

THE SECRETARY OF STATE FOR TRANSPORT

AND

DIRECTLY OPERATED RAILWAYS LIMITED

AND

EAST COAST MAIN LINE COMPANY LIMITED

SERVICES AGREEMENT

CONTENTS

1	INTERPRETATION	2
2	OBLIGATIONS OF DOR	3
3	SERVICE COMMENCEMENT DATE	4
4	TERM AND TERMINATION	4
5	PROVISION OF THE SERVICES	4
6	BUDGET AND PAYMENTS	5
7	BREACH NOTICES.....	6
8	COMMITTED OBLIGATIONS	7
9	TRANSFER OF PROPERTY, RIGHTS AND LIABILITIES ON EXPIRY.....	7
10	CONFIDENTIALITY	7
11	SUPPLEMENTAL TERMS.....	9
12	SUBCONTRACTING	9
13	FURTHER ASSURANCE.....	9
14	PARTIAL INVALIDITY.....	9
15	PAYMENTS TO BE FREE AND CLEAR.....	9
16	TIME LIMITS	10
17	WAIVER	10
18	VARIATIONS IN WRITING	10
19	ASSIGNMENT	10
20	NOTICES	10
21	GOVERNING LAW AND JURISDICTION	12
Schedules		
1	THE INCORPORATED TERMS	14
2	FIXED SERVICE PAYMENTS	17
3	COMMITTED OBLIGATIONS	19
	Part 1	19
	Part 2	33
	Part 3	36
4	SPECIFIC PROVISIONS	40
5	FORM OF TRANSFER AGREEMENT	45
6	AMENDMENTS TO SCHEDULE 5 (FARES) OF THE TERMS.....	66
Appendices		
Error! Not a valid link.....		65

THIS AGREEMENT is made on

2009

BETWEEN:

- (1) **THE SECRETARY OF STATE FOR TRANSPORT**, whose principal place of business is at 76 Marsham Street, London SW1P 4DR (the "**Secretary of State**");
- (2) **DIRECTLY OPERATED RAILWAYS LIMITED**, a company wholly incorporated under the laws of England with registered number 06950819 and whose registered office is at 76 Marsham Street, London SW1P 4DR ("**DOR**"); and
- (3) **EAST COAST MAIN LINE COMPANY LIMITED**, a company wholly incorporated under the laws of England with registered number 04659708 and whose registered office is at Great Minster House, 76 Marsham Street, London SW1P 4DR ("**ECMLCo**").

INTRODUCTION:

- (A) NXEC Trains Limited ("**NXEC**") has been providing certain services for the carriage of passengers by railway and operating certain stations and light maintenance depots pursuant to a franchise agreement dated 13 August 2007 (the "**Franchise Agreement**").
- (B) The Secretary of State has a duty under section 30 of the Act to secure the continuity of the provision of passenger rail services in circumstances where the Franchise Agreement terminates and no further franchise agreement has been entered into in respect of the passenger services formerly provided under the Franchise Agreement (the "**Section 30 Duty**").
- (C) The Franchise Agreement is to terminate on 13 November 2009 and no further franchise agreement has been entered into in respect of the passenger services formerly provided under the Franchise Agreement. In consequence the Secretary of State's Section 30 Duty has become effective.
- (D) DOR is a wholly owned subsidiary of the Secretary of State which has been established for the purposes of undertaking, on behalf of the Secretary of State, the Section 30 Duty in respect of the franchise services formerly provided by NXEC under the Franchise Agreement. ECMLCo is a wholly owned subsidiary of DOR and will operate the franchise services in respect of which the Section 30 Duty applies.
- (E) The Secretary of State, DOR and ECMLCo have agreed that whilst this agreement does not constitute a franchise agreement (within the meaning of the Act) in order to ensure (so far as possible) that the Services are operated and managed in a manner consistent with how railway passenger services are

provided by franchisees under franchise agreements it is appropriate for DOR and ECMLCo to provide the Services in accordance with such terms of the Franchise Agreement as are incorporated in this Agreement.

THE PARTIES HEREBY AGREE as follows:

1. INTERPRETATION

1.1 In this Agreement:

"Act" means the Railways Act 1993 (as amended from time to time);

"Budget" means the document incorporated into this Agreement by reference and marked **"ECMLCo Budget"** being the budget agreed by the Secretary of State, DOR and ECMLCo in respect of the operation of the Services (as may be amended pursuant to Clause 6.3 of this Agreement);

"Expiry Date" means **02.00am on 31 March 2012** or such other earlier or later date as the Secretary of State may notify to DOR and ECMLCo;¹

"Fixed Service Payment" means, in relation to any Reporting Period, the amount determined as such in accordance with paragraph 1 of part 1 of Schedule 2 of this Agreement;

"Franchise Agreement" has the meaning given to it in Recital A;

"Incorporated Terms" has the meaning given to it in Clause 5.2;

"Service Commencement Date" means the date specified as such in a notice served by the Secretary of State under Clause 3;

"Service Year" means any period of 12 months during the Services Period, beginning on 1 April in any year except that the first and last Service Years may be for a period of less than 12 months and the first Service Year shall begin on the Service Commencement Date and the last Service Year shall end on the last day of the Services Period;

"Services" means all of the Franchise Services (as such term is defined in the Franchise Agreement) which, as at the Termination Date, NXEC was required to provide under the Franchise Agreement;

"Services Period" means the period from the Service Commencement Date to the Expiry Date;

"2"; and

¹ Pursuant to Clause 1.1 of the Services Agreement, by way of letter dated 23 February 2012, the Secretary of State notified DOR and ECMLCo that the Expiry Date will be 02:00am on 08 December 2013

"Transfer Agreement" shall have the meaning given to such term in Clause 9.1.

1.2 In this Agreement, unless the context otherwise requires:

- (a) references to this Agreement includes references to the Incorporated Terms which shall form part of this Agreement;
- (b) the Franchise Agreement includes the Terms which are incorporated by reference in the Franchise Agreement pursuant to clause 1.2 of the Franchise Agreement;
- (c) any enactment includes any subordinate legislation made from time to time under it and is to be construed as a reference to that enactment or subordinate legislation as for the time being amended or modified or to any enactment or subordinate legislation for the time being replacing it or amending it;
- (d) a document is a reference to that document as modified or replaced from time to time;
- (e) a person includes a reference to a corporation, body corporate, association or partnership;
- (f) a person includes a reference to that person's legal personal representatives, successors and permitted assigns;
- (g) the singular includes the plural and vice versa (unless the context otherwise requires); and
- (h) a clause or schedule, unless the context otherwise requires, is a reference to a clause of or schedule to this Agreement.

1.3 The headings in this Agreement do not affect its interpretation.

2. OBLIGATIONS OF DOR

2.1 DOR undertakes to secure that ECMLCo provides the Services subject to and in accordance with the terms and conditions of this Agreement and otherwise complies with its obligations, duties and undertakings under this Agreement (as amended from time to time in accordance with this Agreement or by agreement between ECMLCo and the Secretary of State).

² Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- 2.2 of State hereby agrees that ECMLCo shall not be liable for failing to secure that the Current Timetable (and any future Timetable) complies with the Service Level Commitment introduced by this Deed to the extent that any such failure relates to the matters set out in Schedule 2 of this Deed. ECML shall continue to use reasonable endeavours to exercise its Timetable Development Rights so as to secure a Timetable that enables it to operate railway passenger services that comply with the Service Level Commitment introduced by this Deed.

3. **SERVICE COMMENCEMENT DATE**

- 3.1 The Secretary of State will notify DOR and ECMLCo in writing of the date from which the Secretary of State requires ECMLCo to commence provision of the Services ("**Service Commencement Date**").
- 3.2 The Secretary of State may subsequently vary the Service Commencement Date by notice to DOR and ECMLCo.

4. **TERM AND TERMINATION**

- 4.1 This Agreement shall commence on the Service Commencement Date and terminate on the Expiry Date.

5. **PROVISION OF THE SERVICES**

- 5.1 ECMLCo shall provide the Services with effect from the Service Commencement Date. ECMLCo will provide the Services in a proper, efficient and cost effective manner in accordance with its obligations under this Agreement and all other legal and regulatory duties.
- 5.2 The provisions of the Franchise Agreement set out in Schedule 1 of this Agreement are incorporated by reference in this Agreement ("**Incorporated Terms**"). ECMLCo shall comply with the provisions of the Incorporated Terms. Such compliance shall be on the basis that in the Incorporated Terms:
- (a) each reference to the "Franchisee" shall be replaced by a reference to ECMLCo;
 - (b) each reference to the "Franchise Agreement" or the "Terms" shall be replaced by a reference to this Agreement;
 - (c) each reference to the "Franchise Services" shall be deemed to be a reference to the "Services";
 - (d) references to the "Franchise Commencement Date" or "Start Date" shall mean the Service Commencement Date as defined in clause 1.1 of this Agreement;

- (e) each reference to "Franchise Assets" shall be deemed to be a reference to all the property, rights and liabilities owned or used by ECMLCo in the performance of its obligations under this Service Agreement;
- (f) each reference to "Franchise Period" or "Franchise Term" shall be deemed to be a reference to Services Period;
- (g) each reference to "Franchise Payment" shall be deemed to be a reference to the Fixed Service Payment;
- (h) each reference to "Franchisee Year" shall be deemed to be a reference to Service Year;
- (i) cross references to other clauses of the Franchise Agreement shall, to the extent that the clause to which reference is made is an Incorporated Term, be deemed to be a reference to such Incorporated Term;
- (j) where terms defined in the Franchise Agreement are used, those terms shall have the meaning specified in the Franchise Agreement; and
- (k) the rules of construction and interpretation specified in clause 2 of the Terms shall apply.

5.3 The parties agree that the Incorporated Terms are intended to be interpreted so as to be consistent with the provision of the Services by ECMLCo in the context of this Agreement. To the extent that any of the provisions of the Incorporated Terms are not capable of interpretation in a way that is consistent or compatible with the arrangements contemplated by this Agreement, then such provisions shall be deemed modified to the extent necessary to make them accord and consistent with the provisions of the rest of this Agreement and the arrangements hereby contemplated.

5.4 The Secretary of State shall be entitled (at any time and from time to time) to serve notice on ECMLCo requiring a variation of or amendment to the Services as then provided under this Agreement and ECMLCo shall comply with such requirements as soon as it is reasonably able to do so taking into account all relevant factors including any financial implications, or within such other timescale as the parties may agree. The Secretary of State shall consult with ECMLCo prior to issuing any notice under this clause 5.4.

6. **BUDGET AND PAYMENTS**

6.1 ECMLCo shall use reasonable endeavours to operate the Services during the Services Period in accordance with the Budget.

6.2 Schedule 2 shall have effect for the purpose of determining the Fixed Service Payments to be made by ECMLCo to the Secretary of State during the Service Period.

6.3 **Budget Review Process**

(a) As soon as reasonably practicable after the Start Date the Secretary of State, DOR and ECMLCo shall commence discussion to review the Budget with the intention of making it more likely that it will accurately reflect the revenue and costs of ECMLCo incurred in respect of the operation of the Services. The parties will use all reasonable endeavours to agree any amendments required to the Budget in consequence of such review by no later than 31 December 2009 (but in any event shall agree such amendments to the Budget by no later than 15th March 2010). In the absence of agreement by 15 March 2010 the Secretary of State shall have the right to determine amendments to the Budget. On such amendments being agreed or determined:

(i) the Fixed Service Payments set out in the table at paragraph 1 of Part 1 of Schedule 2 payable after the commencement of the Second Service Year; and

(ii) ³

shall be restated as necessary to reflect the amended Budget.

7. **BREACH NOTICES**

7.1 If the Secretary of State is satisfied that ECMLCo is contravening or is likely to contravene any provision of this Agreement he may serve written notice ("**Breach Notice**") upon ECMLCo setting out:

(a) the provision of this Agreement which the Secretary of State is satisfied ECMLCo is contravening or is likely to contravene;

(b) the act or omissions which, in the Secretary of State's opinion, constitute or would constitute contraventions of such provision; and

(c) the steps which the Secretary of State reasonably requires ECMLCo to take in order to remedy or prevent the occurrence of any such contravention and the period within which the Secretary of State requires such steps to be taken.

³ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

7.2 ECMLCo shall comply with the terms of any Breach Notice except in circumstances where to do so would result in ECMLCo being in breach of any legal or statutory duty. In those circumstances, ECMLCo shall as soon as reasonably possible, give notice to the Secretary of State and DOR with details of the breach which would arise and comply with any reasonable instructions issued by the Secretary of State in those circumstances.

7.3 The Secretary of State agrees that it is not his intention that DOR or ECMLCo will in any circumstances be liable to the Secretary of State for any loss or damage caused by any breach of this Agreement or tortious act or omission or breach of statutory duty by DOR or ECMLCo in respect of the Services to the extent permitted by law. All and any such liability as would, but for this clause, arise is expressly excluded provided that nothing in this Clause 7.3 shall restrict the ability of the Secretary of State to seek an order for specific performance of this Agreement.

8. **COMMITTED OBLIGATIONS**

8.1 ECMLCo shall deliver the Committed Obligations that are set out in Schedule 3 of this Agreement.

9. **TRANSFER OF PROPERTY, RIGHTS AND LIABILITIES ON EXPIRY**

9.1 ECMLCo agrees that on the termination of this Service Agreement it will, at the request of the Secretary of State, enter into an agreement in substantially the same form as the document set out in Schedule 5 or in such other form as the Secretary of State may prescribe (the "**Transfer Agreement**") for the purposes of:

- (a) transferring to a Successor Operator all the property, rights and liabilities of ECMLCo; and
- (b) determining the amounts to be paid in respect of such property, rights and liabilities so transferred to a Successor Operator under the Transfer Agreement.

ECMLCo shall comply with its obligations under the Transfer Agreement.

9.2 The Secretary of State agrees, that if he requires ECMLCo to enter into the Transfer Agreement, he shall impose an obligation on the Successor Operator to enter into the Transfer Agreement and comply with its obligations thereunder.

10. **CONFIDENTIALITY**

10.1 Subject to the provisions of the Act, the Transport Act, the Railways Act 2005, the Environmental Information Regulations, the Freedom of Information Act

(and any code of practice or other guidance related to the same) and clauses 10.2 to 10.4 of this clause 10 inclusive, DOR and ECMLCo shall hold in confidence all documents, materials and other information, whether technical or commercial, arising under or pursuant to this Agreement (including all documents and information supplied in the course of proceedings under the Dispute Resolution Rules or the rules of any other dispute resolution procedures to which a dispute is referred in accordance with the Franchise Agreement) (all together the "Confidential Information") and shall not, except with the Secretary of State's prior written authority, publish or otherwise disclose any Confidential Information otherwise than as expressly provided for in this Agreement unless or until DOR or ECMLCo can demonstrate that any such document, material or information is in the public domain through no fault of its own and through no contravention of this Agreement, whereupon to the extent that it is in the public domain this obligation shall cease.

10.2 Disclosure of Confidential Information

DOR and/or ECMLCo may disclose any data or information acquired by it under or pursuant to this Agreement or information relating to a dispute arising under this Agreement without the prior written consent of the Secretary of State if such disclosure is made in good faith:

- (a) to any Affiliate or outside consultants or advisers of such Affiliate, upon obtaining from such Affiliate and/or such outside consultants or advisers of such Affiliate an undertaking of confidentiality equivalent to that contained in paragraph 10.1;
- (b) to any outside consultants or advisers engaged by it or on its behalf and acting in that capacity, upon obtaining from such consultants or advisers an undertaking of confidentiality equivalent to that contained in paragraph 10.1;
- (c) to the extent required by Law or pursuant to an order of any court of competent jurisdiction or under the Dispute Resolution Rules or the rules of any other dispute resolution procedures to which a dispute is referred in accordance with this Agreement or the rules of a recognised stock exchange or a formal or informal request of any taxation authority;
- (d) to any insurer, upon obtaining from such insurer an undertaking of confidentiality equivalent to that contained in paragraph 10.1;
- (e) to any of its directors, employees or officers, to the extent necessary to enable it to perform its obligations under this Agreement or to protect or enforce its rights under this Agreement; or

(f) to the ORR, the Rail Passengers' Council or a Local Authority.

10.3 Service Development Information

Nothing in this paragraph 10 shall be deemed to prohibit, prevent or hinder, or render DOR or ECMLCo liable for, the disclosure by it to Network Rail, the ORR, other Train Operators, any operators of services for the carriage of goods by rail, the Rail Passengers' Council and/or any Local Authority of any information relating to the development of the Service Level Commitment in accordance with Schedule 1.1 (Service Development) of the Terms.

10.4 Continuing Obligation

This paragraph 10 (and any other provisions necessary to give effect hereto) shall survive the termination of this Agreement, irrespective of the reason for termination.

11. SUPPLEMENTAL TERMS

11.1 The provisions of Schedule 4 (Specific Provisions) of this Agreement shall apply.

12. SUBCONTRACTING

Neither DOR nor ECMLCo may subcontract or delegate the provision of any of the Services which are to be provided under this Agreement without the prior written consent of the Secretary of State.

13. FURTHER ASSURANCE

Each of the parties agrees to execute and deliver all such further instruments and do and perform all such further acts and things as shall be necessary or expedient for the carrying out of the provisions of this Agreement.

14. PARTIAL INVALIDITY

If any provision in this Agreement is held to be void, illegal, invalid or unenforceable, in whole or in part, under any enactment or rule of law, such provision or part shall to that extent be deemed not to form part of this Agreement but the legality, validity and enforceability of the remainder of this Agreement shall not be affected.

15. PAYMENTS TO BE FREE AND CLEAR

All sums payable by any party under this Agreement shall be paid free and clear of any deductions, withholdings, set-offs or counter-claims, save only as may be required by law or as expressly permitted or required under this Agreement.

16. TIME LIMITS

Where in this Agreement, any obligation of a party is required to be performed within a specified time limit that obligation shall be deemed to continue after that time limit if the party fails to comply with that obligation within the time limit.

17. WAIVER

17.1 The Secretary of State may at any time waive the obligations of DOR and ECMLCo under this Agreement and their obligations hereunder shall be construed accordingly.

17.2 No waiver by any party of any default by another in the performance of any of the provisions of this Agreement shall operate or be construed as a waiver of any other or further default whether of a like or different character. The failure to exercise or delay in exercising a right or remedy under this Agreement shall not constitute a waiver of the right or remedy or a waiver of any other rights or remedies and no single or partial exercise of any right or remedy under this Agreement shall prevent any further exercise of the right or remedy or the exercise of any other right or remedy.

18. VARIATIONS IN WRITING

18.1 Subject to clause 18.3 no variation of this Agreement shall be effective unless in writing and signed by duly authorised representatives of the parties.

18.2 The consent or approval of DOR shall not be required for any variation or amendment of the rights or obligations of the Secretary of State and ECMLCo under this Agreement.

18.3 Subject thereto, the parties may make such variations as they may consider appropriate from time to time.

19. ASSIGNMENT

DOR and ECMLCo shall not without the prior written consent of the Secretary of State assign, or grant a Security Interest in or over, this Agreement or any part thereof or any benefit or interest or rights therein or thereunder.

20. NOTICES

20.1 Any notice, notification or other communication under or in connection with this Agreement shall be in writing and shall be delivered by hand or recorded delivery or sent by pre-paid first class post, or by electronic data transfer (subject to notification by the recipient of any facility it may operate for receipt

of such data transfers) to the relevant parties at the relevant address for service set out below, or to such other address in the United Kingdom as each party may specify by notice in writing to the other parties to this Agreement.

Name:⁴ *Secretary of State for Transport*

Address⁵: *Great Minster House, 33 Horseferry Road,
London SW1P 4DR*

Attention: *Director, Rail Commercial Contracts*

E-mail: Franchise.Notices@dft.gsi.gov.uk
Facsimile 0207 944 2446

Name:⁶ *Directly Operated Railways and East Coast
Main Line Company Limited*

Address: *4th Floor,
One Kemble Street,
London,
WC2B 4AN*

Attention: *Chief Executive, Directly Operated Railways
Limited*

E-mail⁷: *michael.holden@directlyoperatedrailways.co.uk*

Deemed Receipt

- 20.2 Any such notice or other communication shall be deemed to have been received by the party to whom it is addressed as follows:
- (a) if sent by hand or recorded delivery, when so delivered;
 - (b) if sent by pre-paid first class post, from and to any place within the United Kingdom, three business days after posting unless otherwise proven; and
 - (c) if by electronic data transfer, upon sending.

⁴ Date of change 08/02/2011

⁵ Date of Change 01/10/2011

⁶ Date of change 05/05/2010

⁷ Date of change 02/07/2012

21. **GOVERNING LAW AND JURISDICTION**

- 21.1 This Agreement shall be governed by and construed in accordance with the Laws of England and Wales and the parties irrevocably agree that the courts of England and Wales are to have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement, except as expressly set out in the Incorporated Terms.

THE CORPORATE SEAL)
OF THE **SECRETARY OF**)
STATE FOR TRANSPORT)
IS HEREUNTO AFFIXED:)

Authenticated by authority of the
Secretary of State for Transport

SIGNED FOR AND ON)
BEHALF OF **DIRECTLY**)
OPERATED RAILWAYS)
LIMITED)

DIRECTOR:

DIRECTOR/SECRETARY:

SIGNED FOR AND ON)
BEHALF OF **EAST COAST MAIN**)
LINE COMPANY LIMITED)

DIRECTOR:

DIRECTOR/SECRETARY:

SCHEDULE 1

THE INCORPORATED TERMS

1. Interpretation

Unless otherwise specified, references to Schedules in this Schedule 1 are references to Schedules of the Franchise Agreement.

2. The Incorporated Terms

2.1 For the purposes of clause 5.2 the following provisions of the Franchise Agreement are the Incorporated Terms:

(a) all of the definitions contained in Clause 3 of the Terms but only to the extent that such definitions are relevant for the purposes of the construction and interpretation of any of the Incorporated Terms provided that:

(i) the definition of "**GAAP**" shall be amended to read as follows:

"**GAAP**" means the generally accepted accounting principles in the United Kingdom, as derived from and including the accounting requirements of the Companies Act 1985 (as amended by the Companies Act 2006), 'Statements of Standard Accounting Practice', 'Financial Reporting Standards', abstracts issued by the Urgent Issues Task Force of the Accounting Standards Board and, where appropriate, International Financial Reporting Standards and the listing rules of the Financial Services Authority, in each case, as at September 2009;

(ii) the definition of "**Transition Date**" shall be deleted; and

(iii) the definition of "Service Level Commitment" to be deleted and replaced as follows:

"Service Level Commitment means the service level commitment more particularly described in paragraph 1 of Schedule 1.1 (Service Development) in force from time to time, the first such Service Level Commitment in the agreed terms marked "SLC1".

- (b) Clause 5 (Specific Obligations) and Clause 9 (Documents in the Agreed Terms) of the Franchise Agreement to the extent that such provisions are necessary for the purposes of implementing the other Incorporated Terms but not further or otherwise;
- (c) Appendix 3 (The Train Fleet), Appendix 5 (Cancellations Benchmark Table), Appendix 7ⁱ (Service Delivery Benchmark table), Appendix 9 (List of Key Contracts), Appendix 12 (2012 Olympic Games and Paralympic Games) and Appendix 15 (List of Documents in the Agreed Terms) of the Franchise Agreement;
- (d) ***"Schedule 1 (Passenger Service Obligations) of the Terms excluding paragraph 7.4 (as inserted pursuant to clause 5.2(e)(ii) of the Franchise Agreement) and the amendment to paragraph 1.2 so that it reads as follows:***

"The Service Level Commitment as at the date of the Franchise Agreement is in the agreed terms marked SLC 1".
- (e) Schedule 2 (Assets, Leases, Third Parties, Other Franchise Operations and Schemes) of the Terms;
- (f) Schedule 4 (Persons with Disabilities and Disability Discrimination) of the Terms;
- (g) Schedule 5 (Fares) of the Terms amended as set out in Schedule 7 of this Service Agreement;
- (h) Schedule 7 (Performance Benchmarks/Service Quality Management) of the Terms excluding paragraphs 3.2(a) (as inserted pursuant to clause 5.2(f)(ii) of the Franchise Agreement), 4.2 and 4.5 of Schedule 7.1 (Performance Benchmarks) and paragraph 5.1 of Schedule 7.2 (Service Quality Management);
- (i) Schedule 10.4 (Force Majeure Events) of the Terms;
- (j) Schedule 11 (Agreement Management Provisions) of the Terms;
- (k) Schedule 13 (Information and Industry Initiatives) of the Terms excluding paragraphs 3.8(b)(i) and (ii);
- (l) Schedule 14 (Preservation of Assets) excluding paragraphs 5 and 6 of Schedule 14.3 (Key Contracts), Schedule 14.4 (Designation of Franchise Assets) and Schedule 14.5 (Dealing with Franchise Assets) of the Terms;

- (m) Schedule 15 (Obligations Associated with Termination) of the Terms excluding Schedule 15.3 (Handover Package), Appendix to Schedule 15.3 (Form of Handover Package), paragraphs 3.1, 3.2, 3.3 and 3.4 of Schedule 15.4 (Provisions Applying on and after Termination), Appendix 1 to Schedule 15.4 (Form of Transfer Scheme) and Appendix 2 to Schedule 15.4 (Form of Supplemental Agreement) of the Terms;
- (n) Schedule 16 (Pensions) of the Terms; and

Paragraphs 4, 8.5, 8.6, 10, 11 and 12 of Schedule 19 (Other Provisions).

SCHEDULE 3

FIXED SERVICE PAYMENTS

Part 1: Fixed Service Payments⁸

1. The Fixed Service Payment payable in respect of each Reporting Period set out in column 1 of the table below shall (subject to Clause 6.3 of this Agreement) be an amount equal to:

$$\text{£FFSP} = (\text{PA} \times \text{IF}) + \text{COPA}$$

where:

£FFSP means the Fixed Service Payment for that Reporting Period;

PA means the amount specified in column 2 of the table below for that Reporting Period;

IF means the Indexation Factor applicable in respect of the relevant Service Year; and

COPA means any Committed Obligation Payment Adjustment to be made on that Reporting Period's Payment Date.

9

2. For the purposes paragraph 1 of part 1 of this Schedule 2 Indexation Factor means:

- 2.1 in respect of the first Service Year 1;

- 2.2 in respect of the second Service Year, the quotient of the Retail Price Index for January 2010 divided by the Retail Price Index for January 2009; and

- 2.3 in respect of the third Service Year, the quotient of the Retail Price Index for January 2011 divided by the Retail Price Index for January 2009.

3. **Payment of Service Payments**

- 3.1 The Secretary of State shall notify ECMLCo, no less than seven days prior to the end of each Reporting Period, of the amount of the Fixed Service Payment payable in respect of that Reporting Period.

⁸ Date of Change 05/12/2011

⁹ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- 3.2 The Payment Date for a Reporting Period shall be the last business day of that Reporting Period.
- 3.3 Each Fixed Service Payment shall be payable by ECMLCo in the amount notified by the Secretary of State in accordance with paragraph 3.1 on the Payment Date of the Reporting Period to which it relates.
- 3.4 Each Fixed Service payment shall be made:
- (a) by automatic electronic funds transfer in pounds sterling to such bank account in the United Kingdom as the payee of such payment may have previously specified to the payer in writing; and
 - (b) so that cleared funds are received in that account on or before the due date for payment.

SCHEDULE 4

COMMITTED OBLIGATIONS

Part 1

The list of Committed Obligations are as follows:

1. Ticketing/Advertising/Customer Facing Obligations
 - 1.1 In addition to its obligations in Schedule 1.3 ECMLCo shall in every Service Year spend not less than £¹⁰ on activities designed to reduce the level of ticketless travel and fare evasion.
 - 1.2 ECMLCo shall for the duration of the Service Term maintain:
 - (a) the website provided by NXEC prior to the Service Commencement Date, promoting the Passenger Services, providing information and permitting passengers to purchase tickets;
 - (b) the facilities which allows passengers to:
 - (i) print tickets in respect of the Passenger Services at home; and
 - (ii) display travel authorisations in respect of the Passenger Services on mobile telephones;
 - (c) the system that permits registered passengers, at their request, to be sent journey alerts in respect of the Passenger Services by ECMLCo by email or text message;
 - (d) the system that permits a passenger to submit feedback to ECMLCo in respect of the Passenger Services by text message from their mobile telephone;
 - (e) ¹¹***a system that permits passengers, to download a mobile application which allows timetable information in respect of the Passenger Services to be viewed on their mobile telephone; and***

¹⁰ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹¹ Date of change 01/09/2011

- (f) the seat guarantee policy implemented by NXEC prior to the Service Commencement Date being an offer to passengers of a refund of fare which relates to a journey in respect of which ECMLCo is unable to provide a seat where the passenger has a valid reservation for that Passenger Service,

each as provided by NXEC prior to the Service Commencement Date and in accordance with the terms of its Franchise Agreement. The provisions of paragraph 2.2 of Part 2 of this Schedule 4 shall, where appropriate, apply in respect of the Committed Obligations set out in this paragraph 1.3.

- 1.3 ECMLCo shall throughout the Service Period maintain the wi-fi facility available to passengers on trains to enable such passengers to access the internet. ECMLCo shall ensure that such wi-fi facility is made available:

- (a) in respect of passengers travelling in first class, free of charge; and
- (b) in respect of passengers travelling in standard class, free of charge up to a reasonable usage limit and a reasonable charge thereafter.

- 1.4 ECMLCo shall ensure that it responds to all written correspondence (including e-mails and web forms) from customers within 10 weekdays from the date of receipt of such correspondence.

- 1.5 By no later than 31 January 2010 EMLCo shall use all reasonable endeavours to procure that the seat reservation charge introduced by NXEC is abolished.

- 1.6 ECMLCo shall use reasonable endeavours to co-operate with other Train Operators who either have or will have a certified ITSO Smartmedia functionality, to ensure reciprocal operation of ITSO-Certified Smartmedia cards.

1.7

- (a) ***¹²Following the introduction of Automatic Ticket Barriers, ECMLCo shall, in each Service Year, incur expenditure of no less than £375,000 on the provision of Station Revenue and Security Assistants at London King's Cross to protect revenue and improve customer service and security.***

- (b) Within one year of the Service Commencement Date ECMLCo shall conduct a review of the effectiveness of the arrangements in existence as at the Service Commencement Date for reducing ticketless travel, anti social behaviour and the incidences of criminality on the Services and at Stations. The review will determine the best way of organising the resources of ECMLCo to reduce the aforementioned behaviours.

¹² Date of Change 23/02/2012

Subject to the prior approval of the Secretary of State, not to be unreasonably withheld, ECMLCo shall implement the recommendations of this review.

2. Station Enhancements

2.1

- (a) Subject to obtaining the necessary consents and third party approvals (which ECMLCo shall use reasonable endeavours to obtain) ECMLCo shall, on or before 30 June 2011, invest or procure the investment of no less than £¹³ on the enhancement and/or refurbishment of the Station located at Newcastle. Such enhancement and/or refurbishment shall include:
- (i) improving passenger access to the Station by creating a new western entrance to the Station;
 - (ii) provision of new toilet facilities;
 - (iii) relocation and refreshment of offices used by the Franchise Employees; and
 - (iv) provision of 190 cycle storage spaces (such cycle storage spaces to be additional to those in existence at that Newcastle station at the Service Commencement Date).
- (b) Subject to obtaining the necessary consents and third party approvals (which ECMLCo shall use reasonable endeavours to obtain) ECMLCo shall, on or before 30 June 2011, invest no less than £¹⁴ and use all reasonable endeavours to procure the investment from Network Rail of a further £¹⁵ on the enhancement and/or refurbishment of the Station located at Peterborough. Such enhancement and/or refurbishment may include:
- (i) improving passenger access to the Station;
 - (ii) installation of facilities for the parking of motor cycles and bicycles;

¹³ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁴ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁵ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (iii) redecorating and refreshing of the building located on platform 2 at the Station;
 - (iv) installation of automatic ticket gates; and
 - (v) the provision of 150 bicycle parking spaces (such bicycle parking spaces to be in addition to those in existence at the Service Commencement Date).
 - (c) Subject to obtaining the necessary consents and third party approvals (which ECMLCo shall use reasonable endeavours to obtain) ECMLCo shall, on or before 30 September 2011, enhance and/or refurbish the cycling facilities at the Station located at York and bicycle access routes to it. Such enhancement and refurbishment shall include:
 - (i) the provision of two bicycle access routes linking the Station with the City of York if ECMLCo secures third party grants to meet costs associated with such works or the provision of one bicycle access route if no third party grant is secured. ECMLCo shall use all reasonable endeavours to secure such third party grant;
 - (ii) the development of a cycle hub provided that ECMLCo shall only be obliged to comply with this obligation if it secures the required funding from Network Rail (and ECMLCo shall use all reasonable endeavours to secure such funding); and
 - (iii) the provision of 100 bicycle parking spaces (such bicycle parking spaces to be in addition to those in existence at the Service Commencement Date).
 - (d) Subject to obtaining the necessary consents and third party approvals (which ECMLCo shall use reasonable endeavours to obtain) ECMLCo shall, on or before 30 June 2011, invest or procure the investment of no less than £¹⁶ on the enhancement and/or refurbishment of the ECMLCo Travel Centre located at Edinburgh station.
- 2.2 On or before 31 May 2010 ECMLCo shall undertake a comprehensive review of the availability of car parking spaces at Stations (the **"Car Park Spaces Review"**). The Car Park Spaces Review shall take account of the following:
- (a) current and predicted demand for parking at each Station;

¹⁶ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (b) the effect of planned future price changes on demand;
- (c) the availability of other adjacent parking;
- (d) Government and local authority transport objectives as expressed in official planning policy guidance and local transport plans.

At the request of the Secretary of State ECMLCo shall provide a copy of the Car Park Spaces Review.

2.3 ECMLCo shall:

- (a) maintain in full operational order the 55 CCTV cameras installed by NXEC at the Stations located at Newcastle, Durham, Newark, Grantham and Darlington. The provisions of paragraph 2.2 of Part 2 of this Schedule 4 shall apply in respect of this paragraph 2.3(a); and
- (b) on or before 30 June 2011 install a further 31 CCTV cameras at Stations to be determined by ECMLCo and approved by the Secretary of State (such approval not to be unreasonably withheld or delayed).

2.4 ECMLCo shall maintain the ticket vending machines installed by NXEC and Great North Eastern Railway Limited which are in existence at the Stations at the Service Commencement Date. The provisions of paragraph 2.2 of Part 2 of this Schedule 4 shall, where appropriate, apply in respect of the Committed Obligations set out in this paragraph 2.4.

2.5 ECMLCo shall co-operate with any reasonable requirements of Network Rail in respect of the introduction of ticket gates at the station located at King's Cross.

2.6 Subject to securing third party funding of at least £¹⁷ and obtaining all necessary consents and third party approvals (which ECMLCo shall use reasonable endeavours to obtain) ECMLCo shall, on or before the end of the Service Term invest or procure the investment of no less than £¹⁸ on the enhancement and/or refurbishment of ECMLCo Stations to be determined by ECMLCo and approved by the Secretary of State (such approval not to be unreasonably withheld or delayed).

¹⁷ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁸ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

2.7 ECMLCo shall maintain the 'Adopt a Station' scheme introduced at the following stations:

- (a) Dunbar;
- (b) Berwick upon Tweed;
- (c) Retford;
- (d) Newark; and
- (e) Grantham.

3. **Franchise Employees/Management Processes**

3.1 In order to facilitate:

- (a) improved provision of information to passengers especially during periods of disruptions to the Passenger Services;
- (b) the reduction in the amount of time spent by on-train staff in responding to passenger queries; and
- (c) the promotion of more print at home tickets,

19

3.2 ECMLCo shall throughout the Service Period use its reasonable endeavours to maintain the "Investors in People" accreditation achieved by NXC.

3.3 ECMLCo shall use its reasonable endeavours to achieve:

- (a) the EFQM "Committed to Excellence" accreditation by no later than 31 July 2010; and
- (b) the EFQM "Recognised for Excellence" accreditation by no later than 30 June 2011.

3.4 ECMLCo shall ensure that its performance against the relevant benchmarks in its Service Quality Management System in each Reporting Period is:

- (a) 90% for Stations;
- (b) 80% for trains; and

¹⁹ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (c) 90% for people.
- 3.5 ECMLCo shall use its reasonable endeavours to ensure that the ISO 14001 accreditation achieved by NXEC is maintained throughout the Service Term.
- 3.6 ECMLCo shall continue to make available to all its non-office customer facing Franchise Employees the conflict avoidance training programme established by NXEC. ECMLCo shall use all reasonable endeavours to procure that all such Franchise Employees receive an appropriate level of training during their induction period and all existing Franchise Employees receive refresher training as deemed appropriate.
- 3.7 Within twelve months from the Service Commencement Date ECMLCo shall introduce a comprehensive customer service delivery training programme for all managers with customer service delivery accountability and in so doing incur expenditure of not less than £²⁰ within the first six months.
- 3.8 ECMLCo shall undertake an annual employee survey to assess staff commitment, perception, motivation and to gain employee feedback. The first such survey shall be undertaken by no later than 30 November 2010.
- 3.9 Within twelve months from the Service Commencement Date ECMLCo shall introduce a training programme for all guards to be known as "Remarkable Guards", designed to enable the guards to best manage the balance between their various roles including operational, customer service, revenue collection and byelaws enforcement, and in so doing incur expenditure of not less than £²¹ within the first six months.
- 3.10 Within 6 months from the Service Commencement Date ECMLCo shall employ a dedicated access contract manager whose duties will include the management and co-ordination of all the services provided to ECMLCo under the Access Agreements relating to the depots where ECMLCo is not the Depot Facility Owner.
- 3.11 ECMLCo shall procure that:
- (a) by 30 April 2011, at least 60% of its Franchise Employees; and
- (b) every Service Year thereafter, all of its Franchise Employees,

²⁰ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

²¹ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

undergo a performance and development review with their respective managers.

3.12 On or before 31 May 2010 ECMLCo shall appoint an Employee Director whose primary duty will be to act as a representative of the Franchise Employees including at any board meetings to be held by ECMLCo during the Service Period. ECMLCo shall ensure that any person appointed as an Employee Director is maintained for at least **1 year**²² and is a member of the ECMLCo board of directors. For the purposes of this paragraph 3.12 **"Employee Director"** means a person who is elected by the Franchise Employees and who is not an elected member or representative of any trade union organisation.

3.13 ECMLCo shall, in each Service Year, commencing from the second Service Year, incur expenditure of no less than £500,000 on the training of its Franchise Employees and the implementation of management development initiatives (the **"Yearly Training Expenditure"**). The Yearly Training Expenditure shall include any amounts incurred by ECMLCo in the fulfilment of its obligations under paragraphs 3.6, 3.7, 3.9 and 6.1 of this Schedule 3.

3.14 ²³*The Managing Director (or in her absence her deputy) and at least 2 other members of the ECMLCo Executive Team shall, at least twice in each Service year:*

(a) visit each of the following ECMLCo locations; Edinburgh, Newcastle, Leeds, London and 2 intermediate Stations or Depots, to allow employees a regular opportunity to discuss relevant issues with senior management in an informal environment (except in the Service Year ending 31 March 2012 when only one such visit to each of the above locations shall take place);

(b) host an on-line forum to allow stakeholders to raise questions and receive responses from members of the ECMLCo Executive Team in real time. The first such forum shall take place by no later than 31 December 2011.

4. Rolling Stock Enhancements

4.1 ECMLCo shall throughout the Service Period maintain the ISO 9001:2000 certification achieved by NXEC in respect of its Train Fleet.

4.2 ECMLCo shall work towards achieving the OHSAS 18001 certification in respect of its Train Fleet maintenance activities. ECMLCo shall provide quarterly

²² Date of change 20/02/2012

²³ Date of new insertion 20/02/2012

updates to the Secretary of State on its progress in achieving such OHSAS 18001 certification.

4.3

- (a) ²⁴*On or before 31 December 2010 ECMLCo shall procure the expenditure of no less than £4,500,000 on the implementation of a package of modifications to all its Class 91 locomotives and Mark IV vehicles comprised in its Train Fleet which will include:*
- (i) *reliability modifications;*
 - (ii) *installation of forward facing and internal CCTV; and*
 - (iii) *fitment of telemetry to enable remote monitoring of the condition of the locomotives (Class 91 locomotives only).*
- (b) *On or before 31 December 2010 ECMLCo shall procure the expenditure of no less than £687,000 on the implementation of a package of modifications to all its HST sets of vehicles comprised in its Train Fleet which will include:*
- (i) *reliability modifications;*
 - (ii) *installation of coach internal and cab forward facing CCTV*
- (c) On or before 31 December 2010 ECMLCo shall procure the expenditure of no less than £²⁵ on the implementation of a package of modifications to all its HST sets of vehicles comprised in its Train Fleet which will include:
- (i) reliability modifications;
 - (ii) installation of coach internal and cab forward facing CCTV.
- (d) In order to assist the Secretary of State in the monitoring of ECMLCo's compliance with its obligations under paragraphs 4.3(a), 4.3(b) and 4.3(c) ECMLCo shall on or before the end of the sixth Reporting Period following the Service Commencement Date provide to the Secretary of State a delivery plan which sets out:
- (i) the details of the works it proposes to undertake; and

²⁴ Date of Change 05/11/2010

²⁵ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (ii) a brief explanation as to the reasons why ECMLCo has opted to undertake such modifications.

5. **Stakeholder Management/Community Rail Partnership**

- 5.1 ECMLCo shall, every quarter during the Services Period (the first of such quarter commencing on 1 April 2010), provide to its relevant stakeholders including (the Rail Passengers' Council, the Scottish Regional Transport Partnerships and other relevant Rail User Groups) a newsletter which will include updates on progress in relation to ECMLCo's operational performance, service development plans and any plans for the future development of the Passenger Services.
- 5.2 Every Service Year ECMLCo shall hold a meeting session at Stations (including King's Cross, Leeds and Edinburgh Waverley stations) at which at least one local manager and one senior manager will be available to meet with passengers to discuss issues concerning the operation of the Passenger Services and receive feedback and/or answer questions from passengers ("**Meet the Manager Sessions**"). ECMLCo shall ensure that details of each such "Meet the Manager Session", is published (including the dates, time location and programme for each such Meet the Manager Session) on its website, on station posters and in its stakeholders communications at least 2 weeks in advance of such meeting.
- 5.3 ECMLCo shall hold a stakeholder road show every 6 months during the Services Period (the first of such road shows to be held on or before 30 March 2010) at a Key Location for the purposes of updating the relevant stakeholders (including Rail Passengers' Council, the Scottish Regional Transport Partnerships and other relevant Rail User Groups) on progress in relation to the operation of the Services (including operational performance) and ECMLCo's future plans in respect of the Services (the "**Stakeholder Road Shows**"). ECMLCo shall ensure that each relevant stakeholder is invited to attend at least one of the Stakeholder Road Shows. For the purposes of this paragraph 5.3 "Key Locations" shall include any of London, Peterborough, York, Leeds, Newcastle, Edinburgh, and Aberdeen.ⁱⁱⁱ
- 5.4 ^{iv}ECMLCo shall, in each Service Year, host at least four forums at Edinburgh, Newcastle, York and London whereby local business representatives will be invited to discuss issues and policies concerning the operation of the Services which may have an impact on their businesses.
- 5.5 ECMLCo shall continue to participate in the Community Rail Partnership relevant to the Passenger Services and in so doing shall, in every Service Year, invest £60,000 on projects, payment of the salary for the partnership officer and other administrative costs. Any money not invested at the end of each

Service Year shall be required to be invested in the following Service Year and any outstanding uninvested sum by the end of the Service Term.

5.6 ECMLCo shall conduct an annual on-line survey of all its relevant stakeholders to assess such stakeholders perception of ECMLCo's performance (including its method of communicating with such stakeholders) compared with the performance of other Train Operators and other public transport providers. The first of such on-line stakeholder survey shall be held by no later than 31 May 2010.

5.7 From the Service Commencement Date ECMLCo shall appoint a project champion and project leader (which for these purposes can be the same person) to develop ECMLCo's transport plans in respect of the Games. ECMLCo shall maintain such posts until the end of the Service Term or the end of the Games whichever is earlier.

6. Environment/Safety

6.1 ECMLCo shall provide a series of safety workshops for the purposes of improving the skills, behaviour and attitudes of its Franchise Employees who undertake operational and maintenance activities at the Depots. ECMLCo shall:

- (a) ensure that such safety workshops are completed by no later than 31 July 2011 with at least 6 of such safety workshops to be held in each of London and Scotland; and
- (b) use all reasonable endeavours to ensure that all its Franchise Employees engaged in operational and maintenance activities at Depots attend such safety workshops.

6.2 On or before 31 August 2010 ECMLCo shall undertake a comprehensive environmental benchmarking review of the business.

6.3 ECMLCo shall using the quantified baseline performance data established by the review pursuant to paragraph 6.2 to develop an annual performance improvement target in relation to the following areas:

- (a) carbon emissions and energy use;
- (b) sustainable use of resources;
- (c) air quality; and
- (d) waste, recycling and litter management;

- 6.4 ECMLCo shall monitor its performance against such improvement targets and shall publish annually the results of its performance against such targets as well as the performance improvement targets for the following year.
- 6.5 ECMLCo shall use its best endeavours to achieve the BN:ES16001 accreditation by no later than 31 July 2011.
- 6.6 On or before 31 August 2010 ECMLCo shall prepare and submit to the Secretary of State a "Green Travel Plan" for the Franchise Employees (the "**Green Travel Plan**"). The Green Travel Plan shall cover each major location where Franchise Employees are based and may be submitted in separate parts specific to each location. ECMLCo shall ensure that the Green Travel Plan is updated, at least, every Service Year.
- 6.7 Within 2 years from the Service Commencement Date ECMLCo will introduce measures to reduce the consumption of traction electricity by its electric locomotives so that a reduction of not less than 6% in annual variable traction energy expenditure is obtained and such reduction is maintained for the remainder the Services Term.

7. **Major Projects**

- 7.1 Without prejudice to ECMLCo's rights and obligations under Schedule 1.7 (Extended Restrictions of Use) of the Terms ECMLCo shall, to the extent so requested by the Secretary of State and, if relevant, following consultation with ECMLCo and other train operators likely to be affected by major projects, co-operate and liaise to the extent reasonably required with Network Rail, the Secretary of State and all the relevant parties in connection with any major project developed during the Service Term including but not limited to:
- (a) the Wakefield Westgate Station redevelopment programme;
 - (b) London 2012 Olympic and Paralympic Games;
 - (c) any enhancement scheme which Network Rail is required to deliver in Control Period 4 pursuant to ORR's "Periodic Review 2008";
 - (d) the National Stations Improvement Programme;
 - (e) King's Cross Station redevelopment;
 - (f) Hitchin flyover; and
 - (g) the Thameslink Programme.
- 7.2 In fulfilling its obligations to co-operate and liaise pursuant to paragraph 7.1, the Franchisee shall amongst other things seek to:

- (a) participate in a positive and constructive manner and in a way which offers full transparency of information available from the Franchisee to the Secretary of State; and
- (b) identify solutions that minimise overall rail industry costs.

8. **Business Improvement**

8.1 In order to facilitate:

- (a) improved provision of information to the Franchise Employees in relation to the activities of ECMLCo and other relevant matters; and
- (b) enhance communication within ECMLCo and to external stakeholders including passengers and potential passengers,

ECMLCo shall on or before 31 December 2009 introduce a new intranet and extranet that will replace the current NX Group intranet and have appropriate functionality.

9. **Operations**

9.1 ²⁶.

9.2 ECMLCo shall throughout the Service Period use its reasonable endeavours to reduce and mitigate disruption to passengers journeys at weekends caused by planned infrastructure engineering works including by:

- (a) working with Network Rail to reduce the amount of coach substitution of passenger rail services caused by engineering works at weekends;
- (b) seeking to adjust the Rules of the Route so that passenger rail services can be provided later on Saturday evenings and earlier on Sunday mornings.

9.3 ²⁷On or before 31 March 2012 ECMLCo shall replace the Valenta engines in vehicles numbered 43072 and 43074 with MTU engines.

9.4 ²⁸On or before 31 December 2011 ECMLCo shall procure PDA devices for all station team leaders, riding inspectors, on-board crew leaders and maintenance engineering teams at King's Cross station.

²⁶ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

²⁷ Date of new insertion 20/02/2012

²⁸ Date of new insertion 20/02/2012

9.5 ²⁹*By 30 November 2011 ECMLCo shall introduce a customer portal which enables real time access to journey running information through the on-board WiFi.*

²⁹ Date of new insertion 20/02/2012

Part 2

Miscellaneous Provisions

1. APPLICATION

Part 2 of Schedule 3 (Committed Obligations) sets out further terms which apply to the Committed Obligations set out in Part 1 (List of Committed Obligations) to this Schedule 3 and the references to Committed Obligations in each Part of this Schedule 3 are only to the Committed Obligations in Part 1 of this Schedule 3.

2. CONTINUATION OF AVAILABILITY

- 2.1 Save as expressly provided in this Part 2 of Schedule 3, ECMLCo shall maintain facilities established in accordance with its Committed Obligations in full operational order throughout the remainder of the Service Term.
- 2.2 ECMLCo shall be treated as maintaining Committed Obligations notwithstanding temporary non-availability due to accidental damage or vandalism or maintenance, repair or replacement activities, or temporary staff absence, subject in each case to ECMLCo taking all reasonable steps to keep any such period of temporary non-availability to a minimum.
- 2.3 Where Part 1 to this Schedule 3 includes a commitment regarding staffing or particular appointments it plans to make:
 - (a) the obligation of ECMLCo applies, but shall not be regarded as being contravened by:
 - (i) temporary absences (for example for sickness or holiday);
or
 - (ii) temporary non-fulfilment of a relevant post whilst ECMLCo is recruiting for that post, subject to ECMLCo using all reasonable endeavours to keep the duration between appointments as short as reasonably practicable; and
 - (b) ECMLCo's rights and obligations in relation to the numbers or deployment of its other staff remain unaffected.

3. EXPENDITURE COMMITMENTS

Annual Expenditure

- 3.1 Where Part 1 (List of Committed Obligations) to this Schedule 3 provides for the expenditure of an annual amount (or an amount over some other period) by ECMLCo, that amount:

- (a) is assessed net of Value Added Tax; and
- (c) is the amount required to be expended by ECMLCo itself or procured by ECMLCo to be expended.

Expenditure by Network Rail

- 3.2 Save as expressly provided in the terms of the Committed Obligations listed in Part 1 (List of Committed Obligations) all amounts which ECMLCo has committed (whether unconditionally or otherwise) pursuant to Part 1 to this Schedule 3 to expend in connection with improvements to track or Stations shall be in addition to any expenditure made by Network Rail as part of its infrastructure improvements or maintenance programme to the extent such expenditure is not directly funded or reimbursed by the Franchisee.

4. LIAISON AND CO-OPERATION

Where ECMLCo is committed to liaison and co-operation under Part 1 (List of Committed Obligations) to this Schedule 3, it shall participate actively in the relevant measures including through the application of management time and internal resources, correspondence and attendance at meetings, in each case as ECMLCo reasonably considers in all the circumstances to be an appropriate use of its resources and effective to help achieve the relevant objective.

5. NATURE OF COMMITMENT

- 5.1 Any commitment in terms of Part 1 (List of Committed Obligations) to this Schedule 4 shall be in addition to any obligation of ECMLCo elsewhere in this Agreement and nothing in this Schedule 3 shall limit or restrict an obligation imposed on ECMLCo elsewhere in this Agreement.
- 5.2 Where in Part 1 to this Schedule 3, references are made to particular manufacturers or suppliers of equipment or services, ECMLCo may fulfil its relevant commitment by using reasonable equivalents.
- 5.3 Each commitment under this Schedule 3 shall come to an end on expiry of the Service Term for whatever reason, save in respect of any accrued payments owed pursuant to Part 3 (Late/Non-Completion of Committed Obligations) to this Schedule 3 but not yet paid.

6. THIRD PARTY CONSENTS, AGREEMENT AND CONDITIONS

- 6.1 Where, in Part 1 to this Schedule 3, any commitment of ECMLCo is expressed to be conditional upon the satisfaction of any condition (including the occurrence of any event or the obtaining of any third party consents, approvals and/or entering into any agreement or arrangement with a third party) ECMLCo shall use all reasonable endeavours to procure that such condition is

satisfied within such timescales (if any) as are set out in Part 1 to this Schedule 3 in relation to such obligations.

6.2 Without limiting paragraph 6.1 or any other commitment of ECMLCo if any commitment of ECMLCo set out in Part 1 of this Schedule 3 is expressly subject to the satisfaction of any condition (including the occurrence of any event or the obtaining of any third party consents, approvals and/or entering into any agreement or arrangement with a third party) and ECMLCo is unable to satisfy such condition within the timescales set out in Part 1 of this Schedule 3 then paragraph 6.3 shall apply.

6.3 ECMLCo shall:

6.3.1 as soon as reasonably practicable notify the Secretary of State if it is unable to procure the satisfaction of any condition (including the occurrence of any event or the obtaining of any third party consents, approvals and/or entering into any agreement or arrangement with a third party) relating to any commitment set out in Part 1 to this Schedule 3 despite having complied with its obligations in paragraph 6.1; and

6.3.2 to the extent required by the Secretary of State (and at his absolute discretion) ensure that any amount that cannot be spent due to the non-fulfilment of any such condition is either expended as soon as reasonably practicable on such other improvements to enhance the quality of the Passenger Services and/or Station Services as are approved by the Secretary of State or paid by the Franchisee to the Secretary of State at the next Payment Date or such other date as the Secretary of State may specify.

7. REVIEW OF COMPLIANCE

7.1 Progress with Committed Obligations is an agenda item for Franchise Performance Meetings and ECMLCo shall ensure that at such meetings, the Secretary of State is given such progress reports as he may reasonably request.

7.2 In addition to its obligation under paragraph 7.1, ECMLCo shall from time to time promptly provide such evidence of its compliance with any Committed Obligation as the Secretary of State may reasonably request.

Part 3

Late/Non Completion of Committed Obligations

10. LATE COMPLETION OR NON-DELIVERY OF COMMITTED OBLIGATIONS

If ECMLCo fails to deliver in full a Committed Obligation in accordance with and by the timeframe specified for its delivery in Part 1 (List of Committed Obligations) to this Schedule 3, such late, partial or non-delivery shall constitute a contravention of this Agreement.

11. COMMITTED OBLIGATION PAYMENT ADJUSTMENT

11.1 In addition to being a contravention of this Agreement, if any of the Committed Obligations referred to in the Table is not delivered in full by the date specified for that Committed Obligation in column 3 of the Table, ECMLCo shall pay to the Secretary of State:

(a) in respect of each Reporting Period or part thereof for which that Committed Obligation remains undelivered in full from such date; and

(a) until the Committed Obligation is delivered in full,

a Committed Obligation Payment Adjustment, being the amount set out in column 4 of the Table, as adjusted in accordance with paragraph 2.3 or 2.4 (as appropriate).

11.2 Column 5 of the Table shall specify which of paragraphs 2.3 or 2.4 shall apply to each Committed Obligation specified therein, should any such Committed Obligation be partially delivered by the date specified for that Committed Obligation in column 3 of the Table.

Pro-rating of Committed Obligation Payment Adjustment where partial delivery

11.3 Where:

(a) in relation to any Committed Obligation referred to in column 5 of the Table to be subject to the terms of this paragraph 2.3 that is expressed in terms of a requirement to deliver or carry out activities in respect of a specified number of facilities; and

(a) ECMLCo has delivered or carried out the relevant activity in respect of one or more but less than the number of facilities specified in that Committed Obligation by the relevant delivery date,

then the relevant Committed Obligation Payment Adjustment shall be reduced pro rata by reference to the number of facilities so delivered or by reference to the number of those activities that have been carried out (as appropriate).

Adjustment to Committed Obligation Payment Adjustment where partial spend

11.4 Where:

- (a) in relation to any Committed Obligation referred to in column 5 of the Table to be subject to the terms of this paragraph 2.4 that is expressed in terms of a requirement to spend a specified a sum in fulfilling its stated objective; and
- (a) ECMLCo has spent less than the sum specified in that Committed Obligation in fulfilling its stated objectives by the relevant delivery date,

then the relevant Committed Obligation Payment Adjustment shall be reduced pro rata by reference to the amount actually spent by that delivery date.

11.5

- (a) Where in relation to any Committed Obligation that is expressed in terms of a requirement to spend a specified a sum in fulfilling its stated objective, ECMLCo is able to achieve that stated objective within the timeframe specified for its delivery without investing the full amount referred to in that Committed Obligation, whether because of cost savings or securing additional investment from third parties, ECMLCo may apply to the Secretary of State for the consent referred to in paragraph 2.5(b).
- (a) The Secretary of State's consent for the purposes of paragraph 2.5(a) is his consent for ECMLCo to invest any unspent amount towards the fulfilment of such other commitments as ECMLCo proposes at that time. That consent may not be unreasonably withheld.
- (b) If the Secretary of State consents to an application pursuant to paragraph 2.5(a) in respect of any Committed Obligation, then:
 - (i) Part 1 to Schedule 3 and this Part 3 shall be amended to reflect the terms of any new commitments; and
 - (ii) no Committed Obligation Payment Adjustment shall be payable in respect of the unspent amount that relates to that Committed Obligation.

11.6 The Committed Obligation Payment Adjustment shall be payable in accordance with Schedule 3 of this Agreement.

Table: **Committed Obligations where a Committed Obligation Payment Adjustment applies**³⁰

Column 1	Column 2	Column 3	Column 4	Column 5
Reference in Part 1 (paragraph)	Summary Description	Deadline	Committed Obligation Payment Adjustment (£ per Reporting Period)	Does paragraph 2.3 or 2.4 apply?
2.1(a)	Enhancement/re furbishment at Newcastle Station			2.4
2.1(b)	Enhancement/re furbishment at Peterborough Station			2.4
2.1(c)	York Station Cycle Scheme			2.4
2.1(d)	Enhancement and refurbishment of Edinburgh Station			2.4
2.3(b)	Install further 31 CCTVs			2.3
3.1	Upgrade the 122 Avantix mobile devices			2.3
3.12	Appointment of Employee Director			2.4

³⁰ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

4.3(a)	Class 91 Modifications			2.3
4.3(b)	Mark IV Modifications			2.3
4.3(c)	HST Modifications			2.3
6.2	Undertake a comprehensive environmental benchmarking review of the Business			N/A
6.4	Self monitoring and annual report on performance			N/A
8	Introduction of new Intranet/Extranet by			2.4
9.1	Implementation of system for train crew rostering			2.4

Note: Column two (*Summary Description*) in the Table should be read in conjunction with the relevant Committed Obligation in Part 1 to this Schedule 3 out at the paragraph specified in column 1 (*Reference*).

12. **WAIVER OF PAYMENTS UNDER THIS PART 3**

- 12.1 The Secretary of State may at his reasonable discretion decide to waive his rights to receive any payments payable in respect of a late, partial or non-delivery of any Committed Obligations.
- 12.2 In deciding whether to waive such rights the Secretary of State may, but shall not be obliged to, take into consideration the circumstances under which the late, partial or non-delivery arose.

SCHEDULE 5

SPECIFIC PROVISIONS

1. SLC 2

1.1 Each of the Secretary of State, DOR and ECMLCo acknowledge that:

- (a) under the Franchise Agreement between the Secretary of State and NXEC Trains Limited (the "**NXEC Franchise Agreement**"), NXEC was, subject to the terms of the NXEC Franchise Agreement, obliged to exercise its Timetable Development Rights to secure a Timetable that enables it to operate railway passenger services that comply with the terms of SLC2 (as such term is defined in the NXEC Franchise Agreement) from the Passenger Change Date commencing in December 2010;
- (b) the Service Level Commitment as at the Service Commencement Date is set out in the document in agreed terms marked SLC1. The Budget agreed by the Secretary of State, DOR and ECMLCo and on which the Fixed Service Payments have been derived makes no provision in respect of the costs and revenue impacts of the implementation of SLC2; and
- (c) the Secretary of State has the rights pursuant to Schedule 1.1 of the Terms to issue an amended or new Service Level Commitment and to state the date on which he proposes that such amended or new Service Level Commitment should take effect. In exercise of these rights the Secretary of State intends to issue, during the Service Period, a new Service Level Commitment in substantially the same form as SLC 2 (the "**Revised SLC**").

1.2 Accordingly it is agreed that prior to the exercise of his rights pursuant to Schedule 1.1 to issue the Revised SLC the Secretary of State will consult with DOR and ECMLCo on:

- (a) the date on which the Revised SLC is to take effect;
- (b) the resources required for the implementation of the Revised SLC including the additional Franchise Employees and Rolling Stock;
- (c) the possible impacts on Minutes Delay, Cancellations and/or Capacity (the "**Performance Impacts**") relating to the implementation of the Revised SLC including the Performance Impacts in respect of railway services operated by other Train Operators and freight operators; and

- (d) the necessary changes that are required to be made to the Budget and the Fixed Service Payments in consequence of the implementation of the Revised SLC.

2. **SECURE STATIONS ACCREDITATION.**

(a) ECMLCo shall, as reasonably practicable, obtain the award of Secure Station Accreditation status in respect of each Station which does not have such Secure Station Accreditation at the Start Date.

(b) If a Station at any time after the Start Date has been awarded Secure Station Accreditation ECMLCo shall maintain such accreditation throughout the Service Period provided that ECMLCo shall not be in breach of this provision if Secured Station Accreditation is lost within 12 months of the Start Date in consequence of matters arising before the Start Date.

(c) In the event that Secure Station Accreditation in respect of any Station is lost at any time during the Services Period ECMLCo shall regain such accreditation soon as reasonably practicable.

3. **INTERCITY EXPRESS PROGRAMME**

3.1 ECMLCo agrees to:

- (a) provide operational and technical advice to the Secretary of State throughout the development of the train availability and reliability agreement to be entered into with the Train Service Provider ("**TSP**") under the IEP programme;
- (b) support the Secretary of State in the development and the design of the Intercity Express trains ("**IE Trains**") and
- (c) assist the Secretary of State in respect of the activities that are required for the purposes of ensuring that the IE Trains can be brought into operational use for the carriage of passengers on the railway as reasonable required by the Secretary of State.

3.2 For the purposes of complying with its obligations under paragraph 3.1, ECMLCo will maintain a dedicated internal project team who have appropriate operational knowledge, as well as industry influence to provide operational, customer service, engineering and technical input to support the procurement, design and approvals processes in respect of the IEP Programme as required by the Secretary of State. The ECMLCo dedicated project team (the "**ECMLCo IEP Team**") will be supported by existing ECMLCo staff and resources as may be reasonably required by the Secretary of State. The ECMLCo IEP Team will be integrated with the Secretary of State and TSP project teams, providing

early input into the design and development phases of the IEP Programme. The ECMLCo IEP Team will be accommodated by ECMLCo at the ECMLCo offices located at King's Cross Station.

- 3.3 The Secretary of State shall reimburse to ECMLCo any reasonable and proper costs incurred by it (including legal, technical and other advisers and management time) in complying with its obligations under this paragraph 3.

4. CROWDING PLAN

- 4.1 In formulating its Train Plan, ECMLCo shall consider the effects of, and seek to minimise, overcrowding on the Passenger Services. At the same time as submitting any Train Plan to the Secretary of State under paragraph 2.2 of Schedule 1.1 (Service Development) of the Terms ECMLCo shall submit a crowding plan outlining how it intends to alleviate crowding.

- 4.2 In preparing any such crowding plan, ECMLCo shall:

- (a) do so by reference to the timetable that it envisages operating in order to comply with the Service Level Commitment and the associated Train Plan; and
- (b) consult with the Secretary of State, and take into account any reasonable suggestions made by the Secretary of State to alleviate crowding on the Passenger Services.

5. RAILWAY SAFETY GROUP

- 5.1 ECMLCo will become a member of the 'Railway Safety Group' and, as such, ECMLCo undertakes to engage proactively as a member of that Group. In particular, ECMLCo will engage in:

- (a) the consultation process for new standards (both railway group standards and any ATOC 'Codes of Practice');
- (b) the process of generating the 'Railway Safety Group Safety Plan' (RSGSP); and
- (c) the delivery of an appropriate contribution to that RSGSP.

- 5.2 ECMLCo shall produce an annual safety plan and will deliver this on request to the Secretary of State and ORR.

6. EUROPEAN TRAIN CONTROL SYSTEM

- 6.1 ECMLCo agrees to co-operate with Network Rail in the feasibility and planning stage (prior to the issue of a Network Change notice) of any Network Rail

initiative to migrate cab signalling systems used on the network on which the Passenger Services operate to the system known as "European Train Control System (ETCS)".³¹

6.2 In particular, this co-operation will include, to the extent reasonable for an interested train operator, taking into account the limited role that ECMLCo has in relation to ETCS and the InterCity Express Programme (which does not include any leadership or sponsorship functions):

- (a) making senior management level staff available to participate as interested operators in ERTMS decision making groups to help ensure implementation is planned and facilitated at the lowest net cost to the whole industry; and
- (b) making suitably skilled engineering and commercial personnel available to support the development and implementation of ETCS by Network Rail, including limited advisory support in relation to the design work; installation, testing and evaluation work; vehicle and systems acceptance processes and the maintenance of new equipment (but excluding, in particular, sponsorship or leadership of any programme or process and the introduction of pre-series trains for the InterCity Express Programme).

7. KING'S CROSS LUL WORKS

7.1 ³²

³¹ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

³² Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

ANNEX to SCHEDULE 4: LUL Works At King's Cross

This Annex describes the works referred to in paragraph 7 of Schedule 4. It incorporates by reference the Secretary of State's document reference "070627 ICEC LUL Northern Ticket Hall KingsCross-FranchiseInfosummaryrev1" (**Document**).

1. As described in the Document the station is being developed in two key phases:
 - 1.1 Phase One involved the extension and refurbishment of the existing Tube ticket hall and construction of a new Western ticket hall underneath the forecourt of St. Pancras Chambers. This work commenced in 2000 and is now open and fully operational.
 - 1.2 Phase Two will deliver a new Northern ticket hall between the Great Northern Hotel and the west side of King's Cross station with associated passageways, escalators, lifts and stairs to the deep level tubes (Northern, Piccadilly and Victoria line platforms). Excavation and construction of the ticket hall and subways has recently commenced and will be structurally complete in 2008, with the main passenger facilities opening in 2010. All works will be completed in 2010; the last element of construction is Mobility Impaired Person lift 5 which has no interface with the Network Rail station.
2. The underground station works interface with the Network Rail Station in two areas, the South East Stairs which involve the remodelling of the current tube access at the side of the existing GNER ticket office and the "Bomb Gap" a section of the Network Rail Western Range adjacent to Platform 8. The remodelling of the South East stairs requires hoardings to move to provide a link to the taxi rank in Pancras road by an alternative route. The "Bomb Gap" works which commenced in 2006 consist of the demolition of existing structures and the provision of a new reinforced concrete structure. Completion and handover to Network Rail for fitting out works is scheduled for 31st October 2008.

SCHEDULE 6

FORM OF TRANSFER AGREEMENT

Dated _____ 20[•]

EAST COAST MAIN LINE COMPANY LIMITED

and

[SUCCESSOR OPERATOR]

TRANSFER AGREEMENT

in respect of
certain property rights and liabilities of
East Coast Main Line Company Limited

THIS TRANSFER AGREEMENT is made on [_____] 20[•]

BETWEEN

- (1) **EAST COAST MAIN LINE COMPANY LIMITED** (Company no:4659708), whose registered office is at Great Minster House, 76 Marsham Street, London SW1P 4DR (the **Transferor**); and
- (2) [**SUCCESSOR OPERATOR**] (Company no: []), whose registered office is at [*registered office*] (the **Transferee**).

WHEREAS

- (A) The Transferor has been providing certain services for the carriage of passengers by railway and operating certain stations and light maintenance depots (the "**Services**") pursuant to an agreement dated [•] and entered into between the Secretary of State and the Transferor pursuant to the Secretary of State's duty under Section 30 of the Act (the "**Services Agreement**").
- (B) The Transferee has been selected by the Secretary of State for Transport (the "**Secretary of State**") to continue the provision of all or part of the Services pursuant to a franchise agreement with the Secretary of State dated [•].
- (C) The Secretary of State has requested the Transferor, and the Transferor has agreed, to transfer to the Transferee certain property, rights and liabilities of the Transferor.
- (D) This Agreement sets out certain terms between the Transferor and the Transferee in relation to the transfer of such property, rights and liabilities.

IT IS AGREED THAT

- 1. Definitions and Interpretation

Definitions

- 1.1 The following words and expressions shall have the following meaning:

Act means the Railways Act 1993 as amended from time to time (including by the Transport Act 2000 and the Railways Act 2005);

Assets and Liabilities Letter means the letter dated on or about the Transfer Date to be issued by the Secretary of State to the Transferor and Transferee confirming the property, rights and liabilities of the Transferor that will transfer from the Transferor to the Transferee in accordance with the terms of this Agreement;

Business means such of the undertaking or part of the undertaking of the Transferor that consists of the provision of the Services and which is continued by the Transferee after the Transfer Date;

Completion Payment has the meaning given to that term in clause 2.5

Credit has the meaning given to that term under the Ticketing and Settlement Agreement;

Debit has the meaning given to that term under the Ticketing and Settlement Agreement;

Interest Rate means a rate equivalent to two per cent. per annum above the base lending rate published by Royal Bank of Scotland plc (or such other bank as the Secretary of State may, after consultation with the Transferor and Transferee, determine from time to time);

Law means any enactment, subordinate legislation, rule, regulation, order, directive or other provision, including (without limitation) those of the European Community, and any judicial or administrative interpretation or application thereof, which has, in each case, the force of law in the United Kingdom or any part of it (including the Act, the Transport Act, the Transport Safety Act 2003 and the Railways Act 2005);

Net Asset Statement means the statement to be drawn up pursuant to clause 2.6;

Net Asset Value means the aggregate of the amounts of the Relevant Assets, the Relevant Debits and Credits and the Relevant Employee Liabilities as shown in the Net Asset Statement;

Purchase Price means an amount equal to the Net Asset Value;

Relevant Assets means the property, rights and liabilities of the Transferor which are or are to be transferred to the Transferee, as listed in the Assets and Liabilities Letter;

Relevant Debits and Credits means such Debits and Credits of the Transferor which relate to Fares sold before the Transfer Date and which may be received by the Transferee as a result of clause 11-33 of the Ticketing and Settlement Agreement;

Relevant Employee Liabilities means such rights and liabilities of the Transferor (or any other relevant employer or person) under any contracts of employment relating to the Relevant Employees which have been or are to be transferred to the Transferee by virtue of the operation of Law (including the Transfer Regulations);

Relevant Employees means all persons employed in the Business immediately before the Transfer Date (whether employed by the Transferor or otherwise) whose contract of employment has been or is to be transferred to the Transferee by virtue of the operation of Law (including the Transfer Regulations) or any other person employed in the Business in respect of whom liabilities arising from a contract of employment or employment relationship have or will be transferred by virtue of the operation of Law (including the Transfer Regulations);

Reporting Accountants means such firm of accountants as may be selected by agreement between the parties within four weeks of the preparation of the Net Asset Statement or, in the absence of such agreement, selected by the Secretary of State;

Season Ticket Fare means a Fare which entitles the purchaser to make an unlimited number of journeys in any direction during the period for which, and between the stations and/or the zones for which, such Fare is valid;

Security Interests means any mortgage, pledge, lien, hypothecation, security interest or other charge or encumbrance or any other agreement or arrangement having substantially the same economic effect;

Taxation comprises all forms of taxation, duties, contributions and levies of the United Kingdom whenever imposed and (except in so far as attributable to the unreasonable delay or default of the Transferee) all penalties and interest relating thereto;

Terms [means the National Rail Franchise Terms (Fourth Edition) incorporated by reference in this Agreement];

TOGC has the meaning assigned to that term in clause 6.2;

Transfer Date means [●];

Transfer Regulations means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended, replaced or substituted from time to time);

Transferring Assets and Liabilities has the meaning assigned to that term in clause 2.1(a);

Reporting Accountants means such firm of accountants as may be selected by agreement between the parties within four weeks of the preparation of the Net Asset Statement or, in the absence of such agreement, selected by the Secretary of State;

Undisclosed Employee has the meaning assigned to that term in clause 7.1(d).

Construction and Interpretation

1.2 In this Agreement:

- (a) terms and expressions defined under the Terms shall have the same meaning where used in this Agreement unless the context otherwise implies;
- (b) the terms “contract of employment”, “collective agreement”, “employee representatives” and “trade union” shall have the same meanings respectively as in the Transfer Regulations;
- (c) words and expressions defined in Part I of the Act have the same meanings when used therein provided that, except to the extent expressly stated, “railway” shall not have the wider meaning attributed to it by Section 81(2) of the Act;
- (d) words and expressions defined in the Interpretation Act 1978 have the same meanings when used in this Agreement;
- (e) the words “include”, “including” and “in particular” are to be construed without limitation;
- (f) references to any person include its successors, transferees or assignees;
- (g) headings and references to headings shall be disregarded in construing this Agreement;
- (h) references to any enactment include any subordinate legislation made from time to time under such enactment and are to be construed as references to that enactment as for the time being amended or modified or to any enactment for the time being replacing or amending it and references to any subordinate legislation are to be construed as references to that legislation as for the time being amended or modified or to any legislation for the time being replacing or amending it; and
- (i) words importing the masculine gender include the feminine and vice-versa, and words in the singular include the plural and vice-versa.

2. Agreement to Transfer and Transfer Price

Agreement to Transfer

2.1 As of and with effect from the Transfer Date and to the extent not transferring by virtue of the operation of Law (including the Transfer Regulations):

(a) the Transferor transfers, assigns and conveys to the Transferee each of:

(i) the Relevant Assets;

(ii) the Relevant Debits and Credits; and

(iii) the Relevant Employee Liabilities,

(together, the ***Transferring Assets and Liabilities***); and

2.2 the Transferee accepts such assets and assumes such rights, liabilities and obligations, in each case, on the terms set out in this Agreement.

2.3 Each of the Transferor and the Transferee agrees that the Secretary of State will issue the Assets and Liabilities Letter to the Transferor and the Transferee which will set out the list of the Transferor's property, rights and liabilities that will:

(a) subject to clause 2.4, transfer to the Transferee under this Agreement; and

(b) not transfer to the Transferee under this Agreement.

2.4 The Transferor and the Transferee agree to:

(a) enter into, execute and deliver, and procure that any third party enters into, executes and delivers, in each case with effect from the Transfer Date, such further instruments (including, without limitation, any novation agreements); and

(b) obtain, on or before the Transfer Date, such third party consents, agreements and approvals,

in each case, as shall be necessary or expedient to give effect to the transfer referred to in clause 2.1. Nothing in this clause 2.4 shall require the Transferor to assume any additional liabilities.

Amount and Payment

- 2.5 The price for the transfer of the Transferring Assets and Liabilities shall (subject to adjustment as expressly provided in this Agreement) be an amount equal to the Net Asset Value of which the sum of £[*amount*], as determined by the Secretary of State (the ***Completion Payment***) shall be paid in immediately available funds by the Transferor to the Transferee, or by the Transferee to the Transferor on the Transfer Date and the balance (if any) shall be paid in accordance with clause 2.9.

Net Asset Statement

- 2.6 The Transferee shall procure that, as soon as practicable and in any event not later than two months following the Transfer Date, there shall be drawn up a statement showing a true and fair view of the aggregate of the amount of each separate asset and liability of the Transferring Assets and Liabilities as at the Transfer Date.

- 2.7 The Net Asset Statement shall be:

- (a) drawn up in the manner described in Schedule 2 (*Net Asset Statement*);
- (b) prepared on such basis as would enable the Transferee's auditors, if so requested, to give an unqualified audit report thereon to the effect that it had been drawn up in accordance with Schedule 1; and
- (c) presented, initially as a draft, to the Transferor immediately following its preparation for review in conjunction with its auditors.

- 2.8 If the Transferor and the Transferee have failed to agree the Net Asset Statement within four weeks following such presentation, the matter shall be referred to the Reporting Accountants who shall settle and complete the Net Asset Statement as soon as practicable and shall determine the amount of the Net Asset Value as shown by the Net Asset Statement.

Adjustment of Price

- 2.9 If the Purchase Price exceeds or is less than the Completion Payment, the Transferee shall pay to the Transferor or, as the case may be, the Transferor shall pay to the Transferee, in either case within 14 days of the agreement or determination of the Net Asset Value, an amount equal to such excess or deficiency together in either case with interest thereon calculated from the Transfer Date at the Interest Rate.

3. **References to the Reporting Accountants**

3.1 Whenever any matter is referred under this Agreement to the decision of the Reporting Accountants:

- (a) the Reporting Accountants shall be engaged jointly by the parties on the terms set out in this Agreement and otherwise on such terms as shall be agreed, provided that neither party shall unreasonably (having regard, amongst other things, to the provisions of this Agreement) refuse its agreement to terms proposed by the Reporting Accountants or by the other party. If the terms of engagement of the Reporting Accountants have not been settled within 14 days of their appointment having been determined (or such longer period as the parties may agree) then, unless one party is unreasonably refusing its agreement to those terms, such accountants shall be deemed never to have been appointed as Reporting Accountants, save that the accountants shall be entitled to their reasonable expenses under clause 3(d), and new Reporting Accountants shall be selected in accordance with the provisions of this Agreement;
- (b) if Reporting Accountants acting or appointed to act under this Agreement resign, withdraw, refuse to act, or are disqualified for any reason from performing their duties then, except as may be agreed between the parties, the parties shall appoint a replacement in accordance with the definition of Reporting Accountants;
- (c) the Reporting Accountants shall be deemed to act as experts and not as arbitrators;
- (d) the Reporting Accountants shall have power to allocate their fees and expenses for payment in whole or in part by any party at their discretion. If not otherwise allocated they shall be paid as to half by the Transferor and as to half by the Transferee;
- (e) each of the parties shall promptly on request supply to the Reporting Accountants all such documents and information as they may require for the purpose of the reference; and
- (f) the decision of the Reporting Accountants shall (in the absence of objection on the grounds of any error discovered within 14 days of the issue of their decision) be conclusive and binding and shall not be the subject of any appeal by way of legal proceeding or arbitration or otherwise.

4. **Warranty**

The Transferor warrants and represents to the Transferee that the Relevant Assets are, to the extent they are property or rights, transferring to the Transferee, free and clear of all Security Interests.

5. **Interest**

If the Transferor or the Transferee defaults in the payment when due of any sum payable under this Agreement (whether determined by agreement or pursuant to an order of a court or otherwise) the liability of the Transferor or the Transferee (as the case may be) shall be increased to include interest on such sum from the date when such payment is due until the date of actual payment (after as well as before judgement) at a rate equal to the Interest Rate. Such interest shall accrue from day to day.

6. **Value Added Tax**

6.1 All amounts under this Agreement are expressed as exclusive of Value Added Tax where Value Added Tax is applicable.

6.2 The Transferor and the Transferee shall use all reasonable endeavours to secure that the transfer of the Relevant Assets, the Relevant Contract Liabilities, the Relevant Debits and Credits and the Relevant Employee Liabilities are treated for Value Added Tax purposes as the transfer of a business as a going concern ("**TOGC**") and accordingly as neither a supply of goods nor a supply of services, for the purposes of Value Added Tax.

6.3 If HM Revenue & Customs direct that the transfer of the Relevant Assets, the Relevant Contract Liabilities, the Relevant Debits and Credits and the Relevant Employee Liabilities cannot be treated as a TOGC, the Transferor shall provide the Transferee with a copy of such direction within five days of receipt thereof by the Transferor.

6.4 The Transferee shall thereafter pay upon the receipt of a valid tax invoice the amount of any Value Added Tax which as a result of that direction may be chargeable on the transfer of the Relevant Assets, the Relevant Contract Liabilities, the Relevant Debits and Credits and the Relevant Employee Liabilities. If the aforementioned direction was issued as a result of any action or inaction of the Transferee then the Transferee shall in addition to the Value Added Tax indemnify the Transferor for any penalties and interest that may be incurred upon receipt of such evidence from HM Revenue & Customs.

- 6.5 If the Transferee considers the direction issued by HM Revenue & Customs referred to in clause 6.3 to be incorrect then, without prejudice to the Transferee's obligation under clause 6.4 to pay to the Transferor the amount of any Value Added Tax which as a result of such direction may be chargeable on the transfer of the Relevant Assets, the Relevant Contract Liabilities, the Relevant Debits and Credits and the Relevant Employee Liabilities, the Transferee may, within 30 days of receipt of such direction by the Transferor, give notice to the Transferor that it requires the Transferor to appeal such direction. Upon requesting such an appeal the Transferee agrees to indemnify the Transferor for all reasonable costs. If such an appeal is successful the Transferor agrees to reimburse the Transferee for such reasonable costs and penalties and interest to the extent that those costs have been reimbursed by HM Revenue & Customs.
- 6.6 If any amount paid by the Transferee to the Transferor in respect of Value Added Tax pursuant to this Agreement is subsequently found to have been paid in error the Transferor shall issue a valid tax credit note for the appropriate sum to the Transferee and promptly repay such amount to the Transferee.
- 6.7 If any amount is payable by the Transferor to the Transferee in respect of the transfer of the Relevant Assets, Relevant Contract Liabilities, Relevant Debits and Credits and Relevant Employee Liabilities pursuant to this Agreement, clauses 6.3 to 6.6 inclusive shall apply *mutatis mutandis* to such payment substituting "Transferor" for "Transferee" and vice versa.
- 6.8 All of the records referred to in Section 49 of the Value Added Tax Act 1994 relating to the business (being the purchase records) shall be retained by the Transferor and the Transferor shall undertake to the Transferee to:
- (a) preserve those records in such manner and for such periods as may be required by law; and
 - (b) give the Transferee as from the Transfer Date reasonable access during normal business hours to such records and allow the Transferee to take copies of such records.

7. Employees

Transfer Regulations

- 7.1 The parties accept that, to the extent that the undertaking or part of the undertaking of the Transferor is continued by the Transferee after

the Transfer Date, this Agreement and the transfer of the Business which is effected in connection with the Transfer Scheme are governed by the Transfer Regulations and the following provisions shall apply in connection therewith:

- (a) the contract of employment of each of the Relevant Employees (save, to the extent provided by the Transfer Regulations, insofar as such contract relates to any occupational pension scheme) shall be transferred to the Transferee with effect from the Transfer Date which shall be the "time of transfer" under the Transfer Regulations and the Transferee shall employ each such Relevant Employee on the terms of those contracts of employment (save to the extent provided by the Transfer Regulations, insofar as such contract relates to any occupational pension scheme) with effect from the Transfer Date;
- (b) the Transferor shall perform and discharge all its obligations in respect of all the Relevant Employees for its own account up to and including the Transfer Date including, without limitation, discharging all wages and salaries of the Relevant Employees, all employer's contributions to any relevant occupational pension scheme and all other costs and expenses related to their employment (including, without limitation, any Taxation, accrued holiday pay, accrued bonus, commission or other sums payable in respect of service prior to the close of business on the Transfer Date) and shall indemnify the Transferee and keep the Transferee indemnified against each and every action, proceeding, liability (including, without limitation, any Taxation), cost, claim, expense (including, without limitation, reasonable legal fees) or demand arising from the Transferor's failure so to discharge;
- (c) the Transferor shall indemnify the Transferee and keep the Transferee indemnified against each and every action, proceeding, cost, claim, liability (including, without limitation, any Taxation), expense (including, without limitation, reasonable legal fees) or demand which relates to or arises out of any act or omission by the Transferor or any other event or occurrence prior to the Transfer Date and which the Transferee may incur in relation to any contract of employment or collective agreement concerning one or more of the Relevant Employees pursuant to the provisions of the Transfer Regulations or otherwise including, without limitation, any such matter relating to or arising out of:

- (i) the Transferor's rights, powers, duties and/or liabilities (including, without limitation, any Taxation) under or in connection with any such contract of employment or collective agreement, which rights, powers, duties and/or liabilities (as the case may be) are or will be transferred to the Transferee in accordance with the Transfer Regulations; or
 - (ii) anything done or omitted before the Transfer Date by or in relation to the Transferor in respect of any such contract of employment or collective agreement of any Relevant Employee, which is deemed by the Transfer Regulations to have been done or omitted by or in relation to the Transferee save where the thing done or omitted to be done before the Transfer Date relates to the Transferee's failure to comply with its obligations referred to in Clause 7.4;
- (d) if any contract of employment or collective agreement which is neither disclosed in writing to the Transferee by the Transferor prior to the Transfer Date nor made available to the Secretary of State under Clause 25.2 of the Franchise Agreement prior to the Transfer Date shall have effect as if originally made between the Transferee and any employee ("**Undisclosed Employee**") or a trade union or employee representatives as a result of the provisions of the Transfer Regulations (without prejudice to any other right or remedy which may be available to the Transferee):
 - (i) the Transferee may, upon becoming aware of the application of the Transfer Regulations to any such contract of employment or collective agreement terminate such contract or agreement forthwith; and
 - (ii) the Transferor shall indemnify the Transferee against each and every action, proceeding, cost, claim, liability (including, without limitation, any Taxation), expense (including, without limitation, reasonable legal fees) or demand relating to or arising out of such termination and reimburse the Transferee for all costs and expenses (including, without limitation, any Taxation) incurred in

employing such employee in respect of his employment following the Transfer Date; and

- (iii) the Transferor shall indemnify the Transferee in respect of any Undisclosed Employee on the same terms *mutatis mutandis* as the Transferor has indemnified the Transferee in respect of a Relevant Employee pursuant to the terms of Clauses 7.1(ii) and 7.1(iii) above; and
- (e) the Transferor shall indemnify the Transferee and keep the Transferee indemnified against each and every action, proceeding, cost, claim, liability (including without limitation, any Taxation) expense (including, without limitation, reasonable legal fees) or demand which relates to or arises out of any dismissal (including, without limitation, constructive dismissal) by the Transferor of any employee (not being a Relevant Employee) and which the Transferee may incur pursuant to the provisions of the Transfer Regulations.

Transferee's Indemnity

7.2 The Transferee shall indemnify the Transferor and keep the Transferor indemnified against each and every action, proceeding, liability (including, without limitation, any Taxation), cost, claim, loss, expense (including reasonable legal fees) and demand arising out of or in connection with:

- (a) any substantial change in the working conditions of the Relevant Employees to his or her detriment or any of them occurring on or after the Transfer Date;
- (b) the change of employer occurring by virtue of the Transfer Regulations and/or this Agreement being significant and detrimental to any of the Relevant Employees;
- (c) the employment by the Transferee on or after the Transfer Date of any of the Relevant Employees other than on terms (including terms relating to any occupational pension scheme) at least as good as those enjoyed prior to the Transfer Date or the termination of the employment of any of them on or after the Transfer Date;
- (d) any claim by any Relevant Employee (whether in contract or in tort or under statute (including the Treaty of the European Community or European Union and any Directives made under

the authority of any such Treaty or any successor thereof)) for any remedy (including, without limitation, for unfair dismissal, redundancy, statutory redundancy, equal pay, sex or race discrimination) as a result of any act or omission by the Transferee after the Transfer Date; or

- (e) any breach of Clause 7.5.

Details of Relevant Employees

7.3 Without prejudice to the Transferor's duties under the Transfer Regulations to provide Employee Liability Information, the Transferor warrants to the Transferee that it has (to the extent not made available to the Secretary of State under Clause 25.2 of the Franchise Agreement prior to the Transfer Date) provided the Transferee prior to the Transfer Date with full particulars of:

- (a) each Relevant Employee, including name, sex, and the date on which continuity of employment began for each Relevant Employee for statutory purposes;
- (b) terms and conditions of employment of each such person;
- (c) all payments, benefits or changes to terms and conditions of employment promised to any such person;
- (d) dismissals of Relevant Employees or termination of employment effected within 12 months of the Transfer Date including the Transfer Date;
- (e) all agreements or arrangements entered into in relation to the Relevant Employees between the Transferor, any Affiliate of the Transferor or any other relevant employer and any trade union or association of trade unions or organisation or body of employees including employee representatives and elected representatives; and
- (f) all strikes or other industrial action taken by any Relevant Employee within 12 months of the Transfer Date including the Transfer Date.

7.4 The Transferor and Transferee shall deliver to each of the Relevant Employees letters in an agreed form from the Transferor and Transferee as soon as is practicable after the execution of this Agreement (to the extent not already delivered prior to the Transfer Date).

Transferor's Indemnity

- 7.5 The Transferee shall indemnify the Transferor and keep the Transferor indemnified against each and every action, proceeding, liability, cost, claim, loss, expense (including reasonable legal fees) and demand which arises as a result of it not providing or not having provided, in accordance with its obligations under the Transfer Regulations, the Transferor in writing with such information and at such time as will enable the Transferor to carry out its duties under Regulations 13(2)(d) and 13(6) of the Transfer Regulations concerning measures envisaged by the Transferee in relation to the Relevant Employees.

7.6 Pensions

The Transferee shall comply with the Pensions Regulations in respect of the Relevant Employees.

8. Miscellaneous Provisions

Variations in Writing

- 8.1 No variation of this Agreement shall be effective unless in writing and signed by duly authorised representatives of the parties and the Secretary of State.

Partial Invalidity

- 8.2 If any provision in this Agreement shall be held to be void, illegal, invalid or unenforceable, in whole or in part, under any enactment or rule of law, such provision or part shall to that extent be deemed not to form part of this Agreement but the legality, validity and enforceability of the remainder of this Agreement shall not be affected.

Further Assurance

- 8.3 Each of the parties agrees to execute and deliver all such further instruments and do and perform all such further acts and things as shall be necessary or expedient for the carrying out of the provisions of this Agreement.

Notices

- 8.4 Any notice or other communication requiring to be given or served under or in connection with this Agreement shall be in writing and shall be sufficiently given or served if delivered or sent to the registered office of the recipient or:

- (a) in the case of the Transferor to East Coast Main Line Company Limited at:

[*address*]

[*fax*]

Attention: [*name*]

- (b) in the case of the Transferee to [*name of Transferee*] at:

[*address*]

[*fax*]

Attention: [*name*]

- 8.5 Any such notice or other communication shall be delivered by hand or sent by courier, fax or prepaid first class post. If sent by courier or fax such notice or communication shall conclusively be deemed to have been given or served at the time of despatch. If sent by post such notice or communication shall conclusively be deemed to have been received two business days from the time of posting.

Counterparts

- 8.6 This Agreement may be executed in any number of counterparts each of which shall be deemed an original, but all the counterparts shall together constitute one and the same instrument.

Third Parties

- 8.7 A person who is not a party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement except to the extent set out in clause 8.8.
- 8.8 The Secretary of State may, to the same extent as if he were a party, enforce and rely on any provision of this Agreement where he is expressed to have a right in respect of any such provision.

Governing Law

- 8.9 This Agreement shall be governed by and construed in accordance with the laws of England and Wales and the parties irrevocably agree that the courts of England and Wales are to have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement.

IN WITNESS whereof the parties hereto have executed this Agreement the day and year first before written.

SIGNED FOR AND ON
BEHALF OF
**EAST COAST MAIN LINE
COMPANY LIMITED**

DIRECTOR: }

DIRECTOR/SECRETARY:

SIGNED FOR AND ON
BEHALF OF THE
[***TRANSFeree***]

DIRECTOR: }

DIRECTOR/SECRETARY:

SCHEDULE 1

NET ASSET STATEMENT

The Net Asset Statement shall be drawn up (except to the extent otherwise agreed by the Transferor and the Transferee) in accordance with accounting principles generally accepted in the United Kingdom and such that the Transferring Assets and Liabilities are valued on the following basis:

1. Rights and liabilities relating to an obligation of carriage under the terms of any Fare shall be valued in accordance with the following formula:

$$(C - D) \times \frac{A}{B} + E$$

where:

C equals the Credit (exclusive of any Valued Added Tax) received by the Transferor in respect of the Fare provided that:

- (a) such Credit shall be deemed not to include any reduction in respect of a discount allowed to the purchaser of the Fare pursuant to the Passenger's Charter or any other passenger's charter of the Transferor;
- (b) if the Fare is a Season Ticket Fare, such Credit shall be the New Credit (as defined in the Ticketing and Settlement Agreement) relating to that Season Ticket Fare on the Transfer Date if different to the Credit that was in fact received by the Transferor in respect of such Season Ticket Fare;
- (c) such Credit shall be net of any Private Settlement Credit (as defined in the Ticketing and Settlement Agreement) arising in respect of that Fare; and
- (d) such Credit shall be deemed to exclude any Credit received by the Transferor in respect of any commission due to it in respect of the sale of such Fare (provided that for these purposes the amount of such commission shall not exceed the National Standard Rate of Commission (as defined in the Ticketing and Settlement Agreement) in respect of the Fare);

D equals the Debit (exclusive of any Value Added Tax) received by the Transferor in respect of the commission due in respect of the sale of the Fare (provided that for these purposes the amount of such commission shall not exceed the National Standard Rate of Commission (as defined in the Ticketing and Settlement Agreement) in respect of the Fare);

$\frac{A}{B}$ equals:

- (a) in the case of a Season Ticket Fare, the number of journeys which the purchaser of the Fare is estimated to make from (and including) the Transfer Date to (and including) the last day on which the Fare is valid (including any extensions to its original period of validity) divided by the total number of journeys which the purchaser of the Fare is estimated to

make with that Fare (as determined in each case in accordance with Schedule 28 of the Ticketing and Settlement Agreement);

(b) in the case of any other Fare which entitles the holder thereof to make more than two journeys, the number of days for which the Fare continues to be valid after the Transfer Date (including any extensions to its original period of validity) divided by the total number of days for which such Fare is valid on issue (except to the extent that it can reasonably be estimated what proportion of the journeys which could be made on issue of the Fare have not been made prior to the Transfer Date); or

(c) in the case of any other Fare, zero; and

E equals, if $\frac{A}{B}$ is greater than zero:

the amount of any discount to which it can be reasonably estimated that the purchaser of the Fare would be entitled pursuant to the Passenger's Charter or any other passenger's charter of the Transferor on purchasing an equivalent Fare on the expiry of the relevant Fare,

and for these purposes a Credit or Debit shall be deemed to be received when the relevant Fare is Accepted for Clearing (as defined in the Ticketing and Settlement Agreement).

2. Rights and liabilities relating to an Excess Fare, Reservation or Upgrade (as such terms are defined in the Ticketing and Settlement Agreement) shall be valued at zero unless such Excess Fare, Reservation or Upgrade involves more than two journeys, in which case they shall be valued in accordance with paragraph 1 and references to Fare in paragraph 1 shall be construed accordingly.

3. Rights and liabilities under a Discount Card shall be valued in accordance with the following formula:

$$(C - D) \times \frac{A}{B}$$

where:

C equals the Credit (exclusive of any Value Added Tax) received by the Transferor in respect of the Discount Card;

D equals the Debit (exclusive of any Value Added Tax) received by the Transferor in respect of the commission due in respect of the sale of the Discount Card (provided that for these purposes the amount of such commission shall not exceed the National Standard Rate of Commission (as defined in the Ticketing and Settlement Agreement) in respect of the Discount Card); and

$\frac{A}{B}$ equals the number of days for which the Discount Card continues to be valid after the Transfer Date (including any extensions to its original period of validity) divided by the total number of days for which such Discount Card is valid on issue, or in the case of any Discount Card listed in Schedules 12 or 39 of the Ticketing and Settlement Agreement on the Start Date, zero,

and for these purposes a Credit or Debit shall be deemed to be received when the relevant Discount Card is Accepted for Clearing (as defined in the Ticketing and Settlement Agreement).

4. Relevant Debits and Credits shall be valued at the full amount of such Debits and Credits (inclusive of any Value Added Tax) but excluding any Debits and Credits arising in respect of Adjustment Amounts (as defined in the Ticketing and Settlement Agreement) which are received by the Transferee in respect of a change to the Credit which is used to value any relevant Season Ticket Fare under paragraph 1 of this Schedule to the extent such Adjustment Amounts relate to a period after the Transfer Date.

5. Rights and liabilities in respect of any contract, lease, licence or other equivalent arrangement (excluding rights and liabilities valued under paragraphs 1 to 4 and paragraph 7) shall be valued at nil except to the extent that the relevant rights and liabilities include matters specified in the left hand column of the following table, which shall be valued on the basis specified in the right hand column of the following table:

RIGHTS AND LIABILITIES	VALUE
Any accrued rights to receive payment	Monetary amounts so accrued, subject to any provision being made for payment not being received from any other person
Any right to receive payment in respect of goods and/or services provided by the Transferor prior to the Transfer Date where the due date for such payment is after the Transfer Date	Amount payable under such contract, lease, licence or other equivalent arrangement for the goods and/or services so provided by the Transferor, subject to any provision being made for payment not being received from any other person
Any accrued liabilities to make payment	Monetary amounts so accrued
Any liability to make payment in respect of goods and/or services provided to the Transferor prior to the Transfer Date where the due date for such payment is after the Transfer Date	Amount payable under such contract, lease, licence or other equivalent arrangement for the goods and/or services provided to the Transferor
Any rights in respect of which payment has already been made by the Transferor	Monetary amounts so paid, subject to any provision being made for such rights not being exercisable against any other person
Any liabilities in respect of which payment has already been received by the Transferor	Monetary amounts so received
Any liability resulting from any breach of or failure by the Transferor to	Amount of such liability or, to the extent that such amount is not

RIGHTS AND LIABILITIES	VALUE
comply with the terms of any such contract, lease, licence or other equivalent arrangement	ascertained, the parties reasonable estimate of the amount of such liability

6. Any other property, rights or liabilities (excluding the property rights and liabilities specified in paragraph 7, where the value shall be as specified in that paragraph) shall be valued on the basis of a willing vendor and purchaser and ongoing usage within the railway industry.

7. The values in respect of the property, rights and liabilities specified in the column 1 of the following table shall be as specified in the column 2 of the table:

Column 1 Description	Column 2 Value (£000)

SCHEDULE 7

AMENDMENTS TO SCHEDULE 5 (FARES) OF THE TERMS

For the Fares Setting Round which ends in January 2010 until the Fares Setting Round which ends in January 2011 the provisions set out in paragraph 2 of this Schedule 6 shall apply in place of the relevant provisions set out in paragraph 2 of Schedule 5.5 of the Terms.

1. In schedule 5.5 paragraph 2.2 the figure "+5" shall be deleted from the top line of the formula so that it shall read as follows:

"The Permitted Individual Increase in any Fare Year shall be determined in accordance with the following formula:

$$PII = \frac{(100 \times RPI) + k}{100}$$

where:

PII is the Permitted Individual Increase in such Fare Year; and

RPI is the quotient of the Retail Prices Index for the July of the calendar year preceding that Fare Year divided by the Retail Prices Index for the July of the calendar year preceding that calendar year.

k has the value attributed to it in paragraph 2.2 of this Schedule 5.5"

And the following shall be added to the end of that paragraph-

"provided that within the restrictions on individual Fares in Fare Baskets set out in this schedule:

- a) a Fare which is set under the terms of the Travelcard Agreement may be rounded up to the nearest £0.20p, and
- b) a Fare for a Monthly Season Ticket or Weekly Season Ticket or an Annual Season Ticket may be rounded up to the nearest £0.50p, and
- c) any other Fare may be rounded up to the nearest £0.10p ."

Service Delivery Benchmark Table³³

Column 1		Column 2	Column 3	Column 4	Column 5
Franchisee Year/ Reporting Period		Target Performance Level (Minutes Delay)	Improvement Plan Performance Level (Minutes Delay)	Breach Performance Level (Minutes Delay)	Default Performance Level (Minutes Delay)
Year 1	Period 10	5,310	5,710	6,110	6,370
	Period 11	5,290	5,690	6,080	6,350
	Period 12	5,270	5,670	6,060	6,330
	Period 13	5,250	5,650	6,040	6,300
Year 2	Period 1	5,230	5,630	6,020	6,280
	Period 2	5,210	5,600	6,000	6,260
	Period 3	5,190	5,580	5,970	6,230
	Period 4	5,170	5,560	5,950	6,210
	Period 5	5,150	5,540	5,930	6,160
	Period 6	5,140	5,520	5,910	6,210
	Period 7	5,120	5,500	5,880	6,140
	Period 8	5,100	5,480	5,860	6,120
	Period 9	5,080	5,460	5,840	6,090
	Period 10	5,060	5,440	5,820	6,070
	Period 11	5,040	5,420	5,800	6,050
	Period 12	5,020	5,400	5,770	6,030
	Period 13	5,000	5,380	5,750	6,000
Year 3	Period 1	4,980	5,360	5,730	5,980
	Period 2	4,970	5,340	5,710	5,960
	Period 3	4,950	5,320	5,690	5,940
	Period 4	4,930	5,300	5,670	5,910
	Period 5	4,910	5,280	5,650	5,890
	Period 6	4,890	5,260	5,630	5,870
	Period 7	4,870	5,240	5,600	5,850
	Period 8	4,850	5,220	5,580	5,830
	Period 9	4,840	5,200	5,560	5,800
	Period 10	4,820	5,180	5,540	5,780
	Period 11	4,800	5,160	5,520	5,760
	Period 12	4,780	5,140	5,500	5,740
	Period 13	4,770	5,120	5,480	5,720
Year 4	Period 1	4,750	5,100	5,460	5,700
	Period 2	4,730	5,080	5,440	5,680
	Period 3	4,710	5,070	5,420	5,650
	Period 4	4,690	5,050	5,400	5,630
	Period 5	4,680	5,030	5,380	5,610
	Period 6	4,660	5,010	5,360	5,590
	Period 7	4,640	4,990	5,340	5,570
	Period 8	4,620	4,970	5,320	5,550
	Period 9	4,610	4,950	5,300	5,530
	Period 10	4,600	4,940	5,290	5,520
	Period 11	4,580	4,930	5,270	5,500
	Period 12	4,570	4,910	5,250	5,480

³³ This table, with effect from 6/3/2012 replaces the table 7 of the National Express East Coast Franchise Agreement. Any subsequent references to Appendix 7 are to this table.

	Period 13	4,550	4,890	5,230	5,460
--	------------------	-------	-------	-------	-------

Column 1		Column 2	Column 3	Column 4	Column 5
Franchisee Year/ Reporting Period		Target Performance Level (%)	Improvement Plan Performance Level	Breach Performance Level (%)	Default Performance Level (%)
Year 5	Period 1	4,530	4,870	5,210	5,440
	Period 2	4,520	4,850	5,190	5,420
	Period 3	5,120	5,510	5,890	6,150
	Period 4	5,100	5,490	5,870	6,120
	Period 5	5,090	5,470	5,850	6,100
	Period 6	5,070	5,450	5,830	6,080
	Period 7	5,050	5,430	5,810	6,060
	Period 8	5,030	5,410	5,790	6,040
	Period 9	5,010	5,390	5,770	6,020
	Period 10	5,000	5,370	5,740	5,990
	Period 11	4,980	5,350	5,720	5,970
	Period 12	4,960	5,330	5,700	5,950
	Period 13	4,940	5,310	5,680	5,930
Year 6	Period 1	4,920	5,290	5,660	5,910
	Period 2	4,900	5,270	5,640	5,890
	Period 3	4,890	5,250	5,620	5,860
	Period 4	4,870	5,230	5,600	5,840
	Period 5	4,850	5,210	5,580	5,820
	Period 6	4,830	5,190	5,560	5,800
	Period 7	4,810	5,180	5,540	5,780
	Period 8	4,800	5,160	5,520	5,760
	Period 9	4,780	5,140	5,490	5,730
	Period 10	4,760	5,120	5,470	5,710
	Period 11	4,740	5,100	5,450	5,690
	Period 12	4,720	5,080	5,430	5,670
	Period 13	4,710	5,060	5,410	5,650
Year 7	Period 1	4,690	5,040	5,390	5,620
	Period 2	4,670	5,020	5,370	5,600
	Period 3	4,650	5,000	5,350	5,580
	Period 4	4,630	4,980	5,330	5,560
	Period 5	4,620	4,960	5,310	5,540
	Period 6	4,600	4,940	5,290	5,520
	Period 7	4,580	4,920	5,270	5,490
	Period 8	4,560	4,900	5,240	5,470
	Period 9	4,540	4,880	5,220	5,450
Until end of Franchise					

ⁱⁱ By Virtue of a Derogation, the Secretary of State has granted the Franchise Operator an amendment to the SLC in respect of the published Timetable commencing 22 May 2011.

ⁱⁱⁱ By Virtue of a Derogation, the Secretary of State has granted the Franchise Operator the following: Extension of the time between the Stakeholder roadshows by a further 2½ months to engage on the “Eureka!” process on the May 2011 timetable. ECML will increase the number of roadshows from 3 to 5.

Start Date 13/03/11 End Date 24/05/11

^{iv} By Virtue of a Derogation, the Secretary of State has granted the Franchise Operator the following: A deferral to the due date of the next Business Forum, to facilitate greater value to stakeholders from no later than 31 March 2011 to no later than 30 April 2011

Start Date 31/03/2011 End Date 30/04/2011