

(1) **An tÚDARÁS NÁISIÚNTA IOMPAIR -
THE NATIONAL TRANSPORT AUTHORITY**

and

(2) **IARNRÓD ÉIREANN - IRISH RAIL**

DIRECT AWARD PUBLIC SERVICE CONTRACT

**imposing public service obligations to secure the provision of
rail passenger services in**

IRELAND

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THIS AGREEMENT is made _____ December 2019

BETWEEN:

- (1) **THE NATIONAL TRANSPORT AUTHORITY** (or in the Irish language, **An tÚDARÁS NÁISIÚNTA IOMPAIR**), a statutory corporation established under the Dublin Transport Authority Act 2008, as amended and having its principal office at Dún Scéine, Iveagh Court, Harcourt Lane, Dublin 2 (the “**Authority**”); and
- (2) **IARNRÓD ÉIREANN - IRISH RAIL**, a company established pursuant to the Transport (Re-Organisation of Córas Iompair Éireann) Act 1986 and incorporated in Ireland with the registered number 119571 and having its registered office at Connolly Station, Dublin 1 (the “**Railway Undertaking**”).

RECITALS

- (A) The Authority was established by the 2008 Act and has, among other things, the functions to secure the provision of public passenger transport services, to secure the provision of integrated ticketing and information systems for public transport, to secure the development and implementation of a single public transport brand and the collection of statistical data and information on transport.
- (B) Section 52(3), 2008 Act authorises the Authority, to ensure the adequacy of public passenger transport services in the general economic interest, to enter into direct award contracts, which impose public service obligations on the Railway Undertaking, being Iarnród Éireann - Irish Rail.
- (C) The Authority and the Railway Undertaking had entered into a direct award contract (within the meaning of section 47, 2008 Act) in accordance with section 52, 2008 Act and Regulation 1370 which is expiring on 30 November 2019.
- (D) Regulation 1370 has now been amended by Regulation (EU) 2016/2338 which came into effect on 24 December 2017.
- (E) The Authority is entering in accordance with section 52(6), 2008 Act into a subsequent direct award contract with the Railway Undertaking, subject to satisfaction of the requirements of section 52(6), 2008 Act.
- (F) The Railway Undertaking is a railway undertaking for the purposes of the 2015 Regulations and the 2012 Directive.
- (G) This Agreement is a public transport services contract (within the meaning of section 47, 2008 Act) and a public service contract which is a direct award contract for the purposes of Chapter 2 of Part 3 of the 2008 Act and Regulation 1370.

NOW IT IS HEREBY AGREED as follows:

PART 1 - DEFINITIONS AND INTERPRETATION**1. DEFINITIONS**

In this Agreement (including the recitals and Schedules), unless the context otherwise requires, each of the following words and expressions shall have the following meanings:

“1958 Act” means the Transport Act 1958.

“1986 Act” means the Transport (Re-organisation of Córas Iompair Éireann) Act 1986.

“2008 Act” means the Dublin Transport Authority Act 2008.

“2009 Act” means the Public Transport Regulation Act 2009.

“2012 Directive” means Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area, as amended by Directive (EU) 2016/2370 of the European Parliament and of the Council of 14 December 2016.

“2015 Regulations” means the European Union (Regulation of Railways) Regulations 2015 (SI 249/2015).

“Actual Price” has the meaning given to it in Schedule 20 (Contract Prices and Indexation).

“Agreement” means this Agreement, including the Schedules.

“Annual Business Plan” means the plan prepared by the Railway Undertaking in accordance with Schedule 17 (Annual Business Plan).

“Annual Operating Charge” means the annual amount determined in accordance with clause 30.2(a) (PSO Compensation) and Schedule 20 (Contract Prices and Indexation).

“Annual Review” has the meaning given to it in clause 16.1(a) (Annual Review).

“Annual Services Charge” means the amount payable by the Authority to the Operator in accordance with Schedule 20 (Contract Prices and Indexation).

“Approval” means any agreement, consent, permission, expression of satisfaction or other approval to be given by the Authority, as applicable, under the terms of this Agreement and the term **“Approved”** shall be interpreted accordingly.

“Arrival Time” means the time of arrival for a Train to a destination as set out in the applicable Timetable.

“Associated Company” means any company which is, in relation to another company:

- (a) a subsidiary; or
- (b) a holding company; or
- (c) a company which is a subsidiary of the holding company.

“**Authority IPR**” means Intellectual Property Rights related to Leap, Transport for Ireland and any other public transport brands developed by the Authority in connection with public transport services.

“**Authority Network Asset**” means any asset used by the Railway Undertaking in the provision of the Services that has been funded or provided, in each case directly or indirectly, by the Authority.

“**Authority Variation Notice**” means a notice of Variation to the Services served on the Railway Undertaking by the Authority in accordance with Schedule 23 (Variations).

“**Authority’s Representative**” means the person appointed from time to time by the Authority to act as its representative in accordance with clause 22.5 (Authority’s Representative).

“**Base Period Payment**” means the amount payable by the Authority to the Railway Undertaking in accordance with Schedule 21 (Payment Mechanism).

“**Business Day**” means a day that is not a Saturday, Sunday or a public holiday established under the Organisation of Working Time Act 1997.

“**Capital Expenditure**” means any capital expenditure accepted as such under normal accounting procedure generally accepted and applied in Ireland from time to time.

“**Central Traffic Control**” means, at any time, the premises from which the Infrastructure Manager manages the performance of the Services and the operation and monitoring of the Control System, being, as of the Commencement Date, Connolly Station, North Dock, Dublin 1.

“**Claim**” means any claim, demand or proceeding.

“**Commencement Date**” means 1 December 2019.

“**Commission for Railway Regulation**” means the body established by the Railway Safety Act 2005 and which is now named the “Commission for Railway Regulation” in accordance with section 4(1) of the Public Transport Act 2016.

“**Commuter Services**” means that part of the Services identified as “Commuter services” by the Railway Undertaking, as more particularly referenced in Schedule 2 (Service Specification).

“**Complaint**” means a complaint received by the Railway Undertaking in relation to the Services except:

- (a) complaints in relation to Fares; and
- (b) any complaints that are demonstrated to the Authority (acting reasonably) to be frivolous or vexatious.

“**Consents to Operate**” means all permissions, consents, licences, certificates and authorisations (whether statutory or otherwise) which are required to be obtained by the Railway Undertaking from a Relevant Authority in connection with the provision of the Services.

“**Contract Documents**” means this Agreement, any Grant Agreement together with any other document specified by the Authority.

“**Contract Period**” means the period commencing on the Commencement Date and expiring on the Expiry Date.

“**Contract Year**” means in respect of the first Contract Year, the period commencing on the Commencement Date and ending on 31 December next following and, in respect of each subsequent Contract Year, the period of twelve (12) months commencing on the expiry of the preceding Contract Year (1 January) and ending on 31 December next following or, if earlier, the end of the Contract Period.

“**Control Systems**” means the supervisory control and data acquisition system, radio system and the other control systems described in Schedule 1 (Network Description).

“**Core Document**” means any of the Infrastructure Management Contract, the Station Access Agreement or the Track Access Agreement.

“**Customer Service Centre**” has the meaning given to it in Schedule 13 (Customer Care).

“**Customer Service Policy**” means the Railway Undertaking’s policy for customer care as required under Schedule 13 (Customer Care) as may be amended from time to time in accordance with this Agreement.

“**Dangerous Substances**” means:

- (a) any pollutant, contaminant, flammable or corrosive or radioactive or otherwise hazardous substance (including petroleum and its derivatives and any other hydrocarbon) and every substance, matter or thing having constituent elements having any of the foregoing characteristics, whether or not the substance, matter or thing is specifically referred to in, or regulated under, the Legal Requirements and which alone or in combination with one or more substances causes or may cause harm to the Environment; and
- (b) Waste.

“**DART Services**” means that part of the Services identified as “DART services” by the Railway Undertaking, as more particularly referenced in Schedule 2 (Service Specification).

“**Data Protection Law**” means all applicable Legal Requirements relating to data protection including the General Data Protection Regulation (Regulation (EU) 2016/679) (“**GDPR**”), the Data Protection Acts 1988 to 2018, and any legislation which amends, extends, consolidates, re-enacts or replaces same, including any statutory instruments and regulations that may be made pursuant thereto from time to time.

“**Deemed Variation**” means:

- (a) a Discriminatory Change of Law; or
- (b) the introduction, or modification of, a Sectoral Employment Order in relation to employees who are drivers of Trains.

“**Default Rate**” means the applicable rate of interest for late payment of debts prescribed by the European Communities (Late Payment in Commercial Transactions) Regulations 2012.

“**Department**” means the Department for Transport Tourism and Sport.

“**Departure Time**” means the time of departure for a Train from a Station as set out in the applicable Timetable.

“**Discriminatory Change of Law**” means a change of Legal Requirements the terms of which apply expressly to the Services provided that:

- (a) a Legal Requirement which also affects:
 - (i) other rail passenger services; or
 - (ii) persons other than the Railway Undertaking,shall not be regarded as a Discriminatory Change of Law solely on the basis that its effect on the Services or the Railway Undertaking is greater than on any such rail passenger services or other persons;
- (b) the introduction, or modification, of a Registered Employment Agreement or Employment Regulation Order is not a Discriminatory Change of Law; and,
- (c) such change of Legal Requirement has neither been caused by, nor is the result of, any act or omission of the Railway Undertaking.

“**Employment Regulation Order**” means an order made under Section 42C of the Industrial Relations Act 1946 (as amended).

“**Encumbrance**” means any mortgage, pledge, lien, charge, assignment, hypothecation or security interest or any other agreement or arrangement having the effect of conferring security, together with any option, right of pre-emption, right to acquire or preferential right or arrangement in relation to an asset or assets of a person and any other equity or preferential right or any agreement or arrangement to create any of them.

“**Environment**” means the environment generally including all of its physical and ecological aspects including, without limitation, all or any of air, water (including inland waters and groundwater and water in drains and sewers) and land and the medium of air includes the air within any building or the air within any other man-made or natural structure above or below ground.

“**Environmental Damage**” means any injury or damage to persons (including offence to their senses) living organisms, premises or other property or any pollution or impairment of the Environment resulting from the discharge emission escape or migration of any substance, energy, noise or vibration.

“**Environmental Legislation**” means any Legal Requirement concerning matters relating to the Environment, and includes:

- (a) the Inland Fisheries Acts 1959 to 2017;
- (b) the Dangerous Substances Acts 1972 and 1979,
- (c) the Local Government (Planning and Development) Acts 1963 to 1999,
- (d) the Planning and Development Acts 2000 to 2019,

- (e) the European Communities Acts 1972 to 2012,
- (f) the Local Government (Water Pollution) Acts 1977 to 2007,
- (g) the Water Services Act 2007 to 2017,
- (h) the Air Pollution Acts 1987 and 2011,
- (i) the Safety Health and Welfare at Work Acts 2005 to 2014,
- (j) the Environmental Protection Agency Acts 1992 to 2011,
- (k) the Waste Management Acts 1996 to 2011, and

in each case, any secondary legislation made under any of them.

“Event of Default” means any event specified in clause 42.1(a) (Event of Default).

“Expiry Date” means:

- (a) 30 November 2029; or
- (b) if earlier, the date upon which this Agreement is terminated in accordance with its provisions.

“Fare” means any fare or tariff charged by the Railway Undertaking to passengers in connection with the carriage of passengers by the provision of the Services.

“Fare Evasion” means any act or omission by a passenger giving rise to a Fare Evasion Loss.

“Fare Evasion Loss” has the meaning given to it in Schedule 10 (Revenue Protection).

“Fare Evasion Rate” has the meaning given to it in Schedule 10 (Revenue Protection).

“Fare Evasion Survey” means a survey of Fare Evasion to establish the Fare Evasion Rate, as more particularly described in Schedule 10 (Revenue Protection).

“Fare Evasion Survey Report” means a report issued by the Authority pursuant to Schedule 10 (Revenue Protection).

“Fares Revenue” means, in relation to any period, the revenue earned by the Railway Undertaking directly in connection with the carriage of passengers on the Network (including, Standard Fare Revenue, concessionary fare schemes, fare sharing or similar schemes in which the Railway Undertaking participates from time to time with other public transport operators) net of third party agency commissions.

“Five Year Plan” has the meaning given to it in clause 6.1 (Five Year Plan).

“Force Majeure” means any of the following events and circumstances and their consequences (including a Party’s inability to perform its obligations under this Agreement as a result of any event of Force Majeure):

- (a) war (whether declared or undeclared), armed conflict, civil war, invasion or act of foreign enemy in each case within and affecting Ireland;

- (b) rebellion, revolution, civil disobedience or acts or threats of terrorism in each case within, and affecting, Ireland;
- (c) nuclear explosion, chemical or radioactive contamination or ionising radiation unless the source or cause of the explosion, contamination or radiation is brought to or near the Railway Undertaking Assets by the Party seeking protection as a result of Force Majeure or that Party's contractors or their sub-contractors of any tier, or exists naturally *in situ*; or
- (d) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speed,

provided that such event is not caused or contributed to by the Party claiming or seeking to claim the occurrence of Force Majeure.

“Good Industry Practice” means, in relation to the performance of any activity to which this standard is applied, the exercise of that degree of skill, diligence, prudence and foresight as would reasonably and ordinarily be expected from a skilled and experienced service provider (engaged in the same type of undertaking and under the same or similar circumstances and conditions as that in which the relevant matter arises) seeking in good faith to comply with its contractual obligations and to discharge any liability arising under any duty of care that might be owed by that contractor.

“Government” means, at any time, the government of Ireland at that relevant time.

“Grant Agreement” means an agreement setting out the terms and conditions on which the Authority makes available grants in a form specified by the Authority from time to time.

“Gross Cost Date” means 1 January 2022.

“Group” means, in relation to any company, its holding company and each company which would be regarded as a subsidiary of that company or the ultimate holding company.

“Guaranteed Connection Deduction” means the deduction contemplated by paragraph 19.4 of Schedule 19 (Performance Payments and Deductions).

“holding company” has the meaning given to it in section 8 of the Companies Act 2014. Notwithstanding anything to the contrary in this Agreement, this definition shall not be changed in the event of an amendment to the definition of “holding company” contained in the Companies Act 2014.

“Indexed” means, except where otherwise expressly provided, the adjustment to any amount on each Review Date referred to in this Agreement during the Contract Period in accordance with Schedule 20 (Contract Prices and Indexation).

“Infrastructure Management Contract” means the agreement dated 1 January 2019 between the Minister for Transport, Tourism and Sport and the Infrastructure Manager in connection with the provision and management of the railway infrastructure.

“Infrastructure Manager” means, at any time, the person responsible for the provision and management of railway infrastructure for the purposes of the 2015 Regulations and the 2012 Directive being, as of the Commencement Date, Iarnród Éireann - Irish Rail.

“Insolvency Event” means, in relation to the Railway Undertaking, each or any of the following events or any analogous event in any jurisdiction:

- (a) the presentation of a petition for winding-up and which petition is not dismissed within twenty-eight (28) days of its presentation; or
- (b) the presentation of a petition to appoint an examiner and which petition is not dismissed within ten (10) days of its presentation; or
- (c) the making of an order or an effective resolution being passed for winding up except for the purpose of a solvent reconstruction or amalgamation on a basis previously approved by the Authority (such approval not to be unreasonably withheld or delayed); or
- (d) the making of an order for the appointment or other duly authorised appointment of a liquidator, an examiner, receiver, trustee or similar officer for the Railway Undertaking; or
- (e) the making of an order for the appointment of an examiner to a related company (within the meaning of Part 10 of the Companies Act 2014) of the Railway Undertaking; or
- (f)
 - (i) the making of an order by a court for the appointment of a liquidator, receiver, examiner or other similar officer taking possession; or
 - (ii) the appointment of a receiver by an encumbrancer or the taking of possession by an encumbrancer,

of the whole or any part (which is material in the context of the performance of the Railway Undertaking's obligations under this Agreement) of the Railway Undertaking's undertaking, property or assets; or
- (g) the making of a composition with creditors generally; or
- (h) being unable to pay its debts as they fall due.

“Intellectual Property Rights” means any and all patents, trademarks, service marks, copyright, moral rights, rights in a design, know-how, (whether or not the same constitutes Confidential Information) and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in Ireland or any part of the world.

“Integrated Ticketing Scheme” means any scheme for integrated ticketing for public transport which enables passengers to access one or more public transport services using contactless smart cards as a commonly accepted ticketing medium which is procured, maintained and operated by the Authority pursuant to section 58, 2008 Act (which is currently known as “LEAP”), including:

- (a) any regulations made by the Authority pursuant to section 58(4), 2008 Act;
- (b) any directions given by the Authority pursuant to section 58(6), 2008 Act;
- (c) any agreement entered into by the Railway Undertaking in connection with its participation in the Integrated Ticketing Scheme; and
- (d) any other arrangement involving the Railway Undertaking (and to which the Authority has consented) in relation to the Integrated Ticketing Scheme.

“**InterCity Services**” means that part of the Services identified as “Intercity services” by the Railway Undertaking, as more particularly referenced in Schedule 2 (Service Specification).

“**KPI**” means key performance indicator.

“**LEAP**” means, as of the Commencement Date, the name of the Integrated Ticketing Scheme.

“**Legal Requirements**” means any applicable legislation, constitutions, acts, statutes, laws, bye-laws, rules, or subordinate legislation and any enforceable Community right in each case enforceable in Ireland, and includes any modification, extension or re-enactment of any of the same in force from time to time and all other instruments, orders and regulations made pursuant to statute, in each case enforceable in Ireland.

“**Loss**” means any loss, damage, cost, expense, charge, fee or liability.

“**Lost Train Car Kilometres**” has the meaning given to it in Schedule 19 (Performance Payments and Deductions).

“**Lost Train Car Kilometres Deduction**” has the meaning given to it in Schedule 19 (Performance Payments and Deductions).

“**Maximum Quarterly Payment**” is the amount payable by the Authority to the Railway Undertaking in accordance with Schedule 21 (Payment Mechanism).

“**Minimum Operated Kilometres Standard**” has the meaning given to it in paragraph 19.1 of Schedule 19 (Performance Payments and Deductions).

“**Minister**” means the Minister for Transport, Tourism and Sport.

“**National Journey Planner**” means the Authority’s internet based system for advising users of suitable means of travelling by public transport between an origin and destination selected by the user.

“**Network**” means the Routes operated by the Railway Undertaking when providing the Services.

“**Network Data**” means all information, data, materials, manuals and documents of any nature acquired or relating to the operation or the provision of the Services, or would reasonably be required by the Authority:

- (a) to provide the Services (or any interfaces with the Network); or
- (b) to perform any statutory duty related thereto.

“**Non-Authority Network Assets**” means any asset used by the Railway Undertaking in connection with the provision of the Services which is not an Authority Network Asset.

“**Non-PMS Breach**” has the meaning given to it in clause 33.2 (Breach).

“**Operating Plan**” means a document or documents prepared by the Railway Undertaking in accordance with Schedule 5 (Operations Management).

“**Operator Variation Notice**” means a notice served by the Railway Undertaking in accordance with Schedule 23 (Variations) in respect of a Variation which the Railway Undertaking wants to recommend to the Authority.

“**Originating Station**” means the Station from which a Trip starts as set out in the Timetable.

“**Parties**” means the Authority and the Railway Undertaking.

“**Passengers’ Charter**” means the passengers’ charter provided by the Railway Undertaking outlining the expectations which passengers may have of passenger services on the Network and a procedure for passenger complaints.

“**Performance Deduction**” has the meaning given in Schedule 19 (Performance Payments and Deductions).

“**Performance Monitoring System**” or “**PMS**” means the system described in Schedule 19 (Performance Payments and Deductions) as amended from time to time in accordance with this Agreement in connection with the monitoring of compliance by the Railway Undertaking with the Performance Standards and determining the Performance Deductions.

“**Performance Payment**” has the meaning given to it in Schedule 19 (Performance Payments and Deductions).

“**Performance Standards**” means the requirements for minimum levels of System performance that are set out in Schedule 19 (Performance Payments and Deductions), as amended from time to time in accordance with this Agreement.

“**Period Passenger, Revenue and Ticketing Report**” has the meaning given to it in Schedule 18 (Records and Reporting Requirements).

“**Period Payment**” has the meaning given to it in Schedule 21 (Payment Mechanism).

“**Period Punctuality Performance Report**” has the meaning given to it in Schedule 18 (Records and Reporting Requirements).

“**Period Train Services Report**” means the period report on the operation of the Services to be provided in accordance with Schedule 18 (Records and Reporting Requirements).

“**Planned Service Interruption**” means a disruption to Services due to a Public Event or a major project on or near the Network, which the Railway Undertaking is aware sufficiently in advance to be in a position to prepare an Operator Variation Notice in respect of such disruption.

“**Price**” has the meaning given to it in Schedule 20 (Contract Prices and Indexation).

“**Prior Contract**” means the direct award public service contract dated 1 December 2009 between the Authority and the Railway Undertaking in connection with the provision of rail passenger services.

“**Principal Sub-Contractors**” means any sub-contractor appointed by the Railway Undertaking which are listed in clause 46.2(c) (Sub-Contractors) and such other sub-contractors as may be agreed between the Authority and the Railway Undertaking from time to time.

“**PSC Passes**” means Public Service Cards issued by the Department of Employment Affairs and Social Protection, which entitle:

- (a) the holder, and

(b) any eligible person with the holder,

to free travel on the Services.

“Public Event” means a public event which may affect the provision of the Services by the Railway Undertaking as set out in Schedule 5 (Operations Management).

“public passenger transport service” means:

- (a) a rail passenger service;
- (b) a public bus service (as defined in section 2, 2008 Act) or, to the extent different, a public bus passenger service (as defined in section 2, 2009 Act); or
- (c) an ancillary public passenger transport service (as defined in section 2, 2008 Act).

“public service contract” has the meaning given to it in section 47, 2008 Act.

“public service obligation” has the meaning given to it in section 47, 2008 Act and **“PSO”** shall be construed accordingly.

“public transport services contract” has the meaning given to it in section 47, 2008 Act.

“Punctuality Deduction” has the meaning given to it in Schedule 19 (Performance Payments and Deductions).

“Punctuality Incentive Payment” has the meaning given to it in Schedule 19 (Performance Payments and Deductions).

“Punctuality Performance Deductions” has the meaning given to it in Schedule 19 (Performance Payments and Deductions).

“Punctuality Performance Payment” means the amount payable by the Authority to the Railway Undertaking in accordance with Schedule 21 (Payment Mechanism).

“Punctuality Performance Report” has the meaning given to it in Schedule 18 (Records and Reporting Requirements).

“Quality Management Plans” means the procedures and instructions setting out the activities to be undertaken by the Railway Undertaking as required by clause 23 (Quality Management).

“Quarter” means, in respect of the first Quarter, the period commencing on the Commencement Date and ending on 31 December next following, and in the respect of each subsequent Quarter during a Contract Year:

- (a) in respect of the first three (3) Quarters during such Contract Year, the period commencing on the expiry of the preceding Quarter and ending on the expiry of three successive Reporting Periods or, if earlier, the Expiry Date or date of termination of this Agreement; and
- (b) in respect of the fourth Quarter during such Contract Year, the period commencing on the expiry of the preceding Quarter and ending on the expiry of four successive Reporting Periods or, if earlier, the Expiry Date or date of termination of this Agreement.

“Quarterly Cost Report” has the meaning given to it in Schedule 18 (Records and Reporting Requirements).

“Quarterly Customer Service Performance Report” has the meaning given to it in Schedule 18 (Records and Reporting Requirements).

“Quarterly Customer Service Quality Performance Report” has the meaning given to it in Schedule 18 (Records and Reporting Requirements).

“Quarterly Customer Service Quality Survey Report” has the meaning given to it in Schedule 18 (Records and Reporting Requirements).

“Quarterly Operations Report” has the meaning given to it in Schedule 18 (Records and Reporting Requirements).

“rail passenger service” has the meaning given to it in section 2, 2008 Act.

“railway infrastructure” means the fixed assets required for the provision of rail passenger services, including engineering structures (such as bridges, tunnels), formation (cuttings, embankments, track-bed), plain track, points and crossings, station infrastructure (platforms and zones of access), electrification systems (excluding overhead lines and distribution networks), and the trackside equipment required to ensure safety and to command and control movements of trains authorised to travel on the Network (including the control of level crossings).

“railway infrastructure assets” means, at any time, the fixed assets comprised in, or being part of, the railway infrastructure at such time including, for the avoidance of doubt, any asset which the Railway Undertaking is using pursuant to the Station Access Agreement.

“Railway Safety Legislation” means any law relating to railway safety, including as of the Commencement Date:

- (a) Railway Safety Act 2005 together with:
 - (i) the European Communities (Railway Safety) Regulations 2008 (SI No. 61/2008);
 - (ii) the European Communities (Railway Safety) Regulations 2011 (SI No. 70/2011);
 - (iii) the European Union (Railway Safety) Regulations 2013 (SI No. 444/2013); and
 - (iv) the European Union (Railway Safety) (Reporting and Investigation of Serious Accidents, Accidents and Incidents) Regulations 2014 (SI No. 258/2014); and
- (b) to the extent not transposed or implemented by any of those mentioned in paragraph (a), Directive (EU) 2016/798 of the European Parliament and of the Council of 21 May 2016 on railway safety.

“Railway Undertaking Assets” means the assets (other than railway infrastructure assets) used by the Railway Undertaking in the provision of rail passenger services, including:

- (a) rolling stock;

- (b) assets used in connection with:
- (i) revenue collection from users of the railway; and
 - (ii) services provided to users of the railway, when using or accessing the railway; and
 - (iii) maintenance of Railway Undertaking Assets, including maintenance of rolling stock and any fleet depot.

“Railway Undertaking’s Representative” means the person appointed from time to time by the Railway Undertaking to act as its representative in accordance with clause 22.3 (Railway Undertaking’s Representative).

“Rates” means the rates detailed in Schedule 20 (Contract Prices and Indexation) or such other rates as may be agreed by the Parties.

“Records” means those records referred to in Schedule 18 (Records and Reporting Requirements).

“Regional Services” means that part of the Services identified as “Regional services” by the Railway Undertaking, as more specifically referenced in Schedule 2 (Service Specification).

“Registered Employment Agreement” has the meaning given to it by section 6 of the Industrial Relations (Amendment) Act 2015.

“Regulation 1370” means Regulation (EC) No. 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road, as amended by Regulation (EU) 2016/2338 of the European Parliament and of the Council of 14 December 2016 amending Regulation (EC) No. 1370/2007 concerning the opening of the market for domestic passenger transport services by rail.

“Relevant Authority” means each House of the Oireachtas, the Government, the Commission for Railway Regulation, European Union Agency for Railways, any agency, local authority, department, inspectorate, minister, cross-border body, European Union institution or agency, official or public or statutory person (whether autonomous or not) having jurisdiction over the subject matter of this Agreement.

“Relevant Interest Rate” means the best interest rate available to the Railway Undertaking at the relevant time determined, unless otherwise agreed by the Authority, by reference to at least three (3) quotes from providers of finance (the identity of which shall be agreed in advance with the Authority).

“Relief Event” means:

- (a) any wilful or accidental damage to any Railway Undertaking Asset or any railway infrastructure asset by a person other than the Railway Undertaking to the extent that such damage has a material adverse effect on the Railway Undertaking’s ability to perform a substantial part of the Services;
- (b) suicide, fire, earthquake, extraordinary storm, extraordinary flood or extraordinary weather conditions;
- (c) any official or unofficial strike or lockout in relation to a third party on a national basis in the State which:

- (i) has been or is under way, on a consecutive basis, for more than five (5) Business Days; and
- (ii) directly prevents the Railway Undertaking from performing its obligations under this Agreement;
- (d) a Services Interruption of the type described in paragraph 19.7.1 of Schedule 19 (Performance Payments and Deductions);
- (e) the occurrence of an accident or fire at or involving railway infrastructure which results in a Services Interruption being required by a Relevant Authority in respect of a Route;
- (f) where the Route is impassable because of the occurrence of a landslide or flooding such that there is a Services Interruption;
- (g) the occurrence of an incident at or involving railway infrastructure or on a Network Train which results in a Services Interruption being required by a Relevant Authority in respect of a Route; or
- (h) failure of the ticketing system for more than two (2) days consecutively on any one occurrence,

provided that, in the case of each event listed in this definition, such event has not been caused by any act or omission of the Railway Undertaking;

“**Reporting Period**” means each successive period of four (4) consecutive weeks ending on a Sunday provided that:

- (a) the first Reporting Period in each calendar year shall:
 - (i) commence:
 - (A) subject to sub-paragraph (B), on 1 January in such calendar year; and
 - (B) in the case of the first Contract Year, on the Commencement Date or such other date as may be agreed by the Parties; and
 - (ii) end on:
 - (A) where 1 January falls on any Monday, Tuesday, Wednesday or Thursday, subject to sub-paragraph (C), the fourth (4th) Sunday of such calendar year;
 - (B) where 1 January falls on any Friday, Saturday or Sunday, subject to sub-paragraph (C), the fifth (5th) Sunday of such calendar year ; and
 - (C) in the case of the first Contract Year, on the next Sunday such period would end by reference to sub-paragraphs (i) and (ii)(A) and (B);
- (b) the last Reporting Period in any calendar year shall include any days remaining in such calendar year; and
- (c) in the case of the last Reporting Period, such Reporting Period shall end on the Expiry Date.

“Required Insurance Policies” means the insurance policies required of the Railway Undertaking as described in Schedule 27 (Insurances).

“Required Records” means the records specified in Schedule 18 (Records and Reporting Requirements).

“Required Reports” has the meaning given to it in Schedule 18 (Records and Reporting Requirements).

“Revenue Protection Officer” means an employee of the Railway Undertaking whose duties include the checking of customer tickets for fare payment.

“Review Date” means 1 January of each year from the Commencement Date until the Expiry Date.

“Route” means each route as contemplated by Schedule 1 (Network Description) and Schedule 2 (Service Specification), or as otherwise Approved by the Authority.

“Running Time” means the time taken by a Train in normal service to travel from an Originating Station to the corresponding Terminating Station.

“Scheduled Service Train Car Kilometres” means, in respect of a Reporting Period and a Route, the total kilometrage of the Trips in passenger service multiplied, in the case of each Trip, by the total number of Train Cars shown in the Timetable to depart on that Route during that Reporting Period.

“Schedules” means the Schedules to this Agreement.

“Sectoral Employment Order” has the meaning assigned to it by Section 17, the Industrial Relations (Amendment) Act 2015.

“Service Quality Performance Deduction” has the meaning set out in paragraph 19.8 of Schedule 19 (Performance Payments and Deductions).

“Service Quality Performance Payment” means the amount payable by the Authority to the Railway Undertaking in accordance with Schedule 21 (Payment Mechanism).

“Service Specification” means the service specification set out in Schedule 2 (Service Specification) as may be amended from time to time in accordance with this Agreement or the 2008 Act.

“Services” means the services to be provided by the Railway Undertaking as contemplated by this Agreement, including:

- (a) the DART Services;
- (b) the Commuter Services;
- (c) the InterCity Services; and
- (d) the Regional Services.

“Services Interruption” means any event, other than strike or industrial action by the Staff, which directly or indirectly prevents or frustrates the safe passage of Trains along a Route.

“**Specified Employees**” means the employees of the Railway Undertaking who are designated as, and performing the duties of, drivers of the Trains.

“**Staff**” means the employees of the Railway Undertaking and/or any contractors and/or any sub-contractors of any tier (which, for the avoidance of doubt, shall include the Principal Sub-Contractors), and/or any employees, servants or agents of any of them, engaged in connection with the performance of the Services excluding, for the avoidance of doubt, employees, contractors or sub-contractors of any tier that are employees, contractors or sub-contractors of Iarnród Éireann – Irish Rail in its capacity as Infrastructure Manager and counterparty to the Station Access Agreement or the Track Access Agreement.

“**Standard Fare**” means the standard fare payable by a passenger on the Network consequent on a Fare Evasion pursuant to relevant bye-laws.

“**Standard Fare Revenue**” has the meaning given to it in Schedule 10 (Revenue Protection).

“**State**” means Ireland.

“**Station**” means any place at which passengers are normally permitted to board or leave a Train along a Route.

“**Station Access Agreement**” means the document dated 1 January 2019 between the Railway Undertaking and Iarnród Éireann – Irish Rail setting out the terms and conditions on which the Railway Undertaking uses the stations and freight yards, as amended from time to time in accordance with clause 14.3 (Core Documents).

“**Step In**” has the meaning given to it in clause 41.1 (Step-In).

“**Step In Services**” has the meaning given to it in clause 41.2 (Step-Out).

“**Step Out**” has the meaning given to it in clause 41.2 (Step-Out).

“**Sub-Contract**” means a contract between the Railway Undertaking and a Sub-Contractor in relation to the performance by the Sub-Contractor of part of the Services.

“**Sub-Contractor**” means:

- (a) any person of any tier to whom responsibility for part of the Services has been sub-contracted; and
- (b) the permitted legal successors or assignees of any person referred to in paragraph (a).

“**subsidiary**” has the meaning given to it in section 7 of the Companies Act 2014. Notwithstanding anything to the contrary in this Agreement, this definition shall not be changed in the event of an amendment to the definition of “subsidiary” contained in the Companies Act 2014.

“**Successor Railway Undertaking**” means any person appointed to provide some or all of the Services and/or maintain the Railway Undertaking Assets upon termination or expiry of this Agreement or any part of the Services or the Railway Undertaking Assets.

“**Tax**” means all forms of taxation, duties, imposts and levies including (but without limitation) income tax, corporation tax, corporation profits tax, advance corporation tax, capital gains tax, capital acquisitions tax, residential property tax, rates, property tax, property related tax, VAT, customs and other import and export duties, excise duties, stamp

duty, capital duty, social insurance, social welfare or other similar contributions and other amounts corresponding thereto and any interest, surcharge, penalty or fine in connection therewith, the words “**Taxation**”, “**taxation**”, “**Taxes**”, “**taxes**” and “**tax**” shall be construed accordingly.

“**Terminating Station**” means the Station at which a Trip terminates as set out in the Timetable.

“**Timetable**” means the timetables from time to time in force for the operation of rail passenger services on the Network.

“**Timing Point**” has the meaning given to it in Schedule 19 (Performance Payments and Deductions).

“**Total Operating Price**” has the meaning given to it in Schedule 20 (Contract Prices and Indexation).

“**Track Access Agreement**” means agreement entitled “the terms and conditions for track access contract for services on the Iarnród Éireann network” and dated 1 January 2019 between the Railway Undertaking and the Infrastructure Manager.

“**Train**” means a Train Car or a series of connected railway carriages or wagons moved by a locomotive or by integral motors running on a rail track.

“**Train Car**” means a single railway carriage.

“**Transfer Regulations**” means the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003.

“**Trip**” means the passage of a Train from an Originating Station to the Terminating Station and during which passengers can board and alight at all operational intermediate Stations.

“**Variation**” means:

- (a) any addition, deletion or change to the Railway Undertaking’s obligations under this Agreement, including:
 - (i) a variation to the Routes;
 - (ii) the omission of one or more Routes and/or the addition of one or more Routes to the extent permitted by Legal Requirements;
 - (iii) variations associated with the replacement or enhancement, as the case may be, of Railway Undertaking Assets, railway infrastructure assets, Authority Network Assets and/or Non-Authority Network Assets;
 - (iv) variations associated with the modification, installation and operation of equipment on, or refurbishment to Railway Undertaking Asset;
 - (v) a variation to the Service Specification;
 - (vi) a variation to the Railway Undertaking Asset specification;
 - (vii) the provision of customer information; or

- (viii) to the extent not contemplated by this Agreement, a variation required in connection with the implementation of measures contemplated by clause 5.7 (Integration obligations);
- (b) to the extent not contemplated by the foregoing, any changes contemplated by clauses 29.3(c) and 29.3(d) (Changes and Variations to Services) and clause 29.5 (Possible Variations); and
- (c) any Deemed Variation.

“**Variation Implementation Plan**” has the meaning given to it in Schedule 23 (Variations).

“**Variation Order**” means the instruction given by the Authority to the Railway Undertaking to implement a Variation in accordance with Schedule 23 (Variations).

“**Variation Response**” means the documentation or reports produced by the Railway Undertaking in accordance with Schedule 23 (Variations) in response to an Authority Variation Notice.

“**VAT**” means value added tax pursuant to the Value Added Tax Consolidation Act 2010 and related VAT regulations or similar tax or any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112).

“**Waste**” has the meaning given to it in the Waste Management Acts 1996 to 2011.

“**Website**” means such website as the Authority may designate.

2. INTERPRETATION

2.1 References

Except to the extent that the context or the provisions of this Agreement otherwise require:

- (a) headings and sub-headings are for ease of reference only and shall not be taken into consideration in the interpretation or construction of this Agreement;
- (b) all references to clauses and Schedules are references to clauses of and Schedules to this Agreement and all references to Parts, sections, paragraphs, Annexes or Appendices are references to Parts, sections and paragraphs contained in and Annexes and Appendices to the Schedules;
- (c) the Schedules to this Agreement (including any Annexes or Appendices thereto) are an integral part of this Agreement and reference to this Agreement includes reference thereto and reference to any Schedule includes reference to any Annex or Appendix thereto;
- (d) all references to any agreement (including, this Agreement), document or other instrument include (subject to all relevant approvals and any other provision of this Agreement expressly concerning such agreement, document or other instrument) a reference to that agreement, document or instrument as amended, supplemented, substituted, novated or assigned;
- (e) all references to any statute or statutory provision (including any subordinate legislation) shall include references to any statute or statutory provision which

amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same and shall include, without limitation, any statutory instrument, proclamation, bye-law, directive, decision, regulation, rule, order, notice, rule of court, instrument or delegated or other subordinate legislation made under the relevant statute;

- (f) all references to time of day shall be a reference to whatever time of day shall be in force in the State;
- (g) any reference to “requirements” or “obligations” shall be to such requirements or obligations as may be subsequently altered or supplemented in accordance with the terms of this Agreement;
- (h) the words “herein”, “hereto” and “hereunder” refer to this Agreement as a whole and not to the particular clause, Schedule, Part, section, paragraph, Annex or Appendix in which such word may be used;
- (i) words importing the singular include the plural and *vice versa*;
- (j) words importing a particular gender include all genders;
- (k) “person” includes any individual, partnership, firm, trust, body corporate, government, governmental body, authority, emanation, agency or instrumentality, unincorporated body of persons or association;
- (l) any reference to a public organisation or representative shall be deemed to include a reference to any successor to such public organisation or representative or any organisation or entity or representative which has taken over the functions or responsibilities of such public organisation or representative;
- (m) references to “Parties” mean the parties to this Agreement and references to a “Party” mean one of the parties to this Agreement;
- (n) all monetary amounts are expressed in Euro;
- (o) any references to the Authority shall be deemed to include a reference to the Authority’s Representative, Authority’s advisers, consultants, servants, sub-contractors and/or agents;
- (p) all references to the “Operator” in this Agreement and the Schedules shall be deemed to refer to the Railway Undertaking;
- (q) any references to the Railway Undertaking shall be deemed to include a reference to the Railway Undertaking’s Representative, the Railway Undertaking’s advisers, consultants, servants, sub-contractors and/or agents;
- (r) at any time any reference in this Agreement to a sum or amount, other than an Annual Operating Charge, shall be construed as referring to such sum or amount Indexed for the effects of inflation at such time;
- (s) wherever this Agreement obliges a Party to pay any amount to the other Party in respect of any Loss, Claim or other sums incurred by the other Party:
 - (i) such obligation shall be construed as applying only to so much of such sums as have been properly incurred on an arm’s length commercial basis or,

- where not incurred on an arm's length commercial basis, so much of them as are proper and reasonable; and
- (ii) the other Party shall, where requested by the other Party, provide supporting evidence of such Loss, Claim or other sums;
 - (t) the Authority shall not be imputed with knowledge of any fact, matter or thing merely because that fact, matter or thing is within the knowledge of the State's servants or agents;
 - (u) any reference to the statutory duties or functions of the Authority shall be a reference to such duties or functions (including powers and discretions) from time to time and shall include any common law duties and functions (including powers and discretions);
 - (v) to the extent there is any inconsistency between this Agreement and any Legal Requirement, the Legal Requirement shall prevail;
 - (w) if the result of any calculation to be rounded up or down to a multiple of a specified figure (after deducting the next lower multiple of the specified figure) is exactly half that specified figure (for example, where amounts are to be rounded up or down to the nearest ten (10), the calculation gives a five (5)), then such result shall be rounded up to the nearest multiple of the specified figure;
 - (x) any calculation shall be rounded up or down to three (3) decimal places, or, in the case of monetary amounts, to two (2) decimal places;
 - (y) any reference to "day" shall, unless otherwise stated, mean the period of time which begins with one midnight and ends with the next;
 - (z) where the context requires, any reference in this Agreement:
 - (i) to "approval" shall include "Approval",
 - (ii) to "certificate" shall include "Certificate",
 - (iii) to "acknowledge" shall include "Acknowledged",
 - (iv) to "notice" shall include "Notice";
 - (aa) any Approval shall be at the absolute discretion of the Authority, as applicable, except where expressly stated otherwise in this Agreement; and
 - (bb) words preceding "**include**", "**includes**", "**including**" and "**included**" shall be construed without limitation by the words which follow those words unless inconsistent with the context and the rule of interpretation known as *ejusdem generis* shall not apply.

2.2 Prior Contract

- (a) Subject to clause 2.2(c), nothing in this Agreement shall affect or prejudice the rights, entitlements, obligations and liabilities in relation to the Prior Contract prior to the Commencement Date.

- (b) Subject to clause 2.2(c), as and from the Commencement Date the rights, entitlements, obligations and liabilities of each Party shall be determined by reference to this Agreement, to the exclusion of the Prior Contract.
- (c) To the extent any performance metric and/or amounts payable under Schedules 19 (Performance Payments and Deduction) and Schedule 20 (Contract Prices and Indexation) falls to be determined by reference to the calendar year 2019 (including, any deduction, payment or bonus consequent on such determination), such matter shall be determined by reference to the Prior Contract as if the Prior Contract is in effect up to 31 December 2019 and thereafter shall fall to be determined by reference to this Agreement.

2.3 Ambiguities

In the case of any ambiguity or discrepancy:

- (a) between the provisions in this Agreement (excluding for this purpose, the Schedules) and the provisions of any Schedule, the provisions of this Agreement (excluding for this purpose, the Schedules) shall prevail; or
- (b) between the provisions of particular Schedules, the interpretation which provides the safest and most conservative result, the highest standard of work or service or the latest standard or procedure, as determined by the Authority (acting reasonably), shall prevail; or
- (c) within or between any documentation forming part of a Schedule, the ambiguity or discrepancy shall be determined and resolved by the Authority (acting reasonably).

2.4 Technical Terms

Except where expressly stated to the contrary elsewhere in this Agreement the relevant technical standards used in the Schedules have the meanings given to them in such Schedules.

PART 2 - EFFECTIVENESS WARRANTIES AND PROJECT UNDERTAKINGS**3. EFFECTIVENESS****3.1 Take effect**

This Agreement takes effect on its date of execution.

3.2 Deemed commencement

Notwithstanding clause 3.1 (Take effect), this Agreement shall be deemed to have taken effect as of the Commencement Date such that as between the Parties, in the case of any event or circumstance on or after the Commencement Date, the terms of this Agreement shall apply as if this Agreement had been executed on the Commencement Date.

4. WARRANTIES**4.1 Reliance**

The Railway Undertaking acknowledges that the Authority has entered into this Agreement in reliance on the representations and warranties contained in this Agreement.

4.2 General

The Railway Undertaking represents and warrants to the Authority that, as at the Commencement Date:

- (a) the Railway Undertaking is a company duly incorporated and validly existing under the laws of the jurisdiction of its incorporation and it has the power and authority to own its assets and to conduct the business and to provide the Services which it conducts or proposes to conduct;
- (b) the Railway Undertaking has full power and authority:
 - (i) to execute and deliver the Contract Documents; and
 - (ii) to comply with the provisions of, and perform all of its obligations and exercise all of its rights under, the Contract Documents;
- (c) the Railway Undertaking has taken all necessary action to authorise the execution and delivery of the Contract Documents and the transactions contemplated hereby;
- (d) the entry into and performance by the Railway Undertaking of the Contract Documents does not, and will not, violate in any respect any of the following:
 - (i) any Legal Requirements applicable to the Railway Undertaking; or
 - (ii) the constitutional documents of the Railway Undertaking; or
 - (iii) any agreement, contract or other undertaking to which the Railway Undertaking is a party or which is binding on the Railway Undertaking or any of its property or assets;
- (e) the Contract Documents constitutes legal, valid and binding obligations of the Railway Undertaking enforceable in accordance with its terms except as may be

limited by any relevant bankruptcy, insolvency, examination or similar laws affecting creditors' rights generally, the principles of equity and equitable remedies, limitation of claims or defences of set-off, counterclaim or similar principles and except for any obligation that purports to confer rights on a person that is not a party to the relevant agreement;

- (f) except to the extent previously disclosed to the Authority by or on behalf of the Railway Undertaking, no action, suit, proceeding, litigation or dispute against the Railway Undertaking is currently taking place or pending or, to the Railway Undertaking's knowledge, threatened nor is there subsisting any judgment or award given against the Railway Undertaking or before any court, arbitrator or other body which, in any case, would be reasonably likely (in the reasonable opinion of the Authority) to result in any material adverse change in the business or condition (financial or otherwise) of the Railway Undertaking and/or to materially adversely affect its ability to perform its obligations under the Contract Documents;
- (g) except to the extent previously disclosed to the Authority by the Railway Undertaking, there has been no material adverse change in the financial condition of the Railway Undertaking, since the date of its latest audited consolidated accounts that would have a material adverse effect on the Railway Undertaking's ability to perform its obligations under the Contract Documents; and
- (h) having made all due and reasonable enquiries in respect of information sourced from a third party other than any member of its Group, all written information furnished by or on behalf of the Railway Undertaking in connection with the Contract Documents or delivered by or on behalf of the Railway Undertaking to the Authority pursuant to the Contract Documents was true and accurate in all material respects when given and continues to be true and accurate in all material respects to the extent not subsequently superseded by further written information furnished by or on behalf of the Railway Undertaking.

4.3 Specific representations

The Railway Undertaking hereby represents and warrants that:

- (a) it is a railway undertaking for the purposes of the 2015 Regulations and the 2012 Directive;
- (b) it has all Consents to Operate required in connection with the provision of the Services and such Consents to Operate are in full force and effect; and
- (c) as of 24 December 2017, the maximum annual volume for public passenger transport services by rail in the State was less than twenty three million train-kilometres (23,000,000 train-km) for the purposes of Article 5(4a), Regulation 1370.

5. OPERATOR UNDERTAKINGS

5.1 Railway Undertaking Obligations

- (a) The Railway Undertaking hereby agrees to perform this Agreement (including the Schedules), any Grant Agreement and any other agreement with the Authority.
- (b) Subject to and in accordance with the provisions of this Agreement, the Railway Undertaking shall perform, and shall procure that the Services are performed:

- (i) in accordance with this Agreement during the Contract Period;
- (ii) in full compliance with all applicable Legal Requirements; and
- (iii) in full compliance with all Consents to Operate,

in each case, except to the extent expressly contemplated otherwise by this Agreement, at its own cost and risk.

5.2 Standard of Performance

- (a) The Railway Undertaking shall perform and shall procure that the Services are at all times performed:
 - (i) in an efficient, effective and safe manner and in accordance with Good Industry Practice (except where a lesser specification or standard of performance is expressly required under this Agreement);
 - (ii) in accordance with all Legal Requirements, accepted professional standards, codes of practice and regulations applicable in the State which are consistent with Good Industry Practice;
 - (iii) in a manner that is not likely to be injurious to health or to cause damage to property;
 - (iv) with all due skill, care and diligence;
 - (v) by appropriately experienced, qualified and trained personnel; and
 - (vi) in such manner as would not be likely to significantly damage the reputation of the Authority.
- (b) Without prejudice to the generality of clause 5.2(a), the Railway Undertaking agrees and acknowledges that, at all times during the Contract Period:
 - (i) the Railway Undertaking Assets shall satisfy the requirements of Schedule 2 (Service Specification);
 - (ii) the Railway Undertaking Assets shall be operated in accordance with Schedule 11 (Operation and Maintenance of Railway Undertaking Assets); and
 - (iii) the Services shall be provided in compliance with, and to satisfy, the requirements of Schedule 2 (Service Specification).

5.3 General Obligations

- (a) Without limitation to clause 5.2 (Standard of Performance), the Railway Undertaking shall, at all times:
 - (i) assist and facilitate the Authority in carrying out, and shall take all reasonable steps necessary to support and facilitate the Authority in complying with its duties under any Legal Requirements (insofar as the duties relate to the operation of the Network and the provision of the Services); and

- (ii) perform the Services so as to:
 - (A) facilitate the proper performance by the Authority of its obligations under the 2008 Act, the 2009 Act or any other Legal Requirement insofar as it relates to the provision of the Services and/or any matter the subject of a Grant Agreement;
 - (B) ensure that it shall not hinder or prevent the Authority from enjoying any of its rights, including exercising its rights and powers under the 2008 Act, the 2009 Act or any other Legal Requirement; and
 - (C) ensure that it shall not carry out or permit any act or omission which would put the Authority in breach of its obligations under the 2008 Act, the 2009 Act or any other Legal Requirement.
- (b) The Railway Undertaking, at all times, shall comply with the requirements of the Authority (acting reasonably and insofar as such requirements relate to the subject matter of this Agreement and have been notified to the Railway Undertaking or the Railway Undertaking is otherwise aware of such requirements) and any Legal Requirements.

It is acknowledged that any notification to, or knowledge by, the Railway Undertaking of a requirement for the purposes of this clause shall be deemed to remain in place and to be known by the Railway Undertaking until revoked or otherwise modified by the Authority and notified to the Railway Undertaking (or any person on its behalf).

- (c) The Railway Undertaking shall:
 - (i) procure that all approvals, consents and licences required by it in connection with the entry into, performance, validity and enforceability of this Agreement (or any obligations contemplated herein or therein) will be obtained in a timely manner, including, all approvals, consents and licences required under Data Protection Law to provide information, documents and records to the Authority in connection with the performance of its obligations under this Agreement;
 - (ii) procure that to the extent within its control all consents and licences remain in full force and effect and it shall comply, and shall procure compliance, with the terms and requirements of each of the consents and licences;
 - (iii) obtain all Consents to Operate; and
 - (iv) fulfil any conditions in such Consents to Operate so that the Services may be provided.
- (d) The Railway Undertaking shall procure that:
 - (i) all of its necessary returns will be delivered by or on behalf of the Railway Undertaking to the relevant taxation authorities,
 - (ii) the Railway Undertaking is not in default in the payment of any taxes save in respect of any liability to Tax which is disputed in good faith by the Railway Undertaking, and

- (iii) no Claim, as far as the Railway Undertaking is aware (having made all due enquiry), will be asserted with respect to taxes which has not been disclosed to the Authority (except where the Railway Undertaking is reclaiming VAT).

5.4 Legal Requirements

- (a) The Railway Undertaking shall comply with all Legal Requirements applicable to it in connection with the provision of the Services.
- (b) Without prejudice to the generality of clause 5.4(a), the Railway Undertaking shall comply with:
 - (i) the 2012 Directive;
 - (ii) Regulation 1370;
 - (iii) Directive 2007/59/EC of the European Parliament and of the Council of 23 October 2007 on the certification of train drivers operating locomotives and trains on the railway system in the Community;
 - (iv) the 2015 Regulations; and
 - (v) the Railway Safety Legislation,

together with in the case of (i) – (iii) above, to the extent not otherwise listed above, the Irish legislation transposing such obligations into Irish law.

5.5 Railway Undertaking Assets

- (a) The Railway Undertaking shall ensure that, unless otherwise agreed by the Authority, there is available for use at all times sufficient Trains to provide the Services in accordance with Schedule 2 (Service Specification).
- (b) The Railway Undertaking shall ensure that Railway Undertaking Assets are stored in accordance with Good Industry Practice.
- (c) The Railway Undertaking shall:
 - (i) not do or omit to do or knowingly permit to be done or omitted to be done anything which may reasonably be expected to expose the Railway Undertaking Assets to penalty, forfeiture, impounding, detention, appropriation, damage or destruction (other than in the normal course of the provision of the Services or to the extent otherwise permitted by this Agreement) and without prejudice to the foregoing, if any such situation arises, the Railway Undertaking shall give the Authority prompt notice thereof and use all reasonable endeavours promptly to remedy such situation; and
 - (ii) at its own cost, obtain and maintain in full force all Consents to Operate required for the use and operation of the Railway Undertaking Assets and the provision of the Services.
- (d) The Railway Undertaking shall take all necessary steps to ensure that the operation, use and storage of each Railway Undertaking Asset is not contrary to any Legal Requirements.

5.6 Authority Network Assets

- (a) Subject to clause 5.6(b), the Railway Undertaking:
 - (i) shall not make any modification to the Authority Network Assets or any part of the Authority Network Assets (except as is permitted, or required to comply with its obligations under this Agreement or any Grant Agreement) without the prior written consent of the Authority and subject to such conditions as the Authority, at its absolute discretion, considers necessary; and
 - (ii) shall not, without the prior written consent of the Authority:
 - (A) create, nor permit to subsist, any Encumbrance on or over, or
 - (B) transfer or otherwise dispose of any right, title, benefit or interest in, any Authority Network Asset (or any part thereof) except to the extent expressly contemplated by the Annual Business Plan.
- (b) Clause 5.6(a) shall not apply to any Encumbrance arising by operation of law and in the ordinary course of business to the extent amounts payable by the Railway Undertaking giving rise to such Encumbrance are discharged in accordance with applicable terms and conditions or are subject of a *bona fide* dispute.

5.7 Integration obligations

- (a) The Railway Undertaking, in providing the Services, shall co-ordinate its Services with other public passenger transport services being provided and, to the extent required by the Authority, shall integrate such Services with other public passenger transport services specified by the Authority.
- (b) Without prejudice to clause 5.7(a), the Railway Undertaking shall:
 - (i) participate in and comply with any measures being undertaken or specified by the Authority pursuant to Chapter 3 of Part 3 of the 2008 Act;
 - (ii) support and participate in, using all skill, due care and diligence, the operation of, and any developments in relation to:
 - (A) a real time passenger information system,
 - (B) a journey planner; and
 - (C) any other project related to the foregoing,in each case, being undertaken or promoted by the Authority and shall comply with the requirements of the Authority in connection with the foregoing; and
 - (iii) if required by the Authority, co-operate in the development of a single public transport brand and comply with the requirements of the Authority in connection with the use of such public transport brand.

5.8 Integrated ticketing arrangements

- (a) The Authority and the Railway Undertaking acknowledge that the Railway Undertaking is participating in, and shall provide all reasonable assistance to the Authority in relation to the Integrated Ticketing Scheme to the extent relating to the Services.
- (b) The Railway Undertaking:
 - (i) shall not operate a smart card system, other than the Authority's smart card system, for the discharge of fares; and
 - (ii) shall comply with Schedule 9 (Integrated Ticketing Requirements) and, to the extent not contemplated by Schedule 9 (Integrated Ticketing Requirements), with the Integrated Ticketing Scheme.
- (c) The Railway Undertaking shall participate in any review of the Integrated Ticketing Scheme being undertaken by the Authority.
- (d) The Railway Undertaking shall cooperate with, and facilitate, the Authority in connection with any developments and/or modifications of the Integrated Ticketing Scheme

5.9 Accessibility

The Railway Undertaking shall comply with the accessibility standards for members of the public with special needs, as set out in "Transport Access for All – the Sectoral Plan for Accessible Transport under the Disability Act 2005" or any successor plan or requirement.

5.10 Improvements

The Railway Undertaking is to work with the Authority to continuously improve the Services.

6. PLANS

6.1 Five Year Plan

The Railway Undertaking shall, at the same time it is submitting the plan for the next five years (the "**Five Year Plan**") to the Department for consideration, submit a copy of the Five Year Plan to the Authority for the Authority's information.

6.2 Annual Business Plan

The Railway Undertaking shall prepare, submit for Approval, revise, update and comply with the Annual Business Plan required under Schedule 17 (Annual Business Plan).

6.3 Sustainability Plan

The Railway Undertaking shall prepare and keep updated a plan (a "**Sustainability Plan**") which sets out how the Railway Undertaking will:

- (a) minimise fuel consumption;
- (b) minimise greenhouse gas and other transport emissions;

- (c) outline proposals for replacement of rolling stock and other Railway Undertaking Assets, reflecting the objectives set out at (i) and (ii) above; and
- (d) continuously monitor and improve how it performs from an environmental perspective.

6.4 Operating Plan

- (a) The Railway Undertaking shall comply with the requirements of this Agreement, Schedule 4 (Operating Plan and Programme) and act in accordance with Good Industry Practice in relation to the preparation of the Operating Plan, which is in accordance with, and satisfies the requirements of, Schedule 5 (Operations Management).
- (b) The Railway Undertaking shall implement the Operating Plan throughout the Contract Period.
- (c) The Authority may require, or the Authority and the Railway Undertaking may agree, amendments to the Operating Plan from time to time.
- (d) The Railway Undertaking shall keep under review, maintain and update the Operating Plan and provide an electronic copy of the updated Operating Plan to the Authority within fifteen (15) Working Days of any update.

6.5 General requirements

- (a) The Railway Undertaking, when preparing each plan referred to in this clause 6, shall ensure that the provisions of the other plans and any other plan, guidance or objectives set by the Authority or any other Relevant Authority are taken into consideration when preparing a plan.
- (b) Any plan referred to in this clause 6.5 shall be submitted by the date and time specified by the Authority for its Approval.
- (c) The Authority shall review any draft plan submitted to it in accordance with this clause 6.5 and shall, within twenty (20) Business Days of its receipt, notify the Railway Undertaking whether the draft plan is Approved or whether the Authority has comments and modifications in relation to the draft plan. Any Authority comments and modifications shall be provided by the Authority within the twenty (20) Business Day period referred to in this clause 6.5(c).
- (d) Upon the Railway Undertaking receiving the comments and modifications of the Authority, it shall prepare a revised version of the draft plan taking into account the comments and modifications of the Authority. It shall supply such revised version of the draft plan within fifteen (15) Business Days (or such greater period as the Authority may specify) of its receiving the comments and modifications.
- (e) The process contemplated by clauses 6.5(c) and 6.5(d) shall be repeated until the Authority is satisfied with the draft plan in which case:
 - (i) the Authority shall promptly inform the Railway Undertaking that the draft plan is Approved; and

- (ii) such Approved plan shall be the Annual Business Plan or the Sustainable Plan for the purposes of this Agreement and the period specified in such Approved plan.
- (f) If the Authority does not notify the Railway Undertaking or give comments and modifications on or before the expiry of the period referred to in clause 6.5(c) (or as repeated in accordance with clause 6.5(e)), the draft plan shall be deemed to have been Approved.
- (g) The Railway Undertaking shall comply with each of the Approved plans referred to in this clause 6.

7. INTELLECTUAL PROPERTY

7.1 Licence

The Railway Undertaking shall comply with its obligations as specified by the Authority in this Agreement in relation to Intellectual Property Rights.

7.2 Railway Undertaking's obligations

- (a) Subject to clause 7.2(b), the Railway Undertaking shall:
 - (i) ensure that all Intellectual Property Rights in Network Data acquired, created or brought into existence in any manner whatsoever by or on behalf of it; or
 - (ii) use all reasonable endeavours to ensure that all Intellectual Property Rights and Network Data acquired, vested or brought into existence by or on behalf of a Sub-Contractor,

in each case, for the purposes of the Services are vested in the Authority at the Expiry Date at no cost to the Authority, and to give effect to this, the Railway Undertaking hereby assigns to the Authority absolutely, including by way of present assignment of future rights, its entire right, title and interest in and to all Intellectual Property Rights in Network Data free from all encumbrances, for the full terms thereof throughout the world, including, all statutory and common law rights attaching to the Intellectual Property Rights and the right to bring, make, oppose, defend, appeal proceedings, claims or actions and obtain relief (and to retain any damages recovered) in respect of any infringement or any other cause of action arising from ownership of the Intellectual Property Rights whether occurring before or after the date of this Agreement.

- (b) In the case of software generally available in the market the Railway Undertaking shall use all reasonable endeavours to ensure that the Authority is granted a non-exclusive, transferable, royalty-free perpetual licence in such Intellectual Property Rights and the Authority shall assume the obligation to discharge all fees, charges and expenses of any third party supplier in connection with the acquisition and use by the Authority of such Intellectual Property Rights.
- (c) The Authority shall act reasonably in relation to the Railway Undertaking's ability to comply with its obligations under clause 7.2(a).

7.3 Further assurances

Each Party undertakes, at the request of the other, to execute and do all such instruments, applications, documents, acts and things as may be necessary for the purpose of giving full effect to this clause 7 (Intellectual Property).

7.4 Authority IPR

- (a) The Railway Undertaking shall not use Authority IPR except for the purposes of providing the Services, and shall not use the Authority IPR in any manner which suggests, or may lead people to believe, that it is the Authority.
- (b) The Railway Undertaking shall follow all reasonable directions, instructions and requirements given or made by the Authority from time to time with regard to the form and manner of the use of the Authority IPR including any brand guidelines which may be provided to the Railway Undertaking by the Authority from time to time.
- (c) The Railway Undertaking shall not:
 - (i) do, or omit to do, or permit to be done, any act which will or may weaken, damage or be detrimental to the Authority IPR or the reputation or goodwill associated with the Authority IPR, or which may invalidate or jeopardise the registration of any Authority IPR; or
 - (ii) apply for, or obtain, registration of any trade mark or service mark which consists of, or comprises, or is confusingly similar to, the Authority IPR or any part of it.
- (d) The Railway Undertaking shall not:
 - (i) be entitled to use the Authority's logo, livery or corporate image unless:
 - (A) it obtains the prior written Approval of the Authority to such use; and
 - (B) it complies with the Authority's requirements regarding the use of such logo, livery or corporate image; and
 - (ii) suggest or lead people to believe that it is the Authority.

7.5 Railway Undertaking IPR

- (a) The Railway Undertaking represents and warrants to the Authority that, in performing its obligations under this Agreement, it will not infringe or make unauthorised use of any Intellectual Property Rights of any person, except to the extent that such infringement or unauthorised use is caused by the Railway Undertaking using the Authority IPR in accordance with the terms of this Agreement.
- (b) The Railway Undertaking indemnifies and holds harmless the Authority, on demand, against all Losses as a result of any infringement by the Railway Undertaking of any third party Intellectual Property Rights, except to the extent that such infringement is caused by the Railway Undertaking using the Authority IPR in accordance with the terms of this Agreement.

8. DATA PROTECTION

8.1 Schedule 30 (Data to be processed under this Agreement) – respective roles

- (a) The Parties have set out in Schedule 30 (Data to be processed under this Agreement) their respective roles as either controller or processor of personal data that is processed in connection with the Services, and the basis on which transfers of personal data between the Parties shall take place.
- (b) Where the Railway Undertaking is designated as a processor of specified personal data under Schedule 30 (Data to be processed under this Agreement), it processes such personal data on behalf of the Authority in the context of providing the Services for the duration of the Contract Period. The obligations and rights of the Authority shall be as set out in this Agreement.

8.2 Railway Undertaking – acting as a processor

The Railway Undertaking further agrees that where it acts as a processor on behalf of the Authority:

- (a) the Railway Undertaking will only process such personal data in accordance with the documented instructions of the Authority, including with regard to transfers of personal data to a third country and solely as strictly necessary for the performance of its obligations under this Agreement, unless otherwise required to do so by a Legal Requirement to which the Railway Undertaking is subject and in such a case, the Railway Undertaking shall inform the Authority of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest;
- (b) the Railway Undertaking shall ensure that the persons authorised by the Railway Undertaking to process such personal data are bound by appropriate confidentiality obligations;
- (c) the Railway Undertaking shall implement such technical and organisational security measures as are required to comply with its data security obligations under Data Protection Law, including compliance with the requirements of Schedule 31 (Cyber Security);
- (d) the Railway Undertaking shall not engage any sub-processor in respect of the provision of the Services that will have access to such personal data without the prior written consent of the Authority (such consent not to be unreasonably withheld) and, subject always to clause 46 (Sub-Contracting), where the Authority has consented to the appointment of a sub-processor, the Railway Undertaking shall not replace or engage other sub-processors without the prior written consent of the Authority;
- (e) where any sub-processor of the Railway Undertaking will be processing such personal data on behalf of the Authority, the Railway Undertaking shall ensure that a written contract exists between the Railway Undertaking and the sub-processor containing clauses equivalent to those imposed on the Railway Undertaking in this clause 8;

In the event that any sub-processor fails to meet its data protection obligations, the Railway Undertaking shall remain fully liable to the Authority for the performance of the sub-processor's obligations;

- (f) the Railway Undertaking shall inform the Authority without undue delay in the event of receiving a request from a data subject to exercise their rights under Data

- Protection Law and provide such co-operation and assistance as may reasonably be required to enable the Authority to deal with such request in accordance with the provisions of Data Protection Law;
- (g) taking into account the nature of the processing the Railway Undertaking shall assist the Authority by implementing appropriate technical and organisational measures, in so far as this is possible, to allow the Authority to comply with requests from data subjects to exercise their rights under Data Protection Law;
 - (h) the Railway Undertaking shall assist the Authority in ensuring the Authority's compliance with its obligations in respect of security of personal data, data protection impact assessments and prior consultation requirements under Data Protection Law, taking into account the nature of the processing and the information available to the Railway Undertaking;
 - (i) when the Railway Undertaking ceases to provide Services relating to data processing the Railway Undertaking shall:
 - (i) at the choice of the Authority, delete or return all such personal data to the Authority; and
 - (ii) delete all existing copies of such personal data unless a Legal Requirement requires the continued storage or retention of the personal data;
 - (j) the Railway Undertaking shall:
 - (i) make available to the Authority all information necessary to demonstrate compliance with the obligations laid down in this clause 8; and
 - (ii) allow for and assist with audits, including inspections, conducted by the Authority or another auditor mandated by the Authority, in order to ensure compliance with the obligations laid down in this clause 8, including its data security obligations under Data Protection Law. The Authority shall be entitled, at its discretion, to accept adherence by the Railway Undertaking to an approved code of conduct or an approved certification mechanism to aid demonstration by the Railway Undertaking that it is compliant with the provisions of this clause 8;
 - (k) the Railway Undertaking shall inform the Authority immediately if, in the Railway Undertaking's opinion, it receives an instruction with regard to Article 28(3)(h) of the GDPR from the Authority which infringes Data Protection Law;
 - (l) the Railway Undertaking shall notify the Authority without undue delay, and in any event within forty eight (48) hours, after becoming aware of any personal data breach and shall provide the Authority with such co-operation and assistance as is required for the Authority to comply with its obligations under Articles 33 and 34 of the General Data Protection Regulation (Regulation (EU) 2016/679) in connection with any such personal data breach; and
 - (m) without prejudice to the generality of clause 8.2(a), where any such personal data shall be processed by the Railway Undertaking or any of its agents or sub-processors outside the European Economic Area ("EEA") (which the Parties acknowledge may in the future include the United Kingdom), the Railway Undertaking shall:

- (i) provide the Authority with prior written notice of any intended processing outside of the EEA and provide details of such processing activities and the method intended to be adopted by the Railway Undertaking to ensure the lawfulness of same; and
- (ii) ensure that any such processing shall be in accordance with Data Protection Law, including the provisions of Chapter V of the General Data Protection Regulation (Regulation (EU) 2016/679).

8.3 Controller to controller

- (a) In the event that personal data is transferred from one Party (the “**Transferring Party**”) to the other Party on a controller to controller basis, as identified in Schedule 30 (Data to be processed under this Agreement) or otherwise:
 - (i) the Transferring Party shall take all steps necessary to be able to provide such personal data to the other Party in compliance with the Transferring Party’s obligations under Data Protection Law;
 - (ii) the Transferring Party shall provide such cooperation and assistance as may be reasonably required for the other Party to comply with the other Party’s obligations under Data Protection Law in connection with the other Party’s receipt and use of such personal data; and
 - (iii) each Party shall:
 - (A) notify the other Party promptly upon becoming aware of any data subject request or complaint in relation to the processing of personal data or any correspondence or action by any competent supervisory authority in respect of the provision of such personal data to the other Party or receipt of such personal data from the other Party, as applicable; and
 - (B) provide the other Party with such cooperation and assistance as may be reasonably required for the relevant Party to comply with its obligations under Data Protection Law in respect of any such request, complaint, correspondence or action.
- (b) It is the common intention and understanding of the Parties that the Parties will not act as joint controllers in relation to any personal data that is processed in connection with this Agreement.

8.4 Defined terms

In this clause 8, the terms ‘personal data’, ‘controller’, ‘joint controller’, ‘processor’, ‘process’, ‘data subject’ and ‘personal data breach’ shall have the meanings given to them under Data Protection Law.

PART 3 – OPERATION AND MAINTENANCE**9. OPERATION AND MAINTENANCE****9.1 General Obligations**

- (a) The Railway Undertaking shall comply with the requirements of Schedule 5 (Operations Management) and Schedule 11 (Operation and Maintenance of Railway Undertaking Assets), including in relation to:
- (i) maintaining records in relation to the causes of delays, disruptions and other significant events which affect or have the potential to affect operations and taking the appropriate improvement actions in relation to same;
 - (ii) procuring such water, sewerage disposal, communications, electricity, gas and any other utility services as the Railway Undertaking may require;
 - (iii) co-operating with An Garda Síochána, the relevant Fire Services and Fire Brigades and any other Relevant Authority;
 - (iv) ensuring that any Central Traffic Control is manned in accordance with Schedule 5 (Operations Management);
 - (v) the use of the railway infrastructure; and
 - (vi) maintaining a schedule of all Public Events relevant to the Network.
- (b) The Railway Undertaking shall comply with the requirements of Schedule 12 (Management of Security).
- (c) The Railway Undertaking shall comply with the requirements of Schedule 18 (Records and Reporting Requirements) in relation to, among other reporting obligations, the plans to be prepared and implemented by the Railway Undertaking.

9.2 Service commencement

Without prejudice to any other requirement under this Agreement, the Railway Undertaking shall not commence to provide any new or modified Routes or Services for the purpose of carrying fare paying passengers until the Railway Undertaking has satisfied the Authority that it has:

- (a) secured all Consents to Operate in respect thereof;
- (b) obtained the Approval of the Authority to the provision of the changes to the Services; and
- (c) satisfied all Legal Requirements.

9.3 Training of Staff

The Railway Undertaking shall comply with the requirements of this Agreement and shall act in accordance with Good Industry Practice and applicable Legal Requirements in relation to:

- (a) the preparation of relevant training procedures for relevant staff and relevant personnel deployed in the provision of the Services; and

- (b) the training of relevant staff and relevant personnel, deployed in the provision of the Services, during the Contract Period,

to ensure that the Services are performed with and by appropriately qualified and trained personnel in accordance with Schedule 5 (Operations Management).

9.4 Policing, Emergency Exercises and Enquiries

The Railway Undertaking shall:

- (a) comply with the requirements of Schedule 5 (Operations Management) and Schedule 12 (Management of Security) in relation to the security of the Network, the Railway Undertaking Assets, the Railway Undertaking's staff and members of the public using the Network;
- (b) make arrangements with the appropriate members of An Garda Síochána as may be necessary in relation to their policing of the Network;
- (c) co-operate with the Authority and any other Relevant Authorities in relation to the planning, organisation and control of extraordinary passenger movements resulting from the holding of special events, including Public Events; and
- (d) without prejudice to the generality of the foregoing, comply with the requirements of Schedule 5 (Operations Management) in relation to policing, emergency exercises and special inquiries or investigations that may affect the Network and/or the Services.

10. DEFECTS IN AND DAMAGE TO RAILWAY UNDERTAKING ASSETS

10.1 Railway Undertaking's General Obligations

The Railway Undertaking shall:

- (a) bear all risk of loss, theft and damage (save for any loss, theft or damage directly caused by the Authority) to Railway Undertaking Assets from any cause whatsoever, except to the extent expressly contemplated otherwise by this Agreement;
- (b) be responsible for the safe operation of the Railway Undertaking Assets and the railway infrastructure assets in performing the Services;
- (c) be responsible for identifying and remedying, or procuring the remedy of, defects in Railway Undertaking Assets which impact the Services and notifying such defects to the Authority and any applicable Relevant Authority;
- (d) as between the Authority and it, be responsible for procuring the identification and remedying of defects in the railway infrastructure; and
- (e) comply with the provisions of Schedule 11 (Operation and Maintenance of Railway Undertaking Assets).

10.2 Damage to Railway Undertaking Assets/railway infrastructure

- (a) On the occurrence of damage to a Railway Undertaking Asset, the Railway Undertaking shall rectify such damage with all due speed in accordance with Schedule 11 (Operation and Maintenance of Railway Undertaking Assets) and shall

notify the Authority of any damage that has, or is likely to have, a disruptive effect on the provision of Services.

- (b) On the occurrence of damage to the railway infrastructure (or any part of the railway infrastructure), that has, or is likely to have, a disruptive effect on rail passenger services, the Railway Undertaking:
- (i) shall notify the Authority and, to the extent having a responsibility for the railway infrastructure asset, the Infrastructure Manager;
 - (ii) shall rectify, or, to the extent the Infrastructure Manager has a responsibility for such railway infrastructure asset, procure that the Infrastructure Manager shall rectify the damage, with the minimum disruption to the provision of rail passenger services provided that:
 - (A) where the damage involves a number of railway infrastructure assets, and responsibility for different railway infrastructure assets rests with the Infrastructure Manager and the Railway Undertaking, both shall co-operate and shall rectify the damage; and
 - (B) where the damage involves a railway infrastructure asset and it is not clear which entity is responsible for such railway infrastructure asset, the Railway Undertaking shall rectify such damage, without prejudice to it exercising any remedies available to it in relation to such damage against the Infrastructure Manager;
 - (iii) except in the case of emergencies, shall get the prior consent of the Authority before consenting to the carrying out of any works that would interrupt the provision of rail passenger services along a Route for a period greater than three (3) days; and
 - (iv) shall co-operate with the Infrastructure Manager and any Relevant Authority:
 - (A) to mitigate the effect of such damage on the provision of rail passenger services; and
 - (B) to have the damage rectified as soon as possible.

10.3 Defects and Damage to Railway Undertaking Assets

Subject to clause 33.1 (Reporting and monitoring) and without prejudice to the Railway Undertaking's obligations under clause 5 (Operator Undertakings), the Railway Undertaking shall be liable for any Performance Deduction arising as a consequence of damage to Railway Undertaking Assets or railway infrastructure or defects in either, unless relieved by the Authority in accordance with clause 39 (Force Majeure), clause 40 (Relief Events) or to the extent contemplated by Schedule 19 (Performance Payments and Deductions).

11. MAINTENANCE

11.1 Maintenance

The Railway Undertaking shall comply with the requirements of Schedule 5 (Operations Management) and Schedule 11 (Operation and Maintenance of Railway Undertaking Assets) in relation to maintenance of the Railway Undertaking Assets.

11.2 General requirements

Without prejudice to clause 11.1 (Maintenance), the Railway Undertaking shall use, operate, maintain and securely store each Railway Undertaking Asset in compliance with:

- (a) any recommendations of the relevant manufacturer notified to the Railway Undertaking by the manufacturer, the Authority from time to time or of which the Railway Undertaking is otherwise aware; and
- (b) Good Industry Practice from time to time.

11.3 Disruption to Services

If, at any time, it appears to the Railway Undertaking likely that any maintenance or repair works (including, for the avoidance of doubt, any work required under clause 10 (Defects in and Damage to Railway Undertaking Assets) to be carried out to Railway Undertaking Assets or railway infrastructure will necessitate an interruption to, or restriction of, passenger services on the Network so as to result in passenger services on the Network not being provided in accordance with the Timetable, the Railway Undertaking shall:

- (a) notify the Authority, as soon as is practicable in advance of the carrying out of such work, of:
 - (i) the nature of such work;
 - (ii) the likely effect of such works on passenger services; and
- (b) comply with the requirements of Schedule 5 (Operations Management) and Schedule 15 (Marketing, Communications and Public Relations) in relation to notification of passengers and provision of replacement bus services.

11.4 Third party maintenance

The Railway Undertaking shall co-operate with, and shall facilitate, the Infrastructure Manager and its contractors in performing maintenance on the Network.

12. ENVIRONMENTAL MANAGEMENT

12.1 General Environmental Management

The Railway Undertaking shall:

- (a) perform the Services so as not to interfere unnecessarily or improperly with:
 - (i) the convenience of the public; or
 - (ii) access to, use and occupation of, public or private roads or footpaths, or of properties whether in the possession of the Authority or of any other person;
- (b) perform the Services in accordance with, and comply with, the provisions of Schedule 7 (Environmental Management); and
- (c) comply with any warning letters or notices issued to the Railway Undertaking under any Environmental Legislation in connection with the Network and/or the Services.

12.2 Land Contamination

The Railway Undertaking shall not, in performing the Services, cause or knowingly permit contamination of any land by any deliberate or accidental disposal, including leakage or spillage of any Dangerous Substance.

13. SAFETY MANAGEMENT

13.1 Safety Management

- (a) The Railway Undertaking shall be responsible for all health and safety matters related to the performance of the Services and shall manage for the benefit of the Authority all safety requirements related to the Network and Railway Undertaking Assets so as to facilitate the compliance by the Authority of the Authority's obligations under any relevant Legal Requirements.
- (b) Without prejudice to the generality of the foregoing, the Railway Undertaking shall comply with the requirements of Schedule 6 (Safety Management) in relation to health and safety matters related to the performance of the Services.

13.2 Construction Regulations

To the extent that the Safety, Health and Welfare at Work (Construction) Regulations 2013 apply to any activities for which the Railway Undertaking is responsible under this Agreement, the Railway Undertaking shall, in relation to those activities, be the "client" as that term is used in those regulations, and shall comply with this Agreement accordingly.

14. RAILWAY INFRASTRUCTURE/STATION ACCESS

14.1 Provision of information

- (a) The Railway Undertaking shall, subject always to clause 7 (Intellectual Property), provide (or procure the provision) to the Authority such information as the Authority may reasonably require concerning:
 - (i) the railway infrastructure assets and/or Railway Undertaking Assets; and/or
 - (ii) the operation of passenger services on the Network; and/or
 - (iii) the maintenance of the railway infrastructure assets and/or Railway Undertaking Assets,

that the Authority believes to be required to allow it to specify the terms of any contract for the design, construction, operation and/or maintenance of any public transport infrastructure (as defined in the 2008 Act) relating to the Network or the operation of services using the Railway Undertaking Assets or the railway infrastructure.

- (b) Without prejudice to the generality of the foregoing, the information required may be required for the purposes of, and used in preparing and making available:
 - (i) a data room;
 - (ii) any information memorandum, invitation to tender, technical specification, draft contract or other document connected with such purposes.

- (c) Any information requested by the Authority to be provided pursuant to clause 14.1(a) shall be provided by the Railway Undertaking within such time period as the Authority may reasonably require.

14.2 Railway Infrastructure

- (a) The Authority may require the Railway Undertaking to (or procure that the Infrastructure Manager shall):
 - (i) liaise with any contractor (and its consultants and advisers) engaged by the Authority to perform any aspect of the design and/or construction of any new or improved infrastructure relating to the Network, in accordance with the reasonable requests of the Authority or any such contractor;
 - (ii) subject to prior reasonable notice, co-operate and co-ordinate with any such contractor (and its consultants and advisers) given access by the Authority to those parts of the Railway Undertaking Assets or railway infrastructure asset to which access is required for the efficient carrying out of such design and/or construction; and
 - (iii) provide to the Authority and/or to any such contractor such information concerning the design and/or construction of the Railway Undertaking Assets or railway infrastructure asset which is at its unrestricted disposal and is reasonably required by the Authority and/or such contractor to facilitate the efficient interfacing and integration of the Network with any new or improved infrastructure relating to the Network.
- (b) The Railway Undertaking shall use all reasonable endeavours to ensure that during the construction of any new or improved infrastructure relating to the Network there is minimum disruption to the passenger services being provided on the Network.

14.3 Core Documents

- (a) The Railway Undertaking shall perform its obligations and observe the terms of the Core Documents to which it is a party.
- (b) The Railway Undertaking shall not, and shall procure that no Associated Company of the Railway Undertaking shall, in respect of any Core Document;
 - (i) terminate it or permit its termination;
 - (ii) in any material respect depart from, waive or fail to enforce any rights it may have under such Core Document;
 - (iii) make or agree any amendment to, or variation of, any Core Document,unless the relevant document or proposed course of action has received Approval from the Authority (such Approval not to be unreasonably withheld by the Authority).
- (c) If:
 - (i) at any time any Core Document is terminated,
 - (ii) an amendment or variation is made to any Core Document,

- (iii) the Railway Undertaking is granted a non-administrative waiver or release of any of the obligations under any Core Document, or
- (iv) any agreement is entered into which would affect the interpretation or application of any of the Core Documents is entered into,

then the Railway Undertaking shall deliver to the Authority a certified copy of each such document or (so far as it is not in writing) a true and complete record thereof in writing within twenty (20) Business Days of the date of its execution or creation, certified as a true copy by an officer of the Railway Undertaking.

15. INFRASTRUCTURE MANAGER/OTHER OPERATIONS

15.1 Separation of teams

Iarnród Éireann – Irish Rail hereby agrees with, and undertakes to, the Authority:

- (a) to maintain a team of personnel in connection with the provision of the Services (the “**Services team**”) separate and distinct from those involved in its responsibilities, as Infrastructure Manager, in connection with the provision of the railway infrastructure;
- (b) the Services team:
 - (i) shall not be involved in, or
 - (ii) have or had any role in relation to,
 - (iii) shall not have access to, or have disclosed to them, any information in relation to,

the operation by the Railway Undertaking as the Infrastructure Manager (as provider of the railway infrastructure) of the railway infrastructure or any other operations carried out by the Railway Undertaking (the “**Other Operations**”) that could be regarded as giving rise to a conflict of interest with its (and their) responsibilities in connection with the provision of the Services;

- (c) the Services team shall deal with:
 - (i) Iarnród Éireann – Irish Rail as the Infrastructure Manager (as provider of the railway infrastructure); and
 - (ii) that part of Iarnród Éireann – Irish Rail dealing with Other Operations, on a basis that is arms-length, transparent and the same as that for any other railway undertaking;
- (d) the Railway Undertaking shall not receive, or seek to receive, any favourable or otherwise discriminatory treatment from the Infrastructure Manager;
- (e) the Services team shall operate physically remote from any person that is part of a team involved in the provision of the railway infrastructure or the Other Operations;
- (f) in relation to :

- (i) information relating to or derived from the provision of the Services, the Services team; or
- (ii) information relating to or derived from the provision of the railway infrastructure or the Other Operations, any person involved in the provision of the railway infrastructure or the Other Operations,

shall not disclose, directly or indirectly, to any person who is involved in a team other than their team any information related to the Services, the provision of the railway infrastructure or the Other Operations that is confidential ("**Relevant Information**"); and

- (g) that:
 - (i) all Relevant Information is secured and is not available or disclosed (directly or indirectly) to a person who is involved:
 - (A) in the case of Relevant Information concerning the provision of railway infrastructure or the Other Operations, in the provision of the Services; or
 - (B) in the case of Relevant Information concerning the Services, in the provision of the railway infrastructure or the Other Operations;
 - (ii) all Relevant Information:
 - (A) shall be securely locked away when a member of the Services team is away from his desk; and
 - (B) if in electronic form, is stored in secure drives, segregated and kept separate from that generally available in the Railway Undertaking.

15.2 Separate accounts

The Railway Undertaking shall ensure that:

- (a) the activities contemplated by this Agreement are the subject of separate accounts;
- (b) such accounts shall comply with the requirements of Regulation 1370, the 2012 Directive, the European Union (Regulation of Railways) Regulations 2015 (SI 249/2015) and any other Legal Requirement applicable to them;
- (c) such accounts are provided to the Authority, and/or such other person (acting on its behalf) as the Authority may specify, within such period as the Authority may specify, having regard to the status of such accounts; and
- (d) without prejudice to clause 26 (Information and Access), it will respond within such period as the Authority may specify to any queries which the Authority may raise in relation to such accounts.

16. REVIEWS

16.1 Annual review

- (a) On the expiry of each Contract Year, the Authority shall undertake a review (the “**Annual Review**”) which shall be a review of the Services provided and performance under this Agreement during that Contract Year.
- (b) In connection with such Annual Review, the Railway Undertaking shall attend a meeting with the Authority for the purposes of reviewing the Contractor’s performance under this Agreement and the Services.
- (c) In carrying out any Annual Review, the Authority may consider such matters as it deems appropriate, including (but not exclusively):
 - (i) the results of planned or random inspections;
 - (ii) the results of the customer satisfaction surveys;
 - (iii) the audited financial statements;
 - (iv) the number of complaints received by the Railway Undertaking or the Authority and the results of complaints resolution;
- (d) any matters contemplated by the Service Specification; and
- (e) the standards of performance achieved.

16.2 Other Reviews

- (a) The Authority reserves the right to undertake a more detailed review of one or more areas as may be deemed necessary by it from time to time.
- (b) Subject to the giving of not less than five (5) Business Days’ notice, the Railway Undertaking shall attend such meetings at the Authority’s offices or such other premises as the Authority may reasonably require to:
 - (i) review the day-to-day performance of this Agreement; and
 - (ii) discuss any changes to this Agreement which might be appropriate and desirable.
- (c) Each Party shall ensure that sufficient representatives of that Party attend meetings required under this clause 16.2 to constructively address any issues raised.
- (d) The Railway Undertaking shall liaise with the Authority as and when required by the Authority, and to deal with general enquiries of the Authority in a prompt and efficient manner.
- (e) The Authority shall have regard to any submissions made by the Railway Undertaking in relation to matters to be considered as part of an Annual Review or other review pursuant to this clause 16 (Reviews).

16.3 Railway Undertaking response

The Railway Undertaking shall address all issues raised during any review by the Authority and to the results of the Annual Review referred to in clause 16.1 (Annual Review).

PART 4 - PASSENGER SERVICES**17. PASSENGER SERVICES****17.1 Timetable**

- (a) The Railway Undertaking shall provide the Services in accordance with the Timetables set out in Schedule 2 (Service Specification).
- (b) Without prejudice to the generality of clause 17.1(a), the Railway Undertaking shall comply with the requirements of Schedule 2 (Service Specification), Schedule 13 (Customer Care), Schedule 14 (Customer Information) and Schedule 15 (Marketing, Communications and Public Relations) in relation to the Timetable and the provision of information relating to the Services.

17.2 Passengers' Charter

- (a) The Railway Undertaking shall prepare the Passengers' Charter for Approval by the Authority within forty (40) Business Days of the Commencement Date and subsequently review and update the Passengers' Charter by each anniversary of the start of the Contract Year.
- (b) Without prejudice to clause 17.2(a), the Railway Undertaking shall comply with the requirements of Schedule 13 (Customer Care).
- (c) The Railway Undertaking shall provide the Services so that the requirements of the Passengers' Charter are satisfied.

17.3 Dublin-Belfast

- (a) The parties acknowledge that, as of the Commencement Date:
 - (i) the Services include the route between Dublin and Belfast (the "**Cross-Border Service**");
 - (ii) the Cross-Border Service is operated by both the Railway Undertaking and by Northern Ireland Railways;
 - (iii) certain elements of the Cross-Border Service (as so identified in Schedule 1 (Network Description) are provided by Northern Ireland Railways on behalf of the Railway Undertaking (the "**PSO Cross-Border Service**");
 - (iv) other elements of the Cross-Border Service are provided by the Railway Undertaking on behalf of Northern Ireland Railways; and
 - (v) in connection therewith, the Railway Undertaking and Northern Ireland Railways have agreed a cost and revenue sharing arrangement.
- (b) The Railway Undertaking shall ensure that to the extent any payments made by it to Northern Ireland Railways in relation to the PSO Cross-Border Service exceed the amount which would be in accordance with Regulation 1370, such excess amount shall not be funded, or otherwise derive from, an Annual Operating Charge.
- (c) The Authority consents to the Railway Undertaking participating in the arrangements contemplated by this clause 17.3 subject to the following:

- (i) clause 17.3(b) and clause 28.1 (Provision of Services) being satisfied in relation to such arrangements;
 - (ii) Northern Ireland Railways having, and complying with, all Consents to Operate to allow it to provide rail passenger services within the State (it being acknowledged that, as of the Commencement Date, Northern Ireland Railways is operating in the State in accordance with, and subject to, regulation 50, 2015 Regulations); and
 - (iii) Northern Ireland Railways having in force and effect such insurances as in the opinion of the Authority (acting reasonably) should be in place in connection with the carriage of passengers in the State.
- (d) If the requirements of clause 17.3(c) are not satisfied:
- (i) Northern Ireland Railways may not provide Services in the State; and
 - (ii) the Railway Undertaking shall take all steps to suspend or terminate such provision of Services on its behalf and the arrangements contemplated by this clause 17.3 for so long as Northern Ireland Railways is not satisfying the requirements of clause 17.3(c).
- (e) Without prejudice to clause 17.3(c), the Parties acknowledge that, in the event of the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union, Northern Ireland Railways will not be able to rely on any consents or authorisations issued in Northern Ireland for the purposes of regulation 50, 2015 Regulations, except to the extent expressly permitted by law.
- (f) No change may be made to the arrangements between the Railway Undertaking and Northern Ireland Railways contemplated by this clause 17.3:
- (i) which would result in the requirements of clause 17.3(c) ceasing to be satisfied; and
 - (ii) unless the prior consent of the Authority has been obtained.

17.4 Authority Consent

The Railway Undertaking shall not make any changes to:

- (a) the Timetable;
- (b) the Passengers' Charter;
- (c) any Route;
- (d) the arrangements contemplated by clause 17.3 (Dublin -Belfast); or
- (e) to the extent such changes have, or might reasonably be expected to have, a material effect on the performance of the Services by the Railway Undertaking, any bye-laws made by the Railway Undertaking,

without the Authority's prior consent in writing or, in the case of clause 17.4(a) or clause 17.4(c), to the extent permitted by Schedule 5 (Operations Management).

18. REVENUE COLLECTION

18.1 Ticketing Arrangements

The Railway Undertaking shall:

- (a) procure, make available, charge for and accept tickets of such types, design, periodicity, distance and service validity, at the fare levels and subject to operational arrangements as may be notified by the Authority from time to time to the Railway Undertaking, subject to the Authority providing the Railway Undertaking with reasonable prior notice in relation to changes to the tickets and the fare levels and consultation by the Authority with the Railway Undertaking concerning any operational or administrative issues in relation to such changes;
- (b) provide such assistance to the Authority in establishing the design of tickets to be used on the Network as the Authority may require from time to time;
- (c) implement revenue protection measures in accordance with Schedule 10 (Revenue Protection) or such other measures as the Authority may require from time to time;
- (d) collect Fares from passengers or require passengers to present (and have validated as appropriate) a valid ticket or pass entitling such passengers to use the Services; and
- (e) without prejudice to the generality of the foregoing, comply with:
 - (i) the revenue reporting set out in the Schedule 8 (Ticketing and Fares Collection);
 - (ii) the requirements of Schedule 8 (Ticketing and Fares Collection) in relation to ticketing; and
 - (iii) the requirements of Schedule 10 (Revenue Protection) in relation to Standard Fares.

18.2 Standard Fares

- (a) The Railway Undertaking shall be responsible for implementing any relevant by-laws and all Legal Requirements relating to Standard Fares, including:
 - (i) issuing Standard Fares notices;
 - (ii) making demands for payment of Standard Fares; and
 - (iii) collecting Standard Fares,in accordance with Schedule 10 (Revenue Protection).
- (b) The Railway Undertaking shall keep records of, and, subject to Legal Requirements, provide details to the Authority upon request of:
 - (i) all notices issued and demands for payment made in relation to Standard Fares; and
 - (ii) all Standard Fares collected by the Railway Undertaking.

18.3 Authority Consent

The Railway Undertaking shall not make any changes to the revenue collection arrangements contemplated by this clause 18 (Revenue Collection) without the Authority's prior consent in writing.

18.4 Fares

- (a) The Railway Undertaking is entitled to, and shall retain, all Fares.
- (b) All Fares in a Contract Year shall be in accordance with the Fares determined by the Authority and included in the relevant Annual Business Plan made pursuant to Schedule 17 (Annual Business Plan).
- (c) No changes to Fares shall be made by the Railway Undertaking without the prior Approval in writing of the Authority.

19. ADVERTISING

- (a) Iarnród Éireann - Irish Rail shall be entitled to any revenue from the sale of advertising space in relation to the Network, Railway Undertaking Assets and the railway infrastructure.
- (b) Iarnród Éireann - Irish Rail shall facilitate and/or procure such reasonable access to the Network (subject to compliance with all reasonable instructions of the Iarnród Éireann - Irish Rail with regard to the safety of the Network) and provided such access does not disrupt the Services for the Authority, its employees, sub-contractors and agents as may be requested by the Authority in relation to the installation and replacement of advertisements on the Network or any Railway Undertaking Assets.

20. CUSTOMER CARE AND PUBLIC RELATIONS

The Railway Undertaking shall:

- (a) comply with the requirements of Schedule 13 (Customer Care) in relation to complaints handling and shall implement a complaints handling system in accordance with such Schedule;
- (b) comply with any reasonable request of the Authority that the Railway Undertaking join and participate in such liaison activities or such public liaison groups as the Authority may require; and
- (c) comply with the requirements of Schedule 15 (Marketing, Communications and Public Relations) in relation to public relations and publicity.

21. SERVICES INTERRUPTIONS

21.1 Services Interruptions

In the event of a Services Interruption, the Railway Undertaking shall take all reasonable and practical steps to maintain services either side of the affected section of the Network and shall continue to provide the Services by either:

- (a) operating Services to the nearest suitable Station either side of the affected part of the Network; or

- (b) arranging for alternative transport from such nearest Station to the nearest Station on the Route where a replacement Train is available to be used or, if applicable, the Terminating Station,

in each case in accordance with Schedule 5 (Operations Management).

21.2 Railway Undertaking Relief in relation to Service Interruptions

To the extent that the Railway Undertaking complies with clause 21.1 (Services Interruptions), then the Railway Undertaking shall be entitled to relief in accordance with Schedule 19 (Performance Payments and Deductions).

PART 5 - RELATIONSHIPS, MONITORING AND THIRD PARTIES**22. RELATIONSHIPS****22.1 Instructions in writing**

Instructions given by the Authority shall be in writing, provided that if, in the event of an emergency, the Authority considers it necessary to give any such instructions orally, the Railway Undertaking shall comply with such instructions but such instruction shall be confirmed in writing by the Authority, as the case may be, as soon as practicable and in any event within two (2) days of the oral instructions being given.

22.2 Certificates and approvals

- (a) Where a part of the Network or any Railway Undertaking Asset is required to be certified or approved by a Relevant Authority, the Authority shall not be obliged to issue any certificate or approval under this Agreement in respect of such part of the Network unless the Authority is reasonably satisfied that the required certificates or approvals have been given by the Relevant Authority.
- (b) Neither the Authority nor the Railway Undertaking shall be liable for any delay or disruption to the Services as a result of the Authority, before issuing a certificate or approval, as the case may be, making reasonable enquiries to establish in accordance with clause 22.2(a) whether a certificate or approval has been given by the Relevant Authority.

22.3 Railway Undertaking's Representative

- (a) The Railway Undertaking shall appoint a competent and qualified person to act as its representative in connection with this Agreement and such person shall be the Railway Undertaking's Representative. Such appointment shall be subject to the Approval of the Authority (such Approval not to be unreasonably withheld or delayed).
- (b)
 - (i) The Railway Undertaking's Representative shall be located in Ireland.
 - (ii) At any time the Railway Undertaking's Representative will be outside of Ireland for more than five (5) consecutive Business Days, the Railway Undertaking's Representative shall nominate a temporary substitute and shall so notify the Authority in writing, which notice shall include the name and contact details of the temporary substitute.
 - (iii) Where the Railway Undertaking's Representative proposes to nominate a substitute for a period in excess of twenty (20) consecutive Business Days, such nomination shall, unless otherwise agreed by the Parties, be deemed to be a termination of the Railway Undertaking's Representative's appointment and the provisions of clause 22.4 (Change of Railway Undertaking's Representative) shall apply.
- (c) The Railway Undertaking's Representative shall have full authority to act on behalf of the Railway Undertaking for all purposes of this Agreement. The Authority shall be entitled to treat any act of the Railway Undertaking's Representative in connection with this Agreement as being expressly authorised by the Railway Undertaking, and the Authority shall not be required to determine whether any express authority has in fact been given.

22.4 Change of Railway Undertaking's Representative

- (a) Except in the case of resignation, death, serious illness or gross misconduct, the appointment of the Railway Undertaking's Representative shall not be terminated by the Railway Undertaking without the prior Approval of the Authority (not to be unreasonably withheld or delayed).
- (b) As soon as reasonably practicable upon the Railway Undertaking's Representative ceasing to act in the case of resignation, death, serious illness or gross misconduct and at least twenty (20) Business Days prior to termination of the appointment in all other cases, the Railway Undertaking shall notify the Authority in writing of its intention to appoint a substitute.
- (c) Such appointment shall be subject to the Approval of the Authority (such Approval not to be unreasonably withheld or delayed).

22.5 Authority's Representative

- (a) The Authority shall appoint a competent and qualified person to act as its representative in connection with this Agreement and such person shall be the Authority's Representative.
- (b)
 - (i) The Authority's Representative shall be located in Ireland.
 - (ii) At any time the Authority's Representative will be outside of Ireland for more than five (5) consecutive Business Days, the Authority's Representative shall nominate a temporary substitute and shall so notify the Railway Undertaking in writing, which notice shall include the name and contact details of the temporary substitute.
 - (iii) Where the Authority's Representative proposes to nominate a substitute for a period in excess of twenty (20) consecutive Business Days, such nomination shall, unless otherwise notified by the Authority, be deemed to be a termination of the Authority's Representative's appointment and the provisions of clause 22.6 (Change of Authority's Representative) shall apply.
- (c) The Authority's Representative shall have full authority to act on behalf of the Authority for all purposes of this Agreement. The Railway Undertaking shall be entitled to treat any act of the Authority's Representative in connection with this Agreement as being expressly authorised by the Authority, and the Railway Undertaking shall not be required to determine whether any express authority has in fact been given.

22.6 Change of Authority' Representative

- (a) The Authority may, at any time and from time to time, by notice to the Railway Undertaking, terminate the appointment of the Authority's Representative or appoint one or more substitute Authority's Representatives.
- (b) Any such notice shall specify the date on which such termination or substitution shall have effect.

23. QUALITY MANAGEMENT

The Railway Undertaking shall, in performing its obligations under this Agreement, comply at all times with the requirements of Schedule 16 (Quality Management) in relation to quality plans and systems.

24. CONSENTS AND APPROVALS

24.1 Approvals

- (a) Without limitation to clause 24.2 (Effect of Consents and Approvals), notwithstanding the Approval of the Authority, the Railway Undertaking shall not be entitled to recover from the Authority any Losses or Claims which may arise out of or in connection with any inadequacy, error or failure of any matter which has been subject to Approval and any comments made by the Authority in the course thereof.
- (b) The Railway Undertaking shall, if required by the Authority, use all reasonable endeavours to obtain from the Principal Sub-Contractors, prior to any such party carrying out any part of the Services, waivers of liability in favour of the Authority in respect of any such Losses and Claims.
- (c) No comments or absence of comments on any matter in the course of an Approval shall relieve the Railway Undertaking of any of its obligations under this Agreement in connection with the Services.

24.2 Effect of Consents and Approvals

- (a) Neither the giving of any Approval, knowledge of the terms of any agreement or document, nor the review of any document or course of action by or on behalf of the Authority shall relieve the Railway Undertaking of any of its obligations under this Agreement or of its duty to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the Approval, knowledge or review.
- (b) Any Approval shall be final, subject only to being opened up, reviewed or revised:
 - (i) if errors or further material relevant facts are revealed after the Approval has been given; or
 - (ii) where clause 24.3 (Withdrawal of Approval) applies.
- (c) Without prejudice to the preceding provisions of this clause 24.2, any Approval, endorsement, decision, opinion, instruction, notice, statement of objection, finding, determination, requirement, or certificate of the Authority shall be final.

24.3 Withdrawal of Approval

Without prejudice to clause 24.2 (Effects of Consents and Approvals), which shall apply whether or not an Approval is withdrawn under this clause 24.3, an Approval may be withdrawn if it has been given:

- (a) on the basis of materially inaccurate or misleading facts, information or calculations provided to the Authority by the Railway Undertaking or any of its Staff; or

- (b) without all relevant material facts, information or calculations known by the Railway Undertaking or any of its Staff at such time (at a time when such member of Staff owes an obligation to the Railway Undertaking to provide to the Railway Undertaking or the Authority such facts, information or calculations) having been given to the Authority and where, had such facts, information or calculations been given to the Authority such Approval would not have been given.

25. CONSENTS TO OPERATE

- (a) From the Commencement Date the Railway Undertaking shall (at its own cost) maintain and, where appropriate, obtain or otherwise renew the Consents to Operate.
- (b) The Railway Undertaking shall provide copies of each Consent to Operate obtained or renewed by it to the Authority within five (5) Business Days of receipt of such Consent to Operate.

26. INFORMATION AND ACCESS

26.1 Use of Information

The Railway Undertaking shall only use any information provided to it by the Authority or any person that the Authority has procured to deliver information in connection with this Agreement solely for the purposes of this Agreement and the provision of the Services and for no other purpose.

26.2 Supply of Information and Access to the Network

- (a) Without prejudice to clause 15.2 (Separate accounts), the Railway Undertaking shall at any time throughout the Contract Period:
 - (i) provide to the Authority at its own cost such information, records or documents (including details of cost breakdowns or updates to financial models, if any or any copy correspondence) with respect to the Services as the Authority may require and within such period as the Authority may in each case require and subject to all applicable laws;
 - (ii) without prejudice to the generality of clause 26.2(a)(i), provide such information, records or documents as the Authority may require and within such period as the Authority may in each case require in order to assess the efficiency of the provision of Services or any part of the Services;
 - (iii) inform and keep informed the Authority of any material change or proposed material change in the performance of the Services or in the Railway Undertaking including any material change in or restructuring of the capitalisation or financing of the Railway Undertaking; and
 - (iv) subject to the compliance by the Authority with all reasonable instructions of the Railway Undertaking with regard to the safety of the Network and the Railway Undertaking Assets, provide access to the Authority to the Railway Undertaking Assets (or any part thereof).
- (b) Without prejudice to the generality of clause 26.2(a), the Railway Undertaking shall make available to the Authority, or such professional advisers as the Authority may from time to time nominate, such financial information, documents or accounts as the Authority may reasonably require to audit and verify any payments made under this

Agreement and such as may reasonably be required from time to time to comply with the statutory obligations on the Authority for preparation of accounts.

- (c) The Railway Undertaking:
 - (i) acknowledges that the rights of the Authority under clauses 26.2(a) and 26.2(b) may be exercised by such professional advisers as the Authority may from time to time appoint on its behalf; and
 - (ii) shall provide such information, access and assistance as may reasonably be required by such professional advisers subject to, and in accordance with, clauses 26.2(a) and 26.2(b).
- (d) The reasonable costs of the financial audit to be carried out in accordance with Schedule 29 (Audit Terms of Reference) shall be borne in equal shares by the Authority and the Railway Undertaking.

26.3 Oireachtas Questions and Issues

- (a) Without prejudice to clause 26.2 (Supply of Information and Access to the Network) the Railway Undertaking shall, at its own cost and within the timescale from time to time prescribed by the Authority to ensure compliance with all relevant procedures, provide any information within the possession of the Railway Undertaking or any company which is at the relevant time an Associated Company of the Railway Undertaking or the Principal Sub-Contractors or any of their respective directors, officers, employees, servants or agents, which is requested by the Authority:
 - (i) in connection with this Agreement and/or the Services; and
 - (ii) in relation to statements by the Authority to or responses to questions or issues raised by or on behalf of the Oireachtas, or any member thereof or the Comptroller and Auditor General.
- (b) The Authority shall be entitled to disclose in the course of carrying out its public functions any information to which clause 26.3 applies to the extent that it deems necessary or appropriate and shall not be obliged to keep any such information confidential.

26.4 Relevant Authority Information

The Railway Undertaking shall collect and maintain any information (including information concerning patronage, numbers and types of passenger journeys and customer satisfaction) required by a Legal Requirement or reasonably required by a Relevant Authority.

27. RECORDS AND REPORTING REQUIREMENTS

27.1 Required Reports and Records

- (a) The Railway Undertaking shall submit to the Authority the reports and the records specified in Schedule 18 (Records and Reporting Requirements), Schedule 20 (Contract Prices and Indexation), Schedule 19 (Performance Payments and Deductions) and Schedule 20 (Contract Prices and Indexation) at the times and in such numbers as provided therein, and such reports shall, at the Authority's request, be accompanied by an electronic copy of such report.

- (b) Without prejudice to the generality of clause 27.1(a) or clause 15.2 (Separate accounts), the Railway Undertaking shall:
- (i) ensure that it maintains separate accounts in relation to the Services from any other business or activity of the Railway Undertaking (or, for the avoidance of doubt, Iarnród Éireann – Irish Rail in any capacity);
 - (ii) furnish to the Authority, as soon as they become available and in any event not later than one hundred and twenty (120) days after the end of each of its financial years a copy of its draft financial statements, including a draft balance sheet prepared as at the end of such accounting period and a draft profit and loss account in respect of such accounting period;
 - (iii) furnish to the Authority, as soon as they become available and in any event not later than one hundred and eighty (180) days after the end of each of its financial years:
 - (A) a copy of its audited financial statements, including a balance sheet prepared as at the end of such accounting period and a profit and loss account in respect of such accounting period; and
 - (B) to the extent that they are different, the accounts referred to in clause 27.1(b)(i);
 - (iv) ensure that the cost accounting principles according to which separate accounts are maintained are clearly established; and
 - (v) maintain its accounts in accordance with generally accepted accounting principles, practices and policies in Ireland and ensure that all accounting principles are clearly stated.

27.2 Audit

- (a) The reports and records referred to in clause 27.1 (Required Reports and Records) shall be kept in good and safe order and in such form (including in electronic format) so as to be capable of audit by the Authority (or any person authorised in this regard by the Authority).
- (b) The Authority is entitled to audit such records (or any category of record or any of them):
 - (i) subject to clause 27.2(b)(ii), no more frequently than once each Contract Year in relation thereto and may only exercise its right to have such records audited on giving at least five (5) Business Days' notice to the Railway Undertaking; and
 - (ii) at any time, upon the occurrence and for the duration of:
 - (A) an Event of Default; or
 - (B) it being entitled to exercise its rights to Step-In.

27.3 Availability

- (a) The Railway Undertaking shall make the records referred to in clause 27.1 (Required Reports and Records) available for inspection by or on behalf of the Authority, without prejudice to any legal rights of the Authority, at all reasonable times upon the Authority giving at least two (2) days' notice or, if an Event of Default has occurred or the Authority is entitled to exercise its rights to Step-In, without notice and shall assist the Authority in respect of any accounting queries.
- (b) The Authority shall be entitled, without prejudice to any legal rights of the Authority, at all reasonable times upon giving at least two (2) days' notice or, if an Event of Default has occurred or the Authority is entitled to exercise its rights to Step-In, without notice, to free and full access to inspect examine and/or copy any books, files, records, data, and/or documents relating to the Services other than:
 - (i) documents prepared in response to the issue of any extension or invitation to tender for the provision of the Services; or
 - (ii) legally privileged documents, belonging to or maintained by or on behalf of the Railway Undertaking .

27.4 Retention of Records

- (a) Without prejudice to any Legal Requirement, all Required Records shall be:
 - (i) retained for and stored on a computer system; and
 - (ii) shall be archived,in accordance with the provisions of, and for not less than the periods specified in, Schedule 18 (Records and Reporting Requirements).
- (b) Where the period for the retention of any records has expired, then the Railway Undertaking shall notify the Authority as to what it intends to do with such records. If it intends to dispose of them or subsequently decides to dispose of them, the Railway Undertaking shall notify the Authority, and if the Authority shall within forty (40) days of such notice elect to receive those records or any part of them the Railway Undertaking, at the Authority's cost, shall deliver up such records to the Authority in the manner and at such location as the Authority shall reasonably specify.
- (c) At the end of the Contract Period, the Railway Undertaking shall, at its own cost, deliver up to the Authority, in the manner and at such location as the Authority shall reasonably specify, all such records as are referred to in clause 27.1 (Required Reports and Records) which were in existence at the end of the Contract Period (or, where those records are required by statute to remain with the Railway Undertaking, copies thereof) or such part of such records as the Authority may by notice to the Railway Undertaking specify. Without prejudice to any Legal Requirement, and subject to the receipt of a reasonable request in writing from the Railway Undertaking, the Authority shall make available to the Railway Undertaking such records delivered up by the Railway Undertaking pursuant to this clause 27.4(c) as the Authority considers reasonable.
- (d) The Railway Undertaking shall retain in safe storage at a location to be identified by the Railway Undertaking and agreed by the Authority for a period of not less than

that specified in Schedule 18 (Records and Reporting Requirements) following the end of the Contract Period all such records as are referred to in clause 27.4(c) which the Authority does not require to be delivered up to it. The costs of retaining those records in safe storage shall be borne by the Railway Undertaking and the Authority in equal proportions.

27.5 Protection of Data

- (a) All data or information generated or acquired as a consequence of, or in connection with, this Agreement shall be stored by or on behalf of the Railway Undertaking such that it can be extracted from all other data or information generated or acquired by the Railway Undertaking in some other capacity, and provided to the Authority when required.
- (b) The Railway Undertaking shall implement reasonable measures which shall protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other forms of unlawful processing.
- (c) The Railway Undertaking shall institute and operate all necessary back-up procedures on its systems to ensure that data integrity can be maintained in the event of loss of data for any reason.
- (d) The Railway Undertaking hereby agrees and consents to the Authority, its employees, consultants and agents carrying out such tasks, and accessing such property (without restriction) to obtain such data or information where it has failed to deliver such to the Authority.

27.6 Computer Records

- (a) In respect of all records of the Railway Undertaking that are to be created or maintained on a computer or other electronic storage device, the Railway Undertaking shall comply with the reasonable requirements of the Authority in relation to the back-up and adjacent storage of copies of such records and shall adhere to such agreed procedure and shall cause the Principal Sub-Contractors and their sub-contractors (to the extent that their sub-contractors are engaged for, solely or, among other things, the purpose of back-up and/or storage of copies of such records) to implement and adhere to such agreed procedure.
- (b) In this regard, the Railway Undertaking shall establish and maintain separate and distinct series of computer records and databases (together with all related records and information) in connection with the performance of its obligations under this Agreement from any computer records and databases established by it in connection with the issue of, and processing of transactions from, its general computer records or records relating to its business generally.
- (c) Without prejudice to the generality of this clause 27.6, each series of computer records and databases (together with all related records and information) shall be identified as such and shall be capable of being transferred to a third party, separately to the transfer of any other database or other system maintained by the Railway Undertaking.

27.7 Applicable Laws

Without prejudice to clause 5.1(b)(ii) (Railway Undertaking Obligations) or clause 8 (Data Protection), the Railway Undertaking acknowledges that the performance by the Railway Undertaking of its obligations under this Agreement (including this clause 27 (Records and Reporting Requirements)) shall comply with, and satisfy, all the Legal Requirements applicable to data protection and data storage (including any Data Protection Law).

PART 6 - RAILWAY UNDERTAKING ASSETS, CHANGES AND VARIATIONS**28. RAILWAY UNDERTAKING ASSETS****28.1 Provision of Services**

- (a) Subject to clause 28.1(b), the Railway Undertaking shall use the Railway Undertaking Assets exclusively in the provision of Services and for no other purpose.
- (b) The Railway Undertaking may use the Railway Undertaking Assets, other than the Authority Network Assets, for provision of services or activities other than Services being provided under this Agreement ("**other activities**") provided that:
 - (i) the other activities do not prejudice the provision of the Services;
 - (ii) the full economic cost of providing such other activities is recovered by the Railway Undertaking;
 - (iii) it can demonstrate to the Authority that such use of the Railway Undertaking Assets is in accordance with Regulation 1370, including in relation to the allocation of costs connected with the provision of the other activities such that there is no cross subsidy between the provision of the Services under this Agreement and the provision of the other activities;
 - (iv) the Railway Undertaking provides details (including, details of the cost of providing, and the revenue earned in the provision of, such other activities) in writing to the Authority in respect of each Reporting Period during which such other activities are provided by the Railway Undertaking; and
 - (v) the Authority and the Railway Undertaking agree the alteration to the Period Payments consequent on the provision of such other activities such that there is no overcompensation.

28.2 Grant Agreement

The Parties acknowledge and agree that:

- (a) the Authority may wish from time to time to make available certain monies by way of grant or to make certain payments to the Railway Undertaking in accordance with section 45 and/or section 49, 2008 Act to facilitate the acquisition by the Railway Undertaking of new Authority Network Assets; and
- (b) the Authority may, prior to it making any grants or payments to the Railway Undertaking, require the Railway Undertaking to enter into a Grant Agreement.

29. VARIATIONS**29.1 Variations**

Either Party may request Variations and the Parties shall deal with any such request in accordance with Schedule 23 (Variations).

29.2 Sections 51 and 52, 2008 Act

It is agreed and acknowledged that this clause 29 (Variations) is without prejudice to, and shall not affect, any right, duty or entitlement of the Authority pursuant to, and in accordance with, section 51 or section 52, 2008 Act to unilaterally amend this Agreement.

29.3 Changes and Variations to Services

- (a) The Railway Undertaking may, at its own cost, from time to time prepare and submit to the Authority for its approval proposals for changes to the Services which it proposes to introduce.
- (b) The Authority may from time to time prepare and notify the Railway Undertaking of changes to the Services which it proposes to introduce in accordance with Schedule 23 (Variations).
- (c) Any proposal for changes to Services that constitute a change to the Service Specification set out in Annex A of Schedule 2 (Service Specification) shall constitute, and be treated as, a Variation.
- (d) Any proposal for changes to the specification for a Train set out in Schedule 2 (Service Specification) shall constitute, and be treated as, a Variation.

29.4 Deemed Variations

- (a) Upon the occurrence of a Deemed Variation, the Railway Undertaking shall, within five (5) Business Days of its occurrence:
 - (i) notify the Authority of the occurrence of such Deemed Variation; and
 - (ii) where it is a Deemed Variation:
 - (A) falling within paragraph (a) of its definition, confirm to the Authority details of the costs incurred (or to be incurred) by the Railway Undertaking arising from the Discriminatory Change of Law; or
 - (B) falling within paragraph (b) of its definition and it relates to the annual cost of Specified Employees, demonstrate to the satisfaction of the Authority details of the annual cost immediately before the introduction or modification of the Sectoral Employment Order, of the Specified Employees.
- (b) Upon receipt of the information contemplated by clause 29.4(a) and provided the notice satisfies the requirements of Schedule 23 (Variations), the Authority shall treat such as an Operator Variation Notice in respect of the Deemed Variation for the purposes of Schedule 23 (Variations).
- (c) Schedule 23 (Variations) applies to each Deemed Variation.
- (d) The amount payable in connection with a Deemed Variation falling within paragraph (a) of its definition is the costs incurred (or to be incurred) by the Railway Undertaking arising from the Discriminatory Change of Law.

- (e) The amount payable in respect of each Reporting Period in connection with the Deemed Variation falling within paragraph (b) of its definition is (if (i) is greater than (ii)) the difference between:
- (i) the annual cost prescribed by the Sectoral Employment Order for drivers of Trains, to the extent that the Sectoral Employment Order prescribes this; and
 - (ii) the amount referred to in clause 29.4(a)(ii)(B).
- (f) In this clause 29.4:
- “annual cost” means, in the case of a Specified Employee, all payments associated with the employment of drivers (such as salary, bonus, overtime, pension contributions, employer’s PRSI) and includes all amount which may be payable in connection with unsocial hours or other enhancements.

29.5 Possible Variations

The Parties acknowledge that Variations may be required in connection with:

- (a) changes or upgrades to the Network (or any part of the Network), including works requiring the re-configuration of elements of the Network; or
- (b) variations to the Services,

in each case, whether prompted by:

- (i) passenger demand and/or travel conditions generally affecting the Network (or any part of the Network) having regard to road, rail and other forms of public and private transport;
- (ii) the impact (or anticipated impact) of any planned or actual transport programme;
- (iii) changes to ticketing arrangements (such as, the introduction of next generation ticketing);
- (iv) funding;
- (v) public policy;
- (vi) technological changes and/or improvements;
- (vii) changes in applicable Legal Requirements, including in relation to railway safety;
- (viii) technical or operational difficulties which become apparent during operation or maintenance of the Network and /or performance of the Network;
- (ix) changes to the power or energy supply arrangements, including as a consequence of the Climate Action and Low Carbon Development Act 2015 or any other Legal Requirement;
- (x) the needs of customers;

- (xi) replacement or upgrade of the Railway Undertaking's ticketing system;
- (xii) extraordinary interventions that might become necessary in order to ensure continuation of passenger services on the System; or
- (xiii) otherwise.

PART 7 - PSO COMPENSATION, PAYMENT AND TAXES**30. PSO COMPENSATION****30.1 Public Service Obligation**

It is acknowledged that:

- (a) the Authority has determined in accordance with Regulation 1370 and the 2008 Act that public service obligations are to be applied in respect of the Services; and
- (b) the Railway Undertaking is performing public service obligations in providing the Services.

30.2 PSO Compensation

- (a) Subject to the terms of this Agreement, the Authority shall be liable to pay to the Railway Undertaking, by way of compensation for its performance of the public service obligations in each Contract Year, an amount for that Contract Year calculated in accordance with Regulation 1370, Schedule 20 (Contract Prices and Indexation), Schedule 21 (Payment Mechanism), Schedule 22 (Net Financial Effect Report and Efficiency Incentive) and, to the extent applicable, Schedule 23 (Variations) (the “**Annual Operating Charge**”).
- (b) Subject to the terms of this Agreement (including, clause 29 (Variations) and Schedule 23 (Variations)), the parties acknowledge that any performance metric and/or amounts payable for the first Contract Year (being from the Commencement Date to 31 December 2019) shall be determined by reference to the Prior Contract in accordance with clause 2.2(c) (Prior Contract).
- (c) Any Annual Operating Charge payable by the Authority under this Agreement shall be paid in accordance with clause 31 (Payment Process) and Schedule 21 (Payment Mechanism).
- (d) Notwithstanding any other provision of this Agreement, the Annual Operating Charge shall not exceed the amount required to cover the net financial effect, as calculated by reference to the Annex to Regulation 1370, of compliance with the public service obligations contemplated by this Agreement.

31. PAYMENT PROCESS**31.1 Process**

The Parties shall comply with the requirements of Schedule 21 (Payment Mechanism) in connection with payments to be made under this Agreement.

31.2 Method of payment

All payments to be made by a Party to another Party under this Agreement shall be made by bank transfer (in immediately available funds) to such bank accounts as the receiving Party may have specified to the other from time to time.

31.3 Errors in Reports

- (a) Without prejudice to clause 27.2 (Audit), the Authority shall be entitled to send any Report, Required Record and other records provided by the Operator to an independent auditor (or such other persons as the Authority deems necessary) for examination and scrutiny.
- (b) If, following such examination, scrutiny or otherwise, it is found that any report, supporting information or record was erroneous, resulting in an overpayment or underpayment of a Base Period Payment by the Authority, then the amount of the Base Period Payment payable by the Authority in respect of the next following Reporting Period shall be adjusted to reflect the amount of such overpayment or underpayment, as the case may be.

32. RATES, TAXES AND CHARGES

32.1 Obligation to Pay Rates, Taxes and Charges

The Railway Undertaking shall pay:

- (a) all taxes, duties, charges, impositions and assessments whatsoever whether national, local or otherwise which are payable to the Revenue Commissioners or that the Railway Undertaking is liable to pay pursuant to any Legal Requirement, in respect of the Railway Undertaking Assets and the Services (except to the extent that another person is required to pay such taxes, duties, charges, impositions and/or assessments); and
- (b) any rates payable in respect of any property owned or occupied by the Railway Undertaking in connection with the Services.

32.2 Value Added Tax

- (a) Except where otherwise expressly stated in this Agreement or otherwise applicable at law, all amounts payable by the Authority under this Agreement are VAT exempt in accordance with paragraph 14(3) of Schedule 1 of the Value Added Tax Consolidation Act 2010.
- (b) If the provision of public transportation is no longer treated as an exempt supply or is treated as subject to VAT, the Railway Undertaking may give notice to the Authority to this effect, together with material (satisfactory to the Authority) evidencing or demonstrating this.
- (c) Where the Authority is satisfied that the provision of public transportation is no longer treated as an exempt supply or is treated as subject to VAT, in which case:
 - (i) the Authority and the Railway Undertaking shall revise the Period Payments so that the Railway Undertaking is “no better no worse” in accordance with clause 32.2(d); and
 - (ii) VAT shall be payable in addition to the revised Period Payments and the Authority shall pay to the Railway Undertaking the amount of the VAT properly chargeable in sufficient time to allow the Railway Undertaking to meet its payment obligations in respect of VAT.
- (d) In revising the charges in accordance with this clause 32.2 (Value Added Tax):

-
- (i) the Railway Undertaking shall provide to the Authority such information as would be required by Schedule 23 (Variations) if the change in the VAT treatment had been a Variation;
 - (ii) the Parties shall engage in good faith in resolving this so that the Railway Undertaking is “no better no worse”; and
 - (iii) without prejudice to any other provision of this Agreement, the Authority will be entitled to inspect and audit the records of the Railway Undertaking in connection with such revision.
- (e) No payment is to be made under this clause 32.2 in respect of VAT unless the Authority has received from the Railway Undertaking a valid VAT invoice in respect of the relevant supply.
- (f) For the purposes of this clause 32.2, “no better no worse” is to be construed by reference to the costs of, and VAT input credits available to, the Railway Undertaking both before and after the provision of public transportation being no longer treated as an exempt supply or is treated as subject to VAT, such that the net position of the Railway Undertaking remains unchanged between before and after such occurring.

PART 8 - PERFORMANCE STANDARDS**33. PERFORMANCE****33.1 Reporting and monitoring**

- (a) The Railway Undertaking shall comply with the requirements of Schedule 19 (Performance Payments and Deductions) in relation to performance monitoring and inspection.
- (b) The Railway Undertaking shall record the results of its monitoring of certain Performance Standards specified in Schedule 19 (Performance Payments and Deductions) in the Period Report that it submits to the Authority in respect of each Reporting Period in accordance with Schedule 18 (Records and Reporting Requirements) and Schedule 19 (Performance Payments and Deductions).
- (c) The Authority shall comply with the requirements of Schedule 19 (Performance Payments and Deductions) in relation to the monitoring of certain Performance Standards and shall submit reports to the Railway Undertaking setting out the results of such monitoring in accordance with Schedule 18 (Records and Reporting Requirements).

33.2 Breach

- (a) Without prejudice to clause 33.2(b), if the Railway Undertaking is in breach of any provision of this Agreement, and the breach is one which will not result in a Performance Deduction (a "**Non-PMS Breach**"), then the Authority shall be entitled to enforce its rights in relation to the breach by way of an order for specific performance or an injunction provided that the Authority has given prior notification of such breach to the Railway Undertaking.
- (b) In the event of a Non-PMS Breach (except where the Authority has received damages in lieu of specific performance) the Authority shall be entitled to withhold payment of one or more Annual Operating Charge (or any part thereof) in an amount equal to the aggregate of:
 - (i) any savings in costs or expenses made by the Railway Undertaking;
 - (ii) any additional revenues earned by the Railway Undertaking; and
 - (iii) any loss suffered by the Authority,in each case as a result of the Non PMS- Breach.

33.3 Maximum Liability - Performance Deductions

- (a) Without prejudice to the Authority's right to withhold amounts under clause 33.2 (Breach), the Railway Undertaking's maximum liability for Performance Deductions, excluding Lost Train Car Kilometres Deductions, in any Contract Year shall be limited to two per cent (2%) of the Annual Services Charge for such Contract Year.
- (b) Clause 33.3(a) shall not apply to the Authority's right to withhold amounts under clause 33.2 (Breach).

34. PERFORMANCE MONITORING

34.1 Attendance at meetings

- (a) The Railway Undertaking shall send at its own cost and expense such representatives to meetings as the Authority may reasonably require from time to time which are called to discuss or at which there will be discussed the performance of the Railway Undertaking against the requirements of the Performance Monitoring System.
- (b) Without prejudice to clause 34.1(a), the Railway Undertaking shall send at its own cost and expense representatives to a performance meeting in respect of each Reporting Period with the Authority to discuss the performance of the Railway Undertaking against the requirements of the Performance Monitoring System for such Reporting Period.

34.2 Performance Monitoring System reports

In addition to the Period Train Services Report the Railway Undertaking shall at its own cost and expense prepare and submit to the Authority for approval for each Reporting Period such Performance Monitoring System reports and any other Reports in such form and with such content as the Authority may reasonably require, detailing the performance of the Railway Undertaking against the requirements of the Performance Monitoring System.

34.3 Annual review

Without prejudice to clauses 34.1 (Attendance at meetings) or 34.2 (Performance Monitoring System reports), the Railway Undertaking shall comply with the requirements of Schedule 17 (Annual Business Plan) in relation to the preparation and implementation of the Annual Business Plan for each Contract Year.

35. MONITORING AND ACCESS

35.1 Access to the Authority

The Railway Undertaking shall provide the Authority such reasonable opportunity to monitor the Railway Undertaking's performance of its obligations under this Agreement, including allowing the Authority access (or, as the case may be, procuring that the Authority has access) to:

- (a) such documentation as may have been necessary for the preparation of the Required Records and Required Reports by the Railway Undertaking as may be reasonably requested by the Authority; and
- (b) unless it is unsafe to do so, all or any part of the Network, the Railway Undertaking Assets and the railway infrastructure.

35.2 Effect

The Railway Undertaking acknowledges and agrees that, notwithstanding any provision of this Agreement which contemplates that the Authority will or may from time to time:

- (a) inspect any part of the Network, Railway Undertaking Assets, the railway infrastructure or any records;
- (b) check compliance by the Railway Undertaking with its obligations; or

- (c) confirm or indicate approval or non-objection to proposals made by the Railway Undertaking,

it is and will be the responsibility of, and shall not lessen or in any way affect the responsibility of, the Railway Undertaking (and not the Authority's responsibility) to ensure that the Services are provided and performed in all respects in accordance with the Railway Undertaking's obligations under this Agreement.

PART 9 – INDEMNITIES, INSURANCE AND LIMITATION OF LIABILITY**36. INDEMNITIES****36.1 Railway Undertaking's General Indemnities**

- (a) The Railway Undertaking shall indemnify and hold harmless the Authority from and against:
- (i) all Liabilities for or in respect of bodily injury, illness, disease or death of any person whatsoever;
 - (ii) all Liabilities for or in respect of damage to any property real or personal of the Authority or their employees or any third party;
 - (iii) all Liabilities arising out of a breach of this Agreement;
 - (iv) all Liabilities for or in respect of any breach of statutory duty; and
 - (v) third party actions, claims, demands, costs, charges and expenses brought against the Authority (including legal expenses on an indemnity basis),

to the extent that the same arises out of or are contributed to in whole or in part by any performance or non-performance or negligence by the Railway Undertaking of this Agreement or its Sub-Contractors of any tier, or its or their agents or employees.

- (b) Any amount that may be payable by the Railway Undertaking pursuant to this clause 36 shall be paid by it on demand being made of it by the relevant Indemnified Person.

36.2 Extent of indemnities

The indemnities given by the Railway Undertaking under this Agreement shall not apply to any Liabilities to the extent that they:

- (a) arise from or are contributed to by a breach of this Agreement by the Authority or the negligence of the Authority or their subcontractors of any tier or the Authority's employees or agents (excluding the Railway Undertaking, any Associated Company of the Railway Undertaking, any subcontractor of the Railway Undertaking and any Associated Company of a subcontractor of the Railway Undertaking); or
- (b) arise from any event of Force Majeure; or
- (c) are covered by any insurance policy being maintained by or on behalf of any Party which has not been vitiated and under which insurance proceeds have actually been received by the Authority in respect of the matter and in respect of which the insurer's rights of subrogation have been waived against the Railway Undertaking.

37. INSURANCE**37.1 General**

- (a) The Railway Undertaking shall from the Commencement Date until the Expiry Date or the date of termination of this Agreement, maintain or procure the maintenance of the insurances stipulated and in the manner described in Schedule 27 (Insurances)

and any other insurances as may be required from time to time by Legal Requirements.

- (b) The Railway Undertaking shall ensure that the insurances are effective in each case not later than the date on which the relevant risk commences.
- (c) No Party to this Agreement shall take any action or fail to take any reasonable action, or (insofar as it is reasonably within its power) permit anything to occur in relation to it, which would entitle any insurer to refuse to pay any Claim under any insurance policy in which that Party is an insured, a co-insured or additional insured person.
- (d) The Railway Undertaking agrees that neither the failure to comply nor full compliance with the insurance provisions of this Agreement, including Schedule 27 (Insurances), shall limit or relieve the Railway Undertaking of its liabilities and obligations under this Agreement.

37.2 Without prejudice

The requirements of this Agreement in relation to insurances are without prejudice to, and is not to be regarded as specifying what is required to comply with, any Legal Requirement, including Article 22, 2012 Directive.

38. LIMITATION ON LIABILITY

38.1 Limitation on Railway Undertaking liability

- (a) Subject to clause 38.1(b):
 - (i) the Railway Undertaking's maximum liability to the Authority for all matters arising out of, or in connection with, this Agreement shall not exceed an amount equal to sixty two million euro (€62,000,000) (Indexed) or, if higher, the specified indemnity limit of the Required Insurance Policy in respect of insurance required under clause 37 (Insurance) and Schedule 27 (Insurances); and
 - (ii) the Railway Undertaking's maximum liability to the Authority in respect of its failure to achieve the Performance Standards in respect of which Performance Deductions may be made shall be limited:
 - (A) to the extent contemplated by clause 33.3(a) (Maximum Liability - Performance Deduction), in accordance with such clause; or
 - (B) to the extent not contemplated by clause 33.3(a), to the Performance Deductions,
- (each a "**Liability Cap**" and together the "**Liability Caps**").
- (b) The Liability Caps shall not apply to:
 - (i) any damage to any Authority Network Assets, other than damage caused by the Authority;
 - (ii) any costs or expenses which the Railway Undertaking is obliged to or does expend in performing its obligations under this Agreement;

- (iii) except for amounts that are expressly subject to a Liability Cap, any payments which the Railway Undertaking is obliged to or does make to the Authority under this Agreement (including in respect of any Variation);
- (iv) any Loss recoverable by the Railway Undertaking under any insurance policy;
- (v) any Loss arising under or in respect of any breach by the Railway Undertaking of the provisions of clause 7 (Intellectual Property);
- (vi) any liability of the Railway Undertaking to the Authority arising as a result of or in connection with:
 - (A) death or personal injury;
 - (B) fraud or wilful deceit by the Railway Undertaking; or
 - (C) wilful default or abandonment of this Agreement by the Railway Undertaking;
- (vii) the Railway Undertaking's liability to refund or reimburse as expressly provided by this Agreement;
- (viii) the Railway Undertaking's liability to pay any Taxes as expressly provided by this Agreement or required by any Legal Requirements;
- (ix) any interest payable by the Railway Undertaking under this Agreement; or
- (x) the extent required by Article 22, 2012 Directive.

38.2 Exclusions

- (a) In no event shall any Party be liable for any:
 - (i) loss of actual or anticipated profits;
 - (ii) loss of actual or anticipated savings;
 - (iii) loss of business; or
 - (iv) special, incidental, indirect or consequential damages,except to the extent that such losses are recoverable by the Railway Undertaking under any policy of insurance.
- (b) The Railway Undertaking shall neither:
 - (i) make any Claim against the Authority under, or for breach of, this Agreement; nor
 - (ii) raise any excuse, set-off or defence with respect to any debt or Claim made by the Authority against the Railway Undertaking under, or for breach of, this Agreement,

arising out of any act, default or neglect of the Authority in carrying out obligations imposed on the Authority under any other agreement between the Authority and the Railway Undertaking.

38.3 General Mitigation Obligation

Each Party shall mitigate its losses under this Agreement, howsoever arising, and in the event that a Party is liable for such losses pursuant to this Agreement, those liabilities shall be reduced to the extent that such losses have not been mitigated.

PART 10 - THIRD PARTY EVENTS AND STEP IN**39. FORCE MAJEURE****39.1 Application**

- (a) Neither of the Parties shall be in breach or otherwise be liable to the other Party in any manner whatsoever for any failure or delay in performing its obligations under this Agreement due to the occurrence of Force Majeure on the basis that:
- (i) subject to clause 39.1(c), the date for performance of the obligation which has been delayed by the Force Majeure event shall be deemed suspended for so long as such obligation is affected by such Force Majeure event;
 - (ii) the Party seeking to exempt itself from liability by virtue of this clause 39 must:
 - (A) give notice to the other Parties as soon as reasonably practicable after becoming aware of the Force Majeure event identifying:
 - (1) the event(s) of Force Majeure that has occurred;
 - (2) the date from which the event has prevented or hindered the Party affected in the performance of its obligation;
 - (3) the obligations affected; and
 - (4) its best estimate of the date or dates upon which it will be able to resume performance of the affected obligations; and
 - (B) at all times use all reasonable endeavours to mitigate the effect of the Force Majeure event.
- (b) A Party prevented from performing its obligations under this Agreement by an event of Force Majeure must give notice to the other Party forthwith (upon becoming aware of the same) upon the event ending or being removed or its existence no longer preventing performance of an obligation and shall resume performance of such obligation under this Agreement.
- (c) A Party seeking to rely on the provisions of this clause 39 shall not be entitled to payment from the other Party in respect of extra costs and expenses incurred by virtue of the Force Majeure event.

39.2 Payments

If, as a result of any Force Majeure event occurring on or after the Commencement Date, the Railway Undertaking is unable to provide the Services as contemplated by this Agreement or such operation is disrupted, then the payment by the Authority to the Railway Undertaking of any Base Period Payment (or part thereof) shall be suspended to the extent that the provision of Services is so affected.

39.3 Obligation to Remedy

As soon as practicable after the occurrence of any Force Majeure event the Party affected shall take all reasonable steps to remedy the failure to perform and relief under this clause 39 shall cease to be available to a Party if it fails so to take all such steps to remedy the failure.

39.4 Mitigation

Each Party shall use all reasonable endeavours and in accordance with Good Industry Practice to mitigate the consequences of any Force Majeure event.

39.5 Termination

If the Force Majeure event:

- (a) has an effect on the rights or obligations of any of the Parties so as to render financially or practicably impossible the performance of this Agreement; or
- (b) substantively frustrates the ability of a Party to perform its obligations under this Agreement for a period of time in excess of six (6) months,

then the Authority or the Railway Undertaking may by notice to the other Party forthwith terminate this Agreement.

40. RELIEF EVENTS

40.1 Request for Relief

- (a) The Railway Undertaking shall be entitled to request relief from the performance of any of its obligations under this Agreement to the extent that its ability to perform such obligation is prevented by any Relief Event, notwithstanding the Railway Undertaking using all reasonable endeavours and in accordance with Good Industry Practice to mitigate the effect of such Relief Event in its performance of its obligations under this Agreement.
- (b) Any such relief request shall be made by service of a notice on the Authority as soon as is reasonably practicable after the occurrence of the Relief Event and in any event, within ten (10) Business Days of the Railway Undertaking becoming aware of the circumstances giving rise to the relevant Relief Event or, if later, of its failure to perform, containing such relevant information relating to the Relief Event and/or any failure to perform as is available to the Railway Undertaking, including:
 - (i) full details of the circumstances giving rise to the Relief Event, including its nature, the date of its occurrence and its duration;
 - (ii) the effect of the Relief Event on the Railway Undertaking's ability to perform any of its obligations under this Agreement, including details of the relevant obligations, the precise effect on each such obligation and the likely duration of that effect; and
 - (iii) an explanation of any measures that the Railway Undertaking proposes or intends to adopt to mitigate the consequences of the Relief Event.

40.2 Relief Notice

Subject to compliance by the Railway Undertaking with its obligations under clause 40.1, the Authority shall, having satisfied itself (acting reasonably) of the occurrence of the Relief Event and its effect on the ability of the Railway Undertaking to perform its obligations under this Agreement, issue a notice (the “**Relief Notice**”) specifying:

- (a) the relevant obligations for which relief is given; and
- (b) the period during which the Railway Undertaking shall be relieved from the performance of those obligations (the “**Relief Period**”);
- (c) where the Railway Undertaking is unable by reason of such Relief Event to perform the Services (or any part of the Services), the extent to which the payment by the Authority to the Railway Undertaking of any Base Period Payment (or part thereof) shall be suspended,

and the Railway Undertaking shall be relieved from the performance of all or part of such obligations as set out in the Relief Notice during the Relief Period.

40.3 Duty to Mitigate

Notwithstanding the issue of any Relief Notice, the Railway Undertaking shall use all reasonable endeavours and consistent with Good Industry Practice to mitigate the consequences of any Relief Event.

41. STEP IN

41.1 Step In

- (a) Without prejudice to the powers of the Authority under section 56, 2008 Act, if, in the reasonable opinion of the Authority, the Railway Undertaking fails or refuses to provide the Services in accordance with this Agreement, the Authority may (acting reasonably) by notice in writing to the Railway Undertaking:
 - (i) require the Railway Undertaking to remedy its failure or refusal to provide the Services within such timeframe as may be specified by the Authority (being not less than ten (10) Business Days); and
 - (ii) increase the level of its monitoring of the Railway Undertaking or, at the Authority’s option, the Railway Undertaking’s monitoring of its performance of its obligations under this Agreement until such time as the Railway Undertaking shall have demonstrated to the reasonable satisfaction of the Authority that it will perform, and is capable of performing, its obligations under this Agreement.
- (b) If the Railway Undertaking does not remedy its failure or refusal to provide the Services within the timeframe specified in the notice referred to in clause 41.1(a), the Authority may step in and provide, or procure the provision on its behalf of, part or all of the Services (a “**Step In**”).
- (c) In the event that the Authority exercises its rights under clause 41.1(b):

- (i) the Authority may deduct any costs and expenses incurred from any monies due or which may become due to the Railway Undertaking or may invoice the Railway Undertaking for such sums; and
- (ii) the Railway Undertaking shall give all reasonable co-operation to the Authority to ensure a smooth transition to enable the Railway Undertaking to provide or procure the provision on its behalf of part or all of the Services with no degradation of the standard of Services.
- (d) The provision of part or all of the Services by the Authority in accordance with this clause 41 shall not relieve the Railway Undertaking from any of its powers, obligations or liabilities under this Agreement or affect the rights and powers conferred on the Authority under this Agreement.
- (e) Without prejudice to the foregoing, the Railway Undertaking shall not be subject to Performance Deductions in respect of Services in respect of which there is a Step-In.

41.2 Step Out

In the event that a Step In has occurred and the Authority determines that Services transferred to or taken on by it, or another person on its behalf, (“**Step In Services**”) shall be resumed by the Railway Undertaking (a “**Step Out**”):

- (a) the Authority shall give reasonable notice to the Railway Undertaking of the date on which Step Out shall occur;
- (b) the Railway Undertaking shall, upon receipt of a notice under clause 41.2(a), resume performance of the Step In Services; and
- (c) the Railway Undertaking shall give all reasonable co-operation to the Authority to ensure a smooth transition to enable the Railway Undertaking to resume performance of the Step In Services with no degradation of the standard of Services.

41.3 Railway Undertaking of last resort

- (a) This clause 41 is without prejudice to section 56, 2008 Act.
- (b) If the Authority exercises the rights conferred on it pursuant to section 56, 2008 Act, the Railway Undertaking shall cooperate with the Authority (or any person nominated by it) and shall do all things required by the Authority to facilitate such exercise.

41.4 Access to Railway Undertaking Assets and Control Systems

Without prejudice to the generality of the foregoing, in the event of a Step In or the exercise by the Authority of its rights under section 56, 2008 Act:

- (a) if requested, the Railway Undertaking shall make available for use by the Authority (or a person on its behalf) the Authority Network Assets (or relevant part thereof);
- (b) the Railway Undertaking shall provide to the Authority (or person nominated by it) access to the Control Systems (or relevant part thereof); and
- (c) the Railway Undertaking shall remedy its failure or refusal to provide the Services within such timeframe as may be specified by the Authority.

PART 11 - TERMINATION AND HANDBACK**42. TERMINATION****42.1 Event of Default**

- (a) Without prejudice to any other rights or remedies of the Authority under this Agreement:
- (i) the occurrence of any Insolvency Event in relation to the Railway Undertaking;
 - (ii) the suspension or revocation of a licence in accordance with regulation 42, 2015 Regulations; or
 - (iii) the suspension or revocation of any Consent to Operate other than that contemplated by clause 42.1(a)(ii) which prevents the Railway Undertaking from providing the Services,

shall constitute an Event of Default.

- (b) The Railway Undertaking shall notify the Authority forthwith upon becoming aware of the occurrence of an Event of Default and shall provide the Authority with full details of all steps which it is taking, or proposes to take, in order to remedy or mitigate the effect of the Event of Default or otherwise in connection with it.
- (c) If an Event of Default contemplated by clause 42.1(a)(i) occurs, the Authority may within six (6) months of such Event of Default coming to its attention by notice to the Railway Undertaking terminate this Agreement forthwith.
- (d) Notwithstanding anything in this clause 42.1 (Event of Default), upon the occurrence of an Event of Default, the Authority may exercise all rights and remedies available to it under this Agreement, or otherwise.

42.2 Termination for Force Majeure

Where a Party serves on the other Party a notice pursuant to clause 39.5 (Termination), this Agreement shall terminate immediately upon service of the relevant notice.

43. CONSEQUENCES OF TERMINATION**43.1 Obligations on Termination**

The Railway Undertaking shall comply with the provisions of this clause 43 (Consequences of Termination) upon termination of this Agreement (for whatever reason).

43.2 Termination as a result of Event of Default

Where this Agreement is terminated by the Authority as a result of an Event of Default:

- (a) the Authority shall be entitled to appoint a new operator to perform and provide the Services;
- (b) the Railway Undertaking shall indemnify the Authority in respect of all Losses incurred by the Authority as a result of such termination including, without

limitation, where the Authority appoints a new operator to perform the Services, any amounts payable by the Authority to such operator in excess of the amounts that, but for such termination, would have been payable by the Authority to the Railway Undertaking under this Agreement, less any sums owed to the Railway Undertaking by the Authority under this Agreement; and

- (c) the Authority shall not be required to make any further payment to the Railway Undertaking after the date of termination of this Agreement until any sum due to the Authority under this Agreement or as damages has been agreed or established in accordance with this Agreement, provided that, upon agreeing or establishing such sum, the Railway Undertaking shall be entitled to seek payment of any outstanding amounts due to it by the Authority in accordance with this Agreement.

43.3 Condition of records and systems

- (a) The Railway Undertaking shall ensure that all such records, documentation, drawings and manuals are complete, up-to-date, properly catalogued and in a tidy condition for hand-back to the Authority.
- (b) The Railway Undertaking shall ensure that the maintenance management systems and procedures are operating effectively.
- (c) Except as otherwise provided in this Agreement, the Railway Undertaking shall provide to the Authority free of charge one copy of the latest versions of all documents, databases, records and other information necessary for the operation and maintenance of the Authority Network Assets including a complete record of the activities relating to safety matters undertaken by the Railway Undertaking during the Contract Period and all other information in the Railway Undertaking possession or to which it has access and which may be required to enable a Successor Operator to continue to perform the Services.

43.4 Continuance of activities and assignment of benefit of this Agreement

- (a) Subject to clause 43.2 (Termination as a result of Event of Default) and without prejudice to any rights and remedies of any Party, the Railway Undertaking and the Authority shall continue to perform their respective obligations under this Agreement until the date of termination of this Agreement unless other phased handover procedures are agreed between the Parties.
- (b) The Railway Undertaking shall:
 - (i) give all reasonable co-operation to the Authority to ensure a smooth transition to enable a Successor Operator to continue to perform the Services with no degradation of the standard of Services; and
 - (ii) at the Authority's request execute all documents and do all acts which may be necessary to assign the benefit of this Agreement to a third party.

43.5 Saving provisions

Termination of this Agreement shall be without prejudice to any right or remedy of any Party against the other accruing or accrued at any time relating to the period prior to such termination.

44. EMPLOYMENT ISSUES

44.1 General

- (a) The Railway Undertaking shall provide sufficient trained, competent and suitable staff with the necessary qualifications, skills and experience to provide the Services to ensure that the Services are provided at all times with reasonable skill and care and in accordance with the Performance Standards.
- (b) The Railway Undertaking shall upon written request furnish to the Authority, in the format required by the Authority, details of all employees, agents or any other person whatsoever who will have an involvement in the provision of the Services. The Railway Undertaking shall also provide the required information in respect of any additional or replacement personnel or any other personnel whatsoever who may in the future provide any or all of the Services.
- (c) The Railway Undertaking shall, at its own cost and risk, fill all staff vacancies arising during the Contract Period using fair procedures.

44.2 Ongoing Training

The Railway Undertaking shall provide or procure the provision of such ongoing training for Staff as may be required by any Legal Requirements (including Regulation 1370 or the 2012 Directive to the extent applicable) and may be reasonably necessary to enable them to perform their respective tasks with reasonable skill and diligence.

44.3 Employment Conditions

The Railway Undertaking shall comply with, and shall procure that each of its Staff shall comply with, all relevant Legal Requirements (including Regulation 1370 or the 2012 Directive to the extent applicable) from time to time in force relating to employment.

44.4 Supervision

The Railway Undertaking shall ensure that:

- (a) the Staff shall be appropriately managed and supervised at all times in connection with the operation of the Services; and
- (b) appropriate safety gear and equipment will be provided at the Railway Undertaking's expense and used when required.

PART 12 - MISCELLANEOUS PROVISIONS**45. ASSIGNMENT****45.1 Binding on Successors and Assigns**

This Agreement shall be binding on and shall enure to the benefit of the Railway Undertaking and the Authority and their respective successors and permitted assigns.

45.2 Assignment by the Railway Undertaking

The Railway Undertaking shall not, and shall procure that no Principal Sub-Contractor shall, in either case without the prior consent of the Authority :

- (a) assign, novate, or transfer:
 - (i) this Agreement;
 - (ii) the Principal Sub-Contracts; or
 - (iii) any other contract entered into by the Railway Undertaking in performing its obligations under this Agreement or any part thereof or any benefit or interest therein or thereunder; or
- (b) allow Principal Sub-Contractors to assign their respective Principal Sub-Contracts or any part thereof.

46. SUB-CONTRACTING**46.1 Sub-Contracting Performance**

- (a) Subject to Regulation 1370, the Railway Undertaking shall not be entitled to sub-contract performance of the Services in whole or part, except to the parties listed in clause 46.2(c) (Sub-contractors), without the Authority's prior Approval.
- (b) The Railway Undertaking shall ensure that no Principal Sub-Contractor shall be entitled to sub-contract performance of its services relating to the Services without the Authority's prior Approval.
- (c) Where any Principal Sub-Contractor sub-contracts any of its performance of the Services without the prior knowledge of the Railway Undertaking and without the prior Approval of the Authority, the Railway Undertaking shall not be in breach of this clause 46.1 where it has acted in good faith and either:
 - (i) obtains the Approval of the Authority; or
 - (ii) procures that the Principal Sub-Contractor terminates, rescinds, revokes and/or procures the rescission of such sub-contract, within thirty (30) Business Days of the date of any such sub-contract.
- (d) For the avoidance of doubt, the Railway Undertaking acknowledges that it will remain primarily responsible to the Authority for the provision of the Services notwithstanding any sub-contracting permitted pursuant to the terms of this clause 46.

46.2 Sub-Contractors

The Authority's prior Approval (not to be unreasonably withheld or delayed) shall be obtained before:

- (a) the engagement or employment of the persons identified in clause 46.2(c) are terminated; or
- (b) the terms of engagement or employment of any proposed substitute are agreed or varied in relation to any Principal Sub-Contractor; or
- (c) the appointment of any or any proposed substitute to be made in relation to:
 - (i) any maintenance contractors or persons providing maintenance services for the Railway Undertaking's ticketing system;
 - (ii) any replacement bus services providers, namely:
 - (A) Corduff Travel;
 - (B) Spirit of Ireland Executive Travel;
 - (C) Finnegan Bray Ltd;
 - (D) Deros Coach Tours Ltd;
 - (E) Patrick McElligott & Sons;
 - (F) Dualway Coaches Ltd;
 - (G) Cronins Coaches;
 - (H) Anchor Tours;
 - (I) Bus Eireann;
 - (J) JJ Kavanagh & Sons Limited;
 - (K) Farrelly's Coaches Ltd;
 - (L) Kelly Travel;
 - (M) McGrath Coaches;
 - (N) Reaneys Of Galway (Maura Reaney);
 - (O) Glynn's Coach Hire;
 - (P) Bernard Kavanagh;
 - (Q) Barry's Coaches;
 - (R) McWeeney Coaches;
 - (S) Fair Isle Tours;

- (T) Kearneys (Glenferry);
- (U) John Glasheen Ltd;
- (V) Fureys of Sligo; and
- (W) North Cork Coaches;
- (iii) Cubic Transportation Systems Ltd;
- (iv) Scheidt & Bachmann GmbH;
- (v) HaCon;
- (vi) Strata3 Ltd,

provided however if there is an event of default under the Railway Undertaking's contract with any of the above persons such that their appointment is to be terminated, the Authority shall not object to the appointment of any replacement who has the necessary legal capacity, power and authority to perform such function and who has the necessary technical and financial resources to perform such function.

46.3 Responsibility of Railway Undertaking

In the event that Services are sub-contracted to be performed by a third party, for the purposes of this Agreement such sub-contracted Services:

- (a) are "Services" under this Agreement; and
- (b) are regarded as being provided by the Railway Undertaking.

Nothing in any sub-contracting arrangement shall relieve the Railway Undertaking from any liability, obligation or responsibility under this Agreement.

46.4 Replacement of Sub-Contractors

If any of the persons referred to in clause 46.2(c) shall cease to act as such at any time, the Railway Undertaking shall as soon as practicable appoint a replacement, subject to it obtaining Approval in accordance with clause 46.2 (Sub-Contractors).

46.5 Details of proposed Sub-Contractors

The Railway Undertaking shall, upon reasonable notice from the Authority, submit to the Authority such information as the Authority may reasonably require in respect of Sub-Contractors.

46.6 Continuing obligations

- (a) In the event of a Sub-Contractor having undertaken towards the Railway Undertaking in respect of the work executed, or the materials, Railway Undertaking Assets, or any part thereof or services supplied by such Sub-Contractor, any continuing obligation, the Railway Undertaking shall use all reasonable endeavours to procure that such continuing obligation shall be assignable or capable of novation to the Authority and thence by the Authority to any nominee stipulated by the

Authority and shall assign or novate to the Authority at the Authority's request upon termination or expiry of this Agreement or after notice has been given of Step-In, the benefit of such obligation for the unexpired duration thereof.

- (b) The Railway Undertaking shall procure that any manufacturers' or suppliers' warranties to be given in respect of any part or parts of the Railway Undertaking Assets shall be assignable (or otherwise capable of being available) to the Authority and thence by the Authority to any nominee stipulated by the Authority.

46.7 Waiver of Liability

If requested by the Authority, the Railway Undertaking shall use all reasonable endeavours to obtain from each replacement for a Principal Sub-Contractor, prior to any such party performing any of the Services, a waiver of liability in favour of the Authority in respect of the Losses or Claims referred to clause 24 (Consents and Approvals) in a form satisfactory to the Authority (acting reasonably).

47. **DISPUTES RESOLUTION PROCEDURE**

47.1 Referral to Representatives

Any dispute arising out of or in connection with this Agreement shall be referred at first instance to the Authority's Representative and the Railway Undertaking's Representative who shall endeavour in good faith to resolve the dispute.

47.2 Initial Escalation

In the event that the dispute cannot be resolved by the parties referred to in clause 47.1 (Referral to Representatives) within five (5) Working Days of referral of the dispute to them, the matter will then be referred to Tim Gaston of the Authority and Gerry Culligan of the Railway Undertaking who will endeavour in good faith to resolve the dispute.

47.3 Further Escalation

In the event that the dispute cannot be resolved by the parties referred to in clause 47.2 (Initial Escalation) within five (5) Working Days of referral of the dispute to them, the matter will then be referred to the Chief Executive of the Authority and the Chief Executive of the Railway Undertaking who will also endeavour in good faith to resolve the dispute.

47.4 No limit on rights

Nothing in this Agreement shall prevent either party from seeking injunctive or other relief in any Court to protect or enforce its legal rights.

47.5 Code of Practice for Governance of State Bodies

Subject to clause 47.4 (No limit on rights), the Parties acknowledge that paragraph 8.48 of the Code of Practice for the Governance of State Bodies provides that:

- (a) where a legal dispute arises between the Parties, unless otherwise required by statute, every effort should be made to mediate, arbitrate or otherwise resolve the dispute before expensive legal costs are incurred; and
- (b) the Parties should pursue the most cost effective course of action in relation to legal disputes.

48. SET-OFF

- (a) The Railway Undertaking shall not be entitled to retain or set-off any amount due to it by the Authority against any amounts due to the Authority by it.
- (b) The Authority may retain or set-off any amount due to it by the Railway Undertaking under this Agreement against any amount due by the Authority to the Railway Undertaking under this Agreement.

49. NOTICES

49.1 Requirement for Writing

Wherever in this Agreement provision is made for the giving or issuing of any notice, submission, endorsement, consent, approval, Approval, acknowledgement, certificate or determination by any person (a “Notice”), unless otherwise specified such Notice shall be in writing and the words “notify”, “endorsed”, “consent”, “approval”, “Approval”, “acknowledged”, “Acknowledged”, “certify” or “determined” shall be construed accordingly.

49.2 Notice Specify Response Period

Subject to clause 49.4 (Changes), any Notice issued by the Railway Undertaking under this Agreement which requires a response from the Authority within a particular period of time (pursuant to the provisions of this Agreement) shall expressly specify the particular period.

49.3 Addresses

Any Notice shall be duly given if signed by or on behalf of a duly authorised officer of the person giving the Notice and left at or sent by registered post or by facsimile or email transmission to the following addresses:

Authority	
National Transport Authority Dún Scéine Iveagh Court Harcourt Lane Dublin 2	
Email:	anne.graham@nationaltransport.ie
Attention:	Chief Executive
Railway Undertaking	
Irish Rail Connolly Station Amiens Street Dublin 1	
Email:	gerry.culligan@irishrail.ie
Attention:	Gerry Culligan
Railway Undertaking’s Representative	

Brendan Johnson Irish Rail Connolly Station Amiens Street Dublin 1 Email: brendan.johnson@irishrail.ie Attention: Brendan Johnson
Authority's Representative Ger Regan National Transport Authority Dún Scéine Iveagh Court Harcourt Lane Dublin 2 Email: ger.regan@nationaltransport.ie Attention: Ger Regan

49.4 Changes

Any Party may change its address for notice to another address in the State by prior notice to the other Party.

49.5 Receipt

Except where otherwise provided in this Agreement, any Notice shall be deemed to have been given:

- (a) if sent by hand, when delivered; or
- (b) if sent by registered post, one (1) Business Day after posting; or
- (c) if sent by email, at the time of confirmation of receipt by the addressee.

50. ANNOUNCEMENTS

Any announcement, circular, advertisement or other publicity in connection with the subject matter of this Agreement shall only be made or issued by the Railway Undertaking in accordance with such publicity guidelines as may be agreed with the Authority and the Railway Undertaking shall, where applicable, submit to the Authority for approval a copy of such announcement, circular, advertisement or other publicity.

51. CONFIDENTIALITY

51.1 Confidential Information

In this clause 51 (Confidentiality), "**Confidential Information**" means:

- (a) all commercially sensitive pricing information including, without limitation, pricing information relating to a Variation;

- (b) all information relating to the internal discussions of the board of directors of a Party or any Associated Company of that Party;
- (c) all correspondence between a Party, or any Associated Company of that Party, and the Minister for Transport, Tourism and Sport and/or Department of Transport, Tourism and Sport;
- (d) any information of a confidential or proprietary nature which relates to the undertaking or finances of any of the Parties; and
- (e) such other information as may be agreed by the Parties,

disclosed (whether in writing, orally or by another means and whether directly or indirectly and whether specifically designated as 'confidential' or which ought reasonably be regarded as confidential) under or in connection with this Agreement by one Party (the "**Disclosing Party**") to the other Party (the "**Receiving Party**") whether before or during this Agreement.

51.2 Obligations

During the term of this Agreement, and after termination or expiration of this Agreement for any reason, the Receiving Party:

- (a) will not use Confidential Information for a purpose other than the performance of its obligations under this Agreement;
- (b) will not disclose Confidential Information to any third party except with the prior written consent of the Disclosing Party other than in accordance with clause 51.3 (Permitted Disclosures); and
- (c) shall make every effort to prevent the use or disclosure of Confidential Information.

51.3 Permitted Disclosures

- (a) During the term of this Agreement, the Receiving Party may disclose Confidential Information to any of its directors, shareholders (including employees of such shareholders), officers and employees (a "**Recipient**") to the extent that disclosure is reasonably necessary for the purposes of this Agreement.
- (b) The Receiving Party shall ensure that a Recipient is made aware of and complies with the Receiving Party's obligations of confidentiality under this Agreement as if the Recipient was a party to this Agreement.
- (c) The obligations in this clause 51 (Confidentiality) shall not apply to the extent that:
 - (i) the disclosure of Confidential Information is required by the law of any relevant jurisdiction (including for the avoidance of doubt any disclosure required under the Freedom of Information Act 2014) or pursuant to an order of a court of competent jurisdiction;
 - (ii) the information is disclosed on a strictly confidential basis to the professional advisers, bankers or auditors of that party;
 - (iii) the information has come into the public domain through no fault of that party;

- (iv) the information was in the possession of the Receiving Party before such disclosure by the Disclosing Party, as aforesaid;
- (v) the information was obtained by the Receiving Party from a third party who was free to divulge the same;
- (vi) the information is disclosed by the Receiving Party in accordance with clause 26.3 (Oireachtas Questions and Issues);
- (vii) in the case of the Railway Undertaking, the information is disclosed to the Commission for Railway Regulation (as required by or pursuant to the Railway Safety Legislation or the 2015 Regulations);
- (viii) the information is disclosed to a Minister of the Government of Ireland; or
- (ix) the Disclosing Party has given prior written approval to the Receiving Party in respect of the disclosure, such approval not to be unreasonably withheld or delayed.

52. AGENCY

52.1 No Delegation

For the avoidance of doubt, no provision of this Agreement shall be construed as a delegation by the Authority of any of its statutory authority to the Railway Undertaking.

52.2 No Agency

Except as otherwise provided in this Agreement, the Railway Undertaking shall not be nor be deemed to be an agent of the Authority and the Railway Undertaking shall not hold itself out as having authority or power to bind the Authority in any way. For the avoidance of doubt, the Railway Undertaking shall not have the benefit of any State immunity and, unless otherwise agreed by the Authority, shall apply for and obtain all consents, licences and permissions which the Railway Undertaking would otherwise be obliged to obtain under any Legal Requirements on the basis that the Railway Undertaking does not have the benefit of any such immunity.

52.3 Railway Undertaking Responsibility

As between the Parties, the Railway Undertaking shall be responsible for the acts, defaults, omissions and neglect of the Staff, as fully as if they were the acts, defaults, omissions or neglect of the Railway Undertaking.

52.4 Railway Undertaking Knowledge

Without limitation to its actual knowledge, the Railway Undertaking shall, for all purposes of this Agreement, be deemed to have such knowledge in respect of the Services as is held (or as ought reasonably to be held) by the Staff in the relevant circumstances.

52.5 Parties Relationship

For the avoidance of doubt, nothing in this Agreement shall be construed as constituting a partnership, joint venture, agency or relationship of employer and employee between the Authority and the Railway Undertaking or any of its Staff and the Railway Undertaking shall

not (and shall procure that no member of its Staff shall) hold itself out as having any such relationship with the Authority.

53. **ACKNOWLEDGEMENT**

The Parties acknowledge that, subject to compliance with all applicable Legal Requirements (including section 52, 2008 Act), the Authority and the Railway Undertaking may enter into a direct award public service contract subsequent to this Agreement.

54. **WHOLE AGREEMENT**

- (a) This Agreement, and the agreements and documents between the Parties referred to herein constitute the whole agreement and understanding of the Parties as to the subject matter hereof and, subject to clause 2.2 (Prior Contract), there are no prior or contemporaneous agreements between the Parties with respect thereto.
- (b) The Railway Undertaking confirms that it has not relied upon any representation inducing it to enter into this Agreement (whether or not such representation has been incorporated as a term of this Agreement) and agrees to waive any right which it might otherwise have to bring any action in respect of such representation.

55. **SEVERABILITY**

Each of the provisions of this Agreement is severable and distinct from the others and if at any time one or more of such provisions is or becomes invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

56. **WAIVER**

Failure by any Party at any time to enforce any provision of this Agreement or to require performance by the Railway Undertaking of any of the provisions of this Agreement shall not be construed as a waiver of any such provision and shall not affect the validity of this Agreement or any part thereof or the right of such Party to enforce any provision in accordance with its terms.

57. **AMENDMENTS**

No amendment to this Agreement shall be binding unless such amendment is in writing and signed by the duly authorised representatives of the Authority and the Railway Undertaking.

58. **CORRUPT GIFTS**

58.1 Prohibited Acts

The Railway Undertaking shall not do and warrants that prior to the Commencement Date, it has not done nor have any of the Staff done, nor shall they do any of the following ("**Prohibited Acts**"):

- (a) offer or give or agree to give to any employee or representative of the Authority any gift or consideration of any kind as an inducement or reward for doing or for having done or forborne to do any act in relation to the obtaining or execution of this Agreement or for showing or forbearing to show favour or disfavour to any person in relation to this Agreement; or

- (b) enter into any agreement (including this Agreement) with the Authority in connection with which commission has been paid or agreed to be paid by the Railway Undertaking or on its behalf, or to its knowledge, unless before such agreement is made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to a duly authorised representative of the Authority.

58.2 Consequences of Prohibited Acts

If the Railway Undertaking (or anyone acting on its behalf) does any of the Prohibited Acts or commits any offence under the Criminal Justice (Corruption Offences) Act 2018, and/or the Ethics in Public Office Act 1995, with or without the knowledge of the Railway Undertaking then, subject to clause 58.3 (Remedies for Prohibited Acts) the following provisions shall apply:

- (a) If a Prohibited Act is committed by the Railway Undertaking or by the Staff (or any member of the Staff) not acting independently of the Railway Undertaking, then the Authority may terminate this Agreement by giving notice to the Railway Undertaking.
- (b) If a Prohibited Act is committed by the Staff (or any member of the Staff) acting independently of the Railway Undertaking, then the Authority may give notice to the Railway Undertaking of termination and this Agreement will terminate, unless within twenty (20) Business Days of receipt of such notice the Railway Undertaking removes (or procures the removal) of the Staff (or the relevant member of Staff as the case may be) (which shall unless otherwise agreed with the Authority include the employer of any employee in addition to the relevant employee) from the Services and (if necessary) procures the performance of such part of the Railway Undertaking's obligations under this Agreement by another person.
- (c) Any notice of termination under this clause 58 shall specify:
 - (i) the nature of the Prohibited Act;
 - (ii) the identity of the party whom the Authority believes has committed the Prohibited Act; and
 - (iii) the date on which this Agreement will terminate, in accordance with the applicable provision of this clause.

58.3 Remedies for Prohibited Acts

- (a) Without prejudice to any other rights under this clause 58, the Authority shall be entitled to:
 - (i) recover from the Railway Undertaking the amount of any Loss suffered by the Authority, as the case may be, resulting from a breach by the Railway Undertaking of its obligations under this clause 58; and
 - (ii) require that the amount or value of any gift or consideration given in breach of this clause 58 be donated to a charity specified by the Authority.
- (b) In exercising its remedies under this clause 58, the Authority shall:

- (i) act in a reasonable and proportionate manner having regard to such matters as the gravity of the Prohibited Act and the identity of the person committing the Prohibited Act; and
- (ii) report the Prohibited Act to the authorities to the extent it deems such Prohibited Act to be an offence.

59. COUNTERPARTS

This Agreement may be executed in any number of counterparts and by different parties hereto on separate counterparts, each of which, when executed and delivered, shall constitute but one and the same instrument.

60. GOVERNING LAW AND JURISDICTION

60.1 Law

This Agreement shall be governed by and construed in all respects in accordance with the laws of Ireland.

60.2 Jurisdiction

The parties agree to submit to the exclusive jurisdiction of the Courts of Ireland as regards any Claim or matter arising out of or in relation to this Agreement.

EXECUTION PAGE

IN WITNESS WHEREOF the parties have executed this Agreement on the date first written above.

<p>SIGNED by _____</p> <p>a duly authorised representative of/for and on behalf of AN tÚDARÁS NÁISIÚNTA IOMPAIR - NATIONAL TRANSPORT AUTHORITY</p>	<p>_____</p>
<p>in the presence of:</p> <p>Witness:</p> <p>Address:</p> <p>Occupation:</p>	<p>_____</p> <p>_____</p> <p>_____</p>

<p>SIGNED by _____</p> <p>a duly authorised representative of/for and on behalf of IARNRÓD ÉIREANN - IRISH RAIL</p>	<p>_____</p>
<p>in the presence of:</p> <p>Witness:</p> <p>Address:</p> <p>Occupation:</p>	<p>_____</p> <p>_____</p> <p>_____</p>