

Planned performance	100 planned maintenance tasks
Actual performance achieved	100 tasks
Actual performance against plan	100%
Actual payment against Service Charges	100% x 80% of Service Charge for Planned Services

- 3.1.5 Where actual performance of KPI 1 falls below 100%, the Company shall give the Supplier the opportunity during the next Accounting Period to address the deficiency by carrying forward the undelivered work into the Activity Plan for the next Accounting Period. The Company shall offer the Supplier the opportunity to carry work forward where the Company considers, in its absolute discretion, that completion of the undelivered work is beneficial to the Company having regard to the nature of the work, its planned frequency and other relevant factors. Where work carried forward is completed to the satisfaction of the Company within the next Accounting Period, this work, which shall be known as "Undelivered Completed Work", shall be included within the payment for the following Accounting Period. Payment for undelivered work can be carried forward for a maximum of one (1) Accounting Period only. A worked example is shown in Table 2c.

Table 2c – Payment example

Accounting Period	Planned Performance	Actual Performance	Undelivered Work	Payment
Accounting Period 1	100% for P1	96% for P1	4% for P1	96% x 80% for P1
Accounting Period 2	4% for P1 plus	3% for P1 plus	1% for P1	3% x 80% for P1 plus
	100% for P2	100% for P2	Nil for P2	100% x 80% for P2
Accounting Period 3	100% for P3	99% for P3	1% for P3	99% x 80% for P3

KPI 2 Quality Standards

- 3.1.6 Tables 3a and 3b provide examples in respect of KPI 2.

Table 3a - Example 1

Planned performance	100 passed quality inspections
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Actual performance achieved	96 passed quality inspections
Actual performance against plan	96%
Actual payment against Service Charges	96% x 20% of Service Charge for Planned Services

Table 3b - Example 2

Planned performance	100 passed quality inspections
Actual performance achieved	100 passed quality inspections
Actual performance against plan	100%
Actual payment against Service Charges	100% x 20% of Service Charge for Planned Services

Table 3c Example 3

Support Services	100 passed quality inspections
Actual performance achieved	100 passed quality inspections
Actual performance against plan	100%
Actual payment against Service Charges	100% x 20% of Service Charge for Planned Services

- 3.1.7 On completion of the Planned Services (including Undelivered Completed Work), the Company will conduct Planned Services quality inspections in accordance with the Specification. The Company will provide the Supplier with a Notice of Non-Conformance if a Planned Services quality inspection has failed.
- 3.1.8 Where actual performance of KPI 2 falls below 100%, the Company shall give the Supplier the opportunity during the next Accounting Period to address the deficiency set out in the Notice of Non-Conformance. The Company shall offer the Supplier this opportunity where the Company considers, in its absolute discretion, that addressing the deficiency is beneficial to the Company having regard to the nature of the work, its planned frequency and other relevant factors.
- 3.1.9 The Company will carry out a second Planned Services quality inspection and where the Supplier achieves a "pass" within the next Accounting Period, this quality inspection, which shall be known as "Passed Second Quality Inspection", shall be included within the payment for the following Accounting

Period. Payment for Passed Second Quality Inspections can be carried forward for a maximum of one (1) Accounting Period only. A worked example is shown in Table 3c.

Table 3c – Payment example

Accounting Period	Planned Performance	Actual Performance	Failed Quality Inspection	Payment
Accounting Period 1	100% for P1	96% for P1	4% for P1	96% x 20% for P1
Accounting Period 2	4% for P1 plus	3% for P1 plus	1% for P1	3% x 20% for P1 plus
	100% for P2	100% for P2	Nil for P2	100% x 20% for P2
Accounting Period 3	100% for P3	99% for P3	1% for P3	99% x 20% for P3

3.1.10 Where the Company fails to carry out a second Planned Services quality inspection within the relevant Accounting Period, the Supplier will be deemed to have passed the second Planned Services quality inspection.

3.1.11 Where actual performance of KPI 2 (Support Services) falls below 100%, the Company shall give the Supplier the opportunity during the next three (3) Accounting Periods to address the deficiency set out in the Notice of Non-Conformance. The Company shall offer the Supplier this opportunity where the Company considers, in its absolute discretion, that addressing the deficiency is beneficial to the Company having regard to the nature of the work, its planned frequency and other relevant factors.

3.2 Reactive Services KPIs

3.2.1 Reactive Services KPIs measure:

- a) the speed at which Faults are rectified;
- b) the speed at which Emergency Faults are responded to; and
- c) achievement of the required standard of workmanship for rectified Faults when inspected by the Company.

Table 4 – Reactive Services KPIs

KPI Number	Service	Measure	Target
KPI 3	Faults	Faults to be responded to or	100%

		rectified within specified timescale	
KPI 4	Quality inspections	Achievement of required standard of workmanship for rectified Faults when inspected by the Company	100% passed

A maximum of 80% of the Service Charges for Reactive Services shall be payable in respect of Fault response and rectification (as measured by KPI 3) and a maximum of 20% of the Service Charges for Reactive Services shall be payable in respect of Reactive Services quality inspections.

KPI 3 Faults

- 3.2.2 Rectification Times for Faults are set out in Table 5 below. Rectification Times start when the Supplier receives a Fault notification from the Company. Notwithstanding the Rectification Times set out in Table 5 below, any Faults which could result in safety or environmental contravention orders being issued against the Company by the Health & Safety Executive (including HMRI), the London Fire and Civil Defence Authority, Local Authorities or any other regulatory body shall have a Rectification Time of twenty-four (24) hours.
- 3.2.3 All Faults shall be notified by the Company to the Supplier. The Supplier shall receive Faults from the Company twenty-four (24) hours per day, seven (7) days a week, every day of the year.
- 3.2.4 The Supplier shall rectify all Faults within the Rectification times shown in Table 5 below. All rectified Faults shall be formally reported to the Company in writing within sixteen (16) hours of rectification.
- 3.2.5 Where the Supplier is required to respond to an Emergency Fault, the Supplier shall, within the Response Time set out in Table 5 below, attend site with equipment and notify the Company of the action to be taken to make safe. All responses to Emergency Faults shall be formally reported to the Company in writing within sixteen (16) hours of response.
- 3.2.6 The Supplier is required to submit quotes for emergency works within seven (7) calendar days of request.

Table 5 – Fault Response and Rectification Times

KPI Number	Fault Code	Description	Fault Type Examples	Response Time	Rectification Time
KPI 3	n/a	Emergency Faults	Bridge strike, embankment collapse, flooding	2 hours	n/a
KPI 3	FR02	Premises and structures related Faults	Water ingress, offensive graffiti removal	n/a	144 hours (6 days)
KPI 3	n/a	Incidents and near hits	Bridge Strike, embankment	n/a	36 hours

			collapse		
KPI 3	n/a	Missed provision of inspection support		n/a	3 months
KPI 3	Cat 1	Non-ECC Faults		n/a	1 month
KPI 3	Cat 2	Non-ECC Faults		n/a	3 months
KPI 3	Cat 3	Non-ECC Faults		n/a	6 months

3.2.7 The Supplier shall notify the Company of the date by which they plan to rectify Faults. In the case of Non-ECC Faults, the Supplier shall review the Activity Plan and if the Fault can be rectified within the target timescale as part of planned maintenance which appears on the Activity Plan, the Supplier shall report this to the Company and rectify the Fault as planned maintenance.

3.2.8 At the end of each Accounting Period, the Supplier shall assess and report to the Company actual performance against the Reactive Services KPI targets for KPI 3 as set out in Table 4 above. The Company shall be entitled to apply Deductions for Reactive Services where performance is below target. These Deductions, which are set out in the third column of Table 6 below (as a percentage of the Services Charge), are related to the percentage of Faults responded to or rectified within the target times (as set out in the first column in Table 6 below). For the avoidance of doubt, Faults to be included in a report shall include all Faults that have been closed within the Accounting Period and all open Faults where the Rectification Time has been exceeded. The report shall exclude Faults that are open at the end of the Accounting Period but where the Response Time or Rectification Time has not elapsed. These Faults shall be included within the report at the end of the next Accounting Period.

Table 6 – Calculation of Reactive Services Deductions

Performance against Target as set out in Table 4	Percentage of Service Charges Received	Percentage of Service Charges Deducted
100%	100%	0%
99% - 99.99%	99%	1%
98% - 98.99%	98%	2%
97% - 97.99%	97%	3%
96% - 96.99%	96%	4%
95% - 95.99%	94%	6%
94% - 94.99%	92%	8%
93% - 93.99%	90%	10%

Performance against Target as set out in Table 4	Percentage of Service Charges Received	Percentage of Service Charges Deducted
92% - 92.99%	88%	12%
91% - 91.99%	86%	14%
90% - 90.99%	84%	16%
89% - 89.99%	82%	18%
<89%	80%	20%

KPI 4 Quality Standards

3.2.9 Tables 7a and 7b provide examples in respect of KPI 4.

Table 7a - Example 1

Planned performance	100 passed quality inspections
Actual performance achieved	96 passed quality inspections
Actual performance against plan	96%
Actual payment against Service Charges	96% x 20% of Service Charge for Planned Services

Table 7b - Example 2

Planned performance	100 passed quality inspections
Actual performance achieved	100 passed quality inspections
Actual performance against plan	100%
Actual payment against Service Charges	100% x 20% of Service Charge for Planned Services

3.2.10 The Company will conduct Reactive Services quality inspections in accordance with the Specification. The Company will provide the Supplier with a Notice of Non-Conformance if a Reactive Services quality inspection has failed.

3.2.11 Where actual performance of this KPI 4 falls below 100%, the Company shall give the Supplier the opportunity during the next Accounting Period to address the deficiency set out in the Notice of Non-Conformance. The Company shall offer the Supplier this opportunity where the Company considers, in its absolute discretion, that addressing the deficiency is

beneficial to the Company having regard to the nature of the work, its planned frequency and other relevant factors.

- 3.2.12 The Company will carry out a second Reactive Services quality inspection and where the Supplier achieves a “pass” within the next Accounting Period, this Reactive Services quality inspection, which shall be known as “Passed Second Quality Inspection”, shall be included within the payment for the following Accounting Period. Payment for Passed Second Quality Inspections can be carried forward for a maximum of one (1) Accounting Period only. A worked example is shown in Table 7c.

Table 7c – Payment example

Accounting Period	Planned Performance	Actual Performance	Failed Quality Inspection	Payment
Accounting Period 1	100% for P1	96% for P1	4% for P1	96% x 20% for P1
Accounting Period 2	4% for P1 plus	3% for P1 plus	1% for P1	3% x 20% for P1 plus
	100% for P2	100% for P2	Nil for P2	100% x 20% for P2
Accounting Period 3	100% for P3	99% for P3	1% for P3	99% x 20% for P3

- 3.2.13 Where the Company fails to carry out a second quality inspection within the relevant Accounting Period, the Supplier will be deemed to have passed the second quality inspection.

Fault Reports

- 3.2.14 The Supplier shall track and report open Faults to the Company daily. The open Faults report shall highlight Faults where the Rectification Time has not been met and shall incorporate the agreed revised Rectification Time for such Faults.
- 3.2.15 Where a Fault remains open beyond the Rectification Time for more than a reasonable period (in the absolute opinion of the Company), the Company reserves the right to invoke the procedure set out in Clause 46 (Company Step-in) of this Contract.
- 3.2.16 Where the Supplier is notified of a Fault and responds but can find no Fault (“No Defect Found”), the Supplier shall incorporate these events into a No Defect Found report, which the Supplier shall issue to the Company weekly.

4. Service Delivery Indicators

- 4.1 Service Delivery Indicators measure

a) Repeat Faults;

- b) reporting; and
- c) adherence to health & safety, environmental and quality standards

4.2 Repeat Fault SDI

- 4.2.1 At the end of each Accounting Period, the Supplier shall assess and report to the Company actual performance against the Repeat Fault SDI set out in Table 8 below. In the event that the Supplier fails to meet the SDI the Escalation Procedure set out in paragraph 6 of this Schedule shall apply.

Table 8 – Repeat Faults

Service	Measure	Target
Repeat Faults	All Repeat Faults to be reported by the Supplier to the Company in accordance with agreed timescales	100%

4.3 Health, Safety, Environmental and Quality Standards

- 4.3.1 The Supplier's adherence to health & safety, environmental and quality standards shall be measured by the Service Delivery Indicators shown in Table 9 below. At the end of each Accounting Period, the Supplier shall assess and report to the Company actual performance against these SDIs. In the event that the Supplier fails to meet the SDIs, the Escalation Procedure set out in paragraph 6 of this Schedule shall apply.

Table 9 – Health, Safety, Environmental and Quality SDIs

Service	Measure	Target
Supplier's reporting systems	Evidence that the Supplier is reporting in accordance with the Supplier's own reporting systems when audited by the Company	100%
Environmental Planned General Inspections	Achievement of required standard when inspected by the Company	100%
Planned General Inspections	Achievement of required standard when inspected by the Company	100%
Annual Planned Maintenance Certificate (E3006)	Provision of required information	100%
Strategic Labour Needs and Training (SLNT) Plan	Evidence of delivery of the SLNT Plan as documented when audited by the Company	100%

4.4 Meetings and Reporting SDIs

- 4.4.1 The Supplier's adherence to the requirements of Appendix 2 of Schedule 1 in respect of Contract Requirements shall be measured by the Service Delivery Indicators shown in Table 10 below. At the end of each Accounting Period, the Supplier shall assess and report to the Company actual performance against these SDIs. In the event of the Supplier's failure to meet these SDI targets, the Escalation Procedure set out in paragraph 6 of this Schedule shall apply.

Table 10 – Meetings and Reporting SDIs

Service	Measure	Target
Meetings	Supplier attendance at meetings in accordance with the requirements of Appendix 2 of Schedule 1	100%
Reporting	Delivery of reports by the Supplier in accordance with the requirements of Appendix 2 of Schedule 1	100%

5. Innovation and Continuous Improvement

- 5.1 The Supplier shall submit Improvement Suggestions to the Company. "Improvement Suggestions" are innovations in or improvement to the delivery of the Services and which lead to savings and may include but shall not be limited to changes to the Specification, changes to the Activity Plans, changes to Service delivery methodologies or changes to the Services themselves.
- 5.2 The Supplier's performance in delivering innovation and continuous performance shall be measured quarterly by the Improvement Suggestion Service Delivery Indicator which is set out in Table 11 below. Savings realised as a result of the implementation of Improvement Suggestions shall be shared by the Company and the Supplier in a ratio which shall be included in each business case as set out in paragraph 5.4 below.

Table 11 – Improvement Suggestion Service Delivery Indicator

Service	Measure	Target
Innovation and Continuous Improvement	Amount of savings realised from Improvement Suggestions	4% (four percent) of the annual Service Charges

- 5.3 The Supplier's performance in putting forward Improvement Suggestions shall be reviewed by meetings of the Senior Manager Level Governance Group (as such term is defined in paragraph 4 of Appendix 2 of Schedule 1). Financial Deductions shall not apply to this Service Delivery Indicator.
- 5.4 Where the Supplier identifies an Improvement Suggestion it shall provide a business case to the Company which shall:
- a) provide a description of the relevant Improvement Suggestion;
 - b) describe in detail how such Improvement Suggestion would benefit the delivery of the Services;

- c) detail a breakdown of the costs of implementing an Improvement Suggestion (the "Improvement Suggestion Cost") (if any) including the proposed reimbursement period for the Improvement Suggestion Cost;
 - d) propose the ratio in which realised savings shall be shared; and
 - e) any other information reasonably required by the Company.
- 5.5 Following receipt of each business case, the Company shall notify the Supplier in writing that it:
- a) approves the business case for the Improvement Suggestion;
 - b) approves the business case for the Improvement Suggestion subject to any condition the Company may require; or
 - c) rejects the business case for the Improvement Suggestion.
- 5.6 Where the Company conditionally approves the business case in accordance with paragraph 5.5(b) above, the Supplier may re-submit an amended business case for reconsideration by the Company in accordance with the procedure set out in paragraph 5.4 above.
- 5.7 Where the Company approves the business case for the Improvement Suggestion the Parties shall follow the procedure set out in Schedule 6 (Contract Variation Procedure) and, upon implementation of the Improvement Suggestion by the Supplier, the Service Charges shall be adjusted in accordance with the provisions of that Schedule and the applicable Variation.
- 5.8 The Company shall decide at its absolute discretion whether business cases are approved or rejected.
- 5.9 Where the Contract is terminated early in accordance with the provisions of this Contract, the relevant provisions of Clause 49 shall apply to the balance of any unpaid Improvement Suggestion Cost properly due to the Supplier.
- 5.10 Where the Company identifies potential Improvement Suggestions either as part of the annual review of plans as set out or referred to in Appendix 2 of Schedule 1 or at any other time, the Company shall notify the Supplier of the potential Improvement Suggestion and the Supplier shall submit a business case for the Improvement Suggestion to the Company in accordance with paragraphs 5.4 to 5.8 above.

6. Escalation Procedure

- 6.1 In the event of unsatisfactory performance of the Services by the Supplier, including (but not limited to) failure to reach the targets set by the SDIs and the KPIs, this Escalation Procedure may be invoked by the Company in its absolute discretion.
- 6.2 The purpose of this Escalation Procedure is to provide a structured framework within which the Parties can address unsatisfactory performance of the Services against timescales and deliverable targets. For the purposes

of this procedure, notified levels of poor performance will be termed “Non-Conformances”.

6.3 This Escalation Procedure operates with four levels (as set out in paragraph 6.4 of this Schedule 12); the lowest level of Non-Conformance being a Level 1 Non-Conformance. Should Non-Conformances escalate, they shall receive an appropriate level of management intervention from the Company and the Supplier. In the event a Non-Conformance escalates to become a Level 3 Non-Conformance, the Parties shall have a final review and opportunity for remedial actions to resolve the relevant issues before the Non-Conformance becomes a Level 4 Non-Conformance, which will entitle the Company to terminate in accordance with Clause 48.1(K) (Termination on Supplier Default).

6.4 In the event that a performance issue is not resolved between the Company and the Supplier by [TBC] then the Non-Conformance may be raised by the Company to a Level 1 Non-Conformance or a Level 2 Non-Conformance, depending upon the severity of the performance failure. It is possible for a number of Level 1 Non-Conformances and/or Level 2 Non-Conformances to be in hand at any one time.

Table 12 – Summary of Escalation Procedure

TRIGGER	LEVEL	ACTION	BY	RESULT
Failure to rectify identified Non-Conformance issued as part of KPIs and/ or SDIs	LEVEL 1	Improvement plan with precise end date required. Ongoing review dates specified.	i) Company ii) Supplier	Satisfactory - Stop Unsatisfactory - Level 2
Level 1 Non-Conformance re-occurrence Consistent failure to meet required requirement Safety Condition infringements.	LEVEL 2	Improvement plan with precise end date required. Ongoing review dates specified.	i) Company ii) Supplier	Satisfactory - Stop Unsatisfactory - Level 3
Level 2 Non-Conformance re-occurrence	LEVEL 3	Final review. Final opportunity for remedial action. Precise end date required.	i) [Company] ii) [Supplier]	Satisfactory - Stop Unsatisfactory - Level 4
Level 3 re-occurrence	LEVEL 4	POSSIBLE TERMINATION		

6.5 The Company and the Supplier shall endeavour to resolve any performance issues locally on a day-to-day basis to the mutual satisfaction of each Party

and shall not raise such issues to Level 1 Non-Conformance without having taken prior endeavours to resolve them. At this stage of the process, the Supplier may be required by the Company to supply a Root Cause Analysis and a Recovery Plan.

6.6 Level 1 Non-Conformance

6.6.1 The Level 1 Non-Conformance will be recorded by the Company and a notice will be submitted to the Supplier in the form attached as Appendix A to this Schedule 12. The Supplier shall in response (such response to be within ten (10) Working Days of service of the notice by the Company) prepare and submit to the Company a report (the "Level 1 Non-Conformance Report"). Such report will contain:

- a) confirmation of the date and details of the Level 1 Non-Conformance;
- b) the steps to be taken by the Supplier to ensure there is no repetition of such Level 1 Non-Conformance (the "Level 1 Required Action"); and
- c) the time within which such Level 1 Required Action is to be completed which shall be a reasonable period and no longer than ten (10) Working Days (the "Level 1 Rectification Period").

6.6.2 The Supplier and the Company will use reasonable endeavours to agree the Level 1 Rectification Period and the Level 1 Required Action. If the agreed Level 1 Required Action is carried out within the agreed Level 1 Rectification Period then the Level 1 Non-Conformance will be closed.

6.6.3 All Level 1 Non-Conformances will be reviewed weekly at the Service Manager Level Governance Group meetings (as defined in paragraph 4 of Appendix 2 of Schedule 1) (whether resolved or not) to ensure that reoccurrence is (where possible) eliminated.

6.7 Level 2 Non-Conformances

6.7.1 Paragraph 6.7.2 shall apply where:

- a) the Company determines, having regard to the gravity of the Non-Conformance, that a Non-Conformance should be treated as a Level 2 Non-Conformance; or
- b) the Supplier fails to notify the Company of the occurrence of a Level 1 Non-Conformance prior to the Company notifying the same to the Supplier (provided that the Company shall be entitled, having regard to the gravity of the Non-Conformance, to treat the same as a Level 3 Non-Conformance rather than a Level 2 Non-Conformance); or
- c) the Supplier fails to make available to the Company a Level 1 Non-Conformance Report within ten (10) Working Days of service by the Company of the notice referred to in paragraph 6.6.1; or
- d) the Supplier fails to undertake the Level 1 Required Action within the Level 1 Rectification Period; or

- e) the Supplier fails to rectify the Level 1 Non-Conformance within the Level 1 Rectification Period; or
 - f) a further Non-Conformance occurs after the Level 1 Rectification Period but within two (2) months of the end of the Level 1 Rectification Period and that is a Non-Conformance in relation to the same SDI or KPI ("Same Type") as the Level 1 Non-Conformance; or
 - g) a further Non-Conformance occurs during the Level 1 Rectification Period that is of the Same Type as the Level 1 Non-Conformance and the Supplier has wilfully permitted the occurrence of such further Non-Conformance; or
 - h) the Supplier fails to meet the requirements of Schedule 7 (QUENSH).
- 6.7.2 Where one or more of the circumstances described in paragraph 6.7.1 applies, then this shall be a "Level 2 Non-Conformance" and the Company may submit a notice to the Supplier in the form attached as Appendix A to this Schedule. The Supplier shall determine (acting reasonably) the steps to be taken by the Supplier to ensure there is no repetition of such Level 2 Non-Conformance (the "Level 2 Required Action") and the time within which such Level 2 Required Action is to be completed (which shall be a reasonable period and no longer than ten (10) Working Days (the "Level 2 Rectification Period"), and prepare and make available to the Company a report (the "Level 2 Non-Conformance Report"), which shall set out the following information:
- a) the date and details of the Level 2 Non-Conformance;
 - b) the Level 2 Required Action; and
 - c) the Level 2 Rectification Period.
- 6.7.3 The Supplier and the Company will use reasonable endeavours to agree the Level 2 Rectification Period and the Level 2 Required Action.
- 6.7.4 If the Level 2 Required Action is taken within the agreed Level 2 Rectification Period then the Non-Conformance will be closed. However, a record of the Non-Conformance will be made by the Company and Level 2 trends monitored.
- 6.7.5 All Level 2 Non-Conformances will be reviewed every Accounting Period at the Senior Manager Level Governance Group meetings (whether resolved or not) to ensure reoccurrence is (where possible) eliminated.
- 6.8 Level 3
- 6.8.1 Paragraph 6.8.2 shall apply where:
- a) the Company determines, having regard to the gravity of the Non-Conformance, that a Non-Conformance should be treated as a Level 3 Non-Conformance; or

- b) the Supplier fails to make available to the Company a Level 2 Non-Conformance Report within ten (10) Working Days of service by the Company of the notice referred to in paragraph 6.7.2; or
- c) the Supplier fails to undertake the Level 2 Required Action within the Level 2 Rectification Period; or
- d) the Supplier fails to rectify the Level 2 Non-Conformance within the Level 2 Rectification Period; or
- e) a further Non-Conformance occurs after the Level 2 Rectification Period but within two (2) months of the end of the Level 2 Rectification Period and which is of the Same Type as the Level 2 Non-Conformance; or
- f) a further Non-Conformance occurs during the Level 2 Rectification Period that is of the Same Type as the Level 2 Non-Conformance and the Supplier has wilfully permitted the occurrence of such further Non-Conformance.

6.8.2 Where one or more of the circumstances described in paragraph 6.8.1 applies, then this shall be a "Level 3 Non-Conformance" and the Company shall inform the Supplier of the same by written notice.

6.8.3 The notice referred to in paragraph 6.8.2 shall set out:

- a) the deadline by which it requires the Supplier to serve on the Company a report setting out the steps which the Supplier has taken, or will take, to ensure that no further Non-Conformances of this type shall arise (the "Level 3 Required Action") (a "Level 3 Non-Conformance Report"); and
- b) the period (being no greater than two (2) months from the time of occurrence of the Level 3 Non-Conformance) for the Supplier to put in place steps to ensure that no further Non-Conformances of the Same Type occur (the "Level 3 Rectification Period").

6.8.4 All Level 3 Non-Conformances will be reviewed every third Accounting Period at the Director Level Governance Group meetings.

6.9 Level 4

6.9.1 Paragraph 6.9.2 shall apply where:

- a) the Supplier fails to make available to the Company by the deadline notified under paragraph 6.8.3 a Level 3 Non-Conformance Report; or
- b) the Supplier fails to undertake the Level 3 Required Action within the Level 3 Rectification Period; or
- c) the Supplier fails to rectify the Level 3 Non-Conformance within the Level 3 Rectification Period; or
- d) a further Non-Conformance occurs after the Level 3 Rectification Period but within two (2) months of the end of the Level 3 Rectification Period and which is of the Same Type as the Level 3 Non-Conformance; or

- e) a further Non-Conformance occurs during the Level 3 Rectification Period that is of the Same Type as the Level 3 Non-Conformance and the Supplier has wilfully permitted the occurrence of such further Non-Conformance.

6.9.2 Where one or more of the circumstances described in paragraph 6.9.1 applies, then this shall be a "Level 4 Non-Conformance" and the Company will be entitled to terminate the Contract in accordance with Clause 48.1(K).

7. Exclusions

7.1 Subject to paragraph 7.3 below, no Faults will be attributed to the Supplier in the circumstances set out in sub-paragraphs (a) to (d) below (an "Exclusion"), provided that when the Fault is reported, the Supplier shall commence and continue to make all reasonable endeavours to rectify the Fault so reported. For the avoidance of doubt, where an Exclusion is agreed by the Company to apply to a Fault, the Fault and the actual rectification time achieved shall not be included in the performance calculation for KPI 3:

- a) specialist equipment is required and is not immediately available provided the Supplier could not reasonably be expected to obtain such equipment in the time required; or
- b) specialist materials are required provided the Supplier could not obtain them in the time required; or
- c) confirmed Access is denied by the Company including but not limited to the following reasons:
 - (i) emergency access requirements of another party to deal with an incident;
 - (ii) urgent access requirements of another party to rectify an asset failure that would otherwise have a materially adverse impact on passenger services; or
 - (iii) for safety reasons; or
- d) the Asset is Beyond Economic Repair.

7.2 The Supplier shall notify the Company within the Rectification Time that they believe that the Fault should be excluded from the performance calculation setting out:

- a) the reason for the Exclusion; and
- b) the expected completion date; and
- c) providing any relevant supporting documentation including the lead time for specialist equipment and / or materials and cancelled / delayed access forms.

7.3 Following receipt of each request for an Exclusion, the Company, in its absolute discretion, shall decide and notify the Supplier in writing that it:

- a) approves the Exclusion; or
- b) rejects the Exclusion.

8. Cap on Deductions

- 8.1 The Reactive Services Deduction in any Accounting Period shall be capped at 100% of the Supplier's profit margin (as recorded in Schedule 2 Appendix 1) for that Accounting Period (the "Reactive Services Deductions Cap"). For the avoidance of doubt, the Reactive Services Deductions Cap includes Deductions for Non-Conformances in respect of quality inspections. There shall be no cap on other Deductions made under this Contract.

9. Performance Reporting

- 9.1 The Supplier shall report on the performance of the Services against Key Performance Indicators and Service Delivery Indicators in accordance with Appendix 2 of Schedule 1 Schedule 3.

10. Payment Adjustments

- 10.1 Adjustments to the Service Charges to reflect performance shall be applied in accordance with Schedule 2.

APPENDIX A: Notice of Non-Conformance Template