

THE SCOTTISH MINISTERS
and
SCOTTISH RAIL HOLDINGS LIMITED
and
CALEDONIAN SLEEPER LIMITED

CALEDONIAN SLEEPER GRANT AGREEMENT

CONFORMED COPY GRANT AGREEMENT AS AT AUGUST 2024

This is a conformed copy of the Grant Agreement between The Scottish Ministers and Scottish Rail Holdings and Caledonian Sleeper Limited incorporating all amendments as at August 2024

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CALEDONIAN SLEEPER GRANT AGREEMENT**AMONG**

- (1) **THE SCOTTISH MINISTERS**, Victoria Quay, Edinburgh, EH6 6QQ, acting through Transport Scotland, Buchanan House, 58 Port Dundas Road, Glasgow, G4 0HF or such other agency, department or other organisational unit of the Scottish Government as they may from time to time nominate (who and whose successors are referred to as the “**Authority**”); and
- (2) **SCOTTISH RAIL HOLDINGS LIMITED**, whose registered number is SC548826 and registered office is at Glasgow Queen Street Station, Management Suite, Dundas Street, Glasgow G1 2AQ from Buchanan House, 58 Port Dundas Road, Glasgow, G4 0HF (“**SRH**”); and
- (3) **CALEDONIAN SLEEPER LIMITED**, whose registered number is SC328825 and registered office is at 1-5 Union Street, Inverness, Scotland, IV1 1PP (“**CSL**”).

WHEREAS

- (A) The Scottish Ministers announced on 2nd March 2023 that, the Caledonian Sleeper Franchise currently operated by Serco Caledonian Sleepers Limited (the “**Outgoing Franchisee**”) will terminate, and that the continued operation of the Caledonian Sleeper will transfer to an arms length company, owned and controlled by the Scottish Government, CSL. This change will take place on 25 June 2023
- (B) CSL has been established to provide certain services for the carriage of passengers by railway pursuant to Agreement, the Operator Services, on behalf of Scottish Ministers, as represented by the Authority.
- (C) CSL is a wholly owned subsidiary of SRH which has been established for the purposes of overseeing the performance of the Operator Services under the respective Grant Agreements by ScotRail Trains Limited (“**SRT**”) and CSL and providing support to CSL as would normally be provided by an owning group. The Chief Executive Officer of SRH will Chair and the Finance Director of SRH will be a member of the CSL Board. It is intended that this Agreement will be managed as far as possible through the CSL Executive Team reporting to the CSL Board. This Agreement will be reviewed, and if appropriate, updated by the parties on an annual basis to ensure it continues to reflect the evolving policy, structural and operational requirements for Caledonian Sleeper services.
- (D) Ultimately it is the Authority’s obligation to comply with the Section 30 Duty and the Authority may instruct SRH and/or CSL directly should this be required.
- (E) The Authority expects CSL, on the terms of this Agreement, actively to seek, in all reasonable business ways to deliver the policy objectives referred to in recital (F).
- (F) The policy objectives of this Agreement are for the Operator Services to:
 - ensure compliance with the policy outcomes as detailed in the Framework Agreement and the Policy Compendium Sleeper Addendum (each as amended from time to time);
 - ensure value for money;
 - provides high quality services for all guests, provides additional support for those guests who may require assistance to access services and looks to sustain and where possible grow revenue and maintain patronage from guests; and
 - sustain and where possible further improve guest satisfaction.
- (G) The following provisions of this Agreement are intended to reflect and give effect to the matters referred to in Recitals (A) to (F).

1. Interpretation and Definitions

- 1.1. This Agreement shall be interpreted in accordance with Schedule 19 to this Agreement.
- 1.2. The Schedules and Appendices to this Agreement form part of this Agreement.

2. Commencement

Notwithstanding the dates of execution hereof, this Agreement shall take effect and be binding upon each of the parties at 13:59:59 on 25th June 2023 ("**Commencement Date**").

3. Term

- 3.1. Unless terminated earlier in accordance with clause 3.3 or clause 3.4, this Agreement shall continue until the First Expiry Date and then shall automatically extend until the Final Expiry Date ("**Extended Term**").
- 3.2. Without prejudice to clause 3.3 or clause 3.4, this Agreement shall automatically terminate on the Final Expiry Date without notice.
- 3.3. A party may terminate this Agreement on the First Expiry Date on giving not less than six (6) months' written notice to the other parties before the First Expiry Date.
- 3.4. A party may terminate this Agreement at the end of an Operator Year of the Extended Term by giving not less than twelve (12) months' written notice to the other parties before the end of the relevant Operator Year.
- 3.5. The dates indicatively set out in the table below do not affect the construction and interpretation of the defined terms referred to in that table. The definitions of "**First Expiry Date**" and "**Final Expiry Date**" set out in Schedule 19 shall take precedence over the table below.

Defined Date	Indicative Date
First Expiry Date	1st April 2030
Final Expiry Date	25 June 2023 +10 years

4. CSL's Obligations

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

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

- ensure compliance with the policy outcomes as detailed in the Framework Agreement and the Policy Compendium Sleeper Addendum (each as amended from time to time);
- ensure value for money;
- provide high quality services for all guests, provides additional support for those guests who may require assistance to access services and looks to sustain and where possible grow revenue and maintain patronage from guests; and
- sustain and where possible further improve guest satisfaction.

4.5. Notwithstanding encouragement whether explicit or implicit in this Agreement or otherwise for CSL to consider or discuss the entering into of alliancing arrangements with any party, the existence of any alliance not provide CSL with any relief from any obligation upon CSL in this Agreement.

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

5. Unjustified Enrichment

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

6. Arm's Length Dealings

CSL shall ensure that every contract or other arrangement or transaction to which it may become party in connection with this Agreement with any person is on bona fide arm's length terms, providing that nothing in this clause 6 shall preclude CSL from entering into contracts or other arrangements or transactions with other members of the SRH group or other public sector organisations ("**Public-Public Contracts**") providing that all such Public-Public Contracts:-

- (i) are awarded in compliance with all applicable procurement law requirements, the Scottish Public Finance Manual and all other guidance referred to in the Scottish Public Finance Manual; and
- (ii) are notified to the Authority.

7. The Authority

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

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

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

8. Compliance with Laws

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

9. Entire Agreement

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

9.2. CSL hereby acknowledges that it is not entering into this Agreement in reliance on any warranties, representations or undertakings howsoever or to whomsoever made except in so far as such are contained in this Agreement.

9.3. CSL irrevocably and unconditionally waives any right which it may otherwise have to claim damages in respect of and/or to rescind this Agreement on the basis of any warranty, representation (whether negligent or otherwise, and whether made prior to and/or in this Agreement) or undertaking howsoever or to whomsoever made unless and to the extent that such warranty, representation or undertaking was made fraudulently.

10. Annual Review and Update

10.1 Without prejudice to Schedule 9 (*Changes*), the parties shall hold in the first Operating Year a review meeting no later than 3 months from the Commencement Date and conclude the review no later than 6 months from the Commencement Date, and in each subsequent Operating Year, hold an annual review meeting in the first week of the last GP Quarter of each Operator Year ("**Annual Contractual Review Meeting**") to review and as necessary seek to agree updates and amendments to this Agreement, which shall include without limitation, a review of the Business Plan Commitments ("**Annual Variations**").

10.2 An Annual Variation to the terms of this Agreement pursuant to clause 10.1 may involve the deletion of terms, the addition of new terms or any other type of variation or change to this Agreement required by the parties in the light of evolving policy, structural and operational needs of the Caledonian Sleeper Operation (including without limitation the replacement of this Agreement with a new agreement among the parties).

10.3 If the parties fail to agree the Annual Variations within thirty (30) Weekdays of the relevant Annual Contractual Review Meeting, then the Authority shall reasonably determine what Annual Variations, if any, are to be incorporated to this Agreement.

11. Governing Law

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

IN WITNESS whereof the parties hereto have executed this Agreement (which includes the 19 Schedules and various appendices) as follows:

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

At

On the day of 2023

By

.....Name (printed)
Before this witness:-

..... Witness

..... Full Name

..... Address

.....

SIGNED for and on behalf of SCOTTISH RAIL HOLDINGS LIMITED

At

On the day of 2023

By

..... Director

..... Name (Printed)

Before this witness:-

..... Witness

..... Full Name

..... Address

.....

SIGNED for and on behalf of CALEDONIAN SLEEPER LIMITED

At

On the day of 2023

By

..... Director

..... Name (Printed)

Before this witness:-

..... Witness

..... Full Name

..... Address

.....

SCHEDULE 1

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

Guest Service Obligations

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

SCHEDULE 1.1**THIS IS SCHEDULE 1.1 REFERRED TO IN THE FOREGOING CALEDONIAN SLEEPER GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND CALEDONIAN SLEEPER LIMITED****Service Development****1. Service Level Commitment – Purpose and Responsibility**

- 1.1. A Service Level Commitment is the means by which SRH specifies the level, frequency, maximum journey times and stopping patterns of the railway guest services that CSL is to:
 - (a) seek Train Slots for from Network Rail; and
 - (b) operate pursuant to the Timetable issued by Network Rail at the end of its timetable development process.
- 1.2. The first Service Level Commitment has been prepared by the Authority and is included in Appendix 1 of Schedule 1.1, the **SLC (“Initial Service Level Commitment”)**.
- 1.3. SRH shall, for Service Level Commitments subsequent to the Initial Service Level Commitment, issue a document specifying any additional items to be added or items to be removed from the Service Level Commitment for each timetable development process of Network Rail during the Grant Agreement Term.
- 1.4. A Service Level Commitment may be expressed in whole or in part at any level of generality or to any level of detail SRH considers appropriate.
- 1.5. A Service Level Commitment developed in accordance with this Schedule 1.1 may include journeys along routes which CSL may not have permission to use within the Initial Service Level Commitment and/or along new parts of the network.
- 1.6. A Service Level Commitment may specify capacity for any railway guest services in the Service Level Commitment.
- 1.7. The Authority and/or SRH may make Service Level Commitment adjustment proposals to improve guest experience and/or performance criteria and/or to better match capacity to demand.
- 1.8. CSL agrees to co-operate with the Authority and/or SRH to develop the Service Level Commitment in accordance with this Schedule 1.1.

2. Train Plan – Purpose and Responsibility

- 2.1. A Train Plan is the means by which CSL expresses its proposed allocation of the Guest Carrying Capacity of the Train Fleet to meet guest demand for the railway guest services it is to operate.
- 2.2. CSL shall submit to SRH a Train Plan in respect of the Service Level Commitment and, subsequently, in respect of each Timetable in accordance with this Schedule 1.1.
- 2.3. In preparing a Train Plan in respect of a Service Level Commitment, CSL shall do so by reference to the timetable that it envisages operating in order to comply with that Service Level Commitment.
- 2.4. The Train Plan for the Timetable as at May 2023 is to be delivered to SRH within four weeks of the Commencement Date. SRH accepts that this Train Plan may not contain the information referred to in paragraph 2.5 (c) to (g). If that is the case, CSL shall within six (6) months of the Commencement Date update the Train Plan so that it contains all of the information required by

this Agreement. CSL shall keep SRH advised as regards this updating and shall promptly supply SRH with a copy of both any interim drafts of the Train Plan and the updated Train Plan.

- 2.5. Each Train Plan is to set out for each railway guest service in the Timetable to which it relates:
- (a) its start point and departure time;
 - (b) its terminating point and arrival time;
 - (c) the class of rolling stock vehicles that the allocated train is to have;
 - (d) the Guest Carrying Capacity (split between seating accommodation, single berth rooms, two berth rooms, accessible rooms and other sleeping accommodation as set out in Table 1 of Appendix 1 (*The Train Fleet*)) that the allocated train, as formed, is to have;
 - (e) the planned formation of all trains (including details of lounge cars and catering facilities and luggage, bicycles and goods capacity) and points of splitting or joining of formations);
 - (f) traction provision;
 - (g) its Actual Guest Demand most recently determined in accordance with Schedule 1.5 (*Information about Guests*); and
 - (h) its Forecast Guest Demand.
- 2.6. A Train Plan shall be in any format that SRH may reasonably specify for this purpose.
- 2.7. In the event of CSL proposing seasonal variations to train formations or capacities, such variations shall be detailed in the Train Plan.

3. Train Fleet

- 3.1. CSL's Train Fleet as at the Commencement Date is as set out in Appendix 1 (*The Train Fleet*).
- 3.2. CSL shall comply with its obligations under paragraph 2 of Schedule 2.2 (*Security of Access Assets and Rolling Stock Leases*) with respect to the Train Fleet.
- 3.3. Save as otherwise expressly provided for in this Agreement and/or unless SRH and the Authority both otherwise agrees in writing, CSL shall maintain the composition of the Train Fleet during the Term, such that there are no changes to the Train Fleet, including changes:
- (a) to the classes or types;
 - (b) to the interior configurations that change the balance of berth to seats and/or facilities outwith the available minimum requirements set out in Appendix 1 (*The Train Fleet*); or
 - (c) which may reduce the journey time capabilities of any rolling stock vehicles specified in the Train Fleet.
- 3.4. During the Term, CSL shall advise SRH and the Authority of any rolling stock vehicles comprising the Train Fleet damaged beyond economic repair or likely to be unavailable for service for a period of 3 consecutive Reporting Periods or more. CSL shall, pending the return to service of the same, provide SRH and the Authority with an update at least once per Reporting Period (or at such other frequency as SRH and/or the Authority may specify) on the anticipated return to service date of any vehicle reported as likely to be unavailable for service for a period of 3 consecutive Reporting Periods or more.

- 3.5. If any change is made to the Train Fleet in accordance with this paragraph 3 SRH may, after consulting CSL and subject to approval of the Authority, notify CSL of the Guest Carrying Capacity of any rolling stock vehicles or class of rolling stock vehicles comprising the Train Fleet following such change.
- 3.6. CSL shall procure that the rolling stock vehicles specified in the Train Fleet Table 1 with the capacity and other characteristics referred to therein and in Train Fleet Table 2, and the further facilities, utility and other characteristics detailed in the Train Fleet Tables are available for deployment in the provision of the Guest Services to the extent required by the Timetable and the Train Plan during the periods referred to therein.
- 3.7. CSL shall procure traction for the Train Fleet and the refuelling of locomotives.

4. Procedure

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

5. CSL's Service Development Opinions

- 5.1. As and when required pursuant to any procedural arrangements stipulated by the Authority and/or SRH pursuant to paragraph 4.2 and in any event no later than 31 March each year, CSL shall provide to SRH:
 - (a) its informed estimate of Forecast Guest Demand in such format and to such level of disaggregation as SRH may reasonably require in order to assist SRH's decision making on future service level commitments, infrastructure, station and rolling stock, vehicle investment, the best use of the network.

- (b) its informed opinion as to any changes to the current Service Level Commitment which:
 - (i) should be made in order to deliver an optimal range of railway guest service patterns relative to Target Guest Demand; and
 - (ii) could be implemented and operated without additional resources and/or an adjustment to the Grant Payments;
- (c) its informed opinion as to any changes to the current Service Level Commitment which:
 - (i) would deliver an optimal range of railway guest service patterns in accordance with paragraph 5.1(b)(i); and
 - (ii) could only be implemented and operated with additional resources and/or an adjustment to the Grant Payments, together with an explanation as to:-
 - (A) what additional resources and/or adjustments are necessary to make such changes; and
 - (B) why such additional resources and/or adjustments are necessary;

5.2. CSL shall provide its opinion as to Service Level Commitment changes with due regard to:

- (a) any Route Utilisation Strategy, and any other Strategy published by the Authority;
- (b) the additional factors set out in Appendix 2 (*Service Development Additional Factors*) to this Schedule 1.1; and
- (c) any other constraints or considerations (including affordability constraints and value for money considerations) that SRH has notified to it.

5.3. SRH and CSL shall seek to agree the Service Level Commitment changes (which should be considered in the development of the draft Train Plan as referred to at paragraph 5.4) within 20 Weekdays of receipt of CSL's opinion as provided in accordance with paragraphs 5.1 and 5.2.

5.4. CSL will prepare a draft Train Plan within 12 calendar weeks of provision of CSL's opinion (as provided in accordance with paragraphs 5.1 and 5.2) which draft incorporates each set of proposed changes to the Service Level Commitment.

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

Indicative Timetable and Consultation

5.6. If and to the extent that CSL reasonably considers that any proposed change to the Service Level Commitment issued by SRH pursuant to this Schedule 1.1 contains insufficient information to enable it to perform its obligations under this Schedule 1.1, it shall promptly notify SRH and SRH shall provide such further information as is reasonably required.

5.7. CSL shall, as and when required pursuant to any procedural arrangements stipulated by SRH pursuant to paragraph 4.2 of this Schedule 1.1 provide SRH with a summary (in such form as SRH may specify) of any material changes that it would expect there to be to the Guest Services from the current Timetable if CSL's draft Train Plan were to be implemented.

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

Aligning Capacity with Demand

- 5.9. CSL shall prepare its draft Train Plan so as to operate the Train Fleet in an affordable, efficient and well performing manner whilst providing sufficient capacity on all days of the week on which Services are required to be operated pursuant to the then applicable Service Level Commitment in delivering Guest Services, save for any reasonable planning requirements for:
- (a) rolling stock vehicles to be out of service due to planned maintenance requirements, Mandatory Modifications or any other reasons agreed with SRH, (such agreement not to be unreasonably withheld); or
 - (b) those out of service due to unplanned maintenance or repair requirements.
- CSL shall plan during each day of the Timetable to operate the Train Fleet to satisfy the Fleet Availability Requirement.
- 5.10. CSL shall also, in preparing its Train Plan, unless SRH and the Authority otherwise agree, use all reasonable endeavours to:
- (a) provide for Guest Carrying Capacity on each Guest Service that meets as a minimum the Target Guest Demand;
 - (b) provide for the Guest Carrying Capacity (if any) specified for each Guest Service in a Service Level Commitment; and
 - (c) provide for reallocation of Guest Carrying Capacity to serve Special Events, as agreed with SRH and the Authority.
- 5.11. If, at the time it prepares its draft Train Plan, having exercised all reasonable endeavours, CSL is unable to prepare a Train Plan having the Guest Carrying Capacity and meeting the reasonable

expectations referred to in paragraph 5.10 of this Schedule 1.1, then the Train Plan shall specify the best allocation of rolling stock vehicles to Guest Services that is reasonably practicable with a view to:

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

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

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

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

6. Service Level Commitment

- 6.1. SRH shall, in accordance with any procedural arrangements stipulated by the Authority pursuant to paragraph 4.2 of this Schedule 1.1, issue to CSL the Service Level Commitment that it requires CSL to operate and notice of the changes (if any) to the Operating Performance Benchmarks that SRH will make pursuant to paragraph 1.1 of Schedule 7.1 (*Train Operating Performance*).
- 6.2. Any requirement for SRH to issue a final Service Level Commitment may be satisfied by it issuing a statement of how the existing Service Level Commitment is to be changed.
- 6.3. References in this Schedule 1.1 and in Schedule 1.2 (*Operating Obligations*) to a Service Level Commitment include a statement of how the existing Service Level Commitment is to be changed.

7. Timetable Development Rights

7.1. CSL 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 guest services that comply with the Service Level Commitment; and
- (b) if requested by SRH surrender any Timetable Development Rights that SRH considers CSL no longer requires.

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

- (a) Any specification of railway guest services in the Service Level Commitment shall (unless SRH states to the contrary) be regarded as relating to how those services are to be provided for in the National Rail Timetable that Network Rail publishes for guests, and not how they are to be

provided for in the working timetable that Network Rail issues to industry parties at the conclusion of its timetable development process.

- (b) Accordingly, CSL's obligations specified in this paragraph 7.2 shall be construed as an obligation to secure the requisite Train Slots in the working timetable to be issued by Network Rail at the conclusion of its timetable development process that will permit CSL to operate railway guest services that comply with the Service Level Commitments provided for in the relevant National Rail Timetable.
 - (c) CSL shall ensure, for each period between two consecutive Passenger Change Dates during the Term that the Timetable for such period is not materially different from the relevant working timetable issued by Network Rail at the conclusion of its timetable development process.
- 7.3. Unless SRH otherwise directs, CSL shall, for the purposes of securing a Timetable that complies with the Service Level Commitment, exercise its rights under the Track Access Agreement (including the Network Code) and otherwise to object, to make representations and to withhold consent in respect of any actual or proposed act or omission by Network Rail in relation to such agreement in respect of its Timetable Development Rights and in particular (i) seek the approval of SRH of the terms of reference or similar and (ii) not settle or compromise any claim.
- 7.4. Subject to CSL complying with its obligations under paragraph 7.3, it shall not be liable for any failure to secure a Timetable that enables CSL to operate railway guest services that comply with the Service Level Commitment, to the extent that such failure is caused by:
- (a) CSL's Timetable Development Rights being inadequate to enable it to secure the requisite Train Slots, provided that CSL has exercised all reasonable endeavours to obtain the requisite Timetable Development Rights in accordance with paragraph 7.1 of this Schedule 1.1;
 - (b) Network Rail exercising its flexing rights from time to time under the Track Access Agreement or the Network Code in respect of such Train Slots;
 - (c) Network Rail exercising its other rights from time to time under the Track Access Agreement or the Network Code; or
 - (d) the exercise by ORR of its powers pursuant to Section 22C of the Act.
- 7.5. Without prejudice to the provisions in paragraph 7.3 of this Schedule 1.1, if SRH does not consider that CSL has taken or is taking sufficient steps under paragraph 7.3, SRH may require CSL to exercise its rights referred to in paragraph 7.3 in such manner as SRH reasonably considers appropriate in the circumstances, including:
- (a) disputing any actual or proposed act or omission by Network Rail in respect of any Timetable Development Rights;
 - (b) submitting such dispute to any relevant dispute resolution arrangements or procedures and appealing against any award or determination under such arrangements or procedures, including to ORR; and
 - (c) not settling any such dispute or appeal without SRH's written consent.
- 7.6. SRH shall, to the extent reasonably practicable, allow CSL a reasonable opportunity to make representations to SRH concerning the exercise by CSL of any of its rights referred to in paragraph 7.3 before requiring CSL to take any action referred to in paragraph 7.5.
- 7.7. Where any proposal is made by another operator to vary its services or any proposal is made by Network Rail to change access rights in a way which could adversely affect any aspect of delivery of the Operator Services, CSL shall as soon as reasonably possible inform SRH and consult SRH

on its proposed response and shall carry out such actions as SRH shall reasonably require to oppose or influence such changes.

- 7.8. The provisions of paragraph 4 of Schedule 1.2 (*Operating Obligations*) shall apply to any actual or proposed omission or rescheduling of Guest Services that originates from any person other than Network Rail, as those provisions apply to Network Rail.
- 7.9. If and to the extent that CSL is not able to secure a Timetable enabling it to operate railway guest services that comply with the Service Level Commitments as a result of it not being able to obtain the Timetable Development Rights that it requires for that purpose, SRH shall issue to CSL a Service Level Commitment in the form required by paragraph 7.9(a), which shall operate between SRH and CSL only for the purpose referred to in paragraph 7.9(b):
- (a) any Service Level Commitment issued pursuant to this paragraph 7.9 shall be in a form that:
 - (i) would enable CSL to secure a Timetable in compliance with it by exercise of the Timetable Development Rights that CSL does have or would have had CSL 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 CSL by SRH; and
 - (b) any Service Level Commitment issued pursuant to this paragraph 7.9 shall, for the purpose of Schedule 9 (*Changes*) only, stand in place of the immediately preceding Service Level Commitment issued to CSL by SRH.

8. Certification and Notification by CSL of Timetable Bids

- 8.1. Before exercising any Timetable Development Right to bid for Train Slots, CSL shall provide a certificate addressed to SRH confirming that its proposed exercise of that Timetable Development Right will be compliant with its obligation specified in paragraph 7.2.
- 8.2. If requested by SRH, CSL agrees to demonstrate to the reasonable satisfaction of SRH and/or (as the case may be) Audit Scotland and/or the Authority that CSL's certificate referred to in paragraph 8.1 is a true and accurate confirmation of compliance with its obligation specified in paragraph 7.2. SRH agrees that the certificate will be acceptable if:
- (a) such certificate confirms that CSL has used assurance processes approved by SRH; and
 - (b) CSL has demonstrated its compliance with the Service Level Commitment by using such assurance processes.
- 8.3. CSL shall:
- (a) keep SRH fully informed of any discussions with Network Rail in relation to the matters referred to in this Schedule 1.1 which may have a material bearing on the ability of CSL to deliver the Service Level Commitment through the Timetable and shall, if required to do so by SRH supply copies of any related correspondence to SRH; and
 - (b) update any notification under this paragraph 8.3 and/or certification under paragraph 8.1 as soon as reasonably practicable, if at any time it elects or is required to modify any aspect of its exercise of its Timetable Development Rights following Network Rail's proposed or actual rejection or modification of its bid or any part of it or for any other reason.

9. Obligations in relation to Other Train Operators

- 9.1. Subject to the terms of the Licences and any applicable Law, CSL shall co-operate with other Train Operators and where necessary negotiate with other Train Operators (including resorting to railway industry processes) in respect of their Timetable Development Rights where such other Train Operators provide railway guest services meeting common or displaced guest demand, to ensure (in so far as CSL is able) or otherwise influence the same such that:
- (a) a reasonable pattern of railway guest service is provided on the relevant Route(s) to enable guests to make Connections (particularly where low frequency railway guest services are operated or last trains are involved, taking account of seasonal fluctuations in guest demand and the time needed to make any such Connection); and
 - (b) other policy objectives specified by the Authority and/or SRH (including without limitation any policy objectives outlined in the Framework Agreement) are not compromised.
- 9.2 CSL acknowledges that there are railway passenger services to, from or within Scotland provided by other Train Operators. Without prejudice to the foregoing generality of paragraph 9.1 of this Schedule 1.1, CSL shall co-operate with other Train Operators from time to time to ensure the continued provision of connecting and consequent passenger rail services and guest rail services to, from and within Scotland, provided as at the date of this Agreement and any improvements thereto.

10. Finalising the Train Plan

- 10.1. CSL shall submit its Train Plan prepared pursuant to paragraph 5 of this Schedule 1.1 to SRH as soon as reasonably practicable after Network Rail has published the working timetable on which the Timetable is to be based.
- 10.2. CSL shall, when submitting its Train Plan, certify to SRH details of how the Train Plan differs from the draft Train Plan in so far as the final Timetable has not been approved by SRH. SRH may notify CSL of:
- (a) any respect in which it considers that the Train Plan does not comply with the requirements of this Schedule 1.1; and
 - (b) any revisions that SRH requires to address such non-compliance, and CSL shall revise the Train Plan in accordance with SRH's requirements.
- 10.3. If CSL considers that any of the revisions that SRH requires pursuant to paragraph 12.2(b) are not required for the Train Plan to comply with this Schedule 1.1 then:
- (a) it shall nevertheless make such revisions;
 - (b) it may subsequently refer the question as to whether such revisions were so required for resolution in accordance with such dispute resolution procedure as it and SRH may agree or, in the absence of agreement, in accordance with the Dispute Resolution Rules; and
 - (c) following determination of any such dispute, SRH and CSL shall take such steps as are required to give effect to such determination.

APPENDIX 1 TO SCHEDULE 1.1**Initial Service Level Commitment****SERVICE LEVEL COMMITMENT**

relative to

CALEDONIAN SLEEPER OPERATION**Part 1 - General Provisions****1. DEFINITIONS and INTERPRETATION**

This Service Level Commitment has been issued by the Authority pursuant to paragraph 9 of Schedule 1.1 (*Service Development*) of the Franchise Agreement.

The following words and expressions have the following meanings in this Service Level Commitment:

Christmas means 25 and 26 December in any calendar year;

Connection means a connection (however described) between any of the Guest Services provided by the CSL and any other railway passenger service provided by it or any other passenger train operator or any bus, ferry or shipping service and where reference is made to a time period in relation to a Connection this refers to a waiting period for such Connection;

Edinburgh means Edinburgh Waverley;

Journey Time means the time in the Timetable to be taken by a service in travelling between the specified departure point and specified destination for that service;

London means London Euston;

New Year means 1 January of any calendar year;

Service means any Guest Service specified in this Service Level Commitment;

Weekday (notwithstanding any meaning given to that term in the Definitions Agreement) means any day other than a Saturday or Sunday; and

2. DAYS AND TIMES OF DAY

Except where expressly stated to the contrary, references to a day mean the period commencing at 0200 on one day and ending at 0159 on the following day and references to Weekdays and particular days of the week shall be construed accordingly.

References to periods of times and periods of days include the times and days such periods start and finish.

All references to time are to the twenty-four hour clock.

3. STATIONS

Except where expressly stated to the contrary and subject always to compliance with the other provisions of this Service Level Commitment (including any maximum Journey Times) nothing in this Service Level Commitment shall prevent services which are required to be included by, or on behalf of, CSL in the Timetable pursuant to paragraph 9.2 of Schedule 1.1 (*Service Development*) of the

Grant Agreement calling at any stations which are not specified in this Service Level Commitment or any relevant part of it, subject to obtaining the prior approval of the Authority.

Stations where demand for a particular service is such that there are often no guests wishing to leave or join the relevant service may be designated as a Request Stop Station for that service. Any such designation shall be clearly advertised in advance to intending guests (including in the Timetable).

4. CONNECTIONS

Except where expressly stated to the contrary, a service which is required to be included in the Timetable shall be provided so as to enable travel between the stations specified without guests being required to change train. Where a service may be provided by a Connection or where a Connection is required to be provided between two services, such service or combination of services may be provided without change of train being required.

Except where expressly stated to the contrary, where Connections are required to be provided by CSL in accordance with paragraphs 6.1 and 6.2 of Part 2 to this Appendix 1 to Schedule 1.1, CSL shall ensure that the scheduled interval or scheduled waiting period between the two relevant services as published in the Timetable is of a sufficient duration to allow guests a reasonable period of time to transfer between such services.

Except where expressly indicated to the contrary, where services are subject to maximum Journey Times, such Journey Times shall not apply where the services are required to be, or may be, provided by Connections.

5. PUBLIC HOLIDAYS

The level of Service required to be included in the Timetable for the following days shall, except to the extent the Authority otherwise agrees, be as follows:

24 December and 31 December:	No Services are required to be operated save in so far as comprising the completion of any Service which departed its Station of origin the preceding day
25, 26 December and 1 Jan	No Services are required to be operated

**Part 2 - Sleeper Services between London and Edinburgh/Glasgow and between London and
Aberdeen/Inverness/Fort William**

1 ROUTE DEFINITION

- 1.1 Overnight sleeper/room and seated Services shall be provided between London and each of the following stations:
- (a) Edinburgh
 - (b) Glasgow
 - (c) Aberdeen
 - (d) Inverness
 - (e) Fort William
- 1.2 The Services specified in paragraph 1.1(a-e) may be combined for part of the journey as CSL may think appropriate.
- 1.3 The Services between London and Edinburgh as specified in paragraph 1.1 shall:
- 1.3.1 where travelling northbound call (but not necessarily pick up) at Carstairs and Carlisle; and
 - 1.3.2 where travelling southbound call and pick up at Carlisle.
- 1.4 The Services between London and Glasgow as specified in paragraph 1.1 shall:
- 1.4.1 where travelling northbound call (but not necessarily pick up) at Carlisle, Carstairs and Motherwell; and
 - 1.4.2 where travelling southbound call and pick up at Carlisle, Carstairs and Motherwell.
- 1.5 The Services between London and Aberdeen as specified in paragraph 1.1 shall:
- 1.5.1 where travelling northbound call and pick up at Crewe and Preston and call (but not necessarily pick up) at Inverkeithing, Kirkcaldy, Leuchars, Dundee, Carnoustie, Arbroath, Montrose and Stonehaven; and
 - 1.5.2 where travelling southbound call and pick up at Inverkeithing, Kirkcaldy, Leuchars, Dundee, Carnoustie, Arbroath, Montrose and Stonehaven and call (but not necessarily pick up) at Crewe and Preston.
- 1.6 The Services between London and Inverness as specified in paragraph 1.1 shall:
- 1.6.1 where travelling northbound call and pick up at Crewe, Preston, Kingussie, Aviemore and Carrbridge and call (but not necessarily pick up) at Stirling, Gleneagles, Perth, Dunkeld & Birnam, Pitlochry, Blair Atholl, Dalwhinnie, Newtonmore, and
 - 1.6.2 where travelling southbound call and pick up at Falkirk Grahamston, Stirling, Dunblane, Gleneagles, Perth, Dunkeld & Birnam, Pitlochry, Blair Atholl, Dalwhinnie, Newtonmore, Kingussie and Aviemore and call (but not necessarily pick up) at Crewe and Preston..
- 1.7 The Services between London and Fort William shall:

- 1.7.1 where travelling northbound call and pick up at Crewe Preston, either Glasgow Central Low Level or Glasgow Queen St Low Level, Dalmuir, Dumbarton Central, Helensburgh Upper, Garelochhead, Arrochar & Tarbet, Ardlui, Crianlarich, Upper Tyndrum, Bridge of Orchy, Rannoch, Corrour, Tulloch, Roy Bridge and Spean Bridge; and
- 1.7.2 where travelling southbound call and pick up at Crewe, Preston, either Glasgow Central Low Level or Glasgow Queen St Low Level, Dalmuir, Dumbarton Central, Helensburgh Upper, Garelochhead, Arrochar & Tarbet, Ardlui, Crianlarich, Upper Tyndrum, Bridge of Orchy, Rannoch, Corrour, Tulloch, Roy Bridge and Spean Bridge.

2 SERVICE PATTERN – MONDAY TO FRIDAY

From London

- 2.1 The Services from London to Edinburgh/Glasgow specified in paragraph 1 shall arrive in Edinburgh and Glasgow respectively at or before 0800.
- 2.2 The Services from London to Aberdeen/Inverness/Fort William specified in paragraph 1 shall each arrive in Aberdeen, Inverness and Fort William at or before 0900, 0900 and 1000 respectively.

To London

- 2.3 The Services from Edinburgh and Glasgow, as specified in paragraph 1, shall arrive in London at or before 0800.
- 2.4 The Service from Aberdeen, as specified in paragraph 1, shall arrive in London at or before 0800.
- 2.5 The Service from Inverness, as specified in paragraph 1, shall arrive in London at or before 0800.
- 2.6 The Service from Fort William, as specified in paragraph 1, shall arrive in London at or before 0800.

3 SERVICE PATTERN – SATURDAYS

- 3.1 There is no requirement for the Services to be provided departing from their Station of origin on Saturdays.

4 SERVICE PATTERN – SUNDAYS

From London

- 4.1 The Services from London to Edinburgh/Glasgow specified in paragraph 1 shall arrive in Edinburgh and Glasgow respectively at or before 0800.
- 4.2 The Services from London to Aberdeen/Inverness/Fort William specified in paragraph 1 shall each arrive in Aberdeen, Inverness and Fort William at or before 0900, 0900 and 1000 respectively.

To London

- 4.3 The Services from Edinburgh and Glasgow, as specified in paragraph 1, shall arrive in London at or before 0800.
- 4.4 The Service from Aberdeen, as specified in paragraph 1, shall arrive in London at or before 0800.
- 4.5 The Service from Inverness, as specified in paragraph 1, shall arrive in London at or before 0800.
- 4.6 The Service from Fort William, as specified in paragraph 1, shall arrive in London at or before 0800.

5. OCCUPATION OF ROOMS / SEATED ACCOMMODATION

- 5.1 In the case of each of the Services specified in paragraphs 1 to 4, Rooms shall be made available for occupation by guests at the Station of origin for at least 30 minutes before a Service is scheduled to depart. The vacation of accommodation at the station of termination shall be required no earlier than:

Inverness – 08:45

Fort William – 10:00

Aberdeen – 07:45

Glasgow – 08:00

Edinburgh – 08:00

London Euston (Lowlander) – 07:30

London Euston (Highlander) – 08:00

- 5.2 In the case of each of the Services specified in paragraphs 1 to 4, seated accommodation if provided shall be made available for occupation by guests at the Station of origin for at least 30 minutes before such a Service is scheduled to depart. The vacation of seated accommodation at the station of termination shall be required no earlier than the times specified above at paragraph 5.1. CSL may require compulsory reservations to be made in advance for seated accommodation.

6. CONNECTIONS

- 6.1 CSL shall use reasonable endeavours to ensure that the service from Fort William to London specified in paragraph 1 shall connect, at Crianlarich, with a rail service (provided by SRT) from Oban. Waiting time shall be no more than 30 minutes.

APPENDIX 2 TO SCHEDULE 1.1

The Train Fleet

1. The composition of the Train Fleet

Subject to such fluctuations due to seasonality as the Authority may approve in writing the Train Fleet consists of:

- (a) guest rolling stock vehicles specified in Table 1 with the capacity characteristics referred to there, until the lease expiry dates referred to there.

Train Fleet Table 1

Column 1	Column 2	Column 3			Column 4	Column 5
Class of Vehicles	No of Vehicles and unit configuration				Owner/Lessor	Lease Expiry Date
		Seats	Berths	Total Guests		
Coach	PRM Coach x 14	N/A	2 x PRM berth 2 x Double Berths 2 x Classic Berths 9 beds	12 (assuming full double occupancy)	Caledonian Rail Leasing	31 st March 2030
Coach	Seated Coach x 11	31 (plus 1 wheelchair space)	N/A	31	Caledonian Rail Leasing	31 st March 2030
Coach	Sleeper Coach x 40		6x Ensuite Berths 4 x Classic Berths 20 beds	20 beds	Caledonian Rail Leasing	31 st March 2030

Column 1	Column 2	Column 3			Column 4	Column 5
Class of Vehicles	No of Vehicles and unit configuration				Owner/ Lessor	Lease Expiry Date
		Seats	Berths	Total Guests		
Coach	Club Car x 10			0	Caledonian Rail Leasing	31 st March 2030

2. Guest facilities in the Train Fleet

The Train Fleet consists of the rolling stock vehicles in Train Fleet Table 1 with the facilities and characteristics in Train Fleet Table 2 until the lease expiry dates referred to in Train Fleet Table 1.

Train Fleet Table 2

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9
Class of Vehicles	Internal CCTV	Toilets	Wifi	Bicycle and Luggage Carriage/Storage	Power sockets	Secure door lock to rooms	Windows for all berths/seated areas	Individual luggage locker for seats
Seated Coach	Yes	Yes	Yes	Yes	Yes	N/A	Yes	Yes
Club Car	Yes	Yes	Yes	No	Yes	N/A	Yes	N/A
Sleeper Coach	Yes (Corridor area and gangways)	Yes	Yes	Yes each room is lockable and secure	Yes	Yes	Yes	N/A

2.1 Each formation shall, wherever split, include at least one EA and TSI PRM compliant Berth and toilet.

2.2 Minimum toilet requirements:-

Two.

3. Train Fleet Availability Requirement

The Train Fleet available for service shall, subject to any fluctuations due to seasonality as SRH and the Authority may approve in writing, be no less than that identified in columns 4 and 5 of Train Fleet Availability Table 3 below.

Train Fleet Availability Table 3

Column 1	Column 2	Column 3	Column 4	Column 5
Class of Vehicles	Total Fleet	Planned Maintenance Allocation	Fleet available for Guest Services	Spare/Reserve
Seated Coach	11	1	9	1
Club Car	10	1	9	0
Sleeper Coach	40	2	36	2
PRM Coach	14	1	12	1

APPENDIX 3 TO SCHEDULE 1.1**Service Development Additional Factors****1. Additional Factors**

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

- (a) Actual Guest Demand;
- (b) the latest Forecast Guest Demand;
- (c) the revenue and cost consequences of operating railway guest services on the Routes;
- (d) opportunities to reduce the incidence of disruption caused by CSL, 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 Guest Services call which may affect Forecast Guest Demand;
- (i) the effect of the Service Level Commitment on the railway guest services operated by other Train Operators and/or freight operators;
- (j) interchange and inter modal opportunities;
- (k) Stakeholder and customer aspirations as expressed through specific responses to consultation pursuant to CSL's obligations under this Agreement;
- (l) the likelihood of Special Events generating sufficient guest demand to support the provision of additional railway guest services by CSL to or from such Special Events;
- (m) the impact of Extended Restrictions of Use, major projects, Major Scottish Projects or restrictions of use that may affect Forecast Guest Demand;
- (n) potential available diversionary routes;
- (o) infrastructure and rolling stock changes; and
- (p) such other matters as SRH may notify to CSL from time to time.

2. Policy Objectives

CSL shall, in applying its timetabling resource in terms of this Agreement and otherwise, look to ensure that timings and Connections are, at least preserved and, where possible, are improved in line with the

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

3. Enhancements

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

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

SCHEDULE 1.2

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

Operating Obligations**1. Daily Operating Obligation**

- 1.1 CSL agrees to use all reasonable endeavours to operate on each day of the Term those of its Guest Services as are set out in the Applicable Timetable for that day, with at least the Guest Carrying Capacity specified in the Train Plan.
- 1.2 CSL agrees to use all reasonable endeavours to operate the Train Fleet in accordance with the Service Quality Appendices.
- 1.6 CSL shall not:
- (a) remove any rolling stock vehicle from service; or
 - (b) remove any facilities from any Station with a view to distorting the results of any inspections or re-inspections or audits carried out in accordance with Schedule 7.2 (*Service Quality*).
- 1.7 CSL shall ensure that its performance in each Reporting Period calculated as a moving annual average in accordance with Schedule 7.1 (*Train Operating Performance*), will be equal to or better than the Target Performance Level specified in the cell relating to such Reporting Period in the Right Time Benchmark Table. It shall be a contravention by CSL of the terms of this Agreement if its performance falls below the Breach Performance Level in any Reporting Period.

2. The Train Plan

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

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

3. Amendments to the Train Plan

- 3.1 CSL shall use all reasonable endeavours to propose to SRH from time to time any amendments that it considers should be made to the Train Plan to better match the Guest Carrying Capacity of the Train Fleet to Target Guest Demand using evidence based recommendations and, having regard to:
- (i) any foreseeable differences that there may be between the Timetable and any Applicable Timetable; and
 - (ii) any material alteration in Target Guest Demand, subsequent to the issue of the Train Plan, that is:
 - (A) observable from the most recent determination of Actual Guest Demand in accordance with paragraph 1 of Schedule 1.5 (*Information about Guests*); or
 - (B) attributable to seasonal or exceptional factors; or

(C) reasonably anticipated due to (A) or (B).

- 3.2 CSL shall amend the Train Plan in accordance with SRH's response to its proposal.
- 3.3 Where there are short-notice factors or exceptional factors affecting guest demand to which CSL reasonably considers that it should respond before it is able to make a proposal to SRH in accordance with paragraph 3.1, it may amend the Train Plan prior to the submission of its proposal but shall notify SRH as soon as reasonably practicable afterwards and shall subsequently amend the Train Plan in accordance with SRH's response to such amendment.
- 3.4 The obligation to use all reasonable endeavours to propose amendments to the Train Plan to better match the Guest Carrying Capacity of the Train Fleet to Target Guest Demand is an obligation to use all reasonable endeavours to propose amendments which would either:
- (a) provide for Guest Carrying Capacity on each Guest Service that is at least equal to the Target Guest Demand for that Guest Service; or
 - (b) provide the best allocation of rolling stock vehicles to Guest Services that is reasonably practicable so as to:
 - (i) minimise the amount by which Target Guest Demand exceeds the provision of Guest Carrying Capacity on the affected Guest Services;
 - (ii) ensure, so far as is possible, that the excess of Target Guest Demand is not unduly concentrated on any particular Route or Guest Service;
 - (iii) minimise the extent to which the Guest Carrying Capacity specified for any Guest Service in a Service Level Commitment is not provided; and
 - (iv) best meet additional demand generated by Special Events.
- 3.5 If SRH does not consider that CSL has exercised all reasonable endeavours to make proposals as required by paragraph 3.1, SRH may require CSL to amend the Train Plan in accordance with SRH's requirements.
- 3.6 SRH and/or the Authority may request CSL to propose changes to the Train Plan to meet guest demand for Special Events. CSL shall amend the Train Plan in accordance with SRH's and/or the Authority's response to its proposal.
- 3.7 CSL shall ensure such amendments are communicated to guests as required in terms of paragraphs 2 and 3 of Schedule 1.4. (*Guest Facing Obligations*)

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

- 4.1 CSL shall notify SRH promptly after being notified by Network Rail that Network Rail has decided or proposes to:
- (a) omit from the Applicable Timetable Guest Services that are included in the Timetable; or
 - (b) reschedule in the Applicable Timetable Guest Services from their scheduling in the Timetable,

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

- 4.2 CSL shall explain in such notification the way in which, in its opinion, such omission or rescheduling may materially prejudice CSL's ability to deliver the Timetable with the Guest

Carrying Capacity stipulated in a Train Plan which satisfies the requirements of paragraphs 3.1 and 3.4.

- 4.3 CSL agrees to supply to SRH from time to time, in the format required by SRH such details of any actual or proposed omission or rescheduling of Guest Services by Network Rail as SRH may reasonably require, including details of the steps which CSL proposes to take pursuant to paragraph 4.4.
- 4.4 Where the actual or proposed omission or rescheduling of Guest Services is one which may materially prejudice CSL's ability to deliver the Timetable with the Guest Carrying Capacity stipulated in a Train Plan which satisfies the capacity requirements of paragraphs 3.1 and 3.4, CSL agrees (unless SRH specifically agrees otherwise) to act in the guest's interests and to exercise its rights under the Track Access Agreement (including the Network Code) and otherwise to object, to make representations and to withhold consent in respect of any actual or proposed omission or rescheduling of Guest Services by Network Rail. This obligation will stand notwithstanding any agreement between CSL and Network Rail.
- 4.5 If SRH does not consider that CSL has taken sufficient steps under paragraph 4.4, SRH may require CSL to exercise its rights referred to in paragraph 4.4 in such manner as SRH may consider appropriate in the circumstances, including:
- (a) disputing any actual or proposed act or omission by Network Rail in respect of any Timetable Development Rights;
 - (b) submitting such dispute to any relevant dispute resolution arrangements or procedures and appealing against any award or determination under such arrangements or procedures, including to the ORR;
 - (c) requiring any terms of reference or similar to be approved by SRH prior to submission or agreement by or on behalf of CSL; and
 - (d) requiring CSL to obtain SRH's prior approval of any settlement or compromise prior to offering or accepting the same.
- 4.6 SRH shall, to the extent reasonably practicable, allow CSL a reasonable opportunity to make representations to SRH concerning the exercise of any of its rights referred to in paragraph 4.4 before requiring CSL to take any action referred to in paragraph 4.5.

5. **Timetable Changes Proposed by CSL**

- 5.1 CSL agrees, subject to paragraph 5.2, not to propose to Network Rail:
- (a) the addition to the Applicable Timetable of any railway guest services which are not included in the Timetable;
 - (b) the omission from the Applicable Timetable of any Guest Services included in the Timetable; or
 - (c) the rescheduling in the Applicable Timetable of any Guest Services from their scheduling in the Timetable,
- without SRH's and the Authority's prior consent.
- 5.2 Paragraph 5.1 shall not apply to additional railway guest services to be operated to meet guest demand that CSL anticipates from Special Events (and any related omissions and/or rescheduling of Guest Services) which:
- (a) when operated, still permit CSL to deliver the Timetable with the Guest Carrying Capacity stipulated in a Train Plan which satisfies the requirements of paragraphs 3.1 and 3.4;

- (b) are consistent with any Route Utilisation Strategy or any other Strategy of Authority; and
- (c) are compliant with any framework that SRH may issue for the planning and operation of railway guest services.

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

- (a) which it has identified pursuant to paragraph 1(l) of Appendix 3 (*Service Development Additional Factors*) to Schedule 1.1 (*Service Development*);
- (b) which are not already provided for in the Applicable Timetable; and
- (c) which comply with the requirements of paragraph 5.2,

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

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

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

6.1 CSL agrees, as and when requested by SRH and/or the Authority, to use all reasonable endeavours to seek and to obtain:

- (a) the addition to the Applicable Timetable of any railway guest services that are not included in the Timetable;
- (b) the omission from the Applicable Timetable of any Guest Services that are included in the Timetable; and/or
- (c) the rescheduling in the Applicable Timetable of any Guest Services from their scheduling in the Timetable.

6.2 A request pursuant to paragraph 6.1 may include the addition of railway guest services on parts of the network which CSL may not have permission to use on the Commencement Date and/or on new parts of the network.

7. **Additional Railway Guest Services**

CSL agrees not to operate any railway guest services other than those:

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

8. **Obligations of CSL in the Event of Disruption to Railway Guest Services**

8.1 In the event of any planned or unplanned disruption to railway guest services operated on the Routes, or on other parts of the network which are reasonably local to the Routes, CSL shall:

- (a) without prejudice to any other provision of this Schedule 1.2, notify SRH promptly where such disruption would materially (having regard to both duration and scale) prejudice CSL's ability to deliver the Timetable;

- (b) use all reasonable endeavours to act in accordance with any Strategy or plan published or endorsed by SRH in relation to such disruption notified to it by SRH from time to time;
- (c) in accordance with the Passenger Information During Disruption Guidelines, where applicable, keep guests informed of the disruption and its impact on the said Timetable in a timely manner and consistently across all modes of communications and provide CSL's staff with the information they require to keep guests so informed, all as required in terms of paragraphs 2 and 3 of Schedule 1.4 (*Guest Facing Obligations*);
- (d) co-operate with Network Rail and other Train Operators to act in the overall interests of guests using such railway guest services, including using all reasonable endeavours to minimise and mitigate disruption to ensure that such disruption is not concentrated on a particular part of the network, except where such concentration either:
 - (i) would be in the overall interests of guests using such Guest Services or railway guest services and would not result in disproportionate inconvenience to any group of guests; or
 - (ii) is reasonably necessary as a result of the cause or the location of the disruption being outwith the reasonable control or anticipation of CSL or its Associates; and
- (e) provide or secure the provision of alternative transport arrangements in accordance with paragraph 8.2; and
- (f) keep guests and front line staff (both on train and other staff) informed and updated in a timely and consistent manner across all available media and means of communication as situations and responses unfold.

8.2 CSL shall secure the provision of alternative transport arrangements and passage on such alternative transport arrangements to enable guests affected by disruption referred to in paragraph 8.1 to complete their intended journeys in accordance with this paragraph 8.2. In particular, CSL shall:

- (a) ensure that such alternative transport arrangements are of reasonable quality, in so far as reasonably practicable provide reasonably similar departure and arrival times and Connections to the Guest Services included in the Timetable which such arrangements replace and reasonably fit for the purpose of the journey to be undertaken;
- (b) without prejudice to its obligations in paragraph 8.2(a), comply with any standards issued by SRH from time to time in respect of such alternative transport arrangements;
- (c) transport guests to, or as near as reasonably practicable to, the end of their intended journey on such Guest Services, having particular regard to the needs of any Disabled Persons and persons with additional needs due to their mobility issues (including, without prejudice to the foregoing, infirm or elderly persons and children) and, where appropriate, making additional arrangements for such Disabled Persons and other persons and the full range of guests and their luggage (including but not limited to pushchairs and bicycles) to complete their intended journey;
- (d) timeously provide adequate and prominent publicity and other practicable communication of, and detailed information on, such alternative transport arrangements in advance of, and during the course of, such disruption, subject, in the case of unplanned disruption, to CSL having sufficient notice of such disruption to enable it to provide such publicity;

- (e) where appropriate ensure staff are available to direct customers to alternative transport and provide guests with information on such alternative transport;
- (f) ensure sufficient alternative transport capacity for the reasonably foreseeable demand for the disrupted Guest Services;
- (g) ensure, if any planned disruption overruns, that there is a reasonable contingency arrangement for such alternative transport arrangements to continue for the duration of such overrun.

8.2 CSL, when appropriate and safe to do so, shall give its guests the option instead of making use of the alternative transport arrangements in terms of paragraph 8. 1 to stay in the train and make use of its facilities as overnight accommodation before completing their journey by such alternative transport arrangements as CSL has put in place for those guests making use of this option the following morning, such alternative transport leaving in the morning to allow completion of the intended journey by guests shall comply with paragraph 8. 1 except with regards to being of a reasonably similar frequency to the Timetable provided that such guests are able to complete the intended journey as soon as reasonably practicable after having made use of the train as overnight accommodation.

8.3 In the case of unplanned disruption referred to in paragraph 8.1 and disruption referred to in paragraphs 10 and 11, CSL shall use all reasonable endeavours to secure the outcomes specified in 8. 1 and 8.2.

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

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

8.6 Not used

8.7 Not used

8.8 CSL shall keep records (including a control room log) of all planned and unplanned disruption and make such available to SRH if requested. CSL shall provide SRH with copies of reports of inquiries into disruptive events/incidents and accidents.

8.9 CSL shall use guest feedback and lessons learned from planned and unplanned disruption together with best practices from other countries of dealing with similar events and performance against benchmarks to review, update and refine its responses to put new measures in place to more effectively mitigate the effect of similar events in the future, the 'voice of the guest'.

8.10 CSL shall report the feedback and lessons learned to SRH and the said intended new measures CSL intends to put in place.

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

9.1 Any obligation in this Schedule 1.2 on the part of CSL to use all reasonable endeavours to operate railway guest services shall include an obligation to:

- (a) ensure (so far as it is able to do so) the provision of the Guest Services as set out in the Applicable Timetable in ordinary operating conditions;

- (b) anticipate the matters referred to in paragraph 9.2 and take reasonable measures to avoid and/or reduce the impact of any disruption to the Operator Services having regard to all the circumstances, including the reasonably foreseeable risks arising from the matters referred to in paragraph 9.3; and
- (c) actively manage the performance by Network Rail of its contractual relationship with CSL (and provide appropriate management resources for this purpose) so as to secure the best performance beyond core contractual compliance reasonably obtainable from Network Rail by these means (including taking the steps referred to in paragraph 9.4), having regard to all the circumstances.

9.2 The matters to which CSL is to have regard pursuant to paragraph 9.1(b) shall include:

- (a) variations in climate, weather and operating conditions (including Network Rail's infrastructure not being available for any reason), which may in either case include seasonal variations;
- (b) default by, or restrictions imposed by, suppliers to CSL;
- (c) shortages of appropriately skilled or qualified Operator Employees;
- (d) disputes with Operator Employees;
- (e) the availability of the Train Fleet, having regard to the Fleet Availability Requirement;
- (f) establishing reasonable Turnaround Time allowances for enabling or disabling (as appropriate) any part of a train, the rostering of any train crew, the servicing or cleaning of any rolling stock vehicles in accordance with the current Service Quality Specifications relating to the condition of rolling stock vehicles;
- (g) failures of rolling stock vehicles in service and contingency arrangements (including spare and reserve rolling stock and rescue traction);
- (h) the split of the contracted traction between electric and diesel locomotives, or as applicable the split of the Train Fleet between electric and diesel units;
- (i) resilience planning for snow and other severe weather conditions and variance in the Scottish climate;
- (j) interactions with railway industry parties, Local Authorities and public agencies; and
- (k) the need to take pre-emptive and contingency measures.

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

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

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

- (a) co-operating with Network Rail in adopting the principles set out in any Service Recovery Plans agreed between Network Rail and CSL from time to time;
 - (b) undertaking a review during each Reporting Period of:
 - (i) the 10 most common causes of delay to the Guest Services; and
 - (ii) the 10 causes of delay to the Guest Services with the longest duration (to the extent not already reviewed in accordance with paragraph 9.4(b)(i)),
 which have occurred during that Reporting Period and which have been caused by CSL, any other Train Operator or Network Rail;
 - (c) undertaking with Network Rail a review of the time taken to recover the Guest Services following the occurrence of any of the events specified in paragraphs 9.4(b)(i) and (b)(ii) and seeking to identify and implement actions that reduce the delay effect of such events;
 - (d) undertaking a review of the way CSL communicated with guests during the occurrence of any of the events specified in paragraphs 9.4(b)(i) and (b)(ii) and seeking to identify and implement actions that improve communication with guests in relation to such events;
 - (e) setting up and holding regular and effective performance review meetings with Network Rail, evidenced by meeting minutes and the closure of actions agreed between SRH and CSL;
 - (f) regularly monitoring (at least every Reporting Period) the delivery of local output commitments made by Network Rail and using reasonable endeavours to specify and develop such local output commitments;
 - (g) as and when required by Network Rail, co-operating with Network Rail in improving the accuracy of future timetables by providing access to trains, other facilities or information;
 - (h) co-operating with Network Rail in other delay management, including alliancing and initiatives such as the use of virtual general managers and establishment of integrated control rooms;
 - (i) regularly reviewing (at least every Reporting Period) the imposition and clearance of temporary speed restrictions;
 - (j) regularly reviewing (at least every Reporting Period) the timely and efficient handover and hand-back of possessions; and
 - (k) where appropriate and where Network Rail fails to perform its obligations under the Track Access Agreement, enforcing CSL's rights under such Track Access Agreement.
- 9.5 CSL undertakes (subject to its obligations to prepare a Train Plan and secure a Timetable enabling it to operate railway guest services that comply with the Service Level Commitment and thereafter operate such services) to reasonably co-operate with Network Rail with regard to Network Rail's management of the network, including in relation to the establishment of up to date Timetable Planning Rules.
- 9.6 To the extent not already provided for in this Agreement, CSL shall use all reasonable endeavours to ensure the performance by Network Rail of its obligations under any relevant agreement including, where appropriate or where requested by SRH enforcing its rights against Network Rail under any such agreement.

- 9.7 When and to the extent reasonably requested by SRH, CSL shall provide to SRH evidence of the steps taken by it in order to comply with its obligations under this paragraph 9.
- 9.8 CSL shall in the event of disruption (whether planned or unplanned) which impacts the Caledonian Sleeper Operator Services, use all reasonable endeavours to co-operate with and provide support to SRT. Such co-operation shall without prejudice to the foregoing generality include Publication of appropriate information in respect of the disruption in question and the consequences of and mitigation for the effects of the same.
- 9.9 Without prejudice to the other terms of this Schedule 1.2, CSL shall take all necessary steps to provide for Guest Service resilience, including planning provision and training (including exercises) in respect of:-
- (a) interaction and co-operation with public agencies;
 - (b) traction;
 - (c) equipment;
 - (d) catering;
 - (e) station facilities;
 - (f) operational practices;
 - (g) staff rostering and duties;
 - (h) cross-support to other railway industry parties, transport providers and roads authorities;
 - (i) best practice and lessons learned;
 - (j) attendance at any resilience centre designated by the Authority and/or SRH;
 - (k) mutual support of SRT.

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

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

- 10.1 co-operate with the Authority and/or SRH in its resilience planning including without prejudice to the foregoing generality: -
- (a) attending (whether in person or remotely), at the Authority's and/or SRH's request, meetings of the Multi-Agency Response Team (or similar response group) at the Scottish Government's Resilience Room or otherwise; and
 - (b) engaging with the Scottish Government's preparedness initiatives relating to winter conditions and severe weather;
- 10.2 make such adaptations to the Train Fleet, other equipment or facilities essential to the provision of railway guest services as are reasonably necessary to respond to repeated and prolonged periods of severe weather (be it winter weather or otherwise);
- 10.3 put in place arrangements for emergency staff availability to respond to repeated and prolonged periods of severe weather (be it winter weather or otherwise);

- 10.4 use weather reports and forecasts to plan for disruption and to make decisions on when to implement its Resilience Plan;
- 10.5 co-operate with Network Rail, Associates and other Train Operators to provide support to each other, make staff available to each other and pass timely, accurate and detailed information about disruption to each other including attendance at Gold and Silver Command locations if required by SRH and/or the Authority;
- 10.6 use best practice with regards to planning for severe weather including such adaptations as referred to in paragraph 10.2;
- 10.7 comply with its Resilience Plan and any information Published and provided to guests as to how CSL will operate in such events save where the best interests of the guests would be better served by departing from the same; and
- 10.8 comply with the obligations in paragraph 11.

11 **Resilience Team (the Duty Manager and On Call) and Resilience Plans**

- 11.1 CSL shall designate a service disruption team within its staff ("the **Resilience Team**") consisting of at least two people suitably trained and experienced manager and managers with sufficient support staff whose duties shall include (where required) working with duty control managers to manage disruption to services and provide additional control resources during periods of severe disruption. The Resilience Team shall manage all third party communications with duty control managers.
- 11.2 CSL shall work diligently with Network Rail from the Commencement Date to agree a **Resilience Plan** for Operator Services consisting of guidelines detailing actions to be taken and emergency timetables. The Resilience Team shall be responsible for overseeing implementation of the Resilience Plan at the relevant time.
- 11.3 CSL shall develop and maintain a Resilience Plan, which as a minimum shall include:-
 - (a) consideration of the different effects severe weather can have on different types of trains and Guest Services;
 - (b) a strategy for all Routes and staff resourcing during extreme weather including emergency timetables and staff procedures in the event of disruption;
 - (c) diversionary routes (where practical) for all Routes and a strategy for security necessary rolling stock approvals and train crew knowledge and/or hiring of train crew;
 - (d) procedures to be implemented, communicating and working with Stakeholders to minimise disruption during severe weather, and how it plans to provide detailed up-to-date and easy to understand information to guests;
 - (e) details of any agreements reached with operators of bus services in terms of paragraph 8.4 hereof, and ensure staff have access to information including timetables for bus and other transport operator's services and the details of aforesaid agreements including without prejudice to the foregoing generality in relation to the validity of rail tickets on the bus services;
 - (f) its service disruption strategy covering alternative transport, key stakeholders, staff and training;
 - (g) service recovery timescales for different incident types on different Routes (including diversionary routes referred to in paragraph (c) above) including at all reasonably foreseeable events and consequences.

- 11.4 The Resilience Team shall ensure selected support staff and managers have been provided suitable training to include timetable interpretation skills, dealing with distressed guests and CSL's refreshments and compensation policy.
- 11.5 CSL shall implement a guest information strategy within six months of the Commencement Date for the purposes of communicating disruptions and other problems to guests at Stations which shall include:
- (a) Publishing plans, and CSL's proposed investments in conjunction with Network Rail as appropriate to protect against disruptive events and severe weather preparedness, especially prior to winter;
 - (b) email performance bulletins or SMS text messaging or specified social media (at the guest's option) including, where possible, real time information;
 - (c) providing suitable technology and devices to the Resilience Team and customer facing staff to provide customers with real time information.
 - (d) the provision of information (real time where possible) via CSL's web site, social media and text messages;
 - (e) procure the provision of information (real time where possible) and procuring prompt and accurate display of such on information display systems at all Stations; and
 - (f) the provision of mobile telephones to all of CSL's on-board train managers.
- 11.6 Representatives of the Resilience Team shall meet with SRH and the Authority as and when reasonably requested by SRH and/or the Authority. It is anticipated that additional briefings will be required in respect of anticipated major disruptive events and de-briefings after major disruptive events.
- 11.7 CSL shall use all reasonable endeavours to ensure messages and information in the event of disruption are shared consistently across staff, guests (and other relevant parties).
- 11.8 CSL shall use guest feedback and lessons learned from severe weather or other disruption together with best practices from other countries of dealing with similar events and performance against benchmarks to review, update and refine its Resilience Plan.
- 11.9 CSL shall monitor implementation of its Resilience Plan such monitoring shall include methods to benchmark performance during disruptive events.
- 11.10 CSL shall ensure provisions are made where guests, due to a disruptive event, will require to spend a prolonged period in a station so that those guests are kept safe and comfortable.

12 Performance Management Group

- 12.1 As part of its commitment to working with SRH, the Authority and Network Rail, and SRT, CSL shall work with Network Rail to attend a Periodic Performance Review/Performance Management Group ("**PMG**").
- 12.2 SRH and CSL shall liaise and cooperate together to prioritise the work of the PMG in consultation with each other and such Stakeholders as SRH may from time to time specify and shall regularly review the PMG programme in the light of requests from each other and such Stakeholders and available resources.
- 12.3 Taking into account the performance commitments of CSL and its rights and responsibilities in connection with its conduct of the Operator Services, it is anticipated that the PMG shall address the strategic issues arising from the following with the appropriate Stakeholders and their teams:

- (i) solutions to Timetable conflicts;
- (ii) the management and planning of service disruptions;
- (iii) solutions to reduce delays;
- (iv) the balance between service enhancements and performance; and
- (v) the balance between journey times improvements and performance and reliability.

12.4 CSL shall develop and operate Performance Management Systems to support the work of the PMG and all other aspects of CSL's performance of the Operator Services.

SCHEDULE 1.3

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

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

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

2. Revenue Collection And Protection Against Ticketless Travel

- 2.1 If CSL introduces a smartcard scheme for use by guests, whether on a permanent or trial basis, it shall ensure that any such scheme is compliant with any specification and operating requirement of the Integrated Transport Smartcard Organisation and/or any other Train Operators running services to, from or within Scotland. CSL shall ensure that guests travelling on any of its Guest Services in seated accommodation can do so using ITSO Certified Smartmedia or rail industry e-ticketing technologies which are in use by SRT or any other Train Operators running services within Scotland.
- 2.2 Each Business Plan Submission shall include details of CSL's plans for ensuring that appropriate revenue protection is applied to reduce ticketless travel or travel with invalid tickets to the greatest extent reasonably practicable with the intention of maximising revenue while also treating guests fairly and reasonably.

3. Performance concerning Ticketless Travel

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

4. Protection and Care Plan

- 4.1 CSL shall use all reasonable endeavours to ensure that, save where SRH agrees to the contrary, there shall at all stations that are equipped with a ticketing vending machine be an operational means for guests to retrieve pre-booked inter-operable tickets and reservations for seated Guest Services and also at all staffed stations be an operational means throughout the operational hours of the station of buying a seated ticket for travel and making a reservation for seated accommodation on Guest Services.
- 4.2 CSL shall procure that there shall be sufficient on-train and/or station staff to provide for late reservations and ticket purchases/upgrades and a reception, booking-in and information service to all guests arriving at the trains when boarding at all Stations.
- 4.3 CSL shall use all reasonable endeavours to ensure that on each Guest Service there shall be sufficient staff whose duties shall include the following customer care duties and revenue protection:
- (a) general provision of customer care duties including provision of information to guests and **"helping hand"** assistance to adults with small children, and infirm, elderly and disabled guests who may require such assistance;
 - (b) inspection of tickets, issuing of tickets to persons not in possession of a valid ticket and collection of revenue; and
 - (c) taking appropriate measures to deal with unruly behaviour by any guests, so far as is reasonably practicable in the absence of police assistance, and calling for police assistance when required.
- 4.4 CSL shall use all reasonable endeavours to ensure that the person mentioned in paragraph 4.2 shall actively carry out the inspection of tickets when guests board on each journey and that such person shall use all reasonable endeavours to ensure that no guest travels without payment of the required Fare.
- 4.5 CSL shall ensure that there are sufficient revenue protection staff on Trains as are required in accordance with the Business Plan as amended from time to time that no guest can gain access to board a Train without first having his/her ticket checked, where appropriate.

4.6 CSL shall use all reasonable endeavours to ensure that, at stations where automatic ticket barriers have been installed, no guest is required to queue due to revenue protection staff ticket examination or an automatic ticket barrier for more than:

(i) 3 minutes to access; or

(ii) 2 minutes to exit;

a platform when the guest is in possession of a valid ticket.

5. Special Events

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

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

(a) provision of additional and/or specific railway guest services including use where possible of rolling stock which would otherwise have been designated as spare rolling stock;

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

(c) the provision of joint ticketing promotions and offers in relation to the Guest Services and entrance to Special Events/attractions; and

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

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

6. Engagement with Visit Scotland and SRT in respect of Marketing Co-operation

CSL shall seek a meeting with Visit Scotland and SRT no less frequently than once every three months, to discuss tourism promotion matters, and shall provide the Authority with copies of meeting minutes and confirmation of matters arising and actions taken upon request.

7. Engagement with Visit Scotland and ScotRail Trains Limited marketing co-operation

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

7.1 CSL shall use reasonable endeavours to work with the Authority, VisitScotland and SRT to prepare and implement a strategy in respect of the promotion of tourism in Scotland and the promotion of the ScotRail and Caledonian Sleeper Services. CSL shall not implement such strategy without the prior approval of SRH and/or the Authority (such approval not to be unreasonably withheld or delayed). Such strategy may include (but shall not be limited to):

7.1.1 the identification of opportunities for joint marketing campaigns;

7.1.2 development of business to consumer marketing campaigns;

7.1.3 development of business to business marketing campaigns; and

7.1.4 development and use of joint marketing materials,

CSL shall use reasonable endeavours to ensure that such strategy shall be regularly updated and shall ensure that no amendments are made to such strategy without the prior approval of SRH and/or the Authority (such approval not to be unreasonably withheld or delayed).

8. Information Strategy

- 8.1 CSL shall deliver to SRH with each Business Plan Submission the Information Strategy. The Information Strategy shall cover all obligations on CSL under this Agreement relating to the provision of information for guests and potential guests.
- 8.2 Without prejudice to paragraph 9.1 the Information Strategy shall cover:
- (a) the Guest's Charter;
 - (b) Customer Complaints Handling Procedure;
 - (c) Accessible Travel Policy Policy;
 - (d) management and delivery of information to guests and potential guests;
 - (e) Dealing with Disruption Plan;
 - (f) Resilience Plan;
 - (g) identification and use of digital and developing communications technology;
 - (h) display and production of timetables;
 - (i) information available at stations and on trains;
 - (j) customer service provision including details of the Customer Contact Centre and its operation;
 - (k) co-operation with other public transport information providers; and
 - (l) details of its Communications and Marketing Strategy and its more general marketing strategy.
- 8.3 The Information Strategy shall be updated at least annually and each update shall be provided to SRH and the Authority along with CSL's commentary on their progress in implementing the Information Strategy.
- 8.4 CSL shall implement the Information Strategy throughout the Term.
- 8.5 CSL shall monitor all channels utilised to deliver information to guests and potential guests to ensure that its Information Strategy is appropriate and up to date.

SCHEDULE 1.4

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

Guest Facing Obligations**1. Licences compliance**

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

2. Publishing the TimetableThe First Timetable

2.1. CSL shall on and from the Commencement Date,

- (a) Make available the Timetable:
 - (i) as is practicable for customers who have specific requirements;
 - (ii) at each Station by display on poster providing QR code link, Totem (where available) and live departures via realtime information displays;
 - (iii) NOT USED
 - (iv) on the Website; and
 - (v) by such other means as SRH may, acting reasonably, specify;
- (b) use all reasonable endeavours to exercise all rights CSL has to require Network Rail, SRT or other Train Operators to make the Timetable available at:
 - (i) staffed stations by making relevant information available as is practicable for customers who have special requirements; and
 - (ii) Stations, by display via the means described in paragraph 2.1(a)(ii) and
- (c) use all reasonable endeavours to procure that SRT includes the Timetable in its timetable information.

Timetable Revisions and Alterations

2.2. CSL shall, without prejudice to its obligations under Schedule 1.2 (*Operating Obligations*), Publish updates or replacements to the Timetable at the locations specified in paragraph 2.1 to the extent necessary to reflect any changes which come into effect on a Passenger Change Date:

- (a) in the case of realtime information displays, no later than the day the changes come into effect;
- (b) in the case of information provided to the operators of the stations referred to in paragraph 2.1(b), in sufficient time for such information to be provided by such operators within the time limits provided for in this paragraph 2.2; and

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

Timetable Integration

2.3.

2.3.1 CSL shall use reasonable endeavours to identify, obtain and make available timetable information of operations of other forms of public which connect with Guest Services as SRH may nominate from time to time.

2.3.2 CSL shall co-operate with SRT or other Train Operators to have such timetable information referred to in paragraph 2.3.1 made available at Stations.

2.3.3 Without prejudice to the terms of paragraphs 2.1(b) and 2.2(c) above CSL shall co-operate with SRT, other Train Operators, or Network Rail as appropriate to make available the Timetable and information on railway guest services connecting the Guest Services at the following:-

(a) stations between and including Oban and Crianlarich;

(b) stations between and including Mallaig and Fort William;

(c) Leuchars (for St. Andrews); and

(d) other stations which in the reasonable opinion of CSL are significant tourist destinations or provide connections to ferry services or such stations that are nominated by the Authority as being significant tourist destinations or providing connections to ferry services.

Other Train Operators' Timetables

2.4 CSL shall use reasonable endeavours to procure that it makes available to guests information from the most recently Published timetables of other Train Operators.

Scottish Stations Map

2.5 CSL shall prominently display the Scottish Stations Map, as updated by SRT from time to time, on the Website.

Advertising and Promotion of Guest Services and Cross Modal Integration

2.6.

(a) CSL shall advertise and promote the Guest Services at stations in accordance with the Communications and Marketing Strategy and in a manner reasonably consistent with SRH's requirements for advertising and promotion of the Guest Services. CSL shall use all reasonable endeavours to ensure that any commercial advertising at Stations shall comply with the UK Code of Non-broadcast Advertising and Direct & Promotional Marketing (CAP code) and UK Code of Broadcast Advertising (BCAP Code) (as amended or replaced from time to time); and

(b) CSL shall provide and promote to guests cross modal onward journey information using both existing and emerging technology where appropriate.

National Rail Timetable and National Rail Enquiries

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

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

(a) the Timetable; and

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

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

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

Data Set Availability

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

Traveline and Transport Direct

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

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

(b) promote the services of Traveline and Traveline Scotland.

Website and Other Media/Medium

2.12. CSL shall:

(a) create, Publish and maintain the Website throughout the Operation Period which shall include (but not be limited to) the Timetable, marketing, ticketing and promotions information journey planning, ticket sales, the Guest's Charter or all information as set out in the Guest's Charter, and reservations functions and real time Guest Service information, and provide links to Traveline Scotland web site content and functionality and links to websites of CSL's Affiliates. CSL shall ensure that information is current and that the site is easy to use and provides comprehensive and engaging information for existing and potential customers. The Website may contain "pop ups" where these are used to request guest views on the quality of Guest Services or Operator Services or the quality or functionality of the Website. The Website may contain advertising material for third parties where such material (i) advertises products or services of a nature and quality which reflect the quality of and are not detrimental to the Operator Services and the Caledonian Sleeper branding (including without limitation, the

Authority IP) and (ii) complies with all applicable laws and best practices regarding the use of advertising technologies;

- (b) procure that any such publication and maintenance shall be in accordance with any guidance issued by the Authority and/or SRH to CSL from time to time;
 - (c) use such existing and emerging media/medium as CSL may request and as SRH may approve, or as SRH, acting reasonably, may specify from time to time for dissemination of information to guests.
- 2.13. To the extent that SRH and/or CSL owns copyright or other Intellectual Property Rights in and to the design and contents of the Website, SRH and CSL each hereby assigns all and whole its present and future right, title and interest in and to all such copyright or other Intellectual Property Rights free from all liens, charges and encumbrances to the Authority absolutely. SRH and CSL shall forthwith deliver to the Authority a copy of such documentation listings, flowcharts, specifications and manuals and such source and object code as created by or on behalf of SRH and CSL for the purposes of the Website.
- 2.14. CSL shall continuously review throughout the Operation Period all new and developing applications for marketing the Operator Services and provide information to SRH at Operation Performance Meetings on any new or innovative applications which are or may become available in order to market the Operator Services.
- 2.15. CSL shall as soon as reasonably practicable following any request by SRH, introduce any new or improved methods of marketing the Operator Services from the Website, including any new or developing media applications which may become available from time to time.

Data Provision and Links

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

Emergency Timetables

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

Announcements on-board trains

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

Communications and Marketing Strategy

- 2.19.
- (a) CSL shall submit a draft Communications and Marketing Strategy ("**C&M Strategy**") with each Business Plan Submission;
 - (b) The C&M Strategy shall seek to promote the Guest Services, achieve the policy objectives of this Agreement set out at clause 4.4, promote the benefits of cycling and the cycling facilities at Stations, promote rail travel as an environmentally friendly mode of transport and include specific fares and products, promotions and arrangements for Special Events;
 - (c) CSL shall implement the agreed C&M Strategy throughout the Term;
 - (d) The C&M Strategy shall be regularly reviewed (no less than annually) by CSL and SRH. CSL shall also seek the view of Stakeholders such as Visit Scotland when reviewing and updating the C&M Strategy; and

- (e) CSL shall ensure that any merchandising and/or other advertising activities conducted by or on behalf of CSL during the Operation Period shall not at any time conflict with the policies and objectives as set out in clause 4.4 of this Agreement. If SRH determines that any of CSL's advertising activities conflict or may conflict with SRH's policies, SRH shall notify CSL accordingly and CSL shall cease to conduct any such merchandising or advertising activity with immediate effect.

3. Late Timetable Changes

- 3.1. Save in respect of Significant Alterations, for which the provisions of paragraphs 2.2 and 2.8 shall apply, CSL shall inform guests, so far as possible on 7 days' prior notice, if it will be unable to operate its trains in accordance with the Timetable. Such information shall include any revised Timetable or travelling arrangements.
- 3.2. Such information shall be provided by:
 - (a) revising or adding to the information displays referred to in paragraph 2.1;
 - (b) notifying the operators of the stations referred to in paragraph 2.1(b), as appropriate including by providing such operators with revised posters;
 - (c) updating the Website and such other means as SRH may, acting reasonably, specify from time to time; and
 - (d) direct communication with guests who opt-in for such direct communication by such media to which the opt-in applies.
- 3.3. Where CSL is unable to provide the information specified in paragraph 3.1 because the relevant revisions are made on an emergency basis, CSL shall notify guests and Publish the relevant revisions by way of the means contemplated by paragraph 3.2 as soon as reasonably practicable.
- 3.4. CSL shall ensure that, so far as reasonably practicable (including by communication of the relevant information to persons likely to receive enquiries), guests making enquiries regarding the Guest Services are informed of the revised Timetable and any revised travel arrangements of CSL as far in advance as is reasonably practicable.

4. Fares Selling Restriction

- 4.1. CSL shall procure that all persons selling or offering to sell Fares on its behalf (whether under the terms of the Ticketing and Settlement Agreement, as its agents or otherwise):
 - (i) do not sell or offer to sell any Fare or Discount Card with a validity of 13 or more months, except as required to do so under the terms of the Ticketing and Settlement Agreement or otherwise without the consent of SRH and the Authority (such consent not to be unreasonably withheld); and
 - (ii) comply with the provisions of paragraph 3 of Schedule 15.2 (*Last 12 or 13 Months of Operation Period*) to the extent they apply to the selling of Fares by CSL.

Restrictions on Sales

- 4.2. CSL shall ensure that the purchaser of any Inter-available Fare:
 - (a) shall be entitled, without further charge, to such rights of access and egress and other similar rights at the commencement and end of the relevant intended journey or journeys as may be reasonably necessary for such purchaser to travel on the Guest Services;
 - (b) shall not be required to incur any cost or take any action beyond the payment of an amount equal to the Price or Child Price (as the case may be) of such Inter-available Fare, as the case

may be, and, in relation to the issue of a Season Ticket Fare, the completion of such identity card as CSL may reasonably require; and

- (c) shall not be required to pay an amount in respect of a seat reservation or other similar right which it may be compulsory for such purchaser to have in order to make a journey with such Inter-available Fare, as the case may be, on a Guest Service.
- 4.3. CSL shall procure that for Inter-available Fares, each such Inter-available Fare shall be offered for sale at all staffed ticket offices at which Inter-available Fares for a journey between the same origin and destination stations are sold and otherwise wherever and whenever any Season Ticket Fare is offered for sale, in each case, either by it or its agents (except persons acting in such capacity by virtue of having been appointed under Parts II to VI of Chapter 9 of the Ticketing and Settlement Agreement or by being party to the Ticketing and Settlement Agreement).
- 4.4. Subject to paragraph 4.3 CSL shall permit guests holding tickets for Inter-available Fares to use any unoccupied and unreserved seats, or alternatively (where deemed safe to do so) to stand on services between Stations within or between Edinburgh and Fort William and between Kingussie and Inverness and that without having made a reservation.

Additional Ancillary Services

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

Purchase of tickets from on-train staff

- 4.6 CSL shall ensure that its on-train staff shall be provided with the necessary equipment to allow them to:-
- (a) assist the Guest to purchase, subject to there being capacity on the particular service, tickets for Guest Services or any supplements in relation to any Inter-available Fares, direct to customers.

5. Guest's Charter

Content

- 5.1. CSL shall:
- (a) Publish its Guest's Charter and in accordance with CSL's obligations under the Code of Practice;
- (b) including a "**delay = repay**" compensation scheme based on delays to journeys. The value of compensation shall be at least:
- (i) An entitlement to claim compensation of a minimum of 25% of the Fare for the affected journey for guests delayed by between 30 and 59 minutes;
- and
- (ii) A minimum of 50% of the Fare for the affected journey for delays of 60 to 119 minutes;
- (iii) 100% of the Fare for delays of 120 minutes or more.

Compensation shall be provided in direct payment. Claims forms should be easily available and should be at no cost to the Guest to make a claim. The compensation scheme shall be straightforward and simple for affected guests to understand and to navigate;

(iii) a 'non-availability of facilities repay scheme' which shall comprise:

- Cancellation/en-route termination;
- Degraded/sub-standard facilities on the train (including failure to supply advertised catering);
- Lack of available facilities at Key Stations;
- Non-availability of booked accommodation; and
- Reservation failures.

CSL shall include details of compensation levels and methods of compensation in the Guest's Charter. Such compensation levels shall be of a quantum appropriate to the inconvenience caused with a minimum value of £5 Sterling per guest per incident. Such compensation levels and methods shall be agreed with the Authority from time to time.

- (c) in accordance with the requirements specified in paragraph 5.3;
- (d) review the need for changes to the Guest's Charter at least every 3 years, in consultation with the Passengers' Council, and shall submit a draft of any revisions to the Passenger's Charter that it wishes to propose, together with proof of such consultation, to SRH and the Authority; and
- (e) state the date of publication clearly on the front cover of the Passenger's Charter.
- 5.2. CSL may not change the Guest's Charter without the prior written consent of SRH and the Authority (which consent shall not be unreasonably withheld).

Publishing the Guest's Charter

5.3. CSL shall publicise its Guest's Charter by:

- (a) providing copies to SRH, the Authority and the Passengers' Council at least 7 days before it comes into effect;
- (b) providing electronic copies to guests including to visually impaired guests requiring a copy in large font or in a downloadable format that is readable by text to speech software and devices, free of charge, in the case of any revision thereto, providing such copies at least 7 days before such revision comes into effect;
- (c) sending a copy, free of charge, to any person who requests it; and
- (d) displaying it on the Website at all times and, in the case of any revision thereto, at least 7 days before such revision comes into effect.

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

- 5.4. CSL shall provide copies of its Guest's Charter in electronic form to the operators of the Stations to enable such operators to make it available or answer Guest questions in regard to it.

Guest's Charter Payments

- 5.5. CSL shall:

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

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

- 5.6. CSL shall use all reasonable endeavours:

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

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

Guest's Charter Statistics

- 5.7. CSL shall:

- (a) prepare the Guest's Charter Statistics (in accordance with the Guest's Charter Guidelines);
- (b) make the Guest's Charter Statistics readily available on the Website by midnight on the Saturday following the end of each Reporting Period.; and
- (c) at the same time, provide copies of its Guest's Charter Statistics to SRH, the Authority and the Guests' Council.

- 5.8. CSL shall:

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

6. Compliance with the Equality Act

- 6.1. SRH and CSL each undertake that it will comply with all of its current and future obligations under the EA and any regulations made thereunder.
- 6.2. The parties acknowledge and agree that the Public Sector Equality Duty at Section 149 of the EA shall be deemed to apply to SRH and CSL. SRH and CSL each undertake to comply with such duty including (without limitation) complying with all applicable obligations under The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012.
- 6.3. SRH and CSL shall comply with The Fair Work Convention 2015, The Fair Work Framework 2016 and the Scottish Government's Fair Work First Guidance (all as updated from time to time).

- 6.4. CSL shall not waive and shall take all necessary actions to preserve any existing or future derogations from the obligations referred to in paragraphs 6.1 to 6.3, and no other provision of this Agreement shall supersede this paragraph 6.4.
- 6.5. SRH shall not waive and shall take all necessary actions to preserve any existing or future derogations from the obligations referred to in paragraphs 6.1 to 6.3, and no other provision of this Agreement shall supersede this paragraph 6.5.
- 6.6. CSL undertakes that it will provide SRH and/or the Authority with such information as SRH and/or the Authority may from time to time require to enable SRH and/or the Authority to demonstrate its compliance with SRH's and/or the Authority's obligations in terms of the EA.

7. Specific Additional Obligations relating to Persons with Disabilities

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

CSL shall within 6 months of the date of this Agreement revise its Accessible Travel Policy such that it complies with that guidance, and obtain SRH's and the Authority's approval of the revised version.
 - (b) When required to review, revise and update CSL's Accessible Travel Policy by the ORR CSL shall update the said policy in consultation with SRH, the Authority, the Passenger's Council, Mobility Access Committee Scotland, SATA, SRAF and any other body as directed by the ORR.

- 7.4. CSL shall comply with the requirements set out in Appendix 1 to this Schedule 1.4 (*Alternative Transport and Website Stations Accessibility Stations*) in respect of the provision of alternative means of transportation for persons with disabilities.
- 7.5. CSL shall Publish and promote the availability of alternative means of transportation for guests with disabilities in terms of Appendix 1 of this Schedule 1.4 (*Alternative Transport and Website Stations Accessibility Stations*) by including suitable reference to it in all marketing materials, Guests' Charter and Timetables and providing detailed information on the applicable terms and procedures.
- 7.6. CSL's Accessible Travel Policy shall at a minimum be available on the Website.
- 7.7. CSL shall ensure all staff know the Accessible Travel Policy, of Passenger Assist and CSL's obligations in terms of Appendix 1 to this Schedule 1.4.
- 7.8. CSL shall ensure that the Club Car will also be able to accommodate users of the Guest Services with accessibility needs travelling in a Berth, or in the event of an operational limitation on the day endeavour to contact guests and advise them of any limitation.
- 7.9. If the Guest Services are late or cancelled, CSL shall procure that its staff use their tablet devices to source up-to-date travel information and help users of the Guest Services with accessibility needs to plan their next steps to get to their destination, or return home if this is preferable.
- 7.10. CSL shall provide a dedicated accessibility helpline and telephone free of charge.

8. Lost Property

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

9. Bicycles

- 9.1. CSL shall, so far as is reasonably practical and subject to the availability of appropriate space on Vehicles in the Train Fleet, ensure that reasonable facilities for the transport of bicycles on such Vehicles are made available, at no extra charge to that (if any, and including no charge) specified by the Authority to guests using the Guest Services. CSL shall not, without the prior consent of the Authority introduce charges for the carriage of bicycles. CSL shall be entitled to introduce and maintain a reservation system for the transport of bicycles on the Guest Services, but CSL shall then ensure the carriage of such guest's bicycle on the Guest Services if a prior reservation has been made, and CSL shall highlight this to users of the Guest Services.
- 9.2. CSL shall, so far as is reasonably practical and subject to the availability of appropriate space at stations, ensure that reasonable facilities for the secure storage of bicycles are made available to guests using the Guest Services.
- 9.3. CSL shall not, except to the extent SRH otherwise agrees, cease to provide the level of facilities for the carriage and storage of bicycles on the rolling stock vehicles used in the provision of the Guest Services as at the Commencement Date.
- 9.4. Except to the extent that SRH otherwise agrees having regard to, amongst other things, the likely use of such facilities (such agreement not to be unreasonably withheld), any new rolling stock vehicles which are procured directly or indirectly by CSL shall include reasonable facilities for the carriage and storage of bicycles.
- 9.5. Not used.
- 9.6. Notwithstanding any of the above, CSL shall not be in contravention of any of its obligations under this paragraph 9 if the reason for its failure to comply with any such obligation is the use by it on any particular occasion of some or all space otherwise available to cyclists and/or bicycles for the carriage and/or accommodation of wheelchairs and/or prams or infant buggies, and/or wheelchair

users and/or those guests travelling with such wheelchair users or infants. The on-train policy at the Commencement Date shall be preserved.

10. Car Parking at Stations

- 10.1. To the extent that CSL has control of any car parking at stations, CSL shall not agree to the introduction or variation of car parking charges at Stations without the prior consent of the Authority. Any such consent may, amongst other things, require that any additional revenue from car parking charges is paid to the Authority or that it be re-invested at the direction of the Authority in facilities at Stations, including car parks.
- 10.2. To the extent that CSL has control of any car parking at stations, CSL shall not agree to the reduction of the number of car parking spaces at any Station without the prior consent of SRH.
- 10.3. CSL shall use all reasonable endeavours to work with Network Rail, Local Authorities and commercial providers of car parking to co-ordinate parking policies and provision at and in the immediate vicinity of Stations.

11. Statutory Notices

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

12. Customer Contact Centre

CSL shall maintain for the Term a branded customer contact system which will provide a wide range of retailing and information provision services for Guest Services including telesales, provision of telephone services for guests with accessibility requirements and customer services activities. This customer contact system is to be for rail enquiries in respect of Guest Services and enquiries relating to the Caledonian Sleeper Services and is not to be promoted by CSL as dealing with other enquiries. CSL shall use reasonable endeavours to make the availability of such facility known to both customers and potential customers in Scotland, UK and internationally.

13. Catering

- 13.1. CSL shall provide catering facilities on every Guest Service.
- 13.2. The catering service should provide a good quality experience, which showcases Scottish cuisine, using locally sourced produce where possible.
- 13.3. Guests who have purchased a room must except for in unforeseeable circumstances have access to meals, snacks, breakfast, hot and cold drinks and alcohol.
- 13.4. CSL shall provide for the use of guests an area or areas on board each train in guest service where those guests with rooms may (subject to availability) consume food and drink outwith their room. Priority of access to such areas shall be offered to guests with Club and Double rooms.
- 13.5. All guests in rooms shall in addition have the opportunity to have breakfast served to them on the train on which they are travelling should they so wish, such guests should not require to consume non-breakfast items in their rooms if such guests do not wish to except for in unforeseeable circumstances.
- 13.6. CSL shall ensure that the guests travelling in seated accommodation have access to catered items either at their seats or at a conveniently located facility. Such catering services must be available at all times and not dependent on the availability of specific facilities such as vending machines except for in unforeseeable circumstances.

- 13.7. CSL shall offer a level of catering at Sleeper Station Lounges appropriate to the needs and numbers of guests using those particular Stations with Sleeper Station Lounges.

14. Help Points

CSL shall timeously provide SRT with such information as SRT would require to enable Caledonian Sleeper guests to use the ScotRail Help Points at Stations to obtain accurate information relating to the Guest Services.

15. Customer Complaints Handling Procedure

- 15.1. When required to review, revise and update the Customer Complaints Handling Procedure by the ORR, CSL shall update the procedure in consultation with SRH, the Passenger's Council and any other body as directed by the ORR.
- 15.2. CSL's Customer Complaints Handling Procedure shall at a minimum be available:
- (a) on the Website;
 - (b) available digitally on all trains used to provide Guest Services; and
 - (c) available digitally at all Stations.

16. Station Facilities

- 16.1. CSL shall ensure that guests have access to a waiting room, shower facilities and that digital connectivity will be provided at the Key Stations and Perth and Dundee. The standard of the aforesaid facilities and the charges (if any) payable in respect of their use may differ dependent on the ticket type of the guest making use of the aforesaid facilities;
- 16.2. CSL shall at any Station that is not a Key Station or one of the Stations referred to in paragraph 16.1 use all reasonable endeavours to ensure that all station facilities provided by the Facility Owner of that Station for the benefit of guests are available to guests using the Guest Service at all times when such guests will use the Station.

17. Minimum Staffing on Train Services

CSL shall ensure that the level and quality of staffing in relation to the Guest Services will be:-

- (a) appropriate for the class of provision on the Guest Service offered and/or advertised by CSL; and
- (b) so as not to negatively affect guest's perception of service quality except for in unforeseeable circumstances.

18. Payment Methods

CSL shall ensure that there is no additional charge or fee due to the method of payment used to pay for a reservation or Fare.

GUEST EXPERIENCE AND MARKETING

19. Partnering with Specialist Associates

- 19.1 CSL shall maintain the standards in place at the Commencement Date of:

- 19.1.1 accommodation design and presentation;
- 19.1.2 on board food and drink, including menu design, preparation and logistics;
- 19.1.3 product provenance;
- 19.1.4 staff training and development;
- 19.1.5 quality management;
- 19.1.6 product refresh programme; and
- 19.1.7 sales and distribution channels.

20. On Board Entertainment

- 20.1 In the Club Car, CSL shall, from time to time, use the Club Car to host special events. Such special events will include:
 - 20.1.1 Comedy nights;
 - 20.1.2 Whisky tasting nights;
 - 20.1.3 Literary events;
 - 20.1.4 Music events; and
 - 20.1.5 Halloween events themed to attract families.

21. NET Promoter Score and Guest Satisfaction Survey Score

- 21.1 CSL shall use the Net Promoter Score to help measure the general satisfaction of users of the Guest Services and capture information on how likely a user of the Guest Services is to positively recommend the Guest Services. CSL shall measure the Net Promoter Score for Guest Services via the Guest Satisfaction Survey as soon as possible after the Commencement Date and shall use this figure as a benchmark to track improvement of Guest Services as perceived by users of the Guest Services. CSL shall seek to maintain the Guest Satisfaction Survey score based on Overall Journey Satisfaction percentage rated 3 stars and above to at least 85%.

For the purposes of this paragraph 21.1, "**Net Promoter Score**" means the global customer loyalty metric, used across the service industry which is based on the central question: 'How likely are you to recommend our service to your friends, family and colleagues?'

22. Hospitality Accreditations

- 22.1 From the Commencement Date, CSL shall use all reasonable endeavours to maintain its existing hospitality accreditations from organisations which measure the position of the Guest Services within the Scottish and international tourism industry: such as the AA, TripAdvisor, Scotland Food and Drink, and VisitScotland.

23. Boarding Times

- 23.1 Subject to Paragraphs 23.2 and 23.3 of this Schedule 1.4, CSL shall use best endeavours to maintain the following boarding times for Guests at the starting locations in the table below.

Service	Current Time	Boarding	Departure Time
Aberdeen to London Euston	21.00		21.43
Edinburgh to London Euston	23.00		23.40
Fort William to London Euston	19.20		19.50
Glasgow to London Euston	22.00		23.40
Inverness to London Euston	20.00		20.45
London Euston to Aberdeen	20.30		21.15
London Euston to Edinburgh	22.30		23.50
London Euston to Fort William	20.30		21.15
London Euston to Glasgow	22.30		23.50
London Euston to Inverness	20.30		21.15

23.2 In order to maintain the boarding times described in the table above, CSL shall work with the relevant Station Facility Owners to secure platform availability and associated services, and work with Network Rail to facilitate Train Slots for the earlier movement of the Vehicles from Depots to Stations.

23.3 CSL shall use best endeavours to maintain such boarding times throughout the Term. If, having exhausted all reasonable endeavours, CSL nonetheless anticipates any change to such boarding times, then CSL shall notify and obtain approval from SRH and/or the Authority (such approval not to be unreasonably withheld or delayed) as soon as reasonably practicable.

24. Use by staff of tablet devices

24.1 CSL shall, subject to obtaining the relevant financial approvals for the associated expenditure, procure a CRM that allows on-train staff to use a tablet device to check in users of the Guest Services. CSL shall procure that on-train staff will also be able to use their tablets to sell meal options and arrange wake-up calls, as well as offer complimentary upgrades and suggest supplementary services for users of the Guest Services to purchase.

25. Standardised check-in process and Luggage

- 25.1 CSL shall maintain a standardised check-in process. The use of such a standardised check-in process shall ensure consistent checks take place before a user of the Guest Services boards the train thus mitigating the risk of unauthorised people accessing the train.
- 25.2 CSL shall ensure that all users of the Guest Services shall be able (subject to availability) to store large items of luggage in a dedicated, secure luggage space in the portion of the train which is appropriate to each user of the Guest Services' destination. Each such portion of the train will only be accessible by CSL's staff and will be free of charge to all users of the Guest Services.
- 26. Catering and dining**
- 26.1 CSL shall procure that the catering menus for the Guest Services shall be changed four times per year and CSL's whole catering approach shall be refreshed every five years.
- 26.2 CSL shall following implementation of a CRM system and subject to the associated investment being approved pursuant to paragraph 24.1, ensure that users of the Guest Services shall be able to pre-order catering during the booking process and again at check-in.
- 26.3 CSL shall following implementation of a CRM system and subject to the associated investment being approved pursuant to paragraph 24.1, ensure that users of the Guest Services staying in rooms will have the ability to reserve a table for dining in the Club Car during the booking process and again at check-in.
- 26.4 CSL shall ensure that all users of the Guest Services may order meals and drinks from the same brasserie menu from on-board staff or via the App. CSL shall ensure that such orders can be placed by users of the Guest Services whilst in their rooms and at their seat, and such orders shall be served to such users whilst in their rooms and at their seat.
- 26.5 CSL shall ensure that children aged 12 and under will, when accompanied by an adult purchasing a meal, eat for free in respect of items chosen from the children's section of the brasserie menu.
- 26.6 CSL shall ensure that orders from users of the Guest Services in the Club Car for food and drinks from the brasserie menu shall be taken and served at the tables in the Club Car.
- 26.7 NOT USED
- 26.8 CSL shall publish clear details of the brasserie menu on the Website and on the app so that it is available to users of the Guest Services when they make reservations for the Guest Services.
- 26.9 CSL shall following implementation of a CRM system and subject to the associated investment being approved pursuant to clause 24.1 ensure that users of the Guest Services shall be able to pay for their travel, dinner, bed and breakfast in one transaction.
- 26.10 CSL shall collaborate with an appropriate local entity (currently Scotland Food and Drink) to facilitate partnership with SME producers and suppliers.
- 26.11 CSL shall offer a full bar service throughout the journey from a bar counter in the Club Car. Drinks shall include (where these can be obtained from dependable supply chains):
- Scottish and London micro-brewery beers
 - Whisky from established and emerging distilleries
 - Scottish and London Gins
 - Scottish vodkas
 - wines by the bottle and glass
 - small selection of champagnes and proseccos
 - soft drinks
- 26.12 CSL shall use a central production unit which shall prepare CSL's catering menu for delivery to CSL on a daily basis.

26.13 CSL shall provide food and drink service in the Club Car to the "Caledonian Sleeper Quality" standard.

27. Sleep

27.1 CSL shall ensure that the Website, App and on-board literature will explain how sleep enhancing design features and furnishings have been included across the seats and rooms in the Train Fleet.

27.2 CSL shall maintain a 'Good Sleep Guide' in conjunction with the British Sleep Society or other equivalent organisation offering tips and advice to users of the Guest Services in respect of how to enjoy a good night's sleep.

27.3 CSL shall ensure that such 'Good Sleep Guide' shall be available on the Website and via the App, and shall also provide a 'sleep pack' to all users of the Guest Services. Such 'sleep packs' shall also contain eye masks and ear plugs. CSL shall also provide a sleep enhancing amenity kit to the users of the Guest Services who are travelling in rooms. If at the time of travelling, a user of the Guest Services notifies a member of on-board staff that a sleep pack has not been provided, the member of on-board staff shall provide such sleep pack, or, if for any reason, a sleep pack is not available, the member of on-board staff shall offer a refreshments voucher to such user of the Guest Services.

27.4 CSL shall ensure that users of the Guest Services travelling in rooms shall be able to (a) indicate they do not want to be disturbed by use of a 'do not disturb' sign and (b) order a morning wake-up call by using the App or requesting a call from a member of the on-board staff.

28. Key Suppliers

28.1 CSL shall procure bed mattresses for the Train Fleet from Glencraft. If CSL is unable to procure bed mattresses from Glencraft, CSL shall propose an alternative supplier of bed mattresses for the approval of SRH and/or the Authority (such approval not to be unreasonably withheld or delayed).

28.2 CSL shall procure laundry services from local laundry providers. If CSL is unable to procure laundry services from local laundry providers, CSL shall propose an alternative supplier of laundry services for the approval of SRH (such approval not to be unreasonably withheld or delayed).. CSL shall employ best practice to ensure sustainability in the linen procurement process.

28.3 NOT USED.

28.4 CSL shall enter into a commercial agreement with an appropriate consultant in respect of the provision of accessibility consultancy services. If for whatever reason during the Term, CSL shall cease to work with the accessibility consultant, CSL shall notify SRH and propose a suitable alternative replacement for approval by SRH (such approval not to be unreasonably withheld or delayed).

28.5 For the avoidance of doubt, nothing in this clause 28 shall require CSL to undertake any procurement activity which would not be in compliance with applicable procurement law requirements.

29. Souvenirs

29.1 CSL shall develop and submit for SRH and the Authority's approval during the second Operator Year a business case for offering a range of products which are relevant to the journey and the final destination. Such products may include a quality range of guide books, maps, novels, post cards of destinations, model train, soaps and gift packages. Subject to approval of such business case, CSL shall thereafter implement the approved solution and make such products available.

30. Safety and Security

30.1 At regular intervals, CSL shall organise safety and security workshops with the British Transport Police for on board staff.

- 30.2 CSL shall ensure that CCTV is in operation in all public areas of the train: in the Club Car and Seated Coaches, and in the corridors of the Sleeper Coaches.

31. Guest Communication

- 31.1 CSL shall ensure that all feedback from users of the Guest Services shall be acknowledged by CSL within one working day of receipt of such feedback, with a target of ten working days to investigate and respond to such feedback.
- 31.2 Without prejudice to any right a guest may have in terms of the Guest's Charter and the provisions of Paragraphs 5.1 (ii) and (iii) of this Schedule 1.4, CSL shall give the team leaders within its staff the authority to offer compensation during the journey and such compensation shall be set at an appropriate level for the issue in question: for example, complimentary refreshments, an upgraded accommodation offering, a voucher for future travel, etc.
- 31.3 CSL shall ensure that the Website and App have a section devoted to customer feedback.
- 31.4 If a user of the Guest Services remains dissatisfied in terms of the proposed resolution offered by CSL in respect of a complaint, CSL undertakes to sign-post the guest to their rights to refer the complaint to the Rail Ombudsman, who shall conduct an independent review of the case.
- 31.5 CSL shall send a pre departure email to each user of the Guest Services which shall summarise key journey details, as well as highlighting food and drink choices, and offer travel advice and tips about their destination.
- 31.6 At the end of each Reporting Period, CSL shall publish its performance against a range of measures covering the following areas:
- 31.6.1 punctuality and regularity;
- 31.6.2 guest ratings on:
- station experience
 - accommodation
 - food and drink
 - overall rating;
- 31.6.3 use of Scottish products and services; including from SME and social enterprise sources;
- 31.6.4 'Green Scorecard':
- carbon footprint
 - recycling
 - food and drink miles;
- information about such performance shall be published on all our guest communication channels (Website, email, Totem etc); and
- 31.7 CSL shall ensure that every user of the Guest Services shall receive an email from CSL within 48 hours of completing their journey. Such email shall invite such user to rate CSL on a number of key areas across the guest journey, including cleanliness, catering, staff welcome, signage/wayfinding, toilet and shower facilities, and waiting room and lounge facilities.
- 31.8 Where, from time to time, CSL makes any new facilities available to users of the Guest Services, or makes use of any facilities operated by a third party available to users of the Guest Services, CSL shall, if requested by SRH and subject to approval of any associated third party costs, demonstrate by survey results to SRH the proportion of users of the Guest Services who are aware of such facilities and the proportion of these users who have made use of such facilities. CSL shall identify and

implement any wayfinding and messaging improvements that any such review identifies within 6 months of the completion of any such survey.

32. People

CSL shall ensure that all of its staff who are appointed as Guest Service Hosts and team leaders are provided with an appropriate induction and training in respect of their role and the delivery of CSL's Service Standard. Such induction shall include the following:

- 32.1 Week 1 - Welcome to Caledonian Sleeper, Train Familiarisation, Basic Rail Safety, Emergency & Evacuation, Manual Handling, Basic Fire Safety, Emergency First Aid at Work and Accessibility;
- 32.2 Week 2 - "A Night in the Life of a Host." A comprehensive on-board training course providing an end-to-end walkthrough of the elements of a shift covering all customer touch points and what good service looks like referring to the relevant section of our Customer Service Guidelines. The training also includes a full session on Food Hygiene and Safety including allergens and practical sessions on preparing and serving food; and
- 32.3 Subsequent to the induction training described above, Hosts will then go onboard with a mentor for two weeks before being signed off.

Marketing

33. Guest Technology

- 33.1 CSL shall continue and evolve the current guest technology services ("**Guest Technology**") to enable users of the Guest Services to:
 - 33.1.1 book Caledonian Sleeper tickets as well as non-sleeper tickets;
 - 33.1.2 view tickets booked and develop a technology roadmap and business case for allowing Guests to amend and upgrade tickets as required;
 - 33.1.3 pre-book ancillary on board items on the Guest Services such as breakfast and a wake-up call before and during travel;
 - 33.1.4 view live travel information and updates about the Guest Services
 - 33.1.5 view useful information about the Guest Services such as which Stations have showers and disabled access;
 - 33.1.6 view destination information such as weather reports and events coming up;
 - 33.1.7 access external links for the booking of taxis/car hire, booking of events and destination accommodation or connecting transport services; and
 - 33.1.8 a self-management tool such as a chatbot for customers to ask and answer questions and undertake tasks in relation to their booking.
 - 33.1.9 purchase Caledonian sleeper merchandising/souvenirs online.
- 33.2 CSL shall maintain availability of the Guest Technology (or equivalent) throughout the Term and shall update the Guest Technology with further enhancements from time to time, subject to securing relevant financial approvals for the associated business cases.

34. Partnerships with on-line travel websites

- 34.1 CSL shall seek to work with on-line travel websites to raise the profile of the Guest Services and drive revenue where this proves to be a cost effective method of retailing.

35. Guest Services Contact Centre

- 35.1 CSL shall ensure that the Guest Services Contact Centre will be able to handle calls, emails and web chat, and manage social media feeds. CSL shall ensure that all staff working in the Guest Services Contact Centre shall manage all enquiries from service information to retailing tickets.

36. 12 months booking window

- 36.1 CSL shall offer bookings up to 12 months in advance of travel unless the option is withdrawn or altered by ATOC/RDG.

37. Business-to-Business Marketing (B2B)**Co-Marketing Partnerships**

- 37.1 In order to promote the Guest Services, CSL shall enter into partnerships with key businesses and stakeholders, such as:

37.1.1 VisitScotland, VisitEngland and other large and small tourist boards;

37.1.2 food and beverage and other product partners;

37.1.3 event partners including Whisky distilleries; and

37.1.4 hospitality partners

Product and Event Co-sponsorship Partnerships and Promotional Opportunities

- 37.2 In order to promote the Guest Services, CSL shall enter into co-sponsorship partnerships and consider promotional opportunities..

- 37.3 CSL shall work together with the organisers of the Edinburgh Fringe to co-promote both the Edinburgh Fringe and the Guest Services. CSL shall develop sponsorship opportunities with the organisers of the Edinburgh Fringe which will generate publicity as well as giving CSL access to the Edinburgh Fringe's marketing channels to widen the profile of the Guest Services further.

Corporate Travel

- 37.4 CSL shall engage in B2B marketing in respect of corporate travel including

37.4.1 corporate travel deals for businesses with travel needs between London and Scotland; and

37.4.2 working with relevant chambers of commerce to partake in relevant initiatives.

38. Press and Influencers

- 38.1 CSL shall invite representatives of the press and media influencers, from time to time, to travel on the Guest Services. CSL shall invite such people to use their time on board to write short pieces and posts that link to their experience / travel / Scotland and England as places to visit. Such pieces and posts may be used by CSL for the promotion of the Guest Services and a selection of such pieces and posts shall, from time to time, be published on the Website or other suitable media.

39. Customer Relationship Programme (CRM)

39.1 CSL shall develop and implement a CRM system which shall enable the collection and analysis of customer data, purchasing information, travel patterns. The use of such CRM system will support on-going communication to the customer base which shall enhance the overall customer experience as well as retain and grow such customer base. Such on-going communication shall include, pre-departure emails or telephone calls, post-journey feedback, communication of special offers and other similar communications.

40. Website Booking

40.1 CSL shall ensure that the Website shall be maintained and (subject to obtaining all necessary financial approvals for the associated business cases) improved and shall include:

40.1.1 inspirational content and information that is regularly reviewed, updated and refreshed;

40.1.2 a timetable of the Guest Services;

40.1.3 a modern and easy to navigate booking system; and

40.1.4 to develop a technology roadmap and business case for a self-management tool for customers..

APPENDIX 1 TO SCHEDULE 1.4**Alternative Transport and Website Stations Accessibility Information**

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

CSL shall provide alternative transport for that guest in accordance with paragraph 3.

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

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

4. CSL's obligations under this Appendix 1 are subject to:
 - (a) reasonable prior notice of the guest's requirement for alternative transport; and
 - (b) the availability of suitable alternative transport (provided that CSL has used all reasonable endeavours to ensure that it has arrangements in place to meet requirements for the provision of such alternative transport).

5. Where CSL provides alternative transport for a guest pursuant to paragraph 2, CSL shall permit a carer for that guest to accompany the guest on the alternative transport at no cost additional to the price of the Fare which would otherwise be payable for the carer's rail journey.

6. Website Stations Accessibility Information

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

SCHEDULE 1.5**THIS IS SCHEDULE 1.5 REFERRED TO IN THE FOREGOING CALEDONIAN SLEEPER GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND CALEDONIAN SLEEPER LIMITED****Information about Guests****1. Guest Numbers Information**

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

- (a) the number of guests travelling in each class of accommodation:
 - (i) on each Guest Service;
 - (ii) on each Route; and
 - (iii) at any station (meaning for this purpose both the numbers of guests getting on and off at the station and also the numbers of guests remaining on a train at the station) or between any stations; and
- (b) the times of the day, week or year at which guests travel; and
- (c) in so far as practicable the frequency with which guests use Guest Services on a repeat basis if at all,

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

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

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

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

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

- (a) be provided in such format and to such level of disaggregation as SRH may reasonably require in order to assist SRH's decision-making on future service level commitments, infrastructure, station and rolling stock vehicle investment, the best use of the network, the alleviation of overcrowding, the impact of promotions and

marketing, fare setting, monitoring, of investment and provision of services or requirement for services for Special Events; and

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

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

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

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

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

1.6 Manual Guest Counts

- (a) SRH shall have the right to require CSL should they consider there to be a benefit and subject to funding being made available to carry out independent manual counts in relation to all of the Guest Services at such times as may be required but not more than twice in any year and in such manner (including as to levels of accuracy and the number of days) as may be specified from time to time by SRH.
- (b) CSL shall supply the details of any such counts undertaken to SRH, as soon as reasonably practicable but within two weeks from the date of completion of such counts, in such form as SRH may stipulate.

1.7 SRH shall be entitled to audit such counts (whether by specimen checks at the time of such counts, verification of proper compliance with the manner approved by SRH or otherwise) and the reservations system data provided by CSL. In the event that such audit reveals, in the reasonable opinion of SRH, a material error, or a reasonable likelihood of material error, in such counts, SRH may require the counts to be repeated or the results adjusted as it considers appropriate, and in these circumstances CSL shall pay to SRH the costs of any such audits.

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

2. **National Passenger Surveys and Guest Satisfaction Surveys**

2.1 SRH and/or the Authority may use National Passenger Surveys, Guest Satisfaction Surveys or alternative arrangements to measure the level of guest satisfaction with the Operator Services;

2.2 SRH and/or the Authority shall agree with the Passenger's Council or other provider when (normally twice per annum) and where National Passenger Surveys, Guest Satisfaction Surveys or alternative arrangements are to be carried out;

2.3 CSL shall if required by SRH and/or the Authority grant access on trains or at stations to the Passenger's Council or other provider (or its representatives and agents including SRH) to

carry out National Passenger Surveys, Guest Satisfaction Surveys or alternative arrangements;

- 2.4 CSL shall co-operate with the Passenger's Council or other provider and SRH (in such manner as the Passenger's Council or other provider may reasonably request or as SRH and/or the Authority may reasonably direct) in order to enable the Passenger's Council or other provider to carry out National Passenger Surveys, Guest Satisfaction Surveys or alternative arrangements. This shall include any additional questions or surveys SRH and/or the Authority may request the Passenger's Council or other provider to conduct on SRH's and/or the Authority's behalf in addition to the National Passenger Surveys or Guest Satisfaction Surveys;
- 2.5 CSL shall immediately upon receipt of National Passenger Survey, Guest Satisfaction Surveys or alternative results forward the same to SRH and the Authority;
- 2.6 SRH, the Authority and/or the Passenger's Council or other provider may from time to time Publish the results of each National Passenger Survey, Guest Satisfaction Survey or alternative arrangements.
- 2.7 CSL shall co-operate with any statistical enquiry made by SRH, the Authority or Audit Scotland.

3. **Guest Satisfaction Surveys**

- 3.1 CSL shall carry out or procure the carrying out of a periodic survey on qualitative aspects of guest satisfaction with Operator Services with existing guests employing the methodology and sample size as adopted at the Commencement Date (or with such revisions as may subsequently be approved by SRH and the Authority) (a "**Guest Satisfaction Survey**") and shall make available to SRH and the Authority the findings of any surveys or consultations which CSL (or the Parent, Affiliate or their respective agents) commission in respect of any Operator Services.

SCHEDULE 1.6

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

Business Plan Commitments**1. Business Plan Commitments**

In each Operator Year:

- 1.1 CSL shall propose Business Plan Commitments to deliver the Caledonian Sleeper Policy Compendium Addendum outcomes.
- 1.2 SRH shall review and agree the Business Plan Commitments as part of their review and approval of the Business Plan.
- 1.3 CSL shall deliver the Business Plan Commitments as detailed in the agreed Business Plan.

2. Failure to Deliver Business Plan Commitments

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

3. Continuation of Availability

- 3.1. Save as expressly provided in this Schedule 1.6, CSL shall:-
 - (a) maintain facilities and assets established in accordance with its Business Plan Commitments throughout the remainder of the Term so that such shall be kept (and where necessary for those purposes replaced, improved or renewed) in an effective and efficient working order and state of repair and fit for the purpose of facilitating the provision of Guest Services in accordance with SRH's and/or the Authority's stated policy objectives and pass the same to the Successor Operator at the end of the Term free of any charge or encumbrances and at no cost to the Successor Operator, the Authority and/or SRH in a condition commensurate with such maintenance; and
 - (b) maintain services and activities in accordance with its Business Plan Commitments throughout the remainder of the Term, so that such shall be provided at the standard required under its Business Plan Commitment establishing such services and activities throughout the remainder of the Term.
- 3.2. CSL shall be deemed to be in compliance with paragraph 3.1, notwithstanding temporary non-availability due to accidental damage or vandalism or maintenance, repair or replacement activities, or employees absence, subject in each case to CSL taking all reasonable steps to keep any such period of temporary non-availability to a minimum. Where a Business Plan Commitment includes a commitment regarding employees or particular appointments CSL plans to make:-

- (a) CSL shall maintain each of the said employees or appointments from the date of its first provision of such post (which shall be the Service Commencement Date where the post is in existence at that date) for the remainder of the Term;
- (b) the obligation of CSL applies subject as otherwise expressly provided in this Schedule 1.6 and shall not be regarded as breached by temporary absences (for example for sickness or holiday) or between appointments to the relevant post (subject to CSL using all reasonable endeavours to keep the duration between appointments as short as reasonably practicable and to nominate suitably qualified and available interim or stand-in employees); and
- (c) this obligation is without prejudice to the rights of CSL in relation to the numbers or deployment of its other employees.

4. Expenditure

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

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

5. Liaison and Co-operation

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

6. Nature of Commitment

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

7. Expenditure Commitments

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

8. Review of Compliance

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

SCHEDULE 1.7

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

Operator Services**1. Operator Services**

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

2. Restrictions relative to Operator Services

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

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

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

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

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

3. Station Services

3.1 The Station Services shall comprise:

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

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

(iv) may include car parking.

4. **Light Maintenance Services**

4.1 Light Maintenance Services shall comprise:

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

at the Stations and at the Depots.

5. **Ancillary Services**

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

- 5.1 the selling, lending or hiring of any goods or rights and the provision of any services (whether for a charge or not) on any train used in the provision of the Guest Services where such goods or services are sold or provided principally (subject to paragraph 5.7) for consumption or use on that train, including the sale of any Fares, meals, light refreshments, newspapers, magazines, books, entertainment materials or media and communications connectivity;
- 5.2 the provision of any service at any station which, if provided on a train used in the provision of the Guest Services, would fall within paragraph 5.1 or which, if provided at a Station, would fall within paragraph 3 and which, in each case, is made available only or principally to persons at such stations who either are about to travel or have recently travelled on a train used in the provision of the Guest Services;
- 5.3 subject to obtaining the express consent of SRH and the Authority the subleasing, hiring or licensing of the rolling stock vehicles used in the provision of the Guest Services;
- 5.4 subject to obtaining the express consent of SRH and the Authority, the lending, seconding, hiring or contracting out during any Reporting Period to another person or persons (whether for a charge or not) of:
 - (a) up to five per cent. of the number of Operator Employees (as at the Commencement Date) for over 75 per cent. of their normal working hours during such Reporting Period (including on a full-time basis); and

- (b) up to ten per cent of the number of Operator Employees (as at the Commencement Date) for under 75 per cent of their normal working hours during such Reporting Period;

provided that this paragraph shall not apply to any employee lent, seconded, hired or contracted out under any of paragraphs 5.1 to 5.3 inclusive and 5.5 to 5.15 inclusive, or engaged in any other activity which is permitted under this Schedule 1.7;

- 5.5 the selling at any location of any Fare which is valid, in whole or in part, on the Guest Services and the selling of any other Fare at any location where such Fares may be purchased from CSL on or before the date of signature of this Agreement or at any other location provided that the majority of Fares sold at any such other location shall be Fares which are valid, in whole or in part, on the Guest Services;
- 5.6 the selling, in conjunction with any Fare, of any other rights which entitle the purchaser thereof to:
 - (a) travel on any other train or light rail service;
 - (b) travel on any aircraft;
 - (c) travel on any shipping or ferry service;
 - (d) travel on any bus; or
 - (e) attend any event or attraction or enter any location;
- 5.7 the lending, seconding, hiring or contracting out of Operator Employees to other Train Operators in order to enable such Train Operators to provide services at the Stations to passengers travelling on such operators' trains;
- 5.8 the provision of telephone, internet and mobile data services information relating to railway passenger services within Great Britain to passengers;
- 5.9 the supervision, management and training of train crew of other Train Operators provided such activity is necessarily incidental to the provision of the Guest Services or of CSL and could not reasonably be carried out by or through an Affiliate of CSL
- 5.10 subject to obtaining the express consent of SRH and the Authority, the subleasing, hiring, licensing, lending of any rolling stock vehicles or other assets of CSL or the lending, hiring or contracting out of any employees of CSL or the provision of any other services to Network Rail or any other Train Operator on an emergency basis;
- 5.11 the licensing or permitting of any other person (including an Affiliate of CSL) to carry out any activity or business, in connection with the provision of the Operator Services, or otherwise, on any rolling stock vehicle operated by CSL, at any Station, or otherwise (including the letting, leasing or licensing (on an exclusive basis or otherwise) of any part or all of a Station to such other person);
- 5.12 such other activity or business as may be reasonably necessary for the purpose of providing any other Operator Services or complying with this Agreement provided that it could not reasonably be carried out by or through an Affiliate of CSL;
- 5.13 the subleasing to any other person of the following property which is not comprised in a Station Area:
 - (a) Subleases of office accommodation at HQ

(b) Call Centre

- 5.14 the provision or operation of Charter Services, subject to the Train Mileage of such Charter Services not exceeding in any Reporting Period 20 per cent. of the scheduled Train Mileage of Guest Services provided by CSL in such Reporting Period, without the consent of SRH and the Authority;
- 5.15 the provision of consultancy services reasonably ancillary to the provision of the other Operator Services;
- 5.16 the sale of Caledonian Sleeper merchandise, branded products and/or souvenirs ("**CSL Branded Products**") and (subject to obtaining the consent of the Authority and SRH) the commercial licensing of third parties to sell CSL Branded Products and
- 5.17 any services or activity not falling within paragraphs 3, 4 or 5.1 to 5.15, subject to the gross value of any such services or activity (excluding any attribution of costs) not exceeding £1 million per annum each and in aggregate no more than £1 million per annum in each Operator Year, provided that in the second and each subsequent Operator Year, these amounts will be adjusted in accordance with the following formula:

Adjusted Amount = Original Amount x RPI

where RPI is the quotient of the Retail Prices Index for the January which immediately precedes the commencement of that subsequent Operator Year divided by the Retail Prices Index for January 2023.

SCHEDULE 1.8

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

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

1.1. CSL shall notify SRH:

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

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

1.2. If and to the extent requested by SRH and or the Authority, CSL shall:

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

2. Implementation of Works Specified in any Possession Strategy Notice

- 2.1. CSL shall co-operate with Network Rail, SRH and any other relevant party in connection with any proposed extended Restriction of Use specified in any Possessions Strategy Notice.
- 2.2. CSL shall co-operate with Network Rail in Network Rail's endeavours to obtain all consents required for the carrying out of each such extended Restriction of Use, including any required consent under

Part D of the Network Code and under Part G of the Network Code in respect of any related Network Change.

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

3. Initiation of Change

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

Part 2

Major Scottish Projects

1. Implementation of Major Scottish Project

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

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

SCHEDULE 2

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

Assets, Leases, Third Parties, Other Operations and Schemes

- Schedule 2.1: Property Leases**
- Schedule 2.2: Security of Access Assets and Rolling Stock Leases**
- Schedule 2.3: Third Party Delivery of Guest Services and Other Railway Operators**
- Schedule 2.4: Other Operations**
- Schedule 2.5: Transport, Travel and Other Schemes**
 - Appendix: List of Transport, Travel and Other Schemes**

SCHEDULE 2.1

THIS IS SCHEDULE 2.1 REFERRED TO IN THE FOREGOING CALEDONIAN SLEEPER GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND CALEDONIAN SLEEPER LIMITED

Property Leases

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

SCHEDULE 2.2**THIS IS SCHEDULE 2.2 REFERRED TO IN THE FOREGOING CALEDONIAN SLEEPER GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND CALEDONIAN SLEEPER LIMITED****Security of Access Assets and Rolling Stock Leases****1. Novation of Access Agreements During the Term**

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

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

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

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

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

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

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

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

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

2. Rolling Stock Related Contracts and Insurance Arrangements

2.1 CSL shall not:

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

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

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

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

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

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

3. Assignment of Property Leases during Term

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

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

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

responsibility for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant assignation); and

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

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

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

4. **Station And Depot Leases**

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

4.2 CSL shall not:

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

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

5. **Station Subleases**

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

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

6. SRH rights relating to Access Agreements and Property Leases

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

SCHEDULE 2.3**THIS IS SCHEDULE 2.3 REFERRED TO IN THE FOREGOING CALEDONIAN SLEEPER GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND CALEDONIAN SLEEPER LIMITED****Third Party Delivery of Guest Services and Other Railway Operators****1. Sub-contracting any Guest Services**

- 1.1 Subject to paragraph 1.2, CSL may not subcontract or delegate the provision of all or any part of the Guest Services without the prior written consent of SRH.
- 1.2 CSL may subcontract or delegate the provision of the Guest Services, provided that:
- (a) SRH receives prior written notice of any such subcontracting or delegation;
 - (b) CSL continues to be party to all Access Agreements and Property Leases necessary to provide such Guest Services and to enjoy all relevant access and operational rights thereunder;
 - (c) CSL continues to specify and control (within the limitations imposed on it by Schedule 5 (*Fares*)) the terms and conditions (subject to the requirements of the Inter-Operator Schemes) on which such Guest Services are to be provided, including the determination of the Price or Child Price (as the case may be) of any Fares;
 - (d) the Train Mileage of the Guest Services so delegated or subcontracted does not without the consent of SRH exceed 15 per cent. of the aggregate scheduled Train Mileage of CSL in any Reporting Period; and
 - (e) CSL continues to perform its obligations under Schedule 1.1 (*Service Development*) in respect of any subcontracted or delegated services.
- 1.3 CSL may sub-contract or delegate the provision of the Guest Services on a temporary basis where CSL requires to do so due to an unplanned or otherwise unavoidable shortage of availability of the rolling stock vehicles which comprise the Train Fleet rendering it impossible for CSL to operate all Guest Services provided that the total Train Mileage operated in any Operating Year by the operator of such sub-contracted or delegated Guest Services shall not exceed 15% of the aggregate scheduled Train Mileage for the Operating Year.
- 1.4 Any such subcontracting or delegation shall not relieve CSL from any of its obligations under this Agreement, including its obligations under this paragraph 1 and Schedule 14 (*Preservation of Assets*).

2. Other Railway Operators

- 2.1 If the railway operator of franchise agreement of a railway operator or franchisee terminates or a railway administration order is made in respect of a railway operator or franchisee, CSL shall co-operate with any reasonable request of SRH and/or the Authority to ensure:
- (a) that the services provided or operated by such railway operator or franchisee may continue to be provided or operated by any successor Train Operator or the railway administrator; and
 - (b) that the benefit of any arrangements between CSL and such franchisee which were designated as a Key Contract under such franchise agreement immediately prior to its termination or to a railway administration order being made will continue to be provided to any successor Train Operator or to the railway administrator.

- 2.2 The benefit of any arrangements of the type referred to in paragraph 2.1(b) shall be provided on substantially the same terms as previously obtained by the relevant railway operator or franchisee, subject to clause 7 and paragraph 2.3, provided that the Authority may exclude or modify any terms agreed or amended by such railway operator or franchisee in the 12 months preceding the date on which such railway operator or franchisee's grant or franchise agreement was terminated or the date on which the relevant railway administration order was made which were, in the Authority's reasonable opinion, to the material detriment of such railway operator or franchisee's business. The benefit of such arrangements shall be provided for such period as the Authority may reasonably require to allow the relevant Train Operator or railway administrator to renegotiate such arrangements or make alternative arrangements.
- 2.3 CSL shall notify SRH and the Authority of its intention to terminate any contract with any other Train Operator which is designated as a "**Key Contract**" under that Train Operator's franchise agreement and shall give that Train Operator sufficient notice to enable it to make suitable alternative arrangements for its guests without causing disruption to the railway passenger services provided by such Train Operator.
- 2.4 If the grant or franchise agreement of a railway operator or franchisee terminates in contemplation of the entry into or entry into effect of a new grant or franchise agreement with the same railway operator or franchisee in respect of all or a material part of the relevant railway passenger services, CSL shall waive any event of default or other right it may have to terminate any agreement with such franchisee arising out of such termination, provided that the entry into or entry into effect of such new grant or franchise agreement takes place.
- 2.5 References in this paragraph 2 to a franchisee include references to any railway operator or franchise operator of that railway operation or franchise.

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

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

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

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

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

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

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

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

3. Lounge Staffing at Stations

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

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

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

- 3.2 Subject to paragraph 3.3, CSL shall in respect of its own staff have regard to the views and representations of SRH, the Authority and the Rail Passengers' Council before implementing any proposals pursuant to paragraph 3.1.
- 3.3 CSL shall not implement any proposals in respect of its own staff pursuant to paragraph 3.1 at any Station without the agreement of SRH and the Authority.

4. **Royal Train**

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

5. **Charter Services**

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

SCHEDULE 2.5

THIS IS SCHEDULE 2.5 REFERRED TO IN THE FOREGOING CALEDONIAN SLEEPER GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND CALEDONIAN SLEEPER LIMITED

Transport, Travel and Other Schemes**1. Integrated Transport Schemes**

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

2. National and Local Authority Concessionary Travel Schemes

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

2.3 Subject to the terms of the relevant concessionary travel scheme and paragraph 2.8, CSL shall be entitled to cease to participate in any scheme referred to in paragraph 2.1 where, in the reasonable opinion of SRH:

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

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

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

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

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

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

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

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

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

3. **Multi-Modal Fares Schemes**

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

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

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

- (a) any multi-modal fares scheme set out in paragraph 3 of the Appendix to this Schedule 2.5 (*List of Transport, Travel and Other Schemes*), the terms of which have been amended since the date of signature of this Agreement; and
 - (b) such other multi-modal fares schemes as any relevant Local Authority, or the Authority or SRH may require or request it to participate in.
- 3.3 Subject to the terms of the relevant multi-modal fares scheme and paragraph 3.9, CSL shall be entitled to cease to participate in any scheme referred to in paragraph 3.1 where, in the reasonable opinion of SRH:
 - (a) CSL's continuing participation in such scheme; and/or
 - (b) the obligations assumed by the relevant Local Authority, or Authority or SRH in connection therewith,would fail, by way of distribution of income or otherwise, to render CSL financially no worse off.
- 3.4 Subject to paragraph 3.9, SRH shall not require CSL to participate in any scheme referred to in paragraph 3.2 where SRH is reasonably satisfied, that CSL's participation in any such scheme and/or the obligations to be assumed by the relevant Local Authority, or the Authority or SRH in connection therewith, would fail, by way of distribution of income or otherwise to render CSL financially no worse off.
- 3.5 In determining whether CSL shall, pursuant to paragraph 3.3, continue to participate or, pursuant to paragraph 3.4, participate in any multi-modal fares scheme, SRH shall construe the term **financially no worse off** to mean:
 - (a) in respect of any multi-modal fares scheme set out in paragraph 3 of the Appendix (*List of Transport, Travel and Other Schemes*), that CSL incurs no materially greater financial loss than the financial loss (if any) incurred by CSL at the Commencement Date under that scheme, as adjusted by reference to any change in the Retail Prices Index since such date;
 - (b) in respect of any multi-modal fares scheme which replaces and (in SRH's reasonable opinion) is reasonably similar to any such scheme as may be set out in paragraph 3 of the Appendix, that CSL incurs no materially greater financial loss than the financial loss (if any) incurred by CSL at the Commencement Date under the replaced scheme, as adjusted by reference to any change in the Retail Prices Index since such date; and
 - (c) in respect of any multi-modal fares scheme which does not replace or which does replace but which is not (in SRH's reasonable opinion) reasonably similar to any such scheme or schemes as may be set out in paragraph 3 of the Appendix (*List of Transport, Travel and Other Schemes*), the same as the meaning given to that term in the Regulations, as if the Regulations applied to such multi-modal fares scheme.
- 3.6 SRH shall consult CSL before making any request of CSL to participate in any amended or new multi-modal fares scheme pursuant to paragraph 3.2 and shall allow CSL a reasonable opportunity to make representations to it with respect to any such participation.
- 3.7 CSL shall supply to SRH, in respect of any multi-modal fares schemes referred to in paragraphs 3.1 and 3.2 such information within such period as SRH may reasonably require for the purposes of determining whether or not CSL is or will be financially no worse off as a consequence of its participation in any such scheme and/or the obligations to be assumed by the relevant Local Authority, or SRH in connection therewith.
- 3.8 If SRH and CSL are unable to agree whether CSL will be financially no worse off, SRH and CSL may resolve such dispute in accordance with the Dispute Resolution Rules.

- 3.9 If CSL's participation, or continued participation, in any multi modal fare scheme would make CSL materially financially worse off SRH may require such participation, or continued participation, and CSL shall participate in and comply with its obligations under such a scheme and take such steps as SRH may reasonably require. CSL's compliance with the terms of this paragraph 3.9 shall constitute a Change.
- 3.10 As regards each of the multi-modal fares schemes set out in paragraph 3 of the Appendix to this Schedule 2.5 (*List of Transport, Travel and Other Schemes*), provided the terms of the scheme are not amended, CSL agrees that its continuing participation in the scheme will render CSL financially no worse off.
- 3.11 Within the constraints imposed by competition legislation CSL shall throughout the Term:
- (a) co-operate with SPT to provide travel cards and Glasgow Subway fares as add on fares to Fares;
 - (b) co-operate with local bus operators to provide bus fares as add on fares to Fares; and
 - (c) continue to develop and improve the integration of local bus services with the Guest Services.
- 3.12 CSL shall, if so required by SRH and/or the Authority act as an impartial retailer through the website of tickets as between its tickets and any relevant multi-operator multi-modal tickets which it is from time to time authorised to sell.

4. **Discount Fare Schemes**

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

5. **Inter-Operator Schemes**

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

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

6. **ITSO Ticketing/Smartmedia Technology**

- 6.1 CSL shall:
- (a) if CSL proposes to use smartcard technology allowing guests using rooms to use smartcards, it shall ensure that such technology is fully ITSO Certified; and
 - (b) if guests travelling on any of the Guest Services in seated accommodation do so using ITSO Certified Smartmedia, CSL shall check if they have a valid product loaded which that has been retailed by other Train Operators including the SRT ticketing technologies, by the date on which such technology is introduced for any Route.
- 6.2 Where CSL operates Guest Services at stations where CSL is not the Facility Owner:
- (a) CSL shall co-operate with the relevant Facility Owner and any other Train Operators operating guest services from such stations with the intention of ensuring that any ITSO equipment operated by CSL pursuant to its obligations under this paragraph 6 is fully compatible with the ITSO equipment employed by such relevant Facility Owner or other Train Operators operating guest services from such stations with the intention of ensuring that ITSO equipment operated by CSL pursuant to its obligations under this paragraph 6 is fully compatible with the ITSO equipment employed by such relevant Facility Owner or other Train Operator (including as to ITSO Certified Smartmedia functionality to ensure as far as practicable reciprocal operation of such Smartmedia). It shall not be a breach of this paragraph 6.2 if the relevant Facility Owner or Train Operators fail to utilise ITSO compatible facilities at such stations; and
 - (b) CSL shall be permitted to utilise in relation to such stations reasonable non-station based equipment solutions (including train borne validators) for the purposes of delivering some or all of the required ITSO equipment functionality.
- 6.3 CSL shall ensure that:
- (a) guests travelling on the seated portion of the Guest Services can do so using ITSO Certified Smartmedia for all ITSO Fares;
 - (b) pursuant to its obligations under paragraph (a), where the National and Local Authority Concessionary Travel Schemes referred to in paragraph 2 and Discount Fare Schemes are made available and applied to Fares on ITSO Certified Smartmedia guests travelling on the seated portion of the Guest Services can use the same to travel.
- 6.4 To the extent that the cost of retail is economically viable, CSL shall use all reasonable endeavours to co-operate with Network Rail, RDG and other Train Operators in relation to the provision of equipment to permit ITSO Certified Smartmedia.
- 6.5 CSL shall support SRT in respect of smart cards across the SRT and this shall include the provision of assistance to SRT where there are synergies and opportunities for both parties

to attract new custom such as combining Caledonian Sleeper, local rail and island ferry journeys or connection into the local rail networks through the main destinations in Scotland. CSL shall engage its customer base for feedback and opinions around the use of smart technology.

Monitoring Requirements

- 6.6 Commencing with effect from the earlier of the Commencement Date CSL shall within 10 days of the end of each Reporting Period report to SRH the total number of Guest Journeys made during the relevant Reporting Period.

APPENDIX TO SCHEDULE 2.5

List of Transport, Travel and Other Schemes

1. Integrated Transport Schemes

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2. Local Authority Concessionary Travel Schemes

Scheme	Description	Elderly	Disabled	Disabled Companion	Young Person	Taxi Card	Blind Companion	Blind
Local Authority Areas Served <i>(It is generally noted for the avoidance of doubt that cross-border journeys are out with the scope of all these schemes).</i>								
	Aberdeen	Aberdeen City Council						ü ¹
Aberdeenshire & Moray	Aberdeenshire Council					ü		ü ¹
	Moray Council							ü ¹
Angus	Angus Council							ü ¹
Clackmannanshire, Falkirk & Stirling	Clackmannanshire Council							ü ¹
	Falkirk Council							ü ¹
	Stirling Council							ü ¹
Dumfries & Galloway	Dumfries & Galloway Council							ü ¹
Dundee	Dundee City Council							ü ¹
Eilean Siar	Comhairle nan Eilean Siar							ü ¹
Fife	Fife Council	ü	ü	ü			ü	ü ¹
Highland	Highland Council		ü	ü			ü	ü ²
Lothians	City of Edinburgh Council					ü		ü ¹
	East Lothian Council							ü ¹
	Midlothian Council							ü ¹
Orkney	Orkney Islands Council							ü ¹
Perth & Kinross	Perth & Kinross Council							ü ¹
Scottish Borders	Scottish Borders Council						ü	ü ¹
Shetland	Shetland Islands Council							ü ¹
Strathclyde Partnership for Transport	Argyll & Bute Council	ü	ü	ü			ü	ü ¹
	East Ayrshire Council	ü	ü	ü			ü	ü ¹
	East Dunbartonshire Council	ü	ü	ü			ü	ü ¹
	East Renfrewshire Council	ü	ü	ü			ü	ü ¹
	Glasgow City Council	ü	ü	ü			ü	ü ¹
	Inverclyde Council	ü	ü	ü			ü	ü ¹
	North Ayrshire Council	ü	ü	ü			ü	ü ¹
	North Lanarkshire Council	ü	ü	ü			ü	ü ¹
Renfrewshire Council	ü	ü	ü			ü	ü ¹	

Scheme	Description							
	South Ayrshire Council	ü	ü	ü			ü	ü ¹
	South Lanarkshire Council	ü	ü	ü			ü	ü ¹
	West Dunbartonshire Council	ü	ü	ü			ü	ü ¹
West Lothian	West Lothian Council						ü	ü ¹
	<ol style="list-style-type: none"> 1. Membership of the UK wide scheme for the visually impaired and a companion. Further details can be found at: http://internal.nationalrail.co.uk/64501.aspx 2. Local Authority operated Blind Concessionary Scheme membership 							

3. Multi Modal Fares Schemes

	SCHEME	DESCRIPTION
	AUTHORITY	
	Plusbus	Add on to any rail journey that starts or finishes at participating stations giving unlimited access to most buses in the local network.

4. Discount Fare Schemes

- 4.1. 16 -25 Railcard – (Up to 34% discount on Club Solo or Classic Solo rooms and seated products)
- 4.2. Senior Railcard - (Up to 34% discount on Club Solo or Classic Solo rooms and seated products)
- 4.3. HM Forces Railcard- (Up to 34% discount on Club Solo or Classic Solo rooms and seated products)
- 4.4. Veterans Railcard – (Up to 34% discount on Club Solo or Classic Solo rooms and seated products)
- 4.5. Family & Friends Railcard- (Up to 34% discount for adults and up to 81% for children on seated products.)
- 4.6. Disabled Adult and Child Railcards- (Up to 34% discount for the Railcard holder and a companion travelling together in either Club or Classic, shared or solo rooms and seated products.)
- 4.7. Two Together Railcards- (Up to 34% discount on seated products.)

5. Inter-Operator Schemes

- 5.1. RDG Staff Travel Scheme dated 23 July 1995 between the participants named therein;
- 5.2. RDG Ticketing and Settlement Agreement;
- 5.3. RDG LRT Scheme dated 23 July 1995 between the participants named therein;
- 5.4. RDG Travelcard Agreement dated 15 October 1995 between London Regional Transport and the parties named therein;
- 5.5. RDG Through Ticketing (Non-Travelcard) Agreement dated 15 October 1995 between London Regional Transport and the parties named therein; and
- 5.6. RDG National Rail Enquiries Scheme dated 11 June 1996 between the participants named therein.

SCHEDULE 3

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

Priced Options

This Schedule 3 relates to any Priced Options agreed between CSL and the SRH by Variation, and the terms upon which SRH may exercise each Priced Option.

1. SRH may call any Priced Option by serving written notice on CSL:
 - (a) at any time prior to the last date for the call of such Priced Option, and on the terms of such Priced Option, in which case the terms of such Priced Option, including the agreed cost and revenue amounts for that Priced Option, shall apply and CSL shall implement such Priced Option in accordance with those terms; and
 - (b) at any time after the last date for the call of such Priced Option and/or on different terms to those specified within such Priced Option in which case such call shall be a Change.

3. Any Priced Options will follow the format set out under the heading Priced Option – [Name]
Priced Option – [Name]
 - (a) Description, objective and specification
 - (b) Price for exercising the Priced Option
 - (c) Timescale for implementing Priced Option

SCHEDULE 4

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

Maintaining and Enhancing Stations, Depots and Trains

Schedule 4.1: Operation Facilities

Appendix: Station Surveys

Schedule 4.2: Persons with Disabilities and Disability Discrimination

SCHEDULE 4.1

THIS IS SCHEDULE 4.1 REFERRED TO IN THE FOREGOING CALEDONIAN SLEEPER GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED, AND CALEDONIAN SLEEPER LIMITED

Operation Facilities**1. Operation Facilities Surveys**

- 1.1 If requested by SRH, CSL and SRH shall undertake joint surveys that record:
- (a) the facilities and characteristics of the rolling stock vehicles comprising the Train Fleet;
 - (b) the interior and exterior condition of each of the rolling stock vehicles comprising the Train Fleet;
 - (c) the facilities available at each Station Lounge and their operational status and condition;
 - (d) the information provision facilities at each Station Lounge and their operational status and condition;
 - (e) not used;
 - (f) the aesthetic condition and the state of repair of each Station Lounge;
 - (g) the facilities available at each Depot and their operational status and condition; and
- 1.2 CSL and SRH shall be entitled to use photographic or video recording equipment in the carrying out of any survey pursuant to paragraph 1.1 but in any event both of them shall record the results of such surveys in accordance with paragraph 2.
- 1.3 The surveys shall be completed within four months of the date of request under paragraph 1.1 (or such other period as SRH and CSL shall agree). CSL shall co-operate with SRH in relation to the surveys in order to, as far as possible, carry out such surveys in conjunction with:
- (a) in respect of the Train Fleet, the owners of any rolling stock vehicles within the Train Fleet;
 - (b) in respect of the Station Lounges used by CSL, representatives from Network Rail or SRT (as applicable); and
 - (c) if the survey is to be completed before the Commencement Date, in respect of the matters referred to in both paragraphs 1.3(a) and (b), representatives of the Outgoing Operator.
- 1.4 If requested by SRH, the surveys under paragraph 1.1 shall not be joint but shall be undertaken by CSL and CSL shall provide SRH with all information it may request to audit and verify the results of any survey. The cost of joint surveys in respect of the Station Lounges and the Train Fleet shall be divided equally between CSL and SRH.
- 1.5 In respect of the matters referred to in paragraphs 1.1(g) and 1.1(i), each Station shall be further categorised, in the case of all Station Lounges, by SRH and CSL (and, in the absence of agreement, SRH shall reasonably determine the categories) in accordance with the following condition standard:

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

2. The Operation Facilities Book

- 2.1 Within one (1) month of the completion of any survey, pursuant to paragraph 1.1, SRH and CSL shall agree the extent of the items listed in paragraph 1.1 and their condition for the relevant rolling stock vehicles, Station Lounge or Major Station Area. In the absence of such agreement within one (1) month of the completion of a survey, SRH shall reasonably determine the extent of the items listed and their condition within a further month of the completion of the survey in question.
- 2.2 The record of the extent and condition of the items listed in paragraph 1.1 as agreed between CSL and SRH or determined by SRH shall be compiled in and known as the **Operation Facilities Book** as more particularly described in paragraph 2.3. The Operation Facilities Book may contain no entry or entries as at the Commencement Date and may be compiled as the surveys in respect of matters referred to at paragraph 1.1 are carried out.
- 2.3 The Operation Facilities Book shall include the following:
- (a) a list of:
 - (i) those facilities identified pursuant to paragraph 1.1;
 - (ii) those facilities which, from time to time, replace any facilities specified therein; and
 - (iii) any:
 - (A) additional rolling stock vehicles, which from time to time, are used by CSL in the provision of the Guest Services; and

- (B) additional facilities, which from time to time, are made available in the provision of the Operator Services by CSL (or as a consequence of any of the arrangements mentioned in paragraph 5) at the Stations and the Station car parks,

(together the **Operation Facilities**);

- (b) a summary of the operational status and condition of each Operation Facility at the date of such facility's inclusion within the Operation Facilities Book; and
- (c) a list of the Station Lounges in the format set out in the Appendix (*Station Surveys*) to this Schedule 4.1 and listing the following:
 - (i) not used
 - (ii) in respect of each Station Lounge, the standard according to the categories determined pursuant to paragraph 1.5;
 - (iii) in respect of each Station Lounge, the aesthetic condition of the items referred to in paragraph 1.1(f);
- (d) such other matters as required by the Authority from time to time to give full effect to Schedule 7.2 (*Service Quality*).

2.4 CSL shall compile and maintain the Operation Facilities Book:

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

2.5 The Operation Facilities Book shall also record which Station Lounges are staffed and during what hours they are staffed.

2.6 CSL and SRH shall work together in compiling the Operation Facilities Book (and any computer records relating thereto) with the intention that the book will be capable of being a computerised record covering all Operation Facilities without undue difficulty or expense.

2.7 The Operation Facilities Book shall be available for inspection (and copying) in Scotland during normal business hours by, or on behalf of, the Authority and/or SRH. CSL shall ensure that SRH and the Authority is provided with a complete copy of the Operation Facilities Book promptly after its completion and CSL shall also promptly provide updates from time to time.

3. **Obligations during the Term**

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

- (a) in aggregate across the Caledonian Sleeper Operations; and

there is no degradation of the condition of Station Lounges (the "**Station Lounge Condition Maintenance Programme**") during the Term from the conditions determined pursuant to paragraph 1.5.

- 3.2 The Station Lounge Condition Maintenance Programme shall identify the categories of work to be undertaken at each Station Lounge and the timetable for completing each category of such work.
- 3.3 Clause not used.
- 3.4 Clause not used.
- 3.5 CSL shall use all reasonable endeavours to procure that the Station Lounge Condition Maintenance Programme is implemented in accordance with its respective terms.
- 3.6 CSL shall review the content and implementation of the Station Lounge Condition Maintenance Programme at least once every 13 Reporting Periods and shall make the results of such review available to SRH at the next Operation Performance Meeting following completion of such review.
- 3.7 If and to the extent:-
- (a) CSL replaces any of the facilities specified in an Operation Facilities Book or makes available for use any additional facilities at the locations referred to in paragraph 1.1; or
 - (b) additional assets or facilities are made available at those locations in consequence of any of the arrangements referred to in paragraph 5 or of CSL carrying out any other obligations pursuant to this Agreement.

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

4. **Operation Facilities Surveys to End of the Operation Period**

- 4.1 For the purpose of determining prior to the end of the Operation Period:
- (a) the extent and condition of the Operation Facilities; and
 - (b) in the case of the Station Lounges, in aggregate across the Caledonian Sleeper Operation there has been any degradation of the condition of the Stations from the conditions determined pursuant to paragraph 1.5,

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

- 4.2 The surveys referred to in paragraph 4.1 shall be conducted:
- (a) no more than 12 months prior to and no less than 6 months prior to the Expiry Date; or
 - (b) following service of a Termination Notice, within such period as SRH may reasonably specify.
- 4.3 Within 1 month of the completion of the last survey pursuant to paragraph 4.1 SRH and CSL shall agree, or in the absence of such agreement, SRH shall reasonably determine
- (a) the extent and prevailing condition of the Operation Facilities including:
 - (i) in respect of each Station, the prevailing condition according to the condition standards set out in paragraph 1.5; and

(ii) in respect of each Station, the aesthetic condition of the items referred to in paragraph 1.1(f).

(b) not used

4.4 It shall be a contravention of this Agreement if there is any degradation, in aggregate across the Caledonian Sleeper Operation in the conditions of the Station Lounges from the conditions determined pursuant to paragraph 1.5.

5. Work required by SRH

5.1 SRH may issue a Variation to this Agreement in order to remedy, improve or enhance any aspect of the condition (including the aesthetic condition) or state of repair of, or the facilities available at a Station Lounge or on a rolling stock vehicle comprised in the Train Fleet.

5.2 CSL shall co-operate with SRH in conducting any surveys and pricing any remedial, improvement or enhancement work, if required to do so by SRH, and contracting for and project managing the remedial, improvement or enhancement work and completing and complying with the terms of any Variation to remedy, improve or enhance any aspect of the condition (including the aesthetic condition) or the state of repair of, or the facilities available at, a Station Lounge or on a rolling stock vehicle comprised in the Train Fleet.

5.3 Once remedial work, improvements or enhancements directed by SRH in accordance with paragraph 5.1 have been completed, SRH may adjust the Operation Facilities Book to reflect the work done and/or facilities made available and SRH may also, acting reasonably, re-categorise the relevant Station or Major Station Area in accordance with the condition standards set out in paragraph 1.5.

5.4 The reference to “**the condition of Station Lounges** “ in paragraph 3.1 shall be to the condition of a Station Lounge as improved by remedial or improvement work or enhancements required by SRH, by improvements or enhancements as referred to in paragraph 5.5.

5.5 Where SRH or any other body grant funds or otherwise meets the cost of assets or facilities that improve or enhance any aspect of a Station Lounge (including ticket barriers, ticket machines or CCTV) then SRH and/or the Authority may require the adjustment of the Operation Facilities Book to reflect such improvement or enhancement and SRH and/or the Authority may also, acting reasonably, re-categorise the relevant Station in accordance with the condition standards set out in paragraph 1.5.

5.6 Where either SRH or any other body (including but not limited to the Authority) is considering grant funding or otherwise meeting the costs of assets or facilities, CSL shall co-operate with SRH, or such body and provide to it such information and advice as it may reasonably request.

5.7 The rights of SRH referred to in paragraph 5.1 shall not in any way prejudice SRH in ensuring that repairs or remedial work is carried out by CSL in accordance with Schedule 7.2 (*Service Quality*).

5.8 Any amendments to the Operation Facilities Book shall not be binding without the prior written consent of the Authority if, and to the extent, that such amendments would vary the Service Quality Appendices.

APPENDIX TO SCHEDULE 4.1

Station Lounge Surveys

Condition	1	2	3	4	5
<i>Station Lounge</i>					
<i>[Station Lounge 1]</i>					
<i>[Station Lounge 2]</i>					
<i>[Station Lounge 3]</i>					

SCHEDULE 4.2**THIS IS SCHEDULE 4.2 REFERRED TO IN THE FOREGOING CALEDONIAN SLEEPER GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED, AND CALEDONIAN SLEEPER LIMITED****Persons with Disabilities and Disability Discrimination****1. Relationship with Other Obligations relating to Persons with Disabilities**

- 1.1 CSL acknowledges that its obligations in this Schedule 4.2 are in addition to and do not limit its obligations to comply with:
- (a) the EA;
 - (b) any applicable condition(s) in any of its Licences (including in respect of Disabled Persons); and
 - (c) any other of the requirements of this Agreement.
- 1.2 This Schedule 4.2 sets out:
- (a) specific arrangements which apply in respect of physical alterations to stations to facilitate accessibility and use by Disabled Persons; and
 - (b) specific obligations of CSL directed at meeting the needs of Disabled Persons.

2. Physical Alterations and Accessibility of Stations

- 2.1 In respect of physical alteration works at stations to facilitate accessibility and use by Disabled Persons, it is acknowledged by CSL that:
- (a) there is limited funding available to SRH to assist SRT, CSL and/or other railway operators and franchise operators with the carrying out of those works;
 - (b) consequently, there is a need for such works to be carried out over a period of time to reflect the availability of funding, and for such works to be prioritised with regard to where there is the greatest need and/or where physical alterations can have the greatest effect; and
 - (c) SRH's and/or the Authority's participation in the national programme of works of physical alterations at stations addresses these issues in a structured way.
- 2.2 CSL will:
- (a) co-operate reasonably with and assist the Authority and/or SRH in the development and furtherance by the Authority and/or SRH of the programme described in paragraph 2.1(c) by providing to the Authority and/or SRH:
 - (i) information concerning the usage of Stations (including, where and to the extent reasonably practicable, usage of Stations by Disabled Persons); and
 - (ii) advice as to the most economic way in which accessibility for Disabled Persons could, in CSL's reasonable opinion, be improved at Stations;
 - (b) co-operate reasonably with other Train Operators and/or Network Rail to seek to ensure that, where it would be advantageous to do so, having regard to the needs of Disabled Persons, any planned work on the Stations to facilitate accessibility and use

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

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

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

2.4 If, during the Term:

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

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

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

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

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

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

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

2.7 Accessible Travel Programme

CSL shall:

- (a) co-operate with SRT throughout the Term in the development and implementation of the Accessible Travel Programme in accordance with the requirements of the Policy Compendium Sleeper Addendum; and
- (b) co-operate, as SRH and/or the Authority may reasonably require, with Network Rail or any other person seeking to carry out or procure accessible travel at the Stations or any other stations.

3. Dealing with Claims relating to Stations

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

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

3.2 If, in the reasonable opinion of CSL, it will be more cost effective to settle the EA Claim rather than act in accordance with SRH’s requirement under paragraph 3.1, it shall produce for SRH’s approval a settlement proposal (the “**Settlement Proposal**”).

3.3 If SRH does not accept the Settlement Proposal and still requires CSL to defend the EA Claim (or any aspect of it) then CSL shall defend the EA Claim in accordance with paragraph 3.1.

3.4 If CSL is required to defend an EA Claim where it has submitted a Settlement Proposal to SRH and an award is made in respect of the EA Claim in favour of the person bringing it which is higher than the figure set out in the Settlement Proposal, then, subject to paragraph 3.5, SRH shall pay to CSL:

- (a) the difference between such an award and the figure set out in the Settlement Proposal; and
- (b) the further reasonable costs incurred or payable by CSL in defending the EA Claim, to the extent that such costs have not already been paid by SRH under paragraph 3.1(b).

3.5 SRH shall not have any obligation to make the payments described in paragraphs 3.1(b) or 3.4 where it is determined or, if no declaration or determination by the court on this point has been sought or made, SRH, in its reasonable opinion, considers that CSL has not taken such

steps as it is reasonable, in all the circumstances of the case, for it to take to provide a reasonable alternative method of making services at the Station accessible to Disabled Persons.

SCHEDULE 5

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

Fares

- Schedule 5.1: Fares on the Operator Services**
- Schedule 5.2: CSL's Fares Structure**
- Schedule 5.3: Fares Regulation Information and Monitoring**

SCHEDULE 5.1

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

Fares on the Operator Services

1. Purpose of Schedule 5

At the Commencement Date, CSL will not be the Lead Operator under the Ticketing and Settlement Agreement on any origin destination Flow (as defined within the Ticketing and Settlement Agreement). Moreover, as dedicated Fares on Operator Services are unregulated, and supplements/reservations are required for travel Inter-available Fares ticketing, only minimal Fares regulation will apply.

The purpose of Schedule 5 (Fares) is to set out CSL's Fare structure and CSL's obligations in relation to regulated Fares and Inter-available Fares and to ensure that Inter-available Fares remain valid for travel on the Operator Services, subject to capacity constraints, and that the process for changes to Fares regulation is specified. In addition, regulations concerning staff travel are specified for both room and seated accommodation.

2. Amendment to Fares

CSL shall be entitled to propose to vary any Fare for Guest Services but subject always to the terms of the Ticketing and Settlement Agreement, any other relevant industry arrangements limiting or impacting on the CSL's ability to vary Fares, or which CSL ought reasonably to have regard to and the written approval of SRH and the Authority.

3. Regulated Prices

CSL shall honour any regulated Fares offered by SRT or other Train Operators who set Fares in relation to any journeys on seats that can be fulfilled on the Guest Services.

4. Changes to Fares Regulation

The parties agree that the Authority shall have the power at any time during the Term to alter the obligations of, and restrictions on, CSL with respect to regulation of Fares for Guest Services. The exercise by the Authority of its powers under this paragraph 4 shall constitute a Change.

5. Inter-available Fares

CSL shall be a party to and shall remain a party to the Ticketing and Settlement Agreement throughout the Term. Inter-available Fares shall continue to be valid, subject to available seating and Berth capacity on the Guest Services and the payment of any Grant Payment or Franchise Service supplements that CSL may choose to specify, to allow the guest to travel on the Guest Services.

If CSL intends at any point in the Franchise Term to use pricing/reservations policy to change the balance of room or seated capacity available to holders of Protected Fares, CSL shall communicate details of the proposed changes, at least 3 months in advance to the rail industry and shall also Publish the details in the appropriate manner which will include on the Website, at Stations and in the regional press for the affected Routes, CSL taking such steps to Publish the aforesaid details as SRH and/or the Authority may approve or require.

6. Lead Operator

CSL shall not without the Authority's prior approval agree to any request under the Ticketing and Settlement Agreement that it become Lead Operator in respect of any Flow. CSL becoming the Lead Operator under this paragraph 6 shall be a Change.

7. Child Prices

7.1 Any requirement under this Schedule 5 to set a Child Price in respect of a Fare shall be satisfied by CSL Creating either:

7.1.1 a Fare which is only valid for use by persons under the age of 16; or

7.1.2 a Fare which is valid for use:

(a) by any person at a price; and

(b) only by persons under the age of 16 and at a discounted price relative to the price set pursuant to paragraph 7.1.1.

7.2 CSL shall set Child Prices for all Fares so that:-

(a) no price is payable for the Fare for persons under the age of 5; and

(b) the price for the Fare for persons aged 5 or over and under 16 shall be at least 50% less than the price payable by persons aged 16 and over.

8. Setting of Child Prices

8.1 Any requirement under this Schedule 5 to set a Child Price in respect of a Fare shall be satisfied by CSL Creating either:

(a) a Fare which is only valid for use by persons under the age of 16; or

(b) a Fare which is valid for use:

(i) by any person at a price; and

(ii) only by persons under the age of 16 and at a discounted price relative to the price set pursuant to paragraph 7.1(b)(i).

8.2 CSL shall set Child Prices for all Fares so that:-

(a) no price is payable for the Fare for persons under the age of 5; and

(b) the price for the Fare for persons aged 5 or over and under 16 shall be at least 50% less than the price payable by persons aged 16 and over.

SCHEDULE 5.2

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

CSL's Fares Structure**1. Dedicated Ticket Types**

CSL's Fares structure shall utilise the following ticket types:

Ticket Types	Description
Seat	A Caledonian Sleeper ticket with a reserved seat
Room x1	A Caledonian Sleeper ticket for a reserved room for a single traveller
Room x 2	A Caledonian Sleeper ticket for a reserved room based on two people sharing
Ensuite Room x1	A Caledonian Sleeper ticket for a reserved en-suite room for a single traveller
Ensuite Room x 2	A Caledonian Sleeper ticket for a reserved en-suite room based on two people sharing
Double Bed	A Caledonian Sleeper ticket for a reserved double bed room based on one or two people sharing

2. Pricing Structure

CSL shall utilise dynamic price bands tailored to the demand profile on Guest Services.

Guests booking a Caledonian Sleeper ticket will be presented with a booking calendar which will show accommodation prices for each day. Prices in the calendar will be determined by the demand profile and appropriate price band.

3. Reporting to SRH

CSL shall, for each Reporting Period, provide a detailed report to SRH providing evidence of the proportion of individual fares separately identified for the Lowlander and Highlander, sold by each accommodation type and line of route for the Reporting Period and also in aggregate for each line of route and each accommodation type cumulatively for the Operation Year to date. CSL shall also provide such additional disaggregated data concerning fares within the Report as SRH may specify from time to time.

SCHEDULE 5.3**THIS IS SCHEDULE 5.3 REFERRED TO IN THE FOREGOING CALEDONIAN SLEEPER GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED, AND CALEDONIAN SLEEPER LIMITED****Fares Regulation Information and Monitoring****1. Information**

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

2. Monitoring

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

SCHEDULE 6

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

Rolling Stock

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

SCHEDULE 7

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

Service Quality

Schedule 7.1: Train Operating Performance

Appendix 1: Right Time Benchmark Table

Appendix 2: Construction and Systems

Appendix 3: KPI

Schedule 7.2: Service Quality

Appendix 1: Service Quality Appendix- Station Information

Appendix 2: Service Quality Appendix- Station Posters & Signage

Appendix 3: Service Quality Appendix- Totems

Appendix 4: Service Quality Appendix- Station Lounges (CS Controlled)

Appendix 5: Service Quality Appendix- Station Lounges (Via 3rd Part Handling Agent)

Appendix 6: Service Quality Appendix- Station Accessibility

Appendix 7: Service Quality Appendix- Train Seats, Racks and other Passenger Facilities

Appendix 8: Service Quality Appendix- Train Lighting

Appendix 9: Service Quality Appendix- Train Toilets/Accessible Toilets

Appendix 10: Service Quality Appendix- Train Graffiti

Appendix 11: Service Quality Appendix- Train Cleanliness

Appendix 12: Service Quality Appendix- Onboard Passenger Information System

Appendix 13: Service Quality Appendix- Train Heating & Ventilation

Appendix 14: Service Quality Appendix- Train Posters/Decals & Information

Appendix 15: Service Quality Appendix- Train Doors

Appendix 16: Service Quality Appendix- Train CCTV

Appendix 17: Service Quality Appendix- Train Refreshment & Food Facilities

Appendix 18: Service Quality Appendix- Train Wifi

Appendix 19: Service Quality Appendix- Train Staff and Customer Care

Appendix 20: Service Quality Appendix- Train Accessibility

Appendix 21: Service Quality Appendix - In Room Presentation

Appendix 22: Service Quality Appendix - In Room Facilities

Appendix 23: Service Quality Appendix - Rectification of Faults

Appendix 24: Mystery Shopper Scores

SCHEDULE 7.1

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

Train Operating Performance

1 Operating Performance Benchmarks**1.1 Benchmark**

The Right Time Benchmark is set out in Appendix 1 (*Right Time Benchmark Table*) and shall continue to be reported by CSL for the purpose of continuity of performance from the previous Franchise performance. CSL shall within 12 months of the Commencement Date review the Benchmarks and make a recommendation on how these should be developed in order to better reflect the performance of the Guest Services.

2 Information ProvisionsRight Time Benchmark

2.1 At the end of each Reporting Period CSL shall, in accordance with the relevant requirements of Appendix 3 (*Operational Information*) to Schedule 13.2 (*Information*), report to SRH the total proportion of trains which arrived at the locations specified below within 59 seconds of the Timetable arrival time.

- Southbound Services
 - London Euston (arrival from Edinburgh/Glasgow)
 - London Euston (arrival from Inverness/Fort William/Aberdeen)
- Northbound Services
 - Glasgow
 - Edinburgh (for Edinburgh terminating services only)
 - Fort William
 - Inverness
 - Aberdeen

2.2 For each Reporting Period, CSL shall calculate a moving annual average of the CSL's performance against the Right Time Benchmark in accordance with the following formula:-

$$(A + E + F + G) / 13$$

Where:

A is ascertained as follows:-

$$((\{B+F+G\} - C) / D) \times 100$$

Where:

B is the total number of Guest Services arriving at the locations specified in paragraph 2.1 less than or equal to 59 seconds after the time specified in paragraph 2.1, which completed 100 per cent of its scheduled journey and that called at all its scheduled stops, on the basis that:

C is ascertained as follows:

$$(PV - AV / PV) \times D$$

Where:

PV is the total number of Vehicles (designed principally for the carriage of guests) planned to operate on Guest Services as included in the Train Plan for the Reporting Period;

AV is the total number of Vehicles (designed principally for the carriage of guests) actually operated on Guest Services in the Reporting Period.

D is the total number of Guest Services scheduled to arrive at each specified location in that Reporting Period.

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

F is the total number of Cancellations and Partial Cancellations of Guest Services operated in that Reporting Period that have been attributed to X4 – Blanket Emergency Speed Restriction and specifically those have arisen as a direct result of the Carmont recommendations or due to a held connection.

G is the total number of non-Cancelled and non-Partially Cancelled Guest Services operated in that Reporting Period, which arrived at scheduled destination, as determined by the Train Plan, one or more minutes late and where the majority of their delay has been attributed to X4 – Blanket Emergency Speed Restriction and specifically those have arisen as a direct result of the Carmont recommendations or due to a held connection.

- 2.3 In performing the calculations pursuant to paragraph 2.2, any trains arriving at the locations specified in paragraph 2.1 over 59 seconds after the time specified in paragraph 2.1 due to the occurrence or continuing effect of a Force Majeure Event shall be disregarded.

Calculations

- 2.5 CSL shall perform the calculation referred to in paragraph 2.2 rounded to 2 decimal places, with the midpoint (that is, 11.115) rounded upwards (that is, 11.12).

Notice and Publishing of Performance Results

- 2.6 As soon as reasonably practicable after the end of each Reporting Period, CSL shall notify SRH of the result of the calculation performed pursuant to this paragraph 2 and CSL shall Publish on the Caledonian Sleeper website the performance results by line of route/station.

Meaning of Train Plan

- 2.7 For the purposes of this Schedule 7.1, **Train Plan** shall, unless otherwise stated, mean the then current Train Plan which has been finalised pursuant to paragraph 12.2 of Schedule 1.1 (*Service Development*) and which includes any amendments thereto:
- (a) pursuant to paragraphs 3.2 and 3.5 of Schedule 1.2 (*Operating Obligations*);
 - (b) pursuant to paragraph 4 of Schedule 1.2 (*Operating Obligations*), where:
 - (i) such amendments are required as a consequence of Network Rail exercising its rights pursuant to the Track Access Agreement; and
 - (ii) CSL has complied with the provisions of such paragraph in respect thereof; and
 - (c) pursuant to paragraph 3.3 of Schedule 1.2 (*Operating Obligations*), where such amendments are agreed by SRH and/or the Authority's response in accordance with such paragraph.

3. Performance Levels

Expectation of Good Performance

- 3.1 SRH expects CSL to use all reasonable endeavours to procure that in each Reporting Period during the Term, the moving annual average of CSL's performance against the Right Time Benchmarks will be equal to or better than the Target Performance Level specified in the cell relating to each such Reporting Period in the Right Time Benchmark Table;

Consequences for Poor Performance

- 3.2 The consequences of CSL's performance falling below (that is, is neither equal to nor worse than) the Improvement Plan Performance Levels relating to the Right Time Benchmark are set out in paragraph 3.13 of Schedule 13.2 (*Information*).
- 3.3 CSL shall procure that in each Reporting Period, the moving annual average of CSL's performance against the Right Time Benchmark calculated in accordance with paragraph 2.2 does not fall below (that is, is neither equal to nor worse than) the Breach Performance Levels and the Default Performance Levels specified in the cells relating to each such Reporting Period in the Right Time Benchmark Table;
- 3.4 Certain consequences of CSL's performance falling below (that is equalling or being worse than):
- (a) the Breach Performance Levels relating to the Right Time Benchmark are set out in Schedule 10 (*Remedies, Termination and Expiry*); and
 - (b) the Default Performance Levels relating to the Benchmark are set out in Schedule 10 (*Remedies, Termination and Expiry*).

KPIs

A Patronage

Measurement of Patronage

1. Patronage in any Operating Year shall be determined by use of LENNON data. Only data in respect of guests using the full Sleeper Service (so excluding guests making journeys wholly within Scotland or wholly within England) shall be taken into account.

Patronage Benchmark

2. Patronage in an Operating Year shall not fall below the Patronage in the previous Operating Year (the "Patronage Level");
3. If Patronage in an Operating Year falls below the Patronage Level in the previous Operating Year, save where it can be demonstrated to the reasonable satisfaction of SRH and the Authority that the Patronage Level would have been achieved but for the impact of any Force Majeure Events, CSL shall prepare an Improvement Plan to address the reasons for the fall in Patronage against the Patronage Level in the previous Operating Year to be agreed with SRH and/or the Authority and take all steps necessary to implement the Improvement Plan in the following Operating Year;
4. If Patronage falls below the Patronage Level in any two consecutive Operating Years, save where it can be demonstrated to the reasonable satisfaction of SRH and the Authority that the Patronage Level would have been achieved but for the impact of any Force Majeure Events, CSL will prepare a Remedial Plan to be agreed with SRH and take all steps necessary to implement the agreed Remedial Plan in the following Operating Year;
5. If Patronage falls below the Patronage Level in any three consecutive Operating Years, save where it can be demonstrated to the reasonable satisfaction of SRH and the Authority that the Patronage Level would have been achieved but for the impact of any Force Majeure Events, such shall constitute an Event of Default under paragraph 2.10 of Schedule 10.3 (*Events of Default and Executive Team Review Event*).
6. NOT USED
7. NOT USED

B Guest Satisfaction

Measurement of Guest Satisfaction

8. Guest Satisfaction shall be measured in terms of the results of the Guest Satisfaction Survey based on Overall Journey Satisfaction percentage rated 3 stars and above, with the average of the periodic results being the Guest Satisfaction for an Operating Year. The Authority shall be entitled to Publish or share the results of each survey. CSL shall also Publish on the website the Guest Satisfaction Survey results.

Guest Satisfaction Benchmark

9. Guest Satisfaction in each Operating Year, as measured in accordance with paragraph 8 above, shall not fall below the Guest Satisfaction Level as shown in the table in Part 2 of Appendix 3 of Schedule 7.1.

Reduction in Guest Satisfaction

10. If Guest Satisfaction in an Operating Year falls below the Guest Satisfaction Level, CSL shall prepare an Improvement Plan to be agreed with the Authority to address the fall in Guest Satisfaction against the Guest Satisfaction Level and take all steps necessary to implement the Improvement Plan in the following Operating Year;

If Guest Satisfaction falls below the Guest Satisfaction Level in any two consecutive Operating Years CSL shall prepare a Remedial Plan to be agreed with SRH and take all steps necessary to implement the agreed Remedial Plan in the following Operating Year;

11. If Guest Satisfaction falls below the Guest Satisfaction Level in any three consecutive Operating Years, such shall constitute an Event of Default under paragraph 2.10 of Schedule 10.3 (*Events of Default and Executive Review Event*).

APPENDIX 1 TO SCHEDULE 7.1

Right Time Benchmark Table

Column 1	<u>Column 2</u>	<u>Column 3</u>	Column 4	<u>Column 5</u>
Reporting Period	Target Performance Level (%)	Improvement Plan Performance Level (%)	Breach Performance Level (%)	Default Performance Level (%)
All	80	79	72	68

APPENDIX 2 TO SCHEDULE 7.1**Construction and Systems****Part 1 — Construction**

- (a) For the purposes of this Schedule 7.1, a day shall be deemed to begin at 0000 and end at 2359 on the same day.
- (b) Subject to paragraph 1(a) above, where any train is scheduled to depart from its point of origin on one day and arrive at its destination point on the following day, any minutes late recorded or deemed in respect of the train on the day shall be treated as occurring on the day on which the train was scheduled to depart from its point of origin.
- (c) References in this Schedule 7.1 to “trains” do not include Charter Services or other movements of rolling stock outside the Guest Timetable (but which may be included in any relevant working timetable).

Part 2 – Systems

1. The parties agree that the Right Time Benchmark in each Reporting Period shall be determined by reference to:
 - (a) such systems as may be used by Network Rail from time to time for recording or monitoring the operation of the Guest Services and as may be selected by SRH and/or the Authority and notified to CSL by SRH from time to time (the “**Network Rail Systems**”);
 - (b) such systems as SRH may put in place or (acting reasonably) require CSL to use for determining the Right Time Benchmark on the basis of the information and data in the Network Rail Systems and the other information and data available to it (the “**SRH Systems**”);
 - (c) such other systems as the SRH and CSL may agree; and
 - (d) such other relevant information, data and records as may be available to SRH or which SRH may reasonably require CSL to provide to it from time to time, including the information specified in paragraph 2 of this Appendix 2.
2. CSL shall, if so requested, use all reasonable endeavours to procure that there are entered into the Network Rail Systems and/or provided to SRH:
 - (a) each Guest Timetable;
 - (b) each Train Plan;
 - (c) each item of rolling stock used in the provision of the Guest Services which is planned under a Train Plan to Pass a relevant Formation Monitoring Point but does not so Pass at such Formation Monitoring Point (except in circumstances where the whole train of which such rolling stock forms part is part of a Service Group and does not Pass such Formation Monitoring Point); and
 - (d) such other information and data as SRH may require to facilitate the proper or efficient determination of performance against Benchmarks under this Schedule 7.1.
3. CSL shall provide to SRH the information required under paragraph 2 in such form and format as SRH may require from time to time. CSL shall provide to SRH such further details or information as it may reasonably require in relation to such information.

4. The SRH and CSL will co-operate with each other to ensure that performance against Benchmarks measured under this Schedule 7.1 are determined correctly and efficiently on the basis of the information available to each of them from time to time.

Access and review of systems

5. CSL and SRH each agree to use all reasonable endeavours to ensure that each other may have such access to the Network Rail Systems as they may be able to procure during the Term.
6. SRH agrees to permit CSL to inspect the SRH Systems at any reasonable time during the Term and on reasonable notice if CSL has reasonable grounds to believe that a fault in the SRH Systems is resulting in the incorrect determination of the Right Time Benchmarks under this Schedule 7.1.
7. If CSL notifies SRH that it has reasonable grounds to believe that the Systems are not satisfying any relevant requirements and it is established, following any investigation or inspection, that such Systems are not satisfying any relevant requirements, the information or determination obtained from the relevant System for any relevant Reporting Periods commencing after the date which is two months prior to such notification may be adjusted in such a manner which is fair and reasonable to correct such information or determination, and any Benchmark performance previously determined under this Schedule 7.1 may be adjusted accordingly. The parties may refer any dispute relating thereto for resolution in accordance with the Dispute Resolution Rules.
8. Any inspection or investigation of any System shall be carried out at the cost of the party conducting the investigation or inspection (except in the case of fraud by another party or its employees or agents).

Failure to record or supply information

9. If CSL fails to comply with its obligations under paragraph 2, 3 or 4 of this Appendix 2, SRH may, if it reasonably considers that Benchmark performance has been incorrectly calculated as a result of such non-compliance (whether as a result of new information or data becoming available or otherwise), require any relevant Benchmark performance which may be affected by such non-compliance to be adjusted in a manner which is fair and reasonable to reflect the Benchmark performance which, so far as reasonably determinable on the basis of any relevant data (including any new information or data), should have been calculated. The parties to any dispute relating thereto may refer it for resolution in accordance with the Dispute Resolution Rules.
10. If as a result of a failure to record any arrival time for any relevant train or for any other reason the arrival time at a Station specified in paragraph 2.1 of Schedule 7.1 (*Benchmarks*) cannot be determined for any train, then, subject to paragraph 11, the arrival time of that train at the relevant Station shall be the number of Minutes Late at which such train is at the immediately preceding Station (if any) at which Network Rail may record information in respect of actual minutes late for such train.
11. If, as a result of any fault in the Systems or failure to record any or all relevant information, Benchmark performance cannot be reasonably determined then the parties shall use all reasonable endeavours to determine the relevant Benchmark performance on the basis of such manual information as may have been recorded by Network Rail and other relevant sources, including those of CSL. Nothing in this paragraph 11 shall however prevent SRH and/or the Authority from determining any Benchmark performance on the basis of information available to them at any relevant time.

Service Codes

12. CSL will promptly notify SRH and/or the Authority if it forms an intention to change the Service Code applicable to any particular journey characteristics of any train, alter the journey characteristics of any train to which a particular Service Code is applied or introduce a new Service Code which is applicable to any train or if Appendix 1 of Schedule 8 to its track access agreement with Network Rail is amended (including by the addition of new monitoring points for the purposes of such schedule).

APPENDIX 3 TO SCHEDULE 7.1

KPIsPart 1 - NOT USEDPart 2 – Guest Satisfaction Table

Year	Guest Satisfaction Level
1	85%
2	85%
3	85%
4	85%
5	85%
6	85%
7	85%
8	85%
9	85%
10	85%

SCHEDULE 7.2

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

Service Quality

1. Introduction

1.1. This Schedule 7.2 describes:

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

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

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

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

2 The Service Quality Appendices

2.1 The Service Quality Appendices detail:

- (a) the Station Services, On-Train Services, and the Information Away from Station Services;
- (b) the Schedule 7.2 Service Specifications;
- (c) the Service Quality Benchmarks;
- (d) any Maximum Inspections Numbers,

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

3 Service Quality Management Arrangements

CSL shall:

- 3.1 in relation to the Service Quality Regime:
- (a) ensure that SQM reports directly to and make recommendations to SRH to reduce the occurrence of Below Acceptable Level performance against the Schedule 7.2 Service Specifications and the incidence of failed inspections and re-inspections;
 - (b) record and maintain a list of any corrective actions identified during any checks on service quality undertaken by CSL including any Mystery Shopper surveys referred to in paragraph 5 of this Schedule 7.2 ("*audits*"), inspections or re-inspections undertaken by (or on behalf of) the Authority and ensure that the appropriate responsible parts of CSL's organisation are advised of any necessary corrective actions;
 - (c) monitor the implementation by the responsible party within CSL's organisation of the corrective actions identified;
 - (d) ensure that the CSL Executive Team, and SQM perform the tasks required of them under paragraph 4; and
 - (e) ensure that the CSL Executive Team has responsibility for the SQM role or appoints an appropriate SQM who shall report to the CSL Executive Team;
- 3.2 ensure that sufficient staff reporting to the CSL Executive Team are employed (either directly or under a sub-contract) and employ sufficient resources to allow the CSL Executive Team to carry out the tasks required of them;
- 3.3 ensure that corrective actions arising from any inspections or re-inspections are diligently and promptly dealt with and that there are adequate resources, monitoring processes and procedures, and appropriate contractual arrangements, in place to do so;
- 3.4 ensure that CSL's obligations set out in paragraph 1 of Schedule 1.3 (*Additional Service Specifications*) and in this Schedule 7.2 are complied with in full;
- 3.5 co-operate with the Authority in allowing the Authority's personnel (or its agents or sub-contractors) to conduct inspections, re-inspections or audits and in making appropriately senior and appropriately qualified members of CSL's personnel available to attend meetings;
- 3.6 provide to the Authority when requested details of where train staff and, in the case of staffed Stations, Station staff will be available for any inspection; and
- 3.7 keep the CSL board of directors fully advised as regards the matters referred to in paragraphs 3.1 to 3.6 above and copy to them any recommendations referred to in paragraph 3.1(a).

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

- 4.1 CSL warrants and undertakes that the CSL Executive Team shall:
- (a) report directly to CSL's board of directors;
 - (b) keep full and accurate records and documents relating to or affecting the performance by CSL of the Schedule 7.2 Services;
 - (c) develop and keep under review a train presentation programme for implementation by CSL (to include the management of fault recording and rectification), designed to ensure that the relevant Schedule 7.2 Service Specifications are reached and, where possible, exceeded and that, in any event, the relevant Acceptable Level is met;

- (d) develop and keep under review a station environment, structures, information provision, security, ticket selling and revenue protection programme for implementation by CSL (to include the management of fault recording and rectification), designed to ensure that the relevant Schedule 7.2 Service Specifications are reached and, where possible, exceeded and that, in any event, the relevant Acceptable Level is met;
- (e) develop and keep under review a programme regarding the Information Away from Station Services for implementation by CSL (to include the management of fault recording and rectification), designed to ensure that the relevant Schedule 7.2 Service Specifications are reached and, where possible, exceeded and that, in any event, the relevant Acceptable Level is met;
- (f) review the results of the Guest View Surveys to inform the programmes referred to in paragraphs (c) to (e);
- (g) send to CSL's board of directors at the end of each Reporting Period a statement detailing the inspections and re-inspections where a fail has been recorded (including in respect of Management and Processes) together with audits, copying this statement to the Authority;
- (h) publish on the Caledonian Sleeper website at the end of each Reporting Period a summary of the inspections and re-inspections results;
- (h) ensure that all inspections, re-inspections and audits that may be conducted are fully recorded and any information that is due to be passed is passed on timeously;
- (i) ensure that where faults are found during an audit, inspection or re-inspection or items have failed in an inspection or re-inspection, appropriate remedial action is taken promptly and that there is a process for recording and monitoring the completion of the corrective actions;
- (j) ensure that the Authority's SQIs are granted such access to the facilities under the control of CSL and/or SRH as is necessary to permit the Authority to exercise its rights of inspection under paragraph 6 and are also provided with reliable information on the availability of trains and of staff in respect of staffed stations to allow the Authority to exercise its rights of inspection and re-inspection;
- (k) ensure that current site specific safety rules and regulations are made available to the Authority's SQIs; and
- (l) ensure that CSL puts in place systems to preserve the documents referred to in paragraph 6.10 for a period of either 6 years or until 12 months after the expiry of the Term, whichever is the later.

5. **Mystery Shopper**

- 5.1 CSL shall, should it be required by SRH and/or the Authority, commission an appropriate service provider (having regard to the nature of the Guest Services) to carry out a "mystery shopper" survey to measure qualitative aspects of the Guest Services. The methodology and survey model to be used shall be agreed with SRH and/or the Authority based on the indicative table in Appendix 22 of this Schedule 7.2 and no changes to the methodology or survey model shall be made without the agreement of SRH and/or the Authority. The methodology or survey model shall include a methodology or model that results in an overall numeric score being reached no less frequently than once every 13 Reporting Periods. CSL shall pass the results of each survey to SRH on receipt. SRH and/or the Authority shall be entitled to Publish the survey results. CSL shall not Publish or share the results with any other party without the prior agreement of SRH and/or the Authority.

- 5.2 Where CSL has been required to commission mystery shopper surveys, SRH and CSL shall review the "mystery shopper" survey methodology and survey model annually with the aim of determining whether it requires amending or updating to improve its operation. Both parties shall use reasonable endeavours to agree any changes required and shall obtain agreement from the Authority. Any changes agreed should be made to the "mystery shopper" survey shall be documented in writing between SRH, the Authority and CSL. In the event that no changes are proposed or changes proposed by one party but are not agreed, the mystery shopper survey then prevailing will continue.

6. Authority Service Quality Inspections ("SQI")

- 6.1 The Authority may appoint individuals (who may be sub-contractors of the Authority), each to be known as an SQI to inspect a representative sample of the Schedule 7.2 Services and Management and Processes in accordance with this paragraph 6.
- 6.2 Any SQIs appointed by the Authority will be responsible for carrying out inspections in respect of all Schedule 7.2 Services and Stations. The SQIs of the Authority may inspect the Management and Processes.
- 6.3 The Authority shall have the right to have its SQIs inspect each Station and Station Lounge in relation to the Guest Services up to the relevant Maximum Inspection Number. The Authority does not commit to any minimum number of inspections of Stations and Station Lounges. Notwithstanding the foregoing, an SQI may inspect a Station and Station Lounge up to 52 times during any 13 consecutive Reporting Periods if:
- (a) the Station and/or Station Lounge concerned is a Key Station or at a Key Station; or
 - (b) any notice or notices which have been issued under paragraph 7.2 during the preceding three Reporting Periods show or record, in total, seven or more failures in respect of one or more Station Services at that Station;
- even more frequent inspections are to be permitted where this is provided for in a Service Quality Appendix.
- 6.4 SQIs may inspect Trains in accordance with the number of inspections set out in the Service Quality Appendices but the Authority does not commit to any minimum number of inspections of Trains, however should there be too few inspections to make the results statistically representative then an adjustment will be agreed accordingly.
- 6.5 SQIs may inspect up to twice as many Schedule 7.2 Services as permitted by paragraph 6.4 in respect of an On-Train Service or On-Train Services if CSL fails to provide that On-Train Service or those On-Train Services at the Acceptable Level for three successive Reporting Periods. These additional inspections may continue for so long as required by the Authority.
- 6.6 Subject to the rights of the Authority to re-inspect or carry out additional inspections under paragraph 7, no Station Service or particular rolling stock vehicle shall be inspected within seven days of a previous inspection; provided that this shall not preclude the inspection of any rolling stock vehicle where that rolling stock vehicle has been inspected during the preceding 7 days while providing a different Schedule 7.2 Service than that which it is providing when inspected for the second or subsequent time. Certain Service Quality Appendices anticipate the possibility of further inspections within that seven day period and nothing in this paragraph 6.6 shall restrict the Authority from requiring those more frequent inspections by its SQIs.
- 6.7 The SQIs of the Authority shall also be entitled to:
- (a) vary the timing of inspections, both as regards days of the week and times of day, to seek to ensure that a reasonable cross section of inspection times is achieved;
 - (b) construct and implement their programme of inspections so that the Stations and Trains audited are randomly selected;
 - (c) undertake their inspections and re-inspections on Trains so that these shall not interfere with the timely delivery of guest services;

- (d) undertake their inspections at Stations so that these shall not interfere with the delivery of Schedule 7.2 Services to guests; and
 - (e) not used
 - (f) seek to ensure that during any Reporting Period the number of inspections undertaken in any week shall in normal circumstances be approximately equal.
- 6.8 An SQI of the Authority may inspect the Information Away from Station Services at least once during every 13 consecutive Reporting Periods.
- 6.9 An SQI of the Authority may inspect the Management and Processes at least once during every 13 consecutive Reporting Periods.
- 6.10 In addition to the other rights enjoyed by the Authority under this paragraph 6, the Authority shall have, at all reasonable times, access to and the right to reproduce at its own cost the records created by CSL relating to the performance by CSL of the Schedule 7.2 Services. This access shall be for the purpose of auditing and verifying CSL's performance of the Schedule 7.2 Services. The term "**records**" shall, for the purposes of this paragraph 6.10, be deemed to extend to all books, records, receipts, vouchers and documents, of any description (including those stored on microfilm, video tape or digital recordings or on computer, which shall be made available in legible form).

7. Role of Service Quality Inspectors

- 7.1 During each inspection an SQI shall determine whether the Schedule 7.2 Services are being performed to the required level of service quality in accordance with the relevant Schedule 7.2 Service Specification and which, if any, Schedule 7.2 Services require rectification by CSL so that each Schedule 7.2 Service is provided in accordance with the relevant Schedule 7.2 Service Specification.
- 7.2 If following any inspection of one or more Stations, or Trains, or of Information Away from Station Services or Management and Processes, the Authority determines that there is a failure in terms any Service Quality Appendix to meet the required standard of service quality and/or that a Schedule 7.2 Service requires rectification, the Authority may serve a notice ("**Notice**") on SRH and/or CSL. The Notice shall specify each Schedule 7.2 Service which has failed to meet the required standard and where a Schedule 7.2 Service requires rectification it shall specify each Schedule 7.2 Service requiring rectification and shall specify the time for rectification of each such Schedule 7.2 Service as stated in the relevant Service Quality Appendix, (such time to run from the beginning of the Working Day following the date of receipt of such Notice) and SRT shall rectify each such Schedule 7.2 Service within such time.
- 7.3 After the expiry of the time specified in a Notice a SQI may re-inspect any Station or Train or re-inspect the provision of Information Away from Stations or Management and Processes in respect of which a Notice has been issued that required rectification of a Schedule 7.2 Service to determine whether any Schedule 7.2 Service specified in the Notice has been rectified so that that Schedule 7.2 Service is provided in accordance with the relevant Service Quality Appendix. Any re-inspection by an SQI under this paragraph shall not constitute an inspection referred to in paragraphs 6.3 to 6.5 or 6.7.
- 7.4 If an SQI, after re-inspection under paragraph 7.3, determines that SRT has not rectified all Schedule 7.2 Services specified in a Notice the procedure set out in paragraphs 7.2 to 7.3 above may be repeated by the Authority until CSL has rectified all Schedule 7.2 Services specified in any Notice. This procedure shall, however, be suspended on the date of receipt by the Authority of proposals submitted by SRT in accordance with paragraph 11 unless and until CSL is, in the reasonable opinion of the Authority, failing to use its best endeavours to implement the agreed or determined proposals.
- 7.5 In addition to the inspections and re-inspections permitted by this paragraph 7 the Authority shall be entitled to procure additional inspections of some or all the Station Services at any Station or Stations on up to 6 occasions in each Reporting Period ("**additional inspections**"). The Authority shall not be entitled to carry forward from one Reporting Period to the next its entitlement to carry out any additional inspections during that Reporting Period that it did not

carry out.

- 7.6 If following any additional inspection of a Station Service the Authority determines that there is a failure of any provision of any Service Quality Appendix to meet the required standard of service quality and the relevant Station Service requires rectification, the Authority may serve a notice (“**an Additional Inspection Notice**”) on SRH and/or CSL. The Additional Inspection Notice shall specify each Station Service requiring rectification and shall specify the time for rectification of each such Station Service as stated in the relevant Service Quality Appendix, (such time to run from the beginning of the Working Day following the date of receipt of such Additional Inspection Notice) and CSL shall rectify each such Station Service within such time. For the purposes of this paragraph 7.6, references in the relevant Service Quality Appendix to “**Notice**” shall be deemed to include “**Additional Inspection Notice**”).
- 7.7 After the expiration of the time specified in an Additional Inspection Notice, an SQI may re-inspect any Station in respect of which an Additional Inspection Notice has been issued to determine whether all Station Services specified in the Additional Inspection Notice have been rectified. Any re-inspection by an SQI under this paragraph shall not constitute an inspection referred to in paragraphs 5.3 to 5.5 or 5.7.
- 7.8 If an SQI after a re-inspection under paragraph 6.8 determines that CSL has not rectified all Station Services specified in an Additional Inspection Notice the procedure set out in paragraphs 7.6 to 7.7 may be repeated until CSL has rectified all Station Services specified in any Additional Inspection Notice. The procedure shall, however, be suspended on the date of receipt by the Authority of proposals submitted by CSL in accordance with paragraph 11 unless and until CSL is, in the reasonable opinion of the Authority, failing to use its best endeavours to implement the agreed or determined proposals.
- 7.9 If an SQI has not re-inspected any Station, Train, or Information Away from Station Services or Management and Processes within 7 days of the expiration of the time specified in any Notice, or any Additional Inspection Notice, CSL shall be deemed to have rectified any Schedule 7.2 Service as required by such Notice or Additional Inspection Notice.
- 7.10 The Authority may provide the SQM with copies of all reports prepared by their SQIs during inspections and re-inspections pursuant to this paragraph 7.

8. **CSL’s Response to a Notice**

If CSL, acting reasonably, considers that the content of any Notice, Additional Inspection Notice or report is incorrect or that such Notice, Additional Inspection Notice or report has not been properly given, CSL may notify the Authority and SRH of this within 7 days of the date of receipt of that Notice, Additional Inspection Notice or report, such notification shall be accompanied by photographic or other documentary evidence which supports their notification. If CSL has not so notified the Authority and SRH in accordance with the terms of this paragraph 8 CSL shall be deemed to be satisfied as to the correctness of content and method of delivery or service of the same. The parties may, in seeking to resolve any dispute as to the correctness of content or service of a Notice, Additional Inspection Notice or report, comply with the Escalation Procedure.

9. **Major Event**

- 9.1 Where the performance by CSL of any Schedule 7.2 Service is materially adversely affected by the occurrence of a Major Event affecting that Schedule 7.2 Service, that Schedule 7.2 Service shall be excluded from the provisions of this Schedule 7.2 for such period as the Authority shall determine if:
- (a) SRH shall have notified the Authority of the occurrence and location of a Major Event in writing within 24 hours of the occurrence of that Major Event;
 - (b) SRH shall have provided to the Authority such other information, as the Authority shall reasonably require in connection with that Major Event; and
 - (c) CSL shall have:
 - (i) used all reasonable endeavours to prevent the occurrence of any Major Event and to restore normal performance of its obligations in the event of the occurrence of a Major Event and shall have actively mitigated and minimised

the effect of any Major Event on the performance of its obligations under this Schedule 7.2;

- (ii) complied with the terms of paragraph 10 and 11 in Schedule 1.2 (*Operating Obligations*); and
- (iii) otherwise complied with the terms of this Agreement.

9.2 Notwithstanding that none of the requirements listed in paragraph 9.1 (a) to (c) inclusive has been met, the Authority may agree the exclusion of that Schedule 7.2 Service from the provisions of the Quality Service Regime where in the opinion of the Authority the performance by CSL of any Schedule 7.2 Service is materially adversely affected by the occurrence of a Major Event.

9.3 If CSL is not satisfied with a decision of the Authority under paragraph 9.1 above CSL may notify the Authority and SRH of the same within 7 days of the date on which that decision is notified to CSL such notification shall be accompanied by photographic or other documentary evidence which supports their notification. If CSL has not so notified the Authority and SRH in accordance with this paragraph 9.3, CSL shall be deemed to be satisfied as to the decision. The parties may, in seeking to resolve any dispute as to a decision of the Authority under paragraph 9.1, comply with the Escalation Procedure.

10. Calculation of Service Quality Score

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

10.2 Following calculation of the aggregate total Service Quality Benchmark Scores, CSL shall be awarded a “**Service Quality RP Score**” (either 5,4,3, 2 or 1) for that Reporting Period of:

- (a) ‘Service Quality RP Score Exceptional Level’ (Score of 5) if CSL achieves a cumulative score of not less than 109 for the aggregated Service Quality Benchmark Scores in that Reporting Period;
- (b) ‘Service Quality RP Score Strong Level’ (Score of 4) if CSL achieves a cumulative score not less than 103 and not greater than 108 for the aggregated Service Quality Benchmark Scores in that Reporting Period;
- (c) ‘Service Quality RP Score Acceptable Level’ (Score of 3) if CSL achieves a cumulative score of not less than 97 and not greater than 102 for the aggregated Service Quality Benchmark Scores in that Reporting Period.
- (d) ‘Service Quality RP Score Adequate Level’ (Score of 2) if CSL achieves a cumulative score of not less than 91 and not greater than 96 for the aggregated Service Quality Benchmark Scores in that Reporting Period; or
- (e) ‘Service Quality RP Score Below Acceptable Level’ (Score of 1) if CSL achieves a cumulative score of 90 or less for the aggregated Service Quality Benchmark Scores in that Reporting Period.

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

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

$$A = B/C$$

Where:

- A is the Service Quality PQ Score
- B is the sum of the Service Quality RP Score calculated in accordance with paragraphs 10.1 to 10.2 for each Reporting Period in the relevant GP Quarter
- C is the number of Reporting Periods in the relevant GP Quarter

11. CSL Proposals to Rectify Poor Performance

- 11.1 If the Authority determines that CSL has provided any Schedule 7.2 Service at or below Adequate Level in two successive Reporting Periods or a SQI has successively re-inspected any Station or Train 4 times and CSL has not complied with the last Notice or Additional Inspection Notice served following the last inspection or re-inspection or additional inspection, the Authority may notify CSL of the same. CSL shall, within 14 days of notification submit to the Authority and SRH, CSL's proposals. CSL's proposals shall include solutions which, in its reasonable opinion, will ensure that (having regard to cost and the practicalities of implementation) the relevant of Schedule 7.2 Service will be provided at Acceptable Level and that the relevant Notice or Additional Inspection Notice will be complied with as soon as practicable. The proposals shall indicate proposed timescales for implementation and the estimated cost (if any) of implementation. Within 14 days of receipt of CSL's proposals, the Authority shall notify CSL whether or not it agrees with such proposals and, if the proposals are so agreed, CSL shall implement such proposals within the proposed timescale for implementation.
- 11.2 If the Authority does not consider that such proposals will ensure that the relevant of Schedule 7.2 Service will be provided at Acceptable Level and that the relevant Notice or Additional Inspection Notice will be complied with, the parties shall for 2 weeks (following the Authority's intimation of its view of CSL's initial proposals) in good faith use all reasonable endeavours to agree revised proposals, and failing agreement the parties shall comply with the provisions of the Escalation Procedure. Following agreement of revised proposals in accordance with this paragraph 11.2, or determination of CSL's proposals in accordance with the Escalation Procedure, CSL shall implement the proposals so agreed or determined within the timescales agreed or determined for implementation.

12. Breach and Service Quality

Only where CSL fails to use best endeavours to implement the agreed or determined proposals in accordance with paragraph 11.2 will any failure by CSL to comply with a Service Quality Appendix, constitute non-performance of or non-compliance to a material extent with any obligation in this Schedule 7.2 for the purpose of paragraph 2.7 of Schedule 10.3 (*Events of Default and Executive Team Review Events*).

13. Notices

For the purposes of this Schedule 7.2 any notice shall be sent in the manner required by paragraph 3.1(a) of Schedule 18 (*Other Provisions*) and the provisions of that paragraph shall apply to such notices.

14. Self-Monitoring

- 14.1 As and when requested by the Authority, CSL shall provide to the Authority a **Service Quality Monitoring Plan** which shall contain CSL's informed opinion (including without prejudice to the foregoing generality the taking into account the Guest View Surveys) as to any revised regime to be implemented for the Service Quality Regime so that it can be developed into a regime which provides for CSL to self-monitor and self-assess (through an arm's length operation procured by CSL) the matters being monitored and assessed by the Authority and which will allow for the Authority to audit and verify the results of such self-monitoring and self-assessment.

- 14.2 The Authority may accept any proposals in the Service Quality Monitoring Plan. In addition to or in substitution for (in part or in whole) that Plan, the Authority may (on not less than 6 months written notice to CSL) specify the provisions of this Schedule 7.2 which the Authority has determined will give effect to a regime which provides for self-monitoring and self-assessment by CSL of the Station Services, On-Train Services and Information Away from Station Services under the Service Quality Regime. CSL shall comply with such specification from the expiry date of such notice or such later date as may be specified by the Authority.
- 14.3 Any specification under paragraph 14.2 shall not constitute a Change.
- 14.4 Any specification under paragraph 14.2 may include (but will not be limited by that):-
- (a) that the Authority shall be entitled to require CSL to appoint at CSL's own expense service quality inspectors to inspect the Station Services, On-Train Services, Information Away from Station Services and Emerging Technologies;
 - (b) that, if the Authority does so require CSL to appoint its own service quality inspectors, the Authority shall be under no obligation to appoint its own SQIs, and for the purposes of this Schedule 7.2 references to SQIs appointed by the Authority, or to SQIs of the Authority or any other similar expression shall be a reference to SQIs appointed by CSL;
 - (c) that, if the Authority requires CSL to appoint its own service quality inspectors, the Authority shall be entitled to audit the consistency and accuracy of any inspections carried out by such service quality inspectors and to audit the service quality of the services monitored by them;
 - (d) that, if the Authority requires CSL to appoint its own service quality inspectors, the Authority shall be entitled to require that SRH provide from time to time (and at least monthly) to the Authority an analysis of results and trends gathered both by CSL and its service quality inspectors; and
 - (e) requirements as to frequency of inspections and maximum and minimum numbers of inspection.
- 14.5 CSL shall grant such access to the facilities and records under its control and/or SRH's as is necessary to enable the Authority to exercise its audit rights.

15 Variations to the Service Quality Regime

- 15.1 The Authority may pursuant to paragraphs 1.1(a) or 1.1(b) of Schedule 9 (*Changes*) vary the terms of the Service Quality Regime and such a variation may include, without limitation, the addition or removal of Stations or stations from the Service Quality Regime, changes to the Schedule 7.2 Service Specifications, changes to the Service Quality Benchmarks, changes to the Stations and changes to those aspects of the Operator Services to which the Service Quality Regime applies. Such a variation may also add or remove Stations or stations from the obligations set out in paragraph 1.3.
- 15.2 **Service Quality Regime Review**
- (a) Without prejudice to paragraph 15.1, the parties will jointly review the Service Quality Regime after each Operator Year to consider whether the Service Quality Appendices are still relevant with the operational objective of ensuring the Service Quality Regime is still focused on the best service deliverable for guests and continues to ensure that the Operation Facilities condition remains at the level such were in at the Commencement Date, or, if later, the date such facility came into use for the Operator Services.
 - (b) The parties shall also take into account the results of the Guest View Surveys and any Inspection Programme conducted pursuant to paragraph 16 hereof, output from CSL's online panel surveys carried out in accordance with relevant Business Plan Commitments, with greater weight being given to surveys conducted by independent parties than those carried out by CSL.

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

16 **Not Used**

17 **Operation Facilities Book**

Where a Schedule 7.2 Service Specification is to be read in conjunction with an Operation Facilities Book the reference is to the relevant Operation Facilities Book as updated in accordance with Schedule 4.1 (*Operation Facilities*).

18 **Additional Assets**

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

19 **Staffing aspects**

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

20 **Operational aspects**

20.1 The Customer Contact Centre shall also play a key role in co-ordinating internal information concerning CSL's performance under Schedule 7.2. Guests shall be able to report issues to the CSL on train team who will log the fault to be addressed through the Digital Board Book application, and/or within the shift report of the on board CSL staff. CSL shall:

- (a) ensure acknowledgment is provided to the Guest who has reported the fault;
- (b) aggregate faults logged into reports;
- (c) Fast Track reporting of potential failure under this Schedule 7.2;
- (d) Receipt and acknowledgement of reports received from customers, Stakeholders or external agencies; and
- (e) Co-ordination of required information concerning service quality including records of reports which have to be sent to at the end of each Reporting Period.

20.2 CSL's on board staff shall communicate to the Operations Managers who shall be provided with mobile phones or a similar and suitable means of instantaneous communication and shall be required to log, phone or otherwise contact the relevant SFO as soon as reasonably practicable if any Station needs attention in relation to a matter covered by Schedule 7.2.

21. Escalation Procedure

- 21.1 Within 5 Working Days of notification pursuant to paragraphs 8 or 9.3 of Schedule 7.2 or, where the relevant parties have not agreed revised proposals in accordance with paragraph 11.2, within 5 Working Days of the expiry of the period of 2 weeks referred to in those paragraphs, the relevant parties shall hold a meeting (“**the First Meeting**”) to discuss any disputes in respect of paragraphs 8, 9.3 or 11.2 (“**the Disputes**”) with a view to resolving the Disputes in good faith.
- 21.2 If, for any reason, the relevant parties have not resolved the Disputes within 10 Working Days of the First Meeting each relevant party shall promptly and in any event within 15 Working Days of the First Meeting prepare a written summary of the Disputes and the reason for the Disputes and shall submit that summary accompanied by any photographic or other documentary evidence submitted by CSL in terms of paragraphs 8 and 9.3 of Schedule 7.2 to the Nominated Representative of the other party/ies. The Nominated Representatives of the relevant parties shall within 20 Working Days of the First Meeting meet with a view to resolving the Disputes (“**the Second Meeting**”). If the Nominated Representatives or the relevant parties have not resolved the Disputes within 10 Working Days of the Second Meeting then either party may require that the Disputes be resolved in accordance with the Dispute Resolution Rules.
- 21.3 “**Nominated Representative**” means
- (i) in respect of CSL, such person as CSL shall nominate from time to time and notify to SRH and the Authority; and
 - (ii) in respect of the Authority, such person as the Authority shall nominate from time to time and notify to SRH; and
 - (iii) in respect of SRH, such person as SRH shall nominate from time to time and notify to CSL and the Authority.
- 20.4. Any reference to this procedure is without prejudice to:-
- (i) the re-inspection rights in terms of paragraph 7.4 of Schedule 7.2; and
 - (iii) CSL's obligations to rectify failures.

APPENDIX 1 TO SCHEDULE 7.2**SERVICE QUALITY APPENDIX - STATION INFORMATION****SERVICE SCHEDULE 1 – STATION INFORMATION****1. Service Specification**

1.1 All Caledonian Sleeper timetables and posters specified by the Authority which are required to be displayed and the posters which are required to be displayed to support their communication under the Grant Agreement, should be on display at specified locations, displayed in an appropriate manner and legible.

1.2 A poster will fail if:

- (a) a poster directing the guest where to find the latest journey information, timetable, service updates etc is not on display in an easily accessible location.
- (b) if any poster is torn, faded or damaged in any way.
- (c) at least 1 CSL branded poster is not on display in each station.

2. Service Benchmarks

Exceptional performance (5) means 96% performance of the Service in accordance with the Service Specification during a reporting period.

Strong performance (4) means 92% performance of the Service in accordance with the Service Specification during a Reporting Period.

Acceptable performance (3) means 88% performance of the Service in accordance with the Service Specification during a Reporting Period.

Adequate Level (2) means 84% or below performance of the Service in accordance with the Service Specification during a Reporting Period.

Unsatisfactory (1) means 80% or below performance of the Service in accordance with the Service Specification during a Reporting Period.

3. Maximum number of inspections

Stations will be inspected a maximum once every reporting period.

4. Expected repair

5 Working Days

APPENDIX 2 TO SCHEDULE 7.2**SERVICE QUALITY APPENDIX – STATION POSTERS & SIGNAGE****1. Service Specification**

- 1.1** Signs and poster frames at stations should be in good condition and at the correct location on the station. Information within posters should be clearly visible through the polycarbonate or other frontage over the whole area of the poster frame.

The accuracy of information, signs and posters will be inspected by sign/poster/platform that fails or passes.

- 1.2** A poster will fail if:

- (a) any sign or poster is missing.
- (b) any poster has become noticeably damaged or significantly faded to the extent the information is not legible in any way, which prevents the proper display of the information. (e.g. due to dirt, moisture, non-transparent frontage or because any poster has slumped in its frame).
- (c) any sign, perspex or poster frame is noticeably damaged.

2. Service Benchmarks

Exceptional performance (5) means 96% performance of the Service in accordance with the Service Specification during a reporting period.

Strong performance (4) means 92% performance of the Service in accordance with the Service Specification during a Reporting Period.

Acceptable performance (3) means 88% performance of the Service in accordance with the Service Specification during a Reporting Period.

Adequate Level (2) means 84% or below performance of the Service in accordance with the Service Specification during a Reporting Period.

Unsatisfactory (1) means 80% or below performance of the Service in accordance with the Service Specification during a Reporting Period.

3. Maximum number of inspections

Stations will be inspected a maximum once every reporting period.

4. Expected repair

5 Working Days

APPENDIX 3 TO SCHEDULE 7.2**SERVICE QUALITY APPENDIX – TOTEMS****1. Service Specification**

1.1 All Totems at Stations should be functioning, well maintained and operational.

1.2 A totem will fail if:

- (a) any Totem is missing, not functional or not operational during the times which it is expected to be functional and operational.
- (b) a Totem is not in a prominent position reasonably to serve its purpose.
- (c) the Totem is dirty, marked or has debris on it.
- (d) the screen has visible cracks or damage.
- (e) the outer casing of totem has visible cracks or damage.
- (f) Totem screen content is not fully visible (e.g. due to excessive sun damage)

2. Service Benchmarks

Exceptional performance (5) means 97% performance of the Service in accordance with the Service Specification during a reporting period.

Strong performance (4) means 94% performance of the Service in accordance with the Service Specification during a Reporting Period.

Acceptable performance (3) means 91% performance of the Service in accordance with the Service Specification during a Reporting Period.

Adequate Level (2) means 88% or below performance of the Service in accordance with the Service Specification during a Reporting Period.

Unsatisfactory (1) means 85% or below performance of the Service in accordance with the Service Specification during a Reporting Period.

3. Maximum number of inspections

Stations will be inspected a maximum once every reporting period.

4. Expected repair

5 Working Days

APPENDIX 4 TO SCHEDULE 7.2

SERVICE QUALITY APPENDIX- STATION LOUNGES (CS CONTROLLED)

1. Service Specification

1.1 All lounges controlled by Caledonian Sleeper will provide a comfortable and safe environment for guests waiting to board or who have alighted a train at that station. Times are detailed in appendix A.

1.2 A lounge will fail if:

- (a) any lounge which is intended to be staffed is not staffed.
- (b) any member of staff working in the lounge who should be wearing a uniform is not, or that uniform is incomplete or is excessively worn or is not wearing, in a prominent position, a badge bearing their name and position/role.
- (c) any seat or table cannot be used due to damage (i.e. the seat or table is damaged in such a way that it could injure a person or damage their clothing).
- (d) any seat or table cannot be used due to the presence of spillage, dampness or contamination, which could cause damage to a guest's clothing or articles.
- (e) any light in is not illuminated when the power is switched on, or is not fully operational (i.e., light levels are obviously sub-standard or the light is flickering), or the light cover is unfit for purpose.
- (f) any graffiti of a racial, religious, sexual or other potentially offensive nature is visible, any single piece or item of other graffiti is of greater area than can be covered by an AS sheet of paper, There are more than 10 individual pieces or items of graffiti, within the lounge regardless of the size or area of these items individually or collectively.
- (g) there are more than ten items of litter, each larger than the size of a credit card, found within the lounge.
- (h) any litterbin is not fit for purpose.
- (i) there is any immediately detectable contamination or spillage, which renders any part of any lounge unusable or unsanitary (e.g. vomit, faeces or urine).
- (j) contain a fully functional hot and cold-water supply and be open, sanitary bins available for use.
- (k) toilet is fitted with soap dispenser and or soap available at sink and in shower.
- (l) shower in working order and towels available.
- (m) there is any immediately detectable contamination or spillage, which renders any part of any washing/toilet area unusable, or unsanitary (e.g. vomit, faeces, or urine).
- (n) any lounge should provide catering facilities but does not.
- (o) any catering facilities are not fully functioning, staffed and stocked so as to be operational.
- (p) any catering facilities is not sufficiently stocked so that it is unlikely to be capable of providing at least a basic choice of foodstuffs (including a choice suitable for vegetarians) and beverages (including hot drinks and non-alcoholic cold drinks).
- (q) Wi-Fi available and operational for guests.
- (r) carpets and floor coverings in good condition, no trip hazards, tears or stains.

2. Service Benchmarks

Exceptional performance (5) means 100% performance of the Service in accordance with the Service Specification during a reporting period.

Strong performance (4) means 80% performance of the Service in accordance with the Service Specification during a Reporting Period.

Acceptable performance (3) means 60% performance of the Service in accordance with the Service Specification during a Reporting Period.

Adequate Level (2) means 40% or below performance of the Service in accordance with the Service Specification during a Reporting Period.

Unsatisfactory (1) means 20% or below performance of the Service in accordance with the Service Specification during a Reporting Period.

3. Maximum number of inspections

Stations will be inspected a maximum once every reporting period.

4. Expected repair

5 Working Days

APPENDIX 5 to SCHEDULE 7.2**SERVICE QUALITY APPENDIX– STATION LOUNGES (VIA 3RD PARTY HANDLING AGENT)****1. Service Specification**

- 1.1** Any lounges areas within a station that are operated by a 3rd Party supplier on behalf and leased by CSL are open for use and provide a comfortable and safe environment for people waiting to board or who have alighted a train at that station.
- 1.2** A lounge will fail if:
- (a) any lounge which is intended to be staffed is not staffed.
 - (b) toilet and shower facilities are open and in working order.
 - (c) hot/cold refreshments are on offer.
 - (d) staff are equipped to deal with CSL guests and understand the operational model of CSL (boarding, platform and departure times).

2. Service Benchmarks

Exceptional performance (5) means 100% performance of the Service in accordance with the Service Specification during a reporting period.

Acceptable performance (3) means 50% performance of the Service in accordance with the Service Specification during a Reporting Period.

Unsatisfactory (1) means 0% or below performance of the Service in accordance with the Service Specification during a Reporting Period.

3. Maximum number of inspections

Stations will be inspected a maximum once every reporting period.

4. Expected repair

5 Working Days

APPENDIX 6 to SCHEDULE 7.2**SERVICE QUALITY APPENDIX- STATION ACCESSIBILITY****1. Service Specification**

- 1.1** Any lounge areas within a station that are operated by a 3rd Party supplier on behalf and leased by CSL are open for use and provide a comfortable and safe environment for people waiting to board or who have alighted a train at that station.
- 1.2** A station will fail if:
- (a) access into the lounge by way of a ramp must be clear of hazards or a lift must be operational.
 - (b) accessible door opening function must be a low height to enter into the lounge and operational.
 - (c) lift or Stair Chair (Perth only) must be visible and operational.
 - (d) there is no room to flow within the lounge free from hazards or obstacles to prevent utilising accessible areas for seating.
 - (e) accessible shower and toilet facilities are fully operational including the emergency pull cord.
 - (f) there is no Guest Assistance from the station entrance to the lounge and to the platform/train available in the station.
 - (g) self-service is not fully accessible to wheelchair users or served by a Lounge Ambassador.
 - (h) there is no Lounge Ambassador Assistance on hand with train scheduled arrival and departure times.

2. Service Benchmarks

Exceptional performance (5) means 100% performance of the Service in accordance with the Service Specification during a reporting period.

Strong performance (4) means 80% performance of the Service in accordance with the Service Specification during a Reporting Period.

Acceptable performance (3) means 60% performance of the Service in accordance with the Service Specification during a Reporting Period.

Adequate Level (2) means 40% or below performance of the Service in accordance with the Service Specification during a Reporting Period.

Unsatisfactory (1) means 30% or below performance of the Service in accordance with the Service Specification during a Reporting Period.

3. Maximum number of inspections

Stations will be inspected a maximum once every reporting period.

4. Expected repair

5 Working Days

APPENDIX 7 TO SCHEDULE 7.2

SERVICE QUALITY APPENDIX – TRAIN SEATS, RACKS AND OTHER PASSENGER FACILITIES

1. Service Specification

- 1.1** Seats and tables on trains should be undamaged and generally fit for purpose. This includes both the seat assembly, any seat tilt and slide mechanism and covers, as well as any fold-down tables or slide-out table assemblies
- 1.2** A carriage will be failed if a seat:
- (a) is missing, a seat cushion is missing, damaged or is improperly secured to the frame.
 - (b) is out of use to a passenger by taping, barrier or other means.
 - (c) has a cover which is ripped or pierced in any way (being a tear or cut of more than 5cm in length or a hole greater than 2cm² in area), or the cover is missing or not properly secured to the seat.
 - (d) has an assembly which is insecure, unstable or is noticeably damaged, which affects the functionality, could cause injury to a passenger or damage personal property.
 - (e) any seat tilt and slide mechanism does not operate correctly and does not retain all seats in an upright position.
 - (f) any luggage racks/stacks are not securely fitted, are unstable or the facility is noticeably damaged.
 - (g) any cycle assembly is not securely fitted, is unstable, the facility is noticeably damaged or blocked off for passenger use.
 - (h) any tables (including fold-down or slide-out tables) are not securely fitted, are unstable or are noticeably damaged which would prevent the use of the table or could cause injury.
 - (i) Overhead lockers above seats are not securely locking.

2. Service Benchmarks

Exceptional performance (5) means 90% performance of the Service in accordance with the Service Specification during a reporting period.

Strong performance (4) means 80% performance of the Service in accordance with the Service Specification during a Reporting Period.

Acceptable performance (3) means 70% performance of the Service in accordance with the Service Specification during a Reporting Period.

Adequate Level (2) means 60% or below performance of the Service in accordance with the Service Specification during a Reporting Period.

Unsatisfactory (1) means 50% or below performance of the Service in accordance with the Service Specification during a Reporting Period.

3. Maximum number of inspections

Trains will be inspected a maximum once every reporting period.

4. Expected repair

5 Working Days

APPENDIX 8 TO SCHEDULE 7.2**SERVICE QUALITY APPENDIX – TRAIN LIGHTING****1. Service Specification****1.1** All trains should be fitted with lights to illuminate the passenger compartments.

Train lights shall be turned on unless the daylight level is such that passengers can comfortably read without the benefit of such lights.

1.2 A carriage will be failed if:

- (a) any light bulb or lighting tube does not illuminate when the power is switched on (unless the daylight level is that described in paragraph 1.1. Note units may have dimming lights installed.
- (b) any light cover is cracked or broken, is loose or is otherwise unfit for purpose or is missing or there are exposed electrical connections or wiring

2. Service Benchmarks

Exceptional performance (5) means 98% performance of the Service in accordance with the Service Specification during a reporting period.

Strong performance (4) means 95% performance of the Service in accordance with the Service Specification during a Reporting Period.

Acceptable performance (3) means 92% performance of the Service in accordance with the Service Specification during a Reporting Period.

Adequate Level (2) means 89% or below performance of the Service in accordance with the Service Specification during a Reporting Period.

Unsatisfactory (1) means 86% or below performance of the Service in accordance with the Service Specification during a Reporting Period.

3. Maximum number of inspections

Trains will be inspected a maximum once every reporting period.

4. Expected repair

5 Working Days

APPENDIX 9 TO SCHEDULE 7.2

SERVICE QUALITY APPENDIX – TRAIN TOILETS/ACCESSIBLE TOILETS

This schedule will audit the station toilets and accessible toilets independently. The schedule will be considered as two performance schedules, where each schedule will have their own inventory levels.

Schedule 9A Train Toilets will be audited with an inventory for the number of stations with toilets present which can be audited. This element will have its own % performance benchmark.

Schedule 9B Accessible Train Toilets will be audited with an inventory for the number of stations with accessible toilets which can be audited. This element will have its own % performance benchmark.

SERVICE QUALITY APPENDIX 9A – TRAIN TOILETS

1. Service Specification

- 1.1 Toilets will be inspected per toilet, and it is a toilet that fails or passes.
- 1.2 Each toilet on a train will be failed if:
 - (a) a toilet is closed for customer use.
 - (b) it is not fully functional (to include lights, locks and seats) sanitary and available for use. The main toilet light should be functional, all other lights report under service schedule 8 train lights.
 - (c) it is damaged or has been contaminated in such a way that it could damage or injure passengers or their clothing or articles (including by staining).
 - (d) it is not stocked with required consumables (e.g., toilet paper and soap) where any facility exists that may require restocking.
 - (e) it does not provide a functioning water supply for washing purposes and a means of drying. All such facilities should be operational.
 - (f) any baby changing facilities meant to be fitted are absent or are not fully functional and available for use.
 - (g) a toilet entrance door does not open when the illuminated door release button is depressed, or the door release button does not actually illuminate.
 - (h) there is a toilet availability indicator in the passenger carriage, then such indicator is not fully functional.

SERVICE QUALITY APPENDIX 9B – TRAIN ACCESSIBLE TOILETS

1. Service Specification

- 1.1 Accessible toilets will be inspected per toilet, and it is a toilet that fails or passes.
- 1.2 Each toilet on a train will be failed if:
 - (a) an accessible toilet is closed for customer use.
 - (b) an accessible toilet is not fully functional (to include lights, locks and seats) sanitary and available for use. The main toilet light should be functional, all other lights report under service schedule 8 train lights.
 - (c) an accessible toilet is damaged or has been contaminated in such a way that it could damage or injure passengers or their clothing or articles (including by staining).

- (d) an accessible toilet is not stocked with required consumables (e.g. toilet paper and soap) where any facility exists that may require restocking.
- (e) an accessible toilet does not provide a functioning water supply for washing purposes and a means of drying. All such facilities should be operational.
- (f) any disabled fittings meant to be fitted to comply with relevant disability guidance are absent or are not fully functional and available for use.

2. Service Benchmarks

Train Toilets

Exceptional performance (5) means 94% performance of the Service in accordance with the Service Specification during a reporting period.

Strong performance (4) means 90% performance of the Service in accordance with the Service Specification during a Reporting Period.

Acceptable performance (3) means 86% performance of the Service in accordance with the Service Specification during a Reporting Period.

Adequate Level (2) means 81% or below performance of the Service in accordance with the Service Specification during a Reporting Period.

Unsatisfactory (1) means 76% or below performance of the Service in accordance with the Service Specification during a Reporting Period.

Accessible Train Toilets

Exceptional performance (5) means 94% performance of the Service in accordance with the Service Specification during a reporting period.

Strong performance (4) means 87% performance of the Service in accordance with the Service Specification during a Reporting Period.

Acceptable performance (3) means 79% performance of the Service in accordance with the Service Specification during a Reporting Period.

Adequate Level (2) means 70% or below performance of the Service in accordance with the Service Specification during a Reporting Period.

Unsatisfactory (1) means 62% or below performance of the Service in accordance with the Service Specification during a Reporting Period.

3. Maximum number of inspections

Trains will be inspected a maximum once every reporting period.

4. Expected repair

5 Working Days

APPENDIX 10 TO SCHEDULE 7.2**SERVICE QUALITY APPENDIX – TRAIN GRAFFITI****1. Service Specification**

- 1.1** On train there should be no graffiti of a political, racial, religious, sexual or other potentially offensive nature (internally or externally). Other graffiti must not be readily apparent to a casual user of the Train.

Without limiting the normal meaning of the word graffiti, for the purposes of this service schedule, graffiti will be regarded as writing, painting, drawing or scribbles. Line indentation, line marking, or scratching shall not constitute graffiti as this is clearly no more than scuffing or reasonable wear and tear on the surface. The definition of graffiti shall also include the application of any stickers or labels.

- 1.2** A carriage will be failed if:

- (a) any graffiti which falls within the description in paragraph 1.1 above is visible.
- (b) other graffiti covers an area extending in total to 1 square metre or an A5 sheet of paper cannot cover any individual graffiti.
- (c) any stickering that falls within the description in paragraph 1.1 is visible.
- (d) other stickering covers an area extending in total to 1 square metre or an A5 sheet of paper cannot cover any individual graffiti.

2. Service Benchmarks

Exceptional performance (5) means 98% performance of the Service in accordance with the Service Specification during a reporting period.

Strong performance (4) means 94% performance of the Service in accordance with the Service Specification during a Reporting Period.

Acceptable performance (3) means 90% performance of the Service in accordance with the Service Specification during a Reporting Period.

Adequate Level (2) means 86% or below performance of the Service in accordance with the Service Specification during a Reporting Period.

Unsatisfactory (1) means 82% or below performance of the Service in accordance with the Service Specification during a Reporting Period.

3. Maximum number of inspections

Trains will be inspected a maximum once every reporting period.

4. Expected repair

5 Working Days

APPENDIX 11 TO SCHEDULE 7.2**SERVICE QUALITY APPENDIX – TRAIN CLEANLINESS****SERVICE SCHEDULE 11 – TRAIN CLEANLINESS****1. Service Specification**

1.1 Trains should be kept clean and free from litter.

1.2 A carriage will fail if:

- (a) there are more than 10 items of litter, each larger than the size of a credit card, found within the carriage (other than in a litter bin);
- (b) any litterbin is full which would prevent the use of the bin or is damaged in a way that would prevent the use of the bin or could cause injury to a passenger
- (c) the windows are so dirty that a normally sighted person cannot read a station sign through a window.
- (d) there is any contamination or spillage which makes the carriage dangerous, unusable or unpleasant for the passenger
- (e) any surface in the interior of the carriage (except the floor) is so dirty that it could contaminate a passenger's clothing.
- (f) a seat has been contaminated in such a way that it could damage passengers clothing or articles (including by staining).
- (g) any extraction vents in passenger areas should be clear of visible dust and debris.

2. Service Benchmarks

Exceptional performance (5) means 98% performance of the Service in accordance with the Service Specification during a reporting period.

Strong performance (4) means 94% performance of the Service in accordance with the Service Specification during a Reporting Period.

Acceptable performance (3) means 90% performance of the Service in accordance with the Service Specification during a Reporting Period.

Adequate Level (2) means 86% or below performance of the Service in accordance with the Service Specification during a Reporting Period.

Unsatisfactory (1) means 82% or below performance of the Service in accordance with the Service Specification during a Reporting Period.

3. Maximum number of inspections

Trains will be inspected a maximum once every reporting period.

4. Expected repair

5 Working Days

3. Maximum number of inspections

Trains will be inspected a maximum once every reporting period.

4. Expected repair

5 Working Days

APPENDIX 12 TO SCHEDULE 7.2**SERVICE QUALITY APPENDIX – ONBOARD PASSENGER INFORMATION SYSTEM****1. Service Specification**

- 1.1** Onboard passenger information systems (including both interior and exterior displays), should be legible and comprehensible and display the correct information in the correct sequence and be operating.
- 1.2** A screen will be failed if:
- (a) any destination board or information display is blank, not switched on or damaged.
 - (b) any passenger information screens/destination board or information display is incorrect, not legible or, where relevant, is not operational.

2. Service Benchmarks

Exceptional performance (5) means 98% performance of the Service in accordance with the Service Specification during a reporting period.

Strong performance (4) means 94% performance of the Service in accordance with the Service Specification during a Reporting Period.

Acceptable performance (3) means 90% performance of the Service in accordance with the Service Specification during a Reporting Period.

Adequate Level (2) means 86% or below performance of the Service in accordance with the Service Specification during a Reporting Period.

Unsatisfactory (1) means 82% or below performance of the Service in accordance with the Service Specification during a Reporting Period.

3. Maximum number of inspections

Trains will be inspected a maximum once every reporting period.

4. Expected repair

5 Working Days

APPENDIX 13 TO SCHEDULE 7.2**SERVICE QUALITY APPENDIX – TRAIN HEATING & VENTILATION****2. Service Specification**

1.3 Onboard passenger information systems (including both interior and exterior displays), should be legible and comprehensible and display the correct information in the correct sequence and be operating.

1.4 A screen will be failed if:

(c) any destination board or information display is blank, not switched on or damaged.

(d) any passenger information screens/destination board or information display is incorrect, not legible or, where relevant, is not operational.

3. Service Benchmarks

Exceptional performance (5) means 98% performance of the Service in accordance with the Service Specification during a reporting period.

Strong performance (4) means 94% performance of the Service in accordance with the Service Specification during a Reporting Period.

Acceptable performance (3) means 90% performance of the Service in accordance with the Service Specification during a Reporting Period.

Adequate Level (2) means 86% or below performance of the Service in accordance with the Service Specification during a Reporting Period.

Unsatisfactory (1) means 82% or below performance of the Service in accordance with the Service Specification during a Reporting Period.

3. Maximum number of inspections

Trains will be inspected a maximum once every reporting period.

4. Expected repair

5 Working Days

APPENDIX 14 TO SCHEDULE 7.2

SERVICE QUALITY APPENDIX – TRAIN POSTERS/DECALS & INFORMATION

1. Service Specification

- 1.1** Interior posters/decals should be in good condition and at the correct location on the train. Information should be clearly visible over the full area of the frontage.

The correct posters/decals and other fixed information should be on display at specified locations, displayed in an appropriate manner and legible to the public

- 1.2** A carriage will be failed if:

- (a) a poster/decal is missing.
- (b) a poster/decal is not legible from the adjoining central aisle.
- (c) any poster/decal has become noticeably damaged or significantly faded to the extent the information is not legible in any way, which prevents the proper display of the information. (e.g. due to dirt, moisture, non-transparent frontage or because any poster has slumped in its frame.
- (d) all appropriate passenger saloon Safety and CCTV advisory notices are not in place.
- (e) “no smoking” signs have not been provided or are not clearly visible.
- (f) any poster frame is noticeably damaged.
- (g) it has no signs indicating how the operation of the seat works (if there is any seat operation provided).
- (h) interior information signs that contain information for passengers, including:
 - I. the contact details of the customer relations department.
 - II. how to contact Train staff in the event of an emergency.
 - III. (if appropriate) the contact details of the relevant Rail Passengers’ Committee.

2. Service Benchmarks

Exceptional performance (5) means 98% performance of the Service in accordance with the Service Specification during a reporting period.

Strong performance (4) means 94% performance of the Service in accordance with the Service Specification during a Reporting Period.

Acceptable performance (3) means 90% performance of the Service in accordance with the Service Specification during a Reporting Period.

Adequate Level (2) means 86% or below performance of the Service in accordance with the Service Specification during a Reporting Period.

Unsatisfactory (1) means 82% or below performance of the Service in accordance with the Service Specification during a Reporting Period.

3. Maximum number of inspections

Trains will be inspected a maximum once every reporting period.

4. Expected repair

5 Working Days

APPENDIX 15 TO SCHEDULE 7.2**SERVICE QUALITY APPENDIX – TRAIN DOORS****1. Service Specification**

1.1 All external train doors on vehicles should function properly and be capable of being opened at each station. External doors on the relevant side of the vehicle should open at each halt.

All gangway doors between vehicles should function properly and be capable of being opened and shut at all times.

All vestibule doors which separate one area of a coach from another should function properly and be capable of being opened and shut at all times

1.2 A door will be failed if:

- (a) a gangway door is not capable of being opened or shut properly.
- (b) a vestibule door is not capable of being opened or where a vestibule door is in the open position and a member of on train staff are unable to reset as per the door design.
- (c) an external door does not open when the illuminated door release button is depressed during a halt at a station, or the door release button does not actually illuminate during a halt at a station.
- (d) an external door does not provide a seal against weather and draughts.
- (e) the exterior door "open" or "close" exterior lights are not functioning and do not illuminate during a halt at a station.
- (f) the exterior door opening and closing audio alarm is not functioning and is not audible when the door opens and closes during a halt at a station.
- (g) the spotlighting of a doorstep plate is not functioning.
- (h) the door button bezel trim is damaged or missing where installed.

2. Service Benchmarks

Exceptional performance (5) means 96% performance of the Service in accordance with the Service Specification during a reporting period.

Strong performance (4) means 94% performance of the Service in accordance with the Service Specification during a Reporting Period.

Acceptable performance (3) means 92% performance of the Service in accordance with the Service Specification during a Reporting Period.

Adequate Level (2) means 90% or below performance of the Service in accordance with the Service Specification during a Reporting Period.

Unsatisfactory (1) means 88% or below performance of the Service in accordance with the Service Specification during a Reporting Period.

3. Maximum number of inspections

Trains will be inspected a maximum once every reporting period.

4. Expected repair

5 Working Days

APPENDIX 16 TO SCHEDULE 7.2**SERVICE QUALITY APPENDIX –TRAIN CCTV****1. Service Specification**

- 1.1** CCTV and other cameras (each a “camera”) located on trains should be operational to the standard set. All cameras should be regularly checked for operation. All picture recording systems linked to cameras should be functional.

CCTV cameras and recording equipment shall be functioning and operational at all times during a Train’s journey.

A camera will be failed if any camera or any picture recording system in respect of any camera is not functioning or is not operational to the required standard or is not operating.

- 1.2** A camera will be failed if:

- (a) any camera fails completely.
- (b) if any camera picture is substandard, that would not allow for the area to be monitored.
- (c) The picture recording system is not operational.

2. Service Benchmarks

Exceptional performance (5) means 98% performance of the Service in accordance with the Service Specification during a reporting period.

Strong performance (4) means 95% performance of the Service in accordance with the Service Specification during a Reporting Period.

Acceptable performance (3) means 92% performance of the Service in accordance with the Service Specification during a Reporting Period.

Adequate Level (2) means 89% or below performance of the Service in accordance with the Service Specification during a Reporting Period.

Unsatisfactory (1) means 86% or below performance of the Service in accordance with the Service Specification during a Reporting Period.

3. Maximum number of inspections

Trains will be inspected a maximum once every reporting period.

4. Expected repair

5 Working Days

APPENDIX 17 TO SCHEDULE 7.2**SERVICE QUALITY APPENDIX – TRAIN REFRESHMENT AND FOOD FACILITIES****1. Service Specification**

- 1.1** Any train which should be equipped with hot and cold refreshment and/or food facilities. Where a train is equipped with food facilities these shall be fully functioning and stocked so as to be operational.
- 1.2** A train will be failed if:
- (a) the train should be equipped with food facilities and is not so equipped.
 - (b) any Club Car is unstaffed.
 - (c) Any equipment is not operational that impacts service to passengers.
 - (d) Club car is closed off for service.

2. Service Benchmarks

Exceptional performance (5) means 100% performance of the Service in accordance with the Service Specification during a reporting period.

Strong performance (4) means 80% performance of the Service in accordance with the Service Specification during a Reporting Period.

Acceptable performance (3) means 60% performance of the Service in accordance with the Service Specification during a Reporting Period.

Adequate Level (2) means 40% or below performance of the Service in accordance with the Service Specification during a Reporting Period.

Unsatisfactory (1) means 20% or below performance of the Service in accordance with the Service Specification during a Reporting Period.

3. Maximum number of inspections

Trains will be inspected a maximum once every reporting period.

4. Expected repair

5 Working Days

APPENDIX 18 TO SCHEDULE 7.2**SERVICE QUALITY APPENDIX – TRAIN-WIFI****1. Service Specification**

- 1.1** Any carriage which should be equipped with Wi-Fi shall be so equipped and shall be fully functional and operational
- 1.2** A carriage will be failed if:
- (a) the Wi-Fi is not so equipped and fully functional and operational -the test will be to connect to the BBC News.

2. Service Benchmarks

Exceptional performance (5) means 98% performance of the Service in accordance with the Service Specification during a reporting period.

Strong performance (4) means 94% performance of the Service in accordance with the Service Specification during a Reporting Period.

Acceptable performance (3) means 90% performance of the Service in accordance with the Service Specification during a Reporting Period.

Adequate Level (2) means 86% or below performance of the Service in accordance with the Service Specification during a Reporting Period.

Unsatisfactory (1) means 82% or below performance of the Service in accordance with the Service Specification during a Reporting Period.

3. Maximum number of inspections

Trains will be inspected a maximum once every reporting period.

4. Expected repair

5 Working Days

APPENDIX 19 TO SCHEDULE 7.2

SERVICE QUALITY APPENDIX– TRAIN STAFF AND CUSTOMER CARE

1. Service Specification

- 1.1 All Train staff shall receive sufficient training (including refresher training) to allow them competently to perform the functions their roles require of them and shall act at all times in a courteous and professional manner in their dealings with the public.

On each Train there shall be a person whose duties shall include customer care duties as follows:

- I. taking appropriate measures to deal with unruly behaviour by any passengers so far as is reasonably practicable in the absence of police assistance and calling for police assistance when required:

- 1.2 A train will be failed if:

- (a) any staff member who should be wearing a uniform is not, or that uniform is incomplete or is excessively worn or is not wearing, in a prominent position, a badge bearing their name and position/role.
- (b) any staff member whose role it is to sell tickets cannot, upon enquiry, provide details of relevant tickets and journey information.
- (c) staff members whose role may include making announcements (including through use of public address systems) are unable to demonstrate a knowledge of the protocol for such announcements and the information to be contained within them or where any Train under inspection is running more than 5 minutes late and a staff member whose role it is to make such public announcements does not do so.
- (d) there is no on-train staff.
- (e) any staff member whose role it is to sell tickets or checking tickets are not performing revenue collection duties, this will include customer service duties.

2. Service Benchmarks

Exceptional performance (5) means 100% performance of the Service in accordance with the Service Specification during a reporting period.

Strong performance (4) means 80% performance of the Service in accordance with the Service Specification during a Reporting Period.

Acceptable performance (3) means 60% performance of the Service in accordance with the Service Specification during a Reporting Period.

Adequate Level (2) means 40% or below performance of the Service in accordance with the Service Specification during a Reporting Period.

Unsatisfactory (1) means 20% or below performance of the Service in accordance with the Service Specification during a Reporting Period.

3. Maximum number of inspections

Trains will be inspected a maximum once every reporting period.

4. Expected repair

5 Working Days

APPENDIX 20 TO SCHEDULE 7.2

SERVICE QUALITY APPENDIX –ACCESSIBILITY

1. Service Specification

- 1.1 All assets which aid the accessibility needs of the passenger should be operational and intact.
- 1.2 A carriage will fail if:
- (a) The equipment or fittings to enable the access or egress of wheelchairs or to secure wheelchairs do not function properly or do not provide a secure method of assisting the boarding or alighting of wheelchairs.
 - (b) general provision of customer care duties including provision of information to passengers: "helping hand" assistance to adults with small children, infirm, elderly or disabled / registered mobility impaired passengers who may require such assistance.
 - (c) no evidence of a ramp for guests requiring assistance of the train stowed in the PRM coach.
 - (d) a carriage will be failed if rooms or seated accommodation are not made available as required by paragraph 1.1. A carriage shall not fail for this reason if it provides alternative suitable accommodation at the stations for the relevant times.
 - (e) a carriage will be failed if there is insufficient space or facilities for wheelchairs.
 - (f) a carriage will be failed if it does not have operational and easily accessible passenger emergency alarms or "call for aid" equipment.
 - (g) guests in PRM room can't access Club Car due to the coach or club car being wrong turned.
 - (h) on-train staff are not trained on the use of passenger assistance ramps.
 - (i) a designated wheelchair space is not available for use, unless being used by another wheelchair user.
 - (j) it does not have signs indicating the location and functionality of passenger emergency alarms or "call for aid" equipment.

2. Service Benchmarks

Exceptional performance (5) means 100% performance of the Service in accordance with the Service Specification during a reporting period.

Strong performance (4) means 80% performance of the Service in accordance with the Service Specification during a Reporting Period.

Acceptable performance (3) means 60% performance of the Service in accordance with the Service Specification during a Reporting Period.

Adequate Level (2) means 40% or below performance of the Service in accordance with the Service Specification during a Reporting Period.

Unsatisfactory (1) means 20% or below performance of the Service in accordance with the Service Specification during a Reporting Period.

3. Maximum number of inspections

Trains will be inspected a maximum once every reporting period.

4. Expected repair

5 Working Days

APPENDIX 21 TO SCHEDULE 7.2

SERVICE QUALITY APPENDIX – IN ROOM PRESENTATION

1. Service Specification

- 1.1** A carriage on sleeper services will normally be divided into the number of rooms with which it was built. Rooms should be undamaged, clean and generally fit for purpose. This includes the bed assembly, any bedding and wash basin.

Passengers with reduced mobility rooms (PRM) will also be measured in this schedule.

Transport Scotland will carry out a minimum of 100 berth audits per period. If Transport Scotland carry out less than 100 audits the difference will be recorded as a pass.

Occupied rooms, which are not obviously damaged, will not be failed.

- 1.2** A room/berth will fail if:

- (a) if any bed has bed linen or blankets which are ripped or pierced in any way or is incomplete or subject to excessive wear, is visibly marked or is not freshly laundered.
- (b) if it has an unmade bed (otherwise than after the berth has been vacated by its occupant before the end, or at the end, of the Train's journey).
- (c) if it is not equipped with clean, undamaged towels.
- (d) if it is damaged or has been contaminated in such a way that it could contaminate or injure passengers or their clothing or articles (including by staining).

- 1.3** A PRM room/berth will fail if:

- (a) if any bed has bed linen or blankets which are ripped or pierced in any way or is incomplete or subject to excessive wear, is visibly marked or is not freshly laundered.
- (b) if it has an unmade bed (otherwise than after the berth has been vacated by its occupant before the end, or at the end, of the Train's journey).
- (c) if it is not equipped with clean, undamaged towels.
- (d) if it is damaged or has been contaminated in such a way that it could contaminate or injure passengers or their clothing or articles (including by staining).

2. Service Benchmarks

Exceptional performance (5) means 95% performance of the Service in accordance with the Service Specification during a reporting period.

Strong performance (4) means 90% performance of the Service in accordance with the Service Specification during a Reporting Period.

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

Adequate Level (2) means 80% or below performance of the Service in accordance with the Service Specification during a Reporting Period.

Unsatisfactory (1) means 75% or below performance of the Service in accordance with the Service Specification during a Reporting Period.

3. Maximum number of inspections

Trains will be inspected a maximum once every reporting period.

4. Expected repair

5 Working Days

APPENDIX 22 TO SCHEDULE 7.2**SERVICE QUALITY APPENDIX - IN ROOM FACILITIES****1. Service Specification**

1.1 A carriage on sleeper services will normally be divided into the number of rooms with which it was built. Rooms should be undamaged, clean and generally fit for purpose. This includes the bed assembly, any bedding and wash basin. Rooms shall be made available for occupation by passengers at the station of origin 30 minutes before such service is scheduled to depart.

For seated accommodation, it shall be available at least 30 minutes before departure at the station of origin.

Passengers with reduced mobility rooms (PRM) will also be measured in this schedule.

Transport Scotland will carry out a minimum of 100 berth audits per period. If Transport Scotland carry out less than 100 audits the difference will be recorded as a pass.

Occupied rooms, which are not obviously damaged, will not be failed.

1.2 A room/berth will fail if:

- (a) if any bed (meaning the structure on which the bed is made up) is missing or if the bed is improperly secured.
- (b) if it does not have a functioning hot and cold water supply in the washing facilities.
- (c) if showers and en-suite toilets, where provided, do not function as intended or are not sufficiently stocked with consumables.
- (d) if its heating and ventilation system does not operate when switched on or the ambient temperature cannot be controlled by the passenger where this is intended.
- (e) window blinds are unable to move up or down or are soiled or damaged.
- (f) if it has an assembly which is insecure or unstable or is noticeably damaged.
- (g) if a berth door is defective such that it prohibits access or use of the room.
- (h) its electrical supply outlet for use by a passenger (socket) does not function as designed.
- (i) if booked rooms are not available to passengers 30 minutes prior to departure.

1.3 A PRM room/berth will fail if:

- (a) if any bed (meaning the structure on which the bed is made up) is missing or if the bed is improperly secured.
- (b) if it does not have a functioning hot and cold water supply in the washing facilities.
- (c) if showers and en-suite toilets, where provided, do not function as intended or are not sufficiently stocked with consumables.
- (d) if its heating and ventilation system does not operate when switched on or the ambient temperature cannot be controlled by the passenger where this is intended.
- (e) window blinds are unable to move up or down or are soiled or damaged.

- (f) if it has an assembly which is insecure or unstable or is noticeably damaged.
- (g) if a berth door is defective such that it prohibits access or use of the room.
- (h) its electrical supply outlet for use by a passenger (socket) does not function as designed.
- (i) if booked rooms are not available to passengers 30 minutes prior to departure.

2. Service Benchmarks

Exceptional performance (5) means 95% performance of the Service in accordance with the Service Specification during a reporting period.

Strong performance (4) means 90% performance of the Service in accordance with the Service Specification during a Reporting Period.

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

Adequate Level (2) means 80% or below performance of the Service in accordance with the Service Specification during a Reporting Period.

Unsatisfactory (1) means 75% or below performance of the Service in accordance with the Service Specification during a Reporting Period.

3. Maximum number of inspections

Trains will be inspected a maximum once every reporting period.

4. Expected repair

5 Working Days

APPENDIX 23 TO SCHEDULE 7.2**RECTIFICATION OF FAULTS****1. Service Quality Service Specification**

If following an inspection of a Station Service or On-Train Service the Authority determines that there is a failure, the Operator will notify the Authority when the fault is rectified or alternatively the Authority will carry out a reinspection. The Authority will undertake sample audits on selected rectification notices for verification purposes. This can be completed by the Authority undertaking a re-inspection or requesting evidence of repair. If the verification inspection identifies a failure has not been rectified then the failure will remain for the reporting period.

The Operator is expected to rectify a failure within 5 working days. The Operator is required to notify the Authority by the period end of all rectified faults, where these failures will be recorded as a pass. Where a failure has been identified within week 4 of the period, the Operator is required to notify the Authority by the end of week 1 of the following period, where these failures will be recorded as a pass. Where a follow up inspection has not been completed by the Authority or notification of rectification has not been provided by the Operator a failure will remain for the reporting period.

2. Calculation of the Service Quality Score for each Reporting Period

At the end of each Reporting Period, the Authority shall score each Service Quality Benchmark in that Reporting Period and the Operator shall be awarded a Service Quality Score for that Reporting Period of:

- I. 'Exceptional performance' (5) if the Operator achieves a cumulative score of not less than 109 for all the Service Quality Benchmarks in that Reporting Period.
- II. 'Strong performance' (4) if the Operator achieves a cumulative score not less than 103 and not greater than 108 for all the Service Quality Benchmarks in that Reporting Period.
- III. 'Acceptable performance' (3) if the Operator achieves a cumulative score not less than 97 and not greater than 102 for all the Service Quality Benchmarks in that Reporting Period.
- IV. 'Adequate Level' (2) if the Operator achieves a cumulative score not less than 91 and not greater than 96 for all the Service Quality Benchmarks in that Reporting Period.
- V. 'Unsatisfactory' (1) if the Operator achieves a cumulative score of 90 or less for all the Service Quality Benchmarks in that Reporting Period.

Appendix A – Lounge Opening Times

LOUNGE	Fort William
OPENING TIME AM	0930-1230 Mon-Sat
OPENING TIME PM	1600-2000 Sun-Fri
LOUNGE	Dundee
OPENING TIME AM	0530-0930- Mon-Sat
OPENING TIME PM	2000-2359 Sun-Fri
LOUNGE	Leuchars
OPENING TIME AM	0515-0915- Mon-Sat
OPENING TIME PM	2000-2359 Sun-Fri
LOUNGE	Perth
OPENING TIME AM	0515-0915- Mon-Sat
OPENING TIME PM	2000-2359 Sun-Fri
LOUNGE	Inverness
OPENING TIME AM	0830-1030- Mon-Sat
OPENING TIME PM	18:30-20:30 Sun-Fri
LOUNGE	Euston
OPENING TIME AM	06:30-10:30 Mon-Fri
OPENING TIME PM	18:00-23:00 Sun-Fri

SCHEDULE 8

THIS IS SCHEDULE 8 REFERRED TO IN THE FOREGOING CALEDONIAN SLEEPER GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND CALEDONIAN SLEEPER LIMITED

Payments

- Schedule 8.1: Grant Payments**
 - Appendix 1: Notifiable Costs**

- Schedule 8.2: Performance Review Process**
 - Appendix 1: Indicative Framework of KPIs**
 - Appendix 2: Performance Review**
 - Appendix 3: Performance Review Report**
 - Appendix 4: Indicative Performance Review Scorecard**

- Schedule 8.3: Miscellaneous Payment Provisions**

SCHEDULE 8.1

THIS IS SCHEDULE 8.1 REFERRED TO IN THE FOREGOING CALEDONIAN SLEEPER GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND CALEDONIAN SLEEPER LIMITED

Grant Payments

1. Grant Payments

- 1.1 The Grant Payment (“**£GP**”) payable by SRH to CSL for each of Reporting Period 1 and Reporting Period 2 shall be an amount equal to that specified in column 2 of the table below for that Reporting Period (unless otherwise varied upon the written agreement of the parties):

Column 1	Column 2	Column 3
Reporting Periods	Grant Payment	Working Capital Facility
Reporting Period 4	Grant £1,127,621 FTAC £439,549	£1,500,000
Reporting Period 5	Grant £1,352,395 FTAC £439,549	-

- 1.2 The parties recognise that in addition to the Grant Payment for Reporting Period 4, CSL will also be entitled to a Working Capital Facility from SRH for that Reporting Period 4 at an amount equal to that specified in column 3 of the table in paragraph 1.1.
- 1.3 The Grant Payment payable for any Reporting Period from and including the Reporting Period 6 of the first Operator Year (which third Reporting Period is, for the avoidance doubt, from 20 August 2023 to 16 September 2023) shall be an amount calculated as follows:

£GP =	$PGP + PBCCP \pm PADJ \pm AdADJ$ (as applicable)
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where:

PGP (Periodic Grant Payment)	means an amount equal to: $PGP = BCP_n - ECC_n$ Where:	
	BCP_n	means the Budgeted Cash Payment for the relevant Reporting Period (if any). BCP may be a positive number only.
	ECC_n	means the Estimated Cash Collections for the relevant Reporting Period (if any). ECC may be a positive number only.
	PGP may be a positive or negative number. The parties acknowledge and agree that the PGP for any Reporting Period from and including the third Reporting Period of the first Operator Year shall be determined on the basis of the agreed cash Budget.	

PBCCP	means the Periodic Budgeted Capex Cash Payment for the relevant Reporting Period (if any). PBCCP may be a positive number only.
PADJ	means any Periodic Adjustment due and determined in accordance with paragraph 8 of this Schedule 8.1 (<i>Grant Payments</i>) in respect of the Periodic Adjustment Period. PADJ may be a positive or negative number.
AdADJ	means any Additional Adjustments due and determined in accordance with paragraph 9 of this Schedule 8.1 (<i>Grant Payments</i>). AdADJ may be a positive or negative number.

1.4 Where an Operator Year starts or ends during a Reporting Period, £GP and PGP shall be determined as if references in paragraph 1.3 of this Schedule 8.1 (*Grant Payments*) to a Reporting Period were references to the relevant proportion of a Reporting Period falling within that Operator Year, and the Grant Payment for such Reporting Period shall be calculated as per £GP in paragraph 1.3.

1.5 The parties agree that:

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

2. Payment of Grant Payment

2.1 Except in relation to Reporting Period 4 and Reporting Period 5 to which paragraph 1.1 of this Schedule 8.1 (*Grant Payments*) shall apply, SRH shall notify CSL, no less than seven (7) days prior to the start of each Reporting Period, of the amount of the Grant Payment payable in respect of that Reporting Period.

2.2 Each such notification shall set out the value of each element of the formula used to calculate the Grant Payment as outlined in paragraph 1.3 of this Schedule 8.1 (*Grant Payments*).

2.3 The Payment Date for a Reporting Period shall be the first day of that Reporting Period (or, in the case of Reporting Period 4 of the first Operator Year, it shall be by 19 June 2023).

2.4 Each Grant Payment shall be payable by SRH or, as the case may be, CSL in the amount detailed in paragraph 1.1 or as notified by SRH in accordance with paragraph 2.1 of this Schedule 8.1 (*Grant Payments*) on the Payment Date of the Reporting Period to which it relates.

2.5 Each Grant Payment shall be made:

- (a) by automatic electronic funds transfer in pounds sterling to such bank account in the United Kingdom as the payee of such payment may have previously specified to the payer in writing; and
- (b) so that cleared funds are received in that account on or before the due date for payment.

3. Disputes

3.1 If CSL disputes the amount of a Grant Payment, the dispute shall, unless CSL and SRH otherwise agree, be resolved in accordance with the provisions of paragraph 2 of Schedule 19 (*Other Provisions*). Any such dispute shall not affect any obligation to pay a Grant Payment notified in accordance with this Schedule 8.1 (*Grant Payments*).

4. **No Double Recovery**

4.1 Neither SRH nor CSL shall be entitled to recover (by way of an adjustment to Grant Payments or otherwise) more than once in respect of the same amount.

5. **Force Majeure and Payments**

5.1 Following the occurrence of a Force Majeure Event, the payment of Grant Payments shall continue to be calculated in accordance with this Schedule 8.1 (*Grant Payments*) and the payment of such Grant Payments shall continue unaffected.

6. **Budget**

6.1 The initial Budget as agreed by the parties is detailed in the relevant document as formally approved by each party, and is subject to variation in accordance with this paragraph 6.

6.2 Without limiting the requirement for any other meeting, SRH and CSL shall, subject to paragraph 12.2 of this Schedule 8.1 (*Grant Payments*), hold a forecast Budget review meeting each Reporting Period (unless otherwise agreed in writing among the parties) (a "**Budget Forecast Review Meeting**") at a time and location notified to CSL (and to the Authority) by SRH following provision of the information referred to in paragraph 6.3 of this Schedule 8.1 (*Grant Payments*), and the Authority may (at its discretion) attend such Budget Forecast Review Meeting. The purpose of the meeting shall be to review and seek to agree:

- (a) revisions (if any) to the then current Budget for the remaining Reporting Periods of the Budget; and
- (b) the content of any necessary or desirable corresponding addendum to the Supporting Materials.

6.3 CSL shall ensure that the representatives of CSL at the Budget Forecast Review Meeting include the Finance Director of CSL or a suitable representative of the Finance Director as may reasonably be approved for this purpose by SRH.

6.4 CSL shall within such timescales set out in paragraph 3 of Schedule 13.2 provide to SRH and the Authority:

- (a) the relevant information required pursuant to paragraph 3 of Schedule 13.2 (*Information*);
- (b) a draft periodic Budget prepared using cost and revenue categories agreed with SRH, updated to reflect Actual Cash Payments, Actual Cash Collections and Actual Capex Cash Payments as reflected in the latest Management Accounts and revised Budgeted Cash Payments, Estimated Cash Collections and Periodic Budgeted Capex Cash Payments for the remainder of the Operator Year in respect of the daily cashflow forecast and a corresponding update to the periodic profit and loss account as set out in the relevant Business Plan; and
- (c) all further information as SRH and/or the Authority may request from time to time for the purposes of the operation of this paragraph 6 of this Schedule 8.1 (*Grant Payments*) (and this paragraph shall continue to apply such that the number of requests which SRH and/or the Authority may make is not limited).

6.5 If the parties fail to agree the matters referred to in paragraphs 6.2(a) to 6.2(b) of this Schedule 8.1 (*Grant Payments*) at the relevant Budget Forecast Review Meeting, SRH shall reasonably determine such matters, following consultation with the Authority.

6.6 Such revisions to the Budget and addenda to the Supporting Materials as agreed or determined shall take effect from the first day of the Reporting Period immediately following the date on which the Budget Forecast Review Meeting (at which such matters were discussed) took place provided that, if such revisions or addenda are not agreed by the first day of that Reporting Period, the relevant revisions and addenda shall take effect from the first day of the Reporting Period which falls at least 10 Weekdays after those revisions and addenda are agreed or determined.

- 6.7 Each revision to the Budget and/or addendum to the Supporting Materials shall (unless the parties otherwise agree in writing):
- (a) adopt the same format and structure as the original version in agreed terms (or where the preceding version has included any changes from that format and structure expressly agreed by the parties for this purpose) from the preceding version;
 - (b) make no assumptions or include any costs, revenue or other adjustments which are not consistent with the definitions of Costs and Revenue or, subject to any agreement of the Authority and SRH to the contrary under paragraph 6.2 of this Schedule 8.1 (*Grant Payments*), which represent Notifiable Costs or Revenue Foregone or liabilities in respect of SRH Claims and/or Authority Claims (except as may be otherwise expressly agreed among the parties for that purpose);
 - (c) adopt the same accounting principles and standards as the original agreed version of the initial Budget (as these may be expressly varied by agreement among the parties for this purpose or, in the case of accounting standards, as these may be revised by CSL subject to the approval of SRH and/or the Authority (not to be unreasonably withheld) to take account of changes to GAAP in the United Kingdom);
 - (d) otherwise facilitate easy comparison with the definitions of Costs, Revenue, Notifiable Costs and Revenue Foregone and with the information reported in the Management Accounts, Annual Management Accounts and the Audited Annual Accounts;
 - (e) include a review of cash flows to ensure sufficient working capital with reference to paragraph 10 of this Schedule 8.1 (*Grant Payments*) (in SRH's and the Authority's reasonable opinions);
 - (f) demonstrate that the revision to the Budget and/or addendum is consistent with the relevant Business Plan for that Operator Year, and
 - (g) be formally agreed in accordance with paragraph 1(b) of Schedule 9 (*Changes*).
- 6.8 Further to each occasion when it is agreed or determined that the Budget is to be revised and/or an addendum is to be added to the Supporting Materials, SRH shall be entitled to:-
- (a) make the agreed or determined revisions to the Budget and/or Supporting Materials itself (or procure this is done on its behalf) and provide copies of those revised documents to CSL; or
 - (b) require CSL to provide the agreed or determined revisions to the Budget and/or Supporting Materials for approval by SRH, which CSL shall do and provide revised versions to SRH within such time as SRH shall specify for this purpose.
- 6.9 For the purpose of this paragraph 6, SRH and the Authority shall be entitled to consider any information provided by CSL and any other sources of information which SRH and/or the Authority consider to be relevant and SRH and/or the Authority shall be entitled to request such information from CSL required in connection with the matters referred to in this paragraph 6. Without prejudice to the generality of the foregoing, in considering any revisions to the Budget, regard shall be had to the definitions of Costs, Revenue, Notifiable Costs and Revenue Foregone so as to ensure that the revisions to the Budget are consistent with those definitions.
- 6.10 Subject to SRH's rights set out in paragraph 6.8 of this Schedule 8.1 (*Grant Payments*), SRH and CSL shall at all times act in good faith, reasonably and in a timely manner in the interpretation and application of the provisions for agreeing revisions to the Budget and any addendum to the Supporting Materials.
- 6.11 CSL shall not increase nor agree to any increase in the emoluments payable to Operator Employees (save as may be provided for within the approved Business Plan for the relevant Operator Year and/or the Budget at that time) without first obtaining the written approval of SRH and the Authority (such approval not to be unreasonably withheld or delayed).

7. Review of CSL's performance against Budget

Finance Review Meeting

7.1 Without limiting the requirement for any other meeting, SRH and CSL shall, subject to paragraph 12.2 of this Schedule 8.1 (*Grant Payments*), hold a finance review meeting in every Reporting Period ("**Periodic Finance Review Meeting**") (other than the first Reporting Period of the first Operator Year) at such time(s) and location(s) notified to CSL (and to the Authority) by SRH following provision of the information referred to in paragraph 7.2 below, and the Authority may (at its discretion) attend such Periodic Finance Review Meeting and:

- (a) the purpose of the Periodic Finance Review Meeting shall be to review the financial performance of CSL, including:
 - (i) a review and discussion of variances arising in the preceding Reporting Period between Actual Cash Payments, Actual Cash Collections and Actual Capex Cash Payments with Budgeted Cash Payments, Estimated Cash Collections and Periodic Budgeted Capex Cash Payments contained in the Budget respectively and confirmation of the value of any Periodic Adjustment, and/or reason and confirmation of the value of any Additional Adjustment (as applicable) to be applied to the Grant Payment to be paid in the Reporting Period following the Reporting Period in which the Periodic Finance Review Meeting is taking place, and a comparison with the periodic profit and loss account as set-out in the Business Plan;
 - (ii) a review and discussion of CSL's available cash balance, and any requests for additional working capital;
 - (iii) a review and discussion of CSL's balance sheet position;
 - (iv) a review of fees and payments (including bonuses, rewards or discretionary benefits) actually paid by CSL to its staff, directors and officers during the preceding Reporting Period as against the portion of the Budgeted Cash Payments for such fees and payments stated in the then current Budget;
 - (v) actions to be taken in respect of CSL's financial performance;
 - (vi) identification of any potential Notifiable Costs, Revenue Foregone and SRH Claims and/or Authority Claims that may have been incurred within the preceding or current Reporting Period; and
 - (vii) confirmation and valuation of any Notifiable Costs, Revenue Foregone and liabilities in respect of SRH Claims and/or Authority Claims which have been identified pursuant to (vi) above in previous Periodic Finance Review Meetings and actions to be taken in respect of these costs, revenues and liabilities.
- (b) CSL shall ensure that the representatives of CSL at the meeting include the Finance Director of CSL or a suitable representative of the Finance Director as may reasonably be approved for this purpose by SRH.

7.2 CSL shall, prior to the date of each Periodic Financial Review Meeting provide to SRH the relevant information required pursuant to paragraph 3 of Schedule 13.2 (*Information*) in accordance with the timescales set out therein, and shall provide SRH with all further information as SRH may reasonably request from time to time for the purposes of the operation of paragraph 7.1 above, within such time as SRH may reasonably specify for that purpose (and this paragraph shall continue to apply such that the number of requests which SRH may make is not limited save for that which is reasonable for the resources that are available).

7.3 SRH shall be entitled to consider any information provided to SRH by CSL and any other sources of information which SRH consider to be relevant and SRH shall be entitled to request such information from CSL as SRH require for the purposes of the operation of this paragraph 7. CSL shall provide the

information within such time as SRH may reasonably specify for the purpose (and this paragraph shall continue to apply such that the number of requests which SRH may make is not limited).

7.4 If:

- (a) SRH and CSL fail to agree the matters referred to in paragraph 7.1(a) above at the relevant Periodic Finance Review Meeting; or
- (b) CSL fails to provide the relevant information required pursuant to Schedule 13.2 (*Information*) and/or this paragraph 7, in accordance with the timescales set out therein, or otherwise in accordance with this paragraph 7,

SRH shall (without prejudice to its other rights) determine the relevant matters in accordance with this paragraph 7 and all other applicable provisions of this Schedule 8.1 (*Grant Payments*) but by reference to the relevant information available to SRH at the time of such determination.

7.5 Any Notifiable Costs, Revenue Foregone, SRH Claims, Authority Claims and/or liabilities in respect of such SRH Claims or Authority Claims confirmed and valued in accordance with paragraph 7.1(a)(vii) of this Schedule 8.1 (*Grant Payments*) shall be reported to SRH by CSL as soon as practicable after such confirmation and valuation.

8. Periodic Adjustments

8.1 The value of PADJ for the current Reporting Period (n) shall be equal to the following:

PADJ for Reporting Period (n) =	$(ACP_{n-2} - BCP_{n-2}) + (ACCP_{n-2} - PBCCP_{n-2}) - (ACC_{n-2} - ECC_{n-2})$
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Where:

ACP_{n-2}	means the total Actual Cash Payments in the Reporting Period (n-2) for the Periodic Adjustment Period. ACP _{n-2} may be a positive number only, and shall include any Notifiable Costs and such Notifiable Costs shall be identified separately.
BCP_{n-2}	means the total Budgeted Cash Payments in respect of the Periodic Adjustment Period based on the version of the Budget which applied for the purpose of calculating the Grant Payment in each such Reporting Period. BCP _{n-2} may be a positive number only.
ACCP_{n-2}	means the total Actual Capex Cash Payments in the Reporting Period (n-2) for the Periodic Adjustment Period. ACCP _{n-2} may only be a positive number
PBCCP_{n-2}	means the Periodic Budgeted Capex Cash Payment in respect of the Periodic Adjustment Period based on the version of the Budget which applied for the purpose of the calculation of the Grant Payment for that preceding Reporting Period (n-2). PBCCP may only be a positive number.
ACC_{n-2}	Means the total Actual Cash Collections for the Periodic Adjustment Period. ACC _{n-2} may be a positive or negative number.

ECC_{n-2}	means the total Estimated Cash Collections in respect of the Periodic Adjustment Period. ECC _{n-2} may be a positive or negative number.
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8.2 The value of PADJ shall be calculated in respect of each Reporting Period falling within the Term. An adjustment shall be made to the Grant Payment payable after the calculation of the value of PADJ is determined (a "**Periodic Adjustment**") and the parties acknowledge this may be after the Term.

8.3 If CSL fails to provide the Management Accounts in accordance with its obligations under Schedule 13.2 (*Information*), SRH shall (without prejudice to its other rights) determine (after prior consultation with the Authority) the amount of any Periodic Adjustment in accordance with this paragraph 8 by reference to the relevant information available to SRH at the time of such determination.

8.4 SRH and the Authority may, upon at least three (3) Reporting Periods' notice to CSL, provide for the Periodic Adjustment to the Grant Payment under this paragraph 8 of this Schedule 8.1 (*Grant Payments*) to be replaced by a quarterly, bi-annual or an annual adjustment to the Grant Payment.

9. **Additional Adjustment**

9.1 An "**Additional Adjustment**" or "**AdADJ**" is any adjustment to the Grant Payment other than a Periodic Adjustment.

9.2 CSL may request AdADJ from SRH during a Periodic Finance Review Meeting. The approval and payment of any AdADJ, including the value of any AdADJ, shall be at the discretion and determination SRH (after consultation with the Authority). Requests for AdADJ shall be fully justified and reported by CSL to SRH in accordance with such criteria determined by SRH from time to time, and discussed at the relevant Periodic Finance Review Meeting.

9.3 An adjustment shall be made to the Grant Payment payable after the value of approved AdADJ is determined by SRH (after consultation with the Authority) (an "**Additional Adjustment**").

9.4 SRH and the Authority agree that, provided the Management Accounts (in a form consistent with the obligations of CSL under Schedule 13.2 (*Information*)) are received from CSL within the timescale specified in paragraph 3 of Schedule 13.2 (*Information*), SRH will provide CSL with the value of an approved AdADJ in sufficient time for the Additional Adjustment to be included in the Grant Payment for the Reporting Period immediately following the Reporting Period in which the Additional Adjustment is determined by SRH.

10. **Working Capital**

10.1 It is acknowledged by SRH and CSL that:

- (a) the Grant Payment to CSL shall include sufficient working capital, without prejudice to payment of the Working Capital Facility to be paid to CSL during Reporting Period 4 in accordance with paragraph 1.2; and
- (b) CSL shall be entitled to request additional working capital through the Grant Payment if in any Reporting Period:
 - (i) CSL's available cash balance in that Reporting Period is below the Required Cash Balance; or
 - (ii) CSL reasonably believes that its available cash balance will fall below the Required Cash Balance at the end of the Reporting Period immediately following that Reporting Period and the parties agree that approval and payment of any additional working capital, including the value thereof, shall be at SRH's sole discretion and determination (after consultation with the Authority).

- 10.2 Any request for additional working capital by CSL shall be in writing and fully justified by CSL in accordance with such criteria as determined by SRH from time to time including evidencing the cash shortfall and the amount required to remedy the cash shortfall. CSL shall provide any and all other information reasonably requested and required by SRH to enable SRH to make an informed decision regarding providing additional working capital to CSL.
- 10.3 Where cash balances in a Reporting Period exceeds the Required Cash Balance, then any amounts above the Required Cash Balance may be required to be repaid to SRH by CSL at SRH's discretion (upon written notice by SRH).
- 10.4 Any amounts of working capital which have not been allocated to be spent and/or have not been spent by CSL as at the Expiry Date or termination of this Agreement shall immediately be repaid to SRH by CSL.

11. End of Term

Final Adjustment (FADJ)

- 11.1 Any Final Adjustment to be made in respect of the final Operator Year shall be determined in accordance with paragraph 11.2 of this Schedule 8.1 (*Grant Payments*) but shall be paid (if such Final Adjustment is a positive value) by SRH to CSL within 7 Weekdays of SRH giving written notice to CSL of the amount of such Final Adjustment.
- 11.2 FADJ in shall be equal to the following:

FADJ =	$(\text{TotalACP} - \text{TotalACC}) + \text{Total ACCP} - (\text{TotalPGP} + \text{Total PBCCP}) \pm \text{TotalPADJ} \pm \text{TotalAdADJ}$
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Where:

TotalACP	means the total Actual Cash Payments of CSL for the Term as set out in the Final Reviewed Accounts for the Term. TotalACP may only be a positive number.
TotalACC	means the total Actual Cash Collections for the Term as set out in the Final Reviewed Accounts for the Term. TotalACC may only be a positive number.
TotalACCP	means the total Actual Capex Cash Payments for the Term as set out in the Final Reviewed Accounts for the Term. TotalACCP may only be a positive number.
TotalPGP	means the aggregate value of all of the Periodic Grant Payments paid to CSL during the Term. TotalPGP may be positive or negative.
TotalPBCCP	means the aggregate value of all of the Periodic Budgeted Capex Cash Payments paid to CSL during the Term. TotalPBCCP may only be a positive number
TotalPADJ	means the total net value of PADJ paid in respect of each Reporting Period during the Term. TotalPADJ may be positive or negative.

TotalAdADJ	Means the total net value of any AdADJ paid in respect of each Reporting Period during the Term. TotalAdADJ may be positive or negative
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- 11.3 If any Final Adjustment determined under paragraph 11.2 is a negative value, CSL shall owe SRH, as a debt, a sum equal to the value of such FADJ (expressed as a positive value) and SRH may, at its discretion, demand payment from CSL of all or part of that sum (which CSL shall pay to SRH) or deduct all or part of that sum from any further payments due under this Agreement.
- 11.4 Where CSL notifies SRH within 7 Weekdays of the end of the Term that additional time will be required to identify and collate specified Actual Cash Payments, Actual Cash Collections and Actual Capex Payments for the Term the parties may agree to extend the period for determining the Final Adjustment and the parties may agree to hold a Periodic Finance Review Meeting (for the purposes set out in paragraph 7.1(a) of this Schedule 8.1 (*Grant Payments*)) and to review and discuss any such specified Actual Cash Payments) at an agreed date after the end of the Term.
- 11.5 Subject to paragraph 11.3 of this Schedule 8.1 (*Grant Payments*), if CSL fails to provide the Annual Financial Statements for the final Operator Year within 3 Reporting Periods of the expiry of the final Operator Year pursuant to paragraph 3.7 of Schedule 13.2 (*Information*), SRH shall determine any Final Adjustment (after consultation with the Authority).

12. Rights of TS AO

- 12.1 Where the TS AO reasonably considers that in calculating any matter which impacts the calculation of a Grant Payment Component, any particular item or transaction has not been accounted for on a reasonable basis (including where the accounting treatment looks to the form rather than the substance, of the item or transaction) and having regard to all circumstances, including GAAP (as may be amended from time to time), the TS AO shall be entitled to require it to be accounted for on such other basis as the TS AO may reasonably determine and notify to SRH and/or CSL provided that the TS AO shall not be entitled pursuant to this paragraph to alter the accounting policies of CSL from those set out in the Supporting Materials and applied through the Budget.
- 12.2 SRH and/or the TS AO shall have the discretion (acting reasonably) to decrease (and subsequently increase) the required frequency of the Budget Forecast Review Meetings and/or the Periodic Finance Review Meetings, provided they shall be no more frequent than once a Reporting Period.
- 12.3 Any Budget Forecast Review Meeting or Periodic Finance Review Meeting (or part thereof) may be held remotely with the prior agreement of the parties.
- 12.4 CSL understands and agrees that any information provided by it to SRH under and/or in connection with this Schedule 8.1 (*Grant Payments*) may be provided to the Authority.

13. Indexation

- 13.1 For the avoidance of doubt, it is agreed that the Grant Payments and any sum shown in any Budget for any given Operator Year (or other period) shall not be subject to indexation or adjustment to take into account the effect of inflation provided that this paragraph 13 is without prejudice to the adjustment of the Budget in accordance with paragraph 6 of this Schedule 8.1 (*Grant Payments*) and/or the adjustment of the Grant Payments in accordance with paragraphs 8 and 9 of this Schedule 8.1 (*Grant Payments*) in each case.

14. Further obligations of CSL

- 14.1 Except to the extent otherwise agreed by SRH, CSL will act wholly in accordance with the terms of this Agreement and with the degree of skill, diligence, prudence and foresight which would be exercised by a skilled and experienced Train Operator of the Caledonian Sleeper Operation, including without limitation, in all respects in connection with the operation of this Schedule 8.1 (*Grant Payments*).

- 14.2 CSL warrants on a continuing basis and shall, if requested at any time by SRH, provide written confirmation from a statutory director of CSL confirming that CSL is not subject only to any unidentified fraud that could not reasonably have been detected a party to any arrangement of any kind whatsoever under which:
- (a) any amounts which CSL might otherwise have received from a third party are reduced, waived or otherwise suppressed; and/or
 - (b) any amounts which CSL might otherwise be properly obliged to pay or be liable are increased.
- 14.3 SRH shall be entitled to notify CSL of any future initiatives or proposals that SRH considers may have the potential to reduce certain Actual Cash Payments below the applicable Budgeted Cash Payments, and/or to increase Actual Cash Collections above Estimated Cash Collections, and CSL shall, acting reasonably and in good faith, discuss with SRH all such matters as are relevant to the possible implementation of such initiatives.

APPENDIX 1 TO SCHEDULE 8.1

Notifiable Costs

Any references in this Appendix 1 to Schedule 8.1 to costs, payments, expenses, fees, liabilities or other amounts shall be deemed to refer to Costs and/or Capital Expenditure as the context may require.

Notifiable Costs shall include the following costs listed in limbs (a) to (l) save where incurred in compliance with paragraph 14.1 of Schedule 8.1 and with SRH's prior approval:

- (a) Any costs incurred otherwise in accordance with paragraph 14.1 of Schedule 8.1 including any costs incurred which arise outwith of the agreed scope of obligations of CSL and/or which cause a material change to the agreed Budget without the prior approval of SRH and the Authority (not to be unreasonably withheld);
- (b) Any bonuses, rewards or discretionary benefits paid to any staff, directors or officers under any schemes which have not previously been approved by SRH (in its absolute discretion) in writing;
- (c) Any expenses, disbursements or equivalent costs which are incurred other than in compliance with CSL's expenses policy (as approved by SRH and the Authority);
- (d) Costs incurred or to be incurred by CSL:
 - (i) in relation to any Remedial Plan or Remedial Agreement or Improvement Plan unless specifically permitted in writing by SRH;
 - (ii) in relation to the inspection costs referred to in paragraph 6 of Schedule 10.1 (*Remedial Plans and Remedial Agreements*);
 - (iii) in relation to any reasonable enforcement costs incurred pursuant to paragraph 2.5 of Schedule 10.3;
- (e) Any cost that CSL may incur as a result of:
 - (i) it failing to comply with its obligations under or in connection with this Agreement (including the grant thereof) save in respect of any failures which result from CSL acting as in accordance with paragraph 14.1 of Schedule 8.1 (in SRH's opinion);
 - (ii) it failing to comply with its obligations under or in connection with any agreements which are ancillary to this Agreement save in respect of any failures which result from CSL acting in accordance with paragraph 14.1 of Schedule 8.1 (in SRH's opinion);
 - (iii) it failing to comply with any applicable Laws, to the extent this gives rise to a criminal liability. Paragraph (a) above shall apply in respect of any other consequence of a failure by CSL to comply with any applicable Laws; or
 - (iv) indemnifying SRH and/or the Authority for any matter which CSL is obliged to indemnify SRH and/or CSL pursuant to this Agreement or any agreements which are ancillary to this Agreement;
- (f) Costs of developing and protecting any intellectual property rights which are not owned by the Authority, SRH or CSL or are so owned, but where the costs are not ancillary to an activity included in the Budget;
- (g) Fines from government or regulatory bodies;
- (h) The costs incurred by CSL which are associated with preparing plans to remedy performance shortfalls, including preparing and developing any remedial, improvement or action plans required by this Agreement;

- (i) Any costs incurred by CSL in pursuing or defending any claim against the Authority and/or SRH in respect of or in connection with this Agreement or otherwise;
- (j) Except with the prior written agreement of SRH (not to be unreasonably withheld), any costs, charges, penalties, compensation or similar payments that CSL may incur as a result of the termination of any contract or other arrangement;
- (k) Except with the prior written agreement of SRH, losses on disposals of fixed or noncurrent assets; and
- (l) Depreciation or Capital Expenditure to the extent that the capital cost of acquisition of the relevant assets was to be funded by a third party.

SCHEDULE 8.2**THIS IS SCHEDULE 8.2 REFERRED TO IN THE FOREGOING CALEDONIAN SLEEPER GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND CALEDONIAN SLEEPER LIMITED****Performance Review Process****1. FIRST GP QUARTER: SETTING THE INITIAL PERFORMANCE CRITERIA AND INITIAL BENCHMARKS**

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

- (a) the initial Performance Criteria (which initial Performance Criteria will be determined with reference to the policy outcomes required by the Policy Compendium, Schedules 7.1 and 7.2 of this Agreement, the Business Plan, and any output, service and performance requirements set by the Authority from time to time);
- (b) the initial reporting metrics for the Performance Review Report;
- (c) the initial benchmarks for the Performance Review Scorecard;
- (d) the initial Performance Scoring Standards for the Performance Review Scorecard; and
- (e) the period over which the Initial KPI Framework will apply.

(together the “**Initial KPI Framework**”)

1.2 SRH and CSL shall use the Indicative Framework of KPIs set-out in Appendix 1 to this Schedule 8.2 as basis for establishing and agreeing the Initial KPI Framework. The Initial KPI Framework (and any update thereafter) shall be used to create the Performance Review Scorecard for a GP Quarter as per the Indicative Performance Review Scorecard as set out in Appendix 4.

1.3 SRH and CSL shall use reasonable endeavours to discuss and agree the proposed Initial KPI Framework and the Performance Review Scorecard prior to the end of the first GP Quarter of the first Operator Year.

1.4 If the Initial KPI Framework and/or the Performance Review Scorecard is not agreed by SRH and CSL 10 Weekdays before the end of the first GP Quarter of the first Operator Year, then the Initial KPI Framework and/or the Performance Review Scorecard shall be determined by SRH acting reasonably. Should CSL consider SRH's determined Initial KPI Framework and/or determined Performance Review Scorecard to be manifestly unreasonable then it may notify SRH of that view within ten (10) Weekdays of the determination (“**Initial KPI Framework Dispute**”), and SRH shall consider (in good faith) any representations from CSL on that matter which are properly supported by evidence and decide whether to amend the Initial KPI Framework and/or the Performance Review Scorecard. If within ten (10) Weekdays following SRH's re-determination, CSL still consider SRH's determined Initial KPI Framework and/or determined Performance Review Scorecard to be manifestly unreasonable then such matter will be escalated to the Authority to determine the matter at its discretion. For the avoidance of doubt, the Authority is not obligated to determine the Initial KPI Framework and/or the Performance Review Scorecard, and if the Authority declines in writing to determine the Initial KPI Framework and/or the Performance Review Scorecard, then CSL shall be entitled to refer the matter for resolution under the Dispute Resolution Rules provided that SRH's Initial KPI Framework scoring and/or SRH's Performance Review Scorecard shall apply pending the outcome of such referral.

APPENDIX 1 TO SCHEDULE 8.2
Indicative Framework of KPIs

Ref	Performance Criteria	Potential Measures/KPIs
KPI 01	Operational Performance	Schedule 7.1 regime : , Right Time, Patronage,
KPI 02	Guest Experience	Schedule 7.1 regime: Guest Satisfaction Ratio of Guest Complaints (Station and on-train). Complaints per 1,000 guest journeys
KPI 03	Service Quality	Schedule 7.2 regime Other Measures: overdue maintenance events compliance with fleet maintenance plans
KPI 04	Our People	% Absence % Staff turnover per period, rolling 12 month period Staff Engagement measure Diversity entropy for recruitment Diversity and Inclusiveness
KPI 05	Economic Efficiency	Result before subsidy (real/indexed): Earnings before interest, tax, (depreciation, amortisation) & subsidy, versus real comparator Cashflow: Change in cash Budget Performance: Actual costs relative to Budget for period in question measured through variances Efficiencies: Value of efficiencies identified and delivered. Business Planning: Progress against delivery of Business Plan commitments Budget performance: Annual budget progress against an evidenced long-term plan for driving market-leading cost efficiency Guest revenue: Total revenue growth % from guests, including car parks etc. (net of commission and delay/repay) Guest journeys – growth: Total guest journey growth % Change in Direct variable cost (i.e. not fixed/regulated NR/ROSCO etc) per train mile (or journey) – measures cost efficiency of service delivery Change in Guest revenue contribution to direct variable cost (i.e. financial worthiness. Revenue protection measures:% of ticketless travel (guests without ticket/journeys, routinely detected and spot surveys (potentially via target checking via CCTV)

Ref	Performance Criteria	Potential Measures/KPIs
KPI 06	Safety and Security	<p>SPADs (Signals Past at Danger) per twenty-five thousand journey miles</p> <p>LTI (Lost Time Injury) (Staff) per staff no. or hours worked</p> <p>Accidents & Assaults (Staff & Customer) per twenty-five thousand guest journeys</p> <p>Customer accidents per twenty-five thousand guest journeys</p> <p>Other measures as agreed</p>
KPI 07	Sustainability	<p>CO2 Emissions per Guest/Train Km</p> <p>Emissions around stations</p> <p>% Waste diverted from Landfill</p> <p>% Waste recycled</p> <p>% Reduction in Carbon Footprint</p> <p>% reduction in non-traction energy usage</p>

APPENDIX 2 TO SCHEDULE 8.2**Performance Review****1. PURPOSE OF THE PERFORMANCE REVIEW**

- 1.1 The purpose of a Performance Review is for SRH to undertake a review of CSL's performance in relation to Operator Services over the course of the relevant Performance Review Period.
- 1.2 Subject to paragraph 1.4 of this Appendix 2 to Schedule 8.2 (*Performance Review*), SRH will carry out a Performance Review with respect to the period up to the start of January in the First Operating Year and every 6 month period thereafter (or such period as otherwise agreed among the parties in writing) ("**Performance Review Period**"). At each Performance Review Meeting, progress against all Performance Criteria shall be discussed and reviewed by SRH and CSL.
- 1.3 Each Performance Review shall be carried out in accordance with the process set out in this Appendix 2 to Schedule 8.2 (*Performance Review*).
- 1.4 No Performance Review shall be carried out in the first 6 months of the first Operator Year or, as the case may be, until SRH and CSL have agreed or the Authority or SRH has determined the Initial KPI Framework in accordance with paragraph 1 of Appendix 2 to Schedule 8.2 (*Performance Review*).

2. NOTICE OF PERFORMANCE REVIEW MEETING

- 2.1 SRH shall notify CSL (and the Authority) of the date, time and location for the relevant Performance Review Meeting by no later than the end of the Performance Review Period, provided always that the Performance Review Meeting shall take place no earlier than 30 Weekdays after the end of the Performance Review Period later than 60 Weekdays after the end of the Performance Review Period.
- 2.2 For the avoidance of doubt, nothing in this Schedule 8.2 (*Performance Review Process*) shall prevent the parties from discussing any matter relevant to a Performance Review outside of the relevant Performance Review Meeting.

3. PERFORMANCE REVIEW REPORT

- 3.1 Not less than thirty (30) Weekdays prior to the end of the Performance Review Period, SRH, acting reasonably, shall notify CSL in writing of any additional information that CSL shall be required to submit at the same time as the completed Performance Review Report.
- 3.2 Not less than fifteen (15) Weekdays prior to end of the relevant Performance Review Period, CSL shall notify SRH in writing of any matters in addition to those set out in the Performance Review Report or the information notified to CSL by SRH in accordance with paragraph 3.1 of this Appendix 2 to Schedule 8.2 (*Performance Review*), which CSL considers to be relevant for the Performance Review. SRH shall, within ten (10) Weekdays of receiving such notice, provide written confirmation to CSL of whether SRH considers such matters to be relevant to the Performance Review.
- 3.3 As soon as reasonably practicable after the end of the Performance Review Period, and in any event no later than twenty (20) Weekdays after the end of a Performance Review Period, CSL shall deliver to SRH a duly completed Performance Review Report in respect of the Performance Review Period.
- 3.4 The Performance Review Report delivered by CSL in accordance with paragraph 3.3 of Appendix 2 to Schedule 8.2 (*Performance Review*) shall include information, evidence and written commentary from CSL in respect of the relevant Performance Review Period covering:
 - (a) each of the matters as agreed between SRH and CSL or determined by the Authority or SRH in accordance with paragraph 1 of Schedule 8.2 (*Performance Review Process*) and as adjusted from

time to time in accordance with paragraph 6 of Appendix 2 to Schedule 8.2 (*Performance Review*) and which shall be described in Appendix 3 to this Schedule 8.2 (*Performance Review Report*);

- (b) any other such matter notified by SRH to CSL in accordance with paragraph 3.1 of this Appendix 2 to Schedule 8.2 (*Performance Review*); and
- (c) any other matter which SRH has confirmed as relevant for the Performance Review in accordance with paragraph 3.2 of this Appendix 2 (*Performance Review*).

3.5 SRH shall provide CSL with:

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

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

4. **PERFORMANCE REVIEW MEETING**

4.1 The Performance Review Meeting shall take place at the date, time and location notified by SRH in accordance with paragraph 2.1 of this Appendix 2 to Schedule 8.2 (*Performance Review*) and shall be attended by representatives of each of SRH and CSL. The Authority may, at its discretion, attend the Performance Review Meeting.

4.2 CSL shall ensure that the representatives of CSL at the Performance Review Meeting include such:

- (a) appropriate and qualified personnel of CSL; and
- (b) directors and/or senior managers of CSL, as SRH may reasonably require.

4.3 At the Performance Review Meeting SRH and CSL shall discuss CSL's performance by reference to the Performance Review Report, together with any supporting commentary, documents or evidence submitted by CSL to SRH in accordance with paragraphs 3.3 and 3.4 of this Appendix 2 to Schedule 8.2 (*Performance Review*) and any commentary and/or information provided by SRH to CSL in accordance with paragraph 3.5 of this Appendix 2 to Schedule 8.2 (*Performance Review*).

5. **PERFORMANCE REVIEW SCORING**

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

5.2 For each Performance Review Period, CSL shall be scored 3, 2 or 1 in relation to each Performance Criterion for that Performance Review Period as per the Performance Review Scorecard. Performance sub-criteria which contribute to the overall score of a Performance Criteria shall each be scored 3, 2 or 1. The average (mean) score (rounded to the nearest whole number) determined for those performance sub-criteria shall be the overall score for the relevant Performance Criteria.

5.3 The Performance Review shall be complete once SRH has sent a duly completed Performance Review Scorecard to CSL in accordance with paragraph 5.1 of this Appendix 2 to Schedule 8.2 (*Performance Review*).

5.4 Scores in the Performance Review Scorecard shall be awarded by SRH having regard to the Performance Scoring Standards. Without prejudice to paragraph 5.6 of this Appendix 2 to Schedule 8.2 (*Performance Review*), one single, integer, overall score (3, 2 or 1) shall be awarded in relation to each Performance

Criterion as per paragraph 5.2 based on SRH's assessment of CSL's performance in respect of that Performance Criterion against the Performance Scoring Standards and taking into account:

- (a) the Performance Review Report provided to SRH by CSL in accordance with paragraphs 3.3 and 3.4 of this Appendix 2 to Schedule 8.2 (*Performance Review*);
- (b) any commentary provided to CSL by SRH in accordance with paragraph 3.5 of this Appendix 2 to Schedule 8.2 (*Performance Review*); and
- (c) any discussions between CSL and SRH at the Performance Review Meeting.

5.5 If CSL:

- (a) is operating at a level that would, or would likely, be scored "1"; or
- (b) has received a score of "1",

in relation to any of the Performance Criteria during a Performance Review Period, then SRH may require a Remedial Plan and the provisions of Schedule 10.1 (*Remedial Plans and Remedial Agreements*) shall apply.

- 5.6 Should CSL consider SRH's scoring of a Performance Criterion to be manifestly unreasonable it may notify SRH of that view (the "**Performance Criterion Dispute**") within ten (10) Weekdays of the scoring, and SRH shall consider (in good faith) any representations from CSL on that matter which are properly supported by evidence and SRH and CSL shall meet as soon as reasonably practicable following SRH's receipt of such representations to discuss the same (the "**Performance Criterion Dispute Meeting**").
- 5.7 If within ten (10) Weekdays following the Performance Criterion Dispute Meeting CSL still considers SRH's scoring of a Performance Review Criterion to be manifestly unreasonable, then such matter will be escalated to the Authority to reasonably determine the matter at its discretion.
- 5.8 If the Authority declines in writing to determine matters in accordance with paragraph 5.7 of this Appendix 2 to Schedule 8.2 (*Performance Review*), then CSL shall be entitled to refer the Performance Criterion Dispute for resolution under the Dispute Resolution Rules provided that SRH's scoring shall apply pending the outcome of such referral.

6. **FLEXIBILITY: PERFORMANCE CRITERIA AND BENCHMARKS**

- 6.1 SRH and CSL shall formally review the initial KPI Framework after the first Performance Review and thereafter every Operator Year alongside the annual Business Plan review required by paragraph 2 of Schedule 13.2 (*Information*) or as otherwise agreed by SRH and CSL in writing during the Term in order to review the operation of the performance regime and where necessary agree necessary adjustments to Performance Criteria benchmarks for the Performance Review Scorecard, reporting metrics for the Performance Review Report and Performance Scoring Standards.
- 6.2 Notwithstanding paragraph 6.1 of this Appendix 2 to Schedule 8.2 (*Performance Review*), SRH and CSL may:
 - (a) introduce new Performance Criterion and / or remove existing Performance Criterion ("**Performance Criteria Adjustment**"); and/or
 - (b) adjust the benchmarks and / or Performance Scoring Standards set out in the Performance Review Scorecard,

all in accordance with the provisions of Schedule 9 (*Changes*).

- 6.3 In the event of a Performance Criteria Adjustment, the amended Performance Criteria shall take effect from the beginning of the Performance Review Period designated by SRH.
- 6.4 If a new Performance Criterion is introduced by a Performance Criteria Adjustment, SRH shall provide CSL with the following information, as soon as reasonably practicable, and in any event no later than 5 Weekdays prior to the beginning of the next Performance Review Period:
- (a) details of the information to be included in the Performance Review Report for the new Performance Criterion; and
 - (b) an updated version of the Performance Review Scorecard, which shall include the scoring standards for the new Performance Criterion.
- 6.5 In the event Performance Criteria, the benchmarks and / or scoring standards set out in the Performance Review Scorecard are adjusted in accordance with paragraph 6.2 of this Appendix 2 to Schedule 8.2 (*Performance Review*), the adjusted Performance Review Scorecard shall take effect from the beginning of the Performance Review Period designated by SRH and SRH shall provide to CSL, no later than 5 Weekdays prior to the beginning of the next Performance Review Period, an adjusted Performance Review Scorecard.

APPENDIX 3 TO SCHEDULE 8.2

Performance Review Report

Insert reporting metrics for each Performance Criterion as agreed between the parties or determined by the Authority or SRH in accordance with paragraph 1 of Schedule 8.2 (*Performance Review Process*) and as adjusted from time to time in accordance with paragraph 6 of Appendix 1 to Schedule 8.2 (*Performance Review*).

APPENDIX 4 TO SCHEDULE 8.2
Indicative Performance Review Scorecard

Score	Scoring Standards for each Performance Criterion						
	Performance Criterion: Operational Performance	Performance Criterion: Service Quality	Performance Criterion: Guest Experience	Performance Criterion: Our People	Performance Criterion: Economic Efficiency	Performance Criterion: Safety & Security	Performance Criterion: Sustainability
Good/Better than benchmark	As per para 5 of Schedule 7.1 for each of the two criterion (RT, Patronage,) [exceed benchmark]	The Service Quality PQ Score calculated in accordance with para 9 of Schedule 7.2 is equal to or greater than [benchmark]	<p>Guest Satisfaction [exceeds Schedule 7.1 benchmark]</p> <p>Ratio of Guest Complaints (Station and on-train) are better than benchmark/target</p> <p>Complaint Volumes per 1,000 journeys are better than benchmark/target</p>	<p>Staff Engagement score for [quarter/period] is greater than benchmark/target</p> <p>Absence (%) for [quarter/period] is lower than benchmark/target</p> <p>Staff turnover for [quarter/period] is lower than benchmark/target</p> <p>Diversity entropy for recruitment [%] for [quarter] is better than benchmark/target</p>	<p>Budget Performance (actual to forecast costs variance) for [quarter] exceeds target</p> <p>Guest revenue growth for [quarter] is higher than [previous quarter]</p> <p>Variable cost or staff cost per guest km is better than benchmark</p>	<p>Safety metrics (SPADS and LTI) are both better than benchmark/target for [quarter]</p> <p>Accidents & Assaults (Staff & Customer) per guest journey Is better than benchmarks</p> <p>Customer accidents per [thousand] journeys is better than benchmark.</p>	<p>CO2 Emissions per Guest/Train Km is better than benchmark</p> <p>% Waste diverted from Landfill is better than benchmark</p> <p>% Waste recycled is better than benchmark</p> <p>% Reduction in Carbon Footprint is better than benchmark</p> <p>% reduction in non-traction energy usage is better than benchmark</p>
Acceptable/Satisfactory/within range of benchmark	As per para 5 of Schedule 7.1, if any operational benchmark [meets benchmark]	The Service Quality PQ Score calculated in accordance with para 9 of Schedule 7.2 [meets benchmark]	<p>Guest Satisfaction meets Schedule 7.1 benchmark</p> <p>Ratio of Guest Complaints (Station and on-train) are at benchmark/target</p>	<p>Staff Engagement Survey measure for [quarter] is same as benchmark/target</p> <p>Absence (%) for [quarter/period] is same as benchmark/target</p>	<p>Budget Performance (actual to forecast costs variance) for [quarter] meets target</p> <p>Guest revenue growth for</p>	<p>Safety metrics (SPADS and LTI) are both the same benchmark/target for [quarter].</p> <p>Accidents & Assaults (Staff & Customer) per guest journey Is the same as benchmarks</p>	<p>CO2 Emissions per Guest/Train Km is the same as benchmark</p> <p>% Waste diverted from Landfill is same as benchmark</p> <p>% Waste recycled is same as benchmark</p>

Score	Scoring Standards for each Performance Criterion						
	Performance Criterion: Operational Performance	Performance Criterion: Service Quality	Performance Criterion: Guest Experience	Performance Criterion: Our People	Performance Criterion: Economic Efficiency	Performance Criterion: Safety & Security	Performance Criterion: Sustainability
			Complaint Volumes per 1,000 journeys are at benchmark/target	Staff turnover for [quarter/period] is same as benchmark/target Diversity entropy for recruitment [%] for [quarter] is equal to benchmark/target	[quarter] is the same as [previous quarter] Variable cost or staff cost per guest km is the same as than benchmark	Customer accidents per [thousand] journeys meets benchmark.	% Reduction in Carbon Footprint is same as benchmark % reduction in non-traction energy usage is same as benchmark
Unacceptable/Poor/ X margin worse than benchmark	As per para 5 of Schedule 7.1, if any operational benchmarks are [below benchmarks]	The Service Quality PQ Score calculated in accordance with para 9 of Schedule 7.2 [is below benchmark]	Guest Satisfaction is below Schedule 7.1 benchmark Ratio of Guest Complaints (Station and on-train) are worse than benchmark/target Complaint Volumes per 1,000 journeys are worse than benchmark/target	Staff Engagement Survey measure for [quarter] is worse than benchmark/target Absence (%) for [quarter/period] is worse than benchmark/target Staff turnover for [quarter/period] is worse than benchmark/target Diversity entropy for recruitment [%] for [quarter] is worse than benchmark/target	Budget Performance (actual to forecast costs variance) for [quarter] is worse than target Guest revenue growth for [quarter] is less than [previous quarter] [variable cost or staff cost] per guest km is worse than benchmark	Safety metrics (SPADS and LTI) are both worse than benchmark/target for [quarter]. Accidents & Assaults (Staff & Customer) per guest journey is worse than benchmarks Customer accidents per [thousand] journeys is worse than benchmark.	CO2 Emissions per Guest/Train Km is worse than benchmark % Waste diverted from Landfill is worse than benchmark % Waste recycled is worse than benchmark % Reduction in Carbon Footprint is worse than benchmark % reduction in non-traction energy usage is worse than benchmark

SCHEDULE 8.3

THIS IS SCHEDULE 8.3 REFERRED TO IN THE FOREGOING CALEDONIAN SLEEPER GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND CALEDONIAN SLEEPER LIMITED

Miscellaneous Payment Provisions**1. Set off, deductions, etc.**

All sums payable by any party under this Agreement shall be paid free and clear of any deductions, withholdings, set-offs or counter-claims, save only as may be required by Law or as expressly permitted or required under this Agreement.

2. Payment of Suppliers and Sub-contractors

CSL shall pay all matured and properly authorised invoices promptly and, where appropriate, in accordance with the Scottish Government target of 10 working days for the payment of invoices as detailed within the 'Expenditure and Payments' section of the SPFM. The parties acknowledge and agree that CSL's ability to achieve the 10 working days payment target is contingent upon replacing certain legacy systems and processes, which CSL shall do as soon as reasonably practicable following the Commencement Date.

SCHEDULE 9

THIS IS SCHEDULE 9 REFERRED TO IN THE FOREGOING CALEDONIAN SLEEPER GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND CALEDONIAN SLEEPER LIMITED

Changes

1. Variations to this Agreement

1.1 Without prejudice to clause 10, the terms of this Agreement may be varied as follows:

(a) by the Authority in relation to:

(i) any aspect of the Operator Services;

(ii) any obligations associated with the operation of the Caledonian Sleeper;

and

(iii) any provision of this Agreement other than those provisions specified in paragraph 1.2(a),

by service of a notice on CSL and SRH referring to this paragraph 1.1(a) and setting out the variation to the terms of this Agreement;

(b) in relation to any provision of this Agreement, by prior agreement in writing among the parties to that effect,

(c) by SRH in relation to:

(i) any aspect of the Operator Services;

and

(ii) any provision of this Agreement which requires to be amended to give effect to any Variation related to paragraph 1.1(c)(i) other than those provisions specified in paragraphs 1.2(a) and (b), and subject to the requirements of paragraph 1.12,

by service of a notice on the Authority and CSL referring to this paragraph 1.1(c) and setting out the variation to the terms of this Agreement;

(each a "**Variation**").

1.2

(a) The terms of each of *clause 3 (Term)*, Schedules 8 (*Grant Payments*), 9 (*Changes*), 10 (*Remedies, Executive Team Review and Expiry*), 12 (*Financial Obligations and Undertakings*), 14 (*Preservation of Assets*), and paragraphs 1 to 8 (inclusive) of Schedule 18 (*Other Provisions*) shall not be varied at any time other than in accordance with the terms of this Agreement or with the written agreement of the parties or as required (at the Authority's sole determination) to ensure compliance with any variations to the Framework Agreement and/or Financial Memorandum and/or the Law.

(b) The terms of each of *clauses 1 to 11*, Schedules 8 (*Grant Payments*), 9 (*Changes*), 10 (*Remedies, Executive Team Review and Expiry*), 11 (*Agreement and Service*

Delivery Management Provision), 12 (*Financial Obligations and Undertakings*), 14 (*Preservation of Assets*), 15 (*Obligations Associated with Termination*), 16 (*Pensions*), 17 (*Confidentiality, FOISA and Data Protection*), and 18 (*Other Provisions*) shall not be varied at any time by SRH without the prior written consent of the Authority.

- 1.3 The Authority and/or SRH shall (as the case may be), to the extent reasonably practicable, allow CSL a reasonable opportunity to make representations to the Authority and/or SRH (as the case may be) concerning any Variation to be made in accordance with paragraph 1.1(a) or paragraph 1.1(c) prior to making any such Variation.
- 1.4 The Authority may:
- (a) issue, revise and withdraw from time to time procedures that it requires to be followed for the purposes of orderly consideration of Variations; and
 - (b) require CSL and/or SRH to provide any information that the Authority reasonably requires for this purpose (including in relation to prospective change to profit, costs and revenue as a consequence of proceeding with the Variation).
- 1.5 Procedures issued pursuant to paragraph 1.4 shall have contractual effect among the parties in accordance with their terms.
- 1.6 CSL and/or SRH may notify the other parties of any proposal for a Variation by notice setting out the proposed method of implementing such Variation including:
- (a) the time scale for doing so;
 - (b) the effect (if any) on the timing of the performance of its other obligations under this Agreement;
 - (c) the impact of effecting the proposed Variation on the provision of the Operator Services and CSL's proposals as to how to minimise such impact; and
 - (d) the financial consequences of implementing the proposed Variation.
- 1.7 The Authority shall be under no obligation to consider a Variation proposed by CSL and/or SRH but, if it wishes to do so, it shall do so pursuant to paragraph 1.1.
- 1.8 SRH shall be under no obligation to consider a Variation proposed by CSL but, if it wishes to do so, it shall do so pursuant to paragraph 1.1(c).
- 1.9 A Variation to the terms of this Agreement pursuant to paragraph 1.1 may involve the deletion of terms, the addition of new terms or any other type of variation or change to this Agreement required by the Authority, and the parties agree that the variation mechanism entitles the Authority and/or SRH to require CSL to use the outputs from capital projects, major projects and other projects (including (whether existing or new) trains, stations, track, routes, infrastructure, CCTV and ticket barriers) in such manner as the Authority and/or SRH may require. A Variation may also require that CSL and/or SRH co-operate in relation to capital projects, major projects and other projects and, where required to do so by a Variation, to exercise or refrain from exercising such rights as CSL and/or SRH may have.
- 1.10 Any specific provision in this Agreement which provides that the Authority and/or SRH may make a Variation relating to a particular matter shall not in any way limit the Authority's and/or SRH's rights under paragraph 1.1.
- 1.11 Without prejudice to this paragraph 1 the Authority may make any Variation necessary for the facilitation or delivery of any Extended Restriction of Use, any works in terms of Part 1 of Schedule 1.8 (Extended Restrictions of Use) or Part 2 of Schedule 1.8 (Major Scottish Project).

- 1.12 With reference to paragraph 1.1(c) (and without prejudice to paragraph 1.2) SRH shall not be entitled to make any Variation without the Authority's prior written consent where such Variation directly or indirectly relates:
- (a) to any matter which requires the prior approval of the Authority by Law;
 - (b) to any matter which requires the prior approval of the Authority under the terms of this Agreement and/or Framework Agreement and/or Financial Memorandum,
 - (c) to any matter which is deemed reserved to Authority under the terms of this Agreement and/or Framework Agreement and/or Financial Memorandum;
 - (d) Schedule 7.2 to this Agreement (*Service Quality*);
 - (e) any rights and/or obligations of the Authority under this Agreement;
 - (f) any matter related to approving SRH's strategic aims and objectives and strategic plan in accordance with Framework Agreement; and
 - (g) any material matter related to approving the Budget, including loans and grant in aid for investment into SRH and/or CSL and securing the necessary Scottish Parliament approval, and the parties agree that it will be decided at the SRH Board meetings (with present representation of the Authority) as to what is deemed 'material' for the purpose of this paragraph 1.12(g)).

2. **Financial Consequences of a Change**

- 2.1 CSL shall provide SRH with a report on any Change it considers is required, has occurred or is reasonably likely to occur containing supporting documentation or evidence, recommendations on necessary changes to this Agreement and an analysis (as detailed as can be expected at that time) of its financial consequences.
- 2.2 The parties shall discuss and evaluate, in good faith, at the next Operation Performance Meeting the impact of the Change (including any necessary revisions to the terms of this Agreement and to the Budget).
- 2.3 The parties shall ensure that any required revisions to the Budget in accordance with paragraph 6 of Schedule 8.1 (*Grant Payments*) are dealt with at the next Budget Forecast Review Meeting.
- 2.4 Once the impact of the Change has been agreed by the parties (acting reasonably and in good faith) CSL shall be entitled (notwithstanding the terms of paragraph 1) to a Variation to implement and reflect those agreed changes to this Agreement.
- 2.5 SRH may stipulate (on or before the date on which SRH approves the revised Budget) that those amounts and values are to apply for a limited period of time only, with provision thereafter for a further revision to the Budget.

3. **Capital Expenditure**

Capital Expenditure Threshold

- 3.1 CSL shall notify the Authority and SRH promptly if it reasonably expects that a Change to which paragraph 1 relates would require it to incur, singly or in aggregate with other Changes from time to time, Capital Expenditure in excess of 1 per cent of its annual Turnover in any Operator Year as disclosed by its latest available audited accounts and, when so notified, the Authority shall either:
- (a) withdraw the Change or instruct SRH to withdraw the Change;
 - (b) require SRH to undertake to meet the excess through additional funding as and when such Capital Expenditure is incurred; or

- (c) require SRH to direct CSL to use all reasonable endeavours to borrow or otherwise raise the money required to fund any Change on commercial terms and at rates which are consistent with market conditions at the time, unless borrowing or otherwise raising such money would result in CSL failing to comply with any financial covenants.

Method of Additional Funding

- 3.2 The additional funding referred to in paragraph 3.1(b) may be provided by increased Grant Payments as and when required and SRH may procure such additional funding rather than undertaking to meet it itself.

CSL to Seek Finance

- 3.3 If the Authority elects to require SRH to direct CSL to use all reasonable endeavours as described in paragraph 3.1(c) then CSL shall:
 - (a) seek finance from a representative range of lending institutions and other financial institutions including those which at that time provide finance to CSL and SRH;
 - (b) if it is unable to raise funding, provide the Authority with all information the Authority may reasonably require in relation to the efforts made by CSL and the reasons for a failure to raise additional finance;
 - (c) so far as it is able (having used all reasonable efforts to do so), CSL shall provide to the Authority letters from lenders and financiers it has approached for finance stating their reasons for refusing to provide it and if the Authority so requires, arrange and attend meetings with them for the Authority to discuss those reasons; and
 - (d) if funding is not available, or is not available on terms that the Authority considers to be commercial terms or at rates which are consistent with market conditions at that time the Authority may:
 - (i) withdraw the Change; or
 - (ii) require SRH to undertake to fund the Capital Expenditure as and when such Capital Expenditure is incurred.

Treatment of Borrowings in a revision of the Budget

- 3.4 In revising the Budget for the purposes of any Change referred to in this paragraph 3, CSL shall account for the Capital Expenditure in accordance with GAAP, taking into account the basis on which such Capital Expenditure has been financed.

Meaning of Capital Expenditure

- 3.5 The expression Capital Expenditure when used in this Schedule 9 (*Change*) refers to the nature of the expenditure incurred by CSL and consistent with GAAP, accordingly, does not include expenditure incurred under operating leases.

SCHEDULE 10

THIS IS SCHEDULE 10 REFERRED TO IN THE FOREGOING CALEDONIAN SLEEPER GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND CALEDONIAN SLEEPER LIMITED

Remedies, Executive Team Review and Expiry

- Schedule 10.1: Remedial Plans and Remedial Agreements**
- Schedule 10.2: CSL Executive Team Review and Expiry**
- Schedule 10.3: Events of Default and Executive Team Review Event**
- Schedule 10.4: Force Majeure**
- Schedule 10.5: Liability**

SCHEDULE 10.1

THIS IS SCHEDULE 10.1 REFERRED TO IN THE FOREGOING CALEDONIAN SLEEPER GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND CALEDONIAN SLEEPER LIMITED

Remedial Plans and Remedial Agreements**1. Remedies for Contraventions of this Agreement**

- 1.1 Without prejudice to SRH's rights under paragraph 1 of Schedule 10.2 (*CSL Executive Team Review and Expiry*), if the Authority and/or SRH is satisfied that CSL is contravening or is likely to contravene any term of this Agreement it may serve a notice on CSL requiring it to propose such steps as CSL considers appropriate for the purpose of securing or facilitating compliance with the term in question (a **Remedial Plan Notice**).
- 1.2 CSL hereby acknowledges that any and all of the events in paragraph 3.4 of Schedule 7.1 (*Train Operating Performance*) are contraventions of this Agreement.

2. Contents of Remedial Plan Notices

Each Remedial Plan Notice shall specify the following:

- 2.1 the term or terms of this Agreement that SRH and/or the Authority is satisfied that CSL is contravening or is likely to contravene (each a **Relevant Term**); and
- 2.2 the time period within which SRH and/or the Authority requires CSL to provide an appropriate plan for the purpose of facilitating or securing compliance with any Relevant Term (a **Remedial Plan**).

3. Contents of Remedial Plans

- 3.1 If SRH and/or the Authority issues a Remedial Plan Notice, CSL shall submit a Remedial Plan to SRH and the Authority within the period specified in such Remedial Plan Notice.
- 3.2 Each Remedial Plan shall set out:
 - (a) the Relevant Term which has caused a Remedial Plan to be required;
 - (b) an explanation of the reasons for the contravention or likely contravention of the Relevant Term;
 - (c) the steps proposed for the purposes of securing or facilitating compliance with the Relevant Term; and
 - (d) the time period within which CSL proposes to implement those steps.

4. Remedial Agreements

- 4.1 If SRH and/or the Authority is satisfied that the matters referred to in paragraph 3.2(c) and (d) of this Schedule 10.1 (*Remedial Plans and Remedial Agreements*) are appropriate (with or without further modification as SRH and/or the Authority and CSL may agree) it/they may require CSL to enter into a supplemental agreement (**Remedial Agreement**) with SRH and/or the Authority to implement those matters.
- 4.2 It is a term of this Agreement that CSL complies with the Remedial Agreement in accordance with its terms.

5. **Effect of Force Majeure Event**

Without prejudice to the operation of paragraph 3 of Schedule 10.4 (*Force Majeure*) the following provisions shall apply in relation to Force Majeure Events affecting performance of a Remedial Agreement:

- 5.1 CSL shall give written notice to SRH promptly after it becomes aware (and in any event within 24 hours after becoming aware) of the occurrence or likely occurrence of a Force Majeure Event which will or is likely to affect CSL's ability to comply with a Remedial Agreement within the period specified therein;
- 5.2 each notice submitted in accordance with paragraph 5.1 shall state the extent or likely extent of the relevant Force Majeure Event and, in the case of a Force Majeure Event which has not occurred at such time, the reasons why CSL considers it likely to occur;
- 5.3 CSL shall use, and shall continue to use, all reasonable endeavours to avoid or reduce the effect or likely effect of any Force Majeure Event on its ability to comply with any Remedial Agreement; and
- 5.4 subject to CSL having complied with its obligations under paragraphs 5.1 to 5.3 (inclusive) CSL shall be entitled to a reasonable extension of the remedial period applicable to a Remedial Agreement in order to take account of the effect of a Force Majeure Event which has occurred on CSL's ability to comply with any Remedial Agreement.

6. **Occurrence of a Contravention**

- 6.1 Without prejudice to its rights under Schedule 7.2 (*Service Quality*), following the occurrence of a contravention of this Agreement, SRH may (but shall not be obliged to) commence or increase the level and/or frequency of monitoring (whether by inspection, audit or otherwise) of CSL's performance of any relevant obligation until such time as CSL demonstrates, to SRH's reasonable satisfaction, that it is capable of performing and will perform such obligation as required by this Agreement.
- 6.2 CSL shall co-operate fully with SRH in relation to such monitoring referred to in paragraph 6.1.
- 6.3 The results of such monitoring will be reviewed at each Operation Performance Meeting.

SCHEDULE 10.2**THIS IS SCHEDULE 10.2 REFERRED TO IN THE FOREGOING CALEDONIAN SLEEPER GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND CALEDONIAN SLEEPER LIMITED****CSL Executive Team Review and Expiry****1. CSL Executive Team Review**

- 1.1 The terms of this Agreement will be without prejudice to any rights of SRH, as sole shareholder of CSL, in respect of the articles of association of CSL and without prejudice to any rights of the Scottish Ministers, as sole shareholder of SRH, in respect of the articles of association of SRH.
- 1.2 Without prejudice to SRH's other rights and remedies, SRH may, on and at any time after the occurrence of:
- (a) an Event of Default (subject to paragraphs 1.3 and 1.4 of this Schedule 10.2 (*CSL Executive Team Review and Expiry*)) which is unremedied or continuing and which SRH considers to be material; or
 - (b) an Executive Team Review Event which is unremedied or continuing,
- choose to review the executive management team of CSL.
- 1.3 SRH may not exercise its right under paragraph 1.2(a) of this Schedule 10.2 (*CSL Executive Team Review and Expiry*) in respect of an Event of Default in relation to which a Remedial Plan Notice has been issued until the period has expired within which CSL is required to deliver to SRH the Remedial Plan specified in such Remedial Plan Notice.
- 1.4 SRH may not exercise its right under paragraph 1.2(a) of this Schedule 10.2 (*CSL Executive Team Review and Expiry*) in respect of an Event of Default for which CSL is implementing a Remedial Agreement in accordance with its terms.

2. Consequences of Expiry

- 2.1 Upon expiry of this Agreement (whether through effluxion of time or otherwise) the obligations of the parties shall cease except for:
- (a) any obligations arising as a result of any antecedent contravention of this Agreement;
 - (b) any obligations which are expressed to continue in accordance with the terms of this Agreement; and
 - (c) any other obligations which give effect to such termination or to the consequences of such termination or which otherwise apply (expressly or impliedly) on or after such termination.

SCHEDULE 10.3**THIS IS SCHEDULE 10.3 REFERRED TO IN THE FOREGOING CALEDONIAN SLEEPER GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND CALEDONIAN SLEEPER LIMITED****Events of Default and Executive Team Review Events****1. Provisions relating to Events of Default**

- 1.1 The occurrence of an Event of Default shall constitute a contravention of this Agreement by CSL.
- 1.2 CSL shall notify SRH as soon as reasonably practicable on, and in any event within 24 hours of, it becoming aware of the occurrence of an Event of Default or an event which is likely to result in the occurrence of an Event of Default. CSL shall take such action or steps as SRH may require to remedy any Event of Default or potential Event of Default.

Consequences of Event of Default

- 1.3 On the occurrence of an Event of Default, the provisions of Schedule 10.1 (*Remedial Plans and Remedial Agreements*) shall also apply.

2. Events of Default

Each of the following is an Event of Default:

Change of Control

- 2.1 Without the prior consent of SRH and the Authority, a change occurring in the identity of any 1 person, or 2 or more persons acting by agreement, who may Control CSL on and from the date of this Agreement and during the Term, which shall include a person, or 2 or more persons acting by agreement, ceasing to Control CSL at any time during the Term, whether or not any other person Controls CSL at the same time and, for the purposes of this paragraph 2.3, 2 or more persons shall be deemed to be acting by agreement in relation to CSL if, assuming CSL was a target company as defined in Section 824 of the Companies Act 2006, such persons would be under an obligation to disclose an interest in shares in such company by virtue of an agreement between such persons.

Revocation of Licence

- 2.2 Revocation of any Licence required to be held by CSL in order to comply with its obligations under this Agreement.

Safety Certificate

- 2.3 The Safety Certificate of CSL being revoked or not being renewed on its expiry during the Period.

Guest Service Performance

- 2.4 CSL's performance in relation to any Operating Performance Benchmark contravenes the Default Performance Level for that Operating Performance Benchmark for:
- (a) any 3 consecutive Reporting Periods;
 - (b) any 4 Reporting Periods within a period of 13 consecutive Reporting Periods; or
 - (c) any 5 Reporting Periods within a period of 26 consecutive Reporting Periods.

Remedial Agreements and Enforcement Orders

- 2.5 (a) Non-compliance by CSL with a Remedial Agreement, where such non-compliance is material.
- (b) Non-compliance by CSL with:
- (i) a provisional order;
 - (ii) a final order;
 - (iii) a penalty; or
 - (iv) any other order made relating to contravention of either a relevant condition or requirement (as defined in Section 55 of the Act) or another order,
- in each case made by the Authority under the Act.

Breach of Law

- 2.6 (a) It becoming unlawful for CSL to provide all or, in the reasonable opinion of the Authority and/or SRH, a material part of the Guest Services or to operate all or, in the reasonable opinion of the Authority and/or SRH, a material number of the Stations or Depots (except to the extent not required so to do under this Agreement);
- (b) CSL or any of the directors or senior managers of CSL being convicted of culpable homicide, manslaughter, fraud or, in England and Wales, any other indictable criminal offence, or in Scotland, any offence tried on indictment including where either the indictment or the verdict shall include any inchoate element in each case relating directly to the provision and operation of; or
- (c) CSL being, in the reasonable opinion of the Authority and/or SRH, in material non-compliance with a prohibition or enforcement order (or the equivalent thereof) issued by the ORR or any other body with statutory responsibilities for safety. If CSL makes an appeal against such prohibition or enforcement order (or such equivalent thereof) in accordance with its terms, no Event of Default shall have occurred under this paragraph 2.6(c) until such appeal has been determined to be unsuccessful.

Contravention of Other Obligations

- 2.7 The occurrence of the following:
- (a) CSL contravening to a material extent any one or more of its obligations under this Agreement (other than such non-performance or non-compliance as may constitute an Event of Default under the provisions of this Schedule 10.3 other than this paragraph 2.7);
 - (b) the service by SRH and/or the Authority on CSL of a written notice specifying:
 - (i) such contravention; and
 - (ii) to the extent the contravention is capable of being remedied, the reasonable period within which CSL is required to so remedy; and
 - (c) CSL contravening such obligation or obligations again to a material extent or permitting the contravention to continue or, if the contravention is capable of remedy, failing to remedy such contravention within such period as SRH and/or the Authority has specified in the notice served pursuant to paragraph 2.7(b).

Non-membership of Inter-Operator Schemes

- 2.8 CSL ceasing to be a member of, or ceasing to participate in or to be party to, any of the Inter-Operator Schemes, or having its membership or participation therein suspended.

Key Contracts

- 2.9 Termination, or the material variation, of any Key Contract except where requested (or consented to (for the purpose of paragraph 7 of Schedule 14.3 (*Key Contracts*)) by the Authority or to the extent that CSL has demonstrated to the reasonable satisfaction of the Authority that it is no longer necessary for it to be party to such Key Contract or that it has made adequate alternative arrangements in order to be able to continue to provide and operate Operator Services.

Rolling Stock Leases

- 2.10 A failure by CSL to enter into a new Rolling Stock Lease in accordance with paragraph 3 of Appendix 1 to Schedule 1.1 (*Service Development*) in respect of substitute rolling stock vehicles which meet the requirements of paragraph 3.4 of Schedule 1.1.

Prohibition on blacklisting

- 2.11 CSL committing any breach of the Employment Relations 1999 Act (Blacklists) Regulations 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992, or committing any breach of the Data Protection Laws by unlawfully processing personal data in connection with any blacklisting activities.

3. Executive Team Review Event

- 3.1 If any Force Majeure Event continues with the effect of preventing CSL from delivering, wholly or mainly, the Guest Services for more than 6 consecutive months or for a total period of 6 months in any period of 12 consecutive months, that shall be deemed an Executive Team Review Event.
- 3.2 On the occurrence of an Executive Team Review Event, the provisions of Schedule 10.2 (*CSL Executive Team Review and Expiry*) shall also apply.

SCHEDULE 10.4

THIS IS SCHEDULE 10.4 REFERRED TO IN THE FOREGOING CALEDONIAN SLEEPER GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND CALEDONIAN SLEEPER LIMITED

Force Majeure

1. Force Majeure Events

- 1.1 The following events shall constitute Force Majeure Events, subject to the conditions specified in paragraph 2 being satisfied:
- (a) CSL or any of its agents or subcontractors is prevented or restricted by Network Rail (including by virtue of the implementation of any Contingency Plan) from gaining access to any section or part of track (including any track running into, through or out of a station). For the purposes of this paragraph 1:
 - (i) references to a party being prevented or restricted from gaining access to any section or part of track shall mean that such party is not permitted to operate any trains on the relevant section or part of track, or is only permitted to operate a reduced number of trains from that which it was scheduled to operate;
 - (ii) the period of such prevention or restriction shall be deemed to commence with effect from the first occasion on which CSL is prevented or restricted from operating a train on such section or part of track;
 - (iii) references in paragraphs 1.1(a)(i) and (ii) to the operation of trains include scheduled empty rolling stock vehicle movements and scheduled locomotive movements; and
 - (iv) “**Contingency Plan**” means a contingency plan (as defined in the Railway Operational Code or where the Railway Operational Code ceases to exist, such other replacement document of a similar or equivalent nature which contains a definition of contingency plan similar to that contained in the Railway Operational Code) implemented by and at the instigation of Network Rail, or such other contingency or recovery plan as the Authority may agree from time to time;
 - (b) CSL or any of its agents or subcontractors is prevented or restricted by Network Rail or any Facility Owner (other than a Facility Owner which is an Affiliate of CSL) from entering or leaving:
 - (i) any station or part thereof (excluding, any prevention or restriction from gaining access to any section or part of track running into, through or out of a station); or
 - (ii) any depot or part thereof (including the movement of trains on tracks within any depot but excluding any prevention or restriction from gaining access to any track outside such depot running into or out of that depot);
 - (c) any of the following events occurs:
 - (i) a programme of Mandatory Modifications commences;
 - (ii) any Vehicles are damaged by fire, vandalism, sabotage or a collision and are beyond repair or beyond economic repair; or
 - (iii) a government authority prevents the operation of Vehicles on the grounds of safety,

and, in each case, the greater of 8 Vehicles and 10 per cent. of all Vehicles used by CSL in the provision of the Guest Services are unavailable for use in the provision of the Guest Services as a result of the occurrence of such event;

- (d) any of the following events occurs:
- (i) a programme of Mandatory Modifications commences;
 - (ii) any electric Rolling Stock Units are damaged by fire, vandalism, sabotage or a collision and are beyond repair or beyond economic repair; or
 - (iii) a government authority prevents the operation of electric Rolling Stock Units on the grounds of safety,

and, in each case, the greater of 8 Vehicles and 10 per cent of all electric rolling stock vehicles used by CSL in the provision of the Guest Services are unavailable for use in the provision of the Guest Services as a result of the occurrence of such event;

- (e) CSL prevents or restricts the operation of any train on safety grounds provided that:
- (i) CSL has, either before or as soon as reasonably practicable after initiating such prevention or restriction, sought the confirmation of the ORR, or any other body with statutory responsibility for safety in the circumstances, of the necessity of such prevention or restriction; and
 - (ii) if and to the extent that the ORR or other relevant body indicates that such prevention or restriction is not necessary, then no Force Majeure Event under this paragraph 1.1(e) shall continue in respect of that restriction or prevention after the receipt of such indication from the ORR or other relevant body;
- (f) act of God, war damage, enemy action, terrorism or suspected terrorism, riot, civil commotion, rebellion (together “**Emergency Events**”) or the act of any government instrumentality (including the ORR and the Secretary of State but excluding the Authority) insofar as the act of government instrumentality directly relates to any Emergency Events, provided that there shall be no Force Majeure Event under this paragraph 1.1(f) by reason of:
- (i) the suicide or attempted suicide of any person (other than a person engaged in terrorism or suspected terrorism);
 - (ii) the activities of the police, fire service, ambulance service or other equivalent emergency service that are not in response to acts of terrorism or suspected terrorism; or
 - (iii) an act of God which results in CSL or its agents or subcontractors being prevented or restricted by Network Rail from gaining access to any relevant section or part of track; and
- (g) any strike or other Industrial Action by any or all of the employees of CSL or any or all of the employees of:
- (i) Network Rail;
 - (ii) the operator of any other railway facility; or
 - (iii) any person with whom CSL has a contract or arrangement for the lending, seconding, hiring, contracting out or supervision by that person of train drivers, conductors, other train crew or station or depot staff used by CSL in the provision of Operator Services (except where such contract or arrangement is with an Affiliate of CSL), or in the case of (i) and (ii) above, of the agents or sub-contractors of any such person.

2. **Conditions to Force Majeure Events**

2.1 The occurrence, and continuing existence of a Force Majeure Event shall be subject to satisfaction of the following conditions:

- (a) in relation to an event occurring under paragraph 1.1(a), that event has continued for more than 12 consecutive hours;
- (b) CSL notifies SRH and the Authority within 2 Weekdays of it becoming aware of:
 - (i) the occurrence or likely occurrence of the relevant event; and
 - (ii) the effect or the anticipated effect of such event on CSL's performance of the Guest Services;
- (c) at the same time as CSL serves notification on SRH and the Authority under paragraph 2.1(b), it informs SRH and the Authority of the steps taken and/or proposed to be taken by CSL to prevent the occurrence of, and/or to mitigate and minimise the effects of, the relevant event and to restore the provision of the Guest Services;
- (d) the relevant event did not occur as a result of:
 - (i) any act or omission to act by CSL or its agents or subcontractors save that, in respect of the occurrence of Industrial Action in accordance with paragraph 1.1(g) the provisions of paragraph 2.2 apply; or
 - (ii) CSL's own contravention of, or default under, this Agreement, any Access Agreement, Rolling Stock Lease, Property Lease or any other agreement;
- (e) CSL used and continues to use all reasonable endeavours to avert or prevent the occurrence of the relevant event and/or to mitigate and minimise the effects of such event on its performance of the Guest Services and to restore the provision of the Guest Services as soon as reasonably practicable after the onset of the occurrence of such event;
- (f) CSL shall, to the extent reasonably so requested by SRH and the Authority, exercise its rights and remedies under any relevant agreement to prevent the occurrence or recurrence of any such event and to obtain appropriate redress and/or compensation from any relevant person; and
- (g) CSL's compliance with the requirements of paragraphs 10 and 11 of Schedule 1.2 (*Operating Obligations*).

2.2 Where:

- (a) Industrial Action in accordance with paragraph 1.1(g) occurs as a result of an act or omission to act by CSL or its agents or subcontractors;
- (b) the Authority reasonably believes that it was reasonable for CSL, its agents or subcontractors (as the case may be) to take or omit to take such act; and (c) the other conditions specified in paragraph 2.1 have been satisfied, such occurrence shall be a Force Majeure Event.

3. **Consequences of Force Majeure Events**

On Obligations

3.1 Subject to paragraph 3.2, CSL shall not be responsible for any failure to perform any of its obligations under this Agreement, nor shall there be any contravention of this Agreement if and to the extent that such failure is caused by any Force Majeure Event.

3.2 Paragraph 3.1 shall not apply to the obligations of CSL:-

(a) in Schedule 7.1 (*Train Operating Performance*) if the Force Majeure Event is an event occurring under paragraphs 1.1(a), (b) and (g); and

(b) in Schedule 7.2 (*Service Quality*).

On Payments

3.3 Following the occurrence of a Force Majeure Event, the payment of Grant Payment shall continue unaffected.

SCHEDULE 10.5

THIS IS SCHEDULE 10.5 REFERRED TO IN THE FOREGOING CALEDONIAN SLEEPER GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND CALEDONIAN SLEEPER LIMITED

Liability

1. Exclusion of Liability

Liability with respect to Guests and Third Parties

- 1.1 CSL hereby acknowledges that SRH and/or the Authority will not be responsible for the actions of CSL or any Alliance and that, except as expressly provided in this Agreement, CSL shall provide and operate the Operator Services at its own cost and risk without recourse to SRH and/or the Authority.
- 1.2 CSL, on demand, shall hold SRH and/or the Authority fully protected and indemnified in respect of all losses, liabilities, costs, charges, expenses, actions, proceedings, claims or demands incurred by or made on SRH and/or the Authority in connection with any death, personal injury, loss or damage suffered by guests or by any third party (including, for the avoidance of doubt, any Alliance,) using or affected by Operator Services which is caused or contributed to by CSL, or any Alliance, or any employee, agent, contractor or sub-contractor of CSL or of or any Alliance or anyone for whom CSL or any Alliance is responsible at law.

Liability of Authority

- 1.3 Neither the Authority nor any of its officers, agents or employees shall in any circumstances be liable to CSL and/or SRH for any loss or damage caused by the negligent exercise of any powers reserved to the Authority under this Agreement, except to the extent that such negligence also constitutes a contravention of an obligation of the Authority under this Agreement. CSL and/or SRH may not recover from the Authority or any of its officers, agents, or employees any amount in respect of loss of profit or consequential loss.

2. Review or monitoring by the Authority

- 2.1 The Authority may for its own purposes (whether under this Agreement or under any other arrangement or otherwise and whether before or after the date of this Agreement) monitor or review any proposals, plans or projects (or any aspect thereof) of CSL under this Agreement, but no review, enquiry, comment, statement, report or undertaking, made or given by or on behalf of the Authority during such review or monitoring (and no failure to undertake, make or give any review, enquiry, comment or statement) shall operate to exclude or relieve any of the parties from or reduce or otherwise affect the obligations of the parties under this Agreement.
- 2.2 The exercise by or on behalf of each of the Authority of (or, as the case may be, any failure to exercise) any of its functions, rights or obligations in respect of any review or monitoring process shall not in any way impose any liability, express or implied, on the Authority to any other party save to the extent that the exercise (or failure to exercise) of any of such functions, rights or obligations results in a contravention by the Authority of an express provision of this Agreement and the Authority does not make or give any representation or warranty, either express or implied, as to whether any proposal, plan or project will enable any party to comply with its obligations under this Agreement.

SCHEDULE 11

THIS IS SCHEDULE 11 REFERRED TO IN THE FOREGOING CALEDONIAN SLEEPER GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND CALEDONIAN SLEEPER LIMITED

Agreement and Service Delivery Management Provisions

1. Rail Business Director and Authority Contract Manager

1.1 Rail Business Director

The SRH Board shall appoint a Rail Business Director, who shall have power and authority delegated to them by the SRH Board to act and to make decisions on behalf of SRH in relation to this Agreement (other than to amend this Agreement on behalf of SRH, which shall require the prior authorisation of the SRH Board). The principal responsibilities of the Rail Business Director shall be, amongst other things:

- (a) to manage this Agreement on behalf of SRH;
- (b) to monitor CSL's performance of its obligations under this Agreement and the Business Plan;
- (c) to ensure that the necessary resources within SRH are made available expeditiously for the performance of SRH's obligations under this Agreement and the Business Plan; and
- (d) to facilitate SRH in fulfilling its obligations under this Agreement and the Business Plan to CSL and the Authority.

1.2 The Rail Business Director may from time to time delegate any of the powers, functions and authorities vested in them to an assistant or agent and may at any time revoke any such delegation. Any such delegation or revocation shall be in writing signed by the Rail Business Director and shall state which power, function or authority is thereby delegated or revoked and the persons to whom or from whom the same are delegated or revoked respectively. No such delegation or revocation shall have effect until CSL and the Authority are deemed to have received notice of it in writing in accordance with paragraph 3 of Schedule 18 (*Other Provisions*).

1.3 Except in cases of emergency, or as a consequence of the proper exercise of disciplinary procedures of SRH, SRH shall give the CSL Contract Manager and the Authority Contract Manager reasonable notice of a proposal to replace the Rail Business Director.

1.4 Authority Contract Manager

The Authority's Sponsor Representative under the Framework Agreement shall be the Authority's contract manager for the purposes of this Agreement (the "**Authority Contract Manager**"). The Authority Contract Manager shall have power and authority delegated to him by the Authority to act and to make decisions on behalf of the Authority in relation to this Agreement [and amend this Agreement on behalf of the Authority]. The principal responsibilities of the Authority Contract Manager shall be, amongst other things:

- (a) to manage this Agreement on behalf of the Authority;
- (b) to monitor CSL's performance of its obligations under this Agreement;

- (c) to ensure that the necessary resources within the Authority are made available expeditiously for the performance of the Authority's obligations under this Agreement; and
- (d) to facilitate the Authority in fulfilling its obligations under this Agreement to CSL and SRH.

- 1.5 The Authority Contract Manager may from time to time delegate any of the powers, functions and authorities vested in him to an assistant or agent and may at any time revoke any such delegation. Any such delegation or revocation shall be in writing signed by the Contract Manager and shall state which power, function or authority is thereby delegated or revoked and the persons to whom or from whom the same are delegated or revoked respectively. No such delegation or revocation shall have effect until CSL and SRH are deemed to have received notice of it in writing in accordance with paragraph 3 of Schedule 19 (Other Provisions).
- 1.6 Except in cases of emergency, or as a consequence of the proper exercise of disciplinary procedures of the Authority, the Authority shall give the Rail Business Director and the CSL Contract Manager reasonable notice of a proposal to replace the Authority Contract Manager.

2. **CSL's Key Personnel**

- 2.1 CSL shall identify and provide to SRH a schedule of Key Personnel who shall be employed by CSL in the performance of this Agreement.
- 2.2 CSL shall provide to SRH an organisation chart detailing the responsibilities and reporting lines of each of the Key Personnel within 1 Reporting Period of the Commencement Date and shall update such chart (and provide a copy to SRH promptly thereafter) as and when any changes occur.
- 2.3 Key Personnel may from time to time delegate any of the powers, functions and authorities vested in each of them to an assistant or agent and may at any time revoke any such delegation. Any such delegation or revocation shall be in writing signed by the Key Personnel member in question and shall state which power, function or authority is thereby delegated or revoked and the persons to whom or from whom the same are delegated or revoked respectively. No such delegation or revocation shall have effect until SRH is deemed to have received notice of it in writing in accordance with paragraph 3 of Schedule 18 (*Other Provisions*).
- 2.4 Except in cases of emergency, or as a consequence of the proper exercise of disciplinary procedures of CSL, a minimum of 1 months' notice must be given to the Rail Business Director of a proposal to replace any Key Personnel member.

3. **CSL Executive Team and Contract Manager**

- 3.1 The CSL Board shall appoint a competent team of executive Directors for CSL who shall report directly to the CSL Board and shall have power and authority delegated to them by the CSL Board to act for and to make decisions on behalf of the CSL Board in relation to this Agreement (but who shall not have power to amend this Agreement) ("**CSL Executive Team**").
- 3.2 The principal responsibilities of the CSL Executive Team shall be, amongst other things:
- (a) to appoint a competent contract manager (the "**CSL Contract Manager**"), who shall report directly into the CSL Executive Team, to oversee the day-to-day management of this Agreement on behalf of CSL;

- (b) to ensure that the necessary resources within CSL's organisation are made available expeditiously for the performance of CSL's obligations under this Agreement;
- (c) to ensure that any necessary sub-contracts are placed and managed so that the requirements of this Agreement are fully met; and
- (d) to facilitate CSL in fulfilling its obligations under this Agreement to SRH and the Authority.

3.3 The CSL Executive Team shall:

- (a) report directly to the CSL Board on the full range of CSL's activities;
- (b) make recommendations to the CSL Board on the marketing and promotion of Guest Services, enhancement guest satisfaction levels and growth of patronage throughout the Term (and shall copy any such recommendations to SRH);
- (c) perform the tasks required of them under paragraph 3.2;
- (d) keep full and accurate records and documents in relation to, or affecting, the performance by CSL of its obligations in paragraph 3.2;
- (e) send to the CSL Board at the end of each Reporting Period a statement (which shall be copied at the same time to SRH detailing:
 - (i) the latest findings on CSL's performance as contained in the records and documents kept pursuant to Schedule 7.1 (*Train Operating Performance*);
 - (ii) a comparison of CSL's performance with the targets it has set in respect of its obligations under Schedule 7.2 (*Service Quality*);
 - (iii) the trends which the CSL Executive Team has detected in guest satisfaction and patronage growth with an analysis of the causes of any performance below that forecast or targeted by CSL and recommendations for rectification of performance levels where required;
 - (iv) the CSL Executive Team's evaluation of CSL's performance as against the requirements of any plan which deals with, or specifies, requirements in respect of guest satisfaction and patronage growth;
 - (v) the CSL Executive Team's recommendations for continuing improvement in respect of CSL's performance of its obligations under Schedule 7 and forecast of CSL's likely level of future performance of such obligations; and
- (f) make recommendations to the CSL Board in relation to the promotion of guest satisfaction and patronage; and
- (g) make appropriately senior and appropriately qualified members of CSL's personnel available to attend meetings.

3.4 The CSL Executive Team may from time to time delegate any of the powers, functions and authorities vested in them to the CSL Contract Manager or and may at any time revoke any such delegation. Any such delegation or revocation shall be in writing and shall state which power, function or authority is thereby delegated or revoked. No such delegation or revocation shall have effect until CSL and SRH are deemed to have received notice of it in writing in accordance with paragraph 3 of Schedule 19 (Other Provisions). For the avoidance of doubt, no such delegation shall absolve the CSL Executive Team of its collective responsibility under this paragraph 3 to facilitate CSL in fulfilling its obligations under this Agreement to SRH and the Authority.

4. **Quality**

4.1 The CSL Executive Team:-

- (a) shall work to minimise the amount of ticketless travel and fare evasion on the Guest Services and to maximise guest satisfaction and patronage;
- (b) be responsible for the obligations set out in paragraph 4 of Schedule 7.2 (*Service Quality*) insofar as relating to SQM or quality; and
- (c) ensure the role of SQM is properly carried out.

5 **Transport Integration**

5.1 The CSL Executive Team shall:-

- (a) have a supporting role in improving integration of ticketing, timetabling, information and infrastructure activities through the Transport Integration Group and otherwise to deliver the policy outcomes in the Policy Compendium Addendum, as updated from time to time;
- (b) draw on evidence relating to guest views concerning integration;
- (c) work with the Authority, SRT and stakeholders in particular other transport service providers and Regional Transport Partnerships;
- (d) such work in terms of paragraph 5.1(c) shall include without prejudice to the generality:
 - (i) encouraging a shift from private car usage to integrated journeys making use of rail; and
 - (ii) consulting on timetable changes and new services to improve connections between modes of transport.

6. **Rail Patronage and Revenue**

The CSL Executive Team shall:

6.1

- (a) promote guest satisfaction levels, grow revenue and maintain patronage throughout the Term (and shall copy any such recommendations to SRH); and
- (b) perform the tasks required of them under this paragraph 6;

6.2 ensure that CSL's obligations set out in paragraphs 2 to 4 of Schedule 1.3 (*Additional Service Specifications*) are complied with in full;

6.3 co-operate with SRH in relation to the promotion of guest satisfaction, revenue growth and maintaining patronage and in making appropriately senior and appropriately qualified members of CSL's personnel available to attend relevant meetings;

6.4 including responsibility for the obligations set out in paragraph 4 of Schedule 7.2 insofar as relating to rail patronage.

7. **Control of Communications, Information and Documents**

7.1 Save for correspondence between the parties' Nominated Representatives under the Escalation Procedure in Schedule 7.2, all correspondence between the parties (other than correspondence in connection with the matters referred to in paragraph 3.1(a) of Schedule 18 (*Other Provisions*)) shall be sent to the Rail Business Director, the CSL Contract Manager

and the Authority Contract Manager in accordance with the terms of paragraph 3.1(b) of Schedule 18.

7.2 CSL shall use a logical and structured system for correspondence reference.

7.3 All correspondence between the parties shall be given a unique reference number and, wherever possible, correspondence shall be cross-referenced to the relevant clause or paragraph of or schedule to this Agreement.

8. **CSL Board Meetings**

8.1

(a) CSL shall hold [not less than seven Board Meetings per annum] at a time and location notified to CSL by the Rail Business Director (and without prejudice to the Authority's rights under the Framework Agreement, the Authority may at its discretion attend such CSL Board Meetings). CSL Board Meetings shall be held more often than once every Reporting Period if that is necessary to properly deal with the agenda items. The Chair may propose to the CSL Board to hold a virtual CSL Board Meeting but a report must still be circulated by correspondence.

(b) SRH and CSL shall review the financial and operational performance of CSL at each CSL Board Meeting. Further agenda items shall include:

(i) KPI performance;

(ii) progress of the programmes of any new train fleet or modifications to Train Fleet in accordance with Schedule 6 (*Rolling Stock*);

(iii) timing of reports to be produced in terms of this Agreement;

(iv) asset condition (maintenance audit reports);

(v) fleet stewardship report;

(vi) fleet availability and performance;

(vii) safety

(vii) summarised outputs of the Operation Performance Meetings held pursuant to paragraph 10, which shall provide the CSL Board with an overview of the compliance activities undertaken and of any key risks issues or opportunities identified,

which will be grouped for discussion on a quarterly basis.

(c) Each CSL Board Meeting shall be minuted for the Chair and the Non-Executive Director and the minutes shall be sent to attendees within 7 Weekdays of each such meeting.

(d) The Chair shall chair the CSL Board Meeting.

(e) SRH and CSL shall agree a schedule of CSL Board Meetings prior to the commencement of each Operator Year to include four quarterly meetings spread equally throughout the Operator Year at which CSL's Managing Director and a senior representative of SRH shall attend and a senior representative of the Authority may attend at its discretion.

- 8.2 CSL shall ensure that each of its representatives at all CSL Board Meetings have full power and authority delegated to them by CSL to act and to make binding decisions on behalf of CSL and shall include such directors and/or senior managers of CSL as SRH may require.

9. Right of assessment or inspection

- 9.1 CSL shall, if requested by SRH, allow SRH and/or the Authority and its or their representatives and advisers:
- (a) to inspect and copy any records referred to in Schedule 13 (*Operation Management and Information Obligations*) and SRH may verify any such records; and
 - (b) to inspect and copy at any reasonable time any books, records and any other material, data sets or electronic information howsoever and wheresoever held kept by or on behalf of CSL and/or its auditors and any assets (including the Operator Assets) used by CSL in connection with the Operator Services.
- 9.2 CSL shall make available to SRH and/or the Authority and its representatives and advisers the information referred to in paragraph 9.1 and grant or procure the grant of such access (including to or from third parties) as SRH and/or the Authority and its representatives and advisers shall reasonably require in connection therewith. The obligation of CSL under this paragraph 9.2 shall include an obligation on CSL to grant or procure the grant of such access to premises (including third party premises) where the information referred to in paragraph 9.1 is held, kept by or on behalf of CSL.
- 9.3 Subject to the obligations under Schedule 17 (*Confidentiality, FOISA and Data Protection*) SRH and/or the Authority and its representatives and advisers shall be permitted to take photographs, film or image, recording, or make any other kind of record of any such inspection.
- 9.4 If any inspection reveals that information previously supplied to SRH and/or the Authority was in the reasonable opinion of SRH and/or the Authority, in any material respect inaccurate or if such inspection reveals any other non-trivial contravention of CSL's obligations under this Agreement, the costs of any such inspection shall be borne by CSL.

10 Operation Performance Meetings

- 10.1 SRH and CSL shall hold one or a number of Operation Performance Meetings in each Reporting Period (or such other period as agreed among the parties) at a time and location notified by SRH. The attendees of the Operation Performance Meeting shall include: **[to be agreed/specified]**
- 10.2 Each Operation Performance Meeting shall include as a minimum the review of the following items:
- (a) confirmation of the accuracy of the minutes of the previous Operation Performance Meeting;
 - (b) performance by CSL by reference to the Performance Criteria;
 - (c) service quality performance against Schedule 7.2 (*Service Quality*) and by reference to the Service Quality Benchmarks;
 - (d) performance by CSL of its financial obligations under Schedule 12 (*Financial Obligations and Undertakings*);

- (e) compliance by CSL with its obligations under Schedule 13 (*Operation Management and Information Obligations*) and the timely production of information prior to CSL Board Meetings;
 - (f) any Remedial Plans and/or Remedial Agreements discussed at a previous Operation Performance Meeting and any suggested improvements to CSL's performance;
 - (g) the results of any review of the Station Lounge Condition Maintenance Programme;
 - (h) a review of the progress of the implementation of the Business Plan Commitments, or any Variations previously authorised;
 - (i) outstanding correspondence and identification of matters in dispute and actions towards resolution;
 - (j) any obligations of CSL which SRH is monitoring following a contravention of this Agreement;
 - (k) a review of progress of decisions on authorisation of Variations or Changes and any new or proposed Variations or Changes;
 - (l) the revenue collection performance under Schedule 1.3 (*Additional Service Specifications*);
 - (m) progress in planning for or implementation of projects, including Major Scottish Projects and the delivery of new or refurbished rolling stock;
 - (n) a review of the progress toward implementation of any Business Plan Commitments included in Schedule 1.6 (*Business Plan Commitments*);
 - (o) a review of the current Business Plan as appropriate;
 - (p) performance by CSL by reference to the Business Plan KPIs; and
 - (q) such other matters as may from time to time be determined to be necessary by CSL, SRH or the Authority.
- 10.3 No later than the 5th Weekday prior to each Operation Performance Meeting, CSL shall provide to SRH in accordance with any guidance SRH may issue to CSL from time to time, a report detailing CSL's performance with respect to the items referred to in paragraphs 10.3(b) to (j) inclusive and paragraph 10.3(m) to (r) (if appropriate).
- 10.4 CSL shall prepare and present such additional reports to each CSL Board Meeting as SRH may reasonably request. CSL's obligations under this paragraph 10.5 are subject to CSL receiving at least ten (10) Weekdays' notice of the requirement to prepare and present any such additional report.
- 10.6 No comment or failure to comment nor any agreement or approval, implicit or explicit by the Authority and/or SRH at such meetings will relieve CSL of any of its obligations under this Agreement.

SCHEDULE 12**THIS IS SCHEDULE 12 REFERRED TO IN THE FOREGOING CALEDONIAN SLEEPER GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND CALEDONIAN SLEEPER LIMITED****Financial Obligations and Undertakings****1. Obligations**

Except to the extent that the Authority and SRH may both otherwise agree from time to time, CSL shall:

- 1.1 not incur any liability or financial indebtedness except in the ordinary course of providing and operating the Operator Services; or
- 1.2 not make any loan or grant any credit, or have or permit to subsist any loan or any credit, to any person (other than the deposit of cash with a Bank as permitted under paragraph 1.5 or to an employee in the ordinary course of its business); or
- 1.3 not create or permit to subsist any Security Interest over any of its assets or property or give any guarantee or indemnity to or for the benefit of any person or otherwise assume liability or become obliged (actually or contingently) in respect of any obligation of any other person, in each case other than in the ordinary course of the business of providing and operating the Operator Services; or
- 1.4 not create or acquire any subsidiary; and
- 1.5 not make or have any investment in any other entity, except for the deposit of cash with a Bank
- 1.6

2. Financial Memorandum and Framework Agreement

CSL shall fully assist and co-operate with SRH in doing, all things necessary or desirable to carry out the intent and purposes of the Financial Memorandum and the Framework Agreement, as they relate to CSL.

2.2

3. Financial Transparency

- 3.1 CSL shall ensure that there is no cross subsidisation between the Operator Services and any other service run by CSL or activities of CSL or between CSL and any Affiliate.
- 3.2 CSL shall ensure that all transactions with any Affiliates are conducted on an arm's length basis and are so identified in all records and in its accounting records.
- 3.3 CSL shall have clear, separate and transparent accounting systems for financing and operating the Operator Services (in accordance with Regulation (EC) 1370/2007) to ensure that the Grant Payment is only used for the Operator Services and not for any other activity of CSL and shall deal with SRH on an open book basis.

4. ORCATS

CSL shall act in the best financial interest of SRH in regard to ORCATS. Without prejudice to the foregoing generality, CSL shall:-

- 4.1 resist any ORCATS Notification that may have any adverse impact on the allocation of revenue to the Guest Services;
- 4.2 not agree informally or formally to any ORCATS Adjustment without the prior consent of SRH and the Authority (such consent not to be unreasonably withheld);
- 4.3 challenge any ORCATS Adjustment through the Ticketing and Settlement Agreement, subject to obtaining SRH's and the Authority's prior consent.
- 4.4 use reasonable endeavours to procure that during the Term there is no agreement or Award under the Income Allocation Dispute Rules which is on terms which are less advantageous than the adjustments agreed in commercial agreements in force in relation to ORCATS on the 12 December 2022; and
- 4.5 CSL shall comply with its obligations under the agreements documenting a Negotiated Adjustment and CSL shall enforce the other party's or parties' obligations thereto under any such agreement.

5. Sub-Contractor/Supplier Contracts

CSL shall ensure that all contracts it enters into with suppliers and sub-contractors include provisions requiring CSL to pay all matured and properly authorised invoices promptly and, where appropriate, in accordance with the Scottish Government target of 10 working days as detailed within the 'Expenditure and Payments' section of the SPFM. The parties acknowledge and agree that CSL's ability to achieve the 10 working days payment target is contingent upon replacing certain legacy systems and processes, which CSL shall do as soon as reasonably practicable following the Commencement Date.

SCHEDULE 13

THIS IS SCHEDULE 13 REFERRED TO IN THE FOREGOING CALEDONIAN SLEEPER GRANT AGREEMENT AMONG THE SCOTTISH RAIL HOLDINGS LIMITED AND CALEDONIAN SLEEPER LIMITED

Operation Management and Information Obligations

- Schedule 13.1: Operation Management**
- Schedule 13.2: Information**
 - Appendix 1: Efficient Operator**
 - Appendix 2: Key Assets**
 - Appendix 3: Operational Information**
 - Appendix 4: Guest journeys, miles and earnings information**
- Schedule 13.3: Co-operation**
- Schedule 13.4: Staff Obligations**
- Schedule 13.5: Safety and personal security**
- Schedule 13.6: Integration**

SCHEDULE 13.1

THIS IS SCHEDULE 13.1 REFERRED TO IN THE FOREGOING CALEDONIAN SLEEPER GRANT AGREEMENT AMONG THE SCOTTISH RAIL HOLDINGS LIMITED AND CALEDONIAN SLEEPER LIMITED

Operation Management

1. General Management Obligations

Human Resources

- 1.1 CSL shall deliver the HR Strategy to SRH within the first six months of the first Operator Year.
- 1.2 The HR Strategy shall:
- (a) comply with the applicable requirements of the Policy Compendium from time to time (and in the event of any conflict between this paragraph 1.2(a) and the following provisions of this paragraph 1, this paragraph 1.2(a) shall have precedence);
 - (b) describe the roles and contribution of CSL's directors and Operator Employees in the delivery of CSL's obligations under this Agreement;
 - (c) define the human resources policies, procedures and processes that are required to deliver the vision, business strategy and goals of CSL;
 - (d) set measurable targets (where appropriate) for each aspect of the HR Strategy;
 - (e) define how the HR Strategy will be delivered over the Operation Period;
 - (f) define how the delivery of the HR Strategy will be monitored and managed over the Operation Period; and
 - (g) define how the HR Strategy may be varied to take account of changing circumstances or legislation.
- 1.3 The HR Strategy will comprise as a minimum:
- (a) an **Organisational Development Strategy** incorporating:
 - (i) a resource planning process on a rolling 5-year basis, updated annually and identifying areas where management action will be required to maintain the efficiency of CSL;
 - (ii) a commitment by CSL to incrementally work towards "**Investors in People**" accreditation or similar and setting out the timescales in which such accreditation will be achieved; and
 - (iii) appropriate performance management processes that embrace all Operator Employees and provide individual feedback on personal performance;
 - (b) a **Recruitment, Retention & Resourcing Strategy** incorporating:
 - (i) an objective, transparent and fair recruitment process;
 - (ii) a succession - planning process for key grades / posts on a rolling 5-year basis, updated annually ensuring that there is resilience in the staffing levels of key posts;
 - (iii) a statistical framework for the monitoring of recruitment and Operator Employees turnover by gender, ethnic category, disability, sexuality, religion or belief, function, grade, length of service;

- (iv) an Equalities Plan detailing the proactive steps to be taken to eliminate discrimination and promote equality and evidence of the activities carried out in accordance with the Equalities Plan;
- (c) a **Reward & Engagement Strategy** for each grade group which supports the vision, business strategy and goals and provides for motivation, reward and retention of Operator Employees mitigation against the risk of Industrial Action, and incorporates:
 - (i) base salary and earnings data by key grade group;
 - (ii) earnings and hours-worked data;
 - (iii) previous information;
 - (iv) relevant comparator data;
 - (v) non-financial reward, recognition and motivation initiatives;
 - (vi) employee share schemes and/or profit-share mechanisms; and
 - (vii) pensions benefits;
- (d) a **Training & Development Strategy** incorporating:
 - (i) a commitment to become Investors in People accredited or equivalent and continue throughout the Term to work toward the highest level of such accreditation;
 - (ii) the provision of induction training for all new Operator Employees that incorporates:
 - (A) all necessary safety training;
 - (B) all task-specific training;
 - (C) training in order to make such Operator Employees aware of the obligations required of CSL under this Agreement and of CSL's vision, business strategy and goals;
 - (D) training to provide understanding of CSL's obligations under its Licences;
 - (E) training to provide understanding of the wider context of the railway; and
 - (F) training for Operator Employees who have a guest interface in:
 - (aa) how to deliver excellent customer service to all types of guests including guests with special requirements;
 - (bb) how to deal with dissatisfied or disruptive guests;
 - (cc) ensuring such staff are able to answer guest enquiries about Guest Services, Trains and products at all times including times of disruption; and
 - (dd) ensuring such staff can assist guests with information about onward travel and alternative public transport options.
 - (iii) the provision of refresher training and the circumstances when such would be provided;
 - (iv) a competence framework based upon National Occupational Standards;
 - (v) an assessment and verification framework consistent with the delivery of National Vocational Qualifications and/or Scottish Vocational Qualifications;

- (vi) a commitment by CSL to encourage Operator Employees (where appropriate) to achieve an appropriate National Vocational Qualification and/or Scottish Vocational Qualification (or equivalent accredited qualification) within defined timescales;
 - (vii) the means by which CSL will make available other structured training and development opportunities, using approved training schemes such as “**Modern Apprenticeships**” and “**Graduate Apprenticeships**” where appropriate;
 - (viii) CSL shall develop the activities of in-house training for the Caledonian Sleeper Operation. CSL shall ensure that training is operational throughout the Operation Period and in accordance with industry standards through the Operation Period;
- (e) an **Involvement Strategy** incorporating:
- (i) appropriate “**Collective Consultation and Bargaining Frameworks**”; and
 - (ii) the planned linkages to the wider local community that CSL has through its Operator Employees;
- (f) an Operator **Employee Communications Strategy** which defines the means and frequency with which CSL will provide:
- (i) information and feedback to Operator Employees on CSL’s performance, including whether good or bad performance;
 - (ii) information as to changes in management policy, personnel, organisational structure, reporting lines and responsibilities; and
 - (iii) the conduct, publication and actions to be taken as a result of an annual Operator Employee attitude survey; and
- (g) a **staffing strategy and structure** incorporating:-
- (i) corporate structure of CSL;
 - (ii) proposed management team and structure;
 - (iii) total establishment numbers including any expected changes in numbers, relevant skills and resources by activity and functions;
 - (iv) details of any proposed outsourcing or sub-contractor arrangements and activities.

2. **Quality Management**

- 2.1 CSL shall deliver the **Quality Plan** to SRH within the first six months of the first Operator Year. The Quality Plan shall cover all of the obligations of CSL under this Agreement incorporating:
- (a) all areas of activity that will drive the Guest Satisfaction KPI;
 - (b) the management policy and the expected results from such policy and how that might improve Guest Satisfaction scores; and
 - (c) specific initiatives proposed.
- 2.2 The purpose of the Quality Plan is to ensure that CSL manages in a systematic and structured manner the quality and delivery of its obligations under this Agreement so that they are delivered to a consistent quality in accordance with the terms of this Agreement.

- 2.3 The Quality Plan shall be compliant with the procedures and processes described in the Business Excellence Model of the British Quality Foundation or the EFQM Excellence Model of the European Foundation for Quality Management.
- 2.4 CSL shall implement the Quality Plan throughout the Operation Period. CSL shall ensure that sufficient, adequately trained Operator Employees are allocated to the management of quality and the delivery of Operator Services.
- 2.5 CSL shall deliver to SRH a Quality Report, at least once every 13 Reporting Periods during the Term (the first such report no later than the end of the 13th Reporting Period following the Commencement Date), which shall provide:
- (a) CSL's own assessment of CSL's performance of its obligations under this Agreement;
 - (b) (where applicable) a list of specific corrective actions which CSL believes are necessary to remedy, as soon as reasonably practicable, issues of concern identified in CSL's assessment;
 - (c) (where applicable) a list of specific actions for improvement identified in CSL's assessment that CSL intends to target so as to bring about continuous improvement of performance, in particular the delivery of the key performance results derived from the application of the Business Excellence Model of the British Quality Foundation or the EFQM Excellence Model of the European Foundation for Quality Management;
 - (d) a list of actions intended to maintain current areas of excellence identified in CSL's assessment;
 - (e) a programme which specifies:
 - (i) the time within which the corrective action identified pursuant to paragraph 2.5(b) will be complete;
 - (ii) the time within which the continuous improvement actions identified pursuant to paragraph 2.5(c) will be complete; and
 - (iii) the time within which the maintenance actions necessary for maintaining the current areas of excellence identified pursuant to paragraph 2.5(d) will be complete; and
 - (f) any amendments to the Quality Plan necessary to ensure that CSL manages in a systematic and structured manner the quality and delivery of its obligations under this Agreement so that they are delivered to a consistent quality in accordance with the terms of this Agreement.

3. Quality Standards

EFQM

- 3.1 CSL shall operate a business management system the standard of which shall comply with the European Framework for Quality Management Model ("**EFQM**") and take all steps necessary to maintain such standards during the Operation Period.

ISO 9000:2005 and related standards

- 3.2 CSL shall take all steps necessary to maintain during the Operation Period a quality management system which complies with the ISO 9000:2005, ISO9001: 2008 and ISO9004: 2009 (or any updates to such ISO standards).

4. NOT USED

5. Environment commitments and standards

ISO 14001 and ISO5001 Environmental Accreditation and other systems

- 5.1 CSL shall procure that the Maintenance Contractor shall operate an environmental management system, the standard of which shall comply with ISO 14001, EMAS or BS8900 accreditation status, and take all steps necessary to maintain such standard during the Operation Period.
- 5.2 CSL shall, in so far as not covered by paragraphs 5.1, put in place systems to monitor CSL's: -
- (a) energy consumption from traction and non-traction operations;
 - (b) carbon dioxide equivalent emissions from traction and non-traction operations; and
 - (c) waste to landfill.
- 5.4 CSL shall ensure that there are adequate levels of staffing and management with responsibility to improve CSL's environmental performance.
- 5.5 CSL shall comply with all rail industry protocols with regard to reporting energy consumption and carbon dioxide equivalent emissions to the ORR and Network Rail.
- 5.6 CSL shall Publish annual progress statements on the overall environmental performance of Caledonian Sleeper Operation (such shall include as a minimum energy consumption and carbon dioxide equivalent emissions and waste that went to landfill from Operator Services).
- 5.7 CSL shall ensure all New Stations or new Depots deliver, where practicable, at least an **“excellent”** rating using BREEAM.

Controlled emission toilets

- 5.8 CSL shall procure that all Routes and Guest Services in Scotland are operated with Vehicles that have controlled emission toilets.

Regenerative braking

- 5.9 CSL shall use regenerative braking to reduce energy consumption and CO² emissions where this is part of the standard equipment on the train and the line the train is operating on is capable of accepting regenerative output.

Energy consumption and emissions reporting

- 5.10 CSL shall
- (a) with such frequency as SRH may require, but in any event monthly, report to SRH on the energy consumption and carbon dioxide equivalent emissions of the delivery of Operator Services and energy efficiency and environmental performance, by the provision of such information in such format as is compatible with SRH's Carbon Management System may reasonably require.
 - (b) Each Operating Year, CSL shall publish on the Website an environmental action plan that details the steps CSL will take to deliver the environmental targets. Such steps shall include:
 1. In-cab traction electricity metering to assist drivers to reduce power consumption.
 2. Use of electric locomotives with regenerative breaking.
 3. Diesel locomotives with new, more efficient engines.
 4. With the introduction of new carriages, lighter vehicles that will reduce traction power consumption.

5. Low temperature washing of bed linen to reduce energy consumption.
6. Use of fair trade cotton in bed linen and garments.

In addition to these actions, CSL is committed to working with local suppliers to reduce the energy consumption of CSL's supply chain.

- (c) Where installed, CSL will use on-train metering on electric locomotives to manage traction electricity usage.

Extreme weather events and climate change

- 5.11 CSL shall monitor extreme weather events and the effects of climate change on the delivery of Operator Services:-
- (a) report thereon in a format agreed with SRH with such frequency as SRH may require, but in any event annually (the first such report no later than the end of the 13th Reporting Period following the Commencement Date) highlighting the frequency of events, the impact on the Caledonian Sleeper Operation (including in terms of delay and Cancellations to Guest Services) and highlight hot spot locations that are prone to the effects of weather; and
 - (b) meet no less frequently than twice per Operator Year with the SRH to discuss trends, positions and investigation plans required as a result of such monitoring.

Waste

- 5.12 CSL shall:
- (a) implement relevant systems to ensure that waste is recovered and disposed of without endangering human health or causing harm to the environment; and
 - (b) put mechanisms in place to achieve and monitor progress in reducing the waste CSL sends to landfill from Operator Services.

Sustainability

- 5.13 CSL shall develop and implement a sustainable procurement policy to:
- (a) reduce the environmental impact of goods and services procured to support the operation of Operator Services;
 - (b) embed environmental and sustainability management across Operator Services;
 - (c) consider how this will provide financial savings; and

CSL shall consider operating an accredited management system in regard to sustainable procurement such as BS8903.

6. Advertisement of Contracts

Save as agreed among the parties prior to the Commencement Date or otherwise as required by Law, CSL shall, as a minimum, comply with the Scottish Public Finance Manual (SPFM) and where required by the SPFM will advertise potential contracts for goods and services i in relation to the Caledonian Sleeper Operation in Public Contracts Scotland specifying the locations where such goods and services will be provided in order to make sub-contracting opportunities more visible to SMEs.

7. Review for Innovation Opportunities

- 7.1 CSL shall continually review its operations in a manner that ensures that CSL seeks value for money and opportunities for innovation across Operator Services.
- 7.2 Where CSL identifies such opportunities, CSL, when taking and/or implementing the said opportunities, shall take into consideration the Authority's policy objectives and that this paragraph 7 shall not provide CSL with any relief from any other obligation upon CSL in terms of this Agreement.

SCHEDULE 13.2

THIS IS SCHEDULE 13.2 REFERRED TO IN THE FOREGOING CALEDONIAN SLEEPER GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND CALEDONIAN SLEEPER LIMITED

Information

1. General Information

Corporate information

- 1.1 CSL shall provide the following information to SRH if known on or before the Commencement Date, if the information is not known at the Commencement Date, as soon as possible after it becomes known and shall notify SRH of any change to such information within 21 days of such change:
- (a) its name;
 - (b) its business address and registered office;
 - (c) its directors and company secretary;
 - (d) its auditors; and
 - (e) its trading name or names.
- 1.2 CSL shall inform SRH of any material change or proposed material change in its business (including the employment or the termination of employment of any Key Personnel, the termination of any Key Contract, any litigation or other dispute which may have a material effect on its business) and any material change in or restructuring of, the capitalisation or financing of CSL.

Operational and Performance-related Information to be provided by CSL

- 1.3 CSL shall provide to SRH the information specified in the Appendices to this Schedule 13.2 at the times specified therein.
- 1.4 The Appendices to this Schedule 13.2 shall be interpreted in accordance with any guidance issued by SRH from time to time for that purpose.

Maintenance of Records

- 1.5 CSL shall maintain true, up to date and complete records of all of the information required to be provided by CSL under this Agreement.
- 1.6 Each record required to be maintained by CSL in accordance with this Schedule 13.2 shall be held for a period of 7 years following the date on which such record was required to be created or longer as required by applicable law.
- 1.7 References to records in this Schedule 13.2 shall include records maintained under any Franchise Agreement (or grant agreement) to the extent that such records relate to the Operator Services and CSL has access to them (which it shall use all reasonable endeavours to secure).
- 1.8 CSL shall not be responsible for any records maintained under any previous Franchise Agreement (or Grant Agreement), as referred to in paragraph 1.7, being true, up to date and complete. Notwithstanding the foregoing, as soon as reasonably practicable after becoming aware that any such records are not true, complete and up to date, CSL shall take all reasonable steps to remedy any such deficiency, and shall thereafter maintain such records in accordance with paragraph 1.5.

Information to Stakeholders

- 1.9 CSL shall comply with any reasonable requests and guidance issued by Authority and/or SRH from time to time in respect of the provision of information to and co-operation and consultation with Stakeholders.

Public Sector Equality Duty

- 1.10 CSL shall, upon request by SRH, provide all and any information which may be required by the Authority and/or SRH in order to assist the Authority and/or SRH in complying with its Public Sector Equality Duty.

2. Business PlansInitial Business Plan

- 2.1 Within 6 months after Day One, CSL shall deliver to SRH and the Authority, for review, its draft Initial Business Plan and supporting Business Action Plans for the first Operator Year appropriate to the scale and nature of the operation of the business.
- 2.2 Each party, acting reasonably and through sufficiently senior representatives, shall use all reasonable endeavours to discuss and seek to agree the Initial Business Plan and supporting Business Action Plans in a timely manner and, in any event, before the first Weekday of the sixth month of the first Operator Year. During such period, CSL shall comply with any written requests made by the Authority and/or SRH to:
- (a) provide further detail or evidence in relation to the draft Initial Business Plan (and/or supporting Business Action Plans); and/or
 - (b) amend the draft Initial Business Plan (and/or supporting Business Action Plans) in accordance with the Authority's and/or SRH's requirements and provide the amended draft to the Authority and SRH.
- 2.3 If the Initial Business Plan is not agreed by the parties before the first Weekday of the sixth month of the first Operator Year, then the Initial Business Plan (including any supporting Business Actions Plans and the Business Plan Commitments Schedule) may be determined by the Authority acting reasonably by written notice to SRH and CSL.

Content of the Business Plan

- 2.4 Each Business Plan shall, as a minimum, include (unless otherwise agreed among the parties in writing and in advance):
- (a) a proportionately detailed description of the following items given the scale and nature of the business:
 - i. Accessible Travel
 - ii. Active Travel
 - iii. Brand & Marketing
 - iv. Business Continuity
 - v. Business Development
 - vi. Climate Resilience
 - vii. Community Rail
 - viii. Customer Engagement
 - ix. Guest Lounges & Stations
 - x. Pensions
 - xi. People & Culture
 - xii. Performance Regimes
 - xiii. Retail & Ticketing
 - xiv. Sustainability

- xv. Tourism
- xvi. Rolling Stock and Train Service Specification
- xvii. Transport Integration

- (b) a description of how CSL shall achieve the policy outcomes detailed in the Policy Compendium Sleeper Addendum;
 - (c) a description of the Business Plan Commitments (including the achievement of relevant milestones);
 - (d) the financial cost/revenue associated with the Business Plan Commitments and the timescales for achievement of those Business Plan Commitments by CSL;
 - (e) a description as to how CSL will be able to meet its obligations under this Agreement for the relevant Operator Year, supported by operational plans and strategy plans demonstrating this;
 - (f) details of any investments and initiatives proposed to be made or procured by CSL in relation to the Operator Services during the relevant Operator Year;
 - (g) a summary of CSL's plans for marketing and developing the Operator Services;
 - (h) a profit and loss forecast, cash flow forecast and forecast balance sheet for each of the 13 Reporting Periods in an Operator Year, together with a list of assumptions on the basis of which each such forecast has been prepared;
 - (i) such information or detail as reasonably required given the scale and nature of the business by the Authority and/or SRH from time to time and as notified to CSL before agreement of the Business Plan;
 - (j) a profit and loss forecast for each of the two successive years backed up by detailed assumptions and two further years based on a roll forward of assumptions;
 - (k) the detail required by paragraph 2.2 of Schedule 1.3 (*Additional Service Specifications*);
 - (l) the Information Strategy required in accordance with paragraph 9 of Schedule 1.3 (*Additional Service Specifications*); and
 - (m) the C&M Strategy required in accordance with paragraph 2.2 of Schedule 1.4 (*Guest Facing Specifications*);
- (together the "**Business Plan Content Requirements**").

2.5 Each Business Plan shall, as a minimum, include for each Business Plan Content Requirement, detail on:

- (a) longer-term context and strategy for each Business Plan Content Requirement, which shall (without limitation) include identification and consideration of any anticipated or potential developments or enhancements which may be required to be reflected in the Business Plan with respect to any Operator Year during the relevant Business Plan Term to the extent that such developments or enhancements are within the reasonable contemplation of the parties at the time of agreement or determination of the relevant Business Plan; and
- (b) the strategies, actions, and processes that CSL intends to take or follow for the purposes of delivering each Business Plan Content Requirement.

2.6 Each Business Plan shall comply with all applicable requirements of the Framework Agreement.

Form of Business Plan

2.7 Each Business Plan shall be in such format as agreed by the parties in advance.

- 2.8 The parties agree that the Business Plan Commitments (and the information detailed at paragraphs 2.4(c) and (d)) will be described and listed separately in a schedule to the Business Plan so that the said commitments can be easily and clearly identified (in the Authority's reasonable opinion) as the Business Plan Commitments ("**Business Plan Commitment Schedule**").
- 2.9 Without prejudice to paragraph 2.8, CSL shall comply with any guidance issued by the Authority and/or SRH from time to time as to its/their reasonable requirements for the format of any Business Plan.

Annual Business Plan Review

- 2.10 The Authority may, at its discretion, no later than 4 Reporting Periods prior to the start of each Operator Year (or such other period as required by the Framework Agreement from time to time) notify SRH and CSL of the Authority's requirements for the Business Plan for the upcoming Operator Year ("**Authority Business Plan Requirements**").
- 2.11 By no later than 3 Reporting Periods prior to the start of each Operator Year (other than the first Operator Year) (or such other period as required by the Framework Agreement from time to time), CSL shall deliver to SRH and the Authority for review, a draft Updated Business Plan and supporting Business Action Plans for the upcoming Operator Year which:
- (a) is in substantially the same form as the immediately preceding Business Plan agreed in accordance with this Agreement (unless otherwise notified in the Authority Business Plan Requirements), revised to:
 - (i) include the information available to CSL as at the date of its delivery;
 - (ii) comply with the Authority Business Plan Requirements;
 - (b) containing a statement of the differences between such Updated Business Plan and the immediately preceding Business Plan together with an explanation of such differences;
 - (c) containing revised financial forecasts and cashflows, together with a statement and explanation of any material difference in the financial forecasts and cashflows and any supporting information provided in the immediately preceding Business Plan;
 - (d) containing details of progress made in respect of any existing Business Action Plans;
 - (e) containing a revised profit and loss forecast, cash flow forecast and forecast balance sheet for each of the 13 Reporting Periods in that Operator Year, together with a list of assumptions on the basis of which each such forecast has been prepared;
 - (f) containing revised Business Plan Content Requirements, together with a detailed statement and explanation of any material difference; and
 - (g) continuing forecasts for anticipated moves on costs and revenues likely to impact on the Business Plan Term forecasts and associated assumptions.
- 2.12 Each party, acting reasonably and through sufficiently senior representatives, shall use all reasonable endeavours to discuss and seek to agree Updated Business Plans and supporting Business Action Plans and strategy plans in a timely manner and, in any event, by no later than 1 Reporting Period prior to the start of the upcoming Operator Year (or such other period as required by the Framework Agreement from time to time). During such period, CSL shall comply with any written requests made by the Authority and/or SRH to:
- (a) provide further detail or evidence in relation to the draft Updated Business Plan (and/or supporting Business Action Plans); and/or
 - (b) amend the draft Updated Business Plan (and/or supporting Business Action Plans) in accordance with the Authority's and/or SRH's requirements and provide the amended draft to the Authority and SRH.

- 2.13 If the Updated Business Plan is not agreed by the parties in accordance with the timescales required at paragraph 2.11, then the Updated Business Plan may be determined by the Authority acting reasonably by written notification to SRH and CSL.

Business Plan Dispute

- 2.14 Should SRH and/or CSL consider any Business Plan as determined by the Authority to be manifestly unreasonable then SRH and/or CSL may notify the Authority of that view within ten (10) Weekdays of the determination (“**Business Plan Dispute**”), and the Authority shall consider (in good faith) any representations from SRH and/or CSL on that matter which are properly supported by evidence and decide whether to amend the relevant Business Plan. If within ten (10) Weekdays following the Authority’s re-determination, SRH and/or CSL continue to consider the Authority’s determined Business Plan to be manifestly unreasonable then such matter may be referred by the parties for resolution under the Dispute Resolution Rules provided that the relevant Business Plan as determined by the Authority shall apply pending the outcome of such referral.

Amendments to agreed Business Plans

- 2.15 CSL shall:
- (a) notify SRH (and SRH shall notify the Authority) as soon as reasonably practicable if the business outlook or prospective financial results of CSL are likely to be materially different from those specified in the most recent Business Plan; and
 - (b) within 1 month of any request by SRH and/or the Authority following receipt of a notification in accordance with paragraph 2.15(a), supply SRH and the Authority with a revised draft Updated Business Plan for the remainder of the Operator Year which reflects the latest view of its business.
- 2.16 The revised draft Updated Business Plan shall then be considered by the parties in accordance with paragraphs 2.11 to 2.13 above.

Business Plan Commitments

- 2.17 Schedule 1.6 (*Business Plan Commitments*) shall apply to CSL’s delivery of the Business Plan Commitments.

Provisions relating to Business Plans

- 2.18 SRH and CSL shall, and the Authority may at its discretion, attend such meetings as requested by a party in connection with any Business Plan.
- 2.19 CSL shall:
- (a) make such presentations as requested by the Authority and/or SRH in connection with any Business Plan; and
 - (b) make Business Plans available for discussion at Operation Performance Meetings.
- 2.20 CSL shall comply with any guidance issued by SRH and/or the Authority about how and with whom any consultation on the content of a Business Action Plan is to take place.
- 2.21 Any proposal in a Business Action Plan shall only be implemented if and to the extent that SRH and the Authority agrees it is appropriate to do so and subject to any conditions which may be imposed by SRH and/or the Authority.

Business Action Plan

- 2.22 SRH may at any time require CSL to produce a Business Action Plan in respect of any aspect of any Business Plan. Such Business Action Plan may include steps relating to:
- (a) timetable development;
 - (b) performance management improvement;
 - (c) customer service improvement;
 - (d) improvements in the quality of service delivery or the efficiency of delivery of Operator Services, including any investment to be made, procured or managed by CSL during the Term;
 - (e) patronage growth plan;
 - (f) integration;
 - (g) localism;
 - (h) Extended Restrictions of Use;
 - (i) Major Scottish Projects and/or Major Projects; and
 - (j) each of the matters listed in paragraph 2.4(a) above.

3. **Financial and Operational Information**

Accounting Records

- 3.1 CSL shall prepare and at all times during the Term maintain true, up to date and complete accounting records as are required to be kept under Section 386 of the Companies Act 2006. Such records shall be prepared on a consistent basis for each Reporting Period.

Reporting Period Financial Information

- 3.2 CSL shall deliver to SRH, within 2 weeks of the end of each Reporting Period, Management Accounts for such Reporting Period, setting out a cashflow statement, profit and loss account and balance sheet for that Reporting Period and cumulatively for the Operator Year to date.
- 3.3 The Management Accounts shall also set out:
- (a) CSL's available cash balance on the final day of the Reporting Period to which the Management Accounts relate and CSL's forecast of:
 - (i) CSL's daily cash balance for the period of thirteen (13) weeks following the Reporting Period to which the Management Accounts relate;
 - (ii) the amount of working capital payment (if any) that CSL forecasts that it will require pursuant to paragraph 10 of Schedule 8.1 (*Grant Payments*) in respect of the three (3) Reporting Periods following the Reporting Period to which the Management Accounts relate; and
 - (iii) payments to and from any key suppliers of CSL;
 - (b) a comparison of CSL's financial performance during such period against the forecast provided by CSL in the then current Business Plan;
 - (c) a comparison of CSL's cumulative performance during Operator Year in which such period occurs against the forecast referred to in paragraph 3.3(b);

- (d) a detailed statement and explanation of any material difference between such Management Accounts and the forecast referred to in paragraph 3.3(b), cross-referring to deviations from the applicable operational models;
- (e) where the level of financial performance specified in the Management Accounts is worse than forecast by CSL in its current Business Plan, a Financial Action Plan to ensure that the level of financial performance forecast in its current Business Plan for the remainder of the currency of that Business Plan is achieved and CSL shall use all reasonable endeavours to implement such Financial Action Plan; and
- (f) details and explanations of any Notifiable Costs incurred and actions intended and/or implemented to mitigate Notifiable Costs;
- (g) a comparison on a line by line basis of Actual Cash Payments, Actual Cash Collections and Actual Capex Cash Payments of CSL compared to the Budgeted Cash Payments, Estimated Cash Collections and Periodic Budgeted Capex Cash Payments for that Reporting Period and a comparison on a line by line basis with the periodic profit and loss account as set out in the current Business Plan;
- (h) a detailed statement and a detailed and comprehensive written explanation of any material differences between the actual payments to and from all key suppliers of CSL and the forecast of such payments as referred to in paragraph 3.3(a)(iii); and
- (i) profit and loss, cash flow and balance sheet provided in accordance with the Budget (together with a detailed and comprehensive written explanation as to any changes in such forecasts from the previous such forecasts provided pursuant to the provisions of paragraph 3.3 of this Schedule 13) for each of the following thirteen (13) Reporting Periods.

Quarterly Financial Information

- 3.4 Within 4 weeks after the end of the 3rd, 6th, 9th and 12th Reporting Periods in each Operator Year, CSL shall deliver to SRH an updated version of the profit and loss forecast, cash flow forecast and forecast balance sheet provided in accordance with paragraph 2.4(h), for each of the following 13 Reporting Periods and associated assumptions of the above.
- 3.5 Not used.

Annual Financial Information

- 3.6 Within 3 weeks of the end of each Operator Year, CSL shall deliver to SRH its Annual Management Accounts for that Operator Year.
- 3.7 CSL shall deliver to SRH:
 - (a) in respect of any Operator Year other than the final Operator Year, its Annual Financial Statements for that Operator Year within 3 Reporting Periods of the end of that Operator Year where possible and in any event within 6 Reporting Periods; and
 - (b) in respect of the final Operator Year, its Annual Financial Statements for the period from the start of that Operator Year to the end of the Operation Period within 3 Reporting Periods of the end of the Operation Period,

each together with a reconciliation to the Management Accounts for the same period within one period of finalising the Statutory Accounts.

- 3.8 CSL shall deliver to SRH as part of the relevant Annual Financial Statements pursuant to paragraph 3.7, an unqualified written report from CSL's auditors which confirms that such Annual Financial Statements:
 - (a) comply with paragraph 3.11;

- (b) give a true and fair view of the amount of Revenue (including each revenue flow separately identified therein) earned by CSL during the relevant Operator Year; and
- (c) detail that the amount of Revenue referred to in paragraph 3.8(b) comprises only some or all of those revenue flows specified in the definition of Revenue.

3.9 Within 6 Reporting Periods after the end of each Operator Year, CSL shall deliver to SRH the following information:

- (a) certified true copies of its annual report and Annual Audited Accounts for that Operator Year, together with copies of all related directors' and auditors' reports;
- (b) a reconciliation to the Management Accounts for the same period;
- (c) a statement from CSL's auditors confirming compliance with the financial undertakings in Schedule 12 (*Financial Obligations and Undertakings*). Provided that SRH shall be entitled to discuss any element of the statement provided or the information provided by CSL to demonstrate compliance with the financial undertakings with CSL's auditors;
- (d) a statement of all Related Party Contract transactions undertaken by CSL with any Affiliate; and
- (e) a statement from CSL's auditors confirming that GAAP has been applied in a fair and consistent manner.

Accounting Standards and Practices

3.10 Each set of Management Accounts and Annual Management Accounts shall be:

- (a) drawn up in a form consistent with CSL's profit and loss account, cashflow projection and balance sheets contained in the Budget (or such form as may reasonably be required from time to time by SRH); and
- (b) prepared consistently in accordance with CSL's normal accounting policies, details of which shall be supplied, on request, to SRH and any changes to which shall be notified to SRH on submission of such accounts.

3.11 Each set of Annual Financial Statements and Annual Audited Accounts shall, save as stated in the notes thereto, be prepared and audited in accordance with the GAAP and the SPFM and consistently applied and in accordance with the Companies Act 2006 and, together with those notes and subject to any qualifications contained in any relevant auditors' report, shall give a true and fair view of the state of affairs and profits of CSL for the period covered by such accounts.

3.12 CSL shall not, without the express written consent of SRH, make any alteration to its accounting policies or basis of preparation in relation to its Management Accounts, Annual Management Accounts or Annual Audited Accounts.

Improvement Plans for exceeding Improvement Plan Performance Levels

3.13 If and whenever CSL's performance in respect of a Reporting Period, calculated as a moving annual average in accordance with Schedule 7.1 (*Benchmarks*), falls below the Improvement Plan Performance Level for the Right Time Benchmark, CSL shall promptly:

- (a) notify the SRH of that fact;
- (b) prepare and provide to SRH a plan that it proposes to implement to ensure that its future performance does not fall below the Improvement Plan Performance Level (an **Improvement Plan**);
- (c) implement such Improvement Plan; and

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

Adjustment and Restatement of the Annual Audited Accounts

- 3.14 CSL shall promptly notify SRH as soon as it becomes aware of any requirement to adjust or restate the Annual Audited Accounts and shall deliver to SRH any such adjusted or restated Annual Audited Accounts as soon as such accounts are available. CSL shall provide SRH (with a copy also being provided to CSL's auditors) with a clear written commentary prepared by its finance director, giving reasons for the adjustment or restatement and, CSL shall promptly update any calculations made pursuant to this Schedule 13 which are affected by the adjustment or restatement. CSL shall, as applicable, provide SRH with a nil financial settlement return as evidence that any financial claims previously settled remain unimpacted by the adjustment or restatement.

4. Safety Information

- 4.1 CSL shall co-operate with any request of SRH from time to time for provision of information and/or preparation and submission of reports detailing or identifying compliance with safety obligations set out in the Safety Regulations including any breaches of the Safety Regulations.
- 4.2 CSL shall notify SRH as soon as practicable of the receipt and contents of any formal notification relating to safety or any improvement or prohibition notice received from the ORR. Immediately upon receipt of such notification or notice, CSL shall provide SRH with a copy of such notification or notice.

5. Further Information

- 5.1 CSL shall:

- (a) deliver to SRH, or procure the delivery to SRH of, such information, records or documents as SRH may request within such period as SRH may reasonably require and which relates to or is connected with CSL's performance of this Agreement;
- (b) procure that each Affiliate, Associate, contractor and sub-contractor of and consultant to CSL complies with paragraph 5.1(a) in respect of any information, records or documents that relate to its dealings with CSL in connection with CSL's performance of this Agreement.

- 5.2 The information referred to in paragraph 5.1(a) shall include, without limitation,:-

- (a) any agreement, contract or arrangement to which CSL is a party in connection with any rolling stock used in the operation of the Guest Services;
- (b) in so far as CSL has or is able to obtain the same, any other agreement contract or arrangement which may be associated (directly or indirectly) with the procurement, leasing, financing or maintenance of any such rolling stock (including relative to any depots);
- (c) any agreement for the manufacture or supply of any rolling stock; or
- (d) any arrangements for the securitisation of any lease granted in respect of such rolling stock

- 5.3 SRH may require CSL to provide the information required to be provided under this Schedule 13 more frequently than set out in this Schedule 13.2.

- 5.4 SRH may require CSL to provide:

- (a) the information required to be provided under this Schedule 13.2, or, at SRH's discretion, more detailed financial information, at any time in connection with the re-letting of the Caledonian Sleeper Operation; and
- (b) such unaudited accounts under such accounting policies as may be prescribed by SRH, acting reasonably, from time to time.

6. **Contraventions of this Agreement**

- 6.1 CSL shall notify and SRH so far as possible before it may occur and in any event as soon as reasonably practicable thereafter, of any contravention by CSL of any provision of this Agreement. This includes where CSL is under an obligation to use reasonable endeavours, all reasonable endeavours or best endeavours to achieve a particular result by a particular time, where such result is not achieved by such time.
- 6.2 CSL shall deliver to SRH or procure the delivery to SRH of, such information, records or documents as SRH may request within such period as SRH may reasonably require for the purpose of determining the existence, likelihood, nature or scope of any contravention of, Event of Default or Executive Team Review under, this Agreement.

7. **Information from Third Parties**

- 7.1 CSL shall, if SRH so requests, use all reasonable endeavours to ensure that SRH has direct access to any information, data or records relating to CSL which is or are maintained by third parties and to which SRH is entitled to have access, or of which SRH is entitled to receive a copy, under this Agreement.
- 7.2 CSL shall, if SRH so requests, procure the provision by RSP to SRH of such information, data and records as CSL is entitled to receive under the Ticketing and Settlement Agreement, in such form as SRH may specify from time to time. Such obligation shall be subject to the payment by SRH of the costs incurred by RSP in providing such information.
- 7.3 The obligations of CSL under this Schedule 13.2 to provide information shall not apply if SRH notifies CSL that it has received the relevant information directly from any other person (including Network Rail or RSP). CSL shall, if the Authority and/or SRH so requests, confirm or validate any such information which is received from any such other person.

8. **Information To Third Parties**

CSL shall whenever requested by SRH, confirm what information CSL has provided to Local Authorities, Visit Scotland or other Stakeholders pursuant to paragraph 1.9 of this Schedule 13.2 (*Information*).

9. **Compatibility of Information**

- 9.1 All financial, operational or other information, and any data and records required to be provided under this Agreement shall be provided, if so requested by SRH, in a form compatible with SRH's electronic data and records systems on the Commencement Date, as modified from time to time in accordance with paragraph 10.
- 9.2 SRH and CSL shall ensure that the interconnection of such systems or the provision of such information, data and records under this Agreement will not result in any infringement of any third party Intellectual Property Rights to which its systems or such information, data or records may be subject.

10. **Development of Computer Systems**

- 10.1 CSL shall at all times during the Term, subject to paragraph 10.4, have the necessary Computer Systems to enable it to comply with its information-provision obligations in paragraph 9 of this Schedule 13.2.
- 10.2 CSL shall co-operate in accordance with paragraph 10.3 with SRH and any third party that SRH may reasonably specify in the development of:
- (a) CSL's Computer System;
 - (b) the Authority's Computer System;

- (c) SRH's Computer System;
- (d) any railway industry-wide Computer System; and/or
- (e) any other Computer System, including any new Computer System, SRH may specify

in order that Computer Systems within the railway industry use (where appropriate) the same or compatible computer language, format, networks and protocols.

10.3 In co-operating in developing any of the Computer Systems specified by SRH in accordance with paragraph 10.2 of this Schedule 13.2, CSL shall, when requested by SRH:

- (a) make appropriately skilled and qualified Operator Employees reasonably available, free of charge to:
 - (i) attend meetings with SRH and/or such third party to discuss and review the need for enhancement or replacement of any Computer System;
 - (ii) provide CSL's opinion on any updated specifications for the enhancement of any Computer System;
 - (iii) provide CSL's opinion on any specifications for any replacement Computer System;
 - (iv) review and comment upon implementation timetables and programmes for any enhancement of any Computer System or any replacement Computer System;
 - (v) make available files and data from existing Computer Systems for down-loading onto any enhanced or new Computer System installed;
 - (vi) assist with the commissioning of and fault finding with any enhanced or new Computer System installed; and
 - (vii) make recommendations for modifications to any existing (whether enhanced or otherwise) or new Computer System in the light of operational experience; and
- (b) allow SRH's employees, agents and contractors access to any existing Computer System to effect any necessary change-over arrangements before the introduction of any enhanced or new Computer System.

10.4 If and to the extent requested by SRH, CSL shall:

- (a) carry out the procurement, project management and acceptance of any enhancement of any existing Computer System, or replacement of an existing Computer System with a new Computer System; and
- (b) enter into such maintenance or support contracts as are necessary to maintain or support any enhanced or new Computer System,

and the cost and revenue effects arising from CSL's compliance with this paragraph 10.4 shall constitute a Change.

10.5 CSL shall use any enhanced or new Computer System developed with the co-operation of SRH in accordance with paragraph 10.3 for the purposes for which such Computer System was intended.

11. Information Appendices

CSL shall comply with terms of:-

- 11.1 Appendix 1: (*Efficient Operator*);

- 11.2 Appendix 2: (*Key Assets*);
- 11.3 Appendix 3: (*Operational Information*); and
- 11.4 Appendix 4: (*Guest Journeys, Miles and Earning Information*).

APPENDIX 1 TO SCHEDULE 13.2**Efficient Operator****1. Information about the Efficiency of CSL**

1.1 CSL shall:

(a) at all times during the Term maintain records in relation to the areas and the information described in this Appendix 1; and

(b) subject to paragraph 1.2, provide to SRH the information set out in the following tables at the frequency specified in the column of each such table headed **“When information to be provided”**.

1.2 When so requested by SRH, CSL shall, within such reasonable period as SRH may specify, make such information available for review by SRH by reference to:

(a) such level of disaggregation (including by Route) as is reasonably specified by SRH; and

(b) any particular day, week or other longer period as is reasonably specified by SRH.

2. The following key shall apply to the tables in this Appendix 1:

A = Information to be provided on or before 31 December of each Operator Year;

B = Information to be provided for every Reporting Period within 10 days of the last day of each Reporting Period; and

C = Information to be provided annually within 10 days of the last day of each Operator Year (which obligation begins from the end of the first Operator Year onwards).

Table 1 Rolling stock vehicles

Information to be provided	Class of Rolling Stock Vehicle			When information to be provided
	Class aaa	Class bbb	Class xxx	
Number of rolling stock vehicles in the Train Fleet				A
Number of rolling stock vehicles locked out of use in service in any one train, identified by train id/head code/diagram				A
Number of rolling stock vehicle hours scheduled in service per Reporting Period as a percentage of number of rolling stock vehicles in the Train Fleet x 24 hours x 28 days (total rolling stock vehicle hours)				A
Total standard time scheduled preventative maintenance rolling stock vehicle hours per Reporting Period as a percentage of total rolling stock vehicle hours per Reporting Period				A
Performance measured by technical failures causing 3 mins delay or more expressed as miles per technical failure				B

Information to be provided	Class of Rolling Stock Vehicle			When information to be provided
	Class aaa	Class bbb	Class xxx	
Key reliability issues and improvement actions				B
Availability, actual versus planned				B
Rolling Stock Stewardship Report				B
Heavy maintenance programme				B

3. Where trains operated by CSL consist of locomotive(s) and coaches, CSL shall separate the information provided for locomotive(s) and coaches.
4. For Class of Rolling Stock Vehicle in the above Table, the information is to be provided as if there was a separate column for each class of vehicle in the Train Fleet.

Table 2 Information related to Efficiency of Operation

Information to be provided	When information to be provided
Total guest journey kilometres divided by total staff hours plus contractor hours	A
Number of scheduled diagrams per Reporting Period divided by the number of drivers employed	A
The number of depot maintenance employees (including train maintenance staff and supervisory and administrative staff at the relevant depot) divided by the number of rolling stock vehicles in the Train Fleet	A
Total number of employees divided by the number of rolling stock vehicles in the Train Fleet	A
Number of indirect employees (head office, management and supervisory and administrative staff) relative to the number of direct employees (drivers, train crew, station staff and train maintainers), expressed as a percentage	A

Table 3 Financial Efficiency Ratios

Information to be provided	When information to be provided
Total cost of service operations (all CSL's costs excluding head office, management and supervisory and administrative staff costs and head office lease and facilities costs) divided by total scheduled vehicle miles	A
Total maintenance cost (including depot costs, spare parts replacement train maintenance staff and depot supervisory costs, interior and exterior cleaning costs, depot	A

maintenance costs excluding any vehicle fuel costs) divided by total scheduled vehicle miles	
Total cost (sum of all CSL's costs) divided by total number of total guest journey kilometres	A
Total cost of service operations (all CSL's costs excluding head office, management and supervisory and administrative staff costs and head office lease and facilities costs) divided by total guest journeys	A
Administrative costs (head office, management and supervisory and administrative staff costs and head office lease and facilities costs) divided by total scheduled vehicle miles	A
Total fares revenue divided by the total number of total guest journey kilometres	A
Ticket selling and revenue protection costs as a percentage of total revenue. Ticket selling and revenue protection costs shall include ticket office staff costs, ticket machine and ticket validation equipment maintenance costs, ticket procurement and ticket costs, revenue protection staff costs (less penalty fare (if any) receipts), costs associated with RSP and Ticketing and Settlement Agreement compliance, and commissions paid to third parties in respect of ticket sales plus ticket gating machine charges, maintenance cost and gating staff costs	A
Percentage of off-train sales	A
Percentage of on-train sales	A
Cash flow of the Caledonian Sleeper Operation	A
The total value of any efficiencies delivered	A
The growth of revenue from Guest Services	A
Ratio of guest revenues divided by costs	A
Result before subsidy (real/indexed): Earnings before interest, tax, (depreciation, amortisation) & subsidy	A

Table 4 Safety

Information to be provided	When information to be provided
Accidents reported (staff and guests) divided by the number of guest journeys	C
Crime incidents reported (staff and guests) divided by the number of guest journeys	C

Table 5 HR Information

Information to be provided	When information to be provided
Evidence of CSL's vision, company goals and HR Strategy that supports it	C
Evidence of a human resource database capable of informing the operation of CSL and supporting the production of a resource plan	C
Evidence of a 5 year resource plan, rolling forward and updated annually	C
Evidence of working towards " Investors in People " accreditation or similar	C
Evidence of a performance management process applicable to all staff	C
Evidence of an objective, transparent and fair recruitment process	C
Evidence of analysis of employment and recruitment data by gender, ethnic category, disability function and grade	C
Evidence of analysis of turnover by cause, retirement, dismissal, redundancy, ill health retirement, death	C
Evidence of succession planning, identification of prospective " hot spots " and actions taken to address them	C
Evidence of an Equalities plan, actions taken in terms of it and impact of implementing it	C
Evidence of historical and current data on salaries, earnings, hours of work, overtime worked, free day/rest day working, and other main terms and conditions for all key grade groups	C
Evidence of benchmark comparator data	C
Evidence of non-financial reward and recognition initiatives	C
Evidence of a competence framework in place based on national occupational standards	C
Evidence of an assessment and verification framework to enable the delivery of NVQs and SVQs	C
Evidence of a structured induction programme (supported by hard data) incorporating a rail industry perspective to all new entrants	C
Evidence (supported by hard data (numbers / %)) of staff with NVQs / SVQs (or equivalent externally recognised qualification) by grade against target	C
Evidence (supported by hard data (numbers / %)) of structured training and development for " Strategic ", " Supervisory " and " Operational " managers as well as the wider workforce	C
Evidence of a collective " consultation and bargaining framework "	C

Information to be provided	When information to be provided
Evidence (supported by hard data) (numbers/%) of people days lost through industrial action and a record of industrial action short of strike action	C
Evidence of an annual staff attitude survey	C
Evidence of actions taken arising from feedback received from the staff attitude survey	C
Evidence of company links to the community through its staff	C
Evidence of a company communication and briefing strategy	C
Evidence of a robust process of briefing, core briefing material and 2-way communication and feedback	C
Evidence of staff hours lost through sickness and other absence	C
Evidence of staff hours consumed through training	C
Evidence of average wage and the minimum hourly rate and/or wage of all directly employed staff	C
Evidence of the number of apprenticeships created	C
Evidence of steps taken to eliminate discrimination and promote equality	C

APPENDIX 2 TO SCHEDULE 13.2**Key Assets****Information about assets used by CSL**

1. CSL shall at all times during the Term maintain records covering the following information:
 - 1.1 for each Primary Operator Asset or other asset which is the subject of, or operated under, a Key Contract:
 - (a) the progress and completion of all work described in the maintenance schedules and manuals;
 - (b) all operating manuals (including any safety related regulations); and
 - (c) all permits, licences, certificates or other documents required to operate such asset; and
 - 1.2 a printed or electronic list of all assets owned by CSL from time to time (excluding, unless otherwise requested by the Authority, any office furniture and consumable items).
2. CSL shall provide copies of:
 - 2.1 the records referred to in paragraph 1.1; and
 - 2.2 the records referred to in paragraph 1.2,to the Authority and/or SRH when requested to do so from time to time by the Authority and/or SRH.

APPENDIX 3 TO SCHEDULE 13.2**Operational Information****1. Information About the Performance of CSL**

- 1.1 CSL shall at all times during the Term maintain records in relation to its operational performance under this Agreement, covering the areas and the information described in this Appendix 3 and shall, subject to paragraph 1.3 of this Appendix 3, provide such information to SRH at the frequency specified in the column of each such table headed "**When information to be provided**".
- 1.2 The information referred to in paragraph 1.1 shall include details as to whether or not any curtailment, diversion, delay or failure to attain any connection is attributable, in CSL's opinion, to either a Force Majeure Event or the implementation of a Service Recovery Plan.
- 1.3 When so requested by SRH, CSL shall, within such reasonable period as SRH may specify, make such information available for review by SRH by reference to:
- (a) such level of disaggregation (including by Route and also including between the Services) as is reasonably specified by SRH; and
 - (b) any particular day, week or other longer period as is reasonably specified by SRH.
- 1.4 The following key shall apply to the Table in this Appendix 3:
- A = Information to be provided on or before any Passenger Change Date;
 - B = Information to be provided for every Reporting Period within 17 days of the last day of each Reporting Period; and
 - C = Information to be provided annually within 10 days of the last day of each Operator Year.
- 1.5 For the purpose of this Appendix 3, a business day is any day between Monday to Friday (inclusive) excluding public holidays.
- 1.6 CSL shall Publish the Operational Information on Number of Guest Services and Number of Cancellations and Partial Cancellations in the Table in this Appendix 3 for each Reporting Period on the Caledonian Sleeper Website.

Table - Operational Information per Reporting Period

Information to be provided per Reporting Period	Information (Format)	When information to be provided
Number of Guest Services		
Number of Guest Services in the Timetable	[number]	B
Number of Cancellations and Partial Cancellations		
Number of Guest Services in the Applicable Timetable which were the subject of a Cancellation	[number]	B
Number of Guest Services in the Applicable Timetable which were the subject of a Partial Cancellation	[number]	B
Number of Guest Services in the Applicable Timetable which were the subject of a Cancellation attributable to CSL's implementation of a Service Recovery Plan	[number]	B
Number of Guest Services in the Applicable Timetable which were the subject of a Partial Cancellation attributable to CSL's implementation of a Service Recovery Plan	[number]	B
Any instance of 50 per cent, or more of the Guest Services in the Timetable being the subject of a Cancellation on any day on any line or Route	[number]	within 2 business days of the occurrence
Where there is a difference between the Timetable and the Applicable Timetable on any day which is attributable to the introduction, removal or alteration of a Guest Service by CSL (or with the agreement of CSL in contravention of its obligations under Schedule 1 (<i>Guest Service Obligations</i>)), the following: (a) the fact of such difference; (b) the number of: (i) Guest Services affected; and (ii) Cancellations or Partial Cancellations which would have arisen if the Timetable on that day had been the same as the Applicable Timetable	[number]	B
Number of Guest Services in the Applicable Timetable which were the subject of a cancellation and which satisfied the conditions of the term Cancellation , except that such cancellations occurred for reasons attributable to the occurrence of a Force Majeure Event	[number]	B
Number of Guest Services in the Applicable Timetable which were the subject of a partial cancellation and which satisfied the conditions of the term Partial Cancellation , except that such partial cancellations occurred for reasons attributable to the occurrence of a Force Majeure Event.	[number]	B
Number of Guest Services in the Applicable Timetable which were the subject of a cancellation and which satisfied the conditions of the term Cancellation , except that such cancellations occurred for reasons attributable to the exercise by Network Rail of its rights pursuant to the Track Access Agreement	[number]	B

Information to be provided per Reporting Period	Information (Format)	When information to be provided
Number of Guest Services in the Applicable Timetable which were the subject of a partial cancellation and which satisfied the conditions of the term Partial Cancellation , except that such partial cancellations occurred for reasons attributable to the exercise by Network Rail of its rights pursuant to the Track Access Agreement	[number]	B

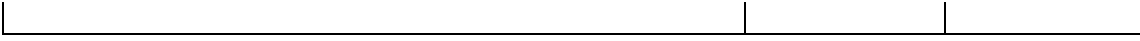
Capacity		
Number of Guest Services that have less than the required Guest Carrying Capacity specified in the Train Plan	[number]	B
Number of Guest Services that have less than the required Guest Carrying Capacity specified in the Train Plan attributable to CSL's implementation of a Service Recovery Plan	[number]	B
Number of Guest Services that have less than the required Guest Carrying Capacity specified in the Train Plan attributable to the occurrence of a Force Majeure Event	[number]	B

Minutes Delay and Punctuality		
Number of Minutes Delay attributable to CSL	[minutes]	B
Number of Minutes Delay attributable to Network Rail	[minutes]	B
Number of Minutes Delay for such Reporting Period for which the attribution is in dispute between Network Rail and CSL	[minutes]	B
Number of Minutes Delay for the 12 preceding Reporting Periods for which the attribution remains in dispute between Network Rail and CSL	[minutes]	B
Number of Minutes Delay from the 12 preceding Reporting Periods for which the attribution remains in dispute between Network Rail and CSL	[minutes]	B
Number of Minutes Delay from the 12 preceding Reporting Periods for which disputed attribution has been resolved or determined since CSL's previous report pursuant to paragraph 2.7 of Schedule 7.1 (<i>Train Operating Performance</i>) and the number of such Minutes Delay attributed to each of CSL and Network Rail as a result of such resolution or determination	[minutes]	B
Number of Minutes Delay attributed to the occurrence of a Force Majeure Event	[minutes]	B
Guest Services arriving at terminus stations less than 5 minutes late (or 10 minutes late in the case of designated long distance services) as a percentage of total number of scheduled guest service arrivals at terminus stations	[%]	B
Average duration of delay per delayed Guest Service	[minutes]	B

<p>Number of Guest Services in the Timetable which arrive at their scheduled final destination:</p> <p>(a) Early (b) On time (c) 1 to 4.59 minutes late (d) 5 to 9.59 minutes late (e) 10 to 14.59 minutes late (f) 15 to 19.59 minutes late (g) 20 to 29.59 minutes late (h) 30 to 59.59 minutes late (i) 60 or more minutes late,</p> <p>measured against scheduled arrival time of such Guest Services in the Timetable any Guest Services which suffers a Cancellation will be recorded as having arrived at destination 20 to 29.59 minutes late)</p>	[number]	B
Guest delay per Guest Service	[minutes]	A

Train Mileage		
Aggregate Train Mileage scheduled in the Timetable	[mileage]	B
Aggregate Train Mileage operated	[mileage]	B

Publication Scheme Information		
<p>In accordance with its obligations under FOISA, CSL shall publish within its publication scheme suitable information about how it performs as an organisation and how well it delivers its functions and services. Such information shall where practicable be updated each Reporting Period and shall include, without limitation, the following:</p> <p>(a) all the periodic performance data published by CSL pursuant to its obligations under Schedule 1.4, paragraph 31.6 ;</p> <p>(b) CSL's performance against each of the Schedule 7.1 Benchmarks;</p> <p>(c) CSL's performance against the Service Quality regime</p> <p>(d) the number of delay = repay payments made</p> <p>(e) the amount of delay = repay payments made</p> <p>(f) the amount of payments under (e) paid via automatic delay repay;</p> <p>(g) the amount of payments under (e) not falling under (f) made via bank card or direct debit;</p> <p>(h) the amount of payments under (e) made by other method (not (f) or (g))</p>	<p>[number]</p> <p>[amount]</p> <p>[amount]</p> <p>[amount]</p> <p>[amount]</p>	



APPENDIX 4 TO SCHEDULE 13.2

Guest Journeys, Miles and Earnings Information

Information About Journey Numbers and Earnings

1. CSL shall at all times during the Term maintain records in relation to the information specified in the following table and shall, subject to paragraph 1.2, provide:
 - 1.1 such information to SRH; and
 - 1.2 the information specified in such table at the frequency specified in the column of such table headed **“When information to be provided”**.
2. When so requested by SRH, CSL shall make such information available for review by SRH by reference to:
 - 2.1 such level of disaggregation (including by Route or Service Group and also including between Services) as is specified by SRH from time to time; and
 - 2.2 any particular day, week or other longer period as is specified by SRH from time to time.
3. The following key shall apply to the Table in this Appendix 4:

A = Information to be provided on or before any Passenger Change Date;

B = Information to be provided for every Reporting Period within 10 days of the last day of each Reporting Period; and

C = Information to be provided annually within 10 days of the last day of each Operator Year.

Table - Guest Journey Information

Information to be provided	Information (Format)	When information to be provided
Number of national guest rail journeys (meaning the number of journeys by guests from the station where such guests join the railway guest services to the station where such guests exit the railway guest services). A national guest rail journey may encompass more than one guest rail train journey (meaning the number of journeys by guests on any one train between stations, which travel may form the whole or part of a national guest rail journey)	[number]	B
Number of guest rail train journeys	[number]	B
Number of guest miles (meaning the total number of guests transported over the distance of one mile on the Guest Services)	[number/ mileage]	B
Earnings (meaning all income received from guests. Earnings shall not be limited to income from Fares)	[£]	B
Farebox income (meaning income from Fares (showing the income for each ticket type for each line of route) which are valid for travel on the Guest Services, or having such other meaning as the Authority may determine from time to time in its reasonable discretion)	[£]	B

Information to be provided	Information (Format)	When information to be provided
Other guest revenue (meaning Earnings less Farebox income)	[£]	B

4. Where the information referred to in this Appendix 4 is held in a system operated by RSP or any other system, CSL may fulfil its obligations under paragraph 1 by procuring that SRH shall be granted access free of charge to such records in a readily accessible manner and in a format acceptable to SRH.
5. CSL shall advise SRH of any changes made to its systems or processes or those of RSP which materially change or affect the continuity of the records maintained pursuant to this Appendix 4. Such advice shall include an assessment of the materiality of the relevant change.

SCHEDULE 13.3

THIS IS SCHEDULE 13.3 REFERRED TO IN THE FOREGOING CALEDONIAN SLEEPER GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND CALEDONIAN SLEEPER LIMITED

Co-operation

1. Development of Railway Industry Standards

- 1.1 CSL shall at all times during the Term, co-operate with the Authority, SRH and any other competent authority in the development, modification, agreement and implementation of railway industry standards. References to **Railway Industry Standards** in this paragraph 1 shall include Railway Group Standards, TSIs, recommendations following accident investigations and any consultation documents on any proposed legislative change affecting the railway industry.
- 1.2 In co-operating with the Authority and/or SRH and/or any third party in developing any Railway Industry Standards, CSL shall make appropriately skilled and qualified Operator Employees reasonably available, free of charge to:
- (a) attend meetings with the Authority, SRH and/or such third party to discuss and review the need for the development, agreement, amendment or need for derogation from any Railway Industry Standards;
 - (b) provide CSL's opinion on any proposed Railway Industry Standards;
 - (c) provide CSL's opinion on any existing Railway Industry Standards or any replacement Railway Industry Standards;
 - (d) review and comment upon implementation timetables and programmes for any Railway Industry Standards or any replacement Railway Industry Standards;
 - (e) make recommendations for modifications to any existing or new Railway Industry Standards in the light of operational experience;
 - (f) make representations to competent authorities to prevent the introduction of new Railway Industry Standards where in CSL's opinion the introduction of such new Railway Industry Standards would cause disproportionate additional cost; and
 - (g) make representations to competent authorities to seek derogations from the application of new Railway Industry Standards where such new Railway Industry Standards are judged inappropriate by CSL.

2. System Interface Committees

- 2.1 CSL shall at all times during the Term co-operate with the reasonable requirements of any relevant System Interface Committees in the development, modification, agreement and implementation of any system interface recommendations made by those committees.
- 2.2 In co-operating with any relevant System Interface Committee, CSL shall make appropriately skilled and qualified Operator Employees reasonably available, free of charge to:
- (a) attend meetings with that committee to discuss and review the need for the development, agreement, amendment or need for derogation from any recommendations made by that committee;
 - (b) provide CSL's opinion on any such proposed recommendations;
 - (c) review and comment upon implementation timetables and programmes for any such recommendations;

- (d) make recommendations for modifications to any existing system or system interface recommendations in the light of operational experience; and
- (e) make representations to competent authorities to seek derogations from the application of such recommendations where CSL reasonably believes that such derogations are appropriate.

3. **Development of Business Cases**

CSL shall co-operate with the Authority and/or SRH and/or any relevant third parties in the development of business cases connected with the improvement of the network (including any in respect of inter-modal schemes).

4. **Development of Industry Schemes**

CSL shall at all times during the Term actively, co-operate, in a manner consistent with it being a reputable Train Operator of the Caledonian Sleeper Operation, with Network Rail, the Authority and SRH and the ORR and all other relevant railway industry bodies and organisations in relation to the development of anything which can reasonably be considered to be a railway industry system in relation to the attribution of train delay, the allocation of revenue and/or the collection and dissemination of industry wide information.

5. **Community Rail Partnerships**

- 5.1 CSL shall contribute to, and seek to deliver, the Community Rail initiatives in accordance with the requirements of the Policy Compendium Sleeper Addendum, from time to time, and will support the continued development, sustainment, growth and geographic expansion of Community Rail Partnerships and their activities in Scotland, in accordance with the requirements of the Policy Compendium Sleeper Compendium.
- 5.2 CSL shall co-operate, and work closely with the relevant parties detailed in the Policy Compendium in the formulation, assurance and/or delivery of the strategies.

6. **Station Investment**

- 6.1 CSL shall at all times during the Term, co-operate with the Authority, SRH and any third party nominated by the Authority and/or SRH and notified to CSL in developing opportunities for financing investment at Stations or other stations served by Guest Services in order to improve the station environment at such stations.
- 6.2 In co-operating with the Authority and/or SRH and/or any nominated third party in developing any such financing opportunities, CSL shall:
 - (a) attend meetings with the Authority and/or SRH and/or such third party to discuss such opportunities;
 - (b) provide CSL's opinion on those opportunities;
 - (c) review and comment on implementation timetables and programmes for any such opportunities; and
 - (d) use all reasonable endeavours to achieve any necessary amendments to any Station Leases in order to facilitate the implementation of those opportunities.

7. **Network Rail**

CSL shall use all reasonable endeavours to work with Network Rail to:-

- (a) deliver efficiencies and improve value for money and performance of the Operator Services;
and
- (b) reduce the environmental impacts of the Caledonian Sleeper Operations including in relation to Timetable design and infrastructure modifications.

8. Small and Medium-sized Enterprises

- 8.1 CSL shall at all times keep accurate and complete records of its contracts with, as to type and value, and interaction with SMEs in delivering the Operator Services.
- 8.2 By no later than 31 January in each year (and within one month of the end of the Operation Period) CSL shall deliver to the Authority and/or SRH a breakdown of the number of SMEs, and type and value of the contract CSL has so contracted with in providing the Operator Services during the calendar year (or part thereof) which ended on the immediately preceding 31 December or at the end of the Operation Period (as applicable).

SCHEDULE 13.4

THIS IS SCHEDULE 13.4 REFERRED TO IN THE FOREGOING CALEDONIAN SLEEPER GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND CALEDONIAN SLEEPER LIMITED

Staff Obligations

Training and development

- 1.1 CSL shall have a planned programme of staff training and coaching covering professional competence and customer service skills.
- 1.2 CSL will regularly carry out a training needs analysis for staff, utilising the National Guest Survey results and customer feedback.
- 1.3 CSL will carry out management staff appraisals annually in order to identify the training required to facilitate staff development and use all reasonable endeavours to provide such training.

2. Staff Travel

- 2.1 Notwithstanding any other terms of this Agreement, CSL shall ensure that all employees of CSL who were employees of the Outgoing Franchisee shall retain the same entitlement to purchase a Fare for use on any Guest Service on the same terms, conditions and subject to same restrictions and rights of variation as such persons enjoyed whilst employed by the Outgoing Franchisee in relation to the Previous Franchise Agreement as at the day prior to the Operations Commencement Date ("the entitlements").
- 2.2 For the avoidance of doubt: -
 - (a) insofar as the entitlements are derived from the participation by CSL in, or observance or implementation of, the ATOC Staff Travel Scheme, the entitlement shall be to the benefit of that scheme and the terms and conditions of that scheme as the same shall be formulated and implemented by CSL from time to time, including as to the benefits enjoyed by employees and others and restrictions imposed upon the same; and
 - (b) the entitlements, including, but not limited to those derived from the participation by CSL in, or observance or implementation of, the ATOC Staff Travel Scheme, shall be subject always to any agreements between employers and employee representatives with respect to the entitlements.

3. CSL shall comply with the requirements in the Policy Compendium Sleeper Addendum as related to people and culture, as updated from time to time when preparing the Business Plan in accordance with paragraph 2 of Schedule 13.2 (*Information*).

SCHEDULE 13.5

THIS IS SCHEDULE 13.5 REFERRED TO IN THE FOREGOING CALEDONIAN SLEEPER GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND CALEDONIAN SLEEPER LIMITED

Safety and Personal Security

1. Safety and Security Review and Plan

- 1.1 By the [end of the second Operator Year, subject to approval of any associated third party costs within the Budget], CSL shall carry out (to standards accepted by Rail Safety and Standards Board or its successor) an assessment of its prevailing safety culture. Within that time frame, CSL shall also produce a specific safety and security plan for on-board security on Guest Services and for at stations which will identify steps that need to be taken to enhance safety and security and perceptions of safety and security. That assessment and plan shall be promptly made available to SRH and the Authority.
- 1.2 The said safety and security plan shall deal with on train and station security, identify key partners with who CSL shall work with, how they will train staff to deliver this and engagement with the British Transport Police and other appropriate organisations and authorities.

2. Rail Safety and Standards Board

- 2.1 CSL shall become a member of the Rail Safety and Standards Board.
- 2.2 CSL shall engage in the Rail Safety and Standards Board's activities including:
- (a) The consultation process for new standards, including European technical standards for interoperability (TSIs), railway group standards and any ATOC 'Codes of Practice';
 - (b) The process of generating the 'Railway Safety Group Safety Plan' (**RSGSP**); and
 - (c) The delivery of an appropriate contribution to that RSGSP.
- 2.3 CSL shall make available to the Authority, SRH and ORR on request the annual safety plan as a member of the Rail Safety and Standards Board CSL is required to produce.

3. Risk Management Strategy

CSL shall manage all significant risks to safety and security throughout the Term using clearly defined processes for identifying and managing those risks as part of an overall risk management strategy. CSL shall identify key performance indicators and monitor these on a quarterly basis, establishing detailed action plans where necessary, reporting such to the Authority and SRH.

4. Training

- 4.1 CSL shall establish a comprehensive training programme to determine and develop the safety competence of staff across the organisation.
- 4.2 CSL shall ensure that all on-board train crew employed by CSL are trained in emergency procedures before the later of the Commencement Date and the member of staff's first on-board duty.

5. Customer and Staff Security

Throughout the Term, CSL shall:

- (a) identify and monitor trends in customer security and verbal and physical abuse of staff;
- (b) establish and implement action plans to address such issues; and

- (c) adopt a policy of zero tolerance of offenders.

SCHEDULE 13.6

THIS IS SCHEDULE 13.6 REFERRED TO IN THE FOREGOING CALEDONIAN SLEEPER GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND CALEDONIAN SLEEPER LIMITED

Integration**1. Policy Compendium Requirements**

CSL shall comply with the requirements in the Policy Compendium Sleeper Addendum- relating to transport integration, as updated from time to time, when preparing the Business Plan in accordance with paragraph 2 of Schedule 13.2 (*Information*).

2. Transport Integration Group etc

2.1 As part of its commitment to work with the Authority and other Stakeholders, CSL shall be required to participate in the Transport Integration Group ("TIG") or such other group as the Authority shall require for the purposes of improving integration in transport within Scotland.

2.2 At the instance of the Authority, the Authority or the Scottish Transport Agency, shall prioritise the work of the TIG in consultation with the key Stakeholders.

2.3 CSL shall, as directed, separately from and in addition to its involvement with TIG, co-operate with, join and/or liaise with and provide information and support to any group, body or organisation that the Authority may direct where the aims or objectives of that group, body or organisation are, or involve to a material extent, the integration of transport. For these purposes the commitment to cooperation, joining and liaison does not include participation in the sense of the provision of funding or finance for that body. A relevant body or organisation may be, or may include within its membership Transport Scotland or other agency or representative of the Authority.

2.4 Separately from, and in addition to its involvement with the TIG, CSL shall work diligently with tourism bodies such as Visit Scotland to develop and promote rail based and rail linked tourism with targeted marketing, development of tourism packages and partnership working with attractions and accommodation providers as well as other transport operators.

3. Cycle Facilities

3.1 CSL shall ensure that cycles will travel for free. CSL shall procure that space will be maintained available on the Train Fleet.

SCHEDULE 14

THIS IS SCHEDULE 14 REFERRED TO IN THE FOREGOING CALEDONIAN SLEEPER GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND CALEDONIAN SLEEPER LIMITED

Preservation of Assets

- Schedule 14.1: Maintenance of Operation**
- Schedule 14.2: Maintenance of Operator Assets**
- Schedule 14.3: Key Contracts**
 - Appendix: List of Key Contracts**
- Schedule 14.4: Designation of Operator Assets**
 - Appendix: List of Primary Operator Assets**
- Schedule 14.5: Dealings with Operator Assets**

SCHEDULE 14.1**THIS IS SCHEDULE 14.1 REFERRED TO IN THE FOREGOING CALEDONIAN SLEEPER GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND CALEDONIAN SLEEPER LIMITED****Maintenance of Operation**

1. CSL shall maintain and manage the business of providing the Operator Services so that, to the greatest extent possible and practicable:
 - 1.1 CSL is able to perform its obligations under this Agreement; and
 - 1.2 a Successor Operator would be able to take over the whole or any part of the business of providing the Operator Services immediately at any time.
2. CSL's obligation under paragraph 1 shall include an obligation to ensure that any computer and information technology systems of CSL shared in whole or in part with Affiliates or third parties can be operated by a Successor Operator as a standalone system without continued reliance on such Affiliates or other third parties immediately from the date of termination of this Agreement without any reduction in functionality or any increase in maintenance or support costs to the Successor Operator (this obligation being without prejudice to any requirement for CSL to obtain consent to such arrangements relating to sharing computer and information technology systems from the Authority).
3. CSL shall use all reasonable endeavours to ensure that such Successor Operator would have immediate access to all Operator Employees and Primary Operator Assets for such purpose.
4. CSL shall maintain and manage the business of providing the Operator Services on the basis that such business will be transferred, in the manner contemplated under this Agreement, as a going concern at the end of the Operation Period to, and continued immediately thereafter by, a Successor Operator.
5. CSL shall use all reasonable endeavours to ensure that an appropriate number of employees (having sufficient skills, qualifications and experience) will transfer by operation of Law to any Successor Operator following the expiry of the Operation Period.
6. CSL shall comply with all requirements of the Authority to obtain or maintain the property and rights that a Successor Operator would require, or that it would be convenient for it to have, on the basis that the same will transfer by operation of Law to any Successor Operator following the expiry of the Operation Period; and CSL shall comply with all reasonable requirements of SRH to obtain or maintain the property and rights that a Successor Operator would require, or that it would be convenient for it to have, on the basis that the same will transfer by operation of Law to any Successor Operator following the expiry of the Operation Period.
7. CSL's obligations in this Schedule 14.1 shall apply regardless of whether the business of providing the Operator Services is continuing in whole or in part, is being split or merged in whole or in part with another business or otherwise having regard to the Authority's policy statements from time to time.

SCHEDULE 14.2

THIS IS SCHEDULE 14.2 REFERRED TO IN THE FOREGOING CALEDONIAN SLEEPER GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND CALEDONIAN SLEEPER LIMITED

Maintenance of Operating Assets

1. **Operating Assets**

- 1.1 CSL shall maintain, protect and preserve the assets (including any Intellectual Property Rights or intangible assets) employed in the performance of its obligations under this Agreement (the **Operating Assets**) in good standing or good working order, subject to fair wear and tear.
- 1.2 CSL shall carry out its obligations under paragraph 1.1 so that the Operating Assets may be transferred at the end of the Operation Period to a Successor Operator and used by such Successor Operator in the provision or operation of similar services to the Operator Services.
- 1.3 Where any Operating Asset is lost, destroyed or otherwise beyond repair, the Operator shall replace the Operating Asset with property, rights or liabilities in modern equivalent form to the operating asset to be replaced. CSL shall at all times maintain an appropriate volume of Spares and/or an appropriate level of access to Spares from a third party, to enable it to perform its obligations under this Agreement.
- 1.4 The Authority and/or SRH may at any time require CSL to provide to SRH and/or the Authority a schedule specifying the condition of any asset or class of assets that it specifies for this purpose. Such schedule shall cover such aspects of asset condition as SRH and/or the Authority may reasonably require. If the relevant parties are unable to agree the content of such schedule of condition, any of them may refer the dispute for resolution in accordance with the Dispute Resolution Rules. Until such dispute is resolved, CSL shall comply with SRH's and/or the Authority's requirements, as the case may be, in respect of such schedule of condition.
- 1.5 CSL shall keep vested in it at all times during the Operation Period all Operator Assets designated as such pursuant to Schedule 14.4 (*Designation of Operator Assets*) as it may require in order to comply with:
- (a) the Licences;
 - (b) any contracts of employment with Operator Employees;
 - (c) any relevant Fares;
 - (d) any Key Contracts; and
 - (e) any applicable safety legislation, regulations or safety standards and the Safety Certificate,
- in order to ensure that such assets may be designated as Primary Operator Assets.

2. **Brand Licences and Branding**

Brand Licences

- 2.1 SRH and CSL shall each comply with its obligations (if any) under each of the Brand Licences.

Branding

- 2.2 Paragraphs 2.3 to 2.5 shall apply to the extent that:

- (a) any of the Marks are not assigned to the Authority in accordance with paragraph 5 of Schedule 15.4 (*Provisions applying on and after Termination*);
- (b) SRH and/or CSL cannot provide an appropriate licence or relevant undertaking, in the Authority's reasonable opinion, to any of the Marks in accordance with paragraph 5 of Schedule 15.4 (*Provisions applying on and after Termination*);
- (c) the Authority consider the relevant Marks to be so distinctive or otherwise such that a Successor Operator could not reasonably be asked to use the relevant assets to which the relevant Marks are applied; and
- (d) SRH and/or CSL has not otherwise removed or covered such Marks in such a way as may be reasonably acceptable to the Authority prior to the expiry of the Operation Period,

and shall not apply to the extent that the relevant asset is not to be used by a Successor Operator in the provision of services similar to the Operator Services as notified by the Authority. The Authority shall notify CSL as soon as it becomes aware of whether or not any such asset is to be so used.

2.3 CSL shall pay to the relevant Successor Operator such amount as may be agreed between CSL and such Successor Operator, as being the reasonable cost (including any Value Added Tax for which credit is not available under Sections 25 and 26 of the Value Added Tax Act 1994) of covering such Marks or otherwise removing all indications of or reference to the Marks in a manner reasonably acceptable to the Authority. Such amount shall not in any event exceed the cost to the Successor Operator of replacing such Marks with its own. If CSL and the relevant Successor Operator fail to agree such cost within twenty (20) Weekdays of the expiry of the Operation Period, CSL shall submit such dispute for resolution in accordance with such dispute resolution procedures as the Authority may require. The amount to be paid to a Successor Operator under this paragraph may include the reasonable cost of:

- (a) removing or covering Marks from the exterior of any rolling stock vehicle;
- (b) removing or covering interior indications of the Marks including upholstery and carpets;
- (c) replacing or covering all station or other signs including billboards; and
- (d) otherwise ensuring that such removal, covering or replacement is effected with all reasonable care and in such manner that the relevant assets may reasonably continue to be used by a Successor Operator in the provision of the Operator Services.

2.4 CSL shall, in addition to making a payment under paragraph 2.3, grant or procure the grant of a licence or undertaking on such terms as reasonably required by the Authority and such licence shall only be for such period as may be agreed between CSL and the Successor Operator as being reasonably required by the Successor Operator to remove the Marks from all relevant assets without causing excessive disruption to the operation of services similar to the Operator Services provided by such Successor Operator. If such period cannot be agreed, CSL shall submit such dispute for resolution in accordance with such dispute resolution procedures as the Authority may require.

2.5 The Authority shall determine at or around the end of the Operation Period and after consultation with CSL the maximum liability of CSL under paragraph 2.3 and the maximum length of licence or undertaking under paragraph 2.4.

Branding of assets

2.6 CSL and SRH shall apply the Authority IP to any assets owned or used by SRH and/or CSL (excluding Stations) in the operation and provision of the Services as the Authority may reasonably direct (including any changes to the Authority IP).

2.7 SRH and CSL shall use reasonable endeavours to apply the Authority IP to such structures or fixtures at Stations as the Authority may reasonably direct (including any changes to the Authority IP).

2.8 The cost of application of the Authority IP shall be met by CSL.

- 2.9 To the extent necessary to provide the Operator Services, perform its obligations under this Agreement and to give effect to any direction of the Authority under paragraphs 2.6 and 2.7 (the "**Permitted Purpose**"), the Authority hereby grants SRH and CSL, a non-exclusive and royalty free licence to use the Authority IP (including the right to grant sub-licenses to third parties to the extent necessary to carry out the Permitted Purpose) in accordance with the terms of any relevant brand guidelines issued from time to time by the Authority, and any other reasonable specifications, directions or instructions issued by or on behalf of the Authority from time to time in relation to the Authority IP (the "**Authority's Brand Guidelines**"). In the event that the Authority require SRH and/or CSL to cease using the Authority IP, or this Agreement expires or is otherwise terminated, the licences granted to under this paragraph 2.9 shall automatically cease.
- 2.10 CSL and SRH each undertakes and agrees:
- (a) to use the Authority IP only for the Permitted Purpose;
 - (b) not to apply for, or obtain, registration of any trade or service mark in any country which comprises consists of, or is confusingly similar, to any of the Authority IP;
 - (c) if so required by the Authority, to agree to the registration of itself as a licensee of any registered trade mark forming part of the Authority IP, any such registration being made at the Authority's expense;
 - (d) not to do anything that is inconsistent with the Authority's ownership of the Authority IP, and that all use of the Authority IP by it shall inure to the benefit of the Authority;
 - (e) that if it becomes aware of, or suspects that the Authority's rights in the Authority IP are being infringed by the actions of a third party, SRH and/or CSL (as the case may be) shall immediately notify the Authority of that fact and give the Authority all reasonable assistance, at the Authority's expense, in any action arising as a result of such infringement; and
 - (f) that nothing in this Agreement shall give it any right, title or interest in the Authority IP other than the right to use the Authority IP in accordance with this Agreement.
- 2.11 Where CSL brings into use on the Guest Services rolling stock the livery of which does not match the Authority IP a livery in compliance with the Authority's Branding Guidelines shall be applied to such rolling stock within 12 months of its introduction onto the Guest Services.
- 2.12 SRH, on or before the Commencement Date, shall provide plans to the Authority for implementing a programme of works to ensure the fleet used in provision of the Guest Services is liveried to match the Authority IP for the Authority's agreement.
- 2.13 SRH, on or before the Commencement Date, shall provide to the Authority suggested branding and livery proposals for locomotives and locomotive hauled rolling stock that shall be similar to the branding for the Inter-city Rolling Stock in line with the principles in the Authority's Branding Guidelines, for the Authority's agreement.

General Advertising and Promotion

- 2.18 The Authority may at its own cost, advertise and promote the Operator Services and/or the Guest Services.

SCHEDULE 14.3

THIS IS SCHEDULE 14.3 REFERRED TO IN THE FOREGOING CALEDONIAN SLEEPER GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND CALEDONIAN SLEEPER LIMITED

Key Contracts

1. Key Contracts

- 1.1 The provisions of this Schedule 14.3 apply to all Key Contracts from time to time.
- 1.2 The Key Contracts as at the date of this Agreement are set out in the Appendix to this Schedule 14.3 (*List of Key Contracts*).

2. Designation of Key Contracts

- 2.1 Where the Authority considers that it is reasonably necessary for securing the continued provision of the Operator Services or the provision of services similar to the Operator Services by a Successor Operator in accordance with this Agreement, it may make a designation pursuant to paragraph 2.2 of this Schedule 14.3 (*Key Contracts*).
- 2.2 The Authority may at any time, by serving notice on CSL, designate as a Key Contract:
- (a) any actual or prospective agreement, contract, licence or other arrangement; and
 - (b) any category of agreement, contract, licence or other arrangement, to which or under which SRH and/or CSL is (or may become) a party or a beneficiary,
- with effect from the date specified in such notice.
- 2.3 Key Contracts may include any agreement, contract, licence or other arrangement whether in written, oral or other form, whether formal or informal and whether with an Affiliate of SRH and/or CSL or any other person and may include any arrangement for the storage of assets (including electronic systems or Computer Systems) or accommodation of employees.
- 2.4 CSL shall train all staff dealing with contract administration and finance matters, their managers and all directors to know what constitutes a Key Contract and to understand the significance of such designation.

3. De-designation of Key Contracts

The Authority may at any time, by serving a notice on CSL, de-designate any Key Contract from continuing to be a Key Contract with effect from the date specified in such notice.

4. Re-designation of Key Contracts

The Authority may at any time, by serving notice on CSL, re-designate as a Key Contract anything which has ceased to be designated as a Key Contract in accordance with paragraph 3 of this Schedule 14.3 (*Key Contracts*) with effect from the date specified in such notice.

5. Direct Agreements

- 5.1 Unless the Authority otherwise agrees, or unless lawfully directed to do so by the ORR, SRH and CSL shall not enter into any prospective Key Contract unless the counterparty to that prospective Key Contract:
- (a) is a franchisee or franchise or grant agreement operator, any of which operate railway guest services pursuant to a franchise agreement to which the Authority is a party or a Public Service Operator which is an Affiliate of the Authority; or

- (b) has entered into a Direct Agreement with the Authority in respect of that prospective Key Contract, providing on a basis acceptable to the Authority, amongst other things, for the continued provision of the Guest Services and/or the continued operation of the Stations and Depots in the event of:
 - (i) breach, termination or expiry of such Key Contract;
 - (ii) termination or expiry of this Agreement; or
 - (iii) the making of a railway administration order in respect of CSL.

5.2 Where the Authority designates or re-designates as a Key Contract:

- (a) any agreement, contract, licence or other arrangement to which SRH and/or CSL is already a party; or
- (b) any category of agreement, contract, licence or other arrangement where CSL is already a party to a contract, licence or other arrangement which, by virtue of the Authority's designation or re-designation, is classified in such category,

SRH and/or CSL, as the case may be, shall use all reasonable endeavours to assist the Authority in entering into a Direct Agreement as envisaged by paragraph 5.1(b).

5.3 CSL shall pay to the Authority an amount equal to any losses, costs, liabilities, charges or expenses which may be suffered or incurred by the Authority under the provisions of any Direct Agreement which may be notified to CSL as a result of, or in connection with:

- (a) any breach by CSL of the terms of the Key Contract to which the relevant Direct Agreement relates; or
- (b) any unsuccessful claim being brought by CSL against the counterparty of any such Key Contract in relation to the termination of such Key Contract.

6. **Emergencies**

Where any emergency may arise in connection with the provision and operation of the Operator Services, SRH and/or CSL:

- 6.1 may enter into on a short-term basis such contracts, licences or other arrangements as it considers necessary or appropriate to deal with the emergency;
- 6.2 need not procure that the Authority enters into a Direct Agreement in respect of such contracts;
- 6.3 shall promptly inform the Authority of any such emergency and contracts, licences or other arrangements which it proposes to enter into; and
- 6.4 shall take such action in relation to such emergency, contracts, licences or other arrangements as the Authority may request.

7. **No Amendment or assignment or sub-contracting**

SRH and CSL shall not without the prior consent of the Authority (which shall not be unreasonably withheld or delayed) make or purport to make any material variation to, the terms or conditions of any Key Contract at any time, unless lawfully directed to do so by the ORR. SRH and CSL shall not without the prior consent of the Authority (which shall not be unreasonably withheld or delayed) assign in whole or in part, or sub-contract in whole or in part the terms or conditions of any of the Key Contracts at any time, unless lawfully directed to do so by the ORR.

8. **Replacement of Key Contracts**

SRH and CSL shall, prior to the scheduled expiry date of any Key Contract (or, if earlier, such other date on which it is reasonably likely that such Key Contract will terminate), take all reasonable steps to enter an appropriate replacement contract (whether with the counterparty to the existing Key Contract or not) and shall comply with the reasonable instructions of the Authority in relation to such replacement contract.

9. Termination of Key Contracts

Whether or not this Agreement is continued after the First Expiry Date in accordance with the 7 Reporting Periods, SRH and/or CSL shall, to the extent so requested by the Authority, exercise all such rights as it may have to terminate any Key Contract on the Expiry Date.

10 Procedures

The parties agree that the effective operation of the provisions of this Schedule 14.3 will require certain procedural arrangements and timescales to be followed to a common timescale by SRH, CSL and the Authority. The parties shall meet to seek to agree suitable procedural arrangements during the first Operator Year and thereafter each comply with such arrangements and review them annually to ensure they remain effective.

11 Maintenance of Contract Database

11.1 CSL shall maintain a digital contract management system throughout the Term containing copies of all contracts entered into by CSL and associated contract information (the "Contract Database").

11.2 CSL shall provide the Authority and SRH with such access to the Contract Database, whether on an ad hoc or ongoing basis as they may request from time to time.

APPENDIX TO SCHEDULE 14.3**List of Key Contracts**

The following items have as at the date of this Agreement been agreed by the parties to be Key Contracts:

1. Any Access Agreement to which CSL is a party other than in its capacity as a Facility Owner.
2. Any Property Lease and any Collateral Agreements.
3. Any contract or arrangement for the lending, seconding, hiring, contracting out, supervision, training, assessment, or accommodation by another Train Operator of any train drivers, conductors or other train crew used by CSL in the provision of the Guest Services.
4. Any Rolling Stock Related Contract.
5. Any contract or arrangement for the subcontracting or delegation to another Train Operator of the provision of any of the Guest Services (whether or not consent is required to such subcontracting or delegation under paragraph 1 of Schedule 2.3 (*Third Party Delivery of Guest Services and Other Operators*)).
6. Any contract or arrangement for the provision of traction and/or train drivers or other operational staff for the provision of Guest Services.
7. Any contract or arrangement with a Train Operator (other than an Access Agreement) for the provision to CSL of train dispatch, performance or supervision of platform duties, security activities, evacuation procedures, advice or assistance to customers, assistance to customers with specific accessibility requirements, operation of customer information systems, cash management or ticket issuing systems administration.
8. Any contract or arrangement with a Train Operator for the provision of breakdown or recovery, and track call services to assist in the provision of the Guest Services.
9. Any contract or arrangement for the design, construction, supply, refurbishment, upgrade or maintenance or technical support of rolling stock for use in the provision of Guest Services.
10. Any contract or arrangement for the supply of spare parts or Spares.
11. Any contract or arrangement for the maintenance of track and other related infrastructure.
12. Any licences of Marks, Foreground IP and/or other relevant IP to CSL and/or SRH.
13. Any contract or arrangement for the supply of rail replacement bus services.
14. Any contract or arrangement relating to the operation of smart ticketing.
15. Any contract or arrangement relating to IT or website provision.
16. Any contract or arrangement for the provision of office space and/or Customer Contact Centres.

SCHEDULE 14.4

THIS IS SCHEDULE 14.4 REFERRED TO IN THE FOREGOING CALEDONIAN SLEEPER GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND CALEDONIAN SLEEPER LIMITED

Designation of Operator Assets

1. Operator Assets

- 1.1 Subject to paragraph 1.2, all property, rights and liabilities of SRH and CSL from time to time during the Operation Period shall be designated as Operator Assets and shall constitute Operator Assets for the purposes of Section 27(11) of the Act.
- 1.2 The rights and liabilities of SRH and CSL in respect of the following items shall not be designated as Operator Assets and shall not constitute Operator Assets for the purposes of Section 27(11) of the Act:
- (a) any contracts of employment;
 - (b) this Agreement and any Transfer Scheme or Supplemental Agreement;
 - (c) the Ticketing and Settlement Agreement;
 - (d) any sums Placed on Deposit with a bank or other financial institution;
 - (e) the rights and liabilities of CSL under any of the Rolling Stock Leases entered into by CSL on or around the date hereof; and
 - (f) such other property, rights and liabilities as the parties may agree from time to time or as the Authority may de-designate as Operator Assets under paragraph 4.

2. Primary Operator Assets

The following property, rights and liabilities shall (to the extent that they constitute Operator Assets) be designated as Primary Operator Assets with effect from the following dates:

- 2.1 the property, rights and liabilities listed in the Appendix to this Schedule 14.4 (which constitutes a list of Primary Operator Assets agreed as at the date of this Agreement), on the Commencement Date;
- 2.2 any additional property, rights and liabilities designated under paragraph 3 during the Operation Period, on the date of such designation;
- 2.3 any property or right which is vested in SRH and/or CSL and used for the purpose of maintaining, replacing, repairing or renewing any property designated as Primary Operator Assets and which forms or replaces part or all of such designated property on completion of such maintenance, replacement, repair or renewal, on the date of its use for such purpose;
- 2.4 the rights and liabilities of SRH and/or CSL under any Key Contract designated in accordance with Schedule 14.3 (*Key Contracts*), on the date of such designation; and
- 2.5 the rights and liabilities of CSL in respect of the terms of any Fare or Discount Card designated under paragraph 6, on the date of such designation.

3. Designation of Additional Primary Operator Assets

- 3.1 The Authority may at any time and from time to time during the Operation Period, by serving notice on SRH and/or CSL, designate any or all of the Operator Assets as Primary Operator Assets. Such

designation shall take effect from the delivery of such notice and may refer to all or certain categories of property, rights or liabilities. Any such notice shall specify the reasons for such designation.

- 3.2 Unless otherwise determined by the Authority, SRH may at any time and from time to time during the Operation Period, by serving notice on CSL, designate any or all of the Operator Assets as Primary Operator Assets. Unless otherwise determined by the Authority, such designation shall take effect from the delivery of such notice and may refer to all or certain categories of property, rights or liabilities. Any such notice shall specify the reasons for such designation.

4. **De-designation**

- 4.1 The Authority may de-designate a Primary Operator Asset by serving notice on SRH and/or CSL. Such de-designation shall take effect upon delivery of such notice.

5. **Designation of Key Contracts as Primary Operator Assets**

- 5.1 The Authority shall, subject to paragraphs 1.2(b) and 7, be entitled to designate any Key Contract as a Primary Operator Asset at any time during the Operation Period by serving notice on SRH and/or CSL. Such designation shall take effect from delivery of such notice.

- 5.2 Unless otherwise determined by the Authority, SRH shall, subject to paragraphs 1.2(b) and 7, be entitled to designate any Key Contract as a Primary Operator Asset at any time during the Operation Period by serving notice on CSL. Unless otherwise determined by the Authority, such designation shall take effect from delivery of such notice.

6. **Designation of Fares and Discount Cards**

- 6.1 The Authority may designate any Fare or Discount Card as a Primary Operator Asset at any time during the Operation Period by serving a notice on SRH and/or CSL. Such designation shall take effect from delivery of such notice.
- 6.2 Unless otherwise determined by the Authority, SRH may designate any Fare or Discount Card as a Primary Operator Asset at any time during the Operation Period by serving a notice on CSL. Unless otherwise determined by the Authority, such designation shall take effect from delivery of such notice.

7. **Rights and Liabilities**

- 7.1 The Authority and/or SRH, as the case may be, in designating the rights and liabilities of CSL (whether under a particular contract or other arrangement) as a Primary Operator Asset may, in its discretion, elect to designate some but not all of the rights and liabilities under a particular contract or other arrangement, or to designate only those rights and liabilities arising after or otherwise relating to a period after a particular time (including the period after the expiry of the Operation Period) or to those relating only to the Operator Services or a particular part thereof. The Authority shall have final determination of all matters.

8. **Disputes over Designation**

- 8.1 CSL may object in writing to the Authority and SRH to any designation pursuant to paragraph 8.3 or 8.5.
- 8.2 Such objection may be made solely on the grounds that the designation of the relevant property, rights or liabilities specified in the objection is not, in CSL's opinion, reasonably necessary to secure the continued provision of the Operator Services by a Successor Operator on the expiry of the Operation Period on a basis reasonably acceptable to the Authority or to facilitate the transfer to such Successor Operator of the provision of the Operator Services at such time.
- 8.3 Any such objection may only be made within twenty (20) Weekdays of a designation under paragraph 3 or ten (10) Weekdays of a designation under paragraph 8.5.

8.4 The Authority shall respond to any such objection as soon as reasonably practicable and shall take account of any representations made by SRH and CSL regarding the use of the relevant Primary Operator Asset otherwise than in the provision and operation of the Operator Services.

8.5 If any dispute as to any designation pursuant to paragraph 3 or 5 remains outstanding on the expiry of the Operation Period then such dispute shall be deemed to cease immediately before the expiry of the Operation Period and the relevant Operator Assets shall continue to be designated as Primary Operator Assets on and after the expiry of the Operation Period.

9. **Provision of Information**

9.1 CSL shall provide such information as the Authority and/or SRH may reasonably require in order to satisfy itself/themselves that any Operating Assets which are to be designated as Primary Operator Assets after the Commencement Date under this Schedule 14.4 will at the time of such designation be vested in CSL. Such information may include details of any Security Interests over such property, rights and liabilities.

9.2 CSL shall further provide such information as to the property, rights and liabilities of CSL as the Authority and/or SRH may reasonably require in connection with the designation of Primary Operator Assets. Such information shall be supplied within such timescale as required by the Authority and/or SRH.

9.3 SRH shall provide such information as the Authority may reasonably require to give full effect to its rights under this Schedule 14.4.

10. **De-designation of Operator Assets and Primary Operator Assets**

10.1 The parties may agree in writing at any time during the Operation Period that an Operator Asset shall cease to be so designated as an Operator Asset or that a Primary Operator Asset shall cease to be so designated as a Primary Operator Asset, and the relevant Operator Asset shall cease to be designated upon such agreement coming into effect.

10.2 The Authority may in addition at any time during the Operation Period, by serving notice on SRH and/or CSL, cause an Operator Asset which is not a Primary Operator Asset to cease to be so designated as an Operator Asset. Such Operator Asset shall cease to be so designated on the date specified in such notice.

10.3 The Authority may in addition, at any time during the Operation Period, by serving notice on SRH and/or CSL, cause a particular Primary Operator Asset to cease to be designated as such. Such Primary Operator Asset shall cease to be so designated on the date specified in such notice. Such right may be exercised, in respect of any rights and liabilities in respect of a Fare or Discount Card, at any time and, in respect of any other Primary Operator Asset, no later than 1 year prior to the expiry of the Term. In respect of those other Primary Operator Assets the Authority shall also not exercise such right after the time that it has determined to terminate this Agreement.

10.4 The Authority may from time to time agree with SRH that it will not de-designate particular Primary Operator Assets.

11. **Spares**

11.1 The obligation of CSL to maintain, preserve and protect Primary Operator Assets under this Schedule 14.4 shall, in respect of Spares, include the obligation to replace any Spare which has been designated as a Primary Operator Asset, which subsequent to its designation ceases to be part of the stock of Spares available to CSL for use in the provision of the Operator Services, with an equivalent Spare of equal or better quality than the Spare so replaced.

APPENDIX TO SCHEDULE 14.4**List of Primary Operator Assets**

For the purpose of this Appendix to Schedule 14.4, “**Designation Letter**” means the designation letter as issued by The Scottish Ministers to Serco Caledonian Sleeper Limited and dated on or around the date of this Agreement.

The following items have as at the date of this Agreement been agreed to be Primary Operator Assets (in the event of any conflict between the content of this Appendix and the content of the Designation Letter, the content of the Designation Letter shall have precedence unless otherwise decided by the Authority):

1. Rolling stock leases (to the extent defined as such within the Designation Letter)
2. Rolling stock maintenance and technical support agreements
3. Traction agreements
4. Strategic Spares

5. CRM Data and Yield Management Data

The property, rights and liabilities of CSL in respect of CRM Data and Yield Management Data.

SCHEDULE 14.5**THIS IS SCHEDULE 14.5 REFERRED TO IN THE FOREGOING CALEDONIAN SLEEPER GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND CALEDONIAN SLEEPER LIMITED****Dealing with Operator Assets****1. Assets Not Designated as Primary Operator Assets**

- 1.1 This paragraph 1 relates to any Operator Assets that are property or rights and are not designated as Primary Operator Assets.
- 1.2 For the purposes of Section 27(3) of the Act, the Authority and SRH consent to CSL:
- (a) transferring or agreeing to transfer any such Operator Assets or any interests in, or right over, any such Operator Assets; and
 - (b) creating or extinguishing, or agreeing to create or extinguish, any interest in, or right over, any such Operator Assets.

2. Liabilities Not Designated as Primary Operator Assets

- 2.1 This paragraph 2 relates to any liabilities which are not designated as Primary Operator Assets.
- 2.2 For the purposes of Section 27(3) of the Act, the Authority and SRH consent to CSL entering into any agreement under which any such liability is released or discharged or transferred to another person.

3. Operator Assets and Primary Operator Assets

- 3.1 This paragraph 3 relates to Operator Assets (whether or not designated as Primary Operator Assets) which are property or rights.
- 3.2 The Authority and SRH hereby consent to the installation of Spares which have been designated as Primary Operator Assets on any rolling stock vehicles. Any Spare which is so installed shall cease to be so designated on such installation.
- 3.3 For the purposes of Section 27(3) of the Act, the Authority and SRH hereby consent to CSL creating or agreeing to create any Security Interest over any of these Operator Assets to the extent that the terms of any such Security Interest provide that:
- (a) if the relevant Operator Asset becomes the subject of a transfer scheme made under Section 12 and Schedule 2 of the Railways Act 2005, it shall be fully and automatically released from the relevant Security Interest immediately before the coming into force of such transfer scheme;
 - (b) if the relevant Operator Asset is assigned, novated or otherwise transferred to another person pursuant to and in accordance with this Agreement, it shall be fully and automatically released from the relevant Security Interest immediately before such assignation, novation or transfer; and
 - (c) such Security Interest shall not be enforced or enforceable until the date on which such Operator Asset ceases to be designated as an Operator Asset.

4. Prohibition on Other Security Interests

- 4.1 CSL shall not create or agree to create a Security Interest over any Operator Asset except on the terms permitted under paragraph 3.3(a).

5. Miscellaneous

- 5.1 CSL shall promptly inform SRH of any Security Interest arising at any time over any of its property or rights and shall provide SRH with such information in relation thereto as it may reasonably require.

SCHEDULE 15

THIS IS SCHEDULE 15 REFERRED TO IN THE FOREGOING CALEDONIAN SLEEPER GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND CALEDONIAN SLEEPER LIMITED

Obligations Associated with Termination

- Schedule 15.1: Reletting Provisions**
- Schedule 15.2: Last 12 or 13 Months of Operation Period**
- Schedule 15.3: Handover Package**
 - Appendix: Form of Handover Package**
- Schedule 15.4: Provisions Applying on and after Termination**
 - Appendix 1: Form of Transfer Scheme**
 - Appendix 2: Form of Supplemental Agreement**
- Schedule 15.5: Employee Exit Provisions**

SCHEDULE 15.1

THIS IS SCHEDULE 15.1 REFERRED TO IN THE FOREGOING CALEDONIAN SLEEPER GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND CALEDONIAN SLEEPER LIMITED

Reletting Provisions

1. Reletting of Caledonian Sleeper Operation

- 1.1 CSL and SRH each acknowledge that the Authority may wish, at or before the expiry of the Operation Period, either to invite persons (including CSL) to tender for the right to provide all or some of the Guest Services under a franchise agreement or alternatively to enter into a franchise agreement in respect of the Guest Services without having gone through a tendering process.
- 1.2 CSL and SRH each further acknowledge that the Authority is under a duty under Section 30 of the Act to secure in certain circumstances the provision of the Guest Services, including if no further franchise agreement is entered into on the termination of this Agreement in respect of such Guest Services. CSL and SRH each accordingly accept and agree to the restrictions and obligations imposed on CSL under Schedule 1.7 (*Operator Services*), Schedule 14 (*Preservation of Assets*) and on SRH and/or CSL under this Schedule 15.
- 1.3 CSL and SRH each further acknowledge that the Authority may split, merge or otherwise deal with the business of providing Operator Services.
- 1.4 The Authority may, at its discretion, require SRH to comply with any obligation placed on CSL under this Schedule 15 by requiring SRH to perform such obligation and/or requiring SRH to procure that CSL perform such obligation.
- 1.5 CSL and SRH each agree to cooperate with the Authority to allow the Authority to comply with the Section 30 Duty.

2. Preparation for Reletting

- 2.1 CSL shall, if so requested by the Authority, provide the Authority and its representatives and advisers with access to the Operator Employees and all books, records and other materials kept by or on behalf of CSL in connection with the Operator Services (including electronic or magnetic records) for the purpose of assisting such representatives and advisers:
 - (a) to prepare reports or other documents in connection with any invitation to potential Successor Operators to tender for the right and obligation to operate all or any of the Operator Services;
 - (b) to prepare invitations to other potential franchisees to tender for the right and obligation to provide any other railway guest services or operate any other additional railway asset; or
 - (c) to enter into any franchise agreement or other agreement relating to the Operator Services, without undergoing a tendering process,

provided that the exercise of such access rights by the Authority and its representatives and advisers shall not unduly interfere with the continuing provision and operation of the Operator Services by CSL.

- 2.2(a) CSL shall make available to the Authority and its representatives and advisers such Data Site Information (as defined at paragraph (e)) and such other information (including financial and operational information) as they shall reasonably require in connection with the matters referred to in paragraph 2.1. If requested by the Authority such information shall be made available to the Authority by CSL promptly copying (at CSL's expense) information requested by the Authority and delivering the copies to the Authority. If requested by the Authority, CSL shall also copy (at CSL's cost) and deliver to the Authority a complete copy of its Handover Package in order to assist the Authority in preparing to re-let.

- (b) CSL shall prepare and present such information in such manner (including in disaggregated form) as the Authority may require, and shall provide such assistance as the Authority may require in connection with the verification of such information.
- (c) CSL shall, when requested to do so, provide such confirmation in relation to the accuracy of the contents of the documents referred to in paragraph 2.1 as the Authority shall require from time to time;
- (d) CSL shall upload such Data Site Information as the Authority may require to such electronic data site as they may specify and shall make a sufficient number of appropriate staff available for that purpose. CSL shall ensure that such staff are trained in the use of such data site (such training to be at the expense of the Authority). For the avoidance of doubt, the Data Site Information required by the Authority under this paragraph may cover the entire Operation Period or any part of it;
- (e) **"Data Site Information"** means information relating to any of the following:
 - (i) the Caledonian Sleeper Operation or CSL, any Affiliate of CSL or their respective businesses (including their audited and management accounts, asset registers and contract lists);
 - (ii) past and present demand for the Operator Services or any similar services (including guest count data, yield management data and CRM Data);
 - (iii) information required to be provided by CSL pursuant to Schedule 1.5 (*Information about Guests*);
 - (iv) the total revenue (being all revenue whatsoever from any source obtained from any commercial or non-commercial activity or undertaking of CSL) received or which CSL expects to receive during the Operation Period;
 - (v) CSL's safety authorisation, safety certificate or Safety Management System (in each case as defined in the Safety Regulations);
 - (vi) any other safety matter;
 - (vii) the arrangements contained within the Railways Pension Scheme, the Pension Trust, the Operation Sections, or any other pension arrangement in respect of employees of CSL or employees of any person who was a franchisee or franchise or grant agreement operator in relation to a Franchise Agreement (or grant agreement);
 - (viii) the management structure of CSL's business (including organograms and any planned changes);
 - (ix) employees and contractors (including details of responsibilities, job title, remuneration, grade, qualifications and any other personnel records);
 - (x) terms and conditions of employment and human resources policies;
 - (xi) public and working timetables;
 - (xii) driver, other train crew and rolling stock diagrams;
 - (xiii) rolling stock (including train and vehicle miles, restrictions of use, fleet examinations and servicing, fleet performance, casualty data and any relevant reports);
 - (xiv) any station or depot (including any leases, documents of title, maintenance arrangements, station facilities, depot facilities, plans and contingency or security plans relating to any station or depot);
 - (xv) health and safety and environmental information;

- (xvi) copies of contracts (including Access Agreements, policies of insurance, property, rolling stock and other leases, catering contracts, contracts for outsourced services, and rolling stock maintenance and spares contracts);
- (xvii) Network Rail charges and requirements (including Engineering Access Statement/plan);
- (xviii) any information technology system (hardware or software) used or owned by CSL or any Affiliate of CSL (including any software licences);
- (xix) performance data;
- (xx) customer service (including staffing levels, call volumes and opening hours);
- (xxi) fares and fares baskets;
- (xxii) relationships and agreements with stakeholders (including minutes of meetings with unions, Local Authorities, Community Rail Partnerships, ATOC, Network Rail, ORR, the Guests' Council, Rail Safety and Standards Board, British Transport Police or Visit Scotland); or
- (xxiii) any other matter which the Authority may specify from time to time,

and in this paragraph (e) the term "**employee**" includes any person engaged by CSL pursuant to a contract of personal service; and

- (f) CSL shall:
 - (i) comply with its obligations under paragraph 2.1 and this paragraph 2.2 promptly and in any case in accordance with any reasonable timetable with which the Authority and/or SRH requires CSL by notice in writing to comply; and
 - (ii) where the Authority and/or SRH raises with CSL any query in relation to any Data Site Information, make a full and substantive response to such query within 10 working days. Such response shall include any further information requested by the Authority and/or SRH in relation to such query.

2.3 In connection with any proposal (whether or not yet finalised) to enter into separate franchise agreements and/or other agreements with more than one Successor Operator, each relating to some only of the Operator Services (whether or not together with other railway guest services) or to take forward delivery of the Operator Services in whole or partially on a basis other than by a franchise, including, for the avoidance of doubt, direct ownership or operation, at or following the end of the Operation Period, CSL agrees and acknowledges that the Authority and/or SRH may require:

- (a) that CSL provides the Authority and/or SRH with additional information and reports and analysis in respect of such Service Groups or Sectors as the Authority and/or SRH may specify. This may include:
 - (i) information relating to the operational and financial performance of CSL in relation to such Service Groups or Sectors; and
 - (ii) identification of those employees, assets and liabilities which relate to such Service Groups together with an indication of the extent to which the same are shared between the operation of different Service Groups or Sectors; and
- (b) subject to paragraph 2.4, that CSL reorganises the business of providing the Operator Services in order to facilitate the transfer anticipated by this Schedule 15.1 on an ongoing basis of the business of providing the Operator Services within each of such Service Groups or Sectors to separate Successor Operators. This may include, to the extent reasonably practicable:

- (i) the re-organisation of personnel such that an appropriate number of employees (having sufficient skills, qualifications and experience) will transfer by operation of Law to each Successor Operator of each such Service Group or Sectors; and/or
- (ii) entering into additional or clarificatory contractual or other arrangements so that the Successor Operator of each such Service Group or Sectors will have the necessary assets and rights to operate the Operator Services within that Service Group or Sectors.

2.4 Subject to paragraph 2.5, the Authority shall reimburse any reasonable out-of-pocket expenses that CSL may incur in complying with its obligations under this paragraph 2. The copying costs referred to in paragraph 2.2 are not to be re-imbursed.

2.5 If the Authority is of the reasonable opinion that CSL does not have sufficient resources to enable its compliance with its obligations under this paragraph 2 it may:

- (a) require CSL to employ; or
- (b) after notification to CSL, employ, such suitable additional resource as may be required to ensure that CSL can comply with its obligations under this paragraph 2.

2.6 To the extent reasonably practicable, prior to taking any of the actions referred to in paragraph 2.5, the Authority shall allow CSL a reasonable opportunity to make representations to it concerning the exercise by the Authority of his rights under paragraph 2.5 but the Authority shall not be obliged by those representations to refrain from exercising any of the actions specified under paragraph 2.5.

3. **Non-frustration of Transfer to Successor Operator**

3.1 Neither SRH nor CSL shall take any action or steps which is or are designed, directly or indirectly:

- (a) to prevent, prejudice or frustrate the transfer as a going concern or going concerns of the business of providing the Operator Services at the end of the Operation Period to a Successor Operator or Successor Operators; or
- (b) to avoid, frustrate or circumvent any provision of this Agreement (including in particular the provisions of Schedule 14 (*Preservation of Assets*) and this Schedule 15) which is included in whole or in part for the purpose of preventing any such preventive, prejudicial or frustrating action or steps.

SCHEDULE 15.2**THIS IS SCHEDULE 15.2 REFERRED TO IN THE FOREGOING CALEDONIAN SLEEPER GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND CALEDONIAN SLEEPER LIMITED****Last 12 or 13 Months of Operation Period****1. Last 12 or 13 Month Period**

1.1 Where reference is made in this Agreement to the last 12 or 13 months of the Operation Period, such period shall be deemed (except where the actual date of expiry of the Operation Period is known) to commence on the earliest of the following dates:

- (a) the date which is 12 or 13 months, as the case may be, prior to the Expiry Date; or
- (b) the date on which the Authority notifies SRH and CSL that such period of 12 or 13 months shall be deemed to commence on the grounds that the Authority considers it reasonably likely that this Agreement will be terminated by agreement of the parties within such period.

1.2 Any such period (which may be longer or shorter than 12 or 13 months, as the case may be) shall expire on the Expiry Date or, if earlier, in the case of periods commencing under paragraph 1.1(b), the date falling 12 or 13 months after the date of any notice under paragraph 1.1(b) or, in each case, such earlier date as the Authority may determine.

1.3 If the last 12 or 13 months of the Operation Period has commenced (or has been deemed to have commenced) and the 7 Reporting Period extension notice to the First Expiry Date has been issued then the last 12 or 13 months of the Operation Period (as the case may be) shall not be interrupted but shall continue to the Expiry Date.

2. Operator EmployeesTerms of Employment of Existing Employees

2.1 CSL shall not, and shall secure that each other relevant employer shall not, without the prior consent of the Authority (which shall not be unreasonably withheld or delayed), vary or purport or promise to vary the terms or conditions of employment of any Operator Employee (in particular, CSL shall not promise to make any additional payment or provide any additional benefit or vary any term or condition relating to holiday, leave or hours to be worked) where such variation or addition:

- (a) takes effect in the last 12 months of the Operation Period unless it is in the ordinary course of business and, when aggregated with any other variation or addition which takes effect during such period, represents an increase in the remuneration of an Operator Employee of no more than the amount determined in accordance with the following formula:-

$$\frac{\text{MAWE} + \text{JAWWE} + \text{SAWE} + \text{DAWE}}{4}$$

4

where:

MAWE is the increase in the Average Weekly Earnings between March in the preceding 12 months and the corresponding March 1 year before, expressed as a percentage;

JAWWE is the increase in the Average Weekly Earnings between June in the preceding 12 months and the corresponding June 1 year before, expressed as a percentage;

SAWE is the increase in the Average Weekly Earnings between September in the preceding 12 months and the corresponding September 1 year before, expressed as a percentage; and

DAWE is the increase in the Average Weekly Earnings between December in the preceding 12 months and the corresponding December 1 year before, expressed as a percentage;

- (b) wholly or partly first takes effect after the end of the Operation Period;
- (c) results in any such employment not being terminable by CSL or other relevant employer within 6 months of the expiry of the Operation Period;
- (d) relates to a payment or the provision of a benefit triggered by termination of employment;
- (e) relates to the provision of a benefit (excluding base salary) which any such employee will or may have a contractual right to receive after the expiry of the Operation Period; or
- (f) prevents, restricts or hinders any such employee from working for a Successor Operator or from performing the duties which such employee performed for CSL.

2.2 Without limiting the foregoing CSL shall consult the Authority as soon as reasonably practicable in any circumstances in which the Authority's consent under paragraph 2.1 may be required. Further, it shall always be deemed to be reasonable for the Authority to withhold its consent to a variation or addition which is prohibited without such consent under paragraph 2.1(a) provided:

- (a) the parties consider required revisions to the Budget in accordance with paragraph 6 of Schedule 8.1 (*Grant Payments*) for direct net losses suffered by CSL on the days ("**Relevant Days**") when the Guest Services are affected by Industrial Action taken by Operator Employees which is a consequence of a refusal by the Authority to agree to the variation or addition; and
- (b) the Authority agrees that during the Relevant Days there shall be no application of the regime by which CSL is required to make payments to the Authority in respect of poor performance to the extent that such poor performance is a consequence of the industrial action referred to in paragraph 2.2(a). Further, to the extent that CSL may be in contravention of this Agreement (excluding contraventions in relation to safety requirements) as a consequence of the industrial action referred to in this paragraph, such contravention shall be waived by the Authority.

2.3 CSL shall consult with the Authority as soon as reasonably practicable in any circumstances in which the Authority's consent under paragraph 2.1 may be required. The expression "**promise to vary**" when used in paragraph 2.1 includes any offer or indication of willingness to vary (whether or not such offer or willingness is made conditional upon obtaining the Authority's consent).

Terms of Employment of New Employees

2.4 CSL shall not, and shall secure that each other relevant employer shall not, without the prior consent of the Authority (which shall not be unreasonably withheld or delayed), create or grant, or promise to create or grant, terms or conditions of employment for any Operator Employee where the employment of such Operator Employee by CSL or such other relevant employer may commence on or after the Commencement Date if and to the extent that:

- (a) such terms or conditions are materially different from the terms or conditions of employment of equivalent or nearest equivalent Operator Employees at the date on which such employment is scheduled to commence; and
- (b) if such terms or conditions were granted to such equivalent Operator Employees already employed by CSL by way of variation to their terms or conditions of employment, CSL would be in contravention of paragraph 2.1.

Changes in Numbers and Total Cost of Employees

2.5 Subject to and excluding any increase in the remuneration of Operator Employees permitted under paragraph 2.1, SOLR shall not, and shall secure that each other relevant employer shall not, without

the prior written consent of the Authority (which shall not be unreasonably withheld or delayed) increase or decrease in the last 12 months of the Operation Period the number of Operator Employees such that:

- (a) the total number of Operator Employees or the total cost per annum to CSL and each other relevant employer of employing all Operator Employees is increased; or
- (b) the total number of Operator Employees is decreased,

in each case, by more than 5 per cent during such period of 12 months.

3. Fares

Reduction in Prices of Fares

- 3.1(a) Without in any way limiting the rights of the Authority in terms of Schedule 5 (*Fares*), during the last 13 months of the Operation Period CSL shall not, without the prior written consent of the Authority (not to be unreasonably withheld), set the Price or Child Price of or sell (except to the extent required to do so under the terms of the Ticketing and Settlement Agreement as a result of the Price or Child Price of a Fare being set by another person) any Fare which would entitle the purchaser of such Fare to travel on all or any of the Guest Services after the Operation Period for an amount which is less than the Price or the Child Price of that Fare immediately before the commencement of such 13 month period or, in the case of a new Fare, the Price of its nearest equivalent immediately before the commencement of such period.
- (b) Paragraph 3.1(a) shall not prevent CSL from giving any discount or reduction to which the purchaser of a Fare may be entitled by virtue of:
 - (i) presenting a Discount Card (or any equivalent replacement thereof) issued by CSL before the commencement of such 13 month period and to which the purchaser would have been entitled before the commencement of such period;
 - (ii) presenting a Discount Card issued by another train operator;
 - (iii) the Guest's Charter or the guest's charter of any other train operator; or
 - (iv) any relevant conditions of carriage.
- (c) CSL shall procure that persons acting as its agent (except persons acting in such capacity by virtue of having been appointed under Parts II to VI of Chapter 9 of the Ticketing and Settlement Agreement or by being party to the Ticketing and Settlement Agreement) shall comply with the provisions of paragraph 3.1(a) to the extent that such provisions apply to the selling of Fares by CSL.

Percentage Allocations

- 3.2(a) Except to the extent that the Authority may consent from time to time (such consent not to be unreasonably withheld), CSL shall not, in the last 13 Reporting Periods of the Operation Period, take any action or step which may result in its Percentage Allocation (as defined in the Ticketing and Settlement Agreement) in respect of any Rail Product (as defined in the Ticketing and Settlement Agreement) being reduced.
- (b) CSL shall notify the Authority before taking any such action or step in the last 13 Reporting Periods of the Operation Period and upon becoming aware of any other person proposing to take any action or step which may have the same effect. CSL shall take such action as the Authority may reasonably request in order to prevent any such reduction, including submitting any dispute to any relevant dispute resolution procedures.

Restrictions in respect of Sale of Advance Purchase Train-specific fares

- 3.3(a) It is acknowledged that CSL will make available for sale prior to the end of the Term Advance Purchase Train-specific Fares which are valid for travel after the end of the Term;
- (b) In making such Advance Purchase Train-specific Fares available for purchase CSL shall not change its commercial practice in terms of the number of such Advance Purchase Train-specific Fares made available or the Guest Services on which they are valid for use when compared with its previous commercial practice in respect of Advance Purchase Train-specific Fares valid for travel prior to the end of the Term;
- (c) CSL will be permitted to take into account reasonable seasonal factors in determining its previous commercial practice. In assessing reasonableness, account will be taken of CSL's practice in addressing such seasonal factors in the corresponding period in the previous year.

4. Inter-Operator Schemes

Voting on Scheme Councils

- 4.1 Subject to paragraph 4.3, during the last 12 months of the Operation Period CSL shall give the Authority reasonable notice of:
- (a) any meeting of:
- (i) a scheme council of an Inter-Operator Scheme on which CSL is represented; or
- (ii) a scheme management group of any Inter-Operator Scheme;
- (A) in which CSL has a permanent position; or
- (B) where CSL employs a member of such group;
- (b) the resolutions to be voted upon at any such meeting; and
- (c) CSL's voting intentions.
- 4.2 Subject to paragraph 4.3, CSL shall vote at any such meeting in the manner required by the Authority.

Successor Operator

- 4.3 Where CSL has been notified by the Authority that a Successor Operator has been selected (whether a franchisee or otherwise and whether or not such selection is conditional), CSL shall give such Successor Operator reasonable notice of:
- (a) any meeting referred to in paragraph 4.1(a);
- (b) any resolutions to be voted upon at any such meeting where such resolutions might reasonably be considered to affect the interests of such Successor Operator; and
- (c) CSL's voting intentions.
- 4.4 CSL shall discuss with the Successor Operator in good faith with a view to agreeing the way CSL should vote on the resolutions referred to in paragraph 4.3(b). In the absence of any agreement, CSL shall, as soon as reasonably practicable thereafter, having regard to the deadline for voting on such resolutions, refer the matter to the Authority for determination.
- 4.5 The Authority shall reasonably determine the way CSL should vote on any resolutions referred to it in accordance with paragraph 4.4, having regard to the transfer of the Operator Services as a going concern at the end of the Operation Period.

4.6 CSL shall vote at any meeting referred to in paragraph 4.1(a) in accordance with any agreement pursuant to paragraph 4.4 or determination pursuant paragraph 4.5.

5. **Local Authority Schemes**

CSL shall not during the last 12 months of the Operation Period, agree to commence or continue any project or investment wholly or partly funded by any Local Authority without the written consent of the Authority.

SCHEDULE 15.3**THIS IS SCHEDULE 15.3 REFERRED TO IN THE FOREGOING CALEDONIAN SLEEPER GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND CALEDONIAN SLEEPER LIMITED****Handover Package****1. Handover Package Status**

- 1.1 CSL shall maintain the Handover Package and shall update it at least every 3 Reporting Periods. SRH shall provide all necessary assistance to CSL to enable CSL to comply with this Schedule 15.3.
- 1.2 CSL shall ensure that any Successor Operator will have immediate access to the Handover Package on the expiry of the Operation Period and shall accordingly agree with the Authority from time to time a location at which such Handover Package should be kept which, unless otherwise agreed, shall be the offices of a solicitor approved by the Authority.

2 Director's Certificate

Once in each Operator Year, CSL shall provide to the Authority a certificate signed by a nominated and duly authorised director of CSL, addressed to the Authority, which confirms that the Handover Package contains the information and objects specified in the Appendix (*Form of Handover Package*) and that such information is accurate at the date of the certificate. CSL shall make the Handover Package available for inspection or audit by the Authority or its representative whenever requested.

3. Handover Package Information

Without prejudice to the preceding provisions of this Schedule 15.3, CSL shall provide to the Authority the following information and letters, and shall supply revised information and/or letters to the Authority as and when required in order to ensure that such information and letters remain accurate and up to date:

- 3.1 details of the location of the Handover Package, which details shall include one or more contact name, address and telephone number enabling contact during, and outside, normal office hours with persons authorised and able to release the Handover Package;
- 3.2 a letter in a form approved by the Authority:
 - (a) from CSL to the Authority confirming that an irrevocable instruction has been given to the solicitor holding (or other persons authorised by the Authority for such purpose) the Handover Package that any of the Authority, a Successor Operator or its agent, is entitled at any time to require access to and delivery of the Handover Package on demand, and confirming the Authority's right to audit the Handover Package at any time; and
 - (b) from the solicitor holding the Handover Package (or other person authorised by the Authority for such purpose) to the Authority confirming that he or she will release the Handover Package to any of the Authority, a Successor Operator or its agent, on demand, and confirming that the Handover Package will be made available for the purposes of auditing its contents when so required by the Authority;
- 3.3 a list of all key contacts, as set out in the Appendix (*Form of Handover Package*); and
- 3.4 a letter in a form approved by and addressed to the Authority confirming the details of any insurer providing insurance to CSL, and authorising the insurer (and any relevant broker) to release any insurance-related information to any of the Authority, a Successor Operator or its agent on demand.

4 Actions required immediately on handover

- 4.1 CSL shall immediately on the expiry of the Operation Period make available to the Authority:
- (a) information as to the status of each purchase order or contract, including its award date, anticipated delivery date, confirmation of receipt of goods or services and the payment records for each purchase order, together with any matters in dispute with the appointed subcontractor and, to the extent that CSL is a subcontractor to another Train Operator, the equivalent information in respect of that Train Operator; and
 - (b) information concerning any contract necessary for the continued operation of the franchise or grant services where a procurement or bidding process has been initiated.
- 4.2 CSL agrees that the Authority or its agents may have access to and use free of charge any information contained in any computer system or in hard copy format as it sees fit (for the purposes of continuing the operation of the Operator Services).

5. Maintenance Records

CSL shall immediately on expiry of the Operation Period provide to the Authority:

- 5.1 records of the status of the maintenance of the rolling stock vehicles used in the provision of the Guest Services, including the extent of completion of examinations and the modification status of each such rolling stock vehicle;
- 5.2 records of the status of the maintenance of any lifting equipment;
- 5.3 a list of any deferred maintenance; and
- 5.4 records of the status of the maintenance of any depot or station or plant or equipment at the same which is an Operator Asset.

6. Ticketing Arrangements

CSL shall provide to the Authority immediately on expiry of the Operation Period a statement certifying:

- 6.1 all ticketing transactions with the public or credit card agencies that are in process and not yet complete, together with any allocations on multi-modal travel with other agencies or local authorities;
- 6.2 any Stored Credit Balance, together with details of how such is held and how such will be transferred to a Successor Operator;
- 6.3 the extent of any outstanding claims with ticketing settlement agencies;
- 6.4 refund arrangements (whether under the Guest's Charter or not) with members of the public or other Train Operators or ticketing settlement agencies that are in process and not yet complete; and
- 6.5 commissions owed and/or due.

APPENDIX TO SCHEDULE 15.3**Form of Handover Package****1. Key Contacts**

A list of key contacts to include all directors (statutory or otherwise) and all managers with responsibility for a department/function within CSL's business or seconded to perform a function within CSL's business from SRH or the SRH group of companies. This must include operations, commercial, personnel and public affairs departments (or in each case their nearest equivalents). This list must include the name, address, home, office and mobile telephone numbers, and a brief description of the person's role and responsibilities in the business.

2. Property

A list of all land and buildings owned, leased, operated or occupied by CSL which shall include the address, telephone number and contact telephone number of each property. Where applicable, the list will also include the name, address and telephone number of the lessor and/or the party which has granted authority to use or occupy the property, and any relevant reference numbers applicable to that lease or occupation. Where applicable, the list will also include the name, address and telephone number of the tenant and/or party in occupation of the property.

3. Contracts

A printed or electronic list (in a format acceptable to the Authority) of all contracts (sales, purchases or otherwise including leases and licences) used to deliver the Operator Services and the counterparty or counterparties to each such contract, showing the name, address and telephone number of each counterparty and a contact name at each such counterparty; the contract reference number of CSL and each counterparty (if any); and the contract price/value, term and expiry date. This requirement shall apply to all contracts unless otherwise agreed by the Authority.

4. Systems

A list of the electronic systems in use in delivering the Operator Services, together with the name of CSL's employee or secondee from the SRH group with responsibility for the management of information technology matters, office address and telephone number who is responsible for administration of each such system.

5. Daily Operations

A printed or electronic list (in a format acceptable to the Authority) of all assets used to deliver the Operator Services together with their location.

6. Insurance

A list of the names, addresses and telephone numbers of all insurers and any relevant broker providing insurance to CSL, together with the relevant policy numbers and other references and details of any outstanding claims or unresolved disputes.

SCHEDULE 15.4**THIS IS SCHEDULE 15.4 REFERRED TO IN THE FOREGOING CALEDONIAN SLEEPER GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND CALEDONIAN SLEEPER LIMITED****Provisions applying on and after Termination****1. Novation of Access Agreements on Termination of this Agreement**

- 1.1 CSL shall, to the extent so requested by the Authority on termination of this Agreement, in relation to any Access Agreement to which it is a party, novate its interest under any relevant Access Agreement (and any related Collateral Agreement) to the Authority or as it may direct.
- 1.2 Such novation shall be subject to the agreement of any counter party to such Access Agreement or Collateral Agreement and, to the extent applicable, the ORR.
- 1.3 Such novation shall be on such terms as the Authority may reasonably require, including:
- (a) that CSL shall not be released from any accrued but unperformed obligation, the consequences of any breach of the relevant agreement which is the subject of arbitration or litigation between the Authority and CSL or any liability in respect of any act or omission under or in relation to the relevant agreement prior to, or as at the date of, any such novation (except to the extent that the Authority or its nominee agrees to assume responsibility for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant novation); and
 - (b) that neither the Authority nor its nominee shall be obliged, in connection with such novation, to agree to assume responsibility for any unperformed obligation, liability or consequences of a breach referred to in paragraph 1.3(a),

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

2. Co-operation with Successor Operator

- 2.1 In order to ensure the continuity of, and an orderly handover of control over, the Operator Services, CSL shall co-operate with:
- (a) where a Successor Operator or Operators has been appointed, such Successor Operator(s); or
 - (b) where a Successor Operator or Operators has not been so appointed, or where such appointment or appointments does or do not encompass all aspects of the Operator Services, the Authority together with such Operator or Operators where relevant,

and shall take such steps as may be reasonably requested by the Authority in connection therewith.

- 2.2 In satisfaction of its obligations under paragraph 2.1, CSL shall bid for and secure the Timetable and the Train Plan for the Operator Services to be operated by the Successor Operator (whether or not a Successor Operator has been identified and whether or not there is in place an Access Agreement relating to the relevant period).

3. Transfer of Primary Operator Assets

Option Arrangements

- 3.1(a) SRH and CSL hereby grant to the Authority the right to make, a Transfer Scheme in accordance with Section 12 and Schedule 2 of the Railways Act 2005 for the transfer of any or all Primary Operator Assets on the expiry of the Operation Period.
- (b) On or within 14 days before the expiry of the Operation Period, the Authority may serve notice on SRH and/or CSL specifying the Primary Operator Assets to be transferred.
- (c) The Authority may make one or more such Transfer Schemes for the transfer of the Primary Operator Assets specified in any such notice within 14 days after service of such notice.
- (d) Any Operator Assets or Primary Operator Assets which are not so transferred shall cease to be designated as such 14 days after service of such notice.

Supplemental Agreement

- 3.2 Without prejudice to the duties, powers, rights and obligations of the Authority under the Railways Act 2005 in respect of any Transfer Scheme, any Transfer Scheme shall impose on SRH, CSL and the transferee an obligation to enter into an agreement substantially in the form of the Supplemental Agreement which shall provide for the determination of amounts to be paid in respect of the property, rights and liabilities which are transferred under such Transfer Scheme. SRH and/or CSL (as the Authority determines) shall enter into any such Supplemental Agreement and shall comply with its obligations thereunder.

Payment of Estimated Transfer Price

- 3.3(a) The Authority may require CSL to pay to any transferee under a Transfer Scheme, or may require any such transferee to pay to CSL, on the day on which the Transfer Scheme comes into force such sum as the Authority may determine should be so paid having regard to:
- (i) its estimate of the sum likely to be paid under the relevant Supplemental Agreement in respect of the Primary Operator Assets being transferred under the relevant Transfer Scheme;
 - (ii) its estimate of any other sums likely to be paid thereunder;
 - (iii) the financial condition of CSL and the transferee and whether any estimate so paid would be likely to be repaid, if in excess of the sums eventually payable thereunder; and
 - (iv) such other matters as the Authority may consider appropriate.
- (b) CSL shall pay to any such transferee the sum determined by the Authority in accordance with paragraph 3.3(a) on the day on which the relevant Transfer Scheme comes into force.

Possession of Operator Assets

- 3.4 On the coming into force of a Transfer Scheme, CSL and SRH shall deliver up to the Authority (or its nominee) possession of the Primary Operator Assets transferred under such Transfer Scheme.

4. Associated Obligations on Termination

Assistance in Securing Continuity

- 4.1(a) In order to facilitate the continuity of the Operator Services on expiry of the Operation Period, SRH and CSL shall take such steps, both before and after the expiry of the Operation Period, as the Authority may reasonably require, to assist and advise any Successor Operator in providing and operating the Operator Services.

- (b) In particular, CSL shall provide any Successor Operator with such records and information relating to or connected with the Operator Services as the Authority may reasonably require (other than Confidential Information of a financial nature but including all records relating to the Operator Employees).

Access

- 4.2 On the expiry of the Operation Period, CSL shall grant, or procure the grant, to the Authority and its representatives such access as the Authority may reasonably request to any property owned, leased or operated by CSL at such time, for the purpose of facilitating the continued provision of the Operator Services.

Key Contracts

- 4.3(a) SRH and CSL shall provide such assistance to any Successor Operator as the Authority may reasonably require in ensuring that, pursuant to any Direct Agreements, such Successor Operator may enter into (or enjoy the benefit of) contracts equivalent to the relevant Key Contracts (or part thereof).
- (b) In satisfaction of its obligations under paragraph 4.3(a), SRH and/or CSL (as the case may be) shall terminate, surrender, cancel or undertake not to enforce its rights under any Key Contract (or part thereof) provided that nothing in this paragraph shall require SRH or CSL to undertake not to enforce any rights under a Key Contract relating to the period prior to the expiry of the Operation Period.

Change of Name

- 4.4 SRH and CSL shall each cease to use any trademarks which are licensed to it under any of the Brand Licences forthwith upon expiry of the Operation Period and shall take all necessary steps to change any company name which incorporates any such marks, the Marks, or the Authority IP as soon as practicable.

Licences

- 4.5 On the expiry of the Operation Period, CSL shall assign the Licences to the Authority's nominee, to the extent and in the manner requested by the Authority, and to the extent permitted by the ORR.

Property Leases

- 4.6(a) SRH and/or CSL (as the case may be) shall, on the expiry of the Operation Period if requested by the Authority assign its interest under all or any Property Leases to the Authority or as it may direct, subject where applicable to the agreement of any other party to such Property Lease or of the ORR.
- (b) Such assignment shall be on such terms as the Authority may reasonably require, including:
- (i) that SRH and/or CSL (as the case may be) shall not be released from any accrued but unperformed obligation, the consequences of any antecedent breach of an undertaking or obligation in the Property Leases or any liability in respect of any act or omission under or in relation to the Property Lease prior to, or as at the date of, any such assignment (except to the extent that the Authority or its nominee agrees to assume responsibility for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant assignment); and
 - (ii) that neither the Authority nor its nominee shall be obliged, in connection with such assignment, to agree to assume responsibility for any unperformed obligation, liability or consequences of a breach referred to in paragraph 4.6(b)(i), and SRH and CSL shall indemnify the Authority or its nominee, as the case may be, on an after-tax basis against any costs, losses, liabilities or expenses suffered or incurred in relation thereto.
- (c) SRH and CSL shall, on the occurrence of any of the circumstances specified in paragraph 4.6(a) in relation to any other Train Operator who is a party to a Property Lease to which either of SRH or CSL

is also party, agree to the assignation of such Train Operator's interest under the relevant Property Lease to the Authority or as it may direct, subject, where applicable, to the consent of Network Rail. The provisions of paragraph 4.6(b) shall apply to any such assignation.

- (d) CSL shall notify the Authority on becoming aware of any circumstances which might lead to the Authority being able to require SRH and/or CSL to assign its interest or agree to the assignation of another Train Operator's interest under this paragraph 4.
- (e) If the landlord under a Property Lease does not serve a notice to quit under the Property Lease on CSL then CSL shall notify the Authority in writing of the necessity to serve a notice to quit under the Property Lease at least one calendar month before the last date for service of a timeous notice to quit under the Property Lease and, if so requested by the Authority following receipt of such notification, CSL shall timeously serve a notice to quit under the Property Lease.
- (f) CSL shall promptly notify the Authority of any notice to quit received from the landlord under a Property Lease.

5. Intellectual Property Rights

- 5.1 The parties agree that any and all Foreground IP is owned exclusively by the Authority. SRH and CSL, each hereby unconditionally and irrevocably, and free of encumbrances, assign absolutely with full title guarantee to the Authority its whole right, title and interest (past, present and future) in and to the Foreground IP to the fullest extent permitted by Law.
- 5.2 To the extent that the Foreground IP does not and/or cannot vest in the Authority in accordance with paragraph 5.1, SRH or CSL (as the case may be) shall hold the relevant Foreground IP on trust for the Authority, and without limitation to the foregoing, shall grant or procure the grant to the Authority (and/or, if requested by the Authority, the Successor Operator and its successors) of an exclusive, irrevocable, fully paid-up, royalty-free, perpetual, irrevocable, worldwide and exclusive licence (including the right to sub-licence) to use, copy and modify the Foreground IP for any purpose related (directly or indirectly) to the operation of guest services, light maintenance services, station services and ancillary services (or such other form of licence as the Authority shall reasonably require or agree in writing).
- 5.3 Without prejudice to paragraphs 5.1 and/or 5.2, on the expiry of the Operation Period, SRH and CSL shall, subject to any limitations on SRH's and/or CSL's ability to grant such licences under any licence of Intellectual Property Rights granted to SRH and/or CSL (as the case may be), grant to the Authority and, at the Authority's request, any Successor Operator (and its successors) licences of any Intellectual Property Rights which:
 - (a) are owned by or licenced to SRH and/or CSL (as the case may be); and
 - (b) which may, in the reasonable opinion of the Authority, be necessary for any Successor Operator to operate services similar to the Operator Services provided by such Successor Operator on an efficient and economic basis after the expiry of the Operation Period.
- 5.4 Where an appropriate licence to any Intellectual Property Rights cannot be granted in accordance with paragraph 5.2 or 5.3, SRH and CSL shall provide an undertaking to the Authority, its licensees and any relevant Successor Operator to the effect that neither it nor the owner of Intellectual Property Rights will enforce such rights as it may have or may in the future have in respect of such Intellectual Property Rights against the Authority, its licensees and/or any relevant Successor Operator.
- 5.4 When agreeing the terms on which Intellectual Property Rights are to be licensed to it, CSL and SRH shall use all reasonable endeavours to ensure that such terms include the right to sub-license such Intellectual Property Rights in accordance with this paragraph. Each of SRH and CSL shall not enter into a licence that does not include such a provision without first obtaining the Authority's prior written consent (such consent not to be unreasonably withheld).
- 5.5 Any such licence under paragraph 5.3 shall be granted to the relevant Successor Operator for such period as the Authority may determine to be reasonably necessary for the purpose of securing

continuity of the provision of the Caledonian Sleeper Operation, and shall be free of charge and royalty-free for such period as reasonably determined by the Authority.

5.6 Any such licence under paragraph 5.3 be in such form as the Authority shall reasonably determine.

5.7 SRH and CSL each warrant and undertake to the Authority that:

- (a) so far as it is aware, the Foreground IP created by or on its behalf have not been copied wholly or substantially from any other source and does not infringe any rights of any third party;
- (b) it has not assigned, or granted an exclusive licence to, (nor shall it assign, or grant an exclusive licence to), any of the Foreground IP (or any part thereof) to any third party (without the prior written consent of the Authority);
- (c) it shall do nothing to prejudice or threaten the validity of the Foreground IP;
- (d) that it has obtained waivers of all moral rights in the Foreground IP created by or on its behalf to which any individual is now or may be entitled under Chapter IV of the Copyright Designs and Patents Act 1988 and, in so far as is legally possible, any broadly equivalent rights as may subsist in any territory in the world;
- (e) it shall promptly and at the Authority's request, do (and procure all third parties, employees, individuals and sub-contractors) all such further acts and things and sign and deliver all such documents as the Authority may from time to time require for the purposes of securing for the Authority the full benefit of all right, title and interest in and to the Foreground IP; and
- (f) to the extent that any software is comprised in any materials developed by it or on its behalf, it shall deliver (and shall procure that any sub-contractor shall deliver) a copy of the source code for such software to the Authority and all documentation necessary to enable the operation, maintenance and development of the software within ten (10) days of termination of this Agreement, or as otherwise reasonably requested by the Authority.

APPENDIX 1 TO SCHEDULE 15.4

Form of Transfer Scheme

Dated _____ 20[•]

**TRANSFER SCHEME
OF
THE SCOTTISH MINISTERS
MADE PURSUANT TO SECTION 12 AND SCHEDULE 2 OF THE RAILWAYS ACT 2005**

**IN FAVOUR OF
[SUCCESSOR OPERATOR]**

**IN RESPECT OF
CERTAIN PROPERTY, RIGHTS AND LIABILITIES
OF
[the Operator]**

[The Scottish Ministers]

TRANSFER SCHEME

Whereas:

- (A) CSL (the Transferor) has been providing certain services for the carriage of guests by railway and operating certain stations and light maintenance depots pursuant to a grant agreement with the Scottish Ministers Victoria Quay, Edinburgh, EH6 6QQ, acting through Transport Scotland, Buchanan House, 58 Port Dundas Road, Glasgow, G4 0HF or such other agency, department or other organisational unit of the Scottish Government as they may from time to time have nominated (who and whose successors are hereinreferred to as the Authority) and Scottish Rail Holdings Limited (hereinreferred to as SRH) dated [•] (the Services Agreement).
- (B) The Services Agreement terminated or is to terminate on [•] and [Successor Operator] (the Transferee) is to continue the provision of all or part of such services or the operation of all or some of such stations and light maintenance depots under a new services agreement or in connection with the performance or exercise of the duties and powers of the Authority to secure the provision of such services or the operation of such stations or light maintenance depots.
- (C) Certain property, rights and liabilities of the Transferor which were designated as franchise assets for the purpose of the Services Agreement are to be transferred to the Transferee under a transfer scheme made by the Authority under Section 12 and Schedule 2 of the Railways Act 2005.

The Authority, in exercise of the powers conferred on it by Section 12 and Schedule 2 of the Railways Act 2005, hereby makes the following scheme:

1. Definitions and Interpretation

In this Transfer Scheme powers and duties and relevant enactment have the meanings ascribed to them in paragraph 6 of Schedule 2 of the Railways Act 2005.

2. Transfer of Property Rights and Liabilities

The property, rights and liabilities of the Transferor specified or described in the Schedule shall be transferred to, and vest in, the Transferee.

3. Powers and Duties under Statutory Provisions

Subject to any amendment to the relevant enactment which comes into force on or after the date on which this Transfer Scheme is made, there shall be transferred to the Transferee all the powers and duties of the Transferor under any relevant enactment if and to the extent that any such relevant enactment:

- (a) relates to any property which is to be transferred by this Transfer Scheme; or
- (b) authorises the carrying out of works designed to be used in connection with any such property or the acquisition of land for the purpose of carrying out any such works.

4. Supplemental Agreement

Each of the Transferor and the Transferee shall enter into the Supplemental Agreement (as defined in the Services Agreement) on the coming into force of this Transfer Scheme.

This Transfer Scheme is made by the Authority on [•]

SIGNED for and on behalf of THE SCOTTISH MINISTERS

At

On the day of 20[xx]

By

.....Name (printed)

Before this witness:-

..... Witness

..... Full Name

..... Address

.....

SCHEDULE TO THE TRANSFER SCHEME
[List relevant [Primary] Operator Assets to be transferred to Successor Operator]

APPENDIX 2 TO SCHEDULE 15.4

Form of Supplemental Agreement

Dated _____ 20[•]

SUPPLEMENTAL AGREEMENT

between

[OUTGOING OPERATOR]

and

[SUCCESSOR OPERATOR]

**to the transfer scheme dated [•] made
by the Scottish Ministers in respect of
certain property rights and liabilities of
[OUTGOING OPERATOR]**

[The Scottish Ministers]

SUPPLEMENTAL AGREEMENT

Between

- (1) [OUTGOING operator] whose registered office is at [registered office] (the Transferor); and
- (2) [SUCCESSOR OPERATOR] whose registered office is at [registered office] (the Transferee).

Whereas

- (A) The Transferor has been providing certain services and the carriage of guests by railway and operating certain stations and light maintenance depots pursuant to a grant agreement with the Scottish Ministers Victoria Quay, Edinburgh, EH6 6QQ, acting through Transport Scotland, Buchanan House, 58 Port Dundas Road, Glasgow, G4 0HF or such other agency, department or other organisational unit of the Scottish Government as they may from time to time have nominated (who and whose successors are hereinreferred to as the “**Authority**”) and Scottish Rail Holdings Limited (hereinreferred to as SRH) dated [•] (the “**Services Agreement**”).
- (B) The Services Agreement terminated or is to terminate on [•] and the Transferee has been selected by the Authority to continue the provision of all or part of such services pursuant either to a services agreement with the Authority or arrangements made with the Authority in connection with the Authority’s duties and powers.
- (C) Certain property, rights and liabilities of the Transferor are to be transferred to the Transferee pursuant to a transfer scheme made by the Authority on [•] under Schedule 2 of the Railways Act 2005 (the Transfer Scheme).
- (D) This agreement is supplemental to the Transfer Scheme and sets out certain terms between the Transferor and the Transferee in relation to the transfer of such property, rights and liabilities under the Transfer Scheme and the transfer of certain other property, rights and liabilities at the same time.

It is agreed that

1. Definitions and Interpretation

Definitions

1.1 The following words and expressions shall have the following meaning:

Business means such of the undertaking or part of the undertaking of the Transferor prior to the Transfer Date as may be continued by the Transferee after the Transfer Date;

Completion Payment has the meaning ascribed to that term in Clause 2.1;

Credit has the meaning assigned to that term under the Ticketing and Settlement Agreement;

Debit has the meaning assigned to that term under the Ticketing and Settlement Agreement;

Net Asset Statement means the statement to be drawn up pursuant to Clause 2.2;

Net Asset Value means the aggregate of the amounts of the Relevant Operator Assets, the Relevant Contract Liabilities, the Relevant Debits and Credits and the Relevant Employee Liabilities as shown in the Net Asset Statement;

Purchase Price means an amount equal to the Net Asset Value;

Relevant Contract Liabilities means such rights and liabilities of the Transferor as may be transferred to the Transferee on the expiry of the Operation Period in relation to any Licence, Access Agreement or Property

Lease under paragraphs 1, 4.5 and 4.6 of Schedule 15.4 (Provisions Applying on and after Termination) of the Services Agreement;

Relevant Debits and Credits means such Debits and Credits of the Transferor which relate to Fares sold before the Transfer Date and which may be received by the Transferee as a result of Clause 11-32 of the Ticketing and Settlement Agreement;

Relevant Employee Liabilities means such rights and liabilities of the Transferor (or any other relevant employer or person) under any contracts of employment relating to the Relevant Employees which have been or are to be transferred to the Transferee by virtue of the operation of Law (including the Transfer Regulations);

Relevant Employees means all persons employed in the Business immediately before the Transfer Date (whether employed by the Transferor or otherwise) whose contract of employment has been or is to be transferred to the Transferee by virtue of the operation of Law (including the Transfer Regulations) or any other person employed in the Business in respect of whom liabilities arising from a contract of employment or employment relationship have or will be transferred by virtue of the operation of Law (including the Transfer Regulations);

Relevant Operator Assets means the property, rights and liabilities of the Transferor which are or are to be transferred to the Transferee under the Transfer Scheme;

Reporting Accountants means such firm of accountants as may be selected by agreement between the parties within 4 weeks of the preparation of the Net Asset Statement or, in the absence of such agreement, selected by the Authority;

Season Ticket Fare means a fare which entitles the purchaser to make an unlimited number of journeys in any direction during the period for which, and between the stations and/or the zones for which, such fare is valid;

Taxation comprises all forms of taxation, duties, contributions and levies of the Authority or the United Kingdom whenever imposed and (except in so far as attributable to the unreasonable delay or default of the Transferee) all penalties and interest relating thereto;

TOGC has the meaning assigned to that term in clause 6.2;

Transfer Date means the date and, where relevant, the time on or at which the Transfer Scheme comes into force;

Transfer Regulations means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended, replaced or substituted from time to time);

Transferring Assets and Liabilities has the meaning assigned to that term in clause 2.1; and

Undisclosed Employee has the meaning assigned to that term in clause 7.1(d).

Construction and Interpretation

1.2 In this Agreement terms and expressions defined in the Services Agreement shall have the same meaning and the terms “**contract of employment**”, “**collective agreement**”, “**employee representatives**” and “**trade union**” shall have the same meanings respectively as in the Transfer Regulations.

2. Transfer Price

Amount and Payment

2.1 The price for the transfer of:

(a) the Relevant Operator Assets,

- (b) the Relevant Contract Liabilities,
- (c) the Relevant Debits and Credits; and
- (d) the Relevant Employee Liabilities

(together the Transferring Assets and Liabilities) shall (subject to adjustment as expressly provided in this Agreement) be an amount equal to the Net Asset Value of which the sum of £[amount], as determined under paragraph 3.3 of Schedule 15.4 (Provisions Applying on and after Termination) of the Services Agreement (the Completion Payment) shall be paid in immediately available funds by the Transferor to the Transferee, or by the Transferee to the Transferor, as determined under paragraph 3.3 of Schedule 15.4 of the Services Agreement, on the Transfer Date and the balance (if any) shall be paid in accordance with clause 2.5.

Net Asset Statement

- 2.2 The Transferee shall procure that, as soon as practicable and in any event not later than 2 months following the Transfer Date, there shall be drawn up a statement showing a true and fair view of the aggregate of the amount of each separate asset and liability of the Transferring Assets and Liabilities as at the Transfer Date.
- 2.3 The Net Asset Statement shall be:
- (a) drawn up in the manner described in the Schedule;
 - (b) prepared on such basis as would enable the Transferee's auditors, if so requested, to give an unqualified audit report thereon to the effect that it had been drawn up in accordance with the Schedule; and
 - (c) presented, initially as a draft, to the Transferor immediately following its preparation for review in conjunction with its auditors.
- 2.4 If the Transferor and the Transferee have failed to agree the Net Asset Statement within 4 weeks following such presentation, the matter shall be referred to the Reporting Accountants who shall settle and complete the Net Asset Statement as soon as practicable and shall determine the amount of the Net Asset Value as shown by the Net Asset Statement.

Adjustment of Price

- 2.5 If the Purchase Price exceeds or is less than the Completion Payment, the Transferee shall pay to the Transferor or, as the case may be, the Transferor shall pay to the Transferee, in either case within 14 days of the agreement or determination of the Net Asset Value, an amount equal to such excess or deficiency together in either case with interest thereon calculated from the Transfer Date at the Interest Rate.

3. References to the Reporting Accountants

Whenever any matter is referred under this Agreement to the decision of the Reporting Accountants:

- (a) the Reporting Accountants shall be engaged jointly by the parties on the terms set out in this Agreement and otherwise on such terms as shall be agreed; provided that neither party shall unreasonably (having regard, amongst other things, to the provisions of this Agreement) refuse its agreement to terms proposed by the Reporting Accountants or by the other party. If the terms of engagement of the Reporting Accountants have not been settled within 14 days of their appointment having been determined (or such longer period as the parties may agree) then, unless one party is unreasonably refusing its agreement to those terms, such accountants shall be deemed never to have been appointed as Reporting Accountants, save that the accountants shall be entitled to their reasonable expenses under clause 3(d), and new Reporting Accountants shall be selected in accordance with the provisions of this Agreement;

- (b) if Reporting Accountants acting or appointed to act under this Agreement resign, withdraw, refuse to act, or are disqualified for any reason from performing their duties then, except as may be agreed between the parties, the parties shall appoint a replacement in accordance with the definition of Reporting Accountants;
- (c) the Reporting Accountants shall be deemed to act as experts and not as arbitrators;
- (d) the Reporting Accountants shall have power to allocate their fees and expenses for payment in whole or in part by any party at their discretion. If not otherwise allocated they shall be paid as to half by the Transferor and as to half by the Transferee;
- (e) each of the parties shall promptly on request supply to the Reporting Accountants all such documents and information as they may require for the purpose of the reference; and
- (f) the decision of the Reporting Accountants shall (in the absence of objection on the grounds of any error discovered within 14 days of the issue of their decision) be conclusive and binding and shall not be the subject of any appeal by way of legal proceeding or arbitration or otherwise.

4. Warranty

The Transferor warrants and represents to the Transferee that the Relevant Contract Liabilities and the Relevant Operator Assets are, to the extent they are property or rights, transferring to the Transferee free and clear of all Security Interests.

5. Interest

If the Transferor or the Transferee defaults in the payment when due of any sum payable under this Agreement (whether determined by agreement or pursuant to an order of a court or otherwise) the liability of the Transferor or the Transferee (as the case may be) shall be increased to include interest on such sum from the date when such payment is due until the date of actual payment (after as well as before judgement) at a rate equal to the Interest Rate. Such interest shall accrue from day to day.

6. Value Added Tax

- 6.1 All amounts under this agreement are expressed as exclusive of Value Added Tax where Value Added Tax is applicable.
- 6.2 The Transferor and the Transferee shall use all reasonable endeavours to secure that the transfer of the Transferring Assets and Liabilities is treated for Value Added Tax purposes as the transfer of a business as a going concern (TOGC) and accordingly as neither a supply of goods nor a supply of services for the purposes of Value Added Tax.
- 6.3 If HM Revenue & Customs direct that the transfer of the Transferring Assets and Liabilities, cannot be treated as a TOGC, the Transferor shall provide the Transferee with a copy of such direction within 5 days of receipt thereof by the Transferor.
- 6.4 The Transferee shall thereafter pay upon the receipt of a valid tax invoice the amount of any Value Added Tax which as a result of that direction may be chargeable on the transfer of the Transferring Assets and Liabilities. If the aforementioned direction was issued as a result of any action or inaction of the Transferee then the Transferee shall in addition to the Value Added Tax indemnify the Transferor for any penalties and interest that may be incurred upon receipt of such evidence from HM Revenue & Customs.
- 6.5 If the Transferee considers the direction issued by HM Revenue & Customs referred to in clause 6.3 to be incorrect then, without prejudice to the Transferee's obligation under clause 6.4 to pay to the Transferor the amount of any Value Added Tax which as a result of such direction may be chargeable on the transfer of the Transferring Assets and Liabilities, the Transferee may, within 30 days of receipt of such direction by the Transferor, give notice to the Transferor that it requires the Transferor to appeal such direction. Upon requesting such an appeal the Transferee agrees to indemnify the Transferor for all reasonable costs that the Transferor may incur in taking such action upon receipt of

evidence of those costs. If such an appeal is successful the Transferor agrees to reimburse the Transferee for such reasonable costs and penalties and interest to the extent that those costs have been reimbursed by HM Revenue & Customs.

- 6.6 If any amount paid by the Transferee to the Transferor in respect of Value Added Tax pursuant to this Agreement is subsequently found to have been paid in error the Transferor shall issue a valid tax credit note for the appropriate sum to the Transferee and promptly repay such amount to the Transferee.
- 6.7 If any amount is payable by the Transferor to the Transferee in respect of the transfer of the Relevant Operator Assets, Relevant Contract Liabilities, Relevant Debits and Credits and Relevant Employee Liabilities pursuant to this Agreement, clauses 6.3 to 6.6 inclusive shall apply mutatis mutandis to such payment substituting Transferor for Transferee and vice versa.
- 6.8 The Transferor shall on the Transfer Date deliver to the Transferee such of those records referred to in Section 49 of the Value Added Tax Act 1994 as relate exclusively to the Business on condition that the Transferee undertakes to preserve those records in such manner and for such periods as may be required by law.
- 6.9 Subject to HM Revenue & Customs so permitting, all of the records referred to in Section 49 of the Value Added Tax Act 1994 relating to the Business (being the purchase records) shall be retained by the Transferor and the Transferor shall undertake to the Transferee to:
- (a) preserve those records in such manner and for such periods as may be required by law;
 - (b) give the Transferee as from the Transfer Date reasonable access during normal business hours to such records and to take copies of such records.

7. Employees

Transfer Regulations

- 7.1 The parties accept that, to the extent that the undertaking or part of the undertaking of the Transferor is continued by the Transferee after the Transfer Date, this Agreement and the transfer of the Business which is effected in connection with the Transfer Scheme are governed by the Transfer Regulations and the following provisions shall apply in connection therewith:
- (a) the contract of employment of each of the Relevant Employees (save insofar as such contract relates to any occupational pension scheme) shall be transferred to the Transferee with effect from the Transfer Date which shall be the “**time of transfer**” under the Transfer Regulations and the Transferee shall employ each such Relevant Employee on the terms of those contracts of employment (save insofar as such contract relates to any occupational pension scheme) with effect from the Transfer Date;
 - (b) the Transferor shall perform and discharge all its obligations in respect of all the Relevant Employees for its own account up to and including the Transfer Date including, without limitation, discharging all wages and salaries of the Relevant Employees, all employer’s contributions to any relevant occupational pension scheme and all other costs and expenses related to their employment (including, without limitation, any Taxation, accrued holiday pay, accrued bonus, commission or other sums payable in respect of service prior to the close of business on the Transfer Date) and shall indemnify the Transferee and keep the Transferee indemnified against each and every action, proceeding, liability (including, without limitation, any Taxation), cost, claim, expense (including, without limitation, reasonable legal fees) or demand arising from the Transferor’s failure so to discharge;
 - (c) the Transferor shall indemnify the Transferee and keep the Transferee indemnified against each and every action, proceeding, cost, claim, liability (including, without limitation, any Taxation), expense (including, without limitation, reasonable legal fees) or demand which relates to or arises out of any act or omission by the Transferor or any other event or occurrence prior to the Transfer Date and which the Transferee may incur in relation to any contract of employment or collective agreement concerning one or more of the Relevant Employees pursuant to the provisions of the Transfer Regulations or otherwise including, without limitation, any such matter relating to or arising out of:

- (i) the Transferor's rights, powers, duties and/or liabilities (including, without limitation, any Taxation) under or in connection with any such contract of employment or collective agreement, which rights, powers, duties and/or liabilities (as the case may be) are or will be transferred to the Transferee in accordance with the Transfer Regulations; or
 - (ii) anything done or omitted before the Transfer Date by or in relation to the Transferor in respect of any such contract of employment or collective agreement or any Relevant Employee, which is deemed by the Transfer Regulations to have been done or omitted by or in relation to the Transferee save where the thing done or omitted to be done before the Transfer Date relates to the Transferee's failure to comply with its obligations referred to in clause 7.4;
- (d) if any contract of employment or collective agreement which is neither disclosed in writing to the Transferee by the Transferor prior to the Transfer Date nor made available to the Authority under Schedule 15.3 (Handover Package) of the Services Agreement prior to the Transfer Date shall have effect as if originally made between the Transferee and any employee ("**the Undisclosed Employee**") or a trade union or employee representatives as a result of the provisions of the Transfer Regulations (without prejudice to any other right or remedy which may be available to the Transferee):
- (i) the Transferee may, upon becoming aware of the application of the Transfer Regulations to any such contract of employment or collective agreement terminate such contract or agreement forthwith;
 - (ii) the Transferor shall indemnify the Transferee against each and every action, proceeding, cost, claim, liability (including, without limitation, any Taxation), expense (including, without limitation, reasonable legal fees) or demand relating to or arising out of such termination and reimburse the Transferee for all costs and expenses (including, without limitation, any Taxation) incurred in employing such employee in respect of his employment following the Transfer Date; and
 - (iii) the Transferor shall indemnify the Transferee in respect of any Undisclosed Employee on the same terms mutatis mutandis as the Transferor has indemnified the Transferee in respect of a Relevant Employee pursuant to the terms of clauses 7.1(b) and 7.1(c); and
- (e) the Transferor shall indemnify the Transferee and keep the Transferee indemnified against each and every action, proceeding, cost, claim, liability (including without limitation, any Taxation) expense (including, without limitation, reasonable legal fees) or demand which relates to or arises out of any dismissal (including, without limitation, constructive dismissal) by the Transferor of any employee (not being a Relevant Employee) and which the Transferee may incur pursuant to the provisions of the Transfer Regulations.

Transferee's Indemnities

- 7.2 The Transferee shall indemnify the Transferor and keep the Transferor indemnified against each and every action, proceeding, liability (including, without limitation, any Taxation), cost, claim, loss, expense (including reasonable legal fees) and demand arising out of or in connection with:
- (a) any substantial change in the working conditions of the Relevant Employees to the detriment of any or all of them occurring on or after the Transfer Date;
 - (b) the change of employer occurring by virtue of the Transfer Regulations and/or this Agreement being significant and detrimental to any of the Relevant Employees;
 - (c) the employment by the Transferee on or after the Transfer Date of any of the Relevant Employees other than on terms (including terms relating to any occupational pension scheme) at least as good as those enjoyed prior to the Transfer Date or the termination of the employment of any of them on or after the Transfer Date; or
 - (d) any claim by any Relevant Employee (whether in contract or in tort or under statute (including the Treaty of the European Community or European Union and any Directives made under the Authority of any such Treaty or any successor thereof)) for any remedy (including, without limitation, for unfair

dismissal, redundancy, statutory redundancy, equal pay, sex or race discrimination) as a result of any act or omission by the Transferee after the Transfer Date.

- 7.3 The Transferee shall indemnify the Transferor and keep the Transferor indemnified against each and every action, proceeding, liability, cost, claim, loss, expense (including reasonable legal fees) and demand which arises as a result of it not providing or not having provided, in accordance with its obligations under the Transfer Regulations, the Transferor in writing with such information and at such time as will enable the Transferor to carry out its duties under Regulation 10(2)(d) and 10(6) of the Transfer Regulations concerning measures envisaged by the Transferee in relation to the Relevant Employees.

Details of Relevant Employees

- 7.4 The Transferor warrants to the Transferee that it has (to the extent not made available to the Authority under Schedule 15.4 (Provisions Applying on and after Termination) of the Services Agreement prior to the Transfer Date) provided the Transferee prior to the Transfer Date with full particulars of:
- (a) each Relevant Employee, including name, sex, and the date on which continuity of employment began for each Relevant Employee for statutory purposes;
 - (b) terms and conditions of employment of each such person;
 - (c) all payments, benefits or changes to terms and conditions of employment promised to any such person;
 - (d) dismissals of Relevant Employees or termination of employment effected within 12 months prior to the Transfer Date including the Transfer Date;
 - (e) all agreements or arrangements entered into in relation to the Relevant Employees between the Transferor, any Affiliate of the Transferor or any other relevant employer and any trade union or association of trade unions or organisation or body of employees including employee representatives and elected representatives; and
 - (f) all strikes or other industrial action taken by any Relevant Employee within 12 months prior to the Transfer Date including the Transfer Date.
- 7.5 The Transferor and Transferee shall deliver to each of the Relevant Employees letters in an agreed form from the Transferor and Transferee as soon as is practicable after the execution of this Agreement (to the extent not already delivered prior to the Transfer Date).

8. Miscellaneous Provisions

Variations in Writing

- 8.1 No variation of this Agreement shall be effective unless in writing and signed by duly authorised representatives of the parties.

Partial Invalidity

- 8.2 If any provision in this Agreement shall be held to be void, illegal, invalid or unenforceable, in whole or in part, under any enactment or rule of law, such provision or part shall to that extent be deemed not to form part of this Agreement but the legality, validity and enforceability of the remainder of this Agreement shall not be affected.

Further Assurance

- 8.3 Each of the parties agrees to execute and deliver all such further instruments and do and perform all such further acts and things as shall be necessary or expedient for the carrying out of the provisions of this Agreement.

Notices

8.4 Any notice or other communication requiring to be given or served under or in connection with this Agreement shall be in writing and shall be sufficiently given or served if delivered or sent to the registered office of the recipient or:

(a) in the case of the Transferor to [name of Transferor] at:

[address]

[fax]

Attention: [name]

(a) in the case of the Transferee to [name of Transferee] at:

[address]

[fax]

Attention: [name]

8.5 Any such notice or other communication shall be delivered by hand or sent by courier, fax or prepaid first class post. If sent by courier or fax such notice or communication shall conclusively be deemed to have been given or served at the time of despatch. If sent by post such notice or communication shall conclusively be deemed to have been received two business days from the time of posting.

Governing Law

8.8 This Agreement shall be governed by and construed in accordance with the laws of Scotland and the parties irrevocably agree that the courts of Scotland are to have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement.

In Witness whereof the parties hereto have executed this Agreement consisting of this and the preceding [] pages and the schedule annexed and executed as relative hereto as follows: -

Signed for and on behalf of TRANSFEROR

At

On the day of 20[xx]

By

..... Director

..... Full Name (Printed)

Before this witness:-

..... Witness

..... Full Name

..... Address

.....

Signed for and on behalf of TRANSFEREE

At

On the day of 20[xx]

By

..... Director

..... Full Name (Printed)

Before this witness:-

..... Witness

..... Full Name

..... Address

.....

SCHEDULE

This is the Schedule referred to in the foregoing Supplemental Agreement between [] and []

NET ASSET STATEMENT

The Net Asset Statement shall be drawn up (except to the extent otherwise agreed by the Transferor and the Transferee) in accordance with accounting principles generally accepted in the United Kingdom and such that the Transferring Assets and Liabilities are valued on the following basis:

1. Rights and liabilities relating to an obligation of carriage under the terms of any Fare shall be valued in accordance with the following formula:

$$(C - D) \times \frac{A}{B} + E$$

where:

C equals the Credit (exclusive of any Valued Added Tax) received by the Transferor in respect of the Fare provided that:

- (a) such Credit shall be deemed not to include any reduction in respect of a discount allowed to the purchaser of the Fare pursuant to the Guest's Charter or any other guest's charter of the Transferor;
- (b) if the Fare is a Season Ticket Fare, such Credit shall be the New Credit (as defined in the Ticketing and Settlement Agreement) relating to that Season Ticket Fare on the Transfer Date if different to the Credit that was in fact received by the Transferor in respect of such Season Ticket Fare;
- (c) such Credit shall be net of any Private Settlement Credit (as defined in the Ticketing and Settlement Agreement) arising in respect of that Fare; and
- (d) such Credit shall be deemed to exclude any Credit received by the Transferor in respect of any commission due to it in respect of the sale of such Fare (provided that for these purposes the amount of such commission shall not exceed the National Standard Rate of Commission (as defined in the Ticketing and Settlement Agreement) in respect of the Fare);

D equals the Debit (exclusive of any Value Added Tax) received by the Transferor in respect of the commission due in respect of the sale of the Fare (provided that for these purposes the amount of such commission shall not exceed the National Standard Rate of Commission (as defined in the Ticketing and Settlement Agreement) in respect of the Fare);

$\frac{A}{B}$

equals:

- (a) in the case of a Season Ticket Fare, the number of journeys which the purchaser of the Fare is estimated to make from (and including) the Transfer Date to (and including) the last day on which the Fare is valid (including any extensions to its original period of validity) divided by the total number of journeys which the purchaser of the Fare is estimated to make with that Fare (as determined in each case in accordance with Schedule 28 of the Ticketing and Settlement Agreement);
- (b) in the case of any other Fare which entitles the holder thereof to make more than two journeys, the number of days for which the Fare continues to be valid after the Transfer Date (including any extensions to its original period of validity) divided by the total number of days for which such Fare is valid on issue (except to the extent that it can reasonably be estimated what

proportion of the journeys which could be made on issue of the Fare have not been made prior to the Transfer Date); or

(c) in the case of any other Fare, zero; and

E equals, if $\frac{A}{B}$ is greater than zero:

the amount of any discount to which it can be reasonably estimated that the purchaser of the Fare would be entitled pursuant to the Guest's Charter or any other guest's charter of the Transferor on purchasing an equivalent Fare on the expiry of the relevant Fare;

and for these purposes a Credit or Debit shall be deemed to be received when the relevant Fare is Accepted for Clearing (as defined in the Ticketing and Settlement Agreement).

2. Rights and liabilities relating to an Excess Fare, Reservation or Upgrade (as such terms are defined in the Ticketing and Settlement Agreement) shall be valued at zero unless such Excess Fare, Reservation or Upgrade involves more than two journeys, in which case they shall be valued in accordance with paragraph 1 and references to Fare in paragraph 1 shall be construed accordingly.
3. Rights and liabilities under a Discount Card shall be valued in accordance with the following formula:

$$(C - D) \times \frac{A}{B}$$

where:

- C equals the Credit (exclusive of any Value Added Tax) received by the Transferor in respect of the Discount Card;
- D equals the Debit (exclusive of any Value Added Tax) received by the Transferor in respect of the commission due in respect of the sale of the Discount Card (provided that for these purposes the amount of such commission shall not exceed the National Standard Rate of Commission (as defined in the Ticketing and Settlement Agreement) in respect of the Discount Card); and
- $\frac{A}{B}$ equals the number of days for which the Discount Card continues to be valid after the Transfer Date (including any extensions to its original period of validity) divided by the total number of days for which such Discount Card is valid on issue, or in the case of any Discount Card listed in Schedules 12 or 39 of the Ticketing and Settlement Agreement on the Commencement Date, zero;

and for these purposes a Credit or Debit shall be deemed to be received when the relevant Discount Card is Accepted for Clearing (as defined in the Ticketing and Settlement Agreement).

4. Relevant Debits and Credits shall be valued at the full amount of such Debits and Credits (inclusive of any Value Added Tax) but excluding any Debits and Credits arising in respect of Adjustment Amounts (as defined in the Ticketing and Settlement Agreement) which are received by the Transferee in respect of a change to the Credit which is used to value any relevant Season Ticket Fare under paragraph 1 of this Schedule to the extent such Adjustment Amounts relate to a period after the Transfer Date.
5. Rights and liabilities in respect of any contract, lease, licence or other equivalent arrangement (excluding rights and liabilities valued under paragraphs 1 to 4) shall be valued at nil except to the extent that the relevant rights and liabilities include matters specified in the left hand column of the following table, which shall be valued on the basis specified in the right hand column of the following table:

Rights and Liabilities	Value
Any accrued rights to receive payment	Monetary amounts so accrued, subject to any provision being made for payment not being received from any other person
Any right to receive payment in respect of goods and/or services provided by the Transferor prior to the Transfer Date where the due date for such payment is after the Transfer Date	Amount payable under such contract, lease, licence or other equivalent arrangement for the goods and/or services so provided by the Transferor, subject to any provision being made for payment not being received from any other person
Any accrued liabilities to make payment	Monetary amounts so accrued
Any liability to make payment in respect of goods and/or services provided to the Transferor prior to the Transfer Date where the due date for such payment is after the Transfer Date	Amount payable under such contract, lease, licence or other equivalent arrangement for the goods and/or services provided to the Transferor.
Any rights in respect of which payment has already been made by the Transferor	Monetary amounts so paid, subject to any provision being made for such rights not being exercisable against any other person
Any liabilities in respect of which payment has already been received by the Transferor	Monetary amounts so received
Any liability resulting from any breach of or failure by the Transferor to comply with the terms of any such contract, lease, licence or other equivalent arrangement	Amount of such liability or, to the extent that such amount is not ascertained, the parties reasonable estimate of the amount of such liability

6. The Stored Credit Balance held by CSL at the Transfer Date shall be valued at the monetary amount so held.
7. Any other property, rights or liabilities shall be valued on the basis of a willing vendor and purchaser and ongoing usage within the railway industry.

.....

Transferor (Director)

.....

Transferee (Director)

SCHEDULE 15.5

THIS IS SCHEDULE 15.5 REFERRED TO IN THE FOREGOING CALEDONIAN SLEEPER GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND CALEDONIAN SLEEPER LIMITED

Employment exit provisions

1. Employment regulations exit provisions

- 1.1 The Authority and CSL acknowledge that subsequent to the commencement of the provision of the Operator Services, the identity of the provider of the Operator Services (or any part of the Guest Services) may change (whether as a result of termination or partial termination of this Agreement or otherwise) resulting in the Operator Services being undertaken by a Successor Operator. Such change in the identity of the supplier of such services may constitute a transfer to which the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) ("**the Employment Regulations**") as amended or replaced or any other regulations implementing the Acquired Rights Directive will apply ("**a Relevant Transfer**"). The Authority and CSL further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between CSL and those employees of CSL to whom the Employment Regulations will apply ("**the Transferring Supplier Employees**") at the time of the Relevant Transfer (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Relevant Transfer date as if originally made between Successor Operator and each such Transferring Supplier Employee.
- 1.2 CSL shall comply with all its obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (and including) the Relevant Transfer date and shall perform and discharge all its obligations in respect of all the Transferring Supplier Employees arising in respect of the period up to (and including) the Relevant Transfer date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period ending on (and including) the Relevant Transfer date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) CSL; and (ii) the Successor Operator.
- 1.3 Subject to paragraph 1.4, CSL shall indemnify the Authority and/or the Successor Operator against any Employee Liabilities in respect of any Transferring Supplier Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
- (a) any act or omission of CSL whether occurring before, on or after the Relevant Transfer date;
 - (b) the breach or non-observance by CSL occurring on or before the Relevant Transfer date of:
 - (i) any collective agreement applicable to the Transferring Supplier Employees; and/or
 - (ii) any other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees which CSL is contractually bound to honour;
 - (c) any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by CSL to comply with any legal obligation to such trade union, body or person arising on or before the Relevant Transfer date;

- (d) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (i) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Relevant Transfer date; and
 - (ii) in relation to any employee who is not a Transferring Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from CSL to the Authority and/or Successor Operator, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Relevant Transfer date;
 - (e) a failure of CSL to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period up to (and including) the Relevant Transfer date);
 - (f) any claim made by or in respect of any person employed or formerly employed by CSL other than a Transferring Supplier Employee for whom it is alleged the Authority and/or the Successor Operator may be liable by virtue of this Agreement and/or the Employment Regulations; and
 - (g) any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of CSL in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Authority and/or Successor Operator to comply with regulation 13(4) of the Employment Regulations.
- 1.4 The indemnities in paragraph 1.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Successor Operator whether occurring or having its origin before, on or after the Relevant Transfer date, including any Employee Liabilities:
- (a) arising out of the resignation of any Transferring Supplier Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Successor Operator to occur in the period on or after the Relevant Transfer date); or
 - (b) arising from the Successor Operator's failure to comply with its obligations under the Employment Regulations.
- 1.5 If any person who is not a Transferring Supplier Employee claims, or it is determined in relation to any person who is not a Transferring Supplier Employee, that his/her contract of employment has been transferred from CSL to the Successor Operator pursuant to the Employment Regulations, then:
- (a) the Authority shall procure that the Successor Operator shall within five Working Days of becoming aware of that fact, give notice in writing to CSL; and
 - (b) CSL may offer employment to such person within 15 Working Days of the notification by the Successor Operator or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.
- 1.6 If such offer is accepted, or if the situation has otherwise been resolved by CSL, the Authority shall procure that the Successor Operator shall, immediately release or procure the release of the person from his/her employment or alleged employment.

- 1.7 If after the 15 Working Day period specified in paragraph (a) has elapsed:
- (a) no such offer of employment has been made;
 - (b) such offer has been made but not accepted; or
 - (c) the situation has not otherwise been resolved;
- the Authority shall advise the Successor Operator that it may within five Working Days give notice to terminate the employment or alleged employment of such person.
- 1.8 Subject to the Successor Operator acting in accordance with the provisions of paragraph 1.5 to paragraph 1.7, and in accordance with all applicable proper employment procedures set out in applicable Law, CSL shall indemnify the Successor Operator against all Employee Liabilities arising out of the termination pursuant to the provisions of clause 1.7 provided that the Successor Operator takes all reasonable steps to minimise any such Employee Liabilities.
- 1.9 The indemnity in paragraph 1.8:
- (a) shall not apply to:
 - (i) in any case in relation to any alleged act or omission of the Successor Operator any claim for: (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees; or
 - (ii) any claim that the termination of employment was unfair because the Successor Operator neglected to follow a fair dismissal procedure; and
 - (b) shall apply only where the notification referred to in paragraph (a) is made by the Successor Operator to CSL within six months of the Relevant Transfer date.
- 1.10 If any such person as is described in paragraph 1.5 is neither re-employed by CSL nor dismissed by the Successor Operator within the time scales set out in paragraph 1.5 to paragraph 1.7, such person shall be treated as a Transferring Supplier Employee and the Successor Operator shall comply with such obligations as may be imposed upon it under applicable Law.
- 1.11 CSL shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of the Transferring Supplier Employees before and on the Relevant Transfer date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (and including) the Relevant Transfer date) and any necessary apportionments in respect of any periodic payments shall be made between:
- (a) CSL; and
 - (b) Successor Operator.
- 1.12 CSL shall promptly provide to the Authority and any Successor Operator in writing such information as is necessary to enable the Authority, or the Successor Operator to carry out their respective duties under regulation 13 of the Employment Regulations. The Authority shall procure that the Successor Operator shall promptly provide to CSL in writing such information as is necessary to enable CSL to carry out their respective duties under regulation 13 of the Employment Regulations.
- 1.13 Subject to paragraph 1.14, the Authority shall procure that the Successor Operator indemnifies CSL on its own behalf and on behalf of any Successor Operator and its sub-contractors against any Employee Liabilities in respect of each Transferring Supplier Employee (or, where applicable

any employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee) arising from or as a result of:

- (a) any act or omission of the Successor Operator;
- (b) the breach or non-observance by the Successor Operator on or after the Relevant Transfer date of:
 - (i) any collective agreement applicable to the Transferring Supplier Employees; and/or
 - (ii) any custom or practice in respect of any Transferring Supplier Employees which the Successor Operator is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Successor Operator to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer date;
- (d) any proposal by the Successor Operator to change the terms and conditions of employment or working conditions of any Transferring Supplier Employees on or after their transfer to the Successor Operator on the Relevant Transfer date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer date as a result of or for a reason connected to such proposed changes;
- (e) any statement communicated to or action undertaken by the Successor Operator to, or in respect of, any Transferring Supplier Employee on or before the Relevant Transfer date regarding the Relevant Transfer which has not been agreed in advance with CSL in writing;
- (f) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (i) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Relevant Transfer date; and
 - (ii) in relation to any employee who is not a Transferring Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from CSL, to the Successor Operator to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Relevant Transfer date;
- (g) a failure of the Successor Operator to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period from (and including) the Relevant Transfer date; and
- (h) any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Successor Operator in relation to obligations under regulation 13 of the Employment Regulations.

1.14 The indemnities in paragraph 1.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of CSL whether occurring or having its origin before, on or after the Relevant Transfer Date, including any Employee Liabilities arising from the failure by CSL to comply with its obligations under the Employment Regulations.

SCHEDULE 16

THIS IS SCHEDULE 16 REFERRED TO IN THE FOREGOING CALEDONIAN SLEEPER GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND CALEDONIAN SLEEPER LIMITED

Pensions

1. **Operation Sections**

- 1.1 CSL shall, in respect of the Operator Services, participate in, and become the Designated Employer in relation to the Caledonian Sleeper Section of the Railways Pension Scheme (the “**Operation Section**”). Subject to paragraphs 3 and 4.2(b), each employee of an Operator will be offered membership of an Operation Section.
- 1.2 CSL as Designated Employer in relation to the Operation Section shall take such action as is required or directed by SRH and/or the Authority to effect and/or reflect the transfer in or transfer out of members to/from the Operation Section consequent to an aggregation or disaggregation by the Authority of services under the Caledonian Sleeper Operation.

2. **Restrictions on Membership**

- 2.1 CSL will restrict membership of any Operation Section which has adopted the Shared Cost Arrangement to its employees. If an Operation Section has adopted the Defined Contribution Arrangement then, subject to paragraph 4 and to the consent of SRH, membership of that Operation Section may include employees of any subsidiary of CSL which is engaged in the railway industry and which becomes a Participating Employer in that Operation Section.

3. **Closed Schemes**

- 3.1 Subject to any requirements of Her Majesty’s Revenue and Customs, CSL shall take such steps as may be necessary (including entering into any relevant deed of participation) to allow Closed Scheme Employees to continue in membership of the Closed Schemes in accordance with their terms. For the purposes of this paragraph 3:
- (a) “**Closed Scheme Employees**” means such of the employees of CSL who were, immediately prior to the commencement of their employment with CSL, members of any of the Closed Schemes; and
- (b) “**Closed Schemes**” means the British Railways Superannuation Fund, the Great Western Railway Supplemental Pensions Reserve Fund, the BR (1974) Pension Fund and the NFC Retirement Plan.

4. **Variations in benefits and contributions; Investment**

- 4.1 If CSL is considering making a proposal that falls within the scope of paragraphs 4.2(a) to (g) inclusive, it shall promptly consult with the Authority in relation to that proposal prior to putting such a proposal to the Pensions Committee of any Operation Section, the Trustee of the Railways Pension Scheme, or to any trade union. CSL must otherwise consult in good time with the Authority in relation to any proposal falling within the scope of 4.2(a) to (g) inclusive.
- 4.2 Separately and in addition to complying with its obligations under paragraph 4.1, CSL shall not, without the prior written consent of the Authority (which may be given on such terms and subject to such conditions as the Authority thinks fit):
- (a) restructure or change the composition of the earnings of employees of CSL in such a way as to increase the part of those earnings which qualifies as pensionable earnings under the Rules applicable to any Operation Section or take any action (or consent to the taking of any action) which could detrimentally affect the funding of any Operation Section, including varying or

providing different or additional benefits under that Operation Section or promising to do so, unless:

- (i) such change is required by Law; or
- (ii) such change only affects benefits payable in respect of past service of members of that Operation Section and on or prior to the effective date of the change CSL pays an additional cash payment to the Trustee which, in the opinion of the Actuary, meets in full the additional funding cost imposed on that Operation Section; or
- (iii) would not lead to substantial changes in the funding of any Operation Section and is the result of normal application of that Operation Section's Rules in the ordinary day to day running of the business of the Operation, for example, where individual employees are, from time to time, promoted or transferred to a higher paid or different employment which has a different composition of earnings.

- (b) make or consent to any proposal to change the provisions of the Pension Trust in respect of the Operation Sections unless the change is required by Law;
- (c) provide retirement, death, disability or life assurance benefits for or in respect of any of its employees other than under any Operation Sections or as provided in paragraph 3;
- (d) omit to provide the above-mentioned benefits for and in respect of its employees save that, without prejudice to any rights which any such employee may otherwise have, CSL shall not be obliged for the purposes of this Agreement to offer such benefits to any employee employed on a fixed term contract of 12 months or less;(e)take any action (or consent to the taking of any action) which could affect the contributions payable by Participating Employers under any Operation Section, including (but not limited to) exercising any discretion allowed to CSL as Designated Employer arising out of any actuarial valuation of an Operation Section, and varying or providing different or additional benefits under the Operation Sections in respect of future service, unless such action is required by Law;
- (f) close an Operation Section to new members; or
- (g) take (or omit to take) any action which could result in any Operation Section being wound up, in whole or in part.

4.3 CSL shall use all reasonable endeavours to procure that the provisions of Clause 5G (Consultation with Pensions Committees) of the Pension Trust are amended such that they do not apply in respect of any Operation Section.

4.4 CSL shall consult with the Authority on:

- (a) any proposal made by the Trustee or Pensions Committee to change the statement of investment principles applicable to any Operation Section; and/or
- (b) any proposal to alter the rate of contributions payable by CSL or its employees under a new schedule of contributions for the Operation Section.

4.5 With respect to any proposal falling within the scope of paragraph 4.4(a) or 4.4(b), CSL shall also consult with the Trustee on the basis of any response it receives from the Authority in relation to any such proposal.

5. **Initial Transfer Value**

5.1 CSL, SRH and the Authority acknowledge that, if for the purposes of this Agreement, under the terms of the Railways Pension Scheme, a transfer payment is made to an Operation Section from another section of the Railways Pension Scheme in relation to Protected Persons, as defined under the Railway Pensions (Protection and Designation of Schemes) Order 1994, who had accrued benefits in

such other section prior to the Commencement Date and who become members of that Operation Section, article 7(4) of that Order shall apply.

6. Funding Liabilities

- 6.1 CSL shall pay the employer contributions required under the schedule of contributions applicable to each Operation Section (and any of the Closed Schemes in which it participates) in respect of the Term subject to the provisions of paragraph 6.2 below.
- 6.2 Where, during the Term, Operator Services are aggregated or disaggregated by the Authority (for example, as a result of remapping) and, as a consequence, an Operation Section of which CSL is the Designated Employer is required to accept a transfer in or to make a transfer out of members, the Authority shall ensure that CSL has no liability for any resulting deterioration immediately arising in the funding level of the Operation Section measured in accordance with the Operation Sections' technical provisions in Part 3 of the Pensions Act 2004 or for any amount arising under article 7(4) of the Railways Pensions (Protection and Designation of Schemes) Order 1994. Notwithstanding the above, the Authority shall have no liability for any future deterioration in the funding levels of the Operation Section linked to such transfer in or out of members.

7. Discharge of obligations

- 7.1 The Authority and/or SRH may at any time during the Term seek information from the Trustee with a view to satisfying itself that CSL and the other Participating Employers (if any) have fully discharged their respective obligations under the Railways Pension Scheme, including (but not limited to) their obligations in respect of the payment of contributions to any Operation Section.
- 7.2 CSL shall, at its expense, promptly provide such information in relation to any Operation Section, including (but not limited to) actuarial advice and information, as the Authority and/or SRH may from time to time request and shall authorise and consent to the Trustee doing so.
- 7.3 CSL shall use all reasonable endeavours to provide to the Authority and/or SRH:
- (a) within 1 month of the expiry of each Operator Year; and
 - (b) at other times as soon as practicable following a request by the Authority and/or SRH,

a certificate signed by the Trustee stating either that CSL and each of the other Participating Employers (if any) has fully complied with its obligations under the Railways Pension Scheme, including (but not limited to) its obligation to contribute to the Operation Sections or, if it or any of them has not so complied, stating the extent to which it has not (or they have not) done so. Where the certificate is given pursuant to paragraph 7.3(a), it shall cover the relevant Operator Year; where the certificate has been given pursuant to paragraph 7.3(b), it shall cover such period as the Authority and/or SRH shall specify.

- 7.4 If the Trustee does not certify that CSL or any other Participating Employer has fully complied with its obligations under the Railways Pension Scheme or if the Authority and/or SRH otherwise reasonably considers that CSL or any other Participating Employer has not complied with such obligations, SRH shall be entitled to withhold (and the Authority shall be entitled to instruct SRH to withhold) from any Grant Payments payable by SRH under Schedule 8 (*Grant Payments*) an amount which is, in the opinion of the Authority and/or SRH (as the case may be), no greater than the amount of any contribution that CSL or such Participating Employer has thereby failed to make or avoided making.
- 7.5 SRH may withhold such amount until such time as it and/or the Authority reasonably determines that the relevant contributions have been made in full by CSL or such Participating Employer. Following that determination, the amount withheld shall become payable (without interest) on the next day on which a Grant Payment becomes payable under Schedule 8 (*Grant Payments*), being a day which falls no less than 7 days after such determination or, if there is no such day, 14 days after the date of such determination. To the extent that the Authority and/or SRH has not so determined within 4 weeks after the expiry of the Operation Period, CSL's right to receive the amount so withheld under this Agreement shall lapse and SRH shall not be obliged to pay such amount.

7.6 The Authority shall at the end of the Term ensure that CSL has no liability for any deficit in Operation Section (other than for contributions due and payable by CSL to the Operation Section for any period prior to the end of the Term) and CSL shall have no right to or to benefit from any surplus which may exist in the Operation Section. For the avoidance of doubt this paragraph 7.6 shall apply where the Operator Services are either aggregated or disaggregated (for example, as a result of remapping).

8. Definitions

8.1 Unless otherwise defined in this Agreement, terms defined in this Schedule 16 shall have the meanings ascribed to them in the Railways Pension Scheme.

9. CSL obligations to participate in any Investigation and reform

9.1 In this paragraph 9:

- (a) **“Investigation”** means an investigation by The Pensions Regulator into the possible use of its powers under Section 231 of the Pensions Act 2004 in relation to a section of the Railways Pension Scheme which has as its designated employer CSL or another Participating Employer; and
- (b) **“Reasonable Commercial Manner”** means acting in the long-term interests of the Caledonian Sleeper franchise taking into account the long-term affordability, sustainability and financial robustness of the Operation Section(s) as if CSL and its employees (as appropriate) were solely responsible for the funding of the Operation Section(s) and, at all times, disregarding the actual allocation of cost risk as between CSL and SRH in this Agreement.

9.2 CSL shall:

- (a) act in good faith and in a Reasonable Commercial Manner at all times; and
- (b) engage appropriately with the Trustee, the RDG, The Pensions Regulator and the relevant trade unions, in discharging its obligations under paragraph 9.3 of this Schedule 16.

9.3 CSL shall take all reasonable steps to participate in:

- (a) the development and implementation of the RDG’s response to the current Investigation and the associated concerns raised by The Pensions Regulator regarding those sections of the Railways Pension Scheme for which a Participating Employer is the designated employer;
- (b) any Investigation concerning one or more of the Operation Sections, in which case CSL shall use all reasonable endeavours to achieve an outcome from that Investigation with which a reasonable franchisee, who was in the position of CSL and acting in a Reasonable Commercial Manner, would be satisfied; and
- (c) any industry wide efforts to reform the pension arrangements or benefits payable under the Railways Pension Scheme or offered to employees of Participating Employers, recognising the need for the British guest rail industry to be affordable and offer value for money in the interests of relevant stakeholders including taxpayers.

10. Information Powers

10.1 Where required by the Authority and/or SRH, CSL agrees to allow the Authority and/or SRH or the Authority’s and/or SRH’s representatives to attend any meeting between CSL and the Trustee and/or the RDG and/or The Pensions Regulator where the meeting in whole or part relates to matters to which paragraph 9 of this Schedule 16 applies.

SCHEDULE 17

THIS IS SCHEDULE 17 REFERRED TO IN THE FOREGOING CALEDONIAN SLEEPER GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND CALEDONIAN SLEEPER LIMITED

Confidentiality, FOISA and Data Protection

1. Confidentiality

1.1 Subject to the provisions of the Act, the Transport Act, the Railways Act 2005 and the terms of this Schedule 17, each party shall hold in confidence all Confidential Information and shall not, except with the disclosing party's written authority:

- (a) Publish or otherwise disclose the same otherwise than as expressly provided for in this Agreement; or
- (b) use for any purpose other than as required pursuant to the terms of this Agreement unless or until the recipient party can demonstrate that any such document, material or information is in the public domain through no fault of its own and through no contravention of this Agreement, whereupon to the extent that it is in the public domain this obligation shall cease.

2. Disclosure of Confidential Information

Each party may disclose Confidential Information acquired by it under or pursuant to this Agreement without the prior written consent of the disclosing party if such disclosure is made in good faith by the recipient party:

- 2.1 to any Affiliate of such party (including, without limitation, to another party to this Agreement);
- 2.2 to any Associate of such party, upon obtaining from such Associate an undertaking of confidentiality equivalent to that contained in paragraph 1 of this Schedule 17;
- 2.3 to any third party consultants or advisers engaged by or on behalf of such party and acting in that capacity, upon obtaining from such consultants or advisers an undertaking of confidentiality equivalent to that contained in paragraph 1;
- 2.4 to any lenders, security trustee, bank or other financial institution (and its or their advisers) from which such party is seeking or obtaining finance, upon obtaining from any such person an undertaking of confidentiality equivalent to that contained in paragraph 1;
- 2.5 to the extent required by Law or pursuant to an order of any court of competent jurisdiction or under the Dispute Resolution Rules or the rules of any other dispute resolution procedures to which a dispute is referred in accordance with this Agreement or the rules of a recognised stock exchange or a formal or informal request of any taxation authority;
- 2.6 to any insurer, upon obtaining from such insurer an undertaking of confidentiality equivalent to that contained in paragraph 1;
- 2.7 to any director, employee or officer of such party, to the extent necessary to enable such party to perform its obligations under this Agreement or to protect or enforce its rights under this Agreement;
- 2.8 by CSL to the ORR, the Passengers' Council or a Local Authority;
- 2.9 by SRH to any department or officer of the Scottish Government or to the ORR; and/or
- 2.10 by the Authority to any department or officer of the Scottish Government, or to the ORR, or such other party as required to comply with Law.

3. **Publication of Certain Information by the Authority**

3.1 Notwithstanding the provisions of paragraph 1, and at all times subject to applicable Data Protection Laws the Authority may Publish whether to the press, the public or to one or more individuals, companies or other bodies, (including to any prospective Successor Operator) in such form and at such times as it sees fit, the following (irrespective of whether the same was provided to the Authority by SRH, CSL and/or a third party):

- (a) the amount of any Grant Payments payable under this Agreement and the aggregate amount of Grant Payments paid in each year under this Agreement;
- (b) such information as the Authority may consider reasonably necessary to Publish in connection with any Closure or proposed Closure;
- (c) any Guest's Charter Statistics and the amount of any payments by CSL under the Guest's Charter;
- (d) such information as may reasonably be required in connection with the retendering or reletting of the franchise or any part thereof, provided that such information may only be published during the period of, or during the period leading up to, such retendering or reletting;
- (e) each summary, information, notification or similar and any reports and accounts delivered to the Authority under or in connection with this Agreement, the Franchise Agreement and/or the Financial Memorandum;
- (f) the results of any monitoring or measurement of the performance of CSL in the provision of the Operator Services;
- (g) the results, on a Service Group, Sector, Route, station or other comparable basis, of any calculation of guest numbers under Schedule 1.5 (*Information about Guests*);
- (h) the results of any survey under Schedule 1.5;
- (i) the results of any assessment or inspection in connection with this Agreement;
- (j) details of CSL's plans and performance in respect of safety;
- (k) such information as may reasonably require to be Published in connection with Schedule 3 (*Priced Options*);
- (l) such information as the Authority may reasonably require to include in any annual report in respect of SRH, CSL and/or the Caledonian Sleeper Operation; and
- (m) such information as the Authority may reasonably require to Publish at or around the expiry or possible termination of this Agreement in order to secure continuity of the provision and operation of the Operator Services.

3.2 Notwithstanding any other provision of this Schedule 17, the Authority in respect of the Operator Services may Publish any other information relating to SRH and/or CSL if the Authority has previously notified SRH and SRH does not object to such publication and demonstrate to the reasonable satisfaction of the Authority within 14 days of such notification that the publication of such information would be materially detrimental to the Caledonian Sleeper Operation.

4. **Publication of Certain Information by SRH**

4.1 Notwithstanding the provisions of paragraph 1, and at all times subject to applicable Data Protection Laws, SRH may Publish whether to the press, the public or to one or more individuals, companies or other bodies, (including to any prospective Successor Operator) in such form and at such times as

agreed by SRH with the Authority in writing and in advance, the following (irrespective of whether the same was provided to SRH by CSL and/or a third party):

- (a) the amount of any Grant Payments payable under this Agreement and the aggregate amount of Grant Payments paid in each year under this Agreement;
- (b) such information as SRH may consider reasonably necessary to Publish in connection with the performance of its functions in relation to any Closure or proposed Closure;
- (c) any Guest's Charter Statistics and the amount of any payments by CSL under the Guest's Charter;
- (d) any reports and accounts delivered to SRH under Schedule 13 (*Operation Management and Information Obligations*);
- (e) the results of any monitoring or measurement of the performance of CSL in the provision of Operator Services;
- (f) the results, on a Service Group, Sector, Route, station or other comparable basis, of any calculation of guest numbers under Schedule 1.5 (*Information about Guests*);
- (g) the results of any survey under Schedule 1.5;
- (h) the results of any assessment or inspection under Schedule 11;
- (i) details of CSL's plans and performance in respect of safety;
- (j) such information as SRH may reasonably require to include in its annual report in respect of CSL; and
- (k) each summary, information, notification or similar received by SRH in connection with Schedule 5.3 (*Fares Regulation Information and Monitoring*).

5. FOISA and EIRs

- 5.1. Each party acknowledges that each party is subject to the requirements of the FOISA and the EIRs and may require to disclose data or information in relation to this Agreement pursuant to the provisions of the FOISA and the EIRs.
- 5.2. Where a party receives a written Request for Information which is covered by the FOISA or the EIRs and which relates to any Confidential Information of another party (the "**Requested Information**") each party shall comply with the procedure set out in paragraphs 5.2(a) to 5.2(f):
 - (a) the party who receives the request ("**Request Receiver**") shall before making any disclosure of the Requested Information and as soon as reasonably practicable after receiving the Request for Information notify the other parties ("**Other Parties**") of the receipt of such request for information and of the nature and extent of the information covered by the Request for Information;
 - (b) following receipt of notification under paragraph 5.2(a), the Other Parties may make representations in writing the Request Receiver as to whether and on what basis the Requested Information is covered by any exemption in the FOISA or the EIRs and should not therefore be disclosed, including where relevant any representations as to the balance of the public interests in disclosure and nondisclosure;
 - (c) the Request Receiver shall reasonably consider any representations made by the Other Parties under paragraph 5.2(b) before reaching a decision on whether it must and shall disclose the Requested Information. However, each party acknowledges that in all cases it is for the Request Receiver (having full regard to any guidance or codes of practice issued by the Scottish Information Commissioner or the Scottish

Government) to determine whether it is obliged to disclose the Requested Information under the FOISA or the EIRs including where the public interest lies in relation to disclosure;

- (d) notwithstanding paragraph 5.2(a) the Request Receiver shall not notify the Other Parties under paragraph 5.2(a) where the Request Receiver has already decided that it does not intend to disclose the Requested Information because the FOISA or the EIRs do not apply to the Request for Information or an exemption under the FOISA or the EIRs can be applied provided that should the Receiving Party determine at a later date that the FOISA or the EIRs do apply to the Requested Information, the process set out in this paragraph 5.2 shall be applied;
- (e) if the Request Receiver takes a decision to disclose the Requested Information, it shall notify the Other Parties of this decision not less than 5 Weekdays in advance of the disclosure being made; and
- (f) for the avoidance of doubt, references to the Requested Information under this paragraph 5.2 shall include both queries as to whether Confidential Information exists and requests for the disclosure of Confidential Information.

5.3 Without prejudice to the specific provisions above, each party shall co-operate and aid each other so as to enable them to meet their obligations under the FOISA or the EIRs or any successor legislation. Where a party receives a Request for Information then such co-operation shall include without limitation the provision of the Requested Information to the Request Receiver within a reasonable timescale to enable the Request Receiver to comply with the Request for Information within the timescales required by the FOISA or the EIRs provided that, and solely to the extent that, the Requested Information is not otherwise in the possession of the Request Receiver.

6. **Service Development Information**

Nothing in this Schedule 17 shall be deemed to prohibit, prevent or hinder, or render any party liable for, the disclosure by any party to Network Rail, the ORR, other Train Operators, any operators of services for the carriage of goods by rail, or any Stakeholder of any information relating to the development of the Service Level Commitments in accordance with Schedule 1.1 (*Service Development*).

7. **Publication by the Authority and SRH**

Nothing in this Schedule 17 shall be deemed to prohibit, prevent or hinder, or render the Authority and/or SRH liable for, the disclosure of any information by the Authority and/or SRH to the ORR, the Parliamentary Commissioner for Administration, a Minister of the Crown, any department of the government of the United Kingdom, the Scottish Parliament, the Scottish Government, the National Assembly of Wales, Network Rail and Visit Scotland, the Mayor of London, Greater London Authority or any department or officer of any of them or of information which is otherwise disclosed for the purpose of facilitating the carrying out of its functions.

8. **Provision of Information to ORR**

CSL hereby authorises the Authority and SRH to provide to the ORR, to the extent so requested by the ORR, such information as may be provided to the Authority and SRH in relation to CSL under this Agreement.

9. **Disclosure by Comptroller and Auditor General and Others**

The parties recognise:

9.1 that the Comptroller and Auditor General may in pursuance of his functions under the Exchequer and Audit Department Act 1921, the National Audit Act 1983 and the Government Resources and Accounts Act 2000, disclose information which he has obtained pursuant to those acts and which a party to this Agreement would not be able to disclose otherwise than under this Schedule 17;

- 9.2 the provisions of the Public Finance and Accountability (Scotland) Act 2000 and the Local Government in Scotland Act 2003 in respect of best value; and
- 9.3 that the Accounts Commission for Scotland, Audit Scotland and the Auditor General may in pursuance of their functions under the Public Finance and Accountability (Scotland) Act 2000, the Local Government in Scotland Act 2003 and the Local Government (Scotland) Act 1973 disclose information which they have obtained pursuant to those Acts and which a party to this Agreement would not be able to disclose otherwise than under this Schedule 17.
10. **Data Protection**
- 10.1 This paragraph 10 of this Schedule 17 governs the overall relationship of the parties in relation to:
- (a) the sharing of personal data among or between the parties;
 - (b) sets out the procedure for agreement, review and variation of Data Sharing Details; and
 - (c) sets out the procedure for review and variation of this paragraph 10.
- 10.2 If there is any conflict or ambiguity between this paragraph 10 or an Agreed Data Sharing Form, a term contained in the Agreed Data Sharing Form shall have priority over one contained in this paragraph 10.

Initial Data Sharing Details

- 10.3 The Initial Data Sharing Details will apply among the parties from the Commencement Date and shall continue to apply unless and until amended and/or terminated in accordance with paragraph 10.7 below.

Agreement of Data Sharing Terms

- 10.4 Data Sharing Details shall be agreed in the following manner:
- (a) a party shall prepare a draft Data Sharing Form and submit this to the other parties for review and consideration (and the Authority may require SRH and/or CSL to prepare the initial draft upon written request);
 - (b) following receipt of the draft, the parties shall consider, discuss and use all reasonable endeavours to seek to agree the Data Sharing Details proposed in a relevant Data Sharing Form; and
 - (c) the parties shall all sign the draft Data Sharing Form when it is agreed ("**Agreed Data Sharing Form**").
- 10.5 If Data Sharing Details are not agreed within 10 Weekdays of receipt of a draft Data Sharing Form then the relevant Data Sharing Details may be determined by the Authority at its sole discretion. The Authority shall not, however, be obliged to determine any Data Sharing Terms, and in this case, the parties may refer any dispute relating thereto for resolution in accordance with the Dispute Resolution Rules.
- 10.6 Any party may, at any time, submit a draft Data Sharing Form to the other parties for review, but the Data Sharing Details as outlined in the Data Sharing Form will not come into effect until the Data Sharing Form has been agreed in accordance with paragraph 10.4(c) above.
- 10.7 The parties shall review the effectiveness and accuracy of the Data Sharing Details (including the Initial Data Sharing Details) at such times as indicated by the Data Sharing Details, having consideration to the relevant Purpose. The parties shall continue, amend or terminate the Data Sharing Details (including the Initial Data Sharing Details) depending on the outcome of such review.

General Data Sharing Conditions

10.8 The Agreed Data Sharing Form(s) outline the Data Sharing Details (except for the Initial Data Sharing Details which are outlined in Appendix 1 to this Schedule 17).

10.9 Each party:

- (a) shall assist the other parties in complying with all applicable requirements of Data Protection Laws and make all necessary preparations to ensure it will be compliant with the Data Protection Laws;
- (b) shall notify the other parties immediately if it becomes aware of any processing of any personal data that has been made or is likely to be made in breach of the terms of this paragraph 10 or the Data Protection Laws;
- (c) shall maintain complete and accurate records and information to demonstrate its compliance with this paragraph 10 and allow for audits by the other party/parties or the other party's/parties' designated auditor;
- (d) shall ensure that they have in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, such personal data and shall, without prejudice to the generality of the foregoing, comply with the specific security requirements outlined in the Data Sharing Details;
- (e) shall ensure that staff members are appropriately trained to handle and process personal data in accordance with the required technical and organisational security measures together with applicable Data Protection Laws;
- (f) shall ensure that compatible technology in connection with personal data is used, to ensure there is no lack of accuracy resulting from transfers of personal data;
- (g) shall comply with their obligations to respond to data subject access requests and to give effect to other rights of data subjects in accordance with Data Protection Laws;
- (h) shall be responsible for adopting and maintaining a data protection impact assessment relevant to its processing activities in accordance with Data Protection Laws;
- (i) shall provide the other party/ies assistance in complying with all applicable requirements of the Data Protection Laws applicable to personal data breaches, and in particular, each party shall:
 - (i) promptly (and in any case within 72 hours) notify the other party/ties as soon as it becomes aware of a personal data breach or a suspected personal data breach which relates to this Agreement;
 - (ii) carry out an investigation into the personal data breach or a suspected personal data breach, its extent and any parties responsible for the personal data breach. Such investigation should consider if the processes outlined in this Agreement have been compromised or whether this Agreement has been breached. Each party shall provide details of the personal data breach to the other party/ties on request; and
 - (iii) where in receipt of notification from another party in respect of an actual or suspected personal data breach, provide reasonable assistance to that party to ensure the party is able to deal with such actual / suspected personal data breach in an expeditious and compliant manner;
- (j) shall promptly notify the other party/parties of any dispute, claim or query brought by any Supervisory Authority concerning any personal data processed in relation to this Agreement

and shall take into account any comments and representations made by the other party when responding to such dispute, claim or query;

- (k) shall co-operate and provide all reasonable assistance and information to the other party/parties in dealing with any dispute, claim or query brought by any Supervisory Authority in connection with this Agreement, with a view to settling them amicably and in a timely fashion;
- (l) shall not transfer any personal data outside the UK unless it: (i) complies with the provisions of Article 26 of the UK GDPR (in the event the third party is a joint controller); and (ii) ensures that (i) the transfer is to a country approved by the UK Information Commissioner's Office as providing adequate protection pursuant to Article 45 of the UK GDPR; (ii) there are appropriate safeguards in place pursuant to Article 46 of the UK GDPR; or (iii) one of the derogations for specific situations in Article 49 of the UK GDPR applies to the transfer;
- (m) warrants that they and anyone operating on its behalf will comply with this paragraph 10 and the Data Protection Laws and other laws, enactments, regulations, orders, standards and other similar instruments;
- (n) warrants they shall give effect to the rights of data subjects in accordance with Data Protection Laws; and
- (o) warrants they have full power to give the warranties, indemnities and enter into and perform its obligations under and in terms of this paragraph 10.

Data Sharing Conditions for Controllers

- 10.10 This paragraph 10.10 applies when the parties who disclose and receive the relevant personal data are both/all designated as controllers in the Data Sharing Details. Each such designated party shall:
- (a) comply with all the obligations imposed on a controller under the Data Protection Laws;
 - (b) when the receiving party:
 - (i) process the personal data only for the Purpose, unless otherwise required to process such personal data to comply with Law;
 - (ii) give full information to any data subject whose personal data may be processed of the nature such processing (including any sharing) as required by Data Protection Laws;
 - (iii) ensure that they keep received personal data separate from all other data/information held, stored or otherwise processed by or under the control of them; and
 - (iv) without prejudice to paragraph 10.10(a), comply with the access and processing restrictions outlined in the Data Sharing Details;
 - (c) when the disclosing party ensure that it has all necessary notices and consents in place to collect the personal data and to share it with the receiving party/parties.

Data Sharing Conditions between a Controller and a Processor

- 10.11 This paragraph 10.11 applies when one of the parties is designated, in the Data Sharing Details, as a processor of one or more of the other parties in relation to a certain category of personal data ("**Processed Personal Data**"). When this paragraph 10.11 applies, in the event of any conflict with other provisions of this paragraph 10, this paragraph 10.11 shall have precedence. The Data Sharing Details outline the scope, nature and purpose of the processing by the Processor and the types of personal data and categories of data subject processed by the Processor. The party designated as a processor in the Data Sharing Details ("**Processor**") shall:

- (a) process the Processed Personal Data only as necessary in accordance with any written instructions given by the controller in the Data Sharing Details (which may be specific or of a general nature), including with regard to transfers of Processed Personal Data to a third country unless required to do so by Law; in which case the Processor must, unless prohibited by that Law, inform the controller of that legal requirement before processing the Processed Personal Data only to the extent, and in such manner as is necessary for the performance of the Processor's obligations or as is required by the Law;
- (b) subject to paragraph 10.11(a) only process or otherwise transfer any Processed Personal Data in or to any third country with the controller's prior written consent;
- (c) take all reasonable steps to ensure the reliability and integrity of any personnel of the Processor who have access to the Processed Personal Data and ensure that such personnel:
 - (i) are aware of and comply with the Processor's duties under this paragraph 10.11;
 - (ii) are subject to appropriate confidentiality undertakings with the Processor;
 - (iii) are informed of the confidential nature of the Processed Personal Data and do not publish, disclose or divulge any of the Processed Personal Data to any third party unless directed in writing to do so by the controller; and
 - (iv) have undergone adequate training in the use, care, protection and handling of personal data; and
- (d) implement appropriate technical and organisational measures including those in accordance with Article 32 of the UK GDPR to protect the Processed Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure, such measures being appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Processed Personal Data and having regard to the nature of the Processed Personal Data which is to be protected;
- (e) not engage a sub-processor to carry out processing in connection with the Processed Personal Data without prior specific or general written authorisation from the controller. In the case of general written authorisation, the Processor must inform the controller of any intended changes concerning the addition or replacement of any other sub-processor and give the controller an opportunity to object to such changes. If the Processor engages a sub-processor for carrying out processing activities on behalf of the controller, the Processor must ensure that the same data protection obligations as set out in this paragraph are imposed on the sub-processor by way of a written and legally binding contract, in particular providing sufficient guarantees to implement appropriate technical and organisational measures. The Processor shall remain fully liable to the controller for the performance of the sub-processor obligations;
- (f) provide to the controller reasonable assistance including by such technical and organisational measures as may be appropriate in complying with Articles 12-23 of the UK GDPR;
- (g) notify the controller if it:
 - (i) receives a data subject access request (or purported data subject access request) related to the Processed Personal Data;
 - (ii) receives a request to rectify, block or erase any Processed Personal Data;
 - (iii) receives any other request, complaint or communication relating to either party's obligations under the Data Protection Laws;
 - (iv) receives any communication from the UK's Information Commissioner's Officer or any other regulatory authority in connection with Processed Personal Data; or

- (v) receives a request from any third party for disclosure of Processed Personal Data where compliance with such request is required or purported to be required by Law;

and such notification must take place as soon as is possible but in any event within three (3) Weekdays of receipt of the request or any other period as agreed in writing with the controller from time to time;

- (h) taking into account the nature of the processing and the information available, the Processor must assist the controller in complying with the controller's obligations concerning the security of personal data, reporting requirements for data breaches, data protection impact assessments and prior consultations in accordance with Articles 32 to 36 of the UK GDPR. These obligations include:
 - (i) ensuring an appropriate level of protection through technical and organisational measures that take into account the circumstances and purposes of the processing as well as the projected probability and severity of a possible infringement of the Law as a result of security vulnerabilities and that enable an immediate detection of relevant infringement events;
 - (ii) notifying a personal data breach to the controller without undue delay and in any event no later than twenty four (24) hours after becoming aware of a personal data breach;
 - (iii) assisting the controller with communication of a personal data breach to a data subject;
 - (iv) supporting the controller with preparation of a data protection impact assessment; and
 - (v) supporting the controller with regard to prior consultation of the Information Commissioner;
- (i) at the end of the provision of services relating to processing, on written instruction of the controller, delete or return to the controller all Processed Personal Data and delete existing copies unless Law requires storage of the Processed Personal Data;
- (j) provide such information as is necessary to enable the controller to satisfy itself of the Processor's compliance with this paragraph 10.11;
- (k) allow the controller, its employees, auditors, authorised agents or advisers reasonable access to any relevant premises, during normal business hours, to inspect the procedures, measures and records referred to in this paragraph 10.11 and contribute as is reasonable to those audits and inspections;
- (l) inform the controller if in its opinion an instruction from the controller infringes any obligation under the Data Protection Laws;
- (m) maintain written records including in electronic form, of all processing activities carried out on behalf of the controller containing the information set out in Article 30(2) of the UK GDPR; and
- (o) if requested, make such records referred to in paragraph 11.11(m) available to the Information Commissioner on request and co-operate with the Information Commissioner in the performance of its tasks.

Amendments to this paragraph 10

- 10.12 The parties shall review the effectiveness of this paragraph 10 as part of the Annual Contractual Review Meeting.

APPENDIX 1 TO SCHEDULE 17

INITIAL DATA SHARING DETAILS

Category of data subject	Disclosing party and role	Recipient party/parties and role	Type of personal data	Special category of personal data	Purpose of sharing	Legal basis	Condition for special category of personal data
Employees Customers and service users Stakeholders	CSL Controller	Authority-controller SRH – controller	Such personal data as may be necessary for the purpose of sharing (see relevant column),, for example statistical information, summaries of events and details about correspondence, claims or complaints	No routine sharing. Any sharing of special category data will only be done in accordance with GDPR requirements.	Oversight of the Caledonian Sleeper Operation and management of the Grant Agreement	Processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested	N/A

Access and Processing restrictions	
Security Requirements	<i>In accordance with its own information security standards and applicable policies and procedures applying to personal data and special categories of personal data</i>
Review of these Data Sharing Details	<i>Three-monthly</i>

APPENDIX 2 TO SCHEDULE 17**TEMPLATE DATA SHARING FORM**

This Data Sharing Form is subject to and incorporates the terms and conditions outlined in paragraph 10 to Schedule 17 of the CALEDONIAN SLEEPER GRANT AGREEMENT among the Authority, Scottish Rail Holdings Limited and CSL (as amended).

General Data Sharing Details

Category of data subject	Disclosing party and role	Recipient party/parties and role	Type of personal data	Special category of personal data	Purpose of sharing	Legal basis	Condition for special category of personal data

Access and Processing restrictions	
Security Requirements	
Review of these Data Sharing Details	

Data Processing Instructions

Subject matter of processing	
Purpose(s) of processing	
Nature of processing	
Type(s) of personal data	
Categories of data subject	
Approved sub-processors	
Security requirements	
Permitted international transfers	

SCHEDULE 18

THIS IS SCHEDULE 18 REFERRED TO IN THE FOREGOING CALEDONIAN SLEEPER GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND CALEDONIAN SLEEPER LIMITED

Other Provisions

1. **Rights Cumulative**

- 1.1 The rights of the Authority under this Agreement are cumulative, may be exercised as often as the Authority considers appropriate and are in addition to the rights of the Authority under the general Law. The exercise of such rights shall not limit the Authority's rights to make payment adjustments, or the Authority's rights to claim damages in respect of contraventions of this Agreement or pursue any available remedies under general law.
- 1.2 The rights of SRH under this Agreement are cumulative, may be exercised as often as SRH considers appropriate and are in addition to the rights of SRH under the general Law. The exercise of such rights shall not limit SRH's rights to make payment adjustments, or SRH's rights to claim damages in respect of contraventions of this Agreement or pursue any available remedies under general law.

2. **Disputes**

Disputes under this Agreement

- 2.1 Wherever this Agreement provides that the Authority and/or SRH may reasonably determine any matter, CSL may, unless this Agreement expressly provides otherwise, dispute whether a determination made by the Authority and/or SRH is reasonable but the Authority's and/or SRH's (as the case may be) determination shall prevail unless and until it is agreed or found to have been unreasonable.
- 2.2 Where any party is entitled, pursuant to the terms of this Agreement, to refer a dispute arising out of or in connection with this Agreement for resolution or determination in accordance with the Dispute Resolution Rules, then such dispute shall, unless the relevant parties otherwise agree and subject to any duty of the Authority under Section 55 of the Act, be resolved or determined by arbitration pursuant to the Dispute Resolution Rules.
- 2.3 The arbitrator in any dispute referred for resolution or determination under the Dispute Resolution Rules shall be a suitably qualified person chosen by agreement between the relevant parties to such dispute or, in default of agreement, chosen by the Disputes Secretary from a panel of persons agreed from time to time for such purposes between the relevant parties or, in default of agreement as to the arbitrator or as to such panel, selected on the application of any party by the President of the Law Society of Scotland or the President of the Institute of Chartered Accountants of Scotland from time to time (or such other person to whom they may delegate such selection).
- 2.4 For the avoidance of doubt:-
- (a) Rules 41 and 69 to Schedule 1 of the Arbitration (Scotland) Act 2010 shall not apply to any arbitration pursuant to this Schedule 18 and are hereby expressly disapplied to any arbitration arising under the provisions of this Agreement; and
 - (b) The Dispute Resolution Rules shall apply only in so far as they are not contrary to the mandatory rules (Schedule of the Arbitration (Scotland) Act 2010).

Disputes under Other Agreements

- 2.5 CSL shall notify SRH of any disputes to which it is a party under any Inter-Operator Scheme, Access Agreement, Property Lease or Rolling Stock Related Contract, or under any other agreement in circumstances where the relevant dispute could have an adverse effect on CSL's ability to comply with its obligations under this Agreement or on the provision of the Operator Services and which have been submitted for resolution either to the courts or to any other procedure for dispute resolution provided for under such agreements.
- 2.6 Such notification shall be made both:
- (a) at the time of such submission (and such submission shall include reasonable details of the nature of the dispute); and
 - (b) at the time of the resolution of the dispute (whether or not subject to appeal) (and such submission shall include reasonable details of the result of the dispute, any associated award and whether it is subject to appeal).
- 2.7 CSL shall provide such further details of any dispute referred to in paragraph 2.5 as SRH may reasonably request from time to time and shall comply with the reasonable requests of SRH in relation to the conduct of such disputes.

3. Notices

- 3.1 Any notice, notification or other communication under or in connection with:

- (a) the matters specified in Schedule 10.2 (*CSL Executive Team Review and Expiry*), or any dispute under or in connection with this Agreement shall be in writing and shall be sufficiently served if delivered by hand or recorded delivery or sent by pre-paid first class post to the relevant party at the address for service set out below, or to such other address in the United Kingdom as each party may specify by notice in writing to the other parties.

Name: The Scottish Ministers
 Address: Transport Scotland, Buchanan House, 58 Port Dundas Road, Glasgow G4 0HF
 Facsimile: n/a
 E-mail: Bill.Reeve@transport.gov.scot
 Attention: The Director Rail

Name: Caledonian Sleeper Ltd
 Address: Basement and first floor premises, 1 Union Street, Inverness IV1 1PP
 Facsimile: n/a
 E-mail: Kathryn.Darbandi@caledoniansleeper.scot
 Attention: Kathryn Darbandi, Managing Director, Caledonian Sleeper Ltd

Name: Scottish Rail Holdings Limited
 Address: Glasgow Queen Street Station, Management Suite, Dundas Street, Glasgow G1 2AQ from Buchanan House, 58 Port Dundas Road, Glasgow, G4 0HF
 Facsimile: n/a
 E-mail: David.Lowrie@railholdings.scot
 Attention: David Lowrie, Chief Executive, Scottish Rail Holdings Limited

- (b) any other matter under or in connection with this Agreement shall be in writing and shall be delivered:
 - (i) in accordance with paragraph 3.1(a); or
 - (ii) by electronic data transfer.

Deemed Receipt

- 3.2 Any such notice or other communication shall be deemed to have been received by the party to whom it is addressed as follows:
- (a) if sent by hand or recorded delivery, when delivered;
 - (b) if sent by pre-paid first class post, from and to any place within the United Kingdom, 3 business days after posting unless otherwise proven; and
 - (c) if sent by electronic data transfer, upon sending, subject to receipt by the sender of a "**delivered**" confirmation (provided that the sender shall not be required to produce a "**read**" confirmation).

4. **Assignment**

- 4.1 CSL shall not without the prior written consent of both the Authority and SRH, assign, hold in trust for any other person, or grant a Security Interest in or over, this Agreement or any part hereof or any benefit or interest or right herein or hereunder (other than any right of CSL to receive monies under a Supplemental Agreement).
- 4.2 SRH shall not without the prior written consent of the Authority assign, hold in trust for any other person, or grant a Security Interest in or over, this Agreement or any part hereof or any benefit or interest or right herein or hereunder (other than any right of SRH to receive monies under a Supplemental Agreement).

5. **Set Off**

- 5.1 The Authority may set off against any amounts payable by it under this Agreement any outstanding amounts or liabilities whether actual, contingent or prospective of SRH and/or CSL to the Authority on any account whatsoever (including any monetary penalty payable under the Act).
- 5.2 SRH may set off against any amounts payable by it under this Agreement any outstanding amounts or liabilities whether actual, contingent or prospective of CSL to SRH on any account whatsoever (including any monetary penalty payable under the Act).

6. **Miscellaneous Provisions**

Waivers

6.1

- (a) Any party may at any time waive any obligation owed to it by any other party under this Agreement and the obligations of the relevant parties hereunder shall be construed accordingly.
- (b) No waiver by any party of any default by any other party in the performance of such party's obligations under this Agreement shall operate or be construed as a waiver of any other or further such default, whether of a like or different character. A failure to exercise or delay in exercising a right or remedy under this Agreement shall not constitute a waiver of any right or remedy or a waiver of any other rights or remedies and no single or partial exercise of any right or remedy under this Agreement shall prevent any further exercise of such right or remedy or the exercise of any other right or remedy.

Time Limits

- 6.2 Where in this Agreement any obligation of a party is required to be performed within a specified time limit (including an obligation to use all reasonable endeavours or best endeavours to secure a particular result within such time limit) that obligation shall be deemed to continue after the expiry of such time limit if such party fails to comply with that obligation (or secure such result, as appropriate) within such time limit.

Partial Invalidity

- 6.3 If any provision in this Agreement is held to be void, illegal, invalid or unenforceable, in whole or in part, under any enactment or rule of Law, such provision or part shall to that extent be deemed not to form part of this Agreement but the legality, validity and enforceability of the remainder of this Agreement shall not be affected.

Further Assurance

- 6.4 All parties agree to execute and deliver all such further instruments and do and perform all such further acts and things as shall be necessary or expedient for the carrying out of the provisions of this Agreement.

Rights of Third Parties

6.5

- (a) A person who is not a party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 or the Contract (Third Party Rights) (Scotland) Act 2017 to enforce any term of this Agreement except to the extent set out in this paragraph 6.5. The parties agree that although this Agreement is made under Scots law, English law shall apply to the extent needed to give effect to this paragraph 6.5.
- (b) Any Successor Operator or potential Successor Operator nominated by the Authority and notified to CSL for the purposes of this paragraph 6.5 may enforce and rely on the provisions of Schedule 15 (*Obligations Associated with Termination*) to the same extent as if it were a party but subject to paragraphs 6.5(c) and (d).
- (c) This Agreement may be terminated, and any term may be amended or waived, in each case in accordance with the terms of this Agreement, without the consent of any person nominated under paragraph 6.5(b).
- (d) The person nominated under paragraph 6.5(b) shall only be entitled to enforce and rely on Schedule 15 to the extent determined by the Authority (whether at the time of nomination or at any other time) and, to the extent that any such person is entitled to enforce and rely on Schedule 15, any legal proceedings in relation thereto must be commenced within 1 year of the expiry of the Operation Period and any such person shall not be entitled to enforce or rely on Schedule 15 to the extent that it has consented to any particular act or omission of CSL which may constitute a contravention of Schedule 15 or has been afforded a reasonable opportunity to indicate to CSL that it is not so consenting and has not so indicated (the extent of such reasonable opportunity to be determined by the Authority and/or SRH unless otherwise agreed).

Authority's and or SRH's Consent or Approval

- 6.6 Where any provision of this Agreement provides for any matter to be subject to the consent or approval of the Authority and/or SRH then (subject only to the express terms of that provision as to the basis on which that consent or approval may be given or withheld) the Authority and/or SRH shall be entitled to give that consent or approval subject to any condition or conditions as it considers appropriate, which may include the adjustment of any of the terms of this Agreement.

7 **Communications**

7.1 All parties recognise the need to promote clear, consistent messages to Stakeholders, the media and the public on matters of common interest concerning the Caledonian Sleeper Operation and to foster and demonstrate a healthy working relationship among themselves and each of the parties shall use reasonable endeavours to do the foregoing.

7.2 CSL shall:

- (a) give advance notice to the Authority and SRH of the issue of all press releases relating to rail services or facilities in Scotland;
- (b) provide advance advice to the Authority and SRH on content of all press releases relating to rail services or facilities in Scotland;
- (c) consult with the Authority and SRH concerning the press releases referred to in (b);
- (d) make joint announcements with the Authority and SRH where the Authority and/or SRH deems the same to be appropriate (either by their type (e.g. as to their value, duration, impact or otherwise) or individually of which the Authority and/or SRH may notify CSL from time to time);
- (e) not issue a press release should the Authority and/or SRH so require; and
- (f) prepare press releases for the Authority's and/or SRH's approval, at the Authority's and/or SRH's reasonable request.

7.3 All parties shall each encourage and develop dialogue between the respective press office staff of each organisation, so as, where reasonably possible, to co-ordinate media responses and to rebut and correct inaccuracies.

8 **Transfer of Rights and Obligations**

The transfer by Law of any of the rights and obligations of the Authority under this Agreement shall not be restricted by Schedule 9 (*Changes*) or any other provisions of this Agreement and such a transfer shall not constitute a Change.

SCHEDULE 19

THIS IS SCHEDULE 19 REFERRED TO IN THE FOREGOING CALEDONIAN SLEEPER GRANT AGREEMENT AMONG THE AUTHORITY, SCOTTISH RAIL HOLDINGS LIMITED AND CALEDONIAN SLEEPER LIMITED

Definitions and Interpretation

1. Construction and Interpretation

1.1 In this Agreement, except to the extent the context otherwise requires:

- (a) words and expressions defined in Part I of the Act have the same meanings when used therein provided that, except to the extent expressly stated, **“railway”** shall not have the wider meaning attributed to it by Section 81(2) of the Act;
- (b) words and expressions defined in the Interpretation Act 1978 have the same meanings when used in this Agreement;
- (c) the words **“include”**, **“including”** and **“in particular”** are to be construed without limitation;
- (d) references to any person shall include any individual, firm, company, corporation, body, trust or foundation, or any association, partnership or unincorporated body (whether or not having separate legal personality) and in each case include that person’s successors, transferees or assignees;
- (e) the words **“subsidiary”**, **“wholly owned subsidiary”** and **“parent undertaking”** have the same meaning in this Agreement as in Sections 1159 and 1162 of the Companies Act 2006;
- (f) references to documents **“in the agreed terms”** are references to documents initialled by or on behalf of the Authority, SRH, and CSL;
- (g) references in this Agreement to Recitals, clauses, Schedules, Parts, paragraphs and Appendices are to Recitals, clauses, Schedules, Parts of Schedules, paragraphs of Schedules and Appendices of Schedules of this Agreement, unless expressly specified to the contrary, and the Schedules and Appendices form part of this Agreement;
- (h) references in any Schedule in this Agreement to a Part, paragraph or Appendix are references to a Part, paragraph or Appendix of that Schedule (or the relevant Part of a Schedule), unless expressly specified to the contrary;
- (i) headings and references to headings shall be disregarded in construing this Agreement;
- (j) references to any enactment include any subordinate legislation made from time to time under such enactment and are to be construed as references to that enactment as for the time being amended or modified or to any enactment for the time being replacing or amending it and references to any subordinate legislation are to be construed as references to that legislation as for the time being amended or modified or to any legislation for the time being replacing or amending it;
- (k) references to an agreement or any other document shall be construed as referring to that agreement or document as from time to time supplemented, varied, replaced, amended, assigned or novated;
- (l) words importing the masculine gender include the feminine and vice-versa, and words in the singular include the plural and vice-versa;
- (m) wherever provision is made for the giving or issuing of any notice, endorsement, consent, approval, waiver, certificate or determination by any person, unless otherwise specified, such notice, endorsement, consent, approval, waiver, certificate or determination shall be in writing and the words

“**notify**”, “**consent**”, “**endorse**”, “**approve**”, “**waive**”, “**certify**” or “**determine**” and other cognate expressions shall be construed accordingly;

- (n) references to materials, information, data and other records shall be to materials, information, data and other records whether stored in electronic, written or other form;
- (o) references to the period of validity of any Fare are references to its period of validity excluding any rights of any purchaser thereof to extend such period under the Guest’s Charter, any equivalent document, or the terms and conditions attaching to such Fare (including any applicable conditions of carriage) in the event of the cancellation or delay of any of the railway guest services for which such Fare is valid;
- (p) references to stations at which any train calls include stations at which such train commences or terminates its journey;
- (q) references to “**railway guest services**” are to be construed subject to Section 40 of the Railways Act 2005;
- (r) references to the provision of railway guest services include the organisation of the relevant train movements and making the necessary arrangements with Network Rail or any other relevant Facility Owner;
- (t) references to amendments or variations of contracts or arrangements include assignments, novations or other transfers of rights or obligations (in whole or in part) under such contracts or arrangements;
- (u) unless otherwise expressly stated, or agreed among the parties, and except in relation to Schedule 8 (and all defined terms used therein), references to sums of money being expended by CSL shall be to such sums exclusive of Value Added Tax;
- (v) references to “**undertakes**” and references to “**undertakings**” are to be construed so as to include the word “**covenants**”;
- (w) references to “**assignment**” and words deriving meaning therefrom are to be construed so as to include the word “**assignment**” and words deriving meaning therefrom;
- (x) references to “**set-off**” are to be construed so as to include both the words “**retain**” and “**compensate**” and words deriving meaning therefrom;
- (y) any reference to an arbitrator shall also be taken as a reference to an arbiter;
- (z) references to the words “**shall not be liable**” are to be construed as meaning that no contravention of this Agreement and no Event of Default shall arise as a result of the matter to which such words relate; and
- (aa) references to a “**contravention of this Agreement**” (and cognate expressions) are to be construed as meaning a breach of this Agreement.

2. Definitions

- 2.1 In this Agreement, except to the extent the context otherwise requires, the following words and expressions have the following meanings:

Actual Capex Cash Payments or **ACCP** means the actual Capital Expenditure of CSL paid in the relevant period excluding any grant funding received from any third party;

Acceptable Level means the performance level falling somewhere between Below Acceptable Level and Strong Level set out in each Service Quality Appendix;

Access Agreement has the meaning given to the term “**access agreement**” in Section 83(1) of the Act;

Accessible Travel Policy means CSL's policy for the protection of persons with disabilities which CSL is required to establish and review from time to time in accordance with the conditions of its Licences in respect of the operation of railway guest services and/or stations;

Accessible Travel Programme means SRT's programme of accessible travel at Stations to improve accessibility of the Stations to persons with disabilities, developed pursuant to paragraph 2.7 of Schedule 4.2 (*Persons with Disabilities and Disability Discrimination*) of SRT's Grant Agreement;

Act means the Railways Act 1993 (as modified, amended or replaced by the Transport Act 2000 and/or the Railways Act 2005) and any regulations or orders made thereunder;

Actual Cash Payments or **ACP** means:

(a) CSL's total expenditure paid for in the period being reviewed, including any of the following expenses that are paid during that period:

(i) amounts payable to the Authority, SRH and Network Rail;

(ii) taxation;

(iii) shareholder distributions including dividends;

(iv) interest;

and

(v) lease payments in relation to on-balance sheet leased assets,

but excluding any of the following expenses that are payable in that period:

(A) interest relating to on-balance sheet leased assets;

(B) depreciation;

(C) amortisation; and

(D) bad debt provisions; and

(b) either:

(i) plus any reduction in the total amount owing by CSL to creditors over that period;
or

(ii) less any increase in the total amount owing by CSL to creditors over that period,
where total creditors:

(A) include any persons owed amounts by CSL in respect of operating expenses, including the types of expenses set out in paragraphs (a)(i) to (iv) inclusive, provisions and deferred income balances; but

(B) exclude persons owed amounts by CSL in respect of season ticket liabilities, lease liabilities in relation to on-balance sheet leased assets and liabilities in relation to grants received for the purchase of fixed assets; and

(b) for the avoidance of doubt, excludes any capex payments made in the period;

Actual Guest Demand has the meaning given to it in paragraph 1 of Schedule 1.5 (*Information about Guests*);

Actual Cash Collections or **ACC** means the actual cash inflow of CSL received in the relevant period (excluding Grant Payments and any Working Capital Facility);

Actuary has the meaning given to it in the Pension Trust;

Additional Adjustment or **AdADJ** has the meaning given to it at paragraph 9 of Schedule 8.1 (*Grant Payments*);

Additional Inspection Notice has the meaning given to it at paragraph 6.7 of Schedule 7.2 (*Service Quality*);

Advance Ticket shall be interpreted in accordance with the national fares structure and public nomenclature adopted by Train Operators in 2008;

Affiliate means, in respect of any person, any person by which that person is Controlled or which is Controlled by that person, or any person which is Controlled by any other Affiliate of that person, save that for the purposes of determining whether one entity is an Affiliate of another, any transfer of shares by way of security or to a nominee of the transferor shall be disregarded (for the avoidance of doubt Network Rail shall not be construed to be an Affiliate of the Authority);

Agreed Data Sharing Form has the meaning given to it at paragraph 10.4(c) of Schedule 17 (*Confidentiality, FOISA and Data Protection*);

Agreed Form means in such form as is annexed and executed or initialled by or on behalf of the Authority, SRH and CSL as relative to this Agreement or otherwise as all parties have confirmed in writing to the other is in agreed form;

Alliance means any joint venture, collaboration or co-operation arrangement (whether expressed as an understanding or contract) to which CSL is a party in respect of railway or railway industry matters, excluding any Access Agreement, Brand Licence, Collateral Agreement, Connection Agreement, this Agreement or Property Lease;

Ancillary Service means any service specified in paragraph 5 of Schedule 1.7 (*Operator Services*);

Annual Audited Accounts means the accounts of CSL which:

- (a) comply with paragraph 3.11 of Schedule 13.2 (*Information*); and
- (b) are delivered by CSL in accordance with paragraph 3.9 of Schedule 13.2 (*Information*) and certified by its auditors as fair and true;

Annual Contractual Review Meeting has the meaning given to it at clause 10;

Annual Financial Statements means the final draft financial statements of CSL which:

- (a) comply with paragraph 3.11 of Schedule 13.2 (*Information*);
- (b) give a true and fair view of the amount of Revenue and Profit earned by CSL during any Operator Year (or part thereof);
- (c) contain:
 - (i) a breakdown of the amount of Revenue and Profit referred to in paragraph (b), identifying the amount earned of each revenue flow specified in the definition of Revenue and Profit;
 - (ii) costs;
 - (iii) balance sheet performance;

(iv) Cash flow position and

(iv) any explanatory notes which CSL reasonably believes would assist SRH in fulfilling the purpose referred to in paragraph (d); and

(d) are delivered by CSL in accordance with paragraph 3.7 of Schedule 13.2 (*Information*);

Annual Variations has the meaning given to it at clause 10;

Annual Management Accounts means the management accounts of CSL which:

(a) comply with paragraph 3.10 of Schedule 13.2 (*Information*); and

(b) are delivered by CSL in accordance with paragraph 3.6 of Schedule 13.2 (*Information*);

Applicable Timetable means, in respect of any particular day, the Passenger Timetable required to be drawn up by Network Rail in accordance with the Network Code as at 2200 on the immediately preceding day, being the Timetable for that particular day, as amended from time to time, including to reflect the following:

(a) any amendment to the working timetable for Guest Services under the applicable Engineering Access Statement or Timetable Planning Rules;

(b) any amendment to the working timetable for Guest Services under Condition H of the Network Code; and

(c) any amendment which is required to the Timetable to reflect the introduction, removal or alteration of a service by CSL;

Associate means any party (other than CSL) to any Alliance to which CSL is party and any partnership or joint venture (whether incorporated or not) resulting from such Alliance and the contractors, agents and employees of the same;

ATOC means the Association of Train Operating Companies;

Audit Scotland means the statutory body set up under the Public Finance and Accountability (Scotland) Act 2000 and any successor body set up to provide services to the Auditor General of Scotland and/or the Accounts Commission;

Authority Claim means all losses, liabilities, costs, damages and expenses that the Authority does or will incur or suffer (including any such losses, liabilities, costs, damages and expenses that are unliquidated or which are contingent):-

(a) as a consequence of any breach, negligence or other default of CSL under or in connection with this Agreement and/or any agreement ancillary to it; and/or

(b) in respect of any matter for which CSL is to indemnify the Authority pursuant to this Agreement or any agreement ancillary to it;

Authority's Brand Guidelines has the meaning given to that term in paragraph 2.9 of Schedule 14.2 (*Maintenance of Operating Assets*);

Authority's Branding means:

(a) the "Caledonian Sleeper" registered trademark number 2265305 registered on the 27 March 2011, renewal date 27 March 2021;

(b) any other registered or unregistered trade marks which are owned or used by the Authority in connection with Caledonian Sleeper other than the Marks;

- (c) any registered or unregistered designs, get ups and livery whether distinctive or not owned or used by the Authority in connection with Caledonian Sleeper; and
- (d) includes any changes to the item listed in (a) to (c) above as the Authority may reasonably direct;

Authority IP means all Intellectual Property Rights owned by, licensed to, and or otherwise made available by, the Authority in relation to the Caledonian Sleeper Operation, including without limitation the Authority's Branding and the Foreground IP;

Authority Business Plan Requirements has the meaning given to it at paragraph 2.10 of Schedule 13.2 (*Information*);

Average Weekly Earnings means the average weekly earnings:

- (a) for the whole economy of the United Kingdom;
- (b) seasonally adjusted; and
- (c) excluding bonuses,

as published from time to time by the Office for National Statistics or, if such index shall cease to be published or if there is a material change in the basis of the index or of its applicability, such other average earnings index as the Authority may, after consultation with SRH and CSL determine to be appropriate in the circumstances;

Bank means a person which has a permission under Part IV of the Financial Services and Markets Act 2000 to carry on one or more of the regulated activities provided thereunder and which is reasonably acceptable to SRH;

Bank Holiday means, except where otherwise specified in the Service Level Commitment, a Weekday on which banks in Scotland are not open for business;

Barcode Ticketing means a digital ticket able to be read and validated by barcode enabled infrastructure and distributing handheld readers, which ticket can be accepted nationally by all Train Operators, even if the barcode ticket is not their own;

Below Acceptable Level means the performance level designated as such and set out in a Service Quality Appendix;

Brand Licence means a licence between Secretary of State or the Authority or SRH (or any company wholly owned by Secretary of State or the Authority) and SRH or CSL in respect of any registered or unregistered trade marks, including:

- (a) the Exclusive Trade Mark Licence Agreement dated 10 December 1995 between the Franchising Director and ScotRail Railways Limited in respect of certain trademarks relating exclusively to the Caledonian Sleeper Operation; and
- (b) the non-exclusive Trade Mark Licence Agreement dated 10 December 1995 between the Franchising Director and the ScotRail Railways Limited in respect of certain other trademarks not relating exclusively to the Caledonian Sleeper Operation;

Breach Performance Level means, in relation to an Operating Performance Benchmark for any Reporting Period, the breach performance level as determined in accordance with Schedule 7.1 (*Train Operating Performance*);

BREEAM means the Building Research Establishment Environmental Assessment Method for buildings;

British Transport Police means the police force established by virtue of section 20 of the Railways and Transport Safety Act 2003 and any statutory successor;

British Transport Police Authority means the police authority established by virtue of Section 18 of the Railways and Transport Safety Act 2003 and any statutory successor;

BS8903 standard means the BSI Group principles and framework for procuring sustainability;

Budget means the budget for each Operator Year used to determine the Periodic Grant Payments (including the initial Budget detailed at paragraph 6.1 of Schedule 8.1 (*Grant Payments*)) comprising:

- (a) the periodic cost and revenues budget;
- (b) the periodic capex budget; and
- (c) the daily cash flow forecast for the Operator Year,

as such budget may be updated from time to time in accordance with paragraph 6 of Schedule 8.1 (*Grant Payments*);

Budget Forecast Review Meeting shall have the meaning given in paragraph 6.1 of Schedule 8.1 (*Grant Payments*);

Budgeted Cash Payments or **BCP** means the cash outflow on Costs forecast and budgeted to be paid by CSL in each Reporting Period and specified in the then current Budget as agreed or determined pursuant to paragraph 6 of Schedule 8.1 (*Grant Payments*);

Business Action Plan means an action plan to the extent applicable, produced by CSL in relation to the delivery of any outcome anticipated by its Business Plan;

Business Plan means the Initial Business Plan or any Updated Business Plan, as the context requires, and includes the Business Plan Commitment Schedule;

Business Plan Commitments means the obligations which CSL is required to deliver in relation to any Operator Year, as described in the relevant Business Plan Commitment Schedule of the relevant Business Plan;

Business Plan Commitment Schedule has the meaning given to it at paragraph 2.8 of Schedule 13.2 (*Information*);

Business Plan Content Requirements has the meaning given to it at paragraph 2.4 of Schedule 13.2 (*Information*);

Business Plan Dispute has the meaning given to it paragraph 2.14 of Schedule 13.2 (*Information*);

Business Plan Submission means a draft Business Plan as prepared and delivered by CSL in accordance with paragraphs 2.1, 2.11 or 2.12(b) of Schedule 13.2 (*Information*) and not yet agreed among the parties or determined by the Authority;

Business Plan Term means the Operator Year to which the Business Plan relates together with a period of two (2) detailed years and a further two (2) indicative years following the end of that Operator Year;

Caledonian Sleeper Franchise means the rights tendered by the Authority to operate railway guest services comprising sleeper services between specified stations in Scotland and England;

Caledonian Sleeper Grant Agreement or **Agreement** means this Caledonian Sleeper grant agreement among the parties hereto, executed on the date hereof, which constitutes a single agreement together with the Schedules and Appendices appended hereto;

Caledonian Sleeper Operation means the operation of railway guest services under the terms and conditions set out in this Agreement;

Cancellation means a Guest Service:

- (a) which is included in the Applicable Timetable and which is cancelled;
- (b) which is included in the Applicable Timetable and which operates less than 50% of its scheduled mileage; or
- (c) which is omitted from the Applicable Timetable, or included in it in a modified form that does not enable CSL to operate more than 50% of such Guest Service's scheduled mileage, without CSL discharging its obligations under Schedule 1.2 (*Operating Obligations*) in relation thereto;

Capital Expenditure has the meaning given to it in paragraph 3.5 of Schedule 9 (*Changes*);

Carbon Management System means a suite of tools to enable consistent, transparent and objective measurement and reporting of carbon emissions which also supports design and construction optioneering for operations and investments;

Change means:

- (a) an alteration to the time period referred to in paragraphs 5.10(b), 5.11(c) of Schedule 1.1 (*Service Development*) and 3.4.(b)(iii) of Schedule 1.2 (*Operating Obligations*);
- (b) a change to the Service Level Commitment previously in force pursuant to the issue of a new Service Level Commitment in accordance with paragraph 6 of Schedule 1.1 (*Service Development*);
- (c) a change effected pursuant to paragraph 6 of Schedule 1.2 (*Operating Obligations*), including as a result of any action that CSL is required to take pursuant to paragraph 8.1(b) of Schedule 1.2; in respect of any Strategy or plan referred to in paragraph 8.1(b) of Schedule 1.2 published, endorsed or varied after the Commencement Date;
- (d) a change to standards in respect of alternative transport arrangements, as referred to in paragraph 8.2(b) of Schedule 1.2, from the standards, as the case may be, which are current as at the date of signature of this Agreement;
- (e) the addition or omission of any station from the provisions of paragraph 4.4 of Schedule 1.3 (*Additional Service Specifications*);
- (f) if and when CSL uses reasonable endeavours to pursue a Network Change Proposal and/or any Material Change Proposal and/or any Major Change Proposal in accordance with paragraph 3 of Schedule 1.8 (*Restrictions of Use*);
- (g) the costs incurred by CSL in using its reasonable endeavours when required to do so pursuant to paragraph 3.1 in Part 1 of Schedule 1.8 (*Extended Restrictions of Use*); the costs incurred by CSL in co-operating with the Authority and/or any other relevant party in connection with a Major Scottish Project when required to do so in terms of paragraph 1 in Part 2 of Schedule 1.8 (*Extended Restrictions of Use*) save to the extent that the Major Scottish Project or any part thereof is addressed directly by any provisions of this Agreement and where such provisions do not indicate that CSL's efforts or actions in respect of the same (including the granting of permission, taking of no action or simple acquiescence or activity or exercise of a right) shall constitute a Change
- (h) if and whenever CSL is required to novate any Access Agreement pursuant to paragraph 1.1 of Schedule 2.2 (*Security of Assets and Rolling Stock Lease*) or to assign any Property Lease pursuant to paragraph 3.1 of Schedule 2.2, to the extent and only to the extent that CSL makes a saving as a consequence of such novation or assignation;

- (i) any action that CSL is required to take pursuant to paragraph 6.1(a) and/or 6.1(b) of Schedule 2.2 (*Security of Access Assets and Rolling Stock Leases*);
- (j) if and whenever CSL is required to participate in a scheme pursuant to paragraph 1.5, 2.8, 3.9, 4.2 and 5.5 of Schedule 2.5 (*Transport, Travel and Other Schemes*);
- (k) if and whenever an amendment or proposed amendment to an Inter-Operator Scheme is approved, as referred to in paragraph 5 of Schedule 2.5 (*Transport, Travel and Other Schemes*), to the extent and only to the extent that CSL makes a saving as a consequence of such amendment or proposed amendment;
- (l) the imposition, subject to the provisions of paragraph 2.6 of Schedule 4.2 (*Persons with Disabilities and Disability Discrimination*), of any increased access charges in respect of EA Requirements at stations at which the Guest Services call, other than stations where CSL is Facility Owner;
- (m) a Variation (other than a Variation as referred to in (n) or (o) below) to the terms of this Agreement;
- (n) if and whenever the Authority has by a Variation regulated and/or specified the Fares, Prices and/or Child Prices on all, or any, Guest Services and/or Flows (all as referred to in paragraph 4(a) of Schedule 5.5 (*Changes to Fares and Fares Regulation*)) to the extent, and only to the extent, that the Fares, Prices and/or Child Prices are for that Fare Year higher or lower than the applicable Fares, Prices and/or Child Prices which the Authority is, by making such Variation, seeking to regulate and/or specify;
- (o) if and whenever the Authority has by a Variation regulated and/or specified the Fares, Prices and/or Child Prices on any Guest Services and/or Flows (all as referred to in paragraph 4(a) of Schedule 5.3 (*Changes to Fares and Fares Regulation*)) and the Authority then by a further Variation notifies CSL that the Authority no longer wishes to regulate and/or specify the Fare, Price and/or Child Price; provided that the financial consequences of that Change pursuant to Schedule 9 (*Changes*) shall be limited to reversing the financial consequences flowing from the original requirement of the Authority;
- (p) if and whenever CSL is obliged to charge Value Added Tax on a Fare or there is an increase or decrease in the rate of Value Added Tax which it must charge on such Fare, in either case due to a change in the Value Added Tax treatment of the provision of Guest Services;
- (q) if and whenever the Authority effects an amendment to a Discount Fare Scheme, introduces a new Discount Fare Scheme or ceases to approve a Discount Fare Scheme for the purposes of Section 28 of the Act;
- (r) an adjustment to the Right Time Benchmark, Patronage Benchmark, or Guest Satisfaction Benchmark at SRH's sole option pursuant to Schedule 7.1 (*Train Operating Performance*);
- (s) if and whenever SRH requests CSL to take any action under paragraph 10.4 of Schedule 13.2 (*Information*) in accordance with its terms, save that any adjustment to the Grant Payments under Schedule 9 (*Changes*) in respect of any maintenance or support costs incurred pursuant to such paragraph 10.4 shall only be made to the extent that such maintenance and support costs are over and above the maintenance and support costs of any Computer System that is replaced;
- (t) if and whenever CSL is required to take any action under paragraph 10.5 of Schedule 13.2 (*Information*) in accordance with its terms;
- (u) the occurrence of a change to the Railway Passenger Services required to be operated by another operator or franchise operator by direction of the Authority or SRH which may reasonably be expected to have a material effect on the cost and revenues of providing the Guest Services;

- (v) if and whenever there is a Change of Law;
- (w) in the event that railway passenger services to, from or within Scotland operated by other Train Operators cease to be provided in whole or in part CSL shall operate additional Guest Services to provide a replacement for those railway passenger services which the other Train Operators shall have ceased or shall cease to provide;
- (x) if and whenever the Authority and/or CSL exercises any right reserved to it to require amendment to any concept, specification or design except where the exercise of such right is expressed not to constitute a Change;

subject in each instance to the applicable circumstances (including, but not limited to any action or inaction by or financial consequences for CSL) not otherwise being expressly stated in this Agreement to not constitute a Change (unless otherwise agreed among the parties).

Change Date means any of the dates on which changes may be made to the working timetable for the Guest Services under the Network Code, being initially two in number per calendar year and subsequently six in number per calendar year and of which two are PassengerChange Dates;

Chair means the chair of the CSL Board as appointed by the SRH Board in accordance with Schedule 11;

Charter Service means a railway passenger service, whether operated on the same routes as the Guest Services or not:

- (a) which is not reflected in the Timetable;
- (b) which does not conform to the pattern of railway guest services normally provided by CSL;
- (c) for which the advance booking or booking arrangements for seats on the relevant service are materially different from those generally applicable to the Guest Services;
- (d) for which tickets are available on a restricted basis or on terms and conditions materially different from those generally applicable to the Guest Services; and/or
- (e) for which the departure time, journey time and calling pattern are materially different from those of the Guest Services,

and which, in the opinion of SRH, is not a railway guest service provided by CSL as part of the Guest Services;

Child Price means, in relation to any Fare, the amount charged or chargeable to a person under the age of 16 in respect of such Fare;

Closed Scheme Employees has the meaning given to it in paragraph 3.1(a) of Schedule 16 (*Pensions*);

Closed Schemes has the meaning given to it in paragraph 3.1(b) of Schedule 16 (*Pensions*);

Closure means a discontinuance or closure under Part 4 of the Railways Act 2005 of any of the Guest Services or of any network on which the Guest Services may be operated or of any of the Stations or Depots or of any part of such network or Depot or Station;

Code of Practice means the code of practice for protecting the interests of users of railway guest services or station services who have disabilities, as prepared, revised from time to time and published by the Secretary of State pursuant to Section 71B of the Act;

Collateral Agreement means an agreement which is required to be entered into by CSL with Network Rail or any other Train Operator as a condition to any Access Agreement of which CSL is the beneficiary;

Commencement Date means the date and, where relevant, the time stated in clause 2 of this Agreement as being the date on which (and, where relevant, the time at which) this Agreement shall commence and CSL is to commence operating the Operator Services;

Common Station Amenities has the meaning given to it in condition 1.2 of the National Station Access Conditions 2013 (Scotland);

Communications and Marketing Strategy or “C&M Strategy” means CSL’s strategy referred to at paragraph 2.22 of Schedule 1.4.

Community Rail, when used to describe a project, scheme or initiative, means one which is related to a rail corridor (whether focussed on a rural or local urban line or local stations) which is led by or has the support of the local community which it serves or through which it passes and will benefit that community;

Community Rail Partnership means any not for profit organisation of the same name that has the purposes of:-

- (a) serving a geographical district, with shared needs and aspirations, linked by the railway;
- (b) working with local organisations and businesses to maximise potential benefits of the said district, railway line and community;
- (c) creating and championing plans and programmes which engage with the railway industry to promote and market initiatives offering clear benefits aligned to long term community benefits;

Compulsory Inter-available Flow has the meaning given to it in the Ticketing and Settlement Agreement;

Computer System means computer hardware and computer software, including licensed third party software and data protocols together with any documentation (whether in human or machine readable form) relating to such software;

Confidential Information means information which is disclosed or made available directly to one party by the other party and which the parties agree should be treated as confidential for the purposes of Schedule 17 (*Confidentiality, FOISA and Data Protection*);

Connection means:-

- (a) in Schedule 7.1 (*Train Operating Performance*), a connection (however described) between any of the Guest Services provided by CSL and any other railway guest service provided by it or any other Train Operator or any bus, ferry or shipping service and which is either included in a Service Level Commitment (however described therein) or which is otherwise included by CSL in the Timetable and is notified to CSL by SRH from time to time as constituting a Connection for the purpose of Schedule 7.1 (*Train Operating Performance*); and
- (b) in the rest of this Agreement, means a connection (however described) between any of the Guest Services provided by CSL and any other railway guest service provided by it or any other Train Operator or any bus, ferry or shipping service and cognate phrases shall be construed accordingly;

Connection Agreement means an agreement for a Depot facility to connect to the operating network;

Contingency Plan has the meaning given to it in paragraph 1(a)(iv) of Schedule 10.4 (*Force Majeure*);

Control means, in respect of a person, that another person (whether alone or with others and whether directly or indirectly and whether by the ownership of share capital, the possession of voting power, contract or otherwise):

- (a) has the power to appoint and/or remove all or the majority of the members of the board of directors or other governing body of that person or of any other person which Controls that person;
- (b) controls or has the power to control the affairs and policies of that person or of any other person which Controls that person;
- (c) is the parent undertaking of that person or of any other person which Controls that person; or
- (d) possesses or is, or will be at a future date, entitled to acquire:
 - (i) 30% or more of the share capital or issued share capital of, or of the voting power in, that person or any other person which Controls that person;
 - (ii) such part of the issued share capital of that person or any other person which Controls that person as would, if the whole of the income of such person were distributed, entitle him to receive 30 per cent. or more of the amount so distributed; or
- (v) such rights as would, in the event of the winding-up of that person or any other person which Controls that person or in any other circumstances, entitle him to receive 30 per cent. or more of the assets of such person which would then be available for distribution;

Costs means costs and expenses properly incurred by CSL in performance of the Operator Services and stated in CSL's profit and loss account but excluding:-

- (a) Grant Payments;
- (b) corporation tax and deferred tax charge in CSL's profit and loss account;
- (c) any accounting transaction which does not require CSL to make a cash payment including notional pensions accounting adjustments and the accounting impact of financial instrument revaluations, other than depreciation where that depreciation is not a Notifiable Cost;

Costs and Revenues Liabilities or CRL means any Notifiable Costs, Revenue Foregone or liability for SRH Claims and/or Authority Claims incurred by CSL during a Reporting Period;

Creating has the meaning given to it in the Ticketing and Settlement Agreement and cognate expressions shall be construed accordingly;

CRM Data means personal data (including any or all of name, address, email address and ticket purchasing history, credit and debit card details) collected by or on behalf of CSL relating to persons travelling on or purchasing tickets for travel on the Guest Services or other services for the carriage of guests by railway;

CSL Board means CSL's board of directors as registered at Companies House;

CSL Executive Team has the meaning given to it at paragraph 3.1 of Schedule 11 (*Agreement and Service Delivery Management Provisions*);

Customer Complaints Handling Procedure means CSL's policy for the handling of customer complaints which CSL is required to establish and review from time to time in accordance with the conditions of its Licences in respect of the operation of railway guest services and/or stations;

Customer Contact Centre means the premises from which CSL provides the services referred to at paragraph 13 of Schedule 1.4 (*Guest Facing Obligations*);

Customer Information Screens means electronic displays used to provide guests with information, along with any necessary supporting systems within the control of CSL and any non-electronic facilities used for similar purposes;

Cycle Innovation Plan means the plan specified in paragraph 9.13 of Schedule 1.4 (*Guest Facing Obligations*);

Cycling Strategy means the strategy to be prepared by CSL in accordance with paragraph 9.2 of Schedule 1.4 (*Guest Facing Obligations*) and which complies with the applicable requirements of the Framework Agreement and the Policy Compendium;

Data Protection Laws means any law, statute, subordinate legislation, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body which relates to the protection of individuals with regard to the processing of personal data to which a party is subject including the Data Protection Act 2018 or any statutory modification or re-enactment thereof and the UK GDPR;

Data Sharing Details means the description of the sharing of personal data between or among the parties, as set out in an Agreed Data Sharing Form, including details of the categories of personal data to be shared, the types of personal data to be shared (including any special categories of personal data), the roles of the parties in relation to such sharing, the legal basis and conditions which apply, any security requirements, and any access requirements; and shall include the Initial Data Sharing Details;

Data Sharing Form means a draft data sharing form containing the proposed Data Sharing Details and in the format set out at Appendix 2 to Schedule 17 (*Confidentiality, FOISA and Data Protection*);

Data Site Information has the meaning given to it in paragraph 2.2(e) of Schedule 15.1 (*Reletting Provisions*);

Default Performance Level means, in relation to an Operating Performance Benchmark for any Reporting Period, the default performance level as determined in accordance with Schedule 7.1 (*Train Operating Performance*);

Defined Contribution Arrangement has the meaning given to it in the Railways Pension Scheme;

Department for Transport means the UK Government department responsible for the transport network in England and certain reserved transport matters in the rest of the UK, or its successors from time to time;

Departure Station has the meaning given to it in paragraph 2(b) of Appendix 2 (*Alternative Transport and Website Stations Accessibility Information*) to Schedule 1.4 (*Guest Facing Obligations*);

Depot means a depot in respect of which CSL has entered into a Depot Lease or an Access Agreement;

Depot Access Agreement means each Access Agreement between a Facility Owner and CSL which permits CSL access to a Depot;

Depot Lease means any lease of any other depot of which CSL becomes the Facility Owner at any time during the Operation Period;

Designated Employer has the meaning given to it in the Pension Trust;

Destination Station has the meaning given to it in paragraph 2(b) of Appendix 2 (*Alternative Transport and Website Stations Accessibility Information*) to Schedule 1.4 (*Guest Facing Obligations*);

Direct Agreement means any agreement made, or to be made, from time to time between the Authority and the counterparty of a Key Contract in relation to such Key Contract, including any agreement entered into by the Authority under paragraph 5 of Schedule 14.3 (*Key Contracts*);

Disabled Person has the meaning given to it in the EA;

Disabled Persons Transport Advisory Committee or DPTAC means the committee with that name established by the Transport Act 1985 and its statutory successors;

Discount Card has the meaning given to it in the Ticketing and Settlement Agreement;

Discount Fare Scheme means:

- (a) a discount fares scheme referred to in paragraph 4 of the Appendix (*List of Transport, Travel and Other Schemes*) to Schedule 2.5 (*Transport, Travel and Other Schemes*); or
- (b) any other discount fare scheme approved from time to time by the Authority for the purposes of Section 28 of the Act,

in each case until such time as it may cease to be approved by the Authority for the purposes of Section 28 of the Act;

Dispute Resolution Rules means the procedures for the resolution of disputes known as “**The Railway Industry Dispute Resolution Rules**”, as amended from time to time in accordance with the terms thereof;

Disputes Secretary means the person appointed as Disputes Secretary from time to time in accordance with the Dispute Resolution Rules;

Driver Advisory System means a system within locomotive cabs that provides information to the driver to assist with optimisation of energy usage and carbon dioxide equivalent emissions and timekeeping during operation;

EA means the Equality Act 2010;

EA Claim has the meaning given to it in paragraph 3.1 of Schedule 4.2 (*Persons with Disabilities and Disability Discrimination*);

EA Requirements means the duties of a provider of services under Section 20 of the EA;

EFQM means the European Foundation for Quality Management;

EIRs means the Environmental Information (Scotland) Regulations 2004;

Emergency Events has the meaning given to it in paragraph 1(f) of Schedule 10.4 (*Force Majeure*);

Emergency Timetable means a temporary amendment to the Timetable, Published no later than 22:00 hours on the date before departure, to alleviate or mitigate the impact of any Force Majeure Event on the Timetable;

Emerging Technologies Services means the services provided by CSL as described in the relevant Service Quality Appendices;

Engineering Access Statements has the meaning given to it in the Network Code;

Equalities Plan means CSL's Equalities Plan specified in paragraph 1.3(b)(iv) of Schedule 13.1 (*Operation Management*);

Escalation Procedure in Schedule 7.2 (*Service Quality*) means the procedure for resolution of disputes set out in paragraph 20 to Schedule 7.2 (*Service Quality*);

Estimated Cash Collections or **ECC** means the cash inflow (excluding any Grant Payments and Working Capital Facility) reasonably forecast and determined in each Reporting Period using available resources as is practicable at the time of the determination and specified in the then current Budget as agreed or determined pursuant to paragraph 6 of Schedule 8.1 (*Grant Payments*);

Event of Default means any of the events set out in paragraph 2 of Schedule 10.3 (*Events of Default and Executive Team Review Event*);

Executive Team Review Event means any of the events set out in paragraph 3 of Schedule 10.3 (*Events of Default and Executive Team Review Event*);

Expiry Date means:

- (a) the First Expiry Date; or
- (b) the Final Expiry Date; or
- (c) the date to which this Agreement is continued in accordance with any (or if more than one, the latest) notice served pursuant to paragraphs 1.3 of Schedule 15.2 (*The last 12 or 13 Months of Operation Period*);

Extended Restrictions of Use has the meaning given to it in the Network Code;

Extended Term has the meaning given to it at clause 3.1 of this Agreement;

Facility Owner has the meaning given to the term *facility owner* in Section 17(6) of the Act;

Fare means:

- (a) for the purposes of Schedules 5.3 (*Regulation of Individual Fares*) to 5.6 (*Fares Regulation, Information and Monitoring*) (inclusive) only, a Fare which is:
 - (i) valid for a journey or journeys on the Guest Services included in the Timetable or other railway guest services which are required to be included in another relevant Train Operator's guest timetable by CSL;
 - (ii) sold under the Travelcard Agreement; or
 - (iii) a Cross-London Ticket (as defined in the Through Ticketing (Non-Travelcard) Agreement); and
- (b) for the purposes of paragraph 4 of Schedule 1.4 (*Guest Facing Obligations*), Schedule 5.2 (*'s Obligation to Create Fares*) and for all other purposes, the right, exercisable against one or more Train Operators, subject to any applicable rights or restrictions and the payment of the relevant price, to make one or more journeys on the network or to carry on such a journey an item of luggage or an animal (where this right does not arise under the relevant conditions of carriage except on the payment of a fee) and, where applicable, to obtain goods or services from a person;

Fare Year means the period from 1st January in any year to 31st December in the same year;

Fares Document means a document (to be prepared by Authority if it wishes prior to the Commencement Date) being a document that lists the price as at the Commencement Date for every Protected Fare and (if the document is not prepared) references to a Fares Document shall be construed as a list of these fares as if it has been prepared;

Fares Setting Round has the meaning given to it in the Ticketing and Settlement Agreement;

Fast Track means a quicker course of action than that usually taken;

Faults Plan has the meaning set out in paragraph 4.3(d) in Schedule 7.2 (*Service Quality*);

Faults Reporting Plan has the meaning set out in paragraph 4.3(e) in Schedule 7.2 (*Service Quality*);

Faults Systems means together the Train Fault System and Station Fault System;

Financial Action Plan means any action plan produced by CSL pursuant to paragraph 3.3(e) of Schedule 13.2 (*Information*), where the level of its financial performance specified in the Management Accounts is worse than forecast by CSL in its current Business Plan;

Final Adjustment or “**FADJ**” has the meaning given in paragraph 11 of Schedule 8.1 (*Grant Payments*);

Final Expiry Date means the last day of the tenth Operator Year;

Final Reviewed Accounts means either the audited accounts of CSL (if available) as at the end of the Term, or other final accounts approved by SRH;

Financial Memorandum means the financial memorandum for the SRH group drawn up on behalf of Scottish Government by Transport Scotland which is supplemental to the Framework Agreement (as amended from time to time);

First Expiry Date means 1st April 2030;

Fleet Availability Requirement means the level of availability of each class of vehicle for the delivery of Guest Services (in line with any given Train Plan) and is as specified at paragraph 5 to Appendix 1 (The Train Fleet) to Schedule 1.1;

Flow has the meaning given to it in the Ticketing and Settlement Agreement;

FOISA means the Freedom of Information (Scotland) Act 2002 (as amended or replaced by any successor legislation) and any subordinate legislation made under that Act from time to time, together with any guidance and/or codes of practice issued by the Scottish Information Commissioner (or his successor or replacement from time to time) in relation to such legislation;

Force Majeure Event means any of the events described as such in paragraph 1 of Schedule 10.4 (*Force Majeure*) where the conditions specified in paragraph 2 of Schedule 10.4 are satisfied;

Forecast Guest Demand means the forecast by CSL pursuant to paragraphs 5.1 of Schedule 1.1 (*Service Development*) and 1.4 of Schedule 1.5 (*Information about Guests*) in respect of:

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

for the period in respect of which the next Timetable is to apply and for 5 years following the date of the forecast, even if such 5 year period extends beyond the Term;

Foreground IP any and all Intellectual Property Rights that arises or is obtained or developed by, or by a third party on behalf of, any party in and/or related to the Caledonian Sleeper Operation and/or this Agreement, including without limitation related to any outputs of the Services;

Formation Monitoring Point means those formation monitoring points as detailed in Appendix 5 to Schedule 7.1 (*Train Operating Performance*);

Framework Agreement means the framework agreement between the Authority and SRH as related to the Caledonian Sleeper Operation (as amended from time to time);

Franchise Agreement means any franchise agreement which terminated on or about the day prior to the Commencement Date under which services equivalent to the Operator Services (or a material proportion thereof) were provided by a Train Operator;

GAAP means UK GAAP as at the date of this Agreement which denotes the corpus of practices forming the basis for determining what constitutes generally accepted accounting practice in the UK based on the requirements of UK accounting standards and, where relevant, the accounting requirements of company law and the listing rules of the Financial Conduct Authority;

Gold and Silver Command locations means Network Rail's office at Buchanan House, 58 Port Dundas, Glasgow, G4 0HP or such other location notified to CSL from time to time;

GP Quarter means, in respect of each Operator Year, each of the following three (or four, as the case may be) Reporting Periods:

- (a) the first to third Reporting Periods;
- (b) the fourth to sixth Reporting Periods;
- (c) the seventh to tenth Reporting Periods; and
- (d) the eleventh to thirteenth Reporting Periods,

provided that:

- (i) the first GP Quarter shall commence on the Commencement Date;
- (ii) each GP Quarter shall start on the day following the last day of the preceding GP Quarter; and
- (iii) the last GP Quarter shall end on the Expiry Date or earlier date of termination;

Grant Payment or **£GP** means, in relation to any Reporting Period, the amount determined in accordance with paragraph 1 of Schedule 8.1 (*Grant Payments*);

Grant Payment Component means:

- (a) each of the components of "**£GP**" as described in paragraph 1.3 of Schedule 8.1 (*Grant Payments*);
- (b) any component or element, described in the relevant provisions of Schedule 8.1 (*Grant Payments*) and Schedule 8.2 (*Performance Review Process*), as the case may be, which is used in determining or calculating the value of those components described in paragraph (a) above;

Gross Revenue means, in relation to any period and any Fare, the gross revenue (excluding any applicable Value Added Tax) to CSL attributable to such Fare over the relevant period, excluding any costs, commissions or other expenses which may be paid or incurred in connection with such Fare;

Guest Carrying Capacity means, in relation to a Guest Service, the capacity of the rolling stock vehicles (as stated in Appendix 1 (*The Train Fleet*) to Schedule 1.1 (*Service Development*) from which the Guest Service is formed;

Guest Journey means a journey on a Guest Service;

Guest Services means CSL's railway guest services specified in any Timetable and/or in any Applicable Timetable, including those railway guest services which CSL may delegate or subcontract or otherwise secure through any other person;

Guest's Charter means CSL's service commitments to its guests in the Agreed Form and marked **PC**, as amended or replaced from time to time with the prior written consent of SRH in accordance with paragraph 5 of Schedule 1.4 (*Guest Facing Obligations*);

Guest's Charter Guidelines means the document of the same name issued by or on behalf of the Authority or referred to by the Authority as constituting such, containing the methodology for compiling performance statistics and Guest's Charter compensation, as amended or replaced from time to time by the Authority after consultation with CSL and SRH;

Guest's Charter Statistics means the record of CSL's performance against the standards specified in the Guest's Charter for each Reporting Period prepared and Published in accordance with paragraph 5.7 to 5.9 of Schedule 1.4 (*Guest Facing Obligations*);

Guest Satisfaction Benchmark means the benchmark described in paragraph 9f of the section headed "B Guest Satisfaction" of Schedule 7.1;

Guest Satisfaction Survey has the meaning given in paragraph 3.1 of Schedule 1.5;

Handover Package means a package containing the information and objects specified in the Appendix (*Form of Handover Package*) to Schedule 15.3 (*Handover Package*) and such other information and objects as the Authority may reasonably specify from time to time;

Help/Information Points means the fixed communication points available for guest assistance and information at Stations linked into Customer Service Centres;

HLOS means the High Level Output Specification issued by the Authority from time to time;

Hot Standby means any rolling stock vehicle specified in the Train Plan which:

- (a) is operationally ready to provide the Guest Services in the Timetable;
- (b) is not already assigned to the delivery of any Guest Service in the Timetable; and
- (c) will only be used to deliver such Guest Services if:
 - (i) a rolling stock vehicle scheduled to deliver such Guest Services is unable to so deliver; and
 - (ii) Actual Guest Demand could only be met by the deployment in service of such rolling stock vehicle;

HR Strategy means CSL's human resources strategy specified in paragraphs 1.1 to 1.3 of Schedule 13.1 (*Operation Management*);

IIP means the Investors in People standard achieved through the accreditation framework of the UK Commission for Employment and Skills trading as Investors in People;

Improvement Plan has the meaning given to it at paragraph 3.2(b) to Schedule 7.1 (*Train Operating Performance*);

Improvement Plan Performance Level means, in relation to an Operating Performance Benchmark for any Reporting Period, the improvement plan performance level as determined in accordance with paragraph 1 of Schedule 7.1 (*Train Operating Performance*);

Indicative Framework of KPIs means the framework detailed in Annex 1 to of Schedule 8.2 (*Performance Review Process*);

Indicative Performance Review Scorecard means the indicative scorecard detailed at Appendix 4 to Schedule 8.2 and referenced at paragraph 1.2 to Schedule 8.2 (*Performance Review Process*);

Industrial Action shall include any concerted action taken in connection with the employment of any person (whether or not that action involves any breach of such employees' conditions of employment, and including any action taken in furtherance of a dispute, or with a view to improving the terms of employment of the relevant employees or by way of support for any other person);

Information Away from Station Services means the information provided by CSL as described in the relevant Service Quality Appendices;

Information Strategy means the strategy specified in paragraph 9.1 to 9.5 of Schedule 1.3 (*Additional Service Specifications*) and updated from time to time;

Information Totem means an interactive touchscreen totem, either free standing or integrated into a platform shelter, that will provide information and other services for guests intending to use the Caledonian Sleeper Operator's railway guest services;

Initial Business Plan means the initial business plan for the first Operator Year agreed or determined in accordance with paragraphs 2.1 to 2.3 of Schedule 13.2 (*Information*);

Initial Data Sharing Details means the Data Sharing Details outlined in Appendix 1 to Schedule 17 (*Confidentiality, FOISA and Data Protection*);

Initial KPI Framework has the meaning given in paragraph 1.1 of Schedule 8.2 (*Performance Review Process*);

Initial KPI Framework Dispute has the meaning given in paragraph 1.4 of Schedule 8.2 (*Performance Review Process*);

Initial Permanent Fare has the meaning given to it in the Ticketing and Settlement Agreement;

Initial Service Level Commitment has the meaning given to it at paragraph 1.2 of Schedule 1.1 (*Service Development*);

Inspection Programme has the meaning given to it at paragraph 15.1 of Schedule 7.2 (*Service Quality*);

Integrated Transport Schemes means those schemes which relate to the integration of any other form of transport with the Operator Services:

- (a) listed in the Appendix (*List of Transport, Travel and Other Schemes*) to Schedule 2.5 (*Transport, Travel and Other Schemes*); or
- (b) designated as such in accordance with paragraph 1.2 of Schedule 2.5;

Intellectual Property Rights means patents, utility models, rights to inventions, copyright and neighbouring and related rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

Inter-available Fare has the meaning given to it in the Ticketing and Settlement Agreement

Inter-Operator Schemes means:

- (a) the schemes, agreements and/or contracts set out in paragraph 5 of the Appendix (*List of Transport, Travel and Other Schemes*) to Schedule 2.5 (*Transport, Travel and Other Schemes*) which have been approved by the Authority and which relate to arrangements between CSL and other participants in the railway industry;
- (b) any other scheme, agreement and/or contract of a similar or equivalent nature as may from time to time during the Operation Period amend, replace or substitute, in whole or in part, any of such schemes, agreements and/or contracts; and
- (c) any Discount Fare Scheme;

Interest Rate means a rate equivalent to 2 per cent. per annum above the base lending rate published by the Royal Bank of Scotland plc (or such other bank as the Authority may, after consultation with SRH and CSL, determine from time to time) during any period in which an amount payable under this Agreement remains unpaid;

ITSO means ITSO Limited, the organisation created by guest transport executives, bus operators and Train Operators for the development and promotion of smartcards for use on transport;

ITSO Certified means products which have been fully certified by ITSO;

ITSO Certified Smartmedia ("Smartmedia") means the contactless smartcards, devices or other media designed to hold fare and travel information with the monetary or other value encoded which meet the requirements of paragraph 6 of Schedule 2.5 (*Transport, Travel and Other schemes*) and have been fully certified by ITSO;

ITSO Environment has the meaning ascribed to it in the document titled "**ITSO Operating Licence**" approved by the members of ITSO at an extraordinary general meeting on 21 December 2006;

ITSO Fares means the following types of fare, whether inter-available or otherwise and whether for travel in Standard Class Accommodation or otherwise:

- (a) Anytime (period and day, single and return);
- (b) Off Peak (period and day, single and return);
- (c) Season Ticket Fares (which shall include Flexipass tickets);
- (d) All ticket types for multi-modal rail and ferry travel on the ferry services operated by the respective holders of the Clyde and Hebrides Ferry Service contract and Northern Isles Ferry Service contract;
- (e) All multi-modal rail and bus products for PlusBus journeys being a Multi Modal Travel Scheme in terms of paragraph 3 of Schedule 2.5 (*Transport, Travel and Other Schemes*) and listed in paragraph 3 of Appendix (*List of Transport, Travel and Other Schemes*) to Schedule 2.5;

where the terms used in paragraphs (a) to (e) shall be interpreted in accordance with the national fares structure and public nomenclature adopted by Train Operators in 2008;

ITSO Operating Licence means the contractual undertaking entered into by ITSO members to allow the members to provide services within the ITSO Environment;

ITSO Specification means the UK technical standard for interoperable smart ticketing which defines the key technical items and interfaces required to deliver interoperability between components of a smart ticketing system and between separate ticketing systems;

Key Contract means:

- (a) each agreement and contract listed in the Appendix (*List of Key Contracts*) to Schedule 14.3 (*Key Contracts*) as at the Commencement Date; and
- (b) any other agreement, contract, licence or other arrangement to which CSL is a party or under which CSL is the beneficiary from time to time which is designated as such pursuant to Schedule 14.3,

but excluding any such agreement, contract, licence or other arrangement which ceases, in accordance with the terms of this Agreement, to be designated as a Key Contract;

Key Personnel has the meaning given to it in paragraph 2 of Schedule 11 (*Agreement and Service Delivery Management Provisions*);

Key Stations means the following Stations:-

Aberdeen;

Edinburgh Waverley;

Fort William;

Glasgow Central High Level;

Inverness;

London Euston;

and any other Stations or stations, or any new station in Scotland notified by SRH to CSL.

KPI Framework Dispute has the meaning given to it in paragraph 1.4 of Schedule 8.2 (*Performance Review Process*);

Law includes any enactment, subordinate legislation, rule, regulation, order, directive or other provision, and any judicial or administrative interpretation or application thereof, which has, in each case, the force of law in the United Kingdom or any part of it (including the Act, the Railways Act 2005 and the Transport Act);

Lead Operator has the meaning given to it in the Ticketing and Settlement Agreement;

Legislation means any enactment or subordinate legislation, rule, regulation, order, directive or other provision which has, in each case, the force of Law in the United Kingdom or any part of it, but excluding:

- (a) any order under Section 1 of the Transport and Works Act 1992 or any order relating to, or matters ancillary to, operation of a transport system at the times mentioned in that Section made under the Private Legislation Procedure (Scotland) Act 1936; and
- (b) any objectives, instructions, directions or guidance given from time to time to the Authority pursuant to the Act;

Licences mean such licences granted or to be granted under Section 8 of the Act as CSL may be required from time to time to hold under the Act in order to provide or operate the Operator Services;

Light Maintenance Service means any service specified in paragraph 4 of Schedule 1.7 (*Operator Services*) which may be provided by CSL at a depot or station;

Local Authority means:

- (a) in England, a county council, a district council, a unitary authority, a guest transport executive, a London borough council, the common council of the City of London, or a council which is established under the Local Government Act 1992 and which is either an authority responsible for expenditure on public guest transport services within the meaning of Section 88 of the Transport Act 1985 or a local authority for the purposes of Section 93 of the Transport Act 1985;
- (b) in Scotland, a Regional Transport Partnership which is established under the Transport Act (Scotland) Act 2005 and a council or islands council which is established or continued under the Local Government, etc. (Scotland) Act 1994;
- (c) any other body or council replacing any of the above from time to time; and
- (d) any other body or instrument of local or regional government specified by the Authority from time to time;

Lottery Commission means the National Lottery Commission established by Section 3A of the National Lottery etc Act 1993 and its statutory successor responsible for licensing and regulating the National Lottery;

MAA means moving annual average;

Maintenance Contract means any contract or arrangement which has a duration of more than 12 Reporting Periods or a value of more than £100,000 to which CSL is a party, which includes the carrying out for CSL of any maintenance work (including light maintenance services) in respect of rolling stock vehicles used by CSL in the provision of the Guest Services or for the enforcement of warranties or other rights against a manufacturer in respect of any such rolling stock vehicles;

Maintenance Contractor means Alstom Transport UK Limited or such other sub-contractor as may be appointed from time to time for the purposes of the Maintenance Contract;

Major Event in Schedule 7.2 (*Service Quality*) means any of the following:- act of God, war damage, enemy action, terrorism, riot, civil commotion, rebellion, fire, lightning, explosion, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, earthquake, aircraft and other aerial devices or articles dropped therefrom except where that Major Event is caused, or contributed to, by any act or omission of CSL, its agents or employees;

Major Project means any engineering, maintenance or renewal project which requires a possession or series of possessions of one or more sections of track extending over:

- (a) a period of more than one year; or
- (b) a period which contains two or more Timetable Change Dates:

Major Scottish Projects means any engineering, maintenance or renewal project within Scotland which requires a possession or series of possessions of one or more sections of track extending over:

- (a) a period of more than one year; or
- (b) a period which contains two or more Timetable Change Dates;

Major Station means Edinburgh Waverley and Glasgow Central;

Major Station Area means:

- (a) in respect of the Station at Edinburgh Waverley:

1000x600mm for totem (base area) (exact position to be determined), and 150sq.ft basement space as servicing hub for food and laundry;

(b) in respect of the Station at Inverness:

1000x600mm for totem (base area) (exact position to be determined), and existing sleeper lounge adjacent to booking hall;

(c) in respect of the Stations at Bridge of Orchy, Upper Tyndrum, Garelochhead, Spean Bridge, Roy Bridge, and Dunkeld & Birnham:

2000x4000mm for each shelter totem (base area) (exact position to be determined).

(d) all other Stations:

1000x600mm for each totem (base area) (exact position to be determined).

Management Accounts means, in relation to any Reporting Period, CSL's management accounts which:

(a) comply with paragraphs 3.3, 3.10 and 3.11 of Schedule 13.2 (*Information*); and

(b) are delivered by CSL in accordance with paragraph 3.2 of Schedule 13.2;

Management and Processes means the management and processes as set out in Schedule 7.2;

Mandatory Modification means a modification or addition to any rolling stock vehicle which is required to be made under any applicable Law or any directive of the Rail Safety and Standards Board or any government authority;

Maximum Inspection Number means the maximum number of inspections which the Authority may conduct in relation to the Schedule 7.2 Services, and as set out in a Service Quality Appendix;

Marks means such registered or unregistered trade marks and/or other designs, branding or Intellectual Property Rights as CSL and/or SRH may apply to any Primary Operator Asset or other asset used by it under a Key Contract, which are applied to assets, equipment and others used in the provision of Operator Services during the Term and are not the subject of a Brand Licence;

Minutes Delay means the minutes of delay to the Guest Services that are attributed to CSL or Network Rail, as the case may be, in each case pursuant to the Track Access Agreement and disregarding any minutes of delay that are imputed to Guest Services that were cancelled;

MTIN means Miles per Technical Incident;

MTIN Score means the score for the overall reliability of the Train Fleet calculated in accordance with the MTIN moving annual average metric used by the Rail Delivery Group;

National Entitlement Card means the Scotland wide scheme for concessionary travel across multi-modes operated by the Scottish Government and administered by Local Authorities (and as at the date of this Agreement branded as the Young Scot National Entitlement Card);

National Guest Survey or NPS means a guest satisfaction survey which may be carried out as described in paragraph 2 of Schedule 1.5 (*Information about Guests*);

National Rail Enquiries means the guest rail information service for England, Wales and Scotland provided by ATOC;

National Rail Timetable means the guest timetable issued by Network Rail (currently twice per annum) specifying the timings and stopping patterns of all guest railway services in Great Britain;

National Rail Travel Vouchers means vouchers issued as compensation under a Train Operator's Guest Charter that can be exchanged for tickets to travel on railway guest services;

National Transport Strategy means the National Transport Strategy issued by the Authority from time to time;

Network Change has the meaning given to it in the Network Code;

Network Change Proposal has the meaning given to it in the Network Code;

Network Code means the document now known as the Network Code and formerly known as the Railtrack Track Access Conditions 1995 (as subsequently replaced or amended from time to time) or any equivalent code or agreement applying to any party referred to in the definition of "**Network Rail**" other than Network Rail Infrastructure Limited;

Network Rail means in respect of:

(c) the network or any relevant facility:

(i) Network Rail Infrastructure Limited, a company registered in England whose registered office is at 1 Eversholt Street, London, NW1 2DN; and

(ii) Any successor in title to the network or any relevant railway facility; or

(d) any new or other sections of network or any relevant new or other railway facilities, the owner (if different);

New Insurance Arrangements means any insurance arrangements which CSL was not a party to prior to or on the Commencement Date;

New Station means:

(a) a station not served by railway guest services as at the Commencement Date, but which has since that time been, or is subsequently, served by railway guest services which have been, or are subsequently to be, included in the Timetable or in another relevant Train Operator's timetable; and/or

(b) if the Authority requires, a station, other than a Station, at which, with the consent of the Authority (whether by amendment to this Agreement or otherwise) railway guest services operated by CSL call;

Notice has the meaning given to it at paragraph 6.2 of Schedule 7.2 (*Service Quality*);

Notifiable Costs means any Costs which are described in Appendix 1 (*Notifiable Costs*) to Schedule 8.1 (*Grant Payments*);

One-Ticket means the travel scheme conducted through a partnership between SESTRAN and transport operators within the SESTRAN area;

On-Train Services means the services provided by CSL on Trains as described in the relevant Service Quality Appendices;

Operating Assets has the meaning given to it in paragraph 1.1 of Schedule 14.2 (*Maintenance of Operating Assets*);

Operation Facilities means the facilities described in the Operation Facilities Book;

Operation Facilities Book has the meaning given to it in paragraph 2.2 of Schedule 4.1 (*Operation Facilities*);

Operating Performance Benchmarks means the Right Time Benchmark, Patronage Benchmark, or Guest Satisfaction Benchmark;

Operating Performance Dispute has the meaning given to it at paragraph 1.6 of Schedule 7.1 (*Train Operating Performance*);

Operating Performance Regime has the meaning given to it at paragraph 1.2 of Schedule 7.1 (*Train Operating Performance*);

Operation Performance Meeting means any meeting between SRH and CSL to review the financial and operational performance of CSL (as required to be held in accordance with paragraph 10 of Schedule 11 (*Agreement and Service Delivery Management Provisions*));

Operation Period means the period commencing on the Commencement Date and ending on the Expiry Date or, if earlier, the date of termination of this Agreement;

Operation Section has the meaning given to it in paragraph 1 of Schedule 16 (*Pensions*);

Station Access Conditions has the meaning given to it in the relevant Access Agreement to which it relates;

Operator Assets means the property, rights and liabilities designated as such pursuant to paragraph 1 of Schedule 14.4 (*Designation of Operator Assets*) but excluding such property, rights or liabilities as shall, in accordance with the terms of this Agreement, cease to be so designated;

Operator Employee means

- (a) any employee of CSL from time to time; and
- (b) any other person employed by CSL or any of its Affiliates or any subcontractor or delegate of any of the Operator Services whose contract of employment may be transferred to a Successor Operator following the expiry of Operation Period by virtue of the operation of Law (including the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended, replaced or substituted from time to time)) or in respect of whom liabilities arising from a contract of employment or employment relationship may be so transferred,

but for the purposes of the Business Plan Commitments (and the terms defined in this Agreement used in the Business Plan Commitments) means those employees in limb (a) only;

Operator Services means such of the Guest Services, the Light Maintenance Services, the Station Services and the Ancillary Services as CSL may provide or operate from time to time, including any of such services as CSL may delegate or subcontract or otherwise secure through any other person from time to time in accordance with the Services Agreement;

Operator Year means any period of 12 months during the Operation Period beginning on 1 April in any year, except that the first and last such periods may be for a period of less than 12 months and the first such period shall begin on the Commencement Date and end on 31 March 2024 and the last such period shall end on the last day of the Operation Period;

ORCATS means the suite of computer programs which provide the LENNON system with a file of allocation factors that may be used to apportion to individual passenger train operating companies passenger revenue on certain flows;

ORCATS Adjustment means any reduction in the Percentage Allocation of inter-available LENNON earnings which CSL receives in accordance with the terms of the Ticketing and Settlement Agreement directly as a result of:-

- (a) The service of a notice on CSL pursuant to Clause 11.17 of the Ticketing and Settlement Agreement (an "**ORCATS Notification**"); or

- (b) a change in the demand profiles chosen by ORCATS to allocate demand to the Guest Services for guest flows between London and Edinburgh and Glasgow (an “**ORCATS Profile Change**”); or
- (c) an agreement or settlement between CSL and any other Train Operator or Operators.

ORR means the Office of Rail Regulation established by Section 15 of the Railways and Transport Safety Act 2003 and having duties and obligations as set out in the Act;

Other Parties has the meaning given to it at paragraph 5 of Schedule 17 (*Confidentiality, FOISA and Data Protection*);

Outgoing Operator means Serco Caledonian Sleepers Limited, whose registered number is SC477821 and whose registered office is at Basement And Ground Floor Premises, 1-5 Union Street, Inverness, IV1 1PP;

Overall Satisfaction means the National Guest Survey measure of the same name;

Parent means SRH;

Partial Cancellation means a Guest Service which is included in the Applicable Timetable and in respect of which CSL:

- (a) misses a scheduled stop;
- (b) completes 50% or more, but less than 100% of its scheduled journey; or
- (c) arrives at its final destination scheduled in the Timetable more than 120 minutes late;

Participating Employer has the meaning given to it in the Pension Trust;

Pass in Schedule 7.1 (*Train Operating Performance*) means, in relation to any Formation Monitoring Point, the act of a train arriving at, passing or departing from (as the context may require) such Formation Monitoring Point;

Passenger Assist means the system known as Passenger Assist as described in the Code of Practice as at the date of this Agreement;

Passenger Change Date means a date upon which significant changes may be made to the Timetable in accordance with or by virtue of the Network Code;

Passenger Information During Disruption Guidelines means ATOC’s Approved Code of Practice Passenger Information During Disruption as amended, updated or replaced from time to time;

Passenger’ Council means the passengers’ council operating as Passenger Focus established under Section 19 of the Railways Act 2005 and its statutory successors or in substitution any person or body nominated by the Authority as performing similar functions. The Passenger’ Council has been generally known as “Transport Focus” from 30 March 2015;

Patronage Benchmark means the benchmark described at paragraph 2 of the section headed “A Patraonge” of Schedule 7.1

Payment Date means the date for the payment of Grant Payments and the Working Capital Facility in accordance with paragraph 2.3 of Schedule 8.1 (*Grant Payments*);

Pension Trust means the pension trust governing the Railways Pension Scheme;

Pensions Committee has the meaning given to it in the Railways Pension Scheme;

Performance Criterion means each of the relevant criteria in respect of which CSL's performance shall be measured in a Performance Review and for which a score shall be awarded in the Performance Review Scorecard, as agreed or determined in accordance with paragraph 1 of Schedule 8.2 (*Performance Review Process*) and as adjusted from time to time in accordance with paragraph 6 of Appendix 1 to Schedule 8.2 (*Performance Review*) (and "**Performance Criteria**" means the plural of Performance Criterion);

Performance Criteria Adjustment has the meaning given in paragraph 6.2 of Appendix 2 to Schedule 8.2 (*Performance Review*);

Performance Criterion Dispute has the meaning given to it at paragraph 5.7 of Appendix 2 to Schedule 8.2 (*Performance Review*);

Performance Criterion Dispute Meeting has the meaning given to it at paragraph 5.7 of Appendix 2 to Schedule 8.2 (*Performance Review*);

Performance Management Group or PMG has the meaning given to it at paragraph 12 of Schedule 1.2 (*Operating Obligations*);

Performance Management System means systems of recording and measuring delays and cancellations against budgets; understanding root cause of delays and cancellations; developing and implementing plans to tackle root cause and monitoring implementation of these plans;

Performance Review means a review carried out (or to be carried out) in accordance with Appendix 2 of Schedule 8.2 (*Performance Review Process*);

Performance Review Period has the meaning given to it at paragraph 1.2 of Appendix 2 to Schedule 8.2 (*Performance Review*);

Performance Review Meeting means, in respect of the Performance Review, a meeting held between SRH and CSL (with the option for the Authority to attend in accordance with paragraph 4 of Appendix 2 to Schedule 8.2 (*Performance Review*) to discuss the performance of CSL during the relevant GP Quarter;

Performance Review Report means, in respect of a Performance Review, a report prepared in accordance with paragraph 3 of Appendix 2 to Schedule 8.2 (*Performance Review*);

Performance Review Scorecard means, in respect of a Performance Review, a scorecard completed (or, as the case may be, to be completed) by SRH in accordance with paragraph 5 of Appendix 2 of Schedule 8.2 (*Performance Review*), in the format agreed or determined in accordance with paragraph 1 of Schedule 8.2 (*Performance Review Process*);

Performance Scoring Standard means each standard set out with respect to each Performance Criterion as agreed or determined in accordance with paragraph 1 of Schedule 8.2 (*Performance Review Process*) and as adjusted from time to time in accordance with paragraph 6 of Appendix 2 to Schedule 8.2 (*Performance; Review*);

Performance Steering Group means the forum for representatives of CSL, SRH, the Authority and Stakeholders referred to in paragraph 12 of Schedule 1.2 (*Operating Obligations*);

Periodic Adjustment or **PADJ** has the meaning given in paragraph 8 of Schedule 8.1 (*Grant Payments*);

Periodic Adjustment Period means the Reporting Period which occurred two Reporting Periods prior to the current Reporting Period (for example, if the current Reporting Period is the third Reporting Period, then the Periodic Adjustment Period would be the first Reporting Period);

Periodic Budgeted Capex Cash Payment or **PBCCP** means the Capital Expenditure forecast and budgeted to be incurred and paid by CSL in a Reporting Period and specified in the then current

Budget as agreed or determined pursuant to paragraph 6 of Schedule 8.1 (*Grant Payments*) excluding any grant funding provided by third parties;

Periodic Finance Review Meeting has the meaning given to it at paragraph 7.1 of Schedule 8.1 (*Grant Payments*);

Periodic Grant Payment or **PGP** has the meaning given to it at paragraph 1.3 of Schedule 8.1 (*Grant Payments*);

Permitted Individual Increase has the meanings given to it in paragraphs 2.2 and 2.4, as appropriate, of Schedule 5.3 (*Regulation of Individual Fares*);

Permitted Purpose has the meaning given to it in paragraph 2.6 of Schedule 14.2 (*Maintenance of Operating Assets*);

Placed on Deposit means consigned to the Authority's Solicitors to be held as undelivered and to CSL's order;

PLUSBUS Scheme means the scheme of the same name operated by Journey Solutions Partnership which allows guests to purchase an integrated bus and rail ticket;

Policy Compendium means the policy compendium as annexed to the Framework Agreement (as updated from time to time with approval of the Authority);

Policy Compendium Sleeper Addendum means the addendum to the Policy Compendium relating to the delivery of Caledonian Sleeper rail services (as updated from time to time with approval of the Authority);

Possessions Strategy Notice has the meaning given to it in the Network Code;

Preceding Year Ticket Price has the meaning given to it in paragraphs 2.1 and 2.3 of Schedule 5.5 (*Regulation of Individual Fares*);

Price means, in respect of any Fare, the price of such Fare before the deduction of any applicable discount to which a purchaser may be entitled, as notified to RSP in accordance with Schedule 5 to the Ticketing and Settlement Agreement;

Priced Option means any of the options set out in Schedule 3 (*Priced Options*);

Primary Operator Assets means:

- (a) the property, rights and liabilities of CSL listed in the Appendix (List of Primary Assets) to Schedule 14.4 (*Designation of Service Assets*); and
- (b) any other property, rights and liabilities of CSL which is or are designated as such pursuant to Schedule 14.4,

but excluding such property, rights or liabilities as may, in accordance with the terms of this Agreement, cease to be so designated;

Principal Change Date has the meaning given to it in the Network Code;

Processed Personal Data has the meaning given to it at paragraph 10.11 of Schedule 17 (*Confidentiality, FOISA and Data Protection*);

Processor has the meaning given to it at paragraph 10.11 of Schedule 17 (*Confidentiality, FOISA and Data Protection*);

Profit means subject to paragraph (b) in respect of any Operator Year, the total profit of CSL for that Operator Year calculated by applying the GAAP:

- (a) after taking into account in respect of that Operator Year:
 - (i) interest, finance income and finance charges (other than finance items recognised in respect of retirement benefits);
 - (ii) Grant Payments;
 - (iii) all extraordinary and exceptional items;
 - (iv) CSL's normal pension contributions in relation to any pension schemes to the extent connected with CSL;
 - (v) any payments to Affiliates of CSL;
 - (vi) any sums payable by or to the Operator pursuant to the terms of the Supplemental Agreement; and
 - (vii) any capital expenditure to the extent that it is recognised as an operating cost in the Annual Audited Accounts and any depreciation on capital expenditure that is added to the balance sheet in the Annual Audited Accounts but applying at all times the depreciation policy of CSL; and
- (b) before taking into account in respect of the Operator Year:
 - (i) any taxation on profits including corporation tax;
 - (ii) shares of the profit of any Affiliate of CSL, except dividends received in cash;
 - (iii) non cash entries in respect of any pension schemes to the extent connected with CSL, excluding accruals or prepayments of any normal pension contributions due;
 - (iv) any payment made by CSL consequent upon any breach or contravention of this Agreement and/or its Licence in respect of Stations (including as a consequence of any penalty payment paid or payable pursuant to Section 57A of the Railways Act 1993);

Property Lease means any agreement or lease of a similar or equivalent nature (whether in respect of any such facility or otherwise) which CSL may enter into with a person who has an interest in a network or a railway facility which is to be used for or in connection with the provision or operation of the Operator Services;

Protected Fare means any Off Peak Ticket and Regulated Peak Fares;

Public Contracts Scotland (or PCS) means the website of that name operated by the Scottish Procurement Directorate;

Public Sector Equality Duty means the duty of that name created by the EA;

Public Sector Operator means any person (other than a franchisee in relation to the services provided or operated under its franchise agreement) who provides railway passenger services or operates any station or light maintenance depot pursuant to or under Section 30 of the Act or Section 8 of the Railways Act 2005;

Publish means the active dissemination and sharing of information by all practicable means including, but not limited to printed booklets, leaflets and posters, information display screens, arrival/departure

boards, notices and public address announcements, broadcast media, websites, social media, SMS and MMS messages as shall be practical, appropriate and timely best practice;

Purpose means the purposes specified in the Data Sharing Details;

Quality Assurance Plans means the quality assurance plan in Agreed Form and marked *QAP* and set out in Schedule 6 (*Rolling Stock*) of this Agreement;

Quality Plan means the plan specified in paragraphs 2.1 to 2.4 of Schedule 13.1 (*Operation Management*);

Quality Report means the report specified in paragraph 2.5 of Schedule 13.1 (*Operation Management*);

Rail Safety and Standards Board or (“RSSB”) means the Rail Safety and Standard Board Limited (Company Number 54655675) with Registered Office at Block 2, Angel Square, 1 Torrens Square, London or its successors;

Railway Group Standards means the standards Published from time to time by the Rail Safety Standards Board;

Railway Industry Standards has the meaning given to it in paragraph 1.1 of Schedule 13.3 (*Co-operation*);

Railway Operational Code has the meaning given to it in Condition H of the Network Code;

Railway Guest Services means, for the purpose of Schedule 5 (*Fares*) only, services for the carriage of guests by railway which are provided by a person who is bound by the Ticketing and Settlement Agreement, or any part of it, and including CSL and any other Train Operator from time to time;

Railways Pension Scheme means the pension scheme established by the Railways Pension Scheme Order 1994 (No. 1433);

Requested Information has the meaning given to it at paragraph 5 of Schedule 17 (*Confidentiality, FOISA and Data Protection*);

Request Receiver has the meaning given to it at paragraph 5 of Schedule 17 (*Confidentiality, FOISA and Data Protection*);

RDG means the Rail Delivery Group;

Regional Transport Partnership means a regional transport partnership established under section 1(1) of the Transport (Scotland) Act 2005;

Regulated Child Price means the Child Price that is permitted to be charged by CSL in respect of any Fare in any Fare Year, determined in accordance with paragraph 2.1 of Schedule 5.3 (*Regulation of Individual Fares*);

Regulated Peak Fares means any Season Ticket or Anytime Ticket;

Regulated Price means the Price that is permitted to be charged by CSL in respect of any Fare in any Fare Year, determined in accordance with paragraph 2.1 of Schedule 5.3 (*Regulation of Individual Fares*);

Regulation (EC) 1370/2007 means Regulation (EC) Number 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public guest transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70;

Regulations has the meaning given to it in paragraph 2.3 of Schedule 2.5 (*Transport, Travel and other Schemes*);

Related Party Contract means a contract between CSL or any Affiliate with another Affiliate;

Relevant Days has the meaning given to it in paragraph 2.2 of Schedule 15.2 (*Last 12 or 13 Months of Operation Period*);

Relevant Term has the meaning given to it in paragraph 2.1 of Schedule 10.1 (*Remedial Plans*);

Remedial Agreement has the meaning given to it in paragraph 4.1 of Schedule 10.1 (*Remedial Plans and Remedial Agreements*);

Remedial Plan has the meaning given to it in paragraph 2.2 of Schedule 10.1 (*Remedial Plans and Remedial Agreements*);

Remedial Plan Notice has the meaning given to it in paragraph 1 of Schedule 10.1 (*Remedial Plans and Remedial Agreements*);

Reporting Accountants means such chartered accountants as the Authority may appoint for the preparation of the Net Asset Statement as provided for in the Supplemental Agreement;

Reporting Period means a period of 28 days, provided that:

- (i) the first such period during the Operation Period shall exclude any days up to but not including the Commencement Date;
- (ii) the first and last such period in any Reporting Year may be varied by up to 7 days by notice from SRH to CSL;
- (iii) each such period shall start on the day following the last day of the preceding such period; and
- (iv) the last such period during the Operation Period shall end on the end of the Operation Period;

Reporting Period 4 means the period from 25th June 2023 to 22nd July 2023;

Reporting Period 5 means the period from 23rd July 2023 to 19 August 2023;

Reporting Year means a period normally commencing on 1 April in each calendar year, except for the first Operating Year, comprising 13 consecutive Reporting Periods;

Requested Information has the meaning given to it at paragraph 5 of Schedule 17 (*Confidentiality, FOISA and Data Protection*);

Request for Information has the meaning set out in FOISA;

Request Receiver has the meaning given to it at paragraph 5 of Schedule 17 (*Confidentiality, FOISA and Data Protection*);

Required Cash Balance means one million and five hundred thousand pounds, Sterling (£1,500,000);

Resilience Plan means the resilience plan developed by CSL in terms of paragraph 11 of Schedule 1.2 (*Operating Obligations*);

Resilience Team has the meaning given to it in paragraph 11.1 of Schedule 1.2 (*Operating Obligations*);

Restriction of Use means in respect of any day, any restriction of use of any relevant section of track notified by Network Rail to CSL which necessitates any difference between the Applicable Timetables;

Retail Prices Index means the retail prices index for the whole economy of the United Kingdom and for all items as published from time to time by the Office for National Statistics or, if such index shall cease to be published or there is, in the reasonable opinion of the Authority, a material change in the basis of the index or if, at any relevant time, there is a delay in the publication of the index, such other retail prices index as the Authority may, after consultation with SRH and CSL, determine to be appropriate in the circumstances;

Return Fare means a Fare which entitles the purchaser to make, without further restrictions as to the time of day for which the Fare is valid, a journey in each direction in Standard Class Accommodation (or, if the Fare relates to a First Class Ticket, in first class accommodation (as defined in the National Classes of Accommodation in terms of the Ticketing and Settlement Agreement)) between the stations and/or the zones for which such Fare is valid and which expires no earlier than 0200 on the day after the day of the outward journey or, if later, the time the relevant return journey may be completed if commenced before 0200;

Revenue means the gross revenue (without any deduction for operating costs or charges except for commission charged to revenue in the normal course of business) of CSL, as stated in the audited or management accounts and statements submitted in accordance with Schedule 13.2 (*Information*), relating to:

- (a) railway guest services;
- (b) the provision of catering services on any Guest Service;
- (c) charging for the use of station car parks;
- (d) other revenue directly related to guest demand for railway guest services;
- (e) amounts receivable from Network Rail (excluding any amounts in terms of any Alliance with Network Rail) and any interest;
- (f) retail commission,

but shall not include any Grant Payment;

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

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

but which would have been receivable and received or otherwise realised by CSL if it had acted wholly in accordance with the terms of this Agreement and with the highest level of care, skill and diligence according with best practice in CSL's industry; and

- (b) subject always to paragraph 5 (No Double Recovery) of Schedule 8.1 (*Grant Payments*), but CSL:
 - (i) incurring Notifiable Costs; and/or
 - (ii) otherwise acting other than wholly in accordance with the terms of this Agreement and with the highest level of care, skill and diligence according with best practice in CSL's industry;

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

Right Time Benchmark means any of the performance levels in respect of the Benchmark set out in the Right Time Benchmark Table;

Right Time Benchmark Table means the table set out in Appendix 1 (*Right Time Benchmark Table*) to Schedule 7.1 (*Benchmarks*);

Rolling Stock means the rolling stock vehicles specified in Appendix 1 (*The Train Fleet*) to Schedule 1.1 (*Service Development*) (as amended from time to time) used to operate the timetable of services on the network;

Rolling Stock Contract means any contract or arrangement to which SRH and/or CSL is a party, related to the maintenance or other of in respect of rolling stock vehicles used by CSL (including Rolling Stock) which are critical to delivering of the Operator Services, or for the enforcement of warranties or other rights against a manufacturer in respect of any such rolling stock vehicles;

Rolling Stock Lease means any agreement for the leasing of rolling stock vehicles listed in Train Fleet Table 1 and any agreement of a similar or equivalent nature (including, any agreement or arrangement for the subleasing, hiring, licensing or other use of rolling stock vehicles) to which CSL is a party from time to time during the Term whether in addition to, or replacement or substitution for, in whole or in part, any such agreement;

Rolling Stock Project means the procurement, manufacture, delivery or improvement, refurbishment, delivery and thereafter testing, commissioning and introduction into service of the Rolling Stock and the procurement, design, manufacture, engineer, supply, test, commission, delivery and provision of the Rolling Stock Works;

Rolling Stock Project Key Personnel means the engineering director and the engineering director's direct reports;

Rolling Stock Related Contract means any Rolling Stock Lease, Maintenance Contract or Technical Support Contract;

Rolling Stock Stewardship Report means the stewardship report for the Train Fleet;

Rolling Stock Unit means the smallest number of rolling stock vehicles which are normally comprised in a train used by the CSL in the provision of the Guest Services;

Rolling Stock Works means the test equipment, off train systems, light maintenance depot works and equipment, equipment modifications, strategic spares and other deliverables ancillary to the procurement of the Rolling Stock;

Route means any route specified in the Service Level Commitment which CSL has permission to operate the Guest Services over pursuant to any Track Access Agreement;

Route Utilisation Strategy means any route utilisation strategy notified to CSL by SRH (and/or the Authority) on or before the Commencement Date or as developed by Network Rail from time to time and notified to CSL for the purposes of this Agreement;

RSP means Rail Settlement Plan Limited;

Rules means in Schedule 16 (*Pensions*) has the meaning given to it in the Railways Pensions Scheme;

Safety Certificate means the certificate issued by the ORR under the Safety Regulations, certifying its acceptance of CSL's safety management system (as defined in those regulations) and the provisions adopted by CSL to meet the requirements that are necessary to ensure safe operation on the Routes;

Safety Management System shall have the same meaning as in the Railways and Other Guided Transport Systems (Safety) Regulations 2006;

Safety Regulations means The Railways and Other Guided Transport Systems (Safety) Regulations 2006;

Scottish Stations Map means the map or other visual representation Published by SRT of stations in Scotland at which guest railway services call;

Season Ticket means a ticket to which a Season Ticket Fare applies;

Season Ticket Fare means a Fare which entitles the purchaser to make an unlimited number of journeys in any direction during the period for which, and between the stations and/or the zones for which, such Fare is valid;

Secretary of State means The Secretary of State for Transport;

Section 30 Duty means the Authority's duty under section 30 of the Act to secure the provision of guest rail services in circumstances where the Franchise Agreement terminates and no further franchise agreement has been entered into in respect of the guest services formerly provided under the Franchise Agreement;

Sectors means the Express (E&G) Sector, the Express (Other) Sector, the Suburban West Sector, the Suburban (East) Sector and the Rural Sector and/or such sectors as determined in accordance with paragraph 1 of Schedule 7.1 (*Train Operating Performance*); and **Sector** shall be construed accordingly;

Security Interest means any mortgage, pledge, lien, hypothecation, security interest or other charge or encumbrance or any other agreement or arrangement having substantially the same economic effect;

Services means all those Guest Services provided and such other Station Services, Depot Services and Ancillary Services as may be provided or operated in connection with the Guest Services;

Service Code in Schedule 7.1 (*Train Operating Performance*) means the third, fourth and fifth digits of an eight character train service code applied in Network Rail's performance monitoring system to trains and used to identify them;

Service Group has the meaning given to it in the Track Access Agreement, except when used in paragraph 5 of Schedule 1.4 (*Guest Facing Obligations*) when it shall have the meaning given to it in the Guest's Charter; and when used in relation to a Sector or Sectors at the Commencement Date. The Sleeper Service Group is Service Group H.

Service Level Commitment means the service level commitment in respect of the Services more particularly described in Schedule 1.1 (*Service Development*), including the Initial Service Level Commitment, and any other service level commitment developed in accordance with Schedule 1.1;

Service Quality Benchmark means any of Exceptional Level, Strong Level, Acceptable Level, Adequate Level or Unsatisfactory Level;

Service Quality Benchmark Score means a score of Exceptional Level (5), Strong Level (4), Acceptable Level (3), Adequate Level (2) or Unsatisfactory Level (1) allocated in accordance with the Service Quality Benchmark detailed in each Service Quality Appendix;

Service Quality Monitoring Plan means a plan which the Authority may require CSL to provide in accordance with paragraph 14 of Schedule 7.2 (*Service Quality*);

Service Quality Operations Team means the SQL's and any supervisors and/or managers to whom the SQLs report;

Service Quality Regime has the meaning given to it at paragraph 1.2 of Schedule 7.2 (*Service Quality*);

Service Quality Regime Review means the review of the Service Quality Regime carried out pursuant and as described in paragraphs 15.2.1 to 15.2.3 of Schedule 7.2 (*Service Quality*);

Service Quality RP Score has the meaning given to it paragraph 9.2 of Schedule 7.2 (*Service Quality*);

Service Quality PQ Score has the meaning given to it paragraph 9.4 of Schedule 7.2 (*Service Quality*);

Schedule 7.2 Services means the Operator Services which make up each Schedule 7.2 Service Specification;

Schedule 7.2 Service Specifications means the service specifications for the Station Services, the On-Train Services, Information Away from Station Services, and the Emerging Technologies Services as set out in a Service Quality Appendix;

Service Quality Appendices means Appendices 1 to 36 as annexed to Schedule 7.2 (and **Service Quality Appendix** means any and each of the Appendixes annexed to Schedule 7.2 (*Service Quality*)) which describe the Schedule 7.2 Service Specifications, the Service Quality Benchmarks any Maximum Inspection Numbers and other information as determined relevant;

Service Recovery Plan means, in the event of a prevention or restriction of access to the track or a section of the track (howsoever caused) which results in any Cancellation, Partial Cancellation, and/or any Guest Service being operated with less guest carrying capacity than the guest carrying capacity specified for such Guest Service in the Train Plan, a plan implemented CSL:

- (a) to minimise the disruption arising from such prevention or restriction of access by operating during such period of disruption, the best possible level of service given such disruption, including by:
 - (i) keeping service intervals to reasonable durations;
 - (ii) keeping extended journey times to reasonable durations; and
 - (iii) managing any resulting overcrowding;
- (b) to:
 - (i) return the level of service to that level specified in the Timetable as soon as reasonably practicable; and
 - (ii) prior to the attainment of the level of service specified in paragraph (b)(i), operate any reduced level of service agreed with Network Rail for the purpose of minimising such disruption pursuant to paragraph (a);
- (c) in accordance with the principles of service recovery set out in the ATOC “**Approved Code of Practice: Contingency Planning for Train Service Recovery – Service Recovery 2009**” or any document of a similar or equivalent nature; and
- (d) where the particulars of such plan in relation to the requirements of paragraphs (a) and (b) have been:
 - (i) agreed at an initial and, where required, subsequent telephone conference between CSL, Network Rail and any other affected Train Operator; and

- (ii) on each occasion, recorded in an official control log by the relevant Region Control Manager of Network Rail,

and prevention or restriction of access to the track or a section of the track shall have the meaning given to that term in paragraph 1.1(a)(i) of Schedule 10.4 (*Force Majeure*);

Settlement Proposal has the meaning given to it in paragraph 3.2 of Schedule 4.2 (*Persons with Disabilities and Disability Discrimination*);

Shared Cost Arrangement has the meaning given to it in the Railways Pension Scheme;

Significant Alterations shall, in relation to a Timetable, include alterations to the Timetable which result in:

- (a) the addition or removal of railway guest services; or
- (b) changes to stopping patterns or destinations or origin; or
- (c) changes of timings for first/last trains by more than 10 minutes; or
- (d) changes to clockface (or near clockface) service patterns (meaning the provision of railway guest services at a specified time or times relative to the hour); or
- (e) significant changes to journey times and/or key connections at the Station or at other stations at which relevant railway guest services call;

Small and Medium-Sized Enterprises (“SMEs”) means any individual micro, small or medium-sized enterprise meeting the requirements set out in EU Recommendation 2003/36 and broadly falling into one of three categories based on a combination of:-

- (a) the number of employees; and
- (b) either its turnover or its balance sheet total.

The three categories are:-

Company Category	Employees	Turnover	Or Balance Sheet Total
Medium	250	£50m	£43m
Small	50	£10m	£10m
Micro	10	£2m	£2m

Smartcard means a plastic card with an embedded processor chip with memory for storing electronic ticketing products;

SMS means Short Message Service, a text messaging service component of phone, Web, or mobile communication systems;

Spares means parts and components of rolling stock vehicles which are available for the purpose of carrying out maintenance services on rolling stock vehicles;

Special Events means any national or regional sporting or cultural event as shall be so designated by SRH and shall include, but not be limited to the Edinburgh Festivals, football cup fixtures including for the avoidance of doubt, but without limitation, round matches quarter final and semi-final matches

and final matches, Six Nations Rugby fixtures, Celtic Connections, Glasgow Film Festival and Glasgow Comedy Festival;

SPFM means Scottish Public Finance Manual;

SPT means Strathclyde Partnership for Transport established under section 1(1) of the Transport (Scotland) Act 2005;

SRH Board means SRH's board of directors as registered at Companies House;

SQI in Schedule 4.1 (*Operation Facilities*) in Schedule 7.2 (*Service Quality*) means a service quality inspector appointed in accordance with the paragraphs 5 and 6 of Schedule 7.2 (*Service Quality*);

SQM means the service quality manager appointed by CSL in accordance with paragraph 3.1(e) of Schedule 7.2 (*Service Quality*);

SRH Claim means all losses, liabilities, costs, damages and expenses that SRH does or will incur or suffer (including any such losses, liabilities, costs, damages and expenses that are unliquidated or which are contingent):-

- (a) as a consequence of any breach, negligence or other default of CSL under or in connection with this Agreement and/or any agreement ancillary to it; and/or
- (b) in respect of any matter for which the CSL is to indemnify SRH pursuant to this Agreement or any agreement ancillary to it.

SRH Systems in Schedule 7.1 (*Train Operating Performance*) has the meaning ascribed to that term in paragraph 1(b) of Part 2 of Appendix 5 to Schedule 7.1;

CSL Systems in Schedule 7.1 (*Train Operating Performance*) has the meaning ascribed to that term in paragraph 1(e) of Part 2 of Appendix 5 to Schedule 7.1;

STAG means the Scottish Transport Appraisal Guidance published from time to time by the Authority;

Stakeholder means the Authority, Community Rail Partnerships, any relevant Local Authority, the Passenger's Council, Train Operators, bus or ferry operators, airport operators, Glasgow City Marketing Bureau, the Mobility Access Committee Scotland, the Disabled Persons Transport Advisory Committee, Visit England and Visit Scotland;

Standard Class Accommodation means, in respect of any train or service, accommodation which is available to the purchaser of any Fare which, taking into account any rights or restrictions relating to that Fare (other than restrictions relating to accommodation on that train or service), entitles such purchaser to make a journey on that train or service (provided that any accommodation on such train which may have been reserved by such purchaser shall be deemed to have been made so available if, had it not been so reserved, it would have been available for use by such purchaser);

Station means any station, in respect of which the CSL has entered or during the Operation Period enters into a Station Lease; and in Schedule 7.2 (*Service Quality*) references to a Station are only to those areas of the Station to which the public are granted access including those areas to which the public are granted access in an emergency;

Station Lounge means any lounges/waiting areas within a station that are operated by CSL

Station Access Agreement means each Access Agreement between a Facility Owner and the CSL which permits CSL access to a station;

Station Access Conditions has the meaning given to the term for the purposes of the Station Access Agreement;

Station Lease Condition Maintenance Programme has the meaning given to it in paragraph 3.1 of Schedule 4.1 (*Operation Facilities*);

Station Facility Owner means the party in control of the Station as defined in the Network Rail station lease agreement;

Station Faults System means a system of incorporating all faults at Stations, incorporating reports from Station staff;

Station Lease means any lease:

- (a) of a station listed in the Appendix to this Schedule 20; or
- (b) of any other station (including any New Station) of which CSL becomes the Facility Owner at any time during the Operation Period;

Station Service means (other than in Schedule 7.2 (*Service Quality*)) any service specified in paragraph 3 of Schedule 1.7 (*Operator Services*) which may be provided by CSL at the Stations, and, in Schedule 7.2, means the services provided by CSL at Stations as described in the relevant Service Quality Appendices;

Station Sublease means a lease or sub-lease of premises comprising part or parts of a Station exclusively occupied by another Train Operator;

Stations Community Regeneration Fund means the fund to make sustainable use of Station buildings by third parties for sustainable purposes including:-

- (a) small businesses meeting the needs of guests or the local community; or
- (b) projects, which contribute to the local community;

Stored Credit Balance means any monetary amount held by the CSL which (the credit being stored in any medium) a guest can apply at a future date to the purchase of a Fare;

Strategic Rail Delivery Group means a cross-industry advisory panel to the executive team of the Alliance comprising key stakeholders from across the industry;

Strategy means any strategy prepared in accordance with Section 5 of the Railways Act 2005 (*Railway Strategy for Scotland*);

Strathclyde means for the purposes of Schedule 5.1 (*Purchase, Structure and Construction*), those Routes contained within the area defined in west central Scotland designated by the Strathclyde Guest Transport Area in the Strathclyde Guest Transport Area (Designation) Order 1995, where a Route does not wholly fall within the said Strathclyde Guest Transport Area the limit of the boundary of the Route as within Strathclyde shall be defined by the last station before the boundary of the said Strathclyde Guest Transport Area;

Strong Level means the performance level designated as such and set out in a Service Quality Appendix;

Successor Operator means a Train Operator or Train Operators succeeding CSL in the provision or operation of all or any of the Operator Services including, where the context so admits, CSL where it is to continue to provide or operate the Operator Services following termination of this Agreement;

Super OffPeak tickets shall be interpreted in accordance with the national fares structure and public nomenclature adopted by Train Operators in 2008;

Supplemental Agreement means a supplemental agreement between CSL (and/or SRH) and a Successor Operator to be entered into pursuant to a Transfer Scheme, being substantially in the form of Appendix 2 (*Form of Supplemental Agreement*) to Schedule 15.4 (*Provisions Applying on and after*

Termination), but subject to such amendments as the Authority may reasonably make thereto as a result of any change of law affecting such supplemental agreement or other change of circumstances between the date of this Agreement and the date on which the relevant Transfer Scheme is made and subject further to paragraph 3.2 of Schedule 15.4;

Supporting Materials means any materials explaining or supporting the Budget produced or compiled by CSL;

Survey Methodology means the survey methodology in Agreed Form marked **SM** used pursuant to the Guest Views Survey;

Systems in Schedule 7.1 (*Train Operating Performance*) means the systems described in paragraph 1 of Part 2 of Appendix 4 to Schedule 7.1;

System Interface Committee means any committee of representatives of the railway industry established to consider system interface issues across the railway industry and which is designated as such by the Authority;

Target Guest Demand means:

- (a) the greater of Actual Guest Demand or Forecast Guest Demand; or
- (b) as directed by SRH, either:
 - (i) the lower of such levels of guest demand; or
 - (ii) any intermediate level of guest demand;

Target Performance Level means, in relation to an Operating Performance Benchmark for any Reporting Period, the target performance level as determined in accordance with paragraph 1 of Schedule 7.1 (*Train Operating Performance*);

Taxation means any kind of tax, duty, levy or other charge whether or not similar to any in force at the date of this Agreement and whether imposed by a local, governmental or other competent authority in Scotland or the United Kingdom or elsewhere;

Technical Support Contract means a contract for technical support to which CSL is a party, relating to the rolling stock vehicles used in the provision of the Guest Services;

Term means the period commencing on the Commencement Date and expiring on the Expiry Date, and includes the Initial Term and any Extended Term;

Third Party means for the purposes of Schedule 1.6 (Business Plan Commitments) any person who is not a party to this Agreement or who is not an Affiliate to a party to this Agreement;

Through Ticketing (Non-Travelcard) Agreement means the agreement of that name referred to in paragraph 5.5 of the Appendix (*List of Transport Travel and Other Schemes*) to Schedule 2.5 (*Transport, Travel and Other Schemes*);

Ticketing and Settlement Agreement means the Ticketing and Settlement Agreement dated 23 July 1995 between RSP, and the other parties named therein, as amended from time to time with the approval of Secretary of State;

Timetable means the timetable which reflects the working timetable issued by Network Rail at the conclusion of its timetable development process, published by CSL at the Stations and at other stations in accordance with paragraphs 1, 2 and 3 of Schedule 1.4 (*Guest Facing Obligations*) containing the departure and arrival times of:

- (a) all Guest Services which call at such Stations and such other stations; and

(b) principal Connections at such other stations;

Timetable Change has the meaning given to it in the Network Code;

Timetable Change Date has the meaning given to it in the Network Code;

Timetable Development Rights means all or any of the rights of CSL under any Track Access Agreement to:

- (a) operate Guest Services and ancillary movements by virtue of that Track Access Agreement;
- (b) deliver any required notification and/or declaration to Network Rail in respect of its intention to exercise any rights;
- (c) make or refrain from making any bids for Train Slots, in each case before any relevant priority dates provided for in, and in accordance with, the Network Code;
- (d) surrender any Train Slots allocated to the CSL by Network Rail in accordance with the Network Code;
- (e) object to, make representations, appeal or withhold consent in respect of any actual or proposed act or omission by Network Rail; and
- (f) seek from Network Rail additional benefits as a condition to granting any consent to any actual or proposed act or omission by Network Rail;

Timetable Planning Rules has the meaning given to it in the Network Code;

Timetable Year has the meaning given to it in paragraph 7.1 of Schedule 8.1 (*Grant Payments*);

Track Access Agreement means each Access Agreement between Network Rail and CSL which permits CSL to provide the Guest Services on track operated by Network Rail;

Train in Schedule 7.2 (*Service Quality*) means a train in service on the Services during a Reporting Period;

Train Faults System means a system of recording all faults on Trains incorporating reports from Train crews;

Train Fleet means the rolling stock vehicles specified in or required by Appendix 1 (*The Train Fleet*) to Schedule 1.1 (*Service Development*);

Train Fleet Table 1 means Table 1 in Appendix 1 (*The Train Fleet*) to Schedule 1.1 (*Service Development*);

Train Fleet Table 2 means Table 2 in Appendix 1 (*The Train Fleet*) to Schedule 1.1 (*Service Development*);

Train Fleet Tables means Train Fleet Table 1 and Train Fleet Table 2;

Train Mileage means, in relation to any period, the aggregate train mileage covered during such period by each train used in the provision of the Guest Services (excluding, any train mileage covered as a result of positioning or other movements of rolling stock vehicles outside the Timetable);

Train Operator means an operator or franchise operator, either of which operate railway guest services pursuant to a grant agreement or franchise agreement, or a Public Sector Operator;

Train Plan Train Plan means the plan of CSL for the operation of trains and train formations under the Timetable in the Agreed Form marked TP and any other train plan developed and agreed in

accordance with Schedule 1.1 (Service Development) except that when used in Schedule 7.1 (Train Operating Performance) it shall have the meaning given to it in paragraph 2.13 of Schedule 7.1;

Train Slots shall have the meaning given to it in the Network Code;

Transfer Scheme means a transfer scheme made by the Authority under Section 12 and Schedule 2 of the Railways Act 2005 (or equivalent statutory provision) pursuant to paragraph 3.1 of Schedule 15.4 (*Provisions Applying on and after Termination*), being substantially in the form of Appendix 1 (*Form of Transfer Scheme*) to Schedule 15.4 but subject to such amendments as the Authority may make thereto as a result of any change of Law affecting such transfer scheme or other change of circumstances between the date of this Agreement and the date on which such scheme is made;

Transport Act means the Transport Act 2000;

Transport Direct means the scheme presently known by that name;

Transport Integration Group means the group of that name relating to addressing transport integration within Scotland (and otherwise known as “**TIG**”) led by SRT supported by CSL involving the Authority, Stakeholders and other transport operators;

Travelcard Agreement means the agreement of that name referred to in paragraph 5.4 of the Appendix (*List of Transport, Travel and Other Schemes*) to Schedule 2.5 (*Transport, Travel and Other Schemes*);.

Traveline means the telephone enquiry service providing information on all public transport across the United Kingdom;

Traveline Scotland means the telephone and website enquiry service providing information on all public transport across Scotland;

TS AO means Transport Scotland’s Accountable Officer, the Chief Executive of Transport Scotland, as portfolio accountable officer for Transport Scotland, and as appointed under the Framework Agreement;

TSI means any Technical Standard for Interoperability with which the CSL is required to comply pursuant to Directives 2008/57/EC and related legislation;

TSI PRM means the TSI on Accessibility to Persons with Reduced Mobility;

Turnaround Time means the time specified in the Train Plan between the completion of a Guest Service in accordance with the Timetable and the commencement of the next Guest Service in accordance with the Timetable on the same day using some or all of the same rolling stock vehicles;

Turnover means, in relation to any period, the aggregate revenue (excluding any applicable Value Added Tax) accruing to the CSL from the sale of Fares, including the receipt of Grant Payments;

UK GDPR means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27th April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018 and as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019;

personal data, special categories of personal data, controller, processor, data subject, personal data breach, Supervisory Authority, technical and organisational measures, legal basis and processing shall have the meanings ascribed to them by the Data Protection Laws (and **process, processes and processed** shall be construed accordingly);

Updated Business Plan means the revised business plan for each Operator Year agreed or determined in accordance with paragraphs 2.11 to 2.13 of Schedule 13.2 (*Information*);

Value Added Tax means value added tax as provided for in the Value Added Tax Act 1994;

Variation means a variation to the terms of this Agreement including an Annual Variation, and including in consequence the Operation Facilities Book in terms of paragraphs 5.3 and 5.5 of Schedule 4.1 (*Operation Facilities*);

Vehicle means: -

- (a) in Schedule 1.6 (Business Plan Commitments) and in Schedule 6 (*Rolling Stock*) a single, one piece body together with all supporting running gear and interior, exterior and underframe fittings forming part of a Unit; and
- (b) in the rest of this Agreement, rolling stock vehicle used in the provision of the Guest Services which is designed principally for the carriage of guests (including any rolling stock vehicle which provides seating accommodation and catering facilities but excluding any rolling stock vehicle which is designed principally for guests to sleep in);

Visit Scotland means an executive non-departmental public body established under the Development of Tourism Act 1969 and having its principal office at Ocean Point One, 94 Ocean Drive, Edinburgh, EH6 6JH;

Website means such website as CSL creates, publishes and maintains for Guest Services pursuant to paragraph 2.13 of Schedule 1.4 (*Guest Facing Obligations*);

Weekday means any day other than a Saturday or Sunday or a Bank Holiday;

Wi-Fi means the provision of public internet access via an on train local area network using latest wireless communication technology;

Working Capital Facility has the meaning given to it a paragraph 1.2 of Schedule 8.1 (*Grant Payment*);

Working Day in Schedule 7.2 (*Service Quality*) means any of Monday to Friday inclusive but shall not include a Scottish public holiday nor, when considering the passage of days since an inspection, a re-inspection or the issuing of any notice or report in respect of a Station pursuant to the provisions of Schedule 7.2, any day which is a local public holiday in the Local Authority area in which the relevant Station is located; and

Young Person's Railcard means a Discount Card issued under the Discount Fare Scheme referred to in paragraph 4.2 of the Appendix (*List of Transport, Travel and Other Schemes*) to Schedule 2.5 (*Transport, Travel and Other Schemes*).