

Dated _____ **2002**

(1) THE STRATEGIC RAIL AUTHORITY

and

(2) M40 TRAINS LIMITED

and

(3) THE CHILTERN RAILWAY COMPANY LIMITED

FRANCHISE AGREEMENT

relating to the services for the carriage of
passengers by railway to be provided by
THE CHILTERN RAILWAY COMPANY LIMITED

Strategic Rail Authority
55 Victoria Street
London SW1H 0EU

CONTENTS

Clause	Page
PART I — PRELIMINARY	
1. DEFINITIONS AND INTERPRETATION	PAGE 1
1.1 Definitions	
1.2 Construction and Interpretation	PAGE 32
2. CONDITIONS PRECEDENT	PAGE 33
2.1 Entry into Effect	PAGE 33
2.2 Conditions Precedent	PAGE 33
2.3 [Intentionally not used]	PAGE 36
2.4 Consequences of non-fulfilment	PAGE 36
3. WARRANTY	PAGE 36
3.1 Franchise replacement process	PAGE 36
3.2 Updating of warranty	PAGE 36
3.3 Exceptions	PAGE 37
PART II — OPERATION OF THE FRANCHISE	
4. THE FRANCHISEE	PAGE 1
5. PASSENGER SERVICE REQUIREMENT	PAGE 1
5.1 Preparation of Timetable and Train Plan	PAGE 1
5.2 Notification to the Authority	PAGE 2
5.3 Compliance with Timetable and Train Plan	PAGE 6
5.4 Force Majeure	PAGE 7
5.5 Closures	PAGE 10
5.6 INTENTIONALLY NOT USED	PAGE 11
5.7 Safety	PAGE 11
5.8 Targets and Performance Reviews	PAGE 11
5.9 Permitted subcontracting	PAGE 11
6. PROVISION OF CAPACITY	PAGE 12
6.1 General provision of capacity	PAGE 12
6.2 Passenger Counts	PAGE 13
6.3 Non-applicability	PAGE 14
6.4 Load Factor Specifications	PAGE 14
6.5 Preliminary statement	PAGE 14
6.6 Feasibility Study	PAGE 16
6.7 Implementation	PAGE 16
6.8 Rolling Stock Capacities	PAGE 16
6.9 Other Train Operators	PAGE 17
7. THE TIMETABLE	PAGE 17
7.1 Publication of Timetable	PAGE 17
7.2 Notification of revisions to Timetable	PAGE 19
8. PASSENGERS	PAGE 19
8.1 Passenger's Charter	PAGE 19
8.2 Disruptions to Passenger Services	PAGE 21
8.3 Bicycles	PAGE 22
8.4 National Passenger Surveys	PAGE 22
9. FARES AND FARE SCHEMES	PAGE 29
9.1 Fare Regulation	PAGE 29
9.2 Reduced Fares for Children	PAGE 29
9.3 Agents of the Franchise Operator	PAGE 29

Schedule 14

- Passenger Service Output Plans and Updates (Clause 14.1)

Part 1 - Definitions

The following definitions shall apply in this Schedule 14, except to the extent the context otherwise requires:

"Borrowings" means, as at any particular time, the aggregate outstanding principal, capital or nominal amount (and any fixed or minimum premium payable on prepayment or redemption) of the Financial Indebtedness of the Franchise Operator.

For this purpose, any amount outstanding or repayable in a currency other than sterling shall on that day be taken into account:

- (a) if an audited balance sheet of the Franchise Operator has been prepared as at that day, in their sterling equivalent at the rate of exchange used for the purpose of preparing that balance sheet; and
- (b) in any other case, in their sterling equivalent at the rate of exchange that would have been used had an audited balance sheet of the Franchise Operator been prepared as at that day in accordance with GAAP.

"Do Minimum EBDIT" means the EBDIT of the Franchise Operator for the relevant period as shown by the First Do Minimum Business Plan.

"EBDIT" means, in relation to any period, the total operating profit of the Franchise Operator for that period:

- (a) before taking into account:
 - (i) Interest Expense;
 - (ii) Tax;
 - (iii) any share of the profit of any associated company or undertaking, except dividends received in cash; and
 - (iv) all extraordinary and exceptional items for which there is not a corresponding cash flow; and
- (b) after adding back all amounts provided for depreciation, amortisation and write downs of goodwill;
- (c) after adding back any new provisions or increases in provisions and after deducting any reduction in provisions;

- (d) for the avoidance of doubt, after taking into account Franchise Payments, Incentive Payments and payments under a Supplemental Agreement (even if due after the end of the Franchise Period) but ignoring for these purposes the provisions of Part 5 of this Schedule 14; and
- (e) after taking into account all extraordinary and exceptional items for which there is a corresponding cash flow.

"Evaluation Date"

means, in relation to any Update Point and any Output Plan relating to that Update Point, the later of:

- (a) the Update Point; and
- (b) the date on which the Output Plan is determined by the Panel under Part 4 of this Schedule 14.

¹⁴²**"Evergreen Charge"**

means the annual cost to the Franchise Operator arising out of Project Evergreen Phases A and B being the sum of;

- (i) *the annual charge calculated in accordance with the method contained in the First Long Term Business Plan using, as the capital value element of the calculation;*
- (a) *the Transfer Price payable by Network Rail to the Enhancement Contractor pursuant to the Enhancement Agreement and the Asset Purchase Agreement on the basis set out in Schedule 7 of the Enhancement Agreement and assuming the Standby Facility is fully utilised; and*
- (b) *the total Additional O & M Charge; and*
- (ii) *the annual Incremental O & M Charge and calculated on the basis that the Acceptance Date occurs during 2006.*

"Financial Indebtedness"

means any indebtedness for or in respect of:

- (a) moneys borrowed;
- (b) any amount raised by acceptance under any acceptance credit facility;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with GAAP, be treated as a finance or capital lease;
- (e) receivables sold or discounted (other than any

¹⁴² Date of Change DOA 2004

receivables to the extent they are sold on a non-recourse basis);

- (f) any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of a borrowing;
- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value shall be taken into account);
- (h) shares which are expressed to be redeemable;
- (i) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and
- (j) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (i) above.

“First Do Minimum Business Plan” means the do minimum business plan comprised in the First Long-Term Business Plan.

“First Long-Term Business Plan” means the Long-Term Business Plan in the agreed form and marked **“LTBP1”**. The First Long-Term Business Plan will include a Committed Outputs Business Plan which reflects each of the following scenarios:

- (a) that the Franchise Term will expire on 31 December 2021 and, pursuant to the Special Output Review, the Franchise Operator will be required to comply with the Evergreen Outputs (as such term is defined and described in the First Output Plan) (Model 3);
- (b) that the Franchise Term will expire on 31 December 2011 and, pursuant to the Special Output Review, the Franchise Operator will not be required to comply with the Evergreen Outputs (Model 2);
- (c) that the Franchise Term will expire on 31 December 2013 and, pursuant to the Special Output Review, the Franchise Operator will be required to comply with the Evergreen Outputs (Model 3); and
- (d) for the purposes referred to in the First Output Plan, Model 2 adapted to show the effects of the Franchise Operator not being required to comply with the Track Doubling Timetable Outputs (Model 2 – also known as Model 2 minus).

“First Output Plan” means the Output Plan in the agreed form and marked **“OP1”**.

“First Update Point” means the date set out in paragraph 1 of Part 4 of this

Schedule 14.

"Interest Expense"

means, in relation to any period, the aggregate amount of interest and any other finance charges (whether or not paid, payable or capitalised) accrued by the Franchise Operator in that period in respect of Borrowings including:

- (a) the interest element of leasing and hire purchase payments;
- (b) commitment fees, commissions, arrangement fees and guarantee fees; and

amounts in the nature of interest payable in respect of any shares other than equity share capital,

adjusted (but without double counting) by adding back the net amount payable (or deducting the net amount receivable) to the Franchise Operator in respect of that period under any interest or (so far as they relate to interest) currency hedging arrangements.

"Long-Term Business Plan"

means the First Long-Term Business Plan and any replacement business plan which is agreed or determined pursuant to this Schedule 14 substantially in the format of the First Long-Term Business Plan (but subject to such amendments as the Authority may reasonably require), detailing the agreed forecasts relating to the business of the Franchise Operator from the Update Point until the date of expiry of the Franchise Term prepared on each of the following assumptions:

- (a) that none of the then current Proposals are implemented but prior Output Commitments (whether the commitment takes effect before or after the date of the plan) are complied with (the **"Do Minimum Business Plan"**) in relation to which plan;
 - (i) the application of Schedule 15 of this Franchise Agreement to any period after the date of such plan shall be ignored;
 - (ii) any monetary penalty or other enforcement action which may be taken by the Authority in relation to breach of this Franchise Agreement shall be ignored;
 - (iii) the level of performance over the preceding twelve months of both Railtrack and the Franchise Operator shall be assumed to continue for the purposes of Schedule 7 of this Agreement and Schedule 8 of the Track Access Agreement (except to the extent that such performance was the result of exceptional events and it would be unreasonable to assume that it would continue until the expiry of the

Franchise Term); and

(iv) for the avoidance of doubt the plan shall take into account any costs reasonably required to complete prior Output Commitments which are not yet completed and any net benefits reasonably likely to accrue on and after completion (but not for the avoidance of doubt on the basis that any Output Aspiration will become an Output Commitment); and

(b) that all then current Proposals contained in the relevant Output Plan and prior and current Output Commitments are implemented and complied with together with such breakdown between the different elements thereof as the Authority may reasonably require (the "**Committed Outputs Business Plan**").

(together in each case with all relevant supporting information and calculations).

"Mediator"	means a mediator appointed under Part 6 of this Schedule 14.
"Metropolitan Line Outputs"	means the Metropolitan Line Robust Outputs and the Metropolitan Line Timetable Outputs.
"Metropolitan Line Robust Outputs"	means those Primary Aspirations specified in paragraph 1.1.1(ii) of Part 3 of this Schedule 14.
"Metropolitan Line Timetable Outputs"	means those Timetable improvements and changes proposed in paragraph 1.1.1(i) of Part 3 of this Schedule 14.
"Minimum Franchise Term"	means the period commencing on the Franchise Commencement Date and expiring at 2.00 am on 30 June 2014 or such other period as may be determined by the Authority in accordance with the terms of this Schedule 14.
"Net Present Value"	means, in relation to any item, the net present value of such item as at the relevant date using a discounted cashflow methodology and discount factors determined in accordance with paragraph 4 of Part 5 of this Schedule 14.
"Original Franchise Term"	means the period commencing on the Franchise Commencement Date and expiring at 2.00 am on 31 December 2021.
"Output Aspirations"	means the Primary Aspirations and the Secondary Aspirations.
"Output Commitments"	means the obligations of the Franchise Operator under any Output Plan.
"Output Plan"	means the First Output Plan or any plan agreed or determined under, and complying with, Part 4 of this Schedule 14.
"Output Study"	means the study of the Franchise Operator of the Proposals, prepared pursuant to paragraph 7.1 of Part 4 of this Schedule 14 and containing the items in paragraph 7.2 of Part 4 of this Schedule 14.

"Panel"	means a panel appointed under Part 7 of this Schedule 14.
"Panel Matter"	means a matter referred to the Panel by the Authority under this Schedule 14.
"Phase"	means a period commencing: <ul style="list-style-type: none"> (a) in the case of the first Phase, on the Franchise Commencement Date and ending on the First Update Point; (b) in the case of any subsequent Phase, on the day after an Update Point and ending on the earlier of the next Update Point or the date of expiry of the Franchise Period.
"Primary Aspirations"	means, subject to paragraph 4 of Part 3 and paragraph 9.2 of Part 4 of this Schedule 14, the output aspirations referred to in paragraph 1 of Part 3 of this Schedule 14.
"Project Evergreen Phases"	<i>has the meaning ascribed to it in the First Output Plan; A and B"</i>
"Proposal"	means, except as otherwise agreed, any proposal of the Franchise Operator under paragraph 5 of Part 4 or of the Authority under paragraph 6 of Part 4.
"Reletting Costs"	shall mean the costs and expenses reasonably estimated by the Authority to be incurred by it or on its behalf in securing, following the Termination Date, the provision or operation of the Franchise Services (or any part of them), and including the fees of all relevant advisers, but excluding for the avoidance of doubt any amounts paid or payable by the Authority to a Successor Operator to secure the provision or operation of the relevant Franchise Services.
"Relevant Date"	means (a) where this Franchise Agreement is terminated pursuant to paragraph 9.6(a) or 9.7(a) of Part 4 following the determination of the Panel made in respect of the Output Plan prepared for the First Update Point, the end of the Minimum Franchise Term (being the Minimum Franchise Term which was applicable immediately prior to the First Update Point); (b) where this Franchise Agreement is terminated pursuant to paragraph 9.6(a) or 9.7(a) of Part 4 following the determination of the Panel made in respect of the Output Plan prepared for any Subsequent Update Point, the end of the Franchise Term which, where the period of the Franchise Term has been specified pursuant to paragraph 9.5(c) of Part 4 shall be the Franchise Term so specified.
"Second Update Point"	means the first Subsequent Update Point as referred to in paragraph 2 of Part 4 of this Schedule 14.
"Secondary Aspirations"	means the output aspirations referred to in paragraph 2 of Part 3 of this Schedule 14.
"Special Output Review"	has the meaning ascribed to that term in paragraph 1.1 of Part

	8 of this Schedule 14.
"Subsequent Update Point"	means a date determined under paragraph 2 of Part 4 of this Schedule 14.
"Tax"	means corporation tax as defined in section 6 of the Income and Corporation Taxes Act 1988.
"Termination Date"	means the date of termination of this Franchise Agreement.
"Termination Payment"	means the appropriate termination payment calculated under Part 5 of this Schedule 14.
"Update Point"	means the First Update Point or a Subsequent Update Point, as appropriate.

Part 2 - Output Commitments

1 Output Obligations

The Franchisee and Franchise Operator agree to procure the Output Commitments described in the First Output Plan in relation to the Franchise Services.

2 Development Obligations

In relation to the Primary Aspiration set out in paragraph 1.1 of Part 3, the Franchise Operator shall undertake the development obligations set out in Part 2 of paragraph 6 of the First Output Plan.

3 Amendments

The parties may make such variations as they may consider appropriate from time to time to any Output Commitments under this Part 2 of Schedule 14 or any Output Plan.

Part 3 - Output Aspirations

1 (intentionally not used)

2 Secondary Aspirations

The parties have agreed that, in addition to the Primary Aspirations, it may be appropriate for the following additional outputs ("**Secondary Aspirations**") to be made or procured by the Franchise Operator over the course of the Franchise Term in relation to the Franchise Services:

2.1 Crossrail

The "Crossrail Project" involves the diversion of trains on the High Wycombe line or (if appropriate) on the Aylesbury line away from Marylebone through the Crossrail tunnel or such other east/west tunnel through central London that may be built. The Franchise Operator proposes to participate in the Crossrail Project with a view to operating enhanced passenger services after completion.

2.2 Great Central

The Franchise Operator proposes to operate a new passenger service between an M1/M6 Parkway Station and London Marylebone. It is envisaged that in order to comply with this output that the Franchise Operator would open a new line between Aylesbury (or Calvert if the East – West line has been opened) and Leicester, including new parkway stations on the A43T at Brackley and near the intersection of the M1 and M6 north of Rugby. The line would integrate at each end with the national rail network.

2.3 Project Evergreen Phase C

The Franchise Operator proposes to increase capacity and reduce journey times on the section of line between High Wycombe and South Ruislip ('Project Evergreen Phase C'). The Franchise Operator envisages that this would involve, inter alia, an increase in the number of tracks from two to four by reinstating the fast lines between West Ruislip and Northolt Junction and through Beaconsfield Station ¹⁴³*and the addition of a loop at Denham*

2.4 Project Evergreen Phase D

The Franchise Operator proposes to increase service frequency and reduce journey times over the Franchise Term on the High Wycombe line, including the provision of passenger services between London Marylebone and the new parkway stations referred to in paragraph 2.2 above. In order to comply with this output it is envisaged that the Franchise Operator would carry out additional infrastructure works which may include doubling of the line between Aylesbury and Princes Risborough and quadrupling of parts of the line south of High Wycombe.

2.5 Electrification

The Franchise Operator envisages that it may be economically advantageous to the Franchise Operator and to the ¹⁴⁴*Secretary of State* and may bring benefits of reduced journey times to passengers if some or all of the routes over which the Passenger Services operate were to be electrified.

¹⁴³ DOA Nov 2007

¹⁴⁴ Date of change nov2007

2.6 West Midlands Capacity

The Franchise Operator proposes to play a key role in the implementation of the West Midlands Capacity Study (commissioned by the Authority in October 1999) in respect of the routes over which the Passenger Services operate.

2.7 Ardley Parkway

The Franchise Operator proposes to build and open a new station at Ardley between Aynho and Bicester.

2.8 Oxford line

¹⁴⁵The Franchise Operator proposes to open a new route to Oxford, either between Princes Risborough and Oxford via Wheatley, with new stations at M40 Junction and South Oxford; or via a new south to east curve at Bicester, with new stations at Bicester Village and Water Eaton Parkway.

Once opened, the Franchise Operator proposes to operate Passenger Services between Oxford and London Marylebone. It is envisaged that these Passenger Services would be a mixture of new Passenger Services and extensions of existing Passenger Services. It is acknowledged that Project Evergreen Phase C (as such term is defined in Paragraph 2.3 above) (or broadly equivalent works) will be required before the Oxford line can be completed.

2.9 New Route (East – West)

¹⁴⁶The Franchise Operator proposes to operate new and additional Passenger Services between Milton Keynes /Bletchley and London Marylebone via Aylesbury and also Bedford – Bletchley – Oxford. In order to comply with this output it is envisaged that the Franchise Operator will open a railway line between Aylesbury and Bletchley and Bicester and Bletchley with new stations at Aylesbury North, Bletchley North and Winslow. In due course, the Franchise Operator anticipates expanding the services over this route to encompass Milton Keynes to Heathrow Airport service.

2.10 ¹⁴⁷New Interchange at West Hampstead

The Franchise Operator proposes to facilitate the implementation of a new transport interchange at West Hampstead. This interchange will be a new major rail hub providing an alternative to road transport and linking deprived areas to areas offering employment and educational opportunities. It will allow passengers to change between platforms on the Midland Main line, North London line and Chiltern line and the LUL Jubilee and Metropolitan line and providing direct rail services to over 250 stations (which figure will increase after the completion of the 'Thameslink and 'Airtrack' projects).

2.11 Chiltern Metro

The Franchise Operator proposes to operate at least 2 trains per hour between West Ruislip and London Marylebone calling at all stations. The Franchise Operator proposes that this output will be achieved in either of two ways:

¹⁴⁵ DOA Nov2007

¹⁴⁶ DOA Nov 2007

¹⁴⁷ DOA Nov2007

- if Crossrail proceeds, with one of its arms being between Old Oak Junction and High Wycombe or further north, capacity between Northolt Junction and Marylebone would be released, allowing the operation of the local service; or
- an infrastructure upgrade of the line between Northolt Junction and Neasden Junction, involving sections of 4 track railway, could allow the introduction of the local service in addition to other Committed Outputs, Primary Aspirations and Secondary Aspirations using London Marylebone.

2.12 ¹⁴⁸Bordesley Junction

The Franchise Operator proposes to carry out enhancements to the infrastructure and/or other works to:-

- enable Rules of the Plan headways between Tyseley and Moor Street to be reduced to 3 minutes on each track and to provide independent up and down train movements between the fast lines at Bordesley Junction through to Snow Hill Station**
- increase terminal capacity at Moor Street Station to accommodate one additional six vehicle train, the requisite connection to the through lines not to have an adverse impact on the design capacity for services to and from Snow Hill; and**
- to reinstate facilities to provide movements on four independent tracks from Small Heath through to Moor Street at an approximate Rules of the Plan headway of two minutes in the normal direction.**

In each case. Modified as appropriate to fit any prevailing Centro PTE plan.

2.13 ¹⁴⁹London to Birmingham Capacity

The Franchise Operator notes that the Department for Transport's July 2007 White Paper "Delivering a Sustainable Railway" recognises that there might in future be the need for additional interventions to meet demand growth on the London to Birmingham corridor. The Franchise Operator proposes to procure enhancements to the Chiltern route infrastructure to facilitate the Department for Transport's objective, and anticipates that this will entail investment in line speed improvements, additional loops, and train lengthening.

2.14 ¹⁵⁰Shorter Journey Times to Aylesbury

The Franchise Operator proposes to reduce journey times between London Marylebone and Aylesbury via Amersham through entering into an agreement with London Underground Limited which enables Chiltern Railways services to operate at a maximum speed higher than the current 60mph limit.

¹⁴⁸ DOA Nov 2007

¹⁴⁹ doa Nov2007

¹⁵⁰ DOA Nov 2007

3 Timing

3.1 The parties acknowledge their mutual current intention that the Franchise Operator should:

- (a) develop the Primary Aspirations so that the relevant outputs can be included in an Output Plan at the appropriate Update Point (in line with the obligations set out in the First Output Plan); and
- (b) consider, develop and bring forward the Secondary Aspirations, as appropriate in the context of the development of Franchise Services over the Franchise Period, so that, where appropriate, they may be the subject of an agreed Output Plan at the relevant time at which it is anticipated they will become Output Commitments.

4 Other Aspirations

All parties recognise that the pattern, shape and demand for the Franchise Services is likely to change over the course of the Franchise Term. All parties agree to consider in good faith whether any additional outputs need to become Output Aspirations or whether any existing Output Aspirations should be withdrawn or modified, in each case in order to reflect such changes.

5 Amendments

The parties may make such variations as they may consider appropriate from time to time to any Output Aspiration (whether by the addition of further Output Aspirations, amendments to existing Output Aspirations or the conversion of an Output Aspiration into an Output Commitment other than under Part 4 of this Schedule 14).

Part 4 - Passenger Service Output Updates¹⁵¹

“1 ^{152 153 154 155} Establishment of First Update Point

Subject to paragraph 3, the First Update Point shall be 10 May 2007.”

2 Next Update Period

Subject to paragraphs 3, 9.6 and 9.7, each Subsequent Update Point shall be set as part of the Output Plan relating to the preceding Update Point.

3 Postponement of Update

The Authority may by notice to the Franchise Operator at any time and more than once in respect of any Update Point postpone an Update Point by up to one year in total (in respect of any Update Point) if in the Authority's reasonable opinion:

- 3.1 the Franchise Operator has failed to meet one or more of the Targets in respect of the Performance Review Period ending on the last Performance Review Date (as such terms are defined in Schedule 15) before the Update Point and the Authority has determined in accordance with Schedule 15 either (i) that failing to meet such Target(s) constitutes a breach of the Franchise Agreement, or (ii) to extend the period for the achievement of the relevant Target(s);
- 3.2 it has published any notice which has not expired of an intention to make or confirm an order under the Act or there is at the time outstanding and unsatisfied any order made by the Authority under the Act;
- 3.3 the Franchise Operator has failed to, or is reasonably likely to fail to, comply with any Output Commitment to the extent such obligation is due to have been complied with by the relevant Update Point and such failure is likely to prevent the Franchise Operator delivering in a timely and satisfactory manner the matters expected to be the subject of the next Output Plan; or
- 3.4 there is subsisting or is likely to be in the period up to one year after the Update Point an Event of Default which would entitle the Authority to terminate this Franchise Agreement.

4 Exchange of Views¹⁵⁶

Except in respect of the period prior to the First Update Point (in respect of which no exchange of views shall be required) or as otherwise agreed, not more than 21 but not less than 20 months before each Update Point the Authority and the Franchise Operator shall exchange views as to what Output Aspirations and any other matters should be implemented or developed as part of an Output Plan following the relevant Update Point.”

5 Franchise Operator Proposals¹⁵⁷

¹⁵¹ DATE OF NEW TEXT 30.6.2005

¹⁵² First Changed text wef 13.12.2006

¹⁵³ Second Changed text wef 27/02/07

¹⁵⁴ Third Changed text wef 29/03/07

¹⁵⁵ Fourth Changed text wef 12/04/07

¹⁵⁶ date of change 30.6.2005

¹⁵⁷ date of change 30.6.2005

Not less than 19 months before each Update Point or, in respect of the First Update Point by no later than 31st October 2005 (or such later as may be agreed), the Franchise Operator shall by written notice served on the Authority propose to the Authority in reasonable detail:

- (a) the Output Commitments the Franchise Operator proposes to assume and commence during the next Phase;**
- (b) the Output Aspirations the Franchise Operator proposes to develop during the next Phase for implementation in the following Phase;**
- (c) any proposed new Output Aspirations;**
- (d) any other related matters which the Franchise Operator wishes to include."**

6 Authority Proposals

With regard to the First Update Point by 30th November 2005, and otherwise not less than one month following receipt of the Franchise Operator's Proposals under paragraph 5 or, if none are received in accordance with such paragraph, not less than 18 months prior to the relevant Update Point, the Authority may propose to the Franchise Operator:

- (e) a specified preferred manner or manners of implementation of any of the Franchise Operator's Proposals;**
- (f) its own proposals in relation to any of the Output Aspirations; and**
- (g) such other matters as the Franchise Operator may agree."**

7 Evaluation of Proposals

7.1 Output Study^{kk158}

- (h) Within two months of the later of the delivery of the Franchise Operator's Proposals under paragraph 5 and the Authority's Proposals under paragraph 6, or in respect of the First Update Point by 31 December 2005 (or such later date or longer period as the parties may agree), the Franchise Operator shall submit to the Authority an Output Study in respect of the Proposals in the form (if any) reasonably specified by the Authority following consultation with the Franchise Operator and complying with the requirements of paragraph 7.2 below.**
- (i) The Authority shall have the right at any reasonable time prior to submission of the Output Study to require the Franchise Operator to consult it regarding the progress of the Output Study (including, if the Authority so requests, the right to require the Franchise Operator to provide it with up-to-date drafts of the Output Study up to once every two weeks)."**

7.2 Contents of Output Study

- (a) The Output Study shall so far as practicable be prepared as a draft Output Plan but shall at least contain:**

¹⁵⁸ date of change 30.6.2005

- (i) a proposed manner of implementation for each of the Proposals and, where any Proposal could be implemented in more than one manner, any reasonable alternatives (except to the extent that the Authority specifies, pursuant to paragraph 6(a), one or more manners of implementation in which case at least such manners shall be included);
 - (ii) a statement of the steps which it is reasonably estimated will be necessary to take to implement each Proposal for each proposed manner of implementation including where relevant:
 - (a) any consents that may be required;
 - (b) the Franchise Operator's proposals for funding each Proposal (including the length of time reasonably anticipated to be required in order to secure such funding);
 - (c) details of any amendments that will be required to the terms of any Access Agreement, Rolling Stock Lease or other relevant agreement to which the Franchise Operator is party;
 - (d) details of its Timetable and Train Plan at all relevant times;
 - (iii) a reasonable estimate of the time in which each Proposal (and any steps constituting such Proposal) can be implemented for each of such alternatives (if any);
 - (iv) the Franchise Operator's draft Long-Term Business Plan for the period from the Update Point to the expiry of the Franchise Term (such draft to be provided in such formats (including on disc) as the Authority may require);
 - (v) the Franchise Operator's proposed adjustments to Franchise Payments as a result of each Proposal (together in each case with all relevant supporting information and calculations);
 - (vi) the steps which it is proposed should be taken to develop any Output Aspirations in the next Phase prior to them becoming part of an Output Plan in the following Phase;
 - (vii) any proposed consequential amendments to the Franchise Agreement; and
 - (viii) any other matter which the Franchise Operator may consider appropriate to include, or which the Authority may reasonably request should be so included.
- (b) The Franchise Operator may at any time engage a suitable third party to prepare any part of the Output Study.

7.3 Consideration

- (a) The Authority shall give due consideration to the Output Study and, the Authority and Franchise Operator shall procure a meeting of their respective representatives as soon as reasonably practicable after the date of submission to the Authority of such Output Study to discuss the Proposals and the Output Study.
- (b) The Authority and the Franchise Operator shall discuss the relevant Proposals in good faith and use all reasonable endeavours to agree an Output Plan for such Proposals prior to the Update Point.

- (c) In respect of the Output Study prepared for the First Update Point and (where applicable) Subsequent Update Points, the Authority shall consider whether the Output Commitments and Output Aspirations set out in such Output Study and which the Franchise Operator proposes to assume or develop (as applicable) during the Franchise Term are sufficient. If the Authority in its absolute discretion determines that such Proposals are not sufficient then the Authority shall be entitled to amend the Franchise Term provided that such amended Franchise Term shall be no shorter than the period of the Minimum Franchise Term and, without prejudice to the Authority's right to extend the Franchise Term further pursuant to Clause 20.2 of this Franchise Agreement, shall not exceed the period of the Original Franchise Term. Alternatively, the Authority may determine that the Franchise Term (including any amended Franchise Term) is conditional upon further Proposals becoming Output Commitments following Subsequent Update Points and, where the Authority makes such a determination, then the provisions of this paragraph 7.3(c) shall also apply in respect of such Subsequent Update Point(s). The Authority may, in addition, amend the period of the Minimum Franchise Term provided that such amended Minimum Franchise Term shall be no shorter than the period of the then current Minimum Franchise Term. Without prejudice to the above, the Authority shall be entitled at any time to request any further information or calculations (including studies of possible alternative manners of implementation of any of the Proposals and any sensitivities relating thereto) which it reasonably considers necessary for the evaluation of the Output Study and, where applicable, determination of the duration of the Franchise Term, the Franchise Operator shall deliver such information or calculations to the Authority as soon as practicable but in any case within seven days or such other period as the parties may agree.

7.4 Contents of Output Plan

The Output Plan shall be prepared as an amendment to this Franchise Agreement to be executed by each of the parties and shall specify:

- (i) the agreed Proposals and all steps constituting such Proposals (including the manner of implementation thereof which, in the absence of agreement, may be specified by the Authority);
- (ii) the time within which the Franchise Operator is obliged to implement the Proposals (and the times within which constituent parts of such Proposals should be implemented);
- (iii) the obligations of the Franchise Operator to be incorporated into the Franchise Agreement in respect of the Proposals (including any Franchise Default Milestones in respect of any Proposal);
- (iv) the adjustments to be made to Franchise Payments as a result of the Proposals (including the adjustments (if any) to be made to paragraph 12 of Part 2 of Schedule 6 (Applicable Rolling Stock Payment) to reflect the decrease (if any) in the rental payments payable by the Franchise Operator in respect of the Applicable Rolling Stock (as such term is defined in paragraph 3.2 of Part 5 of this Schedule 14) as a result of any amendment to the Minimum Franchise Term);
- (v) a replacement Long-Term Business Plan for the period from the Update Point until the expiry of the Franchise Term. For the avoidance of doubt, in relation to the Committed Outputs Business Plan, the principles referred to in paragraph 5.2 of Part 4 of Schedule 6 shall apply;

- (vi) revised thresholds and proportions for the benefit sharing provisions of Part 4 of Schedule 6;
- (vii) any development obligations to be imposed on the Franchise Operator in respect of the Output Aspirations scheduled for the next Phase;
- (viii) the date of the next Update Point for the purposes of paragraph 2 which, unless otherwise agreed, shall fall at the beginning of a Franchise Operator Year;
- (ix) any other amendments to be made to the Franchise Agreement in respect of and in consequence of the Proposals (including, without limitation, to Schedules 3, 4, 5, 7 and 15); and
- (x) any other matters which are considered reasonably necessary by the parties or, in the event of a reference to the Panel, the Panel; and
- (xi) in respect of the Output Plan prepared for the First Update Point and any applicable Subsequent Update Points, the Franchise Term specified by the Authority.

8 Reference to Mediator

8.1 Matters to be referred to Mediator

If the parties are unable to agree a Output Plan at any time following the earlier of:

- (i) one month after the delivery of the Output Study by the Franchise Operator to the Authority; or
- (xii) twelve months before the Update Point

either party may refer any matter relating to such Output Plan to the Mediator provided that the Franchise Operator may not refer any matter to the Mediator prior to the date referred to in (i) above.

8.2 Mediation

The provisions of Part 6 of this Schedule 14 shall apply in the appointment and procedure of the Mediator.

9 Reference to Panel

9.1 Matters to be referred to Panel

If, two months after commencement of a mediation under paragraph 8, the parties are unable to agree an Output Plan, the Authority may and, if so requested by the Franchise Operator on 2 weeks notice, shall refer any part of the Output Plan which has not been agreed to a Panel by means of a notice to the Franchise Operator, to be copied to the Panel, once the Chairman has been appointed under Part 7, identifying:

- (a) the Proposal(s) to be referred;
- (b) a preferred or various alternative manners of implementation of such Proposal(s);
- (c) any areas on which agreement has been reached (whether such agreement is legally binding or not)

provided that, unless the parties otherwise agree:

- (w) any Primary Aspiration scheduled to be commenced or developed during the next Phase shall be included in a Proposal for its commencement or development as the case may be;

- (x) any Secondary Aspirations may, but need not, be included;
- (y) the Authority shall be entitled to specify the manner of implementation of any Proposal referred to the Panel; and
- (z) in respect of the Output Plan prepared for and/or determined in respect of the First Update Point and any applicable Subsequent Update Points, the Authority shall be entitled to specify the period of the Franchise Term and/or the Minimum Franchise Term, provided that such period(s) shall not be shorter than the then current Minimum Franchise Term or, without prejudice to the Authority's rights under Clause 20.2 of this Franchise Agreement, longer than the Original Franchise Term.

9.2 Change in circumstances

- (a) If so requested by the Authority at any time, the Panel shall in addition consider whether circumstances have changed so much since the date of this Franchise Agreement such that any Primary Aspirations ought not be developed or implemented on the basis that the cost to the Authority of the relevant matter cannot be justified by the social and strategic benefits expected to result from such matter, having regard to the Authority's functions and duties (including any relating to value for money). If the Authority does so request, the Panel shall make its determination in respect of the matter as soon as it reasonably can having regard to the extent to which any relevant Proposal has at that time been sufficiently costed. If the Panel does determine that circumstances have changed to the extent described above, the relevant Primary Aspiration shall cease to be designated as a Primary Aspiration for the purposes of this Schedule 14.
- (b) In addition, if the Authority determines, having had regard to its statutory powers and obligations, that it does not have the funds available to it to finance any Primary Aspiration, the relevant Primary Aspiration shall cease to be designated as a Primary Aspiration for the purposes of this Schedule 14 and the Authority shall notify the Franchise Operator accordingly.

9.3 Determination of Panel Matters

- (a) The provisions of Part 7 of this Schedule 14 will apply in the appointment, procedure and determinations of the Panel.
- (b) The Panel shall be required to determine, in its opinion, the Output Plan or such parts of the Output Plan as are referred to it and any other matter referred to it under this Schedule 14.
- (c) The Panel's determination shall provide a breakdown between individual Proposals where so reasonably requested by the Authority.

9.4 Post-determination negotiation

Following the delivery of the Panel's decision pursuant to paragraph 9.3 above in relation to an Output Plan, the parties shall use all reasonable endeavours to agree an Output Plan taking into account the findings of the Panel.

9.5 Authority specification

The Authority may, within 4 weeks of the determination of the Panel, specify:

- (a) one or more Proposals (other than any Proposal reflecting a Primary Aspiration) which it considers should not form part of the Output Plan;

- (b) where a Proposal which has been referred to the Panel has more than one manner of implementation, the manner of implementation of such Proposal; and
- (c) in respect of the Output Plan determined in respect of the First Update Point and any applicable Subsequent Update Points, the period of the Franchise Term and/ or the Minimum Franchise Term provided that such period(s) shall not be shorter than the then current Minimum Franchise Term or, without prejudice to the Authority's rights under Clause 20.2 of this Franchise Agreement, longer than the Original Franchise Term.

The Output Plan determined by the Panel shall be deemed amended accordingly (including, for the avoidance of doubt, the Long Term Business Plan). If there is any doubt as to how the Output Plan should be amended, the matter shall be remitted to the Panel to be determined.

9.6 Franchise Operator's option

- (a) If the Franchise Operator does not wish to accept the determination of the Panel, taking into account the provisions of paragraph 9.5, and is unable to agree an Output Plan with the Authority within 6 weeks of the delivery of the Panel's decision (or such longer period as the parties may agree), it may give notice to that effect within such 6 weeks (or such longer period as may be agreed) to the Authority.
- (b) Following receipt of such notice, the Authority shall within one month give notice to the Franchise Operator either:
 - (i) stating that this Franchise Agreement shall continue in force on its existing terms (for the avoidance of doubt without prejudice to the powers of the Authority to bring forward any Proposals relating to other Output Aspirations at the next Update Point (which, unless the parties otherwise agree or, on reference of the matter to the Panel by any party, the Panel determines that another date would be more reasonable having regard to the notice given under this paragraph and the Output Aspirations scheduled for the next Update Point, shall be the date 5 years after the preceding Update Point)); or
 - (ii) stating that this Franchise Agreement shall continue in force as set out in paragraph (i) above except that the Authority will from a date stated in such notice have the right and obligation to terminate the Franchise Agreement on one month's notice within one year of such date.
- (c) If the Authority gives notice to the Franchise Operator under paragraph (b)(ii) above, this Franchise Agreement shall, unless otherwise agreed, terminate on the date set out in any such subsequent notice.

9.7 Authority's option

If the Franchise Operator does not serve notice under paragraph 9.6 above within the time limit set out in such paragraph and the Authority does not wish to accept the determination of the Panel, taking into account the provisions of paragraph 9.5, the Authority shall within one month of the expiry of such time limit either:

- (a) give notice to the Franchise Operator terminating this Franchise Agreement. If such notice is given, the Authority shall terminate this Franchise Agreement on one month's notice within one year after the later of the Update Point and the date of such notice and this Franchise Agreement shall, unless otherwise agreed, terminate on the date set out in such later notice; or

- (b) give notice to the Franchise Operator stating that this Franchise Agreement shall continue in force on its existing terms (for the avoidance of doubt without prejudice to the powers of the Authority to bring forward any Proposals relating to other Output Aspirations at the next Update Point (which, unless the parties otherwise agree or, on reference of the matter to the Panel by any party, the Panel determines that another date would be more reasonable having regard to the notice given under this paragraph and the Output Aspirations scheduled for the next Update Point, shall be the date 5 years after the preceding Update Point)). In such an event the Franchise Payments payable for the remainder of the Franchise Term (as amended, where applicable) shall, unless otherwise agreed, be adjusted by an amount equal to the difference between the EBDIT of the Franchise Operator under the Committed Outputs Business Plan and the EBDIT of the Franchise Operator under the Do Minimum Business Plan, in each case as determined by the Panel and in each case for the period from the Evaluation Date until the expiry of the Franchise Term. Such amount shall be determined for each Franchise Operator Year (or part thereof) within such period and Schedule 6 shall be adjusted accordingly. If there is any dispute as to the amount of any such adjustment, the matter shall be resolved in accordance with the Dispute Resolution Rules.

9.8 Agreement of Output Plan

If both the Franchise Operator and the Authority fail to give notice under paragraphs 9.6 and 9.7 above within the time limits in such paragraphs each shall be deemed to have agreed to the decision of the Panel (as adjusted, if relevant, by the Authority's specification under paragraph 9.5 above) and the Output Plan shall be deemed agreed in the form of the determination of the Panel (as adjusted as above if appropriate) and the parties shall enter into the amendment agreement comprised in the Output Plan forthwith or, if later, on the Update Point.

10 First Update Point

If the parties agree that no Proposals shall be taken forward in respect of the Output Study (if any) prepared for the First Update Point then the Franchise Term will be amended to expire at 2a.m. on 31 December 2013 and the provisions of paragraph 4 of Part 3 of Schedule 6 (Twelve Year Franchise) shall apply.

11 Determination of Franchise Term

For the avoidance of doubt, wherever the duration of the Franchise Term and/ or the Minimum Franchise Term is subject to the determination of the Authority in this Schedule 14 then, provided that the period of each of the Franchise Term and the Minimum Franchise Term are no shorter than the then current Minimum Franchise Term or, without prejudice to the Authority's rights under Clause 20.2 of this Franchise Agreement, longer than the Original Franchise Term, the duration of the Franchise Term and the Minimum Franchise Term shall not be subject to review by the Panel or determination by the Dispute Resolution Rules.