrive in London at or before 0800.
- 4.4 The Service from Aberdeen, as specified in paragraph 1, shall arrive in London at or before 0800.
- 4.5 The Service from Inverness, as specified in paragraph 1, shall arrive in London at or before 0800. This service may omit to call at Dunkeld.
- 4.6 The Service from Fort William, as specified in paragraph 1, shall arrive in London at or before 0800.

5. OCCUPATION OF CABINS / SEATED ACCOMMODATION

- 5.1 In the case of each of the Services specified in paragraphs 1 to 4, Cabins shall be made available for occupation by passengers at the Station of origin for at least 30 minutes before a Service is scheduled to depart. The vacation of accommodation at the station of termination shall be required no earlier than 30 minutes after the scheduled arrival time.
- 5.2 In the case of each of the Services specified in paragraphs 1 to 4, seated accommodation if provided shall be made available for occupation by passengers at the Station of origin for at least 30 minutes before such a Service is scheduled to depart. The vacation of seated accommodation at the station of termination shall be required no earlier than 30 minutes after the scheduled arrival time. The Franchisee may require compulsory reservations to be made in advance for seated accommodation.

6. CONNECTIONS

- 6.1 The Franchisee shall use reasonable endeavours to ensure that the service from London to Fort William specified in paragraph 1 shall connect, at Crianlarich, with a rail service (provided by ScotRail) or a dedicated road-based service to Oban, arriving in Oban before 08:45. Waiting time shall be no more than 30 minutes.
- 6.2 The Franchisee shall use reasonable endeavours to ensure that the service from Fort William to London specified in paragraph 1 shall connect, at Crianlarich, with a rail service (provided by ScotRail) or dedicated road-based service from Oban. Waiting time shall be no more than 30 minutes.

APPENDIX 2 TO SCHEDULE 1.1

The Train Fleet

1. The composition of the Train Fleet

Subject to such fluctuations due to seasonality as the Authority may approve in writing the Train Fleet consists of:

- (a) passenger rolling stock vehicles specified in Table 1 with the capacity characteristics referred to there, until the lease expiry dates referred to there; and
- (b) following any such lease expiry, rolling stock vehicles having the capacity characteristics described in Table 1 of Schedule 6.1 (*Rolling Stock*);

Initial Train Fleet Table 1

Column 1	Column 2	Column 3			Column 4	Column 5
Class of Vehicles	No of Vehicles and unit configuration	Passenger Carrying Capacity			Owner/Lessor	Lease Expiry Date
		Seats	Berths	Total		
Mark coach 3	SLE x 6		13 berths 13 or 26 beds	13 or 26 depending on configuration of beds	[redacted text]	31 st March 2018
Mark coach 3	SLED x 12		11 berths +1PRM berth 12 or 23 beds	11+1 or 23 depending on configuration of beds	[redacted text]	31 st March 2018
Mark coach 3	SLEP x 35		12 berths 12 or 24 beds	12 or 24 depending on configuration of beds	[redacted text]	31 st March 2018
Mark coach 2	BOU x 11	31		31	Serco Limited	31 st March 2018
Mark coach 2	RLO x 9				Serco Limited	31 st March 2018
Mark coach 2	RFO x 2				Serco Limited	31 st March 2018

Notes:

- (1) Lounge car seats are not available for travel and therefore not counted in train capacity.
- (2) Based on seating at a density of 1.07 seats per m².
- (3) Standard class capacity, excluding Cabins, is 31 seats per train.

Passenger facilities on the Train Fleet

2.1 The Train Fleet consists of:

- (a) the rolling stock vehicles specified in Table 1 with the facilities and characteristics referred to in Table 2, until the lease expiry dates referred to in Table 1; and
- (b) following any such lease expiry, rolling stock vehicles having the facilities and characteristics described in Table 2 of Schedule 6.1 (*Rolling Stock*);

Train Fleet Table 2

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9
Class of Vehicles	Internal CCTV	Toilets	Wifi	Bicycle and Luggage Carriage/Storage	Power sockets	Secure door lock to cabins	Windows for all berths/seated areas	Individual luggage locker for seats
SLE x 6	No	Yes	No	In cabin storage	No but USB fitted in place of shaver sockets during the first 2 weeks after Franchise Commencement Date	Current arrangement maintained	Yes	N/A
SLED x 12	No	Yes	No	In cabin storage	No but USB fitted in place of shaver sockets during the first 2 weeks after Franchise Commencement Date	Current arrangement maintained	Yes	N/A
SLEP x 35	No	Yes	No	In cabin storage	No but USB fitted in place of shaver sockets during the first 2 weeks after Franchise Commencement Date	Current arrangement maintained	Yes	N/A
BOU x 11	No	Yes	No	Storage available in Guards van / storage area	No	N/A	Yes	No

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9
RLO x 9	No	No	No	No	Yes	N/A	Yes	N/A
RFO x 2	No	No	No	No	Yes	N/A	Yes	N/A

2.2 Each formation shall, wherever split, include at least one EA and TSI PRM compliant berth and toilet.

2.3 Minimum toilet requirements:-

Two per Vehicle except in respect of lounge cars.

3 Correction of any errors in description

This Appendix represents the Train Fleet the Franchisee has on lease or has agreed to lease on the 1 April 2015 save for the USB sockets which the Franchisee shall procure and install within 2 weeks after the Franchise Commencement Date.

4 Fleet Availability Requirement

The Train Fleet available for service shall, subject to any fluctuations due to seasonality as the Authority may approve in writing, be no less than that identified in columns 4 and 5 in Table 3 below.

Train Fleet Availability Table 3

Column 1	Column 2	Column 3	Column 4	Column 5
Class of Vehicles	Total Fleet	Planned Maintenance Allocation	Fleet available for Passenger Services	Spare/Reserve
Mark 3 SLE	6	1	4	1
Mark 3 SLED	12	1	10	1
Mark 3 SLEP	35	1	34	0
Mark 2 BOU	11	1	9	1
Mark 2 RLO	9	1	8	0
Mark 2 RFO	2	0	1	1

APPENDIX 3 TO SCHEDULE 1.1

Service Development Additional Factors

1. Additional Factors

The Franchisee, in formulating its opinion in respect of any changes to the Service Level Commitments in accordance with paragraph 5.1 of Schedule 1.1 (*Service Development*), in addition to having regard to any Route Utilisation Strategy or any other Strategy published by the Authority pursuant to paragraph 5.2(a) of Schedule 1.1 and any other constraints or considerations notified to it pursuant to paragraph 5.2(c) of Schedule 1.1 shall also have regard to:

- (a) Actual Passenger Demand;
- (b) the latest Forecast Passenger Demand;
- (c) the revenue and cost consequences of operating railway passenger services on the Routes;
- (d) opportunities to reduce the incidence of disruption caused by the Franchisee, Network Rail, other Train Operators, freight operators and/or other industry parties;
- (e) operational constraints and measures that might be taken to address such constraints;
- (f) the appropriateness of the Train Fleet to the Routes;
- (g) service calling patterns and journey times;
- (h) changes in circumstances local to the stations at which the Passenger Services call which may affect Forecast Passenger Demand;
- (i) the effect of the Service Level Commitment on the railway passenger services operated by other Train Operators and/or freight operators;
- (j) interchange and inter modal opportunities;
- (k) Stakeholder aspirations as expressed through specific responses to consultation pursuant to the Franchisee's obligations under this Agreement;
- (l) the likelihood of Special Events generating sufficient passenger demand to support the provision of additional railway passenger services by the Franchisee to or from such Special Events;
- (m) the impact of major projects, Major Scottish Projects or restrictions of use that may affect Forecast Passenger Demand;
- (n) potential available diversionary routes; and
- (o) such other matters as the Authority may notify to the Franchisee from time to time.

2. Policy Objectives

The Franchisee shall, in applying its timetabling resource in terms of the Franchise Agreement and otherwise, look to ensure that timings and Connections are, at least

preserved and, where possible, are improved in line with the Authority's objectives and published passenger rail policy (including, but not limited to the then current HLOS) and guidance to ORR and other regulatory bodies. The Franchisee shall use all reasonable endeavours in its planning and interactions with industry partners to promote, secure and operate improved reliability and integration with other transport providers.

SCHEDULE 1.2

THIS IS SCHEDULE 1.2 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT BETWEEN THE AUTHORITY AND SERCO CALEDONIAN SLEEPERS LIMITED

Operating Obligations

1. Daily Operating Obligation

- 1.1 The Franchisee agrees to use all reasonable endeavours to operate on each day of the Franchise Term those of its Passenger Services as are set out in the Plan of the Day for that day, with at least the Passenger Carrying Capacity specified in the Train Plan.
- 1.2 The Franchisee agrees to use all reasonable endeavours to operate the Train Fleet in accordance with the current SQUIRE Service Specification.
- 1.3 The Franchisee shall not
 - (a) remove any rolling stock vehicle from service; or
 - (b) remove any of the Franchisee's facilities from any station
with a view to distorting the results of any inspections or re-inspections or audits carried out in accordance with Schedule 7.3 (SQUIRE).
- 1.4 The Franchisee shall ensure that its performance in each Reporting Period calculated as a moving annual average in accordance with Schedule 7.1 (*Benchmarks*), will be equal to or better than the Target Performance Level specified in the cell relating to such Reporting Period in the Right Time Benchmark Table. It shall be a contravention by the Franchisee of the terms of this Agreement if its performance falls below the Breach Performance Level in any Reporting Period.

2. The Train Plan

In this Schedule 1.2 references to the Train Plan are to the Train Plan as issued by the Franchisee to the Authority pursuant to paragraph 12.1 of Schedule 1.1 (*Service Development*), and as amended:

- (a) to comply with any requirements of the Authority pursuant to paragraph 12.2 of Schedule 1.1; and
- (b) pursuant to paragraph 3.

3. Amendments to the Train Plan

- 3.1 The Franchisee shall use all reasonable endeavours to propose to the Authority from time to time any amendments that it considers should be made to the Train Plan to better match the Passenger Carrying Capacity of the Train Fleet to Target Passenger Demand, having regard to:
 - (a) any foreseeable differences that there may be between the Timetable and any Plan of the Day; and
 - (b) any material alteration in Target Passenger Demand, subsequent to the issue of the Train Plan that is:

- (i) observable from the most recent determination of Actual Passenger Demand in accordance with paragraph 1 of Schedule 1.5 (*Information about Passengers*);
- (ii) attributable to seasonal or exceptional factors; or
- (iii) reasonably anticipated due to (i) or (ii).

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

3.3 Where there are short-notice factors or exceptional factors affecting passenger demand to which the Franchisee reasonably considers that it should respond before it is able to make a proposal to the Authority in accordance with paragraph 3.1, it may amend the Train Plan prior to the submission of its proposal, but shall notify the Authority as soon as reasonably practicable afterwards and shall subsequently amend the Train Plan in accordance with the Authority's response to such amendment.

3.4 The obligation to use all reasonable endeavours to propose amendments to the Train Plan to better match the Passenger Carrying Capacity of the Train Fleet to Target Passenger Demand is an obligation to use all reasonable endeavours to propose amendments which would either:

- (a) provide for Passenger Carrying Capacity on each Passenger Service that is at least equal to the Target Passenger Demand for that Passenger Service; or
- (b) provide the best allocation of rolling stock vehicles to Passenger Services that is reasonably practicable so as to:
 - (i) minimise the amount by which Target Passenger Demand exceeds the provision of Passenger Carrying Capacity on the affected Passenger Services;
 - (ii) ensure, so far as is possible, that the excess of Target Passenger Demand is not unduly concentrated on any particular Route or Passenger Service;
 - (iii) minimise the extent to which the Passenger Carrying Capacity specified for any Passenger Service in a Service Level Commitment is not provided; and
 - (iv) best meet additional demand generated by Special Events.

3.5 If the Authority does not consider that the Franchisee has exercised all reasonable endeavours to make proposals as required by paragraph 3.1, the Authority may require the Franchisee to amend the Train Plan in accordance with its requirements.

3.6 The Authority may request the Franchisee to propose changes to the Train Plan to meet passenger demand for Special Events. The Franchisee shall amend the Train Plan in accordance with the Authority's response to its proposal.

3.7 The Franchisee shall ensure such amendments are communicated to passengers as required in terms of paragraphs 2 and 3 of Schedule 1.4 (*Passenger Facing Obligations*).

4. Timetable Changes Proposed by Network Rail

4.1 The Franchisee shall notify the Authority promptly after being notified by Network Rail that Network Rail has decided or proposes to:

- (a) omit from the Plan of the Day Passenger Services that are included in the Timetable; or
- (b) reschedule in the Plan of the Day Passenger Services from their scheduling in the Timetable,

to the extent that any such decision or proposal may materially (having regard to both duration and scale) prejudice the Franchisee's ability to deliver the Timetable with the Passenger Carrying Capacity stipulated in a Train Plan which satisfies the requirements of paragraphs 3.1 and 3.4.

4.2 The Franchisee shall explain in such notification the way in which, in its opinion, such omission or rescheduling may materially prejudice the Franchisee's ability to deliver the Timetable with the Passenger Carrying Capacity stipulated in a Train Plan which satisfies the requirements of paragraphs 3.1 and 3.4.

4.3 The Franchisee agrees to supply to the Authority from time to time, in the format required by the Authority such details of any actual or proposed omission or rescheduling of Passenger Services by Network Rail as the Authority may reasonably require, including details of the steps which the Franchisee proposes to take pursuant to paragraph 4.4.

4.4 Where the actual or proposed omission or rescheduling of Passenger Services is one which may materially prejudice the Franchisee's ability to deliver the Timetable with the Passenger Carrying Capacity stipulated in a Train Plan which satisfies the capacity requirements of paragraphs 3.1 and 3.4, the Franchisee agrees (unless the Authority specifically agrees otherwise) to act in the passenger's interests and to exercise its rights under the Track Access Agreement (including the Network Code) and otherwise to object, to make representations and to withhold consent in respect of any actual or proposed omission or rescheduling of Passenger Services by Network Rail. This obligation will stand notwithstanding any agreement between the Franchisee and Network Rail.

4.5 If the Authority does not consider that the Franchisee has taken sufficient steps under paragraph 4.4, the Authority may require the Franchisee to exercise its rights referred to in paragraph 4.4 in such manner as the Authority may consider appropriate in the circumstances, including:

- (a) disputing any actual or proposed act or omission by Network Rail in respect of any Timetable Development Rights;
- (b) submitting such dispute to any relevant dispute resolution arrangements or procedures and appealing against any award or determination under such arrangements or procedures, including to the ORR;
- (c) requiring any terms of reference or similar to be approved by the Authority prior to submission or agreement by or on behalf of the Franchisee; and

- (d) requiring the Franchisee to obtain the Authority's prior approval of any settlement or compromise prior to offering or accepting the same.

4.6 The Authority shall, to the extent reasonably practicable, allow the Franchisee a reasonable opportunity to make representations to the Authority concerning the exercise of any of its rights referred to in paragraph 4.4 before requiring the Franchisee to take any action referred to in paragraph 4.5.

5. Timetable Changes Proposed by the Franchisee

- 5.1 The Franchisee agrees, subject to paragraph 5.2, not to propose to Network Rail:
 - (a) the addition to the Plan of the Day of any railway passenger services which are not included in the Timetable;
 - (b) the omission from the Plan of the Day of any Passenger Services included in the Timetable; or
 - (c) the rescheduling in the Plan of the Day of any Passenger Services from their scheduling in the Timetable,
 without the Authority's prior consent.
- 5.2 Paragraph 5.1 shall not apply to additional railway passenger services to be operated to meet passenger demand that the Franchisee anticipates from Special Events (and any related omissions and/or rescheduling of Passenger Services) which:
 - (a) when operated, still permit the Franchisee to deliver the Timetable with the Passenger Carrying Capacity stipulated in a Train Plan which satisfies the requirements of paragraphs 3.1 and 3.4;
 - (b) are consistent with any Route Utilisation Strategy or any other Strategy of the Authority; and
 - (c) are compliant with any framework that the Authority may issue for the planning and operation of railway passenger services.
- 5.3 The Franchisee shall use all reasonable endeavours to operate adequate railway passenger services to or from any Special Events:
 - (a) which it has identified pursuant to paragraph 1 (l) of Appendix 3 (*Service Development Additional Factors*) to Schedule 1.1 (*Service Development*);
 - (b) which are not already provided for in the Plan of the Day; and
 - (c) which comply with the requirements of paragraph 5.2,
 to meet the passenger demand that is reasonably likely to arise from such Special Events and from the operation of such railway passenger services.
- 5.4 The Franchisee shall provide adequate numbers of suitably trained and briefed staff to provide passenger information, support and directions during all Special Events.

6. Timetable Changes Requested by the Authority

6.1 The Franchisee agrees, as and when requested by the Authority, to use all reasonable endeavours to seek and to obtain:

- (a) the addition to the Plan of the Day of any railway passenger services that are not included in the Timetable;
- (b) the omission from the Plan of the Day of any Passenger Services that are included in the Timetable; and/or
- (c) the rescheduling in the Plan of the Day of any Passenger Services from their scheduling in the Timetable.

6.2 A request pursuant to paragraph 6.1 may include the addition of railway passenger services on parts of the network which the Franchisee may not have permission to use on the Franchise Commencement Date and/or on new parts of the network.

7. Additional Railway Passenger Services

The Franchisee agrees not to operate any railway passenger services other than those:

- (a) required or permitted pursuant to this Schedule 1.2; or
- (b) operated on behalf of any other Train Operator where the Authority has approved the sub-contracting of the operation of such railway passenger services to the Franchisee; or
- (c) where it has obtained the Authority's approval to do so.

8. Obligations of the Franchisee in the Event of Disruption to Railway Passenger Services

8.1 In the event of any planned or unplanned disruption to railway passenger services operated on the Routes, or on other parts of the network which are reasonably local to the Routes, the Franchisee shall:

- (a) without prejudice to any other provision of this Schedule 1.2, notify the Authority promptly where such disruption would materially (having regard to both duration and scale) prejudice the Franchisee's ability to deliver the Timetable;
- (b) use all reasonable endeavours to act in accordance with any Strategy or plan published or endorsed by the Authority in relation to such disruption notified to it by the Authority from time to time;
- (c) in accordance with the Passenger Information During Disruption Guidelines, where applicable, keep passengers informed of the disruption and its impact on the said Timetable in a timely manner and consistently across all modes of communications and provide the Franchisees' staff with the information they require to keep passengers so informed, all as required in terms of paragraphs 2 and 3 of Schedule 1.4 (*Passenger Facing Obligations*).
- (d) co-operate with Network Rail and other Train Operators to act in the overall interests of passengers using such railway passenger

services, including using all reasonable endeavours to minimise and mitigate disruption to ensure that such disruption is not concentrated on a particular part of the network, except where such concentration either:

- (i) would be in the overall interests of passengers using such Passenger Services or railway passenger services and would not result in disproportionate inconvenience to any group of passengers; or
- (ii) is reasonably necessary as a result of the cause or the location of the disruption being outwith the reasonable control or anticipation of the Franchisee or its Associates; and
- (e) provide or secure the provision of alternative transport arrangements and/or overnight accommodation in accordance with paragraph 8.2;
- (f) keep passengers and front line staff (both on train and other staff) informed and updated in a timely and consistent manner across all available media and means of communication as situations and responses unfold.

8.2

8.2.1 The Franchisee shall secure the provision of alternative transport arrangements and passage on such alternative transport arrangements to enable passengers affected by disruption referred to in paragraph 8.1 to complete their intended journeys in accordance with this paragraph 8.2. In particular, the Franchisee shall:

- (a) ensure that such alternative transport arrangements are of reasonable quality, provide reasonably similar departure and arrival times and Connections to the Passenger Services included in the Timetable which such arrangements replace and reasonably fit for the purpose of the journey to be undertaken;
- (b) without prejudice to its obligations in paragraph 8.2(a), comply with any standards issued by the Authority from time to time in respect of such alternative transport arrangements;
- (c) transport passengers to, or as near as reasonably practicable to, the end of their intended journey on such Passenger Services, having particular regard to the needs of any Disabled Persons and persons with additional needs due to their mobility issues (including, without prejudice to the foregoing, infirm or elderly persons and children) and, where appropriate, making additional arrangements for such Disabled Persons and other persons and the full range of passengers and their luggage (including but not limited to pushchairs and bicycles) to complete their intended journey;
- (d) timeously provide adequate and prominent publicity and other practicable communication of, and detailed information on, such alternative transport arrangements in advance of, and during the course of, such disruption, subject, in the case of unplanned disruption, to the Franchisee having

sufficient notice of such disruption to enable it to provide such publicity;

- (e) provide adequate staff to direct passengers to such alternative transport, assist passengers on to such alternative transport and provide passengers with information on such alternative transport;
- (f) provide sufficient alternative transport capacity for the reasonably foreseeable demand for the disrupted Passenger Services; and
- (g) ensure, if any planned disruption overruns, that there is a reasonable contingency arrangement for such alternative transport arrangements to continue for the duration of such overrun.

8.2.2 The Franchisee, when appropriate and safe to do so, shall give its passengers the option instead of making use of the alternative transport arrangements in terms of paragraph 8.2.1 to stay in the train and make use of its facilities as overnight accommodation before completing their journey by such alternative transport arrangements as the Franchisee has put in place for those passengers making use of this option the following morning, such alternative transport leaving in the morning to allow completion of the intended journey by passengers shall comply with paragraph 8.2.1 except with regards to being of a reasonably similar frequency to the Timetable provided that such passengers are able to complete the intended journey as soon as reasonably practicable after having made use of the train as overnight accommodation.

8.3 In the case of unplanned disruption referred to in paragraph 8.1, the Franchisee shall use all reasonable endeavours to secure the outcomes specified in paragraph 8.2.

8.4 The Franchisee shall, in planning for mitigation of disruption of passenger rail services (howsoever caused) use all reasonable endeavours to identify scheduled bus services between the proximity of the locations of any stations affected by the disruption and procure agreement from the operators of such bus services to allow holders of valid rail tickets to travel on scheduled bus services between such bus stops as are in proximity to the locations of the stations for which the rail ticket held is valid and that at no cost to the passenger. The Franchisee shall Publish details of such bus services, including the validity of rail tickets, in the event of passenger rail service disruption.

8.5 The Franchisee shall use all reasonable endeavours to co-operate with other Train Operators and Network Rail in mitigation of the impact of disruption of passenger rail services (howsoever caused). Such co-operation shall include the provision of information to other Train Operators.

9. Obligation to Use All Reasonable Endeavours

9.1 Any obligation in this Schedule 1.2 on the part of the Franchisee to use all reasonable endeavours to operate railway passenger services shall include an obligation to:

- (a) ensure (so far as it is able to do so) the provision of the Passenger Services as set out in the Plan of the Day in ordinary operating conditions;
- (b) anticipate the matters referred to in paragraph 9.2 and take reasonable measures to avoid and/or reduce the impact of any disruption to the Franchise Services having regard to all the circumstances, including the reasonably foreseeable risks arising from the matters referred to in paragraph 9.3; and
- (c) actively manage the performance by Network Rail of its contractual relationship with the Franchisee (and provide appropriate management resources for this purpose) so as to secure the best performance beyond core contractual compliance reasonably obtainable from Network Rail by these means (including taking the steps referred to in paragraph 9.4), having regard to all the circumstances.

9.2 The matters to which the Franchisee is to have regard pursuant to paragraph 9.1(b) shall include:

- (a) variations in climate, weather and operating conditions (including Network Rail's infrastructure not being available for any reason), which may in either case include seasonal variations;
- (b) default by, or restrictions imposed by, suppliers to the Franchisee;
- (c) shortages of appropriately skilled or qualified Franchise Employees;
- (d) disputes with Franchise Employees;
- (e) the availability of the Train Fleet, having regard to the Fleet Availability Requirement;
- (f) establishing reasonable Turnaround Time allowances for enabling or disabling (as appropriate) any part of a train, the rostering of any train crew, the servicing or cleaning of any rolling stock vehicles in accordance with the current SQUIRE Service Specifications relating to the condition of rolling stock vehicles;
- (g) failures of rolling stock vehicles in service and contingency arrangements (including spare and reserve rolling stock and rescue traction);
- (h) the split of the contracted traction between electric and diesel locomotives, or as applicable the split of the Train Fleet between electric and diesel units;
- (i) resilience planning for snow and other severe weather conditions and variance in the Scottish climate;
- (j) interactions with railway industry parties, Local Authorities and public agencies; and
- (k) the need to take pre-emptive and contingency measures.

9.3 For the purpose of taking measures in respect of any disruption to the Franchise Services in accordance with paragraph 9.1(b) and assessing the

extent of any risk referred to in paragraph 9.1(b), and any such risk's reasonable foreseeability, regard shall be had both:

- (a) to the historical levels of incidence of disruption in the operation of:
 - (i) the Franchise Services;
 - (ii) similar services both by the Franchisee and/or its predecessors; and
 - (iii) other services of a type similar to the Franchise Services; and
- (b) to potential changes in circumstances which may affect those levels.

9.4 The steps to which paragraph 9.1(c) refers include:

- (a) co-operating with Network Rail in adopting the principles set out in any Service Recovery Plans agreed between Network Rail and the Franchisee from time to time;
- (b) undertaking a review during each Reporting Period of:
 - (i) the 10 most common causes of delay to the Passenger Services; and
 - (ii) the 10 causes of delay to the Passenger Services with the longest duration (to the extent not already reviewed in accordance with paragraph 9.4(b)(i)),
 which have occurred during that Reporting Period and which have been caused by the Franchisee, any other Train Operator or Network Rail;
- (c) undertaking with Network Rail a review of the time taken to recover the Passenger Services following the occurrence of any of the events specified in paragraphs 9.4(b)(i) and (b)(ii) and seeking to identify and implement actions that reduce the delay effect of such events;
- (d) setting up and holding regular and effective performance review meetings with Network Rail, evidenced by meeting minutes and the closure of actions agreed between the Authority and the Franchisee;
- (e) regularly monitoring (at least in every Reporting Period) the delivery of local output commitments made by Network Rail and using reasonable endeavours to specify and develop such local output commitments;
- (f) as and when required by Network Rail, co-operating with Network Rail in improving the accuracy of future timetables by providing access to trains, other facilities or information;
- (g) co-operating with Network Rail in other delay management, including alliance and initiatives such as the use of virtual general managers and establishment of integrated control rooms;
- (h) regularly reviewing (at least in every Reporting Period) the imposition and clearance of temporary speed restrictions;

- (i) regularly reviewing (at least in every Reporting Period) the timely and efficient handover and hand-back of possessions; and
- (j) where appropriate and where Network Rail fails to perform its obligations under the Track Access Agreement, enforcing the Franchisee's rights under such Track Access Agreement.

9.5 The Franchisee undertakes (subject to its obligations to prepare a Train Plan and secure a Timetable enabling it to operate railway passenger services that comply with the Service Level Commitment and thereafter operate such services) to reasonably co-operate with Network Rail with regard to Network Rail's management of the network, including in relation to the establishment of up to date Timetable Planning Rules.

9.6 To the extent not already provided for in this Agreement, the Franchisee shall use all reasonable endeavours to ensure the performance by Network Rail of its obligations under any relevant agreement including, where appropriate or where requested by the Authority enforcing its rights against Network Rail under any such agreement (other than any Alliance).

9.7 When and to the extent reasonably requested by the Authority, the Franchisee shall provide to the Authority evidence of the steps taken by it in order to comply with its obligations under this paragraph 9.

9.8 The Franchisee shall in the event of disruption (whether planned or unplanned) which impacts the same, use all reasonable endeavours to co-operate with and provide support to the ScotRail Franchisee. Such co-operation shall without prejudice to the foregoing generality include Publication of appropriate information in respect of the disruption in question and the consequences of and mitigation for the effects of the same.

9.9 Without prejudice to the other terms of this Schedule 1.2, the Franchisee shall take all necessary steps to provide for Passenger Service resilience, including planning provision and training (including exercises) in respect of:-

- (a) interaction and co-operation with public agencies;
- (b) traction;
- (c) equipment;
- (d) catering;
- (e) station facilities;
- (f) operational practices;
- (g) staff rostering and duties;
- (h) cross-support to other railway industry parties, transport providers and roads authorities;
- (i) best practice and lessons learned;
- (j) attendance at any resilience centre designated by the Authority;
- (k) mutual support of the ScotRail Franchise.

10. Severe Weather Resilience

Without prejudice to the Franchisee's obligations in paragraph 9, any obligation in this Schedule 1.2 on the part of the Franchisee to use all reasonable endeavours to operate railway passenger services shall include an obligation to:-

- 10.1 co-operate with the Authority in its resilience planning including without prejudice to the foregoing generality making an appropriately qualified manager with decision-making authority available to attend (whether in person or remotely) at the Authority's request meetings of the Multi-Agency Response Team (or similar response group) at the Scottish Government's Resilience Room or otherwise;
- 10.2 make such adaptations to the Train Fleet, other equipment or facilities essential to the provision of railway passenger services as are reasonably practical and necessary to respond to repeated and prolonged periods of severe weather (be it winter weather or otherwise);
- 10.3 put in place arrangements for emergency staff availability to respond to repeated and prolonged periods of severe weather (be it winter weather or otherwise);
- 10.4 use weather reports and forecasts to plan for disruption and to make decisions on when to implement its Resilience Plan;
- 10.5 co-operate with Network Rail and other Train Operators to provide support to each other, make staff available to each other and pass timely, accurate and detailed information about disruption to each other; and
- 10.6 use best practice with regards to planning for severe weather including such adaptations as are referred to in paragraph 10.2.

11 Resilience & Passenger Team and Resilience Plans

- 11.1 The Franchisee shall designate a service disruption team within its staff ("the Resilience Team") consisting of at least two people, being a suitably trained and experienced manager and with sufficient support staff, whose duties shall include (where required) working with duty control managers to manage disruption to services and provide additional control resources during periods of severe disruption. The Resilience Team shall manage all third party communications with duty control managers.
- 11.2 The Franchisee shall work diligently with Network Rail from the Franchise Commencement Date to agree a Resilience Plan for Franchise Services consisting of guidelines detailing actions to be taken and emergency timetables. The Resilience Team shall be responsible for overseeing implementation of the Resilience Plan at the relevant time.
- 11.3 The Franchisee shall develop and maintain a Resilience Plan, which as a minimum shall include:-
 - (a) consideration of the different effects severe weather can have on different types of trains and Passenger Services;
 - (b) a strategy for all Routes and staff resourcing, during extreme weather including emergency timetables and staff procedures in the event of disruption;

- (c) diversionary routes (where practical) for all Routes and a strategy for securing necessary rolling stock approvals and train crew knowledge and/or hiring of train crew;
- (d) procedures to be implemented, communicating and working with Stakeholders to minimise disruption during severe weather, and how it plans to provide detailed up-to-date and easy to understand information to passengers;
- (e) details of any agreements reached with operators of bus services in terms of paragraph 8.4 hereof and ensure staff have access to information including timetables for bus and other transport operator's services and the details of aforesaid agreements including without prejudice to the foregoing generality in relation to the validity of rail tickets on the bus services;
- (f) its service disruption strategy, covering alternative transport, key stakeholders, staff and training;
- (g) service recovery timescales for different incident types on different Routes (including diversionary routes referred to in paragraph (c) above) covering all reasonably foreseeable events and consequences.

11.4 The Resilience Team shall establish a special training programme for selected support staff and managers to include timetable interpretation skills, dealing with distressed passengers and the Franchisee's refreshments and compensation policy.

11.5 The Franchisee shall implement a passenger information strategy within three months of the Franchise Commencement Date for the purposes of communicating disruptions and other problems to passengers at Stations which shall include:

- (a) Publishing plans, investments to protect against disruptive events and severe weather preparedness;
- (b) email performance bulletins or SMS text messaging or specified social media (at the passenger's option) including, where possible, real time information;
- (c) providing suitable technology and devices to the Resilience Team and customer facing staff to provide customers with real time information.
- (d) the provision of information (real time where possible) via the Franchisee's web site and social media;
- (e) the provision of information (real time where possible) and procuring prompt and accurate display of such on whiteboards and other information display systems at all Stations; and
- (f) the provision of mobile telephones to all of the Franchisee's on-board train managers.

11.6 Representatives of the Resilience Team shall meet with the Authority as and when reasonably requested by the Authority. It is anticipated that additional

briefings will be required in respect of anticipated major disruptive events and de-briefings after major disruptive events.

- 11.7 The Franchisee shall use all reasonable endeavours to ensure messages and information in the event of disruption are aligned across staff, passengers and other relevant parties.
- 11.8 The Franchisee shall use passenger feedback and lessons learned from severe weather or other disruption together with best practices from other countries of dealing with similar events and performance against benchmarks to review, update and refine its Resilience Plan.
- 11.9 The Franchisee shall monitor implementation of its Resilience Plan such monitoring shall include methods to benchmark performance during disruptive events.
- 11.10 The Franchisee shall ensure provisions are made where passengers, due to a disruptive event, will require to spend a prolonged period in a station so that those passengers are kept safe and comfortable.

12 **Performance Steering Group**

- 12.1 As part of its commitment to working with the Authority and Stakeholders, the Franchisee shall work with the Stakeholders to establish a Performance Steering Group (“PSG”). The Franchisee’s representative on the PSG shall be the Quality Manager.
- 12.2 The Authority and the Franchisee shall liaise and cooperate together to prioritise the work of the PSG in consultation with each other and such Stakeholders as the Authority may from time to time specify and shall regularly review the PSG programme in the light of requests from each other and such Stakeholders and available resources.
- 12.3 taking into account the performance commitments of the Franchisee and its rights and responsibilities in connection with its conduct of the Franchise Services, it is anticipated that the PSG shall address the strategic issues arising from the following with the appropriate Stakeholders and their teams:
 - (i) solutions to Timetable conflicts;
 - (ii) the management and planning of service disruptions;
 - (iii) solutions to reduce delays;
 - (iv) the balance between service enhancements and performance; and
 - (v) the balance between arrival times and reliability.
- 12.4 The Franchisee shall develop and introduce Performance Management Systems;

SCHEDULE 1.3

**THIS IS SCHEDULE 1.3 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT
BETWEEN THE AUTHORITY AND SERCO CALEDONIAN SLEEPERS LIMITED**

Additional Service Specifications

1. The Authority's Service Specification Standards

- 1.1 The Franchisee shall at all times during the Franchise Term employ the Franchise Facilities to provide the Franchise Services and shall use all reasonable endeavours to:
 - (a) do so in accordance with each SQUIRE Service Specification as at the date of this Agreement or as amended from time to time; and
 - (b) do so to a standard that is no worse than the relevant Benchmark Level (as amended from time to time) for such Franchise Services.
- 1.2 The requirement to employ the Franchise Facilities in the provision of the Franchise Services is to use or to make available those Franchise Facilities for the benefit of passengers in the condition and with the functionality which is the higher of:
 - (a) the standard for the Franchise Facility recorded in the Franchise Facilities Book;
 - (b) the Train Fleet facilities and characteristics referred to in paragraphs 1 and 2 and Table 2 in Appendix 2 (*The Train Fleet*) to Schedule 1.1 (*Service Development*) and in substitution therefor from the New Train Fleet Service Date the Train Fleet facilities and characteristics referred to in paragraphs 1 and 2 and Table 2 in Schedule 6.1 (*Rolling Stock*);
 - (c) any enhanced standard that is specifically provided for in Schedule 1.6 (*Committed Obligations*);
 - (d) any new rolling stock provided for in Schedule 6 (*Rolling Stock and Station Enhancements*); or
 - (e) any standard that is applied by means of a Variation pursuant to Schedule 9.1 (*Variations and Financial Consequences of Change*);

subject in each case to fair wear and tear.
- 1.3 The requirement to employ the Franchise Facilities in the provision of the Franchise Services is also to use or make available those Franchise Facilities for the benefit of passengers with that degree of skill, diligence, prudence and foresight which would be exercised by a skilled and experienced Train Operator of the Caledonian Sleeper Franchise.
- 1.4 The fact that the Franchisee may have used the reasonable endeavours referred to in paragraph 1.1 shall not in any way reduce its liability to make payments for performance below Benchmark Level in terms of Schedule 7.3 (SQUIRE).

2. Revenue Collection

- 2.1 If the Franchisee introduces a smartcard scheme for use by passengers, whether on a permanent or trial basis, it shall ensure that any such scheme is compliant with any specification and operating requirement of the Integrated Transport Smartcard Organisation and/or any other Train Operators running services to, from or within Scotland. The Franchisee shall ensure that passengers travelling on any of its Passenger Services in seated accommodation can do so using ITSO Certified Smartmedia or other emerging ticketing technologies which are brought into use by the ScotRail Franchisee or any other Train Operators running services within Scotland.
- 2.2 The Franchisee shall not introduce any penalty fares without first obtaining the consent of the Authority.

3. Performance concerning Ticketless Travel

- 3.1 The Franchisee shall use all reasonable endeavours to minimise the amount of ticketless travel and fare evasion on the Passenger Services.
- 3.2 The Franchisee shall ensure that:
 - (a) in seeking to minimise the level of ticketless travel and fare evasion throughout the Franchise Term, it shall use the standard of skill and care which is ordinarily exercised by a skilled and experienced Train Operator performing services of a similar nature;
 - (b) the machinery used for the issuing of tickets, collection of Fares and the checking of tickets shall be of satisfactory quality and fit for purpose;
 - (c) the issuing of tickets and collection of Fares shall be carried out by sufficient numbers of appropriately experienced, qualified and trained personnel with all due skill, care and diligence; and
 - (d) the issuing of tickets, collection of Fares and the checking of tickets shall be performed in compliance with all applicable Laws.

4. Protection and Care Plan

- 4.1 The Franchisee shall use all reasonable endeavours to ensure that, save where the Authority agrees to the contrary, there shall at all stations equipped with a ticket vending machine be an operational means for passengers to retrieve pre-booked tickets and reservations for Passenger Services and also at all staffed stations be an operational means throughout the opening hours of the station of buying a ticket for travel and making a reservation for seated or other accommodation on Passenger Services.
- 4.2 The Franchisee shall procure that there shall be sufficient on-train and/or station staff to provide for late reservations and ticket purchases and a reception, booking-in and information service to all passengers at all Stations.
- 4.3 The Franchisee shall use all reasonable endeavours to ensure that on each Passenger Service there shall be sufficient staff whose duties shall include the following revenue protection and customer care duties:
 - (a) inspection of tickets, issuing of tickets to persons not in possession of a valid ticket and collection of revenue;

- (b) general provision of customer care duties including provision of information to passengers and "helping hand" assistance to adults with small children, and infirm, elderly or Disabled Persons who may require such assistance; and
- (c) taking appropriate measures to deal with unruly behaviour by any passengers, so far as it reasonably practicable in the absence of police assistance, and calling for police assistance when required.

4.4 The Franchisee shall use all reasonable endeavours to ensure that the person mentioned in paragraph 4.3 shall actively carry out the inspection of tickets at regular intervals on each journey and that such person shall use all reasonable endeavours to ensure that no passenger travels without payment of the required Fare.

4.5 The Franchisee shall use all reasonable endeavours to ensure that, at Stations where automatic ticket barriers have been installed, no passenger is required to queue at a revenue protection staff ticket examination or automatic ticket barrier for more than:

- (a) 1 minute to access; or
- (b) 2 minutes to exit;

a platform when the passenger is in possession of a valid ticket.

5. Special Events

5.1 The parties acknowledge that as a key provider of public transport services, the Franchisee may have an important role during the Franchise Term in helping the Authority and third parties make the staging of Special Events successful. The Franchisee shall provide the Authority and third parties involved in staging Special Events with assistance with Passenger Services for Special Events and shall provide the Authority with such evidence or assurances in respect of the same as the Authority may reasonably request.

5.2 The Franchisee shall, at its own cost, co-operate and consult as reasonably required, with the Authority, Network Rail, the ScotRail Franchisee, the British Transport Police and any other relevant party in connection with any arrangements directly or indirectly connected with Special Events, including:-

- (a) provision of additional and/or specific railway passenger services including use of rolling stock which would otherwise have been designated as spare or reserve rolling stock;
- (b) the provision of additional or specific security arrangements at Stations and on Passenger Services;
- (c) the provision of specific integrated ticketing in relation to the Passenger Services; and
- (d) advertising and marketing of Special Events in relation to the Franchise Services.

5.3 The Franchisee shall prepare and implement a strategy to identify and engage with third parties involved in the staging and promotion of Special Events. The Franchisee shall provide the Authority with such details of engagement with such third parties as the Authority may reasonably require. Such strategy shall be regularly updated by the Franchisee and provided to the Authority for approval (such approval not to be unreasonably withheld or delayed) from time to time.

6. Engagement with VisitScotland and the ScotRail Franchisee in respect of Marketing Co-operation

- 6.1 The Franchisee shall use reasonable endeavours to co-operate with VisitScotland and the ScotRail Franchisee to facilitate the promotion of tourism in Scotland and the promotion of the ScotRail Franchise Services including but not limited to the distribution of leaflets and website links.
- 6.2 The Franchisee shall seek a meeting with VisitScotland and the ScotRail Franchisee no less frequently than once every three months, to discuss tourism promotion matters, the promotion of the ScotRail Franchise Services and the strategy developed by the Franchisee, VisitScotland and the ScotRail Franchisee pursuant to paragraph 6.3, and shall provide the Authority with copies of meeting minutes and confirmation of matters arising and actions taken upon request.
- 6.3 The Franchisee shall use reasonable endeavours to work with the Authority, VisitScotland and the ScotRail Franchisee to prepare and implement a strategy in respect of the promotion of tourism in Scotland and the promotion of the ScotRail Franchise Services. The Franchisee shall not implement such strategy without the prior approval of the Authority (such approval not to be unreasonably withheld or delayed). Such strategy may include (but shall not be limited to):
 - 6.3.1 the identification of opportunities for joint marketing campaigns;
 - 6.3.2 development of business to consumer marketing campaigns;
 - 6.3.3 development of business to business marketing campaigns; and
 - 6.3.4 development and use of joint marketing materials,

The Franchisee shall use reasonable endeavours to ensure that such strategy shall be regularly updated and shall ensure that no amendments are made to such strategy without the prior approval of the Authority (such approval not to be unreasonably withheld or delayed).

SCHEDULE 1.4

THIS IS SCHEDULE 1.4 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT BETWEEN THE AUTHORITY AND SERCO CALEDONIAN SLEEPERS LIMITED

Passenger Facing Obligations

1. Licences compliance

The Franchisee shall throughout the Franchise Period comply with the conditions of its Licences and shall in so far as not contrary to those conditions fulfil its obligations under this Schedule.

2. Publishing the Timetable

The First Timetable

2.1. The Franchisee shall on and from the Franchise Commencement Date,

- (a) Publish the Timetable:
 - (i) on the Website;
 - (ii) at the Station Areas; and
 - (iii) by such other means as the Authority may, acting reasonably, specify;
- (b) use all reasonable endeavours to exercise all rights the Franchisee has to require Network Rail, the ScotRail Franchisee or other Train Operator to Publish the Timetable at:
 - (i) staffed stations, by making the relevant information available upon request and free of charge in 1 or more booklets or in other similar form; and
 - (ii) Stations, by display on information displays; and
- (c) use all reasonable endeavours to procure that the ScotRail Franchisee includes the Timetable in its Published timetable information.

Timetable Revisions and Alterations

2.2. The Franchisee shall, without prejudice to its obligations under paragraphs 8.2 and 8.3 of Schedule 1.2 (*Operating Obligations*), Publish updates or replacements to the Timetable at the locations specified in paragraph 2.1 to the extent necessary to reflect any changes which come into effect on a Passenger Change Date:

- (a) in the case of booklets, at least 2 weeks before the changes come into effect;
- (b) in the case of information displays, no later than the day before the changes come into effect and in advance of that date where possible;
- (c) in the case of information provided to the operators of the stations referred to in paragraph 2.1(b), in sufficient time for such information to be Published or

provided by such operators within the time limits provided for in this paragraph 2.2; and

- (d) in the case of the Website and such other means as the Authority may specify from time to time in terms of paragraph 2.1(a)(i) at least 4 weeks before the changes come into effect.

Timetable Integration

2.3.

- 2.3.1. The Franchisee shall use reasonable endeavours to identify, obtain and Publish timetable information of operations of other forms of public transport which connect with Passenger Services as the Authority may nominate from time to time.
- 2.3.2. The Franchisee shall co-operate with the ScotRail Franchisee or other Train Operators to have such timetable information referred to in paragraph 2.3.1 published at Stations.
- 2.3.3. Without prejudice to the terms of paragraphs 2.1(b) and 2.2(c) above the Franchisee shall co-operate with the ScotRail Franchisee, other Train Operators, or Network Rail as appropriate to display the Timetable and information on railway passenger services connecting the Passenger Services at the following:-
 - (a) stations between and including Oban and Crianlarich;
 - (b) stations between and including Mallaig and Fort William;
 - (c) Leuchars (for St. Andrews); and
 - (d) other stations which in the reasonable opinion of the Franchisee are significant tourist destinations or provide connections to ferry services or such stations that are nominated by the Authority as being significant tourist destinations or providing connections to ferry services.

Other Train Operators' Timetables

- 2.4. The Franchisee shall use reasonable endeavours to procure that it makes available to passengers information from the most recently Published timetables of other Train Operators.

Scottish Stations Map

- 2.5. The Franchisee shall prominently display the Scottish Stations Map, as updated by the ScotRail Franchisee from time to time, on rolling stock and at Station Areas and include the same on its Website and in relevant publications.

Advertising and Promotion of Passenger Services

- 2.6. The Franchisee shall advertise and promote the Passenger Services at stations in accordance with the Communications and Marketing Strategy and in a manner reasonably consistent with the Authority's requirements for advertising and promotion of the Passenger Services. The Franchisee shall:

- 2.6.1. ensure that all its commercial advertising in relation to the Passenger Services; and
- 2.6.2. use all reasonable endeavours to ensure all commercial advertising relating to third parties displayed at Station Areas under its control;

shall comply with the British Code of Advertising, Sales Promotion and Direct Marketing (as amended or replaced from time to time).

National Rail Timetable and National Rail Enquiries

- 2.7. The Franchisee shall use all reasonable endeavours to procure (including by virtue of any arrangements made from time to time between Network Rail and RSP) that the National Rail Timetable (or any replacement), which Network Rail is responsible for publishing from time to time in relation to the Passenger Services, incorporates or is consistent with its Timetable from time to time.
- 2.8. The Franchisee shall use all reasonable endeavours to procure that information in relation to:
 - (a) the Timetable; and
 - (b) any Significant Alterations to the Timetable to take effect between any 2 Passenger Change Dates;

is available to passengers through the National Rail Enquiries Scheme (or any replacement) not less than 4 weeks prior to coming into effect.

- 2.9. The Franchisee shall comply with its obligations under the Licences for publication of information for passengers; provided that compliance with such obligations is not sufficient to demonstrate compliance with this paragraph.

Data Set Availability

- 2.10. The Franchisee shall use all reasonable endeavours to procure that the data set comprised in any Timetable (or element of the same) is made available (without charge) to be used and Published by third parties and to that end to secure any necessary licences and/or consents to do so.

Traveline and Transport Direct

- 2.11. The Franchisee shall join, participate in, and comply with its obligations under Traveline Scotland (a part of Traveline) and any other multi-modal public transport information system designated by the Authority. The Franchisee shall also co-operate with the Authority in retaining and further developing Traveline and Transport Direct

Website and Other Media/Medium

- 2.12. The Franchisee shall:
 - (a) create, Publish and maintain a Passenger Services Website throughout the Franchise Period which shall include (but not be limited to) the Timetable, marketing, ticketing and promotions information, journey planning, ticket sales and reservations functions and real time Passenger Service information; and provide links to Traveline Scotland website content and functionality and links to websites of the Franchisee's Affiliates. A Website manager shall ensure that information is current and that the site is easy to

use and provides comprehensive and engaging information for existing and potential customers. The Website may contain "pop ups" where these are used to request passenger views on the quality of Passenger Services or Franchise Services or the quality or functionality of the Website. The Website may contain advertising material for third parties where such material advertises products or services of a nature and quality which reflect the quality of and are not detrimental to the Franchise Services and the Franchisee's branding;

- (b) procure that any such Publication and maintenance shall be in accordance with any guidance issued by the Authority to the Franchisee from time to time; and
- (c) use such existing and emerging media/medium as the Authority may, acting reasonably, specify from time to time for dissemination of information to passengers.

2.13. To the extent that the Franchisee owns copyright or other intellectual property rights in and to the design and contents of the Website, the Franchisee hereby assigns all and whole its present and future right, title and interest in and to all such copyright or other intellectual property rights free from all liens, charges and encumbrances to the Authority absolutely. The Franchisee shall forthwith deliver to the Authority a copy of such documentation, listings, flowcharts, specifications and manuals and such source and object code as created by or on behalf of the Franchisee for the purposes of the Website.

2.14. The Franchisee shall continuously review throughout the Franchise Period all new and developing applications for marketing the Franchise Services and provide information to the Authority at Franchisee Performance Meetings on any new or innovative applications which are or may become available in order to market the Franchise Services.

2.15. The Franchisee shall as soon as reasonably practicable following any request by the Authority, introduce any new or improved methods of marketing the Franchise Services from the Website, including any new or developing media applications which may become available from time to time.

Data Provision and Links

2.16. The Franchisee shall co-operate with the Authority and third parties by the provision of data and data links at no charge as the Authority may from time to time specify.

Emergency Timetables

2.17. In the event of the Franchisee introducing an Emergency Timetable, the Franchisee shall Publish the same in such manner and in such media and mediums as the Authority may from time to time require.

Announcements on-board trains

2.18. The Franchisee shall ensure that all announcements on board trains are appropriate, clear, timely, audible, accurate and easily understood.

Communications and Marketing Strategy

2.19.

- (a) The Franchisee shall implement the Communications and Marketing Strategy ("C&M Strategy") in the Agreed Form marked **C&M** on and from the Franchise Commencement Date;
- (b) The C&M Strategy shall seek to promote the Passenger Services, achieve the policy objectives of the Agreement set out at Clause 4.4 and include specific fares and products, promotions and arrangements for Special Events;
- (c) The Franchisee shall implement the C&M Strategy throughout the Franchise Term;
- (d) The C&M Strategy shall be regularly reviewed (no less than annually) by the Franchisee and the Authority. The Franchisee shall also seek the views of Stakeholders such as Visit Scotland when reviewing and updating the C&M Strategy;
- (e) The Franchisee shall ensure that any merchandising and/or other advertising activities conducted by or on behalf of the Franchisee during the Franchise Period shall not at any time conflict with the Authority's policies and objectives as set out in Clause 4.4 of this Agreement. If the Authority determines that any of the Franchisee's advertising activities conflict or may conflict with the Authority's policies, the Authority shall notify the Franchisee accordingly and the Franchisee shall cease to conduct any such merchandising or advertising activity with immediate effect.

3. Late Timetable Changes

- 3.1. Save in respect of Significant Alterations, for which the provisions of paragraphs 2.2 and 2.9 shall apply, the Franchisee shall inform passengers, so far as possible on 7 days' prior notice, if it will be unable to operate its trains in accordance with the Timetable. Such information shall include any revised Timetable or travelling arrangements.
- 3.2. Such information shall be provided by:
 - (a) revising or adding to the information displays referred to in paragraph 2.1;
 - (b) notifying the operators of the stations referred to in paragraph 2.1(b), as appropriate including by providing such operators with revised posters;
 - (c) updating the Website and such other means as the Authority may, acting reasonably, specify from time to time; and
 - (d) direct communication with passengers who opt-in for such direct communications by such media to which opt-in applies.
- 3.3. Where the Franchisee is unable to provide the information specified in paragraph 3.1 because the relevant revisions are made on an emergency basis, the Franchisee shall notify passengers and Publish the relevant revisions by way of the means contemplated by paragraph 3.2 as soon as reasonably practicable.
- 3.4. The Franchisee shall ensure that, so far as reasonably practicable (including by communication of the relevant information to persons likely to receive enquiries), passengers making enquiries regarding the Passenger Services are informed of the revised Timetable and any revised travel arrangements of the Franchisee as far in advance as is reasonably practicable.

4. Fares Selling Restriction

4.1. The Franchisee shall procure that all persons selling or offering to sell Fares on its behalf (whether under the terms of the Ticketing and Settlement Agreement, as its agents or otherwise):

- (a) do not sell or offer to sell any Fare or Discount Card with a validity of 13 or more months except as required to do so under the terms of the Ticketing and Settlement Agreement or otherwise with the consent of the Authority (such consent not to be unreasonably withheld); and
- (b) comply with the provisions of paragraph 3 of Schedule 15.2 (*Last 12 or 13 Months of Franchise Period*) to the extent they apply to the selling of Fares by the Franchisee.

Restrictions on Sales

4.2. The Franchisee shall ensure that the purchaser of any Inter-available Fare:

- (a) shall be entitled, without further charge, to such rights of access and egress and other similar rights at the commencement and end of the relevant intended journey or journeys as may be reasonably necessary for such purchaser to travel on the Passenger Services;
- (b) shall not be required to incur any cost or take any action beyond the payment of an amount equal to the Price or Child Price (as the case may be) of such Inter-available Fare and, in relation to the issue of a Season Ticket Fare, the completion of such identity card as the Franchisee may reasonably require; and
- (c) shall not be required to pay an amount in respect of a seat reservation or other similar right which it may be compulsory for such purchaser to have in order to make a journey with such Inter-available Fare on a Passenger Service.

4.3. The Franchisee shall procure that for Inter-available Fares, each such Fare shall be offered for sale at all staffed ticket offices at which Fares for a journey between the same origin and destination stations are sold and otherwise wherever and whenever any Season Ticket Fare is offered for sale, in each case, either by it or its agents (except persons acting in such capacity by virtue of having been appointed under Parts II to VI of Chapter 9 of the Ticketing and Settlement Agreement or by being party to the Ticketing and Settlement Agreement).

4.4. Subject to paragraph 4.3 the Franchisee shall permit passengers holding tickets for Inter-available Fares to use any unoccupied and unreserved seats and all accommodation (excluding Cabins), or alternatively to stand on services between Stations within or between Edinburgh and Fort William and between Aviemore and Inverness and that without having made a reservation.

Additional Ancillary Services

4.5. The Franchisee shall, subject to paragraphs 4.2, 8 and 9 of this Schedule 1.4 (*Passenger Facing Obligations*), be entitled to charge a purchaser of any Inter-available Fare for any additional services:

- (a) which are ancillary to the railway passenger service for which such Inter-available Fare (as the case may be) was purchased (including, charges in respect of car parking or catering services); and
- (b) which such purchaser is not obliged to purchase.

Purchase of tickets from on-train staff

4.6 The Franchisee shall ensure that its on-train staff shall be provided with the necessary equipment to allow them to:-

- (a) sell, subject to there being capacity on the particular service, tickets for Passenger Services or any supplements in relation to any Inter-available Fares, direct to customers; and
- (b) sell tickets and/or products for use on other Train Operator's services for any connecting rail service and Transport for London travelcards.

5. Passenger's Charter

Content

5.1. The Franchisee shall:

- (a) Publish its Passenger's Charter:
 - (i) in substantially the form referred to in Appendix 1 (*Form of Passenger's Charter*) and in accordance with Franchisee's obligations under the Code of Practice via the Website, via the app and with printed versions available on train and at ticket offices in Key Stations;
 - (ii) including a "delay = repay" basis and instant settlement mechanism which shall comprise:
 - 30-59 mins – 50% of the fare for the affected journey
 - 59-119 mins – 100% of the fare for the affected journey
 - 120 mins or more – 100% of the return fare

Compensation will be in the form of National Rail Travel Vouchers or an equivalent value cash refund (if preferred by the passenger) payable by electronic fund transfer.

Claim forms will be available on train and at Key Stations, and will include a post-paid address; and
 - (iii) a 'non-availability of facilities repay scheme' which shall comprise:
 - Cancellation/en-route termination;
 - Degraded/sub-standard facilities on the train (including failure to supply advertised catering);
 - Lack of available facilities at Key Stations;

- Non-availability of wi-fi on train;
- Non-availability of booked accommodation;
- Reservation failures; and
- Failure in journey comfort/sleep (noise/level/speed limit/shunting).

The Franchisee shall include details of compensation levels and methods of compensation in the Passenger's Charter. Such compensation levels shall set at a minimum value of £5 Sterling per passenger per incident. Such compensation levels and methods shall be agreed with the Authority from time to time.

- (b) in accordance with the requirements specified in paragraph 5.3;
- (c) review the need for changes to the Passenger's Charter at least once every Franchisee Year, in consultation with the Passengers' Council, and shall submit a draft of any revisions to the Passenger's Charter that it wishes to propose, together with proof of such consultation, to the Authority; and
- (d) state the date from which it comes into effect clearly on the front cover of the Passenger's Charter.

5.2. The Passenger's Charter may reflect the Franchisee's branding and marketing formats.

5.3. The Passenger's Charter shall be drafted so as to achieve Crystal Mark accreditation and accordingly be written in Plain English and shall be Published in the following languages;

- English
- Gaelic (Scottish)
- French
- German
- Spanish
- Italian
- Japanese
- Mandarin

Languages will be reviewed annually by the Franchisee based on passenger provenance.

5.4. The Franchisee may, at its option, additionally Publish a summary or key facts edition of the Passenger's Charter.

5.5. The Franchisee may not change the Passenger's Charter without the prior written consent of the Authority (which consent shall not be unreasonably withheld).

Publishing the Passenger's Charter

5.6. The Franchisee shall publicise its Passenger's Charter by:

- (a) providing copies to the Authority, and the Passengers' Council at least 7 days before it comes into effect;

- (b) providing audiobooks and copies to passengers including to visually impaired passengers requiring a copy in large print or Braille, free of charge, at each staffed Station and, in the case of any revision thereto, providing such copies at least 7 days before such revision comes into effect;
- (c) sending a copy, free of charge, to any person who requests it; and
- (d) displaying it on the Website at all times and, in the case of any revision thereto, at least 7 days before such revision comes into effect,

save in respect of the Passenger's Charter which is effective on the Franchise Commencement Date, in which case the Franchisee shall Publish such Passenger's Charter in the manner contemplated by this paragraph 5.6 on and from the Franchise Commencement Date.

5.7. The Franchisee shall provide copies of its Passenger's Charter to the operators of the Stations to enable such operators to Publish it.

Passenger's Charter Payments

5.8. The Franchisee shall:

- (a) make all payments and all extensions to Fares; and
- (b) provide all discounts on the price of Fares,

which passengers may reasonably expect to be made or provided from time to time under the terms of the Passenger's Charter (whether or not the Franchisee is legally obliged to do so).

5.9. The Franchisee shall use all reasonable endeavours:

- (a) to comply with any other obligations, statements and representations; and
- (b) to meet any other standards or targets of performance,

as are comprised in its Passenger's Charter from time to time.

Passenger's Charter Statistics

5.10. The Franchisee shall:

- (a) prepare the Passenger's Charter Statistics;
- (b) Publish the Passenger's Charter Statistics on the Website by midnight on the Saturday following the end of each Reporting Period; and
- (c) at the same time, provide copies of its Passenger's Charter Statistics to the Authority and the Passengers' Council.

5.11.

- (a) The Franchisee shall provide Passenger's Charter Statistics in a format approved by the Authority to the operators of the Stations in sufficient time for the information to be displayed by such other operators in a format approved by the Authority on information displays at Stations by midnight on the Saturday following the end of each Reporting Period.

- (b) The Franchisee shall as a minimum Publish the Passenger's Charter Statistics on the Website.

Audit of the Passenger's Charter Statistics

5.12. The Franchisee shall procure that:

- (a) the Passenger's Charter Statistics published in accordance with paragraphs 5.10 and 5.11 are audited by an independent person or persons acceptable to the Authority;
- (b) the audit is conducted at least once every 13 Reporting Periods; and
- (c) details of the methodology and the results of the audit are provided to the Authority within 28 days of receipt by the Franchisee.

5.13. If any audit reveals inaccuracies in the data and information used to measure the performance of the Franchisee, the Franchisee shall:

- (a) ensure so far as reasonably practicable that the production of such inaccurate data and information is not repeated;
- (b) as soon as reasonably practicable implement any corrections to such inaccurate data and information (including on a retrospective basis for the previous 13 Reporting Periods); and
- (c) insofar as any inaccuracies in data and information result in compensation that was not given to passengers when it should have been given, so far as reasonably possible make such compensation available by:-
 - (i) providing a compensation mechanism in the Passenger's Charter on such terms as the Authority shall approve (consent not to be unreasonably withheld),
 - (ii) publishing on the Website and at Stations the basis upon which compensation not previously given will be given and how such compensation may be claimed; and
 - (iii) promptly making all payments, extensions and discounts which passengers may thereby reasonably expect to be made or provided, whether or not the Franchisee is legally obliged to do so.

6. Compliance with the Equality Act

- 6.1. The Franchisee undertakes that it will comply with all of its current and future obligations under the EA and any regulations made thereunder.
- 6.2. The Franchisee shall not waive and shall take all necessary actions to preserve any existing or future derogations from the obligations referred to in paragraph 6.1, and no other provision of this Agreement shall supersede this paragraph 6.2.
- 6.3. The Franchisee undertakes that it will provide the Authority with such information as the Authority may from time to time require to enable the Authority to demonstrate its compliance with the Authority's obligations in terms of the EA.

7. Specific Additional Obligations relating to Persons with Disabilities

7.1. The Franchisee acknowledges that its obligations in this paragraph 7 are in addition to and do not limit its obligations to comply with:

- (a) the EA;
- (b) any applicable condition in any of its Licences (including in respect of persons with disabilities); and
- (c) any other of the requirements of this Agreement.

7.2. The Franchisee shall establish and implement procedures necessary to:

- (a) record the making of reservations for all types of accommodation for and/or the provision of assistance to, persons with disabilities which are made through the Assisted Passenger Reservation System (or whatever system may replace it from time to time for the purposes of guidance issued by the Authority and/or the Secretary of State on Disabled People's Protection Policies) and where the Franchisee is responsible for making the reservation and/or delivering the accommodation or assistance reserved. Any helpline established by the Franchisee for the purposes of making reservations for seating accommodation for and/or the provision of assistance to, persons with disabilities shall be provided free of charge;
- (b) record whether accommodation and/or assistance reserved is actually provided; and
- (c) provide such records to the Authority on its request.

7.3.

7.3.1. Where the Franchisee's Disabled People's Protection Policy:

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

the Franchisee shall within 6 months of the date of this Agreement or the publication by the Authority from time to time of any updated published guidance, revise its Disabled People's Protection Policy such that it complies with that guidance, and obtain the Authority's approval of the revised version.

7.3.2. When required to review, revise and update the Franchisee's Disabled People's Protection Policy by the ORR the Franchisee shall update the said policy in consultation with the Authority, the Passengers' Council, Mobility Access Committee Scotland and any other body as directed by the ORR.

7.4. The Franchisee shall comply with the requirements set out in Appendix 2 (*Alternative Transport and Website Stations Accessibility Information*) in respect of the provision of alternative means of transportation for persons with disabilities.

7.5. The Franchisee shall Publish and promote the availability of alternative means of transportation for passengers with disabilities in terms of Appendix 2 (*Alternative Transport and Website Stations Accessibility Information*) by including reference to it in all marketing materials, Passengers' Charter and Timetables and providing detailed information on the applicable terms and procedures.

- 7.6. The Franchisee's Disabled People's Protection Policy shall at a minimum be available on the Website.
- 7.7. The Franchisee shall provide a dedicated accessibility helpline and textphone free of charge.
- 7.8. The Franchisee shall procure that accessibility shall be reviewed and monitored by an "Accessible Travel Working Group", led by the Franchisee's head of guest experience. The Franchisee shall procure that this group shall produce an annual "Accessible Travel Plan", which shall govern the Franchisee's approach to accessibility.
- 7.9. The Franchisee shall procure that the Club Car will also be able to accommodate users of the Passenger Services with accessibility needs travelling in a Berth.
- 7.10. If the Passenger Services are late or cancelled, the Franchisee shall procure that its staff use their tablet devices to source up-to-date travel information and help users of the Passenger Services with accessibility needs to plan their next steps to get to their destination, or return home if this is preferable.

8. Lost Property

The Franchisee shall comply with any code of practice issued by ATOC from time to time in respect of the handling of lost property.

9. Bicycles

- 9.1. The Franchisee shall, so far as is reasonably practical and subject to the availability of appropriate space on Vehicles in the Train Fleet, ensure that reasonable facilities for the transport of bicycles on such Vehicles are made available, at no extra charge to that (if any, and including no charge) specified by the Authority to passengers using the Passenger Services. The Franchisee shall not, without the prior consent of the Authority introduce charges for the carriage of bicycles. The Franchisee shall be entitled to introduce and maintain a reservation system for the transport of bicycles on the Passenger Services, but the Franchisee shall not be entitled to require that any passenger must make a prior reservation to ensure the carriage of such passenger's bicycle on the Passenger Services provided always that the transport of bicycles by whatever means by the Franchisee shall only be guaranteed by the Franchisee if a prior reservation has been made, and the Franchisee shall highlight this to users of the Passenger Services.
- 9.2. The Franchisee shall, so far as is reasonably practical and subject to the availability of appropriate space at Stations, ensure that reasonable facilities to enable the secure storage of bicycles at Stations are made available, at reasonable charges (if any, and including no charge) specified by the Authority to passengers using the Passenger Services.
- 9.3. The Franchisee shall not, except to the extent the Authority otherwise agrees, cease to provide the level of facilities for the carriage and storage of bicycles on the Vehicles used in the provision of the Passenger Services as referred to in Table 2 to Appendix 2 (*The Train Fleet*) to Schedule 1.1 (*Service Development*) until the New Train Fleet Service Date and thereafter as referred to in Table 2 to Schedule 6.1 (*Rolling Stock*).
- 9.4. Except to the extent that the Authority otherwise agrees having regard to, amongst other things, the likely use of such facilities (such agreement not to be unreasonably withheld), any new Vehicles which are procured directly or indirectly

by the Franchisee shall include reasonable facilities for the carriage and storage of bicycles and the Franchisee shall use all reasonable endeavours to maximise the carrying capacity of such facilities.

- 9.5. If at any time the demand for carriage of bicycles on any Passenger Services exceeds the carrying capacity of the same, then the Franchisee shall, or shall procure, that bicycles for which a reservation has been made, but cannot be transported on, the Passenger Services shall be delivered to their destination by alternative means by no later than 45 minutes after the arrival of the Passenger Services at the relevant destination.
- 9.6. Notwithstanding any of the above, the Franchisee shall not be in contravention of any of its obligations under this paragraph 9 if the reason for its failure to comply with any such obligation is the use by it on any particular occasion of some or all space otherwise available to cyclists and/or bicycles for the carriage and/or accommodation of wheelchairs and/or prams or infant buggies, and/or wheelchair users and/or those passengers travelling with such wheelchair users or infants.

10. Car Parking at Stations

- 10.1. The Franchisee shall not agree to the introduction or variation of car parking charges at Stations without the prior consent of the Authority. Any such consent may, amongst other things, require that any additional revenue from car parking charges is paid to the Authority or that it be re-invested at the direction of the Authority in facilities at Stations, including car parks.
- 10.2. The Franchisee shall not agree to the reduction of the number of car parking spaces at any Station without the prior consent of the Authority.
- 10.3. The Franchisee shall use all reasonable endeavours to work with Network Rail, Local Authorities and commercial providers of car parking to co-ordinate parking policies and provision at and in the immediate vicinity of Stations.

11. Statutory Notices

If requested by the Authority, the Franchisee shall Publish and display at the Station Areas and on-board the Train Fleet (and shall use all reasonable endeavours to procure the publication and display at Stations) such notices as the Authority may wish to publish from time to time in the exercise of its functions (including in relation to Closures or any enforcement or penalty orders).

12. Customer Contact Centre

The Franchisee shall establish and create and maintain for the Franchise Term a branded customer contact system which will provide a wide range of retailing and information provision services for Passenger Services including telesales, provision of telephone services for the Disabled Persons and customer relations activities. This customer contact system is to be for rail, and related, enquiries relating to the Caledonian Sleeper Franchise and is not to be promoted by the Franchisee as dealing with other enquiries. The Franchisee shall use reasonable endeavours to make the availability of such facility known to both customers and potential customers in Scotland, UK and internationally.

13. Catering

- 13.1 The Franchisee shall provide catering facilities on every Passenger Service.

- 13.2 The catering service should provide a good quality experience, which showcases Scottish cuisine, using locally sourced produce where possible.
- 13.3 Passengers who have purchased a berth must have access to meals, snacks, breakfast, hot and cold drinks and alcohol.
- 13.4 The Franchisee shall provide for the use of passengers an area or areas on board each train in passenger service where those passengers with berths may consume food and drink outwith their Cabin.
- 13.5 All passengers in berths shall in addition have the opportunity to have breakfast served to them on the train on which they are travelling should they so wish, such passengers should not require to consume non-breakfast items in their cabins if such passengers do not wish to.
- 13.6 The Franchisee shall ensure that the passengers travelling in seated accommodation have access to catered items either at their seats or at a conveniently located facility. Such catering services must be available at all times and not dependent on the availability of specific facilities such as vending machines.
- 13.7 The Franchisee shall offer a level of catering at Stations appropriate to the needs and numbers of passengers using particular Stations.

14. Help Points

The Franchisee shall timeously provide the ScotRail Franchisee with such information as the ScotRail Franchisee would require to enable Caledonian Sleeper Franchise passengers to use the ScotRail Help Points at Stations to obtain accurate information relating to the Passenger Services.

15. Customer Complaints Handling Procedure

- 15.1. When required to review, revise and update the Customer Complaints Handling Procedure by the ORR, the Franchisee shall update the procedure in consultation with the Authority, the Passenger's Council and any other body as directed by the ORR.
- 15.2. The Franchisee's Customer Complaints Handling Procedure shall at a minimum be available:-
 - (a) on the Website;
 - (b) on all trains used to provide Passenger Services; and
 - (c) at staffed Stations.
- 15.3. At unstaffed Stations the Franchisee shall use all reasonable endeavours to provide information to passengers that will enable such passengers to access information about the Franchisee's Customer Complaints Handling Procedure

16. Station Facilities

- 16.1. The Franchisee shall ensure that passengers have access to a waiting room, shower facilities and that digital connectivity will be provided at the Key Stations and Stirling, Perth, Dundee, Crianlarich and Aviemore. The standard of the aforesaid facilities and the charges (if any) payable in respect of their use may

differ dependent on the ticket type of the passenger making use of the aforesaid facilities;

16.2. The Franchisee shall at any Station that is not a Key Station or one of the Stations referred to in paragraph 16.1 use all reasonable endeavours to ensure that all station facilities provided by the Facility Owner of that Station for the benefit of passengers are available to passengers using the Passenger Service at all times when such passengers will use the Station.

17. **Staffing**

The Franchisee shall ensure that the level and quality of staffing in relation to the Passenger Services will be:-

- (a) appropriate for the class of provision on the Passenger Service offered and/or advertised by the Franchisee; and
- (b) such so as not to negatively affect passenger's perception of service quality.

18. **Payment Methods**

The Franchisee shall ensure that there is no additional charge or fee due to the method of payment used to pay for a reservation or Fare.

APPENDIX 1 TO SCHEDULE 1.4**Form of Passenger's Charter**

The form of Passenger's Charter is the document in the Agreed Form marked PC.

APPENDIX 2 TO SCHEDULE 1.4

Alternative Transport and Website Stations Accessibility Information

1. References in this Appendix 2 to passengers are references to passengers who are Disabled Persons who are wheelchair users or otherwise severely mobility impaired. References in this Appendix 2 to a carer are to a person who intends to accompany such a passenger on the Passenger Service referred to in paragraph 2.
2. Subject to paragraph 4, where:
 - (a) a passenger wants to travel on a Passenger Service; and
 - (b) the design of the station at which the Passenger Service is to start (the **Departure Station**) or finish (the **Destination Station**) or the then current operational status or condition of either station or facilities at the same or the trains deployed in providing the Passenger Services prevents the passenger from using that station on the intended date of travel to access or disembark from that Passenger Service,

the Franchisee shall provide alternative transport for that passenger in accordance with paragraph 3.
3. The Franchisee shall provide alternative transport for the passenger referred to in paragraph 2:
 - (a) from the Departure Station to the next station at which the Passenger Service is scheduled to call and at which it is possible for the passenger to access that Passenger Service on the intended date of travel;
 - (b) to the Destination Station, from the station closest to such station at which the Passenger Service is scheduled to call and which it is possible on the intended date of travel for the passenger to use to disembark from that Passenger Service; and/or
 - (c) to or from such other station as the Franchisee may, having regard to the journey and the needs of the passenger, agree,

and, in any case, at no cost additional to the price of the Fare which would otherwise be payable for the passenger's rail journey.
4. The Franchisee's obligations under this Appendix 2 are subject to:
 - (a) reasonable prior notice of the passenger's requirement for alternative transport; and
 - (b) the availability of suitable alternative transport (provided that the Franchisee has used all reasonable endeavours to ensure that it has arrangements in place to meet requirements for the provision of such alternative transport).
5. Where the Franchisee provides alternative transport for a passenger pursuant to paragraph 2, the Franchisee shall permit a carer for that passenger to accompany the passenger on the alternative transport at no cost additional to the price of the Fare which would otherwise be payable for the carer's rail journey.

6. Website Stations Accessibility Information

The Franchisee will with effect from Franchise Commencement Date establish and maintain on the Website information on the accessibility of Stations to act as a guide to Disabled Persons and carers who are prospective passengers.

SCHEDULE 1.5

THIS IS SCHEDULE 1.5 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT BETWEEN THE AUTHORITY AND SERCO CALEDONIAN SLEEPERS LIMITED

Information about Passengers

1. Passenger Numbers Information

1.1 The Franchisee shall, as and when reasonably requested by the Authority and in any event not less than four times each year provide information to the Authority on the extent of the use by passengers of the Passenger Services. In particular and when so requested, the Franchisee shall provide information relating to:

- (a) the number of passengers travelling in each class of accommodation:
 - (i) on each Passenger Service;
 - (ii) on each Route; and
 - (iii) at each 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;
- (b) the times of the day, week or year at which passengers travel; and
- (c) in so far as practicable the frequency with which passengers use Passenger Services on a repeat basis if at all,

(together ***Actual Passenger Demand***).

1.2 The Franchisee shall obtain the information specified in paragraph 1.1(a) by way of the method set out in paragraph 1.5, for determining the number of passengers travelling in each class of accommodation and by ticket type:

- (a) on each Passenger Service;
- (b) on each Route;
- (c) 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); and
- (d) between any Stations.

1.3 The information specified in paragraph 1.1 shall:

- (a) be provided in such format and to such level of disaggregation as the Authority may reasonably require in order to assist the Authority's decision-making on future service level commitments, infrastructure, station and rolling stock vehicle investment, the best use of the network, the impact of promotions and marketing, fare setting, monitoring of investment and provision of services or requirements for services for Special Events; and

- (b) be provided by the Franchisee to the Authority, within 14 days of any request by the Authority pursuant to paragraph 1.1 and in any event on 14th of each of January, April, July and October of each year for the preceding quarter year.

1.4 At the same time as the Franchisee provides any information in accordance with paragraph 1.1, it shall (if the Authority requests it to do so):

- (a) update any Forecast Passenger Demand accordingly in the same format and to the same level of disaggregation as the Authority required pursuant to paragraph 1.1 (a); and
- (b) notify the Authority of any such update.

1.5 For the purposes of paragraph 1.2, an accurate method for determining the number of passengers travelling shall be:-

- (a) reservations system data confirming reservations made and fulfilled reconciled with;
- (b) manual counts as provided for in paragraph 1.6.

1.6 Manual Passenger Counts

- (a) The Authority shall have the right to require the Franchisee to carry out manual counts in relation to all of the Passenger Services at such times as may be required but not more than twice in any Franchisee Year and in such manner (including as to levels of accuracy and the number of days) as may be specified from time to time by the Authority;
- (b) The Franchisee shall supply the details of any such counts undertaken to the Authority, as soon as reasonably practicable but in any event within two weeks from the date of completion of such counts, in such form as the Authority may stipulate.

1.7 The Authority shall be entitled to audit such counts (whether by specimen checks at the time of such counts, verification of proper compliance with the manner approved by the Authority or otherwise) and the reservations system data provided by the Franchisee. In the event that such audit reveals, in the reasonable opinion of the Authority, a material error, or a reasonable likelihood of material error, in such counts, the Authority may require the counts to be repeated or the results adjusted as it considers appropriate, and in these circumstances the Franchisee shall pay to the Authority the costs of any such audits.

1.8 The Franchisee shall in connection with provision of passenger count information co-operate with the Department for Transport and the ORR as required by its Licence conditions or the Authority. The Franchisee shall provide information in alternative formats or with such additional requirements as the Authority may reasonably request.

2. **National Passenger Surveys**

2.1 The Authority may use National Passenger Surveys to measure the level of passenger satisfaction with the Franchise Services.

- 2.2 The Authority shall agree with the Passenger's Council when (normally twice per annum) and where National Passenger Surveys are to be carried out.
- 2.3 The Franchisee shall grant access on trains or at stations to the Passenger's Council (or its representatives and agents including the Authority) to carry out National Passenger Surveys.
- 2.4 The Franchisee shall co-operate with the Passenger's Council and the Authority (in such manner as the Authority may reasonably require) in order to enable the Passenger's Council to carry out National Passenger Surveys. This shall include any additional questions or surveys the Authority may request the Passenger's Council to conduct on the Authority's behalf in addition to the National Passenger Surveys.
- 2.5 The Franchisee shall immediately upon receipt of National Passenger Survey results forward the same to the Authority.
- 2.6 The Authority and/or Passenger's Council may from time to time publish the results of each National Passenger Survey.
- 2.7 If any National Passenger Survey includes a comparison between such National Passenger Survey and any earlier National Passenger Survey, the Authority shall use all reasonable endeavours to ensure that such comparisons form a reasonable basis for monitoring the trends of passenger satisfaction over time.
- 2.8 The Franchisee shall co-operate with any additional passenger surveys (in addition to the National Passenger Survey) which the Authority or ORR may require to be carried out from time to time
- 2.9 For the purposes of this paragraph 2, co-operation may include carrying out or managing surveys for the Authority on a reimbursement at cost basis.
- 2.10 The Franchisee shall co-operate with any statistical enquiry made by the Authority or Audit Scotland.

3. Annual Passenger Survey

- 3.1 The Franchisee shall commission an annual passenger survey of existing users of the Passenger Services employing the methodology and sample size as set out in the Survey Methodology covering qualitative aspects of the Franchise Services and also an overall passenger satisfaction statistic that is compatible with the Passengers' Council's Survey.
- 3.2 The Survey Methodology shall not be altered or departed from without the agreement of the Authority.
- 3.3 The results of each annual survey shall be forwarded to the Authority by the Franchisee on receipt.
- 3.4 The results of each annual survey shall, subject to the Authority having an agreement in place with the Passenger's Council as to the Publication and use of the survey results, be shared with the Passenger's Council.

APPENDIX TO SCHEDULE 1.5

Survey Methodology

1. In each year of the Franchise Term, the Franchisee shall procure that a comprehensive survey of existing users of the Passenger Services is carried out. Each such survey shall be carried out by an independent third party organisation. The Franchisee shall procure that each such survey will take place over a one month period and will use questionnaires to invite users of the Passenger Services to rate their satisfaction levels for a range of elements of the Passenger Services. The Franchisee shall use reasonable endeavours to procure that each such survey will sample at least 500 users of the Passenger Services.
2. The Franchisee shall procure that questionnaires are distributed as follows:
 - On board the train for self-completion;
 - Via emailed link as part of the post trip communication process
 - Supplemented by independent interviewers on board train and in station
3. The Franchisee shall procure that a traditional rating system is used to measure satisfaction of the users of the Passenger Services, and users of the Passenger Services will be invited to rate as follows:
 - Very satisfied
 - Satisfied
 - Neither satisfied / nor dissatisfied
 - Dissatisfied
 - Very dissatisfied.
4. The Franchisee shall procure that each such survey shall include a series of questions designed to understand how users of the Passenger Services rate the Passenger Services for each element of the following areas:
 - Website and app
 - Ease of research
 - Booking process
 - Station experience
 - Welcome and boarding
 - Accommodation
 - Food and drink
 - Comfort and quality of sleep
 - Staff hospitality
 - Safety and security
 - Value for money
 - Feedback and complaint process.
5. The Franchisee shall procure that details of each individual respondent are recorded to enable the Franchisee to understand what particular groups are saying about the Passenger Services. For example:
 - Age range
 - Gender
 - Location

- Routes used
- Frequency of Caledonian Sleeper usage
- alternative used and frequency thereof
- Income level.

6. In addition to the information described in paragraphs 1 to 5 above, the Franchisee shall review other metrics such as punctuality and reliability by route. The Franchisee shall combine both the results from the surveys described in paragraphs 1 to 5 above and these metrics to produce the annual survey which shall be forwarded to the Authority pursuant to paragraph 3.3. of Schedule 1.5.

SCHEDULE 1.6

THIS IS SCHEDULE 1.6 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT BETWEEN THE AUTHORITY AND SERCO CALEDONIAN SLEEPERS LIMITED

Committed Obligations

Part 1

Franchisee's Committed Obligations

- 1.1 The Franchisee shall implement the Committed Obligations set out in Column 1 of the table below in accordance with the further details set out in column 2 by the date or dates specified in column 3 and pursuant to and subject to the relevant terms, conditions, and obligations within Schedules 1.4, 5.2, 6.1, 6.1A, 6.1B, 6.2, 6.3, 7.3 and 13.1 (which for ease of reference only are referred to in column 4 (if any)).
- 1.2 In the event of any conflict between any of the Committed Obligations set out in the columns 1, 2 and 3 in the table below, and any relevant terms specifically cross referenced in column 4, the latter shall prevail.

	Column 1	Column 2	Column 3	Column 4
CO Number	Committed Obligation	Further details	Deadline	Cross Reference

	Column 1	Column 2	Column 3	Column 4
CO Number	Committed Obligation	Further details	Deadline	Cross Reference
1.	Procuring the design, manufacture, delivery, commissioning and acceptance and entry into service of the New Train Fleet for the operation of Passenger Services by 1 April 2018	<ol style="list-style-type: none"> 1. Provision of final vehicle layouts and delivery of electronic 3D visualisation and 3D renderings of the New Train Fleet without the requirement for specialist visualisation software. 2. Completion of design of the New Train Fleet in accordance with the terms of this Franchise Agreement, the Passenger Facing Requirements and the Specification. 3. Delivery of first rake of 16 Coaches in accordance with the requirements contained in Schedule 6.1 4. Achievement of all homologation and approvals necessary for all Primary Routes, Diversionary Routes and routes to Depots, works and stabling yards, in accordance with the requirements contained in Schedule 6.1 5. Delivery of last rake of 16 Coaches in accordance with the requirements contained in Schedule 6.1 	<ol style="list-style-type: none"> 1. By end January 2016 2. By end January 2016 3. By end January 2017 4. By end August 2017 5. By end December 2017 	Schedules 6.1 (<i>Rolling Stock</i>) and 6.1A (<i>new Train Fleet Output Specification</i>)

	Column 1	Column 2	Column 3	Column 4
CO Number	Committed Obligation	Further details	Deadline	Cross Reference
2	<p>In respect of the Stations at Stirling, Perth and Dundee, the Franchisee shall procure the following enhancements of the waiting rooms:</p> <ul style="list-style-type: none"> improved interior layouts; and aesthetic, lighting and décor improvements. 	Waiting rooms in the following Stations: Dundee, Perth, and Stirling	Within 2 years after the Franchise Commencement Date	Schedule 6.2 (<i>Station Enhancements</i>) paragraphs 7.1, 8.1 and 9.1
3	<p>In respect of the Stations at Inverness, Aberdeen, Fort William, Aviemore, Crianlarich and the Tier 3 Stations the Franchisee shall procure aesthetic, lighting and décor improvements to the waiting rooms in accordance with Schedule 6.2 (<i>Station Enhancements</i>).</p>	Waiting rooms in the following stations: Aberdeen, Fort William, Inverness, Aviemore, Crianlarich and the Tier 3 Stations	Within 2 years after Franchise Commencement Date	Schedule 6.2 (<i>Station Enhancements</i>) Paragraphs 4.1, 5.1, 6.1, 10.1, 11.1 and 12.1
4	<p>In respect of the Station at Inverness, the Franchisee shall work with the ScotRail Franchisee to procure investment in the refurbishment of the business/first class (sleeper) lounge at that Station</p>	Inverness business/first class (sleeper) lounge.	Within 2 years after the Franchise Commencement Date	Schedule 6.2 (<i>Station Enhancements</i>) Paragraph 5.2

	Column 1	Column 2	Column 3	Column 4
CO Number	Committed Obligation	Further details	Deadline	Cross Reference
5	In respect of the Stations at Edinburgh Waverley, Glasgow Central, Aberdeen, Inverness, Fort William, London Euston, Dundee, Perth, Stirling, Aviemore, and Crianlarich, the Franchisee shall procure the provision of free wi-fi via the Totems which shall act as wi-fi hotspots.	Stations at Edinburgh Waverley, Glasgow Central, Aberdeen, Inverness, Fort William, London Euston, Dundee, Stirling, Perth, Aviemore and Crianlarich.	Within 2 years after the Franchise Commencement Date	Schedule 6.2 (<i>Station Enhancements</i>) Paragraphs 2.8, 2.9, 3.9, 3.10, 4.7, 4.8, 5.7, 5.8, 6.5, 6.6, 7.5, 7.6, 8.5, 8.6, 9.5, 9.6, 10.4, 10.5, 11.4, 11.5, 14.6, 14.7
6	In respect of the Tier 3 Stations the Franchisee shall procure the provision of free wi-fi via the Totems which shall act as wi-fi hotspots.	The Tier 3 Stations.	Within 2 years after the Franchise Commencement Date	Schedule 6.2 (<i>Station Enhancements</i>) Paragraphs 12.2 and 12.3
7	In respect of the Tier 4 Stations, the Franchisee shall procure the provision of free wi-fi via the Totems which shall act as wi-fi hotspots and which shall provide service and onward connectivity information.	The Tier 4 Stations	Within 2 years after the Franchise Commencement Date	Schedule 6.2 (<i>Station Enhancements</i>) Paragraphs 13.2 and 13.3
8	In respect of the Stations at Dunkeld and Birnham, Roy Bridge, Bridge of Orchy, Upper Tyndrum and Garelochhead, the Franchisee shall procure Totems which shall be incorporated into a waiting shelter.	Stations at Dunkeld and Birnham, Roy Bridge, Bridge of Orchy, Upper Tyndrum and Garelochhead.	Within 2 years after the Franchise Commencement Date	Schedule 6.2 (<i>Station Enhancements</i>) Paragraph 13.1

	Column 1	Column 2	Column 3	Column 4
CO Number	Committed Obligation	Further details	Deadline	Cross Reference
9	<p>In respect of each of the Stations, the Franchisee shall, with the cooperation of the relevant Station Facility Owner, procure:</p> <ul style="list-style-type: none"> enhanced external station signage indicating that the relevant Station is a gateway to the network of Stations; improvement to the wayfinding signage for Key Station facilities for use by users of the Passenger Services; and improved directional signage to key off-station locations, specifically bus stops and any showers provided by the commercial partners of the Franchisee. 	All Stations	Within 2 years after the Franchise Commencement Date	<p>Schedule 6.2 (<i>Station Enhancements</i>)</p> <p>Paragraphs 2.14, 3.15, 4.13, 5.13, 6.10, 7.7, 8.7, 9.7, 10.6, 11.6, 12.4, 13.4 and 14.12</p>
10	In respect of the Stations at Crianlarich and Aviemore, the Franchisee shall enter into commercial agreements with hotel partners to facilitate the provision of showers at Crianlarich and Aviemore.	Stations at Crianlarich and Aviemore	At Franchise Commencement Date	<p>Schedule 6.2 (<i>Station Enhancements</i>)</p> <p>Paragraphs 10.2 and 11.2</p>
11	In respect of the Stations at Perth, Dundee and Stirling, the Franchisee shall procure the installation of a single shower enclosure for each sex.	Stations at Perth, Dundee and Stirling	Within 2 years after the Franchise Commencement Date	<p>Schedule 6.2 (<i>Station Enhancements</i>)</p> <p>Paragraphs 7.2, 8.2 and 9.2</p>

	Column 1	Column 2	Column 3	Column 4
CO Number	Committed Obligation	Further details	Deadline	Cross Reference
12	In respect of the Stations at Dundee, Perth, Motherwell, Carstairs, Leuchars, Kirkcaldy, Inverkeithing, Aviemore, Kingussie, Newtonmore, Carrbridge, Dalwhinnie, Blair Atholl, Pitlochry, Gleneagles, Dunblane, Stirling, Falkirk Grahamston, Crianlarich, Ardlui, Arrochar & Tarbet the Franchisee shall procure the fitment of controlled access devices on waiting room and toilet facilities in accordance with Schedule 6.2 (<i>Rolling Stock</i>).	Stations at Dundee, Perth, Motherwell, Carstairs, Leuchars, Kirkcaldy, Inverkeithing, Aviemore, Kingussie, Newtonmore, Carrbridge, Dalwhinnie, Blair Atholl, Pitlochry, Gleneagles, Dunblane, Stirling, Falkirk Grahamston, Crianlarich, Ardlui, Arrochar & Tarbet	Within 2 years after the Franchise Commencement Date	Schedule 6.2 (<i>Station Enhancements</i>) Paragraphs 7.10, 8.10, 9.10, 10.9, 11.9, 12.7 and 13.7
13	In respect of the Station at London Euston, the Franchisee shall procure access to London Euston first class lounge for users of the Passenger Services, including use of showers.	London Euston station	By Franchise Commencement Date	Schedule 6.2 (<i>Station Enhancements</i>) Paragraphs 14.1 and 14.3
14	In respect of the Station at Aberdeen, the Franchisee shall have agreed commercial terms with ScotRail Franchisee to secure access for users of the Passenger Services to the first class lounge, including use of showers.	Aberdeen station	By Franchise Commencement Date	Schedule 6.2 (<i>Station Enhancements</i>) Paragraphs 4.3 and 4.5

	Column 1	Column 2	Column 3	Column 4
CO Number	Committed Obligation	Further details	Deadline	Cross Reference
15	In respect of the Station at Edinburgh Waverley, the Franchisee shall have agreed commercial terms with East Coast to secure access for users of the Passenger Services to the first class lounge.	Edinburgh Waverley station	By Franchise Commencement Date	Schedule 6.2 (<i>Station Enhancements</i>) Paragraph 2.2
16	In respect of the Stations at Aberdeen, Inverness, Fort William, Edinburgh Waverley, Glasgow Central and London Euston the Franchisee shall supply and use for each train service a branded reception podium.	Stations at Aberdeen, Inverness, Fort William, Edinburgh, Glasgow Central and London Euston	By Franchise Commencement Date	Schedule 6.2 (<i>Station Enhancements</i>) Paragraphs 2.13, 3.14, 4.12, 5.12, 6.9 and 14.11
17	The Franchisee shall introduce private showering facilities for passengers travelling in En-Suite Berths.	Showers located in bathrooms in En Suite Berths will provide a step changing enhancement for customers in terms of convenience and comfort.	Introduction of New Train Fleet by 1 st April 2018	Schedule 6.1A (<i>New Train Fleet Output Specification</i>) Paragraph 1.5
18	The Franchisee shall introduce a programme whereby individual Coaches will be named after famous Scots.	To promote the emblematically Scottish nature of the service and to attract positive media coverage, the Franchisee shall implement a programme of naming Coaches after famous Scots throughout the Franchise Term.	Introduction of New Train Fleet by 1 st April 2018	-

	Column 1	Column 2	Column 3	Column 4
CO Number	Committed Obligation	Further details	Deadline	Cross Reference
19	The Franchisee shall introduce an onboard library located in the Club Car. A range of board games will also be provided.	The Franchisee will stock a range of Scottish literature, both classic and contemporary, which will be a benefit to the customer as well as showcasing the best of Scotland. The Franchisee shall refresh content on a quarterly basis.	At Franchise Commencement Date	Schedule 6.3 (<i>Passenger Experience and Marketing</i>) Part 1 (<i>Passenger Experience</i>) Paragraphs 2.2 and 2.4
20	The Franchisee shall arrange themed 'Special Evenings' in the Club Car. Covering areas such as comedy, music and literature.	The Franchisee will ensure that the train becomes a venue in its own right and will attract positive media coverage. The Franchisee will plan events regularly with at least one per month.	At Franchise Commencement Date	Schedule 6.3 (<i>Passenger Experience and Marketing</i>) Part 1 (<i>Passenger Experience</i>) Paragraph 2.5
21	The Franchisee shall introduce the ability for all passengers to choose to enjoy catering in their accommodation.	The Franchisee shall introduce a 'Room Service' concept to enable all passengers to enjoy food and drink delivered to their accommodation whether it be Cabin, Pod Flatbed or Cradle Seat.	Introduction of New Train Fleet by 1 st April 2018	Schedule 6.3 (<i>Passenger Experience and Marketing</i>) Part 1 (<i>Passenger Experience</i>) Paragraphs 8.4

	Column 1	Column 2	Column 3	Column 4
CO Number	Committed Obligation	Further details	Deadline	Cross Reference
22	The Franchisee shall collaborate with the [redacted text] to facilitate the selection of and partnering with SME producers and suppliers.	This is without prejudice to CO57.	At Franchise Commencement Date	Schedule 6.3 (<i>Passenger Experience and Marketing</i>) Part 1 (<i>Passenger Experience</i>) Paragraphs 8.10
23	The Franchisee shall engage the services of [redacted text] to assist in the design of the New Train Fleet. A 'Good Sleep Guide' and 'Sleep Pack' for passengers shall be produced.	The Sleep Guide and design advise will contribute to ensuring that all Caledonian Sleeper passengers have the best possible chance of enjoying a good night's sleep while travelling on the train.	The Good Sleep Guide will be produced at Franchise Commencement Date. Design enhancements will be included with the introduction of the New Train Fleet by April 2018.	Schedule 6.3 (<i>Passenger Experience and Marketing</i>) Part 1 (<i>Passenger Experience</i>) Paragraphs 9.2 and 9.3
24	The Franchisee shall partner [redacted text] to ensure that the Passenger Services are continuously audited for accessibility.	All potential and existing customers will be able to use Passenger Services without any hindrance or limitation to their enjoyment of their journey. A full audit will take place annually.	At Franchise Commencement Date	Schedule 6.3 (<i>Passenger Experience and Marketing</i>) Part 1 (<i>Passenger Experience</i>) Paragraphs 10.4

	Column 1	Column 2	Column 3	Column 4
CO Number	Committed Obligation	Further details	Deadline	Cross Reference
25	The Franchisee shall introduce a Disabled Person's Protection Policy and associated Accessible Travel Plan.	All potential and existing customers will be able to use Passenger Services without any hindrance or limitation to their enjoyment of their journey. The Franchisee will make pertinent information readily accessible for those planning travel. The policy and plan will be reviewed annually following the audit carried out by Mary-Anne Rankin Associates referred to in CO 24.	At Franchise Commencement Date	Schedule 1.4 (<i>Passenger Facing Obligations</i>) Paragraph 7
26	The Franchisee shall produce a 'Googlemaps Streetview' type virtual tour of exemplars of the Train Fleet (and in due course the New Train Fleet) and the Stations, to be accessible through the Website.	As part of the research process all customers will be able to make a virtual journey through the exemplars of the Train Fleet (and in due course the New Train Fleet) and the Stations. This will be reviewed annually following the audit carried out by Mary-Anne Rankin Associates referred to in CO 24.	At Franchise Commencement Date	-
27	The Franchisee shall incorporate disability awareness training for all staff into the regular programme of refresher training.	All staff will receive such training on an annual basis.	At Franchise Commencement Date	-
28	The Franchisee shall empower all on-train staff to resolve customer satisfaction issues during the journey.	All staff will receive coaching to enable them to deal with customer issues in a professional and confident manner.	Within 6 months of Franchise Commencement Date	Schedule 6.3 (<i>Passenger Experience and Marketing</i>) Part 1 (<i>Passenger Experience</i>) Paragraph 13.2

	Column 1	Column 2	Column 3	Column 4
CO Number	Committed Obligation	Further details	Deadline	Cross Reference
29	Without prejudice to any other terms of the Franchise Agreement, the Franchisee shall introduce a Mystery Shopper programme.	The programme will ensure that all Passenger Services are audited on a monthly basis. The findings, recommendations and action plans will be shared within the Franchisee's organisation.	At Franchise Commencement Date	Schedule 7.3 (SQUIRE) Paragraph 5
30	The Franchisee shall Publish the results of its performance against a range of measures described in paragraph 13 of Schedule 6.3.	The Franchisee shall Publish the said results for each Reporting Period.	At Franchise Commencement Date	Schedule 6.3 (Passenger Experience and Marketing) Part 1 (Passenger Experience) Paragraph 13.6
31	The Franchisee shall undertake a benchmarking exercise, in respect of the measures described in paragraph 13 of Schedule 6.3, with hospitality and service organisations outside the rail industry	This benchmarking exercise shall be repeated once a year and the results Published.	At Franchise Commencement Date	-
32	The Franchisee shall introduce a pre-published programme of 'Meet the Manager' days	Each quarter, the Franchisee shall publicise and hold 'Meet the Manager' sessions on board the train.	At Franchise Commencement Date	-
33	The Franchisee shall achieve at least a minimum target level of 90% guest satisfaction for communication	Based on a question within the post-trip email, the Franchisee will achieve at least a minimum target score of 90%.	Within 12 months of Franchise Commencement Date	-
34	The Franchisee shall achieve at least a 20% improvement in satisfaction levels for accommodation	Within twelve months of the introduction on the New Train Fleet, the Franchisee will achieve at least a 20% improvement in the accommodation score within the post-trip survey	Within 12 months of the introduction of the new train by 1st April 2018	-

	Column 1	Column 2	Column 3	Column 4
CO Number	Committed Obligation	Further details	Deadline	Cross Reference
35	Without prejudice to any other terms of the Franchise Agreement including but not limited to paragraph 4 of Schedule 13.1 (Franchise Management), the Franchisee shall achieve a Crystal Mark accreditation for the use of clear English for all documents and publications	All publications, both physical and online, will be written in clear English to ensure policies are clear and transparent.	Within 6 months of Franchise Commencement Date	Schedule 13.1 (<i>Franchise Management</i>) Paragraph 4
36	The Franchisee shall use all reasonable endeavours to gain a five star rating from at least one internationally recognised hospitality award body listed in the 2 nd column to this CO 36	Recognisable accreditations will be important in establishing the quality credentials of the Caledonian Sleeper. The Franchisee will seek accreditation from the AA, TripAdvisor, VisitScotland and shall also engage with Lonely Planet.	Within 12 months of the introduction of the New Train Fleet by 1st April 2018	Schedule 6.3 (<i>Passenger Experience and Marketing</i>) Part 1 (<i>Passenger Experience</i>) Paragraph 4.1
37	The Franchisee shall introduce a Guest Response Team to oversee significant disruption events.	The Guest Response Team, once deployed, will be charged with ensuring all guests are contacted, the disruption advised, the options explained and the guest's preferences acted upon.	At Franchise Commencement Date	-
38	The Franchisee shall introduce an alert system to advise all customers of disruption.	Guests will be alerted to disruption via SMS, email and telephone.	At Franchise Commencement Date	Schedule 1.2 (<i>Operating Obligations</i>) Paragraph 11.5

	Column 1	Column 2	Column 3	Column 4
CO Number	Committed Obligation	Further details	Deadline	Cross Reference
39	The Franchisee shall enter into an agreement [redacted text] to identify and procure the services of a renowned executive chef partner to oversee the food and beverage concept.	Partnering with a renowned chef will ensure that Passenger Services guests experience a quality dining and beverage offer. Such a partnership will also generate positive media coverage for the Passenger Services.	At Franchise Commencement Date	Schedule 6.3 (<i>Passenger Experience and Marketing</i>) Part 1 (<i>Passenger Experience</i>) Paragraph 1.1 (under exception of sub-paragraph 1.1.1)
40	The Franchisee shall enter into an agreement [redacted text] to identify and procure the services of a leading Scottish interior designer to oversee the look and feel of accommodation and public areas.	Such a partnership will ensure that the interior of the New Train Fleet has a quality finish reflecting the brand.	No later than 4 months following final date of execution of this Agreement.	Schedule 6.3 (<i>Passenger Experience and Marketing</i>) Part 1 (<i>Passenger Experience</i>) Paragraph 1.1.1
41	The Franchisee shall provide streaming of entertainment over wi-fi	Guests will be able to enjoy wi-fi access and entertainment throughout the New Train Fleet.	Introduction of New Train Fleet by 1 st April 2018	Schedule 6.3 (<i>Passenger Experience and Marketing</i>) Part 1 (<i>Passenger Experience</i>) Paragraph 2.1

	Column 1	Column 2	Column 3	Column 4
CO Number	Committed Obligation	Further details	Deadline	Cross Reference
42	The Franchisee shall introduce the Net Promoter Score mechanism for measuring passenger satisfaction.	This metric will be used to benchmark Caledonian Sleeper against other hospitality and service organisations.	At Franchise Commencement Date	Schedule 6.3 (<i>Passenger Experience and Marketing</i>) Part 1 (<i>Passenger Experience</i>) Paragraph 3.1
43	The Franchisee shall launch a standardised check-in process.	The use of such a standardised check-in process shall ensure consistent checks take place before a user of the Passenger Services boards the Train Fleet thus mitigating the risk of unauthorised people accessing the Train Fleet.	Within 6 months of Franchise Commencement Date	Schedule 6.3 (<i>Passenger Experience and Marketing</i>) Part 1 (<i>Passenger Experience</i>) Paragraph 7
44	The Franchisee shall introduce a programme to refresh the onboard menus.	The on-board menu will be refreshed each quarter.	At Franchise Commencement Date	Schedule 6.3 (<i>Passenger Experience and Marketing</i>) Part 1 (<i>Passenger Experience</i>) Paragraph 8.1

	Column 1	Column 2	Column 3	Column 4
CO Number	Committed Obligation	Further details	Deadline	Cross Reference
45	The Franchisee shall introduce a process whereby passengers will have the ability to pre-order food.	Passengers will be able to pre-order food at many stages within the journey, from booking to boarding the train.	Three months prior to Franchise Commencement Date	Schedule 6.3 (<i>Passenger Experience and Marketing</i>) Part 1 (<i>Passenger Experience</i>) Paragraph 8.2
46	The Franchisee shall introduce a process whereby Cabin passengers will have the ability to reserve dining table.	Guests that are travelling in a Cabin will be able to reserve a table in the Club Car. This will drive patronage and revenue.	Three months prior to Franchise Commencement Date	Schedule 6.3 (<i>Passenger Experience and Marketing</i>) Part 1 (<i>Passenger Experience</i>) Paragraph 8.3
47	The Franchisee shall introduce a process whereby passengers travelling in Cabins and using Pod Flatbeds [on the New Train Fleet] will be able to indicate that they do not wish to be disturbed.	This will give passengers reassurance that they will not be disturbed unnecessarily by onboard staff.	At Franchise Commencement Date	Schedule 6.3 (<i>Passenger Experience and Marketing</i>) Part 1 (<i>Passenger Experience</i>) Paragraph 9.4

	Column 1	Column 2	Column 3	Column 4
CO Number	Committed Obligation	Further details	Deadline	Cross Reference
48	The Franchisee shall procure mattresses from a social enterprise.	The Franchisee shall procure mattresses from [redacted text].	Introduction of New Train Fleet by 1 st April 2018	Schedule 6.3 (<i>Passenger Experience and Marketing</i>) Part 1 (<i>Passenger Experience</i>) Paragraph 10.1
49	The Franchisee shall enter into an agreement with a Fairtrade supplier, [redacted text].	By using Fairtrade approved organisations, a premium of \$0.05 per kg will be reinvested in projects that benefit the members and their communities.	At Franchise Commencement Date	Schedule 6.3 (<i>Passenger Experience and Marketing</i>) Part 1 (<i>Passenger Experience</i>) Paragraph 10.2
50	The Franchisee shall install a TV screen in the Club Car.	There will be a large screen available from time to time in the Club Car for public viewing.	Introduction of the New Train Fleet by 1st April 2018	Schedule 6.3 (<i>Passenger Experience and Marketing</i>) Part 1 (<i>Passenger Experience</i>) Paragraph 2.6

	Column 1	Column 2	Column 3	Column 4
CO Number	Committed Obligation	Further details	Deadline	Cross Reference
51	The Franchisee shall introduce a scheme whereby children eat free.	Children under the age of twelve will eat for free from the children's section of the menu.	At Franchise Commencement Date	Schedule 6.3 (<i>Passenger Experience and Marketing</i>) Part 1 (<i>Passenger Experience</i>) Paragraph 8.5
52	The Franchisee shall introduce a range of branded souvenirs.	The Franchisee's designers will develop a range of Caledonian Sleeper souvenirs which will include a 'cuddly' toy Caledonian Sleeper driver, mugs, hats, pens and special edition post cards.	At Franchise Commencement Date	Schedule 6.3 (<i>Passenger Experience and Marketing</i>) Part 1 (<i>Passenger Experience</i>) Paragraph 11
53	The Franchisee shall ensure that all feedback is acknowledged within 24 hours.	Any feedback will be responded to with either a resolution or with an acknowledgement along with a timeline for a full response.	Three months prior to Franchise Commencement Date	Schedule 6.3 (<i>Passenger Experience and Marketing</i>) Part 1 (<i>Passenger Experience</i>) Paragraph 13.1

	Column 1	Column 2	Column 3	Column 4
CO Number	Committed Obligation	Further details	Deadline	Cross Reference
54	The Franchisee shall ensure that the Website and App will have a section devoted to feedback.	Digital access through either the Website or App will clearly highlight the feedback option as the Franchisee actively encourages such feedback.	Three months prior to Franchise Commencement Date	Schedule 6.3 (<i>Passenger Experience and Marketing</i>) Part 1 (<i>Passenger Experience</i>) Paragraph 13.3
55	The Franchisee shall ensure that all onboard staff will have a SVQ Level 3 qualification in hospitality.	New staff will be supported and trained to achieve the qualification within twelve months of employment commencement.	Within 12 months of Franchise Commencement Date	Schedule 6.3 (<i>Passenger Experience and Marketing</i>) Part 1 (<i>Passenger Experience</i>) Paragraph 14.1
56	The Franchisee shall procure the services of central processing unit for food production.	The Franchisee's plan for food and beverage logistics shall include a requirement to establish a central processing unit in the central belt region of Scotland.	At Franchise Commencement Date	Schedule 6.3 (<i>Passenger Experience and Marketing</i>) Part 1 (<i>Passenger Experience</i>) Paragraph 8.12

	Column 1	Column 2	Column 3	Column 4
CO Number	Committed Obligation	Further details	Deadline	Cross Reference
57	The Franchisee shall increase its annual hospitality and catering spend with SMEs which supply Scottish cuisine and other Scottish products.	65% 75% 85% 90%	By the end of Franchisee Year 1 By the end of Franchisee Year 5 By the end of Franchisee Year 10 By the end of Franchisee Year 15	-
58	The Franchisee shall enter into an agreement [redacted text] to deliver the Franchisee's hospitality product and develop the Franchisee's food and drink plan with a renowned chef	Partnering arrangements in place and new menus produced	At Franchise Commencement Date	Schedule 6.3 (<i>Passenger Experience and Marketing</i>) Part 1 (<i>Passenger Experience</i>) Paragraph 1.1
59	The Franchisee shall use best endeavours to introduce and maintain the earlier boarding times for passengers at the departure locations listed in the "Proposed Boarding Times" table below.	See "Proposed Boarding Times" table below	Introduce within 18 months following the Franchise Commencement Date and thereafter continue to provide such until the end of the Franchise Term	Schedule 6.3 (<i>Passenger Experience and Marketing</i>) Part 1 (<i>Passenger Experience</i>) Paragraph 5.1
PROPOSED BOARDING TIMES				

	Column 1	Column 2	Column 3	Column 4
CO Number	Committed Obligation	Further details	Deadline	Cross Reference
	Passenger Service	Current	Proposed Earlier Boarding Times	Departure Time
	Aberdeen to London Euston	21.10	20.00	21.43
	Edinburgh to London Euston	23.00	21.00	23.40
	Fort William to London Euston	19.20	19.20	19.50
	Glasgow to London Euston	22.00	21.00	23.40
	Inverness to London Euston	19.45	19.45	20.44
	London Euston to Aberdeen	20.30	20.00	21.15
	London Euston to Edinburgh	23.00	21.45	23.50
	London Euston to Fort William	20.30	20.00	21.15
	London Euston to Glasgow	23.00	21.45	23.50
	London Euston to Inverness	20.30	20.00	21.15

	Column 1	Column 2	Column 3	Column 4
CO Number	Committed Obligation	Further details	Deadline	Cross Reference
60	The Franchisee shall introduce the use of a post trip email which shall be sent to each passenger. Each post trip email shall actively seek feedback from each passenger. In addition, passengers will be able to provide feedback to the Franchisee by telephone, post and social media.	The Franchisee shall respond to any issues of concern within one working day of receipt of feedback from a passenger, and the Franchisee shall include its proposals for further investigation and rectification within such response.	At Franchise Commencement Date	Schedule 6.3 (<i>Passenger Experience and Marketing</i>) Part 1 (<i>Passenger Experience</i>) Paragraph 13.7
61	Without prejudice to any other terms of the Franchise Agreement including but not limited to paragraph 6 of Schedule 2.5 (Transport, Travel and other schemes), the Franchisee shall support the ScotRail Franchisee in respect of the roll out of smart cards across the ScotRail Franchise and this shall include the provision of assistance to the ScotRail Franchisee where there are synergies and opportunities for both parties to attract new custom such as combining Passenger Services, local rail and island ferry journeys or connection into the local rail networks through the main destinations in Scotland.	The Franchisee shall engage its customer base for feedback and opinions around the use of smart technology.		-

	Column 1	Column 2	Column 3	Column 4
CO Number	Committed Obligation	Further details	Deadline	Cross Reference
62	The Franchisee shall, from time to time, hold 'meet the buyer days' in Edinburgh, Glasgow, Inverness, Aberdeen, Fort William or London. The Franchisee shall use reasonable endeavours to increase the involvement of SMEs and suppliers of Scottish produce. The Franchisee shall advertise such 'meet the buyer' days through the Public Contracts Scotland procurement portal (www.publiccontractsscotland.gov.uk).	The Franchisee shall hold four 'meet the buyer days' per calendar year	Each Franchisee Year	-
63	Branding	Obtain approval from the Authority to progress with a) retaining the existing Caledonian Sleeper name and b) approving new brand identity for the Caledonian Sleeper	Six months prior to Franchise Commencement Date	Schedule 6.3 (<i>Passenger Experience and Marketing</i>) Part 2 (<i>Marketing</i>) Paragraph 9.1.1
64	Branding	The Franchisee shall complete final designs and brand guidelines	Six months prior to Franchise Commencement Date	Schedule 6.3 (<i>Passenger Experience and Marketing</i>) Part 2 (<i>Marketing</i>) Paragraph 9.1.2

	Column 1	Column 2	Column 3	Column 4
CO Number	Committed Obligation	Further details	Deadline	Cross Reference
65	Branding (other requirements for launch)	<ul style="list-style-type: none"> - New Website and booking engine (including virtual concierge) - App (including virtual concierge) - Marketing material 	Three months prior to the Franchise Commencement Date	Schedule 6.3 <i>(Passenger Experience and Marketing)</i> Part 2 (Marketing) Paragraphs 1 and 8
66	Branding (other deliverables)	On-train printed media	At Franchise Commencement Date	
67	Branding (Initial Train Fleet)	New branding will be applied to the Initial Train Fleet	Within 3 months of Franchise Commencement Date	Schedule 6.3 <i>(Passenger Experience and Marketing)</i> Part 1 (Passenger Experience) Paragraph 15.1
68	Without prejudice to any other terms of the Franchise Agreement including but not limited to paragraph 2.12 of Schedule 1.4 (Passenger Facing Obligations), the Franchisee shall commence finalising design and development of new Website	The development of the retail booking system and Website [redacted text].	Nine months prior to Franchise Commencement Date	Schedule 6.3 <i>(Passenger Experience and Marketing)</i> Part 2 (Marketing) Paragraph 8.1
69	Website live	The Franchisee shall procure that the Website goes live (including virtual concierge functionality)	Three months prior to Franchise Commencement Date	-

	Column 1	Column 2	Column 3	Column 4
CO Number	Committed Obligation	Further details	Deadline	Cross Reference
70	Theatre style booking screen	The Franchisee shall procure theatre style booking screen as a part of the functionality of the Website	Three months prior to Franchise Commencement Date	Schedule (Passenger Experience and Marketing) Part 2 (Marketing) Paragraph 8.1.1
71	Timetable available online	The Franchisee shall procure online availability of the timetable as a part of the functionality of the Website	Three months prior to Franchise Commencement Date	Schedule (Passenger Experience and Marketing) Part 2 (Marketing) Paragraph 8.1.2
72	Bespoke booking system	The Franchisee shall procure that the booking system goes live and able to take bookings	Three months prior to Franchise Commencement Date	Schedule (Passenger Experience and Marketing) Part 2 (Marketing) Paragraph 8.1.3
73	Self- management tool for customers online (virtual concierge)	The Franchisee shall procure as part of the Website function, an ability to log in and manage booking.	Three months prior to Franchise Commencement Date	Schedule (Passenger Experience and Marketing) Part 2 (Marketing) Paragraph 8.1.4

	Column 1	Column 2	Column 3	Column 4
CO Number	Committed Obligation	Further details	Deadline	Cross Reference
74	App (including virtual concierge)	The Franchisee shall make available to guests, the App, to support bookings, journey management and other functions described in paragraph 1 of part 2 of Schedule 6.3 (Passenger Experience and Marketing).	Three months prior to Franchise Commencement Date	Schedule 6.3 (<i>Passenger Experience and Marketing</i>) Part 2 (<i>Marketing</i>) Paragraph 1
75	Launch the Guest Services Contact Centre	The channels available through the Guest Services Contact Centre shall include: - Inbound & outbound calls - Email - Social media - Web-chat - Video chat (when totems go live) Staff shall be able to manage all enquiries from service information to retailing tickets.	Three months prior to Franchise Commencement Date (calls, emails and web chat.) From Franchise Commencement Date onwards (social media)	Schedule 6.3 (<i>Passenger Experience and Marketing</i>) Part 2 (<i>Marketing</i>) Paragraph 3
76	Live Capacity Information	The Franchisee shall provide staff the capability to access live booking and customer information up to departure.	At Franchise Commencement Date	Schedule 6.3 (<i>Passenger Experience and Marketing</i>) Part 1 (<i>Passenger Experience</i>) Paragraph 6
77	Mobile ticket availability	The Franchisee shall provide mobile based reservation that can be shown to staff as booking confirmation, as part of the functionality of the App (including virtual concierge).	Three months prior to Franchise Commencement Date	-

	Column 1	Column 2	Column 3	Column 4
CO Number	Committed Obligation	Further details	Deadline	Cross Reference
78	Customer relationship management	<p>The Franchisee shall launch the customer relationship system to enable:</p> <ul style="list-style-type: none"> - regular (at least monthly) targeted e-shots to contacts - Pre-departure contacts <p>Post-journey e-shot</p>	Three months prior to Franchise Commencement Date	<p>Schedule 6.3 (<i>Passenger Experience and Marketing</i>)</p> <p>Part 2 (<i>Marketing</i>)</p> <p>Paragraph 7.1</p>
79	Corporate Travel	The Franchisee shall support growth through business – to – business channels by offering corporate travel deals for businesses with travel needs between London and South East England and Scotland.	Within 12 months after the Franchise Commencement Date	<p>Schedule 6.3 (<i>Passenger Experience and Marketing</i>)</p> <p>Part 2 (<i>Marketing</i>)</p> <p>Paragraph 5.4</p>
80	Visit Scotland	The Franchisee shall have an agreed initial co-marketing plan with VisitScotland	At Franchise Commencement Date	<p>Schedule 6.3 (<i>Passenger Experience and Marketing</i>)</p> <p>Part 2 (<i>Marketing</i>)</p> <p>Paragraph 5.1.1</p>
81	Visit England	The Franchisee shall have an agreed initial co-marketing plan with VisitEngland	At Franchise Commencement Date	<p>Schedule 6.3 (<i>Passenger Experience and Marketing</i>)</p> <p>Part 2 (<i>Marketing</i>)</p> <p>Paragraph 5.1.2</p>

	Column 1	Column 2	Column 3	Column 4
CO Number	Committed Obligation	Further details	Deadline	Cross Reference
82	Chambers of Commerce in Glasgow, Edinburgh, Aberdeen, Inverness, Fort William, Dundee, Perth and Stirling	The Franchisee shall have an agreement with the relevant Chambers of Commerce for the ticket giveaway initiative	At Franchise Commencement Date	Schedule 6.3 (<i>Passenger Experience and Marketing</i>) Part 2 (<i>Marketing</i>) Paragraph 5.4.2
83	Co-marketing and sponsorship opportunities	The Franchisee shall have a co-marketing/sponsorship agreement in place with: - [redacted text] - [redacted text]	At Franchise Commencement Date	Schedule 6.3 (<i>Passenger Experience and Marketing</i>) Part 2 (<i>Marketing</i>) Paragraphs 5.1.3 and 5.3
84	Without prejudice to any other terms of the Franchise Agreement, the Franchisee shall introduce a Fare structure which shall comprise a pricing calendar and price band quotas driven by capacity and demand. Such Fare structure shall include the Fares as presented in different bands tailored to the demand profile which shall vary according to Route and direction.	The Fare structure will form the basis of yield management and shall be designed to achieve patronage growth by offering low Fares at the times of lowest demand and maximise revenue when demand is at its height.	At Franchise Commencement Date	Schedule 5.2 (<i>Franchisee's Fare Structure</i>)

	Column 1	Column 2	Column 3	Column 4
CO Number	Committed Obligation	Further details	Deadline	Cross Reference
85	The Franchisee shall provide that at each Station equipped with a Totem that all functionality is fully operational	<p>The Franchisee shall provide that at each Station equipped with a Totem the following functionality shall be available through the Totem:</p> <ul style="list-style-type: none"> • two-way video; • rail information; • virtual concierge; • operational 24 hours per day 	Within 2 years after the Franchise Commencement Date	<p>Schedule 6.3 (<i>Passenger Experience and Marketing</i>)</p> <p>Part 2 (<i>Marketing</i>)</p> <p>Paragraph 3.1</p>
86	The Franchisee will enter into a Maintenance Contract [redacted text] in respect of the maintenance of the Initial Train Fleet.	The Maintenance Contract shall be agreed such that work pursuant to it is principally carried out at the Depot known as Glasgow Polmadie and with further works being undertaken at the Depots known as London Wembley, Inverness and Aberdeen. Additionally some minor work shall be undertaken at Fort William station	Contract to be agreed three months prior to Franchise Commencement Date	<p>Schedule 6.1B (<i>Maintenance of the Train Fleet</i>)</p> <p>Part 1 (Initial Train Fleet)</p> <p>Paragraphs 1.1.b and 3.1</p>
87	The Franchisee shall enter into a Train Services Agreement [redacted text] which will include a requirement for maintenance of the New Train Fleet and [redacted text].	The Train Services Agreement shall be agreed such that work pursuant to it is principally carried out by the Maintenance Contractor at the Depot known as Glasgow Polmadie and with further works being undertaken at the Depots known as London Wembley, Inverness and Aberdeen. Additionally, some minor work shall be undertaken at Fort William station. Any changes to this proposal will require the prior written approval of the Authority (such approval not to be unreasonably withheld or delayed).	25 September 2014	<p>Schedule 6.1B (<i>Maintenance of the Train Fleet</i>)</p> <p>Part 2 (New Train Fleet)</p> <p>Paragraph 1.b</p>

Part 2

Miscellaneous Provisions

1. Application

This Part 2 (*Miscellaneous Provisions*) of this Schedule 1.6 (*Committed Obligations*) sets out further terms which apply to the Committed Obligations set out in Part 1 (*Franchisees' Committed Obligations*) and the references to Committed Obligations in this Part 2 are only to the Committed Obligations in Part 1 (*Franchisees' Committed Obligations*) of this Schedule 1.6.

2.

- 2.1. Where any Committed Obligation requires the consent or approval of a third party (including the approval of the Competition Commission in connection with the undertakings given by the Franchisee and/or the Parent and/or their Affiliates in relation to the letting of the Franchise) in order to be carried out the Franchisee shall use all reasonable endeavours to secure that consent or approval so that it can be secured and the Committed Obligation performed within the timescale set out for it in this Schedule 1.6.
- 2.2. If any planning or listed building consent or other consent or approval cannot be obtained on reasonable terms or any applicable procedure or process cannot reasonably be completed or it is not reasonably possible to obtain any agreement with or consent from Network Rail or any third party which is necessary for the delivery of the relevant Committed Obligation or any such agreement or consent is only obtainable on terms which are not fair and reasonable, the Franchisee shall propose to the Authority alternative timescales and/or alternative methods of achieving the anticipated benefit, output or outcomes of the relevant Committed Obligation and shall discuss those alternatives with the Authority.
- 2.3. The Franchisee shall be permitted to substitute alternative Committed Obligations subject to the consent of and any amendments required by the Authority and subject to the net cost to the Franchisee not being reduced below the net cost which the Franchisee would have incurred had its original scheme proceeded on fair and reasonable terms. Where any such alternative results in the postponement of a delivery date for the relevant Committed Obligation, paragraph 2.5 shall apply in relation to any savings resulting from the postponement, provided always that there shall be no double counting of costs or savings between this paragraph 2.3 and paragraph 2.5.
- 2.4. The Franchisee shall work with the Authority to refine the Committed Obligations to best meet the requirements of the Franchise. If the parties agree to alter the package of commitments appropriate Variations shall be made to this Agreement and the Financial Model to reflect this.
- 2.5. The Authority may require the Franchisee to rebate to the Authority any net savings which a prudent and diligent franchisee would make in such circumstances as a direct result of the postponement of a delivery date.

3. Continuation of Availability

- 3.1. Save as expressly provided in Committed Obligations 1, 23, 34, 63, 64, 68, 80, 81, 82 and 86 in Part 1 of this Schedule 1.6 where the timescale(s) expressed in a Committed Obligation shall apply to that Committed Obligation, the Franchisee

shall maintain the services, activities and facilities established in accordance with its Committed Obligations throughout the remainder of the Franchise Term and, in respect of facilities at Stations ensure that such shall be kept (and where necessary for those purposes replaced, improved or renewed) in an effective and efficient working order and state of repair and fit for the purpose of facilitating the provision of Passenger Services in accordance with the Authority's stated policy objectives and in respect of those provided in Committed Obligations 4, 5, 6, 7, 8, 9, 11 and 85 pass the same to the Successor Operator at the end of the Franchise Period free of any charge or incumbrances and at no cost to the Successor Operator or the Authority in a condition commensurate with such maintenance.

- 3.2. The Franchisee shall be deemed to be in compliance with paragraph 3.1, notwithstanding temporary non-availability due to accidental damage or vandalism or maintenance, repair or replacement activities, or temporary staff absence, subject in each case to the Franchisee taking all reasonable steps to keep any such period of temporary non-availability to a minimum.
- 3.3. Where Part 1 (*Franchisee's Committed Obligations*) of this Schedule 1.6 includes a commitment regarding staffing or particular appointments the Franchisee plans to make:-
 - (a) The Franchisee shall maintain each of the said staffing or appointments from the date of its first provision of such post (which shall be the Franchise Commencement Date where the post is in existence at that date) for the remainder of the Franchise Term;
 - (b) The obligation of the Franchisee applies subject as otherwise expressly provided in this Schedule 1.6 and shall not be regarded as breached by temporary absences (for example for sickness or holiday) or between appointments to the relevant post (subject to the Franchisee using all reasonable endeavours to keep the duration between appointments as short as reasonably practicable and to nominate suitably qualified and available interim or stand-in staff); and
 - (c) This obligation is without prejudice to the rights of the Franchisee in relation to the numbers or deployment of its other staff.

4. Expenditure

Where Part 1 (*Franchisee's Committed Obligations*) of this Schedule 1.6 provides for the expenditure of an annual amount (or an amount over some other period) by the Franchisee or procured by the Franchisee to be expended, that amount:

- 4.1. is assessed net of VAT recovered or recoverable by the Franchisee; and
- 4.2. is the amount required to be expended by the Franchisee itself or procured by the Franchisee to be expended;

5. Liaison and Co-operation

Where the Franchisee is committed to liaison and co-operation in terms of this Schedule 1.6, it shall participate actively in the relevant measures including through the application of management time and internal resources, correspondence and attendance at meetings, in each case as the Franchisee reasonably considers in all the circumstances to be an appropriate use of its resources and effective to help achieve the relevant objective.

6. Nature of Commitment

- 6.1. Any commitment in terms of this Schedule 1.6 shall be in addition to any obligation of the Franchisee elsewhere in this Agreement and nothing in this Schedule 1.6 shall limit or restrict an obligation imposed on the Franchisee elsewhere in this Agreement.
- 6.2. Where in Part 1 (*Franchisee's Committed Obligations*) of this Schedule 1.6, references are made to particular manufacturers or suppliers of equipment or services or sub-contractors, the Franchisee may fulfil its relevant commitment by using reasonable equivalents with the prior written consent of the Authority.
- 6.3. Each commitment under this Schedule 1.6 shall come to an end on expiry of the Franchise Period for whatever reason, save in respect of any accrued payments owed pursuant to Part 3 (*Late/Non-Completion of Committed Obligations*) to this Schedule 1.6 but not yet paid.

7. Expenditure Commitments

- 7.1. All expenditure commitments set out in this Schedule 1.6 to the extent they have not already been incurred by the Franchisee shall be indexed to RPI (in the same way as variable costs in Schedule 8.2 (*Annual Franchise Payments*)), save that the Authority's obligations to make payments against milestones shall not be indexed to RPI.
- 7.2. For the avoidance of doubt, all amounts which the Franchisee has committed (whether unconditionally or otherwise) pursuant to this Schedule 1.6 to expend in connection with improvements to track or Stations shall be in addition to any expenditure made by Network Rail as part of its infrastructure improvements or maintenance programme to the extent such expenditure is not directly funded or reimbursed by the Franchisee.

8. Review of Compliance

- 8.1. Progress with Committed Obligations shall be an agenda item for Franchisee Performance Meetings and the Franchisee shall ensure that at such meetings the Authority is given such progress reports as they may reasonably request.
- 8.2. In addition to its obligation under paragraph 8.1, the Franchisee shall from time to time promptly provide such evidence of its compliance with its Committed Obligations as the Authority may reasonably request.

Part 3

Late/Non-Completion of Committed Obligations

1. Late completion or non-delivery of Committed Obligations

If the Franchisee fails to deliver in full a Committed Obligation in accordance with and by the timeframe specified for its delivery in Part 1 (*Franchisee's Committed Obligations*) of this Schedule 1.6 (*Committed Obligations*), such late, partial or non-delivery shall constitute a contravention of this Agreement.

2. Committed Obligation Payment Adjustment

2.1 In addition to being a contravention of this Agreement, if any of the Committed Obligations is not delivered in full by the date or dates specified for that Committed Obligation in column 3 of the Table below, the Franchisee shall pay to the Authority:

(a) in respect of each Reporting Period or part thereof for which that Committed Obligation remains undelivered in full from such date or dates; and

(b) until the Committed Obligation is delivered in full,

a Committed Obligation Payment Adjustment, being the amount set out in column 4 of the Table, as adjusted in accordance with paragraph 2.2 and 2.3.

Pro-rating of Committed Obligation Payment Adjustment where partial delivery

2.2 Where:

(a) in relation to any Committed Obligation referred to in column 5 of the Table to be subject to the terms of this paragraph 2.2 that Committed Obligation is expressed in Part 1 (*Franchisee's Committed Obligations*) in terms of a requirement to deliver or carry out activities in respect of a specified number of facilities; and

(b) the Franchisee has delivered or carried out the relevant activity in respect of one or more but less than the number of facilities specified in that Committed Obligation by the relevant delivery date,

then the relevant Committed Obligation Payment Adjustment shall be reduced pro rata by reference to the number of facilities so delivered or by reference to the number of those activities that have been carried out (as appropriate).

Adjustment to Committed Obligation Payment Adjustment where partial spend

2.3 Where:

(a) in relation to any Committed Obligation referred to in column 5 of the Table to be subject to the terms of this paragraph 2.3 that Committed Obligation is expressed in terms of a requirement to spend a specified sum in fulfilling its stated objective; and

(b) the Franchisee has spent less than the sum specified in that Committed Obligation in fulfilling its stated objectives by the relevant delivery date,

then the relevant Committed Obligation Payment Adjustment shall be reduced pro rata by reference to the amount actually spent by that delivery date.

2.4

- (a) Where in relation to any Committed Obligation that is expressed in terms such that the Franchisee is able to achieve that stated objective within the timeframe specified for its delivery without investing the full amount referred to in that Committed Obligation, whether because of cost savings or securing additional investment from third parties, the Franchisee may apply to the Authority for the consent referred to in paragraph 2.4(b).
- (b) The Authority's consent for the purposes of paragraph 2.4(a) is its consent for the Franchisee to invest any unspent amount towards the fulfilment of such other commitments as the Franchisee proposes at that time. That consent may not be unreasonably withheld.
- (c) If the Authority consents to an application pursuant to paragraph 2.4(a) in respect of any Committed Obligation, then:
 - (i) Part 1 (Franchisee's Committed Obligations) to this Schedule 6.1 and this Part 3 shall be amended to reflect the terms of any new commitments; and
 - (ii) no Committed Obligation Payment Adjustment shall be payable in respect of the unspent amount that relates to that Committed Obligation.

2.5 The Committed Obligation Payment Adjustment shall be payable in accordance with Schedule 8.1 (*Franchise Payments*) of the Franchise Agreement.

Table: Committed Obligations where a Committed Obligation Payment Adjustment applies

Column 1	Column 2	Column 3	Column 4	Column 5
Reference in Part 1 (row in Committed Obligations Table)	Summary Description	Deadline	Committed Obligation Payment Adjustment (£ per Reporting Period)	Paragraph 2.2 and/or 2.3 to apply?
1	<p>Procuring the design, manufacture, delivery, commissioning and acceptance and entry into service of the New Train Fleet for the operation of Passenger Services by 1 April 2018</p> <p>1. Provision of final vehicle layouts and delivery of electronic 3D visualisation and 3D renderings of the New Train Fleet</p> <p>2. Completion of design of the New Train Fleet in accordance with the requirements contained in Schedule 6.1.</p> <p>3. Delivery of first vehicle in accordance with the requirements contained in Schedule 6.1</p> <p>4. Achievement of all homologation and approvals necessary for all Primary</p>	<p>1. By end January 2016</p> <p>2. By end January 2016</p> <p>3. By end January 2017</p> <p>4. By end August 2017</p> <p>5. By end December 2017</p>	<p>1. [redacted text]</p> <p>2 [redacted text]</p> <p>3 [redacted text]</p> <p>4. [redacted text]</p> <p>5. [redacted text]</p>	2.2

Column 1	Column 2	Column 3	Column 4	Column 5
Reference in Part 1 (row in Committed Obligations Table)	Summary Description	Deadline	Committed Obligation Payment Adjustment (£ per Reporting Period)	Paragraph 2.2 and/or 2.3 to apply?
	<p>Routes, Diversionary Routes and routes to Depots, works and stabling yards, in accordance with the requirements contained in Schedule 6.1.</p> <p>5. Delivery of last vehicle in accordance with the requirements contained in Schedule 6.1</p>			
2	<p>In respect of the Stations at Stirling, Perth and Dundee, the Franchisee shall procure the following enhancements of the waiting rooms:</p> <ul style="list-style-type: none"> improved interior layouts; and aesthetic, lighting and décor improvements. 	Within 2 years after the Franchise Commencement Date	[redacted text]	2.2
3	In respect of the Stations at Inverness, Aberdeen, Fort William, Aviemore, Crianlarich and the Tier 3 Stations the Franchisee shall procure aesthetic,	Within 2 years after the Franchise Commencement Date	[redacted text]	2.2

Column 1	Column 2	Column 3	Column 4	Column 5
Reference in Part 1 (row in Committed Obligations Table)	Summary Description	Deadline	Committed Obligation Payment Adjustment (£ per Reporting Period)	Paragraph 2.2 and/or 2.3 to apply?
	lighting and/or décor improvements to the waiting rooms in accordance with Schedule 6.2.			
4	In respect of the Station at Inverness, the Franchisee shall work with the Scotrail Franchisee to procure investment in the refurbishment of the business/first class (sleeper) lounge at that Station.	Within 2 years after the Franchise Commencement Date	[redacted text]	2.2
5	In respect of the Stations at Edinburgh Waverley, Glasgow Central, Aberdeen, Inverness, Fort William, London Euston, Dundee, Perth, Stirling, Aviemore, and Crianlarich, the Franchisee shall procure the provision of free wi-fi via the Totems which shall act as wi-fi hotspots.	Within 2 years after the Franchise Commencement Date	[redacted text]	2.2
6	In respect of the Tier 3 Stations the Franchisee shall procure the provision of free wi-fi via the Totems which shall act as wi-fi hotspots.	Within 2 years after the Franchise Commencement Date	[redacted text]	2.2

Column 1	Column 2	Column 3	Column 4	Column 5
Reference in Part 1 (row in Committed Obligations Table)	Summary Description	Deadline	Committed Obligation Payment Adjustment (£ per Reporting Period)	Paragraph 2.2 and/or 2.3 to apply?
7	In respect of the Tier 4 Stations the Franchisee shall procure the provision of free wi-fi via the Totems which shall act as wi-fi hotspots .	Within 2 years after the Franchise Commencement Date	[redacted text]	2.2
8	In respect of the Stations at Dunkeld and Birnham, Roy Bridge, Bridge of Orchy, Upper Tyndrum and Garelochhead, the Franchisee shall procure Totems which shall be incorporated into a waiting shelter.	Within 2 years after the Franchise Commencement Date	[redacted text]	2.2
9	In respect of each of the Stations, the Franchisee shall, with the cooperation of the relevant Station Facility Owner, procure: <ul style="list-style-type: none"> enhanced external station signage indicating that the relevant Station is a gateway to the network of Stations; improvement to the wayfinding signage for Key Station facilities for use by users of the Passenger Services; and 	Within 2 years after the Franchise Commencement Date	[redacted text]	2.2

Column 1	Column 2	Column 3	Column 4	Column 5
Reference in Part 1 (row in Committed Obligations Table)	Summary Description	Deadline	Committed Obligation Payment Adjustment (£ per Reporting Period)	Paragraph 2.2 and/or 2.3 to apply?
	<ul style="list-style-type: none"> improved directional signage to key off-station locations, specifically bus stops and any showers provided by the commercial partners of the Franchisee. 			
10	In respect of the Stations at Crianlarich and Aviemore, the Franchisee shall enter into commercial agreements with hotel partners to facilitate the provision of showers at Crianlarich and Aviemore.	At Franchise Commencement Date	[redacted text]	2.2
11	In respect of the stations at Perth, Dundee and Stirling, the Franchisee shall procure the installation of a single shower enclosure for each sex.	Within 2 years after the Franchise Commencement Date	[redacted text]	2.2
12	In respect of the Stations at Dundee, Perth, Motherwell, Carstairs, Leuchars, Kirkcaldy, Inverkeithing, Aviemore, Kingussie, Newtonmore, Carrbridge, Dalwhinnie, Blair Atholl, Pitlochry, Gleneagles, Dunblane, Stirling, Falkirk	Within 2 years after the Franchise Commencement Date	[redacted text]	2.2

Column 1	Column 2	Column 3	Column 4	Column 5
Reference in Part 1 (row in Committed Obligations Table)	Summary Description	Deadline	Committed Obligation Payment Adjustment (£ per Reporting Period)	Paragraph 2.2 and/or 2.3 to apply?
	Grahamston, Crianlarich, Ardlui, Arrochar & Tarbet the Franchisee shall procure the fitment of controlled access devices on waiting room and toilet facilities in accordance with Schedule 6.2.			
13	In respect of the Station at London Euston, the Franchisee shall procure access to London Euston first class lounge for users of the Passenger Services, including use of showers.	By Franchise Commencement Date	[redacted text]	No
14	In respect of the Station at Aberdeen, the Franchisee shall have agreed commercial terms with the ScotRail Franchisee to secure access for users of the Passenger Services to the first class lounge including use of showers.	By Franchise Commencement Date	[redacted text]	No
15	In respect of the Station at Edinburgh Waverley, the Franchisee shall have agreed commercial terms with East Coast to secure access for users of the Passenger Services to the first class	By Franchise Commencement Date	[redacted text]	No

Column 1	Column 2	Column 3	Column 4	Column 5
Reference in Part 1 (row in Committed Obligations Table)	Summary Description	Deadline	Committed Obligation Payment Adjustment (£ per Reporting Period)	Paragraph 2.2 and/or 2.3 to apply?
	lounge.			
16	In respect of the Stations at Aberdeen, Inverness, Fort William, Edinburgh Waverley, Glasgow Central and London Euston the Franchisee shall supply and use for each train service a branded reception podium.	By Franchise Commencement Date	[redacted text]	No
17	The Franchisee shall introduce private showering facilities for passengers travelling in En Suite Berths.	Introduction of New Train Fleet by 1 st April 2018	[redacted text]	No
18	The Franchisee shall introduce a programme whereby individual Coaches will be named after famous Scots.	Introduction of New Train Fleet by 1 st April 2018	[redacted text]	No
19	The Franchisee shall introduce an onboard library located in the Club Car. A range of board games will also be provided.	At Franchise Commencement Date	[redacted text]	No
20	The Franchisee shall arrange themed 'Special Evenings' in the Club Car.	At Franchise Commencement Date	[redacted text]	No

Column 1	Column 2	Column 3	Column 4	Column 5
Reference in Part 1 (row in Committed Obligations Table)	Summary Description	Deadline	Committed Obligation Payment Adjustment (£ per Reporting Period)	Paragraph 2.2 and/or 2.3 to apply?
	Covering areas such as comedy, music and literature..			
21	The Franchisee shall introduce the ability for all passengers to choose to enjoy catering in their accommodation	Introduction of New Train Fleet by 1 st April 2018	[redacted text]	No
22	The Franchisee shall collaborate with [redacted text] to facilitate the selection of and partnering with SME producers and suppliers.	At Franchise Commencement Date	[redacted text]	No
23	The Franchisee shall engage [redacted text] to assist in the design of the New Train Fleet. A 'Good Sleep Guide' and 'Sleep Pack' for passengers shall be produced.	The 'Good Sleep Guide' and 'Sleep Pack' will be produced at Franchise Commencement Date. Design enhancements will be included with the introduction of the New Train Fleet by April 2018.	[redacted text] [redacted text]	No

Column 1	Column 2	Column 3	Column 4	Column 5
Reference in Part 1 (row in Committed Obligations Table)	Summary Description	Deadline	Committed Obligation Payment Adjustment (£ per Reporting Period)	Paragraph 2.2 and/or 2.3 to apply?
24	The Franchisee shall partner [redacted text] to ensure that the Passenger Services are continuously audited for accessibility.	At Franchise Commencement Date	[redacted text]	No
25	The Franchisee shall introduce a Disabled Person's Protection Policy and associated Accessible Travel Plan.	At Franchise Commencement Date	[redacted text]	No
26	The Franchisee shall produce a 'Googlemaps Streetview' type virtual tour of exemplars of the Train Fleet (and in due course the New Train Fleet) and the Stations, to be accessible through the Website.	At Franchise Commencement Date	[redacted text]	No
27	The Franchisee shall incorporate disability awareness training for all staff into the regular programme of refresher training.	At Franchise Commencement Date	[redacted text]	No
28	The Franchisee shall empower all on train staff to resolve customer	Within 6 months of Franchise	[redacted text]	No

Column 1	Column 2	Column 3	Column 4	Column 5
Reference in Part 1 (row in Committed Obligations Table)	Summary Description	Deadline	Committed Obligation Payment Adjustment (£ per Reporting Period)	Paragraph 2.2 and/or 2.3 to apply?
	satisfaction issues during the journey.	Commencement Date		
29	Without prejudice to any other terms of the Franchise Agreement), the Franchisee shall introduce a Mystery Shopper programme.	At Franchise Commencement Date	[redacted text]	No
30	The Franchisee shall Publish the results of its performance against a range of measures described in paragraph 13 of Schedule 6.3.	At Franchise Commencement Date	[redacted text]	No
31	The Franchisee shall undertake a benchmarking exercise, in respect of the measures described in paragraph 13 of Schedule 6.3, with hospitality and service organisations outside the rail industry	At Franchise Commencement Date	[redacted text]	No
32	The Franchisee shall introduce a pre-published programme of 'Meet the	At Franchise Commencement Date	[redacted text]	No

Column 1	Column 2	Column 3	Column 4	Column 5
Reference in Part 1 (row in Committed Obligations Table)	Summary Description	Deadline	Committed Obligation Payment Adjustment (£ per Reporting Period)	Paragraph 2.2 and/or 2.3 to apply?
	Manager' days			
33	The Franchisee shall achieve at least a minimum target level of 90% guest satisfaction for communication	Within 12 months of Franchise Commencement Date	[redacted text]	No
34	The Franchisee shall achieve at least a 20% improvement in satisfaction levels for accommodation.	Within 12 months of the introduction of the New Train Fleet by 1st April 2018	[redacted text]	No
35	Without prejudice to any other terms of the Franchise Agreement including but not limited to paragraph 4 of Schedule 13.1 (Franchise Management), the Franchisee shall achieve a Crystal Mark accreditation for the use of clear English for all documents and publications.	Within 6 months of Franchise Commencement Date	[redacted text]	No
36	The Franchisee shall use all reasonable endeavours to gain a five star rating from at least one internationally recognised hospitality award body .	Within 12 months of the introduction of the New Train Fleet by 1st April 2018	[redacted text]	No

Column 1	Column 2	Column 3	Column 4	Column 5
Reference in Part 1 (row in Committed Obligations Table)	Summary Description	Deadline	Committed Obligation Payment Adjustment (£ per Reporting Period)	Paragraph 2.2 and/or 2.3 to apply?
37	The Franchisee shall introduce a Guest Response Team to oversee significant disruption events.	At Franchise Commencement Date	[redacted text]	No
38	The Franchisee shall introduce an alert system to advise all customers of disruption.	At Franchise Commencement Date	[redacted text]	No
39	The Franchisee shall enter into an agreement [redacted text] to identify and procure the services of a renowned executive chef partner to oversee the food and beverage concept.	At Franchise Commencement Date	[redacted text]	No
40	The Franchisee shall enter into an agreement [redacted text] to identify and procure the services of a leading Scottish interior designer to oversee the look and feel of accommodation and public areas.	No later than 4 months following final date of execution of this Agreement.	[redacted text]	No

Column 1	Column 2	Column 3	Column 4	Column 5
Reference in Part 1 (row in Committed Obligations Table)	Summary Description	Deadline	Committed Obligation Payment Adjustment (£ per Reporting Period)	Paragraph 2.2 and/or 2.3 to apply?
41	The Franchisee shall provide streaming of entertainment over wi-fi.	Introduction of the New Train Fleet by 1 st April 2018	[redacted text]	No
42	The Franchisee shall introduce the Net Promoter Score mechanism for measuring passenger satisfaction.	At Franchise Commencement Date	[redacted text]	No
43	The Franchisee shall launch a standardised check-in process.	Within 6 months of Franchise Commencement Date	[redacted text]	No
44	The Franchisee shall introduce a programme to refresh the onboard menus.	At Franchise Commencement Date	[redacted text]	No
45	The Franchisee shall introduce a process whereby passengers will have the ability to pre-order food.	Three months prior to Franchise Commencement Date	[redacted text]	No
46	The Franchisee shall introduce a process whereby Cabin passengers will have the ability to reserve dining table.	Three months prior to Franchise Commencement Date	[redacted text]	No

Column 1	Column 2	Column 3	Column 4	Column 5
Reference in Part 1 (row in Committed Obligations Table)	Summary Description	Deadline	Committed Obligation Payment Adjustment (£ per Reporting Period)	Paragraph 2.2 and/or 2.3 to apply?
47	The Franchisee shall introduce a process whereby passengers travelling in Cabins and using Pod Flatbeds will be able to indicate that they do not wish to be disturbed.	At Franchise Commencement Date	[redacted text]	No
48	The Franchisee shall procure mattresses from a social enterprise.	Introduction of New Train Fleet by 1 st April 2018	[redacted text]	No
49	The Franchisee shall enter into an agreement with a Fairtrade supplier, [redacted text].	At Franchise Commencement Date	[redacted text]	No
50	The Franchisee shall install a TV screen in the Club Car.	Introduction of New Train Fleet by 1 st April 2018	[redacted text]	No
51	The Franchisee shall introduce a scheme whereby children eat free.	At Franchise Commencement Date	[redacted text]	No
52	The Franchisee shall introduce a range of branded souvenirs.	At Franchise Commencement Date	[redacted text]	No

Column 1	Column 2	Column 3	Column 4	Column 5
Reference in Part 1 (row in Committed Obligations Table)	Summary Description	Deadline	Committed Obligation Payment Adjustment (£ per Reporting Period)	Paragraph 2.2 and/or 2.3 to apply?
53	The Franchisee shall ensure that all feedback is acknowledged within 24 hours.	Three months prior to Franchise Commencement Date	[redacted text]	No
54	The Franchisee shall ensure that the Website and App will have a section devoted to feedback.	Three months prior to Franchise Commencement Date	[redacted text]	No
55	The Franchisee shall ensure that all onboard staff will have a SVQ Level 3 qualification in hospitality.	Within 12 months of Franchise Commencement Date	[redacted text]	No
56	The Franchisee shall procure the services of a central processing unit for food production.	At Franchise Commencement Date	[redacted text]	No
57	The Franchisee shall increase its annual hospitality and catering spend with SMEs which supply Scottish cuisine and other Scottish products.	65% by end of Franchisee Year 1 75% by end of Franchisee Year 5 85% by end of Franchisee Year 10 90% by end of Franchisee Year 15	[redacted text]	2.3

Column 1	Column 2	Column 3	Column 4	Column 5
Reference in Part 1 (row in Committed Obligations Table)	Summary Description	Deadline	Committed Obligation Payment Adjustment (£ per Reporting Period)	Paragraph 2.2 and/or 2.3 to apply?
58	The Franchisee shall enter into an agreement [redacted text] to deliver the Franchisee's hospitality product and develop the Franchisee's food and drink plan with a renowned chef.	At Franchise Commencement Date	[redacted text]	No
59	The Franchisee shall use best endeavours to introduce and maintain earlier boarding times for Passengers at the starting locations as listed in the "Proposed Boarding Times" table in CO59.	Introduce within 18 months following the Franchise Commencement Date and thereafter continue to provide such until the end of the Franchise Term	[redacted text]	2.2
60	The Franchisee shall introduce the use of a post trip email which shall be sent to each passenger. Each post trip email shall actively seek feedback from each passenger. In addition, passengers will be able to provide feedback to the Franchisee by telephone, post and social	At Franchise Commencement Date	[redacted text]	No

Column 1	Column 2	Column 3	Column 4	Column 5
Reference in Part 1 (row in Committed Obligations Table)	Summary Description	Deadline	Committed Obligation Payment Adjustment (£ per Reporting Period)	Paragraph 2.2 and/or 2.3 to apply?
	media.			
61	Without prejudice to any other terms of the Franchise Agreement including but not limited to paragraph 6 of Schedule 2.5 (Transport, Travel and other schemes), the Franchisee shall support the ScotRail Franchisee in respect of the roll out of Smartcards across the ScotRail Franchise and this shall include the provision of assistance to the ScotRail Franchisee where there are synergies and opportunities for both parties to attract new custom such as combining Passenger Services, local rail and island ferry journeys or connection into the local rail networks through the main destinations in Scotland.		-	No
62	The Franchisee shall, from time to time, hold 'meet the buyer days' in Edinburgh, Glasgow, Inverness, Aberdeen, Fort William or London. The Franchisee shall use reasonable endeavours to increase the involvement of SMEs and suppliers of Scottish produce. The Franchisee	Each Franchisee year	[redacted text]	2.2

Column 1	Column 2	Column 3	Column 4	Column 5
Reference in Part 1 (row in Committed Obligations Table)	Summary Description	Deadline	Committed Obligation Payment Adjustment (£ per Reporting Period)	Paragraph 2.2 and/or 2.3 to apply?
	shall advertise such 'meet the buyer' days through the Public Contracts Scotland procurement portal (www.publiccontractsscotland.gov.uk).			
63	Branding	Six months prior to Franchise Commencement Date	[redacted text]	No
64	Branding	Six months prior to Franchise Commencement Date	[redacted text]	No
65	Branding (other requirements for launch)	Three months prior to Franchise Commencement Date	[redacted text]	2.2
66	Branding (other deliverables)	At Franchise Commencement Date	[redacted text]	No
67	Branding (Initial Train Fleet)	Within 3 months of Franchise Commencement Date	[redacted text]	No
68	Without prejudice to any other terms of the Franchise Agreement including but not limited to paragraph 2.12 of Schedule	Nine months prior to Franchise Commencement Date	[redacted text]	No

Column 1	Column 2	Column 3	Column 4	Column 5
Reference in Part 1 (row in Committed Obligations Table)	Summary Description	Deadline	Committed Obligation Payment Adjustment (£ per Reporting Period)	Paragraph 2.2 and/or 2.3 to apply?
	1.4 (Passenger Facing Obligations), the Franchisee shall commence finalising design and development of the new Website.			
69	Website live	Three months prior to Franchise Commencement Date	[redacted text]	No
70	Theatre style booking screen	Three months prior to Franchise Commencement Date	[redacted text]	No
71	Timetable available online	Three months prior to Franchise Commencement Date	[redacted text]	No
72	Bespoke booking system	Three months prior to Franchise Commencement Date	[redacted text]	No
73	Self-management tool for customers online (virtual concierge)	Three months prior to Franchise Commencement Date	[redacted text]	No
74	App (including virtual concierge)	Three months prior to Franchise Commencement Date	[redacted text]	No

Column 1	Column 2	Column 3	Column 4	Column 5
Reference in Part 1 (row in Committed Obligations Table)	Summary Description	Deadline	Committed Obligation Payment Adjustment (£ per Reporting Period)	Paragraph 2.2 and/or 2.3 to apply?
75	Launch the Guest Services Contact Centre.	Three months prior to Franchise Commencement Date (calls, emails and web chat.) From Franchise Commencement Date onwards (social media)	[redacted text]	2.2
76	Live capacity information	At Franchise Commencement Date	[redacted text]	No
77	Mobile ticket availability	Three months prior to Franchise Commencement Date	[redacted text]	No
78	Customer relationship management	Three months prior to Franchise Commencement Date	[redacted text]	No
79	Corporate travel	Within 12 months after the Franchise Commencement Date	[redacted text]	No
80	Visit Scotland	At Franchise Commencement Date	[redacted text]	No
81	Visit England	At Franchise Commencement Date	[redacted text]	No

Column 1	Column 2	Column 3	Column 4	Column 5
Reference in Part 1 (row in Committed Obligations Table)	Summary Description	Deadline	Committed Obligation Payment Adjustment (£ per Reporting Period)	Paragraph 2.2 and/or 2.3 to apply?
82	Chambers of Commerce in Glasgow, Edinburgh, Aberdeen, Inverness, Fort William, Dundee, Perth and Stirling	At Franchise Commencement Date	[redacted text]	No
83	Co-marketing and sponsorship opportunities	At Franchise Commencement Date	[redacted text]	No
84	Without prejudice to any other terms of the Franchise Agreement including but not limited to Schedule 5.2 (Fares Structure), the Franchisee shall introduce a Fare structure which shall comprise a pricing calendar and price band quotas driven by capacity and demand. Such Fare structure shall include Fares as presented in different bands tailored to the demand profile which shall vary according to Route and direction.	At Franchise Commencement Date	[redacted text]	No
85	The Franchisee shall provide that at each Station equipped with a Totem that all functionality is fully operational	Within 2 years after the Franchise Commencement Date	[redacted text]	2.2
86	The Franchisee will enter into a Maintenance Contract [redacted text] in	Contract to be agreed three months	[redacted text]	No

Column 1	Column 2	Column 3	Column 4	Column 5
Reference in Part 1 (row in Committed Obligations Table)	Summary Description	Deadline	Committed Obligation Payment Adjustment (£ per Reporting Period)	Paragraph 2.2 and/or 2.3 to apply?
	respect of the maintenance of the Initial Train Fleet.	prior to Franchise Commencement Date		
87	The Franchisee shall enter into a Train Services Agreement [redacted text] for maintenance of the New Train Fleet and [redacted text].	25 September 2014	[redacted text]	No

Note: Column 2 (Summary Description) in the Table should be read in conjunction with the relevant Committed Obligation in Part 1 (Franchisee's Committee Obligations) to this Schedule 1.6 set out at the paragraph specified in column 1 (Reference). In the event of any conflict between Column 2 and the description of the Committed Obligation in Part 1 (Franchisee's Committee Obligations) to this Schedule 1.6, the latter shall prevail.

3. Waiver of Payments under this Part 3

- 3.1 The Authority may at its reasonable discretion decide to waive its rights to receive any payments payable in respect of a late, partial or non-delivery of any Committed Obligations.
- 3.2 In deciding whether to waive such rights the Authority may, but shall not be obliged to, take into consideration the circumstances under which the late, partial or non-delivery arose.

APPENDIX 1 TO SCHEDULE 1.6

Capital Expenditure Table

[redacted table]

SCHEDULE 1.7

THIS IS SCHEDULE 1.7 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT BETWEEN THE AUTHORITY AND SERCO CALEDONIAN SLEEPERS LIMITED

Franchise Services

1. Franchise Services

The Franchisee may at all times during the Franchise Term provide and operate the Franchise Services specified in this Schedule 1.7 and the Passenger Services.

2. Restrictions relative to Franchise Services

- 2.1 The Franchisee shall not directly or indirectly, without the prior written consent of the Authority, carry on any business or activity other than the provision and operation of the Franchise Services.
- 2.2 Such consent shall not be unreasonably withheld where the other business or activity proposed to be carried on by the Franchisee could not reasonably be so carried on by an Affiliate of the Franchisee unless, in the Authority's reasonable opinion such additional business or activity:
 - (a) might prejudice the continuity of the provision of the Franchise Services by a Successor Operator at the end of the Franchise Term; or
 - (b) might result in additional liabilities and obligations being assumed by such a Successor Operator.
- 2.3 The Authority may impose such conditions to its consent as it considers appropriate for the purpose of securing the continuity of the provision of the Franchise Services at the end of the Franchise Term.
- 2.4 The Franchisee shall not during the Franchise Term, without the consent of the Authority:
 - (a) provide or operate any railway passenger services other than the Passenger Services or Charter Services;
 - (b) operate any stations or light maintenance depots; or
 - (c) hold shares, participations or any other interest in any other company or body corporate unless such company or body corporate is:-
 - (i) Network Rail; or
 - (ii) owned directly or indirectly by another participant in the railway industry and the holding is incidental to the Franchisee's participation in an Inter-Operator Scheme or any other arrangement designed to ensure or facilitate co-operation between such participants or between any such participants and any other person.
- 2.5 The Franchisee shall not engage any Franchise Employee in any activity or business which it may not conduct or engage in under this paragraph 2.

3. Station Services

The Station Services shall comprise the provision of any services to persons at the Stations, provided that such services:

- 3.1 are made available only or principally to passengers alighting from or joining trains calling at such Stations;
- 3.2 are provided in connection with the calling of trains at such Stations and are not designed to encourage, and do not have the effect of encouraging, passengers or other persons to use such Station Services other than in connection with a journey on a train calling at such Stations;
- 3.3 exclude the sale or issue (for a charge) of any goods or items not included in the price of a Fare; and
- 3.4 may include car parking.

4. Light Maintenance Services

Light Maintenance Services shall comprise:

- 4.1 the carrying out of inspections of rolling stock vehicles;
- 4.2 the carrying out of maintenance work on rolling stock vehicles of a kind which is normally carried out at regular intervals of 12 months or less, or as instructed in the maintenance manual when balanced examinations are carried out;
- 4.3 replacement of failed components and consumables on rolling stock vehicles;
- 4.4 the preparation of rolling stock vehicles for service;
- 4.5 the stabling or other temporary holding of rolling stock vehicles;
- 4.6 the replenishment of water tanks; and
- 4.7 the cleaning of the exterior or the interior of rolling stock vehicles,

at the Stations and at the Depots.

5. Ancillary Services

The Franchisee may carry out the following Ancillary Services as an adjunct to the principal purpose of providing Franchise Services and subject to such not detracting from Franchise Services or the customer experience of those using the same:

- 5.1 the selling, lending or hiring of any goods or rights and the provision of any services (whether for a charge or not) on any train used in the provision of the Passenger Services where such goods or services are sold or provided principally for consumption or use on that train, including the sale of any Fares, meals, light refreshments, newspapers, magazines, books, entertainment materials or media and communications connectivity;
- 5.2 the provision of any service at any station which, if provided on a train used in the provision of the Passenger Services, would fall within paragraph 5.1 or which, if provided at a Station, would fall within paragraph 3 and which, in each case, is made available only or principally to persons at such stations

who either are about to travel or have recently travelled on a train used in the provision of the Passenger Services;

- 5.3 subject to obtaining the express consent of the Authority the subleasing, hiring or licensing of the Vehicles used in the provision of the Passenger Services;
- 5.4 subject to obtaining the express consent of the Authority, the lending, seconding, hiring or contracting out during any Reporting Period to another person or persons (whether for a charge or not):
 - (a) up to five per cent of the number of Franchise Employees (as at the Franchise Commencement Date) for over 75 per cent of their normal working hours during such Reporting Period (including on a full-time basis); and
 - (b) up to ten per cent of the number of Franchise Employees (as at the Franchise Commencement Date) for under 75 per cent of their normal working hours during such Reporting Period;

provided that this paragraph shall not apply to any employee lent, seconded, hired or contracted out under any of paragraphs 5.1 to 5.3 inclusive and 5.6 to 5.16 inclusive, or engaged in any other activity which is permitted under this Schedule 1.7;
- 5.5 clause not used
- 5.6 the selling at any location of any Fare which is valid, in whole or in part, on the Passenger Services and the selling of any other Fare at any location where such Fares may be purchased from the Franchisee on or before the date of signature of this Agreement or at any other location provided that the majority of Fares sold at any such other location shall be Fares which are valid, in whole or in part, on the Passenger Services;
- 5.7 the selling, in conjunction with any Fare, of any other rights which entitle the purchaser thereof to:
 - (a) travel on any other train or light rail service;
 - (b) travel on any aircraft;
 - (c) travel on any shipping or ferry service;
 - (d) travel on any bus; or
 - (e) attend any event or attraction or enter any location;
- 5.8 the lending, seconding, hiring or contracting out of Franchise Employees to other Train Operators in order to enable such Train Operators to provide services at the Stations to passengers travelling on such operators' trains;
- 5.9 the provision of telephone, internet and mobile data services information relating to railway passenger services within Great Britain to passengers;
- 5.10 the supervision, management and training of train crew of other Train Operators provided such activity is necessarily incidental to the provision of the Passenger Services or of the ScotRail Franchise and could not reasonably be carried out by or through an Affiliate of the Franchisee;

- 5.11 subject to obtaining the express consent of the Authority, the subleasing, hiring, licensing, lending of any rolling stock vehicles or other assets of the Franchisee or the lending, hiring or contracting out of any employees of the Franchisee or the provision of any other services to Network Rail or any other Train Operator on an emergency basis;
- 5.12 the licensing or permitting of any other person (including an Affiliate of the Franchisee) to carry out any activity or business, in connection with the provision of the Franchise Services, or otherwise, on any rolling stock vehicle operated by the Franchisee, at any Station Area, or otherwise (including the letting, leasing or licensing (on an exclusive basis or otherwise) of any part or all of a Station Area to such other person);
- 5.13 such other activity or business as may be reasonably necessary for the purpose of providing any other Franchise Services or complying with this Agreement provided that it could not reasonably be carried out by or through an Affiliate of the Franchisee;
- 5.14 the subleasing to any other person of the following property which is not comprised in a Station Area:
 - (a) Subleases of office accommodation at HQ
 - (b) Call Centre
- 5.15 the provision or operation of Charter Services, subject to the Train Mileage of such Charter Services not exceeding in any Reporting Period 20 per cent. of the scheduled Train Mileage of Passenger Services provided by the Franchisee in such Reporting Period;
- 5.16 the provision of consultancy services reasonably ancillary to the provision of the other Franchise Services; and
- 5.17 any services or activity not falling within paragraphs 3, 4 or 5.1 to 5.16, subject to the gross value of any such services or activity (excluding any attribution of costs) not exceeding [redacted text] per annum each and in aggregate no more than [redacted text] per annum in each Franchisee Year, provided that in the second and each subsequent Franchisee Year, these amounts will be adjusted in accordance with the following formula:

Adjusted Amount = Original Amount x RPI

where RPI is the quotient of the Retail Prices Index for the month falling 2 months before the start of the relevant Franchisee Year divided by the Retail Prices Index for the month falling 2 months before the start of the first Franchisee Year.

6. **Affiliates of the Franchisee**

Nothing in this Schedule 1.7 shall restrict any Affiliate of the Franchisee from having an interest in or participating in any business or activity.

7. **Franchise obligation**

Nothing in this Schedule 1.7 including paragraph 6 shall entitle the Franchisee or any Affiliate to act in any way contrary to the terms or spirit of clause 4 of this Agreement.

SCHEDULE 1.8

THIS IS SCHEDULE 1.8 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT BETWEEN THE AUTHORITY AND SERCO CALEDONIAN SLEEPERS LIMITED

Part 1

Major Projects

1. Implementation of Works Specified in any Possession Strategy Notice

- 1.1. The Franchisee shall co-operate with Network Rail, the Authority and any other relevant party in connection with any proposed extended Restriction of Use specified in any Possessions Strategy Notice.
- 1.2. The Franchisee shall co-operate with Network Rail in Network Rail's endeavours to obtain all consents required for the carrying out of each such extended Restriction of Use, including any required consent under Part D of the Network Code and under Part G of the Network Code in respect of any related Network Change.
- 1.3. The Franchisee's obligations under paragraphs 1.1 and 1.2 shall not require it to take or omit to take, nor excuse it from taking or omitting to take, any action that would be prejudicial to:
 - (a) proper performance of its obligations under this Agreement; or
 - (b) the pursuit of reasonable profit from the proper performance of its obligations under the Franchise Agreement.

2. Notice of Proposed Possessions Strategy and Network Change

- 2.1. The Franchisee shall notify the Authority:

- (a) as soon as reasonably practicable upon receiving any notification from Network Rail (including pursuant to Part D or Part G of the Network Code) of any proposal to implement works which require a programme of co-ordinated Restrictions of Use extending over the periods specified in condition D3.4.1 of the Network Code; and
- (b) a reasonable period in advance of:
 - (i) responding to Network Rail in respect of any notification referred to in paragraph 2.1(a);
 - (ii) appealing against any aspect of the proposed extended Restriction of Use specified in any Possessions Strategy Notice;
 - (iii) submitting any notification to Network Rail (pursuant to Part G of the Network Code) or any proposal to implement a Network Change; and
 - (iv) notifying Network Rail that it believes that a Network Change has occurred due to any change to the operation of the network,

in order to allow the consultation pursuant to paragraph 2.2 to take place in a timely manner should it be required.

2.2. If and to the extent requested by the Authority, the Franchisee shall:

- (a) consult them in relation to any of the matters referred to in paragraph 2.1; and
- (b) provide to the Authority copies of any notices, correspondence or other information exchanged between Network Rail and the Franchisee in respect of those matters.

3. **Initiation of Change**

3.1. The Franchisee shall, if so requested by the Authority (by notice given by the Authority which specifically refers to this paragraph) use reasonable endeavours to pursue:-

- (a) a Network Change Proposal; and
- (b) any Material Change Proposal or a Major Change Proposal

specified in writing by the Authority in the notice so given. In this paragraph, the expressions "Material Change Proposal" and "Major Change Proposal" shall have the same meaning as in the Station Access Conditions for the Stations, as amended from time to time.

3.2 Where the Franchisee uses its reasonable endeavours pursuant to paragraph 3.1, such will be a Change.

Part 2

Major Scottish Projects

1. Implementation of Major Scottish Project

- 1.1 The Franchisee shall co-operate with the Authority and any other relevant party in connection with each Major Scottish Project;
- 1.2 The Franchisee shall co-operate with the Authority in the Authority's or a third party's endeavours to obtain or procure the obtaining of all necessary consents required for the carrying out of each Major Scottish Project, including any approval required and any Network Change required under the Network Code;
- 1.3 The Franchisee's obligation under paragraph 1.1 shall not require it to take or omit to take nor excuse it from taking or omitting to take any action that would be prejudicial to:-
 - (a) proper performance of its obligations under this Agreement; or
 - (b) the pursuit of reasonable profit from the proper performance of its obligations under this Agreement.
2. Where the Franchisee's co-operation is required in connection with a Major Scottish Project, it shall constitute a Change, save to the extent that the Major Scottish Project or any part thereof is addressed directly by any provisions of this 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 or where such provisions indicate that the Franchisee's effort or actions shall not constitute a Change.

SCHEDULE 2

**THIS IS SCHEDULE 2 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT
BETWEEN THE AUTHORITY AND SERCO CALEDONIAN SLEEPERS LIMITED**

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

- Schedule 2.1: Property Leases**
- Schedule 2.2: Security of Access Assets, Rolling Stock Leases, and
 Station Leases**
- Schedule 2.3: Third Party Delivery of Passenger Services and Other
 Franchisees**
- Schedule 2.4: Other Franchise Operations**
- Schedule 2.5: Transport, Travel and Other Schemes**

Appendix: List of Transport, Travel and Other Schemes

SCHEDULE 2.1

THIS IS SCHEDULE 2.1 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT BETWEEN THE AUTHORITY AND SERCO CALEDONIAN SLEEPERS LIMITED

Property Leases

1. The Franchisee shall not without the prior written consent of the Authority (whether generally or on a case-by-case basis and which consent shall not be unreasonably withheld):
 - 1.1. enter into to any new Property Lease; or
 - 1.2. effect any amendment to any Property Lease, except to the extent that the Franchisee is required to do so by virtue of any station or depot access conditions to which it is a party.
2. In respect of any new Property Leases with Network Rail or the ScotRail Franchisee, the Franchisee shall enter into such Property Leases:
 - 2.1. with the intent that Section 31 of the Act shall apply to such leases; and
 - 2.2. in respect of Stations and Depots on the basis of the standard industry templates in use at the time and in a form agreed with the Authority, both parties being bound to act reasonably in agreeing such form and
 - 2.3. in respect of Station Areas and Depot Areas (if required) in a form agreed with the Authority, both parties being bound to act reasonably in agreeing such form.
3. In respect of any assignation or amendment of any Property Lease to which Section 31 of the Act applied on its grant, each of the Authority and the Franchisee acknowledge that it is their intention that Section 31 of the Act shall continue to apply to such assigned or amended lease.

SCHEDULE 2.2

THIS IS SCHEDULE 2.2 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT BETWEEN THE AUTHORITY AND SERCO CALEDONIAN SLEEPERS LIMITED

Security of Access Assets, Rolling Stock Leases, and Station and Depot Leases

1. Novation of Access Agreements During the Franchise Term

1.1 The Franchisee shall, to the extent so requested by the Authority (other than on termination of this Agreement, for which the provisions of paragraph 1 of Schedule 15.4 (*Provisions Applying on and after Termination*) apply):

- (a) following receipt of a notice purporting to terminate or irritate any Access Agreement to which it is a party, in relation to such Access Agreement; or
- (b) following receipt of a notice purporting to terminate or irritate a Station Lease or Station Area Lease or Depot Lease or Depot Area Lease in whole or in part or on becoming aware of any proceedings or any other steps having or purporting to have similar effect, in relation to any Access Agreement under which it is a Facility Owner by virtue of a Property Lease,

novate its interest under any relevant Access Agreement (and any related Collateral Agreement) to the Authority or as it may direct.

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

1.3 Such novation shall be on such terms as the Authority may reasonably require, including:

- (a) that the Franchisee shall not be released from any accrued but unperformed obligation, the consequences of any breach of the relevant agreement which is the subject of arbitration or litigation between the parties thereto or any liability in respect of any act or omission under or in relation to the relevant agreement prior to, or as at the date of, any such novation (except to the extent that the Authority or its nominee agrees to assume responsibility for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant novation); and
- (b) that neither the Authority nor its nominee shall be obliged, in connection with the novation, to agree to assume responsibility for any unperformed obligation, liability or consequences of a breach referred to in paragraph 1.3(a),

but shall not, unless the Franchisee otherwise agrees, be on terms which release any counterparty to the relevant agreement from any liability to the Franchisee arising prior to the date of such novation.

1.4 The Franchisee shall, on the occurrence of any of the circumstances specified in paragraph 1.1 in relation to any other Train Operator who is a party to an Access Agreement to which the Franchisee is also party, agree to the novation of the relevant Train Operator's interest under the relevant

Access Agreement to the Authority or as it may direct, subject, to the extent applicable, to the consent of the ORR. The provisions of paragraph 1.3 shall apply to any such novation.

1.5 The Franchisee shall notify the Authority on becoming aware of any circumstances which might lead to the Authority being able to require the Franchisee to novate its interest or agree to the novation of another Train Operator's interest under this paragraph 1.

2. **Rolling Stock Related Contracts and Insurance Arrangements**

2.1 The Franchisee shall not:

- (a) execute any Rolling Stock Related Contract or Traction Agreement;
- (b) exercise any option or other discretion in any Rolling Stock Related Contract or Traction Agreement that would result in any increased payment or delay in delivery being made by the Franchisee to the relevant counterparty or which may result in it being reasonably likely to be unable to comply with the terms of this Agreement; or
- (c) amend or waive the terms of any Rolling Stock Related Contract or Traction Agreement or lose any rights to enforce the whole terms of any Rolling Stock Related Contract or Traction Agreement in its favour,

without, in each case, the prior written consent of the Authority (not to be unreasonably withheld) and shall supply a copy of all draft and all executed Rolling Stock Related Contracts or Traction Agreement (including any agreement amending any Rolling Stock Related Contract or Traction Agreement) to the Authority.

2.2 The Franchisee shall not, without the prior written consent of the Authority,

- (a) amend the terms of any insurance arrangements which relate to rolling stock vehicles or traction used by it in the provision of the Passenger Services and to which it is a party on the Franchise Commencement Date; or
- (b) enter into any New Insurance Arrangements which relate to rolling stock vehicles or traction used or to be used by it in the provision of the Passenger Services.

2.3 The Franchisee shall, in addition, if it enters into any New Insurance Arrangements, use all reasonable endeavours to ensure that the relevant insurers waive their rights of subrogation against any Train Operator which may have equivalent insurance arrangements providing for a similar waiver of rights of subrogation against the Franchisee, whether on a reciprocal basis or otherwise.

2.4 The Franchisee shall provide the Authority with copies of any stewardship report in respect of the Train Fleet and consolidated Rolling Stock Related Contracts and Traction Agreements as they are procured from time to time by the Franchisee.

3. **Assignment of Property Leases during Franchise Term**

- 3.1 The Franchisee shall (other than on termination of this Agreement, for which the provisions of paragraph 4.6 of Schedule 15.4 (*Provisions Applying on and after Termination*) shall apply) following receipt of a notice purporting to terminate or irritate a Property Lease or on becoming aware of any proceedings or any other steps having or purporting to have similar effect, if requested by the Authority, assign its interest under all or any Property Leases to the Authority or as it may direct, subject where applicable to the agreement of any other party to such Property Lease or the ORR.
- 3.2 Such assignation shall be on such terms as the Authority may reasonably require, including:
 - (a) that the Franchisee shall not be released from any accrued but unperformed obligation, the consequences of any antecedent breach of a covenant, undertaking or obligation in the Property Leases or any liability in respect of any act or omission under or in relation to the Property Lease prior to, or as at the date of, any such assignation (except to the extent that the Authority or its nominee agrees to assume responsibility for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant assignation); and
 - (b) that neither the Authority nor its nominee shall be obliged, in connection with such assignation, to agree to assume responsibility for any unperformed obligation, liability or consequences of a breach referred to in paragraph 3.2(a), and the Franchisee shall indemnify the Authority or its nominee, as the case may be, on an after-tax basis against any costs, losses, liabilities or expenses suffered or incurred in relation thereto.
- 3.3 The Franchisee shall, on the occurrence of any of the circumstances specified in paragraph 3.1 in relation to any other Train Operator who is a party to a Property Lease to which the Franchisee is also party, agree to the assignation of such Train Operator's interest under the relevant Property Lease to the Authority or as it may direct, subject, where applicable, to the consent of Network Rail. The provisions of paragraph 3.2 shall apply to any such assignation.
- 3.4 The Franchisee shall notify the Authority on becoming aware of any circumstances which might lead to the Authority being able to require the Franchisee to assign its interest or agree to the assignation of another Train Operator's interest under this paragraph 3.

4. Station Area And Depot Area Leases

- 4.1 The Franchisee shall at all times enforce its rights under each (if any) Station Area Lease, Station Lease, Depot Lease and Depot Area Lease.
- 4.2 The Franchisee shall not:
 - (a) terminate or irritate or agree to terminate or irritate in whole or in part, or take or omit to take any other action which might result in the termination or irritancy of any Station Area Lease, Station Lease, Depot Lease or Depot Area Lease (if any);
 - (b) assign all or part of its interest under any Station Area Lease, Station Lease, Depot Lease or Depot Area Lease (if any);

- (c) sublet the whole or substantially the whole of the property comprised in any Station Area Lease, Station Lease, Depot Lease or Depot Area Lease (if any); or
- (d) by any act or omission lose any of its rights to enforce those provisions of any Station Area Lease, Station Lease, Depot Lease or Depot Area Lease (if any) which are in the Franchisee's favour,

except to the extent that the Authority may otherwise agree from time to time

5. Station Subleases

Unless the Authority agrees otherwise, the Franchisee shall not sublet, or grant any licence or any other right equating to a right of occupancy (whether or not exclusive), to any of its Affiliates of any part of the property comprised in any Property Lease except on terms that any such subletting:

- (a) (other than any subletting to an Affiliate which is a Train Operator) is terminable without compensation immediately upon the termination of this Agreement; and
- (b) is excluded from the provisions of Part II of the Landlord and Tenant Act 1954 and the Tenancy of Shops (Scotland) Act 1949.

6. Authority rights relating to Access Agreements and Property Leases

- 6.1 Where the Authority considers it requisite for the purposes of better securing the delivery of railway passenger services under this Agreement or any other franchise agreement or for the better achievement by it of any of its statutory purposes, the Authority may require the Franchisee:
 - (a) to exercise or refrain from exercising its rights under any Access Agreement or any Property Lease, or any related rights under such other agreements as the Authority may specify; and/or
 - (b) subject to the consent of the counterparty thereto, to assign, novate or surrender its rights under any Access Agreement or Property Lease.
- 6.2 Except to the extent that the Authority otherwise indicates from time to time, the Franchisee shall notify the Authority of its intention to enter into or amend any Access Agreement:
 - (a) where the approval of the ORR is required under the Act, not less than 10 business days before the submission to the ORR; and
 - (b) where no such approval is required, not less than 21 business days prior to entering into such amendment or Access Agreement.
- 6.3 The Franchisee shall comply with its obligations under any Access Agreement or any Property Lease to which it is a party from time to time:
 - (a) to notify or consult with the Authority on any matter or proposal relating to that Access Agreement or Property Lease; and
 - (b) which are contingent on a particular course of action being taken by the Authority or which are otherwise expressly included in that Access Agreement or Property Lease for the benefit of the Authority.

6.4 If and to the extent that:

- (a) the Authority exercises its rights pursuant to paragraph 6.1;
- (b) the Franchisee's compliance with the Authority's requirements pursuant to paragraph 6.1 would lead to the unavoidable consequence of the Franchisee contravening any other terms of this Agreement or the occurrence of an Event of Default; and
- (c) the Franchisee duly complies with such requirements,

no such contravention of this Agreement or Event of Default shall have occurred.

SCHEDULE 2.3

THIS IS SCHEDULE 2.3 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT BETWEEN THE AUTHORITY AND SERCO CALEDONIAN SLEEPERS LIMITED

Third Party Delivery of Passenger Services and Other Franchisees

1. Sub-contracting any Passenger Services

- 1.1 Subject to paragraph 1.2 and paragraph 1.3, the Franchisee may not subcontract or delegate the provision of all or any part of the Passenger Services without the prior written consent of the Authority.
- 1.2 The Franchisee may subcontract or delegate the provision of the Passenger Services, provided that:
 - (a) the Authority receives prior written notice of any such subcontracting or delegation;
 - (b) the Franchisee continues to be party to all Access Agreements and Property Leases necessary to provide such Passenger Services and to enjoy all relevant access and operational rights thereunder;
 - (c) the Franchisee continues to specify and control (within the limitations imposed on it by Schedule 5 (*Fares*)) the terms and conditions (subject to the requirements of the Inter-Operator Schemes) on which such Passenger Services are to be provided, including the determination of the Price or Child Price (as the case may be) of any Fares;
 - (d) the Train Mileage of the Passenger Services so delegated or subcontracted does not, without the consent of the Authority, exceed 15% of the aggregate scheduled Train Mileage of the Franchisee in any Reporting Period;
 - (e) the Franchisee continues to perform its obligations under Schedule 1.1 (*Service Development*) in respect of any subcontracted or delegated services.
- 1.3 The Franchisee may sub-contract or delegate the provision of the Passenger Services on a temporary basis where the Franchisee requires to do so due to an unplanned or otherwise unavoidable shortage of availability of the rolling stock vehicles which comprise the Train Fleet rendering it impossible for the Franchisee to operate all Passenger Services provided that the total Train Mileage operated in any Franchisee Year by the operator of such subcontracted or delegated Passenger Services shall not exceed 15% of the aggregate scheduled Train Mileage for the Franchisee Year.
- 1.4 Any such subcontracting or delegation shall not relieve the Franchisee from any of its obligations under this Agreement, including its obligations under this paragraph 1 and Schedule 14 (*Preservation of Assets*).

2. Other Franchisees

- 2.1 If the franchise agreement of another franchisee terminates or a railway administration order is made in respect of another franchisee, the Franchisee shall co-operate with any reasonable request of the Authority to ensure:

- (a) that the services provided or operated by such other franchisee may continue to be provided or operated by any successor Train Operator or the railway administrator; and
- (b) that the benefit of any arrangements between the Franchisee and such other franchisee which were designated as a key contract under such franchise agreement immediately prior to its termination or to a railway administration order being made will continue to be provided to any successor Train Operator or to the railway administrator.

2.2 The benefit of any arrangements of the type referred to in paragraph 2.1(b) shall be provided on substantially the same terms as previously obtained by the relevant franchisee, subject to clause 6 of this Agreement and paragraph 2.3, provided that the Authority may exclude or modify any terms agreed or amended by such franchisee in the 12 months preceding the date on which such franchisee's franchise agreement was terminated or the date on which the relevant railway administration order was made which were, in the Authority's reasonable opinion, to the material detriment of such franchisee's business. The benefit of such arrangements shall be provided for such period as the Authority may reasonably require to allow the relevant Train Operator or railway administrator to renegotiate such arrangements or make alternative arrangements.

2.3 The Franchisee shall notify the Authority of its intention to terminate any contract with any other Train Operator which is designated as a "Key Contract" under that Train Operator's franchise agreement and shall give that Train Operator sufficient notice to enable it to make suitable alternative arrangements for its passengers without causing disruption to the railway passenger services provided by such Train Operator.

2.4 If the franchise agreement of another franchisee terminates in contemplation of the entry into or entry into effect of a new franchise agreement with the same franchisee in respect of all or a material part of the relevant railway passenger services, the Franchisee shall waive any event of default or other right it may have to terminate any agreement with such franchisee arising out of such termination, provided that the entry into or entry into effect of such new franchise agreement takes place.

2.5 References in this paragraph 2 to a franchisee include references to any franchise operator of that franchisee.

SCHEDULE 2.4

THIS IS SCHEDULE 2.4 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT BETWEEN THE AUTHORITY AND SERCO CALEDONIAN SLEEPERS LIMITED

Other Franchise Operations

1. Rolling Stock Testing and Commissioning

The Franchisee shall, to the extent reasonably requested by the Authority and subject to payment of any reasonable costs by the relevant third party, co-operate with any third party which the Authority may specify (including a Successor Operator, any other franchisee of the Authority, a rolling stock vehicle manufacturer, a rolling stock vehicle refurbishment contractor, a Charter Service operator, Network Rail or the Authority) in connection with the testing and commissioning of new rolling stock vehicles or any new equipment to be fitted to rolling stock vehicles (whether such rolling stock vehicles are new or otherwise). Such co-operation shall not unreasonably disrupt the provision and operation of the Franchise Services and may include:

- (a) the movement of test trains within and around depots;
- (b) making available suitably qualified personnel to operate test trains along the Routes and provide information on the Routes;
- (c) making Train Slots available for such purposes;
- (d) granting or procuring the grant of access to the third party and its representatives to any relevant facilities; and
- (e) the delivery of rolling stock vehicles to specific locations.

2. Restrictions on Closures of Railway Passenger Services or Railway Facilities

2.1 Except to the extent that the Authority agrees otherwise, the Franchisee shall not:

- (a) cease to operate;
- (b) cease to secure the operation of; or
- (c) propose to terminate the use of,

any Station or Depot (if any) (or part of a Station or Depot (if any) or Station Area or Depot Area (if any)) or any railway passenger service over a Route where such cessation or proposal might result in a Closure.

2.2 If any procedures are commenced under Part 4 of the Railways Act 2005 in relation to a Closure, the Franchisee shall, at its own cost and to the extent so requested by the Authority, take such action as the Authority may require in order to enable the Authority to comply with any duty imposed on it under Part 4 of the Railways Act 2005 in relation to such Closure.

3. Staffing at Stations

3.1 If the Franchisee proposes to takes any step or becomes aware of any proposal on or after the Franchise Commencement Date which would result in a Station:

(a) ceasing to be staffed at all times of the day at which railway passenger services are scheduled to call; or

(b) being staffed at times which are less than the scheduled staffing times at the Franchise Commencement Date,

it shall provide at least 8 weeks' written notice of such proposal to the Authority and the Passengers' Council.

3.2 Subject to paragraph 3.3, the Franchisee shall in respect of its own staff have regard to the views and representations of the Authority, and the Passengers' Council before implementing any proposals pursuant to paragraph 3.1.

3.3 The Franchisee shall not implement any proposals in respect of its own staff pursuant to paragraph 3.1 at any Station without the agreement of the Authority.

4. Royal Train

4.1 The Franchisee shall, if and to the extent requested by any person who from time to time is the operator of the same (and subject to the payment by such person of any reasonable costs of the Franchisee), co-operate in the provision by such person of railway passenger services for Her Majesty Queen Elizabeth II or any successor head of state or members of the family or representatives of either of them.

4.2 The provision of railway services for Her Majesty Queen Elizabeth II or any successor head of state or members of the family or representatives of either of them may include:

(a) running a "sweeper" train in front of the royal train;

(b) having spare locomotives on standby as rescue traction; and/or

(c) carrying out security requirements or co-operating with other persons in ensuring that security requirements are carried out prior to calling at any station on the Routes.

5. Charter services

The Franchisee shall, if and to the extent requested by any Charter Service operator or open access train operator and subject to the payment by such operator of any reasonable costs of the Franchisee, co-operate in the provision by such operator of railway passenger services to facilitate the use of the railway network to support and promote tourism and sustainable economic development within Scotland including without prejudice to the foregoing generality subject to obtaining the Authority's consent to do so, flexing the Franchisee's timetable to allow such services to be run.

SCHEDULE 2.5

THIS IS SCHEDULE 2.5 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT BETWEEN THE AUTHORITY AND SERCO CALEDONIAN SLEEPERS LIMITED

Transport, Travel and Other Schemes

1. Integrated Transport Schemes

- 1.1 The Franchisee shall participate in and comply with its obligations under the Integrated Transport Schemes listed in paragraph 1 of the Appendix (*List of Transport, Travel and Other Schemes*).
- 1.2 As and when required by the Authority, the Franchisee shall co-operate with the development and promotion of any schemes proposed by the Authority or any third party (including any Local Authority) and which relate to the integration of any other form of transport with the Franchise Services. If the Authority reasonably considers that the Franchisee's participation in any such scheme would have no adverse financial effect on the Franchisee, the Authority shall be entitled, but not obliged, to designate any such scheme as an Integrated Transport Scheme.
- 1.3 If and to the extent that the Authority designates any further integrated transport scheme or proposed scheme as an Integrated Transport Scheme for the purposes of this paragraph 1 then the Franchisee shall participate in and comply with its obligations under such scheme and take such other steps as the Authority may reasonably require.
- 1.4 The Authority shall consult the Franchisee before designating any scheme an Integrated Transport Scheme under paragraph 1.2 and shall allow the Franchisee a reasonable opportunity to make representations to it with respect to any such designation.
- 1.5 If the Franchisee's participation in any integrated transport scheme or proposed scheme would have an adverse financial effect on the Franchisee, the Authority may designate such scheme or proposed scheme as an Integrated Transport Scheme for the purposes of this paragraph 1 and the Franchisee shall participate in and comply with its obligations under such scheme and take such steps as the Authority may reasonably require. The Franchisee's compliance with this paragraph 1.5 shall constitute a Change.

2. National and Local Authority Concessionary Travel Schemes

- 2.1 The Franchisee shall, subject to paragraphs 2.3 and 2.8, participate in and comply with its obligations under:
 - (a) the concessionary travel schemes set out in paragraph 2 of the Appendix (*List of Transport, Travel and Other Schemes*); and
 - (b) any other concessionary travel scheme which the Franchisee is required to participate in during the Franchise Term pursuant to paragraph 2.2.
- 2.2 The Franchisee shall, subject to paragraphs 2.4 and 2.8, if so requested by the Authority participate in and comply with its prospective obligations under:

- (a) any concessionary travel scheme set out in paragraph 2 of the Appendix (*List of Transport, Travel and Other Schemes*), the terms of which have been amended since the date of signature of this Agreement; and
- (b) such other concessionary travel schemes as any relevant Local Authority, or the Authority may require or request it to participate in.

2.3 Subject to the terms of the relevant concessionary travel scheme and paragraph 2.8, the Franchisee shall be entitled to cease to participate in any scheme referred to in paragraph 2.1 where, in the reasonable opinion of the Authority:

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

each pursuant to Part II of the Travel Concession Regulations 1986 (SI 1986/77) (**Regulations**) would fail to render the Franchisee financially no worse off (within the meaning of the Regulations).

2.4 Subject to paragraph 2.8, the Authority shall not require the Franchisee to participate in any scheme referred to in paragraph 2.2 where the Authority is reasonably satisfied that:

- (a) the reimbursement arrangements with respect to the Franchisee's participation in any such scheme; and/or
- (b) the obligations to be assumed by such Local Authority, or the Authority in connection therewith,

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

2.5 The Authority shall consult the Franchisee before making any request of the Franchisee to participate in any amended or new concessionary travel scheme pursuant to paragraphs 2.2(a) or (b) and shall allow the Franchisee a reasonable opportunity to make representations to it with respect to any such participation.

2.6 The Franchisee shall supply to the Authority, in respect of any concessionary travel schemes referred to in paragraphs 2.1 and 2.2, such information within such period as the Authority may reasonably require for the purposes of determining whether or not the Franchisee is or will be financially no worse off (within the meaning of the Regulations) as a consequence of its participation in any such scheme, and/or the obligations assumed by such Local Authority, or the Authority in connection therewith.

2.7 If the Authority and the Franchisee are unable to agree whether the Franchisee will be financially no worse off (within the meaning of the Regulations), the Authority and the Franchisee may resolve such dispute in accordance with the Dispute Resolution Rules.

2.8 If the Franchisee's participation in any concessionary travel scheme would make the Franchisee financially worse off (within the meaning of the Regulations), the Authority may require such participation, or continued

participation, and the Franchisee shall participate in and comply with its obligations under such scheme and take such steps as the Authority may reasonably require. The Franchisee's compliance with the terms of this paragraph 2.8 shall constitute a Change.

3. Multi-Modal Fares Schemes

- 3.1 The Franchisee shall, subject to paragraphs 3.3 and 3.9, participate in and comply with its obligations under:
 - (a) the multi-modal fares schemes set out in paragraph 3 of the Appendix (*List of Transport, Travel and Other Schemes*); and
 - (b) any other multi-modal fares scheme which the Franchisee is required to participate in during the Franchise Term pursuant to paragraph 3.2.
- 3.2 The Franchisee shall, subject to paragraphs 3.4 and 3.9, if so requested by the Authority, participate in and comply with its prospective obligations under:
 - (a) any multi-modal fares scheme set out in paragraph 3 of the Appendix (*List of Transport, Travel and Other Schemes*), the terms of which have been amended since the date of signature of this Agreement; and
 - (b) such other multi-modal fares schemes as any relevant Local Authority, or the Authority may require or request it to participate in.
- 3.3 Subject to the terms of the relevant multi-modal fares scheme and paragraph 3.9, the Franchisee shall be entitled to cease to participate in any scheme referred to in paragraph 3.1 where, in the reasonable opinion of the Authority:
 - (a) the Franchisee's continuing participation in such scheme; and/or
 - (b) the obligations assumed by the relevant Local Authority, or Authority in connection therewith,

would fail, by way of distribution of income or otherwise, to render the Franchisee financially no worse off.
- 3.4 Subject to paragraph 3.9, the Authority shall not require the Franchisee to participate in any scheme referred to in paragraph 3.2 where the Authority is reasonably satisfied, that the Franchisee's participation in any such scheme and/or the obligations to be assumed by the relevant Local Authority, or the Authority in connection therewith, would fail, by way of distribution of income or otherwise to render the Franchisee financially no worse off.
- 3.5 In determining whether the Franchisee shall, pursuant to paragraph 3.3, continue to participate or, pursuant to paragraph 3.4, participate in any multi-modal fares scheme, the Authority shall construe the term ***financially no worse off*** to mean:
 - (a) in respect of any multi-modal fares scheme set out in paragraph 3 of the Appendix (*List of Transport, Travel and Other Schemes*), that the Franchisee incurs no materially greater financial loss than the financial loss (if any) incurred by the Franchisee at the Franchise Commencement Date under that scheme, as adjusted by reference to any change in the Retail Prices Index since such date;

- (b) in respect of any multi-modal fares scheme which replaces and (in the Authority's reasonable opinion) is reasonably similar to any such scheme as may be set out in paragraph 3 of the Appendix (*List of Transport, Travel and Other Schemes*), that the Franchisee incurs no materially greater financial loss than the financial loss (if any) incurred by the Franchisee at the Franchise Commencement Date under the replaced scheme, as adjusted by reference to any change in the Retail Prices Index since such date; and
- (c) in respect of any multi-modal fares scheme which does not replace or which does replace but which is not (in the Authority's reasonable opinion) reasonably similar to any such scheme or schemes as may be set out in paragraph 3 of the Appendix (*List of Transport, Travel and Other Schemes*), the same as the meaning given to that term in the Regulations, as if the Regulations applied to such multi-modal fares scheme.

3.6 The Authority shall consult the Franchisee before making any request of the Franchisee to participate in any amended or new multi-modal fares scheme pursuant to paragraph 3.2 and shall allow the Franchisee a reasonable opportunity to make representations to it with respect to any such participation.

3.7 The Franchisee shall supply to the Authority, in respect of any multi-modal fares schemes referred to in paragraphs 3.1 and 3.2 such information within such period as the Authority may reasonably require for the purposes of determining whether or not the Franchisee is or will be financially no worse off as a consequence of its participation in any such scheme and/or the obligations to be assumed by the relevant Local Authority, or the Authority in connection therewith.

3.8 If the Authority and the Franchisee are unable to agree whether the Franchisee will be financially no worse off, the Authority and the Franchisee may resolve such dispute in accordance with the Dispute Resolution Rules.

3.9 If the Franchisee's participation, or continued participation, in any multi modal fare scheme would make the Franchisee materially financially worse off the Authority may require such participation, or continued participation, and the Franchisee shall participate in and comply with its obligations under such a scheme and take such steps as the Authority may reasonably require. The Franchisee's compliance with the terms of this paragraph 3.9 shall constitute a Change.

3.10 As regards each of the multi-modal fares schemes set out in paragraph 3 of the Appendix (*List of Transport, Travel and Other Schemes*), provided the terms of the scheme are not amended, the Franchisee agrees that its continuing participation in the scheme will render the Franchisee financially no worse off.

3.11 Within the constraints imposed by competition legislation the Franchisee shall throughout the Franchise Term:

- (a) co-operate with SPT to provide travel cards and Glasgow Subway fares as add on fares to Fares;
- (b) co-operate with local bus operators to provide bus fares as add on fares to Fares; and

(c) continue to develop and improve the integration of local bus services with the Passenger Services.

3.12 The Franchisee shall act as an impartial retailer at its points of sale of tickets as between its tickets and any relevant multi-operator multi-modal tickets which it is from time to time authorised to sell.

4. **Discount Fare Schemes**

4.1 The Franchisee shall participate in and comply with its obligations under the Discount Fares Schemes set out in paragraph 4 of the Appendix (*List of Transport, Travel and Other Schemes*).

4.2 If the Authority:

- (a) effects, or proposes to effect, an amendment to a Discount Fare Scheme;
- (b) introduces any new Discount Fare Scheme; or
- (c) ceases to approve a Discount Fare Scheme

for the purposes of Section 28 of the Act, such amendment, intended amendment, introduction or cessation of approval shall be a Change.

4.3 The Authority shall provide a reasonable opportunity to the Franchisee to make representations to it before amending, introducing or ceasing to approve a Discount Fare Scheme pursuant to paragraph 4.2.

5. **Inter-Operator Schemes**

5.1 The Franchisee shall participate in, and comply with its obligations under, and the terms of, each of the Inter-Operator Schemes set out in paragraph 5 of the Appendix (*List of Transport, Travel and Other Schemes*).

5.2 Without limiting paragraphs 5.1 and 5.3, the Franchisee agrees with the Authority to be bound by Parts IV and V of Chapter 4 of the Ticketing and Settlement Agreement and shall not amend, or agree or propose to amend, the Ticketing and Settlement Agreement without the prior written consent of the Authority.

5.3 The Franchisee shall not amend, or agree or propose to amend, any Inter-Operator Scheme other than in accordance with its terms.

5.4 The Franchisee shall:

- (a) provide reasonable notice to the Authority of any proposal to amend any Inter-Operator Scheme which it intends to make or of which it receives notification and which is reasonably likely materially to affect the provision of the Franchise Services; and

- (b) have regard to the Authority's views in respect of any such proposal.

5.5 If an amendment is effected or proposed to be effected to an Inter-Operator Scheme which requires the consent or approval of the Authority in accordance with the terms thereof, such amendment shall be treated as a Change to the extent and only to the extent that the Franchisee makes a saving as a consequence of such amendment or proposed amendment.

6. Introduction of ITSO Ticketing/Smartmedia Technology

6.1 The Franchisee shall ensure that:-

- (a) if the Franchisee proposes to use smartcard technology allowing passengers using berths to use smartcards, it shall ensure that such technology is fully ITSO compliant;
- (b) passengers travelling on any of the Passenger Services in seated accommodation can do so using ITSO Certified Smartmedia for all types of fare maintaining compatibility with other Train Operators including the ScotRail Franchisee ticketing technologies, by the date on which such technology is introduced for any Route.

6.2 The Franchisee shall use all reasonable endeavours to co-operate with Network Rail and other Train Operators in relation to the provision of equipment to permit ITSO Certified Smartmedia and any other emerging ticketing technologies, which the Authority may from time to time specify. In particular, the Franchisee shall use reasonable endeavours to co-operate with InterCity West Coast and Intercity East Coast franchisees to maximise the benefits of development in ticketing technology in relation to rail travel between Scotland and England.

6.3 The Franchisee shall:

- (a) co-operate with other Train Operators in relation to the introduction of flexible ticketing schemes by such other Train Operators (including flexible season tickets and/or flexible ticketing schemes based on ITSO Certified Smartmedia);
- (b) facilitate the use of ITSO Certified Smartmedia on IOP within Scotland, by the IOP Acceptance Date;
- (c) promote the inter-availability of any smartmedia related ticketing schemes and shall join any relevant ATOC approved smartmedia related ticketing scheme;
- (d) co-operate with relevant passenger transport executives, Local Authorities, as well as other Train Operators in relation to any proposals to use or convert any multi-modal fare schemes to use ITSO Certified Smartmedia and shall not unreasonably withhold or delay its consent to any such proposals; and
- (e) co-operate with relevant Local Authorities in relation to any proposal to implement ITSO Certified Smartmedia based schemes including multi modal fare schemes and shall not unreasonably withhold or delay its consent to any such proposals.

6.4 The Franchisee shall use all reasonable endeavours to accept, retail and fulfil on ITSO Certified Smartmedia the IOP Products and all products that are currently accepted, retailed and fulfilled under the Ticketing and Settlement Agreement.

6.5 Franchisee shall support the ScotRail Franchisee in respect of the roll out of smart cards across the ScotRail Franchise and this shall include the provision of assistance to the ScotRail Franchisee where there are synergies and opportunities for both parties to attract new custom such as combining Caledonian Sleeper, local rail and island ferry journeys or connection into the

local rail networks through the main destinations in Scotland. The Franchisee shall engage its customer base for feedback and opinions around the use of smart technology.

Monitoring Requirements

6.6 Commencing on the date the Franchisee is first obliged to accept ITSO Certified Smartmedia from passengers for their journey on the Passenger Services, the Franchisee shall within 10 days of the end of each Reporting Period report to the Authority:

- (a) the total number of passenger journeys made during the relevant Reporting Period; and
- (b) the total number of passenger journeys made using ITSO Certified Smartmedia during the relevant Reporting Period.
- (c) In respect of the last Reporting Period in each Reporting Year ending on or after 31 March each year the percentage number (reasonably determined) of passenger journeys made using ITSO Certified Smartmedia during the relevant Reporting Year in accordance with the following formula:

$$\frac{Y}{Z} \times 100$$

where:

Y is the total number of passenger journeys made in the relevant Reporting Year using ITSO Certified Smartmedia;

Z is the total number of passenger journeys made in the relevant Reporting Year.

6.7 Where during the Franchise Term the Franchisee becomes Facility Owner of a station the Franchisee, where not the responsibility of any other Train Operator, shall install ITSO Certified Smartmedia product retailing and fulfilment, equipment, media, readers and validators (including on any automated ticket gates) that in the reasonable opinion of the Authority is appropriate at the station for the purpose of complying with its obligations at paragraph 6.1. All ITSO equipment installed and operated by the Franchisee pursuant to this paragraph shall be fully compatible (including as to ITSO functionality) with the ITSO equipment employed by other relevant Facility Owners or other Train Operators at Stations to ensure as far as practicable reciprocal operation of such ITSO Certified Smartmedia.

APPENDIX TO SCHEDULE 2.5

List of Transport, Travel and Other Schemes

1. Integrated Transport Schemes

This is intentionally left blank

2. Local Authority Concessionary Travel Schemes

Scheme	Local Authority Areas Served	Rail Participation						
		Card Type						
Elderly	Disabled	Companion	Young Person	Taxi Card	Blind Companion	Blind		
Aberdeen	Aberdeen City Council							Y
Aberdeenshire & Moray	Aberdeenshire Council Moray Council				#Y			Y
Angus	Angus Council	Y	Y		Y			Y
Clackmannanshire, Falkirk & Stirling	Clackmannanshire Council Falkirk Council Stirling Council	~Y	~Y					Y
Dumfries & Galloway	Dumfries & Galloway Council							Y
Dundee	Dundee City Council							Y
Eilean Siar	Comhairle nan Eilean Siar							Y
Fife	Fife Council	Y	Y	Y	Y	Y		Y
Highland	Highland Council	Y	Y			Y		Y
Lothians	City of Edinburgh Council East Lothian Council Midlothian Council	^Y	^Y		*Y	^Y		Y
Orkney	Orkney Islands Council							Y
Perth & Kinross	Perth & Kinross Council							Y
Scottish Borders	Scottish Borders Council							Y
Shetland	Shetland Islands Council							Y
Strathclyde Partnership for Transport	Argyll & Bute Council East Ayrshire Council East Dunbartonshire Council East Renfrewshire Council Glasgow City Council Inverclyde Council North Ayrshire Council North Lanarkshire Council Renfrewshire Council South Ayrshire Council South Lanarkshire Council West Dunbartonshire Council	Y	Y	Y		Y		Y
West Lothian	West Lothian Council	Y	Y	Y	Y	Y	Y	Y

Aberdeenshire only
~ Falkirk only
* Not Midlothian
^ East Lothian only

3. Multi Modal Fares Schemes

SCHEME	DESCRIPTION
AUTHORITY	
1. Freedom of Scotland	<p>A Rover ticket that allows travel on any 4 out of 8 or 8 out of 15 consecutive days on all ScotRail and Cal Mac ferry services in Scotland and unlimited ScotRail travel. A selection of bus and coach routes are also included.</p> <p>This ticket will be valid in the seated portion of the Caledonian Sleeper between the following stations:</p> <ul style="list-style-type: none"> • Aviemore and Inverness • Fort William and Edinburgh
2. Highland Rover	<p>Unlimited rail travel for 4 out of 8 consecutive days on the West Highland or Kyle of Lochalsh to Inverness railway lines, some buses and some ferries.</p> <p>This ticket will be valid in the seated portion of the Caledonian Sleeper between the following stations:</p> <ul style="list-style-type: none"> • Fort William and Edinburgh
3. Plusbus	<p>Add on to any rail journey that starts or finishes at participating stations giving unlimited access to most buses in the local network.</p>

4. Discount Fare Schemes

- 4.1. ATOC Disabled Persons Railcard Scheme dated 23 July 1995 between the participants named therein;
- 4.2. ATOC 16-25 Railcard Scheme dated 23 July 1995 between the participants named therein; and
- 4.3. ATOC Senior Railcard Scheme dated 23 July 1995 between the participants named therein.
- 4.4. Scottish Youth Railcard under the Young Scot NEC Card.

5. Inter-Operator Schemes

- 5.1. ATOC Staff Travel Scheme dated 23 July 1995 between the participants named therein;
- 5.2. Ticketing and Settlement Agreement;
- 5.3. ATOC LRT Scheme dated 23 July 1995 between the participants named therein;

- 5.4. Travelcard Agreement dated 15 October 1995 between London Regional Transport and the parties named therein;
- 5.5. Through Ticketing (Non-Travelcard) Agreement dated 15 October 1995 between London Regional Transport and the parties named therein; and
- 5.6. National Rail Enquiries Scheme dated 11 June 1996 between the participants named therein.

SCHEDULE 3

THIS IS SCHEDULE 3 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT BETWEEN THE AUTHORITY AND SERCO CALEDONIAN SLEEPERS LIMITED

Priced Options

1. This Schedule 3 relates to any Priced Options agreed between the Franchisee and the Authority by Variation, and the terms upon which the Authority may exercise each Priced Option.
2. The Authority may call any Priced Option by serving written notice on the Franchisee
 - (a) at any time prior to the last date for the call of such Priced Option, and on the terms of such Priced Option, in which case the terms of such Priced Option, including the agreed cost and revenue amounts for that Priced Option, shall apply and the Franchisee shall implement such Priced Option in accordance with those terms; and
 - (b) at any time after the last date for the call of such Priced Option and/or on different terms to those specified within such Priced Option in which case such call shall be a Change.
3. Any Priced Options will follow the format set out under the heading Priced Option – [Name]

Priced Option – [Name]

- (a) Description, objective and specification
- (b) Price for exercising the Priced Option
- (c) Timescale for implementing Priced Option
- (d) Other effects on this Agreement
- (e) Last date for exercising the Priced Option in order to maintain the price detailed in (b) above.

[(f) Timetable

[] timetable

Start time	Start Point	End Time	End Point

SCHEDULE 4

**THIS IS SCHEDULE 4 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT
BETWEEN THE AUTHORITY AND SERCO CALEDONIAN SLEEPERS LIMITED**

Maintaining and Enhancing Stations Areas, Depot Areas and Trains

Schedule 4.1: Franchise Facilities

Appendix: Station Area Surveys

Schedule 4.2: Persons with Disabilities and Disability Discrimination

Appendix: Minor Works

SCHEDULE 4.1

**THIS IS SCHEDULE 4.1 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT
BETWEEN THE AUTHORITY AND SERCO CALEDONIAN SLEEPERS LIMITED**

Franchise Facilities

1. Franchise Facilities Surveys

- 1.1 If requested by the Authority, the Franchisee and the Authority shall undertake joint surveys that record:
 - (a) the facilities and characteristics of the rolling stock vehicles comprising the Train Fleet;
 - (b) the interior and exterior condition of each of the rolling stock vehicles comprising the Train Fleet;
 - (c) the facilities available at each Station Area and their operational status and condition;
 - (d) the information provision facilities at each Station Area and their operational status and condition;
 - (e) the ticket selling facilities of Station Areas and their operational status and condition;
 - (f) the aesthetic condition and the state of repair of each Station Area, including any buildings, roofs, station shelters, guttering, glazing, painted surfaces, tiled surfaces, floor surfaces and signage; and
 - (g) the facilities available at each Depot Area (if any) and their operational status and condition.
- 1.2 The Franchisee and the Authority shall be entitled to use photographic or video recording equipment in the carrying out of any survey pursuant to paragraph 1.1 but in any event both of them shall record the results of such surveys in accordance with paragraph 2.
- 1.3 The surveys shall be completed within four months of the date of request under paragraph 1.1 (or such other period as the Authority and the Franchisee shall agree). The Franchisee shall co-operate with the Authority in relation to the surveys in order to, as far as possible, carry out such surveys in conjunction with:
 - (a) in respect of the Train Fleet, the owners of any rolling stock vehicles within the Train Fleet;
 - (b) in respect of the Stations Areas, representatives from Network Rail and/or the ScotRail Franchisee; and
 - (c) if the survey is to be completed before the Franchise Commencement Date, in respect of the matters referred to in both paragraphs 1.3(a) and (b), representatives of the Outgoing Franchisee under the Previous Franchise Agreement.

1.4 If requested by the Authority, the surveys under paragraph 1.1 shall not be joint but shall be undertaken by the Franchisee and the Franchisee shall provide the Authority with all information it may request to audit and verify the results of any survey. The cost of joint surveys in respect of the Station Areas and the Train Fleet shall be divided equally between the Franchisee and the Authority.

1.5 In respect of the matters referred to in paragraphs 1.1(f), each Station Area shall be further categorised, in the case of all Station Areas, by the Authority and the Franchisee (and, in the absence of agreement, the Authority shall reasonably determine the categories) in accordance with the following condition standard:

Condition status at time of survey completion	Description of condition status	Characteristics of condition status
1	Excellent	As new or recently refurbished, no attention required
2	Good	Good aesthetic appearance, a few minor aesthetic issues requiring attention, no concerns as to repair of fabric of building
3	Satisfactory	Generally acceptable appearance, a few minor aesthetic issues requiring attention, a few minor deficiencies in condition where delay in remedying would not damage the fabric of the building
4	Poor	Shabby, aesthetically poor, attention required to a few deficiencies where delay in remedying would increase the cost of repair
5	Extremely poor	Dilapidated, urgent attention required to a significant number of deficiencies or a few deficiencies where delay in remedying would cause significant additional cost

2. The Franchise Facilities Book

2.1 Within 1 month of the completion of any survey, pursuant to paragraph 1.1, the Authority and the Franchisee shall agree the extent of the items listed in paragraph 1.1 and their condition for the relevant rolling stock vehicles, Station Area. In the absence of such agreement within one month of the completion of a survey, the Authority shall reasonably determine the extent of the items listed and their condition within a further month of the completion of the survey in question.

2.2 The record of the extent and condition of the items listed in paragraph 1.1 as agreed between the Franchisee and the Authority or determined by the Authority shall be compiled in and known as the **Franchise Facilities Book** as more particularly described in paragraph 2.3. The Franchise Facilities Book may contain no entry or entries as at the Franchise Commencement

Date and may be compiled as the surveys in respect of matters referred to at paragraph 1.1 are carried out.

2.3 The Franchise Facilities Book shall include the following:

- (a) a list of:
 - (i) those facilities identified pursuant to paragraph 1.1;
 - (ii) those facilities which, from time to time, replace any facilities specified therein; and
 - (iii) any:
 - (A) additional rolling stock vehicles, which from time to time, are used by the Franchisee in the provision of the Passenger Services; and
 - (B) additional facilities, which from time to time, are made available in the provision of the Franchise Services by the Franchisee (or as a consequence of any of the arrangements mentioned in paragraph 5) at the Stations Areas, and the off-Station car parks,

(together the ***Franchise Facilities***);
- (b) a summary of the operational status and condition of each Franchise Facility at the date of such facility's inclusion within the Franchise Facilities Book; and
- (c) a list of the Station Areas in the format set out in the Appendix (*Station Area Surveys*) and listing the following:
 - (i) the banding of each Station Area according to each such Station's:
 - (A) size;
 - (B) annual origin and destination revenue; and
 - (C) annual origin and destination journey numbers,

by the allocation of a letter, A to F (inclusive), to each such Station in accordance with the criteria used by Network Rail for this purpose from time to time;
 - (ii) in respect of each Station Area, the standard according to the categories determined pursuant to paragraph 1.5; and
 - (iii) in respect of each Station Area, the aesthetic condition of the items referred to in paragraph 1.1(f).

2.4 The Franchisee shall compile and maintain the Franchise Facilities Book:

- (a) in a fair, true and diligent manner; and
- (b) no less than once every Quarter update the Franchise Facilities Book and provide a report to the Franchise Manager copied to the SQI on such update.

- 2.5 The Franchise Facilities Book shall also record which Station Areas are staffed and during what hours they are staffed.
- 2.6 The Franchisee and the Authority shall work together in compiling the Franchise Facilities Book (and any computer records relating thereto) with the intention that the book will be capable of being a computerised record covering all Franchise Facilities without undue difficulty or expense.
- 2.7 The Franchise Facilities Book shall be available for inspection (and copying) in Scotland during normal business hours by, or on behalf of, the Authority. The Franchisee shall ensure that the Authority is provided with a complete copy of the Franchise Facilities Book promptly after its completion and the Franchisee shall also promptly provide updates from time to time.

3. Obligations during the Franchise Term

- 3.1 In so far as not provided for in Schedule 1.6 (*Committed Obligations*) within 6 months of the Franchise Commencement Date the Franchisee shall devise a programme for the maintenance and refurbishment of Stations Areas to ensure that:
 - (a) in aggregate across the Caledonian Sleeper Franchise; and
 - (b) in aggregate across each banding of Station Areas determined pursuant to paragraph 2.3(c)(i) ,

there is no degradation of the condition of Stations Areas (the **Station Areas Condition Maintenance Programme**) during the Franchise Term from the conditions determined pursuant to paragraph 1.5.
- 3.2 The Station Areas Condition Maintenance Programme shall identify the categories of work to be undertaken at each Station and the timetable for completing each category of such work.
- 3.3 Clause not used
- 3.4 Clause not used
- 3.5 The Franchisee shall use all reasonable endeavours to procure that the Station Areas Condition Maintenance Programme is implemented in accordance with their respective terms.
- 3.6 The Franchisee shall review the content and implementation of the Station Areas Condition Maintenance Programme at least once every 13 Reporting Periods and shall make the results of such review available to the Authority at the next Franchise Performance Meeting following completion of such review.
- 3.7 If and to the extent:-
 - (a) the Franchisee replaces any of the facilities specified in a Franchise Facilities Book or makes available for use any additional facilities at the locations referred to in paragraph 1.1; or
 - (b) additional assets or facilities are made available at those locations in consequence of any of the arrangements referred to in paragraph 5 or of the Franchisee carrying out its obligations in Part 2 of Schedule 1.6 (*Committed Obligations*) or in Schedule 3 (*Priced Options*),

the Franchisee shall maintain such replacement or additional assets or facilities and update the relevant Franchise Facilities Book in accordance with this Schedule 4.1.

4. **Franchise Facilities Surveys to End of the Franchise Period**

4.1 For the purpose of determining prior to the end of the Franchise Period:

- (a) the extent and condition of the Franchise Facilities; and
- (b) in the case of the Stations Areas, whether in aggregate across the Caledonian Sleeper Franchise or in aggregate across each banding of Stations Areas determined pursuant to paragraph 2.3(c)(i), there has been any degradation of the condition of the Station Areas from the conditions determined pursuant to paragraph 1.5,

the Authority and the Franchisee shall conduct surveys similar to those referred to in paragraph 1 in accordance with the requirements of this paragraph 4. If requested by the Authority, these surveys shall not be joint but shall be undertaken by the Franchisee, and the Franchisee shall provide the Authority with all information it may request to audit and verify the results of any survey.

4.2 The surveys referred to in paragraph 4.1 shall be conducted:

- (a) no more than 12 months prior to and no less than 6 months prior to the Expiry Date; or
- (b) following service of a Termination Notice, within such period as the Authority may reasonably specify.

4.3 Within 1 month of the completion of the last survey pursuant to paragraph 4.1 the Authority and the Franchisee shall agree, or in the absence of such agreement, the Authority shall reasonably determine

- (a) the extent and prevailing condition of the Franchise Facilities including:
 - (i) in respect of each Station Area, the prevailing condition according to the condition standards set out in paragraph 1.5; and
 - (ii) in respect of each Station Area, the aesthetic condition of the items referred to in paragraph 1.1(f).
- (b) the banding of each Station Area according to that Station Areas:
 - (i) size;
 - (ii) annual origin and destination revenue; and
 - (iii) annual origin and destination journey numbers,

by the allocation of a letter, A to F (inclusive), to each such Station in accordance with the criteria used by Network Rail for this purpose from time to time.

4.4 It shall be a contravention of this Agreement if there is any degradation, either in aggregate across the Caledonian Sleeper Franchise or in aggregate across each banding of Station Areas (as contained in the Franchise Facilities Book, in accordance with paragraph 2.3(c)(ii)) in the conditions of the Station Areas from the conditions determined pursuant to paragraph 1.5,

5 Work required by the Authority

5.1 The Authority may issue a Variation to this Agreement in order to remedy, improve or enhance any aspect of the condition (including the aesthetic condition) or state of repair of, or the facilities available at a Station Area or on a rolling stock vehicle comprised in the Train Fleet.

5.2 The Franchisee shall co-operate with the Authority in conducting any surveys and pricing any remedial, improvement or enhancement work, if required to do so by the Authority, and contracting for and project managing the remedial, improvement or enhancement work and completing and complying with the terms of any Variation to remedy, improve or enhance any aspect of the condition (including the aesthetic condition) or the state of repair of, or the facilities available at, a Station Area or on a rolling stock vehicle comprised in the Train Fleet.

5.3 Once remedial work, improvements or enhancements directed by the Authority in accordance with paragraph 5.1 have been completed, the Authority may adjust the Franchise Facilities Book to reflect the work done and/or facilities made available and the Authority may also, acting reasonably, re-categorise the relevant Station Area in accordance with the condition standards set out in paragraph 1.5.

5.4 The reference to "the condition of Station Areas" in paragraph 3.1 shall be to the condition of the Station Area as improved by remedial or improvement work or enhancements required by the Authority, by improvements or enhancements as referred to in paragraph 5.5.

5.5 Where the Authority or any other body grant funds or otherwise meets the cost of assets or facilities that improve or enhance any aspect of a Station Area then the Authority may require the adjustment of the Franchise Facilities Book to reflect such improvement or enhancement and the Authority may also, acting reasonably, re-categorise the relevant Station Area in accordance with the condition standards set out in paragraph 1.5.

5.6 Where either the Authority or any other body is considering grant funding or otherwise meeting the costs of assets or facilities the Franchisee shall co-operate with the Authority, or such body and provide to it such information and advice as it may reasonably request.

5.7 The rights of the Authority referred to in paragraph 5.1 shall not in any way prejudice the Authority in ensuring that repairs or remedial work is carried out by the Franchisee in accordance with Schedule 7.3 (SQUIRE).

APPENDIX TO SCHEDULE 4.1

Station Area Surveys

Category	Station Area Categorisation and Condition																													
	A					B					C					D					E					F				
Condition	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5
Station Area Name																														
[Station 1]																														
[Station 2]																														
[Station 3]																														
[Station X]																														
[Station Y]																														
[Station Z]																														

SCHEDULE 4.2

**THIS IS SCHEDULE 4.2 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT
BETWEEN THE AUTHORITY AND SERCO CALEDONIAN SLEEPERS LIMITED**

Persons with Disabilities and Disability Discrimination

1. Relationship with Other Obligations relating to Persons with Disabilities

- 1.1 The Franchisee acknowledges that its obligations in this Schedule 4.2 are in addition to and do not limit its obligations to comply with:
 - (a) the EA;
 - (b) any applicable condition(s) in any of its Licences (including in respect of Disabled Persons); and
 - (c) any other of the requirements of this Agreement.
- 1.2 This Schedule 4.2 sets out:
 - (a) specific arrangements which apply in respect of physical alterations to stations to facilitate accessibility and use by Disabled Persons; and
 - (b) specific obligations of the Franchisee directed at meeting the needs of Disabled Persons.

2. Physical Alterations and Accessibility of Stations

- 2.1 In respect of physical alteration works at stations to facilitate accessibility and use by Disabled Persons, it is acknowledged by the Franchisee that:
 - (a) there is limited funding available to the Authority to assist franchisees and/or franchise operators with the carrying out of those works;
 - (b) consequently, there is a need for such works to be carried out over a period of time to reflect the availability of funding, and for such works to be prioritised with regard to where there is the greatest need and/or where physical alterations can have the greatest effect; and
 - (c) the Authority's national programme of works of physical alterations at stations addresses these issues in a structured way.
- 2.2 The Franchisee will:
 - (a) co-operate reasonably with and assist the Authority in the development and furtherance by the Authority of the programme described in paragraph 2.1(c) by providing to the Authority:
 - (i) information concerning the usage of Station Areas (including, where and to the extent reasonably practicable, usage of Stations by Disabled Persons); and
 - (ii) advice as to the most economic way in which accessibility for Disabled Persons could, in the Franchisee's reasonable opinion, be improved at Station Areas;

(b) co-operate reasonably with other Train Operators and/or Network Rail to seek to ensure that, where it would be advantageous to do so, having regard to the needs of Disabled Persons, any planned work on the Stations to facilitate accessibility and use by Disabled Persons is, so far as reasonably practicable, co-ordinated with other work to be carried out at the Stations and/or other parts of the network; and

(c) use all reasonable endeavours to secure sources of grant funding (other than from itself or an Affiliate) for improving accessibility for Disabled Persons at Station Areas (in addition to any funding secured through the Authority pursuant to paragraph 2.5), including but not limited to funding from Local Authorities, and the Lottery Commission. The Franchisee shall notify the Authority of:

(i) any such additional funding which it secures; and

(ii) the terms on which such additional funding has been granted.

2.3 In participating in any multi-modal fares scheme, the Franchisee shall, subject to paragraph 3 of Schedule 2.5 (*Transport, Travel and Other Schemes*), use all reasonable endeavours to secure, through the planning and development of such scheme, improvements in disabled access to the entrances of any relevant Station Area, including within and in the immediate proximity of such Station Area.

2.4 If, during the Franchise Term:

(a) the Franchisee has complied with its obligations in terms of the EA (to take such steps as are reasonable to provide a reasonable alternative method of making services at a Station Area accessible to a Disabled Person to avoid a Disabled Person being placed at a substantial disadvantage by a physical feature at a Station and its obligations in paragraph 2.7 concerning Minor Works); and

(b) notwithstanding such compliance, if the Franchisee reasonably considers it is still required to carry out or procure physical works of alteration at a Station Area, other than any works provided for under Schedule 6.2 (*Station Enhancements*) in order to comply with the EA Requirements in respect of that Station Area, and, in so carrying out or procuring, would incur expenditure which it would not otherwise have an obligation to incur,

the Franchisee may seek funding from the Authority in respect of that expenditure.

2.5 If the Franchisee seeks funding from the Authority under paragraph 2.4, and demonstrates to the Authority's satisfaction that the criteria in paragraph 2.4 have been satisfied, then the Authority may agree to adjust the amount of Franchise Payments in respect of some or all of the works and/or expenditure. In considering its response to any such request, the Authority will have regard to the availability of funding and the priorities set out in the national programme described in paragraph 2.1(c), together with any other available sources of funding described in paragraph 2.2(c). If and to the extent the Authority agrees to adjust Franchise Payments in accordance with this paragraph 2.5 in any Franchise Year:

(a) the Authority shall make such adjustment to the Franchise Payments; and

(b) the Franchisee shall spend such additional funds:

(i) in order to comply with the EA Requirements referred to in paragraph 2.4(b); and

(ii) in accordance with any conditions the Authority may notify the Franchisee of.

2.6 If and to the extent the Franchisee is required to pay any increased access charges as a result of additional expenditure required to be incurred by a station Facility Owner for the purpose of complying with the EA Requirements in respect of a Station, provided that the Franchisee:

- (a) notifies the Authority within 7 days of becoming aware of any proposal for the increase in such charges (or the works to which they relate); and
- (b) complies with the Authority's reasonable directions regarding the exercise of any rights the Franchisee may have in respect thereof,

the imposition of the increased access charges shall constitute a Change.

2.7 Minor Works Budget

The Franchisee shall:

- (a) establish and manage the Minor Works Budget to fund the carrying out of Minor Works. For the purposes of this paragraph 2.7, **Minor Works** means small scale physical alterations or additions to improve accessibility of Station Areas to Disabled Persons, not involving substantial works of construction or reconstruction. The Minor Works:
 - (i) may, but shall not necessarily include, the Minor Works described in the Appendix (*Minor Works*);
 - (ii) shall not include any works which Network Rail, the Franchisee or any other person has a separate obligation to carry out, except where:
 - (A) such obligation is an obligation of the Franchisee under the EA; or
 - (B) the inclusion of such works would lead to the acceleration of the timescale for their completion and the Authority gives its consent pursuant to paragraph 2.7(a)(iii);
 - (iii) shall only include works other than those permitted by paragraphs 2.7(a)(i) and (ii) with the prior consent of the Authority; and
 - (iv) must comply with the standards provided for in the Code of Practice, unless otherwise agreed with the prior consent of the Authority;
- (b) before the start of each Franchisee Year:
 - (i) develop a Minor Works Programme and consult with the Disabled Persons Transport Advisory Committee and relevant Passenger's Committees in relation thereto;
 - (ii) in conjunction with its activities in paragraph 2.7(b)(i), and, consistent with its obligations under paragraph 2.2(b), liaise with Network Rail and other Train Operators as necessary with regard to the determination and implementation of each Minor Works Programme; and

- (iii) following the consultation and liaison described in paragraphs 2.7(b)(i) and (ii), obtain the Authority's prior approval (such approval not to be unreasonably withheld) of each Minor Works Programme;
- (c) carry out or procure the carrying out of the Minor Works Programme in each Franchisee Year and in doing so, spend at least the amount of the Minor Works Budget for the relevant Franchisee Year in such Franchisee Year (unless otherwise agreed by the Authority);
- (d) report progress to the Authority in determining and carrying out the Minor Works' Programme no less than once every 3 Reporting Periods; and
- (e) co-operate, as the Authority may reasonably require, with Network Rail or any other person seeking to carry out or procure Minor Works at the Stations or any other stations.

3. Dealing with Claims relating to Station Areas

- 3.1 If during the Franchise Period the Franchisee receives notification of a claim under the EA in respect of any alleged non-compliance with the EA Requirements or otherwise in respect of any Station Area (an **EA Claim**) then the Franchisee shall:
 - (a) notify the Authority within 7 days of receiving notification of the EA Claim. The Franchisee shall at the same time notify the Authority of any reasonable alternative methods of making the Station Area accessible to or improving use by Disabled Persons that it has considered and/or put in place pursuant to the EA;
 - (b) if required by the Authority, defend the EA Claim or any aspect of the EA Claim (which may include appealing the judgement or decree). The Authority will, subject to paragraph 3.4, pay the Franchisee's reasonable costs of:
 - (i) any defence or appeal required by the Authority; and/or
 - (ii) compliance with the Authority's instructions in accordance with paragraph 3.1(c); and
 - (c) act in accordance with the reasonable instructions of the Authority to defend the EA Claim (or any aspect of it) as required under paragraph 3.1(b) and shall not (without the prior consent of the Authority) settle or enter into any compromise in relation to the EA Claim (or the relevant aspect of it), including by entering into mediation.
- 3.2 If, in the reasonable opinion of the Franchisee, it will be more cost effective to settle the EA Claim rather than act in accordance with the Authority's requirement under paragraph 3.1, it shall produce for the Authority's approval a settlement proposal (the **Settlement Proposal**).
- 3.3 If the Authority does not accept the Settlement Proposal and still requires the Franchisee to defend the EA Claim (or any aspect of it) then the Franchisee shall defend the EA Claim in accordance with paragraph 3.1.
- 3.4 If the Franchisee is required to defend an EA Claim where it has submitted a Settlement Proposal to the Authority and an award is made in respect of the EA Claim in favour of the person bringing it which is higher than the figure set out in the Settlement Proposal, then, subject to paragraph 3.5, the Authority shall pay to the Franchisee:

- (a) the difference between such an award and the figure set out in the Settlement Proposal; and
- (b) the further reasonable costs incurred or payable by the Franchisee in defending the EA Claim, to the extent that such costs have not already been paid by the Authority under paragraph 3.1(b).

3.5 The Authority shall not have any obligation to make the payments described in paragraphs 3.1(b) or 3.4 where it is determined or, if no declaration or determination by the court on this point has been sought or made, the Authority, in its reasonable opinion, considers that the Franchisee has not taken such steps as it is reasonable, in all the circumstances of the case, for it to take to provide a reasonable alternative method of making the Station Area accessible to Disabled Persons.

APPENDIX TO SCHEDULE 4.2

Minor Works

1. Providing additional signage, where it does not currently exist, to allow better way finding around the station by Disabled Persons.
2. Removing:
 - (a) thresholds (above 15 millimetres) which do not comply with the Code of Practice; or
 - (b) less than 3 steps,from the entrances to booking halls or platforms to enable those facilities to have step-free access.
3. Providing contrasting manifestations on glazed areas where contrasting manifestations do not currently exist.
4. Providing additional handrails around the station where handrails do not currently exist and where the Franchisee reasonably believes they may be required by a Disabled Person.
5. Providing new accessible stair nosings where stair nosings do not currently exist.
6. Providing new tactile surfaces, including at the top and bottom of flights of steps, but excluding at platform edges, where tactile surfaces do not currently exist.
7. Providing additional seating that is accessible to Disabled Persons, but not replacing existing seating.
8. Providing induction loops for ticket office windows where induction loops do not currently exist.
9. Replacing non-standard fittings with fittings that are compliant with the Code of Practice in existing disabled toilets, which would include replacing non-standard fittings in respect of toilet bowls and sinks, but would not include making major changes to plumbing or to the dimensions of the toilet area.
10. Providing dropped kerbs at drop off/ set down points or station car parks to enable access/ egress thereto where dropped kerbs do not currently exist.
11. Marking out existing car-parking bays for use by persons with disabilities which comply with the Code of Practice, where such car parking bays do not currently comply.
12. Providing portable light-weight ramps (and appropriate restraining devices for such ramps) and any required assistance with the use of such ramps. Any such ramps shall be:
 - (a) compliant with TSI PRM (or where ramps are fitted to vehicles which first entered passenger service between 31 December 1998 and 1 July 2008, compliant with the Rail Vehicle Accessibility Regulations 1998 provided that where the compliant width of the wheelchair ramp exceeds that of a vehicle doorway, it shall be acceptable that the width of the ramp shall be the maximum practicably achievable; and
 - (b) carried on board trains to provide a method of facilitating access to or egress from a rolling stock vehicle, acknowledging that their use is subject to availability of staff:
 - (i) on the train of which the rolling stock vehicle comprises part; or

(ii) at the station.

SCHEDULE 5

**THIS IS SCHEDULE 5 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT
BETWEEN THE AUTHORITY AND SERCO CALEDONIAN SLEEPERS LIMITED**

Fares

Schedule 5.1: **Fares on the Franchise Services**

Schedule 5.2: **Franchisee's Fares Structure**

Schedule 5.3: **Fares Information and Monitoring**

SCHEDULE 5.1

THIS IS SCHEDULE 5.1 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT BETWEEN THE AUTHORITY, AND SERCO CALEDONIAN SLEEPERS LIMITED

Fares on the Franchise Services

1. Purpose of Schedule 5

At the Franchise Commencement Date, the Franchisee will not be the Lead Operator under the Ticketing and Settlement Agreement on any origin destination Flow (as defined within the Ticketing and Settlement Agreement). Moreover, as dedicated Fares on Franchise Services are unregulated, and supplements/reservations are required for travel on Inter-available Fares ticketing, only minimal Fares regulation will apply.

The purpose of Schedule 5 (*Fares*) is to set out the Franchisee's Fare structure and the Franchisee's obligations in relation to regulated Fares and Inter-available Fares and to ensure that Inter-available Fares remain valid for travel on the Franchise Services, subject to capacity constraints, and that the process for changes to Fares regulation is specified. In addition, regulations concerning staff travel are specified for both berth and seated accommodation.

2. Amendment to Fares Structure

The Franchisee shall be entitled to vary any Fare but subject always to the terms of the Ticketing and Settlement Agreement and any other relevant industry arrangements limiting or impacting on the Franchisee's ability to vary Fares, or which the Franchisee ought reasonably to have regard to.

3. Regulated Fares

The Franchisee shall honour any regulated Fares offered by the ScotRail Franchisee or other Train Operators who set Fares in relation to any journeys on seats that can be fulfilled on the Passenger Services.

4. Changes to Fares regulation

The parties agree that the Authority shall have the power at any time during the Franchise Term to alter the obligations of, and restrictions on, the Franchisee with respect to regulation of Fares for Passenger Services. The exercise by the Authority of its powers under this paragraph 4 shall constitute a Change.

5. Inter-available Fares

The Franchisee shall be a party to and shall remain a party to the Ticketing and Settlement Agreement throughout the Franchise Period. Inter-available Fares shall continue to be valid, subject to available seating, Pod and Berth capacity on the Passenger Services and the payment of any Franchise Service supplements that the Franchisee may choose to specify, to allow the passenger to travel on the Passenger Services.

If the Franchisee intends at any point in the Franchise Term to use pricing/reservations policy to change the balance of berth or seated capacity available to holders of Inter-available Fares, the Franchisee shall communicate details of the proposed changes, at least 3 months in advance to the rail industry and shall also Publish the details in the appropriate manner which will include on the Website, at Stations and in the regional press for the affected

Routes, the Franchisee taking such steps to Publish the aforesaid details as the Authority may approve or require.

6. Lead Operator

The Franchisee shall not without the Authority's prior approval agree to any request under the Ticketing and Settlement Agreement that it become Lead Operator in respect of any Flow. The Franchisee becoming the Lead Operator under this paragraph 6 shall be a Change.

7. Child Prices

7.1 Any requirement under this Schedule 5 to set a Child Price in respect of a Fare shall be satisfied by the Franchisee Creating either:

7.1.1 a Fare which is only valid for use by persons under the age of 16; or

7.1.2 a Fare which is valid for use:

(a) by any person at a price; and

(b) only by persons under the age of 16 and at a discounted price relative to the price set pursuant to paragraph 7.1.1.

7.2 The Franchisee shall set Child Prices for all Fares so that:-

(a) no price is payable for the Fare for persons under the age of 5; and

(b) the price for the Fare for persons aged 5 or over and under 16 shall be at least 50% less than the price payable by persons aged 16 and over.

SCHEDULE 5.2

THIS IS SCHEDULE 5.2 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT BETWEEN THE AUTHORITY AND SERCO CALEDONIAN SLEEPERS LIMITED

Franchisee's Fares Structure

BEFORE DELIVERY OF NEW TRAIN FLEET

1. Dedicated Ticket Types on Franchise Commencement

The Franchisee's Fares structure shall utilise the following ticket types prior to the introduction of the New Train Fleet:

Ticket Types	Description
Seated	A standard Caledonian Sleeper ticket with a reserved seat
Standard Berth	A standard Caledonian Sleeper ticket for a reserved Berth with a bed in shared Cabin with another passenger of the same sex
Standard Berth Solo	A standard Caledonian Sleeper ticket for a reserved standard Cabin Berth occupied by a single passenger on payment of a supplement
First Berth	A first class Caledonian Sleeper ticket for a reserved first class Berth cabin for a single traveller with entitlements such as breakfast in bed

AFTER DELIVERY OF NEW TRAIN FLEET

2. Dedicated Ticket Types following introduction of the New Train Fleet

The Franchisee's Fares structure shall utilise the following ticket types following the introduction of the New Train Fleet:

Ticket Types	Description (without prejudice to the definition of "Cradle Seat", "Pod Flatbed", "Berth" and "Ensuite Berth" in the Definitions Agreement)
Cradle Seat	A Caledonian Sleeper ticket with a reserved Cradle Seat
Pod Flatbed	A Caledonian Sleeper ticket with a reserved Pod Flatbed
Berth x1	A Caledonian Sleeper ticket for a reserved Berth for a single traveller
Berth x 2	A Caledonian Sleeper ticket for a reserved Berth based on two people sharing
Ensuite Berth x1	A Caledonian Sleeper ticket for a reserved En-suite Berth for a single traveller
Ensuite Berth x 2	A Caledonian Sleeper ticket for a reserved En-suite Berth based on two people sharing

3. Pricing Structure

The Franchisee shall utilise five price bands tailored to the demand profile:

- Low: will apply to the least busy days at the least popular times of year
- Low-Mid: will apply to least busy days at times of year when demand is average
- Mid: will apply to busiest days at the least popular times of the year and the least busy days at the most popular times of year
- Mid-High: will apply to the busiest days at times of the year when demand is average
- High: will apply to the busiest days at the most popular times of year

The demand profiles vary by Route and by direction and the price bands will be used by the Franchisee to match each specific profile.

Passengers booking a Caledonian Sleeper ticket will be presented with a booking calendar which will show accommodation prices for each day. Prices in the calendar will be determined by the demand profile and appropriate price band.

DEDICATED TICKET PRICING STRUCTURE ON FRANCHISE COMMENCEMENT

The following tables show the example Fares for Lowland and Highland journeys for accommodation types before the New Train Fleet. The Fares referred to in the column labelled "High" are the maximum Fares that the Franchisee intends to apply to each accommodation type available in the Passenger Services from time to time and all % figures indicated in other columns are expressed as a percentage of the relevant maximum Fares. This table is illustrative only and is not intended to specify or limit any particular Fare (or proscribe any particular percentage of such Fare) at any particular time:

Indicative Pricing Calendar for Lowland Journeys (before the introduction of the New Train Fleet)

Lowland	Low	Lo/Mid	Mid	Hi/Mid	High
Seat	33%	50%	66%	73%	100%
Standard Berth	40%	53%	67%	83%	100%
Standard Berth Solo	53%	63%	74%	87%	100%
First Berth	70%	80%	90%	95%	100%

Indicative Pricing Calendar for Highland Journeys (before the introduction of the New Train Fleet)

Highland	Low	Lo/Mid	Mid	Hi/Mid	High
Seat	36%	50%	64%	82%	100%
Standard Berth	39%	50%	67%	83%	100%
Standard Berth Solo	50%	59%	73%	86%	100%
First Berth	73%	82%	91%	95%	100%

Indicative Pricing Calendar for Month of May

May 2015						
Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

The highlighted segments correspond to pricing above. The Calendar for May 2015 includes Bank Holidays on 4th and 25th of this month.

4. DEDICATED TICKET PRICING STRUCTURE ON DELIVERY OF NEW TRAIN FLEET

The Franchisee shall introduce a new seasonal pricing approach following the delivery of the New Train Fleet.

The following tables show the example Fares for Lowland and Highland journeys for accommodation types in the New Train Fleet. The Fares referred to in the column labelled "High" are the maximum Fares that the Franchisee intends to apply to each accommodation type available in the Passenger Services from time to time and all % figures indicated in other columns are expressed as a percentage of the relevant maximum Fares. This table is illustrative only and is not intended to specify or limit any particular Fare (or proscribe any particular percentage of such Fare) at any particular time:

Indicative Pricing Calendar for Lowland Journeys (following introduction of the New Train Fleet)

Lowland	Low	Lo/Mid	Mid	Hi/Mid	High
Seat	44%	50%	61%	72%	100%
Pod	46%	50%	64%	71%	100%
Berth x1	63%	68%	73%	80%	100%
Berth x2	67%	71%	76%	82%	100%
Ensuite Berth x1	73%	76%	80%	85%	100%
Ensuite Berth x2	76%	79%	82%	87%	100%

Indicative Pricing Calendar for Highland Journeys (following introduction of the New Train Fleet)

Highland	Low	Lo/Mid	Mid	Hi/Mid	High
Cradle Seat	55%	59%	68%	77%	100%

Highland	Low	Lo/Mid	Mid	Hi/Mid	High
Pod Flatbed	53%	56%	69%	75%	100%
Berth x1	66%	70%	75%	82%	100%
Berth x2	69%	73%	78%	84%	100%
Ensuite Berth x1	75%	78%	81%	86%	100%
Ensuite Berth x2	77%	70%	83%	88%	100%

Each accommodation type has five fixed prices. Availability shall be quota controlled by the Franchisee and will vary depending on the date of travel and the booking horizon. The price matrix will be used in conjunction with a bookings calendar to determine the Fare offered to a passenger. The Retailing & Pricing Manager appointed by the Franchisee will set the starting price and quota for each day of operation based on forecast occupancy levels. The "Mid" price band is the default starting price and there will be mid-price Fares available on every train. However, on days when demand is predicted to be low, the starting prices will be in the lower price bands. The Franchisee's booking system shall provide a twelve month booking horizon for passengers. When bookings open, accommodation will be available at the starting price and remain available until the quota is filled at which point Fares will move into the next highest price band until that quota is filled and so on. The following table illustrates how the quotas will work.

Quota Price Bands Illustration

Predicted Occupancy on any given day	Price Band Quota %				
	Low	Low/Mid	Mid	Mid/High	High
Low (up to 30% occupancy)	30%	20%	35%	10%	5%
Low/Mid (31% to 45%)	20%	30%	30%	15%	5%
Mid (46% to 60%)	0%	0%	20%	60%	20%
Mid/High (61% to 70%)	0%	0%	10%	70%	10%
High (over 70% occupancy)	0%	0%	5%	15%	80%

Reporting to the Authority

The Franchisee shall, for each Reporting Period, provide a detailed report to the Authority providing evidence of the proportion of individual fares separately identified for the Lowlander and Highlander, sold by each price band and each accommodation type for each day of the Reporting Period, in aggregate for each price band and each accommodation type for the Reporting Period and also in aggregate for each price band and each accommodation type cumulatively for the Franchisee Year to date.

5. Partnering with other franchise operators

The Franchisee shall seek to partner with the Train Operators of the West and East Coast franchises to offer dedicated returns where passengers take the Passenger Services one way and then take a daytime train back.

SCHEDULE 5.3

**THIS IS SCHEDULE 5.3 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT
BETWEEN THE AUTHORITY AND SERCO CALEDONIAN SLEEPERS LIMITED**

Fares Information and Monitoring

1. Information

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

2. Monitoring

- 2.1 The Franchisee shall provide to the Authority:
 - (a) such access as the Authority may require to information pertaining to the Prices or Child Prices of any Fare set by the Franchisee from time to time; and
 - (b) such further information as the Authority may require for the purpose of determining the Gross Revenue of the Franchisee in relation to any particular Fare or Fares or any particular period.
- 2.2 By no later than week 17 of each Fares Setting Round the Franchisee will provide to the Authority written confirmation from a statutory director of the Franchisee of whether the Franchisee has complied with its obligations under this Schedule 5 during each such Fares Setting Round.
- 2.3 The Franchisee shall take such action as the Authority may require following receipt of any details from the Franchisee pursuant to paragraph 1 in order to ensure that the Franchisee will comply with the provisions of this Schedule 5 (*Fares*).

SCHEDULE 6

**THIS IS SCHEDULE 6 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT
BETWEEN THE AUTHORITY AND SERCO CALEDONIAN SLEEPERS LIMITED**

Rolling Stock and Station Enhancements

Schedule 6.1: **Rolling Stock**

Appendix 1 – Coach Layouts

Appendix 2 – Project Plan

Schedule 6.1A: **New Train Fleet Output Specification**

Schedule 6.1B: **Maintenance of the Train Fleet**

Schedule 6.2: **Station Enhancements**

Schedule 6.3 **Passenger Experience and Marketing**

Part 1 - Passenger Experience

Part 2 - Marketing

SCHEDULE 6.1

THIS IS SCHEDULE 6.1 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT BETWEEN THE AUTHORITY AND SERCO CALEDONIAN SLEEPERS LIMITED

Rolling Stock

1. The composition of the New Train Fleet

Subject to such fluctuations due to seasonality as the Authority may approve in writing the New Train Fleet consists of passenger rolling stock vehicles specified in New Train Fleet Table 1 with the capacity characteristics referred to there, until the lease expiry dates referred to there.

New Train Fleet Table 1

Column 1	Column 2		Column 3			Column 4	Column 5
Class of Vehicles	No of Vehicles and unit configuration		Passenger Carrying Capacity			Owner/Lessor	Lease Expiry Date
		Cradle Seats	Berths	Pod	Total Passengers		
coach	Hybrid Coach x 11	N/A	1 x PRM berth 5 x Berths 6 or 11 beds	8	14 or 19 depending on configuration of beds	[redacted text]	31 st March 2030
coach	Seated Coach x 11	30 (plus 1 wheelchair space)	N/A	N/A	31	[redacted text]	31 st March 2030
coach	Pod Coach x 10			24	24	[redacted text]	31 st March 2030
coach	Sleeper Coach x 31		4x Ensuite Berths 7 x Berths 11 or 22 beds		11 or 22 depending on configuration of beds	[redacted text]	31 st March 2030
coach	Club Car x 11				0	[redacted text]	31 st March 2030

2. Passenger facilities in the New Train Fleet

The New Train Fleet consists of the rolling stock vehicles in New Train Fleet Table 1 with the facilities and characteristics in New Train Fleet Table 2 until the lease expiry dates referred to in New Train Fleet Table 1.

New Train Fleet Table 2

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9
Class of Vehicles	Internal CCTV	Toilets	Wifi	Bicycle and Luggage Carriage/Storage	Power sockets	Secure door lock to cabins	Windows for all berths/seated areas	Individual luggage locker for seats
Seated Coach	Yes	Yes	Yes	Yes	Yes	N/A	Yes	Yes
Club Car	Yes	Yes	Yes	No	Yes	N/A	Yes	N/A
Hybrid Coach	Yes	Yes	Yes	Luggage storage in Cabins and small secure storage in Pod	Yes	Yes	Yes	Yes
Pod Coach	Yes	Yes	Yes	Luggage storage at end of saloon and small secure storage in Pod	Yes	N/A	Yes	Yes
Sleeper Coach	Yes (Corridor area and gangways)	Yes	Yes	Yes each cabin is lockable and secure	Yes	Yes	Yes	N/A

2.1 Each formation shall, wherever split, include at least one EA and TSI PRM compliant Berth and toilet.

2.2 Minimum toilet requirements:-

two

3. New Train Fleet Availability Requirement

The New Train Fleet available for service shall, subject to any fluctuations due to seasonality as the Authority may approve in writing, be no less than that identified in columns 4 and 5 of New Train Fleet Availability Table 3 below.

New Train Fleet Availability Table 3

Column 1	Column 2	Column 3	Column 4	Column 5
Class of Vehicles	Total Fleet	Planned Maintenance Allocation	Fleet available for Passenger Services	Spare/Reserve
Seated Coach	11	1	9	1
Club Car	11	1	9	1
Hybrid Coach	12	1	10	1
Pod Coach	10	1	8	1
Sleeper Coach	31	1	30	0

4. Project Management

- 4.1 The Franchisee shall manage the Project (including the design, procurement and delivery phases) with that degree of skill, diligence, prudence and foresight which would be appropriate to a train operating company experienced in the successful delivery (on time and within budget) of projects comparable to the Project. As considered appropriate by the Franchisee, the Franchisee shall employ third party consultants to assist in the delivery of the Project.
- 4.2 The Franchisee shall develop risk management and contingency plans in respect of the Project. Such risk management and contingency plans shall be presented by the Franchisee for the approval of the Authority (such approval not to be unreasonably withheld or delayed). Once approved, the Franchisee shall comply with such risk management and contingency plans.
- 4.3 The Franchisee shall carry out the tasks and activities assigned to the Franchisee under the New Train Fleet Lease and the Franchise Agreement in accordance with the Project Plan.
- 4.4 The Franchisee shall not, by any act or omission, prejudice the delivery of the Project Plan.

5. Contract Management and Provision of Information

- 5.1 In response to a reasonable request from the Authority, the Franchisee shall copy all relevant material information in respect of such request as soon as reasonably practicable to the Authority in order to enable the Authority to manage their interests in respect of the Project. Such information (including any contractual notices received or issued) may include, but not be restricted to, information in relation to any issue which may have an adverse impact on the success of the Project, the Project Plan and/or the New Train Fleet Lease (including issues

associated with delivery, issues associated with infrastructure, termination, payment-related issues, design review, mock-ups, correspondence and minutes associated with the testing, certification and approval process, notification of any delays and situations where extension of time have been granted including proposals for mitigation of delays and associated costs, rectification proposals and programme in respect of epidemic defects and endemic defects, modifications to the Coaches, variations under the New Train Fleet Lease, variations which impact on the Project Plan or quality plans).

- 5.2 The Franchisee shall use reasonable endeavours to procure that representatives of the Authority are invited to attend any meetings in connection with the New Train Fleet Lease (including design reviews and progress meetings) and to attend any testing, commissioning or other activities associated with the New Train Fleet Lease. The Franchisee agrees to set up any meetings (as may be reasonably required by the Authority) with the Owner and/or the Manufacturer.
- 5.3 The Franchisee agrees to use reasonable endeavours to comply with any reasonable instructions received from the Authority in respect of the introduction of the New Train Fleet which may include the Authority requesting the Franchisee to enforce its rights pursuant to the New Train Fleet Lease or enforce any rights the Franchisee may have against third parties, at no cost to the Authority.

6. **Delivery and Consents**

The Franchisee shall:

- 6.1 use all reasonable endeavours to ensure that the New Train Fleet is delivered and brought into service in accordance with the Project Plan;
- 6.2 prior to delivery of the New Train Fleet, procure all necessary consents, permissions and approvals to allow it to operate and put into service the New Train Fleet including consents, permissions and approvals from Network Rail and any other body, whether incorporated or unincorporated, whose consent, permission or approval is required;
- 6.3 upon request by the Authority, exhibit to the Authority all such consents, permissions and approvals referred to in this paragraph 6 and shall confirm in writing to the Authority on, or prior to, the New Train Fleet Service Date that all such consents, permissions and approvals have been obtained;
- 6.4 complete successfully any pre-service inspections required by Railway Group Standards or the Safety Certificate or otherwise required (including pre-service inspections for confirming acceptance of delivery under the terms of the relevant lease for the New Train Fleet) prior to putting into service the New Train Fleet. The Authority may attend any such inspections and the Franchisee shall notify the Authority of the date of any such inspections in good time to allow the Authority to arrange for a representative of the Authority to attend;
- 6.5 upon the reasonable request by the Authority, permit the Authority (including any advisers or authorised representatives of the Authority) to inspect all records (including financial records) of the Franchisee and the relevant leasing company (to the extent that the Franchisee is entitled to this information under the relevant lease or any other agreement with the relevant leasing company) in connection with the delivery of the New Train Fleet; and
- 6.6 if the date in the Project Plan for introduction of the New Train Fleet into service has passed or passes without the New Train Fleet being brought into service:-

- 6.6.1 not take any action(s) or step(s) which is or are designed or intended directly or indirectly to delay further the introduction of the New Train Fleet;
- 6.6.2 not knowingly or negligently omit to take any action or step if such omission would directly or indirectly delay further the introduction of the New Train Fleet; and
- 6.6.3 enforce all rights it may have against third parties to ensure the introduction of the New Train Fleet or the recovery of damages or other appropriate remedy as soon as possible thereafter and to take such action as the Authority may reasonably require in this regard.

7. Training/Rolling Stock

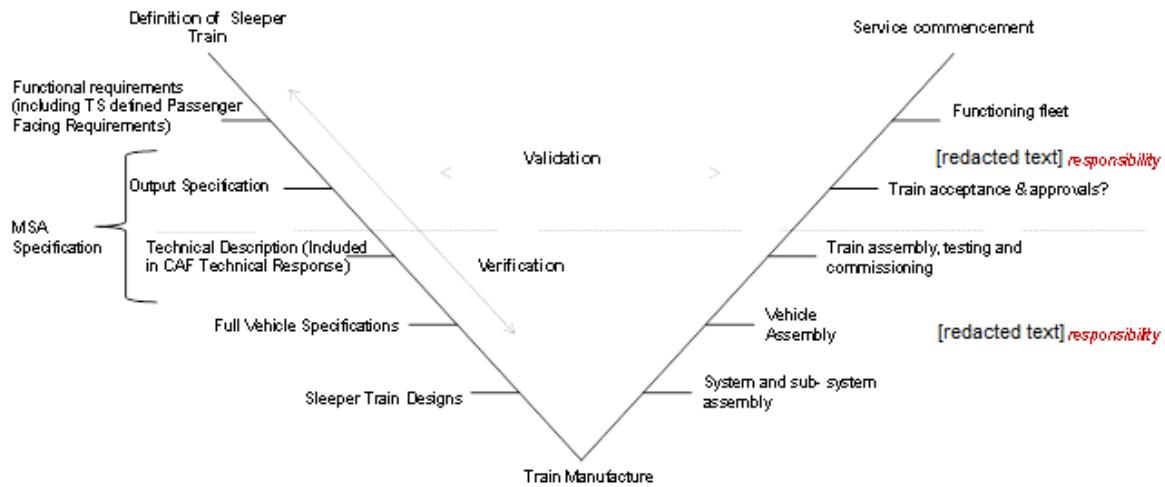
- 7.1 The Franchisee shall from time to time operate one or more of the Coaches ("Training Rolling Stock") on a non-revenue earning basis in order to train employees of the Franchisee in the safe and efficient operation of the New Train Fleet.
- 7.2 The operation of the Training Rolling Stock shall be at the risk of the Franchisee. For the avoidance of doubt, all operating costs (excluding the cost of any insurances) and staff training costs for the Training Rolling Stock shall be to the account of the Franchisee.

8. Direct Agreement

- 8.1 The Franchisee shall procure the Relevant Direct Agreements.

9 DESIGN REVIEW PROCESS

- 9.1 The Franchisee and the Authority wish to ensure that the design of the New Train Fleet is in accordance with the Franchise Agreement, the New Train Fleet Output Specification, the Passenger Facing Requirements and the Specification. In order to achieve this, the Franchisee shall procure that a robust design review process is included within the Manufacture and Supply Agreement (the "Design Review Process").
- 9.2 The Franchisee shall procure that the Design Review Process shall follow the best practice 'V' model principles described in EN 50126 (illustrated in the diagram below) which shall ensure the progressive verification and validation of the design of the New Train Fleet.



9.3 The Franchisee shall pursuant to paragraph 9.1 procure that the Design Review Process shall include:

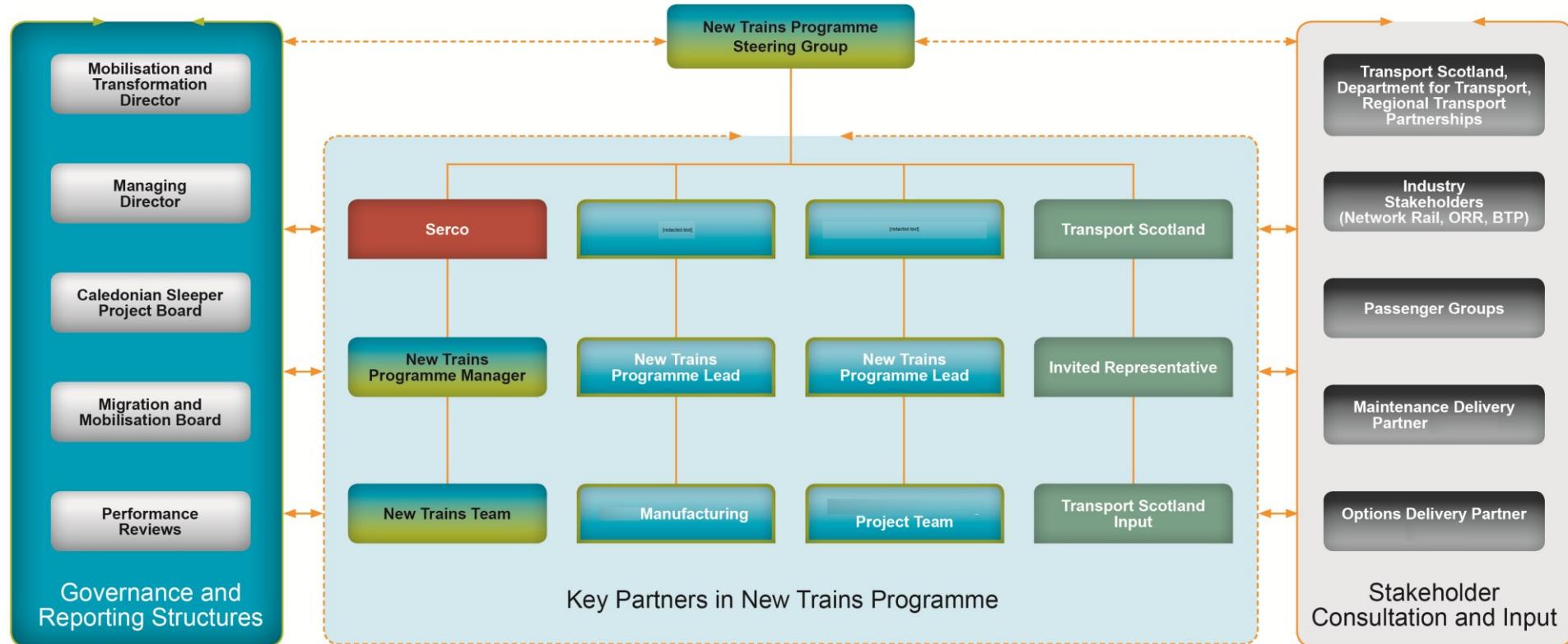
- 9.3.1 the elements of the train which will be subject to design review;
- 9.3.2 the process for making design submissions;
- 9.3.3 the dates by which individual design submissions will be submitted for review;
- 9.3.4 the reasonable time scales for return of comments following each review and the process to be followed in terms of dealing with any comments received (including the resubmission of any revised design);
- 9.3.5 the subject and technical areas for which mock-ups will be included in design submissions;
- 9.3.6 the provision to the Authority of such additional information or materials relating to design submissions as the Authority may reasonably request;
- 9.3.7 if required by the Authority, procuring reasonable access for the Authority, its authorised representatives and advisors to the Franchisee's consultants and advisors engaged in relation to the design and manufacture of the New Train Fleet, the Owner and the Manufacturer, as reasonably required by the Authority to enable it to understand and review the design submissions; and
- 9.3.8 permitting attendance at design review meetings for the Authority, its authorised representatives and advisors.

9.4 The Authority shall be entitled to comment on any aspect of the design of the New Train Fleet. Without prejudice to the Authority's rights under paragraph 9.5, the Franchisee and the Authority shall discuss such comments and the Authority and the Franchisee shall agree (both acting reasonably) on whether any comment or objection should be raised as part of the Design Review Process. Without prejudice to the Authority's rights under paragraph 9.5, the Authority acknowledges that the Design Review Process is not intended to allow the

Franchisee, the Owner or the Manufacturer to request changes to the design of the New Train Fleet, where such changes would result in any increased costs other than de minimis increased costs or anything delays other than de minimis delays to the manufacturing programme for the New Train Fleet. Without prejudice to the Authority's rights under paragraph 9.5, if the Franchisee, the Owner or the Manufacturer request any changes which would result in increased costs or delays to the manufacturing programme for the New Train Fleet, such changes shall be subject to the variation procedure in the Manufacture and Supply Agreement.

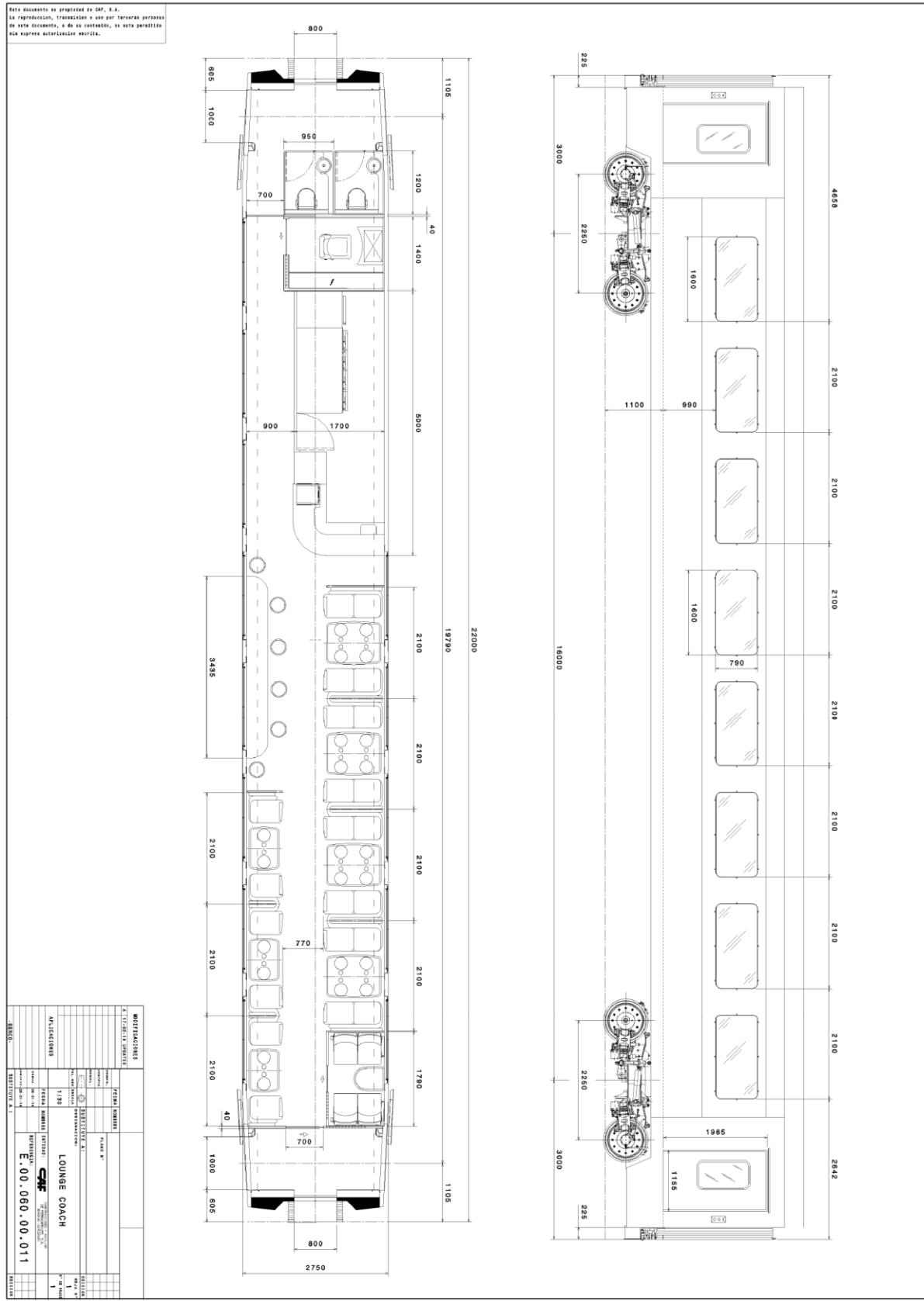
- 9.5 If requested by the Authority, the Franchisee shall procure that the design of the New Train Fleet is revised, at no cost to the Authority, if:
 - 9.5.1 the design does not comply with the Franchise Agreement, the New Train Fleet Output Specification, the Passenger Facing Requirements or the Specification; or
 - 9.5.2 the Authority reasonably believes the effect of the design could mean that the Franchisee may not comply with its obligations in the Franchise Agreement.
- 9.6 The Franchisee shall submit advance drafts of the Design Review Process to the Authority for information on a regular basis. By no later than 1 August 2014, the Franchisee shall submit a final draft Design Review Process to the Authority for approval (such approval not to be unreasonably withheld) as soon as practicable and, in any event, within 14 days of receipt of such draft. If reasonably requested by the Authority, the Franchisee shall procure that the Design Review Process is revised and shall re-submit the revised Design Review Process to the Authority for approval as soon as practicable and, in any event, within 7 days of receipt of such revised Design Review Process.
- 9.7 As part of the Design Review Process, the Franchisee shall undertake comprehensive stakeholder engagement in accordance with the Governance and Programme Management diagram set out below.
- 9.8 As part of the Design Review Process, the Franchisee shall procure any mock ups, electronic or physical, that are necessary to enable the evaluation of designs and functionality of the Coaches. The mock ups may include breadboard mock-ups, prototypes, models and 3D visualisations. Such mock ups may be used by the Franchisee and the Authority to assess, in accordance with the Design Review Process, the final vehicle interior and schedule of finishes in combination with interior renderings and signage.

Governance and Programme Management Diagram

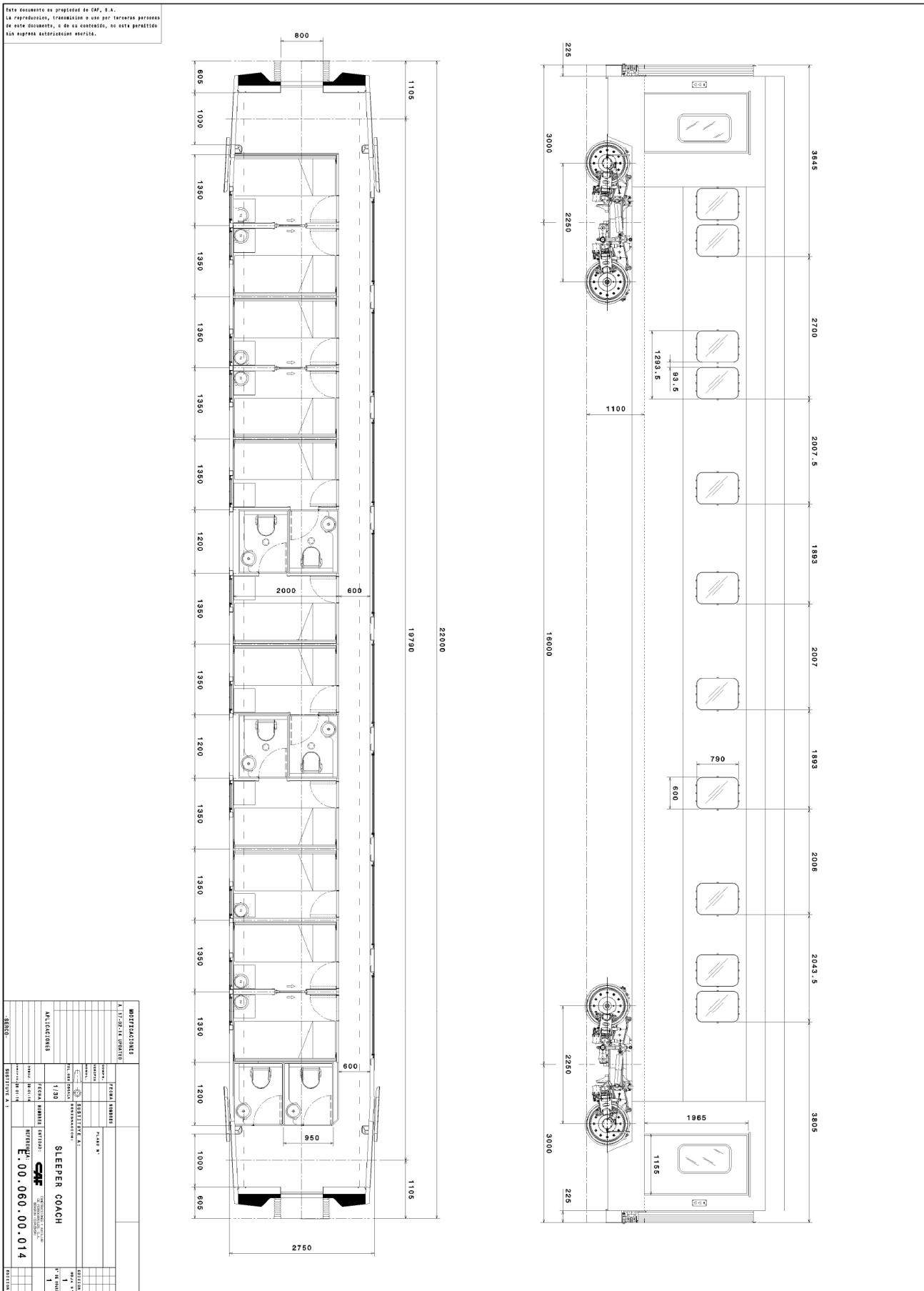


APPENDIX 1 TO SCHEDULE 6.1

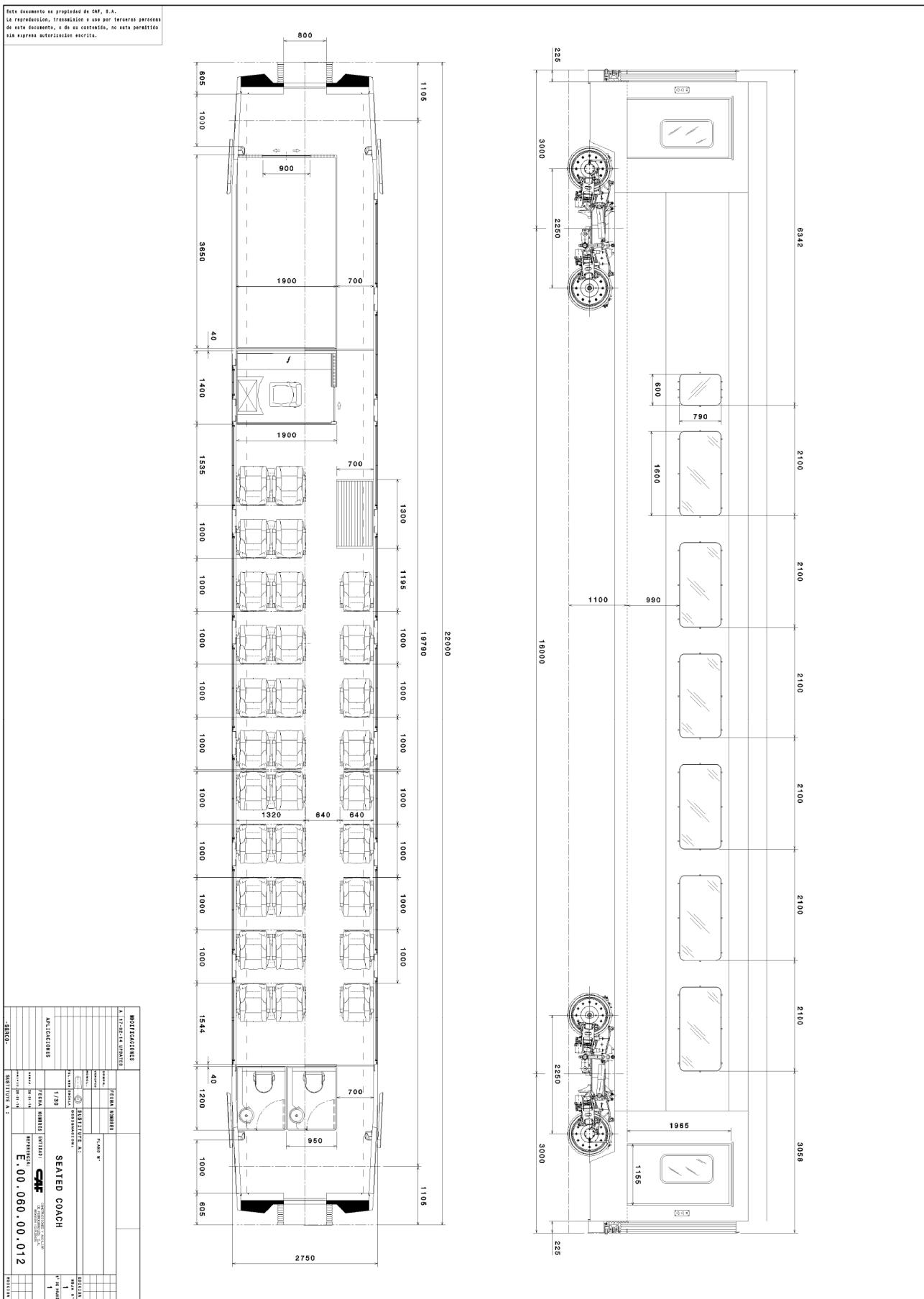
COACH LAYOUTS



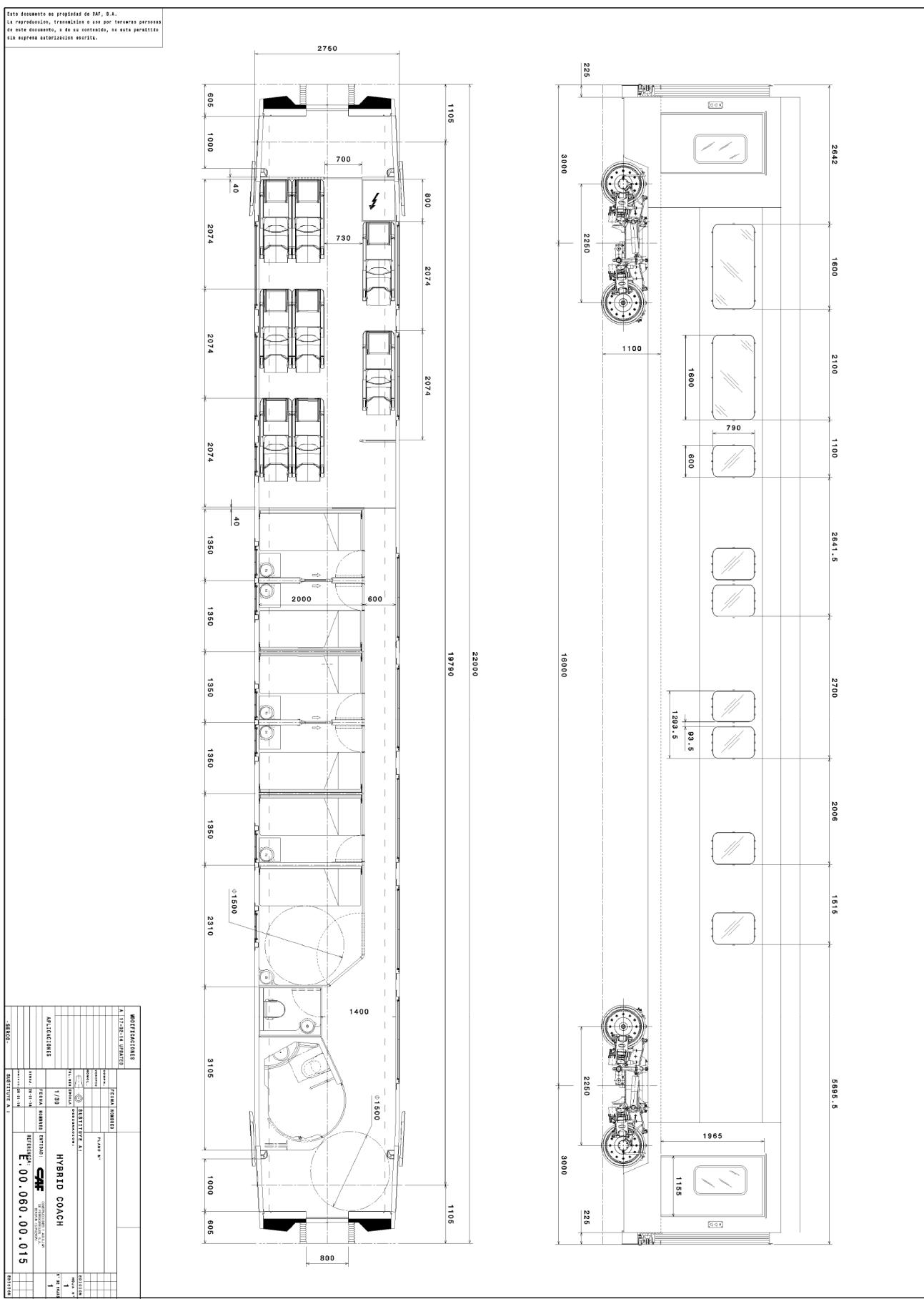
Este documento es propiedad de CAF, S.A.
La reproducción, transmisión o uso por terceras personas
de este documento, o de su contenido, no está permitido
sin expresa autorización escrita.



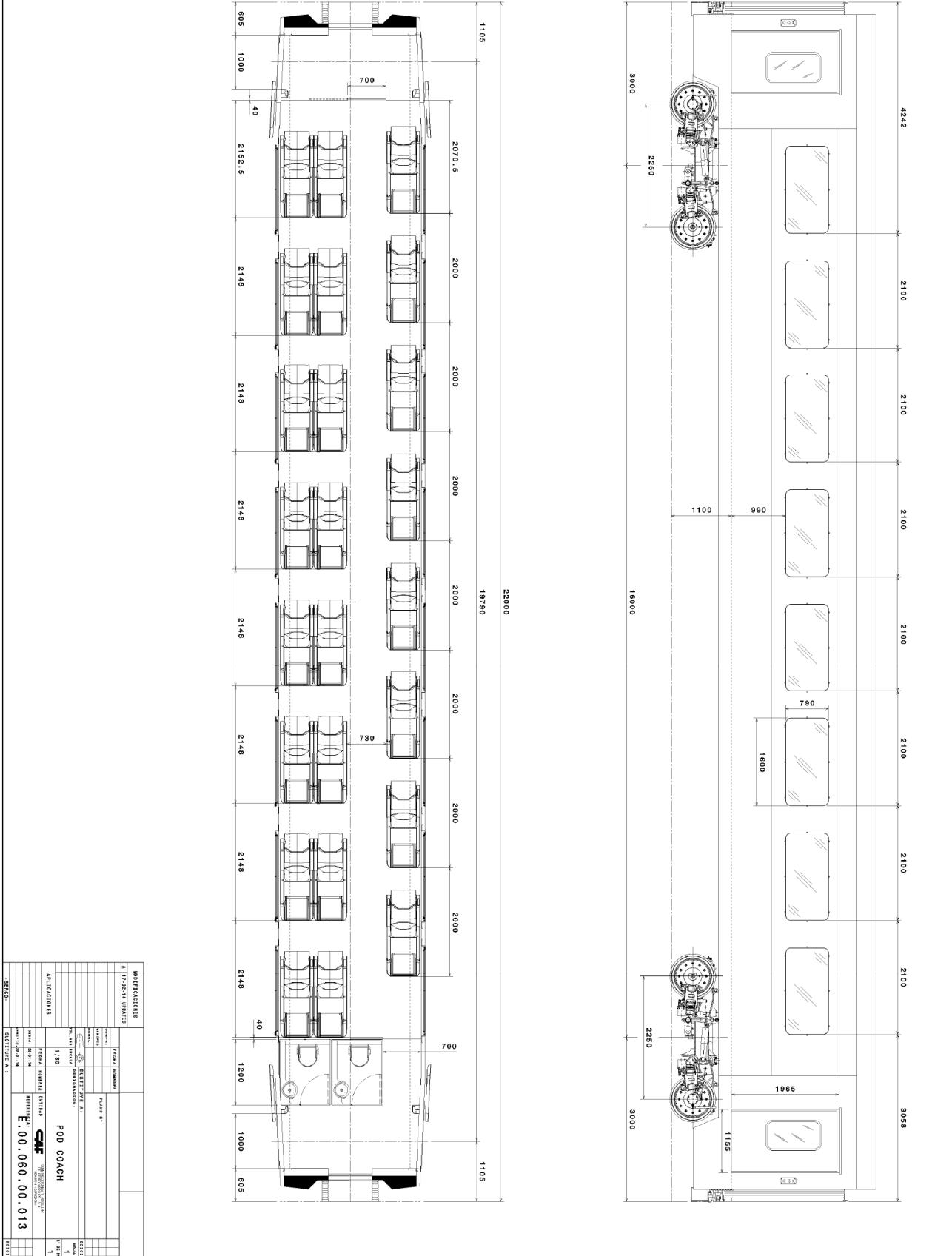
Este documento es propiedad de CAF, S.A.
La reproducción, transmisión e uso por terceras personas
de este documento, o de su contenido, no está permitido
sin expresa autorización escrita.



Este documento es propiedad de CAF, S.A.
La reproducción, transmisión o uso por terceras personas
de este documento, o de su contenido, no está permitido
sin expresa autorización escrita.



Este documento es propiedad de CAF, S.A.
La reproducción, transmisión e uso por terceras personas
de este documento, o de su contenido, no está permitido
sin expresa autorización escrita.



APPENDIX 2 TO SCHEDULE 6.1

PROJECT PLAN

[redacted chart]

SCHEDULE 6.1A

THIS IS SCHEDULE 6.1A REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT BETWEEN THE AUTHORITY AND SERCO CALEDONIAN SLEEPERS LIMITED

NEW TRAIN FLEET OUTPUT SPECIFICATION

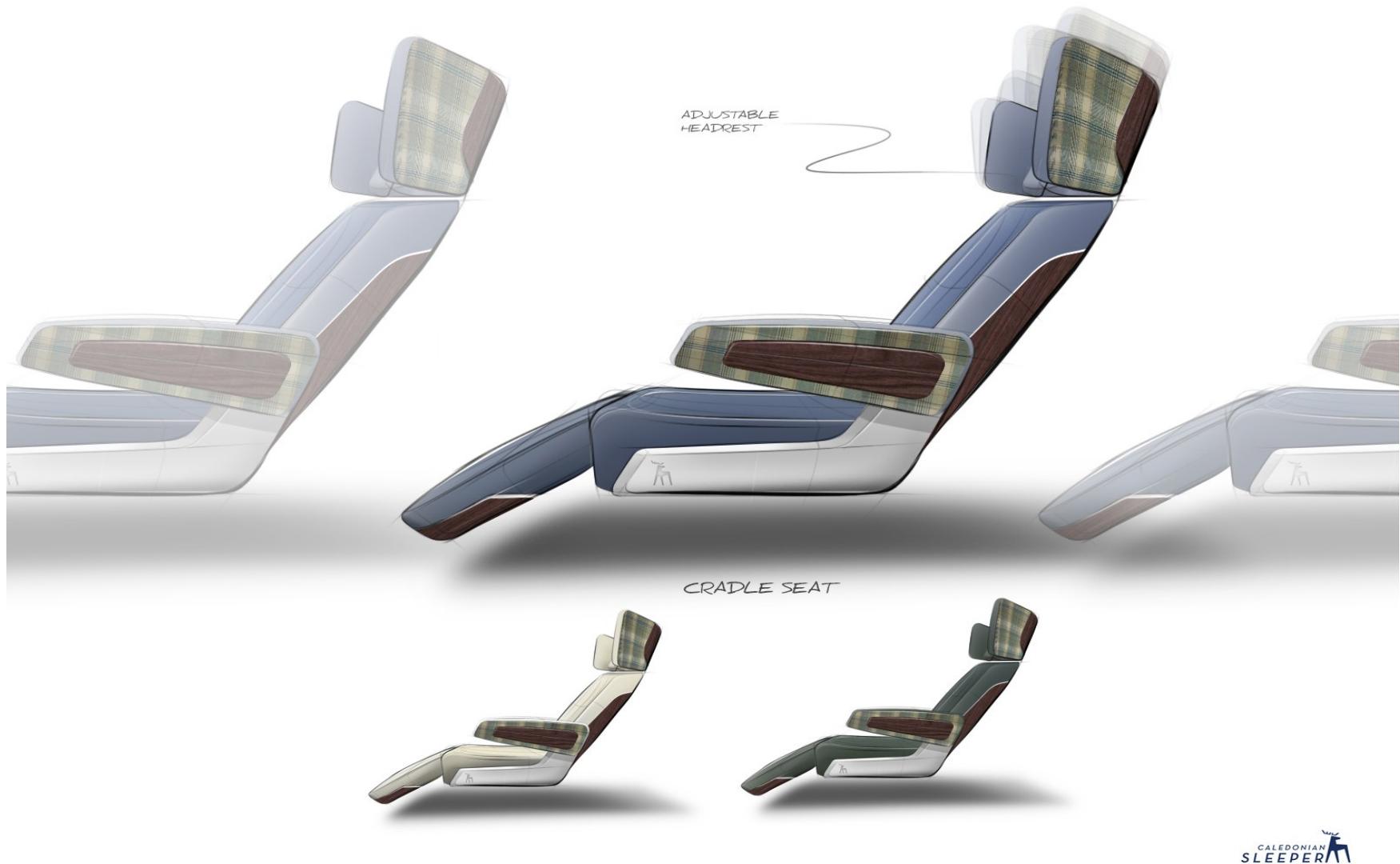
Unless agreed otherwise by the Authority (such agreement not to be unreasonably withheld or delayed), the Franchisee shall procure that the New Train Fleet complies with all aspects of the New Train Fleet Output Specification set out in this Schedule 6.1A.

The Franchisee shall otherwise comply with the obligations expressed in this Schedule 6.1A.

1. Overview of the New Train Fleet

- 1.1.** The Franchisee shall offer the following four accommodation types in the New Train Fleet: Cradle Seats, Pod Flatbeds, Berths and En-Suite Berths.
- 1.2.** Each Cradle Seat shall have an improved seated experience compared to the Initial Train Fleet including the following features:
 - comfortable reclining seat with footrest;
 - generous leg room;
 - 3 pin power socket;
 - USB point;
 - small lockable storage for small luggage, laptops, purses etc;
 - in-built host call bell;
 - sleep kit; and
 - wi-fi.

An indicative drawing of the Cradle Seat is set out below. Such indicative drawing shall be subject to change as a result of the Design Review Process.



CALEDONIAN
SLEEPER

1.3. Each Pod Flatbed shall have the following features:

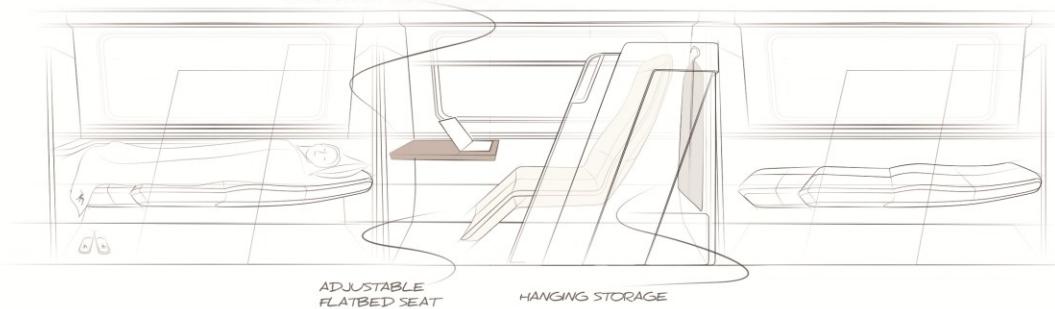
- fully 100% flatbed reclining seat;
- privacy screen;
- individual reading light;
- USB power supply for mobile phones, tablets etc;
- 3 pin power socket;
- lockable storage facility for small luggage, laptops, purses etc;
- ability to check-in larger items of luggage to be stored securely throughout the journey;
- blanket, duvet and pillow;
- sleep kit; and
- wi-fi.

An indicative drawing of the Pod Flatbed is set out below. Such indicative drawing shall be subject to change as a result of the Design Review Process.

POD FLATBED



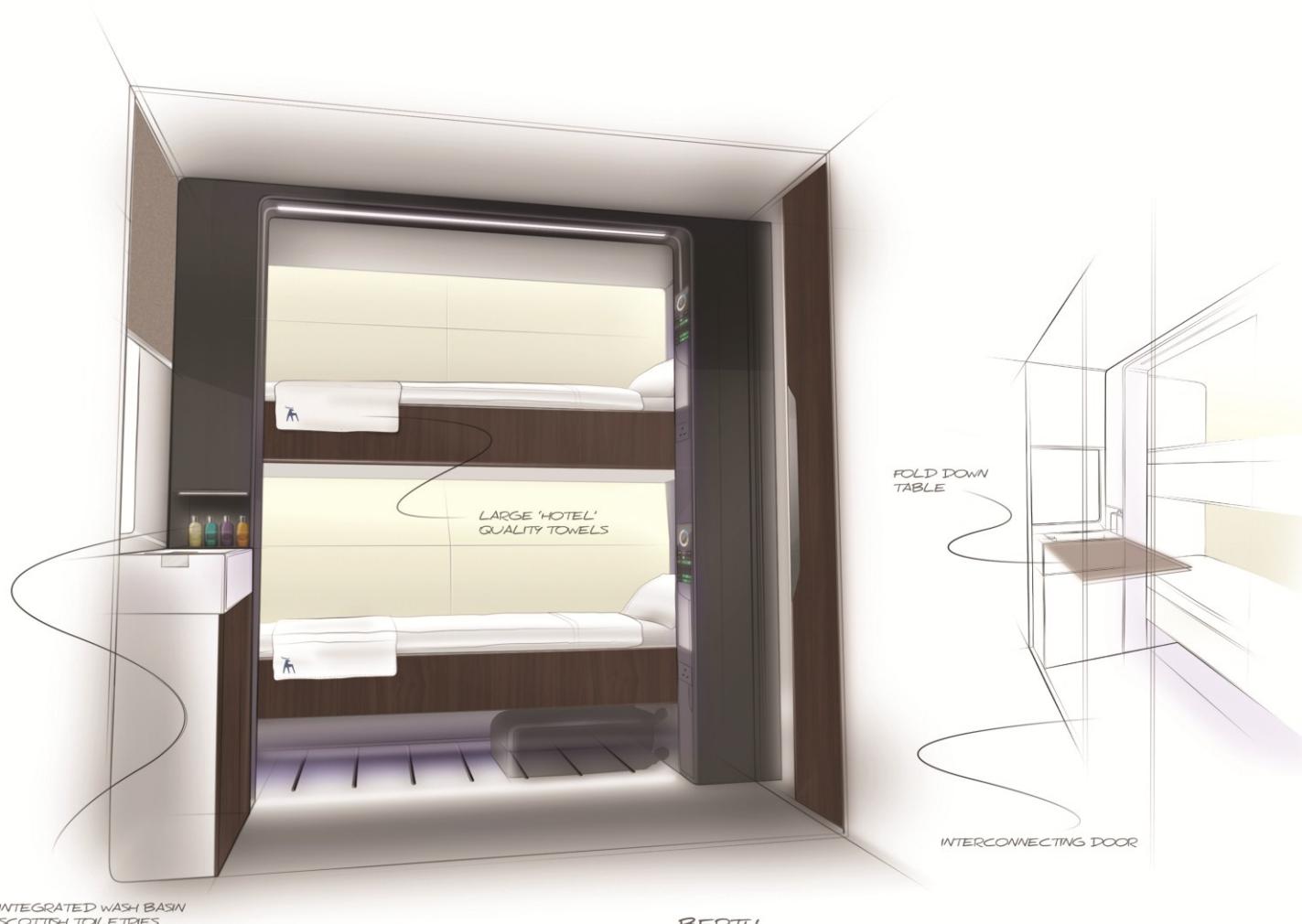
FOLD DOWN TABLE



1.4. Each Berth shall provide a very good level of accommodation ensuring privacy and personal security as well as all the facilities the modern traveller needs and shall have the following features:

- sole or shared occupancy;
- 2 x power socket;
- intercom for passenger(s) to be able to contact train staff without leaving their Berth;
- basin with a much improved hot and cold water supply;
- high specification mattress(es);
- a good quality linen bedding including duvet(s);
- larger 'hotel' quality towels;
- Scottish toiletries sourced from a partner SME;
- variable lighting options to allow for a calm and relaxed atmosphere or alternatively for working and reading;
- storage area for luggage;
- desk table to allow working with mobile devices and eating;
- air conditioning;
- interconnecting door between Berths (for family or larger group use);
- sleep kit;
- room service; and
- wi-fi.

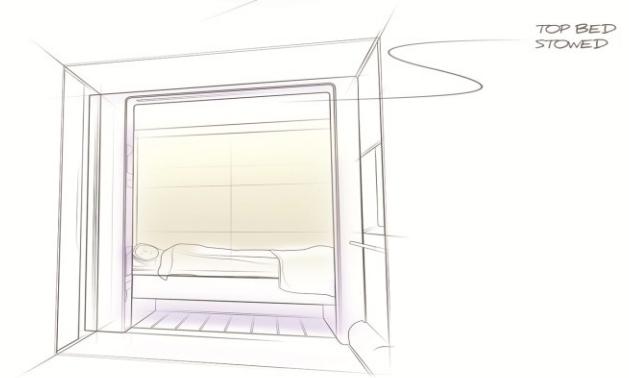
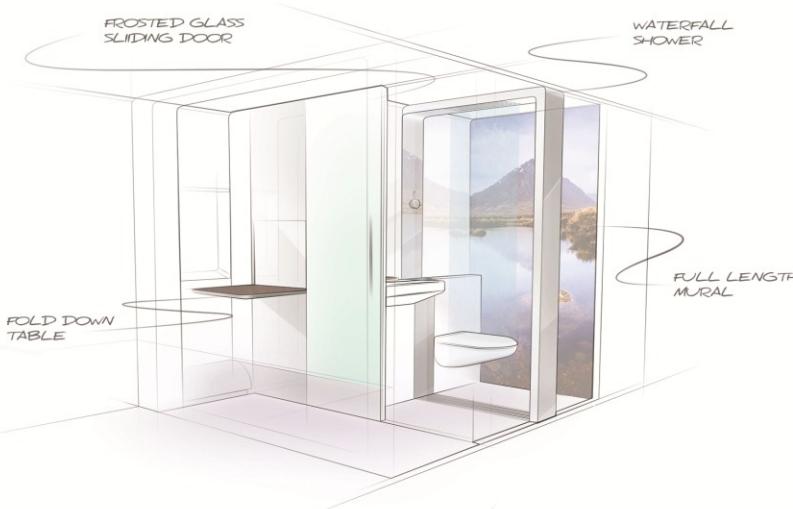
An indicative drawing of the Berth is set out below. Such indicative drawing shall be subject to change as a result of the Design Review Process.



1.5. Each En-Suite Berth shall have the following features:

- sole or shared occupancy;
- en-suite toilet and shower;
- larger premium 'hotel' quality towels;
- premium linen and duvet(s), with Shetland wool blanket(s);
- 3 pin power socket;
- intercom for passenger(s) to be able to contact train staff without leaving their En-Suite Berth;
- basin with a much improved hot and cold water supply
- high specification mattress(es)
- lockable safe for valuables;
- storage area for luggage;
- a Caledonian Sleeper branded amenity kit which will contain:
 - sleep kit
 - ear plugs
 - eye mask
- premium Scottish toiletries sourced from a partner SME;
- room service; and
- wi-fi.

An indicative drawing of the En-Suite Berth is set out below. Such indicative drawing shall be subject to change as a result of the Design Review Process.



2. Abbreviations and Definitions

In this Schedule 6.1A the following terms shall have the following meaning:

Term	Meaning / Definition
ASDO	Automatic Selective Door Operation
ATO	Association of Train Operating Companies
CCP	Control and Communication Point
CCTV	Closed Circuit Television
CfA	Call for Aid
CR Loc & Pas TSI	Conventional Rail Locomotives and Passenger Rolling Stock Technical Standard for Interoperability
CRS	Central Reservation System (Station 3 Alpha Code)
DfT	Department for Transport
EN	Euro Norme
fps	frames per second
GPS	Global Positioning System
HMRI	Her Majesty's Railway Inspectorate
ISO	International Standardization Organization
MDBSAF	Mean Distance between Service Affecting Failures
MRP	Main Reservoir Pipe
ORR	Office of the Rail Regulator
OTDR	On Train Data Recorder
PIS	Passenger Information System
PRM	Persons With Reduced Mobility
RCD	Residual Current Detector
RCF	Rolling Contact Fatigue
RGS	Railway Group Standard
STI	Speech Transmission Index
TfG	Track for Gauging
TIPLOC	Timing and Location Point
TMS	Train Management System
Train	A formation of one or more Coaches for the purpose of operating the Passenger Services
TSI	Technical Specification for Interoperability.
VPN	Virtual Private Network
WSP	Wheel Slide Protection

Operational Mass Definitions.

Design Mass in
Working Order In accordance with the definition in EN15663.

(Tare Load)

Design under Payload	Mass (Normal)	In accordance with the definition in EN15663.
Design under Payload	Mass (Full Load)	In accordance with the definition in EN15663.

3. STANDARDS, APPROVAL AND ENVIRONMENT

3.1. Standards and Legislation

- 3.1.1. The Coaches shall comply with the requirements of all relevant European and UK legislation
- 3.1.2. The Coaches shall comply with all relevant requirements to achieve authorisation into service under the Railways (Interoperability) Regulations 2011, which includes compliance with the mandatory standards mandated therein.
- 3.1.3. The Coaches shall be fully compatible with the infrastructure over which they are to operate (including potential diversionary routes) and neighbouring railway operations.
- 3.1.4. The Coaches shall comply with national and international standards as appropriate to the scope of supply.

3.2. Operating Environment

- 3.2.1. Each Coach shall be capable of continuous operation within the full range of ambient and environmental conditions that will be encountered in Passenger Services.
- 3.2.2. Each Coach and all its constituent parts shall comply with the requirements of climatic zone T1 and altitude range A2 as specified in EN50125-1: 1999 Railway Applications – Environmental conditions for equipment.
- 3.2.3. Each Coach shall be resistant to the effects of exposure to salt water spray, which shall not cause excessive corrosion or degradation of exposed surfaces, components and equipment.
- 3.2.4. Each Coach shall be resistant to the effects of any fluids (such as graffiti removal or vehicle washing chemicals) or particles likely to be encountered in the railway environment.
- 3.2.5. Each Coach exterior, when all doors and windows are closed, shall prevent the ingress of snow, rain, wash plant spray, draughts, dust, exhaust fumes and leaves under all environmental conditions.
- 3.2.6. In the vicinity of externally opening windows and doors, all controls, equipment and enclosures shall be designed to ensure continued operation with no adverse effects due to local ingress of water, dust, snow and leaves. Guttering shall be provided above all openings.

- 3.2.7. Each Coach shall be capable of operating normally through snow or flood water, up to the maximum depths for normal operation and thereafter (subject to speed restriction) up to the absolute maximum depths for operation.
- 3.2.8. Each Coach shall be designed to cope with predicted climate change which may result in more extreme weather conditions, higher summer temperatures and higher winter rainfall.

4. TRAIN REQUIREMENTS

4.1. Train Configuration

- 4.1.1. The Franchisee has identified five types of coach to operate the Passenger Services. These types of coach are classified as follows:
 - 4.1.1.1. Sleeper Coach
 - 4.1.1.2. Club Car
 - 4.1.1.3. Seated Coach (including a luggage area and the guard's accommodation area)
 - 4.1.1.4. Pod Coach
 - 4.1.1.5. Hybrid Coach

The defined term "Coach" shall mean any one of the above.

The basic service pattern to be operated by the Franchisee requires the following configurations to be operated in each direction

Highland Sleeper

Euston – Fort William 1 x Sleeper + 1 x Hybrid +

(1 x Club Car + 1 x Seating Edinburgh – Fort William only)

Euston – Inverness 4 x Sleeper + 1 x Club Car + 1 x Seating + 1 x Pod + 1 x Hybrid

Euston – Aberdeen 2 x Sleeper + 1 x Club Car + 1 x Seating + 1 x Pod + 1 x Hybrid

Lowland Sleeper

Euston – Edinburgh 4 x Sleeper + 1 x Club Car + 1 x Seating + 1 x Pod + 1 x Hybrid

Euston – Glasgow 4 x Sleeper + 1 x Club Car + 1 x Seating + 1 x Pod + 1 x Hybrid

The following table sets out the requirements for service and spare vehicle numbers to be procured by the Franchisee.

Coach Type	Required for Service	Spare vehicles
Hybrid Coach	10	2
Seated Coach	9	2
Pod Coach	8	2
Sleeper Coach	30	1
Club Car	9	2
Total	66	9

- 4.1.2 Each service pattern detailed above shall meet the PRM-TSI requirements. This will require not less than one wheelchair accessible Berth in a Hybrid Coach with a wheelchair accessible toilet and one wheelchair accessible space with a wheelchair accessible toilet in a Seated Coach for each service pattern subject to the issue of PRM-TSI derogation by DfT. More details are provided in paragraph 9 'Coach Specific Requirements'.
- 4.1.3 A train of 16 Coaches plus 2 class 92 locomotives that are 22m in length must fit into the current platforms 1 and 15 at London Euston station.
- 4.1.4 It shall be possible to change train lengths by inserting or removing Coaches in the train creating rakes that vary up to a maximum of 16 vehicles and a minimum of 2 vehicles.

4.2 Coach Mass

- 4.2.1 The tare mass of a Coach shall not be greater than 43 tonnes.
- 4.2.2 The Coaches shall have a route availability of RA 2 or less.

4.3 Floor Height

The nominal floor height above the rail at vehicle entry doorways and throughout the Coach shall be 1,100 mm.

4.4 Inter Coach Gangways

- 4.4.1 Inter-Coach gangways shall be at least 800 mm wide at floor level.
- 4.4.2 Inter-Coach gangways shall be at least 1900 mm high throughout.
- 4.4.3 The Inter-Coach gangway floor shall be level with the main saloon floor, free from step or trip hazards.
- 4.4.4 The gangway doors shall be lockable by the Franchisee's staff in service by use of a standard square key.
- 4.4.5 Gangways shall be leak, rattle and draught free under all operating conditions.

4.5 Coupling

- 4.5.1 It shall be possible to safely couple or uncouple Coaches mechanically, pneumatically and electrically on curves down to a radius of 160 m.
- 4.5.2 The coupler shall be fitted with its centreline 997 mm above rail level.
- 4.5.3 The coupler shall be compatible with Network Rail's track geometry requirements for both mainline and non passenger lines. The maximum angle from the longitudinal axis at which coupling can be achieved shall be notified by the Manufacturer to the Franchisee.

5. PERFORMANCE CAPABILITIES

5.1 Operational Routes

- 5.1.1 The Coaches shall be designed to operate at speeds of up to 110 mph.
- 5.1.2 Coaches shall be capable of operation on all Primary Routes, Diversionary Routes and all other potential routes.
- 5.1.3 Coaches shall be capable of negotiating the minimum horizontal and vertical track curvatures within Depots and sidings, which may be less than those defined for the designated routes.

5.2 Capacities between Servicing

- 5.2.1 The Coaches shall not require servicing between scheduled visits to the maintenance Depots.
- 5.2.2 Each toilet shall have a capacity sufficient to allow 1.2 full days of operation, before requiring any maintenance actions. An external warning indication shall be provided to alert staff when the effluent tank is approximately 75% full. The retention tank shall be fitted with a level gauge.
- 5.2.3 The fresh water tanks shall have sufficient capacity to allow 1.2 full days of operation of the toilet including routine use of the hand basin, based on the utilisation (above) in between refilling. An external warning indication shall be provided to alert staff when the water tank is approximately 25% full. The fresh water tank shall be fitted with a level gauge.

6. RELIABILITY

6.1 General

- 6.1.1 Reliability assurance shall be controlled and demonstrated in accordance with the requirements of EN50126:1999, The Specification and Demonstration of Reliability, Availability, Maintainability and Safety ("**RAMS Specification**") or an equivalent framework. The assurance shall address all stages of the Coach system lifecycle to include, as a minimum, the design, manufacture, build, test, introduction into service, reliability growth, operation/maintenance and decommissioning/disposal phases.
- 6.1.2 As part of the design and construction of the Coaches, the Franchisee shall provide a copy of the RAMS Specification and programme to the Authority.

6.2 Mean Distance between Service Affecting Failures

The mean distance between service affecting failures of the Coaches shall be measured in accordance with the following definition of "miles per 3-min delay":

- a failure en route that results in the Coach having to be withdrawn from the Passenger Services before it reaches its advertised end of journey
- a failure causing the Coach to experience a delay of 3 or more minutes
- a failure causing the cancellation or part cancellation of a Passenger Service;
- a delay of more than 3 minutes in a Coach entering service from a Depot, where the root cause is a technical or maintenance defect on the Coach.

6.2.1 When operating in 16 vehicle rakes, each rake shall achieve an MDBSAF of 250,000 miles in normal operating service

6.2.2 The Franchisee shall provide a reliability growth programme to the Authority that demonstrates the reliability growth management activities and projected reliability performance over the life of the Coaches.

6.3 Mission Failures

A "mission failure" is defined as a failure en route that results in a Coach having to be withdrawn from service before it reaches its advertised end of journey, or in a delay exceeding 60 minutes.

6.3.1 Failure between Stations, requiring detrainment and evacuation of passengers, shall not occur more than once every 5,000,000 miles. Based on an 8 Coach train rake and such shall be reduced pro-rata by reference to the number of Coaches in short formations.

6.3.2 Failure causing a delay exceeding 60 minutes and/or requiring detrainment at a Station shall not occur more than once every 1,500,000 miles. Based on an 8 Coach train rake and such shall be reduced pro-rata by reference to the number of Coaches in short formations.

7. TRAIN WIDE FUNCTIONS

7.1 Gauge and Track Interaction

7.1.1 The Coaches shall comply with the gauging constraints on all Primary Routes, Diversionary Routes and other potential routes.

7.1.2 The design of the Coaches shall fully exploit the defined gauge to maximise the internal space.

7.1.3 Gauging shall be undertaken using the absolute gauging methods described in RGS GM/RT2149 'Requirements for Defining and Maintaining the Size of Railway Vehicles' and GC/RT5212 'Requirements for Defining and Maintaining Clearances'.

7.1.4 The Coaches shall be designed to ensure safe running. This includes having the required derailment resistance on twisted track (taking into account specifically the transition phase between canted and level track, and cross level deviations), having the required over speeding roll-over resistance and exhibiting stable running up to 10% above the maximum design speed. New and fully worn wheels, an appropriate range of effective wheel/rail conicities, and inflated and deflated secondary suspension conditions shall be considered.

7.1.5 The Franchisee shall procure asset data for compatibility assessments of the New Train Fleet with infrastructure. The Franchisee shall identify all non-

standard platforms that result in non-standard stepping distances and the Franchisee shall notify the Authority of such non-standard stepping distances.

7.1.6 The Franchisee shall be responsible for obtaining all approvals, clearances and dealing with all design related issues relating to gauging or non-standard stepping distance issues on all Primary Routes, Diversionary Routes and all other potential routes at its own cost. For the avoidance of doubt this shall include any costed infrastructure alterations necessary for the safe operation of the New Train Fleet.

7.2 Wheel Rail Interface

7.2.1 The suspension design will be optimised to minimise track damage including RCF and wear, such that track access variable usage charge is minimised.

7.2.2 The Coaches shall be fitted with wheels confirming to the P8 or P12 profiles.

7.3 Ride Quality

7.3.1 The Coach ride quality shall demonstrate a mean comfort index of 1.8 based on the definition in EN 12299:1999 'Ride Comfort for Passengers - Measurement and Evaluation'. This shall be demonstrated by undertaking dynamic simulations using the appropriate Network Rail TfG files or over all of the Primary Routes and the most frequently used Diversionary Route.

7.3.2 Compliance with the ride comfort requirement shall be assessed using the 95th percentile Simplified Comfort Index in accordance with EN 12299:1999 'Ride Comfort for Passengers - Measurement and Evaluation'.

7.3.3 The design shall be optimised to ensure that an acceptable level of ride quality is achieved when one or more air springs are deflated.

7.3.4 The Coach's ride quality shall not be significantly degraded by wear or ageing of suspension components.

7.3.5 The ride quality requirements shall be demonstrated for both tare and crush load conditions over a range of speeds up to the maximum design speed of the Coaches.

7.4 Aerodynamics and Pressure Effects

7.4.1 The Coach design and construction shall ensure that passengers and/or the Franchisee's staff do not experience significant discomfort due to internal pressure changes when operating over the Primary Routes and Diversionary Routes, including:

7.4.1.1 in single bore/track tunnels; and

7.4.1.2 trains passing in twin track tunnels

7.4.2 The Coach design shall have adequate resistance to roll-over in high winds.

7.5 Noise and Vibration

7.5.1 The interior noise level shall not exceed:

- 7.5.1.1 66 dB (A) at head positions when sleeping, seated and standing in sleeping and seating areas, as measured in accordance with BS EN ISO 3381:2011, when travelling at 100 mph in open air with all auxiliary systems running. 73 dB (A) at standing positions in vestibules and gangways, as measured in accordance with BS EN ISO 3381:2011, when travelling at 100 mph in open air with all auxiliary systems running. The noise level shall be measured over the same route as that used for the ride test.
- 7.5.1.2 The maximum internal noise level shall not exceed 58 dB (A) at head positions when sleeping, seated and standing in sleeping and seating areas, as measured in accordance with BS EN ISO 3381:2011, when the train is stationary in open air with all auxiliary systems running.
- 7.5.1.3 Coaches shall not emit any prominent harmonics or discrete tones in any operating modes or conditions.

7.6 Fire Safety

- 7.6.1 The Coach design shall adequately mitigate the risk of fire and its products of combustion when operating across all designated routes.
- 7.6.2 In addition to all currently mandated standards, the Coaches shall also comply with the recently issued BS EN 45545 (which is not yet called up by the TSIs) and RGS GM/RT2130 Issue 4 (which will be issued in early 2014).
- 7.6.3 The Coaches shall meet the specific requirements of Operations Category 2, Design Category S (which means it is designated as Hazard level 2) in accordance with BS EN 45545.

7.7 Human Factors and Ergonomics

- 7.7.1 The Franchisee provide a copy of the human factors plan ("**Human Factors Plan**") to the Authority which shall cover how human factors requirements will be identified, managed and closed out throughout the Coach design and development lifecycle. The scope of the Human Factors plan shall include the use of the Coach by passengers, train crew and maintenance staff and shall include the user population design range and relevant datasets.
- 7.7.2 Ergonomics and human factors criteria and techniques shall be applied to the design of passenger and crew areas of the Coach using relevant anthropometric data for passengers, train crew and maintenance personnel.
- 7.7.3 Each Coach shall present a safe, secure, user-friendly and comfortable environment for passengers, crew and maintenance staff with features and interfaces that are intuitive to users and minimise adverse effects from human errors.

7.8 Security, Anti Social Behaviour and Vandalism Resistance

- 7.8.1 The Coaches shall be capable of being made secure when stabled without compromising the need to maintain accessibility for emergencies.
- 7.8.2 The design of the interior bodyside windows and glazed surfaces shall optimise passenger safety in all foreseeable circumstances.
- 7.8.3 The Coach interior shall be sufficiently robust to minimise damage from foreseeable vandalism and misuse.
- 7.8.4 Tamper-proof fixing arrangements shall be fitted where necessary. Fasteners shall not be visible or accessible to passengers as far as practicable.
- 7.8.5 All interior bodyside windows and glazed surfaces shall incorporate a means to minimise the damage from vandalism by etching or scratching.
- 7.8.6 Internal and external finishes shall permit the easy removal of graffiti by trained personnel using proprietary graffiti cleaning chemicals, and the surfaces shall not readily degrade as a result of the removal process.
- 7.8.7 The Coach interior shall be free from gaps and crevices where litter, sharp objects or any other items could be concealed or lodged. Any equipment, such as litter bins and luggage modules shall be adequately designed to eliminate gaps or hidden voids.
- 7.8.8 Soft furnishings shall be resistant to damage by sharp objects and designed to be economical and easy to replace when deemed necessary.
- 7.8.9 All Coach interior equipment within the passenger areas including PIS and entertainment screens shall be resistant to vandalism.

8 GENERAL VEHICLE DESIGN

8.1 Vehicle Design

- 8.1.1 The Coaches shall have a design life of not less than 35 years.
- 8.1.2 The Coach structures and equipment shall be designed for the defined fatigue loadings and service duty cycles under UK operating conditions.

8.2 Exterior Requirements

- 8.2.1 Each Coach shall have smooth body contours as far as practical to allow efficient automatic or manual washing.
- 8.2.2 The Coach livery shall be agreed between the Authority and the Franchisee to complement the branding being developed for the service.
- 8.2.3 The Coaches shall be painted and shall be capable of being fitted with vinyl film in addition to the painted finish.

- 8.2.4 The paint finish shall be capable of withstanding the effect of any detergents used in the cleaning process.
- 8.2.5 The external paint and finishes shall have a high quality of detailing and finish, which shall remain durable and colour-fast for a life of not less than 12 years in service.
- 8.2.6 The bodyside windows shall be designed to enable maximum viewing for interior seated passengers yet provide appropriate privacy for those in Cabins.

8.3 Interior Design

- 8.3.1 The Coach interior fittings shall be robust and minimise damage due to scuffing and abrasion from contact with passenger luggage or wheelchairs, etc.
- 8.3.2 All panels shall be robustly secured, especially ones that are removable.
- 8.3.3 All materials and components shall be resistant to fading and scratching and shall be sufficiently durable to withstand heavy usage for half of the design life of the Coach (as stated in paragraph 8.1.1).
- 8.3.4 All interior panels, fixtures and fittings shall be designed to eliminate drumming, rattles and squeaks.
- 8.3.5 All interior glass panels shall use laminated glass.
- 8.3.6 The floor covering shall be anti-slip, aesthetically pleasing and appropriate to the function of each area of the Coach. All floor materials used shall be hard wearing.
- 8.3.7 The floor covering shall be laid in such a way to prevent liquids seeping beneath the covering.
- 8.3.8 The floor covering in the vestibules shall be capable of coping with moisture from incoming passengers and rain and snow entering from open doors.
- 8.3.9 All interior areas of the Coach that facilitate standing or walking passengers shall be fitted with appropriate means of support to maximise the safety of passengers in all normal and emergency modes of operation.
- 8.3.10 The floor shall be free from any fixed components that will obstruct, hinder and complicate cleaning.

8.4 Seating Provision

- 8.4.1 In the Seated Coach, the Franchisee shall procure seat types and arrangements appropriate to all users, and to ensure that seat construction and installation meets requirements for passenger comfort (including wide comfortable seats that have a recline facility), maintenance and cleaning.
- 8.4.2 In the Seated Coach, the seat back shall be sufficiently rigid to avoid discomfort to the passenger from being knocked or disturbed by

passengers behind, or use by other passengers of the handhold or grab rail, or movement of fold down tables where fitted.

- 8.4.3 In the Seated Coach, the seat headrests shall be shaped to provide comfortable lateral support. The headrest shall be maximum height at the seat centre but be sympathetically shaped at either side to enable good vision between seats and a peripheral view of the horizon through windows on both sides.
- 8.4.4 In the Seated Coach, the priority and wheelchair space shall be easily discernible to all passengers.
- 8.4.5 All seats in the Seated Coach, shall have access to a 230 V socket outlet for laptop and mobile phone operation and charging.
- 8.4.6 In the Seated Coach, the floor area around all seats shall be designed to avoid obstruction to passengers' feet.
- 8.4.7 In the Seated Coach, pitch efficiency and seat widths shall be optimised between the requirement to achieve passenger flow through aisles, and the needs of the individual passenger for easy access and egress from the seat and journey comfort. The contouring of seat cushioning shall be designed to achieve defensible space for the seated passenger, avoiding the need for armrests if practicable.
- 8.4.8 In the Seated Coach, the seat width shall be maximised up to the bottom of the headrest without unnecessary tapering. There shall be no gaps large enough between adjacent seats, through which a passenger in the seat behind can easily put their hand or other items.
- 8.4.9 All seats within a Seated Coach shall be individually numbered

8.5 Toilets

- 8.5.1 All Coaches (with the exception of the Seated Coach which shall have 1 x toilet) shall be fitted with 2 x controlled emission toilets, capable of fully retaining all waste and odour, including grey water waste, between servicing on all Primary Routes and service patterns.
- 8.5.2 En-suite Berths shall be fitted with ensuite toilets.
- 8.5.3 Sufficient universal toilets shall be fitted such that each service pattern (as defined in Section 4.1) complies with the PRM-TSI requirements.. More details are provided in Section 9 ('Coach Specific Requirements').
- 8.5.4 All toilets shall incorporate a high level of resistance to becoming blocked due to misuse and overfilling.
- 8.5.5 The Coach interior shall be free from toilet odours at all times.
- 8.5.6 All toilets and cubicles shall be designed to avoid dirt traps and to allow efficient and effective cleaning.
- 8.5.7 All toilet modules shall be completely sealed.
- 8.5.8 All toilet modules shall incorporate appropriate features to prevent fluid leakage into the saloon or vehicle underframe.

- 8.5.9 The toilet module shall be capable of being removed and replaced, without the need for major structural changes.
- 8.5.10 Toilet waste retention tanks shall be sited to facilitate ease of cleaning.
- 8.5.11 Toilet retention tanks shall be capable of being 100% drained during normal servicing.
- 8.5.12 Toilet door lock operation shall be clearly perceptible to all passengers and intuitive to the user providing unambiguous feedback as to whether the door is locked or unlocked.
- 8.5.13 All toilet doors shall incorporate a device to allow the door to be overridden and opened by the Franchisee's staff when 'locked'.
- 8.5.14 The design of the toilet access door unlocking device, intended for the Franchisee's staff, shall be sufficient to avoid the device being used or tampered with by passengers.
- 8.5.15 The toilet door lock operation shall be designed to ensure that in the event of failure, passengers are not locked in the toilet module.
- 8.5.16 All toilet doors shall incorporate a means for staff to lock the door out of use.
- 8.5.17 Means shall be provided to clearly identify to passengers that the toilet is 'locked out of use'.
- 8.5.18 An illuminated sign shall be provided in each car to inform passengers of the location and status of the nearest toilets. It should also indicate when the toilet is occupied.
- 8.5.19 A CfA device shall be provided in each general use toilet to provide discrete two-way voice communication between the driver and the passenger.
- 8.5.20 In addition to any mandatory equipment, each toilet shall be fitted with the following:
 - 8.5.20.1 A toilet bowl lid catch that holds up the lid when the train is in motion;
 - 8.5.20.2 A flush device that is visible when the toilet seat is in the raised position;
 - 8.5.20.3 A device to freshen the air by the addition of a pleasant fragrance;
 - 8.5.20.4 A sink and a tap that provides warm water at a temperature suitable for hand washing;
 - 8.5.20.5 A warm air hand drying facility that effectively dries hands within 20 seconds;
 - 8.5.20.6 A mirror with tamper proof fixings;
 - 8.5.20.7 A soap dispenser;

- 8.5.20.8 A toilet roll dispenser;
- 8.5.20.9 A system for disposal of sanitary towels;
- 8.5.20.10 A nappy changing facility;
- 8.5.20.11 Two hooks for coats and bags;
- 8.5.20.12 A litter bin;
- 8.5.20.13 Support grab handles;
- 8.5.20.14 Suitable lighting; and
- 8.5.20.15 Smoke alarm.

8.5.21 It shall be possible for maintenance staff to remove and replace the toilet bowl and associated equipment within 30 minutes.

8.6 Luggage Stowage

- 8.6.1 Appropriate solutions should be utilised to ensure that luggage is stowed in a safe manner.
- 8.6.2 Storage space for luggage and clothes shall be provided in each Cabin. More details are provided in paragraph 9.1 'Sleeper Coach'.
- 8.6.3 Part of the Seated Coach shall be allocated to luggage storage. More details are provided in paragraph 9.3 'Seated Coach'.
- 8.6.4 Part of each Seated Coach storage area shall be utilised for the fire proof storage of clean and used linen
- 8.6.5 Secure lockable luggage facilities for small personal items (e.g. briefcase, laptop, handbag, valuable items etc.) shall be provided at each seat in the Seated Coach and incorporated into the design of each Pod Flatbed.

8.7 Signage

- 8.7.1 All non-mandatory signs shall be designed in accordance with ATOC guidelines.
- 8.7.2 Statutory signage shall conform to applicable standards including TSI-PRM.
- 8.7.3 Signage shall be durable and resistant to picking and malicious removal.
- 8.7.4 Unique Coach numbers allocated by the Rolling Stock Library shall be displayed externally and internally. Door positions shall be identified through signage.

8.8 Catering

It is a requirement that all Coaches have provision for deployment of shore based trolley catering services, including suitable restraints.

8.9 Litter

- 8.9.1 Litter/recycling bins shall be appropriately distributed throughout the Coaches.
- 8.9.2 Litter/recycling bins shall be easily identifiable by passengers and capable of being rapidly emptied by cleaning staff.

8.10 Cleanability

- 8.10.1 Each Coach shall be fitted with two 230 V, metal clad, RCD protected socket outlets for commercial cleaning equipment.
- 8.10.2 Lighting and other interior assemblies shall be sealed against the ingress of dust and dirt.
- 8.10.3 Interior panels, covings and lighting shall be simply shaped to allow easy cleaning and have no visible gaps between sections that could act as water or dirt traps.
- 8.10.4 All interior materials shall be resistant to cleaning chemicals including chemicals required to kill pathogens and remove graffiti.
- 8.10.5 All heating and air conditioning ducts shall be designed to minimise the build up of dust, dirt and combustible detritus, and shall be fitted with suitable covers to allow easy access for cleaning yet prevent access by passengers.
- 8.10.6 It shall be possible to complete the daily standard clean, including the floor for a Coach interior, in no more than ½ man hour.
- 8.10.7 It shall be possible to complete a periodical heavy clean on each Coach in no more than 4 man hours.

9. COACH SPECIFIC REQUIREMENTS

9.1 Sleeper Coach

- 9.1.1 There shall be 11 Cabins in each Sleeper Coach - 4 x Ensuite Berths and 7 x Berths.
- 9.1.2 Not used.
- 9.1.3 Not used.
- 9.1.4 Not used
- 9.1.5 The changeover between single and double occupancy Cabins shall be designed to be completed by operational staff in no more than 2 minutes. Minimal training and no tooling shall be required.
- 9.1.6 All Cabin doors are to be lockable by passengers. The Franchisee will encode the key and pair it with the berth door lock through the Train Management System (TMS). The passenger will then be free to use the key during the journey. The passenger will then hand it back at the end of the journey. If the passenger keeps the key at the end of their journey it will no longer operate any door on the train once the door lock system has been reset at the end of the journey. For the

next journey new keys will be encoded and paired with the allocated berth door.

- 9.1.7 Each Cabin type shall have an area suitable for in cabin dining should the passenger choose to eat in their Cabin.
- 9.1.8 Cabins shall have access to general access toilets located in each Sleeper Coach.
- 9.1.9 All the works necessary to carry and heat the water (which is additional to the requirement for water included in paragraph 5.2.3 of this Schedule 6.1A) used by the showers, based on an average utilisation of 2 x 5 minute showers per shower unit per journey, shall be incorporated in the design and validated by the acceptance type testing.
- 9.1.10 Each Cabin shall have passenger controllable interior temperatures regulation. The performance requirements are detailed in paragraph 10.6 'Heating, Ventilation and Cooling' of this Schedule 6.1A.
- 9.1.11 All Cabins shall have an exterior window (which shall be no smaller than the MkIII sleeper coach windows but preferably larger for observing the scenery on daylight portions of the journey)and shall be fitted with blinds (which can be opened and closed) to prevent light entering the Cabin and visibility of the Cabin from outside of the Sleeper Coach.
- 9.1.12 All Cabins shall have a storage space for personal luggage.
- 9.1.13 All Cabins shall have personal clothing hangers incorporated into the design.
- 9.1.14 Cabin lighting should be controllable by each passenger such that the lighting levels can be adjusted between zero and maximum. A reading light shall be provided at each bunk.

9.2 Club Car

- 9.2.1 Each Club Car shall provide a seated area for a minimum of 26 people in various seating combinations that include tables for 2 and 4 along with an option for communal seating / dining.
- 9.2.2 The Franchisee shall procure a display screen and audio output within the Club Car
- 9.2.3 A minimum of 6 x 3 pin power sockets shall be provided around the public areas of the Club Car with a further 4 in excess of those required for fixed catering equipment in the galley area.
- 9.2.4 Lighting in the seated area shall be adjustable by the Franchisee's staff to achieve an atmosphere conducive with a social/dining area.
- 9.2.5 Each Club Car shall include a galley area with sufficient working space to contain 2 x convection microwave oven, 2 x fridges, 1 x water boiler, powered hob and grill, panini grill, 1 x toaster and drinks display/chiller space and a power supply shall be provided to accommodate a bean to cup coffee machine (supplied by coffee supplier), working surfaces shall be provided. Sufficient ventilation

shall be installed to ensure the air quality within the galley is maintained

- 9.2.6 The Franchisee shall procure a power supply and internet connection for an electronic point of sale (EPOS) system. The system consists of an ipad mounting bracket and a small printer. Power supplies for both and a connection to the onboard wifi system will be required
- 9.2.7 Each Club Car shall include a control area where trains systems can be managed and monitored. The systems to be monitored shall include the Train Management System (TMS), public address, passenger information system, CCTV, fire alarm, passenger entertainment, train lighting, water, waste management and monitoring system, and the Cabin door locking system. This control area shall be integrated within or adjacent to the area allocated for the galley.
- 9.2.8 Each Club Car shall have a staff accommodation/seated area with a table and seating for up to 4
- 9.2.9 Each Club Car shall have a 'stand- up' bar area integrated into the galley design.

9.3 Seated Coach

- 9.3.1 The seated area of the Seated Coach shall contain a minimum of 30 reclining Cradle Seats of a quality and comfort appropriate to a long distance overnight journey plus one wheelchair space.
- 9.3.2 Each service pattern detailed in paragraph 4.1 shall meet the PRM-TSI requirements. This will require one wheelchair accessible space and a wheelchair accessible toilet in the Seated Coach for each service pattern serving Fort William, Inverness, Aberdeen, Glasgow and Edinburgh, subject to the issue of PRM-TSI derogation as discussed with DfT.
- 9.3.3 Each seat will be equipped with a personal reading light, a host call, a 3 pin power socket and a USB power socket for charging laptops, tablets and mobile phones
- 9.3.4 The Seated Coach shall have exterior windows fitted with blinds (which can be opened and closed) the dimensions of such windows are indicated on the relevant Coach Layout. The Seated Coach will incorporate a luggage/freight storage area of approximately 20% of the vehicles floor space. The storage area shall contain a cycle rack capable of safely and efficiently storing a minimum of 6 and a maximum of 9 bicycles and a luggage storage rack for up to 20 suitcases. An area equivalent to 3 x cycles and the remainder of the storage area shall be set aside for the transportation of palletised freight, linen for use on the train or additional passenger baggage.
- 9.3.5 The luggage/freight storage area shall have an opening door positioned to facilitate access to the cycle storage/ baggage / freight area.
- 9.3.6 The luggage/freight storage area shall have 2 x 3 pin power sockets for powering freight chiller units.

9.3.7 The Seated Coach shall contain accommodation for the train guard. The accommodation should include access to communications equipment, a small desk and chair.

9.3.8 The communications equipment shall include:

- 9.3.8.1 Driver guard comms
 - (a) via telephone style handset
 - (b) incoming alert / warning
 - (c) indication that the system is functioning and connected through train lines to the Locomotive
- 9.3.8.2 Guard Club Car comms
 - (a) staff audible comms should be possible between each car through the Control and Communication point (CCP) in particular Guards area to Club Car control area
- 9.3.8.3 Public address
 - (a) Same connection / functionality as Club Car control area
 - (b) Ability to select zones for announcements including Club Car galley / control area
 - (c) Selectable standard messages
- 9.3.8.4 Fire alarm
 - (a) Panel indicating fire alarm trigger locations
- 9.3.8.5 CCTV
 - (a) Cycling CCTV display or
 - (b) Selectable CCTV display
 - (c) Automatic selection of appropriate camera upon fire alarm or emergency comms activation
- 9.3.8.6 Door system operation / interface
 - (a) Door enable and open
 - (b) SDO

9.3.9 Personal secure storage space should be provided (i.e. an individual means at each seat of safely securing a briefcase, laptop, handbag, valuable items etc.) in addition to space for securing larger items of luggage.

9.4 Pod Coach

- 9.4.1 Each Pod Coach should contain a minimum of 24 reclining Pod Flatbeds.
- 9.4.2 Each Pod Flatbed should contain an integrated 3 pin power socket, a USB power socket for charging laptops tablet and mobile phones, a host call, an at seat personal reading light a and passenger securable storage capable of containing small hand luggage such as a laptop, hand bag or other similar items.
- 9.4.3 The Pod Coach shall have exterior windows fitted with blinds (which can be opened and closed) the dimensions of such windows are indicated on the relevant Coach Layout.

9.5 Hybrid Coach

- 9.5.1 Each Hybrid Coach should contain 8 x Pod Flat beds identical to those installed in the Pod Coach in terms of fixtures fittings and functionality.
- 9.5.2 Each Hybrid Coach should contain 5 x Berths identical to those installed in the Sleeper Coach in terms of fixtures fittings and functionality
- 9.5.3 Each service pattern detailed in paragraph 4.1 shall meet the PRM-TSI requirements. This will require no fewer than one wheelchair accessible Berth in a Hybrid Coach with a wheelchair accessible toilet for each service pattern subject to the issue of PRM-TSI derogation as discussed with DfT. serving Fort William, Inverness, Aberdeen, Glasgow and Edinburgh.
- 9.5.4 All Cabin doors are to be lockable by passengers. The Franchisee will encode the key and pair it with the Cabin door lock through the Train Management System (TMS). The passenger will then be free to use the key during the journey. The passenger will then hand it back at the end of the journey. If the passenger keeps the key at the end of their journey it will no longer operate any door on the train once the door lock system has been reset at the end of the journey. For the next journey new keys will be encoded and paired with the allocated Cabin door.
- 9.5.5 Each Hybrid Coach should contain 1 x additional toilet that is identical in terms of fixtures fittings and functionality to those described in paragraph 8.5.

9.6 Coach Layout Drawings

Proposed vehicle layouts are included in Appendix 1 to Schedule 6.1 (*Rolling Stock*). Such vehicle layouts shall be subject to change as a result of the Design Review Process. Such change shall include any necessary amendments to ensure compliance with PRM-TSI requirements for the Seated Coach.

10. SYSTEM FUNCTIONS

10.1 Auxiliary Power Supply

- 10.1.1 Each Coach shall have an auxiliary power supply capacity continuously rated at least 10% over the calculated design loading so that additional features can be fitted during the life of the Coach.
- 10.1.2 Each Coach shall be fitted with auxiliary jumper cables interconnecting each Coach in a train and enabling connection to locomotive power supplies and the use of Depot shore supplies
- 10.1.3 Each Coach's batteries shall maintain essential and emergency systems, for at least 90 minutes, for the full range of environmental conditions experienced by the Coach in the event of auxiliary power supply failure. The battery design shall minimise the maintenance required.
- 10.1.4 Each Coach's essential and emergency systems shall include, but not be limited to:
 - 10.1.4.1 reduced and emergency lighting (for cab, saloon and emergency egress).
 - 10.1.4.2 ventilation fans.
 - 10.1.4.3 tail and marker lamps
 - 10.1.4.4 internal emergency signage.
 - 10.1.4.5 public address systems and communications systems.
 - 10.1.4.6 door control system; and
 - 10.1.4.7 CCTV systems.
- 10.1.5 In the event of a short term power interruption of 30 seconds or less, all systems that may be sustained by battery power shall remain powered.
- 10.1.6 All Coaches shall include battery charging receptacles that enable an external battery charging supply to be connected.
- 10.1.7 The Coach design shall ensure that flat batteries whether caused by a failure of a battery charger or voltage regulator or otherwise shall not disable the Coach.

10.2 Braking System

- 10.2.1 The Coach must be capable of holding without rolling back on the maximum gradient on the routes.
- 10.2.2 The Coach parking brakes shall be automatically applied by a spring. The brake shall be released pneumatically; the control system will ensure that this will not occur until the service brake has been established. The design shall prevent compounding of the brake force and it shall be capable of holding the Coach on the maximum gradient on the designated routes.

10.2.3 It is a requirement that in the event of the MRP being unable to be sustained due to major damage or leakage, an alternative means of releasing the parking brake is provided. It should be possible to release the brake without going under the vehicle.

10.3 Wheel Slide Control

10.3.1 Each Coach shall include a proven slide control system that shall operate effectively and efficiently. The configuration of the system control shall incorporate current best practice advice.

10.3.2 The wheel slide control shall maximise the use of available adhesion under braking conditions in all reasonably foreseeable UK wheel rail conditions.

10.4 Door Systems

10.4.1 Each Coach shall have a minimum of 2 power operated body side doors. However if 2 body side doors are proposed the supplier shall demonstrate that all train normal and emergency functions are deliverable safely and efficiently with this configuration.

10.4.2 Each Coach door control system shall be operated by the train guard.

10.4.3 The door control system shall include the functionality to minimise heat and cooling loss during waiting time at stations.

10.4.4 The door system shall provide an optimised method of obstruction detection that ensures the safety of boarding and alighting passengers, including when a portable ramp is used.

10.4.5 When an obstruction is detected, the door system shall provide appropriate information to assist in reducing the impact of obstruction detection on the station dwell time/station delays.

10.4.6 It shall be possible to isolate and lock out of service individual doors on each side of the Coach. The isolated door(s) shall be identified to the guard by the TMS.

10.4.7 All doors shall be interlocked into the traction and braking systems such that power cannot be taken and the brakes cannot be released unless the doors are electrically proved to be closed. The design shall integrate with the locomotive's systems and shall ensure that if this proof is lost when in motion then traction power shall be removed automatically and the brakes shall be applied.

10.4.8 An emergency egress handle shall be located at each doorway. Each emergency egress handle shall be protected from unintentional operation with an appropriate cover.

10.4.9 An emergency access device shall be located on the exterior of the vehicle adjacent to each doorway.

10.4.10 All the doors automatically close after 60 seconds.

10.5 Selective Door Operation

- 10.5.1 The Coaches shall be fitted with an Automatic Selective Door Operation (ASDO) system, consistent with ORR/HMRI requirements, to allow for the use of short platforms.
- 10.5.2 The ASDO system shall permit only doors which are positioned over a safely accessible platform area to open at any station.
- 10.5.3 The ASDO system shall be integrated into or interfaced with the TMS system so that the train can be automatically inaugurated at power up and following any split / join. The TMS system shall provide status information on the MMI/s in the Club Car control area.
- 10.5.4 The ASDO system shall be self contained within the Coaches and not require the installation of facilities in the station, platform or track infrastructure. It may be assumed that platforms to be used by the Caledonian Sleeper shall be pre-defined for each station location, as will driver stop board positions.
- 10.5.5 The ASDO system shall interface with the passenger information system (PIS) to provide passengers with guidance on where to exit the Coach prior to, and at times of, selective door operation.

10.6 Heating Ventilation and Cooling ("HVC")

- 10.6.1 Each Coach shall be fitted with a heating, ventilation and cooling system which is compliant to BS EN 13129-1:2002'Air Conditioning for Main Line Rolling Stock.
- 10.6.2 The HVC system shall deliver a comfortable environment and be capable of regulating the temperature of all passenger saloons, sleeping berths, Club Car areas, vestibules and toilets.
- 10.6.3 The interior set point temperature in all general access areas shall be adjustable by maintenance staff and for all sleeping berths adjustable by passenger over the range 20°C to 25°C
- 10.6.4 Interior temperature regulation shall be in accordance with the regulation curve defined in BS EN 13129-1.
- 10.6.5 The HVC system shall provide emergency ventilation in the event of failure.
- 10.6.6 The emergency ventilation shall include smoke detection to provide control of air flow to minimise the effects of smoke.
- 10.6.7 The heating, ventilating and cooling system shall be designed to minimise mass and energy consumption.
- 10.6.8 The HVC system shall be capable of maintaining a comfortable passenger environment in all likely UK ambient weather conditions, consistent with the environmental conditions set out in paragraph 3.2.
- 10.6.9 The system shall minimise temperature changes within the car when the doors are opened.

10.6.10 The system shall vary the volume of air which is moved within the car according to passenger load. (e.g. When few passengers are on board the air flow should be the minimum).

10.7 Interior Lighting

- 10.7.1 Each Coach shall use high efficiency lighting to provide interior illumination levels in accordance with applicable standards.
- 10.7.2 The interior lighting distribution in the passenger saloon, including gangways, shall be arranged to create a safe, secure and pleasant environment. Light shall be thrown onto and across the ceiling
- 10.7.3 The interior lighting shall comprise normal, reduced, at seat personal and emergency lighting.
- 10.7.4 The emergency lighting system shall remain fully operational when subjected to the crash pulse defined in GM/RT2100 Issue 5.
- 10.7.5 Lighting enclosures shall be tamper proof, prevent the ingress and accumulation of dust and be sealed to IP54 (EN 60529 Specification for Degrees of Protection Provided by Enclosures).
- 10.7.6 The interior lighting system shall be fully compatible with the requirements of the CCTV system.
- 10.7.7 The interior lighting system shall fully complement the passenger information system and interior signage such that there is no adverse glare or reflections from any part of the Coach during any ambient light conditions.
- 10.7.8 The interior lighting shall be controllable by train crew.

10.8 Passenger Information and Communications

- 10.8.1 Each Train shall be fitted with a system that automatically generates audio and visual announcements as defined by the Train ID/Headcode in the working timetable and amended by short term plan (STP) or manually corrected by the train crew using the MMI in any Set.
- 10.8.2 The system shall automatically set up at a configured time before scheduled departure in preparation for boarding passengers. Automatic set up shall require the diagrammed Train/Coaches to be available for the service and at the correct location. Train crew shall have the facility to accept or change the automatic set up.
- 10.8.3 The PIS shall provide all necessary information to meet legislative requirements, including PRM-TSI and support of ACOP015 Passenger Information During Disruption (PIDD).
- 10.8.4 The PIS shall provide destination, next station, stopping pattern, safety, delay, diversion and emergency information for the Train, presented in both audio and visual format, as and where required by PRM. Supplementary information such as scheduled and/or estimated time of arrival, delay, disruption and relevant departure board information at interchange and terminus stations shall also be provided.

- 10.8.5 Visually presented destination and stopping pattern information shall be capable of being assimilated by every passenger on entering the Train and during the journey in public areas, for example textual information supplemented by a map highlighting the route, destination, station stops and current location..
- 10.8.6 The PIS shall provide adequate information to all passengers, including those with disabilities and those with a limited understanding of English, with the functionality to display graphic and colour-coded symbols.
- 10.8.7 The Coach shall selectively present to passengers only that information that is most relevant to the current location in the current journey. The PIS system shall function effectively on diagrams that incorporate:
 - 10.8.7.1 Trains uncoupling en-route with each portion proceeding to a different final destination (splitting service); and
 - 10.8.7.2 Trains from different origins coupling en-route and continuing to a common final destination (joining service)
- 10.8.8 The system shall have capacity to manage two splits and/or two joins per service.
- 10.8.9 A platform facing side display shall be installed adjacent to each external door for the purpose of displaying the coach letter in accordance with PRM - TSI..
- 10.8.10 Each side of every Coach shall be equipped with a platform facing display to show destination and stopping stations, this display may be combined with the coach letter display. The display shall be operated whilst the Train is on platform, it shall enter a power saving mode and may become blank in the journey between stations.
- 10.8.11 The PIS system hardware and internal displays shall be capable of displaying text, pictograms and high quality video information. High priority PIS information (PRM information and emergency announcements) shall stop/override the entertainment system.
- 10.8.12 When the selective door operation system is in use, the PIS shall make specific announcements in the affected cars well in advance of arrival at the relevant station.
- 10.8.13 A control and communication point (CCP) shall be provided in each Coach to allow the train crew to select emergency or other announcements to meet the requirements of standards, legislation, customer service and good practice. The CCP shall have an associated display allowing status and information to be provided to the train crew. The CCP shall be co-located or integrated with the communication handset.
- 10.8.14 The PA system shall provide high quality and intelligible announcements (STI > 0.5 in all areas). Announcements shall be zoned according to the following selections:

- 10.8.14.1 Local (Default), i.e. on splitting services it shall be possible to make announcements to the local Train only. Announcements to other coupled coaches, by zoned area, shall be possible following selection.
 - 10.8.14.1 Public areas (default) – may be deselected
 - 10.8.14.1 Sleeper cabins – may be selected as a zoned group
- 10.8.15 The PA system shall be accessible on a first come first served basis when selected from any CCP. The CCP shall make provision for high priority announcements (e.g. in case of fire) that override normal PA or automatic announcements
- 10.8.16 The PA system shall comply with the requirements of the CR Loc & Pas TSI.
- 10.8.17 PA system volume level in public areas shall automatically adjust to compensate for the background noise level. Typically, the PA level shall be an average 8 to 10 dB(A) above ambient level, the maximum PA level shall be agreed but will be no more than 95 dB(A). The minimum level will be defined during detailed design stage.
- 10.8.18 The system shall provide selective calling full duplex intercom communications between individual CCPs, or defined functional groups of CCP. The arrangement shall support communication in the local Train and selection of coupled Trains with different destinations; it is proposed that destination will be used to identify the other Trains.
- 10.8.19 The system shall provide passenger emergency alarm facilities at each doorway and in locations defined by CR Loc & Pas TSI. Each passenger alarm shall have an integrated or co-located discrete two-way voice communication between the train crew and the passenger at that alarm location.
- 10.8.20 The system shall include Call for Aid ("CfA") Units, located at wheelchair positions, in universal access toilets and sleeper cabins with wheelchair facilities. The CfA shall provide discrete two-way voice communication between the train crew using a CCP and the passenger at that alarm location.
- 10.8.21 A loudspeaker/microphone intercom shall be provided in each sleeper cabin as part of an attendant call system; this may be in the same format as the CfA. The attendant call system shall provide discrete two-way voice communication between the train crew using a CCP and the passenger at the calling location. Train crew shall also have the facility to call and communicate to an individual cabin.
- 10.8.22 Selective train crew intercom, if not answered within a configurable time, shall create an audible/visual alert over the PIS displays and PA loudspeakers in the relevant Coach(es).
- 10.8.23 Passenger Alarm, CfA or attendant call shall create an immediate audible/visual alert in the relevant Coach(es). The system shall support configuration of CCPs and or PIS areas where the alert is to be provided.

- 10.8.24 All CCPs shall display current status, e.g. if a CfA is operated and has not been acknowledged/cleared, the alarm location will be shown on the CCP display (and MMI in the Club Car).
- 10.8.25 Passenger alarms shall be reset locally using a carriage key. The time and location of alarm and reset shall be logged to the TMS.
- 10.8.26 CfA and attendant calls shall be reset from the CCP answering the call. The time and location of alarm and reset shall be logged to TMS.
- 10.8.27 In addition to passenger emergency alarm and CfA, emergency egress and fire/smoke detection and other TMS monitored conditions shall be alerted on the CCP (and MMI in the Club Car).
- 10.8.28 The passenger emergency alarm units shall be designed to deter malicious or accidental operation.
- 10.8.29 All necessary off train software and equipment required to maintain send, receive, process and configure PIS data shall be provided. A PIS Database Editor shall support the preparation of core data (Station name, TIPLOC code, CRS code, geo-location etc). Timetable, diagramming (stock allocation)

10.9 Mobile Communications

The design of the Coaches shall ensure that all mobile phone network signals are not significantly degraded at any location in each Coach.

10.10 On Board Wi fi

- 10.10.1 A wifi installation with sufficient capacity to manage typical email, business VPN and web browsing traffic will be provided. This system should be free to use by all users of the Passenger Services.
- 10.10.2 The design shall ensure that the WiFi network signals are available at 'Good' or better strength at any location in each Coach, including sleeper cabins.
- 10.10.3 The supplier shall provide secure and segregated train to wayside communications for the operational on board systems. The system shall conform to the cybersecurity requirements for transport applicable by EU directive and UK government policy (DfT).

10.11 Passenger Entertainment System

- 10.11.1 The proposed system incorporates a digital service accessible via a portal.
- 10.11.2 The passengers will access this system using their personal devices (laptops, tablets, etc.) via a web based portal.
- 10.11.3 The portal uses a framework which dynamically adjusts graphic design of web pages, taking into account the characteristics of the device used (PC, tablet, mobile phone). As a result the portal is optimized for both laptops & portable devices such as iPhone, Android, Windows mobile.
- 10.11.4 The system will be setup in-line with the Franchisee's requirements. The user-data is stored on the train servers, so users can quickly

login to the portal even if no internet connection is available. The portal is optimized to host a wide variety of on-train content. The portal contains the following:

- 10.11.4.1 internet protocol television (SAT IPTV);
- 10.11.4.2 Video On Demand: the passenger shall be able to browse the library of hosted movies. The player is integrated in the portal so a separate application is not needed.
- 10.11.4.3 E-press (newspapers and book): an automatic synchronization system shall be able to be setup so the newspapers are uploaded to the trains each morning. The reader is integrated in the portal.
- 10.11.4.4 News messages: News messages are automatically updated throughout the day.
- 10.11.4.5 Weather information: Weather information is automatically updated.
- 10.11.4.6 Advertisements
- 10.11.5 In combination with an internet link, the portal content shall be both dynamic (linked to route or GPS position) and remotely updatable (weather information or news). The portal shall also contain travel or passenger information.
- 10.11.6 It shall be possible to configure the system so different content is available for different types of passengers. For instance, free to class and payable elsewhere.
- 10.11.7 The infotainment system in the Club Car includes the installation of an MMI for the crew members. By means of this unit, the crew members shall be able to adjust the volume and the content displayed on the displays in the Club Car.

10.12 Storage of Investigative Data

- 10.12.1 Each Club Car shall be equipped with an OTDR that monitors all vehicles in the Train within which it is coupled and complies with applicable standards.
- 10.12.2 In addition to the mandatory requirements, the OTDR shall monitor and record Train brake controls status, WSP status, door status, and leading bogie brake cylinder pressure.
- 10.12.3 All necessary off train software and equipment required to receive, process, print, interpret and convert to information all aspects of OTDR data shall be provided. At least five operating licenses shall be supplied. OTDR time and date stamps shall be synchronised with other train systems and GPS; it shall maintain +/- 2 sec accuracy.
- 10.12.4 It shall be possible to download from the OTDR data to the wayside or locally using laptop/Ethernet connection or USB flash stick.

10.13 Data Backbone for TMS and Passenger Multimedia Services

10.13.1 An Ethernet communication is to be used for Train Communication Networks, reference BS EN 61375-1:2012, BS EN 61375-2-5 and BS EN 61375-3-4. The TMS and PIS have mission critical roles and their TCN networks shall use self healing (redundant) rings. Individual Coaches shall feature a bypass function in case of total power failure; operation of bypass after inauguration shall not cause coach letter assignments to change.

10.13.2 Gigabit ethernet shall be provisioned for multimedia services.

10.13.3 M12 connectors with crimped terminations or moulded M12 (with spare cable length) shall be used on ethernet cables. RJ45 connectors are not acceptable without justification and validation of design

10.14 Train Management System

10.14.1 The TMS shall be fully integrated with other on board sub systems to provide consistent synchronised information and must exploit the functionality available from data communications technology to facilitate the regular extraction and updating of operational data stored on the Train.

10.14.2 Each Train shall be equipped with a train management system (TMS), located in the Club Car and the information from the TMS will be made available on the MMI in real time.

10.14.3 The TMS system shall log data associated with all Coaches in the Train. TMS shall connect to all Coaches in the Train in support of an inauguration process that determines the running order of Coaches, Vehicle ID, characteristics, and rotation of the vehicle. The TMS shall use Train Communication networks as defined in BS EN 61375.

10.14.4 The TMS shall be capable of generating, receiving and storing information on the Train status and location. In the event of any failure or defect of the TMS, it shall be possible to continue to operate the Train in normal passenger service in compliance with mandatory standards.

10.14.5 The TMS shall be capable of identifying failures of both service affecting and passenger facing equipment to the maintenance team following download so that repair and maintenance work can be planned.

10.14.6 The TMS shall be capable of identifying repair and maintenance work following download.

10.14.7 The TMS shall provide a common source of time, date and Train location information for all subsystems that require it. The TMS clock shall regularly and automatically update itself from an external time signal (e.g. GPS) and regularly re-synchronise the internal real time clocks for all interfaced subsystems within +/- 2 s.

10.14.8 The TMS or PIS shall monitor and report location events and progress against the timetable. TMS shall record Train performance for later download. The TMS (or PIS) shall provide real time location reporting to the operational control centre.

10.14.9 The TMS shall monitor and display relevant information to train crew in the control area of the Club Car.

10.14.10 The TMS shall provide a simple data download capability without the need for specialist software.

10.14.11 The TMS shall send and receive information in real time to and from the operational control centre and maintenance Depot.

10.14.12 All necessary off train software and equipment required to receive, process, print and interpret TMS data shall be provided.

10.15 Internal Saloon CCTV

10.15.1 Each Coach shall be fitted with a full colour CCTV system with resolution sufficient to meet the 'Field of view – object size' requirements in the following clauses, with reference to BS EN 50132-7.

10.15.2 The CCTV system shall have sufficient cameras to provide observation coverage of the Coach interior (except toilets and cabins).

10.15.3 The CCTV system shall have cameras located to provide facial identification of persons boarding and alighting, i.e. near each external doorway.

10.15.4 The CCTV system shall have sufficient cameras to provide facial recognition of persons entering or leaving Cabins and toilets.

10.15.5 The CCTV system shall have sufficient cameras to provide facial recognition of persons entering luggage storage areas.

10.15.6 The CCTV system shall have sufficient cameras to provide facial recognition of persons operating passenger alarms, emergency egress handles and CfA devices.

10.15.7 The cameras shall minimise the view outside the Train where possible to prevent fast changing scene and light conditions.

10.15.8 The cameras shall be located in such a way that each camera is viewed by at least one other.

10.15.9 Images from the CCTV system shall be viewable in the Club Car control area and the guard's compartment in the Seated Coach.

10.15.10 The normal operating mode of the system shall record images of sufficient quality and at a frame rate sufficient to support the specified 'Field of view – object size'. The recording rate shall be no lower than 12 fps

10.15.11 In the event of a CCTV trigger event (e.g. operation of a passenger emergency alarm, emergency egress handle, fire/smoke detection etc.), the recording shall be tagged and the following information recorded:

10.15.11.1 Coach number

10.15.11.2 Date

10.15.11.3 Time

10.15.11.4 Location

10.15.11.5 Camera that recorded the event

10.15.12 The CCTV system shall provide a minimum of 28 days of recording capacity. Alternatively, the CCTV images shall be securely and automatically downloaded every 24 hours to a central database that has a six month storage capacity for the fleet of Trains.

10.15.13 The system shall comply with the ATOC National Rail and Underground CCTV Guidance Document.

10.15.14 The output produced by the CCTV system at both normal and high recording rates shall be capable of being admissible in any Scottish or English (UK) court of law.

10.15.15 The CCTV system recording and retrieval functions shall give a secure auditable trail of data that satisfies the requirements of evidential continuity to prove that the data has not been tampered with in any way. The audit trail shall include location, date and time data synchronised with TMS and other on board systems.

10.15.16 All necessary off train software and equipment required to extract, view, print and interpret CCTV images shall be provided. It shall be possible to access and download the CCTV system using remote wireless communication technology.

10.15.17 It shall be possible to view any of the recorded images on a Train via a single diagnostic port.

10.15.18 Storage media shall be secure, easily accessible to Franchisee staff via a high security lock and key. It shall be possible to remove and replace the storage media within five minutes of accessing the Coach where located. Hot swapping shall be supported. Alternatively, pre-emptive shut down and conditioning of media for transit followed by automatic booting with new storage media and full operating condition within 180 sec.

10.15.19 It shall be possible to view a minimum of 4 simultaneous cameras feeds from the same diagnostic port.

10.15.20 The CCTV system shall be linked to other systems (e.g. fire detection, PIS or TMS), so that when specified events occur, images from the location of the detection are available in the Club Car control area, are tagged on recordings and optionally shown on the CCPs.

10.16 Fire Detection System

10.16.1 Each Coach shall be equipped with a fire and smoke detection system.

10.16.2 On detection of fire or smoke, the information, including the location within the Train shall be provided to the train crew on the MMI (in real time) in the Club Car control area of each Train.

10.16.3 On detection of fire or smoke, the information, including the location within the Train shall be provided to the operational control centre in near real time.

11. SIGNALLING AND TRAIN COMMUNICATIONS

Each Seated Coach and Club Car shall be equipped with wired audio link connecting train crew with the locomotive driver. The system will consist of:

- 11.1 An analog audio signal: 600 Ohm at 0 dB
- 11.2 1 x potential-free digital contact: To inform the driver about an incoming audio call from the crew member.
- 11.3 1 x potential-free digital contact: To inform the crew member about an incoming audio call from the driver in the locomotive
- 11.4 Bell code dispatching signals will be provided by utilising the wired audio link, and whatever other systems are required to obtain the Safety Certificate to operate the New Train Fleet.

12. MAINTENANCE AND OPERATIONS

12.1. Coach Maintenance

- 12.1.1. Each Coach shall be designed for ease of maintenance, servicing, cleaning and repairability. This shall include the design of interior panelling and other items prone to vandalism.
- 12.1.2. Each Coach design shall incorporate features which enable maintenance and repairs to be carried out quickly and effectively.
- 12.1.3. Each Coach design shall be such that the length of time out of service for maintenance, overhaul and repair is minimised.
- 12.1.4. Each Coach design shall be such that maintenance can be accommodated in times that are outside of the service requirement.
- 12.1.5. Each Coach design shall incorporate simple to change modular equipment with simple to manage train diagnostics, condition monitoring and reliable train data systems.
- 12.1.6. Each Coach design shall take account of the need to ensure the long term availability and quality of all spare parts and consumables for the life of the Coach.
- 12.1.7. All Coach component and sub system parts including interior panelling and exterior trim shall be uniquely coded and labelled so that replacement parts can be easily identified.
- 12.1.8. All interior cupboard doors and panels shall incorporate retention devices as appropriate to minimise the risk of injury to passengers or to staff.
- 12.1.9. Suitable test and condition monitoring software and equipment to allow testing, fault diagnosis and repair of all sub systems shall be provided.
- 12.1.10. All necessary off train software and equipment required to send, receive, process, configure, print and interpret sub system data shall be provided.
- 12.1.11. All necessary special tools and equipment required to maintain and repair Coach equipment and sub systems shall be provided.
- 12.1.12. Coach external service connection points shall be located to ensure that only a minimum of trackside servicing points are required regardless

of the orientation of the Train. Connection points shall be safe, durable, simple and quick to use and capable of repeated use in the harsh conditions to be expected at servicing locations. They shall be capable of being changed easily and quickly, in the event of failure.

- 12.1.13. All equipment locations shall be marked to identify the function, type and model of equipment installed. Major components shall be marked with the year and month of manufacture and fitted with an equipment identification plate that shows the manufacturers name, equipment designation, revision code, serial number and a bar code to allow tracking of components. All separable items of equipment must be clearly and permanently labelled in English in a suitable location that is clearly visible and legible when the equipment is installed. Nameplates for equipment shall be securely and permanently attached to a non-removable part of the component or major sub-assembly. They shall not be adversely affected by cleaning agents, graffiti or graffiti removal chemicals.
- 12.1.14. It shall be safe to work on any electrical equipment within 30 seconds after it has been isolated from its supply. Energy storage devices such as capacitors must be discharged.
- 12.1.15. Pneumatic components shall vent outside the passenger area. Exhausts from vented components must not present an OH&S hazard to maintenance staff.
- 12.1.16. For ease of maintenance all equipment that has a maintenance requirement shall be readily accessible and clearly labelled in English. All covers within the passenger area that are required to be opened during routine maintenance shall be fitted with security locks that visually indicate their locked status.
- 12.1.17. All lifting and jacking points shall be clearly marked and accessible without the need to remove other equipment.

12.2. Coach Repairs

- 12.2.1. Each Coach shall be designed and constructed to minimise the extent of exterior collision damage and the time to undertake any necessary repairs.
- 12.2.2. Each Coach shall be designed and constructed so that the time to repair vandalism and to replace damaged interior components is minimised.
- 12.2.3. Each Coach with bonded bodyside windows shall be designed and constructed so that they shall be exchangeable within 3 hours, including any curing time.
- 12.2.4. Each Coach with mechanically attached bodyside windows shall be designed and constructed so that they shall be exchangeable within 20 minutes.
- 12.2.5. Each Coach shall be designed and constructed so that bodyside door windows shall be exchangeable within 3 hours, including any curing time.
- 12.2.6. It shall be possible to replace failed exterior lamps within 15 minutes by maintenance staff standing 300mm below rail level without the need for special tools.

12.2.7. Where failed exterior lamps cannot be replaced in 15 minutes they shall be of a suitable LED technology designed with a lifetime similar to the Coach.

12.2.8. The time required to replace all major components shall be minimised.

12.2.9. There shall be a method for operator's staff to temporarily secure a broken or cracked bodyside window, to allow the Coach to continue in service to the end of the day.

12.3. Documentation

12.3.1. The Franchisee shall provide comprehensive maintenance documentation to the Authority covering the maintenance requirements for the life of the vehicles, repair procedures, test procedures and fault-finding procedures.

12.3.2. The Franchisee shall provide comprehensive overhaul documentation to the Authority covering the overhaul requirements for the life of the vehicles.

12.3.3. The Franchisee shall provide comprehensive parts information to the Authority, including an illustrated parts catalogue showing all parts, their description, part numbers, ordering details etc.

12.3.4. The Franchisee shall provide all drawings related to the construction and maintenance of the Coaches to the Authority, including schematics, wiring diagrams, structural drawings, general arrangements etc.

12.3.5. The Franchisee shall provide detailed technical descriptions of the Coach and its operation to the Authority.

12.3.6. The Franchisee shall provide a copy of the fault finding guides for maintenance staff to the Authority.

12.3.7. The Franchisee shall provide a copy of the train crew operating manuals to the Authority.

12.3.8. The Franchisee shall provide a copy of the easy to read fault finding guides for train crew to the Authority.

12.3.9. The Franchisee shall provide a copy of the comprehensive documentation covering the cleaning requirements for the Coaches to the Authority.

12.3.10. The above documentation shall be provided in an agreed electronic format.

12.3.11. The above documentation shall be provided in the English language.

12.3.12. The electronic information shall include comprehensive cross-referencing (enabling easy navigation between documents and parts of the same document).

12.3.13. Electronic information shall be readily accessible and updatable.

SCHEDULE 6.1B

THIS IS SCHEDULE 6.1B REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT BETWEEN THE AUTHORITY AND SERCO CALEDONIAN SLEEPERS LIMITED

MAINTENANCE OF THE TRAIN FLEET

Part 1 Initial Train Fleet

1. OVERVIEW

1.1 In respect of the maintenance of the Initial Train Fleet:

- a. The Franchisee shall be responsible for ensuring that all required maintenance activities as described in paragraph 2 below are in accordance with [redacted text] vehicle maintenance instructions and agreed in [redacted text] maintenance programme.
- b. The Franchisee shall procure that the Maintenance Contractor enters into the Initial Maintenance Contract with the Franchisee to deliver the scope of maintenance services and activities described in this part 1 of Schedule 6.1B.

1.2 The Franchisee shall procure that commitments in respect of maintenance in the Franchise Agreement are provided by the Maintenance Contractor via the Initial Maintenance Contract. Each party will have the following high level responsibilities including:

Franchisee	Maintenance Contractor
<ul style="list-style-type: none"> • Vehicles to be delivered on time and at locations agreed with Maintenance Contractor • All linen and other bedding material laundered and ready for use 	<ul style="list-style-type: none"> • Rolling stock maintenance • Rolling stock cleaning and daily servicing • Provision of maintenance materials • Provision of maintenance infrastructure • Use of trained and competent staff with evidence to support their level of expertise • Technical support • Generation of technical data and performance reporting

1.3 In addition to the responsibilities outlined above, the Franchisee will also have a key responsibility in ensuring the handover of the fleet from [redacted text] and the Outgoing Franchisee to the Maintenance Contractor is carried out in a timely and efficient fashion. After Serco Limited procures title to the Mark II Coaches from [redacted text], the Franchisee will also facilitate on an on-going basis the relationships between [redacted text], Serco Limited and the Maintenance Contractor.

2. SCOPE

2.1 The Franchisee shall procure that the Maintenance Contractor provides comprehensive train maintenance for the Initial Train Fleet through the Initial Maintenance Contract.

2.2 The Franchisee shall, prior to Franchise Commencement Date, finalise negotiations for the Initial Maintenance Contract which shall support the train preparation and maintenance activities necessary to ensure the safe and reliable operation of the Initial Train Fleet in the provision of the Franchise Services. The Initial Maintenance Contract will be in place for the period from the Franchise Commencement Date until the New

Train Fleet Service Date and will support the ongoing management of the Initial Train Fleet throughout this period. The Franchisee and the Maintenance Contractor shall deliver the following services across the network at all the selected maintenance locations and Depots, including:

- cleaning and train preparation activities
- tanking and CET activities
- exterior washing through the provision of washplants
- daily services (S exams)
- A and B exams
- tyre turning
- repairs arising from planned maintenance activities or those reported by operational staff through the fault reporting procedures.

3. DEPOT LOCATIONS

3.1 The Franchisee shall specify that work is principally carried out by the Maintenance Contractor at the Depot known as Glasgow Polmadie and with further works being undertaken at the Depots known as London Wembley, Inverness and Aberdeen. Additionally, some minor work shall be undertaken at Fort William Station. Any changes to this arrangement will require the prior written approval of the Authority (such approval not to be unreasonably withheld or delayed).

Proposed Maintenance Locations

Depot	Depot / Facility Operator	Task
Polmadie	[redacted text]	Maintenance management and planning, train preparation & cleaning, A & B Exams, major and minor repairs, Tyre turning.
Wembley	[redacted text]	Train preparation & cleaning and minor repairs.
Clayhills	East Coast	Train preparation & cleaning and minor repairs.
Inverness	ScotRail Franchisee	Train preparation & cleaning and minor repairs.
Fort William (Station)	ScotRail Franchisee	Train preparation & cleaning and minor repairs.

3.2 The Franchisee shall ensure that the Maintenance Contractor will develop a detailed mobilisation plan that aligns and integrates with the Franchisee's wider franchise mobilisation plan. The Initial Maintenance Contract mobilisation plan shall set out a programme detailing how the Maintenance Contractor will ensure the people, processes, procedures, materials and facilities are in place to deliver an efficient handover of Initial Train Fleet maintenance responsibilities from the Outgoing Franchisee. The Initial Maintenance Contract mobilisation programme shall provide for detailed tasks including in respect of the following areas:

- staff training and competence assessment;
- the detailed review and reissue of all maintenance instructions;
- the inspection and transfer of all materials and spares from the Outgoing Franchisee to the Maintenance Contractor's stores;
- the modification of the Maintenance Contractor's staff rosters to accommodate the transfer of A & B exams from the Depot at Inverness to the Depot at Polmadie;
- the identification, design and completion of any modifications required to the Depot at Polmadie required to facilitate the maintenance activities;
- the identification and procurement of any tools and equipment required to complete the maintenance activities;
- the confirmed establishment of the supply chain for maintenance materials

- the implementation of sub-contracts for work to be delivered at Fort William Station, Inverness Depot and Aberdeen Depot (and through the ScotRail Franchisee and East Coast).

4. SAFETY

4.1 The Franchisee shall procure that the Maintenance Contractor complies with ISO EN 18001. The Franchisee shall provide a copy of the Annual Safety Plan in respect of inter alia Initial Train Fleet maintenance activities to the Authority that will define the key objectives for both vehicle and occupational safety for the coming year. These objectives will be complementary to the safety objectives of the Franchisee.

4.2 The Franchisee shall procure that a staff competence management system in respect of inter alia Initial Train Fleet maintenance activities will be implemented and maintained that will include routine competence assessment and recording.

5. ANNUAL MAINTENANCE PLAN

The Annual Maintenance Plan shall be provided by the Franchisee to the Authority for comment (if any). Such plan shall include the following key elements:

- A detailed description of the current condition of the Vehicles comprising the Initial Train Fleet and any associated assets such as repairable spares and depot equipment;
- Vehicle and occupational safety performance for the preceding year;
- The level of completion of planned maintenance and overhauls and the levels of corrective repairs arising;
- The maintenance and overhaul plan for the coming year;
- The technical performance of the Vehicles and the levels of reliability and availability achieved during the year;
- The performance improvement plan for the fleet including the anticipated growth in reliability and availability; and
- Training needs for the maintenance staff.

6. PERFORMANCE AND DELIVERY

6.1 The Franchisee shall procure that the Initial Maintenance Contract shall include performance requirements and a performance regime.

6.2 Following the Franchise Commencement Date, the Franchisee shall ensure that the Franchisee's head of production & safety will take on the business as usual responsibility for contract management of the Initial Maintenance Contract. This will continue to be through joint working with the Maintenance Contractor's contract director. The following activities will form the basis of their work:

Data analysis process: the Franchisee's operations support manager will collate data from the following sources as the basis for analysis: reports from the Maintenance Contractor's

maintenance management system, Network Rail Control Centre data, [redacted text] Control Centre monitoring data, staff reporting and the train report / log books.

Performance management processes: a monthly performance management meeting will be used to monitor and address performance issues. This will chaired by the Franchisee's engineering manager with the Franchisee's head of production & safety attending if required. The priority of this meeting will be to resolve the quality of reporting around delay minutes that are attributable to vehicle maintenance issues. All decisions will be evidenced using performance data collected through the process identified above.

Spot checks and audit calendar: the Franchisee's head of production & safety and Franchisee's engineering manager will co-ordinate a regular audit calendar with the Maintenance Contractor's contract director. The Franchisee will target spot checks towards key areas identified for improvement and more broadly to ensure the Maintenance Contractor's standards are maintained across the Initial Train Fleet.

Receipt of vehicles: Following receipt of the Vehicles from [redacted text] via the Outgoing Franchisee, the Franchisee will inspect the Vehicle maintenance and overhaul records for each Vehicle and combine this with a physical inspection of each Vehicle and its systems. These inspections will be completed by independent engineers. To ensure transparency these inspections will be undertaken in conjunction with any observers requested by the [redacted text]. Any defects or outstanding maintenance observed will be recorded and agreed as an accurate reflection of the Vehicles condition with their owners. Remedial works to bring the Vehicles to the condition set out in the Rolling Stock Related Contracts will be completed by [redacted text] as applicable and facilitated by the Franchisee's 'service team'. The priorities for this work will be:

- to identify the position of each Vehicle within the maintenance cycle;
- verification that each Vehicle has received the correct maintenance at the appropriate mileage;
- verification that future maintenance requirements for each Vehicle are identified and included in the Franchisee's future maintenance schedule; and
- identification of any major components that have recently been installed that may be covered by component or warranty repair (and ensure this is recorded on the Maintenance Contractor's maintenance management system to ensure warranty claims can be made to recover costs).

6.3 The Franchisee shall establish a condition baseline for the Initial Train Fleet. This will comprise detailed handover inspections through liaison with the Outgoing Franchisee and vehicle owners [redacted text] to set the condition of the Vehicles.

6.4 The Franchisee shall apply the following overarching conditions to its receipt of the Initial Train Fleet:

- the rolling stock should comply with the designed performance criteria;
- the rolling stock (both individual vehicles and sets) shall have the same configuration as at the delivery date;
- all technical records shall be made available;
- the rolling stock shall comply with all applicable Railway Group Standards (RGS); and
- the rolling stock shall be clean and free from any material damage (fair wear and tear excepted) and in particular:
 - body exterior: all significant dents and scrapes shall have been made good. Major paintwork blemishes rectified and graffiti removed and the rolling stock shall be redelivered to the owner in the livery as per the lease commencement date. All company logo and branding will be removed
 - body interior: all surfaces, furnishings, fittings, bodyside lights will be clean and free from major damage, defects and graffiti

- seat covers: all covers will be clean of the same specification and colour and free from damage.

7. ENVIRONMENT

The Franchisee shall procure that the Maintenance Contractor shall be required to comply with ISO EN 14001. An annual environmental plan will be required to be submitted to the Franchisee for approval by the Franchise Commencement Date that will define the key environmental improvement objectives in respect of the performance of maintenance pursuant to the Initial Maintenance Contract. The annual environmental plan shall be provided by the Franchisee to the Authority for comment (if any).

8. STAFF

The Franchisee shall procure that the Maintenance Contractor shall be responsible for providing all staff, including technical and management, required for the oversight, contract management and provision of the maintenance of the Initial Train Fleet.

Head of Production & Safety and Service Team



The Franchisee's head of production & safety shall be responsible for the delivery of the Initial Maintenance Contract. The Franchisee's head of production & safety shall be in post shortly after the execution of the Franchise Agreement to finalise the Initial Maintenance Contract and then oversee its implementation. Technical input will be provided by the Franchisee's fleet engineering manager. Following mobilisation the Franchisee's head of production & safety will continue to be a member of the business as usual organisation to manage the ongoing performance of the Initial Maintenance Contract while operational management will be the responsibility of the Franchisee's fleet engineering manager.

The Franchisee shall procure the Maintenance Contractor's sleeper services contract director shall be responsible for mobilising the Maintenance Contractor's service provision prior

to taking over responsibility and for ongoing contract delivery and ensuring all the performance metrics are achieved. The Head of Production & Safety and Franchisee's fleet engineering manager's will work closely with the Maintenance Contractor's contract director to ensure the quality of services delivered to the users of the Passenger Services is of the highest level.

9. REPORTING

The Maintenance Contractor shall each provide monthly reports in support of a contract review meeting. The allocation of the scope of such reports will be agreed in the Initial Maintenance Contract. The Franchisee shall report any safety incidents to the Authority.

10. MAINTENANCE MANAGEMENT

10.1 The Franchisee shall procure that the Maintenance Contractor will implement and maintain an asset management system that it will use to manage the maintenance and cleaning of the Initial Train Fleet and Depot facilities.

10.2 The Franchisee shall work with the Maintenance Contractor to gather detailed performance data about the Initial Train Fleet. The Franchisee will closely monitor Vehicle performance in terms of disruptive and system functional failures and identify areas where changes to the Franchisee's maintenance regime and / or modification of the Vehicle systems will improve performance. The Franchisee's fleet engineering manager will facilitate this process working with the Maintenance Contractor to ensure that accurate data interpretation is carried out and the correct conclusions are reached.

10.3 The Franchisee shall use the monthly performance reviews as part of the routine management of the Initial Maintenance Contract. These meetings will be chaired by the Franchisee's fleet engineering manager. At each of these meetings, the Maintenance Contractor will present maintenance and contractual performance data and report to the meeting all Vehicle and systems failures. The Franchisee will develop reporting regimes that group all failures by system, type of failure and impact. The Franchisee shall identify and comment upon the developing failure trends and use the analysis to identify areas where The Franchisee's maintenance regime can be used to improve performance – this will link to the Maintenance Contractor's use of the Kaizen methodology to drive continuous improvement. An example agenda for the meeting is included below:

Maintenance Performance Review Agenda

Agenda Item	Measure	Results
Maintenance activities planned next month	Number of A exams Number of B exams Number of C3 exams	Exams must be planned within scheduled periodicities
Maintenance activities completed previous month	Number of A exams Number of B exams Number of C3 exams	All exams completed to previous month's schedule
Review of all previous month Vehicle and system failures	Number of disruptive failures	Identify disruptive failure defects causes and remedial activities
Review of all previous month's Vehicle and system failures	Number of non-disruptive system failures	Identify disruptive failure defects causes and remedial activities
Tyre turning plan	Tyre and flange wear Wheel flats and cavities	Identify tyre turning plan that ensures safe operation, reduces noise and vibration and maintains optimum ride quality
Top five failures	Total number of disruptive and non-disruptive failures	Rolling six month analysis of disruptive failures to identify where remedial activity will improve performance
Report From Franchisee's guest services team	Response to reported faults, Feedback from passengers	Ensure that frontline operational staff and guest feedback are part of the maintenance teams priorities

11. CAPITAL SPARES

The Franchisee shall procure that the Maintenance Contractor manages any float of Spares which shall be available as a part of the Rolling Stock Lease between the Franchisee and

[redacted text]. This float of spares shall be used as a part of the vehicle maintenance programme for the Mark II and Mark III Coaches. Where applicable, the Franchisee shall have responsibility for ensuring that such spares remain in a usable condition and meet any hand back conditions for such spares.

12. TRAINING

The Franchisee shall be responsible for ensuring that all necessary training and assessment of competence of the maintenance staff will be undertaken. The Franchisee shall provide details to the Authority of all training course plans, which shall include but not be limited to details of the number of places, course materials and maintenance manuals in electronic and hard copy format.

Part 2 – New Train Fleet

1. OVERVIEW

- a. The Franchisee shall be responsible for ensuring that all required maintenance activities as described in paragraph 2 below are in accordance with the Manufacturer's maintenance manual and agreed in the Manufacturer's maintenance programme.
- b. The Franchisee shall procure that the Manufacturer and the Maintenance Contractor enter into the Train Services Agreement with the Franchisee to deliver the scope of maintenance services and activities described in this part 2 of Schedule 6.1B.

2. SCOPE

The Franchisee shall procure that the Manufacturer will be required to provide comprehensive train maintenance the scope of which will include:

- All aspects of scheduled and corrective maintenance and vehicle overhaul.
- Any depot upgrade, including cost of the works and its maintenance, required to enable the Coaches to be maintained.
- Training and the maintenance of competence of staff.
- In service and terminal station technical support.
- All consumable and repairable spares.
- All aspects of maintenance and cleaning planning.
- Detailed records of maintenance and cleaning completed together with equipment failures and repairs.
- Support to the Franchisee's operational staff, including on board staff on service trains.

3 DEPOT LOCATION.

The Train Services Agreement shall be agreed such that work pursuant to it is principally carried out by the Maintenance Contractor at the Depot known as Glasgow Polmadie and

with further works being undertaken at the Depots known as London Wembley, Inverness and Aberdeen. Additionally, some minor work shall be undertaken at Fort William Station. Any changes to this proposal will require the prior written approval of the Authority (such approval not to be unreasonably withheld or delayed).

4 SAFETY

The Franchisee shall procure that the maintenance organisation complies with ISO EN 18001. The Franchisee shall provide a copy of the Annual Safety Plan to the Authority that will define the key objectives for both vehicle and occupational safety for the coming year. These objectives will be complementary to the safety objectives of the Franchisee.

The Franchisee shall procure that a staff competence management system will be implemented and maintained that will include routine competence assessment and recording.

5 ANNUAL MAINTENANCE PLAN

A copy of the Annual Maintenance Plan will be provided by the Franchisee to the Authority. Such plan will describe the following key elements:

- A detailed description of the current condition of the vehicles and any associated assets such as repairable spares and depot equipment.
- Vehicle and occupational safety performance for the preceding.
- The level of completion of planned maintenance and overhauls and the levels of corrective repairs arising.
- The maintenance and overhaul plan for the coming year.
- The technical performance of the vehicles and the levels of reliability and availability achieved during the year.
- The performance improvement plan for the fleet including the anticipated growth in reliability and availability.
- Training needs for the maintenance staff.

6 PERFORMANCE

The Franchisee shall procure that the Train Services Agreement shall include performance requirements and a performance regime.

7 ENVIRONMENT

The Franchisee shall procure that the Maintenance Contractor will be required to comply with ISO EN 14001. An annual environmental plan will be required to be submitted for approval by the Franchisee that will define the key environmental improvement objectives in respect of performance of maintenance pursuant to the Train Services Agreement.

The annual environmental plan shall be provided by the Franchisee to the Authority for comment (if any).

8 STAFF

The Franchisee shall procure that the parties to the Train Services Agreement will be jointly responsible for providing all staff, including technical and management, required for the provision of the maintenance.

9 REPORTING

The Manufacturer and the Maintenance Contractor shall each provide monthly reports in support of each contract review meeting that will cover:

- Safety performance for the fleet and for the maintenance organisation.
- fleet performance in terms of train and equipment reliability and train availability.
- Progress with reliability improvement plans.
- Train presentation.
- External audit results.

The allocation of the scope of such reports will be agreed in the Train Services Agreement. The Franchisee shall report any safety incidents to the Authority

10 MAINTENANCE MANAGEMENT

The Franchisee shall procure that the Manufacturer and the Maintenance Contractor will implement and maintain an asset management system that they will use to manage the maintenance and cleaning of the fleet and depot facilities.

11 CAPITAL SPARES

The Franchisee shall procure that under the terms of the Train Services Agreement, the Manufacturer shall manage the float of Spares delivered as part of the train build and owned by the Owner. The Franchisee shall procure that the terms of Train Services Agreement require that such Spares remain useable and meet the handback conditions stated in the Train Services Agreement.

SCHEDULE 6.2

THIS IS SCHEDULE 6.2 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT BETWEEN THE AUTHORITY AND SERCO CALEDONIAN SLEEPERS LIMITED

Stations Enhancements

1. **Introduction**

- 1.1. Without prejudice to the Franchisee's obligations under Clause 4 of the Franchise Agreement, but subject to paragraphs 1.2 and 1.3, the Franchisee shall procure the delivery of the station enhancements described in this Schedule 6.2.
- 1.2. The delivery by the Franchisee of the station enhancements described in this Schedule 6.2 shall be subject to:
 - 1.2.1. where relevant, approval being granted pursuant to the rail industry's station change process, the Franchisee being hereby obliged to use all reasonable endeavours to secure such approval and follow due process;
 - 1.2.2. where relevant, consent being granted by the relevant Station Facility Owner, the Franchisee being obliged to use all reasonable endeavours to secure such consent and to provide all information reasonably requested by the Station Facility Owner;
 - 1.2.3. where relevant, investment being made pursuant to Network Rail's investment process the Franchisee being obliged to use all reasonable endeavours to secure such investment and to follow due process; and
 - 1.2.4. where relevant, any third party (with whom the Franchisee is required to collaborate) acting reasonably, the Franchisee being obliged to act reasonably in respect of such third party and use all reasonable endeavours to engage proactively and positively with such third party.
- 1.3. In respect of the delivery of the station enhancements described in this Schedule 6.2, the Franchisee shall:
 - 1.3.1. work with the relevant delivery partners;
 - 1.3.2. engage and partner with Community Rail Partnerships, local community interest groups, and regional stakeholders such as Regional Transport Partnerships;
 - 1.3.3. cooperate and collaborate with the relevant station owners or franchisees including ScotRail Franchisee, Network Rail, Department for Transport, Virgin Trains and London Midland (and any successor franchisees from time to time);
 - 1.3.4. engage with specialists and special interest groups where necessary, for example in relation to disability access and accessibility issues; and
 - 1.3.5. closely collaborate with relevant technical specialists;
 to procure all necessary consents and approvals and the timeous delivery and/or commissioning of the station enhancements described in this Schedule 6.2.
- 1.4. Where this Schedule 6.2 refers to access to any facility operated by any third party, the Franchisee shall use best endeavours to seek and enforce rights for such third party to manage and maintain the quality of such facility to a standard of at least the

same quality as the Franchisee is required to provide in respect of the Franchise Services.

1.5. Where this Schedule 6.2 refers to access to any shower and/or toilet facilities operated by any third party, the Franchisee shall procure that the use of such shower and/or toilet facilities and the provision of towelling, soap and shampoo in such shower facilities (which shall be of a suitable quality commensurate with the amenity kits provided on-board the Passenger Services) and that such are available to users of the Passenger Services holding:

1.5.1. Applicable Tickets at no costs to such users; and

1.5.2. Other Tickets for a reasonable sum;

and shall procure that the same shall be open and accessible to users of the Passenger Services throughout the general opening times of the relevant Station and for a reasonable period immediately before the later of the scheduled or actual departure and for a reasonable period immediately after the later of the scheduled or actual arrival of any Passenger Services.

1.6. Where this Schedule 6.2 refers to access to any lounge facility (including wi-fi within that lounge facility) operated by any third party, the Franchisee shall procure that the same shall be open and accessible to Applicable Ticket holders at no cost and to Other Ticket holders for a reasonable sum throughout the general opening times of the relevant Station and for a reasonable period immediately before the later of the scheduled or actual departure and for a reasonable period immediately after the later of the scheduled or actual arrival of any Passenger Services.

2. Edinburgh Waverley

In respect of the Station at Edinburgh Waverley:

Business/First Class Lounge

2.1. The Franchisee shall procure branding enhancements in the existing business/first class lounge.

2.2. The Franchisee shall procure use of the existing business/first class lounge by users of the Passenger Services. The charge associated with such use shall be agreed in the commercial agreement with Network Rail, and paid directly by the Franchisee to Network Rail.

2.3. The Franchisee shall procure earlier opening of the business/first class lounge on Saturday mornings to enable use by users of the Passenger Services arriving at the Station.

2.4. The Franchisee shall procure the presence of the Franchisee's staff to assist users of the Passenger Services in the evening prior to final boarding of the Passenger Services.

Showers and Toilets

2.5. The Franchisee shall procure access to the existing showers for users of the Passenger Services. The charge associated with such use shall be agreed in the commercial agreement with Network Rail, and paid directly by the Franchisee to Network Rail.

2.6. The Franchisee shall procure that towelling, soap and shampoo shall be available to users of the Passenger Services who use the showers described above.

2.7. The Franchisee shall procure access to the existing toilets at the Station for users of

the Passenger Services. The charge associated with such use shall be agreed in the commercial agreement with Network Rail, and paid directly by the Franchisee to Network Rail.

Totem and Wi-Fi

- 2.8. The Franchisee shall install a Totem.
- 2.9. The Franchisee shall provide and maintain free wi-fi via the Totem which shall act as a wi-fi hotspot.
- 2.10. The Franchisee shall procure, and shall procure the continuation of, the availability of wi-fi in the business/first class lounge for users of the Passenger Services.

Baggage and Luggage

- 2.11. The Franchisee shall procure that left luggage facilities or lockers are consistently and preferentially priced for users of the Passenger Services.
- 2.12. From the New Train Fleet Service Date, the Franchisee shall provide a means to facilitate check-in of baggage and issue of baggage receipts for users of the Passenger Services who (a) are using Pod Flatbed accommodation or Cradle Seat accommodation or (b) require to store large items of luggage in the dedicated secure luggage space. The Franchisee shall use a wheeled baggage roll cage to receive and transfer such baggage onto the Passenger Services and shall provide suitable security arrangements for such baggage.
- 2.13. The Franchisee shall provide and use a branded reception podium to check-in users of the Passenger Services.

Signage

- 2.14. The Franchisee shall procure:
 - 2.14.1. enhanced external station signage indicating that such Station is a gateway to the network of Stations which shall include the mounting of signage at the entrance to such Station;
 - 2.14.2. improvement to the wayfinding signage for key station facilities for use by users of the Passenger Services; and
 - 2.14.3. improved directional signage to key off-station locations, including bus stops and taxi ranks.
- 2.15. The Franchisee shall collaborate with Network Rail on signage strategy.
- 2.16. The Franchisee shall use reasonable endeavours to secure funding for further signage improvements from SESTRan or other similar organisation.

Food and Beverages

- 2.17. The Franchisee shall use reasonable endeavours to procure that food and beverages are available from commercial retailers at this Station for a reasonable period immediately before the scheduled departure and for a reasonable period immediately after the later of the scheduled or actual arrival of Passenger Services at this Station.
- 2.18. The Franchisee shall collaborate with nearby hotels and restaurants to seek to secure the availability of the provision of services to users of the Passenger Services

which are not available at this Station or from the Passenger Services for a reasonable period immediately before the scheduled departure and for a reasonable period immediately after the later of the scheduled or actual arrival of Passenger Services at this Station.

3. Glasgow Central

In respect of the Station at Glasgow Central:

Waiting Room

- 3.1. The Franchisee shall procure décor improvements in the existing waiting room adjacent to platform 1.

Business/First Class Lounge

- 3.2. Virgin Trains has proposed the construction of a new business/first class lounge. When such business/first class lounge is completed, the Franchisee shall procure use of such lounge by users of the Passenger Services. The charge associated with such use shall be agreed in the commercial agreement with the operator of the business/first class lounge and any successor operator), and paid directly by the Franchisee to the operator of the lounge.
- 3.3. Subject to completion of the business/first class lounge, the Franchisee shall procure the appropriate display of Caledonian Sleeper branding at the proposed business/first class lounge and shall meet the costs of the same including any costs or expenses that Virgin Trains (or a successor operator of the premium lounge) seeks to recover in respect of the same.
- 3.4. Subject to completion of the business/first class lounge, the Franchisee shall procure opening of the business/first class lounge is available for users of the Passenger Services at the times set out in Paragraph 1.6 of this Schedule 6.2.
- 3.5. Subject to completion of the business/first class lounge, the Franchisee shall procure the presence of the Franchisee's staff to assist users of the Passenger Services in the evening prior to final boarding of the Passenger Services.

Showers and Toilets

- 3.6. The Franchisee shall procure access to the existing showers for users of the Passenger Services. The charge associated with such use shall be agreed in the commercial agreement with Network Rail, and paid directly by the Franchisee to Network Rail.
- 3.7. The Franchisee shall procure that towelling, soap and shampoo shall be available to users of the Passenger Services who use the showers described above.
- 3.8. The Franchisee shall procure access to the existing toilets at the Station for users of the Passenger Services. The charge associated with such use shall be agreed in the commercial agreement with Network Rail, and paid directly by the Franchisee to Network Rail.

Totem and Wi-Fi

- 3.9. The Franchisee shall install a Totem.
- 3.10. The Franchisee shall provide and maintain free wi-fi via the Totem which shall act as a wi-fi hotspot.
- 3.11. The Franchisee shall procure the installation of and shall maintain, wi-fi in the business/first class lounge which users of the Passenger Services can access.

Baggage and Luggage

- 3.12. The Franchisee shall procure that left luggage facilities or lockers are consistently and preferentially priced for users of the Passenger Services .
- 3.13. From the New Train Fleet Service Date, the Franchisee shall provide a means to facilitate check-in of baggage and issue of baggage receipts for users of the Passenger Services who (a) are using Pod Flatbed accommodation or Cradle Seat accommodation or (b) require to store large items of luggage in the dedicated secure luggage space. The Franchisee shall use a wheeled baggage roll cage to receive and transfer such baggage onto the Passenger Service and shall provide suitable security arrangements for such baggage.

- 3.14. The Franchisee shall provide and use a branded reception podium to check-in users of the Passenger Services .

Signage

- 3.15. The Franchisee shall procure:

- 3.15.1. enhanced external station signage indicating that such Station is a gateway to the network of Stations which shall include the mounting of signage at the entrance to such Station;
- 3.15.2. improvement to the wayfinding signage for key station facilities for use by users of the Passenger Services; and
- 3.15.3. improved directional signage to key off-station locations, including bus stops and taxi ranks.

- 3.16. The Franchisee shall collaborate with Network Rail on signage strategy.

- 3.17. The Franchisee shall use reasonable endeavours to secure funding for further signage improvements from SPT or other similar organisation.

Food and Beverages

- 3.18. The Franchisee shall use reasonable endeavours to procure that food and beverages are available at this Station, from commercial retailers at this Station, for a reasonable period immediately before the scheduled departure and for a reasonable period after the later of the scheduled or actual arrival of Passenger Services at this Station.

- 3.19. The Franchisee shall collaborate with nearby hotels and restaurants to seek to secure the availability of the provision of services to users of the Passenger Services which are not available to those users of the Passenger Services at this Station or from the Passenger Services, for a reasonable period immediately before the later of the scheduled or actual departure and for a reasonable period immediately after the scheduled arrival of Passenger Services at this Station.

4. Aberdeen

In respect of the Station at Aberdeen:

Waiting Room

- 4.1. The Franchisee shall procure décor improvements to the waiting room allocated for users of the Passenger Services.

Business/First Class Lounge

- 4.2. The Franchisee shall procure branding enhancements in the existing business/first class lounge.
- 4.3. The Franchisee shall procure use of the existing business/first class lounge by users of the Passenger Services. The charge associated with such use shall be agreed in the commercial agreement with the ScotRail Franchisee and paid directly by the Franchisee to the ScotRail Franchisee.
- 4.4. The Franchisee shall procure the presence of the Franchisee's staff to assist users of the Passenger Services in the evening prior to final boarding of the Passenger Services.

Showers

- 4.5. The Franchisee shall procure access to the existing showers in the business/first class lounge for users of the Passenger Services. The charge associated with such use shall be agreed in the commercial agreement with the ScotRail Franchisee and paid directly by the Franchisee to the ScotRail Franchisee.
- 4.6. The Franchisee shall procure that towelling, soap and shampoo shall be available to users of the Passenger Services who use the showers described above.

Totem and Wi-Fi

- 4.7. The Franchisee shall install a Totem.
- 4.8. The Franchisee shall provide and maintain free wi-fi via the Totem which shall act as a wi-fi hotspot.
- 4.9. The Franchisee shall procure, and shall procure the continuation of, the availability of wi-fi in the business/first class lounge which the users of the Passenger Services can access.

Baggage and Luggage

- 4.10. The Franchisee shall procure that left luggage facilities or lockers are consistently and preferentially priced for users of the Passenger Services.
- 4.11. From the New Train Fleet Service Date, the Franchisee shall provide a means to facilitate check-in of baggage and issue of baggage receipts for users of the Passenger Services who (a) are using Pod Flatbed accommodation or Cradle Seat accommodation or (b) require to store large items of luggage in the dedicated secure luggage space. The Franchisee shall use a wheeled baggage roll cage to receive and transfer such baggage onto the Passenger Services and shall provide suitable security arrangements for such baggage.
- 4.12. The Franchisee shall provide and use a branded reception podium to check-in users of the Passenger Services.

Signage

- 4.13. The Franchisee shall procure:
 - 4.13.1. enhanced external station signage indicating that such Station is a gateway to the network of Stations which shall include the mounting of signage at the entrance to such Station;

- 4.13.2. improvement to the wayfinding signage for key station facilities for use by users of the Passenger Services; and
- 4.13.3. improved directional signage to key off-station locations, including bus stops and taxi ranks.
- 4.14. The Franchisee shall collaborate with the ScotRail Franchisee on signage strategy.
- 4.15. The Franchisee shall use reasonable endeavours to secure funding for further signage improvements from NESTrans or other similar organisation.

Food and Beverages

- 4.16. The Franchisee shall use reasonable endeavours to procure that food and beverages are available at this Station from commercial retailers at this Station for a reasonable period immediately before the scheduled departure and for a reasonable period immediately after the later of the scheduled and actual arrival of Passenger Services at this Station.
- 4.17. The Franchisee shall collaborate with nearby hotels and restaurants to seek to secure the availability of the provision of services to users of the Passenger Services which are not available at this Station or from the Passenger Services for a reasonable period immediately before and for a reasonable period after the later of the scheduled and actual arrival of Passenger Services at this Station.

5. Inverness

In respect of the Station at Inverness:

Waiting Room

- 5.1. The Franchisee shall procure décor improvements to the waiting room allocated for users of the Passenger Services.

Business/First Class Lounge

- 5.2. The Franchisee shall procure the refurbishment as the Authority shall approve (such approval not to be unreasonably withheld or delayed) of the business/first class (sleeper) lounge at this Station. The Franchisee shall provide an investment of [redacted text] in respect of such refurbishment to include new carpets, furniture, guest facilities and window graphics.
- 5.3. The Franchisee shall procure use of the business/first class (sleeper) lounge for users of the Passenger Services. The charge associated with such use shall be agreed in the commercial agreement with the ScotRail Franchisee and paid directly by the Franchisee to the ScotRail Franchisee.
- 5.4. The Franchisee shall procure the presence of the Franchisee's staff to assist users of the Passenger Services in the evening prior to final boarding of the Passenger Services.

Showers

- 5.5. The Franchisee shall procure access to the existing showers for users of the Passenger Services. The charge associated with such use shall be agreed in the commercial agreement with the ScotRail Franchisee and paid directly by the Franchisee to the ScotRail Franchisee.
- 5.6. The Franchisee shall procure that towelling, soap and shampoo shall be available to

users of the Passenger Services who use the showers described above.

Totem and Wi-Fi

- 5.7. The Franchisee shall install a Totem.
- 5.8. The Franchisee shall provide and maintain free wi-fi via the Totem which shall act as a wi-fi hotspot.
- 5.9. The Franchisee shall install and maintain wi-fi in the sleeper lounge which users of the Passenger Services can access.

Baggage and Luggage

- 5.10. The Franchisee shall procure that left luggage facilities or lockers are consistently and preferentially priced for users of the Passenger Services.
- 5.11. From the New Train Fleet Service Date, the Franchisee shall provide a means to facilitate check-in of baggage and issue of baggage receipts for users of the Passenger Services who (a) are using Pod Flatbed accommodation or Cradle Seat accommodation or (b) require to store large items of luggage in the dedicated secure luggage space. The Franchisee shall use a wheeled baggage roll cage to receive and transfer such baggage onto the Passenger Services and shall provide suitable security arrangements for such baggage.
- 5.12. The Franchisee shall provide a branded reception podium to check-in users of the Passenger Services.

Signage

- 5.13. The Franchisee shall procure:
 - 5.13.1. enhanced external station signage indicating that such Station is a gateway to the network of Stations which shall include the mounting of signage at the entrance to such Station;
 - 5.13.2. improvement to the wayfinding signage for key station facilities for use by users of the Passenger Services; and
 - 5.13.3. improved directional signage to key off-station locations, including bus stops and taxi ranks.
- 5.14. The Franchisee shall collaborate with the ScotRail Franchisee on signage strategy.
- 5.15. The Franchisee shall use reasonable endeavours to secure funding for further signage improvements from HITrans or other similar organisation.

Food and Beverages

- 5.16. The Franchisee shall use reasonable endeavours to procure that food and beverages are available at this Station, from commercial retailers at this Station, for a reasonable period immediately before the scheduled departure and for a reasonable period after the later of the scheduled and actual arrival of Passenger Services at this Station.
- 5.17. The Franchisee shall collaborate with nearby hotels and restaurants to seek to secure the availability of the provision of services to users of the Passenger Services which are not available to those users of the Passenger Services at this Station or

from the Passenger Services, for a reasonable period immediately before the scheduled departure and for a reasonable period after the later of the scheduled or actual arrival of Passenger Services at this Station.

6. **Fort William**

In respect of the Station at Fort William:

Waiting Area on the Concourse

6.1. The Franchisee shall procure décor improvements to the waiting area on the concourse.

Lochaber Café

6.2. The Franchisee shall procure the improvement of the Lochaber Café facilities for the benefit of the users of the Passenger Services with an investment contribution of [redacted text].

Showers

6.3. The Franchisee shall procure access to the existing showers for users of the Passenger Services. The charge associated with such use shall be agreed in the commercial agreement with the ScotRail Franchisee, and paid directly by the Franchisee to the ScotRail Franchisee.

6.4. The Franchisee shall procure that towelling, soap and shampoo shall be available to users of the Passenger Services who use the showers described above.

Totem and Wi-Fi

6.5. The Franchisee shall install a Totem.

6.6. The Franchisee shall provide and maintain free wi-fi via the Totem which shall act as a wi-fi hotspot.

Baggage and Luggage

6.7. The Franchisee shall procure that left luggage facilities or lockers are consistently and preferentially priced for users of the Passenger Services.

6.8. From the New Train Fleet Service Date, the Franchisee shall provide a means to facilitate check-in of baggage and issue of baggage receipts for users of the Passenger Services who (a) are using Pod Flatbed accommodation or Cradle Seat accommodation or (b) require to store large items of luggage in the dedicated secure luggage space. The Franchisee shall use a wheeled baggage roll cage to receive and transfer such baggage onto the Passenger Services and shall provide suitable security arrangements for such baggage.

6.9. The Franchisee shall provide and use a branded reception podium to check-in users of the Passenger Services.

Signage

6.10. The Franchisee shall procure:

6.10.1. enhanced external station signage indicating that such Station is a gateway to the network of Stations which shall include the mounting of signage at the

entrance to such Station;

- 6.10.2. improvement to the wayfinding signage for key station facilities for use by users of the Passenger Services; and
- 6.10.3. improved directional signage to key off-station locations, including bus stops and taxi ranks.

6.11. The Franchisee shall collaborate with the ScotRail Franchisee on signage strategy.

6.12. The Franchisee shall use reasonable endeavours to secure funding for further signage improvements from HITrans or other similar organisation.

Food and Beverages

6.13. The Franchisee shall use reasonable endeavours to procure that food and beverages are available at this Station, or from commercial retailers at this Station (including the Lochaber Café), for a reasonable period before the scheduled departure and for a reasonable period after the later of the scheduled and the actual arrival of Passenger Services at this Station.

6.14. The Franchisee shall collaborate with nearby hotels and restaurants to seek to secure the availability of the provision of services to users of the Passenger Services which are not available to those users of the Passenger Services at this Station or from the Passenger Services for a reasonable period before the scheduled departure and for a reasonable period after the later of the scheduled and the actual arrival of Passenger Services at this Station.

7. Stirling

In respect of the Station at Stirling:

Waiting Room

- 7.1. The Franchisee shall procure the following enhancements of the waiting room allocated for users of the Passenger Services:
 - 7.1.1. improved interior layouts; and
 - 7.1.2. aesthetic, lighting and décor improvements.

Showers

- 7.2. The Franchisee shall procure investment in two new showers, one each for separate male and female use which shall entail a remodelling of the existing toilets on the Station concourse.
- 7.3. The Franchisee shall procure access to the new showers for users of the Passenger Services. The charge associated with such use shall be agreed in the commercial agreement with the ScotRail Franchisee and shall be paid directly by the Franchisee to the ScotRail Franchisee.
- 7.4. The Franchisee shall procure that towelling, soap and shampoo shall be available to users of the Passenger Services who use the showers described above.

Totem and Wi-Fi

- 7.5. The Franchisee shall install a Totem.

7.6. The Franchisee shall provide and maintain free wi-fi via the Totem which shall act as a wi-fi hotspot.

Signage

7.7. The Franchisee shall procure:

- 7.7.1. enhanced external station signage indicating that such Station is a gateway to the network of Stations which shall include the mounting of signage at the entrance to such Station;
- 7.7.2. improvement to the wayfinding signage for key station facilities (including the new showers) for use by users of the Passenger Services; and
- 7.7.3. improved directional signage to key off-station locations, including bus stops and taxi ranks.

7.8. The Franchisee shall collaborate with the ScotRail Franchisee on signage strategy.

7.9. The Franchisee shall use reasonable endeavours to secure funding for further signage improvements from TACTran or other similar organisation.

Controlled Access to Station Facilities

7.10. The Franchisee shall procure access control by magnetic lock or keypad to enable users of the Passenger Services to access the waiting room and toilets.

8. Dundee

In respect of the Station at Dundee:

Waiting Room

8.1. The Franchisee shall procure the following enhancements of the waiting room allocated for users of the Passenger Services:

- 8.1.1. improved interior layouts; and
- 8.1.2. aesthetic, lighting and décor improvements.

Showers

8.2. The Franchisee shall procure investment in two new showers, one each for separate male and female use which shall entail a remodelling of the existing toilets on the Station concourse.

8.3. The Franchisee shall procure access to the new showers for users of the Passenger Services. The charge associated with such use shall be agreed in the commercial agreement with the ScotRail Franchisee and shall be paid by the Franchisee directly to the ScotRail Franchisee.

8.4. The Franchisee shall procure that towelling, soap and shampoo shall be available to users of the Passenger Services who use the showers described above.

Totem and Wi-Fi

8.5. The Franchisee shall install a Totem.

8.6. The Franchisee shall provide and maintain free wi-fi via the Totem which shall act as

a wi-fi hotspot.

Signage

8.7. The Franchisee shall procure:

- 8.7.1. enhanced external station signage indicating that such Station is a gateway to the network of Stations which shall include the mounting of signage at the entrance to such Station;
- 8.7.2. improvement to the wayfinding signage for key station facilities (including the new showers) for use by users of the Passenger Services; and
- 8.7.3. improved directional signage to key off-station locations, including bus stops and taxi ranks.

8.8. The Franchisee shall collaborate with the ScotRail Franchisee on signage strategy.

8.9. The Franchisee shall use reasonable endeavours to secure funding for further signage improvements from TACTran or other similar organisation.

Controlled Access to Station Facilities

8.10. The Franchisee shall procure access control by magnetic lock or keypad to enable users of the Passenger Services to access the waiting room and toilets.

9. Perth

In respect of the Station at Perth:

Waiting Room

9.1. The Franchisee shall procure the following enhancements of the waiting room allocated for users of the Passenger Services:

- 9.1.1. improved interior layouts; and
- 9.1.2. aesthetic, lighting and décor improvements.

Showers

9.2. The Franchisee shall procure investment in two new showers, one each for separate male and female use which shall entail a remodelling of the existing toilets on the Station concourse.

9.3. The Franchisee shall procure access to the new showers for users of the Passenger Services. The charge associated with such use shall be agreed in the commercial agreement with the ScotRail Franchisee and shall be paid directly by the Franchisee to the ScotRail Franchisee.

9.4. The Franchisee shall procure that towelling, soap and shampoo shall be available to users of the Passenger Services who use the showers described above.

Totem and Wi-Fi

9.5. The Franchisee shall install a Totem.

9.6. The Franchisee shall provide and maintain free wi-fi via the Totem which shall act as a wi-fi hotspot.

Signage

9.7. The Franchisee shall procure:

- 9.7.1. enhanced external station signage indicating that such Station is a gateway to the network of Stations which shall include the mounting of signage at the entrance to such Station;
- 9.7.2. improvement to the wayfinding signage for key station facilities (including the new showers) for use by users of the Passenger Services; and
- 9.7.3. improved directional signage to key off-station locations, including bus stops and taxi ranks.

9.8. The Franchisee shall collaborate with the ScotRail Franchisee on signage strategy.

9.9. The Franchisee shall use reasonable endeavours to secure funding for signage improvements from TACTran or other similar organisation.

Controlled Access to Station Facilities

9.10. The Franchisee shall procure access control by magnetic lock or keypad to enable users of the Passenger Services to access the waiting room and toilets.

10. Aviemore

In respect of the Station at Aviemore:

Waiting Room

10.1. The Franchisee shall procure décor improvements in the existing waiting room.

Showers

10.2. The Franchisee shall procure access to the showers located [redacted text] for users of the Passenger Services. The charge associated with such use shall be agreed in the commercial agreement [redacted text], and paid directly by the Franchisee [redacted text].

10.3. The Franchisee shall procure that towelling, soap and shampoo shall be available to users of the Passenger Services who use the showers described above.

Totem and Wi-Fi

10.4. The Franchisee shall install a Totem.

10.5. The Franchisee shall provide and maintain free wi-fi via the Totem which shall act as a wi-fi hotspot.

Signage

10.6. The Franchisee shall procure:

- 10.6.1. enhanced external station signage indicating that such Station is a gateway to the network of Stations which shall include the mounting of signage at the entrance to such Station;
- 10.6.2. improvement to the wayfinding signage for key station facilities for use by users of the Passenger Services; and

10.6.3. improved directional signage to key off-station locations, including showers [redacted text], bus stops and taxi ranks.

10.7. The Franchisee shall collaborate with the ScotRail Franchisee on signage strategy.

10.8. The Franchisee shall use reasonable endeavours to secure funding for further signage improvements from HITrans or other similar organisation.

Controlled Access to Station Facilities

10.9. The Franchisee shall procure access control by magnetic lock or keypad to enable users of the Passenger Services to access the waiting room and toilets.

11. Crianlarich

In respect of the Station at Crianlarich:

Waiting Room

11.1. In respect of the Station at Crianlarich, the Franchisee shall procure décor improvements in the existing waiting room.

Showers

11.2. The Franchisee shall procure access to the showers located [redacted text], in Crianlarich for users of the Passenger Services. The charge associated with such use shall be agreed in the commercial agreement [redacted text], and paid directly by the Franchisee [redacted text].

11.3. The Franchisee shall procure that towelling, soap and shampoo shall be available to users of the Passenger Services who use the showers described above.

Totem and Wi-Fi

11.4. The Franchisee shall install a Totem.

11.5. The Franchisee shall provide and maintain free wi-fi via the Totem which shall act as a wi-fi hotspot.

Signage

11.6. The Franchisee shall procure:

11.6.1. enhanced external station signage indicating that such Station is a gateway to the network of Stations which shall include the mounting of signage at the entrance to such Station;

11.6.2. improvement to the wayfinding signage for key station facilities for use by users of the Passenger Services; and

11.6.3. improved directional signage to key off-station locations, including showers [redacted text], bus stops and taxi ranks.

11.7. The Franchisee shall collaborate with the ScotRail Franchisee on signage strategy.

11.8. The Franchisee shall use reasonable endeavours to secure funding for further signage improvements from TACTran or other similar organisation.

Controlled Access to Station Facilities

11.9. The Franchisee shall procure access control by magnetic lock or keypad to enable users of the Passenger Services to access the waiting room and toilets.

12. Pitlochry, Gleneagles, Dunblane, Falkirk Grahamston, Stonehaven, Montrose, Arbroath, Leuchars (for St Andrews), Kirkcaldy, Inverkeithing, Helensburgh Upper, Motherwell (for the purposes of this paragraph 12 referred to as "Tier 3 Stations")

In respect of each of the Tier 3 Stations:

12.1. The Franchisee shall procure the following enhancements of each waiting room allocated for users of the Passenger Services:

- 12.1.1. improved interior layouts; and
- 12.1.2. aesthetic, lighting and décor improvements.

Totem and Wi-Fi

12.2. The Franchisee shall install a Totem.

12.3. The Franchisee shall provide and maintain free wi-fi via the Totem which shall act as a wi-fi hotspot.

Signage

12.4. The Franchisee shall procure:

- 12.4.1. enhanced external station signage indicating that each such Station is a gateway to the network of Stations which shall include the mounting of signage at the entrance to each such Station;
- 12.4.2. improvement to the wayfinding signage for key station facilities for use by users of the Passenger Services; and
- 12.4.3. improved directional signage to key off-station locations, including bus stops and taxi ranks.

12.5. The Franchisee shall collaborate with the ScotRail Franchisee or Network Rail (as appropriate), on signage strategy.

12.6. The Franchisee shall use reasonable endeavours to secure funding for further signage improvements from the relevant regional transport partnership or other similar organisation.

Controlled Access to Station Facilities

12.7. The Franchisee shall procure access control by magnetic lock or keypad to enable users of the Passenger Services to access the waiting room and toilets where such waiting room and/or toilets will be locked when the Passenger Services arrives/departs.

13. Glasgow Queen Street, Carstairs, Carrbridge, Kingussie, Newtonmore, Dalwhinnie, Blair Atholl, Dunkeld & Birnham, Carnoustie, Spean Bridge, Roy Bridge, Tulloch, Corrour, Rannoch, Dalmuir, Ardlui, Arrochar & Tarbet, Garelochhead, Dumbarton Central, Upper Tyndrum, Bridge of Orchy, Watford Junction, Carlisle, Preston and Crewe (for the purposes of this paragraph 13

referred to as "Tier 4 Stations")

13.1. In respect of the Stations at Dunkeld and Birnham, Roy Bridge, Bridge of Orchy, Upper Tyndrum and Garelochhead, the Franchisee shall procure that the Totem shall be incorporated into a waiting shelter.

In respect of each of the Tier 4 Stations:

Totem and Wi-Fi

13.2. The Franchisee shall install a Totem.

13.3. The Franchisee shall provide and maintain free wi-fi via the Totem which shall act as a wi-fi hotspot.

Signage

13.4. The Franchisee shall procure:

- 13.4.1. enhanced external station signage indicating that each such Station is a gateway to the network of Stations which shall include the mounting of signage at the entrance to each such Station;
- 13.4.2. improvement to the wayfinding signage for key station facilities for use by users of the Passenger Services; and
- 13.4.3. improved directional signage to key off-station locations, including bus stops and taxi ranks.

13.5. The Franchisee shall collaborate with the ScotRail Franchisee or Network Rail (as appropriate), on signage strategy.

13.6. The Franchisee shall use reasonable endeavours to secure funding for further signage improvements from the relevant Regional Transport Partnership or other similar organisation.

Controlled Access to Station Facilities

13.7. The Franchisee shall procure access control by magnetic lock or keypad to enable users of the Passenger Services to access the waiting room and toilets where such waiting room and/or toilets will be locked when the Passenger Services arrive/depart.

14. London Euston

In respect of the Station at London Euston:

Business/First Class Lounge

14.1. The Franchisee shall procure access for use of such business/first class lounge by users of the Passenger Services. The charge associated with such use shall be agreed in the commercial agreement with Virgin Trains (or a successor operator of the business/first class lounge), and paid directly by the Franchisee to Virgin Trains (or a successor operator of the business/first class lounge).

14.2. The Franchisee shall procure the presence of Franchisee staff to assist users of the Passenger Services in the evening prior to final boarding of the Passenger Services.

Showers and Toilets

14.3. The Franchisee shall procure access to the existing showers in the business/first class lounge for users of the Passenger Services. The charge associated with such use shall be agreed in the commercial agreement with Virgin Trains (or a successor operator of the business/first class lounge), and paid directly by the Franchisee to Virgin Trains (or a successor operator of the business/first class lounge).

14.4. The Franchisee shall procure that Virgin Trains (or a successor operator of the business/first class lounge) shall refresh the appearance of the existing shower enclosures and shall provide an investment contribution to the refurbishment of the showers in the business/first class lounge. The provision of such investment contribution by the Franchisee shall be subject to the Virgin Trains' plans for refurbishment in respect of the lounge extension being progressed.

14.5. The Franchisee shall procure that towelling, soap and shampoo shall be available to users of the Passenger Services who use the showers described above.

Totem and Wi-Fi

14.6. The Franchisee shall install a Totem.

14.7. The Franchisee shall provide free wi-fi via the Totem which shall act as a wi-fi hotspot.

14.8. The Franchisee shall procure, and shall procure the continuation of, the availability of wi-fi in the business/first class lounge which users of the Passenger Services can access.

Baggage and Luggage

14.9. The Franchisee shall procure that left luggage facilities or lockers are consistently and preferentially priced for users of the Passenger Services .

14.10. From the New Train Fleet Service Date, the Franchisee shall provide a means to facilitate check-in of baggage and issue of baggage receipts for users of the Passenger Services who (a) are using Pod Flatbed accommodation or Cradle Seat accommodation or (b) require to store large items of luggage in the dedicated secure luggage space. The Franchisee shall use a wheeled baggage roll cage to receive and transfer such baggage onto the Passenger Services and shall provide suitable security arrangements for such baggage.

14.11. The Franchisee shall provide and use a branded reception podium to check-in users of the Passenger Services.

Signage

14.12. The Franchisee shall procure:

14.12.1. enhanced external station signage indicating that such Station is a gateway to the network of Stations which shall include the mounting of signage at the entrance to such Station;

14.12.2. improvement to the wayfinding signage for key station facilities for use by users of the Passenger Services; and

14.12.3. improved directional signage to key off-station locations, including bus stops and taxi ranks.

14.13. The Franchisee shall collaborate with Network Rail on signage strategy.

Platform 1

14.14. The Franchisee shall procure a branded presence at platform 1.

Food and Beverages

14.15. The Franchisee shall use reasonable endeavours to procure that food and beverages are available at this Station, from commercial retailers at this Station, for a reasonable period immediately before the scheduled departure and for a reasonable period after the later of the scheduled and actual arrival of Passenger Services at this Station.

14.16. The Franchisee shall collaborate with nearby hotels and restaurants to seek to secure the availability of the provision of services to users of the Passenger Services which are not available to those users of the Passenger Services at this Station or from the Passenger Services, for a reasonable period immediately before the scheduled departure and for a reasonable period after the later of the scheduled and actual arrival of Passenger Services at this Station.

SCHEDULE 6.3

**THIS IS SCHEDULE 6.3 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT
BETWEEN THE AUTHORITY AND SERCO CALEDONIAN SLEEPERS LIMITED**

PASSENGER EXPERIENCE AND MARKETING**Part 1 Passenger Experience****1. Partnering [redacted text]**

1.1 The Franchisee shall enter into a commercial agreement [redacted text] in respect of the provision [redacted text], of consultancy services, such as:

- 1.1.1 accommodation design and presentation;
- 1.1.2 on board food and drink, including menu design, preparation and logistics;
- 1.1.3 product provenance;
- 1.1.4 "Guest Excellence Programme", including staff training and development;
- 1.1.5 quality management;
- 1.1.6 product refresh programme; and
- 1.1.7 sales and distribution channels.

1.2 If for whatever reason, the Franchisee shall cease to work with [redacted text], the Franchisee shall notify the Authority and propose a suitable alternative replacement for approval by the Authority (such approval not to be unreasonably withheld or delayed) references herein [redacted text] thereafter shall be read as references to such alternatives as are agreed between the parties from time to time.

1.3 The Franchisee shall procure that its commercial agreements with any providers or sub-contractors in respect of any services referred to in this Schedule 6.3 shall contain a provision that such providers or sub-contractors shall not bring the Authority or the Caledonian Sleeper Franchise into disrepute (and shall enforce the same where called upon to do so by the Authority).

2. On Board Entertainment

2.1 From the New Train Fleet Service Date, the Franchisee shall stream on-board entertainment over wi-fi which users of the Passenger Services will be able to access from their own tablets, laptops and smartphones. Such on-board entertainment shall include :

- 2.1.1 films;
- 2.1.2 TV catch-up and news feeds;
- 2.1.3 a selection of Scottish audiobooks;

- 2.1.4 specific Scottish entertainment, including Scottish drama and Scottish comedy; and
- 2.1.5 tourist information appropriate to the destination.

2.2 In the Club Car, the Franchisee shall provide users of the Passenger Services with access to a small library with a minimum of 50 books. The Franchisee shall refresh the content of such library on a quarterly basis and, as a minimum, such library shall include:

- 2.2.1 classic and contemporary Scottish literature, from Sir Arthur Conan-Doyle to James Robertson; and
- 2.2.2 a children's section, which the Franchisee will work with children's book experts such as the team at the Scottish Children's Book Awards to create.

2.3 In the Club Car, the Franchisee shall provide users of the Passenger Services with access to a selection of daily national and regional newspapers.

2.4 In the Club Car, the Franchisee shall provide users of the Passenger Services with access to a small selection of board games. The Franchisee shall refresh the selection of such board games from time to time.

2.5 In the Club Car, the Franchisee shall, from time to time, use the Club Car to host special events. Such special events will include:

- 2.5.1 Comedy nights;
- 2.5.2 Whisky tasting nights;
- 2.5.3 Literary events;
- 2.5.4 Music events; and
- 2.5.5 Halloween events themed to attract families.

2.6 From the New Train Fleet Service Date, the Franchisee shall make a screen available in the Club Car for certain special events, such as sporting events, programmes related to destinations in respect of the Passenger Services and Scottish events such as the Royal Edinburgh Military Tattoo. The Franchisee shall ensure that such screen shall be concealed when not in use.

2.7 The initial 'splash' page on accessing the on board wi-fi portal will have GPS enabled route map with information and pop-ups of special points of interest along the route. Real time updates of the journey progress will be shown on screen with any potential service interruptions highlighted to allow for onward travel arrangements to be amended in the unlikely event of a delay.

2.8 Movies, news, travel and onboard information will be downloaded by the Franchisee from the internet on a daily basis to an onboard server.

2.9 The Franchisee shall ensure that any books, games or other materials made available to users of the Passenger Services shall be in good condition and shall review the condition of the same on at least a quarterly basis and replace any that fall below that standard.

3. NET Promoter Score

3.1 The Franchisee shall use the Net Promoter Score to help measure the general satisfaction of users of the Passenger Services and capture information on how likely

a user of the Passenger Services is to positively recommend the Passenger Services. The Franchisee shall measure the Net Promoter Score for Passenger Services as soon as possible after the Franchise Commencement Date and shall use this figure as a benchmark to track improvement of Passenger Services as perceived by users of the Passenger Services. The Franchisee shall seek to improve the Net Promoter Score to at least 90% within 12 months after the New Train Fleet Service Date.

For the purposes of this paragraph 3.1, "**Net Promoter Score**" means the global customer loyalty metric, used across the service industry which is based on the central question: 'How likely are you to recommend our service to your friends, family and colleagues?

4. Hospitality Accreditations

4.1 Within one year following the New Train Fleet Service Date, the Franchisee shall use all reasonable endeavours to obtain hospitality accreditations from organisations which measure the position of the Passenger Services within the Scottish and international tourism industry: [redacted text].

5. Boarding Times

5.1 Subject to Paragraphs 5.2 and 5.3 of this Schedule 6.3, within 18 months of the Franchise Commencement Date, the Franchisee shall use best endeavours to introduce the following earlier boarding times for Passengers at the starting locations in the table below.

Service	Current Boarding Time	Proposed Earlier Boarding Time	Departure Time
Aberdeen to London Euston	21.10	20.00	21.43
Edinburgh to London Euston	23.00	21.00	23.40
Fort William to London Euston	19.20	19.20	19.50
Glasgow to London Euston	22.00	21.00	23.40
Inverness to London Euston	19.45	19.45	20.44
London Euston to Aberdeen	20.30	20.00	21.15
London Euston to Edinburgh	23.00	21.45	23.50
London Euston to Fort William	20.30	20.00	21.15

London Euston to Glasgow	23.00	21.45	23.50
London Euston to Inverness	20.30	20.00	21.15

5.2 In order to achieve the earlier boarding times described in the table above, the Franchisee shall work with the relevant Station Facility Owners to secure platform availability and associated services, and work with Network Rail to facilitate Train Slots for the earlier movement of the Vehicles from Depots to Stations.

5.3 The Franchisee shall use best endeavours to maintain such earlier boarding times throughout the Franchise Term. If, having exhausted all reasonable endeavours, the Franchisee nonetheless anticipates any change to such boarding times, then the Franchisee shall notify and obtain approval from the Authority (such approval not to be unreasonably withheld or delayed) as soon as reasonably practicable.

6. Use by staff of tablet devices

6.1 The Franchisee shall procure that on-train staff shall use a tablet device to check in users of the Passenger Services. The Franchisee shall procure that on-train staff will also be able to use their tablets to sell meal options and arrange wake-up calls, as well as offer complimentary upgrades and suggest supplementary services for users of the Passenger Services to purchase.

7. Standardised check-in process and Luggage

7.1 The Franchisee shall launch a new standardised check-in process within six months of the Franchise Commencement Date. The use of such a standardised check-in process shall ensure consistent checks take place before a user of the Passenger Services boards the train thus mitigating the risk of unauthorised people accessing the train.

7.2 The Franchisee shall ensure that all users of the Passenger Services shall be able to store large items of luggage in a dedicated, secure luggage space in the portion of the train which is appropriate to each user of the Passenger Services' destination. Each such portion of the train will only be accessible by the Franchisee's staff and will be free of charge to all users of the Passenger Services. For the avoidance of doubt, where it is necessary to move luggage from one part of the train to another in order to ensure that such luggage is in the appropriate portion of the train given each user of the Passenger Services' destination, such movement of luggage shall be carried out by the Franchisee's staff.

8. Catering and dining

8.1 The Franchisee shall procure that the catering menus for the Passenger Services shall be changed four times per year and the Franchisee's whole catering approach shall be refreshed by the Franchisee every five years.

8.2 The Franchisee shall ensure that users of the Passenger Services shall be able to pre-order catering during the booking process and again at check-in.

8.3 The Franchisee shall ensure that users of the Passenger Services staying in Cabins will have the ability to reserve a table for dining in the Club Car during the booking process and again at check-in.

8.4 From the New Train Fleet Service Date, the Franchisee shall ensure that all users of the Passenger Services may order meals and drinks from the same brasserie menu

from on-board staff or via the App. The Franchisee shall ensure that such orders can be placed by users of the Passenger Services whilst in their Cabins, at their Pod Flatbed and at their Cradle Seat, and such orders shall be served to such users whilst in their Cabins, at their Pod Flatbed and at their Cradle Seat.

- 8.5 The Franchisee shall ensure that children aged 12 and under will eat for free in respect of items chosen from the children's section of the brasserie menu.
- 8.6 The Franchisee shall ensure that orders from users of the Passenger Services in the Club Car for food and drinks from the brasserie menu shall be taken and served at the tables in the Club Car.
- 8.7 If for any reason, the Franchisee is unable to provide any form of catering service to users of the Passenger Services who have requested such catering service, the on-board staff shall offer a refreshments voucher to such users.
- 8.8 The Franchisee shall publish clear details of the brasserie menu on the Website and on the app so that it is available to users of the Passenger Services when they make reservations for the Passenger Services.
- 8.9 The Franchisee shall ensure that users of the Passenger Services shall be able to pay for their travel, dinner, bed and breakfast in one transaction.
- 8.10 The Franchisee shall collaborate with [redacted text], or such other provider as the Authority may approve (such approval not to be unreasonably withheld or delayed), to facilitate partnership with SME producers and suppliers.
- 8.11 The Franchisee shall offer a full bar service throughout the journey from a bar counter in the Club Car. Drinks shall include:
 - Scottish and London micro-brewery beers
 - Whisky from established and emerging distilleries
 - Islay and London Gins
 - flavoured Caithness vodkas
 - wines by the bottle and glass
 - small selection of champagnes and proseccos
 - soft drinks
- 8.12 The Franchisee shall use a central production unit close to [redacted text] referred to in paragraph 8.10. The central production unit shall prepare the Franchisee's catering menu for delivery to the Franchisee on a daily basis.
- 8.13 The Franchisee shall provide food and drink service in the Club Car [redacted text] standard.

9. Sleep

- 9.1 From the New Train Fleet Service Date, the Franchisee shall ensure that the Website, App and on-board literature will explain how the Franchisee has incorporated sleep enhancing design features and furnishings across the Cradle Seats, Pod Flatbeds and Cabins in the New Train Fleet.
- 9.2 The Franchisee shall produce a 'Good Sleep Guide' in conjunction [redacted text] offering tips and advice to users of the Passenger Services in respect of how to enjoy a good night's sleep.
- 9.3 The Franchisee shall ensure that such 'Good Sleep Guide' shall be available on the Website and via the App, and shall be contained in the 'sleep pack' which shall be provided to all users of the Passenger Services. Such 'sleep packs' shall also contain

eye masks and ear plugs. The Franchisee shall also provide a sleep enhancing pillow spray as part of their amenity kit to the users of the Passenger Services who are travelling in Cabins. If at the time of travelling, a user of the Passenger Services notifies a member of on-board staff that a sleep pack or, if relevant, a pillow spray has not been provided, the member of on-board staff shall provide such sleep pack or pillow spray, or, if for any reason, a sleep pack or pillow spray is not available, the member of on-board staff shall offer a refreshments voucher to such user of the Passenger Services.

9.4 The Franchisee shall ensure that users of the Passenger Services travelling in Cabins and, when introduced as part of the New Train Fleet, Pod Flatbeds, shall be able to (a) indicate they do not want to be disturbed by use of a 'do not disturb' sign and (b) order a morning wake-up call by using the App or requesting a call from a member of the on-board staff.

10. Key Suppliers

10.1 The Franchisee shall procure bed mattresses for the New Train Fleet from [redacted text]. If the Franchisee is unable to procure bed mattresses from [redacted text], the Franchisee shall propose an alternative supplier of bed mattresses for the approval of the Authority (such approval not to be unreasonably withheld or delayed).

10.2 The Franchisee shall procure laundry services from [redacted text]. If the Franchisee is unable to procure laundry services from [redacted text], the Franchisee shall propose an alternative supplier of laundry services for the approval of the Authority (such approval not to be unreasonably withheld or delayed). The Franchisee's linen exchange will have a one stop drop off and collection base in Edinburgh using [redacted text]. The Franchisee shall employ best practice to ensure sustainability in the linen procurement process. By using Fairtrade approved organisations, a premium of \$0.05 per kg will be reinvested in projects that benefit the members and their communities.

10.3 In conjunction with the Franchisee's hot beverage partner, every six months the Franchisee shall make donations to social enterprise projects with a socio-economic or environmental focus in association with the governing organisation 'Social Enterprise Scotland'. The Franchisee shall notify the Authority of the level of such donations.

10.4 The Franchisee shall enter into a commercial agreement with [redacted text] or such other provider as the Authority may approve (such approval not to be unreasonably withheld or delayed) in respect of the provision of accessibility consultancy services. If for whatever reason during the Franchise Term, the Franchisee shall cease to work with [redacted text], the Franchisee shall notify the Authority and propose a suitable alternative replacement for approval by the Authority (such approval not to be unreasonably withheld or delayed).

11. Souvenirs

11.1 The Franchisee shall launch a range of products which are relevant to the journey and the final destination. Such products may include a quality range of guide books, maps, novels, post cards of destinations, model train, soaps and gift packages.

12. Safety and Security

12.1 As soon as practicable following the Franchise Commencement Date, the Franchisee shall organise safety and security workshops with the British Transport Police for on board staff.

12.2 From the New Train Fleet Service Date, the Franchisee shall ensure that CCTV will be in operation in all public areas of the train: in the Club Car, the Pod Coaches and Seated Coaches, and in the corridors of the Sleeper Coaches and Hybrid Coaches.

13. Passenger Communication

13.1 The Franchisee shall ensure that all feedback from users of the Passenger Services shall be acknowledged by the Franchisee within one working day of receipt of such feedback, with a target of one working week to investigate and respond to such feedback.

13.2 Without prejudice to any right a passenger may have in terms of the Passenger's Charter and the provisions of Paragraphs 5.1 (ii) and (iii) of Schedule 1.4, the Franchisee shall give the team leaders within its staff the authority to offer compensation during the journey and such compensation shall be set at an appropriate level for the issue in question: for example, complimentary refreshments, an upgraded accommodation offering, a voucher for future travel, etc.

13.3 The Franchisee shall ensure that the Website and App have a section devoted to customer feedback. Such section shall display current turnaround times so guests' expectations are managed from the start.

13.4 If a user of the Passenger Services remains dissatisfied in terms of the proposed resolution offered by the Franchisee in respect of a complaint, the Franchisee undertakes to refer the complaint to the Passenger's Council, who shall conduct an independent review of the case.

13.5 The Franchisee shall send a pre departure email to each user of the Passenger Services which shall summarise key journey details, as well as reminding such user of the chance to prearrange food and drink choices, and offer travel advice and tips about their destination.

13.6 At the end of each Reporting Period, the Franchisee shall publish its performance against a range of measures covering the following areas:

13.6.1 punctuality and regularity;

13.6.2 guest ratings on:

- station experience
- accommodation
- food and drink
- overall rating;

13.6.3 use of Scottish products and services; including from SME and social enterprise sources;

13.6.4 'Green Scorecard':

- carbon footprint
- recycling
- food and drink miles;

information about such performance shall be published on all our passenger communication channels (Website, email, Totem etc); and

13.6.5 the guest rating on accommodation shall achieve at least a 20% improvement within 12 months of the New Train Fleet Service Date and thereafter the Franchisee shall use all reasonable endeavours to at least maintain such rating throughout the remainder to the Franchise Term.

- 13.7 The Franchisee shall ensure that every user of the Passenger Services shall receive an email from the Franchisee within 48 hours of completing their journey. Such email shall invite such user to rate the Franchisee on a number of key areas across the passenger journey, including cleanliness, catering, staff welcome, signage/wayfinding, toilet and shower facilities, and waiting room and lounge facilities. The Franchisee shall incentivise this process with prizes, discounts, etc. being available for those users who complete the survey.
- 13.8 Where, from time to time, the Franchisee makes any new facilities available to users of the Passenger Services, or makes use of any facilities operated by a third party available to users of the Passenger Services, the Franchisee shall demonstrate by survey results to the Authority the proportion of users of the Passenger Services who are aware of such facilities and the proportion of these users who have made use of such facilities. The Franchisee shall identify and implement any wayfinding and messaging improvements that any such review identifies within 6 months of the completion of any such survey.

14. People

- 14.1 The Franchisee shall ensure that it will be a requirement for all of its staff who are appointed as Guest Service Host shall qualify at SVQ level 3 in Hospitality within one year of appointment to such role.

15. Refresh of the Initial Train Fleet

- 15.1 Within one week of the Franchise Commencement Date, the Franchisee shall complete a deep clean of all Vehicles in the Initial Train Fleet. Within two weeks of the Franchise Commencement Date, the Franchisee shall install new brand decals on each Vehicle, undertake a refresh of any damaged upholstery, bedding or signage, and install USB charging sockets in place of the shaving sockets in each Cabin. These works will be carried out at the vehicle maintenance Depots alongside the planned maintenance activities and will not affect the overall availability of Vehicles for service.
- 15.2 Between the Franchise Commencement Date and the New Train Fleet Service Date, the Franchisee shall ensure that the Club Car and other public areas of the Initial Train Fleet offer a comfortable environment.
- 15.3 Within one month of the Franchise Commencement Date, the Franchisee shall implement a renewal programme of the existing linen, bedding, towels and amenity kits.
- 15.4 The Franchisee will engage with [redacted text] on the dilapidations regarding the handover condition of the Initial Train Fleet to ensure that expenditure of the maintenance reserve focuses on rectifying damage, missing items and progressing any exterior damage including paint system damage. Where it is agreed that the Franchisee will carry out the work using the maintenance reserve for the Initial Train Fleet, then a programme will be prepared and shared with the Authority setting out how all issues will be resolved through the maintenance cycle during the first Franchisee Year.

Part 2 Marketing

1. Mobile App (including virtual concierge)

1.1 The Franchisee shall design and deliver an App for iOS, Android and Windows phones which will complement and integrate fully with the new Website for the Passenger Services. Such App shall enable users of the Passenger Services to:

- 1.1.1 book Caledonian Sleeper tickets as well as non-sleeper tickets;
- 1.1.2 review tickets booked and amend and upgrade tickets as required;
- 1.1.3 book ancillary items on the Passenger Services such as breakfast and a wake-up call before and during travel;
- 1.1.4 view live travel information and updates about the Passenger Services
- 1.1.5 view useful information about the Franchise Services such as which Stations have showers and disabled access;
- 1.1.6 view destination information such as weather reports and events coming up;
- 1.1.7 access external links for the booking of taxis/car hire, booking of events and destination accommodation; and
- 1.1.8 a self-management tool for customers (virtual concierge)..

1.2 The Franchisee shall maintain availability of an App (or equivalent) throughout the Franchise Term and shall update the App with further enhancements from time to time.

2. Partnerships with on-line travel websites

2.1 The Franchisee shall seek to work with on-line travel websites including [redacted text] to raise the profile of the Passenger Services and drive patronage.

3. Guest Services Contact Centre

3.1 The Franchisee shall ensure that the Guest Services Contact Centre will be able to handle calls, emails and web chat, and manage social media feeds. When the Totems are operational, the Franchisee shall ensure that the video chat functionality will be live. The Franchisee shall ensure that all staff working in the Guest Services Contact Centre shall manage all enquiries from service information to retailing tickets.

4. 12 months booking window

4.1 The Franchisee shall offer bookings up to 12 months in advance of travel unless the option is withdrawn or altered by ATOC.

5. Business-to-Business Marketing (B2B)

Co-Marketing Partnerships

5.1 In order to promote the Passenger Services, the Franchisee shall enter into partnerships with key businesses and stakeholders, such as:

- 5.1.1 VisitScotland;

- 5.1.2 VisitEngland;
- 5.1.3 Whisky distilleries; and
- 5.1.4 [redacted text]

Product and Event Co-sponsorship Partnerships and Promotional Opportunities

- 5.2 In order to promote the Passenger Services, the Franchisee shall enter into co-sponsorship partnerships and consider promotional opportunities, such as:
 - 5.2.1 [redacted text];
 - 5.2.2 [redacted text];
 - 5.2.3 Third party sponsorship / advertising; and
 - 5.2.4 Broadcast / filming opportunities.
- 5.3 The Franchisee shall work together with the organisers of the [redacted text] to co-promote both the [redacted text] and the Passenger Services. The Franchisee shall use the Club Car as a comedy venue on selected dates throughout the [redacted text]. The Franchisee shall develop sponsorship opportunities with the organisers of the [redacted text] which will generate publicity as well as giving the Franchisee access to the [redacted text] marketing channels to widen the profile of the Passenger Services further.

Corporate Travel

- 5.4 The Franchisee shall engage in B2B marketing in respect of corporate travel including
 - 5.4.1 corporate travel deals for businesses with travel needs between London and Scotland; and
 - 5.4.2 working with relevant chambers of commerce to partake in the "ticket giveaway" initiative and other relevant initiatives.

6. Writer in Residence

- 6.1 The Franchisee shall invite a writer, from time to time, to travel on the Passenger Services. The Franchisee shall invite such writer to use their time on board to write short stories that link to their experience / travel / Scotland and England as places to visit. Such short stories may be used by the Franchisee for the promotion of the Passenger Services and a selection of such stories shall, from time to time, be published on the Website or other suitable media.

7. Customer Relationship Programme (CRM)

- 7.1 The Franchisee shall develop and implement a CRM system which shall enable the collection and analysis of customer data, purchasing information, travel patterns. The use of such CRM system will support on-going communication to the customer base which shall enhance the overall customer experience as well as retain and grow such customer base. Such on-going communication shall include, pre-departure emails or telephone calls, post-journey feedback, communication of special offers and other similar communications.

8. Website Booking

8.1 The Franchisee shall ensure that the Website shall include:

- 8.1.1 a "theatre style" booking screen;
- 8.1.2 a timetable of the Passenger Services;
- 8.1.3 a bespoke booking system; and
- 8.1.4 a self-management tool for customers (virtual concierge).

9. Development of the Brand for the Caledonian Sleeper

9.1 The Franchisee shall work with the Authority to develop and implement a brand for the Passenger Services in accordance with a programme to be agreed between the parties no later than six (6) months prior to Franchise Commencement Date. Such development and implementation shall comprise:

- 9.1.1 the Franchisee shall seek and obtain approval from the Authority in respect of the Franchisee's proposals for the use of the franchise name and a new visual identity including but not limited to the application of such branding to the station enhancements referred to in Schedule 6.2 and to the Website;
- 9.1.2 development of the final design and brand guidelines by the Franchisee; and
- 9.1.3 roll-out of the branding across the Franchise Services.

SCHEDULE 7

**THIS IS SCHEDULE 7 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT
BETWEEN THE AUTHORITY AND SERCO CALEDONIAN SLEEPERS LIMITED**

Benchmarks, KPIs, and SQUIRE**Schedule 7.1: Benchmarks**

Appendix 1:	Right Time Benchmark Table
Appendix 2:	Construction and Systems

Schedule 7.2 KPIs

Appendix:	Patronage Forecast and Passenger Satisfaction Tables
------------------	---

Schedule 7.3: SQUIRE

Appendix A:	Escalation Procedure
Appendix B:	Mystery Shopper Target Scores

SCHEDULE 7.1

THIS IS SCHEDULE 7.1 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT BETWEEN THE AUTHORITY AND SERCO CALEDONIAN SLEEPERS LIMITED

Benchmarks

1. Benchmark

The Right Time Benchmark is set out in Appendix 1 (*Right Time Benchmark Table*).

2. Information Provisions

Right Time Benchmark

2.1 At the end of each Reporting Period the Franchisee shall, in accordance with the relevant requirements of Appendix 3 (*Operational Information*) to Schedule 13.2 (*Information*), report to the Authority the total proportion of trains which arrived at the locations specified below within 59 seconds of the Timetable arrival time.

- Southbound Services
 - London Euston (arrival from Edinburgh/Glasgow)
 - London Euston (arrival from Inverness/Fort William/Aberdeen)
- Northbound Services
 - Glasgow
 - Edinburgh (for Edinburgh terminating services only)
 - Fort William
 - Inverness
 - Aberdeen

2.2 For each Reporting Period, the Authority shall calculate a moving annual average of the Franchisee's performance against the Right Time Benchmark in accordance with the following formula:-

$$(A + E) / 13$$

Where:

A is ascertained as follows:-

$$([B - C] / D) \times 100$$

Where:

B is the total number of Passenger Services arriving at the locations specified in paragraph 2.1 less than or equal to 59 seconds after the time specified in paragraph 2.1, which completed 100 per cent of its scheduled journey and that called at all its scheduled stops, on the basis that:

C is ascertained as follows:

$$[(PV - AV / PV)] \times D$$

Where:

PV is the total number of Vehicles (designed principally for the carriage of passengers) planned to operate on Passenger Services as included in the Train Plan for the Reporting Period;

AV is the total number of Vehicles (designed principally for the carriage of passengers) actually operated on Passenger Services in the Reporting Period.

D is the total number of Passenger Services scheduled to arrive at each specified location in that Reporting Period.

E is the sum of the values of A in each of the preceding Reporting Periods.

2.3 In performing the calculations pursuant to paragraph 2.2, any trains arriving at the locations specified in paragraph 2.1 over 59 seconds after the time specified in paragraph 2.1 due to the occurrence or continuing effect of a Force Majeure Event shall be disregarded.

First 13 Reporting Periods of the Franchise Term

2.4 For as long as fewer than 13 Reporting Periods have elapsed following the Franchise Commencement Date, the Authority shall, for the purposes of performing the calculation referred to in paragraph 2.2, assume performance at the Target Performance Level in respect of the average of the 13 reporting periods that precede the Franchise Commencement Date.

Calculations

2.5 The Authority shall perform the calculation referred to in paragraph 2.2 rounded to 2 decimal places, with the midpoint (that is, 11.115) rounded upwards (that is, 11.12).

Notice of Performance Results

2.6 As soon as reasonably practicable after the end of each Reporting Period, the Authority shall notify the Franchisee of the result of the calculation performed pursuant to this paragraph 2.

Meaning of Train Plan

2.7 For the purposes of this Schedule 7.1, **Train Plan** shall, unless otherwise stated, mean the then current Train Plan which has been finalised pursuant to paragraph 12.2 of Schedule 1.1 (*Service Development*) and which includes any amendments thereto:

- (a) pursuant to paragraphs 3.2 and 3.5 of Schedule 1.2 (*Operating Obligations*);
- (b) pursuant to paragraph 4 of Schedule 1.2 (*Operating Obligations*), where:

- (i) such amendments are required as a consequence of Network Rail exercising its rights pursuant to the Track Access Agreement; and
- (ii) the Franchisee has complied with the provisions of such paragraph in respect thereof; and
- (c) pursuant to paragraph 3.3 of Schedule 1.2 (*Operating Obligations*), where such amendments are agreed by the Authority's response in accordance with such paragraph.

3. **Performance Levels**

Expectation of Good Performance

- 3.1 The Authority expects the Franchisee to use all reasonable endeavours to procure that in each Reporting Period during the Franchise Term, the moving annual average of the Franchisee's performance against the Right Time Benchmarks will be equal to or better than the Target Performance Level specified in the cell relating to each such Reporting Period in the Right Time Benchmark Table;

Consequences for Poor Performance

- 3.2 The consequences of the Franchisee's performance falling below (that is, is neither equal to nor worse than) the Improvement Plan Performance Levels relating to the Right Time Benchmark are set out in paragraph 3.13 of Schedule 13.2 (*Information*).
- 3.3 The Franchisee shall procure that in each Reporting Period, the moving annual average of the Franchisee's performance against the Right Time Benchmark calculated in accordance with paragraph 2.2 does not fall below (that is, is neither equal to nor worse than) the Breach Performance Levels and the Default Performance Levels specified in the cells relating to each such Reporting Period in the Right Time Benchmark Table;
- 3.4 Certain consequences of the Franchisee's performance falling below (that is equalling or being worse than):
 - (a) the Breach Performance Levels relating to the Right Time Benchmark are set out in Schedule 10 (*Remedies, Termination and Expiry*); and
 - (b) the Default Performance Levels relating to the Benchmark are set out in Schedule 10 (*Remedies, Termination and Expiry*).

APPENDIX 1 TO SCHEDULE 7.1**Right Time Benchmark Table**

Column 1	Column 2	Column 3	Column 4	Column 5
Reporting Period	Target Performance Level (%)	Improvement Plan Performance Level (%)	Breach Performance Level (%)	Default Performance Level (%)
1-39	75	65	60	56
40-195	80	79	72	68

1. START OF THE CALEDONIAN SLEEPER FRANCHISE

The Reporting Period 1 in the cells entitled 1-39 shall be the first Reporting Period of the Franchise Term.

APPENDIX 2 TO SCHEDULE 7.1

Construction and Systems

Part 1 — Construction

- (a) For the purposes of this Schedule 7.1, a day shall be deemed to begin at 0000 and end at 2359 on the same day.
- (b) Subject to paragraph 1(a) above, where any train is scheduled to depart from its point of origin on one day and arrive at its destination point on the following day, any minutes late recorded or deemed in respect of the train on the day shall be treated as occurring on the day on which the train was scheduled to depart from its point of origin.
- (c) References in this Schedule 7.1 to “trains” do not include Charter Services or other movements of rolling stock outside the Passenger Timetable (but which may be included in any relevant working timetable).

Part 2 – Systems

- 1. The parties agree that the Right Time Benchmark in each Reporting Period shall be determined by reference to:
 - (a) such systems as may be used by Network Rail from time to time for recording or monitoring the operation of the Passenger Services and as may be selected by the Authority and notified to the Franchisee by the Authority from time to time (the “**Network Rail Systems**”);
 - (b) such systems as the Authority may put in place or (acting reasonably) require the Franchisee to use for determining the Right Time Benchmark on the basis of the information and data in the Network Rail Systems and the other information and data available to it (the “**Authority Systems**”);
 - (c) such other systems as the Authority and the Franchisee may agree; and
 - (d) such other relevant information, data and records as may be available to the Authority or which the Authority may reasonably require the Franchisee to provide to it from time to time, including the information specified in paragraph 2 of this Appendix 2.
- 2. The Franchisee shall, if so requested, use all reasonable endeavours to procure that there are entered into the Network Rail Systems and/or provided to the Authority:
 - (a) each Passenger Timetable;
 - (b) each Train Plan;
 - (c) each item of rolling stock used in the provision of the Passenger Services which is planned under a Train Plan to Pass a relevant Formation Monitoring Point but does not so Pass at such Formation Monitoring Point (except in circumstances where the whole train of which such rolling stock forms part is part of a Service Group and does not Pass such Formation Monitoring Point); and
 - (d) such other information and data as the Authority may require to facilitate the proper or efficient determination of performance against Benchmarks under this Schedule 7.1.

3. The Franchisee shall provide to the Authority the information required under paragraph 2 in such form and format as the Authority may require from time to time. The Franchisee shall provide to the Authority such further details or information as it may reasonably require in relation to such information.
4. The Authority and the Franchisee will co-operate with each other to ensure that performance against Benchmarks measured under this Schedule 7.1 are determined correctly and efficiently on the basis of the information available to each of them from time to time.

Access and review of systems

5. The Franchisee and the Authority each agree to use all reasonable endeavours to ensure that each other may have such access to the Network Rail Systems as they may be able to procure during the Franchise Period.
6. The Authority agrees to permit the Franchisee to inspect the Authority Systems at any reasonable time during the Franchise Period and on reasonable notice if the Franchisee has reasonable grounds to believe that a fault in the Authority Systems is resulting in the incorrect determination of the Right Time Benchmarks under this Schedule 7.1.
7. If the Franchisee notifies the Authority that it has reasonable grounds to believe that the Systems are not satisfying any relevant requirements and it is established, following any investigation or inspection, that such Systems are not satisfying any relevant requirements, the information or determination obtained from the relevant System for any relevant Reporting Periods commencing after the date which is two months prior to such notification may be adjusted in such a manner which is fair and reasonable to correct such information or determination, and any Benchmark performance previously determined under this Schedule 7.1 may be adjusted accordingly. The parties may refer any dispute relating thereto for resolution in accordance with the Dispute Resolution Rules.
8. Any inspection or investigation of any System shall be carried out at the cost of the party conducting the investigation or inspection (except in the case of fraud by another party or its employees or agents).

Failure to record or supply information

9. If the Franchisee fails to comply with its obligations under paragraph 2, 3 or 4 of this Appendix 2, the Authority may, if it reasonably considers that Benchmark performance has been incorrectly calculated as a result of such non-compliance (whether as a result of new information or data becoming available or otherwise), require any relevant Benchmark performance which may be affected by such non-compliance to be adjusted in a manner which is fair and reasonable to reflect the Benchmark performance which, so far as reasonably determinable on the basis of any relevant data (including any new information or data), should have been calculated. The parties to any dispute relating thereto may refer it for resolution in accordance with the Dispute Resolution Rules.
10. If as a result of a failure to record any arrival time for any relevant train or for any other reason the arrival time at a Station specified in paragraph 2.1 of Schedule 7.1 (*Benchmarks*) cannot be determined for any train, then, subject to paragraph 11, the arrival time of that train at the relevant Station shall be the number of Minutes Late at which such train is at the immediately preceding Station (if any) at which Network Rail may record information in respect of actual minutes late for such train.
11. If, as a result of any fault in the Systems or failure to record any or all relevant information, Benchmark performance cannot be reasonably determined then the

parties shall use all reasonable endeavours to determine the relevant Benchmark performance on the basis of such manual information as may have been recorded by Network Rail and other relevant sources, including those of the Franchisee. Nothing in this paragraph 11 shall however prevent the Authority from determining any Benchmark performance on the basis of information available to it at any relevant time.

Service Codes

12. The Franchisee will promptly notify the Authority if it forms an intention to change the Service Code applicable to any particular journey characteristics of any train, alter the journey characteristics of any train to which a particular Service Code is applied or introduce a new Service Code which is applicable to any train or if Appendix 1 of Schedule 8 to its track access agreement with Network Rail is amended (including by the addition of new monitoring points for the purposes of such schedule).

RPI

13. For the first Franchisee Year the value of V shall be 1.

SCHEDULE 7.2

THIS IS SCHEDULE 7.2 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT BETWEEN THE AUTHORITY AND SERCO CALEDONIAN SLEEPERS LIMITED

KPIs

A Patronage

Measurement of Patronage

1. Patronage in any Franchisee Year shall be determined by use of LENNON data. Only data in respect of passengers using the full Sleeper Service (so excluding passengers making journeys wholly within Scotland or wholly within England) shall be taken into account.

Patronage KPI

2. Patronage in a Franchisee Year shall not fall below the Patronage Forecast Level;
3. If Patronage in a Franchisee Year falls below the Patronage Forecast Level, the Franchisee shall prepare an Improvement Plan to address the reasons for the fall in Patronage against the Patronage Forecast Level to be agreed with the Authority and take all steps necessary to implement the Improvement Plan in the following Franchisee Year;
4. If Patronage falls below the Patronage Forecast Level in any two consecutive Franchisee Years, the Franchisee will prepare a Remedial Plan to be agreed with the Authority and take all steps necessary to implement the agreed Remedial Plan in the following Franchisee Year;
5. If Patronage falls below the Patronage Forecast Level in any three consecutive Franchisee Years, such shall constitute an Event of Default under paragraph 2.10 of Schedule 10.3 (*Events of Default and Termination Event*) and the Authority shall be entitled to terminate this Agreement by serving a Termination Notice on the Franchisee. The Agreement shall terminate with effect from the date specified in any such Termination Notice.

Reduction in Patronage

6. If Patronage decreases in absolute terms in any two consecutive Franchisee Years (except where anticipated in the Patronage Forecast Level) the Franchisee shall prepare a Remedial Plan to address the reasons for the reduction in Patronage to be agreed with the Authority and take all steps necessary to implement the agreed Remedial Plan in the following Franchisee Year;
7. If Patronage decreases in absolute terms in any three consecutive Franchisee Years, such shall constitute an Event of Default under paragraph 2.10 of Schedule 10.3 (*Events of Default and Termination Event*) and the Authority shall be entitled to terminate this Agreement by serving a Termination Notice on the Franchisee. The Agreement shall terminate with effect from the date specified in any such Termination Notice, provided that the Authority shall not be entitled to terminate this Agreement where a Force Majeure Event has caused or materially contributed to the reduction in Patronage.

B Passenger Satisfaction

Measurement of Passenger Satisfaction

8. Passenger Satisfaction shall be measured in terms of the results of Annual Passenger Survey. The Authority shall be entitled to Publish or share the results of each survey. The Franchisee shall not Publish or otherwise share the survey results.

Passenger Satisfaction KPI

9. Passenger Satisfaction as measured by the Annual Passenger Survey, shall not fall below the Passenger Satisfaction Level.

Reduction in Passenger Satisfaction

10. If Passenger Satisfaction in a Franchisee Year falls below the Passenger Satisfaction Level, the Franchisee shall prepare an Improvement Plan to be agreed with the Authority to address the fall in Passenger Satisfaction against the Passenger Satisfaction Level and take all steps necessary to implement the Improvement Plan in the following Franchisee Year;

If Passenger Satisfaction falls below the Passenger Satisfaction Level in any two consecutive Franchisee Years the Franchisee shall prepare a Remedial Plan to be agreed with the Authority and take all steps necessary to implement the agreed Remedial Plan in the following Franchisee Year;

11. If Passenger Satisfaction falls below the Passenger Satisfaction Level in any three consecutive Franchisee Years, such shall constitute an Event of Default under paragraph 2.10 of Schedule 10.3 (*Events of Default and Termination Event*) and the Authority shall be entitled to terminate this Agreement by serving a Termination Notice on the Franchisee. The Agreement shall terminate with effect from the date specified in any such Termination Notice.

APPENDIX TO SCHEDULE 7.2**Part 1 - Patronage Forecast Table**

Note: Patronage Forecast Level 95% of Patronage Forecast

[redacted text]

[redacted table]

2. The basis for the Patronage Forecast, as defined in Schedule 7.2, is forecast LENNON passenger information (after deducting non-cross border passenger journeys), the Patronage Forecast shall be monitored against LENNON data.
3. The source data for the forecasts within columns A-D are the Schedule 7.2 tab in the Demand and Revenue Forecasting Model forming part of the Operational Model (model reference Caledonian Sleepers D&R v9.4.xlsx).

Part 2 – Passenger Satisfaction Table

Franchisee Year	Passenger Satisfaction Level
1	85
2	90
3	90
4	95
5	95
6	95
7	95
8	95
9	95
10	95
11	95
12	95
13	95
14	95
15	95

SCHEDULE 7.3

THIS IS SCHEDULE 7.3 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT BETWEEN THE AUTHORITY AND SERCO CALEDONIAN SLEEPERS LIMITED

SQUIRE

1. Introduction

- 1.1. This Schedule 7.3 together with the SQUIRE Service Schedules describes:
 - (a) the Station Services, On-Train Services and Information Away from Station Services which are to be provided by the Franchisee;
 - (b) the rights of the Authority to carry out (or to require to be carried out) inspections of the quality of those services provided by the Franchisee;
 - (c) the Management and Processes to be put in place by the Franchisee for the management and delivery of service quality for the Franchise Term;
 - (d) the responsibilities and reporting lines for the Quality Manager;
 - (e) the requirements for (and the frequency of) service quality inspections and re-inspections to be carried out by, or on behalf of, the Authority ("inspections" and "re-inspections", respectively);
 - (f) the means of measurement of the level of performance found during inspections and re-inspections in accordance with the SQUIRE Service Schedules;
 - (g) the means of calculation of any Service Quality Payments; and
 - (h) the way in which the Authority and the Franchisee shall work together to rectify poor performance by the Franchisee.
- 1.2 Pursuant to this Schedule 7.3 the Authority shall inspect (or require the inspection), and receive and make payments in respect of, the other Franchise Services with which this Schedule 7.3 deals ("**the SQUIRE Regime**").
- 1.3 The Franchisee shall use all reasonable endeavours to procure that at the Stations the standards for Station Services specified in this Schedule 7.3 and in the SQUIRE Service Schedules are provided at no worse than the relevant Benchmark Level.
- 1.4 Subject to Schedule 1.6 (*Committed Obligations*) and Schedule 6 (*Rolling Stock and Station Enhancements*), but without prejudice to paragraph 18, the Franchisee will not have any obligations under the SQUIRE Regime in relation to facilities and assets, or be obliged, as part of the SQUIRE Regime in this Schedule 7.3, to provide facilities and assets, where those assets are not physically present at the Franchise Commencement Date. The Franchisee accepts that the rectification of poor performance in terms of paragraph 12 could require the provision of replacement assets.
- 1.5 There will be no liability for the Franchisee in relation to the application of any SQUIRE Regime prior to the Franchise Commencement Date. Any

penalties, performance points, notices or other liabilities applicable from the application of any SQUIRE Regime prior to the Franchise Commencement Date shall be cancelled and shall not apply in relation to the Franchisee.

- 1.6 On the occurrence of a SQUIRE Trigger Event the Authority shall be entitled to serve notice on the Franchisee commencing the Service Quality Payments to or by the Authority of Service Quality Payments provided for in paragraph 11 hereof with effect from the Reporting Period commencing after the date of the said notice and such payments shall thereafter continue throughout the Franchise Period.
- 1.7 For the avoidance of doubt the calculation of the Service Quality Payments shall be carried out from the Franchise Commencement Date.

2 The Services

In this Schedule 7.3, reference to a “**Service**” shall, as the context requires, be to any or all of:-

- 2.1 The Station Services, as set out in service schedules 1 to 18 and 36 in the SQUIRE Service Schedules Agreement.
- 2.2 The On-Train Services as set out in service schedules 19 to 32 and 35 in the SQUIRE Service Schedules Agreement.
- 2.3 The Information Away from Station Services as set out in service schedule 34 in the SQUIRE Service Schedules Agreement.
- 2.4 The Management and Processes as set out in service schedule 33 in the SQUIRE Service Schedules Agreement.

3 Service Quality Management Arrangements

The Franchisee shall:

- 3.1 in relation to the SQUIRE Regime:
 - (a) ensure that the Quality Manager reports directly to and make recommendations to an executive officer of the Franchisee to reduce the occurrence of below Benchmark Level performance against the SQUIRE Service Specifications and the incidence of failed inspections and re-inspections;
 - (b) record and maintain a list of any corrective actions identified during any checks on service quality undertaken or instructed by the Franchisee including the Mystery Shopper surveys referred to in paragraph 5 of this Schedule 7.3 and the Annual Passenger Surveys (“**audits**”), inspections or re-inspections undertaken by the Authority and ensure that the appropriate responsible parts of the Franchisee’s organisation are advised of any necessary corrective actions;
 - (c) monitor the implementation by the responsible party within the Franchisee’s organisation of the corrective actions identified; and
 - (d) ensure that the Quality Manager performs the tasks required of him under paragraph 4.

- 3.2 ensure that sufficient staff reporting to the Quality Manager are employed (either directly or under a sub-contract) and employ sufficient resources to allow the Quality Manager to carry out the tasks required of him;
- 3.3 ensure that corrective actions arising from any inspections or re-inspections are diligently and promptly dealt with and that there are adequate resources, monitoring processes and procedures, and appropriate contractual arrangements, in place to do so;
- 3.4 ensure that the Franchisee's obligations set out in paragraph 1 of Schedule 1.3 (*Additional Service Specifications*) and in this Schedule 7.3 are complied with in full;
- 3.5 co-operate with the Authority in allowing the Authority's personnel (or its agents or sub-contractors) to conduct inspections, re-inspections or audits and in making appropriately senior and appropriately qualified members of the Franchisee's personnel available to attend meetings;
- 3.6 provide to the Authority when requested details of where train staff and, in the case of staffed Stations, Station staff will be available for any inspection; and
- 3.7 keep the Managing Director of the Franchisee fully advised as regards the matters referred to in paragraphs 3.1 to 3.6 above and copy to him/her any recommendations made to the executive officer referred to in paragraph 3.1(a).

4. **Role of the Quality Manager in respect of the SQUIRE Regime**

The Quality Manager shall:

- (a) report directly to an executive officer of the Franchisee;
- (b) keep full and accurate records and documents relating to or affecting the performance by the Franchisee of the Services;
- (c) develop and keep under review a train presentation programme for implementation by the Franchisee (to include the management of fault recording and rectification), designed to ensure that the relevant SQUIRE Service Specifications are reached and, where possible, exceeded and that, in any event, the relevant Benchmark Level is met;
- (d) develop and keep under review a station environment, structures, information provision, security, ticket selling and revenue protection programme for implementation by the Franchisee (to include the management of fault recording and rectification), designed to ensure that the relevant SQUIRE Service Specifications are reached and, where possible, exceeded and that, in any event, the relevant Benchmark Level is met;
- (e) develop and keep under review a programme regarding the Information Away from Station Services for implementation by the Franchisee (to include the management of fault recording and rectification), designed to ensure that the relevant SQUIRE Service Specifications are reached and, where possible, exceeded and that, in any event, the relevant Benchmark Level is met;
- (f) send to the relevant executive officer of the Franchisee at the end of each Reporting Period a statement (copied at the same time to the Managing Director of the Franchisee) detailing the inspections and re-inspections where a fail has been recorded (including in respect of Management and Processes) together with audits, copying this statement to the Authority;

- (g) ensure that all inspections, re-inspections and audits that may be conducted are fully recorded and any information that is due to be passed to the executive officer of the Franchisee, Franchisee's staff and/or to the Authority is passed on timeously;
- (h) ensure that where faults are found during an audit, inspection or re-inspection or items have failed in an inspection or re-inspection, appropriate remedial action is taken promptly and that there is a process for recording and monitoring the completion of the corrective actions;
- (i) ensure that the Authority's SQIs are granted such access to the facilities under the control of the Franchisee as is necessary to permit the Authority to exercise its rights of inspection under paragraph 6 and are also provided with reliable information on the availability of trains and of staff in respect of staffed stations to allow the Authority to exercise its rights of inspection and re-inspection;
- (j) ensure that current site specific safety rules and regulations are made available to the Authority's SQIs; and
- (k) ensure that the Franchisee puts in place systems to preserve the documents referred to in paragraph 6.10 for a period of either 6 years or until 12 months after the expiry of the Franchise Term, whichever is the later; and
- (l) review the inspection reports arising out of the SQUIRE Regime and any audits and performance of the Franchisee against the Benchmark Level.

5. **Mystery Shopper**

- 5.1 The Franchisee shall, once every three months, commission an appropriate service provider (having regard to the nature of the Passenger Services) to carry out a "mystery shopper" survey to measure qualitative aspects of the Passenger Services. The methodology and survey model to be used shall be agreed with the Authority and no changes to the methodology or survey model shall be made without the agreement of the Authority. The methodology or survey model shall include a methodology or model that results in an overall numeric score being reached no less frequently than once every 13 Reporting Periods that is the same as that used to reach the Mystery Shopper Minimum Target. The Franchisee shall pass the results of each survey to the Authority on receipt. The Authority shall be entitled to Publish the survey results. The Franchisee shall not Publish or share the results with any other party without the prior agreement of the Authority.
- 5.2 The Authority and the Franchisee shall review the "mystery shopper" survey methodology and survey model (and, consequently, if appropriate, the Mystery Shopper Minimum Target) every three months during the first Franchisee Year and thereafter annually following the anniversary of the Franchise Commencement Date with the aim of determining whether it requires amending or updating to improve its operation. Both parties shall use reasonable endeavours to agree any changes required. Any changes agreed should be made to the "mystery shopper" survey shall be documented in writing between the Authority and the Franchisee. In the event that no changes are proposed or changes proposed by one party but are not agreed, the mystery shopper survey then prevailing will continue.

6. **Authority Service Quality Inspections**

- 6.1 The Authority shall appoint individuals (who may be sub-contractors of the Authority), each to be known as an SQL to inspect a representative sample of

the Station Services, On-Train Services, Information Away from Station Services and Management and Processes in accordance with this paragraph 6.

6.2 The SQIs appointed by the Authority shall be responsible for carrying out inspections in respect of all other Franchise Services including SQUIRE Services and Stations. The SQIs of the Authority may inspect the Management and Processes.

6.3 The Authority shall have the right to have its SQIs inspect each Station up to the maximum number of times set out in paragraph 3 of each relevant service schedule in the SQUIRE Service Schedules. The Authority does not commit to any minimum number of inspections of Stations. Notwithstanding the foregoing, an SQI may inspect a Station up to 52 times during any 13 consecutive Reporting Periods if any notice or notices which have been issued under paragraph 7.2 during the preceding three Reporting Periods show or record, in total, seven or more failures in respect of one or more Station Services at that Station.

Even more frequent inspections are to be permitted where this is provided for in a SQUIRE Service Schedule.

6.4 SQIs shall endeavour to inspect Trains in accordance with the relevant SQUIRE Service Schedule but the Authority does not commit to any minimum number of inspections of Trains.

6.5 SQIs may inspect up to twice as many Services as permitted by paragraph 6.4 in respect of an On-Train Service or On-Train Services if the Franchisee fails to provide that On-Train Service or those On-Train Services at the Benchmark Level for three successive Reporting Periods. These additional inspections may continue for so long as required by the Authority.

6.6 Subject to the rights of the Authority to re-inspect or carry out additional inspections under paragraph 7, no Station Service or particular rolling stock vehicle shall be inspected within seven days of a previous inspection; provided that this shall not preclude the inspection of any rolling stock vehicle where that rolling stock vehicle has been inspected during the preceding 7 days while providing a different Service than that which it is providing when inspected for the second or subsequent time. Certain SQUIRE Service Schedules anticipate the possibility of further inspections within that seven day period and nothing in this paragraph 6.6 shall restrict the Authority from requiring those more frequent inspections by its SQIs.

6.7 The SQIs of the Authority shall endeavour also to:

- (a) vary the timing of inspections, both as regards days of the week and times of day, to seek to ensure that a reasonable cross section of inspection times, , is achieved;
- (b) construct and implement their programme of inspections so that the Stations and Trains audited are randomly selected;
- (c) undertake their inspections and re-inspections on Trains so that these shall not interfere with the timely delivery of passenger services;
- (d) undertake their inspections at Stations so that these shall not interfere with the delivery of Services to passengers;
- (e) conduct at least 10% of inspections on either a Saturday or a Sunday; and
- (f) seek to ensure that during any Reporting Period the number of inspections undertaken in any week shall in normal circumstances be

approximately equal.

- 6.8 An SQI of the Authority shall inspect the Information Away from Station Services at least once during every 13 consecutive Reporting Periods.
- 6.9 An SQI of the Authority shall inspect the Management and Processes at least once during every 13 consecutive Reporting Periods.
- 6.10 In addition to the other rights enjoyed by the Authority under this paragraph 6, the Authority shall have, at all reasonable times, access to and the right to reproduce at its own cost the records created by the Franchisee relating to the performance by the Franchisee of the Services. This access shall be for the purpose of auditing and verifying the Franchisee's performance of the Services. The term "records" shall, for the purposes of this paragraph 6.10, be deemed to extend to all books, records, receipts, vouchers and documents, of any description (including those stored on microfilm, video tape or digital recordings or on computer, which shall be made available in legible form).

7. Role of Service Quality Inspectors

- 7.1 During each inspection an SQI shall determine whether the Services are being performed to the required level of service quality in accordance with the relevant SQUIRE Service Specification and which, if any, Services require rectification by the Franchisee so that each Service is provided in accordance with the relevant SQUIRE Service Specification.
- 7.2 If following any inspection of one or more Stations, or Trains, or of Information Away from Station Services or Management and Processes, the Authority determines that there is a failure in terms of paragraph 1 of any SQUIRE Service Schedule to meet the required standard of service quality and that a Service requires rectification, the Authority may serve a notice ("Notice") on the Franchisee. The Notice shall specify each Service requiring rectification and shall specify the time for rectification of each such SQUIRE Service as stated in paragraph 5 of the relevant SQUIRE Service Schedule (such time to run from the beginning of the Working Day following the date of receipt of such Notice) and the Franchisee shall rectify each such Service within such time.
- 7.3 The Authority shall use reasonable endeavours to provide any Notice to the Franchisee by 1400 hours on the Working Day following the relevant inspection or as soon as reasonably practicable thereafter.
- 7.4 After the expiry of the time specified in a Notice an SQI may re-inspect any Station or Train or re-inspect the provision of Information Away from Stations or Management and Processes in respect of which a Notice has been issued to determine whether any Service specified in the Notice has been rectified so that that Service is provided in accordance with the relevant SQUIRE Service Schedule. Any re-inspection by an SQI under this paragraph shall not constitute an inspection referred to in paragraphs 6.3 to 6.5 or 6.7.
- 7.5 If an SQI, after re-inspection under paragraph 7.4, determines that the Franchisee has not rectified all Services specified in a Notice:
 - (a) the Franchisee shall incur the number of Performance Points set out in the relevant SQUIRE Service Schedule in relation to a failure to comply with a Notice; and
 - (b) the procedure set out in paragraphs 7.2 to 7.4 above may be repeated by the Authority until the Franchisee has rectified all SQUIRE Services specified in any Notice. This procedure shall,

however, be suspended on the date of receipt by the Authority of proposals submitted by the Franchisee in accordance with paragraph 12 unless and until the Franchisee is, in the reasonable opinion of the Authority, failing to use its best endeavours to implement the agreed or determined proposals.

- 7.6 In addition to the inspections and re-inspections permitted by this paragraph 7, the Authority shall be entitled to procure additional inspections of some or all the Station Services at any Station or Stations on up to 6 occasions in each Reporting Period ("**additional inspections**"). The level of performance determined during additional inspections shall not be taken into account in determining the number of Performance Points incurred under the relevant SQUIRE Service Schedule in any Reporting Period. The Authority shall not be entitled to carry forward from one Reporting Period to the next its entitlement to carry out any additional inspections during that Reporting Period that it did not carry out.
- 7.7 If following any additional inspection of a Station Service the Authority determines that there is a failure, in terms of paragraph 1.2 (or any other provision of paragraph 1) of any SQUIRE Service Schedule to meet the required standard of service quality and the relevant Station Service requires rectification, the Authority may serve a notice ("**an Additional Inspection Notice**") on the Franchisee. The Additional Inspection Notice shall specify each Station Service requiring rectification and shall specify the time for rectification of each such Station Service as stated in paragraph 5 of the relevant SQUIRE Service Schedule, (such time to run from the beginning of the Working Day following the date of receipt of such Additional Inspection Notice) and the Franchisee shall rectify each such Station Service within such time. For the purposes of this paragraph 7.7, references in the relevant SQUIRE Service Schedule to "Notice" shall be deemed to include "Additional Inspection Notice").
- 7.8 The Authority shall use reasonable endeavours to provide any Additional Inspection Notice to the Franchisee by 1400 hours on the Working Day following the relevant inspection or as soon as reasonably practicable thereafter.
- 7.9 After the expiration of the time specified in an Additional Inspection Notice, an SQI may re-inspect any Station in respect of which an Additional Inspection Notice has been issued to determine whether all Station Services specified in the Additional Inspection Notice have been rectified. Any re-inspection by an SQI under this paragraph shall not constitute an inspection referred to in paragraphs 6.3 to 6.5 or 6.7.
- 7.10 If an SQI after a re-inspection under paragraph 7.9 determines that the Franchisee has not rectified all Station Services specified in an Additional Inspection Notice:
 - (a) the Franchisee shall incur the number of Performance Points set out in the relevant SQUIRE Service Schedule in relation to a failure to comply with a Notice and references in the relevant SQUIRE Service Schedule to "Notice" shall be deemed to include "Additional Inspection Notice"; and
 - (b) the procedure set out in paragraphs 7.7 to 7.10 shall be repeated until the Franchisee has rectified all Station Services specified in any Additional Inspection Notice. The procedure shall, however, be suspended on the date of receipt by the Authority of proposals submitted by the Franchisee in accordance with paragraph 12 unless and until the Franchisee is, in the reasonable opinion of the Authority, failing to use its best endeavours to implement the agreed or

determined proposals.

- 7.11 If an SQI has not re-inspected any Station, Train, Information Away from Station Services or Management and Processes within 7 days of the expiration of the time specified in any Notice, or any Additional Inspection Notice, the Franchisee shall be deemed to have rectified any Service as required by such Notice or Additional Inspection Notice.
- 7.12 The Authority shall provide the Quality Manager with copies of all reports prepared by their SQIs during inspections and re-inspections pursuant to this paragraph 7. Where those reports have been compiled on computer or are otherwise stored in a non-legible form, legible printouts shall be provided. Where reasonably practicable, those reports shall be provided to the Franchisee by 1400 hours on the second Working Day following the relevant inspection or re-inspection.

8. **Franchisee's Response to a Notice**

If the Franchisee, acting reasonably, considers that the content of any Notice, Additional Inspection Notice or report is incorrect or that such Notice, Additional Inspection Notice or report has not been properly given by the Authority, the Quality Manager may notify the Authority of this within 7 days of the date of receipt of that Notice, Additional Inspection Notice or report. If the Quality Manager has not so notified the Authority within 7 days of receipt of that Notice, Additional Inspection Notice or report, the Franchisee shall be deemed to be satisfied as to the correctness of content and method of delivery or service of the same. The parties shall, in seeking to resolve any dispute as to the correctness of content or service of a Notice, Additional Inspection Notice or report, comply with the Escalation Procedure.

9. **Major Event**

- 9.1 Where the performance by the Franchisee of any SQUIRE Service is materially adversely affected by the occurrence of a Major Event affecting that SQUIRE Service, that Service shall be excluded from the provisions of this Schedule 7.3 for such period as the Authority shall determine if:
 - (a) the Franchisee shall have notified the Authority of the occurrence and location of a Major Event in writing within 24 hours of the occurrence of that Major Event;
 - (b) the Franchisee shall have provided to the Authority such other information, as the Authority shall reasonably require in connection with that Major Event; and
 - (c) the Franchisee shall have:-
 - (i) used all reasonable endeavours to prevent the occurrence of any Major Event and to restore normal performance of its obligations in the event of the occurrence of a Major Event and shall have actively mitigated and minimised the effect of any Major Event on the performance of its obligations under this Schedule 7.3 and the SQUIRE Service Schedules Agreement;
 - (ii) complied with the terms of paragraphs 10 and 11 in Schedule 1.2 (Operating Obligations); and
 - (iii) otherwise complied with the terms of this Agreement.
- 9.2 Notwithstanding that none of the requirements listed in paragraph 9.1 (a) to (c) inclusive has been met, the Authority may agree the exclusion of that Service from the provisions of the SQUIRE Regime where in the opinion of the Authority the performance by the Franchisee of any Service is materially

adversely affected by the occurrence of a Major Event.

9.3 If the Franchisee is not satisfied with a decision of the Authority under paragraph 9.1 above the Quality Manager may notify the Authority of the same within 7 days of the date on which that decision is notified to the Franchisee. If the Quality Manager has not so notified the Authority within 7 days of the date on which that decision is notified to the Franchisee the Franchisee shall be deemed to be satisfied as to the decision. The parties shall, in seeking to resolve any dispute as to a decision of the Authority under paragraph 9.1, comply with the Escalation Procedure.

10. **Calculation of Performance Points**

10.1 The Authority shall calculate the number of Performance Points, derived from paragraph 4 of each service schedule in the SQUIRE Service Schedules Agreement to be added or subtracted for each Reporting Period in relation to each SQUIRE Service Schedule. In its calculations the Authority shall have regard to the outcomes of all inspections and re-inspections by its SQIs and the service by it of Notices and Additional Inspection Notices and the Franchisee's compliance with those Notices and Additional Inspection Notices in the relevant Reporting Period. Performance Points will be awarded in accordance with the numbers set out in the SQUIRE Service Schedules and according to the following:-

(a) Where the level of performance of the relevant Service is greater than (that is, better than) Benchmark Level, Performance Points shall be incurred:

$$\text{Performance Points incurred} = \left(\frac{AL - BL}{CL - BL} \right) \times CP$$

Where:

CP = the number of Performance Points which would be awarded at Ceiling Level

AL = the level at which the Service was performed

BL = Benchmark Level

CL = Ceiling Level

No additional Performance Points shall be incurred under, as appropriate, paragraph 4.2(a) of the relevant SQUIRE Service Schedule in respect of performance above Ceiling Level.

(b) Where the level of performance of the relevant Service is less than Benchmark Level, Performance Points shall be incurred in accordance with the following formula:

$$\text{Performance Points incurred} = \left(\frac{BL - AL}{BL - FL} \right) \times FP$$

Where:

FP = the number of Performance Points which would be awarded at Floor Level

AL = the level at which the Service was performed, but if that level was below FL then AL shall equal FL

FL = Floor Level

BL = Benchmark Level

No additional Performance Points shall be incurred under, as appropriate, paragraph 4.2(b) of the relevant SQUIRE Service Schedule in respect of performance below Floor Level. For performance at less than the Benchmark Level the Performance Points are negative points.

- (c) Where the level of performance of the relevant Service is at Benchmark Level, no Performance Points shall be incurred under, as appropriate paragraph 4.2(a) or (b) of the relevant SQUIRE Service Schedule.

10.2 The Authority shall provide to the Franchisee, within 10 days of the end of each Reporting Period details of the number of Performance Points awarded by it in respect of that Reporting Period broken down across the SQUIRE Service Schedules in the SQUIRE Service Schedules Agreement.

10.3 For the avoidance of doubt, the level of performance described in each SQUIRE Service Schedule by the Franchisee over any Reporting Period will relate to the levels of performance measured by the SQIs of the Authority during such Reporting Period.

11. Service Quality Payments

11.1 Subject to paragraph 1.6 of this Schedule 7.3 the Authority shall calculate the relevant Service Quality Payment for each Reporting Period by:

- (a) aggregating the Performance Points awarded to the Franchisee by the Authority for each Service pursuant to paragraph 10.1; and
- (b) converting the Performance Points to pounds sterling in the following manner, such conversion to be on a *pro rata* basis where the number of Performance Points is not a whole number:
 - (i) For Performance Points accruing at or before the end of the first Franchisee Year that follows the Franchise Commencement Date:
1 Performance Point = [redacted text];
 - (ii) For Performance Points accruing in any subsequent Franchisee Year:
1 Performance Point = [redacted text] x RPI

where RPI is the quotient of the Retail Prices Index for the January which immediately precedes the commencement of that subsequent Franchisee Year divided by the Retail Prices Index for January 2015.

The Authority shall promptly advise the Franchisee (and each other) of the Service Quality Payment it has calculated.

11.2 The Authority shall pay to the Franchisee any Service Quality Payment in respect of the SQUIRE Regime which has a positive value and the Franchisee shall pay to the Authority any Service Quality Payment in respect of the SQUIRE Regime which has a negative value or, if any such Service Quality Payment is payable on the same day as a Franchise Payment and the Authority so elects, the Service Quality Payment shall be paid by way of adjustment to the Franchise Payment.

- 11.3 Each Service Quality Payment in respect of the SQUIRE Regime shall become payable by the relevant person on the last day of the Reporting Period immediately succeeding the Reporting Period to which the Service Quality Payment relates or, if the Authority does not notify the Franchisee of the relevant Service Quality Payment more than 4 days before the last day of such Reporting Period, 7 days after the Authority shall have notified the Franchisee under paragraph 11.1, or, if the Authority so elects, on the next day a Franchise Payment becomes payable under Schedule 8.1 (*Franchise Payments*).
- 11.4 Any payment of a Service Quality Payment shall be made by automatic electronic funds transfer in pounds sterling to such bank account in the United Kingdom as the payee of such payment may have previously specified to the payer in writing and shall be made so that cleared funds are received in that account on or before the date such payment becomes payable under this Schedule 7.3.
- 11.5 Interest shall accrue on any sum due and owing to the Authority under this Schedule 7.3 at the Interest Rate calculated on a daily basis if and to the extent that payment is not received by the Authority on the date such payment becomes payable under this Schedule 7.3.
- 11.6 For the first two Reporting Periods of the Franchise Term the value attributed to a Performance Point shall be nil so no payments shall be due to be made under this Schedule 7.3 in respect of SQUIRE performance during those two Reporting Periods.

12. **Franchisee Proposals to Rectify Poor Performance**

- 12.1 If the Authority determines that the Franchisee has provided any Service at or below the Floor Level in two successive Reporting Periods or a SQI has successively re-inspected any Station or Train 4 times and the Franchisee has not complied with the last Notice or Additional Inspection Notice served following the last inspection or re-inspection or additional inspection, the Authority may notify the Franchisee of the same. The Quality Manager shall, within 14 days of notification of such occurrence by the Authority, submit to the Authority the Franchisee's proposals. The Franchisee's proposals shall include solutions which, in its reasonable opinion, will ensure that (having regard to cost and the practicalities of implementation) the relevant Service will be provided above Floor Level and that the relevant Notice or Additional Inspection Notice will be complied with as soon as practicable. The proposals shall indicate proposed timescales for implementation and the estimated cost (if any) of implementation. Within 14 days of receipt of the Franchisee's proposals, the Authority shall notify the Franchisee whether or not it agrees with such proposals and, if the proposals are so agreed, the Franchisee shall implement such proposals within the proposed timescale for implementation.
- 12.2 If the Authority does not consider that such proposals will ensure that the relevant Service will be provided above Floor Level and that the relevant Notice or Additional Inspection Notice will be complied with, the Authority and the Franchisee shall for 2 weeks (following the Authority's intimation of its view of the Franchisee's initial proposals) in good faith use all reasonable endeavours to agree revised proposals, and failing agreement the parties shall comply with the provisions of the Escalation Procedure. Following agreement of revised proposals in accordance with this paragraph 12.2, or determination of the Franchisee's proposals in accordance with the Escalation Procedure, the Franchisee shall implement the proposals so agreed or determined within the timescales agreed or determined for implementation.
- 12.3 When deciding whether to agree to the Franchisee's proposals in accordance with paragraphs 12.1 and 12.2, the Authority shall take into account:

- (a) any documents created by the Franchisee (including by the Quality Manager) in pursuance of its obligations under paragraph 4 above of which it has received a copy; and
- (b) the findings it has reached following on any examination it may have undertaken under paragraph 6.10 of the records of the Franchisee.

13. Breach and Service Quality

Only where the Franchisee fails to use best endeavours to implement the agreed or determined proposals in accordance with paragraph 12.2 will any failure by the Franchisee to comply with a service schedule in the SQUIRE Service Schedules, constitute non-performance of or non-compliance to a material extent with any obligation in this Schedule 7.3 for the purpose of paragraph 2.10 of Schedule 10.3 (*Events of Default and Termination Event*).

14. Notices

For the purposes of this Schedule 7.3 any notice shall be sent in the manner required by paragraph 3.1(a) of Schedule 19 (*Other Provisions*) and the provisions of that paragraph shall apply to such notices.

15. Self Monitoring

- 15.1 As and when requested by the Authority, the Franchisee shall provide to the Authority a Service Quality Monitoring Plan which shall contain the Franchisee's informed opinion as to any revised regime to be implemented for the SQUIRE Regime so that it can be developed into a regime which provides for the Franchisee to self monitor and self assess (through an arm's length operation procured by the Franchisee) the matters being monitored and assessed by the Authority and which will allow for the Authority to audit and verify the results of such self monitoring and self assessment.
- 15.2 The Authority may accept any proposals in the Service Quality Monitoring Plan. In addition to or in substitution for (in part or in whole) that Plan, the Authority may (on not less than 6 months written notice to the Franchisee) specify the provisions of this Schedule 7.3 which the Authority has determined will give effect to a regime which provides for self monitoring and self assessment by the Franchisee of the Station Services, On-Train Services, Information Away from Station Services and Management and Processes under the SQUIRE Regime. The Franchisee shall comply with such specification from the expiry date of such notice or such later date as may be specified by the Authority.
- 15.3 Any specification under paragraph 15.2 shall not constitute a Change.
- 15.4 Any specification under paragraph 15.2 may include (but will not be limited by that):-
 - (a) that the Authority shall be entitled to require the Franchisee to appoint at the Franchisee's own expense SQIs to inspect the Station Services, On-Train Services, Information Away from Station Services and Management and Processes;
 - (b) that, if the Authority does so require the Franchisee to appoint its own SQIs, the Authority shall be under no obligation to appoint its own SQIs, and for the purposes of this Schedule 7.3 references to SQIs appointed by the Authority, or to SQIs of the Authority or any other similar expression shall be a reference to SQIs appointed by the Franchisee;
 - (c) that, if the Authority requires the Franchisee to appoint its own SQIs,

the Authority shall be entitled to audit the consistency and accuracy of any inspections carried out by the SQIs and to audit the service quality of the services monitored by the Franchisee's SQIs;

- (d) that, if the Authority requires the Franchisee to appoint its own SQIs, the Authority shall be entitled to require that the Franchisee provide from time to time (and at least monthly) to the Authority an analysis of results and trends gathered both by the SQIs appointed by the Franchisee and the Quality Manager; and
- (e) requirements as to frequency of inspections and maximum and minimum numbers of inspection.

15.5 The Franchisee shall grant such access to the facilities and records under its control as is necessary to enable the Authority to exercise its audit rights.

16 Variations to the SQUIRE Regime

- 16.1 The Authority may pursuant to paragraphs 1.1(a) (or by agreement with the Franchisee in terms of 1.1(b)) of Schedule 9.1 (*Variations and Financial Consequences of Change*) vary the terms of the SQUIRE Regime and such a variation may include the addition or removal of Stations or stations from the SQUIRE Regime, changes to the SQUIRE Service Specifications, changes to the SQUIRE Benchmarks, changes to the SQUIRE Stations and changes to those aspects of the Franchise Services to which the SQUIRE Regime applies. Such a variation may also add or remove Stations or stations from the obligations set out in paragraph 1.3.
- 16.2 Without prejudice to paragraph 16.1, as soon as possible following the completion of the first six months of the Franchise Term and after each second anniversary of the Franchise Commencement Date, the Authority and the Franchisee shall review the SQUIRE Regime taking account of the results of any audits carried out in the first six months of the Franchise Term or in the preceding two year period, as appropriate, with the aim of determining whether any changes require to be made to the SQUIRE Regime to improve its operation. As part of that review both parties shall review and compare the results of the Annual Passenger Surveys "mystery shopper" surveys and any other relevant surveys to analyse, by reference to such results, whether the application of the SQUIRE benchmarks and SQUIRE performance points has caused a perverse outcome in terms of the calculation of the Service Quality Payments (if payment of the Service Quality Payment has commenced in terms of paragraph 1.6). Any changes it is agreed should be made to the SQUIRE Regime shall be documented in writing between the Authority and the Franchisee. In the event that no changes are proposed or changes proposed by one party but are not agreed, the SQUIRE Regime then prevailing will continue in force.
- 16.3 Without prejudice to paragraph 16.1, the Authority may review the objectives operation and terms of the SQUIRE Regime during Franchisee Years 3, 5 and 8.

17. Franchise Facilities Book

Where a SQUIRE Service Specification is to be read in conjunction with a Franchise Facilities Book the reference is to the relevant Franchise Facilities Book as updated in accordance with Schedule 4.1 (*Franchise Facilities*).

18. SQUIRE Service Schedule 35

Subject to Schedule 1.6 (*Committed Obligations*), the Authority shall make such adjustments as it reasonably considers appropriate to the times for which Cabins are to be made available to passengers so that the times are not inconsistent with the

rights the Franchisee has from Network Rail; provided that the Authority need not make any adjustment unless it is satisfied that the Franchisee has used all reasonable endeavours to obtain rights which enable it to make the Cabins (as defined in SQUIRE Schedule 35) available as required by SQUIRE Service Schedule 35 at the Franchise Commencement Date.

19. Additional Assets

Assets and facilities that replace existing assets and facilities, and additional assets and facilities, at Stations or on rolling stock vehicles (including, in every case, new rolling stock vehicles and assets and facilities to be provided as a result of the Franchisee carrying out its obligations in Part 1 of Schedule 1.6 (*Franchisee's Committed Obligations*) or Schedule 6 (*Rolling Stock and Station Enhancements*) shall all be subject to the SQUIRE regimes described in this Schedule 7.3.

20. Staffing aspects of SQUIRE

The Franchisee shall from the Franchise Commencement Date ensure that its employees' service specification manuals incorporate the SQUIRE Service Specification and standards and the Franchisee shall train its employees to deliver the Services in accordance with that specification and those standards.

21. Customer Information

21.1 The Customer Contact Centre shall also play a key role in co-ordinating internal information concerning the Franchisee's performance under Schedule 7.3 (SQUIRE). Its specific roles shall include:

- (a) Acceptance of internal reports of failure and acknowledgements;
- (b) Receipt of internally completed SQUIRE reports and aggregation into reports for the Service Quality Manager, the Franchisee's Managing Director, the Franchisee's executive, and the Franchisee's board;
- (c) Fast track reporting of potential failure under Schedule 7.3 (SQUIRE) to the Service Quality Manager;
- (d) Receipt and acknowledgement of reports received from customers, Stakeholders or external agencies; and
- (e) Co-ordination of required information concerning SQUIRE including records of reports which have to be sent to the Authority at the end of each Reporting Period.

21.2 The Franchisee's conductors shall be provided with mobile phones or a similar and suitable means of instantaneous communication and shall be required to phone or otherwise contact the Customer Contact Centre as soon as reasonably practicable if any Station needs attention in relation to a matter covered by Schedule 7.3 or the SQUIRE Service Schedules Agreement.

APPENDIX A to Schedule 7.3 –

Escalation Procedure

1. Within 5 Working Days of notification pursuant to paragraphs 8 or 9.3 of Schedule 7.3 or, where the parties have not agreed revised proposals in accordance with paragraph 12.2, within 5 Working Days of the expiry of the period of 2 weeks referred to in those paragraphs, the parties shall hold a meeting (“**the First Meeting**”) to discuss any disputes in respect of paragraphs 8, 9.3 or 12.2 of Schedule 7.3 (“**the Disputes**”) with a view to resolving the Disputes in good faith the parties shall be represented by their Designated Representatives at the First Meeting.
2. If, for any reason, the Designated Representatives of the parties have not resolved the Disputes within 10 Working Days of the First Meeting each party shall promptly and in any event within 15 Working Days of the First Meeting prepare a written summary of the Disputes and the reason for the Disputes and shall submit that summary to the Nominated Representative of the other party. The Nominated Representatives of the parties shall within 20 Working Days of the First Meeting meet with a view to resolving the Disputes (“**the Second Meeting**”).
3. If the Nominated Representatives of the relevant parties have not resolved the Disputes within 10 Working Days of the Second Meeting then either party may, by agreement, seek to resolve that dispute through mediation under the auspices of a mediator.
4. The mediator shall be selected by mutual agreement and, in the case of any dispute relating to financial matters (a “**Financial Dispute**”) shall be a qualified accountant of good standing. Failing agreement within fourteen days after a request by one party to the other, a mediator shall be chosen at the request of either party by the President for the time being of the Law Society of Scotland, or, in the case of a Financial Dispute, by the President of the Institute of Chartered Accountants in Scotland, who in each case shall be requested to choose a suitably qualified and experienced mediator for the dispute in question.
5. If the dispute is not resolved by mediation within thirty days of the appointment of the mediator (or such other period as the relevant parties may agree), or if one of the relevant parties will not participate in the mediation, the dispute shall be resolved in accordance with the Dispute Resolution Rules.
6. “*Designated Representative*” means
 - (i) in respect of the Franchisee, such person as the Franchisee shall nominate from time to time and notify to the Authority; and
 - (ii) in respect of the Authority, such person as the Authority shall nominate from time to time and notify to the Franchisee.
7. “*Nominated Representative*” means
 - (i) in respect of the Franchisee, the “Head of Guest Experience” (which shall be a senior employee reporting to the Franchisee’s Managing Director) as the Franchisee shall nominate from time to time and notify to the Authority; and
 - (ii) in respect of the Authority, such person at a senior level as the Authority shall nominate from time to time and notify to the Franchisee.

APPENDIX B to Schedule 7.3

Mystery Shopper Target Scores

Mystery Shopper Targets		Franchisee														
Year	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	
Element																
Research																
Timetable	95	95	95	95	95	95	95	95	95	95	95	95	95	95	95	95
Prices	95	95	95	95	95	95	95	95	95	95	95	95	95	95	95	95
Accommodation	95	95	95	95	95	95	95	95	95	95	95	95	95	95	95	95
Facilities and Services	95	95	95	95	95	95	95	95	95	95	95	95	95	95	95	95
Onward transport	95	95	95	95	95	95	95	95	95	95	95	95	95	95	95	95
Accessibility	95	95	95	95	95	95	95	95	95	95	95	95	95	95	95	95
Booking																
Online	92	92	95	95	95	95	95	95	95	95	95	95	95	95	95	95
App	92	95	95	95	95	95	95	95	95	95	95	95	95	95	95	95
Contact Centre	90	95	95	95	95	95	95	95	95	95	95	95	95	95	95	95
Station	90	92	94	95	95	95	95	95	95	95	95	95	95	95	95	95
Confirmation email	92	95	95	95	95	95	95	95	95	95	95	95	95	95	95	95
Pre travel																
Query via Website	92	95	95	95	95	95	95	95	95	95	95	95	95	95	95	95
Query via App	92	95	95	95	95	95	95	95	95	95	95	95	95	95	95	95
Query via Contact Centre	92	95	95	95	95	95	95	95	95	95	95	95	95	95	95	95
Query via Station	90	92	94	95	95	95	95	95	95	95	95	95	95	95	95	95
Change via Website	92	95	95	95	95	95	95	95	95	95	95	95	95	95	95	95
Change via App	92	95	95	95	95	95	95	95	95	95	95	95	95	95	95	95
Change via Contact Centre	92	95	95	95	95	95	95	95	95	95	95	95	95	95	95	95
Change via Station	90	92	94	95	95	95	95	95	95	95	95	95	95	95	95	95
Refund	95	95	95	95	95	95	95	95	95	95	95	95	95	95	95	95
Special Service request	95	95	95	95	95	95	95	95	95	95	95	95	95	95	95	95
At the station																
Ticket office	90	92	94	95	95	95	95	95	95	95	95	95	95	95	95	95
Lounge	90	92	95	95	95	95	95	95	95	95	95	95	95	95	95	95
Left luggage	90	90	95	95	95	95	95	95	95	95	95	95	95	95	95	95
Shower facilities	90	95	95	95	95	95	95	95	95	95	95	95	95	95	95	95
Catering	95	95	95	95	95	95	95	95	95	95	95	95	95	95	95	95
Branding and Signage	95	95	95	95	95	95	95	95	95	95	95	95	95	95	95	95

Mystery Shopper Targets		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Franchisee Year	Element	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Boarding																
Time train available	90	95	95	95	95	95	95	95	95	95	95	95	95	95	95	95
Welcome from host	92	95	95	95	95	95	95	95	95	95	95	95	95	95	95	95
Facilities explaination	92	95	95	95	95	95	95	95	95	95	95	95	95	95	95	95
Clear wayfinding	95	95	95	95	95	95	95	95	95	95	95	95	95	95	95	95
Platform signage	95	95	95	95	95	95	95	95	95	95	95	95	95	95	95	95
Accommodation																
Presentation / cleanliness	80	85	90	95	95	95	95	95	95	95	95	95	95	95	95	95
Facilities availability	80	85	90	95	95	95	95	95	95	95	95	95	95	95	95	95
Comfort levels	75	75	75	95	95	95	95	95	95	95	95	95	95	95	95	95
Bedding	85	90	90	95	95	95	95	95	95	95	95	95	95	95	95	95
Amenity kit	95	95	95	95	95	95	95	95	95	95	95	95	95	95	95	95
Lighting	75	75	75	95	95	95	95	95	95	95	95	95	95	95	95	95
Temperature	75	75	75	95	95	95	95	95	95	95	95	95	95	95	95	95
Noise	75	75	75	95	95	95	95	95	95	95	95	95	95	95	95	95
Wi-Fi service	n/a	n/a	n/a	95	95	95	95	95	95	95	95	95	95	95	95	95
Evening Food and Drink																
Menu availability	90	95	95	95	95	95	95	95	95	95	95	95	95	95	95	95
Staff availability	90	95	95	95	95	95	95	95	95	95	95	95	95	95	95	95
Host product knowledge	90	95	95	95	95	95	95	95	95	95	95	95	95	95	95	95
Taste	90	95	95	95	95	95	95	95	95	95	95	95	95	95	95	95
Presentation of product	90	95	95	95	95	95	95	95	95	95	95	95	95	95	95	95
Club car appearance	75	75	75	95	95	95	95	95	95	95	95	95	95	95	95	95
Ordering of Room service	n/a	n/a	n/a	95	95	95	95	95	95	95	95	95	95	95	95	95
Promptness of delivery to accomodation	n/a	n/a	n/a	95	95	95	95	95	95	95	95	95	95	95	95	95
Breakfast																
Menu availability	90	95	95	95	95	95	95	95	95	95	95	95	95	95	95	95
Staff availability	90	95	95	95	95	95	95	95	95	95	95	95	95	95	95	95
Host product knowledge	90	95	95	95	95	95	95	95	95	95	95	95	95	95	95	95
Taste	90	95	95	95	95	95	95	95	95	95	95	95	95	95	95	95
Presentation of product	90	95	95	95	95	95	95	95	95	95	95	95	95	95	95	95
Club car appearance	75	75	75	95	95	95	95	95	95	95	95	95	95	95	95	95
Promptness of	n/a	n/a	n/a	95	95	95	95	95	95	95	95	95	95	95	95	95

delivery to accomodation												
-----------------------------	--	--	--	--	--	--	--	--	--	--	--	--

Mystery Shopper Targets		Franchisee													
Year	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Element															
Washing															
En suite	n/a	n/a	n/a	95	95	95	95	95	95	95	95	95	95	95	95
Towels	95	95	95	95	95	95	95	95	95	95	95	95	95	95	95
Vestibule toilets	80	80	80	95	95	95	95	95	95	95	95	95	95	95	95
Quality of sleep															
Smooth ride	80	85	85	95	95	95	95	95	95	95	95	95	95	95	95
Overall satisfaction	80	85	90	95	95	95	95	95	95	95	95	95	95	95	95
Disembarkation															
Accommodation exit time	90	95	95	95	95	95	95	95	95	95	95	95	95	95	95
Host good bye	90	95	95	95	95	95	95	95	95	95	95	95	95	95	95
Onward assistance requests	90	95	95	95	95	95	95	95	95	95	95	95	95	95	95
Post trip															
Post trip survey	90	95	95	95	95	95	95	95	95	95	95	95	95	95	95
Complaint process	95	95	95	95	95	95	95	95	95	95	95	95	95	95	95
Guest Service Hosts															
Warmth of welcome	90	95	95	95	95	95	95	95	95	95	95	95	95	95	95
Engagement	90	95	95	95	95	95	95	95	95	95	95	95	95	95	95
Availability	90	95	95	95	95	95	95	95	95	95	95	95	95	95	95
Presentation	90	95	95	95	95	95	95	95	95	95	95	95	95	95	95
Knowledge of products	90	95	95	95	95	95	95	95	95	95	95	95	95	95	95
Knowledge of destination	90	95	95	95	95	95	95	95	95	95	95	95	95	95	95
Overall satisfaction	85	90	90	95	95	95	95	95	95	95	95	95	95	95	95
Overall satisfaction	85	90	90	95	95	95	95	95	95	95	95	95	95	95	95

SCHEDULE 8

**THIS IS SCHEDULE 8 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT
BETWEEN THE AUTHORITY AND SERCO CALEDONIAN SLEEPERS LIMITED**

Payments

Schedule 8.1: Franchise Payments

Schedule 8.2: Annual Franchise Payments

Appendix:	Figures for calculation of Annual Franchise Payments
------------------	---

Schedule 8.3: Miscellaneous Payment Provisions

Schedule 8.4: Track Access Adjustments and Station Charge Adjustments

Schedule 8.5: Capital Payments

Schedule 8.6: The Investment Fund

SCHEDULE 8.1

THIS IS SCHEDULE 8.1 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT BETWEEN THE AUTHORITY AND SERCO CALEDONIAN SLEEPERS LIMITED

Franchise Payments

1. Franchise Payments

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

$\text{£FP} = \text{PFP} + \text{PSuA} + \text{IPSuRA} + \text{FRSuPA} + \text{TAA} + \text{SCA} - \text{NRR} + \text{CP} + \text{FMP} - \text{COPA}$

where:

£FP means the Franchise Payment for that Reporting Period;

NRR means an amount equivalent to the amount received by the Franchisee from Network Rail in that Reporting Period by way of Network Rail rebate in respect of the relevant year ending on (or around) 31 March, excluding any amount received by the Franchisee by way of reimbursement of or credit for value added tax. For this purpose "Network Rail rebate" and "Relevant Year" have the meanings given to them in the Track Access Agreement.

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

where

RPD means the number of days in that Reporting Period;

FYD is equal to 365 or, if February 29 occurs during the Franchisee Year in which that Reporting Period falls, 366; and

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

IPSuRA means the amount of any Interim Profit Support Reconciliation Amount to be paid on that Reporting Period's Payment Date

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

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

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

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

CP means the amount of any Capital Payment to be paid on that Reporting Period's Payment Date in accordance with Schedule 8.5 (*Capital Payments*);

FMP means the amount of any Force Majeure Payment to be paid on that Reporting Period's Payment Date calculated in accordance with paragraph 4.12.

COPA means any Committed Obligation Payment Adjustment to be made on that Reporting Period's Payment Date in accordance with Schedule 1.6 (*Committed Obligations*).

- 1.2 Where a Franchisee Year starts or ends during a Reporting Period, £FP and PFP shall be determined as if references in paragraph 1.1 to a Reporting Period were to each of the separate sections of 2 such Reporting Periods which fall either side of such Franchisee Year start or end, and the Franchise Payment for such Reporting Period shall be the sum of £FP as determined for each such section of such Reporting Period.
- 1.3 The parties agree:
 - (a) each of £FP, IPSuRA, FPSuRA TAA and SCA may be a positive or negative number;
 - (b) where £FP is a positive number, the Authority shall pay that amount to the Franchisee on the Payment Date for that Reporting Period; and
 - (c) where £FP is a negative number, the Franchisee shall pay to the Authority the corresponding positive amount on the Payment Date for that Reporting Period.

2. **Payment of Franchise Payments**

- 2.1 The Authority shall notify the Franchisee, no less than 7 days prior to the end of each Reporting Period, of the amount of the Franchise Payment payable in respect of that Reporting Period.
- 2.2 Each such notification shall set out in reasonable detail how the Franchise Payment has been calculated.
- 2.3 The Payment Date for a Reporting Period shall be the last business day of that Reporting Period.
- 2.4 Each Franchise Payment shall be payable by the Franchisee or, as the case may be, the Authority in the amount notified by the Authority in accordance with paragraph 2.1 on the Payment Date of the Reporting Period to which it relates.
- 2.5 Each Franchise Payment shall be made:
 - (a) by automatic electronic funds transfer in pounds sterling to such bank account in the United Kingdom as the payee of such payment may have previously specified to the payer in writing; and
 - (b) so that cleared funds are received in that account on or before the due date for payment.
- 2.6 If any party disputes the amount of a Franchise Payment, the dispute shall be resolved in accordance with the Dispute Resolution Rules but shall not affect the

obligation of any party to pay a Franchise Payment notified in accordance with this paragraph 2.

- 2.7 If the Franchisee fails to pay any amount to the Authority on its due date, it shall in addition pay interest on such amount at the Interest Rate, calculated on a daily basis, from the due date for payment to the date on which payment is made.
- 2.8 If the amount of any Franchise Payment is agreed or determined to be incorrect and:
 - (a) any party has made a payment to any other party which is greater than it would have made if the amount of the Franchise Payment had been correct, then the recipient shall repay the excess within 3 business days of the agreement or determination; or
 - (b) any party has made a payment to any other party which is less than it would have made if the amount of the Franchise Payment had been correct;

then the payer shall pay the amount of any shortfall to the payee no later than the next day a Franchise Payment becomes payable under this Schedule 8.1 which falls not less than 7 days after such agreement or determination, or if there is no such day, 14 days after the date of such agreement or determination, together, in each case, with interest on the amount payable at the Interest Rate, calculated on a daily basis from the date on which the Franchise Payment was paid until the date on which such excess amount or shortfall is paid.

3. NOT USED

4. Profit Support

Entitlement to Profit Support Adjustments

- 4.1 A Profit Support Adjustment shall be made in accordance with paragraphs 4.2 and 4.5 to 4.7 (inclusive) in respect of any Reporting Period which starts after the 5th anniversary of the Franchise Commencement Date if:
 - (a) in the case of any Reporting Period which ends prior to the exercise of the Rebasing Option, subject to paragraph 4.2, the Management Accounts for that Reporting Period discloses cumulative, year to date Losses up to the end of that Reporting Period; or
 - (b) in the case of any Reporting Period which starts after the exercise of the Rebasing Option, subject to paragraph 4.2, the Management Accounts for that Reporting Period discloses cumulative year to date Profit up to the end of that Reporting Period which is less than the Target Profit; and
 - (c) within 7 days of delivery to the Authority of the Management Accounts for such Reporting Period, the Franchisee requests that a Profit Support Adjustment be made by the Authority.
- 4.2 If any Profit Support Adjustment is made in respect of any Reporting Period that starts during the Franchisee Year in which the 5th anniversary of the Franchise Commencement Date occurs, any such Profit Support Adjustment shall be made by reference to the cumulative year to date Losses for the period from the first Reporting Period that starts after the 5th anniversary of the Franchise Commencement Date up to the end of the Reporting Period in respect of which such Profit Support Adjustment is to be made.

4.3 If a Profit Support Adjustment is requested and made pursuant to paragraphs 4.1 to 4.2 (inclusive) in any Reporting Period in any Franchisee Year, a further Profit Support Adjustment shall be made (whether or not requested) in accordance with paragraphs 4.4 and 4.5 in each subsequent Reporting Period that falls wholly within that Franchisee Year.

Amount of Profit Support Adjustment

4.4 Each Profit Support Adjustment in respect of any Reporting Period, shall be determined by reference to:

- (a) subject to paragraph 4.2, the cumulative, year to date Profit or Losses up to the end of that Reporting Period, reported in the Management Accounts referred to in paragraph 4.1;
- (b) the Target Profit; and
- (c) the following formula:

$$PS_uA = PS_uE - PPS_uA$$

where:

PS_uA is the Profit Support Adjustment for that Reporting Period;

PS_uE is the cumulative Profit Support Adjustment entitlement for the Franchisee Year to date, determined by reference to the following formula in respect of any Reporting Period which ends prior to the exercise of the Rebasing Option:

$$PS_uE = (A \times 50\%)$$

where

A is the cumulative, year to date Losses up to the end of that Reporting Period;

and by reference to the following formula in respect of any Reporting Period which ends after the exercise of the Rebasing Option:

$$PS_uE = (A \times 50\%)$$

where:

A is the amount by which cumulative year to date Profit up to the end of that Reporting Period is less than the Target Profit for the Franchisee Year in which the Reporting Period ends;

PPS_uA is the cumulative net Profit Support Adjustments (if any) made in any previous Reporting Period in the same Franchisee Year as such Reporting Periods

Profit Support Adjustment Date

4.5 Each Profit Support Adjustment in respect of any Reporting Period shall, subject to paragraph 5, be made to the Franchise Payment payable on the Profit Support Adjustment Date.

Interim Profit Support Reconciliation Amount

4.6 The Authority shall, following receipt of the Management Accounts with the relevant information, calculate the Interim Profit Support Reconciliation Amount in accordance with paragraph 4.7.

4.7 The Authority shall calculate the Interim Profit Support Reconciliation Amount in respect of any Franchisee Year in accordance with the following formula:

$$IPS_uRA = PS_uA_{(R)} - PS_uRP$$

where:

IPS_uRA is the Interim Profit Support Reconciliation Amount for any Reporting Period;

$PS_uA_{(R)}$ is the Profit Support Adjustment determined in the manner set out in paragraph 4.1 but by reference to the revised financial information in the Management Accounts for that Reporting Period; and

PS_uRP is the Profit Support Adjustment for the Reporting Period already included in the calculation of a Franchise Payment;

Final Profit Support Reconciliation Amount

4.8 After each Franchisee Year in which any Profit Support Adjustment has been made, the Authority shall, following receipt by the Authority of the Annual Audited Financial Statements in respect of that Franchisee Year, calculate the Final Profit Support Reconciliation Amount in accordance with paragraph 4.9.

4.9 The Authority shall calculate the Final Profit Support Reconciliation Amount in respect of any Franchisee Year in accordance with the following formula:

$$FPS_uRA = PS_uA_{(FS)} - PPS_uA$$

where:

FPS_uRA is the Final Profit Support Reconciliation Amount for that Franchisee Year;

$PS_uA_{(FS)}$ is the Profit Support Adjustment for that Franchisee Year determined in accordance with the following formula in respect of any Franchisee Year which ends prior to the exercising the Rebasing Option:

$$PSuA_{(FS)} = (A \times [redacted text]\%)$$

Where:

A are the Losses for that Franchisee Year as reported in the Annual Audited Financial Statements;

and by reference to the following formula in respect of any Reporting Period which ends after the exercise of the Rebasing Option:

$$PSuA_{(FS)} = (A \times [redacted text]\%)$$

where:

A is the amount by which the Profit for that Franchisee Year as reported in the Annual Audited Financial Statement is less than the Target Profit;

PPS_uA is the sum of each Profit Support Adjustment and Interim Profit Support Reconciliation Amount determined pursuant to paragraphs 4.4 and 4.7 in respect of any Reporting Period in that Franchisee Year.

Profit Support Reconciliation Date

4.10 The Final Profit Support Reconciliation Amount shall, subject to paragraph 5, be applied to the Franchise Payment payable on the Final Profit Support Reconciliation Date.

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

4.11 If a Profit Support Adjustment is to be made in accordance with this paragraph 4 in circumstances where the Franchisee is performing its obligations in contravention of any Breach Performance Level, then the provisions of Schedule 15.1 (*Reletting Provisions*) and, notwithstanding that the last 12 or 13 months of the Franchise Period have not commenced at such time, the provisions of Schedule 15.2 (*Last 12 or 13 Months of Franchise Period*) shall apply.

4.12 A Force Majeure Payment calculated as follows shall be made in respect of any Reporting Period during which a Force Majeure Revenue Loss occurs.

$$FMP = FMRL \times [\text{redacted text}] \%$$

Where

FMP = the Force Majeure Payment

FMRL is the Force Majeure Revenue Loss during the Reporting Period

“Force Majeure Revenue Loss” is the loss of Revenue during any Reporting Period which is directly attributable to a Qualifying Force Majeure Event, as demonstrated by the Franchisee on an open book basis, ,

“Qualifying Force Majeure Event” means a Force Majeure Event, other than a Force Majeure Event arising as a result of industrial action (howsoever caused and of whatever nature), in respect of which there has been a cumulative loss of Revenue in excess of [redacted text] as demonstrated by the Franchisee on an open book basis

5 Final Franchisee Year

Profit Share

5.1 Any Final Profit Share Reconciliation Amount in respect of the final Franchisee Year shall be determined in accordance with Schedule 8.6 (*The Investment Fund*) but where the number is a positive amount such amount shall be paid by the Franchisee to the Authority within 30 days of the Authority giving written notice to the Franchisee of the amount of such Final Profit Share Reconciliation Amount.

Profit Support

5.2 Any Profit Support Adjustment and/or Interim or Final Profit Support Reconciliation Amount which:

- (a) is to be made in respect of the final Franchisee Year; and
- (b) has not been made during the Franchise Period,

shall be determined in accordance with paragraphs 4.4, 4.7 and 4.9 respectively but shall be paid within 30 days of the Authority giving written notice to the Franchisee of the amount of such Profit Support Adjustment and/or Interim or Final Profit Support Reconciliation Amount.

Annual Audited Financial Statements

5.3.1 If the Franchisee fails to provide the Annual Audited Financial Statements for the final Franchisee Year within 3 Reporting Periods of the expiry of the final Franchisee Year pursuant to paragraph 3.7 of Schedule 13.2 (*Information*), the Authority shall be entitled (but not obliged) to determine:

- (a) the Final Profit Share Reconciliation Amount in accordance with Schedule 8.6 (*The Investment Fund*);
- (b) any Profit Support Adjustment in accordance with paragraph 4.4; and/or
- (c) any Final Profit Support Reconciliation Amount in accordance with paragraph 4.9,

but by reference to any relevant information available to the Authority at the time of such determination, including any information contained in the latest cumulative, year to date Management Accounts or in the Annual Management Accounts.

5.3.2 Each year the Franchisee shall provide the Authority with a reconciliation to the reasonable satisfaction of the Authority of the differences between the profit of the Franchisee as stated in the statutory audited financial accounts and the operating profit as contained in the Management Accounts of the Franchisee. For the avoidance of doubt the only anticipated differences shall be interest and statutory accounting adjustments (e.g. pension adjustments).

APPENDIX TO SCHEDULE 8.1**Components of DFR**

The amounts for the purposes of the component of DFR in Profit are set out in the table below

[redacted table]

DFR includes total annual cost for MD, Head of Finance & Commercial, Head of Production & Safety, Head of Revenue & Marketing, Head of Guest Experience

SCHEDULE 8.2

THIS IS SCHEDULE 8.2 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT BETWEEN THE AUTHORITY AND SERCO CALEDONIAN SLEEPERS LIMITED

Annual Franchise Payments

The Annual Franchise Payment for any Franchisee Year is an amount equal to:

$$\text{AFP} = \text{FXD} + (\text{VCRPI} \times \text{RPI}) + (\text{VCAWE} \times \text{AWE}) + (\text{PRPI} \times \text{RPI}) - (\text{TRRPI} \times \text{RPI})$$

where:

AFP equals the Annual Franchise Payment in the relevant Franchisee Year.

FXD means the figure shown in respect of the relevant Franchisee Year in column 2 of the table set out in the Appendix (*Figures for Calculation of Annual Franchise Payments*) (*NB this figure is the costs that are fixed for the franchise term*);

VCRPI means the figure shown in respect of the relevant Franchisee Year in column 3 of the table set out in the Appendix (*NB this figure is the variable costs to be indexed at RPI*);

RPI is the quotient of the Retail Prices Index for the January which immediately precedes the commencement of the relevant Franchisee Year divided by the Retail Prices Index for January 2015;

VCAWE means the figure shown in respect of the relevant Franchisee Year in column 4 of the table set out in the Appendix (n.b. this figure is the variable costs to be included at AWE);

AWE is the quotient of the Average Weekly Earnings for the January which immediate precedes the commencement of the relevant Franchisee Year divided by the Average Weekly Earnings for January 2015;

TRRPI means the figure shown in respect of the relevant Franchisee Year in column 6 of the table set out in the Appendix (*NB this figure is total revenue which will be indexed at RPI*); and

PRPI means the figure shown in respect of the relevant Franchisee Year in column 5 of the table set out in the Appendix (*NB this figure is the total profit which will be indexed at RPI*).

APPENDIX TO SCHEDULE 8.2
Figures for Calculation of Annual Franchise Payments

[redacted table]

SCHEDULE 8.3

**THIS IS SCHEDULE 8.3 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT
BETWEEN THE AUTHORITY AND SERCO CALEDONIAN SLEEPERS LIMITED**

Miscellaneous Payment Provisions

1. Industrial Action

- 1.1 The Authority, in its discretion, may, subject to paragraph 1.2 below, at any time decide to reimburse or ameliorate net losses of the Franchisee arising from Industrial Action (however caused and of whatever nature) in circumstances where the Franchisee has demonstrated to the satisfaction of the Authority that it has taken all reasonable steps to avoid the Industrial Action and that, Industrial Action having nevertheless occurred, the Franchisee has taken all reasonable steps to mitigate its effects.
- 1.2 Where Industrial Action to which paragraph 1.1 applies has been or will be taken by any employees of the Franchisee or any of its Affiliates, Associates or sub-contractors, and the Authority is giving consideration to reimbursement or amelioration of net losses of the Franchisee, the Authority shall, prior to any decision to reimburse or ameliorate net losses of the Franchisee in terms of paragraph 1.1, consult with representatives of the person(s) in respect of whose employment the Industrial Action is taken and such Stakeholders (including the Passengers' Council) as the Authority may determine.

2. Set off, deductions, etc

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

3. Payment of Suppliers and Sub-contractors

The Franchisee shall settle valid invoices from its suppliers and sub-contractors for the sums contractually due within 30 days of receipt by the Franchisee of such invoices.

4. Rebasing Option

The Franchisee may, after the 7th anniversary of the Franchise Commencement Date, exercise an option to rebase to a 2.5% profit on Revenue by service of a written proposal setting out the financial consequences of implementing the rebasing. Subject to paragraphs 1.1(c) and 1.4 of Schedule 10.2 (*Termination and Expiry*) if this option is exercised, the amounts and values set out in paragraph 2.1 of Schedule 9.1 (*Variations and Financial Consequences of Change*) will be ascertained by a Run of the Financial Model using the following Revised Inputs:-

- 4.1 Actual outturn Revenue and costs of operating the Franchise Services during the 26 Reporting Periods prior to the Run of the Financial Model applying bid growth percentages in each year to FXD, RRPI, PRPI, VCRPI and VCAWE;
- 4.2 Target Profit of 2.5% of Revenue.

SCHEDULE 8.4

**THIS IS SCHEDULE 8.4 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT
BETWEEN THE AUTHORITY AND SERCO CALEDONIAN SLEEPERS LIMITED**

Track Access Adjustments and Station Charge Adjustments

1. Track Access Adjustments

1.1 The Track Access Adjustment to be made in respect of any Reporting Period shall be determined in accordance with the following formula:

$$\text{TAA} = L \times \frac{\text{RPD}}{\text{FYD}}$$

where:

TAA means the Track Access Adjustment to be made in that Reporting Period;

L is the value of " L_t " for the Franchisee Year in which the Reporting Period falls under Part 3 of Schedule 7 of the Track Access Agreement;

RPD means the number of days in that Reporting Period; and

FYD means the number of days in the Franchisee Year in which that Reporting Period falls,

except that, where a Reporting Period falls during two Franchisee Years, TAA shall be determined as if the references to Reporting Period were to each of the two periods within such Reporting Period which fall wholly within one of such Franchisee Years and the Track Access Adjustment to be made in that Reporting Period shall reflect the sum of TAA as determined for each such period.

1.2 The Franchisee shall notify the Authority upon becoming aware that any Track Access Adjustment is to be made and shall supply such information as the Authority may require in relation thereto. The Franchisee shall exercise its rights under the Track Access Agreement in such manner and take such other action as the Authority may reasonably require in connection with any related payment thereunder (including in relation to any agreement of the amount of any such payment and including submitting any relevant dispute to any relevant dispute resolution procedures). The Franchisee shall not, without the consent of the Authority, agree or propose to agree a value for " L_t " under Part 3 or 4 of Schedule 7 of the Track Access Agreement.

1.3 The Franchisee shall provide such evidence of payment as the Authority may require (including any certificates) for the purpose of determining the value of L under paragraph 1.1.

1.4 If no value is ascertained for L prior to the date on which the Franchise Payment for the relevant Reporting Period is determined, then a Track Access

Adjustment shall only be determined to the extent such value can be ascertained at such time and, when such value is subsequently ascertained, adjustment shall be made to reflect the full Track Access Adjustment for such Reporting Period.

- 1.5 The value of L when used in the computation in paragraph 1.1 shall be taken to exclude any input Value Added Tax which is recoverable in respect of the payments they represent by the Franchisee under Sections 24 to 26 of the Value Added Tax Act 1994.
- 1.6 References in this paragraph 1 to "L_t" and Parts 3 and 4 of Schedule 7 of the Track Access Agreement shall be deemed also to be references to such other provisions, and such other algebra under any such other provisions, of any Track Access Agreement as the Authority may reasonably consider have an equivalent effect, or are intended to fulfil the same function, as "L_t" and Parts 3 and 4 of Schedule 7 of the Track Access Agreement to which the Franchisee is a party on the Franchise Commencement Date.

2. Station Charge Adjustment

- 2.1 The Station Charge Adjustment to be made in respect of any Reporting Period shall be the aggregate of the Individual Station Charge Adjustments as determined in accordance with the following formula for each Station and each other station at which the Passenger Services call:

$$\text{ISCA} = (L - P) \times \frac{\text{RPD}}{\text{FYD}}$$

where:

ISCA means the Individual Station Charge Adjustment for the relevant station for that Reporting Period;

L is the value of "L_t" for the Franchisee Year in which the Reporting Period falls under:

- (a) if the relevant station is not an Independent Station, Condition F11.2 of the Franchise Station Access Conditions relating to such station; or
- (b) if the relevant station is an Independent Station, Condition 42.3 of the Independent Station Access Conditions relating to that Independent Station

in each case, to the extent that value represents an amount payable to or by Network Rail or any other relevant Facility Owner by or to the Franchisee on its own behalf under the relevant Station Lease or Access Agreement (excluding any amount payable to Network Rail by the Franchisee in its capacity as Facility Owner of a station on behalf of a beneficiary which is party to an Access Agreement in respect of that Station);

P is the value of "P_t" for the Franchisee Year in which the Reporting Period falls under:

- (a) if the relevant station is not an Independent Station, Condition F11.2 of the Franchise Station Access Conditions relating to such station; or

(b) if the relevant station is an Independent Station, Condition 42.3 of the Independent Station Access Conditions relating to that Independent Station

in each case, to the extent that value represents an amount payable to or by Network Rail or any other relevant Facility Owner by or to the Franchisee on its own behalf under the relevant Station Lease or Access Agreement (excluding any amount payable to Network Rail by the Franchisee in its capacity as Facility Owner of a station on behalf of a beneficiary which is party to an Access Agreement in respect of that Station);

RPD means the number of days in that Reporting Period; and

FYD means the number of days in the Franchisee Year in which that Reporting Period falls except that, where a Reporting Period falls during 2 Franchisee Years, the Station Charge Adjustment shall be determined as if the references to Reporting Period were to each of the two periods within such Reporting Period which fall wholly within one of such Franchisee Years and the Station Charge Adjustment for such Reporting Period shall be the sum of the Station Charge Adjustment as determined for each such period.

2.2 The Franchisee shall notify the Authority upon becoming aware that any Station Charge Adjustment is to be made and shall supply such information as the Authority may require in relation thereto. The Franchisee shall exercise such rights as it may have under any relevant Station Lease or Access Agreement in such manner and take such other action as the Authority may reasonably require in connection with any related payment thereunder (including in relation to any agreement of the amount of any such payment and including submitting any relevant dispute to any relevant dispute resolution procedures). The Franchisee shall not, without the consent of the Authority, agree or propose to agree a value for "L_t" or "P_t" under any relevant Station Lease or Access Agreement.

2.3 The Franchisee shall provide such evidence of payment as the Authority may require (including any certificates) for the purpose of determining the value of L and P under paragraph 2.1.

2.4 If no value is ascertained for any of L or P prior to the date on which the Franchise Payment for the relevant Reporting Period is determined, then a Station Charge Adjustment shall only be determined to the extent such values can be ascertained at such time and, when such values are subsequently ascertained, an adjustment shall be made to reflect the full Station Charge Adjustment for such Reporting Period.

2.5 The values of L and P when used in the computation in paragraph 2.1 shall be taken to exclude any input Value Added Tax which is recoverable in respect of the payments they represent by the Franchisee under Sections 24 to 26 of the Value Added Tax Act 1994.

2.6 For the purposes of this paragraph 2, **Independent Station** shall mean:

(a) as at the date hereof, Birmingham New Street, Edinburgh Waverley, Glasgow Central High Level, Glasgow Central Low Level, Glasgow Queen Street High Level, London Bridge, London Cannon Street, London Charing Cross, London Euston, London King's Cross, London Liverpool Street, London Paddington, London St Pancras International,

London Victoria, London Waterloo (excluding Waterloo International),
Leeds, Liverpool Lime Street and Manchester Piccadilly; and

(b) any other station of which Network Rail may from time to time be the Facility Owner.

2.7 References in this paragraph 2 to " L_t ", " P_t ", Condition F11.2 of the Franchise Station Access Conditions and Condition 42.3 of the Independent Station Access Condition shall be deemed also to be references to such other provisions, and such other algebra under any such other provisions, of any relevant station access conditions as the Authority may reasonably consider have an equivalent effect, or are intended to fulfil the same function as, " L_t ", " P_t " and Condition F11.2 of the Franchise Station Access Conditions and Condition 42.3 of the Independent Station Access Conditions which are in effect on the Franchise Commencement Date.

SCHEDULE 8.5

**THIS IS SCHEDULE 8.5 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT
BETWEEN THE AUTHORITY AND SERCO CALEDONIAN SLEEPERS LIMITED**

Capital Payments

Capital Payment Instalments

1. The Authority shall, in accordance with the provisions of the Grant Funding Agreement, pay to the Franchisee the Capital Payment in the instalments set out therein.

SCHEDULE 8.6

THIS IS SCHEDULE 8.6 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT BETWEEN THE AUTHORITY AND SERCO CALEDONIAN SLEEPERS LIMITED

The Investment Fund

1 Definitions

For the purposes of this Schedule 8.6 the following capitalised terms shall have the following meaning.

Joint Investment Fund Bank Account means the bank account set up by and in the names of the Authority and the Franchisee agreed in writing by both parties to be such an account ;

FPShRA means the amount of any Final Profit Share Reconciliation Amount;;

PShA means the amount of any Profit Share Adjustment

IPShRA means the amount of any Interim Profit Share Reconciliation Amount;

2 The Joint Investment Fund Bank Account

- 2.1 The Franchisee shall pay an amount equal to any Profit Share Adjustment, Interim Profit Share Reconciliation Amount or Final Profit Share Reconciliation Amount (where such amounts are a positive number) calculated in accordance with this Schedule 8.6 into the Joint Investment Fund Bank Account by no later than the relevant Profit Share Adjustment Date;
- 2.2 Prior to the earlier of the Termination Date or the Expiry Date, any amounts standing to the credit of the of the Joint Investment Fund Bank Account (together with any interest accrued) (the “**Authority Profit Share**”) may be withdrawn by the Franchisee:
 - (a) up to an amount which is equal to any Interim Profit Share Reconciliation Amount or Final Profit Share Reconciliation Amount where such amounts are a negative number;
 - (b) as required to enable it to fund Changes where the Authority and the Franchisee have agreed in writing that such Changes should be funded using the Authority Profit Share; and
 - (c) for any other purpose agreed with the Authority in writing.
- 2.3 The Authority shall be entitled to withdraw the Authority Profit Share at any time provided the amount left standing to the credit of the Joint Investment Fund after a withdrawal is not less than:
 - (a) any amount required to fund Changes or for any other purpose agreed by the Authority; and
 - (b) the aggregate of any Profit Share Adjustment and Interim Profit Share Reconciliation Amount in respect of which the Final Profit Share Reconciliation Amount has not been calculated; and
 - (c) any Final Profit Share Reconciliation Amount where that amount is a negative number

2.4 The Parties shall operate the signatory requirements of the Joint Investment Fund Bank Account to give effect to the provisions of paragraphs 2.2 and 2.3 above.

3 Calculating the Profit Share Adjustment

Entitlement to Profit Share Adjustments

3.1 A Profit Share Adjustment shall arise and be paid into the Joint Investment Fund Bank Account in respect of any Reporting Period where Management Accounts for that Reporting Period project Profit for the Franchisee Year in which the Reporting Period occurs as exceeding Target Profit for that Franchisee Year.

Amount of Profit Share Adjustments

3.2 Each Profit Share Adjustment in respect of any Reporting Period, shall be determined by reference to:

- (a) the Profit for the Franchisee Year projected in the Management Accounts; and
- (b) the following formula:

$$PS_{h,RP} = PS_{h,A}/13$$

where:

$$PS_{h,A} = (A \times [redacted text]\%) + (B)$$

where:

$PS_{h,RP}$ is the Profit Share Adjustment for the Reporting Period;

$PS_{h,A}$ is the Profit Share Adjustment for that Franchisee Year;

A is the amount of Profit for the Franchisee Year projected in the Management Accounts for that Reporting Period which is:

- (a) greater than Target Profit; and
- (b) less than or equal to the Profit Cap; and

B is the amount of Profit for the Franchisee Year projected in the Management Accounts for that Reporting Period which is greater than the Profit Cap.

Interim Profit Share Reconciliation Amount

3.3 The Authority shall, following receipt of the Management Accounts with the relevant information, calculate the Interim Profit Share Reconciliation Amount for a Reporting Period in accordance with paragraph 3.4.

3.4 The Authority shall calculate the Interim Profit Share Reconciliation Amount in accordance with the following formula:

$$IPS_hRA = PS_hA(R) - PS_hRP$$

where:

IPS_hRA is the Interim Profit Share Reconciliation Amount for any Reporting Period;

$PS_hA(R)$ is the Profit Share Adjustment determined in the manner set out in paragraph 3.2 but by reference to the revised financial information in the Management Accounts for that Reporting Period; and

PS_hRP is the Profit Share Adjustment for the Reporting Period already paid into the Joint Investment Fund Bank Account by the Franchisee;

Final Profit Share Reconciliation Amount

- 3.5 After each Franchisee Year, the Authority shall, following receipt by the Authority of the Annual Audited Financial Statements in respect of that Franchisee Year, calculate the Final Profit Share Reconciliation Amount in accordance with paragraph 3.6.
- 3.6 The Authority shall calculate the Final Profit Share Reconciliation Amount in accordance with the following formula:

$$FPS_hRA = PS_hA(FS) - TPS_hRP$$

where:

FPS_hRA is the Final Profit Share Reconciliation Amount for any Franchisee Year;

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

TPS_hRP is the total Profit Share Adjustments and Interim Profit Share Reconciliation Amount for each Reporting Period in the Franchisee Year already paid into the Joint Investment Fund Bank Account

(if any, or if there was none, nil) determined pursuant to paragraph 3.2.

4. Setting up of the Joint Investment Fund Bank Account

The Authority and the Franchisee shall set up the Joint Investment Fund Bank Account within 28 days of the last day of the first Reporting Period where Management Accounts for that Reporting Period project Profit for the Franchisee Year in which the Reporting Period occurs as exceeding Target Profit for that Franchisee Year.

SCHEDULE 9

**THIS IS SCHEDULE 9 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT
BETWEEN THE AUTHORITY AND SERCO CALEDONIAN SLEEPERS LIMITED**

Changes

Schedule 9.1: Variations and Financial Consequences of Change

Schedule 9.2: Revised Inputs: Identity of the Financial Model etc.

Schedule 9.3 Runs of Financial Model

Appendix: Incentivising Long-Term Investment

Schedule 9.4: Authority Risk Assumptions

SCHEDULE 9.1

THIS IS SCHEDULE 9.1 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT BETWEEN THE AUTHORITY AND SERCO CALEDONIAN SLEEPERS LIMITED

Variations and Financial Consequences of Change

1. Variations to this Agreement

1.1 The terms of this Agreement may be varied as follows but not otherwise:

- (a) by the Authority, in relation to:
 - (i) any aspect of the Franchise Services;
 - (ii) any obligations associated with the operation of the Caledonian Sleeper Franchise; and
 - (iii) any provision of this Agreement other than those provisions specified in paragraph 1.2,
 by service of a notice on the Franchisee referring to this paragraph 1.1(a) and setting out the variation to the terms of this Agreement;
- (b) in relation to any provision of this Agreement, by agreement in writing between the parties to that effect,

(each a **Variation**).

Notwithstanding the references to this Agreement, a Variation pursuant to this paragraph 1.1 may also be made to the Definitions Agreement and/or the SQUIRE Service Schedules Agreement.

1.2 Without prejudice to the Authority's rights under paragraph 1.1, the terms of each of *Clause 3 (Term)*, *Schedules 8 (Franchise Payments)*, *9 (Changes)*, *10 (Remedies, Termination and Expiry)*, *12 (Financial Obligations and Undertakings)*, *14 (Preservation of Assets)*, *18 (Franchise Term Modification)* and paragraphs 1 to 8 (inclusive) of Schedule 19 shall not be varied at any time other than in accordance with the terms of this Agreement or with the agreement of the parties.

1.3 The Authority shall, to the extent reasonably practicable, allow the Franchisee a reasonable opportunity to make representations to the Authority concerning any Variation to be made in accordance with paragraph 1.1(a) prior to making any such Variation.

1.4 The Authority may:

- (a) issue, revise and withdraw from time to time procedures that it requires to be followed for the purposes of orderly consideration of Variations. This will include for the purpose of establishing in relation to any Change whether it is a Qualifying Change; and

- (b) require the Franchisee to provide any information that the Authority reasonably requires for this purpose (including in relation to prospective change to profit, costs and revenue as a consequence of proceeding with the Variation).

1.5 Procedures issued pursuant to paragraph 1.4 may provide for indicative iterations of Runs of the Financial Model in relation to 1 or more Changes that the Authority is considering and may also provide for any number of Changes to be grouped together as a single Change for the purposes of agreeing or determining Revised Inputs and then performing a Run of the Financial Model.

1.6 Procedures issued pursuant to paragraph 1.4 shall have contractual effect between the parties in accordance with their terms.

1.7 The Franchisee may notify the Authority of any proposal for a Variation by notice setting out the proposed method of implementing such Variation including:

- (a) the time scale for doing so;
- (b) the effect (if any) on the timing of the performance of its other obligations under this Agreement;
- (c) the impact of effecting the proposed Variation on the provision of the Franchise Services and the Franchisee's proposals as to how to minimise such impact; and
- (d) the financial consequences of implementing the proposed Variation proposed by the Franchisee in terms of the Revised Inputs that the Franchisee considers the Variation would require.

1.8 The Authority shall be under no obligation to consider a Variation proposed by the Franchisee but, if it wishes to do so, it shall do so pursuant to paragraph 1.1 of this Schedule 9.1.

1.9 Where the Franchisee proposes a Variation in sufficient detail for it to be apparent that its implementation is likely to result in an increase in the overall profitability of the Franchisee through costs saving measures (a **Protected Proposal**), the Authority may not proceed with the Protected Proposal or seek to implement the substance of it by proposing a Variation of its own without complying with the provisions of paragraph 7.3 of Schedule 9.3 (*Runs of the Financial Model*).

1.10 A Variation to the terms of this Agreement pursuant to paragraph 1.1 may involve the deletion of terms, the addition of new terms or any other type of variation or change to this Agreement required by the Authority and the parties agree that the variation mechanism entitles the Authority to require the Franchisee to use the outputs from capital projects, major projects and other projects (including (whether existing or new) trains, stations, track, routes, infrastructure, CCTV and ticket barriers) in such manner as the Authority may require. A Variation may also require that the Franchisee co-operate in relation to capital projects, major projects and other projects and, where required to do so by a Variation, to exercise or refrain from exercising such rights as the Franchisee may have.

1.11 Any specific provision in this Agreement which provides that the Authority may make a Variation relating to a particular matter shall not in any way limit the Authority's rights under paragraph 1.1.

1.12 Without prejudice to this paragraph 1 (except paragraph 1.2) the Authority may make any Variation necessary for the facilitation or delivery of any works in terms of Part 1 of Schedule 1.8 (*Major Projects*) or Major Scottish Project.

2. **Financial Consequences of a Change**

2.1 When there is or is to be a Qualifying Change the values of FXD, VCRPI, VCAWE, PRPI and TRRPI specified for each Franchisee Year in the Appendix (*Figures for Calculation of Annual Franchise Payments*) to Schedule 8.2 (*Annual Franchise Payments*) shall be restated in the amounts and values ascertained by a Run of the Financial Model in accordance with Schedule 9.3 (*Runs of the Financial Model*) after taking into account any reconciliation payment relating to Estimated Revisions pursuant to paragraph 8 of Schedule 9.3.

2.2 Where a Run of the Financial Model is required it shall be performed:

- (a) where it is reasonably practicable to do so, at least 3 Reporting Periods prior to the Qualifying Change; or
- (b) as soon as reasonably practicable thereafter.

2.3 The restated amounts and values shall have effect on and from the later of:

- (a) the date of the Qualifying Change or the date of the last Change pursuant to paragraph 4.1 (as the case may be); and
- (b) the date on which the Authority approves or the auditor certifies the results of the Run of the Financial Model.

2.4 The Authority may stipulate (on or before the date on which the Authority approves or the auditor certifies the results of the Run of the Financial Model) that those amounts and values are to apply for a limited period of time only, with provision thereafter for a further Run of the Financial Model with new Revised Inputs based on information available at that time.

2.5 The Franchisee shall provide the Authority with a log of all changes to the Financial Model in the event of paragraph 2.1 applying.

3. **Estimated Financial Consequences**

3.1 Where:

- (a) there is or is to be a Change before there is a Run of the Financial Model in relation to it; and
- (b) the Authority reasonably determines that the Change is likely to be a Qualifying Change,

then the Authority shall notify to the Franchisee a reasonable estimate of the values of FXD, VCRPI, VCAWE, PRPI and TRRPI specified for each

Franchisee Year in the Appendix (*Figures for Calculation of Annual Franchise Payments*) to Schedule 8.2.

which a Run of the Financial Model using the Authority's view of Revised Inputs and any Model Changes would produce (**Estimated Revisions**).

- 3.2 In the circumstances described in paragraph 3.1 the values of FXD, VCRPI, VCAWE, PRPI and TRRPI specified for each Franchisee Year in the Appendix (*Figures for Calculation of Annual Franchise Payments*) to Schedule 8.2 (*Annual Franchise Payments*), shall be restated in the amounts and values of the Estimated Revisions, and Franchise Payments shall be paid accordingly until the Run of the Financial Model has taken place and its results have been put into effect.
- 3.3 The Authority shall use all reasonable endeavours to provide the notification required by paragraph 3.1 at least 2 Reporting Periods before it considers the Change is likely to occur. If, having exercised all reasonable endeavours, the Authority cannot provide 2 Reporting Periods' notice, it shall provide such notification as soon as reasonably practicable afterwards.

4. Changes Beneath Threshold Amount

- 4.1 Paragraph 1 shall also apply to any 2 or more Changes of which the Franchisee is notified of or of which it becomes aware in any Franchisee Year which do not exceed the Threshold Amount taken alone but which do exceed it when taken together.
- 4.2 If either party wishes to be able to claim an adjustment pursuant to paragraph 4.1 as and when the cumulative Threshold Amount (being the cumulo amount of all Changes during the Franchisee Year) is exceeded, such party shall notify the other parties after the individual Change occurs within the time limit prescribed in paragraph 5.1(b)(iii) that such party reserves its rights to accumulate that Change with others pursuant to paragraph 4.1.

5. Time Limits

- 5.1 Either party may require there to be a Run of the Financial Model in respect of a Change provided that:
 - (a) there are good reasons for considering that a Change is likely to be a Qualifying Change; and
 - (b) that party notifies the other parties of its requirement within 6 months of:
 - (i) the notification or agreement of any Change that is a Variation pursuant to paragraph 2.1 ;
 - (ii) becoming aware of any other Change; or
 - (iii) where the claim is pursuant to paragraph 4.1, the occurrence of the last Qualifying Change .
- 5.2 Unless otherwise agreed by the Authority and the Franchisee, there shall be no entitlement to a Run of the Financial Model unless the Authority or the Franchisee (as the case may be) has notified the other within the 6 month period referred to in paragraph 5.1.

6. Specific Changes

Where an example of Change in the definition of Change in the Definitions Agreement contains wording that qualifies in some way the extent of a Change or the financial consequences of the Change, any restatement referred to in paragraph 2.1, the estimate referred to in paragraph 3.1 or the Revised Inputs, as the case may be, in respect of such a Change is to reflect those qualifications.

7. Capital Expenditure

Capital Expenditure Threshold

7.1 The Franchisee shall notify the Authority promptly if it reasonably expects that a Change to which paragraph 1 relates would require it to incur, singly or in aggregate with other Changes from time to time, Capital Expenditure in excess of 2.5 per cent of its annual Turnover in any Franchisee Year as disclosed by its latest available audited accounts and, when so notified, the Authority shall either:

- (a) withdraw the Change;
- (b) undertake to meet the excess through additional funding as and when such Capital Expenditure is incurred; or
- (c) direct the Franchisee to use all reasonable endeavours to borrow or otherwise raise the money required to fund any Change on commercial terms and at rates which are consistent with market conditions at the time, unless borrowing or otherwise raising such money would result in the Franchisee failing to comply with the financial covenants contained in Schedule 12 (*Financial Obligations and Undertakings*).

Method of Additional Funding

7.2 The additional funding referred to in paragraph 7.1(b) may be provided by increased Franchise Payments as and when required and the Authority may procure such additional funding rather than undertaking to meet it itself.

Franchisee to Seek Finance

7.3 If the Authority elects to require the Franchisee to use all reasonable endeavours as described in paragraph 7.1(c) then the Franchisee shall:

- (a) seek finance from a representative range of lending institutions and other financial institutions including those which at that time provide finance to the Franchisee and the Parent;
- (b) if it is unable to raise funding, provide the Authority with all information the Authority may reasonably require in relation to the efforts made by the Franchisee and the reasons for a failure to raise additional finance;
- (c) so far as it is able (having used all reasonable efforts to do so), the Franchisee shall provide to the Authority letters from lenders and financiers it has approached for finance stating their reasons for refusing to provide it and if the Authority so requires, arrange and

attend meetings with them for the Authority to discuss those reasons; and

- (d) if funding is not available, or is not available on terms that the Authority considers to be commercial terms or at rates which are consistent with market conditions at that time the Authority may:
 - (i) withdraw the Change; or
 - (ii) undertake to fund the Capital Expenditure as and when such Capital Expenditure is incurred.

Treatment of Borrowings in Revised Inputs

- 7.4 In calculating the Revised Inputs for the purposes of any Change referred to in this paragraph 7, the Franchisee shall account for the Capital Expenditure in accordance with the Adopted Accounting Principles, taking into account the basis on which such Capital Expenditure has been financed.

Meaning of Capital Expenditure

- 7.5 The expression *Capital Expenditure* when used in this Schedule 9.1 refers to the nature of the expenditure incurred by the Franchisee and consistent with the Adopted Accounting Principles accordingly, does not include expenditure incurred under operating leases.

8. Adjustment to Benchmarks

If:

- 8.1 there is a Change which falls within (x) of the definition of Change;
- 8.2 that Change is in itself a Qualifying Change; and
- 8.3 the Authority or the Franchisee reasonably considers that as a direct consequence of that Change the performance risk of the Franchisee against the Benchmarks in Schedule 7.1 (*Benchmarks*) is likely to be materially altered;

then the Authority shall make such revisions to the Benchmarks in Schedule 7.1 as it reasonably considers appropriate to hold constant such risks.

SCHEDULE 9.2

THIS IS SCHEDULE 9.2 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT BETWEEN THE AUTHORITY AND SERCO CALEDONIAN SLEEPERS LIMITED

Revised Inputs: Identity of the Financial Model etc.

1. Franchisee's Obligations

- 1.1 The Franchisee shall deliver the Reference Documents to the Authority's Solicitors in the Agreed Form:
 - (a) on the date of this Agreement;
 - (b) within 7 days of the Franchise Commencement Date, but updated only as strictly necessary for any elapsed time between the actual Franchise Commencement Date and the date assumed to be the Franchise Commencement Date in the Initial Business Plan; and
 - (c) within 7 days of any approval or audit of a Run of the Financial Model as provided for in paragraph 1.3 of Schedule 9.3 (*Runs of the Financial Model*), but updated with the Revised Inputs and any Model Changes;

accompanied by a notice that the Reference Documents are to be Placed on Deposit.
- 1.2 The Franchisee shall with each such consignment of the Reference Documents include all of the following information to the extent that it is relevant:
 - (a) details of the Reference Documents deposited (including full filename and version details, any details required to access the Reference Documents including media type, backup command/software used, compression used, archive hardware and operating system details);
 - (b) the names and contact details of persons who are able to provide support in relation to accessing and interpreting the Reference Documents; and
 - (c) if required by the Authority, a certificate from independent auditors approved by the Authority, confirming that the consigned version of the Reference Documents is in the Agreed Form in accordance with paragraph 1.1(a) or (as the case may be) is in accordance with paragraphs 1.1(b) or (c);
- 1.3 The Franchisee shall deliver to the Authority a copy of each set of Reference Documents (together with a copy of all information provided pursuant to paragraph 1.2) on the same day as each set of Reference Documents is Placed on Deposit;
- 1.4 The Franchisee shall supply the Authority with a further set of the Reference Documents in their most recently updated form within 7 days of receipt of a demand from the Authority for such.

2. Authority's Obligations

2.1 The Authority shall procure that the Authority's Solicitors hold the Reference Documents on the basis that they are Placed on Deposit subject to:

- (a) within 5 days, acknowledging receipt to the Franchisee of any version of the Reference Documents delivered to it for the purposes of being Placed on Deposit;
- (b) save as provided under paragraph 2.1(c), storing each copy of the Reference Documents in a different physical location from any other copy of each such document and using all reasonable endeavours to ensure that each copy of the Reference Documents is at all times kept in a safe and secure environment. In so doing the Authority shall be deemed to have Placed on Deposit the Reference Documents for the purposes of this Agreement;
- (c) notifying the Franchisee if it becomes aware at any time during the term of this Agreement that any copy of the Reference Documents held by it has been lost, damaged or destroyed; in such an event, the Authority's Solicitors shall be permitted to create a new copy of the Reference Documents from any other copy thereof that it holds and shall within 7 days notify the Franchisee accordingly and afford it the right to make reasonable inspections in order to satisfy itself that a true and faithful copy has been made. Following the making of such a new copy of the Reference Documents, the Authority's Solicitors shall retain all copies of the Reference Documents in accordance with paragraph 2.1(b);
- (d) within 7 days of receipt of a notice from the Franchisee stating that the Reference Documents are required for the purposes of an indicative or actual Run of the Financial Model in relation to any Change, or should the Authority itself so decide, releasing 1 copy of the Reference Documents to the Franchisee and retain 1 copy of each such model Placed on Deposit;
- (e) maintaining a record of any release of any copy of any version of the Reference Documents made, including details of any version released and the date of release as well as the identity of the person to whom the Reference Documents are released;
- (f) having no obligation or responsibility to any person whatsoever to determine the existence, relevance, completeness, accuracy, effectiveness or any other aspect of the Reference Documents; and
- (g) not being liable for any loss or damage caused to the Franchisee arising from any loss of or damage to the Reference Documents.

2.2 The Authority may use any copy of the Reference Documents received by it pursuant to paragraphs 1.3 or 1.4 from the date of receipt (which shall be the date of delivery) of the same for such purposes as the Authority deems appropriate.

SCHEDULE 9.3

THIS IS SCHEDULE 9.3 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT BETWEEN THE AUTHORITY AND SERCO CALEDONIAN SLEEPERS LIMITED

Runs of the Financial Model

1. Run of the Financial Model

- 1.1 Any Run of the Financial Model that is required for the purposes of this Agreement shall be performed, after making any Model Changes and utilising the Revised Inputs, and shall be performed by:
 - (a) the Franchisee promptly on receiving notification of the Revised Inputs and any Model Changes from the Authority pursuant to paragraph 2.3; or
 - (b) the Authority if the Franchisee fails to do so.
- 1.2 The party that performs the Run of the Financial Model pursuant to paragraph 1.1 shall provide the other party to this Agreement with a reasonable opportunity to be in attendance and shall promptly notify the other party to this Agreement of the New Results.
- 1.3 The Authority, as soon as reasonably practicable after receiving or generating the New Results pursuant to paragraph 1.2, shall either:
 - (a) certify to the Franchisee its approval of the New Results; or
 - (b) notify the Franchisee that it requires the Run of the Financial Model and its results to be audited by an independent auditor appointed by the Authority with the approval (not to be unreasonably withheld or delayed) of the Franchisee.
- 1.4 For purposes of paragraph 1.3 (b), the requirement for an audit is one that requires the auditor either to certify:
 - (a) that the New Results have been produced by applying the Revised Inputs (as provided to the Franchisee by the Authority pursuant to paragraph 2.3) to the Financial Model after making the Model Changes (as provided to the Franchisee by the Authority pursuant to paragraph 2.3); or
 - (b) the restated values of FXD, VCRPI, VCAWE, PRPI and TRRPI to be specified for each Franchisee Year in the Appendix (*Figures for Calculation of Annual Franchise Payments*) to Schedule 8.2, by itself applying the Revised Inputs (as provided to the Franchisee by the Authority pursuant to paragraph 2.3) to the Financial Model after making the Model Changes (as provided to the Franchisee by the Authority pursuant to paragraph 2.3);
- 1.5 The parties shall procure that any auditor is, as soon as reasonably practicable after his appointment, able to discharge the audit requirements.

- 1.6 The results as certified by the Authority pursuant to paragraph 1.3 or by the auditor pursuant to paragraph 1.4 shall be final and binding on the parties, except in the case of manifest error.
- 1.7 The costs of any audit shall be met as the auditor may direct.

2. Revised Inputs and Model Changes

- 2.1 **Revised Inputs** means:
 - (a) the data that the Financial Model utilised in order to produce the Old Results, as such data is recorded in the Financial Model released to the Franchisee by the Authority pursuant to paragraph 2.1(d) of Schedule 9.2 (*Revised Inputs: Identity of the Financial Model etc.*) for the purposes of a Run of the Financial Model; but
 - (b) amended, whether by way of increase, reduction or other alterations to such data, (if at all) only as the parties may agree or the Authority may reasonably determine is required by the provisions of:
 - (i) paragraphs 3 to 8 (inclusive) of this Schedule 9.3; or
 - (ii) paragraph 2.4 of Schedule 9.1 (*Variations and Financial Consequences of Change*),

in respect of a Change in order to produce the New Results.

- 2.2 **Model Changes** means any changes that the parties may agree or the Authority may reasonably determine are required to the Financial Model and/or the Operational Model, as released to the Franchisee by the Authority pursuant to paragraph 2.1(d) of Schedule 9.2 (*Revised Inputs: Identity of the Financial Model etc.*) for the purposes of a Run of the Financial Model, as a consequence of and in order to give effect to the Revised Inputs.
- 2.3 The Authority shall provide a written statement of the Revised Inputs and any Model Changes to the Franchisee for purposes of paragraph 1.1 promptly after they have been agreed or determined.

3. Agreement or Determination of Revised Inputs

The parties shall agree or the Authority shall reasonably determine the Revised Inputs that are required in respect of a Change:

- (a) on the basis of the general adjustments and/or assumptions referred to in paragraph 4;
- (b) on the basis of the assumptions in the Record of Assumptions as added to and/or amended (if at all) in accordance with paragraph 5;
- (c) so as to provide for Traction Electricity Charges in accordance with paragraph 6;
- (d) so as to provide for profit in accordance with paragraph 7;
- (e) so as to provide for Estimated Revisions in accordance with paragraph 8.
- (f) in the case of an ORCATS Adjustment in accordance with paragraph 10;

4. General Adjustments/Assumptions

4.1 Revised Inputs are to be agreed between the parties or reasonably determined by the Authority on the basis that:

- (a) any increase in costs relating to a Change, and/or
- (b) any reduction in revenues relating to a Change,

that is attributable to any activities, actions or omissions of the Franchisee which are not permitted under, or would otherwise constitute a contravention of, the terms of this Agreement, is to be disregarded.

4.2 Revised Inputs are to be agreed between the parties or reasonably determined by the Authority on the basis that:

- (a) any reduction in costs relating to a Change; and/or
- (b) any increase in revenues relating to a Change,

that is attributable to any activities, actions or omissions of the Franchisee which are not permitted under, or would otherwise constitute a contravention of, the terms of this Agreement, is to be taken into account.

4.3 Revised inputs are also to be agreed between the parties or reasonably determined by the Authority on the basis that:

- (a) the Franchisee will use all reasonable endeavours to:
 - (i) reduce any costs that may arise or income that may be foregone; and
 - (ii) increase any revenue that may arise or avoid any cost that may be avoided

as a consequence of a Change; and
- (b) any requirement for borrowing in respect of Capital Expenditure by the Franchisee is dealt with in accordance with paragraph 7 of Schedule 9.1 (*Variations and Financial Consequences of Change*)

5. Assumptions in the Record of Assumptions

5.1 The parties shall (unless to do so would be contrary to paragraph 4) agree or the Authority shall reasonably determine Revised Inputs that are in accordance with the assumptions that are contained in the Record of Assumptions, as added to or modified pursuant to paragraph 5.2 or paragraph 5.3.

5.2 Where the Authority reasonably considers that additional assumptions are required in relation to circumstances not dealt with by the assumptions in the Record of Assumptions, the parties shall agree or the Authority shall reasonably determine additional assumptions for this purpose.

5.3 Where the Authority reasonably considers that:

- (a) a Change is likely to result in an increase in either or both of the costs of the Franchisee and the revenues of the Franchisee; and
- (b) an assumption relevant to the Change contained in the Record of Assumptions does not accord with what would be achievable by, or experienced by, an economic and efficient franchisee,

then the parties shall agree or the Authority shall reasonably determine a modification to the assumption so that, as modified, it does accord with what would be achievable by, or experienced by, an economic and efficient franchisee.

5.4 Where there is a Variation made for the purpose described in paragraph 4 of Schedule 5.1 (*Fares on the Franchise Services*) and that Variation is limited to only a very few fares so that the Authority can reasonably conclude, after consulting with the Franchisee that the Record of Assumptions (and, if applicable, the Operational Model) is not sufficiently detailed to deal with those circumstances, then, to the extent that an assumption is needed for the revenue consequence of those circumstances on a Fare, it shall be reasonable for the Authority to have (if it wishes) as an additional assumption that there is no significant change to the distribution of travel on the Flow or between Flows as a consequence of those circumstances and therefore the aggregate Gross Revenues recorded by RSP as attributable to the sales of that Fare will increase or reduce accordingly in line with the amount of the Fare.

6. Traction Electricity Charges

- 6.1 This paragraph 6 applies only in relation to Charge Variations.
- 6.2 No Revised Inputs shall be made to the extent that a Charge Variation relates, directly or indirectly and however it may be effected, to the amount payable (in pence per kWh or otherwise) for traction current consumed by rolling stock vehicles operated by or on behalf of the Franchisee unless and to the extent that paragraph 6.4 applies.
- 6.3 As at the date of this Agreement, the amount payable for traction current consumed is reflected in the component EF_{gjt} referred to in paragraph 4 of Part 2 of Schedule 7 of the Track Access Agreement.
- 6.4 The parties shall agree or the Authority shall reasonably determine Revised Inputs to reflect any change in the basis of calculation of the margin or premium (if any) which the counterparty to the Relevant Agreement is entitled to charge in respect of traction current.

7. Revised Input for Profit

- 7.1 The parties shall agree or the Authority shall reasonably determine Revised Inputs in relation to profit:
 - (a) where a Change is forecast to result in an increase to the Franchisee's costs, that provide for an increase in the amount of profit in any Franchisee Year equal to the Profit Margin percentage of the forecast increase in costs for that Franchisee Year; and/or
 - (b) where a Change is forecast to result in a reduction in the Franchisee's costs, that provide for a decrease in the amount of profit in any Franchisee Year equal to the lower of:

- (i) the Profit Margin; or
- (ii) the average profit margin in the current Business Plan for the remaining Franchise Term,

of the forecast reduction in costs for that Franchisee Year.

Profit Margin in this paragraph 7 means [redacted text]%, calculated as the percentage of Profit divided by Revenue.

Costs in this paragraph 7 means all net operating costs excluding Total fixed access charges, Total variable access charges, Total Capacity Charge Base Case, Depot Charges, Total EC4T, Total Non-SSA station access charges, Plant and Equipment leases and Other as defined in:

Charge	Model Template worksheet and row reference in Financial Model	Definition of charge in P&L1
Total fixed access charge	Worksheet: 'P&L1' Row:264	Fixed Track Access Charge
Total variable access charge	Worksheet: 'P&L1' Row:265	Variable Track Access Charge
Total Capacity Charge Base Case	Worksheet: 'P&L1' Row:266	Capacity Charge
Depot Charges	Worksheet: 'P&L1' Row:271	Total Depot Access Charges
Total EC4T	Worksheet: 'P&L1' Row:272	Total EC4T
Other	Worksheet: 'P&L1' Row:277	Other Network Rail Charges
Total Non-SSA station access charges	Worksheet: 'P&L1' Row:270	Total Independent Station Access Charges
Plant and Equipment Leases	Worksheet: 'P&L1' Row: 237-257	Rolling Stock Charges

7.2 In agreeing or determining Revised Inputs in respect of any Change, the parties or the Authority shall effect such change (if any) in the amount attributable to profit in paragraph 7.1 as they agree or the Authority reasonably determines to reflect:

- (a) the risk for the Franchisee in continuing to operate the Caledonian Sleeper Franchise on the terms of this Agreement after and as a result of the Change; and
- (b) the likelihood of
 - (i) material benefit from such Change arising after the expiry of the Franchise Term; and

- (ii) material detriment from such Change arising prior to the expiry of the Franchise Term.

7.3 In agreeing or determining Revised Inputs for the purposes of any Protected Proposal, the parties or the Authority shall effect such change (if any) to the amount attributable to profit as they agree or the Authority reasonably determines:

- (a) fairly rewards the Franchisee for proposing the Protected Proposal; and
- (b) reasonably incentivises the Franchisee to propose further Protected Proposals,

by sharing with the Franchisee a reasonable amount of the decrease in the Franchisee's costs that is expected to arise from implementing the Protected Proposal.

7.4 The Appendix (*Incentivising Long-Term Investment*) to this Schedule 9.3 sets out guidance on incentivising long term investment in this or any subsequent franchised or other form or forms of operation of the Franchise Services.

8. Estimated Revisions

8.1 This paragraph applies only where and to the extent that, prior to the Run of the Financial Model, payments made between the Authority and the Franchisee have been altered in accordance with Estimated Revisions notified by the Authority to the Franchisee pursuant to paragraph 3 of Schedule 9.1 (*Variations and Financial Consequences of Change*).

8.2 Where payments between the Authority and the Franchisee have been altered in accordance with Estimated Revisions, the amount of the alteration shall be included in the Revised Input that relates to (as the case may be) the Franchisee's receipts from or payments to the Authority.

9 Call Off Of Priced Options

9.1 When a Priced Option is exercised by the Authority the Financial Model shall be updated so that FXD, VCRPI, VCAWE, PRPI and TRRPI are restated to reflect the amounts agreed for the relevant Priced Option in Schedule 3 (*Priced Options*). The amounts stated in Schedule 3 are not unless otherwise stated indexed to RPI, or otherwise subject to change (as a result of the Change mechanism or otherwise), in the period between the date of this Agreement and the exercise of the relevant Priced Option and, when the Financial Model is updated, it will be adjusted so that the amounts agreed for the relevant Priced Option are not, unless otherwise stated, indexed to RPI, or altered as a consequence of a Change (which may involve deflating figures in Schedule 3 before updating the Financial Model), over that period; provided that:

- (a) those amounts which are expressed in Schedule 3 (*Priced Options*) to be subject to adjustment being the charges listed in column 4 of each relevant table shall be adjusted to reflect the actual amounts at the time of implementation of the Priced Option or as otherwise agreed between the parties; and
- (b) adjustments will be made to the Priced Option including the costs to the extent necessary to reflect that the specification or requirement for the

Priced Option has been varied by the Authority where the Priced Option has been so varied.

Once a Priced Option has been called-off, and the Financial Model updated, it is agreed, for the avoidance of doubt, that the amounts stated in Schedule 3 (*Priced Options*) will, as from the date of call-off, both be subject to RPI (from that date) unless otherwise stated and to the financial consequences of a Change occurring after the date of call off.

- 9.2 No sums shall be due by the Authority to the Franchisee in respect of Priced Options after the Expiry Date.

10. **Revised Inputs for ORCATS Adjustments**

The Revised Inputs as a result of an ORCATS Adjustment shall be agreed or determined as follows:

[redacted text]

APPENDIX TO SCHEDULE 9.3

Incentivising Long-Term Investment

This Appendix sets out guidance on incentivising long term investment.

1. The Franchisee is to be encouraged to:
 - (a) improve the efficiency;
 - (b) reduce the cost; and
 - (c) enhance the revenue earning potential of the delivery of services to passengers, from the commencement of the Caledonian Sleeper Franchise, through the Franchise Term and into the successor franchises.
2. It is recognised however, that the Franchise Term may be perceived to be a barrier to undertaking investment or change programmes where:
 - (a) the time scale for implementation limits the benefit to the Franchisee; or
 - (b) the business case for such investment or change has a payback period longer than the Franchise Term.
3. In this context investment or change may be considered to encompass:
 - (a) capital investments undertaken solely by the Franchisee;
 - (b) capital investments undertaken in association with others (including, but not limited to, Network Rail);
 - (c) changes in working practices of the Franchisee's employees; and
 - (d) changes in the contracted roles and responsibilities between the Franchisee and its major suppliers.
4. Accordingly, the Franchisee is encouraged to propose schemes that seek to achieve the objectives set out in paragraph 1 for consideration by the Authority during the Franchise Term.
5. In considering the Franchisee's proposals for any investment or change proposed to be undertaken, the Authority may recognise:
 - (a) the capital cost and proposed payment profile;
 - (b) legitimate costs of the Franchisee in developing, procuring, delivering and project managing the project;
 - (c) the life of any capital assets and the duration of the benefits stream arising;
 - (d) the remaining Franchise Term and the projected payback period;
 - (e) the benefits associated with undertaking the investment early rather than waiting until the Caledonian Sleeper Franchise and/or the ScotRail Franchise is re-let;

- (f) the risks of cost overrun or under performance of the projected benefits;
- (g) a profit element for undertaking the project commensurate with the risks of the proposed project; and
- (h) alternative benefit sharing arrangements which could be based on:
 - (i) a capital lump sum when the expenditure is incurred;
 - (ii) an enhanced Franchise Payment over the Franchise Term;
 - (iii) a balloon payment on expiry of the Caledonian Sleeper Franchise which allocates a proportion of future benefits to the Franchisee;
 - (iv) an ongoing payment if the benefits materialise after the Franchise Term;
 - (v) agreeing a schedule of depreciation from the date of acquisition for capital assets acquired during the Franchise Term where such assets are designated as a Primary Franchise Asset or an undertaking by the Authority to so designate (and not de-designate), all to the effect that the relevant asset will appear with the appropriate residual value in a Transfer Scheme at the end of the Franchise Period.
 - (vi) any combination of any of paragraphs (h)(i) to (h) (v).

6. In evaluating the Franchisee's proposals for any investment or change proposed to be undertaken and to enable best value for money to be obtained from third party financiers, the Authority may also give consideration to the appropriateness of the provision, by the Authority, of an undertaking (or other form of comfort) pursuant to Section 54 of the Act.

SCHEDULE 9.4

**THIS IS SCHEDULE 9.4 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT
BETWEEN THE AUTHORITY AND SERCO CALEDONIAN SLEEPERS LIMITED**

Authority Risk Assumptions

[redacted text]

SCHEDULE 10

**THIS IS SCHEDULE 10 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT
BETWEEN THE AUTHORITY, AND SERCO CALEDONIAN SLEEPERS LIMITED**

Remedies, Termination and Expiry

Schedule 10.1: Remedial Plans and Remedial Agreements

Schedule 10.2: Termination and Expiry

Schedule 10.3: Events of Default and Termination Event

Schedule 10.4: Force Majeure

Schedule 10.5: Liability

SCHEDULE 10.1

THIS IS SCHEDULE 10.1 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT BETWEEN THE AUTHORITY AND SERCO CALEDONIAN SLEEPERS LIMITED

Remedial Plans and Remedial Agreements

1. Remedies for Contraventions of this Agreement

Without prejudice to the Authority's rights under paragraph 1.1 of Schedule 10.2 (*Termination and Expiry*), if the Authority is satisfied that the Franchisee is contravening or is likely to contravene any term of this Agreement it may serve a notice on the Franchisee requiring it to propose such steps as the Franchisee considers appropriate for the purpose of securing or facilitating compliance with the term in question (a *Remedial Plan Notice*).

2. Contents of Remedial Plan Notices

Each Remedial Plan Notice shall specify the following:

- 2.1 the term or terms of this Agreement that the Authority is satisfied that the Franchisee is contravening or is likely to contravene (each a *Relevant Term*); and
- 2.2 the time period within which the Authority requires the Franchisee to provide an appropriate plan for the purpose of facilitating or securing compliance with any Relevant Term (a *Remedial Plan*).

3. Contents of Remedial Plans

- 3.1 If the Authority issues a Remedial Plan Notice, the Franchisee shall submit a Remedial Plan to the Authority within the period specified in such Remedial Plan Notice.
- 3.2 Each Remedial Plan shall set out:
 - (a) the Relevant Term which has caused a Remedial Plan to be required;
 - (b) an explanation of the reasons for the contravention or likely contravention of the Relevant Term;
 - (c) the steps proposed for the purposes of securing or facilitating compliance with the Relevant Term; and
 - (d) the time period within which the Franchisee proposes to implement those steps.

4. Remedial Agreements

- 4.1 If the Authority is satisfied that the matters referred to in paragraph 3.2(c) and (d) are appropriate (with or without further modification as the Authority and the Franchisee may agree) it may require the Franchisee to enter into a supplemental agreement (the *Remedial Agreement*) with the Authority to implement those matters.
- 4.2 It is a term of this Agreement that the Franchisee (at its own cost) complies with the Remedial Agreement in accordance with its terms.

5. Effect of Force Majeure Event

Without prejudice to the operation of paragraph 3.2 of Schedule 10.4 (*Force Majeure*) the following provisions shall apply in relation to Force Majeure Events affecting performance of a Remedial Agreement:

- 5.1 the Franchisee shall give written notice to the Authority promptly after it becomes aware (and in any event within 24 hours after becoming aware) of the occurrence or likely occurrence of a Force Majeure Event which will or is likely to affect the Franchisee's ability to comply with a Remedial Agreement within the period specified therein;
- 5.2 each notice submitted in accordance with paragraph 5.1 shall state the extent or likely extent of the relevant Force Majeure Event and, in the case of a Force Majeure Event which has not occurred at such time, the reasons why the Franchisee considers it likely to occur;
- 5.3 the Franchisee shall use, and shall continue to use, all reasonable endeavours to avoid or reduce the effect or likely effect of any Force Majeure Event on its ability to comply with any Remedial Agreement; and
- 5.4 subject to the Franchisee having complied with its obligations under paragraphs 5.1 to 5.3 (inclusive) the Franchisee shall be entitled to a reasonable extension of the remedial period applicable to a Remedial Agreement in order to take account of the effect of a Force Majeure Event which has occurred on the Franchisee's ability to comply with any Remedial Agreement.

6. Occurrence of a Contravention

- 6.1 Without prejudice to its rights under Schedule 7.3 (*SQUIRE*), following the occurrence of a contravention of this Agreement, the Authority may (but shall not be obliged to) commence or increase the level and/or frequency of monitoring (whether by inspection, audit or otherwise) of the Franchisee's performance of any relevant obligation until such time as the Franchisee demonstrates, to the Authority's reasonable satisfaction, that it is capable of performing and will perform such obligation as required by this Agreement.
- 6.2 The Franchisee shall co-operate fully with the Authority in relation to such monitoring referred to in paragraph 6.1.
- 6.3 The results of such monitoring will be reviewed at each Franchise Performance Meeting held pursuant to Schedule 11 (*Agreement and Service Delivery Management Provisions*).
- 6.4 The Franchisee shall compensate the Authority for all reasonable costs incurred by the Authority in carrying out such monitoring.

SCHEDULE 10.2

THIS IS SCHEDULE 10.2 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT BETWEEN THE AUTHORITY AND SERCO CALEDONIAN SLEEPERS LIMITED

Termination and Expiry

1. Termination Notices

- 1.1 The Authority may, on and at any time after the occurrence of:
 - (a) an Event of Default (subject to paragraphs 1.2 and 1.3) which is unremedied or continuing and which the Authority considers to be material; or
 - (b) a Termination Event which is unremedied or continuing, or
 - (c) the Franchisee exercising the Rebasing Option;

terminate this Agreement by serving a Termination Notice on the Franchisee. This Agreement shall terminate with effect from the date specified in any such Termination Notice.

- 1.2 The Authority may not serve a Termination Notice in respect of an Event of Default in relation to which a Remedial Plan Notice has been issued until the period has expired within which the Franchisee is required to deliver to the Authority the Remedial Plan specified in such Remedial Plan Notice.
- 1.3 The Authority may not serve a Termination Notice in respect of an Event of Default for which the Franchisee is implementing a Remedial Agreement in accordance with its terms.
- 1.4 The Authority may not serve a Termination Notice in respect of the Franchisee exercising the Rebasing Option later than 90 days following the exercise of the Rebasing Option.
- 1.5 The Franchisee hereby acknowledges that failure to satisfy Patronage KPI as provided for in paragraphs 5 and 7 of Schedule 7.2 (KPI's) and Passenger Satisfaction KPI as provided for in paragraph 11 of Schedule 7.2 are material Events of Default.

2. Consequences of Termination or Expiry

- 2.1 Upon termination of this Agreement (whether through default or effluxion of time or otherwise) the obligations of the parties shall cease except for:
 - (a) any obligations arising as a result of any antecedent contravention of this Agreement;
 - (b) any obligations which are expressed to continue in accordance with the terms of this Agreement; and
 - (c) any other obligations which give effect to such termination or to the consequences of such termination or which otherwise apply (expressly or impliedly) on or after such termination.

- 2.2 Nothing in this paragraph 2 shall prevent the Authority from bringing an action against the Franchisee in connection with the termination of this Agreement prior to the expiry of the Franchise Term.

SCHEDULE 10.3

THIS IS SCHEDULE 10.3 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT BETWEEN THE AUTHORITY AND SERCO CALEDONIAN SLEEPERS LIMITED

Events of Default and Termination Event

1. Provisions relating to Events of Default

Contravention

1.1 The occurrence of an Event of Default shall constitute a contravention of this Agreement by the Franchisee.

Notification of Event of Default

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

Consequences of Event of Default

1.3 On the occurrence of an Event of Default, the provisions of Schedule 10.1 (*Remedial Plans and Remedial Agreements*) shall also apply.

2. Events of Default

Each of the following is an Event of Default:

Insolvency

2.1 (a) **Administration:** Any step being taken by any person with a view to the administration of the Franchisee or the Parent or any Bond Provider under Part II of the Insolvency Act 1986;

(b) **Insolvency:** Any of the Franchisee or the Parent or any Bond Provider stopping or suspending or threatening to stop or suspend payment of all or a material part of (or a particular type of) its debts, or being unable to pay its debts, or being deemed unable to pay its debts under Section 123(1) or (2) of the Insolvency Act 1986 except that in the interpretation of this paragraph:

(i) the words "it is proved to the satisfaction of the court that" in sub-section (1)(e) and sub-section (2) of Section 123 shall be deemed to be deleted;

(ii) Section 123(1)(a) of the Insolvency Act 1986 shall have effect as if for "£750" there was substituted "£100,000" or such higher figure as the Authority may from time to time notify in writing to the Franchisee; and

(iii) any of the Franchisee or the Parent or any Bond Provider shall not be deemed to be unable to pay its debts for the purposes of this paragraph if any such demand as is mentioned in Section 123(1)(a) of the Insolvency Act 1986 is being

contested in good faith by such person with recourse to all appropriate measures and procedures and such person has adequate funds to discharge the amount of such demand or if any such demand is satisfied before the expiration of 21 days from such demand;

- (c) **Arrangements with Creditors:** The directors of the Franchisee or the Parent or any Bond Provider making any proposal under Section 1 of the Insolvency Act 1986, or any of the Franchisee or the Parent or any Bond Provider proposing or making any agreement for the deferral, rescheduling or other readjustment (or proposing or making a general assignation or an arrangement or composition with or for the benefit of creditors) of all or a material part of (or of a particular type of) its debts, or a moratorium being agreed or declared in respect of or affecting all or a material part of (or of a particular type of) its debts;
- (d) **Security Enforceable:** Any step being taken to enforce security over or a distress, diligence, execution or other similar process being levied or served against any property of the Franchisee or the whole or a substantial part of the assets or undertaking of the Franchisee, the Parent or any Bond Provider, including the appointment of a receiver, administrative receiver, manager or similar person to enforce that security;
- (e) **Stopping Business/Winding-Up:** Any step being taken by the Franchisee, the Parent or any Bond Provider with a view to its winding-up or any person presenting a winding-up petition or any of the Franchisee or the Parent or any Bond Provider ceasing or threatening to cease to carry on all or a material part of its business, except for the purpose of and followed by a reconstruction, amalgamation, reorganisation, merger or consolidation on terms approved by the Authority before that step is taken;
- (f) **Railway Administration Order:** A railway administration order being made in relation to the Franchisee under Sections 60 to 62 of the Act; and
- (g) **Analogous Events:** Any event occurring which, under the Law of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed in this paragraph 2.1,

unless and for so long as, in the case of paragraphs 2.1(a), (d) and (e), the relevant petition, proceeding or other step is being actively contested in good faith by the relevant person with recourse to all appropriate measures and procedures and such person has adequate funds to discharge the relevant debt and subject, in the case of any relevant event occurring in relation to a Bond Provider where no other Event of Default has occurred and is unremedied or continuing at such time, to a period of 28 days having elapsed in order to allow the Franchisee to replace the relevant Bond Provider.

Non-payment

2.2 The Franchisee failing to pay to the Authority any amount due under this Agreement within 28 days of the due date for such payment.

Change of Control

2.3 Without the prior consent of the Authority, a change occurring in the identity of any 1 person, or 2 or more persons acting by agreement, who may Control the Franchisee on and from the date of this Agreement and during the Franchise Term, which shall include a person, or 2 or more persons acting by agreement, ceasing to Control the Franchisee at any time during the Franchise Term, whether or not any other person Controls the Franchisee at the same time and, for the purposes of this paragraph 2.3, 2 or more persons shall be deemed to be acting by agreement in relation to the Franchisee if, assuming the Franchisee was a target company as defined in Section 824 of the Companies Act 2006, such persons would be under an obligation to disclose an interest in shares in such company by virtue of an agreement between such persons.

Revocation of Licence

2.4 Revocation of any Licence required to be held by the Franchisee in order to comply with its obligations under this Agreement.

Safety Certificate

2.5 The Safety Certificate of the Franchisee being revoked or not being renewed on its expiry during the Franchise Period.

Passenger Service Performance

2.6 The Franchisee's performance in relation to the Right Time Benchmark contravenes the Default Performance Level for the Right Time Benchmark for:

- (a) any 3 consecutive Reporting Periods;
- (b) any 4 Reporting Periods within a period of 13 consecutive Reporting Periods; or
- (c) any 5 Reporting Periods within a period of 26 consecutive Reporting Periods.

Remedial Agreements and Enforcement Orders

2.7 (a) Non-compliance by the Franchisee with a Remedial Agreement, where such non-compliance is material.

(b) Non-compliance by the Franchisee with:

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

Financial Ratios

2.8 Breach by the Franchisee of either or both of the financial ratios specified in paragraph 2 of Schedule 12 (*Financial Obligations and Undertakings*).

Breach of Law

2.9 (a) It becoming unlawful for the Franchisee to provide all or, in the reasonable opinion of the Authority, a material part of the Passenger Services or to operate all or, in the reasonable opinion of the Authority, a material number of the Stations or Depots (if any) or Station Areas or Depot Areas (if any) (except to the extent not required so to do under this Agreement).

(b) The Franchisee or any of the directors or senior managers of the Franchisee being convicted of culpable homicide, manslaughter, fraud or, in England and Wales, any other indictable criminal offence, or in Scotland, any offence tried on indictment including where either the indictment or the verdict shall include any inchoate element in each case relating directly to the provision and operation of the Franchise Services.

(c) The Franchisee being, in the reasonable opinion of the Authority, in material non-compliance with a prohibition or enforcement order (or the equivalent thereof) issued by the ORR or any other regulatory body.

Contravention of Other Obligations

2.10 The occurrence of the following:

(a) the Franchisee contravening to a material extent any one or more of its obligations under this Agreement (other than such non-performance or non-compliance as may constitute an Event of Default under the provisions of this Schedule 10.3 other than this paragraph 2.10);

(b) the service by the Authority on the Franchisee of a written notice specifying:

- (i) such contravention; and
- (ii) to the extent the contravention is capable of being remedied, the reasonable period within which the Franchisee is required to so remedy;

(c) the Franchisee contravening such obligation or obligations again to a material extent or permitting the contravention to continue or, if the contravention is capable of remedy, failing to remedy such contravention within such period as the Authority has specified in the notice served pursuant to paragraph 2.10(b);

(d) a failure to satisfy the Drawdown Conditions as set out in the Conditions Precedent Agreement by 25 September 2014 or such other date as may be agreed pursuant to the Conditions Precedent Agreement; and

(e) the New Train Fleet Service Date failing to occur on or before 3 January 2019.

Non-membership of Inter-Operator Schemes

2.11 The Franchisee ceasing to be a member of, or ceasing to participate in or to be party to, any of the Inter-Operator Schemes, or having its membership or participation therein suspended.

Bonds

2.12 (a) Any Performance Bond ceasing to be a legal, valid and binding obligation on the relevant Bond Provider (other than in accordance with its terms) or it otherwise becoming unlawful or impossible for any Bond Provider to perform its obligations thereunder; and

(b) A failure by the Franchisee to provide to the Authority a Performance Bond which fulfils the requirements of Schedule 12 (*Financial Obligations and Undertakings*).

Key Contracts

2.14 Termination, or the material variation, of any Key Contract except where requested (or consented to (for the purpose of paragraph 7 of Schedule 14.3 (*Key Contracts*))) by the Authority or to the extent that the Franchisee has demonstrated to the reasonable satisfaction of the Authority that it is no longer necessary for it to be party to such Key Contract or that it has made adequate alternative arrangements in order to be able to continue to provide and operate the Franchise Services.

Prohibition on Blacklisting

2.15 The Franchisee committing any breach of the Employment Relations 1999 Act (Blacklists) Regulations 2010 or section 137 of the Trade Union and Labour Relations (Consolidated) Act 1992, or committing any breach of the Data Protection Act 1998 by unlawfully processing personal data in connection with any blacklisting activities.

3. **Termination Event**

3.1 The Authority may terminate this Agreement in accordance with Schedule 10.2 (*Termination and Expiry*) if any Force Majeure Event continues with the effect of preventing the Franchisee from delivering, wholly or mainly, the Passenger Services for more than 6 consecutive months or for a total period of 6 months in any period of 12 consecutive months (a Termination Event).

3.2 If any Force Majeure Event is caused (directly or indirectly) by any Affiliate the Authority may terminate this Agreement in accordance with Schedule 10.2 (*Termination and Expiry*) if such Force Majeure Event continues with the effect of preventing the Franchisee from delivery, wholly or mainly of the Passenger Services, for more than one month (a Termination Event).

3.3 If any Force Majeure Event is caused (directly or indirectly) by any Associate the Authority may terminate this Agreement in accordance with Schedule 10.2 (*Termination and Expiry*) if such Force Majeure Event continues with the effect of preventing the Franchisee from delivery, wholly or mainly of the Passenger Services, for more than one month (a Termination Event).

SCHEDULE 10.4

THIS IS SCHEDULE 10.4 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT BETWEEN THE AUTHORITY AND SERCO CALEDONIAN SLEEPERS LIMITED

Force Majeure

1. Force Majeure Events

1.1 The following events shall constitute Force Majeure Events, subject to the conditions specified in paragraph 2 being satisfied:

- (a) the Franchisee or any of its agents or subcontractors is prevented or restricted by Network Rail (including by virtue of the implementation of any Contingency Plan) from gaining access to any section or part of track (including any track running into, through or out of a station). For the purposes of this paragraph 1:
 - (i) references to a party being prevented or restricted from gaining access to any section or part of track shall mean that such party is not permitted to operate any trains on the relevant section or part of track, or is only permitted to operate a reduced number of trains from that which it was scheduled to operate;
 - (ii) the period of such prevention or restriction shall be deemed to commence with effect from the first occasion on which the Franchisee is prevented or restricted from operating a train on such section or part of track;
 - (iii) references in paragraphs 1.1(a)(i) and (ii) to the operation of trains include scheduled empty rolling stock vehicle movements and scheduled locomotive movements; and
 - (iv) **Contingency Plan** means a contingency plan (as defined in the Railway Operational Code or where the Railway Operational Code ceases to exist such other replacement document of a similar or equivalent nature which contains a definition of contingency plan similar to that contained in the Railway Operational Code) implemented by and at the instigation of Network Rail, or such other contingency or recovery plan as the Authority may agree from time to time;
- (b) the Franchisee or any of its agents or subcontractors is prevented or restricted by Network Rail or any Facility Owner (other than a Facility Owner which is an Affiliate of the Franchisee) from entering or leaving:
 - (i) any station or part thereof (excluding, any prevention or restriction from gaining access to any section or part of track running into, through or out of a station); or
 - (ii) any depot or part thereof (including the movement of trains on tracks within any depot but excluding any prevention or restriction from gaining access to any track outside such depot running into or out of that depot);

- (c) any of the following events occurs:
 - (i) a programme of Mandatory Modifications commences;
 - (ii) any Vehicles are damaged by fire, vandalism, sabotage or a collision and are beyond repair or beyond economic repair; or
 - (iii) a government authority prevents the operation of Vehicles on the grounds of safety,

and, in each case, the greater of 8 Vehicles and 10 per cent. of all Vehicles used by the Franchisee in the provision of the Passenger Services are unavailable for use in the provision of the Passenger Services as a result of the occurrence of such event;
- (d) Act of God, war damage, enemy action, terrorism or suspected terrorism, riot, civil commotion, rebellion (together “**Emergency Events**”) or the act of any government instrumentality (including the ORR and the Secretary of State but excluding the Authority) insofar as the act of government instrumentality directly relates to any Emergency Events,

provided that there shall be no Force Majeure Event under this paragraph 1.1(d) by reason of:

- (i) the suicide or attempted suicide of any person (other than a person engaged in terrorism or suspected terrorism);
- (ii) the activities of the police, fire service, ambulance service or other equivalent emergency service that are not in response to acts of terrorism or suspected terrorism; or
- (iii) an act of God which results in the Franchisee or its agents or subcontractors being prevented or restricted by Network Rail from gaining access to any relevant section or part of track; and

- (e) any strike or other Industrial Action by any or all of the employees of the Franchisee or any or all of the employees of:
 - (i) Network Rail;
 - (ii) the operator of any other railway facility; or
 - (iii) any person with whom the Franchisee has a contract or arrangement for the lending, seconding, hiring, contracting out or supervision by that person of train drivers, conductors, other train crew or station or depot staff used by the Franchisee in the provision of the Franchise Services (except where such contract or arrangement is with an Affiliate of the Franchisee),

or in the case of (i) and (ii) above, of the agents or sub-contractors of any such person.

2. **Conditions to Force Majeure Events**

2.1 The occurrence, and continuing existence of a Force Majeure Event shall be subject to satisfaction of the following conditions:

- (a) in relation to an event occurring under paragraph 1.1(a), that event has continued for more than 12 consecutive hours;
- (b) the Franchisee notifies the Authority within 2 business days of it becoming aware of:
 - (i) the occurrence or likely occurrence of the relevant event; and
 - (ii) the effect or the anticipated effect of such event on the Franchisee's performance of the Passenger Services;
- (c) at the same time as the Franchisee serves notification on the Authority under paragraph 2.1(b), it informs the Authority of the steps taken and/or proposed to be taken by the Franchisee to prevent the occurrence of, and/or to mitigate and minimise the effects of, the relevant event and to restore the provision of the Passenger Services;
- (d) the relevant event did not occur as a result of:
 - (i) any act or omission to act by the Franchisee or its agents or subcontractors save that, in respect of the occurrence of Industrial Action in accordance with paragraph 1.1(e) the provisions of paragraph 2.2 apply; or
 - (ii) the Franchisee's own contravention of, or default under, this Agreement, any Access Agreement, Rolling Stock Lease, Property Lease or any other agreement;
- (e) the Franchisee used and continues to use all reasonable endeavours to avert or prevent the occurrence of the relevant event and/or to mitigate and minimise the effects of such event on its performance of the Passenger Services and to restore the provision of the Passenger Services as soon as reasonably practicable after the onset of the occurrence of such event;
- (f) the Franchisee shall, to the extent reasonably so requested by the Authority, exercise its rights and remedies under any relevant agreement to prevent the occurrence or recurrence of any such event and to obtain appropriate redress and/or compensation from any relevant person; and
- (g) the Franchisee's compliance with the requirements of paragraphs 10 and 11 of Schedule 1.2 (*Operating Obligations*).

2.2 Where:

- (a) Industrial Action in accordance with paragraph 1.1(e) occurs as a result of an act or omission to act by the Franchisee or its agents or subcontractors;
- (b) the Authority reasonably believes that it was reasonable for the Franchisee, its agents or subcontractors (as the case may be) to take or omit to take such act; and

- (c) the other conditions specified in paragraph 2.1 have been satisfied, such occurrence shall be a Force Majeure Event.

3. **Consequences of Force Majeure Events**

On Obligations

- 3.1 Subject to paragraph 3.2, the Franchisee shall not be responsible for any failure to perform any of its obligations under this Agreement, nor shall there be any contravention of this Agreement if and to the extent that such failure is caused by any Force Majeure Event.
- 3.2 Paragraph 3.1 shall not apply to the obligations of the Franchisee in Schedule 7.2 (*KPIs*) or in Schedule 7.3 (*SQUIRE*).
- 3.3 If any Force Majeure Event continues, with the effect of preventing the Franchisee from delivering, wholly or mainly, the Passenger Services for more than 6 consecutive months or for a total period of 6 months in any period of 12 consecutive months, it shall be a Termination Event in accordance with paragraph 3 of Schedule 10.3 (*Events of Default and Termination Event*).

On Payments

- 3.4 Following the occurrence of a Force Majeure Event, the payment of Franchise Payments shall continue unaffected unless the provisions of paragraph 4 of Schedule 8.1 (*Franchise Payments*) apply.

SCHEDULE 10.5

THIS IS SCHEDULE 10.5 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT BETWEEN THE AUTHORITY AND SERCO CALEDONIAN SLEEPERS LIMITED

Liability

1. Exclusion of Liability

Liability with respect to Passengers and Third Parties

1.1 The Franchisee hereby acknowledges that the Authority will not be responsible for the actions of the Franchisee or any Affiliate of the Franchisee or any Alliance or any Associate and that, except as expressly provided in this Agreement, the Franchisee shall provide and operate the Franchise Services at its own cost and, risk, without recourse to the Authority or government funds or guarantees.

The Franchisee, on demand, shall hold the Authority fully protected and indemnified in respect of all losses, liabilities, costs, charges, expenses, actions, proceedings, claims or demands incurred by or made on the Authority in connection with any death, personal injury, loss or damage suffered by passengers or by any third party (including, for the avoidance of doubt, any Alliance, or Affiliate of the Franchisee or Associate) using or affected by the Franchise Services which is caused or contributed to by the Franchisee, any Affiliate of the Franchisee or any Alliance or any Associate, or any employee, agent, contractor or sub-contractor of the Franchisee or of any Affiliate of the Franchisee or any Alliance or any Associate or anyone for whom the Franchisee or any Affiliate or any Alliance or any Associate is responsible at law.

Liability of Authority

1.2 Neither the Authority nor any of its officers, agents or employees shall in any circumstances be liable to the Franchisee for any loss or damage caused by the negligent exercise of any powers reserved to the Authority under this Agreement, except to the extent that such negligence also constitutes a contravention of an obligation of the Authority under this Agreement. The Franchisee may not recover from the Authority or any of its officers, agents, or employees any amount in respect of loss of profit or consequential loss.

2. Review or monitoring by the Authority

2.1 The Authority may for its own purposes (whether under this Agreement or under any other arrangement or otherwise and whether before or after the date of this Agreement) monitor or review any proposals, plans or projects (or any aspect thereof) of the Franchisee under this Agreement, but no review, enquiry, comment, statement, report or undertaking, made or given by or on behalf of the Authority during such review or monitoring (and no failure to undertake, make or give any review, enquiry, comment or statement) shall operate to exclude or relieve any of the parties from or reduce or otherwise affect the obligations of the parties under this Agreement.

2.2 The exercise by or on behalf of each of the Authority of (or, as the case may be, any failure to exercise) any of its functions, rights or obligations in respect of any review or monitoring process shall not in any way impose any liability,

express or implied, on the Authority to any other party save to the extent that the exercise (or failure to exercise) of any of such functions, rights or obligations results in a contravention by the Authority of an express provision of this Agreement and the Authority does not make or give any representation or warranty, either express or implied, as to whether any proposal, plan or project will enable any party to comply with its obligations under this Agreement.

SCHEDULE 11

THIS IS SCHEDULE 11 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT BETWEEN THE AUTHORITY AND SERCO CALEDONIAN SLEEPERS LIMITED

Agreement and Service Delivery Management Provisions

1. Authority's Franchise Manager

1.1 The Authority shall appoint a competent Franchise Manager who shall have power and authority delegated to him by the Authority to act and to make decisions on behalf of the Authority in relation to this Agreement and amend this Agreement on behalf of the Authority. The principal responsibilities of the Franchise Manager to the Authority shall be, amongst other things:

- (a) to manage this Agreement on behalf of the Authority;
- (b) to monitor the Franchisee's performance of its obligations under this Agreement;
- (c) to ensure that the necessary resources within the Authority are made available expeditiously for the performance of the Authority's obligations under this Agreement; and
- (d) to facilitate the Authority in fulfilling its obligations under this Agreement to the Franchisee.

1.2 The Franchise Manager may from time to time delegate any of the powers, functions and authorities vested in him to an assistant or agent and may at any time revoke any such delegation. Any such delegation or revocation shall be in writing signed by the Franchise Manager and shall state which power, function or authority is thereby delegated or revoked and the persons to whom or from whom the same are delegated or revoked respectively. No such delegation or revocation shall have effect until the Franchisee is deemed to have received notice of it in writing in accordance with paragraph 3 of Schedule 19 (*Other Provisions*).

1.3 Except in cases of emergency, or as a consequence of the proper exercise of disciplinary procedures of the Authority, the Authority shall give the Commercial Manager reasonable notice of a proposal to replace the Franchise Manager.

2. Franchisee's Key Personnel

2.1 The Franchisee shall identify and provide to the Authority a schedule of Key Personnel who shall be employed by the Franchisee in the performance of this Agreement. This shall include but not be limited to the following persons:

- (a) a Commercial Manager, whose role will include responsibility for the matters detailed in paragraph 3 and responsibility in relation to the Financial Model;
- (b) a Quality Manager, whose role will include responsibility for ensuring compliance by the Franchisee with:
 - (i) Schedule 7.1 (*Benchmarks*);

- (ii) Schedule 7.3 (*SQUIRE*); and
- (iii) its legal obligations in relation to the Franchise Services including the Safety Certificate;

(c) an Investment Manager, whose role will include responsibility for the delivery of the Franchise's obligations in respect of:-

- (i) new train fleet in accordance with Schedule 6 (*Rolling Stock and Station Enhancements*);
- (ii) Schedule 1.6 (*Committed Obligations*);
- (iii) Schedule 3 (*Priced Options*), if any.

2.2 The Franchisee shall provide to the Authority an organisation chart detailing the responsibilities and reporting lines of each of the Key Personnel within 1 Reporting Period of the Franchise Commencement Date and shall update such chart (and provide a copy to the Authority promptly thereafter) as and when any changes occur.

2.3 Key Personnel may from time to time delegate any of the powers, functions and authorities vested in each of them to an assistant or agent and may at any time revoke any such delegation. Any such delegation or revocation shall be in writing signed by the Key Personnel member in question and shall state which power, function or authority is thereby delegated or revoked and the persons to whom or from whom the same are delegated or revoked respectively. No such delegation or revocation shall have effect until the Authority is deemed to have received notice of it in writing in accordance with paragraph 3 of Schedule 19 (*Other Provisions*).

2.4 Except in cases of emergency, or as a consequence of the proper exercise of disciplinary procedures of the Franchisee, a minimum of 1 month's notice must be given to the Franchise Manager of a proposal to replace any Key Personnel member.

3. **Commercial Manager**

3.1 The Franchisee shall appoint a competent Commercial Manager who shall have power and authority delegated to him by the Franchisee to act for and to make decisions on behalf of the Franchisee in relation to this Agreement (but who shall not have power to amend this Agreement).

3.2 The principal responsibilities of the Commercial Manager to the Franchisee shall be, amongst other things:

- (a) to manage this Agreement on behalf of the Franchisee;
- (b) to ensure that the necessary resources within the Franchisee's organisation are made available expeditiously for the performance of the Franchisee's obligations under this Agreement;
- (c) to ensure that any necessary sub-contracts are placed and managed so that the requirements of this Agreement are fully met; and
- (d) to facilitate the Franchisee in fulfilling its obligations under this Agreement to the Authority.

3.3 The Commercial Manager shall:

- (a) report directly to an executive officer of the Franchisee;
- (b) make recommendations to an executive officer of the Franchisee on the marketing and promotion of Passenger Services, enhancement passenger satisfaction levels and growth of patronage throughout the Franchise Term (and shall copy any such recommendations to the Authority and the Managing Director of the Franchisee);
- (c) perform the tasks required of him under paragraph 3.2.
- (d) keep full and accurate records and documents in relation to, or affecting, the performance by the Franchisee of its obligations in paragraph 3.2;
- (e) send to that executive officer of the Franchisee at the end of each Reporting Period a statement (which shall be copied at the same time to the Authority and the Managing Director of the Franchisee) detailing:
 - (i) the latest findings on the Franchisee's performance as contained in the records and documents kept pursuant to Schedule 7.1 (*Benchmarks*);
 - (ii) a comparison of the Franchisee's performance with the targets it has set in respect of its obligations under Schedule 7.3 (*SQUIRE*);
 - (iii) the trends which the Commercial Manager has detected in passenger satisfaction and patronage growth with an analysis of the causes of any performance below that forecast or targeted by the Franchisee and his recommendations for rectification of performance levels where required;
 - (iv) the Commercial Manager's evaluation of the Franchisee's performance as against the requirements of any action plan which deals with, or specifies, requirements in respect of passenger satisfaction and patronage growth or any of the Franchisee's other obligations in paragraphs 3, 4, 6, 10 and 11 of Schedule 7.2 (*KPIs*); and
 - (v) the Commercial Manager's recommendations for continuing improvement in respect of the Franchisee's performance of its obligations under Schedule 7 (*Benchmarks, KPIs and SQUIRE*) and his forecast of the Franchisee's likely level of future performance of such obligations; and
- (f) co-operate with the Authority in relation to the promotion of passenger satisfaction and patronage and in making appropriately senior and appropriately qualified members of the Franchisee's personnel available to attend meetings.

4. **Quality Manager**

4.1 The Franchisee shall appoint a competent Quality Manager who shall be responsible for the matters referred to in paragraph 2.1 (b)

4.2 The Quality Manager shall:

- (a) report directly to an executive officer of the Franchisee;
- (b) keep full and accurate records and documents relating to or affecting the performance by the Franchisee of the Services;
- (c) develop and keep under review a programme for implementation by the Franchisee designed to ensure that the relevant Passenger Satisfaction Level and Mystery Shopper Minimum Target are reached and, where possible, exceeded;
- (d) develop and keep under review a train presentation programme for implementation by the Franchisee (to include the management of fault recording and rectification), designed to ensure that the relevant SQUIRE Service Specifications are reached and, where possible, exceeded and that, in any event, the relevant Benchmark Level is met;
- (e) develop and keep under review a station environment, structures, information provision, security, ticket selling and revenue protection programme for implementation by the Franchisee (to include the management of fault recording and rectification), designed to ensure that the relevant SQUIRE Service Specifications are reached and, where possible, exceeded and that, in any event, the relevant Benchmark Level is met;
- (f) develop and keep under review a programme regarding the Information Away from Station Services for implementation by the Franchisee (to include the management of fault recording and rectification), designed to ensure that the relevant SQUIRE Service Specifications are reached and, where possible, exceeded and that, in any event, the relevant Benchmark Level is met;
- (g) send to the relevant executive officer of the Franchisee at the end of each Reporting Period a statement (copied at the same time to the Managing Director of the Franchisee) detailing the inspections and re-inspections where a fail has been recorded (including in respect of Management and Processes) together with audits, copying this statement to the Authority;
- (h) ensure that all inspections, re-inspections and audits that may be conducted are fully recorded and any information that is due to be passed to the executive officer of the Franchisee, Franchisee's staff and/or to the Authority is passed on timeously;
- (i) ensure that where faults are found during an audit, inspection or re-inspection or items have failed in an inspection or re-inspection, appropriate remedial action is taken promptly and that there is a process for recording and monitoring the completion of the corrective actions;
- (j) ensure that the Authority's SQIs are granted such access to the facilities under the control of the Franchisee as is necessary to permit the Authority to exercise its rights of inspection under paragraph 5 and are also provided with reliable information on the availability of trains and of staff in respect of staffed stations to allow the Authority to exercise its rights of inspection and re-inspection;

- (k) ensure that current site specific safety rules and regulations are made available to the Authority's SQIs; and
- (l) ensure that the Franchisee puts in place systems to preserve the documents referred to in paragraph 6.10 of Schedule 7.3 (*SQUIRE*) for a period of either 6 years or 12 months after the expiry of the Franchise Term, whichever is the later.
- (m) work with the Commercial Manager and the Authority to minimise the amount of ticketless travel and fare evasion on the Passenger Services and to maximise passenger satisfaction and patronage growth.

5. Control of Communications, Information and Documents

- 5.1 Save for correspondence between the parties' Nominated Representatives under the Escalation Procedure in Appendix A to Schedule 7.3 (*SQUIRE*), all correspondence between the Franchisee and the Authority (other than correspondence in connection with the matters referred to in paragraph 3.1(a) of Schedule 19 (*Other Provisions*)) shall be sent to the Commercial Manager and/or the Franchise Manager (as appropriate) in accordance with the terms of paragraph 3.1(b) of Schedule 19.
- 5.2 The Franchisee shall use a logical and structured system for correspondence reference.
- 5.3 All correspondence between the Franchisee and the Authority shall be given a unique reference number and, wherever possible, correspondence shall be cross-referenced to the relevant clause or paragraph of or schedule to this Agreement.

6. Franchise Performance and Review Meetings

- 6.1 (a) The Authority and the Franchisee shall hold one or a number of Franchise Performance Meetings in each Reporting Period at a time and location notified to the Franchisee by the Authority. Franchise Performance Meetings shall be held more often than once every Reporting Period if that is necessary to properly deal with the agenda items. At the Authority's option, Franchise Performance Meetings may (by notice to the Franchisee) be held once a quarter rather than per Reporting Period after the third anniversary of the Franchise Commencement Date.
- (b) The parties shall review the financial and operational performance of the Franchisee at each Franchise Performance Meeting. Further agenda items shall include:
 - (i) KPI performance;
 - (ii) progress of the programme for the introduction of new rolling stock under Schedule 6 (*Rolling Stock and Station Enhancements*);
 - (iii) timing of reports to be produced in terms of this Agreement;
 - (iv) asset condition (maintenance audit reports);
 - (v) fleet stewardship report (traction and passenger vehicles);

(vi) fleet availability and performance (traction and passenger vehicles); and

(vii) safety;

which will be grouped for discussion on a quarterly basis.

- (c) Each Franchise Performance Meeting shall be minuted for or by the Franchise Manager and the minutes shall be sent to attendees within 7 business days of each such meeting.
- (d) The Franchise Manager shall chair the relevant elements of each Franchise Performance Meeting.

6.2 The Franchisee shall ensure that each of its representatives at all Franchise Performance Meetings have full power and authority delegated to them by the Franchisee to act and to make binding decisions on behalf of the Franchisee and shall include such directors and/or senior managers of the Franchisee and the Parent as the Authority may require.

6.3 Each Franchise Performance Meeting shall include as a minimum the following agenda items:

- (a) confirmation of the accuracy of the minutes of the previous Franchise Performance Meeting;
- (b) service delivery performance by the Franchisee by reference to the Benchmarks;
- (c) performance by the Franchisee by reference to the KPI's;
- (d) service quality performance against Schedule 7.3 (SQUIRE) and by reference to the SQUIRE Benchmarks;
- (e) performance by the Franchisee of its financial obligations under Schedule 12 (*Financial Obligations and Undertakings*);
- (f) compliance by the Franchisee with its obligations under Schedule 13 (*Franchise Management and Information Obligations*) and the timely production of information prior to Franchise Performance Meetings;
- (g) any Remedial Plans and/or Remedial Agreements discussed at a previous Franchise Performance Meeting and any suggested improvements to the Franchisee's performance;
- (h) the results of any review of the Station Areas Condition Maintenance Programme;
- (i) a review of the progress of the implementation of the Committed Obligations, or any Variations previously authorised;
- (j) adjustments to Franchise Payments;
- (k) outstanding correspondence and identification of matters in dispute and actions towards resolution;

- (l) any obligations of the Franchisee which the Authority is monitoring following a contravention of this Agreement;
- (m) a review of progress of decisions on authorisation of Variations or Changes and any new or proposed Variations or Changes;
- (n) any outstanding action of the Authority identified in previous Franchise Performance Meetings;
- (o) progress in rolling stock enhancement and Station enhancements under Schedule 6 (*Rolling Stock and Station Enhancements*);
- (p) progress in planning for or implementation of projects, including Major Scottish Projects and the delivery of new trains;
- (q) a review of the progress toward implementation of any Priced Option called off pursuant to Schedule 3 (*Priced Options*); and
- (r) such other matters as may from time to time be determined to be necessary by the Franchisee or the Authority.

6.4 No later than the 5th business day prior to each Franchise Performance Meeting, the Franchisee shall provide to the Authority in accordance with any guidance the Authority may issue to the Franchisee from time to time, a report detailing the Franchisee's performance with respect to the items referred to in paragraphs 6.3(b) to (m) inclusive and paragraph 6.3(r) (if appropriate).

6.5 The Franchisee shall prepare and present such additional reports to each Franchise Performance Meeting as the Authority may reasonably request. The Franchisee's obligations under this paragraph 6.5 are subject to the Franchisee receiving at least 14 days' notice of the requirement to prepare and present any such additional report.

6.6 No comment or failure to comment nor any agreement or approval, implicit or explicit by the Authority at such meetings will relieve the Franchisee of any of its obligations under this Agreement.

7. Right of assessment or inspection

7.1 The Franchisee shall, if requested by the Authority, allow the Authority and its representatives and advisers:

- (a) to inspect and copy any records referred to in Schedule 13 (*Franchise Management and Information Obligations*) and the Authority may verify any such records; and
- (b) to inspect and copy at any reasonable time any books, records and any other material, data sets or electronic information howsoever and wheresoever held kept by or on behalf of the Franchisee and/or its auditors and any assets (including the Franchise Assets) used by the Franchisee in connection with the Franchise Services.

7.2 The Franchisee shall make available to the Authority, its representatives and advisers the information referred to in paragraph 7.1 and grant or procure the grant of such access (including to or from third parties) as the Authority, its

representatives and advisers shall reasonably require in connection therewith. The obligation of the Franchisee under this paragraph 7.2 shall include an obligation on the Franchisee to grant or procure the grant of such access to premises (including third party premises) where the information referred to in paragraph 7.1 is held, kept by or on behalf of the Franchisee.

- 7.3 The Authority, its representatives and advisers shall be permitted to take photographs, film or image recording, or make any other kind of record of any such inspection.
- 7.4 If any inspection reveals that information previously supplied to the Authority was, in the reasonable opinion of the Authority, in any material respect inaccurate or if such inspection reveals any other non-trivial contravention of the Franchisee's obligations under this Agreement, the costs of any such inspection shall be borne by the Franchisee.

SCHEDULE 12

THIS IS SCHEDULE 12 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT BETWEEN THE AUTHORITY AND SERCO CALEDONIAN SLEEPERS LIMITED

Financial Obligations and Undertakings

1. Obligations

Except to the extent that the Authority may otherwise agree from time to time, the Franchisee shall not:

- 1.1 incur any liability or financial indebtedness except in the ordinary course of providing and operating the Franchise Services;
- 1.2 make any loan or grant any credit, or have or permit to subsist any loan or any credit, to any person (other than the deposit of cash with a Bank as permitted under paragraph 1.5 or to an employee in the ordinary course of its business);
- 1.3 create or permit to subsist any Security Interest over any of its assets or property or give any guarantee or indemnity to or for the benefit of any person or otherwise assume liability or become obliged (actually or contingently) in respect of any obligation of any other person, in each case other than in the ordinary course of the business of providing and operating the Franchise Services; or
- 1.4 create or acquire any subsidiary; or
- 1.5 make or have any investment in any other entity, except for the deposit of cash with a Bank.

2. Financial Ratios

The Franchisee undertakes that as at the end of each Reporting Period during the Franchise Term:

- 2.1 the ratio of its Modified Revenue to its Actual Operating Costs during the preceding 13 Reporting Periods (or prior to the end of the 13th, such Reporting Period, during all preceding Reporting Periods) will equal or exceed the ratio of 1.05:1;
- 2.2 the ratio of its Forecast Modified Revenue to its Forecast Operating Costs for the next 13 Reporting Periods (or, where there are less than 13 Reporting Periods remaining in the Franchise Term, for all such remaining Reporting Periods) will equal or exceed the ratio of 1.05:1; and
- 2.3 for the purposes of this paragraph 2, "preceding 13 Reporting Periods" means the Reporting Period just ended and the preceding 12 Reporting Periods of the Franchise Term.

3. Inter Company Loan Facility

The Franchisee undertakes:

- 3.1 to maintain in force from the date of signature of this Agreement throughout the Franchise Term an inter company loan facility with the Parent on the terms of the document in the Agreed Form marked **ICLF**; and
- 3.2 not to repay the Initial Drawdown of the inter-company loan facility except in accordance with the terms of the Business Plan provided that if the repayment would result in the Franchisee being in breach of either of the Financial Ratios set out in paragraphs 2.1 and 2.2 any such repayment shall not be made; and
- 3.3 to drawdown on the inter-company loan facility referred to in paragraph 3.1 above (including any part of the Initial Drawdown of the inter-company loan facility previously repaid) if the Franchisee is in breach of either of the Financial Ratios set out in paragraphs 2.1 and 2.2 and not to repay any such sums until any such breach is remedied to the satisfaction of the Authority.

4. **Breach of Financial Ratios**

- 4.1 The Franchisee shall not during any Lock-up Period, do any of the following without the Authority's prior written consent:
 - (a) declare or pay any dividend (equity or preference) or make any other distribution including surrendering any taxable losses to any of its Affiliates or pay any of its Affiliates in respect of taxable losses that they wish to surrender to the Franchisee;
 - (b) make payment of any management charges to any of its Affiliates in excess of those specified in the Initial Business Plan; or
 - (c) make payment under any intra-group borrowings.
- 4.2 **Lock-up Period** means any period from the time when either of the ratios referred to in paragraphs 2.1 and 2.2 falls below the ratio of 1.07:1 until the time at which the Authority is satisfied that the relevant ratio is again above the ratio of 1.07:1.
- 4.3 Failure by the Franchisee at any time to comply with either of the ratios referred to in paragraphs 2.1 and 2.2 shall be an Event of Default under paragraph 2.8 of Schedule 10.3 (*Events of Default and Termination Event*).

5. **Performance Bond**

Provision of Initial Performance Bond

- 5.1 The Franchisee shall procure that there shall be a valid and effective Performance Bond:
 - (a) with effect:
 - (i) from the date of signature of this Agreement;
 - (ii) throughout the Franchise Term; and
 - (iii) for a period of 7 Reporting Periods after the end of the Franchise Period;
 - (b) substantially in the form of Appendix (*Form of Performance Bond*);

- (c) having a value equal to the amount determined under paragraph 5.4; and
- (d) having a minimum duration of at least three years;

Provision of Replacement Performance Bond

- 5.2 The Franchisee may replace the Performance Bond at any time provided that the Authority receives a replacement Performance Bond:
 - (a) substantially in the form of the Appendix (*Form of Performance Bond*) (or in any other form acceptable to the Authority in its discretion);
 - (b) duly executed and delivered by a Bond Provider acceptable to the Authority; and
 - (c) in an amount determined in accordance with paragraph 5.4
- 5.3 The Franchisee shall replace any Performance Bond at least 6 months prior to its scheduled expiry with a replacement that complies with the requirements of paragraph 5.2. The Authority shall immediately notify the Bond Provider of the replaced Performance Bond, that a replacement bond has been provided by the Franchisee, and the Authority shall return such replaced Performance Bond to such Bond Provider.

Amount of Performance Bond

- 5.4 The amount of any Performance Bond shall be as follows:
 - (a) in the period from the date of signature of this Agreement until the first anniversary of the date of signature of this Agreement, [redacted text];
 - (b) in the second year following the date of signature of this Agreement, [redacted text] indexed to RPI; and
 - (c) in the third year following the date of signature of this Agreement and in each subsequent year during the Franchise Term, [redacted text] indexed to RPI;

and for the purpose of this paragraph 5.4, RPI shall be the quotient of the Retail Prices Index for the month falling two months before the commencement of the second or third year following the date of signature of this Agreement as appropriate divided by the Retail Prices Index for the month falling two months before the date of signature of this Agreement or 2 months before the start of the second year following the date of signature of this Agreement in respect of paragraph 5.4(c).

Demands under Performance Bond

- 5.5 The Performance Bond shall be on terms that it is payable without further enquiry by the Bond Provider to the Authority in full in Edinburgh on first written demand by the Authority on the Bond Provider, certifying as to any one or more of the following:
 - (a) that this Agreement has :

- (i) either terminated early or expired and, in either case, there are liabilities or obligations outstanding from the Franchisee to the Authority; or
- (ii) terminated solely as a consequence of the occurrence of one or more Events of Default;
- (b) that a railway administration order has been made in relation to the Franchisee pursuant to Sections 60 to 62 of the Act;
- (c) the occurrence of an Event of Default:
 - (i) under paragraph 2.12(a) of Schedule 10.3 (*Events of Default and Termination Event*) in relation to the Performance Bond or the insolvency of the Bond Provider; or
 - (ii) under paragraph 2.12(b) of Schedule 10.3,

whether or not this Agreement is, or is to be, terminated as a result thereof;
- (d) that the Franchisee has failed to perform or comply with its obligations under any Supplemental Agreement;
- (e) that the Franchisee has failed to provide a replacement Performance Bond complying with this paragraph 5 (other than paragraph 5.9) at least 6 months prior to the scheduled expiry of the existing Performance Bond; or
- (f) that the Franchisee has failed to procure the execution and delivery of a new Performance Bond by a Bond Provider acceptable to the Authority when required to do so in accordance with paragraph 5.9.

5.6 If the Authority makes a demand under the Performance Bond, it shall, within a reasonable period, account to the Franchisee for the proceeds of such Performance Bond less the amount of losses, liabilities, costs or expenses which, in the reasonable opinion of the Authority, the Authority or a Successor Operator has incurred or suffered or may be reasonably likely to incur or suffer including as a result of:

- (a) early termination of the Franchise Agreement; and/or
- (b) any failure of the Franchisee to perform or comply with any of its obligations to the Authority under the Franchise Agreement or to a Successor Operator under the Supplemental Agreement.

Characteristics of Performance Bond Provider

5.7 In determining whether a Bond Provider under any replacement Performance Bond is acceptable, the Authority may exercise its discretion, shall be entitled to require that the Bond Provider has at least an A- credit rating from Standard & Poors (or its equivalent rating from Moody's or Fitch) and shall not be obliged to accept a Bond Provider accepted under any previous Performance Bond.

5.8 The Franchisee shall provide such information relating to any Bond Provider or proposed Bond Provider as the Authority may require from time to time.

5.9 If at any time the Authority reasonably considers the Bond Provider under the then current Performance Bond to be unacceptable, the Authority may require the Franchisee within 20 business days to procure the execution and delivery of a new Performance Bond by a Bond Provider acceptable to the Authority. This applies:

- (a) notwithstanding the other provisions of this paragraph 5; and
- (b) irrespective of the scheduled expiry date of the then current Performance Bond.

6. Financial Transparency

- 6.1 The Franchisee shall ensure that there is no cross subsidisation between the Franchise Services and any other service run by the Franchisee or activities of the Franchisee or between the Franchisee and any Affiliate.
- 6.2 The Franchisee shall ensure that all transactions with any Affiliates are conducted on an arm's length basis and are so identified in all records and in its accounting records.
- 6.3 The Franchisee shall have clear, separate and transparent accounting systems for financing and operating the Franchise Services (in accordance with Regulation (EC) 1370/2007) to ensure that the Franchise Payment is only used for the Franchise Services and not for any other activity of the Franchisee and shall deal with the Authority on an open book basis.

7. Not used

8. ORCATS

The Franchisee shall act in the best financial interest of the Authority in regard to ORCATS. Without prejudice to the foregoing generality, the Franchisee shall:-

[redacted text]

APPENDIX TO SCHEDULE 12

Form of Performance Bond

[DOCUMENT “PB” - PERFORMANCE BOND]
[TO BE AMENDED TO REFLECT THE AGREED PERFORMANCE PACKAGE]

[Dated _____ 20[]

[BOND PROVIDER]

PERFORMANCE BOND

[The Scottish Ministers]

To: [The Scottish Ministers]

Whereas:

We are informed that you have entered into a franchise agreement dated [DATE] (the **Franchise Agreement**) with [Insert name of Franchisee] (the **Franchisee**) under which the Franchisee will provide certain railway passenger services.

We are further informed that the Franchise Agreement requires that the Authority receives a duly executed performance bond of up to [maximum amount] (the **Bond Value**) to secure the performance by the Franchisee of and its compliance with its obligations under the Franchise Agreement and any supplemental agreement thereto entered into between the Franchisee and a successor operator to the Caledonian Sleeper Franchise (any such agreement, a **Supplemental Agreement**).

Accordingly:

We hereby unconditionally and irrevocably undertake to pay to you in full in Edinburgh, immediately upon receipt of your first written demand on us in the form set out in the Schedule and, without further enquiry, the sum specified therein. Such written demand shall state:

- (a) the Call Event (as defined in clause 2 hereof) that has occurred; and
- (b) the date of occurrence of such Call Event.

You may call on us for the whole or part of the amount of our liability hereunder and you may make any number of calls on us up to a maximum aggregate amount of the Bond Value. All sums payable hereunder shall be paid free of any restriction or condition and free and clear of and (except to the extent required by law) without any deduction or withholding, whether for or on account of tax, by way of set-off or otherwise.

1. The undertaking given by us above shall operate provided that:
 - (a) our maximum liability shall be limited to a sum or sums not exceeding in the aggregate the amount of the Bond Value or such lesser amount as you may notify us of from time to time in writing, separately from any demand, shall constitute the Bond Value of this Bond; and
 - (b) notwithstanding anything contained herein, our liability hereunder shall expire on the earlier of:
 - (i) the date falling 6 months after the date on which any railway administration order is made in relation to the Franchisee pursuant to Sections 60 to 62 of the Railways Act 1993;
 - (ii) the later of:
 - (A) the date falling 1 month after the determination of the Purchase Price (as defined in any Supplemental Agreement) under each relevant Supplemental Agreement; and
 - (B) the end of the Franchise Term (as defined in the Franchise Agreement);
 - (iii) a date at least 3 years after the date of the bond; and

- (iv) upon confirmation of receipt by you of a replacement bond,

except in respect of any written demand for payment complying with all the requirements hereof which is received by us on or before such date for either the Bond Value, or for such lesser amount which, when aggregated with any previous demands, amounts to the Bond Value, after which date this undertaking shall be void whether returned to us or not.

2. **Call Event** means, in this Bond, any of:
 - (a) the termination or expiry of the Franchise Agreement in circumstances where there are liabilities or obligations outstanding from the Franchisee to the Authority;
 - (b) the termination of the Franchise Agreement (solely as a consequence of the occurrence of one or more Events of Default);
 - (c) the making of a railway administration order in relation to the Franchisee pursuant to Sections 60 to 62 of the Railways Act 1993;
 - (d) the occurrence of an Event of Default under the Franchise Agreement in respect of:
 - (i) paragraph 2.12(a) of Schedule 10.3 (*Events of Default and Termination Event*) in relation to the Performance Bond (as defined in the Franchise Agreement) or the insolvency of the Bond Provider; or
 - (ii) paragraph 2.12(b) of Schedule 10.3,

whether or not the Franchise Agreement is, or is to be, terminated as a result thereof;
 - (e) the failure by the Franchisee to perform or comply with its obligations under any Supplemental Agreement;
 - (f) the failure by the Franchisee to provide the Authority with a replacement Performance Bond which complies with paragraph 5 (other than paragraph 5.9) of Schedule 12 (*Financial Obligations and Undertakings*) of the Franchise Agreement at least 6 months prior to the scheduled expiry of the existing Performance Bond; or
 - (g) the failure by the Franchisee to procure the execution and delivery of a new Performance Bond by a Bond Provider in favour of, and acceptable to the Authority when required to do so in accordance with paragraph 5.9 of Schedule 12 of the Franchise Agreement.
3. This bond is made to you, your successors by law and may only be assigned to your successors by law.
4. This undertaking shall not be discharged or released by time, indulgence, waiver, alteration or release of, or in respect to, the obligations of the Franchisee under the Franchise Agreement or any Supplemental Agreement or any other circumstances that might operate as a release of a guarantor at law or in equity.
5. You may make demand or give notice to us under this Bond in writing by hand or facsimile transmission to us as follows provided that any demand or notice by facsimile transmission is promptly confirmed by hand or by post:

Address: [Bond Provider's Address]

Facsimile Number: [Bond Provider's fax number]

6. References in this Bond to the Franchise Agreement and the Supplemental Agreement are to the Franchise Agreement and any Supplemental Agreement as amended from time to time. Terms defined therein shall have the same meaning in this Bond.
7. This Bond shall be governed by and construed in accordance with [Scots law] [the laws of England and Wales.]

Executed as a deed this [day and month]

of [year].

**SCHEDULE TO THE PERFORMANCE BOND
SPECIMEN DEMAND NOTICE**

To: [Name and Address of Bond Provider]

[Date]

We refer to the performance bond issued by you on [date of bond] (**the Performance Bond**) in connection with the franchise agreement entered into among the Scottish Ministers (the **Authority**) and [Insert name of Franchisee] (the **Franchisee**) on [franchise agreement signature date] (the **Franchise Agreement**).

We hereby notify you that the following Call Event (as defined in the Performance Bond) occurred on [date of occurrence of Call Event]: [DELETE AS APPROPRIATE]

[The Franchise Agreement has [terminated early/expired] on [date of termination / expiry in circumstances where there are liabilities or obligations outstanding from the Franchisee to the Authority.]

[The Franchise Agreement has terminated early (solely as a consequence of the occurrence of one or more Events of Default) on [date of termination].

[A railway administration order has been made in relation to the Franchisee pursuant to Sections 60 to 62 of the Railways Act 1993.]

[That an Event of Default under the Franchise Agreement has occurred under:

- (a) *paragraph 2.13(a) of Schedule 10.3 (Events of Default and Termination Event) in relation to the Performance Bond (as defined in the Franchise Agreement); or*
- (b) *paragraph 2.13(b) of Schedule 10.3,*

[The Franchisee has failed to perform or comply with its obligations under any Supplemental Agreement (as defined in the Franchise Agreement).]

[The Franchisee has failed to provide a replacement Performance Bond (as described in the Franchise Agreement) complying with paragraph 5 (other than paragraph 5.8) of Schedule 12 (Financial Obligations and Undertakings) to the Franchise Agreement at least 6 months prior to the scheduled expiry of the existing Performance Bond.]

[The Franchisee has failed to procure the execution and delivery of a new Performance Bond by a Bond Provider (as defined in the Franchise Agreement) acceptable to the Authority when required to do so in accordance with paragraph 5.8 of Schedule 12 (Financial Obligations and Undertakings) to the Franchise Agreement.]

We hereby demand immediate payment from you of [specify alternative amount if not Bond Value] or the Bond Value, whichever is smaller.

Please arrange for immediate payment of the relevant amount as follows:

[account details to which Bond monies are to be paid into]

Where used in this Notice, capitalised terms have the same meaning as in the Franchise Agreement and any Supplemental Agreement.

For and on behalf of
The Scottish Ministers

SCHEDULE 13

**THIS IS SCHEDULE 13 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT
BETWEEN THE AUTHORITY AND SERCO CALEDONIAN SLEEPERS LIMITED**

Franchise Management and Information Obligations

Schedule 13.1: **Franchise Management**

Schedule 13.2: **Information**

Appendix 1: Efficient Franchisee

Appendix 2: Key Assets

Appendix 3: Operational Information

**Appendix 4: Passenger journeys, miles and earnings
information**

Schedule 13.3 : **Co-operation**

Schedule 13.4 : **Staff Obligations**

Schedule 13.5 : **Safety and personal security**

Schedule 13.6 : **Integration**

Schedule 13.7 **Related Parties and Open Book Accounting**

Appendix: Related Party Contracts

SCHEDULE 13.1

THIS IS SCHEDULE 13.1 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT AMONG THE AUTHORITY AND SERCO CALEDONIAN SLEEPERS LIMITED

Franchise Management

1. General Management Obligations

Human Resources

- 1.1 The Franchisee shall deliver the HR Strategy to the Authority on the Franchise Commencement Date.
- 1.2 The HR Strategy shall:
 - (a) describe the roles and contribution of the Franchisee's directors and the Franchise Employees in the delivery of the Franchisee's obligations under this Agreement;
 - (b) define the human resources policies, procedures and processes that are required to deliver the vision, business strategy and goals of the Franchisee;
 - (c) set measurable targets (where appropriate) for each aspect of the HR Strategy;
 - (d) define how the HR Strategy will be delivered over the Franchise Term;
 - (e) define how the delivery of the HR Strategy will be monitored and managed over the Franchise Term; and
 - (f) define how the HR Strategy may be varied to take account of changing circumstances or legislation.
- 1.3 The HR Strategy will comprise as a minimum:
 - (a) **an Organisational Development Strategy** incorporating:
 - (i) a manpower planning process on a rolling 5-year basis, updated annually and identifying areas where management action will be required to maintain the efficiency of the Franchisee;
 - (ii) a commitment by the Franchisee to achieve "Investors in People" accreditation within three years of the Franchise Commencement Date; and
 - (iii) appropriate performance management processes that embrace all Franchise Employees and provide individual feedback on personal performance;
 - (b) **a Recruitment, Retention & Resourcing Strategy** incorporating:
 - (i) an objective, transparent and fair recruitment process;
 - (ii) a succession - planning process for key grades / posts on a rolling 5-year basis, updated annually ensuring that there is resilience in the staffing levels of key posts;

- (iii) a statistical framework for the monitoring of recruitment and Franchise Employees turnover by gender, ethnic category, disability, sexuality, religion or belief, function, grade, length of service; and
- (iv) a diversity plan;

(c) a **Reward & Engagement Strategy** for each grade group which supports the vision, business strategy and goals and provides for motivation, reward and retention of Franchise Employees and mitigation against the risk of Industrial Action to ensure protection and promotion of the Franchise brand and incorporates:

- (i) base salary and earnings data by key grade group;
- (ii) earnings and hours-worked data;
- (iii) previous information;
- (iv) relevant comparator data;
- (v) non-financial reward, recognition and motivation initiatives;
- (vi) employee share schemes and/or profit-share mechanisms; and
- (vii) pensions benefits;

(d) a **Training & Development Strategy** incorporating:

- (i) a commitment to become an active and subscribing member of People 1st and maintain membership for the Franchise Term;
- (ii) the provision of induction training for all new Franchise Employees that incorporates:
 - (A) all necessary safety training;
 - (B) all task-specific training;
 - (C) training in order to make such Franchise Employees aware of the obligations required of the Franchisee under this Agreement and of the Franchisee's vision, business strategy and goals;
 - (D) training to provide understanding of the Franchisee's obligations under its Licences and the penalty fares schemes to which it is a party (if any);
 - (E) training to provide understanding of the wider context of the railway; and
 - (F) training for Franchise Employees who have a passenger interface in:
 - (aa) how to deliver excellent customer service to all types of passengers including passengers with special requirements; and
 - (bb) how to deal with dissatisfied or disruptive passengers;

- (iii) the provision of refresher training and the circumstances when such would be provided;
- (iv) a competence framework based upon National Occupational Standards;
- (v) an assessment and verification framework consistent with the delivery of National Vocational Qualifications and/or Scottish Vocational Qualifications;
- (vi) a commitment by the Franchisee to encourage all Franchise Employees (where appropriate) to achieve an appropriate National Vocational Qualification and/or Scottish Vocational Qualification (or equivalent accredited qualification) within defined timescales; and
- (vii) the means by which the Franchisee will make available other structured training and development opportunities, using approved training schemes such as "Modern Apprenticeships" and "Graduate Apprenticeships" where appropriate;

(e) an **Involvement Strategy** incorporating:

- (i) appropriate "Collective Consultation and Bargaining Frameworks"; and
- (ii) the planned linkages to the wider local community that the Franchisee has through its Franchise Employees; and

(f) a **Franchise Employee Communications Strategy** which defines the means and frequency with which the Franchisee will provide:

- (i) information and feedback to Franchise Employees on the Franchisee's performance, including whether good or bad performance;
- (ii) information as to changes in management policy, personnel, organisational structure, reporting lines and responsibilities; and
- (iii) the conduct, publication and actions to be taken as a result of an annual Franchise Employee attitude survey.

2. Quality Management

2.1 The Franchisee shall deliver to the Authority on or before the Franchise Commencement Date the Quality Plan which shall be updated on or before that date to reflect any relevant developments since the submission to the Authority prior to execution of this Agreement of a draft of such plan or the Business Plan. The Quality Plan shall cover all of the obligations of the Franchisee under this Agreement. The purpose of the Quality Plan is to ensure that the Franchisee manages in a systematic and structured manner the quality and delivery of its obligations under this Agreement so that they are delivered to a consistent quality in accordance with the terms of this Agreement.

2.2 The Quality Plan shall be compliant with the procedures and processes described in the Business Excellence Model of the British Quality Foundation or the EFQM Excellence Model of the European Foundation for Quality Management.

2.3 The Franchisee shall implement the Quality Plan throughout the Franchise Term. The Franchisee shall ensure that sufficient, adequately trained Franchise Employees are allocated to the management of quality and the delivery of the Franchise Services.

2.4 The Franchisee shall deliver to the Authority a Quality Report, at least once every 13 Reporting Periods during the Franchise Term (the first such report no later than the end of the 13th Reporting Period following the Franchise Commencement Date), which shall provide:

- (a) the Franchisee's own assessment of the Franchisee's performance of its obligations under this Agreement;
- (b) (where applicable) a list of specific corrective actions which the Franchisee believes are necessary to remedy, as soon as reasonably practicable, issues of concern identified in the Franchisee's assessment;
- (c) (where applicable) a list of specific actions for improvement identified in the Franchisee's assessment that the Franchisee intends to target so as to bring about continuous improvement of performance, in particular the delivery of the key performance results derived from the application of the Business Excellence Model of the British Quality Foundation or the EFQM Excellence Model of the European Foundation for Quality Management;
- (d) a list of actions intended to maintain current areas of excellence identified in the Franchisee's assessment;
- (e) a programme which specifies:
 - (i) the time within which the corrective action identified pursuant to paragraph 2.4(b) will be complete;
 - (ii) the time within which the continuous improvement actions identified pursuant to paragraph 2.4(c) will be complete; and
 - (iii) the time within which the maintenance actions necessary for maintaining the current areas of excellence identified pursuant to paragraph 2.4(d) will be complete; and
- (f) any amendments to the Quality Plan necessary to ensure that the Franchisee manages in a systematic and structured manner the quality and delivery of its obligations under this Agreement so that they are delivered to a consistent quality in accordance with the terms of this Agreement.

3. Quality Standards

EFQM

3.1 The Franchisee shall by the second anniversary of the Franchise Commencement Date operate a business management system, the standard of which shall comply with the European Framework for Quality Management Model ("EFQM") and thereafter take all steps necessary to maintain such standards during the Franchise Term.

ISO 9000:2005 and related standards

3.2 The Franchisee shall procure that the Maintenance Contractor shall work towards ISO 9000:2005, ISO 9000:2008 and ISO 9004:2009 (or equivalents) at each of its Depots.

4. Crystal Mark

The Franchisee shall ensure that all of its Published passenger facing documents including without prejudice to the foregoing generality its Passenger's Charter, Customer Complaints Handling Procedure and Disabled People's Protection Policy are drafted to a standard which shall comply with the Crystal Mark standard (or equivalent).

5. Environment commitments and ISO14001

ISO 14001 Environmental Accreditation

5.1 The Franchisee shall procure that the Maintenance Contractor shall operate an environmental management system, the standard of which shall comply with ISO 14001 at each of its Depots and thereafter take all steps necessary to maintain such standard during the Franchise Term.

Controlled emission toilets

5.2 Pending installation of controlled emission toilets in Vehicles the Franchisee shall procure that toilets are not flushed within any Station or station.

Regenerative braking

5.3 The Franchisee shall use regenerative braking to reduce energy consumption and CO² emissions where this is part of the standard equipment on the train and the line the train is operating on is capable of accepting regenerative output.

Energy consumption, emissions reporting and environmental targets

5.4.1 The Franchisee shall with such frequency as the Authority may require, but in any event three monthly, report to the Authority on the energy consumption and carbon dioxide equivalent emissions of the delivery of Franchise Services and energy efficiency and environmental performance in such format as is compatible with the Authority's Carbon Management System may reasonably require.

5.4.2 Each Franchisee Year, the Franchisee shall publish on the Website an Environmental Action Plan that details the steps the Franchisee will take to deliver the Franchisee's targets. Such steps shall include:

1. In-cab traction electricity metering to assist drivers to reduce power consumption.
2. Use of electric locomotives with regenerative breaking.
3. Diesel locomotives with new, more efficient engines.
4. With the introduction of new carriages, lighter vehicles that will reduce traction power consumption.
5. Low temperature washing of bed linen to reduce energy consumption.
6. Use of fair trade cotton in bed linen and garments.

In addition to these actions, the Franchisee is committed to working with local suppliers to reduce the energy consumption of the Franchisee's supply chain.

5.4.3 Where installed, the Franchisee will use on-train metering on electric locomotives to manage traction electricity usage.

Extreme weather events and climate change

5.5 The Franchisee shall monitor extreme weather events and the effects of climate change on the delivery of Franchise Services and report thereon with such frequency as the Authority may require, but in any event annually (the first such report no later than the end of the 13th Reporting Period following the Franchise Commencement Date).

6. Advertisement of Contracts

The Franchisee shall advertise all its potential contracts for goods and services in relation to the Caledonian Sleeper Franchise locally to where such goods and services will be provided and in Public Contracts Scotland portal in order to make sub-contracting opportunities more visible to SMEs.

SCHEDULE 13.2

**THIS IS SCHEDULE 13.2 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT
BETWEEN THE AUTHORITY AND SERCO CALEDONIAN SLEEPERS LIMITED**

Information

1. General Information

Corporate information

- 1.1 The Franchisee shall provide the following information to the Authority on or before the Franchise Commencement Date and shall notify the Authority of any change to such information within 21 days of such change:
 - (a) its name;
 - (b) its business address and registered office;
 - (c) its directors and company secretary;
 - (d) its auditors;
 - (e) its trading name or names; and
 - (f) to the best of the Franchisee's knowledge and belief having made due and diligent enquiry, the identity of all persons holding, separately or acting by agreement, directly or indirectly, the right to cast more than 20 per cent. of the votes at general meetings of the Franchisee.
- 1.2 The Franchisee shall inform the Authority of any material change or proposed material change in its business (including the employment or the termination of employment of any Key Personnel, the termination of any Key Contract, any litigation or other dispute which may have a material effect on its business) and any material change in, or restructuring of, the capitalisation or financing of the Franchisee or the Parent.

Operational and Performance-related Information to be provided by the Franchisee

- 1.3 The Franchisee shall provide to the Authority the information specified in the Appendices to this Schedule 13.2 at the times specified therein.
- 1.4 The Appendices to this Schedule 13.2 shall be interpreted in accordance with any guidance issued by the Authority from time to time for that purpose.

Maintenance of Records

- 1.5 The Franchisee shall maintain true, up to date and complete records of all of the information required to be provided by the Franchisee under this Agreement.
- 1.6 Each record required to be maintained by the Franchisee in accordance with this Schedule 13.2 shall be held for a period of 7 years following the date on which such record was required to be created.

- 1.7 References to records in this Schedule 13.2 shall include records maintained under any Previous Franchise Agreement to the extent that such records relate to the Franchise Services and the Franchisee has access to them (which it shall use all reasonable endeavours to secure).
- 1.8 The Franchisee shall not be responsible for any records maintained under any Previous Franchise Agreement, as referred to in paragraph 1.7, being true, up to date and complete. Notwithstanding the foregoing, as soon as reasonably practicable after becoming aware that any such records are not true, complete and up to date, the Franchisee shall take all reasonable steps to remedy any such deficiency, and shall thereafter maintain such records in accordance with paragraph 1.5.

Information to Stakeholders

- 1.9 The Franchisee shall comply with any reasonable requests and guidance issued by the Authority from time to time in respect of the provision of information to and co-operation and consultation with Stakeholders.

Public Sector Equality Duty

- 1.10 The Franchisee shall, upon request by the Authority, provide all and any information which may be required by the Authority in order to assist the Authority in complying with its Public Sector Equality Duty.

2. Business Plans

Initial Business Plan

- 2.1 Within 4 months of the date of signature of this Agreement, the Franchisee shall deliver to the Authority its Initial Business Plan and supporting Business Action Plans, describing its planned activities for each Franchisee Year during the Franchise Term, which shall include:
 - (a) a description as to how the Franchisee will be able to meet its obligations under this Agreement for the Franchise Term, supported by operational plans demonstrating this;
 - (b) details of any investments proposed to be made or procured by the Franchisee in relation to the Franchise Services during the Franchise Term;
 - (c) a summary of the Franchisee's plans for marketing and developing the Franchise Services;
 - (d) a Financial Model, Operational Model and Record of Assumptions in the Agreed Form; and
 - (e) a profit and loss forecast, cash flow forecast and forecast balance sheet for each of the first 13 Reporting Periods following the Franchise Commencement Date, together with a list of assumptions on the basis of which each such forecast has been prepared.

- 2.2 The Authority may require the resubmission of the Initial Business Plan to the Authority on the Franchise Commencement Date, 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 submitted in accordance with paragraph 2.1.

Updated Business Plans

2.3 Not more than 3 Reporting Periods and not less than 1 Reporting Period prior to the start of each Franchisee Year (other than the first Franchisee Year), the Franchisee shall deliver to the Authority, an Updated Business Plan:

- (a) in substantially the same form as the immediately preceding Business Plan delivered to the Authority in accordance with this Agreement, revised to include the information available to the Franchisee as at the date of its delivery, describing the Franchisee's planned activities for each Franchisee Year during the remainder of the Franchise Term;
- (b) containing a statement of the differences between such Updated Business Plan and the immediately preceding Business Plan delivered to the Authority in accordance with this Agreement together with an explanation of such differences;
- (c) containing revised financial and operational models, together with a detailed statement and explanation of any material difference in the outputs provided by such financial and operational models and any such models provided in the immediately preceding Business Plan;
- (d) containing details of any Business Action Plan notified to the Authority and any progress made in respect of such Business Action Plans; and
- (e) containing a revised profit and loss forecast, cash flow forecast and forecast balance sheet for each of the 13 Reporting Periods in that Franchisee Year.

Further Updated Business Plans

2.4 The Franchisee shall:

- (a) notify the Authority as soon as reasonably practicable if the business outlook or prospective financial results of the Franchisee are likely to be materially different from those specified in the most recent Business Plan; and
- (b) within 1 month of any request by the Authority following receipt of a notification in accordance with paragraph 2.4(a), supply the Authority with a revised Updated Business Plan for the remainder of the Franchise Term which reflects the latest view of its business.

Provisions relating to Business Plans

2.5 The Franchisee shall:

- (a) comply with any guidance issued by the Authority from time to time as to its reasonable requirements for the format of any Business Plan. The contents and assumptions to be included in any Business Plan shall, unless the Authority and the Franchisee otherwise agree, be consistent with the Record of Assumptions;
- (b) attend such meetings and make such presentations as the Authority shall request in connection with any Business Plan.

2.6 The Franchisee shall not be relieved of any of its obligations under this Agreement as a result of any comment or failure to comment by the Authority on any Business Plan or any agreement with or approval, implicit or explicit, of any Business Plan by the Authority at any time.

2.7 The Authority may at any time require the Franchisee to produce a Business Action Plan in respect of any aspect of any Business Plan. Such Business Action Plan may include steps relating to:

- (a) timetable development;
- (b) performance management improvement;
- (c) customer service improvement;
- (d) improvements in the quality of service delivery or the efficiency of delivery of the Franchise Services, including any investment to be made, procured or managed by the Franchisee during the Franchise Term;
- (e) patronage growth plan;
- (f) integration;
- (g) localism;
- (h) major projects; and
- (i) Major Scottish Projects.

2.8 The Franchisee shall comply with any guidance issued by the Authority about how and with whom any consultation on the content of a Business Action Plan is to take place.

2.9 Any proposal in a Business Action Plan shall only be implemented if and to the extent that the Authority decides it is appropriate to do so and subject to any conditions which it may impose.

2.10 The Authority shall be permitted to carry out indicative Runs of the Financial Model for the purpose of considering whether or not to implement any proposal in a Business Action Plan.

3. **Financial and Operational Information**

Accounting Records

3.1 The Franchisee shall prepare and at all times during the Franchise Term maintain true, up to date and complete accounting records as are required to be kept under Section 386 of the Companies Act 2006. Such records shall be prepared on a consistent basis for each Reporting Period.

Reporting Period Financial Information

3.2 The Franchisee shall deliver to the Authority, within 2 weeks of the end of each Reporting Period, Management Accounts for such Reporting Period, setting out a cashflow statement, profit and loss account and balance sheet for that Reporting Period and cumulatively for the Franchisee Year to date.

3.3 The Management Accounts shall also set out:

- (a) sufficient information to enable the Authority to calculate Actual Operating Costs and Modified Revenue on a cumulative basis for the previous 6 Reporting Periods;

- (b) a statement of calculation demonstrating the Franchisee's performance against the financial undertakings in paragraph 2 of Schedule 12 (*Financial Obligations and Undertakings*) during that Reporting Period;
- (c) a comparison of the Franchisee's performance during such period against the forecast provided by the Franchisee in the then current Business Plan;
- (d) a comparison of the Franchisee's cumulative performance during the Franchisee Year in which such period occurs against the forecast referred to in paragraph 3.3(c);
- (e) a detailed statement and explanation of any material difference between such Management Accounts and the forecast referred to in paragraph 3.3(c), cross-referring to deviations from the applicable operational models; and
- (f) where the level of financial performance specified in the Management Accounts is worse than forecast by the Franchisee in its current Business Plan, a Financial Action Plan to ensure that the level of financial performance forecast in its current Business Plan for the remainder of the currency of that Business Plan is achieved and the Franchisee shall use all reasonable endeavours to implement such Financial Action Plan.
- (g) a forecast of Profit levels for the Franchisee Year taking into account the information referred to in paragraph 3.3(a); and
- (h) for the purpose of calculating the Interim Profit Share Reconciliation Amount and the Interim Profit Support Reconciliation Amount a revised cashflow statement, profit and loss account and balance sheet for the Reporting Period which ended 14 weeks prior to the last date for delivery of the Management Accounts which has been adjusted to include financial information not available at the date of delivery of the Management Accounts for that Reporting Period;

Quarterly Financial Information

- 3.4 Within 4 weeks after the end of the 3rd, 6th, 9th and 12th Reporting Periods in each Franchisee Year, the Franchisee shall deliver to the Authority the following information:
 - (a) an updated version of the profit and loss forecast, cash flow forecast and forecast balance sheet provided in accordance with paragraph 2.1(e), for each of the following 13 Reporting Periods; and
 - (b) a statement of calculation demonstrating the Franchisee's performance against each of the financial undertakings in paragraph 2 of Schedule 12 (*Financial Obligations and Undertakings*) and a forecast of performance against such undertakings for the following 13 Reporting Periods.
- 3.5 Where any Reporting Period falls partly within one Franchisee Year and partly within another, the results for each section of such Reporting Period falling either side of such Franchisee Year end shall be prepared on an accruals basis for each such section of such Reporting Period.

Annual Financial Information

- 3.6 Within 3 weeks of the end of each Franchisee Year, the Franchisee shall deliver to the Authority its Annual Management Accounts for that Franchisee Year.
- 3.7 The Franchisee shall deliver to the Authority:

- (a) in respect of any Franchisee Year other than the final Franchisee Year, its Annual Audited Financial Statements for that Franchisee Year within 3 Reporting Periods of the end of that Franchisee Year; and
- (b) in respect of the final Franchisee Year, its Annual Audited Financial Statements for the period from the start of that Franchisee Year to the end of the Franchise Period within 3 Reporting Periods of the end of the Franchise Period.

each together with a reconciliation to the Management Accounts for the same period.

- 3.8 The Franchisee shall deliver to the Authority at the same time as it delivers the relevant Annual Audited Financial Statements pursuant to paragraph 3.7, an unqualified written report from the Franchisee's auditors which confirms that such Annual Audited Financial Statements:
 - (a) comply with paragraph 3.11;
 - (b) give a true and fair view of the amount of Revenue (including each revenue flow separately identified therein) earned by the Franchisee during the relevant Franchisee Year;
 - (c) detail that the amount of Revenue referred to in paragraph 3.8(b) comprises only some or all of those revenue flows specified in the definition of Revenue.
- 3.9 Within 4 Reporting Periods after the end of each Franchisee Year, the Franchisee shall deliver to the Authority the following information:
 - (a) certified true copies of its annual report and Annual Audited Accounts for that Franchisee Year, together with copies of all related directors' and auditors' reports;
 - (b) a reconciliation to the Management Accounts for the same period (including any reconciliation required for the purposes of paragraphs 3.4 to 3.6 inclusive and 4.4 to 4.8 inclusive of Schedule 8.1 (*Franchise Payments*)); and
 - (c) a statement from the Franchisee's auditors confirming compliance with the financial undertakings in paragraph 2 of Schedule 12 (*Financial Obligations and Undertakings*), Provided that the Authority shall be entitled to discuss any element of the statement provided or the information provided by the Franchisee to demonstrate compliance with the financial undertakings with the Franchisee's auditors;
 - (d) a statement of all Related Party Contract transactions undertaken by the Franchisee with any Affiliate;

Accounting Standards and Practices

- 3.10 Each set of Management Accounts and Annual Management Accounts shall be:
 - (a) drawn up in a form consistent with the Franchisee's profit and loss account, cashflow projection and balance sheets contained in the Financial Model (or such form as may reasonably be required from time to time by the Authority); and
 - (b) prepared consistently in accordance with the Franchisee's normal accounting policies, details of which shall be supplied, on request, to the Authority and any changes to which shall be notified to the Authority on submission of such accounts.
- 3.11 Each set of Annual Audited Financial Statements and Annual Audited Accounts shall, save as stated in the notes thereto, be prepared and audited in accordance with the

Adopted Accounting Principles and consistently applied and in accordance with the Companies Act 2006 and, together with those notes and subject to any qualifications contained in any relevant auditors' report, shall give a true and fair view of the state of affairs and profits of the Franchisee for the period covered by such accounts.

Parent Accounts

3.12 The Franchisee shall in addition deliver to, or procure delivery to, the Authority certified true copies of the annual reports and audited accounts of the Parent, together with copies of all related directors' and auditors' reports, within 4 Reporting Periods of the end of each accounting reference period of the Parent or, if the Parent is domiciled outside England and Wales or Scotland, the equivalent documents in the jurisdiction of residence of the Parent.

Improvement Plans for exceeding Improvement Plan Performance Levels

3.13 If and whenever the Franchisee's performance in respect of a Reporting Period, calculated as a moving annual average in accordance with Schedule 7.1 (*Benchmarks*), falls below the Improvement Plan Performance Level for the Right Time Benchmark, the Franchisee shall promptly:

- (a) notify the Authority of that fact;
- (b) prepare and provide to the Authority a plan that it proposes to implement to ensure that its future performance does not fall below the Improvement Plan Performance Level (an **Improvement Plan**);
- (c) implement such Improvement Plan; and
- (d) advise the Authority from time to time of the results of the implementation of such Improvement Plan.

4. Safety Information

4.1 The Franchisee shall co-operate with any request of the Authority from time to time for provision of information and/or preparation and submission of reports detailing or identifying compliance with safety obligations set out in the Safety Regulations including any breaches of the Safety Regulations.

4.2 The Franchisee shall notify the Authority as soon as practicable of the receipt and contents of any formal notification relating to safety or any improvement or prohibition notice received from the ORR. Immediately upon receipt of such notification or notice, the Franchisee shall provide the Authority with a copy of such notification or notice.

5. Further Information

5.1 The Franchisee shall:-

- (a) deliver to the Authority, or procure the delivery to the Authority of, such information, records or documents as the Authority may request within such period as the Authority may reasonably require and which relates to or is connected with the Franchisee's performance of this Agreement;
- (b) procure that each Affiliate, Associate, contractor and sub-contractor of and consultant to the Franchisee complies with paragraph 5.1(a) in respect of any information, records

or documents that relate to its dealings with the Franchisee in connection with the Franchisee's performance of this Agreement.

- 5.2 The information referred to in paragraph 5.1(a) shall include:-
 - (a) any agreement, contract or arrangement to which the Franchisee is a party in connection with any rolling stock used in the operation of the Passenger Services;
 - (b) in so far as the Franchisee has or is able to obtain the same, any other agreement contract or arrangement which may be associated with the procurement, leasing, financing or maintenance of any such rolling stock;
 - (c) any agreement for the manufacture or supply of any rolling stock; or
 - (d) any arrangements for the securitisation of any lease granted in respect of such rolling stock.
- 5.3 The Authority may require the Franchisee to provide the information required to be provided under this Schedule 13 more frequently than set out in this Schedule 13.2.
- 5.4 The Authority may require the Franchisee to provide:-
 - (a) the information required to be provided under this Schedule 13.2, or, in the Authority's discretion, more detailed financial information, at any time in connection with the re-letting of the Franchise; and
 - (b) such unaudited accounts under such accounting policies as may be prescribed by the Authority, acting reasonably, from time to time.
- 6. **Contraventions of this Agreement**
 - 6.1 The Franchisee shall notify the Authority so far as possible before it may occur and in any event as soon as reasonably practicable thereafter, of any contravention by the Franchisee of any provision of this Agreement. This includes where the Franchisee is under an obligation to use reasonable endeavours, all reasonable endeavours or best endeavours to achieve a particular result by a particular time, where such result is not achieved by such time.
 - 6.2 The Franchisee shall deliver to the Authority or procure the delivery to the Authority of, such information, records or documents as the Authority may request within such period as the Authority may reasonably require for the purpose of determining the existence, likelihood, nature or scope of any contravention of, Event of Default or Termination Event under, this Agreement.
- 7. **Information from Third Parties**
 - 7.1 The Franchisee shall, if the Authority so requests, use all reasonable endeavours to ensure that the Authority has direct access to any information, data or records relating to the Franchisee which is or are maintained by third parties and to which the Authority is entitled to have access, or of which the Authority is entitled to receive a copy, under this Agreement.
 - 7.2 The Franchisee shall, if the Authority so requests, procure the provision by RSP to the Authority of such information, data and records as the Franchisee is entitled to receive under the Ticketing and Settlement Agreement, in such form as the Authority may specify from time to time. Such obligation shall be subject to the payment by the Authority of the costs incurred by RSP in providing such information.

7.3 The obligations of the Franchisee under this Schedule 13.2 to provide information to the Authority shall not apply if the Authority notifies the Franchisee that it has received the relevant information directly from any other person (including Network Rail or RSP). The Franchisee shall, if the Authority so requests, confirm or validate any such information which is received from any such other person.

8. **Information To Third Parties**

The Franchisee shall whenever requested by the Authority, confirm what information the Franchisee has provided to Local Authorities, Visit Scotland or other Stakeholders pursuant to paragraph 1.9 of this Schedule 13.2 (*Information*).

9. **Compatibility of Information**

9.1 All financial, operational or other information, and any data and records required to be provided to the Authority under this Agreement shall be provided, if so requested by the Authority, in a form compatible with the Authority's electronic data and records systems on the Franchise Commencement Date, as modified from time to time in accordance with paragraph 10.

9.2 The Franchisee shall ensure that the interconnection of such systems or the provision of such information, data and records to the Authority under this Agreement will not result in any infringement of any third party intellectual property rights to which its systems or such information, data or records may be subject.

10. **Development of Computer Systems**

10.1 The Franchisee shall at all times during the Franchise Term, subject to paragraph 10.4, have the necessary Computer Systems to enable it to comply with its information-provision obligations in paragraph 9.

10.2 The Franchisee shall co-operate in accordance with paragraph 10.3 with the Authority and any third party that the Authority may reasonably specify in the development of:

- (a) the Franchisee's Computer System;
- (b) the Authority's Computer System;
- (c) any railway industry-wide Computer System; and/or
- (d) any other Computer System, including any new Computer System, the Authority may specify

in order that Computer Systems within the railway industry use (where appropriate) the same or compatible computer language, format, networks and protocols.

10.3 In co-operating with the Authority and/or any third party in developing any of the Computer Systems specified by the Authority in accordance with paragraph 10.2, the Franchisee shall, when requested by the Authority:

- (a) make appropriately skilled and qualified Franchise Employees reasonably available, free of charge to:
 - (i) attend meetings with the Authority and/or such third party to discuss and review the need for enhancement or replacement of any Computer System;

- (ii) provide the Franchisee's opinion on any updated specifications for the enhancement of any Computer System;
- (iii) provide the Franchisee's opinion on any specifications for any replacement Computer System;
- (iv) review and comment upon implementation timetables and programmes for any enhancement of any Computer System or any replacement Computer System;
- (v) make available files and data from existing Computer Systems for down-loading onto any enhanced or new Computer System installed;
- (vi) assist with the commissioning of and fault finding with any enhanced or new Computer System installed; and
- (vii) make recommendations for modifications to any existing (whether enhanced or otherwise) or new Computer System in the light of operational experience; and

(b) allow the Authority's employees, agents and contractors access to any existing Computer System to effect any necessary change-over arrangements before the introduction of any enhanced or new Computer System.

10.4 If and to the extent requested by the Authority, the Franchisee shall:

- (a) carry out the procurement, project management and acceptance of any enhancement of any existing Computer System, or replacement of an existing Computer System with a new Computer System; and
- (b) enter into such maintenance or support contracts as are necessary to maintain or support any enhanced or new Computer System,

and the cost and revenue effects arising from the Franchisee's compliance with this paragraph 10.4 shall be a Change.

10.5 The Franchisee shall use any enhanced or new Computer System developed with the co-operation of the Authority in accordance with paragraph 10.3 for the purposes for which such Computer System was intended.

11. **Information Appendices**

The Franchisee shall comply with the terms of:

- 11.1 Appendix 1 (*Efficient Franchise*);
- 11.2 Appendix 2 (*Key Assets*);
- 11.3 Appendix 3: (*Operational Information*); and
- 11.4 Appendix 4: (*Passenger Journeys, Miles and Earnings Information*).

APPENDIX 1 TO SCHEDULE 13.2

Efficient Franchisee

1. Information about the Efficiency of the Franchisee

1.1 The Franchisee shall:

- (a) at all times during the Franchise Term maintain records in relation to the areas and the information described in this Appendix 1; and
- (b) subject to paragraph 1.2, provide to the Authority the information set out in the following tables at the frequency specified in the column of each such table headed "When information to be provided".

1.2 When so requested by the Authority, the Franchisee shall, within such reasonable period as the Authority may specify, make such information available for review by the Authority by reference to:

- (a) such level of disaggregation (including by Route) as is reasonably specified by the Authority ; and
- (b) any particular day, week or other longer period as is reasonably specified by the Authority .

2. The following key shall apply to the tables in this Appendix 1:

A = Information to be provided on or before any Passenger Change Date;

B = Information to be provided for every Reporting Period within 10 days of the last day of each Reporting Period; and

C = Information to be provided annually within 10 days of the last day of each Franchisee Year.

Table 1 Rolling stock vehicles

Information to be provided	Class of Rolling Stock Vehicle			When information to be provided
	Class aaa	Class bbb	Class xxx	
Number of rolling stock vehicles in the Train Fleet				A
Number of rolling stock vehicles locked out of use in service in any one train, identified by train id/headcode/diagram				A
Number of rolling stock vehicle hours scheduled in service per Reporting Period as a percentage of number of rolling stock vehicles in the Train Fleet x 24 hours x 28 days (total rolling stock vehicle hours)				A
Total standard time scheduled preventative maintenance rolling stock vehicle hours per				A

Information to be provided	Class of Rolling Stock Vehicle			When information to be provided
	Class aaa	Class bbb	Class xxx	
Reporting Period as a percentage of total rolling stock vehicle hours				
Performance measured by technical failures causing [redacted text] mins delay or more expressed as a miles per technical failure				B
Key reliability issues and improvement actions				B
Availability, actual compared to planned				B
Franchisee's and Vehicle owner's product audit reports				B
Heavy maintenance programme				B

3. Where trains operated by the Franchisee consist of locomotive(s) and coaches, the Franchisee shall separate the information provided for locomotive(s) and coaches.
4. For Class of Rolling Stock Vehicle in the above Table, the information is to be provided as if there was a separate column for each class of vehicle in the Train Fleet.

Table 2 Information related to Efficiency of Operation

Information to be provided	When information to be provided
Total passenger journey kilometres divided by total staff hours plus contractor hours	A
Number of scheduled diagrams per Reporting Period divided by the number of drivers employed	A
Number of depot maintenance employees on a full time equivalent basis (including train maintenance staff and supervisory and administrative staff at the relevant depot) divided by the number of rolling stock vehicles in the Train Fleet	A
Scheduled driving/train crew in service time compared to total employed driver/ train crew time expressed as a percentage	A
Total number of employees divided by the number of rolling stock vehicles in the Train Fleet	A
Number of indirect employees (head office, management and supervisory and administrative staff) relative to the number of direct employees (drivers, train crew, station staff and train maintainers), expressed as a percentage	A

Table 3 Financial Efficiency Ratios

Information to be provided	When information to be provided
Total cost of service operations (all Franchisee's costs excluding head office, management and supervisory and administrative staff costs and head office lease and facilities costs) divided by total scheduled vehicle miles	A
Total maintenance cost (including depot costs, spare parts replacement train maintenance staff and depot supervisory costs, interior and exterior cleaning costs, depot maintenance costs excluding any vehicle fuel costs) divided by total scheduled vehicle miles	A
Total cost (sum of all Franchisee's costs) divided by total number of total passenger journey kilometres	A
Total cost of service operations (all Franchisee's costs excluding head office, management and supervisory and administrative staff costs and head office lease and facilities costs) divided by total passenger journeys	A
Administrative costs (head office, management and supervisory and administrative staff costs and head office lease and facilities costs) divided by total scheduled vehicle miles	A
Total fares revenue divided by the total number of total passenger journey kilometres	A
Ticket selling and revenue protection costs as a percentage of total revenue. Ticket selling and revenue protection costs shall include ticket office staff costs, ticket machine and ticket validation equipment maintenance costs, ticket procurement and ticket costs, revenue protection staff costs (less penalty fare (if any) receipts), costs associated with RSP and Ticketing and Settlement Agreement compliance, and commissions paid to third parties in respect of ticket sales plus ticket gating machine charges, maintenance cost and gating staff costs	A
Percentage of ticket sales revenue collected by ticket office staff	A
Percentage of ticket sales revenue collected by on train staff	A
Percentage of ticket sales revenue collected by automatic ticket machines	A
Percentage of total revenue obtained from season tickets	A

Table 4 Safety

Information to be provided	When information to be

	provided
Accidents reported (staff and passengers) divided by the number of passenger journeys	C
Crime incidents reported (staff and passengers) divided by the number of passenger journeys	C

Table 5 HR Information

Information to be provided	When information to be provided
Evidence of Franchisee's vision, company goals and HR Strategy that supports it	C
Evidence of a human resource database capable of informing the operation of the Franchisee and supporting the production of a manpower plan	C
Evidence of a 5 year manpower plan, rolling forward and updated annually	C
Evidence of working towards "Investors in People" accreditation	C
Evidence of a performance management process applicable to all staff	C
Evidence of an objective, transparent and fair recruitment process	C
Evidence of analysis of employment and recruitment data by gender, ethnic category, disability function and grade	C
Evidence of analysis of turnover by cause, retirement, dismissal, redundancy, ill health retirement, death	C
Evidence of succession planning, identification of prospective "hot spots" and actions taken to address them	C
Evidence of a diversity plan and impact of implementing it	C
Evidence of historical and current data on salaries, earnings, hours of work, overtime worked, free day/rest day working, and other main terms and conditions for all key grade groups	C
Evidence of benchmark comparator data	C
Evidence of non-financial reward and recognition initiatives	C
Evidence of a competence framework in place based on national occupational standards	C
Evidence of an assessment and verification framework to enable the delivery of NVQs and SVQs	C

Information to be provided	When information to be provided
Evidence of a structured induction programme (supported by hard data) incorporating a rail industry perspective to all new entrants	C
Evidence (supported by hard data (numbers / %)) of staff with NVQs / SVQs (or equivalent externally recognised qualification) by grade against target	C
Evidence (supported by hard data (numbers / %)) of structured training and development for "Strategic", "Supervisory" and "Operational" managers as well as the wider workforce	C
Evidence of a collective "consultation and bargaining framework"	C
Evidence (supported by hard data) (numbers/%) of people days lost through industrial action and a record of industrial action short of strike action	C
Evidence of an annual staff attitude survey	C
Evidence of actions taken arising from feedback received from the staff attitude survey	C
Evidence of company links to the community through its staff	C
Evidence of a company communication and briefing strategy	C
Evidence of a robust process of briefing, core briefing material and 2-way communication and feedback	C
Evidence of staff hours lost through sickness and other absence	C
Evidence of staff hours lost through training	C
Evidence of the average wage and the minimum hourly rate and/or wage of all directly employed staff	C
Evidence of the number of apprenticeships created	C

APPENDIX 2 TO SCHEDULE 13.2

Key Assets

Information about assets used by the Caledonian Sleeper Franchisee

1. The Franchisee shall at all times during the Franchise Term maintain records covering the following information:
 - 1.1 for each Primary Franchise Asset or other asset which is the subject of, or operated under, a Key Contract:
 - (a) the progress and completion of all work described in the maintenance schedules and manuals;
 - (b) all operating manuals (including any safety related regulations); and
 - (c) all permits, licences, certificates or other documents required to operate such asset; and
 - 1.2 a printed or electronic list of all assets owned by the Franchisee from time to time (excluding, unless otherwise requested by the Authority, any office furniture and consumable items).
2. The Franchisee shall provide copies of:
 - 2.1 the records referred to in paragraph 1.1; and
 - 2.2 the records referred to in paragraph 1.2,

to the Authority when requested to do so from time to time by the Authority.

APPENDIX 3 TO SCHEDULE 13.2

Operational Information

1. Information About the Performance of the Franchisee

- 1.1 The Franchisee shall at all times during the Franchise Term maintain records in relation to its operational performance under this Agreement, covering the areas and the information described in this Appendix 3 and shall, subject to paragraph 1.3, provide such information to the Authority at the frequency specified in the column of each such table headed "When information to be provided".
- 1.2 The information referred to in paragraph 1.1 shall include details as to whether or not any curtailment, diversion, delay or failure to attain any connection is attributable, in the Franchisee's opinion, to either a Force Majeure Event or the implementation of a Service Recovery Plan.
- 1.3 When so requested by the Authority the Franchisee shall, within such reasonable period as the Authority may specify, make such information available for review by the Authority by reference to:
 - (a) such level of disaggregation (including by Route and also including between the Services) as is reasonably specified by the Authority; and
 - (b) any particular day, week or other longer period as is reasonably specified by the Authority.
- 1.4 The following key shall apply to the Table in this Appendix 3:
 - A = Information to be provided on or before any Passenger Change Date;
 - B = Information to be provided for every Reporting Period within 17 days of the last day of each Reporting Period; and
 - C = Information to be provided annually within 10 days of the last day of each Franchisee Year.
- 1.5 For the purpose of this Appendix 3, a business day is any day between Monday to Friday (inclusive) excluding public holidays.

Table - Operational Information per Reporting Period

Information to be provided per Reporting Period	Information (Format)	When information to be provided
Number of Passenger Services		
Number of Passenger Services in the Timetable	[number]	B
Number of Cancellations and Partial Cancellations		
Number of Passenger Services in the Plan of the Day which were the subject of a Cancellation	[number]	B
Number of Passenger Services in the Plan of the Day which were the subject of a Partial Cancellation	[number]	B
Number of Passenger Services in the Plan of the Day which were the subject of a Cancellation attributable to the Franchisee's implementation of a Service Recovery Plan	[number]	B
Number of Passenger Services in the Plan of the Day which were the subject of a Partial Cancellation attributable to the Franchisee's implementation of a Service Recovery Plan	[number]	B
Any instance of 50 per cent, or more of the Passenger Services in the Timetable being the subject of a Cancellation on any day on any line or Route	[number]	within 2 business days of the occurrence
<p>Where there is a difference between the Timetable and the Plan of the Day on any day which is attributable to the introduction, removal or alteration of a Passenger Service by the Franchisee (or with the agreement of the Franchisee in contravention of its obligations under Schedule 1 (<i>Passenger Service Obligations</i>)), the following:</p> <p>(a) the fact of such difference;</p> <p>(b) the number of:</p> <p>(i) Passenger Services affected; and</p> <p>(ii) Cancellations or Partial Cancellations which would have arisen if the Timetable on that day had been the same as the Plan of the Day</p>	[number]	B
Number of Passenger Services in the Plan of the Day which were the subject of a cancellation and which satisfied the conditions of the term Cancellation , except that such cancellations occurred for reasons attributable to the occurrence of a Force Majeure Event	[number]	B
Number of Passenger Services in the Plan of the Day which were the subject of a partial cancellation and which satisfied the conditions of the term Partial Cancellation , except that such partial cancellations occurred for reasons attributable to the occurrence of a Force Majeure Event.	[number]	B

Information to be provided per Reporting Period	Information (Format)	When information to be provided
Number of Passenger Services in the Plan of the Day which were the subject of a cancellation and which satisfied the conditions of the term Cancellation , except that such cancellations occurred for reasons attributable to the exercise by Network Rail of its rights pursuant to the Track Access Agreement	[number]	B
Number of Passenger Services in the Plan of the Day which were the subject of a partial cancellation and which satisfied the conditions of the term Partial Cancellation , except that such partial cancellations occurred for reasons attributable to the exercise by Network Rail of its rights pursuant to the Track Access Agreement	[number]	B
Capacity		
Number of Passenger Services that have less than the required Passenger Carrying Capacity specified in the Train Plan	[number]	B
Number of Passenger Services that have less than the required Passenger Carrying Capacity specified in the Train Plan attributable to the Franchisee's implementation of a Service Recovery Plan	[number]	B
Number of Passenger Services that have less than the required Passenger Carrying Capacity specified in the Train Plan attributable to the occurrence of a Force Majeure Event	[number]	B
Minutes Delay and Punctuality		
Number of Minutes Delay attributable to the Franchisee	[minutes]	B
Number of Minutes Delay attributable to Network Rail	[minutes]	B
Number of Minutes Delay for such Reporting Period for which the attribution is in dispute between Network Rail and the Franchisee	[minutes]	B
Number of Minutes Delay for the 12 preceding Reporting Periods for which the attribution remains in dispute between Network Rail and the Franchisee	[minutes]	B
Number of Minutes Delay from the 12 preceding Reporting Periods for which the attribution remains in dispute between Network Rail and the Franchisee	[minutes]	B
Number of Minutes Delay from the 12 preceding Reporting Periods for which disputed attribution has been resolved or determined since the Franchisee's previous report and the number of such Minutes Delay attributed to each of the Franchisee and Network Rail as a result of such resolution or determination	[minutes]	B
Number of Minutes Delay attributed to the occurrence of a Force Majeure Event	[minutes]	B
Passenger Services arriving at terminus stations less than 5	[%]	B

Information to be provided per Reporting Period	Information (Format)	When information to be provided
minutes late (or 10 minutes late in the case of designated long distance services) as a percentage of total number of scheduled passenger service arrivals at terminus stations		
Average duration of delay per delayed Passenger Service	[minutes]	B
Number of Passenger Services in the Timetable which arrive at their scheduled final destination: (a) Early (b) On time (c) 1 to 4.59 minutes late (d) 5 to 9.59 minutes late (e) 10 to 14.59 minutes late (f) 15 to 19.59 minutes late (g) 20 to 29.59 minutes late (h) 30 to 59.59 minutes late (i) 60 or more minutes late, measured against scheduled arrival time of such Passenger Services in the Timetable any Passenger Services which suffers a Cancellation will be recorded as having arrived at destination 20 to 29.59 minutes late)	[number]	B
Passenger delay per Passenger Service	[minutes]	A
Train Mileage		
Aggregate Train Mileage scheduled in the Timetable	[mileage]	B
Aggregate Train Mileage operated	[mileage]	B
Passenger's Charter Information		
for such Reporting Period:		B
(a) the number of Passenger Services planned for the purpose of the Passenger's Charter; (b) the number of such Passenger Services run as defined in the Passenger's Charter; (c) the percentage of Passenger Services as defined in the Passenger's Charter; (d) the calculated Reliability Moving Annual Average as defined in the Passenger's Charter; (e) the number of Passenger Services having a punctuality target for the purpose of the Passenger's Charter;	[number] [number] [%] [maa] [number]	

Information to be provided per Reporting Period	Information (Format)	When information to be provided
(f) the number of Passenger Services achieving the punctuality target as defined in the Passenger's Charter;	[number]	
(g) the percentage of Passenger Services achieving the punctuality target as defined in the Passenger's Charter; and	[%]	
(h) the calculated Punctuality Moving Annual Average as defined in the Passenger's Charter	[maa]	
(i) the number of delay = repay payments made	[number]	
(j) the amount of delay = repay payments made	[sum]	

APPENDIX 4 TO SCHEDULE 13.2

Passenger Journeys, Miles and Earnings Information

Information About Journey Numbers and Earnings

1. The Franchisee shall at all times during the Franchise Term maintain records in relation to the information specified in the following table and shall, subject to paragraph 2, provide:
 - 1.1 such information to the Authority; and
 - 1.2 the information specified in such table

at the frequency specified in the column of such table headed "When information to be provided".
2. When so requested by the Authority the Franchisee shall make such information available for review by the Authority by reference to:
 - 2.1 such level of disaggregation (including by Route and also including between Services) as is specified by the Authority from time to time; and
 - 2.2 any particular day, week or other longer period as is specified by the Authority from time to time.
3. The following key shall apply to the Table in this Appendix 4:

A = Information to be provided on or before any Passenger Change Date;

B = Information to be provided for every Reporting Period within 10 days of the last day of each Reporting Period; and

C = Information to be provided annually within 10 days of the last day of each Franchisee Year.

Table - Passenger Journey Information

Information to be provided		When information to be provided
Number of national passenger rail journeys (meaning the number of journeys by passengers from the station where such passengers join the railway passenger services to the station where such passengers exit the railway passenger services). A national passenger rail journey may encompass more than one passenger rail train journey (meaning the number of journeys by passengers on any one train between stations, which travel may form the whole or part of a national passenger rail journey)	[number]	B
Number of passenger rail train journeys	[number]	B
Number of passenger miles (meaning the total number of passengers transported over the distance of one mile on the Passenger Services)	[number/ mileage]	B

Information to be provided		When information to be provided
Earnings (meaning all income received from passengers. Earnings shall not be limited to income from Fares)	[£]	B
Farebox income (meaning income from Fares (showing the income for each ticket type for each line of route) which are valid for travel on the Passenger Services, or having such other meaning as the Authority may determine from time to time in its reasonable discretion)	[£]	B
Other passenger revenue (meaning Earnings less Farebox income)	[£]	B

4. Where the information referred to in this Appendix 4 is held in a system operated by RSP or any other system, the Franchisee may fulfil its obligations under paragraph 1 by procuring that the Authority shall be granted access free of charge to such records in a readily accessible manner and in a format acceptable to the Authority.
5. The Franchisee shall advise the Authority of any changes made to its systems or processes or those of RSP which materially change or affect the continuity of the records maintained pursuant to this Appendix 4. Such advice shall include an assessment of the materiality of the relevant change.

SCHEDULE 13.3

THIS IS SCHEDULE 13.3 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT BETWEEN THE AUTHORITY AND SERCO CALEDONIAN SLEEPERS LIMITED

Co-operation

1. Development of Railway Industry Standards

- 1.1 The Franchisee shall at all times during the Franchise Term, co-operate with the Authority and any other competent authority in the development, modification, agreement and implementation of railway industry standards. References to **Railway Industry Standards** in this paragraph 1 shall include Railway Group Standards, TSIs, recommendations following accident investigations and any consultation documents on any proposed legislative change affecting the railway industry.
- 1.2 In co-operating with the Authority and/or any third party in developing any railway industry standards, the Franchisee shall make appropriately skilled and qualified Franchise Employees reasonably available, free of charge to:
 - (a) attend meetings with the Authority and/or such third party to discuss and review the need for the development, agreement, amendment or need for derogation from any Railway Industry Standards;
 - (b) provide the Franchisee's opinion on any proposed Railway Industry Standards;
 - (c) provide the Franchisee's opinion on any existing Railway Industry Standards or any replacement railway industry standards;
 - (d) review and comment upon implementation timetables and programmes for any railway industry standards or any replacement Railway Industry Standards;
 - (e) make recommendations for modifications to any existing or new Railway Industry Standards in the light of operational experience;
 - (f) make representations to competent authorities to prevent the introduction of new railway industry standards where in the Franchisee's opinion the introduction of such new Railway Industry Standards would cause disproportionate additional cost; and
 - (g) make representations to competent authorities to seek derogations from the application of new railway industry standards where such new Railway Industry Standards are judged inappropriate by the Franchisee.

2. System Interface Committees

- 2.1 The Franchisee shall at all times during the Franchise Term co-operate with the reasonable requirements of any relevant System Interface Committees in the development, modification, agreement and implementation of any system interface recommendations made by those committees.
- 2.2 In co-operating with any relevant System Interface Committee, the Franchisee shall make appropriately skilled and qualified Franchise Employees reasonably available, free of charge to:

- (a) attend meetings with that committee to discuss and review the need for the development, agreement, amendment or need for derogation from any recommendations made by that committee;
- (b) provide the Franchisee's opinion on any such proposed recommendations;
- (c) review and comment upon implementation timetables and programmes for any such recommendations;
- (d) make recommendations for modifications to any existing or system interface recommendations in the light of operational experience; and
- (e) make representations to competent authorities to seek derogations from the application of such recommendations where the Franchisee reasonably believes that such derogations are appropriate.

3. **Development of Business Cases**

The Franchisee shall co-operate with the Authority in the development of business cases connected with the improvement of the network (including any in respect of inter-modal schemes).

4. **Development of Industry Schemes**

The Franchisee shall at all times during the Franchise Term actively, co-operate, in a manner consistent with it being a reputable Train Operator of the Caledonian Sleeper Franchise, with Network Rail, the Authority and the ORR and all other relevant railway industry bodies and organisations in relation to the development of anything which can reasonably be considered to be a railway industry system in relation to the attribution of train delay, the allocation of revenue and/or the collection and dissemination of industry wide information.

5. **Community Rail Partnerships**

- 5.1 The Franchisee shall at all times during the Franchise Term without prejudice to the Franchisee's obligations under Schedule 6.2 (*Station Enhancements*), co-operate with the relevant Community Rail Partnership within the communities through in the vicinity of Stations to support the aims of such Community Rail Partnerships. For these purposes, commitment to co-operation does not include provision of funding or finance for the creation, establishment or operation of such Community Rail Partnerships.
- 5.2 The Authority may at any time, by proposing a Variation pursuant to paragraph 1.1(a) of Schedule 9.1 (*Variations and Financial Consequences of Change*), require the Franchisee to develop and/or implement any changes to Franchise Services and/or the transfer of any Franchise Service to another Train Operator in order to deliver any initiatives agreed with the Authority pursuant to paragraph 5.1.

6. **Station Investment**

- 6.1 The Franchisee shall at all times during the Franchise Term, co-operate with the Authority and any third party nominated by the Authority and notified to the Franchisee in developing opportunities for financing investment at Stations in order to improve the station environment at Stations.
- 6.2 In co-operating with the Authority and/or any nominated third party in developing any such financing opportunities, the Franchisee shall:

- (a) attend meetings with the Authority and/or such third party to discuss such opportunities;
- (b) provide the Franchisee's opinion on those opportunities;
- (c) review and comment on implementation timetables and programmes for any such opportunities; and
- (d) use all reasonable endeavours to achieve any necessary amendments to any Property Leases in order to facilitate the implementation of those opportunities.

7. **Network Rail**

The Franchisee shall use all reasonable endeavours to work with Network Rail to:-

- (a) deliver efficiencies and improve value for money and performance of the Franchise Services; and
- (b) reduce the environmental impacts of the Caledonian Sleeper Franchise including in relation to Timetable design and infrastructure modifications.

8. **Small and Medium-sized Enterprises**

- 8.1 The Franchisee shall at all times keep accurate and complete records of its use of and interaction with SMEs in delivering the Franchise Services.
- 8.2 By no later than 31 January in each year (and within one month of the end of the Franchise Period) the Franchisee shall deliver to the Authority a breakdown of the number of SMEs who or whose services have been employed by the Franchisee in providing the Franchise Services during the calendar year (or part thereof) which ended on the immediately preceding 31 December or at the end of the Franchise Period (as applicable).

SCHEDULE 13.4

THIS IS SCHEDULE 13.4 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT BETWEEN THE AUTHORITY AND SERCO CALEDONIAN SLEEPERS LIMITED

Staff Obligations

1. Training and development

- 1.1 The Franchisee shall have a planned programme of staff training and coaching covering professional competence and customer service skills.
- 1.2 The Franchisee will regularly carry out a training needs analysis for staff, utilising the National Passenger Survey results and customer feedback.
- 1.3 The Franchisee will carry out management staff appraisals annually in order to identify the training required to facilitate staff development and use all reasonable endeavours to provide such training.
- 1.4 Apprenticeships
 - 1.4.1 The Franchisee shall participate in a joint hospitality apprenticeship programme operated by Serco Group plc (or other Serco entity) which will employ no less than 15 paid trainees to work on the Passenger Services during the first 18 months of the Franchise Term. Future numbers of apprentices will be dependent on (a) the hotel partners who will participate in such joint hospitality apprenticeship programme and (b) the human resource plan in respect of this Agreement. The Franchisee shall procure that after the first 18 months of the Franchise Term there will be a minimum of two apprentices in each calendar year during the Franchise Term who will be engaged on such joint hospitality apprenticeship programme or another apprenticeship programme.
 - 1.4.2 The Franchisee shall at all times keep accurate and complete records of training and apprenticeships offered by the Franchisee in delivering the Franchise Services.
 - 1.4.3 By no later than 31 January in each year (and within one month of the end of the Franchise Period) the Franchisee shall deliver to the Authority a breakdown of the number of training places or opportunities and apprenticeships offered by the Franchisee in providing the Franchise Services during the calendar year (or part thereof which ended on the immediately preceding 31 December or at the end of the Franchise Period (as applicable)).

2. Scottish Vocational Qualification ("SVQ")

The Franchisee shall develop a competency and training development programme ("Development Programme") which shall be accredited as SVQ level 3. During the first year of the Franchise Term, all transferred staff shall be enrolled by the Franchisee in the Development Programme. The Franchisee shall target to have [redacted text]% of all on-board staff successfully complete the Development Programme during the first year of the Franchise Term. From the Franchise Commencement Date, all newly recruited staff will automatically be enrolled by the Franchisee onto the Development Programme as part of their training and development plan. The Franchisee shall target that [redacted text]% of all on-board staff shall have successfully completed the Development Programme by the end of the Franchise Term.

3. Railway Industry Training

The Franchisee shall use all reasonable endeavours to identify and utilise suitable and cost effective training opportunities for staff engaged in the provision of Passenger Services.

4. Investors in People ("IIP")

The Franchisee shall achieve IIP accreditation for all of its activities within three years of the Franchise Commencement Date and thereafter to maintain that accreditation throughout the Franchise Term.

5. Uniforms for employees

New Caledonian Sleeper Franchise uniforms shall be provided to all customer facing staff of the Franchisee and new name badges shall be issued to all such staff for the Franchise Commencement Date in accordance with the branding of the Franchise.

6. Ticket Sales Training

The Franchisee shall ensure that all of the Franchisee's staff with ticket sales duties shall undergo a formal company induction and a ticket sales training course covering customer service and sales skills, fares, timetables and product knowledge, relevant ticket issuing, reservations and information systems and relevant national and company standards, procedures, publications, conditions of carriage, routing guides and other relevant schemes. Training and progress of staff shall be monitored throughout the Franchise Term by a nominated mentor.

7. Staff Travel

7.1 Notwithstanding any other terms of this Agreement, the Franchisee shall ensure that all employees of the Franchisee who were employees of the Outgoing Franchisee (including those employed as of the Franchise Commencement Date by the ScotRail Franchisee) shall retain the same entitlement to purchase a Fare for use on any Passenger Service on the same terms, conditions and subject to same restrictions and rights of variation as such persons enjoyed whilst employed by the Outgoing Franchisee in relation to the Previous Franchise Agreement as at the day prior to the Franchise Commencement Date ("the entitlements").

7.2 For the avoidance of doubt: -

(a) insofar as the entitlements are derived from the participation by the Franchisee in, or observance or implementation of, the ATOC Staff Travel Scheme, the entitlement shall be to the benefit of that scheme and the terms and conditions of that scheme as the same shall be formulated and implemented by the Franchisee from time to time, including as to the benefits enjoyed by employees and others and restrictions imposed upon the same; and

(b) the entitlements, including, but not limited to those derived from the participation by the Franchisee in, or observance or implementation of, the ATOC Staff Travel Scheme, shall be subject always to any agreements between employers and employee representatives with respect to the entitlements.

7.3 The Authority shall impose similar obligations as contained in paragraphs 7.1 and 7.2 on the ScotRail Franchisee in terms of the ScotRail Franchise Agreement.

8. Subcontractors and transferred staff

Without prejudice to the Franchisee's obligations in terms of Schedule 16 (*Pensions*) and without prejudice to paragraph 1 of Schedule 2.3 (*Third Party Delivery of Passenger Services and Other Franchisees*) in the event that the Franchisee subcontracts any or all or any part of the Franchise Services the Franchisee shall require to ensure that any employees who transfer (by operation of law) from: -

8.1 the Outgoing Franchisee to the Franchisee and subsequently to a subcontractor of the Franchisee; or

8.2 the Outgoing Franchisee directly to a subcontractor of the Franchisee; or

8.3 the Franchisee to a subcontractor of the Franchisee at any point during the Franchise Term,

are provided with terms and conditions of employment (including, for the avoidance of doubt, any entitlement to pensions or other benefits including benefits under the Railway Pension Scheme and staff travel rights) by the subcontractor which are no less favourable to their terms and conditions with the Outgoing Franchisee.

SCHEDULE 13.5

THIS IS SCHEDULE 13.5 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT BETWEEN THE AUTHORITY AND SERCO CALEDONIAN SLEEPERS LIMITED

Safety and Personal Security

1. Safety and Security Review

Within six months of the Franchise Commencement Date, the Franchisee shall carry out (to standards accepted by Rail Safety and Standards Board or its successor) an assessment of its prevailing safety culture. Within that time frame, the Franchisee shall also produce a specific security plan for on-board security on Passenger Services which will identify steps that need to be taken to enhance perceptions of security. That assessment shall be promptly made available to the Authority.

2. Risk Management Strategy

The Franchisee shall manage all significant risks to safety and security throughout the Franchise Term using clearly defined processes for identifying and managing those risks as part of an overall risk management strategy. The Franchisee shall identify key performance indicators and monitor these on a quarterly basis, establishing detailed action plans where necessary, reporting such to the Authority.

3. Training

- 3.1 The Franchisee shall establish a comprehensive training programme to determine and develop the safety competence of staff across the organisation.
- 3.2 The Franchisee shall ensure that all on-board train crew employed by the Franchisee are trained in emergency procedures before the later of the Franchise Commencement Date and the member of staff's first on-board duty.

4. Customer and Staff Security

Throughout the Franchise Term, the Franchisee shall:

- (a) identify and monitor trends in customer security and verbal and physical abuse of staff;
- (b) establish and implement action plans to address such issues; and
- (c) adopt a policy of zero tolerance of offenders.

SCHEDULE 13.6

THIS IS SCHEDULE 13.6 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT BETWEEN THE AUTHORITY AND SERCO CALEDONIAN SLEEPERS LIMITED

Integration

1. **PlusBus**

- 1.1 The Franchisee shall continue existing PlusBus arrangements relevant to the Franchise Services in Aberdeen, Edinburgh, Fort William, Glasgow (Queen Street and Central), Inverness, Perth and Stirling, as taken over at the Franchise Commencement Date.
- 1.2 The Franchisee shall, where there is passenger demand for such a service, seek to extend those arrangements in paragraph 1.1 from the first anniversary of the Franchise Commencement Date to other areas served by the Franchise Services where the relevant bus operator is an Affiliate of the Franchisee.
- 1.3 The Franchisee shall, where there is passenger demand for such a service, seek to extend the arrangements in paragraph 1.1 from the first anniversary of the Franchise Commencement Date to other areas served by the Franchise Services where the relevant bus operator is other than an Affiliate of the Franchisee.
- 1.4 The obligations of the Franchisee under paragraphs 1.2 and 1.3 are subject:
 - (a) to the relevant scheme being compliant with competition law and any undertakings or similar obligations in relation to competition law which may apply to the Parent or its Affiliates in relation to the conduct of their business,
 - (b) to agreement being able to be reached or maintained with the relevant bus operator; and
 - (c) to the relevant scheme not requiring the Franchisee to fund or cross-subsidise the relevant bus operator.
- 1.5 The Franchisee's obligations under paragraph 1.1 to 1.4 are to co-operate with the relevant bus operator in the provision of the PlusBus service by that operator.

2. **Transport Integration Group etc**

- 2.1 As part of its commitment to work with the Authority and other Stakeholders, the Franchisee shall be required to participate in the Transport Integration Group ("TIG") or such other group as the Authority shall require for the purposes of improving integration in transport within Scotland.
- 2.2 At the instance of the Authority, the Authority or the Scottish Transport Agency, shall prioritise the work of the TIG in consultation with the key Stakeholders.
- 2.3 The Franchisee shall, as directed, separately from and in addition to its involvement with TIG, co-operate with, join and/or liaise with and provide information and support to any group, body or organisation that the Authority may direct where the aims or objectives of that group, body or organisation are, or involve to a material extent, the integration of transport. For these purposes the commitment to cooperation, joining and liaison does not include participation in the sense of the provision of funding or finance for that body. A relevant body or organisation may be, or may include within its membership Transport Scotland or other agency or representative of the Authority.

2.4 Separately from, and in addition to its involvement with the TIG, the Franchisee shall work diligently with tourism bodies such as Visit Scotland to develop and promote rail based and rail linked tourism with targeted marketing, development of tourism packages and partnership working with attractions and accommodation providers as well as other transport operators.

3. Cycle Facilities

3.1 The Franchisee shall ensure that cycles will travel for free. The Franchisee shall procure that additional space will be available on the New Train Fleet described in Schedule 6.1A to carry cycles.

SCHEDULE 13.7

THIS IS SCHEDULE 13.7 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT BETWEEN THE AUTHORITY AND SERCO CALEDONIAN SLEEPERS LIMITED

Related Parties and Open Book Accounting

1. Arm's Length Terms

At any time after the date of signature of this Agreement, if and whenever the Franchisee shall enter into, or any Affiliate enters into any Related Party Contract the Franchisee shall ensure or procure (as the case may be) that any such contract is in writing and is on reasonable arm's length terms;

2. Affiliates

- 2.1. The Franchisee shall not enter into or amend a Related Party Contract unless the Authority has confirmed in writing (such confirmation not to be unreasonably withheld or delayed) that it is satisfied that the provisions of paragraph 1 have been complied with. By signing this Agreement the Authority has confirmed that it has satisfied itself that the Related Party Contracts listed in Part 1 of Appendix 1 to this Schedule 13.7 comply with paragraph 1.
- 2.2. The Franchisee shall maintain a detailed record of all Related Party Contracts including details of:
 - (a) the consideration payable under the Related Party Contract;
 - (b) the services to be provided; and
 - (c) confirmation that the consideration has been priced at reasonable arm's length terms, or where not, an explanation as to why the consideration has not been priced on such terms.
- 2.3. The Franchisee shall ensure that if any of the Franchisee's staff are engaged in providing services to or in connection with services provided by an Affiliate that there is no costs incurred by the Franchisee in connection with this.

3. Due Diligence

The Franchisee shall:

- 3.1. allow the Authority a reasonable opportunity to conduct due diligence on the Related Party Contracts to assess their terms for compliance with paragraph 1.
- 3.2. if the Authority requires, procure that the Franchisee's auditors carry out a review of the record of Related Party Contracts and confirm in writing to the Authority that the Related Party Contracts comply with paragraph 1.

4. Profit Share/ Profit Adjustment

The Authority shall be permitted to exclude from the calculation of any Profit Share Adjustment or Profit Support Adjustment any payments made by the Franchisee in accordance with the terms of Related Party Contracts which do not comply with paragraph 1 and any amount that has not been permitted under paragraph 6.

5. Open Book Accounting

The Franchisee shall deal with the Authority on an open book basis and provide all explanations, information and analysis as the Authority may reasonably request.

6. Related Party Contract Cap

The Franchisee shall not exceed the Related Party Contract Level in any Franchisee Year without the prior written consent of the Authority.

APPENDIX TO SCHEDULE 13.7

Related Party Contracts

Part 1 – List of Related Party Contracts

Related Parties

- *Serco Global Technology Delivery, a business unit within Serco Global Services Division which is part of Serco Limited, a company incorporated in England and Wales (company number 242246 and having its registered office at Serco House, 16 Bartley Wood Business Park. Bartley Way, Hook, Hampshire RG27 9UY)*
- *Serco Group plc, a company incorporated in England and Wales (company number 2048608 and having its registered office at Serco House, 16 Bartley Wood Business Park. Bartley Way, Hook, Hampshire RG27 9UY)*

Related Party Contracts

1. Serco Global Technology Delivery

A contract for the delivery of the ICT component of the Franchise Services comprising:

- The set up of the Franchisee's business systems and integration with Serco Group plc.
- Design, programme management and implementation of the new third party systems for the Website, App, ticket booking & reservation, Guest Services Contact Centre, train hardware, asset management and general IT systems and equipment
- On-going operational support to the Franchisee for all IT systems

2. Serco Group plc

An internal Serco agreement for the provision of support services to the Franchise Services including

- Contribution to general overheads for Transport Business Unit, UK Local & Regional Division and Serco Group Plc
- Corporate IT
- HR shared service centre
- Safety, Risk and Compliance
- Finance
- Procurement, Purchasing and Contracts
- Programmes & Transition

Part 2 – Related Party Contracts Table

[redacted table]

SCHEDULE 14

**THIS IS SCHEDULE 14 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT
BETWEEN THE AUTHORITY AND SERCO CALEDONIAN SLEEPERS LIMITED**

Preservation of Assets

Schedule 14.1: Maintenance of Franchise

Schedule 14.2: Maintenance of Operating Assets

Appendix: Marks

Schedule 14.3: Key Contracts

Appendix: List of Key Contracts

Schedule 14.4: Designation of Franchise Assets

Appendix : List of Primary Franchise Assets

Schedule 14.5: Dealings with Franchise Assets

SCHEDULE 14.1

THIS IS SCHEDULE 14.1 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT BETWEEN THE AUTHORITY AND SERCO CALEDONIAN SLEEPERS LIMITED

Maintenance of Franchise

1. The Franchisee shall maintain and manage the business of providing the Franchise Services so that, to the greatest extent possible and practicable:
 - 1.1 the Franchisee is able to perform its obligations under this Agreement; and
 - 1.2 a Successor Operator would be able to take over the whole or any part of the business of providing the Franchise Services immediately at any time.
2. The Franchisee's obligation under paragraph 1 shall include an obligation to ensure that any computer and information technology systems of the Franchisee shared in whole or in part with Affiliates or third parties can be operated by a Successor Operator as a standalone system without continued reliance on such Affiliates or other third parties immediately from the date of termination of the Franchise Agreement without any reduction in functionality or any increase in maintenance or support costs to the Successor Operator (this obligation being without prejudice to any requirement for the Franchisee to obtain consent to such arrangements relating to sharing computer and information technology systems from the Authority).
3. The Franchisee shall use all reasonable endeavours to ensure that such Successor Operator would have immediate access to all Franchise Employees and Primary Franchise Assets for such purpose.
4. The Franchisee shall maintain and manage the business of providing the Franchise Services on the basis that such business will be transferred, in the manner contemplated under this Agreement, as a going concern at the end of the Franchise Period to, and continued immediately thereafter by, a Successor Operator.
5. The Franchisee shall use all reasonable endeavours to ensure that an appropriate number of employees (having sufficient skills, qualifications and experience) will transfer by operation of Law to any Successor Operator following the expiry of the Franchise Period.
6. The Franchisee shall comply with all reasonable requirements of the Authority to obtain or maintain the property and rights that a Successor Operator would require, or that it would be convenient for it to have, on the basis that the same will transfer by operation of Law to any Successor Operator following the expiry of the Franchise Period.
7. The Franchisee's obligations in this Schedule 14.1 shall apply regardless of whether the business of providing the Franchise Services is continuing in whole or in part, is being split or merged in whole or in part with another business or is being nationalised having regard to the Authority's policy statements from time to time.

SCHEDULE 14.2

THIS IS SCHEDULE 14.2 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT BETWEEN THE AUTHORITY AND SERCO CALEDONIAN SLEEPERS LIMITED

Maintenance of Operating Assets

1. Operating Assets

- 1.1 The Franchisee shall maintain, protect and preserve the assets (including any intellectual property or intangible assets) employed in the performance of its obligations under this Agreement (the ***Operating Assets***) in good standing or good working order, subject to fair wear and tear.
- 1.2 The Franchisee shall carry out its obligations under paragraph 1.1 so that the Operating Assets may be transferred at the end of the Franchise Period to a Successor Operator and used by such Successor Operator in the provision or operation of similar services to the Franchise Services.
- 1.3 Where any Operating Asset is lost, destroyed or otherwise beyond repair, the Franchisee shall replace the Operating Asset with property, rights or liabilities in modern equivalent form to the operating asset to be replaced. The Franchisee shall at all times maintain an appropriate volume of Spares and/or an appropriate level of access to Spares from a third party, to enable it to perform its obligations under this Agreement.
- 1.4 The Authority may at any time require the Franchisee to provide to the Authority a schedule specifying the condition of any asset or class of assets that it specifies for this purpose. Such schedule shall cover such aspects of asset condition as the Authority may reasonably require. If the Authority and the Franchisee are unable to agree the content of such schedule of condition, either of them may refer the dispute for resolution in accordance with the Dispute Resolution Rules. Until such dispute is resolved, the Franchisee shall comply with the Authority's requirements in respect of such schedule of condition.
- 1.5 The Franchisee shall keep vested in it at all times during the Franchise Period all Franchise Assets designated as such pursuant to Schedule 14.4 (*Designation of Franchise Assets*) as it may require in order to comply with:
 - (a) the Licences;
 - (b) any contracts of employment with Franchise Employees;
 - (c) any relevant Fares;
 - (d) any Key Contracts; and
 - (e) any applicable safety legislation, regulations or safety standards and the Safety Certificate,

in order to ensure that the Authority may designate such assets as Primary Franchise Assets.

2. Brand Licences and Use of the Marks and the Authority's Branding

Brand Licences

2.1 The Franchisee shall comply with its obligations under each of the Brand Licences.

The Marks

2.2 The Franchisee hereby assigns to the Authority its whole right, title and interest in and to the Marks together with the goodwill (if any) it may possess in the Marks including all statutory and common law rights attaching to the Marks.

2.3 The Franchisee undertakes at the request of the Authority to execute any further documents and to do any other things that the Authority may reasonably require to enable the Marks to be vested in the Authority.

2.4 The Authority hereby grants to the Franchisee a non-exclusive royalty free licence to use the Marks in accordance with the terms of any relevant brand guidelines issued from time to time by the Authority to the Franchisee and any other reasonable specifications, directions or instructions issued by or on behalf of the Authority from time to time ("the **Authority's Brand Guidelines**"). In the event that the Authority requires the Franchisee to cease using the Marks, or this Agreement expires or is otherwise terminated, the licence granted to the Franchisee under this paragraph 2.4 shall automatically cease.

2.5 Subject to paragraphs 2.6 to 2.12, the Franchisee shall apply the Marks to any assets owned or used by the Franchisee in the operation and provision of the Services as the Authority may reasonably direct (including any changes to the Marks).

2.6 Subject to paragraphs 2.7 to 2.12, the Franchisee shall use its reasonable endeavours to apply the Marks to such structures or fixtures at Stations as the Authority may reasonably direct (including any changes to such Marks), provided that the Authority shall pay the Franchisee the marginal additional costs of complying with any such direction (save that the Authority shall not pay any costs in respect of any directions given in connection with any branding activity undertaken pursuant to Schedules 1.6, 6.1, 6.2 and 6.3).

2.7 The Franchisee undertakes and agrees:

- (a) to use the Marks only for performing its obligations under the Franchise Agreement;
- (b) not to apply for, or obtain, registration of any trade mark in any country which comprises consists of, or is confusingly similar, to any of the Marks;
- (c) if so required by the Authority, to agree to the registration of the Franchisee as a licensee of any of the Marks, any such registration being made at the Authority's expense;
- (d) not to do anything that is inconsistent with the Authority's ownership of the Marks, and that all use of the Marks by the Franchisee shall inure to the benefit of the Authority;
- (e) that if the Franchisee becomes aware of, or suspects that any of the Marks are being infringed by the actions of a third party, the Franchisee shall immediately notify the Authority of that fact and give the Authority all reasonable assistance, at the Authority's expense, in any action arising as a result of such infringement;
- (f) that nothing in this Agreement shall give the Franchisee any right, title or interest in the Marks other than the right to use the Marks in accordance with this Agreement;

- (g) that all goodwill associated with or relating to the Marks will at all times remain the exclusive property of the Authority; and
- (h) not at any time during or after the Franchise Period, use the Marks or any mark or name confusingly similar to the Marks as part of any corporate business or trading name or style or brand name of the Franchisee or any associated company of the Franchisee.

2.8 Subject to paragraph 2.9, the Authority shall indemnify the Franchisee against all claims, liabilities and expenses arising out of any claim by a third party that the Franchisee's use of Marks infringes the intellectual property rights of that third party.

2.9 The indemnity in paragraph 2.8 shall not apply to the extent that such claim arises out of the Franchisee's use of the Marks other than in accordance with the terms of this Agreement.

2.10 The Franchisee shall immediately notify the Authority in writing if it becomes aware of any allegation of infringement to which paragraph 2.8 applies, and will not make any admission without first obtaining the Authority's prior written consent. The Franchisee shall co-operate fully with the Authority in taking all steps required by the Authority, in its sole discretion, in connection with any such allegation.

2.11 If requested to do so by the Authority, the Franchisee shall allow the Authority to conduct and/or settle all negotiations and litigation resulting from any claim to which paragraph 2.8 applies. The Franchisee shall provide the Authority with all reasonable assistance in relation to any such litigation.

2.12 If at the end of the Franchise Term, the Franchisee is required by a third party in terms of a legal obligation to remove any of the Marks applied at the direction of the Authority to any assets owned or used by the Franchisee in the operation and provision of the Services, then the Authority shall pay the Franchisee's marginal additional costs that arise from having to remove the Marks.

Authority's Branding

2.13 The Authority hereby grants to the Franchisee, a non-exclusive and royalty-free licence to use the Authority's Branding in accordance with the terms of the Authority's Brand Guidelines. In the event that the Authority requires the Franchisee to cease using Authority's Branding, or this Agreement expires or is otherwise terminated, the licence to use the Authority's Branding granted to the Franchisee under this paragraph 2.13 shall automatically cease.

2.14 Subject to paragraphs 2.16 to 2.21, the Franchisee shall apply the Authority's Branding to any assets owned or used by the Franchisee in the operation and provision of the Franchisee Services as the Authority may reasonably direct (including any changes to such trade marks or livery).

2.15 Subject to paragraphs 2.16 to 2.21, the Franchisee shall use reasonable endeavours to apply the Authority's Branding to such structures or fixtures at Stations as the Authority may reasonably direct (including any changes to such trade marks or livery), provided that the Authority shall pay the Franchisee the marginal additional costs of complying with any such direction.

2.16 The Franchisee undertakes and agrees:

- (a) to use the Authority's Branding only for performing its obligations under the Franchise Agreement;

- (b) not to apply for, or obtain, registration of any trade mark in any country which comprises, consists of, or is confusingly similar to any of the Authority's Branding;
- (c) if so required by the Authority, to agree to the registration of the Franchisee as a licensee of any of the Authority's Branding, any such registration being made at the Authority's expense;
- (d) not to do anything that is inconsistent with the Authority's ownership of the Authority's Branding, and that all use of the Authority's Branding by the Franchisee shall inure to the benefit of the Authority;
- (e) that if the Franchisee becomes aware of, or suspects that, any of the Authority's Branding being infringed by the actions of a third party, the Franchisee shall immediately notify the Authority of that fact and give the Authority all reasonable assistance at the Authority's expense, in any action arising as a result of such infringement;
- (f) that nothing in this Agreement shall give the Franchisee any right, title or interest in the Authority's Branding other than the right to use the Authority's Branding in accordance with this Agreement;
- (g) that all goodwill associated or relating to the Authority's Branding will at all times remain the exclusive property of the Authority; and
- (h) not at any time during or after the Franchise Period, other than for the purposes of the Franchise Agreement, use the Authority's Branding or any mark or name confusingly similar to any of the Authority's Branding as part of any corporate business or trading name or style or brand name of the Franchisee or any associated company of the Franchisee.

2.17 Subject to paragraph 2.18, the Authority shall indemnify the Franchisee against all claims, liabilities and expenses arising out of any claim by a third party that the Franchisee's use of Authority's Branding infringes the intellectual property rights of that third party.

2.18 The indemnity in paragraph 2.17 shall not apply to the extent that such claim arises out of the Franchisee's use of the Authority's Branding other than in accordance with the terms of this Agreement.

2.19 The Franchisee shall immediately notify the Authority in writing if it becomes aware of any allegation of infringement to which paragraph 2.17 applies, and will not make any admission without first obtaining the Authority's prior written consent. The Franchisee shall co-operate fully with the Authority in taking all steps required by the Authority, in its sole discretion, in connection with any such allegation.

2.20 If requested to do so by the Authority, the Franchisee shall allow the Authority to conduct and/or settle all negotiations and litigation resulting from any claim to which paragraph 2.17 applies. The Franchisee shall provide the Authority with all reasonable assistance in relation to any such litigation.

2.21 If at the end of the Franchise Term, the Franchisee is required by a third party in terms of a legal obligation to remove any of the Authority's Branding applied at the direction of the Authority to any assets owned or used by the Franchisee in the operation and provision of the Services, then the Authority shall pay the Franchisee's marginal additional costs that arise from having to remove the Authority's Branding.

Branding Developed By The Franchisee During the Franchise Period

2.22 If in addition to the Marks set out in the Appendix (*Marks*) to Schedule 14.2, the Franchisee develops (or has developed on its behalf) any other brands, logos or get up which it uses or intends to use in connection with the Franchise Services, or registers (or has registered on its behalf) any domain name which it uses or intends to use in connection with the Franchise Services, the Franchisee hereby undertakes:

- (a) not to use such branding unless first approved in writing by the Authority;
- (b) not to use any such domain name unless first approved in writing by the Authority;
- (c) where requested in writing by the Authority, to register any such domain name in the name of the Authority;
- (d) to assign any and all rights to the branding and/or domain name to the Authority upon request in writing from the Authority, provided always that in such circumstances the Authority shall be deemed to have granted back automatically a non-exclusive royalty-free licence to the Franchisee to use such branding and/or domain name for the purposes of the Franchise Agreement; and
- (e) to procure that any third party that owns any rights in and to such brands, logos, get up or domain name has assigned or shall assign any and all rights to such branding and/or domain name to the Franchisee to facilitate the Franchisee's compliance with the terms of this paragraph 2.22.

General Advertising and Promotion

2.23 The Authority may at its own cost, advertise and promote the Franchise Services and/or the Passenger Services.

Removal of The Marks and the Authority's Branding

2.24 (a) (i) if the Authority considers any of the Marks or the Authority's Branding to be so distinctive or otherwise such that a Successor Operator could not reasonably be asked to use the relevant assets to which the Marks or the Authority's Branding are applied; or

(ii) if the Franchisee has not otherwise removed or covered such Marks or the Authority's Branding in such a way as may be reasonably acceptable to the Authority prior to the expiry of the Franchise Period,

then the Franchisee shall pay to the relevant Successor Operator such amount as may be agreed between the Franchisee and such Successor Operator, as being the reasonable cost (including any Value Added Tax for which credit is not available under Sections 25 and 26 of the Value Added Tax Act 1994) of covering such Marks or Authority's Branding or otherwise removing all indications of or reference to the Marks or any of the Authority's Branding in a manner reasonably acceptable to the Authority. Such amount shall not in any

event exceed the cost to the Successor Operator of replacing such Marks or Authority's Branding with its own. If the Franchisee and the relevant Successor Operator fail to agree such cost within 28 days of the expiry of the Franchise Period, the Franchisee shall submit such dispute for resolution in accordance with the Dispute Resolution Rules.

- (b) The amount to be paid to a Successor Operator under paragraph 2.24(a) may include the reasonable cost of:
 - (i) removing or covering Marks or Authority's Branding from the exterior of any rolling stock vehicle;
 - (ii) removing or covering interior indications of the Marks or Authority's Branding including upholstery and carpets;
 - (iii) replacing or covering all station or other signs including bill boards; and
 - (iv) otherwise ensuring that such removal, covering or replacement is effected with all reasonable care and in such manner that the relevant assets may reasonably continue to be used by a Successor Operator in the provision of the Franchise Services.
- (c) The Authority shall determine at or around the end of the Franchise Period and after consultation with the Franchisee the maximum liability of the Franchisee under paragraph 2.24(a).
- (d) The provisions of paragraphs 2.24(a) to (c) shall not apply to the extent that the relevant asset is not to be used by a Successor Operator in the provision of services similar to the Franchise Services. The Authority shall notify the Franchisee as soon as it becomes aware of whether or not any such asset is to be so used.

APPENDIX TO SCHEDULE 14.2

Marks

Proposed New Visual Identity

[redacted image]

New Visual Identity (Colours Reversed Out with Scottish Imagery)

[redacted image]

Refined New Visual Identity

[redacted image]

SCHEDULE 14.3

THIS IS SCHEDULE 14.3 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT BETWEEN THE AUTHORITY AND SERCO CALEDONIAN SLEEPERS LIMITED

Key Contracts

1. Key Contracts

- 1.1 The provisions of this Schedule 14.3 apply to all Key Contracts from time to time.
- 1.2 The Key Contracts as at the date of this Agreement are set out in the Appendix (*List of Key Contracts*).

2. Designation of Key Contracts

- 2.1 Where the Authority considers that it is reasonably necessary for securing the continued provision of the Franchise Services or the provision of services similar to the Franchise Services by a Successor Operator in accordance with this Agreement, it may make a designation pursuant to paragraph 2.2.
- 2.2 The Authority may at any time, by serving notice on the Franchisee, designate as a Key Contract:
 - (a) any actual or prospective agreement, contract, licence or other arrangement; and
 - (b) any category of agreement, contract, licence or other arrangement, to which or under which the Franchisee is (or may become) a party or a beneficiary,
 with effect from the date specified in such notice.
- 2.3 Key Contracts may include any agreement, contract, licence or other arrangement whether in written, oral or other form, whether formal or informal and whether with an Affiliate of the Franchisee or any other person and may include any arrangement for the storage of assets (including electronic systems or Computer Systems) or accommodation of employees.
- 2.4 The Franchisee shall train all staff dealing with contract administration and finance matters, their managers and all directors to know what constitutes a Key Contract and to understand the significance of such designation.

3. De-designation of Key Contracts

The Authority may at any time, by serving a notice on the Franchisee, de-designate any Key Contract from continuing to be a Key Contract with effect from the date specified in such notice.

4. Re-designation of Key Contracts

The Authority may at any time, by serving notice on the Franchisee, re-designate as a Key Contract anything which has ceased to be designated as a Key Contract in accordance with paragraph 3 with effect from the date specified in such notice.

5. Direct Agreements

5.1 Unless the Authority otherwise agrees, or unless lawfully directed to do so by the ORR, the Franchisee shall not enter into any prospective Key Contract unless the counterparty to that prospective Key Contract:

- (a) is a franchisee or franchise operator, either of which operate railway passenger services pursuant to a franchise agreement to which the Authority is a party or a Public Sector Operator which is an Affiliate of the Authority; or
- (b) has entered into a Direct Agreement with the Authority in respect of that prospective Key Contract, providing on a basis acceptable to the Authority, amongst other things, for the continued provision of the Passenger Services and/or the continued operation of the Stations and Depots in the event of:
 - (i) breach, termination or expiry of such Key Contract;
 - (ii) termination or expiry of this Agreement; or
 - (iii) the making of a railway administration order in respect of the Franchisee.

5.2 Where the Authority designates or re-designates as a Key Contract:

- (a) any agreement, contract, licence or other arrangement to which the Franchisee is already a party; or
- (b) any category of agreement, contract, licence or other arrangement where the Franchisee is already a party to a contract, licence or other arrangement which, by virtue of the Authority's designation or re-designation, is classified in such category,

the Franchisee shall use all reasonable endeavours to assist the Authority in entering into a Direct Agreement as envisaged by paragraph 5.1(b).

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

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

6. **Emergencies**

Where any emergency may arise in connection with the provision and operation of the Franchise Services, the Franchisee:

6.1 may enter into on a short-term basis such contracts, licences or other arrangements as it considers necessary or appropriate to deal with the emergency;

- 6.2 need not procure that the Authority enters into a Direct Agreement in respect of such contracts;
- 6.3 shall promptly inform the Authority of any such emergency and contracts, licences or other arrangements which it proposes to enter into; and
- 6.4 shall take such action in relation to such emergency, contracts, licences or other arrangements as the Authority may request.

7. No Amendment or assignation or sub-contracting

The Franchisee shall not without the prior consent of the Authority (which shall not be unreasonably withheld or delayed) vary, or purport to vary, the terms or conditions of any Key Contract at any time, unless lawfully directed to do so by the ORR. The Franchisee shall not without the prior consent of the Authority (which shall not be unreasonably withheld or delayed) assign in whole or in part, or sub-contract in whole or in part the terms or conditions of any of the Key Contracts at any time, unless lawfully directed to do so by the ORR.

8. Replacement of Key Contracts

The Franchisee shall, prior to the scheduled expiry date of any Key Contract (or, if earlier, such other date on which it is reasonably likely that such Key Contract will terminate), take all reasonable steps to enter an appropriate replacement contract (whether with the counterparty to the existing Key Contract or not) and shall comply with the reasonable instructions of the Authority in relation to such replacement contract.

9. Termination of Key Contracts

The Franchisee shall, to the extent so requested by the Authority, exercise all such rights as it may have to terminate any Key Contract on the Expiry Date.

APPENDIX TO SCHEDULE 14.3

List of Key Contracts

The following items have as at the date of this Agreement been agreed between the Authority and the Franchisee to be Key Contracts:

1. Any Access Agreement to which the Franchisee is a party other than in its capacity as a Facility Owner.
2. Any Property Lease including the Property Leases listed in paragraph 4 of Appendix 2 (*List of Conditions Precedent Documents*) to the Conditions Precedent Agreement.
3. Any Rolling Stock Related Contract.
4. Any contract or arrangement for the lending, seconding, hiring, contracting out, supervision, training, assessment, or accommodation by another Train Operator of any train drivers, conductors or other train crew used by the Franchisee in the provision of the Passenger Services.
5. Any contract or arrangement for the provision of traction and/or train drivers or other operational staff for the provision of Passenger Services.
6. Any contract or arrangement for the subcontracting or delegation to another Train Operator of the provision of any of the Passenger Services (whether or not the consent of the Authority is required to such subcontracting or delegation under paragraph 1 of Schedule 2.3 (*Third Party Delivery of Passenger Services and Other Franchisees*)).
7. Any contract or arrangement with a Train Operator (other than an Access Agreement) for the provision to the Franchisee of train dispatch, performance or supervision of platform duties, security activities, evacuation procedures, advice or assistance to customers, assistance to disabled customers, operation of customer information systems, cash management or ticket issuing systems administration.
8. Any contract or arrangement with a Train Operator for the provision of breakdown or recovery, and track call services to assist in the provision of the Passenger Services.
9. Any contract or arrangement for the design, construction, supply, maintenance or technical support for the New Train Fleet.
10. Any contract or arrangement for the supply of spare parts or Spares.
11. Any contract or arrangement for the maintenance of track and other related infrastructure.
12. Any licences of Marks to the Franchisee.
13. Any contract or arrangement for the supply of rail replacement bus services.
14. Any contract or arrangement relating to the operation of smart ticketing.
15. Any contract or arrangement relating to IT or Website provision.
16. Any contract or arrangement for the provision of office space and/or customer service centres.

SCHEDULE 14.4

THIS IS SCHEDULE 14.4 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT BETWEEN THE AUTHORITY AND SERCO CALEDONIAN SLEEPERS LIMITED

Designation of Franchise Assets

1. Franchise Assets

- 1.1 Subject to paragraph 1.2, all property, rights and liabilities of the Franchisee from time to time during the Franchise Period shall be designated as Franchise Assets and shall constitute Franchise Assets for the purposes of Section 27(11) of the Act.
- 1.2 The rights and liabilities of the Franchisee in respect of the following items shall not be designated as Franchise Assets and shall not constitute franchise assets for the purposes of Section 27(11) of the Act:
 - (a) any contracts of employment;
 - (b) this Agreement and any Transfer Scheme or Supplemental Agreement;
 - (c) the Ticketing and Settlement Agreement;
 - (d) any sums placed on deposit with a bank or other financial institution;
 - (e) the rights and liabilities of the Franchisee under any of the Rolling Stock Leases entered into by the Franchisee on or around the date hereof; and
 - (f) such other property, rights and liabilities as the Franchisee and Authority may agree from time to time or as the Authority may de-designate as Franchise Assets under paragraph 10.2.

2. Primary Franchise Assets

The following property, rights and liabilities shall (to the extent that they constitute Franchise Assets) be designated as Primary Franchise Assets with effect from the following dates:

- (a) the property, rights and liabilities listed in the Appendix (*List of Primary Franchise Assets*) (which constitutes a list of Primary Franchise Assets agreed between the Authority and the Franchisee as at the date of this Agreement), on the Franchise Commencement Date;
- (b) any additional property, rights and liabilities designated under paragraph 3 during the Franchise Period, on the date of such designation;
- (c) any property or right which is vested in the Franchisee and used for the purpose of maintaining, replacing, repairing or renewing any property designated as Primary Franchise Assets and which forms or replaces part or all of such designated property on completion of such maintenance, replacement, repair or renewal, on the date of its use for such purpose;
- (d) the rights and liabilities of the Franchisee under any Key Contract designated in accordance with Schedule 14.3 (*Key Contracts*), on the date of such designation; and

- (e) the rights and liabilities of the Franchisee in respect of the terms of any Fare or Discount Card designated under paragraph 6, on the date of such designation.

3. Designation of Additional Primary Franchise Assets

The Authority may at any time and from time to time during the Franchise Period, by serving notice on the Franchisee, designate any or all of the Franchise Assets as Primary Franchise Assets. Such designation shall take effect from the delivery of such notice and may refer to all or certain categories of property, rights or liabilities. Any such notice shall specify the reasons for such designation.

4. Designation during last 12 Months of Franchise Period

If the Authority designates a Franchise Asset as a Primary Franchise Asset under paragraph 3 at any time during the last 12 months of the Franchise Period then, within 28 days of such designation, the Authority may de-designate such Primary Franchise Asset by serving notice on the Franchisee. Such de-designation shall take effect upon delivery of such notice.

5. Designation of Key Contracts as Primary Franchise Assets

The Authority shall, subject to paragraphs 1.2(b) and 7, be entitled to designate any Key Contract as a Primary Franchise Asset at any time during the Franchise Period by serving notice on the Franchisee. Such designation shall take effect from delivery of such notice.

6. Designation of Fares and Discount Cards

The Authority may designate any Fare or Discount Card as a Primary Franchise Asset at any time during the Franchise Period by serving a notice on the Franchisee. Such designation shall take effect from delivery of such notice.

7. Rights and Liabilities

The Authority, in designating the rights and liabilities of the Franchisee (whether under a particular contract or other arrangement) as a Primary Franchise Asset may, in its discretion, elect to designate some but not all of the rights and liabilities under a particular contract or other arrangement, or to designate only those rights and liabilities arising after or otherwise relating to a period after a particular time (including the period after the expiry of the Franchise Period) or to those relating only to the Franchise Services or a particular part thereof.

8. Disputes over Designation

- 8.1 The Franchisee may object in writing to the Authority to any designation pursuant to paragraph 3 or 4.
- 8.2 Such objection may be made solely on the grounds that the designation of the relevant property, rights or liabilities specified in the objection is not, in the Franchisee's opinion, reasonably necessary to secure the continued provision of the Franchise Services by a Successor Operator on the expiry of the Franchise Period on a basis reasonably acceptable to the Authority or to facilitate the transfer to such Successor Operator of the provision of the Franchise Services at such time.
- 8.3 Any such objection may only be made within 28 days of a designation under paragraph 3 or 14 days of a designation under paragraph 4.

- 8.4 The Authority shall respond to any such objection as soon as reasonably practicable and shall take account of any representations made by the Franchisee regarding the use of the relevant Primary Franchise Asset otherwise than in the provision and operation of the Franchise Services.
- 8.5 If any dispute as to any designation pursuant to paragraph 3 or 4 remains outstanding on the expiry of the Franchise Period then such dispute shall be deemed to cease immediately before the expiry of the Franchise Period and the relevant Franchise Assets shall continue to be designated as Primary Franchise Assets on and after the expiry of the Franchise Period.

9. **Provision of Information to Authority**

- 9.1 The Franchisee shall provide such information as the Authority may reasonably require in order to satisfy the Authority that any Franchise Assets which are to be designated as Primary Franchise Assets after the Franchise Commencement Date under this Schedule 14.4 will at the time of such designation be vested in the Franchisee. Such information may include details of any Security Interests over such property, rights and liabilities.
- 9.2 The Franchisee shall further provide such information as to the property, rights and liabilities of the Franchisee as the Authority may reasonably require in connection with the designation of Primary Franchise Assets. Such information shall be supplied to the Authority within such timescale as the Authority may reasonably require.

10. **De-designation of Franchise Assets and Primary Franchise Assets**

- 10.1 The Authority and the Franchisee may agree in writing at any time during the Franchise Period that a Franchise Asset shall cease to be so designated as a Franchise Asset or that a Primary Franchise Asset shall cease to be so designated as a Primary Franchise Asset, and the relevant Franchise Asset shall cease to be designated upon such agreement coming into effect.
- 10.2 The Authority may in addition at any time during the Franchise Period, by serving notice on the Franchisee, cause a Franchise Asset which is not a Primary Franchise Asset to cease to be so designated as a Franchise Asset. Such Franchise Asset shall cease to be so designated on the date specified in such notice.
- 10.3 The Authority may in addition, at any time during the Franchise Period, by serving notice on the Franchisee, cause a particular Primary Franchise Asset to cease to be designated as such. Such Primary Franchise Asset shall cease to be so designated on the date specified in such notice. Such right may be exercised, in respect of any rights and liabilities in respect of a Fare or Discount Card, at any time and, in respect of any other Primary Franchise Asset, no later than 1 year prior to the expiry of the Franchise Term. In respect of those other Primary Franchise Assets the Authority shall also not exercise such right after the time that it has determined to terminate this Agreement in consequence of a Termination Event.
- 10.4 The Authority may from time to time agree with the Franchisee that it will not de-designate particular Primary Franchise Assets.

11. **Spares**

The obligation of the Franchisee to maintain, preserve and protect Primary Franchise Assets under this Schedule 14.4 shall, in respect of Spares, include the obligation to replace any Spare which has been designated as a Primary Franchise Asset, which subsequent to its designation ceases to be part of the stock of Spares available to the

Franchisee for use in the provision of the Franchise Services, with an equivalent Spare of equal or better quality than the Spare so replaced.

APPENDIX TO SCHEDULE 14.4**List of Primary Franchise Assets**

The following items have as at the date of this Agreement been agreed between the Authority and the Franchisee to be Primary Franchise Assets:

[redacted text]

SCHEDULE 14.5

THIS IS SCHEDULE 14.5 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT BETWEEN THE AUTHORITY AND SERCO CALEDONIAN SLEEPERS LIMITED

Dealing with Franchise Assets

1. Assets Not Designated as Primary Franchise Assets

- 1.1 This paragraph 1 relates to any Franchise Assets that are property or rights and are not designated as Primary Franchise Assets.
- 1.2 For the purposes of Section 27(3) of the Act, the Authority consents to the Franchisee:
 - (a) transferring or agreeing to transfer any such Franchise Assets or any interests in, or right over, any such Franchise Assets; and
 - (b) creating or extinguishing, or agreeing to create or extinguish, any interest in, or right over, any such Franchise Assets.

2. Liabilities Not Designated as Primary Franchise Assets

- 2.1 This paragraph 2 relates to any liabilities which are not designated as Primary Franchise Assets.
- 2.2 For the purposes of Section 27(3) of the Act, the Authority consents to the Franchisee entering into any agreement under which any such liability is released or discharged, or transferred to another person.

3. Franchise Assets and Primary Franchise Assets

- 3.1 This paragraph 3 relates to Franchise Assets (whether or not designated as Primary Franchise Assets) which are property or rights.
- 3.2 The Authority hereby consents to the installation of Spares which have been designated as Primary Franchise Assets on any rolling stock vehicles. Any Spare which is so installed shall cease to be so designated on such installation.
- 3.3 For the purposes of Section 27(3) of the Act, the Authority hereby consents to the Franchisee creating or agreeing to create any Security Interest over any of these Franchise Assets to the extent that the terms of any such Security Interest provide that:
 - (a) if the relevant Franchise Asset becomes the subject of a transfer scheme made under Section 12 and Schedule 2 of the Railways Act 2005, it shall be fully and automatically released from the relevant Security Interest immediately before the coming into force of such transfer scheme;
 - (b) if the relevant Franchise Asset is assigned, novated or otherwise transferred to another person pursuant to and in accordance with this Agreement, it shall be fully and automatically released from the relevant Security Interest immediately before such assignation, novation or transfer; and
 - (c) such Security Interest shall not be enforced or enforceable until the date on which such Franchise Asset ceases to be designated as a Franchise Asset.

4. Prohibition on Other Security Interests

The Franchisee shall not create or agree to create a Security Interest over any Franchise Asset except on the terms permitted under paragraph 3.3(a).

5. Miscellaneous

The Franchisee shall promptly inform the Authority of any Security Interest arising at any time over any of its property or rights and shall provide the Authority with such information in relation thereto as it may reasonably require.

SCHEDULE 15

**THIS IS SCHEDULE 15 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT
BETWEEN THE AUTHORITY AND SERCO CALEDONIAN SLEEPERS LIMITED**

Obligations Associated with Termination

Schedule 15.1: **Reletting Provisions**

Schedule 15.2: **Last 12 or 13 Months of Franchise Period**

Schedule 15.3: **Handover Package**

Appendix: Form of Handover Package

Schedule 15.4: **Provisions Applying on and after Termination**

Appendix 1: Form of Transfer Scheme

Appendix 2: Form of Supplemental Agreement

SCHEDULE 15.1

THIS IS SCHEDULE 15.1 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT BETWEEN THE AUTHORITY AND SERCO CALEDONIAN SLEEPERS LIMITED

Reletting Provisions

1. **Reletting of Franchise**

- 1.1 The Franchisee acknowledges that the Authority may wish, at or before the expiry of the Franchise Period, either to invite persons (including the Franchisee) to tender for the right to provide all or some of the Passenger Services under a franchise agreement or alternatively to enter into a franchise agreement in respect of the Passenger Services without having gone through a tendering process.
- 1.2 The Franchisee further acknowledges that the Authority is under a duty under Section 30 of the Act to secure in certain circumstances the provision of the Passenger Services, including if no further franchise agreement is entered into on the termination of this Agreement in respect of such Passenger Services. The Franchisee accordingly accepts and agrees to the restrictions and obligations imposed on it under Schedule 1.7 (*Franchise Services*), Schedule 14 (*Preservation of Assets*) and this Schedule 15.
- 1.3 The Franchisee further acknowledges that the Authority may split, merge or nationalise the business of providing Franchise Services.

2. **Preparation for Reletting**

- 2.1 The Franchisee shall, if so requested by the Authority, provide the Authority and its representatives and advisers with access to the Franchise Employees and all books, records and other materials kept by or on behalf of the Franchisee in connection with the Franchise Services (including electronic or magnetic records) for the purpose of assisting such representatives and advisers:
 - (a) to prepare reports or other documents in connection with any invitation to potential Successor Operators to tender for the right and obligation to operate all or any of the Franchise Services;
 - (b) to prepare invitations to other potential franchisees to tender for the right and obligation to provide any other railway passenger services or operate any other additional railway asset; or
 - (c) to enter into any franchise agreement or other agreement relating to the Franchise Services, without undergoing a tendering process,

provided that the exercise of such access rights by the Authority and its representatives and advisers shall not unduly interfere with the continuing provision and operation of the Franchise Services by the Franchisee.
- 2.2(a) The Franchisee shall make available to the Authority and its representatives and advisers such Data Site Information (as defined at paragraph 2.2(e)) and such other information (including financial and operational information) as they shall reasonably require in connection with the matters referred to in paragraph 2.1. If requested by the Authority such information shall be made available to the Authority by the Franchisee promptly copying (at the Franchisee's expense) information requested by the Authority and delivering the copies to the Authority. If requested by the Authority, the Franchisee

shall also copy (at the Franchisee's cost) and deliver to the Authority a complete copy of its Handover Package in order to assist the Authority in preparing to re-let.

- (b) The Franchisee shall prepare and present such information in such manner (including in disaggregated form) as the Authority may require, and shall provide such assistance as the Authority may require in connection with the verification of such information.
- (c) The Franchisee shall, when requested to do so, provide such confirmation in relation to the accuracy of the contents of the documents referred to in paragraph 2.1 as the Authority shall require from time to time;
- (d) The Franchisee shall upload such Data Site Information as the Authority may require to such electronic data site as they may specify and shall make a sufficient number of appropriate staff available for that purpose. The Franchisee shall ensure that such staff are trained in the use of such data site (such training to be at the expense of the Authority). For the avoidance of doubt, the Data Site Information required by the Authority under this paragraph may cover the entire Franchise Period or any part of it.
- (e) **"Data Site Information"** means information relating to any of the following:
 - (i) the Franchise or the Franchisee, any Affiliate of the Franchisee or their respective businesses (including their audited and management accounts, asset registers and contract lists);
 - (ii) past and present demand for the Franchise Services or any similar services (including passenger count data, yield management data and CRM Data);
 - (iii) information required to be provided by the Franchisee pursuant to Schedule 1.5 (*Information about Passengers*);
 - (iv) the total revenue (being all revenue whatsoever from any source obtained from any commercial or non-commercial activity or undertaking of the Franchisee) received or which the Franchisee expects to receive during the Franchise Period;
 - (v) the Franchisee's safety authorisation, safety certificate or safety management system (in each case as defined in the Safety Regulations);
 - (vi) any other safety matter;
 - (vii) the arrangements contained within the Railways Pension Scheme, the Pension Trust, the Franchise Sections, or any other pension arrangement in respect of employees of the Franchisee or employees of any person who was a franchisee or franchise operator in relation to a Previous Franchise Agreement;
 - (viii) the management structure of the Franchisee's business (including organograms and any planned changes);
 - (ix) employees and contractors (including details of responsibilities, job title, remuneration, grade, qualifications and any other personnel records);
 - (x) terms and conditions of employment and human resources policies;
 - (xi) public and working timetables;
 - (xii) driver, other train crew and rolling stock diagrams;

- (xiii) rolling stock (including train and vehicle miles, restrictions of use, fleet examinations and servicing, fleet performance, casualty data and any relevant reports);
- (xiv) any station or Station Area or depot or Depot Area, if any such depots or Depot Areas are under the control of the Franchisee, (including any leases, documents of title, maintenance arrangements, station facilities, plans and contingency or security plans relating to any station or Station Area or depot or Depot Area);
- (xv) health and safety and environmental information;
- (xvi) financial records and information (including without prejudice to the foregoing Annual Audited Accounts, Annual Audited Financial Statements, Annual Management Accounts and Management Accounts);
- (xvii) copies of contracts (including Access Agreements, policies of insurance, property, rolling stock and other leases, catering contracts, contracts for outsourced services, and rolling stock maintenance and spares contracts);
- (xviii) Network Rail charges and requirements (including Engineering Access Statement/plan);
- (xix) any information technology system (hardware or software) used or owned by the Franchisee or any Affiliate of the Franchisee (including any software licences);
- (xx) performance data;
- (xxi) customer service (including staffing levels, call volumes and opening hours);
- (xxii) fares and fares baskets;
- (xxiii) relationships and agreements with stakeholders (including minutes of meetings with unions, Local Authorities, Community Rail Partnerships, ATOC, Network Rail, ORR, Passengers' Council, Rail Safety and Standards Board, British Transport Police or Visit Scotland); or
- (xxiv) any other matter which the Authority may specify from time to time,

and in this paragraph (e) the term "employee" includes any person engaged by the Franchisee pursuant to a contract of personal service.

(f) The Franchisee shall:

- (i) comply with its obligations under paragraph 2.1 or this paragraph 2.2 promptly and in any case in accordance with any reasonable timetable with which the Authority requires the Franchisee by notice in writing to comply; and
- (ii) where the Authority raises with the Franchisee any query in relation to any Data Site Information, make a full and substantive response to such query within 10 working days. Such response shall include any further information requested by the Authority in relation to such query.

2.3 In connection with any proposal (whether or not yet finalised) to enter into separate franchise agreements and/or other agreements with more than one Successor Operator, each relating to some only of the Franchise Services (whether or not together with other railway passenger services) or to take the delivery of the Franchise Services

in whole or on a partial basis other than by a Franchise, including for the avoidance of doubt, direct ownership or operation, at or following the end of the Franchise Period, the Franchisee agrees and acknowledges that the Authority may require:

- (a) that the Franchisee provides the Authority with additional information and reports and analysis in respect of Passenger Services to different destinations as the Authority may specify. This may include:
 - (i) information relating to the operational and financial performance of the Franchisee in relation to such Passenger Services to different destinations; and
 - (ii) identification of those employees, assets and liabilities which relate to Passenger Services to different destinations together with an indication of the extent to which the same are shared between the operation of different Service Groups; and
- (b) subject to paragraph 2.4, that the Franchisee reorganises the business of providing the Franchise Services in order to facilitate the transfer anticipated by this Schedule 15.1 on an ongoing basis of the business of providing the Franchise Services within each Passenger Service to a different destination to separate Successor Operators. This may include, to the extent reasonably practicable:
 - (i) the re-organisation of personnel such that an appropriate number of employees (having sufficient skills, qualifications and experience) will transfer by operation of Law to each Successor Operator of each Passenger Service to a different destination; and/or
 - (ii) entering into additional or clarificatory contractual or other arrangements so that the Successor Operator of each Passenger Service to a different destination will have the necessary assets and rights to operate the Franchise Services within that Passenger Service to such different destination.

2.4 Subject to paragraph 2.5, the Authority shall reimburse any reasonable out-of-pocket expenses that the Franchisee may incur in complying with its obligations under this paragraph 2. The copying costs referred to in paragraph 2.2 are not to be re-imbursed

2.5 If the Authority is of the reasonable opinion that the Franchisee does not have sufficient resources to enable its compliance with its obligations under this paragraph 2 it may:

- (a) require the Franchisee (at its own cost) to employ; or
- (b) after notification to the Franchisee, employ, such suitable additional resource as may be required to ensure that the Franchisee can comply with its obligations under this paragraph 2. The Franchisee shall reimburse to the Authority, by way of adjustment to Franchise Payments, any proper costs (including staff costs) incurred by it in the employment of any such additional resource pursuant to this paragraph 2.5(b).

2.6 To the extent reasonably practicable, prior to taking any of the actions referred to in paragraph 2.5, the Authority shall allow the Franchisee a reasonable opportunity to make representations to it concerning the exercise by the Authority of his rights under paragraph 2.5 but the Authority shall not be obliged by those representations to refrain from exercising any of the actions specified under paragraph 2.5.

3. **Non-frustration of Transfer to Successor Operator**

3.1 The Franchisee shall take no action or steps which is or are designed, directly or indirectly:

- (a) to prevent, prejudice or frustrate the transfer as a going concern or going concerns of the business of providing the Franchise Services at the end of the Franchise Period to a Successor Operator or Successor Operators; or
- (b) to avoid, frustrate or circumvent any provision of this Agreement (including in particular the provisions of Schedule 14 (*Preservation of Assets*) and this Schedule 15) which is included in whole or in part for the purpose of preventing any such preventive, prejudicial or frustrating action or steps.

3.2 Subject to the restrictions set out in paragraph 3.1 and the other provisions of this Agreement, the Franchisee may take such action as it may require for the purposes of bidding to become, or becoming, a Successor Operator.

SCHEDULE 15.2

THIS IS SCHEDULE 15.2 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT BETWEEN THE AUTHORITY AND SERCO CALEDONIAN SLEEPERS LIMITED

Last 12 or 13 Months of Franchise Period

1. Last 12 or 13 Month Period

- 1.1 Where reference is made in this Agreement to the last 12 or 13 months of the Franchise Period, such period shall be deemed (except where the actual date of expiry of the Franchise Period is known) to commence on the earliest of the following dates:
 - (a) the date which is 12 or 13 months, as the case may be, prior to the Expiry Date;
 - (b) the date on which the Authority notifies the Franchisee that such period of 12 or 13 months shall be deemed to commence on the grounds that the Authority reasonably considers that an Event of Default may occur within the following 12 months; or
 - (c) the date on which the Authority notifies the Franchisee that such period of 12 or 13 months shall be deemed to commence on the grounds that the Authority considers it reasonably likely that this Agreement will be terminated by agreement between the Authority and the Franchisee within such period.
- 1.2 Any such period (which may be longer or shorter than 12 or 13 months, as the case may be) shall expire on the Expiry Date or, if earlier, in the case of periods commencing under paragraph 1.1(b) or (c), the date falling 12 or 13 months after the date of any notice under paragraph 1.1(b) or (c) or, in each case, such earlier date as the Authority may determine.
- 1.3 If the last 12 or 13 months of the Franchise Period has commenced (or has been deemed to have commenced) and the notice referred to in paragraph 1 of Schedule 18 (*Franchise Term Modification*) is given, then the last 12 or 13 months of the Franchise Period (as the case may be) shall not be interrupted, but shall continue to the Expiry Date.

2. Franchise Employees

Terms of Employment of Existing Employees

- 2.1 The Franchisee shall not, and shall secure that each other relevant employer shall not, without the prior consent of the Authority (which shall not be unreasonably withheld or delayed), vary or purport or promise to vary the terms or conditions of employment of any Franchise Employee (in particular, the Franchisee shall not promise to make any additional payment or provide any additional benefit or vary any term or condition relating to holiday, leave or hours to be worked) where such variation or addition:
 - (a) takes effect in the last 12 months of the Franchise Period unless it is in the ordinary course of business and, when aggregated with any other variation or addition which takes effect during such period, represents an increase in the remuneration of a Franchise Employee of no more than the amount determined in accordance with the following formula:-

MAWE+JAWE+SAWE + DAWE

where:

MAWE is the increase in the Average Weekly Earnings between March in the preceding 12 months and the corresponding March 1 year before, expressed as a percentage;

Jawe is the increase in the Average Weekly Earnings between June in the preceding 12 months and the corresponding June 1 year before, expressed as a percentage;

SAWE is the increase in the Average Weekly Earnings between September in the preceding 12 months and the corresponding September 1 year before, expressed as a percentage; and

DAWE is the increase in the Average Weekly Earnings between December in the preceding 12 months and the corresponding December 1 year before, expressed as a percentage;

- (b) wholly or partly first takes effect after the end of the Franchise Period;
- (c) results in any such employment not being terminable by the Franchisee or other relevant employer within 6 months of the expiry of the Franchise Period;
- (d) relates to a payment or the provision of a benefit triggered by termination of employment;
- (e) relates to the provision of a benefit (excluding base salary) which any such employee will or may have a contractual right to receive after the expiry of the Franchise Period; or
- (f) prevents, restricts or hinders any such employee from working for a Successor Operator or from performing the duties which such employee performed for the Franchisee.

2.2 Without limiting the foregoing the Franchisee shall consult the Authority as soon as reasonably practicable in any circumstances in which the Authority's consent under paragraph 2.1 may be required. Further, it shall always be deemed to be reasonable for the Authority to withhold its consent to a variation or addition which is prohibited without such consent under paragraph 2.1(a) provided the Authority:

- (a) makes an overall increase in Franchise Payments equal to the amount of the direct net losses suffered by the Franchisee on the days (**Relevant Days**) when the Passenger Services are affected by Industrial Action taken by the Franchise Employees which is a consequence of a refusal by the Authority to agree to the variation or addition; and
- (b) agrees that during the Relevant Days to the extent that the Franchisee may be in contravention of this Agreement (excluding contraventions in relation to safety requirements) as a consequence of the Industrial Action referred to in this paragraph, such contravention shall be waived by the Authority.

2.3 The Franchisee shall consult with the Authority as soon as reasonably practicable in any circumstances in which the Authority's consent under paragraph 2.1 may be required. The expression "promise to vary" when used in paragraph 2.1 includes any offer or indication of willingness to vary (whether or not such offer or willingness is made conditional upon obtaining the Authority's consent).

Terms of Employment of New Employees

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

- (a) such terms or conditions are materially different from the terms or conditions of employment of equivalent or nearest equivalent Franchise Employees at the date on which such employment is scheduled to commence; and
- (b) if such terms or conditions were granted to such equivalent Franchise Employees already employed by the Franchisee by way of variation to their terms or conditions of employment, the Franchisee would be in contravention of paragraph 2.1.

Changes in Numbers and Total Cost of Employees

2.5 Subject to and excluding any increase in the remuneration of Franchise Employees permitted under paragraph 2.1, the Franchisee shall not, and shall secure that each other relevant employer shall not, without the prior written consent of the Authority (which shall not be unreasonably withheld or delayed) increase or decrease in the last 12 months of the Franchise Period the number of Franchise Employees such that:

- (a) the total number of Franchise Employees or the total cost per annum to the Franchisee and each other relevant employer of employing all Franchise Employees is increased; or
- (b) the total number of Franchise Employees is decreased,

in each case, by more than 5 per cent. during such period of 12 months.

3. **Fares**

Reduction in Prices of Fares

3.1(a) Without in any way limiting the rights of the Authority in terms of Schedule 5 (*Fares*), during the last 13 months of the Franchise Period the Franchisee shall not, without the prior written consent of the Authority (not to be unreasonably withheld), set the Price or Child Price of or sell (except to the extent required to do so under the terms of the Ticketing and Settlement Agreement as a result of the Price or Child Price of a Fare being set by another person) any Fare which would entitle the purchaser of such Fare to travel on all or any of the Passenger Services after the Franchise Period for an amount which is less than the Price or the Child Price of that Fare immediately before the commencement of such 13 month period or, in the case of a new Fare, the Price of its nearest equivalent immediately before the commencement of such period.

(b) Paragraph 3.1(a) shall not prevent the Franchisee from giving any discount or reduction to which the purchaser of a Fare may be entitled by virtue of:

- (i) presenting a Discount Card (or any equivalent replacement thereof) issued by the Franchisee before the commencement of such 13 month period and to which the purchaser would have been entitled before the commencement of such period;
- (ii) presenting a Discount Card issued by another train operator;

- (iii) the Passenger's Charter or the passenger's charter of any other train operator; or
- (iv) any relevant conditions of carriage.

(c) The Franchisee shall procure that persons acting as its agent (except persons acting in such capacity by virtue of having been appointed under Parts II to VI of Chapter 9 of the Ticketing and Settlement Agreement or by being party to the Ticketing and Settlement Agreement) shall comply with the provisions of paragraph 3.1(a) to the extent that such provisions apply to the selling of Fares by the Franchisee.'

Percentage Allocations

3.2(a) Except to the extent that the Authority may consent from time to time (such consent not to be unreasonably withheld), the Franchisee shall not, in the last 13 Reporting Periods of the Franchise Period, take any action or step which may result in its Percentage Allocation (as defined in the Ticketing and Settlement Agreement) in respect of any Rail Product (as defined in the Ticketing and Settlement Agreement) being reduced.

(b) The Franchisee shall notify the Authority before taking any such action or step in the last 13 Reporting Periods of the Franchise Period and upon becoming aware of any other person proposing to take any action or step which may have the same effect. The Franchisee shall take such action as the Authority may reasonably request in order to prevent any such reduction, including submitting any dispute to any relevant dispute resolution procedures.

Restrictions in respect of Sale of Advance Purchase Train-specific fares

3.3(a) It is acknowledged that the Franchisee will make available for sale prior to the end of the Franchise Period Advance Purchase Train-specific Fares which are valid for travel after the end of the Franchise Period;

(b) In making such Advance Purchase Train-specific Fares available for purchase the Franchisee shall not change its commercial practice in terms of the number of such Advance Purchase Train-specific Fares made available or the Passenger Services on which they are valid for use when compared with its previous commercial practice in respect of Advance Purchase Train-specific Fares valid for travel prior to the end of the Franchise Period;

(c) The Franchisee will be permitted to take into account reasonable seasonal factors in determining its previous commercial practice. In assessing reasonableness, account will be taken of the Franchisee's practice in addressing such seasonal factors in the corresponding period in the previous year.

4. Inter-Operator Schemes

Voting on Scheme Councils

4.1 Subject to paragraph 4.3, during the last 12 months of the Franchise Period the Franchisee shall give the Authority reasonable notice of:

- (a) any meeting of:
 - (i) a scheme council of an Inter-Operator Scheme on which the Franchisee is represented; or
 - (ii) a scheme management group of any Inter-Operator Scheme;

- (A) in which the Franchisee has a permanent position; or
- (B) where the Franchisee employs a member of such group;
- (b) the resolutions to be voted upon at any such meeting; and
- (c) the Franchisee's voting intentions.

4.2 Subject to paragraph 4.3, the Franchisee shall vote at any such meeting in the manner required by the Authority.

Successor Operator

- 4.3 Where the Franchisee has been notified by the Authority that a Successor Operator has been selected (whether a franchisee or otherwise and whether or not such selection is conditional), the Franchisee shall give such Successor Operator reasonable notice of:
 - (a) any meeting referred to in paragraph 4.1(a);
 - (b) any resolutions to be voted upon at any such meeting where such resolutions might reasonably be considered to affect the interests of such Successor Operator; and
 - (c) the Franchisee's voting intentions.
- 4.4 The Franchisee shall discuss with the Successor Operator in good faith with a view to agreeing the way the Franchisee should vote on the resolutions referred to in paragraph 4.3(b). In the absence of any agreement, the Franchisee shall, as soon as reasonably practicable thereafter, having regard to the deadline for voting on such resolutions, refer the matter to the Authority for determination.
- 4.5 The Authority shall reasonably determine the way the Franchisee should vote on any resolutions referred to it in accordance with paragraph 4.4, having regard to the transfer of the Franchise Services as a going concern at the end of the Franchise Period.
- 4.6 The Franchisee shall vote at any meeting referred to in paragraph 4.1(a) in accordance with any agreement pursuant to paragraph 4.4 or determination pursuant to paragraph 4.5.

Local Authority Schemes

- 5. The Franchisee shall not during the last 12 months of the Franchise Period, agree to commence or continue any project or investment wholly or partly funded by any Local Authority without the written consent of the Authority.

SCHEDULE 15.3

THIS IS SCHEDULE 15.3 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT BETWEEN THE AUTHORITY AND SERCO CALEDONIAN SLEEPERS LIMITED

Handover Package

1. Handover Package Status

- 1.1 The Franchisee shall maintain the Handover Package and shall update it at least every 3 Reporting Periods.
- 1.2 The Franchisee shall ensure that any Successor Operator will have immediate access to the Handover Package on the expiry of the Franchise Period and shall accordingly agree with the Authority from time to time a location at which such Handover Package should be kept which, unless otherwise agreed, shall be the offices of a solicitor approved by the Authority.

2 Director's Certificate

Once in each Franchisee Year, the Franchisee shall provide to the Authority a certificate signed by a nominated and duly authorised director of the Franchisee, addressed to the Authority, which confirms that the Handover Package contains the information and objects specified in the Appendix (*Form of Handover Package*) and that such information is accurate at the date of the certificate. The Franchisee shall make the Handover Package available for inspection or audit by the Authority or its representative whenever requested.

3. Handover Package Information

Without prejudice to the preceding provisions of this Schedule 15.3, the Franchisee shall provide to the Authority the following information and letters, and shall supply revised information and/or letters to the Authority as and when required in order to ensure that such information and letters remain accurate and up to date:

- 3.1 details of the location of the Handover Package, which details shall include one or more contact name, address and telephone number enabling contact during, and outside, normal office hours with persons authorised and able to release the Handover Package;
- 3.2 a letter in a form approved by the Authority:
 - (a) from the Franchisee to the Authority confirming that an irrevocable instruction has been given to the solicitor holding (or other persons authorised by the Authority for such purpose) the Handover Package that any of the Authority, a Successor Operator or its agent, is entitled at any time to require access to and delivery of the Handover Package on demand, and confirming the Authority's right to audit the Handover Package at any time; and
 - (b) from the solicitor holding the Handover Package (or other person authorised by the Authority for such purpose) to the Authority confirming that he or she will release the Handover Package to any of the Authority, a Successor Operator or its agent, on demand, and confirming that the Handover Package will be made available for the purposes of auditing its contents when so required by the Authority;
- 3.3 a list of all key contacts, as set out in the Appendix (*Form of Handover Package*); and

3.4 a letter in a form approved by and addressed to the Authority confirming the details of any insurer providing insurance to the Franchisee, and authorising the insurer (and any relevant broker) to release any insurance-related information to any of the Authority, a Successor Operator or its agent on demand.

4 Actions required immediately on handover

4.1 The Franchisee shall immediately on the expiry of the Franchise Period make available to the Authority:

- (a) information as to the status of each purchase order or contract, including its award date, anticipated delivery date, confirmation of receipt of goods or services and the payment records for each purchase order, together with any matters in dispute with the appointed subcontractor and, to the extent that the Franchisee is a subcontractor to another Train Operator, the equivalent information in respect of that Train Operator; and
- (b) information concerning any contract necessary for the continued operation of the franchise where a procurement or bidding process has been initiated.

4.2 The Franchisee agrees that the Authority or its agents may have access to and use free of charge any information contained in any computer system or in hard copy format as it sees fit (for the purposes of continuing the operation of the Franchise Services).

5. Maintenance Records

The Franchisee shall immediately on expiry of the Franchise Period provide to the Authority:

- 5.1 records of the status of the maintenance of the rolling stock vehicles used in the provision of the Passenger Services, including the extent of completion of examinations and the modification status of each such rolling stock vehicle;
- 5.2 records of the status of the maintenance of any lifting equipment;
- 5.3 a list of any deferred maintenance; and
- 5.4 records of the status of the maintenance of any station or Station Area or depot or Depot Area, if any such depots or Depot Areas are under the control of the Franchisee at expiry of the Franchise Period, or plant or equipment at the same which is a Franchise Asset,

6. Ticketing Arrangements

The Franchisee shall provide to the Authority immediately on expiry of the Franchise Period a statement certifying:

- 6.1 all ticketing transactions with the public or credit card agencies that are in process and not yet complete, together with any allocations on multi-modal travel with other agencies or local authorities;
- 6.2 the extent of any outstanding claims with ticketing settlement agencies;
- 6.3 refund arrangements (whether under the Passenger's Charter or not) with members of the public or other Train Operators or ticketing settlement agencies that are in process and not yet complete; and
- 6.4 commissions owed and/or due.

APPENDIX TO SCHEDULE 15.3

Form of Handover Package

1. **Key Contacts**

A list of key contacts to include all directors (statutory or otherwise) and all managers with responsibility for a department/function within the Franchisee's business. This must include operations, commercial, personnel and public affairs departments (or in each case their nearest equivalents). This list must include the name, address, home, office and mobile telephone numbers, and a brief description of the person's role and responsibilities in the business.

2. **Property**

A list of all land and buildings owned, leased, operated or occupied by the Franchisee which shall include the address, telephone number and contact telephone number of each property. Where applicable, the list will also include the name, address and telephone number of the lessor and/or the party which has granted authority to use or occupy the property, and any relevant reference numbers applicable to that lease or occupation. Where applicable, the list will also include the name, address and telephone number of the tenant and/or party in occupation of the property.

3. **Contracts**

A printed or electronic list (in a format acceptable to the Authority) of all contracts (sales, purchases or otherwise including leases and licences) between the Franchisee and the counterparty or counterparties to each such contract, showing the name, address and telephone number of each counterparty and a contact name at each such counterparty; the contract reference number of the Franchisee and each counterparty (if any); and the contract price/value, term and expiry date. This requirement shall apply to all contracts unless otherwise agreed by the Authority.

4. **Systems**

A list of the electronic systems in use by the Franchisee, together with the name of the Franchisee's employee with responsibility for the management of information technology matters, office address and telephone number who is responsible for administration of each such system.

5. **Daily Operations**

A printed or electronic list (in a format acceptable to the Authority) of all assets owned or operated by the Franchisee together with their location.

6. **Insurance**

A list of the names, addresses and telephone numbers of all insurers and any relevant broker providing insurance to the Franchisee, together with the relevant policy numbers and other references and details of any outstanding claims or unresolved disputes.

SCHEDULE 15.4

THIS IS SCHEDULE 15.4 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT BETWEEN THE AUTHORITY AND SERCO CALEDONIAN SLEEPERS LIMITED

Provisions applying on and after Termination

1. Novation of Access Agreements on Termination of this Agreement

- 1.1 The Franchisee shall, to the extent so requested by the Authority on termination of this Agreement, in relation to any Access Agreement to which it is a party, novate its interest under any relevant Access Agreement (and any related Collateral Agreement) to the Authority or as it may direct.
- 1.2 Such novation shall be subject to the agreement of any counter party to such Access Agreement or Collateral Agreement and, to the extent applicable, the ORR.
- 1.3 Such novation shall be on such terms as the Authority may reasonably require, including:
 - (a) that the Franchisee shall not be released from any accrued but unperformed obligation, the consequences of any breach of the relevant agreement which is the subject of arbitration or litigation between the Authority and the Franchisee or any liability in respect of any act or omission under or in relation to the relevant agreement prior to, or as at the date of, any such novation (except to the extent that the Authority or its nominee agrees to assume responsibility for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant novation); and
 - (b) that neither the Authority nor its nominee shall be obliged, in connection with such novation, to agree to assume responsibility for any unperformed obligation, liability or consequences of a breach referred to in paragraph 1.3(a),

but shall not, unless the Franchisee otherwise agrees, be on terms which release any counterparty to the relevant agreement from any liability to the Franchisee arising prior to the date of such novation.

2. Co-operation with Successor Operator

- 2.1 In order to ensure the continuity of, and an orderly handover of control over, the Franchise Services, the Franchisee shall co-operate with:
 - (a) where a Successor Operator has been appointed, such Successor Operator; or
 - (b) where a Successor Operator has not been so appointed, or where such appointment or appointments does or do not encompass all aspects of the Franchise Services, the Authority together with such Successor Operator where relevant,

and shall take such steps as may be reasonably requested by the Authority in connection therewith.
- 2.2 In satisfaction of its obligations under paragraph 2.1, the Franchisee shall bid for and secure the Timetable and the Train Plan for the Franchise Services to be operated by the Successor Operator (whether or not a Successor Operator has been identified and whether or not there is in place an Access Agreement relating to the relevant period).

3. Transfer of Primary Franchise Assets

Option Arrangements

3.1(a) The Authority hereby grants to the Franchisee the right to require the Authority to make, and the Franchisee hereby grants to the Authority the right to make, a Transfer Scheme in accordance with Section 12 and Schedule 2 of the Railways Act 2005 for the transfer of any or all Primary Franchise Assets on the expiry of the Franchise Period.

(b) On or within 14 days before the expiry of the Franchise Period, either party may serve notice on the other party specifying the Primary Franchise Assets to be transferred.

(c) The Authority may (and shall if required by the Franchisee) make one or more such Transfer Schemes for the transfer of the Primary Franchise Assets specified in any such notice within 14 days after service of such notice.

(d) Any Franchise Assets or Primary Franchise Assets which are not so transferred shall cease to be designated as such 14 days after service of such notice.

Supplemental Agreement

3.2 Without prejudice to the duties, powers, rights and obligations of the Authority under the Railways Act 2005 in respect of any Transfer Scheme, any Transfer Scheme shall impose on the Franchisee and the transferee an obligation to enter into an agreement substantially in the form of the Supplemental Agreement which shall provide for the determination of amounts to be paid in respect of the property, rights and liabilities which are transferred under such Transfer Scheme. The Franchisee shall enter into any such Supplemental Agreement and shall comply with its obligations thereunder.

Payment of Estimated Transfer Price

3.3(a) The Authority may require the Franchisee to pay to any transferee under a Transfer Scheme, or may require any such transferee to pay to the Franchisee, on the day on which the Transfer Scheme comes into force such sum as the Authority may determine should be so paid having regard to:

- (i) its estimate of the sum likely to be paid under the relevant Supplemental Agreement in respect of the Primary Franchise Assets being transferred under the relevant Transfer Scheme;
- (ii) its estimate of any other sums likely to be paid thereunder;
- (iii) the financial condition of the Franchisee and the transferee and whether any estimate so paid would be likely to be repaid, if in excess of the sums eventually payable thereunder; and
- (iv) such other matters as the Authority may consider appropriate.

(b) The Franchisee shall pay to any such transferee the sum determined by the Authority in accordance with paragraph 3.3(a) on the day on which the relevant Transfer Scheme comes into force.

Possession of Franchise Assets

3.4 On the coming into force of a Transfer Scheme, the Franchisee shall deliver up to the Authority (or its nominee) possession of the Primary Franchise Assets transferred under such Transfer Scheme.

4. Associated Obligations on Termination

Assistance in Securing Continuity

- 4.1(a) In order to facilitate the continuity of the Franchise Services on expiry of the Franchise Period, the Franchisee shall take such steps, both before and after the expiry of the Franchise Period, as the Authority may reasonably require, to assist and advise any Successor Operator in providing and operating the Franchise Services.
- (b) In particular, the Franchisee shall provide any Successor Operator with such records and information relating to or connected with the Franchise Services as the Authority may reasonably require (other than Confidential Information of a financial nature but including all records relating to the Franchise Employees).

Access

- 4.2 On the expiry of the Franchise Period, the Franchisee shall grant the Authority and its representatives such access as the Authority may reasonably request to any property owned, leased or operated by the Franchisee at such time, for the purpose of facilitating the continued provision of the Franchise Services.

Key Contracts

- 4.3(a) The Franchisee shall provide such assistance to any Successor Operator as the Authority may reasonably require in ensuring that, pursuant to any Direct Agreements, such Successor Operator may enter into (or enjoy the benefit of) contracts equivalent to the relevant Key Contracts (or part thereof).
- (b) In satisfaction of its obligations under paragraph 4.3(a), the Franchisee shall terminate, surrender, cancel or undertake not to enforce its rights under any Key Contract (or part thereof) provided that nothing in this paragraph shall require the Franchisee to undertake not to enforce any rights under a Key Contract relating to the period prior to the expiry of the Franchise Period.

Change of Name

- 4.4 The Franchisee shall cease to use any trade marks which are licensed to the Franchisee under any of the Brand Licences forthwith upon expiry of the Franchise Period and shall take all necessary steps to change any company name which incorporates any such marks the Marks or the Authority's Branding as soon as practicable.

Licences

- 4.5 On the expiry of the Franchise Period, the Franchisee shall assign the Licences to the Authority's nominee, to the extent and in the manner requested by the Authority, and to the extent permitted by the ORR.

Property Leases

- 4.6(a) The Franchisee shall, on the expiry of the Franchise Period if requested by the Authority assign its interest under all or any Property Leases to the Authority or as it may direct, subject where applicable to the agreement of any other party to such Property Lease or of the ORR.
- (b) Such assignation shall be on such terms as the Authority may reasonably require, including:

- (i) that the Franchisee shall not be released from any accrued but unperformed obligation, the consequences of any antecedent breach of an undertaking or obligation in the Property Leases or any liability in respect of any act or omission under or in relation to the Property Lease prior to, or as at the date of, any such assignation (except to the extent that the Authority or its nominee agrees to assume responsibility for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant assignation); and
- (ii) that neither the Authority nor its nominee shall be obliged, in connection with such assignation, to agree to assume responsibility for any unperformed obligation, liability or consequences of a breach referred to in paragraph 4.6(b)(i), and the Franchisee shall indemnify the Authority or its nominee, as the case may be, on an after-tax basis against any costs, losses, liabilities or expenses suffered or incurred in relation thereto.

- (c) The Franchisee shall, on the occurrence of any of the circumstances specified in paragraph 4.6(a) in relation to any other Train Operator who is a party to a Property Lease to which the Franchisee is also party, agree to the assignation of such Train Operator's interest under the relevant Property Lease to the Authority or as it may direct, subject, where applicable, to the consent of Network Rail. The provisions of paragraph 4.6(b) shall apply to any such assignation.
- (d) The Franchisee shall notify the Authority on becoming aware of any circumstances which might lead to the Authority being able to require the Franchisee to assign its interest or agree to the assignation of another Train Operator's interest under this paragraph 4.
- (e) If the landlord under a Property Lease does not serve a notice to quit under the Property Lease on the Franchisee then the Franchisee shall notify the Authority in writing of the necessity to serve a notice to quit under the Property Lease at least one calendar month before the last date for service of a timeous notice to quit under the Property Lease and, if so requested by the Authority following receipt of such notification, the Franchisee shall timeously serve a notice to quit under the Property Lease.
- (f) The Franchisee shall promptly notify the Authority of any notice to quit received from the landlord under a Property Lease.

5. **Franchisee's Intellectual Property**

- 5.1(a) On the expiry of the Franchise Period, the Franchisee shall, subject to any limitations on the Franchisee's ability to grant such licences under any licence of intellectual property granted to the Franchisee, grant to any Successor Operator licences of any intellectual property which:
 - (i) is owned by or licensed to the Franchisee;
 - (ii) was not owned by or licensed to it immediately prior to the Franchise Commencement Date;
 - (iii) has not been designated as a Primary Franchise Asset;
 - (iv) does not represent or constitute a Mark; and

- (v) which may, in the reasonable opinion of the Authority, be necessary for any Successor Operator to operate the Franchise Services on an efficient and economic basis after the expiry of the Franchise Period.

(b) When agreeing the terms on which intellectual property is to be licensed to it, the Franchisee shall use all reasonable endeavours to ensure that such terms include the right to sub-license such intellectual property in accordance with this paragraph 5.1. The Franchisee shall not enter into a licence that does not include such a provision without first obtaining the Authority's prior written consent (such consent not to be unreasonably withheld).

5.2 Any such licence shall be granted to the relevant Successor Operator for such period as the Authority may determine to be reasonably necessary for the purpose of securing continuity of the provision of the Franchise Services, and:-

- (a) shall be free of charge and royalty-free for a period of 1 month or less.
- (b) if such licence is for a period in excess of 1 month, the grant of the licence shall be subject to payment of a reasonable royalty to the Franchisee (backdated to the expiry of the Franchise Period) on the basis of a willing licensor and licensee entering into a licence on comparable terms to similar licences of such intellectual property. If the Franchisee and the relevant Successor Operator are unable to agree such royalty, the Franchisee shall submit such dispute for resolution in accordance with such dispute resolution rules as the Authority may require.

5.3 Any such licence shall be in such form as the Authority shall reasonably determine but in any event shall:

- (a) be non-exclusive and limited to use solely for the purposes of the provision and operation of the Franchise Services and will not provide for any right to use such intellectual property for any other purpose (including its marketing or exploitation for any other purpose);
- (b) prohibit assignation or the grant of any sub-licences pursuant to the licence other than to the Authority or a Successor Operator to the Successor Operator to whom the licence is granted;
- (c) be terminable on material breach by the Successor Operator;
- (d) contain an indemnity from the Franchisee to the effect that to the best of its knowledge and belief it owns the relevant intellectual property or has the right to license it and the licensing of it and the subsequent use of the intellectual property will not infringe any third party intellectual property rights; and
- (e) require the Successor Operator, to the extent that it relates to any trade marks, to use such trade marks in such manner as may reasonably be required by the Authority provided that it shall not be reasonable for the Authority to require any such trade mark to be used in a manner materially different from its use during the Franchise Period.

APPENDIX 1 TO SCHEDULE 15.4

Form of Transfer Scheme

Dated _____ 20[•]

**TRANSFER SCHEME
OF
THE SCOTTISH MINISTERS
MADE PURSUANT TO SECTION 12 AND SCHEDULE 2 OF
THE RAILWAYS ACT 2005**

**IN FAVOUR OF
[SUCCESSOR OPERATOR]**

**IN RESPECT OF
CERTAIN PROPERTY, RIGHTS AND LIABILITIES
OF
[FRANCHISEE]**

[The Scottish Ministers]

TRANSFER SCHEME

Whereas:

- (A) [Franchisee] (the **Transferor**) has been providing certain services for the carriage of passengers by railway and operating certain [parts of] stations [and light maintenance depots] pursuant to a franchise agreement with 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 Executive as they may from time to time have nominated (who and whose successors are hereinreferred to as the **Authority**) dated [•] (the **Franchise Agreement**).
- (B) The Franchise Agreement terminated or is to terminate on [•] and [Successor Operator] (the **Transferee**) is to continue the provision of all or part of such services or the operation of all or some of such [parts of] stations [and light maintenance depots] under a new franchise agreement or in connection with the performance or exercise of the duties and powers of the Authority to secure the provision of such services or the operation of such stations [or light maintenance depots].
- (C) Certain property, rights and liabilities of the Transferor which were designated as franchise assets for the purpose of the Franchise Agreement are to be transferred to the Transferee under a transfer scheme made by the Authority under Section 12 and Schedule 2 of the Railways Act 2005.

The Authority, in exercise of the powers conferred on it by Section 12 and Schedule 2 of the Railways Act 2005, hereby makes the following scheme:

1. Definitions and Interpretation

In this Transfer Scheme **powers and duties** and **relevant enactment** have the meanings ascribed to them in paragraph 6 of Schedule 2 of the Railways Act 2005.

2. Transfer of Property Rights and Liabilities

The property, rights and liabilities of the Transferor specified or described in the Schedule shall be transferred to, and vest in, the Transferee.

3. Powers and Duties under Statutory Provisions

Subject to any amendment to the relevant enactment which comes into force on or after the date on which this Transfer Scheme is made, there shall be transferred to the Transferee all the powers and duties of the Transferor under any relevant enactment if and to the extent that any such relevant enactment:

- (a) relates to any property which is to be transferred by this Transfer Scheme; or
- (b) authorises the carrying out of works designed to be used in connection with any such property or the acquisition of land for the purpose of carrying out any such works.

4. Supplemental Agreement

Each of the Transferor and the Transferee shall enter into the Supplemental Agreement (as defined in the Franchise Agreement) on the coming into force of this Transfer Scheme.

This Transfer Scheme is made by the Authority on [•]

SIGNED for and on behalf of THE SCOTTISH MINISTERS

At

On the day of 20[xx]

By

..... Name (printed)

Before this witness:-

..... Witness

..... Full Name

..... Address

.....

SCHEDULE TO THE TRANSFER SCHEME
[List relevant [Primary] Franchise Assets to be transferred to Successor Operator]

APPENDIX 2 TO SCHEDULE 15.4

Form of Supplemental Agreement

Dated _____ 20[•]

SUPPLEMENTAL AGREEMENT

between

[OUTGOING FRANCHISEE]

and

[SUCCESSOR OPERATOR]

to the transfer scheme dated [•] made
by the Scottish Ministers in respect of
certain property rights and liabilities of
[OUTGOING FRANCHISEE]

[The Scottish Ministers]

SUPPLEMENTAL AGREEMENT

BETWEEN

- (1) [OUTGOING FRANCHISEE] whose registered office is at [registered office] (the **Transferor**); and
- (2) [SUCCESSOR OPERATOR] whose registered office is at [registered office] (the **Transferee**).

WHEREAS

- (A) The Transferor has been providing certain services for the carriage of passengers by railway pursuant to a franchise agreement with 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 Executive as they may from time to time have nominated (who and whose successors are hereinreferred to as the **Authority**) dated [•] (the **Franchise Agreement**).
- (B) The Franchise Agreement terminated or is to terminate on [•] and the Transferee has been selected by the Authority to continue the provision of all or part of such services pursuant either to a franchise agreement with the Authority or arrangements made with the Authority in connection with the Authority's duties and powers.
- (C) Certain property, rights and liabilities of the Transferor are to be transferred to the Transferee pursuant to a transfer scheme made by the Authority on [•] under Schedule 2 of the Railways Act 2005 (the **Transfer Scheme**).
- (D) This agreement is supplemental to the Transfer Scheme and sets out certain terms between the Transferor and the Transferee in relation to the transfer of such property, rights and liabilities under the Transfer Scheme and the transfer of certain other property, rights and liabilities at the same time.

IT IS AGREED THAT

1. Definitions and Interpretation

Definitions

1.1 The following words and expressions shall have the following meaning:

Business means such of the undertaking or part of the undertaking of the Transferor prior to the Transfer Date as may be continued by the Transferee after the Transfer Date;

Completion Payment has the meaning ascribed to that term in Clause 2.1;

Credit has the meaning assigned to that term under the Ticketing and Settlement Agreement;

Debit has the meaning assigned to that term under the Ticketing and Settlement Agreement;

Net Asset Statement means the statement to be drawn up pursuant to Clause 2.2;

Net Asset Value means the aggregate of the amounts of the Relevant Franchise Assets, the Relevant Contract Liabilities, the Relevant Debits and Credits and the Relevant Employee Liabilities as shown in the Net Asset Statement;

Purchase Price means an amount equal to the Net Asset Value;

Relevant Contract Liabilities means such rights and liabilities of the Transferor as may be transferred to the Transferee on the expiry of the Franchise Period in relation to any Licence, Access Agreement or Property Lease under paragraphs 1, 4.5 and 4.6 of Schedule 15.4 (*Provisions Applying on and after Termination*) of the Franchise Agreement;

Relevant Debits and Credits means such Debits and Credits of the Transferor which relate to Fares sold before the Transfer Date and which may be received by the Transferee as a result of Clause 11-32 of the Ticketing and Settlement Agreement;

Relevant Employee Liabilities means such rights and liabilities of the Transferor (or any other relevant employer or person) under any contracts of employment relating to the Relevant Employees which have been or are to be transferred to the Transferee by virtue of the operation of Law (including the Transfer Regulations);

Relevant Employees means all persons employed in the Business immediately before the Transfer Date (whether employed by the Transferor or otherwise) whose contract of employment has been or is to be transferred to the Transferee by virtue of the operation of Law (including the Transfer Regulations) or any other person employed in the Business in respect of whom liabilities arising from a contract of employment or employment relationship have or will be transferred by virtue of the operation of Law (including the Transfer Regulations);

Relevant Franchise Assets means the property, rights and liabilities of the Transferor which are or are to be transferred to the Transferee under the Transfer Scheme;

Reporting Accountants means such firm of accountants as may be selected by agreement between the parties within 4 weeks of the preparation of the Net Asset Statement or, in the absence of such agreement, selected by the Authority;

Season Ticket Fare means a fare which entitles the purchaser to make an unlimited number of journeys in any direction during the period for which, and between the stations and/or the zones for which, such fare is valid;

Taxation comprises all forms of taxation, duties, contributions and levies of the Authority or the United Kingdom whenever imposed and (except in so far as attributable to the unreasonable delay or default of the Transferee) all penalties and interest relating thereto;

TOGC has the meaning assigned to that term in clause 6.2;

Transfer Date means the date and, where relevant, the time on or at which the Transfer Scheme comes into force;

Transfer Regulations means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended, replaced or substituted from time to time);

Transferring Assets and Liabilities has the meaning assigned to that term in clause 2.1; and

Undisclosed Employee has the meaning assigned to that term in clause 7.1(d).

Construction and Interpretation

1.2 In this Agreement terms and expressions defined in the Franchise Agreement shall have the same meaning and the terms "contract of employment", "collective agreement", "employee representatives" and "trade union" shall have the same meanings respectively as in the Transfer Regulations.

2. Transfer Price

Amount and Payment

2.1 The price for the transfer of:

- (a) the Relevant Franchise Assets,
- (b) the Relevant Contract Liabilities,
- (c) the Relevant Debits and Credits; and
- (d) the Relevant Employee Liabilities

(together the **Transferring Assets and Liabilities**) shall (subject to adjustment as expressly provided in this Agreement) be an amount equal to the Net Asset Value of which the sum of £[amount], as determined under paragraph 3.3 of Schedule 15.4 (*Provisions Applying on and after Termination*) of the Franchise Agreement (the "**Completion Payment**") shall be paid in immediately available funds by the Transferor to the Transferee, or by the Transferee to the Transferor, as determined under paragraph 3.3 of Schedule 15.4 of the Franchise Agreement, on the Transfer Date and the balance (if any) shall be paid in accordance with clause 2.5.

Net Asset Statement

2.2 The Transferee shall procure that, as soon as practicable and in any event not later than 2 months following the Transfer Date, there shall be drawn up a statement showing a true and fair view of the aggregate of the amount of each separate asset and liability of the Transferring Assets and Liabilities as at the Transfer Date.

2.3 The Net Asset Statement shall be:

- (a) drawn up in the manner described in the Schedule;
- (b) prepared on such basis as would enable the Transferee's auditors, if so requested, to give an unqualified audit report thereon to the effect that it had been drawn up in accordance with the Schedule; and
- (c) presented, initially as a draft, to the Transferor immediately following its preparation for review in conjunction with its auditors.

2.4 If the Transferor and the Transferee have failed to agree the Net Asset Statement within 4 weeks following such presentation, the matter shall be referred to the Reporting Accountants who shall settle and complete the Net Asset Statement as soon as practicable and shall determine the amount of the Net Asset Value as shown by the Net Asset Statement.

Adjustment of Price

2.5 If the Purchase Price exceeds or is less than the Completion Payment, the Transferee shall pay to the Transferor or, as the case may be, the Transferor shall pay to the Transferee, in either case within 14 days of the agreement or determination of the Net

Asset Value, an amount equal to such excess or deficiency together in either case with interest thereon calculated from the Transfer Date at the Interest Rate.

3. **References to the Reporting Accountants**

Whenever any matter is referred under this Agreement to the decision of the Reporting Accountants:

- (a) the Reporting Accountants shall be engaged jointly by the parties on the terms set out in this Agreement and otherwise on such terms as shall be agreed; provided that neither party shall unreasonably (having regard, amongst other things, to the provisions of this Agreement) refuse its agreement to terms proposed by the Reporting Accountants or by the other party. If the terms of engagement of the Reporting Accountants have not been settled within 14 days of their appointment having been determined (or such longer period as the parties may agree) then, unless one party is unreasonably refusing its agreement to those terms, such accountants shall be deemed never to have been appointed as Reporting Accountants, save that the accountants shall be entitled to their reasonable expenses under clause 3(d), and new Reporting Accountants shall be selected in accordance with the provisions of this Agreement;
- (b) if Reporting Accountants acting or appointed to act under this Agreement resign, withdraw, refuse to act, or are disqualified for any reason from performing their duties then, except as may be agreed between the parties, the parties shall appoint a replacement in accordance with the definition of **Reporting Accountants**;
- (c) the Reporting Accountants shall be deemed to act as experts and not as arbitrators;
- (d) the Reporting Accountants shall have power to allocate their fees and expenses for payment in whole or in part by any party at their discretion. If not otherwise allocated they shall be paid as to half by the Transferor and as to half by the Transferee;
- (e) each of the parties shall promptly on request supply to the Reporting Accountants all such documents and information as they may require for the purpose of the reference; and
- (f) the decision of the Reporting Accountants shall (in the absence of objection on the grounds of any error discovered within 14 days of the issue of their decision) be conclusive and binding and shall not be the subject of any appeal by way of legal proceeding or arbitration or otherwise.

4. **Warranty**

The Transferor warrants and represents to the Transferee that the Relevant Contract Liabilities and the Relevant Franchise Assets are, to the extent they are property or rights, transferring to the Transferee free and clear of all Security Interests.

5. **Interest**

If the Transferor or the Transferee defaults in the payment when due of any sum payable under this Agreement (whether determined by agreement or pursuant to an order of a court or otherwise) the liability of the Transferor or the Transferee (as the case may be) shall be increased to include interest on such sum from the date when such payment is due until the date of actual payment (after as well as before judgement) at a rate equal to the Interest Rate. Such interest shall accrue from day to day.

6. **Value Added Tax**

- 6.1 All amounts under this agreement are expressed as exclusive of Value Added Tax where Value Added Tax is applicable.
- 6.2 The Transferor and the Transferee shall use all reasonable endeavours to secure that the transfer of the Transferring Assets and Liabilities is treated for Value Added Tax purposes as the transfer of a business as a going concern ("TOGC") and accordingly as neither a supply of goods nor a supply of services for the purposes of Value Added Tax.
- 6.3 If HM Revenue & Customs direct that the transfer of the Transferring Assets and Liabilities, cannot be treated as a TOGC, the Transferor shall provide the Transferee with a copy of such direction within 5 days of receipt thereof by the Transferor.
- 6.4 The Transferee shall thereafter pay upon the receipt of a valid tax invoice the amount of any Value Added Tax which as a result of that direction may be chargeable on the transfer of the Transferring Assets and Liabilities. If the aforementioned direction was issued as a result of any action or inaction of the Transferee then the Transferee shall in addition to the Value Added Tax indemnify the Transferor for any penalties and interest that may be incurred upon receipt of such evidence from HM Revenue & Customs.
- 6.5 If the Transferee considers the direction issued by HM Revenue & Customs referred to in clause 6.3 to be incorrect then, without prejudice to the Transferee's obligation under clause 6.4 to pay to the Transferor the amount of any Value Added Tax which as a result of such direction may be chargeable on the transfer of the Transferring Assets and Liabilities, the Transferee may, within 30 days of receipt of such direction by the Transferor, give notice to the Transferor that it requires the Transferor to appeal such direction. Upon requesting such an appeal the Transferee agrees to indemnify the Transferor for all reasonable costs that the Transferor may incur in taking such action upon receipt of evidence of those costs. If such an appeal is successful the Transferor agrees to reimburse the Transferee for such reasonable costs and penalties and interest to the extent that those costs have been reimbursed by HM Revenue & Customs.
- 6.6 If any amount paid by the Transferee to the Transferor in respect of Value Added Tax pursuant to this Agreement is subsequently found to have been paid in error the Transferor shall issue a valid tax credit note for the appropriate sum to the Transferee and promptly repay such amount to the Transferee.
- 6.7 If any amount is payable by the Transferor to the Transferee in respect of the transfer of the Relevant Franchise Assets, Relevant Contract Liabilities, Relevant Debits and Credits and Relevant Employee Liabilities pursuant to this Agreement, clauses 6.3 to 6.6 inclusive shall apply *mutatis mutandis* to such payment substituting **Transferor** for **Transferee** and vice versa.
- 6.8 The Transferor shall on the Transfer Date deliver to the Transferee such of those records referred to in Section 49 of the Value Added Tax Act 1994 as relate exclusively to the Business on condition that the Transferee undertakes to preserve those records in such manner and for such periods as may be required by law.
- 6.9 Subject to HM Revenue & Customs so permitting, all of the records referred to in Section 49 of the Value Added Tax Act 1994 relating to the Business (being the purchase records) shall be retained by the Transferor and the Transferor shall undertake to the Transferee to:
 - (a) preserve those records in such manner and for such periods as may be required by law;

- (b) give the Transferee as from the Transfer Date reasonable access during normal business hours to such records and to take copies of such records.

7. Employees

Transfer Regulations

- 7.1 The parties accept that, to the extent that the undertaking or part of the undertaking of the Transferor is continued by the Transferee after the Transfer Date, this Agreement and the transfer of the Business which is effected in connection with the Transfer Scheme are governed by the Transfer Regulations and the following provisions shall apply in connection therewith:
 - (a) the contract of employment of each of the Relevant Employees (save insofar as such contract relates to any occupational pension scheme) shall be transferred to the Transferee with effect from the Transfer Date which shall be the "time of transfer" under the Transfer Regulations and the Transferee shall employ each such Relevant Employee on the terms of those contracts of employment (save insofar as such contract relates to any occupational pension scheme) with effect from the Transfer Date;
 - (b) the Transferor shall perform and discharge all its obligations in respect of all the Relevant Employees for its own account up to and including the Transfer Date including, without limitation, discharging all wages and salaries of the Relevant Employees, all employer's contributions to any relevant occupational pension scheme and all other costs and expenses related to their employment (including, without limitation, any Taxation, accrued holiday pay, accrued bonus, commission or other sums payable in respect of service prior to the close of business on the Transfer Date) and shall indemnify the Transferee and keep the Transferee indemnified against each and every action, proceeding, liability (including, without limitation, any Taxation), cost, claim, expense (including, without limitation, reasonable legal fees) or demand arising from the Transferor's failure so to discharge;
 - (c) the Transferor shall indemnify the Transferee and keep the Transferee indemnified against each and every action, proceeding, cost, claim, liability (including, without limitation, any Taxation), expense (including, without limitation, reasonable legal fees) or demand which relates to or arises out of any act or omission by the Transferor or any other event or occurrence prior to the Transfer Date and which the Transferee may incur in relation to any contract of employment or collective agreement concerning one or more of the Relevant Employees pursuant to the provisions of the Transfer Regulations or otherwise including, without limitation, any such matter relating to or arising out of:
 - (i) the Transferor's rights, powers, duties and/or liabilities (including, without limitation, any Taxation) under or in connection with any such contract of employment or collective agreement, which rights, powers, duties and/or liabilities (as the case may be) are or will be transferred to the Transferee in accordance with the Transfer Regulations; or
 - (ii) anything done or omitted before the Transfer Date by or in relation to the Transferor in respect of any such contract of employment or collective agreement or any Relevant Employee, which is deemed by the Transfer Regulations to have been done or omitted by or in relation to the Transferee save where the thing done or omitted to be done before the Transfer Date relates to the Transferee's failure to comply with its obligations referred to in clause 7.5;
 - (d) if any contract of employment or collective agreement which is neither disclosed in writing to the Transferee by the Transferor prior to the Transfer Date nor made available

to the Authority under Schedule 15.3 (*Handover Package*) of the Franchise Agreement prior to the Transfer Date shall have effect as if originally made between the Transferee and any employee ("the **Undisclosed Employee**") or a trade union or employee representatives as a result of the provisions of the Transfer Regulations (without prejudice to any other right or remedy which may be available to the Transferee):

- (i) the Transferee may, upon becoming aware of the application of the Transfer Regulations to any such contract of employment or collective agreement terminate such contract or agreement forthwith;
- (ii) the Transferor shall indemnify the Transferee against each and every action, proceeding, cost, claim, liability (including, without limitation, any Taxation), expense (including, without limitation, reasonable legal fees) or demand relating to or arising out of such termination and reimburse the Transferee for all costs and expenses (including, without limitation, any Taxation) incurred in employing such employee in respect of his employment following the Transfer Date; and
- (iii) the Transferor shall indemnify the Transferee in respect of any Undisclosed Employee on the same terms mutatis mutandis as the Transferor has indemnified the Transferee in respect of a Relevant Employee pursuant to the terms of clauses 7.1(b) and 7.1(c); and
- (e) the Transferor shall indemnify the Transferee and keep the Transferee indemnified against each and every action, proceeding, cost, claim, liability (including without limitation, any Taxation) expense (including, without limitation, reasonable legal fees) or demand which relates to or arises out of any dismissal (including, without limitation, constructive dismissal) by the Transferor of any employee (not being a Relevant Employee) and which the Transferee may incur pursuant to the provisions of the Transfer Regulations.

Transferee's Indemnities

- 7.2 The Transferee shall indemnify the Transferor and keep the Transferor indemnified against each and every action, proceeding, liability (including, without limitation, any Taxation), cost, claim, loss, expense (including reasonable legal fees) and demand arising out of or in connection with:
 - (a) any substantial change in the working conditions of the Relevant Employees to the detriment of any or all of them occurring on or after the Transfer Date;
 - (b) the change of employer occurring by virtue of the Transfer Regulations and/or this Agreement being significant and detrimental to any of the Relevant Employees;
 - (c) the employment by the Transferee on or after the Transfer Date of any of the Relevant Employees other than on terms (including terms relating to any occupational pension scheme) at least as good as those enjoyed prior to the Transfer Date or the termination of the employment of any of them on or after the Transfer Date; or
 - (d) any claim by any Relevant Employee (whether in contract or in tort or under statute (including the Treaty of the European Community or European Union and any Directives made under the authority of any such Treaty or any successor thereof)) for any remedy (including, without limitation, for unfair dismissal, redundancy, statutory redundancy, equal pay, sex or race discrimination) as a result of any act or omission by the Transferee after the Transfer Date.
- 7.3 The Transferee shall indemnify the Transferor and keep the Transferor indemnified against each and every action, proceeding, liability, cost, claim, loss, expense (including

reasonable legal fees) and demand which arises as a result of it not providing or not having provided, in accordance with its obligations under the Transfer Regulations, the Transferor in writing with such information and at such time as will enable the Transferor to carry out its duties under Regulation 10(2)(d) and 10(6) of the Transfer Regulations concerning measures envisaged by the Transferee in relation to the Relevant Employees.

Details of Relevant Employees

7.4 The Transferor warrants to the Transferee that it has (to the extent not made available to the Authority under Schedule 15.4 (*Provisions Applying on and after Termination*) of the Franchise Agreement prior to the Transfer Date) provided the Transferee prior to the Transfer Date with full particulars of:

- (a) each Relevant Employee, including name, sex, and the date on which continuity of employment began for each Relevant Employee for statutory purposes;
- (b) terms and conditions of employment of each such person;
- (c) all payments, benefits or changes to terms and conditions of employment promised to any such person;
- (d) dismissals of Relevant Employees or termination of employment effected within 12 months prior to the Transfer Date including the Transfer Date;
- (e) all agreements or arrangements entered into in relation to the Relevant Employees between the Transferor, any Affiliate of the Transferor or any other relevant employer and any trade union or association of trade unions or organisation or body of employees including employee representatives and elected representatives; and
- (f) all strikes or other industrial action taken by any Relevant Employee within 12 months prior to the Transfer Date including the Transfer Date.

7.5 The Transferor and Transferee shall deliver to each of the Relevant Employees letters in an agreed form from the Transferor and Transferee as soon as is practicable after the execution of this Agreement (to the extent not already delivered prior to the Transfer Date).

8. Miscellaneous Provisions

Variations in Writing

8.1 No variation of this Agreement shall be effective unless in writing and signed by duly authorised representatives of the parties.

Partial Invalidity

8.2 If any provision in this Agreement shall be held to be void, illegal, invalid or unenforceable, in whole or in part, under any enactment or rule of law, such provision or part shall to that extent be deemed not to form part of this Agreement but the legality, validity and enforceability of the remainder of this Agreement shall not be affected.

Further Assurance

8.3 Each of the parties agrees to execute and deliver all such further instruments and do and perform all such further acts and things as shall be necessary or expedient for the carrying out of the provisions of this Agreement.

Notices

8.4 Any notice or other communication requiring to be given or served under or in connection with this Agreement shall be in writing and shall be sufficiently given or served if delivered or sent to the registered office of the recipient or:

(a) in the case of the Transferor to *[name of Transferor]* at:

[*address*]
 [*fax*]
 Attention: *[name]*

(a) in the case of the Transferee to *[name of Transferee]* at:

[*address*]
 [*fax*]
 Attention: *[name]*

8.5 Any such notice or other communication shall be delivered by hand or sent by courier, fax or prepaid first class post. If sent by courier or fax such notice or communication shall conclusively be deemed to have been given or served at the time of despatch. If sent by post such notice or communication shall conclusively be deemed to have been received two business days from the time of posting.

Governing Law

8.8 This Agreement shall be governed by and construed in accordance with the laws of Scotland and the parties irrevocably agree that the courts of Scotland are to have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement.

IN WITNESS whereof the parties hereto have executed this Agreement consisting of this and the preceding [] pages and the schedule annexed and executed as relative hereto as follows: -

Signed for and on behalf of **TRANSFEROR**

At

On the _____ day of _____ 20[xx]

By

..... Director

..... Name (Printed)

Before this witness:-

..... Witness

..... Name

..... Address

.....
Signed for and on behalf of **TRANSFeree**

At

On the day of 20[xx]

By

..... Director

..... Name (Printed)

Before this witness:-

..... Witness

..... Name

..... Address

.....

SCHEDULE

This is the Schedule referred to in the foregoing Supplemental Agreement between [] and []

NET ASSET STATEMENT

The Net Asset Statement shall be drawn up (except to the extent otherwise agreed by the Transferor and the Transferee) in accordance with accounting principles generally accepted in the United Kingdom and such that the Transferring Assets and Liabilities are valued on the following basis:

1. Rights and liabilities relating to an obligation of carriage under the terms of any Fare shall be valued in accordance with the following formula:

$$(C - D) \times \frac{A}{B} + E$$

where:

C equals the Credit (exclusive of any Value Added Tax) received by the Transferor in respect of the Fare provided that:

- (a) such Credit shall be deemed not to include any reduction in respect of a discount allowed to the purchaser of the Fare pursuant to the Passenger's Charter or any other passenger's charter of the Transferor;
- (b) if the Fare is a Season Ticket Fare, such Credit shall be the New Credit (as defined in the Ticketing and Settlement Agreement) relating to that Season Ticket Fare on the Transfer Date if different to the Credit that was in fact received by the Transferor in respect of such Season Ticket Fare;
- (c) such Credit shall be net of any Private Settlement Credit (as defined in the Ticketing and Settlement Agreement) arising in respect of that Fare; and
- (d) such Credit shall be deemed to exclude any Credit received by the Transferor in respect of any commission due to it in respect of the sale of such Fare (provided that for these purposes the amount of such commission shall not exceed the National Standard Rate of Commission (as defined in the Ticketing and Settlement Agreement) in respect of the Fare);

D equals the Debit (exclusive of any Value Added Tax) received by the Transferor in respect of the commission due in respect of the sale of the Fare (provided that for these purposes the amount of such commission shall not exceed the National Standard Rate of Commission (as defined in the Ticketing and Settlement Agreement) in respect of the Fare);

$\frac{A}{B}$
equals:

- (a) in the case of a Season Ticket Fare, the number of journeys which the purchaser of the Fare is estimated to make from (and including) the Transfer Date to (and including) the last day on which the Fare is valid (including any extensions to its original period of validity) divided by the total number of

journeys which the purchaser of the Fare is estimated to make with that Fare (as determined in each case in accordance with Schedule 28 of the Ticketing and Settlement Agreement);

- (b) in the case of any other Fare which entitles the holder thereof to make more than two journeys, the number of days for which the Fare continues to be valid after the Transfer Date (including any extensions to its original period of validity) divided by the total number of days for which such Fare is valid on issue (except to the extent that it can reasonably be estimated what proportion of the journeys which could be made on issue of the Fare have not been made prior to the Transfer Date); or
- (c) in the case of any other Fare, zero; and

E equals, if $\frac{A}{B}$ is greater than zero:

the amount of any discount to which it can be reasonably estimated that the purchaser of the Fare would be entitled pursuant to the Passenger's Charter or any other passenger's charter of the Transferor on purchasing an equivalent Fare on the expiry of the relevant Fare;

and for these purposes a Credit or Debit shall be deemed to be received when the relevant Fare is Accepted for Clearing (as defined in the Ticketing and Settlement Agreement).

2. Rights and liabilities relating to an Excess Fare, Reservation or Upgrade (as such terms are defined in the Ticketing and Settlement Agreement) shall be valued at zero unless such Excess Fare, Reservation or Upgrade involves more than two journeys, in which case they shall be valued in accordance with paragraph 1 and references to Fare in paragraph 1 shall be construed accordingly.
3. Rights and liabilities under a Discount Card shall be valued in accordance with the following formula:

$$(C - D) \times \frac{A}{B}$$

where:

- C equals the Credit (exclusive of any Value Added Tax) received by the Transferor in respect of the Discount Card;
- D equals the Debit (exclusive of any Value Added Tax) received by the Transferor in respect of the commission due in respect of the sale of the Discount Card (provided that for these purposes the amount of such commission shall not exceed the National Standard Rate of Commission (as defined in the Ticketing and Settlement Agreement) in respect of the Discount Card); and
- $\frac{A}{B}$ equals the number of days for which the Discount Card continues to be valid after the Transfer Date (including any extensions to its original period of validity) divided by the total number of days for which such Discount Card is valid on issue, or in the case of any Discount Card listed in Schedules 12 or 39 of the Ticketing and Settlement Agreement on the Franchise Commencement Date, zero;

and for these purposes a Credit or Debit shall be deemed to be received when the relevant Discount Card is Accepted for Clearing (as defined in the Ticketing and Settlement Agreement).

4. Relevant Debits and Credits shall be valued at the full amount of such Debits and Credits (inclusive of any Value Added Tax) but excluding any Debits and Credits arising in respect of Adjustment Amounts (as defined in the Ticketing and Settlement Agreement) which are received by the Transferee in respect of a change to the Credit which is used to value any relevant Season Ticket Fare under paragraph 1 of this Schedule to the extent such Adjustment Amounts relate to a period after the Transfer Date.

5. Rights and liabilities in respect of any contract, lease, licence or other equivalent arrangement (excluding rights and liabilities valued under paragraphs 1 to 4) shall be valued at nil except to the extent that the relevant rights and liabilities include matters specified in the left hand column of the following table, which shall be valued on the basis specified in the right hand column of the following table:

RIGHTS AND LIABILITIES	VALUE
Any accrued rights to receive payment	Monetary amounts so accrued, subject to any provision being made for payment not being received from any other person
Any right to receive payment in respect of goods and/or services provided by the Transferor prior to the Transfer Date where the due date for such payment is after the Transfer Date	Amount payable under such contract, lease, licence or other equivalent arrangement for the goods and/or services so provided by the Transferor, subject to any provision being made for payment not being received from any other person
Any accrued liabilities to make payment	Monetary amounts so accrued
Any liability to make payment in respect of goods and/or services provided to the Transferor prior to the Transfer Date where the due date for such payment is after the Transfer Date	Amount payable under such contract, lease, licence or other equivalent arrangement for the goods and/or services provided to the Transferor.
Any rights in respect of which payment has already been made by the Transferor	Monetary amounts so paid, subject to any provision being made for such rights not being exercisable against any other person
Any liabilities in respect of which payment has already been received by the Transferor	Monetary amounts so received
Any liability resulting from any breach of or failure by the Transferor to comply with the terms of any such contract, lease, licence or other equivalent arrangement	Amount of such liability or, to the extent that such amount is not ascertained, the parties reasonable estimate of the amount of such liability

6. Any other property, rights or liabilities shall be valued on the basis of a willing vendor and purchaser and ongoing usage within the railway industry.

.....
Transferor (Director)

.....
Transferee (Director)

SCHEDULE 16

THIS IS SCHEDULE 16 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT BETWEEN THE AUTHORITY AND SERCO CALEDONIAN SLEEPERS LIMITED

Pensions

1. **Franchise Sections**

- 1.1 The Franchisee shall, in respect of the Franchise Services, participate in, and become the Designated Employer in relation to the section of the Railways Pension Scheme set up or to be set up in respect of the Caledonian Sleeper Franchise (the **Franchise Sections**). Subject to paragraphs 3 and 4.1(c), each employee of a Franchisee will be offered membership of a Franchise Section.
- 1.2 The Franchisee as Designated Employer in relation to the Franchise Section shall take such action as is required or directed by the Authority to effect and/or reflect the transfer in or transfer out of members to/from the Franchise Section consequent to an aggregation or disaggregation by the Authority of services under the Previous Franchise Agreement.

2. **Restrictions on Membership**

The Franchisee will restrict membership of any Franchise Section which has adopted the Shared Cost Arrangement to its employees. If a Franchise Section has adopted the Defined Contribution Arrangement then, subject to paragraph 4 and to the consent of the Authority, membership of that Franchise Section may include employees of any subsidiary of the Franchisee which is engaged in the railway industry and which becomes a Participating Employer in that Franchise Section.

3. **Closed Schemes**

Subject to any requirements of Her Majesty's Revenue and Customs, the Franchisee shall take such steps as may be necessary (including entering into any relevant deed of participation) to allow Closed Scheme Employees to continue in membership of the Closed Schemes in accordance with their terms. For the purposes of this paragraph 3:

- (a) **Closed Scheme Employees** means such of the employees of the Franchisee who were, immediately prior to the commencement of their employment with the Franchisee, members of any of the Closed Schemes; and
- (b) **Closed Schemes** means the British Railways Superannuation Fund, the Great Western Railway Supplemental Pensions Reserve Fund, the BR (1974) Pension Fund and the NFC Retirement Plan.

4. **Variations in benefits and contributions; Investment**

- 4.1 The Franchisee shall promptly consult with the Authority in relation to any proposal it considers would fall within the scope of paragraphs 4.1(a) to (g) inclusive prior to putting such a proposal to the Pensions Committee of any Franchise Section, the Trustee of the Railways Pension Scheme, or to any trade union. The Franchisee shall not, without the prior written consent of the Authority (which may be given on such terms and subject to such conditions as the Authority thinks fit):
 - (a) restructure or change the composition of the earnings of employees of the Franchisee or its subsidiaries in such a way as to increase the part of those earnings which qualifies as pensionable earnings under the Rules applicable to any Franchise Section or take any action (or consent to the taking of any action) which could detrimentally

affect the funding of any Franchise Section, including varying or providing different or additional benefits under that Franchise Section or promising to do so, unless:

- (i) such change is required by Law; or
- (ii) such change only affects benefits payable in respect of past service of members of that Franchise Section and on or prior to the effective date of the change the Franchisee pays an additional cash payment to the Trustee which, in the opinion of the Actuary, meets in full the additional funding cost imposed on that Franchise Section; or
- (iii) would not lead to substantial changes in the funding of any Franchise Section and is the result of normal application of that Franchise Section's Rules in the ordinary day to day running of the business of the Caledonian Sleeper Franchise, for example, where individual employees are, from time to time, promoted or transferred to a higher paid or different employment which has a different composition of earnings.

- (b) make or consent to any proposal to change the provisions of the Pension Trust in respect of the Franchise Sections unless the change is required by Law;
- (c) provide retirement, death, disability or life assurance benefits for or in respect of any of its employees other than under any Franchise Sections or as provided in paragraph 3;
- (d) omit to provide the above-mentioned benefits for and in respect of its employees save that, without prejudice to any rights which any such employee may otherwise have, the Franchisee shall not be obliged for the purposes of this Agreement to offer such benefits to any employee employed on a fixed term contract of 12 months or less;
- (e) take any action (or consent to the taking of any action) which could affect the contributions payable by Participating Employers under any Franchise Section, including (but not limited to) exercising any discretion allowed to the Franchisee as Designated Employer arising out of any actuarial valuation of a Franchise Section, and varying or providing different or additional benefits under the Franchise Sections in respect of future service, unless such action is required by Law; or
- (f) close a Franchise Section to new members; or
- (g) take (or omit to take) any action which could result in any Franchise Section being wound up, in whole or in part.

4.2 The Franchisee shall use all reasonable endeavours to procure that the provisions of Clause 5G (Consultation with Pensions Committees) of the Pension Trust are amended such that they do not apply in respect of any Franchise Section.

4.3 The Franchisee shall consult with the Authority on:

- (a) any proposal made by the Trustee or Pensions Committee to change the statement of investment principles applicable to any Franchise Section; and
- (b) any proposal to alter the rate of contributions payable by the Franchisee or its employees under a new schedule of contributions for the Franchise Section.

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

5. Initial Transfer Value

The Franchisee and the Authority acknowledge that if for the purposes of this Agreement, under the terms of the Railways Pension Scheme, a transfer payment is made to a Franchise Section from another section of the Railways Pension Scheme in relation to Protected Persons, as defined under the Railway Pensions (Protection and Designation of Schemes) Order 1994, who had accrued benefits in such other section prior to the Franchise Commencement Date and who become members of that Franchise Section, article 7(4) of that Order shall apply.

6. **Funding Liabilities**

- 6.1 The Franchisee shall pay the employer contributions required under the schedule of contributions applicable to each Franchise Section (and any of the Closed Schemes in which it participates) in respect of the Franchise Term subject to the provisions of paragraphs 6.2 to 6.4 below.
- 6.2 Where, during or on expiry of the Franchise Term, Franchise Services are aggregated or disaggregated by the Authority (for example, as a result of remapping) and, as a consequence, a Franchise Section of which the Franchisee is the Designated Employer is required to accept a transfer in or to make a transfer out of members, the Authority shall ensure that the Franchisee has no liability for any resulting deterioration immediately arising in the funding level of the Franchise Section measured in accordance with the Franchise Sections' technical provisions in Part 3 of the Pensions Act 2004 or for any amount arising under article 7(4) of the Railways Pensions (Protection and Designation of Schemes) Order 1994. Notwithstanding the above, the Authority shall have no liability for any future deterioration in the funding levels of the Franchise Section linked to such transfer in or out of members.
- 6.3 On expiry or earlier termination of the Franchise Term, subject to the Franchisee having complied with its funding obligations under paragraph 6.1 above during the Franchise Term, the Authority shall procure that any Successor Operator shall become the Designated Employer in relation to the Franchise Section and shall assume all of the liabilities and obligations previously owed by the Franchisee in relation to the Franchise Section.
- 6.4 Where, on termination of the Franchise (whether on expiry or earlier termination for any reason other than an Event of Default), there is no Successor Operator the Authority shall, subject to the Franchisee having complied with its funding obligations under paragraph 6.1 above during the Franchise Term, ensure that the Franchisee has no further liability to fund the Franchise Section.

7. **Discharge of obligations**

- 7.1 The Authority may at any time during the Franchise Term seek information from the Trustee with a view to satisfying itself that the Franchisee and the other Participating Employers (if any) have fully discharged their respective obligations under the Railways Pension Scheme, including (but not limited to) their obligations in respect of the payment of contributions to any Franchise Section.
- 7.2 The Franchisee shall, at its expense, promptly provide such information in relation to any Franchise Section, including (but not limited to) actuarial advice and information, as the Authority may from time to time request and shall authorise and consent to the Trustee doing so.
- 7.3 The Franchisee shall use all reasonable endeavours to provide to the Authority:
 - (a) within 1 month of the expiry of each Franchise Year; and

(b) at other times as soon as practicable following a request by the Authority, a certificate signed by the Trustee stating either that the Franchisee and each of the other Participating Employers (if any) has fully complied with its obligations under the Railways Pension Schemes, including (but not limited to) its obligation to contribute to the Franchise Sections or, if it or any of them has not so complied, stating the extent to which it has not (or they have not) done so. Where the certificate is given pursuant to paragraph 7.3(a), it shall cover the relevant Franchise Year; where the certificate has been given pursuant to paragraph 7.3(b), it shall cover such period as the Authority shall specify.

7.4 If the Trustee does not certify that the Franchisee or any other Participating Employer has fully complied with its obligations under the Railways Pension Scheme or if the Authority otherwise reasonably considers that the Franchisee or any other Participating Employer has not complied with such obligations, the Authority shall be entitled to withhold from any Franchise Payments payable by it under Schedule 8 (*Payments*) an amount which is, in its opinion, no greater than the amount of any contribution that the Franchisee or such Participating Employer has thereby failed to make or avoided making.

7.5 The Authority may withhold such amount until such time as it reasonably determines that the relevant contributions have been made in full by the Franchisee or such Participating Employer. Following that determination, the amount withheld shall become payable (without interest) on the next day on which a Franchise Payment becomes payable under Schedule 8, being a day which falls no less than 7 days after such determination or, if there is no such day, 14 days after the date of such determination. To the extent that the Authority has not so determined within 4 weeks after the expiry of the Franchise Period, the Franchisee's right to receive the amount so withheld under this Agreement shall lapse and the Authority shall not be obliged to pay such amount.

8. Definitions

Unless otherwise defined in this Agreement, terms defined in this Schedule 16 shall have the meanings ascribed to them in the Railways Pension Scheme.

SCHEDULE 17

THIS IS SCHEDULE 17 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT BETWEEN THE AUTHORITY AND SERCO CALEDONIAN SLEEPERS LIMITED

Confidentiality, FOISA and Data Protection

1. Confidentiality

Subject to the provisions of the Act, the Transport Act, the Railways Act 2005 and paragraphs 2 to 9, each party shall hold in confidence all documents, materials and other information, whether technical or commercial, supplied by or on behalf of another party (including all documents and information supplied in the course of proceedings under the Dispute Resolution Rules or the rules of any other dispute resolution procedures to which a dispute is referred in accordance with this Agreement) and shall not, except with that other party's written authority:

- 1.1 publish or otherwise disclose the same otherwise than as expressly provided for in this Agreement;
- 1.2 use for any purpose other than as required pursuant to the terms of this Agreement unless or until the recipient party can demonstrate that any such document, material or information is in the public domain through no fault of its own and through no contravention of this Agreement, whereupon to the extent that it is in the public domain this obligation shall cease.

2. Disclosure of Confidential Information

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

- (a) to any Affiliate of such party, upon obtaining from such Affiliate an undertaking of confidentiality equivalent to that contained in paragraph 1;
- (b) to any Associate of such party, upon obtaining from such Associate an undertaking of confidentiality equivalent to that contained in paragraph 1;
- (c) to any third party consultants or advisers engaged by or on behalf of such party and acting in that capacity, upon obtaining from such consultants or advisers an undertaking of confidentiality equivalent to that contained in paragraph 1;
- (d) to any lenders, security trustee, bank or other financial institution (and its or their advisers) from which such party is seeking or obtaining finance, upon obtaining from any such person an undertaking of confidentiality equivalent to that contained in paragraph 1;
- (e) to the extent required by Law or pursuant to an order of any court of competent jurisdiction or under the Dispute Resolution Rules or the rules of any other dispute resolution procedures to which a dispute is referred in accordance with this Agreement or the rules of a recognised stock exchange or a formal or informal request of any taxation authority;
- (f) to any insurer, upon obtaining from such insurer an undertaking of confidentiality equivalent to that contained in paragraph 1;

- (g) to any director, employee or officer of such party, to the extent necessary to enable such party to perform its obligations under this Agreement or to protect or enforce its rights under this Agreement;
- (h) by the Franchisee to the ORR, a Passengers' Council or a Local Authority; or
- (i) by the Authority to any department or officer of the Scottish Government or to the ORR.

3. Publication of Certain Information

- 3.1 Notwithstanding the provisions of paragraph 1, the Authority may Publish whether to the press, the public or to one or more individuals, companies or other bodies, (including to any prospective Successor Operator) in such form and at such times as it sees fit, the following (irrespective of whether the same was provided to the Authority by the Franchisee or a third party):
 - (a) the amount of any Franchise Payments payable under this Agreement and the aggregate amount of Franchise Payments paid in each year under this Agreement;
 - (b) such information as the Authority may consider reasonably necessary to Publish in connection with the performance of its functions in relation to any Closure or proposed Closure;
 - (c) any Passenger's Charter Statistics and the amount of any payments by the Franchisee under the Passenger's Charter;
 - (d) such information as may reasonably be required in connection with the retendering or reletting of the franchise or any part thereof, provided that such information may only be published during the period of, or during the period leading up to, such retendering or reletting;
 - (e) any reports and accounts delivered to the Authority under Schedule 13 (*Franchise Management and Information Obligations*);
 - (f) the results of any monitoring or measurement of the performance of the Franchisee in the provision of the Franchise Services (including any information provided under Schedule 11 (*Agreement and Service Delivery Management Provisions*) and any information relating to the SQUIRE Regime);
 - (g) the results, on a Route, station or other comparable basis, of any calculation of passenger numbers under Schedule 1.5 (*Information about Passengers*);
 - (h) the results of any survey under Schedule 1.5;
 - (i) the results of any assessment or inspection under Schedule 11 (*Agreement and Service Delivery Management Provisions*);
 - (j) details of the Franchisee's plans and performance in respect of safety;
 - (k) such information as may reasonably require to be Published in connection with Schedule 3 (*Priced Options*);
 - (l) such information as the Authority may reasonably require to include in its annual report in respect of the Franchisee; and

- (m) such information as the Authority may reasonably require to publish at or around the expiry or possible termination of the Franchise Period in order to secure continuity of the provision and operation of the Franchise Services.
- 3.2 Notwithstanding any other provision of this Schedule 17, the Authority in respect of the Franchise Services may publish any other information relating to the Franchisee if the Authority has previously notified the Franchisee and the Franchisee does not object to such publication and demonstrate to the reasonable satisfaction of the Authority within 14 days of such notification that the publication of such information would be materially detrimental to its business.

4. **Confidential Information and FOISA**

- 4.1 Without prejudice to paragraph 2 of this Schedule 17, the Franchisee acknowledges that the Authority is subject to the requirements of the FOISA and the EIRs and may require to disclose data or information in relation to this Agreement pursuant to the provision of the FOISA and the EIRs.
- 4.2 The Franchisee shall transfer any Request for Information to the Authority as soon as reasonably practicable after receipt and in any event within 7 days of receiving any Request for Information.
- 4.3 The parties acknowledge that the public interest test should be applied to any request for disclosure of Commercially Sensitive Information under FOISA.
- 4.4 Where the Authority receive a written request for information which is covered by the FOISA or the EIRs and which relates to any Confidential Information or Commercially Sensitive Information (the "**Requested Information**") the parties shall comply with the procedure set out in paragraphs 4.4(a) to 4.4(f):
 - (a) subject to paragraph 4.4(d), the Authority shall before making any disclosure of the Requested Information and as soon as reasonably practicable after receiving the Request for Information notify the Franchisee of the receipt of such Request for Information and of the nature and extent of the information covered by the Request for Information;
 - (b) following receipt of notification under paragraph 4.4(a) the Franchisee may make representations in writing to the Authority as to whether and on what basis the Requested Information is covered by any exemption in the FOISA or the EIRs and should not therefore be disclosed, including where relevant any representations as to the balance of the public interests in disclosure and nondisclosure. Such representations must be provided to the Authority no later than 5 business days following the receipt of notification under paragraph 4.4(a) and any representations received after this time shall not be taken into account by the Authority;
 - (c) the Authority shall reasonably consider any representations made by the Franchisee under paragraph 4.4(b) before reaching a decision on whether they must and shall disclose the Requested Information. However, the parties acknowledge that in all cases it is for the Authority (having full regard to any guidance or codes of practice issued by the Scottish Information Commissioner or the Scottish Government) to determine whether it is obliged to disclose the Requested Information under the FOISA or the EIRs including where the public interest lies in relation to disclosure;
 - (d) notwithstanding paragraph 4.4(a) the Authority shall not notify the Franchisee under paragraph 4.4(a) where the Authority have already decided that they do

not intend to disclose the Requested Information because the FOISA or the EIRs do not apply to the Request for Information or an exemption under the FOISA or the EIRs can be applied provided that should the Authority determine at a later date that the FOISA or the EIRs do apply to the Requested Information, the process set out in this paragraph 4.4 shall be applied;

- (e) if the Authority take a decision to disclose the Requested Information, they shall notify the Franchisee of this decision not less than 3 days in advance of the disclosure being made; and
- (f) for the avoidance of doubt, references to the Requested Information under this paragraph 4.4 shall include both queries as to whether the Franchisee's Confidential Information exists and requests for the disclosure of the Franchisee's Confidential Information.

4.5 Without prejudice to the specific provisions above, each party shall co-operate and aid each other so as to enable them to meet their obligations under the FOISA or the EIRs or any successor legislation. Where a party receives a Request for Information then such co-operation shall include without limitation the provision of the Requested Information to the Authority by the Franchisee within a reasonable timescale to enable the Authority to comply with the Request for Information within the timescales required by the FOISA or the EIRs provided that, and solely to the extent that, the Requested Information is not otherwise in the possession of the Authority.

4.6 The Authority agrees that if the FOISA is amended and the Franchisee becomes a public authority (or other equivalent regulated entity) for the purposes of FOISA, then provisions analogous to this paragraph 4 (as appropriately amended to reflect the status of the Franchisee) shall be incorporated within this Agreement. In particular, the provisions of paragraph 4.5 shall be incorporated mutatis mutandis.

5. **Service Development Information**

Nothing in this Schedule 17 shall be deemed to prohibit, prevent or hinder, or render any party liable for, the disclosure by any party to Network Rail, the ORR, other Train Operators, any operators of services for the carriage of goods by rail, or any Stakeholder of any information relating to the development of the Service Level Commitments in accordance with Schedule 1.1 (Service Development).

6. **Publication by the Authority**

Nothing in this Schedule 17 shall be deemed to prohibit, prevent or hinder, or render the Authority liable for, the disclosure of any information by the Authority to the ORR, the Parliamentary Commissioner for Administration, a Minister of the Crown, any department of the government of the United Kingdom, the Scottish Parliament, the Scottish Government, the National Assembly of Wales, Network Rail and Visit Scotland, the Mayor of London, Greater London Authority or any department or officer of any of them or of information which is otherwise disclosed for the purpose of facilitating the carrying out of its functions.

7. **Provision of Information to ORR**

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

8. **Disclosure by Comptroller and Auditor General and Others**

The parties recognise:

- 8.1 that the Comptroller and Auditor General may in pursuance of his functions under the Exchequer and Audit Department Act 1921, the National Audit Act 1983 and the Government Resources and Accounts Act 2000, disclose information which he has obtained pursuant to those acts and which a party to this Agreement would not be able to disclose otherwise than under this Schedule 17;
- 8.2 the provisions of the Public Finance and Accountability (Scotland) Act 2000 and the Local Government in Scotland Act 2003 in respect of best value; and
- 8.3 that the Accounts Commission for Scotland, Audit Scotland and the Auditor General may in pursuance of their functions under the Public Finance and Accountability (Scotland) Act 2000, the Local Government in Scotland Act 2003 and the Local Government (Scotland) Act 1973 disclose information which they have obtained pursuant to those Acts and which a party to this Agreement would not be able to disclose otherwise than under this Schedule 17.

9. Data Protection

- 9.1 Both parties will duly observe all their obligations under the DPA, which arise in connection with the Franchise Services and this Agreement.
- 9.2 The Franchisee shall not perform its obligations under this Agreement in such a way as to cause the Authority to breach any of its applicable obligations under the DPA.
- 9.3 The Franchisee shall:-
 - (a) maintain a valid and up to date notification under the DPA;
 - (b) Process the Personal Data only to the extent, and in such manner, as is necessary in connection with the Franchise Services or this Agreement;
 - (c) take reasonable steps to ensure the reliability of any employees or sub-contractors who have access to the Personal Data;
 - (d) obtain prior written consent from the Authority in order to transfer the Personal Data to any sub-contractors in connection with this Agreement;
 - (e) ensure that all employees required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this paragraph 9;
 - (f) ensure that none of its employees publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority;
 - (g) permit the Authority or the Authority's representative to inspect and audit, in accordance with paragraphs 9.4 and 8, the Franchisee's data processing activities (and/or those of its agents, subsidiaries and sub-contractors) and comply with all reasonable requests or directions by the Authority to enable the Authority to verify and/or procure that the Franchisee is in full compliance with its obligations under this Agreement;
 - (h) not Process Personal Data outside the European Economic Area without the prior written consent of the Authority and, where the Authority consents to a transfer, comply with:-

- (i) the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data that is transferred; and
- (ii) any reasonable instructions notified to it by the Authority.

9.4 Notwithstanding the general obligations in paragraph 9.3 above, where the Franchisee is Processing Personal Data as a Data Processor for the Authority, the Franchisee shall ensure that it has in place appropriate technical and contractual measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful Processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under the Seventh Data Protection Principle in Schedule 1 to the Data Protection Act 1998; and

- (a) provide the Authority with such information as the Authority may reasonably require to satisfy itself that the Franchisee is complying with its obligations under the DPA;
- (b) promptly notify the Authority of any breach of the security measures required to be put in place pursuant to this paragraph 9.4; and
- (c) ensure it does not knowingly or negligently do or omit to do anything which places the Authority in breach of the Authority's obligations under the DPA.

10. Continuing Obligation

This Schedule 17 (and any other provisions necessary to give effect hereto) shall survive the termination of this Agreement irrespective of the reason for termination.

SCHEDULE 18**THIS IS SCHEDULE 18 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT
BETWEEN THE AUTHORITY AND SERCO CALEDONIAN SLEEPERS LIMITED****Franchise Term Modification****1. Reduction of Franchise Term by 7 Reporting Periods**

If the Authority gives notice to the Franchisee not less than 3 months before the Initial Expiry Date, this Agreement shall terminate not less than 1 and not more than 7 Reporting Periods, as the Authority may stipulate, prior to the Initial Expiry Date.

2. Additional Two Hours

- 2.1 Notwithstanding any other provision of this Schedule 18, the Authority may by notice, given to the Franchisee not less than one month before the Expiry Date require that this Agreement shall continue after the Expiry Date until 2am on the day immediately after the Expiry Date ("the Extended Time"). No payment shall be due by the Authority to the Franchisee for this additional two hours.
- 2.2 In the event of the Authority giving notice pursuant to paragraph 2.1, the phrase "Expiry Date" shall (other than in paragraph 2.1), notwithstanding the terms of the Definitions Agreement, fail to mean the Extended Time.

SCHEDULE 19

THIS IS SCHEDULE 19 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT BETWEEN THE AUTHORITY AND SERCO CALEDONIAN SLEEPERS LIMITED

Other Provisions

1. Rights Cumulative

The rights of the Authority under this Agreement are cumulative, may be exercised as often as the Authority considers appropriate and are in addition to the rights of the Authority under the general Law. The exercise of such rights shall not limit the Authority's rights to make payment adjustments, or the Authority's rights to claim damages in respect of contraventions of this Agreement or pursue any available remedies under general Law.

2. Disputes

Disputes under this Agreement

- 2.1 Wherever this Agreement provides that the Authority may reasonably determine any matter, the Franchisee may, unless this Agreement expressly provides otherwise, dispute whether a determination made by the Authority is reasonable but the Authority's determination shall prevail unless and until it is agreed or found to have been unreasonable.
- 2.2 Where either party is entitled, pursuant to the terms of this Agreement, to refer a dispute arising out of or in connection with this Agreement for resolution or determination in accordance with the Dispute Resolution Rules, then such dispute shall, unless the parties otherwise agree and subject to any duty of the Authority under Section 55 of the Act, be resolved or determined by arbitration pursuant to the Dispute Resolution Rules.
- 2.3 The arbitrator in any dispute referred for resolution or determination under the Dispute Resolution Rules shall be a suitably qualified person chosen by agreement between the parties to such dispute or, in default of agreement, chosen by the Disputes Secretary from a panel of persons agreed from time to time for such purposes between the parties or, in default of agreement as to the arbitrator or as to such panel, selected on the application of any party by the President of the Law Society of Scotland or the President of the Institute of Chartered Accountants of Scotland from time to time (or such other person to whom they may delegate such selection).
- 2.4 For the avoidance of doubt:-
 - 2.4.1 Rules 41 and 69 to Schedule 1 of the Arbitration (Scotland) Act 2010 shall not apply to any arbitration pursuant to this Schedule 19 and are hereby expressly disapplied to any arbitration arising under the provisions of this Agreement;
 - 2.4.2 The Dispute Resolution Rules shall apply only in so far as they are not contrary to the mandatory rules (Schedule 1 of the Arbitration (Scotland) Act 2010).

Disputes under Other Agreements

- 2.5 The Franchisee shall notify the Authority of any disputes to which it is a party under any Inter-Operator Scheme, Access Agreement, Property Lease or Rolling Stock Related Contract, or under any other agreement in circumstances where the relevant dispute could have an adverse effect on the Franchisee's ability to comply with its obligations

under this Agreement or on the provision of the Franchise Services and which have been submitted for resolution either to the courts or to any other procedure for dispute resolution provided for under such agreements.

2.6 Such notification shall be made both:

- (a) at the time of such submission (and such submission shall include reasonable details of the nature of the dispute); and
- (b) at the time of the resolution of the dispute (whether or not subject to appeal) (and such submission shall include reasonable details of the result of the dispute, any associated award and whether it is subject to appeal).

2.6 The Franchisee shall provide such further details of any dispute referred to in paragraph 2.5 as the Authority may reasonably request from time to time and shall comply with the reasonable requests of the Authority in relation to the conduct of such disputes.

3. Notices

3.1 Any notice, notification or other communication under or in connection with:

- (a) the matters specified in Schedule 10.2 (*Termination and Expiry*), or any dispute under or in connection with this Agreement shall be in writing and shall be sufficiently served if delivered by hand or recorded delivery or sent by pre-paid first class post to the relevant party at the address for service set out below, or to such other address in the United Kingdom as each party or parties may specify by notice in writing to the other parties.

Name:	The Scottish Ministers
Address:	Transport Scotland, Buchanan House, 58 Port Dundas Road, Glasgow G4 0HF
Facsimile	n/a
E-mail:	[redacted text]
Attention:	The Director Rail

Name:	Serco Caledonian Sleepers Limited
Address:	Serco Caledonian Sleepers Limited, Suite 4D, 4 th Floor, 227 Ingram Street, Glasgow G1 1DA

Facsimile	n/a
E-mail:	[redacted text]
Attention:	Managing Director

- (b) any other matter under or in connection with this Agreement shall be in writing and shall be delivered:
 - (i) in accordance with paragraph 3.1(a);
 - (ii) by facsimile; or
 - (iii) by electronic data transfer

except that it shall be marked for the attention of the Managing Director of the Franchisee or the Franchise Manager.

Deemed Receipt

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

- (a) if sent by hand or recorded delivery, when delivered;
- (b) if sent by pre-paid first class post, from and to any place within the United Kingdom, 3 business days after posting unless otherwise proven;
- (c) if sent by facsimile, upon sending, subject to confirmation of completed transmission to the intended recipient; and
- (d) if sent by electronic data transfer, upon sending, subject to receipt by the sender of a "delivered" confirmation (provided that the sender shall not be required to produce a "read" confirmation).

4. Assignment

The Franchisee shall not without the prior written consent of the Authority assign, hold in trust for any other person, or grant a Security Interest in or over, this Agreement or any part hereof or any benefit or interest or right herein or hereunder (other than any right of the Franchisee to receive monies under a Supplemental Agreement).

5. Set Off

The Authority may set off against any amounts payable by it under this Agreement any outstanding amounts or liabilities whether actual, contingent or prospective of the Franchisee to the Authority on any account whatsoever (including any monetary penalty payable under the Act).

6. Miscellaneous Provisions

Waivers

6.1(a) Either party may at any time waive any obligation owed to it by the other party under this Agreement and the obligations of the parties hereunder shall be construed accordingly.

(b) No waiver by either party of any default by the other party in the performance of such party's obligations under this Agreement shall operate or be construed as a waiver of any other or further such default, whether of a like or different character. A failure to exercise or delay in exercising a right or remedy under this Agreement shall not constitute a waiver of any right or remedy or a waiver of any other rights or remedies and no single or partial exercise of any right or remedy under this Agreement shall prevent any further exercise of such right or remedy or the exercise of any other right or remedy.

Time Limits

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

Partial Invalidity

6.3 If any provision in this Agreement is held to be void, illegal, invalid or unenforceable, in whole or in part, under any enactment or rule of Law, such provision or part shall to that extent be deemed not to form part of this Agreement but the legality, validity and enforceability of the remainder of this Agreement shall not be affected.

Further Assurance

6.4 Both parties agrees to execute and deliver all such further instruments and do and perform all such further acts and things as shall be necessary or expedient for the carrying out of the provisions of this Agreement.

Rights of Third Parties

6.5(a) A person who is not a party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement except to the extent set out in this paragraph 6.5. The parties agree that although this Agreement is made under Scots law, English law shall apply to the extent needed to give effect to this paragraph 6.5.

(b) Any Successor Operator or potential Successor Operator nominated by the Authority and notified to the Franchisee for the purposes of this paragraph 6.5 may enforce and rely on the provisions of Schedule 15 (*Obligations Associated with Termination*) to the same extent as if it were a party but subject to paragraphs 6.5(c) and (d).

(c) This Agreement may be terminated, and any term may be amended or waived, in each case in accordance with the terms of this Agreement, without the consent of any person nominated under paragraph 6.5(b).

(d) The person nominated under paragraph 6.5(b) shall only be entitled to enforce and rely on Schedule 15 to the extent determined by the Authority (whether at the time of nomination or at any other time) and, to the extent that any such person is entitled to enforce and rely on Schedule 15, any legal proceedings in relation thereto must be commenced within 1 year of the expiry of the Franchise Period and any such person shall not be entitled to enforce or rely on Schedule 15 to the extent that it has consented to any particular act or omission of the Franchisee which may constitute a contravention of Schedule 15 or has been afforded a reasonable opportunity to indicate to the Franchisee that it is not so consenting and has not so indicated (the extent of such reasonable opportunity to be determined by the Authority unless otherwise agreed).

Authority's Consent or Approval

6.6 Where any provision of this Agreement provides for any matter to be subject to the consent or approval of the Authority then (subject only to the express terms of that provision as to the basis on which that consent or approval may be given or withheld) the Authority shall be entitled to give that consent or approval subject to any condition or conditions as it considers appropriate, which may include the adjustment of any of the terms of this Agreement.

7. **Enforcement Costs**

The Franchisee shall compensate the Authority for all reasonable costs incurred by the Authority as a result of the Franchisee failing to perform its obligations under this Agreement in accordance with their terms in the exercise of the Authority's rights under Schedule 10 (*Remedies, Termination and Expiry*).

8. **Currency**

If at any time the Bank of England or other competent monetary authority of the United Kingdom or Scotland or competent organ of H.M. Government of the United Kingdom or any lawful government of Scotland lawfully recognises the Euro as lawful currency and tender of the United Kingdom, the Authority may, by reasonable notice to the Franchisee elect that all payment obligations arising under this Agreement shall be denominated and/or constituted in Euros on the basis that all outstanding amounts and obligations previously denominated and/or constituted in pounds sterling shall be translated into Euros at the exchange rate applied or recognised by the United Kingdom authority or organ which granted recognition of Euros for the purpose of such translation on the date on which it granted recognition of Euros.

9. **Communications**

- 9.1 The parties recognise the need to promote clear, consistent messages to Stakeholders, the media and the public on matters of common interest concerning the Caledonian Sleeper Franchise and to foster and demonstrate a healthy working relationship among themselves and each of the parties shall use reasonable endeavours to do the foregoing.
- 9.2 The Franchisee shall:-
 - (a) give advance notice to the Authority of the issue of all press releases relating to rail services or facilities in Scotland and/or England;
 - (b) provide advance advice to the Authority on content of all press releases relating to rail services or facilities in Scotland and/or England;
 - (c) consult with the Authority concerning the press releases referred to in (b);
 - (d) make joint announcements with the Authority where the Authority deems the same to be appropriate (either by their type (e.g. as to their value, duration, impact or otherwise) or individually of which the Authority may notify the Franchisee from time to time);
 - (e) not issue a press release should the Authority so require; and
 - (f) prepare press releases for the Authority's approval, at the Authority's reasonable request.
- 9.3 The parties shall each encourage and develop dialogue between the respective press office staff of each organisation, so as, where reasonably possible, to co-ordinate media responses and to rebut and correct inaccuracies.

10. **Transfer of Rights and Obligations**

The transfer by Law of any of the rights and obligations of the Authority under this Franchise Agreement shall not be restricted by paragraphs 1.1 or 1.2 of Schedule 9.1 (*Variations and Financial Consequences of Change*) or any other provisions of this Agreement and such a transfer shall not be a Change.