

DATED

29 JUNE

2018

(1) SECRETARY OF STATE FOR TRANSPORT

- and -

(2) TRANSPORT FOR THE NORTH

- and -

(3) RAIL NORTH LIMITED

PARTNERSHIP AGREEMENT

and novation

relating to

devolution of rail responsibilities in the North
of England including the management of the
Northern and Transpennine Express Franchise
Agreements

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BETWEEN:

- (1) **THE SECRETARY OF STATE FOR TRANSPORT** whose principal place of business is at Great Minster House, 33 Horseferry Road, London, SW1P 4DR ("**Secretary of State**"); and
- (2) **TRANSPORT FOR THE NORTH** a sub-national transport body established pursuant to the Sub-national Transport Body (Transport for the North) Regulations 2018 (SI 2018/103) ("**Order**") whose principal place of business is 2nd Floor, 4 Piccadilly Place, Manchester, M1 3BN ("**TfN**"); and
- (3) **RAIL NORTH LIMITED** a company registered in England and Wales (company number 09229441) whose registered office is at Ground Floor, West Gate, Grace Street, Leeds, LS1 2RP ("**Rail North**").

BACKGROUND:

- A The Secretary of State and Rail North (together the "**Original Parties**") entered into an agreement dated 20 March 2015 (the "**Original Agreement**"). The Original Agreement set out how the Original Parties would jointly manage the Franchise Agreements, co-operate on investment planning, manage change to the Franchise Agreements, fund Rail North, manage any Service Quality Deductions and determine any further steps to be taken in order to achieve the Purpose, all to the extent specified, and on the terms and conditions set out, in the Original Agreement.
- B On 1 April 2018, TfN became a sub-national transport body pursuant to the Order. As part of the establishment of TfN, it has been agreed that it will become a statutory partner to the Secretary of State in respect of the rail investment process. Specifically:
 - (i) In developing and agreeing their strategic transport plan TfN will, as a statutory partner in the Secretary of State's investment processes, determine the North's objectives and work jointly with the Secretary of State to ensure they are incorporated in the Secretary of State's national prioritisation decisions.
 - (ii) Whilst the Secretary of State remains the final decision maker, decisions related to the North will have to take account of TfN's priorities.
 - (iii) Following the Secretary of State's final decisions, TfN will ensure, through formal bi-lateral arrangements with the Department for Transport that the North's priorities are understood and recognised in national decision making with respect to Network Rail investment.
- C It has also been agreed that the role of Rail North should be more fully integrated with that of TfN, with the Secretary of State confirming that a key function of TfN will be the coordination of regional transport activities and the co-management of the Franchises.
- D The Secretary of State also wished to make use of the strategic board established through the Original Agreement so that this could also be utilised as a forum for discussion of rail infrastructure priorities and other rail functions of TfN not already covered by the Original Agreement ("**Additional Strategic Functions**"). This strategic board is now known as the Rail North Partnership Board.

- E It has been agreed that TfN should therefore acquire the existing business of Rail North, which includes the rights, functions and obligations set out in the Original Agreement, and that the Original Agreement should be extended to cover the Additional Strategic Functions. On or about the date of this agreement, a transfer agreement ("**Transfer Agreement**") was entered into transferring such rights, functions and obligations of Rail North to TfN.
- F Therefore, in accordance with the terms of the Transfer Agreement, this Agreement novates the Original Agreement from Rail North to TfN and replaces such Original Agreement with the terms set out in this Agreement under which TfN assumes all outstanding liabilities of Rail North pursuant to the terms of the Original Agreement.
- G It is acknowledged that Merseytravel has the primary responsibility for the letting of the concession agreement in relation to the operation of the Merseyrail Electrics Network and that this Agreement will not affect engagement between the Secretary of State and associated departments with Merseytravel in relation to the Merseyrail Electrics Network and its continued development.

IT IS AGREED:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

"**Additional Team**" has the meaning given to it in clause 7.4;

"**Affected Strategic Responsibility**" has the meaning given to it in clause 8.3;

"**Agreement Amendment**" means an amendment or variation to this Agreement effected pursuant to clause 15;

"**Agreement Amendment Notice**" has the meaning given to it in clause 15.1;

"**Annual Report**" has the meaning given to it in paragraph 9 of schedule 2;

"**Annual Review**" has the meaning given to it in clause 14;

"**Benchmark**" has the meaning given to it in the relevant Franchise Agreement;

"**Change Manager**" has the meaning given to it in clause 7.4.4;

"**Commencement Date**" shall have the meaning set out in clause 2.1;

"**Contracts Manager**" has the meaning given to it in clause 7.4.3;

"**Control Period**" means a regulatory control period of Network Rail;

"**Core Management Team**" has the meaning given to it in clause 7.4;

"**Criteria**" has the meaning given to it in clause 13.2;

"**Devolution Proposal**" has the meaning given to it in clause 13.1;

"Disclosing Party" has the meaning given to it in clause 19;

"Dispute" shall have the meaning set out in clause 24.1;

"Dispute Resolution Procedure" means the procedure for resolution of Disputes set out in clause 24;

"EIRs" means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such regulations;

"Expert" has the meaning given to it in clause 24.6;

"Fares Basket" has the same meaning as in the Franchise Agreements;

"Financial Year" means a period of 12 months, beginning on 1 April and ending on 31 March;

"FOIA" means the Freedom of Information Act 2000 and any subordinate legislation made under this Act together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such legislation;

"Franchise Agreements" means the Northern Franchise Agreement and the Transpennine Express Franchise Agreement, and **"Franchise Agreement"** shall be construed accordingly;

"Franchise Management Responsibilities" has the meaning given to it in paragraph 3 of schedule 3;

"Franchise Output Adjustment" means in relation to either Franchise Agreement an amendment to the Train Service Requirement under paragraph 9.4 of Schedule 1.1 of the Franchise Agreements or a Variation which is permitted under the terms of the relevant Franchise Agreement;

"Franchisee" means a franchisee under either of the Franchise Agreements;

"Franchise Commencement Date" means in respect of a Franchise Agreement, the date of commencement of such Franchise Agreement;

"Franchise Management Agreement" means the franchise management agreement entered into on or about the date of this agreement between (1) the TfN Parties and (2) TfN under which they agree arrangements ancillary to the performance by TfN of its obligations under this Agreement;

"Franchise Payment" means a Franchise Payment (as defined in the relevant Franchise Agreement) under a Franchise Agreement;

"Franchisee Year" means a period of 12 months, beginning on 1 April and ending on 31 March, except that the first and last Franchisee Years may be for a period of less than 12 months and the first Franchisee Year shall begin on the Commencement Date and the last Franchisee Year shall end on the last day of the date of expiry or termination of this Agreement;

"Franchises" means the Northern franchise and the Transpennine Express franchise delivered by the Franchisees under the respective Franchise Agreements;

"Head of Investment and Planning" has the meaning given to it in clause 7.4.5;

"HLOS" means the High Level Output Specification being the information to be provided by the Secretary of State to the Office of Rail and Road pursuant to paragraph 1D(1)(a) of Schedule 4A to the Railways Act 1993 following service of a notice of access charge review by the Office of Rail and Road pursuant to paragraph 1C(1) of Schedule 4A to the Railways Act 1993;

"Initial Dispute Board" has the meaning given to it in clause 24.3;

"Local Transport Authority" has the meaning given to it in Section 108(4) of the Transport Act 2000;

"Management Team" has the meaning given to it in clause 7.1;

"Management Team Member" has the meaning given to it in clause 7.5;

"Management Team Responsibilities" has the meaning given to it in clause 6.2;

"Member" means a Member of TfN, appointed in accordance with TfN's constitution;

"Network Rail" means Network Rail Infrastructure Limited, a company registered in England with registered number 02904587 whose registered office is at Kings Place, 90 York Way, London N1 9AG;

"Northern Commercial Manager" has the meaning given to it in clause 7.4.1;

"Northern Franchise Agreement" means the franchise agreement in respect of the operation of inter-urban, commuter and local rail passenger services across northern England entered into between the Secretary of State and Arriva Rail North Limited on 22 December 2015 and such term shall include, for the purposes of this Agreement any ancillary agreement entered into by the Secretary of State required for the purposes of managing the Northern Franchise Agreement;

"Passenger Benefits" means the delivery of enhanced facilities and/or services for the use of passengers travelling on services within the relevant Franchise Agreement;

"Planned Franchise End Date" means in respect of each Franchise Agreement the day specified as the Expiry Date under such Franchise Agreement (including any extension of such date in accordance with the terms of the relevant Franchise Agreement);

"Proposed Franchising Approach" has the meaning given to it in clause 14.3.2;

"Purpose" has the meaning given to it in clause 5.1;

"Rail Network Enhancements Pipeline" or **"RNEP"** means the new continuous approach to rail enhancements in England and Wales building on the process set out in the Memorandum of Understanding dated March 2016 between the Department of Transport and Network Rail on Rail Enhancements¹;

"Rail North Partnership Board" shall have the meaning set out in clause 6.1;

¹ <https://www.gov.uk/government/publications/rail-network-enhancements-pipeline>

"Rail North Partnership Board Business Plan" means the business plan for the operation of the Rail North Partnership Board and the Management Team set out at schedule 4 to this Agreement and amended annually in accordance with schedule 2;

"Rail North Partnership Board Management Budget" has the meaning given to it in paragraph 1 of schedule 2;

"Rail North Partnership Director" has the meaning given to it in clause 7.3;

"Receiving Party" has the meaning given to it in clause 19;

"Regional Business Unit" means a group of two or more TfN Parties formed to jointly oversee rail matters in their geographical areas;

"Reporting Period" has the meaning given to it in the relevant Franchise Agreement;

"Request for Information" means a request for information or an apparent request for information under the FOIA or the EIRs or the Code of Practice on Access to Government Information;

"Requesting Party" has the meaning given to it in clause 20.1.1;

"Reserved Matters" has the meaning given to it in clause 8.3;

"Retail Prices Index" or **"RPI"** 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 as "RPI" or, if such index shall cease to be published or the Parties agree (acting reasonably) that there is 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 Parties shall agree (acting reasonably) is appropriate in the circumstances;

"RNEP Scheme Management" has the meaning given to it in clause 14.1.3;

"Savings Franchise Output Adjustment" has the meaning given to it in clause 12.4;

"Savings Fund" has the meaning given to it in clause 12.8.2;

"Secretary of State Annual Franchise Budget" has the meaning given to it in part 2 of schedule 1;

"Secretary of State Duties" means such constitutional duties of the Secretary of State arising out of his office as are relevant to the rights, obligations and duties of the Secretary of State which are the subject of this Agreement including:

- (a) the legal duties of the Secretary of State under the Railways Act 1993 (the "Act"), including those as the appropriate designating authority or appropriate franchising authority under the Act and including, for the avoidance of doubt, the enforcement powers of the Secretary of State pursuant to sections 55 to 58 of such Act; and
- (b) those duties relating to the proper expenditure of public monies;

"Secretary of State Prejudice" has the meaning given to it in clause 6.14;

- "Secretary of State Prejudice Notice"** has the meaning given to it in clause 6.14;
- "Secretary of State Required Savings"** has the meaning given to it in clause 12.4;
- "Secretary of State Rail North Partnership Board Members"** has the meaning given to it in clause 6.3 and **"Secretary of State Rail North Partnership Board Member"** shall be construed accordingly;
- "Service Quality Deduction"** means a deduction made from a Franchise Payment pursuant to the Service Quality Regime in the Northern Franchise Agreement;
- "Service Quality Regime"** means a regime which establishes and monitors standards for the presentation of trains and stations pursuant to the Northern Franchise Agreement;
- "Service Quality Saving"** means the total amount of Service Quality Deductions in each Franchisee Year;
- "Service Quality Programme"** means a programme of works or services to be carried out by a Franchisee pursuant to the Northern Franchise Agreement, TfN or a TfN Party funded in whole or in part by the Service Quality Savings;
- "SoFA"** means the Statement of Fund Available being the information to be provided by the Secretary of State to the Office of Rail and Road pursuant to paragraph 1D(1)(b) of Schedule 4A to the Railways Act 1993 regarding the public finance resources available or likely to become available to be applied towards meeting the HLOS, following service of a notice of access charge review by the Office of Rail and Road pursuant to paragraph 1C(1) of Schedule 4A to the Railways Act 1993;
- "SoS Amendment Rejection"** has the meaning given to it in clause 15.4;
- "Statutory Partner"** means TfN's role as statutory partner to the Secretary of State, including, but not limited to its functions pursuant to regulation 5(b) to (e) of the Order;
- "Statutory Transport Plan"** means the transport strategy for TfN's area to be produced pursuant to regulation 5(a) of the Order;
- "Ticketing and Settlement Agreement"** means the agreement entered into between the operators set out in schedule 1 to that agreement and Rail Settlement Plan Limited dated 23 July 1995 as amended from time to time;
- "TfN Event of Default"** has the meaning given to it in clause 17.1;
- "TfN Fares Change"** has the meaning given to it in clause 12.9.2;
- "TfN Franchise Output Adjustment"** has the meaning given to it in clause 12.2;
- "TfN Matters"** has the meaning given to it in clause 8.1;
- "TfN Party"** means those Local Transport Authorities listed in schedule 5;
- "TfN Prejudice"** has the meaning given to it in clause 6.16;
- "TfN Prejudice Notice"** has the meaning given to it in clause 6.16;

"TfN Rail North Partnership Board Members" has the meaning given to it in clause 6.4 and **"TfN Rail North Partnership Board Member"** shall be construed accordingly;

"TfN Variation Benefits" has the meaning given to it in clause 12.6.2;

"TfN Variation Costs" has the meaning given to it in clause 12.6.1;

"Train Service Requirement" has the same meaning as in the Franchise Agreements;

"Transfer Agreement" has the meaning given to it in Recital (E);

"Transpennine Commercial Manager" has the meaning given to it in clause 7.4.2;

"Transpennine Express Franchise Agreement" means the franchise agreement in respect of the operation of rail passenger services across northern England and Edinburgh and Glasgow entered into between the Secretary of State and First Transpennine Express Limited on 22 December 2015 and such term shall include, for the purposes of this Agreement any ancillary agreement entered into by the Secretary of State required for the purposes of managing the Transpennine Express Franchise Agreement;

"Variation" has the same meaning as in the Franchise Agreements; and

"Working Day" means a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London.

1.2 Interpretation

1.2.1 In this Agreement, unless the context otherwise requires:

- 1.2.1.1 headings are for ease of reference only and are to be disregarded when interpreting this Agreement;
- 1.2.1.2 the singular includes the plural and vice versa;
- 1.2.1.3 the words "include", "including" and "in particular" are to be construed without limitation;
- 1.2.1.4 references to an agreement or any other document are references to that agreement (or document) as varied, amended, novated, supplemented or replaced from time to time;
- 1.2.1.5 any reference to a statutory provision shall include such provision as from time to time modified or re-enacted or consolidated whether before or after the date of this Agreement so far as such modification, re-enactment or consolidation applies or is capable of applying to any action taken under this Agreement;
- 1.2.1.6 the Interpretation Act 1978 shall apply to this Agreement in the same way that it applies to an enactment;
- 1.2.1.7 references to any clause, paragraph, schedule or recital is a reference to a clause, paragraph of a schedule, schedule or recital of this Agreement. All the schedules are an integral part of this Agreement;

- 1.2.1.8 references to any person, including a party, include that person's successors, transferees or assignees;
- 1.2.1.9 reference to "**Parties**" means the parties to this Agreement and references to "**Party**" means one of the Parties; and
- 1.2.1.10 references to any amount being "indexed" or increased in accordance with RPI means that the relevant amount shall be multiplied by the Retail Prices Index for the month of April in the Financial Year in which such amount is indexed divided by the Retail Prices Index on 1 April 2015.

2. COMMENCEMENT AND TERM

- 2.1 The terms of this Agreement shall come into full force and effect on the date stated at the start of this Agreement ("**Commencement Date**").
- 2.2 This Agreement shall remain in full force and effect until terminated by either Party by providing 12 months' notice in writing to the other Party, provided that, subject to early termination in accordance with clause 17, termination shall not take effect earlier than the last Planned Franchise End Date pursuant to the terms of the Franchise Agreements.

3. NOVATION OF THE ORIGINAL AGREEMENT

- 3.1 With effect from the date of this Agreement:
 - 3.1.1 the Secretary of State unconditionally and irrevocably releases and discharges Rail North from the performance or discharge of the obligations and liabilities of (or expressed to be of) Rail North under the Original Agreement, whether arising before, at or after the date of this Agreement and the Secretary of State shall have no claim, whether arising before, at or after the date of this Agreement, against Rail North whatsoever arising under or in connection with the Original Agreement;
 - 3.1.2 Rail North unconditionally and irrevocably releases and discharges the Secretary of State from the performance or discharge of its obligations and liabilities of (or expressed to be of) the Secretary of State under the Original Agreement, whether arising before, at or after the date of this Agreement and Rail North shall have no claim, whether arising before, at or after the date of this Agreement, against the Secretary of State whatsoever arising under or in connection with the Original Hosting Agreement;
 - 3.1.3 TfN agrees to assume the rights and obligations duties and liabilities of Rail North under the Original Agreement as if it were the original party to it in place of Rail North;
 - 3.1.4 The Secretary of State consents to and accepts the assumption by TfN of Rail North's rights and obligations, duties and liabilities under the Original Agreement; and
 - 3.1.5 The Original Agreement shall be deemed to be novated and constitute an agreement between TfN and the Secretary of State.

- 3.2 The Secretary of State and TfN agree that, immediately following novation of the Original Agreement pursuant to clause 3.1.5, the Original Agreement shall be deemed to be terminated and replaced with this Agreement, and any reference to the Original Agreement shall be deemed to be a reference to this Agreement.

4. CO-OPERATION AND CONSULTATION

- 4.1 Subject as expressly provided elsewhere in this Agreement, the Secretary of State and TfN agree generally to co-operate and consult with each other and to have due regard to any representations made by the other in relation to this Agreement or the Franchise Agreements.
- 4.2 The Parties undertake to use their respective reasonable endeavours to do and to procure that any necessary third parties, including the Rail North Partnership Board and the Management Team, shall do, execute and perform all such further deeds, documents, assurances, acts and things as the Parties hereto may reasonably require to bring this Agreement into full force and effect.

5. AIMS OF THIS AGREEMENT

- 5.1 The Parties intend to facilitate rail devolution in the North of England ("**Purpose**") and the Parties propose to give effect to the Purpose through this Agreement in accordance with its terms.
- 5.2 The Parties agree that the shared aims and objectives to achieve the Purpose are as follows:
- 5.2.1 the joint management of the Franchise Agreements;
 - 5.2.2 to seek to develop the railway to maximise the benefits of infrastructure investment and link this to railway efficiencies;
 - 5.2.3 to achieve a platform for determining investment priorities between the Parties (including the potential for capital investment), taking into account TfN's role as a statutory partner in the rail infrastructure investment process;
 - 5.2.4 risk and reward sharing between the Parties, including the potential for revenue or profit-sharing mechanisms that could allow reinvestment into rail services; and
 - 5.2.5 to maintain a contractual structure that allows the balance of risk to change over time where it is appropriate that it does so,

and the Parties shall carry out their obligations, and exercise their rights, under this Agreement having regard to such shared aims and objectives.

6. RAIL NORTH PARTNERSHIP BOARD

- 6.1 Pursuant to the terms of the Original Agreement, a Strategic Board (as defined in the Original Agreement) was established. The Parties agree that this Strategic Board should continue as the Rail North Partnership Board ("**Rail North Partnership Board**"). The Parties agree that the Rail North Partnership Board shall:
- 6.1.1 subject always to clause 6.13, deal with franchise management with regard to the Northern Franchise Agreement and the Transpennine Express Franchise Agreement;

- 6.1.2 oversee matters relating to this Agreement;
- 6.1.3 act as the primary interface between the Secretary of State and TfN in relation to the Purpose;
- 6.1.4 oversee co-operation between the Parties with regard to investment planning in respect of rail services in the North of England including TfN's role as a statutory partner to the Secretary of State in respect of rail infrastructure investment planning.

In accordance with the other provisions of this Agreement the Parties shall procure that the Rail North Partnership Board shall carry out its role in accordance with the Rail North Partnership Board Business Plan, and having due and appropriate regard to the Purpose.

- 6.2 The Parties acknowledge and agree that the Rail North Partnership Board shall be entitled to allocate and amend from time to time functions and responsibilities set out in schedule 3 ("**Management Team Responsibilities**") relating to the management of the Franchise Agreements to the Management Team. The Rail North Partnership Board shall continue to supervise the exercise of the Management Team Responsibilities and may amend any of the Management Team Responsibilities of the Management Team at any time. Where appropriate and to the extent that such activities do not involve any change to any of the Franchise Agreements the Rail North Partnership Board may from time to time allocate such Management Team Responsibilities to Regional Business Units on the basis that the Rail North Partnership Board shall continue to supervise them and may amend such allocation of Management Team Responsibilities to Regional Business Units at any time.
- 6.3 Prior to the Commencement Date the Secretary of State has appointed three directors or deputy directors within the Department for Transport to be the Secretary of State's representatives on the Rail North Partnership Board ("**Secretary of State Rail North Partnership Board Members**"). The Secretary of State shall be entitled to replace a Secretary of State Rail North Partnership Board Member on giving TfN notice of the replacement Rail North Partnership Board Member, provided that any replacement Secretary of State Rail North Partnership Board Member shall be a director or deputy director within the Department for Transport (or such other person as TfN may agree, acting reasonably).
- 6.4 Prior to the Commencement Date TfN had appointed three senior officials to be members of the Rail North Partnership Board and such senior officials shall be TfN's three members of the Rail North Partnership Board ("**TfN Rail North Partnership Board Members**"). Such TfN Rail North Partnership Board Members shall be of equivalent standing to the Secretary of State Rail North Partnership Board Members and shall be employees of TfN or representatives of the members of TfN. TfN shall be entitled to replace a TfN Rail North Partnership Board Member on giving the Secretary of State notice of the replacement TfN Rail North Partnership Board Member, and provided that any replacement TfN Rail North Partnership Board Member is of equivalent standing to the Secretary of State Rail North Partnership Board Members and an employee of TfN or a representative of the TfN Parties (or such other person as the Secretary of State may agree, acting reasonably).

Meetings of Rail North Partnership Board

- 6.5 An independent chairperson was appointed to the Rail North Partnership Board pursuant to clause 6.5 of the Original Agreement. The Rail North Partnership Board shall be entitled to replace the independent chairperson on the basis of a majority decision (and on such decisions the independent chairperson shall not have a casting vote).

- 6.6 The Rail North Partnership Board shall meet at least quarterly or more frequently:
- 6.6.1 as may be determined by the independent chairperson of the Rail North Partnership Board; or
 - 6.6.2 at the request of either Party.

The Parties agree that the Rail North Partnership Director shall be accountable to the Rail North Partnership Board and the Rail North Partnership Director shall at the request of the Rail North Partnership Board attend any meeting of the Rail North Partnership Board.

- 6.7 Subject to clauses 6.8 and 6.9, the Parties agree that the Rail North Partnership Board is required to reach decisions by majority and shall have regard to the Purpose, aims and objectives of this Agreement as set out in clause 5 and having regard to the Secretary of State Duties and the duties of TfN as set out in clauses 9 and 10 respectively. Save as provided in clause 6.5 where the members of the Rail Partnership Board in favour or against a particular decision are equal in number the independent chairperson shall have the casting vote.
- 6.8 The Rail North Partnership Board shall be quorate for the purposes of making any decision by majority only when at least one Secretary of State Rail North Partnership Board Member and at least one TfN Rail North Partnership Board Member is present at the Rail North Partnership Board meeting. For the avoidance of doubt, a Rail North Partnership Board meeting shall be quorate whether attendance is in person or via telephone or video conferencing. Where a quorum is not present, the meeting shall be adjourned until such other time as a quorum can be present.
- 6.9 Where the Rail North Partnership Board reaches a decision in accordance with clauses 6.7 and 6.8, such decision shall not be valid unless it was reached with the agreement of both a Secretary of State Rail North Partnership Board Member and a TfN Rail North Partnership Board Member. In the event that not all Secretary of State Rail North Partnership Board Members or TfN Rail North Partnership Board Members are present at a meeting where a decision is taken, the Secretary of State Rail North Partnership Board Members who are present shall be entitled to act on behalf of absent Secretary of State Rail North Partnership Board Members and the TfN Rail North Partnership Board Members who are present shall be entitled to act on behalf of absent TfN Rail North Partnership Board Members (including, in each case, by casting votes on behalf of such absent Rail North Partnership Board Members).

Responsibilities of Rail North Partnership Board

- 6.10 The Parties agree that the responsibilities of the Rail North Partnership Board shall be as set out in schedule 2 and shall be updated as agreed by the Parties in accordance with this Agreement as appropriate.
- 6.11 The Parties shall ensure that any Rail North Partnership Board Member performs their duties as a Rail North Partnership Board Member properly with regard to the Rail North Partnership Board Responsibilities but without prejudice to the ability of the Secretary of State Rail North Partnership Board Member to always act in a manner in accordance with the Secretary of State Duties.
- 6.12 Where an obligation is placed on the Rail North Partnership Board or any Rail North Partnership Board Member in this Agreement, the Parties shall use all reasonable endeavours to ensure that their representatives on the Rail North Partnership Board carry out their obligations in good faith.

- 6.13 The Parties acknowledge that in respect of the Secretary of State Duties the ability of the Secretary of State to make decisions pertaining to the Secretary of State Duties shall not be fettered by any provision of this Agreement, and agree that in such cases any decision of the Rail North Partnership Board pursuant to this Agreement in respect of the exercise of a Secretary of State Duty shall be treated by the Secretary of State as an informed recommendation to the Secretary of State in relation to the exercise of such Secretary of State Duty and the Secretary of State shall have due regard to such recommendation and act reasonably in making decisions for the purposes of complying with the Secretary of State Duties.

Secretary of State Prejudice Notice

- 6.14 Notwithstanding anything else in this Agreement, in the event that the ability of the Secretary of State to fulfil the Secretary of State Duties has been or is being prejudiced by:

6.14.1 any exercise or non-exercise by TfN of its rights under this Agreement; or

6.14.2 any other act or omission of TfN in connection with this Agreement,

the Secretary of State may give written notice (the "**Secretary of State Prejudice Notice**") to TfN stating the nature and origin of such prejudice (the "**Secretary of State Prejudice**") and specifying the steps that he reasonably believes that TfN should take to remedy it and any time periods which are reasonably required for such steps to be exercised, to avoid continued Secretary of State Prejudice.

- 6.15 Following service of a Secretary of State Prejudice Notice, TfN may request that the Rail North Partnership Board discuss the subject matter of a Secretary of State Prejudice Notice, and following such request the Rail North Partnership Board shall promptly discuss the content of such Secretary of State Prejudice Notice, and the Secretary of State shall take into account the views of the Rail North Partnership Board (including any matters raised by TfN Rail North Partnership Board Members) and where appropriate amend the relevant Secretary of State Prejudice Notice. If within the time periods specified in the Secretary of State Prejudice Notice (or such shorter period that the Secretary of State may reasonably specify in the case of emergency) TfN has failed to carry out the steps required by such notice (as modified in accordance with this clause 6.15) then the Secretary of State may for the purpose only of preventing or mitigating the Secretary of State Prejudice upon reasonable notice to TfN elect that the Secretary of State exercise (or prevent the exercise of) the relevant right, or remedy the relevant act or omission, in place of TfN.

TfN Prejudice Notice

- 6.16 In the event that TfN believes that the position of TfN is prejudiced by:

6.16.1 any exercise or non-exercise by the Secretary of State of its rights under this Agreement; or

6.16.2 any other act or omission of the Secretary of State in connection with this Agreement,

such that TfN is required to act in breach of its obligations or duties to its members ("**TfN Prejudice**"), or is prevented from acting in accordance with its obligations or duties to its members, TfN may give written notice (the "**TfN Prejudice Notice**") to the Secretary of State stating the nature and origin of such prejudice and any action which TfN may reasonably require for the purposes of preventing or mitigating such TfN Prejudice, and

requesting that where the Secretary of State determines not to take such action, that such matters are promptly discussed between TfN and the Secretary of State through a meeting of the Rail North Partnership Board. Following service of a TfN Prejudice Notice the Rail North Partnership Board shall promptly discuss the content of the TfN Prejudice Notice with a view to resolving the issue and subject to any overriding requirement of any of the Secretary of State Duties the Secretary of State shall take into account the views of the Rail North Partnership Board (including any matters raised by TfN Rail North Partnership Board Members) in determining what action to take, if any, to mitigate or prevent the TfN Prejudice.

7. MANAGEMENT TEAM

- 7.1 The Original Parties established a management team pursuant to the terms of the Original Agreement to perform on behalf of the Rail North Partnership Board the Management Team Responsibilities ("**Management Team**").
- 7.2 The Management Team members employed by Rail North have transferred to employment by TfN from the date of this Agreement pursuant to the terms of the Transfer Agreement.
- 7.3 The Parties acknowledge that, pursuant to the Original Agreement, the Original Parties appointed a Managing Director (as defined under the Original Agreement) to lead the Management Team . The role of the Managing Director has become that of the Rail North Partnership Director ("**Rail North Partnership Director**") who shall have the following responsibilities:
 - 7.3.1 the day-to-day management of this Agreement by the Management Team;
 - 7.3.2 engagement with the Rail North Partnership Board in respect of the activities of the Management Team; and
 - 7.3.3 leading quarterly (or other) reviews with the Franchisees in accordance with the terms of the relevant Franchise Agreement.
- 7.4 The Parties acknowledge that, pursuant to the Original Agreement, the Strategic Board, on behalf of the Original Parties, identified each initial member of the Management Team (including their employer) and appointed within the Management Team. This Management Team now consists of:
 - 7.4.1 a commercial manager responsible for the management of those provisions of the Northern Franchise Agreement that have been delegated to the Management Team pursuant to schedule 2 ("**Northern Commercial Manager**");
 - 7.4.2 a commercial manager responsible for the management of those provisions of the Transpennine Express Franchise Agreement that have been delegated to the Management Team pursuant to schedule 2 ("**Transpennine Commercial Manager**");
 - 7.4.3 two contract managers responsible for day-to-day contact with each Franchisee where provisions of the Franchise Agreements have been delegated to the Management Team pursuant to schedule 2 ("**Contracts Manager**");
 - 7.4.4 a change manager responsible for managing change under the Franchise Agreements, including those arising from infrastructure matters ("**Change Manager**")

- 7.4.5 a planning and investment manager ("**Head of Investment and Planning**"),
together (the "**Core Management Team**").

The Rail North Partnership Board shall be entitled to agree changes to the members of the Core Management Team, including agreeing the funding of any additional or changed roles with the Secretary of State and/or TfN. The Management Team shall, with the consent of the Rail North Partnership Board, be entitled to appoint such other employees, consultants and/or secondees, specialist support and/or sub-contractors as the Parties agree are necessary for the Management Team to be able to carry out its duties pursuant to this Agreement ("**Additional Team**"). The Parties acknowledge that the Management Team may include employees of the Secretary of State, TfN or one of the TfN Parties. The Parties shall also make available to the Management Team other relevant resource which may be reasonably necessary or beneficial to support the delivery of the Management Team responsibilities, and shall use reasonable endeavours to make such resource available in a timely fashion. For the avoidance of doubt, this includes providing advice or support from teams within both the Department for Transport and TfN Parties who currently provide advice or support in respect of any matters which fall within the responsibility of the Rail North Partnership Board or the Management Team.

- 7.5 Where members of the Management Team ("**Management Team Members**") are employed by the Secretary of State, they will continue to work under their terms and conditions of employment with the Secretary of State and will continue to be paid by the Secretary of State.
- 7.6 Where any Management Team Member requires replacement TfN shall be entitled to propose an employee of TfN or a TfN Party as such Management Team Member. The Secretary of State and TfN shall discuss such a proposal and seek to reach agreement.
- 7.7 The Parties acknowledge and agree that the operation of this Agreement is not intended to change the employer of any employee referred to in this Agreement and, as such, each employee remains employed by the Secretary of State, TfN, or the TfN Party as relevant, but will owe obligations to their employer and both Parties in relation to the duties they perform, representing both Parties equally.
- 7.8 The Parties shall ensure that any Management Team Member performs their duties as a Management Team Member with regard to the Management Team Responsibilities and the overall Purpose, and not by reference solely to the interests or requirements of their employer.

8. RIGHTS AND RESPONSIBILITIES OF THE PARTIES

- 8.1 In respect of the operation of the Rail North Partnership Board, the TfN Rail North Partnership Board Members shall be responsible for consulting TfN or any relevant TfN Party in respect of matters which affect TfN or a TfN Party, including those matters set out in Table 1 of part 1 of schedule 1 ("**TfN Matters**") in accordance with the terms of the Franchise Management Agreement.
- 8.2 Without restricting in any way the ability of the Secretary of State to engage and consult with TfN Parties as he sees fit, where any matter will specifically affect the area of any TfN Party or persons living or working in that area or visiting or traveling through that area, TfN shall be responsible for consulting with such TfN Parties in respect of such matter, provided that TfN is notified of such matter by the Rail North Partnership Board (and TfN shall be deemed to be notified where TfN Rail North Partnership Board Members have confirmed that they are aware of such matter and the need to consult, at any meeting of the Rail North Partnership Board). The Rail North Partnership Board shall not be required to consult individually with

each TfN Party in respect of any matter, provided that it has notified TfN of such matter in accordance with this Clause 8.

- 8.3 In respect of the matters set out in part 2 of schedule 1 ("**Reserved Matters**") the Secretary of State shall retain sole and unfettered responsibility for exercise of rights in respect of such Reserved Matter under the Franchise Agreement and where the Reserved Matter affects (or may affect) the responsibilities of the Rail North Partnership Board, as specified in schedule 2 (or as otherwise agreed pursuant to this Agreement) ("**Affected Strategic Responsibility**"), the Rail North Partnership Board shall notify the Secretary of State of such Affected Strategic Responsibility and shall to the extent that the Affected Strategic Responsibility is affected by a Reserved Matter only proceed where instructed to do so by the Secretary of State. Where a matter is a Reserved Matter the Secretary of State shall have due regard to any recommendation or guidance of the Rail North Partnership Board in respect of such Reserved Matter, including in respect of any Affected Strategic Responsibility.
- 8.4 The Management Team shall provide to the Rail North Partnership Board such information as it may reasonably request within a reasonable timescale of such request and where such information cannot be provided shall give the Rail North Partnership Board reasons why such information cannot be provided. Where the Rail North Partnership Board delegates to the Management Team any matter which relates to a TfN Matter, to the matters provided for in clauses 8.7 to 8.18, or a Reserved Matter, the Management Team shall ensure that proper account is taken of the Rail North Partnership Board's responsibilities under this clause 8, and shall promptly notify the Rail North Partnership Board (or TfN Rail North Partnership Board Members or Secretary of State Rail North Partnership Board Members, as the case may be) where any action is required by them pursuant to this clause 8. For the avoidance of doubt, TfN Rail North Partnership Board Members may delegate to members of the Management Team employed by TfN or TfN Parties performance of their obligations and duties under this clause 8.
- 8.5 The Rail North Partnership Board shall provide to TfN and the Secretary of State such information as either Party may reasonably request within a reasonable timescale of such request, and where such information cannot be provided or cannot be provided to a certain group of people, the Rail North Partnership Board shall give the requesting party reasons why such information cannot be provided. The Management Team shall provide such information to the Secretary of State and TfN as the Rail North Partnership Board may reasonably request for the purposes of this clause 8.5.
- 8.6 The Rail North Partnership Board shall agree the basis on which it will provide information to and notify TfN and the Secretary of State. The Rail North Partnership Board shall ensure that TfN is properly notified and informed of any matters relevant to TfN or a TfN Party. The Rail North Partnership Board shall ensure that the Secretary of State is properly notified and informed of any matters relevant to the Secretary of State.

Statutory Partner role

- 8.7 TfN will work with the relevant investment planning teams within the Department for Transport to identify and progress the case for investments that could assist with the delivery of the TfN Statutory Transport Plan. This will be discharged through the Rail North Partnership Board in accordance with this Agreement, provided that either the Secretary of State or TfN may seek advice directly from the other on any key issues or priorities relating to the area covered by TfN.
- 8.8 TfN will be formally consulted at each stage of the Secretary of State's decision making process for investments within the TfN area through the Rail North Partnership Board, and

the Secretary of State shall ensure that TfN's views shall be reported in any papers submitted to Department for Transport decision making boards and shall ensure that timely feedback from any such decision making board is provided to the Rail North Partnership Board, including providing:

- 8.8.1 appropriate attendance at the Rail North Partnership Board; and
 - 8.8.2 subject to clause 19, appropriate materials to the Rail North Partnership Board to ensure that the Rail North Partnership Board remains actively engaged in the Secretary of State's investment decision making process.
- 8.9 The Rail North Partnership Board shall agree a work programme, milestones, deadlines and resources to ensure that appropriate resources and time are allocated.
- 8.10 TfN's role as a statutory partner will be identified in any published governance for the Secretary of State's rail investment processes.

Outcome Setting: Pre-HLOS/ SoFA

- 8.11 The Secretary of State Rail North Partnership Board Members shall be responsible for explaining to the Rail North Partnership Board the parameters and key decisions related to the national outcomes which are to be defined in the HLOS for each Control Period.
- 8.12 The TfN Rail North Partnership Board Members shall be responsible for ensuring the provision of statutory partner advice to the Rail North Partnership Board and following such advice the Rail North Partnership Board shall ensure that feedback is provided to the Secretary of State in accordance with clauses 8.7 and 8.8 in respect of issues faced in the North of England, to ensure that these can be appropriately addressed by the Secretary of State in the full range of outcomes defined in the HLOS for each Control Period.

Priority setting: Rail Network Enhancements Pipeline (RNEP)

- 8.13 TfN shall have direct input into the drafting of any consultation on priorities for enhancements to be included in the RNEP (which shall be led by the Department for Transport) taking into account the priorities of the North of England.
- 8.14 TfN shall be involved in the evaluation of consultation responses (which shall be led by the Department for Transport), and the Secretary of State and TfN shall produce a joint report on the conclusions of this consultation to the Rail North Partnership Board.
- 8.15 TfN shall be directly involved in the Secretary of State's formulation of priorities and criteria for enhancements to be included in the RNEP, and in particular TfN shall be entitled to provide a formal submission to the Secretary of State Rail North Partnership Board Members setting out the key priorities for the North for consideration by the Secretary of State, and the Secretary of State shall pay due regard to such submission in determining the contents of the RNEP as it relates to the North of England.

Scheme specific Development/Design/Delivery

- 8.16 TfN will continue to be a member of the Department for Transport and Network Rail's North of England Programme Board in addition to its representation on the Rail North Partnership Board to ensure that its views continue to be represented as enhancement schemes progress through the development and delivery cycle. The Parties acknowledge that such continued

attendance will support TfN to ensure that their objectives as set out in the Statutory Transport Plan, and as reflected in the RNEP are being delivered by Network Rail.

- 8.17 In considering TfN's concern regarding any specific scheme, the following principles shall apply:
- 8.17.1 Due account shall be taken of the Secretary of State's role of funder (where this is the case), recognising that in such cases the Secretary of State will remain the final decision maker.
 - 8.17.2 On all schemes that enable the implementation of TfN's Statutory Transport Plan TfN shall have a formal role in advising the Secretary of State on decision making about the scheme outputs and design, including changes to outputs and scope over time. TfN may seek prior discussion with the Secretary of State of any proposed decisions through the Rail North Partnership Board. This shall include advice in respect of schemes that extend beyond TfN's area, provided that TfN shall not have any right, in its role as statutory partner to specify or alter outputs outside the TfN area.
- 8.18 Any TfN promoted schemes remain subject to the Department for Transport's affordability and Value for Money criteria and will require formal investment approval through the Department for Transport's established governance requirements.

9. REGARD TO SECRETARY OF STATE DUTIES

TfN shall have proper regard to the Secretary of State Duties when exercising its obligations and duties under this Agreement, and no provision of this Agreement shall be interpreted in a way that shall prevent or restrict the Secretary of State from carrying out the Secretary of State Duties.

10. REGARD TO TFN DUTIES

The Secretary of State shall have proper regard to the functions and duties of TfN as a sub-national transport body when exercising its obligations and duties under this Agreement.

11. PAYMENTS AND BENEFIT SHARE

- 11.1 Subject to the provisions of this clause 11, the Secretary of State shall be solely responsible for all payments (including, but not limited to, Franchise Payments) to be made to the relevant Franchisee pursuant to the terms of each Franchise Agreement, including the funding of such payments and any liability for non-payment, save where such liability arises directly as a result of breach of the terms of this Agreement by TfN.
- 11.2 The Secretary of State shall:
- 11.2.1 pay to TfN the sum of £370,000 (indexed) in each Financial Year;
 - 11.2.2 in each of the two Financial Years commencing with 2017-18 pay in respect of TfN costs a sum of £500,000 (indexed) to those TfN Parties (or passenger transport executives as appropriate) which currently receive rail administrative grant, which shall be paid as part of the rail administrative grant which the Secretary of State will pay to those relevant TfN Parties (or passenger transport executives as appropriate) in accordance with the process and timing for payment of such grant used at the Commencement Date, provided always that the amount

of the rail administration grant is not increased by the payment referred to in this clause;

- 11.2.3 in each subsequent Financial Year pay directly to TfN or one of the TfN Parties an amount equivalent to the value of TfN costs identified in the Rail North Partnership Board Management Budget, subject to a maximum cap of £500,000 (indexed). This arrangement does not preclude the Secretary of State from paying rail administrative grant to one or more TfN Parties to commission activities falling outside the scope of this Agreement.

- 11.3 The Secretary of State shall in each applicable Franchise Year retain any Service Quality Deductions made pursuant to the Northern Franchise Agreement from 1 January 2017 for the purposes of applying Service Quality Savings to the delivery of Service Quality Programmes in accordance with paragraph 7 of schedule 3.

12. FRANCHISE OUTPUT ADJUSTMENTS

12.1 Franchise Output Adjustments

Either Party may at any time propose a Franchise Output Adjustment and all proposals for Franchise Output Adjustments shall be discussed by the Rail North Partnership Board and subject to those Franchise Output Adjustments set out in clauses 12.2 and 12.4, all Franchise Output Adjustments shall be agreed and implemented by the Rail North Partnership Board.

- 12.2 Notwithstanding clause 12.1, TfN can require a Franchise Output Adjustment to be made (a "**TfN Franchise Output Adjustment**") if it complies with the following criteria:

- (a) it is cost neutral or cost reducing (in respect of both capital and operational costs) for the Secretary of State:

- (i) in each Financial Year; and
- (ii) in respect of the Secretary of State's costs under all franchise agreements, including the Secretary of State's likely costs under future franchise agreements (as determined by the Rail North Partnership Board, acting reasonably),

either:

- (iii) on the basis that such TfN Franchise Output Adjustment is self-funding; or
- (iv) on the basis that TfN shall fund (or shall procure the funding of) any additional cost to the Secretary of State arising from such TfN Franchise Output Adjustment; and

- (b) it does not materially increase the risk of the Secretary of State under the relevant Franchise Agreement either:

- (i) because there is no material change in risk profile as a result of such variation; or
- (ii) because TfN has agreed to bear such additional risk (or procured that a third party bears such risk); and

- (c) it does not in the reasonable opinion of the Secretary of State:
- (i) give rise to any procurement law risk (including "material change" risk) to the Secretary of State;
 - (ii) conflict with any of the Secretary of State Duties,
- always provided that:
- (iii) TfN shall be entitled to propose a TfN Franchise Output Adjustment which continues to have an effect following the expiry of the Franchise Agreements provided that limbs (a) and (b) of this definition remain satisfied throughout the period that the TfN Franchise Output Adjustment has effect; and
 - (iv) such TfN Franchise Output Adjustment may include, but not be limited to incremental changes to services provided under a Franchise Agreement.
- 12.3 Where TfN requires that a TfN Franchise Output Adjustment be implemented TfN shall provide to the Rail North Partnership Board:
- 12.3.1 such information as is required by the relevant Franchise Agreement or is otherwise reasonably required by the Rail North Partnership Board, including information reasonably required to demonstrate that the conditions in clause 12.2 are satisfied; and
 - 12.3.2 where TfN is proposing to fund (or procure that TfN Parties fund) any additional cost of the TfN Franchise Output Adjustment, appropriate undertakings, in satisfactory terms to the Secretary of State (determined at the sole discretion of the Secretary of State) from the relevant TfN Parties in respect of such funding.
- 12.4 The Secretary of State shall be entitled to propose a Franchise Output Adjustment where the Secretary of State as the result of a requirement to make savings from his departmental budget requires (acting reasonably) savings to be made from either Franchise Agreement ("**Savings Franchise Output Adjustment**"). Where the Secretary of State wishes to make a Savings Franchise Output Adjustment, he shall notify the Rail North Partnership Board of the proposal for a Savings Franchise Output Adjustment including the savings that are required (the "**Secretary of State Required Savings**") and any timescales within which such savings are required to be made and, in accordance with clause 12.1, the Rail North Partnership Board shall discuss the Savings Franchise Output Adjustment and seek to reach agreement on how to achieve the Secretary of State Required Savings. If the Rail North Partnership Board is unable to reach agreement on the appropriate Franchise Output Adjustments required to make the Secretary of State Required Savings within 3 months of the Secretary of State giving notice that such savings are required, the Secretary of State shall be entitled to implement the Savings Franchise Output Adjustment, and shall notify the Rail North Partnership Board if the Secretary of State does choose to proceed with such Savings Franchise Output Adjustment.
- 12.5 Where the Rail North Partnership Board seeks to implement a Franchise Output Adjustment and, when agreeing the required variation to the relevant Franchise Agreement, any changes are made pursuant to the relevant variation procedure under the Franchise Agreement which affect the terms of the relevant Franchise Output Adjustment, then the Rail North Partnership

Board shall consider such amendment to determine how to proceed, including agreeing changes which would allow such Franchise Output Adjustment to proceed. Where:

- 12.5.1 the Franchise Output Adjustment is a TfN Franchise Output Adjustment then, in the absence of agreement, TfN shall be entitled to determine the amendments required to the Franchise Output Adjustment, provided that it meets the conditions in clause 12.2;
 - 12.5.2 the Franchise Output Adjustment is a Savings Franchise Output Adjustment, in the absence of agreement, the Secretary of State shall be entitled to determine the amendments required to the Franchise Output Adjustment.
- 12.6 Where, pursuant to a TfN Franchise Output Adjustment, the Rail North Partnership Board or TfN and the Secretary of State have agreed that TfN shall be responsible for the impacts of any variation to a Franchise Agreement then:
- 12.6.1 the net costs associated with such variation ("**TfN Variation Costs**") shall be allocated in accordance with the terms of the TfN Franchise Output Adjustment, and TfN shall procure that to the extent that such costs are the responsibility of TfN or any TfN Party that such costs are paid to the Secretary of State or the relevant Franchisee in accordance with the terms of the TfN Franchise Output Adjustment; and
 - 12.6.2 the payment of the benefit of any savings or additional revenue generated by such variation ("**TfN Variation Benefits**") shall be allocated equally between the Secretary of State and TfN in the absence of alternative agreement between the Parties, and where such payments are due to TfN or any TfN Party the Secretary of State shall retain such amounts in the Savings Fund or pay such benefits to TfN or the relevant TfN Party in accordance with the terms of the TfN Franchise Output Adjustment for the same purposes as set out in clause 12.8.2,
- and:
- 12.6.3 TfN shall pay or procure the payment of the TfN Variation Costs on such dates, and in such amounts, as may be agreed pursuant to the terms of each TfN Franchise Output Adjustment;
 - 12.6.4 the Secretary of State shall pay, or procure the payment, to TfN or any TfN Party specified in each TfN Franchise Output Adjustment the relevant TfN Variation Benefits on such dates, and in such amounts, as may be agreed pursuant to the terms of each TfN Franchise Output Adjustment.
- 12.7 Either pursuant to the terms of any TfN Franchise Output Adjustment or otherwise, it may be agreed that one or more TfN Variation Benefits may be set off against one or more TfN Variation Costs, in which case, for the purposes of this clause 12 the relevant TfN Variation Costs shall be reduced to the extent that it has been agreed that a TfN Variation Benefit shall be set off against it, and the aggregate level of TfN Variation Benefits shall be reduced accordingly.
- 12.8 Subject to clauses 12.4 and 12.6 the Parties agree that where any Franchise Output Adjustment leads to a saving (which shall include the generation of additional revenue allowing the reduction in a Franchise Payments under the relevant Franchise Agreement), the Parties acknowledge that, subject to any other provisions being expressly agreed as part of the Franchise Output Adjustment:

- 12.8.1 in the case of a Savings Franchise Output Adjustment, the Secretary of State shall be entitled to retain all savings or additional revenue generated as a result of such Savings Franchise Output Adjustment; and
- 12.8.2 in all other cases, half (or such higher proportion as is agreed by the Rail North Partnership Board) of any savings or additional revenue shall be retained in a fund ("**Savings Fund**") and TfN shall be entitled to use any savings retained in the Savings Fund for the purposes of future Franchise Output Adjustments or other investment to the benefit of passengers of the Franchises during the term of the Franchise Agreements.

Fares Baskets

12.9 With regard to Schedule 5.4 of each relevant Franchise Agreement:

- 12.9.1 the Secretary of State may change the value of "k" for the purposes of the "Permitted Aggregate Increase" (as defined in the relevant Franchise Agreement) in relation to any Fares Basket where this does not impose any financial cost on TfN; and
- 12.9.2 TfN may propose a change to the value of "k" for the purposes of the "Permitted Aggregate Increase" in relation to any Fares Basket by notifying the Rail North Partnership Board of its proposal and specifying the change it wishes to make to the value of "k" ("**TfN Fares Change**"). If TfN wishes to proceed with the TfN Fares Change it shall be permitted to do so if the Secretary of State confirms that he does not believe that this will or may impose any adverse financial consequences on him.

Following a Qualifying Change (as defined in the relevant Franchise Agreement) consequent upon a TfN Fares Change, the Parties agree that the Secretary of State shall retain any consequent reduction in Franchise Payments (where any Franchise Agreement at the relevant time is a "subsidy franchise", that is where Franchise Payments are made by the Secretary of State to the Franchisee under the relevant Franchise Agreement) or any increase in Franchise Payments (where any Franchise Agreement at the relevant time is a "premium franchise", that is where Franchise Payments are made by the Franchisee to the Secretary of State under the relevant Franchise Agreement) in the Savings Fund and TfN shall be entitled to determine how to use the full value of the saving for the purposes set out in clause 12.8.2.

Fares Flex

12.10 With regard to Schedule 5.5 of each relevant Franchise Agreement:

- 12.10.1 the Secretary of State may change the value of "k" and "f" for the purposes of the "Permitted Individual Increase" (as defined in the relevant Franchise Agreement) in relation to any Regulated Price or Regulated Child Price for any Fare where this does not impose any financial cost on TfN; and
- 12.10.2 TfN may propose a change to the values of "k" and "f" for the purposes of the "Permitted Individual Increase" in relation to any Regulated Price or Regulated Child Price for any Fare by notifying the Rail North Partnership Board of its proposal and specifying the change it wishes to make to the value of "k" and "f" ("**TfN Individual Fares Change**"). If TfN wishes to proceed with the TfN Individual Fares Change it shall be permitted to do so if the Secretary of State

confirms that he does not believe that this will or may impose any adverse financial consequences on him.

Following a Qualifying Change (as defined in the relevant Franchise Agreement) consequent upon a TfN Individual Fares Change, the Parties agree that the Secretary of State shall retain any consequent reduction in Franchise Payments (where any Franchise Agreement at the relevant time is a "subsidy franchise", that is where Franchise Payments are made by the Secretary of State to the Franchisee under the relevant Franchise Agreement) or any increase in Franchise Payments (where any Franchise Agreement at the relevant time is a "premium franchise", that is where Franchise Payments are made by the Franchisee to the Secretary of State under the relevant Franchise Agreement) in the Savings Fund and TfN shall be entitled to determine how to use the full value of the saving for the purposes set out in clause 12.8.2.

13. FURTHER DEVOLUTION

13.1 TfN may, at any time (but only once in any Financial Year) submit a proposal to the Rail North Partnership Board specifying steps which TfN would propose to achieve further devolution, consistent with the Purpose ("**Devolution Proposal**").

13.2 The Rail North Partnership Board shall promptly consider any Devolution Proposal and analyse the performance of this Agreement, and TfN as a party to this Agreement, against the Purpose by reference to the following criteria:

13.2.1 the record of the Management Team and the Rail North Partnership Board Members in the performance of their respective obligations pursuant to this Agreement in the management and development of the Franchise Agreements. For the avoidance of doubt, a failure by the Franchisee to perform its obligations under the Franchise Agreements which is not caused by a failure of the Management Team or the Rail North Partnership Board Members shall not adversely impact the assessment of the record of the Management Team and the Rail North Partnership Board Members against this criterion;

13.2.2 the maturity of TfN's governance arrangements; and

13.2.3 the financial capacity of TfN to bear additional risk taking into account any arrangements proposed with TfN Parties or other parties to manage such risk,

(the "**Criteria**"). In accordance with clause 4.1, the Rail North Partnership Board shall use reasonable endeavours to agree whether TfN is meeting the Criteria and shall confirm to the Secretary of State such agreement ahead of the next Annual Review carried out pursuant to clause 14.1, including a recommendation as to whether the Devolution Proposal should be accepted, together with any amendments to the Devolution Proposal agreed by the Rail North Partnership Board.

13.3 Without prejudice to clause 9, for the purposes of compliance with the criterion at clause 13.2.2 and acceptance of the Devolution Proposal, it shall be deemed with effect from the start of the second Financial Year that TfN's governance arrangements are sufficiently mature for the purposes of the Devolution Proposal, unless the Secretary of State Rail North Partnership Board Members demonstrate (either by reference to performance or the terms of those arrangements) that TfN's governance arrangements are not sufficient to properly support the additional responsibilities that are proposed to be undertaken by TfN or TfN Parties under the Devolution Proposal.

- 13.4 If the Rail North Partnership Board is unable to reach agreement as to whether the Criteria have been satisfied and/or the Devolution Proposal can be accepted, the Rail North Partnership Board may, prior to the Annual Review, refer the issue to an independent assessor agreed by them to undertake an independent assessment of the performance of TfN and to make a recommendation as to whether TfN meets the Criteria, given the nature of the Devolution Proposal. Neither Party shall be obliged to agree the recommendation of the independent assessor. The costs of such independent assessor shall be shared equally.
- 13.5 At the Annual Review carried out pursuant to clause 14.1 following submission of the Devolution Proposal, the Parties shall consider the Devolution Proposal and compliance with the Criteria. The Annual Review shall take into account the outcome of the Rail North Partnership Board's review of the Devolution Proposal pursuant to clause 13.1 and any recommendations it makes as well as any recommendation of the independent assessor pursuant to clause 13.4.
- 13.6 In reaching a final decision as to whether to accept a Devolution Proposal, the Secretary of State shall take into account the outcome of the reviews of the Devolution Proposal undertaken at the Annual Review and by the Rail North Partnership Board as well as any recommendation of the independent assessor. Where a Devolution Proposal is accepted, the Secretary of State shall provide written confirmation to TfN and this Agreement shall be varied accordingly.

14. REVIEW

14.1 Annual Review

Subject to clause 14.2, the Parties agree that there shall be an annual meeting between the Secretary of State (or relevant Minister) and relevant Members appointed by TfN which will be held on a date to be agreed in the calendar month in which each anniversary of the Commencement Date occurs ("**Annual Review**"). The purpose of the Annual Review shall be:

- 14.1.1 to review the performance of the Parties to this Agreement against the Purpose and the aims and objectives set out in clause 5;
 - 14.1.2 to agree any changes to the Reserved Matters for the forthcoming year;
 - 14.1.3 to agree any delegation to the Rail North Partnership Board of discharge of the Secretary of State's client function in respect of RNEP Schemes pursuant to clauses 8.16 to 8.18 within the area of the Franchise Agreements where this would support delivery of the Purposes ("**RNEP Scheme Management**"); and
 - 14.1.4 to discuss any Devolution Proposal proposed pursuant to clause 13 and any related recommendations by the Rail North Partnership Board and, where a Devolution Proposal has been agreed, to provide written confirmation;
- 14.2 The Parties agree that they may jointly agree a different frequency of review for the Annual Review, and in particular that the parties may agree to any delegation of RNEP Scheme Management outside the Annual Review where this is appropriate in respect of the key decision points in respect of the relevant RNEP Schemes. It is acknowledged that where TfN seeks the delegation of individual RNEP Scheme Management the proposed financial risk allocation between TfN and the Secretary of State will need to form part of the proposed delegation and will be considered in any such Annual Review.

14.3 Options Review

- 14.3.1 The Parties shall meet three years (or such other longer period as the Parties may agree is required to ensure that this process can be effectively carried out) before the expiry of each Franchise Agreement to carry out a review of the options available for the re-procurement of subsequent franchise agreements. The Parties shall ensure that the review to be undertaken:
 - 14.3.1.1 has due regard to the experience of the Parties in the management of the Franchise Agreements;
 - 14.3.1.2 ensures the continuation of TfN in the management of subsequent franchise agreements provided that the Purpose and the aims and objectives set out in clause 5 remain or allows the letting of subsequent franchise agreements to be carried out by TfN; and
 - 14.3.1.3 considers the ability for future agreements to be let by TfN or any member or members of TfN.
- 14.3.2 The Parties shall complete the options review and select an option for the re-procurement of the subsequent franchise agreements ("**Proposed Franchising Approach**") within 6 months of the Parties meeting in accordance with clause 14.3.1. Following selection of the Proposed Franchising Approach in respect of each Franchise Agreement, the Parties agree to work together to achieve the re-procurement of the relevant franchise agreement in accordance with the Proposed Franchising Approach.

15. AMENDMENT TO THIS AGREEMENT

- 15.1 If either Party wishes to propose an Agreement Amendment, it shall do so by serving a notice of change ("**Agreement Amendment Notice**") on the other Party. Such notice shall set out the particulars of the proposed Agreement Amendment together with any cost impact.
- 15.2 Within ten (10) Working Days of receipt of the Agreement Amendment Notice or such other timescale as is reasonable in the context of the scope of the Agreement Amendment proposed, the receiving party shall respond to the Agreement Amendment Notice confirming or rejecting the Agreement Amendment and providing reasons.
- 15.3 Where the receiving party rejects the proposed Agreement Amendment and the Party proposing the Agreement Amendment wishes to challenge the rejection of the Agreement Amendment, the Parties shall meet and use reasonable endeavours to agree amendments to the Agreement Amendment within ten (10) Working Days of the response received pursuant to clause 15.2 so that the Agreement Amendment can be approved.
- 15.4 Where the Secretary of State believes that an Agreement Amendment is, or may be, inconsistent with any Secretary of State Duties the Secretary of State shall notify TfN of such inconsistency ("**SoS Amendment Rejection**"). TfN shall be entitled to dispute an SoS Amendment Rejection in accordance with the provisions of clauses 24.1 to 24.5, but unless and until it is agreed that such SoS Amendment Rejection is unjustified, TfN shall not be permitted to challenge the rejection of the relevant Agreement Amendment by the Secretary of State.
- 15.5 In agreeing an Agreement Amendment the Parties shall act reasonably when agreeing which Party is responsible for the cost of the Agreement Amendment (including the cost of

implementation of the Agreement Amendment) and in the absence of agreement, the Party proposing the Agreement Amendment shall bear such (reasonably incurred) costs.

16. ASSIGNMENT, TRANSFER AND NOVATION

- 16.1 Subject to clauses 16.2 and 16.3, neither Party shall sub-contract, assign, underlet, charge, sell, bargain, transfer, novate or create or otherwise deal in any way with the benefit of this Agreement in whole or in part, save with the written consent of the other Party.
- 16.2 The Secretary of State shall be entitled to assign, novate or otherwise transfer its rights and obligations under this Agreement (whether by virtue of any Legislation or any scheme pursuant to any Legislation) to any person having the legal capacity, power and authority to become a party to and to perform the obligations of the Secretary of State under this Agreement (including, but not limited to, the Secretary of State's rail franchising functions under the Railways Act 1993, and the Secretary of State's rights and obligations under the Franchise Agreements).
- 16.3 Subject to the prior consent of the Secretary of State (not to be unreasonably withheld or delayed) TfN shall be entitled to assign, novate or otherwise transfer its rights and obligations under this Agreement to any person having the legal capacity, power and authority to become a party to and to perform the obligations of TfN under this Agreement.

17. TERMINATION

- 17.1 The Secretary of State shall be entitled to terminate this Agreement:
- 17.1.1 in the event of any act of fraud or gross negligence on the part of TfN or any of its Members in the course of their duties in office; or
 - 17.1.2 in the event of any material breach of this Agreement by TfN; or
 - 17.1.3 if, in the reasonable opinion of the Secretary of State, TfN ceases to be substantially representative, in respect of the matters set out in this Agreement, of:
 - 17.1.3.1 the local transport authorities to whom it is accountable; and
 - 17.1.3.2 in respect of management of the Franchise Agreements, the geographical areas served by the Franchise Agreements,

("TfN Event of Default").

- 17.2 If the Secretary of State wishes to terminate this Agreement pursuant to clause 17.1, it must serve a termination notice on TfN within twenty (20) Working Days of becoming aware of the TfN Event of Default.
- 17.3 The termination notice must specify the type of TfN Event of Default which has occurred entitling the Secretary of State to terminate.
- 17.4 This Agreement shall terminate on the day falling thirty (30) Working Days after the date TfN receives the termination notice, unless the TfN Event of Default is rectified within thirty (30) Working Days in respect of the events set out in clauses 17.1.1 to 17.1.2 and within six (6) months in respect of the event set out in clause 17.1.3, of receipt of the termination notice.

17.5 TfN shall be entitled to terminate this Agreement where the Secretary of State implements a Savings Franchise Output Adjustment in accordance with clause 12.4 which TfN had not agreed at the Rail North Partnership Board.

17.6 If TfN wishes to terminate this Agreement pursuant to clause 17.5, it must serve a termination notice on the Secretary of State within twenty (20) Working Days of the Secretary of State notifying the Rail North Partnership Board of its decision to implement pursuant to clause 12.4. This Agreement shall terminate on the day falling thirty (30) Working Days after the date the Secretary of State receives the termination notice from TfN provided always that any financial liabilities of TfN or any TfN Party survive the termination of this Agreement pursuant to this clause 17.6.

18. INFORMATION AND UPDATING OF DOCUMENTS

Each Party shall act reasonably in keeping the other informed of any developments relating to the Franchise Agreements or their management, provided that it is agreed that the Secretary of State may withhold information from TfN that he reasonably believes to be price sensitive for the period of time that such information remains price sensitive.

19. CONFIDENTIALITY

Each Party ("**Receiving Party**") shall keep confidential and not use (without the other Party's ("**Disclosing Party**") written consent) all or any information relating to the Disclosing Party's business supplied by the Disclosing Party pursuant to or as a result of this Agreement, and shall not divulge the same to any third party except to the extent that any such information is or becomes public through no fault of the Receiving Party, or disclosure of the same is required by Law (such as disclosure through the FOIA and/or the EIRs) or by any other governmental or other regulatory body.

20. FREEDOM OF INFORMATION

20.1 The Parties acknowledge that they are each subject to the requirements of the FOIA and the EIRs. Each Party shall:

20.1.1 provide all necessary assistance and cooperation (free of charge) as reasonably requested by the other Party ("**Requesting Party**") to enable the Requesting Party to comply with its obligations under the FOIA and the EIRs;

20.1.2 provide the Requesting Party with a copy of all information belonging to the Requesting Party requested in the Request for Information which is in its possession or control in the form that the Requesting Party requires within five (5) Working Days (or such other period as the Requesting Party may reasonably specify) of the Requesting Party's request for such information; and

20.1.3 not respond directly to a Request for Information made to the Requesting Party unless authorised in writing to do so by the Requesting Party. For the avoidance of doubt, if the same Request for Information has been issued to each Party separately, both Parties will be required to comply with their own obligations under the FOIA and/or the EIRs in responding to such a Request for Information.

20.2 Each Party acknowledges that it may be required under the FOIA and the EIRs to disclose information without consulting or obtaining consent from the other Party. Each Party shall take reasonable steps to notify the other Party of a Request for Information (in accordance with the Secretary of State's Section 45 Code of Practice on the Discharge of the Functions of

Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Requesting Party shall be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the FOIA and/or the EIRs in relation to any Request for Information made to the Requesting Party.

- 20.3 In relation to other types of requests for information (such as requests outside the scope of the FOIA and/or the EIRs), each Party shall provide, where reasonably practicable within 24 hours and in any event within two (2) Working Days of receipt of a request from the Requesting Party, such information as the Requesting Party may reasonably require in response to any Parliamentary request for information or any other emergency request received from a Crown Body, Chief Officer of Police or other regulatory authority.

21. NO WAIVER

No failure to exercise nor delay in exercising any right, power or remedy under or in connection with this Agreement shall operate as a waiver thereof, and no single or partial exercise of any right, power or remedy shall preclude any further or other exercise thereof, or the exercise of any other right or remedy.

22. NOTICES

- 22.1 All notices, notifications, instructions, consents, claims and other communications given under this Agreement shall expressly refer to this Agreement and shall be given or made in writing (which includes electronic mail) and shall be delivered:

- 22.1.1 if to the Secretary of State, to Eddie Muraszko, Deputy Director, Midlands, North & Wales Market

Address: Great Minster House, 33 Horseferry Road, London, SW1P 4DR

Phone no: 020 7944 3420

Email address: eddie.muraszko@dft.gsi.gov.uk

- 22.1.2 if to TfN, to the Head of Legal, Transport for the North;

Address: Transport for the North, 2nd Floor, 4 Piccadilly Place, Manchester;

Phone no: 07557039174;

Email address: sasha.wayne@transportfornorth.com;

or such other addressee as may be advised by either Party from time to time. Any such notification must state that the new address is the address for notices and/or the new contact person is the contact person to whose attention all future notices should be brought, as the case may be.

- 22.2 Each such communication shall, unless proved otherwise or unless in the case of any notification of a failure in delivery (including automatic reports produced), be deemed to have been received:

- 22.2.1 if personally delivered, at the time of delivery;

- 22.2.2 if sent by first-class post, on the second Working Day following the date on which posted; and
- 22.2.3 if sent by electronic mail at the time of receipt.
- 22.3 All communications shall be sequentially numbered.

23. LAW AND JURISDICTION

This Agreement (and any claims arising out of or in connection with it (whether contractual or non-contractual)) shall be governed by, and construed in accordance with, the laws of England and Wales and each Party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.

24. DISPUTES

- 24.1 The Parties shall use all reasonable endeavours to negotiate in good faith and settle amicably any dispute or difference of whatever nature between them arising under, out of, or in connection with this Agreement (each such dispute or difference a "**Dispute**").
- 24.2 Following any referral of a Dispute to the Dispute Resolution Procedure in accordance with the terms of this Agreement, the provisions set out in this clause 24 shall apply.
- 24.3 The Dispute shall initially be referred for resolution to the Director General, Rail Group, Department for Transport and the Chief Executive, Transport for the North ("**Initial Dispute Board**") who shall seek to resolve the matter as soon as reasonably possible and in any event within twenty (20) Working Days of escalation, or such other period as may be reasonable given the nature of the Dispute, and the urgency of resolution. The Initial Dispute Board shall be entitled to request such additional information as may be reasonably requested from either TfN or the Secretary of State in respect of the Dispute, including, but not limited to, any information to be provided pursuant to the relevant provisions of this Agreement.
- 24.4 Both Parties shall be entitled to make oral and/or written representations to the Initial Dispute Board prior to the Initial Dispute Board making its final determination.
- 24.5 Where the Initial Dispute Board are not able to resolve the Dispute within twenty (20) Working Days of escalation pursuant to clause 24.3, the Initial Dispute Board shall refer the Dispute for determination by a Minister and the chairperson of TfN who shall seek to determine the Dispute within twenty (20) Working Days of escalation, or such other period as may be reasonable given the nature of the Dispute.
- 24.6 Subject to clause 24.8, if there is a dispute in relation to the correct legal interpretation of any provision of this Agreement or the legal rights and obligations of the Parties pursuant to it that has not been resolved pursuant to the procedure prescribed by clauses 24.1 to 24.5, the Parties shall refer the Dispute to an independent expert for determination ("**Expert**"). The Expert shall be Queen's Counsel appointed by agreement in writing between the Parties (acting reasonably), but in the event of a failure to agree within ten (10) Working Days, or if the person appointed is unable or unwilling to act, the Expert shall be a Queen's Counsel appointed on the instructions of the president of the Law Society.
- 24.7 The Expert shall act on the following basis:
 - 24.7.1 as an expert and not as an arbitrator and shall act fairly and impartially;

- 24.7.2 the Expert's determination shall be final and binding on the Parties;
- 24.7.3 the Expert shall decide the procedure to be followed in the determination and shall be requested to make his/her determination within thirty (30) Working Days of his/her appointment or as soon as reasonably practicable thereafter and the Parties shall assist and provide the documentation that the Expert requires for the purposes of the determination;
- 24.7.4 the process shall be conducted in private and shall be confidential;
- 24.7.5 the Expert shall not act for either of the Parties individually in connection with the Dispute in any capacity during the term of this Agreement and the duration of the Dispute. The Parties acknowledge and agree that in relation to the Dispute, the Expert is not an agent of, or acting in any capacity for, either of the Parties; and
- 24.7.6 the costs of the Expert shall be paid, as the Expert shall determine or otherwise jointly by the Parties.
- 24.8 TfN acknowledges and accepts that the decision of the Secretary of State in relation to this exercise of any of the Secretary of State Duties is final and binding.
- 25. VARIATION**
- No amendment to this Agreement shall be effective unless made in writing and executed by an authorised representative of the Secretary of State and TfN.
- 26. SEVERANCE**
- If any provision of this Agreement is found by any judicial or other competent authority to be invalid or unenforceable, such invalidity or unenforceability shall not affect the remaining provisions of this Agreement which shall remain in full force and effect.
- 27. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**
- No person who is not party to this Agreement may enforce any term of this Agreement under the Contracts (Rights of Third Parties) Act 1999.
- 28. NO PARTNERSHIP**
- This agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the parties other than the relationship expressly provided for in this Agreement.
- 29. SURVIVAL**
- Notwithstanding the termination or expiry of this Agreement, the provisions of this clause and clauses 17.6, 19 (Confidentiality), 20 (Freedom of Information), 23 (Law and Jurisdiction), 24 (Disputes), 27 (Contracts (Rights of Third Parties) Act 1999) and 28 (No Partnership) shall expressly survive such termination or expiry and continue in full force and effect along with any other clauses of and any schedules to this Agreement necessary to give full and proper effect to those clauses.

30. COUNTERPARTS

This Agreement may be entered in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

Executed as a deed and delivered on the date appearing at the beginning of this Deed.

The Corporate Seal of the **SECRETARY OF**)
STATE FOR TRANSPORT is hereunto)
affixed:)

SEAL

J.

Authenticated by authority of
the Secretary of State for
Transport



JOSEPH JOHNSON

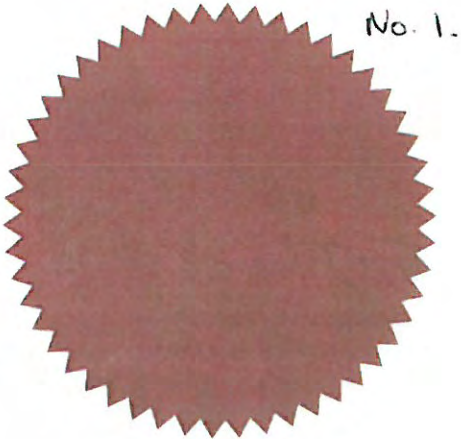
Name (block
capitals)

Minister of State

Title

EXECUTED as a Deed by affixing the
common seal of
TRANSPORT FOR THE NORTH
in the presence of:

)
)
)
)
)
)



Signature

Name (block capitals)

BARRY WHITE

Authorised Signatory

Signature

Name (block capitals)

SASHA WIMNE

Authorised Signatory

EXECUTED as a Deed, but not delivered until)
the date specified on this deed, by **RAIL**)
NORTH LIMITED by a director in the)
presence of a witness:) Signature

Name (block capitals) JUDITH BLAKE
Director

Witness signature Deborah A Dimock

Witness name DEBORAH Dimock
(block capitals)

Witness address Transport for the North
4, Piccadilly Place
Manchester
M1 3BN

SCHEDULE 1: RIGHTS AND RESPONSIBILITIES

Part 1: TfN Matters

No.	TfN Matter
1	Development of and changes to the Train Service Requirement
2	Changes to train fleet
3	Assets, leases and third parties
4	Concessionary Travel, Multi Modal Ticketing Schemes and Smart Transactions
5	Performance Management and Enforcement
6	Matters relating to the deployment of Rolling Stock where this affects any TfN Party (including branding and funding of Rolling Stock)
7	Development of and changes to the Train Plan
8	Right to carry out Surveys (including carrying out passenger surveys such as surveys required for the purposes of multi operator ticketing schemes and/or concessionary travel reimbursement)
9	Station facilities addressed by the provisions of a relevant Franchise Agreement, (including staffing levels, passenger facilities, ticket sales, ticketing equipment, information provision, car parks, parking charges, cycle storage, taxi and bus interchange)
10	Right to inspect (including carrying out inspections, surveys of stations, trains and any other passenger facility)
11	The application of fare increases to fare baskets (including fare basket harmonisation and the application of de minimis values)
12	Any matter agreed to be TfN's responsibility pursuant to clause 8 (Statutory Partner Role) or 14.1 (Annual Review) of this Agreement

Part 2: Reserved Matters

1. Approval of any changes to the train service requirement where such change would result in an overall increased subsidy or cost commitments either:
 - 1.1 for the Franchise Agreements considered together;
 - 1.2 for other franchises managed by Secretary of State;
 - 1.3 following the expiry of the Franchise Agreements; and/or
 - 1.4 have any procurement law implications including with regard to "material change", provided that a TfN Franchise Output Adjustment shall not be a Reserved Matter.
2. Approval of any other financial or contractual changes to a Franchise Agreement which requires an overall increased subsidy requirement or other cost commitments either:
 - 2.1 for the Franchise Agreements considered together;
 - 2.2 for other franchises managed by Secretary of State; and/or
 - 2.3 following the expiry of the Franchise Agreements; and/or
 - 2.4 have any procurement law implications including with regard to "material change", provided that a TfN Franchise Output Adjustment shall not be a Reserved Matter.
3. Approval of any change not being a TfN Franchise Output Adjustment that would impact the long term value of the Franchise Agreements.
4. Approval of any long term or contingent liabilities of the Secretary of State arising from a change to a Franchise Agreement other than a TfN Franchise Output Adjustment .
5. Enforcement matters pertaining to the Secretary of State Duties, provided that the Rail North Partnership Board shall in accordance with clause 6.15 be responsible for making informed recommendations regarding the approval and management of remedial plans.
6. The agreement of the High Level Output Statements (HLOS) and the Statements of Funds Available (SoFA) as required by paragraph 1D of Schedule 4 of the Railways Act 2005.
7. The agreement with Network Rail of output statements relating to delivery of the RNEP requirements (save to the extent specifically delegated to the Rail North Partnership Board).
8. Approval of the annual budget ("**Secretary of State Annual Franchise Budget**") in respect of payments due under each of the Franchise Agreements, save in respect of any payments for which TfN (or TfN Parties) have responsibility under this Agreement (including pursuant to any TfN Franchise Output Adjustment).
9. The provision, or securing the provision of, service for the carriage of passengers by railway where a Franchise Agreement is terminated or otherwise comes to an end but no further

franchise agreement has been entered into in respect of such services, in accordance with section 30 Railways Act 1993.

SCHEDULE 2: RAIL NORTH PARTNERSHIP BOARD RESPONSIBILITIES

Subject to the Reserved Matters and without prejudice to clause 9 of this Agreement, the Rail North Partnership Board shall be responsible for:

1. Agreeing each annual Rail North Partnership Board Business Plan and the budget for the Management Team ("**Rail North Partnership Board Management Budget**").
2. Setting and reviewing the financial and management responsibilities of the Management Team including processes for consultation and liaison with other statutory bodies, the composition of the Additional Team and any delegation to Regional Business Units as deemed appropriate by the Rail North Partnership Board and the resourcing of the statutory partner role and reviewing those responsibilities on a regular basis.
3. Developing and keeping under review investment options for, and relating to, the Franchise Agreements.
4. In relation to each of the Franchise Agreements:
 - 4.1 oversight of performance of the Franchisees
 - 4.2 change approvals in accordance with the terms of this Agreement; and
 - 4.3 management and agreement of Train Service Requirement derogations.
5. Recommendations in relation to the scope of Reserved Matters for the purposes of the Annual Review to be carried out pursuant to clause 14.
6. Acting as the primary vehicle for the statutory partner interface between the Secretary of State and TfN including those processes specified in clause 8 in respect of the statutory partner role;
7. Overseeing co-operation between the Parties on HLOS delivery in CP5 and future Control Period planning in respect of the North of England, having regard to the Secretary of State funding available (SoFA) and specific responsibilities for discharge of client functions for certain RNEP schemes within this area where specifically delegated by the Secretary of State.
8. To perform RNEP Scheme Management where delegated to the Rail North Partnership Board by the Secretary of State in accordance with this Agreement.
9. Agreeing an annual report for the Parties in respect of the operation of this Agreement ("**Annual Report**"), which shall include:
 - 9.1 recommendations (including plans and timelines) for any changes to this Agreement to set out greater risk and opportunity sharing between the Parties during the term of the Franchise Agreements;
 - 9.2 assessment of performance against the Purposes in respect of the operation of the Franchise Agreements;
 - 9.3 any information relevant to the Franchise Agreement Review to be carried out in accordance with clause 14.

10. Reviewing and approving proposals for Service Quality Programmes where it is demonstrated that such proposals:
 - 10.1 achieve Passenger Benefits; and
 - 10.2 will be completed within the term of the relevant Franchise Agreement.
11. When a Service Quality Programme is approved, the Rail North Partnership Board shall promptly notify the Management Team.

SCHEDULE 3: MANAGEMENT TEAM RESPONSIBILITIES

1. Subject to the Reserved Matters, the Management Team shall have authority to implement the Rail North Partnership Board Business Plan in accordance with the Rail North Partnership Board Annual Budget.
2. Without prejudice to clause 11.1 of this Agreement the Management Team shall be entitled to implement cost neutral or reducing changes to the Franchise Agreements in accordance with the delegated authority of the Rail North Partnership Board.
3. Save in respect of Reserved Matters, the Management Team's responsibilities shall include day-to-day contract and commercial management of the Franchise Agreements on behalf of the Secretary of State ("**Franchise Management Responsibilities**"), including:
 - 3.1 appropriate contract administration;
 - 3.2 performance monitoring;
 - 3.3 risk management and reporting.
4. The Management Team shall also be responsible for the development of other change proposals for consideration by the Rail North Partnership Board in conjunction with the Franchisee, TfN and other stakeholders, including managing the TfN Franchise Output Adjustment process set out in clause 12 on behalf of the Secretary of State.
5. The Management Team shall be responsible for providing general briefing and support for Ministers and the TfN Leaders Committee on matters relating to the Franchises, the operation of the Rail North Partnership Board and the Management Team and all necessary preparation for each Annual Review.
6. The Management Team shall in relation to rail investment in the North of England:
 - 6.1 develop proposals for the Government's HLOS for each Control Period, identifying related or necessary TfN Franchise Output Adjustments;
 - 6.2 develop TfN funded investment proposals, identifying related or necessary TfN Franchise Output Adjustments;
 - 6.3 oversee the development of output statements and metrics for Network Rail setting out in more detail what is sought from HLOS requirements and TfN Franchise Output Adjustments having regard to the total HLOS funding available;
 - 6.4 where the Rail North Partnership Board has been delegated RNEP Scheme Management by the Secretary of State, to act as Network Rail's 'Client' for such RNEP schemes, as agreed between Secretary of State and TfN, including finalising the detailed scheme output specifications and agreeing these with Network Rail and Secretary of State including budget provision and affordability;
 - 6.5 acting as 'Client' for TfN's infrastructure investment schemes.
7. The Management Team shall be responsible for developing proposals for Service Quality Programmes in relation to the Northern Franchise Agreement in consultation with TfN and TfN Parties. The development of such proposals shall include:

- 7.1 demonstrating how the proposal will deliver Passenger Benefits; and
 - 7.2 the timescales for implementation and completion; and
 - 7.3 a plan for the commissioning of the works or services included in the Service Quality Programme.
8. In the event that a proposal for a Service Quality Programme is approved by the Rail North Partnership Board pursuant to paragraph 10 of schedule 2, the Management Team shall be responsible for the commissioning of such Service Quality Programme from the Franchisee of the Northern Franchise Agreement or the relevant TfN Party.

Where a Service Quality Programme is commissioned from the relevant Franchisee of the Northern Franchise Agreement, the Management Team shall be responsible for the management of the Franchisee in the delivery of the Service Quality Programme.

Where a Service Quality Programme is to be carried out by a TfN Party, that TfN Party shall be responsible for the delivery of the Service Quality Programme.

SCHEDULE 4: RAIL NORTH PARTNERSHIP BOARD BUSINESS PLAN

SCHEDULE 5: TFN PARTIES

Name	Address
Blackburn with Darwen Borough Council	Old Town Hall King William Street Blackburn Lancashire BB1 7DY
Blackpool Borough Council	Municipal Buildings Corporation Street Blackpool FY1 1NF
Cheshire East Council	Westfields Middlewich Road Sandbach CW11 1HZ
Cheshire West and Chester Council	Nicholas Street, Chester, CH1 2NP
City of York Council	West Offices, Station Rise, York, North Yorkshire, YO1 6GA
Cumbria County Council	Cumbria House, 107 - 117 Botchergate, Carlisle, CA1 1RD
Derbyshire County Council	County Hall Matlock DE4 3AG
East Riding of Yorkshire Council	County Hall Beverley East Riding of Yorkshire HU17 9BA
Greater Manchester Combined Authority	Churchgate House 56 Oxford Street Manchester M1 6EU
Hull City Council	Guildhall Hull HU1 2AA

Name	Address
Lancashire County Council	PO Box 78 County Hall Fishergate Preston Lancashire PR1 8XJ
Lincolnshire County Council	County Offices, Newland, Lincoln, LN1 1YL
Liverpool City Region Combined Authority	c/o Merseytravel PO Box 1976 Liverpool L69 3HN
North East Combined Authority	Quadrant, The Silverlink North, Cobalt Business Park, North Tyneside NE27 0BY
North East Lincolnshire Council	Municipal Offices, Town Hall Square, Grimsby, DN31 1HU
North Lincolnshire Council	Civic Centre, Ashby Road, Scunthorpe DN16 1AB
North Yorkshire County Council	County Hall, Racecourse Ln, Northallerton, North Yorkshire DL7 8AD
Nottingham City Council	Loxley House, Station Street, Nottingham, NG2 3NG
Nottinghamshire County Council	County Hall, West Bridgford, Nottingham, NG2 7QP
Sheffield City Region Combined Authority	AMP Technology Centre Advanced Manufacturing Park Brunel Way

Name	Address
	Rotherham S60 5WG
Staffordshire County Council	Number 1 Staffordshire Place, Stafford, ST16 2DH
Stoke-on-Trent City Council	Civic Centre, Glebe Street, Stoke-on-Trent, ST4 1RN
Tees Valley Combined Authority	Cavendish House, Teesdale Business Park, Stockton-on-Tees, Tees Valley, TS17 6QY
Warrington Borough Council	26-30 Horsemarket Street, Warrington WA1 1XL
West Yorkshire Combined Authority	Wellington House 40/50 Wellington Street Leeds LS1 2DE