

Dated

2012

**NETWORK RAIL INFRASTRUCTURE LIMITED
STAGECOACH SOUTH WESTERN TRAINS LIMITED**

**ALLIANCE AGREEMENT
relating to the NRIL
Wessex Route and SSWT Franchise Services**

Redacted Version

This agreement has been redacted for reasons of commercial confidentiality.

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Between

- (1) **NETWORK RAIL INFRASTRUCTURE LIMITED** (No. 2904587) whose registered office is at Kings Place, 90 York Way, London, N1 9AG (**NRIL**); and
- (2) **STAGECOACH SOUTH WESTERN TRAINS LIMITED** (No. 5599788) whose registered office is at Friars Bridge Court, 41-45 Blackfriars Road, London, SE1 8NZ (**SSWT**).

Whereas

- (A) NRIL is the owner of and responsible for the rail infrastructure in England, Scotland and Wales, including the Wessex Route;
- (B) SSWT operates Franchise Services on the Wessex Route;
- (C) On 21 September 2011 NRIL and SSWT signed the Heads of Terms establishing the principles upon which an alliance would be formed.
- (D) NRIL and SSWT have agreed to form an alliance to jointly explore finding more cost-effective and efficient ways of delivering their respective activities on the Wessex Route, to sustain, and where required, improve the service delivered to passengers and other users of the Wessex Route. By entering into the alliance, the Parties each intend to realise cost reductions and savings in relation to the operation of the Wessex Route and the Franchise Services over the duration of the Alliance beyond that which either Party could achieve by itself alone as well as improve the efficiency and productivity of the utilisation of the human and physical resources and assets available to the Parties, while respecting the requirement of separation in relation to certain activities of infrastructure managers and train operators.
- (E) In this regard the Parties aim to achieve the following:
 - a. maintain or, where required, improve current safety performance to meet relevant targets;
 - b. deliver the required level of service delivery output in a more cost effective manner;
 - c. maintain or improve the level of customer satisfaction, as measured by the NPS;
 - d. meet the required PPM targets for operators on the Wessex Route;
 - e. maintain current and sustainable levels of asset stewardship as required by NRIL's regulatory settlement;
 - f. share and develop their respective learning and understanding of one another's operations on the Wessex Route;
 - g. agree efficiency targets related to the infrastructure asset value; and
 - h. improve the effectiveness and financial efficiency of the interface between NRIL and SSWT in delivering services.
- (F) The operation of the Alliance will respect all existing and future operators' rights to access the Wessex Route infrastructure on a fair and non-discriminatory basis.

- (G) The Parties recognise the importance of ensuring compliance with the Railways Act 1993 and the Access & Management Regulations, the Health and Safety at Work etc Act 1974 and other safety legislation, the Competition Act 1998 and the Enterprise Act 2002 as well as compliance with their obligations under licences, safety certificates and other authorisations in place, as well as access contracts, other regulated contracts and the Network Code. The Parties have structured the Alliance accordingly.
- (H) The Parties agree to establish the Alliance with effect from the Commencement Date on the terms contained in this Agreement.

It is agreed

1 DEFINITIONS

In this Agreement, unless the context otherwise requires:

Advance Matter	has the meaning given to it in paragraph 3.4 of Part 1 of Schedule 4;
Access & Management Regulations	means The Railways Infrastructure (Access and Management) Regulations 2005;
Access Agreement	has the meaning given to the term access agreement in section 83(1) of the Railways Act;
Actual Baseline Pro-Forma	means: <ul style="list-style-type: none"> (a) in relation to NRIL, the pro-forma baseline set out in NRIL's Baseline Methodology and Assumptions; and (b) in relation to SSWT, the pro-forma baseline set out in SSWT's Baseline Methodology and Assumptions;
Actual Baselines	means the Four-Weekly Actual Baselines and the Annual Actual Baselines;
Affiliate	means, in relation to any company: <ul style="list-style-type: none"> (a) a company which is either a holding company or a subsidiary of such company; or (b) a company which is a subsidiary of a holding company of which such company is also a subsidiary;
Aggregate Unwind Costs	means the aggregate of the: <ul style="list-style-type: none"> (a) Unwind Costs incurred by NRIL; and (b) Unwind Costs incurred by SSWT;

Alliance	means the contractual alliance formed by this Agreement;
Alliance Activities	has the meaning given to it in clause 3.1;
Alliance Annual Actual Baseline	has the meaning given to it in paragraph 5.6 (b) (i) of Schedule 4;
Alliance Budget	means the annual budget in respect of the Alliance approved and adopted in accordance with this Agreement;
Alliance Contract	has the meaning given to it in clause 4.13(c)(iv);
Alliance Executive	means the Alliance executive established in accordance with Part 2 of Schedule 2;
Alliance Initial Baseline	means, in respect of any Year, the Parties' combined Initial Baselines for that Year;
Alliance IP	has the meaning given to it in clause 7.4;
Alliance Joint Facilities	has the meaning given to it in clause 5.1(a);
Alliance MD	means the managing director of the Alliance appointed by the Governance Board from time to time;
Alliance Organisational Chart	means an organisational chart prepared by the Alliance Executive which sets out the current organisational structure of the Alliance;
Alliance Participants	means the NRIL Alliance Participants and the SSWT Alliance Participants;
Alliance Payment Period Actual Baseline	has the meaning given to it in paragraph 5.5(b)(i) of Schedule 4;
Alliance Scheme	means any scheme identified by the Parties as such, which is to be managed under the arrangements established under this Agreement but in relation to which the Parties wish to establish modified arrangements in relation to the pooling of costs and/or revenues or otherwise;
Alliance Supplies	has the meaning given to it in clause 10.4(b)(iii)(E);
Alliance Term	means the period commencing on the Commencement Date and ending on the Termination Date;
[REDACTED]	[Redacted];
Annual Actual Baselines	means, in respect of any Year, the NRIL Annual Actual Baseline and the SSWT Annual Actual Baseline;
Annual Efficiency	has the meaning given to it in paragraph 5.6(a)(ii) of Schedule

Adjustment Report	4;
Annual Efficiency Share Payment Statement	has the meaning given to it in paragraph 8.1(b) of Schedule 4;
Annual Gain Share Adjustment Amount	has the meaning given to it in paragraph 7.3(a)(i) of Schedule 4;
Annual Gain Share Adjustment Payment	means, in respect of any Year, the absolute value of the Annual Gain Share Adjustment Amount for that Year;
Annual Gain Share Amount	has the meaning given to it in paragraph 7.3(a)(iii) of Schedule 4;
Annual Pain Share Adjustment Amount	has the meaning given to it in paragraph 7.3(b)(i) of Schedule 4;
Annual Pain Share Adjustment Payment	means, in respect of any Year, the absolute value of the Annual Pain Share Adjustment Amount for that Year;
Annual Pain Share Amount	has the meaning given to it in paragraph 7.3(b)(iii) of Schedule 4;
Annual Report	has the meaning given to it in paragraph 5.6(b)(ii) of Schedule 4;
Annual Total Variance Adjustment	means, in respect of any Year the amount of the Annual Variance for that Year classified as a Deferred Variance for that Year pursuant to paragraph 5.6 of Part 2 of Schedule 4;
Annual Variance	has the meaning given to it in paragraph 5.6(a)(ii)(B) of Schedule 4;
Applied Variances	means any Variance which has been classified as an Applied Variance pursuant to the Variance Table;
Appointees	means, in relation to: <ul style="list-style-type: none"> (a) NRIL, the NRIL Appointees; (b) SSWT, the SSWT Appointees, and, where relevant, includes their respective alternates;
Appropriate Representatives	has the meaning given in Regulation 13 of the Regulations;
Assurance Audit	has the meaning given to it in clause 4.13(d)(i);
Audited Party	has the meaning given to it in paragraph 5.8(c) of Schedule 4;
Auditing Party	has the meaning given to it in paragraph 5.8(c) of Schedule 4;
Baseline Methodology	means:

and Assumptions

in relation to NRIL:

- (a) in respect of the first Year and second Year, the methodology and assumptions set out in the Introduction and Overview and Part 1 of Appendix 2 to Schedule 4; and
- (b) in respect of any Year commencing after 31 March 2014, its Control Period 5 Baseline Methodology and Assumptions;

in relation to SSWT:

- (a) in respect of the first Year and second Year, the methodology and assumptions set out in the Introduction and Overview and Part 2 of Appendix 2 to Schedule 4; and
- (b) in respect of any Year commencing after 31 March 2014, its Control Period 5 Baseline Methodology and Assumptions;

Business Day

means any day on which banks are open for business in London (excluding Saturdays, Sundays and public holidays);

CA 2006

means the Companies Act 2006;

CAHA

means the Claims Allocation and Handling Agreement in relation to the Network as amended from time to time;

Calling Party

has the meaning given to it in paragraph 7.5(b) of Schedule 4;

Chairman

means the chairman of the Governance Board;

Change in Circumstances

means a Change in Law or any action or omission of any Competent Authority which:

- (a) results in it becoming impossible to continue with the alliance arrangements (or any material part thereof) which are the subject of this Agreement (as amended from time to time);
- (b) (in the reasonable opinion of either Party), results in an increase in the risk of such a Party being:
 - (i) in breach of any licence and/or, in the case of SSWT, the Franchise Agreement; or
 - (ii) the subject of a legal or regulatory sanction,

which is unacceptable to such Party ; or

- (c) (in the reasonable opinion of either Party) would require the Party to incur costs in relation to the performance of its obligations under this Agreement which fall outside the

NRIL Initial Baseline or the SSWT Initial Baseline (as the case may be) and which would, if such costs were included in the NRIL Actual Baseline or the SSWT Actual Baseline (as the case may be), result in such Actual Party's NCFE falling to zero or less;

Change in Circumstances Longstop Date	has the meaning given to it in paragraph 2.4 of Schedule 5;
Change in Circumstances Notice	has the meaning given to it in paragraph 1.2 of Schedule 5;
Change in Circumstances Response	has the meaning given to it in paragraph 1.4 of Schedule 5;
Change in Law	means the repeal, amendment, making or change in the judicial or administrative interpretation or application of any Law, in each such case after the date of this Agreement;
Change Receiving Party	has the meaning given to it in paragraph 1 of Part 1 of Schedule 1;
Change Requesting Party	has the meaning given to it in paragraph 1 of Part 1 of Schedule 1;
Charge Variation	has the meaning given to it in the Franchise Agreement;
Claim	means all and any claims against a Party under this Agreement, including any claim for breach of contract, misrepresentation or indemnification, or pursuant to any common law or statutory rights, covenant or undertaking in relation to any matter relating to this Agreement;
Closed Amount	means any of: <ul style="list-style-type: none">(a) NGA_p for any Payment Period as determined pursuant to paragraph 7.1(a)(ii) of Schedule 4;(b) NPA_p for any Payment Period as determined pursuant to paragraph 7.2(a)(ii) of Schedule 4;(c) SGA_p for any Payment Period as determined pursuant to paragraph 7.1(a)(iii) of Schedule 4;(d) SPA_p for any Payment Period as determined pursuant to 7.2(a)(iii) of Schedule 4;(e) NGA_y for any Year as determined pursuant to paragraph 7.3(a)(iv) of Schedule 4;(f) SGA_y for any Year as determined pursuant to paragraph 7.3(a)(v) of Schedule 4;(g) NPA_y for any Year as determined pursuant to paragraph

	7.3(b)(iv) of Schedule 4;
	(h) SPAy for any Year as determined pursuant to paragraph 7.3(b)(v) of Schedule 4;
Closed Payment	means any paid, invoiced, finally agreed or determined: <ul style="list-style-type: none"> (a) Gain Share Payment; (b) Pain Share Payment; (c) Annual Gain Share Adjustment Payment; or (d) Annual Pain Share Adjustment Payment;
Code of Conduct	has the meaning given to it in clause 4.13(b)(i);
Commencement Date	means 29 April 2012;
Competent Authority	means any local, national or supra-national agency, authority, department, inspectorate, minister, ministry, official, court, tribunal, or public or statutory person (whether autonomous or not and including the ORR and SoS) whether of the United Kingdom or of the European Union provided that Competent Authority shall not include Her Majesty's Government (or any department, minister, official or nominee of it) where acting as shareholder of a Party or other than pursuant to the Crown prerogative or a statutory function or power;
Conditions Precedent Agreement	has the meaning given to it in the Franchise Agreement;
Contractors	means the NRIL Contractors and the SSWT Contractors;
Control Period	means a specific regulatory period for which NRIL's funding and outputs are determined by the ORR;
Control Period 4	means the Control Period expiring on 31 March 2014 or such other date as determined by a Competent Authority;
Control Period 5	means the Control Period commencing on 1 April 2014 or such other date as determined by a Competent Authority;
Control Period 5 Baseline Methodology and Assumptions	means the methodology and assumptions developed in accordance with the Control Period 5 Baseline Plan;
Control Period 5 Baseline Plan	has the meaning given to it in paragraph 2.1 of Schedule 4;
Control Period 5 Baseline Plan Longstop Date	means 31 March 2013;
Control Period 5	has the meaning given to it in paragraph 2.1 of Schedule 4 and includes the Control Period 5 Estimated Initial Baselines

Baselines	and the Control Period 5 Initial Baselines;
Control Period 5 Estimated Baselines	means the estimated Initial Baselines for each Year commencing after 31 March 2014 agreed pursuant to the Control Period 5 Baseline Plan;
Control Period 5 Estimated Baselines Longstop Date	has the meaning given to it in paragraph 2.2(b)(ii) of Schedule 4;
Control Period 5 Initial Baselines	means the final Initial Baselines for each Year commencing after 31 March 2014 agreed pursuant to the Control Period 5 Baseline Plan;
Costs	means any costs, expenses, charges, losses, liabilities or damages which are included in the Initial Baselines as more particularly described in the Baseline Methodology and Assumptions, but excluding any Excluded Cost;
Data Protection Laws	means all statutes, laws, secondary legislation and regulations pertaining to privacy, confidentiality and/or data protection of personal data, including the Data Protection Act 1998, the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI2003/2426), the Regulation of Investigatory Powers Act 2000 and the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699) and any relevant national laws implementing Directives 95/46/EC, 2002/58/EC;
Deadlock Dispute	means any failure to reach agreement on matters expressly required to be agreed between the Parties under this Agreement within the specified time period;
Default Unwind Costs	means the additional Unwind Costs which are incurred by NRIL or SSWT (as applicable) as a consequence of this Agreement being terminated due to a NRIL Event of Default or a SSWT Event of Default (as the case may be) having occurred, rather than being terminated in accordance with clause 13.4 (Other Rights of Termination) or clause 13.5 (Automatic Termination) or expiring in accordance with clause 13.1(b);
Deferred Variance	means any Variance which has been classified as a Deferred Variance pursuant to the Variance Table and paragraph 5.3 of Part 2 of Schedule 4 (excluding any Deferred Variances reclassified as Payable Variances);
Delegated Authority	has the meaning given to it in clause 4.4(a);
Designated IT Systems	has the meaning given to it in clause 5.1(b);
DfT Revenue Support	has the meaning given to it in clause 4.9;

Dispute	means a Legal Dispute and/or a Deadlock Dispute;
Disputes Resolution Procedure	means the procedure for the resolution of Disputes under or in connection with this Agreement, as set out in Schedule 7;
Due Date	has the meaning given to it in paragraph 8.1(f) of Schedule 4;
Efficiency Adjustment Report	means a Payment Period Efficiency Adjustment Report or an Annual Efficiency Adjustment Report (as the case may be);
Efficiency Share Cut-Off Date	means the date falling 38 calendar months after the Termination Date;
Efficiency Share Payment Statement	has the meaning given to it in paragraph 8.1(a) of Schedule 4;
Efficiency Share Reconciliation Payment	means any balancing payment agreed to be made under paragraph 4.2(c) of Schedule 4, paragraph 4.3(d) of Schedule 4, paragraph 5.4(d) of Schedule 4, paragraph 5.8(g) of Schedule 4 and/or paragraph 7.5(e) of Schedule 4;
Efficiency Sharing Principles	has the meaning given to it in paragraph 6.4 of Schedule 4;
Employee Liability Information	means the employee liability information in Regulation 11 of the Regulations;
Employer	means, in relation to a member of the Governance Board or a member of the Alliance Executive, that member's employer, being NRIL, SSWT or one of their Affiliates, as the case may be;
Employment Claims	means any claim or demand by or on behalf of any Alliance Participant or former Alliance Participant arising out of or in connection with their contract of employment with a Party (or the Affiliate of such Party where such Affiliate provides or has provided an Alliance Participant to a Party) and/or its termination (whether in contract, tort, under statute, pursuant to European law or otherwise) including, without limitation, any claim for injury, death, illness, disease, mental injury or mental anguish that results in a recognisable psychiatric injury, unfair dismissal, wrongful dismissal, a redundancy payment, breach of contract, unlawful deduction from wages, discrimination on the grounds of sex, race, disability, sexual orientation, religion or religious belief, age, gender re-assignment or marital or civil partnership status, a protective award or a claim or demand of any other nature;
Exceptions Report	means the exceptions report generated by NRIL regarding service alterations not assigned to a possession in relation to

	the operation of schedule 4 to the Track Access Agreement;
Excluded Cost	<p>means that proportion of any cost, expense, charge, loss, liability or damage:</p> <p>(a) which is an Excluded Matter, save as otherwise expressly agreed by the Parties; or</p> <p>(b) expressly stated to be excluded from the relevant Initial Baseline and/or the Actual Baseline in the Baseline Methodology and Assumptions;</p>
Excluded Matter	means any event, matter or circumstance set out in Appendix 3 of Schedule 4 (Costs and Revenue);
Excluded Revenue	<p>means that proportion of any income, revenue, proceeds or cash receipts:</p> <p>(a) which is an Excluded Matter, save as otherwise expressly agreed by the Parties; or</p> <p>(b) expressly stated to be excluded from the relevant Initial Baseline and/or the Actual Baseline in the Baseline Methodology and Assumptions;</p>
Expenses	means reasonable and proper third party costs and expenses;
Expiry Date	has the meaning given to it in the Franchise Agreement;
Facility Owner	has the meaning given to the term facility owner in section 17(6) of the Railways Act;
Final Judgment	means the Relevant Proceedings have been determined by a court of competent jurisdiction from which there is no right of appeal, or from whose judgment the Protected Party is debarred by passage of time or otherwise from making an appeal;
Final Unwind Date	means the date on which the Parties certify in writing that the Free Standing Principle has been achieved, in accordance with paragraph 4.4 of Part 2 of Schedule 6;
First Post-Termination Audit Period	means the period from the Termination Date until the date 45 Business Days following the provision of both sets of Four-Weekly Actual Baselines in respect of the last Period in the Alliance Term;
Four-Weekly Actual Baselines	means, in respect of any Period, the NRIL Four-Weekly Actual Baseline and the SSWT Four-Weekly Actual Baseline for that Period;
Four-Weekly Alliance Baseline	has the meaning given to it in paragraph 5.2(b)(i) of Schedule 4;

Four-Weekly Report	has the meaning given to it in paragraph 5.2(b)(ii) of Schedule 4;
Franchise Agreement	means the agreement between the SoS and SSWT dated 21 September 2006 (as amended), which constitutes a single agreement together with the Conditions Precedent Agreement and the Terms and which is a franchise agreement for the purposes of the Railways Act;
Franchise Agreement Change Process	means the process set out in Schedule 9 of the Terms;
Franchise Services	has the meaning given to it in the Franchise Agreement;
Franchise Term	has the meaning given to it in the Franchise Agreement;
Free Standing Organisational Chart	means an organisational chart prepared by each Party which sets out the proposed organisational structure of such Party if this Agreement were to be unwound to achieve the Free Standing Principle;
Free Standing Principle	means: <ul style="list-style-type: none"> (a) (in relation to NRIL) NRIL being in a position to operate and be responsible for the Wessex Route without this Agreement being in place; (b) (in relation to SSWT) SSWT being in a position to operate and be responsible for the Franchise Services and to comply with its obligations under the Franchise Agreement without this Agreement being in place; and (c) (in relation to a Successor Operator) the Successor Operator being in a position to operate and be responsible for services which are equivalent to the Franchise Services and to comply with such obligations as are imposed upon it by the SoS under a franchise agreement or equivalent arrangement under section 30 of the Railways Act without this Agreement being in place;
Gain Share Amount	has the meaning given to it in paragraph 7.1(a)(i) of Schedule 4;
Gain Share Payment	means, in respect of any Payment Period, the absolute value of the Gain Share Amount for that Payment Period;
Go Live	has the meaning given to it in clause 4.12(a)(ii);
Go Live Criteria	has the meaning given to it in clause 4.12(a)(v);

Good Industry Practice	means using standards, practices, methods and procedures conforming to the Law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged in a similar type of undertaking under the same or similar circumstances;
Governance Board	means the governance board established in accordance with Part 1 of Schedule 2;
Group Standards	means Railway Group Standards produced pursuant to the Railway Group Standards Code (or equivalent predecessor documents, including previous versions of the Railway Group Standards Code) defining mandatory requirements in respect of the mainline railway in each case as published by the Rail Safety and Standards Board Limited or imposed by the ORR;
Handbook to the Alliance	means the handbook to the Wessex Alliance documenting the operational control framework in relation to the operation of the Alliance dated on or around the date of this Agreement and as amended from time to time;
Handover Package	has the meaning given to it in the Franchise Agreement;
Initial Baselines	means, in respect of any Year, the NRIL Initial Baseline, the SSWT Initial Baseline and the Alliance Initial Baseline for that Year;
Intellectual Property	means any and all patents, trade marks, service marks, copyright, database rights, moral rights, rights in a design, know-how, confidential information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating or attached thereto;
Interest Rate	means a rate equivalent to two per cent. per annum above the base lending rate published by Royal Bank of Scotland plc (or such other bank as the Parties may agree from time to time) during any period in which an amount payable under the Agreement remains unpaid;
Interim Payment	has the meaning given to it in paragraph 8.8(i) of Schedule 6;
Interim Payment Date	has the meaning given to it in paragraph 8.8(iii) of Schedule 6;
Interim Period	means the period from the commencement of the Unwind Period until 60 Business Days after the commencement of the Unwind Period and then every 60 Business Day period thereafter, provided that the last such period shall end on the Final Unwind Date and accordingly may be less than 60 Business Days;

Invoice Dispute	has the meaning given to it in paragraph 8.1(i) of Schedule 4;
Invoice Dispute Notice	has the meaning given to it in paragraph 8.1(h) of Schedule 4;
Law	includes any enactment, subordinate legislation, rule, regulation, order, directive or other provision, including those of the European Union, and any judicial or administrative interpretation or application thereof, which has, in each case, the force of law in the United Kingdom or any part of it (including the Railways Act, the Transport Act, the Railways and Transport Safety Act 2003, the Access & Management Regulations and the Railways Act 2005);
Legal Dispute	means any controversy, claim, dispute or difference of whatever nature between the Parties arising under, out of or in connection with this Agreement (including any question regarding the existence, termination, validity or interpretation thereof), other than a Deadlock Dispute;
Losses	means all losses, fines, damages, awards, costs and expenses including legal fees on a solicitor/client basis and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties;
Material Change	means any event or circumstance: <ul style="list-style-type: none"> (a) (not being a Change in Circumstances) occurring during the Alliance Term which if known at the time the Initial Baselines (or any of them) were agreed would have resulted in a material change to such Initial Baseline or Initial Baselines; or (b) set out in Appendix 3 to Schedule 4;
Network	means the network in respect of which NRIL is the Facility Owner and which is situated in England, Wales and Scotland (which, for the avoidance of doubt, shall include any relevant station or depot);
Network Rail Standards	means any standards document (or the equivalent of such documents) issued by NRIL from time to time in relation to the Network as a whole and which applies to the matters under this Agreement;
Non-Default Unwind Costs	means the Aggregate Unwind Costs less the Default Unwind Costs (if any);
Non-Industry Standard UA	has the meaning given to it in paragraph 7.5(a) of Schedule 4;
Non-Industry Standard UA Notice	has the meaning given to it in paragraph 7.5(b) of Schedule 4;
Notified Party	has the meaning given to it in paragraph 1.2 of Schedule 5;

Notifying Party	has the meaning given to it in paragraph 1.2 of Schedule 5;
NPS	means the National Passenger Survey conducted by Passenger Focus, the independent consumer watchdog for, amongst others, Britain's rail passengers;
NR Care Scheme	means the Network Rail Section of the Railways Pension Scheme;
NR DC Scheme	means the Network Rail Defined Contribution Pension Scheme;
NR Schemes	means the NRIL Section, the NR CARE Scheme and the NR DC Scheme;
NRIL Activities	means such of the Alliance Activities as were carried out by NRIL immediately prior to the Commencement Date including, for the avoidance of doubt, those listed in Part 1 of Schedule 9 but excluding the Separated Activities and all central and non-devolved activities;
NRIL Alliance Participants	means those employees of NRIL (or of an Affiliate of NRIL) assigned (in whole or in part) to perform functions and duties in relation to the Alliance Activities from time to time and for the avoidance of doubt excludes any member of the Governance Board;
NRIL Annual Actual Baseline	means, in respect of any Year, a baseline setting out the actual Costs and actual Revenue of NRIL for that Year;
NRIL Annual Gain Share	has the meaning given to it in paragraph 7.3(a)(iv) of Schedule 4;
NRIL Annual Pain Share	has the meaning given to it in paragraph 7.3(b)(iv) of Schedule 4;
NRIL Appointee	has the meaning given to it in paragraph 1.2(a) of Schedule 2;
NRIL Central Efficiency Team	means the team within NRIL tasked with establishing the efficiency/sustainability of any cost savings across the Network;
NRIL Contractor	means an independent contractor appointed by NRIL which carries out any Alliance Activities;
NRIL Event of Default	has the meaning given to it in clause 13.2(a);
NRIL Four-Weekly Actual Baseline	means, in respect of any Period, a baseline setting out the actual Costs and actual Revenue of NRIL for that Period;
NRIL Gain Share	has the meaning given to it in paragraph 7.1(a)(ii) of Schedule 4;
NRIL Initial Baseline	means, in respect of any Year, the initial financial statement setting out the forecast Costs and Revenue of NRIL for such

	Year appended to or agreed in accordance with this Agreement;
NRIL Pain Share	has the meaning given to it in paragraph 7.2(a)(ii) of Schedule 4;
NRIL Payment Period Actual Baseline	means, in respect of any Payment Period, a baseline setting out the actual Costs and actual Revenue of NRIL for that Payment Period;
NRIL Section	means the Network Rail Section of the Railways Pension Scheme;
NRIL Termination Notice	means a termination notice stating that a NRIL Event of Default has occurred and setting out details of such NRIL Event of Default which may be served by SSWT on NRIL in accordance with clause 13.2(b);
Operators	mean the train operating companies and freight operating companies which use the Wessex Route (other than SSWT);
ORR	means the Office of Rail Regulation established by section 15 of the Railways and Transport Safety Act 2003 and having duties and obligations as set out in the Railways Act;
Overriding Party	has the meaning given to it in paragraph 7.5(b) of Schedule 4;
Pain Share Amount	has the meaning given to it in paragraph 7.2(a)(i) of Schedule 4;
Pain Share Payment	means, in respect of any Payment Period, the absolute value of the Pain Share Amount for that Payment Period;
Party	means NRIL or SSWT in its capacity as a Party to this Agreement and Parties means both of them;
Passenger Services	has the meaning given to it in the Franchise Agreement;
Payable Variance	means in any Payment Period any Payment Period Variance which was classified as a Deferred Variance and which has been subsequently reclassified as an efficient or allowable pursuant to paragraph 5.3(a)(iv)(A) of Part 2 of Schedule 4;
Payee	has the meaning given to it in clause 9.1(b);
Payee Party	has the meaning given to it in paragraph 8.1(a)(v) of Schedule 4 or paragraph 8.1(b)(v) of Schedule 4, as the case may be;
Payer Party	has the meaning given to it in paragraph 8.1(a)(v) of Schedule 4 or paragraph 8.1(b)(v) of Schedule 4, as the case may be;
Payment Date	has the meaning given to it in paragraph 8.6 of Part 3 of Schedule 6;

Payment Period	<p>means any of the following aggregate periods:</p> <p>in the case of the first Year,</p> <p>(a) the period from and including the Commencement Date to and including 21 July 2012;</p> <p>(b) the three Periods comprising the fifth, sixth and seventh Periods in that Year;</p> <p>(c) the three Periods comprising the eighth, ninth and tenth Periods in that Year; and</p> <p>(d) the final three Periods in that Year,</p> <p>in each case in (b), (c) and (d) determined as if that Year commenced on 1 April 2012,</p> <p>and thereafter,</p> <p>(a) the first three Periods in the relevant Year;</p> <p>(b) the three Periods comprising the fourth, fifth and sixth Periods in the relevant Year;</p> <p>(c) the three Periods comprising the seventh, eighth and ninth Periods in the relevant Year; and</p> <p>(d) the final four Periods in the relevant Year,</p> <p>except that the last Payment Period in the Alliance Term shall end on the Termination Date;</p>
Payment Period Actual Baselines	means, in respect of any Payment Period, the NRIL Payment Period Actual Baseline and the SSWT Payment Period Actual Baseline for that Payment Period;
Payment Period Deferred Variance Adjustment	means, in respect of any Payment Period, an amount equal to the aggregate of all Deferred Variances classified as such in that Payment Period;
Payment Period Efficiency Adjustment Report	has the meaning given to it in paragraph 5.5(a)(ii) of Schedule 4;
Payment Period Payable Variance Adjustment	means, in respect of any Payment Period an amount equal to the aggregate of all Payable Variances classified as such in that Payment Period;
Payment Period Report	has the meaning given to it in paragraph 5.5(b)(ii) of Schedule 4;
Payment Period Total Variance Adjustment	means, in respect of any Payment Period an amount, which may be positive or negative, equal to the absolute value of the Payment Period Deferred Variance Adjustment for that

	Payment Period, less the absolute value of the Payment Period Payable Variance Adjustment for that Payment Period;
Payment Period Variance	has the meaning given to it in paragraph 5.5(a)(ii)(B) of Schedule 4;
Payor	has the meaning given to it in clause 9.1(b);
Period	has the meaning given to Reporting Period for purposes other than for the purposes of the Season Ticket Bond in the Franchise Agreement, except that: <ul style="list-style-type: none"> (a) the first Period in the Alliance Term will commence on the Commencement Date and end on the day immediately preceding the next Period; and (b) the last Period in the Alliance Term will end on the date on the Termination Date;
Persistent Breach	shall be deemed to arise in relation to a Party where: <ul style="list-style-type: none"> (a) the other Party to this Agreement serves separate written notices on such Party on any three occasions within a rolling one year period; (b) each such notice is served in respect of a failure by the other Party to this Agreement to perform the same or a similar obligation under this Agreement to the standard required by this Agreement; and (c) each such notice is served within a reasonable period of the relevant failure;
Post-Termination Audit Period	means the First Post-Termination Audit Period and the Second Post-Termination Audit Period;
PPM	means the Public Performance Measure, being the percentage of franchised passenger trains arriving at their destination, having made all booked calls, and within a specified lateness margin;
Proposed Additional Activity	has the meaning given to it in paragraph 1.1(a) of Part 1 of Schedule 1;
Proposed Baseline Modification	means the proposed modification to any of the Initial Baselines and the Baseline Methodology and Assumptions to reflect the Proposed Additional Activity or Proposed Removed Activity, as applicable, served by the Change Requesting Party under paragraph 1.2 of Part 1 of Schedule 1 and prepared in accordance with paragraph 1.3 of Part 1 of Schedule 1;
Proposed Removed Activity	has the meaning given to it in paragraph 1.1(b) of Part 1 of Schedule 1;

Protected Information	means information relating to the Separated Activities;
Qualifying Non-Industry Standard UA	has the meaning given to it in paragraph 7.5(b) of Schedule 4;
Railways Act	means the Railways Act 1993;
Recipient	has the meaning given to it in clause 9.1(a);
Records	means all records, documents, materials and information maintained by a Party in relation to the operation of the Alliance;
Regulations	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended from time to time or any other legislation enacted to give effect to Council Directive 23/2001 (as such directive is amended, consolidated or replaced from time to time in the United Kingdom);
Relevant Employing Entity	means the Alliance Participant's current employer, being NRIL or SSWT or their respective Affiliates, as appropriate;
Relevant Information	means: <ul style="list-style-type: none"> (a) the final binding determination of any Competent Authority in respect of any challenge to the ORR's determination of NRIL's outputs and funding for Control Period 5; and (b) the final binding determination of the Franchise Agreement Change Process arising as a result of the Charge Variation taking effect at the commencement of Control Period 5;
Relevant Proceedings	has the meaning given to it in clause 10.7(b);
Relevant Transfer	has the meaning given to it in Regulation 2(1) of the Regulations;
Relevant Transfer Date	means the date or dates when a Relevant Transfer occurs;
Revenue	means any income, revenue, proceeds or cash receipts which are included in the Initial Baselines as more particularly described in the Baseline Methodology and Assumptions, but excluding any Excluded Revenue;
Safety Management Systems	means each of NRIL and SSWT's health and safety management systems;
Schedule 4 Statements	means the statements issued by NRIL to SSWT regarding restrictions of use in relation to schedule 4 of the Track Access Agreement;
Schedule 8 Statements	means the statements (if any) issued by NRIL to SSWT regarding performance in relation to schedule 8 of the Track

	Access Agreement;
Schedules 4 and 8 Regime	has the meaning given to it in clause 4.9
Second Post-Termination Audit Period	means the period from the Termination Date until the date 45 Business Days following the provision of both sets of Final Annual Actual Baselines in respect of the last Year in the Alliance Term;
Section	means a section of the Railways Pension Scheme;
Separate Employees	has the meaning given to it in clause 4.7(c)(i);
Separated Activities	has the meaning given to it in clause 4.7(b);
Shared Resources	means the resources which are shared by NRIL and SSWT in relation to the Alliance, including: <ul style="list-style-type: none"> (a) the Alliance Joint Facilities; (b) any tangible moveable assets, including plant, tools and other equipment owned or leased by one Party which are used by the other Party; (c) any contracts to which one Party is a party which relates to goods and/or services received by the other Party; (d) intellectual property rights owned by or licensed to one Party which are licensed (or sub-licensed) to the other Party; and (e) Alliance Participants of one Party or such Party's Affiliates who carry out activities on behalf of the other Party;
SoS	means the Secretary of State for Transport;
SSWT Activities	means such of the Alliance Activities as were carried out by SSWT immediately prior to the Commencement Date including, for the avoidance of doubt, those listed in Part 2 of Schedule 9;
SSWT Alliance Participants	means those employees of SSWT (or of an Affiliate of SSWT) assigned (in whole or in part) to perform functions and duties in relation to the Alliance Activities from time to time and for the avoidance of doubt excludes any member of the Governance Board;
SSWT Annual Actual Baseline	means, in respect of any Year, a baseline setting out the actual Costs and actual Revenue of SSWT for that Year;
SSWT Annual Gain Share	has the meaning given to it in paragraph 7.3(a)(v) of Schedule 4;

SSWT Annual Pain Share	has the meaning given to it in paragraph 7.3(b)(v) of Schedule 4;
SSWT Appointee	has the meaning given to it in paragraph 1.2(b) of Part 1 of Schedule 2;
SSWT Contractor	means an independent contractor appointed by SSWT which carries out any Alliance Activities;
SSWT Event of Default	has the meaning given to it in clause 13.3(a);
SSWT Four-Weekly Actual Baseline	means, in respect of any Period, a baseline setting out the actual Costs and actual Revenue of SSWT for that Period;
SSWT Gain Share	has the meaning given to it in paragraph 7.1(a)(iii) of Schedule 4;
SSWT Initial Baseline	means, in respect of any Year, the initial financial statement setting out the forecast Costs and Revenue of SSWT for that Year appended to or agreed in accordance with this Agreement;
SSWT Pain Share	has the meaning given to it in paragraph 7.2(a)(iii) of Schedule 4;
SSWT Payment Period Actual Baseline	means, in respect of any Payment Period, a baseline setting out the actual Costs and actual Revenue of SSWT for that Payment Period;
SSWT Sections	means the SSWT and Island Line Sections of the Railways Pension Scheme;
SSWT Standards	means any standards document (or the equivalent of such documents) issued by SSWT from time to time in relation to the Franchise Services and which applies to the matters under this Agreement;
SSWT Termination Notice	means a termination notice stating that a SSWT Event of Default has occurred and setting out details of such SSWT Event of Default which may be served by NRIL on SSWT in accordance with clause 13.3(b);
Stagecoach	means Stagecoach Group plc with its registered office at 10 Dunkeld Road, Perth PH1 5TW, Scotland, Registered in Scotland, registered number: 100764;
Stagecoach Guarantee	means the agreed form parent company guarantee dated on or about the date of this Agreement to be provided by Stagecoach to NRIL pursuant to which Stagecoach agrees to guarantee the performance of certain of SSWT's obligations under this Agreement under certain circumstances;
Standards	means Group Standards, Network Rail Standards and SSWT Standards;

Station	has the meaning given to it in the Franchise Agreement;
Successor Operator	means any one or more: (a) replacement franchise operators; or (b) parties appointed by the SoS pursuant to section 30 of the Railways Act 1993, which are, in either case, appointed by the SoS to operate services equivalent to the Franchise Services in succession to SSWT;
Supplier	has the meaning given to it in clause 9.1(a);
System Operator	has the meaning given to it in clause 4.7(a);
Taxation	means any kind of tax, duty, levy or other charge in respect of taxation whether or not similar to any in force at the date of the Agreement and whether imposed by a local, governmental or other competent authority in the United Kingdom or elsewhere;
Termination Date	means the Expiry Date or such earlier date on which this Agreement terminates;
Termination Event	has the meaning given to it in clause 13.4(a);
Termination Notice	means a termination notice which may be served by either Party on the other in accordance with clause 13.4(b);
Terms	means the edition of the National Rail Franchise Terms incorporated by reference into the Franchise Agreement;
Timetable	has the meaning given to it in the Franchise Agreement;
Track Access Agreement	means the Access Agreement which permits SSWT to provide the Passenger Services on track operated by NRIL dated 20 May 2004 (as subsequently varied and amended);
[REDACTED]	[Redacted];
Transition Period	means the period between: (a) the Termination Date; and (b) the Final Unwind Date;
Transitional Services	means the services and/or facilities which are to be provided

by one Party to the other, as specified in and in accordance with the Unwind Plan, during the period from the date of termination of this Agreement in accordance with clause 13 until and including the Final Unwind Date;

Transport Act	means the Transport Act 2000;
Tri-Partite Agreement	has the meaning given to it in paragraph 5.1 of Part 2 of Schedule 2;
TSI	means any Technical Standard for Interoperability with which SSWT is required to comply pursuant to Directives 96/48/EC and 2001/16/EC and related legislation;
Ultimate Accountabilities	means, in relation to each of NRIL and SSWT, that Party's ultimate accountabilities or responsibilities deriving by reason of statutory or regulatory requirements, licences, the Franchise Agreement and/or requirements in a regulated contract or contract of employment;
Ultimate Accountability Direction	has the meaning given to it in clause 4.5(i);
[REDACTED]	[Redacted];
Unwind Cost Difference	has the meaning given to it in paragraph 7.1 of Part 3 of Schedule 6;
Unwind Costs	<p>means the reasonable and properly incurred costs of a Party which are incurred as a direct consequence of unwinding the Alliance to achieve the Free Standing Principle in accordance with the Unwind Plan and shall, to the extent that they are reasonably necessary to achieve this, principally include:</p> <ul style="list-style-type: none">(a) the costs of finding alternative premises and facilities;(b) the costs of finding alternative tangible moveable assets, including plant, tools and other equipment;(c) the costs of finding alternative supply contracts;(d) the costs of finding alternative intellectual property rights;(e) the recruitment costs required to repopulate such Party's organisation to the level set out in the Underlying Organisational Chart;(f) the contractual or statutory redundancy payments and notice monies associated with making employees redundant where a post is no longer required; and(e) the reasonable and properly incurred costs of a Party in providing the Transitional Services to the other Party; <p>but for the avoidance of doubt, Unwind Costs shall not include</p>

	the acquisition cost in respect of, or the upfront or ongoing operating expenditure (including any salary, rent, premium, licence fee or leasing costs) under any such alternative arrangements or any deposit or other similar security required to obtain the same;
Unwind Period	has the meaning given to it in paragraph 4.1 of Part 2 of Schedule 6;
Unwind Plan	has the meaning given to it in paragraph 2.1 of Part 2 of Schedule 6;
Variance	means a Payment Period Variance or an Annual Variance (as the context requires);
Variance Dispute	has the meaning given to it in paragraph 5.4(a) of Schedule 4;
Variance Information	has the meaning given to it in paragraph 5.3(a)(i) of Schedule 4;
Variance Table	means the table set out in paragraph 5.3(b) of Schedule 4;
VAT	means value added tax as provided for in the Value Added Tax Act 1994;
Wessex Route	means the main line railway lines from London Waterloo to Reading, Exeter, Weymouth, Portsmouth including inter-connecting lines known as the Wessex route; and
Year	means in the case of the first Year, the period from and including the Commencement Date to and including the 31 March the following calendar year and thereafter the period from and including 1 April in a calendar year to and including 31 March in the following calendar year except in the case of the last Year which will be the period from and including 1 April to and including the Termination Date.

2 INTERPRETATION

2.1 In this Agreement, unless the context otherwise requires:

- (a) references to **recitals, clauses** and **schedules** are to recitals and clauses of, and schedules to, this Agreement respectively and references in a schedule or part of a schedule to **paragraphs** are to paragraphs of that schedule or that part of that schedule respectively;
- (b) references to **this Agreement** or any other document are to this Agreement or that document as amended from time to time;
- (c) words importing any gender include every gender, references to the singular include the plural and vice versa and words denoting persons include individuals, bodies corporate, partnerships, unincorporated associations and other bodies (in each case, wherever resident) and vice versa;

- (d) **in the agreed form** means, in relation to any document, that document in the form agreed and, for the purposes of identification, signed or initialled by or on behalf of the Parties with such alterations as the Parties agree in writing before the Commencement Date;
- (e) words and phrases which are generally defined for the purposes of the CA 2006 bear the meanings attributed to them by that Act save that references to the term **subsidiary** shall include subsidiary undertaking as defined in the CA 2006 and shall include a company which would be a subsidiary undertaking within the meaning of section 1162 of the CA 2006 but for any security subsisting over the shares in that company from time to time; and references to the term **holding company** shall include parent undertaking as defined in the CA 2006 and shall include a company which would be a parent undertaking within the meaning of section 1162 of the CA 2006 but for any security granted by that undertaking over the shares it holds in another undertaking from time to time;
- (f) a person is deemed to be **connected with** another if that person is so connected within the meaning of sections 1122 and 1123 of the Corporation Tax Act 2010 (as in force and construed at the date of this Agreement);
- (g) a person is deemed to be **associated with** another person or an **associated person** of that other person if the person is an associate of the other person within the meaning of section 435 of the Insolvency Act 1986;
- (h) a reference to a statute or statutory provision includes a reference to any subordinate legislation (as defined by section 21(1) of the Interpretation Act 1978) made under that statute or provision (whether before or after the date of this Agreement);
- (i) a reference to a statute, statutory provision or subordinate legislation includes a reference to:
 - (i) any statute, statutory provision or subordinate legislation which it has consolidated, superseded, re-enacted or replaced (whether with or without modification); and
 - (ii) that statute, statutory provision or subordinate legislation as for the time being modified or consolidated, superseded, re-enacted or replaced (whether with or without modification) after the date of this Agreement);
- (j) references to the Parties procuring that the Alliance MD and/or the Alliance Executive take an action, carry out a task or perform a particular function shall be construed as a several obligation of each Party to exercise all powers and rights available to it in respect of the individual member or members of the Alliance Executive to procure compliance (whether pursuant to any relevant employment contract, the Tri-Partite Agreement or otherwise);
- (k) references to the Parties procuring that the Governance Board take an action, carry out a task or perform a particular function shall be construed as:
 - (i) a several obligation of NRIL to exercise all powers and rights available to it in respect of the NRIL Appointees to procure compliance; and

- (ii) a several obligation of SSWT to exercise all powers and rights available to it in respect of the SSWT Appointees to procure compliance;
 - (l) reference to a Party is to a Party to this Agreement, its successors and permitted assigns; and
 - (m) words and expressions defined in the Interpretation Act 1978 have the same meanings when used in this Agreement.
- 2.2 The headings and contents table in this Agreement are for convenience only and do not affect its interpretation. The recitals and schedules form part of this Agreement.
- 2.3 In this Agreement the words **other, includes, including** and **in particular** do not limit the generality of any preceding words and any words which follow them will not be construed as being limited in scope to the same class as the preceding words where a wider construction is possible.
- 2.4 Indemnities provided for in this contract hold the indemnified Party harmless on an after tax basis (for the avoidance of doubt, taking into account any tax reliefs arising in respect of the indemnified amount or event) notwithstanding that the indemnified Party may be negligent or in default (unless otherwise agreed). For the avoidance of doubt, any amounts payable under clause 10.4(b)(iii), Schedule 4 (Costs and Revenues) or Schedule 6 (Handover and Unwind) are not indemnity payments for the purposes of this clause 2.4.

3 SCOPE AND CHANGE MANAGEMENT

3.1 Scope

The activities of either or both of the Parties which relate to or are associated with Costs and/or Revenue included in their respective Baselines as more particularly described or identified in their respective Baseline Methodology and Assumptions shall together be known as the **Alliance Activities**.

3.2 Change Management

The Parties may agree to add specified costs and/or revenue to or to delete specified costs and/or revenue from the NRIL Initial Baseline or the SSWT Initial Baseline (as the case may be) in accordance with Schedule 1.

4 GOVERNANCE AND ASSURANCE

4.1 Governance Board

The provisions of Part 1 of Schedule 2 shall have effect in relation to the formation, procedures, powers and responsibilities of the Governance Board.

4.2 Role

The Parties shall procure that the Governance Board will:

- (a) monitor the performance of the Alliance Executive and the Alliance MD;
- (b) from time to time review and revise the objectives of the Alliance;

- (c) review and approve the proposed Alliance business plan and proposed Alliance budget prepared by the Alliance MD in respect of each Year (other than the first Year); and
- (d) otherwise perform the other functions which this Agreement states are to be performed by the Governance Board and such other functions as the Parties may agree from time to time that it should perform.

4.3 Alliance MD and Alliance Executive

- (a) The Parties shall procure that the Governance Board will in accordance with the more detailed provisions set out in Schedule 2 appoint and remove the Alliance MD and the rest of the Alliance Executive.
- (b) The provisions of Part 2 of Schedule 2 shall have effect in relation to the formation, procedures, powers and responsibilities of the Alliance MD and Alliance Executive.

4.4 Delegated Authority

- (a) Each of NRIL and SSWT shall from time to time delegate authority (**Delegated Authority**) to its respective Appointees on the Governance Board to enable them to:
 - (i) govern and oversee the Alliance and the conduct of the Alliance Activities;
 - (ii) delegate appropriate authorities to the Alliance MD; and
 - (iii) otherwise to carry out their functions in accordance with this Agreement.
- (b) It is acknowledged and agreed that:
 - (i) the respective Appointees may then sub delegate such authorities to the Alliance MD; and
 - (ii) the Alliance MD may sub delegate such authorities to the Alliance Participants,

in accordance with the more detailed provisions set out in Schedule 2 and subject to any conditions set out in the Delegated Authorities.

- (c) The Parties agree that the Governance Board and/or the Alliance MD shall not be authorised to exercise any authority in relation to a matter in excess of the Delegated Authorities without having first obtained the prior written consent of the relevant Party who conferred the same.
- (d) The Delegated Authorities shall set out the capacity of the Appointees on the Governance Board and, through them, of the Alliance MD and, through him of the Alliance Executive and of the other Alliance Participants to enter into contracts in the name of the relevant Parties subject to the provisions of this Agreement and in particular to the provisions of clause 4.13(c).

4.5 Ultimate Accountabilities

- (a) Each Party acknowledges that each of the Parties has certain obligations, accountabilities and/or responsibilities in respect of its Ultimate Accountabilities

and, so far as it is reasonably able to do so, each Party shall act and shall procure that its Appointees, its Affiliates and all its Alliance Participants act in a manner designed to enable both Parties to discharge their respective Ultimate Accountabilities.

- (b) Without prejudice to the operation of Schedule 4 (Costs and Revenues), each Party shall remain ultimately responsible and accountable for its own Ultimate Accountabilities.
- (c) Without prejudice to the generality of the obligation in clause 4.5(a), the Parties shall enter into a Tri-Partite Agreement with the Alliance MD, which shall, amongst other things, require the Alliance MD to act in a manner designed to enable both Parties to discharge their respective Ultimate Accountabilities.
- (d) Notwithstanding the delegation by a Party of any authority in relation to the management of any Ultimate Accountabilities to its Appointees on the Governance Board, the Alliance MD and/or through the Alliance MD to any other Alliance Participant, each Party shall retain oversight and final and ultimate decision making authority in relation to its Ultimate Accountabilities within the operation and management of the Alliance, including the right to overrule any decision taken by the Governance Board and/or the Alliance MD or Alliance Executive in relation to its Ultimate Accountabilities.
- (e) Wherever practicable, the exercise by a Party of the oversight and final and ultimate decision making authority in relation to its Ultimate Accountabilities shall be undertaken via its Appointees on the Governance Board.
- (f) The Parties agree:
 - (i) that on the Commencement Date (save in relation to the members of the Alliance Executive) the existing reporting lines and assurance responsibilities and processes in relation to the Ultimate Accountabilities shall remain in place in relation to all Alliance Participants and that reporting lines and management responsibilities shall remain in place save as supplemented or varied by their job description or objectives;
 - (ii) that each Alliance Participant shall be appropriately briefed in relation to the discharge of the Parties' respective Ultimate Accountabilities; and
 - (iii) that any amendments after the Commencement Date to the management, operational and/or reporting structure in relation to the Alliance Activities shall be subject to the Parties maintaining direct and clear lines of reporting and responsibility to the Parties in relation to their Ultimate Accountabilities.
- (g) The Parties shall direct the Alliance MD to develop and implement on the Commencement Date, or so soon thereafter as is reasonably possible, a whistle blowing policy and/or procedure providing a mechanism enabling the members of the Alliance Executive and other Alliance Participants to report to the relevant Party any case of suspected or potential non-compliance with a Party's Ultimate Accountabilities on a confidential basis, such policy and procedure to be subject to formal approval and sign off by the Governance Board and to (so far as practicable) be consistent with any similar policy adopted by either Party.

- (h) Where a Party is of the opinion (in its sole discretion) that any of its Ultimate Accountabilities are not being properly discharged, that Party shall be entitled to intervene in the management of such Ultimate Accountabilities and direct the further management and conduct in relation to those Ultimate Accountabilities or otherwise take such action as it deems necessary or desirable (in its sole discretion) to discharge its Ultimate Accountabilities as it sees fit.
- (i) If in the exercise of its rights under clause 4.5(h), a Party requires the Governance Board and/or the Alliance MD to take any action, carry out any task or perform a particular function in the discharge of that Party's Ultimate Accountabilities (**Ultimate Accountability Direction**) it shall notify the Governance Board and/or the Alliance MD (as the case may be) accordingly and the Parties shall procure that the Governance Board and/or the Alliance MD (as the case may be) shall comply with such Ultimate Accountability Direction;
- (j) In deciding how to exercise its rights under this clause 4.5 in respect of its Ultimate Accountabilities and, in particular, as to how any discretion as to the measures to be taken (or as to their cost or timing) should be exercised, the relevant Party shall have regard to the prevailing standards and practices for the time being in Great Britain in comparable cases in other routes (or, if there is no such comparable case, to the practice in any comparable cases in the Wessex Route in the period prior to the Commencement Date but taking into account any Change in Law or change in the requirements of any Competent Authority).
- (k) Without prejudice to paragraph 7.5 of Schedule 4, in the event of a dispute arising following the service of an Ultimate Accountability Direction regarding whether a matter constitutes a Party's Ultimate Accountability or not or as to the reasonableness of the steps (including where relevant the cost) required by a Party in that Ultimate Accountability Direction, the Party claiming the Ultimate Accountability shall nevertheless and notwithstanding any provision to the contrary in this Agreement, be entitled to procure that the matter is discharged in accordance with that Ultimate Accountability as it sees fit.

4.6 **Compliance with Standards**

Without limitation to clause 4.5, the Parties agree to comply and shall procure that the Alliance MD and the Alliance Participants comply with the Standards.

4.7 **Separated Activities of System Operator**

- (a) NRIL is prohibited under the Access & Management Regulations, Network Licence, Network Code and Competition Law, from unduly discriminating when carrying on its Network related activities. NRIL shall maintain fair treatment for all operators and prospective operators within and across routes and to provide seamless planning and operation of the Network (**System Operator**). The following activities have been identified by the Parties as not being Alliance Activities and are the sole responsibility of NRIL as part of its role as System Operator:
 - (i) the process of assembling, validating and publishing the timetable;
 - (ii) possession planning;
 - (iii) allocation of access rights;

- (iv) charge setting and collection and contracting policy;
 - (v) central management and planning of Network enhancements;
 - (vi) Network planning; and
 - (vii) Network change.
- (b) Without prejudice to the generality of clause 4.7(a) the following activities (each as such activity is defined and understood in the Great Britain rail industry at the date of this Agreement) have been identified by the Parties as activities that shall continue to be carried on by NRIL and shall be separate from any Alliance Activity:
- (i) the activities of the Operational Planning Team (comprising the Timetable Planning and Engineering Access Planning Teams);
 - (ii) the activities of the Strategic Planning Team;
 - (iii) the activities of the National Delivery Service;
 - (iv) the activities of the SSWT Customer Relationship Executive;
 - (v) the setting, collection and administration of access charges under Access Agreements (whether with SSWT or with any other Operator);
 - (vi) the finalisation and production of documents forming part of the activities listed in clause 4.7(a), including:
 - (A) the Working Timetable;
 - (B) the Engineering Access Statement;
 - (C) the Timetable Planning Rules;
 - (D) the Weekly Operating Notice; and
 - (E) the Confirmed Period Possession Plan,
- together the **Separated Activities**.
- (c) Without derogating from the generality of the obligation in clause 4.7(a) and so far as NRIL may deem it necessary, the Parties undertake to procure that on, or so soon as is reasonably possible after, the Commencement Date:
- (i) all personnel bearing responsibility or authority in respect of, or who are otherwise engaged in a Separated Activity (**Separate Employees**) shall not be Alliance Participants;
 - (ii) the Separate Employees shall be identified and the Parties shall take reasonable steps to procure that those Separate Employees are aware of the obligations of NRIL under this clause 4.7 to maintain separation between the Separated Activities and the Alliance Activities;

- (iii) the Parties shall take reasonable steps to procure that appropriate restrictions are placed upon all Alliance Participants in relation to communication and contact with Separate Employees;
 - (iv) Separate Employees shall be based in different office locations, or if that is not reasonably possible, then in separate office areas from any Alliance Participants;
 - (v) all information and systems relating to Separated Activities shall be identified and access by Alliance Participants to such information and systems may be restricted to the extent required to maintain separation between the Separated Activities and the Alliance Activities; and
 - (vi) Protected Information shall be kept strictly confidential and not disclosed to any Alliance Participant.
- (d) Notwithstanding clause 4.7(c), in accordance with general prevailing practice in the Great Britain rail industry and the practice in the Wessex Route prior to the Commencement Date, NRIL Alliance Participants who have the appropriate local knowledge and expertise shall continue to provide to NRIL appropriate information and support so that NRIL can duly perform aspects of its Systems Operator role that rely on local knowledge and experience of the Wessex Route.
- (e) Nothing in this Agreement shall:
- (i) in any way limit or fetter the exercise and discharge by NRIL of its powers, responsibilities, rights and discretions for the time being in respect of the Separated Activities as NRIL may see fit; or
 - (ii) require NRIL to account to SSWT in respect of how it exercises or discharges the Separated Activities.

4.8 Access Agreements

- (a) The Parties acknowledge and agree that it is not their intention that this Agreement should amend any Access Agreement between them and agree that this Agreement should be construed accordingly.
- (b) If any provision in this Agreement should, at any time in the future, have or be deemed to have the effect of amending or giving rise to a purported amendment to an Access Agreement, such provision shall to that extent be deemed not to form part of this Agreement but the validity, legality and enforceability of the remainder of this Agreement will not be affected, provided that the operation of this clause 4.8 would not negate the commercial intent and purpose of the Parties in entering into this Agreement.
- (c) The Parties agree and undertake to comply with their respective obligations under the Access Agreements between them as if this Agreement were not in place.
- (d) Nothing in this Agreement shall in any way limit or fetter the exercise by a Party of any of its rights and discretions for the time being under any Access Agreement between the Parties.
- (e)

- (i) The Parties agree to review and monitor the operation of the Alliance, any change to the Alliance Activities and any amendment to this Agreement with a view to identifying whether any of them constitutes or is capable of constituting an amendment or a purported amendment to an access contract within the meaning of section 22 of the Railways Act.
- (ii) Where the operation of the Alliance, any change to the Alliance Activities or any amendment to this Agreement constitutes or may constitute an amendment or a purported amendment to an access contract within the meaning of section 22 of the Railways Act, the Parties undertake to first make the necessary application to ORR for the approval required by that section.

4.9 Revenue Support

In relation to the operation of schedule 4 and schedule 8 of the Track Access Agreement (**Schedules 4 and 8 Regime**) and the revenue support mechanism under the Franchise Agreement (**DfT Revenue Support**), each Party agrees:

- (a) to act in good faith in relation to the operation of the Schedules 4 and 8 Regime and DfT Revenue Support;
- (b) it shall operate the Schedules 4 and 8 Regime and DfT Revenue Support as if this Agreement were not in place;
- (c) it shall not behave in a manner or take steps intentionally and/or solely designed or intended to manipulate the operation of the Schedules 4 and 8 Regime and/or the DfT Revenue Support regime to increase the revenue support payments made to SSWT;
- (d) in relation to SSWT only, SSWT shall not waive any right to payment under the Schedules 4 and 8 Regime; and
- (e) each shall, upon the reasonable request of the SoS, make available to the SoS their respective delay attribution records and files; and
- (f) in relation to NRIL only, upon the reasonable request of the SoS, NRIL shall make available to the SoS:
 - (i) all Exceptions Reports; and
 - (ii) all Schedule 4 Statements and Schedule 8 Statements (if any);

issued by NRIL to SSWT during the operation of the Alliance.

4.10 Records

Notwithstanding the provisions of Schedule 4, the Parties will each maintain separate accounting records and profit and loss accounts from those of the Alliance.

4.11 Other Operators

In conducting the affairs of the Alliance and without prejudice to the Ultimate Accountabilities of either Party in this respect, the Parties shall act in a fair and non-discriminatory manner towards other Operators (including train operating companies and freight operating

companies which may in the future use the Wessex Route) and shall act in accordance with the Access & Management Regulations.

4.12 **Safety management and Handbook to the Wessex Alliance**

- (a) The Parties acknowledge that before the Commencement Date, the Parties shall have procured:
- (i) the completion of a joint safety validation of the arrangements created by this Agreement compliant with each of NRIL and SSWT's Safety Management Systems;
 - (ii) approval from NRIL's Organisation Safety Assessment Review Team to proceed with the implementation of the arrangements created by this Agreement (**Go Live**);
 - (iii) the issue of the Handbook to the Alliance;
 - (iv) completion of the Go Live process;
 - (v) compliance with the Go Live criteria devised in relation to the safety validation of the arrangements created by this Agreement (**Go Live Criteria**) or creation of an appropriate mitigating action plan to meet the Go Live Criteria within an agreed period of time after the Commencement Date;
 - (vi) in relation to the arrangements created by this Agreement , the issue of a national go live certificate, certifying that:
 - (A) the safety validation process referred to in clause 4.12(a)(i) has been completed;
 - (B) the Go Live Criteria have been achieved or an appropriate mitigating action plan has been put in place;
 - (C) the new accountabilities and responsibilities in relation to the arrangements created by this Agreement are understood by the relevant Alliance Participants; and
 - (D) the arrangements created by this Agreement can go live on the Commencement Date,such certificate to be executed by an authorised representative of each of NRIL and SSWT.
- (b) The Parties shall and/or shall procure that the Alliance MD and the Alliance Executive (as appropriate) will:
- (i) conduct a post implementation review of the arrangements created by this Agreement in accordance with Appendix O (Post-Implementation Review Requirements) of the Handbook to the Alliance at each of:
 - (A) three months;
 - (B) six months;

(C) nine months; and

(D) twelve months,

after the Commencement Date;

(ii) the Parties shall and shall procure that all Alliance Participants will, in relation to the operation of the Alliance Activities, comply with the assurance framework defined in the Safety Management Systems (as summarised in Appendix F of the Handbook to the Alliance).

(c) The results of the reviews prepared in relation to the performance of clause 4.12(b) shall be presented to the Governance Board.

4.13 Operational Matters

(a) Ongoing Compliance

The Parties shall keep the operation and further development of the Alliance under continuous review to ensure that it continues to comply with all relevant Laws and requirements of Competent Authorities to enable the Parties to discharge their respective Ultimate Accountabilities and to liaise with the ORR and the SoS as appropriate with a view to obtaining on a timely basis any regulatory approvals, consent or derogations or changes thereto as may be required before implementing any further development of the Alliance.

(b) Code of Conduct

(i) The Parties shall procure that within three months of the Commencement Date the Alliance MD, in consultation with the Alliance Executive, shall develop a code of conduct (**Code of Conduct**) which shall be subject to the approval of the Governance Board under clause 4.13(b)(iii), and to which the Parties shall be required to have due regard in relation to the operation of the Alliance.

(ii) The Parties agree that the Alliance MD, in consultation with the Alliance Executive, may from time to time amend or revise the Code of Conduct in the light of practical experience in the operation of the Alliance and changes in the circumstances under which the Alliance shall operate.

(iii) The Parties shall procure that Governance Board shall review and if thought fit, approve the Code of Conduct and any amendments made to it from time to time under clause 4.13(b)(ii).

(c) Contract Management

(i) The contracting processes adopted by the Alliance shall comply with all applicable Law and (without prejudice to the generality of the foregoing) be conducted in accordance with all applicable Law as to procurement and competitive tendering.

(ii) The Alliance itself is not a body corporate or partnership and no person shall purport to contract in its name.

- (iii) Save with the express written agreement of both Parties, contracts to be entered into during the Alliance Term relating to NRIL Activities shall be entered into by NRIL and contracts to be entered into during the Alliance Term relating to SSWT Activities shall be entered into by SSWT.
- (iv) Subject to:
 - (A) the express provisions of the Delegated Authorities and its power to revoke or vary the same;
 - (B) its Ultimate Accountabilities; and
 - (C) the other express terms of this Agreement,each Party agrees to operate the Alliance in a way which is consistent with the due performance by each Party of all contracts entered into with third parties which are relevant to the operation of the Alliance Activities and to use its reasonable endeavours to assist the other Party and the Alliance MD in enforcing any right or obligation as reasonably required under any such contract (**Alliance Contract**).
- (v) The Parties shall procure that the Alliance MD and the Alliance Executive will:
 - (A) consider and act in accordance with any reasonable instruction from the relevant Party to the Alliance Executive in relation to an Alliance Contract to which that Party is a party; andsave as may be permitted from time to time in accordance with the relevant Delegated Authorities:
 - (B) not incur any legal obligations under an Alliance Contract which are binding on either Party without prior approval in writing from the relevant Party;
 - (C) not vary, terminate or otherwise alter an Alliance Contract without prior approval in writing from the relevant Party; and
 - (D) not incur on behalf of the Parties any additional costs under an Alliance Contract without prior approval in writing from the relevant Party.
- (vi) Each Party shall retain its respective responsibilities and liabilities under its Alliance Contracts, including for its payment obligations.
- (vii) Without prejudice to the Delegated Authority given to persons who are employees of one or other Party (or their Affiliates) (which, it is acknowledged, must be exercised in the interest of the Party who conferred the same subject to the other terms of this Agreement and, where relevant, the Tri-Partite Agreement), neither Party is the agent or partner of, or has any authority to contract or to enter into any obligations or incur any liabilities on behalf of the other Party.
- (viii) Nothing in this clause 4.13 shall relate to or otherwise regulate any separate contract for the time being between the Parties.

(d) **Assurance Audits**

- (i) Each Party agrees to submit to any assurance audit reasonably required by the other Party (**Auditing Party**) under its audit assurance plan for the time being, including in relation to the financial, operational, governance, controls, risk management system, capex control, safety management, contract management, investments management, assets, safety, regulatory compliance, contract management and HR and/or similar matters in respect of the arrangement created under this Agreement (**Assurance Audit**).
- (ii) In relation to any Assurance Audit and subject to clause 4.7, each Party agrees that it shall permit reasonable access to its records and information to the relevant Auditing Party and/or its professional advisers, including:
 - (A) reasonable access and admittance to premises or systems where those records and information are kept or stored and reasonable facilities at those premises and reasonable access to relevant personnel;
 - (B) providing reasonable assistance so as to facilitate the efficient performance of such audit and not blocking, obstructing or obfuscating the audit in any way; and
 - (C) allowing copies of such records and information to be made provided that the Auditing Party reimburses the other Party its reasonably and properly incurred costs and expenses of making such copies.
- (iii) The Auditing Party shall only be entitled to exercise its audit rights pursuant to clause 4.13(d)(ii) on reasonable notice and during normal business hours at the relevant premises or location where the records are kept.
- (iv) The Auditing Party, in exercising its audit rights under clause 4.13(d)(ii), shall ensure that:
 - (A) no damage to premises and systems or injury to personnel is caused as a result of any audit; and
 - (B) any audit is conducted in such a manner as not to disproportionately interfere with or disproportionately disrupt the normal business activities of the Audited Party.
- (v) This clause 4.13(d) is subject to paragraph 5.8(i) of Schedule 4.

(e) **Use of Contractors**

No Party shall use the Contractors of the other Party unless:

- (i) the first Party agrees to enter into an individual contractual relationship with such Contractor in relation to the relevant activities to be performed by such Contractor for that Party; or
- (ii) it is satisfied that there is appropriate and adequate insurance cover in relation to the potential risks and/or liabilities that might arise from such Contractors' carrying out activities on behalf of that other Party.

(f) **Existing Reporting Obligations**

Each Party shall provide within a reasonable timeframe such support, information and documentation as is reasonably requested by the other Party in respect to the Alliance Activities to enable the other Party to comply with its accounting and reporting obligations (whether pursuant to Law or contract).

(g) **Activities Involving Provision Of Professional Advice**

No Alliance Participant shall be required to engage in activities involving the provision of professional advice to third parties unless the Parties are satisfied that there is appropriate and adequate insurance cover in place in relation to the potential risks and/or liabilities that might arise from such engagement.

(h) **Funding Equivalence in respect of the Wessex Route**

In conducting the affairs of the Alliance and without prejudice to the Ultimate Accountabilities of either Party in this respect, NRIL shall act in a fair and non-discriminatory manner as between the Wessex Route and other routes in relation to the allocation of funding and resources made available to all routes.

(i) **Insurance In Relation To Criminal Activities**

(i) As soon as reasonably practicable after the Commencement Date the Parties shall consider what modified arrangements should be made to their policies of insurance which cover the risk of criminal activities by their respective employees to reflect the implementation of this Agreement.

(ii) The Parties shall discuss and seek to agree with their respective insurers the modified arrangements to be put in place (including the amendments to clause 10 which would be required to give effect to such modified arrangements). Any failure to reach agreement between the Parties shall be referred to the Disputes Resolution Procedure as a Deadlock Dispute.

(iii) Following the agreement or determination of the modified arrangements the agreed or determined amendments shall be incorporated into clause 10.

4.14 General Obligations

(a) The Parties agree that for so long as this Agreement remains in full force and effect and subject always to their respective Ultimate Accountabilities (and, in the case of NRIL, to clause 4.7):

(i) each Party shall use all reasonable endeavours to procure that its Appointees and all of its Alliance Participants observe the terms of this Agreement;

(ii) each Party shall procure that all transactions, arrangements and agreements (whether of a trading nature or otherwise) entered into by it in relation to the Alliance Activities which take place or are made between any of the Parties and/or any persons connected with any of them (on the one hand) and the Party and/or any persons connected with that Party (on the other hand) shall be on a full and commercial arm's length basis; and

- (iii) save as expressly provided in this Agreement and the Stagecoach Guarantee, neither of the Parties shall be obliged to give any guarantee, indemnity or security in respect of the other Party's liabilities or obligations.
- (b)
- (i) For the avoidance of doubt, respecting the EU directives on the separation between infrastructure management and transport operations and competition law, nothing in this Agreement shall require NRIL in any way to favour the Alliance Activities over any other Route or over any central or non-Wessex Route functions or activities for the time being of NRIL in the allocation of available resources.
 - (ii) Resources for this purpose include (without limitation) personnel, plant and equipment, IT and computer facilities, consultancy services and financial facilities.
- (c) Each Party undertakes with the other to procure that the Governance Board and/or the Alliance MD shall not do anything that may restrict or interfere with the performance by NRIL of its Separated Activities.

5 PROVISION OF FACILITIES, EQUIPMENT AND INFORMATION TECHNOLOGY

5.1 The Parties acknowledge that the Alliance MD, in consultation with the Alliance Executive, shall from time to time identify the:

- (a) premises, facilities and equipment (**Alliance Joint Facilities**); and/or
- (b) IT systems (**Designated IT Systems**),

in the ownership or control of a Party to which access is required by the other Party and the relevant Alliance Participants (**Authorised Alliance Participants**) to whom access is to be granted for the purposes of carrying out the Alliance Activities.

5.2 Subject to the relevant Party's consent (not to be unreasonably withheld or delayed), the confidentiality requirements and any other restrictions set out in this Agreement or as otherwise agreed by the Parties, each Party shall as may reasonably be required during normal operating hours for the purposes of the carrying out the Alliance Activities during the Alliance Term:

- (a) where agreed and subject to any relevant third party consents, grant a licence to the other Party and its Authorised Alliance Participants to access and use the relevant Alliance Joint Facilities; and
- (b) where agreed and subject to any relevant third party consents, permit the access of the other Party and its Authorised Alliance Participants to the Designated IT Systems to the extent reasonably required for the purpose of carrying out the Alliance Activities.

5.3 Subject to having obtained the relevant consent(s) and/or any agreement between the Parties referred to in clause 5.2, where a Party requires access to Designated IT Systems controlled by the other Party it shall contact the relevant IT helpdesk of the other Party to request such access. The following information may be required by the recipient Party in processing such request:

- (a) the required software programme, data, system or digital location;
 - (b) details of the relevant Authorised Alliance Participant(s) requiring access;
 - (c) the purpose of such access specifying which Alliance Activities it relates to;
 - (d) where relevant, the time period required for such access;
 - (e) where relevant, the level of access required;
 - (f) details of the storage and security arrangements for any data extracted from the recipient Party's Designated IT Systems; and
 - (g) the location from where access will be required.
- 5.4 The recipient Party (via its IT helpdesk) shall, as soon as reasonably practicable following receipt of a request for access under clause 5.3, respond to the requesting Party by either:
- (a) granting permission to access the Designated IT Systems requested, setting out the terms of such access and the restrictions (if any) and supplying any required instructions, user ID and passwords for access; or
 - (b) declining the request for access to the Designated IT Systems, giving reasons why such access is not permitted or possible in the circumstances.
- 5.5 In accessing the Designated IT Systems, each Party agrees to comply with (and procure compliance by its Authorised Alliance Participants with):
- (a) any prevailing corporate policies governing access to the Designated IT Systems and the use of data and information contained within the Designated IT Systems; and
 - (b) any restrictions on the terms of access which are notified to that Party pursuant to clause 5.4(a).
- 5.6 Each Party reserves the right to deny, restrict or withdraw the access of the other Party (or any of its Authorised Alliance Participants) to its Alliance Joint Facilities, its other facilities or equipment or its Designated IT Systems if:
- (a) it reasonably considers such access:
 - (i) is not related to the Alliance Activities;
 - (ii) is not permitted under or otherwise in compliance with its Ultimate Accountabilities;
 - (iii) would result in a breach of any Law, contractual obligation, existing confidentiality obligation, agreement, lease, condition, proprietary interest, security, licence or otherwise;
 - (iv) would be contrary to the requirements of clause 4.7;
 - (v) has been exercised in breach of clauses 5.5 and/or 5.8; or

(vi) would expose the other Party (or any Alliance Participant) to commercially sensitive information of a type that is not within the scope or required for the purpose of the Alliance Activities; or

(b) any relevant third party consents have been revoked.

5.7 If it no longer becomes possible or appropriate for access to an Alliance Joint Facility and/or Designated IT Systems to continue, the Party providing access to the relevant Alliance Joint Facility and/or Designated IT Systems (as the case may be) shall notify the Alliance MD and the other Party either suspending or terminating the licence to the other Party to access the relevant Alliance Joint Facility and/or Designated IT Systems, giving as much notice as is reasonably practicable prior to such suspension or termination. If appropriate in the circumstances, the Parties shall cooperate to agree an alternative Alliance Joint Facility and/or Designated IT Systems (as the case may be) as required.

5.8 To the extent that a Party has the right to gain access to any Alliance Joint Facilities or other facilities or equipment or Designated IT Systems owned or operated by the other Party, each Party agrees that:

(a) it shall have no proprietary right or title to, interest in or ownership of, to the other Party's Alliance Joint Facilities, other facilities and equipment or Designated IT Systems or any part thereof;

(b) it shall not make any untrue or unsubstantiated claim or representation as to the ownership of, or improperly act as the owner, lessee or licensee of the other Party's Alliance Joint Facilities, other facilities and equipment or Designated IT Systems or any part thereof;

(c) it shall be responsible for the actions of any third party accessing the other Party's Alliance Joint Facilities, other facilities and equipment or any part thereof at the invitation or permission (whether expressly or which can be reasonably implied) of that Party;

(d) it shall not attempt to gain access (or facilitate access to an Alliance Participant or Affiliate or any other person) to any of the other Party's facilities and equipment or Designated IT Systems or any part thereof to which the Party has no right of access;

(e) its rights to gain access to or use any of the other Party's Alliance Joint Facilities, other facilities and equipment or Designated IT Systems shall be subject to the security and privacy policies and procedures of the other Party which are notified to it, and any obligations of confidentiality or like restrictions imposed under any legally binding agreements to which the other Party is subject which will be notified to it; and

(f) in the case of the Designated IT Systems:

(i) it shall give the other Party prompt notice if it becomes aware of any unauthorised copying of information on, or access to, the other Party's Designated IT Systems, or any component part thereof, such notice to be in the form of a reasonably detailed incident report;

(ii) it shall not, and shall not facilitate or assist another person to, reverse compile or disassemble any object code version of any software application

or program in the other Party's Designated IT Systems or any component part thereof;

- (iii) it shall not, nor shall it facilitate or assist another person to, perform any act that is inconsistent with or in violation of this Agreement, or that may jeopardise the rights of the other Party or any third Party licensors, in the other Party's Designated IT Systems or any component part thereof; and
- (iv) except as expressly otherwise provided in this Agreement, it shall not permit or facilitate access to the other Party's Designated IT Systems or any component part thereof to any unauthorised third Party or persons without the prior express permission of the other Party.

6 PERSONNEL

The provisions of Schedule 3 shall have effect.

7 INTELLECTUAL PROPERTY

- 7.1 Subject to clauses 7.2 and 7.9, each Party hereby grants for the duration of the Alliance Term and the Unwind Period to the other Party and to be used only for the purpose of the Alliance Activities and the implementation of the Unwind Plan and in accordance with clause 7.7 below, an irrevocable, non-exclusive, non-transferable, royalty-free licence to use such Intellectual Property (including future Intellectual Property) as is owned by that Party and/or which that Party has the right to disclose, license or sub-license in the manner contemplated by this clause 7.1 and which is reasonably required for the purposes of the Alliance Activities or the implementation of the Unwind Plan.
- 7.2 Clause 7.1 shall only apply to the extent that the Party is able to grant such a licence of its Intellectual Property and where any relevant Intellectual Property is or becomes vested in a third party, the relevant Party shall use reasonable endeavours to procure the grant of a like licence to that referred to in Clause 7.1 to the other Party.
- 7.3 Subject to Clause 14 (Confidentiality and Announcements) and any other restrictions imposed on either Party, each Party shall as from the date of this Agreement deliver to the other Party at the other Party's reasonable request copies of the Intellectual Property licensed or sub licensed under clause 7.1 and all supporting documents (to the extent that it is the relevant Party's possession, custody or control at the date of such request) which is reasonably required for the purposes of the Alliance Activities or the implementation of the Unwind Plan.
- 7.4 Unless otherwise agreed in writing, any Intellectual Property that is developed jointly by the Parties during the Alliance Term (including any Alliance IPR as defined in the Tri-Partite Agreement) and for the purpose of the Alliance Activities (collectively **Alliance IP**), shall be jointly owned and held in equal shares by the Parties. To the extent that legal title in any Alliance IP does vest in only one Party as a matter of law, that Party hereby assigns (or where immediate assignment is not effective, agrees to assign) wholly and absolutely with full title guarantee, all its right, title and interest in such Alliance IP, including the right to sue for damages for past infringements, to both Parties to hold in equal shares. The assigning Party shall promptly do all such things and execute all such documents as may be necessary to give full effect to such assignment and give to the other Party the full benefit of its rights under this clause 7.4.
- 7.5 Each Party hereby grants to the other Party an irrevocable, worldwide non-exclusive, royalty free, freely transferable and perpetual licence to use, license and sub-license the Alliance IP

solely for the purpose of the Party's or its Affiliates' business and in accordance with clause 7.7 below.

7.6 Each Party shall retain sole ownership of:

- (a) its own Intellectual Property in existence at the date of this Agreement; and
- (b) unless otherwise agreed in writing, all Intellectual Property which is created or acquired by that Party after the date of this Agreement and which is not Alliance IP.

7.7 In using any Intellectual Property or Alliance IP licensed or sub-licensed to it in accordance with clause 7.1 or clause 7.5 (as the case may be), each Party shall comply with (and shall procure that its Affiliates and Alliance Participants and permitted licensees, sub-licensees and assignees shall comply with) the terms of the applicable licence and any prevailing conditions, policies and/or standards governing use of such Intellectual Property and/or Alliance IP.

7.8 Neither Party shall:

- (a) except as provided by clause 7.5, use or permit any person to use the Alliance IP or license or sub-license any rights in the Alliance IP; or
- (b) assign the Alliance IP to any person,

without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed).

7.9 NRIL shall not be required to grant SSWT a licence under clause 7.1 to the extent that any such Intellectual Property satisfies the criteria set out in paragraph 8.1(a) of schedule 15.4 of the Franchise Agreement, if it is unable (despite having made reasonable efforts) to include the right to grant sub-licences of such Intellectual Property to a Successor Operator or the SoS for the purposes of performing the Franchise Services or services substantially similar to the Franchise Services.

8 COSTS AND REVENUES

The provisions of Schedule 4 shall have effect.

9 VAT

9.1 If:

- (a) the performance by one of the Parties of any of its obligations under or pursuant to the terms of this Agreement shall constitute for VAT purposes the making of a supply of goods or services by that Party (**Supplier**) to the other Party (**Recipient**), or
- (b) any amount payable or paid, or other cash or non-cash consideration or deemed consideration given by one Party (**Payor**) to the other (**Payee**) under or pursuant to the terms of this Agreement (including, for the avoidance of doubt, amounts payable under Schedule 4 (Costs and Revenues) or Schedule 6 (Handover and Unwind) shall constitute consideration for any supply of goods or services by the Payee to the Payor for VAT purposes,

the Recipient shall pay to the Supplier, or the Payee shall pay to the Payor (as applicable), an amount equal to the VAT chargeable in respect of any such supply following receipt of a valid

VAT invoice in respect of the same, in accordance with the Supplier's standard commercial terms for payment.

9.2 If:

- (a) any such supply of goods or services for VAT purposes as referred to in clause 9.1 is, or is treated by HMRC as being, for a consideration not consisting (or not consisting wholly) of money, such that the value of such supply for VAT purposes falls to be calculated in accordance with section 19(3) of the Value Added Tax Act 1994; and/or
- (b) either Party is treated by HMRC as making a barter transaction under the Agreement for the purposes of VAT, such that the value of each supply made or treated as made in the barter is required to be determined in accordance with 9.2(a),

it being acknowledged that the Parties have sought confirmation from HMRC that neither such treatment will apply, the Parties shall cooperate, and each Party shall provide such support and assistance as is reasonably requested by the other Party, to (x) mitigate any adverse effect on that other Party of being treated as making such barter transaction; (y) determine the value of any such supply or consideration and/or (z) ensure proper and timely VAT invoicing and compliance in respect of such supply.

10 RISK AND LIABILITY

10.0 [Redacted]

10.1 [Redacted]

10.2 [Redacted]

10.3 [Redacted]

10.4 [Redacted]

10.5 [Redacted]

10.6 **General Provisions on Liability**

- (a) Where either Party is required to make payment to the other Party pursuant to an indemnity set out in this Agreement, the Parties may agree that such payment shall not be made on the grounds and to the extent that its payment and receipt would be neutralised by payments made in accordance with Part 3 of Schedule 4.
- (b) Neither Party shall be liable to the other Party for any punitive, indirect or consequential loss or for any loss of profits, income, business opportunities or anticipated savings (whether direct or indirect) (whether suffered by the other Party, its Affiliates, Alliance Participants and/or Appointees) arising out of or in connection with this Agreement (including any breach of this Agreement) (but, for the avoidance of doubt, this clause 10.6(b) is not intended to affect the position applying in relation to other contracts between the Parties or in relation to non-contractual claims which arise other than out of or in connection with this Agreement or breach of this Agreement).

- (c) Neither Party shall be entitled to recover or otherwise obtain reimbursement or restitution more than once in respect of the same Losses (including for the avoidance of doubt through the operation of Part 3 of Schedule 4 and/or an indemnity in this Agreement).
- (d) Neither Party shall be liable for Losses arising from breach of any warranty, representation, indemnity, covenant or undertaking in connection with this Agreement except where it is expressly set out in this Agreement. Each Party confirms that it has not relied upon or been induced to enter into this Agreement by any warranty, representation, indemnity, covenant or undertaking given by any person which is not expressly contained in this Agreement.
- (e) Nothing in this Agreement shall be deemed to relieve either Party or any relevant Affiliate from its common law duty to mitigate Losses.
- (f) Nothing in this Agreement shall have the effect of limiting any person's right, remedy or liability to the extent arising from fraud or otherwise prohibited by Law.
- (g) Without prejudice to the operation of clause 10.5 and Schedule 4, nothing in this Agreement shall affect the application as between the parties of the provisions of CAHA which relate to liability for small claims equal to or below the Threshold (as defined in CAHA).
- (h) The provisions of clauses 10.0 to 10.3 are without prejudice to the reallocation of gain or pain between the Parties pursuant to Schedule 4.

10.7 Conduct of Claims

- (a) The Parties acknowledge and agree that CAHA will continue to govern the handling of any and all claims to which it applies in accordance with its terms and that the subsequent provisions of this clause 10.7 shall only apply to claims which are not governed by CAHA.
- (b) Subject to clause 10.7(a), if any proceedings are instituted by a third party (which for the avoidance of doubt shall mean a claim brought by a person other than one of the Parties including, for the avoidance of doubt, an Alliance Participant) against either Party or an Affiliate, Alliance Participant or Appointee of such Party and such Party will be entitled to an indemnity (which for the avoidance of doubt, shall not include any payment under clause 10.4(b)(iii)) under this Agreement in respect of any Losses resulting from such claim (**Protected Party**) which may give rise to a claim under such indemnity (**Relevant Proceedings**), the Protected Party shall as soon as reasonably practicable give notice of the Relevant Proceedings in writing to the Party against whom a claim under the indemnity may be brought (**Protecting Party**).
- (c) To the extent practicable, and subject to any obligations the Parties have to Insurers, the Protecting Party shall have the option, subject to giving to the Protected Party such indemnities as the Protected Party may reasonably require, to assume the defence of the Relevant Proceedings, including the instruction of legal advisers reasonably satisfactory to the Protected Party to represent the Protected Party and any others which the Protecting Party may designate in such Relevant Proceedings and the Protecting Party shall indemnify the Protected Party in respect of the fees and disbursements of such legal advisers related to such Relevant Proceedings.

- (d) In any event and subject to the obligations the Parties may have to Insurers, the Protected Party will:
 - (i) consult with the Protecting Party as to legal representation;
 - (ii) update the Protecting Party regularly in relation to the Relevant Proceedings, provide to the Protecting Party all information that it may reasonably require and allow the Protecting Party to comment on key documents and submissions, and take reasonable account of such comments; and
 - (iii) co-operate with the Protecting Party in relation to the management and conduct of the Relevant Proceedings.
- (e) In any Relevant Proceedings the Protected Party shall, subject to any obligations it may have to insurers, have the right to retain its own legal advisers, but the fees and expenses of such legal advisers shall be at the expense of such Protected Party unless:
 - (i) the Protecting Party and the Protected Party have mutually agreed to the retention of such legal advisers and the sharing of the relevant fees and expenses; or
 - (ii) the named parties to any such Relevant Proceedings (including any added parties) include both the Protecting Party and the Protected Party and representation of both parties by the same legal advisers would be inappropriate due to actual or potential differing interests between them.
- (f) The Protecting Party shall not be liable for any settlement of any Relevant Proceedings effected without its written consent (such consent not to be unreasonably withheld or delayed) where it has not assumed the defence of such Relevant Proceedings under clause 10.7(c) but, if such Relevant Proceedings are settled with such consent or if there is a Final Judgment for the claimant, the Protecting Party agrees to indemnify the Protected Party on the terms of the relevant indemnity.
- (g) If the Protecting Party does not exercise the option contained in clause 10.7(c) the Protected Party shall, if so required by the Protecting Party, maintain consultation with the Protecting Party on all aspects of the Relevant Proceedings and shall provide the Protecting Party with all information reasonably requested by it in relation to such Relevant Proceedings.
- (h) If the Protecting Party exercises the option in clause 10.7(c), it shall thereafter, if so required by the Protected Party, maintain consultation with the Protected Party on all aspects of the Relevant Proceedings and shall provide the Protected Party with all information reasonably requested by it in relation to such Relevant Proceedings.

11 DATA PROTECTION

- 11.1 The Parties shall at all times comply with their respective obligations under all Data Protection Laws. No Party shall, by any act or omission in connection with this Agreement, place the other Party in breach of any Data Protection Laws.
- 11.2 Terms used in this clause 11 and not otherwise defined have the same meanings as in the Data Protection Act 1998.

- 11.3 Subject to confidentiality requirements and compliance with Data Protection Laws, each Party agrees that it will be necessary for the proper performance of this Agreement to share with the other Party certain personal data relating to the Alliance Participants and/or contractors of the first Party. The Parties undertake that on or as soon as is reasonably possible after the execution of this Agreement they shall enter into a reciprocal data sharing agreement substantially in the form set out in Schedule 8.
- 11.4 Each Party acknowledges and agrees that where, in the course of performing its respective obligations under this Agreement, a Party processes personal data as a data processor on behalf of the other Party, the Party acting as data processor shall not be entitled to use or otherwise process that personal data for any purpose other than in relation to the Alliance Activities or as otherwise set out in this Agreement. Accordingly, in connection with that processing the Party acting as data processor shall:
- (a) act only on the instructions of the other Party;
 - (b) take appropriate technical and organisational measures to protect such personal data against accidental or unlawful destruction or accidental loss (including deletion), alteration (including corruption), unauthorised disclosure, use or access and against all other unlawful forms of processing, including controls over entry, access, intervention, disclosure, input and preservation of and to such data;
 - (c) not transfer such personal data out of the UK;
 - (d) give the other Party such co-operation, assistance and information and do all things and execute all documents as that Party may reasonably require to enable such Party to comply with its obligations under any Data Protection Laws and co-operate and comply with the directions or decisions of any competent data protection or privacy authority in relation to personal data, and in each case within such timescale as would enable such Party to meet any time limit imposed by the data protection or privacy authority; and
 - (e) notify the other Party, as soon as becoming aware of them, of any actual or suspected breaches of Data Protection Laws or security controls (including, but not limited to unauthorised disclosures of such personal data and unauthorised access to personal data) and provide a report to the other Party on any investigations into such breaches.

12 CHANGE IN CIRCUMSTANCES

The provisions of Schedule 5 (Change in Circumstances) shall have effect.

13 TERM AND TERMINATION

13.1 Duration

- (a) With the exception of clauses 1, 2, 11, 12, 13, 14, 15 and 16 (which shall come into effect on the date of this Agreement), the provisions of this Agreement shall come into effect on the Commencement Date.
- (b) Subject to the earlier termination of this Agreement in accordance with clauses 13.2, 13.3, 13.4 or 13.5, this Agreement shall continue in effect until the Expiry Date.

13.2 NRIL Events of Default

- (a) Each of the following shall be a **NRIL Event of Default** and shall entitle SSWT to serve a NRIL Termination Notice on NRIL:
- (i) a material breach by NRIL of its obligations under this Agreement which:
 - (A) is not capable of being remedied; or
 - (B) is capable of being remedied and is not remedied by NRIL within 15 Business Days from the date of a written notice from SSWT to NRIL setting out details of the breach to be remedied and requiring such breach to be remedied;
 - (ii) a Persistent Breach by NRIL of its obligations under this Agreement;
 - (iii) NRIL failing to pay to SSWT an amount or aggregate amount in excess of £500,000 due under this Agreement within 15 Business Days of a notice from SSWT requiring such amount to be paid (which notice may not be given before the due date) unless such amount has been disputed in good faith by NRIL;
 - (iv) a breach by NRIL of its obligations under clause 10.2 which is not remedied by NRIL within 15 Business Days from the date of a written notice from SSWT to NRIL setting out the details of the breach to be remedied and requiring such breach to be remedied;
 - (v) any step being taken by any person with a view to the appointment of an administrator of NRIL;
 - (vi) NRIL stopping or suspending or threatening to stop or suspend payment of all or a material part of (or of a particular type of) its debts or being unable to pay its debts or is deemed for the purposes of section 123 of the Insolvency Act 1986 to be unable to pay its debts as they become due, but in the latter case with section 123(1)(a) of the Insolvency Act 1986 being construed as if the reference to "£750" was a reference to "£5,000,000";
 - (vii) a proposal or agreement being made in relation to NRIL to defer, reschedule or readjust (or a proposal to make a general assignment or an arrangement or composition with or for the benefit of creditors) all or a material part of (or of a particular type of) its debts, or a moratorium being agreed or declared in respect of or affecting all or a material part of (or of a particular type of) its debts;
 - (viii) a petition being presented in respect of NRIL which is not withdrawn, set aside, dismissed or revoked within 30 Business Days of presentation or within such period as such petition is being contested in good faith by NRIL, or an order being made or an effective resolution being passed for the dissolution, liquidation or winding up of NRIL (except for the purpose of a bona fide amalgamation or reconstruction);
 - (ix) a receiver, manager, administrator or administrative receiver (or the equivalent of any of them) is appointed or an encumbrancer takes

possession of the whole or a material part of the assets or undertaking of NRIL; and

- (x) a railway administration order being made in relation to NRIL under sections 60 to 62 of the Act.
- (b) This Agreement shall be terminated immediately upon the service of a NRIL Termination Notice by SSWT on NRIL.

13.3 SSWT Events of Default

- (a) Each of the following shall be a **SSWT Event of Default** and shall entitle NRIL to serve a SSWT Termination Notice on SSWT:
 - (i) a material breach by SSWT of its obligations under this Agreement which:
 - (A) is not capable of being remedied; or
 - (B) is capable of being remedied and is not remedied by SSWT within 15 Business Days from the date of a written notice from NRIL to SSWT setting out details of the breach to be remedied and requiring such breach to be remedied;
 - (ii) a Persistent Breach by SSWT of its obligations under this Agreement;
 - (iii) SSWT failing to pay NRIL an amount or aggregate amount in excess of £500,000 due under this Agreement within 15 Business Days of a notice from NRIL requiring such amount to be paid (which notice may not be given before the due date) unless such amount has been disputed in good faith by SSWT;
 - (iv) a breach by SSWT of its obligations under clause 10.2 which is not remedied by SSWT within 15 Business Days from the date of a written notice from NRIL to SSWT setting out the details of the breach to be remedied and requiring such breach to be remedied;
 - (v) any step being taken by any person with a view to the appointment of an administrator of SSWT;
 - (vi) SSWT stopping or suspending or threatening to stop or suspend payment of all or a material part of (or of a particular type of) its debts or being unable to pay its debts or is deemed for the purposes of section 123 of the Insolvency Act 1986 to be unable to pay its debts as they become due, but in the latter case with section 123(1)(a) of the Insolvency Act 1986 being construed as if the reference to "£750" was a reference to "£5,000,000";
 - (vii) a proposal or agreement being made in relation to SSWT to defer, reschedule or readjust (or a proposal to make a general assignment or an arrangement or composition with or for the benefit of creditors) all or a material part of (or of a particular type of) its debts, or a moratorium being agreed or declared in respect of or affecting all or a material part of (or of a particular type of) its debts;
 - (viii) a petition being presented in respect of SSWT which is not withdrawn, set aside, dismissed or revoked within 30 Business Days of presentation or within such period as such petition is being contested in good faith by SSWT,

an order being made or an effective resolution being passed for the dissolution, liquidation or winding up of SSWT (except for the purpose of a bona fide amalgamation or reconstruction);

- (ix) a receiver, manager, administrator or administrative receiver (or the equivalent of any of them) is appointed or an encumbrancer takes possession of the whole or a material part of the assets or undertaking of SSWT;
 - (x) a railway administration order being made in relation to SSWT under sections 60 to 62 of the Act;
 - (xi) the Franchise Agreement is terminated (for reasons other than solely under paragraph 3 of Schedule 3 (Termination Event) of the Terms);
 - (xii) the ratio of SSWT's forecast modified revenue to SSWT's forecast operating costs calculated pursuant to paragraph 2(b) of schedule 12 of the Franchise Agreement is less than the ratio of 1.05:1.
- (b) This Agreement shall be terminated immediately upon the service of a SSWT Termination Notice by NRIL on SSWT.

13.4 Other Rights of Termination

- (a) Each of the following shall be a **Termination Event**:
- (i) except where this Agreement makes express provision to the contrary, where the Parties have failed to reach agreement on any Deadlock Dispute in accordance with the Disputes Resolution Procedure;
 - (ii) on each occasion that either Party's NCFE falls to zero or less (calculated in accordance with clause 10.5) and following the occurrence of such event, it shall constitute a continuing Termination Event until such time as after payment being made or payment being received of any amount pursuant to any Efficiency Share Payment Statement or Annual Efficiency Share Payment Statement delivered after the date of such event, that Party's NCFE will exceed zero;
 - (iii) where the Franchise Agreement is terminated early under paragraph 3 of schedule 10.3 (Force Majeure) of the Franchise Agreement;
 - (iv) where SSWT receives a request from the SoS under the Franchise Agreement requiring it to terminate this Agreement from such date specified by the SoS in such notice;
 - (v) where the SoS fails or omits to extend or revokes the derogations, approvals or consents under the Franchise Agreement granted to SSWT under cover of the letter dated on or around 27 April 2012; and
 - (vi) where the ORR fails or omits to extend or revokes the consent under NRIL's network licence condition 5 granted to NRIL under cover of the ORR's letter dated 28 March 2012.
- (b) Where clause 13.4(a)(i) or clause 13.4(a)(ii) applies, either Party shall be entitled to serve a Termination Notice on the other Party.

- (c) Where clause 13.4(a)(iii) or clause 13.4(a)(vi) applies, NRIL shall be entitled to serve a Termination Notice on SSWT.
- (d) Where clause 13.4(a)(iv) or clause 13.4(a)(v) applies, SSWT shall be entitled to serve a Termination Notice on NRIL.
- (e) This Agreement shall be terminated immediately upon the service of a Termination Notice by one Party on the other Party.

13.5 Automatic Termination

- (a) This Agreement shall terminate automatically:
 - (i) where provided in paragraph 3 or 4 of Schedule 5 (failure to agree terms to preserve Alliance following Change in Circumstances);
 - (ii) where provided in paragraph 2.8(a) of Schedule 4 (Control Period 5 Baseline Plan has not been agreed by the Parties by the Control Period 5 Baseline Plan Longstop Date);
 - (iii) where provided in paragraph 2.8(a) of Schedule 4 (Control Period 5 Estimated Baselines have not been agreed by the Control Period 5 Estimated Baselines Longstop Date); and
 - (iv) where provided in paragraph 2.8(b) of Schedule 4 (Control Period 5 Final Baselines and/or the Control Period 5 Final Baselines Reconciliation Amount have not been agreed by the Control Period 5 Final Baselines Longstop Date); and
 - (v) where the SoS does not provide to SSWT, at least 90 Business Days prior to the expiry of Control Period 4, such approvals, consents or derogations as SSWT reasonably considers are required to allow this Agreement to continue during Control Period 5.

13.6 Survival

The provisions of clauses 1, 2, 4, 10, 11, 14, 15, 16, paragraphs 9 to 17 (both inclusive) of Schedule 3, Part 2 and Part 3 of Schedule 4, Schedule 6, Schedule 7 and Schedule 9 shall survive the expiry or termination of this Agreement.

13.7 Handover / Unwinding

The provisions of Schedule 6 shall have effect in relation to termination or expiry of this Agreement.

14 CONFIDENTIALITY AND ANNOUNCEMENTS

- 14.1 Subject to clause 14.5, each Party shall, and shall use all reasonable endeavours to procure that its officers and employees and their Affiliates and their officers and employees shall, keep confidential all confidential information relating to the other (and the other's business affairs) that it obtains in connection with this Agreement or the negotiations leading up to it. Each Party shall only use such information in the proper performance of its obligations or exercise of its rights under this Agreement and shall not divulge any of such information to any other person without the prior written consent of the other, unless permitted to do so by clause 14.4.

14.2 For the avoidance of doubt, for the purpose of clause 14.1 confidential information shall include:

- (a) financial information which relates to a Party and which is unpublished; and
- (b) confidential information which relates to any other Operator,

but subject thereto shall not include:

- (i) information that one Party obtains relating to the other Party's structure, organisation and processes in relation to the Wessex Route;
- (ii) information in relation to efficiencies identified in relation to the operation of the arrangement created by this Agreement.

14.3 In no event shall the standard of care employed by a Party in protecting the information referred to in this clause 14 from disclosure be less than the standard which that Party employs in the protection of its own confidential information.

14.4 A Party may disclose information if and to the extent that:

- (a) the other Party has given its written consent; or
- (b) the information is contained in a press announcement in a form agreed by the Parties; or
- (c) that Party can show that the information was already, or has subsequently become, published or publicly available for use other than through a breach of this Agreement or of any confidentiality obligation owed by that Party; or
- (d) that Party is required to disclose the information by Law or any Competent Authority or recognised investment exchange provided that, so far as is practicable, the disclosure shall be made only after consultation with the other Party and after taking into account the other Party's reasonable requirements as to timing, content and manner of communication; or
- (e) the information is disclosed for a proper purpose in legal proceedings to which that Party is a Party; or
- (f) the information is disclosed on a confidential basis to that Party's professional advisers for the purpose of advising that Party in connection with this Agreement; or
- (g) the information is disclosed on a confidential basis either to that Party's officers and employees whose function requires the disclosure or to other persons who are engaged in the performance of that Party's obligations under this Agreement and who reasonably require the information for that purpose.

14.5 Clause 14.1 shall not apply to a Party in relation to information to the extent that that Party can show:

- (a) that the information was already lawfully in its possession (without restriction on disclosure or use) before it obtained the information in connection with this Agreement or the negotiations leading up to it; or

- (b) that the information has subsequently lawfully been disclosed to it (without restriction on disclosure or use) by a person who is not a Party to this Agreement and who itself lawfully obtained the information and is not under any obligation restricting its disclosure or use; or
- (c) from its records that it has derived the same information independently of that obtained by it in connection with this Agreement or the negotiations leading up to it.

14.6 Notwithstanding the duties owed by each member of the Governance Board or the Alliance Executive, in his capacity as employee to his Employer or, in his capacity as a director of a Party to that Party, any such member shall be entitled to disclose any information and provide relevant documents and materials about the Alliance and discuss its affairs, finances and accounts with appropriate officers and employees of each of the Parties. Each of the Parties shall be entitled to disclose details of the Alliance's affairs, finances and accounts to that Party's professional and financial advisers and providers of debt or other structural finance to that Party or its Affiliates on a confidential basis who are required to know the same to carry out their duties.

15 GENERAL

15.1 Notices

- (a) Any notice under this Agreement will be effective only if it is in writing.
- (b) References to a notice under this Agreement include any notice, claim, demand or other document to be delivered to any Party in connection with this Agreement or any dispute arising in connection with this Agreement.
- (c) Any notice under this Agreement must be in English.
- (d) Notice details for the Parties are as follows:

Party	Address, fax number and email address	Addressee/marked for the attention of
Network Rail Infrastructure Limited	Kings Place 90 York Way London N1 9AG notices@networkrail.co.uk	The Company Secretary
Stagecoach South Western Trains Limited	Friars Bridge Court, 41-45 Blackfriars Road, London, SE1 8NZ awest@swtrains.co.uk	The Company Secretary

A Party may change its notice details for the purpose of this clause 15.1 by giving notice to the other Party in accordance with this clause 15.1.

- (e) In proving the giving of a notice, it will be conclusive evidence to prove:

- (i) if delivered by hand, that it was left at the relevant address;
- (ii) if sent by post, that it was properly addressed and posted; or
- (iii) if sent by fax, that a fax transmission report was obtained by the sender confirming the fax transmission to the relevant number; or
- (iv) if sent by email, that it was transmitted to the correct email address, whether or not opened or read by the recipient.

in each case in accordance with the relevant details set out above.

- (f) In the absence of evidence of earlier receipt, if a notice is:
 - (i) delivered by hand:
 - (A) between 9.00 am and 5.00 pm on a Business Day (such time period being referred to as within **Business Hours**), it will be deemed received when so delivered; or
 - (B) outside Business Hours, it will be deemed received at 9.00 am on the next Business Day after the time of delivery;
 - (ii) sent by post:
 - (A) on a Business Day, it will be deemed received at 9.00 am on the second Business Day after the day on which it was posted; or
 - (B) not on a Business Day, it will be deemed received at 9.00 am on the third Business Day after the day on which it was posted; or
 - (iii) sent by fax:
 - (A) during Business Hours, it will be deemed received when so delivered; or
 - (B) outside Business Hours, it will be deemed received at 9.00 am on the next Business Day after the time that the fax was sent to the relevant number; or
 - (iv) sent by email:
 - (A) during Business Hours, it will be deemed received when sent to the correct email address; or
 - (B) outside Business Hours, it will be deemed received at 9.00 am on the next Business Day after the time that the email was sent to the correct email address.

15.2 Assignment and third Party rights

- (a) No right or obligation arising under this Agreement may be assigned, transferred or otherwise disposed of, in whole or in part, by any Party without the prior written agreement of the other Party.

- (b) References in this Agreement to a Party will, except where the context requires otherwise, include its successors in title and permitted assignees.
- (c) Save:
 - (i) as provided in clause 15.2(d); and
 - (ii) unless this Agreement expressly states otherwise (which includes any provision expressed to be in favour of any person who is not a Party),

a person who is not a Party to this Agreement has no right to enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.
- (d) The following persons are third parties for the purposes of the Contract (Rights of Third Parties) Act 1999 and may enforce the following terms of this Agreement:
 - (i) the SoS may enforce the Parties' obligations under clause 4.9, clause 4.13(a) and Schedule 6 (Handover and Unwind);
 - (ii) each Alliance Participant may enforce clause 10.1(c) and 10.1(d); and
 - (iii) an Affiliate, Alliance Participant and/or Appointee of the relevant Party may enforce the indemnity provided to it by such Party under clause 10.3(d).
- (e) Notwithstanding clause 15.2(d), if a person who is not a Party to this Agreement is stated as having the right to enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999, the Parties may rescind or vary this Agreement (and any Transaction Documents) without the consent of that person.

15.3 **Announcements**

Save as (but only to the extent) expressly provided in this Agreement or required by any collective bargaining arrangements, all announcements by, of or on behalf of either of the Parties relating to the subject matter of this Agreement or the arrangements contemplated by this Agreement must be in terms to be agreed between the Parties in advance of issue and the Parties shall procure that the Alliance Participants comply with this clause.

15.4 **Exercise of rights**

In relation to the rights of each Party under this Agreement:

- (a) rights may be exercised as often as necessary;
- (b) rights are cumulative and not exclusive of any right or remedy provided by law;
- (c) rights may be released or waived as regards any Party without affecting the liability of any other Party; and
- (d) rights may only be waived specifically in writing (and any delay in exercising, or non-exercise of, any right will not constitute a waiver of that right).

15.5 **Survival of rights**

Termination of this Agreement for any reason shall not affect any rights or liabilities that have accrued prior to termination or the coming into force or continuance in force of any term that is expressly or by implication intended to come into or continue in force on or after termination.

15.6 **No Partnership**

Nothing in this Agreement (or in any arrangement contemplated by it) shall create a partnership or establish a relationship of principal and agent or any other fiduciary relationship between the Parties nor (save where expressly provided in this Agreement) shall it confer on either Party the power to bind or impose on the other Party any obligations to any third parties or to pledge the credit of the other Party. **[Redacted]**.

15.7 **No Proprietary Rights**

Save where expressly provided in this Agreement, nothing in this Agreement shall confer on either Party any property or rights in the property of the other Party (whether owned or leased on the Commencement Date or subsequently acquired by purchase, lease or otherwise).

15.8 **Entire Agreement**

- (a) This Agreement sets out the entire agreement and understanding between the Parties to them in connection with the subject matter of this Agreement and other matters described in them.
- (b) Without prejudice to the generality of clause 15.8(a), this Agreement supersedes from the Commencement Date the heads of terms entered into between the Parties on 21 September 2011 and all, if any, other prior negotiations, representations, undertakings and agreements (whether oral or written) on any matter which is the subject of this Agreement.
- (c) So far as is permitted by law, each of the Parties agrees and acknowledges that its only right and remedy in connection with this Agreement shall be in contract only for breach or anticipated breach of the terms of this Agreement to the exclusion of all other rights and remedies (including those in tort or arising under statute).

15.9 **Amendments**

Any amendments to this Agreement must be in writing, refer specifically to this Agreement and be duly executed by each Party.

15.10 **Further assurance**

Each Party shall do and execute, or arrange for the doing and executing of, any other act and document reasonably requested of it by the other Party to implement and give full effect to the terms of this Agreement. The costs and expenses incurred in carrying out any such request will be paid by the Party making the request.

15.11 **Severability**

If any provision in this Agreement is or at any time becomes to any extent invalid, illegal or unenforceable under any enactment or rule of law, such provision will to that extent be deemed not to form part of this Agreement but the validity, legality and enforceability of the remainder of this Agreement will not be affected, provided that the operation of this clause 15.11 would not negate the commercial intent and purpose of the Parties in entering into this Agreement.

15.12 Counterparts

This Agreement may be entered into in the form of two or more counterparts, each executed by one or more of the Parties but, taken together, executed by all and, provided that all the Parties so enter into this Agreement, each of the executed counterparts, when duly exchanged and delivered, will be deemed to be an original, but, taken together, they will constitute one instrument.

15.13 Payment of costs

Except where this Agreement provides otherwise, each Party shall pay its own costs and expenses incurred in relation to the negotiation, preparation and completion of this Agreement.

15.14 Time

All references to time in this Agreement are to London time.

16 GOVERNING LAW, JURISDICTION AND DISPUTES

16.1 This Agreement will be governed by and construed in accordance with English law and all claims and disputes (including non-contractual claims and disputes) arising out of or in connection with this Agreement, its subject matter, negotiation or formation will be determined in accordance with English law.

16.2 Each Party irrevocably submits to the exclusive jurisdiction of the English courts in relation to all matters (including non-contractual matters) arising out of or in connection with this Agreement.

16.3 Dispute Resolution

The provisions of Schedule 7 (Dispute Resolution) shall have effect.

Signed by the Parties or their duly authorised representatives on the date of this Agreement.

Schedule 1

Change Management

Part 1: Change Management

1 Change Management

1.1 A Party (**Change Requesting Party**) shall by giving notice to the other Party (**Change Receiving Party**) have the right to request that:

- (a) specified costs and/or revenue are added to the NRIL Initial Baseline and/or the SSWT Initial Baseline (as the case may be) and accordingly should create an additional Alliance Activity (**Proposed Additional Activity**); or
- (b) specified costs and/or revenue should be removed from the NRIL Initial Baseline and/or the SSWT Initial Baseline (as the case may be) and accordingly should remove the relevant Alliance Activity (or any part thereof) from the scope of the Alliance (**Proposed Removed Activity**).

1.2 Any such notice provided pursuant to paragraph 1.1 shall:

- (a) contain a detailed description of the Proposed Additional Activity or the Proposed Removed Activity;
- (b) set out the Proposed Baseline Modification which shall be prepared in accordance with paragraph 1.3;
- (c) specify the proposed amendments (if any) to the insurance arrangements and indemnities under clause 10 as a consequence of the inclusion of the Proposed Additional Activity or the removal of the Proposed Removed Activity (as applicable); and
- (d) set out the amendment (if any) to the maximum financial exposure of the Parties under clause 10.5 proposed by the Change Requesting Party as a consequence of the inclusion of the Proposed Additional Activity or the removal of the Proposed Removed Activity (as applicable).

1.3 A Proposed Baseline Modification shall:

- (a) be prepared in a manner consistent with the Baseline Methodology and Assumptions and shall set out any appropriate additions, deletions or amendments (as the case may be) to the Baseline Methodology and Assumptions to explain the basis on which the Proposed Additional Activity would be added to the NRIL Initial Baseline and/or the SSWT Initial Baseline (as the case may be);
- (b) in the case of a Proposed Additional Activity, specify the changes to anticipated costs and/or revenue which will or are likely to arise as a consequence of the inclusion of such Proposed Additional Activity and which should accordingly be included in the Baselines;
- (c) in the case of a Proposed Removed Activity, specify the changes to anticipated costs and/or revenue which will or are likely to arise as a consequence of the removal of such Proposed Removed Activity and which should accordingly be removed from the Baselines; and

- (d) set out any approvals, consents or derogations which will be required if such Proposed Additional Activity or Proposed Removed Activity were to be accepted by the Change Receiving Party.
- 1.4 Within 10 Business Days of service of a notice pursuant to paragraph 1.1, the Change Receiving Party may request such additional information as it may reasonably require from the Change Requesting Party:
- (a) to assist it in determining whether to accept or reject the Change Requesting Party's proposals; and
 - (b) to determine whether the Proposed Baseline Modification has been prepared in accordance with paragraph 1.3,
- and any such request shall be made by the Change Receiving Party to the Change Requesting Party by notice in writing.
- 1.5 Within 10 Business Days of service of a notice pursuant to paragraph 1.4, the Change Requesting Party shall, to the extent that it is reasonably able, provide the Change Receiving Party with such additional information requested by the Change Receiving Party.
- 1.6 Within a reasonable period of service of the notice pursuant to paragraph 1.1 (and in any event within 40 Business Days), the Parties shall procure that the Governance Board will discuss the Change Requesting Party's proposal and:
- (a) shall seek to agree whether to include the Proposed Additional Activity as an Alliance Activity, or whether to remove the Proposed Removed Activity from the scope of the Alliance (as applicable); and
 - (b) if the Parties reach agreement pursuant to paragraph 1.6(a), the amendments (if any) which will be made to:
 - (i) the NRIL Initial Baseline and/or the SSWT Initial Baseline (as the case may be);
 - (ii) the Baseline Methodology and Assumptions; and
 - (iii) the maximum financial exposure of the Parties under clause 10.5,in each case as a consequence of such inclusion or removal.
- 1.7 If the Parties are able to reach agreement on each of the matters set out in paragraph 1.6:
- (a) they shall first obtain any relevant approvals, consents or derogation which may be required before its implementation; and
 - (b) the Alliance Activities, the NRIL Initial Baseline and/or the SSWT Initial Baseline (as the case may be) and the Baseline Methodology and Assumptions shall be amended on the basis agreed by the Parties with effect from such date as is agreed by the Parties; and
 - (c) clause 10.5 shall be amended if and as required to reflect such agreement.

- 1.8 If the Parties are unable to reach agreement as to whether to accommodate the Change Requesting Party's proposal, each Party shall be entitled to refer the matter to the Disputes Resolution Procedure as a Deadlock Dispute.
- 1.9 If the Parties are unable to reach agreement in relation to each of the matters set out in paragraph 1.6 within 40 Business Days of the matter being referred to the Disputes Resolution Procedure:
- (a) no changes shall be made to the Alliance Activities, the Baselines or the Parties' respective maximum financial exposure under clause 10.5 and the Change Requesting Party's proposal shall lapse; and
 - (b) the right to terminate this Agreement in clause 13.4(a)(i) shall not apply to such Deadlock Dispute.

2 **Alliance Schemes**

- 2.1 The provisions of paragraph 1 of this Schedule shall not apply in respect of Alliance Schemes, which shall be agreed on a scheme by scheme basis by the Parties.
- 2.2 In relation to a proposed Alliance Scheme, each Party shall be entitled to propose by notice in writing to the other Party that an Alliance Scheme is undertaken by the Alliance. Any such notice provided shall contain a detailed description of the proposed Alliance Scheme and all costs and/or revenues which are reasonably likely to arise as a consequence of implementing such Alliance Scheme.
- 2.3 Within 10 Business Days of the date of a notice proposing that an Alliance Scheme is undertaken, the Parties shall seek to agree all aspects of the proposed Alliance Scheme, including:
- (a) how the Alliance Scheme will be financed by the Parties or by third parties;
 - (b) the proportions to which each Party will bear the costs of the proposed Alliance Scheme;
 - (c) how any efficiencies or revenue arising from the implementation of the Alliance Scheme will be shared between the Parties;
 - (d) any caps on expenditure or liability as between the Parties intended to apply in relation to the Alliance Scheme;
 - (e) where there will, or is likely to be, a financial impact on either or both of the Parties which goes beyond the Alliance Term, how such impact (whether positive or negative in nature) will be dealt with;
 - (f) the approvals, consents and/or derogations which will be required in order for the Alliance Scheme to be implemented;
 - (g) the amendments (if any) to the insurance arrangements and indemnities under clause 10 which will be required in order for the Alliance Scheme to be implemented;
 - (h) the amendment (if any) to the Parties' respective net maximum financial exposure under clause 10.5 which should be made to reflect the implementation of the Alliance Scheme; and

- (i) any consequential changes which would be required to the existing provisions of this Agreement to reflect the terms agreed in relation to the Alliance Scheme.
- 2.4 An Alliance Scheme shall not be implemented unless and until both Parties have agreed that such Alliance Scheme should be implemented and the terms upon which such Alliance Scheme should be implemented, including the matters expressly set out in paragraph 2.3.
- 2.5 The terms upon which any Alliance Scheme will be implemented, as agreed in accordance with this paragraph 2, shall be added to this Agreement as an additional Schedule.
- 2.6 If the Parties are unable to reach agreement as to any matter set out in this paragraph 2, each Party shall be entitled to refer the matter to the Disputes Resolution Procedure as a Deadlock Dispute.
- 2.7 If the Parties are unable to reach agreement in relation to any matter set out in this paragraph 2 within 40 Business Days of the matter being referred to the Disputes Resolution Procedure:
 - (a) no changes shall be made; and
 - (b) the right to terminate this Agreement in clause 13.4(a)(i) shall not apply to such Deadlock Dispute.

3 **Catastrophic Capex**

For the avoidance of doubt any Proposed Additional Activity or any Alliance Scheme which contemplates that capital expenditure costs would form part of any revised Initial Baseline shall not include responsibility for any capital expenditure arising from catastrophic events unless the Parties specifically agree otherwise in writing at the time.

Schedule 2

Governance and Management

Part 1: GOVERNANCE BOARD

1 Formation and Composition of Governance Board

1.1 The Alliance governance board (**Governance Board**) shall be established by NRIL and SSWT comprising senior executive members appointed by each of NRIL and SSWT and shall have the functions, obligations and duties set out in this Part 1.

1.2

(a) NRIL may at any time appoint any person who meets the criteria in paragraph 1.3 of this Schedule 2 to be one of its delegates to the Governance Board by notice to SSWT (**NRIL Appointee**).

(b) SSWT may at any time appoint any person who meets the criteria in paragraph 1.3 of this Schedule 2 to be one of its delegates to the Governance Board by notice to NRIL (**SSWT Appointee**).

(c) Either Party may at any time remove any delegate it had previously appointed to the Governance Board by notice to the other Party.

(d) Any such appointment or removal shall take effect on service of the notice or at any later time specified in it.

(e) Any notice under this paragraph 1.2 shall be copied for information to the Alliance MD.

1.3 Appointees to the Governance Board must not be:

(a) a member of the Alliance Executive; or

(b) an Alliance Participant or consultant who operates within the Alliance.

1.4 Each Party shall at all times ensure that it has at least 1 and no more than 2 persons appointed and serving as its Appointees to the Governance Board.

1.5

(a) The initial NRIL Appointees shall be Robin Gisby and Richard O'Brien.

(b) The initial SSWT Appointees shall be Martin Griffiths and Ross Paterson.

1.6 There shall be a chairman of the Governance Board (**Chairman**). The first Chairman shall be a NRIL Appointee. Thereafter, the Chairman shall be appointed by rotation between the SSWT Appointees and NRIL Appointees. Each Chairman shall hold office for 6 months.

1.7 The Alliance MD and the Alliance Infrastructure Director shall unless otherwise determined by the Governance Board be in attendance at meetings of the Governance Board. For the avoidance of doubt neither shall be a member of the Governance Board or be entitled to any vote.

2 Procedure, powers and responsibilities of Governance Board

- 2.1 The Governance Board will serve as the body for the governance, monitoring and oversight of the Alliance, the Alliance MD and the Alliance Executive, with particular focus on whether the Alliance is being operated in a manner that recognises the respective Ultimate Accountabilities of the Parties.
- 2.2 The Governance Board will meet regularly (and at least 10 times in any consecutive twelve month period) and will be responsible for:
- (a) appointing and removing the Alliance MD to and from that role;
 - (b) appointing the other members of the Alliance Executive (including the Deputy Alliance MD) and removing any such person from that role;
 - (c) ensuring that it receives proper reports and other oversight in relation to the discharge of each Party's Ultimate Accountabilities;
 - (d) monitoring compliance with the Safety Management Systems;
 - (e) monitoring compliance with the objectives of the arrangements established under this Agreement;
 - (f) appointing and selecting the members of the review team to conduct the post implementation reviews referred to in clause 4.12(b)(i);
 - (g) making recommendations to the Relevant Employing Entity in respect of performance bonus for managers operating within the Alliance;
 - (h) material public relations and reputation management matters;
 - (i) the setting of the objectives of the Alliance MD and the review of his compliance with them;
 - (j) the review of the objectives proposed by the Alliance MD for the other members of the Alliance Executive;
 - (k) all other Alliance matters within the scope of the Governance Board and outside the scope of the authority delegated for the time being to the Alliance MD;
 - (l) approving the Code of Conduct and any amendment to it;
 - (m) reviewing and approving the Alliance budget and Alliance business plan presented by the Alliance MD in respect of each Year, other than the first Year; and
 - (n) advising and assisting with such other things as the Parties may from time to time agree.
- 2.3 The Governance Board meetings shall take place at such places and times and in accordance with such prior procedures as the Governance Board members decide.
- 2.4 A quorum for the proper and valid conduct of any business of the Governance Board shall be at least 2 members present of whom:
- (a) at least one must be a NRIL Appointee; and

- (b) at least one must be a SSWT Appointee.

2.5

- (a) Each Appointee to the Governance Board may by notice to the other members of the Governance Board (copied to the Alliance MD, if any) appoint, remove and/or replace any other person who is:
 - (i) willing to act; and
 - (ii) not precluded by paragraph 1.3 from appointment to the Governance Board to be his alternate.
- (b) Any such alternate in the absence of his appointor:
 - (i) may attend and vote (or abstain from voting) as he sees fit at meetings of the Governance Board; and
 - (ii) shall (if present) constitute part of its quorum to the same extent as his appointor present in person.
- (c) An alternate shall exercise his own discretion and be responsible for his own actions when acting as a member of the Governance Board and shall not be the agent of his appointor.

2.6 Decisions of the Governance Board shall be taken by unanimous consent of all NRIL Appointees and SSWT Appointees present at a quorate meeting. Each Appointee shall be entitled to exercise one vote. In the event of deadlock, no one has a casting vote and the matter shall be referred to the Disputes Resolution Procedure.

2.7 Subject to paragraph 2.11 below, the Parties agree that they will be bound by the unanimous decision of the quorate Governance Board entitled to vote on a matter within its agreed functions.

2.8 Unless otherwise provided in this Agreement, in the event that a vote of the quorate Governance Board does not result in a unanimous decision of the Appointees present, subject to each Party being entitled to refer the matter to the Disputes Resolution Procedure, the status quo in relation to that matter shall be maintained.

2.9 For the avoidance of doubt, decisions of the Governance Board which affect the Ultimate Accountability of any Party will bind that Party only where that Party's representatives on the Governance Board are satisfied that the decision is compliant with its relevant Ultimate Accountabilities.

2.10

- (a) Delegated Authority to be granted by NRIL in connection with the operation of the Alliance shall be to the NRIL Appointees.
- (b) Subject to the terms of the Delegated Authority from NRIL, the NRIL Appointees shall be responsible for the sub delegation of their Delegated Authority from NRIL to the Alliance MD, the monitoring of the exercise by the Alliance MD of such authority sub delegated to him and the amendment or revocation of such authority. This shall not be a responsibility of the Governance Board as a whole.

2.11

- (a) Delegated Authority to be granted by SSWT in connection with the operation of the Alliance shall be to the SSWT Appointees.
- (b) Subject to the terms of the Delegated Authority from SSWT, the SSWT Appointees shall be responsible for the sub delegation of their Delegated Authority from SSWT to the Alliance MD, the monitoring of the exercise by the Alliance MD of such Delegated Authority and the amendment or revocation of such authority. This shall not be a responsibility of the Governance Board as a whole.

2.12 Where any instruction, notice, consent, approval or otherwise is to be given by a Party under this Agreement, such may be given:

- (a) in the case of NRIL, by any NRIL Appointee; and
- (b) in the case of SSWT, by any SSWT Appointee,

on behalf of that Party. The other Party and the Alliance MD and Alliance Participants shall be entitled to rely upon any such instruction, notice, consent, approval or otherwise as being given on behalf of that Party.

3 **Operation of the Alliance Governance**

3.1 Each Party shall use its reasonable endeavours to provide that:

- (a) its respective Appointees on the Governance Board participate actively, fully and positively and attend and participate in its meetings;
- (b) its respective Appointees attend such meetings as the other of them may call by reasonable prior notice in writing to the other. Such notice shall be given at least 10 Business Days prior to the intended date for the meeting (except in cases of emergency in which case the Party calling the meeting shall give such notice as is reasonable in the circumstances) and shall specify the intended date, time, location and agenda for the meeting; and
- (c) comprehensive and detailed minutes are taken of each meeting and are circulated to the Appointees on the Governance Board within 10 Business Days of the meeting.

Part 2: ALLIANCE MD AND ALLIANCE EXECUTIVE

4 **Formation and Composition of Alliance Executive**

4.1 The Parties shall procure that the Governance Board appoints an Alliance executive management team (**Alliance Executive**) initially consisting of 9 members comprising:

- (a) a single managing director (**Alliance MD**); and
- (b) such other executive members as shall be agreed by the Governance Board.

4.2

- (a) No person may at the same time be both a member of the Governance Board and a member of the Alliance Executive.
 - (b) No person may at the same time be both a member of the Governance Board and an Alliance Participant.
- 4.3 No person who is an employee of NRIL engaged in any Separated Activities or to whom an employee of NRIL engaged in any Separated Activities reports in respect of such Separated Activity may be the Alliance MD or otherwise a member of the Alliance Executive.
- 4.4 The Alliance MD shall have such authority from a Party as the Appointees of that Party on the Governance Board may from time to time delegate to him in writing. Any such delegation may by notice in writing to the Alliance MD be amended or revoked as the relevant Appointees on the Governance Board think fit. Such authority may by its terms permit, require or prohibit sub delegation as the relevant Appointees on the Governance Board think fit.
- 4.5 The Alliance MD shall report to the Governance Board as any members of the Governance Board may reasonably require in respect of the matters for which he is responsible in respect of the Alliance and otherwise generally in respect of the operation of the Alliance including:
 - (a) compliance with clause 4 and Schedule 2 and the other provisions of this Agreement,
 - (b) the discharge of the Ultimate Accountabilities of the respective Parties; and
 - (c) the exercise of such authority delegated to him from time to time (including its exercise by any person to whom he sub delegates the same or any part thereof) in accordance with paragraph 4.6(b).
- 4.6
 - (a) Subject to the terms of the Delegated Authority delegated to him from time to time, the Alliance MD may sub delegate any of the authorities that are delegated to him to such other member(s) of the Alliance Executive and/or to such Alliance Participants as he may specify and on such terms as he sees fit.
 - (b) Any such sub delegation:
 - (i) shall be recorded in writing;
 - (ii) may be amended or revoked as the Alliance MD thinks fit (and such amendment or revocation shall be similarly recorded); and
 - (iii) shall automatically be revoked if the Alliance MD's delegated authorities from the relevant Appointees on the Governance Board are amended or revoked so as no longer to authorise him to exercise (or, as the context may require, to sub delegate) the authority in question.
- 4.7 The initial members of the Alliance Executive shall be:
 - (a) Tim Shoveller (Alliance MD);
 - (b) Jim Morgan (Infrastructure and Deputy Alliance MD);
 - (c) Mark Steward (Operations);

- (d) Sam McCarthy (Commercial);
- (e) Kelly Barlow (HR);
- (f) Andy West (Finance);
- (g) Jake Kelly (Customer Service);
- (h) Christian Roth (Fleet);
- (i) Brian Cook (Safety).

5 Terms of Appointment of Alliance Managing Director

5.1

- (a) The Alliance MD's terms of appointment shall be set out in an agreed form tri-partite agreement (**Tri-Partite Agreement**) between each of the Alliance MD, NRIL and SSWT. The Tri-Partite Agreement shall provide that the Alliance MD shall have direct contractual obligations and duties to each of NRIL and SSWT for, amongst other things, the discharge of the Parties' respective Ultimate Accountabilities, including providing for relevant reporting lines in respect of the Ultimate Accountabilities.
- (b) The contractual obligations in the Tri-Partite Agreement shall establish clear lines of responsibility between each of NRIL, SSWT and the Alliance MD to ensure that the Parties' respective Ultimate Accountabilities can be properly discharged, overseen and audited.

6 Operational Responsibility of Alliance MD

6.1 The Alliance MD shall be responsible for the day to day running of the Alliance Activities in accordance with:

- (a) the terms of this Agreement;
- (b) the terms of the Tri-Partite Agreement;
- (c) his job description;
- (d) his objectives as set by the Governance Board;
- (e) the Delegated Authorities from the respective Appointees; and
- (f) the terms of his employment contract with his Employer.

6.2 The Alliance MD shall be the day-to-day controlling mind in relation to the operation of the Alliance Activities and shall make all business decisions in relation to the Alliance on a day-to-day basis subject to the terms, conditions and restriction contained in this Agreement and the authorities delegated to him by the Appointees. The Alliance MD shall have regard to the advice of the relevant members of the Alliance Executive when making his decisions.

6.3 The Alliance MD shall comply with due instructions received from Appointees on the Governance Board.

- 6.4 The Alliance MD shall attend meetings of the Governance Board unless otherwise requested by it.
- 6.5 The Alliance MD's responsibilities shall include:
- (a) implementing the strategic management of the Alliance decided by the Parties;
 - (b) implementing any instructions received from the Appointees on the Governance Board which are in accordance with this Agreement;
 - (c) reporting to and advising the Governance Board whenever requested in relation to the operation of the Alliance Activities;
 - (d) making recommendations to the Governance Board which will assist the Parties to achieve the objectives of the Alliance;
 - (e) performing all reporting obligations assigned to him under this Agreement;
 - (f) implementing, operating and monitoring the Parties' respective systems of internal control;
 - (g) attending quarterly stakeholder meetings in respect of the Wessex Route and assisting the development of appropriate relationships with other Operators on operational matters relating to such Operators' train services in the Wessex Route to assist in the discharge of NRIL's relevant Ultimate Accountabilities; and
 - (h) preparing and presenting the Alliance budget and Alliance business plan to the Governance Board in respect of each Year (other than the first Year) of the Alliance and revising them in accordance with any comments received from the Governance Board.
- 6.6 The Alliance MD shall be required to maintain reporting lines to the relevant Appointees on the Governance Board in relation to the discharge of the Ultimate Accountabilities of each Party.
- 6.7 Each Party undertakes to instruct the Alliance MD to operate the Alliance in accordance with this Agreement and in a manner which is consistent with:
- (a) the obligations of NRIL in respect of its network licence, any other licences held by NRIL and any Access Agreement to which NRIL is a party; and
 - (b) the obligations of SSWT in respect of its Franchise Agreement, any other licences held by SSWT and any Access Agreement to which SSWT is a party.

7 Referral by Alliance MD to Governance Board or Appointees

All matters in excess of the authority delegated to the Alliance MD and/or which are reserved for the decision of the Governance Board or the Appointees on it will be referred by the Alliance MD to the Governance Board or to the relevant Appointees as appropriate.

8 Alliance Executive

- 8.1 The other members of the Alliance Executive shall be required to assist the Alliance MD as he may reasonably request in the discharge of his obligations and duties.

8.2 The Alliance Executive meetings shall take place at such places and times as the Alliance MD shall determine.

Schedule 3

Employment and Pensions

[Redacted]

Schedule 4
Costs and Revenues
[Redacted]

Schedule 5

Change in Circumstances

1 Change in Circumstances

1.1 It is acknowledged and agreed that:

- (a) whether or not there has been or will be a Change in Circumstances; and
- (b) if it is considered that there has been or will be a Change in Circumstances, whether or not this Agreement can continue as a result; and
- (c) if so, if and how the Agreement and/or the NRIL Initial Baseline and/or the SSWT Initial Baseline and/or the Baseline Methodology and Assumptions may be amended and what further approvals, consents, derogations may be necessary to preserve the Alliance (in whole or in part) in light of such Change in Circumstances,

shall be matters for consideration and determination by the Governance Board in the first instance.

1.2 If at any time during the Alliance Term either Party (**Notifying Party**) considers that there has been or will be a Change in Circumstances (and the matter has been raised by or with the Governance Board but the Notifying Party is not satisfied with the manner in which the matter is being addressed by the Governance Board), the Notifying Party shall be entitled to issue a notice (**Change in Circumstances Notice**) to the other Party (**Notified Party**).

1.3 A Change in Circumstances Notice shall be made in writing copied to the Governance Board and shall set out:

- (a) details of the relevant Change in Circumstances; and
- (b) whether or not the Notifying Party considers that the Alliance is capable of being preserved (in whole or in part) and, if so, any proposed changes to this Agreement and/or the NRIL Initial Baseline and/or the SSWT Initial Baseline and/or the Baseline Methodology and Assumptions and any further approvals, consents or derogations required to address the relevant Change in Circumstances and allow the Alliance to continue (in whole or in part).

1.4 Within 20 Business Days of receipt of the Change in Circumstances Notice, the Notified Party shall respond to the Notifying Party in writing copied to the Governance Board (**Change in Circumstances Response**) setting out:

- (a) whether or not the Notified Party agrees that there has been or will be a Change in Circumstances;
- (b) whether or not the Notified Party considers that the Alliance is capable of being preserved (in whole or in part) by amending this Agreement and/or the NRIL Initial Baseline and/or the SSWT Initial Baseline and/or the Baseline Methodology and Assumptions and/or obtaining further approvals, consents or derogations and, if so, comments on, or counterproposals (if any) in response to, any proposals of the Notifying Party made pursuant to paragraph 1.3.

If the Notified Party fails to do so it shall be deemed to have agreed that there has been or will be a Change in Circumstances as set out in the relevant Change in Circumstances Notice.

- 1.5 Following receipt by the Notifying Party of a Change in Circumstances Response in circumstances where the Notified Party disagrees that there has been or will be a Change in Circumstances, the Parties shall meet and seek to agree whether or not there has been or will be a Change in Circumstances as expeditiously as possible.
- 1.6 If, after 20 Business Days following receipt by the Notifying Party of a Change in Circumstances Response pursuant to paragraph 1.4 the Parties have not agreed whether or not there has been or will be a Change in Circumstances, the matter shall be referred to the Disputes Resolution Procedure for resolution as a Deadlock Dispute.
- 1.7 If, after 20 Business Days following a referral pursuant to paragraph 1.6, the Disputes Resolution Procedure has not determined whether or not there has been or will be a Change in Circumstances the Parties shall be deemed to have agreed on such date that there has been or will be a Change in Circumstances as set out in the relevant Change in Circumstances Notice.
- 1.8 If, in respect of any Change in Circumstances, neither:
- (a) the Notifying Party sets out in the relevant Change in Circumstances Notice; nor
 - (b) the Notified Party sets out in the relevant Change in Circumstances Response,
- that they consider the Alliance to be capable of being preserved (in whole or in part) by amending this Agreement and/or the NRIL Initial Baseline and/or the SSWT Initial Baseline and/or the Baseline Methodology and Assumptions and/or obtaining further approvals, consents or derogations, the Parties shall be deemed to have agreed on the date of the relevant Change in Circumstances Response that the Alliance is not so capable of being preserved.

2 Remediable Change in Circumstances

- 2.1 In circumstances where it has been agreed that there has been or will be a Change in Circumstances and either:
- (a) the Notifying Party sets out in the relevant Change in Circumstances Notice; or
 - (b) the Notified Party sets out in the relevant Change in Circumstances Response,
- that they consider the Alliance to be capable of being preserved (in whole or in part) by amending this Agreement and/or the NRIL Initial Baseline and/or the SSWT Initial Baseline and/or the Baseline Methodology and Assumptions and/or obtaining further approvals, consents or derogations, no later than 20 Business Days after the date on which it was agreed that there has been or will be a Change in Circumstances, the Parties shall meet and as expeditiously as possible seek to agree the necessary amendments to this Agreement and/or the NRIL Initial Baseline and/or the SSWT Initial Baseline and/or the Baseline Methodology and Assumptions on the basis that (to the extent reasonably practicable having regard to the relevant Change in Circumstances) neither Party is put in any worse or any better position than it would have been had the Change in Circumstances not occurred and seek to identify and obtain any necessary further approvals, consents or derogations.
- 2.2 If the Parties have not agreed any amendments to the Alliance Agreement and/or the NRIL Initial Baseline and/or the SSWT Initial Baseline and/or the Baseline Methodology and Assumptions or obtained the identified approvals, consents or derogations (if any) pursuant to paragraph 2.1 by the date falling 60 Business Days after the date of the relevant Change in

Circumstances Notice, the matter shall be referred to the Disputes Resolution Procedure for resolution.

- 2.3 Any amendments to the Agreement and/or the NRIL Initial Baseline and/or the SSWT Initial Baseline and/or the Baseline Methodology and Assumptions agreed by the Parties or pursuant to the Disputes Resolution Procedure, as the case may be, shall take effect from the date on which the relevant Change in Circumstance occurred or (if it has not yet occurred) the date on which it is due to occur. Where relevant the Parties shall also agree any reconciliation amount to be paid by one Party to the other as a result of any such agreed change in the NRIL Initial Baseline and/or the SSWT Initial Baseline which the Parties have agreed will have retrospective effect.
- 2.4 If, after 20 Business Days following a referral pursuant to paragraph 2.2, the Disputes Resolution Procedure has not determined the necessary amendments to this Agreement and/or the NRIL Initial Baseline and/or the SSWT Initial Baseline and/or the Baseline Methodology and Assumptions and/or any balancing payment (if required) to address the relevant Change in Circumstances and/or the identified approvals, consents or derogations have not been obtained (**Change in Circumstances Longstop Date**) then paragraph 3 shall apply.

3 Termination

If it is agreed or deemed pursuant to paragraph 1 that there has been or will be a Change in Circumstances and either:

- 3.1 the Parties agree or it is deemed that the Alliance cannot be preserved (in whole or in part) by amending this Agreement and/or the NRIL Initial Baseline and/or the SSWT Initial Baseline and/or the Baseline Methodology and Assumptions and/or obtaining further approvals, consents or derogations; or
- 3.2 one or both of the Parties consider that the Alliance can be preserved (in whole or in part) by amending this Agreement and/or the NRIL Initial Baseline and/or the SSWT Initial Baseline and/or the Baseline Methodology and Assumptions and/or obtaining further approvals, consents or derogations, but the necessary amendments have not been agreed or the identified approvals, consents or derogations have not been obtained by the Change in Circumstances Longstop Date;

the Agreement will automatically terminate on the earlier of:

- (a) the Change in Circumstances Longstop Date; and
- (b) 30 Business Days after the date on which the Parties agree or it is deemed that the Alliance cannot be preserved (in whole or in part) by amending this Agreement and/or the NRIL Initial Baseline and/or the SSWT Initial Baseline and/or the Baseline Methodology and Assumptions and/or obtaining further consents, derogations or approvals,

or on such other date as the Parties may agree, in each case, subject to and in accordance with Clause 13.

4 Expedited Process

- 4.1 If a Party considers that there has been or will be a Change in Circumstances and it further considers (acting reasonably) that the potential consequences of such a Change in

Circumstances will be so serious and imminent that the matter needs to be dealt with by the Parties on an urgent basis:

- (a) the preceding paragraphs shall apply with the following amendments:
 - (i) in paragraph 1.3 adding a new sub paragraph (c) reading "a prominent notice specifying that the matter be dealt with on an urgent basis in accordance with paragraph 4 of this Schedule";
 - (ii) in paragraph 1.4 the reference to "20 Business Days" shall be replaced with "2 Business Days";
 - (iii) in paragraph 1.6 the reference to "20 Business Days" shall be replaced with "1 Business Days";
 - (iv) in paragraph 1.7 the reference to "20 Business Days" shall be replaced with "2 Business Days";
 - (v) in paragraph 2.1 the reference to "20 Business Days" shall be replaced with "2 Business Days";
 - (vi) in paragraph 2.2 the reference to "20 Business Days" shall be replaced with "8 Business Days";
 - (vii) in paragraph 2.4 the reference to "20 Business Days" shall be replaced with "2 Business Days", and
- (b) the relevant time periods in Schedule 7 will be abridged proportionally in accordance with the new time period set in paragraph 4.1(a)(iv) and/or 4.1(a)(vii) (as the case may be).
- (c) For the avoidance of doubt, if the Parties have not agreed any amendments to the Alliance Agreement and/or the NRIL Initial Baseline and/or the SSWT Initial Baseline and/or the Baseline Methodology and Assumptions or obtained the identified approvals, consents or derogations (if any) pursuant to paragraph 2.1 by the date falling 10 Business Days after the date of the relevant Change in Circumstances Notice, either Party will be entitled to terminate this Agreement.

Schedule 6

Handover and Unwind

Part 1- Handover

1 Operation of the Alliance

1.1 Each Party shall:

- (a) procure that the Alliance MD manages the Alliance; and
- (b) exercise its rights and perform its obligations under this Agreement,

during the Alliance Term with the intent that:

- (i) NRIL and one or more Successor Operators (if they do so agree) would be in a position to enter into new alliance arrangements on a similar basis to the arrangements created by this Agreement; and
- (ii) the Alliance can be unwound on reasonable notice at any time during the Alliance Term without interruption to the operation of the Franchise Services or the Wessex Route infrastructure.

1.2 The obligation under paragraph 1.1 shall include the requirement for each Party (to the extent that it is within its control) to:

Premises

- (a) procure that, to the extent that Alliance Joint Facilities would reasonably continue to be required by the other Party during the Transition Period, occupy and operate such Alliance Joint Facilities during the Alliance Term in a manner which allows for the continued occupation of such premises or facilities by the other Party for that purpose during the Transition Period;

Assets

- (b) procure that, to the extent that tangible moveable assets would reasonably continue to be required by the other Party during the Transition Period, use such tangible moveable assets during the Alliance Term in a manner which would not prevent the other Party from using such tangible moveable assets for that purpose during the Transition Period;

Contracts

- (c) where joint procurement occurs during the Alliance Term, ensure that where practicable, separate contracts are entered into with each of the Parties so that if the Alliance was unwound, each Party would be able to continue to discharge the obligations and receive the benefits of its contract;
- (d) where there are not separate contracts in accordance with paragraph 1.2(c), procure that, to the extent that the benefit of any contract between a Party and a third Party in relation to any Alliance Activity would reasonably be required by the other Party during the Transition Period, such benefit is capable of being assigned or otherwise made available to the other Party (or to its nominee) for that purpose, without the

consent of and without requiring a further payment to be made to the third Party or to any other person;

Intellectual Property

- (e) procure that, to the extent that Intellectual Property would reasonably continue to be required by the other Party during the Transition Period, any intellectual property right used by such Party in connection with any Alliance Activity but which is owned by a third party is to the extent that it is reasonably able, capable of being transferred or sub-licensed to the other Party for that purpose and without the consent of and without requiring a payment to be made to the relevant third Party or to any other person;

Employees

- (f) procure that, to the extent that employees of a Party who are or who were Alliance Participants may be required to provide support, services and/or other assistance to the other Party during the Transition Period, that such employees will be available to provide support, services and/or other assistance to the other Party for that purpose during the Transition Period;

Records

- (g) procure that, to the extent that they would reasonably be required by the other Party during the Transition Period, the Records are maintained in a manner which ensures that the other Party is able to have access to or delivery of the Records; and

IT Systems

- (h) procure that, to the extent that Designated IT Systems would reasonably continue to be required by the other Party during the Transition Period, operate such Designated IT Systems during the Alliance Term in a manner which allows for the continued use of such Designated IT Systems by the other Party for that purpose during the Transition Period;

Information

- (i) procure that all Records that are reasonably requested by or on behalf of the SoS or any other Competent Authority for the purposes of or in connection with letting a train operating company franchise are supplied to the SoS or other Competent Authority as soon as reasonably practicable. To the extent that the Records requested contain confidential information relating to the other Party, clause 14.4(d) of the Agreement shall apply and the Party disclosing the confidential information to the SoS or other Competent Authority shall be deemed to be required to disclose the confidential information.

1.3 The obligation under paragraph 1.1 shall include the requirement for NRIL to provide such reasonable assistance to SSWT in preparing the Handover Package as is reasonably requested by SSWT from time to time, to the extent that the contents of the Handover Package relate to any of the Alliance Activities.

2 Unwind Plan

2.1 Within 90 Business Days of the Commencement Date, NRIL and SSWT shall procure that the Alliance MD, assisted by the Alliance Executive, prepares and that the Governance Board

agrees a comprehensive plan describing the process by which the Alliance can be separated and unwound on reasonable notice at any point during the Alliance Term to achieve the Free Standing Principle without interruption to the operation of the Franchise Services or the Wessex Route infrastructure (**Unwind Plan**).

Principles

2.2 The Unwind Plan shall reflect the following principles:

- (a) throughout the Unwind Period, a safety validation process shall be undertaken by each Party to ensure that all risks continue to be managed to as low as reasonably practicable levels;
- (b) the Ultimate Accountabilities of each of the Parties shall be reflected and respected;
- (c) each of the Parties shall comply with Law and discharge its Ultimate Accountabilities throughout the Unwind Period;
- (d) Alliance Joint Facilities owned or leased by a Party which are used for the purposes of the Alliance or in connection with the provision of the Alliance Activities will remain owned or leased by such Party following the unwind of the Alliance;
- (e) tangible moveable assets owned or leased by a Party which are used for the purposes of the Alliance or in connection with the provision of the Alliance Activities will remain owned or leased by such Party following the unwind of the Alliance;
- (f) contracts entered into by a Party for the purposes of the Alliance or for or in connection with the provision of the Alliance Activities will remain with such Party following the unwind of the Alliance;
- (g) Intellectual Property owned by or licensed by a third party to a Party which is used for the purposes of the Alliance or in connection with the provision of the Alliance Activities will remain vested in such Party following the unwind of the Alliance;
- (h) each Alliance Participant will remain employed by the Relevant Employing Entity;
- (i) Records owned by a Party which are kept for the purposes of the Alliance or in connection with the provision of the Alliance Activities will remain owned by such Party following the unwind of the Alliance; and
- (j) Designated IT Systems owned by a Party or leased by a third party to a Party will remain owned or leased by such Party following the unwind of the Alliance.

Unwind Plan

2.3 The Unwind Plan shall include, as a minimum, the following matters:

- (a) details of Alliance Joint Facilities which are Shared Resources, which Party owns such Alliance Joint Facilities and any steps which would need to be taken by the other Party to seek alternative premises or facilities (and anticipated timescales);
- (b) details of any tangible moveable assets which are Shared Resources, which Party owns each tangible moveable asset and the steps which would need to be taken by the other Party to source a replacement tangible moveable asset (and anticipated timescales);

- (c) a list of any contracts which are Shared Resources and details of the Parties to such contract (and which Party is Party to the contract) and any steps which would need to be taken to provide the benefit of such contracts to the other Party or for such party to obtain a suitable replacement contract;
 - (d) details of any Intellectual Property which is a Shared Resource, which Party owns or has a licence or sub-licence of such Intellectual Property rights and any steps which would need to be taken to provide the benefit of such Intellectual Property rights to the other Party or for the Party to obtain suitable replacement Intellectual Property;
 - (e) the Alliance Organisational Chart;
 - (f) each Free Standing Organisational Chart;
 - (g) details of the steps which would need to be taken and the organisational changes which would be required by each Party to transition to the organisational structure set out in its Free Standing Organisational Chart;
 - (h) arrangements for the provision by each Party to the other Party of access to the first Party's Records which are Shared Resources to the extent required to facilitate the safe and orderly unwinding of the Alliance arrangements or thereafter, together with any steps which would need to be taken to provide access to or a copy of any such Records to the other Party;
 - (i) details of how authority granted to the Governance Board and Alliance MD by the individual Parties would be revoked and the key steps which will need to be undertaken to do so (and anticipated timescales);
 - (j) details of any services which are provided by one Party to the other Party, how reliance on such services would be unwound and the key steps which would need to be undertaken to do so (and anticipated timescales); and
 - (k) details of the information, cooperation and/or support which either Party would require the other Party to provide during the Transition Period (including any Transitional Services).
- 2.4 NRIL and SSWT shall procure that the Unwind Plan, is reviewed, updated and approved by the Governance Board regularly during the Alliance Term and in any event:
- (a) no less than once in every six calendar months;
 - (b) following any material organisation change; or
 - (c) following any change in the scope of the Alliance Activities.

Part 2 – Implementation of the Unwind Plan

3 Termination or Expiry of the Agreement and Implementation of the Unwind Plan

- 3.1 Subject to paragraph 5, the Parties shall implement the Unwind Plan to achieve the Free Standing Principle:

- (a) (if this Agreement expires in accordance with clause 13.1(b) but subject to paragraph 3.2) on the Expiry Date (but no sooner) or, if it is not possible or practicable to unwind the Alliance to achieve the Free Standing Principle on the Expiry Date, as soon as reasonably practicable thereafter; or
 - (b) (if this Agreement is terminated in accordance with clause 13.2, 13.3, 13.4 or 13.5) as soon as reasonably practicable following the date on which this Agreement is so terminated.
- 3.2 If the SoS exercises her right under paragraph 1.4 of Schedule 18 of the Franchise Agreement to continue the Franchise Agreement for up to an additional seven Reporting Periods (as defined in the Franchise Agreement), the Parties shall meet and shall seek to agree whether:
 - (a) to continue to implement the Unwind Plan to achieve the Free Standing Principle on the date on which this Agreement would have expired but for the exercise by the SoS of her rights under paragraph 1.4 of Schedule 18 of the Franchise Agreement; or
 - (b) to make amendments to the implementation of the Unwind Plan so that the Alliance is unwound to achieve the Free Standing Principle on such other date as may be agreed between the Parties provided that such date falls during the period between:
 - (i) the date on which this Agreement would have expired but for the exercise by the SoS of her rights under paragraph 1.4 of Schedule 18 of the Franchise Agreement; and
 - (ii) the new Expiry Date,in each case, inclusive.
- 3.3 In relation to Alliance Participants the provisions of paragraphs 9.1 to 14 of Schedule 3 shall apply upon unwinding of the Alliance.
- 4 **Unwind Period**
- 4.1 Throughout the period in which the Unwind Plan is being implemented (including during the Transition Period, if applicable) the (**Unwind Period**), the provisions of paragraph 4.2 shall apply.
- 4.2 The Parties shall meet regularly throughout the Unwind Period to discuss:
 - (a) progress in relation to the implementation of the Unwind Plan and shall, if applicable, seek to agree such additional steps as may be necessary to reach the Final Unwind Date within the timescales set out in paragraph 3.1; and
 - (b) whether the Free Standing Principle has been achieved and whether the Parties are able to certify that the Final Unwind Date has been reached in accordance with paragraph 4.4.
- 4.3 If a Party (acting reasonably) believes that the Free Standing Principle has been achieved, it shall notify the other Party in writing within 5 Business Days. Both Parties shall meet within 10 Business Days of service of the notice and shall seek to agree whether the Free Standing Principle has been achieved.

- 4.4 If both Parties agree that the Free Standing Principle has been achieved for each Party, the Parties shall issue a certificate to this effect. The Final Unwind Date shall be such date as the Parties both certify in writing that the Free Standing Principle has been achieved.
- 4.5 If the Parties issue a certificate pursuant to paragraph 4.4, from the moment that such certificate is issued the Parties shall have no further obligations under this Schedule 6.
- 4.6 If the Parties are unable to agree pursuant to paragraph 4.3 that the Free Standing Principle has been achieved, the Parties shall refer the matter to the SoS for resolution and the decision of the SoS shall be binding on both Parties.

5 **Alliance with Successor Operator**

5.1 Where:

- (a) not less than 12 months prior to the Expiry Date the SoS serves a notice under paragraph 4 of Schedule 15.1 to the Terms to the effect that she intends to invite persons (including SSWT) to tender for the right to provide all or some of the Franchise Services under a franchise agreement (or alternatively to enter into a franchise agreement in respect of the Franchise Services without having gone through a tendering process) on the basis that the Successor Operator will be required to enter into arrangements with NRIL which would avoid the need for the Alliance to be unwound prior to the Expiry Date in accordance with paragraph 3.1(a);
- (b) NRIL confirms that it is satisfied that it has reached agreement regarding the terms of the relevant arrangements, then NRIL and SSWT shall not unwind the Alliance to achieve the Free Standing Principle.

6 **Run Off Insurance Cover**

Where, following the Final Unwind Date, either Party (or any Affiliates for its benefit) maintains in place or renews its insurance cover referable to all or part of the period between the Commencement Date and the Final Unwind Date and it is practicable to include the other Party within the scope of such cover, it shall notify the other Party of its intention to do so, the terms of the cover and any additional costs that will be incurred by including the other Party and, if requested by, and at the cost of the other Party, shall ensure (or, as the context may require, shall procure that such Affiliate ensures) to the maximum extent reasonably practicable that such policy or policies of insurance continue to comply with the requirements of clause 10.2(b) or 10.2(c) (as applicable).

Part 3– Unwind Costs

7 **Costs of Unwinding the Alliance**

- 7.1 Subject to clause 10.5 each Party shall be responsible for half of the Non-Default Unwind Costs. For the purposes of this paragraph 7, where there is a difference between the Non-Default Unwind Costs of one Party and the Non-Default Unwind Costs of the other Party, the difference between the level of the Parties' respective Unwind Costs shall be known as the **Unwind Cost Difference**.
- 7.2 Subject to clause 10.5, if this Agreement is terminated in accordance with clause 13.4 (Other Rights of Termination), clause 13.5 (Automatic Termination) or expires in accordance with clause 13.1(b) and an Unwind Cost Difference arises, the Party having incurred the lower

amount of Non-Default Unwind Costs shall pay half of the Unwind Cost Difference to the Party having incurred the higher amount of Unwind Costs, in accordance with paragraph 8.

7.3 Subject to clause 10.5, if this Agreement is terminated in accordance with clause 13.2 (NRIL Event of Default):

- (a) if an Unwind Cost Difference arises, the Party having incurred the lower amount of Non-Default Unwind Costs shall pay half of the Unwind Cost Difference to the Party having incurred the higher amount of Unwind Costs; and
- (b) NRIL shall pay to SSWT an amount equivalent to the aggregate Default Unwind Costs which have been incurred by SSWT and shall bear its own Default Unwind Costs,

in each case in accordance with paragraph 8.

7.4 Subject to clause 10.5, if this Agreement is terminated in accordance with clause 13.3 (SSWT Event of Default):

- (a) if an Unwind Cost Difference arises, the Party having incurred the lower amount of Non-Default Unwind Costs shall pay half of the Unwind Cost Difference to the Party having incurred the higher amount of Unwind Costs; and
- (b) SSWT shall pay to NRIL an amount equivalent to the aggregate Default Unwind Costs which have been incurred by NRIL and shall bear its own Default Unwind Costs,

in each case in accordance with paragraph 8.

7.5 Where applicable, the Parties shall be entitled to set off payment due to one another under:

- (a) paragraphs 7.3(a) and 7.3(b); or
- (b) paragraphs 7.4(a) and 7.4(b).

8 Payment and Interim Payment

8.1 Not later than 20 Business Days following the Final Unwind Date, the Parties shall seek to agree as expeditiously as possible the amount of the final payment required to be made pursuant to paragraph 7 (taking into account any Interim Payments already made by the Parties during the Unwind Period).

8.2 If the Parties are able to agree the amount of the final payment required to be made pursuant to paragraph 7, paragraphs 8.5 to 8.7 shall apply.

8.3 If the Parties are unable to agree the amount of the final payment required to be made pursuant to paragraph 7, the matter shall be referred to the Disputes Resolution Procedure for resolution.

8.4 If, after 20 Business Days following a referral pursuant to paragraph 8.3, the Disputes Resolution Procedure has not determined the amount of the final payment required to be made pursuant to paragraph 7, the matter shall be referred for determination by an expert as contemplated by paragraph 1.4(b) of Schedule 7.

- 8.5 Not later than 10 Business Days following agreement or determination of the amount of the final payment required pursuant to paragraph 7, the Party to whom payment is to be made shall submit to the paying Party an invoice for the total amount of that payment.
- 8.6 Not later than 20 Business Days after the date of receipt by the paying Party of an invoice submitted in accordance with paragraph 8.5 (**Payment Date**), the paying Party shall pay to the Party to whom payment is to be made the amount specified in the invoice (except to the extent that such invoice contains a manifest error, in which case the paying Party shall not be required to pay the amounts represented by such manifest error).
- 8.7 From the Payment Date until payment of the invoice amount is received in full by the Party to whom payment is to be made, interest will accrue on the unpaid amount (save for any amounts represented by manifest error not paid by the paying Party) at the Interest Rate.
- 8.8 **Interim payments**
- (a) No later than 15 Business Days following the end of each Interim Period, the preceding provisions of paragraphs 8.1 to 8.7 (both inclusive) shall mutatis mutandis apply to determine the amount of the Interim Payment to be made between the Parties and its invoicing and payment (including as to the accrual of interest at the Interest Rate) but with the following modifications:
- (i) the payment to be made between them (**Interim Payment**) shall be determined in accordance with paragraph 7 but applying it only to the Unwind Cost Difference (whether relating to Non-Default Unwind Costs or to Default Unwind costs, as the context may require) relating to that Interim Period;
- (ii) no account shall be taken of any earlier Interim Payment previously made but any amount carried forward under paragraph 8.8(b) shall adjust the amount otherwise payable in respect of that Interim Period in accordance with the terms of that paragraph; and
- (iii) subject to paragraph 8.8(b), any Interim Payment due shall be payable 20 Business Days after receipt of the relevant invoice (**Interim Payment Date**).
- (b) If the amount otherwise agreed or determined as the Interim Payment for an Interim Period (after adjusting for all sums carried forward by virtue of this paragraph 8.8(b) in respect of the preceding Interim Period) is less than £250,000 then the sum shall not be payable on that occasion but shall be carried forward as an adjustment to the Interim Payment otherwise payable in respect of the next Interim Period as follows:
- (i) by adding the amount carried forward to the amount otherwise payable in respect of that later Interim Period (if the paying Party is or would otherwise be the same in respect of the two Interim Payments but for this paragraph 8.8(b)); or
- (ii) by deducting the amount carried forward from the amount otherwise payable in respect of that later Interim Period (if the paying Party is or would otherwise be different in respect of the two Interim Payments but for this paragraph 8.8(b)).
- (c) For the avoidance of doubt, no deferral under paragraph 8.8(b) shall apply to the final payment due under paragraph 7 on or after the Final Unwind Date and its whole amount (whether or not less than £250,000) shall be payable.

Part 4– Transfer to Successor Operator

9 Successor Operator Issue

9.1 The Parties acknowledge and agree that:

- (a) where the Franchise Agreement terminates before the end of the Unwind Period, the Successor Operator will need to assume at least some of SSWT's rights and obligations under this Agreement;
- (b) where the Franchise Agreement is terminated on short notice, the Successor Operator may need to assume the majority (if not all) of SSWT's rights and obligations under this Agreement; and
- (c) a framework needs to be designed to ensure that the Successor Operator will be in a position to exercise or perform those rights and obligations as required,

(Successor Operator Issue).

9.2 As soon as reasonably practicable after the Commencement Date, the Parties shall seek to agree a framework to deal with the Successor Operator Issue, which shall include (as a minimum) agreeing the following matters:

- (a) the rights and obligations of SSWT under this Agreement that will need to be assigned, novated or otherwise transferred to the Successor Operator in the envisaged scenarios (**Required Rights and Obligations**);
- (b) the most appropriate mechanism for assigning, novating or otherwise transferring the Required Rights and Obligations to the Successor Operator and the terms on which such assignment, novation or transfer will be made;
- (c) the allocation of costs, expenses, losses and liabilities (including Unwind Costs) arising out of or in connection with this Agreement as between SSWT and the Successor Operator (and/or NRIL, if required);
- (d) any necessary or reasonably desirable amendments to this Agreement or any related document to give effect to such framework; and
- (e) any further approvals, consents or derogations (or amendments to any existing approvals, consents or derogations) which may be necessary or reasonably desirable in order to facilitate the operation and implementation of such framework.

9.3 The Parties agree that a representative of the SoS shall be invited to all meetings in relation to the design of the framework to deal with Successor Operator Issue, and the Parties agree to have due regard to the views of the SoS in respect of the design of such framework.

9.4 Each Party shall provide within a reasonable timeframe such information and support as is reasonably requested by the other Party or the SoS from time to time in connection with the resolution of the Successor Operator Issue.

9.5 If and when the Parties are satisfied that the Successor Operator Issue has been satisfactorily resolved and all matters in relation to the framework designed to deal with the Successor Operator Issue have been agreed (and SSWT has received a confirmation from SoS that she

is equally satisfied), the Parties shall (subject to the SoS effecting the agreed amendments to related documents to which she is a Party) effect such amendments to this Agreement and any related document as they have agreed.

- 9.6 If, after 90 Business Days of the Commencement Date, either Party is not satisfied that the Successor Operator Issue been resolved satisfactorily (acting reasonably and taking into account the views of the SoS) and all matters in relation to the Successor Operator Issue agreed, the matter shall be referred to the Disputes Resolution Procedure as a Deadlock Dispute, provided that the right of either Party to terminate this Agreement in the event such Deadlock Dispute is not resolved shall lapse on the date falling 150 Business Days after the Commencement Date (**Successor Operator Issue Longstop Date**).

Schedule 7

Dispute Resolution

1 Disputes Procedure

- 1.1 If there arises any Dispute between NRIL and SSWT which cannot be resolved at an operational level, then the following provisions shall apply:
- (a) the matter shall be referred on the written request of either SSWT or NRIL to the Governance Board, with a view to the Governance Board endeavouring to resolve such Dispute;
 - (b) the Governance Board shall meet within 10 Business Days of the date of the written request for the purpose of endeavouring to resolve such Dispute subject to the further provisions of this Schedule.
- 1.2 If the Governance Board has not resolved a Dispute within 10 Business Days of the date on which they first met pursuant to paragraph 1.1, then the following provisions shall apply:
- (a) on the written request of either SSWT or NRIL each of them shall within 5 Business Days after the date of service of such written request appoint a designated representative (being a senior member of staff of the Party or one of its Affiliates who does not devote substantially all of his or her time to the Alliance);
 - (b) the designated representatives shall meet within 10 Business Days of whichever is the later of their respective appointments for the purpose of endeavouring to resolve such Dispute subject to the further provisions of this Schedule.
- 1.3 The following provisions shall apply to any attempt to resolve a Dispute made pursuant to paragraphs 1.1 and 1.2:
- (a) the members of the Governance Board and/or designated representatives may meet as often as they reasonably deem necessary in order to gather and furnish all information with respect to the matter in issue which they believe to be appropriate and relevant in connection with its resolution. The members of the Governance Board and/or the designated representatives will discuss the problem and negotiate in an effort to resolve the Dispute without the necessity of any formal proceedings (where available) relating thereto; and
 - (b) during the course of such negotiation, all reasonable requests made by one Party to the other for information will be honoured in order that the members of the Governance Board or the designated representatives (as the case may be) may be fully advised of the relevant facts. The specific format for such discussions will be left to the discretion of the members of the Governance Board or the designated representatives (as the case may be) and may include the preparation of agreed statements of fact or written statements of position furnished to the other Party.
- 1.4 NRIL and SSWT may at any time jointly decide to:
- (a) appoint an independent expert to provide a non-binding written opinion (**Expert's Opinion**) to the Governance Board and/or the designated representatives (as the case may be) relating to the Dispute; or
 - (b) refer a Dispute to an independent expert for binding determination.

If SSWT and NRIL are unable to agree the identity of such expert and/or the terms of appointment then such identity and/or terms shall be determined by an application by either Party to the President of the Law Society.

- 1.5 On receipt of an Expert's Opinion, the Governance Board or the designated representatives (as the case may be) shall attempt to resolve such Dispute in accordance with the provisions of paragraph 1.3 with due consideration being given to the Expert's Opinion although such report shall not be binding on the Governance Board or the designated representatives (as the case may be).
- 1.6 In making a determination pursuant to paragraph 1.4(b), the independent expert shall act as expert and not as arbitrator, and his decision as to any matter referred to him for determination shall, in the absence of manifest error or fraud, be final and binding in all respects on the Parties and shall not be subject to question on any ground whatsoever.
- 1.7 For the avoidance of doubt, a failure to agree under this paragraph 1 shall not in itself constitute a Deadlock Dispute.

2 Legal Disputes

- 2.1 This paragraph 2 shall apply in respect of a Legal Dispute.
- 2.2 Save in respect of an application for urgent injunctive relief, no Party may commence any court proceedings in relation to any Legal Dispute until it has attempted to settle the Legal Dispute in accordance with paragraphs 1.1 and 1.2 and the designated representatives have not resolved the Legal Dispute within fifteen (15) Business Days of the last available date on which they are first required to meet pursuant to paragraph 1.2, the other Party has failed to participate in the attempt to resolve the Legal Dispute in accordance with paragraphs 1.1 and 1.2 or such attempt to resolve the Legal Dispute has otherwise terminated, provided that the right to issue proceedings is not prejudiced by a delay.

3 Deadlock Disputes

- 3.1 This paragraph 3 shall apply in respect of a Deadlock Dispute unless otherwise expressly provided in this Agreement.
- 3.2 If the designated representatives have not resolved the Deadlock Dispute within 15 Business Days of the date on which they first met pursuant to paragraph 1.2, the other Party has failed to participate in the attempt to resolve the Deadlock Dispute in accordance with paragraphs 1.1 and 1.2 or such attempt to resolve the Deadlock Dispute has otherwise terminated, unless this Agreement provides otherwise in relation to the relevant Deadlock Dispute, either Party shall be entitled to terminate this Agreement pursuant to clause 13.

4 Agreement Continues

- 4.1 The Parties agree to continue performing their respective obligations under this Agreement while any Deadlock Dispute is being resolved unless and until this Agreement expires or is terminated in accordance with its terms.

Schedule 8

Data Sharing Agreement

[Redacted]

Schedule 9

Alliance Activities

Part 1– NRIL Activities

A. Operational services

1. Principles and Standards:

- Manage application and compliance to Operational Standards.
- Contribute to the development and improvement of new and existing Standards.

2. Operational Control:

- Deliver current operation of real time railway to include STP and VSTP.
- Participate and cooperate in national seasons management overview conference call.

3. Operational Safety:

- Agree joint safety improvement plans with stakeholders.
- Provide safety information through key safety performance indicators and identify action plans for resolution.
- Pro-actively disseminate key safety information to key stakeholders.

4. Operational Competency:

- Apply national framework to manage safety critical competency.

5. Level Crossings:

- Operate and maintain crossings.
- Undertake risk assessment and inspection.
- Manage local project delivery.
- Undertake asset management.

6. Stations and Customer Services:

- Develop and deliver route/station plans to deliver business intent.
- Provide clear articulation of challenges, successes and development opportunities to allow sharing of best practice, and highlight areas of common interest across routes.
- Prioritise route response to local needs, and develop solutions, which are cognisant of the national position.
- Operate, maintain and enhance Managed Stations.
- Manage franchised estate, which best meets customer needs and delivers Network Rail regulatory requirements.
- Locally sponsor and deliver schemes within national programmes.
- Manage and engage customers to agree claims settlement to meet long term business needs.
- Lead and deliver service to customers.

7. Operational Planning:

- Sponsor and fund modelling work necessary to provide assurance on the effect of material changes to Access Plans.
- Deliver Timetable Change Risk Assessment Group responsibilities to the timelines required by the Standard.

8. Operational Performance:

- Deliver all performance processes and contractual outputs.
- Brief and train relevant performance processes.
- Resolve assurance recommendations.
- Seek approval for any non-compliance with recognised key processes.
- Define and maintain local processes.
- Manage competence development and people performance.
- Undertake Route/TOC and FOC level analysis and reporting.

- Develop local Route/TOC and FOC sub-targets within the framework of the national targets.
- Author Route level KPI and stakeholder commentaries.
- Secure PPM reconciliation and sign-off.
- Share best practice reporting, analysis and performance improvement.
- Assess and quantify performance improvement schemes and risks.
- Deliver bi-lateral JPIP and related performance planning.
- Attribute delays at required levels of granularity.

B. Maintenance services

1. Maintenance Strategies:

- Input into development of maintenance strategies.
- Develop plans to implement these strategies to attain functional and Route goals.

2. Productivity & Efficiency:

- Develop plans to implement productivity and efficiency programmes to attain function & Route goals.
- Identify & share opportunities for further productivity & efficiency programmes.
-

3. Business Plans:

- Develop Business Plans to meet functional and Route objectives.

4. Asset Performance and Reliability Improvement:

- Develop plans to implement programmes.
- Identify and share opportunities for further improvements to programmes.

5. Maintenance delivered renewals & enhancements:

- Develop plans to implement programmes.
- Identify and share opportunities for further improvements.
- Undertake detailed development including cost estimation for the implementation of projects and programmes of works
- Develop plans to implement strategies to attain functional and Route goals.
- Implement projects and programmes of works utilising national systems for management information.
- Implement standards and processes for safe delivery of in-house works.

6. Maintenance National Programmes:

- Utilise the national services and emergency response services.
- Utilise national contracts and support improvements to these contracts where the services have been devolved.
- Define the delivery programme including scope and prioritisation of works.
- Support improvements in the delivery of national services.

7. Deliver services and provide emergency response support for elements of:

- Property
- Civils

8. Safety and Assurance:

- Comply with the compliance framework.
- Identify risks and mitigation measures.
- Maintain Safety and Compliance Plans that align with policy and assurance framework.
- Provide safety leadership.
- Implement Cultural Change Programmes.
- Develop and implement Safety Improvement Programmes.
- Support the development of safety standards.
- Manage stakeholder relationships with TOCs/FOCs and ORR.
- Support implementation of the compliance framework.

- Define and implement additional compliance checks based on Route risks and critical controls.
- Report safety and compliance indicators.
- Identify improvements in mitigation measures and controls.

C. Safety and sustainable development

1. General

- Enable all line managers to be accountable for safety.
- Implement a culture where staff are able to report safety issues.
- Produce analyses of gaps in performance against agreed strategies.
- Define a Safety and Sustainable Development Improvement Plan to address the gaps in performance and key risks.
- Allocate appropriate resources to implement such plans.
- Report progress in implementing such improvement plans
- Implement company-wide standards and management systems
- Report safety and SD performance to the Centre.
- Work with customers to reduce those risks we share with them.
- Implement a programme of safety tours for managers.
- Provide routine occupational health advice to its employees.
- Investigate all but the most serious of incidents.
- Implement actions arising from audits, enforcement notices and safety tours.

2. Work jointly with the Centre to:

- Develop appropriate strategies for safety, wellness and SD.
- Develop improvement plans on issues spanning multiple routes.
- Implement risk reduction strategies covering the key risks.
- Provide assurance on the robustness of safety and SD controls.

3. Consult the Centre when:

- Recruiting key safety or sustainable development posts.
- Access to the Network to reduce key safety risks cannot be granted in a reasonable time.
- Discussing potential enforcement action with Regulators.

D. Strategy and planning

1. General

- Support the development of long term industry strategies (e.g. RUSs) and route specifications.
- Support periodic reviews, including development of Route (and functional) Plans (short, medium and long term) based on route specifications and full engagement with benchmarking activities.
- Develop Route (and functional) Plans to deliver outputs within the available funding. Provide information for plan documents.
- Manage delivery of route based enhancements in accordance with client's specification.
- Comply with all regulatory obligations (e.g. Licence Conditions, Network Code).
- Report swiftly to the Centre on arising compliance issues (e.g. relating to the Network Licence).
- Provide relevant information to enable corporate reporting (e.g. on the delivery of key regulated outputs).
- Manage specific Reporter studies. Implement agreed actions.
- Lead the commercial and contractual negotiations with customers for the sale of access rights.
- Provide route information to support development of central input to government of franchise specifications.
- Contact S&P before discussion with regulators/funders on RUSs, funding, franchises, network licence and other strategic issues.
- Support S&P in managing European issues.

2. Consult the Centre when:

- Unsure of the implications of a specific strategy or policy.
- Unsure of regulatory obligations.
- Considering new objectives, targets or reporting arrangements.

E. Asset management

1. Be responsible for:

- Asset planning and maintenance (excluding telecoms).
- Asset data collection and evaluation (excluding telecoms).
- Meeting requirements within Company Standards.
- Specifying programmes of CEFA contract works required for structures, buildings and geotechnical inspections.

2. Work jointly with the Centre to:

- Develop Route Plans.
- Develop future demand levels for materials or services provided by NDS.
- Define service levels required from Telecoms.
- Share a complete record, and seek central approval for non-compliances to Standards.
- Provide assurance of compliance with Asset Policies.
- Plan infrastructure changes which may have implications under interoperability regulations (ROGs, RIR).

3. Consult the Centre:

- If unsure of the implications of a specific Standard or Policy.
- If considering external provision of services currently provided by central Asset Management.
- If considering using alternative asset systems.

F. Corporate services

1. Finance

i. Work jointly with Route Finance and Central Finance teams when:

- Developing local Business Plans, financial plans, investment and financial strategy.
- Considering financial reporting requirements.
- Considering funding of organisational plans.
- Considering operational changes and transformation with a financial impact.
- Considering business cases (where outside centrally agreed financial plans, principles, budgets and targets).
- Considering governance issues.

ii. For all financial activities:

- Comply with corporate Finance Regulations.
- Comply with corporate Investment Regulations.

2. C&P

i. Work jointly with the Centre when:

- Developing Business Plans and planning demand on the supply chain.
- Assessing 'make v buy' decisions.
- Developing requirements and specifications for suppliers.
- Approving Network Rail-wide procurement strategies.
- Benchmarking our costs.
- Defining service levels required from C&P and suppliers.
- Identifying and addressing any breach of a C&P Policy or Standard.

- Managing any ongoing supplier performance issues.
- Identifying any opportunities to undertake joint procurement activities with Train Operators.
- Identifying the optimum total transactional cost solution for any procurement activity.

ii. Consult the Centre (as required) when:

- Ordering goods or services using catalogues or purchasing cards.
- Managing the day-to-day operational performance of the supply chain, and addressing any issues (e.g. non-delivery).
- Obtaining and analysing reports on supply chain spend and performance.
- Approving supplier payment.

iii. For all purchasing transactions:

- Maintain split of Authority to Incur from Authority to contract.
- Comply with EU procurement law.
- Only use approved suppliers.

3. HR

i. Work jointly with the Centre when:

- Considering organisational changes or different ways of working.
- There is a dispute or issue with the trade unions.
- There is a need to go outside standard HR policies.
- An activity may have company-wide implications on people beyond the business unit.
- Developing people plans and strategies.
- Reviewing service provision and performance of HR Services.
- There is a requirement to procure people products or services not currently provided in-house.
- Managing and implementing corporate strategies and programmes into the business unit.

ii. Consult with the Centre when:

- Unsure about the people implications of a specific issue or business activity.
- Managing employee issues in line with HR policies, procedures and processes.
- There is a need for additional HR support.
- Reviewing the Business Plan and considering funding requirements.

iii. For all new Route staff, confirm:

- Their identity; what they have done previously; their Right to Work in UK; and that they are medically fit to do the work.
- Salaries with the RMD and HR Business Partner.

iv. For all Route staff, comply with:

- Employment legislation; Trade Union collective agreements and procedures; Company job evaluation, banding and pay frameworks; Company organisation design rules; Company occupational health standards; Company leave, performance, disciplinary and grievance procedures.

4. IM

i. Work jointly with the Centre when:

- Developing Business Plans.
- They have a new IM requirement.
- Exploring opportunities for IM solutions or services with external partners.
- Changing business processes that may have a potential opportunity to utilise technology.
- Considering a potential new IM product or service.
- Considering expansion or replacement of IT infrastructure.
- Considering external provision of any services currently provided by Network Rail IM.
- Considering using alternatives to corporate IT systems.
- Considering new contracts which may potentially have an IT element.
- Defining service levels required from IM.

- They identify a potential breach of an IM Standard or Policy.
- They are unsure of the implications of a specific IM Standard or Policy.
- Establishing a new exchange of data with third parties.
- Seeking to secure IM resources (e.g. project managers, business architects and analysts).

ii. For all technology:

- - Follow corporate IM Standards, Principles, Policies and Procedures.

5. Property

i. Work jointly with the Centre when:

- Considering land/property acquisition requirements.
- Developing business plans requiring a land/property strategy.
- Developing project plans or operational plans which will be supported by a property acquisition or solution.
- Developing projects or operational plans which have an impact on Town Planning/Permitted Development rights.
- Considering workplace accommodation requirements.
- Developing and implementing management plans at Managed Stations.

ii. Consult with the Centre when:

- Considering operational plans or changes, which will have an impact on the property estate or will impact on Town Planning/Permitted Development Estate.

iii. Manage all property and town planning transactions (buying, selling, leasing) through the Property team, except for TOC station leases, which are dealt with direct by Network Operations.

6. Enhancement contracts

i. Work jointly with the Centre when:

- Seeking transaction authority for principal and miscellaneous agreements (outside delegated authorities).
- Developing commercial strategies with Network Rail-wide relevance.
- Managing any commercial investment framework non-compliances.
- Considering transactions outside the commercial investment framework.
- Applying commercial assurance of transactions and commitments (outside delegated authorities).
- Balancing Route business needs with implications on corporate commercial risk.
- Uncertain of financial or commercial implications.

ii. Consult the Centre (as required) on:

- Application of policies and commercial assurance arrangements.
- Addressing contract management issues where a liability is likely to arise.

7. Other group finance

- Provide robust cash flow forecasts.
- Direct all communication with banks and arrangement of financing through the Network Rail Treasury team.
- Identify and assess key business risks, and follow the corporate Integrated Risk Framework.
- Provide information and data to support the purchase of insurance cover, which will only be procured by the corporate Insurance team.
- Identify incidents which may result in an insurance claim or recovery opportunity.
- Provide data to defend against insurance claims and support recoveries.
- Provide Internal Audit with access to information and people as required to perform audits.
- Obtain any legal advice required via the corporate Legal Services team, and only instruct firms to provide legal advice with Legal Services approval.

G. G&CA

1. Consult the Centre:

- When we require further guidance or advice beyond what is available on the “communications direct” self-service intranet site.
- When planning communications activity to test activity fits with national objectives.
- When we are unsure about how the company’s communications policies and standards apply to a specific issue or business activity.

2. For communications:

Follow corporate Brand Guidelines.

Part 2 – SSWT Activities

A. Operations

- Operation of passenger trains over Network Rail infrastructure (drivers and guards activities) using standards set by Network Rail
- Training of key operational staff
- Train dispatch
- Berthing of trains in dedicated sidings
- Provision of a control centre under Network Rail overall direction
- Train announcements

B. Customer Service

- Retailing of tickets to customers
- Provision of customer service facility to passengers
- Revenue protection activities, on train and at gatelines
- Maintenance of automatic gatelines and manning of them
- Light maintenance work and station condition upkeep on station premises (tenant's responsibilities)
- Station painting
- Electrical testing etc of SSWT equipment
- Station cleaning
- Provision of handymen for light maintenance activity at stations
- Vegetation control at stations
- Management of weather related incidents (e.g. dealing with ice on platforms)
- Sub-letting of station outlets to retailing tenants and the selling of advertising space by 3rd parties
- Provision of contracted security guards at events (e.g. Twickenham rugby matches)
- Turnaround/on-train cleaning
- On Train catering service (outsourced activity)
- Provision of contracted buses for planned/emergency engineering work
- Announcements at stations

C. Engineering

- All trains are leased from the ROSCO's however we have obligations under the lease arrangements
- Light maintenance of some of the SSWT train fleet
- Heavy maintenance work (under contract) for some of the SSWT fleet
- Train cleaning
- Fault fixing to the SSWT fleet of trains
- Undertake track maintenance within depots
- Train fuelling (diesel fuel for SSWT and other TOCs units)
- Recruitment and training of engineering staff
- Maintenance of buildings etc within depots (tenants responsibility)
- Overnight berthing of trains
- Train shunting activities within depots
- Operation of groundframes etc in depots (signaling/points)
- From within the Control Centre provide train crew with first line advice on train defects

D. Island Line

- SSWT is responsible for all of the above activities on the Isle of Wight but additionally
- Provision of signallers (recruitment, training etc)
- Maintenance of the infrastructure (signals, track, CIS etc) under the terms of the Infrastructure

- lease
- Heavy maintenance activities on the 483 rolling stock fleet

Signed by)
)
 Paul Plummer)

and by
 Richard O'Brien)

duly authorised for and on behalf of
Network Rail Infrastructure Limited

Signed by)
duly authorised for and on behalf of)
Stagecoach South Western Trains Limited)