

Schedule I

Machine Specification and Works Information

Part A – Machine Specification

Part B - Works Information

Schedule 2

Performance Management Regime

This Schedule sets out the performance measurement mechanisms that will be applied under this Agreement.

I SERVICE DELIVERY INDICATORS

I.1 SHIFT PRODUCTIVITY – Machine Availability

- (a) The Supplier shall ensure that a Rail Re-Profiling Machine is Available for each Shift set out in the Programme of Works as provided by the Company.
- (b) The Company shall ensure that it utilizes to full capacity the availability of the Rail Re-Profiling machines. If a Rail Re-Profiling Machine is not made Available for performance of a Shift by the Supplier:
 - (i) this shall be noted by the Company as a Failed Shift on the applicable Shift Report;
 - (ii) paragraph I.3 below shall apply; and
 - (iii) the Supplier shall promptly provide the Company with a report detailing why the Rail Re-Profiling Machine has not been made Available for the Shift.
- (c) Where a Rail Re-Profiling Machine is not Available for more than one (1) Shift within a Payment Period:
 - (i) this will constitute a Level 3 Non-Conformance; and
 - (ii) the Supplier will be required to attend a performance review meeting at the request of the Company's Representative to review the issues that caused the Rail Re-Profiling Machine to not be Available.

I.2 SHIFT PRODUCTIVITY – Performance

- (a) The Supplier shall meet or exceed the shift productivity targets for each Shift as set out in Works Scope Document as provided by the Company prior to each Shift. The Works Scope Document will be substantially in the form set out in the Appendix to the Works Information or such other format as notified by the Company to the Supplier from time to time.
- (b) The Supplier shall record (i) all required productivity outputs for a Shift as specified in the Works Scope Document and; (ii) the Rail Head Profiling Measurements and shall record these on the Shift Report. The Shift Report will be substantially in the form set out in the Appendix to the Works Information or such other format as notified by the Company to the Supplier from time to time.

- (c) Promptly, and in any event within two (2) hours of the end of a Shift, the Supplier shall complete the Shift Report in respect of that Shift with details of the actual work completed in comparison to the instructions recorded on the Works Scope Document prior to the start of the Shift in accordance with paragraph 1.2(b) above and submit the completed Shift Report to the Company's Representative.
- (d) If, following its review of the Shift Report for a Shift completed pursuant to paragraph 1.2(c) above:
 - (i) the Company determines (acting reasonably) that such Shift should be classed as a Completed Shift; or
 - (ii) the Company determines (acting reasonably) that the Supplier was precluded from completing all or any part of such Shift due to the Company failing to perform any of its obligations under this Agreement,

then the Company shall issue a Shift Completion Certificate to the Supplier to certify that such Shift is a Completed Shift.

- (e) If the Company issues a Shift Completion Certificate to the Supplier in accordance with paragraph (d) above the Supplier shall not be required to pay any Liquidated Damages to the Company in relation to the Shift the subject of that Shift Completion Certificate.
- (f) If, following its review of the Shift Report for a Shift completed pursuant to paragraph (c) above, the Company determines (acting reasonably) that such Shift should be classed as a Failed Shift, then:
 - (i) this shall be noted by the Company as a Failed Shift on the applicable Shift Report; and
 - (ii) paragraph 1.3 below shall apply.

1.3 Failed Shifts

If any Shift is recorded as a Failed Shift in accordance with either paragraph 1.1(b) or paragraph 1.2(f):

- (a) the Supplier shall pay to the Company on demand Liquidated Damages at the rate of £ and
- (b) the Supplier shall, at the direction of the Company by way of the Programme of Works, repeat the Shift to the standard of a Completed Shift, at no further expense to the Company.

1.4 The Company shall be entitled to set-off any undisputed amount payable to it under paragraph 1.1.3(a) against the next Service Payment payable by it to the Supplier.

2 MANAGEMENT ESCALATION PROCEDURE

2.1 Management Escalation Procedure - General

- (a) This paragraph 2 sets out the management escalation procedure that shall apply in respect of the Supplier's non-compliance with its obligations under this Agreement (the "Management Escalation Procedure").
- (b) The table below sets out various measures of non-performance in respect of the Supplier's obligations under this Agreement (each a "Non-Conformance" for the purposes of the Performance Regime):

Service	Non-Conformance	Level
Administrative obligations	Failure to perform any of the Supplier's administrative obligations under this Agreement, including a failure to attend meetings, failure to produce reports, failure to respond to a request for a Variation Quote or a failure to provide a Variation Valuation within the timeframes specified in this Agreement, failure to comply with audit requirements.	Level I
Shift Report	Failure to produce a completed Shift Report in accordance with the timeframe set out in paragraph 1.2(c).	Level I
Rail Head Profiling Performance	Failure to meet a performance item as required in the Works Information.	Level I
Shift Start Time	Failure to commence a Shift on time.	Level I
Shift Work Completion	Failure to complete all activities required for a particular Shift.	Level I
Rail Head Profiling Work	Failure to record all required Rail Head Profiling Measurements or carry out eddy current checks that can be used for verification purposes, even if the rail head has been treated and finished to	Level I

Service	Non-Conformance	Level
	specification	
Report on Machine Availability	Failure to provide a report giving full details as to why a Rail Re-Profiling Machine has not been made Available for one Shift as per the Programme of Works	Level 2
Inadequate Control of Staff Competences	Staff working without having required competency (e.g. where a specific 'card' is needed).	Level 2
Machine Availability	A Rail Re-Profiling Machine is not Available for more than one (1) Shift in a Payment Period.	Level 3
Preventing Railway Operation	Delaying start of passenger services due to overrun of Supplier's performance of the Services.	Level 3
Serious Health and Safety Incident	Serious Health and Safety incident that is due to Supplier not following procedures.	Level 3
Serious Environmental Incident	Serious Environmental incident that is due to Supplier not following procedures.	Level 3
ROGS breach	Serious breach of ROGS requirements by the Supplier that may place the Supplier at risk of losing the "Entity in Charge of Maintenance" licence in respect of a Rail Re-Profiling Machine	Level 3

- (c) If the Supplier becomes aware that has or is likely to commit a Non-Conformance, then the Supplier shall inform the Company as soon as possible.

2.2 Level I Non-Conformance

- (a) For the purposes of this paragraph 2, a Non-Conformance identified as Level I in the table set out in paragraph 2.1 shall be referred to as a "Level I Non-Conformance".
- (b) The Company's Representative shall be responsible for responding to and dealing with any Level I Non-Conformances.
- (c) If one (1) or more Level I Non-Conformance(s) occur, the Company may, at its sole discretion, submit a notice to the Supplier setting out the details of the Level I Non-Conformance and requiring the Supplier to rectify and/or avoid a repetition of that Level I Non-Conformance (the "Level I Non-Conformance Notice").
- (d) The Supplier shall within ten (10) Working Days of its receipt of the Level I Non-Conformance Notice from the Company, prepare and submit to the Company a draft plan, containing:
 - (i) confirmation of the date and details of the Level I Non-Conformance;
 - (ii) proposed steps to be taken by the Supplier to rectify the Level I Non-Conformance;
 - (iii) proposed steps to be taken by the Supplier to ensure there is no repetition of the Level I Non-Conformance; and
 - (iv) proposed timeframes for completion of the steps set out pursuant to paragraphs 2.2(d)(ii) and 2.2(d)(iii) above (the "Level I Rectification Period"),

(the "Level I Non-Conformance Plan").
- (e) The Company and the Supplier shall review the draft Level I Non-Conformance plan and agree the final content of the Level I Non-Conformance Plan.
- (f) In the event the Company and the Supplier do not agree the final content of the Level I Non-Conformance Plan, the Company will determine the final content of the Level I Non-Conformance Plan in its sole discretion.
- (g) The Supplier shall perform and deliver all obligations contained in the Level I Non-Conformance Plan within the Level I Rectification Period.
- (h) If the Supplier completes all obligations set out in the Level I Non-Conformance Plan to the satisfaction of the Company and within the Level I Rectification Period, the Company shall notify the Supplier and the Level I Non-Conformance shall be classed as closed. In the event that the Supplier does not complete the Level I Non-Conformance Plan to the

satisfaction of the Company and within the Level I Rectification Period, the Company shall be entitled to escalate the Level I Non-Conformance to a Level 2 Non-Conformance.

- (i) The Company shall record all Level I Non-Conformances and monitor and feedback on the remedying of any such Level I Non-Conformances at Contract Management Meetings.
- (j) The Company shall review all Level I Non-Conformances weekly until such Level I Non-Conformances are classed as closed in accordance with paragraph 2.2(h) above.

2.3 Level 2 Non-Conformance

(a) Where:

- (i) the Supplier commits a Non-Conformance that is classed as Level 2 in the table set out in paragraph 2.1(b) above; or
- (ii) 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
- (iii) the Supplier fails to notify the Company of the occurrence of a Level I Non-Conformance prior to the Company notifying the Supplier of the same Level I Non-Conformance (provided that the Company 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
- (iv) the Supplier fails to provide the Company with a draft Level I Non-Conformance Plan within ten (10) Working Days of receiving a Level I Non-Conformance Notice from the Company; or
- (v) the Supplier fails to undertake and/or rectify a Level I Non-Conformance in accordance with the requisite Level I Non-Conformance Plan and/or within the Level I Rectification Period to the satisfaction of the Company; or
- (vi) a further Non-Conformance occurs of the same category (as set out in the table in paragraph 2.1(b) above) within two (2) months of the end of the Level I Rectification Period; or
- (vii) a further Non-Conformance occurs during the Level I Rectification Period of the same category as the Level I Non-Conformance and the Supplier has knowingly and intentionally permitted the occurrence of such further Non-Conformance; or
- (viii) three (3) or more Level I Non-Conformances occur within one (1) six (6) month period,

the Supplier shall have committed a "Level 2 Non-Conformance" for the purposes of this paragraph 2.

- (b) Level 2 Non-Conformances shall be escalated to the Company's Head of Infrastructure (or such other person as the Company may notify to the Supplier from time to time).
- (c) Where one (1) or more Level 2 Non-Conformances occur, the Company may, at its sole discretion, submit a notice to the Supplier setting out the details of the Level 2 Non-Conformance and requiring the Supplier to rectify and/or avoid a repetition of that Level 2 Non-Conformance (the "Level 2 Non-Conformance Notice"). The Supplier shall, within five (5) Working Days of its receipt of the Level 2 Non-Conformance Notice from the Company, prepare and submit to the Company a draft plan containing:
 - (i) confirmation of the date and details of the Level 2 Non-Conformance(s);
 - (ii) proposed steps to be taken by the Supplier to rectify the Level 2 Non-Conformance;
 - (iii) proposed steps to be taken by the Supplier to ensure there is no repetition of the Level 2 Non-Conformance(s); and
 - (iv) proposed timeframes for completion of the steps set out pursuant to paragraphs 2.3(c)(ii) and 2.3(c)(iii) above (the "Level 2 Rectification Period"),

(the "Level 2 Non-Conformance Plan").
- (d) The Company and the Supplier shall review the draft Level 2 Non-Conformance Plan and agree the final content of the Level 2 Non-Conformance Plan.
- (e) In the event the Company and the Supplier do not agree the final content of the Level 2 Non-Conformance Plan, the Company will determine the final content of the Level 2 Non-Conformance Plan in its sole discretion.
- (f) The Supplier shall perform and deliver all obligations contained in the Level 2 Non-Conformance Plan within the Level 2 Rectification Period.
- (g) If the Supplier completes all obligations set out in the Level 2 Non-Conformance Plan to the satisfaction of the Company and within the Level 2 Rectification Period, the Company shall notify the Supplier and the Level 2 Non-Conformance shall be classed as closed. In the event that the Supplier does not complete the Level 2 Non-Conformance Plan to the satisfaction of the Company and within the Level 2 Rectification Period, the Company shall be entitled to escalate the Level 2 Non-Conformance to a Level 3 Non-Conformance.
- (h) The Company shall record all Level 2 Non-Conformances and monitor and feedback on the remedying of any such Level 2 Non-Conformances at Contract Management Meetings.

- (i) The Company shall review all Level 2 Non-Conformances weekly until such Level 2 Non-Conformances are classed as closed in accordance with paragraph 2.3(g) above.

2.4 Level 3 Non-Conformance

- (a) Where:

- (i) the Supplier commits a Non-Conformance that is classed as Level 3 in the table set out in paragraph 2.1(b) above; or
- (ii) 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
- (iii) the Supplier fails to submit to the Company a draft Level 2 Non-Conformance Plan within five (5) Working Days of receiving a Level 2 Non-Conformance Notice from the Company; or
- (iv) the Supplier fails to undertake and/or rectify a Level 2 Non-Conformance in accordance with the requisite Level 2 Non-Conformance Plan and/or within the Level 2 Rectification Period to the satisfaction of the Company; or
- (v) a further Non-Conformance occurs within two (2) months of the end of the Level 2 Rectification Period which is the same category (as set out in the table in paragraph 2.1(b) above) as the Level 2 Non-Conformance; or
- (vi) a further Non-Conformance occurs during a Level 2 Rectification Period which is the same category of Non-Conformance as the Level 2 Non-Conformance and the Supplier has wilfully permitted the occurrence of such further Non-Conformance,

the Supplier shall have committed a "Level 3 Non- Conformance" for the purposes of this paragraph 2.

- (b) Level 3 Non-Conformances shall be escalated to the Company's Director of Operations (or such other person as the Company may notify to the Supplier from time to time).

- (c) Where one (1) or more Level 3 Non-Conformances occur, the Company may, at its sole discretion, submit a notice to the Supplier setting out the details of the Level 3 Non-Conformance and requiring the Supplier to rectify and/or avoid a repetition of that Level 3 Non-Conformance (the "Level 3 Non-Conformance Notice"). The Supplier shall, within five (5) Working Days of its receipt of the Level 3 Non-Conformance from the Company, prepare and submit a draft plan containing:

- (i) confirmation of the date and details of the Level 3 Non-Conformance(s);

- (ii) proposed steps to be taken by the Supplier to rectify the Level 3 Non-Conformance;
 - (iii) proposed steps to be taken by the Supplier to ensure that there is no repetition of the Level 3 Non-Conformance(s); and
 - (iv) proposed timeframes for completion of the steps set out in paragraphs (ii) and 2.4(c)(iii) above (the "Level 3 Rectification Period"),

(the "Level 3 Non-Conformance Plan").
- (d) The Company and the Supplier shall review the draft Level 3 Non-Conformance Plan and agree the final content of the Level 3 Non-Conformance Plan.
 - (e) In the event the Company and the Supplier do not agree the final content of the Level 3 Non-Conformance Plan, the Company will determine the final content of the Level 3 Non-Conformance Plan in its sole discretion.
 - (f) The Supplier shall deliver all obligations contained in the Level 3 Non-Conformance Plan within the Level 3 Rectification Period.
 - (g) If the Supplier completes all obligations set out in the Level 3 Non-Conformance Plan to the satisfaction of the Company and within the Level 3 Rectification Period, the Company shall notify the Supplier and the Level 3 Non-Conformance shall be classed as closed. In the event that the Supplier does not complete the Level 3 Non-Conformance Plan to the satisfaction of the Company and within the Level 3 Rectification Period, the Company shall be entitled to escalate the Level 3 Non-Conformance to a Level 4 Non-Conformance.
 - (h) The Company shall record all Level 3 Non-Conformances and monitor and feedback on the remedying of any such Level 3 Non-Conformances at Contract Management Meetings.
 - (i) The Company shall review all Level 3 Non-Conformances weekly until such Level 3 Non-Conformances are classed as closed in accordance with paragraph 2.4(g) above.

2.5 Level 4 Non-Conformance

- (a) Where:
 - (i) the Supplier fails to submit to the Company a draft Level 3 Non-Conformance Plan within five (5) Working Days of receiving a Level 2 Non-Conformance Notice from the Company; or
 - (ii) the Supplier fails to undertake and/or rectify a Level 3 Non-Conformance in accordance with the requisite Level 3 Non-Conformance Plan and/or within the Level 3 Rectification Period to the satisfaction of the Company; or

- (iii) a further Non-Conformance occurs within two (2) months of the end of the Level 3 Rectification Period which is the same category (as set out in the table in paragraph 2.1(b) above) of Non-Conformance as the Level 3 Non-Conformance; or
- (iv) 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 knowingly and intentionally permitted the occurrence of such further Non-Conformance,

the Supplier shall have committed a "Level 4 Non-Conformance" for the purposes of this paragraph 2.

- (b) Where a Level 4 Non-Conformance occurs, a Supplier Event of Default shall arise and the Company shall be entitled to terminate this Agreement by serving a Company Termination Notice in accordance with Clause 13.2.2 of this Agreement.

3 REVIEW OF PERFORMANCE REGIME

3.1 The Company's Representative and the Supplier's Representative shall hold annual meetings (on or about each anniversary of the Commencement Date) to:

- (a) review the Supplier's compliance with the Performance Regime over the previous twelve (12) months; and
- (b) discuss in good faith whether it is appropriate, based on the Supplier's compliance with the Performance Regime over the previous twelve (12) months, for any additional measures of non-performance to be incorporated the table set out in paragraph 2.1 for the remainder of the Agreement Duration.

Schedule 3
Service Payments

Part A– Pricing Preambles

1 PRICING INTRODUCTION

This Part A provides further details with respect to the Service Payments.

2 PRICING CONCEPT

- 2.1 The Service Payments are calculated in accordance with the process and pricing set out in Part C (Pricing Schedule) of this Schedule 3 and shall, subject only to adjustment in accordance with the Variation Procedure (where applicable), be fixed until the Expiry Date .
- 2.2 The Service Payments shall be in Sterling and shall include all applicable taxes including any import/export taxes and all other statutory costs and the like but excluding VAT (which shall be dealt with pursuant to Clause 9 of this Agreement). The Supplier is liable for all costs arising from exchange rate fluctuations and the prices shall not be increased or adjusted in connection with exchange rate fluctuations.
- 2.3 Each Service Payment shall be inclusive of all costs and charges whatsoever and shall be deemed to include all costs, overheads, profit, risk allowances and the like required for the Supplier's performance of this Agreement.
- 2.4 The Periodic Service Charge for each Rail Re-Profiling Machine is the standing charge to cover all Shifts within a Payment Period, regardless of the length of each Shift, or whether the Shift falls upon a Weekend or Bank Holiday (including Christmas Day).
- 2.5 The Periodic Service Charge for each Rail Re-Profiling Machine will not commence and no items are payable under this Agreement in respect of a Rail Re-Profiling Machine until the Supplier has commenced provision of the Services using such Rail Re-Profiling Machine in accordance with Clause 3.2.2 or Clause 3.2.5(b) (as applicable).

3 PRICING APPROACH

- 3.1 Notwithstanding paragraph 2 above, the rates and prices for all items and activities required for the Supplier's performance of this Agreement are deemed to be fully inclusive, and shall include the costs set out in subparagraphs (a) to (e) below.

(a) Preliminaries

The following preliminaries are included:

- (i) head office, branch office and other premises or offices support - all head office, branch office and other premises or offices costs directly related to this Agreement including supervisory, liaison, engineering, planning, quality assurance and administrative staff (and includes all associated overheads, communications and data

costs, stationery costs, printing costs and postage costs not included in the percentage addition for overheads and profit);

- (ii) all costs of accommodation and sanitary facilities necessary for site staff and all associated costs (including heating, lighting, furniture, first aid, associated consumables and all other safety, health and welfare facilities);
- (iii) site communications - all costs in connection with the provision of telephones and portable telephones including installation costs, rental and calls, costs of usage of public telephones and other communication equipment and consumables required for the Supplier to perform its obligations under this Agreement;
- (iv) training requirements - course and examination fees, all costs of staff attending medical examinations and training courses to enable the Supplier to perform its obligations under this Agreement, and all costs of Supplier-run courses and licensing of staff; and
- (v) insurance - all costs of complying with the insurance requirements as set out in this Agreement.

(b) Mobilisation

The mobilisation costs shall include staff costs, costs of training, recruitment, establishment of facilities, site journey and inspection, establishment of process and procedures and all other items necessary for the successful commencement of the performance of this Agreement. All costs in connection with mobilisation, including transportation to and from London, set-up and the like and management thereof are deemed to be included.

(c) Overheads and Profit

Overheads shall include corporate overhead contribution, profit recovery, headquarters staff costs, Supplier offices, yards, depots and other buildings and associated plant, Supplier's equipment and vehicles, rents, rates, insurances, running, maintenance and replacement costs for the above, general and administrative head and branch office staff salaries and wages, emoluments, expenses and allowances and all other costs of employment (including costs of and allowance for motor cars, subsistence, hotels, accommodation and the like, travel and associated expenses for directors and general and administrative head and branch office staff), legal and accountancy fees and costs, any financing costs and depreciation associated with all of the above, other non-job related costs and other indirect costs incurred by the Supplier in performing its obligations under this Agreement.

(d) Attendance and Reporting

The Service Payments are deemed to be fully inclusive of the costs that the Supplier incurs in recording and providing information in accordance with this Agreement, including as requested by the Company's Representative. The Service Payments are also deemed to include the costs of the Supplier's personnel attending any meetings.

(e) Administration of Change

The Service Payments are deemed to be fully inclusive of the costs that the Supplier incurs in recording and providing information in accordance with any Variation Quote, or the costing or administration of the Variation Procedure.

Part B- Payment

1 Service Payments

The Supplier will be entitled to submit a Payment Application in respect of a Service Payment in respect of each Payment Period, calculated in accordance with the Service Payments Schedule set out in Part C of this Schedule 3 (Service Payments).

2 Variations

- 2.1** Where a Variation varies the Service Payments, the Variation will be paid by varying the amount due at the relevant Payment Period to which the Variation relates. Where the Variation relates to two or more Service Payments, the value of the Variation will be divided between those Service Payments, based on allocating the value of the Variation between the Service Payments in proportion to the value of the Variation related to each Payment Period.
- 2.2** Where a Variation varies the Service Payments and the Service Payment to which the Variation relates has been paid, payment will be made by varying the amount due in respect of the subsequent Service Payment.
- 2.3** Otherwise Variations will be paid once the instructed Variation has been fully completed, unless it is set out in the Variation that payment may be applied for on an interim basis.
- 2.4** Where a Variation does not relate to a Service Payment, the Supplier will be entitled to apply for payment in respect of Variations at intervals of not less than one (1) month. The Supplier may apply for payment of one or more Variations at the same time.

Part C- Pricing Schedule

- I.1 The Service Payments for each Payment Period are to be calculated in accordance with the following formula:

$$£SP = £PSCM1 + £PSCM2 + £ASP - LD$$

where:

- £SP means the Service Payment for the relevant Payment Period payable by the Company to the Supplier;
- £PSCM1 means the Periodic Service Charge payable in respect of Rail Re-Profiling Machine 1 as set out in the first row of the table in the Appendix to this Part C to Schedule 3 (Service Payments);
- £PSCM2 means the Periodic Service Charge payable in respect of Rail Re-Profiling Machine 2 as set out in the first row of the table in the Appendix to this Part C to Schedule 3 (Service Payments);
- £ASP means the amounts due from the Company for any Additional Services performed by the Supplier in the relevant Payment Period as calculated in accordance with the rates set out in the table in the Appendix to this Part C to Schedule 3 (Service Payments) (the "Additional Services Payments"); and
- LD means any Liquidated Damages payable by the Supplier to the Company in accordance with Schedule 2 (Performance Regime) for the relevant Payment Period.

Appendix - Periodic Service Charge and Additional Payments

No.	Item	
1	Machine Cost (Periodic Charge)	
	Fixed periodic cost per Rail Re-Profiling Machine	per machine
2	Transportation Cost (Additional Services)	
	Transport Shift - Road transport between lines (where Rail Re-Profiling Machine is moved to different Locations/Depots during the Agreement Duration)	Per Location Move
3	Craneage (Additional Services)	
	Craneage per lift	Per 8hr Shift
4	Site Surveys and Inspections (Additional Service)	
	Stand alone site survey and inspections, including protection staff (only where specially ordered by the Company's Representative)	Per 8hr Shift

Please note that all prices are fixed until the Expiry Date of this Agreement, and are only subject to indexation in accordance with Part D (Indexation Adjustment) of this Schedule 3, if the option to extend this Agreement pursuant to Clause 3.3 is exercised.

Part D- Indexation Adjustment

1 Overview

1.1 Where the Company extends this Agreement pursuant to Clause 3.2, the Service Payments, the Additional Services Payments and any Liquidated Damages shall be subject to annual indexation for the term of the extension of this Agreement in accordance with paragraphs 2 and 2.3 below (the "Indexation Adjustment").

2 Indexation

2.1 The Service Payments, the Additional Services Payments and any Liquidated Damages shall only be adjusted on the Expiry Date, and annually thereafter (each such date being an "Indexation Adjustment Date"), for the term of any extension of this Agreement pursuant to Clause 3.3, in accordance with the following formula:

$$I = \left(\frac{RPIX_y}{RPIX_x} \right)$$

2.2 For the purposes of the formula in paragraph 2.1 above:

I means the indexation factor applied in any calculation performed pursuant to paragraph 1 of this Schedule 3 (Service Payments) Part D;

RPIX_y means the value of RPIX for the date that is three (3) months immediately prior to the Indexation Adjustment Date; and

RPIX_x means the value of RPIX for the date that is fifteen (15) months immediately prior to the Indexation Adjustment Date.

2.3 Where the indexation factor ("I") set out in this paragraph 2 is less than unity (1.0), then the value of the indexation factor ("I") shall be equal to unity (1.0) such that the Service Payments, the Additional Services Payments and any Liquidated Damages shall not be reduced.

3 Changes to the Index

If the index referred to in paragraph 2.2 of this Part D of Schedule 3 (Service Payments) ceases to be published, then such other appropriate index that may be published in place thereof shall apply or, in the absence of an appropriate replacement index, such index shall apply as the Parties may agree.

Schedule 4

Insurance

- 1 The Supplier shall procure and maintain the insurances as listed below in paragraph 3 with reputable insurers. The Supplier shall ensure any Subcontractors also maintain adequate insurance having regard to their obligations under the relevant Subcontract. Such insurances shall be in effect for the Agreement Duration unless otherwise specified. Evidence that such insurance is in effect shall be provided in the form of a broker's letter or similar, within fourteen (14) days of the Commencement Date and at the time of each renewal of such policies.
- 2 If the Supplier fails to maintain the insurance policies as provided for in this Schedule 4 (Insurance), the Company may effect and keep in force any such insurance and pay such premium or premiums at commercially competitive rates as may be necessary for that purpose and from time to time deduct the amount so paid from any monies due or which become due to the Supplier or recover the same as a debt due from the Supplier.
- 3 The Supplier shall procure and maintain the following insurances:
 - 3.1 Insurance to cover liability for death of or bodily injury or illness sustained by employees of the Supplier arising out of or in the course of their employment. Such insurance shall be of an amount and on terms that comply with the appropriate statutory obligations in each country in which the Supplier operates.
 - 3.2 Public Liability insurance of not less than £20,000,000 per incident or series of incidents arising out of one event or such limit of indemnity as is required by the Office of Road and Rail and its successors (whichever is the greater), such insurance to cover sums for which the Supplier shall be legally liable to pay as damages in respect of death or injury or illness or disease to third parties and/or loss of or damage to third party property, including property belonging to the Company or for which it is responsible. Such insurance shall extend to indemnify the Company as principal, and shall be endorsed such that any care, custody or control exclusion shall not apply to property belonging to the Company or for which the Company is responsible.
 - 3.3 Product Liability insurance of not less than £20,000,000 per incident or series of incidents arising out of one event or such limit of indemnity as is required by the Office of Road and Rail and its successors (whichever is the greater), such insurance to cover sums for which the Supplier shall be legally liable to pay as damages in respect of death or injury or illness or disease to third parties and/or loss of or damage to third party property, (including property belonging to the Company or for which it is responsible) arising as a result of a defect, fault or flaw in the goods supplied. Such insurance shall extend to indemnify the Company as principal, and shall be endorsed such that any care, custody or control

exclusion shall not apply to property belonging to the Company or for which the Company is responsible.

- 3.4 Professional indemnity insurance of not less than £10,000,000 per incident and in the aggregate per annum. Such insurance shall be in effect for the Agreement Duration and for six (6) years following expiry of this Agreement.
- 4 The provisions of this Schedule 4 (Insurance) shall survive the expiry or the termination of this Agreement for whatever reason.

Schedule 5 QUENSH Contract

Schedule 6

Dispute Resolution Procedure

For the purposes of this Dispute Resolution Procedure the following terms have the meanings set out below:

"Adjudicator" means an independent person appointed to act as an adjudicator in accordance with paragraph 8 of this Schedule 6 (Dispute Resolution Procedure).

"Dispute" means any dispute, controversy or claim arising out of or in connection with this Agreement.

"Nominating Authority" means the President or Vice President or other duly authorised officer of the London Court of International Arbitration;

"Notice of Adjudication" means any notice given by a Party to the other party or parties to the Dispute requiring reference of a Dispute to the Adjudicator in accordance with paragraph 7. The Notice of Adjudication shall include:

- (i) the nature and a brief description of the Dispute;
- (ii) details of where and when the Dispute arose; and
- (iii) the nature of the redress which is sought.

"Referral Notice" means a notice referring a Dispute to the Adjudicator in accordance with paragraph 11;

"Senior Representative" means a representative of a Party at senior executive level.

- 1 The Company and the Supplier shall follow the procedure set out in this Schedule 6 (Dispute Resolution Procedure) for the management and resolution of Disputes.
- 2 Subject to paragraph 7, any Dispute may in the first instance be referred in writing from the referring Party to the Senior Representatives by notice in writing to the other Party. The written notice from the referring Party shall give brief written particulars of the Dispute, the relief sought and the basis for claiming the relief sought (including the provisions of this Agreement that are relevant to the Dispute). The written notice shall also identify the referring Party's Senior Representative.
- 3 Within 14 days of receipt of the notice pursuant to paragraph 2, the responding Party provides the referring Party with a brief written response. The response includes identification of the responding Party's Senior Representative.
- 4 The Senior Representatives shall meet and try to reach agreement to resolve the Dispute referred to them pursuant to paragraph 3.
- 5 If the Senior Representatives are unable to, or fail to, reach agreement to resolve the Dispute within 14 days after the date of the response under

paragraph 3, court proceedings shall not be commenced unless and until the Dispute has first been referred to adjudication (and an Adjudicator's decision has been obtained) in accordance with the procedure in paragraphs 7–30 and notice has been given in accordance with paragraph 30.

6 Each Party bears its own costs and expenses in relation to any reference of a Dispute to the Senior Representatives. Discussions amongst the Senior Representatives and any documents prepared or exchanged in relation to the reference of the Dispute to the Senior Representatives (including, for the avoidance of doubt, the notice under paragraph 2 and any response under paragraph 3) are without prejudice and the Parties shall not make use of or rely upon any without prejudice statements in any proceedings.

7 Notwithstanding the provisions of paragraphs 1, 2, 3, 4, 5 and 6, either Party may give notice at any time of its intention to refer a Dispute to adjudication under the procedure set out in paragraphs 7–30 by giving a Notice of Adjudication to the other parties to the Dispute.

8 Should either Party give a Notice of Adjudication then immediately thereafter the parties to the Dispute shall endeavour to agree upon a person whom they would consider suitable to act as the Adjudicator.

In the event of the parties to the Dispute failing to agree upon a suitable person who is able to act as the Adjudicator, the referring Party shall request the Nominating Authority to select a person to act as the Adjudicator.

The Nominating Authority communicates the selection of the Adjudicator to the Parties within 4 days of receiving a request to do so.

9 Any person requested or selected to act as the Adjudicator in accordance with paragraph 8:

9.1 shall be a natural person acting in his personal capacity; and

9.2 shall not be an employee of any of the parties to the Dispute, and shall declare any interest, financial or otherwise, in any matter relating to the Dispute.

10 The terms of remuneration of the Adjudicator shall be agreed by the parties to the Dispute and the Adjudicator with the object of securing the appointment of the Adjudicator within 7 days of the Notice of Adjudication. If any party to the Dispute (but not all parties to the Dispute) rejects the terms of the remuneration of the Adjudicator the same shall be settled (and binding upon the parties to the Dispute) by agreement between the Nominating Authority and the Adjudicator (provided that the level of the Adjudicator's remuneration does not exceed the level originally proposed to the parties to the Dispute by the Adjudicator). If all the parties to the Dispute reject the terms of remuneration proposed by an Adjudicator another person shall be selected as an Adjudicator in accordance with paragraph 8.

- 11 Where the Adjudicator has been selected in accordance with paragraph 8 the referring Party shall refer the Dispute in writing to the Adjudicator by the Referral Notice in accordance with paragraph 12 within 7 days of the date of the Notice of Adjudication or within 2 days of the date of appointment of the Adjudicator, whichever is later. Upon receipt of the Referral Notice, the Adjudicator must inform every Party to the dispute of the date that it was received.
- 12 The Referral Notice shall:
- 12.1 include the facts relied upon by the referring Party in support of its claim(s);
 - 12.2 include a statement of the contractual and/or other basis relied upon by the referring Party in support of its claim(s);
 - 12.3 include a calculation of the specific monetary amount (if any) that the referring Party is seeking to recover in relation to each and every claim that is the subject matter of the Dispute;
 - 12.4 be accompanied by copies of, or relevant extracts from, this Agreement and such other documents on which the referring Party relies; and
 - 12.5 include the addresses of all Parties to the Dispute.
- 13 The referring Party shall send copies of the Referral Notice and the documents referred to in this paragraph 12 to the other Party at the same time as he sends them to the Adjudicator.
- 14 If a matter disputed by the Supplier under or in connection with a Subcontract is also a matter disputed under or in connection with this Agreement, the Supplier may, with the consent of the Company, refer the Subcontract dispute to the Adjudicator at the same time as the main Agreement referral. The Adjudicator shall then decide the disputes together and references to the parties for the purposes of the Dispute are interpreted as including the Subcontractor. The parties to the Dispute agree to consider and endeavour to agree in good faith any reasonable request by the Adjudicator for additional time to decide the main Agreement and Subcontract disputes.
- 15 The parties to the Dispute may jointly terminate the Adjudicator's appointment at any time. In such a case, or:
- 15.1 if the Adjudicator fails to give notice of his decision within the period referred to in paragraph 17 and the parties to the Dispute do not jointly extend time for his decision to be made in accordance with paragraph 17, or
 - 15.2 if the period referred to in paragraph 17 is extended in accordance with paragraph 19 or by agreement by the parties to the Dispute and the Adjudicator fails to give notice of his decision within such extended period, and the parties to the Dispute do not jointly

extend time for his decision to be made in accordance with paragraph 17, or

15.3 if at any time the Adjudicator declines to act or is unable to act as a result of his death, disability, resignation or otherwise,

a person shall be appointed to replace the Adjudicator in accordance with the provisions of paragraph 8. In the event of the parties to the Dispute failing to jointly appoint a person willing and suitable to act as replacement Adjudicator within 3 days, any party to the Dispute may apply to the Nominating Authority to appoint a replacement Adjudicator. In any case where the Adjudicator is appointed as a replacement pursuant to this paragraph 14, the parties to the Dispute shall each send to the Adjudicator, as soon as reasonably practicable, copies of all documents supplied by them to the Adjudicator he replaces.

16 The Nominating Authority and its employees and agents shall not be liable to any Party for any act or omission unless the act or omission is in bad faith. The Parties also agree that any employee or agent of the Nominating Authority shall be similarly protected from liability.

17 The Party not making the referral may send to the Adjudicator within 14 days of the date of the referral, with a copy to the other Party, a written statement of the contentions on which it relies and any materials it wishes the Adjudicator to consider.

18 The Adjudicator shall reach his decision and give notice of the decision to the parties to the Dispute within 28 days of the date of receipt of the Referral Notice mentioned in paragraph 11, or such longer period as is agreed by the parties to the Dispute after the Dispute has been referred to him. Notice of the Adjudicator's decision (stating that it is given under this Schedule 6 (Dispute Resolution Procedure)) shall be in writing and shall include a summary of the Adjudicator's findings and a statement of the reasons for his decision.

19 The Adjudicator may extend the period of 28 days referred to in paragraph 18 by up to 14 days, with the consent of the Party by whom the Dispute was referred.

20 The Adjudicator's decision shall be binding upon the parties to the Dispute and the Adjudicator unless and until the Dispute is finally determined by legal proceedings, by arbitration (if the parties otherwise agree to arbitration) or by agreement. The Adjudicator may on his own initiative or on the application of a Party correct his decision so as to remove a clerical or typographical error arising by accident or omission. Any correction of a decision must be made within five days of the delivery of the decision to the parties to the dispute. As soon as possible after correcting a decision in accordance with this paragraph, the Adjudicator must deliver a copy of the corrected decision to each of the Parties to this Agreement. Any correction of a decision shall form part of the decision. The Adjudicator may in his decision allocate his remuneration and expenses between the Parties in accordance with paragraph 27. If the Adjudicator's decision

changes any payment which is due under this Agreement, payment of the sum decided by the Adjudicator shall be due not later than seven days from the date of the decision or the date, on which such payment is due in accordance with the provisions of this Agreement, whichever is the later.

21 The Adjudicator:

- 21.1 shall act impartially and as an expert (not as an arbitrator) in the conduct of the reference and in reaching his decision;
- 21.2 shall consider any relevant information submitted to him by any of the parties to the Dispute and make available to them any information to be taken into account in reaching his decision provided in accordance with the procedure (if any) which the Adjudicator may decide;
- 21.3 shall reach his decision in accordance with the law applicable to this Agreement;
- 21.4 may take the initiative in ascertaining the facts and the law in relation to the Dispute;
- 21.5 may, with the consent of the parties to the Dispute, seek legal or technical advice from consultants whose appointment by the Adjudicator (including terms of remuneration) is subject to the approval of the parties to the Dispute;
- 21.6 shall, where a translation of any document is required, decide by whom it should be provided in the event that the parties to the Dispute do not agree.

22 The Adjudicator shall decide in his discretion on the procedure to be followed in the adjudication. In particular he may, but is not obliged to:

- 22.1 convene meetings upon reasonable notice to the parties to the Dispute at which such parties and their representatives are entitled to be present;
- 22.2 submit lists of questions to the parties to the Dispute to be answered in such meetings or in writing within such reasonable time as he requires;
- 22.3 require the parties to the Dispute to provide him with such information and other facilities as he reasonably requires for the determination of the Dispute;
- 22.4 otherwise take such action and adopt such procedures as do not conflict with any of the provisions of this Agreement and are reasonable and proper for the just, expeditious and economical determination of the Dispute; and
- 22.5 inspect any part of the LUL Network, the Supplier's works or the facilities of any relevant Subcontractor.

- 23 The Adjudicator shall not be liable for anything done or omitted in the discharge or purported discharge of his functions as an adjudicator unless the act or omission is in bad faith. The Parties also agree that any employee or agent of the Adjudicator shall be similarly protected from liability.
- 24 All meetings are private and save as required by law the Adjudicator and the Parties shall keep confidential the Dispute, all information of whatever nature provided to him by or on behalf of any Party and his decision.
- 25 The Parties to a contract to which the Dispute relates shall continue to observe and perform all the obligations contained in such contract, notwithstanding any reference to the Adjudicator, and insofar as the same is consistent with any safety review procedures to which the parties to the Dispute are bound, give effect forthwith to the Adjudicator's decision in every respect unless and until as hereinafter provided the Dispute is finally determined by a court in any legal proceedings, by arbitration (if the parties otherwise agree to arbitration) or by agreement. Any party to the Dispute may apply to any appropriate court for enforcement of the Adjudicator's decision. Neither any form of enforcement of the Adjudicator's decision nor any form of challenge to the enforcement of the Adjudicator's decision nor any dispute arising out of or in connection with such enforcement or challenge are regarded and treated as a Dispute for the purposes of this Schedule 6 (Dispute Resolution Procedure).
- 26 After the giving of a Notice of Adjudication, the Parties may seek to agree how the Adjudicator allocates the costs and fees excluding his remuneration and expenses which are dealt with in paragraph 27 below of the adjudication as between the Parties. If such an agreement is reached between the Parties, they shall notify the Adjudicator, who shall allocate costs and fees in accordance with such agreement. The Parties agree to be bound by the Adjudicator's allocation of costs and fees and to pay such costs and fees in accordance with the Adjudicator's direction unless and until the direction of the Adjudicator is set aside or revised by a court pursuant to any legal proceedings.
- 27 Subject to any agreement of the Parties, the Adjudicator shall allocate payment of his remuneration and expenses as between the Parties. Unless the Parties otherwise agree, the Adjudicator awards the payment of his remuneration and expenses on the general principle that costs should follow the event, except where it appears to the Adjudicator that in the circumstances this is not appropriate in relation to the whole or part of his remuneration or expenses. The Parties agree to be bound by the Adjudicator's allocation of payment of his remuneration and expenses and pay such remuneration and expenses in accordance with the Adjudicator's direction unless and until the direction of the Adjudicator is set aside or revised by a court pursuant to any legal proceedings.
- 28 All notices, written submissions and any other written communications between the parties to the Dispute and the Adjudicator shall either be delivered by hand, sent by facsimile or sent by first class pre-paid post or

recorded delivery (airmail if posted to or from a place outside the United Kingdom) and, in each case, copied simultaneously (delivered or sent as aforesaid) to the other Parties. Copies by way of confirmation of all communications by facsimile between the parties to the Dispute and the Adjudicator shall also be sent by first class post (airmail if posted to or from a place outside the United Kingdom) not later than the next following Working Day the date of the original facsimile transmission.

- 29 All information of whatever nature provided to the Adjudicator by any party to the Dispute shall be copied to the other parties simultaneously.
- 30 If any party to a Dispute is dissatisfied with the Adjudicator's decision on that Dispute, that party may commence court proceedings for the final determination of the Dispute.

Schedule 7

Not used

Schedule 8

Form of Deed of Warranty

THIS DEED is made on ● 201●

BETWEEN:

- (1) LONDON UNDERGROUND LIMITED a company registered in England and Wales under number 01900907, whose registered office is at 55 Broadway, London, SW1H 0BD (the "Company" which expression shall include its successors and assigns);
- (2) ●whose registered office is situated at ●(the "Subcontractor"); and
- (3) ●whose registered office is situated at ● (the "Supplier").

WHEREAS:

- (A) The Supplier has entered into a contract dated ● (the "Contract") with the Company for the provision of rail re-profiling services (the "Services").
- (B) The Subcontractor [has entered] [will shortly enter] into a subcontract (the "Subcontract") with the Supplier for the carrying out of certain parts (the "Subcontract Services") of the Services more particularly defined in Annex ● hereto.

NOW IT IS AGREED:

- I. Terms and expressions defined in the Subcontract shall where the context so permits have the same meanings in this Deed. The following expressions have the meanings set out herein:
 - (a) "Applicable Laws" means all or any laws, statutes, proclamations, by-laws, directives, regulations, statutory instruments, rules, orders, rules of court, delegated or subordinate legislation, rules of common law or any European Union legislation at any time or from time to time in force in the United Kingdom or the European Union and which are or may become applicable to this Deed, the Subcontract or the Subcontract Services, any agreement or document referred to in this Deed or the Subcontract, or to the Rail Re-Profiling Machines;
 - (b) "Commencement Date" means the date for the Commencement Date set out in the Contract, as notified by the Company from time to time;
 - (c) "Completion" means [];
 - (d) "Connected Persons" means of any of the Subcontractor's employees, directors, consultants, agents, subcontractors, subconsultants, suppliers, shareholders, professional advisers

(including lawyers, auditors, financial advisers, accountants and technical consultants) or underwriters;

- (e) "Documents" means documents, items of information, data, reports, drawings, specifications, plans, software, designs, inventions and any other materials provided by or on behalf of the Subcontractor in connection with the Subcontract Services (whether in existence or to be made);
- (f) "Government Authority" means any national, supra-national, state or local government, any political subdivision thereof or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or other similar entity and includes the Office of Rail and Road and the Secretary of State for Transport;
- (g) "Minimum Records" means all records relating to the Subcontractor's operations, method statements, costs and expenses, subcontracts, claims relating to compensation events and financial arrangements and any document referred to therein or relating thereto and any similar records which the Company may reasonably request;
- (h) "Operator" means a person with statutory duties to provide or secure the provision for Greater London of public passenger services by railway who secures the provision of such services either through contractual arrangements or otherwise;
- (i) "Rail Re-Profiling Machines" means the machinery to be operated and/or maintained (as the case may be) by the Supplier under the terms of the Contract;
- (j) "Prohibited Act" means:
 - (i) offering or agreeing to give to any servant, employee, officer or agent of the Company or the Supplier any grant, gift or consideration of any kind as an inducement or reward for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of the Subcontract or any other contract with the Company or the Supplier or for showing or not showing favour or disfavour to any person in relation to the Subcontract or any other contract with the Company or the Supplier;
 - (ii) entering into the Subcontract or any other contract with the Company or the Supplier in connection with which commission has been paid or has been agreed to be paid by the Subcontractor or on his behalf or to his knowledge unless, before the relevant contract or document is entered into, particulars of any such commission and the terms and conditions of any such contract or document for the payment

thereof have been disclosed in writing to the Company or the Supplier;

- (iii) committing any offence under the Prevention of Corruption Acts 1889-1916 and/or the Bribery Act 2010, under any law or legislation creating offences in respect of fraudulent acts, or at common law in respect of fraudulent acts in relation to the Subcontract or any other contract with the Company or the Supplier; or
- (iv) defrauding or attempting to defraud the Company or the Supplier;
- (k) "Relevant Consents" means a consent, approval, authorisation, acceptance, certificate, licence, exemption, registration, filing, permit and other matters, including any relevant derogation required to be granted by a Relevant Consents Authority, which are required or necessary for the proper performance of the Subcontract Services;
- (l) "Relevant Consents Authority" means any or all of the Government Authority, or any other entity which has the appropriate authority for the granting of a Relevant Consent;
- (m) "Safety Breach" means a material breach of the Subcontract caused by the gross incompetence, wilful default or reckless disregard to safety of the Subcontractor (or anyone employed or acting on behalf of the Subcontractor) which has materially affected (or which had the potential to materially affect) the safe provision of the Subcontract Services, the safe operation of the LUL Network and/or the safety of the Company's employees, or the public or any other persons;
- (n) "TfL Group" means Transport for London, a statutory body set up by the Greater London Authority Act 1999 and any of its subsidiaries and their subsidiaries; and
- (o) "TfL Standards" means the various standards documents and associated codes of practice identified in the Contract as "TfL Standards".

2. The Subcontractor warrants and undertakes to the Company that:

- (a) he has exercised and will continue to exercise all the reasonable skill, care and diligence to be expected of a competent Subcontractor experienced in carrying out services of a similar scope, size and complexity to the Subcontract Services; and
- (b) he has complied with and will continue to comply with the terms of the Subcontract.

3. The Subcontractor warrants and undertakes to the Company that it has not selected or specified for use, and that it will not select or specify for use or

allow to be used any substance or material which are not in accordance with the TfL Standards, general good building and engineering practice and the requirements of the Machine Specification and Works Information (as set out in Schedule I of the Contract).

4. The Subcontractor further warrants and undertakes to the Company that:
 - (a) the Subcontract Services will on Completion satisfy all performance or output specifications and other requirements contained or referred to in the Subcontract;
 - (b) the Subcontract Services and all materials comprised in them will correspond as to description, quality and condition with the requirements of the Subcontract and will be of sound manufacture and workmanship;
 - (c) the Subcontract Services are integrated with the designs of the Company, the Supplier and others as specified in the Subcontract;
 - (d) he has exercised and will continue to exercise all reasonable skill, care and diligence in the design of the Subcontract Services insofar as they have been or will be designed by or on behalf of the Subcontractor;
 - (e) the Subcontract Services will on Completion comply with all Applicable Laws and all relevant TfL Standards;
 - (f) he shall not commit a Prohibited Act and/or Safety Breach; and
 - (g) the Subcontract Services will be carried out and completed timeously in accordance with the time constraints set out in the Subcontract.
5. The Subcontractor warrants and undertakes to the Company that he has maintained and will continue to maintain all insurances required to be maintained pursuant to the terms of the Subcontract and that insofar as he is responsible for the design of the Subcontract Services, he has professional indemnity insurance with a limit of indemnity of not less than £[●] in respect of each and every claim which may be made against the Subcontractor in relation to the Subcontract Services. The Subcontractor shall maintain such professional indemnity insurance for a period of 12 years from the Commencement Date provided such insurance remains available at commercially reasonable rates and shall notify the Company forthwith if such insurance ceases to be so available. When deciding whether such insurances are available at commercially reasonable rates, no account shall be taken of any increase in the premium or imposition of terms which arise as a result of the Subcontractor's insurance claims record.
6. As and when reasonably requested by the Company, the Subcontractor shall produce for inspection documentary evidence that the insurances referred to in Clause 5 are being properly maintained and that payment has been made of the last premiums due in respect of such insurances.

7. To the extent that the intellectual property rights in any and all Documents have not already vested in the Company or the Supplier, the Subcontractor grants to the Company an irrevocable non-exclusive, non-terminable, royalty-free licence to copy and make full use of any and all Documents and all amendments and additions to them and any works, designs or inventions of the Subcontractor incorporated or referred to in them for the following purposes:

- (a) the operation, maintenance, modification, repair, overhaul, refurbishment or sale of the Rail Re-Profiling Machines or any related activity, or permitting the Company to use the Rail Re-Profiling Machines for the purposes of performing the Services;
- (b) complying with all Applicable Laws, TfL Standards and all Relevant Consents;
- (c) training personnel to carry out any of the activities described in (a) or (b) above;
- (d) inviting tenders for any of the activities described in (a) to (c) inclusive;
- (e) in the event of termination of both the Contract and the Subcontract, procuring fulfilment and performance of the Subcontractor's obligations under the Subcontract; and
- (f) the Company performing its obligations under the Contract,

provided always that the Subcontractor shall not be liable for the consequences of any use of the Documents as aforesaid for any other purpose. Such licence shall carry the right to grant sub-licences and shall be transferable to third parties without the prior consent of the Subcontractor.

8. The Subcontractor agrees:

- (a) on request at any time to give the Company or any persons authorised by the Company access to the material referred to in Clause 7 and at the Company's expense to provide copies of any such material; and
- (b) at the Subcontractor's expense to provide the Company with a set of all such material on Completion of the Subcontract Services.

9. If called upon to do so by the Company, the Subcontractor shall provide the Company with such information relating to the Subcontract Services as it may reasonably require including without limitation copies of and extracts from Documents prepared or provided by the Subcontractor for the purposes of the Services provided that neither the provision of such information nor any inspection of the Services by the Company nor the approval by the Company of any material shall limit or discharge, or be deemed to limit or discharge the obligations of the Subcontractor under the

Subcontract or relieve the Subcontractor from any liability which he has in relation to the Subcontract Services.

10. The Subcontractor warrants and undertakes to the Company that he shall maintain and retain the Minimum Records for a minimum of twelve (12) years from Completion of the Services with respect to all matters for which the Subcontractor is responsible under the Subcontract. The Subcontractor further warrants and undertakes to the Company that the Subcontract contains open-book audit rights in favour of the Company and its authorised representatives and that he shall undertake his obligations and exercise his rights under the Subcontract on an open-book basis. The Company and his authorised representatives may from time to time audit on an open-book basis and check and take copies of and extracts from any document or record of the Subcontractor including, without limitation, the Minimum Records. The Subcontractor further warrants that it shall promptly provide all reasonable co-operation in relation to any audit or checking including, without limitation, granting access to premises, equipment, systems and senior personnel and making documents available. Without prejudice to the foregoing, the Subcontractor acknowledges and agrees that the Company may audit and check any and all records as are necessary in order to monitor compliance with the Subcontractor's obligations under the Subcontract with respect to Prohibited Acts and Safety Breaches at any time during performance of the Subcontract and during the 12 years thereafter.
11. The Subcontractor shall provide such assistance to the Company as it may reasonably require in connection with the Subcontract Services.
12. In the event that the Contract or the employment of the Supplier thereunder is determined for any reason whatsoever including but not limited to the insolvency or winding-up of the Supplier (voluntary or otherwise), the Subcontractor shall without allowing any break or intermission to occur in the performance of his duties:
 - (a) continue to observe and carry out his obligations under the Subcontract and this Deed;
 - (b) if so required by notice in writing from the Company treat the Company as Company under the Subcontract to the exclusion of the Supplier whereupon all rights and obligations of the Supplier under the Subcontract shall thereafter be exercisable and performed by the Company; and
 - (c) accept and enter into any deeds or other documents as are required to put into legal effect any further novation of the Subcontract reasonably required by the Company.
- 13.1 The Subcontractor warrants and undertakes to the Company that he will promptly inform the Company of any default by the Supplier under the Subcontract and that he will not, without first giving the Company at least twenty one (21) days' notice in writing, exercise any right he may have to terminate the Subcontract or to treat the same as having been repudiated

- by the Supplier or to suspend performance of his obligations under the Subcontract.
- 13.2 The Subcontractor's right to terminate the Subcontract or to treat the same as having been repudiated or to suspend performance of his obligations thereunder shall cease if within the period of the aforesaid notice and subject to Clause 14 hereof the Company shall have given notice in writing to the Subcontractor requiring the Subcontractor to accept the instructions of the Company or its appointee to the exclusion of the Supplier in respect of the carrying out and completion of the Subcontract Services upon the terms of the Subcontract.
14. The provisions of Clauses 12, 13.1 and 13.2 hereof are conditional upon any notice given by the Company pursuant thereto stating that the Company or its appointee accepts liability for payment of the last unpaid invoice submitted by the Subcontractor. Upon the issue of any such notice by the Company, the Subcontract shall continue in full force and effect as if no right of termination on the part of the Subcontractor had arisen and the Subcontractor shall be liable to the Company or its appointee under the Subcontract in lieu of its liability to the Supplier. If any notice given by the Company under Clauses 12 or 13 requires the Subcontractor to accept the instructions of the Company's appointee, the Company shall be liable to the Subcontractor as guarantor for the payment of all sums from time to time due to the Subcontractor from the Company's appointee. For the avoidance of doubt neither the Company nor his appointee shall be liable for any work carried out prior to the date of the Company's notice.
15. The Supplier has agreed to be a party to this Deed for the purposes of acknowledging that the Subcontractor shall not be in breach of the Subcontract by complying with the obligations imposed on it by Clauses 12 or 13 hereof.
16. This Deed may be assigned by the Company to any member of the TfL Group without limitation and otherwise to any other person on two occasions without the consent of the Subcontractor being required and the Subcontractor shall do all such acts, deeds and things as may be reasonably necessary to give effect to any such assignment. No further assignment shall be permitted without the consent of the Subcontractor.
17. The Subcontractor shall not be entitled to contend that any person to whom this Deed is assigned in accordance with Clause 16 is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed (whenever happening) by reason that such person is an assignee and not a named promisee under this Deed.
18. The liability of the Subcontractor under this Deed shall cease 12 years following Completion of the whole of the Services.
19. The Subcontractor hereby covenants that if required by the Company it will enter into further deeds of warranty with all and each of such persons who shall acquire or agree to acquire an interest in the whole or any part of the Subcontract Services. Each such deed of warranty shall be in the same form

mutatis mutandis as this Deed or in such substantially similar form as may reasonably be required by the Company.

- 20.1 Without limitation to Clause 2 above, the Subcontractor hereby warrants to the Company that:
- (a) except as provided under deeds of warranty required pursuant to the Subcontract, it shall not, without the prior written approval of the Company, at any time for any reason disclose to any person or publish or make any statement concerning the Subcontract, this Deed or the project to which the Subcontract Services relate;
 - (b) it shall treat all information obtained under, arising from or in connection with the Subcontract, this Deed and the project as confidential, and that other than for the purpose of providing the Subcontract Services, it shall not disclose any information or documents concerning the Subcontract to any other person; and
 - (c) it shall not, without the prior written consent of the Company, disclose any information obtained by it concerning the Company or the TfL Group to any other person.
- 20.2 The Company may require as a precondition to the granting of such consent that any such third party provides a confidentiality undertaking in terms satisfactory to the Company.
- 20.3 Clause 20.1 does not apply to the disclosure of:
- (a) any information which is already in the public domain at the time of its disclosure other than by breach of these provisions,
 - (b) any information disclosed by the Subcontractor to any Connected Persons provided that such recipients agree in writing to be bound by the terms of this confidentiality provision; and
 - (c) any information which is required to be disclosed by any applicable law or statutory requirement, the regulations of any stock exchange, any taxation authorities or by an order of a court or other tribunal of competent jurisdiction or any relevant regulatory body.
- 20.4 The Subcontractor shall procure that the Connected Persons comply with the provisions of this Deed and is responsible to the Company for any act or omission of any Connected Person in breach of such obligations.
- 20.5 The Subcontractor shall notify the Company promptly if the Subcontractor becomes aware of any breach of confidence by a Connected Person and shall give the Company all assistance the Company may reasonably require in connection with any proceedings the Company may bring or other steps the Company may take against that Connected Person or any other person for such breach of confidence.
- 20.6 The Subcontractor acknowledges that damages would not be an adequate remedy for any breach of this Clause 20.6 by the Subcontractor and that

(without prejudice to all other remedies to which the Company may be entitled to as a matter of law) the Company shall be entitled to any form of equitable relief to enforce the provisions of this Clause 20.6.

- 20.7 At the Company's request and in any event upon the termination or expiry of the Subcontract, the Subcontractor shall promptly deliver to the Company or destroy as the Company may direct all documents and other materials in the possession, custody or control of the Subcontractor (or the relevant parts of such materials) that bear or incorporate the whole or any part of the confidential information and if instructed by the Company in writing, remove all electronically held confidential information, including the purging of all disk-based confidential information and the reformatting of all disks.
- 21.1 The Subcontractor shall owe no greater obligations to the Company than he owes to the Supplier under the Subcontract.
- 21.2 The Subcontractor shall be entitled in any action or proceedings by the Company to rely on any limitation in the Subcontract and to raise the equivalent rights in defence of liability as he would have against the Supplier thereunder.
22. The rights and benefits conferred upon the Company by this Deed are in addition to any other rights and remedies the Company may have against the Subcontractor including without limitation any remedies in negligence.
23. The Supplier agrees that he will not take any steps which would prevent or hinder the Company from exercising his rights under this Deed and confirms that the rights of the Company in Clauses 12 and 13 override any obligations of the Subcontractor to the Supplier under the Subcontract.
24. Any notice to be given hereunder shall be deemed to be duly given if it is in writing and delivered by hand at or sent by registered post to the registered office or principal place of business in the United Kingdom for the time being of the party to be served and in the case of any such notice sent by registered post shall be deemed to have been received 48 hours after being posted.
- 25.1 Any dispute or difference arising out of or in connection with this Deed may be referred to adjudication in accordance with Schedule 8 (Form of Deed of Warranty) of the Contract which shall be deemed to be included in this Deed as if it were recited herein in full (with the necessary changes).
- 25.2 The Adjudicator's decision shall be binding on the parties until the dispute or difference is finally determined by the Courts in accordance with Clause 25.3.
- 25.3 This Deed and any non-contractual obligations arising out of or in connection with it shall be governed by, and construed in accordance with, English law. The Courts of England and Wales shall have jurisdiction over any dispute or difference arising out of or in connection with this Deed.

26. Nothing in this Deed confers or is intended to confer on any third party any benefit or the right to enforce any term of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999.

IN WITNESS whereof this Deed has been executed and unconditionally delivered as a Deed by the parties the day and year first above written.

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

THE COMMON SEAL of
[THE SUBCONTRACTOR]

was affixed to THIS DEED

in the presence of:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary

EXECUTED AND DELIVERED AS A DEED by

[THE CONTRACTOR]

acting by:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary

ANNEX

(Subcontract Services)

Schedule 9 Form of Performance Bond

(Letterhead of Guarantor)

To: London Underground Limited (its successors in title and assigns)

Contract Bond No. [●]

1. Whereas our clients [●] (the "Supplier") have entered into a contract with you dated [●] (the "Contract") in respect of [●], we [●] (the "Guarantor", which term shall include our successors in title and assigns) hereby irrevocably undertake as a primary obligation upon first demand in writing made by you upon us from time to time or at any time to pay to you on each occasion the sum demanded by you within five (5) banking days upon service of your demand.

PROVIDED THAT:

2. This Bond shall come into force on the date hereof.
3. Any demand hereunder shall be substantially in the form of either Annex IA or Annex 2 to this Bond, and as between you and us the facts set out in that demand shall be: (a) deemed to be true and (b) accepted by us as conclusive evidence for the purposes of this Bond that the amount claimed in the demand is due and payable to you hereunder, it being our intention that the event upon which payment must be made hereunder is the service of your demand without any rights on our part to raise any objections, irrespective of the validity or the effectiveness of the Contract and the obligations arising thereunder and irrespective of the underlying facts or their significance under the Contract.
4. Any demand in the form of Annex IA to this Bond shall be accompanied by a copy of a letter from you sent to the Supplier by first class recorded delivery fourteen (14) or more days before the date of the demand, substantially in the form of Annex IB to this Bond.
5. All sums payable under this Bond shall be paid in pounds sterling to such bank account as may be specified in your demand in immediately available funds, free of any restriction or condition and free and clear of and without any deduction or withholding whether for or on account of tax, by way of set-off, or otherwise, except to the extent required by law.
6. For the purpose of this paragraph 6, the expression "Expiry Date" means [●]. Our liability hereunder shall be limited as follows:
 - (a) we shall have no liability in respect of any demand received after the Expiry Date; and
 - (b) in respect of a demand or demands received on or before the Expiry Date, our liability shall not exceed the aggregate sum of £[●].
7. Our obligations hereunder shall remain in full force and effect and shall not in any way be affected, reduced or discharged by:

- (c) any alteration to the terms of the Contract made by agreement between you and the Supplier; and/or
 - (d) any defence, counterclaim, set-off or other deduction available to the Supplier under the Contract; and/or
 - (e) any alteration in the extent or nature or sequence or method or timing of the works/services to be carried out under the Contract; and/or
 - (f) any time being given to the Supplier or any other indulgence or concession to the Supplier or any forbearance, forgiveness or any other thing done, omitted or neglected to be done under the Contract; and/or
 - (g) any other bond, security or guarantee now or hereafter held by you for all or any part of the obligations of the Supplier under the Contract; and/or
 - (h) the release or waiver of any such other bond, security or guarantee; and/or
 - (i) any amalgamation or reconstruction or dissolution including liquidation or change in control or constitution of the Supplier; and/or
 - (j) the termination of the Contract; and/or
 - (k) any other event which might operate to discharge a guarantor at law or in equity.
8. Terms defined in the Contract and not otherwise defined herein shall have the same meaning in this Bond unless inconsistent with the context.
9. This Bond shall be governed by, and interpreted according to, the laws of England and the Courts of England shall have exclusive jurisdiction in relation to any claim, dispute or difference concerning this Bond and any matter arising from it save that you shall have the right to bring proceedings in the Courts of any other jurisdiction in which any of our assets may be situated.
10. This Bond may be assigned or transferred without our prior consent to any member of the Transport for London Group. Any other assignment or transfer of this Bond by either party shall require the consent of the other party, such consent not to be unreasonably withheld or delayed.
11. This bond may not be amended, varied or supplemented in any manner whatsoever without your prior written consent, other than in accordance with its express terms.
12. Each of the provisions of this bond is severable and distinct from the others, and if at any time any such provision is or becomes ineffective, inoperable, invalid or unenforceable it shall be severed and deemed to be deleted from this bond, and in such event the remaining provisions of this bond shall continue to have full force and effect.

13. All bank charges and other fees payable in relation to or in connection with this bond are for the account of the Supplier and you shall have no liability or responsibility therefor.
14. Except to the extent it is inconsistent with the express terms of this bond, this bond is subject to the ICC Uniform Rules for Demand Guarantees, 2010 revision, ICC Publication No. 758.

Executed as a deed by the parties and delivered on the date of this Bond.

Executed as a Deed by [GUARANTOR]

acting by

.....
Authorised Signatory

and

.....
Authorised Signatory

Executed as a deed by affixing the Common Seal of

LONDON UNDERGROUND LIMITED

in the presence of:-

.....
Authorised Signatory

ANNEX IA

Form of Demand from the Company to the Guarantor

To be sent by first class recorded delivery post

Dear Sirs

[Contract Title]

Contract No: [•]

We refer to the Bond given by you to us dated [•]. We enclose a copy of a letter from us to [•] (the "Supplier") which was sent to the Supplier by first class recorded post on [•] which is more than fourteen (14) days before the date of this demand.

The Supplier has not taken steps to remedy the breach/breaches of the Contract.

The breach/breaches of the Contract is/are as follows:

[•]We hereby demand payment from you of the sum of £[•] under your Bond. Please make payment by CHAPS in sterling payable to [London Underground Limited / bank account details].

Yours faithfully

.....

London Underground Limited

55 Broadway

London

SW1H 0BL

ANNEX IB

Form of letter from the Company to the Supplier

To be sent by first class recorded delivery post

Dear Sirs

[Contract Title]

Contract No: [•] (the "Contract")

As explained in [previous letters to you/ our letter dated [•]], you are in breach of your obligations under the Contract and you have not proposed or implemented sufficient steps to remedy those breaches.

This letter therefore notifies you that, unless within the next fourteen (14) days you take steps to remedy the breach/breaches, we will be entitled without further notice to you to call for payment under the Bond given on your behalf by [• Guarantor].

Yours faithfully

.....

on behalf of

London Underground Limited

55 Broadway

London

SW1H 0BL

ANNEX 2

Alternative form of demand from the Company to the Guarantor

Dear Sirs

[Contract Title]

Contract No: [●] (the "Contract")

We refer to the Bond given by you to us dated [●].

An event has occurred of the type described in Clause [●] of the Contract.

The breach/breaches of the Contract is/are as follows:

[●]

We hereby demand payment from you of the sum of £[●] under the Bond. Please make payment by CHAPS made payable to [London Underground Limited / bank account details].

Yours faithfully

.....
London Underground Limited

55 Broadway

London

SW1H 0BL

Schedule 10 Not used

Schedule II Key Personnel

Maurice Verheijen

Head of International Sales & Operations

Allan Billing

Operations Manager UK