

AGREEMENT []

Between

DIRECT RAIL SERVICES LIMITED

and

[]

for

[REDACTED]

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Parties

- (1) **DIRECT RAIL SERVICES LIMITED** (incorporated and registered in England and Wales with company number 03020822 whose registered office is at Herdus House, Westlakes Science & Technology Park, Moor Row, Cumbria CA24 3HU hereinafter referred to as “**DRS**”).
- (2) [REDACTED] incorporated and registered in England and Wales with company number [REDACTED] whose registered office is at [REDACTED] (hereinafter referred to as the “**Contractor**”).

each a “**Party**” and together the “**Parties**”

- (A) DRS requires the Contractor to seasonal services as is more particularly described in the scope of work (“**Scope**”) at Schedule 1 (the “**Services**”).
- (B) DRS has appointed the Contractor to provide the Services in accordance with the terms and conditions set out in this Agreement.

1. Definitions and Interpretation

- 1.1 The following definitions and rules of interpretation apply in this Agreement:

Achieved	means the achievement of a KPI by the Contractor.
Agreement	means this Agreement between the Parties including any associated schedules and appendices.
Audit	means an audit carried out pursuant to clause 19.
Auditor	means the National Audit Office or an auditor appointed by the NDA or NTS as the context requires.
Bribery Act	means the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by government.
Cessation Plan	means a plan agreed between the Parties or determined by DRS pursuant to clauses 27.3 to 27.5 (inclusive) to give effect to a Declaration of Ineffectiveness or clauses 27.9 to 27.11 (inclusive) to give effect to a Public Procurement Termination Event.
Change	any change to this Agreement or the Services.
Change Control Note	the written record of a Change agreed or to be agreed by the Parties pursuant to the Change Control Procedure.

Change Control Procedure	the procedure for changing this Agreement, as set out in Schedule 6.
Commencement Date	means 1 st April 2023.
Commercial Contact	means the people named in Schedule 3 nominated by each Party from time to time to act as that Party's main point of contact in respect of this Agreement, or such person as may be nominated by the Commercial Contact to act on its behalf.
Completion Date	means the first anniversary after the Commencement Date.
Confidential Information	means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business affairs, properties, assets, trading practices, services, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers or suppliers of either Party, all Personal Data and Sensitive Personal Data and commercially sensitive information.
Contract Area	means the area where the Services are to be carried out as described Schedule 1.
Contract Order	means any order issued to the Contractor by DRS pursuant to this Agreement in respect of any of the Services.
Contracting Authority	means any contracting authority as defined in Regulation 4 of The Utilities Contracts Regulations 2016.
Contractor Equipment	the equipment and materials of whatsoever nature used by the Contractor in providing the Services which do not themselves form part of the Services and in which title is not intended to pass to DRS under this Agreement.
Controller	has the meaning given to it in the Data Protection Legislation.
Data Protection Legislation	means: <ul style="list-style-type: none"> (a) the Data Protection Act 2018; (b) the General Data Protection Regulation (Regulation (EU) 2016/679); (c) any other European Union legislation relating

to Personal Data and any other Law which applies to a party relating to the use of Personal Data (including the privacy of electronic communications); and

- (d) the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party,

all as amended, updated or replaced from time to time.

Data Subject has the meaning given to it in the Data Protection Legislation.

Declaration of Ineffectiveness a declaration of ineffectiveness in relation to this Agreement made by a Court of competent jurisdiction pursuant to Regulation 98 of the Public Contracts Regulations 2015.

Default any breach of the obligations of either Party (including but not limited to fundamental breach or breach of a fundamental term) or any default, act, omission negligence or statement of either Party, its employees, agents or sub-contractors in connection with or in relation to the subject matter of this Agreement and in respect of which such Party is liable to the other.

Default Notice a notice which sets out the nature of the Default committed, what remedial action is required and the timescale within which the remedial action must take place.

Documents means all plans, drawings, specifications, schedules, reports, records calculations, correspondence and other documents (including any computer software developed by the Contractor to generate them and any design contained in them) prepared or provided by the Contractor in connection with this Agreement.

DRS Data means:

- (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any of DRSs Confidential Information, and which:
 - i) are supplied to the Contractor by or on behalf of DRS; or
 - ii) the Contractor is required to generate, process, store or transmit pursuant to this Agreement; or

	(b) any Personal Data for which DRS is the Controller.
DRS HSEQ Procedure	means the following documents (may be amended from time to time to stay in line with relevant code of practice and/or legislative and regulatory requirements in force) and as provided by DRS as part of the Tender process:
	DRS HSEQ - POL01;
	Environment Policy – POL08; and
	HSE policy – POL04.
EIRs	the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the information commissioner or relevant government department in relation to such regulations.
Exit Management Plan	a plan agreed between the Parties which sets out the procedures to be adopted by the Contractor on termination or conclusion of this Agreement.
FOIA	the Freedom of Information Act 2000 and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or government.
Force Majeure	any cause affecting the performance by a Party of its obligations under this Agreement arising from acts, events, omissions or non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster, but excluding any industrial dispute relating to the Contractor, its Personnel or any other failure in the Contractor's supply chain.
Group	in relation to a company, any subsidiary or holding company of that company and any subsidiary of a holding company of that company (as subsidiary and holding company are defined in section 1159 of the Companies Act 2006).
Information	has the meaning given under section 84 of the FOIA.
Insolvency Event	where either Party: <ul style="list-style-type: none"> (a) becomes bankrupt or makes a composition or arrangement with its creditors or has a

proposal made in respect of its company for a voluntary arrangement for the composition of debts or scheme of arrangement approved in accordance with the Insolvency Act 1986;

- (b) has an application made under the Insolvency Act 1986 to the Court for the appointment of an administrative receiver;
- (c) has a winding-up order made or (except for the purposes of amalgamation or reconstruction) a resolution for voluntary winding-up passed;
- (d) has a provisional liquidator receiver or manager of its business or undertaking duly appointed;
- (e) has an administrative receiver as defined in the Insolvency Act 1986 appointed;
- (f) has possession taken by or on behalf of the holders of any debentures secured by a floating charge of any property comprised in or subject to the floating charge;
- (g) is in circumstances which entitle the Court or a creditor to appoint or have appointed a receiver a manager or administrative receiver or which entitles the Court to make a winding-up order; or
- (h) any similar event occurs under the law of any other jurisdiction.

Intellectual Property Rights

any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including all patents, registered designs, design rights, trade marks, domain names, copyrights, database rights, moral rights, topography rights, any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures, trade and business names, including the benefit of all registrations of and applications to register any of the aforesaid items, and all rights in the nature of any of the aforesaid items, anywhere in the world. All rights of confidence, trade secret, confidentiality and other proprietary rights, including all rights to know-how and other technical information and in each case, including all extensions and renewals and any other industrial or intellectual property rights now or in the future created in any part of the world.

KPIs	the key performance indicators (if applicable) set out in Schedule 4.
Law	any applicable Act of Parliament, regulation, by-law, subordinate legislation within the meaning of section 2(1) of the Interpretation Act 1978 in force from time to time, exercise of the royal prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any regulatory body.
NDA	means the Nuclear Decommissioning Authority established under section 1 of the Energy Act 2004, whose principal place of business is at Herdus House, Westlakes Science and Technology Park, Moor Row, Cumbria, CA24 3HU.
Necessary Consents	all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Services.
Parent Company	means [insert name of Contractor's parent].
Guarantee	means a guarantee executed in the form of the template at Schedule 7.
Performance Failure	failure of a Service to be provided in accordance with this Agreement.
Personal Data	has the meaning given to it in the Data Protection Legislation.
Personal Data Breach	has the meaning given to it in the Data Protection Legislation.
Personnel	means all the persons employed by the Contractor, together with the Contractor's staff, agents, consultants, officers, suppliers, sub-consultants, Sub-Contractors and other workers of the Contractor who are engaged in the provision of the Services from time to time.
Plant	means the machines owned by DRS or Network Rail as described in this Specification to be operated by the Contractor in accordance with this Agreement.
Price	the Price payable by DRS to the Contractor as detailed in Schedule 2 for the proper performance of the Services by the Contractor in accordance with the Scope and the terms and conditions of this

	Agreement.
Processor	has the meaning given to it in the Data Protection Legislation.
Prohibited Act	<p>the following constitute Prohibited Acts:</p> <ul style="list-style-type: none"> (a) to directly or indirectly offer, promise or give any person working for or engaged by DRS a financial or other advantage to: <ul style="list-style-type: none"> (i) induce that person to perform improperly a relevant function or activity; or (ii) reward that person for improper performance of a relevant function or activity. (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement; (c) committing any offence: <ul style="list-style-type: none"> (i) under the Bribery Act; (ii) under legislation or common law concerning fraudulent acts; (iii) defrauding, attempting to defraud or conspiring to defraud DRS. <p>Or any activity, practice or conduct which would constitute one of the offences listed above, if such activity, practice or conduct were to have been carried out in the UK.</p>
Public Procurement Termination Event	has the meaning give to it in clause 27.7.
Public Procurement Termination Ground	any one or more of the grounds described in Regulation 73(1) of the Public Contracts Regulations 2015.
Replacement Contractor	any third-party contractor providing a Replacement Service appointed by DRS from time to time.
Replacement Service	any service that is identical or substantially similar to the Services and which DRS receives in substitution for any part of the Services following the termination or expiry of this Agreement, whether such Replacement Service is provided by DRS internally or by a Replacement Contractor.

Request for Information	means a request for information under the FOIA or the EIR.
RIDDOR	the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 and any subordinate legislation made under the regulations from time to time, together with any guidance and/or codes of practice issued by government.
Sensitive Personal Data	has the meaning given to it in the Data Protection Legislation.
Services	means the services set out in Schedule 1.
Site	means the area in the Contract Area where the Services pursuant to each Contract Order are to be carried out.
Specification	the Services to provided and set out in Schedule 1.
SQ Response	means the response to the standard selection questionnaire submitted by the Contractor to DRS on [DATE].
Sub-Contract	any contract between the Contractor and a Sub-Contractor pursuant to which the Contractor sources the provision of any part of the Services from the Sub-Contractor.
Sub-Contractor	Means a third party who has entered a contract with the Contractor and will provide up to 20% of the Services under this Agreement.
Tender	means the tender submitted by the Contractor to DRS on [DATE].
Term	has the meaning given to it at clause 2.1.
Working Day	means Monday to Friday, excluding any public holidays in England and Wales.

- 1.2 Words importing the singular meaning include where the context so admits the plural meaning and vice versa.
- 1.3 Words importing the masculine include the feminine and the neuter.
- 1.4 The words “include”, “includes”, “including”, are to be construed as if they were immediately followed by the words “without limitation”.
- 1.5 References to “**clauses**”, “**Schedules**” and “**Appendices**” are to the clauses, Schedules and Appendices of this Agreement. References to paragraphs are to paragraphs of the relevant Schedule.

- 1.6 Headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of the Agreement.
- 1.7 Any Schedule and Appendix forms part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes all Schedules and Appendices.
- 1.8 Reference to any person, shall include natural persons and partnerships, corporate or unincorporated bodies (whether or not having separate legal personality), all other legal persons of whatever kind and however constituted and their legal and personal representatives, successors and permitted assigns.
- 1.9 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.10 References to a statute, statutory instrument, enactment, regulation, order or quality standard shall be construed as a reference to such statute, statutory instrument, enactment, regulation order or quality standard as amended or re-enacted or updated or superseded from time to time.
- 1.11 A reference to writing or written includes faxes and e-mail.
- 1.12 Any obligation in this Agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.13 No terms and conditions of the Contractor whether stated on an invoice in a catalogue or other literature shall apply, override, or supersede any of the terms of this Agreement.
- 1.14 Where there is any conflict or inconsistency between the provisions of the Agreement, such conflict or inconsistency shall be resolved according to the following order of priority:
- (a) the clauses of the Agreement;
 - (b) the Scope.

2. Term

- 2.1 This Agreement shall take effect on the Commencement Date and shall expire on the Completion Date unless it is otherwise terminated in accordance with this Agreement (the “**Term**”).
- 2.2 Subject to clause 2.3, DRS may extend the Term by notice in writing to the Contractor for further periods each of 12 month duration and the Completion Date shall be varied accordingly to account for any such extension.
- 2.3 In no circumstances shall the Term of this Agreement extend beyond 31st March 2026.

3. Due Diligence and Contractor's Warranty

- 3.1 The Contractor warrants that:

- (a) it has full capacity and authority and all necessary consents (including, where its procedures so require, the consent of its Parent Company) to enter into and to perform its obligations under this Agreement;
- (b) it is entering into this Agreement as principal and not as agent for any person and that it acts as an independent contractor in carrying out its obligations under this Agreement;
- (c) it is capable of performing the Services in all respects in accordance with this Agreement and has all necessary Personnel, equipment and experience for this purpose;
- (d) any Personnel assigned to the performance of the Services shall possess and exercise such training, qualifications, skill and experience as are necessary for the proper performance of the Services;
- (e) all Necessary Consents are in place to provide the Services and DRS shall not (unless otherwise agreed) incur any additional costs associated with obtaining, maintaining or complying with the same;
- (f) it shall comply with all Laws;
- (g) in the performance of the Services and in regard to all documents prepared by the Contractor and all information provided by the Contractor in connection with the Services, it has exercised and will continue to exercise all the reasonable skill care and diligence to be expected of a professional body experienced in carrying out services of the kind envisaged by the Scope. No enquiry, inspection, approval, sanction, comment, consent, decision or instruction at any time made or given by or on behalf of DRS in relation to any such document, data or information and no failure of DRS to discern any defect in or omission from any such document, data or information shall operate to exclude or limit the obligation of the Contractor to exercise all the reasonable skill care and diligence required under this Agreement;
- (h) as at the Commencement Date, all information, statements and representations contained in the Tender and the SQ Response are true, accurate and not misleading save as may have been specifically disclosed in writing to DRS before the execution of this Agreement and it will promptly advise DRS of any fact, matter or circumstance of which it may become aware during the Term that would render any such information, statement or representation to be false or misleading;
- (i) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets that will or might affect its ability to perform its obligations under this Agreement;
- (j) it is not subject to any contractual obligation, compliance with which is likely to have an effect on its ability to perform its obligations under this Agreement; and

- (k) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue.
 - (l) the Contractor shall comply with Network Rail's Code of Business Ethics and Code of Conduct, corporate hospitality, conflicts of interests and speak out (whistleblowing) policies and any updates thereof set out at <https://www.networkrail.co.uk/who-we-are/transparency-and-ethics/ethics>; and
 - (m) without compromising the safety of anyone on or about or using DRS's property and/or railway infrastructure.
- 3.2 Each warranty and obligation in this clause 3 shall be construed as a separate warranty or obligation (as the case may be) and shall not be limited or restricted by reference to, or reference from, the terms of any other such warranty or obligation or any other term of this Agreement.
- 3.3 Where the Contractor is a partnership (non statutory) the rights, obligations and liabilities of the partners in the partnership under this Agreement are joint and several. This Agreement and the liabilities of the partners under this Agreement do not automatically terminate upon the death, retirement or resignation of any one or more members of such partnership or upon the admission of an additional partner or partners. The partners in the partnership use their reasonable endeavours to procure that any additional partner or partners enter into an agreement with DRS confirming his/her acceptance of the rights, obligations and liabilities of the Contractor under this Agreement.
- 3.4 Where the Contractor is comprised of two or more parties in joint venture or other alliance the rights, obligations and liabilities of each such party under this Agreement are joint and several.
- 3.5 Where the Services comprise the provision of spare parts which are supplied with a warranty, the Contractor undertakes followed up on the warranty whenever a failure of a component or Spare occurs during the relevant period of warranty and also undertakes to make sure that the benefits are passed through to the DRS in the Agreement Price.
- 3.6 Where the Contractor uses DRS premises to perform the Services, the Contractor agrees to and will pay or indemnify DRS against all utility charges relating to the premises of which the Contractor is permitted to have the use (but not council tax or rates) and shall vacate such premises returning the keys to DRS promptly after the completion of the Services or the determination of the Agreement (whether or not the validity of such determination is contested), whichever is the earlier, or earlier than any such time if so required by the Agreement or DRS (which shall be deemed to be a

variation ordered by DRS leaving such premises in their condition as first made available to the Contractor.

3.7 DRS may also substitute other premises for premises previously provided (which shall be deemed to be a variation ordered by DRS).

3.8 The Contractor shall, in relation to all such premises described in the Contract, be deemed to have satisfied himself as to their state and condition, and as to their compliance with the law applicable at the place of performance of the Contract, and shall be responsible for such compliance at his own expense.

4. Supply of Services

4.1 The Contractor:

- (a) shall provide the Services, during the Term, in accordance with the Scope, the terms of this Agreement and all Laws;
- (b) acknowledges that it has sufficient information about DRS and the Scope and that it has made all appropriate and necessary enquiries to enable it to perform the Services in accordance with this Agreement;
- (c) shall comply with all lawful and reasonable directions of DRS relating to the performance of the Services;
- (d) shall comply with DRS's policies and procedures (as may be updated from time to time and have been provided to the Contractor) which are applicable to the provisions of the Services;
- (e) shall provide the Services in a safe manner and free from any unreasonable or avoidable risk to any person's health and well-being and in an economic and efficient manner; and
- (f) shall ensure that all materials, equipment and goods under this Agreement or supplied by the Contractor shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979 (as amended), sound in design and in conformance in all respects with the requirements specified in this Agreement.

4.2 DRS shall have the power to inspect and examine the performance of the Services at any time provided that DRS gives reasonable notice to the Contractor at any premises where any part of the Services is being performed.

4.3 In the event that DRS notifies the Contractor that in DRS's reasonably held opinion any part of the Services does not meet the requirements of this Agreement or differs in any way from those requirements and this is other than as a result of Default or negligence on the part of DRS, the Contractor shall at its own expense re-schedule and carry out the Services in accordance with the requirements of this Agreement within such reasonable time as may be specified by DRS.

- 4.4 Without prejudice to any other rights and remedies DRS may have pursuant to this Agreement, the Contractor shall reimburse DRS for all reasonable costs incurred by DRS which have arisen as a consequence of the Contractor's delay in the performance of its obligations under this Agreement and which delay the Contractor has failed to remedy following reasonable notice from the DRS.
- 4.5 Save to the extent reasonably required in the performance of the Services or expressly agreed by DRS and with all reasonable mitigation measures in place, the Contractor shall not interfere with or obstruct any public or private rights or property (including, without limitation, DRS's property, DRS's neighbours' property, railway operations and traffic, road traffic and highways).

Conflicts of Interest

- 4.6 The Contractor warrants:
- (a) undertakes and agrees that it has and shall keep in place adequate procedures for dealing with any conflicts of interest; and
 - (b) that it does not have and will not have at the Commencement Date any interest in any matter where there is or is reasonably likely to be a conflict of interest with the Services or any member of DRS, save to the extent fully disclosed to and approved by DRS.
- 4.7 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any of its Personnel or Sub-Contractors are placed in a position where, in the reasonable opinion of DRS, there is or may be an actual conflict or a potential conflict of interest between the pecuniary or personal interests of the Contractor and the duties owed to DRS under this Agreement.
- 4.8 The Contractor shall check for any conflict of interest at regular intervals throughout the Term and in any event no less than once in every six months and shall notify DRS in writing immediately upon becoming aware of any actual or potential conflict of interest with the Services or DRS and shall work with DRS to do whatever is necessary to manage such conflict to DRS's satisfaction, provided that, where DRS is not so satisfied, it may terminate this Agreement in accordance with clause 25 and/or take such other action as it deems necessary.

Performance

- 4.9 Timely provision of the Services shall be of the essence including commencing the provision of the Services within a time agreed or on a specified date.
- 4.10 Where any part of the Services is subject to a KPI, the Contractor shall provide the Services in such a manner as to ensure the KPI is Achieved.

- 4.11 The Contractor shall provide any records reasonably requested by DRS summarising the KPIs that have been Achieved.
- 4.12 In the event that a KPI is not Achieved, this shall constitute a Default and the provisions of clauses 24 and 25 shall apply.

Exit Management

- 4.13 The Parties shall comply with requirements set out in Schedule 9 (Exit Management).

5. Price and Payment

- 5.1 DRS shall pay the Price to the Contractor in accordance with Schedule 2.
- 5.2 Where the Contractor enters into a Sub-Contract for the purpose of performing all or part of the Services, it shall include a clause in the Sub-Contract that payments shall be made by the Contractor to the Sub-Contractor within 30 days from receipt of a valid invoice.
- 5.3 DRS may retain or set off any sums owed to it by the Contractor which have fallen due and payable against any sums due to the Contractor under this Agreement or any other agreement with DRS.
- 5.4 The Contractor shall make any payments due to DRS without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise, unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by DRS to the Contractor.
- 5.5 Except where otherwise provided in this Agreement, the Price shall be inclusive of all costs of staff, facilities, equipment, materials and other expenses whatsoever incurred by the Contractor in providing the Services under this Agreement.
- 5.6 The Contractor is not entitled to reimbursement for expenses unless such expenses are specified in this Schedule or have been incurred with the prior written consent of DRS, in which case the Contractor shall supply appropriate evidence of expenditure in a form acceptable to DRS.
- 5.7 The Contractor shall, on or before the date of this Agreement, provide to DRS a Guarantee.

6. Contract Management

- 6.1 The Contractor shall provide any reports required in the form and at the intervals set out in the Scope.
- 6.2 The Parties shall meet in accordance with any requirements set out in the Scope.

7. Observance of Site Regulations

Where the Contractor carries out Services on sites operated by or on behalf of DRS or any DRS Group company, the Contractor shall ensure that its

Personnel shall be familiar with and comply with all regulations pertaining to such sites.

8. Security

8.1 The Contractor shall comply with all instructions issued by DRS and the requirements of Schedule 5 in respect of security measures.

8.2 The Contractor's attention is drawn to the provisions of the Official Secrets Acts, 1911 to 1989 and to the provisions of Section 11 of the Atomic Energy Act, 1946.

8.3 The Contractor's attention is drawn to the provisions of the Anti-Terrorism Crime and Security Act 2001, particularly Section 79, which makes it an offence intentionally or recklessly to make a disclosure of information which might prejudice the security of a nuclear site or of nuclear material where that material is held on such a site, or is being transported to or from such a site or is being carried on board a British ship. The Contractor shall take all reasonable steps by display of notices or by other appropriate means to ensure that all persons employed on any work in connection with the Agreement have notice that these statutory provisions apply to them and will continue to apply after completion or earlier determination of the Agreement.

8.4 In the event that the Contractor or its Personnel fail to comply with this clause 8, DRS reserves the right to terminate this Agreement with immediate effect by giving notice in writing to the Contractor.

8.5 The Contractor shall take all reasonable steps and all steps required by the Agreement to prevent unauthorised persons being admitted to the Routes, Sites and the DRS's premises. The Contractor shall be responsible for ensuring that no person employed on its behalf trespasses beyond the agreed limits of any specified working areas or access routes.

8.6 The Contractor shall maintain a list of names and addresses of all persons who are or may be at any time concerned with the Services or any part thereof, specifying the capacities in which they are so concerned, and shall supply such list to the DRS when instructed so to do, giving such other particulars as the DRS may reasonably require.

8.7 Standards

If there is a change in Railway Group Standards or Network Rail Standards affecting the Services after the date of this Agreement which necessitates a variation to the Services, such variation shall be deemed to be incorporated into this Agreement. Where the aforementioned variation causes the Contractor to incur significant additional cost in order to provide the Services, the additional cost shall be shared between the Parties equally.

9. Confidentiality

9.1 Subject to clause 9.3 and clause 16, each Party shall:-

- (a) treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly;
- (b) only use the Confidential Information for the purposes of this Agreement; and
- (c) not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party except to such persons and to such extent as may be necessary for the performance of the Agreement or where disclosure is otherwise expressly permitted by the provisions of the Agreement.

9.2 Notwithstanding the provisions of clauses 9.1(b) and 9.1(c) the Contractor hereby agrees that DRS is authorised to share all Confidential Information with NDA.

9.3 The provisions of clause 9.1 shall not apply to any Confidential Information:

- (a) which is required by any Law or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under FOIA or the EIR;
- (b) where a Party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 9.1;
- (c) which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
- (d) which is independently developed without access to the Confidential Information;
- (e) which the Parties have agreed contains no Confidential Information;
- (f) to enable a determination to be made under clause 29;
- (g) which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party, and the disclosing party is not under any obligation of confidence in respect of that information;
- (h) which is disclosed by DRS to any other department, office or agency of the government, provided that DRS informs the recipient of any duty of confidence owed in respect of the information; and
- (i) which is disclosed by DRS relating to this Agreement and in respect of which the Contractor has given its prior written consent to disclosure.

9.4 DRS shall be entitled to disclose to any Replacement Contractor any Confidential Information of the Contractor which relates to the performance of the Services by the Contractor. In such circumstances DRS shall authorise the Replacement Contractor to use such Confidential Information only for

purposes relating to the performance of the Services and for no other purposes and shall take all reasonable steps to ensure that the Replacement Contractor accepts an obligation of confidence.

9.5 Nothing in this Agreement shall prevent DRS disclosing the Contractor's Confidential Information:

- (a) to the Crown, any other Contracting Authority or any government department. All government departments receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments on the basis that the information is confidential and is not disclosed to a third party which is not part of the Crown, any Contracting Authority or any government department;
- (b) for the purpose of the examination and certification of DRS's accounts; or
- (c) for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which DRS has used its resources.

10. **DRS Data**

- 10.1 The Contractor acknowledges DRS's ownership of Intellectual Property Rights which may subsist in DRS's Data. The Contractor shall not delete or remove any copyright notices contained within or relating to DRS's Data.
- 10.2 The Contractor and DRS shall each take reasonable precautions (having regard to the nature of their other respective obligations under this Agreement) to preserve the integrity of DRS's Data and to prevent any corruption or loss of DRS's Data.

11. **Intellectual Property**

- 11.1 The Intellectual Property in the Documents shall remain vested in the Contractor but the Contractor hereby grants to DRS an irrevocable, perpetual, royalty-free, non-exclusive licence to copy and use the Documents and the contents of it for any purpose whatsoever relating to DRS's business including, but without limitation, the construction, completion, reconstruction, reinstatement, modification, extension, maintenance, repair, letting, sale, advertisement or use of the Services. DRS shall be entitled to grant sub-licences to others in relation to the Documents and the licence hereby granted shall be assignable to third parties and shall continue to subsist notwithstanding the expiry of this Agreement. The Contractor shall not be liable to DRS or any sub-licensee for any use of the Documents for any purpose other than that for which the same was prepared or provided by the Contractor.

- 11.2 The Contractor shall use reasonable endeavours to procure that the Sub-Contractors shall grant a licence to DRS in terms identical to Clause 11.1.
- 11.3 The Contractor warrants and undertakes that they have the right to grant DRS a licence to use the Contractor's Intellectual Property Rights for all purposes.
- 11.4 The Contractor indemnifies DRS against all Losses arising out of any use by DRS of the Documents and the Contractor Intellectual Property Rights, including, without limitation, any claim that the exploitation of any licence granted by the Contractor to DRS under clause 11.3 infringes the Intellectual Property Rights or other rights of any third party.
- 11.5 At the expiry or termination of this Agreement the Contractor shall immediately return to DRS all materials, documents, work and records (including any back-up media) in respect of all Intellectual Property Rights owned by or licensed to DRS.
- 11.6 The Contractor shall have no right (save where expressly permitted under this Agreement or with DRS's prior written consent) to use any trademarks, trade names, logos or other Intellectual Property Rights of DRS.
- 11.7 The Contractor acknowledges that it is the author of all the Documents prepared and developed by him in the performance of this Agreement and waives any moral rights which he might be deemed to possess under Chapter IV of the Copyright, Design & Patents Act 1988 in respect thereof and of the Documents.
- 11.8 The Contractor shall obtain any Necessary Consents before using any material in relation to the performance of the Agreement which is or may be subject to any third-party Intellectual Property rights. The Contractor shall procure that the owner of the rights grants to DRS a non-exclusive licence or, if the Contractor is a licensee of those rights, shall grant to DRS an authorised non-exclusive sub-licence to use, reproduce and maintain the material. Such licence or sub-licence shall be perpetual and irrevocable and shall be granted at no cost to DRS.

12. Quality

- 12.1 The Contractor shall maintain a quality management system which, as a minimum, shall comply with the requirements of:

(a) The international quality standard:

- (i) a quality management system certification to ISO 9001 standard.

13. Environment, Health & Safety

- 13.1 The Contractor shall maintain a health, safety and environmental management system which, as a minimum, shall comply with the requirements of:

(a) ISO 45001: 2018

(b) ISO 14001:2015

- 13.2 The Contractor shall perform its obligations under the Agreement in accordance with the principles defined in DRS's environment, health, and safety policy statement and in compliance with the DRS SHEQ Specification.
- 13.3 The Contractor shall comply with all applicable environment, health and safety legislation, regulations, and approved codes of practice.
- 13.4 In providing the Services, the Contractor shall (taking into account best available techniques not entailing excessive cost and the best practicable means of preventing, or counteracting the effects of any noise or vibration) have appropriate regard (insofar as the Contractor's activities may impact on the environment) to the need to:
- (a) preserve and protect the environment and to the need to avoid, remedy and mitigate any adverse effects on the environment;
 - (b) enhance the environment and have regard to the desirability of achieving sustainable development;
 - (c) conserve and safeguard flora, fauna and geological or physiological features of special interest; and
 - (d) sustain the potential of natural and physical resources and the need to safeguard the life-supporting capacity of air, water, soil, and ecosystems.
- 13.5 The Contractor shall ensure that all risks arising from its activities in relation to this Agreement are effectively managed and are as low as reasonably practicable.
- 13.6 The Contractor shall notify DRS in a timely manner of any instances of the following which relate to the Services:
- (a) any death, major injury, disease or Dangerous Occurrence (as defined in RIDDOR or equivalent regulations); and
 - (b) any breach of environment or health and safety legislation, including enforcement actions (i.e. improvement or prohibition notices).
- 13.7 The Contractor shall also notify DRS in a timely manner of any of the following occurring in relation to (i) the work carried out under this Agreement; and/or (ii) work of a similar nature to the Services carried out by the Contractor for third parties:
- (a) any accident/event resulting in personal injury to DRS's personnel or any third party; and
 - (b) any 'near miss' – an event, incident, accident, or emergency which did not result in an injury but had the potential to do so.
- 13.8 In all cases, the costs of compliance with this clause 13 shall be borne by the Contractor.

14. Contractor's Personnel

- 14.1 Nothing in this Agreement will render the Contractor's Personnel, an employee, agent, or partner of DRS by virtue of the provision of the Services by the Contractor under this Agreement and the Contractor shall be responsible for making appropriate deductions for tax and national insurance contributions from the remuneration paid to the Contractor's Personnel.
- 14.2 The Contractor shall provide the Contractor's Personnel as necessary for the proper and timely performance and management of the Services in accordance with this Agreement.
- 14.3 DRS is not under an obligation to provide office or other accommodation or facilities or services (including telephony and IT services) to the Contractor except as may be specified in the Scope.
- 14.4 During the Term and without prejudice to any of DRS other rights, powers or remedies, DRS may (without liability to the Contractor) deny any Contractor Personnel access to any of DRS's sites and/or require any Contractor Personnel to be immediately removed from performing the Services if such Contractor Personnel in DRS view is unsuitable to provide the Services, has not been properly trained as required for this Agreement, or is otherwise incompetent, negligent, guilty of misconduct or could be a danger to any person. DRS shall notify the Contractor of such denial and/or requirement in writing and the Contractor shall redeploy that person to work un-associated with the Services and provide a suitable replacement (with the DRS's consent).
- 14.5 The Contractor shall indemnify, keep indemnified and hold harmless DRS from and against all liabilities, costs, expenses, injuries, damages, claims, demands, proceedings, and legal costs (on a full indemnity basis) which DRS incurs or suffers whenever arising or brought by the Contractor's Personnel or any person who may allege to be the same.
- 14.6 The Contractor shall pay to the Contractor's Personnel not less than the amounts to which the Contractor's Personnel are contractually entitled.
- 14.7 The Contractor shall provide DRS with such particulars as DRS may reasonable require of the Personnel (including grade) and the agreement of the DRS shall be obtained prior to the engagement of all additional or replacement Personnel in connection with the Services.
- 14.8 The Contractor shall not assign a specific member of Contractor Personnel to provide the Services under this Agreement on a full time basis. Contractor Personnel should be spread across a number of Contractor customers so as to avoid any Contractor Personnel being able to transfer under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) (the "Transfer Regulations"). No single Contractor Personnel should spend up to 20% of their time providing the Deliverables and/or services under this Agreement. In the event that any Contractor Personnel makes a claim against NTS claiming that they have transferred under the Transfer Regulations (a "Transfer Claim"), the Contractor will indemnify NTS against such a Transfer Claim. NTS will not settle the Transfer Claim without the

consent of the Contractor. The Contractor may at its option have conduct of the Transfer Claim.

14.9 Notwithstanding anything to the contrary elsewhere in this Agreement:

14.10 in the last 12 months prior to completion of the Services (up signature if this Agreement if for 12 months or less), the Contractor shall, where it is of the opinion that TUPE is likely to apply, provide DRS with a list of names, ages, addresses and national insurance numbers of all persons who are, who have been, or who may be at any time concerned with the Services or any part thereof, specifying their job title, job description, basic salary, bonus and all other emoluments and benefits, period of continuous employment, the percentage of the time that they have worked under this Agreement, details of any agreements entered into with employee representative bodies in relation to such persons, details of all training and competency courses attended and certificates or qualifications obtained and such other requirements as DRS may reasonably require (altogether the "Employee Data"). DRS will, subject to compliance with any laws relating to data protection, be permitted to disclose any information provided to it under this Clause in summary and/or anonymised form to any person who has been invited to tender for the provision of the Services (or similar services) and to any replacement supplier and replacement supplier's sub-contractors;

14.11 in the last 12 months prior to completion of the Services under the last Contract Order, (or up signature if this Agreement if for 12 months or less), the Contractor shall (and shall procure that any Sub-Contractor shall) provide to the people engaged in the performance of this Agreement, written contracts of employment or statements of terms of employment, in either case complying with the requirements of Section 1 of the Employment Rights Act 1996, and retain copies of such documents together with such other documentation and PAYE records as may reasonably be required by DRS ("Personnel Records") and shall, where TUPE is likely to apply, within 28 days of DRS's request, whether during the performance of this Agreement; or

14.12 following the end of this Agreement (whether lawfully or otherwise) deliver up to DRS or to such person as DRS may nominate the Employee Data, such copies of the Personnel Records as may be required by DRS and to the extent not otherwise provided, any employee liability information pursuant to and in accordance with Regulation 11 of TUPE. DRS may communicate such information to persons intending to tender to execute Services of the nature of the Services;

14.13 the Contractor shall not (and shall procure that any Sub-Contractor shall not) (where TUPE is likely to apply), in the last 6 months prior to completion of the Services, without the prior written permission of DRS, vary or purport or

promise to vary (in the employee's favour), the terms of the contracts of employment of any person engaged wholly or principally in the execution of the Services;

- 14.14 the Contractor shall not (and shall procure that any Sub-Contractor shall not) (where TUPE is likely to apply), without the prior written consent of DRS create or grant, or promise to create or grant, terms or conditions of employment for any new employee engaged wholly or principally in the execution of the Services if and to the extent that such terms or conditions are materially different to the terms or conditions of employment of equivalent or nearest equivalent existing employees (which themselves comply with Clause 14.4) at the date of commencement of employment of such new employee;
- 14.15 the Contractor shall (and shall procure that any Sub-Contractor shall) (where TUPE is likely to apply) at all times comply with its information and consultation obligations under Regulation 13 of TUPE; and
- 14.16 the Contractor shall indemnify and keep indemnified DRS and any successor supplier against all costs, claims, expenses, damages, demands, actions, losses and liabilities arising out of or in connection with any claim or demand arising out of or in connection with any act or omission of the Contractor or any Sub-Contractor and which DRS or the successor supplier incurs:
- (a) in relation to any one or more employees whose employment has transferred or is alleged to have transferred to DRS and/or a successor contract pursuant to TUPE and/or this Agreement; and/or
 - (b) as a result of the Contractor's breach of Clauses 14.12, 14.13 and/or 14.14,
- 14.17 and, despite anything else in this Agreement, such a successor supplier can directly enforce the indemnity in its favour proved for by this Clause 14.17

15. **Equipment**

15.1 Risk in:

- (a) all of the Contractor's Equipment shall be with the Contractor at all times; and
- (b) all other equipment and materials forming part of the Services (title to which will pass to DRS) ("**Materials**") shall be with the Contractor at all times until completion of the Services in accordance with this Agreement.

15.2 Regardless of whether or not the Contractor's Materials are located at DRS premises the Contractor shall ensure that all Contractor Equipment and all

Materials meet all minimum health, safety, environment and quality standards required from time to time by law.

- 15.3 The Contractor shall use DRS's Plant solely in connection with the Services and may not use DRS's Plant for any other purposes without the prior written consent of DRS. The Contractor must ensure they provide proof of competence (if required) and shall not remove, deface or cover up any name-plate or identification mark or number on DRS's Plant nor shall it attempt to sell, mortgage, charge or otherwise deal with DRS's Plant.
- 15.4 The Contractor shall provide progress reports and attend meetings with DRS's Representative as required and in accordance with DRS's Instructions.

16. Freedom of Information

- 16.1 The Contractor (including any Sub-Contractors if appropriate) acknowledges that DRS is subject to the requirements of the FOIA and the EIR and shall assist and cooperate with DRS (at DRS's expense) to enable DRS to comply with any Requests for Information and the requirements under the FOIA and EIR.
- 16.2 The Contractor shall and shall procure that its Sub-Contractors:
- (a) provide DRS with a copy of all Information belonging to DRS requested in the Request for Information which is in its possession or control in the form that DRS requires within five (5) Working Days (or such other period as DRS may reasonably specify) of DRS's request for such Information and such assistance as is reasonably requested by DRS for DRS to respond to the Request for Information within the time periods set out in the FOIA and EIRs;
 - (b) shall transfer to the DRS all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within two (2) Working Days of receipt; and
 - (a) shall not respond directly to a Request For Information unless authorised in writing to do so by DRS.
- 16.3 The Contractor acknowledges that DRS shall be responsible for determining at its absolute discretion whether any information, including commercially sensitive information, is exempt from disclosure under the FOIA or EIR and for determining what information will be disclosed in response to a Request for Information in accordance with the FOIA and EIR.
- 16.4 The Contractor acknowledges that DRS may be required under the FOIA and EIR to disclose Information (including commercially sensitive information) without consulting or obtaining consent from the Contractor. DRS shall take reasonable steps to notify the Contractor of a Request For Information to the extent that it is permissible and reasonably practical for it to do so.

17. Data Protection

- 17.1 Both Parties to this Agreement will comply with all applicable requirements of the Data Protection Legislation. This clause 17 is in addition to, and does not relieve, remove or replace, a Party's obligations under the Data Protection Legislation.
- 17.2 The Parties acknowledge that for the purposes of the Data Protection Legislation, DRS is the data Controller and the Contractor is the data Processor. Schedule 8 sets out the scope, nature and purpose of processing by the Contractor, the duration of the processing and the types of Personal Data and categories of Data Subject.
- 17.3 Without prejudice to the generality of clause 17, DRS shall ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Contractor for the duration and purposes of this Agreement.
- 17.4 Without prejudice to the generality of clause 17, the Contractor shall, in relation to any Personal Data processed in connection with the performance by the Contractor of its obligations under this Agreement:
- (a) process that Personal Data only on the written instructions of DRS (as set out in Schedule 8), unless the Contractor is required by the laws of any member of the European Union or by the laws of the European Union ("**Applicable Laws**") applicable to the Contractor to otherwise process the Personal Data. Where the Contractor is so required, it shall promptly, and in any event within twenty-four (24) hours notify DRS before processing the Personal Data, unless prohibited by the Applicable Laws;
 - (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by DRS, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
 - (c) ensure that all Contractor's Personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and have entered into an appropriate contractual agreement that requires them to keep the Personal Data confidential;
 - (d) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of DRS has been obtained and the following conditions are fulfilled:

- (i) DRS or the Contractor has provided appropriate safeguards in relation to the transfer;
 - (ii) the Data Subject has enforceable rights and effective remedies;
 - (iii) the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (iv) the Contractor complies with the reasonable instructions notified to it in advance by DRS with respect to the processing of the Personal Data;
- (e) notify DRS immediately, and in any event within five (5) Working Days if it receives:
- (i) a request from a Data Subject to have access to that person's Personal Data;
 - (ii) a request to rectify, block or erase any Personal Data;
 - (iii) any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation (including any communication from the Information Commissioner), and

will not disclose any Personal Data in response to such requests or correspondence without the consent of DRS;

- (f) assist DRS in responding to any request from a Data Subject, with correspondence with the Information Commissioner or in ensuring compliance with DRS's obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (g) notify DRS immediately and in any event within twelve (12) hours on becoming aware of a Personal Data breach including without limitation any event that results, or may result, in unauthorised access, loss, destruction, or alteration of Personal Data in breach of this Agreement and:
 - (i) implement any measures necessary to restore the security of the Personal Data; and
 - (ii) assist DRS to make notifications to the Information Commissioner and affected Data Subjects;
- (h) at the written direction of DRS, delete or return Personal Data and copies thereof to DRS on termination or expiry of this Agreement unless required by the Applicable Laws to store the Personal Data;
- (i) maintain complete and accurate records and information to demonstrate its compliance with this clause 17 and allow for audits by DRS's designated auditor pursuant to clause 19;

- (j) indemnify DRS against any loss or damage suffered by DRS arising from or in connection with any breach by the Contractor of its obligations under this clause 17; and
 - (k) notify DRS if it considers in its opinion any of DRS's instructions infringe the Data Protection Legislation.
- 17.5 Where the Contractor intends to engage a Sub-Contractor and intends for that Sub-Contractor to process any Personal Data relating to this Agreement, replace an existing Sub-Contractor who is processing the Personal Data or alter the scope or location of Processing carried out by an existing Sub-Contractor, it shall:
- (a) notify DRS in writing at least sixty (60) days before the intended change to the Sub-Contractor or the processing by the Sub-Contractor;
 - (b) ensure that it has undertaken due diligence on the proposed Sub-Contractor with all due skill and care, including a risk assessment of the information governance related practices and processes of the Sub-Contractor and has established that the outcome of the due diligence is a determination that the Sub-Contractor and the arrangements made for the sub-processing would objectively be adequate and sufficient to ensure compliance with the applicable requirements of the Data Protection Legislation and has given notice of the outcome to DRS;
 - (c) obtain prior written consent to the processing; and
 - (d) ensure that any Sub-Contract imposes obligations on the Sub-Contractor to give effect to the terms set out in this clause 17.
- 17.6 Either Party may, at any time on not less than thirty (30) Working Days' written notice to the other Party, revise this clause 17 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).

18. Prevention of Bribery

- 18.1 The Contractor represents and warrants that neither it, nor to the best of its knowledge any Personnel, have at any time prior to the Commencement Date:
- (a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
 - (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 18.2 The Contractor shall not during the term of this Agreement:

- (a) commit a Prohibited Act; and/or
- (b) do or suffer anything to be done which would cause DRS or any of DRS's employees, consultants, contractors, sub-contractors or agents to contravene any provision of the Bribery Act or otherwise incur any liability in relation to the Bribery Act.

18.3 The Contractor shall during the term of this Agreement:

- (a) establish, maintain and enforce, and require that its Sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Bribery Act and prevent the occurrence of a Prohibited Act;
- (b) keep appropriate records of its compliance with its obligations under clause 18.3(a) and make such records available to DRS on request; and
- (c) immediately notify DRS if a foreign public official becomes an officer or employee of the Contractor or acquires a direct or indirect interest in the Contractor. The Contractor warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of this Agreement.

18.4 The Contractor shall immediately notify DRS in writing if it becomes aware of any breach of this clause 18 or has reason to believe that it has or any of its Personnel have:

- (a) been convicted of any offence involving bribery or corruption, fraud or dishonesty;
- (b) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
- (c) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
- (d) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Agreement or otherwise suspects that any person or Party directly or indirectly connected with this Agreement has committed or attempted to commit a Prohibited Act.

18.5 If the Contractor makes a notification to DRS pursuant to clause 18.4, the Contractor shall respond promptly to DRS's enquiries, co-operate with any investigation, and allow DRS to audit any books, records and/or any other relevant documentation in accordance with clause 19.

18.6 DRS may terminate this Agreement by written notice with immediate effect if the Contractor or its Personnel (whether or not acting with the Contractor's knowledge) breaches this clause 18.

19. Records and Audit

- 19.1 The Contractor shall and shall procure that its Sub-Contractors (if any) shall keep and maintain until six (6) years after the Term full, true and accurate records of this Agreement, the manner in which the Contractor has complied with the terms of this Agreement, the Services provided under it and all payments made by DRS (the "**Records**").
- 19.2 During the Term and for a period of two (2) years after the Completion Date DRS, the NDA or an auditing body appointed by the government may conduct an audit, at any reasonable time during normal business hours, in connection with this Agreement.
- 19.3 Subject to DRS's rights of confidentiality, the Contractor shall on demand provide the Auditor with all reasonable co-operation and assistance in relation to each Audit, including:
- (a) all information requested by the Auditor within the scope of the Audit;
 - (b) reasonable access to sites controlled by the Contractor and to equipment used in the provision of the Services; and
 - (c) access to the Personnel.
- 19.4 DRS shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Contractor or delay the provision of the Services, save insofar as the Contractor accepts and acknowledges that control over the conduct of Audits carried out by the Auditor is outside of the control of DRS.
- 19.5 If an audit identifies that:
- (a) the Contractor has failed to perform its obligations under this Agreement in any material manner, the Parties shall agree and implement a remedial plan. If the Contractor's failure relates to a failure to provide any information to DRS about the Price, proposed Price or the Contractor's costs, then the remedial plan shall include a requirement for the provision of all such information; or
 - (b) DRS has overpaid any fees, the Contractor shall pay to DRS the amount overpaid within thirty (30) Working Days. DRS may deduct the relevant amount from the Price if the Contractor fails to make this payment.
- 19.6 The Contractor shall keep the Records and accounts referred to in clause **Error! Reference source not found.** in accordance with good accountancy practice.

20. Notices

- 20.1 Except as otherwise provided within this Agreement, no notice or other communication from one Party to the other shall have any validity under this Agreement, unless it is made in writing by or on behalf of the Party sending the communication.

- 20.2 Any notice given to a Party under or in connection with this Agreement shall be in writing, marked for the attention of the Party's Commercial Contact and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office.
- 20.3 Any notice shall be deemed to have been received:
- (a) if delivered by hand, on signature of a delivery receipt;
 - (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Working Day after posting or at the time recorded by the delivery service.
- 20.4 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

21. Insurance

- (a) The Contractor shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum the following levels of cover:
- (b) public liability insurance with a limit of indemnity of not less than ten (10) million pounds sterling in relation to any one claim or series of claims;
- (c) employer's liability insurance with a limit of indemnity of not less than five (5) million pounds in relation to any one claim or series of claims;
- (d) product liability insurance with a limit of indemnity of not less than ten (10) million pounds sterling in relation to any one claim or series of claims.

(together the "**Required Insurances**") in respect of all risks which may be incurred by the Contractor arising out of the Contractor's performance of the Agreement, including death or personal injury, loss of or damage to property or any other loss.

- 21.2 The Contractor shall give DRS, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 21.3 The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Agreement.
- 21.4 The Contractor shall hold and maintain the Required Insurances for a minimum of six (6) years following the expiration or earlier termination of the Agreement.
- 21.5 Should the Contractor or any Sub-Contractor be in breach of any of their respective obligations under this Clause 21, DRS may itself insure against any risk in respect of which the default shall have occurred and may deduct a sum or sums equivalent to the amount paid or payable in respect of the

premiums from any monies due or to become due to the Contractor under this Agreement, or, if none are due, may recover the amount paid from the Contractor as a debt.

22. Liability and Limitation of Liability

22.1 The Contractor shall indemnify and keep indemnified DRS against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever whether arising in tort (including negligence) default or breach of this Agreement, to the extent that any such loss or claim is due to the breach of contract, negligence, wilful default or fraud of the Contractor, its Personnel and/or of any of its representatives save to the extent that the same is directly caused by DRS.

22.2 Neither Party shall be liable to the other Party (as far as is permitted by law) in respect of all and any (i) loss of or damage to profit, revenue, contracts, anticipated savings, goodwill or business opportunities whether direct or indirect; or (ii) all or any incidental, indirect, special or consequential loss or damage.

22.3 Each Party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant Party is entitled to bring a claim against the other Party pursuant to this Agreement.

22.4 Subject to clause 22.5:

(a) DRS's maximum aggregate liability to the Contractor in respect of all causes of action under, arising out of, or in connection with this Agreement for breach of contract, breach of duty, tort (including but not limited to negligence), act or omission, by way of indemnity or otherwise, shall be limited to a sum not in any circumstances exceeding the value of the sums paid or payable under this Agreement;

(b) The Contractor's maximum liability to DRS in respect of all causes of action under, arising out of, or in connection with this Agreement for breach of contract, breach of duty, tort (including but not limited to negligence), act or omission, by way of indemnity or otherwise, shall be limited for each incident (or series of incidents giving rise to the same claim) to a sum not in any circumstances exceeding £5,000,000 (five million).

22.5 Notwithstanding any other provision of this Agreement neither Party limits or excludes its liability for:

(a) fraud or fraudulent misrepresentation;

(b) death or personal injury caused by its negligence; or

(c) any other act or omission, for which liability may not be limited under any Law.

- 22.6 Should the Contractor or any sub-contractor be in breach of any of their respective obligations under this Clause 22, DRS may itself insure against any risk in respect of which the default shall have occurred and may deduct a sum or sums equivalent to the amount paid or payable in respect of the premiums from any monies due or to become due to the Contractor under this Agreement, or, if none are due, may recover the amount paid from the Contractor as a debt.

23. Liquidated Damages

In the event of Default by the Contractor, DRS may deduct from its payments to the Contractor the sums (if any) in Schedule 2 (Financial Provisions). The Parties confirm that the sums set out in Schedule 2 represents a genuine pre-estimate of DRS's loss.

24. Default and Default Notices

- 24.1 If DRS suspects that the Contractor has committed a Default, DRS shall be entitled to serve a Default Notice upon the Contractor. This will be without prejudice to any other right or remedy which may be available to DRS either under this Agreement or at law.
- 24.2 When DRS serves a Default Notice the Contractor shall take such remedial action as is specified in the Default Notice within the timescale set out and at the Contractor's sole cost.
- 24.3 If the Contractor fails to complete the remedial action within the specified time detailed in the Default Notice then DRS shall be entitled at its sole discretion to (i) suspend the Services until the Contractor has satisfactorily completed the remedial action; or (ii) terminate the Agreement with immediate effect.

25. Termination

- 25.1 Without affecting any other right or remedy available to it, DRS may terminate this Agreement at any time by giving one month's written notice to the Contractor.
- 25.2 Either Party may terminate this Agreement in whole or part with immediate effect by the service of written notice on the other Party in the following circumstances:
- (a) subject and without prejudice to any other express termination right under this Agreement, if the other Party is in breach of any material obligation under this Agreement and:
 - (i) that breach is incapable of remedy; or
 - (ii) the breaching Party has failed to remedy the breach within thirty (30) days of being notified of the breach in writing; or

- (b) if the other Party is affected by an Insolvency Event.
- 25.3 Without prejudice to any other rights powers or remedies DRS may have, DRS may terminate this Agreement:
 - (a) in accordance with clause 18 (Prevention of Bribery); or
 - (b) if the Contractor fails to remedy any breach in accordance with a Default Notice issued in accordance with clause 24 (Default and Default Notices); or
 - (c) in accordance with clause 27 (Declaration of Ineffectiveness and Public Procurement Termination Event); or
 - (d) in accordance with clause 28 (Force Majeure); or
 - (e) in accordance with clause 32 (Change of Ownership).
- 25.4 DRS may, in addition to any other power it may have, with 30 days notice to the Contractor forthwith terminate the employment of the Contractor under this Agreement.
- 25.5 DRS may terminate this Agreement in the event that it considers any of the circumstances set out in regulations 89(1)(a) or (c) of the Utilities Contracts Regulations 2016 SI 2016/274 ("UCR") or regulations 73(1)(a) or (c) of the Public Contracts Regulations 2015 SI 2015/102 ("PCR") as amended from time to time as applicable have arisen.
- 25.6 DRS may terminate this Agreement in the event that it considers any of the circumstances set out in regulation 89(1)(b) of UCR or regulation 73(1)(b) of PCR as applicable have arisen. Termination of this Agreement by DRS pursuant to this Clause 25 shall be deemed to be a material breach under Clause 25.2 which the Contractor has failed to remedy.
- 25.7 DRS shall notify DRS in writing immediately upon becoming aware of the circumstances referred to in Clause 25.6(previous clause) applying.

26. Consequences of Termination

- 26.1 On the expiry of the Term or if this Agreement is terminated in whole or in part for any reason:
 - (a) the Contractor shall, at DRS's request and in accordance with DRS's instructions, either destroy, dispose of or deliver to DRS all DRS's Data, DRS's property (including but not limited to materials, documents, data, information and access keys) relating to the Agreement in its possession or under its control and in default of compliance with this clause the Contractor hereby grants a licence to DRS or its appointed agents to enter any premises of the Contractor or

its Sub-Contractors, consultants or agents where such items may be held, to recover possession thereof;

- (a) the Contractor shall co-operate fully with DRS to ensure an orderly migration of the Services to DRS or, at DRS's request, to a Replacement Contractor; and
 - (b) the provisions of any Exit Management Plan shall come into effect.
- 26.2 Where DRS terminates this Agreement in whole or part and makes other arrangements for the provision of Services, DRS shall be entitled to recover from the Contractor the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the DRS throughout the remainder of the Term. DRS shall take all reasonable steps to mitigate such additional expenditure. On termination no further payments shall be payable by DRS to the Contractor until DRS has established the final cost of making those other arrangements, such arrangements not to be unreasonably delayed.
- 26.3 On the termination or expiry of this Agreement for any reason the Contractor shall cooperate with DRS to ensure, if applicable, the orderly hand over and migration of the Services to DRS or to a Replacement Contractor.
- 26.4 Subject to clauses 26.2 and 26.5, on termination of this Agreement DRS shall, within no more than thirty (30) Working Days, pay to the Contractor, the Contractor's outstanding unpaid invoices, any amount due up to the date of termination and any other reasonable and demonstrable costs that the Contractor shall incur up to the date of termination.
- 26.5 Nothing in this clause shall restrict or limit the parties' general obligation at law to mitigate any cost it may suffer or incur as a result of the termination of this Agreement.
- 26.6 If DRS, in exercise of the powers contained in Clause 25.5 or 25.6 shall terminate the Contractor's employment under this Agreement the following provisions shall take effect:
 - (a) the payment of any sum of money that may then be due or accruing due from DRS to the Contractor shall be suspended;
 - (b) the Contractor shall pay to DRS DRS's reasonable losses and expenses due to the termination, but the Contractor shall receive credit for any sum the payment of which is suspended under Clause 26.6(a); and
 - (c) DRS (or its agent) may hire any persons in the employment of the Contractor and DRS may enter upon any Site and take possession of all goods, materials, plant and equipment (whether or not for incorporation in the Services) which are on a Site, or in storage or lying or in the course of preparation or manufacture off Site, and may purchase or do anything requisite for the further execution of the Services, or may employ other suppliers to do the same.

26.7 Suspension

- (a) The Contractor shall, on the written instructions of DRS, suspend the performance of the Services or any part thereof for such time and in such manner as DRS's Representative may require.
- (b) Where the performance of the Services or any part thereof has been suspended under Clause 26.7(a) and the Services are to be resumed, DRS shall grant the Contractor a reasonable period of time in order to resume performance of such Services.
- (c) Unless any suspension is:
 - (i) provided for in any provision of this Agreement other than Clause 26.7(a); or
 - (ii) a consequence of some default of, or breach by, the Contractor of any provision of this Agreement,the Contractor shall be entitled to reimbursement of the sums which would otherwise have fallen due under the Pricing Document less a reasonable deduction for the cost of fuel, consumables, discretionary overtime and other avoidable costs assessed by DRS's Representative following the principles set out in Clause 6. DRS shall take all reasonable steps to reduce avoidable costs during any suspension.
- (d) In the event of suspension, the Contractor:
 - (i) shall comply with DRS's Representative's instructions with regard to stabling of Plant;
 - (ii) shall not remove any Plant from the Contract Area or from any Stabling Point or other location without the written permission of DRS's Representative. Such permission shall not be unreasonably withheld.

27. Declaration of Ineffectiveness and Public Procurement Termination Event

- 27.1 In the event that a court makes a Declaration of Ineffectiveness, DRS shall promptly notify the Contractor. The Parties agree that the provisions of clause 26 and clauses 27.1, 27.2, 27.4 to 27.6 (inclusive) and 27.12 shall apply as from the time when the Declaration of Ineffectiveness is made.
- 27.2 The Declaration of Ineffectiveness shall not prejudice or affect any other right, liability or remedy which has accrued or shall accrue to either Party prior to or after such Declaration of Ineffectiveness, save as otherwise expressly provided to the contrary in clauses 27.1 to 27.6 inclusive.
- 27.3 During any court proceedings seeking a Declaration of Ineffectiveness, DRS may require the Contractor to prepare a Cessation Plan in accordance with this clause 27.3 by issuing a notice in writing. As from the date of receipt by the Contractor of such notification from DRS, the Parties (acting reasonably and in good faith) shall agree or, in the absence of such agreement, DRS

shall reasonably determine an appropriate Cessation Plan with the object of achieving:

- (a) an orderly and efficient cessation of the Services or (at DRS's request) a transition of the Services to DRS or such other entity as DRS may specify; and
- (b) minimal disruption or inconvenience to DRS or to customers of the Services,

in accordance with the provisions of clauses 27.2 to 27.6 (inclusive) and which the Parties agree would have effect in the event that a Declaration of Ineffectiveness is made.

- 27.4 Where there is any conflict or discrepancy between the provisions of clause 26 and clauses 27.2 to 27.6 (inclusive) and 27.12 or the Cessation Plan, the provisions of these clauses 27.2 to 27.6 (inclusive) and 27.12 and the Cessation Plan shall prevail.
- 27.5 The Parties will comply with their respective obligations under the Cessation Plan (as agreed by the Parties or, where agreement cannot be reached, as reasonably determined by DRS) in the event that a Declaration of Ineffectiveness is made.
- 27.6 DRS shall pay the Contractor's reasonable costs in assisting DRS in preparing, agreeing and complying with the Cessation Plan. Such costs shall be based on any comparable costs or charges agreed as part of this Agreement or as otherwise reasonably determined by DRS. Provided that DRS shall not be liable to the Contractor for any loss of profit, revenue, goodwill or loss of opportunity as a result of the early termination of this Agreement pursuant to any Declaration of Ineffectiveness.
- 27.7 Without prejudice to DRS's rights of termination implied into this Agreement by Regulation 73(3) of the Public Contracts Regulations 2015, in the event that DRS exercises its right to terminate the Agreement pursuant to Regulation 73(1) of the Public Contracts Regulations 2015 (a "**Public Procurement Termination Event**"), DRS shall promptly notify the Contractor and the Parties agree that:
- (a) the provisions of clause 26 and these clauses 27.7 to 27.12 (inclusive) shall apply as from the date of receipt by the Contractor of the notification of the Public Procurement Termination Event; and
 - (b) if there is any conflict or discrepancy between the provisions of clause 26 and these clauses 27.7 to 27.12 or the Cessation Plan, the provisions of these clauses 27.7 to 27.12 and the Cessation Plan shall prevail.
- 27.8 Termination on the Public Procurement Termination Grounds shall not prejudice or affect any right, liability or remedy which has accrued or shall accrue to either Party prior to or after such termination on Public Procurement Termination Grounds, in respect of the period prior to such termination, save as otherwise expressly provided in clauses 27.7 to 27.11 inclusive.

27.9 As from the date of receipt by the Contractor of the notification of the termination on Public Procurement Termination Grounds, the Parties (acting reasonably and in good faith) shall agree or, in the absence of such agreement, DRS shall reasonably determine an appropriate Cessation Plan with the object of achieving:

- (a) an orderly and efficient cessation or (at DRS's election) a transition to DRS or such other entity as DRS may specify of: (i) the Services; or (at DRS's election), (ii) the part of the Services which are affected by the Public Procurement Termination Grounds; and
- (b) minimal disruption or inconvenience to DRS or to customers of the Services,

in accordance with the provisions of these clauses 27.7 to 27.11 (inclusive) and to take account of the circumstances of the Public Procurement Termination Grounds.

27.10 Upon agreement, or determination by DRS, of the Cessation Plan the Parties will comply with their respective obligations under the Cessation Plan.

27.11 DRS shall pay the Contractor's reasonable costs in assisting DRS in preparing, agreeing and complying with the Cessation Plan. Such costs shall be based on any comparable costs or charges agreed as part of this Agreement or as otherwise reasonably determined by DRS, provided that DRS shall not be liable to the Contractor for any loss of profit, revenue, goodwill or loss of opportunity as a result of the early termination of this Agreement as a result of Public Procurement Termination Grounds.

27.12 The provisions of this clause 27 (and applicable definitions) shall survive any termination of this Agreement following a Declaration of Ineffectiveness or termination on Public Procurement Termination Grounds.

28. **Force Majeure**

28.1 Subject to the remaining provisions of this clause 28, neither Party to this Agreement shall be liable to the other for any delay or non-performance of its obligations under this Agreement to the extent that such non-performance is due to Force Majeure.

28.2 In the event that either Party is delayed or prevented from performing its obligations under this Agreement by Force Majeure, such Party shall:

- (a) give notice in writing of such delay or prevention to the other Party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;
- (b) use reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this Agreement; and
- (c) resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.

- 28.3 A Party cannot claim relief if Force Majeure is attributable to that Party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure.
- 28.4 The Contractor cannot claim relief if a reasonable Contractor should have foreseen Force Majeure and taken mitigative steps to reduce or prevent its impact.
- 28.5 As soon as practicable following the affected Party's notification, the Parties shall consult with each other in good faith and use reasonable endeavours to agree appropriate terms to mitigate the effects of Force Majeure and to facilitate the continued performance of this Agreement.
- 28.6 The affected Party shall notify the other Party as soon as practicable after Force Majeure ceases or no longer causes the affected Party to be unable to comply with its obligations under this Agreement. Following such notification, this Agreement shall continue to be performed on the terms existing immediately before the occurrence of Force Majeure unless agreed otherwise by the Parties.
- 28.7 DRS may terminate this Agreement by written notice to the Contractor if Force Majeure occurs that affects all or a substantial part of the Services and which continues for more than sixty (60) Working Days.

29. **Dispute Resolution**

- 29.1 If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it ("**Dispute**") then the Parties shall follow the procedure set out in this clause:
- (a) either Party shall give to the other written notice of the Dispute, setting out its nature and full particulars ("**Dispute Notice**"), together with relevant supporting documents. On service of the Dispute Notice, the each Party's Commercial Contact shall attempt in good faith to resolve the Dispute;
 - (b) if the Commercial Contacts are for any reason unable to resolve the Dispute within 30 (thirty) days of service of the Dispute Notice, the Dispute shall be referred to the line manager of each Commercial Contact, who shall attempt in good faith to resolve it; and
 - (c) if the line managers of the Commercial Contacts are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the Parties will attempt to settle as follows
- 29.2 Any Dispute or difference arising under or in connection with this Agreement, may be referred to adjudication in accordance with the following provisions:
- (a) the Scheme for Construction Contracts SI No. 649 of 1998 shall apply; and
 - (i) the adjudicator's decision is binding until the dispute or difference is finally determined by the Courts.

- (ii) The adjudicator shall not be liable for anything done or omitted in the discharge or purported discharge of his functions as Adjudicator unless the act or omission is in bad faith, and any employee or agent of the adjudicator is similarly protected.
 - (b) Disputes and differences between the Parties arising out of or in relation to this Agreement shall, subject to the exclusive jurisdiction of the English Courts.
- 29.3 Disputes and differences between the Parties arising out of or in relation to this Agreement shall be referred to the exclusive jurisdiction of the English Courts.
- 29.4 The commencement of adjudication shall not prevent the parties commencing or continuing court proceedings.
- 29.5 If the Dispute is not resolved within ninety (90) days after the reference to adjudication, or either Party fails to participate or to continue to participate in the adjudication before the expiration of the said period of ninety (90) days, or the adjudication terminates before the expiration of the said period of ninety (90) days, the dispute shall be finally resolved by the courts of England and Wales in accordance with clause 44.
- 30. Sub-Contracting**
- 30.1 The Contractor shall not sub-contract all or any part of the Services without the prior written consent of DRS which may be refused or granted subject to such conditions as DRS sees fit. Where the Contractor wishes to obtain DRS's consent to subcontract part of its obligations under this Agreement, the Contractor shall notify DRS of:
- (a) the identity of the proposed Sub-Contractor;
 - (b) the proposed terms of Sub-Contract, which as a minimum, will require all Sub-Contractors at all levels of subcontracting to agree to terms equivalent of this Agreement; and
 - (c) the scope of obligations proposed to be subcontracted.
- 30.2 Where the Contractor sub-contracts all or any part of the Services to any person, the Contractor shall:
- (a) ensure that such person is obliged to comply with all of the obligations and duties of the Contractor under this Agreement, insofar as they relate to the Services or part of them (as the case may be) which that Sub-Contractor is required to provide;
 - (b) be responsible for payments to that person; and
 - (c) remain solely responsible and liable to DRS for any breach of this Agreement or any performance, non-performance, part-performance or delay in performance of any of the Services by any Sub-Contractor

to the same extent as if such breach, performance, non-performance, part-performance or delay in performance had been carried out by the Contractor.

- 30.3 In the event that the Contractor enters into any Sub-Contract in connection with this Agreement any such Sub-Contracting shall not in any way relieve the Contractor from its liabilities hereunder and the Contractor shall be and shall remain fully responsible in respect of the Services notwithstanding such Sub-Contracting.

31. Assignment and Novation

- 31.1 Subject to clause 31.3, the Contractor shall not assign, novate, or otherwise dispose of any or all of its rights and obligations under this Agreement without the prior written consent of DRS, which may be refused or granted subject to such conditions as DRS sees fit.
- 31.2 DRS shall be entitled to novate this Agreement to any other body which substantially performs any of the functions that previously had been performed by DRS and the Contractor shall take all necessary steps to assist in such a novation.
- 31.3 Provided that DRS has given its prior written consent, the Contractor shall be entitled to novate this Agreement where:
- (a) the specific change in contractor was provided for in the procurement process for the award of this Agreement; or
 - (b) there has been a universal or partial succession into the position of the Contractor, following a corporate restructuring, including takeover, merger, acquisition or insolvency, by another economic operator that meets the criteria for qualitative selection applied in the procurement process for the award of this Agreement.

32. Change of Ownership

- 32.1 The Contractor shall give notice in writing to DRS of any take-over, merger, reconstruction, or other change in ownership or control of the Contractor or of any holding company as defined in section 1159 of the Companies Act 2006.
- 32.2 Upon receipt of such notice DRS may at its absolute discretion terminate this Agreement and the provisions of clause 26 shall apply. Such termination shall be without prejudice to the rights of either Party accrued under this Agreement prior to the date of termination.

33. Publicity

- 33.1 The Contractor shall not make reference to DRS or NDA on its correspondence, letterhead or other published materials and this Agreement shall not operate as a licence to permit the display or otherwise use of DRS or NDA's names or of any mark that vests with DRS or NDA without prior written approval.
- 33.2 The Contractor shall not communicate with representatives of the general or technical press, radio, television or other communications media in relation to

the existence of this Agreement or that it is providing the Services to DRS or in relation to any matter under or arising from this Agreement unless specifically granted permission to do so in writing by DRS. DRS shall have the right to approve any announcement before it is made.

33.3 The Contractor shall not at any time (either before or after the expiry or termination of this Agreement) issue or publish nor cause to be issued or published any comment or statement in connection with the activities of DRS or NDA or the content of the Services without first obtaining express written approval.

33.4 DRS shall be entitled to publicise this Agreement in accordance with any legal obligation on DRS, including any examination of this Agreement by the Auditor or otherwise.

33.5 The Contractor shall not do anything that may damage the reputation of DRS or bring DRS into disrepute.

34. Survivorship

The provisions of clause 3 (Due diligence and Contractors warranty), clause 4 (Supply of Services), clause 8 (Security), clause 9 (Confidentiality), clause 11 (Intellectual Property), clause 14 (Contractor's Personnel), clause 16 (Freedom of Information), clause 17 (Data Protection), clause 18 (Prevention of Bribery), clause 19 (Records and Audit), Clause 21 (Insurance), clause 22 (Liability and Limitation of Liability), clause 22.6 (Liquidated Damages), clause 26 (Consequences of termination), clause 27 (Declaration of Ineffectiveness and Public Termination Event), clause 29 (Dispute Resolution), clause 30 (Sub-Contracting), clause 31 (Assignment and Novation), clause 32 (Change of Ownership), clause 33 (Publicity), clause 34 (Survivorship), clause 37 (Rights and Remedies), clause 38 (Waiver), clause 40 (Partnership or agency), clause 41 (Third party rights), clause 42 (Entire Agreement), clause 44 (Governing Law), clause 45 (Jurisdiction), clause 46 (Modern Slavery Act 2015), Schedule 5 (Security), Schedule 9 (Exit Management) and any other clauses and Schedules that are necessary to give effect to those clauses shall survive termination or expiry of this Agreement. In addition, any other provision of this Agreement which by its nature or implication is required to survive the termination or expiry of this Agreement shall do so.

35. Variation

This Agreement shall not be varied except by instrument in writing signed by an authorised signatory of each Party and in accordance with the Change Control Procedure set out in Schedule 6.

36. Standards

If there is a change in Railway Group Standards or Network Rail Standards affecting the Services after the date of this Agreement which necessitates a variation to the Services, such variation shall be treated as if it were DRS's instructions to which the provisions of [Clause 6 shall apply.

37. Rights and Remedies

Except as expressly provided in this Agreement the rights and remedies provided under this Agreement are in addition to and not exclusive of any rights or remedies provided by law.

38. Waiver

38.1 No failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

38.2 A waiver of any right or remedy under this agreement or by law is only effective if given to the other Party in writing.

39. Severance

If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.

40. Partnership or Agency

Nothing in this Agreement is intended to or shall be deemed to establish any partnership, agency agreement, joint venture or contract of employment between the Parties. Neither Party shall represent itself as the agent of the other Party for any purpose whatsoever or have authority to create or to assume any obligations of any kind (whether express or implied) for or on behalf of the other Party.

41. Third Party Rights

41.1 With the exception of the NDA, a person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

41.2 The rights of DRS and the Contractor to terminate, rescind or agree any variation, waiver, or settlement under this Agreement are not subject to the consent of any other person.

42. Entire Agreement

42.1 This Agreement and any Schedules or Appendices or documents annexed or referenced in this Agreement, constitute the entire Agreement between the Parties relating to the subject matter hereof and supersede and extinguish all previous agreements, promises, assurances, warranties, representations and understandings between the Parties relating to the subject matter, whether written or oral, relating to its subject matter.

- 42.2 Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Both Parties agree that neither Party shall have a claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

43. **Counterparts**

This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Agreement, but all the counterparts shall together constitute the same Agreement. No counterpart shall be effective until each Party has executed at least one counterpart and each counterpart must be dated the same.

44. **Governing Law**

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

45. **Jurisdiction**

Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

46. **Modern Slavery Act 2015**

- 46.1 In performing its obligations under this Agreement, the Contractor shall:

- (a) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including the Modern Slavery Act 2015;
- (b) have and maintain throughout the Term its own policies and procedures to ensure their compliance;
- (c) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the United Kingdom; and
- (d) include in its Sub-Contracts with its Sub-Contractors and suppliers anti-slavery and human trafficking provisions that are at least as onerous as those set out in this clause 46.1.

- 46.2 The Contractor represents, warrants and undertakes that neither it nor any of its officers, employees or other persons associated with it:

- (a) has been convicted of any offence involving slavery and human trafficking; and

- (b) has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.

46.3 The Contractor shall implement due diligence procedures for its Sub-Contractors, suppliers and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.

46.4 Any breach of this clause 46 by the Contractor shall constitute a material breach of this Agreement.

47. **Further Assurance**

Each Party does or procures the doing of all acts and things and executes or procures the execution of all such documents as the other Party reasonably considers necessary to give full effect to the provisions of this Agreement.

48. **Guarantees**

48.1 The Contractor shall ensure that the benefit of any warranty or guarantee in respect of the DRS's Plant shall not be invalidated by its actions.

48.2 Unless agreed to the contrary, the Contractor shall obtain and provide to the DRS, forthwith upon entry into this Agreement, a parent company guarantee in the form appended to the Contract Specific Conditions from the Contractor's ultimate holding company. For these purposes "ultimate holding company" shall mean the parent company of the group of companies of which the Contractor is a member (as each of those terms is defined in s.170 Taxation of Chargeable Gains Act 1992).

48.3 The Contractor's compliance with the provisions of Clause 48.2 shall be a condition precedent to any obligation on the part of the Employer to make any payment that might otherwise be due under this Agreement, and the Contractor acknowledges that it has no entitlement either to receive payment or to exercise any rights in respect of non-payment arising under this Agreement unless and until the Contractor has provided any parent company guarantee so required.

49. **EQUALITY AND DIVERSITY**

49.1 The Supplier shall perform its obligations under this Agreement in accordance with:

- (a) all applicable equality Law (whether in relation to age, disability, gender reassignment, marriage or civil partnership status, pregnancy or maternity, race, religion or belief, sex or sexual orientation (each a "Relevant Protected Characteristic") or otherwise);

- (b) the Employer's equality, diversity and inclusion policy as published by the Employer from time to time; and
- (c) any other requirements and instructions which the Employer reasonably imposes in connection with any equality obligations imposed on the Employer at any time under applicable equality Law.

49.2 The Supplier shall take all reasonable steps to secure the observance of Clause 49.1 above by its employees, agents, representatives and Sub-Contractors.

49.3 The Supplier acknowledges that the Employer is under a duty under section 149 of the Equality Act 2010 to have due regard to the need to eliminate unlawful discrimination (on the grounds of a 'Relevant Protected Characteristic'); to advance equality of opportunity, and to foster good relations, between persons who share a Relevant Protected Characteristic and persons who do not share it. In performing its obligations under this Agreement, the Supplier shall assist and co-operate with the Employer where possible in satisfying this duty.

50. **LONDON LIVING WAGE**

50.1 The Supplier shall and shall also procure that its relevant sub-contractors (if any) shall:

- (a) ensure that none of its workers or its subcontractor's workers engaged in the performance of the Agreement in the Greater London Area (but not otherwise) and who would also satisfy the eligibility criteria set by the Living Wage Foundation (or any replacement thereof) is paid an hourly wage (or equivalent of an hourly wage) less than the London Living Wage; and
- (b) co-operate and provide all reasonable assistance to the Employer in monitoring the effect of the London Living Wage.

50.2 If the London Living Wage increases during the term of this Agreement, the Supplier shall not be entitled to adjust the Contract Price and the Parties agree and acknowledge that any increases in the London Living Wage anticipated during the term of this Agreement have been factored into the Contract Price.

50.3 Any failure by the Supplier to comply with the provisions of Clause 50.1 shall be treated as a material breach under this Agreement.

IN WITNESS whereof the Parties hereto have executed and delivered this Agreement the day and the year first above written

Signed by for and on behalf of
**DIRECT RAIL SERVICES
LIMITED**

.....
Signature

.....
Print name

Signed by for and on behalf of
[REDACTED]

.....
Signature

.....
Print name

Schedule 1 – Scope and Specification

Schedule 2 – Financial Provisions

1. [Insert schedule of rates here from ITT]
2. The Price is exclusive of VAT which shall be added at the prevailing rate as applicable and paid by DRS following receipt of a valid VAT invoice.
3. All invoices shall be directed to DRS's at the address detailed at Schedule 3 and should contain the following information: this Agreement reference number, Contractor's name, address, bank details to which payment should be made, a separate calculation of VAT and a brief description of the Services provided.
4. DRS shall pay valid, undisputed invoices within thirty (30) days of receipt from the Contractor. In the event that the Price properly due to the Contractor is not paid by the due date for payment, the Contractor shall be entitled to simple interest thereon, payable from the due date for payment until payment is duly effected, at the rate of 2% above the prevailing base rate of the Bank of England.
5. In the event that DRS considers an invoice not to have been calculated correctly, or if the invoice contains any error or inadequacy, DRS shall notify the Contractor and the Parties shall work together to resolve the error or inadequacy. Upon resolution, the Contractor shall submit a revised invoice to DRS.

6. LIQUIDATED DAMAGES - Poor Performance Adjustments

- 6.1. Where the Contractor fails, through their negligence, to deliver 50% and below of treatment mileage of the rail circuit in question, the Contractor shall not be paid and will pay DRS 100% of the value of the rail circuit.
- 6.2. Should the Contractor, through their negligence, fail to complete a circuit in its entirety but achieves over 50% of the treatment mileage, the Contractor will be subject to a cost offset proportionate to the remaining circuit mileage. Mileage payments will be calculated via total value of the rail circuit minus the percentage complete value.
- 6.3. The value of the rail circuit quoted below for illustration, in clause 6.4, will be pro-rated based on actual shift duration and actual mileage missed by whole percentages, and will be subject to annual price escalation as set out in clause 6.9 below
- 6.4. The indicative circuit lengths, by location are as out in the table below and are subject to confirmation by Network Rail pre-season in 2023, when Network Rail Schedule F3s are issued:

Location	Circuit ref	Circuit duration (hrs)
Anglia	01	9.5
	05	11.5
	51	9.5
	53	6
	55	8.25
	65	6
York	02	19.75

	05	12.75
Carlisle	07	6
	511	20
	54	6
Inverness	05	17

- 6.5. The Contractor, through their negligence, fails to provide part or all of the Services they are committed to deliver and this impacts other services, the Contractor shall pay the poor performance adjustment (also referred to as the assurance of supply charge in the agreement between DRS and Network Rail), as illustrated in 6.8 below to DRS for all services that have been impacted. This does not relieve the supplier of further associated damages.
- 6.6. Failed minimum hour circuits will be measured on actual circuit timings not minimum circuit duration.
- 6.7. Where the Supplier fails to provide sufficient Resources, this will be deemed a Supplier Performance Failure.
- 6.8. **Assurance of Supply Measure Table** (below); based on average shift length of 10.5hrs:

Missed sites	Assurance of supply penalty	Value
5%	5%	£344.93
10%	10%	£689.85
20%	20%	£1,379.70
30%	30%	£2,069.55
40%	40%	£2,759.40
50%	100%	£6,898.50
60%	100%	£6,898.50
70%	100%	£6,898.50
80%	100%	£6,898.50
90%	100%	£6,898.50
100%	100%	£6,898.50

6.9. Indexation - Price Variation

- 6.9.1. The Contractor's poor performance failure payment shall be adjusted in accordance with the formula below on the 1st April each year this Agreement remains in force and for the avoidance of doubt this will be calculated (and adjusted) from the 1st April 2023.

- 6.9.2. The rates will be calculated in accordance with the following formula:

$$\text{Adjustment Factor} = \left[1 + \left(\frac{CPI_{t-1} - CPI_{t-2}}{CPI_{t-2}} \right) \right] * (1 - y)$$

- 6.9.3. Where: CPI¹ = means the average value of the monthly figures of the CPI price index as published by the Office of National Statistics for the 12 months

up to and including the month of November immediately preceding the current year's contract start date anniversary.

<http://www.ons.gov.uk/ons/taxonomy/index.html?nscl=Consumer+Price+Indices>

CPI² = means the average value of the monthly figures of the CPI price index as published by the Office of National Statistics for the 12 months up to and including the month of November which is 12 months before the month of November which immediately precedes the current year's contract start date anniversary.

<http://www.ons.gov.uk/ons/taxonomy/index.html?nscl=Consumer+Price+Indices>

y = means the efficiency discount stated in the Pricing Schedule.

- 6.9.4. The rates resulting from the calculation referred to in 6.9.4 above shall be rounded down to the nearest pound.

Schedule 3 – Contacts and Addresses

Schedule 4 – KPI's

1. Key Performance Indicators

- 1.1. The Contractor shall meet or exceed the Key Performance Indicators (KPIs) in performing the Services. The KPI's will be calculated and measured by each Service.
- 1.2. The Contractor's actual performance achieved for each Service against each KPI shall be calculated following the end of each Period by the Contractor and presented to DRS for review and agreement.

2. Failure to comply with KPIs

- 2.1. In the event that the Contractor fails to meet the required KPI set out in table at clause [4.1] below for any Period, this shall be deemed to be a KPI failure and the Contractor shall draft a plan to remedy the cause(s) of the KPI failure, which shall specify (at the minimum):
 - 2.1.1. the reason(s) for and circumstances which caused the KPI failure;
 - 2.1.2. the action the Contractor will take to rectify the cause(s) of the KPI failure;
 - 2.1.3. which of the Contractor's personnel will be involved in rectifying the cause(s) of the KPI failure; and
 - 2.1.4. the timescales for implementing the rectification plan.
- 2.2. The Contractor shall provide the rectification plan to DRS as promptly as practicable but in any event within seven days.
- 2.3. As soon as practicable but in any event within seven days of receipt of the rectification plan by DRS, the parties' representatives (eg their contract managers) shall meet to discuss the KPI failure and the rectification plan.
- 2.4. The Contractor shall take steps to rectify the KPI failure, either by implementing the rectification plan or as otherwise agreed with DRS.
- 2.5. In the event that the Contractor fails to meet any required service level for a Service in any two consecutive Periods or any three Periods in a period of 13 consecutive Periods this shall be deemed to be a "Continuing KPI Failure" then:
 - 2.5.1. DRS may give notice to the Contractor requiring the immediate removal of the Contractor from carrying out the Services or the immediate removal of any of the Contractors operatives from carrying out the Services.
 - 2.5.2. the Contractor shall comply with the requirements of any such notice at its own cost.
 - 2.5.3. if the Contractor is removed from operating any of the Services then the Contractor shall not be entitled to any payment in respect of that Service.

2.5.4. any Services that the Contractor can not supply following the removal or replacement of the Service will be classified as a Contractor Performance Failure.

2.6. Failure to remedy repetitive failures may constitute a breach of this Agreement.

3. Exclusions from the KPIs

3.1. Any failure by the Contractor to deliver the Services shall be disregarded for the purposes of assessing the Contractor's compliance with the KPIs if and to the extent that:

3.1.1. the failure was caused by circumstances beyond the control of the Contractor; (excluding industrial action)

3.1.2. the failure was caused by DRS, its agents or its representatives;

3.2. Any dispute between the parties as to whether a failure to deliver the Services falls within the provisions of clauses 3.1.1 or 3.1.2 shall be determined in accordance with the dispute resolution procedure set out in this Agreement.

4. Required Service Level

4.1. Each Service will have the following KPI measures applied to it for the Period:

KPI Ref.	KPI	Measure	KPI Achievement Score
1	Reporting	The actual number of completed reports sent in on time as detailed in this Agreement where required per service	100%
2	Rectification of plant faults	The number of faults fixed first time without recurring within 7 days, divided by the total number of faults occurring in the Period, as a percentage	95%
3	Planned maintenance events carried out on time against plan	Number of maintenance activities completed within timescales within the VMI	98%
4	Seasonal Treatment	The actual distance treated compared to the planned distance treated for each circuit or call out	99%
5	RIDDOR	Number of reportable events in the period	0

6	Working Time Exceedances	No. of working time exceedances in the Period	0
7	Accidents	No. of accidents occurring during the Period	0
8	Safety Management System	No. of assurance reviews undertaken divided by the scheduled number of reviews	100%
9	Dissemination of safety information	No. of safety training sessions and safety briefings undertaken divided by the number scheduled	100%
10	Close Calls	YTD close calls closed within 90 days	85%
11	Non-provision of Resources for a Service	Number of times the Contractor fails to deliver any or all of the Resources for a planned Service except in unforeseen circumstances	0

Schedule 5 – Security

Definitions:

Expressions defined in other clauses of this Agreement shall, unless otherwise defined hereunder have the same meanings when used in this Schedule 5.

“Classified Information” means protectively marked documents, at the levels ‘OFFICIAL– SENSITIVE’ or ‘SECRET’, issued by DRS to the Contractor or arising out of the services carried out under this Agreement;

“Information” means all information of a confidential nature which is directly or indirectly disclosed by or on behalf of DRS to the Contractor by any means (including by the Contractor’s observation), including but not limited to:

- information contained in or ascertainable from letters, papers, manuals, designs, photographs, drawings, specifications, samples, prototypes, site visits or other access to DRS’s property, personnel or data; specifically from any UK Classified Information as defined hereunder; and
- information relating to DRS’s objectives, strategy, operations, processes, know how, intellectual property, pricing information, details of customers or suppliers or other sensitive business information;

“ONR” means the Office for Nuclear Regulation – Civil Nuclear Security or such other statutory body charged with the obligation to regulate the physical security of Classified Information;

“SAL” means the Security Aspects Letter relating to this Agreement containing a precise definition of and the level of protective marking for, each aspect of the Agreement which requires special security protection;

“Security Manager” means the suitably qualified and experienced individual, nominated by the Contractor and approved by DRS, who shall be responsible for all aspects of the Contractor’s obligations under the Agreement relating to security, including but not limited to the security of Classified Information.

1. The Contractor acknowledges that it may have access to and/or hold Classified Information in connection with, or for the purposes of complying with, its obligations under this Agreement and it acknowledges the importance of safeguarding Classified Information from disclosure and shall ensure that all employees and subcontractors engaged in the performance of the Agreement are made aware of their obligations under this Schedule 5.
2. Prior to signature of this Agreement DRS issued to the Contractor, and the Contractor accepted, a SAL. All Information and/or Classified Information shall be secured and controlled in compliance with the requirements of the

SAL. The Contractor shall, and shall where relevant procure that Sub-Contractors shall, comply with such requirements. DRS may update, amend and reissue the SAL from time to time should changes be required.

3. The Contractor shall prevent any loss or compromise of Classified Information and shall protect it from deliberate or opportunist attack. The reporting of any compromise of any Classified Information shall be carried out in accordance with the requirements of the SAL.
4. The Contractor shall ensure that access to all Information, and in particular all Classified Information shall only be given to those personnel whose access to such Information and/or Classified Information is essential in order to carry out work under this Agreement. The Contractor shall ensure that all individuals requiring access to Classified Information have undergone adequate recruitment/security checks, including but not limited to establishing proof of identity; confirming they satisfy all legal requirements for employment by the Contractor and verification of their employment record. Criminal record checks should also be undertaken where permissible under local laws and regulations. If the Contractor discovers or suspects that an unauthorised person is seeking or has sought to access any Classified Information it shall forthwith notify DRS.
5. The Contractor shall ensure that persons with a current or former nationality from outside the European Economic Area, including dual-nationalities, shall not be given access to Classified Information unless express prior written authorisation is granted by DRS. Requests for such authorisation shall be submitted no less than 20 (twenty) working days before access is required and authorisation may be subject to approval by ONR.
6. The Contractor shall ensure that Classified Information shall not be held, processed or generated on any IT system until such IT system has received security accreditation by ONR.
7. All Information and Classified Information provided to the Contractor pursuant to this Agreement shall at all times remain the property of DRS. Upon completion of its obligations under the Agreement, or at any other time on request of DRS, the Contractor shall return all such Information and Classified Information to DRS or in the case of Classified Information to the extent specified by DRS, provide evidence to DRS that all Classified Information has been destroyed, in each case in a manner that does not contravene the requirements of this Agreement which relate to security. To the extent any security related equipment has been loaned to the Contractor, the Contractor shall ensure the safe return of such equipment in accordance with the relevant provisions of this Agreement.
8. In addition to the statutory requirements of Regulation 10 or Regulation 22 of the Nuclear Industries Security Regulations 2003 (as applicable) for suspected security breaches to be reported to ONR, the Contractor shall notify DRS, as detailed in the SAL, of all cases where Classified Information is lost or stolen or may have been compromised.
9. The Contractor shall afford access to DRS and ONR to the Contractor's premises for the purpose of audit to ensure compliance with the requirements of this Security Measures Clause and any associated SAL. The Contractor shall also procure the right for DRS and ONR to audit subcontractors'

premises. DRS may at any time request from the Contractor or any employee or subcontractor of the Contractor written confirmation of compliance in respect of the provisions of this Agreement (or any subcontract), which relate to security of Classified Information and compliance with all aspects of the SAL.

10. In the event that the Contractor is in breach of its obligations under this Agreement relating to security of Classified Information or the requirements of the SAL, DRS may take any action it considers appropriate or necessary, including:

- 10.1 notification to the appropriate authorities, including ONR;
- 10.2 immediate suspension of the whole or any part of the Agreement obligations and recommencement of such obligations;
- 10.3 a requirement that specific persons or subcontractors connected with such breach be removed from their involvement with the project and cease to have any access to the Classified Information;
- 10.4 the return and/or evidenced destruction of the Classified Information;
- 10.5 the implementation of measures to protect and secure Classified Information;
- 10.6 termination of the Contractor's engagement under the Agreement, in whole or in part.

DRS shall have no liability to the Contractor for any action taken pursuant to paragraph 10 of this Schedule and all consequences of such action shall be at the Contractor's cost.

11. The Contractor shall ensure that the Security Manager implements and maintains an effective security regime to cover access, transmission, processing, storage and destruction of Classified Information. The Contractor shall not change its Security Manager without the prior written consent (at its absolute discretion) of DRS.
12. The Contractor shall advise DRS of any proposed change to the entities controlling it or subcontractors or any change to key employees or subcontractor key personnel. The Contractor shall also at its earliest opportunity notify DRS of any changes in the behavioural or personal circumstances of employees or personnel of subcontractors, to the extent relevant to the matters set out in this Agreement and/or the requirements of the SAL. DRS shall, at its absolute discretion determine whether or not such change has an impact on the matters set out in this Agreement and/or the requirements of the SAL. If DRS determines that there is such an adverse impact it may exercise any of the powers set out in paragraph 11 of this Schedule 5.
13. The provisions of this Schedule 5 and the SAL shall survive the expiration of this Agreement and shall continue in force for such time as the Classified Information is held by the Contractor, its Personnel or Sub-Contractors.

Schedule 6 – Change Control Procedure

1. General Principles

- 1.1 Where DRS or the Contractor has a need to change this Agreement, DRS may at any time request, and the Contractor may at any time recommend, such Change only in accordance with the Change Control Procedure set out in paragraph 2 of this Schedule 6.
- 1.2 Until such time as a Change is made in accordance with the Change Control Procedure, DRS and the Contractor shall, unless otherwise agreed in writing, continue to perform this Agreement in compliance with its terms before such Change.
- 1.3 Any discussions which may take place between DRS and the Contractor in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either Party.
- 1.4 Any work undertaken by the Contractor and the Personnel which has not been authorised in advance by a Change, and which has not been otherwise agreed in accordance with the provisions of this Schedule 6, shall be undertaken entirely at the expense and liability of the Contractor.

2. Procedure

- 2.1 Discussion between DRS and the Contractor concerning a Change shall result in any one of the following:
 - (a) no further action being taken; or
 - (b) a request to change this Agreement by DRS; or
 - (c) a recommendation to change this Agreement by the Contractor.
- 2.2 Where a written request for an amendment is received from DRS, the Contractor shall, unless otherwise agreed, submit two copies of a Change Control Note signed by the Contractor to DRS within three (3) weeks of the date of the request.
- 2.3 A recommendation to amend this Agreement by the Contractor shall be submitted directly to DRS in the form of two (2) copies of a Change Control Note signed by the Contractor at the time of such recommendation. DRS shall give its response to the Change Control Note within three (3) weeks.
- 2.4 Each Change Control Note shall contain:
 - (a) the title of the Change;

- (b) the originator and date of the request or recommendation for the Change;
- (c) the reason for the Change;
- (d) full details of the Change, including any Scopes;
- (e) the price, if any, of the Change;
- (f) a timetable for implementation, together with any proposals for acceptance of the Change;
- (g) a schedule of payments if appropriate;
- (h) details of the likely impact, if any, of the Change on other aspects of this Agreement including:
 - (i) the timetable for the provision of the Change;
 - (ii) the personnel to be provided;
 - (iii) the Price;
 - (iv) the documentation to be provided;
 - (v) the training to be provided;
 - (vi) working arrangements;
 - (vii) other contractual issues;
- (i) the date of expiry of validity of the Change Control Note; and
- (j) provision for signature by DRS and the Contractor.

2.5 For each Change Control Note submitted by the Contractor DRS shall, within the period of the validity of the Change Control Note:

- (a) allocate a sequential number to the Change Control Note; and
- (b) evaluate the Change Control Note and, as appropriate:
 - (i) request further information;
 - (ii) accept the Change Control Note by arranging for two (2) copies of the Change Control Note to be signed by or on behalf of DRS and return one of the copies to the Contractor; or
 - (iii) notify the Contractor of the rejection of the Change Control Note.

2.6 A Change Control Note signed by DRS and by the Contractor shall constitute an amendment to this Agreement.

Schedule 7 – Guarantee

Schedule 8 – Data Protection

1. Any further instructions agreed between the Parties shall be incorporated into this Schedule.
2. Scope, nature and purpose:

Personal Data in scope:	names and email addresses of personnel involved in the administration of the Agreement
Permitted Purpose:	to facilitate the performance of the Agreement.
Permitted Recipients:	the Parties employees involved in the administration of the Agreement.

Schedule 9 – Exit Management

1. DEFINITIONS

The following definitions shall apply to this Schedule 9:

“Contractors Employee Staff List” means a list prepared and updated by the Contractor of all the Contractor’s Personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the date of preparation of the list.

“Contractors Software” means any proprietary software owned by the Contractor.

“Employment Regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the Acquired Rights Directive.

“Exclusive Assets” means those Contractor assets used by the Contractor or a key Sub-Contractor which are used exclusively in the provision of the Services.

“Exit Information” means as described in paragraph 4.1 of this Schedule 9.

“DRS’s Assets” means DRS’s Data, DRS Intellectual Property Rights, DRS Property together with any other data, software, assets, equipment or other property which is owned by DRS and which is or may be used in connection with the provision or receipt of the Services.

“DRS Property” means the property, other than real property and Intellectual Property Rights, including any equipment issued or made available to the Contractor by DRS in connection with this Agreement.

“Non-Exclusive Assets” means those Contractor assets (if any) which are used by the Contractor or a key Sub-Contractor in connection with the Services but which are also used by the Contractor or key Sub-Contractor for other purposes.

“Replacement Services” means any services which are substantially similar to any of the Services and which DRS receives in substitution for any of the Services following the expiry of this Agreement whether those services are provided by DRS and/or any third party.

“Service Transfer Date” means the date when any transfer of the Services (or any part of the Services) takes place, including any assignment, for whatever reason, from the Contractor or any Sub-Contractor to a Replacement Contractor or a replacement Sub-Contractor.

“Staffing Information” means in relation to all persons detailed on the Contractor’s Employees Staff List, such information as DRS may reasonably request (subject to the Data Protection Legislation), but including in an anonymised format:

- (a) their ages, dates of commencement of employment or engagement and gender;
- (b) details of whether they are employees, workers, self-employed, contractors or consultants, agency workers or otherwise;
- (c) the identity of their employer or relevant contracting party;
- (d) their relevant notice periods and any other terms relating to termination of employment or engagement, including any redundancy procedures and contractual redundancy payment schemes;
- (e) the current wages, salaries (including holiday pay), profit sharing, incentive and bonus arrangements applicable to them and how they are calculated;
- (f) details of other employment-related benefits including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and customer car schemes applicable to them;
- (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (h) details of any such individuals on long-term sickness absence, maternity or other statutory leave or otherwise absent from work; and
- (i) copies of all relevant documents and materials relating to such information including copies of relevant contracts of employment or engagement (or relevant standard contracts if applied generally in respect of such individuals).

“Termination Assistance” means the activities to be performed by the Contractor pursuant to the Exit Management Plan, and any other assistance required by DRS pursuant to the Termination Assistance Notice.

“Termination Assistance Notice” has the meaning give to it in paragraph 5.1 of this Schedule 9.

“Termination Assistance Period” means the period specified in the Termination Assistance Notice during which the Contractor is required to provide the Termination Assistance and as such period may be extended in accordance with paragraph 5.2 of this Schedule 9.

“Third Party Software” means any proprietary software owned by a third party that is licensed to DRS or used by the Contractor for the provision of the Services.

“Transferable Assets” means those of the Exclusive Assets which are capable of legal transfer to DRS or the Replacement Contractor.

“Transferable Contracts” means the Sub-Contracts, licences for Contractor Intellectual Property Rights, Documents, licences for third party Intellectual Property Rights or other agreements which are necessary to enable DRS or

any Replacement Contractor to provide the Services or the Replacement Services.

“Transferring Contractor Employees” means the employees of the Contractor and/or Contractor’s Sub-Contractors to whom the Employment Regulations will apply on the Service Transfer Date.

2. EXIT PLAN

2.1 The Contractor shall, within three (3) months of the Commencement Date, deliver to DRS the Exit Management Plan which:

- (a) sets out the Contractor's proposed methodology for achieving an orderly transition of the Services from the Contractor to DRS and/or its Replacement Contractor on the expiry or termination of this Agreement;
- (b) complies with the requirements set out in this Schedule 9; and
- (c) is otherwise reasonably satisfactory to DRS.

2.2 Within sixty (60) Working Days of the submission of the Exit Management Plan to DRS, the Parties shall meet and use reasonable endeavours to agree the contents of the Exit Management Plan based on the principles set out in this Schedule 9. If the Parties are unable to agree the contents of the Exit Management Plan within twenty (20) Working Days, then such dispute shall be resolved in accordance with clause 29 (Dispute Resolution).

2.3 Unless otherwise specified by DRS or approved, the Exit Management Plan shall set out, as a minimum:

- (a) how the Exit Information is obtained;
- (b) the management structure to be employed during both transfer and cessation of the Services;
- (c) the management structure to be employed during the Termination Assistance Period;
- (d) a detailed description of both the transfer and cessation processes, including a timetable;
- (e) how the Services will transfer to the Replacement Contractor and/or DRS, including details of the processes, documentation, data transfer, systems migration, security and the segregation of DRS's technology components from any technology components operated by the Contractor or its Sub-Contractors (where applicable);
- (f) details of Transferable Contracts (if any) which will be available for transfer to DRS and/or the Replacement Contractor upon the expiry of this Agreement together with any reasonable costs required to effect such transfer (and the Contractor agrees that all assets and contracts used by the Contractor in connection with the provision of the Services will be available for such transfer);

- (g) proposals for the training of key members of the Replacement Contractor's personnel in connection with the continuation of the provision of the Services following the expiry of this Agreement charged at rates agreed between the Parties at that time;
- (h) proposals for providing DRS or a Replacement Contractor copies of all documentation:
 - (i) used in the provision of the Services and necessarily required for the continued use thereof, in which the Intellectual Property Rights are owned by the Contractor; and
 - (ii) relating to the use and operation of the Services;
- (i) proposals for the assignment or novation of the provision of all services, leases, maintenance agreements and support agreements utilised by the Contractor in connection with the performance of the supply of the Services;
- (j) proposals for the identification and return of all DRS's Property in the possession of and/or control of the Contractor or any third party (including any Sub-Contractor);
- (k) proposals for the disposal of any redundant Services and materials;
- (l) procedures to:
 - (i) deal with requests made by DRS and/or a Replacement Contractor for Staffing Information;
 - (ii) determine which Contractor Personnel are or are likely to become Transferring Contractor Employees; and
 - (iii) identify or develop any measures for the purpose of the Employment Regulations envisaged in respect of Transferring Contractor Employees;
- (m) how each of the issues set out in this Schedule 9 will be addressed to facilitate the transition of the Services from the Contractor to the Replacement Contractor and/or DRS with the aim of ensuring that there is no disruption to or degradation of the Services during the Termination Assistance Period; and
- (n) proposals for the supply of any other information or assistance reasonably required by DRS or a Replacement Contractor in order to effect an orderly handover of the provision of the Services.

2.4 The Contractor shall update the Exit Management Plan no less than once during each twelve (12) months to reflect changes in the Services and shall keep the Exit Management Plan under continuous review. Following each update, the Contractor shall:

- (a) submit the revised Exit Management Plan to DRS for review;

- (b) within thirty (30) Working Days after the submission of the revised Exit Management Plan, the Parties shall meet and use all reasonable endeavours to agree the contents of the revised Exit Management Plan, based on the principles set out in this Schedule 9 and the changes that have occurred in the Services since the Exit Management Plan was last agreed; and
 - (c) if the Parties are unable to agree the contents of the revised Exit Management Plan within that thirty (30) Working Day period, the previous version shall continue to apply and either Party may refer the dispute for resolution in accordance with Clause 29.
- 2.5 Within thirty (30) Working Days after service of a Termination Notice by either party or eighteen (18) months prior to the expiration of this Agreement:
 - (a) the Contractor shall update the Exit Management Plan into a final form that could be implemented immediately and in doing so, provide as much detail as is appropriate given the nature of the termination or expiry and the timing of termination, so that such Exit Management Plan can be submitted to DRS for review and approval; and
 - (b) the Parties shall meet and use their respective reasonable endeavours to agree the contents of such Exit Management Plan based on the principles set out in this Schedule 9; and
 - (c) until the agreement of the updated Exit Management Plan, the Contractor shall provide the Termination Assistance in accordance with the last-approved version of the Exit Management Plan (insofar as this still applies) to DRS in good faith.
- 2.6 The Contractor shall ensure that it is able to implement the Exit Management Plan at any time.

3. OBLIGATIONS DURING THE TERM

- 3.1 The Contractor and DRS shall each appoint an exit manager and provide written notification of such appointment to each other within six months after the Commencement Date. The Contractor's exit manager shall be responsible for ensuring that the Contractor, its Personnel, agents and Sub-Contractors comply with this Schedule 9. The Contractor shall ensure that its exit manager has the requisite authority to arrange and procure any resources of the Contractor as are reasonably necessary to enable the Contractor to comply with this Schedule 9. The exit managers shall liaise with one another in relation to all issues relevant to termination or expiry and all matters connected with this Schedule 9 and each party's compliance with it.
- 3.2 During the Term, the Contractor shall:
 - (a) create and maintain a register of:
 - (i) all assets, detailing their ownership status as either Exclusive Assets (separately identifying Transferable Assets) or Non-Exclusive Assets and their Net Book Value; and
 - (ii) all Sub-Contracts and other agreements (separately identifying

Transferable Contracts) required to perform the Services;

- (b) create and maintain a database setting out the Contractor's technical infrastructure through which the Services are delivered. Such database shall be capable of allowing staff of the Replacement Contractor and/or DRS to acquire sufficient technical understanding of how the Contractor provides the Services to ensure the smooth transition of the Services with the minimum of disruption; and
- (c) at all times keep the Registers up to date and shall maintain copies of any agreements referred to in any Register,

(together the "**Registers**")

- 3.3 The Parties shall agree the format of the Registers as part of the process of agreeing the first Exit Management Plan.
- 3.4 At the same time as the Contractor submits a revised Exit Management Plan, it shall also submit to DRS up-to-date Registers.
- 3.5 The Contractor shall ensure all Exclusive Assets are clearly marked to identify that they are exclusively used for the provision of the Services under this Agreement.
- 3.6 The Contractor shall procure that all licences for Third Party Software entered into with effect from or after the Commencement Date and all Sub-Contracts shall be assignable or capable of novation at the request of DRS to DRS and/or any Replacement Contractor without restriction (including any need to obtain any consent or approval) or payment by DRS. If the Contractor cannot procure such rights then the Contractor shall consult with DRS on whether the rights that can be obtained are nevertheless acceptable to DRS or whether the Contractor should seek an alternative provider of the goods or services to which the relevant agreement relates.

4. OBLIGATIONS TO ASSIST ON RE-TENDERING OF SERVICES

- 4.1 On reasonable notice at any point during the Term, the Contractor shall provide to DRS and/or its potential Replacement Contractor (subject to the potential Replacement Contractor entering into reasonable written confidentiality undertakings), the following material and information in order to facilitate the preparation by DRS of any invitation to tender and/or to facilitate any potential Replacement Contractor undertaking due diligence:
 - (a) details of the Service(s);
 - (b) a copy of the Registers, updated by the Contractor up to the date of delivery of such Registers;
 - (c) an inventory of DRS's Data in the Contractor's possession or control;
 - (d) all information relating to Transferring Contractor Employees or those who may be Transferring Contractor Employees' required to be provided by the Contractor under this Agreement, such information to include the Staffing Information; and

- (e) such other material and information as DRS shall reasonably require, (together, the “**Exit Information**”).
- 4.2 The Contractor acknowledges that DRS may disclose the Contractor’s Confidential Information to an actual or prospective Replacement Contractor or any third party whom DRS is considering engaging to the extent that such disclosure is necessary in connection with such engagement (except that DRS may not under this paragraph disclose any of the Contractor’s Confidential Information which is information relating to the Contractor’s or its Sub-Contractors’ prices or costs).
- 4.3 The Contractor shall:
 - (a) notify DRS within five (5) Working Days of any material change to the Exit Information which may adversely impact upon the provision of any Services and shall consult with DRS regarding such proposed material changes; and
 - (b) provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within ten (10) Working Days of a request in writing from DRS.
- 4.4 The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the Contractor shall be such as would be reasonably necessary to enable a third party to:
 - (a) prepare an informed offer for those Services; and
 - (b) not be disadvantaged in any subsequent procurement process compared to the Contractor.

5. TERMINATION ASSISTANCE

- 5.1 DRS shall be entitled to require the provision of Termination Assistance at any time during the Term by giving written notice to the Contractor (a “**Termination Assistance Notice**”) at least eighteen (18) months prior to the expiry of the Agreement or as soon as reasonably practicable (but in any event, not later than one (1) month) following the service by either Party of a Termination Notice. The Termination Assistance Notice shall specify:
 - (a) the date from which Termination Assistance is required;
 - (b) the nature of the Termination Assistance required; and
 - (c) the period during which it is anticipated that Termination Assistance will be required, which shall continue no longer than twelve (12) months after the date that the Contractor ceases to provide the Services.
- 5.2 DRS shall have an option to extend the Termination Assistance Period beyond the period specified in the Termination Assistance Notice provided that such extension shall not extend for more than six (6) months after the date the Contractor ceases to provide the Services or, if applicable, beyond

the end of the Termination Assistance Period and provided that it shall notify the Contractor to such effect no later than twenty (20) Working Days prior to the date on which the provision of Termination Assistance is otherwise due to expire. DRS shall have the right to terminate its requirement for Termination Assistance by serving not less than (20) Working Days' written notice upon the Contractor to such effect.

6. TERMINATION ASSISTANCE PERIOD

6.1 Throughout the Termination Assistance Period, or such shorter period as DRS may require, the Contractor shall:

- (a) continue to provide the Services (as applicable) in accordance with the service levels unless the Parties agree otherwise pursuant to paragraph 6.3 of this Schedule 9 and, if required DRS pursuant to paragraph 5.1 of this Schedule 9, provide the Termination Assistance;
- (b) in addition to providing the Services and the Termination Assistance, provide to DRS any reasonable assistance requested by DRS to allow the Services to continue without interruption following the termination or expiry of this Agreement and to facilitate the orderly transfer of responsibility for and conduct of the Services to DRS and/or its Replacement Contractor;
- (c) use all reasonable endeavours to reallocate resources to provide such assistance as is referred to in paragraph (b) of this paragraph 6.1 of this Schedule 9 without additional costs to DRS; and
- (d) at DRS's request and on reasonable notice, deliver up-to-date Registers.

6.2 During the Transitional Period, the Contractor shall, in addition to providing the Services and the Transitional Assistance Services, provide to the DRS any reasonable assistance requested by the DRS to allow the Services to continue without interruption and to facilitate the orderly transfer of the Services. The Contractor shall use all reasonable endeavours to reallocate resources to provide these services without additional costs. However if this is not possible, any additional reasonable costs incurred by the Contractor in this regard which are not already in the scope of the Transitional Assistance Services or the Exit Plan, shall be provided on a time-and-materials basis in accordance with the applicable rates set out in Schedule 8 and subject to agreement under the Change Control Procedure.

6.3 Where the Contractor demonstrates to DRS's reasonable satisfaction that transfer of the Services during the Termination Assistance Period will have a material adverse effect on the Contractor's ability to meet a particular service level and such adverse effect is not due to a failure by the Contractor to perform this Agreement, the Parties shall vary the relevant service level and/or the applicable service credits to take account of such adverse effect.

6.4 DRS and the Contractor acknowledge that the transition of the Services to the Replacement Contractor or DRS may be phased over a period of time so that certain identified Services are transferred to the Replacement Contractor or DRS before others.

- 6.5 DRS shall, at the Contractor's reasonable request, require the Replacement Contractor and any agent or personnel of the Replacement Contractor, to enter into an appropriate confidentiality undertaking with the Contractor.
- 6.6 The Contractor shall comply with all of its obligations contained in the Exit Management Plan.
- 6.7 For the duration of this Agreement Contractor shall not terminate or vary in any material respect any Transferable Contract without DRS's prior written consent, such consent not to be unreasonably withheld or delayed.
- 6.8 Upon termination or expiry (as the case may be) or upon expiration of the Termination Assistance Period or, provided that it does not have an adverse impact on the ability of the Contractor to provide the Services or the Termination Assistance at any time during the Termination Assistance Period (as DRS shall require):
- (a) the Contractor shall cease to use DRS's Data and, at the direction of DRS either:
 - (i) provide DRS or Replacement Contractor with a complete and uncorrupted version of the DRS's Data in electronic form (or such other format as reasonably required by DRS); or
 - (ii) destroy (including removal from any hard disk) or return (at DRS's option) all copies of DRS's Data not required to be retained by the Contractor for statutory compliance purposes and confirm in writing that such destruction has taken place;
 - (b) the Contractor shall erase from any computers, storage devices and storage media that are to be retained by the Contractor after the end of the Termination Assistance Period any software containing the Intellectual Property Rights owned by DRS;
 - (c) the Contractor shall return to DRS such of the following as are in the Contractor's possession or control:
 - (i) all DRS's Assets;
 - (ii) all materials created by the Contractor under this Agreement, the Intellectual Property Rights in which are owned by DRS;
 - (iii) any other equipment which belongs to DRS; and
 - (iv) any items that have been on-charged to DRS, such as consumables;
 - (d) the Contractor shall vacate any of DRS's premises and sites; and
 - (e) each Party shall return to the other party all Confidential Information of the other Party and shall certify that it does not retain the other Party's Confidential Information.

7. TRANSFER OF ASSETS AND CONTRACTS

Where the Contractor is supplying equipment to DRS or has entered into a contract specifically to be able to provide the Services:

- 7.1 Not less than six (6) months prior to expiry or, in the case of termination, as soon as practicable (but in any event not later than one month following delivery of the up-to-date Registers) or in the event of a Termination Assistance Period, not later than one month prior to the date of expiration of the Termination Assistance Period, DRS shall notify the Contractor:
- (a) which, if any, of the Transferable Assets DRS requires to be transferred to it and/or any Replacement Contractor ("**Transferring Assets**");
 - (b) which, if any, of the Exclusive Assets which are not Transferable Assets and which of the Non-Exclusive Assets DRS and/or the Replacement Contractor requires the continued use of; and
 - (c) which Transferable Contracts DRS requires to be transferred to it and/or to the Replacement Contractor or any other licences of the Contractor's Software or Third Party Software required by DRS and/or the Replacement Contractor ("**Transferring Contracts**"),

in order for DRS or the Replacement Contractor to provide the Replacement Services from the end of the Termination Assistance Period. At the request of DRS the Contractor shall provide such assistance as may be necessary to help DRS and/or the Replacement Contractor to identify which Transferring Assets and which Transferable Contracts are required for the continued provision of the Services and the provision of the Replacement Services.

- 7.2 The Contractor shall sell the Transferring Assets to DRS or the Replacement Contractor (as determined by DRS) with effect from the end of the Termination Assistance Period and the sale shall take place at such place as DRS shall specify. DRS or the Replacement Contractor shall acquire the Transferring Assets at Net Book Value. Risk in such Transferring Assets shall pass to DRS or the Replacement Contractor (as appropriate) at the end of the Termination Assistance Period and title to such Transferring Assets shall pass to DRS or the Replacement Contractor (as appropriate) on payment for the same.

- 7.3 Where the Contractor is notified in accordance with paragraph 7.1(b) of this Schedule 9 that DRS and/or the Replacement Contractor requires continued use of any of the Exclusive or Non-Exclusive Assets, the Contractor shall:

- (a) procure a non-exclusive, perpetual, royalty-free licence (or licence on such other terms that have been agreed by DRS) for DRS and/or the Replacement Contractor to use such assets (with a right of sub-licence or assignment on the same terms); or failing which
- (b) procure a suitable alternative to such assets and DRS or the Replacement Contractor shall bear the reasonable proven costs of procuring the same.

- 7.4 The Contractor shall at DRS's request and with the co-operation of DRS procure the novation or assignment to DRS and/or Replacement Contractor of the Transferring Contracts.

7.5 DRS shall:

- (a) accept assignments from the Contractor or join with the Contractor in procuring a novation of each Transferring Contract; and
- (b) once a Transferring Contract is novated or re-assigned to DRS or the Replacement Contractor, DRS shall carry out, perform and discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract or, as applicable, procure that the Replacement Contractor does the same.

7.6 The Contractor shall indemnify DRS (or the Replacement Contractor, as applicable) against each loss, liability and cost arising out of any claims made by a party to a Transferring Contract which is assigned or novated to DRS (or Replacement Contractor) pursuant to paragraph 7.4 of this schedule 9 in relation to any matters arising prior to the date of such assignment or novation.

7.7 DRS shall notify the Contractor of any obligation under any Transferring Contract which has been or will be novated or assigned under this paragraph 7 which it is unable to carry out or perform without the assistance of the Contractor. The Contractor shall provide all reasonable assistance to DRS to enable it to comply with that obligation.

8. SERVICE PROVIDER PERSONNEL

8.1 The Contractor shall not and shall procure that any relevant Sub-Contractor shall not take any step (expressly or implicitly and directly or indirectly by itself or through any other person) without the prior written consent of DRS to dissuade or discourage any employees engaged in the provision of the Services from transferring their employment to DRS and/or the Replacement Contractor.

8.2 During the Termination Assistance Period, the Contractor shall and shall procure that any relevant Sub-Contractor shall:

- (a) give DRS and/or the Replacement Contractor reasonable access to the Contractor's Personnel and/or their consultation representatives to present the case for transferring their employment to DRS and/or the Replacement Contractor and/or to discuss or consult on any measures envisaged by DRS, Replacement Contractor in respect of persons expected to be Transferring Contractor Employees;
- (b) co-operate with DRS and the Replacement Contractor to ensure an effective consultation process and smooth transfer in respect of Transferring Contractor Employees in line with good employee relations and the effective continuity of the Services.

8.3 The Contractor shall immediately notify DRS or, at the direction of DRS, the Replacement Contractor of any period of notice given by the Contractor or received from any person referred to in the Staffing Information, regardless of when such notice takes effect.

- 8.4 The Contractor shall not for a period of twelve (12) months from the date of transfer re-employ or re-engage or entice any Personnel, employees, or Sub-Contractors whose employment or engagement is transferred to DRS and/or the Replacement Contractor except that this paragraph 8.4 shall not apply where an offer is made following a genuine competition or advertisement for the position which was independently applied for.

9. CHARGES

- 9.1 Except as otherwise expressly specified in this Agreement, the Contractor shall not make any charges for the services provided by the Contractor pursuant to, and DRS shall not be obliged to pay for costs incurred by the Contractor in relation to its compliance with, this Schedule 9 including the preparation and implementation of the Exit Management Plan, the Termination Assistance and any activities mutually agreed between the Parties to carry on after the expiry of the Termination Assistance Period.

10. APPORTIONMENTS

- 10.1 There shall be apportioned between DRS and the Contractor or the Replacement Contractor and the Contractor all outgoings and expenses (including any remuneration due) and all rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts.

- 10.2 This apportionment shall be carried out as follows:

- (a) the payments shall be annualised and divided by 365 to reach a daily rate;
- (b) DRS shall be responsible for or shall procure that its nominee or the Replacement Contractor shall be responsible for or entitled to (as the case may be) an amount equal to the number of complete days during the period of the invoice after the transfer multiplied by that daily rate; and
- (c) the Contractor shall be responsible for or entitled to (as the case may be) the rest of the invoice.

- 10.3 Each party shall pay and DRS shall procure that its nominee or the Replacement Contractor shall pay any monies due under this paragraph 10 as soon as practicable.