

Text of Schedule 14 to the Central Trains franchise agreement

Schedule 14: Agreement between the PTE and the Franchisee for the protection of local bus services within the West Midlands area

Whereas:

- (A) The PTE has powers to subsidise local bus services within the West Midlands area pursuant to the Transport Act 1985.
- (B) The majority of local bus services operated within the West Midlands area are performed by West Midlands Travel Limited, a wholly owned subsidiary of the Franchisee.
- (C) In consideration of the award to the Franchisee of the rail franchise for the West Midlands area, the Franchisee and the PTE have agreed provisions for the protection of bus services within the West Midlands area.

1 Definitions

1.1 In this Schedule 14 the following terms shall bear the following meanings:

“Bus Passenger Service Requirement” means the document in the agreed terms and marked **“SQSBS”**.

“Confidential Information” means commercially sensitive business and financial information in whatever form relating to the Franchise Services (including information as to passenger numbers, passenger revenue, passenger flows, types, values and numbers of tickets sold, market research and customer surveys) but not including information which otherwise than through breach of an obligation of confidentiality is or becomes generally available to the public.

“Initial Commercial Bus Service” means a bus service operating wholly or partly within the Passenger Transport Area at 22 January 1997 which is registered under Section 6 of the Transport Act 1995 the operation of which is not subsidised by the PTE or other local authority.

“Local Services” means those services defined within Section 2 of the Transport Act 1985.

“NEG Group” means the Franchisee and its affiliates.

“Separate Business” means any bus business of the NEG Group which is a legal entity and which is operating Local Services within the Passenger Transport Area.

“Service Quality Standards” means Sections 2, 3 and 4 of the document in the agreed terms and marked **“SQSBS”**.

2 Interpretation

2.1 References to clauses are references to the clauses of this Schedule unless specified otherwise.

3 Obligations of the Franchisee

Assurances in Respect of Bus Services

3.1 The Franchisee covenants to the PTE that West Midlands Travel Limited or any other company or firm of which it has or gains Control and which operates Local Services (the “**Company**”) shall:

3.1.1 Provide Local Services in accordance with the Bus Passenger Service Requirement unless otherwise agreed by the PTE.

3.1.2 Not discontinue amend or vary the operation of any Initial Commercial Bus Service which would constitute a reduction below the Service Quality Standards unless otherwise agreed with the PTE, provided that for the avoidance of doubt the PTE shall agree to such discontinuance or amendment or variation of an Initial Commercial Bus Service in the following circumstances:

- (i) predatory or competitive action by another bus operator which causes the Company to suffer a significant loss in its revenue;
- (ii) substantial reductions in demand due to external factors such as changes in demographic patterns, land uses, employment patterns and economic activity and the like which are outside the control of the Company and its affiliates and have a substantial financial impact on the Company;
- (iii) significant changes in transport policy of local authorities in the West Midlands (including significant changes to methods of calculating concessionary travel reimbursement) which have a major impact on the revenue of the Company;
- (iv) changes in law, regulatory or taxation regimes after the Franchise Commencement Date which affect all bus operators in the West Midlands and have a substantial financial impact on the Company

and such other circumstances as are subsequently agreed.

3.1.3 Ensure continued participation in the multi-modal scheme known as Centrocard (as defined by the terms and conditions in existence at 22 January 1997) as the Franchise Operator, an operator of local bus services and operator of Midland Metro Line 1.

3.1.4 Ensure that bus fares for services specified within the Bus Passenger Service Requirement will be set at the same level as other bus fares for services operating within the rest of the Passenger Transport Area, provided that this requirement shall not apply in the event of significant financial loss caused to the Franchisee or any company or firm under its control through the operation of competing Local Services by another bus operator.

3.1.5 Provide information to the public about services of other bus and rail operators serving PTE Stations to the reasonable satisfaction of the PTE.

3.1.6 Use all reasonable endeavours to co-operate with the PTE to maximise standards of public transport by bus and the Midland Metro light rail system in the Passenger Transport Area.

For the avoidance of doubt the creation of any new multi-mode or multi-operator ticket for use on the Franchise Operator's services within the Passenger Transport Area requires the agreement of the PTE who will have regard to the competition implications of such an agreement in respect of other local bus operators.

3.2 Confidentiality

- 3.2.1 Notwithstanding the other provisions of this Agreement, neither the Franchisee nor the Franchise Operator nor their respective directors, officers or employees shall supply any Confidential Information to (i) any other company in the NEG Group or (ii) to any director, officer or employee of any such company (other than to such directors, officers or employees who are also directors, officers or employees of the Franchisee or the Franchise Operator), and shall procure that it is used only for the purpose of (x) enabling the directors of the Franchisee or the Franchise Operator to perform their legal or fiduciary duties as directors of the Franchisee or the Franchise Operator or (y) enabling the officers of the Franchisee or the Franchise Operator to perform their duties as officers of the Franchisee or the Franchise Operator or (z) enabling the employees of the Franchisee or the Franchise Operator to perform their duties as employees of the Franchisee or the Franchise Operator.
- 3.2.2 Confidential Information may be supplied to directors and officers of any holding company of the Franchisee provided that the Franchisee ensures that such Confidential Information is used only by the directors of such holding company for the purposes of enabling such directors to perform their legal or fiduciary duties as directors of that holding company.

3.3 Separate Reports and Accounting

Without prejudice to the other provisions of this Agreement, the Franchisee undertakes:

- 3.3.1 to maintain separate accounting records in respect of each Separate Business, so that the revenues, costs, assets, liabilities, reserves and provisions of or reasonably attributable to, each Separate Business are identifiable in the books of the Franchisee (or of the Separate Business in question) separately from the business of any other company in the NEG Group;
- 3.3.2 to prepare on a consistent basis from such accounting records in respect of each Separate Business:
- (i) for the financial year commencing in 1997 and each subsequent financial year, accounting statements comprising the profit and loss account, a balance sheet and a cash flow statement;
 - (ii) for the first six months of the financial year commencing in 1997 and of each subsequent financial year an interim profit and loss account; and
 - (iii) such further financial information as may be reasonably required by the PTE for the purpose of determining that the Franchisee is complying with its obligations under this Schedule;
- 3.3.3 to deliver to the PTE a copy of each document referred to in 3.3.2(i) and (ii) above as soon as reasonably practicable and in any event not later than four months after the end of the period to which it relates.

4 Disputes

In the event of a dispute between the PTE and the Franchisee arising from the terms of this Schedule 14 the matter shall be referred to an arbitrator appointed by agreement or in default of agreement by the President of the Law Society for determination.