

- 35.8 The Service Provider shall ensure that those of its Subcontractors or suppliers who operate Delivery and Servicing Vehicles to provide the Spares shall:
- 35.8.1 comply with Clause 35.2; and
- 35.8.2 where its Subcontractors or suppliers operate the following vehicles to provide the Spares shall comply with the corresponding provisions of this Agreement:
- (a) For Lorries – Clauses 35.3, 35.4, 35.5 and 35.6; and
- (b) For Vans – Clauses 35.4, 35.5 and 35.6.

Failure to Comply with Freight-related Obligations

- 35.9 Without limiting the effect of any other clause of this Agreement relating to termination, if the Service Provider fails to comply with Clauses 35.2, 35.3, 35.4, 35.5, 35.6, 35.7 and 35.8:
- 35.9.1 the Service Provider has committed a material breach of this Agreement; and
- 35.9.2 the Purchaser may refuse the Service Provider, its employees, agents and Delivery and Servicing Vehicles entry onto any property that is owned, occupied or managed by Purchaser for any purpose (including but not limited to deliveries).

36 COSTS

Except as otherwise agreed in this Agreement, each Party shall bear its own costs incurred in connection with the execution and implementation of this Agreement.

37 ASSIGNMENT

37.1 Assignment, Transfer and Subcontracting by the Service Provider

Subcontracting

- 37.1.1 The Service Provider may subcontract its obligations under this Agreement either in whole or in part to any Subcontractor provided that:
- (a) the written consent of the Purchaser Representative is obtained by the Service Provider prior to the Service Provider entering into any Subcontract; and
- (b) the Service Provider shall notify the Purchaser in writing of the name, contact details and details of the legal representatives of any Subcontractor.
- 37.1.2 In granting such consent pursuant to Clause 37.1.1, the Purchaser may require the Service Provider to procure that a Subcontractor duly executes and delivers to the Purchaser, within fifteen (15) Working Days of the date of the relevant Subcontract, a deed of warranty in the form set out at Schedule 10 (*Form of Deed of Warranty*).
- 37.1.3 The Service Provider shall be fully responsible for any act, neglect, default or breach of this Agreement by any Subcontractor or supplier or the directors, agents, representatives or employees of the Service Provider or of any of its Subcontractors

or suppliers as if such act, neglect, default or breach had been carried out by the Service Provider.

- 37.1.4 The Service Provider agrees that any Subcontractors who supply safety critical materials or services will be approved by the Purchaser in accordance with all Applicable Laws and all applicable LU Standards and in accordance with the Safety Plan and the Quality Plan.
- 37.1.5 The Service Provider shall ensure that it includes in any Subcontract provisions on substantially similar terms to Clause 8 (*Payments*).
- 37.1.6 The Purchaser reserves the right to verify whether there are any grounds for excluding any Subcontractor under Regulation 57 of the Public Contracts Regulations 2015. Where necessary for the purpose of the Purchaser's exercise of its right under this Clause 37.1.6, the Purchaser may request that the information provided by the Manufacturer under Clause 37.1.1(b) is accompanied by one or more European Single Procurement Document(s) (within the meaning of Regulation 59 of the Public Contracts Regulations 2015) in respect of the relevant Subcontractor(s). Further, the Purchaser:
- (a) shall require the Service Provider to replace any Subcontractor in respect of which the verification has shown that there are compulsory grounds for exclusion under Regulation 57 of the Public Contracts Regulations 2015; and
 - (b) may require the Service Provider to replace any Subcontract in respect of which the verification has shown that there are non-compulsory grounds for exclusion under Regulation 57 of the Public Contracts Regulations 2015.

Assignment

- 37.1.7 Without prejudice to Clauses 37.1.1 to 37.1.3, the Service Provider shall not assign (whether absolutely or by way of security and whether in whole or in part), transfer, mortgage, charge, declare itself a trustee for a third party of, or otherwise dispose of (in any manner whatsoever) its rights and/or obligations under this Agreement, and any purported dealing in contravention of this Clause 37.1 shall be ineffective.

37.2 Assignment and Novation or Granting of Security by the Purchaser

Permitted Transfers

- 37.2.1 The Purchaser shall be entitled without the consent of the Service Provider to assign, transfer, novate, mortgage, charge or otherwise dispose of its rights and/or obligations under this Agreement to any person.

Implementation of Transfers

- 37.2.2 If the Purchaser wishes to deal with its rights and/or obligations in this Agreement (either in whole or in part) pursuant to Clauses 37.2.1, the Service Provider shall execute such documents and do such other things as the Purchaser may reasonably request in order to facilitate and perfect such dealing.

38 NOTICES

38.1 Any notice or communication to be given under or in connection with this Agreement shall be in writing and signed by or on behalf of the Party giving it and may be served by personal delivery, or by prepaid recorded delivery or first class prepaid post to the address or, as the case may be, and for the attention of the relevant Party set out in Clause 38.2. Any such notice or communication shall be deemed to have been received:

38.1.1 if delivered, on delivery;

38.1.2 in the case of recorded delivery or first class post, forty eight (48) hours from the date of posting.

provided that if the date of delivery or receipt is not a Working Day such notice or communication shall be deemed to have been delivered or, as the case may be, received, on the opening of business on the next Working Day.

38.2 Notices or communications affecting this Agreement shall be addressed (where not specifically required to be addressed to the respective Parties' Representative) to:

38.2.1 in the case of the Service Provider, the address for the Service Provider set out in the Contract Particulars; and

38.2.2 in the case of the Purchaser, the address for the Purchaser set out in the Contract Particulars.

38.3 The Service Provider irrevocably appoints and authorises Intertrust (UK) Limited of 11 Old Jewry (7th Floor), London EC2R 8DU to accept service on behalf of the Service Provider of all legal process, and service on Intertrust (UK) Limited at the address above shall be deemed to be service on the Service Provider.

39 SET OFF

The Purchaser shall be entitled to withhold from any sum or sums expressed in this Agreement to be payable by it to the Service Provider, any amounts due or expressed to be due by the Service Provider to the Purchaser. Any payment payable by the Service Provider under this Agreement shall be made in full without any set-off or counterclaim howsoever arising and shall be free and clear of, and without deduction of, or withholding for or on account of, any amount which is due and payable to the Service Provider under this Agreement.

40 ACCRUED RIGHTS

Termination of the obligations to provide Services under this Agreement shall not affect any accrued rights and obligations under this Agreement as at the date of termination.

41 CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999

41.1 With the exception of the right of:

41.1.1 any member of the TfL Group; and

41.1.2 any person expressly stated to be indemnified by a Party,

to enforce any term of this Agreement which either expressly or by implication confers any benefit upon such person, no term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a Party to this Agreement.

42 **COUNTERPARTS**

This Agreement to which the Service Provider and Purchaser are a Party may be executed in separate counterparts, each of which, when executed and delivered, shall be an original, but all such counterparts shall together constitute one and the same instrument. All signatures need not be contained in the same counterpart.

43 **DISPUTES AND GOVERNING LAW**

43.1 **Disputes**

If any Dispute should arise under this Agreement, either Party may refer it for resolution pursuant to Schedule 6 (*Dispute Resolution Procedure*).

43.2 **Governing Law**

This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by, and construed in accordance with, English law.

43.3 **Exclusive Jurisdiction**

Subject to the terms of Clause 43.1, the English Courts have exclusive jurisdiction in relation to any claim, dispute or difference ("**Proceedings**") concerning this Agreement and any matter arising from it. For these purposes, each Party irrevocably submits to the jurisdiction of the English Courts.

43.4 **Forum**

Each Party irrevocably waives any right that it may have to object to any Proceedings being brought in the English Courts, to claim that the Proceedings have been brought in an inconvenient forum, or to claim that the English Courts do not have jurisdiction.

In witness whereof this Agreement is executed the day and date referred to above.

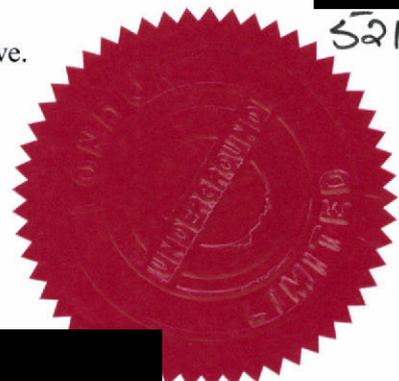
**THE COMMON SEAL of
LONDON UNDERGROUND LIMITED**

was affixed to **THIS DEED**

in the presence of:

Signature of Authorised Signatory

Print name of Authorised Signatory



EXECUTED AND DELIVERED AS A DEED

by **EKE-ELECTRONICS LTD**

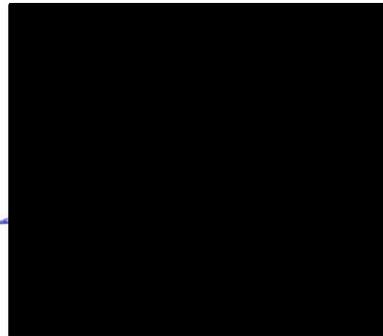
acting by:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary



Schedule 1
Contract Particulars

Part A
Contract Particulars

Clause	Item	Input
(1)	(2)	(3)
1.1	"Change Date"	The date on which the Fleet Acceptance Certificate has been counter-signed and dated by the Purchaser Representative (as such term is defined under the MSA) in accordance with the provisions of the MSA.
1.1	"Commencement Date"	The date on which the Fleet Acceptance Certificate has been counter-signed and dated by the Purchaser Representative (as such term is defined under the MSA) in accordance with the provisions of the MSA.
1.1	"Expiry Date"	20 years from the date on which the Fleet Acceptance Certificate has been counter-signed and dated by the Purchaser Representative (as such term is defined under the MSA) in accordance with the provisions of the MSA.
1.1	"Extension Limit"	Five (5) years
1.1	"Guarantee" to be provided	Yes
1.1	"Guarantor"	EKE Finance Ltd
1.1	"Indexation Base Date"	2016
1.1	"Payment Period"	Quarterly Period
1.1	"Purchaser Representative"	Samuel McDonough
1.1	"Performance Bond" to be provided	No
1.1	Performance Management Regime applies	Yes
1.1	"Service Provider Representative"	Mika Linden
1.1	"Warranty Period"	24 months
4.3	Supply and Support Plan	Not used
6.2	Spares to be supplied	Yes
6.3	Special Tools to be supplied	Yes
38.2.1	Service Provider's address for notices	Address : Piispanportti 7, Finland

		Attention : Mika Linden Email : mika.linden@eke.f
38.2.2	Purchaser's address for notices	Address: Templar House, 81-87 High Holborn, London, WC1V 6NU Attention: Samuel McDonough Email: sammcdonough@tfl.gov.uk
Paragraph 1.2.5, Schedule 2 Part A	The amount of liquidated damages payable per day under paragraph 1.2.5, Schedule 2 Part A is:	£6,371 per day for late delivery of Spares
Paragraph 1.1(b), Part A Schedule 5	Public Liability insurance	£10 million per incident or series of incidents arising out of one event
Paragraph 1.1(b), Part A Schedule 5	Product Liability insurance	£10 million per incident or series of incidents arising out of one event
Paragraph 4, Part B Schedule 5	Professional Indemnity insurance	£2 million per incident and in the aggregate per annum

Part B
NOT USED

Schedule 2 Services

Part A

Core Services

1 Core Services

The Core Services are:

1.1 Design Authority

1.1.1 The Service Provider agrees that it will act as the Design Authority for the Design Life of the Replacement Systems.

1.1.2 The Service Provider shall comply with the following obligations in its role as Design Authority:

- (a) operate and maintain a system that tracks changes to the original designs of the Goods;
- (b) operate a system that can provide the "know-why" (factors which influenced the choice of the design) in relation to design information relating to the Goods;
- (c) operate a system that facilitates validation of technical changes to the current design of the Goods;
- (d) maintain a comprehensive understanding of the technical and operational requirements of the Goods;
- (e) maintain comprehensive knowledge of how the technical and operational requirements influence the design of the Goods and retain records accordingly;
- (f) retain information relating to the design to enable performance and assessment of modifications, evaluation of change of use, understanding of vehicle system and component behaviour, and support incident investigation as reasonably required by the Purchaser;
- (g) make informed judgements and validate operational safety implications relating to change of use and modifications including where the same is required by the Purchaser;
- (h) ensure that records are kept of the configuration levels of design throughout the Replacement Systems' life to ensure the above is carried out accurately and safely and that any modifications are compatible with the original design and any subsequent modifications;
- (i) ensure that all systems and/or documentation established or maintained pursuant to this paragraph 1.1.2 take account of and integrate (where possible) all of the Manufacturer Design Documentation;

- (j) provide the Purchaser with any relevant information relating to changes in sub-suppliers, modifications to the original designs of the Goods, changes to maintenance requirements or any other changes relevant to the continued operation of the Goods ("**Relevant Changes**") along with details of any recommended modifications to the design or Manufacturer Documentation as a result of the Relevant Changes for the Purchaser's consideration and approval;
- (k) following prior written approval from the Purchaser, implement any of the modifications recommended by the Service Provider pursuant to paragraph 1.1.2(j); and
- (l) provide the Purchaser with such information as the Purchaser may reasonably require in respect of the Service Provider's obligations contained in this paragraph 1.1.2 within 28 Working Days of receipt of written notice from the Purchaser requesting such information, unless otherwise agreed between the Parties.

1.1.3 The Parties agree that any failure to comply with this paragraph 1.1 will constitute a material breach for the purposes of Clause 13.1.3.

1.2 Supply of Spares

- 1.2.1 The Purchaser may request Spares, from time to time, by giving the Service Provider a notice setting out reasonable details of its requirements.
- 1.2.2 The Service Provider shall use all reasonable endeavours to make Spares available to the Purchaser by delivering them to the relevant London Underground location as notified by the Purchaser in writing to the Service Provider:
 - (a) within the lead times specified for such Spares in Part E of Schedule 4 (*Service Payments*);
 - (b) where no lead time is specified in Part E of Schedule 4 (*Service Payments*) within 48 hours of receipt of the Purchaser's request; or
 - (c) as otherwise agreed by the Parties by way of a Variation, which may include an agreement to deliver Spares earlier than the stated lead times.
- 1.2.3 Where the Service Provider supplies a Spare to the Purchaser, the Service Provider shall invoice the Purchaser for that Spare on the basis of the prices and rates set out in Part E of Schedule 4 (*Service Payments*).
- 1.2.4 If the Service Provider fails to deliver Spares within the lead times specified in paragraph 1.2.2 and such failure leads to a Two-Car Unit being withdrawn from service, the Service Provider shall pay to the Purchaser on demand liquidated damages calculated in accordance with paragraph 1.2.5 below. Such liquidated damages shall be the sole and exclusive remedy of the Purchaser in respect of such late delivery.
- 1.2.5 Any liquidated damages payable under paragraph 1.2.4 shall accrue at the rates specified in the Contract Particulars.

- 1.2.6 The Parties agree that any failure to comply with this paragraph 1.1 will constitute a material breach for the purposes of Clause 13.1.3.

1.3 **Obsolescence Management**

- 1.3.1 The Service Provider shall provide and update every six (6) months an obsolescence plan in respect of the Replacement System, which will include:

- (a) a register of Spares at risk of obsolescence;
- (b) research and recommended measures by which the Purchaser can mitigate operational or maintenance risks arising from obsolescence at the lowest practical cost to the Purchaser. Implementation of such recommendations shall be subject to the prior written approval of the Purchaser.

- 1.3.2 The Service Provider shall ensure that it regularly communicates with its suppliers and/or Subcontractors via telephone, email or otherwise to ensure that it is notified as soon as possible of any Spares that are at risk of obsolescence.

- 1.3.3 The Service Provider shall ensure that, where it intends to or becomes aware that any of its suppliers and/or Subcontractors intends to:

- (a) dispose of any item of Spares due to such Spare becoming obsolete or being replaced by a comparable spare; and/or
- (b) stop the production or sale of any item of Spares,

(together, the "**Potential Obsolete Spares**") the Service Provider shall:

- (i) notify the Purchaser Representative as soon as possible prior to any such disposal or cessation of production and sale of the Potential Obsolete Spares; and
- (ii) propose to the Purchaser Representative a range of suitable alternative spares and/or parts.

- 1.3.4 the Purchaser may in such circumstances as described in paragraph 1.3.3 above require the Service Provider to:

- (a) supply one of the suitable alternative spares proposed by the Service Provider pursuant to paragraph 1.3.3(b)(ii), and the Purchaser shall bear any increased costs of such alternative spare provided that the Service Provider has complied with its obligations contained in this paragraph 1.3 to the Purchaser's satisfaction; and/or
- (b) supply one or more of the Potential Obsolete Spares for the Purchaser; and/or
- (c) sell any remaining Spares or Potential Obsolete Spares to the Purchaser Representative at the rates set out in Schedule 4 (*Service Payments*).

- 1.3.5 The Parties agree that any failure to comply with this paragraph 1.3 will constitute a material breach for the purposes of Clause 13.1.3.

1.4 Continuous Improvement

- 1.4.1 The Service Provider shall provide and update every six (6) months a continuous improvement plan in respect of the Replacement Systems and all other items of Goods, which will include:
- (a) a register of Spares and recommended improvements and innovations to such Spares;
 - (b) research and recommended measures, including modification procedures, by which the Purchaser can improve operational performance, environmental performance and maintenance optimisation or improvements which will reduce the whole life cost of the Replacement Systems and other items of Goods at the at the lowest practical cost to the Purchaser;
 - (c) monitoring industry practices to identify processes and material changes which may improve the performance of the Replacement Systems; and
 - (d) development of improvement proposals informed by the reliability trends of the Replacement Systems.

For the purposes of this Schedule 2 Part A, the recommendations described in this paragraph 1.4.1 shall be referred to as the "**Continuous Improvement Recommendations**".

- 1.4.2 Following receipt of the continuous improvement plan, the Purchaser shall determine at its sole discretion whether to implement any Continuous Improvement Recommendations. The Purchaser shall confirm its decision in writing to the Service Provider on a date as notified by the Purchaser to the Service Provider. If the Purchaser does not confirm its decision in writing by the date which is three (3) months after receipt of the continuous improvement plan, the Service Provider shall implement the Continuous Improvement Recommendations.
- 1.4.3 The Parties agree that any failure to comply with this paragraph 1.4 will constitute a material breach for the purposes of Clause 13.1.3.

1.5 FRACAS / DRACAS

- 1.5.1 For the duration of the Agreement, the Service Provider shall comply with and maintain the agreed FRACAS and DRACAS process and associated database established as a requirement of the MSA.
- 1.5.2 The Service Provider shall provide and update every six (6) months a report on its compliance and maintenance of the Agreed FRACAS and DRACAS Database.
- 1.5.3 The Service Provider shall ensure that the Agreed FRACAS and DRACAS Database is used to record all data on the types and causes of faults found in the Replacement System, all items of Goods and the Services.
- 1.5.4 For the duration of this Agreement, the Service Provider shall compile and action the data for the Replacement Systems, all items of Goods and the Services under this Agreement onto the Agreed FRACAS and DRACAS Database.

- 1.5.5 The Service Provider shall ensure that the Agreed FRACAS and DRACAS Database records all actual or suspected faults and the agreed attribution, for all non-conformances, failures, defects, incidents and accidents arising in relation to, or in connection with, any of the Replacement Systems, any item of Goods and the Services, together with details of any remedial actions that need to be taken by the Service Provider and/or any Subcontractor. Such information shall be provided to the Purchaser in the report described in paragraph 1.5.2 of this Schedule 2 Part A.
- 1.5.6 The Service Provider shall use the Agreed FRACAS and DRACAS Database to support the Core Services and any Optional Services in accordance with the terms of this Agreement.
- 1.5.7 The Parties agree that any failure to comply with this paragraph 1.5 will constitute a material breach for the purposes of Clause 13.1.3.

Part B
Optional Services

1 Optional Services

1.1 The Purchaser shall be entitled to instruct the Service Provider to undertake the Optional Services which includes without limitation:

1.1.1 Spares supply:

- (a) procure and supply Spares required by the Purchaser to carry out all servicing, maintenance and overhaul of the Replacement Systems;
- (b) provide such assistance as the Purchaser may reasonably require, from time to time, to assist it in understanding and predicting its scheduled maintenance requirements;
- (c) provide a dedicated materials management organisation while the Spares are at the relevant London Underground delivery location as notified by the Purchaser to the Service Provider;
- (d) monitor and record the usage of Spares and make such information available to the Purchaser as reasonably directed by the Purchaser from time to time;
- (e) assume responsibility for the effective handling, management, control, storage and stewardship of Spares at all times when they are not in the custody or control of the Purchaser or incorporated into any Replacement System;
- (f) carry out, or procure the carrying out of, any servicing, maintenance, overhaul, repair or refurbishment required by the Spares in accordance with the Manuals to ensure that such Spares remain at all times Fit for Purpose. The Service Provider shall, and shall procure that each Subcontractor shall, while the Critical Spares are in its possession (including when they are on its premises) protect the same from theft, injury, breakage or damage by exposure to the weather and take every reasonable precaution against theft, accident, injury or breakage or damage from any cause.

1.1.2 investigate all service casualties for the Replacement Systems;

1.1.3 produce KPI reports to monitor the performance of the Replacement Systems;

1.1.4 undertake technical investigations on failures of the Replacement Systems;

1.1.5 operate the change control process;

1.1.6 assist in the assessment of defects;

1.1.7 provide technical guidance via a dedicated phone line to the Purchaser's operational and maintenance staff on an as required basis;

- 1.1.8 produce technical reports on Fault investigation;
- 1.1.9 assist with the provision of technical support at incidents on and off London Underground premises;
- 1.1.10 perform audits on technical issues;
- 1.1.11 provide proactive condition monitoring and trend tracking to produce preventative recall opportunities;
- 1.1.12 develop a condition monitoring process for the Replacement Systems;
- 1.1.13 implement the condition monitoring process referred to in paragraph 1.1.13 of this Part B of Schedule 2 (*Services*) throughout the period of service of the Replacement Systems on the LUL Network;
- 1.1.14 provide daily failure analysis data for use in the production review at the start of a shift. The Service Provider shall also attend the production review (which takes place at the start of a shift);
- 1.1.15 carry out monitoring of the Replacement Systems using records, diagnostic data or condition monitoring systems in order to identify potential improvements in failure rates and reliability as required;
- 1.1.16 provide open and transparent whole life cost analysis throughout the Agreement term arising from planned and unscheduled maintenance materials utilisation, so as to identify possible year-on-year cost reductions;
- 1.1.17 provide on-site technical assistance regarding fault identification and fault finding;
- 1.1.18 Provide off site technical resource to carry out technical investigation;
- 1.1.19 provide technical information and advisory support relating to off-site systems and Software;
- 1.1.20 update the Manuals within twenty (20) Working Days of any Modifications to the Replacement Systems, Changes in Law or other necessary changes;
- 1.1.21 deliver to the Purchaser technical data recorded as a result of task-delivered quality analysis or asset inspection or dynamic condition recording; and
- 1.1.22 work collaboratively with third parties, other suppliers and the operator in the delivery of any Optional Services pursuant to this Part B of Schedule 2 (*Services*), together with any other technical support services and/or spares supply that the Purchaser may reasonably require in relation to the Goods and Services.

1.2 Whenever there is a requirement for Optional Services the Service Provider shall liaise with the Purchaser in order to establish a solution which, so far as practicable, best meets the Purchaser's requirements.

2 **Additional training for on-going maintenance**

2.1 The Optional Services shall include the additional training services set out in this paragraph 2 (the "**Training Services**"). The Purchaser shall be entitled to instruct the Service Provider

to provide, or procure the provision of, the Training Services, which shall include without limitation:

- 2.1.1 providing, or procuring the provision of, training to the breadth and depth required to enable the Purchaser's trainers to acquire all relevant knowledge and skills to carry out training of the Purchaser's employees, agents, consultants and contractors to:
 - (a) enable operation and maintenance of the Replacement Systems as well as equipment used to carry out tests for the Replacement Systems;
 - (b) conduct fault finding;
 - (c) remove, replace and subsequently test all components of the Replacement Systems; and
 - (d) enable operation of the Replacement Systems by the train driver;
- 2.1.2 providing any required information to enable the Purchaser to train its train drivers and other operational staff as required;
- 2.1.3 providing the Training Materials, Training Programme and training plan;
- 2.1.4 training any other person nominated by the Purchaser;
- 2.1.5 providing competence assessments for the planned preventative maintenance, corrective maintenance, fault and failure diagnosis and rectification maintenance of the Replacement Systems;
- 2.1.6 analysing any technical enhancements to the Replacement Systems and/or any other changes, such as those arising from the rectification of defects, in consultation with the Purchaser, to determine whether further training is required;
- 2.1.7 conducting training needs analysis in accordance with the requirements of the Specification;
- 2.1.8 modifying the training approach, materials and resources as required, in consultation with the Purchaser, taking account of training pass/fail rates and in-service operations and maintenance experience;
- 2.1.9 providing all tools and equipment associated with the Replacement Systems for which training is being provided; and
- 2.1.10 providing training on the set-up, use and maintenance of all:
 - (a) tools used to support training; and
 - (b) e-learning and equipment, including diagnostic equipment and off-train equipment testing and analysis tools.
- 2.2 The Training Services shall cover the operation and maintenance of the Replacement Systems under normal, abnormal, degraded and emergency conditions and shall address all normal modes of operation, the symptoms of failure modes, corrective actions to be taken, safety precautions, the level of intervention that is permissible by the Purchaser and the

events that would necessitate the Service Provider's involvement. Such training shall include, but shall not be limited to:

- 2.2.1 Providing the location, purpose and function of all systems and components relevant for the following activities associated with the Replacement Systems:
- (a) the operation and maintenance (including all instructions and processes for installation, operation and maintenance, fault diagnosis, rectification and testing) of the Replacement Systems;
 - (b) system interfaces and associated failure modes and effects;
 - (c) calibration, adjustment and use of Special Tools;
 - (d) the Replacement Systems design, performance limits and capability (to ensure that the Purchaser has the capability to undertake specialist engineers' investigations); and
 - (e) such other content that the Service Provider shall propose and the Purchaser shall agree.
- 2.3 If the Service Provider is instructed by the Purchaser to provide training services in accordance with this paragraph 2, the Service Provider shall be responsible for the provision of an adequate number of appropriately skilled trainers to complete all aspects of the analysis, design, development, delivery and evaluation of training (including, when required by the Purchaser, competency assessments) to meet the provision of the Training Programme.
- 2.4 Any training or materials provided by the Service Provider pursuant to this paragraph 2 shall be sufficient to ensure that:
- 2.4.1 those personnel nominated by the Purchaser to attend training shall acquire all relevant knowledge and skill in relation to the operation of the Replacement Systems, including facets relating to the function, malfunction (including the range and ramification of potential failure conditions), operation and use of the Replacement Systems that are relevant to the appropriate employees, agents, consultants and contractors of the Purchaser;
 - 2.4.2 those personnel nominated by the Purchaser to attend training acquire knowledge and skill in relation to the maintenance of the Replacement Systems, including all maintenance activities over the life of the Replacement Systems that are relevant to the appropriate staff members. Such activities shall include (without limitation) inspection maintenance, casualty maintenance, diagnostic and monitoring activities, fault diagnosis and fault rectification;
 - 2.4.3 those personnel nominated by the Purchaser to attend training acquire knowledge and skills such that they are able to train the appropriate employees, agents, consultants and contractors of the Purchaser as per the requirements of paragraphs 2.4.1 and 2.4.2.

- 2.5 Training shall be delivered by the Service Provider at such venue as may be nominated by the Purchaser.
- 2.6 For on-going maintenance and operation of the Replacement Systems, the Service Provider shall provide training on a "train-the-trainer" approach. The Purchaser shall procure that the maximum number of attendees shall be four (4) persons per "train-the-trainer" course.
- 2.7 Any training provided by the Service Provider as part of the Training Services shall be subject to the final approval of the Purchaser, once the Purchaser confirms it is satisfied with:
- 2.7.1 the finalised Training Materials; and
 - 2.7.2 delivery of the training concerned (to the Purchaser's nominees), including the delivery of training evaluation and delivery of the competence assessments set out in paragraph 2.18 of this Schedule 2 Part B.

Training Materials and other documentation

- 2.8 Prior to each training course, the Service Provider shall submit to the Purchaser draft training materials for approval. The draft training materials shall be of sufficient quality and quantity as is reasonably necessary or desirable to permit the Purchaser's nominated trainers to further train the Purchaser's employees or those of any nominee and shall include (without limitation):
- 2.8.1 operator and maintainer documentation, including manuals and training manuals;
 - 2.8.2 the outputs of the training needs analysis;
 - 2.8.3 Training Plans;
 - 2.8.4 presentation materials;
 - 2.8.5 detailed trainer notes;
 - 2.8.6 trainee materials, including handbooks, fault guides, hand-outs and other such materials;
 - 2.8.7 tools and equipment; and
 - 2.8.8 formative and summative assessments including, for the summative assessments, a matrix that cross-references each learning objective with all related assessment questions.
- 2.9 The Purchaser shall review the draft training materials in conjunction with the Service Provider and instruct the Service Provider to amend and re-submit the draft training materials as reasonably required. Following approval of the draft training materials, they shall become the "**Training Materials**" for the purposes of this paragraph 2. The Service Provider shall maintain and update the Training Materials as and when necessary.
- 2.10 If, as a result of in-service operations and/or maintenance experience, amendments are required to the Training Materials, the Service Provider shall complete any necessary analysis and submit updated Training Materials to the Purchaser for the Purchaser's approval. The Service Provider shall provide all necessary support to the Purchaser and/or the

Purchaser's nominees to ensure that the Purchaser's nominees acquire all required knowledge and skills that are required as a result of any amendments to the Training Materials.

- 2.11 Any training courses provided by the Service Provider in accordance with this paragraph 2 shall be accompanied by a full suite of documentation approved by the Purchaser, including but not limited to:
- 2.11.1 operator and maintainer manuals (including detailed instructions for the operation and maintenance of the Replacement Systems, including training tools and equipment);
 - 2.11.2 documentation necessary to provide specialist engineers with all necessary information to enable them to carry out incident investigations on the Replacement Systems being supplied;
 - 2.11.3 an emergency breakdown manual;
 - 2.11.4 Training Materials including Training Plans, detailed trainers' notes, presentation materials (e.g. slides, models etc.), formative and summative assessments and trainee material (including, for example, handbooks); and
 - 2.11.5 all required technical information, including documentation such as illustrations, schematics, display screen captures, training manuals and design information relating to the design parameters, installation, operation and maintenance of the Replacement Systems in order to facilitate the development of technology based training (such as simulation or computer based training).

The Purchaser shall be entitled, without further charge, to duplicate as many copies of the documentation listed in this paragraph 2.11 as it requires.

Training Programme

- 2.12 The Training Services shall include provision of a draft training programme that complies with all of the requirements set out in paragraphs 2.13 to 2.15. Once the Purchaser approves the draft training programme, it shall become the "**Training Programme**" for the purposes of this paragraph 2.
- 2.13 The Training Programme shall set out the training that the Service Provider will provide to enable the Purchaser to train its employees, agents, sub-contractors or consultants (or any employees, agents, sub-contractors or consultants of the Purchaser's nominees) to operate and maintain (as applicable) the Replacement Systems in accordance with the requirements of the Specification.
- 2.14 The Service Provider shall ensure that the Training Programme details all training timescales associated with the:
- 2.14.1 production of all Training Materials;
 - 2.14.2 delivery of all training courses and associated assessments to be provided by the Service Provider; and
 - 2.14.3 delivery of all deliverables set out in paragraph 2 of this Schedule 2 Part B.

- 2.15 The Service Provider shall ensure that the Training Programme shall, at a minimum, make programme provision in relation to training as follows:
- 2.15.1 Training Programme preparation and submission to the Purchaser for review, along with any updating and resubmission to the Purchaser (if required);
 - 2.15.2 Purchaser approval and regular review of the Training Programme; and
 - 2.15.3 for each training course:
 - (a) Completion and assurance of training needs analysis;
 - (b) production of a training plan, including (but not limited to) preparation of the training plan (incorporating Service Provider validation/assurance), submission to the Purchaser, Purchaser review, any updates or resubmission to the Purchaser (if required) and Purchaser approval;
 - (c) production of technical support documentation, including but not limited to the preparation of operation and maintenance manuals (incorporating Service Provider validation/assurance), submission to the Purchaser for approval, Purchaser review, any updates or resubmission to the Purchaser (if required) and Purchaser approval;
 - (d) production of Training Materials, including preparation of the Training Materials (incorporating Service Provider validation/assurance), submission of Training Materials to the Purchaser, Purchaser review, any updates or resubmission to the Purchaser (if required) and Purchaser approval;
 - (e) provision of all training tools and equipment required for the training course concerned; and
 - (f) delivery, evaluation and certification of the relevant training (and licensing if required) and any required competence development and assessment activities.
- 2.16 The Service Provider shall review the Training Programme regularly in conjunction with the Purchaser and shall maintain and update the Training Programme as and when necessary or as requested by the Purchaser. Following any updates to the Training Programme, the Service Provider shall re-submit the Training Programme to the Purchaser for approval as required.
- 2.17 The Service Provider shall also submit to the Purchaser for the Purchaser's approval details of the training accreditation/validation process to accompany the Training Programme and Training Materials provided.

Training plan

- 2.18 The Training Services shall include the provision of a training plan, which shall, without limitation:
- 2.18.1 identify time(s), location(s) and attendee numbers for training courses, along with any prerequisites or dependencies for attendance;

- 2.18.2 identify each training course where recommended attendance is linked to the prior completion of another training course, and limit the number of such dependences as far as reasonably practicable; and
- 2.18.3 provide joining instructions specifying exact details regarding time(s), location, directions, pre-course information and other requirements for each course delegate.

Competence assessments

- 2.19 Unless agreed otherwise with the Purchaser, the Service Provider shall provide as part of the Training Services formative and summative immediate outcome level assessments. The Service Provider shall provide competence assessments in relation to each of the following activities:
 - 2.19.1 Planned preventative maintenance of the Replacement Systems;
 - 2.19.2 Corrective maintenance of the Replacement Systems; and
 - 2.19.3 Fault and failure diagnosis and rectification maintenance of the Replacement Systems.
- 2.20 The Service Provider shall provide to the Purchaser's nominees all required support in relation to the achievement of competence, including task coaching, task shadowing and supervised practice.

3 Information Provided by the Service Provider

- 3.1 Where the Purchaser requests the Service Provider to carry out Optional Services in accordance with paragraph 1 or paragraph 2 of this Part B of Schedule 2 (*Services*) the Service Provider shall, as soon as reasonably practicable, advise the Purchaser of all relevant reasonable information relating to the carrying out of the proposed Optional Services including a proposal addressing, without limitation:
 - 3.1.1 the nature and extent of the requirement for the Optional Services; and
 - 3.1.2 the Service Provider's outline proposals for how it will carry out and satisfy the Optional Services required, including:
 - (a) the key activities that the Service Provider will undertake;
 - (b) any deliverable that the Service Provider will provide including any relevant reports, analysis and amendments to Documentation;
 - (c) a timetable for completion of the relevant Optional Services including key milestones and dates for provision of any key activities or deliverables;
 - (d) any information or other support required by the Service Provider from the Purchaser or its Subcontractors in order to complete the relevant Optional Services;
 - (e) the individuals (including brief details of their roles, experience and competency for the proposed activity) that the Service Provider will utilise in order to provide the Optional Services;

- (f) the price of the Optional Services calculated by reference to the prices and rates agreed for the individual Service Provider roles as described in Part E of Schedule 4 (*Service Payments*);
- (g) how the Service Provider will manage the provision of the Optional Services which shall include (as a minimum) periodic updates (to be daily or weekly as required by the Purchaser) setting out:
 - (i) progress of the Service Provider against any agreed deliverables and milestones; and
 - (ii) costs incurred to date against the price proposed in accordance with paragraph (f) and future costs to be incurred in order to complete the relevant Optional Services;
- (h) any Parts to be replaced or refurbished;
- (i) any effects on the Spares following the carrying out of the Optional Services; and
- (j) any other information required by the Purchaser or that the Service Provider deems relevant to the Optional Services.

3.2 If the Purchaser requests any further information or variation to the Service Provider's proposal the Service Provider shall use reasonable endeavours to accommodate such request as soon as reasonably practicable.

3.3 Where the Purchaser requests the Service Provider to carry out Optional Services in accordance with paragraph 1 of this Part B of Schedule 2 (*Services*), the Purchaser may request the Service Provider to provide the Purchaser with:

3.3.1 a draft quality plan specific to this Agreement based on the principles set out in Appendix 1 of this Part B of Schedule 2 (*Services*). The Purchaser acting reasonably shall notify the Service Provider of any amendments required to the draft quality plan within one (1) month of receiving the draft quality plan from the Service Provider and the Service Provider shall incorporate such amendments. The Service Provider shall provide the Purchaser with the final version of the quality plan (in hard copy and electronic copy form) within fourteen (14) days of the Purchaser notifying the Service Provider of any amendments and this shall be deemed to be the "Quality Plan" as defined for the purposes of this Agreement; and/or

3.3.2 a draft safety plan specific to this Agreement based on the Service Provider's safety management system and safety manuals and on the principles set out in Appendix 2 of this Part B of Schedule 2 (*Services*). The Purchaser acting reasonably shall notify the Service Provider of any amendments required to the draft safety plan within one month of receiving the draft safety plan from the Service Provider and the Service Provider shall incorporate such amendments, the Service Provider shall provide the Purchaser with the final version of the safety plan (in hard copy and electronic copy form) within fourteen (14) days of the Purchaser notifying the Service Provider of any amendments and this shall be deemed to be the "Safety Plan" as defined for the purposes of this Agreement.

4 Prompt Performance

- 4.1 Where the Purchaser approves a proposal for carrying out Optional Services the Purchaser shall so notify the Service Provider by email and as soon as reasonably practicable following receipt of such notification the Service Provider shall carry out and complete that Optional Service in accordance with the approved proposal (including in respect of the timing agreed in the relevant approved proposal for such Optional Services).

5 Payment

Payment for any Optional Services shall be in accordance with the prices and rates set out in Part E of Schedule 4 (*Service Payments*).

6 Suspension of Optional Services

If the Purchaser notifies the Service Provider that it should suspend the provision of any Optional Services then the Service Provider shall stop performing the relevant Optional Services as notified by the Purchaser and payment of any costs incurred by the Service Provider and agreed in accordance with this Part B of Schedule 2 (*Services*) shall be addressed in accordance with the prices and rates set out in Part E of Schedule 4 (*Service Payments*).

Appendix 1: Quality Plan Principles

1 Quality Plan Principles

1.1 The Service Provider shall ensure that each Quality Plan:

1.1.1 is produced in accordance with ISO10005 and consistent with the Service Provider's ISO9001 accreditation; and

1.1.2 complies with the Purchaser's QUENSH requirements.

Appendix 2: Safety Plan Principles

1 Safety Plan Principles

- 1.1 The Service Provider shall ensure that each Safety Plan complies with the following:
- 1.1.1 all relevant European and/or UK health, safety and environmental guidelines;
 - 1.1.2 the Service Provider's own health, safety and environment management systems;
 - 1.1.3 the Purchaser's Health, Safety and Environment Strategy 2014 - 2017;
 - 1.1.4 the Purchaser's Health, Safety and Environment Policy (February 2014);
 - 1.1.5 the Purchaser's alcohol and drugs and workplace violence policies;
 - 1.1.6 the Purchaser's accident and incident reporting procedure; and
 - 1.1.7 the Service Provider's obligations in connection with Work Related Road Risk, as further described in Clause 35 of this Agreement.
- 1.2 The Service Provider shall ensure that each Safety Plan includes (without limitation):
- 1.2.1 a statement of how roles and responsibilities for delivering health, safety and environment requirements will be discharged by the Service Provider's personnel;
 - 1.2.2 a description of the arrangements for how the health, safety and environmental competency of the Service Provider's personnel will be assessed, reviewed and updated during the term of this Agreement;
 - 1.2.3 the Service Provider's health, safety and environmental incident reporting procedures and how any such incidents will be reported to the Purchaser;
 - 1.2.4 method statements and risk assessments that demonstrate a safe system of work;
 - 1.2.5 a schedule of activities required to meet the delivery of the Safety Plan;
 - 1.2.6 verification activities, including but not limited to the following health, safety and environment management system requirements:
 - (a) site monitoring activities; and
 - (b) performance reporting;
 - 1.2.7 details of how the Service Provider will consult with the Purchaser on health and safety matters relating to maintenance; and
 - 1.2.8 processes for monitoring and ensuring that the Service Provider's Subcontractors comply with each Safety Plan.

Part C**Performance Management Regime****1 Key Performance Indicators**

1.1 At the end of each month following the Commencement Date and at each SSA Status Update Meeting, the Service Provider shall assess and report to the Purchaser in writing the Service Provider's actual performance against the KPIs set out in paragraph 1.3 to 1.5 of this Part C (the "KPIs"). The Purchaser shall determine in its absolute discretion whether the Service Provider has met the KPIs. In the event that the Purchaser determines that the Service Provider has failed to meet any of the KPIs the Management Escalation Procedure shall apply.

1.2 The Parties may agree additional KPIs in writing prior to each SSA Status Update Meeting.

1.3 The KPIs are as follows:

Service	KPI measures	Target	Non-Conformance
Design Authority: Schedule 2 Part A paragraphs 1.1.2(a) to 1.1.2(h) inclusive	Provision of a report every six (6) months on delivery of the Design Authority Obligations.	100% compliance	Level 1
Obsolescence Management: Schedule 2 Part A paragraph 1.3.1	Provision of an updated obsolescence plan every six (6) months.	100% compliance	Level 1
Continuous Improvement Schedule 2 Part A 1.4.1	Provision of an updated continuous improvement plan every six (6) months.	100% compliance	Level 1
FRACAS / DRACAS Schedule 2 Part A 1.5.2	Provision of a report on the Service Provider's compliance and maintenance of the Agreed FRACAS and DRACAS Database every six (6) months.	100% compliance	Level 1

1.4 The performance KPIs are as follows:

Service	KPI measures	Target	Non-Conformance
Design Authority: Schedule 2 Part A paragraph 1.1.2(j)	Implementation of modifications within agreed timescales (reporting as required)	100% compliance	Level 1
Design	Provision of information within 28	100%	Level 1

Authority: Schedule 2 Part A paragraph 1.1.2(k)	Working Days (reported monthly)	compliance	
Supply of Spares: Schedule 2 Part A paragraph 1.2.2	Accuracy of orders (reported monthly) On-time delivery (reported monthly)	100% compliance	Level 1
Provision of Optional Services Schedule 2 Part B	On-time delivery (reported monthly – as required)	100% compliance	Level 1

1.5 The quality and safety KPIs are as follows:

	KPI measure	Target	
Quality Plan (Schedule 2 Appendix 1)	Provision of 6 Monthly update of Quality Plan	100% compliance	Level 1
Safety Plan (Schedule 2 Appendix 2)	Provision of 6 Monthly update of Safety Plan	100% compliance	Level 1
Performance Management	Non-Conformance Notices Issued	0 Notices Issued 100% compliance	

2 Management Escalation Procedure

- 2.1 If the Service Provider fails to meet any of the KPIs, the Purchaser may at its sole discretion invoke the management escalation procedure set out in paragraphs 3 to 6 below of this Schedule 2 Part C (the "**Management Escalation Procedure**").
- 2.2 For the purposes of the Management Escalation Procedure, any failure to meet any KPI will be a "**Non- Conformance**".
- 2.3 If the Service Provider becomes aware that it will not achieve or is reasonably likely not to achieve one or more of the KPIs, the Service Provider shall inform the Purchaser as soon as possible in accordance with paragraph 1.3 of Schedule 3A (*Contract Management*).
- 2.4 Excluding the delivery of Spares in accordance with paragraph 1.2.2 of Schedule 2 Part A, the Service Provider shall use all reasonable endeavours to resolve any failure to meet a KPI within ten (10) Working Days of the Service Provider becoming aware that it will not achieve or is reasonably likely not to achieve a KPI before a Non-Conformance is raised in accordance with this Schedule 2 Part C.

3 Level 1 Non-Conformance

- 3.1 For the purposes of this Schedule 2 Part C, a failure to meet any KPI identified as Level 1 in the tables set out in paragraph 1.3 to 1.5 of this Schedule 2 Part C that has not been resolved

in accordance with paragraph 2.4 of this Schedule 2 Part C shall be referred to as a "**Level 1 Non-Conformance**".

- 3.2 The Purchaser's operations department (including the General Manager Asset and Maintenance) shall be responsible for responding to and dealing with any Level 1 Non-Conformances.
- 3.3 If one or more Level 1 Non-Conformance(s) occur the Purchaser may at its sole discretion submit a notice to the Service Provider setting out the details of the Level 1 Non-Conformance (the "**Level 1 Non-Conformance Notice**").
- 3.4 The Service Provider shall within ten (10) Working Days of service of the Non-Conformance Notice by the Purchaser prepare and submit to the Purchaser a draft plan, containing:
 - 3.4.1 confirmation of the date and details of the Level 1 Non-Conformance;
 - 3.4.2 proposed steps to be taken by the Service Provider to rectify the Level 1 Non-Conformance;
 - 3.4.3 proposed steps to be taken by the Service Provider to ensure there is no repetition of the Level 1 Non-Conformance; and
 - 3.4.4 proposed timeframes for completion of the steps set out pursuant to paragraphs 3.4.2 and 3.4.3 above (the "**Level 1 Rectification Period**"),(the "**Level 1 Non-Conformance Plan**").
- 3.5 The Purchaser and the Service Provider shall review the draft Level 1 Non-Conformance plan and agree the final content of the Level 1 Non-Conformance Plan.
- 3.6 In the event the Purchaser and the Service Provider do not agree the final content of the Level 1 Non-Conformance Plan, the Purchaser will determine the final content of the Level 1 Non-Conformance Plan in its sole discretion.
- 3.7 The Service Provider shall deliver all obligations contained in the Level 1 Non-Conformance Plan within the Level 1 Rectification Period.
- 3.8 If the Service Provider completes all obligations set out in the Level 1 Non-Conformance Plan to the satisfaction of the Purchaser and within the Level 1 Rectification Period, the Purchaser shall notify the Service Provider and the Level 1 Non-Conformance shall be classed as closed. In the event that the Service Provider does not complete the Level 1 Non-Conformance Plan to the satisfaction of the Purchaser and within the Level 1 Rectification Period, the Purchaser shall escalate the Level 1 Non-Conformance to a Level 2 Non-Conformance.
- 3.9 If three (3) or more Level 1 Non-Conformances occur within one (1) six (6) month period the Purchaser shall escalate the Level 1 Non-Conformance to a Level 2 Non-Conformance.
- 3.10 The Purchaser shall record all Level 1 Non-Conformances and monitor and feedback on remedying any such Level 1 Non-Conformances at SSA Status Update Meetings all Level 1 Non-Conformance trends.

3.11 The Purchaser shall review all Level 1 Non-Conformances weekly until such Level 1 Non-Conformances are classed as closed in accordance with paragraph 3.8 of this Schedule 2 Part C.

4 **Level 2 Non-Conformance:**

4.1 Where:

- 4.1.1 there is a failure to meet any KPI that is identified as Level 2 in the tables set out in paragraph 1.3 to 1.5 inclusive of this Schedule 2 Part C; or
- 4.1.2 the Purchaser determines, having regard to the gravity of the Non-Conformance, that a Non-Conformance should be treated as a Level 2 Non-Conformance; or
- 4.1.3 the Service Provider fails to notify the Purchaser of the occurrence of a Level 1 Non-Conformance prior to the Purchaser notifying the Service Provider of the same Level 1 Non-Conformance (provided that the Purchaser shall be entitled, having regard to the gravity of the Non-Conformance, to treat this as a Level 3 Non-Conformance rather than a Level 2 Non-Conformance); or
- 4.1.4 the Service Provider fails to provide the Purchaser with a draft Level 1 Non-Conformance Plan within ten (10) Working Days of service by the Purchaser notice of such Non-Conformance; or
- 4.1.5 the Service Provider fails to undertake and/or rectify a Level 1 Non-Conformance in accordance with the requisite Level 1 Non-Conformance Plan and within the Level 1 Rectification Period to the satisfaction of the Purchaser; or
- 4.1.6 a further Non-Conformance occurs of the same KPI within two (2) months of the end of the Level 1 Rectification Period; or
- 4.1.7 a further Non-Conformance occurs during the Level 1 Rectification Period of the same type as the Level 1 Non-Conformance and the Service Provider has knowingly and intentionally permitted the occurrence of such further Non-Conformance; or
- 4.1.8 three (3) or more Level 1 Non-Conformances occur within one (1) six (6) month period,

the Service Provider shall have committed a "**Level 2 Non-Conformance**" for the purposes of this Schedule 2 Part C.

4.2 Level 2 Non-Conformances shall be escalated to the Purchaser's Director of Operations.

4.3 Where one or more Level 2 Non-Conformances occur, the Purchaser may Purchaser may at its sole discretion submit a notice to the Service Provider setting out the details of the Level 2 Non-Conformance (the "**Level 2 Non-Conformance Notice**"). The Service Provider shall within five (5) Working Days of service of the Level 2 Non-Conformance Notice by the Purchaser prepare and submit to the Purchaser a draft plan containing:

- 4.3.1 confirmation of the date and details of the Level 2 Non-Conformance(s);
- 4.3.2 proposed steps to be taken by the Service Provider to rectify the Level 2 Non-Conformance;

4.3.3 proposed steps to be taken by the Service Provider to ensure there is no repetition of the Level 2 Non-Conformance(s); and

4.3.4 proposed timeframes for completion of the steps set out pursuant to paragraphs 4.3.2 and 4.3.3 above (the "**Level 2 Rectification Period**"),

(the "**Level 2 Non-Conformance Plan**").

4.4 The Purchaser and the Service Provider shall review the draft Level 2 Non-Conformance Plan and agree the final content of the Level 2 Non-Conformance Plan.

4.5 In the event the Purchaser and the Service Provider do not agree the final content of the Level 2 Non-Conformance Plan, the Purchaser will determine the final content of the Level 2 Non-Conformance Plan in its sole discretion.

4.6 If the Service Provider completes all obligations set out in the Level 2 Non-Conformance Plan to the satisfaction of the Purchaser and within the Level 2 Rectification Period, the Purchaser shall notify the Service Provider and the Level 2 Non-Conformance shall be classed as closed. In the event that the Service Provider does not complete the Level 2 Non-Conformance Plan to the satisfaction of the Purchaser and within the Level 2 Rectification Period, the Purchaser shall escalate the Level 2 Non-Conformance to a Level 3 Non-Conformance.

4.7 The Purchaser shall record all Level 2 Non-Conformances and monitor and feedback on remedying any such Level 2 Non-Conformances at SSA Status Update Meetings Level 2 Non-Conformance trends.

4.8 The Purchaser shall review all Level 2 Non-Conformances weekly until such Level 2 Non-Conformances are classed as closed in accordance with paragraph 4.6 of this Schedule 2 Part C.

5 **Level 3 Non-Conformance**

5.1 where:

5.1.1 there is a failure to meet any KPI that is identified as Level 3 in the tables set out in paragraph 1.3 to 1.5 inclusive of this Schedule 2 Part C; or

5.1.2 the Purchaser determines, having regard to the gravity of the Non-Conformance, that a Non-Conformance should be treated as a Level 3 Non-Conformance; or

5.1.3 the Service Provider fails to submit to the Purchaser a draft Level 2 Non-Conformance Plan within five (5) Working Days of service by the Purchaser of a Non-Conformance Notice; or

5.1.4 the Service Provider fails to undertake and rectify a Level 2 Non-Conformance in accordance with the requisite Level 2 Non-Conformance Plan and within the Level 2 Rectification Period to the satisfaction of the Purchaser; or

5.1.5 a further Non-Conformance occurs within two (2) months of the end of the Level 2 Rectification Period which is the same Non-Conformance as the Level 2 Non-Conformance; or