SCHEDULE 9: FORM OF PARENT COMPANY GUARANTEE AND PERFORMANCE BOND[1]

THIS GUARANTEE is made the day of 201[•]

BETWEEN:

(1) [•] a company registered in England and Wales under number [•] and having its registered office at [•] (the "Guarantor");

(2) [•] a company registered in England and Wales under number [•] and having its registered office at Windsor House, 42-50 Victoria Street, London SW1H 0TL (the "Company" which expression shall include its successors in title and assigns); and

(3) [•] a company registered in England and Wales under number [•] and having its registered office at [•] (the "Supplier").

WHEREAS:

(A) This Guarantee is supplemental to a contract (the "Contract") for the carrying out of [•] at [•] made between (1) the Company and (2) the Supplier.

(B) The Guarantor has agreed to guarantee to the Company the due and punctual performance of the Contract by the Supplier in the manner hereinafter appearing.

(C) The Supplier is a party to this Guarantee in order to confirm its request that the Guarantor provide this Guarantee on the terms set out herein.

NOW IT IS HEREBY AGREED as follows:

1. The Guarantor unconditionally guarantees to the Company the proper and punctual performance and observance by the Supplier of all its obligations, warranties, duties, undertakings and responsibilities under the Contract and shall forthwith make good any default thereunder on the part of the Supplier and the Guarantor shall pay or be responsible for the payment by the Supplier to the Company of all sums of money, liabilities, awards, losses, damages, costs, charges and expenses that may be or become due and payable under or arising out of the Contract in accordance with its terms or otherwise by reason or in consequence of any such default on the part of the Supplier.

2. This Guarantee shall be a continuing guarantee and indemnity and accordingly shall remain in full force and effect until all obligations, warranties, duties and undertakings now or hereafter to be carried out or performed or

[1] Consider whether a legal opinion is or may be required. This is required where the Guarantor providing the PCG/Bond is a foreign entity. Depending on the identity/standing of the Guarantor you may wish to consider whether it is necessary to insist on requiring the opinion as it is an added form of protection in respect of the Guarantor's obligations under the PCG/Bond. The form of opinion can be found as a standalone document and added as necessary.

observed by the Supplier under or arising out of the Contract have been duly and completely performed and observed in full.

3. The Guarantee is in addition to and not in substitution for any other security or warranty which the Company may at any time hold for the performance of any obligations, warranties, duties and undertakings under the Contract and may be enforced by the Company without first taking any proceedings or exhausting any right or remedy against the Supplier or any other person or taking any action to enforce any other security, bond or guarantee.

4. The Guarantor shall be under no greater obligation or greater liability under this Guarantee than it would have been under the Contract if it had been named as the Supplier in the Contract.

5. The Guarantor's liability shall cease and no action or proceedings by the Company for any cause of action arising under or in connection with this Deed shall be commenced against the Guarantor after the expiry of 12 (twelve) years of the Expiry Date (or any revised Expiry Date extended in accordance with clause 2 of the Contract).

6. The obligations and liabilities hereunder shall remain in full force and effect and shall not be affected, lessened, impaired or discharged by:

   (A) any alteration or variation to the terms of the Contract;

   (B) any alteration in the extent or nature or sequence or method or timing or scope of the works, services or supplies to be carried out under the Contract;

   (C) any extension of time being given to the Supplier or any other indulgence or concession to the Supplier or any forbearance, forgiveness or any other thing done, omitted or neglected to be done under the Contract;

   (D) any other bond, security or guarantee now or hereafter held for all or any part of the obligations of the Supplier under the Contract;

   (E) the release, modification, exchange or waiver of any such bond, security or guarantee;

   (F) any amalgamation or reconstruction or dissolution including liquidation of the Supplier;

   (G) the making of a winding up order, the appointment of a provisional liquidator, the passing of a resolution for winding up, liquidation, administration, receivership or insolvency of the Supplier;

   (H) any legal limitation, disability or incapacity relating to the Supplier (whether or not known to the Guarantor);

   (I) any invalidity in, irregularity affecting or unenforceability of the obligations of the Supplier under the Contract;

(J) the termination of the Contract; or

(K) anything the Company or the Supplier may do or omit or neglect to do including, but without limitation, the assertion of or failure or delay to assert any right or remedy of the Company or the pursuit of any right or remedy by the Company.

7. Until all amounts which may be or become payable and all liabilities, obligations, warranties, duties and undertakings in respect of the Supplier's obligations have been irrevocably paid, performed or discharged in full, the Guarantor shall not, after a claim has been made or by virtue of any payment, performance or discharge by it under this Guarantee:

(A) be subrogated to any rights, security or moneys held, received or receivable by the Company or be entitled to any right of contribution or indemnity in respect of any payment made or moneys received on account of the Guarantor's liability under this Guarantee;

(B) claim, rank, prove or vote as a creditor of the Supplier or its estate in competition with the Company unless the Company so directs; or

(C) receive, claim or have the benefit of any payment distribution or security from or on account of the Supplier, or exercise any right of set-off against the Supplier unless the Company so directs.

8. This Guarantee is irrevocable.

9. The benefit of this Guarantee may be assigned by the Company at any time to any assignee of the benefit of the whole of the Contract. No further or other assignments shall be permitted.

10. The Guarantor:

(A) gives the guarantee contained in this Guarantee as principal obligor and not merely as surety;

(B) agrees to indemnify the Company on written demand against any loss or liability suffered by it if any provision set out in the Contract guaranteed by the Guarantor becomes unenforceable, invalid or illegal; and

(C) waives any right it may have of first requiring the Company to proceed against, or enforce any other rights or security or claim payment from, any person before claiming from the Guarantor under this Guarantee.

11. Until all amounts which may be or become payable in respect of the Supplier's obligations have been irrevocably paid in full by the Guarantor, the Company may:

(A) refrain from applying or enforcing any other moneys, security or rights held or received by the Company in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit

(whether against those amounts or otherwise) and the Guarantor shall not be entitled to the benefit of the same; and

(B) hold in a suspense account any moneys received from the Supplier on account of these Supplier's obligations or on account of the Guarantor's liability under this Guarantee.

12. The Company is entitled to make any number of demands under this Guarantee.

13. The invalidity, illegality or unenforceability in whole of or in part of any provisions of this Guarantee shall not affect the validity, legality and enforceability of the remaining part or provisions of this Guarantee.

14. This Guarantee may be executed in any number of counterparts each of which shall be an original and all of such counterparts taken together shall be deemed to constitute one and the same instrument.

15. No person other than the Company and its subsidiaries (as defined in section 1159 of the Companies Act 2006) shall have any right to claim or remedy under or pursuant to this Guarantee and the provisions of the Contracts (Rights of Third Parties) Act 1999 are hereby excluded.

16. This Guarantee, executed and delivered as a deed, shall be governed by and interpreted according to the laws of England and the Courts of England shall have exclusive jurisdiction save that the Company shall have the right to bring proceedings in the courts of any other jurisdiction in which any of the Guarantor's assets may be situated.

17. [For non-UK resident Guarantors only:

For the purposes of this Guarantee the Guarantor hereby appoints [•] of [•] [to be a London address] to accept service of process on its behalf, and service on the said [•] at the said address shall be deemed to be good service on the Guarantor; and the Guarantor hereby irrevocably agrees not to revoke or terminate such appointment).]

Executed as a deed by the Parties and delivered on the date of this Guarantee

Executed as a Deed by [GUARANTOR])

acting

by)....

) Authorised

Signatory

and)....

..

) Authorised

Signatory

Executed as a deed by affixing the Common Seal of)

[COMPANY])

in the presence of:–)

……

[Authorised Signatory]

Executed as a Deed by [SUPPLIER])

acting

by)....

) Authorised

Signatory

and)....

..

) Authorised

Signatory

SCHEDULE 10: FORM OF ON DEMAND PERFORMANCE BOND WITH ANNEX 1 [2]

BOND

(Letterhead of Guarantor)

To: [Company name] (its successors in title and assigns)

Contract Bond No. [•]

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

PROVIDED THAT:

1. This Bond shall come into force on the date hereof.

2. Any demand hereunder shall be substantially in the form of Annex 1 to this Bond, and as between you and us the facts set out in that demand shall be: (a) deemed to be true and (b) accepted by us as conclusive evidence for the purposes of this Bond that the amount claimed in the demand is due and payable to you hereunder, it being our intention that the event upon which payment must be made hereunder is the service of your demand without any rights on our part to raise any objections, irrespective of the validity or the effectiveness of the Contract and the obligations arising thereunder and irrespective of the underlying facts or their significance under the Contract.

3. All sums payable under this Bond shall be paid in pounds sterling to such bank account as may be specified in your demand in immediately available funds, free of any restriction or condition and free and clear of and without any deduction or withholding whether for or on account of tax, by way of set-off, or otherwise, except to the extent required by law.

4. For the purpose of this paragraph 4, the expression "Expiry Date" means the date falling twelve (12) months after the date of this Bond. Our liability hereunder shall be limited as follows:

   (A) we shall have no liability in respect of any demand received after the Expiry Date; and

[2] Consider whether a legal opinion is or may be required. This is required where the Guarantor providing the Bond is a foreign entity. Depending on the identity/standing of the Guarantor you may wish to consider whether it is necessary to insist on requiring the opinion as it is an added form of protection in respect of the Guarantor's obligations under the Bond. The form of opinion can be found as a standalone document and added as necessary.

(B) in respect of a demand or demands received on or before the Expiry Date, our liability shall not exceed the aggregate sum of £ [•].

5. Our obligations hereunder shall remain in full force and effect and shall not in any way be affected, reduced or discharged by:

(A) any alteration to the terms of the Contract made by agreement between you and the Supplier; and/or

(B) any defence, counterclaim, set-off or other deduction available to the Supplier under the Contract; and/or

(C) any alteration in the extent or nature or sequence or method or timing of the works/services to be carried out under the Contract; and/or

(D) any time being given to the Supplier or any other indulgence or concession to the Supplier or any forbearance, forgiveness or any other thing done, omitted or neglected to be done under the Contract; and/or

(E) any other bond, security or guarantee now or hereafter held by you for all or any part of the obligations of the Supplier under the Contract; and/or

(F) the release or waiver of any such other bond, security or guarantee; and/or

(G) any amalgamation or reconstruction or dissolution including liquidation or change in control or constitution of the Supplier; and/or

(H) the termination of the Contract; and/or

(I) any other event which might operate to discharge a guarantor at law or in equity.

6. Terms defined in the Contract and not otherwise defined herein shall have the same meaning in this Bond unless inconsistent with the context.

7. This Bond shall be governed by, and interpreted according to, the laws of England and the Courts of England shall have exclusive jurisdiction in relation to any claim, dispute or difference concerning this Bond and any matter arising from it save that you shall have the right to bring proceedings in the Courts of any other jurisdiction in which any of our assets may be situated.

8. This Bond may be assigned or transferred without our prior consent to any member of the TfL Group. Any other assignment or transfer of this Bond by either Party shall require the consent of the other Party, such consent not to be unreasonably withheld or delayed.

9. This Bond may not be amended, varied or supplemented in any manner whatsoever without your prior written consent, other than in accordance with its express terms.

10. Each of the provisions of this Bond is severable and distinct from the others, and if at any time any such provision is or becomes ineffective, inoperable, invalid or unenforceable it shall be severed and deemed to be deleted from this Bond, and in such event the remaining provisions of this Bond shall continue to have full force and effect.

11. All bank charges and other fees payable in relation to or in connection with this Bond are for the account of the Supplier and you shall have no liability or responsibility therefor.

12. Except to the extent it is inconsistent with the express terms of this Bond, this Bond is subject to the ICC Uniform Rules for Demand Guarantees, 2010 revision, ICC Publication No. 758.

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

Executed as a Deed by [GUARANTOR])

acting by)....

) Authorised Signatory

and)....

) Authorised Signatory

Executed as a deed by affixing the Common Seal of)

[COMPANY])

in the presence of:–)

.....

[Authorised Signatory]

APPENDIX 1 : FORM OF DEMAND FROM THE COMPANY TO THE GUARANTOR

Dear Sirs

[Contract Title]

Contract No: [•] (the "Contract")

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

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

We hereby demand payment from you of the sum of £[•] under the Bond. Please make payment by CHAPS made payable to [Company name / bank account details].

Yours faithfully

.....

[Company name]
Windsor House
42-50 Victoria Street
London
SW1H 0TL

SCHEDULE 11: FORM OF COLLATERAL WARRANTY[3]

THIS AGREEMENT is made the day of 201[ ]

BETWEEN: -

(1) **TRANSPORT FOR LONDON** or **TfL**, a statutory corporation established under the Greater London Authority Act 1999 of Windsor House, 42-50 Victoria Street, London SW1H 0TL (the "Company" which expression shall include its successors, transferees and assignees);

(2) [•] a company registered in England and Wales under number: [•] and having its registered office at [•] (the "Sub-Contractor"); and

(3) [•] a company registered in England and Wales under number: [•] and having its registered office at [•] (the "Supplier").

WHEREAS:-

(A) The Company has entered into a contract with the Supplier (the "Main Contract") pursuant to which the Supplier is to undertake and complete the following services: [•] (the "Services").

(B) The Sub-Contractor has submitted a tender to the Supplier for the carrying out and completion of certain parts (the "Sub-Contract Services") of the Services referred to above as more particularly described in the tender.

NOW IN CONSIDERATION of the payment of £1 (one pound) by the Company to the Sub-Contractor (receipt of which the Sub-Contractor hereby acknowledges) IT IS HEREBY AGREED as follows:

1. The Sub-Contractor warrants to the Company that:

   (A) the Sub-Contract Services have been and will be carried out with the skill and care to be expected of appropriately qualified and experienced professional contractors with experience in carrying out works or services of a similar type, nature and complexity to the Sub-Contract Services;

   (B) reasonable skill and care has been and will continue to be exercised in connection with:

[3] Consider whether a legal opinion is or may be required. This is required where the Sub-Contractor providing the Sub-Contractor warranty is a foreign entity. Depending on the identity/standing of the Sub-Contractor you may wish to consider whether it is necessary to insist on requiring the opinion as it is an added form of protection in respect of the Sub-Contractor's obligations under the Sub-Contractor warranty. The form of opinion can be found as a standalone document in the Commercial Procurement Handbook and can be added as necessary.

(1) the design of any goods, works or services to the extent that the Sub-Contractor has or will be responsible for such design;

(2) the selection of all goods and materials comprised in the Sub-Contract Services (in so far as such goods and materials have been or will be selected by the Sub-Contractor);

(3) the satisfaction of any performance specification or requirement in so far as the same are included or referred to in this Contract between the Supplier and the Sub-Contractor in relation to the Sub-Contract Services (the "Sub-Contract");

(4) the execution and completion of the Sub-Contract Services;

(5) the Sub-Contract Services will, on completion of the Main Contract, comply with all Applicable Laws and Standards (as such capitalised terms are defined in the Main Contract);

(C) the Sub-Contract Services will be reasonably fit for the purposes for which they are intended (awareness of which purposes the Sub-Contractor hereby acknowledges) and in particular but without limitation will be so fit for the period and with a rate of deterioration reasonably to be expected of high quality, reliable, well designed and engineered goods, materials and construction; and

(D) it has the right to grant to the Company all licences (including without limitation all rights to sub-licence) of all intellectual property rights as contemplated in this Agreement.

For the purposes of construing the warranties in this Clause 1 references to the Sub-Contract Services shall include any part of the Sub-Contract Services. Each warranty shall be construed as a separate warranty and shall not be limited by reference to, or reference from, the terms of any other warranty or any other term of the Sub-Contract.

2. The Sub-Contractor shall, save in so far as he is delayed by any event in respect of which the Supplier is granted an extension of time under the Main Contract for completion of the Services:

(A) execute, complete [and maintain][4] the Sub-Contract Services in accordance with the provisions of the Sub-Contract; and

(B) ensure that the Supplier shall not become entitled to any extension of time for completion of the Services or to claim any additional payment under the Main Contract due to any failure or delay by the Sub-Contractor.

3. The Sub-Contractor shall from time to time supply the Company and the Supplier with such information as either may reasonably require.

[4] Include depending on Sub-Contract Services to be provided

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

   (A) understanding the Services;

   (B) operating, maintaining, repairing, modifying, altering, enhancing, re-figuring, correcting, replacing, re-procuring and re-tendering the Services;

   (C) extending, interfacing with, integrating with, connecting into and adjusting the Services;

   (D) enabling the Company to carry out the operation, maintenance repair, renewal and enhancement of the [Underground Network/Sites] (as such capitalised terms are defined in the Main Contract);

   (E) executing and completing the Services; and

   (F) enabling the Company to perform its functions and duties as Infrastructure Manager and Operator of the [Underground Network/Sites] (as such capitalised terms are defined in the Main Contract)

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

   For the purposes of this Clause, the term "Documents" shall mean documents, items of information, data, reports, drawings, specifications, plans, software, designs, inventions and any other materials provided by or on behalf of the Sub-Contractor in connection with the Sub-Contract (whether in existence or to be made).

5. The Sub-Contractor agrees:

   (A) on request at any time to give the Company or any persons authorised by the Company access to the material referred to in Clause 4 and at the Company's expense to provide copies of any such material; and

   (B) at the Sub-Contractor's expense to provide the Company with a set of all such material on completion of the Sub-Contract Services.

6. The Parties hereby agree that:

   (A) this Agreement shall be personal to the Sub-Contractor;

(B) the Company may assign the benefit of this Agreement to any third party;

(C) the rights and remedies contained in this Agreement are cumulative and shall not exclude any other right or remedy available to either Party in law or equity.

7. The Sub-Contractor warrants and undertakes to the Company that he has maintained and will continue to maintain all insurances required to be maintained pursuant to the terms of the Sub-Contract and that, insofar as he is responsible for the design of the Sub-Contract Services, he has professional indemnity insurance with a limit of indemnity of not less than [two million pounds (£2,000,000)][5] in respect of each and every claim which may be made against the Sub-Contractor in respect of the Sub-Contract Services. The Sub-Contractor shall maintain such professional indemnity insurance for a period of twelve (12) years from completion of the Services provided such insurance remains available at commercially reasonable rates and shall notify the Company forthwith if such insurance ceases to be so available. When deciding whether such insurances are available at commercially reasonable rates, no account shall be taken of any increase in the premium or imposition of terms which arise as a result of the Sub-Contractor's insurance claims record.[6]

8. If any dispute of any kind whatsoever arises between the Parties in connection with this Agreement or the Sub-Contract Services which raises issues which are in opinion of the Company the same as or substantially the same as issues raised in a related dispute (the "Related Dispute") between the Company and the Supplier and such Related Dispute has already been referred to a conciliator or arbitrator appointed under the provisions to that effect contained in the Main Contract, then the Sub-Contractor hereby agrees that the Company may at his discretion by giving notice in writing to the Sub-Contractor refer the dispute arising out of this Agreement or the Sub-Contract Services to the adjudicator, conciliator, arbitrator or other Party (the "Appointed Party") appointed to determine the Related Dispute. In this event the Appointed Party shall have power to give such directions for the determination of the dispute and the Related Dispute as he may think fit and to make such awards as may be necessary in the same way as if the procedure of the High Court as to joining one or more defendants or joint co-defendants or third parties was available to the Parties and to him.

9.

(A) Neither the Sub-Contractor nor the Supplier shall exercise or seek to exercise any right which may be or become available to it to terminate or treat as terminated the Sub-Contract or discontinue or suspend the performance of any of its duties or obligations thereunder or treat the Sub-Contract as determined without first giving to the Supplier or the Sub-Contractor (as applicable) not less than twenty-five (25) Working Days prior written notice of its intention to do so, with a copy to the Company, specifying the Sub-Contractor's or Supplier's grounds for

[5] Insert appropriate PI insurance figure as agreed with the Insurance and Risk team.
[6] If the Sub-Contractor is not undertaking any design as part of the Sub-Contract Services Clause 7 can be stated as "Not Used".

terminating or treating as terminated the Sub-Contract or discontinuing or suspending its performance thereof or treating the Sub-Contract as determined.

(B) If the Main Contract is terminated for any reason, within twenty-five (25) Working Days of such termination the Company may give written notice to the Sub-Contractor and to the Supplier (a "Step-in Notice") that the Company or its appointee shall henceforth become the Supplier under the Sub-Contract in accordance with the terms of sub-Clause (C) below.

(C) With effect from the date of the service of any Step-in Notice:

(1) the Company or its appointee shall be substituted in the Sub-Contract as the Supplier thereunder in place of the Supplier and references in the Sub-Contract to the Supplier shall be construed as references to the Company or its appointee;

(2) the Sub-Contractor shall be bound to continue with the performance of its duties and obligations under the Sub-Contract and any exercise or purported exercise by the Sub-Contractor prior to the date of the Step-in Notice of any right to terminate or treat as terminated the Sub-Contract or to discontinue or suspend the performance of any of its duties or obligations thereunder or to treat the Sub-Contract as automatically determined shall be of no effect;

(3) the Company shall become bound by the terms and conditions of the Sub-Contract in respect of all obligations and duties of the Supplier thereunder which fall to be performed after the date of the Step-in Notice and shall promptly thereafter make payment of any amounts properly due to the Sub-Contractor as at the date of the Step-in Notice and still outstanding; and

(4) the Supplier shall be released from further performance of the duties and obligations of the Supplier under the Sub-Contract after the date of the Step-in Notice, but without prejudice to any rights and remedies of:

(a) the Sub-Contractor against the Supplier in respect of any matter or thing done or omitted to be done by the Supplier on or before the date of the Step-in Notice; and

(b) the Supplier against the Sub-Contractor in respect of any matter or thing done or omitted to be done by the Sub-Contractor on or before the date of the Step-in Notice.

(D) Notwithstanding anything contained in this Agreement and notwithstanding any payments which may be made by the Company to the Sub-Contractor, the Company shall not be under any obligation to the Sub-Contractor and the Sub-Contractor shall not be under any obligation to the Company unless the Company shall have served a Step-in Notice pursuant to Clause 9(B) above.

10. The Sub-Contractor's liabilities, duties and obligations hereunder shall be no greater and of no longer duration than the liabilities, duties and obligations which the Sub-Contractor owes to the Supplier under the Sub-Contract.

11. The Sub-Contractor further undertakes to indemnify the Company from and against the consequences of any breach by the Sub-Contractor of any of the warranties, covenants and undertakings contained in this Agreement.

12. The rights and benefits conferred upon the Company by this Agreement are in addition to any other rights and remedies that the Company may have against the Sub-Contractor including, without prejudice to the generality of the foregoing, any remedies in negligence.

13. Nothing contained in this Agreement shall in any way limit the obligations of the Supplier to the Company arising under the Main Contract or otherwise undertaken by the Supplier to the Company in relation to the Sub-Contract Services.

14. No amendment to this Agreement shall be valid unless it is in writing and signed by all Parties.

15. Any person who is not a Party to this Agreement may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.

16. This Agreement shall be governed by and construed in accordance with English law and shall be subject to the exclusive jurisdiction of the Courts of England and Wales.

Executed as deed by the Parties and delivered on the date of this Agreement.

Executed as a deed by)
affixing the Common)
Seal of Transport for)
London in the presence
of [•]

_____
Authorised Signatory

Executed as a Deed by)
[SUB-CONTRACTOR])
acting by [•]

_____
Authorised Signatory

And)
)
)

_____
Authorised Signatory

Executed as a Deed by)
[SUPPLIER] acting by)
[•])

_____
Authorised Signatory

And)
)

_____
Authorised Signatory

SCHEDULE 12: SUPPLIER PERFORMANCE

Definitions

1.1 In this Schedule 12, the following terms shall have the following meanings:

"Deductions" means a reduction from the Service Charges in respect of a failure by the Supplier to meet the required level of performance in respect of specific KPIs, as determined and calculated in accordance with paragraph 2 of this Schedule 12.

"Emergency Fault" means any Fault so designated by the Company and having a Response Time set out in this Schedule 12, Table 5.

"FR02 Fault" means a Fault coded FR02.

"Exclusion" has the meaning given in paragraph 7.1 of Schedule 12.

"No Defect Found" has the meaning given in paragraph 3.2.16 of this Schedule 12.

"Non-EEC Fault" means a Fault not being an Emergency Fault or FR02 Fault as designated by the ECC/MCC (Engineering Control Centre, Maintenance Control Centre or fault reporting centre).

"Non-Conformance" has the meaning given in paragraph 6.2 of this Schedule 12.

"Notice of Non-Conformance" means a notice that may be issued by the Company in respect of Non-Conformances in accordance with paragraph 3 of this Schedule 12 and substantially in the form set out in Appendix A of this Schedule 12.

"Recovery Plan" means a plan to be provided by the Supplier upon request by the Company in the event that there has been a performance issue which has not been raised to Level 1 Non-Conformance setting out how the Supplier will address such non-performance.

"Rectification Time" means the maximum amount of time the Supplier has before being at variance to the elapsed time of Key Performance Indicator 3 set out in this Schedule 12, Table 5.

"Repeat Fault" means the re-occurrence of a Fault or the occurrence of a closely related Fault affecting the same Asset.

"Response Time" means the maximum amount of time the Supplier has before being at variance to the elapsed time of Key Performance Indicator 3 set out in this Schedule 12, Table 5.

"Root Cause Analysis" means an analysis to be provided by the Supplier upon request by the Company in the event that there has been a performance issue which has not been raised to Level 1 Non-Conformance setting out the Supplier's analysis of the root cause of the non-performance in question.

"Support Services" are support services that form part of the Planned Services.

2. Overview

2.1 This Schedule 12 comprises the performance measurement mechanism applicable to the Services, in order to incentivise the Supplier to deliver the Services in accordance with the requirements of this Contract and also to provide the Company with a remedy where the Supplier fails to do so.

2.2 The performance measurement mechanism set out in this Schedule shall, subject to paragraph 7 (Exclusions) below, come into effect on the Contract Commencement Date and be applicable to the whole of the Services, including where relevant any Additional Services.

2.3 The performance measurement mechanism comprises and incorporates:

a) a range of performance measures that define required performance in respect of Planned Services, Reactive Services and standards;

b) an assessment of performance at the end of each Accounting Period against KPIs and SDIs;

c) Deductions from and adjustments to the Service Charges in respect of the Supplier's failure to meet KPIs;

d) non-financial remedies in respect of the Supplier's failure to meet SDIs;

e) an Escalation Procedure which can be invoked in the event of unsatisfactory performance; and

f) incentives for the Supplier to innovate to continuously improve the Services.

2.4 KPIs are stated in paragraph 3 of this Schedule 12. The KPIs measure:

a) actual performance achieved by the Supplier against the Activity Plans;

b) the speed with which the Supplier rectifies Faults; and

c) achievement of the required quality of maintenance.

2.5 SDIs are stated in paragraph 4 of this Schedule 12. The SDIs measure:

a) Repeat Faults;

b) reporting; and

c) adherence to health & safety, environmental and quality standards.

3. Key Performance Indicators

3.1 Planned Services KPIs

3.1.1 Planned Services KPIs measure:

- actual performance achieved against Planned Services as set out in the Activity Plan; and
- achievement of the required quality of planned maintenance when measured by the Company's quality inspections.

Table 1 – Planned Service KPIs

KPI Number	Service	Measure	Target
KPI 1	Maintenance	Delivery of planned maintenance in accordance with Activity Plan	100%
KPI 2	Quality inspections	Achievement of required standard of planned maintenance when inspected by the Company	100% passed

3.1.2 At the end of each Accounting Period, the Supplier shall assess and report to the Company on actual performance against the Planned Service KPIs. Performance against Planned Service KPIs shall be assessed at the end of each Accounting Period and the Company shall be entitled to apply an adjustment to the Service Charges to reflect the actual performance for the Accounting Period. The payment for the Services shall be directly related to the percentage of planned maintenance performance set out in the Activity Plan that has been delivered in that Accounting Period and the percentage of quality inspections that have been passed.

3.1.3 A maximum of 80% of the Service Charges for Planned Services shall be payable by the Company in respect of maintenance Planned Services set out in the Activity Plan and a maximum of 20% of the Service Charges for Planned Services shall be payable by the Company in respect of Planned Services quality inspections.

KPI 1 Delivery of Planned Maintenance in Accordance with the Activity Plan

3.1.4 Tables 2a and 2b provide examples in respect of KPI 1.

Table 2a - Example 1

Planned performance	100 planned maintenance tasks
Actual performance achieved	96 tasks
Actual performance against plan	96%
Actual payment against Service Charges	96% x 80% of Service Charge for Planned Services

Table 2b - Example 2