

THE SCOTTISH MINISTERS
and
SCOTTISH RAIL HOLDINGS LIMITED
and
SCOTRAIL TRAINS LIMITED

SCOTRAIL GRANT AGREEMENT

CONFORMED COPY GRANT AGREEMENT AS AT JUNE 2022

**This is a conformed copy of the Grant Agreement between The
Scottish Ministers and Scottish Rail Holdings and ScotRail Trains
Limited as at June 2022**

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SCOTRAIL GRANT AGREEMENT

AMONG

- (1) **THE SCOTTISH MINISTERS**, Victoria Quay, Edinburgh, EH6 6QQ, acting through Transport Scotland, Buchanan House, 58 Port Dundas Road, Glasgow, G4 0HF or such other agency, department or other organisational unit of the Scottish Government as they may from time to time nominate (who and whose successors are referred to as the “**Authority**”); and
- (2) **SCOTTISH RAIL HOLDINGS LIMITED**, whose registered number is SC548826 and registered office is at Buchanan House, 58 Port Dundas Road, Glasgow, G4 0HF (“**SRH**”); and
- (3) **SCOTRAIL TRAINS LIMITED**, whose registered number is SC328826 and registered office is at 50 Waterloo Street, Glasgow G2 6HQ Atrium Court, (“**SRT**”).

WHEREAS

- (A) The Cabinet Secretary for Transport announced on 17 March 2021 that, given the impact of the pandemic and continued uncertainty around UK rail reform, a franchise procurement competition to secure successor arrangements for the ScotRail franchise would not be held.
- (B) In the circumstances, ScotRail services would instead be provided within the public sector by an arm’s length company owned and controlled by the Scottish Government when the current ScotRail Franchise Agreement ends.
- (C) SRT has been established to provide certain services for the carriage of passengers by railway and operating certain stations and light maintenance depots pursuant to Agreement, the Operator Services, on behalf of Scottish Ministers, as represented by the Authority.
- (D) SRT is a wholly owned subsidiary of SRH which has been established for the purposes of overseeing the performance of the Operator Services by SRT and providing support to SRT as would normally be provided by an owning group. The Chief Executive Officer of SRH will Chair and the Finance Director of SRH will be a member of the SRT Board. It is intended that this Agreement will be managed as far as possible through the SRT Executive Team reporting to the SRT Board. This Agreement will be reviewed, and if appropriate, updated by the parties on an annual basis to ensure it continues to reflect the evolving policy, structural and operational requirements for ScotRail services.
- (E) Ultimately it is the Authority’s obligation to comply with the Section 30 Duty and the Authority may instruct SRH and/or SRT directly should this be required.
- (F) The Authority expects SRT, on the terms of this Agreement, actively to seek, in all reasonable business ways to deliver the policy objectives referred to in recital (G).
- (G) The policy objectives of this Agreement are for the Operator Services to:
 - ensure compliance with the policy outcomes as detailed in the Framework Agreement and Policy Compendium (each as amended from time to time);
 - ensure value for money;
 - improve industry alignment to increase effectiveness and reduce costs; and
 - improve passenger satisfaction.
- (H) The following provisions of this Agreement are intended to reflect and give effect to the matters referred to in Recitals (A) to (G).

1. Interpretation and Definitions

- 1.1. This Agreement shall be interpreted in accordance with Schedule 20 to this Agreement.
- 1.2. The Schedules and Appendices to this Agreement form part of this Agreement.

2. Commencement

Notwithstanding the dates of execution hereof, this Agreement shall take effect and be binding upon each of the parties at 01:59 on 1 April 2022 (“**Commencement Date**”).

3. Term

- 3.1. Unless terminated earlier in accordance with clause 3.3 or clause 3.4, this Agreement shall continue until the First Expiry Date and then shall automatically extend until the Final Expiry Date (“**Extended Term**”).
- 3.2. Subject to paragraphs 1 and 2 of Schedule 18 (*Operation Continuation*), and without prejudice to clause 3.3 or clause 3.4, this Agreement shall automatically terminate on the Final Expiry Date without notice.
- 3.3. A party may terminate this Agreement on the First Expiry Date on giving not less than six (6) months' written notice to the other parties before the First Expiry Date.
- 3.4. A party may terminate this Agreement at the end of an Operator Year of the Extended Term by giving not less than twelve (12) months' written notice to the other parties before the end of the relevant Operator Year.
- 3.5. The dates indicatively set out in the table below do not affect the construction and interpretation of the defined terms referred to in that table. The definitions of “**First Expiry Date**” and “**Final Expiry Date**” set out in Schedule 20 shall take precedence over the table below.

Defined Date	Indicative Date	Indicative Date plus Schedule 18 maximum continuation
First Expiry Date	31 March 2027	13 October 2027
Final Expiry Date	31 March 2032	N/A

4. SRT's Obligations

- 4.1. SRT shall perform its obligations under this Agreement in accordance with its terms and with that degree of skill, diligence, prudence and foresight which would be exercised by a skilled and experienced Train Operator of the ScotRail Operation.
- 4.2. Any obligation on the part of SRT to use all reasonable endeavours shall extend to consequent obligations adequately to plan and resource its activities, and to implement those plans and resources, with all due efficiency and economy.
- 4.3. SRT shall co-operate with SRH and the Authority and act reasonably and in good faith in and about the performance of its obligations and the exercise of its rights pursuant to this Agreement in the interests of the passenger and the sustainable and economic and social development of Scotland through the provision of passenger rail services. In this regard, “**sustainable**” shall include the meaning of that term when applied in environmental, social and economic contexts.

4.4. SRT acknowledges that the Authority's stated policy objectives for this Agreement are listed in Recital (G) for the Operator Services to:-

- ensure compliance with the policy outcomes as detailed in the Framework Agreement and Policy Compendium (each as amended from time to time);
- ensure value for money;
- improve industry alignment to increase effectiveness and reduce costs; and
- improve passenger satisfaction.

4.5. Notwithstanding encouragement whether explicit or implicit in this Agreement or otherwise for SRT to consider or discuss the entering into of alliancing arrangements with Network Rail or any other party, the existence of any Alliance shall (save as expressly stated in this Agreement) not provide SRT with any relief from any obligation upon SRT in this Agreement.

4.6. SRH and SRT shall each comply with the Public Sector Pay Policy and Severance Policy, as amended from time to time.

5. Unjustified Enrichment

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

6. Arm's Length Dealings

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

7. The Authority

7.1. The Authority shall be entitled to enforce and/or receive the benefit of any provision of this Agreement which enures to SRH and shall have no responsibility for nor liability under any obligation of SRH under such provision or any other provision of this Agreement.

7.2. SRT understands and agrees that any information provided by it, or on its behalf, to SRH under and/or in connection with this Agreement may also be provided, or otherwise made available, to the Authority, and the Authority shall, if it has requested information from SRH and not received such information, be entitled to request, at its discretion, directly from SRT such information and/or any information the Authority requires to comply with the Section 30 Duty.

7.3. SRT understands and agrees and the Authority may, at its discretion, attend any meetings between SRH and SRT to the extent connected to any rights or obligations under this Agreement.

8. Compliance with Laws

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

9. Entire Agreement

9.1. This Agreement contains the entire agreement among or between the parties in relation to the subject matter of this Agreement and supersede all prior agreements and arrangements among or between the parties other than the Framework Agreement and Financial Memorandum.

- 9.2. SRT hereby acknowledges that it is not entering into this Agreement in reliance on any warranties, representations or undertakings howsoever or to whomsoever made except in so far as such are contained in this Agreement.
- 9.3. SRT irrevocably and unconditionally waives any right which it may otherwise have to claim damages in respect of and/or to rescind this Agreement on the basis of any warranty, representation (whether negligent or otherwise, and whether made prior to and/or in this Agreement) or undertaking howsoever or to whomsoever made unless and to the extent that such warranty, representation or undertaking was made fraudulently.

10. Annual Review and Update

- 10.1 Without prejudice to Schedule 9 (*Change*), the parties shall hold an annual review meeting in the first week of the last GP Quarter of each Operator Year ("**Annual Contractual Review Meeting**") to review and as necessary seek to agree updates and amendments to this Agreement, which shall include without limitation, a review of the Business Plan Commitments ("**Annual Variations**").
- 10.2 An Annual Variation to the terms of this Agreement pursuant to clause 10.1 may involve the deletion of terms, the addition of new terms or any other type of variation or change to this Agreement required by the parties in the light of evolving policy, structural and operational needs of the ScotRail Operation (including without limitation the replacement of this Agreement with a new agreement among the parties).
- 10.3 If the parties fail to agree the Annual Variations within thirty (30) Weekdays of the relevant Annual Contractual Review Meeting, then the Authority shall reasonably determine what Annual Variations, if any, are to be incorporated to this Agreement.

11. Governing Law

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

IN WITNESS whereof the parties hereto have executed this Agreement (which includes the 20 Schedules and various appendices) as follows:

SIGNED for and on behalf of **THE SCOTTISH MINISTERS** acting through **TRANSPORT SCOTLAND**
At Linlithgow

On the 31st day of March 2022

By

...William Joseph Reeve.....Name (printed)
Before this witness:-

..... Witness

...Alastair Mark Richards..... Full Name

...Buchanan House..... Address

...Glasgow.....

SIGNED for and on behalf of **SCOTTISH RAIL HOLDINGS LIMITED**

At Glasgow

On the 31st day of March 2022

By

..... Director

...David Lowrie..... Name (Printed)

Before this witness:-

.....Witness

...Sarah Aitken.....Full Name

...58 Port Dundas, GlasgowAddress

.....

SIGNED for and on behalf of **SCOTRAIL TRAINS LIMITED**

At Prestwick

On the 31st day of March 2022

By

.....Director

... Christopher GibbName (Printed)

Before this witness:-

.....Witness

...Sarah Aitken.....Full Name

...58 Port Dundas, Glasgow..... Address

.....

SCHEDULE 1

THIS IS SCHEDULE 1 REFERRED TO IN THE FOREGOING SCOTRAIL GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND SCOTRAIL TRAINS LIMITED

Passenger Service Obligations

- Schedule 1.1: Service Development**
 - Appendix 1: The Train Fleet**
 - Appendix 2: Service Development Additional Factors**
- Schedule 1.2: Operating Obligations**
- Schedule 1.3: Additional Service Specifications**
- Schedule 1.4: Passenger Facing Obligations**
 - Appendix 1: Alternative Transport and Website Stations Accessibility Information**
- Schedule 1.5: Information about Passengers**
- Schedule 1.6: Business Plan Commitments**
- Schedule 1.7: Operator Services**
- Schedule 1.8: Restrictions of Use**
 - Part 1 – Extended Restrictions of Use**
 - Part 2 – Major Scottish Projects**

SCHEDULE 1.1

THIS IS SCHEDULE 1.1 REFERRED TO IN THE FOREGOING SCOTRAIL GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND SCOTRAIL TRAINS LIMITED

Service Development

1. Service Level Commitment – Purpose and Responsibility

- 1.1. A Service Level Commitment is the means by which SRH specifies the level, frequency, maximum journey times and stopping patterns of the railway passenger services that SRT is to:
 - (a) seek Train Slots for from Network Rail; and
 - (b) operate pursuant to the Timetable issued by Network Rail at the end of its timetable development process.
- 1.2. The first Service Level Commitment will be prepared by the Authority within the first GP Quarter of the first Operator Year, and once finalised by the Authority shall be marked **SLC** (“**Initial Service Level Commitment**”).
- 1.3. SRH shall, for Service Level Commitments subsequent to the Initial Service Level Commitment, issue a document specifying any additional items to be added or items to be removed from the Service Level Commitment for each timetable development process of Network Rail during the Term.
- 1.4. A Service Level Commitment may be expressed in whole or in part at any level of generality or to any level of detail SRH considers appropriate.
- 1.5. A Service Level Commitment developed in accordance with this Schedule 1.1 may include journeys along routes which SRT may not have permission to use within the Initial Service Level Commitment and/or along new parts of the network.
- 1.6. A Service Level Commitment may specify capacity for any railway passenger services in the Service Level Commitment.
- 1.7. The Authority and/or SRH may make Service Level Commitment adjustment proposals to improve efficiency of journey times and/or performance criteria and/or to better match capacity to demand.
- 1.8. SRT agrees to co-operate with the Authority and/or SRH to develop the Service Level Commitment in accordance with this Schedule 1.1.
- 1.9. SRT agrees that the Planned Service Changes shall not constitute a Change but the parties will consider an adjustment to the Budget in accordance with paragraph 6 of Schedule 8.1 (*Grant Payments*).

2. Train Plan – Purpose and Responsibility

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

- 2.4. The Train Plan for the Timetable as at 15 May 2022 is to be delivered to SRH prior to the Commencement Date. SRH accepts that this Train Plan may not contain the information referred to in paragraph 2.5 (e) to (g). If that is the case, SRT shall within six (6) months of the Commencement Date update the Train Plan so that it contains all of the information required by this Agreement. SRT shall keep SRH advised as regards this updating and shall promptly supply SRH with a copy of both any interim drafts of the Train Plan and the updated Train Plan.
- 2.5. Each Train Plan is to set out for each railway passenger service in the Timetable to which it relates:
- (a) its start point and departure time;
 - (b) its terminating point and arrival time;
 - (c) the class of rolling stock vehicles that the allocated train is to have;
 - (d) the Passenger Carrying Capacity (split between seated and standing capacity) that the allocated train, as formed, is to have;
 - (e) the planned formation of all trains (including, for Scenic Trains, details of catering facilities and luggage, bicycles and goods capacity) and points of splitting or joining of formations);
 - (f) its Actual Passenger Demand most recently determined in accordance with Schedule 1.5 (*Information about Passengers*); and
 - (g) its Forecast Passenger Demand.
- 2.6. A Train Plan shall be in any format that SRH may reasonably specify for this purpose.
- 2.7. In the event of SRT proposing seasonal variations to train formations or capacities, such variations shall be detailed in the Train Plan.

3. Train Fleet

- 3.1. SRT's Train Fleet as at the Commencement Date is as set out in Appendix 1 (*The Train Fleet*).
- 3.2. SRT shall comply with its obligations under paragraph 2 of Schedule 2.2 (*Security of Access Assets, Rolling Stock Leases, Station and Depot Leases*) with respect to the Train Fleet.
- 3.3. Save as otherwise expressly provided for in this Agreement and/or unless SRH and the Authority both otherwise agrees in writing, SRT shall maintain the composition of the Train Fleet during the Term, such that there are no changes to the Train Fleet, including changes:
- (a) to the classes or types;
 - (b) to the interior configurations (including equipment or facilities present and available for use);
or
 - (c) which may reduce the journey time capabilities of any rolling stock vehicles specified in the Train Fleet.
- 3.4. Where any rolling stock vehicles referred to in Train Fleet Table 1 cease to be leased on the date so specified in Train Fleet Table 1 SRT shall (unless otherwise agreed by SRH and subject to compliance with all other relevant provisions of this Agreement including in relation to Rolling Stock Contracts) include in the Train Fleet substitute rolling stock on a leased basis (unless the Authority otherwise consents in advance and in writing) which has:

- (a) a capacity which as a minimum can accommodate the forecast passenger demand on the routes the train fleet is planned to operate;
 - (b) a lower net operating costs and reliability, capability and quality that is at least equal to the reliability, capability and quality of the rolling stock vehicles being substituted;
 - (c) an aggregate total capacity can accommodate the longer term forecast passenger demand on the routes the fleet is planned to operate.
- 3.5. During the Term, SRT shall advise SRH of any rolling stock vehicles comprising the Train Fleet damaged beyond economic repair or likely to be unavailable for service for a period of 3 consecutive Reporting Periods or more. SRT shall, pending the return to service of the same, provide SRH with an update at least once per Reporting Period (or at such other frequency as SRH may specify) on the anticipated return to service date of any vehicle reported as likely to be unavailable for service for a period of 3 consecutive Reporting Periods or more.
- 3.6. If any change is made to the Train Fleet in accordance with this paragraph 3 SRH may, after consulting SRT, notify SRT of the Passenger Carrying Capacity of any rolling stock vehicles or class of rolling stock vehicles comprising the Train Fleet following such change.
- 3.7. SRT shall procure that the rolling stock vehicles specified in Train Fleet Table 1 with the capacity and other characteristics referred to therein and in Train Fleet Table 2, and the further facilities, utility and other characteristics detailed in the Train Fleet Tables are available for deployment in the provision of the Passenger Services to the extent required by the Timetable and the Train Plan during the periods referred to therein.
- 3.8. SRT shall, in keeping with its obligations pursuant to this Schedule 1.1, plan to ensure that the class/route specific requirements for vehicle facilities/make-up detailed in Train Fleet Tables shall be met in the operation of Passenger Services.

4. Procedure

- 4.1. The parties agree that the effective operation of the provisions of this Schedule 1.1, and of provisions addressing the same or similar matters in other agreements, will require certain procedural arrangements and timescales to be followed to a common timescale by SRH, SRT and others. The parties agree that such procedural arrangements may need to be modified to reflect changes to railway industry processes. The parties further agree that the procedural arrangements applicable to the ScotRail Operation may require to be different from those applicable to other franchises or other operations of railway passenger services.
- 4.2. SRT agrees that SRH and/or the Authority may stipulate any reasonable procedural arrangements and timescales that are to be followed by SRH and/or SRT for these purposes (which shall be consistent with any relevant standard railway industry processes for timetable development) and that SRH and/or the Authority may amend any such stipulation.
- 4.3. SRH agrees to consult SRT (and where relevant, the Authority) prior to stipulating or amending any such procedural arrangements and timescales in accordance with paragraph 4.2.
- 4.4. Any stipulation by the Authority and/or SRH pursuant to paragraph 4.2:
- (a) shall be at the reasonable discretion of the Authority and/or SRH;
 - (b) may contain procedural arrangements and timescales to be followed by SRT in relation to other changes to the Operator Services (pursuant to Schedule 9 (*Changes*)) in conjunction with a Service Level Commitment; and
 - (c) may provide for iterations of drafts of any Service Level Commitment, Train Plan or Timetable and for the Budget in relation thereto.

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

5. SRT's Service Development Opinions

- 5.1. As and when required pursuant to any procedural arrangements stipulated by the Authority and/or SRH pursuant to paragraph 4.2 and in any event no later than 31 March each year, SRT shall provide to SRH:
- (a) its informed estimate of Forecast Passenger Demand in such format and to such level of disaggregation as SRH may reasonably require in order to assist SRH's decision making on future service level commitments, infrastructure, station and rolling stock, vehicle investment, the best use of the network and the alleviation of overcrowding.
 - (b) its informed opinion as to any changes to the current Service Level Commitment which:
 - (i) should be made in order to deliver an optimal range of railway passenger service patterns relative to Target Passenger Demand; and
 - (ii) could be implemented and operated without additional resources and/or an adjustment to the Grant Payments;
 - (c) its informed opinion as to any changes to the current Service Level Commitment which:
 - (i) would deliver an optimal range of railway passenger service patterns in accordance with paragraph 5.1(b)(i); and
 - (ii) could only be implemented and operated with additional resources and/or an adjustment to the Grant Payments, together with an explanation as to:-
 - (A) what additional resources and/or adjustments are necessary to make such changes; and
 - (B) why such additional resources and/or adjustments are necessary;
 - (d) its informed opinion as to any changes that SRH ought to make to the Operating Performance Benchmarks pursuant to paragraph 4.1 of Schedule 7.1 (*Train Operating Performance*).
- 5.2. SRT shall provide its opinion as to Service Level Commitment changes with due regard to:
- (a) any Route Utilisation Strategy, and any other Strategy published by the Authority;
 - (b) the additional factors set out in Appendix 2 (*Service Development Additional Factors*) to this Schedule 1.1; and
 - (c) any other constraints or considerations (including affordability constraints and value for money considerations) that SRH has notified to it.
- 5.3. SRH and SRT shall seek to agree the Service Level Commitment changes (which should be considered in the development of the draft Train Plan as referred to at paragraph 5.4) within 20 Weekdays of receipt of SRT's opinion as provided in accordance with paragraphs 5.1 and 5.2.
- 5.4. SRT will prepare a draft Train Plan within 12 calendar weeks of provision of SRT's opinion (as provided in accordance with paragraphs 5.1 and 5.2) which draft incorporates each set of proposed changes to the Service Level Commitment.

- 5.5. SRT shall consider in all Timetable changes all opportunities to improve journey times or service reliability and implement such changes.

Indicative Timetable and Consultation

- 5.6. If and to the extent that SRT reasonably considers that any proposed change to the Service Level Commitment issued by SRH pursuant to this Schedule 1.1 contains insufficient information to enable it to perform its obligations under this Schedule 1.1, it shall promptly notify SRH and SRH shall provide such further information as is reasonably required.
- 5.7. SRT shall, as and when required pursuant to any procedural arrangements stipulated by SRH pursuant to paragraph 4.2 of this Schedule 1.1 provide SRH with a summary (in such form as SRH may specify) of any material changes that it would expect there to be to the Passenger Services from the current Timetable if SRT's draft Train Plan were to be implemented.
- 5.8. Notwithstanding any consultation SRH might undertake in respect of any draft Service Level Commitment issued pursuant to this Schedule 1.1, SRT shall:
- (a) as soon as reasonably practicable after:
 - (i) first providing a summary to SRH pursuant to paragraph 5.6, give all Stakeholders notice and consult them in respect of the changes to the Passenger Services specified in such summary; and
 - (ii) sending or receiving any correspondence in respect of such notice or consultation, provide SRH with copies of such correspondence;
 - (b) take due and timeous account of Stakeholders' views that are submitted to SRT in accordance with the procedural stipulations pursuant to paragraph 4.2, the guidance as issued by SRH from time to time, and SRT's delivery plan for Stakeholder consultation;
 - (c) promptly inform SRH of any material changes that it would expect there to be to such draft Service Level Commitment if the views of Stakeholders were accommodated in the Service Level Commitment;
 - (d) comply timeously with such reasonable requirements and guidance as SRH may notify to SRT from time to time in respect of giving notice to and consulting Stakeholders in accordance with this paragraph 5.8; and
 - (e) agree with SRH which proposals from the consultation process will be incorporated to the Service Level Commitments, and where relevant, the Train Plan.

Aligning Capacity with Demand

- 5.9. SRT shall prepare its draft Train Plan so as to operate the Train Fleet in an affordable, efficient and well performing manner whilst providing sufficient seating capacity throughout the day on weekdays and weekends in delivering Passenger Services, save for any reasonable planning requirements for:
- (a) rolling stock vehicles to be out of service due to planned maintenance requirements, Mandatory Modifications or any other reasons agreed with SRH, (such agreement not to be unreasonably withheld); or
 - (b) those out of service due to unplanned maintenance or repair requirements.

SRT shall plan during each day of the Timetable to operate the Train Fleet to satisfy the Fleet Availability Requirement allocating surplus units as Hot Standbys to support delivery of robust and reliable Passenger Services

5.10. SRT shall also, in preparing its Train Plan, unless SRH otherwise agrees, use all reasonable endeavours to:

- (a) provide for Passenger Carrying Capacity on each Passenger Service that meets as a minimum the Target Passenger Demand;
- (b) provide passengers with a reasonable expectation of a seat within such time period as SRH may stipulate informed by evidence provided by SRT on a case by case basis and approved by the Authority in advance on each Passenger Service;
- (c) provide for the Passenger Carrying Capacity (if any) specified for each Passenger Service in a Service Level Commitment; and
- (d) provide for reallocation of Passenger Carrying Capacity to serve Special Events, as agreed with SRH.

5.11. If, at the time it prepares its draft Train Plan, having exercised all reasonable endeavours, SRT is unable to prepare a Train Plan having the Passenger Carrying Capacity and meeting the reasonable expectations referred to in paragraph 5.10 of this Schedule 1.1, then the Train Plan shall specify the best allocation of rolling stock vehicles to Passenger Services that is reasonably practicable with a view to:

- (a) minimising, so far as is possible, the amount by which Target Passenger Demand exceeds the provision of Passenger Carrying Capacity on the affected Passenger Services;
- (b) ensuring, so far as possible, that such excess is not unduly concentrated on any particular Route or Passenger Service;
- (c) minimising, so far as is possible, the extent to which passengers are required to stand following boarding in respect of each Passenger Service; and
- (d) ensuring, so far as possible, that the Passenger Carrying Capacity specified for each Passenger Service in a Service Level Commitment is provided.

Providing that any Train Plan which does not plan to meet the Fleet Availability Requirement shall not constitute a Train Plan in respect of which SRT shall be said to have exercised all reasonable endeavours in terms of this paragraph 5.11.

5.12 Where paragraph 5.11 applies, SRT shall propose to SRH for its consideration and comment:

- (a) such changes to the Service Level Commitment; and
- (b) any other actions that it considers would most efficiently address the shortfall in Passenger Carrying Capacity and meet Target Passenger Demand on a case by case evidence based level.

6. Service Level Commitment

6.1. SRH shall, in accordance with any procedural arrangements stipulated by SRH and/or the Authority pursuant to paragraph 4.2 of this Schedule 1.1, issue to SRT the Service Level Commitment that it requires SRT to operate and notice of the changes (if any) to the Operating Performance Benchmarks that SRH will make pursuant to paragraph 4.1 of Schedule 7.1 (*Train Operating Performance*).

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

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

7. Timetable Development Rights

- 7.1. SRT shall:

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

- 7.2. SRT shall exercise its Timetable Development Rights so as to secure a Timetable that enables it to operate railway passenger services that comply with the Service Level Commitment in accordance with its obligations under paragraph 9 of this Schedule 1.1. In that regard:-

- (a) Any specification of railway passenger services in the Service Level Commitment shall (unless SRH states to the contrary) be regarded as relating to how those services are to be provided for in the National Rail Timetable that Network Rail publishes for passengers, and not how they are to be provided for in the working timetable that Network Rail issues to industry parties at the conclusion of its timetable development process.
- (b) Accordingly, SRT's obligations specified in this paragraph 7.2 shall be construed as an obligation to secure the requisite Train Slots in the working timetable to be issued by Network Rail at the conclusion of its timetable development process that will permit SRT to operate railway passenger services that comply with the Service Level Commitments provided for in the relevant National Rail Timetable.
- (c) SRT shall ensure, for each period between two consecutive Passenger Change Dates during the Term that the Timetable for such period is not materially different from the relevant working timetable issued by Network Rail at the conclusion of its timetable development process.

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

- 7.4. Subject to SRT complying with its obligations under paragraph 7.3, it shall not be liable for any failure to secure a Timetable that enables SRT to operate railway passenger services that comply with the Service Level Commitment, to the extent that such failure is caused by:

- (a) SRT's Timetable Development Rights being inadequate to enable it to secure the requisite Train Slots, provided that SRT has exercised all reasonable endeavours to obtain the requisite Timetable Development Rights in accordance with paragraph 7.1 of this Schedule 1.1;
- (b) Network Rail exercising its flexing rights from time to time under the Track Access Agreement or the Network Code in respect of such Train Slots;
- (c) Network Rail exercising its other rights from time to time under the Track Access Agreement or the Network Code; or
- (d) the exercise by ORR of its powers pursuant to Section 22C of the Act.

- 7.5. Without prejudice to the provisions in paragraph 7.3 of this Schedule 1.1, if SRH does not consider that SRT has taken or is taking sufficient steps under paragraph 7.3, SRH may require SRT to exercise its rights referred to in paragraph 7.3 in such manner as SRH reasonably considers appropriate in the circumstances, including:
- (a) disputing any actual or proposed act or omission by Network Rail in respect of any Timetable Development Rights;
 - (b) submitting such dispute to any relevant dispute resolution arrangements or procedures and appealing against any award or determination under such arrangements or procedures, including to ORR; and
 - (c) not settling any such dispute or appeal without SRH's written consent.
- 7.6. SRH shall, to the extent reasonably practicable, allow SRT a reasonable opportunity to make representations to SRH concerning the exercise by SRT of any of its rights referred to in paragraph 7.3 before requiring SRT to take any action referred to in paragraph 7.5.
- 7.7. Where any proposal is made by another operator to vary its services or any proposal is made by Network Rail to change access rights in a way which could adversely affect any aspect of delivery of the Operator Services, SRT shall as soon as reasonably possible inform SRH and consult SRH on its proposed response and shall carry out such actions as SRH shall reasonably require to oppose or influence such changes.
- 7.8. The provisions of paragraph 4 of Schedule 1.2 (*Operating Obligations*) shall apply to any actual or proposed omission or rescheduling of Passenger Services that originates from any person other than Network Rail, as those provisions apply to Network Rail.
- 7.9. If and to the extent that SRT is not able to secure a Timetable enabling it to operate railway passenger services that comply with the Service Level Commitments as a result of it not being able to obtain the Timetable Development Rights that it requires for that purpose, SRH shall issue to SRT a Service Level Commitment in the form required by paragraph 7.9(a), which shall operate between SRH and SRT only for the purpose referred to in paragraph 7.9(b):
- (a) any Service Level Commitment issued pursuant to this paragraph 7.9 shall be in a form that:
 - (i) would enable SRT to secure a Timetable in compliance with it by exercise of the Timetable Development Rights that SRT does have or would have had SRT properly performed its obligations under this Agreement; and
 - (ii) in all other respects, is the same as the immediately preceding Service Level Commitment issued to SRT by SRH; and
 - (b) any Service Level Commitment issued pursuant to this paragraph 7.9 shall, for the purpose of Schedule 9 (*Changes*) only, stand in place of the immediately preceding Service Level Commitment issued to SRT by SRH.

8. Certification and Notification by SRT of Timetable Bids

- 8.1. Before exercising any Timetable Development Right to bid for Train Slots, SRT shall provide a certificate addressed to SRH confirming that its proposed exercise of that Timetable Development Right will be compliant with its obligation specified in paragraph 7.2.
- 8.2. If requested by SRH, SRT agrees to demonstrate to the reasonable satisfaction of SRH and/or (as the case may be) Audit Scotland and/or the Authority that SRT's certificate referred to in paragraph 8.1 is a true and accurate confirmation of compliance with its obligation specified in paragraph 7.2. SRH agrees that the certificate will be acceptable if:

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

8.3. SRT shall:

- (a) keep SRH fully informed of any discussions with Network Rail in relation to the matters referred to in this Schedule 1.1 which may have a material bearing on the ability of SRT to deliver the Service Level Commitment through the Timetable and shall, if required to do so by SRH supply copies of any related correspondence to SRH; and
- (b) update any notification under this paragraph 8.3 and/or certification under paragraph 8.1 as soon as reasonably practicable, if at any time it elects or is required to modify any aspect of its exercise of its Timetable Development Rights following Network Rail's proposed or actual rejection or modification of its bid or any part of it or for any other reason.

9. Obligations in relation to Other Train Operators

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

- (a) the levels of overcrowding over the Routes or other relevant routes are minimised and not unduly concentrated on particular railway passenger services Routes or other relevant routes;
- (b) the stopping patterns of such railway passenger services are placed at approximately evenly-spaced intervals throughout each relevant hour, taking into account the reasonable needs of passengers and the different types of railway passenger services provided by other Train Operators and SRT;
- (c) a reasonable pattern of railway passenger service is provided on the relevant Route(s) to enable passengers to make Connections (particularly where low frequency railway passenger services are operated or last trains are involved, taking account of seasonal fluctuations in passenger demand and the time needed to make any such Connection); and
- (d) other policy objectives specified by the Authority and/or SRH (including without limitation any policy objectives outlined in the Framework Agreement) are not compromised.

9.2 SRT acknowledges that there are railway passenger services to, from or within Scotland provided by other Train Operators. Without prejudice to the foregoing generality of paragraph 9.1 of this Schedule 1.1, SRT shall co-operate with other Train Operators from time to time to ensure the continued provision of connecting and consequent passenger rail services to, from and within Scotland, provided as at the date of this Agreement and any improvements thereto.

10. Finalising the Train Plan

10.1. SRT shall submit its Train Plan prepared pursuant to paragraph 5 of this Schedule 1.1 to SRH as soon as reasonably practicable after Network Rail has published the working timetable on which the Timetable is to be based.

10.2. SRT shall, when submitting its Train Plan, certify to SRH details of how the Train Plan differs from the draft Train Plan in so far as the final Timetable has not been approved by SRH. SRH may notify SRT of:

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

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

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

APPENDIX 1 TO SCHEDULE 1.1**The Train Fleet****1. The composition of the Train Fleet**

The Train Fleet as at the Commencement Date and thereafter as at the Timetable Change Date referred to in Train Fleet Table 1 consists of:

- 1.1 the rolling stock vehicles specified in Train Fleet Table 1 with the capacity characteristics further specified therein, until the lease expiry dates referred to there; and
- 1.2 following any such lease expiry, substitute rolling stock vehicles having:
 - (a) a capacity which as a minimum can accommodate the forecast passenger demand on the routes the fleet is planned to operate;
 - (b) a lower net operating cost and reliability, capability and quality that is at least equal to the reliability, capability and quality of the rolling stock vehicles being substituted;
 - (c) an aggregate total capacity which can accommodate the longer term forecast passenger demand on the routes the fleet is planned to operate.
- 1.3 in the case of any other additional rolling stock vehicles:
 - (a) have an appropriate capacity for the intended routes in the reasonable opinion of SRH; and
 - (b) have a net operating cost, reliability, capability and quality that is, in the reasonable opinion of SRH appropriate for the intended services which they will operate.

2. Changes to the Train Fleet

- 2.1 SRH with the approval of the Authority may (by Variation or by Updated Business Plan as agreed in accordance with Schedule 13.2 (*Information*)) require SRT to:
 - (a) change the composition of the Train Fleet during the Term;
 - (b) sub-let some of its Train Fleet to another Train Operator or to sub-lease a Train Fleet from another Train Operator;
 - (c) procure modifications to the Train Fleet and to manage any modification programme subject to payment of SRT's reasonable costs by SRH or a relevant third party; and/or
 - (d) work in collaboration with SRH to identify and secure additional or replacement rolling stock vehicles during the Term in which case SRH may require SRT to set the specification of such rolling stock, subject to SRH's prior written consent.

Train Fleet Table 1

Column 1	Column 2	Column 3				Column 4	Column 5
Class of Vehicles	Fleet size Units	Passenger Carrying Capacity of Vehicles				Owner / Lessor	Lease Expiry Date
		Seats	Standing (1)	Total	Standard Class		
Class 153	5	26	*	*	*	Angel Trains	Mar 2026 (Lease to Mar 2026 with 2 year extension option)
Class 380 4 car	16	282	152	434	434	Eversholt Rail (UK) Limited	Dec 2040
Class 380 3 car	22	208	114	322	322	Eversholt Rail (UK) Limited	Dec 2040
Class 334	40	183	102	285	285	Eversholt Rail (UK) Limited	Dec 2030
Class 320	34	206	71	277	277	Eversholt Rail (UK) Limited	Dec 2027 (option to off-lease 12x320/4 in Mar 2025)
Class 318	21	206	86	292	292	Eversholt Rail (UK) Limited	Dec 2027
Class 170	34	189	84	273	255	Porterbrook	Mar 2035
Class 158	40	134	36	170	155	Porterbrook	Mar 2030
Class 156	42	145	40	185	185	Angel Trains	Mar 2027 (extension option to Dec 2027)
HST4	8	232	90	322	202	Angel Trains	Mar 2030 (Lease to Mar 2026. S54 to Mar 2030)
HST5	17	306	120	426	276	Angel Trains	Mar 2030 (Lease to Mar 2026. S54 to Mar 2030)

Class 385/3	46	206	114	320	206	Caledonian Rail Leasing Limited	flexible to 28.02.2044 (Lease to March 2025, S54 to Dec 2044)
Class 385/4	24	273	152	425	253	Caledonian Rail Leasing Limited	flexible to 28.02.2044 (Lease to March 2025, S54 to Dec 2044)

Notes:

(1) Based on standing at a density of 0.55m² per passenger.

3 Preservation of Train Fleet

Without limiting paragraph 2 of Schedule 2.2 (*Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases*) or Schedule 14.3 (*Key Contracts*), SRT shall, in respect of any Rolling Stock Lease which is to expire at any time during the Term, not less than one (1) year prior to such expiry date, enter into new Rolling Stock Lease in respect of substitute rolling stock vehicles which meet the requirements of paragraph 3.4 of Schedule 1.1 (*Service Development*).

4. Correction of any errors in description

This Appendix 1 to this Schedule 1.1 represents the Train Fleet SRT has on lease or has agreed or committed to lease in advance of the Commencement Date. In the event that there is a discrepancy between the actual train fleet and this Appendix 1, SRH will amend this Appendix 1 to reflect the actual train fleet (in accordance with Schedule 9). Such an amendment shall not constitute a Change. SRH shall consult with SRT before amending either of Train Fleet Table 1 or Train Fleet Table 2, SRT shall provide such information to SRH as SRH require to ensure that the aforesaid tables properly reflect the details of the relevant rolling stock.

5. Fleet Availability Requirement

The Train Fleet available for service as at the Commencement Date shall be no less than that identified in column 4 in Train Fleet Table 2 below:

Train Fleet Table 2

Column 1	Column 2	Column 3	Column 4
Class of Vehicles	Total Fleet	Planned Maintenance Allocation	Fleet Allocated Passenger Services
156	42 Units	Corkerhill	39 Units
153	5 Units	Corkerhill	3 Units

158	40 Units	Corkerhill / Inverness	35 Units
170	34 Units	Haymarket / Inverness	29 Units
318, 320	55 Units	Shields	44 Units plus 6 on Pay As You Go contract
334	40 Units	Shields	36 Units
380/0 (3-car)	22 Units	Shields	20 Units
380/1 (4-car)	16 Units	Shields	15 Units
385 3 car	46 Units	Craigentenny	42 Units
385 4 car	24 Units	Craigentenny	21 Units
HST 4 +2PC	8 Units	Haymarket / Inverness	7 Units
HST 5 + 2PC	17 Units	Haymarket / Inverness	11 Units

APPENDIX 2 TO SCHEDULE 1.1

Service Development Additional Factors

1. Additional Factors

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

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

2. Policy Objectives

SRT shall, in applying its timetabling resource in terms of this Agreement and otherwise, look to ensure that journey times are, at least preserved and, where possible, are improved in line with the Authority's

and/or SRH's objectives and published passenger rail policy (including, but not limited to the then current HLOS) and guidance to ORR and other regulatory bodies. SRT shall use all reasonable endeavours in its planning and interactions with industry partners to promote, secure and operate improved journey times and reliability.

3. Enhancements

Where there are enhancements supported by the Authority, including changes to infrastructure and rolling stock, that involve a service change:

- (a) the service specification will be provided by the Authority to SRT when the outline business case is approved;
- (b) SRT will provide a costed enhancement Train Plan that meets the service specification;
- (c) operating costs will be provided to the Authority for input to the final business case; and
- (d) the enhancement Train Plan will be used to inform the changes to the Service Level Commitments as per paragraph 5.1 of Schedule 1.1.

SCHEDULE 1.2

THIS IS SCHEDULE 1.2 REFERRED TO IN THE FOREGOING SCOTRAIL GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND SCOTRAIL TRAINS LIMITED

Operating Obligations**1. Daily Operating Obligation**

- 1.1 SRT agrees to use all reasonable endeavours to operate on each day of the Term those of its Passenger Services as are set out in the Applicable Timetable for that day, with at least the Passenger Carrying Capacity specified in the Train Plan.
- 1.2 SRT agrees to use all reasonable endeavours to operate during the Peak on Weekdays the entire Train Fleet in delivering the Passenger Services, save for any reasonable requirements:
 - (a) for rolling stock vehicles to be out of service due to maintenance requirements, Mandatory Modifications or for any other reason agreed with SRH (such agreement not to be unreasonably withheld); or
 - (b) for the allocation of Hot Standbys.
- 1.3 SRT shall operate the Train Fleet to satisfy the Fleet Availability Requirement.
- 1.4 SRT shall use all reasonable endeavours to operate the Train Fleet on the routes specified for each class of rolling stock within the Train Plan.
- 1.5 SRT agrees to use all reasonable endeavours to operate the Train Fleet in accordance with the Service Quality Appendices.
- 1.6 SRT shall not:
 - (a) remove any rolling stock vehicle from service; or
 - (b) remove any facilities from any Station with a view to distorting the results of any inspections or re-inspections or audits carried out in accordance with Schedule 7.2 (*Service Quality*).
- 1.7 SRT shall ensure that its performance in each Reporting Period calculated as a moving annual average in accordance with Schedule 7.1 (*Train Operating Performance*), does not:
 - (a) equal or exceed each Breach Performance Level for the Cancellations and Capacity Benchmarks in respect of that Reporting Period. It shall be a contravention by SRT of the terms of this Agreement if its performance, equals or exceeds any Breach Performance Level for the Cancellations and Capacity Benchmarks in any Reporting Period;
 - (b) fall below (that is, is neither equal to nor worse than) each Breach Performance Level for the PPM Benchmark in respect of that Reporting Period. It shall be a contravention by SRT of the terms of this Agreement if its performance falls below (that is, is neither equal to nor worse than) any Breach Performance Level for the PPM Benchmarks in any Reporting Period; and
 - (c) fall below the MTIN Improvement Plan for the MTIN Target respect of that Reporting Period.

2. The Train Plan

In this Schedule 1.2 references to the Train Plan are to the Train Plan as issued by SRT to SRH pursuant to paragraph 10.1 of Schedule 1.1 (*Service Development*), and as amended:

- (a) to comply with any requirements of SRH pursuant to paragraph 10.2 of Schedule 1.1; and
- (b) pursuant to paragraph 3 of this Schedule 1.2.

3. Amendments to the Train Plan

3.1 SRT shall use all reasonable endeavours to propose to SRH from time to time any amendments that it considers should be made to the Train Plan to better match the Passenger Carrying Capacity of the Train Fleet to Target Passenger Demand using evidence based recommendations and, having regard to:

- (i) any foreseeable differences that there may be between the Timetable and any Applicable Timetable; and
- (ii) any material alteration in Target Passenger Demand, subsequent to the issue of the Train Plan, that is:
 - (A) observable from the most recent determination of Actual Passenger Demand in accordance with paragraph 1 of Schedule 1.5 (*Information about Passengers*); or
 - (B) attributable to seasonal or exceptional factors; or
 - (C) reasonably anticipated due to (A) or (B).

3.2 SRT shall amend the Train Plan in accordance with SRH's response to its proposal.

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

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

- (a) provide for Passenger Carrying Capacity on each Passenger Service that is at least equal to the Target Passenger Demand for that Passenger Service; or
- (b) provide the best allocation of rolling stock vehicles to Passenger Services that is reasonably practicable so as to:
 - (i) minimise the amount by which Target Passenger Demand exceeds the provision of Passenger Carrying Capacity on the affected Passenger Services;
 - (ii) ensure, so far as is possible, that the excess of Target Passenger Demand is not unduly concentrated on any particular Route or Passenger Service;
 - (iii) minimise the extent to which passengers are required to stand after 10 minutes following boarding (or such other time period as SRH may stipulate for the Services having obtained the prior written approval of the Authority) in

respect of each Passenger Service (other than any specific service mentioned as an exception in paragraph 5.10(b) of Schedule 1.1);

- (iv) minimise the extent to which the Passenger Carrying Capacity specified for any Passenger Service in a Service Level Commitment is not provided; and
- (v) best meet additional demand generated by Special Events.

- 3.5 If SRH does not consider that SRT has exercised all reasonable endeavours to make proposals as required by paragraph 3.1, SRH may require SRT to amend the Train Plan in accordance with SRH's requirements.
- 3.6 SRH and/or the Authority may request SRT to propose changes to the Train Plan to meet passenger demand for Special Events. SRT shall amend the Train Plan in accordance with SRH's and/or the Authority's response to its proposal.
- 3.7 SRT shall ensure such amendments are communicated to passengers as required in terms of paragraphs 2 and 3 of Schedule 1.4. (*Passenger Facing Obligations*)

4. **Timetable Changes Proposed by Network Rail**

- 4.1 SRT shall notify SRH promptly after being notified by Network Rail that Network Rail has decided or proposes to:

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

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

- 4.2 SRT shall explain in such notification the way in which, in its opinion, such omission or rescheduling may materially prejudice SRT's ability to deliver the Timetable with the Passenger Carrying Capacity stipulated in a Train Plan which satisfies the requirements of paragraphs 3.1 and 3.4.
- 4.3 SRT agrees to supply to SRH from time to time, in the format required by SRH such details of any actual or proposed omission or rescheduling of Passenger Services by Network Rail as SRH may reasonably require, including details of the steps which SRT proposes to take pursuant to paragraph 4.4.
- 4.4 Where the actual or proposed omission or rescheduling of Passenger Services is one which may materially prejudice SRT's ability to deliver the Timetable with the Passenger Carrying Capacity stipulated in a Train Plan which satisfies the capacity requirements of paragraphs 3.1 and 3.4, SRT agrees (unless SRH specifically agrees otherwise) to act in the passenger's interests and to exercise its rights under the Track Access Agreement (including the Network Code) and otherwise to object, to make representations and to withhold consent in respect of any actual or proposed omission or rescheduling of Passenger Services by Network Rail. This obligation will stand notwithstanding any agreement between SRT and Network Rail.
- 4.5 If SRH does not consider that SRT has taken sufficient steps under paragraph 4.4, SRH may require SRT to exercise its rights referred to in paragraph 4.4 in such manner as SRH may consider appropriate in the circumstances, including:
 - (a) disputing any actual or proposed act or omission by Network Rail in respect of any Timetable Development Rights;

- (b) submitting such dispute to any relevant dispute resolution arrangements or procedures and appealing against any award or determination under such arrangements or procedures, including to the ORR;
- (c) requiring any terms of reference or similar to be approved by SRH prior to submission or agreement by or on behalf of SRT; and
- (d) requiring SRT to obtain SRH's prior approval of any settlement or compromise prior to offering or accepting the same.

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

5. **Timetable Changes Proposed by SRT**

5.1 SRT agrees, subject to paragraph 5.2, not to propose to Network Rail:

- (a) the addition to the Applicable Timetable of any railway passenger services which are not included in the Timetable;
- (b) the omission from the Applicable Timetable of any Passenger Services included in the Timetable; or
- (c) the rescheduling in the Applicable Timetable of any Passenger Services from their scheduling in the Timetable,

without SRH's and the Authority's prior consent.

5.2 Paragraph 5.1 shall not apply to additional railway passenger services to be operated to meet passenger demand that SRT anticipates from Special Events (and any related omissions and/or rescheduling of Passenger Services) which:

- (a) when operated, still permit SRT to deliver the Timetable with the Passenger Carrying Capacity stipulated in a Train Plan which satisfies the requirements of paragraphs 3.1 and 3.4;
- (b) are consistent with any Route Utilisation Strategy or any other Strategy of Authority; and
- (c) are compliant with any framework that SRH may issue for the planning and operation of railway passenger services.

5.3 SRT shall use all reasonable endeavours to operate adequate railway passenger services to or from any Special Events:

- (a) which it has identified pursuant to paragraph 1(l) of Appendix 2 (*Service Development Additional Factors*) to Schedule 1.1 (*Service Development*);
- (b) which are not already provided for in the Applicable Timetable; and
- (c) which comply with the requirements of paragraph 5.2,

to meet the passenger demand that is reasonably likely to arise from such Special Events and from the operation of such railway passenger services.

5.4 SRT shall provide adequate numbers of suitably trained and briefed staff to provide passenger information, support and directions during all Special Events.

6. **Timetable Changes Requested by SRH or the Authority**

- 6.1 SRT agrees, as and when requested by SRH and/or the Authority, to use all reasonable endeavours to seek and to obtain:
- (a) the addition to the Applicable Timetable of any railway passenger services that are not included in the Timetable;
 - (b) the omission from the Applicable Timetable of any Passenger Services that are included in the Timetable; and/or
 - (c) the rescheduling in the Applicable Timetable of any Passenger Services from their scheduling in the Timetable.
- 6.2 A request pursuant to paragraph 6.1 may include the addition of railway passenger services on parts of the network which SRT may not have permission to use on the Commencement Date and/or on new parts of the network.

7. **Additional Railway Passenger Services**

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

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

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

- 8.1 In the event of any planned or unplanned disruption to railway passenger services operated on the Routes, or on other parts of the network which are reasonably local to the Routes, SRT shall:
- (a) without prejudice to any other provision of this Schedule 1.2, notify SRH promptly where such disruption would materially (having regard to both duration and scale) prejudice SRT's ability to deliver the Timetable;
 - (b) use all reasonable endeavours to act in accordance with any Strategy or plan published or endorsed by SRH in relation to such disruption notified to it by SRH from time to time;
 - (c) in accordance with the Passenger Information During Disruption Guidelines, where applicable, keep passengers informed of the disruption and its impact on the said Timetable in a timely manner and consistently across all modes of communications and provide SRT's staff with the information they require to keep passengers so informed, all as required in terms of paragraphs 2 and 3 of Schedule 1.4 (*Passenger Facing Obligations*);
 - (d) co-operate with Network Rail and other Train Operators to act in the overall interests of passengers using such railway passenger services, including using all reasonable endeavours to minimise and mitigate disruption to ensure that such disruption is not concentrated on a particular part of the network, except where such concentration either:
 - (i) would be in the overall interests of passengers using such Passenger Services or railway passenger services and would not result in disproportionate inconvenience to any group of passengers; or

- (ii) is reasonably necessary as a result of the cause or the location of the disruption being outwith the reasonable control or anticipation of SRT or its Associates; and
 - (e) provide or secure the provision of alternative transport arrangements in accordance with paragraph 8.2; and
 - (f) keep passengers and front line staff (both on train and other staff) informed and updated in a timely and consistent manner across all available media and means of communication as situations and responses unfold.
- 8.2 SRT shall ensure alternative transport arrangements are in place to enable passengers affected by planned disruption referred to in paragraph 8.1 to complete their intended journeys in accordance with this paragraph 8.2. In particular, SRT shall:
- (a) ensure that such alternative transport arrangements are of reasonable quality, of a frequency which is appropriate to customer demand on the corridor and reasonably fit for the purpose of the journey to be undertaken;
 - (b) without prejudice to its obligations in paragraph 8.2(a), comply with any standards issued by SRH from time to time in respect of such alternative transport arrangements;
 - (c) transport passengers to, or as near as reasonably practicable to, the end of their intended journey on such Passenger Services, having particular regard to the needs of any Disabled Persons and persons with additional needs due to their mobility issues (including, without prejudice to the foregoing, infirm or elderly persons and children) and, where appropriate, making additional arrangements for such Disabled Persons and other persons and the full range of passengers and their luggage (including but not limited to pushchairs and bicycles) to complete their intended journey;
 - (d) timeously provide adequate and prominent publicity and other practicable communication of, and detailed information on, such alternative transport arrangements in advance of, and during the course of, such disruption, subject, in the case of unplanned disruption, to SRT having sufficient notice of such disruption to enable it to provide such publicity;
 - (e) where appropriate ensure staff are available to direct customers to alternative transport and provide passengers with information on such alternative transport;
 - (f) ensure sufficient alternative transport capacity for the reasonably foreseeable demand for the disrupted Passenger Services;
 - (g) ensure, if any planned disruption overruns, that there is a reasonable contingency arrangement for such alternative transport arrangements to continue for the duration of such overrun;
 - (h) ensure that any increase in time it takes passengers to complete their journey is appropriate to the length and type of journey being undertaken.
- 8.3 In the case of unplanned disruption referred to in paragraph 8.1 and disruption referred to in paragraphs 10 and 11, SRT shall use all reasonable endeavours to secure the provision of alternative transport arrangements and passage on such alternative transport arrangements to enable passengers affected by such disruption to complete their intended journeys in accordance with this paragraph 8.3.
- (a) All reasonable endeavours in the context of this paragraph 8.3 shall include, but not be limited to, the planning in advance of alternative travel arrangements in conjunction

with the advance planning of contingency arrangements for unplanned disruption to Passenger Services. Such advance planning shall: -

- (i) in the first instance consider all reasonable options for completion of the journey by rail before considering completion of journeys by other modes of transport such as Glasgow Subway, Edinburgh Trams, bus or taxi; and
 - (ii) make reasonable efforts to ensure passengers can complete their journeys by other modes of transport at no additional cost to the passenger.
- (b) In particular, SRT shall use all reasonable endeavours to:
- (i) ensure that such alternative transport arrangements are of reasonable quality, of a reasonably similar frequency to the Passenger Services included in the Timetable which such arrangements replace and reasonably fit for the purpose of the journey to be undertaken;
 - (ii) without prejudice to its obligations in paragraph 8.2(a), comply with any standards issued by SRH from time to time in respect of such alternative transport arrangements;
 - (iii) transport passengers to, or as near as reasonably practicable to, the end of their intended journey on such Passenger Services, having particular regard to the needs of any Disabled Persons and persons with additional needs due to their mobility issues (including, without prejudice to the foregoing, infirm or elderly persons and children) and, where appropriate, making additional arrangements for such Disabled Persons and other persons and the full range of passengers and their luggage (including but not limited to pushchairs and bicycles) to complete their intended journey;
 - (iv) timeously provide adequate and prominent publicity and other practicable communication of, and detailed information on, such alternative transport arrangements in advance of, and during the course of, such disruption, subject, in the case of unplanned disruption, to SRT having sufficient notice of such disruption to enable it to provide such publicity;
 - (v) where staff can be made available, deploy them to direct passengers to such alternative transport, assist passengers on to such alternative transport and provide passengers with information on such alternative transport;
 - (vi) provide sufficient alternative transport capacity for the reasonably foreseeable demand for the disrupted Passenger Services; and
 - (vii) ensure that any increase in time it takes passengers to complete their journey is appropriate to the length and type of journey being undertaken and provide SRH and the Authority with data on what the average and maximum additional journey durations are each Reporting Period.

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

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

- 8.6 SRT shall at or prior to the Commencement Date have in place a **Dealing with Disruption Plan** that will set out in compliance with the Passenger Information During Disruption Guidelines how SRT shall communicate with passengers in relation to planned and unplanned disruption. This plan will at a minimum:
- (a) cover how SRT shall use different methods of communicating with Passengers including developing and emerging technologies to ensure one accurate source of information is fed through simultaneously via the different communications methods being utilised; and
 - (b) detail the steps being taken by SRT with regard to its obligations in terms of paragraphs 8.2 and 8.3 and to negotiate with other transport providers that the passengers train ticket without any extra charge shall be accepted to allow completion of the intended journey.
- 8.7 SRT shall monitor implementation of its Dealing with Disruption Plan such monitoring shall include methods to benchmark performance during disruptive events.
- 8.8 SRT shall keep records (including a control room log) of all planned and unplanned disruption and make such available to SRH. SRT shall provide SRH with copies of reports of inquiries into disruptive events/incidents and accidents.
- 8.9 SRT shall use passenger feedback and lessons learned from planned and unplanned disruption together with best practices from other countries of dealing with similar events and performance against benchmarks to review, update and refine its responses to put new measures in place to more effectively mitigate the effect of similar events in the future.
- 8.10 SRT shall report the feedback and lessons learned to SRH and the said intended new measures SRT intends to put in place.

9. **Obligation to Use All Reasonable Endeavours**

- 9.1 Any obligation in this Schedule 1.2 on the part of SRT to use all reasonable endeavours to operate railway passenger services shall include an obligation to:
- (a) ensure (so far as it is able to do so) the provision of the Passenger Services as set out in the Applicable Timetable in ordinary operating conditions;
 - (b) anticipate the matters referred to in paragraph 9.2 and take reasonable measures to avoid and/or reduce the impact of any disruption to the Operator Services having regard to all the circumstances, including the reasonably foreseeable risks arising from the matters referred to in paragraph 9.3; and
 - (c) actively manage the performance by Network Rail of its contractual relationship with SRT (and provide appropriate management resources for this purpose) so as to secure the best performance beyond core contractual compliance reasonably obtainable from Network Rail by these means (including taking the steps referred to in paragraph 9.4), having regard to all the circumstances, including without limitation any Alliance to which SRT is a party.
- 9.2 The matters to which SRT is to have regard pursuant to paragraph 9.1(b) shall include:
- (a) variations in climate, weather and operating conditions (including Network Rail's infrastructure not being available for any reason), which may in either case include seasonal variations;
 - (b) default by, or restrictions imposed by, suppliers to SRT;
 - (c) shortages of appropriately skilled or qualified Operator Employees;

- (d) disputes with Operator Employees;
- (e) the availability of the Train Fleet, having regard to the Fleet Availability Requirement;
- (f) establishing reasonable Turnaround Time allowances for enabling or disabling (as appropriate) any part of a train, the rostering of any train crew, the servicing or cleaning of any rolling stock vehicles in accordance with the current Service Quality Specifications relating to the condition of rolling stock vehicles;
- (g) failures of rolling stock vehicles in service and contingency arrangements (including Hot Standbys and rescue traction);
- (h) the split of the Train Fleet between electric and diesel units;
- (i) resilience planning for snow and other severe weather conditions and variance in the Scottish climate;
- (j) interactions with railway industry parties, Local Authorities and public agencies; and
- (k) the need to take pre-emptive and contingency measures.

9.3 For the purpose of taking measures in respect of any disruption to the Operator Services in accordance with paragraph 9.1(b) and assessing the extent of any risk referred to in paragraph 9.1(b), and any such risk's reasonable foreseeability, regard shall be had both:

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

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

- (a) co-operating with Network Rail in adopting the principles set out in any Service Recovery Plans agreed between Network Rail and SRT from time to time;
- (b) undertaking a review during each Reporting Period of:
 - (i) the 10 most common causes of delay to the Passenger Services; and
 - (ii) the 10 causes of delay to the Passenger Services with the longest duration (to the extent not already reviewed in accordance with paragraph 9.4(b)(i)),

which have occurred during that Reporting Period and which have been caused by SRT, any other Train Operator or Network Rail;
- (c) undertaking with Network Rail a review of the time taken to recover the Passenger Services following the occurrence of any of the events specified in paragraphs 9.4(b)(i) and (b)(ii) and seeking to identify and implement actions that reduce the delay effect of such events;
- (d) undertaking a review of the way SRT communicated with passengers during the occurrence of any of the events specified in paragraphs 9.4(b)(i) and (b)(ii) and seeking to identify and implement actions that improve communication with passengers in relation to such events;

- (e) setting up and holding regular and effective performance review meetings with Network Rail, evidenced by meeting minutes and the closure of actions agreed between SRH and SRT;
 - (f) regularly monitoring (at least every Reporting Period) the delivery of local output commitments made by Network Rail and using reasonable endeavours to specify and develop such local output commitments;
 - (g) as and when required by Network Rail, co-operating with Network Rail in improving the accuracy of future timetables by providing access to trains, other facilities or information;
 - (h) co-operating with Network Rail in other delay management, including alliancing and initiatives such as the use of virtual general managers and establishment of integrated control rooms;
 - (i) regularly reviewing (at least every Reporting Period) the imposition and clearance of temporary speed restrictions;
 - (j) regularly reviewing (at least every Reporting Period) the timely and efficient handover and hand-back of possessions; and
 - (k) where appropriate and where Network Rail fails to perform its obligations under the Track Access Agreement, enforcing SRT's rights under such Track Access Agreement.
- 9.5 SRT undertakes (subject to its obligations to prepare a Train Plan and secure a Timetable enabling it to operate railway passenger services that comply with the Service Level Commitment and thereafter operate such services) to reasonably co-operate with Network Rail with regard to Network Rail's management of the network, including in relation to the establishment of up to date Timetable Planning Rules.
- 9.6 To the extent not already provided for in this Agreement, SRT shall use all reasonable endeavours to ensure the performance by Network Rail of its obligations under any relevant agreement including, where appropriate or where requested by SRH enforcing its rights against Network Rail under any such agreement.
- 9.7 When and to the extent reasonably requested by SRH, SRT shall provide to SRH evidence of the steps taken by it in order to comply with its obligations under this paragraph 9.
- 9.8 SRT shall in the event of disruption (whether planned or unplanned) which impacts the Caledonian Sleeper franchise services, use all reasonable endeavours to co-operate with and provide support to the Caledonian Sleeper Franchisee. Such co-operation shall without prejudice to the foregoing generality include to Publish appropriate information in respect of the disruption in question and the consequences of and mitigation for the effects of the same.
- 9.9 Without prejudice to the other terms of this Schedule 1.2, SRT shall take all necessary steps to provide for Passenger Service resilience, including planning provision and training (including exercises) in respect of:-
- (a) interaction and co-operation with public agencies;
 - (b) traction;
 - (c) equipment;
 - (d) catering;
 - (e) station facilities;

- (f) operational practices;
- (g) staff rostering and duties;
- (h) cross-support to other railway industry parties, transport providers and roads authorities;
- (i) best practice and lessons learned;
- (j) attendance at any resilience centre designated by the Authority and/or SRH; and
- (k) mutual support of the Caledonian Sleeper Franchise.

10. **Severe Weather Resilience and Service Disruption**

Without prejudice to SRT's obligations in paragraphs 8 and 9, any obligation in this Schedule 1.2 on the part of SRT to use all reasonable endeavours to operate railway passenger services shall include an obligation to:-

- 10.1 co-operate with the Authority and/or SRH in its resilience planning including without prejudice to the foregoing generality: -
 - (a) attending (whether in person or remotely), at the Authority's and/or SRH's request, meetings of the Multi-Agency Response Team (or similar response group) at the Scottish Government's Resilience Room or otherwise; and
 - (b) engaging with the Scottish Government's preparedness initiatives relating to Winter conditions and severe weather;
- 10.2 make such adaptations to the Train Fleet, other equipment or facilities essential to the provision of railway passenger services and Stations as are reasonably necessary to respond to repeated and prolonged periods of severe weather (be it winter weather or otherwise);
- 10.3 put in place arrangements for emergency staff availability to respond to repeated and prolonged periods of severe weather (be it winter weather or otherwise);
- 10.4 use weather reports and forecasts to plan for disruption and to make decisions on when to implement its Resilience Plan;
- 10.5 co-operate with Network Rail, Associates and other Train Operators to provide support to each other, make staff available to each other and pass timely, accurate and detailed information about disruption to each other including attendance at Gold and Silver Command locations;
- 10.6 use best practice with regards to planning for severe weather including such adaptations as referred to in paragraph 10.2;
- 10.7 ensure that each Station and Depot is equipped with the necessary equipment to help railway passenger services to continue in severe weather;
- 10.8 comply with its Resilience Plan and any information Published and provided to passengers as to how SRT will operate in such events save where the best interests of the passengers would be better served by departing from the same; and
- 10.9 comply with the obligations in paragraph 11.

11 **Resilience Team and Resilience Plans**

- 11.1 SRT shall employ a service disruption team ("the **Resilience Team**") consisting of at least 9 suitably trained and experienced managers with sufficient support staff whose duties shall

include (where required) working with duty control managers to manage disruption to services and provide additional control resources during periods of severe disruption. The Resilience Team shall manage all third party communications with duty control managers.

- 11.2 SRT shall work diligently with Network Rail from the Commencement Date to agree a **Resilience Plan** for Key Stations and by line of route consisting of guidelines detailing actions to be taken and emergency timetables and priority routes to keep open (such priority routes shall include those used most by passengers and cross-border services). The Resilience Team shall be responsible for overseeing implementation of the Resilience Plan at the relevant time.
- 11.3 SRT shall continue to provide services across the whole rail network to ensure that all communities continue to receive at least some level of Passenger Services. SRT shall use all reasonable endeavours to re-introduce Passenger Services across all parts of the network at the earliest possible opportunity.
- 11.4 SRT shall develop and maintain a Resilience Plan, which as a minimum shall include:-
- (a) consideration of the different effects severe weather can have on different types of trains and Passenger Services;
 - (b) a strategy for all Routes and staff resourcing during extreme weather including emergency timetables and staff procedures in the event of disruption;
 - (c) diversionary routes (where practical) for all Routes and a strategy for security necessary rolling stock approvals and train crew knowledge and/or hiring of train crew;
 - (d) procedures to be implemented, communicating and working with Stakeholders to minimise disruption during severe weather, and how it plans to provide detailed up-to-date and easy to understand information to passengers;
 - (e) details of any agreements reached with operators of bus services in terms of paragraph 8.4 hereof, and ensure staff have access to information including timetables for bus and other transport operator's services and the details of aforesaid agreements including without prejudice to the foregoing generality in relation to the validity of rail tickets on the bus services;
 - (f) its service disruption strategy covering alternative transport, key stakeholders, staff and training;
 - (g) service recovery timescales for different incident types on different Routes (including diversionary routes referred to in paragraph (c) above) including at all reasonably foreseeable events and consequences.
- 11.5 The Resilience Team shall establish a special training programme for selected support staff and managers to include timetable interpretation skills, dealing with distressed passengers and SRT's refreshments and compensation policy.
- 11.6 SRT shall implement a passenger information strategy within three months of the Commencement Date for the purposes of communicating disruptions and other problems to passengers at Stations which shall include:
- (a) Publishing plans, and SRT's proposed investments to protect against disruptive events and severe weather preparedness, especially prior to Winter;
 - (b) email performance bulletins or SMS text messaging or specified social media (at the passenger's option) including, where possible, real time information;
 - (c) providing suitable technology and devices to the Resilience Team and customer facing staff to provide customers with real time information.

- (d) the provision of information (real time where possible) via SRT's web site and social media;
 - (e) the provision of information (real time where possible) and procuring prompt and accurate display of such on whiteboards and other information display systems at all Stations; and
 - (f) the provision of mobile telephones to all of SRT's on-board train managers.
- 11.7 Representatives of the Resilience Team shall meet with SRH and the Authority quarterly and as and when reasonably requested by SRH and/or the Authority. It is anticipated that additional briefings will be required in respect of anticipated major disruptive events and debriefings after major disruptive events where these cannot reasonably be addressed as part of the regular Operation Performance Meetings.
- 11.8 SRT shall use all reasonable endeavours to ensure messages and information in the event of disruption are shared consistently across staff, passengers (and other relevant parties).
- 11.9 SRT shall use passenger feedback and lessons learned from severe weather or other disruption together with best practices from other countries of dealing with similar events and performance against benchmarks to review, update and refine its Resilience Plan.
- 11.10 SRT shall monitor implementation of its Resilience Plan such monitoring shall include methods to benchmark performance during disruptive events.
- 11.11 SRT shall ensure provisions are made where passengers, due to a disruptive event, will require to spend a prolonged period in a station so that those passengers are kept safe and comfortable.

12 Performance Management Group

- 12.1 As part of its commitment to working with SRH, the Authority and Network Rail, SRT shall work with Network Rail to establish a Performance Management Group ("**PMG**").
- 12.2 SRH and SRT shall liaise and cooperate together to prioritise the work of the PMG in consultation with each other and such Stakeholders as SRH may from time to time specify and shall regularly review the PMG programme in the light of requests from each other and such Stakeholders and available resources.
- 12.3 Taking into account the performance commitments of SRT and its rights and responsibilities in connection with its conduct of the Operator Services, it is anticipated that the PMG shall address the strategic issues arising from the following with the appropriate Stakeholders and their teams:
- (i) solutions to Timetable conflicts;
 - (ii) the management and planning of service disruptions;
 - (iii) solutions to reduce delays;
 - (iv) the balance between service enhancements and performance; and
 - (v) the balance between journey times improvements and performance and reliability.
- 12.4 SRT shall develop and operate Performance Management Systems to support the work of the PMG and all other aspects of SRT's performance of the Operator Services.

SCHEDULE 1.3

THIS IS SCHEDULE 1.3 REFERRED TO IN THE FOREGOING SCOTRAIL GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND SCOTRAIL TRAINS LIMITED

Additional Service Specifications**1. SRH's Service Specification Standards**

- 1.1 SRT shall at all times during the Term employ the Operation Facilities to provide the Operator Services and shall use all reasonable endeavours to:-
- (a) do so in accordance with each Schedule 7.2 Service Specification as at the date of this Agreement or as amended from time to time; and
 - (b) do so to a standard that is no worse than the Acceptable Level (as amended from time to time) for such Operator Services.
- 1.2 The requirement to employ the Operation Facilities in the provision of the Operator Services is to use or to make available those Operation Facilities for the benefit of passengers in the condition and with the functionality which is the higher of:
- (a) the standard for the Operation Facility recorded in the Operation Facilities Book;
 - (b) the Train Fleet facilities, capacity and characteristics referred to in the Train Fleet Tables;
 - (c) any enhanced standard that is specifically provided for in Schedule 1.6 (*Business Plan Commitments*);
 - (d) any enhanced, refurbished or new rolling stock provided for in Schedule 6 (*Rolling Stock*) as amended from time to time; or
 - (e) any standard that is applied by means of a Variation pursuant to Schedule 9 (*Changes*),
- subject in each case to fair wear and tear.
- 1.3 The requirement to employ the Operation Facilities in the provision of the Operator Services is also to use or make available those Operation Facilities for the benefit of passengers with that degree of skill, diligence, prudence and foresight which would be exercised by a skilled and experienced Train Operator of the ScotRail Operation.

2. Revenue Collection And Protection Against Ticketless Travel

- 2.1 SRT shall conduct an annual survey of ticketless travel. The said survey shall be carried out by an independent company. The first survey shall take place within 4 Reporting Periods of the Commencement Date and SRT shall share the results with SRH by no later than one Reporting Period after the survey is completed.
- 2.2 Each Business Plan Submission shall include details of SRT's plans for ensuring that appropriate revenue protection is applied to reduce ticketless travel or travel with invalid tickets to the greatest extent reasonably practicable with the intention of maximising revenue while also treating passengers fairly and reasonably.

3. Performance concerning Ticketless Travel

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

4. Protection and Care Plan

- 4.1 SRT shall use all reasonable endeavours to ensure that, save where SRH agrees to the contrary, there shall at all stations equipped with a ticketing vending machine and at all staffed stations be an operational means throughout the opening hours of the station of buying a ticket for travel and making a reservation for seated or other accommodation on Passenger Services.
- 4.2 SRT shall use all reasonable endeavours to ensure that on each Passenger Service there shall be sufficient staff whose duties shall include the following customer care duties and revenue protection:
- (a) general provision of customer care duties including provision of information to passengers and "**helping hand**" assistance to adults with small children, and infirm, elderly and disabled passengers who may require such assistance;
 - (b) inspection of tickets, issuing of tickets to persons not in possession of a valid ticket and collection of revenue; and
 - (c) taking appropriate measures to deal with unruly behaviour by any passengers, so far as is reasonably practicable in the absence of police assistance, and calling for police assistance when required.
- 4.3 SRT shall use all reasonable endeavours to ensure that the person mentioned in paragraph 4.2 shall actively carry out the inspection of tickets at regular intervals on each journey and that such person shall use all reasonable endeavours to ensure that no passenger travels without payment of the required Fare.
- 4.4 SRT shall ensure that there are sufficient revenue protection staff at Stations as are required in accordance with the Business Plan as amended from time to time that no passenger can gain access to, or egress from, a platform without first having his/her ticket checked, where appropriate. circumstances that in itself would be categorised as a public safety concern).
- 4.5 SRT shall use all reasonable endeavours to ensure that, at stations where automatic ticket barriers have been installed, no passenger is required to queue:-
- (a) due to revenue protection staff ticket examination or an automatic ticket barrier for more than:

(i) 1 minute to access; or

(ii) 2 minutes to exit;

a platform when the passenger is in possession of a valid ticket; and

(b) for more than 5 minutes to buy a ticket after alighting from a Passenger Service without a ticket.

SRT shall procure that throughout the Operation Period where automatic ticket barriers are installed, such barriers shall recognise, (throughout the period of validity of the same and notwithstanding some to be anticipated wear and tear to the same) season tickets and smartcards in whatever format is a valid ticket for Passenger Services from time to time.

5. Special Events

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

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

(a) provision of additional and/or specific railway passenger services including use of rolling stock which would otherwise have been designated as a Hot Standby;

(b) the provision of additional or specific security arrangements at stations at which the Passenger Services call and on Passenger Services;

(c) the provision of specific integrated ticketing in relation to the Passenger Services; and

(d) advertising and marketing of Special Events in relation to the Operator Services.

5.3 SRT shall prepare and implement a strategy to identify and engage with third parties involved in the staging and promotion of Special Events. SRT shall provide SRH with such details of engagement with such third parties as SRH may reasonably require.

6. Engagement with Visit Scotland

SRT shall continue to meet with Visit Scotland and other tourist/visitor stakeholders regularly, to discuss tourism promotion matters, and how best to deliver the policy outcomes required under the Tourism Policy in the Policy Compendium.

7. Visit Scotland and Caledonian Sleeper Franchisee marketing co-operation

SRT shall use reasonable endeavours to co-operate with the Visit Scotland and Caledonian Sleeper Franchisee to facilitate the promotion of tourism in Scotland and Caledonian Sleeper Operator Services including but not limited to the distribution of leaflets and website links.

8. Services to be offered to Caledonian Sleeper Franchisee

SRT shall in respect of the passenger rail services to be provided by the Caledonian Sleeper Franchisee or a successor Train Operator of all or any of those passenger rail services throughout the Operation Period:-

8.1 Provide free of charge:

(a) at least one double royal advertising space at each Station at which the Caledonian Sleeper Franchise railway passenger services call;

- (b) one double royal advertising space at up to all other Stations as nominated by the Caledonian Sleeper Franchisee from time to time and shall maintain the same all as if the same were information displays as described in any relevant Service Quality Appendix or to permit the Caledonian Sleeper Franchisee to maintain the same;
 - (c) exclusive use of an area at each of the Stations at which SRT has granted the Caledonian Sleeper Franchisee Permission to Use, each such area being one which would (save for the grant of such exclusive use) have formed part of the Common Station Amenities, upon which the Caledonian Sleeper Franchisee may locate an Information Totem. The area to which such exclusive rights shall extend shall be that of the footprint of the Information Totem and associated foundation, frame or mount. SRT shall additionally afford the Caledonian Sleeper Franchisee all necessary rights to install, operate, maintain, repair and replace the Information Totem located at any such Station with necessary electricity and data cable connections, subject to compliance with applicable Law, SRT's reasonable operational and procedural requirements and to reimbursement of any costs properly and reasonably incurred by SRT; and
 - (d) permission for the Caledonian Sleeper Franchisee to provide to its passengers through the Information Totem:
 - (i) service information, including platform number, availability of train to board, expected time of arrival and live disruption information specific to the Caledonian Sleeper Franchisee's railway passenger services;
 - (ii) a virtual check-in offering guest the opportunity to pre-order dinner, breakfast and wakeup time, this will be linked to on-train crew handheld devices;
 - (iii) interactivity with the Caledonian Sleeper Franchisee guest services contact centre and the ability to access dedicated support using live voice and video streaming;
 - (iv) the location of the Caledonian Sleeper Wi-Fi hotspot, where provided;
 - (v) a clear 'safe zone' on the station where guests can be reassured they are being video monitored, will have access to help in a well-lit area;
 - (vi) Caledonian Sleeper Franchisee commercial partner information, promotions and offers with direct connectivity through to those partners;
 - (vii) information about onward transport by bus, ferry and other public transport services;
 - (viii) local mapping and bus time tables; and
 - (ix) the provision of other information or interactive services delivered through the Totem as developed during the course of the Caledonian Sleeper Franchisee.
- 8.2 Liaise with the Caledonian Sleeper Franchisee over additional and specific further facilities (including any of a temporary nature) or services through its Information Totem which the Caledonian Sleeper Franchisee intimates it requires or would wish, but without any requirement on the part of SRT to incur additional costs or to invest in additional facilities;
- 8.3 Without prejudice to paragraph 2.4 of Schedule 1.4 (*Passenger Facing Obligations*) to display the timetable for the railway passenger services provided by the Caledonian Sleeper Franchisee at the following:-
- (a) Stations between and including Oban and Crianlarich;
 - (b) Stations between and including Mallaig and Fort William;

- (c) Leuchars (for St. Andrews); and
- (d) use reasonable endeavours at other Stations the Caledonian Sleeper Franchisee intimates it requires its timetables displayed at to do so.

- 8.4 Provide use of any car parks at Stations to passengers of the Caledonian Sleeper Franchisee on the same terms as passengers of SRT;
- 8.5 Permit free of charge at such Stations at which the Caledonian Sleeper Franchisee railway passenger services call the Caledonian Sleeper Franchisee to place signage on to any Caledonian Sleeper Franchisee facilities and/or its railway passenger services;
- 8.6 In the event of unplanned disruption to the Caledonian Sleeper service permit its passengers to complete their journey utilising their Caledonian Sleeper ticket on Passenger Services;
- 8.7 Liaise with the Caledonian Sleeper Franchisee to plan timetables that provide Connections mutually beneficial to ScotRail and Caledonian Sleeper passengers.

9. **Information Strategy**

- 9.1 SRT shall deliver to SRH with each Business Plan Submission the Information Strategy. The Information Strategy shall cover all obligations on SRT under this Agreement relating to the provision of information for passengers and potential passengers.
- 9.2 Without prejudice to paragraph 9.1 the Information Strategy shall cover:
 - (a) the Passenger's Charter;
 - (b) Customer Complaints Handling Procedure;
 - (c) Disabled People's Protection Policy;
 - (d) management and delivery of information to passengers and potential passengers;
 - (e) Dealing with Disruption Plan;
 - (f) Resilience Plan;
 - (g) identification and use of digital and developing communications technology;
 - (h) availability of access to and production of timetable information for the public;
 - (i) appropriate information available at stations and on trains;
 - (j) customer service provision including details of the Customer Contact Centre and its operation;
 - (k) co-operation with other public transport information providers; and
 - (l) details of its Communications and Marketing Strategy and its more general marketing strategy.
- 9.3 The Information Strategy shall be updated at least annually and each update shall be provided to SRH and the Authority along with SRT's commentary on their progress in implementing the Information Strategy.
- 9.4 SRT shall implement the Information Strategy throughout the Term.

- 9.5 SRT shall monitor all channels utilised to deliver information to passengers and potential passengers to ensure that its Information Strategy is appropriate and up to date.

SCHEDULE 1.4

THIS IS SCHEDULE 1.4 REFERRED TO IN THE FOREGOING SCOTRAIL GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND SCOTRAIL TRAINS LIMITED

Passenger Facing Obligations

1. Licences compliance

SRT shall throughout the Term comply with the conditions of its Licences and shall in so far as not contrary to those conditions fulfil its obligations under this Schedule 1.4.

2. Publishing the Timetable

The First Timetable

2.1. SRT shall on and from the Commencement Date,

- (a) Publish the Timetable:
 - (i) as is practicable for customers who have specific requirements;
 - (ii) at each Station by display on information displays;
 - (iii) at stations other than Stations where Passenger Services call by providing to the operators of such stations the departure and arrival times of such services in the same form as specified in paragraphs 2.1(a)(i) and (a)(ii); and
 - (iv) on the Website; and
 - (v) by such other means as SRH may, acting reasonably, specify;
- (b) Publish the timetables of other Train Operators at Stations in accordance with paragraph 2.4.
- (c) use all reasonable endeavours to exercise all rights SRT has to require Network Rail, the Caledonian Sleeper Franchisee or other Trains Operator to Publish the Timetable at:
 - (i) staffed stations by making relevant information available as is practicable for customers who have special requirements; and
 - (ii) Stations, by display on information displays; and
- (d) use all reasonable endeavours to procure that the Caledonian Sleeper Franchisee includes the Timetable in its Published timetable information for Operator Services connecting with Caledonian Sleeper Franchise passenger rail services.

Timetable Revisions and Alterations

- 2.2. SRT shall, without prejudice to its obligations under Schedule 1.2 (*Operating Obligations*), Publish updates or replacements to the Timetable at the locations specified in paragraph 2.1 to the extent necessary to reflect any changes which come into effect on a Passenger Change Date:
- (a) in the case of information displays, no later than the day before the changes come into effect;
 - (b) in the case of information provided to the operators of the stations referred to in paragraph 2.1(b), in sufficient time for such information to be Published or provided by such operators within the time limits provided for in this paragraph 2.2; and

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

Timetable Integration

2.3.

- (a) SRT shall work with other public transport operators to provide cross modal information at, as a minimum, Stations that are major interchanges;
- (b) SRT shall use reasonable endeavours to identify, obtain and Publish timetable information of operations of other forms of public transport for which integrated ticketing is available with and/or which connect with Passenger Services as SRH may nominate from time to time;
- (c) SRT shall work in partnership with other Station Facility Owners to provide cross modal information at stations;
- (d) SRT shall work with the operator of the Edinburgh Tram link and other relevant organisations to develop integration of service timetables, ticket integration and connectivity to the tram services; and
- (e) SRT shall particularly in rural areas and areas where onward forms of public transport are less frequent work with other public transport operators to maximise public transport service timetable integration and cross connectivity.

Other Train Operators' Timetables

- 2.4. SRT shall also comply with the requirements of paragraphs 2.1 and 2.2 inclusive in respect of any other Train Operator's timetable at each Station where the railway passenger services of such other Train Operator are scheduled to call:
- (a) within the time limits specified in paragraphs 2.2 where such other Train Operator delivers to SRT the relevant information in sufficient time for SRT to so Publish; and
- (b) as soon as reasonably practicable thereafter where such other Train Operator delivers the relevant information late to SRT.

In the event that SRT has not received such equivalent information from such other Train Operators in what SRT reasonably considers to be sufficient time for such information to be published by it within the time limits specified in paragraph 2.2, SRT shall make a request of such other Train Operator for such information, and shall continue to make such requests until it receives the information.

Scottish Stations Map

- 2.5. (a) SRT shall ensure that all stations which are connected to the network, including those which are not Stations or at which Passenger Services do not call are included on the Scottish Stations Map and that any temporary, new or re-opened station is added to the Scottish Stations Map from the date of opening of each such station; and that any station is removed from the same with effect from the date of its closure.
- (b) SRT shall prominently display the Scottish Stations Map, as updated by SRT from time to time, on rolling stock and at Stations and include the same on the Website and in relevant publications.

Advertising and Promotion of Passenger Services and Cross Modal Integration

2.6.

- (a) SRT may advertise and promote the Passenger Services at stations in accordance with the Communications and Marketing Strategy and in a manner reasonably consistent with SRH's requirements for advertising and promotion of the Passenger Services. SRT shall use all reasonable endeavours to ensure that any commercial advertising at Stations shall comply with the British Code of Advertising, Sales Promotion and Direct Marketing (as amended or replaced from time to time); and
- (b) SRT shall provide and promote to passengers cross modal onward journey information using both existing and emerging technology where appropriate.

National Rail Timetable and National Rail Enquiries

2.7. SRT shall use all reasonable endeavours to procure (including by virtue of any arrangements made from time to time between Network Rail and RSP) that the National Rail Timetable (or any replacement), which Network Rail is responsible for publishing from time to time in relation to the Passenger Services, incorporates or is consistent with its Timetable from time to time.

2.8. SRT shall use all reasonable endeavours to procure that information in relation to:

- (a) the Timetable; and
- (b) any Significant Alterations to the Timetable to take effect between any 2 Passenger Change Dates;

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

2.9. SRT shall use reasonable endeavours to obtain data from such other Train Operators providing railway passenger services in Scotland to enable the publishing of a timetable detailing all railway passenger services within Scotland.

2.10. SRT shall comply with its obligations under the Licenses for publication of information for passengers; provided that compliance with such obligations is not sufficient to demonstrate compliance with this paragraph 2.

Data Set Availability

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

Traveline Scotland

2.12. SRT shall join, participate in, and comply with its obligations under Traveline Scotland (and any other multi-modal public transport information system designated by the Authority and/or SRH. SRT shall also:-

- (a) co-operate with the Authority and/or SRH in the Authority's and/or SRH's work to ensure the provision of impartial travel information across all technology platforms including to retain and further develop Traveline Scotland including the free downloadable mobile applications, social media and other products; and
- (b) promote the services of Traveline Scotland.

Website and Other Media/Medium

2.13. SRT shall:

- (a) create, Publish and maintain the Website throughout the Operation Period which shall include (but not be limited to) the Timetable, marketing, ticketing and promotions information journey planning, ticket sales, the Passenger's Charter or all information as set out in the Passenger's Charter, and reservations functions and real time Passenger Service information, and provide links to Traveline Scotland web site content and functionality and links to websites of SRT's Affiliates. SRT shall ensure that information is current and that the site is easy to use and provides comprehensive and engaging information for existing and potential customers. The Website may contain "pop ups" where these are used to request passenger views on the quality of Passenger Services or Operator Services or the quality or functionality of the Website. The Website may contain advertising material for third parties where such material (i) advertises products or services of a nature and quality which reflect the quality of and are not detrimental to the Operator Services and the ScotRail branding (including without limitation, the Authority IP) and (ii) complies with all applicable laws and best practices regarding the use of advertising technologies;
- (b) procure that any such publication and maintenance shall be in accordance with any guidance issued by the Authority and/or SRH to SRT from time to time;
- (c) use such existing and emerging media/medium as SRT may request and as SRH may approve, or as SRH, acting reasonably, may specify from time to time for dissemination of information to passengers.

2.14. To the extent that SRH and/or SRT owns copyright or other Intellectual Property Rights in and to the design and contents of the Website, SRH and SRT each hereby assigns all and whole its present and future right, title and interest in and to all such copyright or other Intellectual Property Rights free from all liens, charges and encumbrances to the Authority absolutely. SRH and SRT shall forthwith deliver to the Authority a copy of such documentation listings, flowcharts, specifications and manuals and such source and object code as created by or on behalf of SRH and SRT for the purposes of the Website.

2.15. SRT shall continuously review throughout the Operation Period all new and developing applications for marketing the Operator Services and provide information to SRH at Operation Performance Meetings on any new or innovative applications which are or may become available in order to market the Operator Services.

2.16. SRT shall as soon as reasonably practicable following any request by SRH, introduce any new or improved methods of marketing the Operator Services from the Website, including any new or developing media applications which may become available from time to time.

Data Provision and Links

2.17. SRT shall co-operate with SRH and third parties by the provision of data and data links at no charge as SRH may from time to time specify.

Emergency Timetables

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

Other Information

2.19.

- (a) SRT shall, as requested by SRH, display at all Stations (and use reasonable endeavours to so procure at other stations where Passenger Services call) such notices as SRH may wish to Publish from time to time;

- (b) SRT shall display at all Stations (and use all reasonable endeavours to so procure at other stations where Passenger Services call) an easily understood current and valid map of the area surrounding and including the particular station, which map shall as a minimum requirement include details of the nearest alternative onward modes of transport (including, without limitation), buses and taxis, cycle provisions (including, without limitation nearby cycle routes if any), details of car parks in the vicinity of the Station and accessible walking routes in the vicinity. SRT shall periodically review such maps to ensure such are current and valid.

Announcements on-board trains

- 2.20. SRT shall ensure that all announcements on board trains are appropriate, clear, timely, audible, accurate and easily understood.

Customer Information Screens

- 2.21. SRT shall repair and renew, maintain and replace (where beyond economic repair) as appropriate the Customer Information Screens.

Communications and Marketing Strategy

2.22.

- (a) SRT shall submit a draft Communications and Marketing Strategy ("**C&M Strategy**") with each Business Plan Submission;
- (b) The C&M Strategy shall seek to promote the diverse nature of Scotland's rail routes, promote rural routes, Passenger Services, achieve the policy objectives of this Agreement set out at clause 4.4, promote the benefits of cycling and the cycling facilities at Stations, promote rail travel as an environmentally friendly mode of transport and include specific fares and products, promotions and arrangements for Special Events;
- (c) The C&M Strategy shall include SRT's strategy for engagement with school age children to provide such children with information and to encourage such children to interact with and use the railway network in a safe and effective manner;
- (d) SRT shall implement the agreed C&M Strategy throughout the Term;
- (e) The C&M Strategy shall be regularly reviewed (no less than annually) by SRT and SRH. SRT shall also seek the view of Stakeholders such as Visit Scotland when reviewing and updating the C&M Strategy;
- (f) SRT shall ensure that any merchandising and/or other advertising activities conducted by or on behalf of SRT during the Operation Period shall not at any time conflict with the policies and objectives as set out in clause 4.4 of this Agreement. If SRH determines that any of SRT's advertising activities conflict or may conflict with SRH's policies, SRH shall notify SRT accordingly and SRT shall cease to conduct any such merchandising or advertising activity with immediate effect.

3. Late Timetable Changes

- 3.1. Save in respect of Significant Alterations, for which the provisions of paragraphs 2.2 and 2.8 shall apply, SRT shall inform passengers, so far as possible on 7 days' prior notice, if it will be unable to operate its trains in accordance with the Timetable. Such information shall include any revised Timetable or travelling arrangements.
- 3.2. Such information shall be provided by:
- (a) revising or adding to the information displays referred to in paragraph 2.1;

- (b) notifying the operators of the stations referred to in paragraph 2.1(b), as appropriate including by providing such operators with revised posters;
 - (c) updating the Website and such other means as SRH may, acting reasonably, specify from time to time; and
 - (d) direct communication with passengers who opt-in for such direct communication by such media to which the opt-in applies.
- 3.3. SRT shall revise or add to the information displays at the Stations promptly on receipt of any equivalent information relating to the railway passenger services of other Train Operators whose services call at the Stations.
- 3.4. Where SRT is unable to provide the information specified in paragraph 3.1 because the relevant revisions are made on an emergency basis, SRT shall notify passengers and Publish the relevant revisions by way of the means contemplated by paragraph 3.2 as soon as reasonably practicable.
- 3.5. SRT shall ensure that, so far as reasonably practicable (including by communication of the relevant information to persons likely to receive enquiries), passengers making enquiries regarding the Passenger Services are informed of the revised Timetable and any revised travel arrangements of SRT as far in advance as is reasonably practicable.

4. Fares Selling Restriction

- 4.1. SRT shall procure that all persons selling or offering to sell Fares on its behalf (whether under the terms of the Ticketing and Settlement Agreement, as its agents or otherwise):
- (a) for Fares whose:
 - (i) Prices are regulated under Schedule 5.3 (*Regulation of Individual Fares*), sell or offer to sell such at prices no greater than the Prices set for such Fares from time to time in accordance with Schedule 5.3; and
 - (ii) Child Prices are regulated under Schedule 5.3, sell or offer to sell those at prices no greater than the Child Prices set for such Fares from time to time in accordance with Schedule 5.3;
 - (b) for Fares whose Child Price has been set pursuant to paragraph 2.1 of Schedule 5.2 (*SRT's Obligation to Create Fares*), sell or offer to sell such Fares to any person under the age of 16 for an amount which is no greater than the lowest amount that would be paid if that person were the holder of a Young Person's Railcard or Scottish Youth Railcard (as amended or replaced from time to time) and whose purchase was made without condition as to the day, or time of day, of travel and also without any other condition; and
 - (c) for all Fares:
 - (i) do not sell or offer to sell any Fare or Discount Card with a validity of 13 or more months, except as required to do so under the terms of the Ticketing and Settlement Agreement or otherwise without the consent of SRH and the Authority (such consent not to be unreasonably withheld); and
 - (ii) comply with the provisions of paragraph 3 of Schedule 15.2 (*Last 12 or 13 Months of Operation Period*) to the extent they apply to the selling of Fares by SRT.

Restrictions on Sales

- 4.2. SRT shall ensure that the purchaser of any Protected Fare:

- (a) shall be entitled, without further charge, to such rights of access and egress and other similar rights at the commencement and end of the relevant intended journey or journeys as may be reasonably necessary for such purchaser to travel on the Passenger Services;
 - (b) shall not be required to incur any cost or take any action beyond the payment of an amount equal to the Price or Child Price (as the case may be) of such Protected Fare, as the case may be, and, in relation to the issue of a Season Ticket Fare, the completion of such identity card as SRT may reasonably require; and
 - (c) shall not be required to pay an amount in respect of a seat reservation or other similar right which it may be compulsory for such purchaser to have in order to make a journey with such Protected Fare, as the case may be, on a Passenger Service.
- 4.3. Where SRT sets a limit on the number of Protected Fares that may be used on any particular train, such limit shall be the greater of:
- (a) the number of seats in Standard Class Accommodation on such train; and
 - (b) the capacity of Standard Class Accommodation of the rolling stock vehicles comprising such train according to Appendix 1 (*The Train Fleet*) to Schedule 1.1 (*Service Development*).
- 4.4. SRT shall not sell any Fare or Discount Card which has a validity of 13 or more months, except to the extent required to do so under the terms of the Ticketing and Settlement Agreement.

Additional Ancillary Services

- 4.5. SRT shall, subject to paragraphs 4.1, 8 and 9 of Schedule 1.4 (*Passenger Facing Obligations*), be entitled to charge a purchaser of any Protected Fare for any additional services:
- (a) which are ancillary to the railway passenger service for which such Protected Fare (as the case may be) was purchased (including, charges in respect of car parking or catering services); and
 - (b) which such purchaser is not obliged to purchase.

Children Under Five

- 4.6. SRT shall ensure that up to two children under five years of age may accompany each fare-paying passenger on any Passenger Service free of charge.

5. Passenger's Charter

Content

- 5.1. SRT shall:
- (a) Publish its Passenger's Charter and in accordance with SRT's obligations under the Code of Practice;
 - (b) including a "**delay = repay**" compensation scheme based on delays to journeys. The value of compensation shall be at least:
 - (i) An entitlement to claim compensation of 50% of the Fare for the affected journey for passengers delayed by between 30 and 59 minutes;
 - (ii) 100% of the fare for the affected journey for delays of 60 to 119 minutes;
 - (iii) 100% of the Return Fare for delays of 120 minutes or more; and

(iv) for Season Tickets the compensation will be calculated on the proportionate daily cost of the ticket.

The delay repay compensation scheme shall apply to all ticket types irrespective of what caused the delay. Compensation shall be provided in National Rail Travel Vouchers with cash offered instead if vouchers are not acceptable to the passenger. Claims forms should be easily available and should be “**postage-paid**”. The compensation scheme shall be straightforward and simple for affected passengers to understand and to navigate;

(c) as a minimum including:

- (i) Information about planning a rail journey – where to find information about train services and what other information is available at stations (including where to obtain information about onward travel and integration with other modes);
- (ii) Information about stations including staffing, facilities, interchanges, smoking and alcohol, ticket buying facilities, reservations, booking assistance and the carrying of wheelchairs / pushchairs etc;
- (iii) Contact details of relevant organisations and partners e.g. National Rail Enquiries, British Transport Police, Passenger’s Council, Traveline Scotland;
- (iv) Performance and quality standards (stations and trains); and
- (v) Passenger rights – including SRT’s commitment to passengers when things go wrong, compensation details and method of refund.

(d) in accordance with the requirements specified in paragraph 5.3;

(e) review the need for changes to the Passenger’s Charter at least every 3 years, in consultation with the Passengers’ Council, and shall submit a draft of any revisions to the Passenger’s Charter that it wishes to propose, together with proof of such consultation, to SRH and the Authority; and

(f) state the date of publication clearly on the front cover of the Passenger’s Charter.

5.2. SRT may not change the Passenger’s Charter without the prior written consent of SRH and the Authority (which consent shall not be unreasonably withheld).

Publishing the Passenger’s Charter

5.3. SRT shall publicise its Passenger’s Charter by:

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

save in respect of the Passenger’ Charter which is effective on the Commencement Date, in which case SRT shall Publish such Passenger’s Charter in the manner contemplated by this paragraph 5.3 on and from the Commencement Date.

- 5.4. SRT shall provide copies of its Passenger's Charter to the operators of the Stations to enable such operators to Publish it.

Passenger's Charter Payments

- 5.5. SRT shall:

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

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

- 5.6. SRT shall use all reasonable endeavours:

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

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

Passenger's Charter Statistics

- 5.7. SRT shall:

- (a) prepare the Passenger's Charter Statistics (in accordance with the Passenger's Charter Guidelines);
- (b) Publish the Passenger's Charter Statistics (and the passenger's charter statistics of other Train Operators whose trains call at any Stations) in a format approved by SRH and the Authority on information displays at all staffed Stations by midnight on the Saturday following the end of each Reporting Period. The Passenger's Charter Statistics to be displayed shall relate to the Service Groups serving such Stations;
- (c) Publish the Passenger's Charter Statistics relating to each Service Group on the Website by midnight on the Saturday following the end of each Reporting Period; and
- (d) at the same time, provide copies of its Passenger's Charter Statistics to SRH, the Authority and the Passengers' Council.

- 5.8. The obligation under paragraph 5.7(b) to Publish any other Train Operator's statistics is subject to the provision of such statistics to SRT by such other Train Operators.

- 5.9. SRT shall:

- (a) provide Passenger's Charter Statistics in a format approved by SRH to the operators of the stations referred to in paragraph 2.1(a)(iii) in sufficient time for the information to be displayed by such other operators within the time limits specified in paragraph 5.8 in a format approved by SRH on information displays at Stations by midnight on the Saturday following the end of each Reporting Period; and
- (b) as a minimum Publish the Passenger's Charter Statistics on the Website.

6. Compliance with the Equality Act

- 6.1. SRH and SRT each undertake that it will comply with all of its current and future obligations under the EA and any regulations made thereunder.

- 6.2. The parties acknowledge and agree that the Public Sector Equality Duty at Section 149 of the EA shall be deemed to apply to SRH and SRT. SRH and SRT each undertake to comply with such duty including (without limitation) complying with all obligations under The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012.
- 6.3. SRH and SRT shall comply with The Fair Work Convention 2015, The Fair Work Framework 2016 and the Scottish Government's Fair Work First Guidance (all as updated from time to time).
- 6.4. SRT shall not waive and shall take all necessary actions to preserve any existing or future derogations from the obligations referred to in paragraphs 6.1 to 6.3, and no other provision of this Agreement shall supersede this paragraph 6.4.
- 6.5. SRH shall not waive and shall take all necessary actions to preserve any existing or future derogations from the obligations referred to in paragraphs 6.1 to 6.3, and no other provision of this Agreement shall supersede this paragraph 6.5.
- 6.6. SRT undertakes that it will provide SRH and/or the Authority with such information as SRH and/or the Authority may from time to time require to enable SRH and/or the Authority to demonstrate its compliance with SRH's and/or the Authority's obligations in terms of the EA.

7. **Specific Additional Obligations relating to Persons with Disabilities**

- 7.1. SRT acknowledges that its obligations in this paragraph 7 are in addition to and do not limit its obligations to comply with:
 - (a) the EA;
 - (b) any applicable condition in any of its Licences (including in respect of persons with disabilities); and
 - (c) any other of the requirements of this Agreement.
- 7.2. SRT shall establish and implement procedures necessary to:
 - (a) record the making of reservations for all types of accommodation for and/or the provision of assistance to, persons with disabilities which are made through Passenger Assist (or whatever system may replace it from time to time for the purposes of guidance issued by SRH and/or the Secretary of State on Disabled People's Protection Policies) and where SRT is responsible for making the reservation and/or delivering the seating accommodation or assistance reserved. Any helpline established by SRT for the purposes of making reservations for seating accommodation for and/or provision of assistance to, persons with disabilities shall be provided free of charge;
 - (b) record whether accommodation and/or assistance reserved is actually provided; and
 - (c) provide such records to SRH and/or the Authority on its request.
- 7.3.
 - (a) Where SRT's Disabled People's Protection Policy:
 - (i) has been established before the date of this Agreement; and
 - (ii) has not been revised and approved by SRH to take into account the most recent published guidance on Disabled People's Protection Policies as at the date of this Agreement,

SRT shall within 6 months of the date of this Agreement revise its Disabled People's Protection Policy such that it complies with that guidance, and obtain SRH's and the Authority's approval of the revised version.

- (b) When required to review, revise and update SRT's Disabled People's Protection Policy by the ORR SRT shall update the said policy in consultation with SRH, the Authority, the Passenger's Council, Mobility Access Committee Scotland, SATA, SRAF and any other body as directed by the ORR.
- 7.4. SRT shall comply with the requirements set out in Appendix 1 to this Schedule 1.4 (*Alternative Transport and Website Stations Accessibility Stations*) in respect of the provision of alternative means of transportation for persons with disabilities.
- 7.5. SRT shall Publish and promote the availability of alternative means of transportation for passengers with disabilities in terms of Appendix 1 of this Schedule 1.4 (*Alternative Transport and Website Stations Accessibility Stations*) by including suitable reference to it in all marketing materials, Passengers' Charter and Timetables and providing detailed information on the applicable terms and procedures.
- 7.6. SRT's Disabled People's Protection Policy shall at a minimum be available on the Website.
- 7.7. SRT shall ensure all staff know the Disabled People's Protection Policy, of Passenger Assist and SRT's obligations in terms of Appendix 1 to this Schedule 1.4.

8. Lost Property

SRT shall comply with any code of practice issued by RDG from time to time in respect of the handling of lost property.

9. Bicycles

- 9.1. SRT shall, so far as is reasonably practical and subject to the availability of appropriate space on any rolling stock vehicles in the Train Fleet, ensure that reasonable facilities for the transport of bicycles on such rolling stock vehicles are made available, to passengers using the Passenger Services. SRT shall not, without the prior consent of SRH impose additional charges for making a reservation for the transport of bicycles on Passenger Services.
- 9.2. SRT shall develop and implement a Cycling Strategy which sets out how the railway asset(s) will be utilised to enable an uplift, with specific measurable targets, in the use of walking, wheeling and cycling as part of a passenger's journey.
- 9.3. SRT shall, retain, maintain and renew when necessary the existing facilities to enable the secure storage of bicycles at Stations.
- 9.4. SRT shall not introduce charges for the use of the bicycle storage facilities at Stations where such facilities exist as at the Commencement Date, except to the extent otherwise agreed by SRH in advance. Thereafter SRT shall only be entitled to introduce charges for improved bicycle storage facilities or additional services in relation to bicycle storage. Any such charges, if introduced, shall be reasonable or at nil cost to passengers using the Passenger Services.
- 9.5. SRT shall not, except to the extent SRH otherwise agrees, cease to provide the level of facilities for the carriage and storage of bicycles on the rolling stock vehicles used in the provision of the Passenger Services as at the Commencement Date.
- 9.6. Except to the extent that SRH otherwise agrees having regard to, amongst other things, the likely use of such facilities (such agreement not to be unreasonably withheld), any new rolling stock vehicles which are procured directly or indirectly by SRT shall include reasonable facilities for the carriage and storage of bicycles.

- 9.7. Notwithstanding any of the above, SRT shall not be in contravention of any of its obligations under this paragraph 9 if the reason for its failure to comply with any such obligation is the use by it on any particular occasion of some or all space otherwise available to cyclists and/or bicycles for the carriage and/or accommodation of wheelchairs and/or prams or infant buggies, and/or wheelchair users and/or those passengers travelling with such wheelchair users or infants. The on-train policy at the Commencement Date shall be preserved.
- 9.8. SRT shall ensure that staff are fully aware of cycle capacity and policies at Stations and on trains and that staff performance in this regard is monitored to ensure that cyclists are advised and accommodated appropriately.
- 9.9. SRT shall ensure that free reservations for the carriage of cycles on trains shall be capable of being booked through a dedicated phone number, or such other means agreed with SRH from time to time.
- 9.10. SRT shall throughout the Term:
- (a) liaise with potential partners such as Local Authorities to develop marketing strategies and seek to improve cycle parking facilities at Stations further where practicable; and
 - (b) work with local businesses and cycle event organisers to promote and facilitate more, and greater use of, cycling facilities at Stations including co-operation with cycle hire schemes and promotional schemes for passengers.
- 9.11. SRT shall:-
- (a) monitor the use of bicycle facilities at Stations and on trains;
 - (b) provide recommendations for improvements to SRH and/or the Authority on its request;
- SRT, the Authority and SRH shall be entitled to share such recommendations for improvements with interested parties.
- 9.12. In determining the extent of any refurbishment of Stations which is to be procured directly or indirectly by SRT, SRT shall consider what additional facilities for bicycle storage can be included in the said refurbishment provided SRT is satisfied that there is an increased demand for and thus a requirement for such additional facilities.

10. Pedestrians

- 10.1. SRT shall ensure, liaising with others where necessary, that easily identifiable, sign-posted where practicable and accessible walking routes are available in the area close to Stations;
- 10.2. SRT shall monitor feedback from passengers on the effectiveness of the provision under paragraph 10.1 and shall seek to improve the same, liaising with others if required, where particular issues have been identified;
- 10.3. SRT shall use all reasonable endeavours to work with Local Authorities, local businesses and walking event organisers to promote and facilitate greater walking facilities including in the vicinity of Stations and promotional schemes for passengers.

11. Car Parking at Stations

- 11.1. SRT, as part of Scotland's Railway, shall further develop and implement the Railway Parking and Station Connectivity Strategy 2021-2040.
- 11.2. SRT shall only be entitled to introduce or increase car parking charges at Stations with the prior consent of SRH.

- 11.3. SRT shall not reduce the number of car parking spaces at any Station without the prior consent of SRH.
- 11.4. SRT shall use all reasonable endeavours to work with Network Rail, Local Authorities and commercial providers of car parking to co-ordinate parking policies and provision at and in the immediate vicinity of Stations, ensuring that any resulting action is based on a proportionate STAG appraisal and that it is in line with the STAG investment hierarchy to achieve the objectives set out in the National Transport Strategy.
- 11.5. SRT shall take all reasonable measures to ensure passenger's safety at Station car parking facilities for which SRT is responsible, including without prejudice to the foregoing, ensuring such are adequately lit and adequately covered by CCTV.
- 11.6. Where car park charges are introduced in terms of this paragraph 11, SRT shall ensure:-
- (a) automated ticket machines are available for car park payments;
 - (b) multi-trip tickets are available;
 - (c) Season Ticket holders are offered a full or partial refund on the charges, as agreed in advance with SRH; and
 - (d) car park users making use of the Passenger Services for onwards travel from the car park who do not hold Season Tickets are offered a full or partial refund on the charges as agreed in advance with SRH.
- 11.7. SRT shall take all reasonable steps to ensure Station car parks operate to full capacity including reducing any applicable charges for users of onward Passenger Services.
- 11.8. SRT shall ensure that car parks at Stations are available for use by users of railway passenger services including those travelling on the services of the Caledonian Sleeper or other Train Operators' services.

12. Statutory Notices

If requested by SRH and/or the Authority, SRT shall Publish and display at the Stations and on-board the Train Fleet (and shall use all reasonable endeavours to procure the publication and display at any other stations served by the Passenger Services) such notices as SRH and/or the Authority may wish to Publish from time to time in the exercise of its functions (including in relation to Closures or any enforcement or penalty orders).

13. Customer Contact Centre

- 13.1. SRT shall maintain for the Term a branded customer contact system which will provide a wide range of retailing and information provision services for Passenger Services including telesales, provision of telephone services for Disabled Persons and customer services activities. This customer contact system is to be for rail enquiries in respect of Passenger Services (and (subject to paragraph 13.2) enquiries relating to the Caledonian Sleeper Franchise) and is not to be promoted by SRT as dealing with other enquiries. SRT shall use reasonable endeavours to make the availability of such facility known to both customers and potential customers in Scotland, UK and internationally.
- 13.2. SRT shall offer the Caledonian Sleeper Franchisee the services of the customer contact system referred to in paragraph 13.1 on reasonable commercial terms.
- 13.3. The facility to be provided shall be at least dual-language (English and Scottish Gaelic) shall provide direct and detailed advice and assistance to passengers or potential passengers. Those offering such advice and assistance shall demonstrate an excellent knowledge of the geography of Scotland and the Scottish rail network.

14. Catering

- 14.1. SRT shall provide catering facilities that as a minimum provide for sale of hot and cold beverages and snacks on the Applicable Passenger Services between:-
- (a) Glasgow and Aberdeen; Glasgow and Inverness; Edinburgh and Inverness; Edinburgh and Aberdeen; and Aberdeen and Inverness;
 - (b) Inverness and Kyle of Lochalsh;
 - (c) Inverness and Wick and Thurso; and
 - (d) Glasgow, Oban and Fort William;
- 14.2 For the purposes of paragraph 14.1:
- (a) Glasgow refers to any of Glasgow Central, Glasgow Low Level or Glasgow Queen Street stations;
 - (b) Edinburgh means Edinburgh Waverley station or Haymarket station;
 - (c) **“Applicable Passenger Services”** means:
 - (i) for the purposes of paragraph 14.1(a) Passenger Services departing after 9am and arriving before 7pm; and
 - (ii) for the purposes of paragraph 14.1(b), 14.1(c) and 14.1(d) Passenger Services operating between April or Easter (whichever is the earlier) to end of October, excluding the first and last services of the day.
- 14.3 Where catering facilities are not provided by a dedicated carriage passengers should not require to change carriage to benefit from the facilities available.
- 14.4 The requirement in paragraph 14.1 does not apply to local stopping services travelling on inter-city routes.
- 13.5 The scope of catering provision on Passenger Services set out in paragraph 14.1 may be adjusted during the Term by Variation or by way of Updated Business Plan agreed among SRT, SRH and the Authority.

15. Help/Information Points

- 15.1. SRT shall repair, maintain, renew and (where beyond economic repair) replace the Help/Information Points at Stations;
- 15.2. SRT shall ensure that all enquiries made at Help/Information Points are answered within 30 seconds of that enquiry being made;
- 15.3. SRT shall ensure that, (subject to the necessary information to allow such enquiries to be answered being provided by the Caledonian Sleeper Franchisee or other Train Operations), the passengers of Caledonian Sleeper Franchise or other Train Operators who call at Stations, enquiries regarding the service such passengers are using can be responded to through the Help Point;
- 15.4. SRT shall ensure all New Stations are equipped with a Help Point.

16. Customer Complaints Handling Procedure

- 16.1. When required to review, revise and update the Customer Complaints Handling Procedure by the ORR, SRT shall update the procedure in consultation with SRH, the Passenger's Council and any other body as directed by the ORR.
- 16.2. SRT's Customer Complaints Handling Procedure shall at a minimum be available on the Website.

17. Minimum Staffing on Train Services

- 17.1. SRT shall use all reasonable endeavours to maintain a minimum staffing level for every train service of two members of staff;
- 17.2. The non-driver member of staff on a train service will be required to carry out customer service duties including taking appropriate measures to deal with unruly behaviour by any passengers in so far as reasonably practicable in the absence of police assistance and calling for police assistance when it is required.

APPENDIX 1 TO SCHEDULE 1.4

Alternative Transport and Website Stations Accessibility Information

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

SRT shall provide alternative transport for that passenger in accordance with paragraph 3.

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

and, in any case, at no cost additional to the price of the Fare which would otherwise be payable for the passenger's rail journey.

4. SRT's obligations under this Appendix 1 are subject to:
 - (a) reasonable prior notice of the passenger's requirement for alternative transport; and
 - (b) the availability of suitable alternative transport (provided that SRT has used all reasonable endeavours to ensure that it has arrangements in place to meet requirements for the provision of such alternative transport).
5. Where SRT provides alternative transport for a passenger pursuant to paragraph 2, SRT shall permit a carer for that passenger to accompany the passenger on the alternative transport at no cost additional to the price of the Fare which would otherwise be payable for the carer's rail journey.
6. Website Stations Accessibility Information

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

SCHEDULE 1.5**THIS IS SCHEDULE 1.5 REFERRED TO IN THE FOREGOING SCOTRAIL GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND SCOTRAIL TRAINS LIMITED****Information about Passengers****1. Passenger Numbers Information**

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

- (a) the number of passengers travelling in each class of accommodation:
 - (i) on each Passenger Service;
 - (ii) on each Route; and
 - (iii) at any station (meaning for this purpose both the numbers of passengers getting on and off at the station and also the numbers of passengers remaining on a train at the station) or between any stations; and
- (b) the times of the day, week or year at which passengers travel; and
- (c) the type of Rolling Stock used in each case,

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

1.2 SRT shall obtain the information specified in paragraph 1.1 by using an accurate method for determining the number of passengers travelling in each class of accommodation and by ticket type:

- (a) on each Passenger Service;
- (b) on each Route;
- (c) at any station (meaning for this purpose both the numbers of passengers getting on and off at the station and also the numbers of passengers remaining on a train at the station); and
- (d) between any stations.

Such method of determining the numbers of passengers shall be subject to approval by SRH, which shall be entitled to require revisions to the methodology used from time to time.

1.3 SRT shall provide to SRH all of the information generated by the technology specified in paragraph 1.6 including the information specified in paragraph 1.1 and such shall:

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

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

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

- (a) update any Forecast Passenger Demand accordingly in the same format and to the same level of disaggregation as SRH required pursuant to paragraph 1.3 (a); and
- (b) notify SRH of any such update.

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

- (a) the use of the technology specified in paragraph 1.6;
- (b) manual counts as provided for in paragraph 1.7.

1.6 Technology for Obtaining the Information referred to in Paragraph 1.2

- (a) The technology to be used for the purpose of paragraph 1.2 shall be:
 - (i) of a type to achieve an average accuracy of 98% or better and a minimum accuracy for any specific measurement of 97%; and
 - (ii) fitted to a minimum of 30% of the vehicles operating on all Service Groups from time to time; and
 - (iii) deployed by SRT on each Passenger Service (for the entire duration of that Passenger Service) at least twice on each day, twice on a Saturday and twice on a Sunday (or such less frequent requirement as may be stipulated by SRH) in each period of not less than 3 Reporting Periods as SRH may from time to time specify for this purpose. This means that, for example, in relation to any individual Passenger Service, the passenger counting technology must have been deployed on that Passenger Service at least twice on a Monday, at least twice on a Tuesday and so on and so forth during the relevant period.
- (b) SRT shall ensure that any technology for determining the number of passengers travelling in each class of accommodation that is fitted on the Train Fleet remains operational and in good working order from the date that it is fitted throughout the Term.
- (c) SRH acting reasonably shall have the right to obtain such other information that SRT has which may provide a more detailed or accurate view of the extent of use by passengers of the Passenger Services including information about ingress and egress of passengers at ticket gates at Stations.

1.7 Manual Passenger Counts

- (a) SRH shall have the right to require SRT to carry out manual counts in relation to all of the Passenger Services at such times as may be required and in such manner (including as to levels of accuracy and the number of days) as may be specified from time to time by SRH.
- (b) Without prejudice to paragraph 1.7(a), in the absence or failure of the technology referred to in paragraph 1.6, a full programme (submitted to and approved by SRH) of manual counts on all Passenger Services shall be carried out or procured by SRT at least twice a year.

- (c) SRT shall supply the details of any such counts undertaken to SRH, as soon as reasonably practicable but within 6 weeks from the date of completion of such counts, in such form as SRH may stipulate.
- (d) SRH shall be entitled to audit such counts (whether by specimen checks at the time of such counts, verification of proper compliance with the manner approved by SRH or otherwise). In the event that such audit reveals, in the reasonable opinion of SRH, a material error, or a reasonable likelihood of material error, in such counts, SRH may require the counts to be repeated or the results adjusted as it considers appropriate, and in these circumstances SRT shall pay to SRH the costs of any such audits.

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

2. **National Passenger Surveys**

- 2.1 SRH and/or the Authority may use National Passenger Surveys or alternative arrangements to measure the level of passenger satisfaction with the Operator Services;
- 2.2 SRH and/or the Authority shall agree with the Passenger's Council or other provider when (normally twice per annum) and where National Passenger Surveys or alternative arrangements are to be carried out;
- 2.3 SRT shall if required by SRH and/or the Authority grant access on trains or at stations to the Passenger's Council or other provider (or its representatives and agents including SRH) to carry out National Passenger Surveys or alternative arrangements;
- 2.4 SRT shall co-operate with the Passenger's Council or other provider and SRH (in such manner as the Passenger's Council or other provider may reasonably request or as SRH and/or the Authority may reasonably direct) in order to enable the Passenger's Council or other provider to carry out National Passenger Surveys or alternative arrangements. This shall include any additional questions or surveys SRH and/or the Authority may request the Passenger's Council or other provider to conduct on SRH's and/or the Authority's behalf in addition to the National Passenger Surveys;
- 2.5 SRT shall immediately upon receipt of National Passenger Survey or alternative results forward the same to SRH and the Authority;
- 2.6 SRH, the Authority and/or the Passenger's Council or other provider may from time to time Publish the results of each National Passenger Survey or alternative arrangements.

3. **Passenger View Surveys**

- 3.1 SRT shall carry out or procure the carrying out of regular surveys or consultations on qualitative aspects of Operator Services with passengers or potential passengers employing the methodology and sample size as set out in the Survey Methodology and shall make available to SRH the findings of any surveys or consultations which SRT (or the Parent, Affiliate or their respective agents) commission in respect of any Operator Services.

SCHEDULE 1.6

THIS IS SCHEDULE 1.6 REFERRED TO IN THE FOREGOING SCOTRAIL GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND SCOTRAIL TRAINS LIMITED

Business Plan Commitments

1. Business Plan Commitments

In each Operator Year, SRT shall deliver the Business Plan Commitments as detailed in the Business Plan and in accordance with the Business Plan.

2. Failure to Deliver Business Plan Commitments

- 2.1. If SRH and/or the Authority reasonably considers that SRT is likely to fail to deliver any Business Plan Commitment, SRH and/or the Authority may give notice to SRT requiring SRT to perform or deliver such relevant requirement of the Business Plan Commitment as SRH and/or the Authority may reasonably determine.
- 2.2. If SRT fails to perform or deliver any relevant requirement of a Business Plan Commitment as SRH and/or the Authority may specify in a notice to SRT in accordance with paragraph 2.1, this shall constitute a contravention of this Agreement.
- 2.3. SRT shall not be relieved of any of its obligations under this Agreement as a result of any comment or failure to comment by SRH and/or the Authority on any Business Plan or any agreement with or approval, implicit or explicit, of any Business Plan by SRH and/or the Authority at any time.

3. Continuation of Availability

- 3.1. Save as expressly provided in this Schedule 1.6, SRT shall:-
 - (a) maintain facilities and assets established in accordance with its Business Plan Commitments throughout the remainder of the Term so that such shall be kept (and where necessary for those purposes replaced, improved or renewed) in an effective and efficient working order and state of repair and fit for the purpose of facilitating the provision of Passenger Services in accordance with SRH's and/or the Authority's stated policy objectives and pass the same to the Successor Operator at the end of the Term free of any charge or encumbrances and at no cost to the Successor Operator, the Authority and/or SRH in a condition commensurate with such maintenance; and
 - (b) maintain services and activities in accordance with its Business Plan Commitments throughout the remainder of the Term, so that such shall be provided at the standard required under its Business Plan Commitment establishing such services and activities throughout the remainder of the Term.
- 3.2. SRT shall be deemed to be in compliance with paragraph 3.1, notwithstanding temporary non-availability due to accidental damage or vandalism or maintenance, repair or replacement activities, or employees absence, subject in each case to SRT taking all reasonable steps to keep any such period of temporary non-availability to a minimum. Where a Business Plan Commitment includes a commitment regarding employees or particular appointments SRT plans to make:-
 - (a) SRT shall maintain each of the said employees or appointments from the date of its first provision of such post (which shall be the Service Commencement Date where the post is in existence at that date) for the remainder of the Term;
 - (b) the obligation of SRT applies subject as otherwise expressly provided in this Schedule 1.6 and shall not be regarded as breached by temporary absences (for example for sickness or holiday) or between appointments to the relevant post (subject to SRT

using all reasonable endeavours to keep the duration between appointments as short as reasonably practicable and to nominate suitably qualified and available interim or stand-in employees); and

- (c) this obligation is without prejudice to the rights of SRT in relation to the numbers or deployment of its other employees.

4. Expenditure

Where a Business Plan Commitment provides for the expenditure of an annual amount (or an amount over some other period) by SRT or procured by SRT to be expended, that amount:

- (a) is assessed net of VAT recovered or recoverable by SRT; and
- (b) is the amount required to be expended by SRT itself or procured by SRT to be expended.

5. Liaison and Co-operation

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

6. Nature of Commitment

- 6.1. The Business Plan Commitments shall be in addition to any obligation of SRT elsewhere in this Agreement and nothing in this Schedule 1.6 shall limit or restrict an obligation imposed on SRT elsewhere in this Agreement.
- 6.2. Where in this Schedule 1.6 (*Business Plan Commitments*), references are made to particular manufacturers or suppliers of equipment or services or sub-contractors, SRT may fulfil its relevant commitment by using reasonable equivalents with the prior written consent of the Authority and SRH.
- 6.3. Each Business Plan Commitment shall come to an end on expiry of the Term for whatever reason, save in respect of any accrued payments owed but not yet paid.

7. Expenditure Commitments

- 7.1. All expenditure commitments related to the Business Plan Commitments shall be expressed in nominal terms with respect to the relevant Operator Year in which such Business Plan Commitments are to be delivered.
- 7.2. For the avoidance of doubt, all amounts which SRT has committed (whether unconditionally or otherwise) pursuant to this Schedule 1.6 to expend in connection with improvements to track, Stations or Depots shall be in addition to any expenditure made by Network Rail as part of its infrastructure improvements or maintenance programme to the extent such expenditure is not directly funded or reimbursed by SRT.

8. Review of Compliance

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

SCHEDULE 1.7

THIS IS SCHEDULE 1.7 REFERRED TO IN THE FOREGOING SCOTRAIL GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND SCOTRAIL TRAINS LIMITED

Operator Services

1. Operator Services

SRT shall at all times during the Term provide and operate the Operator Services specified in this Schedule 1.7 and the Passenger Services.

2. Restrictions relative to Operator Services

2.1 SRT shall not directly or indirectly, without the prior written consent of SRH and the Authority, carry on any business or activity other than the provision and operation of the Operator Services.

2.2 SRH and the Authority may impose such conditions to their consent as they consider appropriate for the purpose of securing the continuity of the provision of Operator Services at the end of the Term.

2.3 SRT shall not during the Term, without the consent of SRH and the Authority:

- (a) provide or operate any railway passenger services other than the Passenger Services or Charter Services;
- (b) operate any stations or light maintenance depots, other than the Stations and the Depots; or
- (c) hold shares, participations or any other interest in any other company or body corporate unless such company or body corporate is:-
 - (i) Network Rail; or
 - (ii) owned directly or indirectly by another participant in the railway industry and the holding is incidental to SRT's participation in an Inter-Operator Scheme or any other arrangement designed to ensure or facilitate co-operation between such participants or between any such participants and any other person.

2.4 SRT shall not engage any Operator Employee in any activity or business which it may not conduct or engage in under this paragraph 2.

3. Station Services

3.1 The Station Services shall comprise:

- (a) the provision of any services to persons at the Stations or to Train Operators whose trains call at such Stations, provided that such services:
 - (i) are made available only or principally to passengers alighting from or joining trains calling at such Stations and to such Train Operators;
 - (ii) are provided in connection with the calling of trains at such Stations and are not designed to encourage, and do not have the effect of encouraging, passengers or other persons to use such Station Services other than in connection with a journey on a train calling at such Stations;

(iii) exclude the sale or issue (for a charge) of any goods or items not included in the price of a Fare;

(iv) may include car parking; and

(b) the provision of access to any person under an Access Agreement at the Stations.

3.2 The Station Services shall include the provision of any service which SRT may provide, or may be required to provide, under any Access Agreement in effect on the Commencement Date or as lawfully directed by the ORR from time to time.

4. **Light Maintenance Services**

4.1 Light Maintenance Services shall comprise:

- (a) the provision of access to any other person under an Access Agreement;
- (b) the carrying out of inspections of rolling stock vehicles;
- (c) the carrying out of maintenance work on rolling stock vehicles of a kind which is normally carried out at regular intervals of 12 months or less;
- (d) replacement of failed components and consumables on rolling stock vehicles;
- (e) the preparation of rolling stock vehicles for service;
- (f) the stabling or other temporary holding of rolling stock vehicles;
- (g) the refuelling of rolling stock vehicles;
- (h) the replenishment of water tanks; and
- (i) the cleaning of the exterior or the interior of rolling stock vehicles,

in each case for itself and/or other Train Operators, at the Stations and at the Depots.

4.2 Light Maintenance Services shall include the provision of any service which SRT may provide, or may be required to provide, under any Access Agreement in effect on the Commencement Date or as lawfully directed by the ORR from time to time.

4.3 SRT shall offer the Caledonian Sleeper Franchisee a Depot Access Agreement at Inverness Depot.

5. **Ancillary Services**

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

- 5.1 the selling, lending or hiring of any goods or rights and the provision of any services (whether for a charge or not) on any train used in the provision of the Passenger Services where such goods or services are sold or provided principally (subject to paragraph 5.7) for consumption or use on that train, including the sale of any Fares, meals, light refreshments, newspapers, magazines, books, entertainment materials or media and communications connectivity;
- 5.2 the provision of any service at any station which, if provided on a train used in the provision of the Passenger Services, would fall within paragraph 5.1 or which, if provided at a Station, would fall within paragraph 3 and which, in each case, is made available only or principally to

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

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

provided that this paragraph shall not apply to any employee lent, seconded, hired or contracted out under any of paragraphs 5.1 to 5.3 inclusive and 5.5 to 5.16 inclusive, or engaged in any other activity which is permitted under this Schedule 1.7;

- 5.5 any heavy maintenance of rolling stock vehicles which does not fall within the Light Maintenance Services on behalf of any other person at all depots for which SRT is the Depot Facility Owner, subject to the number of persons engaged or employed in such activity not exceeding by more than 10 per cent. the number of Operator Employees so engaged or employed on the Commencement Date;
- 5.6 the selling at any location of any Fare which is valid, in whole or in part, on the Passenger Services and the selling of any other Fare at any location where such Fares may be purchased from SRT on or before the date of signature of this Agreement or at any other location provided that the majority of Fares sold at any such other location shall be Fares which are valid, in whole or in part, on the Passenger Services;
- 5.7 the selling, in conjunction with any Fare, of any other rights which entitle the purchaser thereof to:
- (a) travel on any other train or light rail service;
 - (b) travel on any aircraft;
 - (c) travel on any shipping or ferry service;
 - (d) travel on any bus; or
 - (e) attend any event or attraction or enter any location;
- 5.8 the lending, seconding, hiring or contracting out of Operator Employees to other Train Operators in order to enable such Train Operators to provide services at the Stations to passengers travelling on such operators' trains;
- 5.9 the provision of telephone, internet and mobile data services information relating to railway passenger services within Great Britain to passengers;
- 5.10 the supervision, management and training of train crew of other Train Operators provided such activity is necessarily incidental to the provision of the Passenger Services or of ScotRail Operation and could not reasonably be carried out by or through an Affiliate of SRT;

- 5.11 subject to obtaining the express consent of SRH and the Authority, the subleasing, hiring, licensing, lending of any rolling stock vehicles or other assets of SRT or the lending, hiring or contracting out of any employees of SRT or the provision of any other services to Network Rail or any other Train Operator on an emergency basis;
- 5.12 the licensing or permitting of any other person (including an Affiliate of SRT) to carry out any activity or business, in connection with the provision of the Operator Services, or otherwise, on any rolling stock vehicle operated by SRT, at any Station at any Depot, or otherwise (including the letting, leasing or licensing (on an exclusive basis or otherwise) of any part or all of a Station or Depot to such other person);
- 5.13 such other activity or business as may be reasonably necessary for the purpose of providing any other Operator Services or complying with this Agreement provided that it could not reasonably be carried out by or through an Affiliate of SRT;
- 5.14 the provision or operation of Charter Services, subject to the Train Mileage of such Charter Services not exceeding in any Reporting Period 1 per cent. of the scheduled Train Mileage of Passenger Services provided by SRT in such Reporting Period, without the consent of SRH and the Authority;
- 5.15 the provision of consultancy services reasonably ancillary to the provision of the other Operator Services; and
- 5.16 any services or activity not falling within paragraphs 3, 4 or 5.1 to 5.16, subject to the gross value of any such services or activity (excluding any attribution of costs) not exceeding £10,000 per annum each and in aggregate no more than £100,000 per annum in each Operator Year, provided that in the second and each subsequent Operator Year, these amounts will be adjusted in accordance with the following formula:

Adjusted Amount = Original Amount x RPI

where RPI is the quotient of the Retail Prices Index for the January which immediately precedes the commencement of that subsequent Operator Year divided by the Retail Prices Index for January 2022.

SCHEDULE 1.8

THIS IS SCHEDULE 1.8 REFERRED TO IN THE FOREGOING SCOTRAIL GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND SCOTRAIL TRAINS LIMITED

Restrictions of Use**Part 1****Extended Restrictions of Use****1. Notice of Proposed Possessions Strategy and Network Change**

1.1. SRT shall notify SRH:

- (a) as soon as reasonable practicable upon receiving any notification from Network Rail (including pursuant to Part D or Part G of the Network Code) of any proposal to implement works which require a programme of co-ordinated Restrictions of Use extending over the periods specified in condition D6.1.1 of the Network Code; and
- (b) a reasonable period in advance of:
 - (i) responding to Network Rail in respect of any notification referred to in paragraph 1.1(a);
 - (ii) appealing against any aspect of the proposed extended Restriction of Use specified in any Possessions Strategy Notice;
 - (iii) submitting any notification to Network Rail (pursuant to Part G of the Network Code) or any proposal to implement a Network Change; and
 - (iv) notifying Network Rail that it believes that a Network Change has occurred due to any change to the operation of the network,

in order to allow the consultation pursuant to paragraph 1.2 to take place in a timely manner should it be required.

1.2. If and to the extent requested by SRH, SRT shall:

- (a) consult SRH in relation to any of the matters referred to in paragraph 1.1;
- (b) provide to SRH copies of any notices, correspondence or other information exchanged between Network Rail and SRT in respect of those matters; and
- (c) object to any such proposal, make representations to Network Rail in respect of any notification referred to in paragraph 1.1(a) and to withhold consent in respect of any such proposals and obtain SRH's prior approval of any settlement or compromise with Network Rail prior to offering or accepting the same.

2. Implementation of Works Specified in any Possession Strategy Notice

2.1. SRT shall co-operate with Network Rail, SRH and any other relevant party in connection with any proposed extended Restriction of Use specified in any Possessions Strategy Notice.

2.2. SRT shall co-operate with Network Rail in Network Rail's endeavours to obtain all consents required for the carrying out of each such extended Restriction of Use, including any required consent under Part D of the Network Code and under Part G of the Network Code in respect of any related Network Change.

- 2.3. SRT's obligations under paragraphs 2.1 and 2.2 shall not require it to take or omit to take, nor excuse it from taking or omitting to take, any action that would be prejudicial to:
- (a) proper performance of its obligations under this Agreement; or
 - (b) the pursuit of reasonable profit from the proper performance of its obligations under the Services Agreement.

3. Initiation of Change

- 3.1. SRT shall, if so requested by SRH (by notice given by SRH which specifically refers to this paragraph) use reasonable endeavours to pursue:-
- (a) a Network Change Proposal; and
 - (b) any Material Change Proposal or a Major Change Proposal specified in writing by SRH in the notice so given. In this paragraph, the expressions "**Material Change Proposal**" and "**Major Change Proposal**" shall have the same meaning as in the Station Access Conditions for the Stations, as amended from time to time.
- 3.2 Where SRT uses its reasonable endeavours pursuant to paragraph 3.1, such will be a Change.

Part 2**Major Scottish Projects****1. Implementation of Major Scottish Project**

- 1.1 SRT shall co-operate with the Authority and any other relevant party in connection with each Major Scottish Project;
- 1.2 SRT shall co-operate with the Authority in the Authority's or a third party's endeavours to obtain or procure the obtaining of all necessary consents required for the carrying out of each Major Scottish Project, including any approval required and any Network Change required under the Network Code;
- 1.3 SRT's obligation under paragraph 1.1 shall not require it to take or omit to take nor excuse it from taking or omitting to take any action that would be prejudicial to:-
 - (a) proper performance of its obligations under this Agreement; or
 - (b) the pursuit of reasonable profit from the proper performance of its obligations under this Agreement.

2. Notwithstanding the terms of paragraph 1.3, where SRT's co-operation is required in connection with a Major Scottish Project, it shall constitute a Change save to the extent that the Major Scottish Project or any part thereof is addressed directly by any provisions of this Agreement and where such provisions do not indicate that SRT's efforts or actions in respect of the same (including the granting of permission, taking of no action or simple acquiescence or activity or exercise of a right) shall constitute a Change or where such provisions indicate that SRT's effort or actions shall not constitute a Change.

SCHEDULE 2

THIS IS SCHEDULE 2 REFERRED TO IN THE FOREGOING SCOTRAIL GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND SCOTRAIL TRAINS LIMITED

Assets, Leases, Third Parties, Other Operations and Schemes

Schedule 2.1:	Property Leases
Schedule 2.2:	Security of Access Assets, Rolling Stock Leases, Station and Depot Leases
Schedule 2.3:	Third Party Delivery of Passenger Services and Other Franchisees
Schedule 2.4:	Other Operations
Schedule 2.5:	Transport, Travel and Other Schemes Appendix: List of Transport, Travel and Other Schemes
Schedule 2.6:	Inverness Depot

SCHEDULE 2.1**THIS IS SCHEDULE 2.1 REFERRED TO IN THE FOREGOING SCOTRAIL GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND SCOTRAIL TRAINS LIMITED****Property Leases**

1. SRT shall not without the prior written consent of SRH and the Authority (whether generally or on a case-by-case basis and which consent shall not be unreasonably withheld):
 - 1.1. enter into any new Property Lease; or
 - 1.2. effect any amendment to any Property Lease, except to the extent that SRT is required to do so by virtue of any station or depot access conditions to which it is a party (and in which case, SRT shall inform SHR and the Authority in writing of any proposed amendment prior to effecting it).
2. In respect of any new Property Leases with Network Rail, SRT shall enter into such Property Leases:
 - 2.1. with the intent that Section 31 of the Act shall apply to such leases; and
 - 2.2. in the Agreed Form marked **SL**, **MSAL**, **DL** or **IA** (as appropriate).
3. In respect of any new Property Leases with the Caledonian Sleeper Franchisee, SRT shall enter into such Property Leases:
 - 3.1. with the intent that Section 31 of the Act shall apply to such Property Leases; and
 - 3.2. in the Agreed Form marked **SAL** and **DAL** (as appropriate).
4. In respect of any assignation or amendment of any Property Lease to which Section 31 of the Act applied on its grant, each of the Authority, SRH and SRT acknowledge that it is their intention that Section 31 of the Act shall continue to apply to such assigned or amended Property Lease.

SCHEDULE 2.2

THIS IS SCHEDULE 2.2 REFERRED TO IN THE FOREGOING SCOTRAIL GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND SCOTRAIL TRAINS LIMITED

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

1. Novation of Access Agreements During the Term

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

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

novate its interest under any relevant Access Agreement (and any related Collateral Agreement) to the Authority and/or SRH (as determined in the request) or as the Authority and/or SRH may direct (with the Authority having final determination of all matters).

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

1.3 Such novation shall be on such terms as the Authority and/or SRH may reasonably require (with the Authority having final determination of all matters), including:

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

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

1.4 SRT shall, on the occurrence of any of the circumstances specified in paragraph 1.1 in relation to any other Train Operator who is a party to an Access Agreement to which SRT is also party, agree to the novation of the relevant Train Operator's interest under the relevant Access Agreement to the Authority and/or SRH or as the Authority and/or SRH may direct (with the Authority having final determination of all matters), subject, to the extent applicable, to the consent of the ORR. The provisions of paragraph 1.3 shall apply to any such novation.

1.5 SRT shall notify SRH on becoming aware of any circumstances which might lead to the Authority and/or SRH being able to require SRT to novate its interest or agree to the novation of another Train Operator's interest under this paragraph 1, and SRH shall notify the Authority upon receipt of the notification from SRT.

2. Rolling Stock Related Contracts and Insurance Arrangements

2.1 SRT shall not:

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

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

2.2 SRT shall not, without the prior written consent of SRH and the Authority,

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

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

2.4 SRT shall provide SRH with copies of the consolidated Rolling Stock Related Contracts as they are procured from time to time by SRT (which shall also be provided to the Authority upon request).

3. Assignment of Property Leases during Term

3.1 SRT shall (other than on termination of this Agreement, for which the provisions of paragraph 4.6 of Schedule 15.4 (*Provisions Applying on and after Termination*) shall apply) following receipt of a notice purporting to terminate or irritate a Property Lease or on becoming aware of any proceedings or any other steps having or purporting to have similar effect, if and to the extent requested by the Authority and/or SRH in writing, assign its interest under all or any Property Leases to the Authority and/or SRH (as determined by the request) or as the Authority and/or SRH may direct (with the Authority having final determination of all matters), subject where applicable to the agreement of any other party to such Property Lease or the ORR.

3.2 Such assignment shall be on such terms as the Authority and/or SRH may reasonably require (with the Authority having final determination of all matters), including:

- (a) that SRT shall not be released from any accrued but unperformed obligation, the consequences of any antecedent breach of a covenant, undertaking or obligation in the Property Leases or any liability in respect of any act or omission under or in relation to the Property Lease prior to, or as at the date of, any such assignment (except to the extent that the Authority and/or SRH or its nominee agrees to assume responsibility for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant assignment); and

- (b) that neither the Authority nor SRH nor its nominee shall be obliged, in connection with such assignment, to agree to assume responsibility for any unperformed obligation, liability or consequences of a breach referred to in paragraph 3.2(a), and SRT shall indemnify the Authority and/or SRH or its nominee, as the case may be, on an after-tax basis against any costs, losses, liabilities or expenses suffered or incurred in relation thereto.

3.3 SRT shall, on the occurrence of any of the circumstances specified in paragraph 3.1 in relation to any other Train Operator who is a party to a Property Lease to which SRT is also party, agree to the assignment of such Train Operator's interest under the relevant Property Lease to the Authority and/or SRH or as SRH and/or the Authority may direct (with the Authority having final determination of all matters), subject, where applicable, to the consent of Network Rail. The provisions of paragraph 3.2 shall apply to any such assignment.

3.4 SRT shall notify SRH on becoming aware of any circumstances which might lead to the Authority and/or SRH being able to require SRT to assign its interest or agree to the assignment of another Train Operator's interest under this paragraph 3 and SRH shall notify the Authority upon receipt of the notification from SRT.

4. **Station And Depot Leases**

4.1 SRT shall at all times enforce its rights under each Station Lease and Depot Lease.

4.2 SRT shall not:

- (a) terminate or irritate or agree to terminate or irritate in whole or in part, or take or omit to take any other action which might result in the termination or irritancy of any Station Lease or Depot Lease;
- (b) assign all or part of its interest under any Station Lease or Depot Lease;
- (c) sublet the whole or substantially the whole of the property comprised in any Station Lease or Depot Lease; or
- (d) by any act or omission lose any of its rights to enforce those provisions of any Station Lease or Depot Lease which are in SRT's favour,

except to the extent that SRH and the Authority may otherwise agree from time to time (such agreement not to be unreasonably withheld if SRT has made arrangements, reasonably satisfactory to SRH and the Authority, for the continued operation of such Station or Depot (as the case may be) for the remainder of the Term or if consent to the Closure of the relevant Station or Depot has been granted).

5. **Station Subleases**

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

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

5.2 If so requested by SRH and/or the Authority, SRT shall:

- (a) extend each Station Sublease on the same terms for such period as SRH and/or the Authority may request (including a period equivalent to the term of the Train Operator

who is the lessee under such Station Sublease) (with the Authority having final determination of all matters); and

- (b) if such Station Sublease terminates (which for the purposes of this paragraph 5.2(b) shall include the termination, at or around the time of termination of this Agreement, of a station sublease in respect of which SRT was the lessor), grant a new Station Sublease on the same terms to such Train Operator and for such period as SRH and/or the Authority may request (including a period equivalent to the term of the Train Operator who is the lessee under such Station Sublease),

subject, where required, to the consent of Network Rail (and, if required, the relevant sub-lessee) and to the duration of the relevant Station Lease.

- 5.3 SRT shall notify SRH immediately on it becoming aware of any event which might give SRT a right to surrender, irritate or terminate any Station Sublease. SRT shall notify SRH if it wishes to surrender, irritate or terminate any such Station Sublease but shall not (without SRH's and the Authority's prior written consent) effect such surrender, irritancy or termination until the date which occurs 3 months after the date of such notice. SRH shall notify the Authority upon receipt of any notification from SRT in relation to this paragraph 5.3.
- 5.4 SRT shall, throughout the term of any Station Sublease ensure that it does not, through any act or omission by it, lose any right to enforce any or all of the terms of that Sublease which are in SRT's favour.

6. SRH rights relating to Access Agreements and Property Leases

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

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

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

SCHEDULE 2.3**THIS IS SCHEDULE 2.3 REFERRED TO IN THE FOREGOING SCOTRAIL GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND SCOTRAIL TRAINS LIMITED****Third Party Delivery of Passenger Services and Other Franchisees****1. Sub-contracting any Passenger Services**

- 1.1 Subject to paragraph 1.2, SRT may not subcontract or delegate the provision of all or any part of the Passenger Services without the prior written consent of SRH.
- 1.2 SRT may subcontract or delegate the provision of the Passenger Services, provided that:
- (a) SRH receives prior written notice of any such subcontracting or delegation;
 - (b) SRT continues to be party to all Access Agreements and Property Leases necessary to provide such Passenger Services and to enjoy all relevant access and operational rights thereunder;
 - (c) SRT continues to specify and control (within the limitations imposed on it by Schedule 5 (*Fares*)) the terms and conditions (subject to the requirements of the Inter-Operator Schemes) on which such Passenger Services are to be provided, including the determination of the Price or Child Price (as the case may be) of any Fares;
 - (d) the Train Mileage of the Passenger Services so delegated or subcontracted does not without the consent of SRH exceed 1 per cent. of the aggregate scheduled Train Mileage of SRT in any Reporting Period; and
 - (e) SRT continues to perform its obligations under Schedule 1.1 (*Service Development*) in respect of any subcontracted or delegated services.
- 1.3 Any such subcontracting or delegation shall not relieve SRT from any of its obligations under this Agreement, including its obligations under this paragraph 1 and Schedule 14 (*Preservation of Assets*).

2. Franchisees

- 2.1 If the franchise agreement of a franchisee terminates or a railway administration order is made in respect of a franchisee, SRT shall co-operate with any reasonable request of SRH and/or the Authority to ensure:
- (a) that the services provided or operated by such franchisee may continue to be provided or operated by any successor Train Operator or the railway administrator; and
 - (b) that the benefit of any arrangements between SRT and such franchisee which were designated as a Key Contract under such franchise agreement immediately prior to its termination or to a railway administration order being made will continue to be provided to any successor Train Operator or to the railway administrator.
- 2.2 The benefit of any arrangements of the type referred to in paragraph 2.1(b) shall be provided on substantially the same terms as previously obtained by the relevant franchisee, subject to clause 7 and paragraph 2.3, provided that the Authority may exclude or modify any terms agreed or amended by such franchisee in the 12 months preceding the date on which such franchisee's franchise agreement was terminated or the date on which the relevant railway administration order was made which were, in the Authority's reasonable opinion, to the material detriment of such franchisee's business. The benefit of such arrangements shall be provided for such period as the Authority may reasonably require to allow the relevant Train

Operator or railway administrator to renegotiate such arrangements or make alternative arrangements.

- 2.3 SRT shall notify SRH and the Authority of its intention to terminate any contract with any other Train Operator which is designated as a "**Key Contract**" under that Train Operator's franchise agreement and shall give that Train Operator sufficient notice to enable it to make suitable alternative arrangements for its passengers without causing disruption to the railway passenger services provided by such Train Operator.
- 2.4 If the franchise agreement of a franchisee terminates in contemplation of the entry into or entry into effect of a new franchise agreement with the same franchisee in respect of all or a material part of the relevant railway passenger services, SRT shall waive any event of default or other right it may have to terminate any agreement with such franchisee arising out of such termination, provided that the entry into or entry into effect of such new franchise agreement takes place.
- 2.5 References in this paragraph 2 to a franchisee include references to any franchise operator of that franchisee.

SCHEDULE 2.4**THIS IS SCHEDULE 2.4 REFERRED TO IN THE FOREGOING SCOTRAIL GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND SCOTRAIL TRAINS LIMITED****Other Operations****1. Rolling Stock Testing and Commissioning**

SRT shall, to the extent reasonably requested by SRH and/or the Authority and subject to payment of any reasonable costs by the relevant third party, co-operate with any third party which SRH and/or the Authority may specify (including, without limitation, a Successor Operator, any other franchisee of the Authority (or SRH on behalf of the Authority)), a rolling stock vehicle manufacturer, a rolling stock vehicle refurbishment contractor, a Charter Service operator, Network Rail, the Authority and/or SRH) in connection with the testing and commissioning of new rolling stock vehicles or any new equipment to be fitted to rolling stock vehicles (whether such rolling stock vehicles are new or otherwise). Such co-operation shall not unreasonably disrupt the provision and operation of the Operator Services and may include:

- 1.1. the movement of test trains within and around depots;
- 1.2. making available suitably qualified personnel to operate test trains along the Routes and provide information on the Routes;
- 1.3. making Train Slots available for such purposes;
- 1.4. granting or procuring the grant of access to the third party and its representatives to any relevant facilities; and
- 1.5. the delivery of rolling stock vehicles to specific locations.

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

2.1 Except to the extent that SRH and the Authority agrees otherwise, SRT shall not:

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

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

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

3. Staffing at Stations

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

- (a) ceasing to be staffed at all times of the day at which railway passenger services are scheduled to call; or
- (b) being staffed at times which are less than the scheduled staffing times at the Commencement Date,

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

- 3.2 Subject to paragraph 3.3, SRT shall in respect of its own staff have regard to the views and representations of SRH, the Authority and the Rail Passengers' Council before implementing any proposals pursuant to paragraph 3.1.
- 3.3 SRT shall not implement any proposals in respect of its own staff pursuant to paragraph 3.1 at any Station without the agreement of SRH and the Authority.
- 3.4 SRT shall not reduce the opening hours of the Stations, or of the ticket office(s), waiting rooms or areas, or similar passenger facility at the Stations from the opening hours in respect of the same in place at the Commencement Date without the prior agreement of SRH and the Authority.

4. **Royal Train**

- 4.1 SRT shall, if and to the extent requested by any person who from time to time is the operator of the same (and subject to the payment by such person of any reasonable costs of SRT), co-operate in the provision by such person of railway passenger services for Her Majesty Queen Elizabeth II or any successor head of state or members of the family or representatives of either of them.
- 4.2 The provision of railway services for Her Majesty Queen Elizabeth II or any successor head of state or members of the family or representatives of either of them may include:
 - (a) running a "sweeper" train in front of the royal train;
 - (b) having spare locomotives on standby as rescue traction; and/or
 - (c) carrying out security requirements or co-operating with other persons in ensuring that security requirements are carried out prior to calling at any station on the Routes.

5. **Charter Services**

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

SCHEDULE 2.5**THIS IS SCHEDULE 2.5 REFERRED TO IN THE FOREGOING SCOTRAIL GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND SCOTRAIL TRAINS LIMITED****Transport, Travel and Other Schemes****1. Integrated Transport Schemes**

- 1.1 SRT shall participate in and comply with its obligations under the Integrated Transport Schemes listed in paragraph 1 of the Appendix to this Schedule 2.5 (*List of Transport, Travel and Other Schemes*).
- 1.2 As and when required by SRH, SRT shall co-operate with the development and promotion of any schemes proposed by SRH or any third party (including, without limitation, any Local Authority and/or the Authority) and which relate to the integration of any other form of transport with the Operator Services. If SRH reasonably considers that SRT's participation in any such scheme would have no adverse financial effect on SRT, SRH shall be entitled, but not obliged, to designate any such scheme as an Integrated Transport Scheme.
- 1.3 If and to the extent that SRH designates any further integrated transport scheme or proposed scheme as an Integrated Transport Scheme for the purposes of this paragraph 1 then SRT shall participate in and comply with its obligations under such scheme and take such other steps as SRH may reasonably require.
- 1.4 SRH shall consult SRT before designating any scheme an Integrated Transport Scheme under paragraph 1.2 and shall allow SRT a reasonable opportunity to make representations to it with respect to any such designation.
- 1.5 If SRT's participation in any Integrated Transport Scheme or proposed scheme would have an adverse financial effect on SRT, SRH may designate such scheme or proposed scheme as an Integrated Transport Scheme for the purposes of this paragraph 1 and SRT shall participate in and comply with its obligations under such scheme and take such steps as SRH may reasonably require. SRT's compliance with this paragraph 1.5 shall constitute a Change.

2. National and Local Authority Concessionary Travel Schemes

- 2.1 SRT shall, subject to paragraphs 2.3 and 2.8, participate in and comply with its obligations under:
 - (a) the concessionary travel schemes set out in paragraph 2 of the Appendix to this Schedule 2.5 (*List of Transport, Travel and Other Schemes*); and
 - (b) any other concessionary travel scheme which SRT is required to participate in during the Term pursuant to paragraph 2.2.
- 2.2 SRT shall, subject to paragraphs 2.4 and 2.8, if so requested by SRH participate in and comply with its prospective obligations under:
 - (a) any concessionary travel scheme set out in paragraph 2 of the Appendix to this Schedule 2.5 (*List of Transport, Travel and Other Schemes*); and
 - (b) such other concessionary travel schemes as any relevant Local Authority, or the Authority, or SRH may require or request it to participate in.
- 2.3 Subject to the terms of the relevant concessionary travel scheme and paragraph 2.8, SRT shall be entitled to cease to participate in any scheme referred to in paragraph 2.1 where, in the reasonable opinion of SRH:

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

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

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

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

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

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

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

2.7 If SRH and SRT are unable to agree whether SRT will be financially no worse off (within the meaning of the Regulations), SRH and SRT may resolve such dispute in accordance with the Dispute Resolution Rules or the Authority, acting reasonably, may make a determination.

2.8 If SRT's participation in any concessionary travel scheme would make SRT financially worse off (within the meaning of the Regulations), SRH may require such participation, or continued participation, and SRT shall participate in and comply with its obligations under such scheme and take such steps as SRH may reasonably require. SRT's compliance with the terms of this paragraph 2.8 shall constitute a Change and the Budget may be adjusted accordingly (in accordance with paragraph 6 of Schedule 8.1 (*Grant Payments*)).

3. **Multi-Modal Fares Schemes**

3.1 SRT shall, subject to paragraphs 3.3 and 3.9, participate in and comply with its obligations under:

- (a) the multi-modal fares schemes set out in paragraph 3 of the Appendix to this Schedule 2.5 (*List of Transport, Travel and Other Schemes*); and
- (b) any other multi-modal fares scheme which SRT is required to participate in during the Term pursuant to paragraph 3.2.

3.2 SRT shall, subject to paragraphs 3.4 and 3.9, if so requested by SRH, participate in and comply with its prospective obligations under:

- (a) any multi-modal fares scheme set out in paragraph 3 of the Appendix to this Schedule 2.5 (*List of Transport, Travel and Other Schemes*), the terms of which have been amended since the date of signature of this Agreement; and

- (b) such other multi-modal fares schemes as any relevant Local Authority, or the Authority or SRH may require or request it to participate in.
- 3.3 Subject to the terms of the relevant multi-modal fares scheme and paragraph 3.9, SRT shall be entitled to cease to participate in any scheme referred to in paragraph 3.1 where, in the reasonable opinion of SRH:
- (a) SRT's continuing participation in such scheme; and/or
- (b) the obligations assumed by the relevant Local Authority, or Authority or SRH in connection therewith,
- would fail, by way of distribution of income or otherwise, to render SRT financially no worse off.
- 3.4 Subject to paragraph 3.9, SRH shall not require SRT to participate in any scheme referred to in paragraph 3.2 where SRH is reasonably satisfied, that SRT's participation in any such scheme and/or the obligations to be assumed by the relevant Local Authority, or the Authority or SRH in connection therewith, would fail, by way of distribution of income or otherwise to render SRT financially no worse off.
- 3.5 In determining whether SRT shall, pursuant to paragraph 3.3, continue to participate or, pursuant to paragraph 3.4, participate in any multi-modal fares scheme, SRH shall construe the term **financially no worse off** to mean:
- (a) in respect of any multi-modal fares scheme set out in paragraph 3 of the Appendix (*List of Transport, Travel and Other Schemes*), that SRT incurs no materially greater financial loss than the financial loss (if any) incurred by SRT at the Commencement Date under that scheme, as adjusted by reference to any change in the Retail Prices Index since such date;
- (b) in respect of any multi-modal fares scheme which replaces and (in SRH's reasonable opinion) is reasonably similar to any such scheme as may be set out in paragraph 3 of the Appendix, that SRT incurs no materially greater financial loss than the financial loss (if any) incurred by SRT at the Commencement Date under the replaced scheme, as adjusted by reference to any change in the Retail Prices Index since such date; and
- (c) in respect of any multi-modal fares scheme which does not replace or which does replace but which is not (in SRH's reasonable opinion) reasonably similar to any such scheme or schemes as may be set out in paragraph 3 of the Appendix (*List of Transport, Travel and Other Schemes*), the same as the meaning given to that term in the Regulations, as if the Regulations applied to such multi-modal fares scheme.
- 3.6 SRH shall consult SRT before making any request of SRT to participate in any amended or new multi-modal fares scheme pursuant to paragraph 3.2 and shall allow SRT a reasonable opportunity to make representations to it with respect to any such participation.
- 3.7 SRT shall supply to SRH, in respect of any multi-modal fares schemes referred to in paragraphs 3.1 and 3.2 such information within such period as SRH may reasonably require for the purposes of determining whether or not SRT is or will be financially no worse off as a consequence of its participation in any such scheme and/or the obligations to be assumed by the relevant Local Authority, or SRH in connection therewith.
- 3.8 If SRH and SRT are unable to agree whether SRT will be financially no worse off, SRH and SRT may resolve such dispute in accordance with the Dispute Resolution Rules.
- 3.9 If SRT's participation, or continued participation, in any multi modal fare scheme would make SRT materially financially worse off SRH may require such participation, or continued participation, and SRT shall participate in and comply with its obligations under such a scheme

and take such steps as SRH may reasonably require. SRT's compliance with the terms of this paragraph 3.9 shall constitute a Change.

- 3.10 As regards each of the multi-modal fares schemes set out in paragraph 3 of the Appendix to this Schedule 2.5 (*List of Transport, Travel and Other Schemes*), provided the terms of the scheme are not amended, SRT agrees that its continuing participation in the scheme will render SRT financially no worse off.
- 3.11 Within the constraints imposed by competition legislation SRT shall throughout the Term:
- (a) co-operate with SPT to provide travel cards and Glasgow Subway fares as add on fares to Fares;
 - (b) co-operate with local bus operators to provide bus fares as add on fares to Fares; and
 - (c) continue to develop and improve the integration of local bus services with the Passenger Services.
- 3.12 SRT shall act as an impartial retailer at its points of sale of tickets as between its tickets and any relevant multi-operator multi-modal tickets which it is from time to time authorised to sell.
- 3.13 SRT shall use all reasonable endeavours to promote multi-modal tickets including working with Local Authorities and operators of ITSO Certified Smartmedia and other smart ticketing and payment scheme providers within Scotland who may wish to implement smartcard multi-modal ticketing schemes and where SRT's consent is required to such propositions SRT shall not unreasonably withhold or delay granting consent to such propositions,

4. **Discount Fare Schemes**

- 4.1 SRT shall participate in and comply with its obligations under the Discount Fares Schemes.
- 4.2 If SRH:
- (a) effects, or proposes to effect, an amendment to a Discount Fare Scheme;
 - (b) introduces any new Discount Fare Scheme; or
 - (c) ceases to approve a Discount Fare Scheme,
- for the purposes of Section 28 of the Act such amendment, intended amendment, introduction or cessation of approval shall be a Change.
- 4.3 SRH shall provide a reasonable opportunity to SRT to make representations to it before amending, introducing or ceasing to approve a Discount Fare Scheme pursuant to paragraph 4.2.

5. **Inter-Operator Schemes**

- 5.1 SRT shall participate in, and comply with its obligations under, and the terms of, each of the Inter-Operator Schemes set out in paragraph 5 of the Appendix (*List of Transport, Travel and Other Schemes*).
- 5.2 Without limiting paragraphs 5.1 and 5.3, SRT agrees with SRH to be bound by Parts IV and V of Chapter 4 of the Ticketing and Settlement Agreement and shall not amend, or agree or propose to amend, the Ticketing and Settlement Agreement without the prior written consent of SRH and the Authority.
- 5.3 SRT shall not amend, or agree or propose to amend, any Inter-Operator Scheme other than in accordance with its terms.

- 5.4 SRT shall:
- (a) provide reasonable notice to SRH of any proposal to amend any Inter-Operator Scheme which it intends to make or of which it receives notification and which is reasonably likely materially to affect the provision of Operator Services; and
 - (b) have regard to SRH's views in respect of any such proposal.
- 5.5 If an amendment is effected or proposed to be effected to an Inter-Operator Scheme which requires the consent or approval of SRH in accordance with the terms thereof, such amendment shall be treated as a Change to the extent and only to the extent that SRT makes a saving as a consequence of such amendment or proposed amendment.

6. **ITSO Ticketing/Smartmedia Technology**

- 6.1 SRT shall:
- (a) ensure that all ITSO Certified product retailing and fulfilment equipment, media, readers and validators (including on any automated ticket gates where fitted) at Stations is fit for the purpose of enabling SRT to comply with its obligations pursuant to paragraph 6.3. Where the aforesaid items are not fit for the said purpose SRT shall take all steps necessary (including for the avoidance of doubt replacing) to make the aforesaid items fit for the said purpose
 - (b) utilise an ITSO Certified back office (being compliant with the latest version of the ITSO Specification available at the time of its deployment) which:-
 - (i) is ITSO compliant; and
 - (ii) is able to:
 - A. operate hotlisting of SRT's products and cards; and
 - B. is capable of making available for collection, SRT's ITSO smart ticketing products and to SRT's ITSO Certified Smartmedia or other compatible smartmedia; and
 - (c) utilise any other equipment, commercial arrangements and/or licences (being the most current version available at the time of their deployment) as are, in SRH's reasonable opinion, necessary in order to operate an efficient and effective ITSO-based scheme across the entire area in which Passenger Services are provided.
- 6.2 Where SRT operates Passenger Services at stations where SRT is not the Facility Owner:
- (a) SRT shall co-operate with the relevant Facility Owner and any other Train Operators operating passenger services from such stations with the intention of ensuring that ITSO equipment operated by SRT pursuant to its obligations under this paragraph 6 is fully compatible with the ITSO equipment employed by such relevant Facility Owner or other Train Operators operating passenger services from such stations with the intention of ensuring that ITSO equipment operated by SRT pursuant to its obligations under this paragraph 6 is fully compatible with the ITSO equipment employed by such relevant Facility Owner or other Train Operator (including as to ITSO Certified Smartmedia functionality to ensure as far as practicable reciprocal operation of such Smartmedia). It shall not be a breach of this paragraph 6.2 if the relevant Facility Owner or Train Operators fail to utilise ITSO compatible facilities at such stations; and
 - (b) SRT shall be permitted to utilise in relation to such stations reasonable non-station based equipment solutions (including train borne validators) for the purposes of delivering some or all of the required ITSO equipment functionality.

- 6.3 SRT shall ensure that:
- (a) passengers travelling on any of the Passenger Services can do so using ITSO Certified Smartmedia for all ITSO Fares;
 - (b) to the extent that the cost of retail is economically viable, that SRT offers OFF- Peak ticket fares using ITSO Certified Smartmedia;
 - (c) passengers travelling on the Passenger Services utilising the ITSO Fares are by default, encouraged to do so using ITSO Certified Smartmedia; and
 - (d) the National and Local Authority Concessionary Travel Schemes referred to in paragraph 2 and Discount Fare Schemes are available and applied through the ITSO Certified Smartmedia wherever this is technically feasible as the relevant type of ITSO Fare or any other type of Fare is available on ITSO Certified Smartmedia.
- 6.4 To the extent that the cost of retail is economically viable, SRT shall use all reasonable endeavours to co-operate with Network Rail, RDG and other Train Operators in relation to the provision of equipment to permit ITSO Certified Smartmedia.
- 6.5 SRT shall (to the extent that the cost of delivery is economically and commercially viable):
- (a) co-operate with Network Rail, RDG and other Train Operators in relation to the provision of equipment to permit ITSO Certified Smartmedia use;
 - (b) co-operate with RDG and other Train Operators in relation to the provision of flexible ticketing schemes by such other Train Operators (including flexible season tickets and/or flexible ticketing schemes based on ITSO Certified Smartmedia);
 - (c) co-operate with RDG and other Train Operators who have ITSO Certified Smartmedia functionality, to ensure reciprocal operation of ITSO Certified Smartmedia;
 - (d) ensure that all ITSO Certified Smartmedia equipment operates to RSPS3002 standards.
 - (e) promote the inter-availability of any smartmedia related ticketing schemes and shall join any relevant RDG approved smartmedia related ticketing scheme such as the Smart Ticketing on National Rail Scheme (STNR) and the South East Flexible Ticketing Programme;
 - (f) promote demand management and passenger benefits by making proposals for the development and implementation of new Smartmedia/flexible or other ticketing products;
 - (g) co-operate with and develop with Local Authorities, bus, ferry, light rail, metro operators and active travel schemes as well as other Train Operators proposals to use or convert and improve any multi-modal fare schemes including the zone boundaries of such schemes to use ITSO Certified Smartmedia and shall not unreasonably withhold or delay its consent to any such proposals;
 - (h) co-operate with and develop with relevant Local Authorities, bus, ferry, light rail, metro operators and active travel schemes in relation to any proposal to implement new and redefine zone boundaries of existing ITSO Certified Smartmedia based schemes including multi modal fare schemes and shall not unreasonably withhold or delay its consent to any such proposals;
 - (i) co-operate and further develop with the Authority a national ITSO smartcard ticketing scheme across multi modes of transport within Scotland including in the creation of Fulfilment Services;

- (j) retain and comply with throughout the Term an ITSO Operating Licence; and
- (k) ensure that its ITSO Certified Smartmedia is capable of holding at least eight ITSO products concurrently including:
 - (i) those developed by the Smart Ticketing on National Rail and the South East Flexible Ticketing Programmes;
 - (ii) other ITSO compliant products including for other forms of transport and, for example, products such as the National Entitlement Card; and
 - (iii) appropriate anti-tear software.

Monitoring Requirements

- 6.6 Commencing with effect from the earlier of the Commencement Date SRT shall within 10 days of the end of each Reporting Period report to SRH:
- (a) the total number of Passenger Journeys made during the relevant Reporting Period;
 - (b) the total number of Passenger Journeys made using ITSO Certified Smartmedia during the relevant Reporting Period; and
 - (c) the total number of ITSO Certified Smartmedia issued during the relevant Reporting Period;
 - (d) the total number of ITSO Certified Smartmedia actively used to make a journey during the relevant Reporting Period;
 - (e) the total number of season tickets sold to ITSO Certified Smartmedia during the relevant Reporting Period; and
 - (f) the total number of ticket offices retailing ITSO Certified products during the relevant Reporting Period.

- 6.7 SRT in respect of the last Reporting Period shall determine the percentage number of Passenger Journeys made using ITSO Certified Smartmedia during the relevant Reporting Year in accordance with the following formula:

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

where:

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

Z is the total number of Passenger Journeys made in the relevant Reporting Year

SRT shall within 10 days of the end of the aforesaid Reporting Period report to SRH the percentage calculated in accordance with the above formula.

- 6.8 Where during the Term SRT becomes Facility Owner of a station SRT shall takeover existing or purchase and install such ITSO Certified product retailing and fulfilment equipment, media, readers and validations that in the reasonable opinion of SRH is necessary at such station that within such period of time as SRH shall reasonably determine.
- 6.9 SRT shall co-operate with the development and promotion of smart ticketing schemes and initiatives led by the Authority including without prejudice to the foregoing by SRT maintaining

the saltire branding of the National Entitlement Card prominently on its issued ITSO Certified Smartmedia subject to the Authority granting a licence to SRT to make use of such branding, if required.

7. Barcode Ticketing Technology

7.1 SRT shall (to the extent that it is economically viable to do so):

- (a) ensure that all Barcode Ticketing product retailing and fulfilment equipment, media, readers and validators (including on any automated ticket gates where fitted) at Stations is fit for the purpose of enabling SRT to comply with its obligations pursuant to paragraph 7.3. Where the aforesaid items are not fit for the said purpose SRT shall take all steps necessary (including for the avoidance of doubt replacing) to make the aforesaid items fit for the said purpose;
- (b) utilise a Barcode Ticketing back office (being compliant with the latest version of the RDG specifications available at the time of its deployment) which:-
 - (iii) interfaces with other National Rail Barcode Ticketing operators or processing systems; and
 - (iv) is able to:
 - C. operate validation of both other Train Operators and SRT's products for those other Train Operators who have systems that are able to validate; and
 - D. is capable of reading and validating other Train Operators' Barcode Ticketing products; and
- (c) utilise any other equipment, commercial arrangements and/or licences (being the most current version available at the time of their deployment) as are, in SRH's reasonable opinion, necessary in order to operate an efficient and effective Barcode Ticketing scheme across the entire area in which Passenger Services are provided.

7.2 Where SRT operates Passenger Services at stations where SRT is not the Facility Owner:

- (a) SRT shall co-operate with the relevant Facility Owner and any other Train Operators operating passenger services from such stations with the intention of ensuring that Barcode Ticketing equipment operated by SRT pursuant to its obligations under this paragraph 7 is fully compatible with the Barcode Ticketing equipment employed by such relevant Facility Owner or other Train Operators operating passenger services from such stations with the intention of ensuring that Barcode Ticketing equipment operated by SRT pursuant to its obligations under this paragraph 7 is fully compatible with the Barcode Ticketing equipment employed by such relevant Facility Owner or other Train Operator. It shall not be a breach of this paragraph 7.2 if the relevant Facility Owner or Train Operators fail to utilise Barcode Ticketing compatible facilities at such stations;
- (b) SRT shall be permitted to utilise in relation to such stations reasonable non-station based equipment solutions (including train borne validators) for the purposes of delivering some or all of the required Barcode Ticketing equipment functionality.

7.3 SRT shall ensure that passengers travelling on any of the Passenger Services can do so using Barcode Ticketing.

7.4 SRT shall use all reasonable endeavours to co-operate with Network Rail, RDG and other Train Operators in relation to the provision of equipment to permit Barcode Ticketing.

7.5 SRT shall (to the extent that it is economically viable to do so):

- (a) co-operate with Network Rail, RDG and other Train Operators in relation to the provision of equipment to permit Barcode Ticketing use;
- (b) co-operate with RDG and other Train Operators in relation to the provision of flexible ticketing schemes by such other Train Operators; and
- (c) co-operate with RDG and other Train Operators who have Barcode Ticketing functionality, to ensure reciprocal operation of Barcode Ticketing;

Monitoring Requirements

7.6 From the Commencement Date SRT shall within 10 days of the end of each Reporting Period report to SRH:

- (a) the total number of Passenger Journeys made during the relevant Reporting Period;
- (b) the total number of Passenger Journeys made using Barcode Ticketing during the relevant Reporting Period; and
- (c) the total number of Barcode Tickets issued by SRT during the relevant Reporting Period;

7.7 SRT in respect of the last Reporting Period in each Reporting Year shall determine the percentage number of Passenger Journeys made using Barcode Ticketing during the relevant Reporting Year in accordance with the following formula:

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

where:

Y is the total number of Passenger Journeys made in the relevant Reporting Year using Barcode Tickets;

Z is the total number of Passenger Journeys made in the relevant Reporting Year

SRT shall within 10 days of the end of the aforesaid Reporting Period report to SRH the percentage calculated in accordance with the above formula.

7.8 Where during the Term SRT becomes Facility Owner of a station, SRT shall takeover existing or purchase and install such Barcode Ticketing product retailing and fulfilment equipment, media, readers and validations that in the reasonable opinion of SRH is necessary at such station and within such period of time as SRH shall reasonably determine.

APPENDIX TO SCHEDULE 2.5

List of Transport, Travel and Other Schemes

Section	Scheme	Description	Elderly	Disabled	Disabled Companion	Young Person	Taxi Card	Blind Companion	Blind	
Local Authority Concessionary Travel Schemes	Local Authority Areas Served									
	Aberdeen	Aberdeen City Council							ü ¹	
	Aberdeenshire & Moray	Aberdeenshire Council					ü		ü ¹	
		Moray Council							ü ¹	
	Angus	Angus Council							ü ¹	
	Clackmannanshire, Falkirk & Stirling	Clackmannanshire Council								ü ¹
		Falkirk Council								ü ¹
		Stirling Council								ü ¹
	Dumfries & Galloway	Dumfries & Galloway Council							ü ¹	
	Dundee	Dundee City Council							ü ¹	
	Eilean Siar	Comhairle nan Eilean Siar							ü ¹	
	Fife	Fife Council	ü	ü	ü			ü	ü ¹	
	Highland	Highland Council		ü	ü			ü	ü ²	
	Lothians	City of Edinburgh Council					ü			ü ¹
		East Lothian Council								ü ¹
		Midlothian Council								ü ¹
	Orkney	Orkney Islands Council							ü ¹	
	Perth & Kinross	Perth & Kinross Council							ü ¹	
	Scottish Borders	Scottish Borders Council						ü	ü ¹	
	Shetland	Shetland Islands Council							ü ¹	
	Strathclyde Partnership for Transport	Argyll & Bute Council	ü	ü	ü				ü	ü ¹
		East Ayrshire Council	ü	ü	ü				ü	ü ¹
		East Dunbartonshire Council	ü	ü	ü				ü	ü ¹
		East Renfrewshire Council	ü	ü	ü				ü	ü ¹
		Glasgow City Council	ü	ü	ü				ü	ü ¹
		Inverclyde Council	ü	ü	ü				ü	ü ¹
		North Ayrshire Council	ü	ü	ü				ü	ü ¹
		North Lanarkshire Council	ü	ü	ü				ü	ü ¹
		Renfrewshire Council	ü	ü	ü				ü	ü ¹
		South Ayrshire Council	ü	ü	ü				ü	ü ¹
		South Lanarkshire Council	ü	ü	ü				ü	ü ¹
	West Dunbartonshire Council	ü	ü	ü				ü	ü ¹	
West Lothian	West Lothian Council	ü	ü				ü	ü ¹		
	1. Membership of the UK wide scheme for the visually impaired and a companion. Further details can be found at: http://internal.nationalrail.co.uk/64501.aspx									

Section	Scheme	Description
		2. Local Authority operated Blind Concessionary Scheme membership
Multi Modal Fares Schemes and ScotRail Products	Strathclyde Transport Zonecard Scheme (Including Conference Delegates' Travel Ticket)	Zone based flexible season ticket for unlimited travel by rail, Subway, most buses and some ferries.
	Roundabout	An inner city one day "off-peak" ticket for unlimited travel by rail and subway within the designated area.
	Playscheme Travel Pass	A Playscheme based travel pass that allows Playschemes to travel in the SPT area free of charge by rail, Subway, some buses and some ferries
	One – Ticket – SESTRAN	"Travelarea" based flexible season ticket for limited travel by rail and unlimited travel by bus.
	Central Scotland Rover	Unlimited off-peak rail travel on any 3 days out of 7 between designated stations in central Scotland and unlimited Subway travel.
	Highland Rover	Unlimited rail travel for 4 out of 8 consecutive days on the West Highland or Kyle of Lochalsh to Inverness railway lines, some buses and some ferries. This ticket will be valid in the seated portion of the Caledonian Sleeper between the following stations: i) Fort William and Edinburgh
	Highland Railcard	The Highland Railcard is available to anyone aged 16 or over, living permanently within defined postcode areas. The Highland Railcard saves 50% on the Mallaig/Fort William/Oban, Wick/Thurso and Kyle of Lochalsh routes
	Spirit of Scotland	A Rover ticket that allows travel on any 4 out of 8 or 8 out of 15 consecutive days on all ScotRail and Cal Mac ferry services in Scotland and unlimited ScotRail travel. A selection of bus and coach routes are also included. This ticket will be valid in the seated portion of the Caledonian Sleeper between the following stations: i) Aviemore and Inverness ii) Fort William and Edinburgh
	Scottish Youth Railcard	Under the Young Scot NEC Card
	Edinburgh Airport Bus & Tram Link	Through one-ticket for Train and Bus or Tram
	Glasgow Airport Bus Link	Through one-ticket for Train and Bus
	Rail & Sail	Through one-ticket for Train and Ferry
	Jobseekers Offers	Jobseekers' is a ticket offering free travel, within Strathclyde, for the first month of employment
Kids for a Quid	For every paying adult, up to four children can travel for just £1	
Club 50	Membership ticket offering flat fares and discounts on ScotRail services	

Section	Scheme	Description
RDG Inter-Operator Schemes	Ticketing and Settlement Agreement	
	Disabled Persons Railcard Scheme	Dated 23 July 1995 between the participants named therein
	16-25 Railcard Scheme	Dated 23 July 1995 between the participants named therein
	26-30 Railcard	26–30 Railcard offers 1/3 off rail fares for 26-30-year-olds
	Senior Railcard Scheme	dated 23 July 1995 between the participants named therein
	Family and Friends Railcard	1/3 off rail fares for people purchasing the Family & Friends Railcard
	Two Together Railcard	Railcard offering 1/3 off rail fares across Britain, for any two, named individuals who travel together
	HM Forces Railcard	1/3 on most rail fares throughout Great Britain.
	Veterans Railcard Scheme	Dated 5 November 2020 between the participants named therein
	Staff Travel Scheme	Dated 23 July 1995 between the participants named therein;
	LRT Scheme	Dated 23 July 1995 between the participants named therein;
	Travelcard Agreement	Dated 15 October 1995 between London Regional Transport and the parties named therein;
	National Rail Enquiries Scheme	Through Ticketing (Non-Travelcard) Agreement dated 15 October 1995 between London Regional Transport and the parties named therein; and dated 11 June 1996 between the participants named therein.
	Plusbus	Add on to any rail journey that starts or finishes at participating stations giving unlimited access to most buses in the local network
Leuchars to St Andrew's Rail link	Rail ticket incorporating bus travel between St Andrews bus station and Leuchars station	
Taxi link between Scrabster and Thurso	Rail ticket incorporating taxi transfer between Thurso and Scrabster	

SCHEDULE 2.6

THIS IS SCHEDULE 2.6 REFERRED TO IN THE FOREGOING SCOTRAIL GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND SCOTRAIL TRAINS LIMITED

INVERNESS DEPOT

1. SRT shall (without prejudice to the duties or powers of ORR):
 - 1.1. offer depot access at Inverness Depot and a range of depot services (including in respect of the specification and quality of the latter) to the Caledonian Sleeper Franchisee which are no less in any such aspect than the maintenance services provided by the Outgoing Operator in respect of the Caledonian Sleeper services; and
 - 1.2. when required by SRH, demonstrate that charges sought from and/or charged to other Train Operators for depot access and/or depot services are reasonable.

SCHEDULE 3

THIS IS SCHEDULE 3 REFERRED TO IN THE FOREGOING SCOTRAIL GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND SCOTRAIL TRAINS LIMITED

Priced Options

There are no Priced Options associated with and/or related to this Agreement unless otherwise agreed among the parties in writing by way of Variation.

SCHEDULE 4

THIS IS SCHEDULE 4 REFERRED TO IN THE FOREGOING SCOTRAIL GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND SCOTRAIL TRAINS LIMITED

Maintaining and Enhancing Stations, Depots and Trains

Schedule 4.1: Operation Facilities

Appendix: Station Surveys

Schedule 4.2: Persons with Disabilities and Disability Discrimination

SCHEDULE 4.1**THIS IS SCHEDULE 4.1 REFERRED TO IN THE FOREGOING SCOTRAIL GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED, AND SCOTRAIL TRAINS LIMITED****Operation Facilities**

1. Operation Facilities Surveys
 - 1.1 If requested by SRH, SRT and SRH shall undertake joint surveys that record:
 - (a) the facilities and characteristics of the rolling stock vehicles comprising the Train Fleet;
 - (b) the interior and exterior condition of each of the rolling stock vehicles comprising the Train Fleet;
 - (c) the facilities available at each Station or Major Station Area (including the facilities in the Control Centres at Paisley Gilmour Street and Dunfermline Stations) and their operational status and condition;
 - (d) the information provision facilities at each Station or Major Station Area and their operational status and condition;
 - (e) the facilities available at each Station or Major Station Area car park and their operational status and condition;
 - (f) the ticket selling facilities of each Station or Major Station Area and their operational status and condition;
 - (g) the aesthetic condition of each Station or Major Station Area and the state of repair of each Station, including the buildings, roofs, station shelters, guttering, glazing, painted surfaces, tiled surfaces, floor surfaces and signage;
 - (h) the facilities available at each Depot and their operational status and condition; and
 - (i) the aesthetic condition of each Depot and the state of repair of each Depot, including the buildings, roofs, guttering, glazing, painted surfaces, tiled surfaces, floor surfaces and signage.
 - 1.2 SRT and SRH shall be entitled to use photographic or video recording equipment in the carrying out of any survey pursuant to paragraph 1.1 but in any event both of them shall record the results of such surveys in accordance with paragraph 2.
 - 1.3 The surveys shall be completed within four months of the date of request under paragraph 1.1 (or such other period as SRH and SRT shall agree). SRT shall co-operate with SRH in relation to the surveys in order to, as far as possible, carry out such surveys in conjunction with:
 - (a) in respect of the Train Fleet, the owners of any rolling stock vehicles within the Train Fleet;
 - (b) in respect of the Stations or Major Station Areas and Depots, representatives from Network Rail and/or in respect of Stations at which the Caledonian Sleeper Franchisee's railway passenger services call or Depots which the Caledonian Sleeper Franchisee make use of the Caledonian Sleeper Franchisee; and
 - (c) if the survey is to be completed before the Commencement Date, in respect of the matters referred to in both paragraphs 1.3(a) and (b), representatives of the Outgoing Operator.

- 1.4 If requested by SRH, the surveys under paragraph 1.1 shall not be joint but shall be undertaken by SRT and SRT shall provide SRH with all information it may request to audit and verify the results of any survey. The cost of joint surveys in respect of the Stations or Major Station Areas, the Train Fleet and Depots shall be divided equally between SRT and SRH.
- 1.5 In respect of the matters referred to in paragraphs 1.1(g) and 1.1(i), each Station or Major Station Area and Depot shall be further categorised, in the case of all Stations or Major Station Areas and all Depots, by SRH and SRT (and, in the absence of agreement, SRH shall reasonably determine the categories) in accordance with the following condition standard:

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

2. The Operation Facilities Book

- 2.1 Within one (1) month of the completion of any survey, pursuant to paragraph 1.1, SRH and SRT shall agree the extent of the items listed in paragraph 1.1 and their condition for the relevant rolling stock vehicles, Station or Major Station Area or Depot. In the absence of such agreement within one (1) month of the completion of a survey, SRH shall reasonably determine the extent of the items listed and their condition within a further month of the completion of the survey in question.
- 2.2 The record of the extent and condition of the items listed in paragraph 1.1 as agreed between SRT and SRH or determined by SRH shall be compiled in and known as the **Operation Facilities Book** as more particularly described in paragraph 2.3. The Operation Facilities Book may contain no entry or entries as at the Commencement Date and may be compiled as the surveys in respect of matters referred to at paragraph 1.1 are carried out.
- 2.3 The Operation Facilities Book shall include the following:
- (a) a list of:

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

(together the **Operation Facilities**);

- (b) a summary of the operational status and condition of each Operation Facility at the date of such facility's inclusion within the Operation Facilities Book; and
- (c) a list of the Stations or Major Station Areas in the format set out in the Appendix (*Station Surveys*) to this Schedule 4.1 and listing the following:
 - (i) the banding of each Station or Major Station Area according to each such Station's:
 - (A) size;
 - (B) annual origin and destination revenue; and
 - (C) annual origin and destination journey numbers,

by the allocation of a letter, A to F (inclusive), to each such Station or Major Station Area in accordance with the criteria used by Network Rail for this purpose from time to time;
 - (ii) in respect of each Station or Major Station Area, the standard according to the categories determined pursuant to paragraph 1.5;
 - (iii) in respect of each Station or Major Station Area, the aesthetic condition of the items referred to in paragraph 1.1(g);
- (d) a list of Depots and the aesthetic condition of the items referred to in paragraph 1.1(i); and
- (e) such other matters as required by the Authority from time to time to give full effect to Schedule 7.2 (*Service Quality*).

2.4 SRT shall compile and maintain the Operation Facilities Book:

- (a) in a fair, true and diligent manner;
- (b) in accordance with any guidance issued to it by the Authority and SRH from time to time; and
- (c) no less than once every quarter of an Operator Year update the Operation Facilities Book and provide a report to SRH and the Authority on such update.

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

3. Obligations during the Term

- 3.1 In so far as not provided for in Schedule 1.6 (*Business Plan Commitments*) within 6 months of the Commencement Date SRT shall devise a programme for the maintenance and refurbishment of Stations or Major Station Areas to ensure that:

- (a) in aggregate across the ScotRail Operations; and
- (b) in aggregate across each banding of Stations or Major Station Areas determined pursuant to paragraph 2.3(c)(i),

there is no degradation of the condition of Stations or Major Station Areas (the “**Station Condition Maintenance Programme**”) during the Term from the conditions determined pursuant to paragraph 1.5.

- 3.2 The Station Condition Maintenance Programme shall identify the categories of work to be undertaken at each Station or Major Station Area and the timetable for completing each category of such work.
- 3.3 In so far as not provided for in Schedule 1.6 (*Business Plan Commitments*) within 6 months of the Commencement Date SRT shall devise a programme to ensure that maintenance of Depot buildings is carried out in a timely manner and not delayed, so that additional costs are not incurred when maintenance is actually carried out (the “**Depot Condition Maintenance Programme**”).
- 3.4 The Depot Condition Maintenance Programme shall identify the categories of work to be undertaken at each Depot and the timetable for completing each category of such work.
- 3.5 SRT shall use all reasonable endeavours to procure that each of the Station Condition Maintenance Programme and the Depot Condition Maintenance Programme are implemented in accordance with their respective terms.
- 3.6 SRT shall review the content and implementation of the Station Condition Maintenance Programme and the Depot Condition Maintenance Programme at least once every 13 Reporting Periods and shall make the results of such review available to SRH at the next Operation Performance Meeting following completion of such review.
- 3.7 If and to the extent:-
 - (a) SRT replaces any of the facilities specified in an Operation Facilities Book or makes available for use any additional facilities at the locations referred to in paragraph 1.1; or
 - (b) additional assets or facilities are made available at those locations in consequence of any of the arrangements referred to in paragraph 5 or of SRT carrying out any other obligations pursuant to this Agreement.

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

4. Operation Facilities Surveys to End of the Operation Period

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

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

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

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

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

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

- (a) the extent and prevailing condition of the Operation Facilities including:
 - (i) in respect of each Station or Major Station Area and Depot, the prevailing condition according to the condition standards set out in paragraph 1.5;
 - (ii) in respect of each Station or Major Station Area, the aesthetic condition of the items referred to in paragraph 1.1(g); and
 - (iii) in respect of each Depot, the aesthetic condition of the items referred to in paragraph 1.1(i); and

(b) the banding of each Station or Major Station Area according to that Station's:

- (i) size;
- (ii) annual origin and destination revenue; and
- (iii) annual origin and destination journey numbers,

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

4.4 It shall be a contravention of this Agreement if there is any degradation, either in aggregate across the ScotRail Operation or in aggregate across each banding of Stations or Major Station Areas, determined pursuant to paragraph 2.3(c)(ii), in the conditions of the Stations from the conditions determined pursuant to paragraph 1.5.

5. Work required by SRH

- 5.1 SRH may issue a Variation to this Agreement in order to remedy, improve or enhance any aspect of the condition (including the aesthetic condition) or state of repair of, or the facilities available at a Station or Major Station Area or a Depot or on a rolling stock vehicle comprised in the Train Fleet.
- 5.2 SRT shall co-operate with SRH in conducting any surveys and pricing any remedial, improvement or enhancement work, if required to do so by SRH, and contracting for and project managing the remedial, improvement or enhancement work and completing and complying with the terms of any Variation to remedy, improve or enhance any aspect of the condition (including the aesthetic condition) or the state of repair of, or the facilities available at, a Station or Major Station Area or Depot or on a rolling stock vehicle comprised in the Train Fleet.
- 5.3 Once remedial work, improvements or enhancements directed by SRH in accordance with paragraph 5.1 have been completed, SRH may adjust the Operation Facilities Book to reflect the work done and/or facilities made available and SRH may also, acting reasonably, re-categorise the relevant Station or Major Station Area in accordance with the condition standards set out in paragraph 1.5.
- 5.4 The reference to "**the condition of Stations and Major Station Areas** " in paragraph 3.1 shall be to the condition of a Station or Major Station Area as improved by remedial or improvement work or enhancements required by SRH, by improvements or enhancements as referred to in paragraph 5.5.
- 5.5 Where SRH or any other body grant funds or otherwise meets the cost of assets or facilities that improve or enhance any aspect of a Station (including ticket barriers, ticket machines or CCTV) then SRH and/or the Authority may require the adjustment of the Operation Facilities Book to reflect such improvement or enhancement and SRH and/or the Authority may also, acting reasonably, re-categorise the relevant Station in accordance with the condition standards set out in paragraph 1.5.
- 5.6 Where either SRH or any other body (including but not limited to the Authority) is considering grant funding or otherwise meeting the costs of assets or facilities, SRT shall co-operate with SRH, or such body and provide to it such information and advice as it may reasonably request.
- 5.7 The rights of SRH referred to in paragraph 5.1 shall not in any way prejudice SRH in ensuring that repairs or remedial work is carried out by SRT in accordance with Schedule 7.2 (*Service Quality*).
- 5.8 Any amendments to the Operation Facilities Book shall not be binding without the prior written consent of the Authority if, and to the extent, that such amendments would vary the Service Quality Appendices.

SCHEDULE 4.2

THIS IS SCHEDULE 4.2 REFERRED TO IN THE FOREGOING SCOTRAIL GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED, AND SCOTRAIL TRAINS LIMITED

Persons with Disabilities and Disability Discrimination

1. Relationship with Other Obligations relating to Persons with Disabilities
 - 1.1 SRT acknowledges that its obligations in this Schedule 4.2 are in addition to and do not limit its obligations to comply with:
 - (a) the EA;
 - (b) any applicable condition(s) in any of its Licences (including in respect of Disabled Persons); and
 - (c) any other of the requirements of this Agreement.
 - 1.2 This Schedule 4.2 sets out:
 - (a) specific arrangements which apply in respect of physical alterations to stations to facilitate accessibility and use by Disabled Persons; and
 - (b) specific obligations of SRT directed at meeting the needs of Disabled Persons.
2. Physical Alterations and Accessibility of Stations
 - 2.1 In respect of physical alteration works at stations to facilitate accessibility and use by Disabled Persons, it is acknowledged by SRT that:
 - (a) there is limited funding available to SRH to assist franchisees and/or franchise operators with the carrying out of those works;
 - (b) consequently, there is a need for such works to be carried out over a period of time to reflect the availability of funding, and for such works to be prioritised with regard to where there is the greatest need and/or where physical alterations can have the greatest effect; and
 - (c) SRH's and/or the Authority's participation in the national programme of works of physical alterations at stations addresses these issues in a structured way.
 - 2.2 SRT will:
 - (a) co-operate reasonably with and assist the Authority and/or SRH in the development and furtherance by the Authority and/or SRH of the programme described in paragraph 2.1(c) by providing to the Authority and/or SRH:
 - (i) information concerning the usage of Stations (including, where and to the extent reasonably practicable, usage of Stations by Disabled Persons); and
 - (ii) advice as to the most economic way in which accessibility for Disabled Persons could, in SRT's reasonable opinion, be improved at Stations;
 - (b) co-operate reasonably with other Train Operators and/or Network Rail to seek to ensure that, where it would be advantageous to do so, having regard to the needs of Disabled Persons, any planned work on the Stations to facilitate accessibility and use

by Disabled Persons is, so far as reasonably practicable, co-ordinated with other work to be carried out at the Stations and/or other parts of the network; and

- (c) use all reasonable endeavours to secure sources of grant funding (other than from itself or an Affiliate) for improving accessibility for Disabled Persons at Stations (in addition to any funding secured through SRH pursuant to paragraph 2.5), including but not limited to funding from Local Authorities, and the Lottery Commission. SRT shall notify SRH of:
 - (i) any such additional funding which it secures; and
 - (ii) the terms on which such additional funding has been granted.

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

2.4 If, during the Term:

- (a) SRT has complied with its obligations in terms of the EA (to take such steps as are reasonable to provide a reasonable alternative method of making services at a Station accessible to a Disabled Person to avoid a Disabled Person being placed at a substantial disadvantage by a physical feature at a Station and its obligations in paragraph 2.7 concerning the Accessible Travel Programme); and
- (b) notwithstanding such compliance, if SRT reasonably considers it is still required to carry out or procure physical works of alteration at a Station in order to comply with the EA Requirements in respect of that Station, and, in so carrying out or procuring, would incur expenditure which it would not otherwise have an obligation to incur,

SRT may request relevant funding from SRH in respect of that expenditure.

2.5 If SRT requests relevant funding from SRH under paragraph 2.4, and demonstrates to SRH's satisfaction that the criteria in paragraph 2.4 have been satisfied, then the parties may agree to adjust the Budget (and any corresponding adjustment to Grant Payments) in accordance with paragraph 6 of Schedule 8.1 (Grant Payment); and SRT shall spend such additional funds:

- (a) in order to comply with the EA Requirements referred to in paragraph 2.4(b) (unless otherwise agreed among the parties); and
- (b) in accordance with any conditions notified to SRT.

2.6 If and to the extent SRT is required to pay any increased access charges as a result of additional expenditure required to be incurred by another station Facility Owner for the purpose of complying with the EA Requirements in respect of a station at which the Passenger Services are permitted to call under this Agreement, provided that SRT:

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

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

2.7 Accessible Travel Programme

SRT shall:

- (a) before the start of each Operator Year, except for the first Operator Year, develop the Accessible Travel Programme in accordance with the requirements of the Policy Compendium;
- (b) develop the Accessible Travel Programme through consultation with Network Rail, the Mobility Access Committee Scotland, and other relevant stakeholders, including other Train Operators as necessary;
- (c) obtain the Authority's and SRH's prior approval (such approval not to be unreasonably withheld) for each Accessible Travel Programme (and each initiative described therein) developed in accordance with paragraph 2.7(a);
- (d) manage the Accessible Travel Programme Budget to fund the carrying out each initiative of the Accessible Travel Programme; and the parties agree that in the event that the Accessible Travel Programme Budget remains unspent within the relevant period, the Authority reserves the right, at its discretion, to distribute any unspent funds to other appropriate projects or programmes;
- (e) carry out or procure the carrying out of each initiative of the Accessible Travel Programme in each Operator Year;
- (f) report progress to SRH and the Authority in determining and carrying out each initiative of the Accessible Travel Programme no less than once every 3 Reporting Periods and/or as otherwise required by the Authority from time to time; and
- (g) co-operate, as SRH and/or the Authority may reasonably require, with Network Rail or any other person seeking to carry out or procure accessible travel at the Stations or any other stations.

3. Dealing with Claims relating to Stations

3.1 If during the Operation Period SRT receives notification of a claim under the EA in respect of any alleged non-compliance with the EA Requirements or otherwise in respect of any Station (an "**EA Claim**") then SRT shall:

- (a) notify SRH within 7 days of receiving notification of the EA Claim. SRT shall at the same time notify SRH of any reasonable alternative methods of making services at the Station accessible to or improving use by Disabled Persons that it has considered and/or put in place pursuant to the EA;
- (b) if required by SRH, defend the EA Claim or any aspect of the EA Claim (which may include appealing the judgement or decree). SRH will, subject to paragraph 3.4, pay SRT's reasonable costs of:
 - (i) any defence or appeal required by SRH; and/or
 - (ii) compliance with SRH's instructions in accordance with paragraph 3.1(c); and
- (c) act in accordance with the reasonable instructions of SRH to defend the EA Claim (or any aspect of it) as required under paragraph 3.1(b) and shall not (without the prior consent of SRH) settle or enter into any compromise in relation to the EA Claim (or the relevant aspect of it), including by entering into mediation.

- 3.2 If, in the reasonable opinion of SRT, it will be more cost effective to settle the EA Claim rather than act in accordance with SRH's requirement under paragraph 3.1, it shall produce for SRH's approval a settlement proposal (the "**Settlement Proposal**").
- 3.3 If SRH does not accept the Settlement Proposal and still requires SRT to defend the EA Claim (or any aspect of it) then SRT shall defend the EA Claim in accordance with paragraph 3.1.
- 3.4 If SRT is required to defend an EA Claim where it has submitted a Settlement Proposal to SRH and an award is made in respect of the EA Claim in favour of the person bringing it which is higher than the figure set out in the Settlement Proposal, then, subject to paragraph 3.5, SRH shall pay to SRT:
- (a) the difference between such an award and the figure set out in the Settlement Proposal; and
 - (b) the further reasonable costs incurred or payable by SRT in defending the EA Claim, to the extent that such costs have not already been paid by SRH under paragraph 3.1(b).
- 3.5 SRH shall not have any obligation to make the payments described in paragraphs 3.1(b) or 3.4 where it is determined or, if no declaration or determination by the court on this point has been sought or made, SRH, in its reasonable opinion, considers that SRT has not taken such steps as it is reasonable, in all the circumstances of the case, for it to take to provide a reasonable alternative method of making services at the Station accessible to Disabled Persons.

SCHEDULE 5

THIS IS SCHEDULE 5 REFERRED TO IN THE FOREGOING SCOTRAIL GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND SCOTRAIL TRAINS LIMITED

Fares

Schedule 5.1:	Purpose, Structure and Construction
Schedule 5.2:	SRT's Obligation to Create Fares
Schedule 5.3:	Regulation of Individual Fares
Schedule 5.4:	Exceeding the Regulated Price or Regulated Child Price
Schedule 5.5:	Changes to Fares and Fares Regulation
Schedule 5.6:	Fares Regulation Information and Monitoring

SCHEDULE 5.1

THIS IS SCHEDULE 5.1 REFERRED TO IN THE FOREGOING SCOTRAIL GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED, AND SCOTRAIL TRAINS LIMITED

Purpose, Structure and Construction

1. Purpose of Schedule 5

Purpose of provisions relating to Creating Fares

- 1.1 The purpose of Schedule 5.2 (*SRT's Obligation to Create Fares*) is to ensure that any Fare which is created by SRT as Lead Operator is Created in accordance with the Ticketing and Settlement Agreement and appropriate restrictions are placed on SRT's ability to Create Fares.

Purpose of Fares Regulation

- 1.2 The purpose of Schedules 5.3 (*Regulation of Individual Fares*) to 5.6 (*Fares Regulation Information and Monitoring*) (inclusive) is, amongst other things, to provide for the regulation of Fares by the Authority pursuant to Section 28 of the Act.
- 1.3 For purposes of regulating Fares, each Fare that is to be regulated by the Authority shall be dealt with in accordance with Schedule 5.3 (*Regulation of Individual Fares*).
- 1.4 The Authority's regulation of Fares places a limit on the Price or Child Price of each Fare that is a Protected Fare. The limit on the Price or Child Price of each Fare is set by reference to the individual increase in Price and Child Price of each Protected Fare.
- 1.5 Subject to the more detailed provisions of Schedule 5.3 (*Regulation of Individual Fares*) the increase in Regulated Peak Fares may not exceed RPI + 0 per cent per annum and the increase in Off-Peak Tickets may not exceed RPI + 0 per cent per annum.
- 1.6 The Authority may alter these limits, and other aspects of its regulation of Fares, in accordance with the more detailed provisions of Schedule 5.5 (*Changes to Fares and Fares Regulation*).

Outline of protected/unregulated products

The table below summarises the scope of "**Fares Regulation**" envisaged for SRH and SRT from the Commencement Date:

Area	Fares Regulation	
	Protected	Unregulated
Scotland (including Strathclyde and Edinburgh commuter area)	Season tickets	First Class
	Anytime single/return	Super Off peak Return
	Anytime day single/return	
	Off peak single/return	Flexipasses and Advance tickets
	Off peak day single/return	

2. **Structure of Schedule 5**

- 2.1 Schedule 5.2 (*SRT's Obligation to Create Fares*) sets out or refers to SRT's obligations to Create Fares.
- 2.2 Schedule 5.3 (*Regulation of Individual Fares*) sets out the limits applicable to the increase in the Price or Child Price of any individual Fare.
- 2.3 Schedule 5.4 (*Exceeding the Regulated Price or Regulated Child Price*) sets out the consequences of SRT exceeding the Regulated Price or Regulated Child Price of any Fare.
- 2.4 Schedule 5.5 (*Changes to Fares and Fares Regulation*) sets out the Authority's ability to vary the forgoing provisions.
- 2.5 Schedule 5.6 (*Fares Regulation Information and Monitoring*) sets out Fares regulation information and monitoring provisions.

3. **Construction**

References to "Fare"

- 3.1 For the purposes of:
 - (a) Schedule 5.2 (*SRT's obligation to Create Fares*), "**Fare**" shall have the wide meaning given to it in paragraph (b) of that definition; and
 - (b) Schedules 5.3 (*Regulation of Individual Fares*) to 5.6 (*Fares Regulation Information and Monitoring*) (inclusive), "**Fare**" shall have the narrow meaning given to it in paragraph (a) of that definition.
- 3.2 References in this Schedule 5 to a Fare shall, except to the extent the context otherwise requires, be construed as references to the Fare which is or can be Created by the Lead Operator for the Flow to which the Fare relates or, if such Flow is not a Compulsory Inter-available Flow, any Fare which SRT has Created or can Create in respect of that Flow as the Authority may specify.

Fares Documents

- 3.3 In the event of an immaterial inconsistency between the Fares, 2022 Ticket Prices or 2022 Nominal Ticket Sales:
 - (a) described in or determined in accordance with this Schedule 5; and
 - (b) described in the Fares Document,
 the Fares Document shall prevail.
- 3.4 In the event of a material inconsistency between the Fares, 2022 Ticket Prices or 2022 Nominal Ticket Sales:
 - (a) described in or determined in accordance with this Schedule 5; and
 - (b) described in the Fares Document,
 this Schedule 5 shall prevail.

Setting of Child Prices

- 3.5 Any requirement under this Schedule 5 to set a Child Price in respect of a Fare shall be satisfied by SRT Creating either:
- (a) a Fare which is only valid for use by persons under the age of 16; or
 - (b) a Fare which is valid for use:
 - (i) by any person at a price; and
 - (ii) only by persons under the age of 16 and at a discounted price relative to the price set pursuant to paragraph 3.5(b)(i).

New Stations

- 3.6 Subject to paragraph 3.2, the Authority and/or SRH may require the creation of a Protected Fare or Fares to or from any New Station, on such basis as it may, after consultation with SRT, reasonably determine and references in Schedule 5 to Fares and other relevant definitions shall be construed accordingly.

Internet season ticket sales

- 3.7 SRT shall offer Season Tickets for the Passenger Services for sale via the Website and the Customer Contact Centre.

Fares timing restrictions

- 3.8 Without the prior consent of SRH and the Authority, SRT shall not create new restrictions or alter existing restrictions on the times of day during which a regulated off-peak Fare is valid on a Passenger Service.

For the purposes of this paragraph 3.8, the existing restrictions are:

	Validity and Restrictions on Validity for Off Peak Singles and Returns	Applicable Area
	Valid on any train except those timed to depart Mondays - Fridays before 0900 with the exception of the Passenger Service departing Largs at or around 0833 to Glasgow Central and the Passenger Service departing Wemyss Bay at or around 0857 to Glasgow Central	Within Strathclyde
	Valid on any train except those timed to depart Mondays - Fridays before 0800	Routes within the Service Level Commitment known as Routes B2, B3 and B4, except those parts of the B2 and B3 Routes that are within Strathclyde.
	Valid on any train except those timed to depart Mondays - Fridays before 0915 with the exception of the Passenger Service departing Stranraer at or around 0901 to Glasgow Central. Not valid on any train departing: - 1. Glasgow Queen Street or Glasgow Central, Edinburgh Waverley or Haymarket Stations Mondays to Fridays between 1643 and 1809; 2. Edinburgh Waverley or Haymarket Stations - Glasgow Queen Street at or around 1815; 3. Glasgow Queen St – Edinburgh Waverley or Haymarket Stations at or around 1815 (for the avoidance of doubt except the train at or around 1756 to Glasgow Central via Shotts)	Central Belt
	Valid on any train except those timed to depart Mondays - Fridays before 0900. Not valid for passengers joining at Inverness, Aberdeen or Dyce Stations, Mondays to Fridays, on any train time to depart between 1700 and 1730	Route within the Service Level Commitment known as Route B1 (Aberdeen – Inverness)
	Valid on any train on Saturdays, Sundays and Bank Holidays	

SCHEDULE 5.2

THIS IS SCHEDULE 5.2 REFERRED TO IN THE FOREGOING SCOTRAIL GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND SCOTRAIL TRAINS LIMITED

SRT's Obligation to Create Fares**1. Creation of Protected Fares**

SRT shall, and SRH shall procure that SRT shall, ensure that any Protected Fare Created by SRT as Lead Operator is Created to the extent it is entitled or obliged to do so under the terms of the Ticketing and Settlement Agreement.

2. Restrictions on Creation of Fares

- 2.1 SRT shall set the Child Price for any Fare so that Fare may be purchased by or for a person under the age of 16 for an amount which is no greater than the lowest amount that would be paid if that person were the holder of a Young Person's Railcard (as amended or replaced from time to time) and whose purchase was made without condition as to the day, or time of day, of travel and also without any other condition.
- 2.2 SRT shall not Create or agree to Create any Fare or Discount Card with a validity of 13 or more months without the consent of the Authority (such consent not to be unreasonably withheld)
- 2.3 SRH shall procure that SRT complies with the requirements of this paragraph 2.

SCHEDULE 5.3

THIS IS SCHEDULE 5.3 REFERRED TO IN THE FOREGOING SCOTRAIL GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED, AND SCOTRAIL TRAINS LIMITED

Regulation of Individual Fares

1. Price or Child Price not to exceed Regulated Price or Regulated Child Price

Subject to paragraph 3.3 of Schedule 5.2 (*SRT's Obligation to Create Fares*), SRT shall (and SRH shall procure that SRT shall procure that SRT shall) procure that the Price or Child Price (as the case may be) of any Protected Fare in any Fare Year does not exceed the Regulated Price or Regulated Child Price (as the case may be) for each such Fare in that Fare Year.

2.1 Subject to paragraph 2.4, the Regulated Price or Regulated Child Price (as the case may be) for any Protected Fare in any Fare Year shall be an amount equal to the Preceding Year Ticket Price x PII where:

Preceding Year Ticket Price is the maximum Price or Child Price (as the case may be) for that Fare recorded by RSP in 2021 or, for any subsequent Fare Year, the Fare Year preceding that Fare Year, provided that such maximum Price or Child Price (as the case may be) complied with the requirements of this Schedule 5. If such maximum Price or Child Price (as the case may be) did not so comply, then such maximum Price or Child Price (as the case may be) shall be the last Price or Child Price (as the case may be) for such Fare recorded by RSP which did so comply. In each case the maximum Price or Child Price (as the case may be) shall be less any part of that Price or Child Price (as the case may be) that forms part of that Fare pursuant to a rounding up or down in accordance with paragraph 2.4 in 2021 or, for any subsequent Fare Year, the Fare Year preceding that Fare Year; and

PII is the Permitted Individual Increase in any Fare Year, as determined in accordance with paragraph 2.2.

2.2 The Permitted Individual Increase in any Fare Year shall be an amount equal to:

$$PII = \frac{(100 \times RPI) + k}{100}$$

where:

PII is the Permitted Individual Increase in that Fare Year;

RPI is an amount equal to:

$$\frac{RPI - 1}{RPI - 2}$$

where:

RPI – 1 is the Retail Prices Index for the July of the calendar year preceding that Fare Year; and

RPI – 2 is the Retail Prices Index for the July of the calendar year preceding the calendar year referred in the definition of RPI-1; and

- k is equal to 0 for Off-Peak Tickets and 0 for Regulated Peak Fares, or such other value as the Authority may specify in writing from time to time pursuant to Schedule 5.5 paragraph 2

2.3 Where:

- (a) SRT sets the Price or Child Price (as the case may be) of any Protected Fare in any Fare Year; and
- (b) the Authority reasonably determines that the Price or Child Price (as the case may be) of such Protected Fare was set solely for the purpose of increasing the value of the Preceding Year Ticket Price in the next Fare Year,

the Preceding Year Ticket Price for the purposes of determining the Regulated Price pursuant to paragraph 2.1 in the next Fare Year shall be the maximum Price or Child Price (as the case may be) prior to such setting that complied with the requirements of this Schedule 5, as recorded by RSP in such preceding Fare Year.

- 2.4 The Price or Child Price of any Protected Fare which is changed in accordance with paragraph 2.1 may following such change be rounded up or down to the nearest 10p or multiple thereof as SRT may consider appropriate subject to such rounding, if applied, being applied to all Prices and Child Prices of all relevant Protected Fares. Any other changes to the Prices and Child Prices of Protected Fares (whether because SRT wishes to rebalance such Prices and Child Prices or otherwise) may only be made with the prior consent of the Authority or in accordance with Schedule 5.4 (*Exceeding the Regulated Price or Regulated Child Price*) or otherwise in accordance with this Schedule.

3. **Compulsory Inter-available Flows**

Where SRT:

- (a) as Lead Operator for a Compulsory Inter-available Flow, is responsible for setting the Price or Child Price (as the case may be) of a Fare for that Flow; and
- (b) has notified RSP of the Price or Child Price (as the case may be) of that Fare in any Fares Setting Round,

SRT shall not, and SRH shall procure that SRT shall not, increase the Price or Child Price (as the case may be) of that Fare in the same Fares Setting Round without the consent of the Authority and each other Train Operator which provides railway passenger services for such Flow.

SCHEDULE 5.4**THIS IS SCHEDULE 5.4 REFERRED TO IN THE FOREGOING SCOTRAIL GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED, AND SCOTRAIL TRAINS LIMITED****Exceeding the Regulated Price or Regulated Child Price**

1. If SRT is in contravention of paragraph 1 of Schedule 5.3 (*Regulation of Individual Fares*):
 - 1.1. it shall reduce the Price or Child Price of any relevant Fare at the next available opportunity and, in any event, at the next Fares Setting Round, so as to comply with the requirements of paragraph 1 of Schedule 5.3 from such date; and
 - 1.2. SRH may, and/or the Authority may require SRH to, adjust the Grant Payments by an amount equivalent in its opinion to the sums collected by SRT or any person selling Fares on its behalf as a result of the sale of Fares at Prices and/or Child Prices in excess of the relevant amounts permitted under Schedule 5.3, and the parties will adjust the Budget in accordance with paragraph 6 of Schedule 8.1 (*Grant Payments*).
2. Any adjustment pursuant to paragraph 1.2:
 - 2.1. shall not constitute a Change; and
 - 2.2. shall be without prejudice to any other rights or remedies of the Authority and/or SRH under the Act or this Agreement in respect of such contravention.
3. SRT shall take such action as the Authority and/or SRH may reasonably direct SRT to for the benefit of passengers affected by such a contravention.

SCHEDULE 5.5

THIS IS SCHEDULE 5.5 REFERRED TO IN THE FOREGOING SCOTRAIL GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND SCOTRAIL TRAINS LIMITED

Changes to Fares and Fares Regulation

1. Changes to Prices

- 1.1 SRT may request permission from the Authority from time to time to increase any Prices or Child Prices beyond the levels permitted under Schedule 5.3 (*Regulation of Individual Fares*) in connection with any proposed or actual improvement in any aspect of the Passenger Services relating to such Fares. The Authority shall act reasonably in relation to any such request but shall not under any circumstances be obliged to accept any such request in whole or in part.
- 1.2 SRT may request permission from the Authority from time to time to adjust any Fares at the next Fares Setting Round in order to address any fares anomalies which it has identified. The adjustment of any Fares where so permitted by the Authority under this paragraph shall be a Change.

2. Changes to Fares regulation

The parties agree that the Authority shall have the power at any time and on more than one occasion during the Term to alter the obligations of, and restrictions on, SRT under Schedules 5.2 (*SRT's Obligation to Create Fares*) to 5.6 (*Fares Information and Monitoring*) (inclusive) for any Fare Year, or part thereof (including alteration of the value of "k" in paragraph 2.2 of Schedule 5.3 (*Regulation of Individual Fares*)) or to introduce further regulation of Fares for which SRT is the Lead Operator. The exercise by the Authority of its powers under this paragraph 2 shall be a Change. The Authority shall consult with SRH before altering the obligations of, or restrictions on, SRT.

3. Change of Lead Operator / Major Flow Operator

- 3.1 SRT shall not without the Authority's and SRH's prior approval agree to any request under the Ticketing and Settlement Agreement that it cease to be Lead Operator in respect of any Flow.
- 3.2 SRT shall inform the Authority and SRH if it becomes the Lead Operator in respect of any Flow.
- 3.3 SRT shall inform the Authority and SRH if it ceases to be a Major Flow Operator in respect of any Flow.

4. Variation

Without in anyway limiting the Authority's rights under paragraph 2, the parties agree that the Authority has the power from time to time by using a Variation to:

- (a) regulate in any way and/or specify the Fares, Prices and/or Child Prices on all, or any, Passenger Services and/or Flows on which there are Passenger Services;
- (b) create, and regulate Fares Baskets.

SCHEDULE 5.6**THIS IS SCHEDULE 5.6 REFERRED TO IN THE FOREGOING SCOTRAIL GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED, AND SCOTRAIL TRAINS LIMITED****Fares Regulation Information and Monitoring****1. Information**

- 1.1 SRT shall provide to the Authority and SRH by no later than week 12 of each Fares Setting Round a summary to such level of detail or generality as the Authority and SRH may reasonably require of the Prices and Child Prices of the Fares it is intending to set.
- 1.2 SRT shall notify, or procure the notification to, the Authority and SRH of any proposed increase to the Price or Child Price of any Fare which SRT sets and shall provide such details of any such proposal at such times (including before and during each Fares Setting Round) and in such form (including by electronic data transfer) as the Authority and SRH may reasonably request from time to time (which form in respect both of this notification and/or the information to be provided pursuant to paragraph 1.1, may include, at the request of the Authority and SRH a letter from SRT to the Authority and SRH describing the methodology behind and rationale for the setting of such Price(s) and/or Child Price(s)).
- 1.3 SRT shall make available, or procure that RSP makes available, to the Authority and SRH, for any Fares Setting Round during the Term, such details (including the proposed Prices or Child Prices) of the Initial Permanent Fare of any Fare set by SRT for each such Fares Setting Round.

2. Monitoring

- 2.1 SRT shall provide to the Authority and SRH:
 - (a) such access as the Authority and SRH may require to information pertaining to the Prices or Child Prices of any Fare set by SRT from time to time; and
 - (b) such further information as the Authority and SRH may require for the purpose of determining the Gross Revenue of SRT in relation to any particular Fare or Fares or any particular period.
- 2.2 By no later than week 17 of each Fares Setting Round SRT will provide to the Authority and SRH written confirmation from a statutory director of SRT of whether SRT has complied with its obligations under this Schedule 5 during each such Fares Setting Round.
- 2.3 SRT shall take such action as SRH may require following receipt of any details from SRT pursuant to paragraph 1 in order to ensure that SRT will comply with the provisions of Schedule 5.3 (*Regulation of Individual Fares*) to this Schedule 5.5 (inclusive).

SCHEDULE 6

THIS IS SCHEDULE 6 REFERRED TO IN THE FOREGOING SCOTRAIL GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED, AND SCOTRAIL TRAINS LIMITED

Rolling Stock

This Schedule 6 will be used and amended by the parties by way of Variation if SRH and/or the Authority instruct SRT to undertake Fleet Procurement and/or Major Modifications and Refurbishments.

SCHEDULE 7

THIS IS SCHEDULE 7 REFERRED TO IN THE FOREGOING SCOTRAIL GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND SCOTRAIL TRAINS LIMITED

Service Quality**Schedule 7.1: Train Operating Performance**

Appendix 1: Indicative Cancellations Benchmark Table

Appendix 2: Indicative Capacity Benchmark Table

Appendix 3: Indicative PPM Benchmark Table

Appendix 4: Indicative MTIN Benchmark Table

Schedule 7.2: Service Quality

Appendix 1: Station Ticket Offices

Appendix 2: Station Shelters and Waiting Areas

Appendix 3: Station Platform Seats

Appendix 4: Station Lights

Appendix 5: Station CCTV and Security

Appendix 6: Station Graffiti

Appendix 7: Station Litter, Contamination and Winterisation

Appendix 8: Station Information

Appendix 9: Station Clocks

Appendix 10: Station Posters

Appendix 11: Public Announcements and CIS

Appendix 12: Station Toilets

Appendix 13: Station Car Parks and Cycle Facilities

Appendix 14: Access Ramps and Stairs

Appendix 15: Station Landscaping, Vegetation and Boundaries

Appendix 16: Station Help/Information Points, Ticket Vending Machines and Ticket

Appendix 17: Station Staff

Appendix 18: Train Weather and Wind Proofing

Appendix 19: Train Seats, Tables, Racks, Cycle and Other Passenger Facilities

Appendix 20: Train Lighting

Appendix 21: Train Toilets

Appendix 22: Train Graffiti

Appendix 23: Train Litter and Cleanliness

Appendix 24: Train Destination Boards and Passenger Information Displays

Appendix 25: Train Heating/Ventilation

Appendix 26: Train Posters

Appendix 27: On Train Public Address

Appendix 28: Train Doors

Appendix 29: On-Train CCTV

Appendix 30: Seat Reservation System

Appendix 31: On-Train Refreshment and Food Facilities

Appendix 32: WIFI on Train

Appendix 33: Train Staff and Customer Care

Appendix 34: Ticket Inspection on Trains

Appendix 35: SQMS Management Process

SCHEDULE 7.1

THIS IS SCHEDULE 7.1 REFERRED TO IN THE FOREGOING SCOTRAIL GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND SCOTRAIL TRAINS LIMITED

Train Operating Performance

1. **Operating Performance Benchmarks**

1.1 Performance of the ScotRail Operation will be measured across Cancellations, Capacity, PPM and MTIN Score for Operator Services as a whole, and for each of the Sectors.

1.2 During the first GP Quarter of the first Operator Year, SRH and SRT shall meet to discuss and seek to agree:

- (a) the Cancellations Benchmarks;
- (b) the Capacity Benchmarks;
- (c) the PPM Benchmarks;
- (d) the MTIN Target;
- (e) the MTIN Improvement Plan Level;
- (f) the Breach Performance Levels;
- (g) the Default Performance Levels;
- (h) the Target Performance Levels;
- (i) Improvement Plan Performance Levels; and
- (j) Sectors,

(together the “**Operating Performance Regime**”),

which Operating Performance Regime will apply from the first day of the second GP Quarter in the first Operator Year and for the Term, unless otherwise varied in accordance with the terms of this Agreement.

1.3 Subject to paragraph 1.4, SRH and SRT shall use the Indicative Benchmark Tables as the basis for establishing and agreeing the Operating Performance Regime.

1.4 SRH and SRT shall determine the Operating Performance Regime, and any amendments thereto, in accordance with the policy outcomes and performance requirements detailed in the Policy Compendium and any other output, service and/or performance requirements set by the Authority from time to time. The Authority shall have the right to amend the Operating Performance Regime, at its sole discretion, to the extent that such Operating Performance Regime does not comply with the requirements of this paragraph 1.4.

1.5 SRH and SRT shall use all reasonable endeavours to discuss and agree the Operating Performance Regime prior to the end of the first GP Quarter of the first Operator Year. If the Operating Performance Regime is not agreed by SRH and SRT fifteen (15) Weekdays before the end of the first GP Quarter of the first Operator Year, then the Operating Performance Regime shall be determined by SRH acting reasonably.

1.6 Should SRT consider SRH’s determined Operating Performance Regime to be manifestly unreasonable then it may notify SRH of that view within ten (10) Weekdays of the determination (“**Operating Performance Dispute**”), and SRH shall consider (in good faith) any representations from SRT on that matter which are properly supported by evidence and decide whether to amend the

Operating Performance Regime. If within ten (10) Weekdays following SRH's re-determination, SRT still consider SRH's determined Operating Performance Regime to be manifestly unreasonable then such matter will be escalated to the Authority to determine the matter at the Authority's discretion. For the avoidance of doubt, the Authority is not obligated to determine the Operating Performance Regime and if the Authority declines in writing to determine the Operating Performance Regime, then SRT shall be entitled to refer the matter for resolution under the Dispute Resolution Rules provided that SRH's Operating Performance Regime shall apply pending the outcome of such referral.

2. Information Provision and Calculations

Cancellations Benchmarks

2.2 For each Reporting Period (from the second GP Quarter in the first Operator Year), SRT shall calculate a moving annual average of SRT's performance against the Cancellation Benchmark for the ScotRail Operation as a whole, and for each of the Sectors, in accordance with the following formula:

$$\frac{A + D}{13}$$

where:

A is ascertained as follows:

$$\frac{B}{C} \times 100$$

where:

B is the total number of Cancellations or Partial Cancellations of Passenger Services in the relevant Sector or Sectors to which the relevant calculation pertains (at such level of disaggregation as SRH may from time to time require) operated in that Reporting Period, on the basis that:

- (a) a Cancellation shall count as 1;
- (b) a Partial Cancellation shall count as 0.5; and
- (c) any Cancellations or Partial Cancellations during that Reporting Period which were caused by:
 - (i) SRT's implementation of a Service Recovery Plan during that Reporting Period; or
 - (ii) the occurrence or continuing effect of a Force Majeure Event,
 shall be disregarded in determining such total number;

C is the total number of Passenger Services in the relevant Sector or Sectors to which the relevant calculation pertains (at such level of disaggregation as SRH may from time to time require) scheduled to be operated in that Reporting Period, disregarding any Cancellations or Partial Cancellations during that Reporting Period which were caused by:

- (a) SRT's implementation of a Service Recovery Plan during that Reporting Period; or
- (b) the occurrence or continuing effect of a Force Majeure Event; and

D is the sum of the values of A in each of the 12 preceding Reporting Periods.

- 2.3 Within 14 days of the end of each Reporting Period (from the second GP Quarter in the first Operator Year), SRT shall notify SRH and the Authority of the results of the calculation performed pursuant to paragraph 2.2 of this Schedule 7.1.

Capacity Benchmarks

- 2.4 Within 7 days of the end of each Reporting Period (from the second GP Quarter in the first Operator Year), SRT shall, in accordance with the relevant requirements of Appendix 3 (*Operational Information*) to Schedule 13.2 (*Information*), report to SRH (in respect of all Sectors) the total Capacity provided by the Passenger Services in the relevant Sector or Sectors to which the relevant calculation pertains (at such level of disaggregation as SRH may from time to time require) in that Reporting Period against the total Capacity planned to be provided in that Reporting Period for each such Passenger Service in the Train Plan. Each such report shall be broken down between the Sectors and shall set out the consequences for the Capacity provided of each of the circumstances set out in (a) to (c) in the definition of B below.
- 2.5 For each Reporting Period (from the second GP Quarter in the first Operator Year), SRT shall calculate a moving annual average of SRT's performance against the Capacity Benchmark for the ScotRail Operation as a whole, and for each of the Sectors in accordance with the following formula:

$$\frac{A + D}{13}$$

where:

A is ascertained as follows:

$$\frac{C - B}{C} \times 100$$

where:

B is the aggregate of the Capacity provided at the Formation Monitoring Point for each Passenger Service in the relevant Sector or Sectors to which the relevant calculation pertains which is included in the Train Plan of SRT for the Reporting Period, disregarding any Capacity that was not provided as a result of

- (a) SRT's implementation of a Service Recovery Plan during that Reporting Period;
- (b) the occurrence or continuing effect of a Force Majeure Event; or
- (c) a Passenger Service not passing such Formation Monitoring Point.

C is the aggregate of the Capacity planned to be provided at the Formation Monitoring Point for each Passenger Service in accordance with the Train Plan disregarding Capacity that is less than the passenger carrying capacity specified for such Passenger Service in the Train Plan as a result of:

- (a) SRT's implementation of a Service Recovery Plan during that Reporting Period; or
- (b) the occurrence or continuing effect of a Force Majeure Event; or

(c) a Passenger Service not passing such Formation Monitoring Point
and

D is the sum of the values of A in each of the 12 preceding Reporting Periods.

- 2.6 If and to the extent that any Passenger Service is operated with passenger carrying capacity in excess of the passenger carrying capacity specified for that Passenger Service in the Train Plan, the excess capacity shall be disregarded for the purposes of the calculation referred to in paragraph 2.5.
- 2.7 Within 14 days of the end of each Reporting Period (from the second GP Quarter in the first Operator Year), SRT shall notify SRH and the Authority of the results of the calculation performed pursuant to paragraph 2.5 of this Schedule 7.1.

PPM Benchmarks

- 2.8 Within 7 days of the end of each Reporting Period (from the second GP Quarter in the first Operator Year), SRT shall, in accordance with the relevant requirements of Appendix 3 (*Operational Information*) to Schedule 13.2 (*Information*) report to SRH the value of the PPM.
- 2.9 For each Reporting Period (from the second GP Quarter in the first Operator Year), SRT shall calculate a moving annual average of SRT's performance in terms of PPM for the ScotRail Operation as a whole, and for each of the Sectors, in accordance with the following formula:

$$[D - (B + C) - (E+F)] / D$$

- B is the total number of Cancellations and Partial Cancellations of Passenger Services operated in that Reporting Period and the previous 12 Reporting Periods.
- C is the total number of non-Cancelled and non-Partially Cancelled Passenger Services operated in that Reporting Period, and the previous 12 Reporting Periods which arrived at scheduled destination, as determined by the Train Plan, five or more minutes late.
- D is the total number of Passenger Services scheduled to be operated in that Reporting Period and the previous 12 Reporting Periods.
- E is the total number of Passenger Services directly effected by Severe Weather Speed Restrictions and Held Connections in that Reporting Period and the previous 12 E is the total number of Cancellations and Partial Cancellations of Passenger Services operated in that Reporting Period and the previous 12 Reporting Periods that have been attributed to X4 – Blanket Emergency Speed Restriction and specifically those have arisen as a direct result of the Carmont recommendations or due to a held connection.
- F is the total number of non-Cancelled and non-Partially Cancelled Passenger Services operated in that Reporting Period, and the previous 12 Reporting Periods which arrived at scheduled destination, as determined by the Train Plan, five or more minutes late and where the majority of their delay has been attributed to X4 – Blanket Emergency Speed Restriction and specifically those have arisen as a direct result of the Carmont recommendations or due to a held connection. Reporting Periods.

- 2.10 Within 14 days of the end of each Reporting Period (from the second GP Quarter in the first Operator Year), SRT shall notify SRH and the Authority of the results of the calculation performed pursuant to paragraph 2.9 of this Schedule 7.1.

Calculations

- 2.11 The calculations referred to in paragraphs 2.2 and 2.5 shall be rounded to 2 decimal places, with the midpoint (that is, 11.115) rounded upwards that is, 11.12).

Meaning of Train Plan

- 2.12 For the purposes of this Schedule 7.1, **Train Plan** shall, unless otherwise stated, mean the then current Train Plan which has been finalised pursuant to paragraph 10.2 of Schedule 1.1 (*Service Development*) and which includes any amendments thereto:
- (a) pursuant to paragraphs 3.2 and 3.5 of Schedule 1.2 (*Operating Obligations*);
 - (b) pursuant to paragraph 4 of Schedule 1.2, where:
 - (i) such amendments are required as a consequence of Network Rail exercising its rights pursuant to the Track Access Agreement; and
 - (ii) SRT has complied with the provisions of such paragraph in respect thereof; and
 - (c) pursuant to paragraph 3.3 of Schedule 1.2, where such amendments are agreed by SRH's response in accordance with such paragraph.

3. Performance Levels

Expectation of Good Performance

- 3.1 SRT shall procure that in each Reporting Period during the Term, the moving annual average of the number of:
- (a) Cancellations and Partial Cancellations will be equal to or lower than the Target Performance Level specified by the Cancellation Benchmarks;
 - (b) Passenger Services operated with less Passenger Carrying Capacity than the Passenger Carrying Capacity specified for each such Passenger Service in the Train Plan will be equal to or lower than the Target Performance Level specified by the Capacity Benchmarks;
 - (c) PPM will be equal to or higher than the Target Performance Levels specified in specified by the PPM Benchmarks.

Consequences for Poor Performance

- 3.2 The consequences of SRT's performance equalling or exceeding the Improvement Plan Performance Levels relating to Cancellations and Capacity Benchmark and/or failing to achieve at least the Improvement Plan Performance Levels of the PPM Benchmark are, if and whenever SRT's performance:-
- (a) in respect of a Reporting Period, calculated as a moving annual average in accordance with this Schedule 7.1 does not equal or exceed the Improvement Plan Performance Level for Cancellations and Capacity Benchmark or fails to achieve the Improvement Plan Performance Level or higher for the PPM Benchmark, that SRT shall promptly notify SRH of that fact;
 - (b) prepare and provide to SRH, for SRH's comments, a plan that it proposes to implement to ensure that its future performance meets the Target Performance Level as soon as reasonably practicable (an "**Improvement Plan**"). SRT shall have due regard to any comments provided by SRH in relation to the Improvement Plan and may amend the Improvement Plan as may be considered necessary (and consistent with its obligations under paragraph 3.2(a));

- (c) implement such Improvement Plan; and
- (d) advise SRH from time to time of the results of the implementation of such Improvement Plan.

3.3 SRT shall procure that in each Reporting Period, the moving annual average of the number of:

- (a) Cancellations and Partial Cancellations does not equal or exceed the Breach Performance Levels and the Default Performance Levels specified by the Cancellations Benchmark;
- (b) Passenger Services operated with less Passenger Carrying Capacity than the Passenger Carrying Capacity specified for each such Passenger Service in the Train Plan, does not equal or exceed the Breach Performance Levels and the Default Performance Levels specified by the Capacity Benchmark;
- (c) PPM does not fall below (that is, is neither equal to nor worse than) the Breach Performance Levels and the Default Performance Levels specified in by the PPM Benchmark.

3.4 Schedule 10 (*Remedies, Executive Team Review and Expiry*) outlines certain consequences of SRT's performance:

- (a) not being equal to or exceeding the Breach Performance Levels relating to:
 - (i) the Cancellations Benchmark; and/or
 - (ii) the Capacity Benchmark;
- (b) falling below (that is, being neither equal to nor worse than) the Breach Performance Levels to the PPM Benchmark;
- (c) not being equal to or exceeding the Default Performance Levels relating to the Cancellations Benchmark and Capacity Benchmark; and
- (d) falling below (that is, being neither equal to nor worse than) the Default Performance Levels relating to the PPM Benchmark).

4. **Operating Performance Benchmark Adjustments**

4.1 If:

- (a) there is a Change to the Service Level Commitments previously in force; and
- (b) SRH reasonably considers that a revision to the Operating Performance Benchmarks are required to hold constant the risk of SRT failing to satisfy the Operating Performance Benchmarks,

SRH shall make such revisions to the Operating Performance Benchmarks as it reasonably considers appropriate to hold constant such risk subject to the requirements of paragraph 1.4 of this Schedule 7.1.

4.2 SRH shall notify SRT of any revision to the Operating Performance Benchmarks in accordance with the procedural stipulations pursuant to paragraph 4.2 of Schedule 1.1 (*Service Development*).

5. **Scoring the Operational Performance in a GP Half**

- 5.1 If the moving annual average of Cancellations and Partial Cancellations calculated under paragraph 2.2 of this Schedule 7.1 is:
- (a) equal to or more than the Target Performance Level as at the final Reporting Period of a GP Half, then SRT shall score a 3 for the Cancellations Benchmark; or
 - (b) less than the Target Performance Level but equal to or greater than the Improvement Plan Performance Level as at the final Reporting Period of a GP Half, then SRT shall score a 2 for the Cancellations Benchmark; or
 - (c) less than the Improvement Plan Performance Level as at the as at the final Reporting Period of a GP Half in then SRT shall score a 1 for the Cancellations Benchmark.
- 5.2 If the moving annual average of the number of Passenger Services (calculated under paragraphs 2.5 of this Schedule 7.1) operated with less Passenger Capacity than the Passenger Carrying Capacity specified for each such Passenger Service in the Train Plan is:
- (a) equal to or lower than the Target Performance Level as at the final Reporting Period of a GP Half in, then SRT shall score a 3 for the Capacity Benchmark; or
 - (b) greater than the Target Performance Level but lower than the Improvement Plan Performance Level as at the final Reporting Period of a GP Half, then SRT shall score a 2 for the Capacity Benchmark; or
 - (c) greater than the Improvement Plan Performance Level as at the final Reporting Period of a GP Half then SRT shall score a 1 for the Capacity Benchmark.
- 5.3 If the moving annual average of PPM calculated under paragraph 2.9 of this Schedule 7.1 is:
- (a) equal to or higher than the Target Performance Level as at the final Reporting Period of a GP Half, then SRT shall score a 3 for the PPM Benchmark;
 - (b) less than the Target Performance Level but equal to or greater than the Improvement Plan Performance Level as at the final Reporting Period of a GP Half, then SRT shall score a 2 for the PPM Benchmark; or
 - (c) less than the Improvement Plan Performance Level as at the final Reporting Period of a GP Half, then SRT shall score a 1 for the PPM Benchmark.
- 5.4 If, as at the final Reporting Period of a GP Half, the moving average MTIN Score:
- (a) is equal to or greater than the MTIN Target, then SRT shall score a 3; or
 - (b) is greater than the MTIN Improvement Plan Level but less than the MTIN Target, then SRT shall score a 2; or
 - (c) is less than the MTIN Improvement Plan Level, then SRT shall score a 1.
- 5.5 SRT shall be awarded a 3 overall for its operation performance under this Schedule 7.1 if it receives a score of 3 for each of the four Operating Performance Benchmarks under paragraphs 5.1, 5.2, 5.3 and 5.4 above.
- 5.6 If a score of less than 3 is awarded for one (or more) of the Operating Performance Benchmarks, SRT's overall score for its operation performance under this Schedule 7.1 shall be the lowest score given to an Operating Performance Benchmark.
- 5.7 SRH may (at its sole discretion) choose to award a score of '2' for an Operating Performance Benchmark even though SRT was not entitled to such a score under this paragraph 5, if SRT demonstrates to SRH's satisfaction that its failure to achieve a '2' was wholly or mainly attributable to act(s) or omission(s) or failure(s) of a third party affecting SRT's performance.

SRT shall provide SRH with details of the steps taken to mitigate the effect of any such third party acts or omissions on its performance.

**APPENDIX 1 TO SCHEDULE 7.1
INDICATIVE CANCELLATIONS BENCHMARK TABLE**

The Indicative Cancellation Benchmarks for the Passenger Services as a whole and for each Sector in each Reporting Period are as follows:-

Column 1	Column 2	Column 3	Column 4	Column 5
Sector	Target Performance Level (%)	Improvement Plan Performance Level (%)	Breach Performance Level (%)	Default Performance Level (%)
Passenger Services (as a whole)	1.60%	1.90%	2.20%	2.50%
Express Sector (E&G)	1.60%	1.90%	2.20%	2.50%
Express Sector (Other)	1.60%	1.90%	2.20%	2.50%
Suburban Sector West	1.60%	1.90%	2.20%	2.50%
Suburban Sector East	1.60%	1.90%	2.20%	2.50%
Rural Sector	1.60%	1.90%	2.20%	2.50%

APPENDIX 2 TO SCHEDULE 7.1

INDICATIVE CAPACITY BENCHMARK TABLE

The Indicative Capacity Benchmarks for the Passenger Services as a whole and for each Sector in each Reporting Period will be as follows:-

Column 1	Column 2	Column 3	Column 4	Column 5
Sector	Target Performance Level (%)	Improvement Plan Performance Level (%)	Breach Performance Level (%)	Default Performance Level (%)
Passenger Services (as a whole)	1.0%	1.3%	1.6%	1.9%
Express (E&G) Sector	0.5%	0.8%	1.1%	1.4%
Express (Other) Sector	1.0%	1.3%	1.6%	1.9%
Suburban West Sector	0.8%	1.1%	1.4%	1.7%
Suburban East Sector	1.6%	1.9%	2.2%	2.5%
Rural Sector				

APPENDIX 3 TO SCHEDULE 7.1

INDICATIVE PPM BENCHMARK TABLES

The Indicative PPM Benchmarks for the Passenger Services as a whole will be as follows:

PPM Benchmark Table 1

Column 1	Column 2	Column 3	Column 4	Column 5
	Target Performance Level (%)	Improvement Plan Performance Level (%)	Breach Performance Level (%)	Default Performance Level (%)
Passenger Services (as a whole)	92.5%	90.0%	88.5%	85.5%

Note: Column 3 (Improvement Plan Performance Level) of Indicative PPM Benchmark Table 1 above shall set at 90.0% while the current "**Performance Improvement Plan**" (*Joint Performance Improvement Plan between Network Rail and Scotrail established January 2022*) is in place until such time that the moving annual average PPM is at least 90.5% for six consecutive periods, and then Column 3 (Improvement Plan Performance Level) shall be set at 90.5%.

PPM Benchmark Table 2

Column 1	Column 2	Column 3	Column 4	Column 5
Sector	Target Performance Level (%)	Improvement Plan Performance Level (%)	Breach Performance Level (%)	Default Performance Level (%)
Express (E&G) Sector	89.3%	86.3%	83.3%	80.3%
Express (Other) Sector	86.5%-	83.5%	80.5%	77.5%
Suburban West (Peak) Sector	84.9%-	81.9%	78.9%	75.9%
Suburban West (Off-Peak) Sector	92.5%-	91.0%	88.0%	85.0%
Suburban East Sector	92.5%-	89.5%	86.5%	83.5%
Rural Sector	85.3%-	82.3%	79.3%	76.3%

APPENDIX 4 TO SCHEDULE 7.1**INDICATIVE MTIN BENCHMARK TABLES**

MTIN Target = 14,000 Km

MTIN Improvement Plan Level = 12,717 Km.

The MTIN Score for the first GP Quarter of the first Operator Year shall be calculated by excluding the HST's and the Class 385 Fleets from the Train Fleets and thereafter the parties shall meet to review the targets and agree any changes.

APPENDIX 5 TO SCHEDULE 7.1

Part 1 — Construction

- 1.(a) For the purposes of this Schedule 7.1, a day shall be deemed to begin at 0200 and end at 0159 on the same day.
- (b) Subject to paragraph 1(a) above, where any train is scheduled to depart from its point of origin on one day and arrive at its destination point on the following day, any determination of that train as Cancelled or Partially Cancelled shall be treated as occurring on the day on which the train was scheduled to depart from its point of origin.
- (c) References in this Schedule 7.1 to “**trains**” do not include Charter Services or other movements of rolling stock outside the Passenger Timetable (but which may be included in any relevant working timetable).
- (d) A train is treated as being in a Sector for that part of its journey during which it satisfies the Service Code, timing, direction and description set out in Part 3 of this Appendix 5 to Schedule 7.1 as forming a service which is included in that Sector.
- (e) Pursuant to this Schedule 7.1, SRH shall determine the achievement or otherwise of the Operating Performance Benchmarks in respect of the Sectors.
- (f) In monitoring the Operating Performance Benchmarks, each train should only be measured once. The Sector for each train will be based on the Sector of the Service Code at the final scheduled destination. In the Suburban West Sector, each train is then defined as either Peak or Off-peak (a train will not be classed as both) under this Schedule 7.1. Given each train is only monitored once, the aggregate of the Sector calculations should equate to the Passenger Services (as a whole) calculation.

Part 2 – Systems

Systems

1. The parties agree that the Operating Performance Benchmark in each Reporting Period shall be determined by reference to:
 - (a) such systems as may be used by Network Rail from time to time for recording or monitoring the operation of the Passenger Services and as may be selected by SRH and notified to SRT by SRH from time to time (the “**Network Rail Systems**”);
 - (b) such systems as SRH may put in place or (acting reasonably) require SRT to use for determining the Operating Performance Benchmark on the basis of the information and data in the Network Rail Systems and the other information and data available to it (the “**SRH Systems**”);

- (c) such other systems as SRH and SRT may agree;
 - (d) such other relevant information, data and records as may be available to SRH or which SRH may reasonably require SRT to provide to it from time to time, including the information specified in paragraphs 2 and 3 of this Part 2; and
 - (e) such systems as SRT may propose to SRH, and SRH, acting reasonably, agrees should be put to use for rebasing or monitoring the operation of the Passenger Services (the “**SRT Systems**”).
2. SRT shall, if so requested, use all reasonable endeavours to procure that there are entered into the Network Rail Systems and/or provided to SRH:
- (a) each Passenger Timetable;
 - (b) each Train Plan;
 - (c) each item of rolling stock used in the provision of the Passenger Services which is planned under a Train Plan to Pass a relevant Formation Monitoring Point but does not so Pass at such Formation Monitoring Point (except in circumstances where the whole train of which such rolling stock forms part is part of a Sector and does not Pass such Formation Monitoring Point); and
 - (d) such other information and data as SRH may require to facilitate the proper or efficient determination of performance against Operating Performance Benchmark under this Schedule 7.1.
3. SRT shall provide such information as SRH may require in relation to any differences between a Timetable and an Applicable Timetable for any day which results from an Allowable Change, such information to include, without limitation:
- 3.1. where the Allowable Change is a Restriction of Use, details of compensation therefor under the Track Access Agreement; and
 - 3.2. evidence of the manner and time of publication to passengers of details of such difference from the Timetable.

SRT shall provide to SRH details of the number of Minutes late which a train may be at a Formation Monitoring Point as a result of being delayed awaiting a Connection (to be provided within 7 days of the day on which the relevant train may be delayed).

- 4. SRT shall provide to SRH the information required under paragraphs 2 and 3 in such form and format as the Authority may require from time to time. SRT shall provide to the Authority such further details or information as it may reasonably require in relation to such information.
- 5. SRH and SRT will co-operate with each other to ensure that performance against Operating Performance Benchmark calculated under this Schedule 7.1 are determined correctly and efficiently on the basis of the information available to each of them from time to time.

Access and review of systems

- 6. SRT and SRH each agree to use all reasonable endeavours to ensure that each other may have such access to the Network Rail Systems as they may be able to procure during the Term.
- 7. SRH agrees to permit SRT to inspect the SRH Systems at any reasonable time during the Term and on reasonable notice if SRT has reasonable grounds to believe that a fault in the SRH Systems is resulting in the incorrect determination of the performance against Operating Performance Benchmark calculated under this Schedule 7.1.
- 8. If SRT notifies SRH that it has reasonable grounds to believe that the Systems are not satisfying any relevant requirements and it is established, following any investigation or inspection, that such Systems are not satisfying any relevant requirements, the information or determination obtained from

the relevant System for any relevant Reporting Periods commencing after the date which is two months prior to such notification may be adjusted in such a manner which is fair and reasonable to correct such information or determination, and any performance against Operating Performance Benchmark previously calculated under this Schedule 7.1 may be adjusted accordingly. The parties may refer any dispute relating thereto for resolution in accordance with the Dispute Resolution Rules.

9. Any inspection or investigation of any System shall be carried out at the cost of the party conducting the investigation or inspection (except in the case of fraud by another party or its employees or agents).

Failure to record or supply information

10. If SRT fails to comply with its obligations under paragraphs 2, 3 or 4 of this Part 2, SRH may, if it reasonably considers that performance against Operating Performance Benchmark has been incorrectly calculated as a result of such non-compliance (whether as a result of new information or data becoming available or otherwise), require any relevant performance against Operating Performance Benchmark which may be affected by such non-compliance to be adjusted in a manner which is fair and reasonable to reflect performance against Operating Performance Benchmark which, so far as reasonably determinable on the basis of any relevant data (including any new information or data), should have been calculated. The parties to any dispute relating thereto may refer it for resolution in accordance with the Dispute Resolution Rules.
11. If, as a result of any fault in the Systems or failure to record any or all relevant information, performance against Operating Performance Benchmark cannot be reasonably determined then the parties shall use all reasonable endeavours to determine the relevant performance against Operating Performance Benchmark on the basis of such manual information as may have been recorded by Network Rail and other relevant sources, including those of SRT. Nothing in this paragraph 11 shall however prevent SRH from determining any performance against Operating Performance Benchmark on the basis of information available to it at any relevant time.

Part 3 — Service Groups

Part 3(a) — Service Group A (HA02) East Coast Suburban Services

Service Code	Formation Monitoring Point
576 EDINBURGH-DUNBLANE	Edinburgh
584 HAYMARKET-NORTH BERWICK	Edinburgh
586 EDINBURGH-NEWCRAIGHALL	Edinburgh
587 FIFE CIRCULAR	Edinburgh

Part 3(b) — Service Group B (HA01) Express Services

Service Code	Formation Monitoring Points
540 GLASGOW-ABERDEEN-DYCE	Glasgow Queen Street high level
541 EDINBURGH-ABERDEEN	Edinburgh
548 EDINBURGH-FALKIRK-GLASGOW	Glasgow Queen Street high level
549 GLASGOW/EDINBURGH-INVERNESS	Edinburgh

	Glasgow Queen Street high level
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Part 3(c) — Service Group C Strathclyde Diesel (HA07)

Service Code	Formation Monitoring Points
561 GLASGOW QUEEN STREET / SPRINGBURN-CUMBERNAULD (S)	Glasgow Queen Street high level
564 GLASGOW-SHOTTIS-EDINBURGH	Glasgow Central high level
565 GLASGOW-PAISLEY CANAL (S)	Glasgow Central high level
566 GLASGOW - WHIFFLET (S)	Glasgow Central high level
567 GLASGOW-EAST KILBRIDE (S)	Glasgow Central high level
568 GLASGOW-BARRHEAD-KILMARNOCK (S)	Glasgow Central high level
572 MOTHERWELL-CUMBERNAULD (S)	None
574 GLASGOW NORTHERN SUBURBAN (S)	Glasgow Queen Street high level
575 GLASGOW-STIRLING-DUNBLANE	Glasgow Queen Street high level
577 KILMARNOCK-GIRVAN	None
578 GLASGOW-FALKIRK GRAHAMSTON	Glasgow Queen Street high level

Part 3(d) — Service Group D (HA06op) Strathclyde Electric Offpeak

Service Code	Formation Monitoring Points
560 GLASGOW NORTH (S)	Glasgow Queen Street low level
562 GLASGOW SOUTH (S)	Glasgow Central high level
563 ARGYLE LINE (S)	Glasgow Central Low Level
569 GLASGOW-WEMYSS BAY/GOUROCK (S)	Glasgow Central high level
571 GLASGOW-ARDROSSAN/LARGS (S)	Glasgow Central high level
573 GLASGOW-AYR (S)	Glasgow Central high level

Part 3(e) — Service Group E (HA06p) Strathclyde Electric Peak

Service Code	Formation Monitoring Points
560 GLASGOW NORTH (S)	Glasgow Queen Street low level
562 GLASGOW SOUTH (S)	Glasgow Central high level
563 ARGYLE LINE (S)	Glasgow Central Low Level
569 GLASGOW-WEMYSS BAY/GOUROCK (S)	Glasgow Central high level
571 GLASGOW-ARDROSSAN/LARGS (S)	Glasgow Central high level
573 GLASGOW-AYR (S)	Glasgow Central high level

Part 3(f) - Service Group F (HA03) South West Rural

Service Code	Formation Monitoring Points
579 GLASGOW/CARLISLE - STRANRAER	None

Part 3(g) - Service Group G (HA04) Highland Rural

Service Code	Formation Monitoring Points
542 INVERNESS – WICK/THURSO	None
543 INVERNESS – KYLE OF LOCHALSH	None
545 GLASGOW – OBAN/FORT WILLIAM/MALLAIG	None
547 ABERDEEN – INVERNESS	None

SCHEDULE 7.2

THIS IS SCHEDULE 7.2 REFERRED TO IN THE FOREGOING SCOTRAIL GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND SCOTRAIL TRAINS LIMITED

Service Quality

1. Introduction

1.1. This Schedule 7.2 describes:

- (a) the mechanism for determining the Schedule 7.2 Service Specifications for Station Services, the On-Train Services, the Information Away from Station Services and the Emerging Technologies Services which are to be provided by SRT;
- (b) the rights of the Authority to carry out (or to require to be carried out) inspections of the quality of those Schedule 7.2 Services provided by SRT;
- (c) the Management and Processes to be put in place by SRT for the management and delivery of the Service Quality Regime for the Term;
- (d) the responsibilities and reporting lines for the SQM and SRT Executive Team;
- (e) the means of measurement of the level of performance found during service quality inspections and re-inspections by the Authority (“*inspections*” and “*re-inspections*”, respectively); and;
- (f) the way in which the parties shall work together to rectify poor performance by SRT.

1.2 Pursuant to this Schedule 7.2 the Authority may inspect (or require the inspection), in respect of, the Schedule 7.2 Services with which this Schedule 7.2 deals (“**Service Quality Regime**”).

1.3 SRT shall use all reasonable endeavours to procure that at Glasgow Central, Edinburgh Waverley and Prestwick International stations the standards for Station Services are provided at no worse than the relevant Acceptable Level.

1.4 Subject to any obligations within this Agreement which result in or require improvements in facilities or assets but without prejudice to paragraph 17, SRT will not have any obligations under the Service Quality Regime in relation to facilities and assets, or be obliged, as part of the Service Quality Regime in this Schedule 7.2, to provide facilities and assets, where those assets are not physically present at the Commencement Date. SRT accepts that the rectification of poor performance in terms of paragraph 10 could require the provision of replacement assets.

1.5 There will be no liability for SRT in relation to the application of any Service Quality Regime prior to the Commencement Date. Any penalties, notices or other liabilities applicable from the application of any Service Quality Regime prior to the Commencement Date shall be cancelled and shall not apply in relation to SRT.

2 The Service Quality Appendices

2.1 The Service Quality Appendices detail:

- (a) the Station Services, On-Train Services, the Information Away from Station Services, and the Emerging Technologies;
- (b) the Schedule 7.2 Service Specifications;
- (c) the Service Quality Benchmarks;

(d) any Maximum Inspections Numbers,

applicable from the Commencement Date and for the Term unless varied in accordance with paragraph 12 of this Schedule 7.2.

3 **Service Quality Management Arrangements**

SRT shall:

3.1 in relation to the Service Quality Regime:

- (a) ensure that SQM reports directly to and make recommendations to SRH to reduce the occurrence of Below Acceptable Level performance against the Schedule 7.2 Service Specifications and the incidence of failed inspections and re-inspections;
- (b) record and maintain a list of any corrective actions identified during any checks on service quality undertaken by SRT ("**audits**"), inspections or re-inspections undertaken by (or on behalf of) the Authority and ensure that the appropriate responsible parts of SRT's organisation are advised of any necessary corrective actions;
- (c) monitor the implementation by the responsible party within SRT's organisation of the corrective actions identified;
- (d) ensure that the SRT Executive Team, and SQM perform the tasks required of them under paragraph 4; and
- (e) ensure that the SRT Executive Team has responsibility for the SQM role or appoints an appropriate SQM who shall report to the SRT Executive Team;

3.2 ensure that sufficient staff reporting to the SRT Executive Team are employed (either directly or under a sub-contract) and employ sufficient resources to allow the SRT Executive Team to carry out the tasks required of them;

3.3 ensure that corrective actions arising from any inspections or re-inspections are diligently and promptly dealt with and that there are adequate resources, monitoring processes and procedures, and appropriate contractual arrangements, in place to do so;

3.4 ensure that SRT's obligations set out in paragraph 1 of Schedule 1.3 (*Additional Service Specifications*) and in this Schedule 7.2 are complied with in full;

3.5 co-operate with the Authority in allowing the Authority's personnel (or its agents or sub-contractors) to conduct inspections, re-inspections or audits and in making appropriately senior and appropriately qualified members of SRT's personnel available to attend meetings;

3.6 provide to the Authority when requested details of where train staff and, in the case of staffed Stations, Station staff will be available for any inspection; and

3.7 keep the SRT board of directors fully advised as regards the matters referred to in paragraphs 3.1 to 3.6 above and copy to them any recommendations referred to in paragraph 3.1(a).

4. **Role of the SRT Executive Team and/or SQM in respect of the Service Quality Regime**

4.1 SRT warrants and undertakes that the SRT Executive Team shall:

- (a) report directly to SRT's board of directors;
- (b) keep full and accurate records and documents relating to or affecting the performance by SRT of the Schedule 7.2 Services;

- (c) develop and keep under review a train presentation programme for implementation by SRT (to include the management of fault recording and rectification), designed to ensure that the relevant Schedule 7.2 Service Specifications are reached and, where possible, exceeded and that, in any event, the relevant Acceptable Level is met;
- (d) develop and keep under review a station environment, structures, information provision, security, ticket selling and revenue protection programme for implementation by SRT (to include the management of fault recording and rectification), designed to ensure that the relevant Schedule 7.2 Service Specifications are reached and, where possible, exceeded and that, in any event, the relevant Acceptable Level is met;
- (e) develop and keep under review a programme regarding the Information Away from Station Services for implementation by SRT (to include the management of fault recording and rectification), designed to ensure that the relevant Schedule 7.2 Service Specifications are reached and, where possible, exceeded and that, in any event, the relevant Acceptable Level is met;
- (f) review the results of the Passenger View Surveys to inform the programmes referred to in paragraphs (c) to (e);
- (g) send to SRT's board of directors at the end of each Reporting Period a statement detailing the inspections and re-inspections where a fail has been recorded (including in respect of Management and Processes) together with audits, copying this statement to the Authority;
- (h) ensure that all inspections, re-inspections and audits that may be conducted are fully recorded and any information that is due to be passed is passed on timeously;
- (i) ensure that where faults are found during an audit, inspection or re-inspection or items have failed in an inspection or re-inspection, appropriate remedial action is taken promptly and that there is a process for recording and monitoring the completion of the corrective actions;
- (j) ensure that the Authority's SQIs are granted such access to the facilities under the control of SRT and/or SRH as is necessary to permit the Authority to exercise its rights of inspection under paragraph 5 and are also provided with reliable information on the availability of trains and of staff in respect of staffed stations to allow the Authority to exercise its rights of inspection and re-inspection;
- (k) ensure that current site specific safety rules and regulations are made available to the Authority's SQIs; and
- (l) ensure that SRT puts in place systems to preserve the documents referred to in paragraph 5.10 for a period of either 6 years or until 12 months after the expiry of the Term, whichever is the later.

4.2 With respect to the SQM involved in the Service Quality Regime, SRT warrants and undertakes the following:-

- (a) The SQM shall be an individual capable of competently performing the functions the role requires of him/her, including in the management of the work of others.
- (b) The SQM, in implementing his/her role, shall develop and implement processes to ensure that there is, throughout the organisation of SRT, a focus upon the importance of continued improvement in the passengers' experiences across the areas of Train presentation, Station condition and interaction with SRT staff. This focus must include an appreciation of the need to record reliable and accurate information on SRT's ongoing performance across these areas.

- (c) The SQM shall be an individual capable of competently performing the functions the role requires of him/her, including in the management of the work of others.
- (d) The SQM, in implementing his/her role, shall develop and implement processes to ensure that there is, throughout the organisation of SRT, a focus upon the importance of continued improvement in SRT's performance across the areas of revenue collection and protection against ticketless travel. This focus must include an appreciation of the need to record reliable and accurate information on SRT's ongoing performance across these areas.
- (e) The SQM shall ensure that SRT has in place a management process for reporting to and seeking action from Network Rail in relation to any amount of litter on the track adjacent to platforms which fail to comply with Grade B Cleanliness Standard as defined in the Code of Practice on Litter and Refuse issued by the Scottish Government under section 89 of the Environmental Protection Act 1990 as published in 2000 or any successor legislation.
- (f) The SQM will ensure that aspects of Service Quality Appendices not assessed as part of the typical on-train audits are regularly assessed as part of a depot visit.
- (g) The SQM will ensure that Fast Track reporting of potential failures under this Schedule 7.2 is enabled both to the SQM and also the property help desk.
- (h) The SQM will ensure that processes are in place to ensure that all alarms and Help/Information Points are working, with records of test procedures.
- (i) The SQM shall have records to ensure that in areas of semi-permanent darkness, such as subways, lights shall be switched on at all times between 30 minutes before the first scheduled Train and until 30 minutes after the actual arrival or actual departure, whichever is the later, of the last Train.

4.3 There shall be deemed to be a failure to meet the requirements in paragraph 4.2 if:

- (a) a Train Faults System to allow for timeous repair/remedy (which is independent of the Service Quality Regime, but which incorporates information arising from inspections) has not been established by SRT, or it cannot be shown to be kept continually up-to-date (by being updated no less than daily);
- (b) a Station Faults System to allow for timeous repair/remedy (which is independent of the Service Quality Regime, but which incorporates information arising from inspections) has not been established by SRT, or it cannot be shown to be kept continually up-to-date (by being updated no less than daily);
- (c) the Faults Systems do not incorporate a means of recording any complaints or comments from passengers in respect of any faults;
- (d) it cannot be demonstrated (during each inspection after the first Operator Year) that the SQM has reviewed, during the preceding thirteen Reporting Periods, the data captured under the Faults Systems and prepared, within one Reporting Period of such a review, a plan (a "**Faults Plan**") to reduce the incidence of faults arising and the time taken to remedy or repair such faults;
- (e) it cannot be demonstrated (during each inspection after the first Operator Year) that the SQM has reviewed, during the preceding thirteen Reporting Periods, the data captured under the Faults Systems to ensure the Faults Systems are being fully and properly utilised by SRT's staff and has prepared, within one Reporting Period of such a review a plan (a "**Faults Reporting Plan**") to continually improve the frequency, quality and accuracy of fault reporting by SRT's staff;
- (f) it cannot be shown that the SQM has implemented a Faults Plan and a Faults Reporting Plan within two Reporting Periods of the preparation of each such plan;
- (g) it can be demonstrated that SQM has failed to ensure that full and accurate records

and documents have been kept in relation to SRT's performance of its obligations in respect of revenue collection and protection against ticketless travel;

- (h) the SQM has failed to forward to SRT's board of directors his/her detailed statement at the end of any Reporting Period which has fallen since the last date of inspection of the Schedule 7.2 Services;
- (i) it cannot be demonstrated that either one of paragraphs 4.2 (f) – (i) have been met.

5. Authority Service Quality Inspections ("SQI")

- 5.1 The Authority may appoint individuals (who may be sub-contractors of the Authority), each to be known as an SQI to inspect a representative sample of the Schedule 7.2 Services and Management and Processes in accordance with this paragraph 5.
- 5.2 Any SQIs appointed by the Authority will be responsible for carrying out inspections in respect of all Schedule 7.2 Services and Stations. The SQIs of the Authority may inspect the Management and Processes.
- 5.3 The Authority shall have the right to have its SQIs inspect each Station up to the relevant Maximum Inspection Number. The Authority does not commit to any minimum number of inspections of Stations. Notwithstanding the foregoing, an SQI may inspect a Station up to 52 times during any 13 consecutive Reporting Periods if:
 - (a) the Station concerned is a Key Station; or
 - (b) any notice or notices which have been issued under paragraph 6.2 during the preceding three Reporting Periods show or record, in total, seven or more failures in respect of one or more Station Services at that Station;

even more frequent inspections are to be permitted where this is provided for in a Service Quality Appendix.

- 5.4 SQIs may inspect Trains in accordance with the number of inspections set out in the Service Quality Appendices but the Authority does not commit to any minimum number of inspections of Trains.
- 5.5 SQIs may inspect up to twice as many Schedule 7.2 Services as permitted by paragraph 5.4 in respect of an On-Train Service or On-Train Services if SRT fails to provide that On-Train Service or those On-Train Services at the Acceptable Level for three successive Reporting Periods. These additional inspections may continue for so long as required by the Authority.
- 5.6 Subject to the rights of the Authority to re-inspect or carry out additional inspections under paragraph 6, no Station Service or particular rolling stock vehicle shall be inspected within seven days of a previous inspection; provided that this shall not preclude the inspection of any rolling stock vehicle where that rolling stock vehicle has been inspected during the preceding 7 days while providing a different Schedule 7.2 Service than that which it is providing when inspected for the second or subsequent time. Certain Service Quality Appendices anticipate the possibility of further inspections within that seven day period and nothing in this paragraph 5.6 shall restrict the Authority from requiring those more frequent inspections by its SQIs.
- 5.7 The SQIs of the Authority shall also be entitled to:
 - (a) vary the timing of inspections, both as regards days of the week and times of day, to seek to ensure that a reasonable cross section of inspection times, both Peak (meaning for the purpose of this paragraph the Peak on Weekdays) and Off-Peak, is achieved;
 - (b) construct and implement their programme of inspections so that the Stations and Trains audited are randomly selected;
 - (c) undertake their inspections and re-inspections on Trains so that these shall not interfere with the timely delivery of passenger services;
 - (d) seek to programme their inspections so that they are representative of the number of

Schedule 7.2 Services starting or operating in the Peak and in the Off-Peak;

- (e) undertake their inspections at Stations so that these shall not interfere with the delivery of Schedule 7.2 Services to passengers;
 - (f) conduct at least 10% of inspections on either a Saturday or a Sunday; and
 - (g) seek to ensure that during any Reporting Period the number of inspections undertaken in any week shall in normal circumstances be approximately equal.
- 5.8 An SQI of the Authority may inspect the Information Away from Station Services at least once during every 13 consecutive Reporting Periods.
- 5.9 An SQI of the Authority may inspect the Management and Processes at least once during every 13 consecutive Reporting Periods.
- 5.10 In addition to the other rights enjoyed by the Authority under this paragraph 5, the Authority shall have, at all reasonable times, access to and the right to reproduce at its own cost the records created by SRT relating to the performance by SRT of the Schedule 7.2 Services. This access shall be for the purpose of auditing and verifying SRT's performance of the Schedule 7.2 Services. The term "**records**" shall, for the purposes of this paragraph 5.10, be deemed to extend to all books, records, receipts, vouchers and documents, of any description (including those stored on microfilm, video tape or digital recordings or on computer, which shall be made available in legible form).

6. Role of Service Quality Inspectors

- 6.1 During each inspection an SQI shall determine whether the Schedule 7.2 Services are being performed to the required level of service quality in accordance with the relevant Schedule 7.2 Service Specification and which, if any, Schedule 7.2 Services require rectification by SRT so that each Schedule 7.2 Service is provided in accordance with the relevant Schedule 7.2 Service Specification.
- 6.2 If following any inspection of one or more Stations, or Trains, or of Information Away from Station Services or Management and Processes, the Authority determines that there is a failure in terms any Service Quality Appendix to meet the required standard of service quality and/or that a Schedule 7.2 Service requires rectification, the Authority may serve a notice ("**Notice**") on SRH and/or SRT. The Notice shall specify each Schedule 7.2 Service which has failed to meet the required standard and where a Schedule 7.2 Service requires rectification it shall specify each Schedule 7.2 Service requiring rectification and shall specify the time for rectification of each such Schedule 7.2 Service as stated in the relevant Service Quality Appendix, (such time to run from the beginning of the Working Day following the date of receipt of such Notice) and SRT shall rectify each such Schedule 7.2 Service within such time.
- 6.3 After the expiry of the time specified in a Notice a SQI may re-inspect any Station or Train or re-inspect the provision of Information Away from Stations or Management and Processes in respect of which a Notice has been issued that required rectification of a Schedule 7.2 Service to determine whether any Schedule 7.2 Service specified in the Notice has been rectified so that that Schedule 7.2 Service is provided in accordance with the relevant Service Quality Appendix. Any re-inspection by an SQI under this paragraph shall not constitute an inspection referred to in paragraphs 5.3 to 5.5 or 5.7.
- 6.4 If an SQI, after re-inspection under paragraph 6.3, determines that SRT has not rectified all Schedule 7.2 Services specified in a Notice the procedure set out in paragraphs 6.2 to 6.3 above may be repeated by the Authority until SRT has rectified all Schedule 7.2 Services specified in any Notice. This procedure shall, however, be suspended on the date of receipt by the Authority of proposals submitted by SRT in accordance with paragraph 10 unless and until SRT is, in the reasonable opinion of the Authority, failing to use its best endeavours to implement the agreed or determined proposals.
- 6.5 In addition to the inspections and re-inspections permitted by this paragraph 6 the Authority shall be entitled to procure additional inspections of some or all the Station Services at any Station or Stations on up to 6 occasions in each Reporting Period ("**additional inspections**").

The Authority shall not be entitled to carry forward from one Reporting Period to the next its entitlement to carry out any additional inspections during that Reporting Period that it did not carry out.

- 6.7 If following any additional inspection of a Station Service the Authority determines that there is a failure of any provision of any Service Quality Appendix to meet the required standard of service quality and the relevant Station Service requires rectification, the Authority may serve a notice (“**an Additional Inspection Notice**”) on SRH and/or SRT. The Additional Inspection Notice shall specify each Station Service requiring rectification and shall specify the time for rectification of each such Station Service as stated in the relevant Service Quality Appendix, (such time to run from the beginning of the Working Day following the date of receipt of such Additional Inspection Notice) and SRT shall rectify each such Station Service within such time. For the purposes of this paragraph 6.7, references in the relevant Service Quality Appendix to “**Notice**” shall be deemed to include “**Additional Inspection Notice**”).
- 6.8 After the expiration of the time specified in an Additional Inspection Notice, an SQI may re-inspect any Station in respect of which an Additional Inspection Notice has been issued to determine whether all Station Services specified in the Additional Inspection Notice have been rectified. Any re-inspection by an SQI under this paragraph shall not constitute an inspection referred to in paragraphs 5.3 to 5.5 or 5.7.
- 6.9 If an SQI after a re-inspection under paragraph 6.8 determines that SRT has not rectified all Station Services specified in an Additional Inspection Notice the procedure set out in paragraphs 6.7 to 6.8 may be repeated until SRT has rectified all Station Services specified in any Additional Inspection Notice. The procedure shall, however, be suspended on the date of receipt by the Authority of proposals submitted by SRT in accordance with paragraph 10 unless and until SRT is, in the reasonable opinion of the Authority, failing to use its best endeavours to implement the agreed or determined proposals.
- 6.10 If an SQI has not re-inspected any Station, Train, or Information Away from Station Services or Management and Processes within 7 days of the expiration of the time specified in any Notice, or any Additional Inspection Notice, SRT shall be deemed to have rectified any Schedule 7.1 Service as required by such Notice or Additional Inspection Notice.
- 6.11 The Authority may provide the SQM with copies of all reports prepared by their SQIs during inspections and re-inspections pursuant to this paragraph 6.

7. **SRT’s Response to a Notice**

If SRT, acting reasonably, considers that the content of any Notice, Additional Inspection Notice or report is incorrect or that such Notice, Additional Inspection Notice or report has not been properly given, SRT may notify the Authority and SRH of this within 7 days of the date of receipt of that Notice, Additional Inspection Notice or report, such notification shall be accompanied by photographic or other documentary evidence which supports their notification. If SRT has not so notified the Authority and SRH in accordance with the terms of this paragraph 7 SRT shall be deemed to be satisfied as to the correctness of content and method of delivery or service of the same. The parties may, in seeking to resolve any dispute as to the correctness of content or service of a Notice, Additional Inspection Notice or report, comply with the Escalation Procedure.

8. **Major Event**

- 8.1 Where the performance by SRT of any Schedule 7.2 Service is materially adversely affected by the occurrence of a Major Event affecting that Schedule 7.2 Service, that Schedule 7.2 Service shall be excluded from the provisions of this Schedule 7.2 for such period as the Authority shall determine if:
- (a) SRH shall have notified the Authority of the occurrence and location of a Major Event in writing within 24 hours of the occurrence of that Major Event;
 - (b) SRH shall have provided to the Authority such other information, as the Authority shall reasonably require in connection with that Major Event; and
 - (c) SRT shall have:

- (i) used all reasonable endeavours to prevent the occurrence of any Major Event and to restore normal performance of its obligations in the event of the occurrence of a Major Event and shall have actively mitigated and minimised the effect of any Major Event on the performance of its obligations under this Schedule 7.2;
- (ii) complied with the terms of paragraph 10 and 11 in Schedule 1.2 (*Operating Obligations*); and
- (iii) otherwise complied with the terms of this Agreement.

8.2 Notwithstanding that none of the requirements listed in paragraph 8.1 (a) to (c) inclusive has been met, the Authority may agree the exclusion of that Schedule 7.2 Service from the provisions of the Quality Service Regime where in the opinion of the Authority the performance by SRT of any Schedule 7.2 Service is materially adversely affected by the occurrence of a Major Event.

8.3 If SRT is not satisfied with a decision of the Authority under paragraph 8.1 above SRT may notify the Authority and SRH of the same within 7 days of the date on which that decision is notified to SRT such notification shall be accompanied by photographic or other documentary evidence which supports their notification. If SRT has not so notified the Authority and SRH in accordance with this paragraph 8.3, SRT shall be deemed to be satisfied as to the decision. The parties may, in seeking to resolve any dispute as to a decision of the Authority under paragraph 8.1, comply with the Escalation Procedure.

9. Calculation of Service Quality Score

9.1 At the end of each Reporting Period, the Authority will calculate and allocate each Service Quality Benchmark Score in that Reporting Period using the calculations detailed in the Service Quality Appendices, and the Authority shall then aggregate the total Service Quality Benchmarks Scores.

9.2 Following calculation of the aggregate total Service Quality Benchmark Scores, SRT shall be awarded a “**Service Quality RP Score**” (either 3, 2 or 1) for that Reporting Period of:

- (a) ‘Service Quality RP Score Strong Level’ (Score of 3) if SRT achieves a cumulative score of not less than 100 for the aggregated Service Quality Benchmark Scores in that Reporting Period;
- (b) ‘Service Quality RP Score Acceptable Level’ (Score of 2) if SRT achieves a cumulative score not less than 75 and nor greater than 99 for the aggregated Service Quality Benchmark Scores in that Reporting Period; or
- (c) ‘Service Quality RP Score Below Acceptable Level’ (Score of 1) if SRT achieves a cumulative score of 74 or less for the aggregated Service Quality Benchmark Scores in that Reporting Period.

9.3 For the avoidance of doubt in arriving at the Service Quality RP Score under this paragraph the parties accept that the maximum score for all Service Quality Benchmarks in any Reporting Period (assuming SRT is awarded a ‘Strong Level (Score of 3)’ for every Service Quality Benchmark) in that Reporting Period is 120.

9.4 At the end of each GP Quarter, the Authority will calculate the “**Service Quality PQ Score**” which shall be calculated in accordance with the following formula, namely:

$$A = B/C$$

Where:

A is the Service Quality PQ Score

- B is the sum of the Service Quality RP Score calculated in accordance with paragraphs 9.1 to 9.2 for each Reporting Period in the relevant GP Quarter
- C is the number of Reporting Periods in the relevant GP Quarter

10. SRT Proposals to Rectify Poor Performance

- 10.1 If the Authority determines that SRT has provided any Schedule 7.2 Service at or Below Acceptable Level in two successive Reporting Periods or a SQI has successively re-inspected any Station or Train 4 times and SRT has not complied with the last Notice or Additional Inspection Notice served following the last inspection or re-inspection or additional inspection, the Authority may notify SRT of the same. SRT shall, within 14 days of notification submit to the Authority and SRH, SRT's proposals. SRT's proposals shall include solutions which, in its reasonable opinion, will ensure that (having regard to cost and the practicalities of implementation) the relevant of Schedule 7.2 Service will be provided at Acceptable Level and that the relevant Notice or Additional Inspection Notice will be complied with as soon as practicable. The proposals shall indicate proposed timescales for implementation and the estimated cost (if any) of implementation. Within 14 days of receipt of SRT's proposals, the Authority shall notify SRT whether or not it agrees with such proposals and, if the proposals are so agreed, SRT shall implement such proposals within the proposed timescale for implementation.
- 10.2 If the Authority does not consider that such proposals will ensure that the relevant of Schedule 7.2 Service will be provided at Acceptable Level and that the relevant Notice or Additional Inspection Notice will be complied with, the parties shall for 2 weeks (following the Authority's intimation of its view of SRT's initial proposals) in good faith use all reasonable endeavours to agree revised proposals, and failing agreement the parties shall comply with the provisions of the Escalation Procedure. Following agreement of revised proposals in accordance with this paragraph 10.2, or determination of SRT's proposals in accordance with the Escalation Procedure, SRT shall implement the proposals so agreed or determined within the timescales agreed or determined for implementation.

11. Breach and Service Quality

Only where SRT fails to use best endeavours to implement the agreed or determined proposals in accordance with paragraph 10.2 will any failure by SRT to comply with a Service Quality Appendix, constitute non-performance of or non-compliance to a material extent with any obligation in this Schedule 7.2 for the purpose of paragraph 2.7 of Schedule 10.3 (*Events of Default and Executive Team Review Events*).

12. Notices

For the purposes of this Schedule 7.2 any notice shall be sent in the manner required by paragraph 3.1(a) of Schedule 19 (*Other Provisions*) and the provisions of that paragraph shall apply to such notices.

13 Self-Monitoring

- 13.1 As and when requested by the Authority, SRT shall provide to the Authority a **Service Quality Monitoring Plan** which shall contain SRT's informed opinion (including without prejudice to the foregoing generality the taking into account the Passenger View Surveys) as to any revised regime to be implemented for the Service Quality Regime so that it can be developed into a regime which provides for SRT to self-monitor and self-assess (through an arm's length operation procured by SRT) the matters being monitored and assessed by the Authority and which will allow for the Authority to audit and verify the results of such self-monitoring and self-assessment.
- 13.2 The Authority may accept any proposals in the Service Quality Monitoring Plan. In addition to or in substitution for (in part or in whole) that Plan, the Authority may (on not less than 6 months written notice to SRT) specify the provisions of this Schedule 7.2 which the Authority has

determined will give effect to a regime which provides for self-monitoring and self-assessment by SRT of the Station Services, On-Train Services, Information Away from Station Services and Emerging Technologies under the Service Quality Regime. SRT shall comply with such specification from the expiry date of such notice or such later date as may be specified by the Authority.

- 13.3 Any specification under paragraph 13.2 shall not constitute a Change.
- 13.4 Any specification under paragraph 13.2 may include (but will not be limited by that):-
- (a) that the Authority shall be entitled to require SRT to appoint at SRT's own expense service quality inspectors to inspect the Station Services, On-Train Services, Information Away from Station Services and Emerging Technologies;
 - (b) that, if the Authority does so require SRT to appoint its own service quality inspectors, the Authority shall be under no obligation to appoint its own SQIs, and for the purposes of this Schedule 7.2 references to SQIs appointed by the Authority, or to SQIs of the Authority or any other similar expression shall be a reference to SQIs appointed by SRT;
 - (c) that, if the Authority requires SRT to appoint its own service quality inspectors, the Authority shall be entitled to audit the consistency and accuracy of any inspections carried out by such service quality inspectors and to audit the service quality of the services monitored by them;
 - (d) that, if the Authority requires SRT to appoint its own service quality inspectors, the Authority shall be entitled to require that SRH provide from time to time (and at least monthly) to the Authority an analysis of results and trends gathered both by SRT and its service quality inspectors; and
 - (e) requirements as to frequency of inspections and maximum and minimum numbers of inspection.
- 13.5 SRT shall grant such access to the facilities and records under its control and/or SRH's as is necessary to enable the Authority to exercise its audit rights.

14 Variations to the Service Quality Regime

14.1 The Authority may pursuant to paragraphs 1.1(a) or 1.1(b) of Schedule 9 (*Changes*) vary the terms of the Service Quality Regime and such a variation may include, without limitation, the addition or removal of Stations or stations from the Service Quality Regime, changes to the Schedule 7.2 Service Specifications, changes to the Service Quality Benchmarks, changes to the Stations and changes to those aspects of the Operator Services to which the Service Quality Regime applies. Such a variation may also add or remove Stations or stations from the obligations set out in paragraph 1.3.

14.2 Service Quality Regime Review

- (a) Without prejudice to paragraph 14.1, the parties will jointly review the Service Quality Regime after Operator Years 3, 5 and 8 to consider whether the Service Quality Appendices are still relevant with the operational objective of ensuring the Service Quality Regime is still focused on the best service deliverable for passengers and continues to ensure that the Operation Facilities condition remains at the level such were in at the Commencement Date, or, if later, the date such facility came into use for the Operator Services.
- (b) The parties shall also take into account the results of the Passenger View Surveys and any Inspection Programme conducted pursuant to paragraph 15 hereof, output from SRT's online panel surveys carried out in accordance with relevant Business Plan Commitments, with greater weight being given to surveys conducted by independent parties than those carried out by SRT.

- (c) The parties shall consult with each other in good faith and each shall act reasonably to negotiate amendments to the Service Quality Appendices that are required as a result of the Service Quality Regime Review.
- (d) In the event that the parties cannot agree on the terms of the amended Service Quality Appendices within 4 Reporting Periods then the Authority's amendments to the Service Quality Regime shall apply.
- (e) In the event that the parties reach agreement on the terms of an amended Service Quality Appendices, the terms of this Agreement will be varied pursuant to paragraph 1.1(b) of Schedule 9 (*Changes*) and the amended Service Quality Regime shall apply from the date the parties agree to in such Variation.

15 Localised Approach

- 15.1 SRT shall consult with Stakeholders, Community Rail Partnerships and other local bodies with an interest in Operator Services local to the Operator Services in question to develop propositions for programmes of inspection to be an alternative to the Service Quality Regime ("**Inspection Programme**") which are suitable for local needs.
- 15.2 The proposition being the outcome of the consultation shall be provided to the Authority and SRH in draft at least three months prior to the second anniversary of the Commencement Date along with evidence the consultation required under paragraph 15.1 took place.
- 15.3 SRT shall consult with the Authority and SRH regarding the proposition issued under paragraph 15.2 including in relation to its contents and the level of consultation undertaken in accordance with paragraph 15.1. The parties shall co-operate in the consultation process with a view to SRT issuing within 30 days after the issue of the draft proposition a revised proposition for approval by the Authority. The Authority shall not unreasonably withhold their approval to the revised proposition.
- 15.4 SRT shall commence the Inspection Programme following the Authority confirming approval of the proposition during the Operator Year commencing on the second anniversary of the Commencement Date.
- 15.5 SRT shall continue to consult with the parties who were involved in terms of paragraph 15.1 in developing the Inspection Programme as to its efficacy and any revisions required to it, should any revisions be required SRT shall consult with the Authority in the same manner as paragraph 19.3 before implementing the revisions.
- 15.6 The Authority reserves the right to require the Service Quality Regime to reapply and/or to continue to apply to any facilities or services covered by the Inspection Programme, the exercise of that right shall not constitute a Change.

16 Operation Facilities Book

Where a Schedule 7.1 Service Specification is to be read in conjunction with an Operation Facilities Book the reference is to the relevant Operation Facilities Book as updated in accordance with Schedule 4.1 (*Operation Facilities*).

17 Additional Assets

Assets and facilities that replace existing assets and facilities, and additional assets and facilities, at Stations or on rolling stock vehicles (including, in every case, new rolling stock vehicles and assets and facilities to be provided as a result of SRT carrying out any obligations within this Agreement which result in or require improvements in facilities or assets shall all be subject to the regimes described in this Schedule 7.2.

18 Staffing aspects

SRT shall from the Commencement Date ensure that its employees' service specification manuals incorporate the Schedule 7.2 Service Specification and standards and SRT shall train its employees to deliver the of Schedule 7.2 Services in accordance with that specification and those standards.

19 Operational aspects

19.1 Each ticket office shall be equipped with an electronic information system or with relevant manuals including NRTT, Retail Manuals Part I and II, Routing Guide, Operator's Product Guide, Newsrail Express and engineering/special train notices or the equivalent to these publications in hard copy or electronic format.

19.2 The Customer Contact Centre shall also play a key role in co-ordinating internal information concerning SRT's performance under Schedule 7.2. Its specific roles shall include:

- (a) Acceptance of internal reports of failure and acknowledgements;
- (b) Receipt of internally completed service quality reports and aggregation into reports;
- (c) Fast Track reporting of potential failure under this Schedule 7.2;
- (d) Receipt and acknowledgement of reports received from customers, Stakeholders or external agencies; and
- (e) Co-ordination of required information concerning service quality including records of reports which have to be sent to at the end of each Reporting Period.

19.3 SRT's conductors shall be provided with mobile phones or a similar and suitable means of instantaneous communication and shall be required to phone or otherwise contact the Customer Contact Centre as soon as reasonably practicable if any Station needs attention in relation to a matter covered by Schedule 7.2.

20. Escalation Procedure

20.1 Within 5 Working Days of notification pursuant to paragraphs 7 or 8.3 of Schedule 7.2 or, where the relevant parties have not agreed revised proposals in accordance with paragraph 10.2, within 5 Working Days of the expiry of the period of 2 weeks referred to in those paragraphs, the relevant parties shall hold a meeting ("**the First Meeting**") to discuss any disputes in respect of paragraphs 7, 8.3 or 10.2 ("**the Disputes**") with a view to resolving the Disputes in good faith.

20.2 If, for any reason, the relevant parties have not resolved the Disputes within 10 Working Days of the First Meeting each relevant party shall promptly and in any event within 15 Working Days of the First Meeting prepare a written summary of the Disputes and the reason for the Disputes and shall submit that summary accompanied by any photographic or other documentary evidence submitted by SRT in terms of paragraphs 7 and 8.3 of Schedule 7.2 to the Nominated Representative of the other party/ies. The Nominated Representatives of the relevant parties shall within 20 Working Days of the First Meeting meet with a view to resolving the Disputes ("**the Second Meeting**"). If the Nominated Representatives or the relevant parties have not resolved the Disputes within 10 Working Days of the Second Meeting then either party may require that the Disputes be resolved in accordance with the Dispute Resolution Rules.

20.3 "**Nominated Representative**" means

- (i) in respect of SRT, such person as SRT shall nominate from time to time and notify to SRH and the Authority; and

- (ii) in respect of the Authority, such person as the Authority shall nominate from time to time and notify to SRH; and
- (iii) in respect of SRH, such person as SRH shall nominate from time to time and notify to SRT and the Authority.

20.4. Any reference to this procedure is without prejudice to:-

- (i) the re-inspection rights in terms of paragraph 6.4 of Schedule 7.2; and
- (iii) SRT's obligations to rectify failures.

APPENDIX 1 TO SCHEDULE 7.2
SERVICE QUALITY APPENDIX - STATION TICKET OFFICES

1. SPECIFICATION

This Appendix 1 will be considered as two performance appendixes, where 1.1 and 1.2 each will have their own inventory levels.

All Station schedule audits may commence at the start of the ticket office opening hours. Ticket Offices Appendix 1, audits will commence no earlier than 15 minutes after the agreed opening hours and will be completed no later than 15 minutes prior to the agreed opening hours, this will permit SRT to pull ticket equipment, within the Station opening hours.

1.1 Category 1 and Category 2 ticket offices should be opened during the hours set out in the agreed opening hours (Table A). A ticket office will be failed if:

(a) Where any ticket office is closed during an inspection when it should be open as specified in paragraph 1.1 above a fail will be recorded.

1.2 Category 1, 2 and 3 ticket offices will be failed if:

- (a) on arriving at the Station the SQI is not able to sign in within 5 minutes of joining the queue.
- (b) on departure from the Station the SQI is not able to sign out within 5 minutes of joining the queue.
- (c) Where speaker/microphone systems and/or hearing aid induction loops are fitted, any of these are not operational or do not permit clearly audible conversation.

Mitigating steps on the event of a Cat 3 being closed:

- (i) Transport Scotland will complete all other aspects of an audit at a category 3 Station.
- (ii) Should Transport Scotland be required to complete a follow up audit against any other Station schedule audited during the primary audit, then the date of the follow up audit will be considered as a first attempt audit for appendix 1.2 at a category 3 Station.
- (iii) If a follow up audit is not required against any other Station schedule from the primary audit, if possible and time permitting Transport Scotland will request a category 3 Station to be opened to check assets and facilities linked with appendix 1.2. If this is not possible then the inventory for the Station not audited for 1.2 will be removed for the reporting period.

2. The above is to be read in conjunction with the Operation Facilities Book which identifies at which Stations the Service exists.

3. SERVICE QUALITY BENCHMARK APPENDIX 1

The overall score for Appendix 1 will be calculated combining the 1.1 and the 1.2 performance score level i.e. 1.1 achieves strong level 3 and 1.2 achieves level 2, the overall score for Appendix 1 booking offices will be acceptable level 2 ($(3+2)/2 = 2.5$). 0.5 will be rounded down.

4. SERVICE QUALITY BENCHMARKS 1.1

- 4.1 Strong Level (3) means 100% performance of the Service in accordance with the Specification during a Reporting Period.
- 4.2 Acceptable Level (2) means 95-99.9% performance of the Service in accordance with the Specification during a Reporting Period.
- 4.3 Below Acceptable Level (1) means 94.9% or below performance of the Service in accordance with the Specification during a Reporting Period.

5. SERVICE QUALITY BENCHMARKS 1.2

- 5.1 Strong Level (3) means 97% performance of the Service in accordance with the Specification during a Reporting Period.
- 5.2 Acceptable Level (2) means 95-96.9% performance of the Service in accordance with the Specification during a Reporting Period.
- 5.3 Below Acceptable Level (1) means 94.9% or below performance of the Service in accordance with the Specification during a Reporting Period.

6. MAXIMUM NUMBER OF INSPECTIONS

Stations will be inspected a maximum once every reporting period.

APPENDIX 2 TO SCHEDULE 7.2

SERVICE QUALITY APPENDIX - STATION SHELTERS AND WAITING AREAS

1. SPECIFICATION

This category includes all canopies, standalone shelters, waiting rooms and all covered areas at Stations including those areas adjoining or within ticket offices (each a "**Shelter**").

1.1 A Shelter will be failed if:

- (a) The Station does not have a weatherproof (wind and watertight) covered waiting accommodation or other adequate shelter which offers reasonable protection from the weather. Adequate alternative shelter shall be available when such waiting accommodation is not provided or is temporarily out of use.
- (b) the Shelter is damaged to an unsafe condition.
- (c) the Shelter/waiting room is not available for use.
- (d) any door does not fully open or close as it is designed to do.
- (e) the Shelter contains, or its exterior is marred or visibly marked by, any immediately detectable contamination or spillage which would render it unsanitary or deter a passenger from using it (e.g. vomit or urine).
- (f) any polycarbonate panels or other glazing (together "glazing") has been burnt in any way so that there is a hole more than 25mm in diameter on any one piece of glazing or more than two burn marks on all such glazing in any Shelter.
- (g) any heating unit, which is part of a waiting area, is not safe and operational, and if controlled by passengers, is not labelled appropriately.
- (h) "**no smoking**" signage is not clearly visible – report as an observation.

1.2 The above is to be read in conjunction with the Operation Facilities Book which identifies at which Stations the Service exists.

2. SERVICE QUALITY BENCHMARKS

- 2.1 Strong Level (3) means 90% performance of the Service in accordance with the Specification during a Reporting Period.
- 2.2 Acceptable Level (2) means 85-89.9% performance of the Service in accordance with the Specification during a Reporting Period.
- 2.3 Below Acceptable Level (1) means 84.9% or below performance of the Service in accordance with the Specification during a Reporting Period.

3. MAXIMUM NUMBER OF INSPECTIONS

Stations will be inspected a maximum once every reporting period.

4. TIMES TO BE SPECIFIED IN NOTICES

5 Working Days

APPENDIX 3 TO SCHEDULE 7.2**SERVICE QUALITY APPENDIX - STATION PLATFORM SEATS****1. SPECIFICATION**

Station seats will be considered in terms of benches or group of seats (an example of a group being the Macemain seat where there is a single frame with 3 seats attached). Shelter seats will be considered any seating unit, which is an integral part of a Shelter.

1.1 A platform will be failed if:

- (a) a Station seat is missing, damaged and not fit for purpose, which affects the functionality of the seat or could injure a person or damage their clothing (e.g. an armrest where this is part of the design). Missing cosmetic coverings or missing end caps would not be a fail but should be reported separately as an observation.
- (b) a Station seat, bench, part of a bench or part of a group of seats are insecure or unstable.
- (c) a shelter seating unit is missing, damaged and not fit for purpose, which affects the functionality of the seat or could injure a person or damage their clothing (e.g. an armrest where this is part of the design). Missing cosmetic coverings or missing end caps would not be a fail but should be reported separately as an observation.
- (d) cannot be used due to the presence of contamination or spillage which would render it unsanitary or would deter a passenger from using it (e.g. vomit or urine).
- (e) a shelter seating unit is insecure or unstable.

1.2 The above is to be read in conjunction with the Operation Facilities Book which identifies at which Stations the Service exists.

2. SERVICE QUALITY BENCHMARKS

- 2.1 Strong Level (3) means 95% performance of the Service in accordance with the Specification during a Reporting Period.
- 2.2 Acceptable Level (2) means 85-94.9% performance of the Service in accordance with the Specification during a Reporting Period.
- 2.3 Below Acceptable Level (1) means 84.9% or below performance of the Service in accordance with the Specification during a Reporting Period.

3. MAXIMUM NUMBER OF INSPECTIONS

Stations will be inspected a maximum once every reporting period.

4. TIMES TO BE SPECIFIED IN NOTICES

5 Working Days.

APPENDIX 4 TO SCHEDULE 7.2

SERVICE QUALITY APPENDIX – STATION LIGHTS

1. SPECIFICATION

1.1 (a) All Stations shall have adequate lighting, which shall be switched on during the hours of darkness during which Trains are scheduled to call at the relevant Station (including for a reasonable period before the first Train and after the last Train in order to allow passengers to await the first scheduled Train at the Station or depart from the Station after the departure of the last Train).

(b) All specified lights (i.e. the lighting referred to in 1.1(a) above) should be working. All light covers should be present and fully intact.

NOTE: where 'LED' lights are present more than 50% of the light is out or an individual block, i.e. within a shelter, If not illuminated (strip lights in shelters are made up of several blocks. Lights cannot be shunted by staff, i.e. a ticket office closure and staff are not present (or due to problems with the shunt box at unstaffed Stations) then a fail will be recorded. If all lights pass on the re-inspection then the original fail will be rescinded.

1.2 Lights will be inspected per platform and it is a platform that fails or passes. A platform will be failed if:

- (a) any light is not illuminated when the power is switched on.
- (b) any light is not fully operational (e.g. light levels are obviously sub-standard or the light is flickering).
- (c) any light cover is unfit for purpose or missing.
- (d) any light is not properly aligned or directed towards the area to be illuminated.
- (e) any light is not switched on in the hours of darkness, or subways in areas of semi-permanent darkness, which are controlled solely by time switches, the settings should reflect the worst case ambient light levels for both Greenwich Mean Time and British Summer Time.
- (f) there are exposed electrical connections or wiring.

The above criteria (and the reference to Stations in 1.1(a) above) shall apply to all lights illuminating platforms, Station buildings, underpasses, footbridges and car parks.

1.3 The above is to be read in conjunction with the Operation Facilities Book which identifies at which Stations the Service exists.

2. SERVICE QUALITY BENCHMARKS

2.1 Strong Level (3) means 78% performance of the Service in accordance with the Specification during a Reporting Period.

2.2

2.3 Acceptable Level (2) means 65-77.9% performance of the Service in accordance with the Specification during a Reporting Period.

2.4

2.5 Below Acceptable Level (1) means 64.9% or below performance of the Service in accordance with the Specification during a Reporting Period.

3. MAXIMUM NUMBER OF INSPECTIONS

Stations will be inspected a maximum once every reporting period.

4. TIMES TO BE SPECIFIED IN NOTICES

5 Working Days.

APPENDIX 5 TO SCHEDULE 7.2

SERVICE QUALITY APPENDIX – STATION CCTV AND SECURITY

1. SPECIFICATION

This Appendix 5 will audit the CCTV independently at the Station and at the Control Centres. The appendix will be considered as two performance appendixes, where each appendix will have their own inventory levels.

Appendix 5A Station CCTV and Security - Stations will be audited with an inventory for the number of staffed Stations with CCTV equipment which can be audited – this element will have its own % performance benchmark.

Appendix 5C Control Centre CCTV and Security - CCTV at the Control Centres will be audited with an inventory for the number of Stations with CCTV equipment linked to the Control Centre which can be audited – this element will have its own % performance benchmark.

2. APPENDIX 5A – STATION CCTV AND SECURITY

2.1 Specification

CCTV at Stations should be operational to the standard set for each specific location. CCTV at Stations should cover areas such as underpasses, bridges, lifts, stairwells and other vulnerable areas. The CCTV at Stations shall be operated by a skilled and experienced Train Operator of the ScotRail Operation.

2.2 A CCTV Station camera will not be considered to be functioning to the required standard if:

- (a) a camera fails completely.
- (b) the picture is substandard, that would not allow for the area to be monitored.
- (c) a camera is pointing skyward, directly at the ground or could not provide any obvious security benefit.

3. APPENDIX 5B – CONTROL CENTRE CCTV AND SECURITY

3.1 Specification

CCTV at Stations should be operational to the standard set for each specific location. All cameras should be checked regularly for operation including tilt, pan and zoom. All picture recording systems linked to cameras should be checked regularly. CCTV at Stations should cover areas such as underpasses, bridges, lifts, stairwells and other vulnerable areas.

The CCTV Control Centre's shall be operated by a skilled and experienced Train Operator of the ScotRail Operation.

3.2 A CCTV Control Centre camera will not be considered to be functioning to the required standard if:

- (a) a camera which should tilt, pan or zoom fails to do so;
- (b) a camera fails completely;
- (c) the picture is substandard, that would not allow for the area to be monitored;
- (d) a camera is pointing skyward, directly at the ground or could not provide any obvious security benefit;

- (e) A picture recording system will not be considered to be functioning to the required standard if:
 - (i) the system fails completely or
 - (ii) the picture is substandard, that would not allow for the area to be monitored.

4. THE ABOVE IS TO BE READ IN CONJUNCTION WITH THE OPERATION FACILITIES BOOK WHICH IDENTIFIES AT WHICH STATIONS THE SERVICE EXISTS.

5. SERVICE QUALITY BENCHMARKS STATION CCTV AND SECURITY

- 5.1 Strong Level (3) means 90% performance of the Service in accordance with the Specification during a Reporting Period.
- 5.2 Acceptable Level (2) means 80-89.9% performance of the Service in accordance with the Specification during a Reporting Period.
- 5.3 Below Acceptable Level (1) means 79.9% or below performance of the Service in accordance with the Specification during a Reporting Period.

6. CONTROL CCTV AND SECURITY

- 6.1 Strong Level (3) means 90% performance of the Service in accordance with the Specification during a Reporting Period.
- 6.2 Acceptable Level (2) means 80-89.9% performance of the Service in accordance with the Specification during a Reporting Period.
- 6.3 Below Acceptable Level (1) means 79.9% or below performance of the Service in accordance with the Specification during a Reporting Period.

7. MAXIMUM NUMBER OF INSPECTIONS

A Station will be inspected at the control centre a maximum once every reporting period. Station CCTV will be inspected at the Station a maximum once every reporting period.

8. TIMES TO BE SPECIFIED IN NOTICES

5 Working Days.

APPENDIX 6 TO SCHEDULE 7.2

SERVICE QUALITY APPENDIX – STATION GRAFFITI

1. SPECIFICATION

- (a) At a Station there should be no graffiti of a political, racial, religious, sexual or other potentially offensive nature.
- (b) Other graffiti at a Station must be contained so that it is not readily apparent to a casual user of the Station.
 - A Station will be failed if:
 - (i) Any graffiti that falls within the description in paragraph 1.1a is visible.
 - (ii) Any single piece or item of other graffiti is of greater area than can be covered by an A5 sheet of paper.
 - (iii) There are more than 10 individual pieces or items of graffiti, within any area within the Station extending to 300 square metres, regardless of the size or area of these items individually or collectively.
- 1.1 Without limiting the normal meaning of the word graffiti, for the purposes of this specification, graffiti will be regarded as writing, painting, drawing or scribbles. Line indentation, line marking, or scratching shall not constitute graffiti as this is clearly no more than scuffing or reasonable wear and tear on the surface. The definition of graffiti shall also include the application of any stickers or labels.
- 1.2 The above is to be read in conjunction with the Operation Facilities Book which identifies at which Stations the Service exists.

2. SERVICE QUALITY BENCHMARKS

- 2.1 Strong Level (3) means 90% performance of the Service in accordance with the Specification during a Reporting Period.
- 2.2 Acceptable Level (2) means 85-89.9% performance of the Service in accordance with the Specification during a Reporting Period.
- 2.3 Below Acceptable Level (1) means 84.9% or below performance of the Service in accordance with the Specification during a Reporting Period.

3. MAXIMUM NUMBER OF INSPECTIONS

Stations will be inspected a maximum once every reporting periods.

4. TIMES TO BE SPECIFIED IN NOTICES

5 Working Days.

APPENDIX 7 TO SCHEDULE 7.2

SERVICE QUALITY APPENDIX – STATION LITTER, CONTAMINATION AND WINTERISATION

1. SPECIFICATION

Stations should be kept free from litter, contamination and danger underfoot.

1.1 A platform will be failed if:

- (a) there are more than ten items of litter, each larger than the size of a credit card, found within any accessible area of the Station extending to 300 square metres. Litter in non-accessible areas would not be a fail but should be reported separately as an observation and will be audited within the SQMS specification.
- (b) any litterbin is not fit for purpose or is noticeably damaged; or is full to the point of overflowing.
- (c) there is any immediately detectable contamination or spillage, which renders any part of a Station unsanitary or would deter a passenger from using it (e.g. vomit, faeces on walking routes, urine).
- (d) There are liquids or materials (including fallen leaves but not other vegetation which is covered by Appendix 15 (Landscaping and Vegetation)) which is slippery underfoot except where these have been treated to remove the danger of slipping (including by mopping, brushing or the laying down of agents or solutions).
- (e) there is evidence of birds nesting which has created a hazard that requires some form of bird management. If Transport Scotland find six pieces of bird fouling within any 10m length during an audit, if this is cleared by the follow up audit, then the fail will be removed.
- (f) Surfaces are not free from loose surfaces, weeds and other materials that constitute slip or tripping hazards that are the responsibility of the SRT / rail operation to resolve.

1.2 Grit application or snow clearing has not been undertaken or has been undertaken inappropriately so that a clear, safe walking route is not provided for customers (if required by weather conditions).

A Station will be failed if:

- (a) There is no evidence of recent winter working during periods of sub-zero temperatures.
- (b) there is no evidence that platform surfaces are not cleared of snow and ice in an area 3 coach lengths long by 2meters wide, allowing passengers to access the train. All paths, ramps, stairs and footbridges must be cleared by 8am ready for safe passenger use.

1.3 All Network Rail responsibility faults should be reported separately as an observation and will be audited within the SQMS specification.

1.4 The above is to be read in conjunction with the Operation Facilities Book which identifies at which Stations the Service exists.

2. SERVICE QUALITY BENCHMARKS

2.1 Strong Level (3) means 85% performance of the Service in accordance with the Specification during a Reporting Period.

2.2 Acceptable Level (2) means 80-84.9% performance of the Service in accordance with the Specification during a Reporting Period.

2.3 Below Acceptable Level (1) means 79.9% or below performance of the Service in accordance with the Specification during a Reporting Period.

3. MAXIMUM NUMBER OF INSPECTIONS

Stations will be inspected a maximum once every reporting period.

4. TIMES TO BE SPECIFIED IN NOTICES

5 Working Days.

APPENDIX 8 TO SCHEDULE 7.2

SERVICE QUALITY APPENDIX - STATION INFORMATION

1. SPECIFICATION

- 1.1 All ScotRail timetables and promotional material valid at the time should be available on request by passengers and should be made available to an SQI on request. Every Station shall also display accurate information about how lost luggage is dealt with including the ATOC code.
- 1.2 Guideline Note: The number of timetable leaflets available at Stations is being reduced in-line with the environmental strategy. A Station should NOT fail for having no timetable leaflets present if they have had them and since ran out. The staff should, however, offer to print a copy for a customer if electronic channels are not an option for them.
- 1.3 Guideline Note: For timetable errors identified at an early stage, a temporary notice advising the customer of the error would be suitable in the interim to allow ScotRail time to assess the scale of the problem and arrange a re-print. Timescales will be agreed between ScotRail and Transport Scotland on a case by case basis.
- 1.4 In any event information displays and/or signage which provide the following information shall be in place at each Station.
- (a) the job title, address and telephone number of the customer services manager (or his equivalent) under whose control the Station rests, and details of how to register a complaint and who to contact in an emergency.
 - (b) the location of the nearest public telephone (which includes within this definition a “freephone”) if provided (unless there is a telephone located within the Station).
 - (c) the telephone number of the National Rail Enquiries and a statement that it is open 24 hours a day.
 - (d) the telephone number of an alternative location from which current train running information can be obtained if a public address or “freephone” facility is not provided at the Station.
 - (e) wherever appropriate, the location and telephone number of the nearest taxi rank or operator, other public transport services, and, for Stations which are not staffed at all times of the day at which passenger trains are scheduled to call, the nearest person authorised to sell tickets for use on the Passenger Services.
 - (f) a list of tickets, which may be purchased on Trains calling at that Station, at times at which such Station is not staffed (if at all).
 - (g) arrangements for the issue of season tickets, railcards and other facilities relating to and offered on the Trains calling at such Station and which cannot be purchased at the Station.
 - (h) for Stations which have two or more platforms, customer information displays or directional signs indicating the destinations served by Trains calling at each platform.
 - (i) in a place visible to mobility-impaired customers, the nearest Station with access for mobility- impaired customers if no such access is provided at the Station and contact details, including a telephone number, of a person whom people with disabilities could contact in order to obtain travel advice and arrange assistance.
 - (j) details of changes to Train times as a result of engineering works or other disruption

which shall be displayed no less than 5 days in advance of such engineering works or other disruption.

Guideline Note: A pdf of the engineering poster may be displayed prior to the works whilst awaiting delivery of the poster. The normal sized poster should be displayed from the first day of the works.

- (k) the phone numbers and, where applicable e-mail or website addresses of National Rail and the Passenger's Council.
- (l) accurate information about how lost luggage is dealt with including the ATOC code, or there is reasonable evidence that the staff at the Station are not dealing with lost luggage in the manner required by the ATOC code.
- (m) the scheduled times of all passenger trains departing, the times of arrival at other Stations, the other Stations at which the Trains call, and details of principal connections at such other Stations to other passenger Trains, shall be displayed in the Station in poster form at locations which will be easily accessible by passengers.
- (n) a network map and a local area map or other local wayfinding information applicable to that station which will be displayed in the entrance lobby of the Station, if the Station has one, in the publicly accessible area of the ticket office and on each platform.

1.5 A failure will occur if any of the items mentioned in paragraph 1.1 is unavailable or if any of the items listed in paragraph 1.2 is not in place, provided that the relevant timetables and promotional material have, where required in terms of this Agreement, been provided by the Authority to SRT at least 2 working days before the inspection. Station timetables and information will be inspected per Station and it is a Station that fails or passes.

1.6 Appropriate signage must be provided at the Station to direct passengers towards (where appropriate):

- (a) the relevant town; and
- (b) any local attractions or amenities.

A Station will be failed if either of the above is not met.

1.7 SRT shall ensure that the symbol known as the double arrow symbol (and registered with trade mark numbers 1275675, 1276989, 1276991, 1276992, 1276993, 1276994 and 1276995) is displayed at or near the entrance or entrances to the Station to clearly indicate access to the Station. This signage must be in line with all regulatory requirements and any government guidelines for its use. If the use of the double arrow symbol requires SRT to enter into a licence in respect of such symbol, then SRT shall enter into such a licence and shall comply with its terms.

1.8 The above is to be read in conjunction with the Operation Facilities Book which identifies at which Stations the Service exists.

2. SERVICE QUALITY BENCHMARKS

- 2.1 Strong Level (3) means 95% performance of the Service in accordance with the Specification during a Reporting Period.
- 2.2 Acceptable Level (2) means 92-94.9% performance of the Service in accordance with the Specification during a Reporting Period.
- 2.3 Below Acceptable Level (1) means 91.9% or below performance of the Service in accordance with the Specification during a Reporting Period.

3. MAXIMUM NUMBER OF INSPECTIONS

Stations will be inspected a maximum once every reporting period.

4. TIMES TO BE SPECIFIED IN NOTICES

5 Working Days.

APPENDIX 9 TO SCHEDULE 7.2**SERVICE QUALITY APPENDIX – STATION CLOCKS****1. SPECIFICATION**

- 1.1 Clocks should be operational and display the correct time (with a permissible margin of three minutes fast or one minute slow).
- 1.2 Station clocks will be inspected per clock and it is a clock that fails or passes. A clock will be failed if:
 - a. it is not working.
 - b. it is displaying an incorrect time, which shows the clock is more than 1 minute slow.
 - c. it is displaying an incorrect time, which shows the clock is more than 3 minutes fast.
 - d. it is obscured or unreadable in any way (e.g. not illuminated at night) or has suffered damage.
 - e. Heritage clocks – where a ‘heritage’ clock is obsolete but is to remain in place, signage is to be provided to inform passengers of this and it will then not be counted as a Station clock. Where such signage is missing this may fail under Appendix 10 Station Posters.
- 1.3 The above is to be read in conjunction with the Operation Facilities Book which identifies at which Stations the Service exists.

2. SERVICE QUALITY BENCHMARKS

- 2.1 Strong Level (3) means 94% performance of the Service in accordance with the Specification during a Reporting Period.
- 2.2 Acceptable Level (2) means 90-93.9% performance of the Service in accordance with the during a Reporting Period.
- 2.3 Below Acceptable Level (1) means 89.9% or below performance of the Service in accordance with the Specification during a Reporting Period.

3. MAXIMUM NUMBER OF INSPECTIONS

Stations at which the Service exists will be inspected a maximum once each reporting period.

4. TIMES TO BE SPECIFIED IN NOTICES

5 Working Days.

APPENDIX 10 TO SCHEDULE 7.2

SERVICE QUALITY APPENDIX – STATION POSTERS

1. SPECIFICATION

- 1.1 Signs and poster frames at Stations should be in good condition and at the correct location on the Station. Information within posters should be clearly visible through the polycarbonate or other frontage over the whole area of the poster frame.
- 1.2 The ScotRail posters specified by the Authority which SRT is required to display and the posters which are required to be displayed by Schedule 1 of this Agreement, should be on display at specified locations, displayed in an appropriate manner and legible to the public except where SRT can show appropriate evidence that such posters are unavailable or inappropriate.
- 1.3 Guideline Note: Signs will only fail if damaged (dents alone do not fail) and in need of repair. Signs over head height will not fail, however signs at head height should be regularly maintained, however have to have a heavy build up of dirt to fail. Signs/posters should only fail for being missing if displayed previously.
- 1.4 The accuracy of Information, Signs and Posters will be inspected by platform that fails or passes. A platform will be failed if:
 - (a) Any sign or poster is missing.
 - (b) Any poster has become noticeably damaged or significantly faded to the extent the information is not legible in any way, which prevents the proper display of the information. (e.g. due to dirt, moisture, non-transparent frontage or because any poster has slumped in its frame).
 - (c) The customer information on any poster is out of date. For errors identified at an early stage, if a temporary notice is displayed advising the customer of the error, this should be reported separately as an observation.
 - (d) Any sign or poster frame is missing or becomes noticeably damaged.
 - (e) CCTV signage complies with the requirements of the Data Protection Code of Practice on the Use of CCTV cameras in respect of that Station.
- 1.5 The above is to be read in conjunction with the Operation Facilities Book which identifies at which Stations the Service exists.

2. SERVICE QUALITY BENCHMARKS

- 2.1 Strong Level (3) means 85% performance of the Service in accordance with the Specification during a Reporting Period.
- 2.2 Acceptable Level (2) means 75-84.9% performance of the Service in accordance with the Specification during a Reporting Period.
- 2.3 Below Acceptable Level (1) means 74.9% or below performance of the Service in accordance with the Specification during a Reporting Period.

3. MAXIMUM NUMBER OF INSPECTIONS

Stations will be inspected a maximum once every reporting period.

4. TIMES TO BE SPECIFIED IN NOTICES

5 Working Days.

APPENDIX 11 TO SCHEDULE 7.2

SERVICE QUALITY APPENDIX – PUBLIC ANNOUNCEMENT AND CIS

1. SPECIFICATION

- 1.1 Public announcement and customer information systems (together "**CIS**") should be fitted at all Stations so that passengers may be informed about Train delays or cancellations as well as to provide details of alternative journey arrangements and for use in any emergency.
- 1.2 This appendix will audit the Public Announcement and CIS independently at the Station. The Appendix will be considered as two performance Appendixes, where each Appendix will have their own inventory levels.
- 1.3 Appendix 11A Station Public Announcement - Stations will be audited with an inventory for the number of Stations with PA equipment which can be audited – this element will have its own % performance benchmark.
- 1.4 Schedule 11B CIS – Station will be audited with an inventory for the number of Stations with CIS equipment which can be audited – this element will have its own % performance benchmark.

2. APPENDIX 11A – PUBLIC ANNOUNCEMENT

- 2.1 A Station will be failed if:
 - (a) appropriate announcements, at required Stations, advising of coach lengths, are not made prior to the train arriving in the Station.
 - (b) Information during delays is not provided.
 - (c) it is an aural system, and is not able to produce, on request, audible (and, where pre-recorded, understandable) announcements, or the information supplied is incorrect.

3. APPENDIX 11B – CIS

- 3.1 A CIS will be failed if:
 - (a) CIS fitted at Stations should be fully functional and in operation 30 minutes before the scheduled departure of the first Train until 30 minutes after the actual arrival of the last Train.
 - (b) it is a screen-based system, and is not displaying appropriate and timely customer information, the information is illegible, the screen is not working correctly, or the correct time is not displayed.
 - (i) Stations where the CIS operates on 3G/4G connection and when connected, each screen does not post the next train arriving to the platform due to arrive within the next 5 hours and this should update as appropriate should a train be delayed.
 - (ii) Stations where the CIS operates on 3G/4G connection and the connection is lost, CIS will revert to the back-up system.

4. THE ABOVE IS TO BE READ IN CONJUNCTION WITH THE OPERATION FACILITIES BOOK WHICH IDENTIFIES AT WHICH STATIONS THE SERVICE EXISTS.

5. SERVICE QUALITY BENCHMARKS CIS

- 5.1 Strong Level (3) means 95% performance of the Service in accordance with the y Specification during a Reporting Period.
- 5.2 Acceptable Level (2) means 90-94.9% performance of the Service in accordance with the Specification during a Reporting Period.
- 5.3 Below Acceptable Level (1) means 89.9% or below performance of the Service in accordance with the Specification during a Reporting Period.

6. PA

- 6.1 Strong Level (3) means 95% performance of the Service in accordance with the Specification during a Reporting Period.
- 6.2 Acceptable Level (2) means 90-94% performance of the Service in accordance with the Specification during a Reporting Period.
- 6.3 Below Acceptable Level (1) means 89% or below performance of the Service in accordance with the Specification during a Reporting Period.

7. MAXIMUM NUMBER OF INSPECTIONS

Stations will be inspected a maximum once every reporting period.

8. TIMES TO BE SPECIFIED IN NOTICES

5 Working Days.

APPENDIX 12 TO SCHEDULE 7.2

SERVICE QUALITY APPENDIX – STATION TOILETS

1. SPECIFICATION

Each toilet (which includes the room itself as well as the toilet facility)

- 1.1 Toilets will be inspected per toilet and it is a toilet that fails or passes. A toilet will be failed if:
- (a) it is not Fully functional (to include lights, locks and seats) open, sanitary and available for use. The main toilet light should be functional, all other lights report as an observation.
 - (b) it is not stocked with required consumables (e.g. toilet paper and soap) where any facility exists that may require restocking.
 - (c) it does not provide a functioning water supply for washing purposes and a means of drying. All such facilities should be operational.
 - (d) it is not fitted with a record card which will maintain a record of the last time the toilet facility was checked and serviced by Station staff. This should show a checking and cleaning programme of at least twice per day, with the previous day's record used for measurement. Where Stations are not open 7 days (i.e. closed on a Sunday), the previous day's record will relate to the last day the facility was open prior to the audit. For toilet record cards at unstaffed locations – only require to be signed once a day including weekends.
 - (e) any disabled fittings meant to be fitted to comply with relevant disability guidance are absent or are not fully functional and available for use.
 - (f) any baby changing facilities meant to be fitted are absent or are not fully functional and available for use.
- 1.2 The above is to be read in conjunction with the Operation Facilities Book which identifies at which Stations the Service exists.

2. SERVICE QUALITY BENCHMARKS

- 2.1 Strong Level (3) means 90% performance of the Service in accordance with the Specification during a Reporting Period.
- 2.2 Acceptable Level (2) means 85-89.9% performance of the Service in accordance with the Specification during a Reporting Period.
- 2.3 Below Acceptable Level (1) means 84.9% or below performance of the Service in accordance with the Specification during a Reporting Period.

3. MAXIMUM NUMBER OF INSPECTIONS

Stations will be inspected a maximum once every reporting period.

4. TIMES TO BE SPECIFIED IN NOTICES

5 Working Days.

APPENDIX 13 TO SCHEDULE 7.2

SERVICE QUALITY APPENDIX – STATION CAR PARKS AND CYCLE FACILITIES

1. SPECIFICATION

All car parks and cycle facilities at Stations shall be clearly marked as such. There shall be sufficient information displays or signage to inform passengers as to the conditions of use, opening hours and charges.

1.1 A car park will fail if:

- (a) there is no information display or signage informing passengers of the existence of the facility visible from an appropriate point outside the Station (including a sign indicating the entrance to the car park).
- (b) All parking, waiting bays or boundaries are not clearly marked as such, or are not available for use should be reported separately as an observation and will be audited within the SQMS Appendix.
- (c) there is no information or signage as to the conditions of use of the facility clearly indicating, where appropriate, the details of the operator of the facility.
- (d) the location of any parking meters is not displayed or signed, any parking meter is missing or is not functional and operating, or the consequences of non-payment are not displayed.
- (e) Electric Vehicle charging bays are not functional and operating.
- (f) there is an abandoned vehicle in a car park without it containing a notification of intent to move will be reported as an observation.
- (g) Electric barriers are not functional and operating.

1.2 Cycle facilities such as stands or lockers, where provided, will fail if such are damaged that affects the functionality of the facility, panels missing or smashed, missing or unfit for the purpose of storing bicycles. This includes the presence of abandoned bicycles, unless correctly signed as per SRT's process for removal or rusty bike locks taking up space that could otherwise be used by passengers wishing to use the facility.

1.3 The above is to be read in conjunction with the Operation Facilities Book which identifies at which Stations the Service exists. In addition, any changes to disability regulation shall be considered.

2. SERVICE QUALITY BENCHMARKS

- 2.1 Strong Level (3) means 95% performance of the Service in accordance with the Specification during a Reporting Period.
- 2.2 Acceptable Level (2) means 85-94.9% performance of the Service in accordance with the Specification during a Reporting Period.
- 2.3 Below Acceptable Level (1) means 84.9% or below performance of the Service in accordance with the Specification during a Reporting Period.

3. MAXIMUM NUMBER OF INSPECTIONS

Stations at which the Service exists shall be inspected a maximum once each reporting period.

4. TIMES TO BE SPECIFIED IN NOTICES

5 Working Days.

APPENDIX 14 TO SCHEDULE 7.2**SERVICE QUALITY APPENDIX - ACCESS RAMPS AND STAIRS****1. SPECIFICATION**

- 1.1 Any lifts or escalators at Stations shall be functional and in operation 30 minutes before the scheduled departure of the first Train and until 30 minutes after the actual arrival of the last Train. Any access ramps must be fully functioning and any handrails or any other fixtures designed to provide stability to passengers on stairs must be safe to use.
- 1.2 Any lift or escalator is not functional and in operation at the times referred to above, should be reported separately as an observation and will be audited within the SQMS Appendix.
- 1.3 Any access ramps must be fully functioning and any handrails or any other fixtures designed to provide stability to passengers on stairs must be safe to use.
- 1.4 A Station will fail if:
 - (a) Any access ramp where provided does not function as intended.
 - (b) Any handrails or any other fixtures designed to provide passengers with stability on stairs or on ramps or bridges are damaged in such a way that could injure a person or could cause damage to their clothing or articles. Bird fouling on handrails will fail if 6 pieces of fouling occur within any 10m length of handrail.
- 1.5 The above is to be read in conjunction with the Operation Facilities Book which identifies at which Stations the Service exists.

2. SERVICE QUALITY BENCHMARKS

- 2.1 Strong Level (3) means 95% performance of the Service in accordance with the Service Quality Specification during a Reporting Period.
- 2.2 Acceptable Level (2) means 90-94.9% performance of the Service in accordance with the Service Quality Specification during a Reporting Period.
- 2.3 Below Acceptable Level (1) means 89.9% or below performance of the Service in accordance with the Service Quality Specification during a Reporting Period.

3. MAXIMUM NUMBER OF INSPECTIONS

Stations will be inspected a maximum once every reporting period.

4. TIMES TO BE SPECIFIED IN NOTICES

5 Working Days.

APPENDIX 15 TO SCHEDULE 7.2**SERVICE QUALITY APPENDIX – STATION LANDSCAPING, VEGETATION AND BOUNDARIES****1. SERVICE QUALITY SPECIFICATION**

All landscaping and vegetation at Stations should be neat and tidy and not overgrown and should be confined to areas intended to be laid out to landscaping and vegetation. All plants should be trimmed and/or pruned as appropriate to ensure a neat and tidy condition.

1.1 A Station will fail if:

- (a) any board, poster, sign notice, help/information point, or any surface upon which information is intended to be displayed, is obscured to any material extent by vegetation.
- (b) any growth or overgrowth of vegetation poses a risk of injury to persons or damage (including by staining) to their clothing or articles.
- (c) Boundaries and fences for Stations and Station car parks are not secure, damaged and functional and shall be regularly checked and maintained in order to maintain Station and Station car park security. If the fault is repaired by the follow up, then the initial fail will be removed.
- (d) any light source is significantly obscured by foliage, which detrimentally affects the area to be illuminated.

1.2 The above is to be read in conjunction with the Operation Facilities Book which identifies at which Stations the Service exists.

2. SERVICE QUALITY BENCHMARKS

- 2.1 Strong Level (3) means 90% performance of the Service in accordance with the Service Quality Specification during a Reporting Period.
- 2.2 Acceptable Level (2) means 85-89.9% performance of the Service in accordance with the Service Quality Specification during a Reporting Period.
- 2.3 Below Acceptable Level (1) means 84.9% or below performance of the Service in accordance with the Service Quality Specification during a Reporting Period.

3. MAXIMUM NUMBER OF INSPECTIONS

Stations will be inspected a maximum once every reporting period.

4. TIMES TO BE SPECIFIED IN NOTICES

5 Working Days.

APPENDIX 16 TO SCHEDULE 7.2**SERVICE QUALITY APPENDIX – STATION HELP/ INFORMATION POINTS, TICKET VENDING MACHINES AND TICKET****COLLECTION AT KEY STATIONS****1. SERVICE QUALITY SPECIFICATION**

- 1.1 Help Points, information points, smartcard readers, electronic gates and self-service ticket machines at Stations should be functioning and operational and clearly signed, with clear instructions for their use on or adjacent to the machine.
- 1.2 This Appendix 16 will audit the WiFi, SMART, Help Points, Ticket Collection at Key Stations and TVM's independently at the Station. The Appendix will be considered as five performance Appendixes, where each Appendix will have their own inventory levels.

2. APPENDIX 16A – STATION WIFI

- 2.1 A Station will fail if:
- (a) If the Station should be equipped with Wi-Fi and is not so equipped.
 - (b) Wi-Fi facilities are not able to be accessed by a mobile device within 30 seconds of attempting to log on – the test will be to connect to BBC News.

3. APPENDIX 16B - SMARTCARD READER

- 3.1 A Station will fail if:
- (a) Any smartcard reader is missing, not fully functional or not operational.

4. APPENDIX 16C – STATION HELP POINTS

- 4.1 A Station will fail if:
- (a) any help point is missing, not fully functional or not operational.
 - (b) any call made from a Help/Information Point is not answered within 30 seconds of the call being made from that Help/Information Point.
 - (c) there are no clear instructions for the use of a Help/Information Point, information point, at, on or adjacent to the relevant help point.

5. APPENDIX 16D – TICKET COLLECTION AT KEY STATIONS

- 5.1 References in this paragraph 5.1 (a) and paragraph 5.1 (b) to passenger, or intending passengers, are those passengers at the following Stations: Anderston, Argyle Street, Ayr, Charing Cross, Exhibition Centre, Glasgow Central, Glasgow Queen Street, Motherwell, Paisley Gilmour Street, Partick, Aberdeen, Bathgate, Dundee, Edinburgh Gateway, Edinburgh Park, Edinburgh Waverley, Haymarket, Inverness, Perth and Stirling, during the hours as agreed by the parties from time to time.
- 5.2 A Station will fail if:
- (a) where there are fixed barriers and these barriers are missing, not functioning or not operational. Where a gate is closed for maintenance or repair, this will be recorded as an observation.

- (b) where ticket checking measures should be put in place are missing to ensure the validity of each passenger's ticket is checked both before they enter or leave a ticket check area per the agreed staffing hours and numbers.

6. APPENDIX 16E – TICKET MACHINES

6.1 A TVM will fail if:

- (a) Any self-service ticket machine is missing, not fully functional or not operational.
- (b) there are no clear instructions for the use of a self-service ticket machine at, on or adjacent to the relevant machine including details of who to contact if the passenger is having difficulty using the self-service ticket machine.

6.2 The above is to be read in conjunction with the Operation Facilities Book which identifies at which Stations the Service exists.

7. SERVICE QUALITY BENCHMARKS WIFI

7.1 Strong Level (3) means 95% performance of the Service in accordance with the Service Quality Specification during a Reporting Period.

7.2 Acceptable Level (2) means 85-94.9% performance of the Service in accordance with the Service Quality Specification during a Reporting Period.

7.3 Below Acceptable Level (1) means 84.9% or below performance of the Service in accordance with the Service Quality Specification during a Reporting Period.

8. SMARTCARD READER

8.1 Strong Level (3) means 96% performance of the Service in accordance with the Service Quality Specification during a Reporting Period.

8.2 Acceptable Level (2) means 80-95.9% performance of the Service in accordance with the Service Quality Specification during a Reporting Period.

8.3 Below Acceptable Level (1) means 79.9% or below performance of the Service in accordance with the Service Quality Specification during a Reporting Period.

9. HELP POINTS

9.1 Strong Level (3) means 92% performance of the Service in accordance with the Service Quality Specification during a Reporting Period.

9.2 Acceptable Level (2) means 80-91.9% performance of the Service in accordance with the Service Quality Specification during a Reporting Period.

9.3 Below Acceptable Level (1) means 79.9% or below performance of the Service in accordance with the Service Quality Specification during a Reporting Period.

10. TICKET COLLECTION AT KEY STATIONS

10.1 Strong Level (3) means 90% performance of the Service in accordance with the Service Quality Specification during a Reporting Period.

10.2 Acceptable Level (2) means 85-89.9% performance of the Service in accordance with the Service Quality Specification during a Reporting Period.

10.3 Below Acceptable Level (1) means 84.9% or below performance of the Service in accordance

with the Service Quality Specification during a Reporting Period.

11. TICKET MACHINES

- 11.1 Strong Level (3) means 96% performance of the Service in accordance with the Service Quality Specification during a Reporting Period.
- 11.2 Acceptable Level (2) means 80-95.9% performance of the Service in accordance with the Service Quality Specification during a Reporting Period.
- 11.3 Below Acceptable Level (1) means 79.9% or below performance of the Service in accordance with the Service Quality Specification during a Reporting Period.

12. MAXIMUM NUMBER OF INSPECTIONS

Stations will be inspected a maximum once every reporting period.

13. TIMES TO BE SPECIFIED IN NOTICES

5 Working Days.

APPENDIX 17 TO SCHEDULE 7.2

SERVICE QUALITY APPENDIX – STATION STAFF

1. SERVICE QUALITY SPECIFICATION

- 1.1 Station staff should be available during the hours set out in the Category 1/2/3 categorisation of all Stations across Scotland agreed with the Authority.
- 1.2 All Station staff shall receive sufficient training (including, where necessary, refresher training) to allow them to competently perform the functions their roles require of them and shall act at all times in a courteous and professional manner in their dealings with the public.
- 1.3 A Station will fail if:
- (a) Any staff member who should be wearing a uniform is not, or that uniform is incomplete or is excessively worn.
 - (b) Any staff member is not wearing, in a prominent position, a badge bearing their name and position/role.
 - (c) Any staff member whose role it is to sell tickets either using fixed or mobile ticketing equipment cannot, upon enquiry, within the capabilities of the equipment provide details of the prices of one randomly selected Fare, the times and calling patterns of one randomly selected Service calling at that Station, or reasonable details as to other Services or facilities at that Station (e.g. car parking) or cannot demonstrate an ability to sell one randomly selected Fare to a stated destination at the correct price.
 - (d) At a Station where there is agreed to be a member of customer service staff there to assist interchange passengers there is no such person obviously available to assist or assisting members of the public. When providing assistance takes the member of staff away from the information desk, a notice will be displayed advising customers that they are helping another customer and will be back to provide them with assistance. If a member of staff is away from the desk for more than 10minutes a fail will be recorded.
- 1.4 The above is to be read in conjunction with the Operation Facilities Book which identifies at which Stations the Service exists.

2. SERVICE QUALITY BENCHMARKS

- 2.1 Strong Level (3) means 95% performance of the Service in accordance with the Service Quality Specification during a Reporting Period.
- 2.2 Acceptable Level (2) means 92-94.9% performance of the Service in accordance with the Service Quality Specification during a Reporting Period.
- 2.3 Below Acceptable Level (1) means 91.9% or below performance of the Service in accordance with the Service Quality Specification during a Reporting Period.

3. MAXIMUM NUMBER OF INSPECTIONS

Stations will be inspected a maximum once every reporting period.

4. TIMES TO BE SPECIFIED IN NOTICES

5 Working Days.

APPENDIX 18 TO SCHEDULE 7.2**SERVICE QUALITY APPENDIX – TRAIN WEATHER AND WIND PROOFING****1. SERVICE QUALITY SPECIFICATION**

- 1.1 Trains shall provide protection from the weather and draughts in all areas, including connecting passages between carriages.
- 1.2 A Vehicle shall be failed if:
- (a) Any part is leaking or is otherwise not weather or draught proof; or
 - (b) Any window does not provide protection from the weather and draughts when closed.
- Any doors which fail to provide adequate weather or wind proofing shall be covered by Appendix 28 – Train Doors

2. SERVICE QUALITY BENCHMARKS

- 2.1 Strong Level (3) means 98% performance of the Service in accordance with the Service Quality Specification during a Reporting Period.
- 2.2 Acceptable Level (2) means 95-97.9% performance of the Service in accordance with the Service Quality Specification during a Reporting Period.
- 2.3 Below Acceptable Level (1) means 94.9% or below performance of the Service in accordance with the Service Quality Specification during a Reporting Period.

3. MAXIMUM NUMBER OF INSPECTIONS

The maximum number of inspections per Reporting Period shall be, limited to one inspection per Vehicle number, with a programme of inspections that are representative of the number of services operating in the peak and off-peak and unit type.

4. TIMES TO BE SPECIFIED IN NOTICES

5 Working Days.

APPENDIX 19 TO SCHEDULE 7.2

SERVICE QUALITY APPENDIX – TRAIN SEATS, TABLES, RACKS, CYCLE AND OTHER PASSENGER FACILITIES

1.

- 1.1 Seats and tables on Trains should be undamaged and generally fit for purpose. This includes both the seat assembly, any seat tilt and slide mechanism and covers, as well as any fold-down tables or slide- out table assemblies.
- 1.2 A vehicle will be failed if a seat:
- (a) is missing or a seat cushion is missing or is improperly secured to the seat frame.
 - (b) has a cover which is ripped or pierced in any way (being a tear or cut of more than 5cm in length or a hole greater than 2cm² in area), or the cover is missing or not properly secured to the seat.
 - (c) has been contaminated in such a way that it could damage passengers clothing or articles (including by staining). Missing cosmetic coverings or aesthetic missing end caps should be reported separately as an observation. Mechanical side caps that cover a mechanism will be recorded as a fail.
 - (d) has no signs indicating how the operation of the seat works (if there is any seat operation provided).
 - (e) has an assembly which is insecure or unstable or is noticeably damaged, which affects the functionality.
 - (f) any seat tilt and slide mechanism does not operate correctly and does not retain all seats in an upright position.
- 1.3 A vehicle will be failed if any power socket provided does not function as intended.
- 1.4 A Vehicle will be failed if there is insufficient space or facilities for wheelchairs.
- 1.5 A vehicle will be failed if it does not have signs indicating the location and functionality of passenger emergency alarms or "call for aid" equipment.
- 1.6 Any luggage racks/stacks, cycle assembly are not securely fitted, are unstable or the facility is noticeably damaged.
- 1.7 A vehicle will be failed if any tables (including fold-down or slide-out tables) are not securely fitted, are unstable or are noticeably damaged which would prevent the use of the table or could cause injury.

2. SERVICE QUALITY BENCHMARKS

- 2.1 Strong Level (3) means 88% performance of the Service in accordance with the Service Quality Specification during a Reporting Period.
- 2.2 Acceptable Level (2) means 78-87.9% performance of the Service in accordance with the Service Quality Specification during a Reporting Period.
- 2.3 Below Acceptable Level (1) means 77.9% or below performance of the Service in accordance with the Service Quality Specification during a Reporting Period.

3. MAXIMUM NUMBER OF INSPECTIONS

The maximum number of inspections per Reporting Period shall be, limited to one inspection per Vehicle number, with a programme of inspections that are representative of the number of services operating in the peak and off-peak and unit type.

4 TIMES TO BE SPECIFIED IN NOTICES

5 Working Days.

APPENDIX 20 TO SCHEDULE 7.2**SERVICE QUALITY APPENDIX – TRAIN LIGHTING****1 SERVICE QUALITY SPECIFICATION**

- 1.1 (a) All Trains should be fitted with lights to illuminate the passenger compartments.
- 1.1 (b) Train lights shall be turned on unless the daylight level is such that passengers can comfortably read without the benefit of such lights.
- 1.2 A Vehicle will be failed if:
 - 1.2.1 any light bulb or lighting tube does not illuminate when the power is switched on.
 - 1.2.2 any light cover is cracked or broken, is loose or is otherwise unfit for purpose or is missing.
 - 1.2.3 there are exposed electrical connections or wiring.
 - 1.2.4 a light is not turned on (unless the daylight level is that described in paragraph 1.1 (b)). Note units may have dimming lights installed.

2 SERVICE QUALITY BENCHMARKS

- 2.1 Strong Level (3) means 95% performance of the Service in accordance with the Service Quality Specification during a Reporting Period.
- 2.2 Acceptable Level (2) means 80-94.9% performance of the Service in accordance with the Service Quality Specification during a Reporting Period.
- 2.3 Below Acceptable Level (1) means 79.9% or below performance of the Service in accordance with the Service Quality Specification during a Reporting Period.

3 MAXIMUM NUMBER OF INSPECTIONS

The maximum number of inspections per Reporting Period shall be, limited to one inspection per Vehicle number, with a programme of inspections that are representative of the number of services operating in the peak and off-peak and unit type.

4 TIMES TO BE SPECIFIED IN NOTICES

5 Working Days.

APPENDIX 21 TO SCHEDULE 7.2

SERVICE QUALITY APPENDIX – TRAIN TOILETS

1

- 1.1 Each toilet on a Train, will be failed if:
- (a) not fully functional (to include all locks and seats) open, sanitary and available for use.
 - (b) not stocked with required consumables (e.g. toilet paper, hand towels and soap).
 - (c) not provided with a functioning water supply for washing purposes and means of drying.
 - (d) there is a toilet status indicator on the door of the toilet and/or an electronic indicator in the passenger carriage, then such indicator is not fully functional.
 - (e) toilet lights are not functional, a toilet will fail in there is no lighting available. If a single bulb is not working from multiple bulbs, then a fail should be recorded under train lighting.
 - (f) not fitted with a twitter label or a record card. The record card will maintain a record of the last time the toilet facility was checked and serviced. This should show a checking and cleaning programme which will relate to the last day the train (and therefore the facility) was open for customer use prior to the audit.

2

SERVICE QUALITY BENCHMARKS

- 2.1 Strong Level (3) means 90% performance of the Service in accordance with the Service Quality Specification during a Reporting Period.
- 2.2 Acceptable Level (2) means 85-89.9% performance of the Service in accordance with the Service Quality Specification during a Reporting Period.
- 2.3 Below Acceptable Level (1) means 84.9% or below performance of the Service in accordance with the Service Quality Specification during a Reporting Period.

3

MAXIMUM NUMBER OF INSPECTIONS

The maximum number of inspections per Reporting Period shall be, limited to one inspection per Vehicle number, with a programme of inspections that are representative of the number of services operating in the peak and off-peak and unit type.

4

TIMES TO BE SPECIFIED IN NOTICES

5 Working Days.

APPENDIX 22 TO SCHEDULE 7.2**SERVICE QUALITY APPENDIX – TRAIN GRAFFITI****1**

- 1.1 (a) There should be no graffiti (to include etching on glass or on another surface) of a racial, religious, sexual or other potentially offensive nature on Trains (inside or out).
- (b) Other graffiti must not be readily apparent to a casual user of the Train.
- 1.2 A Vehicle will be failed if:
- (a) Any graffiti which falls within the description in paragraph 1.1(a) above is visible.
- (b) Other graffiti covers an area extending in total to 1 square metre or an A5 sheet of paper cannot cover any individual graffiti.
- 1.3 Without limiting the normal meaning of the word graffiti, for the purposes of this Appendix, graffiti will be regarded as writing, painting, drawing or scribbles. Line indentation, line marking, or scratching shall not constitute graffiti as this is clearly no more than scuffing or reasonable wear and tear on the surface. The definition of graffiti shall also include the application of any stickers or labels.

2**SERVICE QUALITY BENCHMARKS**

- 2.1 Strong Level (3) means 98% performance of the Service in accordance with the Service Quality Specification during a Reporting Period.
- 2.2 Acceptable Level (2) means 94-97.9% performance of the Service in accordance with the Service Quality Specification during a Reporting Period.
- 2.3 Below Acceptable Level (1) means 93.9% or below performance of the Service in accordance with the Service Quality Specification during a Reporting Period.

3**MAXIMUM NUMBER OF INSPECTIONS**

The maximum number of inspections per Reporting Period shall be, limited to one inspection per Vehicle number, with a programme of inspections that are representative of the number of services operating in the peak and off-peak and unit type.

4**TIMES TO BE SPECIFIED IN NOTICES**

5 Working Days.

APPENDIX 23 TO SCHEDULE 7.2

SERVICE QUALITY APPENDIX – TRAIN LITTER AND CLEANLINESS

1

- 1.1 Trains should be kept clean and free from litter.
- 1.2 A Vehicle will be failed if:
- (a) There are more than 10 items of litter, each larger than the size of a credit card, found within the Vehicle (other than in a litter bin).
 - (b) Any litterbin is full or is damaged in a way that would prevent the use of the bin. Any other damage will be reported as an observation.
 - (c) the windows are so dirty that a normally sighted person cannot read a Station sign through a window.
 - (d) there is any contamination or spillage which makes the Vehicle dangerous, unusable or unpleasant for the passenger
 - (e) any surface in the interior of the Vehicle (excepting the floor) is so dirty that it could contaminate a passenger's clothing.

2

SERVICE QUALITY BENCHMARKS

- 2.1 Strong Level (3) means 96% performance of the Service in accordance with the Service Quality Specification during a Reporting Period.
- 2.2 Acceptable Level (2) means 92-95.9% performance of the Service in accordance with the Service Quality Specification during a Reporting Period.
- 2.3 Below Acceptable Level (1) means 91.9% or below performance of the Service in accordance with the Service Quality Specification during a Reporting Period.

3

MAXIMUM NUMBER OF INSPECTIONS

The maximum number of inspections per Reporting Period shall be, limited to one inspection per Vehicle number, with a programme of inspections that are representative of the number of services operating in the peak and off-peak and unit type.

4

TIMES TO BE SPECIFIED IN NOTICES

5 Working Days.

APPENDIX 24 TO SCHEDULE 7.2

SERVICE QUALITY APPENDIX – TRAIN DESTINATION BOARDS AND PASSENGER INFORMATION DISPLAYS

1

- 1.1 Train destination boards (including both interior and exterior destination boards), labels or interior information displays should be legible and comprehensible and display the correct information in the correct sequence and be operating.
- 1.2 Interior information displays shall include information for passengers, including:
 - (a) the contact details of SRT's customer relations department.
 - (b) how to contact Train staff in the event of an emergency.
 - (c) (if appropriate) the contact details of the relevant Rail Passengers' Committee.
- 1.4 A Vehicle will be failed if:
 - (a) The information specified in section 1.2 is not provided.
 - (b) All destination boards, labels or interior information displays do not match.
 - (c) Any destination board, labels or information display is incorrect, not legible or, where relevant, is not operational.

2

SERVICE QUALITY BENCHMARKS

- 2.1 Strong Level (3) means 93% performance of the Service in accordance with the Service Quality Specification during a Reporting Period.
- 2.2 Acceptable Level (2) means 85-92.9% performance of the Service in accordance with the Service Quality Specification during a Reporting Period.
- 2.3 Below Acceptable Level (1) means 84.9% or below performance of the Service in accordance with the Service Quality Specification during a Reporting Period.

3

MAXIMUM NUMBER OF INSPECTIONS

The maximum number of inspections per Reporting Period shall be, limited to one inspection per Vehicle number, with a programme of inspections that are representative of the number of services operating in the peak and off-peak and unit type.

4

TIMES TO BE SPECIFIED IN NOTICES

5 Working Days.

APPENDIX 25 TO SCHEDULE 7.2

SERVICE QUALITY APPENDIX – TRAIN HEATING/VENTILATION

1 SERVICE QUALITY SPECIFICATION

- 1.1 The heating and ventilation systems fitted by the manufacturer in the Vehicle should be fully functional and used to provide passengers with a comfortable travelling environment.
- 1.2 A Vehicle will be failed if:
- (a) its heating and ventilation system does not operate when switched on, or when the ambient temperature falls below 10 degrees centigrade.
 - (b) the heating system is in operation when the ambient temperature is above 25 degrees centigrade.
 - (c) the average temperature in the passenger compartments of a Vehicle fitted with a heating and ventilation system, is less than 10 degrees centigrade or more than 25 degrees centigrade.
 - (d) any window which is intended by the manufacturer to be capable of being opened and closed by passengers is not capable of being opened and closed and of remaining so.
 - (e) where the ambient temperature warrants use of heaters a convector panel is not warm.

A Vehicle which is not fitted with an air conditioning unit will not be failed for the reason described in(b) above if the temperature is more than 25 degrees centigrade, provided the heating system is switched off and all windows intended by the manufacturer to be capable of being opened by passengers are capable of being so opened.

2 SERVICE QUALITY BENCHMARKS

- 2.1 Strong Level (3) means 99% performance of the Service in accordance with the Service Quality Specification during a Reporting Period.
- 2.2 Acceptable Level (2) means 95-98.9% performance of the Service in accordance with the Service Quality Specification during a Reporting Period.
- 2.3 Below Acceptable Level (1) means 94.9% or below performance of the Service in accordance with the Service Quality Specification during a Reporting Period.

3 MAXIMUM NUMBER OF INSPECTIONS

The maximum number of inspections per Reporting Period shall be, limited to one inspection per Vehicle number, with a programme of inspections that are representative of the number of services operating in the peak and off-peak and unit type.

4 TIMES TO BE SPECIFIED IN NOTICES

5 Working Days.

APPENDIX 26 TO SCHEDULE 7.2

SERVICE QUALITY APPENDIX – TRAIN POSTERS

1 SERVICE QUALITY SPECIFICATION

- 1.1 (a) Poster frames should be in good condition and at the correct location on the Train. Information should be clearly visible through the polycarbonate or other material over the full area of the frontage.
- 1.2 (b) The correct posters and other fixed information (together “**poster**”) should be on display at specified locations, displayed in an appropriate manner and legible to the public.
- 1.2 A vehicle will fail if a poster is:
- (a) missing.
 - (b) not legible from the adjoining central aisle.
 - (c) not up to date.
 - (d) noticeably damaged or significantly faded to the extent the information is not legible (e.g. due to dirt, moisture, non-transparent frontage or because any poster has slumped in its frame).
 - (e) in a frame that is damaged in any way, which prevents the proper display of the poster.
 - (f) when external advertising is on display this will comply with the ‘Out of Home Advertising Industry’ guidelines. Should a dated advertisement be expired, this will be reported as an observation.
 - (g) all appropriate passenger saloon Safety and CCTV advisory notices are not in place.
 - (f) “**no smoking**” signs have not been provided or are not clearly visible, will be reported as an observation.

2 SERVICE QUALITY BENCHMARKS

- 2.1 Strong Level (3) means 92% performance of the Service in accordance with the Service Quality Specification during a Reporting Period.
- 2.2 Acceptable Level (2) means 88-91.9% performance of the Service in accordance with the Service Quality Specification during a Reporting Period.
- 2.3 Below Acceptable Level (1) means 87.9% or below performance of the Service in accordance with the Service Quality Specification during a Reporting Period.

3 MAXIMUM NUMBER OF INSPECTIONS

The maximum number of inspections per Reporting Period shall be, limited to one inspection per Vehicle number, with a programme of inspections that are representative of the number of services operating in the peak and off-peak and unit type.

4 TIMES TO BE SPECIFIED IN NOTICES

5 Working Days.

APPENDIX 27 TO SCHEDULE 7.2**SERVICE QUALITY APPENDIX – ON TRAIN PUBLIC ADDRESS****1 SPECIFICATION**

- 1.1 Public address systems fitted on Vehicles should function properly and be audible, intelligible and free from distortion and mispronunciation but shall not be at such a level as to be uncomfortable to passengers
- 1.2 A Vehicle will be failed if:
- (a) An announcement made when the Vehicle is in motion is not audible or capable of being understood.
 - (b) Service disruption or replacement bus services relevant to this service (or at any of the Stations that the train calls at) are not mentioned as part of on-board announcements.
 - (c) An announcement of the train destination is not made immediately prior to departure from any originating Station for the train services listed within the Train Plan for each timetable. This will also include Glasgow Queen Street Low Level and Glasgow Central Low Level.
 - (d) An announcement of the approach and next Station and appropriate interchange is not made on approach or on arrival at each Station either by the automated PA or a member of on train staff, appropriate with timetable development and unit capability.

2 SERVICE QUALITY BENCHMARKS

- 2.1 Strong Level (3) means 93% performance of the Service in accordance with the Service Quality Specification during a Reporting Period.
- 2.2 Acceptable Level (2) means 85-92.9% performance of the Service in accordance with the Service Quality Specification during a Reporting Period.
- 2.3 Below Acceptable Level (1) means 84.9% or below performance of the Service in accordance with the Service Quality Specification during a Reporting Period.

3 MAXIMUM NUMBER OF INSPECTIONS

The maximum number of inspections per Reporting Period shall be, limited to one inspection per Vehicle number, with a programme of inspections that are representative of the number of services operating in the peak and off-peak and unit type.

4 TIMES TO BE SPECIFIED IN NOTICES

5 Working Days.

APPENDIX 28 TO SCHEDULE 7.2

SERVICE QUALITY APPENDIX – TRAIN DOORS

1 SERVICE QUALITY SPECIFICATION

- 1.1 (a) All external train doors on Vehicles should function properly and be capable of being opened at each Station. External doors on the relevant side of the Vehicle should open at each halt.
- (b) All gangway doors between Vehicles should function properly and be capable of being opened and shut at all times.
- (c) All vestibule doors which separate one area of a coach from another i.e. a door in/out of first class on a 170 unit should function properly and be capable of being opened and shut at all times.
- 1.2 A Vehicle will be failed if:
- (a) a gangway door is not capable of being opened or shut properly.
- (b) a vestibule door is not capable of being opened or where a vestibule door is in the open position and a member of on train staff are unable to reset as per the door design.
- (c) an external door does not open when the illuminated door release button is depressed during a halt at a Station, or the door release button does not actually illuminate during a halt at a Station.
- (d) an external door does not provide a seal against weather and draughts.
- (e) the exterior door "open" or "close" exterior lights are not functioning and do not illuminate during a halt at a Station.
- (f) the exterior door opening and closing audio alarm is not functioning and is not audible when the door opens and closes during a halt at a Station.
- (g) the spotlighting of a doorstep plate is not functioning.

2 SERVICE QUALITY BENCHMARKS

3 STRONG LEVEL (3) MEANS 95% PERFORMANCE OF THE SERVICE IN ACCORDANCE WITH THE SERVICE QUALITY SPECIFICATION DURING A REPORTING PERIOD.

- 3.1 Acceptable Level (2) means 90-94.9% performance of the Service in accordance with the Service Quality Specification during a Reporting Period.
- 3.2 Below Acceptable Level (1) means 89.9% or below performance of the Service in accordance with the Service Quality Specification during a Reporting Period.

4 MAXIMUM NUMBER OF INSPECTIONS

The maximum number of inspections per Reporting Period shall be, limited to one inspection per Vehicle number, with a programme of inspections that are representative of the number of services operating in the peak and off-peak and unit type.

5 TIMES TO BE SPECIFIED IN NOTICES

5 Working Days.

APPENDIX 29 TO SCHEDULE 7.2

SERVICE QUALITY APPENDIX – ON-TRAIN CCTV

1

- 1.1 (a) CCTV and other cameras (each a “*camera*”) located on Trains should be operational to the standard set. All cameras should be regularly checked for operation. All picture recording systems linked to cameras should be functional.
- 1.2 (b) CCTV cameras and recording equipment shall be functioning and operational at all times during a Train’s journey.
- 1.3 A Vehicle will be failed if any camera on that Vehicle or any picture recording system in respect of any camera on that Vehicle is not functioning or is not operational to the required standard or is not operating.
- 1.4 A camera will be considered not to be functioning to the required standard if:
- (a) A camera fails completely.
- (b) The picture is substandard, that would not allow for the area to be monitored.
- 1.5 A picture recording system will be considered not to be functioning to the standard set if:
- (a) The system fails completely.
- (b) The picture is substandard, that would not allow for the area to be monitored.
- 1.6 The above is to be read in conjunction with the Operation Facilities Book which identifies at which Stations the Service exists.

2

SERVICE QUALITY BENCHMARKS

- 2.1 Strong Level (3) means 90% performance of the Service in accordance with the Service Quality Specification during a Reporting Period.
- 2.2 Acceptable Level (2) means 80-89.9% performance of the Service in accordance with the Service Quality Specification during a Reporting Period.
- 2.3 Below Acceptable Level (1) means 79.9% or below performance of the Service in accordance with the Service Quality Specification during a Reporting Period.

3

MAXIMUM NUMBER OF INSPECTIONS

The maximum number of inspections per Reporting Period shall be, limited to one inspection per Vehicle number, with a programme of inspections that are representative of the number of services operating in the peak and off-peak and unit type.

4

TIMES TO BE SPECIFIED IN NOTICES

5 Working Days.

APPENDIX 30 TO SCHEDULE 7.2

SERVICE QUALITY APPENDIX – SEAT RESERVATION SYSTEM

1

- 1.1 (a) Any Vehicle which should be equipped with a seat reservation system (“**SRS**”) shall be so equipped, and shall where required provide a SRS for both first class accommodation and Standard Class Accommodation.
- (c) Where any Vehicle is equipped with an SRS this shall, in the case of an electronic or automatic system, be operational and functioning and, in the case of a manual or paper-based system, be properly operated.
- 1.2 A Vehicle will be failed if:
- (a) Where a Vehicle is fitted with an electronic or automatic SRS that SRS is not operational or functioning.
- (b) Where a manual or paper-based system is due to be in use on a Vehicle but is not being properly operated.
- (c) The SRS does not allow for segregation, including first class accommodation and Standard Class Accommodation, or alternative facilities such as wheelchair accommodation or the facility to carry bikes, animals, etc.

2

SERVICE QUALITY BENCHMARKS

- 2.1 Strong Level (3) means 95% performance of the Service in accordance with the Service Quality Specification during a Reporting Period.
- 2.2 Acceptable Level (2) means 90-94.9% performance of the Service in accordance with the Service Quality Specification during a Reporting Period.
- 2.3 Below Acceptable Level (1) means 89.9% or below performance of the Service in accordance with the Service Quality Specification during a Reporting Period.

3

MAXIMUM NUMBER OF INSPECTIONS

The maximum number of inspections per Reporting Period shall be, limited to one inspection per Vehicle number, with a programme of inspections that are representative of the number of services operating in the peak and off-peak and unit type.

4

TIMES TO BE SPECIFIED IN NOTICES

5 Working Days.

APPENDIX 31 TO SCHEDULE 7.2

SERVICE QUALITY APPENDIX – ON-TRAIN REFRESHMENT AND FOOD FACILITIES

Appendix suspended until further notice by the Authority.

APPENDIX 32 TO SCHEDULE 7.2**SERVICE QUALITY APPENDIX – WIFI ON TRAIN****1**

- 1.1 Any vehicle which should be equipped with WiFi shall be so equipped and shall be fully functional and operational.
- 1.2 A Vehicle will be failed if:
 - (a) The Vehicle should be equipped with WiFi and is not so equipped and fully functional and operational - the test will be to connect to the BBC News.

2**SERVICE QUALITY BENCHMARKS**

- 2.1 Strong Level (3) means 97% performance of the Service in accordance with the Service Quality Specification during a Reporting Period.
- 2.2 Acceptable Level (2) means 95-96.9% performance of the Service in accordance with the Service Quality Specification during a Reporting Period.
- 2.3 Below Acceptable Level (1) means 94.9% or below performance of the Service in accordance with the Service Quality Specification during a Reporting Period.

3**MAXIMUM NUMBER OF INSPECTIONS**

The maximum number of inspections per Reporting Period shall be, limited to one inspection per Vehicle number, with a programme of inspections that are representative of the number of services operating in the peak and off-peak and unit type.

4**TIMES TO BE SPECIFIED IN NOTICES**

5 Working Days.

APPENDIX 33 TO SCHEDULE 7.2

SERVICE QUALITY APPENDIX– TRAIN STAFF AND CUSTOMER CARE

1

- 1.1 (a) All Train staff shall receive sufficient training (including refresher training) to allow them competently to perform the functions their roles require of them and shall act at all times in a courteous and professional manner in their dealings with the public.
- (b) On each Train there shall be a person whose duties shall include customer care duties as follows: -
- (i) general provision of customer care duties including provision of information to passengers and "**helping hand**" assistance to adults with small children, infirm, elderly or disabled passengers who may require such assistance.
- (ii) taking appropriate measures to deal with unruly behaviour by any passengers so far as is reasonably practicable in the absence of police assistance and calling for police assistance when required.
- 1.2 A Train will be failed if:
- (a) Any staff member who should be wearing a uniform is not, or that uniform is incomplete or is excessively worn.
- (b) Any staff member is not wearing, in a prominent position, a badge bearing their name and position/role.
- (c) Any staff member whose role it is to sell tickets cannot, upon enquiry, provide details of the prices of one randomly selected Fare, the times and calling patterns of one randomly selected Train on that route, details as to other services or facilities on that Train, cannot demonstrate an ability to sell one randomly selected Fare to a stated destination at the correct price or cannot refer a passenger to National Rail Enquiries in respect of any network enquiry that is not related to that route.
- (d) Staff members whose role may include making announcements (including through use of public address systems) are unable to demonstrate a knowledge of the protocol for such announcements and the information to be contained within them or where any Train under inspection is running more than 5 minutes late and a staff member whose role it is to make such public announcements does not do so.
- (e) There is no such person (as described in paragraph 1.1(b) above) for any part of its journey.
- (f) There is reasonable evidence that such person is not performing their customer care duties.

2

SERVICE QUALITY BENCHMARKS

- 2.1 Strong Level (3) means 96% performance of the Service in accordance with the Service Quality Specification during a Reporting Period.
- 2.2 Acceptable Level (2) means 93-95.9% performance of the Service in accordance with the Service Quality Specification during a Reporting Period.
- 2.3 Below Acceptable Level (1) means 92.9% or below performance of the Service in accordance with the Service Quality Specification during a Reporting Period.

3 MAXIMUM NUMBER OF INSPECTIONS

The maximum number of inspections per Reporting Period shall be, limited to one inspection per Vehicle number, with a programme of inspections that are representative of the number of services operating in the peak and off-peak and unit type.

4 TIMES TO BE SPECIFIED IN NOTICES

5 Working Days.

APPENDIX 34 TO SCHEDULE 7.2**SERVICE QUALITY APPENDIX – TICKET INSPECTION ON TRAINS****1 SPECIFICATION**

- 1.1 On each Train there shall be a person whose duties shall include revenue protection duties comprising inspection of tickets, issuing of tickets to persons not in possession of a valid ticket and collection of revenue.
- 1.2 A Train will be failed if:
- (a) there is no such person (as described above) for any part of its journey.
 - (b) the portable ticketing machine of such person (as described above) is not working properly as per the operating licences (i.e. does not accept credit or debit cards; SMART) or they do not have in their possession such a machine.
 - (c) There is reasonable evidence that such person (as described above) is not actively both checking and selling tickets.

2 SERVICE QUALITY BENCHMARKS

- 2.1 Strong Level (3) means 96% performance of the Service in accordance with the Service Quality Specification during a Reporting Period.
- 2.2 Acceptable Level (2) means 93-95.9% performance of the Service in accordance with the Service Quality Specification during a Reporting Period.
- 2.3 Below Acceptable Level (1) means 92.9% or below performance of the Service in accordance with the Service Quality Specification during a Reporting Period.

3 MAXIMUM NUMBER OF INSPECTIONS

The maximum number of inspections per Reporting Period shall be, limited to one inspection per Vehicle number, with a programme of inspections that are representative of the number of services operating in the peak and off-peak and unit type.

4 TIMES TO BE SPECIFIED IN NOTICES

5 Working Days.

APPENDIX 35 TO SCHEDULE 7.2

SERVICE QUALITY APPENDIX - SQMS MANAGEMENT PROCESS

The SQM process ensures that there is, throughout the organisation of SRT, a focus upon the importance of continued improvement in the passengers' experiences across the areas of train presentation and maintenance, Station condition and interaction with SRT staff. This focus must include an appreciation of the need to record reliable and accurate information on SRT's ongoing performance across these areas.

The SQMS appendix will look for evidence that the quality management system is operational as opposed to checking that every activity has been performed. There SRT will provide the Authority with a periodic report for planned works for the following period and confirmation of the actual works completed the previous period for:

1. PPM PROGRAMME FOR INACCESSIBLE STATION LITTER.

SRT shall use reasonable endeavours to implement a Station cleaning programme which will consist of removal of litter in accessible areas. Clearing litter and refuse in non-accessible areas will comply with the Environmental Protection Act 1990.

2. PPM PROGRAMME FOR PAINTING WORKS FOR PARKING, WAITING BAYS AND BOUNDARIES.

SRT shall use reasonable endeavours to undertake renewal of car park white lining at 25 carparks across the estate.

3. PPM PROGRAMME FROM NETWORK RAIL FOR LIFTS AND ESCALATORS.

(a) SRT shall use reasonable endeavours to ensure Network Rail implement a lifts and escalators programme. The Network Rail maintenance will be split into Statutory (Lifting Operations and Lifting Equipment Regulations (LOLER)) and non- statutory. The programme will consist of:

- (i) Lifts, 13 non-statutory inspections a year across the Network.
- (ii) Lifts, 2 LOLER inspections a year across the Network.
- (iii) Lifts, each lift will receive The Safety Assessment Federation (SAFed) LG test carried out yearly, 5 yearly & 10 yearly.
- (iv) Lifts, each lift will receive an National Inspection Council for Electrical Installation Contracting (NCEIC) test every 3 years.
- (v) Escalators, each escalator will receive a deep clean 4 times a year.
- (vi) Escalators, 13 intrusive PPM's a year across the Network.
- (vii) Escalators, 13 'walk through' PPM's a year across the Network.
- (viii) Escalators, 2 SAFed PM45 inspections a year across the Network.
- (ix) Escalators, each escalator will receive an NCEIC test every 3 years.
- (x) Where the 'application programming interface' is fitted, Network Rail will make the information available for passengers on their website, with the aim to incorporate the information into the National Rail Enquiries website.

(b) SRT shall implement a system of recording all lifts and escalator faults incorporating reports from Station Staff and information arising from inspections, to allow for timeous repair/remedy out with scheduled maintenance.

4. NETWORK RAIL FAULTS.

SRT shall use reasonable endeavours to implement a system of recording all Network Rail faults, incorporating reports from Station Staff and information arising from inspections, to allow for timeous repair/remedy, or has been kept continually up to date. The system will include:

- (i) A periodic Network Rail faults report.
 - (ii) A first level (Tier 1) review structure. The role of this structure will be to review the previous periods performance, share priorities, activities and resolve any issues. Representation will be required from both ScotRail and Network Rail.
 - (iii) A second level (Tier 2) review structure. The role of this structure will be to resolve any issues escalated from the Tier 1 level and focus on the current or short-term aims. Representation will be required from both ScotRail and Network Rail Management Teams. Generally, if there is no resolution by the next Tier 2 meeting, then the issue will be escalated to Tier 3.
 - (iv) A third level (Tier 3) review structure. The role of this structure will be to resolve any issues escalated from the Tier 2 level, review performance of both organisations and agree priorities linked to the business overall strategy and objectives. Representation will be required from both ScotRail and Network Rail Senior Management Teams. Generally, if there is no resolution within 8 weeks, then the issue will be escalated to Tier 4.
 - (v) A fourth level (Tier 4) review structure. The role of this structure will be to resolve any issues escalated from the Tier 3 level and consider the strategic focus of both organisations. Representations will be required from both ScotRail and Network Rail Executive Teams.
 - (vi) Canopies. Network Rail shall use reasonable endeavours to implement a canopy cleaning programme. The information will be shared with ScotRail every 1/4tr.
- 4.1 Strong Level (3) means 80% of the number of fails recorded pass the follow-up audit during a Reporting Period.
- 4.2 Acceptable Level (2) means 70-79.9% of the number of fails recorded pass the follow-up audit during a Reporting Period.
- 4.3 Below Acceptable Level (1) means 69.9% or below of the number of fails recorded pass the follow-up audit during a Reporting Period.

SCHEDULE 8

THIS IS SCHEDULE 8 REFERRED TO IN THE FOREGOING SCOTRAIL GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND SCOTRAIL TRAINS LIMITED

Payments

- Schedule 8.1: Grant Payments**
Appendix 1: Notifiable Costs
- Schedule 8.2: Performance Review Process**
Appendix 1: Indicative Framework of KPIs
Appendix 2: Performance Review
Appendix 3: Performance Review Report
Appendix 4: Indicative Performance Review Scorecard
- Schedule 8.3: Miscellaneous Payment Provisions**

SCHEDULE 8.1

THIS IS SCHEDULE 8.1 REFERRED TO IN THE FOREGOING SCOTRAIL GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND SCOTRAIL TRAINS LIMITED

Grant Payments

1. Grant Payments

- 1.1 The Grant Payment (“**£GP**”) payable by SRH to SRT for each of Reporting Period 1 and Reporting Period 2 shall be an amount equal to that specified in column 2 of the table below for that Reporting Period (unless otherwise varied upon the written agreement of the parties):

Column 1	Column 2	Column 3
Reporting Periods	Grant Payment	Working Capital Facility
Reporting Period 1	£22,910,955	Seven million and five hundred thousand pounds Sterling (£7,500,000)
Reporting Period 2	£76,622,706	N/A

- 1.2 The parties recognise that in addition to the Grant Payment for Reporting Period 1, SRT will also be entitled to a Working Capital Facility from SRH for that Reporting Period 1 at an amount equal to that specified in column 3 of the table in paragraph 1.1.
- 1.3 The Grant Payment payable for any Reporting Period from and including the third Reporting Period of the first Operator Year (which third Reporting Period is, for the avoidance doubt, from 29 May 2022 to 25 June 2022) shall be an amount calculated as follows:

£GP =	PGP+ PBCCP+ PADJ + AdADJ (as applicable)
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where:

PGP (Periodic Grant Payment)	means an amount equal to: $PGP = BCP_n - ECC_n$ Where:	
	BCP_n	means the Budgeted Cash Payment for the relevant Reporting Period (if any). BCP may be a positive number only.
	ECC_n	means the Estimated Cash Collections for the relevant Reporting Period (if any). ECC may be a positive number only.
	PGP may be a positive or negative number. The parties acknowledge and agree that the PGP for any Reporting Period from and including the third Reporting Period of the first Operator Year shall be determined on the basis of the agreed cash Budget.	

PBCCP	means the Periodic Budgeted Capex Cash Payment for the relevant Reporting Period (if any). PBCP may be a positive number only.
PADJ	means any Periodic Adjustment due and determined in accordance with paragraph 8 of this Schedule 8.1 (<i>Grant Payments</i>) in respect of the Periodic Adjustment Period. PADJ may be a positive or negative number.
AdADJ	means any Additional Adjustments due and determined in accordance with paragraph 9 of this Schedule 8.1 (<i>Grant Payments</i>). AdADJ may be a positive or negative number.

1.4 Where an Operator Year starts or ends during a Reporting Period, £GP and PGP shall be determined as if references in paragraph 1.3 of this Schedule 8.1 (*Grant Payments*) to a Reporting Period were references to the relevant proportion of a Reporting Period falling within that Operator Year, and the Grant Payment for such Reporting Period shall be calculated as per £GP in paragraph 1.3.

1.5 The parties agree that:

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

2. Payment of Grant Payment

2.1 Except in relation to Reporting Period 1 and Reporting Period 2 to which paragraph 1.1 of this Schedule 8.1 (*Grant Payments*) shall apply, SRH shall notify SRT, no less than seven (7) days prior to the start of each Reporting Period, of the amount of the Grant Payment payable in respect of that Reporting Period.

2.2 Each such notification shall set out the value of each element of the formula used to calculate the Grant Payment as outlined in paragraph 1.3 of this Schedule 8.1 (*Grant Payments*).

2.3 The Payment Date for a Reporting Period shall be before the first Weekday of that Reporting Period (or, in the case of the first Reporting Period of the first Operator Year, it shall be by 31st March 2022).

2.4 Each Grant Payment shall be payable by SRH or, as the case may be, SRT in the amount detailed in paragraph 1.1 or as notified by SRH in accordance with paragraph 2.1 of this Schedule 8.1 (*Grant Payments*) on the Payment Date of the Reporting Period to which it relates.

2.5 Each Grant Payment shall be made:

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

3. Disputes

3.1 If SRT disputes the amount of a Grant Payment, the dispute shall, unless SRT and SRH otherwise agree, be resolved in accordance with the provisions of paragraph 2 of Schedule 19 (*Other Provisions*). Any such dispute shall not affect any obligation to pay a Grant Payment notified in accordance with this Schedule 8.1 (*Grant Payments*).

4. **No Double Recovery**

4.1 Neither SRH nor SRT shall be entitled to recover (by way of an adjustment to Grant Payments or otherwise) more than once in respect of the same amount.

5. **Force Majeure and Payments**

5.1 Following the occurrence of a Force Majeure Event, the payment of Grant Payments shall continue to be calculated in accordance with this Schedule 8.1 (*Grant Payments*) and the payment of such Grant Payments shall continue unaffected.

6. **Budget**

6.1 The initial Budget as agreed by the parties is detailed in the relevant document as formally approved by each party, and is subject to variation in accordance with this paragraph 6.

6.2 Without limiting the requirement for any other meeting, SRH and SRT shall, subject to paragraph 12.2 of this Schedule 8.1 (*Grant Payments*), hold a forecast Budget review meeting each Reporting Period (unless otherwise agreed in writing among the parties) (a "**Budget Forecast Review Meeting**") at a time and location notified to SRT (and to the Authority) by SRH following provision of the information referred to in paragraph 6.3 of this Schedule 8.1 (*Grant Payments*), and the Authority¹ may (at its discretion) attend such Budget Forecast Review Meeting. The purpose of the meeting shall be to review and seek to agree:

- (a) revisions (if any) to the then current Budget for the remaining Reporting Periods of the Budget; and
- (b) the content of any necessary or desirable corresponding addendum to the Supporting Materials.

6.3 SRT shall ensure that the representatives of SRT at the Budget Forecast Review Meeting include the Finance Director of SRT or a suitable representative of the Finance Director as may reasonably be approved for this purpose by SRH.

6.4 SRT shall within such timescales set out in paragraph 3 of Schedule 13.2 provide to SRH and the Authority:

- (a) the relevant information required pursuant to paragraph 3 of Schedule 13.2 (*Information*);
- (b) a draft periodic Budget prepared using cost and revenue categories agreed with SRH, updated to reflect Actual Cash Payments, Actual Cash Collections and Actual Capex Cash Payments as reflected in the latest Management Accounts and revised Budgeted Cash Payments, Estimated Cash Collections and Periodic Budgeted Capex Cash Payments for the remainder of the Operator Year in respect of the daily cashflow forecast and a corresponding update to the periodic profit and loss account as set out in the relevant Business Plan; and
- (c) all further information as SRH and/or the Authority may request from time to time for the purposes of the operation of this paragraph 6 of this Schedule 8.1 (*Grant Payments*) (and this paragraph shall continue to apply such that the number of requests which SRH and/or the Authority may make is not limited).

6.5 If the parties fail to agree the matters referred to in paragraphs 6.2(a) to 6.2(b) of this Schedule 8.1 (*Grant Payments*) at the relevant Budget Forecast Review Meeting, SRH shall reasonably determine such matters, following consultation with the Authority.

6.6 Such revisions to the Budget and addenda to the Supporting Materials as agreed or determined shall take effect from the first day of the Reporting Period immediately following the date on which the Budget Forecast Review Meeting (at which such matters were discussed) took place provided that, if such revisions or addenda are not agreed by the first day of that Reporting Period, the relevant revisions and

addenda shall take effect from the first day of the Reporting Period which falls at least 10 Weekdays after those revisions and addenda are agreed or determined.

- 6.7 Each revision to the Budget and/or addendum to the Supporting Materials shall (unless the parties otherwise agree in writing):
- (a) adopt the same format and structure as the original version in agreed terms (or where the preceding version has included any changes from that format and structure expressly agreed by the parties for this purpose) from the preceding version;
 - (b) make no assumptions or include any costs, revenue or other adjustments which are not consistent with the definitions of Costs and Revenue or, subject to any agreement of the Authority and SRH to the contrary under paragraph 6.2 of this Schedule 8.1 (*Grant Payments*), which represent Notifiable Costs or Revenue Foregone or liabilities in respect of SRH Claims and/or Authority Claims (except as may be otherwise expressly agreed among the parties for that purpose);
 - (c) adopt the same accounting principles and standards as the original agreed version of the Budget (as these may be expressly varied by agreement among the parties for this purpose or, in the case of accounting standards, as these may be reasonably revised by SRH and/or the Authority to take account of changes to GAAP in the United Kingdom);
 - (d) otherwise facilitate easy comparison with the definitions of Costs, Revenue, Notifiable Costs and Revenue Foregone and with the information reported in the Management Accounts, Annual Management Accounts and the Audited Annual Accounts;
 - (e) include a review of cash flows to ensure sufficient working capital with reference to paragraph 10 of this Schedule 8.1 (*Grant Payments*) (in SRH's and the Authority's reasonable opinions);
 - (f) demonstrate that the revision to the Budget and/or addendum is consistent with the relevant Business Plan for that Operator Year, and
 - (g) be formally agreed in accordance with paragraph 1(b) of Schedule 9 (*Changes*).
- 6.8 Further to each occasion when it is agreed or determined that the Budget is to be revised and/or an addendum is to be added to the Supporting Materials, SRH shall be entitled to:-
- (a) make the agreed or determined revisions to the Budget and/or Supporting Materials itself (or procure this is done on its behalf) and provide copies of those revised documents to SRT; or
 - (b) require SRT to provide the agreed or determined revisions to the Budget and/or Supporting Materials for approval by SRH, which SRT shall do and provide revised versions to SRH within such time as SRH shall specify for this purpose.
- 6.9 For the purpose of this paragraph 6, SRH and the Authority shall be entitled to consider any information provided by SRT and any other sources of information which SRH and/or the Authority consider to be relevant and SRH and/or the Authority shall be entitled to request such information from SRT required in connection with the matters referred to in this paragraph 6. Without prejudice to the generality of the foregoing, in considering any revisions to the Budget, regard shall be had to the definitions of Costs, Revenue, Notifiable Costs and Revenue Foregone so as to ensure that the revisions to the Budget are consistent with those definitions.
- 6.10 Subject to SRH's rights set out in paragraph 6.8 of this Schedule 8.1 (*Grant Payments*), SRH and SRT shall at all times act in good faith, reasonably and in a timely manner in the interpretation and application of the provisions for agreeing revisions to the Budget and any addendum to the Supporting Materials.
- 6.11 SRT shall not increase nor agree to any increase in the emoluments payable to Operator Employees (save as may be provided for within the approved Business Plan for the relevant Operator Year and/or the Budget at that time) without first obtaining the written approval of SRH and the Authority (such approval not to be unreasonably withheld or delayed).

7. Review of SRT's performance against Budget

Finance Review Meeting

- 7.1 Without limiting the requirement for any other meeting, SRH and SRT shall, subject to paragraph 12.2 of this Schedule 8.1 (*Grant Payments*), hold a finance review meeting in every Reporting Period ("**Periodic Finance Review Meeting**") (other than the first Reporting Period of the first Operator Year) at such time(s) and location(s) notified to SRT (and to the Authority) by SRH following provision of the information referred to in paragraph 7.2 below, and the Authority may (at its discretion) attend such Periodic Finance Review Meeting and:
- (a) the purpose of the Periodic Finance Review Meeting shall be to review the financial performance of SRT, including:
 - (i) a review and discussion of variances arising in the preceding Reporting Period between Actual Cash Payments, Actual Cash Collections and Actual Capex Cash Payments with Budgeted Cash Payments, Estimated Cash Collections and Periodic Budgeted Capex Cash Payments contained in the Budget respectively and confirmation of the value of any Periodic Adjustment, and/or reason and confirmation of the value of any Additional Adjustment (as applicable) to be applied to the Grant Payment to be paid in the Reporting Period following the Reporting Period in which the Periodic Finance Review Meeting is taking place, and a comparison with the periodic profit and loss account as set-out in the Business Plan;
 - (ii) a review and discussion of SRT's available cash balance, and any requests for additional working capital;
 - (iii) a review and discussion of SRT's balance sheet position;
 - (iv) a review of fees and payments (including bonuses, rewards or discretionary benefits) actually paid by SRT to its staff, directors and officers during the preceding Reporting Period as against the portion of the Budgeted Cash Payments for such fees and payments stated in the then current Budget;
 - (v) actions to be taken in respect of SRT's financial performance;
 - (vi) identification of any potential Notifiable Costs, Revenue Foregone and SRH Claims and/or Authority Claims that may have been incurred within the preceding or current Reporting Period; and
 - (vii) confirmation and valuation of any Notifiable Costs, Revenue Foregone and liabilities in respect of SRH Claims and/or Authority Claims which have been identified pursuant to (vi) above in previous Periodic Finance Review Meetings and actions to be taken in respect of these costs, revenues and liabilities.
 - (b) SRT shall ensure that the representatives of SRT at the meeting include the Finance Director of SRT or a suitable representative of the Finance Director as may reasonably be approved for this purpose by SRH.
- 7.2 SRT shall, prior to the date of each Periodic Financial Review Meeting provide to SRH the relevant information required pursuant to paragraph 3 of Schedule 13.2 (*Information*) in accordance with the timescales set out therein, and shall provide SRH with all further information as SRH may request from time to time for the purposes of the operation of paragraph 7.1 above, within such time as SRH may reasonably specify for that purpose (and this paragraph shall continue to apply such that the number of requests which SRH may make is not limited).
- 7.3 SRH shall be entitled to consider any information provided to SRH by SRT and any other sources of information which SRH consider to be relevant and SRH shall be entitled to request such information from SRT as SRH require for the purposes of the operation of this paragraph 7. SRT shall provide the information within such time as SRH may reasonably specify for the purpose (and this paragraph shall continue to apply such that the number of requests which SRH may make is not limited).

7.4 If:

- (a) SRH and SRT fail to agree the matters referred to in paragraph 7.1(a) above at the relevant Periodic Finance Review Meeting; or
- (b) SRT fails to provide the relevant information required pursuant to Schedule 13.2 (*Information*) and/or this paragraph 7, in accordance with the timescales set out therein, or otherwise in accordance with this paragraph 7,

SRH shall (without prejudice to its other rights) determine the relevant matters in accordance with this paragraph 7 and all other applicable provisions of this Schedule 8.1 (*Grant Payments*) but by reference to the relevant information available to SRH at the time of such determination.

7.5 Any Notifiable Costs, Revenue Foregone, SRH Claims, Authority Claims and/or liabilities in respect of such SRH Claims or Authority Claims confirmed and valued in accordance with paragraph 7.1(a)(vii) of this Schedule 8.1 (*Grant Payments*) shall be reported to SRH by SRT as soon as practicable after such confirmation and valuation.

8. Periodic Adjustments

8.1 The value of PADJ for the current Reporting Period (n) shall be equal to the following:

PADJ for Reporting Period (n) =	$(ACP_{n-2} - BCP_{n-2}) + (ACCP_{n-2} - PBCCP_{n-2}) - (ACC_{n-2} - ECC_{n-2})$
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Where:

ACP_{n-2}	means the total Actual Cash Payments in the Reporting Period (n-2) for the Periodic Adjustment Period ACP _{n-2} may be a positive number only, and shall include any Notifiable Costs and such Notifiable Costs shall be identified separately.
BCP_{n-2}	means the total Budgeted Cash Payments in respect of the Periodic Adjustment Period based on the version of the Budget which applied for the purpose of calculating the Grant Payment in each such Reporting Period. BCP _{n-2} may be a positive number only.
ACCP_{n-2}	means the total Actual Capex Cash Payments for the Periodic Adjustment Period ACCP _{n-2} may only be a positive number
PBCCP_{n-2}	means the Periodic Budgeted Capex Cash Payment in respect of the Periodic Adjustment Period (based on the version of the Budget which applied for the purpose of the calculation of the Grant Payment for that preceding Reporting Period (n-2)). PBCCP may only be a positive number.
ACC_{n-2}	Means the total Actual Cash Collections for the Periodic Adjustment Period. ACC _{n-2} may be a positive or negative number.

ECC_{n-2}	means the total Estimated Cash Collections in respect of the Periodic Adjustment Period. ECC _{n-2} may be a positive or negative number.
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8.2 The value of PADJ shall be calculated in respect of each Reporting Period falling within the Term. An adjustment shall be made to the Grant Payment payable after the calculation of the value of PADJ is determined (a "**Periodic Adjustment**") and the parties acknowledge this may be after the Term.

8.3 If SRT fails to provide the Management Accounts in accordance with its obligations under Schedule 13.2 (*Information*), SRH shall (without prejudice to its other rights) determine (after prior consultation with the Authority) the amount of any Periodic Adjustment in accordance with this paragraph 8 by reference to the relevant information available to SRH at the time of such determination.

8.4 SRH and the Authority may, upon at least three (3) Reporting Periods' notice to SRT, provide for the Periodic Adjustment to the Grant Payment under this paragraph 8 of this Schedule 8.1 (*Grant Payments*) to be replaced by a quarterly, bi-annual or an annual adjustment to the Grant Payment.

9. **Additional Adjustment**

9.1 An "**Additional Adjustment**" or "**AdADJ**" is any adjustment to the Grant Payment other than a Periodic Adjustment.

9.2 SRT may request AdADJ from SRH during a Periodic Finance Review Meeting. The approval and payment of any AdADJ, including the value of any AdADJ, shall be at the discretion and determination SRH (after consultation with the Authority). Requests for AdADJ shall be fully justified and reported by SRT to SRH in accordance with such criteria determined by SRH from time to time, and discussed at the relevant Periodic Finance Review Meeting.

9.3 An adjustment shall be made to the Grant Payment payable after the value of approved AdADJ is determined by SRH (after consultation with the Authority) (an "**Additional Adjustment**").

9.4 SRH and the Authority agree that, provided the Management Accounts (in a form consistent with the obligations of SRT under Schedule 13.2 (*Information*)) are received from SRT within the timescale specified in paragraph 3 of Schedule 13.2 (*Information*), SRH will provide SRT with the value of an approved AdADJ in sufficient time for the Additional Adjustment to be included in the Grant Payment for the Reporting Period immediately following the Reporting Period in which the Additional Adjustment is determined by SRH.

10. **Working Capital**

10.1 It is acknowledged by SRH and SRT that:

- (a) the Grant Payment to SRT shall include sufficient working capital, without prejudice to payment of the Working Capital Facility to be paid to SRT during Reporting Period 1 in accordance with paragraph 1.2; and
- (b) SRT shall be entitled to request additional working capital through the Grant Payment if in any Reporting Period:
 - (i) SRT's available cash balance in that Reporting Period is below the Required Cash Balance; or
 - (ii) SRT reasonably believes that its available cash balance will fall below the Required Cash Balance at the end of the Reporting Period immediately following that Reporting Period and the parties agree that approval and payment of any additional working capital, including the value thereof, shall be at SRH's sole discretion and determination (after consultation with the Authority).

10.2 Any request for additional working capital by SRT shall be in writing and fully justified by SRT [in accordance with such criteria as determined by SRH from time to time including evidencing the cash shortfall and the amount required to remedy the cash shortfall. SRT shall provide any and all other information reasonably requested and required by SRH to enable SRH to make an informed decision regarding providing additional working capital to SRT.

10.3 Where cash balances in a Reporting Period exceeds the Required Cash Balance, then any amounts above the Required Cash Balance may be required to be repaid to SRH by SRT at SRH's discretion (upon written notice by SRH).

10.4 Any amounts of working capital which have not been allocated to be spent and/or have not been spent by SRT as at the Expiry Date or termination of this Agreement shall immediately be repaid to SRH by SRT.

11. End of Term

Final Adjustment (FADJ)

11.1 Any Final Adjustment to be made in respect of the final Operator Year shall be determined in accordance with paragraph 11.2 of this Schedule 8.1 (*Grant Payments*) but shall be paid (if such Final Adjustment is a positive value) by SRH to SRT within 7 Weekdays of SRH giving written notice to SRT of the amount of such Final Adjustment.

11.2 FADJ in shall be equal to the following:

FADJ =	$(\text{TotalACP} - \text{TotalACC}) + \text{Total ACCP} - (\text{TotalPGP} + \text{Total PBCCP}) - \text{TotalPADJ} - \text{TotalAdADJ}$
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Where:

TotalACP	means the total Actual Cash Payments of SRT for the Term as set out in the Final Reviewed Accounts for the Term. TotalACP may only be a positive number.
TotalACC	means the total Actual Cash Collections for the Term as set out in the Final Reviewed Accounts for the Term. TotalACC may only be a positive number.
TotalACCP	means the total Actual Capex Cash Payments for the Term as set out in the Final Reviewed Accounts for the Term. TotalACCP may only be a positive number.
TotalPGP	means the aggregate value of all of the Periodic Grant Payments paid to SRT during the Term. TotalPGP may be positive or negative.
TotalPBCCP	means the aggregate value of all of the Periodic Budgeted Capex Cash Payments paid to SRT during the Term. TotalPBCCP may only be a positive number
TotalPADJ	means the total net value of PADJ paid in respect of each Reporting Period during the Term. TotalPADJ may be positive or negative.

TotalAdADJ	Means the total net value of any AdADJ paid in respect of each Reporting Period during the Term. TotalAdADJ may be positive or negative
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- 11.3 If any Final Adjustment determined under paragraph 11.2 is a negative value, SRT shall owe SRH, as a debt, a sum equal to the value of such FADJ (expressed as a positive value) and SRH may, at its discretion, demand payment from SRT of all or part of that sum (which SRT shall pay to SRH) or deduct all or part of that sum from any further payments due under this Agreement.
- 11.4 Where SRT notifies SRH within 7 Weekdays of the end of the Term that additional time will be required to identify and collate specified Actual Cash Payments, Actual Cash Collections and Actual Capex Payments for the Term the parties may agree to extend the period for determining the Final Adjustment and the parties may agree to hold a Periodic Finance Review Meeting (for the purposes set out in paragraph 7.1(a) of this Schedule 8.1 (*Grant Payments*)) and to review and discuss any such specified Actual Cash Payments) at an agreed date after the end of the Term.
- 11.5 Subject to paragraph 11.3 of this Schedule 8.1 (*Grant Payments*), if SRT fails to provide the Annual Financial Statements for the final Operator Year within 3 Reporting Periods of the expiry of the final Operator Year pursuant to paragraph 3.7 of Schedule 13.2 (*Information*), SRH shall determine any Final Adjustment (after consultation with the Authority).

12. Rights of TS AO

- 12.1 Where the TS AO reasonably considers that in calculating any matter which impacts the calculation of a Grant Payment Component, any particular item or transaction has not been accounted for on a reasonable basis (including where the accounting treatment looks to the form rather than the substance, of the item or transaction) and having regard to all circumstances, including GAAP (as may be amended from time to time), the TS AO shall be entitled to require it to be accounted for on such other basis as the TS AO may reasonably determine and notify to SRH and/or SRT provided that the TS AO shall not be entitled pursuant to this paragraph to alter the accounting policies of SRT from those set out in the Supporting Materials and applied through the Budget.
- 12.2 SRH and/or the TS AO shall have the discretion (acting reasonably) to decrease (and subsequently increase) the required frequency of the Budget Forecast Review Meetings and/or the Periodic Finance Review Meetings, provided they shall be no more frequent than once a Reporting Period.
- 12.3 Any Budget Forecast Review Meeting or Periodic Finance Review Meeting (or part thereof) may be held remotely with the prior agreement of the parties.
- 12.4 SRT understands and agrees that any information provided by it to SRH under and/or in connection with this Schedule 8.1 (*Grant Payments*) may be provided to the Authority.

13. Indexation

- 13.1 For the avoidance of doubt, it is agreed that the Grant Payments and any sum shown in any Budget for any given Operator Year (or other period) shall not be subject to automatic indexation or adjustment to take into account the effect of inflation provided that this paragraph 13 is without prejudice to the adjustment of the Budget in accordance with paragraph 6 of this Schedule 8.1 (*Grant Payments*) and/or the adjustment of the Grant Payments in accordance with paragraphs 8 and 9 of this Schedule 8.1 (*Grant Payments*) in each case.

14. Further obligations of SRT

- 14.1 Except to the extent otherwise agreed by SRH, SRT will act wholly in accordance with the terms of this Agreement and with the degree of skill, diligence, prudence and foresight which would be exercised by a skilled and experienced Train Operator of the ScotRail Operation, including without limitation, in all respects in connection with the operation of this Schedule 8.1 (*Grant Payments*).

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

- (a) any amounts which SRT might otherwise have received from a third party are reduced, waived or otherwise suppressed; and/or
- (b) any amounts which SRT might otherwise be properly obliged to pay or be liable are increased.

14.3 SRH shall be entitled to notify SRT of any future initiatives or proposals that SRH considers may have the potential to reduce certain Actual Cash Payments below the applicable Budgeted Cash Payments, and/or to increase Actual Cash Collections above Estimated Cash Collections, and SRT shall, acting reasonably and in good faith, discuss with SRH all such matters as are relevant to the possible implementation of such initiatives.

APPENDIX 1 TO SCHEDULE 8.1

Notifiable Costs

Any references in this Appendix 1 to Schedule 8.1 to costs, payments, expenses, fees, liabilities or other amounts shall be deemed to refer to Costs and/or Capital Expenditure as the context may require.

Notifiable Costs shall include the following costs listed in limbs (a) to (l) save where incurred in compliance with paragraph 14.1 of Schedule 8.1 and with SRH's prior approval:

- (a) Any costs incurred otherwise in accordance with paragraph 14.1 of Schedule 8.1 including any costs incurred which arise outwith of the agreed scope of obligations of SRT and/or which cause a material change to the agreed Budget without the prior approval of SRH and the Authority (not to be unreasonably withheld);
- (b) Any bonuses, rewards or discretionary benefits paid to any staff, directors or officers under any schemes which have not previously been approved by SRH (in its absolute discretion) in writing;
- (c) Any expenses, disbursements or equivalent costs which are incurred other than in compliance with SRT's expenses policy (as approved by SRH and the Authority);
- (d) Costs incurred or to be incurred by SRT:
 - (i) in relation to any Remedial Plan or Remedial Agreement or Improvement Plan unless specifically permitted in writing by SRH;
 - (ii) in relation to the inspection costs referred to in paragraph 6 of Schedule 10.1 (*Remedial Plans and Remedial Agreements*);
 - (iii) in relation to any reasonable enforcement costs incurred pursuant to paragraph 7 of Schedule 19;
- (e) Any cost that SRT may incur as a result of:
 - (i) it failing to comply with its obligations under or in connection with this Agreement (including the grant thereof) save in respect of any failures which result from SRT acting as in accordance with paragraph 14.1 of Schedule 8.1 (in SRH's opinion);
 - (ii) it failing to comply with its obligations under or in connection with any agreements which are ancillary to this Agreement save in respect of any failures which result from SRT acting in accordance with paragraph 14.1 of Schedule 8.1 (in SRH's opinion);
 - (iii) it failing to comply with any applicable Laws, to the extent this gives rise to a criminal liability. Paragraph (a) above shall apply in respect of any other consequence of a failure by SRT to comply with any applicable Laws; or
 - (iv) indemnifying SRH and/or the Authority for any matter which SRT is obliged to indemnify SRH and/or SRT pursuant to this Agreement or any agreements which are ancillary to this Agreement;
- (f) Costs of developing and protecting any intellectual property rights which are not owned by the Authority, SRH or SRT or are so owned, but where the costs are not ancillary to an activity included in the Budget;
- (g) Fines from government or regulatory bodies;
- (h) The costs incurred by SRT which are associated with preparing plans to remedy performance shortfalls, including preparing and developing any remedial, improvement or action plans required by this Agreement;

- (i) Any costs incurred by SRT in pursuing or defending any claim against the Authority and/or SRH in respect of or in connection with this Agreement or otherwise;
- (j) Except with the prior written agreement of SRH (not to be unreasonably withheld), any costs, charges, penalties, compensation or similar payments that SRT may incur as a result of the termination of any contract or other arrangement;
- (k) Except with the prior written agreement of SRH, losses on disposals of fixed or noncurrent assets; and
- (l) Depreciation or Capital Expenditure to the extent that the capital cost of acquisition of the relevant assets was to be funded by a third party.

SCHEDULE 8.2

THIS IS SCHEDULE 8.2 REFERRED TO IN THE FOREGOING SCOTRAIL GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND SCOTRAIL TRAINS LIMITED

Performance Review Process

1. **FIRST GP QUARTER: SETTING THE INITIAL PERFORMANCE CRITERIA AND INITIAL BENCHMARKS**

1.1 During the first GP Quarter of the first Operator Year, SRH and SRT shall meet to discuss and seek to agree:

- (a) the initial Performance Criteria (which initial Performance Criteria will be determined with reference to the policy outcomes required by the Policy Compendium, Schedules 7.1 and 7.2 of this Agreement, the Business Plan, and any output, service and performance requirements set by the Authority from time to time);
- (b) the initial reporting metrics for the Performance Review Report;
- (c) the initial benchmarks for the Performance Review Scorecard;
- (d) the initial Performance Scoring Standards for the Performance Review Scorecard; and
- (e) the period over which the Initial KPI Framework will apply.

(together the “**Initial KPI Framework**”)

1.2 SRH and SRT shall use the Indicative Framework of KPIs set-out in Appendix 1 to this Schedule 8.2 as basis for establishing and agreeing the Initial KPI Framework. The Initial KPI Framework (and any update thereafter) shall be used to create the Performance Review Scorecard for a GP Quarter as per the Indicative Performance Review Scorecard as set out in Appendix 4.

1.3 SRH and SRT shall use reasonable endeavours to discuss and agree the proposed Initial KPI Framework and the Performance Review Scorecard prior to the end of the first GP Quarter of the first Operator Year.

1.4 If the Initial KPI Framework and/or the Performance Review Scorecard is not agreed by SRH and SRT 10 Weekdays before the end of the first GP Quarter of the first Operator Year, then the Initial KPI Framework and/or the Performance Review Scorecard shall be determined by SRH acting reasonably. Should SRT consider SRH’s determined Initial KPI Framework and/or determined Performance Review Scorecard to be manifestly unreasonable then it may notify SRH of that view within ten (10) Weekdays of the determination (“**Initial KPI Framework Dispute**”), and SRH shall consider (in good faith) any representations from SRT on that matter which are properly supported by evidence and decide whether to amend the Initial KPI Framework and/or the Performance Review Scorecard. If within ten (10) Weekdays following SRH’s re-determination, SRT still consider SRH’s determined Initial KPI Framework and/or determined Performance Review Scorecard to be manifestly unreasonable then such matter will be escalated to the Authority to determine the matter at its discretion. For the avoidance of doubt, the Authority is not obligated to determine the Initial KPI Framework and/or the Performance Review Scorecard, and if the Authority declines in writing to determine the Initial KPI Framework and/or the

Performance Review Scorecard, then SRT shall be entitled to refer the matter for resolution under the Dispute Resolution Rules provided that SRH's Initial KPI Framework scoring and/or SRH's Performance Review Scorecard shall apply pending the outcome of such referral.

APPENDIX 1 TO SCHEDULE 8.2
Indicative Framework of KPIs

Ref	Performance Criteria	Potential Measures/KPIs
KPI 01	Operational Performance	<p>Schedule 7.1 regime : PPM (per 5 Service Groups), Capacity (per 5 Service Groups), Cancellations (per 5 Service Groups), MTIN (average MTIN measured),</p> <p><u>Other potential measures:</u> Infrastructure reliability (i.e., delays caused by infra failures) Punctuality (% departure on time; % arrivals on time)</p>
KPI 02	Passenger Experience	<p>Ratio of Passenger Complaints (Station and on-train).</p> <p>Complaints per 100,000 passenger journeys</p>
KPI 03	Service Quality	<p>Schedule 7.3 regime</p> <p>Other Measures: overdue maintenance events compliance with fleet maintenance plans</p>
KPI 04	Our People	<p>% Absence</p> <p>% Staff turnover per period, rolling 12 month period</p> <p>Staff Engagement measure</p> <p>Diversity entropy for recruitment</p> <p>Diversity and Inclusiveness</p>
KPI 05	Economic Efficiency	<p>Result before subsidy (real/indexed): Earnings before interest, tax, (depreciation, amortisation) & subsidy, versus real comparator</p> <p>Cashflow: Change in cash</p> <p>Budget Performance: Actual costs relative to Budget for period in question measured through variances</p> <p>Efficiencies: Value of efficiencies identified and delivered.</p> <p>Business Planning: Progress against delivery of Business Plan commitments</p> <p>Budget performance: Annual budget progress against an evidenced long-term plan for driving market-leading cost efficiency</p> <p>Passenger revenue: Total revenue growth % from passengers, including car parks etc. (net of commission and delay/repay)</p> <p>Passenger journeys – growth: Total passenger journey growth %</p> <p>Change in Direct variable cost (i.e. not fixed/regulated NR/ROSCO etc) per train mile (or journey) – measures cost efficiency of service delivery</p> <p>Change in Passenger revenue contribution to direct variable cost (i.e. financial worthiness).</p>

Ref	Performance Criteria	Potential Measures/KPIs
		Revenue protection measures:% of ticketless travel (passengers without ticket/journeys, routinely detected and spot surveys (potentially via target checking via CCTV)
KPI 06	Safety and Security	SPADs (Signals Past at Danger) per million journey miles LTI (Lost Time Injury) (Staff) per staff no. or hours worked Accidents & Assaults (Staff & Customer) per million passenger journeys Customer accidents per million passenger journeys Other measures as agreed
KPI 07	Sustainability	CO2 Emissions per Passenger/Train Km Emissions around stations % Waste diverted from Landfill % Waste recycled % Reduction in Carbon Footprint % reduction in non-traction energy usage

APPENDIX 2 TO SCHEDULE 8.2**Performance Review****1. PURPOSE OF THE PERFORMANCE REVIEW**

- 1.1 The purpose of a Performance Review is for SRH to undertake a review of SRT's performance in relation to Operator Services over the course of the relevant Performance Review Period.
- 1.2 Subject to paragraph 1.4 of this Appendix 2 to Schedule 8.2 (*Performance Review*), SRH will carry out a Performance Review with respect to every 6 month period (or such period as otherwise agreed among the parties in writing) ("**Performance Review Period**"). At each Performance Review Meeting, progress against all Performance Criteria shall be discussed and reviewed by SRH and SRT.
- 1.3 Each Performance Review shall be carried out in accordance with the process set out in this Appendix 2 to Schedule 8.2 (*Performance Review*).
- 1.4 No Performance Review shall be carried out in the first 6 months of the first Operator Year or, as the case may be, until SRH and SRT have agreed or the Authority or SRH has determined the Initial KPI Framework in accordance with paragraph 1 of Appendix 2 to Schedule 8.2 (*Performance Review*).

2. NOTICE OF PERFORMANCE REVIEW MEETING

- 2.1 SRH shall notify SRT (and the Authority) of the date, time and location for the relevant Performance Review Meeting by no later than the end of the Performance Review Period, provided always that the Performance Review Meeting shall take place no earlier than the last day in the Performance Review Period and no later than 7 Weekdays after the end of the Performance Review Period.
- 2.2 For the avoidance of doubt, nothing in this Schedule 8.2 (*Performance Review Process*) shall prevent the parties from discussing any matter relevant to a Performance Review outside of the relevant Performance Review Meeting.

3. PERFORMANCE REVIEW REPORT

- 3.1 Not less than thirty (30) Weekdays prior to the end of the Performance Review Period, SRH, acting reasonably, shall notify SRT in writing of any additional information that SRT shall be required to submit at the same time as the completed Performance Review Report.
- 3.2 Not less than fifteen (15) Weekdays prior to end of the relevant Performance Review Period, SRT shall notify SRH in writing of any matters in addition to those set out in the Performance Review Report or the information notified to SRT by SRH in accordance with paragraph 3.1 of this Appendix 2 to Schedule 8.2 (*Performance Review*), which SRT considers to be relevant for the Performance Review. SRH shall, within ten (10) Weekdays of receiving such notice, provide written confirmation to SRT of whether SRH considers such matters to be relevant to the Performance Review.
- 3.3 As soon as reasonably practicable after the end of the Performance Review Period, and in any event no later than ten (10) Weekdays after the end of a Performance Review Period, SRT shall deliver to SRH a duly completed Performance Review Report in respect of the Performance Review Period.
- 3.4 The Performance Review Report delivered by SRT in accordance with paragraph 3.3 of Appendix 2 to Schedule 8.2 (*Performance Review*) shall include information, evidence and written commentary from SRT in respect of the relevant Performance Review Period covering:
 - (a) each of the matters as agreed between SRH and SRT or determined by the Authority or SRH in accordance with paragraph 1 of Schedule 8.2 (*Performance Review Process*) and as adjusted from time to time in accordance with paragraph 6 of Appendix 2 to Schedule 8.2 (*Performance Review*) and which shall be described in Appendix 3 to this Schedule 8.2 (*Performance Review Report*);

- (b) any other such matter notified by SRH to SRT in accordance with paragraph 3.1 of this Appendix 2 to Schedule 8.2 (*Performance Review*); and
- (c) any other matter which SRH has confirmed as relevant for the Performance Review in accordance with paragraph 3.2 of this Appendix 2 (*Performance Review*).

3.5 SRH shall provide SRT with:

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

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

4. **PERFORMANCE REVIEW MEETING**

- 4.1 The Performance Review Meeting shall take place at the date, time and location notified by SRH in accordance with paragraph 2.1 of this Appendix 2 to Schedule 8.2 (*Performance Review*) and shall be attended by representatives of each of SRH and SRT. The Authority may, at its discretion, attend the Performance Review Meeting.
- 4.2 SRT shall ensure that the representatives of SRT at the Performance Review Meeting include such:
 - (a) appropriate and qualified personnel of SRT; and
 - (b) directors and/or senior managers of SRT, as SRH may reasonably require.
- 4.3 At the Performance Review Meeting SRH and SRT shall discuss SRT's performance by reference to the Performance Review Report, together with any supporting commentary, documents or evidence submitted by SRT to SRH in accordance with paragraphs 3.3 and 3.4 of this Appendix 2 to Schedule 8.2 (*Performance Review*) and any commentary and/or information provided by SRH to SRT in accordance with paragraph 3.5 of this Appendix 2 to Schedule 8.2 (*Performance Review*).

5. **PERFORMANCE REVIEW SCORING**

- 5.1 SRH shall provide to SRT, no later than ten (10) Weekdays following the Performance Review Meeting, a duly completed Performance Review Scorecard setting out SRT's performance in each of the Performance Criteria for the relevant Performance Review Period.
- 5.2 For each Performance Review Period, SRT shall be scored 3, 2 or 1 in relation to each Performance Criterion for that Performance Review Period as per the Performance Review Scorecard. Performance sub-criteria which contribute to the overall score of a Performance Criteria shall each be scored 3, 2 or 1. The average (mean) score (rounded to the nearest whole number) determined for those performance sub-criteria shall be the overall score for the relevant Performance Criteria.
- 5.3 The Performance Review shall be complete once SRH has sent a duly completed Performance Review Scorecard to SRT in accordance with paragraph 5.1 of this Appendix 2 to Schedule 8.2 (*Performance Review*).
- 5.4 Scores in the Performance Review Scorecard shall be awarded by SRH having regard to the Performance Scoring Standards. Without prejudice to paragraph 5.6 of this Appendix 2 to Schedule 8.2 (*Performance Review*), one single, integer, overall score (3, 2 or 1) shall be awarded in relation to each Performance Criterion as per paragraph 5.2 based on SRH's assessment of SRT's performance in respect of that Performance Criterion against the Performance Scoring Standards and taking into account:

- (a) the Performance Review Report provided to SRH by SRT in accordance with paragraphs 3.3 and 3.4 of this Appendix 2 to Schedule 8.2 (*Performance Review*);
- (b) any commentary provided to SRT by SRH in accordance with paragraph 3.5 of this Appendix 2 to Schedule 8.2 (*Performance Review*); and
- (c) any discussions between SRT and SRH at the Performance Review Meeting.

5.5 If SRT:

- (a) is operating at a level that would, or would likely, be scored "1"; or
- (b) has received a score of "1",

in relation to any of the Performance Criteria during a Performance Review Period, then SRH may require a Remedial Plan and the provisions of Schedule 10.1 (*Remedial Plans and Remedial Agreements*) shall apply.

- 5.6 Should SRT consider SRH's scoring of a Performance Criterion to be manifestly unreasonable it may notify SRH of that view (the "**Performance Criterion Dispute**") within ten (10) Weekdays of the scoring, and SRH shall consider (in good faith) any representations from SRT on that matter which are properly supported by evidence and SRH and SRT shall meet as soon as reasonably practicable following SRH's receipt of such representations to discuss the same (the "**Performance Criterion Dispute Meeting**").
- 5.7 If within ten (10) Weekdays following the Performance Criterion Dispute Meeting SRT still considers SRH's scoring of a Performance Review Criterion to be manifestly unreasonable, then such matter will be escalated to the Authority to reasonably determine the matter at its discretion.
- 5.8 If the Authority declines in writing to determine matters in accordance with paragraph 5.7 of this Appendix 2 to Schedule 8.2 (*Performance Review*), then SRT shall be entitled to refer the Performance Criterion Dispute for resolution under the Dispute Resolution Rules provided that SRH's scoring shall apply pending the outcome of such referral.

6. **FLEXIBILITY: PERFORMANCE CRITERIA AND BENCHMARKS**

- 6.1 SRH and SRT shall formally review the initial KPI Framework after the first Performance Review and thereafter every Operator Year alongside the annual Business Plan review required by paragraph 2 of Schedule 13.2 (*Information*) or as otherwise agreed by SRH and SRT in writing during the Term in order to review the operation of the performance regime and where necessary agree necessary adjustments to Performance Criteria benchmarks for the Performance Review Scorecard, reporting metrics for the Performance Review Report and Performance Scoring Standards.
- 6.2 Notwithstanding paragraph 6.1 of this Appendix 2 to Schedule 8.2 (*Performance Review*), SRH and SRT may:
 - (a) introduce new Performance Criterion and / or remove existing Performance Criterion ("**Performance Criteria Adjustment**"); and/or
 - (b) adjust the benchmarks and / or Performance Scoring Standards set out in the Performance Review Scorecard,

all in accordance with the provisions of Schedule 9 (*Changes*).

- 6.3 In the event of a Performance Criteria Adjustment, the amended Performance Criteria shall take effect from the beginning of the Performance Review Period designated by SRH.

- 6.4 If a new Performance Criterion is introduced by a Performance Criteria Adjustment, SRH shall provide SRT with the following information, as soon as reasonably practicable, and in any event no later than 5 Weekdays prior to the beginning of the next Performance Review Period:
- (a) details of the information to be included in the Performance Review Report for the new Performance Criterion; and
 - (b) an updated version of the Performance Review Scorecard, which shall include the scoring standards for the new Performance Criterion.
- 6.5 In the event Performance Criteria, the benchmarks and / or scoring standards set out in the Performance Review Scorecard are adjusted in accordance with paragraph 6.2 of this Appendix 2 to Schedule 8.2 (*Performance Review*), the adjusted Performance Review Scorecard shall take effect from the beginning of the Performance Review Period designated by SRH and SRH shall provide to SRT, no later than 5 Weekdays prior to the beginning of the next Performance Review Period, an adjusted Performance Review Scorecard.

APPENDIX 3 TO SCHEDULE 8.2

Performance Review Report

Insert reporting metrics for each Performance Criterion as agreed between the parties or determined by the Authority or SRH in accordance with paragraph 1 of Schedule 8.2 (*Performance Review Process*) and as adjusted from time to time in accordance with paragraph 6 of Appendix 1 to Schedule 8.2 (*Performance Review*).

APPENDIX 4 TO SCHEDULE 8.2

Indicative Performance Review Scorecard DRAFT 17/03/22

Score	Scoring Standards for each Performance Criterion						
	Performance Criterion: Operational Performance	Performance Criterion: Service Quality	Performance Criterion: Passenger Experience	Performance Criterion: Our People	Performance Criterion: Economic Efficiency	Performance Criterion: Safety & Security	Performance Criterion: Sustainability
Good/Better than benchmark	As per para 5 of Schedule 7.1 for each of the four criterion (PPM, Cancellations, Capacity, MTIN) [exceed benchmark]	The Service Quality PQ Score calculated in accordance with para 9 of Schedule 7.2 is equal to or greater than [benchmark]	Ratio of Passenger Complaints (Station and on-train) are better than benchmark/target Complaint Volumes per 100,000 journeys are better than benchmark/target	Staff Engagement score for [quarter/period] is greater than benchmark/target Absence (%) for [quarter/period] is lower than benchmark/target Staff turnover for [quarter/period] is lower than benchmark/target Diversity entropy for recruitment [%] for [quarter] is better than benchmark/target	Budget Performance (actual to forecast costs variance) for [quarter] exceeds target Passenger revenue growth for [quarter] is higher than [previous quarter] Variable cost or staff cost per passenger km is better than benchmark	Safety metrics (SPADS and LTI) are both better than benchmark/target for [quarter] Accidents & Assaults (Staff & Customer) per passenger journey is better than benchmarks Customer accidents per [million] journeys is better than benchmark.	CO2 Emissions per Passenger/Train Km is better than benchmark % Waste diverted from Landfill is better than benchmark % Waste recycled is better than benchmark % Reduction in Carbon Footprint is better than benchmark % reduction in non-traction energy usage is better than benchmark
Acceptable/Satisfactory/within range of benchmark	As per para 5 of Schedule 7.1, if any operational benchmark [meets benchmark]	The Service Quality PQ Score calculated in accordance with para 9 of Schedule 7.2 [meets benchmark]	Ratio of Passenger Complaints (Station and on-train) are at benchmark/target Complaint Volumes per 100,000 journeys are at benchmark/target	Staff Engagement Survey measure for [quarter] is same as benchmark/target Absence (%) for [quarter/period] is same as benchmark/target	Budget Performance (actual to forecast costs variance) for [quarter] meets target Passenger revenue growth	Safety metrics (SPADS and LTI) are both the same benchmark/target for [quarter]. Accidents & Assaults (Staff & Customer) per passenger journey is	CO2 Emissions per Passenger/Train Km is the same as benchmark % Waste diverted from Landfill is same as benchmark

Score	Scoring Standards for each Performance Criterion						
	Performance Criterion: Operational Performance	Performance Criterion: Service Quality	Performance Criterion: Passenger Experience	Performance Criterion: Our People	Performance Criterion: Economic Efficiency	Performance Criterion: Safety & Security	Performance Criterion: Sustainability
				Staff turnover for [quarter/period] is same as benchmark/target Diversity entropy for recruitment [%] for [quarter] is equal to benchmark/target	for [quarter] is the same as [previous quarter] Variable cost or staff cost per passenger km is the same as than benchmark	the same as benchmarks Customer accidents per [million] journeys meets benchmark.	% Waste recycled is same as benchmark % Reduction in Carbon Footprint is same as benchmark % reduction in non-traction energy usage is same as benchmark
Unacceptable/Poor/ X margin worse than benchmark	As per para 5 of Schedule 7.1, if any operational benchmarks are [below benchmarks]	The Service Quality PQ Score calculated in accordance with para 9 of Schedule 7.3 [is below benchmark]	Ratio of Passenger Complaints (Station and on-train) are worse than benchmark/target Complaint Volumes per 100,000 journeys are worse than benchmark/target	Staff Engagement Survey measure for [quarter] is worse than benchmark/target Absence (%) for [quarter/period] is worse than benchmark/target Staff turnover for [quarter/period] is worse than benchmark/target Diversity entropy for recruitment [%] for [quarter] is worse than benchmark/target	Budget Performance (actual to forecast costs variance) for [quarter] is worse than target Passenger revenue growth for [quarter] is less than [previous quarter] [variable cost or staff cost] per passenger km is worse than benchmark	Safety metrics (SPADS and LTI) are both worse than benchmark/target for [quarter]. Accidents & Assaults (Staff & Customer) per passenger journey is worse than benchmarks Customer accidents per [million] journeys is worse than benchmark.	CO2 Emissions per Passenger/Train Km is worse than benchmark % Waste diverted from Landfill is worse than benchmark % Waste recycled is worse than benchmark % Reduction in Carbon Footprint is worse than benchmark % reduction in non-traction energy usage is worse than benchmark

SCHEDULE 8.3

**THIS IS SCHEDULE 8.3 REFERRED TO IN THE FOREGOING SCOTRAIL GRANT AGREEMENT
AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND SCOTRAIL TRAINS LIMITED**

Miscellaneous Payment Provisions

1. Set off, deductions, etc.

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

2. Payment of Suppliers and Sub-contractors

SRT shall pay all matured and properly authorised invoices promptly and, where appropriate, in accordance with the Scottish Government target of 10 working days for the payment of invoices as detailed within the 'Expenditure and Payments' section of the SPFM

SCHEDULE 9

THIS IS SCHEDULE 9 REFERRED TO IN THE FOREGOING SCOTRAIL GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND SCOTRAIL TRAINS LIMITED

Changes

1. Variations to this Agreement

1.1 Without prejudice to clause 10, the terms of this Agreement may be varied as follows:

- (a) by the Authority in relation to:
 - (i) any aspect of the Operator Services;

and

 - (ii) any provision of this Agreement other than those provisions specified in paragraph 1.2(a),

by service of a notice on SRT and SRH referring to this paragraph 1.1(a) and setting out the variation to the terms of this Agreement;
- (b) in relation to any provision of this Agreement, by prior agreement in writing among the parties to that effect,
- (c) by SRH in relation to:
 - (i) any aspect of the Operator Services;

and

 - (ii) any provision of this Agreement which requires to be amended to give effect to any Variation related to paragraph 1.1(c)(i) other than those provisions specified in paragraphs 1.2(a) and (b), and subject to the requirements of paragraph 1.13,

by service of a notice on the Authority and SRH referring to this paragraph 1.1(c) and setting out the variation to the terms of this Agreement;

(each a "**Variation**").

1.2

- (a) The terms of each of *clause 3 (Term)*, *Schedules 8 (Grant Payments)*, *9 (Changes)*, *10 (Remedies, Executive Team Review and Expiry)*, *12 (Financial Obligations and Undertakings)*, *14 (Preservation of Assets)*, *18 (Operation Continuation)*, and paragraphs 1 to 8 (inclusive) of *Schedule 19 (Other Provisions)* shall not be varied at any time other than in accordance with the terms of this Agreement or with the written agreement of the parties or as required (at the Authority's sole determination) to ensure compliance with any variations to the Framework Agreement and/or Financial Memorandum and/or the Law.
- (b) The terms of each of *clauses 1 to 11*, *Schedules 8 (Grant Payments)*, *9 (Changes)*, *10 (Remedies, Executive Team Review and Expiry)*, *11 (Agreement and Service Delivery Management Provision)*, *12 (Financial Obligations and Undertakings)*, *14 (Preservation of Assets)*, *15 (Obligations Associated with Termination)*, *16*

(Pensions), 17 *(Confidentiality, FOISA and Data Protection)*, 18 *(Operation Continuation)*, and 19 *(Other Provisions)* shall not be varied at any time by SRH without the prior written consent of the Authority.

- 1.3 The Authority and/or SRH shall (as the case may be), to the extent reasonably practicable, allow SRT a reasonable opportunity to make representations to the Authority and/or SRH (as the case may be) concerning any Variation to be made in accordance with paragraph 1.1(a) or paragraph 1.1(c) prior to making any such Variation.
- 1.4 The Authority may:
- (a) issue, revise and withdraw from time to time procedures that it requires to be followed for the purposes of orderly consideration of Variations; and
 - (b) require SRT and/or SRH to provide any information that the Authority reasonably requires for this purpose (including in relation to prospective change to profit, costs and revenue as a consequence of proceeding with the Variation).
- 1.5 Procedures issued pursuant to paragraph 1.4 shall have contractual effect among the parties in accordance with their terms.
- 1.6 SRT and/or SRH may notify the other parties of any proposal for a Variation by notice setting out the proposed method of implementing such Variation including:
- (a) the time scale for doing so;
 - (b) the effect (if any) on the timing of the performance of its other obligations under this Agreement;
 - (c) the impact of effecting the proposed Variation on the provision of the Operator Services and SRT's proposals as to how to minimise such impact; and
 - (d) the financial consequences of implementing the proposed Variation.
- 1.7 The Authority shall be under no obligation to consider a Variation proposed by SRT and/or SRH but, if it wishes to do so, it shall do so pursuant to paragraph 1.1.
- 1.8 SRH shall be under no obligation to consider a Variation proposed by SRT but, if it wishes to do so, it shall do so pursuant to paragraph 1.1(c).
- 1.9 A Variation to the terms of this Agreement pursuant to paragraph 1.1 may involve the deletion of terms, the addition of new terms or any other type of variation or change to this Agreement required by the Authority, and the parties agree that the variation mechanism entitles the Authority and/or SRH to require SRT to use the outputs from capital projects, major projects and other projects (including (whether existing or new) trains, stations, track, routes, infrastructure, CCTV and ticket barriers) in such manner as the Authority and/or SRH may require. A Variation may also require that SRT and/or SRH co-operate in relation to capital projects, major projects and other projects and, where required to do so by a Variation, to exercise or refrain from exercising such rights as SRT and/or SRH may have.
- 1.10 Any specific provision in this Agreement which provides that the Authority and/or SRH may make a Variation relating to a particular matter shall not in any way limit the Authority's and/or SRH's rights under paragraph 1.1.
- 1.11 Without prejudice to this paragraph 1 the Authority may make any Variation necessary for the facilitation or delivery of any Extended Restriction of Use or Major Scottish Project.

- 1.12 With reference to paragraph 1.1(c) (and without prejudice to paragraph 1.2) SRH shall not be entitled to make any Variation without the Authority's prior written consent where such Variation directly or indirectly relates:
- (a) to any matter which requires the prior approval of the Authority by Law;
 - (b) to any matter which requires the prior approval of the Authority under the terms of this Agreement and/or Framework Agreement and/or Financial Memorandum,
 - (c) to any matter which is deemed reserved to Authority under the terms of this Agreement and/or Framework Agreement and/or Financial Memorandum;
 - (d) Schedule 7.2 to this Agreement (*Service Quality*);
 - (e) any rights and/or obligations of the Authority under this Agreement;
 - (f) any matter related to approving SRH's strategic aims and objectives and strategic plan in accordance with Framework Agreement; and
 - (g) any material matter related to approving the Budget, including loans and grant in aid for investment into SRH and/or SRT and securing the necessary Scottish Parliament approval, and the parties agree that it will be decided at the SRH Board meetings (with present representation of the Authority) as to what is deemed 'material' for the purpose of this paragraph 1.12(g)).

2. **Financial Consequences of a Change**

- 2.1 SRT shall provide SRH with a report on any Change it considers is required, has occurred or is reasonably likely to occur containing supporting documentation or evidence, recommendations on necessary changes to this Agreement and an analysis (as detailed as can be expected at that time) of its financial consequences.
- 2.2 The parties shall discuss and evaluate, in good faith, at the next Operation Performance Meeting the impact of the Change (including any necessary revisions to the terms of this Agreement and to the Budget).
- 2.3 The parties shall ensure that any required revisions to the Budget in accordance with paragraph 6 of Schedule 8.1 (*Grant Payments*) are dealt with at the next Budget Forecast Review Meeting.
- 2.4 Once the impact of the Change has been agreed by the parties (acting reasonably and in good faith) SRT shall be entitled (notwithstanding the terms of paragraph 1) to a Variation to implement and reflect those agreed changes to this Agreement.
- 2.5 SRH may stipulate (on or before the date on which SRH approves the revised Budget) that those amounts and values are to apply for a limited period of time only, with provision thereafter for a further revision to the Budget.

3. **Capital Expenditure**

Capital Expenditure Threshold

- 3.1 SRT shall notify the Authority and SRH promptly if it reasonably expects that a Change to which paragraph 1 relates would require it to incur, singly or in aggregate with other Changes from time to time, Capital Expenditure in excess of 1 per cent of its annual Turnover in any Operator Year as disclosed by its latest available audited accounts and, when so notified, the Authority shall either:
- (a) withdraw the Change or instruct SRH to withdraw the Change;

- (b) require SRH to undertake to meet the excess through additional funding as and when such Capital Expenditure is incurred; or
- (c) require SRH to direct SRT to use all reasonable endeavours to borrow or otherwise raise the money required to fund any Change on commercial terms and at rates which are consistent with market conditions at the time, unless borrowing or otherwise raising such money would result in SRT failing to comply with any financial covenants.

Method of Additional Funding

- 3.2 The additional funding referred to in paragraph 3.1(b) may be provided by increased Grant Payments as and when required and SRH may procure such additional funding rather than undertaking to meet it itself.

SRT to Seek Finance

- 3.3 If the Authority elects to require SRH to direct SRT to use all reasonable endeavours as described in paragraph 3.1(c) then SRT shall:
- (a) seek finance from a representative range of lending institutions and other financial institutions including those which at that time provide finance to SRT and SRH;
 - (b) if it is unable to raise funding, provide the Authority with all information the Authority may reasonably require in relation to the efforts made by SRT and the reasons for a failure to raise additional finance;
 - (c) so far as it is able (having used all reasonable efforts to do so), SRT shall provide to the Authority letters from lenders and financiers it has approached for finance stating their reasons for refusing to provide it and if the Authority so requires, arrange and attend meetings with them for the Authority to discuss those reasons; and
 - (d) if funding is not available, or is not available on terms that the Authority considers to be commercial terms or at rates which are consistent with market conditions at that time the Authority may:
 - (i) withdraw the Change; or
 - (ii) require SRH to undertake to fund the Capital Expenditure as and when such Capital Expenditure is incurred.

Treatment of Borrowings in a revision of the Budget

- 3.4 In revising the Budget for the purposes of any Change referred to in this paragraph 3, SRT shall account for the Capital Expenditure in accordance with GAAP, taking into account the basis on which such Capital Expenditure has been financed.

Meaning of Capital Expenditure

- 3.5 The expression Capital Expenditure when used in this Schedule 9 (*Change*) refers to the nature of the expenditure incurred by SRT and consistent with GAAP, accordingly, does not include expenditure incurred under operating leases.

SCHEDULE 10

THIS IS SCHEDULE 10 REFERRED TO IN THE FOREGOING SCOTRAIL GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND SCOTRAIL TRAINS LIMITED

Remedies, Executive Team Review and Expiry

- Schedule 10.1: Remedial Plans and Remedial Agreements**
- Schedule 10.2: SRT Executive Team Review and Expiry**
- Schedule 10.3: Events of Default and Executive Team Review Event**
- Schedule 10.4: Force Majeure**
- Schedule 10.5: Liability**

SCHEDULE 10.1

THIS IS SCHEDULE 10.1 REFERRED TO IN THE FOREGOING SCOTRAIL GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND SCOTRAIL TRAINS LIMITED

Remedial Plans and Remedial Agreements**1. Remedies for Contraventions of this Agreement**

- 1.1 Without prejudice to SRH's rights under paragraph 1 of Schedule 10.2 (*SRT Executive Team Review and Expiry*), if the Authority and/or SRH is satisfied that SRT is contravening or is likely to contravene any term of this Agreement it may serve a notice on SRT requiring it to propose such steps as SRT considers appropriate for the purpose of securing or facilitating compliance with the term in question (a **Remedial Plan Notice**).
- 1.2 SRT hereby acknowledges that any and all of the events in paragraph 3.4 of Schedule 7.1 (*Train Operating Performance*) are contraventions of this Agreement.

2. Contents of Remedial Plan Notices

Each Remedial Plan Notice shall specify the following:

- 2.1 the term or terms of this Agreement that SRH and/or the Authority is satisfied that SRT is contravening or is likely to contravene (each a **Relevant Term**); and
- 2.2 the time period within which SRH and/or the Authority requires SRT to provide an appropriate plan for the purpose of facilitating or securing compliance with any Relevant Term (a **Remedial Plan**).

3. Contents of Remedial Plans

- 3.1 If SRH and/or the Authority issues a Remedial Plan Notice, SRT shall submit a Remedial Plan to SRH and the Authority within the period specified in such Remedial Plan Notice.
- 3.2 Each Remedial Plan shall set out:
 - (a) the Relevant Term which has caused a Remedial Plan to be required;
 - (b) an explanation of the reasons for the contravention or likely contravention of the Relevant Term;
 - (c) the steps proposed for the purposes of securing or facilitating compliance with the Relevant Term; and
 - (d) the time period within which SRT proposes to implement those steps.

4. Remedial Agreements

- 4.1 If SRH and/or the Authority is satisfied that the matters referred to in paragraph 3.2(c) and (d) of this Schedule 10.1 (*Remedial Plans and Remedial Agreements*) are appropriate (with or without further modification as SRH and/or the Authority and SRT may agree) it/they may require SRT to enter into a supplemental agreement (**Remedial Agreement**) with SRH and/or the Authority to implement those matters.
- 4.2 It is a term of this Agreement that SRT complies with the Remedial Agreement in accordance with its terms.

5. **Effect of Force Majeure Event**

Without prejudice to the operation of paragraph 3 of Schedule 10.4 (*Force Majeure*) the following provisions shall apply in relation to Force Majeure Events affecting performance of a Remedial Agreement:

- 5.1 SRT shall give written notice to SRH promptly after it becomes aware (and in any event within 24 hours after becoming aware) of the occurrence or likely occurrence of a Force Majeure Event which will or is likely to affect SRT's ability to comply with a Remedial Agreement within the period specified therein;
- 5.2 each notice submitted in accordance with paragraph 5.1 shall state the extent or likely extent of the relevant Force Majeure Event and, in the case of a Force Majeure Event which has not occurred at such time, the reasons why SRT considers it likely to occur;
- 5.3 SRT shall use, and shall continue to use, all reasonable endeavours to avoid or reduce the effect or likely effect of any Force Majeure Event on its ability to comply with any Remedial Agreement; and
- 5.4 subject to SRT having complied with its obligations under paragraphs 5.1 to 5.3 (inclusive) SRT shall be entitled to a reasonable extension of the remedial period applicable to a Remedial Agreement in order to take account of the effect of a Force Majeure Event which has occurred on SRT's ability to comply with any Remedial Agreement.

6. **Occurrence of a Contravention**

- 6.1 Without prejudice to its rights under Schedule 7.2 (*Service Quality*), following the occurrence of a contravention of this Agreement, SRH may (but shall not be obliged to) commence or increase the level and/or frequency of monitoring (whether by inspection, audit or otherwise) of SRT's performance of any relevant obligation until such time as SRT demonstrates, to SRH's reasonable satisfaction, that it is capable of performing and will perform such obligation as required by this Agreement.
- 6.2 SRT shall co-operate fully with SRH in relation to such monitoring referred to in paragraph 6.1.
- 6.3 The results of such monitoring will be reviewed at each Operation Performance Meeting.

SCHEDULE 10.2**THIS IS SCHEDULE 10.2 REFERRED TO IN THE FOREGOING SCOTRAIL GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND SCOTRAIL TRAINS LIMITED****SRT Executive Team Review and Expiry****1. SRT Executive Team Review**

- 1.1 The terms of this Agreement will be without prejudice to any rights of SRH, as sole shareholder of SRT, in respect of the articles of association of SRT and without prejudice to any rights of the Scottish Ministers, as sole shareholder of SRH, in respect of the articles of association of SRH.
- 1.2 Without prejudice to SRH's other rights and remedies, SRH may, on and at any time after the occurrence of:
- (a) an Event of Default (subject to paragraphs 1.3 and 1.4 of this Schedule 10.2 (*SRT Executive Team Review and Expiry*)) which is unremedied or continuing and which SRH considers to be material; or
 - (b) an Executive Team Review Event which is unremedied or continuing,
- choose to review the executive management team of SRT.
- 1.3 SRH may not exercise its right under paragraph 1.2(a) of this Schedule 10.2 (*SRT Executive Team Review and Expiry*) in respect of an Event of Default in relation to which a Remedial Plan Notice has been issued until the period has expired within which SRT is required to deliver to SRH the Remedial Plan specified in such Remedial Plan Notice.
- 1.4 SRH may not exercise its right under paragraph 1.2(a) of this Schedule 10.2 (*SRT Executive Team Review and Expiry*) in respect of an Event of Default for which SRT is implementing a Remedial Agreement in accordance with its terms.

2. Consequences of Expiry

- 2.1 Upon expiry of this Agreement (whether through effluxion of time or otherwise) the obligations of the parties shall cease except for:
- (a) any obligations arising as a result of any antecedent contravention of this Agreement;
 - (b) any obligations which are expressed to continue in accordance with the terms of this Agreement; and
 - (c) any other obligations which give effect to such termination or to the consequences of such termination or which otherwise apply (expressly or impliedly) on or after such termination.

SCHEDULE 10.3

THIS IS SCHEDULE 10.3 REFERRED TO IN THE FOREGOING SCOTRAIL GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND SCOTRAIL TRAINS LIMITED

Events of Default and Executive Team Review Events

1. Provisions relating to Events of Default

- 1.1 The occurrence of an Event of Default shall constitute a contravention of this Agreement by SRT.
- 1.2 SRT shall notify SRH as soon as reasonably practicable on, and in any event within 24 hours of, it becoming aware of the occurrence of an Event of Default or an event which is likely to result in the occurrence of an Event of Default. SRT shall take such action or steps as SRH may require to remedy any Event of Default or potential Event of Default.

Consequences of Event of Default

- 1.3 On the occurrence of an Event of Default, the provisions of Schedule 10.1 (*Remedial Plans and Remedial Agreements*) shall also apply.

2. Events of Default

Each of the following is an Event of Default:

Change of Control

- 2.1 Without the prior consent of SRH and the Authority, a change occurring in the identity of any 1 person, or 2 or more persons acting by agreement, who may Control SRT on and from the date of this Agreement and during the Term, which shall include a person, or 2 or more persons acting by agreement, ceasing to Control SRT at any time during the Term, whether or not any other person Controls SRT at the same time and, for the purposes of this paragraph 2.3, 2 or more persons shall be deemed to be acting by agreement in relation to SRT if, assuming SRT was a target company as defined in Section 824 of the Companies Act 2006, such persons would be under an obligation to disclose an interest in shares in such company by virtue of an agreement between such persons.

Revocation of Licence

- 2.2 Revocation of any Licence required to be held by SRT in order to comply with its obligations under this Agreement.

Safety Certificate

- 2.3 The Safety Certificate of SRT being revoked or not being renewed on its expiry during the Period.

Passenger Service Performance

- 2.4 SRT's performance in relation to any Operating Performance Benchmark contravenes the Default Performance Level for that Operating Performance Benchmark for:
 - (a) any 3 consecutive Reporting Periods;
 - (b) any 4 Reporting Periods within a period of 13 consecutive Reporting Periods; or
 - (c) any 5 Reporting Periods within a period of 26 consecutive Reporting Periods.

Remedial Agreements and Enforcement Orders

- 2.5 (a) Non-compliance by SRT with a Remedial Agreement, where such non-compliance is material.
- (b) Non-compliance by SRT with:
- (i) a provisional order;
 - (ii) a final order;
 - (iii) a penalty; or
 - (iv) any other order made relating to contravention of either a relevant condition or requirement (as defined in Section 55 of the Act) or another order,
- in each case made by the Authority under the Act.

Breach of Law

- 2.6 (a) It becoming unlawful for SRT to provide all or, in the reasonable opinion of the Authority and/or SRH, a material part of the Passenger Services or to operate all or, in the reasonable opinion of the Authority and/or SRH, a material number of the Stations or Depots (except to the extent not required so to do under this Agreement);
- (b) SRT or any of the directors or senior managers of SRT being convicted of culpable homicide, manslaughter, fraud or, in England and Wales, any other indictable criminal offence, or in Scotland, any offence tried on indictment including where either the indictment or the verdict shall include any inchoate element in each case relating directly to the provision and operation of; or
- (c) SRT being, in the reasonable opinion of the Authority and/or SRH, in material non-compliance with a prohibition or enforcement order (or the equivalent thereof) issued by the ORR or any other body with statutory responsibilities for safety. If SRT makes an appeal against such prohibition or enforcement order (or such equivalent thereof) in accordance with its terms, no Event of Default shall have occurred under this paragraph 2.6(c) until such appeal has been determined to be unsuccessful.

Contravention of Other Obligations

- 2.7 The occurrence of the following:
- (a) SRT contravening to a material extent any one or more of its obligations under this Agreement (other than such non-performance or non-compliance as may constitute an Event of Default under the provisions of this Schedule 10.3 other than this paragraph 2.7);
 - (b) the service by SRH and/or the Authority on SRT of a written notice specifying:
 - (i) such contravention; and
 - (ii) to the extent the contravention is capable of being remedied, the reasonable period within which SRT is required to so remedy; and
 - (c) SRT contravening such obligation or obligations again to a material extent or permitting the contravention to continue or, if the contravention is capable of remedy, failing to remedy such contravention within such period as SRH and/or the Authority has specified in the notice served pursuant to paragraph 2.7(b).

Non-membership of Inter-Operator Schemes

- 2.8 SRT ceasing to be a member of, or ceasing to participate in or to be party to, any of the Inter-Operator Schemes, or having its membership or participation therein suspended.

Key Contracts

- 2.9 Termination, or the material variation, of any Key Contract except where requested (or consented to (for the purpose of paragraph 7 of Schedule 14.3 (*Key Contracts*) by the Authority or to the extent that SRT has demonstrated to the reasonable satisfaction of the Authority that it is no longer necessary for it to be party to such Key Contract or that it has made adequate alternative arrangements in order to be able to continue to provide and operate Operator Services.

Rolling Stock Leases

- 2.10 A failure by SRT to enter into a new Rolling Stock Lease in accordance with paragraph 3 of Appendix 1 to Schedule 1.1 (*Service Development*) in respect of substitute rolling stock vehicles which meet the requirements of paragraph 3.4 of Schedule 1.1.

Prohibition on blacklisting

- 2.11 SRT committing any breach of the Employment Relations 1999 Act (Blacklists) Regulations 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992, or committing any breach of the Data Protection Laws by unlawfully processing personal data in connection with any blacklisting activities.

3. Executive Team Review Event

- 3.1 If any Force Majeure Event continues with the effect of preventing SRT from delivering, wholly or mainly, the Passenger Services for more than 6 consecutive months or for a total period of 6 months in any period of 12 consecutive months, that shall be deemed an Executive Team Review Event.
- 3.2 On the occurrence of an Executive Team Review Event, the provisions of Schedule 10.2 (*SRT Executive Team Review and Expiry*) shall also apply.

SCHEDULE 10.4

THIS IS SCHEDULE 10.4 REFERRED TO IN THE FOREGOING SCOTRAIL GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND SCOTRAIL TRAINS LIMITED

Force Majeure

1. Force Majeure Events

- 1.1 The following events shall constitute Force Majeure Events, subject to the conditions specified in paragraph 2 being satisfied:
- (a) SRT or any of its agents or subcontractors is prevented or restricted by Network Rail (including by virtue of the implementation of any Contingency Plan) from gaining access to any section or part of track (including any track running into, through or out of a station). For the purposes of this paragraph 1:
 - (i) references to a party being prevented or restricted from gaining access to any section or part of track shall mean that such party is not permitted to operate any trains on the relevant section or part of track, or is only permitted to operate a reduced number of trains from that which it was scheduled to operate;
 - (ii) the period of such prevention or restriction shall be deemed to commence with effect from the first occasion on which SRT is prevented or restricted from operating a train on such section or part of track;
 - (iii) references in paragraphs 1.1(a)(i) and (ii) to the operation of trains include scheduled empty rolling stock vehicle movements; and
 - (iv) “**Contingency Plan**” means a contingency plan (as defined in the Railway Operational Code or where the Railway Operational Code ceases to exist, such other replacement document of a similar or equivalent nature which contains a definition of contingency plan similar to that contained in the Railway Operational Code) implemented by and at the instigation of Network Rail, or such other contingency or recovery plan as the Authority may agree from time to time;
 - (b) SRT or any of its agents or subcontractors is prevented or restricted by Network Rail or any Facility Owner (other than a Facility Owner which is an Affiliate of SRT) from entering or leaving:
 - (i) any station or part thereof (excluding, any prevention or restriction from gaining access to any section or part of track running into, through or out of a station); or
 - (ii) any depot or part thereof (including the movement of trains on tracks within any depot but excluding any prevention or restriction from gaining access to any track outside such depot running into or out of that depot);
 - (c) any of the following events occurs:
 - (i) a programme of Mandatory Modifications commences;
 - (ii) any diesel Rolling Stock Units are damaged by fire, vandalism, sabotage or a collision and are beyond repair or beyond economic repair; or
 - (iii) a government authority prevents the operation of diesel Rolling Stock Units on the grounds of safety,

and, in each case, the greater of 2 diesel Rolling Stock Units and 10 per cent. of all diesel rolling stock vehicles used by SRT in the provision of the Passenger Services are unavailable for use in the provision of the Passenger Services as a result of the occurrence of such event;

(d) any of the following events occurs:

- (i) a programme of Mandatory Modifications commences;
- (ii) any electric Rolling Stock Units are damaged by fire, vandalism, sabotage or a collision and are beyond repair or beyond economic repair; or
- (iii) a government authority prevents the operation of electric Rolling Stock Units on the grounds of safety,

and, in each case, the greater of 2 electric Rolling Stock Units and 10 per cent. of all electric rolling stock vehicles used by SRT in the provision of the Passenger Services are unavailable for use in the provision of the Passenger Services as a result of the occurrence of such event;

(e) SRT prevents or restricts the operation of any train on safety grounds provided that:

- (i) SRT has, either before or as soon as reasonably practicable after initiating such prevention or restriction, sought the confirmation of the ORR, or any other body with statutory responsibility for safety in the circumstances, of the necessity of such prevention or restriction; and
- (ii) if and to the extent that the ORR or other relevant body indicates that such prevention or restriction is not necessary, then no Force Majeure Event under this paragraph 1.1(e) shall continue in respect of that restriction or prevention after the receipt of such indication from the ORR or other relevant body;

(f) act of God, war damage, enemy action, terrorism or suspected terrorism, riot, civil commotion, rebellion (together "**Emergency Events**") or the act of any government instrumentality (including the ORR and the Secretary of State but excluding the Authority) insofar as the act of government instrumentality directly relates to any Emergency Events, provided that there shall be no Force Majeure Event under this paragraph 1.1(f) by reason of:

- (i) the suicide or attempted suicide of any person (other than a person engaged in terrorism or suspected terrorism);
- (ii) the activities of the police, fire service, ambulance service or other equivalent emergency service that are not in response to acts of terrorism or suspected terrorism; or
- (iii) an act of God which results in SRT or its agents or subcontractors being prevented or restricted by Network Rail from gaining access to any relevant section or part of track; and

(g) any strike or other Industrial Action by any or all of the employees of SRT or any or all of the employees of:

- (i) Network Rail;
- (ii) SRT or any other railway facility; or
- (iii) any person with whom SRT has a contract or arrangement for the lending, seconding, hiring, contracting out or supervision by that person of train drivers, conductors, other train crew or station or depot staff used by SRT in the provision of Operator Services

(except where such contract or arrangement is with an Affiliate of SRT), or in the case of (i) and (ii) above, of the agents or sub-contractors of any such person.

2. Conditions to Force Majeure Events

2.1 The occurrence, and continuing existence of a Force Majeure Event shall be subject to satisfaction of the following conditions:

- (a) in relation to an event occurring under paragraph 1.1(a), that event has continued for more than 12 consecutive hours;
- (b) SRT notifies SRH and the Authority within 2 Weekdays of it becoming aware of:
 - (i) the occurrence or likely occurrence of the relevant event; and
 - (ii) the effect or the anticipated effect of such event on SRT's performance of the Passenger Services;
- (c) at the same time as SRT serves notification on SRH and the Authority under paragraph 2.1(b), it informs SRH and the Authority of the steps taken and/or proposed to be taken by SRT to prevent the occurrence of, and/or to mitigate and minimise the effects of, the relevant event and to restore the provision of the Passenger Services;
- (d) the relevant event did not occur as a result of:
 - (i) any act or omission to act by SRT or its agents or subcontractors save that, in respect of the occurrence of Industrial Action in accordance with paragraph 1.1(g) the provisions of paragraph 2.2 apply; or
 - (ii) SRT's own contravention of, or default under, this Agreement, any Access Agreement, Rolling Stock Lease, Property Lease or any other agreement;
- (e) SRT used and continues to use all reasonable endeavours to avert or prevent the occurrence of the relevant event and/or to mitigate and minimise the effects of such event on its performance of the Passenger Services and to restore the provision of the Passenger Services as soon as reasonably practicable after the onset of the occurrence of such event;
- (f) SRT shall, to the extent reasonably so requested by SRH and the Authority, exercise its rights and remedies under any relevant agreement to prevent the occurrence or recurrence of any such event and to obtain appropriate redress and/or compensation from any relevant person; and
- (g) SRT's compliance with the requirements of paragraphs 10 and 11 of Schedule 1.2 (*Operating Obligations*).

2.2 Where:

- (a) Industrial Action in accordance with paragraph 1.1(g) occurs as a result of an act or omission to act by SRT or its agents or subcontractors;
- (b) the Authority reasonably believes that it was reasonable for SRT, its agents or subcontractors (as the case may be) to take or omit to take such act; and
- (c) the other conditions specified in paragraph 2.1 have been satisfied, such occurrence shall be a Force Majeure Event.

3. Consequences of Force Majeure Events

On Obligations

- 3.1 Subject to paragraph 3.2, SRT shall not be responsible for any failure to perform any of its obligations under this Agreement, nor shall there be any contravention of this Agreement if and to the extent that such failure is caused by any Force Majeure Event.
- 3.2 Paragraph 3.1 shall not apply to the obligations of SRT:-
- (a) in Schedule 7.1 (*Train Operating Performance*) if the Force Majeure Event is an event occurring under paragraphs 1.1(a), (b) and (g); and
 - (b) in Schedule 7.2 (*Service Quality*).

On Payments

- 3.3 Following the occurrence of a Force Majeure Event, the payment of Grant Payment shall continue unaffected.

SCHEDULE 10.5**THIS IS SCHEDULE 10.5 REFERRED TO IN THE FOREGOING SCOTRAIL GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND SCOTRAIL TRAINS LIMITED****Liability****1. Exclusion of Liability**Liability with respect to Passengers and Third Parties

- 1.1 SRT hereby acknowledges that SRH and/or the Authority will not be responsible for the actions of SRT or any Alliance and that, except as expressly provided in this Agreement, SRT shall provide and operate the Operator Services at its own cost and risk without recourse to SRH and/or the Authority.
- 1.2 SRT, on demand, shall hold SRH and/or the Authority fully protected and indemnified in respect of all losses, liabilities, costs, charges, expenses, actions, proceedings, claims or demands incurred by or made on SRH and/or the Authority in connection with any death, personal injury, loss or damage suffered by passengers or by any third party (including, for the avoidance of doubt, any Alliance,) using or affected by Operator Services which is caused or contributed to by SRT, or any Alliance, or any employee, agent, contractor or sub-contractor of SRT or of or any Alliance or anyone for whom SRT or any Alliance is responsible at law.

Liability of Authority

- 1.3 Neither the Authority nor any of its officers, agents or employees shall in any circumstances be liable to SRT and/or SRH for any loss or damage caused by the negligent exercise of any powers reserved to the Authority under this Agreement, except to the extent that such negligence also constitutes a contravention of an obligation of the Authority under this Agreement. SRT and/or SRH may not recover from the Authority or any of its officers, agents, or employees any amount in respect of loss of profit or consequential loss.

2. Review or monitoring by the Authority

- 2.1 The Authority may for its own purposes (whether under this Agreement or under any other arrangement or otherwise and whether before or after the date of this Agreement) monitor or review any proposals, plans or projects (or any aspect thereof) of SRT under this Agreement, but no review, enquiry, comment, statement, report or undertaking, made or given by or on behalf of the Authority during such review or monitoring (and no failure to undertake, make or give any review, enquiry, comment or statement) shall operate to exclude or relieve any of the parties from or reduce or otherwise affect the obligations of the parties under this Agreement.
- 2.2 The exercise by or on behalf of each of the Authority of (or, as the case may be, any failure to exercise) any of its functions, rights or obligations in respect of any review or monitoring process shall not in any way impose any liability, express or implied, on the Authority to any other party save to the extent that the exercise (or failure to exercise) of any of such functions, rights or obligations results in a contravention by the Authority of an express provision of this Agreement and the Authority does not make or give any representation or warranty, either express or implied, as to whether any proposal, plan or project will enable any party to comply with its obligations under this Agreement.

SCHEDULE 11**THIS IS SCHEDULE 11 REFERRED TO IN THE FOREGOING SCOTRAIL GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND SCOTRAIL TRAINS LIMITED****Agreement and Service Delivery Management Provisions****1. Chair and Non-Executive Director of the SRT Board**

- 1.1 The SRH Board shall appoint both a Chair and a Non-Executive Director to the SRT Board, who shall each have power and authority delegated to them by the SRH Board to act and to make decisions on behalf of SRH in relation to this Agreement and amend this Agreement on behalf of SRH. The principal responsibilities of the Chair and the Non-Executive Director on the SRT Board shall be, amongst other things:
- (a) to manage this Agreement on behalf of SRH;
 - (b) to monitor SRT's performance of its obligations under this Agreement and the Business Plan;
 - (c) to ensure that the necessary resources within SRH are made available expeditiously for the performance of SRH's obligations under this Agreement and the Business Plan; and
 - (d) to facilitate SRH in fulfilling its obligations under this Agreement and the Business Plan to SRT.
- 1.2 The Chair and the Non-Executive Director may from time to time delegate any of the powers, functions and authorities vested in them to an assistant or agent and may at any time revoke any such delegation. Any such delegation or revocation shall be in writing signed by the Chair or the Non-Executive Director and shall state which power, function or authority is thereby delegated or revoked and the persons to whom or from whom the same are delegated or revoked respectively. No such delegation or revocation shall have effect until SRT is deemed to have received notice of it in writing in accordance with paragraph 3 of Schedule 19 (*Other Provisions*).
- 1.3 Except in cases of emergency, or as a consequence of the proper exercise of disciplinary procedures of SRH, SRH shall give the SRT Board reasonable notice of a proposal to replace the Chair or the Non-Executive Director.

2. SRT's Key Personnel

- 2.1 SRT shall identify and provide to SRH a schedule of Key Personnel who shall be employed by SRT in the performance of this Agreement.
- 2.2 SRT shall provide to SRH an organisation chart detailing the responsibilities and reporting lines of each of the Key Personnel within 1 Reporting Period of the Commencement Date and shall update such chart (and provide a copy to SRH promptly thereafter) as and when any changes occur.
- 2.3 Key Personnel may from time to time delegate any of the powers, functions and authorities vested in each of them to an assistant or agent and may at any time revoke any such delegation. Any such delegation or revocation shall be in writing signed by the Key Personnel member in question and shall state which power, function or authority is thereby delegated or revoked and the persons to whom or from whom the same are delegated or revoked respectively. No such delegation or revocation shall have effect until SRH is deemed to have received notice of it in writing in accordance with paragraph 3 of Schedule 19 (*Other Provisions*).

- 2.4 Except in cases of emergency, or as a consequence of the proper exercise of disciplinary procedures of SRT, a minimum of 1 months' notice must be given to the Chair and the Non-Executive Director of SRT of a proposal to replace any Key Personnel member.

3. **SRT Executive Team**

- 3.1 The SRT Board shall appoint a competent team of executive Directors for SRT who shall report directly to the SRT Board and shall have power and authority delegated to them by the SRT Board to act for and to make decisions on behalf of the SRT Board in relation to this Agreement (but who shall not have power to amend this Agreement) ("**SRT Executive Team**").
- 3.2 The principal responsibilities of the SRT Executive Team shall be, amongst other things:
- (a) to manage this Agreement on behalf of SRT;
 - (b) to ensure that the necessary resources within SRT's organisation are made available expeditiously for the performance of SRT's obligations under this Agreement;
 - (c) to ensure that any necessary sub-contracts are placed and managed so that the requirements of this Agreement are fully met; and
 - (d) to facilitate SRT in fulfilling its obligations under this Agreement to SRH and the Authority.
- 3.3 The SRT Executive Team shall:
- (a) report directly to the SRT Board on the full range of SRT's activities;
 - (b) make recommendations to the SRT Board on the marketing and promotion of Passenger Services, enhancement passenger satisfaction levels and growth of patronage throughout the Term (and shall copy any such recommendations to SRH;
 - (c) perform the tasks required of them under paragraph 3.2;
 - (d) keep full and accurate records and documents in relation to, or affecting, the performance by SRT of its obligations in paragraph 3.2;
 - (e) send to the SRT Board at the end of each Reporting Period a statement (which shall be copied at the same time to SRH detailing:
 - (i) the latest findings on SRT's performance as contained in the records and documents kept pursuant to Schedule 7.1 (*Train Operating Performance*);
 - (ii) a comparison of SRT's performance with the targets it has set in respect of its obligations under Schedule 7.2 (*Service Quality*);
 - (iii) the trends which the SRT Executive Team has detected in passenger satisfaction and patronage growth with an analysis of the causes of any performance below that forecast or targeted by SRT and recommendations for rectification of performance levels where required;
 - (iv) the SRT Executive Team's evaluation of SRT's performance as against the requirements of any plan which deals with, or specifies, requirements in respect of passenger satisfaction and patronage growth;

- (v) the SRT Executive Team's recommendations for continuing improvement in respect of SRT's performance of its obligations under Schedule 7 and forecast of SRT's likely level of future performance of such obligations; and
- (f) co-operate with the SRT Board and SRH in relation to the promotion of passenger satisfaction and patronage and in making appropriately senior and appropriately qualified members of SRT's personnel available to attend meetings.

4. **Quality**

4.1 The SRT Executive Team:-

- (a) shall work to minimise the amount of ticketless travel and fare evasion on the Passenger Services and to maximise passenger satisfaction and Off-Peak Patronage growth;
- (b) be responsible for the obligations set out in paragraph 4 of Schedule 7.2 (*Service Quality*) insofar as relating to SQM or quality; and
- (c) ensure the role of SQM is properly carried out.

5 **Transport Integration**

5.1 The SRT Executive Team shall:-

- (a) have a leading role in improving integration of ticketing, timetabling, information and infrastructure activities in line with smart ticketing initiatives through the Transport Integration Group and otherwise to deliver the policy outcomes in the Policy Compendium, as updated from time to time;
- (b) draw on evidence relating to passenger views concerning integration;
- (c) work with the Authority and stakeholders in particular other transport service providers and Regional Transport Partnerships;
- (d) such work in terms of paragraph 5.1(c) shall include without prejudice to the generality:
 - (i) encouraging a shift from private car usage to integrated journeys making use of rail; and
 - (ii) consulting on timetable changes and new services to improve connections between modes of transport;
- (e) prepare an annual transport integration strategy plan identifying how SRT shall measure improvements in transport integration and setting targets for such integration and monthly reports on progress against these targets. The plan and reports shall be made available to the SRH Board and SRH;
- (f) make use of data on passenger flows (including information on passenger origins and destinations) to identify gaps and opportunities to improve transport integration and to ascertain demand for sustainable transport connections to and from Stations; and
- (g) have a leading role in planning and setting up any Fulfilment Service for smart ticketing proposed by the Authority and/or SRH.

6. **Rail Patronage**

The SRT Executive Team shall:

- 6.1
- (a) promote passenger satisfaction levels, grow patronage and minimise the level of ticketless travel and fare evasion throughout the Term (and shall copy any such recommendations to SRH and the Chief Operating Officer of SRT); and
 - (b) perform the tasks required of them under this paragraph 6;
- 6.2 ensure that SRT's obligations set out in paragraphs 2 to 4 of Schedule 1.3 (*Additional Service Specifications*) are complied with in full;
- 6.3 co-operate with SRH in relation to the promotion of passenger satisfaction and patronage and the minimisation of ticketless travel and fare evasion and in making appropriately senior and appropriately qualified members of SRT's personnel available to attend relevant meetings;
- 6.4 including responsibility for the obligations set out in paragraph 4 of Schedule 7.2 insofar as relating to rail patronage;
- 6.5
- (a) keep full and accurate records and documents in relation to, or affecting, the performance by SRT of its obligations in paragraphs 2 to 4 of Schedule 1.3 (*Additional Service Specifications*);
 - (b) send to the SRT Board at the end of each Reporting Period a statement (which shall be copied at the same time to SRH and the Chief Operating Officer of SRT) detailing:
 - (i) the latest findings on SRT's performance as contained in the records and documents kept pursuant to paragraph 6.2;
 - (ii) a comparison of SRT's performance with the targets it has set in respect of its obligations under paragraphs 2 to 5 of Schedule 1.3 (*Additional Service Specifications*);
 - (iii) the trends detected in ticketless travel passenger satisfaction and patronage growth with an analysis of the causes of any performance below that forecast or targeted by SRT and recommendations for rectification of performance levels where required;
 - (iv) evaluation of SRT's performance as against the requirements of any Action Plan which deals with, or specifies, requirements in respect of ticketless travel, revenue protection passenger satisfaction and patronage growth or any of SRT's other obligations in paragraphs 2 to 5 of Schedule 1.3 (*Additional Service Specification*);
 - (v) recommendations for continuing improvement in respect of SRT's performance of its obligations under paragraphs 2 to 5 of Schedule 1.3 and in realisation of patronage growth and higher passenger satisfaction levels and forecast of SRT's likely level of future performance of such obligations and objectives; and
 - (vi) work with the SRT Board and SRH to minimise the amount of ticketless travel and fare evasion on the Passenger Services and to maximise passenger satisfaction and patronage growth.

7. **Control of Communications, Information and Documents**

- 7.1 Save for correspondence between the parties' Nominated Representatives under the Escalation Procedure in Schedule 7.2, all correspondence between SRT and SRH (other than correspondence in connection with the matters referred to in paragraph 3.1(a) of Schedule 19

(*Other Provisions*) shall be sent to the SRT Board and onto SRH in accordance with the terms of paragraph 3.1(b) of Schedule 19.

7.2 SRT shall use a logical and structured system for correspondence reference.

7.3 All correspondence between SRT and SRH shall be given a unique reference number and, wherever possible, correspondence shall be cross-referenced to the relevant clause or paragraph of or schedule to this Agreement.

8. **SRT Board Meetings**

8.1

(a) SRT shall hold one or a number of SRT Board Meetings in each Reporting Period at a time and location notified to SRT by the Chair and the Non-Executive Director (and without prejudice to the Authority's rights under the Framework Agreement, the Authority may at its discretion attend such SRT Board Meetings). SRT Board Meetings shall be held more often than once every Reporting Period if that is necessary to properly deal with the agenda items. The Chair may propose to the SRT Board to hold a virtual SRT Board Meeting but a report must still be circulated by correspondence.

(b) SRH and SRT shall review the financial and operational performance of SRT at each SRT Board Meeting. Further agenda items shall include:

(i) KPI performance;

(ii) progress of the programmes if any new train fleet or modifications to Train Fleet in accordance with Schedule 6 (*Rolling Stock*);

(iii) timing of reports to be produced in terms of this Agreement;

(iv) asset condition (maintenance audit reports);

(v) fleet stewardship report;

(vi) fleet availability and performance; and

(vii) safety,

which will be grouped for discussion on a quarterly basis.

(c) Each SRT Board Meeting shall be minuted for the Chair and the Non-Executive Director and the minutes shall be sent to attendees within 7 Weekdays of each such meeting.

(d) The Chair shall chair the SRT Board Meeting.

(e) SRH and SRT shall agree a schedule of SRT Board Meetings prior to the commencement of each Operator Year to include four quarterly meetings spread equally throughout the Operator Year at which SRT's Chief Operating Officer and a senior representative of SRH shall attend and a senior representative of the Authority may attend at its discretion.

8.2 SRT shall ensure that each of its representatives at all SRT Board Meetings have full power and authority delegated to them by SRT to act and to make binding decisions on behalf of SRT and shall include such directors and/or senior managers of SRT as SRH may require.

- 8.3 Each SRT Board Meeting shall include as a minimum the following agenda items:
- (a) confirmation of the accuracy of the minutes of the previous SRT Board Meeting;
 - (b) performance by SRT by reference to the Performance Criteria;
 - (c) service quality performance against Schedule 7.2 (*Service Quality*) and by reference to the Service Quality Benchmarks;
 - (d) performance by SRT of its financial obligations under Schedule 12 (*Financial Obligations and Undertakings*);
 - (e) compliance by SRT with its obligations under Schedule 13 (*Operation Management and Information Obligations*) and the timely production of information prior to SRT Board Meetings;
 - (f) any Remedial Plans and/or Remedial Agreements discussed at a previous SRT Board Meeting and any suggested improvements to SRT's performance;
 - (g) the results of any review of the Depot Condition Maintenance Programme and the Station Condition Maintenance Programme;
 - (h) a review of the progress of the implementation of the Business Plan Commitments, or any Variations previously authorised;
 - (i) outstanding correspondence and identification of matters in dispute and actions towards resolution;
 - (j) any obligations of SRT which SRH is monitoring following a contravention of this Agreement;
 - (k) a review of progress of decisions on authorisation of Variations or Changes and any new or proposed Variations or Changes;
 - (l) any outstanding action of SRH identified in previous SRT Board Meetings;
 - (m) the revenue collection performance under Schedule 1.3 (*Additional Service Specifications*);
 - (n) progress in planning for or implementation of projects, including Major Scottish Projects and the delivery of new or refurbished rolling stock;
 - (o) a review of the progress toward implementation of any Business Plan Commitments included in Schedule 1.6 (*Business Plan Commitments*);
 - (p) a review of the current Business Plan as appropriate;
 - (q) performance by SRT by reference to the Business Plan KPIs; and
 - (r) such other matters as may from time to time be determined to be necessary by SRT, SRH or the Authority.
- 8.4 No later than the 5th Weekday prior to each SRT Board meeting, SRT shall provide to SRH in accordance with any guidance SRH may issue to SRT from time to time, a report detailing SRT's performance with respect to the items referred to in paragraphs 8.3(b) to (j) inclusive and paragraph 8.3(m) to (r) (if appropriate).

- 8.5 SRT shall prepare and present such additional reports to each SRT Board Meeting as SRH may reasonably request. SRT's obligations under this paragraph 8.5 are subject to SRT receiving at least ten (10) Weekdays' notice of the requirement to prepare and present any such additional report.
- 8.6 No comment or failure to comment nor any agreement or approval, implicit or explicit by the Authority and/or SRH at such meetings will relieve SRT of any of its obligations under this Agreement.

9. Right of assessment or inspection

- 9.1 SRT shall, if requested by SRH, allow SRH and/or the Authority and its or their representatives and advisers:
- (a) to inspect and copy any records referred to in Schedule 13 (*Operation Management and Information Obligations*) and SRH may verify any such records; and
 - (b) to inspect and copy at any reasonable time any books, records and any other material, data sets or electronic information howsoever and wheresoever held kept by or on behalf of SRT and/or its auditors and any assets (including the Operator Assets) used by SRT in connection with the Operator Services.
- 9.2 SRT shall make available to SRH and/or the Authority and its representatives and advisers the information referred to in paragraph 9.1 and grant or procure the grant of such access (including to or from third parties) as SRH and/or the Authority and its representatives and advisers shall reasonably require in connection therewith. The obligation of SRT under this paragraph 9.2 shall include an obligation on SRT to grant or procure the grant of such access to premises (including third party premises) where the information referred to in paragraph 9.1 is held, kept by or on behalf of SRT.
- 9.3 Subject to the obligations under Schedule 17 (*Confidentiality, FOISA and Data Protection*) SRH and/or the Authority and its representatives and advisers shall be permitted to take photographs, film or image, recording, or make any other kind of record of any such inspection.
- 9.4 If any inspection reveals that information previously supplied to SRH and/or the Authority was in the reasonable opinion of SRH and/or the Authority, in any material respect inaccurate or if such inspection reveals any other non-trivial contravention of SRT's obligations under this Agreement, the costs of any such inspection shall be borne by SRT.

10. Operation Performance Meetings

SRH and SRT shall hold one or a number of Operation Performance Meetings in each Reporting Period (or such other period as agreed among the parties) at a time and location notified by SRH.

SCHEDULE 12**THIS IS SCHEDULE 12 REFERRED TO IN THE FOREGOING SCOTRAIL GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND SCOTRAIL TRAINS LIMITED****Financial Obligations and Undertakings****1. Obligations**

Except to the extent that the Authority and SRH may both otherwise agree from time to time, SRT shall:

- 1.1 not incur any liability or financial indebtedness except in the ordinary course of providing and operating the Operator Services; or
- 1.2 not make any loan or grant any credit, or have or permit to subsist any loan or any credit, to any person (other than the deposit of cash with a Bank as permitted under paragraph 1.5 or to an employee in the ordinary course of its business); or
- 1.3 not create or permit to subsist any Security Interest over any of its assets or property or give any guarantee or indemnity to or for the benefit of any person or otherwise assume liability or become obliged (actually or contingently) in respect of any obligation of any other person, in each case other than in the ordinary course of the business of providing and operating the Operator Services; or
- 1.4 not create or acquire any subsidiary;
- 1.5 not make or have any investment in any other entity, except for the deposit of cash with a Bank; and
- 1.6 fully cooperate with SRH to ensure that SRH fulfils its obligations under the Framework Agreement and the Financial Memorandum.

2. Financial Memorandum and Framework Agreement

- 2.1 SRT shall discharge in full all duties and obligations imposed upon SRH in the Financial Memorandum and, wherever in the Financial Memorandum there is a reference to SRH or a term referring to SRH, for the purposes of this Schedule 12 a reference to SRT or a term referring to SRT shall be substituted.
- 2.2 SRT shall discharge in full all duties and obligations imposed upon SRH in the Framework Agreement and, wherever in the Framework Agreement there is a reference to SRH or a term referring to SRH, for the purposes of this Schedule 12 a reference to SRT or a term referring to SRT shall be substituted.

3. Financial Transparency

- 3.1 SRT shall ensure that there is no cross subsidisation between the Operator Services and any other service run by SRT or activities of SRT or between SRT and any Affiliate.
- 3.2 SRT shall ensure that all transactions with any Affiliates are conducted on an arm's length basis and are so identified in all records and in its accounting records.
- 3.3 SRT shall have clear, separate and transparent accounting systems for financing and operating the Operator Services (in accordance with Regulation (EC) 1370/2007) to ensure that the Grant Payment is only used for the Operator Services and not for any other activity of SRT and shall deal with SRH on an open book basis.

4. ORCATS

SRT shall act in the best financial interest of SRH in regard to ORCATS. Without prejudice to the foregoing generality, SRT shall:-

- 4.1 resist any ORCATS Notification that may have any adverse impact on the allocation of revenue to the Passenger Services;
- 4.2 not agree informally or formally to any ORCATS Adjustment without the prior consent of SRH (such consent not to be unreasonably withheld);
- 4.3 challenge any ORCATS Adjustment through the Ticketing and Settlement Agreement, subject to obtaining SRH's prior consent.

5. Sub-Contractor/Supplier Contracts

SRT shall ensure that all contracts it enters into with suppliers and sub-contractors include provisions requiring SRT to pay all matured and properly authorised invoices promptly and, where appropriate, in accordance with the Scottish Government target of 10 working days as detailed within the 'Expenditure and Payments' section of the SPFM.

SCHEDULE 13

THIS IS SCHEDULE 13 REFERRED TO IN THE FOREGOING SCOTRAIL GRANT AGREEMENT AMONG THE SCOTTISH RAIL HOLDINGS LIMITED AND SCOTRAIL TRAINS LIMITED

Operation Management and Information Obligations

- Schedule 13.1: Operation Management**
- Schedule 13.2: Information**
 - Appendix 1: Efficient Operator**
 - Appendix 2: Key Assets**
 - Appendix 3: Operational Information**
 - Appendix 4: Passenger journeys, miles and earnings information**
- Schedule 13.3: Co-operation**
 - Staff Obligations**
- Schedule 13.4: Safety and personal security**
- Schedule 13.5: Integration**
- Schedule 13.6: Related Parties and Open Book Accounting**
- Schedule 13.7: Appendix: Related Party Contracts**

SCHEDULE 13.1

THIS IS SCHEDULE 13.1 REFERRED TO IN THE FOREGOING SCOTRAIL GRANT AGREEMENT AMONG THE SCOTTISH RAIL HOLDINGS LIMITED AND SCOTRAIL TRAINS LIMITED

Operation Management

1. General Management Obligations

Human Resources

- 1.1 SRT shall deliver the HR Strategy to SRH within the first GP Quarter of the first Operator Year.
- 1.2 The HR Strategy shall:
- (a) comply with the applicable requirements of the Policy Compendium from time to time (and in the event of any conflict between this paragraph 1.2(a) and the following provisions of this paragraph 1, this paragraph 1.2(a) shall have precedence);
 - (b) describe the roles and contribution of SRT's directors and Operator Employees in the delivery of SRT's obligations under this Agreement;
 - (c) define the human resources policies, procedures and processes that are required to deliver the vision, business strategy and goals of SRT;
 - (d) set measurable targets (where appropriate) for each aspect of the HR Strategy;
 - (e) define how the HR Strategy will be delivered over the Operation Period;
 - (f) define how the delivery of the HR Strategy will be monitored and managed over the Operation Period; and
 - (g) define how the HR Strategy may be varied to take account of changing circumstances or legislation.
- 1.3 The HR Strategy will comprise as a minimum:
- (a) an **Organisational Development Strategy** incorporating:
 - (i) a manpower planning process on a rolling 5-year basis, updated annually and identifying areas where management action will be required to maintain the efficiency of SRT;
 - (ii) a commitment by SRT to achieve "**Investors in People**" accreditation or equivalent within three years of the Commencement Date; and
 - (iii) appropriate performance management processes that embrace all Operator Employees and provide individual feedback on personal performance;
 - (b) a **Recruitment, Retention & Resourcing Strategy** incorporating:
 - (i) an objective, transparent and fair recruitment process;
 - (ii) a succession - planning process for key grades / posts on a rolling 5-year basis, updated annually ensuring that there is resilience in the staffing levels of key posts;
 - (iii) a statistical framework for the monitoring of recruitment and Operator Employees turnover by gender, ethnic category, disability, sexuality, religion or belief, function, grade, length of service;

- (iv) an Equalities Plan detailing the proactive steps to be taken to eliminate discrimination and promote equality and evidence of the activities carried out in accordance with the Equalities Plan;
- (c) a **Reward & Engagement Strategy** for each grade group which supports the vision, business strategy and goals and provides for motivation, reward and retention of Operator Employees mitigation against the risk of Industrial Action, and incorporates:
 - (i) base salary and earnings data by key grade group;
 - (ii) earnings and hours-worked data;
 - (iii) previous information;
 - (iv) relevant comparator data;
 - (v) non-financial reward, recognition and motivation initiatives;
 - (vi) employee share schemes and/or profit-share mechanisms; and
 - (vii) pensions benefits;
- (d) a **Training & Development Strategy** incorporating:
 - (i) a commitment to become Investors in People accredited or equivalent and continue throughout the Term to work toward the highest level of such accreditation;
 - (ii) the provision of induction training for all new Operator Employees that incorporates:
 - (A) all necessary safety training;
 - (B) all task-specific training;
 - (C) training in order to make such Operator Employees aware of the obligations required of SRT under this Agreement and of SRT's vision, business strategy and goals;
 - (D) training to provide understanding of SRT's obligations under its Licences;
 - (E) training to provide understanding of the wider context of the railway; and
 - (F) training for Operator Employees who have a passenger interface in:
 - (aa) how to deliver excellent customer service to all types of passengers including passengers with special requirements;
 - (bb) how to deal with dissatisfied or disruptive passengers;
 - (cc) ensuring such staff are able to answer passenger enquiries about Passenger Services, Trains and products at all times including times of disruption; and
 - (dd) ensuring such staff can assist passengers with information about onward travel and alternative public transport options.
 - (iii) the provision of refresher training and the circumstances when such would be provided;
 - (iv) a competence framework based upon National Occupational Standards;

- (v) an assessment and verification framework consistent with the delivery of National Vocational Qualifications and/or Scottish Vocational Qualifications;
- (vi) a commitment by SRT to encourage all Operator Employees (where appropriate) to achieve an appropriate National Vocational Qualification and/or Scottish Vocational Qualification (or equivalent accredited qualification) within defined timescales;
- (vii) the means by which SRT will make available other structured training and development opportunities, using approved training schemes such as “**Modern Apprenticeships**” and “**Graduate Apprenticeships**” where appropriate;
- (viii) with the co-operation of the Outgoing Franchisee, SRT shall develop the activities of the in-house Training Academy for the ScotRail Operation. SRT shall ensure that the Training Academy is operational throughout the Operation Period and in accordance with industry standards through the Operation Period;
- (ix) Training simulators and exercises

SRT shall provide and thereafter maintain two simulators to be used for the purpose of training and competence management processes for train drivers employed and invest in additional or replacement simulators to reflect the development of the composition of the Train Fleet (including all new Train Fleets save for the Scenic Train Rolling Stock). This will incorporate the requirements for:-

- (A) the simulators shall mimic the driving controls of a typical traction unit (one DMU and one EMU) and the software will be typical of route sections found across the ScotRail Operation. The simulators shall permit drivers to experience scenarios unlikely to be found on a regular basis during actual driving;
- (B) the simulators shall be procured by SRT following a full procurement exercise and will be designed with features which allow them to simulate realistically the characteristics of at least one of the traction types employed by SRT;
- (C) SRT will ensure that best practice from other Train Operators which is relevant to the ScotRail Operation, is reflected in the simulators;
- (D) SRT shall ensure that the use of the simulators is an integral part of its training process for drivers with effect from the simulators being introduced into service;
- (E) the simulators shall be located in Scotland at all times; and
- (F) SRT shall create and carry out training exercises to permit drivers and customer facing staff to experience a range of scenarios involving possible incidents and causes of disruption, to improve communication with and handling of reactions from passengers.

- (e) an **Involvement Strategy** incorporating:
 - (i) appropriate “**Collective Consultation and Bargaining Frameworks**”; and
 - (ii) the planned linkages to the wider local community that SRT has through its Operator Employees;
- (f) an Operator **Employee Communications Strategy** which defines the means and frequency with which SRT will provide:
 - (i) information and feedback to Operator Employees on SRT’s performance, including whether good or bad performance;

- (ii) information as to changes in management policy, personnel, organisational structure, reporting lines and responsibilities; and
 - (iii) the conduct, publication and actions to be taken as a result of an annual Operator Employee attitude survey; and
- (g) **a staffing strategy and structure** incorporating:-
- (i) corporate structure of SRT
 - (ii) proposed management team and structure;
 - (iii) total establishment numbers including any expected changes in numbers, relevant skills and resources by activity and functions;
 - (iv) details of any proposed outsourcing or sub-contractor arrangements and activities.

2. **Quality Management**

- 2.1 SRT shall deliver the **Quality Plan** to SRH within the first GP Quarter of the first Operator Year. The Quality Plan shall cover all of the obligations of SRT under this Agreement incorporating:
- (a) all areas of activity that will drive the Overall Satisfaction results measured by the National Passenger Survey;
 - (b) the management policy and the expected results from such policy and how that might improve National Passenger Survey results; and
 - (c) specific initiatives proposed.
- 2.2 The purpose of the Quality Plan is to ensure that SRT manages in a systematic and structured manner the quality and delivery of its obligations under this Agreement so that they are delivered to a consistent quality in accordance with the terms of this Agreement.
- 2.3 The Quality Plan shall be compliant with the procedures and processes described in the Business Excellence Model of the British Quality Foundation or the EFQM Excellence Model of the European Foundation for Quality Management.
- 2.4 SRT shall implement the Quality Plan throughout the Operation Period. SRT shall ensure that sufficient, adequately trained Operator Employees are allocated to the management of quality and the delivery of Operator Services.
- 2.5 SRT shall deliver to SRH a Quality Report, at least once every 13 Reporting Periods during the Term (the first such report no later than the end of the 13th Reporting Period following the Commencement Date), which shall provide:
- (a) SRT's own assessment of SRT's performance of its obligations under this Agreement;
 - (b) (where applicable) a list of specific corrective actions which SRT believes are necessary to remedy, as soon as reasonably practicable, issues of concern identified in SRT's assessment;
 - (c) (where applicable) a list of specific actions for improvement identified in SRT's assessment that SRT intends to target so as to bring about continuous improvement of performance, in particular the delivery of the key performance results derived from the application of the Business Excellence Model of the British Quality Foundation or the EFQM Excellence Model of the European Foundation for Quality Management;
 - (d) a list of actions intended to maintain current areas of excellence identified in SRT's assessment;

- (e) a programme which specifies:
- (i) the time within which the corrective action identified pursuant to paragraph 2.5(b) will be complete;
 - (ii) the time within which the continuous improvement actions identified pursuant to paragraph 2.5(c) will be complete; and
 - (iii) the time within which the maintenance actions necessary for maintaining the current areas of excellence identified pursuant to paragraph 2.5(d) will be complete; and
- (f) any amendments to the Quality Plan necessary to ensure that SRT manages in a systematic and structured manner the quality and delivery of its obligations under this Agreement so that they are delivered to a consistent quality in accordance with the terms of this Agreement.

3. Quality Standards

EFQM

- 3.1 SRT shall operate a business management system the standard of which shall comply with the European Framework for Quality Management Model ("**EFQM**") and take all steps necessary to maintain such standards during the Operation Period.

ISO 9000:2005 and related standards

- 3.2 SRT shall take all steps necessary to maintain during the Operation Period a quality management system which complies with the ISO 9000:2005, ISO 9001: 2008 and ISO 9004: 2009 (or any updates to such ISO standards).
- 3.3 SRT shall operate an environmental management system, the standard of which shall comply with ISO 14001 accreditation status, and take all steps necessary to maintain such standard during the Operation Period.

4. Crystal Mark

SRT shall ensure all of its Published passenger facing documents, including without prejudice to the foregoing generality, its Passenger's Charter, Customer Complaints Handling Procedure and Disabled Persons Protection Policy are drafted and maintained to a standard which shall comply with the Crystal Mark standard (or equivalent).

5. Environment commitments and standards

ISO 14001 and ISO 15001 Environmental Accreditation and other systems

- 5.1 SRT shall operate an environmental management system, the standard of which shall comply with ISO 14001, EMAS or BS8900 accreditation status, and take all steps necessary to maintain such standard during the Operation Period.
- 5.2 SRT shall operate an energy management system, the standard of which shall comply with ISO 15001 accreditation status, and take all steps necessary to maintain such standard during the Operation Period.
- 5.3 SRT shall, in so far as not covered by paragraphs 5.1 and 5.2, put in place systems to monitor SRT's:
- - (a) energy consumption from traction and non-traction operations;
 - (b) carbon dioxide equivalent emissions from traction and non-traction operations; and

(c) waste to landfill.

- 5.4 SRT shall ensure that there are adequate levels of staffing and management with responsibility to improve SRT's environmental performance.
- 5.5 SRT shall comply with all rail industry protocols with regard to reporting energy consumption and carbon dioxide equivalent emissions to the ORR and Network Rail.
- 5.6 SRT shall Publish annual progress statements on the overall environmental performance of ScotRail Operation (such shall include as a minimum energy consumption and carbon dioxide equivalent emissions and waste that went to landfill from Operator Services).
- 5.7 SRT shall ensure all New Stations or new Depots deliver, where practicable, at least an "**excellent**" rating using BREEAM.

Controlled emission toilets

- 5.8 SRT shall procure that all Routes and Passenger Services in Scotland are operated with Vehicles that have controlled emission toilets.

Regenerative braking

- 5.9 SRT shall use regenerative braking to reduce energy consumption and CO² emissions where this is part of the standard equipment on the train and the line the train is operating on is capable of accepting regenerative output.

Energy consumption and emissions reporting

- 5.10 SRT shall
- (a) with such frequency as SRH may require, but in any event monthly, report to SRH on the energy consumption and carbon dioxide equivalent emissions of the delivery of Operator Services and energy efficiency and environmental performance, by the provision of such information in such format as is compatible with SRH's Carbon Management System may reasonably require. Such reports shall include:
- (i) details of the unit numbers that are not using regenerative braking, the period for which it will not be in use and the reasons why it is not in use;
- (ii) actual energy consumption, emission and environmental performance against targets; and
- (iii) measures for monitoring diesel consumption to assist energy efficiency, reduce costs and carbon emissions, inform maintenance and driver training strategies and prevent spillages;
- (b) ensure:
- (i) energy metering equipment is fitted to all electric rolling stock;
- (ii) energy metering equipment is fitted at all Stations and Depots;
- (iii) all train drivers are trained in eco-driving techniques and that systems are put in place to ensure that these techniques are applied;
- (iv) the fitment of appropriate Driver Advisory Systems;

- (v) through working with Network Rail, that SRT takes into account energy efficiency in timetable preparation and stabling arrangements;
- (vi) intelligent control of train auxiliary/ hotel loads in service and when stabled;
- (vii) investment is made in energy efficiency at Stations and Depots; and
- (viii) existing micro-generation facilities at Stations and Depots are preserved and maintained.

Extreme weather events and climate change

- 5.11 SRT shall monitor extreme weather events and the effects of climate change on the delivery of Operator Services:-
- (a) report thereon in a format agreed with SRH with such frequency as SRH may require, but in any event monthly (the first such report no later than the end of the 1st Reporting Period following the Commencement Date) highlighting the frequency of events, the impact on the ScotRail Operation (including in terms of delay and Cancellations to Passenger Services) and highlight hot spot locations that are prone to the effects of weather; and
 - (b) meet no less frequently than twice per Operator Year with the SRH to discuss trends, positions and investigation plans required as a result of such monitoring.

Waste

- 5.12 SRT shall:
- (a) implement relevant systems to ensure that waste is recovered and disposed of without endangering human health or causing harm to the environment; and
 - (b) put mechanisms in place to achieve and monitor progress in reducing the waste SRT sends to landfill from Operator Services.

Sustainability

- 5.13 SRT shall develop and implement a sustainable procurement policy to:
- (a) reduce the environmental impact of goods and services procured to support the operation of Operator Services;
 - (b) embed environmental and sustainability management across Operator Services;
 - (c) consider how this will provide financial savings; and

SRT shall consider operating an accredited management system in regard to sustainable procurement such as BS8903.

6. Advertisement of Contracts

Save as agreed among the parties prior to the Commencement Date or otherwise as required by Law, SRT shall, as a minimum, advertise all its potential contracts for goods and services in relation to ScotRail Operation locally to where such goods and services will be provided and in Public Contracts Scotland in order to make sub-contracting opportunities more visible to SMEs.

7. Review for Innovation Opportunities

- 7.1 SRT shall continually review its operations in a manner that ensures that SRT seeks value for money and opportunities for innovation across Operator Services.
- 7.2 Where SRT identifies such opportunities, SRT, when taking and/or implementing the said opportunities, shall take into consideration the Authority's policy objectives and that this paragraph 7 shall not provide SRT with any relief from any other obligation upon SRT in terms of this Agreement.

SCHEDULE 13.2**THIS IS SCHEDULE 13.2 REFERRED TO IN THE FOREGOING SCOTRAIL GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND SCOTRAIL TRAINS LIMITED****Information****1. General Information**Corporate information

- 1.1 SRT shall provide the following information to SRH on or before the Commencement Date and shall notify SRH of any change to such information within 21 days of such change:
- (a) its name;
 - (b) its business address and registered office;
 - (c) its directors and company secretary;
 - (d) its auditors; and
 - (e) its trading name or names.
- 1.2 SRT shall inform SRH of any material change or proposed material change in its business (including the employment or the termination of employment of any Key Personnel, the termination of any Key Contract, any litigation or other dispute which may have a material effect on its business) and any material change in or restructuring of, the capitalisation or financing of SRT.

Operational and Performance-related Information to be provided by SRT

- 1.3 SRT shall provide to SRH the information specified in the Appendices to this Schedule 13.2 at the times specified therein.
- 1.4 The Appendices to this Schedule 13.2 shall be interpreted in accordance with any guidance issued by SRH from time to time for that purpose.

Maintenance of Records

- 1.5 SRT shall maintain true, up to date and complete records of all of the information required to be provided by SRT under this Agreement.
- 1.6 Each record required to be maintained by SRT in accordance with this Schedule 13.2 shall be held for a period of 7 years following the date on which such record was required to be created.
- 1.7 References to records in this Schedule 13.2 shall include records maintained under any Franchise Agreement (or grant agreement) to the extent that such records relate to the Operator Services and SRT has access to them (which it shall use all reasonable endeavours to secure).
- 1.8 SRT shall not be responsible for any records maintained under any Franchise Agreement, as referred to in paragraph 1.7, being true, up to date and complete. Notwithstanding the foregoing, as soon as reasonably practicable after becoming aware that any such records are not true, complete and up to date, SRT shall take all reasonable steps to remedy any such deficiency, and shall thereafter maintain such records in accordance with paragraph 1.5.

Information to Stakeholders

- 1.9 SRT shall comply with any reasonable requests and guidance issued by Authority and/or SRH from time to time in respect of the provision of information to and co-operation and consultation with Stakeholders.

Public Sector Equality Duty

- 1.10 SRT shall, upon request by SRH, provide all and any information which may be required by the Authority and/or SRH in order to assist the Authority and/or SRH in complying with its Public Sector Equality Duty.

2. Business Plans

Initial Business Plan

- 2.1 On or before Day One, SRT shall deliver to SRH and the Authority, for review, its draft Initial Business Plan and supporting Business Action Plans for the first Operator Year.
- 2.2 Each party, acting reasonably and through sufficiently senior representatives, shall use all reasonable endeavours to discuss and seek to agree the Initial Business Plan and supporting Business Action Plans in a timely manner and, in any event, before the first Weekday of the fourth Reporting Period of the first Operator Year. During such period, SRT shall comply with any written requests made by the Authority and/or SRH to:
- (a) provide further detail or evidence in relation to the draft Initial Business Plan (and/or supporting Business Action Plans); and/or
 - (b) amend the draft Initial Business Plan (and/or supporting Business Action Plans) in accordance with the Authority's and/or SRH's requirements and provide the amended draft to the Authority and SRH.
- 2.3 If the Initial Business Plan is not agreed by the parties before the first Weekday of the fourth Reporting Period of the first Operator Year, then the Initial Business Plan (including any supporting Business Actions Plans and the Business Plan Commitments Schedule) may be determined by the Authority acting reasonably by written notice to SRH and SRT.

Content of the Business Plan

- 2.4 Each Business Plan shall, as a minimum, include (unless otherwise agreed among the parties in writing and in advance):
- (a) a detailed description of the following items:
 - i. Accessible Travel
 - ii. Alliancing
 - iii. Brand & Marketing
 - iv. Business Continuity
 - v. Business Development
 - vi. Car Parking
 - vii. Climate Resilience
 - viii. Community Rail
 - ix. Customer Engagement
 - x. Cycling
 - xi. Fares & Ticketing
 - xii. Heritage
 - xiii. Pensions
 - xiv. People & Culture
 - xv. Performance Regimes
 - xvi. Stations

- xvii. Sustainability
- xviii. Tourism
- xix. Train Service Specification and Rolling Stock
- xx. Transport Integration

- (b) a detailed description of how SRT shall achieve the policy outcomes detailed in the Policy Compendium;
- (c) a detailed description of the Business Plan Commitments (including the achievement of relevant milestones);
- (d) the financial cost/revenue associated with the Business Plan Commitments and the timescales for achievement of those Business Plan Commitments by SRT;
- (e) a description as to how SRT will be able to meet its obligations under this Agreement for the relevant Operator Year, supported by operational plans and strategy plans demonstrating this;
- (f) details of any investments and initiatives proposed to be made or procured by SRT in relation to the Operator Services during the relevant Operator Year;
- (g) a summary of SRT's plans for marketing and developing the Operator Services;
- (h) a profit and loss forecast, cash flow forecast and forecast balance sheet for each of the 13 Reporting Periods in an Operator Year, together with a list of assumptions on the basis of which each such forecast has been prepared;
- (i) such information or detail as reasonably required by the Authority and/or SRH from time to time and as notified to SRT before agreement of the Business Plan;
- (j) a profit and loss forecast for each of the two successive years backed up by detailed assumptions and two further years based on a roll forward of assumptions;
- (k) the detail required by paragraph 2.2 of Schedule 1.3 (*Additional Service Specifications*);
- (l) the Information Strategy required in accordance with paragraph 2.2 of Schedule 1.3 (*Additional Service Specifications*); and
- (m) the C&M Strategy required in accordance with paragraph 2.22 of Schedule 1.3 (*Additional Service Specifications*);

(together the "**Business Plan Content Requirements**").

2.5 Each Business Plan shall, as a minimum, include for each Business Plan Content Requirement, detail on:

- (a) longer-term context and strategy for each Business Plan Content Requirement, which shall (without limitation) include identification and consideration of any anticipated or potential developments or enhancements which may be required to be reflected in the Business Plan with respect to any Operator Year during the relevant Business Plan Term to the extent that such developments or enhancements are within the reasonable contemplation of the parties at the time of agreement or determination of the relevant Business Plan; and
- (b) the strategies, actions, and processes that SRT intends to take or follow for the purposes of delivering each Business Plan Content Requirement.

2.6 Each Business Plan shall comply with all applicable requirements of the Framework Agreement.

Form of Business Plan

- 2.7 Each Business Plan shall be in such format as agreed by the parties in advance.
- 2.8 The parties agree that the Business Plan Commitments (and the information detailed at paragraphs 2.4(c) and (d)) will be described and listed separately in a schedule to the Business Plan so that the said commitments can be easily and clearly identified (in the Authority's reasonable opinion) as the Business Plan Commitments ("**Business Plan Commitment Schedule**").
- 2.9 Without prejudice to paragraph 2.8, SRT shall comply with any guidance issued by the Authority and/or SRH from time to time as to its/their reasonable requirements for the format of any Business Plan.

Annual Business Plan Review

- 2.10 The Authority may, at its discretion, no later than 4 Reporting Periods prior to the start of each Operator Year (or such other period as required by the Framework Agreement from time to time) notify SRH and SRT of the Authority's requirements for the Business Plan for the upcoming Operator Year ("**Authority Business Plan Requirements**").
- 2.11 By no later than 3 Reporting Periods prior to the start of each Operator Year (other than the first Operator Year) (or such other period as required by the Framework Agreement from time to time), SRT shall deliver to SRH and the Authority for review, a draft Updated Business Plan and supporting Business Action Plans for the upcoming Operator Year which:
- (a) is in substantially the same form as the immediately preceding Business Plan agreed in accordance with this Agreement (unless otherwise notified in the Authority Business Plan Requirements), revised to:
 - (i) include the information available to SRT as at the date of its delivery;
 - (ii) comply with the Authority Business Plan Requirements;
 - (b) containing a statement of the differences between such Updated Business Plan and the immediately preceding Business Plan together with an explanation of such differences;
 - (c) containing revised financial and operational models, together with a detailed statement and explanation of any material difference in the outputs provided by such financial and operational models and any such models provided in the immediately preceding Business Plan;
 - (d) containing details of progress made in respect of any existing Business Action Plans;
 - (e) containing a revised profit and loss forecast, cash flow forecast and forecast balance sheet for each of the 13 Reporting Periods in that Operator Year, together with a list of assumptions on the basis of which each such forecast has been prepared;
 - (f) containing revised Business Plan Content Requirements, together with a detailed statement and explanation of any material difference; and
 - (g) continuing forecasts for anticipated moves on costs and revenues likely to impact on the Business Plan Term forecasts and associated assumptions.
- 2.12 Each party, acting reasonably and through sufficiently senior representatives, shall use all reasonable endeavours to discuss and seek to agree Updated Business Plans and supporting Business Action Plans and strategy plans in a timely manner and, in any event, by no later than 1 Reporting Period prior to the start of the upcoming Operator Year (or such other period as required by the Framework

Agreement from time to time). During such period, SRT shall comply with any written requests made by the Authority and/or SRH to:

- (a) provide further detail or evidence in relation to the draft Updated Business Plan (and/or supporting Business Action Plans); and/or
- (b) amend the draft Updated Business Plan (and/or supporting Business Action Plans) in accordance with the Authority's and/or SRH's requirements and provide the amended draft to the Authority and SRH.

2.13 If the Updated Business Plan is not agreed by the parties in accordance with the timescales required at paragraph 2.11, then the Updated Business Plan may be determined by the Authority acting reasonably by written notification to SRH and SRT.

Business Plan Dispute

2.14 Should SRH and/or SRT consider any Business Plan as determined by the Authority to be manifestly unreasonable then SRH and/or SRT may notify the Authority of that view within ten (10) Weekdays of the determination ("**Business Plan Dispute**"), and the Authority shall consider (in good faith) any representations from SRH and/or SRT on that matter which are properly supported by evidence and decide whether to amend the relevant Business Plan. If within ten (10) Weekdays following the Authority's re-determination, SRH and/or SRT continue to consider the Authority's determined Business Plan to be manifestly unreasonable then such matter may be referred by the parties for resolution under the Dispute Resolution Rules provided that the relevant Business Plan as determined by the Authority shall apply pending the outcome of such referral.

Amendments to agreed Business Plans

2.15 SRT shall:

- (a) notify SRH (and SRH shall notify the Authority) as soon as reasonably practicable if the business outlook or prospective financial results of SRT are likely to be materially different from those specified in the most recent Business Plan; and
- (b) within 1 month of any request by SRH and/or the Authority following receipt of a notification in accordance with paragraph 2.15(a), supply SRH and the Authority with a revised draft Updated Business Plan for the remainder of the Operator Year which reflects the latest view of its business.

2.16 The revised draft Updated Business Plan shall then be considered by the parties in accordance with paragraphs 2.11 to 2.13 above.

Business Plan Commitments

2.17 Schedule 1.6 (*Business Plan Commitments*) shall apply to SRT's delivery of the Business Plan Commitments.

Provisions relating to Business Plans

2.18 SRH and SRT shall, and the Authority may at its discretion, attend such meetings as requested by a party in connection with any Business Plan.

2.19 SRT shall:

- (a) make such presentations as requested by the Authority and/or SRH in connection with any Business Plan; and
- (b) make Business Plans available for discussion at Operation Performance Meetings.

- 2.20 SRT shall comply with any guidance issued by SRH and/or the Authority about how and with whom any consultation on the content of a Business Action Plan is to take place.
- 2.21 Any proposal in a Business Action Plan shall only be implemented if and to the extent that SRH and the Authority agrees it is appropriate to do so and subject to any conditions which may be imposed by SRH and/or the Authority.

Business Action Plan

- 2.22 SRH may at any time require SRT to produce a Business Action Plan in respect of any aspect of any Business Plan. Such Business Action Plan may include steps relating to:
- (a) timetable development;
 - (b) performance management improvement;
 - (c) customer service improvement;
 - (d) improvements in the quality of service delivery or the efficiency of delivery of Operator Services, including any investment to be made, procured or managed by SRT during the Term;
 - (e) patronage growth plan;
 - (f) integration;
 - (g) localism;
 - (h) Extended Restrictions of Use;
 - (i) Major Scottish Projects; and
 - (j) each of the matters listed in paragraph 2.4(a) above.

3. Financial and Operational Information

Accounting Records

- 3.1 SRT shall prepare and at all times during the Term maintain true, up to date and complete accounting records as are required to be kept under Section 386 of the Companies Act 2006. Such records shall be prepared on a consistent basis for each Reporting Period.

Reporting Period Financial Information

- 3.2 SRT shall deliver to SRH, within 2 weeks of the end of each Reporting Period, Management Accounts for such Reporting Period, setting out a cashflow statement, profit and loss account and balance sheet for that Reporting Period and cumulatively for the Operator Year to date.
- 3.3 The Management Accounts shall also set out:
- (a) SRT's available cash balance on the final day of the Reporting Period to which the Management Accounts relate and SRT's forecast of:
 - (i) SRT's daily cash balance for the period of thirteen (13) weeks following the Reporting Period to which the Management Accounts relate;
 - (ii) the amount of working capital payment (if any) that SRT forecasts that it will require pursuant to paragraph 10 of Schedule 8.1 (*Grant Payments*) in respect of the three

(3) Reporting Periods following the Reporting Period to which the Management Accounts relate; and

- (iii) payments to and from any key suppliers of SRT;
- (b) a comparison of SRT's financial performance during such period against the forecast provided by SRT in the then current Business Plan;
- (c) a comparison of SRT's cumulative performance during Operator Year in which such period occurs against the forecast referred to in paragraph 3.3(b);
- (d) a detailed statement and explanation of any material difference between such Management Accounts and the forecast referred to in paragraph 3.3(b), cross-referring to deviations from the applicable operational models;
- (e) where the level of financial performance specified in the Management Accounts is worse than forecast by SRT in its current Business Plan, a Financial Action Plan to ensure that the level of financial performance forecast in its current Business Plan for the remainder of the currency of that Business Plan is achieved and SRT shall use all reasonable endeavours to implement such Financial Action Plan; and
- (f) details and explanations of any Notifiable Costs incurred and actions intended and/or implemented to mitigate Notifiable Costs;
- (g) a comparison on a line by line basis of Actual Cash Payments, Actual Cash Collections and Actual Capex Cash Payments of SRT compared to the Budgeted Cash Payments, Estimated Cash Collections and Periodic Budgeted Capex Cash Payments for that Reporting Period and a comparison on a line by line basis with the periodic profit and loss account as set out in the current Business Plan;
- (h) a detailed statement and a detailed and comprehensive written explanation of any material differences between the actual payments to and from all key suppliers of SRT and the forecast of such payments as referred to in paragraph 3.3(a)(iii); and
- (i) profit and loss, cash flow and balance sheet provided in accordance with the Budget (together with a detailed and comprehensive written explanation as to any changes in such forecasts from the previous such forecasts provided pursuant to the provisions of paragraph 3.3 of this Schedule 13) for each of the following thirteen (13) Reporting Periods.

Quarterly Financial Information

- 3.4 Within 4 weeks after the end of the 3rd, 6th, 9th and 12th Reporting Periods in each Operator Year, SRT shall deliver to SRH an updated version of the profit and loss forecast, cash flow forecast and forecast balance sheet provided in accordance with paragraph 2.4(h), for each of the following 13 Reporting Periods and associated assumptions of the above.
- 3.5 Where any Reporting Period falls partly within one Operator Year and partly within another, the results for each section of such Reporting Period falling either side of such Operator Year end shall be prepared on an accruals basis for each such section of such Reporting Period.

Annual Financial Information

- 3.6 Within 3 weeks of the end of each Operator Year, SRT shall deliver to SRH its Annual Management Accounts for that Operator Year.
- 3.7 SRT shall deliver to SRH:

- (a) in respect of any Operator Year other than the final Operator Year, its Annual Financial Statements for that Operator Year within 3 Reporting Periods of the end of that Operator Year; and
- (b) in respect of the final Operator Year, its Annual Financial Statements for the period from the start of that Operator Year to the end of the Operation Period within 3 Reporting Periods of the end of the Operation Period,

each together with a reconciliation to the Management Accounts for the same period.

3.8 SRT shall deliver to SRH at the same time as it delivers the relevant Annual Financial Statements pursuant to paragraph 3.7, an unqualified written report from SRT's auditors which confirms that such Annual Financial Statements:

- (a) comply with paragraph 3.11;
- (b) give a true and fair view of the amount of Revenue (including each revenue flow separately identified therein) earned by SRT during the relevant Operator Year; and
- (c) detail that the amount of Revenue referred to in paragraph 3.8(b) comprises only some or all of those revenue flows specified in the definition of Revenue.

3.9 Within 6 Reporting Periods after the end of each Operator Year, SRT shall deliver to SRH the following information:

- (a) certified true copies of its annual report and Annual Audited Accounts for that Operator Year, together with copies of all related directors' and auditors' reports;
- (b) a reconciliation to the Management Accounts for the same period;
- (c) a statement from SRT's auditors confirming compliance with the financial undertakings in Schedule 12 (*Financial Obligations and Undertakings*). Provided that SRH shall be entitled to discuss any element of the statement provided or the information provided by SRT to demonstrate compliance with the financial undertakings with SRT's auditors;
- (d) a statement of all Related Party Contract transactions undertaken by SRT with any Affiliate; and
- (e) a statement from SRT's auditors confirming that GAAP has been applied in a fair and consistent manner.

Accounting Standards and Practices

3.10 Each set of Management Accounts and Annual Management Accounts shall be:

- (a) drawn up in a form consistent with SRT's profit and loss account, cashflow projection and balance sheets contained in the Budget (or such form as may reasonably be required from time to time by SRH); and
- (b) prepared consistently in accordance with SRT's normal accounting policies, details of which shall be supplied, on request, to SRH and any changes to which shall be notified to SRH on submission of such accounts.

3.11 Each set of Annual Financial Statements and Annual Audited Accounts shall, save as stated in the notes thereto, be prepared and audited in accordance with the GAAP and the SPFM and consistently applied and in accordance with the Companies Act 2006 and, together with those notes and subject to any qualifications contained in any relevant auditors' report, shall give a true and fair view of the state of affairs and profits of SRT for the period covered by such accounts.

- 3.12 SRT shall not, without the express written consent of SRH, make any alteration to its accounting policies or basis of preparation in relation to its Management Accounts, Annual Management Accounts or Annual Audited Accounts.

Adjustment and Restatement of the Annual Audited Accounts

- 3.13 SRT shall promptly notify SRH as soon as it becomes aware of any requirement to adjust or restate the Annual Audited Accounts and shall deliver to SRH any such adjusted or restated Annual Audited Accounts as soon as such accounts are available. SRT shall provide SRH (with a copy also being provided to SRT's auditors) with a clear written commentary prepared by its finance director, giving reasons for the adjustment or restatement and, SRT shall promptly update any calculations made pursuant to this Schedule 13 which are affected by the adjustment or restatement. SRT shall, as applicable, provide SRH with a nil financial settlement return as evidence that any financial claims previously settled remain unimpacted by the adjustment or restatement.

4. Safety Information

- 4.1 SRT shall co-operate with any request of SRH from time to time for provision of information and/or preparation and submission of reports detailing or identifying compliance with safety obligations set out in the Safety Regulations including any breaches of the Safety Regulations.
- 4.2 SRT shall notify SRH as soon as practicable of the receipt and contents of any formal notification relating to safety or any improvement or prohibition notice received from the ORR. Immediately upon receipt of such notification or notice, SRT shall provide SRH with a copy of such notification or notice.

5. Further Information

- 5.1 SRT shall:

- (a) deliver to SRH, or procure the delivery to SRH of, such information, records or documents as SRH may request within such period as SRH may reasonably require and which relates to or is connected with SRT's performance of this Agreement;
- (b) procure that each Affiliate, Associate, contractor and sub-contractor of and consultant to SRT complies with paragraph 5.1(a) in respect of any information, records or documents that relate to its dealings with SRT in connection with SRT's performance of this Agreement.

- 5.2 The information referred to in paragraph 5.1(a) shall include, without limitation,:-

- (a) any agreement, contract or arrangement to which SRT is a party in connection with any rolling stock used in the operation of the Passenger Services;
- (b) in so far as SRT has or is able to obtain the same, any other agreement contract or arrangement which may be associated (directly or indirectly) with the procurement, leasing, financing or maintenance of any such rolling stock (including relative to any depots);
- (c) any agreement for the manufacture or supply of any rolling stock; or
- (d) any arrangements for the securitisation of any lease granted in respect of such rolling stock

- 5.3 SRH may require SRT to provide the information required to be provided under this Schedule 13 more frequently than set out in this Schedule 13.2.

- 5.4 SRH may require SRT to provide:

- (a) the information required to be provided under this Schedule 13.2, or, at SRH's discretion, more detailed financial information, at any time in connection with the re-letting of the ScotRail Operation; and

- (b) such unaudited accounts under such accounting policies as may be prescribed by SRH, acting reasonably, from time to time.

6. **Contraventions of this Agreement**

- 6.1 SRT shall notify and SRH so far as possible before it may occur and in any event as soon as reasonably practicable thereafter, of any contravention by SRT of any provision of this Agreement. This includes where SRT is under an obligation to use reasonable endeavours, all reasonable endeavours or best endeavours to achieve a particular result by a particular time, where such result is not achieved by such time.
- 6.2 SRT shall deliver to SRH or procure the delivery to SRH of, such information, records or documents as SRH may request within such period as SRH may reasonably require for the purpose of determining the existence, likelihood, nature or scope of any contravention of, Event of Default or Executive Team Review under, this Agreement.

7. **Information from Third Parties**

- 7.1 SRT shall, if SRH so requests, use all reasonable endeavours to ensure that SRH has direct access to any information, data or records relating to SRT which is or are maintained by third parties and to which SRH is entitled to have access, or of which SRH is entitled to receive a copy, under this Agreement.
- 7.2 SRT shall, if SRH so requests, procure the provision by RSP to SRH of such information, data and records as SRT is entitled to receive under the Ticketing and Settlement Agreement, in such form as SRH may specify from time to time. Such obligation shall be subject to the payment by SRH of the costs incurred by RSP in providing such information.
- 7.3 The obligations of SRT under this Schedule 13.2 to provide information shall not apply if SRH notifies SRT that it has received the relevant information directly from any other person (including Network Rail or RSP). SRT shall, if the Authority and/or SRH so requests, confirm or validate any such information which is received from any such other person.

8. **Information To Third Parties**

SRT shall whenever requested by SRH, confirm what information SRT has provided to Local Authorities, Visit Scotland or other Stakeholders pursuant to paragraph 1.9 of this Schedule 13.2 (*Information*).

9. **Compatibility of Information**

- 9.1 All financial, operational or other information, and any data and records required to be provided under this Agreement shall be provided, if so requested by SRH, in a form compatible with SRH's electronic data and records systems on the Commencement Date, as modified from time to time in accordance with paragraph 10.
- 9.2 SRH and SRT shall ensure that the interconnection of such systems or the provision of such information, data and records under this Agreement will not result in any infringement of any third party Intellectual Property Rights to which its systems or such information, data or records may be subject.

10. **Development of Computer Systems**

- 10.1 SRT shall at all times during the Term, subject to paragraph 10.4, have the necessary Computer Systems to enable it to comply with its information-provision obligations in paragraph 9 of this Schedule 13.2.

10.2 SRT shall co-operate in accordance with paragraph 10.3 with SRH and any third party that SRH may reasonably specify in the development of:

- (a) SRT's Computer System;
- (b) the Authority's Computer System;
- (c) SRH's Computer System;
- (d) any railway industry-wide Computer System; and/or
- (e) any other Computer System, including any new Computer System, SRH may specify

in order that Computer Systems within the railway industry use (where appropriate) the same or compatible computer language, format, networks and protocols.

10.3 In co-operating in developing any of the Computer Systems specified by SRH in accordance with paragraph 10.2 of this Schedule 13.2, SRT shall, when requested by SRH:

- (a) make appropriately skilled and qualified Operator Employees reasonably available, free of charge to:
 - (i) attend meetings with SRH and/or such third party to discuss and review the need for enhancement or replacement of any Computer System;
 - (ii) provide SRT's opinion on any updated specifications for the enhancement of any Computer System;
 - (iii) provide SRT's opinion on any specifications for any replacement Computer System;
 - (iv) review and comment upon implementation timetables and programmes for any enhancement of any Computer System or any replacement Computer System;
 - (v) make available files and data from existing Computer Systems for down-loading onto any enhanced or new Computer System installed;
 - (vi) assist with the commissioning of and fault finding with any enhanced or new Computer System installed; and
 - (vii) make recommendations for modifications to any existing (whether enhanced or otherwise) or new Computer System in the light of operational experience; and
- (b) allow SRH's employees, agents and contractors access to any existing Computer System to effect any necessary change-over arrangements before the introduction of any enhanced or new Computer System.

10.4 If and to the extent requested by SRH, SRT shall:

- (a) carry out the procurement, project management and acceptance of any enhancement of any existing Computer System, or replacement of an existing Computer System with a new Computer System; and
- (b) enter into such maintenance or support contracts as are necessary to maintain or support any enhanced or new Computer System,

and the cost and revenue effects arising from SRT's compliance with this paragraph 10.4 shall constitute a Change.

10.5 SRT shall use any enhanced or new Computer System developed with the co-operation of SRH in accordance with paragraph 10.3 for the purposes for which such Computer System was intended.

11. **Information Appendices**

SRT shall comply with terms of:-

11.1 Appendix 1: (*Efficient Operator*);

11.2 Appendix 2: (*Key Assets*);

11.3 Appendix 3: (*Operational Information*); and

11.4 Appendix 4: (*Passenger Journeys, Miles and Earning Information*).

APPENDIX 1 TO SCHEDULE 13.2

Efficient Operator

1. Information about the Efficiency of SRT

1.1 SRT shall:

- (a) at all times during the Term maintain records in relation to the areas and the information described in this Appendix 1; and
- (b) subject to paragraph 1.2, provide to SRH the information set out in the following tables at the frequency specified in the column of each such table headed "**When information to be provided**".

1.2 When so requested by SRH, SRT shall, within such reasonable period as SRH may specify, make such information available for review by SRH by reference to:

- (a) such level of disaggregation (including by Route or Service Group or Sector) as is reasonably specified by SRH; and
- (b) any particular day, week or other longer period as is reasonably specified by SRH.

2. The following key shall apply to the tables in this Appendix 1:

A = Information to be provided on or before 31 December of each Operator Year;

B = Information to be provided for every Reporting Period within 10 days of the last day of each Reporting Period; and

C = Information to be provided annually within 10 days of the last day of each Operator Year (which obligation begins from the end of the first Operator Year onwards).

Table 1 Rolling stock vehicles

Information to be provided	Class of Rolling Stock Vehicle			When information to be provided
	Class aaa	Class bbb	Class xxx	
Number of rolling stock vehicles in the Train Fleet				A
Number of rolling stock vehicles locked out of use in service in any one train, identified by train id/head code/diagram				A
Number of rolling stock vehicles scheduled to be in service in peak hour as a percentage of the number of rolling stock vehicles in the Train Fleet				A
Number of rolling stock vehicle hours scheduled in service per Reporting Period as a percentage of number of rolling stock vehicles in the Train Fleet x 24 hours x 28 days (total rolling stock vehicle hours)				A

Information to be provided	Class of Rolling Stock Vehicle			When information to be provided
	Class aaa	Class bbb	Class xxx	
Total standard time scheduled preventative maintenance rolling stock vehicle laws per Reporting Period as a percentage of total rolling stock vehicle hours				A
Performance measured by technical failures causing 3 mins delay or more expressed as miles per technical failure				B
Key reliability issues and improvement actions				B
Availability, actual versus planned				B
Rolling Stock Stewardship Report				B
The number of rolling stock vehicles locked out of use in service in one train, identified by the train id/head code/diagram on a daily basis				B

3. Where trains operated by SRT consist of locomotive(s) and coaches, SRT shall separate the information provided for locomotive(s) and coaches.
4. For Class of Rolling Stock Vehicle in the above Table, the information is to be provided as if there was a separate column for each class of vehicle in the Train Fleet.

Table 2 Information related to Efficiency of Operation

Information to be provided	When information to be provided
Total passenger journey kilometres divided by total staff hours plus contractor hours	A
Number of scheduled diagrams per Reporting Period divided by the number of drivers employed	A
The number of depot maintenance employees (including train maintenance staff and supervisory and administrative staff at the relevant depot) divided by the number of rolling stock vehicles in the Train Fleet	A
Total number of employees divided by the number of rolling stock vehicles in the Train Fleet	A
Number of indirect employees (head office, management and supervisory and administrative staff) relative to the number of direct employees (drivers, train crew, station staff and train maintainers), expressed as a percentage	A

Table 3 Financial Efficiency Ratios

Information to be provided	When information to be provided
Total cost of service operations (all SRT's costs excluding head office, management and supervisory and administrative staff costs and head office lease and facilities costs) divided by total scheduled vehicle miles	A
Total maintenance cost (including depot costs, spare parts replacement train maintenance staff and depot supervisory costs, interior and exterior cleaning costs, depot maintenance costs excluding any vehicle fuel costs) divided by total scheduled vehicle miles	A
Total cost (sum of all SRT's costs) divided by total number of total passenger journey kilometres	A
Total cost of service operations (all SRT's costs excluding head office, management and supervisory and administrative staff costs and head office lease and facilities costs) divided by total passenger journeys	A
Administrative costs (head office, management and supervisory and administrative staff costs and head office lease and facilities costs) divided by total scheduled vehicle miles	A
Total fares revenue divided by the total number of total passenger journey kilometres	A
Ticket selling and revenue protection costs as a percentage of total revenue. Ticket selling and revenue protection costs shall include ticket office staff costs, ticket machine and ticket validation equipment maintenance costs, ticket procurement and ticket costs, revenue protection staff costs (less penalty fare (if any) receipts), costs associated with RSP and Ticketing and Settlement Agreement compliance, and commissions paid to third parties in respect of ticket sales plus ticket gating machine charges, maintenance cost and gating staff costs	A
Percentage of ticket sales revenue collected by ticket office staff	A
Percentage of ticket sales revenue collected by on train staff	A
Percentage of ticket sales revenue collected by automatic ticket machines	A
Percentage of total revenue obtained from season tickets	A
Cash flow of the ScotRail Operation	A
The total value of any efficiencies delivered	A
The growth of revenue from Passenger Services	A
The amount of ticketless travel (% of ticketless journeys versus total passenger journeys)	A

Ratio of passenger revenues divided by costs	A
Result before subsidy (real/indexed): Earnings before interest, tax, (depreciation, amortisation) & subsidy	A

Table 4 Safety

Information to be provided	When information to be provided
Accidents reported (staff and passengers) divided by the number of passenger journeys	C
Crime incidents reported (staff and passengers) divided by the number of passenger journeys	C

Table 5 HR Information

Information to be provided	When information to be provided
Evidence of SRT's vision, company goals and HR Strategy that supports it	C
Evidence of a human resource database capable of informing the operation of SRT and supporting the production of a manpower plan	C
Evidence of a 5 year manpower plan, rolling forward and updated annually	C
Evidence of working towards " Investors in People " accreditation or similar	C
Evidence of a performance management process applicable to all staff	C
Evidence of an objective, transparent and fair recruitment process	C
Evidence of analysis of employment and recruitment data by gender, ethnic category, disability function and grade	C
Evidence of analysis of turnover by cause, retirement, dismissal, redundancy, ill health retirement, death	C
Evidence of succession planning, identification of prospective " hot spots " and actions taken to address them	C
Evidence of an Equalities plan, actions taken in terms of it and impact of implementing it	C
Evidence of historical and current data on salaries, earnings, hours of work, overtime worked, free day/rest day working, and other main terms and conditions for all key grade groups	C

Information to be provided	When information to be provided
Evidence of benchmark comparator data	C
Evidence of non-financial reward and recognition initiatives	C
Evidence of a competence framework in place based on national occupational standards	C
Evidence of an assessment and verification framework to enable the delivery of NVQs and SVQs	C
Evidence of a structured induction programme (supported by hard data) incorporating a rail industry perspective to all new entrants	C
Evidence (supported by hard data (numbers / %)) of staff with NVQs / SVQs (or equivalent externally recognised qualification) by grade against target	C
Evidence (supported by hard data (numbers / %)) of structured training and development for “ Strategic ”, “ Supervisory ” and “ Operational ” managers as well as the wider workforce	C
Evidence of a collective “ consultation and bargaining framework ”	C
Evidence (supported by hard data) (numbers/%) of people days lost through industrial action and a record of industrial action short of strike action	C
Evidence of an annual staff attitude survey	C
Evidence of actions taken arising from feedback received from the staff attitude survey	C
Evidence of company links to the community through its staff	C
Evidence of a company communication and briefing strategy	C
Evidence of a robust process of briefing, core briefing material and 2-way communication and feedback	C
Evidence of staff hours lost through sickness and other absence	C
Evidence of staff hours lost through training	C
Evidence of average wage and the minimum hourly rate and/or wage of all directly employed staff	C
Evidence of the number of apprenticeships created	C
Evidence of steps taken to eliminate discrimination and promote equality	C

Table 6 – Other

Information to be provided	When information to be provided
Monitoring of Resilience Plan implementation	C

APPENDIX 2 TO SCHEDULE 13.2**Key Assets****Information about assets used by SRT**

1. SRT shall at all times during the Term maintain records covering the following information:
 - 1.1 for each Primary Operator Asset or other asset which is the subject of, or operated under, a Key Contract:
 - (a) the progress and completion of all work described in the maintenance schedules and manuals;
 - (b) all operating manuals (including any safety related regulations); and
 - (c) all permits, licences, certificates or other documents required to operate such asset; and
 - 1.2 a printed or electronic list of all assets owned by SRT from time to time (excluding, unless otherwise requested by the Authority, any office furniture and consumable items).
 2. SRT shall provide copies of:
 - 2.1 the records referred to in paragraph 1.1; and
 - 2.2 the records referred to in paragraph 1.2,
- to the Authority and/or SRH when requested to do so from time to time by the Authority and/or SRH.

APPENDIX 3 TO SCHEDULE 13.2**Operational Information****1. Information About the Performance of SRT**

- 1.1 SRT shall at all times during the Term maintain records in relation to its operational performance under this Agreement, covering the areas and the information described in this Appendix 3 and shall, subject to paragraph 1.3 of this Appendix 3, provide such information to SRH at the frequency specified in the column of each such table headed "**When information to be provided**".
- 1.2 The information referred to in paragraph 1.1 shall include details as to whether or not any curtailment, diversion, delay or failure to attain any connection is attributable, in SRT's opinion, to either a Force Majeure Event or the implementation of a Service Recovery Plan.
- 1.3 When so requested by SRH, SRT shall, within such reasonable period as SRH may specify, make such information available for review by SRH by reference to:
- (a) such level of disaggregation (including by Route or Service Group or Sector and also including between the Services) as is reasonably specified by SRH; and
 - (b) any particular day, week or other longer period as is reasonably specified by SRH.
- 1.4 The following key shall apply to the Table in this Appendix 3:
- A = Information to be provided on or before any Passenger Change Date;
 - B = Information to be provided for every Reporting Period within 17 days of the last day of each Reporting Period; and
 - C = Information to be provided annually within 10 days of the last day of each Operator Year.
- 1.5 For the purpose of this Appendix 3, a business day is any day between Monday to Friday (inclusive) excluding public holidays.

Table - Operational Information per Reporting Period

Information to be provided per Reporting Period	Information (Format)	When information to be provided
Number of Passenger Services		
Number of Passenger Services in the Timetable	[number]	B
Number of Cancellations and Partial Cancellations		
Number of Passenger Services in the Applicable Timetable which were the subject of a Cancellation	[number]	B
Number of Passenger Services in the Applicable Timetable which were the subject of a Partial Cancellation	[number]	B
Number of Passenger Services in the Applicable Timetable which were the subject of a Cancellation attributable to SRT's implementation of a Service Recovery Plan	[number]	B
Number of Passenger Services in the Applicable Timetable which were the subject of a Partial Cancellation attributable to SRT's implementation of a Service Recovery Plan	[number]	B
Any instance of 50 per cent, or more of the Passenger Services in the Timetable being the subject of a Cancellation on any day on any line or Route or in any Service Group	[number]	within 2 business days of the occurrence
Where there is a difference between the Timetable and the Applicable Timetable on any day which is attributable to the introduction, removal or alteration of a Passenger Service by SRT (or with the agreement of SRT in contravention of its obligations under Schedule 1 (<i>Passenger Service Obligations</i>)), the following: (a) the fact of such difference; (b) the number of: (i) Passenger Services affected; and (ii) Cancellations or Partial Cancellations which would have arisen if the Timetable on that day had been the same as the Applicable Timetable	[number]	B
Number of Passenger Services in the Applicable Timetable which were the subject of a cancellation and which satisfied the conditions of the term Cancellation , except that such cancellations occurred for reasons attributable to the occurrence of a Force Majeure Event	[number]	B
Number of Passenger Services in the Applicable Timetable which were the subject of a partial cancellation and which satisfied the conditions of the term Partial Cancellation , except that such partial cancellations occurred for reasons attributable to the occurrence of a Force Majeure Event.	[number]	B
Number of Passenger Services in the Applicable Timetable which were the subject of a cancellation and which satisfied the conditions of the term Cancellation , except that such cancellations occurred for reasons attributable to the	[number]	B

Information to be provided per Reporting Period	Information (Format)	When information to be provided
exercise by Network Rail of its rights pursuant to the Track Access Agreement		
Number of Passenger Services in the Applicable Timetable which were the subject of a partial cancellation and which satisfied the conditions of the term Partial Cancellation , except that such partial cancellations occurred for reasons attributable to the exercise by Network Rail of its rights pursuant to the Track Access Agreement	[number]	B

Capacity		
Number of Passenger Services that have less than the required Passenger Carrying Capacity specified in the Train Plan	[number]	B
Number of Passenger Services that have less than the required Passenger Carrying Capacity specified in the Train Plan attributable to SRT's implementation of a Service Recovery Plan	[number]	B
Number of Passenger Services that have less than the required Passenger Carrying Capacity specified in the Train Plan attributable to the occurrence of a Force Majeure Event	[number]	B

Minutes Delay and Punctuality		
Number of Minutes Delay attributable to SRT	[minutes]	B
Number of Minutes Delay attributable to Network Rail	[minutes]	B
Number of Minutes Delay for such Reporting Period for which the attribution is in dispute between Network Rail and SRT	[minutes]	B
Number of Minutes Delay for the 12 preceding Reporting Periods for which the attribution remains in dispute between Network Rail and SRT	[minutes]	B
Number of Minutes Delay from the 12 preceding Reporting Periods for which the attribution remains in dispute between Network Rail and SRT	[minutes]	B
Number of Minutes Delay from the 12 preceding Reporting Periods for which disputed attribution has been resolved or determined since SRT's previous report pursuant to paragraph 2.7 of Schedule 7.1 (<i>Train Operating Performance</i>) and the number of such Minutes Delay attributed to each of SRT and Network Rail as a result of such resolution or determination	[minutes]	B
Number of Minutes Delay attributed to the occurrence of a Force Majeure Event	[minutes]	B
Passenger Services arriving at terminus stations less than 5 minutes late (or 10 minutes late in the case of designated	[%]	B

long distance services) as a percentage of total number of scheduled passenger service arrivals at terminus stations		
Average duration of delay per delayed Passenger Service	[minutes]	B
Number of Passenger Services in the Timetable which arrive at their scheduled final destination: (a) Early (b) On time (c) 1 to 4.59 minutes late (d) 5 to 9.59 minutes late (e) 10 to 14.59 minutes late (f) 15 to 19.59 minutes late (g) 20 to 29.59 minutes late (h) 30 to 59.59 minutes late (i) 60 or more minutes late, measured against scheduled arrival time of such Passenger Services in the Timetable any Passenger Services which suffers a Cancellation will be recorded as having arrived at destination 20 to 29.59 minutes late)	[number]	B
Passenger delay per Passenger Service	[minutes]	A

Train Mileage		
Aggregate Train Mileage scheduled in the Timetable	[mileage]	B
Aggregate Train Mileage operated	[mileage]	B

Passenger's Charter Information		
In respect of each Charter Group (and in each case, consistent with the Passenger's Charter Guidelines) for such Reporting Period: (a) the number of Passenger Services planned for the purpose of the Passenger's Charter; (b) the number of such Passenger Services run as defined in the Passenger's Charter; (c) the percentage of Passenger Services as defined in the Passenger's Charter; (d) the calculated Reliability Moving Annual Average as defined in the Passenger's Charter; (e) the number of Passenger Services having a punctuality target for the purpose of the Passenger's Charter; (f) the number of Passenger Services achieving the punctuality target as defined in the Passenger's Charter; (g) the percentage of Passenger Services achieving the punctuality target as defined in the Passenger's Charter; and (h) the calculated Punctuality Moving Annual Average as defined in the Passenger's Charter (i) the number of delay = repay payments made	[number] [number] [%] [maa] [number] [number] [%] [maa] [number]	B

(j)	the amount of delay = repay payments made	[sum]	
(k)	the amount of payments under (j) paid at scene;	[%]	
(l)	the amount of payments under (j) sent in post;	[%]	
(m)	the amount of payments under (j) made by other method (not (k) or (l))	[%]	

APPENDIX 4 TO SCHEDULE 13.2

Passenger Journeys, Miles and Earnings Information

Information About Journey Numbers and Earnings

1. SRT shall at all times during the Term maintain records in relation to the information specified in the following table and shall, subject to paragraph 1.2, provide:
 - 1.1 such information to SRH; and
 - 1.2 the information specified in such table at the frequency specified in the column of such table headed **“When information to be provided”**.
2. When so requested by SRH, SRT shall make such information available for review by SRH by reference to:
 - 2.1 such level of disaggregation (including by Route or Service Group and also including between Services) as is specified by SRH from time to time; and
 - 2.2 any particular day, week or other longer period as is specified by SRH from time to time.
3. The following key shall apply to the Table in this Appendix 4:

A = Information to be provided on or before any Passenger Change Date;

B = Information to be provided for every Reporting Period within 10 days of the last day of each Reporting Period; and

C = Information to be provided annually within 10 days of the last day of each Operator Year.

Table - Passenger Journey Information

Information to be provided	Information (Format)	When information to be provided
Number of national passenger rail journeys (meaning the number of journeys by passengers from the station where such passengers join the railway passenger services to the station where such passengers exit the railway passenger services). A national passenger rail journey may encompass more than one passenger rail train journey (meaning the number of journeys by passengers on any one train between stations, which travel may form the whole or part of a national passenger rail journey)	[number]	B
Number of passenger rail train journeys	[number]	B
Number of passenger miles (meaning the total number of passengers transported over the distance of one mile on the Passenger Services)	[number/mileage]	B
Earnings (meaning all income received from passengers. Earnings shall not be limited to income from Fares)	[£]	B
Farebox income (meaning income from Fares (showing the income for each ticket type for each line of route) which are valid for travel on the Passenger Services, or having such	[£]	B

Information to be provided	Information (Format)	When information to be provided
other meaning as the Authority may determine from time to time in its reasonable discretion)		
Other passenger revenue (meaning Earnings less Farebox income)	[£]	B

4. Where the information referred to in this Appendix 4 is held in a system operated by RSP or any other system, SRT may fulfil its obligations under paragraph 1 by procuring that SRH shall be granted access free of charge to such records in a readily accessible manner and in a format acceptable to SRH.
5. SRT shall advise SRH of any changes made to its systems or processes or those of RSP which materially change or affect the continuity of the records maintained pursuant to this Appendix 4. Such advice shall include an assessment of the materiality of the relevant change.

SCHEDULE 13.3**THIS IS SCHEDULE 13.3 REFERRED TO IN THE FOREGOING SCOTRAIL GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND SCOTRAIL TRAINS LIMITED****Co-operation****1. Development of Railway Industry Standards**

- 1.1 SRT shall at all times during the Term, co-operate with the Authority, SRH and any other competent authority in the development, modification, agreement and implementation of railway industry standards. References to **Railway Industry Standards** in this paragraph 1 shall include Railway Group Standards, TSIs, recommendations following accident investigations and any consultation documents on any proposed legislative change affecting the railway industry.
- 1.2 In co-operating with the Authority and/or SRH and/or any third party in developing any Railway Industry Standards, SRT shall make appropriately skilled and qualified Operator Employees reasonably available, free of charge to:
- (a) attend meetings with the Authority, SRH and/or such third party to discuss and review the need for the development, agreement, amendment or need for derogation from any Railway Industry Standards;
 - (b) provide SRT's opinion on any proposed Railway Industry Standards;
 - (c) provide SRT's opinion on any existing Railway Industry Standards or any replacement Railway Industry Standards;
 - (d) review and comment upon implementation timetables and programmes for any Railway Industry Standards or any replacement Railway Industry Standards;
 - (e) make recommendations for modifications to any existing or new Railway Industry Standards in the light of operational experience;
 - (f) make representations to competent authorities to prevent the introduction of new Railway Industry Standards where in SRT's opinion the introduction of such new Railway Industry Standards would cause disproportionate additional cost; and
 - (g) make representations to competent authorities to seek derogations from the application of new Railway Industry Standards where such new Railway Industry Standards are judged inappropriate by SRT.

2. System Interface Committees

- 2.1 SRT shall at all times during the Term co-operate with the reasonable requirements of any relevant System Interface Committees in the development, modification, agreement and implementation of any system interface recommendations made by those committees.
- 2.2 In co-operating with any relevant System Interface Committee, SRT shall make appropriately skilled and qualified Operator Employees reasonably available, free of charge to:
- (a) attend meetings with that committee to discuss and review the need for the development, agreement, amendment or need for derogation from any recommendations made by that committee;
 - (b) provide SRT's opinion on any such proposed recommendations;

- (c) review and comment upon implementation timetables and programmes for any such recommendations;
- (d) make recommendations for modifications to any existing system or system interface recommendations in the light of operational experience; and
- (e) make representations to competent authorities to seek derogations from the application of such recommendations where SRT reasonably believes that such derogations are appropriate.

3. **Development of Business Cases**

SRT shall co-operate with the Authority and/or SRH and/or any relevant third parties in the development of business cases connected with the improvement of the network (including any in respect of inter-modal schemes).

4. **Development of Industry Schemes**

SRT shall at all times during the Term actively, co-operate, in a manner consistent with it being a reputable Train Operator of the ScotRail Operation, with Network Rail, the Authority and SRH and the ORR and all other relevant railway industry bodies and organisations in relation to the development of anything which can reasonably be considered to be a railway industry system in relation to the attribution of train delay, the allocation of revenue and/or the collection and dissemination of industry wide information.

5. **Community Rail Partnerships and Heritage**

- 5.1 SRT shall contribute to, and seek to deliver, the Community Rail initiatives in accordance with the requirements of the Policy Compendium, from time to time, and will support the continued development, sustainment, growth and geographic expansion of Community Rail Partnerships and their activities in Scotland, in accordance with the requirements of the Policy Compendium.
- 5.2 SRT shall contribute to, and seek to deliver, the heritage initiatives in accordance with the requirements of the Policy Compendium, from time to time.
- 5.3 SRT shall:
 - (a) develop the Community Rail and heritage strategies in accordance with the requirements of the Policy Compendium;
 - (b) carry out or procure the carrying out of the strategies in each Operator Year;
 - (c) report progress to SRH and the Authority in determining and carrying out strategies no less than once every 3 Reporting Periods and/or as otherwise required by the Authority from time to time;
 - (d) co-operate, and work closely with the relevant parties detailed in the Policy Compendium in the formulation, assurance and/or delivery of the strategies;
 - (e) manage the budgets to fund each strategy, as detailed in the Policy Compendium; and
 - (f) publish an annual outcome report in accordance with the requirements of the Policy Compendium.
- 5.4 The parties agree that in the event that any part of the budgets referred to at paragraph 5.3(e) remains unspent within the relevant period, the Authority reserves the right, at its discretion, to distribute any unspent funds to other appropriate projects or programmes.

- 5.5 SRT shall, at all times during the Term, participate in the relevant Community Rail Partnership's governance, funding and activities.
- 5.6 SRT shall employ the equivalent one full time member of staff to assist with the creation, development and operation of Community Rail Partnerships.
- 5.7 SRT shall manage and administer the fund for Regeneration and Heritage strategy in accordance with the Policy Compendium that can be used to:
- (a) carry out structural repairs to disused buildings; and
 - (b) meet up to half of the costs of fitting out disused buildings for their intended use, or 60% for smaller community projects.

6. Station Investment

- 6.1 SRT shall at all times during the Term, co-operate with the Authority, SRH and any third party nominated by the Authority and/or SRH and notified to SRT in developing opportunities for financing investment at Stations or other stations served by Passenger Services in order to improve the station environment at such stations.
- 6.2 In co-operating with the Authority and/or SRH and/or any nominated third party in developing any such financing opportunities, SRT shall:
- (a) attend meetings with the Authority and/or SRH and/or such third party to discuss such opportunities;
 - (b) provide SRT's opinion on those opportunities;
 - (c) review and comment on implementation timetables and programmes for any such opportunities; and
 - (d) use all reasonable endeavours to achieve any necessary amendments to any Station Leases in order to facilitate the implementation of those opportunities.

7. Small and Medium-sized Enterprises

- 7.1 SRT shall at all times keep accurate and complete records of its contracts with, as to type and value, and interaction with SMEs in delivering the Operator Services.
- 7.2 By no later than 31 January in each year (and within one month of the end of the Operation Period) SRT shall deliver to the Authority and/or SRH a breakdown of the number of SMEs, and type and value of the contract SRT has so contracted with in providing the Operator Services during the calendar year (or part thereof) which ended on the immediately preceding 31 December or at the end of the Operation Period (as applicable).

SCHEDULE 13.4

THIS IS SCHEDULE 13.4 REFERRED TO IN THE FOREGOING SCOTRAIL GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND SCOTRAIL TRAINS LIMITED

Staff Obligations

SRT shall comply with the requirements in the Policy Compendium as related to people and culture, as updated from time to time when preparing the Business Plan in accordance with paragraph 2 of Schedule 13.2 (*Information*).

SCHEDULE 13.5

THIS IS SCHEDULE 13.5 REFERRED TO IN THE FOREGOING SCOTRAIL GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND SCOTRAIL TRAINS LIMITED

Safety and Personal Security

1. Safety and Security Review and Plan

1.1 Within six months of the Commencement Date, SRT shall carry out (to standards accepted by Rail Safety and Standards Board or its successor) an assessment of its prevailing safety culture. Within that time frame, SRT shall also produce a specific safety and security plan for on-board security on Passenger Services and for at stations which will identify steps that need to be taken to enhance safety and security and perceptions of safety and security. That assessment and plan shall be promptly made available to SRH and the Authority.

1.2 The said safety and security plan shall deal with on train and station security, identify key partners with who SRT shall work with, how they will train staff to deliver this and engagement with the British Transport Police and other appropriate organisations and authorities.

2. Rail Safety and Standards Board

2.1 SRT shall become a member of the Rail Safety and Standards Board.

2.2 SRT shall engage in the Rail Safety and Standards Board's activities including:

- (a) The consultation process for new standards, including European technical standards for interoperability (TSIs), railway group standards and any ATOC 'Codes of Practice';
- (b) The process of generating the 'Railway Safety Group Safety Plan' (**RSGSP**); and
- (c) The delivery of an appropriate contribution to that RSGSP.

2.3 SRT shall make available to the Authority, SRH and ORR on request the annual safety plan as a member of the Rail Safety and Standards Board SRT is required to produce.

3. Risk Management Strategy

SRT shall manage all significant risks to safety and security throughout the Term using clearly defined processes for identifying and managing those risks as part of an overall risk management strategy. SRT shall identify key performance indicators and monitor these on a quarterly basis, establishing detailed action plans where necessary, reporting such to the Authority and SRH.

4. Training

4.1 SRT shall establish a comprehensive training programme to determine and develop the safety competence of staff across the organisation.

4.2 SRT shall ensure that all on-board train crew employed by SRT are trained in emergency procedures before the later of the Commencement Date and the member of staff's first on-board duty.

5. Customer and Staff Security

Throughout the Term, SRT shall:

- (a) identify and monitor trends in customer security and verbal and physical abuse of staff;

- (b) establish and implement action plans to address such issues; and
- (c) adopt a policy of zero tolerance of offenders.

SCHEDULE 13.6

THIS IS SCHEDULE 13.6 REFERRED TO IN THE FOREGOING SCOTRAIL GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND SCOTRAIL TRAINS LIMITED

Integration

SRT shall comply with the requirements in the Policy Compendium, as updated from time to time, when preparing the Business Plan in accordance with paragraph 2 of Schedule 13.2 (*Information*).

SCHEDULE 14

THIS IS SCHEDULE 14 REFERRED TO IN THE FOREGOING SCOTRAIL GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND SCOTRAIL TRAINS LIMITED

Preservation of Assets

- Schedule 14.1: Maintenance of Operation**
- Schedule 14.2: Maintenance of Operator Assets**
- Schedule 14.3: Key Contracts**
 - Appendix: List of Key Contracts**
- Schedule 14.4: Designation of Operator Assets**
 - Appendix: List of Primary Operator Assets**
- Schedule 14.5: Dealings with Operator Assets**

SCHEDULE 14.1**THIS IS SCHEDULE 14.1 REFERRED TO IN THE FOREGOING SCOTRAIL GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND SCOTRAIL TRAINS LIMITED****Maintenance of Operation**

1. SRT shall maintain and manage the business of providing the Operator Services so that, to the greatest extent possible and practicable:
 - 1.1 SRT is able to perform its obligations under this Agreement; and
 - 1.2 a Successor Operator would be able to take over the whole or any part of the business of providing the Operator Services immediately at any time.
2. SRT's obligation under paragraph 1 shall include an obligation to ensure that any computer and information technology systems of SRT shared in whole or in part with Affiliates or third parties can be operated by a Successor Operator as a standalone system without continued reliance on such Affiliates or other third parties immediately from the date of termination of this Agreement without any reduction in functionality or any increase in maintenance or support costs to the Successor Operator (this obligation being without prejudice to any requirement for SRT to obtain consent to such arrangements relating to sharing computer and information technology systems from the Authority).
3. SRT shall use all reasonable endeavours to ensure that such Successor Operator would have immediate access to all Operator Employees and Primary Operator Assets for such purpose.
4. SRT shall maintain and manage the business of providing the Operator Services on the basis that such business will be transferred, in the manner contemplated under this Agreement, as a going concern at the end of the Operation Period to, and continued immediately thereafter by, a Successor Operator.
5. SRT shall use all reasonable endeavours to ensure that an appropriate number of employees (having sufficient skills, qualifications and experience) will transfer by operation of Law to any Successor Operator following the expiry of the Operation Period.
6. SRT shall comply with all requirements of the Authority to obtain or maintain the property and rights that a Successor Operator would require, or that it would be convenient for it to have, on the basis that the same will transfer by operation of Law to any Successor Operator following the expiry of the Operation Period; and SRT shall comply with all reasonable requirements of SRH to obtain or maintain the property and rights that a Successor Operator would require, or that it would be convenient for it to have, on the basis that the same will transfer by operation of Law to any Successor Operator following the expiry of the Operation Period.
7. SRT's obligations in this Schedule 14.1 shall apply regardless of whether the business of providing the Operator Services is continuing in whole or in part, is being split or merged in whole or in part with another business or otherwise having regard to the Authority's policy statements from time to time.

SCHEDULE 14.2

THIS IS SCHEDULE 14.2 REFERRED TO IN THE FOREGOING SCOTRAIL GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND SCOTRAIL TRAINS LIMITED

Maintenance of Operating Assets

1. **Operating Assets**

- 1.1 SRT shall maintain, protect and preserve the assets (including any Intellectual Property Rights or intangible assets) employed in the performance of its obligations under this Agreement (the **Operating Assets**) in good standing or good working order, subject to fair wear and tear.
- 1.2 SRT shall carry out its obligations under paragraph 1.1 so that the Operating Assets may be transferred at the end of the Operation Period to a Successor Operator and used by such Successor Operator in the provision or operation of similar services to the Operator Services.
- 1.3 Where any Operating Asset is lost, destroyed or otherwise beyond repair, the Operator shall replace the Operating Asset with property, rights or liabilities in modern equivalent form to the operating asset to be replaced. SRT shall at all times maintain an appropriate volume of Spares and/or an appropriate level of access to Spares from a third party, to enable it to perform its obligations under this Agreement.
- 1.4 The Authority and/or SRH may at any time require SRT to provide to SRH and/or the Authority a schedule specifying the condition of any asset or class of assets that it specifies for this purpose. Such schedule shall cover such aspects of asset condition as SRH and/or the Authority may reasonably require. If the relevant parties are unable to agree the content of such schedule of condition, any of them may refer the dispute for resolution in accordance with the Dispute Resolution Rules. Until such dispute is resolved, SRT shall comply with SRH's and/or the Authority's requirements, as the case may be, in respect of such schedule of condition.
- 1.5 SRT shall keep vested in it at all times during the Operation Period all Operator Assets designated as such pursuant to Schedule 14.4 (*Designation of Operator Assets*) as it may require in order to comply with:
 - (a) the Licences;
 - (b) any contracts of employment with Operator Employees;
 - (c) any relevant Fares;
 - (d) any Key Contracts; and
 - (e) any applicable safety legislation, regulations or safety standards and the Safety Certificate,
 in order to ensure that such assets may be designated as Primary Operator Assets.

2. **Brand Licences and Branding**

Brand Licences

- 2.1 SRH and SRT shall each comply with its obligations (if any) under each of the Brand Licences.

Branding

- 2.2 Paragraphs 2.3 to 2.5 shall apply to the extent that:

- (a) any of the Marks are not assigned to the Authority in accordance with paragraph 5 of Schedule 15.4 (*Provisions applying on and after Termination*);
- (b) SRH and/or SRT cannot provide an appropriate licence or relevant undertaking, in the Authority's reasonable opinion, to any of the Marks in accordance with paragraph 5 of Schedule 15.4 (*Provisions applying on and after Termination*);
- (c) the Authority consider the relevant Marks to be so distinctive or otherwise such that a Successor Operator could not reasonably be asked to use the relevant assets to which the relevant Marks are applied; and
- (d) SRH and/or SRT has not otherwise removed or covered such Marks in such a way as may be reasonably acceptable to the Authority prior to the expiry of the Operation Period,

and shall not apply to the extent that the relevant asset is not to be used by a Successor Operator in the provision of services similar to the Operator Services as notified by the Authority. The Authority shall notify SRT as soon as it becomes aware of whether or not any such asset is to be so used.

2.3 SRT shall pay to the relevant Successor Operator such amount as may be agreed between SRT and such Successor Operator, as being the reasonable cost (including any Value Added Tax for which credit is not available under Sections 25 and 26 of the Value Added Tax Act 1994) of covering such Marks or otherwise removing all indications of or reference to the Marks in a manner reasonably acceptable to the Authority. Such amount shall not in any event exceed the cost to the Successor Operator of replacing such Marks with its own. If SRT and the relevant Successor Operator fail to agree such cost within twenty (20) Weekdays of the expiry of the Operation Period, SRT shall submit such dispute for resolution in accordance with such dispute resolution procedures as the Authority may require. The amount to be paid to a Successor Operator under this paragraph may include the reasonable cost of:

- (a) removing or covering Marks from the exterior of any rolling stock vehicle;
- (b) removing or covering interior indications of the Marks including upholstery and carpets;
- (c) replacing or covering all station or other signs including billboards; and
- (d) otherwise ensuring that such removal, covering or replacement is effected with all reasonable care and in such manner that the relevant assets may reasonably continue to be used by a Successor Operator in the provision of the Operator Services.

2.4 SRT shall, in addition to making a payment under paragraph 2.3, grant or procure the grant of a licence or undertaking on such terms as reasonably required by the Authority and such licence shall only be for such period as may be agreed between SRT and the Successor Operator as being reasonably required by the Successor Operator to remove the Marks from all relevant assets without causing excessive disruption to the operation of services similar to the Operator Services provided by such Successor Operator. If such period cannot be agreed, SRT shall submit such dispute for resolution in accordance with such dispute resolution procedures as the Authority may require.

2.5 The Authority shall determine at or around the end of the Operation Period and after consultation with SRT the maximum liability of SRT under paragraph 2.3 and the maximum length of licence or undertaking under paragraph 2.4.

Branding of assets

- 2.6 SRT and SRH shall apply the Authority IP to any assets owned or used by SRH and/or SRT (excluding Stations) in the operation and provision of the Services as the Authority may reasonably direct (including any changes to the Authority IP).
- 2.7 SRH and SRT shall use reasonable endeavours to apply the Authority IP to such structures or fixtures at Stations as the Authority may reasonably direct (including any changes to the Authority IP).

- 2.8 The cost of application of the Authority IP shall be met by SRT.
- 2.9 To the extent necessary to give effect to any direction of the Authority under paragraphs 2.6 and 2.7 (the "**Permitted Purpose**"), the Authority hereby grants SRH and SRT, a non-exclusive and royalty free licence to use the Authority IP in accordance with the terms of any relevant brand guidelines issued from time to time by the Authority, and any other reasonable specifications, directions or instructions issued by or on behalf of the Authority from time to time in relation to the Authority IP (the "**Authority's Brand Guidelines**"). In the event that the Authority require SRH and/or SRT to cease using the Authority IP, or this Agreement expires or is otherwise terminated, the licences granted to under this paragraph 2.9 shall automatically cease.
- 2.10 SRT and SRH each undertakes and agrees:
- (a) to use the Authority IP only for the Permitted Purpose;
 - (b) not to apply for, or obtain, registration of any trade or service mark in any country which comprises consists of, or is confusingly similar, to any of the Authority IP;
 - (c) if so required by the Authority, to agree to the registration of itself as a licensee of any registered trade mark forming part of the Authority IP, any such registration being made at the Authority's expense;
 - (d) not to do anything that is inconsistent with the Authority's ownership of the Authority IP, and that all use of the Authority IP by it shall inure to the benefit of the Authority;
 - (e) that if it becomes aware of, or suspects that the Authority's rights in the Authority IP are being infringed by the actions of a third party, SRH and/or SRT (as the case may be) shall immediately notify the Authority of that fact and give the Authority all reasonable assistance, at the Authority's expense, in any action arising as a result of such infringement; and
 - (f) that nothing in this Agreement shall give it any right, title or interest in the Authority IP other than the right to use the Authority IP in accordance with this Agreement.
- 2.11 Where SRT brings into use on the Passenger Services rolling stock the livery of which does not match the Authority IP a livery in compliance with the Authority's Branding Guidelines shall be applied to such rolling stock within 12 months of its introduction onto the Passenger Services.
- 2.12 SRH, on or before the Commencement Date, shall provide plans to the Authority for implementing a programme of works to ensure the fleet used in provision of the Passenger Services is liveried to match the Authority IP for the Authority's agreement.
- 2.13 SRH, on or before the Commencement Date, shall provide to the Authority suggested branding and livery proposals for locomotives and locomotive hauled rolling stock that shall be similar to the branding for the Inter-city Rolling Stock in line with the principles in the Authority's Branding Guidelines, for the Authority's agreement.

General Advertising and Promotion

- 2.18 The Authority may at its own cost, advertise and promote the Operator Services and/or the Passenger Services.

SCHEDULE 14.3

THIS IS SCHEDULE 14.3 REFERRED TO IN THE FOREGOING SCOTRAIL GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND SCOTRAIL TRAINS LIMITED

Key Contracts

1. Key Contracts

- 1.1 The provisions of this Schedule 14.3 apply to all Key Contracts from time to time.
- 1.2 The Key Contracts as at the date of this Agreement are set out in the Appendix to this Schedule 14.3 (*List of Key Contracts*).

2. Designation of Key Contracts

- 2.1 Where the Authority considers that it is reasonably necessary for securing the continued provision of the Operator Services or the provision of services similar to the Operator Services by a Successor Operator in accordance with this Agreement, it may make a designation pursuant to paragraph 2.2 of this Schedule 14.3 (*Key Contracts*).
- 2.2 The Authority may at any time, by serving notice on SRT, designate as a Key Contract:
- (a) any actual or prospective agreement, contract, licence or other arrangement; and
 - (b) any category of agreement, contract, licence or other arrangement, to which or under which SRH and/or SRT is (or may become) a party or a beneficiary,

with effect from the date specified in such notice.

- 2.3 Key Contracts may include any agreement, contract, licence or other arrangement whether in written, oral or other form, whether formal or informal and whether with an Affiliate of SRH and/or SRT or any other person and may include any arrangement for the storage of assets (including electronic systems or Computer Systems) or accommodation of employees.
- 2.4 SRT shall train all staff dealing with contract administration and finance matters, their managers and all directors to know what constitutes a Key Contract and to understand the significance of such designation.

3. De-designation of Key Contracts

The Authority may at any time, by serving a notice on SRT, de-designate any Key Contract from continuing to be a Key Contract with effect from the date specified in such notice.

4. Re-designation of Key Contracts

The Authority may at any time, by serving notice on SRT, re-designate as a Key Contract anything which has ceased to be designated as a Key Contract in accordance with paragraph 3 of this Schedule 14.3 (*Key Contracts*) with effect from the date specified in such notice.

5. Direct Agreements

- 5.1 Unless the Authority otherwise agrees, or unless lawfully directed to do so by the ORR, SRH and SRT shall not enter into any prospective Key Contract unless the counterparty to that prospective Key Contract:

- (a) is a franchisee or franchise operator, either of which operate railway passenger services pursuant to a franchise agreement to which the Authority is a party or a Public Service Operator which is an Affiliate of the Authority; or
- (b) has entered into a Direct Agreement with the Authority in respect of that prospective Key Contract, providing on a basis acceptable to the Authority, amongst other things, for the continued provision of the Passenger Services and/or the continued operation of the Stations and Depots in the event of:
 - (i) breach, termination or expiry of such Key Contract;
 - (ii) termination or expiry of this Agreement; or
 - (iii) the making of a railway administration order in respect of SRT.

5.2 Where the Authority designates or re-designates as a Key Contract:

- (a) any agreement, contract, licence or other arrangement to which SRH and/or SRT is already a party; or
- (b) any category of agreement, contract, licence or other arrangement where SRT is already a party to a contract, licence or other arrangement which, by virtue of the Authority's designation or re-designation, is classified in such category,

SRH and/or SRT, as the case may be, shall use all reasonable endeavours to assist the Authority in entering into a Direct Agreement as envisaged by paragraph 5.1(b).

5.3 SRT shall pay to the Authority an amount equal to any losses, costs, liabilities, charges or expenses which may be suffered or incurred by the Authority under the provisions of any Direct Agreement which may be notified to SRT as a result of, or in connection with:

- (a) any breach by SRT of the terms of the Key Contract to which the relevant Direct Agreement relates; or
- (b) any unsuccessful claim being brought by SRT against the counterparty of any such Key Contract in relation to the termination of such Key Contract.

6. Emergencies

Where any emergency may arise in connection with the provision and operation of the Operator Services, SRH and/or SRT:

- 6.1 may enter into on a short-term basis such contracts, licences or other arrangements as it considers necessary or appropriate to deal with the emergency;
- 6.2 need not procure that the Authority enters into a Direct Agreement in respect of such contracts;
- 6.3 shall promptly inform the Authority of any such emergency and contracts, licences or other arrangements which it proposes to enter into; and
- 6.4 shall take such action in relation to such emergency, contracts, licences or other arrangements as the Authority may request.

7. No Amendment or assignment or sub-contracting

SRH and SRT shall not without the prior consent of the Authority (which shall not be unreasonably withheld or delayed) vary, or purport to vary, the terms or conditions of any Key Contract at any time, unless lawfully directed to do so by the ORR. SRH and SRT shall not without the prior consent of the

Authority (which shall not be unreasonably withheld or delayed) assign in whole or in part, or sub-contract in whole or in part the terms or conditions of any of the Key Contracts at any time, unless lawfully directed to do so by the ORR.

8. **Replacement of Key Contracts**

SRH and SRT shall, prior to the scheduled expiry date of any Key Contract (or, if earlier, such other date on which it is reasonably likely that such Key Contract will terminate), take all reasonable steps to enter an appropriate replacement contract (whether with the counterparty to the existing Key Contract or not) and shall comply with the reasonable instructions of the Authority in relation to such replacement contract.

9. **Termination of Key Contracts**

Whether or not this Agreement is continued after the Expiry Date in accordance with Schedule 18 (*Operation Continuation*), SRH and/or SRT shall, to the extent so requested by the Authority, exercise all such rights as it may have to terminate any Key Contract on the Expiry Date.

APPENDIX TO SCHEDULE 14.3**List of Key Contracts**

The following items have as at the date of this Agreement been agreed by the parties to be Key Contracts:

1. Any Access Agreement to which SRT is a party other than in its capacity as a Facility Owner.
2. Any Property Lease and any Connection Agreements and any Collateral Agreements.
3. Any contract or arrangement for the lending, seconding, hiring, contracting out, supervision, training, assessment, or accommodation by another Train Operator of any train drivers, conductors or other train crew used by SRT in the provision of the Passenger Services.
4. Any contract or arrangement for the subcontracting or delegation to another Train Operator of the provision of any of the Passenger Services (whether or not consent is required to such subcontracting or delegation under paragraph 1 of Schedule 2.3 (*Third Party Delivery of Passenger Services and Other Operators*)).
5. Any contract or arrangement with a Train Operator (other than an Access Agreement) for the provision to SRT of train dispatch, performance or supervision of platform duties, security activities, evacuation procedures, advice or assistance to customers, assistance to disabled customers, operation of customer information systems, cash management or ticket issuing systems administration.
6. Any contract or arrangement with a Train Operator for the provision of breakdown or recovery, and track call services to assist in the provision of the Passenger Services.
8. Any contract or arrangement for the design, construction, supply, refurbishment, upgrade or maintenance or technical support of rolling stock for use in the provision of Passenger Services.
9. Any contract or arrangement for the supply of spare parts or Spares.
10. Any contract or arrangement for the maintenance of track and other related infrastructure.
11. Any licences of Marks, Foreground IP and/or other relevant IP to SRT and/or SRH.
12. Any contract or arrangement for the supply of rail replacement bus services.
13. Any contract or arrangement relating to the operation of smart ticketing.
14. Any contract or arrangement relating to IT or website provision.
15. Any contract or arrangement for the provision of office space and/or Customer Contact Centres.
16. Any contract detailed in the Designation Letter as issued by The Scottish Ministers to Abellio ScotRail Limited and dated on or around the date of this Agreement.

SCHEDULE 14.4

THIS IS SCHEDULE 14.4 REFERRED TO IN THE FOREGOING SCOTRAIL GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND SCOTRAIL TRAINS LIMITED

Designation of Operator Assets

1. Operator Assets

- 1.1 Subject to paragraph 1.2, all property, rights and liabilities of SRH and SRT from time to time during the Operation Period shall be designated as Operator Assets and shall constitute Operator Assets for the purposes of Section 27(11) of the Act.
- 1.2 The rights and liabilities of SRH and SRT in respect of the following items shall not be designated as Operator Assets and shall not constitute Operator Assets for the purposes of Section 27(11) of the Act:
- (a) any contracts of employment;
 - (b) this Agreement and any Transfer Scheme or Supplemental Agreement;
 - (c) the Ticketing and Settlement Agreement;
 - (d) any sums Placed on Deposit with a bank or other financial institution;
 - (e) the rights and liabilities of SRT under any of the Rolling Stock Leases entered into by SRT on or around the date hereof; and
 - (f) such other property, rights and liabilities as the parties may agree from time to time or as the Authority may de-designate as Operator Assets under paragraph 4.

2. Primary Operator Assets

The following property, rights and liabilities shall (to the extent that they constitute Operator Assets) be designated as Primary Operator Assets with effect from the following dates:

- 2.1 the property, rights and liabilities listed in the Appendix to this Schedule 14.4 (which constitutes a list of Primary Operator Assets agreed as at the date of this Agreement), on the Commencement Date;
- 2.2 any additional property, rights and liabilities designated under paragraph 3 during the Operation Period, on the date of such designation;
- 2.3 any property or right which is vested in SRH and/or SRT and used for the purpose of maintaining, replacing, repairing or renewing any property designated as Primary Operator Assets and which forms or replaces part or all of such designated property on completion of such maintenance, replacement, repair or renewal, on the date of its use for such purpose;
- 2.4 the rights and liabilities of SRH and/or SRT under any Key Contract designated in accordance with Schedule 14.3 (*Key Contracts*), on the date of such designation; and
- 2.5 the rights and liabilities of SRT in respect of the terms of any Fare or Discount Card designated under paragraph 6, on the date of such designation.

3. Designation of Additional Primary Operator Assets

- 3.1 The Authority may at any time and from time to time during the Operation Period, by serving notice on SRH and/or SRT, designate any or all of the Operator Assets as Primary Operator Assets. Such

designation shall take effect from the delivery of such notice and may refer to all or certain categories of property, rights or liabilities. Any such notice shall specify the reasons for such designation.

- 3.2 Unless otherwise determined by the Authority, SRH may at any time and from time to time during the Operation Period, by serving notice on SRT, designate any or all of the Operator Assets as Primary Operator Assets. Unless otherwise determined by the Authority, such designation shall take effect from the delivery of such notice and may refer to all or certain categories of property, rights or liabilities. Any such notice shall specify the reasons for such designation.

4. **De-designation**

- 4.1 The Authority may de-designate a Primary Operator Asset by serving notice on SRH and/or SRT. Such de-designation shall take effect upon delivery of such notice.

5. **Designation of Key Contracts as Primary Operator Assets**

- 5.1 The Authority shall, subject to paragraphs 1.2(b) and 7, be entitled to designate any Key Contract as a Primary Operator Asset at any time during the Operation Period by serving notice on SRH and/or SRT. Such designation shall take effect from delivery of such notice.

- 5.2 Unless otherwise determined by the Authority, SRH shall, subject to paragraphs 1.2(b) and 7, be entitled to designate any Key Contract as a Primary Operator Asset at any time during the Operation Period by serving notice on SRT. Unless otherwise determined by the Authority, such designation shall take effect from delivery of such notice.

6. **Designation of Fares and Discount Cards**

- 6.1 The Authority may designate any Fare or Discount Card as a Primary Operator Asset at any time during the Operation Period by serving a notice on SRH and/or SRT. Such designation shall take effect from delivery of such notice.
- 6.2 Unless otherwise determined by the Authority, SRH may designate any Fare or Discount Card as a Primary Operator Asset at any time during the Operation Period by serving a notice on SRT. Unless otherwise determined by the Authority, such designation shall take effect from delivery of such notice.

7. **Rights and Liabilities**

- 7.1 The Authority and/or SRH, as the case may be, in designating the rights and liabilities of SRT (whether under a particular contract or other arrangement) as a Primary Operator Asset may, in its discretion, elect to designate some but not all of the rights and liabilities under a particular contract or other arrangement, or to designate only those rights and liabilities arising after or otherwise relating to a period after a particular time (including the period after the expiry of the Operation Period) or to those relating only to the Operator Services or a particular part thereof. The Authority shall have final determination of all matters.

8. **Disputes over Designation**

- 8.1 SRT may object in writing to the Authority and SRH to any designation pursuant to paragraph 8.3 or 8.5.
- 8.2 Such objection may be made solely on the grounds that the designation of the relevant property, rights or liabilities specified in the objection is not, in SRT's opinion, reasonably necessary to secure the continued provision of the Operator Services by a Successor Operator on the expiry of the Operation Period on a basis reasonably acceptable to the Authority or to facilitate the transfer to such Successor Operator of the provision of the Operator Services at such time.
- 8.3 Any such objection may only be made within twenty (20) Weekdays of a designation under paragraph 3 or ten (10) Weekdays of a designation under paragraph 8.5.

8.4 The Authority shall respond to any such objection as soon as reasonably practicable and shall take account of any representations made by SRH and SRT regarding the use of the relevant Primary Operator Asset otherwise than in the provision and operation of the Operator Services.

8.5 If any dispute as to any designation pursuant to paragraph 3 or 5 remains outstanding on the expiry of the Operation Period then such dispute shall be deemed to cease immediately before the expiry of the Operation Period and the relevant Operator Assets shall continue to be designated as Primary Operator Assets on and after the expiry of the Operation Period.

9. **Provision of Information**

9.1 SRT shall provide such information as the Authority and/or SRH may reasonably require in order to satisfy itself/themselves that any Operating Assets which are to be designated as Primary Operator Assets after the Commencement Date under this Schedule 14.4 will at the time of such designation be vested in SRT. Such information may include details of any Security Interests over such property, rights and liabilities.

9.2 SRT shall further provide such information as to the property, rights and liabilities of SRT as the Authority and/or SRH may reasonably require in connection with the designation of Primary Operator Assets. Such information shall be supplied within such timescale as required by the Authority and/or SRH.

9.3 SRH shall provide such information as the Authority may reasonably require to give full effect to its rights under this Schedule 14.4.

10. **De-designation of Operator Assets and Primary Operator Assets**

10.1 The parties may agree in writing at any time during the Operation Period that an Operator Asset shall cease to be so designated as an Operator Asset or that a Primary Operator Asset shall cease to be so designated as a Primary Operator Asset, and the relevant Operator Asset shall cease to be designated upon such agreement coming into effect.

10.2 The Authority may in addition at any time during the Operation Period, by serving notice on SRH and/or SRT, cause an Operator Asset which is not a Primary Operator Asset to cease to be so designated as an Operator Asset. Such Operator Asset shall cease to be so designated on the date specified in such notice.

10.3 The Authority may in addition, at any time during the Operation Period, by serving notice on SRH and/or SRT, cause a particular Primary Operator Asset to cease to be designated as such. Such Primary Operator Asset shall cease to be so designated on the date specified in such notice. Such right may be exercised, in respect of any rights and liabilities in respect of a Fare or Discount Card, at any time and, in respect of any other Primary Operator Asset, no later than 1 year prior to the expiry of the Term. In respect of those other Primary Operator Assets the Authority shall also not exercise such right after the time that it has determined to terminate this Agreement.

10.4 The Authority may from time to time agree with SRH that it will not de-designate particular Primary Operator Assets.

11. **Spares**

11.1 The obligation of SRT to maintain, preserve and protect Primary Operator Assets under this Schedule 14.4 shall, in respect of Spares, include the obligation to replace any Spare which has been designated as a Primary Operator Asset, which subsequent to its designation ceases to be part of the stock of Spares available to SRT for use in the provision of the Operator Services, with an equivalent Spare of equal or better quality than the Spare so replaced.

APPENDIX TO SCHEDULE 14.4

List of Primary Operator Assets

For the purpose of this Appendix to Schedule 14.4, “**Designation Letter**” means the designation letter as issued by The Scottish Ministers to Abellio ScotRail Limited and dated on or around the date of this Agreement.

The following items have as at the date of this Agreement been agreed to be Primary Operator Assets (in the event of any conflict between the content of this Appendix and the content of the Designation Letter, the content of the Designation Letter shall have precedence unless otherwise decided by the Authority):

1. Fixed Assets

- 1.1 MK3 Testing Vehicles based at Yoker Depot
- 1.2 Class 334 Simulator located at Glasgow Central Station, supplied by Sydac Pty
- 1.3 Class 170 simulator located at Glasgow Central Station, supplied by Sydac Pty

2. Other Assets

- 2.1 Hako floor cleaning machines, including the supply, delivery and maintenance contract for all Industrial Floor Cleaning equipment
- 2.2 Samsung Mobile Phones
- 2.3 All customer-facing equipment located in any Station, including, but not limited to:
 - 2.3.1 All booking office ticket machines, including but not limited to all hardware and software required to operate and maintain desktop Ticketing Issue System (TIS) machine
 - 2.3.2 Automatic ticket gates, including but not limited to the Asset procured from the Expired Lease agreements (2 x HSBC and GEC lease agreements)
 - 2.3.3 All ticket vending machines, including but not limited to Scheidt and Bachmann Ticket Vending Machines ST70 Card Only x 46, ST70 Cash and Card x 2, ST71 Card Only x 171, ST71 Fullservice x 68 and Ticket Express Lite x 29
 - 2.3.4 Station CCTV, including but not limited to all hardware and software required to operate and maintain CCTV cameras at stations
 - 2.3.5 Station Customer information screens, including but not limited to all hardware and software required to operate and maintain CIS screens at stations
 - 2.3.6 Station Help points, including but not limited to all hardware and software required to operate and maintain Help points at stations
 - 2.3.7 Equipment at stations such as tractors etc for mobility impaired person support
 - 2.3.8 Cubic Gating System - 241 x ITSO Gates (including 2 MOs) Including but not limited to control points, maintenance software and control software
- 2.4 Handheld ticket machines (Mobile TIS) including but not limited to control points, charging systems, maintenance software and control software

2.5 ITSO SMART ticketing equipment, included by not limited to the 666 Vix Units (plus 25 spare units), any SMART ticketing equipment incorporated into Gateline, TVM and TIS, as well as any all hardware and software required to operate or maintain the SMART Ticketing System

2.6 Barcode Smart Ticketing Equipment, including but not limited to control software, maintenance software and Barcode readers both fixed and mobile, and those covered by the RDG Heads of Agreement Date XXXX (76 enabled Gates)

3. Property Agreements (including Connection Agreements and Collateral Agreements)

3.1 Lease between Abellio ScotRail Limited and Universities Superannuation Scheme Limited, dated February 2016, in relation to the Basement Storage Lease, Atrium Court, 50 Waterloo Street, Glasgow

3.2 Minute of Lease between Abellio ScotRail and Edinburgh City Council, signed 24 May 2010 for Unit Thiry Four, West Geogie Park Industrial Estate, Hutchinson Road, Edinburgh EH14 1UT

3.3 Minute of Lease between Abellio ScotRail, The Lothian and Border Fire Board and Edinburgh City Council, signed 3 June 2002 for Carpark/park and ride facility at Newcraighall Station Edinburgh

3.4 Licence to Occupy, the Dalgety Bay station Area A, between Abellio ScotRail and Fife Council.

4. Access Agreements

4.1 The property, rights and liabilities of SRT in respect of the Track Access Contract (Passenger Services) with Network Rail Infrastructure Limited (as amended from time to time) and including by the Supplemental Agreement as further described in the Designation Letter.

4.2 Station Access Agreements where SRT is SFO, including without limitation:

4.2.1 Station Access Agreements with CrossCountry Trains for Dunbar station (CrossCountry Trains as Beneficiary);

4.2.2 Station Access Agreements with Direct Rail Services Limited for Charter Station Access Agreement (Direct Rail Services as Beneficiary);

4.2.3 Station Access Agreements with First Transpennine Express Limited for Motherwell Station (FTPE as Beneficiary);

4.2.4 Station Access Agreements with West Coast railway Company Ltd for Charter Station Access Agreement (West Coast Railway Company as Beneficiary);

4.2.5 Station Access Agreements with GB Railfreight Ltd (GB Railfrieght as Beneficiary);

4.2.6 Station Access Agreements with London North Eastern Railway Ltd at 24 stations (LNER as Beneficiary);

4.2.7 Station Access Agreements with Serco Caledonian Sleepers Ltd for multiple stations (SCSL as Beneficiary);

4.2.8 Station Access Agreements with Northern Trains Ltd for Motherwell Station (Northern as Beneficiary);

4.2.9 Station Access Agreements with and Rail Express Systems Ltd for Charter Station Access Agreement (Rail Express Systems as Beneficiary);

4.2.10 Station Access Agreements with First Trenitalia West Coast Rail Ltd for Station Access at 3 Stations (FTWC as Beneficiary);

- 4.3 Station Access Agreements where SRT is Beneficiary, including without limitation:
 - 4.3.1 Station Access Agreements with London North Eastern Railway Ltd for access to Newcastle station (SRT as Beneficiary)
 - 4.3.2 Station Access Agreements with Northern Trains Ltd for access to various Northern Stations (SRT as Beneficiary)
 - 4.3.3 Station Access Agreements with Glasgow Prestwick Airport Limited (SRT as Beneficiary)
- 4.4 Depot Access Agreements where SRT is the DFO
 - 4.4.1 Depot Access Agreements with Alstom Transport UK Ltd for access to Inverness Depot
 - 4.4.2 Depot Access Agreements with Serco Caledonian Sleepers Limited for access to Inverness Depot
 - 4.4.3 Depot Access Agreements with Hitachi Rail Europe Ltd for access to Inverness Depot (Hitachi as Beneficiary)
- 4.5 Depot Access Agreements where SRT is Beneficiary
 - 4.5.1 Depot Access Agreements with London North Eastern Railway, for access to Clayhills Depot (SRT as Beneficiary)
 - 4.5.2 Depot Access Agreements with Northern Trains Ltd for access to Newcastle-upon-Tyne Heaton depot (SRT as Beneficiary)
- 4.6 Depot Connection Agreement where SRT is the DFO at the following locations:
 - 4.6.1 Ayr Townhead, reference DCA/18/01/96/01
 - 4.6.2 Corkerhill, reference DCA/18/02/96/01
 - 4.6.3 Haymarket, reference DCA/18/03/96/01
 - 4.6.4 Inverness, reference DCA/18/04/96/01
 - 4.6.5 Perth, reference DCA/18/05/96/01
 - 4.6.6 Shields, reference DCA/18/06/96/01
 - 4.6.7 Yoker, reference DCA/18/07/96/01

5. Other Agreements

The Rolling Stock contracts detailed in the Designation Letter.

6. CRM Data and Yield Management Data

The property, rights and liabilities of SRT in respect of CRM Data and Yield Management Data.

7. Designation Letter

All other items designated in the Designation Letter as 'primary franchise assets' or 'primary operator assets'.

SCHEDULE 14.5**THIS IS SCHEDULE 14.5 REFERRED TO IN THE FOREGOING SCOTRAIL GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND SCOTRAIL TRAINS LIMITED****Dealing with Operator Assets****1. Assets Not Designated as Primary Operator Assets**

- 1.1 This paragraph 1 relates to any Operator Assets that are property or rights and are not designated as Primary Operator Assets.
- 1.2 For the purposes of Section 27(3) of the Act, the Authority and SRH consent to SRT:
- (a) transferring or agreeing to transfer any such Operator Assets or any interests in, or right over, any such Operator Assets; and
 - (b) creating or extinguishing, or agreeing to create or extinguish, any interest in, or right over, any such Operator Assets.

2. Liabilities Not Designated as Primary Operator Assets

- 2.1 This paragraph 2 relates to any liabilities which are not designated as Primary Operator Assets.
- 2.2 For the purposes of Section 27(3) of the Act, the Authority and SRH consent to SRT entering into any agreement under which any such liability is released or discharged or transferred to another person.

3. Operator Assets and Primary Operator Assets

- 3.1 This paragraph 3 relates to Operator Assets (whether or not designated as Primary Operator Assets) which are property or rights.
- 3.2 The Authority and SRH hereby consent to the installation of Spares which have been designated as Primary Operator Assets on any rolling stock vehicles. Any Spare which is so installed shall cease to be so designated on such installation.
- 3.3 For the purposes of Section 27(3) of the Act, the Authority and SRH hereby consent to SRT creating or agreeing to create any Security Interest over any of these Operator Assets to the extent that the terms of any such Security Interest provide that:
- (a) if the relevant Operator Asset becomes the subject of a transfer scheme made under Section 12 and Schedule 2 of the Railways Act 2005, it shall be fully and automatically released from the relevant Security Interest immediately before the coming into force of such transfer scheme;
 - (b) if the relevant Operator Asset is assigned, novated or otherwise transferred to another person pursuant to and in accordance with this Agreement, it shall be fully and automatically released from the relevant Security Interest immediately before such assignation, novation or transfer; and
 - (c) such Security Interest shall not be enforced or enforceable until the date on which such Operator Asset ceases to be designated as an Operator Asset.

4. Prohibition on Other Security Interests

- 4.1 SRT shall not create or agree to create a Security Interest over any Operator Asset except on the terms permitted under paragraph 3.3(a).

5. **Miscellaneous**

- 5.1 SRT shall promptly inform SRH of any Security Interest arising at any time over any of its property or rights and shall provide SRH with such information in relation thereto as it may reasonably require.

SCHEDULE 15

THIS IS SCHEDULE 15 REFERRED TO IN THE FOREGOING SCOTRAIL GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND SCOTRAIL TRAINS LIMITED

Obligations Associated with Termination

- Schedule 15.1: Reletting Provisions**
- Schedule 15.2: Last 12 or 13 Months of Operation Period**
- Schedule 15.3: Handover Package**
 - Appendix: Form of Handover Package**
- Schedule 15.4: Provisions Applying on and after Termination**
 - Appendix 1: Form of Transfer Scheme**
 - Appendix 2: Form of Supplemental Agreement**
- Schedule 15.5: Employee Exit Provisions**

SCHEDULE 15.1**THIS IS SCHEDULE 15.1 REFERRED TO IN THE FOREGOING SCOTRAIL GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND SCOTRAIL TRAINS LIMITED****Reletting Provisions****1. Reletting of ScotRail Operation**

- 1.1 SRT and SRH each acknowledge that the Authority may wish, at or before the expiry of the Operation Period, either to invite persons (including SRT) to tender for the right to provide all or some of the Passenger Services under a franchise agreement or alternatively to enter into a franchise agreement in respect of the Passenger Services without having gone through a tendering process.
- 1.2 SRT and SRH each further acknowledge that the Authority is under a duty under Section 30 of the Act to secure in certain circumstances the provision of the Passenger Services, including if no further franchise agreement is entered into on the termination of this Agreement in respect of such Passenger Services. SRT and SRH each accordingly accept and agree to the restrictions and obligations imposed on SRT under Schedule 1.7 (*Operator Services*), Schedule 14 (*Preservation of Assets*) and on SRH and/or SRT under this Schedule 15.
- 1.3 SRT and SRH each further acknowledge that the Authority may split, merge or otherwise deal with the business of providing Operator Services.
- 1.4 The Authority may, at its discretion, require SRH to comply with any obligation placed on SRT under this Schedule 15 by requiring SRH to perform such obligation and/or requiring SRH to procure that SRT perform such obligation.
- 1.5 SRT and SRH each agree to cooperate with the Authority to allow the Authority to comply with the Section 30 Duty.

2. Preparation for Reletting

- 2.1 SRT shall, if so requested by the Authority, provide the Authority and its representatives and advisers with access to the Operator Employees and all books, records and other materials kept by or on behalf of SRT in connection with the Operator Services (including electronic or magnetic records) for the purpose of assisting such representatives and advisers:
- (a) to prepare reports or other documents in connection with any invitation to potential Successor Operators to tender for the right and obligation to operate all or any of the Operator Services;
 - (b) to prepare invitations to other potential franchisees to tender for the right and obligation to provide any other railway passenger services or operate any other additional railway asset; or
 - (c) to enter into any franchise agreement or other agreement relating to the Operator Services, without undergoing a tendering process,

provided that the exercise of such access rights by the Authority and its representatives and advisers shall not unduly interfere with the continuing provision and operation of the Operator Services by SRT.

- 2.2(a) SRT shall make available to the Authority and its representatives and advisers such Data Site Information (as defined at paragraph (e)) and such other information (including financial and operational information) as they shall reasonably require in connection with the matters referred to in paragraph 2.1. If requested by the Authority such information shall be made available to the Authority by SRT promptly copying (at SRT's expense) information requested by the Authority and delivering the copies to the Authority. If requested by the Authority, SRT shall also copy (at SRT's cost) and

deliver to the Authority a complete copy of its Handover Package in order to assist the Authority in preparing to re-let.

- (b) SRT shall prepare and present such information in such manner (including in disaggregated form) as the Authority may require, and shall provide such assistance as the Authority may require in connection with the verification of such information.
- (c) SRT shall, when requested to do so, provide such confirmation in relation to the accuracy of the contents of the documents referred to in paragraph 2.1 as the Authority shall require from time to time;
- (d) SRT shall upload such Data Site Information as the Authority may require to such electronic data site as they may specify and shall make a sufficient number of appropriate staff available for that purpose. SRT shall ensure that such staff are trained in the use of such data site (such training to be at the expense of the Authority). For the avoidance of doubt, the Data Site Information required by the Authority under this paragraph may cover the entire Operation Period or any part of it;
- (e) **"Data Site Information"** means information relating to any of the following:
 - (i) the ScotRail Operation or SRT, any Affiliate of SRT or their respective businesses (including their audited and management accounts, asset registers and contract lists);
 - (ii) past and present demand for the Operator Services or any similar services (including passenger count data, yield management data and CRM Data);
 - (iii) information required to be provided by SRT pursuant to Schedule 1.5 (*Information about Passengers*);
 - (iv) the total revenue (being all revenue whatsoever from any source obtained from any commercial or non-commercial activity or undertaking of SRT) received or which SRT expects to receive during the Operation Period;
 - (v) SRT's safety authorisation, safety certificate or Safety Management System (in each case as defined in the Safety Regulations);
 - (vi) any other safety matter;
 - (vii) the arrangements contained within the Railways Pension Scheme, the Pension Trust, the Operation Sections, or any other pension arrangement in respect of employees of SRT or employees of any person who was a franchisee or franchise operator in relation to a Franchise Agreement;
 - (viii) the management structure of SRT's business (including organograms and any planned changes);
 - (ix) employees and contractors (including details of responsibilities, job title, remuneration, grade, qualifications and any other personnel records);
 - (x) terms and conditions of employment and human resources policies;
 - (xi) public and working timetables;
 - (xii) driver, other train crew and rolling stock diagrams;
 - (xiii) rolling stock (including train and vehicle miles, restrictions of use, fleet examinations and servicing, fleet performance, casualty data and any relevant reports);

- (xiv) any station or depot (including any leases, documents of title, maintenance arrangements, station facilities, depot facilities, plans and contingency or security plans relating to any station or depot);
- (xv) health and safety and environmental information;
- (xvi) copies of contracts (including Access Agreements, policies of insurance, property, rolling stock and other leases, catering contracts, contracts for outsourced services, and rolling stock maintenance and spares contracts);
- (xvii) Network Rail charges and requirements (including Engineering Access Statement/plan);
- (xviii) any information technology system (hardware or software) used or owned by SRT or any Affiliate of SRT (including any software licences);
- (xix) performance data;
- (xx) customer service (including staffing levels, call volumes and opening hours);
- (xxi) fares and fares baskets;
- (xxii) relationships and agreements with stakeholders (including minutes of meetings with unions, Local Authorities, Community Rail Partnerships, ATOC, Network Rail, ORR, the Passengers' Council, Rail Safety and Standards Board, British Transport Police or Visit Scotland); or
- (xxiii) any other matter which the Authority may specify from time to time,

and in this paragraph (e) the term "**employee**" includes any person engaged by SRT pursuant to a contract of personal service; and

- (f) SRT shall:
 - (i) comply with its obligations under paragraph 2.1 and this paragraph 2.2 promptly and in any case in accordance with any reasonable timetable with which the Authority and/or SRH requires SRT by notice in writing to comply; and
 - (ii) where the Authority and/or SRH raises with SRT any query in relation to any Data Site Information, make a full and substantive response to such query within 10 working days. Such response shall include any further information requested by the Authority and/or SRH in relation to such query.

2.3 In connection with any proposal (whether or not yet finalised) to enter into separate franchise agreements and/or other agreements with more than one Successor Operator, each relating to some only of the Operator Services (whether or not together with other railway passenger services) or to take forward delivery of the Operator Services in whole or partially on a basis other than by a franchise, including, for the avoidance of doubt, direct ownership or operation, at or following the end of the Operation Period, SRT agrees and acknowledges that the Authority and/or SRH may require:

- (a) that SRT provides the Authority and/or SRH with additional information and reports and analysis in respect of such Service Groups or Sectors as the Authority and/or SRH may specify. This may include:
 - (i) information relating to the operational and financial performance of SRT in relation to such Service Groups or Sectors; and
 - (ii) identification of those employees, assets and liabilities which relate to such Service Groups together with an indication of the extent to which the same are shared between the operation of different Service Groups or Sectors; and

- (b) subject to paragraph 2.4, that SRT reorganises the business of providing the Operator Services in order to facilitate the transfer anticipated by this Schedule 15.1 on an ongoing basis of the business of providing the Operator Services within each of such Service Groups or Sectors to separate Successor Operators. This may include, to the extent reasonably practicable:
- (i) the re-organisation of personnel such that an appropriate number of employees (having sufficient skills, qualifications and experience) will transfer by operation of Law to each Successor Operator of each such Service Group or Sectors; and/or
 - (ii) entering into additional or clarificatory contractual or other arrangements so that the Successor Operator of each such Service Group or Sectors will have the necessary assets and rights to operate the Operator Services within that Service Group or Sectors.
- 2.4 Subject to paragraph 2.5, the Authority shall reimburse any reasonable out-of-pocket expenses that SRT may incur in complying with its obligations under this paragraph 2. The copying costs referred to in paragraph 2.2 are not to be reimbursed.
- 2.5 If the Authority is of the reasonable opinion that SRT does not have sufficient resources to enable its compliance with its obligations under this paragraph 2 it may:
- (a) require SRT to employ; or
 - (b) after notification to SRT, employ, such suitable additional resource as may be required to ensure that SRT can comply with its obligations under this paragraph 2.
- 2.6 To the extent reasonably practicable, prior to taking any of the actions referred to in paragraph 2.5, the Authority shall allow SRT a reasonable opportunity to make representations to it concerning the exercise by the Authority of his rights under paragraph 2.5 but the Authority shall not be obliged by those representations to refrain from exercising any of the actions specified under paragraph 2.5.
- 3. Non-frustration of Transfer to Successor Operator**
- 3.1 Neither SRH nor SRT shall take no action or steps which is or are designed, directly or indirectly:
- (a) to prevent, prejudice or frustrate the transfer as a going concern or going concerns of the business of providing the Operator Services at the end of the Operation Period to a Successor Operator or Successor Operators; or
 - (b) to avoid, frustrate or circumvent any provision of this Agreement (including in particular the provisions of Schedule 14 (*Preservation of Assets*) and this Schedule 15) which is included in whole or in part for the purpose of preventing any such preventive, prejudicial or frustrating action or steps.

SCHEDULE 15.2**THIS IS SCHEDULE 15.2 REFERRED TO IN THE FOREGOING SCOTRAIL GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND SCOTRAIL TRAINS LIMITED****Last 12 or 13 Months of Operation Period****1. Last 12 or 13 Month Period**

- 1.1 Where reference is made in this Agreement to the last 12 or 13 months of the Operation Period, such period shall be deemed (except where the actual date of expiry of the Operation Period is known) to commence on the earliest of the following dates:
- (a) the date which is 12 or 13 months, as the case may be, prior to the Expiry Date; or
 - (b) the date on which the Authority notifies SRH and SRT that such period of 12 or 13 months shall be deemed to commence on the grounds that the Authority considers it reasonably likely that this Agreement will be terminated by agreement of the parties within such period.
- 1.2 Any such period (which may be longer or shorter than 12 or 13 months, as the case may be) shall expire on the Expiry Date or, if earlier, in the case of periods commencing under paragraph 1.1(b), the date falling 12 or 13 months after the date of any notice under paragraph 1.1(b) or, in each case, such earlier date as the Authority may determine.
- 1.3 If the last 12 or 13 months of the Operation Period has commenced (or has been deemed to have commenced) and the notice referred to in paragraph 1 of Schedule 18 (*Operation Continuation*) is given, then the last 12 or 13 months of the Operation Period (as the case may be) shall not be interrupted, but shall continue to the Expiry Date.

2. Operator EmployeesTerms of Employment of Existing Employees

- 2.1 SRT shall not, and shall secure that each other relevant employer shall not, without the prior consent of the Authority (which shall not be unreasonably withheld or delayed), vary or purport or promise to vary the terms or conditions of employment of any Operator Employee (in particular, SRT shall not promise to make any additional payment or provide any additional benefit or vary any term or condition relating to holiday, leave or hours to be worked) where such variation or addition:
- (a) takes effect in the last 12 months of the Operation Period unless it is in the ordinary course of business and, when aggregated with any other variation or addition which takes effect during such period, represents an increase in the remuneration of an Operator Employee of no more than the amount determined in accordance with the following formula:-

$$\frac{\text{MAWE} + \text{JAWE} + \text{SAWE} + \text{DAWE}}{4}$$

where:

MAWE is the increase in the Average Weekly Earnings between March in the preceding 12 months and the corresponding March 1 year before, expressed as a percentage;

JAWE is the increase in the Average Weekly Earnings between June in the preceding 12 months and the corresponding June 1 year before, expressed as a percentage;

SAWE is the increase in the Average Weekly Earnings between September in the preceding 12 months and the corresponding September 1 year before, expressed as a percentage; and

DAWE is the increase in the Average Weekly Earnings between December in the preceding 12 months and the corresponding December 1 year before, expressed as a percentage;

- (b) wholly or partly first takes effect after the end of the Operation Period;
- (c) results in any such employment not being terminable by SRT or other relevant employer within 6 months of the expiry of the Operation Period;
- (d) relates to a payment or the provision of a benefit triggered by termination of employment;
- (e) relates to the provision of a benefit (excluding base salary) which any such employee will or may have a contractual right to receive after the expiry of the Operation Period; or
- (f) prevents, restricts or hinders any such employee from working for a Successor Operator or from performing the duties which such employee performed for SRT.

2.2 Without limiting the foregoing SRT shall consult the Authority as soon as reasonably practicable in any circumstances in which the Authority's consent under paragraph 2.1 may be required. Further, it shall always be deemed to be reasonable for the Authority to withhold its consent to a variation or addition which is prohibited without such consent under paragraph 2.1(a) provided:

- (a) the parties consider required revisions to the Budget in accordance with paragraph 6 of Schedule 8.1 (*Grant Payments*) for direct net losses suffered by SRT on the days ("**Relevant Days**") when the Passenger Services are affected by Industrial Action taken by Operator Employees which is a consequence of a refusal by the Authority to agree to the variation or addition; and
- (b) the Authority agrees that during the Relevant Days there shall be no application of the regime by which SRT is required to make payments to the Authority in respect of poor performance to the extent that such poor performance is a consequence of the industrial action referred to in paragraph 2.2(a). Further, to the extent that SRT may be in contravention of this Agreement (excluding contraventions in relation to safety requirements) as a consequence of the industrial action referred to in this paragraph, such contravention shall be waived by the Authority.

2.3 SRT shall consult with the Authority as soon as reasonably practicable in any circumstances in which the Authority's consent under paragraph 2.1 may be required. The expression "**promise to vary**" when used in paragraph 2.1 includes any offer or indication of willingness to vary (whether or not such offer or willingness is made conditional upon obtaining the Authority's consent).

Terms of Employment of New Employees

2.4 SRT shall not, and shall secure that each other relevant employer shall not, without the prior consent of the Authority (which shall not be unreasonably withheld or delayed), create or grant, or promise to create or grant, terms or conditions of employment for any Operator Employee where the employment of such Operator Employee by SRT or such other relevant employer may commence on or after the Commencement Date if and to the extent that:

- (a) such terms or conditions are materially different from the terms or conditions of employment of equivalent or nearest equivalent Operator Employees at the date on which such employment is scheduled to commence; and
- (b) if such terms or conditions were granted to such equivalent Operator Employees already employed by SRT by way of variation to their terms or conditions of employment, SRT would be in contravention of paragraph 2.1.

Changes in Numbers and Total Cost of Employees

- 2.5 Subject to and excluding any increase in the remuneration of Operator Employees permitted under paragraph 2.1, SRT shall not, and shall secure that each other relevant employer shall not, without the prior written consent of the Authority (which shall not be unreasonably withheld or delayed) increase or decrease in the last 12 months of the Operation Period the number of Operator Employees such that:
- (a) the total number of Operator Employees or the total cost per annum to SRT and each other relevant employer of employing all Operator Employees is increased; or
 - (b) the total number of Operator Employees is decreased,
- in each case, by more than 5 per cent during such period of 12 months.

3. Fares

Reduction in Prices of Fares

- 3.1(a) Without in any way limiting the rights of the Authority in terms of Schedule 5 (*Fares*), during the last 13 months of the Operation Period SRT shall not, without the prior written consent of the Authority (not to be unreasonably withheld), set the Price or Child Price of or sell (except to the extent required to do so under the terms of the Ticketing and Settlement Agreement as a result of the Price or Child Price of a Fare being set by another person) any Fare which would entitle the purchaser of such Fare to travel on all or any of the Passenger Services after the Operation Period for an amount which is less than the Price or the Child Price of that Fare immediately before the commencement of such 13 month period or, in the case of a new Fare, the Price of its nearest equivalent immediately before the commencement of such period.
- (b) Paragraph 3.1(a) shall not prevent SRT from giving any discount or reduction to which the purchaser of a Fare may be entitled by virtue of:
- (i) presenting a Discount Card (or any equivalent replacement thereof) issued by SRT before the commencement of such 13 month period and to which the purchaser would have been entitled before the commencement of such period;
 - (ii) presenting a Discount Card issued by another train operator;
 - (iii) the Passenger's Charter or the passenger's charter of any other train operator; or
 - (iv) any relevant conditions of carriage.
- (c) SRT shall procure that persons acting as its agent (except persons acting in such capacity by virtue of having been appointed under Parts II to VI of Chapter 9 of the Ticketing and Settlement Agreement or by being party to the Ticketing and Settlement Agreement) shall comply with the provisions of paragraph 3.1(a) to the extent that such provisions apply to the selling of Fares by SRT.

Percentage Allocations

- 3.2(a) Except to the extent that the Authority may consent from time to time (such consent not to be unreasonably withheld), SRT shall not, in the last 13 Reporting Periods of the Operation Period, take any action or step which may result in its Percentage Allocation (as defined in the Ticketing and Settlement Agreement) in respect of any Rail Product (as defined in the Ticketing and Settlement Agreement) being reduced.
- (b) SRT shall notify the Authority before taking any such action or step in the last 13 Reporting Periods of the Operation Period and upon becoming aware of any other person proposing to take any action or step which may have the same effect. SRT shall take such action as the Authority may reasonably

request in order to prevent any such reduction, including submitting any dispute to any relevant dispute resolution procedures.

4. Inter-Operator Schemes

Voting on Scheme Councils

- 4.1 Subject to paragraph 4.3, during the last 12 months of the Operation Period SRT shall give the Authority reasonable notice of:
- (a) any meeting of:
 - (i) a scheme council of an Inter-Operator Scheme on which SRT is represented; or
 - (ii) a scheme management group of any Inter-Operator Scheme;
 - (A) in which SRT has a permanent position; or
 - (B) where SRT employs a member of such group;
 - (b) the resolutions to be voted upon at any such meeting; and
 - (c) SRT's voting intentions.
- 4.2 Subject to paragraph 4.3, SRT shall vote at any such meeting in the manner required by the Authority.

Successor Operator

- 4.3 Where SRT has been notified by the Authority that a Successor Operator has been selected (whether a franchisee or otherwise and whether or not such selection is conditional), SRT shall give such Successor Operator reasonable notice of:
- (a) any meeting referred to in paragraph 4.1(a);
 - (b) any resolutions to be voted upon at any such meeting where such resolutions might reasonably be considered to affect the interests of such Successor Operator; and
 - (c) SRT's voting intentions.
- 4.4 SRT shall discuss with the Successor Operator in good faith with a view to agreeing the way SRT should vote on the resolutions referred to in paragraph 4.3(b). In the absence of any agreement, SRT shall, as soon as reasonably practicable thereafter, having regard to the deadline for voting on such resolutions, refer the matter to the Authority for determination.
- 4.5 The Authority shall reasonably determine the way SRT should vote on any resolutions referred to it in accordance with paragraph 4.4, having regard to the transfer of the Operator Services as a going concern at the end of the Operation Period.
- 4.6 SRT shall vote at any meeting referred to in paragraph 4.1(a) in accordance with any agreement pursuant to paragraph 4.4 or determination pursuant paragraph 4.5.

5. Local Authority Schemes

SRT shall not during the last 12 months of the Operation Period, agree to commence or continue any project or investment wholly or partly funded by any Local Authority without the written consent of the Authority.

6. **This Schedule 15.2**

The parties agree that the obligations outlined in this Schedule 15.2 shall apply among the parties at least until agreement of the Initial Business Plan in accordance with paragraph 2 of Schedule 13.2 (*Information*) when such obligations may (in part or whole), at the discretion of the parties, and upon the prior written agreement of the parties, be varied in accordance with paragraph 1.1(b) of Schedule 9 (*Changes*).

SCHEDULE 15.3**THIS IS SCHEDULE 15.3 REFERRED TO IN THE FOREGOING SCOTRAIL GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND SCOTRAIL TRAINS LIMITED****Handover Package****1. Handover Package Status**

- 1.1 SRT shall maintain the Handover Package and shall update it at least every 3 Reporting Periods. SRH shall provide all necessary assistance to SRT to enable SRT to comply with this Schedule 15.3.
- 1.2 SRT shall ensure that any Successor Operator will have immediate access to the Handover Package on the expiry of the Operation Period and shall accordingly agree with the Authority from time to time a location at which such Handover Package should be kept which, unless otherwise agreed, shall be the offices of a solicitor approved by the Authority.

2 Director's Certificate

Once in each Operator Year, SRT shall provide to the Authority a certificate signed by a nominated and duly authorised director of SRT, addressed to the Authority, which confirms that the Handover Package contains the information and objects specified in the Appendix (*Form of Handover Package*) and that such information is accurate at the date of the certificate. SRT shall make the Handover Package available for inspection or audit by the Authority or its representative whenever requested.

3. Handover Package Information

Without prejudice to the preceding provisions of this Schedule 15.3, SRT shall provide to the Authority the following information and letters, and shall supply revised information and/or letters to the Authority as and when required in order to ensure that such information and letters remain accurate and up to date:

- 3.1 details of the location of the Handover Package, which details shall include one or more contact name, address and telephone number enabling contact during, and outside, normal office hours with persons authorised and able to release the Handover Package;
- 3.2 a letter in a form approved by the Authority:
 - (a) from SRT to the Authority confirming that an irrevocable instruction has been given to the solicitor holding (or other persons authorised by the Authority for such purpose) the Handover Package that any of the Authority, a Successor Operator or its agent, is entitled at any time to require access to and delivery of the Handover Package on demand, and confirming the Authority's right to audit the Handover Package at any time; and
 - (b) from the solicitor holding the Handover Package (or other person authorised by the Authority for such purpose) to the Authority confirming that he or she will release the Handover Package to any of the Authority, a Successor Operator or its agent, on demand, and confirming that the Handover Package will be made available for the purposes of auditing its contents when so required by the Authority;
- 3.3 a list of all key contacts, as set out in the Appendix (*Form of Handover Package*); and
- 3.4 a letter in a form approved by and addressed to the Authority confirming the details of any insurer providing insurance to SRT, and authorising the insurer (and any relevant broker) to release any insurance-related information to any of the Authority, a Successor Operator or its agent on demand.

4 Actions required immediately on handover

- 4.1 SRT shall immediately on the expiry of the Operation Period make available to the Authority:
- (a) information as to the status of each purchase order or contract, including its award date, anticipated delivery date, confirmation of receipt of goods or services and the payment records for each purchase order, together with any matters in dispute with the appointed subcontractor and, to the extent that SRT is a subcontractor to another Train Operator, the equivalent information in respect of that Train Operator; and
 - (b) information concerning any contract necessary for the continued operation of the franchise where a procurement or bidding process has been initiated.
- 4.2 SRT agrees that the Authority or its agents may have access to and use free of charge any information contained in any computer system or in hard copy format as it sees fit (for the purposes of continuing the operation of the Operator Services).

5. Maintenance Records

SRT shall immediately on expiry of the Operation Period provide to the Authority:

- 5.1 records of the status of the maintenance of the rolling stock vehicles used in the provision of the Passenger Services, including the extent of completion of examinations and the modification status of each such rolling stock vehicle;
- 5.2 records of the status of the maintenance of any lifting equipment;
- 5.3 a list of any deferred maintenance; and
- 5.4 records of the status of the maintenance of any depot or station or plant or equipment at the same which is an Operator Asset.

6. Ticketing Arrangements

SRT shall provide to the Authority immediately on expiry of the Operation Period a statement certifying:

- 6.1 all ticketing transactions with the public or credit card agencies that are in process and not yet complete, together with any allocations on multi-modal travel with other agencies or local authorities;
- 6.2 any Stored Credit Balance, together with details of how such is held and how such will be transferred to a Successor Operator;
- 6.3 the extent of any outstanding claims with ticketing settlement agencies;
- 6.4 refund arrangements (whether under the Passenger's Charter or not) with members of the public or other Train Operators or ticketing settlement agencies that are in process and not yet complete; and
- 6.5 commissions owed and/or due.

APPENDIX TO SCHEDULE 15.3**Form of Handover Package****1. Key Contacts**

A list of key contacts to include all directors (statutory or otherwise) and all managers with responsibility for a department/function within SRH's and SRT's business. This must include operations, commercial, personnel and public affairs departments (or in each case their nearest equivalents). This list must include the name, address, home, office and mobile telephone numbers, and a brief description of the person's role and responsibilities in the business.

2. Property

A list of all land and buildings owned, leased, operated or occupied by SRH and SRT which shall include the address, telephone number and contact telephone number of each property. Where applicable, the list will also include the name, address and telephone number of the lessor and/or the party which has granted authority to use or occupy the property, and any relevant reference numbers applicable to that lease or occupation. Where applicable, the list will also include the name, address and telephone number of the tenant and/or party in occupation of the property.

3. Contracts

A printed or electronic list (in a format acceptable to the Authority) of all contracts (sales, purchases or otherwise including leases and licences) between SRT (or SRH) and the counterparty or counterparties to each such contract, showing the name, address and telephone number of each counterparty and a contact name at each such counterparty; the contract reference number of SRT and each counterparty (if any); and the contract price/value, term and expiry date. This requirement shall apply to all contracts unless otherwise agreed by the Authority.

4. Systems

A list of the electronic systems in use by SRT and SRH, together with the name of SRH's/SRT's employee with responsibility for the management of information technology matters, office address and telephone number who is responsible for administration of each such system.

5. Daily Operations

A printed or electronic list (in a format acceptable to the Authority) of all assets owned or operated by SRT and SRH together with their location.

6. Insurance

A list of the names, addresses and telephone numbers of all insurers and any relevant broker providing insurance to SRH and SRT, together with the relevant policy numbers and other references and details of any outstanding claims or unresolved disputes.

SCHEDULE 15.4**THIS IS SCHEDULE 15.4 REFERRED TO IN THE FOREGOING SCOTRAIL GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND SCOTRAIL TRAINS LIMITED****Provisions applying on and after Termination****1. Novation of Access Agreements on Termination of this Agreement**

- 1.1 SRT shall, to the extent so requested by the Authority on termination of this Agreement, in relation to any Access Agreement to which it is a party, novate its interest under any relevant Access Agreement (and any related Collateral Agreement) to the Authority or as it may direct.
- 1.2 Such novation shall be subject to the agreement of any counter party to such Access Agreement or Collateral Agreement and, to the extent applicable, the ORR.
- 1.3 Such novation shall be on such terms as the Authority may reasonably require, including:
- (a) that SRT shall not be released from any accrued but unperformed obligation, the consequences of any breach of the relevant agreement which is the subject of arbitration or litigation between the Authority and SRT or any liability in respect of any act or omission under or in relation to the relevant agreement prior to, or as at the date of, any such novation (except to the extent that the Authority or its nominee agrees to assume responsibility for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant novation); and
 - (b) that neither the Authority nor its nominee shall be obliged, in connection with such novation, to agree to assume responsibility for any unperformed obligation, liability or consequences of a breach referred to in paragraph 1.3(a),

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

2. Co-operation with Successor Operator

- 2.1 In order to ensure the continuity of, and an orderly handover of control over, the Operator Services, SRT shall co-operate with:
- (a) where a Successor Operator or Operators has been appointed, such Successor Operator(s); or
 - (b) where a Successor Operator or Operators has not been so appointed, or where such appointment or appointments does or do not encompass all aspects of the Operator Services, the Authority together with such Operator or Operators where relevant,

and shall take such steps as may be reasonably requested by the Authority in connection therewith.

- 2.2 In satisfaction of its obligations under paragraph 2.1, SRT shall bid for and secure the Timetable and the Train Plan for the Operator Services to be operated by the Successor Operator (whether or not a Successor Operator has been identified and whether or not there is in place an Access Agreement relating to the relevant period).

3. Transfer of Primary Operator Assets

Option Arrangements

- 3.1(a) SRH and SRT hereby grant to the Authority the right to make, a Transfer Scheme in accordance with Section 12 and Schedule 2 of the Railways Act 2005 for the transfer of any or all Primary Operator Assets on the expiry of the Operation Period.
- (b) On or within 14 days before the expiry of the Operation Period, the Authority may serve notice on SRH and/or SRT specifying the Primary Operator Assets to be transferred.
- (c) The Authority may make one or more such Transfer Schemes for the transfer of the Primary Operator Assets specified in any such notice within 14 days after service of such notice.
- (d) Any Operator Assets or Primary Operator Assets which are not so transferred shall cease to be designated as such 14 days after service of such notice.

Supplemental Agreement

- 3.2 Without prejudice to the duties, powers, rights and obligations of the Authority under the Railways Act 2005 in respect of any Transfer Scheme, any Transfer Scheme shall impose on SRH, SRT and the transferee an obligation to enter into an agreement substantially in the form of the Supplemental Agreement which shall provide for the determination of amounts to be paid in respect of the property, rights and liabilities which are transferred under such Transfer Scheme. SRH and/or SRT (as the Authority determines) shall enter into any such Supplemental Agreement and shall comply with its obligations thereunder.

Payment of Estimated Transfer Price

- 3.3(a) The Authority may require SRT to pay to any transferee under a Transfer Scheme, or may require any such transferee to pay to SRT, on the day on which the Transfer Scheme comes into force such sum as the Authority may determine should be so paid having regard to:
- (i) its estimate of the sum likely to be paid under the relevant Supplemental Agreement in respect of the Primary Operator Assets being transferred under the relevant Transfer Scheme;
 - (ii) its estimate of any other sums likely to be paid thereunder;
 - (iii) the financial condition of SRT and the transferee and whether any estimate so paid would be likely to be repaid, if in excess of the sums eventually payable thereunder; and
 - (iv) such other matters as the Authority may consider appropriate.
- (b) SRT shall pay to any such transferee the sum determined by the Authority in accordance with paragraph 3.3(a) on the day on which the relevant Transfer Scheme comes into force.

Possession of Operator Assets

- 3.4 On the coming into force of a Transfer Scheme, SRT and SRH shall deliver up to the Authority (or its nominee) possession of the Primary Operator Assets transferred under such Transfer Scheme.

4. Associated Obligations on Termination

Assistance in Securing Continuity

- 4.1(a) In order to facilitate the continuity of the Operator Services on expiry of the Operation Period, SRH and SRT shall take such steps, both before and after the expiry of the Operation Period, as the

Authority may reasonably require, to assist and advise any Successor Operator in providing and operating the Operator Services.

- (b) In particular, SRT shall provide any Successor Operator with such records and information relating to or connected with the Operator Services as the Authority may reasonably require (other than Confidential Information of a financial nature but including all records relating to the Operator Employees).

Access

- 4.2 On the expiry of the Operation Period, SRT shall grant, or procure the grant, to the Authority and its representatives such access as the Authority may reasonably request to any property owned, leased or operated by SRT at such time, for the purpose of facilitating the continued provision of the Operator Services.

Key Contracts

- 4.3(a) SRH and SRT shall provide such assistance to any Successor Operator as the Authority may reasonably require in ensuring that, pursuant to any Direct Agreements, such Successor Operator may enter into (or enjoy the benefit of) contracts equivalent to the relevant Key Contracts (or part thereof).
- (b) In satisfaction of its obligations under paragraph 4.3(a), SRH and/or SRT (as the case may be) shall terminate, surrender, cancel or undertake not to enforce its rights under any Key Contract (or part thereof) provided that nothing in this paragraph shall require SRH or SRT to undertake not to enforce any rights under a Key Contract relating to the period prior to the expiry of the Operation Period.

Change of Name

- 4.4 SRH and SRT shall each cease to use any trademarks which are licensed to it under any of the Brand Licences forthwith upon expiry of the Operation Period and shall take all necessary steps to change any company name which incorporates any such marks, the Marks, or the Authority IP as soon as practicable.

Licences

- 4.5 On the expiry of the Operation Period, SRT shall assign the Licences to the Authority's nominee, to the extent and in the manner requested by the Authority, and to the extent permitted by the ORR.

Property Leases

- 4.6(a) SRH and/or SRH (as the case may be) shall, on the expiry of the Operation Period if requested by the Authority assign its interest under all or any Property Leases to the Authority or as it may direct, subject where applicable to the agreement of any other party to such Property Lease or of the ORR.
- (b) Such assignment shall be on such terms as the Authority may reasonably require, including:
- (i) that SRH and/or SRT (as the case may be) shall not be released from any accrued but unperformed obligation, the consequences of any antecedent breach of an undertaking or obligation in the Property Leases or any liability in respect of any act or omission under or in relation to the Property Lease prior to, or as at the date of, any such assignment (except to the extent that the Authority or its nominee agrees to assume responsibility for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant assignment); and
- (ii) that neither the Authority nor its nominee shall be obliged, in connection with such assignment, to agree to assume responsibility for any unperformed obligation, liability or consequences of a breach referred to in paragraph 4.6(b)(i), and SRH and SRT shall indemnify the Authority

or its nominee, as the case may be, on an after-tax basis against any costs, losses, liabilities or expenses suffered or incurred in relation thereto.

- (c) SRH and SRT shall, on the occurrence of any of the circumstances specified in paragraph 4.6(a) in relation to any other Train Operator who is a party to a Property Lease to which either of SRH or SRT is also party, agree to the assignation of such Train Operator's interest under the relevant Property Lease to the Authority or as it may direct, subject, where applicable, to the consent of Network Rail. The provisions of paragraph 4.6(b) shall apply to any such assignation.
- (d) SRT shall notify the Authority on becoming aware of any circumstances which might lead to the Authority being able to require SRH and/or SRT to assign its interest or agree to the assignation of another Train Operator's interest under this paragraph 4.
- (e) If the landlord under a Property Lease does not serve a notice to quit under the Property Lease on SRT then SRT shall notify the Authority in writing of the necessity to serve a notice to quit under the Property Lease at least one calendar month before the last date for service of a timeous notice to quit under the Property Lease and, if so requested by the Authority following receipt of such notification, SRT shall timeously serve a notice to quit under the Property Lease.
- (f) SRT shall promptly notify the Authority of any notice to quit received from the landlord under a Property Lease.

5. Intellectual Property Rights

- 5.1 The parties agree that any and all Foreground IP is owned exclusively by the Authority. SRH and SRT, each hereby unconditionally and irrevocably, and free of encumbrances, assign absolutely with full title guarantee to the Authority its whole right, title and interest (past, present and future) in and to the Foreground IP to the fullest extent permitted by Law.
- 5.2 To the extent that the Foreground IP does not and/or cannot vest in the Authority in accordance with paragraph 5.1, SRH or SRT (as the case may be) shall hold the relevant Foreground IP on trust for the Authority, and without limitation to the foregoing, shall grant or procure the grant to the Authority (and/or, if requested by the Authority, the Successor Operator and its successors) of an exclusive, irrevocable, fully paid-up, royalty-free, perpetual, irrevocable, worldwide and exclusive licence (including the right to sub-licence) to use, copy and modify the Foreground IP for any purpose related (directly or indirectly) to the operation of passenger services, light maintenance services, station services and ancillary services (or such other form of licence as the Authority shall reasonably require or agree in writing).
- 5.3 Without prejudice to paragraphs 5.1 and/or 5.2, on the expiry of the Operation Period, SRH and SRT shall, subject to any limitations on SRH's and/or SRT's ability to grant such licences under any licence of Intellectual Property Rights granted to SRH and/or SRT (as the case may be), grant to the Authority and, at the Authority's request, any Successor Operator (and its successors) licences of any Intellectual Property Rights which:
 - (a) are owned by or licenced to SRH and/or SRT (as the case may be); and
 - (b) which may, in the reasonable opinion of the Authority, be necessary for any Successor Operator to operate services similar to the Operator Services provided by such Successor Operator on an efficient and economic basis after the expiry of the Operation Period.
- 5.4 Where an appropriate licence to any Intellectual Property Rights cannot be granted in accordance with paragraph 5.2 or 5.3, SRH and SRT shall provide an undertaking to the Authority, its licensees and any relevant Successor Operator to the effect that neither it nor the owner of Intellectual Property Rights will enforce such rights as it may have or may in the future have in respect of such Intellectual Property Rights against the Authority, its licensees and/or any relevant Successor Operator.
- 5.4 When agreeing the terms on which Intellectual Property Rights are to be licensed to it, SRT and SRH shall use all reasonable endeavours to ensure that such terms include the right to sub-licence such

Intellectual Property Rights in accordance with this paragraph. Each of SRH and SRT shall not enter into a licence that does not include such a provision without first obtaining the Authority's prior written consent (such consent not to be unreasonably withheld).

- 5.5 Any such licence under paragraph 5.3 shall be granted to the relevant Successor Operator for such period as the Authority may determine to be reasonably necessary for the purpose of securing continuity of the provision of the ScotRail Operation, and shall be free of charge and royalty-free for such period as reasonably determined by the Authority.
- 5.6 Any such licence under paragraph 5.3 be in such form as the Authority shall reasonably determine.
- 5.7 SRH and SRT each warrant and undertake to the Authority that:
- (a) so far as it is aware, the Foreground IP created by or on its behalf have not been copied wholly or substantially from any other source and does not infringe any rights of any third party;
 - (b) it has not assigned, or granted an exclusive licence to, (nor shall it assign, or grant an exclusive licence to), any of the Foreground IP (or any part thereof) to any third party (without the prior written consent of the Authority);
 - (c) it shall do nothing to prejudice or threaten the validity of the Foreground IP;
 - (d) that it has obtained waivers of all moral rights in the Foreground IP created by or on its behalf to which any individual is now or may be entitled under Chapter IV of the Copyright Designs and Patents Act 1988 and, in so far as is legally possible, any broadly equivalent rights as may subsist in any territory in the world;
 - (e) it shall promptly and at the Authority's request, do (and procure all third parties, employees, individuals and sub-contractors) all such further acts and things and sign and deliver all such documents as the Authority may from time to time require for the purposes of securing for the Authority the full benefit of all right, title and interest in and to the Foreground IP; and
 - (f) to the extent that any software is comprised in any materials developed by it or on its behalf, it shall deliver (and shall procure that any sub-contractor shall deliver) a copy of the source code for such software to the Authority and all documentation necessary to enable the operation, maintenance and development of the software within ten (10) days of termination of this Agreement, or as otherwise reasonably requested by the Authority.

APPENDIX 1 TO SCHEDULE 15.4

Form of Transfer Scheme

Dated _____ 20[•]

**TRANSFER SCHEME
OF
THE SCOTTISH MINISTERS
MADE PURSUANT TO SECTION 12 AND SCHEDULE 2 OF THE RAILWAYS ACT 2005**

**IN FAVOUR OF
[SUCCESSOR OPERATOR]**

**IN RESPECT OF
CERTAIN PROPERTY, RIGHTS AND LIABILITIES
OF
[the Operator]**

[The Scottish Ministers]

TRANSFER SCHEME

Whereas:

- (A) [SRT] (the Transferor) has been providing certain services for the carriage of passengers by railway and operating certain stations and light maintenance depots pursuant to a grant agreement with the Scottish Ministers Victoria Quay, Edinburgh, EH6 6QQ, acting through Transport Scotland, Buchanan House, 58 Port Dundas Road, Glasgow, G4 0HF or such other agency, department or other organisational unit of the Scottish Government as they may from time to time have nominated (who and whose successors are hereinreferred to as the Authority) and Scottish Rail Holdings Limited (hereinreferred to as SRH) dated [•] (the Services Agreement).
- (B) The Services Agreement terminated or is to terminate on [•] and [Successor Operator] (the Transferee) is to continue the provision of all or part of such services or the operation of all or some of such stations and light maintenance depots under a new services agreement or in connection with the performance or exercise of the duties and powers of the Authority to secure the provision of such services or the operation of such stations or light maintenance depots.
- (C) Certain property, rights and liabilities of the Transferor which were designated as franchise assets for the purpose of the Services Agreement are to be transferred to the Transferee under a transfer scheme made by the Authority under Section 12 and Schedule 2 of the Railways Act 2005.

The Authority, in exercise of the powers conferred on it by Section 12 and Schedule 2 of the Railways Act 2005, hereby makes the following scheme:

1. Definitions and Interpretation

In this Transfer Scheme powers and duties and relevant enactment have the meanings ascribed to them in paragraph 6 of Schedule 2 of the Railways Act 2005.

2. Transfer of Property Rights and Liabilities

The property, rights and liabilities of the Transferor specified or described in the Schedule shall be transferred to, and vest in, the Transferee.

3. Powers and Duties under Statutory Provisions

Subject to any amendment to the relevant enactment which comes into force on or after the date on which this Transfer Scheme is made, there shall be transferred to the Transferee all the powers and duties of the Transferor under any relevant enactment if and to the extent that any such relevant enactment:

- (a) relates to any property which is to be transferred by this Transfer Scheme; or
- (b) authorises the carrying out of works designed to be used in connection with any such property or the acquisition of land for the purpose of carrying out any such works.

4. Supplemental Agreement

Each of the Transferor and the Transferee shall enter into the Supplemental Agreement (as defined in the Services Agreement) on the coming into force of this Transfer Scheme.

This Transfer Scheme is made by the Authority on [•]

SIGNED for and on behalf of THE SCOTTISH MINISTERS

At

On the day of 20[xx]

By

.....Name (printed)

Before this witness:-

..... Witness

..... Full Name

..... Address

.....

SCHEDULE TO THE TRANSFER SCHEME
[List relevant [Primary] Operator Assets to be transferred to Successor Operator]

APPENDIX 2 TO SCHEDULE 15.4

Form of Supplemental Agreement

Dated _____ 20[•]

SUPPLEMENTAL AGREEMENT

between

[OUTGOING OPERATOR]

and

[SUCCESSOR OPERATOR]

to the transfer scheme dated [•] made
by the Scottish Ministers in respect of
certain property rights and liabilities of
[OUTGOING OPERATOR]

[The Scottish Ministers]

SUPPLEMENTAL AGREEMENT

Between

- (1) [OUTGOING operator] whose registered office is at [registered office] (the Transferor); and
- (2) [SUCCESSOR OPERATOR] whose registered office is at [registered office] (the Transferee).

Whereas

- (A) The Transferor has been providing certain services and the carriage of passengers by railway and operating certain stations and light maintenance depots pursuant to a grant agreement with the Scottish Ministers Victoria Quay, Edinburgh, EH6 6QQ, acting through Transport Scotland, Buchanan House, 58 Port Dundas Road, Glasgow, G4 0HF or such other agency, department or other organisational unit of the Scottish Government as they may from time to time have nominated (who and whose successors are hereinreferred to as the “**Authority**”) and Scottish Rail Holdings Limited (hereinreferred to as SRH) dated [•] (the “**Services Agreement**”).
- (B) The Services Agreement terminated or is to terminate on [•] and the Transferee has been selected by the Authority to continue the provision of all or part of such services pursuant either to a services agreement with the Authority or arrangements made with the Authority in connection with the Authority’s duties and powers.
- (C) Certain property, rights and liabilities of the Transferor are to be transferred to the Transferee pursuant to a transfer scheme made by the Authority on [•] under Schedule 2 of the Railways Act 2005 (the Transfer Scheme).
- (D) This agreement is supplemental to the Transfer Scheme and sets out certain terms between the Transferor and the Transferee in relation to the transfer of such property, rights and liabilities under the Transfer Scheme and the transfer of certain other property, rights and liabilities at the same time.

It is agreed that

1. Definitions and Interpretation

Definitions

1.1 The following words and expressions shall have the following meaning:

Business means such of the undertaking or part of the undertaking of the Transferor prior to the Transfer Date as may be continued by the Transferee after the Transfer Date;

Completion Payment has the meaning ascribed to that term in Clause 2.1;

Credit has the meaning assigned to that term under the Ticketing and Settlement Agreement;

Debit has the meaning assigned to that term under the Ticketing and Settlement Agreement;

Net Asset Statement means the statement to be drawn up pursuant to Clause 2.2;

Net Asset Value means the aggregate of the amounts of the Relevant Operator Assets, the Relevant Contract Liabilities, the Relevant Debits and Credits and the Relevant Employee Liabilities as shown in the Net Asset Statement;

Purchase Price means an amount equal to the Net Asset Value;

Relevant Contract Liabilities means such rights and liabilities of the Transferor as may be transferred to the Transferee on the expiry of the Operation Period in relation to any Licence, Access Agreement or Property

Lease under paragraphs 1, 4.5 and 4.6 of Schedule 15.4 (Provisions Applying on and after Termination) of the Services Agreement;

Relevant Debits and Credits means such Debits and Credits of the Transferor which relate to Fares sold before the Transfer Date and which may be received by the Transferee as a result of Clause 11-32 of the Ticketing and Settlement Agreement;

Relevant Employee Liabilities means such rights and liabilities of the Transferor (or any other relevant employer or person) under any contracts of employment relating to the Relevant Employees which have been or are to be transferred to the Transferee by virtue of the operation of Law (including the Transfer Regulations);

Relevant Employees means all persons employed in the Business immediately before the Transfer Date (whether employed by the Transferor or otherwise) whose contract of employment has been or is to be transferred to the Transferee by virtue of the operation of Law (including the Transfer Regulations) or any other person employed in the Business in respect of whom liabilities arising from a contract of employment or employment relationship have or will be transferred by virtue of the operation of Law (including the Transfer Regulations);

Relevant Operator Assets means the property, rights and liabilities of the Transferor which are or are to be transferred to the Transferee under the Transfer Scheme;

Reporting Accountants means such firm of accountants as may be selected by agreement between the parties within 4 weeks of the preparation of the Net Asset Statement or, in the absence of such agreement, selected by the Authority;

Season Ticket Fare means a fare which entitles the purchaser to make an unlimited number of journeys in any direction during the period for which, and between the stations and/or the zones for which, such fare is valid;

Taxation comprises all forms of taxation, duties, contributions and levies of the Authority or the United Kingdom whenever imposed and (except in so far as attributable to the unreasonable delay or default of the Transferee) all penalties and interest relating thereto;

TOGC has the meaning assigned to that term in clause 6.2;

Transfer Date means the date and, where relevant, the time on or at which the Transfer Scheme comes into force;

Transfer Regulations means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended, replaced or substituted from time to time);

Transferring Assets and Liabilities has the meaning assigned to that term in clause 2.1; and

Undisclosed Employee has the meaning assigned to that term in clause 7.1(d).

Construction and Interpretation

1.2 In this Agreement terms and expressions defined in the Services Agreement shall have the same meaning and the terms “**contract of employment**”, “**collective agreement**”, “**employee representatives**” and “**trade union**” shall have the same meanings respectively as in the Transfer Regulations.

2. Transfer Price

Amount and Payment

2.1 The price for the transfer of:

- (a) the Relevant Operator Assets,
- (b) the Relevant Contract Liabilities,
- (c) the Relevant Debits and Credits; and
- (d) the Relevant Employee Liabilities

(together the Transferring Assets and Liabilities) shall (subject to adjustment as expressly provided in this Agreement) be an amount equal to the Net Asset Value of which the sum of £[amount], as determined under paragraph 3.3 of Schedule 15.4 (Provisions Applying on and after Termination) of the Services Agreement (the Completion Payment) shall be paid in immediately available funds by the Transferor to the Transferee, or by the Transferee to the Transferor, as determined under paragraph 3.3 of Schedule 15.4 of the Services Agreement, on the Transfer Date and the balance (if any) shall be paid in accordance with clause 2.5.

Net Asset Statement

- 2.2 The Transferee shall procure that, as soon as practicable and in any event not later than 2 months following the Transfer Date, there shall be drawn up a statement showing a true and fair view of the aggregate of the amount of each separate asset and liability of the Transferring Assets and Liabilities as at the Transfer Date.
- 2.3 The Net Asset Statement shall be:
- (a) drawn up in the manner described in the Schedule;
 - (b) prepared on such basis as would enable the Transferee's auditors, if so requested, to give an unqualified audit report thereon to the effect that it had been drawn up in accordance with the Schedule; and
 - (c) presented, initially as a draft, to the Transferor immediately following its preparation for review in conjunction with its auditors.
- 2.4 If the Transferor and the Transferee have failed to agree the Net Asset Statement within 4 weeks following such presentation, the matter shall be referred to the Reporting Accountants who shall settle and complete the Net Asset Statement as soon as practicable and shall determine the amount of the Net Asset Value as shown by the Net Asset Statement.

Adjustment of Price

- 2.5 If the Purchase Price exceeds or is less than the Completion Payment, the Transferee shall pay to the Transferor or, as the case may be, the Transferor shall pay to the Transferee, in either case within 14 days of the agreement or determination of the Net Asset Value, an amount equal to such excess or deficiency together in either case with interest thereon calculated from the Transfer Date at the Interest Rate.

3. References to the Reporting Accountants

Whenever any matter is referred under this Agreement to the decision of the Reporting Accountants:

- (a) the Reporting Accountants shall be engaged jointly by the parties on the terms set out in this Agreement and otherwise on such terms as shall be agreed; provided that neither party shall unreasonably (having regard, amongst other things, to the provisions of this Agreement) refuse its agreement to terms proposed by the Reporting Accountants or by the other party. If the terms of engagement of the Reporting Accountants have not been settled within 14 days of their appointment having been determined (or such longer period as the parties may agree) then, unless one party is unreasonably refusing its agreement to those terms, such accountants shall be deemed never to have been appointed as Reporting Accountants, save that the accountants shall be entitled to their

reasonable expenses under clause 3(d), and new Reporting Accountants shall be selected in accordance with the provisions of this Agreement;

- (b) if Reporting Accountants acting or appointed to act under this Agreement resign, withdraw, refuse to act, or are disqualified for any reason from performing their duties then, except as may be agreed between the parties, the parties shall appoint a replacement in accordance with the definition of Reporting Accountants;
- (c) the Reporting Accountants shall be deemed to act as experts and not as arbitrators;
- (d) the Reporting Accountants shall have power to allocate their fees and expenses for payment in whole or in part by any party at their discretion. If not otherwise allocated they shall be paid as to half by the Transferor and as to half by the Transferee;
- (e) each of the parties shall promptly on request supply to the Reporting Accountants all such documents and information as they may require for the purpose of the reference; and
- (f) the decision of the Reporting Accountants shall (in the absence of objection on the grounds of any error discovered within 14 days of the issue of their decision) be conclusive and binding and shall not be the subject of any appeal by way of legal proceeding or arbitration or otherwise.

4. Warranty

The Transferor warrants and represents to the Transferee that the Relevant Contract Liabilities and the Relevant Operator Assets are, to the extent they are property or rights, transferring to the Transferee free and clear of all Security Interests.

5. Interest

If the Transferor or the Transferee defaults in the payment when due of any sum payable under this Agreement (whether determined by agreement or pursuant to an order of a court or otherwise) the liability of the Transferor or the Transferee (as the case may be) shall be increased to include interest on such sum from the date when such payment is due until the date of actual payment (after as well as before judgement) at a rate equal to the Interest Rate. Such interest shall accrue from day to day.

6. Value Added Tax

- 6.1 All amounts under this agreement are expressed as exclusive of Value Added Tax where Value Added Tax is applicable.
- 6.2 The Transferor and the Transferee shall use all reasonable endeavours to secure that the transfer of the Transferring Assets and Liabilities is treated for Value Added Tax purposes as the transfer of a business as a going concern (TOGC) and accordingly as neither a supply of goods nor a supply of services for the purposes of Value Added Tax.
- 6.3 If HM Revenue & Customs direct that the transfer of the Transferring Assets and Liabilities, cannot be treated as a TOGC, the Transferor shall provide the Transferee with a copy of such direction within 5 days of receipt thereof by the Transferor.
- 6.4 The Transferee shall thereafter pay upon the receipt of a valid tax invoice the amount of any Value Added Tax which as a result of that direction may be chargeable on the transfer of the Transferring Assets and Liabilities. If the aforementioned direction was issued as a result of any action or inaction of the Transferee then the Transferee, shall in addition to the Value Added Tax, indemnify the Transferor for any penalties and interest that may be incurred upon receipt of such evidence from HM Revenue & Customs.
- 6.5 If the Transferee considers the direction issued by HM Revenue & Customs referred to in clause 6.3 to be incorrect then, without prejudice to the Transferee's obligation under clause 6.4 to pay to the

Transferor the amount of any Value Added Tax which as a result of such direction may be chargeable on the transfer of the Transferring Assets and Liabilities, the Transferee may, within 30 days of receipt of such direction by the Transferor, give notice to the Transferor that it requires the Transferor to appeal such direction. Upon requesting such an appeal, the Transferee agrees to indemnify the Transferor, for all reasonable costs that the Transferor may incur in taking such action, upon receipt of evidence of those costs. If such an appeal is successful, the Transferor agrees to reimburse the Transferee for such reasonable costs and penalties and interest, to the extent that those costs have been reimbursed by HM Revenue & Customs.

- 6.6 If any amount paid by the Transferee to the Transferor in respect of Value Added Tax pursuant to this Agreement is subsequently found to have been paid in error the Transferor shall issue a valid tax credit note for the appropriate sum to the Transferee and promptly repay such amount to the Transferee.
- 6.7 If any amount is payable by the Transferor to the Transferee in respect of the transfer of the Relevant Operator Assets, Relevant Contract Liabilities, Relevant Debits and Credits and Relevant Employee Liabilities pursuant to this Agreement, clauses 6.3 to 6.6 inclusive shall apply mutatis mutandis to such payment substituting Transferor for Transferee and vice versa.
- 6.8 The Transferor shall on the Transfer Date deliver to the Transferee such of those records referred to in Section 49 of the Value Added Tax Act 1994 as relate exclusively to the Business on condition that the Transferee undertakes to preserve those records in such manner and for such periods as may be required by law.
- 6.9 Subject to HM Revenue & Customs so permitting, all of the records referred to in Section 49 of the Value Added Tax Act 1994 relating to the Business (being the purchase records) shall be retained by the Transferor and the Transferor shall undertake to the Transferee to:
- (a) preserve those records in such manner and for such periods as may be required by law;
 - (b) give the Transferee as from the Transfer Date reasonable access during normal business hours to such records and to take copies of such records.

7. Employees

Transfer Regulations

- 7.1 The parties accept that, to the extent that the undertaking or part of the undertaking of the Transferor is continued by the Transferee after the Transfer Date, this Agreement and the transfer of the Business which is effected in connection with the Transfer Scheme are governed by the Transfer Regulations and the following provisions shall apply in connection therewith:
- (a) the contract of employment of each of the Relevant Employees (save insofar as such contract relates to any occupational pension scheme) shall be transferred to the Transferee with effect from the Transfer Date which shall be the **"time of transfer"** under the Transfer Regulations and the Transferee shall employ each such Relevant Employee on the terms of those contracts of employment (save insofar as such contract relates to any occupational pension scheme) with effect from the Transfer Date;
 - (b) the Transferor shall perform and discharge all its obligations in respect of all the Relevant Employees for its own account up to and including the Transfer Date including, without limitation, discharging all wages and salaries of the Relevant Employees, all employer's contributions to any relevant occupational pension scheme and all other costs and expenses related to their employment (including, without limitation, any Taxation, accrued holiday pay, accrued bonus, commission or other sums payable in respect of service prior to the close of business on the Transfer Date) and shall indemnify the Transferee and keep the Transferee indemnified against each and every action, proceeding, liability (including, without limitation, any Taxation), cost, claim, expense (including, without limitation, reasonable legal fees) or demand arising from the Transferor's failure so to discharge;

- (c) the Transferor shall indemnify the Transferee and keep the Transferee indemnified against each and every action, proceeding, cost, claim, liability (including, without limitation, any Taxation), expense (including, without limitation, reasonable legal fees) or demand which relates to or arises out of any act or omission by the Transferor or any other event or occurrence prior to the Transfer Date and which the Transferee may incur in relation to any contract of employment or collective agreement concerning one or more of the Relevant Employees pursuant to the provisions of the Transfer Regulations or otherwise including, without limitation, any such matter relating to or arising out of:
- (i) the Transferor's rights, powers, duties and/or liabilities (including, without limitation, any Taxation) under or in connection with any such contract of employment or collective agreement, which rights, powers, duties and/or liabilities (as the case may be) are or will be transferred to the Transferee in accordance with the Transfer Regulations; or
 - (ii) anything done or omitted before the Transfer Date by or in relation to the Transferor in respect of any such contract of employment or collective agreement or any Relevant Employee, which is deemed by the Transfer Regulations to have been done or omitted by or in relation to the Transferee save where the thing done or omitted to be done before the Transfer Date relates to the Transferee's failure to comply with its obligations referred to in clause 7.4;
- (d) if any contract of employment or collective agreement which is neither disclosed in writing to the Transferee by the Transferor prior to the Transfer Date nor made available to the Authority under Schedule 15.3 (Handover Package) of the Services Agreement prior to the Transfer Date shall have effect as if originally made between the Transferee and any employee ("**the Undisclosed Employee**") or a trade union or employee representatives as a result of the provisions of the Transfer Regulations (without prejudice to any other right or remedy which may be available to the Transferee):
- (i) the Transferee may, upon becoming aware of the application of the Transfer Regulations to any such contract of employment or collective agreement terminate such contract or agreement forthwith;
 - (ii) the Transferor shall indemnify the Transferee against each and every action, proceeding, cost, claim, liability (including, without limitation, any Taxation), expense (including, without limitation, reasonable legal fees) or demand relating to or arising out of such termination and reimburse the Transferee for all costs and expenses (including, without limitation, any Taxation) incurred in employing such employee in respect of his employment following the Transfer Date; and
 - (iii) the Transferor shall indemnify the Transferee in respect of any Undisclosed Employee on the same terms mutatis mutandis as the Transferor has indemnified the Transferee in respect of a Relevant Employee pursuant to the terms of clauses 7.1(b) and 7.1(c); and
- (e) the Transferor shall indemnify the Transferee and keep the Transferee indemnified against each and every action, proceeding, cost, claim, liability (including without limitation, any Taxation) expense (including, without limitation, reasonable legal fees) or demand which relates to or arises out of any dismissal (including, without limitation, constructive dismissal) by the Transferor of any employee (not being a Relevant Employee) and which the Transferee may incur pursuant to the provisions of the Transfer Regulations.

Transferee's Indemnities

- 7.2 The Transferee shall indemnify the Transferor and keep the Transferor indemnified against each and every action, proceeding, liability (including, without limitation, any Taxation), cost, claim, loss, expense (including reasonable legal fees) and demand arising out of or in connection with:
- (a) any substantial change in the working conditions of the Relevant Employees to the detriment of any or all of them occurring on or after the Transfer Date;

- (b) the change of employer occurring by virtue of the Transfer Regulations and/or this Agreement being significant and detrimental to any of the Relevant Employees;
 - (c) the employment by the Transferee on or after the Transfer Date of any of the Relevant Employees other than on terms (including terms relating to any occupational pension scheme) at least as good as those enjoyed prior to the Transfer Date or the termination of the employment of any of them on or after the Transfer Date; or
 - (d) any claim by any Relevant Employee (whether in contract or in tort or under statute (including the Treaty of the European Community or European Union and any Directives made under the Authority of any such Treaty or any successor thereof)) for any remedy (including, without limitation, for unfair dismissal, redundancy, statutory redundancy, equal pay, sex or race discrimination) as a result of any act or omission by the Transferee after the Transfer Date.
- 7.3 The Transferee shall indemnify the Transferor and keep the Transferor indemnified against each and every action, proceeding, liability, cost, claim, loss, expense (including reasonable legal fees) and demand which arises as a result of it not providing or not having provided, in accordance with its obligations under the Transfer Regulations, the Transferor in writing with such information and at such time as will enable the Transferor to carry out its duties under Regulation 10(2)(d) and 10(6) of the Transfer Regulations concerning measures envisaged by the Transferee in relation to the Relevant Employees.

Details of Relevant Employees

- 7.4 The Transferor warrants to the Transferee that it has (to the extent not made available to the Authority under Schedule 15.4 (Provisions Applying on and after Termination) of the Services Agreement prior to the Transfer Date) provided the Transferee prior to the Transfer Date with full particulars of:
- (a) each Relevant Employee, including name, sex, and the date on which continuity of employment began for each Relevant Employee for statutory purposes;
 - (b) terms and conditions of employment of each such person;
 - (c) all payments, benefits or changes to terms and conditions of employment promised to any such person;
 - (d) dismissals of Relevant Employees or termination of employment effected within 12 months prior to the Transfer Date including the Transfer Date;
 - (e) all agreements or arrangements entered into in relation to the Relevant Employees between the Transferor, any Affiliate of the Transferor or any other relevant employer and any trade union or association of trade unions or organisation or body of employees including employee representatives and elected representatives; and
 - (f) all strikes or other industrial action taken by any Relevant Employee within 12 months prior to the Transfer Date including the Transfer Date.
- 7.5 The Transferor and Transferee shall deliver to each of the Relevant Employees letters in an agreed form from the Transferor and Transferee as soon as is practicable after the execution of this Agreement (to the extent not already delivered prior to the Transfer Date).

8. Miscellaneous Provisions

Variations in Writing

- 8.1 No variation of this Agreement shall be effective unless in writing and signed by duly authorised representatives of the parties.

Partial Invalidity

8.2 If any provision in this Agreement shall be held to be void, illegal, invalid or unenforceable, in whole or in part, under any enactment or rule of law, such provision or part shall to that extent be deemed not to form part of this Agreement but the legality, validity and enforceability of the remainder of this Agreement shall not be affected.

Further Assurance

8.3 Each of the parties agrees to execute and deliver all such further instruments and do and perform all such further acts and things as shall be necessary or expedient for the carrying out of the provisions of this Agreement.

Notices

8.4 Any notice or other communication requiring to be given or served under or in connection with this Agreement shall be in writing and shall be sufficiently given or served if delivered or sent to the registered office of the recipient or:

(a) in the case of the Transferor to [name of Transferor] at:

[address]

[fax]

Attention: [name]

(a) in the case of the Transferee to [name of Transferee] at:

[address]

[fax]

Attention: [name]

8.5 Any such notice or other communication shall be delivered by hand or sent by courier, fax or prepaid first class post. If sent by courier or fax such notice or communication shall conclusively be deemed to have been given or served at the time of despatch. If sent by post such notice or communication shall conclusively be deemed to have been received two business days from the time of posting.

Governing Law

8.8 This Agreement shall be governed by and construed in accordance with the laws of Scotland and the parties irrevocably agree that the courts of Scotland are to have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement.

In Witness whereof the parties hereto have executed this Agreement consisting of this and the preceding [] pages and the schedule annexed and executed as relative hereto as follows: -

Signed for and on behalf of TRANSFEROR

At

On the day of 20[xx]

By

..... Director

..... Full Name (Printed)

Before this witness:-

..... Witness

..... Full Name

..... Address

.....

Signed for and on behalf of TRANSFEREE

At

On the day of 20[xx]

By

..... Director

..... Full Name (Printed)

Before this witness:-

..... Witness

..... Full Name

..... Address

.....

SCHEDULE

This is the Schedule referred to in the foregoing Supplemental Agreement between [] and []

NET ASSET STATEMENT

The Net Asset Statement shall be drawn up (except to the extent otherwise agreed by the Transferor and the Transferee) in accordance with accounting principles generally accepted in the United Kingdom and such that the Transferring Assets and Liabilities are valued on the following basis:

1. Rights and liabilities relating to an obligation of carriage under the terms of any Fare shall be valued in accordance with the following formula:

$$(C - D) \times \frac{A}{B} + E$$

where:

C equals the Credit (exclusive of any Valued Added Tax) received by the Transferor in respect of the Fare provided that:

- (a) such Credit shall be deemed not to include any reduction in respect of a discount allowed to the purchaser of the Fare pursuant to the Passenger's Charter or any other passenger's charter of the Transferor;
- (b) if the Fare is a Season Ticket Fare, such Credit shall be the New Credit (as defined in the Ticketing and Settlement Agreement) relating to that Season Ticket Fare on the Transfer Date if different to the Credit that was in fact received by the Transferor in respect of such Season Ticket Fare;
- (c) such Credit shall be net of any Private Settlement Credit (as defined in the Ticketing and Settlement Agreement) arising in respect of that Fare; and
- (d) such Credit shall be deemed to exclude any Credit received by the Transferor in respect of any commission due to it in respect of the sale of such Fare (provided that for these purposes the amount of such commission shall not exceed the National Standard Rate of Commission (as defined in the Ticketing and Settlement Agreement) in respect of the Fare);

D equals the Debit (exclusive of any Value Added Tax) received by the Transferor in respect of the commission due in respect of the sale of the Fare (provided that for these purposes the amount of such commission shall not exceed the National Standard Rate of Commission (as defined in the Ticketing and Settlement Agreement) in respect of the Fare);

$\frac{A}{B}$

equals:

- (a) in the case of a Season Ticket Fare, the number of journeys which the purchaser of the Fare is estimated to make from (and including) the Transfer Date to (and including) the last day on which the Fare is valid (including any extensions to its original period of validity) divided by the total number of journeys which the purchaser of the Fare is estimated to make with that Fare (as determined in each case in accordance with Schedule 28 of the Ticketing and Settlement Agreement);
- (b) in the case of any other Fare which entitles the holder thereof to make more than two journeys, the number of days for which the Fare continues to be valid after the Transfer Date (including any extensions to its original period of validity) divided by the total number of days for which

such Fare is valid on issue (except to the extent that it can reasonably be estimated what proportion of the journeys which could be made on issue of the Fare have not been made prior to the Transfer Date); or

(c) in the case of any other Fare, zero; and

E equals, if $\frac{A}{B}$ is greater than zero:

the amount of any discount to which it can be reasonably estimated that the purchaser of the Fare would be entitled pursuant to the Passenger's Charter or any other passenger's charter of the Transferor on purchasing an equivalent Fare on the expiry of the relevant Fare;

and for these purposes a Credit or Debit shall be deemed to be received when the relevant Fare is Accepted for Clearing (as defined in the Ticketing and Settlement Agreement).

2. Rights and liabilities relating to an Excess Fare, Reservation or Upgrade (as such terms are defined in the Ticketing and Settlement Agreement) shall be valued at zero unless such Excess Fare, Reservation or Upgrade involves more than two journeys, in which case they shall be valued in accordance with paragraph 1 and references to Fare in paragraph 1 shall be construed accordingly.
3. Rights and liabilities under a Discount Card shall be valued in accordance with the following formula:

$$(C - D) \times \frac{A}{B}$$

where:

- C equals the Credit (exclusive of any Value Added Tax) received by the Transferor in respect of the Discount Card;
- D equals the Debit (exclusive of any Value Added Tax) received by the Transferor in respect of the commission due in respect of the sale of the Discount Card (provided that for these purposes the amount of such commission shall not exceed the National Standard Rate of Commission (as defined in the Ticketing and Settlement Agreement) in respect of the Discount Card); and
- $\frac{A}{B}$ equals the number of days for which the Discount Card continues to be valid after the Transfer Date (including any extensions to its original period of validity) divided by the total number of days for which such Discount Card is valid on issue, or in the case of any Discount Card listed in Schedules 12 or 39 of the Ticketing and Settlement Agreement on the Commencement Date, zero;

and for these purposes a Credit or Debit shall be deemed to be received when the relevant Discount Card is Accepted for Clearing (as defined in the Ticketing and Settlement Agreement).

4. Relevant Debits and Credits shall be valued at the full amount of such Debits and Credits (inclusive of any Value Added Tax) but excluding any Debits and Credits arising in respect of Adjustment Amounts (as defined in the Ticketing and Settlement Agreement) which are received by the Transferee in respect of a change to the Credit which is used to value any relevant Season Ticket Fare under paragraph 1 of this Schedule to the extent such Adjustment Amounts relate to a period after the Transfer Date.
5. Rights and liabilities in respect of any contract, lease, licence or other equivalent arrangement (excluding rights and liabilities valued under paragraphs 1 to 4) shall be valued at nil except to the extent that the relevant rights and liabilities include matters specified in the left hand column of the

following table, which shall be valued on the basis specified in the right hand column of the following table:

Rights and Liabilities	Value
Any accrued rights to receive payment	Monetary amounts so accrued, subject to any provision being made for payment not being received from any other person
Any right to receive payment in respect of goods and/or services provided by the Transferor prior to the Transfer Date where the due date for such payment is after the Transfer Date	Amount payable under such contract, lease, licence or other equivalent arrangement for the goods and/or services so provided by the Transferor, subject to any provision being made for payment not being received from any other person
Any accrued liabilities to make payment	Monetary amounts so accrued
Any liability to make payment in respect of goods and/or services provided to the Transferor prior to the Transfer Date where the due date for such payment is after the Transfer Date	Amount payable under such contract, lease, licence or other equivalent arrangement for the goods and/or services provided to the Transferor.
Any rights in respect of which payment has already been made by the Transferor	Monetary amounts so paid, subject to any provision being made for such rights not being exercisable against any other person
Any liabilities in respect of which payment has already been received by the Transferor	Monetary amounts so received
Any liability resulting from any breach of or failure by the Transferor to comply with the terms of any such contract, lease, licence or other equivalent arrangement	Amount of such liability or, to the extent that such amount is not ascertained, the parties reasonable estimate of the amount of such liability

6. The Stored Credit Balance held by SRT at the Transfer Date shall be valued at the monetary amount so held.
7. Any other property, rights or liabilities shall be valued on the basis of a willing vendor and purchaser and ongoing usage within the railway industry.

.....

Transferor (Director)

.....

Transferee (Director)

SCHEDULE 15.5

THIS IS SCHEDULE 15.5 REFERRED TO IN THE FOREGOING SCOTRAIL GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND SCOTRAIL TRAINS LIMITED

Employment exit provisions

1. Employment regulations exit provisions

- 1.1 The Authority and SRT acknowledge that subsequent to the commencement of the provision of the Operator Services, the identity of the provider of the Operator Services (or any part of the Passenger Services) may change (whether as a result of termination or partial termination of this Agreement or otherwise) resulting in the Operator Services being undertaken by a Successor Operator. Such change in the identity of the supplier of such services may constitute a transfer to which the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) (**“the Employment Regulations”**) as amended or replaced or any other regulations implementing the Acquired Rights Directive will apply (**“a Relevant Transfer”**). The Authority and SRT further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between SRT and those employees of SRT to whom the Employment Regulations will apply (**“the Transferring Supplier Employees”**) at the time of the Relevant Transfer (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Relevant Transfer date as if originally made between Successor Operator and each such Transferring Supplier Employee.
- 1.2 SRT shall comply with all its obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (and including) the Relevant Transfer date and shall perform and discharge all its obligations in respect of all the Transferring Supplier Employees arising in respect of the period up to (and including) the Relevant Transfer date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period ending on (and including) the Relevant Transfer date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) SRT; and (ii) the Successor Operator.
- 1.3 Subject to paragraph 1.4, SRT shall indemnify the Authority and/or the Successor Operator against any Employee Liabilities in respect of any Transferring Supplier Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
- (a) any act or omission of SRT whether occurring before, on or after the Relevant Transfer date;
 - (b) the breach or non-observance by SRT occurring on or before the Relevant Transfer date of:
 - (i) any collective agreement applicable to the Transferring Supplier Employees; and/or
 - (ii) any other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees which SRT is contractually bound to honour;
 - (c) any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by SRT to comply with any legal obligation to such trade union, body or person arising on or before the Relevant Transfer date;

- (d) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (i) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Relevant Transfer date; and
 - (ii) in relation to any employee who is not a Transferring Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from SRT to the Authority and/or Successor Operator, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Relevant Transfer date;
 - (e) a failure of SRT to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period up to (and including) the Relevant Transfer date);
 - (f) any claim made by or in respect of any person employed or formerly employed by SRT other than a Transferring Supplier Employee for whom it is alleged the Authority and/or the Successor Operator may be liable by virtue of this Agreement and/or the Employment Regulations; and
 - (g) any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of SRT in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Authority and/or Successor Operator to comply with regulation 13(4) of the Employment Regulations.
- 1.4 The indemnities in paragraph 1.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Successor Operator whether occurring or having its origin before, on or after the Relevant Transfer date, including any Employee Liabilities:
- (a) arising out of the resignation of any Transferring Supplier Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Successor Operator to occur in the period on or after the Relevant Transfer date); or
 - (b) arising from the Successor Operator's failure to comply with its obligations under the Employment Regulations.
- 1.5 If any person who is not a Transferring Supplier Employee claims, or it is determined in relation to any person who is not a Transferring Supplier Employee, that his/her contract of employment has been transferred from SRT to the Successor Operator pursuant to the Employment Regulations, then:
- (a) the Authority shall procure that the Successor Operator shall within five Working Days of becoming aware of that fact, give notice in writing to SRT; and
 - (b) SRT may offer employment to such person within 15 Working Days of the notification by the Successor Operator or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.

- 1.6 If such offer is accepted, or if the situation has otherwise been resolved by SRT, the Authority shall procure that the Successor Operator shall, immediately release or procure the release of the person from his/her employment or alleged employment.
- 1.7 If after the 15 Working Day period specified in paragraph (a) has elapsed:
- (a) no such offer of employment has been made;
 - (b) such offer has been made but not accepted; or
 - (c) the situation has not otherwise been resolved;
- the Authority shall advise the Successor Operator that it may within five Working Days give notice to terminate the employment or alleged employment of such person.
- 1.8 Subject to the Successor Operator acting in accordance with the provisions of paragraph 1.5 to paragraph 1.7, and in accordance with all applicable proper employment procedures set out in applicable Law, SRT shall indemnify the Successor Operator against all Employee Liabilities arising out of the termination pursuant to the provisions of clause 1.7 provided that the Successor Operator takes all reasonable steps to minimise any such Employee Liabilities.
- 1.9 The indemnity in paragraph 1.8:
- (a) shall not apply to:
 - (i) in any case in relation to any alleged act or omission of the Successor Operator any claim for: (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees; or
 - (ii) any claim that the termination of employment was unfair because the Successor Operator neglected to follow a fair dismissal procedure; and
 - (b) shall apply only where the notification referred to in paragraph (a) is made by the Successor Operator to SRT within six months of the Relevant Transfer date.
- 1.10 If any such person as is described in paragraph 1.5 is neither re-employed by SRT nor dismissed by the Successor Operator within the time scales set out in paragraph 1.5 to paragraph 1.7, such person shall be treated as a Transferring Supplier Employee and the Successor Operator shall comply with such obligations as may be imposed upon it under applicable Law.
- 1.11 SRT shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of the Transferring Supplier Employees before and on the Relevant Transfer date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (and including) the Relevant Transfer date) and any necessary apportionments in respect of any periodic payments shall be made between:
- (a) SRT; and
 - (b) Successor Operator.
- 1.12 SRT shall promptly provide to the Authority and any Successor Operator in writing such information as is necessary to enable the Authority, or the Successor Operator to carry out their respective duties under regulation 13 of the Employment Regulations. The Authority shall procure that the Successor Operator shall promptly provide to SRT in writing such information as is necessary to enable SRT to carry out their respective duties under regulation 13 of the Employment Regulations.

- 1.13 Subject to paragraph 1.14, the Authority shall procure that the Successor Operator indemnifies SRT on its own behalf and on behalf of any Successor Operator and its sub-contractors against any Employee Liabilities in respect of each Transferring Supplier Employee (or, where applicable any employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee) arising from or as a result of:
- (a) any act or omission of the Successor Operator;
 - (b) the breach or non-observance by the Successor Operator on or after the Service Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Supplier Employees; and/or
 - (ii) any custom or practice in respect of any Transferring Supplier Employees which the Successor Operator is contractually bound to honour;
 - (c) any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Successor Operator to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer date;
 - (d) any proposal by the Successor Operator to change the terms and conditions of employment or working conditions of any Transferring Supplier Employees on or after their transfer to the Successor Operator on the Relevant Transfer date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer date as a result of or for a reason connected to such proposed changes;
 - (e) any statement communicated to or action undertaken by the Successor Operator to, or in respect of, any Transferring Supplier Employee on or before the Relevant Transfer date regarding the Relevant Transfer which has not been agreed in advance with SRT in writing;
 - (f) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (i) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Relevant Transfer date; and
 - (ii) in relation to any employee who is not a Transferring Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from SRT, to the Successor Operator to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Relevant Transfer date;
 - (g) a failure of the Successor Operator to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period from (and including) the Relevant Transfer date; and
 - (h) any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Successor Operator in relation to obligations under regulation 13 of the Employment Regulations.
- 1.14 The indemnities in paragraph 1.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of SRT whether occurring or having its origin before, on or after the Relevant Transfer Date, including any Employee Liabilities arising from the failure by SRT to comply with its obligations under the Employment Regulations.

SCHEDULE 16

THIS IS SCHEDULE 16 REFERRED TO IN THE FOREGOING SCOTRAIL GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND SCOTRAIL TRAINS LIMITED

Pensions

1. **Operation Sections**

- 1.1 SRT shall, in respect of the Operator Services, participate in, and become the Designated Employer in relation to the ScotRail Section of the Railways Pension Scheme (the “**Operation Section**”). Subject to paragraphs 3 and 4.2(b), each employee of an Operator will be offered membership of an Operation Section.
- 1.2 SRT as Designated Employer in relation to the Operation Section shall take such action as is required or directed by SRH and/or the Authority to effect and/or reflect the transfer in or transfer out of members to/from the Operation Section consequent to an aggregation or disaggregation by the Authority of services under the ScotRail Operation.

2. **Restrictions on Membership**

- 2.1 SRT will restrict membership of any Operation Section which has adopted the Shared Cost Arrangement to its employees. If an Operation Section has adopted the Defined Contribution Arrangement then, subject to paragraph 4 and to the consent of SRH, membership of that Operation Section may include employees of any subsidiary of SRT which is engaged in the railway industry and which becomes a Participating Employer in that Operation Section.

3. **Closed Schemes**

- 3.1 Subject to any requirements of Her Majesty’s Revenue and Customs, SRT shall take such steps as may be necessary (including entering into any relevant deed of participation) to allow Closed Scheme Employees to continue in membership of the Closed Schemes in accordance with their terms. For the purposes of this paragraph 3:
- (a) “**Closed Scheme Employees**” means such of the employees of SRT who were, immediately prior to the commencement of their employment with SRT, members of any of the Closed Schemes; and
- (b) “**Closed Schemes**” means the British Railways Superannuation Fund, the Great Western Railway Supplemental Pensions Reserve Fund, the BR (1974) Pension Fund and the NFC Retirement Plan.

4. **Variations in benefits and contributions; Investment**

- 4.1 If SRT is considering making a proposal that falls within the scope of paragraphs 4.2(a) to (g) inclusive, it shall promptly consult with the Authority in relation to that proposal prior to putting such a proposal to the Pensions Committee of any Operation Section, the Trustee of the Railways Pension Scheme, or to any trade union. SRT must otherwise consult in good time with the Authority in relation to any proposal falling within the scope of 4.2(a) to (g) inclusive.
- 4.2 Separately and in addition to complying with its obligations under paragraph 4.1, SRT shall not, without the prior written consent of the Authority (which may be given on such terms and subject to such conditions as the Authority thinks fit):
- (a) restructure or change the composition of the earnings of employees of SRT in such a way as to increase the part of those earnings which qualifies as pensionable earnings under the Rules applicable to any Operation Section or take any action (or consent to the taking of any action)

which could detrimentally affect the funding of any Operation Section, including varying or providing different or additional benefits under that Operation Section or promising to do so, unless:

- (i) such change is required by Law; or
- (ii) such change only affects benefits payable in respect of past service of members of that Operation Section and on or prior to the effective date of the change SRT pays an additional cash payment to the Trustee which, in the opinion of the Actuary, meets in full the additional funding cost imposed on that Operation Section; or
- (iii) would not lead to substantial changes in the funding of any Operation Section and is the result of normal application of that Operation Section's Rules in the ordinary day to day running of the business of the Operation, for example, where individual employees are, from time to time, promoted or transferred to a higher paid or different employment which has a different composition of earnings.

- (b) make or consent to any proposal to change the provisions of the Pension Trust in respect of the Operation Sections unless the change is required by Law;
- (c) provide retirement, death, disability or life assurance benefits for or in respect of any of its employees other than under any Operation Sections or as provided in paragraph 3;
- (d) omit to provide the above-mentioned benefits for and in respect of its employees save that, without prejudice to any rights which any such employee may otherwise have, SRT shall not be obliged for the purposes of this Agreement to offer such benefits to any employee employed on a fixed term contract of 12 months or less; (e) take any action (or consent to the taking of any action) which could affect the contributions payable by Participating Employers under any Operation Section, including (but not limited to) exercising any discretion allowed to SRT as Designated Employer arising out of any actuarial valuation of an Operation Section, and varying or providing different or additional benefits under the Operation Sections in respect of future service, unless such action is required by Law;
- (f) close an Operation Section to new members; or
- (g) take (or omit to take) any action which could result in any Operation Section being wound up, in whole or in part.

4.3 SRT shall use all reasonable endeavours to procure that the provisions of Clause 5G (Consultation with Pensions Committees) of the Pension Trust are amended such that they do not apply in respect of any Operation Section.

4.4 SRT shall consult with the Authority on:

- (a) any proposal made by the Trustee or Pensions Committee to change the statement of investment principles applicable to any Operation Section; and/or
- (b) any proposal to alter the rate of contributions payable by SRT or its employees under a new schedule of contributions for the Operation Section.

4.5 With respect to any proposal falling within the scope of paragraph 4.4(a) or 4.4(b), SRT shall also consult with the Trustee on the basis of any response it receives from the Authority in relation to any such proposal.

5. **Initial Transfer Value**

5.1 SRT, SRH and the Authority acknowledge that, if for the purposes of this Agreement, under the terms of the Railways Pension Scheme, a transfer payment is made to an Operation Section from another

section of the Railways Pension Scheme in relation to Protected Persons, as defined under the Railway Pensions (Protection and Designation of Schemes) Order 1994, who had accrued benefits in such other section prior to the Commencement Date and who become members of that Operation Section, article 7(4) of that Order shall apply.

6. Funding Liabilities

6.1 SRT shall pay the employer contributions required under the schedule of contributions applicable to each Operation Section (and any of the Closed Schemes in which it participates) in respect of the Term subject to the provisions of paragraph 6.2 below.

6.2 Where, during the Term, Operator Services are aggregated or disaggregated by the Authority (for example, as a result of remapping) and, as a consequence, an Operation Section of which SRT is the Designated Employer is required to accept a transfer in or to make a transfer out of members, the Authority shall ensure that SRT has no liability for any resulting deterioration immediately arising in the funding level of the Operation Section measured in accordance with the Operation Sections' technical provisions in Part 3 of the Pensions Act 2004 or for any amount arising under article 7(4) of the Railways Pensions (Protection and Designation of Schemes) Order 1994. Notwithstanding the above, the Authority shall have no liability for any future deterioration in the funding levels of the Operation Section linked to such transfer in or out of members.

7. Discharge of obligations

7.1 The Authority and/or SRH may at any time during the Term seek information from the Trustee with a view to satisfying itself that SRT and the other Participating Employers (if any) have fully discharged their respective obligations under the Railways Pension Scheme, including (but not limited to) their obligations in respect of the payment of contributions to any Operation Section.

7.2 SRT shall, at its expense, promptly provide such information in relation to any Operation Section, including (but not limited to) actuarial advice and information, as the Authority and/or SRH may from time to time request and shall authorise and consent to the Trustee doing so.

7.3 SRT shall use all reasonable endeavours to provide to the Authority and/or SRH:

(a) within 1 month of the expiry of each Operator Year; and

(b) at other times as soon as practicable following a request by the Authority and/or SRH,

a certificate signed by the Trustee stating either that SRT and each of the other Participating Employers (if any) has fully complied with its obligations under the Railways Pension Scheme, including (but not limited to) its obligation to contribute to the Operation Sections or, if it or any of them has not so complied, stating the extent to which it has not (or they have not) done so. Where the certificate is given pursuant to paragraph 7.3(a), it shall cover the relevant Operator Year; where the certificate has been given pursuant to paragraph 7.3(b), it shall cover such period as the Authority and/or SRH shall specify.

7.4 If the Trustee does not certify that SRT or any other Participating Employer has fully complied with its obligations under the Railways Pension Scheme or if the Authority and/or SRH otherwise reasonably considers that SRT or any other Participating Employer has not complied with such obligations, SRH shall be entitled to withhold (and the Authority shall be entitled to instruct SRH to withhold) from any Grant Payments payable by SRH under Schedule 8 (*Grant Payments*) an amount which is, in the opinion of the Authority and/or SRH (as the case may be), no greater than the amount of any contribution that SRT or such Participating Employer has thereby failed to make or avoided making.

7.5 SRH may withhold such amount until such time as it and/or the Authority reasonably determines that the relevant contributions have been made in full by SRT or such Participating Employer. Following that determination, the amount withheld shall become payable (without interest) on the next day on which a Grant Payment becomes payable under Schedule 8 (*Grant Payments*), being a day which

falls no less than 7 days after such determination or, if there is no such day, 14 days after the date of such determination. To the extent that the Authority and/or SRH has not so determined within 4 weeks after the expiry of the Operation Period, SRT's right to receive the amount so withheld under this Agreement shall lapse and SRH shall not be obliged to pay such amount.

7.6 The Authority shall at the end of the Term ensure that SRT has no liability for any deficit in Operation Section (other than for contributions due and payable by SRT to the Operation Section for any period prior to the end of the Term) and SRT shall have no right to or to benefit from any surplus which may exist in the Operation Section. For the avoidance of doubt this paragraph 7.6 shall apply where the Operator Services are either aggregated or disaggregated (for example, as a result of remapping).

8. **Definitions**

8.1 Unless otherwise defined in this Agreement, terms defined in this Schedule 16 shall have the meanings ascribed to them in the Railways Pension Scheme.

9. **SRT obligations to participate in any Investigation and reform**

9.1 In this paragraph 9:

(a) "**Investigation**" means an investigation by The Pensions Regulator into the possible use of its powers under Section 231 of the Pensions Act 2004 in relation to a section of the Railways Pension Scheme which has as its designated employer SRT or another Participating Employer; and

(b) "**Reasonable Commercial Manner**" means acting in the long-term interests of the ScotRail franchise taking into account the long-term affordability, sustainability and financial robustness of the Operation Section(s) as if SRT and its employees (as appropriate) were solely responsible for the funding of the Operation Section(s) and, at all times, disregarding the actual allocation of cost risk as between SRT and SRH in this Agreement.

9.2 SRT shall:

(a) act in good faith and in a Reasonable Commercial Manner at all times; and

(b) engage appropriately with the Trustee, the RDG, The Pensions Regulator and the relevant trade unions, in discharging its obligations under paragraph 9.3 of this Schedule 16.

9.3 SRT shall take all reasonable steps to participate in:

(a) the development and implementation of the RDG's response to the current Investigation and the associated concerns raised by The Pensions Regulator regarding those sections of the Railways Pension Scheme for which a Participating Employer is the designated employer;

(b) any Investigation concerning one or more of the Operation Sections, in which case SRT shall use all reasonable endeavours to achieve an outcome from that Investigation with which a reasonable franchisee, who was in the position of SRT and acting in a Reasonable Commercial Manner, would be satisfied; and

(c) any industry wide efforts to reform the pension arrangements or benefits payable under the Railways Pension Scheme or offered to employees of Participating Employers, recognising the need for the British passenger rail industry to be affordable and offer value for money in the interests of relevant stakeholders including taxpayers.

10. **Information Powers**

10.1 Where required by the Authority and/or SRH, SRT agrees to allow the Authority and/or SRH or the Authority's and/or SRH's representatives to attend any meeting between SRT and the Trustee and/or

the RDG and/or The Pensions Regulator where the meeting in whole or part relates to matters to which paragraph 9 of this Schedule 16 applies.

SCHEDULE 17

THIS IS SCHEDULE 17 REFERRED TO IN THE FOREGOING SCOTRAIL GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND SCOTRAIL TRAINS LIMITED

Confidentiality, FOISA and Data Protection

1. Confidentiality

1.1 Subject to the provisions of the Act, the Transport Act, the Railways Act 2005 and the terms of this Schedule 17, each party shall hold in confidence all Confidential Information and shall not, except with the disclosing party's written authority:

- (a) Publish or otherwise disclose the same otherwise than as expressly provided for in this Agreement; or
- (b) use for any purpose other than as required pursuant to the terms of this Agreement unless or until the recipient party can demonstrate that any such document, material or information is in the public domain through no fault of its own and through no contravention of this Agreement, whereupon to the extent that it is in the public domain this obligation shall cease.

2. Disclosure of Confidential Information

Each party may disclose Confidential Information acquired by it under or pursuant to this Agreement without the prior written consent of the disclosing party if such disclosure is made in good faith by the recipient party:

- 2.1 to any Affiliate of such party (including, without limitation, to another party to this Agreement);
- 2.2 to any Associate of such party, upon obtaining from such Associate an undertaking of confidentiality equivalent to that contained in paragraph 1 of this Schedule 17;
- 2.3 to any third party consultants or advisers engaged by or on behalf of such party and acting in that capacity, upon obtaining from such consultants or advisers an undertaking of confidentiality equivalent to that contained in paragraph 1;
- 2.4 to any lenders, security trustee, bank or other financial institution (and its or their advisers) from which such party is seeking or obtaining finance, upon obtaining from any such person an undertaking of confidentiality equivalent to that contained in paragraph 1;
- 2.5 to the extent required by Law or pursuant to an order of any court of competent jurisdiction or under the Dispute Resolution Rules or the rules of any other dispute resolution procedures to which a dispute is referred in accordance with this Agreement or the rules of a recognised stock exchange or a formal or informal request of any taxation authority;
- 2.6 to any insurer, upon obtaining from such insurer an undertaking of confidentiality equivalent to that contained in paragraph 1;
- 2.7 to any director, employee or officer of such party, to the extent necessary to enable such party to perform its obligations under this Agreement or to protect or enforce its rights under this Agreement;
- 2.8 by SRT to the ORR, the Passengers' Council or a Local Authority;
- 2.9 by SRH to any department or officer of the Scottish Government or to the ORR; and/or

2.10 by the Authority to any department or officer of the Scottish Government, or to the ORR, or such other party as required to comply with Law.

3. **Publication of Certain Information by the Authority**

3.1 Notwithstanding the provisions of paragraph 1, and at all times subject to applicable Data Protection Laws the Authority may Publish whether to the press, the public or to one or more individuals, companies or other bodies, (including to any prospective Successor Operator) in such form and at such times as it sees fit, the following (irrespective of whether the same was provided to the Authority by SRH, SRT and/or a third party):

- (a) the amount of any Grant Payments payable under this Agreement and the aggregate amount of Grant Payments paid in each year under this Agreement;
- (b) such information as the Authority may consider reasonably necessary to Publish in connection with any Closure or proposed Closure;
- (c) any Passenger's Charter Statistics and the amount of any payments by SRT under the Passenger's Charter;
- (d) such information as may reasonably be required in connection with the retendering or reletting of the franchise or any part thereof, provided that such information may only be published during the period of, or during the period leading up to, such retendering or reletting;
- (e) each summary, information, notification or similar and any reports and accounts delivered to the Authority under or in connection with this Agreement, the Franchise Agreement and/or the Financial Memorandum;
- (f) the results of any monitoring or measurement of the performance of SRT in the provision of the Operator Services;
- (g) the results, on a Service Group, Sector, Route, station or other comparable basis, of any calculation of passenger numbers under Schedule 1.5 (*Information about Passengers*);
- (h) the results of any survey under Schedule 1.5;
- (i) the results of any assessment or inspection in connection with this Agreement;
- (j) details of SRT's plans and performance in respect of safety;
- (k) such information as may reasonably require to be Published in connection with Schedule 3 (*Priced Options*);
- (l) such information as the Authority may reasonably require to include in any annual report in respect of SRH, SRT and/or the ScotRail Operation; and
- (m) such information as the Authority may reasonably require to Publish at or around the expiry or possible termination of this Agreement in order to secure continuity of the provision and operation of the Operator Services.

3.2 Notwithstanding any other provision of this Schedule 17, the Authority in respect of the Operator Services may Publish any other information relating to SRH and/or SRT if the Authority has previously notified SRH and SRH does not object to such publication and demonstrate to the reasonable satisfaction of the Authority within 14 days of such notification that the publication of such information would be materially detrimental to the ScotRail Operation.

4. **Publication of Certain Information by SRH**

4.1 Notwithstanding the provisions of paragraph 1, and at all times subject to applicable Data Protection Laws, SRH may Publish whether to the press, the public or to one or more individuals, companies or other bodies, (including to any prospective Successor Operator) in such form and at such times as agreed by SRH with the Authority in writing and in advance, the following (irrespective of whether the same was provided to SRH by SRT and/or a third party):

- (a) the amount of any Grant Payments payable under this Agreement and the aggregate amount of Grant Payments paid in each year under this Agreement;
- (b) such information as SRH may consider reasonably necessary to Publish in connection with the performance of its functions in relation to any Closure or proposed Closure;
- (c) any Passenger's Charter Statistics and the amount of any payments by SRT under the Passenger's Charter;
- (d) any reports and accounts delivered to SRH under Schedule 13 (*Operation Management and Information Obligations*);
- (e) the results of any monitoring or measurement of the performance of SRT in the provision of Operator Services;
- (f) the results, on a Service Group, Sector, Route, station or other comparable basis, of any calculation of passenger numbers under Schedule 1.5 (*Information about Passengers*);
- (g) the results of any survey under Schedule 1.5;
- (h) the results of any assessment or inspection under Schedule 11;
- (i) details of SRT's plans and performance in respect of safety;
- (j) such information as SRH may reasonably require to include in its annual report in respect of SRT; and
- (k) each summary, information, notification or similar received by SRH in connection with Schedule 5.6 (*Fares Regulation Information and Monitoring*).

5. **FOISA and EIRs**

5.1. Each party acknowledges that each party is subject to the requirements of the FOISA and the EIRs and may require to disclose data or information in relation to this Agreement pursuant to the provisions of the FOISA and the EIRs.

5.2 Where a party receives a written Request for Information which is covered by the FOISA or the EIRs and which relates to any Confidential Information of another party (the "**Requested Information**") each party shall comply with the procedure set out in paragraphs 5.2(a) to 5.2(f):

- (a) the party who receives the request ("**Request Receiver**") shall before making any disclosure of the Requested Information and as soon as reasonably practicable after receiving the Request for Information notify the other parties ("**Other Parties**") of the receipt of such request for information and of the nature and extent of the information covered by the Request for Information;
- (b) following receipt of notification under paragraph 5.2(a), the Other Parties may make representations in writing the Request Receiver as to whether and on what basis the Requested Information is covered by any exemption in the FOISA or the EIRs and

should not therefore be disclosed, including where relevant any representations as to the balance of the public interests in disclosure and nondisclosure;

- (c) the Request Receiver shall reasonably consider any representations made by the Other Parties under paragraph 5.2(b) before reaching a decision on whether it must and shall disclose the Requested Information. However, each party acknowledges that in all cases it is for the Request Receiver (having full regard to any guidance or codes of practice issued by the Scottish Information Commissioner or the Scottish Government) to determine whether it is obliged to disclose the Requested Information under the FOISA or the EIRs including where the public interest lies in relation to disclosure;
- (d) notwithstanding paragraph 5.2(a) the Request Receiver shall not notify the Other Parties under paragraph 5.2(a) where the Request Receiver has already decided that it does not intend to disclose the Requested Information because the FOISA or the EIRs do not apply to the Request for Information or an exemption under the FOISA or the EIRs can be applied provided that should the Receiving Party determine at a later date that the FOISA or the EIRs do apply to the Requested Information, the process set out in this paragraph 5.2 shall be applied;
- (e) if the Request Receiver takes a decision to disclose the Requested Information, it shall notify the Other Parties of this decision not less than 5 Weekdays in advance of the disclosure being made; and
- (f) for the avoidance of doubt, references to the Requested Information under this paragraph 5.2 shall include both queries as to whether Confidential Information exists and requests for the disclosure of Confidential Information.

5.3 Without prejudice to the specific provisions above, each party shall co-operate and aid each other so as to enable them to meet their obligations under the FOISA or the EIRs or any successor legislation. Where a party receives a Request for Information then such co-operation shall include without limitation the provision of the Requested Information to the Request Receiver within a reasonable timescale to enable the Request Receiver to comply with the Request for Information within the timescales required by the FOISA or the EIRs provided that, and solely to the extent that, the Requested Information is not otherwise in the possession of the Request Receiver.

6. **Service Development Information**

Nothing in this Schedule 17 shall be deemed to prohibit, prevent or hinder, or render any party liable for, the disclosure by any party to Network Rail, the ORR, other Train Operators, any operators of services for the carriage of goods by rail, or any Stakeholder of any information relating to the development of the Service Level Commitments in accordance with Schedule 1.1 (*Service Development*).

7. **Publication by the Authority and SRH**

Nothing in this Schedule 17 shall be deemed to prohibit, prevent or hinder, or render the Authority and/or SRH liable for, the disclosure of any information by the Authority and/or SRH to the ORR, the Parliamentary Commissioner for Administration, a Minister of the Crown, any department of the government of the United Kingdom, the Scottish Parliament, the Scottish Government, the National Assembly of Wales, Network Rail and Visit Scotland, the Mayor of London, Greater London Authority or any department or officer of any of them or of information which is otherwise disclosed for the purpose of facilitating the carrying out of its functions.

8. **Provision of Information to ORR**

SRT hereby authorises the Authority and SRH to provide to the ORR, to the extent so requested by the ORR, such information as may be provided to the Authority and SRH in relation to SRT under this Agreement.

9. **Disclosure by Comptroller and Auditor General and Others**

The parties recognise:

- 9.1 that the Comptroller and Auditor General may in pursuance of his functions under the Exchequer and Audit Department Act 1921, the National Audit Act 1983 and the Government Resources and Accounts Act 2000, disclose information which he has obtained pursuant to those acts and which a party to this Agreement would not be able to disclose otherwise than under this Schedule 17;
- 9.2 the provisions of the Public Finance and Accountability (Scotland) Act 2000 and the Local Government in Scotland Act 2003 in respect of best value; and
- 9.3 that the Accounts Commission for Scotland, Audit Scotland and the Auditor General may in pursuance of their functions under the Public Finance and Accountability (Scotland) Act 2000, the Local Government in Scotland Act 2003 and the Local Government (Scotland) Act 1973 disclose information which they have obtained pursuant to those Acts and which a party to this Agreement would not be able to disclose otherwise than under this Schedule 17.

10. **Data Protection**

- 10.1 This paragraph 10 of this Schedule 17 governs the overall relationship of the parties in relation to:
 - (a) the sharing of personal data among or between the parties;
 - (b) sets out the procedure for agreement, review and variation of Data Sharing Details; and
 - (c) sets out the procedure for review and variation of this paragraph 10.
- 10.2 If there is any conflict or ambiguity between this paragraph 10 or an Agreed Data Sharing Form, a term contained in the Agreed Data Sharing Form shall have priority over one contained in this paragraph 10.

Initial Data Sharing Details

- 10.3 The Initial Data Sharing Details will apply among the parties from the Commencement Date and shall continue to apply unless and until amended and/or terminated in accordance with paragraph 10.7 below.

Agreement of Data Sharing Terms

- 10.4 Data Sharing Details shall be agreed in the following manner:
 - (a) a party shall prepare a draft Data Sharing Form and submit this to the other parties for review and consideration (and the Authority may require SRH and/or SRT to prepare the initial draft upon written request);
 - (b) following receipt of the draft, the parties shall consider, discuss and use all reasonable endeavours to seek to agree the Data Sharing Details proposed in a relevant Data Sharing Form; and
 - (c) the parties shall all sign the draft Data Sharing Form when it is agreed ("**Agreed Data Sharing Form**").

- 10.5 If Data Sharing Details are not agreed within 10 Weekdays of receipt of a draft Data Sharing Form then the relevant Data Sharing Details may be determined by the Authority at its sole discretion. The Authority shall not, however, be obliged to determine any Data Sharing Terms, and in this case, the parties may refer any dispute relating thereto for resolution in accordance with the Dispute Resolution Rules.
- 10.6 Any party may, at any time, submit a draft Data Sharing Form to the other parties for review, but the Data Sharing Details as outlined in the Data Sharing Form will not come into effect until the Data Sharing Form has been agreed in accordance with paragraph 10.4(c) above.
- 10.7 The parties shall review the effectiveness and accuracy of the Data Sharing Details (including the Initial Data Sharing Details) at such times as indicated by the Data Sharing Details, having consideration to the relevant Purpose. The parties shall continue, amend or terminate the Data Sharing Details (including the Initial Data Sharing Details) depending on the outcome of such review.

General Data Sharing Conditions

- 10.8 The Agreed Data Sharing Form(s) outline the Data Sharing Details (except for the Initial Data Sharing Details which are outlined in Appendix 1 to this Schedule 17).
- 10.9 Each party:
- (a) shall assist the other parties in complying with all applicable requirements of Data Protection Laws and make all necessary preparations to ensure it will be compliant with the Data Protection Laws;
 - (b) shall notify the other parties immediately if it becomes aware of any processing of any personal data that has been made or is likely to be made in breach of the terms of this paragraph 10 or the Data Protection Laws;
 - (c) shall maintain complete and accurate records and information to demonstrate its compliance with this paragraph 10 and allow for audits by the other party/parties or the other party's/parties' designated auditor;
 - (d) shall ensure that they have in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, such personal data and shall, without prejudice to the generality of the foregoing, comply with the specific security requirements outlined in the Data Sharing Details;
 - (e) shall ensure that staff members are appropriately trained to handle and process personal data in accordance with the required technical and organisational security measures together with applicable Data Protection Laws;
 - (f) shall ensure that compatible technology in connection with personal data is used, to ensure there is no lack of accuracy resulting from transfers of personal data;
 - (g) shall comply with their obligations to respond to data subject access requests and to give effect to other rights of data subjects in accordance with Data Protection Laws;
 - (h) shall be responsible for adopting and maintaining a data protection impact assessment relevant to its processing activities in accordance with Data Protection Laws;
 - (i) shall provide the other party/ies assistance in complying with all applicable requirements of the Data Protection Laws applicable to personal data breaches, and in particular, each party shall:

- (i) promptly (and in any case within 72 hours) notify the other party/ties as soon as it becomes aware of a personal data breach or a suspected personal data breach which relates to this Agreement;
 - (ii) carry out an investigation into the personal data breach or a suspected personal data breach, its extent and any parties responsible for the personal data breach. Such investigation should consider if the processes outlined in this Agreement have been compromised or whether this Agreement has been breached. Each party shall provide details of the personal data breach to the other party/ties on request; and
 - (iii) where in receipt of notification from another party in respect of an actual or suspected personal data breach, provide reasonable assistance to that party to ensure the party is able to deal with such actual / suspected personal data breach in an expeditious and compliant manner;
- (j) shall promptly notify the other party/parties of any dispute, claim or query brought by any Supervisory Authority concerning any personal data processed in relation to this Agreement and shall take into account any comments and representations made by the other party when responding to such dispute, claim or query;
 - (k) shall co-operate and provide all reasonable assistance and information to the other party/parties in dealing with any dispute, claim or query brought by any Supervisory Authority in connection with this Agreement, with a view to settling them amicably and in a timely fashion;
 - (l) shall not transfer any personal data outside the UK unless it: (i) complies with the provisions of Article 26 of the UK GDPR (in the event the third party is a joint controller); and (ii) ensures that (i) the transfer is to a country approved by the UK Information Commissioner's Office as providing adequate protection pursuant to Article 45 of the UK GDPR; (ii) there are appropriate safeguards in place pursuant to Article 46 of the UK GDPR; or (iii) one of the derogations for specific situations in Article 49 of the UK GDPR applies to the transfer;
 - (m) warrants that they and anyone operating on its behalf will comply with this paragraph 10 and the Data Protection Laws and other laws, enactments, regulations, orders, standards and other similar instruments;
 - (n) warrants they shall give effect to the rights of data subjects in accordance with Data Protection Laws; and
 - (o) warrants they have full power to give the warranties, indemnities and enter into and perform its obligations under and in terms of this paragraph 10.

Data Sharing Conditions for Controllers

- 10.10 This paragraph 10.10 applies when the parties who disclose and receive the relevant personal data are both/all designated as controllers in the Data Sharing Details. Each such designated party shall:
- (a) comply with all the obligations imposed on a controller under the Data Protection Laws;
 - (b) when the receiving party:
 - (i) process the personal data only for the Purpose, unless otherwise required to process such personal data to comply with Law;
 - (ii) give full information to any data subject whose personal data may be processed of the nature such processing (including any sharing) as required by Data Protection Laws;

- (iii) ensure that they keep received personal data separate from all other data/information held, stored or otherwise processed by or under the control of them; and
 - (iv) without prejudice to paragraph 10.10(a), comply with the access and processing restrictions outlined in the Data Sharing Details;
- (c) when the disclosing party ensure that it has all necessary notices and consents in place to collect the personal data and to share it with the receiving party/parties.

Data Sharing Conditions between a Controller and a Processor

10.11 This paragraph 10.11 applies when one of the parties is designated, in the Data Sharing Details, as a processor of one or more of the other parties in relation to a certain category of personal data ("**Processed Personal Data**"). When this paragraph 10.11 applies, in the event of any conflict with other provisions of this paragraph 10, this paragraph 10.11 shall have precedence. The Data Sharing Details outline the scope, nature and purpose of the processing by the Processor and the types of personal data and categories of data subject processed by the Processor. The party designated as a processor in the Data Sharing Details ("**Processor**") shall:

- (a) process the Processed Personal Data only as necessary in accordance with any written instructions given by the controller in the Data Sharing Details (which may be specific or of a general nature), including with regard to transfers of Processed Personal Data to a third country unless required to do so by Law; in which case the Processor must, unless prohibited by that Law, inform the controller of that legal requirement before processing the Processed Personal Data only to the extent, and in such manner as is necessary for the performance of the Processor's obligations or as is required by the Law;
- (b) subject to paragraph 10.11(a) only process or otherwise transfer any Processed Personal Data in or to any third country with the controller's prior written consent;
- (c) take all reasonable steps to ensure the reliability and integrity of any personnel of the Processor who have access to the Processed Personal Data and ensure that such personnel:
 - (i) are aware of and comply with the Processor's duties under this paragraph 10.11;
 - (ii) are subject to appropriate confidentiality undertakings with the Processor;
 - (iii) are informed of the confidential nature of the Processed Personal Data and do not publish, disclose or divulge any of the Processed Personal Data to any third party unless directed in writing to do so by the controller; and
 - (iv) have undergone adequate training in the use, care, protection and handling of personal data; and
- (d) implement appropriate technical and organisational measures including those in accordance with Article 32 of the UK GDPR to protect the Processed Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure, such measures being appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Processed Personal Data and having regard to the nature of the Processed Personal Data which is to be protected;
- (e) not engage a sub-processor to carry out processing in connection with the Processed Personal Data without prior specific or general written authorisation from the controller. In the case of general written authorisation, the Processor must inform the controller of any intended changes concerning the addition or replacement of any other sub-processor and give the controller an opportunity to object to such changes. If the Processor engages a sub-processor for carrying out processing activities on behalf of the controller, the Processor must ensure

that the same data protection obligations as set out in this paragraph are imposed on the sub-processor by way of a written and legally binding contract, in particular providing sufficient guarantees to implement appropriate technical and organisational measures. The Processor shall remain fully liable to the controller for the performance of the sub-processor obligations;

- (f) provide to the controller reasonable assistance including by such technical and organisational measures as may be appropriate in complying with Articles 12-23 of the UK GDPR;
- (g) notify the controller if it:
 - (i) receives a data subject access request (or purported data subject access request) related to the Processed Personal Data;
 - (ii) receives a request to rectify, block or erase any Processed Personal Data;
 - (iii) receives any other request, complaint or communication relating to either party's obligations under the Data Protection Laws;
 - (iv) receives any communication from the UK's Information Commissioner's Officer or any other regulatory authority in connection with Processed Personal Data; or
 - (v) receives a request from any third party for disclosure of Processed Personal Data where compliance with such request is required or purported to be required by Law;

and such notification must take place as soon as is possible but in any event within three (3) Weekdays of receipt of the request or any other period as agreed in writing with the controller from time to time;

- (h) taking into account the nature of the processing and the information available, the Processor must assist the controller in complying with the controller's obligations concerning the security of personal data, reporting requirements for data breaches, data protection impact assessments and prior consultations in accordance with Articles 32 to 36 of the UK GDPR. These obligations include:
 - (i) ensuring an appropriate level of protection through technical and organisational measures that take into account the circumstances and purposes of the processing as well as the projected probability and severity of a possible infringement of the Law as a result of security vulnerabilities and that enable an immediate detection of relevant infringement events;
 - (ii) notifying a personal data breach to the controller without undue delay and in any event no later than twenty-four (24) hours after becoming aware of a personal data breach;
 - (iii) assisting the controller with communication of a personal data breach to a data subject;
 - (iv) supporting the controller with preparation of a data protection impact assessment; and
 - (v) supporting the controller with regard to prior consultation of the Information Commissioner;
- (i) at the end of the provision of services relating to processing, on written instruction of the controller, delete or return to the controller all Processed Personal Data and delete existing copies unless Law requires storage of the Processed Personal Data;
- (j) provide such information as is necessary to enable the controller to satisfy itself of the Processor's compliance with this paragraph 10.11;

- (k) allow the controller, its employees, auditors, authorised agents or advisers reasonable access to any relevant premises, during normal business hours, to inspect the procedures, measures and records referred to in this paragraph 10.11 and contribute as is reasonable to those audits and inspections;
- (l) inform the controller if in its opinion an instruction from the controller infringes any obligation under the Data Protection Laws;
- (m) maintain written records including in electronic form, of all processing activities carried out on behalf of the controller containing the information set out in Article 30(2) of the UK GDPR; and
- (o) if requested, make such records referred to in paragraph 11.11(m) available to the Information Commissioner on request and co-operate with the Information Commissioner in the performance of its tasks.

Amendments to this paragraph 10

10.12 The parties shall review the effectiveness of this paragraph 10 as part of the Annual Contractual Review Meeting.

APPENDIX 1 TO SCHEDULE 17

INITIAL DATA SHARING DETAILS

Category of data subject	Disclosing party and role	Recipient party/parties and role	Type of personal data	Special category of personal data	Purpose of sharing	Legal basis	Condition for special category of personal data
Customers/ passengers	SRT – controller	SRH – controller	Complaints information	N/A	Management of the ScotRail Operation	Processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested	N/A
		Authority-controller			Oversight of the ScotRail Operation	Processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested	
	SRT – controller	SRH – controller	Ticketing information	N/A	Management of the ScotRail Operation	Processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested	N/A
		Authority-controller			To transfer ScotRail Operation to Successor Franchisee	Processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested	
	SRT – controller	SRH – controller	Health and safety incident data	May contain health information	Management of the ScotRail Operation	Processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested Processing is necessary for compliance with a legal obligation.	Processing is necessary for the purposes of carrying out the obligations and exercising specific rights of controller or of the data subject in the field of employment and social security and social protection law.
		Authority-controller			Oversight of the ScotRail Operation	Processing is necessary for the performance of a task carried out in the public interest or in the exercise	

						of official authority vested	
Employees/staff of SRT	SRT – controller	SRH – controller	[All and any information constituting personal data e.g. - any information relating to age, date of birth, length of service, payroll number, job title, salary]	N/A	Management of the ScotRail Operation	Processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested	Processing is necessary for the purposes of carrying out the obligations and exercising specific rights in the field of employment and social security and social protection law. processing is necessary for reasons of substantial public interest
		Authority-controller	Information related to SRH's/SRT's reporting obligations to the Authority under this Agreement and the Framework Agreement	N/A	Oversight of the ScotRail Operation	Processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested	N/A
Board member of SRT	SRT – controller	SRH – controller	Identity, contact details, background and qualifications, information related to performance of role	Limited health information	Management of the ScotRail Operation	Processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested	processing is necessary for reasons of substantial public interest
		Authority-controller	Identity, contact details, background and qualifications, information related to performance of role	Limited health information	Oversight of the ScotRail Operation	Processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested	processing is necessary for reasons of substantial public interest
Employees/staff of SRH	SRH – controller	SRT – controller	Identity information and contact information	N/A	Operation of the ScotRail Operation	Processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested	Processing is necessary for the purposes of carrying out the obligations and exercising specific rights in the field of employment and social security and

							social protection law. processing is necessary for reasons of substantial public interest
		Authority-controller	Information related to SRH's/SRT's reporting obligations to the Authority under this Agreement and the Framework Agreement	N/A	Oversight of the ScotRail Operation	Processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested	N/A
Board member of SRH	SRH – controller	SRT – controller	Identity information and contact information	N/A	Operation of the ScotRail Operation	Processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested	N/A
		Authority-controller	Identity, contact details, background and qualifications, information related to performance of role	Limited health information	Oversight of the ScotRail Operation	Processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested	processing is necessary for reasons of substantial public interest
Employees/staff of the Authority	Authority – controller	SRT – controller	Identity information and contact information	N/A	Operation of the ScotRail Operation	Processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested	N/A
		SRH – controller	Identity information and contact information	N/A	Management of the ScotRail Operation	Processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested	N/A
Suppliers and service providers of SRT	SRT – controller	SRH – controller	Identity information and contact information	N/A	Management of the ScotRail Operation	Processing is necessary for the performance of a task carried out in the public interest or in the exercise	N/A

						of official authority vested	
		Authority-controller	Identity information and contact information	N/A	Oversight of the ScotRail Operation / transfer to Successor Operator	Processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested	N/A

Access and Processing restrictions	
Security Requirements	<i>In accordance with its own information security standards and applicable policies and procedures applying to personal data and special categories of personal data</i>
Review of these Data Sharing Details	<i>Three-monthly</i>

APPENDIX 2 TO SCHEDULE 17
TEMPLATE DATA SHARING FORM

This Data Sharing Form is subject to and incorporates the terms and conditions outlined in paragraph 10 to Schedule 17 of the ScotRail Grant Agreement among the Authority, Scottish Rail Holdings Limited and Scotrail Trains Limited (as amended).

General Data Sharing Details

Category of data subject	Disclosing party and role	Recipient party/parties and role	Type of personal data	Special category of personal data	Purpose of sharing	Legal basis	Condition for special category of personal data

Access and Processing restrictions	
Security Requirements	
Review of these Data Sharing Details	

Data Processing Instructions

Subject matter of processing	
Purpose(s) of processing	
Nature of processing	
Type(s) of personal data	
Categories of data subject	
Approved sub-processors	
Security requirements	
Permitted international transfers	

SCHEDULE 18

THIS IS SCHEDULE 18 REFERRED TO IN THE FOREGOING SCOTRAIL GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND SCOTRAIL TRAINS LIMITED

Operation Continuation**1. Continuation for Additional 7 Reporting Periods**

In circumstances where paragraph (a) of the definition of Expiry Date applies, and if either the Authority gives notice to SRT not less than 3 months before the First Expiry Date, this Agreement shall continue after the Expiry Date on the terms set out in this Agreement for up to 7 Reporting Periods, as the Authority may stipulate.

2. Additional Two Hours

Notwithstanding any other provision of this Schedule 18, the Authority and/or SRH may by notice, given to SRT not less than one month before the Expiry Date require that this Agreement shall continue after the Expiry Date until 2am on the day immediately after the Expiry Date. No payment shall be due for this additional two hours.

3. Stakeholder Consultation

SRT acknowledges and accepts that prior to serving any notice in terms of this Schedule 18 the Authority and/or SRH may consult with Stakeholders on an “**in principle**” basis to obtain the Stakeholders’ views on whether the Authority’s and/or SRH’s service of a notice in terms of this Schedule 18 would be in the interests of the Authority’s stated policy objectives and to facilitate achieving the best timing for realisation at best value, emerging policy objectives through the re-letting of the ScotRail Operation.

4. Key Contracts

SRT shall enter into any and all Key Contracts which are necessary for this Agreement to continue or be extended in accordance with this Schedule 18.

SCHEDULE 19

THIS IS SCHEDULE 19 REFERRED TO IN THE FOREGOING SCOTRAIL GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND SCOTRAIL TRAINS LIMITED

Other Provisions

1. Rights Cumulative

- 1.1 The rights of the Authority under this Agreement are cumulative, may be exercised as often as the Authority considers appropriate and are in addition to the rights of the Authority under the general Law. The exercise of such rights shall not limit the Authority's rights to make payment adjustments, or the Authority's rights to claim damages in respect of contraventions of this Agreement or pursue any available remedies under general law.
- 1.2 The rights of SRH under this Agreement are cumulative, may be exercised as often as SRH considers appropriate and are in addition to the rights of SRH under the general Law. The exercise of such rights shall not limit SRH's rights to make payment adjustments, or SRH's rights to claim damages in respect of contraventions of this Agreement or pursue any available remedies under general law.

2. Disputes

Disputes under this Agreement

- 2.1 Wherever this Agreement provides that the Authority and/or SRH may reasonably determine any matter, SRT may, unless this Agreement expressly provides otherwise, dispute whether a determination made by the Authority and/or SRH is reasonable but the Authority's and/or SRH's (as the case may be) determination shall prevail unless and until it is agreed or found to have been unreasonable.
- 2.2 Where any party is entitled, pursuant to the terms of this Agreement, to refer a dispute arising out of or in connection with this Agreement for resolution or determination in accordance with the Dispute Resolution Rules, then such dispute shall, unless the relevant parties otherwise agree and subject to any duty of the Authority under Section 55 of the Act, be resolved or determined by arbitration pursuant to the Dispute Resolution Rules.
- 2.3 The arbitrator in any dispute referred for resolution or determination under the Dispute Resolution Rules shall be a suitably qualified person chosen by agreement between the relevant parties to such dispute or, in default of agreement, chosen by the Disputes Secretary from a panel of persons agreed from time to time for such purposes between the relevant parties or, in default of agreement as to the arbitrator or as to such panel, selected on the application of any party by the President of the Law Society of Scotland or the President of the Institute of Chartered Accountants of Scotland from time to time (or such other person to whom they may delegate such selection).
- 2.4 For the avoidance of doubt:-
- (a) Rules 41 and 69 to Schedule 1 of the Arbitration (Scotland) Act 2010 shall not apply to any arbitration pursuant to this Schedule 19 and are hereby expressly disapplied to any arbitration arising under the provisions of this Agreement; and
 - (b) The Dispute Resolution Rules shall apply only in so far as they are not contrary to the mandatory rules (Schedule of the Arbitration (Scotland) Act 2010).

Disputes under Other Agreements

- 2.5 SRT shall notify SRH of any disputes to which it is a party under any Inter-Operator Scheme, Access Agreement, Property Lease or Rolling Stock Related Contract, or under any other agreement in

circumstances where the relevant dispute could have an adverse effect on SRT's ability to comply with its obligations under this Agreement or on the provision of the Operator Services and which have been submitted for resolution either to the courts or to any other procedure for dispute resolution provided for under such agreements.

2.6 Such notification shall be made both:

- (a) at the time of such submission (and such submission shall include reasonable details of the nature of the dispute); and
- (b) at the time of the resolution of the dispute (whether or not subject to appeal) (and such submission shall include reasonable details of the result of the dispute, any associated award and whether it is subject to appeal).

2.7 SRT shall provide such further details of any dispute referred to in paragraph 2.5 as SRH may reasonably request from time to time and shall comply with the reasonable requests of SRH in relation to the conduct of such disputes.

3. Notices

3.1 Any notice, notification or other communication under or in connection with:

- (a) the matters specified in Schedule 10.2 (*SRT Executive Team Review and Expiry*), or any dispute under or in connection with this Agreement shall be in writing and shall be sufficiently served if delivered by hand or recorded delivery or sent by pre-paid first class post to the relevant party at the address for service set out below, or to such other address in the United Kingdom as each party may specify by notice in writing to the other parties.

Name:	The Scottish Ministers
Address:	Transport Scotland, Buchanan House, 58 Port Dundas Road, Glasgow G4 0HF
Facsimile	n/a
E-mail:	Bill.Reeve@transport.gov.scot
Attention:	The Director Rail

Name:	Scotrail Trains Limited
Address:	Atrium Court, 50 Waterloo Street, Glasgow, Scotland, G2 6HQ

Facsimile	
E-mail:	Joanne.Maguire@ScotRail.co.uk
Attention:	Jo Maguire

Name:	Scottish Rail Holdings Limited
Address:	Buchanan House, Port Dundas Road, Glasgow, Scotland, G4 0HF

Facsimile	
E-mail:	
Attention:	

- (b) any other matter under or in connection with this Agreement shall be in writing and shall be delivered:
 - (i) in accordance with paragraph 3.1(a);
 - (ii) by facsimile; or
 - (iii) by electronic data transfer.

Deemed Receipt

- 3.2 Any such notice or other communication shall be deemed to have been received by the party to whom it is addressed as follows:
- (a) if sent by hand or recorded delivery, when delivered;
 - (b) if sent by pre-paid first class post, from and to any place within the United Kingdom, 3 business days after posting unless otherwise proven;
 - (c) if sent by facsimile, upon sending, subject to confirmation of completed transmission to the intended recipient; and
 - (d) if sent by electronic data transfer, upon sending, subject to receipt by the sender of a "**delivered**" confirmation (provided that the sender shall not be required to produce a "**read**" confirmation).

4. **Assignment**

- 4.1 SRT shall not without the prior written consent of both the Authority and SRH, assign, hold in trust for any other person, or grant a Security Interest in or over, this Agreement or any part hereof or any benefit or interest or right herein or hereunder (other than any right of SRT to receive monies under a Supplemental Agreement).
- 4.2 SRH shall not without the prior written consent of the Authority assign, hold in trust for any other person, or grant a Security Interest in or over, this Agreement or any part hereof or any benefit or interest or right herein or hereunder (other than any right of SRH to receive monies under a Supplemental Agreement).

5. **Set Off**

- 5.1 The Authority may set off against any amounts payable by it under this Agreement any outstanding amounts or liabilities whether actual, contingent or prospective of SRH and/or SRT to the Authority on any account whatsoever (including any monetary penalty payable under the Act).
- 5.2 SRH may set off against any amounts payable by it under this Agreement any outstanding amounts or liabilities whether actual, contingent or prospective of SRT to SRH on any account whatsoever (including any monetary penalty payable under the Act).

6. **Miscellaneous Provisions**

Waivers

6.1

- (a) Any party may at any time waive any obligation owed to it by any other party under this Agreement and the obligations of the relevant parties hereunder shall be construed accordingly.
- (b) No waiver by any party of any default by any other party in the performance of such party's obligations under this Agreement shall operate or be construed as a waiver of any other or further such default,

whether of a like or different character. A failure to exercise or delay in exercising a right or remedy under this Agreement shall not constitute a waiver of any right or remedy or a waiver of any other rights or remedies and no single or partial exercise of any right or remedy under this Agreement shall prevent any further exercise of such right or remedy or the exercise of any other right or remedy.

Time Limits

- 6.2 Where in this Agreement any obligation of a party is required to be performed within a specified time limit (including an obligation to use all reasonable endeavours or best endeavours to secure a particular result within such time limit) that obligation shall be deemed to continue after the expiry of such time limit if such party fails to comply with that obligation (or secure such result, as appropriate) within such time limit.

Partial Invalidity

- 6.3 If any provision in this Agreement is held to be void, illegal, invalid or unenforceable, in whole or in part, under any enactment or rule of Law, such provision or part shall to that extent be deemed not to form part of this Agreement but the legality, validity and enforceability of the remainder of this Agreement shall not be affected.

Further Assurance

- 6.4 All parties agree to execute and deliver all such further instruments and do and perform all such further acts and things as shall be necessary or expedient for the carrying out of the provisions of this Agreement.

Rights of Third Parties

6.5

- (a) A person who is not a party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 or the Contract (Third Party Rights) (Scotland) Act 2017 to enforce any term of this Agreement except to the extent set out in this paragraph 6.5. The parties agree that although this Agreement is made under Scots law, English law shall apply to the extent needed to give effect to this paragraph 6.5.
- (b) Any Successor Operator or potential Successor Operator nominated by the Authority and notified to SRT for the purposes of this paragraph 6.5 may enforce and rely on the provisions of Schedule 15 (*Obligations Associated with Termination*) to the same extent as if it were a party but subject to paragraphs 6.5(c) and (d).
- (c) This Agreement may be terminated, and any term may be amended or waived, in each case in accordance with the terms of this Agreement, without the consent of any person nominated under paragraph 6.5(b).
- (d) The person nominated under paragraph 6.5(b) shall only be entitled to enforce and rely on Schedule 15 to the extent determined by the Authority (whether at the time of nomination or at any other time) and, to the extent that any such person is entitled to enforce and rely on Schedule 15, any legal proceedings in relation thereto must be commenced within 1 year of the expiry of the Operation Period and any such person shall not be entitled to enforce or rely on Schedule 15 to the extent that it has consented to any particular act or omission of SRT which may constitute a contravention of Schedule 15 or has been afforded a reasonable opportunity to indicate to SRT that it is not so consenting and has not so indicated (the extent of such reasonable opportunity to be determined by the Authority and/or SRH unless otherwise agreed).

Authority's and or SRH's Consent or Approval

6.6 Where any provision of this Agreement provides for any matter to be subject to the consent or approval of the Authority and/or SRH then (subject only to the express terms of that provision as to the basis on which that consent or approval may be given or withheld) the Authority and/or SRH shall be entitled to give that consent or approval subject to any condition or conditions as it considers appropriate, which may include the adjustment of any of the terms of this Agreement.

7 Communications

7.1 All parties recognise the need to promote clear, consistent messages to Stakeholders, the media and the public on matters of common interest concerning the ScotRail Operation and to foster and demonstrate a healthy working relationship among themselves and each of the parties shall use reasonable endeavours to do the foregoing.

7.2 SRT shall:

- (a) give advance notice to the Authority and SRH of the issue of all press releases relating to rail services or facilities in Scotland;
- (b) provide advance advice to the Authority and SRH on content of all press releases relating to rail services or facilities in Scotland;
- (c) consult with the Authority and SRH concerning the press releases referred to in (b);
- (d) make joint announcements with the Authority and SRH where the Authority and/or SRH deems the same to be appropriate (either by their type (e.g. as to their value, duration, impact or otherwise) or individually of which the Authority and/or SRH may notify SRT from time to time);
- (e) not issue a press release should the Authority and/or SRH so require; and
- (f) prepare press releases for the Authority's and/or SRH's approval, at the Authority's and/or SRH's reasonable request.

7.3 All parties shall each encourage and develop dialogue between the respective press office staff of each organisation, so as, where reasonably possible, to co-ordinate media responses and to rebut and correct inaccuracies.

8 Transfer of Rights and Obligations

The transfer by Law of any of the rights and obligations of the Authority under this Agreement shall not be restricted by Schedule 9 (*Changes*) or any other provisions of this Agreement and such a transfer shall not constitute a Change.

SCHEDULE 20**THIS IS SCHEDULE 20 REFERRED TO IN THE FOREGOING SCOTRAIL GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND SCOTRAIL TRAINS LIMITED****Definitions and Interpretation****1. Construction and Interpretation**

1.1 In this Agreement, except to the extent the context otherwise requires:

- (a) words and expressions defined in Part I of the Act have the same meanings when used therein provided that, except to the extent expressly stated, “**railway**” shall not have the wider meaning attributed to it by Section 81(2) of the Act;
- (b) words and expressions defined in the Interpretation Act 1978 have the same meanings when used in this Agreement;
- (c) the words “**include**”, “**including**” and “**in particular**” are to be construed without limitation;
- (d) references to any person shall include any individual, firm, company, corporation, body, trust or foundation, or any association, partnership or unincorporated body (whether or not having separate legal personality) and in each case include that person’s successors, transferees or assignees;
- (e) the words “**subsidiary**”, “**wholly owned subsidiary**” and “**parent undertaking**” have the same meaning in this Agreement as in Sections 1159 and 1162 of the Companies Act 2006;
- (f) references to documents “**in the agreed terms**” are references to documents initialled by or on behalf of the Authority, SRH, and SRT;
- (g) references in this Agreement to Recitals, clauses, Schedules, Parts, paragraphs and Appendices are to Recitals, clauses, Schedules, Parts of Schedules, paragraphs of Schedules and Appendices of Schedules of this Agreement, unless expressly specified to the contrary, and the Schedules and Appendices form part of this Agreement;
- (h) references in any Schedule in this Agreement to a Part, paragraph or Appendix are references to a Part, paragraph or Appendix of that Schedule (or the relevant Part of a Schedule), unless expressly specified to the contrary;
- (i) headings and references to headings shall be disregarded in construing this Agreement;
- (j) references to any enactment include any subordinate legislation made from time to time under such enactment and are to be construed as references to that enactment as for the time being amended or modified or to any enactment for the time being replacing or amending it and references to any subordinate legislation are to be construed as references to that legislation as for the time being amended or modified or to any legislation for the time being replacing or amending it;
- (k) references to an agreement or any other document shall be construed as referring to that agreement or document as from time to time supplemented, varied, replaced, amended, assigned or novated;
- (l) words importing the masculine gender include the feminine and vice-versa, and words in the singular include the plural and vice-versa;
- (m) wherever provision is made for the giving or issuing of any notice, endorsement, consent, approval, waiver, certificate or determination by any person, unless otherwise specified, such notice, endorsement, consent, approval, waiver, certificate or determination shall be in writing and the words

“**notify**”, “**consent**”, “**endorse**”, “**approve**”, “**waive**”, “**certify**” or “**determine**” and other cognate expressions shall be construed accordingly;

- (n) references to materials, information, data and other records shall be to materials, information, data and other records whether stored in electronic, written or other form;
- (o) references to the period of validity of any Fare are references to its period of validity excluding any rights of any purchaser thereof to extend such period under the Passenger’s Charter, any equivalent document, or the terms and conditions attaching to such Fare (including any applicable conditions of carriage) in the event of the cancellation or delay of any of the railway passenger services for which such Fare is valid;
- (p) references to stations at which any train calls include stations at which such train commences or terminates its journey;
- (q) references to “**railway passenger services**” are to be construed subject to Section 40 of the Railways Act 2005;
- (r) references to the provision of railway passenger services include the organisation of the relevant train movements and making the necessary arrangements with Network Rail or any other relevant Facility Owner;
- (t) references to amendments or variations of contracts or arrangements include assignments, novations or other transfers of rights or obligations (in whole or in part) under such contracts or arrangements;
- (u) unless otherwise expressly stated, or agreed among the parties, and except in relation to Schedule 8 (and all defined terms used therein), references to sums of money being expended by SRT shall be to such sums exclusive of Value Added Tax;
- (v) references to “**undertakes**” and references to “**undertakings**” are to be construed so as to include the word “**covenants**”;
- (w) references to “**assignment**” and words deriving meaning therefrom are to be construed so as to include the word “**assignment**” and words deriving meaning therefrom;
- (x) references to “**set-off**” are to be construed so as to include both the words “**retain**” and “**compensate**” and words deriving meaning therefrom;
- (y) any reference to an arbitrator shall also be taken as a reference to an arbiter;
- (z) references to the words “**shall not be liable**” are to be construed as meaning that no contravention of this Agreement and no Event of Default shall arise as a result of the matter to which such words relate; and
- (aa) references to a “**contravention of this Agreement**” (and cognate expressions) are to be construed as meaning a breach of this Agreement.

2. Definitions

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

Actual Capex Cash Payments or **ACCP** means the actual Capital Expenditure of SRT paid in the relevant period excluding any grant funding received from any third party;

Acceptable Level means the performance level falling somewhere between Below Acceptable Level and Strong Level set out in each Service Quality Appendix;

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

Accessible Travel Programme Budget means: £2,500,000 (TWO AND HALF MILLION POUNDS STERLING) for each five (5) year period of the Term, to be allocated by SRT for the purpose of facilitating the Accessible Travel Programme;

Accessible Travel Programme means SRT’s programme of accessible travel at Stations to improve accessibility of the Stations to persons with disabilities, developed pursuant to paragraph 2.7 of Schedule 4.2 (*Persons with Disabilities and Disability Discrimination*);

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

Actual Cash Payments or **ACP** means:

(a) SRT’s total expenditure paid for in the period being reviewed, including any of the following expenses that are paid during that period:

(i) amounts payable to the Authority, SRH and Network Rail;

(ii) taxation;

(iii) shareholder distributions including dividends;

(iv) interest;

and

(v) lease payments in relation to on-balance sheet leased assets,

but excluding any of the following expenses that are payable in that period:

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

(B) depreciation;

(C) amortisation; and

(D) bad debt provisions; and

(b) either:

(i) plus any reduction in the total amount owing by SRT to creditors over that period;
or

(ii) less any increase in the total amount owing by SRT to creditors over that period,
where total creditors:

(A) include any persons owed amounts by SRT in respect of operating expenses, including the types of expenses set out in paragraphs (a)(i) to (iv) inclusive, provisions and deferred income balances; but

(B) exclude persons owed amounts by SRT in respect of season ticket liabilities, lease liabilities in relation to on-balance sheet leased assets and liabilities in relation to grants received for the purchase of fixed assets; and

(b) for the avoidance of doubt, excludes any capex payments made in the period;

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

Actual Cash Collections or **ACC** means the actual cash inflow of SRT received in the relevant period (excluding Grant Payments and any Working Capital Facility);

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

Additional Adjustment or **AdADJ** has the meaning given to it at paragraph 9 of Schedule 8.1 (*Grant Payments*);

Additional Inspection Notice has the meaning given to it at paragraph 6.7 of Schedule 7.2 (*Service Quality*);

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

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

Agreed Data Sharing Form has the meaning given to it at paragraph 10.4(c) of Schedule 17 (*Confidentiality, FOISA and Data Protection*);

Agreed Form means in such form as is annexed and executed or initialled by or on behalf of the Authority, SRH and SRT as relative to this Agreement or otherwise as all parties have confirmed in writing to the other is in agreed form;

Alliance means any joint venture, collaboration or co-operation arrangement (whether expressed as an understanding or contract) to which SRT is a party in respect of railway or railway industry matters, excluding any Access Agreement, Brand Licence, Collateral Agreement, Connection Agreement, this Agreement or Property Lease;

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

Annual Audited Accounts means the accounts of SRT which:

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

Annual Contractual Review Meeting has the meaning given to it at clause 10;

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

- (a) comply with paragraph 3.11 of Schedule 13.2 (*Information*);
- (b) give a true and fair view of the amount of Revenue and Profit earned by SRT during any Operator Year (or part thereof);
- (c) contain:

- (i) a breakdown of the amount of Revenue and Profit referred to in paragraph (b), identifying the amount earned of each revenue flow specified in the definition of Revenue and Profit;
 - (ii) costs;
 - (iii) balance sheet performance; and
 - (iv) any explanatory notes which SRT reasonably believes would assist SRH in fulfilling the purpose referred to in paragraph (d); and
- (d) are delivered by SRT in accordance with paragraph 3.7 of Schedule 13.2 (*Information*);

Annual Variations has the meaning given to it at clause 10;

Annual Management Accounts means the management accounts of SRT which:

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

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

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

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

ATOC means the Association of Train Operating Companies;

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

Authority Claim means all losses, liabilities, costs, damages and expenses that the Authority does or will incur or suffer (including any such losses, liabilities, costs, damages and expenses that are unliquidated or which are contingent):-

- (a) as a consequence of any breach, negligence or other default of SRT under or in connection with this Agreement and/or any agreement ancillary to it; and/or
- (b) in respect of any matter for which SRT is to indemnify the Authority pursuant to this Agreement or any agreement ancillary to it;

Authority's Brand Guidelines has the meaning given to that term in paragraph 2.9 of Schedule 14.2 (*Maintenance of Operating Assets*);

Authority's Branding means:

- (a) Community Trade Mark Number EU006316707; UK Trade Mark Number UK00001528473; UK Trade Mark Number UK00002012344; and UK Trade Mark Number UK00002468429;
- (b) any other registered or unregistered trade marks which are owned or used by the Authority in connection with ScotRail, including without limitation UK Design Right 4004536;
- (c) any registered or unregistered designs, get ups and livery whether distinctive or not owned or used by the Authority in connection with ScotRail; and
- (d) includes any changes to the item listed in (a) to (c) above as the Authority may reasonably direct;

Authority IP means all Intellectual Property Rights owned by, licensed to, and or otherwise made available by, the Authority in relation to the ScotRail Operation, including without limitation the Authority's Branding and the Foreground IP;

Authority Business Plan Requirements has the meaning given to it at paragraph 2.10 of Schedule 13.2 (*Information*);

Average Weekly Earnings means the average weekly earnings:

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

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

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

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

Barcode Ticketing means a digital ticket able to be read and validated by barcode enabled infrastructure and distributing handheld readers, which ticket can be accepted nationally by all Train Operators, even if the barcode ticket is not their own;

Below Acceptable Level means the performance level designated as such and set out in a Service Quality Appendix;

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

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

Breach Performance Level means, in relation to an Operating Performance Benchmark for any Reporting Period, the breach performance level as determined in accordance with Schedule 7.1 (*Train Operating Performance*);

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

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

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

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

Budget means the budget for each Operator Year used to determine the Periodic Grant Payments (including the initial Budget detailed at paragraph 6.1 of Schedule 8.1 (*Grant Payments*)) comprising:

- (a) the periodic cost and revenues budget;
- (b) the periodic capex budget; and
- (c) the daily cash flow forecast for the Operator Year,

as such budget may be updated from time to time in accordance with paragraph 6 of Schedule 8.1 (*Grant Payments*);

Budget Forecast Review Meeting shall have the meaning given in paragraph 6.1 of Schedule 8.1 (*Grant Payments*);

Budgeted Cash Payments or **BCP** means the cash outflow on Costs forecast and budgeted to be paid by SRT in each Reporting Period and specified in the then current Budget as agreed or determined pursuant to paragraph 6 of Schedule 8.1 (*Grant Payments*);

Business Action Plan means an action plan to the extent applicable, produced by SRT in relation to the delivery of any outcome anticipated by its Business Plan;

Business Plan means the Initial Business Plan or any Updated Business Plan, as the context requires, and includes the Business Plan Commitment Schedule;

Business Plan Commitments means the obligations which SRT is required to deliver in relation to any Operator Year, as described in the relevant Business Plan Commitment Schedule of the relevant Business Plan;

Business Plan Commitment Schedule has the meaning given to it at paragraph 2.8 of Schedule 13.2 (*Information*);

Business Plan Content Requirements has the meaning given to it at paragraph 2.4 of Schedule 13.2 (*Information*);

Business Plan Dispute has the meaning given to it paragraph 2.14 of Schedule 13.2 (*Information*);

Business Plan Submission means a draft Business Plan as prepared and delivered by SRT in accordance with paragraphs 2.1, 2.11 or 2.12(b) of Schedule 13.2 (*Information*) and not yet agreed among the parties or determined by the Authority;

Business Plan Term means the Operator Year to which the Business Plan relates together with a period of two (2) detailed years and a further two (2) indicative years following the end of that Operator Year;

Caledonian Sleeper Franchise means the rights tendered by the Authority to operate railway passenger services comprising sleeper services between specified stations in Scotland and England;

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

Cancellation means a Passenger Service:

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

Cancellations Benchmark means any of the performance levels in respect of Cancellations as determined in accordance with paragraph 1 of Schedule 7.1 (*Train Operating Performance*);

Capacity in paragraphs 2.4 to 2.7 of Schedule 7.1 (*Train Operating Performance*) means, in respect of any train and any Formation Monitoring Point, the number of seats on such train which SRT provides or (as the case may be) plans to provide under any relevant Train Plan, on such train at such Formation Monitoring Point;

Capacity Benchmark means any of the performance levels in respect of the capacity operated in delivering the Passenger Services as determined in accordance with paragraph 1 of Schedule 7.1 (*Train Operating Performance*);

Capital Expenditure has the meaning given to it in paragraph 3.5 of Schedule 9 (*Changes*);

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

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

Change means:

- (a) an alteration to the time period referred to in paragraphs 5.10(b), 5.11(c) of Schedule 1.1 (*Service Development*) and 3.4.(b)(iii) of Schedule 1.2 (*Operating Obligations*);
- (b) a change to the Service Level Commitment previously in force pursuant to the issue of a new Service Level Commitment in accordance with paragraph 6 of Schedule 1.1 (*Service Development*);
- (c) a change effected pursuant to paragraph 6 of Schedule 1.2 (*Operating Obligations*), including as a result of any action that SRT is required to take pursuant to paragraph 8.1(b) of Schedule 1.2; in respect of any Strategy or plan referred to in paragraph 8.1(b) of Schedule 1.2 published, endorsed or varied after the Commencement Date;

- (d) a change to standards in respect of alternative transport arrangements, as referred to in paragraph 8.2(b) of Schedule 1.2, from the standards, as the case may be, which are current as at the date of signature of this Agreement;
- (e) the addition or omission of any station from the provisions of paragraph 4.4 of Schedule 1.3 (*Additional Service Specifications*);
- (f) if and when SRT uses reasonable endeavours to pursue a Network Change Proposal and/or any Material Change Proposal and/or any Major Change Proposal in accordance with paragraph 3 of Schedule 1.8 (*Restrictions of Use*);
- (g) the costs incurred by SRT in using its reasonable endeavours when required to do so pursuant to paragraph 3.1 in Part 1 of Schedule 1.8 (*Extended Restrictions of Use*); the costs incurred by SRT in co-operating with the Authority and/or any other relevant party in connection with a Major Scottish Project when required to do so in terms of paragraph 1 in Part 2 of Schedule 1.8 (*Extended Restrictions of Use*) save to the extent that the Major Scottish Project or any part thereof is addressed directly by any provisions of this Agreement and where such provisions do not indicate that SRT's efforts or actions in respect of the same (including the granting of permission, taking of no action or simple acquiescence or activity or exercise of a right) shall constitute a Change;
- (h) if and whenever SRT is required to novate any Access Agreement pursuant to paragraph 1.1 of Schedule 2.2 (*Security of Assets, Rolling Stock Lease, Stations and Depot Leases*) or to assign any Property Lease pursuant to paragraph 3.1 of Schedule 2.2, to the extent and only to the extent that SRT makes a saving as a consequence of such novation or assignment;
- (i) any action that SRT is required to take pursuant to paragraph 6.1(a) and/or 6.1(b) of Schedule 2.2 (*Security of Access Assets, Rolling Stock Leases, Station and Depot Leases*);
- (j) if and whenever SRT is required to participate in a scheme pursuant to paragraph 1.5, 2.8, 3.9, 4.2 and 5.5 of Schedule 2.5 (*Transport, Travel and Other Schemes*);
- (k) if and whenever an amendment or proposed amendment to an Inter-Operator Scheme is approved, as referred to in paragraph 5 of Schedule 2.5 (*Transport, Travel and Other Schemes*), to the extent and only to the extent that SRT makes a saving as a consequence of such amendment or proposed amendment;
- (l) the imposition, subject to the provisions of paragraph 2.6 of Schedule 4.2 (*Persons with Disabilities and Disability Discrimination*), of any increased access charges in respect of EA Requirements at stations at which the Passenger Services call, other than stations where SRT is Facility Owner;
- (m) a Variation (other than a Variation as referred to in (n) or (o) below) to the terms of this Agreement;
- (n) if and whenever the Authority has by a Variation regulated and/or specified the Fares, Prices and/or Child Prices on all, or any, Passenger Services and/or Flows (all as referred to in paragraph 4(a) of Schedule 5.5 (*Changes to Fares and Fares Regulation*)) to the extent, and only to the extent, that the Fares, Prices and/or Child Prices are for that Fare Year higher or lower than the applicable Fares, Prices and/or Child Prices which the Authority is, by making such Variation, seeking to regulate and/or specify;
- (o) if and whenever the Authority has by a Variation regulated and/or specified the Fares, Prices and/or Child Prices on any Passenger Services and/or Flows (all as referred to in paragraph 4(a) of Schedule 5.5 (*Changes to Fares and Fares Regulation*)) and the Authority then by a further Variation notifies SRT that the Authority no longer wishes to regulate and/or specify the Fare, Price and/or Child Price; provided that the financial consequences of that Change

pursuant to Schedule 9 (*Changes*) shall be limited to reversing the financial consequences flowing from the original requirement of the Authority;

- (p) if and whenever SRT is obliged to charge Value Added Tax on a Fare or there is an increase or decrease in the rate of Value Added Tax which it must charge on such Fare, in either case due to a change in the Value Added Tax treatment of the provision of Passenger Services;
- (q) if and whenever the Authority effects an amendment to a Discount Fare Scheme, introduces a new Discount Fare Scheme or ceases to approve a Discount Fare Scheme for the purposes of Section 28 of the Act;
- (r) an adjustment to the Cancellations Benchmark, Capacity Benchmark, PPM Benchmark or MTIN Target at SRH's sole option pursuant to paragraph 4 of Schedule 7.1 (*Train Operating Performance*);
- (s) if and whenever SRH requests SRT to take any action under paragraph 10.4 of Schedule 13.2 (*Information*) in accordance with its terms, save that any adjustment to the Grant Payments under Schedule 9 (*Changes*) in respect of any maintenance or support costs incurred pursuant to such paragraph 10.4 shall only be made to the extent that such maintenance and support costs are over and above the maintenance and support costs of any Computer System that is replaced;
- (t) if and whenever SRT is required to take any action under paragraph 10.5 of Schedule 13.2 (*Information*) in accordance with its terms;
- (u) the occurrence of a change to the Railway Passenger Services required to be operated by another operator or franchise operator by direction of the Authority or SRH which may reasonably be expected to have a material effect on the cost and revenues of providing the Passenger Services;
- (v) if and whenever there is a Change of Law;
- (w) in the event that railway passenger services to, from, or within Scotland, operated by other Train Operators, cease to be provided in whole or in part, SRT shall operate additional Passenger Services to provide a replacement for those railway passenger services which the other Train Operators shall have ceased or shall cease to provide;
- (x) if and whenever the Authority and/or SRT exercises any right reserved to it to require amendment to any concept, specification or design except where the exercise of such right is expressed not to constitute a Change;

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

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

Chair means the chair of the SRT Board as appointed by the SRH Board in accordance with Schedule 11;

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

- (a) which is not reflected in the Timetable;

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

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

Chief Operating Officer means the Chief Operating Officer of SRT;

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

Closed Scheme Employees has the meaning given to it in paragraph 3.1(a) of Schedule 16 (*Pensions*);

Closed Schemes has the meaning given to it in paragraph 3.1(b) of Schedule 16 (*Pensions*);

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

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

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

Commencement Date means the date and, where relevant, the time stated in clause 2 of this Agreement as being the date on which (and, where relevant, the time at which) this Agreement shall commence and SRT is to commence operating the Operator Services;

Commission means the European Commission;

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

Communications and Marketing Strategy or "C&M Strategy" means SRT's strategy referred to at paragraph 2.22 of Schedule 1.4.

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

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

- (a) serving a geographical district, with shared needs and aspirations, linked by the railway;

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

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

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

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

Connection means:-

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

Connection Agreement means an agreement for a Depot facility to connect to the operating network;

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

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

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

- (a) has the power to appoint and/or remove all or the majority of the members of the board of directors or other governing body of that person or of any other person which Controls that person;
- (b) controls or has the power to control the affairs and policies of that person or of any other person which Controls that person;
- (c) is the parent undertaking of that person or of any other person which Controls that person; or
- (d) possesses or is, or will be at a future date, entitled to acquire:
 - (i) 30% or more of the share capital or issued share capital of, or of the voting power in, that person or any other person which Controls that person;

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

Costs means costs and expenses properly incurred by SRT in performance of the Operator Services and stated in SRT's profit and loss account but excluding:-

- (a) Grant Payments;
- (b) corporation tax and deferred tax charge in SRT's profit and loss account;
- (c) any accounting transaction which does not require SRT to make a cash payment including notional pensions accounting adjustments and the accounting impact of financial instrument revaluations, other than depreciation where that depreciation is not a Notifiable Cost;

Costs and Revenues Liabilities or **CRL** means any Notifiable Costs, Revenue Foregone or liability for SRH Claims and/or Authority Claims incurred by SRT during a Reporting Period;

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

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

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

Customer Contact Centre means the premises from which SRT provides the services referred to at paragraph 13 of Schedule 1.4 (*Passenger Facing Obligations*);

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

Cycling Strategy means the strategy to be prepared by SRT in accordance with paragraph 9.2 of Schedule 1.4 (*Passenger Facing Obligations*) and which complies with the applicable requirements of the Framework Agreement and the Policy Compendium;

Data Protection Laws means any law, statute, subordinate legislation, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body which relates to the protection of individuals with regard to the processing of personal data to which a party is subject including the Data Protection Act 2018 or any statutory modification or re-enactment thereof and the UK GDPR;

Data Sharing Details means the description of the sharing of personal data between or among the parties, as set out in an Agreed Data Sharing Form, including details of the categories of personal data to be shared, the types of personal data to be shared (including any special categories of personal data), the roles of the parties in relation to such sharing, the legal basis and conditions which apply,

any security requirements, and any access requirements; and shall include the Initial Data Sharing Details;

Data Sharing Form means a draft data sharing form containing the proposed Data Sharing Details and in the format set out at Appendix 2 to Schedule 17 (*Confidentiality, FOISA and Data Protection*);

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

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

Default Performance Level means, in relation to an Operating Performance Benchmark for any Reporting Period, the default performance level as determined in accordance with Schedule 7.1 (*Train Operating Performance*);

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

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

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

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

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

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

Depot Lease means any lease:

(a) of the following depots:

1. Ayr Townhead
2. Corkerhill
3. Eastfield
4. Haymarket
5. Inverness
6. Perth
7. Shields
8. Yoker;
9. Cadder,
10. Millerhill; or

(b) of any other depot of which SRT becomes the Facility Owner at any time during the Operation Period;

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

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

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

Disabled Persons Protection Policy means SRT's policy for the protection of persons with disabilities which SRT is required to establish and review from time to time in accordance with the conditions of its Licences in respect of the operation of railway passenger services and/or stations;

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

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

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

Discount Fare Scheme means:

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

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

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

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

DMU means a diesel multiple unit Vehicle;

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

EA means the Equality Act 2010;

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

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

EFQM means the European Foundation for Quality Management;

EIRs means the Environmental Information (Scotland) Regulations 2004;

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

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

Emerging Technologies Services means the services provided by SRT as described in the relevant Service Quality Appendices;

EMUs means an electric multiple unit Vehicle;

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

Equalities Plan means SRT's Equalities Plan specified in paragraph 1.3(b)(iv) of Schedule 13.1 (*Operation Management*);

Escalation Procedure in Schedule 7.2 (*Service Quality*) means the procedure for resolution of disputes set out in paragraph 20 to Schedule 7.2 (*Service Quality*);

Estimated Cash Collections or **ECC** means the cash inflow (excluding any Grant Payments and Working Capital Facility) reasonably forecast and determined in each Reporting Period using available resources as is practicable at the time of the determination and specified in the then current Budget as agreed or determined pursuant to paragraph 6 of Schedule 8.1 (*Grant Payments*);

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

Executive Team Review Event means any of the events set out in paragraph 3 of Schedule 10.3 (*Events of Default and Executive Team Review Event*);

Expiry Date means:

- (a) the First Expiry Date; or
- (b) the Final Expiry Date; or
- (c) the date to which this Agreement is continued in accordance with any (or if more than one, the latest) notice served pursuant to paragraphs 1 or 2 of Schedule 18 (*Operation Continuation*);

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

Extended Term has the meaning given to it at clause 3.1 of this Agreement;

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

Fare means:

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

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

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

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

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

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

Faults Plan has the meaning set out in paragraph 4.3(d) in Schedule 7.2 (*Service Quality*);

Faults Reporting Plan has the meaning set out in paragraph 4.3(e) in Schedule 7.2 (*Service Quality*);

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

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

Final Adjustment or “**FADJ**” has the meaning given in paragraph 11 of Schedule 8.1 (*Grant Payments*);

Final Expiry Date means, subject to Schedule 18 (*Operation Continuation*), the last day of the tenth Operator Year;

Final Reviewed Accounts means either the audited accounts of SRT (if available) as at the end of the Term, or other final accounts approved by SRH;

Financial Memorandum means the financial memorandum for the SRH group drawn up on behalf of Scottish Government by Transport Scotland which is supplemental to the Framework Agreement (as amended from time to time);

First Expiry Date means, subject to Schedule 18 (*Operation Continuation*), the last day of the fifth Operator Year;

Fleet Availability Requirement means the level of availability of each class of vehicle for the delivery of Passenger Services (in line with any given Train Plan) and is as specified at paragraph 5 to Appendix 1 (The Train Fleet) to Schedule 1.1;

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

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

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

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

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

- (a) the number of passengers travelling in each class of accommodation:
 - (i) on each Passenger Service;
 - (ii) on each Route; and/or
 - (iii) at any station (meaning for this purpose both the numbers of passengers getting on and off at the station and also the numbers of passengers remaining on a train at the station) or between any stations; and
- (b) the times of day, week or year at which passengers travel,

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

Foreground IP any and all Intellectual Property Rights that arises or is obtained or developed by, or by a third party on behalf of, any party in and/or related to the ScotRail Operation and/or this Agreement, including without limitation related to any outputs of the Services;

Formation Monitoring Point means those formation monitoring points as detailed in Appendix 5 to Schedule 7.1 (*Train Operating Performance*);

Framework Agreement means the framework agreement between the Authority and SRH as related to the ScotRail Operation (as amended from time to time);

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

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

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

- (g) a customer service function and on-line portal dealing with account maintenance, new and replacement cards, travel planning and advice, retail of commercial products, refunds, etc;
- (h) fraud prevention including hotlisting management; and
- (i) a management information (data) and customer survey service.

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

Gold and Silver Command locations means Network Rail's office at 151 St Vincent Street Glasgow G2 5NW or such other location notified to SRT from time to time;

GP Half means, in respect of each Operator Year, each 6 calendar month period thereof:

provided that:

- (i) the first GP Half shall commence on the Commencement Date;
- (ii) each GP Half shall start on the day following the last day of the preceding GP Half; and
- (iii) the last GP Half shall end on the Expiry Date or earlier date of termination;

GP Quarter means, in respect of each Operator Year, each of the following three (or four, as the case may be) Reporting Periods:

- (a) the first to third Reporting Periods;
- (b) the fourth to sixth Reporting Periods;
- (c) the seventh to tenth Reporting Periods; and
- (d) the eleventh to thirteenth Reporting Periods,

provided that:

- (i) the first GP Quarter shall commence on the Commencement Date;
- (ii) each GP Quarter shall start on the day following the last day of the preceding GP Quarter; and
- (iii) the last GP Quarter shall end on the Expiry Date or earlier date of termination;

Grant Payment or **£GP** means, in relation to any Reporting Period, the amount determined in accordance with paragraph 1 of Schedule 8.1 (*Grant Payments*);

Grant Payment Component means:

- (a) each of the components of "**£GP**" as described in paragraph 1.3 of Schedule 8.1 (*Grant Payments*);
- (b) any component or element, described in the relevant provisions of Schedule 8.1 (*Grant Payments*) and Schedule 8.2 (*Performance Review Process*), as the case may be, which is used in determining or calculating the value of those components described in paragraph (a) above;

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

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

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

HLOS means the High Level Output Specification issued by the Authority from time to time;

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

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

HR Strategy means SRT's human resources strategy specified in paragraphs 1.1 to 1.3 of Schedule 13.1 (*Operation Management*);

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

Improvement Plan has the meaning given to it at paragraph 3.2(b) to Schedule 7.1 (*Train Operating Performance*);

Improvement Plan Performance Level means, in relation to an Operating Performance Benchmark for any Reporting Period, the improvement plan performance level as determined in accordance with paragraph 1 of Schedule 7.1 (*Train Operating Performance*);

Indicative Benchmark Table means, in relation to:

- (a) the Cancellations Benchmark, the table set out in Appendix 1 (*Indicative Cancellations Benchmark Table*) to Schedule 7.1 (*Train Operating Performance*);
- (b) the Capacity Benchmark, the table set out in Appendix 2 (*Indicative Capacity Benchmark Table*) to Schedule 7.1 (*Train Operating Performance*); and
- (c) the PPM Benchmark, the tables set out in Appendix 3 (*Indicative PPM Benchmark Tables*) to Schedule 7.1 (*Train Operating Performance*); and
- (d) in relation to the MTIN Score, the information set out in Appendix 4 (*Indicative MTIN Benchmark Tables*) to Schedule 7.1 (*Train Operating Performance*).

Indicative Framework of KPIs means the framework detailed in Annex 1 to of Schedule 8.2 (*Performance Review Process*);

Indicative Performance Review Scorecard means the indicative scorecard detailed at Appendix 4 to Schedule 8.2 and referenced at paragraph 1.2 to Schedule 8.2 (*Performance Review Process*);

Industrial Action shall include any concerted action taken in connection with the employment of any person (whether or not that action involves any breach of such employees' conditions of employment, and including any action taken in furtherance of a dispute, or with a view to improving the terms of employment of the relevant employees or by way of support for any other person);

Information Away from Station Services means the information provided by SRT as described in the relevant Service Quality Appendices;

Information Strategy means the strategy specified in paragraph 9.1 to 9.5 of Schedule 1.3 (*Additional Service Specifications*) and updated from time to time;

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

Initial Business Plan means the initial business plan for the first Operator Year agreed or determined in accordance with paragraphs 2.1 to 2.3 of Schedule 13.2 (*Information*);

Initial Data Sharing Details means the Data Sharing Details outlined in Appendix 1 to Schedule 17 (*Confidentiality, FOISA and Data Protection*);

Initial KPI Framework has the meaning given in paragraph 1.1 of Schedule 8.2 (*Performance Review Process*);

Initial KPI Framework Dispute has the meaning given in paragraph 1.4 of Schedule 8.2 (*Performance Review Process*);

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

Initial Service Level Commitment has the meaning given to it at paragraph 1.2 of Schedule 1.1 (*Service Development*);

Inspection Programme has the meaning given to it at paragraph 15.1 of Schedule 7.2 (*Service Quality*);

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

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

Intellectual Property Rights means patents, utility models, rights to inventions, copyright and neighbouring and related rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

Inter-city Rolling Stock means the fleet of rolling stock designated as such;

Inter-Operator Schemes means:

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

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

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

ITSO Certified means products which have been fully certified by ITSO;

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

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

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

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

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

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

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

Key Contract means:

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

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

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

Key Stations means the following Stations:-

Aberdeen;

Argyle Street,

Ayr;

Dundee;

Dunfermline;

Edinburgh Haymarket;

Edinburgh Waverley;

Falkirk High;

Glasgow Central;

Glasgow Central low level;

Glasgow Queen Street;

Inverness;

Kirkcaldy;

Motherwell;

Paisley Gilmour Street;

Partick;

Stirling;

and any other Stations or stations, or any new station in Scotland notified by SRH to SRT.

KPI Framework Dispute has the meaning given to it in paragraph 1.4 of Schedule 8.2 (*Performance Review Process*);

Law includes any enactment, subordinate legislation, rule, regulation, order, directive or other provision, and any judicial or administrative interpretation or application thereof, which has, in each

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

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

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

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

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

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

Local Authority means:

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

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

MAA means moving annual average;

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

Major Event in Schedule 7.2 (*Service Quality*) means any of the following:- act of God, war damage, enemy action, terrorism, riot, civil commotion, rebellion, fire, lightning, explosion, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, earthquake, aircraft and other aerial devices or articles dropped therefrom except where that Major Event is caused, or contributed to, by any act or omission of SRT, its agents or employees;

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

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

Major Station means Edinburgh Waverley and Glasgow Central;

Major Station Area means:

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

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

- (a) comply with paragraphs 3.3, 3.10 and 3.11 of Schedule 13.2 (*Information*); and
- (b) are delivered by SRT in accordance with paragraph 3.2 of Schedule 13.2;

Management and Processes in means the management and processes as set out in paragraph 4.3 of Schedule 7.2;

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

Maximum Inspection Number means the maximum number of inspections which the Authority may conduct in relation to the Schedule 7.2 Services, and as set out in a Service Quality Appendix;

Marks means such registered or unregistered trade marks and/or other designs, branding or Intellectual Property Rights as SRT and/or SRH may apply to any Primary Operation Asset or other asset used by it under a Key Contract, which are applied to assets, equipment and others used in the provision of Operator Services during the Term and are not the subject of a Brand Licence;

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

MTIN means Miles per Technical Incident;

MTIN Improvement Plan Level means the target determined in accordance with paragraph 1 of Schedule 7.1 (*Train Operating Performance*);

MTIN Score means the score for the overall reliability of the Train Fleet calculated in accordance with the MTIN moving annual average metric used by the Rail Delivery Group;

MTIN Target means the target determined in accordance with paragraph 1 of Schedule 7.1 (*Train Operating Performance*);

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

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

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

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

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

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

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

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

Network Code means the document now known as the Network Code and formerly known as the Railtrack Track Access Conditions 1995 (as subsequently replaced or amended from time to time) or any equivalent code or agreement applying to any party referred to in the definition of "**Network Rail**" other than Network Rail Infrastructure Limited;

Network Rail means in respect of:

(a) the network or any relevant facility:

- (i) Network Rail Infrastructure Limited, a company registered in England whose registered office is at 1 Eversholt Street, London, NW1 2DN; and
 - (ii) Any successor in title to the network or any relevant railway facility; or
- (b) any new or other sections of network or any relevant new or other railway facilities, the owner (if different);

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

New Station means:

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

Notice has the meaning given to it at paragraph 6.2 of Schedule 7.2 (*Service Quality*);

Notifiable Costs means any Costs which are described in Appendix 1 (*Notifiable Costs*) to Schedule 8.1 (*Grant Payments*);

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

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

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

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

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

On-Train Services means the services provided by SRT on Trains as described in the relevant Service Quality Appendices;

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

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

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

Operating Performance Benchmarks means the Cancellations Benchmarks, the Capacity Benchmarks, the PPM Benchmarks and the MTIN Score;

Operating Performance Dispute has the meaning given to it at paragraph 1.6 of Schedule 7.1 (*Train Operating Performance*);

Operating Performance Regime has the meaning given to it at paragraph 1.2 of Schedule 7.1 (*Train Operating Performance*);

Operation Performance Meeting means any meeting between SRH and SRT to review the financial and operational performance of SRT (as required to be held in accordance with paragraph 10 of Schedule 11 (*Agreement and Service Delivery Management Provisions*));

Operation Period means the period commencing on the Commencement Date and ending on the Expiry Date or, if earlier, the date of termination of this Agreement;

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

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

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

Operator Employee means

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

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

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

Operator Year means any period of 12 months during the Operation Period beginning on 1 April in any year, except that the first and last such periods may be for a period of less than 12 months and the first such period shall begin on the Commencement Date and end on 31 March 2023 and the last such period shall end on the last day of the Operation Period;

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

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

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

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

Other Parties has the meaning given to it at paragraph 5 of Schedule 17 (*Confidentiality, FOISA and Data Protection*);

Outgoing Operator means Abellio ScotRail Limited, whose registered number is SC450732 and whose registered office is at Atrium Court, 50 Waterloo Street, Glasgow, United Kingdom, G2 6HQ;

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

Parent means SRH;

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

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

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

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

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

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

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

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

Passenger Journey means a journey on a Passenger Service;

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

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

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

Passenger's Charter Guidelines means the document of the same name issued by or on behalf of the Authority or referred to by the Authority as constituting such, containing the methodology for

compiling performance statistics and Passenger's Charter compensation, as amended or replaced from time to time by the Authority after consultation with SRT and SRH;

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

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

Payment Date means the date for the payment of Grant Payments and the Working Capital Facility in accordance with paragraph 2.3 of Schedule 8.1 (*Grant Payments*);

Peak means the Morning Peak and the Evening Peak;

Morning Peak means (unless otherwise agreed among the parties in writing):

- (a) in Schedule 7.1 (*Train Operating Performance*), in relation to any Passenger Service forming part of Service Group HA06 or HA07, those Weekday periods between 0745 and 0915 inclusive in respect of arrivals at any of Glasgow Central, Glasgow Central low level, or Glasgow Queen Street stations; and
- (b) in the rest of this Agreement, except where otherwise specified in a Service Level Commitment:-
 - (i) those Weekday periods between 0730 and 0930 in respect of arrivals at any of Glasgow Central, Glasgow Central low level, Glasgow Queen Street, Argyle Street, High Street or Paisley Gilmour Street stations; and
 - (ii) those Weekday periods between 0700 and 0959 in respect of arrivals at Edinburgh (Waverly station or Haymarket station);

Evening Peak means (unless otherwise agreed among the parties in writing):

- (a) in Schedule 7.1 (*Train Operating Performance*) in relation to any Passenger Service forming part of Service Group HA06 and HA07, those Weekday periods between 1630 and 1800 inclusive in respect of departures from any of Glasgow Central, Glasgow Central low level or Glasgow Queen Street stations; and
- (b) in the rest of this Agreement, in relation to any Passenger Service, except where otherwise specified in a Service Level Commitment:
 - (i) those Weekday Periods between 1600 and 1800 in respect of departures from any of Glasgow Central, Glasgow Central low level, Glasgow Queen Street, Argyle Street, High Street or Paisley Gilmour Street stations; and
 - (ii) those Weekday Periods between 1600 and 1859 in respect of departures from Edinburgh (Waverley station or Haymarket station).

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

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

Performance Criterion means each of the relevant criteria in respect of which SRT's performance shall be measured in a Performance Review and for which a score shall be awarded in the Performance Review Scorecard, as agreed or determined in accordance with paragraph 1 of Schedule 8.2 (*Performance Review Process*) and as adjusted from time to time in accordance with paragraph 6

of Appendix 1 to Schedule 8.2 (*Performance Review*) (and "**Performance Criteria**" means the plural of Performance Criterion);

Performance Criteria Adjustment has the meaning given in paragraph 6.2 of Appendix 2 to Schedule 8.2 (*Performance Review*);

Performance Criterion Dispute has the meaning given to it at paragraph 5.7 of Appendix 2 to Schedule 8.2 (*Performance Review*);

Performance Criterion Dispute Meeting has the meaning given to it at paragraph 5.7 of Appendix 2 to Schedule 8.2 (*Performance Review*);

Performance Management Group or PMG has the meaning given to it at paragraph 12 of Schedule 1.2 (*Operating Obligations*);

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

Performance Review means a review carried out (or to be carried out) in accordance with Appendix 2 of Schedule 8.2 (*Performance Review Process*);

Performance Review Period has the meaning given to it at paragraph 2.2 of Appendix 2 to Schedule 8.2 (*Performance Review*);

Performance Review Meeting means, in respect of the Performance Review, a meeting held between SRH and SRT (with the option for the Authority to attend in accordance with paragraph 4 of Appendix 2 to Schedule 8.2 (*Performance Review*)) to discuss the performance of SRT during the relevant GP Quarter;

Performance Review Report means, in respect of a Performance Review, a report prepared in accordance with paragraph 3 of Appendix 2 to Schedule 8.2 (*Performance Review*);

Performance Review Scorecard means, in respect of a Performance Review, a scorecard completed (or, as the case may be, to be completed) by SRH in accordance with paragraph 5 of Appendix 2 of Schedule 8.2 (*Performance Review*), in the format agreed or determined in accordance with paragraph 1 of Schedule 8.2 (*Performance Review Process*);

Performance Scoring Standard means each standard set out with respect to each Performance Criterion as agreed or determined in accordance with paragraph 1 of Schedule 8.2 (*Performance Review Process*) and as adjusted from time to time in accordance with paragraph 6 of Appendix 2 to Schedule 8.2 (*Performance Review*);

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

Periodic Adjustment or **PADJ** has the meaning given in paragraph 8 of Schedule 8.1 (*Grant Payments*);

Periodic Adjustment Period means the Reporting Period which occurred two Reporting Periods prior to the current Reporting Period (for example, if the current Reporting Period is the third Reporting Period, then the Periodic Adjustment Period would be the first Reporting Period);

Periodic Budgeted Capex Cash Payment or **PBCCP** means the Capital Expenditure forecast and budgeted to be incurred and paid by SRT in a Reporting Period and specified in the then current Budget as agreed or determined pursuant to paragraph 6 of Schedule 8.1 (*Grant Payments*) excluding any grant funding provided by third parties;

Periodic Finance Review Meeting has the meaning given to it at paragraph 7.1 of Schedule 8.1 (*Grant Payments*);

Periodic Grant Payment or **PGP** has the meaning given to it at paragraph 1.3 of Schedule 8.1 (*Grant Payments*);

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

Permitted Purpose has the meaning given to it in paragraph 2.6 of Schedule 14.2 (*Maintenance of Operating Assets*);

Placed on Deposit means consigned to the Authority's Solicitors to be held as undelivered and to SRT's order;

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

PLUSBUS Scheme means the scheme of the same name operated by Traveline Information Limited which allows passengers to purchase an integrated bus and rail ticket;

Policy Compendium means the policy compendium as annexed to the Framework Agreement (as updated from time to time with approval of the Authority);

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

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

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

PPM Benchmark means any of the performance levels in respect of PPM as determined in accordance with paragraph 1 of Schedule 7.1 (*Train Operating Performance*);

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

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

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

Primary Operation Assets means:

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

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

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

Processed Personal Data has the meaning given to it at paragraph 10.11 of Schedule 17 (*Confidentiality, FOISA and Data Protection*);

Processor has the meaning given to it at paragraph 10.11 of Schedule 17 (*Confidentiality, FOISA and Data Protection*);

Profit means subject to paragraph (b) in respect of any Operator Year, the total profit of SRT for that Operator Year calculated by applying the GAAP:

- (a) after taking into account in respect of that Operator Year:
 - (i) interest, finance income and finance charges (other than finance items recognised in respect of retirement benefits);
 - (ii) Grant Payments;
 - (iii) all extraordinary and exceptional items;
 - (iv) SRT's normal pension contributions in relation to any pension schemes to the extent connected with SRT;
 - (v) any payments to Affiliates of SRT;
 - (vi) any sums payable by or to the Operator pursuant to the terms of the Supplemental Agreement; and
 - (vii) any capital expenditure to the extent that it is recognised as an operating cost in the Annual Audited Accounts and any depreciation on capital expenditure that is added to the balance sheet in the Annual Audited Accounts but applying at all times the depreciation policy of SRT; and
- (b) before taking into account in respect of the Operator Year:
 - (i) any taxation on profits including corporation tax;
 - (ii) shares of the profit of any Affiliate of SRT, except dividends received in cash;
 - (iii) non cash entries in respect of any pension schemes to the extent connected with SRT, excluding accruals or prepayments of any normal pension contributions due;
 - (iv) any payment made by SRT consequent upon any breach or contravention of this Agreement and/or its Licence in respect of Stations (including as a consequence of any penalty payment paid or payable pursuant to Section 57A of the Railways Act 1993);

Property Lease means any agreement or lease of a similar or equivalent nature (whether in respect of any such facility or otherwise) which SRT may enter into with a person who has an interest in a network or a railway facility which is to be used for or in connection with the provision or operation of the Operator Services;

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

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

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

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

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

Purpose means the purposes specified in the Data Sharing Details;

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

Quality Plan means the plan specified in paragraphs 2.1 to 2.4 of Schedule 13.1 (*Operation Management*);

Quality Report means the report specified in paragraph 2.5 of Schedule 13.1 (*Operation Management*);

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

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

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

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

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

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

Requested Information has the meaning given to it at paragraph 5 of Schedule 17 (*Confidentiality, FOISA and Data Protection*);

Request Receiver has the meaning given to it at paragraph 5 of Schedule 17 (*Confidentiality, FOISA and Data Protection*);

RDG means the Rail Delivery Group;

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

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

Regulated Peak Fares means any Season Ticket or Anytime Ticket;

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

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

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

Related Party Contract means a contract between SRT or any Affiliate with another Affiliate (other than this Agreement);

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

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

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

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

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

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

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

- (i) the first such period during the Operation Period shall exclude any days up to but not including the Commencement Date;
- (ii) the first and last such period in any Reporting Year may be varied by up to 7 days by notice from SRH to SRT;
- (iii) each such period shall start on the day following the last day of the preceding such period; and
- (iv) the last such period during the Operation Period shall end on the end of the Operation Period;

Reporting Period 1 means the period from 1 April 2022 to 30 April 2022;

Reporting Period 2 means the period from 1 May 2022 to 28 May 2022;

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

Requested Information has the meaning given to it at paragraph 5 of Schedule 17 (*Confidentiality, FOISA and Data Protection*);

Request for Information has the meaning set out in FOISA;

Request Receiver has the meaning given to it at paragraph 5 of Schedule 17 (*Confidentiality, FOISA and Data Protection*);

Required Cash Balance means seven million and five hundred thousand pounds, Sterling (£7,500,000);

Resilience Plan means the resilience plan developed by SRT in terms of paragraph 11 of Schedule 1.2 (*Operating Obligations*);

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

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

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

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

Revenue means the gross revenue (without any deduction for operating costs or charges except for commission charged to revenue in the normal course of business) of SRT, as stated in the audited or management accounts and statements submitted in accordance with Schedule 13.2 (*Information*), relating to:

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

but shall not include any Grant Payment;

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

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

but which would have been receivable and received or otherwise realised by SRT if it had acted wholly in accordance with the terms of this Agreement and with the highest level of care, skill and diligence according with best practice in SRT's industry; and

- (b) subject always to paragraph 5 (No Double Recovery) of Schedule 8.1 (*Grant Payments*), but SRT:
- (i) incurring Notifiable Costs; and/or
 - (ii) otherwise acting other than wholly in accordance with the terms of this Agreement and with the highest level of care, skill and diligence according with best practice in SRT's industry;

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

Rolling Stock means the rolling stock vehicles specified in Appendix 1 (*The Train Fleet*) to Schedule 1.1 (*Service Development*) (as amended from time to time) used to operate the timetable of services on the network;

Rolling Stock Contract means any contract or arrangement to which SRH and/or SRT is a party, related to the maintenance or other of in respect of rolling stock vehicles used by SRT (including Rolling Stock) which are critical to delivering of the Operator Services, or for the enforcement of warranties or other rights against a manufacturer in respect of any such rolling stock vehicles;

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

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

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

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

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

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

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

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

Route Utilisation Strategy means any route utilisation strategy notified to SRT by SRH (and/or the Authority) on or before the Commencement Date or as developed by Network Rail from time to time and notified to SRT for the purposes of this Agreement;

RSP means Rail Settlement Plan Limited;

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

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

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

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

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

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

ScotRail Grant Agreement or Agreement means this Scotrail grant agreement among the parties hereto, executed on the date hereof, which constitutes a single agreement together with the Schedules and Appendices appended hereto;

ScotRail Operation means the operation of railway passenger services under the terms and conditions set out in this Agreement;

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

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

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

Season Ticket Fare means a Fare which entitles the purchaser to make an unlimited number of journeys in any direction during the period for which, and between the stations and/or the zones for which, such Fare is valid;

Secretary of State means The Secretary of State for Transport;

Section 30 Duty means the Authority's duty under section 30 of the Act to secure the provision of passenger rail services in circumstances where the Franchise Agreement terminates and no further franchise agreement has been entered into in respect of the passenger services formerly provided under the Franchise Agreement;

Sectors means the Express (E&G) Sector, the Express (Other) Sector, the Suburban West Sector, the Suburban (East) Sector and the Rural Sector and/or such sectors as determined in accordance

with paragraph 1 of Schedule 7.1 (*Train Operating Performance*); and **Sector** shall be construed accordingly;

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

Services means all those Passenger Services provided and such other Station Services, Depot Services and Ancillary Services as may be provided or operated in connection with the Passenger Services;

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

Service Group has the meaning given to it in the Track Access Agreement, except when used in paragraph 5 of Schedule 1.4 (*Passenger Facing Obligations*) when it shall have the meaning given to it in the Passenger's Charter; and when used in relation to a Sector or Sectors at the Commencement Date. The various Service Groups are Service Group A, Service Group B, Service Group C, Service Group D, Service Group E, Service Group F and Service Group G where:-

Service Group A in Schedule 7.1 (*Train Operating Performance*) means the Passenger Services described in Part 3(a), Appendix 5 to Schedule 7.1;

Service Group B in Schedule 7.1 (*Train Operating Performance*) means the Passenger Services described in Part 3(b), Appendix 5 to Schedule 7.1;

Service Group C in Schedule 7.1 (*Train Operating Performance*) means the Passenger Services described in Part 3(c), Appendix 5 to Schedule 7.1;

Service Group D in Schedule 7.1 (*Train Operating Performance*) means the Passenger Services described in Part 3(d), Appendix 5 to Schedule 7.1;

Service Group E in Schedule 7.1 (*Train Operating Performance*) means the Passenger Services described in Part 3(e), Appendix 5 to Schedule 7.1;

Service Group F in Schedule 7.1 (*Train Operating Performance*) means the Passenger Services described in Part 3(f), Appendix 5 to Schedule 7.1;

Service Group G in Schedule 7.1 (*Train Operating Performance*) means the Passenger Services described in Part 3(g), Appendix 5 to Schedule 7.1;

Service Level Commitment means the service level commitment in respect of the Services more particularly described in Schedule 1.1 (*Service Development*), including the Initial Service Level Commitment, and any other service level commitment developed in accordance with Schedule 1.1;

Service Quality Benchmark means any of Acceptable Level, Below Level or Below Acceptable Level;

Service Quality Benchmark Score means a score of Strong Level (3), Acceptable Level (2) or Below Acceptable Level (1) allocated in accordance with the Service Quality Benchmark detailed in each Service Quality Appendix;

Service Quality Monitoring Plan means a plan which the Authority may require SRT to provide in accordance with paragraph 14 of Schedule 7.2 (*Service Quality*);

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

Service Quality Regime has the meaning given to it at paragraph 1.2 of Schedule 7.2 (*Service Quality*);

Service Quality Regime Review means the review of the Service Quality Regime carried out pursuant and as described in paragraphs 15.2.1 to 15.2.3 of Schedule 7.2 (*Service Quality*);

Service Quality RP Score has the meaning given to it paragraph 9.2 of Schedule 7.2 (*Service Quality*);

Service Quality PQ Score has the meaning given to it paragraph 9.4 of Schedule 7.2 (*Service Quality*);

Schedule 7.2 Services means the Operator Services which make up each Schedule 7.2 Service Specification;

Schedule 7.2 Service Specifications means the service specifications for the Station Services, the On-Train Services, Information Away from Station Services, and the Emerging Technologies Services as set out in a Service Quality Appendix;

Service Quality Appendices means Appendices 1 to 36 as annexed to Schedule 7.2 (and **Service Quality Appendix** means any and each of the Appendixes annexed to Schedule 7.2 (*Service Quality*)) which describe the Schedule 7.2 Service Specifications, the Service Quality Benchmarks any Maximum Inspection Numbers and other information as determined relevant;

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

- (a) to minimise the disruption arising from such prevention or restriction of access by operating during such period of disruption, the best possible level of service given such disruption, including by:
 - (i) keeping service intervals to reasonable durations;
 - (ii) keeping extended journey times to reasonable durations; and
 - (iii) managing any resulting overcrowding;
- (b) to:
 - (i) return the level of service to that level specified in the Timetable as soon as reasonably practicable; and
 - (ii) prior to the attainment of the level of service specified in paragraph (b)(i), operate any reduced level of service agreed with Network Rail for the purpose of minimising such disruption pursuant to paragraph (a);
- (c) in accordance with the principles of service recovery set out in the ATOC “**Approved Code of Practice: Contingency Planning for Train Service Recovery – Service Recovery 2009**” or any document of a similar or equivalent nature; and
- (d) where the particulars of such plan in relation to the requirements of paragraphs (a) and (b) have been:
 - (i) agreed at an initial and, where required, subsequent telephone conference between SRT, Network Rail and any other affected Train Operator; and

- (ii) on each occasion, recorded in an official control log by the relevant Region Control Manager of Network Rail,

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

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

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

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

- (a) the addition or removal of railway passenger services; or
- (b) changes to stopping patterns or destinations or origin; or
- (c) changes of timings for first/last trains by more than 10 minutes; or
- (d) changes to clockface (or near clockface) service patterns (meaning the provision of railway passenger services at a specified time or times relative to the hour); or
- (e) significant changes to journey times and/or key connections at the Station or at other stations at which relevant railway passenger services call;

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

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

The three categories are:-

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

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

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

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

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

Special Events means any national or regional sporting or cultural event as shall be so designated by SRH and shall include, but not be limited to the Edinburgh Festivals, football cup fixtures including for the avoidance of doubt, but without limitation, round matches quarter final and semi-final matches and final matches, Six Nations Rugby fixtures, Celtic Connections, Glasgow Film Festival and Glasgow Comedy Festival;

SPFM means Scottish Public Finance Manual;

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

SRH Board means SRH's board of directors as registered at Companies House;

SRT Board means SRT's board of directors as registered at Companies House;

SRT Executive Team has the meaning given to it at paragraph 3.1 of Schedule 11 (*Agreement and Service Delivery Management Provisions*);

SQI in Schedule 4.1 (*Operation Facilities*) in Schedule 7.2 (*Service Quality*) means a service quality inspector appointed in accordance with the paragraphs 5 and 6 of Schedule 7.2 (*Service Quality*);

SQM means the service quality manager appointed by SRT in accordance with paragraph 3.1(e) of Schedule 7.2 (*Service Quality*);

SRH Claim means all losses, liabilities, costs, damages and expenses that SRH does or will incur or suffer (including any such losses, liabilities, costs, damages and expenses that are unliquidated or which are contingent):-

- (a) as a consequence of any breach, negligence or other default of the SRT under or in connection with this Agreement and/or any agreement ancillary to it; and/or
- (b) in respect of any matter for which the SRT is to indemnify SRH pursuant to this Agreement or any agreement ancillary to it.

SRH Systems in Schedule 7.1 (*Train Operating Performance*) has the meaning ascribed to that term in paragraph 1(b) of Part 2 of Appendix 5 to Schedule 7.1;

SRT Systems in Schedule 7.1 (*Train Operating Performance*) has the meaning ascribed to that term in paragraph 1(e) of Part 2 of Appendix 5 to Schedule 7.1;

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

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

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

Station means any station, in respect of which the SRT has entered or during the Operation Period enters into a Station Lease; and in Schedule 7.2 (*Service Quality*) references to a Station are only to those areas of the Station to which the public are granted access including those areas to which the public are granted access in an emergency;

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

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

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

Station Facility Owner means the party in control of the Station as defined in the Network Rail station lease agreement;

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

Station Lease means any lease:

- (a) of a station listed in the Appendix to this Schedule 20; or
- (b) of any other station (including any New Station) of which SRT becomes the Facility Owner at any time during the Operation Period;

Station Service means (other than in Schedule 7.2 (*Service Quality*)) any service specified in paragraph 3 of Schedule 1.7 (*Operator Services*) which may be provided by SRT at the Stations, and, in Schedule 7.2, means the services provided by SRT at Stations as described in the relevant Service Quality Appendices;

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

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

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

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

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

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

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

Strong Level means the performance level designated as such and set out in a Service Quality Appendix;

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

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

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

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

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

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

Supplemental Agreement means a supplemental agreement between the SRT (and/or SRH) and a Successor Operator to be entered into pursuant to a Transfer Scheme, being substantially in the form of Appendix 2 (*Form of Supplemental Agreement*) to Schedule 15.4 (*Provisions Applying on and after Termination*), but subject to such amendments as the Authority may reasonably make thereto as a result of any change of law affecting such supplemental agreement or other change of circumstances between the date of this Agreement and the date on which the relevant Transfer Scheme is made and subject further to paragraph 3.2 of Schedule 15.4;

Supporting Materials means any materials explaining or supporting the Budget produced or compiled by SRT;

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

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

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

Target Passenger Demand means:

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

Target Performance Level means, in relation to an Operating Performance Benchmark for any Reporting Period, the target performance level as determined in accordance with paragraph 1 of Schedule 7.1 (*Train Operating Performance*);

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

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

Term means the period commencing on the Commencement Date and expiring on the Expiry Date, and includes the Initial Term and any Extended Term;

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

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

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

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

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

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

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

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

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

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

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

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

Train in Schedule 7.2 (*Service Quality*) means a train in service on the Services during a Reporting Period;

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

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

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

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

Train Fleet Tables means Train Fleet Table 1 and Train Fleet Table 2;

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

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

Train Plan Train Plan means the plan of SRT for the operation of trains and train formations under the Timetable in the Agreed Form marked TP and any other train plan developed and agreed in accordance with Schedule 1.1 (*Service Development*) except that when used in Schedule 7.1 (*Train Operating Performance*) it shall have the meaning given to it in paragraph 2.13 of Schedule 7.1;

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

Transfer Scheme means a transfer scheme made by the Authority under Section 12 and Schedule 2 of the Railways Act 2005 (or equivalent statutory provision) pursuant to paragraph 3.1 of Schedule 15.4 (*Provisions Applying on and after Termination*), being substantially in the form of Appendix 1 (*Form of Transfer Scheme*) to Schedule 15.4 but subject to such amendments as the Authority may make thereto as a result of any change of Law affecting such transfer scheme or other change of circumstances between the date of this Agreement and the date on which such scheme is made;

Transport Act means the Transport Act 2000;

Transport Direct means the scheme presently known by that name;

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

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

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

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

TS AO means Transport Scotland's Accountable Officer, the Chief Executive of Transport Scotland, as portfolio accountable officer for Transport Scotland, and as appointed under the Framework Agreement;

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

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

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

Turnover means, in relation to any period, the aggregate revenue (excluding any applicable Value Added Tax) accruing to the SRT from the sale of Fares, including the receipt of Grant Payments;

UK GDPR means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27th April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018 and as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019;

personal data, special categories of personal data, controller, processor, data subject, personal data breach, Supervisory Authority, technical and organisational measures, legal basis and processing shall have the meanings ascribed to them by the Data Protection Laws (and **process, processes and processed** shall be construed accordingly);

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

Updated Business Plan means the revised business plan for each Operator Year agreed or determined in accordance with paragraphs 2.11 to 2.13 of Schedule 13.2 (*Information*);

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

Variation means a variation to the terms of this Agreement including an Annual Variation, and including in consequence the Operation Facilities Book in terms of paragraphs 5.3 and 5.5 of Schedule 4.1 (*Operation Facilities*);

Vehicle means: -

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

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

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

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

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

Working Capital Facility has the meaning given to it a paragraph 1.2 of Schedule 8.1 (*Grant Payment*);

Working Day in Schedule 7.2 (*Service Quality*) means any of Monday to Friday inclusive but shall not include a Scottish public holiday nor, when considering the passage of days since an inspection, a re-inspection or the issuing of any notice or report in respect of a Station pursuant to the provisions of Schedule 7.2, any day which is a local public holiday in the Local Authority area in which the relevant Station is located; and

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

APPENDIX TO SCHEDULE 20

Station Lease

1. Aberdeen
2. Aberdour
3. Achanalt
4. Achnasheen
5. Achnashellach
6. Addiewell
7. Airbles
8. Airdrie
9. Alexandra Parade
10. Alexandria
11. Alloa
12. Alness
13. Altnabreac
14. Anderston
15. Annan
16. Anniesland
17. Arbroath
18. Ardgay
19. Ardlui
20. Ardrossan Harbour
21. Ardrossan S.
Beach
22. Ardrossan Town
23. Argyle Street
24. Arisaig
25. Armadale (West
Lothian)
26. Arrochar & Tarbet
27. Ashfield
28. Attadale
29. Auchinleck
30. Aviemore
31. Ayr
32. Baillieston
33. Balloch
34. Balmossie
35. Banavie
36. Barassie
37. Bargeddie
38. Barnhill
39. Barrhead
40. Barrhill
41. Barry Links
42. Bathgate

43. Bearsden
44. Beasdale
45. Beaully
46. Bellgrove
47. Bellshill
48. Bishopbriggs
49. Bishopton
50. Blackridge
51. Blair Atholl
52. Blairhill
53. Blantyre
54. Bogston
55. Bowling
56. Branchton
57. Breich
58. Bridge of Allan
59. Bridge of Orchy
60. Bridgeton
61. Brora
62. Broughty Ferry
63. Brunstane
64. Burnside
65. Burntisland
66. Busby
67. Caldercruix
68. Cambuslang
69. Camelon
70. Cardenden
71. Cardonald
72. Cardross
73. Carfin
74. Carluke
75. Carmyle
76. Carnoustie
77. Carntyne
78. Carrbridge
79. Carstairs
80. Carttsyke
81. Cathcart
82. Charing Cross
83. Chatelherault
84. Clarkston
85. Cleland
86. Clydebank

87. Coatbridge Central
88. Coatbridge
Sunnyside
89. Coatdyke
90. Connel Ferry
91. Conon Bridge
92. Corkerhill
93. Corpach
94. Corroul
95. Cowdenbeath
96. Craigendoran
97. Crianlarich
98. Croftfoot
99. Crookston
100. Crosshill
101. Crossmyloof
102. Croy
103. Culrain
104. Cumbernauld
105. Cupar
106. Curriehill
107. Dalgety Bay
108. Dalmally
109. Dalmarnock
110. Dalmeny
111. Dalmuir
112. Dalreoch
113. Dalry
114. Dalwhinnie
115. Dingwall
116. Drem
117. Drumchapel
118. Drumfrochar
119. Drumgelloch
120. Drumry
121. Duirinish
122. Duke Street
123. Dumbarton Central
124. Dumbarton East
125. Dumbreck
126. Dumfries
127. Dunblane
128. Duncraig
129. Dundee

130. Dunfermline
Queen Margaret
131. Dunfermline Town
132. Dunkeld and
Birnam
133. Dunlop
134. Dunrobin Castle
135. Dyce
136. East Kilbride
137. Easterhouse
138. Edinburgh Park
139. Elgin
140. Exhibition Centre
141. Fairlie
142. Falkirk
Grahamston
143. Falkirk High
144. Falls of Cruachan
145. Fauldhouse
146. Fearn
147. Forres
148. Forsinard
149. Fort Matilda
150. Fort William
151. Garelochhead
152. Garrowhill
153. Garscadden
154. Gartcosh
155. Garvel
156. Georgemas
Junction
157. Giffnock
158. Gilshochill
159. Girvan
160. Glasgow Central
Low Level
161. Glasgow Queen
Street
162. Gleneagles
163. Glenfinnan
164. Glengarnock
165. Glenrothes With
Thornton
166. Golf Street
167. Golspie

168. Gourock
169. Greenfaulds
170. Greenock Central
171. Greenock West
172. Gretna Green
173. Hairmyres
174. Hamilton Central
175. Hamilton West
176. Hartwood
177. Hawkhead
178. Haymarket
179. Helensburgh
Central
180. Helensburgh
Upper
181. Helmsdale
182. High Street
183. Hillfoot
184. Hillington East
185. Hillington West
186. Holytown
187. Howwood
188. Huntly
189. Hyndland
190. IBM Halt
191. Inch
192. Invergordon
193. Invergowrie
194. Inverkeithing
195. Inverkip
196. Inverness
197. Invershin
198. Inverurie
199. Irvine
200. Johnstone
201. Jordanhill
202. Keith
203. Kelvindale
204. Kennishead
205. Kildonan
206. Kilmarnock
207. Kilmaurs
208. Kilpatrick
209. Kilwinning

210. Kinbrace
211. Kinghorn
212. King's Park
213. Kingsknowe
214. Kingussie
215. Kirkcaldy
216. Kirkconnel
217. Kirkhill
218. Kirknewton
219. Kirkwood
220. Kyle of Lochalsh
221. Ladybank
222. Lairg
223. Lanark
224. Langbank
225. Langside
226. Larbert
227. Largs
228. Larkhall
229. Laurencekirk
230. Lenzie
231. Leuchars
232. Linlithgow
233. Livingston North
234. Livingston South
235. Loch Awe
236. Loch Eil
Outwardbound
237. Lochnilort
238. Locheilside
239. Lockerbie
240. Lochgelly
241. Lochluichart
242. Lochwinnoch
243. Longniddry
244. Mallaig
245. Markinch
246. Maryhill
247. Maxwell Park
248. Maybole
249. Merryton
250. Milliken Park
251. Milngavie
252. Monifieth

253. Montrose
254. Morar
255. Mosspark
256. Motherwell
257. Mount Florida
258. Mount Vernon
259. Muir of Ord
260. Muirend
261. Musselburgh
262. Nairn
263. Neilston
264. New Cumnock
265. Newcraighall
266. Newton
267. Newtonmore
268. Newton-on-Ayr
269. Nitshill
270. North Berwick
271. North Queensferry
272. Oban
273. Paisley Canal
274. Paisley Gilmour Street
275. Paisley St James
276. Partick
277. Patterton
278. Perth
279. Pitlochry
280. Plockton
281. Pollokshaws East
282. Pollokshaws West
283. Pollokshields East
284. Pollokshields West
285. Polmont
286. Port Glasgow
287. Portlethen
288. Possilpark & Parkhouse
289. Prestonpans
290. Prestwick Town
291. Priesthill & Darnley
292. Queens Park
293. Rannoch
294. Renton

295. Rogart
296. Rosyth
297. Roy Bridge
298. Rutherglen
299. Saltcoats
300. Sanquhar
301. Scotscalder
302. Scotstounhill
303. Shawlands
304. Shettleston
305. Shieldmuir
306. Shotts
307. Singer
308. Slateford
309. South Gyle
310. Spean Bridge
311. Springburn
312. Springfield
313. Stepps
314. Stevenston
315. Stewarton
316. Stirling
317. Stonehaven
318. Stranraer
319. Strathcarron
320. Stromeferry
321. Summerston
322. Tain
323. Taynuilt
324. Thornliebank
325. Thorntonhall
326. Thurso
327. Troon
328. Tulloch
329. Tyndrum Lower
330. Uddingston
331. Uphall
332. Upper Tyndrum
333. Wallyford
334. Wemyss Bay
335. West Calder
336. West Kilbride
337. Wester Hailes
338. Westerton

- 339. Whifflet
- 340. Whinhill
- 341. Whitecraigs
- 342. Wick
- 343. Williamwood
- 344. Wishaw
- 345. Woodhall
- 346. Yoker
- 347. Robroyston
- 348. Kintore
- 349. Shawfair
- 350. Eskbank
- 351. Newtongrange
- 352. Gorebridge
- 353. Stow
- 354. Galashiels
- 355. Tweedbank
- 356. Dunbar
- 357. Edinburgh Park