

Supplemental Agreement to the Franchise Agreement - Emergency Measures Agreement ("**EMA2**")

The Scottish Ministers

and

Abellio ScotRail Limited

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BETWEEN:

- (1) **THE SCOTTISH MINISTERS**, Victoria Quay, Edinburgh, EH6 6QQ acting through Transport Scotland, Buchanan House, 58 Port Dundas Road, Glasgow, G4 0HF or such other agency, department or other organisational unit of the Scottish Government as they may from time to time nominate (who and whose successors are referred to as the **Authority**); and
 - (2) **ABELLIO SCOTRAIL LIMITED** (company number SC450732), whose registered office is at Atrium Court, 50 Waterloo St, Glasgow, G2 6HQ (the **"Franchisee"**),
- each a **"Party"** and together, the **"Parties"**.

RECITALS:

- (A) The Scottish Ministers and the Franchisee entered into a franchise agreement (the **"Franchise Agreement"**) and a definitions agreement (the **"Definitions Agreement"**) both dated 7 and 18 October 2014 in respect of certain railway passenger services designated by the Scottish Ministers as eligible for provision under a franchise agreement (the **"ScotRail Franchise"**).
- (B) On 11 March 2020 the World Health Organisation declared the coronavirus disease 2019 (**"COVID-19"**) a pandemic and that pandemic continues to affect the ScotRail Franchise.
- (C) Anticipating the impact of COVID -19 on the operation of the ScotRail Franchise the Parties entered into an Emergency Measures Agreement (the **"EMA"**) on 7 April 2020 to amend, temporarily, the Franchise Agreement to address the impact of COVID-19.
- (D) The EMA has expired, with the impact of COVID-19 still having a fundamental impact on the operation of the franchise and therefore the Parties have agreed to enter into this agreement (**"EMA2"**) to record and implement their agreement on certain further amendments to the Franchise Agreement.
- (E) The Franchisee acknowledges that this EMA2 is entered into pursuant to article 5(5) of Regulation (EC) 1370/2007.

THE PARTIES AGREE AS FOLLOWS:

1. **INTERPRETATION AND CONSTRUCTION**

1. **Interpretation**

In this Agreement (unless the context otherwise requires):

- (a) words and expressions defined under the Franchise Agreement, the Definitions Agreement and the Act (as defined in the Definitions Agreement) shall have the same meanings when used in this Agreement;
- (b) words and expressions defined in the Interpretation Act 1978 shall have the same meanings when used in this Agreement;
- (c) the words "including", "include" and "in particular" are to be construed without limitation;
- (d) references to a person include its successors, transferees and assignees;

- (e) references in this Agreement to clauses and schedules are to clauses and schedules of this Agreement unless expressly specified to the contrary;
- (f) headings and references to headings shall be disregarded in construing this Agreement;
- (g) references to an agreement or other document shall be construed as referring to that agreement or document as from time to time supplemented, varied, replaced, amended, assigned or novated; and
- (h) words importing the masculine gender include the feminine gender and vice versa and words in singular include the plural and vice versa.

2. **Construction**

- (a) This Agreement is supplemental to and shall be read and construed together with the Franchise Agreement and this Agreement and the Franchise Agreement shall together constitute one and the same document.
- (b) In the event of conflict between (i) the terms of this Agreement, and the terms of the Franchise Agreement or (ii) between the terms of the EMA and this Agreement, in either case the terms of this Agreement shall prevail; provided that the Parties shall discuss (in good faith) practical and sensible solution(s) to such conflicts (including, if necessary, further amendments to this Agreement or the Franchise Agreement).
- (c) Save as expressly provided for in this Agreement the Franchise Agreement shall continue in full force and effect.
- (d) Any reference to the "term" or "duration" of this EMA2 (or "this Agreement") shall mean the Term and any Extended Term (if applicable) in accordance with clause 3 of this Agreement.

2. **PURPOSE OF THIS AGREEMENT**

2.1 The Parties acknowledge that:

- (a) this Agreement is based on the following overriding principles:
 - (i) the Parties recognising the exceptional circumstances presented by COVID-19;
 - (ii) the Parties seeking to ensure that, as far as possible, operational performance and the provision of Passenger Services is maintained;
 - (iii) the Parties seeking to ensure the Franchisee is insulated as far as is reasonable from the severe financial impacts of COVID-19 whilst not being overcompensated; and
 - (iv) the Parties cooperating with an overall goal of acting in the national interest.

3. **COMMENCEMENT AND TERM**

3.1 The EMA shall expire on and this Agreement shall take effect from 1.59 a.m on 20 September 2020 and shall continue until the earlier of:

- (a) 1.59 a.m. on 10 January 2021; or
- (b) the date the Parties mutually agree to terminate this Agreement,

(the "**Term**").

- 3.2 If not provided on or before the execution of this Agreement, the Franchisee shall within 2 days of the date of this Agreement provide: (i) a signed warranty from a statutory officer of ASR relating to the Budget in the form required by clause 18; and (ii) an executed copy of the alliancing security amendment agreement in the form set out in Appendix 3 to Schedule 1 (the "**Alliancing Security Amendment Agreement**"), together with a written resolution of the managing board and power of attorney in the name of NS Groep N.V. authorising the execution and delivery of the Alliancing Security Amendment Agreement. Should the Franchisee fail to comply with (ii) above, the Franchisee shall pay to the Authority, (without, for the avoidance of doubt, any claim or demand for the same being required) a sum equal to the Final Working Capital Repayment which sum shall be immediately due and payable and until paid shall gather interest as described in paragraph 3.6 of this Schedule 8A (Franchise Payments).
- 3.3 Subject to clause 0, the Parties may, by mutual agreement, extend the variations to the Franchise Agreement imposed by this Agreement by a further period ("**Extended Term**") and upon such agreement to extend, this Agreement shall remain in full force and effect until the expiry of the Extended Term.
- 3.4 The Authority shall have an unfettered discretion in proposing, accepting or refusing any extensions to the Term.
- 3.5 The amendments to the Franchise Agreement pursuant to this Agreement shall, unless otherwise required by the Authority or pursuant to this Agreement, cease to have effect on the later of the expiry of the Term or the Extended Term (as applicable).
- 3.6 At the expiry of this EMA2 the variations imposed on the Franchise Agreement by this Agreement shall cease and the Franchise Agreement, with the limited exceptions referred to in clause 3.7, shall continue on the terms and conditions operating before entry into this Agreement; but this clause shall not, for the avoidance of doubt, limit the operation or effect of clause 24 (Survival of Provisions after Termination or Expiry of this Agreement).
- 3.7 The limited exceptions referred to in clause 0 generally consist of amendments (to be agreed in accordance with clause 17) to expunge the impact of the period the EMA and EMA2 was in place from certain of the Franchise Agreement performance metrics and to recalibrate such metrics and amounts (the "**Recalibration Items**") to take account of their temporary suspension for the duration of the EMA and EMA2.
- 3.8 Within four (4) weeks of the commencement of this Agreement, the Authority shall provide the Franchisee with its view on the Franchisee liabilities in relation to the SQUIRE Investment Fund and the Station Investment Fund. The Franchisee shall respond to that within two (2) weeks of its receipt and thereafter the Parties shall meet to discuss and attempt, in good faith, to resolve their differences on the SQUIRE Investment Fund and the Station Investment Fund.

4. **AMENDMENTS TO THE FRANCHISE AGREEMENT**

From the date this Agreement takes effect under clause 3.1 until the expiry of the Term or the Extended Term (as applicable), the Franchise Agreement shall be varied as set out in 0this Agreement.

5. **COOPERATION; PAYMENT RECONCILIATION**

- 5.1 The Franchisee agrees to coordinate and cooperate with other Train Operators, Network Rail and other rail industry bodies, to ensure the continuation of Passenger Services across the network in a coordinated manner, and in line with the priorities and directions as may be set out by the Authority from time to time, including, but not limited to:

- (a) coordinating with other Train Operators to ensure consistency of coverage to all communities across the national network, including changes to Franchise Services to assist where other Train Operators are unable to operate their own Franchise Services;
 - (b) assisting altered or additional freight services to operate on the national rail network and, where appropriate, enabling certain essential goods (such as medical equipment or other urgent items) to be carried on Passenger Services; and
 - (c) continuing where possible and appropriate to enforce any agreements with third parties to deliver quality and value for money.
- 5.2 The Parties shall cooperate, in good faith, in order to agree on the proper implementation of the principles set out in Schedule 2 (*Payment Reconciliation Principles*).

6. **ADDITIONAL SERVICES**

- 6.1 The Franchisee acknowledges that the Authority may require special measures, in the form of increased cooperation or additional services, to be implemented while COVID-19 subsists and the Franchisee shall use its best endeavours to accommodate such requests and act in the national interests.
- 6.2 The Franchisee, if requested by the Authority, shall use its best endeavours to provide additional services, such as enhanced cleaning regimes to a standard reasonably proposed by the Authority.
- 6.3 The reasonable and proper costs incurred in carrying out such additional services shall be recoverable from the Authority as part of the 'Actual Costs' defined in Schedule 8.A (Franchise Payments)(as set out in Appendix 1 to 0 to this Agreement).

7. **MEETINGS**

- 7.1 Where the Franchise Agreement refers to a "meeting" of the Parties or the Parties and other third parties, such meetings may be conducted by conference call or other remote link as mutually agreed between the Parties.

8. **REMEDIAL PLANS**

- 8.1 Subject to the provisions of Schedule 10.1 of the Franchise Agreement, as amended by this Agreement, the requirement to submit a Remedial Plan shall be suspended for the duration of EMA2.
- 8.2 During the term of EMA2 the Franchisee shall continue to implement and comply with the NRPS Remedial Agreement agreed between the Parties on 30 August 2019 (as subsequently amended on 30 May 2020) and as reduced in scope by agreement of the Parties on 4 June 2020 pursuant to the proposals of the Scottish Ministers of 30 April 2020.

9. **FARES**

- 9.1 The Franchisee shall remain responsible for the collection of fare revenue using the same degree of skill, diligence, prudence and foresight which would be exercised by a skilled and experienced Train Operator using all reasonable endeavours to maximise revenue, whilst giving consideration to appropriate customer service in light of the prevailing circumstances and any guidance from the Authority, NHS Health Scotland or other relevant authority in relation to public interaction.
- 9.2 To the extent a ticket is sold which relates partially to the term of EMA2 and partially to the period after the expiry of EMA2, this shall be accounted for using the same principles that apply on the transfer of a franchise.

10. **OTHER FINANCIAL OBLIGATIONS**

On the last day of the Term of this Agreement the Franchisee shall pay to the Authority (without, for the avoidance of doubt, any claim or demand for the same from the Authority being required) a sum equal to the lesser of: (i) the Final Working Capital Repayment; and (ii) the amount calculated by subtracting from the Final Working Capital Repayment the aggregate of all sums received by the Authority under paragraph 10.6(b) of Schedule 8A (Franchise Payments). The sum payable under this clause shall be immediately due and payable and until paid shall gather interest as described in paragraph 3.6 of Schedule 8.A (Franchise Payments).

11. **FUNDING DEED AND OTHER BANK/ CREDIT FACILITIES**

11.1 The Funding Deed shall remain in force and shall not be amended by this Agreement.

11.2 During the Term the Franchisee will not pay any interest accrued before the date of this Agreement (including, for the avoidance of doubt, any interest accrued during the term of the EMA) or accruing during the Term in relation to (i) any loans provided under the Funding Deed or (ii) any other loans, bank or credit facilities or guarantees whatsoever to which it is party or has benefited from. The Franchisee shall ensure any such interest accrued or accruing shall remain due at the expiry of EMA2.

11.3 The Franchisee shall not during the Term of EMA2 repay any part of (i) any Inter Company Debt (as defined in the Funding Deed) that has been advanced pursuant to the Funding Deed or (ii) subject to clause 11.4 and clause 11.5, any other loans, bank or credit facilities or guarantees whatsoever to which it is party or has benefited from.

11.4 Nothing in this Agreement (including clauses 11.2 and 11.3 and Schedule 8A) shall apply to (i) the Rolling Stock Leases and (ii) the asset finance leases in Schedule 3 of this Agreement (the "**Asset Finance Leases**"), and nothing in this Agreement shall restrict the Franchisee from making any payments thereunder during the term of EMA2.

11.5 Nothing in this Agreement (including clauses 11.2, 11.3(ii) and Schedule 8A) shall restrict the Franchisee from:

- (a) [redacted];
- (b) paying interest on the HSBC letter of credit facility;
- (c) paying interest on the HSBC season ticket and smartcard bond guarantee facility;
- (d) paying fees on the Performance Bond; and/or
- (e) paying interest on the Alliancing Security.

12. **CHANGE**

12.1 Save as specified in Schedule 1 to this Agreement the provisions of Schedule 9 (Changes) of the Franchise Agreement shall: (i) be suspended for the duration of EMA2; and (ii) any Changes that were suspended during the EMA shall remain suspended for the duration of the EMA2.

12.2 Unless otherwise specifically agreed by the Authority, the impacts of COVID-19 shall not be considered, and such impact shall be excluded, in relation to any of the limbs of the definition of "Change" for the duration of EMA2 and the Franchisee shall not raise a claim for Change that arises from the impact of COVID-19 for the duration of the EMA2.

12.3 Any Change event that arises during the Term or arose during the term of the EMA unrelated to the impact(s) of COVID-19 during the Term or the term of the EMA (as the

case may be) shall be evaluated in accordance with the provisions in Schedule 9 (Changes) of the Franchise Agreement after the expiry of this Agreement.

13. REVERSION TO PERFORMANCE BENCHMARKS

13.1 Where the Franchisee's performance in the Reporting Periods before the EMA came into effect resulted in a breach or is at "default level", this was disregarded for the duration of the EMA and shall continue to be disregarded for the duration of EMA2 and the Authority shall determine (acting in its absolute discretion) the course of action, after the expiry of EMA2

13.2 Any course of action determined by the Authority in accordance with clause 0 shall in no circumstances be more advantageous to the Authority than the position prior to the EMA.

14. COMMITTED OBLIGATIONS

14.1 During the EMA, the Parties met and considered, acting reasonably and in good faith, whether the completion of Committed Obligations will be:

- (a) continued "as is";
- (b) delayed;
- (c) suspended; or
- (d) reduced in scope or application,

and agreed to a position in relation to each of the Committed Obligations (the "**Agreed COs Position**").

14.2 Subject to clause 14.1, in the event that a Committed Obligation involves Capital Expenditure the default assumption shall be that that Committed Obligation shall continue unaffected during the Term of this Agreement.

14.3 During the Term, the Parties shall keep the Agreed COs Position under review and make such changes to the Agreed COs Position as the Authority deems reasonably necessary or as otherwise agreed by the Parties. Any changes so made to the Agreed COs Position or otherwise to reflect the position set out in clause 14.2 shall be discussed at the next Reporting Period Forecast Review Meeting with a view to agreeing appropriate revisions to the Budget.

15. COVID-19 RELATED SUPPORT

15.1 The Franchisee shall use all reasonable endeavours to avail itself of, including applying for, any UK Government support that is offered in relation to the impact of COVID-19, including for example tax relief.

15.2 To the extent the Franchisee is successful in receiving such support, this shall be taken into account in relation to the application of the mechanisms in Schedule 8.A of the Franchise Agreement, (as set out in Appendix 1 to 0 to this Agreement), such that the Franchisee does not benefit from double recovery.

16. STATE AID

16.1 The Franchisee acknowledges and agrees that neither the EMA nor this Agreement must result in any financial advantage being granted to the Franchisee that is incompatible with the EU rules on State aid and, in particular, Articles 107 and 108 of the Treaty on the Functioning of the European Union. In that regard, it is noted in particular that the replacement Schedule 8A (as set out in Appendix 2 to 0 to this Agreement) defines the

parameters on the basis of which the compensation payment for discharging the public service obligations is to be calculated. In accordance with Articles 4(1) and 6(1) of Regulation (EC) N° 1370/2007 of 23 October 2007 on public passenger transport services by rail and by road, these parameters have been determined in such a way that no compensation payment may exceed the amount required to cover the net financial effect on costs incurred and revenues generated in discharging the public service obligations, taking account of revenue relating thereto kept by the Train Operator and a reasonable profit.

- 16.2 At the end of this Agreement, the Authority will carry out an ex-post check to ensure that there has been no overcompensation for the discharge of the public service obligations over the duration of the EMA and this Agreement. If necessary, the Authority will recover – in accordance with the EU State aid rules - any overcompensation in relation to the provision of the management role over the duration of this Agreement and/or the EMA or any other financial advantage that is identified as having been granted as a result of this Agreement and/or the EMA in violation of the EU State aid rules whether such overcompensation or other advantage has been identified by the Authority or by the European Commission and the Franchisee agrees to repay such monies promptly; provided that the Authority shall not be permitted to double recover for any amounts already covered under any such exercise carried out pursuant to the EMA.

17. EXPIRY OF EMA2 – RECALIBRATION ITEMS

- 17.1 The Parties shall, at least forty (40) days before the anticipated expiry of EMA2 (and unless the Parties have agreed further emergency measures to apply after the Term of EMA2), meet (either in person or remotely) and with both Parties acting reasonably and in good faith, seek to agree the recalibration required to the Recalibration Items.
- 17.2 The sole factor to be considered in recalibrating the Recalibration Items shall be the fact that an alternative contractual regime has applied for the duration of the EMA and EMA2 and no other factor shall be taken into account.

18. WARRANTIES; DELIVERY OF BUDGET FOR TERM OF EMA2

- 18.1 The Franchisee shall provide a warranty, in writing, from a statutory director of the Franchisee to the Authority confirming that:
- (a) the Budget submitted by the Franchisee on 9 September 2020 (attached to an email of 17.26 Hours from [redacted]) is a true and valid reflection of the budget assumed by the Franchisee at 16 September 2020; and
 - (b) in the preparation of such Budget no measures have been taken, nor during the Term will any measures be taken, to:
 - (i) suppress revenue and/or increase costs during the term of EMA2;
 - (ii) reallocate costs to, or revenues from the period when EMA2 is in place; or
 - (iii) act in a way that is contrary to the principles of EMA2 by using the existence or cessation of EMA2 to increase profitability.

- 18.2 Not used.

19. ENTIRE AGREEMENT

- 19.1 This Agreement contains all the terms which the Parties have agreed in relation to the subject matter of this Agreement and supersedes any prior written or oral agreements, representations or understandings between the Parties in relation to such subject matter.

19.2 The Franchisee acknowledges that this Agreement has not been entered into wholly or partly in reliance on, nor has the Franchisee been given any warranty, statement, promise or representation other than as expressly set out in this Agreement. To the extent that any such warranties, statements, promises or representations have been given the Franchisee unconditionally and irrevocably waives any claims, rights or remedies which it might otherwise have had in relation to them.

19.3 Nothing in this clause 19 shall exclude any liability which one Party would otherwise have to the other Party in respect of any statements made fraudulently.

20. **COUNTERPARTS AND DELIVERY**

20.1 This Agreement may be executed in any number of counterparts and by each of the Parties on separate counterparts.

20.2 Where executed in counterparts:

(a) this Agreement shall not take effect until both of the Counterparts have been delivered, The date of delivery shall be inserted at the top of page 1; and

(b) delivery will only take place when the date of delivery is agreed between the Parties after execution of this Agreement.

20.3 Where not executed in Counterparts, this Agreement shall become effective on the date agreed between the Parties.

21. **COSTS**

Each Party shall bear its own legal, accountancy and other costs and expenses incurred in connection with the preparation, execution and implementation of this Agreement and all documents ancillary to it.

22. **GOVERNING LAW**

This Agreement (and any non-contractual obligations arising out of or in connection with it) shall be governed and construed in accordance with the laws of Scotland and the Parties irrevocably agree, where competent, only 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.

23. **CONTRACTS (THIRD PARTY RIGHTS) (SCOTLAND) ACT 2017**

This Agreement does not create any rights in favour of third parties under the Contracts (Third Party Rights) (Scotland) Act 2017 to enforce or otherwise enable any provision of this Agreement.

24. **SURVIVAL OF PROVISIONS AFTER TERMINATION OR EXPIRY OF THIS AGREEMENT**

For the avoidance of doubt any provision of, or introduced into the Franchise Agreement by, this Agreement (including, but not limited to those in clause 3.6, Schedule 8.A (Franchise Payments) and Schedule 8.B (Performance Payment)) expressly or reasonably and necessarily required for the purpose of giving full effect to this Agreement shall survive the early termination, natural expiry in accordance with its terms, or any other ending or lapsing of this Agreement or the Franchise Agreement (however arising) and shall continue in full force and effect and shall be implemented in accordance with their terms. For the avoidance of doubt, any provision of the Franchise Agreement that is amended pursuant to the terms of this EMA2 and which is otherwise expressed as surviving for the purposes of the Franchise Agreement shall survive as amended by this EMA2.

IN WITNESS whereof these presents typewritten on this and the 8 preceding pages together with the Schedule are executed as follows:

SIGNED on behalf of **THE SCOTTISH MINISTERS** by,

William Joseph Reeve (Authorised Signatory)

at

on

.....
(Authorised Signatory)

SIGNED on behalf of **ABELLIO SCOTRAIL LIMITED** by,

(Authorised Signatory)

at

on

.....
(Authorised Signatory)

**THIS IS SCHEDULE 1 REFERRED TO IN THE FOREGOING SUPPLEMENTAL AGREEMENT TO
THE FRANCHISE AGREEMENT BETWEEN THE AUTHORITY AND ABELLIO SCOTRAIL LIMITED**

SCHEDULE 1

Amendments to the Franchise Agreement

1.1 – Service Development	N/A
1.2 – Operating Obligations	<p>Paragraph 4.4 shall be amended as follows:</p> <p><i>"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 <u>shall promptly notify the Authority and the Franchisee agrees to cooperate with Network Rail in relation to such proposal, unless and until: (i) the Franchisee reasonably believes that such proposal would be likely to materially be detrimental to the interests of passengers on railway passenger services both in Scotland and Great Britain; or (ii) the Authority specifically instructs the Franchisee accordingly, in which case the Franchisee shall act in the passenger’s interests and exercise its rights under the Track Access Agreement (including the Network Code) and otherwise object, make representations and 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."</u></i></p> <p>New paragraphs 5.3A, 5.3B, 5.3C and 5.3D shall be inserted as follows:</p> <p><i><u>"5.3A If, in the opinion of the Franchisee (acting reasonably), it would not be reasonably practicable to obtain the Authority's consent prior to proposing any of the items referred to in paragraphs 5.1(a), 5.1(b) or 5.1(c) to Network Rail, the Franchisee shall be entitled to propose such items to Network Rail without the Authority's prior consent provided that the Franchisee shall inform the Authority of such proposals as soon as is reasonably practicable.</u></i></p> <p><i><u>5.3B The Franchisee shall ensure that any proposals to Network Rail submitted pursuant to paragraphs 5.1 or 5.3A:</u></i></p> <p><i><u>(a) take full and proper account of the likely passenger demand (including a reasonable assessment of key workers) considering any known or anticipated impacts of COVID-19 (including without limitation any guidance published by NHS Health Scotland, and any Legislation, direction or instruction issued by any relevant local, governmental or other competent authority in the United Kingdom from time to time);</u></i></p>

	<p><u>(b) utilise an appropriate number of Franchise Employees to support the likely passenger demand (as determined having taking into consideration the matters referred to in paragraph 5.3B(a)); and</u></p> <p><u>(c) ensure that the Train Fleet is deployed in an optimal manner taking account of all relevant circumstances, including the latest available official guidance relating to social distancing.</u></p> <p><u>5.3C The Franchisee shall use all reasonable endeavours to co-operate with other Train Operators in respect of the Franchisee's proposals to Network Rail pursuant to paragraphs 5.1 and 5.3A or any emergency timetables proposed by other Train Operators to ensure that 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 first trains or last trains are involved, taking account of the likely fluctuations in passenger demand as a result of COVID-19 and the time needed to make any such Connection).</u></p> <p><u>5.3D The Franchisee shall use reasonable endeavours to take into account the requirements of operators of rail freight services in respect of the Franchisee's proposals to Network Rail pursuant to paragraphs 5.1 and 5.3A."</u></p> <p>The word "and" shall be deleted where it appears at the end of paragraph 9.2 (j), the punctuation and word ";<u>and</u>" shall be inserted at the end of paragraph 9.1 (k), and a new paragraph 9.2 (l) shall be inserted as follows:</p> <p><u>"(l) the impact, and emerging projections relating to the likely or potential impact, from time to time, of COVID-19 on the Franchisee's ability to provide the Passenger Services and/or the level of passenger demand or reasonably expected passenger demand for the Passenger Services."</u></p> <p>Paragraph 9.2 (f) shall not apply for the duration of EMA2.</p>
1.3 – Additional Service Obligations	Paragraph 1.1 (a) and paragraph 1.4 shall not apply for the duration of EMA2.
1.4 – Passenger Facing Obligations	<p>New paragraphs 3A.1 and 3A.2 shall be inserted as follows:</p> <p><u>"3A Communicating Emergency Timetables</u></p>

3A.1 The Franchisee shall publish:

(a) any amendments to the Timetable made pursuant to paragraphs 5, 6 or 8 of Schedule 1.2 as soon as reasonably practicable:

(i) at each Station, by displaying the relevant information on information displays;

(ii) at each Station by providing to the operator of each such station the departure and arrival times of the Passenger Services that call at each such station and the principal Connections to any other transport services relevant to each such station in the same forms as are specified in paragraph (i);

(iii) on the Franchisee's website;

(iv) via the Franchisee's social media accounts (through which the Franchisee shall in any event publish any such amendments to the Timetable no later than 2 hours following agreement of such amendments);

(v) via any other direct means of communication with passengers available to the Franchisee including but not limited to email and/or text messaging services; and

(b) as far and as soon as is reasonably practicable, any emergency timetables of other Train Operators where the railway passenger services of such other Train Operator are scheduled to call or in respect of which Connections to such other Train Operators railway passenger services can be made from that Station:

(i) at each Station, by displaying the relevant information on information displays; and

(ii) on the Franchisee's website.

3A.2 To the extent that this paragraph 3A requires the Franchisee to undertake activities that it would otherwise be obliged to perform pursuant to paragraph 2.1 to 2.22 (other than paragraph 2.7) and 3, and there are any discrepancies between the timescales or other requirements relating to such activities between this paragraph 3A and paragraphs 2.1 to 2.22 (other than paragraph 2.7) or 3, the relevant

	<u>requirements of this paragraph 3A shall take precedence over those in paragraphs 2.1 to 2.22 (other than paragraph 2.7) and 3 (as applicable)."</u>
1.5 – Information about Passengers	N/A
1.6 – Committed Obligations	N/A
1.7 – Franchise Services	<p>Paragraph 5.3 and paragraph 5.4 shall not apply for the duration of the EMA.</p> <p>A new paragraph 5A.1 shall be inserted as follows:</p> <p><u>" 5A.1 The Franchisee may, and (to the extent required in order to best serve the needs of passengers on railway passenger services within Great Britain from time to time) shall use reasonable endeavours to, carry out the following Ancillary Services:</u></p> <p><u>(a) in any Reporting Period, the subleasing, hiring or licensing of up to ten per cent (10%) of the rolling stock vehicles used in the provision of the Passenger Services (such percentage to be determined by reference to the aggregate period of time for which such rolling stock vehicles are sub-let, hired or licensed and the aggregate period of time for which they are used in the provision of the Passenger Services);</u></p> <p><u>(b) the lending, seconding, hiring or contracting out during any Reporting Period to another person or persons (whether for a charge or not) of:</u></p> <p><u>(i) up to one per cent (1%) of the number of Franchise Employees as at the Start Date, for over ninety per cent (90%) of their normal working hours during such Reporting Period (including on a full-time basis); and</u></p> <p><u>(ii) one per cent (1%) of any other Franchise Employees as at the Start Date,</u></p> <p><u>provided that this paragraph shall not apply to any employee lent, seconded, hired or contracted out under any of paragraph 5 and paragraphs 5A.1 (a) and 5A.2(b) inclusive, or engaged in any other activity which is permitted under this Schedule 1.7;</u></p> <p><u>(c) the subleasing, hiring, licensing, lending, selling of any rolling stock vehicles or other assets of the Franchisee or the lending, hiring or contracting out of any employees of the</u></p>

	<p><u>Franchisee or the provision of any other services to Network Rail or any other Train Operator on an emergency basis; and</u></p> <p><u>(d) assisting altered or additional freight services to operate on the national rail network and, where appropriate, enabling certain essential goods (such as medical equipment or other urgent items) to be carried on Passenger Services. "</u></p>
1.8 – Restrictions of Use	N/A
Schedule 2: Assets, Leases, Other Franchisees and Schemes	
2.1 – Property Leases	N/A
2.2 – Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases	N/A
2.3 – Third Party Delivery of Passenger Services and Other Franchisees	N/A
2.4 – Other Franchise Operations	N/A
2.5 – Transport, Travel and Other Schemes	N/A
2.6 – Inverness Depot	N/A
Schedule 3: Priced Options	
Priced Options	N/A
Schedule 4: Maintaining and Enhancing Stations, Depots and Trains	
4.1- Franchise Facilities	N/A
4.2 –Persons with Disabilities and Disability Discrimination	N/A

Schedule 5: Fares	
5.1 – Purpose, Structure and Construction	N/A
5.2 – Franchisee's Obligations to Create Fares	N/A
5.3 – Regulation of Individual Fares	N/A
5.4 – Exceeding the Regulated Price or Regulated Child Price	N/A
5.5 – Changes to Fares and Fares Regulation	N/A
5.6 – Fares Regulation Information and Monitoring	N/A
Schedule 6: Rolling Stock	
6.1 – EGIP & HLOS Rolling Stock	N/A
6.2 – Inter-city Rolling Stock	N/A
6.3 – Scenic Train Rolling Stock	N/A
6.4 – Other Rolling Stock	N/A
Schedule 7: Train Operating Performance/ KPIs and Journey Time Metric/SQUIRE	
7.1 – Train Operating Performance	Unless otherwise instructed by the Authority (acting reasonably, having regard to the provisions of Schedule 10 (Remedies, Events of Default and Termination Events)), Schedule 7.1 shall not apply for the duration of EMA2.
7.2 – KPIs and Journey Time Metric	Unless otherwise instructed by the Authority (acting reasonably, having regard to the provisions of Schedule 10 (Remedies, Events of Default and Termination Events)), Schedule 7.2 shall not apply for the duration of EMA2.

7.3 – SQUIRE	Schedule 7.3 shall not apply for the duration of EMA and EMA2 provided that, for the avoidance of doubt, nothing in this Agreement shall prejudice the rights of either Party arising, or that arose, under paragraph 10 (Service Quality Payments) in respect of any Reporting Period(s) before the commencement of the EMA.
Schedule 8: Payments	
8.1 – Franchise Payments	Schedule 8.1 shall be replaced with the new Schedule 8.A attached at Appendix 1.
8.2– Annual Franchise Payments	Schedule 8.2 shall be replaced with the new Schedule 8.B attached at Appendix 2.
8.3 – Miscellaneous Payment Provisions	Clause 1 (Industrial Action) shall not apply for the duration of EMA2.
8.4 – Station Charge Adjustments	Schedule 8.4 shall not apply for the duration of EMA2.
8.5 – Rebasing	N/A
Schedule 9: Changes	
9.1 – Variations to this Agreement	Unless otherwise instructed by the Authority, Schedule 9 shall not apply for the duration of EMA2.
9.2 – Revised Inputs: Identity of the Financial Model etc.	N/A
9.3 – Runs of the Financial Model	N/A
9.4 –Authority Risk Assumptions	N/A
9.5 –Financial Consequences of RIR Amendment Agreement	N/A
Schedule 10: Remedies, Events of Default and Termination Events	
10.1 –Remedies for Contraventions of this Agreement	Paragraph 1 shall be deleted and replaced with the following new paragraph: <i><u>"If:</u></i>

	<p><u>(a) the Authority is satisfied that the Franchisee is operating at a level that would, or would likely, be scored "1"; or</u></p> <p><u>(b) the Franchisee has received a score of "1",</u></p> <p><u>in relation to any of the EMA2 Criteria, for a particular EMA2 Performance Period, in accordance with the EMA2 Review process set out in Schedule 8.B, the Authority may serve a notice on the Franchisee requiring it to address and overcome the shortfalls or failures that have led to the Franchisee receiving, or being likely to receive, a score of "1" with respect to the relevant EMA2 Criterion (a "Remedial Plan Notice")."</u></p> <p>Paragraph 2.1 shall be deleted and replaced with the following new paragraph:</p> <p><u>2.1 the specific EMA2 Criterion under the EMA2 Review Scorecard that the Authority is satisfied that the Franchisee is likely to score, or has scored, "1" in ("Relevant Term"); and</u></p> <p>Paragraph 3.2(b) shall be amended as follows:</p> <p>"3.2 Each Remedial Plan shall set out:</p> <p>(a) the Relevant Term which has caused such Remedial Plan to be required;</p> <p>(b) an explanation of the reasons for the <u>Franchisee receiving, or being likely to receive, a score of "1" with respect to contravention or likely contravention of the Relevant Term;</u></p> <p>(c) the steps proposed for the purposes of <u>addressing and overcoming the shortfalls or failures that have led to the Franchisee receiving, or being likely to receive, a score of "1" with respect to the Relevant Term securing or facilitating compliance with the Relevant Term;</u> and</p> <p>(d) the time period within which the Franchisee proposes to implement those steps."</p>
10.2-Termination and Expiry	N/A
10.3 – Events of Default and Termination Event	The text in paragraph 2.6 shall be deleted and replaced with " <u>not used</u> ".

	<p>The text in paragraph 2.8 shall be deleted and replaced with "<u>not used</u>".</p> <p>A new paragraph 2.19 shall be inserted as follows:</p> <p>"2.19 Failure to make payment under Clause 10 (Other Financial Obligations) of EMA2</p> <p><i><u>The Franchisee fails to pay the sum due under clause 3.2 (Commencement and Term) of EMA2 or the sum due under clause 10 (Other Financial Obligations) of EMA2 within 3 days of the date when that sum became due and payable, unless the Guarantor under the Alliancing Security Amendment Agreement pays that sum to the Authority within 3 days"</u></i></p>
10.4 – Force Majeure	<p>Paragraph 1.1(f)(iii) shall be amended by replacing the word "and" with "<u>or</u>".</p> <p>Paragraph 1.1(f) shall be amended by inserting a new paragraph as follows:</p> <p><i><u>"(iv) for the duration of EMA2, the occurrence and impact, whether direct or indirect, of COVID-19; and"</u></i></p> <p>Paragraph 1 shall be amended by inserting the following text at the end of the paragraph:</p> <p><i><u>"The definition of "Force Majeure Event" shall for the duration of EMA2 exclude the occurrence and impact, whether direct or indirect, of COVID-19."</u></i></p> <p>Paragraph 3 shall be amended by inserting the following new paragraph:</p> <p><i><u>"3.5 Notwithstanding any other provision of this Agreement, the Franchisee agrees that it shall not for the duration of EMA2 be entitled to further relief from obligations pursuant to the Force Majeure provisions under this Schedule 10.3 as a direct or indirect impact of COVID-19."</u></i></p>
10.5 – Liability	N/A
Schedule 11: Agreement and Service Delivery Management Provisions	
Agreement and Service Delivery Management Provision	<p>The following text shall be inserted as the second sentence in Clause 9.2:</p> <p><i><u>"Without prejudice to the preceding general obligation, the Franchisee agrees that it will provide the Authority with sufficient current financial information, including, but not limited to, periodic management</u></i></p>

	<u><i>cashflow analysis and daily management cashflow forecasts, to allow the ongoing monitoring of the Franchisee's cash position and the operation of the Schedules 8.A and 8.B."</i></u>
Schedule 12: Financial Obligations and Undertakings	
1 - Obligations	<p>In paragraph 1, delete "or" at the end of paragraph 1.4 and replace the full stop at the end of paragraph 1.5 with a "<u>or</u>". Insert a new subparagraph 1.6 as follows:</p> <p><u><i>"1.6 borrow any sum, or enter into any loan or lending agreement for the purpose of borrowing from any person (unless that borrowing is solely for the purpose of enabling the Franchisee to comply with its obligation in paragraph 10.3 of Schedule 8A (Franchise Payments) to EMA2 or permitted under clause 11.4 or 11.5 of EMA2)."</i></u></p>
2 - Financial Ratios	The text in paragraph 2 shall be deleted and replaced with " <u>not used</u> ".
3 - Breach of Financial Ratios	<p>Clause 3.2 shall be deleted and replaced with the following new clause:</p> <p><u><i>""Lock-up Period" means the period commencing on the date of EMA2 and expiring on the date which the Authority confirms by notice in writing to the Franchisee that:</i></u></p> <p><u><i>(a) the Authority considers that all the obligations of the Parties to account to each other pursuant to Schedule 8.A (Franchise Payments) have been fully performed and discharged (such confirmation not to be unreasonably withheld or delayed); and</i></u></p> <p><u><i>(b) by virtue of such notice, the Lock-Up Period has expired.</i></u></p> <p><u><i>No such notice shall constitute a waiver of any rights which the Authority may have under or in respect of Schedule 8.A."</i></u></p> <p>Paragraph 3.3 is deleted.</p>

4 - Performance Bond

A new paragraph 4.3A shall be amended by inserting the following text at the end of the subparagraph:

"The Parties acknowledge and agree that the Franchisee shall under no circumstances be entitled to reimbursement, pursuant to Schedule 8.A (Franchise Payments) or otherwise, in respect of any additional costs or expenses incurred by the Franchisee in procuring any new Performance Bond pursuant to this paragraph 4."

Paragraph 4.5(a)(i) shall be replaced with the following:

"either terminated or expired and, in either case, in circumstances where there are liabilities or obligations outstanding from the Franchisee to the Authority including where the Franchise Period has terminated or expired but provisions of the Franchise Agreement remain in operation and effect (including Schedule 8.A (Franchise Payments)); and/or"

Paragraph 4.6 shall be amended as follows:

- "(a) early termination of the Franchise Agreement; and/or*
- (b) any failure by 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; and/or*
- (c) without prejudice to the forgoing generality, any of the following amounts which (i) the Authority has not offset against APP in accordance with paragraph 11 of Schedule 8.A (Payments); or (ii) which are not taken into account in any payment received by the Authority pursuant to the Funding Deed:*
 - (A) Authority Claims; and*
 - (B) any other sums which the Authority has the right in accordance with Schedule 8.A (Franchise Payments) to offset against APP; and/or*
 - (d) any amount of the Final Working Capital Repayment not paid to the Authority in accordance with EMA2."*

A new subparagraph 4.6A shall be added as follows:

	<p><u>"The Parties acknowledge and agree that the Franchisee shall under no circumstances be entitled to reimbursement, pursuant to Schedule 8.A (Franchise Payments) or otherwise, of any losses, liabilities, costs or expenses incurred by the Franchisee arising out of or in connection with any lawful demand made by the Authority under the Performance Bond pursuant to this paragraph 4."</u></p>
11.- Survival	<p>A new paragraph 11 shall be inserted as follows:</p> <p><u>"11. Survival</u></p> <p><u>For the avoidance of doubt this Schedule 12 and any other provisions of the Franchise Agreement reasonably required for the purpose of giving this Schedule full effect shall survive the termination or expiry of the Franchise Term (however arising) and continue in full force and effect in accordance with its terms."</u></p>
Schedule 13: Franchise Management and Information Obligations	
13.1 – Franchise Management Obligations	N/A
13.2 – Information	<p>The following sentence shall be added to the end of paragraph 3.1:</p> <p><u>"In particular, the Franchisee shall ensure that such accounting records are produced and maintained in a form which distinguishes between transactions which reasonably and properly relate, on the accruals basis, to the period during which EMA2 is in force, and those which do not."</u></p> <p>Delete the text of paragraph 3.3 (b) and insert the following:</p> <p><u>"(b) the Franchisee's available Cash Balance on the final day of the Reporting Period to which the Management Accounts relate and the Franchisee's forecast of:</u></p> <p><u>(i) the Franchisee's daily Cash Balance for the period of thirteen (13) weeks following the Reporting Period to which the Management Accounts relate; and</u></p>

	<p><u><i>(iii) payments to and from Affiliates of the Franchisee.</i></u></p>
	<p>In paragraph 3.3 (c), the word "<u><i>finacial</i></u>" shall be inserted between "<i>Franchisee's</i>" and "<i>performance</i>".</p>
	<p>At the end of paragraph (f) delete the word "<i>and</i>".</p>
	<p>At the end of paragraph (g) delete the full stop and insert "<u><i>;</i></u>".</p>
	<p>New paragraphs 3.3 (h), (i) and (j) shall be inserted as follows:</p> <p><u><i>"(h) a comparison on a line by line basis of Actual Costs and Actual Revenue of the Franchisee compared to the Budgeted Costs and Estimated Revenue for that Reporting Period;</i></u></p> <p><u><i>(i) a detailed statement and a detailed and comprehensive written explanation of any material differences between the actual payments to and from Affiliates of the Franchisee and the forecast of such payments as referred to in paragraph 3.3(b)(iii); and</i></u></p> <p><u><i>(j) profit and loss, cash flow and balance sheet provided in accordance with the Initial Budget (together with a detailed and comprehensive written explanation as to any changes in such forecasts from the previous such forecasts provided pursuant to the provisions of paragraph 3.3 of this Schedule 13) for each of the following thirteen (13) Reporting Periods."</i></u></p>
	<p>Paragraph 3.4 shall be deleted and replaced with "<u><i>not used</i></u>".</p>
	<p>The following text shall be inserted at the end of paragraph 3.6:</p> <p><u><i>"divided between Reporting Periods within the term of EMA2 and Reporting Periods not within the term of EMA2. For Reporting Periods within the term of EMA2, line items should be disaggregated between a section in relation to Actual Costs and a section in relation to Actual Revenues, and Disallowable Costs, Revenue Foregone, Accrued Disallowable Costs and Accrued Revenue Foregone."</i></u></p>
	<p>Paragraph 3.9 (b) shall be deleted and replaced with the following provision:</p> <p><u><i>"a detailed reconciliation, disaggregating Actual Costs and Actual Revenues, and Disallowable Costs, Revenue Foregone, Accrued Disallowable Costs and Accrued Revenue Foregone of the Annual Audited Accounts, reconciled to each of the Management Accounts in relation to the</i></u></p>

	<p><u>term of EMA2 within that Franchisee Year, Management Accounts in relation to all other Reporting Periods in that Franchisee Year (if any), Annual Management Accounts in relation to the term of EMA2 within that Franchisee Year and Annual Management Accounts in relation to all other Reporting Periods within that Franchisee Year for the same period in a format to be from time to time reasonably specified by the Authority (the "Audited Accounts Reconciliation"). The Audited Accounts Reconciliation shall:</u></p> <p><u>(i) disaggregate the costs and revenues in the Annual Audited Accounts so as to report against (and show in a format consistent with that used in) the Management Accounts and Annual Management Accounts; and</u></p> <p><u>(ii) facilitate the identification of Actual Costs and Actual Revenues as reported in the Management Accounts and easy comparison of Actual Costs with the Budget;"</u></p>
	<p>Insert new paragraph 3.9 (e) as follows:</p> <p><u>"(e) statement from the Franchisee's auditors (in a format to be reasonably specified by the Authority from time to time, on the basis of providing the Authority with reasonable assurance) that the disaggregation required by the Audited Accounts Reconciliation in accordance with paragraph 3.9(b)(ii) has been undertaken accurately; and"</u></p>
	<p>Insert new paragraph 3.9 (f) as follows:</p> <p><u>"(f) a statement from the Franchisee's auditors confirming that GAAP has been applied in a fair and consistent manner."</u></p>
	<p>A new paragraph 3.9A shall be inserted as follows:</p> <p><u>"3.9A Within two (2) Reporting Periods after the end of the last EMA2 Performance Period, the Franchisee shall deliver to the Authority the following information:</u></p> <p><u>(a) certified true copies of its Final Reviewed Accounts for the EMA2 Performance Periods in aggregate, together with copies of all related reports provided by auditors or other reviewers (if any) pursuant to paragraph 16 of Schedule 8.A;</u></p> <p><u>(b) a detailed reconciliation disaggregating Actual Costs and Actual Revenues, and Disallowable Costs, Revenue Foregone, Accrued Disallowable Costs and Accrued Revenue Foregone of the Final Reviewed Accounts reconciled to the Management Accounts in relation to the period of the term of the EMA, in a format to be from time to time</u></p>

	<p><u>reasonably specified by the Scottish Ministers (the "Final Reviewed Accounts Reconciliation"). The Final Reviewed Accounts Reconciliation shall:</u></p> <p><u>(i) disaggregate the costs and revenues in the Final Reviewed Accounts so as to report against (and show in a format consistent with that used in) the Management Accounts within the EMA2 Performance Period(s); and</u></p> <p><u>(ii) facilitate the identification of Actual Costs and Actual Revenues as reported in the Management Accounts within the EMA2 Performance Period(s) and easy comparison of Actual Costs with the Budget;</u></p> <p><u>(iii) a statement from the Franchisee's auditors (in a format to be reasonably specified by the Authority from time to time, on the basis of providing the Authority with reasonable assurance) that the disaggregation required by the Final Reviewed Accounts Reconciliation in accordance with paragraph 3.9A(b) has been undertaken accurately; and</u></p> <p><u>(iv) a statement from the Franchisee's auditors confirming that GAAP has been applied in a fair and consistent manner."</u></p>
	<p>In paragraph 3.11, the words "the Adopted Accounting Principles" shall be deleted and the word "<u>GAAP</u>" shall be inserted.</p>
	<p>A new paragraph 3.11A shall be inserted as follows:</p> <p><u>"3.11A The Franchisee shall not, without the express written consent of the Authority, make any alteration to its accounting policies or basis of preparation in relation to its Management Accounts, Annual Management Accounts, Annual Audited Accounts or Final Reviewed Accounts."</u></p>
	<p>A new paragraph 3.13 shall be inserted as follows:</p> <p><u>"Adjustment and Restatement of the Annual Audited Accounts</u></p> <p><u>3.13 The Franchisee shall promptly notify the Authority as soon as it becomes aware of any requirement to adjust or restate the Annual Audited Accounts or Final Reviewed Accounts and shall deliver to the Authority any such adjusted or restated Annual Audited Accounts or Final Reviewed Accounts as soon as such accounts are available. The Franchisee shall provide the Authority (with a copy also being provided to the Franchisee's Auditors) with a clear written commentary prepared by its finance director, giving reasons for the adjustment or restatement</u></p>

	<i><u>and, the Franchisee shall promptly update any calculations made pursuant to this Schedule 13 which are affected by the adjustment or restatement. The Franchisee shall, as applicable, provide the Authority with a nil financial settlement return as evidence that any financial claims previously settled remain unimpacted by the adjustment or restatement."</u></i>
13.3 – Co-operation	N/A
13.4 – Staff Obligations	N/A
13.5 – Safety and Personal Security	N/A
13.6 – Integration	N/A
13.7 – Related Parties and Open Book Accounting	N/A
Schedule 14: Preservation of Assets	
14.1 – Maintenance of Franchisee	N/A
14.2 – Maintenance of Operating Assets	N/A
14.3 – Key Contracts	N/A
14.4 – Designation of Franchise Assets	N/A
14.5 – Dealing with Franchise Assets	N/A
Schedule 15: Obligations Associated with Termination	
15.1 – Reletting Provisions	N/A
15.2 – Last 12 or 13 months of Franchise Period and Other Conduct of Business Provisions	A new paragraph 1.4 shall be inserted as follows: <i><u>"1.4 EMA2 Period</u></i>

Notwithstanding paragraphs 1.1 and 1.2 above, the Parties agree that paragraphs 2 to 7 of this Schedule 15.2 shall apply for the duration of EMA2."

Paragraph 2.1(a) shall be amended as follows:

"(a) takes effect during the term of EMA2 or in the last twelve (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:"

A new paragraph 2.1A shall be inserted as follows:

"It is agreed that the Franchisee will be permitted to make a decrease in the remuneration of any Franchise Employee that takes effect during the term of EMA2 or in the last twelve (12) months of the Franchise Period without first obtaining the consent of the Authority in circumstances where such decrease is in the ordinary course of business and when aggregated with any other variation which takes effect during such period, represents a decrease in the remuneration of a Franchise Employee of no more than the amount determined in accordance with the formula contained in paragraph 2.1(a) where a calculation pursuant to such formula gives rise to a negative percentage. In any other circumstances the prior consent of the Authority will be required to any decrease in the remuneration of a Franchise Employee during the term of EMA2 or in the last twelve (12) months of the Franchise Period."

Paragraph 2.5 shall be amended as follows:

"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) increase or decrease during the term of EMA2 or in the last twelve (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*

	<p><i>in each case, by more than five per cent (5%) during such term of EMA2 or period of twelve (12) months provided that where the last twelve (12) or thirteen (13) months of the Franchise Period has been deemed to have commenced under paragraph 1.1 and the period of the restriction contemplated by this paragraph 2.5 lasts longer than twelve (12) months such restriction shall apply in respect of the longer period."</i></p> <p>Paragraph 3.1(a) shall be amended as follows:</p> <p><i>"(a) During the term of EMA2 or the last thirteen (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 term of EMA2 or the Franchise Period (as applicable) for an amount which is less than the Price or the Child Price of that Fare immediately before the commencement the term of EMA2 or of such thirteen (13) month period (as applicable) or, in the case of a new Fare, the Price of its nearest equivalent immediately before the commencement of such period."</i></p> <p>Paragraph 3.1(b)(i) shall be amended as follows:</p> <p><i>"(i) presenting a Discount Card (or any equivalent replacement thereof) issued by the Franchisee before the commencement of the term of EMA2 or such thirteen (13) month period and to which the purchaser would have been entitled before the commencement of such period;"</i></p> <p>Paragraph 3.2(a) and (b) shall be amended by inserting the words "during the term of EMA2 or," before the words "<i>in the last thirteen (13) Reporting Periods</i>".</p> <p>Paragraph 4.1 shall be amended by inserting the words "during the term of EMA2 or" before the words "<i>during the last twelve (12) months</i>".</p>
15.3 – Handover Package	N/A
15.4 – Provisions Applying on and After Termination	N/A

Schedule 16: Pensions	
Pensions	N/A
Schedule 17: Confidentiality, FOISA and Data Protection	
Confidentiality	N/A
Schedule 18: Franchise Continuation	
All provisions in this Schedule	N/A
Schedule 19: Other Provisions	
All provisions in this Schedule	N/A

**Appendix 1 to Schedule 1
Schedule 8.A (Franchise Payments)**

1. Definitions

For the purposes of this Schedule 8.A (Franchise Payments) only, the following words and expressions shall have the following meanings:

- “Accrued Claims”** has the meaning given in paragraph 5.7 of Schedule 8.A (Franchise Payments);
- “Accrued Disallowable Costs”** has the meaning given in paragraph 5.7 of Schedule 8.A (Franchise Payments);
- “Accrued Revenue Foregone”** has the meaning given in paragraph 5.7 of Schedule 8.A (Franchise Payments);
- “Actual Capex”** means the actual Capital Expenditure of the Franchisee in the relevant period;
- “Actual Costs”** means the actual Costs of the Franchisee in the relevant period;
- “Actual Revenue”** means the actual Revenue of the Franchisee in the relevant period;
- “Adjusted Performance Payment”** means the amount calculated in accordance with paragraph 11 of this Schedule 8.A (Franchise Payments);
- “Aggregated Costs and Revenues Liabilities”** has the meaning given in paragraph 5.8 of Schedule 8.A (Franchise Payments);
- “Authority Claim”** means all losses, liabilities, costs, damages and expenses that the Authority does or will incur or suffer (including any such losses, liabilities, costs, damages and expenses that are unliquidated or which are contingent):-
- (a) as a consequence of any breach, negligence or other default of the Franchisee under or in connection with the Franchise Agreement and/or any agreement ancillary to it, including EMA2; and/or
 - (b) in respect of any matter for which the Franchisee is to indemnify the Authority pursuant to the Franchise Agreement or any agreement ancillary to it, including the Supplemental Agreement.
- “Budget”** means the budget for the Term of EMA2 comprising:
- (a) the periodic cost and revenues budget; and
 - (b) the periodic capex budget,

as such budget may be updated from time to time in accordance with paragraph 4 of Schedule 8.A (Franchise Payments);

“Budgeted Capex” means the Capital Expenditure budgeted to be incurred by the Franchisee in a Reporting Period and specified in the then current Budget as agreed or determined pursuant to paragraph 4 of this Schedule 8.A (Franchise Payments);

“Budgeted Costs” means the Costs budgeted to be incurred by the Franchisee in each Reporting Period and specified in the then current Budget as agreed or determined pursuant to paragraph 4 of this Schedule 8.A (Franchise Payments);

“Capital Expenditure” means costs of creating non-current or fixed assets which are not Costs (as defined in this Schedule 8.A) and which are properly accrued during the Term of EMA2 and relate to the Franchisee's performance of EMA2;

“Contingent Claim” Authority has the meaning given in paragraph 5.9 of Schedule 8.A (Franchise Payments);

“Costs” means costs and expenses properly accrued by the Franchisee during the Term of EMA2 in performance of EMA2 and stated in the Franchisee's profit and loss account but excluding:-

- (a) Franchise Payments (which shall include (for the avoidance of doubt) the value of any Performance Payment);
- (b) corporation tax and deferred tax charge in the Franchisee's profit and loss account;
- (c) any accounting transaction which does not require the Franchisee to make a cash payment including notional pensions accounting adjustments and the accounting impact of financial instrument revaluations, other than depreciation where that depreciation is not a Disallowable Cost;
- (d) Capital Expenditure;

provided that:

- (i) if the Franchisee's profit and loss account includes any cost(s) in respect of right of use assets treated in accordance with IFRS16 (the **“IFRS16 Cost”**), then for the purpose of this definition the amount for each IFRS16 Cost shall be deemed to be replaced (for the purposes of this definition and all related consequential purposes under this Agreement) with the amount which would have applied if the cost had been treated on a cash basis, as such cost is incurred in accordance with the relevant contractual

arrangements, rather than in accordance with IFRS16;
and

- (ii) for the avoidance of doubt, any liability of the Franchisee to the Authority arising under or in connection with the Franchise Agreement prior to the EMA2 Start Date shall not be treated as or give rise to a cost or expense for the purpose of the Franchisee's profit and loss account;

"Disallowable Costs" means any Costs or Capital Expenditure which are described within Appendix 1 (Disallowable Costs) to this Schedule 8.A (Franchise Payments);

"EMA2" means the agreement of that name entered into between the Authority and the Franchisee taking effect on the EMA2 Start Date;

"EMA2 Start Date" means 1.59 a.m. on 20 September 2020;

"Estimated Revenue" means the Revenue reasonably determined by the Authority using available resources as is practicable at the time of the determination;

"Extended Performance Period" means, in the event that the Term of EMA2 is extended in accordance with clause 3.3, each further period following the end of the preceding Performance Period, comprising four (4) additional Reporting Periods (or less in the event that EMA2 is terminated prior to the expiry of the relevant Extended Performance Period);

"Final Reviewed Accounts" means the audited accounts provided pursuant to paragraph 16 of Schedule 8.A (Franchise Payments);

"Franchise Payment" means (i) in relation to any Reporting Period during the Term of EMA2, the amount determined in accordance with paragraph 2.1 of this Schedule 8.A (Franchise Payments); and (ii) after the expiry of EMA2, it shall bear the meaning given to it in the Definitions Agreement;

"Franchise Payment Component" means:

- (a) each of the components of "FP" as described in paragraph 2.1 of this Schedule 8.A (Franchise Payments); and
- (b) any component or element, described in the relevant provisions of this Schedule 8.A (Franchise Payments) and Schedule 8.B (Performance Payment), as the case may be, which is used in determining or calculating the value of those components described in paragraph (a) above;

“Good and Efficient Operator”	means in the context of all other relevant provisions of this Agreement, a notional train operator, having the same commercial, regulatory and operational arrangements as the Franchisee and being subject to the same operational circumstances (which, for the avoidance of doubt, shall recognise the extraordinary impact of COVID-19, the existence of EMA2 and the requirement for operators to act in the national interest in response to COVID-19), which is a party to a franchise agreement in equivalent terms to the Franchise Agreement (as amended by EMA2), with performance targets and standards equivalent to those set out in Schedule 8.B (Performance Payment) of the Franchise Agreement, which complies with its obligations under such franchise agreement and the Licences in a timely, efficient and economical manner and with the degree of skill, diligence, prudence and foresight which can be expected from a skilled and experienced train operator so that in this context costs and revenues are optimised in combination to the greatest extent reasonably practicable, adopting a reasonable balance in respect of short, medium and longer term consequences for the relevant franchise;
“Initial Authority Claim Amount”	has the meaning given in paragraph 5.9 of Schedule 8.A (Franchise Payments);
“Payment Date”	has the meaning given in paragraph 3.3 of Schedule 8.A (Franchise Payments);
“Performance Period”	means each of: <ul style="list-style-type: none"> (a) the period commencing on the 1.59 a.m. on 20 September 2020 and expiring at 1.59 am on 10 January 2021, or such earlier date of termination of EMA2; and (b) where the Term of EMA2 is extended in accordance with clause 3.3, each Extended Performance Period;
“Periodic Adjustment”	has the meaning given in paragraph 6.2 of Schedule 8.A (Franchise Payments);
“Periodic Budgeted Capex Payment” or “PBCP”	has the meaning given in paragraph 2.1 of this Schedule 8.A (Franchise Payments);
“Periodic Franchise Payment” or “PFP”	has the meaning given in paragraph 2.1 of this Schedule 8.A (Franchise Payments);
“Periodic Finance Review Meeting”	has the meaning given in paragraph 5.1 of Schedule 8.A (Franchise Payments);
“Reporting Period Budget Forecast Review Meeting”	has the meaning given in paragraph 4.1 of Schedule 8.A (Franchise Payments);

[redacted]

“Revenue”

means the gross total revenue of the Franchisee received or receivable and properly accrued during the Term of EMA2 and in relation to EMA2 as stated in the Franchisee’s profit and loss account but excluding:

- (a) Franchise Payments (which shall include (for the avoidance of doubt) the value of any Performance Payment; and
- (b) any accounting transaction included in the Management Accounts, Annual Management Accounts or Annual Audited Accounts but which does not result in the Franchisee receiving a cash payment including notional pensions accounting adjustments and the accounting impact of financial instruments revaluations;

“Revenue Foregone”

means an amount equal to the amount of revenue or other value which was not received or receivable by the Franchisee including:

- (a) the:
 - (i) debts or other receivables waived, not collected or written off; and/or
 - (ii) value of any other asset not realised in whole or in part,

but which would have been receivable and received or otherwise realised by the Franchisee if it had acted as a Good and Efficient Operator; and
- (b) subject always to paragraph 3.8 (No Double Recovery) of Schedule 8.A (Franchise Payments), the amount by which the Purchase Price (as defined in Clause 1.1 of the Supplemental Agreement) receivable by the Franchisee is lower than it would have been but for the Franchisee:
 - (i) incurring Disallowable Costs; and/or
 - (ii) otherwise acting other than as Good and Efficient Operator;

save where, in respect of both (a) and (b) above, such revenue is not received or receivable as a result of the Franchisee acting in accordance with the instructions of the Authority;

“Supporting Materials”

means any materials explaining or supporting the Budget produced or compiled by the Franchisee;

2. **Franchise Payments**

2.1 The Franchise Payment for any Reporting Period during the Term of EMA2 shall be an amount calculated as follows:

£FP =	PFP + PBCP + PADJ + FADJ + APP
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where:

PFP (Periodic Franchise Payment)	means an amount equal to:	
	$PFP_n = BC_n - ER_n$	
	Where:	
	BC_n	means the Budgeted Costs for the current Reporting Period (if any). BC may only be a positive number.
	ER_n	means the Estimated Revenue for Reporting Period _(n-1) (if any) provided such Reporting Period occurs after EMA2 Start Date. ER may only be a positive number.
PFP may be a positive or negative number.		
PBCP (Periodic Budgeted Capex Payment)	means an amount equal to the Budgeted Capex for the current Reporting Period (if any). PBCP may only be a positive number.	
PADJ	Means:	
	(i)	any Periodic Adjustment (positive or negative) determined in accordance with paragraph 6 of Schedule 8.A (Franchise Payments) to the EMA relating to the sixth or seventh Reporting Period of the EMA; plus
	(ii)	(ii) any Periodic Adjustment determined in accordance with paragraph 6 of this Schedule 8.A (Franchise Payments), to be made on that Reporting Period's Payment Date. PADJ may be a positive or negative number.
FADJ	means any Final Adjustment due and determined in accordance with paragraph 7 of Schedule 8.A (Franchise Payments) of the EMA. FADJ may be a positive or negative number.	
APP	means the Performance Payment for the Term of the EMA, determined in accordance with paragraph 11.1 of Schedule 8.A (Franchise Payments) of the EMA and to be paid on the first Payment Date following the determination of the Performance Payment in accordance with Paragraph 11 of Schedule 8.A (Franchise Payments) of the EMA. In this calculation, APP may only be a positive number.	

2.2 Not Used.

2.3 Not Used.

2.4 The Parties agree that:

- (a) where **£FP is a positive number**, the Authority shall pay that amount to the Franchisee on the Payment Date for that Reporting Period;
- (b) where **£FP is a negative number**, the Franchisee shall pay the corresponding positive amount to the Authority on the Payment Date for that Reporting Period.

3. **Payment of Franchise Payments**

3.1 The Authority shall notify the Franchisee, no less than seven (7) days prior to the start of each Reporting Period (or, in the case of the first Reporting Period following the EMA2 Start Date, as soon as reasonably practicable thereafter), of the amount of the Franchise Payment payable in respect of that Reporting Period.

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

3.3 The Payment Date for a Reporting Period shall be the first Weekday of that Reporting Period (or, in the case of the first Reporting Period following the EMA2 Start Date shall be 21 August 2020).

3.4 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 3.1 on the Payment Date of the Reporting Period to which it relates.

3.5 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.

Interest

3.6 Subject to paragraph 11.3, if:

- (a) the Franchisee fails to pay any amount to the Authority on its due date; or
- (b) the Authority fails to pay to the Franchisee the Franchise Payment on its due date,

the Party failing to pay on the due date 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.

Disputes

3.7 If either the Franchisee or the Authority disputes the amount of a Franchise Payment, the dispute shall, unless the Franchisee and the Authority otherwise agree, be resolved in accordance with the provisions of paragraph 2 of Schedule 19 of the Franchise Agreement. Any such dispute shall not affect the obligation of either party to pay a Franchise Payment notified in accordance with this Schedule 8.A.

No Double Recovery

- 3.8 Neither Party shall be entitled to recover (by way of an adjustment to Franchise Payments or otherwise) more than once in respect of the same amount. In particular, no amount shall be categorised as both Capital Expenditure and as a Cost for the purpose of this Schedule 8.A, or inconsistently with the accounting treatment assumed for the same capital expenditure in calculating the Franchise Payments under the Franchise Agreement before implementation of EMA2.
- 3.8A In the event that the Franchisee is successful in obtaining any UK Government support offered in relation to the impact of COVID-19, this shall be taken into account in relation to the relevant payment and adjustments in this Schedule 8A such that the Franchisee does not benefit from double recovery or double counting.

Force Majeure and Payments

- 3.9 Following the occurrence of a Force Majeure Event, the payment of Franchise Payments shall continue to be calculated in accordance with this Schedule 8.A (Franchise Payments) and the payment of such Franchise Payments shall continue unaffected.

4. Revisions to the Budget

- 4.1 Without limiting the requirement for any other meeting, the Parties shall, subject to paragraph 5.10, hold a forecast Budget review meeting in each Reporting Period (a "**Reporting Period Budget Forecast Review Meeting**") at a time and location notified to the Franchisee by the Authority following provision of the information referred to in paragraph 4.2. The purpose of the meeting shall be to review and seek to agree:
- (a) revisions (if any) to the then current Budget for the remaining Reporting Periods of the Budget;
 - (b) the content of any necessary or desirable corresponding addendum to the Supporting Materials; and
 - (c) any new contracts which the Franchisee proposes to enter into with an Affiliate.

The Franchisee shall ensure that the representatives of the Franchisee at the Reporting Period Budget Forecast Review Meeting shall include the Finance Director of the Franchisee or a suitable representative of the Finance Director as may reasonably be approved for this purpose by the Authority.

- 4.2 The Franchisee shall, before the date of each Reporting Period Budget Forecast Review Meeting, provide to the Authority the relevant information required pursuant to paragraph 3 of Schedule 13.2 together with a draft periodic budget prepared using the cost and revenue categories within P&L2 of the Financial Model, updated to reflect Actual Costs and Actual Revenues as reflected in the latest Management Accounts and revised Budgeted Costs for the remainder of the Term of EMA2, in accordance with the timescales set out therein, and shall provide the Authority with all further information as the Authority may request from time to time for the purposes of the operation of this paragraph 4, within such time as the Authority may reasonably specify for that purpose (and this paragraph shall continue to apply such that the number of requests which the Authority may make is not limited).
- 4.3 If the Parties fail to agree the matters referred to in paragraphs 4.1(a) to 4.1(c) at the relevant Reporting Period Budget Forecast Review Meeting, the Authority shall reasonably determine such matters.
- 4.4 Such revisions to the Budget and addenda to the Supporting Materials as agreed or determined shall take effect from the first day of the Reporting Period immediately following the date on which the Reporting Period Budget Forecast Review Meeting (at which such matters were

discussed) took place provided that, if such revisions or addenda are not agreed by the first day of that Reporting Period, the relevant revisions and addenda shall take effect from the first day of the Reporting Period which falls at least 10 Weekdays after those revisions and addenda are agreed or determined.

- 4.5 Each revision to the Budget and/or addendum to the Supporting Materials shall (unless the Parties otherwise agree):
- (a) adopt the same format and structure as the original version in agreed terms (or where the preceding version has included any changes from that format and structure expressly agreed by the Parties for this purpose) from the preceding version;
 - (b) make no assumptions or include any costs, revenue or other adjustments which are not consistent with the definitions of Costs, Capital Expenditure and Revenue or which represent Disallowable Costs or Revenue Foregone or liabilities in respect of Authority Claims (except as may be otherwise expressly agreed by the Parties for that purpose);
 - (c) adopt the same accounting principles and standards as the original version (as these may be expressly varied by agreement between the Parties for this purpose or, in the case of accounting standards, as these may be reasonably revised by the Authority to take account of changes to GAAP in the United Kingdom); and
 - (d) otherwise facilitate easy comparison with the definitions of Costs, Capital Expenditure, Revenue, Disallowable Costs and Revenue Foregone and with the information reported in the Management Accounts, Annual Management Accounts and the Audited Annual Accounts.
- 4.6 Each time it is agreed or determined that the Budget is to be revised and/or an addendum is to be added to the Supporting Materials, the Authority shall be entitled to:-
- (a) make the agreed or determined revisions to the Budget and/or Supporting Materials itself (or procure this is done on its behalf) and provide copies of those revised documents to the Franchisee; or
 - (b) require the Franchisee to provide the agreed or determined revisions to the Budget and/or Supporting Materials for approval by the Authority, which the Franchisee shall do and provide revised versions to the Authority within such time as the Authority shall specify for this purpose.
- 4.7 The Franchisee shall not enter into any contract with an Affiliate unless the Authority has, in his absolute discretion (and for this purpose paragraph 2.1 of Schedule 13.7 of the Franchise Agreement shall not apply) first consented to the terms of such contract and to it being entered into on those terms, whether at or following a Reporting Period Budget Forecast Review Meeting (where such contract forms part of the agenda for that meeting) or otherwise.
- 4.8 For the purpose of this paragraph 4, the Authority shall be entitled to consider any information provided to the Authority by the Franchisee and any other sources of information which the Authority consider to be relevant and the Authority shall be entitled to request such information from the Franchisee as the Authority requires in connection with the matters referred to in this paragraph 4. Without prejudice to the generality of the foregoing, in considering any revisions to the Budget, regard shall be had to the definitions of Costs, Revenue, Capital Expenditure, Good and Efficient Operator, Disallowable Costs and Revenue Foregone, so as to ensure that the revisions to the Budget are consistent with those definitions.
- 4.9 Subject to the Authority's rights set out in paragraph 4.6, the Parties shall at all times act in good faith, reasonably and in a timely manner in the interpretation and application of the provisions for agreeing revisions to the Budget and any addendum to the Supporting Materials.

4.10 The Franchisee shall not agree to any increase in the emoluments payable to Franchise Employees without first obtaining the written approval of the Authority (such approval not to be unreasonably withheld or delayed).

5. **Review of Franchisee's performance against Budget**

Finance Review Meeting

5.1 Without limiting the requirement for any other meeting, the Parties shall, subject to paragraph 5.10, hold a finance review meeting in every Reporting Period ("**Periodic Finance Review Meeting**") (other than the first Reporting Period of the Term of EMA2) at such time(s) and location(s) notified to the Franchisee by the Authority following provision of the information referred to in paragraph 5.2 and:

- (a) the purpose of the Periodic Finance Review Meeting shall be to review the financial performance of the Franchisee, including:
 - (i) a review and discussion of variances arising in the preceding Reporting Period between Actual Costs, Actual Revenues and Actual Capex and Budgeted Costs, Budgeted Capex and Estimated Revenues respectively and confirmation of the value of the Periodic Adjustment to be applied to the Franchise Payment to be paid in the Reporting Period following the Reporting Period in which the Periodic Finance Review Meeting is taking place;
 - (ii) a review and discussion regarding any Actual Costs with respect to payments made by the Franchisee under affiliated contracts which exceed either the Budgeted Costs stated in the then current Budget or the level of payments made under the affiliate contracts for equivalent periods prior to the EMA2 Start Date;
 - (iii) a review of fees and payments (including bonuses, rewards or discretionary benefits) actually paid by the Franchisee to its staff, directors and officers during the preceding Reporting Period as against the portion of the Budgeted Costs for such fees and payments stated in the then current Budget;
 - (iv) a review and discussion of the Franchisee's management of its working capital and compliance (or not) with clause 10.2 of EMA2 in that Reporting Period in which the Periodic Finance Review Meeting is taking place;
 - (v) actions to be taken in respect of the Franchisee's financial performance;
 - (vi) identification of any potential Disallowable Costs, Revenue Foregone and Authority Claims that may have been incurred within the preceding or current Reporting Period; and
 - (vii) confirmation and valuation of any Disallowable Costs, Revenue Foregone and Authority Claims (and/or in accordance with paragraph 5.9, relevant Initial Authority Claim Amounts, as applicable) which have been identified pursuant to (vi) above in previous Periodic Finance Review Meetings.
- (b) the Franchisee shall ensure that the representatives of the Franchisee at the meeting shall include the Finance Director of the Franchisee or a suitable representative of the Finance Director as may reasonably be approved for this purpose by the Authority.
- (c) the Authority shall ensure that the representatives of the Authority shall include a senior civil servant where the confirmation and valuation of any Disallowable Costs,

Revenue Foregone and/or Authority Claims (and/or in accordance with paragraph 5.9, relevant Initial Authority Claim Amounts, as applicable) are to be considered as part of any Periodic Finance Review Meeting.

5.2 The Franchisee shall, prior to the date of each Periodic Financial Review Meeting provide to the Authority the relevant information required pursuant to paragraph 3 of Schedule 13.2 together with confirmation (or not) of compliance with clause 10.2 of EMA2 in that Reporting Period, in accordance with the timescales set out therein, and shall provide the Authority with all further information as the Authority may request from time to time for the purposes of the operation of paragraph 5.1, within such time as the Authority may reasonably specify for that purpose (and this paragraph shall continue to apply such that the number of requests which the Authority may make is not limited).

5.3 Not used.

5.4 The Authority shall be entitled to consider any information provided to them by the Franchisee and any other sources of information which the Authority consider to be relevant and the Authority shall be entitled to request such information from the Franchisee as the Authority require for the purposes of the operation of this paragraph 5. The Franchisee shall provide the information within such time as the Authority may reasonably specify for the purpose (and this paragraph shall continue to apply such that the number of requests which the Authority may make is not limited).

5.4A If, within 10 Weekdays following the relevant Periodic Finance Review Meeting:

(a) the Parties have failed to agree the matters referred to in paragraph 5.1(a)(vii); and

(b) [redacted]

each Party will respectively procure that such matter or matters (as the case may be) will be escalated to any senior civil servant within the Transport Scotland's rail group on behalf of the Authority and any statutory director of any Affiliate of the Franchisee on behalf of the Franchisee. Those representatives will meet at the earliest convenient time and in any event within 20 Weekdays of the date of the relevant Periodic Finance Review Meeting and negotiate in good faith and attempt to agree the relevant matters.

5.5 If:

(a) the Parties fail to agree the matters referred to in paragraph 5.1(a) at the relevant Periodic Finance Review Meeting, in circumstances where paragraph 5.4A does not apply;

(b) the representatives of the Parties fail to agree the matters referred to in paragraph 5.1(a)(vii) within 10 Weekdays of first meeting to agree such matters in accordance with paragraph 5.4A, in circumstances where that paragraph applies; or

(c) the Franchisee fails to provide the relevant information required pursuant to Schedule 13.2 (Information), in accordance with the timescales set out therein, or otherwise in accordance with this paragraph 5,

the Authority shall (without prejudice to its other rights) be entitled (but not obliged) to determine the relevant matters in accordance with this paragraph 5 and all other applicable provisions of this Schedule 8.A but by reference to the relevant information available to the Authority at the time of such determination.

Accrued Disallowable Costs, Accrued Revenue Foregone and Accrued Authority Claims

5.6 Without prejudice to paragraphs 5.4 to 5.5, if subsequent to any Periodic Finance Review Meeting the Authority later identifies any item (applicable to that period to which the relevant Periodic Finance Review Meeting relates) which the Authority considers is or may be a Disallowable Cost or an instance of Revenue Foregone or any Authority Claims (whether following a review of the Franchisee's Annual Audited Accounts or otherwise) the Authority shall within 28 days of identifying such item be entitled to:-

- (a) notify the Franchisee in writing, identifying the item concerned; and
- (b) request further information from the Franchisee in connection with the item for the purposes of the operation of this paragraph 5.6 and paragraphs 5.6A to 5.6C. The Franchisee shall provide the information within such time as the Authority may reasonably specify for the purpose.

5.6A The parties shall seek to agree the value of any Disallowable Costs and/or Revenue Foregone and/or any Authority Claims (and/or in accordance with paragraph 5.9, relevant Initial Authority Claim Amounts, as applicable) identified by the Authority pursuant to paragraph 5.6 within 20 Weekdays of the later of the Authority's notice referred to in paragraph 5.6(a) and the date specified by the Authority for the delivery of further information in accordance with paragraph 5.6(b) (the "**Escalation Trigger Date**").

5.6B If:

- (a) the parties fail to agree the matters referred to in paragraph 5.6A; and
- (b) [redacted]

each Party will respectively procure that such matter or matters (as the case may be) will be escalated to any senior civil servant within Transport Scotland's rail group on behalf of the Authority and Dominic Booth (statutory director of Abellio Transport Group Limited) on behalf of the Franchisee. Those representatives will meet at the earliest convenient time and in any event within 20 Weekdays of the Escalation Trigger Date and negotiate in good faith and attempt to agree the relevant matters.

5.6C If:

- (a) the Parties fail to agree the matters referred to in paragraph 5.6A in circumstances where paragraph 5.6B does not apply;
- (b) the representatives of the Parties fail to agree the matters referred to in paragraph 5.6A within 10 Weekdays of first meeting to agree such matters in accordance with paragraph 5.6B, in circumstances where that paragraph applies; or
- (c) the Franchisee fails to provide the relevant information required pursuant to paragraph 5.6(b) in accordance with the specified timescales, then

the Authority shall reasonably determine the value of any Disallowable Costs and/or Revenue Foregone and/or any Authority Claims (and/or in accordance with paragraph 5.9, relevant Initial Authority Claim Amounts, as applicable).

5.7 The value of any Disallowable Costs and/or Revenue Foregone and/or any Authority Claims (and/or in accordance with paragraph 5.9, relevant Initial Authority Claim Amounts as applicable) as agreed or determined whether pursuant to paragraph 5.4A, paragraph 5.5, paragraph 5.6A, paragraph 5.6B, paragraph 5.6C or paragraph 5.9 shall be referred to as "**Accrued Disallowable Costs**" and "**Accrued Revenue Foregone**" and "**Accrued Claims**" (as applicable).

- 5.8 The value of any Accrued Disallowable Costs and/or Accrued Revenue Foregone and/or Accrued Claims on each occasion accumulated pursuant to paragraph 5.7 shall be aggregated with the total of all Disallowable Costs, Revenue Foregone and Authority Claims which have been previously accumulated, such aggregated value from time to time being the "**Aggregated Costs and Revenues Liabilities**".
- 5.9 To the extent that any Authority Claim is a contingent or unliquidated claim (a "**Contingent Authority Claim**"), the parties shall, pursuant to paragraph 5.4A, paragraph 5.6A or paragraph 5.6B (as applicable) seek to agree (or in the absence of agreement, the Authority may for the purposes of paragraph 5.5 and shall for the purposes of paragraph 5.6C, reasonably determine) an initial value for such Contingent Authority Claim (the "**Initial Authority Claim Amount**") and the Initial Authority Claim Amount shall be deemed to be an Accrued Claim for the purposes of paragraph 5.7. If the value of Contingent Authority Claim once fully liquidated (that is, being agreed or determined through dispute resolution) is:
- (a) in excess of the Initial Authority Claim Amount the Authority shall be entitled to claim such amount in excess of the Initial Authority Claim Amount from the Franchisee:
 - (i) as an adjustment (i.e. as an uplift or increase) to the Aggregated Costs and Revenues Liabilities used in the calculation of APP, where Franchise Payments in favour of the Authority remain to be paid after the date on which the Contingent Authority Claim has become fully liquidated; and/or
 - (ii) as an adjustment to (i.e. as a deduction from) the Franchise Payment(s) payable after the expiry of the Term of EMA2;
 - (iii) as a debt from the Franchisee (and the Franchisee recognises and accepts that such debt is a liability outstanding to the Authority which the Authority shall be entitled to claim in accordance with the Funding Deed or under the Performance Bond on expiry or termination of this Franchise Agreement); or
 - (b) is less than the Initial Authority Claim Amount the Authority shall repay to the Franchisee the difference between the actual liquidated value of the relevant Authority Claim and the Initial Authority Claim Amount either:
 - (i) as an adjustment to the Aggregated Costs and Revenues Liabilities to be applied against the calculation of APP, where Franchise Payments remain to be paid after the date on which the Contingent Authority Claim has become fully liquidated; or
 - (ii) where no Franchise Payment is payable after the date on which the Contingent Authority Claim becomes fully liquidated as a payment to the Franchisee.
- 5.10 The Authority shall have the discretion (acting reasonably) to decrease (and subsequently increase) the required frequency of the Reporting Period Budget Forecast Review Meetings and/or the Periodic Finance Review Meetings, provided they shall be no more frequent than once a Reporting Period.
- 5.11 Any Reporting Period Budget Forecast Review Meeting or Periodic Finance Review Meeting (or part thereof) may be held remotely with the prior agreement of the Parties.
6. **Periodic Adjustments**
- 6.1 The value of PADJ for the current Reporting Period (n) shall be equal to the following

PADJ for Reporting Period(n) =	$(ACRP_{n-2} - BCRP_{n-2}) + (ACAP_{n-2} - BCAP_{n-2}) - (ARRP_{n-2} - ERRP_{n-2})$
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Where:

ACRP_{n-2}	means the total Actual Costs in the second preceding Reporting Period (n-2) as set out in the Management Accounts for that preceding Reporting Period. ACRP _{n-2} may only be a positive number
BCRP_{n-2}	means the total Budgeted Costs in respect of the second preceding Reporting Period (n-2) based on the version of the Budget which applied for the purpose of the calculation of the Franchise Payment for that preceding Reporting Period (n-2). BCRP _{n-2} may only be a positive number.
ACAP_{n-2}	means the total Actual Capex for the second preceding Reporting Period (n-2). ACAP _{n-2} may only be a positive number
BCAP_{n-2}	means the Budgeted Capex in respect of the second preceding Reporting Period (based on the version of the Budget which applied for the purpose of the calculation of the Franchise Payment for that preceding Reporting Period (n-2)). BCAP _{n-2} may only be a positive number
ARRP_{n-2}	means the total Actual Revenue for the second preceding Reporting Period (n-2). ARRP may be a positive or negative number.
ERRP_{n-2}	means the total Estimated Revenue in respect of the second preceding Reporting Period (n-2) ERRP may only be a positive number.

- 6.2 The value of PADJ shall be calculated in respect of each Reporting Period falling within the Term of EMA2. Subject to paragraph 6.3, an adjustment shall be made to the next Franchise Payment payable after the calculation of the value of PADJ is determined (a "**Periodic Adjustment**"). For the avoidance of doubt a Periodic Adjustment shall be made to the two Franchise Payments falling due after the expiry of the Term of EMA2, based on the information in the Management Accounts of, respectively, the third and fourth Reporting Periods in EMA2. Also for the avoidance of doubt each Periodic Adjustment shall be calculated on the basis that no interest is due pursuant to paragraph 3.6 of this Schedule 8.A.
- 6.3 The Authority agrees that, provided the Management Accounts (in a form consistent with the obligations of the Franchisee under Schedule 13.2 (Information)) are received from the Franchisee within the timescale specified in paragraph 3 of Schedule 13.2 (Information), the Authority will provide the Franchisee with the value of PADJ in sufficient time for the Periodic Adjustment to be included in the Franchise Payment for the Reporting Period immediately following the Reporting Period to which the Periodic Adjustment relates.
- 6.4 If the Franchisee fails to provide the Management Accounts in accordance with its obligations under Schedule 13.2 (Information), the Authority shall (without prejudice to his other rights) be entitled (but not obliged) to determine the amount of any Periodic Adjustment in accordance with this paragraph 6 by reference to the relevant information available to the Authority at the time of such determination.

7. **Final Adjustments**

7.1 FADJ in respect of EMA2 shall be equal to the following:

FADJ for EMA2 =	$(\text{TotalAC} - \text{TotalAR}) + \text{TotalACAP} - (\text{TotalPFP} + \text{TotalPBCP}) - \text{TotalPADJ}$
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Where:

TotalAC	means the total Actual Costs of the Franchisee for the Term of EMA2 as set out in the Final Reviewed Accounts for the Term of EMA2. TotalAC may only be a positive number.
TotalAR	means the total Actual Revenue for the Term of EMA2 as set out in the Final Reviewed Accounts for the Term of EMA2. TotalAR may only be a positive number.
TotalACAP	means the total Actual Capex for the Term of EMA2 as set out in the Final Reviewed Accounts for the Term of EMA2. TotalACAP may only be a positive number.
TotalPFP	means the aggregate value of all of the Periodic Franchise Payments paid to the Franchisee during the Term of EMA2. TotalPFP may be positive or negative.
TotalPBCP	means the aggregate value of all of the Periodic Budgeted Capex Payments paid to the Franchisee during the Term of EMA2. TotalPBCP may only be a positive number.
TotalPADJ	means the total net value of PADJ paid in respect of each Reporting Period during the Term of EMA2. TotalPADJ may be positive or negative.

7.2 The value of FADJ in respect of the Term of EMA2 (whether negative or positive) shall be payable as an adjustment to the Franchise Payment payable after the calculation of FADJ is determined (the "**Final Adjustment**") and the Parties acknowledge this will be after the Term of EMA2. For the avoidance of doubt the Final Adjustment shall be calculated on the basis that no interest is due pursuant to paragraph 3.6 of this Schedule 8.A.

7.3 If the Franchisee fails to provide the information required by paragraph 3 of Schedule 13.2 (Information) including Annual Audited Accounts, Final Reviewed Accounts and a reconciliation to the Management Accounts by the date specified in that paragraph the Authority shall (without prejudice to his other rights) be entitled (but not obliged) to determine the amount of any Final Adjustment in accordance with this paragraph 7 but by reference to the 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.

8. **NOT USED**

9. **NOT USED**

10. **WORKING CAPITAL**

10.1 During the Term of the EMA2, the Authority shall not provide any working capital support to the Franchisee. The Franchisee shall manage its own working capital position during the Term.

Working Capital Shortfall

- 10.2 If during a Reporting Period, the Franchisee becomes aware that the Franchisee’s available cash balance will or is likely to fall below the Required Cash Balance on the last day of that Reporting Period (the “**Working Capital Shortfall**”), the Franchisee shall:
 - (a) notify the Authority that a Working Capital Shortfall will or is likely to occur during that Reporting Period and its value;
 - (b) provide in or with that notice supporting information (including relevant accounts and calculations) evidencing that Working Capital Shortfall and the amount of additional working capital the Franchisee will require to ensure that the Working Capital Shortfall is remedied; and
 - (c) provide such further supporting information as the Authority shall reasonably require.
- 10.3 Unless otherwise permitted in paragraph 10.4, the Franchisee shall ensure that a Working Capital Shortfall is made up within the relevant Reporting Period, such that the cash balance of the Franchisee is not less than the Required Cash Balance. The Franchisee may arrange a facility or make other arrangements with its Parent or otherwise to meet the obligation to make up the Working Capital Shortfall.
- 10.4 If the Authority is satisfied that a Working Capital Shortfall in a Reporting Period is likely to be temporary or will be made up by the Franchisee at a future date (including, but not limited, to situations where the Working Capital Shortfall relates to the payment of VAT), the Authority may agree that the Franchisee is not required to make up that Working Capital Shortfall within that Reporting Period but may do so instead in such subsequent Reporting Period(s) agreed by the parties and in that event no Working Capital Shortfall therefore shall be considered to exist in that Reporting Period.

Working Capital Account

- 10.5 During the Term of the EMA2, the Franchisee will manage a working capital account which clearly sets out the periodic movements in working capital to provide both the Authority and its Parent with clear sight of the amounts of working capital provided and outstanding. The Franchisee will provide the Authority with sight of and detail of movements within that account, as required by the Authority.

11. Calculation of Adjusted Performance Payment

- 11.1 Without prejudice to paragraphs 11.2 to 11.5 (inclusive), after the expiry of the Term of EMA2 the value of the APP shall be calculated as follows:

APP =	SumPP – PPADC
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Where:

SumPP	means the sum of all of the Performance Payments for the Term of EMA2 calculated in accordance with Schedule 8.B (Performance Payments). SumPP may only be a positive number.
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PPADC	means the Aggregated Costs and Revenues Liabilities
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11.2 If the value of APP is a negative amount:

- (a) for the purposes of the calculation under paragraph 2.1, APP shall be deemed to equal zero; and
- (b) the Franchisee shall owe the Authority, as a debt, a sum equal to the value of APP (expressed as a positive value) and the Authority may choose to demand payment from the Franchisee of all or part of that sum (plus interest as described under paragraph 3.6 until paid) or deduct all or part of that sum from any Franchise Payment(s) payable following expiry of the Term of EMA2.

11.3 Without prejudice to paragraph 11.4, the value of APP (if a positive value) shall be paid to the Franchisee, by way of an addition to the Franchise Payment payable after:

- (a) the value of the Performance Payment has been finally calculated pursuant to Schedule 8.B (Performance Payment); and
- (b) the value of the Aggregate Costs and Revenue Liabilities have been agreed or determined for the purposes of this paragraph 11.

For the avoidance of doubt APP shall be calculated on the basis that no interest is due pursuant to paragraph 3.6 of this Schedule 8.A.

11.4 Nothing in this paragraph 11 shall limit the rights and remedies of the Authority in respect of any Disallowable Costs, Revenue Foregone and/or Authority Claims not taken into account in the calculation of PPADC.

12. Further Authority rights in relation to accounting matters

12.1 Where the Authority reasonably considers that in calculating any matter which impacts the calculation of a Franchise Payment Component, any particular item or transaction has not been accounted for on a reasonable basis (including where the accounting treatment looks to the form rather than the substance, of the item or transaction) and having regard to all circumstances, including GAAP (as may be amended from time to time), the Authority shall be entitled to require it to be accounted for on such other basis as the Authority may reasonably determine and notify to the Franchisee provided that the Authority shall not be entitled pursuant to this paragraph to alter the accounting policies of the Franchisee from those set out in the Supporting Materials and applied through the Financial Model.

12.2 Where the Final Reviewed Accounts are subject to adjustment or restatement the Authority shall have a discretion to require the recalculation of any affected Franchise Payment Component for the relevant Franchisee Year and to require that the Franchisee shall pay to the Authority the amount which is the difference between:

- (a) any amount actually paid to the Authority or adjusted in favour of the Authority and the amount that would have been paid or adjusted had the affected Franchise Payment Component been originally calculated on the basis that such adjustment or revision was included in the Final Reviewed Accounts; and/or
- (b) any amount actually paid by the Authority or adjusted in favour of the Franchisee and the amount that would have been paid or adjusted had the affected Franchise Payment Component been originally calculated on the basis that such adjustment or revision was included in the Final Reviewed Accounts.

12.3 Any payment due to the Authority shall be paid by the Franchisee within thirty (30) days of the Authority notifying the Franchisee that the Authority requires a payment to be made pursuant to this paragraph.

13. **Indexation**

For the avoidance of doubt, it is agreed that the Franchise Payments and any sum shown in any Budget for any given Franchisee Year (or other period) shall not be subject to automatic indexation or adjustment to take into account the effect of inflation provided that this paragraph 13 is without prejudice to the adjustment of the Budget in accordance with paragraph 4 and/or the adjustment of the Franchise Payments in accordance with paragraphs 6 and 7 of this Schedule 8.A.

14. **Further obligations of the Franchisee**

14.1 Except to the extent otherwise agreed by the Authority, the Franchisee will act as a Good and Efficient Operator in all respects in connection with the operation of this Schedule 8.A (Franchise Payments) and shall not act in a way that is contrary to the principles of EMA2 by using the existence or cessation of EMA2 to increase the profitability of the Franchisee.

14.2 The Franchisee warrants on a continuing basis and shall, if requested at any time by the Authority, provide written confirmation from a statutory director of the Franchisee confirming that the Franchisee is not party to any arrangement of any kind whatsoever under which:

- (a) any amounts which the Franchisee might otherwise have received from a third party are reduced, waived or otherwise suppressed; and/or
- (b) any amounts which the Franchisee might otherwise be properly obliged to pay or be liable are increased; and/or
- (c) any amounts required to be paid or accounted for by the Franchisee become or are recorded as paid or accounted for during the Term of EMA2, which might otherwise be paid or accounted for in the periods preceding or following the Term of EMA2;
- (d) any amounts which the Franchisee might otherwise have received from a third party during the Term of EMA2 are recovered or accounted for in the periods preceding or following the Term of EMA2; and/or
- (e) Revenue is accounted for in the periods preceding or following the Term of EMA2.

14.3 Without limiting any other constraints which operate by virtue of any other part of the Franchise Agreement or otherwise, no application shall be made or other step taken by or on behalf of the Franchisee in respect of the winding up or striking off of the Franchisee (or any similar or analogous process) and nor shall the Franchisee permit or facilitate the same:

- (a) until all the adjustments and payments for which this Schedule 8.A provides have been made and discharged in full; and/or
- (b) without the prior written consent of the Authority.

14.4 The Authority shall be entitled to notify the Franchisee of any future initiatives or proposals that the Authority considers may have the potential to reduce certain Actual Costs below the applicable Budgeted Costs and the Franchisee shall, acting reasonably and in good faith, discuss with the Authority all such matters as are relevant to the possible implementation of such initiatives.

15. **NOT USED**

16. **Preparation of Final Reviewed Accounts**

- 16.1 The Parties agree and acknowledge that the Franchisee shall not be obligated to prepare a full set of financial statements as was set out in Paragraph 16 of Schedule 8.A of the EMA but shall instead produce a balance sheet for the purposes of a balance sheet reconciliation as soon as reasonably practicable following the expiry of this Agreement.
- 16.2 Following the expiry of the Term of EMA2, the Franchisee will have prepared a set of financial statements in accordance with GAAP comprising, as a minimum, a profit and loss account, balance sheet and a cashflow statement containing only transactions properly accounted for which relate to the Term of EMA2, to a level of disaggregation which the Authority may reasonably require and then commission a review and audit of those accounts, to a standard equivalent to a statutory audit to the extent that statutory audit procedures would reasonably be applied to a profit and loss account, balance sheet and cash flow statement (such audited accounts being the "**Final Reviewed Accounts**"), and will:
- (a) if required by the Authority, use an external auditor;
 - (b) if required by the Authority, allow full access by their officials and/or representatives on an "open book" basis; and
 - (c) if required by the Authority, allow full access by the National Audit Office or other equivalent body on an "open book" basis.

APPENDIX 1 TO SCHEDULE 8.A

Disallowable Costs

Any references in this Appendix 1 to Schedule 8.A to costs, payments, expenses, fees, liabilities or other amounts shall be deemed to refer to Costs and/or Capital Expenditure as the context may require.

- (a) Any costs that were incurred otherwise than in accordance with those expected to be incurred by a Good and Efficient Operator. Variations between Actual Costs and Budgeted Costs and/or Actual Capex and Budgeted Capex (as the case may be) likely to be considered to be inconsistent with those expected of a Good and Efficient Operator include but are not limited to:-
 - (i) staff, director or officer costs in excess of the Budget (except where evidenced by the Franchisee as appropriate for delivery of the Franchise or of reasonable scale given the requirement for delivery of the Franchise provided that any costs referred in to in paragraph (b) or paragraph (c) of this Appendix shall not in any circumstance be considered appropriate for the delivery of the Franchise or of a reasonable scale given the requirement for delivery of the Franchise);
 - (ii) costs that do not reflect the contracted position under existing contracts as at the EMA Start Date unless such change has been agreed by the Authority (such agreement not to be unreasonably withheld or delayed);
 - (iii) new contracts entered in to by the Franchisee which have not been procured in compliance with the Franchisee's usual procurement procedures; or
 - (iv) variations to existing contracts which have not been made in accordance with the Franchisee's usual procurement procedures;
- (b) Any bonuses, rewards or discretionary benefits paid to any staff, directors or officers under any schemes which have not previously been approved by the Authority (in its absolute discretion) in writing;
- (c) Any expenses, disbursements or equivalent costs (to which the Franchisee's Expenses Policy would apply) which are incurred other than in compliance with the Franchisee's expenses policy;
- (d) Costs incurred or to be incurred by the Franchisee:
 - (i) in relation to any Remedial Plan or Remedial Agreement or Improvement Plan unless specifically permitted in writing by the Authority;
 - (ii) in removing branding or Marks under paragraph 2.2 of Schedule 14.2 (Maintenance of Operating Assets) except for branding or Marks whose removal from particular assets the Authority has explicitly agreed for the purpose of this provision should be an allowable cost;

- (iii) in relation to the inspection costs referred to in paragraph 6.4 of Schedule 10.1 (Remedial Plans and Remedial Agreements);
 - (iv) in meeting Abellio Group audit requirements to the extent these are additional to audit costs which would otherwise be incurred by the Franchisee;
 - (v) in relation to any reasonable enforcement costs incurred by the Authority pursuant to paragraph 7 of Schedule 19;
- (e) Any cost that the Franchisee may incur as a result of:
- (i) it failing to comply with its obligations under or in connection with the Franchise Agreement (including the grant thereof) save in respect of any failures which result from the Franchisee acting as a Good and Efficient Operator;
 - (ii) it failing to comply with its obligations under or in connection with any agreements which are ancillary to the Franchise Agreement save in respect of any failures which result from the Franchisee acting as a Good and Efficient Operator;
 - (iii) it failing to comply with any applicable Laws, to the extent this gives rise to a criminal liability. Paragraph (a) above shall apply in respect of any other consequence of a failure by the Franchisee to comply with any applicable Laws; or
 - (iv) indemnifying the Authority for any matter which the Franchisee is obliged to indemnify the Authority pursuant to the Franchise Agreement or any agreements which are ancillary to the Franchise Agreement;
- (f) not used;
- (g) Any costs incurred by the Franchisee arising out of or in connection with a lawful demand by the Authority under the Performance Bond or Season Ticket and Smartcard Bond or under the Funding Deed or under the Bank Guarantee (as defined in the Funding Deed);
- (h) Any payments, costs or other liabilities owed to Affiliates save in respect of such payments costs or other liabilities which have been incurred by the Franchisee acting as a Good and Efficient Operator;
- (i) Costs of developing and protecting any intellectual property rights which are not owned by the Authority or the Franchisee or are so owned, but where the costs are not ancillary to an activity included in the Budget;
- (j) Marketing or advertising costs incurred substantially to the benefit of wider group products or group brand recognition and which are not primarily for the benefit of Franchise Services;
- (k) Fines from government or regulatory bodies;

- (l) Costs of financial hedging, or gains/losses from hedging activity except with prior agreement from the Authority or where such costs or gains/losses arise from the Franchisee's participation in an industry recognised hedging scheme or activity which has been agreed by the Authority or which the Authority reasonably considers have been made in good faith on an arm's length basis to any Affiliate in connection with fuel hedging instruments to help manage the exposure of the Franchisee to diesel fuel costs;
- (m) The amount by which the Purchase Price under the Supplemental Agreement at the end of the Franchise Period is higher than it would have been but for the Franchisee:
 - (i) incurring Disallowable Costs; or
 - (ii) otherwise acting other than as Good and Efficient Operator;
- (n) The costs incurred by the Franchisee which are associated with preparing plans to remedy performance shortfalls, including preparing and developing any remedial, improvement or action plans required by this Agreement;
- (o) The amount of any interest payable by the Franchisee to the Authority in accordance with paragraph 3.6 of Schedule 8.A (Franchise Payments);
- (p) Any costs incurred by the Franchisee in pursuing or defending any claim against the Authority in respect of or in connection with the Franchise Agreement or otherwise;
- (q) Any costs incurred in relation to the period prior to the EMA Start Date which a Good and Efficient Operator would have usually have discharged in the period prior to the EMA Start Date;
- (r) Any costs incurred in relation to the period prior expiry of the Term of EMA2 which a Good and Efficient Operator would have usually have discharged in the period following the expiry of the Term of EMA2;
- (s) Any costs incurred in relation to the discharge of Committed Obligations which are in excess of the amounts a Good and Efficient Operator would ordinarily have expended on discharging the Committed Obligation in accordance with the contractual programme and to minimum specification contractually required;
- (t) Where costs are incurred during the Term of EMA2 as the result of an obligation to incur expenditure from a fund required to be maintained pursuant to the Franchise Agreement (including, but not limited to, Minor Works) such expenditure shall be a Disallowable Cost except and to the extent that it relates to expenditure required to be incurred in relation to Franchisee Years beginning after 31st March 2020;

After the expiry of EMA2, the Parties shall agree or the Authority shall determine the remaining amounts in such funds with reference to the amounts available to be expended in the funds and the aggregate amount of expenditure incurred since the EMA Start Date in relation to obligations related to those funds;

- (u) Principal and interest paid or payable on amounts drawn under the Funding Deed or under any other loan, bank or credit facility, credit line, guarantee or any other instrument or arrangement of any nature (but excluding those payments the Franchisee is permitted to make under clause 11.4 and 11.5 of EMA2);
- (v) Except with the prior agreement of the Authority (not to be unreasonably withheld), any costs, charges, penalties, compensation or similar payments that the Franchisee may incur as a result of the termination of any contract or other arrangement;
- (w) Except with the prior agreement of the Authority, losses on disposals of fixed or non-current assets;
- (x) Maintenance costs where the maintenance activity was previously scheduled to be undertaken prior to the EMA or after the Term of EMA2 or where (and to the extent that) it would have been reasonable and/or prudent for the maintenance to have been carried out prior to the EMA or after the Term of EMA2;
- (y) Depreciation or Capital Expenditure to the extent that the capital cost of acquisition of the relevant assets was (or was assumed in the Financial Model) to be funded by a third party;
- (z) Costs of any audit pursuant to paragraph 3 of Schedule 13.2 (Information); and
- (aa) Legal, accountancy and other costs and expenses incurred in connection with the preparation and implementation of the EMA and/or EMA2.

Appendix 2 to Schedule 1

Schedule 8.B (Performance Payment)

1. DEFINITIONS

For the purposes of this Schedule 8.B (Performance Payment) only, the following words and expressions shall have the following meanings unless otherwise specified:

"EMA2 Criterion"	means each of the criteria set out in Appendix 3 of this Schedule 8.B, in respect of which the Franchisee's performance shall be measured in an EMA2 Review and for which a score shall be awarded in the EMA2 Review Scorecard (and "EMA2 Criteria" means the plural of EMA2 Criterion);
"EMA2 Performance Period"	means: (a) the period commencing at 1.59 a.m. on 20 September 2020 and ending at 1.59 a.m. on 10 January 2021, or such earlier date of termination of the EMA2; and (b) where the term of EMA2 is extended in accordance with clause 3.3 of EMA2, each Extended EMA2 Performance Period;
"EMA2 Review"	means a review carried out (or to be carried out) in accordance with Appendix 1 of this Schedule 8.B;
"EMA2 Review Report"	means, in respect of an EMA2 Review, a report prepared in accordance with paragraphs 3.3 and 3.4 of this Schedule 8B;
"EMA2 Review Meeting"	means, in respect of the EMA2 Review, a meeting held between the Parties to discuss the performance of the Franchisee during the relevant EMA2 Performance Period;
"EMA2 Review Scorecard"	means, in respect of an EMA2 Review, a scorecard completed (or, as the case may be, to be completed) by the Authority in accordance with paragraph 5 of Appendix 1 of this Schedule 8.B;
"EMA2 Scoring Standard"	means each standard set out with respect to each EMA2 Criterion as set out in Appendix 3 of this Schedule 8.B; and;
"Extended EMA2 Performance Period"	means, in the event that the term of EMA2 is extended in accordance with clause 3.3 of EMA2, each further period following the end of the preceding EMA2 Performance

Period, comprising four (4) additional Reporting Periods (or less in the event that EMA2 is terminated prior to the expiry of the relevant Extended EMA2 Performance Period).

2. CALCULATION OF THE PERFORMANCE PAYMENT (PP)

2.1 The Performance Payment (PP) shall be the sum of the three amounts corresponding to the Franchisee's EMA2 Review score for the EMA2 Criteria as set out below:

EMA2 Criterion	EMA2 Review Scorecard score for relevant EMA2 Criterion	PP £
Operational performance	3	[redacted]
	2	[redacted]
	1	[redacted]
Customer experience	3	[redacted]
	2	[redacted]
	1	[redacted]
Acting as a Good and Efficient Operator	3	[redacted]
	2	[redacted]
	1	[redacted]

2.2 The Performance Payment for each EMA2 Performance Period assumes an EMA2 Performance Period of four (4) Reporting Periods. If the actual duration of an EMA2 Performance Period is more or less than four (4) Reporting Periods, the Performance Payment with respect to such EMA2 Performance Period shall be calculated on a pro rata basis.

APPENDIX 1 TO SCHEDULE 8.B

EMA2 Review

1. PURPOSE OF THE EMA2 REVIEW

- 1.1 The purpose of an EMA2 Review is for the Authority to undertake a review of the Franchisee's performance in relation to the Franchise Services over the course of the relevant EMA2 Performance Period.
- 1.2 The Parties agree that more than one EMA2 Review may be undertaken by the Authority where the variations to the Franchise Agreement imposed pursuant to EMA2 are extended in accordance with clause 3.3 of EMA2.
- 1.3 The Authority will carry out an EMA2 Review with respect to each EMA2 Performance Period. At each periodic Franchise Performance Meeting, progress against the three EMA2 Criteria shall be discussed and reviewed by the Parties.
- 1.4 Each EMA2 Review shall be carried out in accordance with the process set out in this Schedule 8.B.

2. NOTICE OF EMA2 REVIEW MEETING

- 2.1 The Authority shall notify the Franchisee of the date, time and location for the relevant EMA2 Review Meeting by no later than the end of the relevant EMA2 Performance Period, provided always that the EMA2 Review Meeting shall take place no earlier than the last day in the relevant EMA2 Performance Period and no later than 60 Weekdays after the end of the relevant EMA2 Performance Period.
- 2.2 For the avoidance of doubt, nothing in this Schedule 8.B shall prevent the Parties from discussing any matter relevant to an EMA2 Review outside of the relevant EMA2 Review Meeting.

3. EMA2 REVIEW REPORT

- 3.1 Not less than 30 Weekdays prior to the end of the relevant EMA2 Performance Period, the Authority, acting reasonably, shall notify the Franchisee in writing of any additional information that the Franchisee shall be required to submit at the same time as the completed EMA2 Review Report.
- 3.2 Not less than fifteen (15) Weekdays prior to end of the EMA2 Performance Period, the Franchisee shall notify the Authority in writing of any matters in addition to those set out in the EMA2 Review Report or the information notified to the Franchisee by the Authority in accordance with paragraph 3.1 above, which the Franchisee considers to be relevant for the EMA2 Review. The Authority shall, within ten (10) Weekdays of receiving such notice, provide written confirmation to the Franchisee of whether the Authority considers such matters to be relevant to the EMA2 Review.
- 3.3 As soon as reasonably practicable after the end of an EMA2 Performance Period, and in any event no later than 10 Weekdays after the end of an EMA2 Performance Period, the Franchisee shall deliver to the Authority a duly completed EMA2 Review Report in respect of the EMA2 Performance Period.
- 3.4 The EMA2 Review Report delivered by the Franchisee in accordance with paragraph 3.3 above shall include information, evidence and written commentary from the Franchisee in respect of the EMA2 Performance Period covering:

- (a) each of the matters described in Appendix 2 to this Schedule 8B;
- (b) any other such matter notified by the Authority to the Franchisee in accordance with paragraph 3.1 above; and
- (c) any other matter which the Authority has confirmed as relevant for the EMA Review in accordance with paragraph 3.2 above.

3.5 The Authority shall provide the Franchisee with:

- (a) written commentary on the completed EMA2 Review Report; and
- (b) any information additional to that contained in the EMA2 Review Report which the Authority has used or intends to use to assess the Franchisee's performance,

in each case, no later than ten (10) Weekdays prior to the EMA Review Meeting.

4. **EMA2 REVIEW MEETING**

4.1 The EMA2 Review Meeting shall take place at the date, time and location notified by the Authority in accordance with paragraph 2.1 above and shall be attended by representatives of each of the Authority and the Franchisee.

4.2 The Franchisee shall ensure that the representatives of the Franchisee at the EMA Review Meeting include such:

- (a) appropriate and qualified personnel of the Franchisee;
- (b) directors and/or senior managers of the Franchisee; and
- (c) directors and/or senior managers of the Parent,

as the Authority may reasonably require.

4.3 At the EMA2 Review Meeting the Parties shall discuss the Franchisee's performance by reference to the EMA2 Review Report, together with any supporting commentary, documents or evidence submitted by the Franchisee to the Authority in accordance with paragraphs 3.3 and 3.4 above and any commentary and/or information provided by the Authority to the Franchisee in accordance with paragraph 3.5 above.

5. **EMA2 REVIEW SCORING**

5.1 The Authority shall provide to the Franchisee, no later than ten (10) Weekdays following the EMA2 Review Meeting, a duly completed EMA2 Review Scorecard setting out the Franchisee's performance in each of the EMA2 Criteria for the EMA Performance Period.

5.2 The Franchisee shall be scored 3, 2 or 1 in relation to each EMA2 Criterion.

5.3 The EMA Review shall be complete once the Authority has sent a duly completed EMA2 Review Scorecard to the Franchisee in accordance with paragraph 5.1 above.

- 5.4 Scores in the EMA2 Review Scorecard shall be awarded by the Authority having regard to the EMA2 Scoring Standards. Without prejudice to paragraph 5.8 below, one single, integer, overall score shall be awarded in relation to each EMA2 Criterion based on the Authority's assessment of the Franchisee's performance in respect of that EMA2 Criterion against the EMA2 Scoring Standards and taking into account:
- (a) the EMA2 Review Report provided to the Authority by the Franchisee in accordance with paragraphs 3.3 and 3.4 above;
 - (b) any commentary provided to the Franchisee by the Authority in accordance with paragraph 3.5 above; and
 - (c) any discussions between the Franchisee and the Authority at the EMA2 Review Meeting.
- 5.5 The Franchisee shall receive a Performance Payment, in accordance with this Schedule 8.A (Franchise Payments), if the Franchisee scores 2 or above with respect to one or more of the EMA2 Criteria.
- 5.6 The Franchisee shall not receive a Performance Payment if the Franchisee scores 1 in relation to all three of the EMA2 Criteria.
- 5.7 If the Franchisee:
- (a) is operating at a level that would, or would likely, be scored "1"; or
 - (b) has received a score of "1",
- in relation to any of the EMA2 Criteria during an EMA2 Performance Period, then the Authority may require a Remedial Plan and the provisions of Schedule 10.1 of the Franchise Agreement shall apply.
- 5.8 Should the Franchisee consider the Authority's scoring of an EMA Criterion to be manifestly unreasonable it may notify the Authority of that view (the "**EMA Criterion Dispute**"), and the Authority shall consider (in good faith) any representations from the Franchisee on that matter which are properly supported by evidence and the Parties shall meet as soon as reasonably practicable following the Authority's receipt of such representations to discuss the same (the "**EMA Criterion Dispute Meeting**").
- 5.9 If within 10 Weekdays following the EMA Criterion Dispute Meeting the Franchisee still considers the Authority's scoring of an EMA Criterion to be manifestly unreasonable, then then each Party will respectively procure that such matter will be escalated to any senior civil servant within Transport Scotland's rail group on behalf of the Authority and any statutory director of any Affiliate of the Franchisee on behalf of the Franchisee. Those representatives will meet at the earliest convenient time and in any event within 20 Weekdays of the date of the relevant EMA Criterion Dispute Meeting and negotiate in good faith and attempt to agree the relevant matters (the "**EMA Criterion Escalation Meeting**").
- 5.10 If the Parties fail to agree the EMA Criterion Dispute at the EMA Criterion Escalation Meeting, then the Franchisee shall be entitled to refer the EMA Criterion Dispute for resolution under the Dispute Resolution Rules provided that the Authority's scoring shall apply pending the outcome of such referral.

APPENDIX 2 TO SCHEDULE 8.B

EMA2 Review Report

1. OPERATIONAL PERFORMANCE

A report on the Franchisee's operational performance, by reference to the Applicable Timetable, including:

- (a) the level of performance achieved against the Applicable Timetable, and an explanation of the level of performance achieved relative to the Applicable Timetable;
- (b) an explanatory note setting out, if relevant, any act, omission or failure of a third party which has impacted performance and the extent of that impact, along with supporting evidence (except for where the impact exclusively relates to COVID-19); and
- (c) details and supporting evidence of any actions undertaken to mitigate any impacts on performance, including work with Network Rail regarding infrastructure.

2. CUSTOMER EXPERIENCE

A report on the customer experience delivered by the Franchisee, including:

- (a) evidence of train and Station cleaning schedules;
- (b) details of complaints received relating to quality of service including cleanliness and upkeep of Stations and the trains, staff presence/helpfulness, accessibility and information provision; and
- (c) details of staff presence, including evidence of staffing rosters having been adhered to as far as possible.

3. GOOD AND EFFICIENT OPERATOR

A report detailing the extent to which the Franchisee has acted as a Good and Efficient Operator, including:

- (a) evidence of any ways in which the Franchisee has sought to identify and implement ways to run the Franchise more efficiently and avoid nugatory costs, acting as a Good and Efficient Operator, including details and supporting evidence of the Franchisee's actions;
- (b) evidence of appropriate revenue protection being applied in the interests of the taxpayer and/or otherwise evidence that the Franchisee has followed government guidance prevailing at the time regarding revenue collection; and
- (c) evidence of plans in place to return the operations and business to pre-COVID-19 levels of operation, including encouraging the public to travel on public transport where appropriate.

APPENDIX 3 TO SCHEDULE 8.B

EMA2 Review Scorecard

EMA2 Score	EMA2 Scoring Standards for each EMA2 Criterion		
	EMA2 Criterion: Operational Performance	EMA2 Criterion: Customer Experience	EMA2 Criterion: Good and Efficient Operator
3: Good	<p>The Franchisee has delivered the Passenger Services in accordance with the relevant Applicable Timetable (with minor exceptions only).</p>	<p>The Franchisee has provided high levels of cleanliness at Stations and on trains.</p> <p>The Franchisee has ensured that all Stations and trains have been staffed as required to enable service to continue at a good or very good standard.</p> <p>Trains and Stations have been maintained as appropriate.</p> <p>The Franchisee has provided a high quality journey experience for all passengers including providing information at all Stations and trains at all times, where possible.</p>	<p>The Franchisee has continued to make every effort to grow the business, offering incentives for appropriate travel (for example, ensuring those who have a legitimate need to travel are encouraged to use the train where it is appropriate to do so).</p> <p>The Franchisee has worked collaboratively with other Train Operators and/other rail industry bodies (including Network Rail) to provide an appropriate service to passengers, ensuring that passengers have as much choice as desirable, whilst taking into account demand.</p> <p>The Franchisee has proactively made suggestions and developed plans for restoring service, operations and business to pre-COVID-19 levels as soon as possible after the expiry of EMA2.</p>

			The Franchisee has been responsive to the Authority's requests and fully cooperated in dealing with national emergencies.
2: Acceptable	The Franchisee has delivered the Passenger Services in accordance with the relevant Applicable Timetable (with some exceptions).	<p>The Franchisee has ensured that trains and Stations have continued to be cleaned to an acceptable standard.</p> <p>The Franchisee has deployed staff on the same or similar basis as usual, with an emphasis on provision of customer service throughout the period.</p> <p>Trains and Stations have been maintained to an acceptable level.</p> <p>The Franchisee has provided an acceptable level of journey experience for passengers including providing information at Stations and trains at all times, where possible.</p>	The Franchisee has sought to operate the Franchise as far as possible as if they were still on revenue/cost risk, avoiding nugatory costs including ensuring revenue is protected throughout the duration of EMA2 in accordance with the prevailing advice from the Authority.
1: Below acceptable standard	The Franchisee has materially failed to deliver the Passenger Services in accordance with the relevant Applicable Timetable.	<p>The Franchisee has failed to maintain cleanliness of trains and Stations to an acceptable level.</p> <p>The Franchisee has failed to deploy staff in a way to enable Stations and services to be maintained for passengers.</p>	<p>The Franchisee has failed to mitigate nugatory costs or manage revenue loss throughout the term of EMA2 in accordance with the prevailing advice from the Authority.</p> <p>The Franchisee has failed to respond to the Authority's requests</p>

		<p>The Franchisee has failed to maintain the trains and Stations at an acceptable level.</p> <p>The Franchisee has failed to provide an acceptable level of journey experience for passengers and/or has failed to provide information at Stations and trains.</p>	<p>and/or failed to cooperate in dealing with national emergencies.</p>
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Amendment to Alliancing Security Agreement

For the purposes of the Legal Writings (Counterparts and Delivery) (Scotland) Act 2015, this Agreement is delivered on 2020

Between:

- (1) **NS Groep N.V.**, a company incorporated in the Netherlands with company number 30124358 and having its registered office at Laan van Putenburg 100, 3511 ER Utrecht (the "**Guarantor**"); and
- (2) **The Scottish Ministers**, Victoria Quay, Edinburgh, EH6 6QQ acting through **Transport Scotland**, Buchanan House, 58 Port Dundas Road, Glasgow, G4 0JF or such other agency, department or other organisational unit of the Scottish Government as they may from time to time nominate (the "**Scottish Ministers**").

Whereas:

- (A) On 18 October 2014 the Guarantor and the Scottish Ministers entered into an alliancing security agreement (the "**Alliancing Security Agreement**") pursuant to which the Guarantor guaranteed to the Scottish Ministers that Abellio Scotrail Limited (a company incorporated in Scotland with company number SC450732 and whose registered address is Atrium Court, 50 Waterloo Street, Glasgow, G2 6HQ) (the "**Franchisee**") would comply with its obligations under paragraph 2.4 of schedule 10.2 (*Compensation for Termination on Franchisee Default*) of a franchise agreement dated 7 and 18 October 2018 (the "**Franchise Agreement**").
- (B) On 11 March 2020 the World Health Organisation declared the coronavirus disease 2019 ("**COVID-19**") a pandemic.
- (C) COVID-19 affected the ability of the Franchisee to perform its obligations under the Franchise Agreement.
- (D) On 7 April 2020 the Scottish Ministers and the Franchisee entered into an emergency measures agreement to temporarily amend the Franchise Agreement to address the impact on COVID-19 (the "**Emergency Measures Agreement**"), pursuant to which the Scottish Ministers made available certain working capital funding to the Franchisee.
- (E) The Emergency Measures Agreement expired on 20 September 2020.
- (F) COVID-19 continues to fundamentally impact the Franchisee's performance of its obligations under the Franchise Agreement and therefore the Franchisee and Scottish Ministers have agreed to entered into a further emergency measures agreement on or about the date of this Agreement to record and implement further amendments to the Franchise Agreement, including certain changes to the provision of working capital funding to the Franchisee ("**EMA2**").
- (G) The Guarantor and the Scottish Ministers wish to amend the Alliancing Security Agreement to have guaranteed certain obligations that the Franchisee has in EMA2 to repay working capital provided to it and to maintain a specified amount of working capital during EMA2.

It is agreed as follows:

1 Definitions and Interpretation

1.1 Words and expressions defined in the Security Alliancing Agreement shall have the same meaning herein unless otherwise provided.

1.2 In this Agreement the following words and phrases have the following meanings:

"Alliancing Security Agreement" has the meaning given to it in Recital (A);

"COVID-19" has the meaning given to it in Recital (B);

"EMA2" has the meaning given to it in Recital (F);

"Emergency Measures Agreement" has the meaning given to it in Recital (D);

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

"Franchisee" has the meaning given to it in Recital (A).

1.3 Each reference in this Agreement to:

1.3.1 **"this Agreement"** (or to any other agreement or deed) means, at any time, this Agreement (or, as applicable, such other agreement or deed) as amended, novated, re-stated, substituted or supplemented at that time, provided that the relevant amendment, novation, re-statement, substitution or supplement does not breach any term of this Agreement, EMA2 or the Franchise Agreement;

1.3.2 a party to this Agreement includes its successors-in-title and its permitted assignees and transferees;

1.3.3 the singular includes the plural and vice versa, as the context permits or requires; and

1.3.4 any provision of any statute or of any subordinate legislation means, at any time, the relevant provision as in force at that time (even if it has been amended or re-enacted since the date of this Agreement) unless this Agreement expressly states otherwise or the context requires otherwise;

1.3.5 any reference to a "clause" or "Schedule" is, unless the context otherwise requires, a reference to a clause or Schedule of this Agreement and clause and Schedule headings are for ease of reference only.

2 Amendments to the Security Alliancing Agreement

2.1 The Alliancing Security Agreement shall be amended with effect from the date first written on this Agreement as set out in this Clause 2.

2.2 Clause 1.1 of the Alliancing Security Agreement shall be amended by inserting the following definitions:

"EMA2" means the emergency measures agreement dated on or about 20 September 2020 between the Franchisee and the Scottish Ministers;

“Working Capital Discharge Date” means the date that is six (6) calendar months after the end of the Term of EMA2 unless:

- (a) the Franchisee has made payment of the WC Secured Amount 1 on the last day of the Term of EMA2 or otherwise received on or after such date notification(s) from the Scottish Ministers for WC Secured Amount 1; or
- (b) the Franchisee has received on or before such date a notification from the Scottish Ministers in respect of WC Secured Amount 2,

in which case the Working Capital Discharge Date shall be the earlier of:

- (i) the date upon which the WC Secured Amounts as so notified are received (in full) from the Franchisee by the Scottish Ministers, in cleared funds, to such bank account as may be notified by the Scottish Ministers to the Franchisee; and
- (ii) the date upon which all and any claims brought by the Scottish Ministers under this Agreement in respect of the WC Secured Amounts are discharged in full by the Guarantor and the Scottish Ministers have received the WC Secured Amounts in cleared funds, to such bank account as may be notified by the Scottish Ministers to the Guarantor;

“WC Guaranteed Obligations” means the obligations of the Franchisee under clause 10 (*Other Financial Obligations*) and paragraph 10.3 of Schedule 8A (*Franchise Payments of EMA2*) of EMA2;

“WC Secured Amount 1” means the amount which becomes due and payable by the Franchisee to the Scottish Ministers under clause 10 (*Other Financial Obligations*) of EMA2 provided that such amount shall not exceed [redacted]

“WC Secured Amount 2” means, at any time during the Term of EMA2, the amount of any and all sums required to be provided or sourced by the Franchisee to comply with its obligations in paragraph 10.3 of Schedule 8A (*Franchise Payments*) of EMA2 to make up Working Capital Shortfall(s) provided that such amount shall not exceed [redacted]

“WC Secured Amounts” means WC Secured Amount 1 and WC Secured Amount 2.

2.3 Clause 1.2.1 of the Alliancing Security Agreement shall be amended by inserting the words “or EMA2 (as the case may be)” after “the Franchise Agreement”.

2.4 Clause 1.3 of the Alliancing Security Agreement shall be amended by inserting the words “or EMA2 (as the case may be)” after “the Franchise Agreement”.

2.5 A new clause 2.1A shall be inserted into the Alliancing Security Agreement after clause 2.1 as follows:

“2.1A In consideration of the benefits made available to the Franchisee pursuant to EMA2, the Guarantor hereby:

- 2.1A.1 guarantees to the Scottish Ministers that the Franchisee shall comply with its obligation in Clause 10 (*Other Financial Obligations*) of EMA2;
- 2.1A.2 guarantees to the Scottish Ministers that the Franchisee shall comply with its obligation in paragraph 10.3 of Schedule 8A (*Franchise Payments*) to EMA2 to make up a Working Capital Shortfall;
- 2.1A.3 undertakes to pay WC Secured Amount 1 to the Scottish Ministers within three (3) days if such amount is notified to it by the Scottish Ministers;
- 2.1A.4 undertakes to pay WC Secured Amount 2 to the Scottish Ministers within three (3) days if such amount is notified to the Guarantor by the Scottish Ministers; and
- 2.1A.5 as principal obligor and as a separate and independent obligation and liability from its obligations under clauses 2.1A.1, 2.1A.2, 2.1A.3 and 2.1A.4 agrees to indemnify and keep indemnified the Scottish Ministers in full and on demand from and against all and any losses, costs, claims, liabilities, damages, demands and expenses suffered or incurred by the Scottish Ministers arising out of, or in connection with, any failure of the Franchisee to perform or discharge any of its obligations or liabilities in respect of the WC Guaranteed Obligations,

(the "**WC Guarantee**")."

- 2.6 Clause 2.3 of the Alliancing Security Agreement shall be deleted and replaced as follows:

"Subject to clause 3.2:

- 2.4.1 the Guarantor's obligations in respect of the WC Guarantee shall expire at 11:59pm (London time) on the Working Capital Discharge Date; and
- 2.4.2 this Agreement shall otherwise expire at 11:59pm (London time) on the Discharge Date."

- 2.7 Clause 3.2 of the Alliancing Security Agreement shall be deleted and replaced as follows:

"If, at any time, there has been a release, settlement or discharge of the Guarantor's obligations under this Agreement and, as a consequence of any insolvency proceedings (or analogous proceedings) or for any other reason, (a) any payment made to the Scottish Ministers in respect of the Guarantee or WC Guarantee (as the case may be) is required to be repaid and/or (b) any such payment or any security (or other right) held by the Scottish Ministers in respect of the Guarantee or WC Guarantee (as the case may be) is void, is set aside or is otherwise affected, then the Guarantor's obligations under this Agreement shall continue in effect as if there had been no such release, settlement or discharge and as if the relevant payment had not

been made and/or (as applicable) the relevant security (or other right) had not been held by the Scottish Ministers.”

2.8 Clause 5.1.1 of the Alliancing Security Agreement shall be amended by inserting the words “or the WC Guarantee (as the case may be)” after “the Guarantee”.

2.9 Clause 5.1.3 of the Alliancing Security Agreement shall be deleted and replaced as follows:

“The Scottish Ministers may decide (a) whether and, if so, when, how and to what extent (i) to exercise its rights under this Agreement and (ii) to exercise any other right it might have in respect of the Guarantee or WC Guarantee (or otherwise) and (b) when and how to apply any payments received under this Agreement and any other payments received by it in respect of the Guarantee or WC Guarantee (as the case may be). The Guarantor has no right to control or restrict the Scottish Ministers’ exercise of this discretion. In particular, the Guarantor is not permitted to insist that the Scottish Ministers seeks payment from any other person exercises any other right it might have or takes any other step before exercising any right under this Agreement.”

2.10 Clause 5.3.2 of the Alliancing Security Agreement shall be deleted and replaced as follows:

“If, at any time, the Guarantor’s performance of its obligations under this Agreement in respect of any part of the Guarantee or WC Guarantee would be in breach of sections 678-680 of the Companies Act 2006, the Guarantor’s obligations will not apply at that time in respect of that part of the Guarantee or WC Guarantee (as the case may be).”

2.11 Clause 5.4.1 of the Alliancing Security Agreement shall be deleted and replaced as follows:

“The provisions of this Agreement will apply at all times (a) regardless of the date on which any obligations secured by the Guarantee or WC Guarantee arise or arose and (b) in respect of the full obligations secured by the Guarantee and WC Guarantee at the relevant time.”

2.12 Clause 5.4.2 of the Alliancing Security Agreement shall be amended by deleting the words “(ii) the Guarantee” and replacing with the words “(ii) the Guarantee and/or the WC Guarantee”.

3 Representations and Warranties

3.1 The Guarantor makes the following representations and warranties:

3.1.1 it is a limited liability company, duly incorporated and validly existing under the law of the Netherlands, with power to own its assets and to carry on its business (and other activities) as they are being conducted;

3.1.2 it has the power and authority to enter into this Agreement and to perform its obligations and exercise its rights under it;

3.1.3 the obligations expressed to be assumed by it in this Agreement are legal, valid, binding and enforceable obligations (subject to the principle that equitable remedies are discretionary); and

3.1.4 entering into this Agreement and performing its obligations and exercising its rights do not conflict with any law applicable to it, its memorandum and articles of association or any agreement binding upon it (or its assets).

4 Assignment

4.1 No Assignment by Guarantor

The Guarantor shall not assign, novate or otherwise deal with any rights, interest or obligations under this Agreement.

4.2 Assignment by Scottish Ministers

4.2.1 The Scottish Ministers may, at any time, assign, novate and otherwise deal with any rights, interests or obligations under this Agreement.

4.2.2 The Scottish Ministers may disclose any information it sees fit to any person (a) to which it proposes to assign or novate (or has assigned or novated) any rights, interests or obligations under this Agreement and/or (b) with which it proposes to enter into (or has entered into) any other dealings in relation to any such rights, interests or obligations.

5 Counterparts

5.1 This Agreement may be executed by the parties on separate counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement. Where executed in counterparts this Agreement shall be held as undelivered for the purposes of The Legal Writings (Counterparts and Delivery) (Scotland) Act 2015 and will not take effect until both counterparts have been executed and delivered by the parties agreeing the date of delivery and inserting it at the top of page 1 of this Agreement.

5.2 Transmission of the executed signature page of a counterpart of this Agreement by (a) fax or (b) email (in PDF, JPEG or other agreed format) shall take effect as the transmission of an executed "wet ink" counterpart of this Agreement. If this transmission is adopted, without prejudice to the validity of the agreement thus made, each party shall on request provide the other with the "wet ink" hard copy original of their counterpart.

6 Governing Law

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by Scots law.

IN WITNESS WHEREOF these presents consisting of this and the [5] preceding pages are executed as follows:

Executed by **NS Groep N.V.** in the presence of:

signature

Director

signature
of witness

print name

name

print name of witness

address

Executed on behalf of **The Scottish Ministers** in the presence of:

signature

signature
of witness

print name

name

print name of witness

address

Schedule 2

Payment Reconciliation Principles

1. In connection with making a Final Adjustment under the EMA and under EMA2, under Paragraph 16 of Schedule 8A of the EMA and Paragraph 16 of Schedule 8A of EMA2, the Authority may require the Franchisee to produce Final Reviewed Accounts.
2. The Parties have agreed to combine the Final Adjustment and have a single set of Final Reviewed Accounts for the period of the combined terms of EMA and EMA2. This is intended to provide comfort to the Authority that no overcompensation has arisen during the terms of the EMA, EMA2 and/or for the current Franchisee Year taking into account all emergency measures agreed for such Franchisee Year (and in respect of the previous Franchisee Year as appropriate).

Schedule 3

[redacted]