

ALLIANCE AGREEMENT

between

NETWORK RAIL INFRASTRUCTURE LIMITED

and

ABELLIO SCOTRAIL LIMITED

re: ScotRail Franchise

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AGREEMENT

between

- (1) **NETWORK RAIL INFRASTRUCTURE LIMITED**, registered in England and Wales under number 2904587 and having its registered office at Kings Place, 90 York Way, London N1 9AG (“NRIL”); and
- (2) **ABELLIO SCOTRAIL LIMITED**, registered in Scotland under number SC450732 and having its registered office at 10th Floor, 133 Finnieston Street, Glasgow, G3 8HB (“Abellio”).

WHEREAS

- (A) NRIL is the owner and operator of and responsible for the main rail infrastructure in Scotland, England and Wales;
- (B) The Scottish Ministers are currently running a procurement exercise to award the ScotRail Franchise (as hereinafter defined);
- (C) Abellio are bidding for the ScotRail Franchise;
- (D) As part of its ScotRail Franchise bid Abellio wishes to form an alliance with NRIL to align their respective activities in Scotland and to perform their respective roles in a spirit of co-operation and openness as set out in this Agreement;
- (E) Abellio has developed a baseline using the ScotRail control period 5 settlement and the financial proposition included in Abellio's ScotRail Franchise bid (the “Abellio Initial Baseline”). NRIL's baseline is the control period 5 settlement with the exclusion of enhancements and civils (the “NRIL Initial Baseline”);
- (F) Whilst discussing and developing the depth of the proposed alliance NRIL and Abellio had regard to European legislation and in particular the “Fourth Rail Package” (as hereinafter defined) and the need to develop an agreement that complies with this;
- (G) During the Mobilisation Period Abellio and NRIL agree that the Alliance Board will be formed and the Alliance Board will perform certain functions including formally agreeing and adopting the Baseline and Business Plan as hereinafter defined;

- (H) NRIL and Abellio agree that the operation of the Alliance shall be without prejudice to each Party's statutory and/or regulatory and/or licence and/or contractual obligations which they shall remain severally ultimately accountable for;
- (I) NRIL and Abellio have agreed that the operation of the Alliance will adhere to the spirit of the Alliance Charter as hereafter adopted;
- (J) Similarly, NRIL and Abellio agree that the operation of the Alliance will support and respect all existing and future operators' rights to access the railway on a fair and non-discriminatory basis;
- (K) Abellio has elected to opt out of NRIL's proposals for route efficiency benefit sharing ("REBs") for the duration of the Alliance; and
- (L) The Parties agree to establish the Alliance with effect from the Alliance Commencement Date on the terms contained in this Agreement.

IT IS AGREED:

1. **INTERPRETATION**

- 1.1 In this Agreement, unless the context otherwise requires, the following words and expressions shall have the meanings ascribed to them:

"Access Agreement" means the bilateral access contracts between NRIL and the beneficiary including without limitation track, station and depot access contracts;

"Affiliate" of any person means any other person that, directly or through one or more intermediaries, controls, is controlled by, or is under common control with, such person;

"Alliance" means the unincorporated collaboration between the Parties in respect of the operation of the ScotRail Franchise and Scotland Route, through the Alliance Board;

"Alliance Activities" means the operation, renewal (including for the avoidance of doubt electrification), replacement, improvement, development and maintenance of the

Scotland Route together with the operation and maintenance of rolling stock and other assets associated with passenger rail services provided by the ScotRail Franchise;

- “Alliance Assumptions”** means the assumptions detailed at Schedule Part 8;
- “Alliance Board”** means the board of representatives appointed by each of the Parties from time to time pursuant to Clause 5.2.1 and Schedule Part 1;
- “Alliance Charter”** means the behaviours, objectives and founding principles of the Alliance more particularly described in Schedule Part 3 which the Parties agree will be the basis of operation of this Agreement;
- “Alliance Commencement Date”** means the day after the expiry of the standstill period following the announcement of Abellio as preferred bidder in the procurement exercise to award the ScotRail Franchise;
- “Alliance Initiative”** has the meaning given to it in Schedule Part 5;
- “Alliance Term”** shall be consistent with the term of the ScotRail Franchise Agreement unless subject to earlier termination pursuant to Clause 17;
- “Authorised Representative”** means the representatives appointed by each of the Parties from time to time in accordance with Clause 5.2.1;
- “Baseline Methodology and Assumptions”** has the meaning given to it in Schedule Part 5;
- “Business”** means the business described in Schedule Part 2 or any other business or activity carried on by the Alliance with the written agreement of both the Parties consistent with the Alliance Activities;
- “Business Day”** means Mondays to Fridays inclusive except for days

which are bank or public holidays in Scotland;

“Business Plan” shall have the meaning ascribed thereto in Clause 5.3.2;

“Committed Alliance Initiatives” means the initiatives listed in Schedule Parts 2 and 4;

“Companies Act” means the Companies Act 2006;

“Confidential Information” means the terms of this Agreement and all information (whether oral, written or in any other form) of a confidential and/or commercially sensitive nature made available or disclosed by or on behalf of a Discloser to a Recipient (whether before or after this Agreement is actually entered into), for the purpose of or pursuant to this Agreement (and, for these purposes, the Alliance’s intellectual property shall be deemed to have belonged to the Alliance at all times), together with any information derived from such information and any analyses, compilations, studies and other material prepared by the Recipient which contain or otherwise reflect or are generated from such information, but shall not include information which:

- (a) is publicly available at the time it is made available to the Recipient or subsequently becomes generally available to the public other than as a result of disclosure or other act or omission by any Recipient contrary to its obligations of confidentiality; or
- (b) was or has become available (as can be demonstrated by its written records) to the Recipient or any other member of the Recipient’s Group) free of any restrictions as to its use or disclosure; or
- (c) the Discloser has agreed in writing not to

treat as Confidential Information;

- “control”** (including, with correlative meaning, the terms “controlled by” and “under common control with”) means the possession, direct or through one or more intermediaries or together with persons acting in concert (as such term is defined for the purposes of The City Code on Takeovers and Mergers), of the power to direct or cause the direction of the management or policies of any person and, without limitation, for the purposes of this Agreement, an interest in shares in the capital of a company conferring in the aggregate 50% or more of the total voting rights conferred by all the issued shares in the capital of that company shall be deemed to confer control of that company;
- “Discloser”** means the relevant Party by or on whose behalf Confidential Information is made available or disclosed;
- “Financial Year”** shall have the meaning ascribed to it in section 390 of the Companies Act;
- “Fourth Railway Package”** means the package of legislation reforms proposed by the European Commission in its Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on "the Fourth Railway Package - completing the single European Railway Area to foster European Competitiveness and Growth" dated 30 January 2013 as such proposals are amended, developed and adopted as legislation from time to time;
- “Group”** means in relation to a company, that company, any wholly-owned subsidiary of that company, any holding company of which that company is a wholly-

owned subsidiary and any other wholly-owned subsidiary of such a holding company;

- “Generally Accepted Accounting Principles”** means accounting principles and policies which are recommended by the Institute of Chartered Accountants of Scotland, generally adopted in the United Kingdom and commonly adopted by companies carrying on businesses similar to that of the Company;
- “in the agreed terms”** means in a form and in terms agreed or to be agreed among, or on behalf of, the Parties in writing;
- “Mobilisation Period”** means the period between the expiry of the standstill period following confirmation of preferred bidder and 31 March 2015 or such other date as Transport Scotland may advise;
- “Network”** means the network of which NRIL is the operator pursuant to its Network Licence;
- “Network Code”** means the set of rules called the "Network Code" which is incorporated by reference into and therefore forms part of each Access Agreement;
- “Network Licence”** means the licence granted to NRIL on 31 March 1994 pursuant to section 8 of the Railways Act 1993 as amended from time to time;
- “Office of Rail Regulation”** has the meaning ascribed to it under section 15 of the Railways and Transport Safety Act 2003;
- “Operating Budget”** means the projected balance sheet, profit and loss account and cash flow statement in relation to the Alliance, together with the projected capital expenditure budget for each successive period of 12 months (being a period corresponding with each Financial Year of the Alliance);
- “Panel on Takeovers and”** means the independent supervisory authority

- “Mergers”** designated to carry out certain regulatory functions in relation to takeovers pursuant to the Direction on Takeover Bids (2004/23/EC) whose statutory functions under Chapter 1 of Part 28 of the Companies Act 2006 are to issue and administer the City Code of Takeovers and Mergers and to supervise and regulate takeovers and other matters to which the code applies;
- “Parties”** means NRIL and Abellio and their permitted assignees and successors together with all other persons who are parties to this Agreement from time to time (and each a “Party”);
- “Recipient”** means the relevant Party receiving Confidential Information;
- “Retained Functions”** means:
- (a) the process of assembling, validating and publishing the timetable;
 - (b) central management and planning of Network enhancements including possession planning;
 - (c) charge setting and collection and contracting policy;
 - (d) the activities of the strategic planning team;
 - (e) the setting, collection and administration of access charges and access rights under Access Agreements (whether with Abellio or with any other Operator);
- “Schedule”** means the schedule in 8 parts annexed to this Agreement;
- “Scotland Route”** means the Network in Scotland including any interconnecting routes;

- “ScotRail Franchise”** means the franchise for the provision of passenger rail services awarded by the Scottish Ministers pursuant to the ScotRail Franchise Agreement;
- “ScotRail Franchise Agreement”** means the agreement in relation to the ScotRail Franchise to be awarded by the Scottish Ministers following the conclusion of their procurement exercise on or around October 2014;
- “ScotRail Franchise Commencement Date”** means 1 April 2015 or such other date as may be stated by Transport Scotland;
- “Track Access Agreement”** means the track access agreement between First ScotRail Limited and Network Rail Infrastructure Limited as amended and to be assigned to Abellio in due course;
- “Ultimate Accountabilities”** means in relation to the Parties each Party’s ultimate accountabilities or responsibilities deriving by reason of statutory or regulatory requirements, licences, the ScotRail Franchise Agreement and/ or requirements in a regulated contract or contract of employment;
- “United Kingdom Listing Authority”** means a division of the Financial Conduct Authority, an independent corporate body created under Chapter 1 of the Financial Services Act 2012, responsible for monitoring market disclosures reviewing and approving prospectuses published by issuers of securities and for operating the UK listing regime by ensuring compliance with Disclosure and Transparency Rules, the Prospectus Rules and the Listing Rules pursuant to Part VI of the Financial Services and Markets Act 2000 (as amended); and
- “Unwind Plan”** means the process to be completed by the Parties on the termination of the Alliance which for the avoidance of doubt will provide for the continuation of the Committed Alliance Initiatives notwithstanding termination of this Agreement and as may be varied

by the Alliance Board from time to time.

- 1.2 In this Agreement, unless the context otherwise requires:
- 1.2.1 words and expressions defined in the Companies Act shall, unless they are otherwise defined in this Agreement, bear the same meanings;
 - 1.2.2 reference to any statute or statutory provision includes a reference to any statute or statutory provision which amends, extends, re-enacts or replaces the same or which has been amended, extended, re-enacted or replaced by the same and shall include any orders, regulations, instruments or other subordinate legislation made under the relevant statute or statutory provision whether before or after the date hereof;
 - 1.2.3 reference to Recitals and Clauses and subdivisions thereof are references to the recitals and clauses of this Agreement and subdivisions thereof and references to Parts are references to parts of the Schedule;
 - 1.2.4 a reference to the singular includes a reference to the plural and *vice versa* and a reference to any gender includes a reference to all other genders; and
 - 1.2.5 references to persons shall include natural persons, bodies corporate, unincorporated associations, partnerships, joint ventures, trusts or other entities or organisations of any kind, including (without limitation) government entities (or political subdivisions or agencies or instrumentalities thereof).
- 1.3 Reference to this Agreement shall include the Recitals and the Schedule which shall each form part of this Agreement.
- 1.4 The headings in this Agreement are for convenience of reference only and do not form part of this Agreement and shall not affect its validity or construction.
2. **COMMENCEMENT AND MOBILISATION**
- 2.1 This Agreement and the obligations contained herein (including for example the obligations contained at Clause 3 (Undertakings), Clause 20 (Confidential Information) and Clause 21 (Announcements)) shall commence on the date of execution. The Alliance shall commence on the Alliance Commencement Date. This Agreement and if appropriate the Alliance shall subject to earlier termination

pursuant to Clause 17 (Termination of the Alliance) continue for the duration of the Alliance Term.

2.2 Following the commencement of the Alliance and during the Mobilisation Period each Party shall (at their own cost) complete the following:

- 2.2.1 Agree and adopt the Alliance Charter;
- 2.2.2 Appoint the members of the Alliance Board pursuant to Clause 5.2 and Schedule Part 1;
- 2.2.3 Agree the governance and extent of decision making powers of the Alliance Board;
- 2.2.4 Finalise the Baseline;
- 2.2.5 Finalise and adopt the Business Plan detailed at Part 4 of the Schedule;
- 2.2.6 Agree the Unwind Plan in accordance with the principles set out at Schedule Part 4;
- 2.2.7 Develop and agree Schedule Part 5 (Cost and Revenues);
- 2.2.8 Develop and agree Schedule Part 6 (Personnel);
- 2.2.9 Develop and agree Schedule Part 7 (Risk Allocation and Insurance); and
- 2.2.10 Agree the Alliance communications strategy.

3. **UNDERTAKINGS**

3.1 Abellio acknowledges that NRIL is not a joint bidder in the ScotRail Franchise. Abellio wishes to enter into an Alliance with NRIL in order to deliver some of the ScotRail Franchise outputs for which Abellio shall remain ultimately accountable. Accordingly, Abellio has made certain assumptions about the Alliance as detailed at Schedule Part 8 ("Abellio Alliance Assumptions"). NRIL has agreed to enter into an Alliance with Abellio based on the Abellio Alliance Assumptions. Abellio hereby undertakes to consult NRIL on any proposed changes to its Abellio Alliance Assumptions, prior to the Alliance Commencement Date, that would affect the terms of this Agreement. Abellio acknowledges that pursuant to Clause 17.2 (Termination of the Alliance) NRIL may terminate this Agreement if the Abellio Alliance Assumptions are changed without NRIL's agreement.

3.2 NRIL acknowledges that in deciding whether to form an Alliance Abellio considered the baseline provided by NRIL (the “NRIL Alliance Assumptions”) detailed in Schedule Part 8. Abellio has agreed to enter into an Alliance with NRIL based on the NRIL Alliance Assumptions. NRIL hereby undertakes to consult Abellio on any proposed changes to the NRIL Alliance Assumptions, prior to the Alliance Commencement Date, that would affect the terms of this Agreement. NRIL acknowledges that pursuant to Clause 17.2 (Termination of the Alliance) Abellio may terminate this Agreement if the NRIL Alliance Assumptions are changed without Abellio’s agreement.

3.3 In performing its obligations pursuant to this Agreement each Party agrees that it shall comply with the Alliance Charter and:

3.3.1 it shall act in good faith towards the other Party;

3.3.2 it will do all things necessary or reasonably desirable to give effect to the spirit and intention of this Agreement subject always to its statutory and or contractual obligations and/ or Ultimate Accountabilities; and

3.3.3 the operation of the Alliance shall be without prejudice to existing and/or future operators’ rights to access the railway on a fair and non-discriminatory basis.

3.4 Each Party agrees and undertakes to the other that the affairs of the Alliance shall be managed in accordance with and subject to :

3.4.1 the Alliance Charter;

3.4.2 this Agreement; and

3.4.3 all other relevant agreements including without limitation the ScotRail Franchise Agreement, NRIL’s Licence, the Track Access Agreement and the Network Code.

In the event of any ambiguity or conflict arising between the terms of this Agreement and the Alliance Charter the terms of this Agreement shall prevail.

4. **PURPOSE OF THE ALLIANCE**

4.1 The Parties agree and undertake to each other that the primary object of the Alliance is to work collaboratively to ensure that the Business shall, by reference to the

Baseline and Annual Business Plan, be conducted on sound commercial principles to ensure best performance, align incentives and operations with a view to generating the maximum achievable savings and efficiencies for the operation of the railway in Scotland subject always to each Party's Ultimate Accountabilities, or contractual obligations or limitations that may apply.

5. **THE ALLIANCE BOARD**

5.1 **Function of the Alliance Board**

Subject to the provisions of this Agreement including without limitation Ultimate Accountability the Parties agree that the Alliance Board shall have ultimate responsibility for the performance of such Alliance Activities as encompassed within the Business and delivery of the Business Plan from time to time. In performing this function the Alliance Board may delegate day to day management or elements thereof to an executive committee or specified individuals of an executive committee as detailed at Schedule Part 1.

5.2 **Composition of the Alliance Board**

5.2.1 Each Party shall be entitled to appoint two representatives to the Alliance Board as its Authorised Representatives. Each Authorised Representative shall be a senior member of the relevant Party's organisation and shall be authorised to represent and bind their appointer on any matter relating to this Agreement;

5.2.2 A Party may change its Authorised Representative by giving 5 business days' written notice in advance of the change to the other Party. A replacement Authorised Representative shall have an equivalent level of experience and capability as the Authorised Representative he/she is replacing;

5.2.3 Without prejudice to their rights to appoint and remove Authorised Representatives pursuant to Clauses 5.2.1 and 5.2.2 the Parties undertake to each other that they will consult with each other and have regard to any representations made, so far as practicable, prior to the exercise of such rights, including, without limitation, with regard to the identity of any proposed representative.

5.2.4 The Authorised Representatives shall not be entitled to any remuneration or other emoluments by reason of their appointment.

5.2.5 It is agreed between the Parties that neither of them nor any Authorised Representative appointed by them shall be entitled to take, or permit to be taken any action or decision on behalf of the Alliance (including without limitation any action or decision relating to the conduct of affairs of the Alliance) without any prior approval of the Alliance Board required in terms of this Agreement or the Alliance Charter.

5.3 **Meetings of the Alliance Board**

5.3.1 Alliance Board meetings shall be convened in any appropriate form or forms (including, without limitation, by means of telephone or video conferencing) at regular intervals. The notice in relation to any particular proposed Alliance Board meeting shall include a reasonably detailed agenda of the business to be considered thereat. Only business specified in such agenda shall be considered at Alliance Board meetings unless otherwise agreed.

5.3.2 The Alliance Board will adopt the Business Plan for the period from 1st April 2015 to 31 March 2016 set out in part 4 of the Schedule and thereafter prepare or procure the preparation, for each Financial Year, of an annual business plan (each such plan being referred to in this Agreement as an "Annual Business Plan") which shall include a budget for that period or Financial Year as the case may be (including for the avoidance of doubt, cash flow statements, profit and loss account, balance sheet and capital expenditure proposals).

5.3.3 The Parties acknowledge that continuous involvement in and attendance at the Alliance Board meetings is critical to the success of the Alliance. Accordingly, each Party shall ensure that its Authorised Representatives attend the meetings of the Alliance Board or that a suitable alternative attends.

5.4 **Decisions**

5.4.1 No decision can be made by the Alliance Board unless:

- (a) one Authorised Representative of each Party is present;

- (b) the decision is unanimous; and
- (c) it is within the matters contemplated by this Agreement and is made in accordance with this Agreement.

5.5 Compliance with decisions

5.5.1 Subject to Clauses 5.5.2 each Party must comply with an Alliance Board decision.

5.5.2 If a Party at its absolute discretion thinks that compliance with an Alliance Board decision would cause the Party or the Party's officers, directors, agents, or employees to do or omit to do anything that contravenes its internal governance, any law, contractual obligation or statutory requirement including without limitation Ultimate Accountabilities, or the Party's constituent statute, constitution, memorandum or articles of association, the Party need not comply, but must as soon as practicable give notice in writing to the other Party providing the details of the law or statutory requirement, or the Party's internal governance, constituent statute, constitution, memorandum or articles of association, as the case may be, that will be so contravened and the Alliance Board will then make an alternative decision in respect of the relevant matter.

5.6 Disclosure of conflict of interest

5.6.1 A Party's Authorised Representative on the Alliance Board must fully disclose to an Alliance Board meeting, any conflicting interest or duty, or potential conflict of interest or duty, the representative may have (whether personally or as a representative) before participating in a discussion on any relevant issue or making a decision about that issue. A representative who has made full disclosure may fully participate in any discussion and decision, even though the representative has or may have a conflicting interest or duty. For the purposes of this Clause 5.6.1, a conflict of interest will include any corporate or other objective or affiliations of a Party that could reasonably be considered to have an adverse impact on the achievement of the Alliance Objectives. A conflict of interest is not created merely by the fact that a representative is an appointee and/or an employee of a Party.

6. ULTIMATE ACCOUNTABILITIES

- 6.1.1 Each Party acknowledges that the other Party has certain obligations, accountabilities and/or responsibilities in respect of its Ultimate Accountabilities and, so far as it is reasonably able to do so, each Party shall act and shall procure that its Affiliates and its Authorised Representatives act in a manner designed to enable both Parties to discharge their respective Ultimate Accountabilities.
- 6.1.2 Each Party shall remain ultimately responsible and accountable for its own Ultimate Accountabilities.
- 6.1.3 Notwithstanding the delegation by a Party of any authority in relation to the management of any Ultimate Accountabilities to its Authorised Representative, each Party shall retain oversight and final and ultimate decision making authority in relation to its Ultimate Accountabilities within the operation and management of the Alliance, including the right to overrule any decision taken by the Alliance Board in relation to its Ultimate Accountabilities.
- 6.1.4 Where a Party is of the opinion (in its sole discretion) that any of its Ultimate Accountabilities are not being properly discharged, that Party shall be entitled to intervene in the management of such Ultimate Accountabilities and direct the further management and conduct in relation to those Ultimate Accountabilities or otherwise take such action it deems necessary or desirable (in its sole discretion) to discharge its Ultimate Accountabilities as it sees fit.
- 6.1.5 If a Party requires the Alliance Board to take any action, carry out any task or perform a particular function in the discharge of that Party's Ultimate Accountabilities including without limitation the removal of a member of the executive committee (an "Ultimate Accountability Direction") it shall notify the Alliance Board accordingly and the Parties shall procure that the Alliance Board shall comply with such Ultimate Accountability Direction;
- 6.1.6 In the event of a dispute arising following the service of an Ultimate Accountability Direction regarding whether a matter forms part of a Party's Ultimate Accountabilities or as to the reasonableness of the steps

(including where relevant the cost) required by a Party in that Ultimate Accountability Direction, the Party that issues the Ultimate Accountability Direction shall nevertheless and notwithstanding any provision to the contrary in this Agreement, be entitled to procure that the matter is discharged in accordance with its Ultimate Accountabilities as it sees fit.

7. **SEPARATED ACTIVITIES OF SYSTEM OPERATOR**

7.1.1 Abellio acknowledges and agrees that NRIL:

- (a) is prohibited under the Railways Infrastructure (Access & Management) Regulations 2005, Network Licence, Network Code and Competition Law, from unduly discriminating when carrying on its Network related activities;
- (b) must maintain fair treatment for all operators and prospective operators within and across routes and to provide seamless planning and operation of the Network; and
- (c) shall retain sole responsibility for the Retained Functions as part of its role as System Operator.

and hereby undertakes to help and support NRIL to discharge these obligations as part of the Alliance.

7.1.2 Nothing in this Agreement shall:

- (a) in any way limit or fetter the exercise and discharge by NRIL of its powers, responsibilities, rights and discretions for the time being in respect of the Retained Functions; or
- (b) require NRIL to account to Abellio in respect of how it exercises or discharges the Retained Functions.

8. **ACCESS AGREEMENTS**

8.1.1 This Agreement does not amend any Access Agreement existing between the Parties and hereby agree that this Agreement shall be construed accordingly.

- 8.1.2 The Parties agree and undertake to comply with their respective obligations under any Access Agreement between them as if this Agreement were not in place.
- 8.1.3 Nothing in this Agreement shall in any way limit or fetter the exercise by a Party of any of its rights and discretions for the time being under any Access Agreement between the Parties.
- 8.1.4 If any provision in this Agreement should, at any time in the future, have or be deemed to have the effect of amending or giving rise to a purported amendment to an Access Agreement, such provision shall to that extent be deemed not to form part of this Agreement but the validity, legality and enforceability of the remainder of this Agreement will not be affected, provided that the operation of this Clause 8.1.4 would not negate the commercial intent and purpose of the Parties in entering into this Agreement.

9. **OTHER OPERATORS**

- 9.1 In conducting the Alliance Activities and Business and without prejudice to the Ultimate Accountabilities of either Party in this respect, the Parties shall act in a fair and non-discriminatory manner towards other operators (including train operating companies and freight operating companies either now or which may in the future use the Scotland Route) and shall act in accordance with the Railways Infrastructure (Access & Management) Regulations 2005.

10. **RISK ALLOCATION AND INSURANCE**

- 10.1 The detailed risk allocation and insurance requirements shall be in accordance with the provisions of Schedule Part 7.

11. **REVENUE SUPPORT**

- 11.1 In relation to the operation of schedule 4 and schedule 8 of the Track Access Agreement (the "Schedules 4 and 8 Regime") and the revenue support mechanism under the ScotRail Franchise Agreement (Scottish Ministers Revenue Support), each Party agrees:

- 11.1.1 to act in good faith in relation to the operation of the Schedules 4 and 8 Regime and Scottish Ministers Revenue Support;
- 11.1.2 it shall operate the Schedules 4 and 8 Regime and Scottish Ministers Revenue Support as if this Agreement were not in place;
- 11.1.3 it shall not behave in a manner or take steps intentionally and/or solely designed or intended to manipulate the operation of the Schedules 4 and 8 Regime and/or the Scottish Ministers Revenue Support regime to increase the revenue support payments made to Abellio;
- 11.1.4 in the event that Abellio goes into revenue support pursuant to the ScotRail Franchise Agreement, Abellio shall not waive any right to payment under the Schedules 4 and 8 Regime;
- 11.1.5 each shall, upon the reasonable request of the Scottish Ministers, make available to the Scottish Ministers their respective delay attribution records and files; and
- 11.1.6 in relation to NRIL only, upon the reasonable request of the Scottish Ministers, NRIL shall make available to the Scottish Ministers:
 - (a) all Exceptions Reports; and
 - (b) all Schedule 4 Statements and Schedule 8 Statements (if any);issued by NRIL to Abellio during the operation of the Alliance.

12. SAFETY MANAGEMENT

- 12.1.1 The Parties acknowledge that the Alliance Board shall during the Mobilisation Period procure:
 - (a) the completion of a joint safety validation of the arrangements created by this Agreement to ensure that they are compliant with each of NRIL and Abellio's Safety Management Systems;
 - (b) approval from NRIL's Organisation Safety Assessment Review Team to proceed with the implementation of the arrangements created by this Agreement ("Go Live");
 - (c) completion of the Go Live process;

- (d) compliance with the Go Live criteria devised in relation to the safety validation of the arrangements created by this Agreement (**Go Live Criteria**) or creation of an appropriate mitigating action plan to meet the Go Live Criteria;
- (e) in relation to the arrangements created by this Agreement, the issue of a national go live certificate, certifying that:
 - (i) the safety validation process has been completed;
 - (ii) the Go Live Criteria have been achieved or an appropriate mitigating action plan has been put in place;
 - (iii) the new accountabilities and responsibilities in relation to the arrangements created by this Agreement are understood by the relevant Parties; and
 - (iv) the arrangements created by this Agreement can go live on the ScotRail Franchise Commencement Date,

such certificate to be executed by an authorised representative of each of NRIL and Abellio.

12.1.2 The Parties shall:

- (a) conduct a post implementation review of the arrangements created by this Agreement at each of:
 - (i) three months;
 - (ii) six months;
 - (iii) nine months; and
 - (iv) twelve months

after the ScotRail Franchise Commencement Date;

13. **PREMISES, FACILITIES & EQUIPMENT**

- 13.1.1 The Parties acknowledge that in order to effectively operate the Alliance a degree of integration of premises, facilities, equipment and/or IT is

necessary. Details of the integrated approach are detailed at Schedule Part 4 (Business Plan).

14. **PERSONNEL**

14.1 The Parties agree that:

14.1.1 there are no individuals, employed by either of them, whose contracts of employment will transfer to the other Party by virtue of the Alliance;

14.1.2 each Party shall remain financially responsible for its employees; and

14.1.3 whilst performance reviews and disciplinary action will be governed by an employee's contract of employment any employee forming part of the executive team acting on Alliance Activities or Business will be required to provide an undertaking to comply with the Alliance Charter.

Further details of the personnel provisions including the undertaking to be provided are detailed at Schedule Part 6 (Personnel).

15. **INTELLECTUAL PROPERTY**

15.1 Subject to Clause 15.2 each Party hereby grants for the duration of the Alliance Term to the other Party and to be used only for the purpose of the Alliance Activities and the implementation in accordance with Clause 15.7 below, an irrevocable, non-exclusive, non-transferable, royalty-free licence to use such intellectual property (including future intellectual property) as is owned by that Party and/or which that Party has the right to disclose, license or sub-license in the manner contemplated by this Clause 15.1 and which is reasonably required for the purposes of the Alliance Activities.

15.2 Clause 15.1 shall only apply to the extent that the Party is able to grant such a licence of its Intellectual Property and where any relevant Intellectual Property is or becomes vested in a third party, the relevant Party shall use reasonable endeavours to procure the grant of a like licence to that referred to in Clause 15.1 to the other Party.

15.3 Subject to Clause 20 (Confidential Information) and any other restrictions imposed on either Party, each Party shall as from the date of this Agreement deliver to the other Party at the other Party's reasonable request copies of the Intellectual Property licensed or sub licensed under Clause 15.1 and all supporting documents (to the

extent that it is the relevant Party's possession, custody or control at the date of such request) which is reasonably required for the purposes of the Alliance Activities.

- 15.4 Unless otherwise agreed in writing, any Intellectual Property that is developed jointly by the Parties during the Alliance Term and for the purpose of the Alliance Activities ("Alliance IP"), shall be jointly owned and held in equal shares by the Parties. To the extent that legal title in any Alliance IP does vest in only one Party as a matter of law, that Party hereby assigns (or where immediate assignment is not effective, agrees to assign) wholly and absolutely, all of its right, title and interest in such Alliance IP, including the right to sue for damages for past infringements, to both Parties to hold in equal shares. The assigning Party shall promptly do all such things and execute all such documents as may be necessary to give full effect to such assignation and give to the other Party the full benefit of its rights under this Clause 15.4.
- 15.5 Each Party hereby grants to the other Party an irrevocable, worldwide non-exclusive, royalty free, freely transferable and perpetual licence to use, license and sub-license the Alliance IP solely for the purpose of the Party's or its Affiliates' business and in accordance with Clause 15.7 below.
- 15.6 Each Party shall retain sole ownership of:
- 15.6.1 its own Intellectual Property in existence at the date of this Agreement;
and
- 15.6.2 unless otherwise agreed in writing, all Intellectual Property which is created or acquired by that Party after the date of this Agreement and which is not Alliance IP.
- 15.7 In using any Intellectual Property or Alliance IP licensed or sub-licensed to it in accordance with Clause 15.1 or Clause 15.5 (as the case may be), each Party shall comply with (and shall procure that its Affiliates and Alliance Participants and permitted licensees, sub-licensees and assignees shall comply with) the terms of the applicable licence and any prevailing conditions, policies and/or standards governing use of such Intellectual Property and/or Alliance IP.
- 15.8 Neither Party shall except as provided by Clause 15.5:
- 15.8.1 use or permit any person to use the Alliance IP or license or sub-license any rights in the Alliance IP; or

15.8.2 assign the Alliance IP to any person

without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed).

16. **RECORDS**

16.1 The provisions of Schedule Part 5 (Costs and Revenues) shall have effect.

16.2 Notwithstanding the provisions of Schedule Part 5 (Costs and Revenues), the Parties will:

16.2.1 each remain responsible for maintaining their own corporate records including separate accounting records and profit and loss accounts; and

16.2.2 assist with requests for the provision of records and in particular in relation to the re-franchise.

17. **TERMINATION OF THE ALLIANCE**

17.1 At NRIL's absolute discretion this Agreement may immediately terminate:

17.1.1 if Abellio is not selected as preferred bidder in the Scottish Ministers' procurement exercise to award the ScotRail Franchise and the period of time for any procurement challenge to be brought has passed; or

17.1.2 on the termination of the ScotRail Franchise Agreement; or

17.1.3 in the event that Abellio fails to satisfy the conditions precedent to the ScotRail Franchise Agreement.

17.2 If either party materially alters its Alliance Assumptions prior to the Alliance Commencement Date without the consent of the other Party (the "Affected Party") the Affected Party may terminate this Agreement by giving 5 days' written notice.

17.3 Alternatively, this Agreement may be terminated by either Party giving one year's written notice (or such other period of time as may be agreed in accordance with the Unwind Plan) to the other of its intention to terminate this Agreement.

17.4 On the expiry or termination of this Agreement howsoever arising each party shall as a continuing obligation comply with its obligations pursuant to the Unwind Plan.

18. **NO PARTNERSHIP, MERGER OR JOINT VENTURE**

None of the provisions of this Agreement shall be deemed to constitute a partnership, merger or joint venture amongst the Parties (or any of them) and no Party shall have any authority to bind the other Party in any way.

19. **COSTS**

Each Party shall be liable for its own costs and expenses incurred in connection with the negotiation and preparation of this Agreement and all matters referred to therein.

20. **CONFIDENTIAL INFORMATION**

20.1 Each Recipient undertakes to the Discloser that, subject to Clause 20.2, it will not disclose any Confidential Information to any person other than to such directors, employees, advisers and providers of finance of/to it and any company which it controls or controls it or is under common control with it as are concerned with its interests in the Alliance and that it will use and procure that the Confidential Information is used by those persons to whom it discloses Confidential Information solely in connection with its interests or proposed interests in the Alliance and this Agreement. Each Recipient further undertakes to procure that all persons to whom the Confidential Information is passed are made aware of the confidential and/or commercially sensitive nature of such information and that they observe the terms of this undertaking as if they were parties to it and the Recipient shall be responsible for any breach of its terms by any of them.

20.2 If by reason of any legal requirement or requirement of any court or tribunal of competent jurisdiction or any regulation of any governmental or quasi-governmental authority (including without limitation the Office of Rail Regulation) or of the United Kingdom Listing Authority or of the Panel on Takeovers and Mergers, either Party is required to disclose any of the Confidential Information, such Party shall be entitled to do so but only to the extent required provided that prior to such announcement or disclosure (or, if the circumstances do not reasonably permit prior notification, as soon as practicable after being so required) that Party notifies the others of such requirement and of the timing and content of such announcement or disclosure.

20.3 Each Party acknowledges and agrees that:

- 20.3.1 if any of the provisions of this Clause are breached or violated damages may not be an adequate remedy and accordingly the Discloser shall be entitled without proof of special damages to the right to seek the remedies of injunction, specific performance and other equitable or similar relief for any threatened or actual breach of the provisions of this Clause; and
- 20.3.2 no failure or delay on the part of a Party in exercising any rights or powers herein shall operate as a waiver thereof and a single or partial exercise shall not prevent any other or further exercise thereof or the exercise of any other right or power available.

21. ANNOUNCEMENTS

- 21.1 Except as may be required by law or the United Kingdom Listing Authority or any other regulatory authority, neither Party shall make or cause to be made any announcement or public statement or issue or cause to be issued any press statement with regard to this Agreement or matters provided for or contemplated in or pursuant to this Agreement without the prior written consent of the other Party such consent not to be unreasonably withheld or delayed.
- 21.2 Where a Party is required by law or the United Kingdom Listing Authority or any other regulatory authority to make or cause to be made any announcement or public statement or issue or cause to be issued any press statement with regard to this Agreement or matters provided for or contemplated in or pursuant to this Agreement, then that Party shall, so far as practicable, first consult with the other Party in good faith with regard to the form and content of such announcement or statement and shall limit the information disclosed about such matters in such announcement or statement to that which is strictly necessary to comply with the relevant law or regulation.

22. WAIVER, FOREBEARANCE AND VARIATION

- 22.1 The rights of the Parties shall not be prejudiced or restricted by any indulgence or forbearance extended to the other Party and no waiver by either Party in respect of any breach shall operate as a waiver in respect of any subsequent breach.
- 22.2 Any variation or cancellation or any provision of this Agreement shall only be effective if expressly agreed in writing by each of the Parties.

23. **INVALIDITY**

If any of the provisions of this Agreement become invalid, illegal or unenforceable in any respect under any applicable law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired. Where, however, the provisions of such applicable law may be waived, they are waived by the Parties to the full extent permitted by law to the end that this Agreement shall be deemed to be a valid and binding Agreement enforceable in accordance with its terms. In the event that any provision of this Agreement becomes invalid, illegal or unenforceable, the Parties agree to substitute for such invalid, illegal or unenforceable provision a new provision which serves the purpose of the invalid, illegal or unenforceable provision to the fullest possible extent and shall otherwise agree to the amendment or variation of this Agreement to restore the balance of the Parties' respective interests in this Agreement.

24. **NOTICES**

24.1 Any notice, communication or demand to be served under or in connection with this Agreement shall be sufficiently served if it is delivered by personal service or sent by recorded delivery letter addressed:

24.1.1 in the case of NRIL, to the address of NRIL set out in this Agreement, marked for the urgent attention of the Company Secretary, or to such other address in the United Kingdom as NRIL may notify in writing to the other Parties from time to time;

24.1.2 in the case of Abellio, to the address of Abellio set out in this Agreement, marked for the urgent attention of the Company Secretary, or to such other address in the United Kingdom as Abellio may notify in writing to the other Parties from time to time, together with a copy sent to Chris Simms, Legal and Commercial Manager; 1 Ely Place, Second Floor, London EC1N 6RY.

24.2 Any such notice, communication or demand posted as aforesaid shall be deemed to have been received:

24.2.1 in the case of delivery in person or by courier, when delivered; and

24.2.2 in the case of posting, two days after the date that it was posted.

24.3 In proving service, it should be sufficient to prove that the envelope containing such notice, communication or demand was properly addressed and either:

24.3.1 delivered in person or by courier; or

24.3.2 stamped and put in the post.

25. **ENTIRE AGREEMENT**

25.1 Each of the Parties confirms that this Agreement and the documents referred to in it set out the entire agreement and understanding among the Parties in relation to the subject matter of this Agreement and that no other Party has made or given to it any representation, warranty or undertaking which is not set out or referred to in this Agreement or those documents (and to the extent that any such representation, warranty or undertaking has been given or made, it is deemed that it has not been made).

25.2 Without prejudice to the generality of Clause 25.1 or the provisions of Clause 25.3 each of the Parties confirms that this Agreement supersedes all previous proposals, agreements and other communications whether written, oral or otherwise, in relation to the subject matter of this Agreement.

25.3 Notwithstanding the provisions of Clauses 25.1 and 25.2, each Party agrees that should this Agreement terminate pursuant to Clause 17.1.1 the non-disclosure agreement entered into between NRIL and Abellio shall continue in accordance with the provisions of said non-disclosure agreement.

26. **GOVERNING LAW AND JURISDICTION**

This Agreement shall be construed in all respects in accordance with, and it and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by, the

laws of Scotland. Each of the parties submits to the exclusive jurisdiction of the Court of Session as regards any such dispute or claim: IN WITNESS WHEREOF, these presents consisting of this and the preceding 26 pages and the Schedule are executed as follows:

SUBSCRIBED for and on behalf of the said

NETWORK RAIL INFRASTRUCTURE LIMITED

by PAUL PLUMMER a director thereof

at LONDON

on 8/4 2014 P. Plummer

in the presence of:

Witness Laura Wight

Name: LAURA WIGHT

Address: KINGS PLACE 90 YORK WAY
LONDON N1 9AG

SUBSCRIBED for and on behalf of the said

ABELLIO SCOTRAIL LIMITED

by D. Booth a director thereof

at London DOMINIC BOOTH,

on 9/4/2014

in the presence of:

Witness V. Foxton

Name: Victoria Foxton

Address: One London Wall,
London, EC2Y 5AB

SCHEDULE PART 1**ALLIANCE BOARD**

The Alliance Board comprises 4 representatives, of which 2 will be appointed by NRIL and 2 will be appointed by Abellio.

Each representative shall be a senior member of the relevant Party's organisation.

The chairperson shall be appointed by rotation from the Alliance Board members of each Party. Each chairperson shall hold office for 12 months. In the event that the chairperson is not present at any meeting of the Alliance Board, an alternative Alliance Board member of that party shall act as chairperson at that meeting. One of NRIL's representatives shall act as the initial chairperson of the Alliance Board.

Functions of the Alliance Board

Subject to clauses 5 and 6 the functions of the Alliance Board shall include without limitation:

- Determination of the Alliance organisational structure including the potential appointment of an Executive team with delegated authority for the day to day management of the operation of the Alliance;
- Appointment of team to support structure;
- Determination of the delegated authority levels of the executive team or other reporting lines included in the organisational structure;
- The setting of financial and operational targets always having due regard to the Baseline;
- The approval of the Annual Business Plan;
- Development of appropriate key performance indicators for the Alliance;
- Monitoring performance of the Alliance, including adherence to this Agreement;
- Monitoring Alliance risks and risk management; and
- Providing strategic direction.

SCHEDULE PART 2**BUSINESS**

From the Alliance Commencement Date, and in conjunction with Schedule Part 4 (Business Plan) the parties shall work together to deliver the Committed Alliance Initiatives in Part A below and to give due consideration to the delivery of the initiatives in Part B below.

Initiatives may be removed from or added to Parts A and B of this Schedule Part 2 at any time by resolution of the Alliance Board.

Part A**1. Renewals and possession optimisation**

The parties will work together to optimise the Alliance's possession strategy by convening a joint strategic planning forum to jointly plan disruptive possessions.

Commencement Date: April 2015

2. Integrated Project planning and delivery

The parties agree that joint teams will be formed to plan the delivery of all enhancement projects with the aim of increasing the efficiency of any spending on such projects.

Commencement Date: April 2015

3. Integrated route control

The parties agree that the control centre at West of Scotland Signalling Centre shall become a fully integrated control centre managed by a single manager and housing employees of both parties and any other affected operators.

Commencement Date: April 2015 (subject to the appropriate consultation with employee representative groups).

4. Organisation and Leadership

The Alliance Board shall appoint an Alliance Executive Team with representatives from both organisations.

Completion Date: December 2015

5. Skills exchange to enable fast response

On or before December 2015 the parties agree to begin exchanging knowledge and training activities to enable a faster response to disruptive incidents. In particular, this

may include the training of Abellio's train driving and station staff at known risk locations to enable them to inspect and report on Network Rail infrastructure.

6. Asset Management and commercial property

The parties agree to integrate their station maintenance and asset management teams. The integrated team will work to develop and deliver a single work plan using integrated processes and systems.

Completion Date: December 2015

7. Weather resilience

From the Franchise start date, the parties agree to integrate their severe weather resilience teams and reporting function. As part of this integration, the parties agree to work together to develop:

- a) Timetables which are resilient to severe weather and seasonal/conditional variations; and
- b) Contingency plans for train operation during times of disruption due to severe weather.

8. Integrated performance and delay attribution teams

On or before 2nd December 2015 the parties agree to co-locate and integrate their respective performance and delay attribution teams.

9. Joint communications and Marketing

The parties agree to co-ordinate the public communication of any enhancement or maintenance work which will have a significant effect on passengers or other stakeholders.

Part B

10. On-train monitoring of NR infrastructure and train-borne equipment

The parties agree to use any information generated from the future installation of train borne infrastructure monitoring equipment to improve asset knowledge to investigate improvement in the efficiency of infrastructure maintenance and renewal activities.

11. Shared IT and integrated procurement

The parties agree to consider the operation of a joint process for the procurement of any equipment or services necessary for the operation of the Alliance Business.

The parties agree that they will investigate the possibility of utilising common IT infrastructure for the delivery of back-office functions across the Alliance Business.

SCHEDULE PART 3**ALLIANCE CHARTER**

[To be finalised during mobilisation]

Our mission is to *[to be completed by the Alliance Board]*

The Alliancing Objectives are to:

- Maintain or improve current safety performance and meet relevant targets;
- Deliver required level of service more efficiently;
- Maintain or improve the level of passenger satisfaction.
- Meet the required PPM targets for the Scotland Route;
- Maintain levels of asset stewardship as required by Network Rail regulatory settlement for Control Period 5 and the asset condition quality regime set out in the Franchise Agreement;
- Improve effectiveness and financial efficiency of infrastructure projects; and
- Foster innovation in the delivery of rail services in Scotland.
- Identify and exploit opportunities to drive journey time improvements.

The alliance is founded on the following core principles:

1. the Parties are committed to the success of the Alliance and its continued operation;
2. Each Party wins, or each Party loses, based on achieved project outcomes. Win-lose outcomes are not acceptable;
3. Parties have a peer relationship where each Party has an equal say in decisions (except in respect of the Ultimate Accountabilities and Retained Functions);
4. subject to the terms of this Agreement, risks and responsibilities are shared and managed collectively by the Parties, rather than allocated to individual Parties;
5. risks and rewards are shared equitably between the Parties and no Party will seek or accept unreasonable commercial advantage at the expense of the other Party;

6. all actions are taken based on the Parties mutual long-term interests;
7. all decisions are made, and processes and systems are adopted, on a “Best For Alliance” basis.

To achieve our mission statement and committed outcome, the Parties will:

1. behave ethically and responsibly at all times;
2. communicate openly and honestly with integrity so as to enable informed decision making;
3. develop a ‘communication culture’ and be transparent in all dealings with each other;
4. develop a culture that promotes and drives collaboration, innovation and outstanding performance;
5. listen carefully and with respect for others views, encouraging people to think freely and innovate without fear of failure or reprimand;
6. share all information and not hold back ideas;
7. acknowledge contributions and celebrate successes, giving praise when deserved without being overly concerned about taking credit;
8. accept personal accountability for actions and the consequences they give rise to;
9. avoid disputes by adopting a no blame culture, challenging themselves rather than blaming others;
10. support decisions of the Alliance; and
11. act consistently according to espoused values.

The core principles of this Alliance Charter and the values to achieve the mission statement and committed outcome may be amended by the Alliance Board from time to time.

SCHEDULE PART 4**INITIAL BUSINESS PLAN****Alliance Business Plan - 2015/16**

[To be developed during mobilisation]

Unwind Plan*Principles*

In agreeing the Unwind Plan pursuant to paragraph 2.2, the Alliance Board shall have regard to the following principles:

- (a) throughout the Unwind Period, a safety validation process shall be undertaken by each Party to ensure that all risks continue to be managed to as low as reasonably practicable levels;
- (b) the Ultimate Accountabilities of each of the Parties shall be reflected and respected;
- (c) each of the Parties shall comply with Law and discharge its Ultimate Accountabilities throughout the Unwind Period;
- (d) Alliance Joint Facilities owned or leased by a Party which are used for the purposes of the Alliance or in connection with the provision of the Alliance Activities will remain owned or leased by such Party following the unwind of the Alliance;
- (e) tangible moveable assets owned or leased by a Party which are used for the purposes of the Alliance or in connection with the provision of the Alliance Activities will remain owned or leased by such Party following the unwind of the Alliance;
- (f) contracts entered into by a Party for the purposes of the Alliance or for or in connection with the provision of the Alliance Activities will remain with such Party following the unwind of the Alliance;
- (g) Intellectual Property owned by or licensed by a third party to a Party which is used for the purposes of the Alliance or in connection with the provision of the Alliance Activities will remain vested in such Party following the unwind of the Alliance;
- (h) each Alliance Participant will remain employed by the Relevant Employing Entity;
- (i) Records owned by a Party which are kept for the purposes of the Alliance or in connection with the provision of the Alliance Activities will remain owned by such Party following the unwind of the Alliance; and
- (j) Any IT Systems owned by a Party or leased by a third party to a Party will remain owned or leased by such Party following unwind of the Alliance.

(k) Any Committed Alliance Initiatives contained in schedule Part 2 above which have been commenced at the time the Unwind Plan is implemented shall continue to be carried out jointly until the Expiry Date, unless otherwise agreed by the Parties.

SCHEDULE PART 5**COSTS AND REVENUES**

[To be developed during mobilisation]

1. ALLIANCE BASELINE

- 1.1 The agreed NRIL Initial Baseline and [] Initial Baseline are set out in [Appendices 1 & 2 respectively to this Schedule Part 5].

2. INITIAL BASELINE PHASING

- 2.1 The Parties shall agree the phasing of the baseline for the first year of the Alliance Term during the Mobilisation Period. This shall set out the phasing of each Party's forecast Costs and Revenues by Period.
- 2.2 For each Year thereafter each Party shall provide no later than [28th February] of the previous Year a phased baseline which shall be identical to the Initial Baseline but shall include the phasing of each Party's forecast Costs and Revenues for that Year. No other changes to Initial Baselines may be made pursuant to this paragraph 2.2.

3. REVISIONS TO BASELINE**3.1 Revision by Agreement**

The Initial Baselines in respect of any Year may be revised by agreement of the Parties pursuant to 3.1.1 Change Management and or change in circumstance.

3.1.1 Change Management

A Party proposing a change (Change Requesting Party) shall by giving notice to the other Party (Change Receiving Party) have the right to request that:

- (a) specified costs and/or revenue are added to the NRIL Initial Baseline and/or the [] Initial Baseline (as the case may be) and accordingly should create an additional Alliance Initiative (Proposed Additional Initiative); or
- (b) specified costs and/or revenue should be removed from the NRIL Initial Baseline and/or the [] Initial Baseline (as the case may be)

and accordingly should remove the relevant Alliance Initiative (or any part thereof) from the scope of the Alliance (Proposed Removed Initiative).

Any such notice provided pursuant to paragraph 3.1.1 shall:

- (c) contain a detailed description of the Proposed Additional Initiative or the Proposed Removed Initiative;
- (d) set out the Proposed Baseline Modification which shall be prepared in accordance with paragraph 3.1.2; and
- (e) specify the proposed amendments (if any) to the insurance arrangements and indemnities as a consequence of the inclusion of the Proposed Additional Initiative or the removal of the Proposed Removed Initiative (as applicable).

3.1.2 A Proposed Baseline Modification shall:

be prepared in a manner consistent with the Baseline Methodology and Assumptions¹ and shall set out any appropriate additions, deletions or amendments (as the case may be) to the Baseline Methodology and Assumptions to explain the basis on which the Proposed Additional Initiative would be added to the NRIL Initial Baseline and/or the [] Initial Baseline (as the case may be);

in the case of a Proposed Additional Initiative, specify the changes to anticipated costs and/or revenue which will or are likely to arise as a consequence of the inclusion of such Proposed Additional Initiative and which should accordingly be included in the Baselines;

in the case of a Proposed Removed Initiative, specify the changes to anticipated costs and/or revenue which will or are likely to arise as a consequence of the removal of such Proposed Removed Initiative and which should accordingly be removed from the Baselines; and

set out any approvals, consents or derogations which will be required if such Proposed Additional Initiative or Proposed Removed Initiative were to be accepted by the Change Receiving Party.

¹ Need to define Baseline Methodology and Assumptions.

Within 10 Business Days of service of a notice pursuant to paragraph 3.1.1, the Change Receiving Party may request such additional information as it may reasonably require from the Change Requesting Party:

- (a) to assist it in determining whether to accept or reject the Change Requesting Party's proposals; and
- (b) to determine whether the Proposed Baseline Modification has been prepared in accordance with paragraph 3.1.2,

and any such request shall be made by the Change Receiving Party to the Change Requesting Party by notice in writing.

Within 10 Business Days of service of a notice, the Change Requesting Party shall, to the extent that it is reasonably able, provide the Change Receiving Party with such additional information requested by the Change Receiving Party.

Within a reasonable period of service of the notice (and in any event within 40 Business Days), the Parties shall procure that the Alliance Board will discuss the Change Requesting Party's proposal² and shall seek to agree whether to include the Proposed Additional Initiative in the Business Plan for that Year, or whether to remove the Proposed Removed Initiative from the scope of the Business Plan for that Year (as applicable);

If the Parties reach agreement the amendments (if any) which will be made as a consequence of such inclusion or removal, subject to obtaining any relevant approvals, consents or derogation which may be required the Business Plan, the NRIL Initial Baseline and/or the [] Initial Baseline (as the case may be) and the Baseline Methodology and Assumptions shall be amended on the basis agreed by the Parties with effect from such date as is agreed by the Parties.

If the Parties are unable to reach agreement in relation to a proposed change, no changes shall be made to the Business Plan or Baselines and the Change Requesting Party's proposal shall lapse.

² Level at which request will be considered depends on structure adopted by each bidder.

SCHEDULE PART 6**PERSONNEL**

[To be developed during mobilisation]

EMPLOYMENT AND PENSIONS**PART 1: EMPLOYMENT****1. PROVISION OF SERVICES IN RELATION TO ALLIANCE ACTIVITIES**

- 1.1 This Schedule Part 6 (Personnel) applies to the provision of Alliance Activities by Alliance Participants.
- 1.2 The Parties shall procure that their Affiliates (including any Relevant Employing Entity that is an Affiliate) shall comply with the provisions of this Schedule Part 6 and shall assist the Parties in their compliance with the provisions of this Schedule Part 6.
- 1.3 When entering into any arrangements with any sub-contractors, each Party shall take all reasonable steps to give effect to the terms of this Schedule Part 6 and shall procure that their Affiliates shall assist the Parties in their compliance with the provisions of this Schedule Part 6.

2. OVER-ARCHING PRINCIPLES OF THE ALLIANCE AGREEMENT

- 2.1 The Parties acknowledge and agree that the operation of the Alliance is not intended to change the Relevant Employing Entity of the Alliance Participants and, as such, each Alliance Participant remains employed by the Relevant Employing Entity but will owe obligations to both Parties in relation to the Alliance duties they perform, representing both Parties equally.
- 2.2 The Parties shall require the Alliance Participants (to the extent permitted by their employment contracts) to assist the Parties to comply with their obligations in accordance with this Agreement.

3. ALLIANCE PARTICIPANTS

- 3.1 Each Party shall provide sufficient Alliance Participants as agreed between the Parties to carry out the Alliance Activities under this Agreement. The Parties' intention is that the identity of the Relevant Employing Entity shall remain

unaffected by the operation of the Alliance. The Relevant Employing Entity shall be responsible for:

- 3.1.1 any payments due to or in respect of its employees who are Alliance Participants, in connection with their employment including without limitation, wages, bonuses due and payable, commission, pension, holiday pay due, costs, expenses, operation of PAYE, tax, social security and national insurance contributions and any redundancy payments;
 - 3.1.2 HR administration in respect of its Alliance Participants, including but not limited to managing holiday requests, sickness absence, performance management and disciplinary and grievance handling in accordance with its policies and procedures from time to time in force;
 - 3.1.3 ensuring that adequate and suitable records are maintained for the Alliance Participants including but not limited to records in compliance with working time and national minimum wage legislation and evidence of the Alliance Participants' right to work in the United Kingdom and any relevant immigration conditions being satisfied; and
 - 3.1.4 industrial relations in connection with the Alliance Participants.
- 3.2 When determining salary and bonus payments and considering appraisal ratings and performance management the Relevant Employing Entity shall, without prejudice to any legal obligations to which it is subject, have due regard to the recommendations and steps of the Alliance Board and/or the Alliance Executive, as appropriate, provided always that such recommendations shall not prevent the Relevant Employing Entity from giving effect to its legal obligations and any pay awards arising from collective bargaining in accordance with any applicable collective bargaining agreements.
- 3.3 The Relevant Employing Entity shall retain ultimate responsibility for the outcome of any appraisal and performance management affecting an Alliance Participant. Where necessary and appropriate the Relevant Employing Entity shall interpret its internal policies and procedures and the Alliance Participants' duties to reflect the obligations owed by an Alliance Participant to both the Parties.
- 3.4 Subject to paragraph 3.5 the Relevant Employing Entity shall remain responsible for ensuring that its Alliance Participants comply with all applicable Law whilst acting under the direction and control of the Relevant Employing Entity.

- 3.5 When a Party other than the Relevant Employing Entity is responsible for the direction and control of an Alliance Participant, that Party shall not instruct the Alliance Participant to undertake any act that would breach applicable Law.

4. **SUPERVISION AND CONTROL**

- 4.1 Without prejudice to the obligations Alliance Participants owe to their Relevant Employing Entity and the Parties jointly, the Relevant Employing Entity remains responsible for ensuring that its Alliance Participants discharge their duties to the Alliance as set out in their job descriptions and objectives, having regard to applicable collective bargaining procedures.

- 4.2 The Relevant Employing Entity may delegate responsibility for the performance of certain management/supervisory functions in relation to the Alliance Participant to a Party in accordance with the terms of this Agreement.

5. **CO-OPERATION**

- 5.1 The Parties shall co-operate in determining which Alliance Participants should perform particular tasks.

- 5.2 The Parties shall procure that Alliance Participants act in the interests of both Parties, having regard to the Parties' obligations in the Alliance Agreement.

- 5.3 Either Party may at any time raise with the other Party any concerns or positive feedback in relation to an Alliance Participant which the other Party shall procure the Relevant Employing Entity has due regard to. The Relevant Employing Entity at all times has the discretion to decide what action (if any) to take in relation to the Alliance Participant in accordance with its own policies and procedures from time to time in force.

- 5.4 The Parties further agree to co-operate, to the extent necessary, in connection with any grievance raised by an Alliance Participant or disciplinary process relating to an Alliance Participant which involves another Party or their employees or their Affiliates' employees provided always that the responsibility for the conduct of and decision-making arising from the grievance or disciplinary process shall remain with the Relevant Employing Entity.

- 5.5 The Parties acknowledge that Alliance Participants may have access to confidential information of the Alliance and each of the Parties in connection with the

performance of their duties for the Alliance and either Party may request that an Alliance Participant who is ceasing to be an Alliance Participant (whether or not his/her employment contract ends) be put on garden leave (to the extent permissible under his/her employment contract) during his/her notice period and reminded of his/her confidentiality obligations.

6. **CONFLICTS**

Where an Alliance Participant reports a conflict he/she should first notify the Relevant Employing Entity and then the Parties shall take reasonable steps to cooperate with a view to resolving the issue.

7. **EMPLOYMENT STATUS**

Should circumstances arise where either Party considers the Alliance Participant may be or has become employed other than by the Relevant Employing Entity the Parties shall take reasonable steps to ensure that the Alliance Participant is or becomes employed by the Relevant Employing Entity which may include but shall not be limited to the Relevant Employing Entity making an offer of re-employment to such Alliance Participant on the same terms and conditions.

8. **NO TRANSFER ON COMMENCEMENT**

The Parties agree that the Regulations will not apply to transfer the employment of any of their employees or those of their Affiliates to the other Party or their Affiliates and/or any third party upon commencement of this Agreement.

9. **TRANSFER DURING OR UPON EXPIRY OR TERMINATION OF THIS AGREEMENT**

9.1 As between the Parties and their Affiliates, the Parties do not envisage that the Regulations will apply during or upon expiry or termination of this Agreement.

9.2 The Parties agree to work together to take reasonable steps to minimise the likelihood that the Regulations apply during the term of this Agreement or on the termination or expiry of all or part of this Agreement. However, should either Party consider at any point that the Regulations have applied or will apply in connection with this Agreement that Party shall promptly notify the other Party of this, including providing all relevant information. The Parties shall then discuss as soon as possible what steps to take with a view to reaching agreement as to the

application of the Regulations or (as the case may be) what steps can be taken to prevent the Regulations applying.

9.3 Should agreement not be reached in accordance with paragraph [9.2] of this Schedule Part 6, and at least one Party continues to assert that the Regulations apply during the Term of this Agreement; any liability that arises shall be dealt with in accordance with the terms of this Agreement.

9.4 Should agreement not be reached in accordance with paragraph [9.2] of this Schedule Part 6, and at least one Party continues to assert that the Regulations apply on or after the termination or expiry of this Agreement; the terms of the Unwind Plan shall apply.

10. **TRANSFER-DEFAULT PROVISIONS**

10.1 Should agreement not be reached in accordance with paragraphs 9.2 and 9.4 of this Schedule Part 6, and at least one Party continues to assert that the Regulations apply on or after the termination or expiry of this Agreement the following provisions shall apply:

10.1.1 The Transferor confirms and agrees that (subject to any restrictions imposed by Law including, without limitation, any obligation under the Data Protection Laws):

- (a) it shall provide the Employee Liability Information to the Transferee no later than twenty eight (28) days before the Relevant Transfer Date to the extent this is reasonably practicable, otherwise as soon as reasonably practicable;
- (b) it shall provide to the Transferee in writing details of material changes to the Employee Liability Information as soon as reasonably practicable;
- (c) the Employee Liability Information shall be complete and accurate in all material respects at the time it is provided to the Transferee and the Parties agree that for the purposes of Regulations 11 and 12 of the Regulations this provision is sufficient to cover any loss the Transferee may incur as a result of any failure of the Transferor to comply with Regulation 11 of the Regulations;

- (d) it shall use its reasonable endeavours to clarify any matter in connection with the Employee Liability Information on which clarification is reasonably requested by the Transferee;
- (e) within fourteen (14) days after the Relevant Transfer Date, it shall deliver or make available to the Transferee copies of all payroll, tax, PAYE and national insurance records; original terms and conditions of employment; collective agreements; employee handbook and policies and procedures and any other documents or records reasonably requested by the Transferee which are relevant to the Transferring Employees including evidence of the Transferring Employees' right to work in the United Kingdom.

11. **OBLIGATION TO INFORM AND CONSULT**

The Transferor and the Transferee shall comply fully with their obligations under the Regulations to inform and (if appropriate) consult to the extent reasonably practicable and:

- 11.1 the Transferor and the Transferee shall provide reasonable assistance to, co-operate with, and keep each other appropriately informed regarding any information they propose to give to, or any consultation they propose to have with, the Transferring Employees and/or the Appropriate Representatives regarding or in connection with the Relevant Transfer;
- 11.2 the Transferor shall give reasonable assistance to the Transferee to enable them to communicate and meet with the Transferring Employees and Appropriate Representatives including providing reasonable access during normal business hours to the Transferring Employees and Appropriate Representatives;
- 11.3 the Transferee shall promptly provide the Transferor with details of any measures it envisages that it will take in relation to Transferring Employees or confirmation there are none and in any event shall do so in sufficient time for the Transferor to comply with its obligations under the Regulations.

12. **TRANSFER-RELATED OBLIGATIONS**

- 12.1 The Transferor shall in relation to the Transferring Employees perform and discharge all of its obligations (whether statutory, regulatory, contractual or otherwise) relating to or in respect of the Transferring Employees up to the Relevant

Transfer Date including without limitation paying wages, bonuses due and payable, commission, pension, holiday pay due, costs, expenses, operating PAYE, tax, making social security and national insurance contributions.

- 12.2 The Transferee shall in relation to the Transferring Employees perform and discharge all of its obligations (whether statutory, regulatory, contractual or otherwise) relating or in respect of the Transferring Employees in respect of the period on and after the Relevant Transfer Date including without limitation, paying wages, bonuses due and payable, commission, pension, holiday pay, costs, expenses, operating PAYE, tax, making social security and national insurance contributions.

13. **TRANSFEROR INDEMNITIES**

Where the Transferor is a Party or an Affiliate of a Party, that Party shall indemnify and keep indemnified the Transferee (for and on behalf of itself and any relevant Affiliate and any Successor Operator) against all Losses incurred in connection with or as a result of:

- 13.1 the Transferor's failure to perform or discharge its obligations under paragraphs 10 to 12;
- 13.2 any claim or demand by or on behalf of any Transferring Employee (whether in contract, delict, under statute, pursuant to European law or otherwise) including, without limitation, any claim for unfair dismissal, wrongful dismissal, a redundancy payment, breach of contract, unlawful deduction from wages, discrimination on the grounds of sex, race, disability, sexual orientation, religion or religious belief, age, a protective award or a claim or demand of any other nature, in each case arising directly or indirectly from any act, fault or omission of the Transferor in respect of any Transferring Employee or any other event or occurrence in respect of any Transferring Employee in the period before the Relevant Transfer Date;
- 13.3 any failure by the Transferor to comply with its obligations under the Regulations, including (without limitation) Regulations 13 and 14 of the Regulations, save where such failure arises from the failure of the Transferee to comply with its duties under Regulations 13 and 14 of the Regulations.

14. TRANSFEREE INDEMNITIES

Where the Transferee is a Party or an Affiliate of a Party, that Party shall indemnify and keep indemnified the Transferor (for and on behalf of itself and any relevant Affiliate and any Successor Operator) against all Losses incurred in connection with or as a result of:

- 14.1 the Transferee's failure to perform or discharge its obligations under paragraphs 11 to 12;
- 14.2 any claim or demand by or on behalf of any Transferring Employee (whether in contract, delict, under statute, pursuant to European law or otherwise) including, without limitation, any claim for unfair dismissal, wrongful dismissal, a redundancy payment, breach of contract, unlawful deduction from wages, discrimination on the grounds of sex, race, disability, sexual orientation, religion or religious belief, age, a protective award or a claim or demand of any other nature, in each case arising directly or indirectly from any act, fault or omission of the Transferee in respect of any Transferring Employee or any other event or occurrence in respect of the Transferring Employee in the period commencing on the Relevant Transfer Date;
- 14.3 any failure by the Transferee to comply with its obligations under the Regulations, including (without limitation) Regulations 13 and 14 of the Regulations save where such failure arises from the failure of the Transferor to comply with its duties under Regulations 13 and 14 of the Regulations;
- 14.4 any claim by a Transferring Employee that the transfer of his employment to the Transferee involves, or would involve, a substantial change in working conditions to his material detriment so that he is entitled to treat his contract of employment as terminated pursuant to Regulation 4(9) of the Regulations;
- 14.5 any claim by a Transferring Employee that the terms and conditions of employment to be provided by the Transferee pursuant to this Agreement constitutes, or would constitute, a repudiatory breach of the Transferring Employee's contract of employment so that he is entitled to treat himself as constructively dismissed.

15. NON-SOLICITATION

15.1 In this paragraph:

15.1.1 End Date means the date upon which the Alliance Agreement terminates;

- 15.1.2 Confidential Information means all and any information concerning the curriculum vitae, remuneration details, work-related experience, performance and career potential, attributes and other personal information concerning those Alliance Participants employed by the Relevant Employing Entity, excluding information which becomes available to the public generally other than by reason of a breach by the relevant Party of its obligations under the Alliance Agreement;
- 15.1.3 Prior Period means the 12 months immediately preceding the termination or expiry of the Agreement;
- 15.1.4 Senior Employee means any Alliance Participant who is employed by a Party or a Relevant Employing Entity in a senior managerial, senior development, senior engineering, senior production, senior financial, senior executive, senior professional, senior sales, senior marketing, senior research or senior technical capacity;
- 15.2 [TOC] agrees that it shall not and shall procure that each of its Affiliates shall not (without the prior consent in writing of the Alliance Board or NRIL, such consent not to be unreasonably withheld) whether as principal or agent, and whether alone or jointly, directly or indirectly:
- 15.2.1 solicit or entice away or endeavour to solicit or entice away from NRIL or any of its Affiliates any Alliance Participant who is an employee of NRIL or any of its Affiliates and either:
- (a) is a Senior Employee of NRIL and/or any of its Affiliates and with whom [TOC] or any of its Affiliates have had material dealings at any time during the Alliance Term; or
- (b) in respect of whom [TOC] or any of its Affiliates shall have acquired a material amount of Confidential Information at any time during the Alliance Term
- in each case with a view to inducing that Alliance Participant to leave such employment (whether or not such Alliance Participant would commit a breach of his/her contract of employment by reason of leaving)

15.2.2 at any time during the Term employ or engage for the provision of work or services any Alliance Participant who is an employee of NRIL or any of its Affiliates and either:

- (a) is a Senior Employee of NRIL and/or any of its Affiliates and with whom [TOC] or any of its Affiliates have had material dealings at any time during the Alliance Term; or
- (b) in respect of whom [TOC] or any of its Affiliates shall have acquired a material amount of Confidential Information at any time during the Alliance Term.

15.2.3 for a period of six months immediately after the expiry or termination of the Agreement solicit or entice away or endeavour to solicit or entice away from NRIL or any of its Affiliates any Alliance Participant who is at the expiry or termination of the Agreement an employee of NRIL or any of its Affiliates and either:

- (a) is a Senior Employee of NRIL and/or any of its Affiliates and with whom [TOC] or any of its Affiliates had material dealings at any time during the Prior Period; or
- (b) in respect of whom [TOC] or any of its Affiliates had acquired a material amount of Confidential Information as at the termination or expiry of the Agreement

in each case with a view to inducing that Alliance Participant to leave such employment (whether or not such Alliance Participant would commit a breach of his/her contract of employment by reason of leaving).

15.2.4 for the period of six months immediately after the termination or expiry of the Agreement employ or engage for the provision of work or services any Alliance Participant who is at the termination or expiry of the Agreement, an employee of NRIL or any of its Affiliates and either:

- (a) is a Senior Employee of NRIL and/or any of its Affiliates and with whom [TOC] or any of its Affiliates had material dealings at any time during the Alliance Term; or

- (b) in respect of whom [TOC] or any of its Affiliates had acquired a material amount of Confidential Information as at the termination or expiry of the Agreement

provided that the foregoing restrictions in paragraphs 15.2(a) to 15.2(d) shall not apply where an Alliance Participant responds to a public advertisement that is not solely aimed at any employee (or group of employees) of NRIL and/or its Affiliates or where an Alliance Participant is first approached when no longer an employee of NRIL or its Affiliates.

- 15.3 NRIL agrees that it shall not and shall procure that each of its Affiliates shall not (without the prior consent in writing of the Alliance Board or [TOC] such consent not to be unreasonably withheld) whether as principal or agent, and whether alone or jointly, directly or indirectly:

- 15.3.1 solicit or entice away or endeavour to solicit or entice away from [TOC] or any of its Affiliates any Alliance Participant who is an employee of [TOC] or any of its Affiliates and either:

- (a) is a Senior Employee of [TOC] and/or any of its Affiliates and with whom NRIL or any of its Affiliates have had material dealings at any time during the Alliance Term; or
- (b) in respect of whom NRIL or any of its Affiliates shall have acquired a material amount of Confidential Information at any time during the Alliance Term

in each case with a view to inducing that Alliance Participant to leave such employment (whether or not such Alliance Participant would commit a breach of his/her contract of employment by reason of leaving)

- 15.3.2 at any time during the Alliance Term employ or engage for the provision of work or services any Alliance Participant who is an employee of [TOC] or any of its Affiliates and either:

- (a) is a Senior Employee of [TOC] and/or any of its Affiliates and with whom NRIL or any of its Affiliates have had material dealings at any time during the Alliance Term; or

- (b) in respect of whom NRIL or any of its Affiliates had acquired a material amount of Confidential Information at any time during the Alliance Term

15.3.3 for a period of six months immediately after the termination or expiry of the Agreement solicit or entice away or endeavour to solicit or entice away from [TOC] or any of its Affiliates any Alliance Participant who is at the termination or expiry of the agreement an employee of [TOC] or any of its Affiliates and either:

- (a) is a Senior Employee of [TOC] and/or any of its Affiliates and with whom NRIL or any of its Affiliates had material dealings at any time during the Alliance Term; or
- (b) in respect of whom NRIL or any of its Affiliates had acquired a material amount of Confidential Information as at the termination or expiry of the Agreement

in each case with a view to inducing that Alliance Participant to leave such employment (whether or not such Alliance Participant would commit a breach of his/her contract of employment by reason of leaving)

15.3.4 for the period of six months immediately after the termination or expiry of the Agreement employ or engage for the provision of work or services any Alliance Participant who is at the termination or expiry of the Agreement an employee of or otherwise worked for [TOC] or any of its Affiliates and either:

- (a) is a Senior Employee of [TOC] and/or any of its Affiliates and with whom NRIL or any of its Affiliates had material dealings at any time during the Alliance Term; or
- (b) in respect of whom NRIL or any of its Affiliates had acquired a material amount of Confidential Information as at the termination or expiry of the Agreement.

provided that the foregoing restrictions in paragraphs 15.3(a) to 15.3(d) shall not apply where an Alliance Participant responds to a public advertisement that is not solely aimed at any employee (or group of

employees) of [TOC] and/or its Affiliates or where an Alliance Participant is first approached when no longer an employee of [TOC] or its Affiliates.

15.4 Each Party agrees that, having regard to all the circumstances, the restrictions contained in this paragraph are reasonable and necessary for the protection of each Party and/or their Affiliates and that they do not bear harshly upon them and the Parties agree that:

15.4.1 each restriction shall be read and construed independently of the other restrictions so that if one or more are found to be void or unenforceable as an unreasonable restraint of trade or for any other reason the remaining restrictions shall not be affected; and

15.4.2 if any restriction is found to be void but would be valid and enforceable if some part of it were deleted, that restriction shall apply with such deletion as may be necessary to make it valid and enforceable.

PART 2: PENSIONS

1. SOS AND TRUSTEE CONSENT

[TOC] shall use its reasonable endeavours to procure the consent by deed of SoS and the Trustee of the Railways Pension Scheme to the continued participation of Alliance Participants employed by [TOC] in the [TOC] Section notwithstanding Clause 12A of the Pension Trust of the Railways Pension Scheme. NRIL shall provide such reasonable assistance (if any) as [TOC] may require in relation to such consent.

2. TUPE TRANSFERS AND INDEMNITY

2.1 The Parties shall use reasonable endeavours to ensure that Alliance Participants continue to participate in their existing pension arrangements notwithstanding their status as Alliance Participants.

2.2 The Parties acknowledge that it is not possible for an Alliance Participant employed by NRIL to participate in the [TOC] Sections under the terms of the Pension Trust of the Railways Pension Scheme and that, if a Relevant Transfer occurs from [TOC] or any Affiliate of [TOC] to NRIL, it is anticipated that such employee would automatically cease to be a member of the [TOC] Section effective from the Relevant Transfer Date.

- 2.3 The Parties acknowledge that if a Relevant Transfer occurs from NRIL to [TOC] or any Affiliate of [TOC], any Alliance Participant whose employment is so transferred would (where applicable) cease to be a member of the relevant NR Scheme with effect from the Relevant Transfer Date.
- 2.4 If a Relevant Transfer occurs and if an Alliance Participant employed by the Transferor who is a member of a Section (Transferor Section) immediately before the transfer is transferred to the Transferee in circumstances where Clause 8C2(b) of the Pension Trust of the Railways Pension Scheme applies:
- 2.4.1 where required by legislation or in accordance with the Alliance Participant's contract of employment, the Alliance Participant will become entitled to participate in the Section operated by the Transferee (Transferee Section) for future service membership in accordance with the rules of the Transferee Section applicable at the Relevant Transfer Date;
- 2.4.2 in respect of past service benefits, in any case where the Railways Pension (Protection and Designation of Schemes Order) 1994 applies in respect of an Alliance Participant:
- (a) there will be a transfer of the Alliance Participant's past service benefits unless the Alliance Participant or the Trustee of the Railways Pension Scheme decides otherwise;
 - (b) where there is a transfer of past service benefits, the member must be credited with benefits in the Transferee Section in accordance with the Pension Trust of the Railways Pension Scheme and the rules of the Transferee Section; and
 - (c) the amount of the transfer payment in respect of the Alliance Participant's past service benefits will be calculated:
 - (i) on a Past Service Reserve basis, or a Share of Fund basis if lower (both terms defined as in the Railways Pension Scheme); or
 - (ii) in any case where it is required by legislation, the transfer payment will be such higher amount as required by legislation, and where such a requirement applies (in accordance with the Pension Trust of Railways Pension

Scheme) the Transferor must pay to the Transferee Section any shortfall in the amount required to provide the relevant Alliance Participant with their service credits in the Transferee Section. To the extent that the Transferor is unable to provide this amount, the Transferee must pay the difference.

2.4.3 in respect of past service benefits where the Railways Pension (Protection and Designation of Schemes) Order 1994 does not apply in respect of an Alliance Participant who is participating in the Railways Pension Scheme:

- (a) there will be a transfer of the Alliance Participant's past service benefits unless the Alliance Participant or the Trustee of the Railways Pension Scheme decides otherwise;
- (b) the amount of the transfer payment will be calculated on a Past Service Reserve, or a Share of Fund basis if lower (both terms as defined in the Pension Trust of the Railways Pension Scheme); and
- (c) the member must be credited with benefits in the Transferee Section in accordance with the Pension Trust of the Railways Pension Scheme and the rules of the Transferee Section.

3. **TRANSFEEE PENSION PROTECTION**

3.1 The Transferor shall indemnify the Transferee:

3.1.1 for any payment which the Transferee is required to make to the Transferee Section as described in paragraph 17.5 of Part 2 of Schedule 3; and

3.1.2 for any underfunding in the amount of the transfer payment paid by a Transferor which arises where Clause 8E8 of the Railways Pension Scheme applies and the Trustee of the Railways Pension Scheme determines that the Pensionable Service (as defined in the Pension Trust of the Railways Pension Scheme) to be credited to an Alliance Participant in the Transferee Section shall not be adjusted as described in that Clause 8E8.

3.2 Where:

- 3.2.1 the Transferor is an Affiliate of NRIL, then NRIL shall indemnify the Transferee as if NRIL were the Transferor;
 - 3.2.2 the Transferor is an Affiliate of [TOC], then [TOC] shall indemnify the Transferee as if [TOC] were the Transferor.
- 3.3 For the avoidance of doubt, payments under such indemnities shall not be a Cost or Revenue for the purposes of Schedule Part [5] (Costs and Revenues).

SCHEDULE PART 7**RISK ALLOCATION AND INSURANCE**

[To be developed during mobilisation]

1. RISK AND LIABILITY**1.1 Liability Scheme**

1.1.1 The Parties have agreed and intend in relation to the Alliance (both as regards the Alliance Term and the Unwind Plan) that, notwithstanding:

- (a) the Alliance Activities;
- (b) [the involvement of NRIL Alliance Participants in TOC Activities;
and
- (c) the involvement of [] Alliance Participants in NRIL Activities,]

liability (including liability arising in relation to other contracts between them and in respect of non-contractual claims) should continue to be ultimately borne by the same Party which would have borne it in the absence of the Alliance (and in particular in the absence of the matters specified in (a) to (c) above).

1.1.2 The Parties have agreed and intend in relation to the Alliance Activities (both as regards the Alliance Term and the Unwind Plan) that, notwithstanding: (i) the Alliance; (ii) the involvement of NRIL Alliance Participants in [] Activities; and (iii) the involvement of [] Alliance Participants in NRIL Activities:

- (a) liability arising from claims brought against a Party which results from the use of a motor vehicle shall be borne by the registered keeper, but otherwise the following rules shall apply;
- (b) liability arising from claims brought against a Party by a third party (other than a claim by an Alliance Participant brought in connection with their employment) will ultimately be borne:

- (i) by the Party claimed against, as a third party claim, where the claim results from activities of the type which were carried out by that Party immediately prior to the Alliance; and
 - (ii) by the other Party, as a third party claim, where the claim results from the activities of the type which were carried out by the other Party immediately prior to the Alliance;
- (c) liability arising from claims brought against a Party by an Alliance Participant of that Party which relate to injury, death, illness, disease, mental injury or mental anguish that results in a recognisable psychiatric injury suffered by an Alliance Participant in connection with their employment will ultimately be borne:
 - (i) by the Party claimed against, as an employment claim, where the claim results from the activities of the type which were carried out by that Party immediately prior to the Alliance; and
 - (ii) by the other Party, as a third party claim, where the claim results from the activities of the type which were carried out by that other Party immediately prior to the Alliance;
- (d) liability arising from claims brought against a Party by an Alliance Participant of the other Party which relate to injury, death, illness, disease, mental injury or mental anguish that results in a recognisable psychiatric injury suffered by an Alliance Participant in connection with their employment will ultimately be borne:
 - (i) by the Party claimed against, as a third party claim, where the claim results from the activities of the type which were carried out by that Party immediately prior to the Alliance; and
 - (ii) by the other Party, as an employment claim, where the claim results from the activities of the type which were carried out by that other Party immediately prior to the Alliance;
- (e) liability arising from claims brought against a Party by an Alliance Participant of either Party in connection with their employment

which do not relate to injury, death, illness, disease, mental injury or mental anguish that results in a recognisable psychiatric injury will ultimately be borne by the employer, irrespective of which Party's activities the claim results from;

- (f) the Parties will not bring claims against each other's Alliance Participants or Appointees;
- (g) liability for claims between the Parties in relation to breach of contract and/or property damage will be preserved but must be blind to which Party's Alliance Participants or Appointees were responsible for the damage;
- (h) a Party's directors and officers will continue to be protected by its own insurance cover, including in respect of their involvement in the activities which were carried out by the other Party immediately prior to the Alliance;
- (i) more generally, the Party's insurance arrangements should reflect the principles set out above; and
- (j) as between the Parties, and without affecting the legal position with respect to liability or insurance, [the benefit sharing mechanism set out in Schedule Part x]³ may have the effect in practice of sharing the financial impact of certain claims on the Actual Baselines.

1.2 Accordingly the Parties have agreed that:

1.2.1 in order to achieve the intentions set out in this Schedule Part 7; and

1.2.2 without prejudice to the generality of those intentions; and

1.2.3 for the purposes of this Agreement,

the following liability scheme shall apply:

1.2.4 liability of a Party (or, in certain circumstances specified in this 1.2.4, its Affiliates) to third parties (which for the avoidance of doubt means a person other than one of the Parties) including liability to an Alliance Participant and/or Appointees which relates to injury, death, illness,

³ Benefit sharing mechanism to be developed.

disease, mental injury or mental anguish that results in a recognisable psychiatric injury shall, regardless of which Party (or Affiliate) any relevant claim is made against, continue to attach to:

- (a) NRIL to the extent the liability results from NRIL Activities; and
- (b) [TOC] to the extent the liability results from [TOC] Activities.

1.2.5 subject to and without prejudice to paragraphs [13] (Transferor Indemnities) and [14] (Transferee Indemnities) of Schedule [6], in relation to liability in respect of Employment Claims brought against a Party or its Affiliate by or on behalf of Alliance Participants which do not relate to injury, death, illness, disease, mental injury or mental anguish that results in a recognisable psychiatric injury, regardless of which Party (or Affiliate of a Party) they are made against, shall continue to attach:

- (a) to NRIL or its Affiliates where the Employment Claim is brought by a NRIL Alliance Participant (notwithstanding his/her involvement in [TOC] Activities and/or him/her working under the direction of [TOC] or an [TOC] Alliance Participant); or
- (b) to [TOC] or its Affiliates where the Employment Claim is brought by a [TOC] Alliance Participant (notwithstanding his/her involvement in NRIL Activities and/or him/her working under the direction of NRIL or an NRIL Alliance Participant);

1.2.6 NRIL shall not and shall procure that none of its Affiliates will claim against [TOC] Alliance Participants and/or [TOC] Appointees in connection with the involvement of [TOC] Alliance Participants and/or [TOC] Appointees in the NRIL Activities arising out of the implementation of this Agreement;

1.2.7 [TOC] shall not and shall procure that none of its Affiliates will claim against NRIL Alliance Participants and/or NRIL Appointees in connection with the involvement of NRIL Alliance Participants and/or NRIL Appointees in the [TOC] Activities arising out of the implementation of this Agreement;

1.2.8 NRIL shall be entitled to pursue any claim or potential claim against [TOC] or any Affiliate of [TOC] (whether contractual or non-contractual

in nature including claims made under the Track Access Agreement and including, for the avoidance of doubt, claims which would be regarded as "third party claims" for the purposes of [TOC]'s insurance), but:

- (a) in pursuing such other claim or potential claim against [TOC] or any Affiliate of [TOC], NRIL shall not be entitled to rely upon the argument that liability attaches to [TOC] or any Affiliate of [TOC] by virtue of the involvement of [TOC] Alliance Participants and/or [TOC] Appointees in NRIL Activities; and
- (b) in defending such other claim or potential claim brought by NRIL, [TOC] shall not be entitled to (and shall procure that its Affiliates do not) rely upon the argument that liability does not attach to it by virtue of the involvement of NRIL Alliance Participants and/or NRIL Appointees in [TOC] Activities;

1.2.9 [TOC] shall be entitled to pursue any claim or potential claim against NRIL or any Affiliate of NRIL (whether contractual or non-contractual in nature including claims made under the Track Access Agreement and including, for the avoidance of doubt, claims which would be regarded as "third party claims" for the purposes of NRIL's insurance), but:

- (a) in pursuing such other claim or potential claim against NRIL or any Affiliate of NRIL, [TOC] shall not be entitled to rely upon the argument that liability attaches to NRIL or any Affiliate of NRIL by virtue of the involvement of NRIL Alliance Participants and/or NRIL Appointees in [TOC] Activities; and
- (b) in defending such other claim or potential claim brought by [TOC], NRIL shall not be entitled to (and shall procure that its Affiliates do not) rely upon the argument that liability does not attach to it by virtue of the involvement of [TOC] Alliance Participants and/or [TOC] Appointees in NRIL Activities.

Accordingly the Parties have agreed to the insurance obligations set out in this Schedule Part 7 and to hold each other harmless as set out in this Schedule Part 7.

1.3 Insurance

1.3.1 Each Party shall with effect from the Alliance Commencement Date⁴, maintain in force and/or renew (and/or procure that the same are maintained in force and/or renewed) all existing policies of insurance in relation to their respective Alliance Activities in accordance with its practice immediately prior to the Alliance Commencement Date and/or as required by Law or the subsequent provisions of this clause [] in respect of:

- (a) third party liability;
- (b) employers' liability;
- (c) directors' and officers' liability;
- (d) first party property damage;
- (e) motor liability; and
- (f) other business risks which are customarily insured in accordance with Good Industry Practice,

provided that there shall be no obligation to maintain in force and/or renew (and/or procure that the same are maintained in force and/or renewed) policies of insurance in relation to loss of profit cover and/or professional indemnity cover.

For the avoidance of doubt, subject to compliance with the express requirements of this paragraph 1.3.1, neither Party shall be required to amend the commercial terms on which it procured insurance cover immediately prior to the Alliance Commencement Date.

1.3.2 NRIL shall procure that, with effect from the Alliance Commencement Date and until expiry or termination:

- (a) [TOC] and [TOC]'s Affiliates (to the extent that such Affiliates provide or have provided any Alliance Participant and/or Appointee to a Party) are added to NRIL's policy or policies of third party

⁴ Alliance Commencement Date is the day following the end of the procurement standstill period i.e. mobilisation not franchise start date. Is this the correct date ref?

liability insurance (and references to third party liability insurance in this paragraph 1.3.2 shall not include any policy or policies of professional indemnity or financial loss insurance) as an additional insured to the extent of any liability of [TOC] or its Affiliates (to the extent that such Affiliates provide or have provided any Alliance Participant and/or Appointee to a Party) to third parties which relates to NRIL Activities and arises out of the implementation of this Agreement (and in particular the involvement of [TOC] Alliance Participants and/or [TOC] Appointees in NRIL Activities);

- (b) its policy or policies of third party liability insurance are extended to cover its liability to third parties arising out of or in connection with the involvement of [TOC] Alliance Participants and/or [TOC] Appointees in NRIL Activities arising out of the implementation of this Agreement;
- (c) its policy or policies of third party liability insurance contain a provision under which its insurers agree that their rights of subrogation against [TOC] and its Affiliates (to the extent that such Affiliates provide or have provided any Alliance Participant and/or Appointee to a Party), and [TOC] Alliance Participants and/or [TOC] Appointee have been waived in circumstances where NRIL itself would not have a claim against [TOC] or its relevant Affiliates or the relevant NRIL Alliance Participants and/or NRIL Appointees;
- (d) its policy or policies of third party liability insurance contain a provision under which its insurers agree that cover shall apply to [TOC] and NRIL and their Affiliates (to the extent that such Affiliates provide or have provided any Alliance Participant and/or Appointee to a Party) in the same manner and to the same extent as if individual policies had been issued to each, provided that the total liability of the Insurers to all of the insured parties collectively shall not exceed the limit of indemnity;
- (e) its policy or policies of third party liability insurance contain a provision that any act, error or omission by one insured party will

not be attributed to, or invalidate the insurance of, any other insured party provided that the insured party seeking an indemnity under the relevant policy has not caused, contributed to or knowingly condoned those acts, errors or omissions; and provided that such insured party, as soon as reasonably possible on becoming aware of the same, shall give notice to the relevant insurer;

- (f) its policy or policies of third party liability insurance contain a provision that no claim by an insured party shall be defeated, prejudiced or otherwise affected by any act, omission, neglect, breach or violation of any warranty, declaration or condition on the part of any other insured party provided that the insured party seeking an indemnity under the relevant policy has not caused, contributed to or knowingly condoned those acts or omissions, neglect, breach or violation of any warranty, declaration or condition; and provided that such insured party, as soon as reasonably possible on becoming aware of the same, shall give notice to the relevant insurer;
- (g) its policy or policies of third party liability insurance contain a provision that insurers shall accept notification of claims or other matters requiring notification given by any insured party as valid notification in respect of the interest of each insured party;
- (h) its policy or policies of third party liability insurance will in relation to liabilities arising out of the implementation of this Agreement provide that the insurer shall not contend that the relevant policy is in excess of any other insurance policy and shall not be entitled to contribution from any other insurance held by an insured;
- (i) its policy or policies of employer liability insurance are extended to cover, on a consistent basis, liability for Employment Claims:
 - (i) by any NRIL Alliance Participant which relate to injury, death, illness, disease, mental injury or mental anguish that results in a recognisable psychiatric injury suffered by such NRIL Alliance Participant in connection with his/her participation in [TOC] Activities brought against NRIL or any Affiliate (to the extent that such Affiliate provides or has

provided any Alliance Participant and/or Appointee to a Party) and other cover provided by the employers' liability policy/employers' liability section of the policy, arising out of the implementation of the Alliance Agreement; and

- (ii) by any [TOC] Alliance Participant (based in whole or part on the [TOC] Alliance Participant alleging or it being held that NRIL or any Affiliate owes him/her duties or obligations as an employer) which relate to injury, death, illness, disease, mental injury or mental anguish that results in a recognisable psychiatric injury suffered by such [TOC] Alliance Participant in connection with his/her participation in Alliance Activities brought against NRIL or any Affiliate (to the extent that such Affiliate provides or has provided any Alliance Participant and/or Appointee to a Party) and other cover provided by the employers' liability policy/employers' liability section of the policy, arising out of the implementation of the Alliance Agreement;
- (j) its policy or policies of employer liability insurance are extended to cover NRIL's liability pursuant to this Agreement;
- (k) its policy or policies of employer liability insurance contain a provision under which its insurers agree that their rights of subrogation against [TOC] and its Affiliates (to the extent that such Affiliates provide or have provided any Alliance Participant and/or Appointee to a Party) and [TOC] Alliance Participants and/or [TOC] Appointees have been waived in circumstances where NRIL itself would not have a claim against [TOC] or its relevant Affiliates and/or the relevant [TOC] Alliance Participants and/or [TOC] Appointees;
- (l) its policy or policies of employer liability insurance will in relation to liabilities arising out of the implementation of this Agreement provide that the insurer shall not contend that the relevant policy is in excess of any other insurance policy and shall not be entitled to contribution from any other insurance held by the Parties or their Affiliates;

- (m) its policy or policies of directors' and officers' liability insurance are extended to cover liability for claims brought against its directors or officers in connection with their participation in the [TOC] Activities arising out of the implementation of this Agreement;
- (n) its policy or policies of insurance in relation to first party property damage risks contain a provision under which its insurers agree that their rights of subrogation against [TOC] and its Affiliates (to the extent that such Affiliates provide or have provided any Alliance Participant and/or Appointee to a Party) and any [TOC] Alliance Participants and/or [TOC] Appointees have been waived in circumstances where NRIL itself would not have a claim against [TOC] or its relevant Affiliates or the relevant [TOC] Alliance Participants and/or [TOC] Appointees;
- (o) its policy or policies of motor liability insurance will cover all use of vehicles for which NRIL is the registered keeper for Alliance Activities (regardless of whether such vehicles are under the control of [TOC] Alliance Participants, [TOC] Appointees, NRIL Alliance Participants or NRIL Appointees) and where the vehicle is used for Alliance Activities the insurance will be extended to cover as an additional insured [TOC], its Affiliates (to the extent that such Affiliates provide or have provided any Alliance Participant and/or Appointee to a Party) and [TOC] Alliance Participants and/or [TOC] Appointees in relation to such Alliance Activities;
- (p) its policy or policies of motor liability insurance contain a provision under which its insurers agree that cover shall apply to NRIL and [TOC] and their respective Affiliates (to the extent that such Affiliates provide or have provided any Alliance Participant and/or Appointee to a Party), Alliance Participants and/or Appointees in the same manner and to the same extent as if individual policies had been issued to each, provided that the total liability of the Insurers to all of the insured parties collectively shall not exceed the limit of indemnity;
- (q) its policy or policies of motor liability insurance contain a provision that any act, error or omission by one insured party will not be

attributed to, or invalidate the insurance of, any other insured party provided that the insured party seeking an indemnity under the relevant policy has not caused, contributed to or knowingly condoned those acts, errors or omissions; and provided that such insured party, as soon as reasonably possible on becoming aware of the same, shall give notice to the relevant insurer;

- (r) its policy or policies of motor liability insurance contain a provision that no claim by an insured party shall be defeated, prejudiced or otherwise affected by any act, omission, neglect, breach or violation of any warranty, declaration or condition on the part of any other insured party provided that the insured party seeking an indemnity under the relevant policy has not caused, contributed to or knowingly condoned those acts, omissions, neglect, breach or violation of any warranty, declaration or condition; and provided that such insured party, as soon as reasonably possible on becoming aware of the same, shall give notice to the relevant insurer;
- (s) its policy or policies of motor liability insurance contain a provision that insurers shall accept notification of claims or other matters requiring notification given by any insured party as valid notification in respect of the interest of each insured;
- (t) its policy or policies of motor liability insurance will in relation to liabilities arising out of the implementation of this Agreement provide that the insurer shall not contend that the relevant policy is in excess of any other insurance policy and shall not be entitled to contribution from any other insurance held by any insured;
- (u) its policy or policies of motor liability insurance contain a provision under which its insurers agree that their rights of subrogation against [TOC] and its Affiliates (to the extent that such Affiliates provide or have provided any Alliance Participant and/or Appointee to a Party) and [TOC] Alliance Participants and/or [TOC] Appointees have been waived in circumstances where NRIL itself would not have a claim against [TOC] or its relevant Affiliates or the relevant [TOC] Alliance Participants and/or [TOC] Appointees;

- (v) its policy or policies of insurance, other than its policies of directors' and officers' liability insurance, required to be maintained pursuant to this paragraph contain a provision under which its insurers agree that they will not be entitled to avoid or reduce any liability which they might otherwise have under the policies by virtue of an insured Party's ability to recover from the other Party under the indemnities pursuant to this Agreement;
- (w) its policy or policies of insurance, other than its policies of directors' and officers' liability insurance, required to be maintained pursuant to this paragraph where a Party is to be an additional insured provide for 30 days' prior written notice of their cancellation, intention not to renew or to amend (where such amendment would lead to a material reduction in coverage under the relevant policy relevant to the Alliance Activities to which this Agreement applies) to be given to both Parties;
- (x) its policies of insurance, other than its policies of directors' and officers' liability insurance, required to be maintained pursuant to this paragraph contain a provision that this provision has been seen and agreed to by insurers; and
- (y) its policies of insurance, other than its policies of directors' and officers' liability insurance, required to be maintained pursuant to this paragraph contain a provision that:
 - (i) the insurer will not assert that it is entitled to avoid any policy or refuse or reduce a claim by reason of the Alliance being held in whole or in part to be a partnership within the meaning of the Partnership Act 1890; and
 - (ii) in the event that a claim is made against [TOC] or NRIL on the basis of the existence of a partnership within the meaning of the Partnership Act 1890, cover will apply in the same manner as it would have applied to that claim under the terms of the relevant policy had there been no actual or alleged partnership.

- (z) [TOC] shall procure that, with effect from the Alliance Commencement Date and until the termination or expiry of this Agreement:
- (i) NRIL and NRIL's Affiliates (to the extent that such Affiliates provide or have provided any Alliance Participant and/or Appointee to a Party) are added to [TOC]'s policy or policies of third party liability insurance (and references to third party liability insurance in this paragraph shall not include any policy or policies of professional indemnity or financial loss insurance) as an additional insured to the extent of any liability of NRIL or its Affiliates (to the extent that such Affiliates provide or have provided any Alliance Participant and/or Appointee to a Party) to third parties which relates to [TOC] Activities and arises out of the implementation of this Agreement (and in particular the involvement of NRIL Alliance Participants and/or NRIL Appointees in [TOC] Activities);
 - (ii) its policy or policies of third party liability insurance are extended to cover its liability to third parties arising out of or in connection with the involvement of NRIL Alliance Participants and/or NRIL Appointees in [TOC] Activities arising out of the implementation of this Agreement;
 - (iii) its policy or policies of third party liability insurance contain a provision under which its insurers agree that their rights of subrogation against NRIL and its Affiliates (to the extent that such Affiliates provide or have provided any Alliance Participant and/or Appointee to a Party), and NRIL Alliance Participants and/or NRIL Appointee have been waived in circumstances where [TOC] itself would not have a claim against NRIL or its relevant Affiliates or the relevant NRIL Alliance Participants and/or NRIL Appointees;
 - (iv) its policy or policies of third party liability insurance contain a provision under which its insurers agree that cover shall apply to NRIL and [TOC] and their Affiliates (to the extent

that such Affiliates provide or have provided any Alliance Participant and/or Appointee to a Party) in the same manner and to the same extent as if individual policies had been issued to each, provided that the total liability of the Insurers to all of the insured parties collectively shall not exceed the limit of indemnity;

- (v) its policy or policies of third party liability insurance contain a provision that any act, error or omission by one insured party will not be attributed to, or invalidate the insurance of, any other insured party provided that the insured party seeking an indemnity under the relevant policy has not caused, contributed to or knowingly condoned those acts, errors or omissions; and provided that such insured party, as soon as reasonably possible on becoming aware of the same, shall give notice to the relevant insurer;
- (vi) its policy or policies of third party liability insurance contain a provision that no claim by an insured party shall be defeated, prejudiced or otherwise affected by any act, omission, neglect, breach or violation of any warranty, declaration or condition on the part of any other insured party provided that the insured party seeking an indemnity under the relevant policy has not caused, contributed to or knowingly condoned those acts or omissions, neglect, breach or violation of any warranty, declaration or condition; and provided that such insured party, as soon as reasonably possible on becoming aware of the same, shall give notice to the relevant insurer;
- (vii) its policy or policies of third party liability insurance contain a provision that insurers shall accept notification of claims or other matters requiring notification given by any insured party as valid notification in respect of the interest of each insured party;
- (viii) its policy or policies of third party liability insurance will in relation to liabilities arising out of the implementation of this

Agreement provide that the insurer shall not contend that the relevant policy is in excess of any other insurance policy and shall not be entitled to contribution from any other insurance held by an insured;

- (ix) its policy or policies of employer liability insurance are extended to cover, on a consistent basis, liability for Employment Claims:
- A. by any [TOC] Alliance Participant which relate to injury, death, illness, disease, mental injury or mental anguish that results in a recognisable psychiatric injury suffered by such [TOC] Alliance Participant in connection with his/her participation in NRIL Activities brought against [TOC] or any Affiliate (to the extent that such Affiliate provides or has provided any Alliance Participant and/or Appointee to a Party) and other cover provided by the employers' liability policy/employers' liability section of the policy, arising out of the implementation of the Alliance Agreement; and
 - B. by any NRIL Alliance Participant (based in whole or part on the NRIL Alliance Participant alleging or it being held that [TOC] or any Affiliate owes him/her duties or obligations as an employer) which relate to injury, death, illness, disease, mental injury or mental anguish that results in a recognisable psychiatric injury suffered by such NRIL Alliance Participant in connection with his/her participation in Alliance Activities brought against [TOC] or any Affiliate (to the extent that such Affiliate provides or has provided any Alliance Participant and/or Appointee to a Party) and other cover provided by the employers' liability policy/employers' liability section of the policy, arising out of the implementation of the Alliance Agreement;

- (x) its policy or policies of employer liability insurance are extended to cover [TOC]'s liability under pursuant to this Agreement;
- (xi) its policy or policies of employer liability insurance contain a provision under which its insurers agree that their rights of subrogation against NRIL and its Affiliates (to the extent that such Affiliates provide or have provided any Alliance Participant and/or Appointee to a Party) and NRIL Alliance Participants and/or NRIL Appointees have been waived in circumstances where [TOC] itself would not have a claim against NRIL or its relevant Affiliates and/or the relevant NRIL Alliance Participants and/or NRIL Appointees;
- (xii) its policy or policies of employer liability insurance will in relation to liabilities arising out of the implementation of this Agreement provide that the insurer shall not contend that the relevant policy is in excess of any other insurance policy and shall not be entitled to contribution from any other insurance held by the Parties or their Affiliates;
- (xiii) its policy or policies of directors' and officers' liability insurance are extended to cover liability for claims brought against its directors or officers in connection with their participation in the NRIL Activities arising out of the implementation of this Agreement;
- (xiv) its policy or policies of insurance in relation to first party property damage risks contain a provision under which its insurers agree that their rights of subrogation against NRIL and its Affiliates (to the extent that such Affiliates provide or have provided any Alliance Participant and/or Appointee to a Party) and any NRIL Alliance Participants and/or NRIL Appointees have been waived in circumstances where [TOC] itself would not have a claim against NRIL or its relevant Affiliates or the relevant NRIL Alliance Participants and/or NRIL Appointees;

- (xv) its policy or policies of motor liability insurance will cover all use of vehicles for which [TOC] is the registered keeper for Alliance Activities (regardless of whether such vehicles are under the control of [TOC] Alliance Participants, [TOC] Appointees, NRIL Alliance Participants or NRIL Appointees) and where the vehicle is used for Alliance Activities the insurance will be extended to cover as an additional insured NRIL, its Affiliates (to the extent that such Affiliates provide or have provided any Alliance Participant and/or Appointee to a Party) and NRIL Alliance Participants and/or NRIL Appointees in relation to such Alliance Activities;
- (xvi) its policy or policies of motor liability insurance contain a provision under which its insurers agree that cover shall apply to NRIL and [TOC] and their respective Affiliates (to the extent that such Affiliates provide or have provided any Alliance Participant and/or Appointee to a Party), Alliance Participants and/or Appointees in the same manner and to the same extent as if individual policies had been issued to each, provided that the total liability of the Insurers to all of the insured parties collectively shall not exceed the limit of indemnity;
- (xvii) its policy or policies of motor liability insurance contain a provision that any act, error or omission by one insured party will not be attributed to, or invalidate the insurance of, any other insured party provided that the insured party seeking an indemnity under the relevant policy has not caused, contributed to or knowingly condoned those acts, errors or omissions; and provided that such insured party, as soon as reasonably possible on becoming aware of the same, shall give notice to the relevant insurer;
- (xviii) its policy or policies of motor liability insurance contain a provision that no claim by an insured party shall be defeated, prejudiced or otherwise affected by any act, omission, neglect, breach or violation of any warranty, declaration or

condition on the part of any other insured party, provided that the insured party seeking an indemnity under the relevant policy has not caused, contributed to or knowingly condoned those acts, omissions, neglect, breach or violation of any warranty, declaration or condition; and provided that such insured party, as soon as reasonably possible on becoming aware of the same, shall give notice to the relevant insurer;

- (xix) its policy or policies of motor liability insurance contain a provision that insurers shall accept notification of claims or other matters requiring notification given by any insured party as valid notification in respect of the interest of each insured;
- (xx) its policy or policies of motor liability insurance will in relation to liabilities arising out of the implementation of this Agreement provide that the insurer shall not contend that the relevant policy is in excess of any other insurance policy and shall not be entitled to contribution from any other insurance held by any insured;
- (xxi) its policy or policies of motor liability insurance contain a provision under which its insurers agree that their rights of subrogation against NRIL and its Affiliates (to the extent that such Affiliates provide or have provided any Alliance Participant and/or Appointee to a Party) and NRIL Alliance Participants and/or NRIL Appointees have been waived in circumstances where [TOC] itself would not have a claim against NRIL or its relevant Affiliates or the relevant NRIL Alliance Participants and/or NRIL Appointees;
- (xxii) its policy or policies of insurance, other than its policies of directors' and officers' liability insurance, required to be maintained pursuant to this paragraph contain a provision under which its insurers agree that they will not be entitled to avoid or reduce any liability which they might otherwise have under the policies by virtue of an insured Party's ability

to recover from the other Party under the indemnities pursuant to this Agreement;

(xxiii) its policy or policies of insurance, other than its policies of directors' and officers' liability insurance, required to be maintained pursuant to paragraph where a Party is to be an additional insured provide for 30 days' prior written notice of their cancellation, intention not to renew or to amend (where such amendment would lead to a material reduction in coverage under the relevant policy relevant to the Alliance Activities to which this Agreement applies) to be given to both Parties;

(xxiv) its policies of insurance, other than its policies of directors' and officers' liability insurance, required to be maintained pursuant to this paragraph contain a provision that this clause Schedule Part 7 has been seen and agreed to by insurers; and

(xxv) its policies of insurance, other than its policies of directors' and officers' liability insurance, required to be maintained pursuant to this paragraph contain a provision that:

- A. the insurer will not assert that it is entitled to avoid any policy or refuse or reduce a claim by reason of the Alliance being held in whole or in part to be a partnership within the meaning of the Partnership Act 1890; and
- B. in the event that a claim is made against [TOC] or NRIL on the basis of the existence of a partnership within the meaning of the Partnership Act 1890, cover will apply in the same manner as it would have applied to that claim under the terms of the relevant policy had there been no actual or alleged partnership.

(aa) Each Party shall:

- (i) where the other Party is or becomes an additional insured party on the first Party's policy or policies of insurance,

provide the other Party with a copy of such policy or policies of insurance on the Alliance Commencement Date and following the renewal or amendment of each such policy or policies of insurance and such receiving Party may in turn copy the same to such of its Affiliates as are intended to be covered by such policy provided that the recipient Party shall and shall procure that its Affiliates will only use such policy or policies of insurance for purpose of this Agreement and shall not be disclosed to any person other than an Affiliate intended to be covered by such policy of insurance; and

- (ii) prior to the Alliance Commencement Date and following the renewal or amendment of any policy or policies of insurance required to be maintained pursuant to this paragraph, where requested by the other Party and in any event within five (5) Business Days of a written demand from the other Party provide documentary evidence that such policies of insurance are fully maintained and that any premiums on them and/or contributions in respect of them (if any) are fully paid.
- (bb) The Parties shall monitor the operation of the Alliance, any change to the implementation of the Business Plan⁵ and any amendments to this Agreement with a view to identifying whether any of them affects or is capable of affecting the requirements of this Agreement in relation to insurance or the policies of insurance which are required to be maintained by the Parties pursuant to this Schedule Part 7 or the nature or degree of risk to which any policy of insurance which protects either of the Parties may be or become exposed as a result of either the scope or operation of the Alliance pursuant to this Agreement or any proposed change to such scope or operation. The Parties shall liaise with their respective insurers regularly (and not less than once every 3 months after the Alliance Commencement Date, except to the extent otherwise agreed with their respective insurers) to inform and update them about the operation of the provisions of this Schedule Part 7 and the policies of insurance required to be maintained under it and to confirm

⁵ Is the correct reference change to implement of Business Plan or Alliance Activities?

whether they remain appropriate in the context of the Alliance as it develops. Where such liaison suggests that amendments to this Agreement are required, the Parties shall seek to agree appropriate amendments.

- (cc) Reference in this Schedule Part 7 to any policy of insurance or any insurance cover of a Party maintained or renewed by that Party (or similar phrase) extends not only to a policy solely in the name of that Party but also to any policy which that Party shares with any of its Affiliates and to any policy effected by any of its Affiliates or by any group of which that Party is a member provided that such Party itself normally looks to or relies on such policy for cover and references to the insurers of a Party shall extend to the insurers under any such policy.

1.4 **Hold Harmless Indemnities**

1.4.1 NRIL shall indemnify and hold harmless [TOC] against all Losses, including Losses incurred by its Affiliates (to the extent they result from the provision by such Affiliates of any Alliance Participant and/or Appointee to a Party) and Alliance Participants and/or Appointees arising:

- (a) from claims (other than Employment Claims to the extent that they fall within the scope of the indemnities provided and brought against [TOC] or any of its Affiliates (to the extent that such Affiliates provide or have provided any Alliance Participant and/or Appointee to a Party) by third parties (which for the avoidance of doubt shall mean claims brought by a person other than one of the Parties) which result from NRIL Activities and which arise out of the implementation of this Agreement (and in particular the involvement of [TOC] Alliance Participants and/or [TOC] Appointees in NRIL Activities), but only to the extent that the relevant Losses have not been recovered by [TOC] or the relevant Affiliate, Alliance Participant and/or Appointee (having used all reasonable endeavours to do so) from insurers under a policy of insurance maintained pursuant to this Agreement;
- (b) from Employment Claims brought against [TOC] or any of its Affiliates (to the extent that such Affiliates provide or have

provided any Alliance Participant and/or Appointee to a Party) by a NRIL Alliance Participant which relate to injury, death, illness, disease, mental injury or mental anguish that results in a recognisable psychiatric injury suffered by such NRIL Alliance Participant to the extent resulting from NRIL Activities and which arise out of the implementation of this Agreement (and in particular the involvement of [TOC] Alliance Participants and/or [TOC] Appointees in NRIL Activities);

- (c) subject and without prejudice to paragraphs 13 (Transferor Indemnities) and 14 (Transferee Indemnities) of Schedule Part 6, from Employment Claims brought against [TOC] or any of its Affiliates (to the extent that such Affiliates provide or have provided any Alliance Participant and/or Appointee to a Party) by NRIL Alliance Participants which do not relate to injury, death, illness, disease, mental injury or mental anguish that results in a recognisable psychiatric injury suffered by such NRIL Alliance Participant and which arise out of and which arise out of the implementation of this Agreement (and in particular the involvement of NRIL Alliance Participants and/or NRIL Appointees in [TOC] Activities and/or [TOC] Alliance Participants and/or [TOC] Appointees in NRIL Activities), but only to the extent that the relevant Losses are not recovered by [TOC] or the relevant Affiliate (having used all reasonable endeavours to do so) from insurers under a policy of insurance maintained pursuant to Schedule Part 7; and
- (d) from claims brought by NRIL or by any of its Affiliates (to the extent that such Affiliates provide or have provided any Alliance Participant and/or Appointee to a Party) against [TOC] or any of its Affiliates (to the extent that such Affiliates provide or have provided any Alliance Participant and/or Appointee to a Party) and/or against [TOC] Alliance Participants and/or [TOC] Appointees where such claims are excluded.

1.4.2 [TOC] shall indemnify and hold harmless NRIL, against all Losses, including Losses incurred by its Affiliates (to the extent they result from the provision by such Affiliates of any Alliance Participant and/or

Appointee to a Party) and, in relation only to Losses arising from a breach by [TOC], Alliance Participants and/or Appointees, arising:

- (a) from claims (other than Employment Claims brought against NRIL or any of its Affiliates (to the extent that such Affiliates provide or have provided any Alliance Participant and/or Appointee to a Party) by third parties (which for the avoidance of doubt shall mean claims brought by a person other than one of the Parties) which result from [TOC] Activities and which arise out of the implementation of this Agreement (and in particular the involvement of NRIL Alliance Participants and/or NRIL Appointees in [TOC] Activities), but only to the extent that the relevant Losses have not been recovered by NRIL or the relevant Affiliate, Alliance Participant and/or Appointee (having used all reasonable endeavours to do so) from insurers under a policy of insurance maintained pursuant to Schedule Part 7;
- (b) from Employment Claims brought against NRIL or any of its Affiliates (to the extent that such Affiliates provide or have provided any Alliance Participant and/or Appointee to a Party) by an [TOC] Alliance Participant which relate to injury, death, illness, disease, mental injury or mental anguish that results in a recognisable psychiatric injury suffered by such [TOC] Alliance Participant to the extent resulting from [TOC] Activities and which arise out of the implementation of this Agreement (and in particular the involvement of NRIL Alliance Participants in [TOC] Activities);
- (c) subject and without prejudice to paragraphs 13 (Transferor Indemnities) and 14 (Transferee Indemnities) of Schedule Part 6, from Employment Claims brought against NRIL or any of its Affiliates (to the extent that such Affiliates provide or have provided any Alliance Participant and/or Appointee to a Party) by [TOC] Alliance Participants which do not relate to injury, death, illness, disease, mental injury or mental anguish that results in a recognisable psychiatric injury suffered by such [TOC] Alliance Participant and which arise out of the implementation of this Agreement (and in particular the involvement of [TOC] Alliance

Participants and/or [TOC] Appointees in NRIL Activities and/or NRIL Alliance Participants and/or NRIL Appointees in [TOC] Activities), but only to the extent that the relevant Losses are not recovered by NRIL or the relevant Affiliate (having used all reasonable endeavours to do so) from insurers under a policy of insurance maintained pursuant to Schedule Part 7; and

- (d) from claims brought by [TOC] or by any of its Affiliates (to the extent that such Affiliates provide or have provided any Alliance Participant and/or Appointee to a Party) against NRIL or any of its Affiliates (to the extent that such Affiliates provide or have provided any Alliance Participant and/or Appointee to a Party) and/or against NRIL Alliance Participants and/or NRIL Appointees where such claims are excluded.

1.4.3 For the avoidance of doubt, the indemnities set out shall not apply to:

- (a) any Losses accruing either entirely before the Alliance Commencement Date or entirely after the expiry or termination of the Agreement; or
- (b) the proportion of any Losses accruing in respect of the period before the Alliance Commencement Date or after the expiry or termination of the Agreement.

1.4.4 Where a Party is entitled to be indemnified against Losses of its Affiliate, Alliance Participant and/or Appointee under this paragraph, that Party shall have a corresponding obligation to indemnify such Affiliate, Alliance Participant and/or Appointee (as the case may be) in respect of such Losses on the same terms mutatis mutandis immediately following receipt of the relevant amounts from the indemnifying Party.

1.5 **No Unintended Relationship**

1.5.1 If a third party asserts to either or both of the Parties that the Alliance (or any part of it) is a partnership within the meaning of the Partnership Act 1890 (Unintended Relationship), whether in connection with formal proceedings against that Party or the Parties or otherwise, the Party to whom the assertion has been made shall promptly notify the other Party in writing (save where the assertion has been made to both of the Parties)

and each Party undertakes to the other party to take all reasonable steps to challenge such assertion.

1.5.2 If it is lawfully held by a court or other Competent Authority that the Alliance (or any part of it) is an Unintended Relationship, in order to eliminate or mitigate, as between the Parties, the legal and financial consequences of the Unintended Relationship:

- (a) NRIL shall indemnify and hold harmless [TOC] (and any Affiliate of [TOC]) against any and all Losses to the extent arising out of:
 - (i) any claim made against [TOC] by a third party for which but for the Unintended Relationship [TOC] would not be liable; and
 - (ii) any claim made against [TOC] by NRIL for which but for the Unintended Relationship [TOC] would not be liable; and
 - (iii) any sanctions imposed by the Pensions Regulator under sections 38 to 47 of the Pensions Act 2004 in relation to the NRIL Section or any other defined benefit pension scheme operated by NRIL or any company which is associated or connected with NRIL and which arise as a result of an Unintended Relationship.

- (b) [TOC] shall indemnify and hold harmless NRIL (and any Affiliate of NRIL) against any and all Losses to the extent arising out of:
 - (i) any claim made against NRIL by a third party for which but for the Unintended Relationship NRIL would not be liable; and
 - (ii) any claim made against NRIL by [TOC] for which but for the Unintended Relationship NRIL would not be liable; and
 - (iii) any sanctions imposed by the Pensions Regulator under sections 38 to 47 of the Pensions Act 2004 in relation to the [TOC] Section or any other defined benefit pension scheme operated by [TOC] or any company which is associated or

connected with [TOC] and which arise as a result of an Unintended Relationship.

- (c) if and to the extent that the Alliance (or any part of it) is treated as an Unintended Relationship for Taxation purposes (it being acknowledged that (x) HMRC has confirmed to the Parties that it will not seek to treat the Alliance as an Unintended Relationship and (y) the Parties' intention is that the tax consequences that would arise to them if there is an Unintended Relationship should be no different to the tax consequences that would arise to them in the absence of an Unintended Relationship) the Parties agree that:
- (i) the profit shares, entitlement to losses and entitlement to Taxation reliefs and allowances (including, for the avoidance of doubt, capital allowances) arising to each as a partner in respect of the relevant Alliance Activities, and the net VAT position of each (as to which, see sub clause (E) below), shall be such, and shall be deemed to be such, as would result in each of the Parties being taxed in a manner as far as possible equivalent to the position that would have pertained if it were not for the Unintended Relationship;
 - (ii) the Parties shall cooperate and each Party shall provide such support and assistance as is reasonably requested by the other Party to carry out any legally required actions regarding Taxation in respect of the Alliance arising as a result of the Unintended Relationship, including filing partnership Taxation returns or applying for an Alliance VAT Registration, and ensuring that the Alliance complies with any other applicable Law in relation to VAT (including accounting for any VAT due);
 - (iii) the Parties shall cooperate to procure that the liability to Taxation (including VAT) of each Party in respect of the Alliance, remain as far as possible equivalent to the position that would have pertained if it were not for the Unintended Relationship

- (iv) if any Taxation interest or penalties arise as a result of a failure to (i) comply with any laws relating to VAT in connection with (x) an Alliance VAT Registration being required or (y) any supplies being treated for VAT purposes by HMRC as Alliance Supplies or make any legally required Taxation filings on behalf of the Alliance as a partnership, the Parties shall take all steps as are practicable so as to ensure that (to the maximum extent permitted by Law) each Party bears an equal share of such interest and penalties; and
- (v) if it is determined by HMRC that:
 - A. an Alliance VAT Registration is or was required, and
 - B. an obligation to account for output tax, or an entitlement to credit for input tax, has arisen to that Alliance VAT Registration in respect of supplies made or received by that Alliance VAT Registration (Alliance Supplies),

then the Parties agree to (x) make such adjustments (including payments between themselves, if necessary) and (y) to share the economic burden and benefit of the obligations and entitlements referred to above, in each case in such a manner between themselves as will (so far as possible) result in each of the Parties being in a net VAT position equivalent to the position that would have pertained if it were not for such determination.

For the avoidance of doubt, nothing in this paragraph shall require either Party to recalculate, adjust or unwind any payments made or due under Schedule Part 5 (Costs and Revenues), or to compute on a different basis any payments that subsequently become payable under Schedule Part 5 (Costs and Revenues).

1.5.3 For the avoidance of doubt, in any event (whether or not the Alliance (or any part of it) is treated as an Unintended Relationship for Taxation purposes), any reliefs, rebates, refunds or credits of or in respect of Taxation arising other than as a result of, or in respect of, Alliance Activities shall be retained by the Party to whom they are paid or given by

HMRC, without adjustment or reallocation, unless otherwise agreed by the Parties.

1.5.4 In this section:

- (a) Alliance VAT Registration means a separate VAT registration in respect of the Alliance (or any part of it) (whether a registration of the Parties carrying on a business in partnership (in the name of the Alliance or otherwise), or a registration in respect of the Alliance (or any part of it) by virtue of some other relationship or arrangement between the Parties that does not constitute a partnership under the Partnership Act 1890; and
- (b) in respect of VAT only, the term Unintended Relationship shall include, as well as a partnership within the meaning of the Partnership Act 1890, any other relationship or arrangement between the Parties that does not constitute a partnership within the meaning of the Partnership Act 1890 but which nevertheless requires that an Alliance VAT Registration be made.

1.5.5 Any reference to a claim shall not include any claim in respect of Tax brought by a Tax Authority.

1.6 **Maximum Financial Exposure⁶**

1.6.1 The Parties agree that their maximum net financial exposure as a result of entering into the arrangements set out in this Agreement will be capped at £[20,000,000] ([twenty million pounds]) in accordance with the following provisions of this paragraph 1.6. [*Detail of extent of committed exposure to be developed with bidders*]

1.7 **General Provisions on Liability**

1.7.1 Where either Party is required to make payment to the other Party pursuant to an indemnity set out in this Agreement, the Parties may agree that such payment shall not be made on the grounds and to the extent that its payment and receipt would be neutralised by payments made in accordance with Schedule Part 5.

⁶ No maximum financial exposure agreed. Not relevant as upside risk sharing only?

- 1.7.2 Neither Party shall be liable to the other Party for any punitive, indirect or consequential loss or for any loss of profits, income, business opportunities or anticipated savings (whether direct or indirect) (whether suffered by the other Party, its Affiliates, Alliance Participants and/or Appointees) arising out of or in connection with this Agreement (including any breach of this Agreement) (but, for the avoidance of doubt, this paragraph) is not intended to affect the position applying in relation to other contracts between the Parties or in relation to non-contractual claims which arise other than out of or in connection with this Agreement or breach of this Agreement).
- 1.7.3 Neither Party shall be entitled to recover or otherwise obtain reimbursement or restitution more than once in respect of the same Losses (including for the avoidance of doubt through the operation of Schedule Part 5 and/or an indemnity in this Agreement).
- 1.7.4 Neither Party shall be liable for Losses arising from breach of any warranty, representation, indemnity, covenant or undertaking in connection with this Agreement except where it is expressly set out in this Agreement. Each Party confirms that it has not relied upon or been induced to enter into this Agreement by any warranty, representation, indemnity, covenant or undertaking given by any person which is not expressly contained in this Agreement.
- 1.7.5 Nothing in this Agreement shall be deemed to relieve either Party or any relevant Affiliate from its common law duty to mitigate Losses.
- 1.7.6 Nothing in this Agreement shall have the effect of limiting any person's right, remedy or liability to the extent arising from fraud or otherwise prohibited by Law.
- 1.7.7 Without prejudice to the operation of Schedule Part 5, nothing in this Agreement shall affect the application as between the parties of the provisions of CAHA which relate to liability for small claims equal to or below the Threshold (as defined in CAHA).
- 1.7.8 The provisions of this Schedule Part 7 are without prejudice to the reallocation of gain or pain between the Parties pursuant to Schedule Part 5.

1.8 Conduct of Claims

- 1.8.1 The Parties acknowledge and agree that CAHA will continue to govern the handling of any and all claims to which it applies in accordance with its terms and that the subsequent provisions of this paragraph shall only apply to claims which are not governed by CAHA.
- 1.8.2 If any proceedings are instituted by a third party (which for the avoidance of doubt shall mean a claim brought by a person other than one of the Parties) against either Party or an Affiliate, Alliance Participant or Appointee of such Party and such Party will be entitled to an indemnity which may give rise to a claim under such indemnity (Relevant Proceedings), the Protected Party shall as soon as reasonably practicable give notice of the Relevant Proceedings in writing to the Party against whom a claim under the indemnity may be brought (Protecting Party).
- 1.8.3 To the extent practicable, and subject to any obligations the Parties have to Insurers, the Protecting Party shall have the option, subject to giving to the Protected Party such indemnities as the Protected Party may reasonably require, to assume the defence of the Relevant Proceedings, including the instruction of legal advisers reasonably satisfactory to the Protected Party to represent the Protected Party and any others which the Protecting Party may designate in such Relevant Proceedings and the Protecting Party shall indemnify the Protected Party in respect of the fees and disbursements of such legal advisers related to such Relevant Proceedings.
- 1.8.4 In any event and subject to the obligations the Parties may have to Insurers, the Protected Party will:
- (a) consult with the Protecting Party as to legal representation;
 - (b) update the Protecting Party regularly in relation to the Relevant Proceedings, provide to the Protecting Party all information that it may reasonably require and allow the Protecting Party to comment on key documents and submissions, and take reasonable account of such comments; and
 - (c) co-operate with the Protecting Party in relation to the management and conduct of the Relevant Proceedings.

- 1.8.5 In any Relevant Proceedings the Protected Party shall, subject to any obligations it may have to insurers, have the right to retain its own legal advisers, but the fees and expenses of such legal advisers shall be at the expense of such Protected Party unless:
- (a) the Protecting Party and the Protected Party have mutually agreed to the retention of such legal advisers and the sharing of the relevant fees and expenses; or
 - (b) the named parties to any such Relevant Proceedings (including any added parties) include both the Protecting Party and the Protected Party and representation of both parties by the same legal advisers would be inappropriate due to actual or potential differing interests between them.
- 1.8.6 The Protecting Party shall not be liable for any settlement of any Relevant Proceedings effected without its written consent (such consent not to be unreasonably withheld or delayed) where it has not assumed the defence of such Relevant Proceedings but, if such Relevant Proceedings are settled with such consent or if there is a Final Judgment for the claimant, the Protecting Party agrees to indemnify the Protected Party on the terms of the relevant indemnity.
- 1.8.7 If the Protecting Party does not exercise the option contained above the Protected Party shall, if so required by the Protecting Party, maintain consultation with the Protecting Party on all aspects of the Relevant Proceedings and shall provide the Protecting Party with all information reasonably requested by it in relation to such Relevant Proceedings.
- 1.8.8 If the Protecting Party exercises the option above it shall thereafter, if so required by the Protected Party, maintain consultation with the Protected Party on all aspects of the Relevant Proceedings and shall provide the Protected Party with all information reasonably requested by it in relation to such Relevant Proceedings.

SCHEDULE PART 8**ALLIANCE ASSUMPTIONS****Abellio assumptions**

In signing this agreement, Abellio has assumed that:

1. Abellio will be selected as the Franchisee for the ScotRail Franchise on terms which are not materially different from those set out in its response to the invitation to tender.
2. There will be, prior to the ScotRail Franchise Commencement Date, no material change in the legal status of NRIL or any of its affiliates, except to the extent that such change (or the likelihood of it) had been made known to Abellio prior to the signature of this Agreement.
3. There will be, prior to the ScotRail Franchise Commencement Date, no serious safety incident which causes widespread perturbation of the capacity and/or capability of the Network.
4. There will be, prior to the ScotRail Franchise Commencement Date, no material revisions of any previously publicly announced measure of NRIL's financial or operational performance.
5. There will be, prior to the ScotRail Franchise Commencement Date, no further review of access charges by the Office of Rail Regulation.

NRIL assumptions

In signing this Agreement, NRIL has assumed that:

- The Alliance will be negotiated in accordance with the core commercial proposition presented by NRIL at the bidder open day on 9th October and the summary of the commercial proposition, including scope and baseline issued 19th November 2013 both of which we understand were also included in the data room;
- Ultimate Accountability and Retained Functions will be preserved at all times;
- In exercising its functions each party will have due regard to its wider corporate obligations and internal governance processes;
- The parties will agree the appropriate structure for the Alliance, acting in good faith, with a principle of sharing senior positions as appropriate;

- That the Alliance baseline will be the Abellio Initial Baseline plus NRIL's Initial Baseline as described at Recital (E) and as more fully detailed in Paul Plummer's letter of 7th November 2013 (the "Alliance Baseline");
- The Alliance Baseline can only be modified as per Schedule Part 5 once adopted by the Alliance Board;
- In any year where there is an aggregate out performance of the Alliance Baseline, such aggregate out performance will be shared 50:50 other than in respect of renewals. NRIL retains only 25% of any renewals outperformance meaning that the 50:50 share will be of the NRIL retained amount. (All as more fully detailed in the commercial proposition issued on 19th November 2013);
- Initially there will be no downside sharing. The parties will explore and develop, if appropriate, a downside sharing option;
- Alliance before REBs;
- Enhancements are expressly excluded from the Alliance and will be addressed by a separate incentive mechanism that has been developed in outline and circulated on 27th February 2014; and
- Abellio has opted out of REBs for the purpose of this Franchise.