

Dated

_____ **2014**

Supply of Services Agreement

between

ISS FACILITY SERVICES LIMITED

and

EAST COAST MAIN LINE COMPANY LIMITED

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THIS AGREEMENT is dated _____ 2014

Parties

- (1) **ISS FACILITY SERVICES LIMITED** incorporated and registered in England and Wales with company number 00890885 whose registered office is at ISS House, Genesis Business Park, Albert Drive, Woking, Surrey GU21 5RW (ISS).
- (2) **EAST COAST MAINE LINE COMPANY LIMITED** incorporated and registered in England and Wales with company number 04659708 whose registered office is at 4th Floor, 5 Chancery Lane, London EC4A 1BL (ECML).

Background

- A. ECML is the operator of certain rail services pursuant to the Services Agreement. ECML is the facility owner or occupier of the stations and other accommodation listed in Schedule 4.
- B. Pursuant to the Services Agreement, ECML is obliged to operate, maintain, repair and renew specified aspects of the stations and other accommodation to the required standard.
- C. At the date of this Agreement ISS and ECML were parties to an agreement dated January 2009 for the provision of cleaning services originally made between ISS and National Express East Coast and subsequently transferred to ECML pursuant to a transfer scheme effected by the Secretary of State pursuant to the Railway Act 2005 on 13th November 2009 (Original Agreement).
- D. The Parties hereby agree that it is in the best interests of both Parties to formally terminate the Original Agreement.
- E. ECML wishes to appoint ISS to provide cleaning and environmental services (as set out in Schedule 1) for the premises, facilities, depots and rolling stock listed in Schedule 4 on the terms and conditions set out in this Agreement.

AGREED TERMS

1. INTERPRETATION

- 1.1. The definitions and rules of interpretation in this clause apply in this Agreement.

Actual Weekly Cleaning Hours: has the meaning given to it in paragraph 1.4.1 to Part A of Schedule 2.

Affiliate: means in respect of a Party, any person that Controls, is Controlled by or is under common Control with that Party from time to time and for this purpose **Control** means, in relation to a person, the power (whether direct or indirect) to direct or cause the direction of its affairs, whether by means of holding shares, possessing voting power, exercising contractual powers or otherwise and **Controls** and **Controlled** shall be construed accordingly.

Agreed Cleaning Hours: has the meaning given to it in paragraph 1.4.2 to Part A of Schedule 2.

Applicable Law: any statute, statutory instrument, bye-law, order, directive, treaty, decree or law, and/or any rule, policy, guidance or recommendation issued by any governmental, statutory or regulatory body.

Area of Activity: has the meaning given to it in paragraph 1.1 to Part A of Schedule 2.

Auto Enrolment Costs: such amount as agreed between the Parties that represent the additional costs payable by ISS as a result of any obligations placed on ISS from the provisions set out in Chapter 1 of Part 1 of the Pensions Act 2008.

Authorised Representative: means the ISS Train Fleet Manager and/or the ISS Station Manager for ISS and the ECML Train Fleet Manager and/or the ECML Station Manager for ECML.

Business Continuity Plan: the business continuity plan of ISS as referred to in Schedule 6.

Business Day: means a day that is not a Saturday, Sunday or public or bank holiday in England and/or Wales.

Business Hours: means 9:00 am to 5:00 pm on a Business Day.

Change In Control: means where a person who has Control of any entity ceases to do so or if another person acquires Control of it.

Charge: means the fees payable in respect of the Services as set out in Schedule 3.

Civil Procedure Rules: means the rules of civil procedure used by the Court of Appeal, High Court of Justice and the County Courts in civil cases in England and Wales pursuant to the Civil Procedure Act 1997 and the Civil Procedure Rules 1998 (SI 1998/3132).

Cleaning Credits: has the meaning given to it in paragraph 1.4.4 to Part A of Schedule 2.

Cleaning Debits: has the meaning given to it in paragraph 2.3 to Part A of Schedule 2.

Cleaning Period: has the meaning given to it in paragraph 1.4 to Part A of Schedule 2.

Contract Year: means a period commencing on 1st April in each calendar year, comprising 13 consecutive Railway Periods, except that the first and last Contract Years may be for less than 13 Railway Periods and the first Contract Year shall begin on the Start Date and the last Contract Year shall end on the Expiry Date.

Confidential Information: means, subject to clause 11.6 (a) any information (whether written, oral, in electronic form or in any other media) that is disclosed in connection with the Services by or on behalf of a Party or any of its Affiliates (the Discloser) to the other Party (the Recipient) or any other Recipient Party whether before, on or after the date of this Agreement and that relates (in whole or in part) to the Discloser or any of the Discloser's Affiliates or their business and/or (b) the existence of the Services or any discussions or documents in relation to it (including the terms of this Agreement).

Control, Controls and Controlled: has the meaning given to such terms in the definition of Affiliate.

Default Service Level means the level specified in Column [4] of the table in Appendix 2A of Schedule 2.

Default Termination Sum: means the sum determined as specified in clause [15.4].

Deliverables: all Documents, products and materials developed by ISS or its agents, subcontractors, consultants and employees in relation to the Services in any form, including computer programs, data, reports and specifications (including drafts).

Discloser: has the meaning given to it in the definition of Confidential Information.

Dispute: has the meaning given to it in clause 29.1.

Document: includes, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

East Coast Train Services: has the meaning given to it in clause 22.5.

ECML Bank Account: means The Royal Bank of Scotland PLC, of 2½ Devonshire Square, London EC2M 4XJ Sort Code [REDACTED], Account Number: [REDACTED] (or such other bank account as may be notified by ECML to ISS).

ECML's Equipment: any equipment, systems, cabling or facilities provided by ECML to ISS and used by ISS either directly or indirectly in the supply of the Services.

ECML Policies: means those ECML policies that are notified in writing to ISS from time to time.

ECML Station Manager: ECML's manager for the Station Services, appointed in accordance with clause 5.1.1.

ECML Train Fleet Manager: ECML's manager for the Train Fleet Services, appointed in accordance with clause 5.1.1.

Efficiency and Cost Saving Initiatives: has the meaning given to it in paragraph 4.1 of Part B to Schedule 2

Excluded Costs: has the meaning given to it in clause 9.2.1.

Expiry Date: the date on which this Agreement expires or terminates for whatever reason.

FOI Legislation: means the Freedom of Information Act 2000 and the Environmental Information Regulations 2004;

Force Majeure Event: has the meaning given to it in clause 16.1.

Health & Safety Legislation: means the national (including Scottish) & European Union health and safety legislation including (a) National Safety Rules (such as general duties under the Health and Safety at Work Act 1974 and the Railways and Other Guided Transport Systems (Safety) Regulations 2006 (ROGS) and (b) where applicable, general safety and environmental legislation.

Industry Standards: means the rules and regulations including codes of practice and conduct in force from time to time relating to the Services including in particular (but without limitation) those produced by or under the authority of the Health and Safety Executive.

In-put Material: all Documents, information and materials provided by ECML relating to the Services, including computer programs, data, reports and specifications.

Insolvent: means a Party: (a) has a receiver, administrator or provisional liquidator appointed; (b) is subject to a notice of intention to appoint an administrator; (c) passes a resolution for its winding-up (save for the purpose of a solvent restructuring previously approved in writing by the terminating Party); (d) has a winding up order made by a court in respect of it; (e) enters into any composition or arrangement with creditors (other than relating to a solvent restructuring previously approved in writing by the terminating Party); or ceases to carry on business; or has any steps or actions taken in connection with any of these procedures.

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

ISS Bank Account¹: means HSBC Bank PLC of 60 Fenchurch Street, London Sort Code: [REDACTED] Account Number: [REDACTED] (or such other bank account as may be notified by ISS to ECML).

ISS's Equipment: any equipment, including tools, systems, cabling or facilities, provided by ISS or its subcontractors and used directly or indirectly in the supply of the Services which are not the subject of a separate agreement between the Parties under which title passes to ECML.

ISS Personnel: any person employed or engaged by ISS who is wholly or partly engaged in the provision of the Services.

ISS Station Manager: ISS's manager for the Station Services, appointed in accordance with clause 4.2.

ISS Train Fleet Manager: ISS's manager for the Train Feet Services, appointed in accordance with clause 4.2.

Labour Bank Credit: the sums payable by ISS to ECML in accordance with clause 9.6 for failure to achieve the Service Levels, as such sums are to be calculated in accordance with paragraph 2.4 of Part A to Schedule 2.

Meeting Structure Matrix: means the matrix set out in Schedule 5.

Minor Variation: means any change to the Services or the outputs from the Services that ECML has a right to require because the Charges include a certain level of contingency in respect of the same or which is otherwise anticipated in this Agreement that ISS may be required to make in the ordinary course of providing the Services. Such Minor Variations may include, for example, cleaning up spillages or re-cleaning where the initial clean was ineffective or substandard.

National Minimum Wage: means the specified minimum hourly rate of pay as prescribed by the Secretary of State Secretary of State for Business, Innovation and Skills from time to time, to which most workers are entitled pursuant to the National Minimum Wage Act 1998.

Pre-existing Materials: all Documents, information and materials provided by ISS relating to the Services which existed prior to the commencement of this Agreement, including computer programs, data, reports and specifications.

Premises: the premises, office facilities and depots at which the Services will be performed as more particularly set out in Schedule 1.

Railway Period: means a period of 28 days provided that (a) the first such period during the Term shall exclude any days up to but excluding the Start Date (b) each such period shall start on the day following the last day of the preceding such period and (c) the last such period during the Term shall end on the Expiry Date.

Recipient: has the meaning given to it in the definition of Confidential Information.

Recipient Parties: means the Recipient, the Recipient's Affiliates and their officers, directors, employees, consultants and professional advisers; and **Recipient Party** means any of them.

Rectification Failure has the meaning given to such term in clause 14.9.

Rectification Plan: has the meaning given to it in clause 14.7.1.

Referral Notice: has the meaning given to it in clause 29.1.

Relevant Policies: has the meaning given to it in clause 3.1.2.

Relevant Requirements: has the meaning given to it in clause 3.1.1.

Required Insurances: has the meaning given to it in clause 12.14.

[**Service Credit:** the sum payable by ISS to ECML in accordance with clause 9.7 for failure by ISS to achieve the Target Service Levels, as such sums are to be calculated in accordance with Part B of Schedule 2.]

Service Credit Bank: means the credit bank to be operated by ISS in accordance with Part B to Schedule 2, for a failure by ISS to achieve the Target Service Levels.

Service Default: has the meaning given to such term in paragraph 3.1 of Schedule 2.

Service Levels: the Target Service Levels and the Default Service Levels set out in Appendix 2A to Schedule 2.

Service Level Report: has the meaning given to such term in paragraph 1.2 Part B of Schedule 2.

Service Quality Management System: means the quality management and reporting systems specified in Appendix 1 to Schedule 2.

Service Quality Standards: means the Service Levels and the Service Specification.

Service Specification means services and the specifications set out in Schedule 1.

Services: the Train Fleet Services, Station Services to be provided by ISS under this Agreement as set out in D.

Services Agreement: the agreement of that name dated 13 November 2009 and made between (1) The Secretary of State for Transport, (2) Directly Operated Railways Limited and (3) ECML.

Start Date: the 13 October 2013.

Station Services: has the meaning given to it in Schedule 1.

Successor Operator: has the meaning given to it in clause 22.2.

Target Service Level means, the level specified in Column 3 of the table set out in Appendix 2A to Schedule 2.

Term: the period during which this Agreement is in force in accordance with clause 2.

Train Fleet Services: has the meaning given to it in Schedule 10.

TUPE: the Transfer of Undertakings (Protection of Employment) Regulations 2006.

Variation: means any change to the Services (including the introduction of new services, the manner in which they are provided, or the other systems and processes which the Services have to interface with), the scope of this Agreement (to the extent not expressly addressed elsewhere) or the Service Levels and any other change that is stated in this Agreement as being required to be made pursuant to a Variation but excluding any Minor Variation.

VAT: value added tax chargeable under English law for the time being and any similar additional tax.

- 1.2. Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.
- 1.4. The schedules and background form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the schedules and background.
- 1.5. Words in the singular shall include the plural and vice versa.
- 1.6. References to a Party or to the Parties shall mean ECML and/or ISS as the context requires and shall include a reference to its or their successors and (to the extent applicable) permitted assigns, or transferees and references to a third party shall mean any person other than the Parties.
- 1.7. Where the words **include(s)**, **including** or **in particular** are used in this Agreement, they are deemed to have the words **without limitation** following them. Where the context permits, the words **other** and **otherwise** are illustrative and shall not limit the sense of the words preceding them.
- 1.8. Any obligation in this Agreement on a person not to do something includes an obligation not to agree, allow, permit or acquiesce in that thing being done.
- 1.9. References to clauses and Schedules are to the clauses and Schedules of this Agreement.

1.10. References to this Agreement are references to this Agreement as varied from time to time in accordance with clause 17 and as assigned (in accordance with clause 22) or novated from time to time.

1.11. References to any statute or statutory provision will include any subordinate legislation made under it and will be construed as references to such statute, statutory provision and/or subordinate legislation as modified, amended, extended, consolidated, re-enacted and/or replaced and in force from time to time.

2. COMMENCEMENT AND DURATION

2.1. For the duration of the Term ISS shall provide the Services to ECML in accordance with the terms and conditions of this Agreement

2.2. The Parties agree that the Original Agreement and any other existing agreements between the Parties for the provision of the Services are hereby terminated and superseded by the terms of this Agreement with effect from the Start Date provided that each Party shall remain liable to the other in respect of any liabilities that accrued in relation to the performance of the Original Agreement prior to the Start Date but not otherwise.

2.3. The Services supplied under this Agreement will commence on the Start Date and will continue until the day preceding the third anniversary of the Start Date and after that for any extension period notified by ECML to ISS in accordance with clause 2.4. This Agreement may be suspended or terminated earlier in accordance with its terms.

2.4. Without prejudice to the rights of termination set out in this Agreement, ECML will be entitled, on up to 2 occasions, to extend the term of this Agreement by a period of 12 months from the date on which it would otherwise have expired, subject to ECML giving a minimum of 8 weeks written notice to that effect to ISS prior to the date on which this Agreement would otherwise have expired and subject to the price adjustment mechanism set out in Schedule 3 on an extension of the Agreement and throughout any such extension period

3. COMPLIANCE WITH RELEVANT REQUIREMENTS

3.1. Both parties shall at all times:

3.1.1. comply with all Applicable Laws, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("Relevant Requirements");

3.1.2. comply with ISS's 'Ethics', 'Anti-bribery' and 'Anti-corruption' policies provided to ECML, in each case as ISS or the relevant industry body may update them from time to time ("Relevant Policies");

3.1.3. have and shall maintain in place throughout the term of the agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and the Relevant Policies and will enforce them where appropriate; and

3.1.4. within two months of the Start Date, and annually thereafter, certify to each other compliance with this clause 3.1, by them and all persons associated with them Both parties shall provide such supporting evidence of compliance to the other as the other may reasonably request.

4. ISS'S OBLIGATIONS

4.1. ISS represents and undertakes to ECML that it shall:

- 4.1.1. provide the Services and deliver the Deliverables to ECML, in accordance with and in compliance with the Service Levels;
 - 4.1.2. provide the Services with all reasonable skill and care in accordance with Industry Standards, Applicable Laws, the Service Specification and the ECML Policies; and
 - 4.1.3. in the performance of the Services exercise the reasonable skill and care and diligence to be expected of a qualified and competent provider experienced in carrying out services of a similar nature, size and scope to the Services.
- 4.2. ISS shall, appoint an ISS Train Fleet Manager and an ISS Station Manager, who shall each have equal authority to contractually bind ISS on all matters relating to the Services. ISS shall ensure that the individuals appointed as the ISS Train Fleet Manager and the ISS Station Manager hold the position of ISS Train Fleet Manager and the ISS Station Manager throughout the term of this Agreement, but ISS may replace such ISS Train Fleet Manager and/or ISS Station Manager from time to time where reasonably necessary in the interests of ISS's day-to-day business subject to:
- 4.2.1. ECML receiving prior notification from ISS of the proposed change in identity of the ISS Train Fleet Manager or the ISS Station Manager (as the case may be); and
 - 4.2.2. ECML having the right, at its sole discretion, to:
 - 4.2.2.1. veto the appointment of the individual proposed pursuant to clause 4.2.1; and
 - 4.2.2.2. require ISS to nominate another suitably qualified and competent individual to replace the existing ISS Train Fleet Manager or the ISS Station Manager (as the case may be),
 if ECML believes that the individual proposed by ISS pursuant to clause 4.2.1 is unsuitable.
- At the Start Date, the ISS Train Fleet Manager shall be Steven Corrigan and the ISS Station Manager shall be Christine Humphreys.
- 4.3. ISS will at all times ensure that all persons involved in performing any aspect of the Services are adequately supervised by a sufficient complement of supervisory staff to ensure that:
- 4.3.1. such persons properly perform their duties in accordance with this Agreement;
 - 4.3.2. the Services are performed in accordance with this Agreement and meet or exceed all Service Levels; and
 - 4.3.3. such persons receive the necessary training so as to ensure the proper performance of the Services.
- 4.4. ISS shall comply with all health and safety rules and regulations and any other security requirements that apply at any of ECML's premises and that have been communicated to It in writing under clause 5.1.4, provided that It shall not be liable under this Agreement if, as a result of such compliance, it is in breach of any of its obligations under this Agreement.
- 4.5. ISS shall obey all reasonable instructions of ECML in connection with the provision of the Services.
- 4.6. ISS shall keep ECML fully informed with regard to the provision of the Services and provide to ECML all information and/or progress reports relating to the Services as ECML may reasonably require from time to time. ISS shall in particular bring to ECML's attention any serious problems or delays concerning the provision of the

Services which it becomes aware of, and shall notify ECML immediately if at any time it is unable to provide the Services.

- 4.7. ISS shall at all times during the Term keep separate and reasonably detailed written and electronic records of its performance of this Agreement and any information, data and documents relating to or relevant to the Services, and shall provide ECML from time to time with a copy of these records on request. Such copies should be available to ECML in electronic spreadsheet format (or any other format(s) that ECML may reasonably request).
- 4.8. ISS shall provide all equipment and other facilities necessary for the performance of its obligations under this Agreement, including all equipment, tools, consumable materials, protective clothing and other facilities necessary for the provision of the Services.
- 4.9. ISS shall provide the Services in such a way as to ensure, so far as is reasonably practicable, that persons not in their employment who may be affected thereby are not exposed to risks to their health or safety, and that ECML does not incur any liability under the Health and Safety at Work Act 1974 (or any amendment or re-enactment thereof)
- 4.10. ISS shall be responsible for understanding and complying with all relevant Health & Safety Legislation and Industry Standards that are relevant for the performance of its obligations under this Agreement.
- 4.11. ISS shall perform the services in line with requirements of:
 - 4.11.1. the Environmental Protection Act 1990 (or any amendment or re-enactment thereof);
 - 4.11.2. ISO 14001 to promote a continuous improvement culture within the business and demonstrate effective management of waste, recycling initiatives, energy consumption;
 - 4.11.3. the Waste (England and Wales) Regulations 2011; and
 - 4.11.4. all other applicable rules, laws, legislation, standards, codes/industry practice which are relevant for the performance of the Services.
- 4.12. All ISS employees providing the Services under this Agreement shall adhere strictly to ECML's policy on Alcohol and Drugs.
- 4.13. ISS shall not, without the prior written consent of ECML, at any time from the date of this Agreement to the expiry of 6 months after termination of this Agreement, solicit or entice away from ECML or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of ECML in the provision of the Services.
- 4.14. ISS shall indemnify ECML for all costs, expenses, damage and losses (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by ECML arising out of or in connection with damage to ECML property and the Premises to the extent that such damage to ECML property has arisen as a result of any deliberate or negligent act or omission on the part of ISS, its employees, or any other party for whom ISS is vicariously liable. ISS's maximum liability to ECML pursuant to this paragraph 4.14 shall not exceed [REDACTED] in each Contract Year.

5. ECML'S OBLIGATIONS

5.1. ECML shall:

- 5.1.1. co-operate with ISS in all matters relating to the Services and shall, provide an ECML Train Fleet Manager and an ECML Station Manager, who shall each have equal authority to contractually to bind ECML on matters relating to the Services. At the Start Date, the ECML Train Fleet Manager shall be Nigel Thomson and the ECML Station Manager shall be Phil Cooke;
- 5.1.2. provide, for ISS, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to ECML's premises, office accommodation, data and other facilities as reasonably required by ISS to perform the Services;
- 5.1.3. provide, in a timely manner, such In-put Material and other information as ISS may reasonably require, and ensure that any such information supplied is accurate in all material respect;
- 5.1.4. inform ISS of all health and safety rules and regulations and any other reasonable security requirements that apply at any of ECML's premises;
- 5.1.5. ensure that all ECML's Equipment is in good working order and suitable for the purposes for which it is used in relation to the Services and conforms to the relevant United Kingdom standards or requirements;
- 5.1.6. obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services, the installation of ISS's Equipment, the use of In-put Material and the use of ECML's Equipment in relation to ISS's Equipment insofar as such licences, consents and legislation relate to ECML's business, premises, staff and equipment, in all cases before the date on which the Services are to start; and
- 5.1.7. notify ISS within twenty-one (21) Business Days of any claims made against ECML, and for which ISS is liable pursuant to clauses 4.14 and 7, of this Agreement.

5.2. If ISS's performance of its obligations under this Agreement is prevented or delayed by any act or omission of ECML, its agents, subcontractors, consultants or employees, ISS shall not be liable for any costs, charges or losses sustained or incurred by ECML that arise directly or indirectly from such prevention or delay.

5.3. Subject to clause 12.6, ECML shall be liable to pay to ISS, on demand, all reasonable costs, charges or losses sustained or incurred by ISS that arise directly or indirectly from ECML's fraud, negligence, failure to perform or delay in the performance of any of its obligations under this Agreement, subject to ISS confirming such costs, charges and losses to ECML in writing.

5.4. ECML shall not, without the prior written consent of ISS, at any time from the date of this Agreement to the expiry of six (6) months after termination of this Agreement, solicit or entice away from ISS or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of ISS in the provision of the Services.

6. REQUIREMENTS FOR SUPPLIER PERSONNEL

6.1. ISS will at all times:

- 6.1.1. ensure that all ISS Personnel are suitably qualified and experienced to perform the Services in accordance with the Service Levels, the other terms of this Agreement and all Applicable Laws and that all continuing checks are made and documents obtained and/or verified as required by law or the United Kingdom Border Agency to demonstrate the continuing right of ISS Personnel to work in the United Kingdom;

- 6.1.2. ensure that all ISS Personnel will at all times uphold the good name and reputation of the Customer and their respective products and services and act in a manner that is appropriate given that good name and reputation;
- 6.1.3. ensure that there are an adequate number of ISS Personnel to provide the Services properly;
- 6.1.4. individually assess all ISS Personnel to ensure that such persons are:
 - 6.1.4.1. diligent, careful, honest, skilled, competent and experienced in the work which they are to perform in connection with the Services and at all times remain so;
 - 6.1.4.2. properly supervised and sufficiently trained, and informed about:
 - (a) the Services to be provided;
 - (b) the duty or duties which that person has to perform in relation to those Services;
 - (c) any aspect of the Service Levels or other terms of this Agreement which are or may be relevant to the duties to be performed by the ISS Personnel;
 - (d) all relevant rules, procedures and statutory and regulatory requirements concerning health and safety and safety at work; and
 - (e) the need to observe the highest standards of integrity, courtesy and consideration in the performance of their duties; and
 - 6.1.4.3. implement such ongoing training for the ISS Personnel (including the use of and access to information technology) as is necessary from time to time to ensure that they perform the Services in accordance with the Service Levels and the other requirements of this Agreement.
- 6.2. Following Notice from ECML setting out the circumstances giving rise to the request and subject to such notice complying with the requirements of clause 28, ISS will immediately remove from any involvement in, or responsibility for the provision of the Services, any ISS Personnel who, in the reasonable opinion of ECML:
 - 6.2.1. does not fulfil any of the conditions set out in clause 6.1. above;
 - 6.2.2. is not performing his or her role in respect of the provision of the Services properly, efficiently or effectively; and/or
 - 6.2.3. is, for any other reason, unacceptable or inappropriate for the provision of the Services including any person assigned by ISS to perform the Services without the prior written agreement of ECML.
- 6.3. ISS will:
 - 6.3.1. following the removal of any of the ISS Personnel for any reason, ensure such person is replaced promptly with another person with the necessary training, experience and skills to perform the Services in accordance with this Agreement;
 - 6.3.2. if any ISS Personnel are replaced ensure that a full and effective knowledge transfer process is in place and fully adhered to for the transfer of any relevant knowledge from the replaced ISS Personnel to the replacement ISS Personnel;
 - 6.3.3. ensure that all ISS Personnel who cease to be engaged in the performance of the Services (for any reason) return all Confidential Information held by them to ISS or ECML (as appropriate); and
 - 6.3.4. bear all costs associated with effecting the replacement of any ISS Personnel (including any required to be removed by ECML under clause 6.2).

7. EMPLOYEE CLAIMS

- 7.1. Subject to clause 12.2.1, ISS shall indemnify ECML on demand for any claims brought against ECML by an employee or former employee of ISS.

8. CHANGE CONTROL

- 8.1. The ECML Train Fleet Manager and the ISS Train Fleet Manager shall meet at least once every Railway Period to discuss matters relating to the Services. If either Party wishes to change the scope or execution of the Services, it shall submit details of the requested change to the other in writing and the provision of this clause 8 shall apply.
- 8.2. The ECML Station Manager and the ISS Station Manager shall meet at least once every Railway Period to discuss matters relating to the Services. If either Party wishes to change the scope or execution of the Services, it shall submit details of the requested change to the other in writing.
- 8.3. Subject to Clause 8.12 the preceding provisions of this clause 8 shall apply where a Party requests a Variation.
- 8.4. If any Variation:
- 8.4.1. proposed by any of ISS or ECML is agreed by the Parties to be a material change to the Services (or on failure to agree, is determined pursuant to clause 29, to be a material change to the Services); or
- 8.4.2. proposed by ECML is to be provided on a temporary basis and is not a Minor Variation,
- a Variation request shall be submitted in writing by the Party proposing the change to the other Party in accordance with this clause 7 save that a Variation pursuant to clause 8.4.2 can be made by ECML in electronic form.
- 8.5. In the event of such a Variation request being submitted, ISS shall state in writing the effect that the Variation will have on the ability of ISS to comply with its obligations under this Agreement and what impact, if any, the change will have to ISS's costs in providing the Services in an open and transparent manner (including any resulting redundancy costs). ISS shall notify ECML of such details within a reasonable time, and in any event within fourteen (14) Business Days of the Variation request or such other period as may be agreed.
- 8.6. ECML shall notify ISS whether or not it wishes to commission the Variation to the Services and/or the terms of the agreement on the basis of ISS's response. ISS shall not undertake or implement any Variation unless agreed in writing by ECML.
- 8.7. In the event that the Variation request is made by ISS in order to protect ISS's commercial position under the agreement and, if such request is rejected by ECML in accordance with clause 8.6 the matter shall be referred to the application of clause 29.
- 8.8. All correspondence pursuant to this clause 8 shall be conducted by the Authorised Representatives of the Parties.
- 8.9. Each Party shall bear its own costs and expenses (and those of any third party retained by it) incurred in relation to the investigation, discussion, agreement and for other resolution of any Variation.
- 8.10. ISS shall promptly provide to ECML any information that is reasonably required by ECML in order that it may evaluate any Variation.
- 8.11. ISS shall at all times act reasonably and properly in relation to all Variations and the preparation of all documents relating to such Variation and shall also take all reasonable steps to minimise the costs of each Variation and the time taken to implement each Variation including by:

- 8.11.1. proposing ways to reduce the Charges associated with implementing the Variation;
 - 8.11.2. minimising any increase in the ongoing Charges, if an increase is required as a result of the Variation;
 - 8.11.3. maximising any reduction in the ongoing Charges that can be achieved as a result of the Variation;
 - 8.11.4. minimising the internal costs of ECML associated with, or arising from, each Variation;
 - 8.11.5. ensuring that there is a viable "back out plan" to minimise the impact of any Variation that does not occur as planned; and
 - 8.11.6. continuing to provide the Services in accordance with the terms of this Agreement (including the Service Levels) at all times.
- 8.12. Notwithstanding clause 8.4, ISS may, from time to time, change the Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, Service Level, scope of, or the charges for the Services and such change shall be a Minor Variation. ISS shall notify ECML of any such change of the Services as soon as reasonably practicable after such change.
9. **CHARGES AND PAYMENT**
- 9.1. In consideration of the provision of the Services by ISS, ECML shall pay the charges as set out in Schedule 3, the total price for the Services shall be the amount set out in Schedule 3. ECML shall pay the total price to ISS (without deduction or set-off) in 13 instalments, as set out in Schedule 3. At the end of a period specified in Schedule 3 in respect of which any payment is due, ISS shall invoice ECML for the charges that are then payable, together with agreed expenses, the agreed costs of materials and VAT, where appropriate, calculated as provided in clause 9.2.
- 9.2. The fixed price contained in Schedule 3 excludes:
- 9.2.1. the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom ISS engages in connection with the Services (**Excluded Costs**). ISS shall notify ECML and obtain the agreement of the ECML Train Fleet Manager or the ECML Station Manager prior to incurring any Excluded Costs and shall separately invoice ECML for any such Excluded Costs with such supporting evidence as ECML may require; and
 - 9.2.2. VAT, which ISS shall add to its invoices at the appropriate rate.
- 9.3. ECML shall pay each invoice submitted to it by ISS, in full and in cleared funds, within thirty (30) days of receipt to the ISS Bank Account. All charges quoted to ECML exclude VAT, which ISS shall add to its invoices at the appropriate rate.
- 9.4. Without prejudice to any other right or remedy that it may have, if ECML fails to pay ISS on the due date, providing ISS has provided ECML with fourteen (14) days written notice, ISS may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998 and ECML shall pay the interest immediately on demand.
- 9.5. If any amounts due by ECML are disputed in part, but not as a whole, then the undisputed element of the invoice shall be paid to ISS on the terms in clause 9.3 above. ECML will advise ISS as soon as is reasonably practical, and in any case within fourteen (14) days of the date of the invoice, of any disputed amounts. The Parties will then liaise as a matter of urgency to resolve the dispute so that ISS is paid in a timely manner.

- 9.6. By no later than the date on which ISS issues ECML with an invoice for the last Railway Period in each Contract Year pursuant to clause 9.1, ISS shall issue ECML with a credit note for a sum equal to the Labour Bank Credit accrued under Schedule 2 for each such Railway Period for which the Service Levels and the cleaning targets have not been met. ISS shall net off the amount of such credit note against such invoice provided that if no such invoice is to be issued or if the amount of the total credit is greater than the amount of the relevant invoice, then ISS shall pay the amount of such Labour Bank Credit or the amount by which such credits exceeds the amount of such invoice (as applicable) to ECML in pounds sterling to the ECML Bank Account so that cleared funds are received in that account, in each case, by the last day of the month following receipt of the relevant credit note. The provisions of clause 9.4 shall apply *mutatis mutandis* if ISS fails to make payment under this clause 9.6 by the due date for payment. The Service Charge and any credit must be separate lines on the invoice and clearly identifiable.
- 9.7. By no later than the date on which ISS issues ECML with an invoice for the last Railway Period in each Contract Year pursuant to clause 9.1, ISS shall issue ECML with a credit note for a sum equal to the Service Credits accrued in the Service Credit Bank under Part B to Schedule 2 for such Contract Year in which the Service Levels have not been met. ISS shall net off the amount of such credit note against such invoice provided that if no such invoice is to be issued or if the amount of the total credit is greater than the amount of the relevant invoice, then ISS shall pay the amount of such Service Credit or the amount by which such credits exceeds the amount of such invoice (as applicable) to ECML in pounds sterling to the ECML Bank Account so that cleared funds are received in that account, in each case, by the last day of the month following receipt of the relevant credit note. The provisions of clause 9.4 shall apply *mutatis mutandis* if ISS fails to make payment under this clause 9.7 by the due date for payment. The Service Charge and any credit must be separate lines on the invoice and clearly identifiable.
- 9.8. The Service Credits and the Labour Bank Credits are regarded by the Parties as being the most effective way of compensating ECML for part or all of its loss arising from a failure by ISS to meet the Service Levels and it is the Parties' intention that ECML should be able to recover damages as well as Service Credits and the Labour Bank Credits in circumstances where it can prove that it has suffered loss in excess of the Service Credits and the Labour Bank Credit. Accordingly the right of the ECML to any such credits will be without prejudice to any other rights which ECML may have under this Agreement or otherwise in respect of a failure to meet the Service Levels, including the right to sue for damages or other relief and/or to terminate the affected Services or this Agreement and for the avoidance of doubt a claim for general damages in relation to a failure to achieve a Service Level will be reduced by the amount of Service Credits and/or the Labour Bank Credits actually applied or paid in respect of the relevant Service Level failure. The fact that the Service Credit and the Labour Bank Credit provisions anticipate or provide for a particular eventuality will not be interpreted as implying that the relevant eventuality should not constitute a breach (or material breach) of this Agreement.
- 9.9. On receipt of a written demand by ISS, ECML unconditionally and irrevocably agrees to pay in good time to ISS (at a frequency to be agreed between the Parties) the Auto Enrolment Costs.
- 9.10. ISS reserves the right, by giving written notice to ECML at any time, to increase the charges payable by ECML to reflect any increase in the cost to ISS as a result of an increase in the National Minimum Wage.
- 9.11. All sums payable by either Party under this Agreement shall become due within [thirty (30)] days of its termination, despite any other provision. This clause 9.11 is without prejudice to any right to claim for interest under the law, or any such right under this Agreement.

10. INTELLECTUAL PROPERTY RIGHTS

- 10.1. As between ECML and ISS, all Intellectual Property Rights and all other rights in the Deliverables and the Pre-existing Materials shall be the property of ISS. Subject to clause 10.2, ISS licenses all such rights to ECML free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable ECML to make reasonable use of the Deliverables and the Services. If this Agreement is terminated, this licence will automatically terminate.
- 10.2. ECML acknowledges that, where ISS does not own any of the Pre-existing Materials, ECML's use of rights in Pre-existing Materials is conditional on ISS obtaining a written licence (or sub-licence) from the relevant licensor or licensors on such terms as will entitle ISS to license such rights to ECML.

11. CONFIDENTIALITY AND ISS'S PROPERTY

- 11.1. Each Party undertakes that it shall not at any time during this Agreement, and for a period of five (5) years after termination of this Agreement, disclose to any person any Confidential Information concerning the business, affairs, customers, clients or suppliers of the other Party or of any Affiliate of the other Party belongs, except as permitted by clause 11.2.
- 11.2. Each Party may disclose the other Party's Confidential Information:
- 11.2.1. to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the Party's obligations under this. Each Party shall procure that its employees, officers, representatives or advisers to whom it discloses the other Party's confidential information comply with this clause 11.2;
 - 11.2.2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority (including the Secretary of State for Transport, his employees, representatives and advisers); and
 - 11.2.3. to a Successor Operator.
- 11.3. No Party shall use any other Party's Confidential Information for any purpose other than to perform its obligations and the provision of the Services under this Agreement.
- 11.4. Each Party shall keep the Confidential Information safe and secure and apply to it documentary and electronic security measures that match or exceed those the Recipient operates in relation to its own confidential information and will never exercise less than reasonable care.
- 11.5. The Recipient (and each Recipient Party) may retain a copy of any Confidential Information to the extent required to do so for legal or regulatory purposes.
- 11.6. Subject to clause 11.5, the Recipient's obligations under this Agreement will not extend to Confidential Information which:
- 11.6.1. at the time of disclosure was in the public domain;
 - 11.6.2. the Recipient can prove the information:
 - 11.6.2.1. has been received by the Recipient or one of the Recipient's Affiliates at any time from a third party who did not acquire it in confidence and who is free to make it available to the Recipient Affiliate without limitation; or

11.6.2.2. was independently developed by the Recipient or one of the Recipient's Affiliate without any breach of this Agreement.

11.7. Clause 11.6 will not apply to the matters referred to in paragraph (b) of the definition of Confidential Information.

11.8. The Recipient agrees that the obligations imposed by this Agreement in relation to Confidential Information extend to any Confidential Information which has been, or may have been, supplied to the Recipient or any of the Recipient Parties prior to the date of this Agreement, despite the absence of a written agreement, this Agreement merely recording in writing the oral confidentiality obligations under which the Recipient or relevant Recipient Party received the Confidential Information in question.

12. LIMITATION OF LIABILITY, WARRANTIES AND INSURANCE

LIMITATION OF LIABILITY

12.1. This clause 12 sets out the entire financial liability of the Parties (including any liability for the acts or omissions of its employees, agents, consultants and subcontractors) to ECML in respect of:

- 12.1.1. any breach of this Agreement by a Party however arising;
- 12.1.2. in the case of ISS, any use made by ECML of the Services, the Deliverables or any part of them; and
- 12.1.3. any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.

12.2. Nothing in this Agreement will operate to limit or exclude the liability of either Party:

- 12.2.1. for death or personal injury resulting from its negligence or the negligence of a person for whom it is vicariously liable (negligence being as defined in Section 1(1) Unfair Contract Terms Act 1977); or
- 12.2.2. fraud or fraudulent misrepresentation or fraudulent misrepresentation by a person for whom it is vicariously liable;
- 12.2.3. breach of its obligations under section 2 of the Supply of Goods and Services Act 1982; or
- 12.2.4. any matter for which it is not permitted by law to exclude or limit, or to attempt to exclude or limit, its liability.

12.3. Liability of a Party which falls within clause 12.2 will not be taken into account in assessing whether any relevant financial limit in clause 12.5 has been reached.

12.4. Subject to clause 12.2 and clause 12.7 neither Party will have any Liability to the other Party for any:

- 12.4.1. loss of profit (whether direct, indirect or consequential);
- 12.4.2. loss of revenue, loss of production or loss of business (in each case whether direct, indirect or consequential);
- 12.4.3. loss of goodwill, loss of reputation or loss of opportunity (in each case whether direct, indirect or consequential);
- 12.4.4. loss of anticipated savings or loss of margin (in each case whether direct, indirect or consequential);

12.4.5. liability of the other party to third parties (whether direct, indirect or consequential); or

12.4.6. indirect, consequential or special loss.

This clause 12.4 will not operate to limit the sums payable under clause 9.6.

12.5. Subject to clause 12.2 and clause 12.7, ISS's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of this Agreement shall in be limited to [REDACTED] in the aggregate.

12.6. ECML's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of this Agreement shall be limited to [REDACTED] in the aggregate.

12.7. Without prejudice to clause 12.2 above, nothing in this Agreement shall operate to exclude or restrict ISS's liability in respect of the sums payable (including any related interest):

12.7.1. by ISS under clause 9;

12.7.2. for any breach of clause 11.1;

which sums will not count towards any relevant financial limit set out in clause 12.5.

12.8. ISS shall not be liable for any loss, damage, costs or expenses suffered by ECML due to or arising from the loss of any key, key card or similar item relating to the Premises, or any part of them, save for the cost of the replacement of the lost key, key card or similar item relates.

12.9. The Parties agree that they have negotiated clauses 12.1 to 12.11 inclusive and the allocation of risk in this clause is a fair and equitable position.

12.10. The exclusions from and limitations of liability contained in this in clauses 12.1 to 12.11 inclusive will apply after as well as before the Expiry Date.

12.11. The exclusions from, and limitations of, liability set out in clauses 12.1 to 12.11 inclusive will be considered severally. The invalidity or unenforceability of any one sub-clause or clause will not affect the validity or enforceability of any other sub-clause or clause and will be considered severable from each other.

WARRANTIES

12.12. ISS warrants that it will provide the Services with reasonable skill and care and in accordance with the Service Levels.

12.13. Save as expressly provided in this Agreement ISS gives or makes no warranty, representation, term or condition of any kind concerning the Services or the Deliverables. All warranties, representations, terms and conditions implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from this Agreement.

INSURANCE

12.14. ISS shall, at its own cost, maintain with reputable insurers the following insurance policies which will provide cover in respect of the Services and the performance by ISS of its other obligations under this Agreement:

Employers Liability

- 12.14.1. Employers Liability insurance which complies with the Employer (Compulsory Insurance) Act 1969 and with a minimum per occurrence limit of indemnity of [REDACTED] pounds) per event;

Public Liability

- 12.14.2. Public Liability Insurance in respect of the ISS's liability for all risks arising from this Agreement with a minimum per occurrence limit of [REDACTED] pounds) per event;

- 12.14.3. any other insurances which ISS is required to maintain by law,

(together the Required Insurances).

- 12.15. All Required Insurances shall be maintained with a member of the Association of British Insurers, with Lloyds' underwriters or with other reputable insurers of good financial standing lawfully carrying out such business in the United Kingdom and shall be for such amount stated in clause 12.14.
- 12.16. Where ISS employs or engages a subcontractor in accordance with clause 22.6, ISS shall ensure that each subcontractor maintains Public and Employers liability insurance as required of ISS under clauses 12.14.1 to 12.14.3 inclusive in respect of any subcontractor unless ECML agrees in writing otherwise, or to a lower amount in respect of any particular subcontractor.
- 12.17. The insurance premiums for the Required Insurances shall at all times be the responsibility of ISS.

Evidence of Insurance

- 12.18. On the date of this Agreement and each anniversary of that date, ISS will provide to ECML, evidence in a form satisfactory to ISS that the Required Insurances are in full force and effect and comply with this clause 12.
- 12.19. ISS will on reasonable notice at any time during the Term provide any further information reasonably requested by ECML in relation to the Required Insurances.

13. EMPLOYMENT AND TUPE

Without prejudice to clause 6, employment and TUPE provisions relating to the arrangements contemplated by this Agreement are set out in Schedule 7.

14. PERFORMANCE MEASURES/REVIEW MEETINGS

REVIEW MEETINGS/REPORTS/AUDITS

- 14.1. Subject to clause 14.5, review meetings will be held at least once every Railway Period at the locations and at the times set out in the table in Part 1 of Schedule 5 (the Meeting Structure Matrix).
- 14.2. Unless as may be otherwise be agreed by the Parties, the attendees at any such review meeting shall be as set out in the Meeting Structure Matrix.
- 14.3. ISS shall provide to ECML the information/reports set out in the table in Part 2 of Schedule 5 at the times, frequency and to the relevant persons specified in the relevant columns of such table.
- 14.4. ISS shall, within such period as reasonably required, deliver to ECML such information, records or documents as ECML may from time to time request and which relate to or are connected with ISS's performance of its obligations under this Agreement.

- 14.5. ECML reserves the right to require an increase in the frequency of meetings, the provision of reports, information, records or documents at any time following or during any period when ISS is in breach of any term of this Agreement.

PERFORMANCE MEASURES

- 14.6. The provisions of Schedule 2 and clauses 9.6 and 9.7 shall apply in relation to Service Levels, Service Credits, the Service Credit Bank and the Labour Bank Credit.

SERVICE DEFAULTS/RECTIFICATION

14.7. Creation and implementation of a Rectification Plan

- 14.7.1. If at any time a Service Default occurs or ISS becomes aware that a Service Default is likely to occur then ISS shall, in each case, without cost to ECML, and immediately upon it becoming aware of such Service Default or anticipated Service Default:

- (a) notify ECML in writing of the nature and extent of the relevant Service Default, the anticipated impact of the relevant Service Default on the Services, the root cause of the Service Default and immediately provide to ECML ISS's proposed plan for rectifying such Service Default (**Rectification Plan**). All Rectification Plans shall (unless otherwise agreed in writing by ECML) require ISS to deploy all additional resources and take all remedial action that is necessary to rectify the relevant Service Default (provided the failure in question is remediable) and to prevent the Service Default in question from recurring;
- (b) amend any proposed Rectification Plan to reflect all of ECML's reasonable comments and so as to require ISS to take any additional steps ECML may require and then promptly implement the amended Rectification Plan as soon as possible;
- (c) if ECML so requests, procure that the member of ISS who is responsible for rectifying the relevant Service Default is available to discuss the matter with ECML;
- (d) if ECML so requests permit ECML (or its Authorised Representative) to attend operational meetings to the extent that they relate to the planning and implementation of the Rectification Plan;
- (e) report to ECML on a reasonably appropriate basis given the nature of the Service Default and Rectification Plan and, in any event no less than weekly, on ISS's progress against the Rectification Plan implemented by it; and
- (f) promptly notify ECML in writing of any non trivial changes required to the Rectification Plan from time to time and the reasons for those changes, all such changes to be subject to ECML's prior written consent (to be given at its sole discretion).

14.8. Costs

ISS shall meet all of its costs in developing and implementing a Rectification Plan.

14.9. Rectification Failure

If ISS:

- 14.9.1. is required pursuant to clause 14.7.1 to provide 1 (one) or more Rectification Plans (in any consecutive period of three (3) Railway Periods);
- 14.9.2. fails to fully, effectively and promptly implement any Rectification Plan in all material respects in accordance with its terms;
- 14.9.3. fails to promptly produce a reasonable Rectification Plan when it is required to do so;

- 14.9.4. the Service Level remains lower than the Default Service Level for three (3) Railway Periods immediately following the implementation of a Rectification Plan pursuant to clause 14.7.1; or
- 14.9.5. any underlying cause which a Rectification Plan should have avoided recurs more than once,

(in each case a Rectification Failure) then ECML may terminate this Agreement pursuant to clause 15.4.

15. TERMINATION

- 15.1. Without prejudice to any other rights or remedies which the Parties may have, either Party may terminate this Agreement without liability to the other for convenience on giving the other not less than 6 months' written notice, or on giving fourteen (14) days notice to the other if:

- 15.1.1. the other Party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than thirty (30) days after being notified in writing to make such payment; or
- 15.1.2. the other Party commits a material breach of any of the material terms of this Agreement and (if such a breach is remediable) fails to remedy that breach within thirty (30) days of that Party being notified in writing of the breach; or
- 15.1.3. the other Party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- 15.1.4. the other Party becomes Insolvent.

For the purposes of this clause 15, a material breach means a breach by ISS which (a) would have a serious effect on the benefit which ECML would otherwise derive under this Agreement, (b) would expose ECML to any liability or (c) would be a repudiatory breach at common law.

- 15.2. Without prejudice to any other rights or remedies which the Parties may have, either Party may terminate this Agreement immediately without liability to the other if:

- 15.2.1. the other Party suspends, or threatens to suspend, payment of its debts, is unable to pay its debts as they fall due, admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
- 15.2.2. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of that other Party other than for the sole purpose of a scheme for a solvent amalgamation of that other Party with one or more other companies, or the solvent reconstruction of that other Party; or
- 15.2.3. an application is made to court, or an order is made, for the appointment of an administrator, a notice of intention to appoint an administrator is given, or an administrator is appointed over the other Party; or
- 15.2.4. a person becomes entitled to appoint a receiver over the assets of the other Party, or a receiver is appointed over the assets of the other Party; or
- 15.2.5. a creditor or encumbrancer of the other Party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within fourteen (14) days.

- 15.3. ECML may terminate this Agreement immediately by giving written notice to that effect to ISS if ISS commits more than two (2) breaches of this Agreement in any rolling period of six (6) months, whether such breaches are of the same, similar or different provisions of this Agreement and whether or not such breaches are material breaches, have been remedied and/or can be remedied, provided that such breaches justify an inference on the part of ECML that ISS is either not capable of performing or not willing to perform its obligations under this Agreement.

- 15.4. ECML shall be entitled to terminate this Agreement Immediately by giving written notice to that effect on the occurrence of a Rectification Failure or a Service Default. Where ECML exercises its right of termination under this clause 15.4, ISS shall pay to ECML, in accordance with clause 9.11, the Default Termination Sum calculated as follows:

$$[DTS - \text{[REDACTED]} STA]$$

where:

DTS = the Default Termination Sum payable by ISS to ECML in accordance with clause 9.1;

STA = a sum equivalent to the balance of the Service Credit Bank (subject to paragraph 2.6 of Part B to Schedule 2 and as determined in accordance with paragraph 2.3 of Part B to Schedule 2) on the Expiry Date for the relevant Contract Year in which this Agreement is terminated;

So for example, if this Agreement was terminated during a Contract Year in which the performance had remained at 1% below the Train Fleet Service Target Service Level for a period of six (6) [Reporting Periods] and the Agreement is terminated by ECML and the running balance of the Service Credit Bank was [REDACTED] on the Expiry Date, then

$$DTS - \text{[REDACTED]}$$

In such instance ISS shall pay ECML a Default Termination Sum equivalent to the DTS.

- 15.5. ECML may terminate this Agreement by giving not less than thirty (30) days written notice to that effect to ISS if there is a Change in Control of ISS without the prior written consent of ECML but excluding a change in control arising from an Initial Placement Offering (IPO) during the period of the contract.

- 15.6. On termination of this Agreement for any reason:

- 15.6.1. ECML shall within thirty (30) days pay to ISS all of ISS's [undisputed] outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, ISS may submit an invoice, which shall be payable within 30 days from receipt of the invoice;
- 15.6.2. ISS shall remove, or procure the removal of, all of ISS's Equipment. If ISS fails to do so, then ECML may charge ISS for its storage or removal and return to ISS;
- 15.6.3. the accrued rights, remedies, obligations and liabilities of the Parties as at termination shall not be affected, including the right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination and the right to payment (including interest) of any disputed invoice is resolved; and
- 15.6.4. clauses which expressly or by implication have effect after termination shall continue in full force and effect, including the following clauses: clause 10 (Intellectual property rights), clause 11 (Confidentiality and ISS's property), clause 12 (Limitation of liability), clause 15.2, clause 27 (Notices), clause 29 (Dispute resolution) and clause 30 (Governing law and jurisdiction).

16. FORCE MAJEURE

- 16.1. A Party, provided that it has complied with the provisions of clause 16.2, shall not be in breach of this Agreement, nor liable for any failure or delay in performance of any obligations under this Agreement arising from or attributable to acts, events, omissions or accidents beyond its reasonable control (Force Majeure Event), including but not limited to any of the following:

- 16.1.1. acts of God, including but not limited to fire, flood, earthquake, windstorm or other natural disaster;

- 15.4. ECML shall be entitled to terminate this Agreement immediately by giving written notice to that effect on the occurrence of a Rectification Failure or a Service Default. Where ECML exercises its right of termination under this clause 15.4, ISS shall pay to ECML, in accordance with clause 9.11, the **Default Termination Sum** calculated as follows:

$$[DTS = £100,000 - STA]$$

where:

- DTS* = the Default Termination Sum payable by ISS to ECML in accordance with clause 9.1;
- STA* = a sum equivalent to the balance of the Service Credit Bank (subject to paragraph 2.6 of Part B to Schedule 2 and as determined in accordance with paragraph 2.3 of Part B to Schedule 2) on the Expiry Date for the relevant Contract Year in which this Agreement is terminated;

So for example, if this Agreement was terminated during a Contract Year in which the performance had remained at 1% below the Train Fleet Service Target Service Level for a period of six (6) [Reporting Periods] and the Agreement is terminated by ECML and the running balance of the Service Credit Bank was £30,000 on the Expiry Date, then

$$DTS = £100,000 - £30,000 = £70,000.$$

In such instance ISS shall pay ECML a Default Termination Sum equivalent to the DTS.

- 15.5. ECML may terminate this Agreement by giving not less than thirty (30) days written notice to that effect to ISS if there is a Change in Control of ISS without the prior written consent of ECML but excluding a change in control arising from an Initial Placement Offering (IPO) during the period of the contract.
- 15.6. On termination of this Agreement for any reason:
- 15.6.1. ECML shall within thirty (30) days pay to ISS all of ISS's [undisputed] outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, ISS may submit an invoice, which shall be payable within 30 days from receipt of the invoice;
 - 15.6.2. ISS shall remove, or procure the removal of, all of ISS's Equipment. If ISS fails to do so, then ECML may charge ISS for its storage or removal and return to ISS;
 - 15.6.3. the accrued rights, remedies, obligations and liabilities of the Parties as at termination shall not be affected, including the right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination and the right to payment (including interest) of any disputed invoice is resolved; and
 - 15.6.4. clauses which expressly or by implication have effect after termination shall continue in full force and effect, including the following clauses: clause 10 (Intellectual property rights), clause 11 (Confidentiality and ISS's property), clause 12 (Limitation of liability), clause 15.2, clause 27 (Notices), clause 29 (Dispute resolution) and clause 30 (Governing law and jurisdiction).

16. FORCE MAJEURE

- 16.1. A Party, provided that it has complied with the provisions of clause 16.2, shall not be in breach of this Agreement; nor liable for any failure or delay in performance of any obligations under this Agreement arising from or attributable to acts, events, omissions or accidents beyond its reasonable control (**Force Majeure Event**), including but not limited to any of the following:
- 16.1.1. acts of God, including but not limited to fire, flood, earthquake, windstorm or other natural disaster;

- 16.1.2. war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions;
 - 16.1.3. terrorist attack, civil war, civil commotion or riots;
 - 16.1.4. nuclear, chemical or biological contamination or sonic boom;
 - 16.1.5. voluntary or mandatory compliance with any law (including a failure to grant any licence or consent needed or any change in the law or interpretation of the law);
 - 16.1.6. fire, explosion or accidental damage;
 - 16.1.7. loss at sea;
 - 16.1.8. extreme adverse weather conditions;
 - 16.1.9. collapse of building structures, failure of plant machinery, machinery, computers or vehicles;
 - 16.1.10. any labour dispute, including but not limited to strikes, industrial action or lockouts; or
 - 16.1.11. interruption or failure of utility service, including but not limited to electric power, gas or water.
- 16.2. Subject to clause 16.3 a Party that is subject to a Force Majeure Event shall not be in breach of this Agreement provided that:
- 16.2.1. it promptly notifies the other Party in writing of the nature, anticipated duration and extent of the Force Majeure Event causing its failure or delay in performance;
 - 16.2.2. it has used reasonable endeavours to mitigate the effect of the Force Majeure Event, to carry out its obligations under this Agreement in any way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably possible; and
 - 16.2.3. it continues to perform all of its obligations under this Agreement the performance of which are not affected by the Force Majeure Event.
- 16.3. Nothing in this clause 16 will relieve ISS from its obligations under this Agreement to create, implement and operate the Business Continuity Plan. Accordingly, if a Force Majeure Event affecting ISS occurs which is an event or circumstance that is within the scope of the Business Continuity Plan, or would have been had the Business Continuity Plan complied with Schedule 6, then this clause 16 will only apply to that Force Majeure Event if:
- 16.3.1. the Business Continuity Plan complies with Schedule 6 and has been fully and properly implemented and operated in accordance with Schedule 6 in respect of that Force Majeure Event; and
 - 16.3.2. that Force Majeure Event still causes a failure or delay in performance of any of ISS's other obligations under this Agreement.
- 16.4. If a Force Majeure Event which affects performance of a material part of a Party's obligations under this Agreement and which gives rise to relief from liability under clause 16.1 prevails for a continuous period of more than two (2) months, either Party will may terminate this Agreement immediately by giving thirty (30) days written notice to that effect to the affected Party. On the expiry of this notice period, this Agreement will terminate. Such termination shall be without prejudice to the rights of the Parties in respect of any breach of this Agreement occurring prior to such termination.
17. **VARIATION**
- 17.1. During any Contract Year ECML or ISS may propose a Variation, in which case the provisions of clause 8 shall apply.

18. WAIVER

- 18.1. A waiver of any right or remedy under this Agreement is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict any further exercise of that or any other right or remedy.
- 18.2. No single or partial exercise of any right or remedy provided under this Agreement or by law shall preclude or restrict the further exercise of any such right or remedy.

19. CUMULATIVE REMEDIES

Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.

20. SEVERANCE

- 20.1. If any court or competent authority finds that any provision of this Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Agreement shall not be affected.
- 20.2. If any invalid, unenforceable or illegal provision of this Agreement would be valid, enforceable and legal if some part of it were deleted, the Parties shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the Parties' original commercial intention.

21. ENTIRE AGREEMENT

- 21.1. This Agreement constitutes the entire agreement between the Parties and supersedes and extinguishes all previous drafts, arrangements, understandings or agreements between them, whether written or oral, relating to the subject matter of this Agreement.
- 21.2. Nothing in this clause shall limit or exclude any liability for fraud.

22. ASSIGNMENT

- 22.1. Subject to clause 22.2, ECML shall not, without the prior written consent of ISS (such consent not to be unreasonably withheld or delayed), assign, transfer, charge, mortgage, subcontractor deal in any other manner with all or any of its rights or obligations under this Agreement.
- 22.2. ECML shall be entitled by providing six (6) months prior notice in writing, to novate its rights and obligations under this Agreement (in whole or in part) to any person who has been successful in a rail franchise letting process conducted by the Secretary of State for Transport in relation to some or all of the East Coast Train Services or any affiliate of such person or to the Secretary of State for Transport or his nominee (a Successor Operator). Such novation shall be on the same terms as this Agreement.
- 22.3. It is acknowledged by the ISS and the ECML that, as at the Start Date, it is the intention that the entire issued share capital of ECML would, on or before the termination of the ECML Services Agreement, be acquired by the Successor Operator so that ECML would continue as the operator of the East Coast Train Services under a new franchise agreement and accordingly the Successor Operator would continue to be a Party to this Agreement following termination of the ECML Services Agreement.
- 22.4. Unless this Agreement is novated in accordance with clause 22.2 or transferred in accordance with clause 22.3 this Agreement shall terminate on the date of termination of the ECML Services Agreement.

- 22.5. For the purposes of this clause 22, **East Coast Train Services** means the passenger rail services provided by ECML on the date of this Agreement.
- 22.6. ISS may at any time assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of its rights or obligations under this Agreement, with the prior written consent of ECML, such consent not to be unreasonably withheld or delayed.
- 22.7. Each Party that has rights under this Agreement is acting on its own behalf and not for the benefit of another person.
23. **NO PARTNERSHIP OR AGENCY**
- 23.1. Nothing in this Agreement is intended to, or shall operate to, create a partnership between the Parties, or to authorise either Party to act as agent for the other, and neither Party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
24. **RIGHTS OF THIRD PARTIES**
- 24.1. The Parties do not intend that any term of this Agreement will be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person.
25. **COSTS AND EXPENSES**
- 25.1. Each Party will bear its own costs and expenses incurred in connection with or arising out of the negotiation, preparation, execution and, if applicable, registration of this Agreement.
26. **FREEDOM OF INFORMATION**
- 26.1. ISS acknowledges and shall procure that its agents and subcontractors acknowledge that ECML:
- 26.1.1. is subject to the requirements of the FOI Legislation and accordingly ISS shall and shall procure that its agents and subcontractors shall assist and co-operate with ECML to enable ECML to comply with its information disclosure obligations under the FOI Legislation; and
- 26.1.2. may be obliged under the FOI Legislation to disclose confidential information without consulting or obtaining consent from ISS, its agents or subcontractors, and subject to the provisions of this clause 26, may ultimately at its discretion disclose such confidential information.
- 26.2. Without prejudice to the generality of clause 26.1, ISS shall and shall procure that its subcontractors (if any) shall:
- 26.2.1. transfer to ECML (or such other person as may be notified by ECML to ISS) each information request relevant to this Agreement, that it receives as soon as practicable and in any event within two (2) Business Days of receiving such information request;
- 26.2.2. in relation to confidential information held by ISS on behalf of ECML, provide ECML (or such other person as may be notified by ECML to ISS) with details about and/or copies of all such confidential information that ECML requests and such details and/or copies shall be provided within five (5) Business Days of a request from ECML (or such other period as ECML may reasonably specify) and in such forms as ECML may reasonably specify; and
- 26.2.3. provide all necessary assistance as reasonably requested by ECML (or such other person as may be notified by ECML to ISS) to enable it to respond to any information request within the time for compliance set out in section 10 of the Freedom of Information Act 2000 or regulation 5 of the Environmental Information Regulations 2004 as applicable.

26.3. ECML shall be responsible for determining, in its absolute discretion, and notwithstanding any other provision in this Agreement, whether the confidential information is exempt information under the FOI Legislation and for determining what confidential information will be disclosed in response to an information request in accordance with the FOI Legislation.

26.4. ISS shall not itself and shall procure its agents and subcontractors shall not respond directly to any person making an information request, save to acknowledge receipt, unless expressly authorised to do so by ECML.

27. RIGHT OF AUDIT

RIGHT OF AUDIT OR INSPECTION

27.1. ISS shall during the Term permit ECML (and/or any of its representatives, employees or advisers) to have such access on demand to the ISS premises (which for these purposes shall include such other third party premises where books, records or other material used for the provisions of the Services are held) and to the books, records and any other material kept by or on behalf of ISS in connection with the provision of the Services as may be reasonably required in order to:

27.1.1. check or audit any information supplied to ECML under this Agreement (and in particular under Schedule 2);

27.1.2. perform a financial audit (including the staff costs, wage rates, materials and equipment costs);

27.1.3. verify that the Services are being provided in accordance with this Agreement;

27.1.4. monitor ISS's compliance with the Service Quality Management System;

27.1.5. check or audit that the assets employed by ISS in the provision of the Services are fit for purpose and comply with Applicable Laws (including Health and Safety Legislation and Industry Standards); or

27.1.6. monitor ISS's compliance with its obligations under this Agreement.

27.2. Without prejudice to any rights ECML may have to inspect the delivery by ISS of the Services undertaken at ECML's premises, ECML shall exercise its rights pursuant to clause 27.1 during Business Hours and once in each Contract Year save that where any such audit reveals any non-compliance with any of the provisions of this Agreement then ECML shall have the right to carry out such further audit at such frequency as ECML may consider appropriate in the circumstances.

27.3. In conducting any audit or inspection pursuant to this paragraph 27, ECML shall be permitted to take photographs, film or make a video recording, or make any other kind of record of any such inspection or audit.

27.4. In the event that any audit or inspection undertaken by ECML pursuant to this Clause 27 reveals that information previously supplied to ECML was in any material respect inaccurate on the basis of information available to ISS at the time or reveals any other non-compliance with the requirements of this Agreement, the costs of any such audit or inspection shall be borne by ISS.

28. NOTICES

28.1. Subject to clause 28.6, a notice or other communication given to a Party under or in connection with this Agreement:

28.1.1. shall be in writing in the English language (or accompanied by a properly prepared translation into English);

28.1.2. shall be signed by or on behalf of the Party giving it;

- 28.1.3. shall be sent to the person and at the address specified in this clause 28 (or to such other address or person as that Party may notify to the other, in accordance with the provisions of this clause 28); and
- 28.1.4. shall be:
- 28.1.4.1. delivered personally; or
 - 28.1.4.2. sent by commercial courier; or
 - 28.1.4.3. sent by pre-paid first-class post or recorded delivery; or
 - 28.1.4.4. sent by airmail requiring signature on delivery; or
 - 28.1.4.5. sent by e-mail to that party's e-mail address (with a copy sent by pre-paid first class post, recorded delivery or airmail post to that party's address within twenty-four (24) hours after sending the e-mail).
- 28.2. The addresses for service of a notice or other communication are as follows:
- 28.2.1. ISS:
- | | |
|-----------------------|---|
| address: | ISS Transport Division
9 th Floor, South Quay Plaza 3
189 Marsh Wall
London E14 9SH |
| for the attention of: | Brian Raven, Managing Director |
| email: | Brian.Raven@ukissworld.com. |
- 28.2.2. ECML:
- | | |
|-----------------------|---|
| address: | East Coast Mainline Company Limited
East Coast House
25 Skeldergate
York YO1 6DH |
| for the attention of: | Karen Boswell, Managing Director |
| email: | Karen.Boswell@eastcoast.co.uk. |
- 28.3. If a notice or other communication has been properly sent or delivered in accordance with this clause, it will be deemed to have been received as follows:
- 28.3.1. if delivered personally, at the time of delivery; or
 - 28.3.2. if delivered by commercial courier, at the time of signature of the courier's receipt; or
 - 28.3.3. if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the [third] Business Day after posting; or
 - 28.3.4. if sent by airmail, five (5) Business Days from the date of posting; or
 - 28.3.5. if sent by e-mail, at the time of sending the e-mail (except that if an automatic electronic notification is received by the sender within twenty-four (24) hours after sending the e-mail informing the sender that the e-mail has not been delivered to the recipient or that the recipient is out of the office, that e-mail will be deemed not to have been served),

provided that if a notice or other communication is deemed to be served before [9.00am] on a Business Day it will be deemed to be served at [9.00am] on that Business Day and if it is deemed to be served on a day which is not a Business Day or after [5.00pm] on a Business Day it will be deemed to be served at [9.00am] on the immediately following Business Day.

28.4. For the purposes of this clause 28:

28.4.1. all times are to be read as local time in the place of deemed receipt; and

28.4.2. If deemed receipt under this clause is not within Business Hours on a Business Day, the notice or other communication is deemed to be served at 9.00am on the immediately following Business Day.

28.5. To prove delivery of a notice or other communication, it shall be sufficient to prove that it will be sufficient to prove that the provisions of clauses 28.1 and 28.2 were complied with.

28.6. The provisions of this clause 28 will not apply to the service of any proceedings or other documents in a legal action to which the Civil Procedure Rules apply.

29. DISPUTE RESOLUTION

29.1. If a dispute arises out of or in connection with this Agreement (including in relation to any non-contractual obligations) (a **Dispute**) either Party may during the Term of this Agreement by written notice (a **Referral Notice**) to the other Party refer the matter for resolution. Each Party will procure that its representatives referred to in clause 29.2 and 29.3 will comply with the provisions of this clause 29.

29.2. Once a Referral Notice has been served in relation to a Dispute, that Dispute will be referred for resolution simultaneously to the ISS Train Fleet Manager and the ISS Station Manager for the time being on behalf of ISS and the ECML Train Fleet Manager and the ECML Station Manager for the time being on behalf of ECML. Those representatives will meet at the earliest convenient time and in any event within [ten (10)] Business Days of the date of service of the relevant Referral Notice and will attempt to resolve the Dispute.

29.3. If a Dispute has not been resolved within [twenty (20)] Business Days of the date of service of the relevant Referral Notice it will be referred for resolution simultaneously to the Managing Director for the time being on behalf of ISS and the Managing Director for the time being on behalf of ECML. Those representatives will meet at the earliest convenient time and in any event within [thirty four (34)] days of the date of service of the relevant Referral Notice and will attempt to resolve the Dispute.

29.4. If a Dispute is not resolved within [thirty four (34)] Business Days of the date of service of the relevant Referral Notice the Parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure.

29.5. Unless a mediator has been agreed upon by the Parties and has confirmed his appointment within [forty eight (48)] Business Days of the date of service of the relevant Referral Notice, a mediator will be nominated at the written request of either Party by CEDR. The Parties will use all reasonable endeavours to procure that the mediation will start within [fifty five (55)] days of the date of service of the Referral Notice.

29.6. Subject to clause 29.7, the procedures set out in clauses 29.1 to 29.5 will be followed prior to the commencement of any proceedings by either Party in relation to a Dispute. However, if the Dispute is not resolved within [eighty four (84)] Business Days of the date of service of the Referral Notice, either Party may commence proceedings in accordance with clause 30.

29.7. Nothing in this clause 29 will prevent or delay either Party from:

29.7.1. seeking orders for specific performance, interim or final injunctive relief;

29.7.2. exercising any rights it has to terminate this Agreement; or

- 29.7.3. commencing any proceedings where this is necessary to avoid any loss of a claim due to the rules on limitation of actions.

30. GOVERNING LAW AND JURISDICTION

- 30.1. This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, the law of England and Wales.
- 30.2. The Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

Schedule 1 Services

Station and Offices

- Appendix 1: Facilities Cleaning Specification
- Appendix 2: Facilities Window Cleaning Specification

Train Fleet

- Appendix 3: In-Transit Service Routine
- Appendix 4: Turnaround at Leeds
- Appendix 5: Turnaround at Kings Cross
- Appendix 6: Overnight Catering Vehicle Cleaning
- Appendix 7: Overnight Drivers Cab Cleaning
- Appendix 8: Overnight External Loco Cleaning
- Appendix 9: Overnight Guards Office Cleaning
- Appendix 10: Overnight Saloons Cleaning
- Appendix 11: Overnight Toilet Cleaning
- Appendix 12: Overnight Vestibules Cleaning
- Appendix 13: Heavy Cleaning Briefing Document
- Appendix 14: Heavy and Chemical Catering Vehicle Cleaning
- Appendix 15: Heavy and Chemical Drivers Cab Cleaning
- Appendix 16: Heavy and Chemical External Train Cleaning
- Appendix 17: Heavy and Chemical Guards Office Cleaning
- Appendix 18: Heavy and Chemical Saloons Cleaning
- Appendix 19: Heavy and Chemical Toilet Cleaning
- Appendix 20: Heavy and Chemical Vestibules Cleaning

Schedule 2 Service Levels and KPI's

Part A

CLEANING HOURS AND LABOUR BANK

1. CLEANING HOURS

- 1.1. ISS shall provide to ECML a minimum of ten thousand (10,000) complete hours of cleaning Service per week at the premises and property detailed in Schedule 4 in accordance with the Agreed Cleaning Hours for each area of activity set out in first column of the table detailed in Schedule 3 (**Area of Activity**)
- 1.2. ISS shall keep detailed and accurate written records of the cleaning services undertaken and the time expended in undertaking the Services such that either Party is able to determine whether the minimum requirements for the Services have been provided to ECML in accordance with the provisions of this Agreement.
- 1.3. ISS shall record the provision of the Services in respect of each Area of Activity in hourly increments with the mid point rounded up to the nearest whole hour (so for example, 2 hours 30 minutes shall be rounded up to 3 hours and 2 hours 29 minutes shall be rounded down to 2 hours).
- 1.4. ISS shall provide a detailed report, in both hard copy and electronic copy (and in such format as ECML may require from time to time) to ECML following each Railway Period (a **Cleaning Period**), but prior to the period review meetings, detailing, as a minimum for each Cleaning Period:
 - 1.4.1. the actual number of hours of the Services provided (the **Actual Weekly Cleaning Hours**) for each Area of Activity; and
 - 1.4.2. identifying each Area of Activity for which the Actual Weekly Cleaning Hours were less than the agreed weekly cleaning hours set out in the second column of the table in Schedule 3 (**Agreed Cleaning Hours**);
 - 1.4.3. for each Area of Activity specified in 1.4.2 the number of hours by which the Actual Weekly Cleaning Hours are less than the Agreed Cleaning Hours. For the purposes of this paragraph 1.4.3, where the difference is or includes a part hour, the part hours shall be rounded mathematically to the nearest whole hour.
 - 1.4.4. the aggregate sum, across all Areas of Activity, of the number of hours by which the Actual Weekly Cleaning Hours are less than the Agreed Cleaning Hours across all the Areas of Activity (the **Cleaning Credits**);
 - 1.4.5. details of any debits in accordance with paragraph 2.3

2. LABOUR BANK

- 2.1. ECML recognises that there may be occasions where ISS is unable to provide the full ten thousand (10,000) hours of the Services for each Cleaning Period. In such instances ISS shall operate a banking system (the **Labour Bank**) and which shall be operated in the manner set out in this paragraph 2.
- 2.2. At the end of each Cleaning Period commencing on the Start Date, ISS shall deposit in the Labour Bank the Cleaning Credits applicable in respect of such Cleaning Period.
- 2.3. In respect of any Cleaning Period where there are Cleaning Credits outstanding in the Labour Bank, ECML may require ISS to undertake extra cleaning hours up to the balance of the Cleaning Credits then standing to the order of the Labour bank (that is, over and above the Agreed Cleaning Hours in respect of that Cleaning Period (the **Cleaning Debits**)). At no time shall ISS be entitled to deduct Cleaning Credits from the Labour Bank.

2.4. At the end of each Contract Year, ECML may at its sole discretion elect to:

- 2.4.1. roll to the next Contract Year the balance of the Cleaning Credits in the Labour Bank at the end of that Contract Year; or
- 2.4.2. require ISS to pay (as a debt) to ECML within fourteen (14) days following the end of that Contract Year and amount calculated as follows:

$(CC \times \text{[redacted]})$

where:

CC = the Cleaning Credits standing in the Labour Bank at the end of that Contract Year,

2.5. Fourteen (14) days after the Expiry Date, ISS shall pay to ECML (as a debt) an amount calculated as follows:

$(CC \times \text{[redacted]})$

where:

CCD = the Cleaning Credits standing in the Labour Bank on the Expiry Date.

Part B

SERVICE LEVELS

1. GENERAL

- 1.1. From the Start Date and throughout the term of this Agreement, ISS shall, in providing the Services, ensure that in each Railway Period during the Term its performance against each Area of Activity as measured using the Service Quality Management System at least equal to or better than the Target Service Level.
- 1.2. With effect from the Start Date, ISS's performance of the Services will be measured and recorded against each Service Level in respect of each Railway Period. ECML shall at the end of each Railway Period provide ISS with a report in the format and containing the detail set out in Appendix 1 to this Schedule 2 (the Service Level Report). The Service Level Report shall highlight any failures to meet the Target Service Level and be used by the Parties for the purposes of determining whether ISS has failed to meet any Service Level and in consequence whether Service Credits have accrued to ECML pursuant to paragraph 2.

2. FAILURE TO MEET THE SERVICE SPECIFICATION AND THE BANKING AND PAYMENT OF SERVICE CREDITS

- 2.1. Clause 14 and this paragraph 2 shall apply to any failure to meet any Service Level.
- 2.2. ISS shall operate a banking system (the Service Credit Bank) in respect of Service Credits which will accrue in favour of ECML if the actual Service Level performance is below the Target Service Levels set out in Appendix 2A to this Schedule 2 in respect of the Train Fleet Services and Station Services.
- 2.3. Without prejudice to ECML's other rights and remedies and with effect from the 14th February 2014:
- 2.3.1. If the Services are not supplied in accordance with the Service Specification and the Target Service Levels for the Train Fleet Services and/or Station Services, ISS shall credit the Service Credit Bank each Railway Period with an amount equivalent to [REDACTED] per percentage point (rounded up to the nearest [REDACTED] deviation from the relevant Target Service Levels for the Train Fleet Services and Station Services; or
- 2.3.2. If the Services supplied exceed the Service Specification and the Target Service Levels for the Train Fleet Services and/or Station Services, ISS shall debit the Service Credit Bank with an amount equivalent to [REDACTED] per percentage point (rounded up to the nearest [REDACTED] deviation from the relevant Target Service Levels for the Train Fleet Services and Station Services.

Any debit pursuant to paragraph 2.3.2 of this Part B to Schedule 2 shall only serve to reduce the amount of Service Credits payable by ISS to ECML. There shall be no obligation on ECML to make any payment to ISS in the event that the debits to the Service Credit Bank exceed the credits.

- 2.4. So by way of example if ISS's performance is 1.65% below the Target Service Level for the Train Fleet Services metric and at the Target Service Level for the Stations Services metric in any given [Reporting Period], the Service Credit Bank will be debited with an amount equivalent to [REDACTED]. If in the following Railway Period ISS's performance exceeds the Target Service Level by 0.78% for the Train Fleet Services metric and is at the Target Service level for the Stations Services metric, the Service Credit Bank will be credited with an amount equivalent to [REDACTED] leaving an overall balance of [REDACTED].
- 2.5. Subject to paragraph 2.6 the Service Credits accrued in any Railway Period shall be payable by ISS to ECML in accordance with the provisions of clause 9.7.
- 2.6. ISS's liability to pay Service Credits to ECML under this Agreement shall be limited to [REDACTED] pounds) in any Contract Year.

- 2.7. If the Parties do not agree on the amount of any Service Credits payable in relation to any Railway Period, then such dispute shall be resolved in accordance with clause 29 and pending the determination of such dispute an amount equal to the amount of Service Credits that ECML claims is due will be paid by ISS to ECML in accordance with clause 9.6. Any sums due to ECML or ISS following determination of such dispute will be due, as a debt due within ten (10) Working Days of the determination of the dispute.
- 2.8. ISS acknowledges that its failure to meet Service Specifications may have a material adverse effect on the business and operations of ECML. The Parties agree that the Service Credits are a genuine and negotiated pre-estimate of loss and shall not be regarded as penalty provisions. ISS waives any right to question or challenge the validity of the obligation to pay Service Credits.
- 2.9. For the avoidance of doubt, ISS shall not be responsible for any failure to achieve the Service Levels to the extent that such failure arises solely from any failure of ECML to comply with its obligations under this Agreement.

3. FAILURE TO MEET THE SERVICE LEVELS

SERVICE DEFAULT AND PERFORMANCE IMPROVEMENT PLAN

- 3.1. A service default (**Service Default**) shall occur:
- 3.1.1. if, in any Railway Period, ISS's actual performance in respect of any Area of Activity is equal to or worse than the Default Service Level;
 - 3.1.2. if, in any Railway Period the ISS performance in respect of any Area of Activity, as measured using the Service Quality Measurement System, is more than 1% but less than 10% below the Target Service Level for 3 consecutive [Railway Periods]; or
 - 3.1.3. If, in any Railway Period the ISS performance in respect of any Area of Activity, as measured using the Service Quality Measurement System, is more than 10 (ten) percentage points below the Target Service Level for:
 - (a) any three (3) consecutive Railway Periods; or
 - (b) any four (4) Railway Periods within thirteen(13) consecutive Railway Periods.

- 3.2. The provisions of clause 14 shall apply on the occurrence of a Service Default.

4. EFFICIENCY INCENTIVES

- 4.1. **Efficiency and profitability:** ECML wishes to encourage ISS to:

- 4.1.1. improve efficiency; and
- 4.1.2. reduce cost;

in each case, in respect of the delivery of the Service and for the purposes of improving the profitability in respect of the delivery of the Services (**Efficiency and Cost Saving Initiatives**).

- 4.2. Accordingly if at any time during the Term ISS develops and proposes any Efficiency and Cost Saving Initiatives which are agreed by ECML then on the successful implementation of any such Efficiency and Cost Saving Initiative, ISS shall reduce the charges payable by ECML by the amount that is equivalent to 50% of any cost and efficiency savings generated from the implementation of such Efficiency and Cost Saving Initiatives.

Part 1 – Station Facilities

Ref	Measure	Cleaning Contractor - Edinburgh	Cleaning Contractor - Dunbar	Cleaning Contractor - Bewick	Cleaning Contractor - Newcastle	Cleaning Contractor - Durham	Cleaning Contractor - Darlington	Cleaning Contractor - York	Cleaning Contractor - Leeds	Cleaning Contractor - Wakefield	Cleaning Contractor - Doncaster	Cleaning Contractor - Retford	Cleaning Contractor - Newark	Cleaning Contractor - Grantham	Cleaning Contractor - Peterborough	Cleaning Contractor - Stevenage	Cleaning Contractor - King's Cross
	Car Park Machines				x	x	x	x		x	x	x	x	x	x		
	Car Parks				x	x	x	x		x	x	x	x	x	x		
	Station frontage					x											
	Entrance lobby				x	x											
	Concourse				x	x											
	Travel Centre	x			x	x	x	x		x	x	x	x	x	x		x
	Customer Information Points																
	First Class Lounges	x							x								
	Toilets				x					x	x						x
	Waiting Rooms				x					x	x						
	Other customer area				x												
	Retail Outlets					x											
	Subways				x												
	Bridges				x												
	Lifts				x												
	Platforms				x												
	Shelters				x												
	Posters, signage and other																

Measure	Edinburgh	Bewick	Newcastle	Durham	Darlington	York	Leeds	Wakefield	Doncaster	Rotherford	Newark	Grantham	Peterborough	Stevenage	King's Cross
Car Parks															
Are car park payment machines clean?															
Is 'car park operator sign' clean and maintained?															
Is area clean?															
Is the area clear of litter?															
Is paintwork free from stains and dirt?															
Is the area clear of graffiti or fly posting?															
Are all poster frames free of graffiti, etching and fly posting?															
Are all poster frames clean?															
Station Frontage															
Is approach, forecourt and road frontage clean?															
Is the area clear of litter?															
Is paintwork free from stains and dirt?															
Is the area clear of graffiti or fly posting?															
Are windows, glazing and perspex clean?															
Are the seats clean?															
Are cigarette bins not overflowing?															
Are all poster frames free of graffiti, etching and fly posting?															
Are all poster frames clean?															
Entrance Lobby															
Are entrance / exit doors clean?															
Is entrance mat clean (matted)?															
Is area clean?															
Is the area clear of litter?															
Is paintwork free from stains and dirt?															
Is the area clear of graffiti or fly posting?															
Are windows, glazing and perspex clean?															
Are the seats clean?															
Are all vending machines, cash points, public phones and other facilities clean?															
Are all poster frames free of graffiti, etching and fly posting?															
Are all poster frames clean?															
Concourse															
Are entrance / exit doors clean?															
Is entrance mat clean (matted)?															
Is area clean?															
Is the area clear of litter?															
Is paintwork free from stains and dirt?															
Is the area clear of graffiti or fly posting?															
Are windows, glazing and perspex clean?															
Are ticket-gates clean and free from graffiti and fly															

Measure	Edinburgh	Bewick	Newcastle	Durham	Darlington	York	Leeds	Wakefield	Doncaster	Retford	Newark	Grantham	Peterborough	Sevenage	King's Cross
posting?															
Are Fasticket machines clean?		Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y		
Are all vending machines, cash points, public phones and other facilities clean?		Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y		
Are the seats clean?		Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y		
Are all poster frames free of graffiti, etching and fly posting?		Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y		
Are all poster frames clean?		Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y		
Travel Centre															
Are ticket office windows clean?	Y	Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y
Are entrance / exit doors clean?	Y	Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y
Door handles: are they clean?	Y	Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y
Is area clean?	Y	Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y
Is the area clear of litter?	Y	Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y
Is flooring /paving /surface clean?	Y	Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y
Is paintwork free from stains and dirt?	Y	Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y
Is the area clear of graffiti or fly posting?	Y	Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y
Are windows, glazing and perspex clean?	Y	Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y
Are the seats clean?	Y	Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y
Are Fasticket machines clean?	Y	Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y
Are all poster frames free of graffiti, etching and fly posting?	Y	Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y
Are all poster frames clean?	Y	Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y
Customer Information Points															
Is the area clean?	Y	Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y
First Class Lounges															
Door handles: are they clean?	Y	Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y
Is the area clean?	Y	Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y
Is the area clear of litter?	Y	Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y
Is paintwork free from stains and dirt?	Y	Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y
Is the area clear of graffiti or fly posting?	Y	Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y
Are the seats clean?	Y	Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y
Are tables clean?	Y	Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y
Are FCL toilet facilities clean?	Y	Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y
Are all poster frames free of graffiti, etching and fly posting?	Y	Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y
Are all poster frames clean?	Y	Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y
Toilets															
Are any baby changing facilities clean?	Y	Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y
Is area clean?	Y	Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y
Is the area clear of litter	Y	Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y
Is paintwork free from stains and dirt?	Y	Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y
Are toilet walls and surfaces clean and dry?	Y	Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y
Is the area clear of graffiti or fly posting?	Y	Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y
Are windows, glazing and perspex clean?	Y	Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y
Is the lavatory clear of blockages/over-	Y	Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y

Measure	Edinburgh	Bewick	Newcastle	Durham	Darlington	York	Leeds	Wakefield	Doncaster	Retford	Newark	Grantham	Peterborough	Stevenage	King's Cross
flowing/flooding?															
In female toilets is there a suitable means of sanitary disposal?		X	X	X	X	X		X	X	X	X	X	X		
Is the urinal clear of blockages/overflowing/flooding?		Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y		
Are there sufficient supplies of toilet paper?		Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y		
Are the sufficient supplies of soap?		Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y		
Is the toilet block cleaned to an acceptable standard?		Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y		
Is the toilet block free from unpleasant odours?		Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y		
Are air dryers operational?		X	X	X	X	X		X	X	X	X	X	X		
Is mirror clean and free from graffiti / fly posting		Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y		
Is there an up to date record card of cleaning and inspection?		Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y		
Waiting Rooms															
Are entrance / exit doors clean?		Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y		
Door handles: are they clean?		Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y		
Is the area clean?		Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y		
Is the area clear of litter?		Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y		
Is flooring/paving/surface clean?		Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y		
Is paintwork free from stains and dirt?		Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y		
Is the area clear of graffiti or fly posting?		Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y		
Are windows, glazing and perspex clean?		Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y		
Are the seats clean?		Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y		
Are the tables clean?		Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y		
Are all vending machines, cash points, public phones and other facilities clean?		Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y		
Are all poster frames free of graffiti, etching and fly posting?		Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y		
Are all poster frames clean?		Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y		
Other bus/other area															
Is area free of clutter / obstructions		Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y		
Is area clean?		Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y		
Is the area clear of litter?		Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y		
Are entrance / exit doors clean?		Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y		
Door handles: are they clean?		Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y		
Is paintwork free from stains and dirt?		Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y		
Is the area clear of graffiti or fly posting?		Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y		
Are windows, glazing and perspex clean?		Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y		
Are Fasticket machines clean?		Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y		
Are all vending machines, cash points, public phones and other facilities clean?		Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y		
Are the seats clean?		Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y		
Are all poster frames free of graffiti, etching and fly posting?		Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y		
Are all poster frames clean?		Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y		
Subways															

Measure	Edinburgh	Bewick	Newcastle	Durham	Darlington	York	Leeds	Wakefield	Doncaster	Retford	Newark	Grantham	Peterborough	Stevenage	King's Cross
Is area clean?															
Is the area clear of litter?															
Is paintwork free from stains and dirt?															
Are walls and surfaces clean and dry?															
Is the area clear of graffiti or fly posting?															
Are all poster frames free of graffiti, etching and fly posting?															
Are all poster frames clean?															
Bridges															
Is area clean?															
Is the area clear of litter?															
Is paintwork free from stains and dirt?															
Are walls and surfaces clean and dry?															
Is the area clear of graffiti or fly posting?															
Are windows, glazing and perspex clean?															
Are all poster frames free of graffiti, etching and fly posting?															
Are all poster frames clean?															
Lifts															
Is area clean?															
Is the area clear of litter?															
Is the area clear of graffiti or fly posting?															
Is lift free from unpleasant odours?															
Platforms															
Is area clean?															
Is the area clear of litter?															
Has daily cleaning delivered a satisfactory standard?															
Are surfaces free from ingrained stains & build up / accumulation of dirt/debris?															
Are ticket-gates clean and free from graffiti and fly posting?															
Is paintwork free from stains and dirt?															
Is the area clear of graffiti or fly posting?															
Are windows, glazing and perspex clean?															
Are the seats clean?															
Are Fasticket machines clean?															
Are all vending machines, cash points, public phones and other facilities clean?															
Are all poster frames free of graffiti, etching and fly posting?															
Are all poster frames clean?															
Shelters															
Are entrance / exit doors clean?															
Door handles: are they clean?															
Is the area clear of litter?															
Is the area clear of graffiti or fly posting?															

Measure	Edinburgh	Bewick	Newcastle	Durham	Darlington	York	Leeds	Wakefield	Doncaster	Retford	Newark	Grantham	Peterborough	Stevenage	King's Cross
Is paintwork free from stains and dirt?			Y			Y			Y	Y					
Are windows, glazing and perspex clean?			Y			Y			Y	Y					
Are the seats clean?			Y			Y			Y	Y					
Are all poster frames free of graffiti, etching and fly posting?			Y			Y			Y	Y					
Are all poster frames clean?			Y			Y			Y	Y					
Posters, Signage and other															
Bins: are bins not overflowing?		Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y		
Bins: are they clean?		Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y		
Bins: Is there a bin liner fitted?		Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y		
Did you observe waste being sorted correctly?		Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y		
Are any A frames clean and well maintained?		Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y		

Questions	Location	Applicable to HST	Applicable to First Class	Applicable to Standard Class	Overnight station clean	Turnaround station cleans	in transit cleans
Exterior							
Are the doors clean?	C) Exterior	Y			Y		
Are the door windows clean?	C) Exterior	Y			Y		
Are all other windows clean?	C) Exterior	Y			Y		
Is the footplate stripe clearly visible?	C) Exterior	Y			Y	Y	
Is the footplate clean?	C) Exterior	Y			Y	Y	
Is door opening system (handle or button) clean?	C) Exterior	Y			Y	Y	
Are door 'open/close' lights clean and bright?	C) Exterior	Y			Y	Y	
Any other comments for this area?	NA	Y			Y	Y	Y
Vestibules							
What is the vehicle ID number?	D) Vehicle details				Y	Y	Y
Are you assessing the north or south vestibule?	E) Vestibule details				Y	Y	Y
Are the internal door control buttons clean?	F) Vestibules	Y	N		Y		
Are exterior doors clean?	F) Vestibules	Y	Y		Y		
Are drop light windows clean, including top rim (leaving no marks on hands)?	F) Vestibules	N	Y		Y		
Are vestibule walls and surfaces clean?	F) Vestibules	Y	Y		Y		
Is vestibule free of litter?	F) Vestibules	Y	Y		Y	Y	Y
Was any collected rubbish stored out of sight?	F) Vestibules	Y	Y		Y	Y	Y
Is carpeting in the vestibules clean, free of stains and debris?	F) Vestibules	Y	Y		Y	Y	
Is the vestibule free from unpleasant odours?	F) Vestibules	Y	Y		Y	Y	
Is vestibule clear of graffiti or fly posting?	F) Vestibules	Y	Y		Y	Y	
Are litter bins, clean, sound and not over-flowing?	F) Vestibules	Y	Y		Y	Y	Y
On removing the bin, is the bin void clean and free of debris?	F) Vestibules	Y	N		Y	Y	
Is the fabric area directly surrounding the bin clean?	F) Vestibules	Y	N		Y		
Are vestibule grab rails clean and free from residue?	F) Vestibules	Y	Y		Y	Y	
Are all glazed areas in the vestibule clean?	F) Vestibules	Y	N		Y		
Are the bench seats clean?	F) Vestibules	Y	N		Y		
Are the workstation surfaces clean?	F) Vestibules	Y	N		Y		
Is the cart storage and preparation area clean?	F) Vestibules	Y	N		Y		
Are the frames (and vents HST only) on internal vestibule doors clean?	F) Vestibules	Y	Y		Y		
Is interior door glazing clean and free from smears?	F) Vestibules	Y	Y		Y		
Any other comments for this area?	NA				Y	Y	Y
Toilets							
Is toilet door runner clean?	H) Toilet	Y	Y		Y		
Are toilet walls and surfaces clear of litter?	H) Toilet	Y	Y		Y	Y	Y
Are toilet walls and surfaces clean and dry?	H) Toilet	Y	Y		Y	Y	Y
Is the toilet floor clear of litter?	H) Toilet	Y	Y		Y	Y	Y
Is the toilet floor clean and dry?	H) Toilet	Y	Y		Y	Y	Y
Is the toilet floor free from flooding / overflowing?	H) Toilet	Y	Y		Y	Y	Y
Is toilet area clear of graffiti or fly posting?	H) Toilet	Y	Y		Y		

Measure	Location	Applicable to	Applicable	Overnight	Turnaround	in transit
Are windows clean and free of smears?	H) Toilet	N	Y	Y	Y	Y
Are toilet litter bins, clean, sound and not over-flowing?	H) Toilet	Y	Y	Y	Y	Y
Is the toilet free of unpleasant odours?	H) Toilet	Y	Y	Y	Y	Y
Is the toilet seat and cover clean and unmarked?	H) Toilet	Y	Y	Y	Y	Y
Is the toilet clean?	H) Toilet	Y	Y	Y	Y	Y
Does the toilet flush effectively?	H) Toilet	Y	Y	Y	Y	Y
Is the vanity unit clean and unmarked?	H) Toilet	Y	Y	Y	Y	Y
Is the sink clean and unmarked?	H) Toilet	Y	Y	Y	Y	Y
Is there no evidence of consumable items not stored correctly?	H) Toilet	Y	Y	Y	Y	Y
Is toilet mirror clean?	H) Toilet	Y	Y	Y	Y	Y
Does the toilet have toilet tissue?	H) Toilet	Y	Y	Y	Y	Y
Does the toilet have soap?	H) Toilet	Y	Y	Y	Y	Y
Does toilet have hand towels?	H) Toilet	Y	Y	Y	Y	Y
Are dispensers not over filled? (able to pull one sheet at a time)	H) Toilet	Y	Y	Y	Y	Y
Any other comments for this area?	NA	Y	Y	Y	Y	Y
Carriage						
Are you assessing a First or Standard Class?	I) Carriage	Y	Y	Y	Y	Y
Are walls and surfaces clean?	I) Carriage	Y	Y	Y	Y	Y
Is the carriage free of litter?	I) Carriage	Y	Y	Y	Y	Y
Are litter bins, clean, sound and not over-flowing?	I) Carriage	Y	Y	Y	Y	Y
Is carriage interior clear of graffiti or fly posting?	I) Carriage	Y	Y	Y	Y	Y
Is the carriage free from unpleasant odours?	I) Carriage	Y	Y	Y	Y	Y
Are luggage racks / areas clean?	I) Carriage	Y	Y	Y	Y	Y
Is carpeting in the carriage clean, free of stains and debris?	I) Carriage	Y	Y	Y	Y	Y
Are seats clean?	I) Carriage	Y	Y	Y	Y	Y
Are chair arms clean?	I) Carriage	Y	Y	Y	Y	Y
Are antimacassars correctly attached (straight and neat)?	I) Carriage	Y	Y	Y	Y	Y
Are antimacassars clean?	I) Carriage	Y	Y	Y	Y	Y
Are seat reservation labels appropriate to this journey?	I) Carriage	Y	Y	Y	Y	Y
Are seat reservations placed onto seats correctly and neatly?	I) Carriage	Y	Y	Y	Y	Y
Are drop down tables clean, dry and stain free with no pen marks, graffiti, or stickers on both sides?	I) Carriage	Y	Y	Y	Y	Y
Are hinge areas and supports for drop down tables clean?	I) Carriage	Y	Y	Y	Y	Y
Are tables clean?	I) Carriage	Y	Y	Y	Y	Y
Table edging - is it clean?	I) Carriage	Y	Y	Y	Y	Y
Are carriage windows clean and smear-free?	I) Carriage	Y	Y	Y	Y	Y
Are window ledges that are visible to customers, clean and free of dust?	I) Carriage	Y	Y	Y	Y	Y
Is 'curtain track' clean and free of debris and grime?	I) Carriage	Y	Y	Y	Y	Y
Any other comments for this area?	NA	Y	N	Y	Y	Y
Café Bar						
Does the kitchen and entrance area appear clean, tidy, clear of rubbish and present a professional appearance to the customer?	K) Café bar			Y	Y	Y
Is the floor clean?	K) Café bar			Y	Y	Y
Is the floor free of litter?	K) Café bar			Y	Y	Y
Are the walls clean?	K) Café bar			Y	Y	Y
Is the ceiling clean?	K) Café bar			Y	Y	Y

Worksheet	Location	Applicable to	Applicable to	Overnight	Turnaround	In transit
Are counter tops clean?	K) Café bar			Y		
Are windows and glazed panels clean?	K) Café bar			Y		
Is the ambient display clean?	K) Café bar			Y		
Are all catering vehicle ventilation panels clean and free of dust?	K) Café bar			Y		
Any other comments for this area?	NA			Y	Y	Y
Staff Area						
Is the floor clean?	L) Staff Area	Y	N	Y	Y	
Is the floor free of litter?	L) Staff Area	Y	N	Y	Y	Y
Are the walls clean?	L) Staff Area	Y	N	Y		
Is the ceiling clean?	L) Staff Area	Y	N	Y		
Are workstations clean?	L) Staff Area	Y	N	Y		
Are fridge fascias clean?	L) Staff Area	Y	N	Y		
Are seats clean?	L) Staff Area	Y	N	Y	Y	
Are chair arms clean?	L) Staff Area	Y	N	Y		
Are tables clean?	L) Staff Area	Y	N	Y	Y	
Table edging - is it clean?	L) Staff Area	Y	N	Y	Y	
Are internal doors clean? (both sides of door)	L) Staff Area	Y	N	Y		
Are windows clean and free of smears?	L) Staff Area	Y	N	Y		
Are window ledges clean and free from dust?	L) Staff Area	Y	N	Y		
Any other comments for this area?	NA			Y	Y	Y
Guards Office						
Does the guards office appear clean, tidy and present a professional appearance to the customer?	M) Guards office			Y		
Any other comments for this area?	NA			Y		
In Transit Cleaning						
Is an in transit cleaner scheduled to be on this service?	N) In transit cleaning					Y
Is there an in transit cleaner on this service?	N) In transit cleaning					Y
Storage/Refrigerator						
Any other comments for this area?	NA			Y		

Appendix 2A

SERVICE LEVELS

The following Service Levels apply in respect of the Services to be provided by ECML under this Agreement. The Target Service Levels, Minimum Service Levels and Default Service Levels set forth below will be defined by reference to the Service Specification.

1	2	3	3
Service number	Service Level Name	Target Service Level	Default Service Level
1	Station Services	97%	87%
2	Train Fleet Services	92%	82%

Schedule 3 Pricing

Lot No.	Activity	Operative Hours per week	Supervisor Hours per week	Lot Price - Full Year from 01/04/2013 £'s	Lot Price 13/10/2013 to 31/03/2014
1	In transit cleaning coverage as per the In transit time table	1,553.10	102.40		
2	Turnaround Cleaning and Tanking at Leeds Station	862.25	40.00		
3	Turnaround Cleaning and Tanking at Kings Cross Station	2,536.00	56.00		
34	Turnaround Cleaning and Tanking at Newcastle Station	284.00	-		
35	Turnaround Cleaning and Tanking at Edinburgh Waverley Station	448.00	56.00		
4	Overnight Cleaning @ Kings Cross Station (3 trains p/night)	392.00	49.00		
5	Overnight Cleaning @ Leeds Station & York Station 1 train 6 nights p/week, 1 train 1 night p/week at York	116.00	-		
6	Heavy & Chemical Cleaning to the HST Fleet at Aberdeen (35 day Heavy Clean each set - every 4th Heavy Clean is a combined Heavy & Chemical Clean i.e. 140 days)	202.50	27.00		
7	Heavy & Chemical Cleaning to the MK4 Fleet at Bounds Green (35 day Heavy Clean each set - every 4th Heavy Clean is a combined Heavy & Chemical Clean i.e. 140 days)	496.00	52.00		
8	Weekly steam clean of all train toilets	144.00			
9	Weekly steam clean of all Buffet areas	88.00			
10	Hand bash of wrap round ends - on 2 week cycle	-			
11	External Hand bash and Polishing regime	-			
12	Facilities cleaning at Dunbar Station	-			
13	Facilities cleaning at Berwick-upon-Tweed Station	84.00	10.50		
14	Facilities cleaning at Newcastle Station	588.00	40.00		
15	Facilities cleaning at Durham Station	168.00	10.50		
16	Facilities cleaning at Darlington	168.00	10.50		

Lot No.	Activity	Operative Hours per week	Supervisor Hours per week	Lot Price - Full Year from 01/04/2013 £'s	Lot Price 13/10/2013 to 31/03/2014
	Station				
17	Facilities cleaning at York Station	560.00	42.00		
18	Facilities cleaning at Wakefield Westgate Station	100.00	10.50		
19	Facilities cleaning at Doncaster Station	364.00	8.40		
20	Facilities cleaning at Retford Station	98.00	10.50		
21	Facilities cleaning at Newark Northgate Station	98.00	10.50		
22	Facilities cleaning at Grantham Station	98.00	10.50		
23	Facilities cleaning at Peterborough Station	280.00	10.50		
24	Travel centre cleaning at Stevenage Station	1.75	-		
25	Travel centre cleaning at London Kings Cross Station	91.00	-		
26	Travel centre cleaning at Edinburgh Waverly Station	21.00	-		
27	Travel centre cleaning at Leeds Station	42.50	8.40		
28	Office cleaning in Edinburgh	84.00	8.40		
29	Office cleaning in Leeds	42.00	8.40		
30	Office cleaning in London	21.00			
31	Office cleaning in York	80.00			
32	Window cleaning of facilities throughout business	120.00			
33	Specialist cleaning				
	Total Fleet & Station Cleaning	1,0231.1	582		

The Charges set out in this Schedule 3 shall be adjusted on the 1st April 2014 and at the start of each Contract Year thereafter for the Term of this Agreement, and any extension thereof, on the following basis.

Non Management Staff:

London based rate per hour assuming a 2% Increase in the London Living Wage each year :		Apr 14	Apr 15	Apr 16
Basic Operative		£7.55	£8.35	£9.16
Day Time Tankers		£7.90	£8.70	£9.50
Basic Operative – Nights		£8.19	£8.95	£9.72
Team Leader		£8.70	£9.43	£10.15
Night Time Tankers		£8.68	£9.40	£10.11
Senior Supervisor		£10.10	£10.76	£11.41

In the event that the percentage increase in the London Living Wage ("LLW Increase") is greater than the assumed 2% Increase, the Charges shall be adjusted by the difference between the 2% already applied and the LLW Increase. Such further adjustment shall be applied within 30 days of the effective date of the LLW Increase.

Non-London based:

By the annual percentage Increase in the Retail Price Index (the "RPI Increase") as measured in February of each year. In the event that the percentage Increase in the National Minimum Wage ("NMW Increase") is greater than the RPI Increase awarded at the start of the Contract Year, the Charges shall be adjusted by the difference between the RPI Increase already applied and the NMW Increase. Such further adjustment shall be applied within 30 days of the effective date of the NMW Increase.

Management staff:

to be increased by RPI.

All other costs:

to be increased by RPI - 1%.

For the purpose of this Schedule 3,

London Living Wage means the current London hourly rate of pay deemed adequate for a London worker to provide their family with the essentials of life by the Living Wage Foundation and set by the Greater London Authority annually each November;

RPI the Retail Prices Index for February in the relevant Contract Year or 0%, whichever is the greater; and

Retail Prices Index means the retail prices index for the whole economy of the United Kingdom and for all items as published from time to time by the Office for National Statistics as "RPI" or, if such index shall cease to be published or there is, in the reasonable opinion of ECML, a material change in the basis of the index or if, at any relevant time, there is a delay in the publication of the index, such other retail prices index as ECML may, after consultation with ISS, determine to be appropriate in the circumstances.

Schedule 4 List of Premises

ECML Premises

- | | |
|---|---|
| 1. Kings Cross Station
Euston Road
London
N1 9AL | 10. Leeds Station
Aire Street
Leeds
LS1 4DY |
| 2. Bounds Green Depot
Bridge Road
Wood Green
London
N22 7SE | 11. York Station
Station Road
York
YO24 1AB |
| 3. Stevenage Station
Lytton Way
Stevenage
SG1 1XT | 12. East Coast House
25 Skeldergate
York
YO1 6DH |
| 4. Peterborough Station
Station Road
Peterborough
PE1 1QL | 13. Darlington Station
Bank Top
Darlington
DL1 4AA |
| 5. Grantham Station
Station Road
Grantham
NG31 6BT | 14. Durham Station
North Rd
Durham
DH1 4RB |
| 6. Newark Northgate Station
Appletongate
Newark
NG24 1LS | 15. Newcastle Central Station
Neville Street
Newcastle
NE1 5DL |
| 7. Retford Station
Station Road
Retford
DN22 7DE | 16. Berwick Station
Railway Street
Berwick on Tweed
TD15 1NF |
| 8. Doncaster Station
Station Court
Doncaster
DN1 1PE | 17. Waverley Station
Edinburgh
EH1 1BB |
| 9. Wakefield Station
Westgate
Wakefield
WF1 1XP | 18. Clayhills Depot
South College Street
Aberdeen
A11 6JW |

Schedule 5 Meeting Structure Matrix

Part 1: Meeting Structure Matrix

A STATIONS

Meeting	Attendees	Purpose	Chair	Frequency	Output	Circulation List
Local Period review meetings	Station Managers Local ISS Managers	Review the previous Periods audits and discuss any issues. Review locally hours provided	Station Manager	Monthly	Action plan Identifying repeat failures requiring a focus	Attendees Station Delivery Manager
Stations Contract Review	Phil Cooke Chas Kay Brian Cleary Christine Humphries 1x Station Manager Head of Purchasing and Contracts	Review implementation progress Review Schedules Review SLA's & Identify locations requiring a focus. Resolve issues escalated from local meetings	Phil Cooke	Monthly	Agreed changes to split of hours / schedules Action Plans for underperforming stations, Allocation of any banked hours	Attendees Head of Stations

Part 1: Meeting Structure Matrix

B FLEET ONLY

Meeting	Attendees	Purpose	Chair	Frequency	Output	Circ.
ISS Periodic Fleet Review	EC CM ISS CM	To review the period in retrospect and agree resulting actions going forward, agree any applicable penalties to be banked, consideration to any change events	EC CM	EC Periodically	The supplier will be expected to create a report, for review at the meeting the detail / content to be further agreed but should not be limited to the following: <ul style="list-style-type: none"> • Report on Health & Safety incidents / accidents / near misses etc. • Review previous actions and solutions • Period Overview • Highlights / Lowlights for each w/stream • SQMS results • Hours V's Lot - evidence 	EC CM EC FM EC Eng Director
Ad-hoc	Selective	Discuss & plan actions on individual issues as they arise	EC or ISS	Ad - hoc	To deliver an enhanced and tailored service for the benefit of Mrs Jones	All attendees and others with relevant input

Part 2: Information/Reports

Frequency	Report Description	Type	Submission date	Circulation list EC
<i>Daily</i>	Accident / Incident Report	By Exception - Health and Safety	By 1700hrs each day	EC CM, EC H&S team
<i>Periodic</i>	KPI Report	<p>Detail for individual work streams:</p> <ol style="list-style-type: none"> 1) Hours: Report that details Actual hours by week/period V's tendered hours 2) SQMS: Report that details SQMS scores by w/stream and details a) actions for increasing scores in areas where SQMS is not being met and b) suggested actions for areas where efficiencies can be made 	After end of period but 5 working days before Period Fleet review meeting – see above	All Fleet Review meeting attendees – see above

Schedule 6 ISS Business Continuity Plan

Business Continuity Management

Disaster Recovery plans have been defined to ensure that ISS can continue to operate despite any unforeseen situation. As the majority of our business operates at remote and client sites, we adopt both a corporate and site specific plan.

ISS head office is protected in the following manner:

- Reciprocal agreement to operate from alternative premises under agreement with a local company
- Data regularly backed-up and stored off site in a fire proof safe
- Critical processes, such as the Helpdesk, operate through an intranet ASP provider
- We are able to divert email to alternative site locations
- ISS operate from a number of regional offices each of which have the ability to host our head office operations in the event of an unforeseen situation arising at any one location.

In addition to the above we have the ability to upload data and information at operational and remote sites.

Within our Management System we have a procedure that defines the activities for data back-up and managing power outages.

Due to the sensitivity, client confidentiality and the size of the business continuity and emergency procedure documents, we are unable to provide copies at this stage. The contents of the procedures ensure that we are able to:

- Safely and efficiently manage emergency situations
- Minimise effects of unplanned and sudden occurrences
- Prevent injury or loss of life during such occurrences
- Contain property damage and protect company assets
- Minimise business disruption

The information contained in the business continuity and emergency procedure is unique to each site, but typically contains the following information.

- Introduction
- Scope
- Emergency Personnel
- Emergency Procedures Awareness
- Fire Precautions
- Emergency Plans / Maps
- Emergency Procedures
 - Fire
 - Bomb threat
 - First aid and medical emergencies
 - Anthrax and other biological agent threats
 - Loss of building services
 - Lift entrapment
 - Local disaster / crisis

- Planned evacuation drills
 - Re-occupation of the building
 - Demonstrators/ intruders
- Attachments
 - Schedule of tests and inspections
 - Weekly fire alarm test procedures
 - Bomb threat checklist
 - First aid checklist
 - Emergency contact list
 - Evacuation drill procedure
 - Evacuation checklist
 - Annual self audit questionnaire
 - Fire log book

In developing site specific Business Continuity plans, we look at all points of failure and risk. At a component level we look at single points of failure and determine the appropriate critical spares holding. From a supply chain perspective we go through a rigorous Vendor Appraisal process to ensure that all suppliers are financially stable and capable of delivering the services. Should part of the supply chain fail and be unable to deliver the services we have a number of backup measures we can deploy:

- Local management and agency staff
- In house capabilities to deliver the services
- Agreements with other service providers

On specific accounts we cross-train staff from other sites so that we can deploy knowledgeable resources at the point of need.

In addition to the above we ensure the Management Systems and site documentation are fully up to date. This allows alternative sources to come to site and operate in a very efficient timescale.

We maintain a 24-hour-a-day manned control centre that can receive damage reports from the claimants on behalf of the insurance community, receive alarm calls from the fire authorities, or be called in directly by businesses.

Schedule 7 Employment and TUPE

1. DEFINITIONS

1.1. In this Schedule 7, the following definitions and rules of interpretation apply.

ECML Personnel: those employees of ECML the names of which are listed in Appendix 1 of this Schedule 7

ECML Staffing Information: staffing Information regarding ECML Personnel.

Employment Costs: all salaries, wages, commissions, bonuses, all statutory contributions, holiday pay (including payment for accrued but untaken holiday), national insurance contributions, pension contributions made to or on behalf of an employee, taxation (including all income tax deductible under PAYE) and all other employment costs (such as the provision of non-pecuniary benefits).

Final ISS Staffing Information:

- (a) ISS Staff List;
- (b) Staffing Information regarding ISS Personnel on the ISS Staff List;
- (c) any additional material terms and conditions of employment and/or Employment Costs of persons listed on the ISS Staff List;
- (d) any additional information provided under paragraph 4.8.2 of this Schedule; and
- (e) a list of any ISS Personnel alleged by the ISS not to be Re-Transferring Employees

Further Transfer Date: the date on which the Services (or any part of them) cease to be provided by ISS and Replacement Services start to be performed by the ECML or any Replacement Supplier.

New Employer: such of ECML, the Replacement Supplier to whom ISS Personnel will transfer under TUPE on a Further Transfer Date.

Relevant EI Policy: any contract of insurance remaining in force at the Relevant Transfer Date (a) giving indemnity against liability as an employer including employer's liability; (b) being a permanent health or prolonged disability policy covering employees performing the Services; or (c) being an employment protection policy, in all cases where the benefit of such contracts are deemed to transfer to ISS pursuant to TUPE.

Relevant Transfer Date: the Start Date or such other date determined under the law relating to TUPE as being the date of the relevant transfer.

Replacement Supplier: any replacement supplier or provider appointed (or proposed to be appointed) by ECML to provide replacement services.

Replacement Services: Services the same as or substantially similar to the Services (or any part of them) or which will or may be received in place of or in substitution for the Services or otherwise have the same or similar use or application as the Services (or any part of them) or their outputs.

Re-Transferring Employees: any ISS Personnel who are wholly or mainly assigned to the relevant Services or part thereof immediately before the Further Transfer Date and whose employment

contract will transfer to the New Employer pursuant to TUPE with effect from the Further Transfer Date.

Staffing Information: in respect of each relevant individual:

- (f) identity and job title;
- (g) role profile;
- (h) place of work;
- (i) date of commencement of continuous employment;
- (j) date of birth;
- (k) basic pay;
- (l) variable pay (including scale, method of calculation and intervals of payment);
- (m) all relevant contractual or non-contractual termination or severance arrangements (including the method of calculation of any termination or redundancy payments);
- (n) all benefits contractual or non-contractual including pension, bonus options, equity participation and any other incentive schemes;
- (o) contractual holiday entitlements and any additional holiday days purchased;
- (p) notice periods;
- (q) copy of employment contract or applicable standard terms and employee handbook;
- (r) contractual hours of work;
- (s) details of the relevant employee representative body or bodies and relevant collective agreements;
- (t) any loans or educational grants;
- (u) for those employees who are foreign nationals the country of citizenship, immigrant status and all documentation required by Applicable Law to demonstrate a right to work in the [United Kingdom]/[jurisdiction in which they work];
- (v) information on any disciplinary or grievance procedure taken against or by an employee in the two years immediately preceding the information being provided;
- (w) information about any tribunal claims in the immediately preceding two years or whether there are reasonable grounds to believe a claim may be brought;
- (x) department and place on organisation chart;
- (y) training and competency records; and
- (z) terms of any outstanding retention bonus (including a payment schedule with amounts specified)

ISS Personnel: the employees of ISS who are wholly or mainly assigned to the provision of the Services (or part of the Services) under this Agreement

ISS Staff List: a list of ISS Personnel, prepared by or on behalf of ISS, who are wholly or mainly assigned to work in the provision of all or part of the relevant Services and who are liable to transfer to the New Employer pursuant to TUPE on a Further Transfer Date

Termination Notice Period: the date that is 6 months prior to the date of expiry of this Agreement or, if earlier, the date on which Notice is served to terminate this Agreement (or part of this Agreement)

Termination Notice Period: the period starting on the Termination Notice Date and ending on the date this Agreement terminates for whatever reason.

Transferring Services: the services performed by ECML Personnel immediately prior to the Relevant Transfer Date in connection with the Services transferred on that date to ISS under TUPE.

TUPE: the Transfer of Undertakings (Protection of Employment) Regulations 2006.

2. ECML PERSONNEL AND THE APPLICATION OF TUPE

2.1. The Parties acknowledge that TUPE applies to the arrangements contemplated under this Agreement and that, pursuant to TUPE, the contracts of employment between ECML and each of the ECML Personnel will have effect from the start of business on the Relevant Transfer Date as if originally made between ISS and each of the ECML Personnel (except in relation to rights under any occupational pension scheme excluded under Regulation 10 of TUPE which will be subject to the provisions of **paragraph 3.2 of this Schedule 7**) but excluding any ECML Personnel who prior to the Relevant Transfer Date:

- 2.1.1. are no longer employed by ECML;
- 2.1.2. have accepted an offer of alternative employment by ECML; or
- 2.1.3. object to becoming employees of ISS in accordance with TUPE.

2.2. All Employment Costs (whether or not due for payment at the relevant date) in respect of:

- 2.2.1. ECML Personnel will be the responsibility of ECML (as appropriate) up to the Relevant Transfer Date; and
- 2.2.2. ISS Personnel will be the responsibility of ISS on and from the Relevant Transfer Date and for so long as they remain employed by ISS up to and including the Further Transfer Date, and will, if necessary and save as to payments in respect of accrued holiday entitlement up to the Relevant Transfer Date, be apportioned on a time basis between ECML and ISS.

2.3. ECML will in respect of the ECML Personnel:

- 2.3.1. comply with its information and consultation obligations under TUPE;
- 2.3.2. in good time before the Relevant Transfer Date, and in any event at least 14 days in advance of the Relevant Transfer Date provide ECML Staffing Information to ISS. Where ECML becomes aware of any changes to ECML Staffing Information it will notify ISS in writing within seven days of becoming aware of any such change;
- 2.3.3. permit ISS reasonable access for the purposes of knowledge transfer, orientation and training, including the giving of presentations and holding of discussions to consult with ECML Personnel.

- 2.4 ECML warrants to ISS that as at the date of this Agreement none of the ECM Personnel (save where ECML has given written notice to ISS to the contrary prior to the date of this Agreement) to ECML's knowledge:
 - 2.4.1 is under notice of termination or will be given notice of termination;
 - 2.4.2 is on long-term sick leave;
 - 2.4.3 is pregnant or on maternity or paternity leave;
 - 2.4.4 has committed any serious security, data protection or other similar breach or engaged in any fraudulent activity or serious misconduct;
 - 2.4.5 is entitled to or has been promised any additional terms and conditions of employment other than those disclosed to the Supplier;
 - 2.4.6 is the subject of formal disciplinary or employment tribunal proceedings;
 - 2.4.7 has received a written warning (other than a warning that has lapsed);
 - 2.4.8 has taken or is the subject of a grievance procedure;
 - 2.4.9 has, in the preceding six months, been predominantly employed other than in providing the Transferring Services;
 - 2.4.10 has objected, or has indicated an intention to object, in accordance with Regulation 4 of TUPE to his employment transferring to the Supplier under TUPE;
 - 2.4.11 is on secondment;
 - 2.4.12 is owed any remuneration or benefit of any sort other than the current month's salary; or
 - 2.4.13 lacks the right to work in the United Kingdom
- 2.5 ECML will indemnify ISS in relation to:
 - 2.5.1 all losses, damages, liabilities, expenses, costs, actions, awards, penalties, fines and proceedings which ISS may suffer or incur arising out of or in connection with any claim or threatened claim or other legal recourse by all or any ECML Personnel in respect of:
 - (a) any matter concerning or arising from the employment or termination of employment with ECML before the date of transfer; and
 - (b) any act, omission or default of ECML; and
 - (c) any claim for breach of contract, unlawful deduction of wages, or any claim under the Equal Pay Act 1970 (as amended) arising as a result of ISS continuing, in good faith, to pay the employees and provide benefits under the same terms and conditions provided by ECML before the date of transfer.
 - 2.5.2 ECML's failure to inform or consult appropriate representatives as required under Regulation 13 of TUPE (except to the extent that any such action or claim or part of any such action or claim arises from any failure by ISS to give ECML the information

required from ISS to enable ECML to comply with its obligations under TUPE or ISS giving inaccurate information).

2.6 If any person who is not ECML Personnel claims that, as a result of the Parties entering into this Agreement, his contract of employment has transferred to ISS pursuant to TUPE the following provisions will apply:

- 2.6.1 ISS will notify ECML in writing within seven days of becoming aware of such claim;
- 2.6.2 within 14 days of such notification, ECML may either offer employment to that person or take, at its own cost, such other steps as it considers necessary to effect a written withdrawal of that person's claim;
- 2.6.3 if ECML offers employment to that person and that offer of employment is accepted, ISS will immediately release that person from his or her employment; and
- 2.6.4 if ECML makes no offer or offers employment to that person and that offer of employment is not accepted within [28 days of the date when ECML was notified in writing by ISS of that person's claim, or if that person fails to withdraw his or her claim within 28 days of such notification, ISS may give written notice to terminate the employment of that person within seven days of the expiry of the 28 day period from the notification by ISS, provided that ISS will give that person notice of termination in accordance with his or her contract of employment and any relevant statutory rights, or make a payment in lieu of notice based on and in accordance with that person's statutory and contractual entitlements.

2.7 ECML will indemnify ISS in relation to:

- 2.7.1 the termination of employment of any person claiming employment by ISS in accordance with paragraph 2.6.

2.8 ISS will provide ECML, as soon as practicable but in any event in good time before the Relevant Transfer Date with all information which ECML may require to enable it to comply with its information and consultation obligations under TUPE.

2.9 ISS warrants and undertakes to ECML that all information given to ECML regarding ECML Personnel and any measures ISS proposes to take in relation to them is and will be full and accurate in all material respects.

2.10 ISS undertakes to honour the provisions of TUPE and accept ECML Personnel into its employment with effect from the Relevant Transfer Date on terms and conditions of employment which are substantially the same terms and conditions and no less favourable overall than those which they enjoyed immediately prior to the Relevant Transfer Date (other than in relation to any occupational pension scheme (as defined in TUPE) with respect to which paragraph 3.2 will apply).

3. ISS PERSONNEL AND PROVISION OF THE SERVICES

3.1. On and from the Relevant Transfer Date ISS will assume and retain full responsibility for:

- 3.1.1. the management and employment of ECML Personnel including all Employment Costs; and
 - 3.1.2. the acts and omissions of ECML Personnel in the provision of the Services,
- and ECML Personnel will on that date become part of ISS Personnel.
- 3.2. ISS will with effect from the Relevant Transfer Date discharge any relevant obligation under TUPE as regards pensions and will otherwise provide ECML Personnel with effect from the Relevant Transfer Date access to a pension scheme and pension benefits that comply with the Pensions Act 2004, any relevant regulations made thereunder and in particular the Transfer of Employment (Pension Protection) Regulations 2005].
 - 3.3. ISS will Indemnify ECML in relation to:
 - 3.3.1. any act, omission or default by or on behalf of ISS on or after the Relevant Transfer Date in respect of any person employed or engaged by it;
 - 3.3.2. the employment or termination of employment by ISS of any ISS Personnel (whether or not terminated by notice and, if so terminated, whenever that notice expires) on or from the Relevant Transfer Date ;
 - 3.3.3. any failure by ISS to inform or consult appropriate representatives as required under Regulation 13 of TUPE and/or any failure or delay by ISS to provide sufficient information to ECML to enable it to comply with its information and consultation obligations under TUPE;
 - 3.3.4. any claim brought or other action taken by or on behalf of any of ECML Personnel which arises from or in connection with (directly or indirectly) any act or omission and/or communication made to ECML Personnel before the Relevant Transfer Date by, on behalf of and/or at the instruction of ISS including any claim under Regulations 4(9) or 4(11) of TUPE; and
 - 3.3.5. any actual, proposed or anticipated changes made by ISS to the terms and conditions of employment of any of ECML Personnel which are or are alleged to be to the detriment of any of ECML Personnel.

4. PROVISIONS ON TERMINATION OF THIS AGREEMENT (IN WHOLE OR IN PART)

4.1. ISS will:

- 4.1.1. in accordance with **clause [X]**; and
- 4.1.2. at any other time within 7 days of a request by ECML;

provide ECML (to the extent permitted by law) in writing and in such form as ECML reasonably requires, with ISS Personnel and Staffing Information in respect of all ISS Personnel.

- 4.2. ISS will notify ECML in writing in as much detail as possible as soon as practicable and in any event within 7 days of ISS becoming aware of any additional or new applicable Staffing Information and/or any changes to any Staffing Information already provided.

- 4.3. ISS undertakes to ECML on its own behalf and on behalf of the New Employer that any Staffing Information which it supplies (including any copies of it) will be complete and accurate in all material respects.
- 4.4. Subject to paragraph 4.2, ISS will provide the New Employer with the Final Supplier Staffing Information not less than 7 days before the Termination Date.
- 4.5. During the Termination Notice Period ISS undertakes to ECML that it on its own behalf and on behalf of the New Employer will not without the prior written consent of ECML:
- 4.5.1. terminate or give notice to terminate the employment or engagement of, or replace, any ISS Personnel;
 - 4.5.2. deploy or assign any person to perform the Services who is not already doing so with the effect that the number of ISS Personnel increases;
 - 4.5.3. make, propose or permit any changes to the terms and conditions of employment or engagement of ISS Personnel;
 - 4.5.4. increase or reduce to any significant degree the proportion of working time spent on the Services by any of ISS Personnel; or
 - 4.5.5. introduce any new contractual or customary practice (including for the avoidance of doubt any payments on termination of employment) applicable to ISS Personnel,
- or agree to do any of the above.
- 4.6. ISS will promptly notify ECML in writing of any notice of resignation received from any person listed on the most recent ISS Staff List during the period referred to in paragraph 4.5 regardless of when such notice takes effect.
- 4.7. ISS confirms that ECML will, subject to compliance with any applicable Laws or official guidance relating to data protection, be permitted to disclose any information provided to it under this paragraph 4 in summary and/or anonymised form to any person who has been invited to tender for the provision of the Services or part of the Services (or similar services in whole or in part) and to any New Employer.
- 4.8. The Parties acknowledge that TUPE is likely to apply on the expiration or termination of this Agreement and/or the appointment of a Replacement Supplier to provide all or any part of the Replacement Services and agree that:
- 4.8.1. the contracts of employment of all the Re-Transferring Employees will have effect from the Further Transfer Date as if originally made between the Re-Transferring Employees and the New Employer (except in relation to rights under any occupational pension scheme excluded under Regulation 10 of TUPE which will be treated in accordance with the provisions of the Pensions Act 2004, any regulations thereunder, and in particular the Transfer of Employment (Pension Protection) Regulations 2005);
 - 4.8.2. during the period commencing on the Termination Notice Date and ending on the Further Transfer Date ISS will:
 - 4.8.2.1. promptly provide the New Employer with access to such employment records as the New Employer may require to put in place the administrative

- arrangements for the transfer of the contracts of employment of the Re-Transferring Employees to the New Employer;
- 4.8.2.2. allow the New Employer to have copies of any of the documents referred to in paragraph 4.8.2.1; and
- 4.8.2.3. provide all original employment records relating to the Re-Transferring Employees to the New Employer.
- 4.8.3. ISS warrants to New Employer that (except where ISS has notified ECML and the New Employer (if different) in writing to the contrary) as at the Further Transfer Date none of ISS Personnel to ISS's knowledge having made due enquiry:
 - 4.8.3.1. is under notice of termination or will be given notice of termination;
 - 4.8.3.2. is on long-term sick leave;
 - 4.8.3.3. is pregnant or on maternity or paternity leave;
 - 4.8.3.4. has committed any serious security, data protection or other similar breach or engaged in any fraudulent activity or serious misconduct;
 - 4.8.3.5. is entitled to or has been promised any additional terms and conditions of employment other than those disclosed to ECML and the New Employer;
 - 4.8.3.6. is the subject of formal disciplinary or employment tribunal proceedings or order;
 - 4.8.3.7. has received a written warning (other than a warning that has lapsed);
 - 4.8.3.8. has taken or is the subject of a grievance procedure;
 - 4.8.3.9. has, in the preceding six (6) months, been predominantly employed other than in providing the Services;
 - 4.8.3.10. has objected, or has indicated an intention to object, in accordance with Regulation 4 of TUPE to his or her employment transferring to the New Employer under TUPE;
 - 4.8.3.11. is on secondment;
 - 4.8.3.12. is owed any remuneration or benefit of any sort other than the current month's salary; or
 - 4.8.3.13. lacks the continuing right to work in the United Kingdom.
- 4.8.4. ISS undertakes to the New Employer that it will:
 - 4.8.4.1. continue to perform and observe all of its obligations and those of any of its predecessors under or in connection with the contracts of employment of the Re-Transferring Employees up to the Further Transfer Date;
 - 4.8.4.2. pay to the Re-Transferring Employees all sums to which they are entitled from ISS (or the relevant Supplier Party (as appropriate)) up to the Further Transfer Date (regardless of when such sums fall due) including, all wages and salaries, sick pay, maternity pay, any liability to taxation, expenses, accrued bonus, commission and other sums payable in respect of any period up to the Further Transfer Date; and

- 4.8.4.3. comply in all respects with its information and consultation obligations under TUPE and provide to the New Employer such information as the New Employer may request in order to verify such compliance.

4.9. In respect of the Re-Transferring Employees the Parties agree that all Employment Costs will be apportioned on a time basis (regardless of when such sums fall to be paid) as follows:

- 4.9.1. up to and including the Further Transfer Date ISS will be responsible for the Employment Costs;
- 4.9.2. after the Further Transfer Date the New Employer will be responsible for the Employment Costs

except that there will be no apportionment in respect of holiday entitlements. ISS will procure that ISS complies with this paragraph 4.9.

4.10. ISS will indemnify the New Employer in relation to:

- 4.10.1. any failure by ISS to comply with its obligations under paragraph 4.8.4;
- 4.10.2. any act, omission or default by or on behalf of ISS in respect of any person who is or was employed or engaged by ISS, except in the case of the Re-Transferring Employees where ISS's Indemnity will only apply in respect of such employees insofar as and to the extent that any such act, omission or default occurred on or before the Further Transfer Date or was undertaken by, on behalf of or at the instruction of ISS;
- 4.10.3. the employment or termination of employment by ISS of any of the Re-Transferring Employees up to and including the Further Transfer Date;
- 4.10.4. ISS's failure to inform or consult appropriate representatives as required under Regulation 13 of TUPE (except to the extent that any such action or claim or part of any such action or claim arises from any failure by the New Employer to give ISS the information required from it or them to enable ISS to comply with its obligations under TUPE);
- 4.10.5. any failure or delay by ISS to provide employee liability information to the New Employer in accordance with Regulation 11 of TUPE;
- 4.10.6. any claim brought or other action taken by or on behalf of any of the Re-Transferring Employees which arises from or in connection with (directly or indirectly) any act or omission and/or communication made to any of them before the Further Transfer Date by, on behalf of and/or at the instruction of ISS including any claim under Regulations 4(9), 4(11) or 7(1) of TUPE.

4.11. If any person who is not a Re-Transferring Employee claims that his contract of employment has transferred to the New Employer pursuant to TUPE the following provisions will apply:

- 4.11.1. ECML will (or if ECML is not the New Employer will use its reasonable endeavours to procure that the New Employer will) notify ISS in writing within seven days of becoming aware of such claim;
- 4.11.2. within 14 days of such notification, ISS may either offer employment to that person or take, at its own cost, such other steps as it considers necessary to effect a written withdrawal of that person's claim;
- 4.11.3. if ISS offers employment to that person and that offer of employment is accepted, ECML will (or if ECML is not the New Employer, ECML will at ISS's request use its reasonable

endeavours to procure that the New Employer will) immediately release that person from his or her employment; and

- 4.11.4. if ISS makes no offer or offers employment to that person and that offer of employment is not accepted within 28 days of the date when ISS was notified by ECML of the person's claim, or if that person fails to withdraw his or her claim within 28 days of such notification, the New Employer may give notice to terminate the employment of that person within seven days of the expiry of the 28 day period from ECML notification by ECML, provided that ECML will (or if ECML is not the New Employer, ECML will at ISS's request use its reasonable endeavours to procure that the New Employer will give that person notice of termination in accordance with his or her contract of employment and any relevant statutory rights, or make a payment in lieu of notice based on and in accordance with that person's statutory and contractual entitlements.

4.12. ISS will Indemnify the New Employer in relation to:

- 4.12.1. the termination of employment of any person claiming employment by the New Employer in accordance with paragraph 4.11;
- 4.12.2. the time the counterparty to such person's contract of employment was not the New Employer and where the transfer to the New Employer is as a result of the operation of TUPE; and
- 4.12.3. acts or omissions (other than of the New Employer) during any period when the counterparty to any such person's contract of employment is the New Employer (save in respect of any period where such person provides services at the request of the New Employer) provided that ECML will (or if ECML is not the New Employer, ECML will use its reasonable endeavours to procure that the New Employer will) use its reasonable endeavours not to increase the value of the Indemnity arising during any period when the counterparty to such person's contract of employment is the New Employer.

4.13. Without prejudice to its rights pursuant to this Agreement will procure that whenever ECML so requires on reasonable notice at any time during the Term and for six years following the Termination Date ECML will be given access to and be allowed to consult with any person, consultant or employee who, at that time:

- 4.13.1. is still an employee of ISS or any member of ISS's Group; and
- 4.13.2. was at any time employed or engaged by ISS or any member of ISS's Group directly or indirectly in relation to the provision of the Services or the performance by ISS of its other obligations pursuant to this Agreement,


and such access and consultation will be provided free of charge. ISS will further procure that all such persons co operate with ECML's requests.

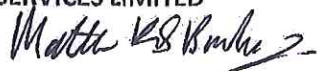
Appendix 1 of Schedule 7


ECML Personnel

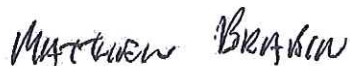
John Pears


IN WITNESS of the foregoing the Parties have caused this Agreement to be duly executed on the date first mentioned above.

Signed by 
for and on behalf of ISS FACILITY
SERVICES LIMITED





Director



Signed by 
for and on behalf of EAST COAST
MAIN LINE COMPANY LIMITED

Signed by 
for and on behalf of EAST COAST
MAIN LINE COMPANY LIMITED


Director


Director