

SCHEDULE 1

THIS IS SCHEDULE 1 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT AMONG THE STRATEGIC RAIL AUTHORITY, STRATHCLYDE PASSENGER TRANSPORT EXECUTIVE AND FIRST SCOTRAIL LIMITED

Passenger Service Obligations

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SCHEDULE 1.1

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Service Development

1. SERVICE LEVEL COMMITMENT – PURPOSE AND RESPONSIBILITY

1.1 A Service Level Commitment is the means by which each of the Authority and the SPTE specifies in respect of the Authority Services and the SPTE Services, respectively, the level, frequency, maximum journey times and stopping patterns of the railway passenger services that the Franchisee is to:

- (a) seek Train Slots for from Network Rail; and
- (b) operate pursuant to the Timetable issued by Network Rail at the end of its timetable development process.

1.2 Each of the Authority and the SPTE shall issue a Service Level Commitment (being the Authority Service Level Commitment and the SPTE Service Level Commitment, respectively) for, and prior to the start of, each timetable development process of Network Rail during the Franchise Term.

1.3 The Authority Service Level Commitment as at the date of this Agreement is in the agreed terms marked Authority SLC. The SPTE Service Level Commitment as at the date of this Agreement is in the agreed terms marked SPTE SLC.

1.4 The Service Level Commitments may be expressed in whole or in part at any level of generality or to any level of detail the Authority (in relation to the Authority Service Level Commitment) or the SPTE (in relation to the SPTE Service Level Commitment), as the case may be, considers appropriate.

1.5 A Service Level Commitment developed in accordance with this Schedule 1.1 may include journeys along routes which the Franchisee may not have permission to use at the Franchise Commencement Date and/or along new parts of the network.

1.6 A Service Level Commitment may specify capacity for any railway passenger services in the Service Level Commitment.

2. TRAIN PLAN – PURPOSE AND RESPONSIBILITY

2.1 A Train Plan is the means by which the Franchisee expresses its proposed allocation of the passenger carrying capacity of the Train Fleet to meet passenger demand for the railway passenger services it is to operate.

2.2 The Franchisee shall submit to the Authority and the SPTE a Train Plan in respect of each Service Level Commitment (dealing with, in one Train Plan, each

Authority Service Level Commitment and each SPTE 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 Service Level Commitments, the Franchisee shall do so by reference to the timetable that it envisages operating in order to comply with those Service Level Commitments.

2.4 The Train Plan for the Timetable as at the Franchise Commencement Date is to be delivered to the Authority and the SPTE prior to the Franchise Commencement Date. The Authority and the SPTE accept that this Train Plan may not contain the information referred to in paragraph 2.5(e) to (g). If that is the case, the Franchisee shall within 6 months of the Franchise Commencement Date update the Train Plan so that it contains all of the information required by this Agreement. The Franchisee shall keep both the Authority and SPTE advised as regards this updating and shall promptly supply each of the Authority and the SPTE 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 and whether it is part of the SPTE Train Fleet or the Non SPTE Train Fleet;
- (d) the passenger carrying capacity (split between seated and standing capacity) that the allocated train, as formed, is to have;
- (e) the indicative formation of those trains allocated in accordance with paragraph 2.5(d) which have a Target Passenger Demand greater than 75 per cent. of their passenger carrying capacity;
- (f) its Actual Passenger Demand most recently determined in accordance with Schedule 1.5 (*Information about Passengers*);
- (g) its Forecast Passenger Demand; and
- (h) for sleeper services, the split of passenger carrying capacity between seating accommodation, single berth cabins and two berth cabins.

2.6 A Train Plan shall be in any format that the Authority may reasonably specify for this purpose. The Authority agrees with the SPTE to obtain the consent of the SPTE (which consent shall not be unreasonably withheld or delayed) prior to making any specification which affects the format in relation to SPTE Services.

3. TRAIN FLEET

3.1 The Franchisee's Train Fleet as at the Franchise Commencement Date is as set out in Appendix 1 (*The Train Fleet*).

3.2 The Franchisee shall comply with its obligations under:

- (a) paragraph 15 concerning changes to the composition and characteristics of the Train Fleet; and
- (b) paragraph 2 of Schedule 2.2 (*Security of Access Assets, Rolling Stock Leases, Station and Depot Leases*) with respect to the Train Fleet.

4. SERVICE LEVEL DEVELOPMENT

The Franchisee agrees to co-operate with each of the Authority and the SPTE to develop the Authority Service Level Commitment and the SPTE Service Level Commitment, respectively, in accordance with this Schedule 1.1.

5. PROCEDURE

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

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

5.3 The Authority agrees to consult the SPTE (and to have due regard to any representation that the SPTE may make) and the Franchisee, as far as reasonably practicable as regards the Franchisee, prior to stipulating or amending any such procedural arrangements and timescales in accordance with paragraph 5.2.

5.4 Any stipulation by the Authority pursuant to paragraph 5.2:

- (a) shall be at the reasonable discretion of the Authority having consulted with the SPTE;
- (b) may contain procedural arrangements and timescales to be followed by the Franchisee in relation to other changes to the Franchise Services (pursuant to paragraph 1 of Schedule 19 (*Other Provisions*)) or, subject to the SPTE's rights pursuant to paragraphs 5.6 and 5.7, an SPTE Change) in conjunction with a Service Level Commitment; and
- (c) may provide for iterations of drafts of any Service Level Commitment, Train Plan or Timetable and for indicative Runs of the Financial Model in relation thereto.

5.5 The Authority agrees with the SPTE that it shall endeavour to ensure that any procedural arrangements and timescales stipulated by the Authority pursuant to paragraph 5.2 are not inconsistent with the SPTE's statutory duties.

5.6 Any procedural arrangements and timescales stipulated by the Authority pursuant to paragraph 5.2 shall have contractual effect between the Franchisee, the SPTE and the Authority in accordance with the terms of such stipulation. The SPTE may elect not to be bound by those procedural arrangements (or any aspects thereof), but such election shall be without prejudice to the contractual effect of the arrangements between the Authority and the Franchisee. The Franchisee shall not be in breach of its obligations under the procedural arrangements and timescales stipulated by the Authority pursuant to paragraph 5.2 to the extent that the breach is of an obligation owed only to the SPTE and the obligation is part of the arrangements (or an aspect thereof) which the SPTE has elected not to be bound by.

5.7 The SPTE may also issue reasonable procedural arrangements and timescales that are to be followed by the Franchisee in dealing with the SPTE in relation to the purposes referred to in paragraph 5.2 and in relation to an SPTE Change. Any stipulation by the SPTE shall be at the reasonable discretion of the SPTE, having consulted with the Authority. These procedural arrangements and timescales shall have contractual effect between the SPTE and the Franchisee in accordance with their terms. The SPTE shall ensure that its procedures do not place an obligation on the Franchisee which is inconsistent with an obligation imposed on the Franchisee pursuant to the procedural arrangements and timescales stipulated by the Authority pursuant to paragraph 5.2.

6. FRANCHISEE'S SERVICE DEVELOPMENT OPINIONS

6.1 As and when required pursuant to any procedural arrangements stipulated by the Authority pursuant to paragraph 5.2 or by the SPTE pursuant to paragraph 5.7, the Franchisee shall provide to the Authority and the SPTE, as the case may be:

- (a) its informed estimate of Forecast Passenger Demand in such format and to such level of disaggregation as the Authority and, where affected, the SPTE may reasonably require in order to assist the Authority and the SPTE'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 Commitments which:
 - (i) should be made in order to deliver an optimal range of railway passenger service patterns relative to Target Passenger Demand; and
 - (ii) could be implemented and operated without additional resources and/or an adjustment to the Franchise Payments;
- (c) its informed opinion as to any changes to the current Service Level Commitments which:
 - (i) would deliver an optimal range of railway passenger service patterns in accordance with paragraph 6.1(b)(i); and

- (ii) could only be implemented and operated with additional resources and/or an adjustment to the Franchise Payments, together with an explanation as to:-
 - (A) what additional resources and/or adjustments are necessary to make such changes; and
 - (B) why such additional resources and/or adjustments are necessary;
- (d) its informed opinion as to any changes that the Authority ought to make to the Benchmarks pursuant to paragraph 3.2 of Schedule 7.1 (*Enforcement Benchmarks*); and
- (e) a draft of the Train Plan that it considers that each set of proposed changes to the Service Level Commitments would require.

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

- (a) any Route Utilisation Strategy, and any other Strategy published by the Authority;
- (b) the additional factors set out in Appendix 2 (*Service Development Additional Factors*);
- (c) the constraints imposed by paragraphs 6.9 and 6.10;
- (d) any other constraints or considerations (including affordability constraints and value for money considerations) that the Authority, in relation to the Authority Service Level Commitment, or the SPTE, in relation to the SPTE Service Level Commitment, has notified to it; and
- (e) in relation to SPTE Services, any strategy published by SPTE.

6.3 The Franchisee shall prepare its Train Plan so as to operate the entire Train Fleet in delivering Passenger Services during each Peak on a Weekday, save for any reasonable planning requirements for:

- (a) the allocation of Hot Standbys; or
- (b) other rolling stock vehicles to be out of service due to maintenance requirements, Mandatory Modifications or any other reasons agreed with the Authority, in the case of the Non SPTE Train Fleet, or the SPTE, in the case of the SPTE Train Fleet (such agreement not to be unreasonably withheld).

6.4 The Franchisee shall in preparing its Train Plan in accordance with paragraph 6.3 comply with the requirements of paragraphs 6.9 and 6.10.

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

- (a) provide for passenger carrying capacity on each Passenger Service that meets as a minimum the Target Passenger Demand;
- (b) provide passengers with a reasonable expectation of a seat within 10 minutes of boarding (or such other time period as the Authority may stipulate for the Authority Services or the SPTE may stipulate for the SPTE Services) on each Passenger Service (other than the service mentioned below); and
- (c) provide for the passenger carrying capacity (if any) specified for each Passenger Service in a Service Level Commitment.

The exception above is journeys on non-stop trains in either direction between Glasgow Central and Paisley Gilmour Street.

6.6 If, at the time it prepares its Train Plan, having exercised all reasonable endeavours, the Franchisee is unable to prepare a Train Plan having the passenger carrying capacity and meeting the reasonable expectations referred to in paragraph 6.5, then the Train Plan shall specify the best allocation of rolling stock vehicles to Passenger Services that is reasonably practicable (within the constraints imposed by paragraphs 6.9 and 6.10) 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 after 10 minutes following boarding (or such other time period as the Authority may stipulate for the Authority Services or the SPTE may stipulate for the SPTE Services) in respect of each Passenger Service (other than the specific service mentioned as an exception in paragraph 6.5(b)); and
- (d) ensuring, so far as possible, that the passenger carrying capacity specified for each Passenger Service in a Service Level Commitment is provided.

6.7 Where paragraph 6.6 applies, the Franchisee shall propose to the Authority and, where it is affected, the SPTE:

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

that it considers would most efficiently address the shortfall in passenger carrying capacity and meet Target Passenger Demand.

6.8 Where paragraph 6.6 applies the Franchisee shall also propose to the Authority and the SPTE any changes to the allocation of the Train Fleet as between Authority Services and SPTE Services that it considers would most efficiently address the

shortfall in passenger carrying capacity and meet Target Passenger Demand on Passenger Services.

6.9 The Franchisee shall use all reasonable endeavours to procure that on any Passenger Services which for the whole of their journey are SPTE Services only rolling stock vehicles from the SPTE Train Fleet are used and on any Passenger Services which for the whole of their journey are Authority Services only rolling stock vehicles from the Non SPTE Train Fleet are used. On any Passenger Services which for part of their journey are Authority Services and for part of their journey are SPTE Services, the Franchisee shall, where possible, seek to use the rolling stock vehicles of the Relevant Authority whose Service Level Commitment specifies the greater part of the relevant Passenger Services and, where this is not reasonably practicable, the Franchisee may use rolling stock vehicles from the SPTE Train Fleet and/or rolling stock vehicles from the Non SPTE Train Fleet.

6.10 In preparing its Train Plan, insofar as it relates to the use of rolling stock vehicles on SPTE Services and the use of the SPTE Train Fleet, the Franchisee shall first obtain the agreement of the SPTE to the use of rolling stock vehicles which are not rolling stock vehicles from the SPTE Train Fleet on SPTE Services and the use of any rolling stock vehicles from the SPTE Train Fleet otherwise than as contemplated by paragraph 6.9. If it is reasonable to do so the SPTE shall be entitled to refuse such agreement or give such agreement subject to conditions.

6.11 In preparing its Train Plan, insofar as it relates to the use of rolling stock vehicles on Authority Services and the use of the Non SPTE Train Fleet, the Franchisee shall first obtain the agreement of the Authority to the use of rolling stock vehicles which are not rolling stock vehicles from the Non SPTE Train Fleet on Authority Services and the use of any rolling stock vehicles from the Non SPTE Train Fleet otherwise than as contemplated by paragraph 6.9. If it is reasonable to do so, the Authority shall be entitled to refuse such agreement or give such agreement subject to conditions.

6.12 Notwithstanding any Train Plan the Franchisee may use rolling stock vehicles from the SPTE Train Fleet and rolling stock vehicles from the Non SPTE Train Fleet otherwise than as contemplated under paragraph 6.9 from time to time but that only on a temporary basis for the shortest period reasonably practicable to deal with unforeseen operational requirements.

6.13 The Franchisee shall use all reasonable endeavours to ensure that its allocation of Hot Standbys is the most efficient that can reasonably be achieved taking account of all the Passenger Services. Where a Hot Standby for SPTE Services is planned to be part of the Non SPTE Train Fleet the Franchisee shall first obtain the consent of the Authority and where a Hot Standby for the Authority Services is planned to be part of the SPTE Train Fleet the Franchisee shall first obtain the consent of the SPTE. The Authority and the SPTE agree with each other not to unreasonably withhold their consent to such a request.

7. DRAFT SERVICE LEVEL COMMITMENT

As and when required pursuant to any procedural arrangements stipulated by the Authority pursuant to paragraph 5.2 or, in the case of the SPTE, where it has

stipulated procedures pursuant to paragraph 5.7, those procedures, the Authority and the SPTE, as the case may be, shall each provide to the Franchisee (with a copy to each other):

- (a) its draft Service Level Commitment;
- (b) its opinion on any changes that the Authority or the SPTE, as the case may be, reasonably considers are required to the Train Plan for such Train Plan
 - (i) to satisfy the capacity requirements referred to in paragraph 6.5 (a), (b) and (c); or
 - (ii) to satisfy the capacity requirements referred to in paragraphs 6.6 (a) to (d) inclusive and 6.7 if the Authority or the SPTE, as the case may be, reasonably considers that the capacity requirements referred to in paragraph 6.5 (a), (b) and (c) cannot be met; and
- (c) its opinion of any changes that are required to the Benchmarks pursuant to paragraph 3.2 of Schedule 7.1 (*Enforcement Benchmarks*).

8. INDICATIVE TIMETABLE AND CONSULTATION

8.1 If and to the extent that the Franchisee reasonably considers that any Service Level Commitment issued by the Authority or the SPTE, as the case may be, pursuant to this Schedule 1.1 contains insufficient information to enable it to perform its obligations under this Schedule 1.1, it shall promptly notify the Authority or the SPTE, as the case may be, and the Authority or the SPTE, as the case may be, shall provide such further information as is reasonably required.

8.2 The Franchisee shall, as and when required pursuant to any procedural arrangements stipulated by the Authority pursuant to paragraph 5.2 or, in the case of provision to the SPTE, where it has stipulated procedures pursuant to paragraph 5.7, those procedures, provide the Authority and the SPTE with a summary (in such form as the Relevant Authority may specify) of any material changes that it would expect there to be to the Passenger Services from the current Timetable if both the Authority's draft Service Level Commitment and the SPTE's draft Service Level Commitment and the Franchisee's proposed Train Plan were to be implemented. Any summary provided to the SPTE shall at the same time be copied by the Franchisee to the Authority and vice versa.

8.3 Notwithstanding any consultation the Authority or the SPTE might separately undertake in respect of any draft Service Level Commitment issued pursuant to paragraph 7, the Franchisee shall:

- (a) as soon as reasonably practicable after:
 - (i) first providing a summary to the Authority and/or the SPTE pursuant to paragraph 8.2, give all Stakeholders notice and consult them in respect of the changes to the Passenger Services specified in such summary and

- (ii) sending or receiving any correspondence in respect of such notice or consultation, provide the Authority and the SPTE with copies of such correspondence;
- (b) take due account of such bodies' views that are submitted to the Franchisee in accordance with the procedural stipulations pursuant to paragraph 5.2 and the guidance referred to in paragraph 8.3(e);
- (c) take due account of such bodies' views that are submitted to the Franchisee in accordance with the procedural stipulations pursuant to paragraph 5.7 and the guidance referred to in paragraph 8.3(e);
- (d) inform both the Authority and the SPTE of any material changes that it would expect there to be to such draft Service Level Commitments if the views of such bodies were accommodated in such draft Service Level Commitments; and
- (e) comply with such reasonable requirements and guidance as the Relevant Authority may notify to it from time to time in respect of giving notice to and consulting such Stakeholders in accordance with this paragraph 8.3.

9. SERVICE LEVEL COMMITMENT

9.1 The Authority shall, in accordance with any procedural arrangements stipulated by the Authority pursuant to paragraph 5.2, issue to the Franchisee (with copies to the SPTE) the Authority Service Level Commitment that it requires the Franchisee to operate and notice of the changes (if any) to the Benchmarks that the Authority will make pursuant to paragraph 3.2 of Schedule 7.1 (*Enforcement Benchmarks*).

9.2 The SPTE shall, in accordance with any procedural arrangements stipulated by the Authority pursuant to paragraph 5.2 or, if applicable, in accordance with any procedural arrangements stipulated by the SPTE pursuant to paragraph 5.7, issue to the Franchisee (with copies to the Authority) the SPTE Service Level Commitment that it requires the Franchisee to operate.

9.3 Notwithstanding that the services listed in the document in the agreed terms marked TPS appear in the Authority Service Level Commitment, at the date hereof they are operated by another Train Operator. The Authority may by notice issued at the same time as it issues an Authority Service Level Commitment to the Franchisee pursuant to paragraph 9.1 require any of those services to be treated as if they appeared in that issued Authority Service Level Commitment for the first time (and are therefore services that the Authority requires the Franchisee to operate). For the purpose of the definition of Change, such a notice shall be deemed a change to the Authority Service Level Commitment. The Franchisee shall not be required to operate any of these services unless required to do so in terms of such a notice. The Authority may also remove any of these services from the Authority Service Level Commitment and, provided that the notice referred to above has not been given in respect of the service removed, such a change to the Authority Service Level Commitment shall not be a Change.

10. TIMETABLE DEVELOPMENT RIGHTS

10.1 The Franchisee shall:

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

10.2 The Franchisee shall exercise its Timetable Development Rights so as to secure a Timetable that enables it to operate railway passenger services that comply with the Service Level Commitments in accordance with its obligations under paragraph 12.

10.3 Unless the Relevant Authority otherwise directs, the Franchisee shall, for the purposes of securing a Timetable that complies with the Service Level Commitments, exercise its rights under the Track Access Agreement (including the Network Code) 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.

10.4 Subject to the Franchisee complying with its obligations under paragraph 10.3, it shall not be liable for any failure to secure a Timetable that enables the Franchisee to operate railway passenger services that comply with the Service Level Commitments, to the extent that such failure is caused by:

- (a) the Franchisee's Timetable Development Rights being inadequate to enable it to secure the requisite Train Slots, provided that the Franchisee has exercised all reasonable endeavours to obtain the requisite timetable development rights in accordance with paragraph 10.1;
- (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 the Regulator of his powers pursuant to Section 22C of the Act.

10.5 If the Authority or the SPTE does not consider that the Franchisee has taken sufficient steps under paragraph 10.3, the Authority or the SPTE, as the case may be, may require the Franchisee to exercise its rights referred to in paragraph 10.3 in such manner as the Authority or the SPTE, as the case may be, 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; and
- (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 Regulator.

10.6 Each of the Authority and the SPTE shall, to the extent reasonably practicable, allow the Franchisee a reasonable opportunity to make representations to the Authority or the SPTE, as the case may be, concerning the exercise by the Franchisee of any of its rights referred to in paragraph 10.3 before requiring the Franchisee to take any action referred to in paragraph 10.5.

10.7 If and to the extent that the Franchisee is not able to secure a Timetable enabling it to operate railway passenger services that comply with the Service Level Commitments as a result of it not being able to obtain the timetable development rights that it requires for that purpose, the Authority and the SPTE (or whichever of them whose requirements as regards railway passenger services (as specified in its Service Level Commitment) are not so secured) shall issue to the Franchisee a Service Level Commitment in the form required by paragraph 10.7(a), which shall operate among the parties only for the purpose referred to in paragraph 10.7(b):

- (a) any Service Level Commitment issued pursuant to this paragraph 10.7 shall be in a form that:
 - (i) would enable the Franchisee to secure a Timetable in compliance with it by exercise of the Timetable Development Rights that the Franchisee does have or would have had the Franchisee properly performed its obligations under this Agreement; and
 - (ii) in all other respects, is the same as the immediately preceding Service Level Commitment issued to the Franchisee by the Authority or the SPTE (as the case may be); and
- (b) any Service Level Commitment issued pursuant to this paragraph 10.7 shall, for the purpose of Schedule 9 (*Changes*) only, stand in place of the immediately preceding Service Level Commitment issued to the Franchisee by the Authority or the SPTE (as the case may be).

11. CERTIFICATION AND NOTIFICATION BY FRANCHISEE OF TIMETABLE BIDS

11.1 Before exercising any Timetable Development Right to bid for Train Slots, the Franchisee shall provide a certificate addressed to both the Authority and the SPTE confirming that its proposed exercise of that Timetable Development Right will be compliant with its obligation specified in paragraph 10.2.

11.2 If requested by the Authority or the SPTE, the Franchisee agrees to demonstrate to the reasonable satisfaction of the Authority or the SPTE, as the case may be, that the Franchisee's certificate referred to in paragraph 11.1 is a true and accurate confirmation of compliance with its obligation specified in paragraph 10.2. The Authority and the SPTE each agree that the certificate will be acceptable if:

- (a) such certificate confirms that the Franchisee has used assurance processes approved by the Authority and, if affected, the SPTE in relation to SPTE Services; and
- (b) the Franchisee has demonstrated its compliance with the Service Level Commitments by using such assurance processes.

11.3 The Franchisee shall:

- (a) keep the Authority and, if affected, the SPTE fully informed of any discussions with Network Rail in relation to the matters referred to in this Schedule 1.1 which may have a material bearing on the ability of the Franchisee to deliver the Service Level Commitments through the Timetable and shall, if required to do so by the Authority or the SPTE, supply copies of any related correspondence to the Authority and the SPTE; and
- (b) update any notification under this paragraph 11.3 and/or certification under paragraph 11.1 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.

12. OBLIGATIONS IN RELATION TO OTHER TRAIN OPERATORS

Subject to the terms of the Licences and any applicable Law, the Franchisee shall co-operate with other Train Operators in respect of their timetable development rights where such other Train Operators provide railway passenger services meeting common or displaced passenger demand, with a view to ensuring 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 the Franchisee; and
- (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).

13. FINALISING THE TRAIN PLAN

13.1 The Franchisee shall submit its Train Plan to each of the Authority and the SPTE as soon as reasonably practicable after Network Rail has published the working timetable on which the Timetable is to be based.

13.2 The Relevant Authority may notify the Franchisee of:

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

and the Franchisee shall revise the Train Plan in accordance with the Relevant Authority's requirements. Such notification shall be copied at the same time to the other Relevant Authority.

13.3 If the Franchisee considers that any of the revisions that the Authority or the SPTE requires pursuant to paragraph 13.2(b) are not required for the Train Plan to comply with this Schedule 1.1 then:

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

14. PROVISIONS RELATING TO ACCESS AGREEMENTS AND PROPERTY LEASES

14.1 Where the Authority considers it requisite for the purposes of better securing the delivery of railway passenger services under this Agreement or any other franchise agreement or for the better achievement by it of any of its statutory purposes, the Authority may require the Franchisee:

- (a) to exercise or refrain from exercising its rights under any Access Agreement or any Property Lease, or any related rights under such other agreements as the Authority may specify; and/or
- (b) subject to the consent of the counterparty thereto, to assign, novate or surrender its rights under any Access Agreement or Property Lease.

14.2 Except to the extent that the Authority otherwise indicates from time to time, the Franchisee shall notify the Authority of its intention to enter into or amend any Access Agreement:

- (a) where the approval of the Regulator is required under the Act, not less than 10 business days before the submission to the Regulator; and
- (b) where no such approval is required, not less than 21 business days prior to entering into such amendment or Access Agreement.

Where any such notification is in respect of an Access Agreement that relates to a SPTE Station or Glasgow Central High Level, to the extent that any amendment would impact upon SPTE Services, notification shall also be given at the same time by the Franchisee to the SPTE.

14.3 The Franchisee shall comply with its obligations under any Access Agreement or any Property Lease to which it is a party from time to time:

- (a) to notify or consult with the Authority on any matter or proposal relating to that Access Agreement or Property Lease; and
- (b) which are contingent on a particular course of action being taken by the Authority or which are otherwise expressly included in that Access Agreement or Property Lease for the benefit of the Authority or the SPTE.

14.4 If and to the extent that:

- (a) the Authority exercises its rights pursuant to paragraph 14.1;
- (b) the Franchisee's compliance with the Authority's requirements pursuant to paragraph 14.1 would lead to the unavoidable consequence of the Franchisee contravening any other terms of this Agreement or the occurrence of an Event of Default; and
- (c) the Franchisee duly complies with such requirements,

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

14.5 The Authority agrees with the SPTE that it shall not (except with the prior consent of the SPTE) give any indication pursuant to paragraph 14.2 in respect of any Access Agreement that relates to a SPTE Station or relates wholly or partly to a SPTE Service.

14.6 The Authority agrees with the SPTE that, before exercising its rights under paragraph 14.1 in relation to any Access Agreement or Property Lease in respect of a an SPTE Service or SPTE Station, it shall first obtain the consent of the SPTE such consent not to be unreasonably withheld or delayed.

15. CHANGES TO THE TRAIN FLEET

15.1 The Franchisee shall maintain the composition of the Non SPTE Train Fleet during the Franchise Term, unless the Authority otherwise agrees, such that there are no changes to the Non SPTE 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 Non SPTE Train Fleet.

15.2 During the Franchise Term, the Franchisee shall advise the Authority of any rolling stock vehicles comprising the Non SPTE Train Fleet damaged beyond economic repair or likely to be unavailable for service for a period of 3 consecutive Reporting Periods or more.

15.3 If any change is made to the Non SPTE Train Fleet in accordance with this paragraph 15 the Authority may, after consulting the Franchisee, notify the Franchisee of the passenger carrying capacity of any rolling stock vehicles or class of rolling stock vehicles comprising the Non SPTE Train Fleet following such change.

15.4 The Franchisee shall maintain the composition of the SPTE Train Fleet during the Franchise Term, unless the SPTE otherwise agrees, such that there are no changes to the SPTE 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 SPTE Train Fleet.

15.5 During the Franchise Term, the Franchisee shall advise the SPTE and the Authority of any rolling stock vehicles forming part of the SPTE Train Fleet damaged beyond economic repair or likely to be unavailable for service for a period of 3 consecutive Reporting Periods or more.

15.6 If any change is made to the SPTE Train Fleet in accordance with this paragraph 15 the SPTE may, after consulting the Franchisee and the Authority, notify the Franchisee of the passenger carrying capacity of any rolling stock vehicles or class of rolling stock vehicles comprising the SPTE Train Fleet following such change.

15.7 The Franchisee shall procure that the rolling stock vehicles specified in the Tables set out in Appendix 1 (The Train Fleet), with the capacity and other characteristics referred to therein, are available for deployment in the provision of the Passenger Services during the periods referred to therein.

15.8 The Authority agrees with the SPTE that it shall not designate as part of the Non-SPTE Train Fleet a rolling stock vehicle that is to be principally used for SPTE Services and the SPTE agrees with the Authority that it shall not designate as a part of the SPTE Train Fleet a rolling stock vehicle that is to be principally used for Authority Services.

15.9 In terms of a Priced Option the Franchisee is expected to be required to prepare a Replacement Rolling Stock Feasibility Study in relation to the 314s.

15.10 The Authority may pursuant to paragraphs 1.1(a) or 1.1(b) of Schedule 19 (*Other Provisions*) require the Franchisee to implement any aspect of the Replacement Rolling Stock Feasibility Study, or any other solution it reasonably considers appropriate, to address the termination of the rolling stock leases for the

314s which are due to expire in October 2006. Such Variation may require that the 314s rolling stock leases are not extended.

15.11 If no Variation (as referred to in paragraph 15.10) is made before the day which is two Weekdays prior to the first anniversary of the Franchise Commencement Date then the Authority shall lose the right to make the Variation mentioned in paragraph 15.10 and the Authority and the SPTE accept that in these circumstances the Franchisee will extend the rolling stock leases for the 314s for the Franchise Term in accordance with their terms and then carry through their currently proposed modifications to the 314s.

15.12 In making the Variation referred to in paragraph 15.10, if the Authority, the SPTE or the Franchisee reasonably considers that as a direct consequence of that Variation:

- (i) the performance risk of the Franchisee against the Benchmarks in Schedule 7.1 is likely to be materially altered; and/or
- (ii) the financial risks for any of the Authority, the SPTE and the Franchisee in terms of Schedule 7.1A are likely to be materially altered

then the Authority shall make such revisions to the Benchmarks in Schedule 7.1 and the benchmarks in Schedule 7.1A as it reasonably considers appropriate to hold constant such risks. In this regard the Authority shall have due regard to any performance consequences identified in the Replacement Rolling Stock Feasibility Study for the solution implemented by the Variation.

16. AUTHORITY'S AND SPTE'S STATEMENT OF SERVICE LEVEL COMMITMENT CHANGES

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

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

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

17. THE TIMETABLE AND THE WORKING TIMETABLE

17.1 Any specification of railway passenger services in a Service Level Commitment shall (unless the Authority, in relation to the Authority Service Level Commitment, or the Authority and the SPTE, in relation to the SPTE Service Level Commitment, 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.

17.2 Accordingly, the Franchisee's obligations specified in paragraph 10.2 shall be construed as an obligation to secure the requisite Train Slots in the working timetable to be issued by Network Rail at the conclusion of its timetable development process that will permit the Franchisee to operate railway passenger services that comply with the Service Level Commitments provided for in the relevant Timetable.

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

18. INCONSISTENT OBLIGATIONS

18.1 (a) In this paragraph 18 an Authority Request means:-

- (i) any draft or final Service Level Commitment issued by the Authority pursuant to this Agreement;
- (ii) any requirement, request, response or direction made by the Authority pursuant to paragraph 10 of this Schedule 1.1 or paragraph 3.2, 3.3 or 3.5 of Schedule 1.2 (*Operating Obligations*);
- (iii) any constraints, considerations or other matters notified by the Authority pursuant to paragraph 6.2(d) or paragraph (n) of Appendix 2;
- (iv) any revisions notified by the Authority pursuant to paragraph 13.2(b);
- (v) any specification, consent or requirement made by the Authority under paragraph 4 or 5 of Schedule 1.2; and
- (vi) any requests made by the Authority pursuant to paragraph 6.1 of Schedule 1.2.

(b) In this paragraph 18 an SPTE Request means:-

- (i) any draft or final Service Level Commitment issued by the SPTE pursuant to this Agreement;
- (ii) any requirement, request, response or direction made by the SPTE pursuant to paragraph 10 of this Schedule 1.1 or paragraph 3.2, 3.3 or 3.5 of Schedule 1.2 (*Operating Obligations*);
- (iii) any constraints, considerations or other matters notified by the SPTE pursuant to paragraph 6.2(d) or paragraph (n) of Appendix 2;

- (iv) any revisions notified by the SPTE pursuant to paragraph 13.2(b);
 - (v) any specification, consent or requirement made by the SPTE under paragraph 4 or 5 of Schedule 1.2; and
 - (vi) any requests made by the SPTE pursuant to paragraph 6.1 of Schedule 1.2
- (c) The Franchisee shall promptly notify the Authority and the SPTE if it receives an Authority Request that is inconsistent with an SPTE Request or vice versa.
- (d) If either, or both of, the Authority and/or the SPTE agree (acting reasonably) with the Franchisee that a request (as referred to in paragraph (c)) is inconsistent they shall promptly notify the Franchisee, and each other, that they do so agree and the Franchisee shall not be liable for failing to comply with its obligations as regards those aspects of the Authority Request or the SPTE Request, as the case may be, that are thus agreed to be inconsistent.
- (e) The Authority and the SPTE may together, following the notification in (c), advise the Franchisee why the Authority Request or SPTE Request, as the case may be, is not inconsistent and/or how the Franchisee is to resolve any perceived inconsistency.
- (f) An Authority Request shall be inconsistent with an SPTE Request if in order to carry out the requirement of the Authority Request the Franchisee will be in contravention of this Agreement as regards an SPTE Request or vice versa.
- (g) The Authority and the SPTE agree with each other that they will endeavour to ensure issues of potential inconsistency (as described in this paragraph 18) are, as between the two of them, identified at the earliest practical opportunity.

APPENDIX 1 TO SCHEDULE 1.1

The Train Fleet

1 THE COMPOSITION OF THE TRAIN FLEET

The Train Fleet consists of:

- (a) the rolling stock vehicles specified in Tables 1A and 1B, with the capacity characteristics referred to there, until the lease expiry dates referred to there;
- (b) following any such lease expiry, substitute rolling stock vehicles having:
 - (i) at least the capacity specified in respect of the original rolling stock vehicles being substituted; and
 - (ii) reliability, capability and quality that is at least equal to the reliability, capability and quality of the original rolling stock vehicles being substituted ; and
- (c) from the dates specified in Table 2, the additional rolling stock vehicles referred to against those dates, having:
 - (i) in the case of any additional rolling stock vehicles of the same class as any original rolling stock vehicles:
 - (A) at least the capacity specified in respect of such original rolling stock vehicles; and
 - (B) reliability, capability and quality that is at least equal to the reliability, capability and quality of such original rolling stock vehicles; and
 - (ii) in the case of any other additional rolling stock vehicles:
 - (A) at least the capacity specified in respect of any original rolling stock vehicles that are, in the reasonable opinion of the Authority or the SPTE (depending on which of the two parts of the Train Fleet the rolling stock is to belong to), most similar to such additional rolling stock vehicles; and
 - (B) reliability, capability and quality that is, in the reasonable opinion of the Authority or the SPTE (depending on which of the two parts of the Train Fleet the rolling stock is to belong to), at least equal to the reliability, capability and quality of any original rolling stock vehicles that are, in the reasonable opinion of the Authority or the SPTE (depending on which of the two parts of the Train Fleet the rolling stock is to belong to), most similar to such additional rolling stock vehicles.

Table 2 identifies which vehicles and units are to be part of the Non SPTE Train Fleet and which are to be part of the SPTE Train Fleet.

Table 1A: Non SPTE Train Fleet

Column 1	Column 2	Column 3				Column 4	Column 5
Class of vehicle	Number of vehicles and unit configuration	Capacity of vehicles				Owner/Lessor	Lease expiry date(s)
		Seats	Standing (1)	Total	Standard Class		
Class 150	12 x 2 car	145	49	194	All	Porterbrook	31.03.2005 (2)
Class 156	20 x 2 car	145	40	185	All	Angel	09.11.2014 ()
Class 158	40 x 2 car	136	36	172	121 std	Porterbrook	09.11.2014
Class 158	1 x 2 car	136	36	172	All	Angel	31.07.2006 (3)
Class 170	7 x 3 car	189	84	273	171 std	HSBC	09.11.2014
Class 170	12 x 3 car	193	84	277	184 std	Porterbrook	09.11.2014 (4)
Class 170	25 x 3 car	195	84	279	186 std	Porterbrook	09.11.2014 (4)
Class 170	4 x 3 car	153	84	237	124 std	Porterbrook/ Hull trains	To be confirmed (5)
Sleeper	53 vehicles (4)	12-26	0	12-26 (6)	Variable	Porterbrook	09.11.2014
Sleeper (seated)	11 vehicles	31	0	31	All	HSBC	09.11.2014
Sleeper (lounge)	9 vehicles	26	0	26 (7)	All	HSBC	09.11.2014
Sleeper (other)	1 vehicle	26	0	26 (7)	All	HSBC	09.11.2014
Mk 3 Coach	18 vehicles	72	20	92	All	Porterbrook	31.03.2005 (8)
DVT 125	5 Vehicles	0	0	0	N/A	Porterbrook	31.03.2005 ()

Notes:

- (1) Based on standing at a density of 0.55m² per passenger.
- (2) 12 x Class 150 units to be phased out as 12 x Class 170 units are delivered after the Franchise Commencement Date.
- (3) The 158 unit from Angel is intended to be replaced with an alternative equivalent unit on 01.08.06 with a lease expiry date of 09.11.2014.
- (4) 2 x Class 170 units to be delivered after the Franchise Commencement Date.

- (5) The lease expiry date depends on the outcome of the Class 314 Replacement Rolling Stock Feasibility Study
- (6) There are three types of sleeper vehicles with either 12 or 13 cabins. Cabins configured for first class contain one berth and cabins configured for standard class have two berths.
- (7) Lounge car seats are not available for travel and therefore not counted in train capacity.
- (8) This is the planned date but depends on the precise date that the replacement stock is available. Leases will be extended on a month by month basis as required. These are marshalled into 4 sets of 4xTSO+1xDVT.

Table 1B: SPTE Train Fleet

Column 1	Column 2	Column 3				Column 4	Column 5
Class of vehicle	Number of vehicles and unit configuration	Capacity of vehicles				Owner/Lessor	Lease expiry date(s)
		Seats	Standing (1)	Total	Standard Class		
Class 156	28 x 2 car	145	40	185	All	Angel	09.11.2014
Class 170	9 x 3 car	198	84	282	All	Porterbrook	09.11.2014 (2)
Class 314	16 x 3 car	212	70	282	All	Angel	09.11.2014
Class 318	21 x 3 car	219	86	305	All	HSBC	09.11.2014
Class 320	22 x 3 car	230	51	281	All	HSBC	09.11.2014
Class 334	40 x 3 car	183	102	285	All	HSBC	09.11.2014
Class 170	2 x 3 car	212	70	282	All	HSBC	09.11.2014

Notes:

- (1) based on standing at a density of 0.55m² per passenger
- (2) 1 x Class 170 unit to be delivered after the Franchise Commencement Date.

In the event that any of the tables in this Appendix 1 is not fully completed at the date hereof, the Authority may by a Variation complete these tables. Such a Variation shall not be a Change. The Authority shall consult with both the SPTE and the Franchisee before completing these tables and the Franchisee and the SPTE shall provide such information to the Authority as the Authority requires to ensure that the tables properly reflect the details of the relevant rolling stock.

APPENDIX 2 TO SCHEDULE 1.1

Service Development Additional Factors

The Franchisee, in formulating its opinion in respect of any changes to the Service Level Commitments in accordance with paragraph 6.1 of Schedule 1.1 (*Service Development*), in addition to having regard to any Route Utilisation Strategy or any other Strategy published by the Authority pursuant to paragraph 6.2(a) of Schedule 1.1 and any other constraints or considerations notified to it pursuant to paragraph 6.2(d) of Schedule 1.1 or, in relation to the SPTE Services, a strategy of the SPTE, shall also have regard to:

- (a) Actual Passenger Demand;
- (b) the latest Forecast Passenger Demand;
- (c) the revenue and cost consequences of operating railway passenger services on the Routes;
- (d) opportunities to reduce the incidence of disruption caused by the Franchisee, Network Rail, other Train Operators, freight operators and/or other industry parties;
- (e) operational constraints and measures that might be taken to address such constraints;
- (f) the appropriateness of the Train Fleet to the Routes;
- (g) service calling patterns and journey times;
- (h) changes in circumstances local to the stations at which the Passenger Services call which may affect Forecast Passenger Demand;
- (i) the effect of the Service Level Commitments on the railway passenger services operated by other Train Operators and/or freight operators;
- (j) interchange and inter modal opportunities;
- (k) Stakeholder aspirations (including such aspirations as are expressed or are likely to be expressed in any "Local Transport Plans");
- (l) the likelihood of special events generating sufficient passenger demand to support the provision of railway passenger services by the Franchisee to or from such special events;
- (m) the impact of Major Projects or restrictions of use that may affect Forecast Passenger Demand; and
- (n) such other matters as the Relevant Authority may notify to the Franchisee from time to time.

