

**PRIVATE AND CONFIDENTIAL**

**TRANSPORT FOR LONDON**

and

**GB RAILFREIGHT LIMITED**

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**OPERATION AND MAINTENANCE**

**AGREEMENT FOR YELLOW PLANT**

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**OPERATION AND MAINTENANCE AGREEMENT****DATED** 26 JUNE 2018**BETWEEN:**

- (1) **TRANSPORT FOR LONDON**, a statutory corporation established under the Greater London Authority Act 1999 of 55 Broadway, London SW1H 0BD (the "**Purchaser**");
- (2) **GB RAILFREIGHT LIMITED** (Registered Number 03707899), a company incorporated in England and Wales, whose registered office is at 55 Old Broad Street, London EC2M 1RX (the "**Service Provider**").

**WHEREAS:**

- (A) The Service Provider is experienced and qualified in providing operation and maintenance services in relation to railway plant and machinery, including services of similar nature and complexity to the Services.
- (B) The Purchaser wishes to appoint the Service Provider to provide the Services on the terms and conditions of this Agreement.

**IT IS AGREED:****1 DEFINITIONS AND INTERPRETATION****1.1 Definitions**

In this Agreement, (including the recitals) unless the context otherwise requires, the following words and expressions have the following meanings respectively:

"**Access Costs**" shall have the meaning given to it in Clause 6.4.2;

"**Abbey Wood Boundary**" means the boundary of the CCOS and the NR Network to the east of Abbey Wood sidings;

"**Additional Equipment**" means the following additional equipment:

- (a) locomotive haulage;
- (b) wagons;
- (c) rail cranes (for example, Kirow 250);
- (d) road rail vehicles;
- (e) road rail vehicle trailers;
- (f) small plant (for example, mini diggers, site generators, lighting);
- (g) tampers;
- (h) trolleys;
- (i) mobile elevating work platform; and

(j) track geometry measurement equipment.

"**Additional Contract Management Meeting**" shall have the meaning given to it in Clause 23.4.1;

"**Affected Party**" shall have the meaning given to it in Clause 28.2;

"**Agreement**" means this agreement which has been signed and delivered by the Parties as a Deed and includes the Schedules;

"**Agreement Duration**" means the period commencing upon the date hereof and continuing until the Expiry Date subject to:

- (a) earlier termination pursuant to Clause 16; and/or
- (b) the Purchaser extending the Agreement pursuant to Clause 4.2;

"**Applicable Laws**" means all or any laws, statutes, proclamations, by-laws, directives, regulations, statutory instruments, rules, orders, rules of court, delegated or subordinate legislation, rules of common law or any European Union legislation at any time or from time to time in force in the United Kingdom or the European Union and which are or may become applicable to this Agreement or any obligations performed under it, any agreement or document referred to in this Agreement or to the Parts, Spares or Special Tools, including, without limitation, Industry Standards (but excluding the TfL Standards), the Railways (Interoperability) Regulations 2006 and ROGS;

"**Bond Provider**" means a bond provider having a credit rating of at least the Required Rating and having been approved in writing by the Purchaser (in its absolute discretion);

"**CBTC Signalling Equipment**" means the train-carried signalling equipment installed on certain items of Plant and Machinery as further detailed in the Services Specification and produced by the CBTC Signalling Equipment Contractor pursuant to the CBTC Signalling Equipment Contract;

"**CBTC Signalling Equipment Contract**" means the contract to be entered into between the Purchaser and the CBTC Signalling Equipment Contractor under which the CBTC Signalling Equipment Contractor agrees to supply the CBTC Signalling Equipment for certain items of Plant and Machinery and related services;

"**CBTC Signalling Equipment Contractor**" means Siemens Invensys Consortium, an unincorporated joint venture between (1) Siemens PLC and (2) Siemens Rail Automation, having its place of business at Faraday House, Sir William Siemens Square, Frimley, Camberley, Surrey, GU16 8QD;

"**CCOS**" means the Crossrail central operating section authorised under the Crossrail Act 2008, being the railway between Portobello Boundary, Pudding Mill Lane Boundary and Abbey Wood Boundary;

"**Change Date**" means the date that this Agreement is executed by both Parties;

"**Change in Law**" means the application to any person of any Applicable Laws and/or TfL Standards which did not apply to them at the Change Date, or any change in the application or interpretation after the Change Date of any Applicable Laws and/or TfL Standards but excluding any Foreseeable Change in Law;

**“Change Proposal”** means a proposal to change the Services or the delivery processes for the Services as defined in 6.8;

**"Commencement Date"** means the date specified as such in the Contract Particulars(b), or if no date is specified, the date specified in a written notice by the Purchaser to the Service Provider instructing it to commence the provision of the services under this Agreement;

**"Competent Authority"** means any legislative, judicial, regulatory or administrative body or agency (or any subdivision of them) of the United Kingdom or the European Union or any supranational body which has rule-making power or whose directions, instructions, rulings, laws or regulations are directly enforceable against a Party in connection with the performance of this Agreement;

**"Completed Shift"** means:

- (a) in respect of the Engineering Trains and the Infrastructure Monitoring Vehicle:
  - (i) arrives at the Starting Point on or prior to the scheduled commencement time for a Shift as set out in the Work Return Form in the correct formation;
  - (ii) leaves the Starting Point on time;
  - (iii) follows the correct route as set out in the Work Return Form;
  - (iv) arrives at the Finishing Point at the scheduled finishing time for a Shift as set out in the Work Return Form; and
  - (v) is in full working condition with no Faults present for the entire Shift (excluding any Purchaser Faults);
- (b) in respect of the Infrastructure Monitoring Vehicle, that the quantity and quality of the data collected during the Shift is satisfactory to the Purchaser (as further described in paragraph 6.3 of the Services Specification);
- (c) in respect of the Rail Milling Machine, that:
  - (i) such Plant and Machinery arrives at the Starting Point on or prior to the scheduled commencement time for a Shift as set out in the Work Return Form in the correct formation;
  - (ii) such Plant and Machinery leaves the Starting Point on time;
  - (iii) such Plant and Machinery completes milling as and where required in accordance with the instructions set out in the Work Return Form and the requirements of the Services Specification;
  - (iv) the Rail Head Profiling Measurements collected at the end of the Shift are satisfactory to the Purchaser (further described in paragraph 6.2 of the Services Specification);
  - (v) such Plant and Machinery follows the correct route as set out in the Work Return Form;

- (vi) such Plant and Machinery arrives at the Finishing Point at the scheduled finishing time for a Shift as set out in the Work Return Form; and
- (vii) such Plant and Machinery is in full working condition with no Faults present for the entire Shift (excluding any Purchaser Faults);

**“Condition”** means a condition, as stated in the Contract Particulars as may be further described in the Services Specification;

**"Confidential Information"** shall have the meaning given to it in Clause 22.1;

**"Consequential Loss"** means in relation to a breach of this Agreement or other circumstances in which a Party is entitled to recover any costs, expenses or liabilities suffered or incurred, any loss of production, loss of profit, loss of revenue, loss of contract, loss of goodwill, liability under other agreements or liability to third parties (other than the Indemnified Parties or any Service Provider Personnel) and/or indirect or consequential or other financial loss resulting from such breach and whether or not the Party committing the breach knew, or ought to have known, that such indirect or consequential loss would be likely to be suffered as a result of such breach;

**"Contract Information"** means (i) this Agreement in its entirety (including from time to time agreed changes to this Agreement) and (ii) data extracted from the invoices submitted by the Service Provider which shall consist of the Service Provider's name, the expenditure account code, the expenditure account code description, the SAP document number, the clearing date and the invoice amount;

**"Contract Management Meeting"** shall have the meaning given to it in Clause 23.4.1;

**"Contract Particulars"** means the contract particulars set out in Schedule 12 (*Contract Particulars*);

**"Contract Year"** means the calendar year commencing on the date of this Agreement and each anniversary thereof;

**"Controlling Interest"** shall have the meaning given to it in Clause 16.1.8;

**"Corrective Action"** shall have the meaning given to it in Clause 12.7;

**“Data Protection Legislation”** means:

- (a) any legislation from time to time in the United Kingdom which implements the European Community's Directive 95/46/EC and Directive 2002/58/EC, including but not limited to the Data Protection Act 1998 and the Privacy and Electronic Communications (EC Directive) Regulations 2003;
- (b) from 25 May 2018 only, the Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (the “General Data Protection Regulation”);
- (c) any other legislation in force from time to time in the United Kingdom relating to privacy and/or the Processing of Personal Data (as such terms are defined in section 1(1) of the Data Protection Act 1998); and

- (d) any statutory codes of practice issue by the Information Commissioner's Office of the United Kingdom in relation to such legislation;

**"Declaration"** shall have the meaning given to it in Clause 36.1;

**"Declaration of Ineffectiveness"** means a declaration of ineffectiveness in relation to this Agreement made by a court of competent jurisdiction in accordance with Regulation 98 of the Public Contracts Regulations (as amended);

**"Default Interest"** means interest on late payment at the rate of two per cent (2%) per annum above the base rate of the Bank of England from time to time;

**"Default Package"** means an electronic and hard copy set of the following:

- (a) the Technical Information;
- (b) any On-Train Monitoring Recorder ("**OTMR**") data currently in the Service Provider's possession as required under the Services Specification;
- (c) any other materials or information reasonably required by the Purchaser in order to ensure continuity of the Services,

(a) to (c) above up-dated by the Service Provider in accordance with the Service Provider's obligations under this Agreement and to include details of any Variations);

**"Defect Rectification Period"** means, in relation to each item of Plant and Machinery (and those Parts forming part of such Plant and Machinery), the period starting on the Commencement Date for that item of Plant and Machinery and ending on a date as notified in writing by the Purchaser to the Service Provider;

**"Designated Depot"** means Plumstead depot, or such other location as the Purchaser may notify to the Service Provider from time to time;

**"Dispute"** has the meaning ascribed to it in Schedule 6 (*Dispute Resolution Procedure*);

**"Engineering Access Statement"** means the engineering access statement for the CCOS, as reviewed and updated from time to time in accordance with Part D of the Rail for London (Infrastructure) Limited CCOS Network Code;

**"Engineering Trains"** means the ROBEL maintenance trains more particularly described in paragraph 3 of the Services Specification;

**"Environmental Damage"** means any significant harm to human health, or living organisms or property or any material pollution or impairment of the environment resulting from the discharge, emission, escape or migration of any substance caused by the Service Provider or Service Provider Personnel;

**"European Railway Agency"** means the European Railway Agency established pursuant to Regulation (EC) No 1335/2008 of the European Parliament and of the Council of 16 December 2008 amending Regulation (EC) No 881/2004 establishing a European Railway Agency (Agency Regulation) and includes any successor to all or any of its functions;

**"Excepted Liabilities"** means:

- (a) the Service Provider's liability for death, personal injury, or fraud, fraudulent misrepresentation or corruption;
- (b) the Service Provider's liability for loss suffered or incurred by the Purchaser or any other person to the extent such loss is recovered by the Service Provider under any policy of insurance which is maintained by the Service Provider in accordance with the provisions of Clause 20;
- (c) not used;
- (d) not used;
- (e) not used;
- (f) the Service Provider's liability in respect of any IPRs pursuant to Clause 18.5;
- (g) the Service Provider's liability to pay any Taxes as expressly provided by this Agreement or as required by Applicable Law;
- (h) any Default Interest on any payments falling within (a) to (g) above;
- (i) Losses recovered under any policy of insurance that the Service Provider is required to maintain under this Agreement (or which would have been recovered but for any breach or failure to maintain such insurance), subject to any limits on such Losses stated in Schedule 5 (*Insurance*) and any deductibles payable under such policies;
- (j) not used;
- (k) not used;
- (l) not used;

"**Expiry Date**" means the date falling five (5) years after the date that this Agreement is executed by both Parties;

"**Extension Limit**" means three (3) years;

"**Failed Shift**" means a Shift that does not meet the criteria for being a Completed Shift;

"**Fault**" means, in relation to any item of Plant and Machinery, Part, Spare or Special Tool that such item of Plant and Machinery, Part, Spare or Special Tool is defective, damaged, of unsatisfactory quality, is not Fit for Purpose or is not in a condition that will enable it to complete its next scheduled Shift;

"**Finishing Point**" means the station or other location where a Shift is scheduled to finish, as set out in the Work Return Form;

"**Fit for Purpose**" means in relation to any item of Plant and Machinery, Part, Spare or Special Tool:

- (a) that it complies with all requirements and provisions of this Agreement (including the Services Specification and the Manuals);

- (b) that it complies with all Applicable Laws, Relevant Consents and applicable Tfl Standards, and to the extent that there is non-compliance with an applicable Tfl Standard, that there is a valid derogation from that Tfl Standard;
- (c) in relation to each Part or Spare, that such Part or Spare, when incorporated into the Plant and Machinery, does not of itself prevent such Plant and Machinery from being Fit for Purpose as defined in (a) or (b) above; and
- (d) in relation to a Special Tool, that such Special Tool is able to perform its specification in accordance with the Manuals;

**"FM Affected Party"** shall have the meaning given to it in Clause 21.1.1;

**"FM Notice"** shall have the meaning given to it in Clause 21.3;

**"FOI Legislation"** means the Freedom of Information Act 2000, all regulations made under it and the Environmental Information Regulations 2004 and any amendment or re-enactment of any of them; and any guidance issued by the Information Commissioner, the Department of Constitutional Affairs, or the Department for Environment Food and Rural Affairs (including in each case its successors or assigns) in relation to such legislation;

**"Force Majeure Event"** means any:

- (a) fire, earthquake or flood;
- (b) act of terrorism;
- (c) war, invasion, acts of foreign enemies, hostilities, civil war, revolutions, insurrection, riots or civil unrest; and/or
- (d) strikes, lock outs or other industrial action not solely affecting the Service Provider's and/or their Subcontractors' employees or those of any of its Subcontractors,

save to the extent that such event is caused by the Service Provider, any Subcontractor, or their respective agents, officers and/or employees;

**"Foreseeable Change in Law"** means any Change in Law which:

- (a) is, provided it comes into force in the same or substantially similar form:
  - (i) enacted prior to the Change Date as coming into effect on a specified future date;
  - (ii) in a draft bill or statutory instrument published on or before the Change Date;
  - (iii) in a draft Industry Standard published on or before the Change Date by the Purchaser, the Secretary of State, RSSB, Network Rail, or the European Rail Agency;
- (b) a prudent maintainer of plant and machinery should have reasonably known about on or before the Change Date; and/or
- (c) otherwise arises on or before the Change Date;

**"Goods"** means the Plant and Machinery, Parts, Spares and Special Tools;

**"Government Authority"** means any national, supra-national (including the European Union), state or local government, any political subdivision thereof or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or other similar entity and includes the ORR and the Secretary of State;

**"Group"** means, in relation to any company (which for the purposes of this Agreement shall include TfL), that company and any company which is a holding company or subsidiary of that company and any subsidiary of any such holding company; for which purposes "subsidiary" and "holding company" have the meanings respectively given to them by section 1159 of the Companies Act 2006;

**"Guarantee"** means the parent company guarantee of even date herewith of the Service Provider's obligations under this Agreement provided by the Guarantor in favour of the Purchaser substantially in the form set out in Schedule 7 (*Form of Guarantee*);

**"Guarantee Event"** shall have the meaning given to it in Clause 16.1.4;

**"Guarantor"** is as defined in Contract Particulars(g);

**"Indemnified Parties"** shall have the meaning given to it in Clause 19.1;

**"Indemnified Party"** shall have the meaning given to it in in Clause 19.1;

**"Independent Auditor"** shall have the meaning given to it in Clause 16.9.4;

**"Indexation Adjustment"** shall have the meaning given to it in paragraph 1.1 of Part F of Schedule 4 (*Service Payments*);

**"Industry Standards"** means all the laws, rules, regulations, recommendations and instructions, including (without limitation) guidance, codes of practice and conduct which have the force of law or with which it is generally accepted within the United Kingdom rail industry that it is good practice to comply, relating to the performance of this Agreement and/or applicable to the Parts, Spares or Special Tools which are or have been issued by the Secretary of State, Network Rail, ORR, RSSB, or any other Relevant Consents Authority or other person from time to time legally authorised to set standards in respect of the rail industry including the European Railway Agency and shall include, without limitation, Railway Group Standards, the Rule Book, Notified National Technical Rules and Technical Specifications for Interoperability;

**"Information"** means information recorded in any form held by or on behalf of the Purchaser;

**"Information Request"** means a request for any Information under the FOI Legislation;

**"Infrastructure Monitoring Vehicle"** or **"IMV"** means the infrastructure monitoring vehicle which will be connected to an Engineering Train as and when required, and more particularly described in paragraph 3 of the Services Specification;

**"Insolvency Event"** in relation to any person means:

- (a) such person stopping or suspending or threatening to stop or suspend payment of all or a material part of its debts, or becoming unable to pay its debts, or being deemed unable to pay its debts under section 123(1) or (2) of the Insolvency Act 1986;
- (b) any step being taken by any person with a view to the winding up of such person or any person presenting a winding-up petition in respect of such person which is not dismissed within seven (7) days;
- (c) any step being taken to enforce security over or a distress execution or other similar process being levied or served out against the whole or a substantial part of the assets or undertaking of such person;
- (d) a receiver, administrative receiver, administrator, compulsory manager or other similar officer being appointed in respect of such person;
- (e) such person ceasing or threatening to cease to carry on all or a material part of its business, except for the purpose of and followed by a reconstruction, amalgamation, reorganisation, merger or consolidation on terms approved by the Purchaser (in its absolute discretion) before that step is taken;
- (f) the making by such person of a general assignment or an arrangement or composition with or for the benefit of creditors; or
- (g) any event occurring which, under the laws of any relevant jurisdiction other than England and Wales, has an analogous or equivalent effect to any of the events listed above;

**"Intellectual Property Rights"** or **"IPRs"** means all intellectual property rights in any part of the world, including any patent, rights to inventions, patent application, trade mark and service mark (including any trade, brand or business names), trade mark application, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, design rights, registered design, registered design application, utility model, trade name, discovery, invention, process, formula, specification, copyright and related rights, unregistered design right, technical information or drawing (including rights in software, database rights and topography rights), rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

**"Key Date"** means a date, as stated in the Contract Particulars unless later changed in accordance with this Agreement, by which the Service Provider is required to meet a Condition;

**"Level 4 Non-Conformance"** has the meaning ascribed to it in paragraph 2.7.1 of Schedule 3 (*Performance Regime*);

**"Liquidated Damages"** means the payments to be made by the Service Provider to the Purchaser under the Performance Regime;

**"London Living Wage"** means the basic hourly wage current at the date of this Agreement (before tax, other deductions and any increase for overtime) as may be revised from time to time by the Mayor of London or any other body or agency whose directives, decisions, instructions, rulings, laws, or regulations are directly enforceable against the Purchaser;

**"Losses"** means, in the context of the definition of Excepted Liabilities, any expense, liability, loss, claims, fines, damages, costs (including reasonable legal and other professional fees and disbursements), penalties, settlements and judgments incurred by the Purchaser, its employees or agents or any other person;

**"Lost Shifts Tracker"** means the table set out in the Work Return Form labelled "Lost Shifts Tracker", or other suitable tracker as agreed between the Parties, that tracks the running total of Failed Shifts in each Contract Year;

**"Maintenance Activities"** means the train maintenance activities set out in paragraph 4 of the Services Specification.

**"Maintenance Meeting"** shall have the meaning given to it in Clause 23.7.1.

**"Mandatory Modification"** means a Modification which is required to be made under any Applicable Laws including, without limitation, any directive of Network Rail or any other Relevant Consents Authority;

**"Manuals"** means the operation and maintenance manuals relating to the Plant and Machinery and any Spares;

**"Manufacturer"** means, in respect of each item of Plant and Machinery, Part, Spare or Special Tool, the OEM of such item of Plant and Machinery, Part, Spare or Special Tool;

**"Manufacturer Fault"** means a Fault that arises solely as a consequence of:

- (a) defective materials, workmanship or design that can attributed to the Manufacturer or the SSA Provider; or
- (b) any act or omission of the Manufacturer or the SSA Provider during the Defect Rectification Period,

but excluding:

- (i) any Fault that arises as a result of the Purchaser and/or the Service Provider failing to use, operate or maintain the Goods in accordance with the Manuals and/or any Applicable Laws and applicable TfL Standards;
- (ii) any Fault that arises as a result of fair wear and tear; and
- (iii) any Fault that arises as a result of vandalism, collision or accidental damage caused by any person other than the Manufacturer, its subcontractors or supplier or the directors, agents, representatives or employees of any of them;

**"MMS"** means the Maintenance Management System, being the Maximo asset management system or such other asset management system nominated by the Purchaser from time to time;

**"Modification"** means any variation, modification or addition to the Plant and Machinery;

**"National Vehicle Register"** has the meaning ascribed to it in the Railways (Interoperability) Regulations 2011;

**"Network Rail"** means Network Rail Infrastructure Limited (Registered No: 02904587) a company incorporated under the laws of England and Wales whose registered office is at 1 Eversholt Street, London, NW1 2DN;

**"Notice of Default"** shall have the meaning given to it in Clause 16.9.1;

**"Notified Body"** means any person approved as a notified body pursuant to the Notified Standards for the purposes of the acceptance of the item of Plant and Machinery, Part, Spare or Special Tools;

**"Notified National Technical Rules"** means those rules or standards notified by the Secretary of State to the European Commission in accordance with Directive 2008/57/EC on the interoperability of the rail system within the community;

**"Notified Standards"** shall have the meaning given to it in the Railways (Interoperability) Regulations 2006;

**"NR Network"** means the network in respect of which Network Rail is the facility owner and which is situated in England, Wales and Scotland;

**"O&M Period"** means in relation to each item of Plant and Machinery, the period running from the Commencement Date and ending at the time at which the Services cease in accordance with the terms of this Agreement in relation to that item of Plant and Machinery, as the case may be;

**"Operational Activities"** means those operational activities set out in paragraph 5 of the Services Specification.

**"Operations Meeting"** shall have the meaning given to it in Clause 23.8.1.

**"Optional Services"** means the following services, work and activities:

- (a) vehicle fuelling;
- (b) controlled emissions toilet emptying;
- (c) scrap disposal;
- (d) Designated Depot equipment maintenance services;
- (e) Designated Depot cleaning services;
- (f) maintenance of Designated Depot facilities; and
- (g) the provision of additional specialist resources, including:
  - (i) industry experts;
  - (ii) specialist engineers;
  - (iii) additional engineers;
  - (iv) technicians/practitioners; and

(v) artisans;

**"ORR"** means the Office of Rail and Road established pursuant to the Railways and Transport Safety Act 2003 and includes any successor to all or any of its functions;

**"Part"** means any component, furnishing or equipment forming part of the Plant and Machinery or Spare;

**"Party"** means either the Purchaser or the Service Provider;

**"Parties"** means both the Purchaser and the Service Provider;

**"Payment Certificate"** shall have the meaning given to it in Clause 11.2.3;

**"Payment Period"** means each consecutive 28 day period, the first of which starts on 1 April in each year and, in respect of the first or last such period in any year, as may be varied by the Purchaser;

**"Performance Bond"** means a performance bond issued by a Bond Provider in favour of the Purchaser in substantially the form set out in Schedule 9 (*Form of Performance Bond*);

**"Performance Bond Event"** shall have the meaning given to it in Clause 16.1.9;

**"Performance Regime"** means the performance regime set out in Schedule 3 (*Performance Regime*);

**"Performance Report"** means a report in respect of the Service Provider's performance of the Services in a form agreed between the Parties;

**"Performance Specification"** means the performance specification set out in paragraph 6.1 of the Services Specification;

**"Periodic Review"** has the meaning ascribed to it by paragraph 6 of Schedule 2 (*Spare, Special Tools and other equipment*);

**"Permissible Change in Law"** means a Change in Law which:

- (a) specifically relates to the provision of services the same as or similar to the Services (and not to the provision of any other services) or to the holding of shares in companies whose main business is providing services the same as or similar to the Services (and not to the provision of any other services); and
- (b) is not a Foreseeable Change in Law;

**"Persistent Breach"** shall have the meaning given to it in Clause 16.4.2;

**"Personal Data"** has the meaning given to it in the Data Protection Legislation;

**"Plant and Machinery"** means the plant and machinery to be operated and/or maintained (as the case may be) by the Service Provider in accordance with the Services Specification, and includes the Engineering Trains, Rail Milling Machine and the Infrastructure Monitoring Vehicle;

**"Plant and Machinery Condition Report"** shall have the meaning given to it in Clause 8.2.1(a);

**"Portobello Boundary"** means the boundary of the CCOS and the NR Network to the west of Royal Oak portal;

**"Proceedings"** shall have the meaning given to it in Clause 46.3;

**"Processing"** has the meaning given to it in the Data Protection Legislation;

**"Prohibited Act"** means:

- (a) offering or agreeing to give to any servant, employee, officer or agent of the Purchaser or the TfL Group any grant, gift or consideration of any kind as an inducement or reward:
  - (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with the Purchaser; or
  - (ii) for showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the Purchaser;
- (b) entering into this Agreement or any other contract with the Purchaser in connection with which commission has been paid or has been agreed to be paid by the Service Provider or on its behalf or to his knowledge unless, before the relevant contract or document is entered into, particulars of any such commission and the terms and conditions of any such contract or document for the payment thereof have been disclosed in writing to the Purchaser;
- (c) committing any offence:
  - (i) under the Prevention of Corruption Acts 1889-1916 and/or the Bribery Act 2010;
  - (ii) under any law or legislation creating offences in respect of fraudulent acts; or
  - (iii) at common law in respect of fraudulent acts,
 in relation to this Agreement or any other contract with the Purchaser; or
- (d) defrauding or attempting to defraud the Purchaser;

**"Public Procurement Termination Event"** means:

- (a) this Agreement has been subject to any substantial modification that would require a new procurement procedure in accordance with Regulation 72 of the Public Contracts Regulations 2015; or
- (b) the Purchaser determines that this Agreement should not have been awarded to the Service Provider in view of a serious infringement of the obligations contained under the EU Treaties and Directives 2014/24/EU of the European Parliament Council dated 26 February 2014;

**"Pudding Mill Lane Boundary"** means the boundary of the CCOS and the NR Network to the east of Pudding Mill Lane portal;

**"Purchasers' Designated Store"** has the meaning ascribed to it in paragraph 2.1 of Schedule 2 (*Spares, Special Tools and other equipment*).

**"Purchaser's Representative"** is as defined in the Contract Particulars(k);

**"Purchaser Event of Default"** shall have the meaning given to it in Clause 16.8;

**"Purchaser Fault"** means a Fault that arises as a consequence of:

- (a) the negligence of, or any act or omission of the Purchaser or its subcontractors or suppliers or the directors, agents, representatives or employees of any of them;
- (b) (in whole or in part) a failure in the CBTC Signalling Equipment (other than any failure in the CBTC Signalling Equipment caused by an act, omission or the negligence of the Service Provider or its subcontractors or suppliers or the directors, agents, representatives or employees of any of them);
- (c) the Purchaser failing to provide a Spare to the Service Provider in enough time to enable the Service Provider to ensure that an item of Plant and Machinery is ready to perform its next Shift;
- (d) fair wear and tear, which shall, for the avoidance of doubt, exclude any Fault arising from:
  - (i) the Service Provider's negligence; or
  - (ii) any act or omission of the Service Provider or its subcontractors or suppliers or the directors, agents, representatives or employees of any of them;
- (e) vandalism, collision or accidental damage caused by any person other than the Service Provider, its subcontractors or suppliers or the directors, agents, representatives or employees of any of them;

**"Purchaser IPRs"** means all Intellectual Property Rights that the Purchaser owns and/or has a licence in relation to IPR that the Service Provider requires solely for the purpose of enabling the Service Provider to perform the Services in accordance with this Agreement;

**"Purchaser Termination Notice"** shall have the meaning given to it in Clause 16.2.2;

**"Qualified Take Over Certificate"** means, in relation to each item of Plant and Machinery, a qualified take-over certificate to be issued by the Purchaser to the Manufacturer of such item of Plant and Machinery under the terms of that Manufacturer's manufacture and supply agreement with the Purchaser;

**"Quality Plan"** means the quality plan specific to this Agreement produced by the Service Provider and approved by the Purchaser in accordance with Clause 6.3.2;

**"Rail Head Profiling Measurements"** has the meaning ascribed to it in paragraph 6.2 of the Services Specification;

**"Rail Milling Machine"** means the Linsinger rail milling train more particularly described in paragraph 3 of the Services Specification;

**"Railway Group Standards"** means, to the extent applicable to the Plant and Machinery, Special Tools, the Spares and their operation, those standards to which railway assets or equipment used on or as part of railway assets must conform, and operating procedures with which the purchasers of railway assets must comply, in each case as prepared and updated by RSSB;

**"Railway Infrastructure"** means the stations and depots (wherever situate), assets, systems, track and other buildings comprised in CCOS;

**"Relevant Consents"** has the meaning ascribed to it in Clause 6.4.1;

**"Relevant Consents Authority"** means any or all of the Government Authority, the Notified Body, or any other entity which has the appropriate authority for the granting of a Relevant Consent;

**"Relevant Conviction"** means any unspent criminal conviction relating to actual or potential acts of terrorism or acts which threaten national security;

**"Relevant Individual"** means any servant, employee, officer, consultant or agent of the Service Provider or any Subcontractor carrying out, or intended to carry out, any aspects of this Agreement on the Railway Infrastructure and/or the TfL Premises;

**"Remedy Notice"** shall have the meaning given to it in Clause 16.3.1;

**"Remedial Plan"** shall have the meaning given to it in Clause 16.3.1;

**"Representative"** means a representative appointed by the Service Provider, or Purchaser, as the case may be, in accordance with Clause 23.2;

**"Required Rating"** means a long term, stable credit rating of at least "A+" or better from Standard & Poor's or the equivalent rating from Moody's or Fitch;

**"Responsible Procurement Principles"** means the seven principles of responsible procurement more particularly described in the GLA Group Responsible Procurement Policy dated March 2006, as updated in January 2008 and as may be further updated from time to time and which is available from the Purchaser on request;

**"Retention Period"** shall have the meaning given to it in Clause 12.2.2;

**"RPIX"** means the measure of inflation in the United Kingdom, equivalent to the all items Retail Price Index excluding mortgage interest payments which is, at the date of this Agreement, published on a monthly basis by the Office of National Statistics;

**"RfL(I)"** means Rail for London (Infrastructure) Limited, (Registered No: 09366341) a company incorporated under the laws of England and Wales whose registered office is at 55 Broadway, London SW1H 0BD;

**"ROGS"** means Railways and Other Guided Transport Systems (Safety) Regulations 2006;

**"RSSB"** means the Rail Safety and Standards Board;

**"Rule Book"** means the document with references GE/RT 8000 (including all applicable Modules as defined in GE/RT 8051) issued by RSSB;

"**Safety Plan**" means the safety plan specific to this Agreement produced by the Service Provider and approved by the Purchaser in accordance with Clause 6.3.3;

"**Secretary of State**" means the Secretary of State for Transport, or any successor to all or part of his functions in relation to the operation of the railways;

"**Security Interest**" means any mortgage, charge, assignment, pledge, lien, hypothecation, security interest, title retention or other encumbrance;

"**Service Payments**" means the payments to be made by the Purchaser to the Service Provider in respect of the provision of the Services as set out in Schedule 4 (*Service Payments*);

"**Service Payments Schedule**" means Part C of Schedule 4 (*Service Payments*);

"**Service Provider Event of Default**" means any of the events set out in Clause 16.1;

"**Service Provider IPR**" means any existing or new Intellectual Property Rights owned by the Service Provider, any Subcontractor or other third party that:

- (a) are used for; or
- (b) arise in connection with,

the performance of the Services;

"**Service Provider Personnel**" means any Service Provider employee, servant, agent, Subcontractor, supplier, director, representative or officer;

"**Service Provider Public Procurement Termination Event**" means the Service Provider has, as at the Commencement Date, been in one of the situations referred to in Regulation 57(1) of the Public Contracts Regulations 2015 and should therefore have been excluded from the procurement procedure in accordance with those regulations;

"**Service Providers' Designated Store**" has the meaning ascribed to it in paragraph 4.1 of Schedule 2 (*Spares, Special Tools and other equipment*).

"**Service Provider's Representative**" is as defined in the Contract Particulars(1);

"**Service Provider's Group**" means the Service Provider and any member of its Group from time to time;

"**Service Provider's Records**" shall have the meaning given to it in Clause 12.2.1;

"**Services**" means the services, work and activities to be carried out by the Service Provider in relation to the Plant and Machinery as further described in the Services Specification;

"**Services Specification**" means the operations and maintenance core services specification set out in Schedule 1 (*Services Specification*);

"**Shift**" means a defined period of time during which the Service Provider will be required to operate an item of Plant and Machinery, as confirmed to the Service Provider by the Purchaser in accordance with the process set out in the Services Specification;

**"Shift Completion Certificate"** means a certificate in a form as notified by the Purchaser to the Service Provider from time to time that certifies that a Shift is a Completed Shift;

**"Siemens PLC"** means Siemens PLC (registered number 00727817), a company incorporated under the laws of England and Wales, whose registered office is at Faraday House, Sir William Siemens Square, Frimley, Camberley, Surrey GU16 8QD;

**"Siemens Rail Automation"** means Siemens Rail Automation Limited (registered number 0161421), a company incorporated in England and Wales, whose registered office is at Faraday House, Sir William Siemens Square, Frimley, Camberley, Surrey GU16 8QD;

**"Spares"** means all spare parts of any description including fluids, parts and assemblies, reasonably required in connection with the Plant and Machinery to perform the Services, to be made available by the Purchaser to the Service Provider in accordance with paragraph 2 of Schedule 2 (*Spares, Special Tools and other equipment*);

**"Spares and Support Provider"** means the Manufacturer or any other company engaged by the Purchaser to provide Spares and Support, as the case may be;

**"Special Tools"** means the list of items of special equipment, tools and other materials designed and built specifically for maintenance and repair of the Plant and Machinery, Parts and Spares, as further described in the Services Specification;

**"Special Tools and other equipment Condition Report"** has the meaning ascribed to it in Clause 8.5.1(a);

**"SSA Provider"** means, in respect of each item of Plant and Machinery, the third party appointed by the Purchaser to provide spares and technical support in respect of each such item of Plant and Machinery (as notified by the Purchaser to the Service Provider from time to time);

**"SSA Warranty"** means, in respect of a particular Part or Spare, the warranty provided for that Part or Spare under the relevant spares and support agreement between the Purchaser and the relevant Spares and Support Provider;

**"Starting Point"** means the station or other location where a Shift is scheduled to start;

**"Sterling"** means the lawful currency from time to time of the United Kingdom;

**"Subcontract"** means any contract awarded by, or to be awarded by, the Service Provider for any work to be performed or for the supply of Parts and Spares or materials as part of, or in connection with, the performance of the Service Provider's obligations under this Agreement, and, unless the context herein requires, includes a subcontractor or supplier of any such person;

**"Subcontractor"** means any party to a Subcontract other than the Service Provider;

**"Support Plan"** means the support plan specific to this Agreement produced by the Service Provider and approved by the Purchaser in accordance with Clause 6.3.1;

**"Take Over Certificate"** means, in relation to each item of Plant and Machinery, a take-over certificate to be issued by the Manufacturer of such Plant and Machinery and counter-signed by the Purchaser under the terms of that Manufacturer's manufacture and supply agreement with the Purchaser;

**"Taxes", "Tax" and "Taxation"** means all present and future taxes, charges, imposts, duties or levies of any kind whatsoever, payable at the instance of or imposed by any Government Authority, together with any penalties, additions, fines, surcharges or interest thereon;

**"Technical Information"** means information and materials required by the Purchaser in relation to the Plant and Equipment, Parts, Spares and Special Tools for the purposes contemplated under this Agreement and shall include:

- (a) data, quality plans, quality programmes, quality certification;
- (b) records of maintenance and repairs undertaken (in both electronic and hard copy forms);
- (c) all other documents, information materials and know-how materials whether on paper or magnetic format or in any other form prepared by the Service Provider or any of its Subcontractors and submitted to obtain any Relevant Consents and/or relating to the operation, maintenance and/or repair of the Plant and Machinery, Parts, Spares and Special Tools; and
- (d) all training materials;

**"Technical Specifications for Interoperability"** means the Technical Specifications for Interoperability adopted pursuant to EU Directive 2001/16/EC;

**"TfL Group"** means Transport for London, a statutory body set up by the Greater London Authority Act 1999 and any of its subsidiaries and their subsidiaries;

**"TfL Premises"** means any property, including railway infrastructure, owned by or under the control or supervision of the Purchaser and/or any member of the TfL Group;

**"TfL Standards"** means the various standards documents and associated codes of practice produced by the Purchaser that shall, upon reasonable notice to the Service Provider, apply to the Services from time to time, and includes without limitation any standards documents and associated codes of practice referred to in the Services Specification;

**"Transparency Commitment"** means the transparency commitment stipulated by the UK government in May 2010 (including any subsequent legislation) in accordance with which the TfL Group is committed to publishing its contracts, tender documents and data from invoices received;

**"TUPE"** means The Transfer of Undertakings (Protection of Employment) Regulations 2006;

**"Variation"** means any addition, omission or other change whatsoever to or in respect of this Agreement including (without limitation) the Services, the Goods, the requirements of the Performance Regime and/or steps, if any, necessary to implement any change to the scope of the Services resulting from a Mandatory Modification;

**"Variation Procedure"** means the procedure for amending this Agreement, as detailed in Clause 7;

**"Variation Quote"** has the meaning given in Clause 7.3;

**"Variation Valuation"** has the meaning given in Clause 7.5;

"VAT" means

- (a) any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112); and
- (b) any other tax of a similar nature, whether imposed in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in paragraph (a), or imposed elsewhere;

"Working Day" means a weekday (other than Saturday and Sunday) on which banks are open for domestic business in the City of London;

"Work Return Form" means the work return form that is filled in by the Purchaser prior to a Shift with instructions for the work to be undertaken during that Shift, and is then reviewed and finalised by the Purchaser at the end of a Shift by adding in the details of the actual work completed in comparison to the instructions provided for that Shift. The format of the Work Return Form will be notified by the Purchaser to the Service Provider from time to time;

## 1.2 Construction

Save where the contrary is indicated:

- 1.2.1 the contents page and headings in this Agreement are for convenience only and shall not affect its interpretation;
- 1.2.2 where appropriate, the singular includes the plural and vice versa;
- 1.2.3 a reference to a Clause or to a schedule shall be to a Clause of or, as the case may be, a schedule, to this Agreement and references to this Agreement include its recitals and schedules;
- 1.2.4 references to (or to any specified provision of) this Agreement or any other document shall be construed as references to this Agreement, that provision or that document as in force for the time being and as from time to time amended, supplemented, novated or varied in accordance with the terms hereof or, as the case may be, with the consent of the relevant parties (and where such consent is, by the terms of this Agreement or the relevant document, required to be obtained as a condition to such amendment being permitted, such prior written consent);
- 1.2.5 if a period of time is specified as "**from**" or "**within**" a given day, or "**from**" or "**within**" the day of an act or event, it shall be calculated exclusive of that day;
- 1.2.6 a reference to "**includes**" or "**including**" shall mean "**includes without limitation**" or "**including without limitation**";
- 1.2.7 references to a Party or person shall include their successors, transferees, legal, personal representatives and permitted assignees;
- 1.2.8 without prejudice to any provision of this Agreement providing for adjustments in the event of a Permissible Change in Law, reference to Applicable Laws or Industry Standards also includes a reference to such Applicable Laws or Industry Standards as from time to time amended, extended or re-enacted;

- 1.2.9 references to a "**regulation**" include any present or future regulation, rule, directive, requirement, request or guideline (whether or not having the force of law) of any Government Authority or Relevant Consents Authority;
- 1.2.10 references to a statute shall include any subordinate legislation made from time to time under it and shall be construed so as to refer to such statute as it is amended or modified from time to time;
- 1.2.11 a reference to one gender includes other genders;
- 1.2.12 references to assets include business, undertakings, securities, properties, revenues or rights of every description and whether present or future, actual or contingent;
- 1.2.13 references to this Agreement shall include reference to the Schedules, the Annexures and any document or information contained in electronic format on any CD-ROM dated the date of this Agreement and initialled by each Party to identify that CD-ROM and the documents or information contained in it as forming part of a Schedule or Annexure.

## **2 CONFLICTS AND DISCREPANCIES**

### **2.1 Contract Precedence**

- 2.1.1 Unless expressly stated otherwise, where there is any conflict, error, inconsistency or discrepancy between the documents forming part of this Agreement, the following order of precedence shall apply:
- (a) the schedules to this Agreement;
  - (b) the terms of this Agreement;
  - (c) the Services;
  - (d) the Performance Regime.

### **2.2 Service Provider's acknowledgements regarding discrepancies and errors**

The Service Provider confirms to the Purchaser that as at the Commencement Date it has considered in detail this Agreement and has satisfied itself:

- 2.2.1 that no conflicts, inconsistencies, discrepancies or errors exist within the Agreement;
- 2.2.2 that it has:
- (a) obtained all necessary information as to the risks, contingencies and all other circumstances which may influence or affect the level of payment arising under or in connection with this Agreement; and
  - (b) satisfied itself that the performance of its obligations under and in accordance with this Agreement will be in accordance with all Applicable Laws; and
- 2.2.3 as to the feasibility of the Services Specification with respect to the performance of the Services.

### 2.3 Notification of errors and inconsistencies

- 2.3.1 Without prejudice to Clause 2.3.3, the Service Provider shall notify the Purchaser in writing forthwith upon becoming aware of any conflict, inconsistency, discrepancy or error within the Agreement that cannot be resolved in accordance with Clause 2.1 and the Service Provider shall provide with the notice detailed written proposals for resolving such conflict, inconsistency, discrepancy or error. The Purchaser shall decide how such conflict, inconsistency, discrepancy or error should be dealt with and shall notify the Service Provider of such decision within fifteen (15) Working Days of the Service Provider's notice of such conflict, inconsistency, discrepancy or error. The Service Provider shall immediately proceed to comply with such decision. The Purchaser's notification under this Clause 2.3.1 shall constitute a Variation provided that the Service Provider shall not be entitled to any increase in the Service Payment or any other payment, compensation, extension of time or relief in respect of such Variation instructed in accordance with this Clause 2.3.1.
- 2.3.2 Without prejudice to Clause 2.3.1 and subject to Clause 2.3.3, whenever a conflict, inconsistency, discrepancy or error appears within this Agreement, the Parties shall consult with each other over, and seek to agree, the manner in which the conflict, error, inconsistency or discrepancy should be resolved.
- 2.3.3 Where any conflict, inconsistency, discrepancy or error appears within the TfL Standards, or between a TfL Standard and the equivalent Industry Standard, each Party shall notify the other forthwith in writing upon becoming aware of such conflict, inconsistency, discrepancy or error. The Purchaser shall decide how such conflict, inconsistency, discrepancy or error should be dealt with and shall notify the Service Provider within fifteen (15) Working Days of receiving or issuing the notice (as the case may be). The Service Provider shall comply with such decision in performing the Services. The Purchaser's notification under this Clause 2.3.3 shall constitute a Variation and the provisions of Clause 7 shall apply.

## 3 EXERCISE OF RIGHTS AND PERFORMANCE OF OBLIGATIONS BY A THIRD PARTY

- 3.1 The Service Provider acknowledges and agrees that the Purchaser may, after notifying the Service Provider in writing, delegate at any time some or all of its actions in connection with this Agreement to the Purchaser's Representative and may cancel any delegation.
- 3.2 The Purchaser's Representative may, after notifying the Service Provider in writing, delegate at any time some or all of its actions in connection with this Agreement and may cancel any delegation. Any reference to an action of the Purchaser's Representative in this Agreement includes an action by his delegate.
- 3.3 The Service Provider will perform its obligations under this Agreement in accordance with the relevant provisions of this Agreement as if the Purchaser's Representative was, to the extent notified, the Purchaser, and, to that extent, accept the instructions, requests, notifications, claims and demands of the Purchaser's Representative in substitution for the Purchaser accordingly.
- 3.4 The Service Provider shall be entitled to rely and act upon the exercise by a Purchaser's Representative of any right permitted in accordance with Clauses 3.1 and 3.2 and any

performance by a Purchaser's Representative of any obligation on the part of the Purchaser shall contribute good and valid discharge of the Purchaser's obligation in question.

- 3.5 Except as provided under this Clause 3, no person or entity is authorised to act or give any instruction to the Service Provider in connection with this Agreement on behalf of the Purchaser.

## **4 AGREEMENT DURATION**

### **4.1 Duration**

This Agreement shall continue for the Agreement Duration and the Service Provider shall supply the Services for the duration of the O&M Period in accordance with the provisions of this Agreement. Neither Party shall have any right to terminate this Agreement or any part of this Agreement except in accordance with the express terms of this Agreement.

### **4.2 Extension**

The Purchaser may subject to prior written notice within the notice period for extension stated in Contract Particulars(c) extend the term of this Agreement up to the Extension Limit. The Parties shall agree a suitable process to enable ongoing delivery of the services in the event that the extension is notified.

## **5 REPRESENTATIONS AND WARRANTIES**

### **5.1 Representation and Warranties by the Service Provider**

- 5.1.1 The Service Provider provides the representations and warranties in Clause 5.1.2 to the Purchaser. The Service Provider acknowledges and agrees that the Purchaser is relying on the representations and warranties set out below and is entering into this Agreement on the basis of them.
- 5.1.2 The Service Provider represents and warrants to the Purchaser that as at the date of this Agreement:
- (a) the Service Provider is a company properly organised and validly existing under the laws of England and Wales as a limited liability company. It has the power, capacity and legal right to carry on its business as it is now being conducted and has all licences, consents, approvals, permits, authorisations, exemptions and certifications required for that purpose;
  - (b) the Service Provider has power, capacity and legal right to enter into and perform its obligations and exercise its rights under this Agreement and any related ancillary documents to which it is a party, and any necessary corporate, shareholder and other action has been taken to authorise the entry into, performance and delivery of this Agreement and any related ancillary documents to which it is a party;
  - (c) this Agreement and any related ancillary documents to which it is a party constitute its legal, valid and binding obligations;
  - (d) entering into this Agreement and performing its obligations or exercising its rights under this Agreement will not:

- (i) conflict with the Service Provider's Memorandum and Articles of Association;
- (ii) conflict with or result in a breach of any existing contract to which the Service Provider is a party or in the creation of any Security Interest over the Service Provider or any of its property;
- (e) to the best of the Service Providers' knowledge and except as disclosed on or before this statement of fact is made, no legal proceedings are pending or to the Service Provider's knowledge threatened against it which if decided against the Service Provider would have a material adverse effect upon the Service Provider's financial condition or business or its ability to perform its obligations under this Agreement;
- (f) to the best of the Service Provider's knowledge no information is in existence at the time this statement of fact is made which would cause the Purchaser not to enter into this Agreement if the Purchaser were aware of that information; and
- (g) no Insolvency Event has occurred or is reasonably likely to occur in relation to the Service Provider.

## 5.2 Repetition of Warranties

The Parties agree that the Service Provider's representations and warranties set out in Clause 5.1 shall be deemed to be repeated by the Service Provider on the Commencement Date and every five (5) years thereafter.

## 6 THE SERVICES

### 6.1 Service Provision

The Service Provider agrees with the Purchaser that it shall carry out the Services in accordance with the terms of this Agreement.

### 6.2 Standards of Performance

6.2.1 The Service Provider agrees with the Purchaser that it shall provide the Services and fulfil its obligations under this Agreement:

- (a) in accordance with:
  - (i) all Applicable Laws and applicable TfL Standards;
  - (ii) the requirements of:
    - (A) the Performance Regime;
    - (B) the Services Specification, including the Performance Specification;
    - (C) the Support Plan;
    - (D) the Safety Plan;

- (E) the Quality Plan; and
  - (F) the Manuals;
  - (b) so as to ensure that the Plant and Machinery is Fit for Purpose and is available to perform each Shift as agreed with the Purchaser, and where the Fit for Purpose requirement is subject to the number and type of operations in the Manuals (once received) being capable of being undertaken by a competent service provider;
  - (c) with the degree of diligence, care and skill reasonably to be expected of a supplier holding itself out as having the competence, expertise and resources necessary for the proper performance of the Services; and
  - (d) in a safe manner and free (to the extent reasonably possible using the best modern design and engineering principles and practices) from any risk to the health and wellbeing of persons using or maintaining the Purchaser's property or railway infrastructure.
- 6.2.2 The Service Provider acknowledges that the Manuals will not be available until on or around May 2018. Once the Service Provider receives the Manuals, the Service Provider shall provide the Services in accordance with the Manuals as required by this Clause 6.2.
- 6.2.3 The Purchaser acknowledges that the Service Provider has provided pricing in Schedule 4 based on the number and type of operations that an experienced service provider would reasonably expect in order to deliver the Services. If the Service Provider demonstrates to the satisfaction of the Purchaser (acting reasonably) that delivery of the Services in accordance with the Manuals, once received per clause 6.2.2, requires a significantly different number or type of operations than would reasonably have been expected, then this shall be considered a change of scope per clause 6.6.3.

### 6.3 **Support, Quality and Safety Plans**

- 6.3.1 The Service Provider shall provide the Purchaser with a draft support plan specific to this Agreement that:
- (a) explains how the Service Provider intends to deliver the Services throughout the Agreement Duration;
  - (b) sets out any specific arrangements that the Service Provider will put in place in order to deliver the Services; and
  - (c) explains the processes and arrangements that the Service Provider intends to put in place during the initial mobilisation phase of the Services,

by no later than the date falling four (4) weeks after the Commencement Date. The Purchaser acting reasonably shall notify the Service Provider of any amendments required to the draft support plan within one (1) month of receiving the draft support plan from the Service Provider and the Service Provider shall incorporate such amendments. The Service Provider shall provide the Purchaser with the final version of the support plan (in hard copy and electronic copy form) within fourteen

(14) days of the Purchaser notifying the Service Provider of any amendments and this shall be deemed to be the "**Support Plan**" as defined for the purposes of this Agreement.

6.3.2 The Service Provider shall provide the Purchaser with a draft quality plan specific to this Agreement, accordance with BS EN ISO 9001:2015, by no later than the date falling four (4) weeks after the Commencement Date. The Purchaser acting reasonably shall notify the Service Provider of any amendments required to the draft quality plan within one (1) month of receiving the draft quality plan from the Service Provider and the Service Provider shall incorporate such amendments. The Service Provider shall provide the Purchaser with the final version of the quality plan (in hard copy and electronic copy form) within fourteen (14) days of the Purchaser notifying the Service Provider of any amendments and this shall be deemed to be the "**Quality Plan**" as defined for the purposes of this Agreement.

6.3.3 The Service Provider shall provide the Purchaser with a draft safety plan specific to this Agreement that:

- (a) explains how safety will be managed by the Service Provider; and
- (b) sets out the measures that the Service Provider will put in place to ensure compliance with all Applicable Laws in relation to safety,

by no later than the date falling four (4) weeks after the Commencement Date. The Purchaser acting reasonably shall notify the Service Provider of any amendments required to the draft safety plan within one (1) month of receiving the draft safety plan from the Service Provider and the Service Provider shall incorporate such amendments. The Service Provider shall provide the Purchaser with the final version of the safety plan (in hard copy and electronic copy form) within fourteen (14) days of the Purchaser notifying the Service Provider of any amendments and this shall be deemed to be the "**Safety Plan**" as defined for the purposes of this Agreement.

6.3.4 The Service Provider shall update the Support Plan, Quality Plan and Safety Plan as required to reflect any changes to arrangements and processes during the Agreement Duration.

#### 6.4 Licences, Consents and Training

6.4.1 The Service Provider shall obtain and maintain all consents, approvals, authorisations, acceptances, certificates, licences, exemptions, registrations, filings, permits and other matters, give all notices and pay all fees, in each case which are required or necessary for the proper performance of the Service Provider's duties and obligations under this Agreement ("**Relevant Consents**"). In particular:

- (a) the Service Provider shall obtain a non-passenger train licence from the ORR relating to the provision of the Services prior to the Commencement Date;
- (b) the Service Provider shall enter into appropriate access arrangements with:
  - (i) (with respect to the Railway Infrastructure) RfL(I); and

- (ii) (with respect to the NR Network, if access to the NR Network is required in order to perform the Services) Network Rail,

to ensure that the Service Provider is appropriately authorised to access CCOS and the NR Network in order to perform the Services;

- (c) the Service Provider shall ensure that its drivers hold all appropriate licences and certifications required in order to operate the Plant and Machinery on the Railway Infrastructure and NR Network in accordance with the requirements of the Services Specification; and
- (d) the Service Provider shall be the "entity in charge of maintenance" with respect to the Plant and Machinery for the purposes of regulation 18A of the ROGs and:
  - (i) the Service Provider must hold and maintain all relevant approvals, certificates and competencies required in order to fulfil its obligations as the "entity in charge of maintenance"; and
  - (ii) the Service Provider must register itself as the "entity in charge of maintenance" with respect to the Plant and Machinery on the National Vehicle Register.

6.4.2 Subject to Clause 6.4.3, the Purchaser shall pay to the Service Provider an amount equal to the direct costs incurred by the Service Provider for the Relevant Consents described in Clause 6.4.1(b) (the "**Access Costs**"), and payment shall be made within ten (10) days of receipt by the Purchaser of:

- (a) a copy of the VAT invoice (which shall be dated) issued to the Service Provider by RfL(I) or Network Rail (as applicable) for the Access Costs;
- (b) documentation in a form reasonably acceptable to the Purchaser demonstrating payment by the Service Provider of the VAT invoice described in Clause 6.4.2(a); and
- (c) a VAT invoice issued by the Service Provider to the Purchaser for an amount equal to the Access Costs, which shall:
  - (i) correspond with the value of the invoice described in Clause 6.4.2(a);
  - (ii) be dated; and
  - (iii) clearly state the purchaser order number.

6.4.3 The Parties acknowledge and agree that for the purposes of Clause 6.4.2:

- (a) the Purchaser shall not be obliged to pay the Service Provider any amount in the absence of receipt of all of the documentation set out in Clause 6.4.2;
- (b) the Purchaser shall not be liable to the Service Provider for any costs, expenses or liabilities in connection with any of the Relevant Consents

other than those described in Clause 6.4.1(b) and on the terms set out in Clause 6.4.2; and

- (c) the Purchaser shall not be liable for any expenses, liabilities, losses, damages, claims, costs, demands, proceedings and Taxes whatsoever suffered or incurred or arising out of the Service Provider's breach of the terms of the Relevant Consents or the Service Provider's failure to maintain the Relevant Consents.

6.4.4 The Service Provider shall procure that all of its employees or representatives that are involved in the provision of the Services are trained to the appropriate competence in order to carry out the Services.

## 6.5 Key Personnel

6.5.1 The Service Provider shall appoint the Key Personnel set out at Schedule 11 (*Key Personnel*).

6.5.2 The Service Provider shall ensure that each of the Key Personnel devotes substantially their whole time and effort to the performance of the Services. The Service Provider shall take all reasonable steps to ensure it retains the services of the Key Personnel and shall not without the Purchaser's prior written consent terminate their employment, remove or change Key Personnel or do any such thing which would cause any of the Key Personnel to resign.

6.5.3 The Service Provider agrees to inform the Purchaser of any changes to the Key Personnel where any relevant member of Key Personnel dies, suffers long term sickness or disability, is incapacitated by reason of ill health or accident from performing his or her duties for a period of or periods aggregating twenty (20) Working Days in the preceding three (3) months, is guilty of gross or serious misconduct, goes on any period of statutory leave (other than holiday) or leaves the Service Provider's employment.

6.5.4 The Service Provider shall be responsible for the costs of replacing any member of Key Personnel with an appropriately qualified and competent replacement (including but not limited to, the cost of training any replacement to ensure that they can take over the vacated position efficiently and without disrupting the Services). The Service Provider shall use all reasonable endeavours to ensure that any replacement for any member of Key Personnel is engaged and available to perform his or her role as soon as reasonably practicable and at least within five (5) Working Days of the expiry of the notice period of the relevant member of Key Personnel. Where termination of the relevant member of Key Personnel is due to gross or serious misconduct, a replacement shall be engaged and available to perform his/her role as soon as reasonably practicable and in any event within twenty (20) Working Days of the termination. Save where the relevant member of Key Personnel being replaced has vacated the position immediately due to death, illness, gross misconduct or some other similar reason, the Service Provider shall, at its own cost, ensure that the member of Key Personnel being replaced works in parallel with his or her replacement to hand over to them for a period of five (5) Working Days or any shorter period agreed between the Parties.

- 6.5.5 Within a reasonable period of time before an offer of engagement is made to a replacement member of Key Personnel, the Service Provider shall provide such information about and access to the relevant individual as the Purchaser may reasonably require. The Purchaser shall notify the Service Provider if it objects to the appointment of an individual as a member of Key Personnel, together with its reasons for such objection. The Service Provider shall, subject to Applicable Laws, comply with any request by the Purchaser that a particular person should not become a member of Key Personnel.
- 6.5.6 The Service Provider shall, at its own expense:
- (a) ensure that all of the Service Provider's personnel possess the appropriate skills, qualifications and experience to perform the tasks assigned to them, and that they shall be available at such times as are necessary to perform the Services in accordance with this Agreement; and
  - (b) ensure that all of the Service Provider's personnel are in possession of valid work permits if they are non-European Community nationals.
- 6.5.7 Without prejudice to the Service Provider's other obligations under this Agreement, where training of any or all of the Service Provider's personnel is required for the purposes of performance of this Agreement, the Service Provider shall not assign any of the Service Provider's personnel to the performance of this Agreement unless and until such Service Provider's personnel have satisfactorily completed such training.
- 6.5.8 The Purchaser shall arrange certain training for Service Provider's personnel in accordance with the Services Specification.
- 6.5.9 Initial mobilisation of the services will not require any transfer of the Purchaser's staff to the Service Provider under TUPE regulations. The Parties do not intend TUPE regulations to apply to the initial mobilisation. The Purchaser acknowledges that the Service Provider has the right to terminate the contract of employment of any member of the Purchaser's staff who transfers or claims to transfer to the Service Provider under TUPE regulations as part of the initial mobilisation. The Purchaser shall indemnify the Service Provider against any claims or liabilities incurred by it as a consequence of such transfer or purported transfer and/or termination of employment.

## 6.6 **Change in scope of Services**

- 6.6.1 The Purchaser may at any time request a change of the scope of the Services by instructing a Variation and the provisions of Clause 7 shall apply.
- 6.6.2 If the Purchaser makes a request to change the scope of Services pursuant to Clause 6.6.1, the changed scope of Services becomes effective on the date specified in the Variation (subject to such date being agreed between the Purchaser and Service Provider, or such date being realistically achievable in the view of the Purchaser acting reasonably).
- 6.6.3 Where the Service Provider reasonably believes that there has been a change to the scope of the services, then the Service Provider may notify the Purchaser of this

fact and provide such details as the Purchaser reasonably requires. The Service Provider must notify the Purchaser of any change of scope within 4 calendar weeks of the Service Provider becoming aware of the change. Where the Purchaser agrees (acting reasonably) that a change of scope has occurred, then the Purchaser shall issue a Variation and the provisions of Clause 7 shall apply. The Purchaser shall issue any Variation within 14 calendar days of receipt of the change of scope notification by the Service Provider.

## 6.7 **Optional Services and Additional Equipment**

6.7.1 The Purchaser may, from time to time, request the Service Provider to provide or procure the provision of the Optional Services or the Additional Equipment and the parties shall negotiate in good faith for the purposes of attempting to reach agreement regarding the terms of the same.

## 6.8 **Change Proposals**

6.8.1 The Service Provider may submit a proposal to change the Services or the processes/systems/staffing associated with the delivery of the Services. Any proposal will need to include key information that the Purchaser requires to reasonably assess whether to proceed, and would include such things as the cost/benefit, risks/opportunities and ease of implementation.

6.8.2 Where the Employer agrees to proceed with a Change Proposal, then any associated amendment to the Service Payments will be agreed reasonably between the Service Provider and the Purchaser, and this change to the Service Payment shall permit the Service Provider to retain any reasonable overhead and profit relating to any service element that is reduced or removed as a result of the change.

6.8.3 Each Party bears its own costs in respect of preparing and submitting a Change Proposal (including the reasonable costs of exploring and establishing the merits and feasibility of the same).

## 6.9 **Changes to Service Provider Organisation**

6.9.1 Any significant or long term changes to the Service Provider organisation for the management or delivery of the Services must be approved formally by the Purchaser. Where such changes include reduction in staffing levels and/or types of staff made by the Service Provider, then this should be the subject of a Change Proposal and any impact on the Service Payments will be agreed between the Parties. If changes are made without an agreed Change Proposal, then the Employer shall have the right to assess any impact on the Service Payments and to adjust the Service Payments accordingly.

## 7 **VARIATIONS**

7.1 Any Variation to this Agreement shall be agreed by the Purchaser's Representative and the Service Provider in accordance with the Variation Procedure.

7.2 If:

7.2.1 a Mandatory Modification is required which gives rise to a change in the scope of the Services; or

- 7.2.2 there is a Permissible Change in Law;
- 7.2.3 the Purchaser agrees that there has been a change in scope of the Services; or
- 7.2.4 the Purchaser agrees to implement a Change Proposal,
- the Service Provider shall be entitled to a Variation.

### 7.3 **Right to request a quote**

- 7.3.1 The Purchaser's Representative may, at any time prior to instructing a Variation, request the Service Provider to provide, in writing, a quotation in respect of any variation envisaged, such quotation to detail any adjustment to the Service Payment as a result of implementing the proposed variation (the "**Variation Quote**").
- 7.3.2 The Service Provider shall:
- (a) provide the Purchaser's Representative with a Variation Quote within five (5) Working Days (or such longer period as the Purchaser's Representative may agree) of a request from the Purchaser's Representative; and
  - (b) hold its Variation Quote open for ninety (90) Working Days and shall endorse the Variation Quote to this effect.
- 7.3.3 The Purchaser's Representative may, in its absolute discretion, accept the Variation Quote and instruct a Variation in accordance with Clause 7.4.1, and the remaining provisions of this Clause 7.3 shall apply in respect of such Variation.
- 7.3.4 The Service Provider shall be responsible for all costs and expenses associated with the preparation of any Variation Quote.

### 7.4 **Right to vary**

- 7.4.1 The Purchaser's Representative may at any time instruct the Service Provider in writing to proceed with a Variation of any kind in accordance with the provisions of this Clause 7.4.
- 7.4.2 Upon instruction of a Variation by the Purchaser's Representative, the Service Provider shall carry out such Variation and be bound by the terms of this Agreement in so doing, as though the Variation was stated in the Agreement.
- 7.4.3 Nothing in this Clause 7.4 shall prevent the Service Provider from making a proposal to the Purchaser's Representative for a Variation but no Variation so proposed shall be carried out by the Service Provider except as directed in writing by the Purchaser's Representative.

### 7.5 **Valuation of Variations**

- 7.5.1 As soon as possible after having received any instruction under Clause 7.4.1, the Service Provider shall notify the Purchaser's Representative if, in the Service Provider's opinion, the Variation will involve an adjustment to the Service Payment (the "**Variation Valuation**").

7.5.2 Subject to Clause 7.5.3, the Variation Valuation shall, if not the subject of a Variation Quote which has been accepted by the Purchaser's Representative in accordance with Clause 7.3.3, be determined by the Purchaser's Representative on the basis of the prices and rates set out in Part E of Schedule 4 (*Service Payments*) or, to the extent that such rates are not applicable, on a fair and reasonable basis in all the circumstances reflecting, so far as possible, the then current market rates. Due account shall be taken of any partial performance of the Agreement which is rendered useless by any such Variation.

7.5.3 The Service Provider shall not be entitled to any increase in the Service Payment with respect to any Variation to the extent that it was directly or indirectly caused by or resulted from any act, neglect, default or breach of this Agreement by the Service Provider its Subcontractors or suppliers or the directors, agents, representatives or employees of any of them or to the extent that the Service Provider has failed to take all reasonable steps to mitigate any actual or potential increase in the Service Payment.

## 7.6 Notice of variations

7.6.1 When instructing any Variation, the Purchaser's Representative shall, to the extent possible, give the Service Provider such reasonable notice as will enable him to make his arrangements accordingly.

## 7.7 Progress with variations

7.7.1 The Service Provider shall, on receipt of an instruction from the Purchaser's Representative to proceed with a Variation, immediately proceed to carry out such Variation in accordance with its terms notwithstanding that the Variation Valuation has not yet been determined. The carrying out of the Variation by the Service Provider shall not, without the prior written consent of the Purchaser, be delayed pending determination of the Variation Valuation in accordance with Clause 7.5.2.

7.7.2 The Parties shall enter into such amendments to this Agreement to give effect to any Variation instructed by the Purchaser's Representative pursuant to Clause 7.4.1.

## 8 PLANT AND MACHINERY, SPARES AND SPECIAL TOOLS

### 8.1 General

8.1.1 The Service Provider shall use the Plant and Machinery, Spares, Special Tools and any other equipment provided by the Purchaser solely in connection with the provision of the Services and not for any other purpose without the prior agreement of the Purchaser.

8.1.2 The Parties shall comply with their respective obligations in respect of the provision of Spares, Special Tools and other equipment as set out in the Services Specification and Schedule 2 (*Spares, Special Tools and other equipment*).

8.1.3 The Service Provider shall not remove, deface or cover up any name-plate or identification mark, livery or number on any part of the Plant and Machinery, Spares, Special Tools or other equipment provided by the Purchaser under this Agreement.

## 8.2 Provision and return of Plant and Machinery

8.2.1 Prior to the Commencement Date, the Purchaser shall:

- (a) record the condition of the Plant and Machinery (the "**Plant and Machinery Condition Report**"); and
- (b) provide the Service Provider with the Plant and Machinery Condition Report.

8.2.2 Upon the termination or expiry of this Agreement, the Service Provider shall promptly return to the Purchaser at the Designated Depot or other such location nominated by the Purchaser (which shall not be unreasonable):

- (a) the Plant and Machinery in the same condition as recorded in the Plant and Machinery Condition Report (fair wear and tear excluded); and
- (b) all Technical Information in relation to the Plant and Machinery.

8.2.3 Where the Service Provider fails to return the Plant and Machinery in the condition set out in Clause 8.2.2, the Service Provider shall procure and bear all costs associated with the rectification of the Plant and Machinery to the condition set out in Clause 8.2.2 within either:

- (a) five (5) Working Days of notification by the Purchaser to the Service Provider that the Purchaser reasonably considers that the Plant and Machinery are not in the condition set out in Clause 8.2.2; or
- (b) a timeframe otherwise agreed between the parties pursuant to a rectification plan.

## 8.3 Plant and Machinery: Access, Risk and Title

8.3.1 Following issue of a Take Over Certificate or a Qualified Take Over Certificate (as applicable) for an item of Plant and Machinery, the Purchaser shall make such item of Plant and Machinery available to the Service Provider at the Designated Depot for the provision of the Services.

8.3.2 The Service Provider shall protect any item of Plant and Machinery against loss, theft, damage or destruction whilst that item of Plant and Machinery is in the care, custody or control of the Service Provider. Where any circumstances arise that could affect the security of the Purchaser's assets, the Service Provider shall inform the Purchaser immediately.

8.3.3 Title to each item of Plant and Machinery shall remain with the Purchaser at all times.

## 8.4 Provision and return of Spares

8.4.1 Upon the termination or expiry of this Agreement, the Service Provider shall promptly return any unused Spare to the Purchaser at the Designated Depot or other such location nominated by the Purchaser (which shall not be unreasonable).

8.4.2 Upon the Service Provider becoming aware that:

- (a) it no longer reasonably requires any Spare in order to perform the Services; and
- (b) the Spare may reasonably possess a scrap value or may be capable of being overhauled or repaired,

the Service Provider shall promptly return the Spare to the Purchaser at the Designated Depot or other such location nominated by the Purchaser (which shall not be unreasonable).

## 8.5 Provision and return of Special Tools

8.5.1 Prior to the Commencement Date, the Purchaser shall:

- (a) record the condition of all Special Tools and any other equipment to be provided to the Service Provider under this Agreement (the "**Special Tools and other equipment Condition Report**"); and
- (b) provide the Service Provider with the Special Tools and other equipment Condition Report.

8.5.2 Upon the termination or expiry of this Agreement, the Service Provider shall promptly return the Special Tools and any other equipment that has been provided by the Purchaser back to the Purchaser:

- (a) at the Designated Depot or other such location nominated by the Purchaser (which shall not be unreasonable); and
- (b) in the same condition as recorded in the Special Tools Condition Report (fair wear and tear excluded).

8.5.3 Where the Service Provider fails to return the Special Tools or any other equipment provided by the Purchaser in the condition set out in Clause 8.5.2, the Service Provider shall procure and bear all costs associated with the rectification of the Special Tools to the condition of the same within either:

- (a) five (5) Working Days of notification by the Purchaser to the Special Tools that the Purchaser reasonably considers that the Special Tools are not in the condition set out in Clause 8.5.2; or
- (b) a timeframe otherwise agreed between the parties pursuant to a rectification plan.

## 8.6 Spares, Special Tools and other equipment: Title, Risk and Care

8.6.1 The Service Provider shall protect any Spare, Special Tool and any other equipment against loss, theft, damage or destruction whilst in the care, custody or control of the Service Provider. Title to each Spare, Special Tool and any other equipment shall remain with the Purchaser at all times, including if any Spare or Part is subsequently removed from the Plant and Machinery.

8.6.2 The Service Provider shall store, use and maintain (as applicable) the Special Tools, Spares and any other equipment provided by the Purchaser to the Service Provider pursuant to this Agreement and in accordance with the Manuals.

## 8.7 **Prohibition on Creating Security**

The Service Provider undertakes that it shall not at any time create or purport to create any Security Interest over the Goods, Manuals or any documentation supplied to the Service Provider under and in accordance with the terms of this Agreement.

## 9 **ACCESS TO TFL PREMISES**

9.1 The Purchaser shall grant the Service Provider such access to the Designated Depot and other Tfl Premises as is reasonably required by the Service Provider for the performance of the Services.

9.2 The Service Provider undertakes that while any of its employees or representatives are located at a Designated Depot or any other Tfl Premises, such employees or representatives shall:

9.2.1 comply with all rules and/or policies in existence from time to time in relation to the Designated Depot or Tfl Premises, including any health and safety rules and security requirements; and

9.2.2 not disrupt the commercial and industrial operation of the Purchaser or its subcontractors,

and the Service Provider shall procure that any employees or representatives of any Subcontractors comply with the same.

9.3 Save to the extent reasonably required in the performance of the Services or expressly agreed by the Purchaser and with all reasonable mitigation measures in place, when performing the Services the Service Provider shall not interfere with or obstruct any public or private rights or property (including the Tfl Premises, any other property belonging to or leased by the Purchaser, the Purchaser's neighbours' property, railway operations and traffic, road traffic and highways).

9.4 The Service Provider shall ensure that no person employed on its behalf trespasses beyond the agreed limits of any specified working area(s) or access routes at the Designated Depot or other Tfl Premises.

9.5 If the Designated Depot is unavailable for any reason, the parties shall work together and make all reasonable efforts to mitigate the effects of the unavailability of the Designated Depot in order to minimise the impact on the Service Provider's delivery of the Services.

## 10 **PERFORMANCE REGIME**

### 10.1 **Obligations under the Performance Regime**

10.1.1 The Service Provider shall perform the Services in accordance with the requirements of the Performance Regime.

### 10.2 **Liquidated Damages**

10.2.1 If the Service Provider fails to comply with its obligations under the Performance Regime with respect to Shift completion (as set out in paragraph 1 of the

Performance Regime), the Service Provider shall pay to the Purchaser Liquidated Damages (as compensation for loss and not as a penalty) calculated in accordance with the Performance Regime and payable in accordance with Clause 11.

10.2.2 All Liquidated Damages shall be subject to:

- (a) an increase per annum as stated in the Contract Particulars(q), from the date of the first anniversary of this Agreement until and including the Expiry Date; and
- (b) the application of the Indexation Adjustment set out in Part F of this Schedule 4 (Service Payments) for any extension to this Agreement pursuant to Clause 4.2.

10.2.3 The Parties acknowledge and agree that the amount of Liquidated Damages under the Agreement:

- (a) serves to protect the Purchaser's legitimate business interests, including the need to have the Services performed on-time and to an appropriate standard in accordance with the requirements of the Performance Regime; and
- (b) constitutes a genuine pre-estimate of the loss that would be suffered by the Purchaser as a result of the Service Provider's failure to comply with the requirements of the Performance Regime.

10.2.4 The Purchaser shall be entitled to set-off any undisputed amount payable to it under Clause 10.2.1 against the next Service Payment payable by it to the Service Provider.

## **11 PAYMENTS**

### **11.1 Amount of Service Payments**

11.1.1 The Purchaser shall pay Service Payments to the Service Provider in accordance with this clause 11 and Part C of Schedule 4 (*Service Payments*).

11.1.2 The Service Payments in respect of any extension to this Agreement pursuant to Clause 4.2 shall be subject to the Indexation Adjustment.

11.1.3 Where the Contract Particulars states that a Guarantee or Performance Bond is required, then no Service Payment shall be made unless and until:

- (a) the Guarantee is in place; and
- (b) the Performance Bond is in place.

### **11.2 Payment applications**

11.2.1 At the beginning of each Payment Period the Service Provider shall submit a payment application to the Purchaser's Representative at the address specified in Clause 41.2 which shall show the following amounts separately and in aggregate:

- (a) the relevant portion of the Service Payment in respect of the Services provided by the Service Provider in the immediately preceding Payment Period (as further described in Part C of Schedule 4 (*Service Payments*));
- (b) any amounts due (less any payments already made) pursuant to Clause 7.5, and in accordance with the principles set out in paragraph 2 of Part B of Schedule 4 (*Service Payments*), in respect of any properly completed Variation in the immediately preceding Payment Period (or, where the Parties have agreed that a Variation shall be paid on a sectional basis, in respect of any properly completed section of the Variation in the immediately preceding Payment Period) provided that the Service Provider's application sets out details and value of any Variation payment being sought.

11.2.2 The Service Provider shall ensure that each payment application is dated and issued no earlier than the first day of the subsequent Payment Period to which the Services relate and/or the date on which the Variation to which it relates has been completed.

11.2.3 The Purchaser's Representative shall consider the Service Provider's payment application, and assess and verify the amount due (the "**Invoice Amount**") in a timely manner. The Purchaser shall certify the Invoice Amount (the "**Payment Certificate**") within seven (7) days of receipt of the payment application and shall give the Service Provider details of how the Invoice Amount due has been assessed. Where the Purchaser fails to comply with its obligations under this Clause 11.2.3 and there is an undue delay in considering and verifying the Invoice Amount, the Payment Certificate shall be regarded as issued for the purposes of Clause 11.4 after a reasonable time has passed.

### 11.3 **VAT Invoice**

Within ten (10) days of receipt of the Payment Certificate, the Service Provider shall issue a corresponding VAT invoice for the amount of the relevant Invoice Amount, accompanied by a copy of the Payment Certificate, to the Purchaser's Representative in accordance with any instructions received from him. The Service Provider shall ensure that such VAT invoice:

11.3.1 is dated and issued no earlier than the date when the Payment Certificate was issued; and

11.3.2 clearly states the purchase order number.

### 11.4 **Payment due date**

Subject to Clauses 11.5 and 11.9, the Purchaser's Representative shall, on receipt by it of an appropriate VAT invoice in accordance with Clause 11.3, pay to the Service Provider within ten (10) days of receipt by it of such VAT invoice the relevant Invoice Amount calculated in accordance with Clause 11.2.3. If the Service Provider fails to issue a VAT invoice that complies with the requirements of this Clause 11 within the time period stated in Clause 11.3, then the time period for payment of the relevant Invoice Amount shall be automatically extended by the number of days that the VAT invoice remains outstanding.

### 11.5 **Payments Owed by the Service Provider**

Where a payment application shows a net amount owed by the Service Provider to the Purchaser the Service Provider shall pay the amount to the Purchaser within thirty (30) days of such application being provided to the Purchaser's Representative or, at the option of the Purchaser's Representative, carry forward that amount to the next payment application in reduction of amounts which would otherwise have been owed by the Purchaser to the Service Provider.

### 11.6 **Payment recovery**

Any payment made by the Purchaser under this Agreement does not prevent the Purchaser from recovering any amount over-paid or wrongfully paid however such payment may have arisen, including but not limited to, those amounts paid to the Service Provider by mistake of law or fact.

### 11.7 **Method of Payment**

All payments required to be made under this Agreement will be made for value on the due date in cleared funds to such account at a bank in the United Kingdom as the payee shall have notified to the payer by not less than three (3) Working Days' notice, free and clear of any deduction, withholding, set off or counterclaim whatsoever except to the extent deduction is required by any Applicable Laws or is in accordance with the express provisions of this Agreement. If the due date for any payment falls on a day which is not a Working Day, payment shall be made on the next Working Day thereafter unless such day would fall in another Payment Period, in which case payment shall be made on the immediately preceding Working Day.

### 11.8 **Late Payment**

Save where otherwise specifically provided, where any payment or sum of money due from one Party to the other Party under any provision of this Agreement is not paid in accordance with the timescales set out in this Agreement and providing that there has been no Dispute in respect of the sums therein, without prejudice to the Parties' other rights under the Agreement, that sum shall bear simple interest thereon from the due date until payment is made in full at the Default Interest rate current at the date a payment under this Agreement becomes overdue. The Parties agree that this is a substantial remedy for late payment of any sum payable under this Agreement in accordance with section 8(2) of the Late Payment of Commercial Debts (Interest) Act 1998. The Service Provider is not entitled to suspend its provision of the Services under the Agreement as a result of any sums being outstanding.

### 11.9 **Disputed Payment Applications**

The Purchaser's Representative shall notify the Service Provider in writing of any disputed amounts or payment applications stating the reasons for such dispute within seven (7) days of receipt of such payment application, and any dispute shall be resolved in accordance with Clause 46. In the event of any disputed payment application, the undisputed element of such payment application shall be certified by the Purchaser's Representative in accordance with this Clause 11.

**11.10 Payments Inclusive**

Save as expressly provided otherwise in this Agreement, the Service Payments payable by the Purchaser are inclusive of all costs, expenses and disbursements incurred by the Service Provider in connection with this Agreement.

**11.11 Payments in Sterling**

The Service Payments are denominated in, and shall (together with all other payments payable by any Party under this Agreement) be made in, Sterling.

**11.12 Value Added Tax**

11.12.1 All amounts payable by one Party to another Party under this Agreement are, unless otherwise stated, exclusive of VAT. To the extent that VAT is properly chargeable in respect of any amount payable and the Service Provider is liable to account for such VAT to any Competent Authority, such VAT shall be charged by the Service Provider to the Purchaser at the rate in force on the date of the relevant payment application and must be shown as a separate amount on such payment application and shall accordingly be paid by the Purchaser to the Service Provider. To the extent that VAT is chargeable in respect of the Service Payments and the Purchaser is liable to account for such VAT to any Competent Authority, the Service Payments shall not be affected by such VAT and no additional payments in respect of such VAT shall be made by the Purchaser to the Service Provider pursuant to this Agreement but the Purchaser shall instead account for such VAT to the relevant Competent Authority.

11.12.2 Where under this Agreement one Party is to reimburse or indemnify another Party in respect of any payment made or cost incurred by the other Party, the first Party shall also reimburse any VAT paid by the other Party in question which forms part of its payment made or cost incurred to the extent such VAT is not available for credit for the other Party in question (or for any person with whom the indemnified party is treated as a member of a group for VAT purposes).

11.12.3 Where under this Agreement any rebate or repayment of any amount is payable by one Party to another Party, and the first Party is entitled as a matter of law or of HM Revenue and Customs practice to issue a valid VAT credit note, such rebate or repayment shall be paid together with an amount representing the VAT paid on that part of the consideration in respect of which the rebate or repayment is made, and the first Party shall issue an appropriate VAT credit note to the other Party in question.

**12 ACCESS AND AUDIT**

12.1 For the purposes of exercising any of its rights under this Clause 12, the Service Provider shall (a) grant the Purchaser access on reasonable prior notice to any of the Service Provider's premises involved in the provision of the Services and (b) use its reasonable endeavours to procure such access to those premises of its agents and Subcontractors.

12.2 The Service Provider shall, and shall (unless the Purchaser's Representative otherwise agrees in writing) procure that its Subcontractors shall:

- 12.2.1 maintain a complete and correct set of records pertaining to all activities relating to the performance of the Service Provider's obligations under this Agreement (including the Service Provider's compliance with the Manuals) and all transactions and Subcontracts entered into by the Service Provider for the purposes of performing its obligations under this Agreement (in respect of the Service Provider) and the performance by the Subcontractor of its obligations under its Subcontract (in respect of the Subcontractor) (the "**Service Provider's Records**"); and
  - 12.2.2 retain all the Service Provider's Records until the date six (6) years (or such longer period as may be required by law) following expiry or termination of this Agreement for whatever reason (the "**Retention Period**").
- 12.3 The Service Provider shall ensure that its procedures and obligations are regularly audited, tested and/or inspected by an independent auditor.
- 12.4 Notwithstanding any other right of audit that the Purchaser is entitled to under this Agreement, in order to verify the Service Provider's performance of and compliance with the Agreement the Purchaser shall be entitled on reasonable notice (whether in writing or verbally), either itself or using such agents or representatives as it may authorise to:
- 12.4.1 audit, inspect or witness any aspects of the provision of the Services;
  - 12.4.2 inspect any and all of the Service Provider's Records during the Retention Period as are reasonably necessary to investigate the Service Provider's (and any Subcontractor's) performance of its obligations under this Agreement (including the Service Provider's compliance with the Manuals). Where the Service Provider considers that certain specific information required for the audit is confidential, then the Service Provider shall have the right to redact this information and to disclose in un-redacted form only to an independent agent or representative of the Purchaser bound by non-disclosure, and which agent or representative is acceptable (acting reasonably) to the Service Provider;
  - 12.4.3 audit the management systems of the Service Provider and those of any Subcontractor; and
  - 12.4.4 inspect and/or audit compliance by the Service Provider and its Subcontractors with the Service Provider's obligations under this Agreement,
- and where such inspection reasonably requires the attendance or participation by the Service Provider, the Service Provider shall provide such attendance or participation by appropriately qualified individuals at its own cost.
- 12.5 To the extent necessary for the purpose of exercising any of the rights granted under Clause 12.3 the Service Provider shall provide, and shall procure that its Subcontractors shall provide, all reasonable co-operation to the Purchaser, including:
- 12.5.1 upon request from the Purchaser, acting reasonably, providing electronic or paper copies of any Service Provider's Records required for the purposes of Clause 12.4.2 free of charge and within a reasonable time of any request; and
  - 12.5.2 making the Service Provider's employees available for discussion with the Purchaser.

- 12.6 No audit and/or inspection testing by the Purchaser pursuant to Clause 12.3 shall relieve the Service Provider (or any of its Subcontractors) from any of its obligations under this Agreement or prejudice any right, power and/or remedy of the Purchaser against the Service Provider.
- 12.7 Any actions found to be reasonably necessary having regard to the Service Provider's obligations under this Agreement as a consequence of the Purchaser undertaking any inspections or audits (a "**Corrective Action**") shall be carried out by the Service Provider. The Service Provider shall acknowledge formally within two (2) Working Days receipt of any request for a Corrective Action raised by the Purchaser, together with the Service Provider's confirmation of the timescale allocated by the Purchaser for the Service Provider to close out the Corrective Action. The Service Provider shall advise the Purchaser upon its close-out of the Corrective Action, together with details of the Corrective Action applied. The Purchaser shall be entitled to undertake a further audit of any Corrective Actions on the same basis as set out in Clauses 12.1 to 12.6.
- 12.8 If the Service Provider (acting reasonably) disputes any Corrective Action, it shall notify the Purchaser whereupon the Service Provider and the Purchaser shall consult with each other and seek to resolve such dispute and in default of such resolution either the Purchaser or the Service Provider may refer the dispute for determination in accordance with Clause 46.

### **Plans for Remedial Action**

- 12.9 If, at any time in the course of any participation or inspection by the Purchaser in accordance with Clauses 12.2 and 12.7, the Purchaser reasonably determines that the provision of the Services does not, or is unlikely in the future to, comply with any of the requirements of Clause 6.2 the Purchaser shall notify the Service Provider of such determination. The Purchaser and the Service Provider shall thereafter use all reasonable endeavours to agree a plan for necessary remedial action to be implemented by the Service Provider, at the Service Provider's cost, to ensure that that the Services do or will conform to the requirements of Clause 6.2. If the Service Provider fails to implement such remedial action within a reasonable period following agreement of a plan pursuant to this Clause 12.9 then the Purchaser may proceed to implement, or procure the implementation, of such remedial action at the Service Provider's expense. The exercise by the Purchaser of its rights under this Clause 12.9 shall not in any way prejudice or affect any of the Purchaser's other rights or remedies under this Agreement nor shall it relieve the Service Provider from any of its obligations and liabilities under this Agreement.

## **13 SECURITY**

### **13.1 Performance Bond**

- 13.1.1 Where the Contract Particulars(d) states that a Performance Bond is required, then on or prior to the date of this Agreement, the Service Provider shall procure at its cost a valid and effective Performance Bond in favour of the Purchaser. The Performance Bond shall:
- (a) be for the amount stated in the Contract Particulars(e);
  - (b) substantially in the form set out in Schedule 9 (*Form of Performance Bond*);

- (c) continue in full force and effect for the Agreement Duration; and
- (d) be duly executed and delivered by a Bond Provider.

### 13.2 **Guarantee**

13.2.1 Where the Contract Particulars(f) states that a Guarantee is required, then on or prior to the date of this Agreement, the Service Provider shall procure at its cost a valid and effective Guarantee in favour of the Purchaser. The Guarantee shall:

- (a) be substantially in the form set out in Schedule 7;
- (b) continue in full force and effect for the Agreement Duration; and
- (c) be duly executed and delivered by the Guarantor.

### 13.3 **Replacement Bonds**

13.3.1 If at any time:

- (a) a Performance Bond ceases to be in full force and effect;
- (b) the Bond Provider's obligations under the Performance Bond are or become wholly or partly invalid or unenforceable;
- (c) the Bond Provider ceases to meet the Required Rating;
- (d) an Insolvency Event occurs in relation to a Bond Provider,

then the Service Provider shall provide a replacement Performance Bond issued by a Bond Provider and that otherwise complies with this Clause 13 within 10 (ten) Working Days of the Performance Bond ceasing to meet the relevant requirement(s) of this Clause 13.3.

13.3.2 In the event that the Service Provider does not provide a replacement Performance Bond in accordance with Clause 13.3.1, the Purchaser may at its option:

- (a) make a demand upon the full amount (or remaining balance thereof if a demand or demands have already been made) of the Performance Bond, which amount shall be paid to the Purchaser and retained by the Purchaser pending receipt of a replacement Performance Bond meeting the requirements of this Clause 13 (provided that if, prior to receipt of such Performance Bond this Agreement is terminated, the Purchaser may apply such amount towards any sums owing to it under this Agreement); or
- (b) procure the issue of a replacement Performance Bond meeting the requirements of this Clause 13 and invoice the Service Provider for the cost thereof. The Service Provider shall reimburse the Purchaser for the amount of such cost, together with Default Interest from the date of such invoice until the date on which the invoice is paid.

### 13.4 **Demands**

- 13.4.1 Where this Agreement is terminated due to the occurrence of a Service Provider Event of Default, the Purchaser shall be entitled to make a demand under the Performance Bond for the Performance Bond amount specified in Clause 13.1.1(a), which amount shall be paid into an interest bearing account with a clearing bank of first class standing in London and held on trust for the Purchaser and the Service Provider for application in or towards amounts due to the Purchaser following termination for Service Provider Event of Default as provided for in this Agreement.
- 13.4.2 Where this Agreement terminates other than as contemplated by Clause 13.4.1 (save where it terminates due to a Purchaser Event of Default), or expires, the Purchaser shall be entitled to make a demand under the Performance Bond in respect of any amounts which the Service Provider is liable to pay to the Purchaser (whether by way of indemnity or otherwise) and has failed to pay to the Purchaser.
- 13.4.3 Clauses 13.4.1 and 13.4.2 shall only apply where the Contract particulars states that a Performance Bond is required.

## **14 FAULT RECTIFICATION**

### **14.1 Notification of Faults**

If the Service Provider identifies a Fault in an item of Plant and Machinery, Part, Spare and/or Special Tool, it must notify the Purchaser of such Fault in writing within a reasonable time of its discovery. Following any such notification, the Parties shall determine how the Fault should be rectified, including:

- 14.1.1 who will be responsible for rectifying the Fault; and
- 14.1.2 who will be responsible for the costs of rectifying the Fault,

in accordance with the provisions of this Clause 14.

### **14.2 Rectification of Faults: Purchaser Faults**

If, following notification of a Fault in an item of Plant and Machinery, Part, Spare and/or Special Tool, the Parties determine (acting reasonably) that such Fault should be classed as a Purchaser Fault, then the Purchaser may:

- 14.2.1 seek to rectify the Purchaser Fault itself or using third party resources at its own cost; or
- 14.2.2 issue a Variation to the Service Provider instructing the Service Provider to undertake at the Purchaser's cost such corrective action and/or rectification works as may be necessary to address the Purchaser Fault.

### **14.3 Rectification of Faults during Defect Rectification Period**

- 14.3.1 If a Fault arises in an item of Plant and Machinery during the Defect Rectification Period, the Purchaser shall determine (acting reasonably) whether such Fault is a Manufacturer Fault. If the Purchaser determines that the Fault is a Manufacturer Fault, then the Purchaser shall use reasonable endeavours to procure that the Manufacturer of such item of Plant and Machinery rectifies the Manufacturer Fault in the first instance.

14.3.2 If the Manufacturer of such item of Plant and Machinery is unable to rectify the Manufacturer Fault within seven (7) days of the Service Provider notifying the Purchaser of such Fault pursuant to Clause 14.1, then the Purchaser may issue a Variation to the Service Provider instructing the Service Provider to undertake at the Purchaser's cost such corrective action and/or rectification works as may be necessary to address such Manufacturer Fault.

#### 14.4 **Rectification of Faults: Parts and Spares**

Subject to Clause 14.2, if, following notification of a Fault pursuant to Clause 14.1, the Parties determine that the Fault arises from or in connection with any Part or Spare failing during service and that Part or Spare is subject to an SSA Warranty, then the Purchaser may notify the Service Provider that it will seek to remedy such Fault itself using third party resources in the first instance. If the Purchaser is unable to remedy such Fault using third party resources within ten (10) days of the Purchaser notifying the Service Provider that it will seek to remedy such Fault itself pursuant to this Clause 14.4 then the Purchaser may issue a Variation to the Service Provider instructing the Service Provider to undertake at the Purchaser's cost such corrective action and/or rectification works as may be necessary to address such Fault (provided that if the Purchaser demonstrates (acting reasonably) that such Fault arises as a result of an act or omission or the negligence of the Service Provider, then the provisions of Clauses 14.5 and 14.5.3 shall apply).

#### 14.5 **Rectification of Faults in Plant and Machinery: General**

14.5.1 Where a Fault arises in an item of Plant and Machinery, Part, Spare and/or Special Tool and the provisions of 14.2, 14.3 and 14.4 do not apply, the provisions of this Clause 14.5 shall apply.

14.5.2 The Service Provider shall, at its own cost, as soon as reasonably practicable and in any event within seven (7) days of notifying the Purchaser of any Fault pursuant to Clause 14.1, make good (and where necessary shall procure the making good of) such Fault and must complete any work required to make good any such Fault within a reasonable period having regard to the circumstances.

14.5.3 If the Service Provider fails to remedy any Fault notified pursuant to Clause 14.1 within a reasonable time of notifying the Fault to the Purchaser, then the Purchaser may proceed on notice to make good, or procure the making good of, such Fault at the Service Provider's expense. All costs and expenses properly and reasonably incurred by the Purchaser in undertaking any work pursuant to this Clause 14.5.3, together with VAT chargeable thereon, shall be recoverable by the Purchaser within ten (10) Working Days of demand from the Purchaser as a debt due and owing from the Service Provider. The exercise of the Purchaser's rights under this Clause 14.5.3 shall not in any way prejudice or affect any of the Purchaser's other rights or remedies under this Agreement.

#### 14.6 **Contractual Relationship with Manufacturer and SSA Provider**

The Purchaser shall have the direct contractual relationship with the Manufacturer and SSA Provider, and the Service Provider shall not be required to engage in commercial dialogue with the Manufacturer or SSA Provider in respect of Defect Rectification Period or SSA Warranty. The Service Provider is required to capture full details of any fault that does occur with the Plant and Machinery or parts thereof; this can then be used to support any warranty

and/or defect liability discussions between the Purchaser and the Manufacturer or SSA Provider.

## **15 PURCHASER'S OBLIGATIONS**

15.1 The Purchaser shall:

- 15.1.1 comply with its express obligations under the Performance Regime;
- 15.1.2 provide certain training to the Service Provider on a "train-the-trainer" basis as set out in the Services Specification;
- 15.1.3 notify the Service Provider of any Faults or damage which occurs or it believes may occur to any of the Goods while the Goods are in the care, custody or control of the Purchaser; and
- 15.1.4 comply with its express obligations as set out in this Agreement, including the Services Specification.

## **16 EVENTS OF DEFAULT**

### **16.1 Service Provider Events of Default**

It shall be a Service Provider Event of Default if any of the following occurs:

- 16.1.1 the Service Provider fails to pay any sum (including, where applicable, any Liquidated Damages) not in dispute when due and payable to the Purchaser in accordance with this Agreement within thirty (30) days of a written demand for payment;
- 16.1.2 an Insolvency Event occurs in relation to the Service Provider;
- 16.1.3 the Service Provider commits a material breach of its obligations under this Agreement;
- 16.1.4 the Guarantee either ceases to be in full force and effect or the Guarantor's obligations under the Guarantee are or become wholly or partly invalid or unenforceable or the Guarantor fails to comply promptly with any of its obligations pursuant to the Guarantee (a "**Guarantee Event**"), or the Guarantor breaches the Guarantee;
- 16.1.5 the Service Provider commits a Persistent Breach as provided for in Clause 16.4;
- 16.1.6 the Service Provider fails to take out and/or maintain any of the required insurances in accordance with Clause 20;
- 16.1.7 there is a breach by the Service Provider of its obligations under Clause 40;
- 16.1.8 without the Purchaser's written consent, at any time a person (or persons acting together) takes a controlling interest in the Service Provider's share capital, and for this purpose, a "**Controlling Interest**" being either:
  - (a) the ownership or control (directly or indirectly) of more than 30% of the Service Provider's voting share capital or the share capital of the Service Provider's holding company; or

- (b) the ability to direct the casting of more than 30% of the votes exercisable at the Service Provider's general meetings or those of the Service Provider's holding company on all, or substantially all, matters;

16.1.9 the Performance Bond, where required per Contract Particulars(d), either ceases to be in full force and effect or the Bond Provider's obligations under the Performance Bond are or become wholly or partly invalid or unenforceable or the Bond Provider fails to comply promptly with any of its obligations pursuant to the Performance Bond (a "**Performance Bond Event**"), or the Bond Provider breaches the Performance Bond;

16.1.10 a Service Provider Public Procurement Termination Event occurs;

16.1.11 a Level 4 Non-Conformance occurs ; or

16.1.12 the Service Provider's liability to the Indemnified Parties under this Agreement, (excluding for these purposes all Excepted Liabilities) reaches the amount stated in the Contract Particulars (j).

## 16.2 **Procedures in relation to Termination for a Service Provider Event of Default**

16.2.1 The Service Provider shall notify the Purchaser forthwith on the Service Provider becoming aware of the occurrence of a Service Provider Event of Default.

16.2.2 Following the occurrence of a Service Provider Event of Default (and notwithstanding that the Service Provider may not have notified it pursuant to Clause 16.2.1), the Purchaser may by notice in writing to the Service Provider, specifying the Service Provider Event of Default in question, terminate this Agreement in relation to the provision of Services ("**Purchaser Termination Notice**"), such termination to take effect from the date specified in the Purchaser Termination Notice (being not less than seven (7) days after the date of the Purchaser Termination Notice or, in the case of an Insolvency Event, forthwith), provided that, in respect of a Service Provider Event of Default under Clauses 16.1.1 , 16.1.3 or 16.1.12 which is capable of remedy, the provisions of Clause 16.3 shall apply.

## 16.3 **Remedial Plan**

16.3.1 Where a Service Provider Event of Default that is capable of remedy arises under Clauses 16.1.1, 16.1.3 or 16.1.12 the Purchaser shall by notice in writing to the Service Provider signed on behalf of the Purchaser (a "**Remedy Notice**") require the Service Provider either:

- (a) to remedy such breach(es) referred to in the Remedy Notice within thirty (30) Working Days of that notice (and in respect of a breach of the type referred to Clause 16.1.12, the remedy must be the agreement with the Purchaser of an increased limit on the Service Provider's Liability per clause 19.4.1 to be inserted in Contract Particulars(j)); or
- (b) in respect of Events of Default arising under Clause 16.1.1 or 16.1.3, within ten (10) Working Days of the Remedy Notice, to put forward a plan (a "**Remedial Plan**") acceptable to the Purchaser in its absolute discretion to remedy the breach(es) referred to in the

Remedy Notice. Such Remedial Plan shall be in writing and shall specify the proposed remedy in reasonable detail and the latest date by which it is proposed that that remedy will be completed.

- 16.3.2 Where the Service Provider puts forward a Remedial Plan in accordance with Clause 16.3.1, the Purchaser shall notify the Service Provider in writing within twenty (20) Working Days of receipt of the Remedial Plan that it does not accept the Remedial Plan. If the Purchaser does not so notify the Service Provider, the Purchaser shall be deemed to have accepted the Remedial Plan.
- 16.3.3 If the Purchaser notifies the Service Provider that it does not accept that Remedial Plan pursuant to Clause 16.3.2, the Purchaser and the Service Provider shall use reasonable endeavours in the following ten (10) Working Days to agree any necessary amendments to the Remedial Plan in order for it to be acceptable to the Purchaser. In the absence of agreement in that period of ten (10) Working Days, the Purchaser may treat the Service Provider Event of Default as not being capable of remedy and terminate this Agreement in accordance with Clause 16.2 (notwithstanding the proviso thereto). Where the Purchaser and the Service Provider agree the form of the Remedial Plan, the Service Provider shall forthwith implement such Remedial Plan in accordance with its terms.
- 16.3.4 If any breach specified in a Remedy Notice served under Clause 16.3.1 is not remedied:
- (a) within the thirty (30) Working Day period specified in Clause 16.3.1(a) (if applicable); or
  - (b) in accordance with a Remedial Plan that has been accepted or deemed accepted by the Purchaser, or the Service Provider otherwise fails to comply with the terms of that Remedial Plan,

then the Purchaser may:

- (i) may proceed to implement, or procure the implementation, of the Remedial Plan at the Service Provider's expense. The exercise by the Purchaser of its rights under this Clause 16.3.4 shall not in any way prejudice or affect any of the Purchaser's other rights or remedies under this Agreement nor shall it relieve the Service Provider from any of its obligations and liabilities under this Agreement; and/or
- (ii) exercise its rights under Clause 16.2 as if the Service Provider Event of Default is not capable of remedy.

#### 16.4 **Persistent Breach**

- 16.4.1 If the Service Provider breaches any of its obligations (where those obligations are of the same type or nature) under this Agreement, more than twice in any three (3) month period, then the Purchaser may serve a notice on the Service Provider:
- (a) specifying that it is a formal warning notice;
  - (b) giving reasonable details of such breach; and

- (c) stating that such breach is a persistent breach that, if it continues unremedied or if a breach of the same type or nature occurs within three (3) months of the date of service of the notice, may result in a termination of this Agreement in accordance with this Clause 16.4.

16.4.2 If, following service of such a warning notice pursuant to Clause 16.4.1, the breach specified has continued un-remedied or a breach of the same type or nature has occurred within the three (3) months following the date of service of such notice, then the Purchaser may, no later than the date falling six (6) months following the date of service of the warning notice pursuant to Clause 16.4.1, serve another notice on the Service Provider specifying that such breach constitutes a "**Persistent Breach**" for the purposes of Clause 16.1.5.

## 16.5 Consequences of a Service Provider Event of Default

16.5.1 Where the Purchaser has served (a) a Purchaser Termination Notice in accordance with Clause 16.2.2 (and, where relevant, the Service Provider Event of Default has not been remedied pursuant to Clause 16.3) or (b) a notice of termination under Clause 17.4 (*Prohibited Acts*), then:

- (a) the Purchaser will have the right to place the carrying out of the Services with a third party and the Service Provider will, subject to Clause 16.5.3, indemnify the Purchaser for any properly incurred reasonable costs of placing the Services with a third party to the extent they exceed the costs which the Purchaser would have paid the Service Provider for the same Services. Any costs in relation to this clause 16.5.1(a) shall be:
  - (i) subject to an aggregate cap as defined in the Contract Particulars(h); and
  - (ii) incurred within a time limit as defined in the Contract Particulars(i).
- (b) the Service Provider will provide the Purchaser with the Default Package;
- (c) the Service Provider shall continue to perform the Services and meet its obligations until the date upon which the termination of this Agreement in relation to the provision of the Services shall become effective and the Purchaser shall continue to pay the Service Provider for performance of such Services;
- (d) the Service Provider shall co-operate with the Purchaser to minimise the disruption caused to the Purchaser's business due to the termination of this Agreement in relation to the provision of the Services and shall provide any assistance, training or other support required by the Purchaser or any third party taking over the provision of the Services; and
- (e) the Service Provider will on demand pay the Purchaser:
  - (i) all reasonable costs incurred by the Purchaser as a result of any Service Provider Event of Default and the loss of the provision of the Services;

- (ii) all reasonable costs incurred by the Purchaser in rectifying Faults arising but not rectified prior to the date of such termination which have not been reimbursed to the Purchaser under any provision of this Agreement; and
  - (iii) all amounts outstanding in respect of any accrued obligations or liabilities under this Agreement; and
- (f) the Service Provider shall promptly return to the Purchaser at the Designated Depot or other such location nominated by the Purchaser (which shall not be unreasonable):
- (i) any unused Spare;
  - (ii) the Special Tools in the same condition as recorded in the Special Tools Condition Report (fair wear and tear excluded); and
  - (iii) any other equipment provided by the Purchaser under this Agreement.

16.5.2 The Purchaser shall use all reasonable endeavours to mitigate all costs claimed by it under this Clause 16.5.

16.5.3 For the avoidance of doubt, the Purchaser's rights upon the occurrence of a Service Provider Event of Default are as expressly set out in this Agreement.

## 16.6 Voluntary Termination

The Purchaser may terminate this Agreement without cause at any time by giving notice to the Service Provider of such termination and the date when such termination shall become effective and the termination shall take effect upon such date. In the event that this Agreement is terminated pursuant to this Clause 16.6, then the provisions of Clause 16.9 shall apply.

## 16.7 Declaration of Ineffectiveness and Public Procurement Termination Event

16.7.1 The Purchaser may terminate this Agreement at any time in the event that:

- (a) there is a Declaration of Ineffectiveness; or
- (b) a Public Procurement Termination Event occurs (without prejudice to the Purchaser's rights of termination implied into this Agreement by Regulation 73(3) of the Public Contracts Regulations 2015).

16.7.2 In the event that this Agreement is terminated pursuant to Clause 16.7.1, the provisions of Clause 16.9 shall apply.

## 16.8 Purchaser Event of Default

It shall be an Purchaser Event of Default if the Purchaser fails to make payment of any sum in excess of three (3) Service Payments which is due and payable to the Service Provider in accordance with this Agreement and not in dispute and such amount has not been paid within thirty (30) days following a subsequent written demand by the Service Provider for payment.

16.9 **Consequences of a Purchaser Event of Default, Voluntary Termination, Declaration of Ineffectiveness or Public Procurement Termination Event**

- 16.9.1 If a Purchaser Event of Default occurs, the Service Provider may deliver to the Purchaser a notice (a "**Notice of Default**") specifying the Purchaser Event of Default which has occurred and the Service Provider may, terminate this Agreement in relation to the provision of the Services by notice in writing, such termination to have immediate effect or to be effective on such later date as is specified in the Notice of Default. If, following service of a Notice of Default the relevant Purchaser Event of Default is remedied, then the applicable Notice of Default will be deemed to have been withdrawn and will no longer be outstanding.
- 16.9.2 If this Agreement is terminated in relation to the provision of the Services pursuant to Clauses 16.6, 16.7, or 16.9.1, the Purchaser will pay the Service Provider:
- (a) the aggregate of all Service Payments (including the apportioned element of the period relating to the Payment Period during which the Agreement is so terminated) and other amounts payable to the Service Provider which have then fallen due under this Agreement but remain unpaid;
  - (b) such sum as represents the reasonable cost of labour and materials already incurred or committed by the Service Provider as at the date of termination of this Agreement in respect of Services (including, without limitation, the cost of terminating subcontracts and redundancy of employees);
  - (c) the reasonable costs incurred by the Service Provider in preparing the Default Package; and
  - (d) all other direct losses, costs and claims reasonably incurred in connection with such termination if properly evidenced by the Service Provider.

The Service Provider shall not be entitled to payment of any other loss and/or damage arising from such termination.

- 16.9.3 Subject to payment by the Purchaser to the Service Provider of all sums due and payable under this Agreement the Service Provider will comply with the provisions of Clauses 16.5.1(b) to 16.5.1(e) above.
- 16.9.4 The Purchaser shall be entitled to appoint a suitably qualified independent person ("**Independent Auditor**") to audit any or all of the costs, expenses and/or other liabilities incurred by the Service Provider as a direct result of termination of this Agreement and determine whether the amount of such costs, expenses and/or liabilities were properly and reasonably incurred by the Service Provider as a direct result of the termination of this Agreement.
- 16.9.5 Where the Purchaser exercises its rights pursuant to Clause 16.9.4, it shall give written notice to the Service Provider identifying the Independent Auditor appointed by the Purchaser, the terms of the Independent Auditor's appointment and the proposed timeframes for undertaking the audit. The Service Provider shall cooperate with the Independent Auditor and grant the Independent Auditor the same rights of audit as the Purchaser enjoys under this Agreement.

- 16.9.6 The Purchaser shall procure that the Independent Auditor provides a copy of its decision in writing (together with reasons for its decisions) to the Service Provider. Where the Independent Auditor determines that some or all of a specific cost, expense and/or liability was not properly and reasonably incurred by the Service Provider as a direct result of termination of this Agreement, the Purchaser shall not be obliged to pay such amount to the Service Provider.
- 16.9.7 The costs incurred by the Independent Auditor in undertaking the audit shall be borne by the Purchaser save where the Independent Auditor determines that some or all of a specific cost, expense and/or liability was not properly and reasonably incurred by the Service Provider, in which case the costs incurred by the Independent Auditor in undertaking the audit shall be borne by the Service Provider.
- 16.9.8 In the event the Service Provider disputes any findings of the Independent Auditor, such Dispute shall be referred for resolution in accordance with Clause 46.
- 16.9.9 With effect from the termination or expiry of the Agreement Duration, the Service Provider shall extend to the Purchaser the benefit of any then subsisting guarantee, condition or warranty which may have been given to the Service Provider or which is implied by law in favour of the Service Provider in respect of the Services as provided by the Service Provider during the Agreement Duration, provided that in so doing the Service Provider shall be relieved of its obligations and liabilities under this Agreement in so far as the benefit of such rights are assigned to the Purchaser.
- 16.9.10 For the avoidance of doubt, the Service Provider's rights upon the occurrence of a Purchaser Event of Default are as expressly set out in this Agreement.

## **17 PROHIBITED ACTS**

- 17.1 The Service Provider shall not and shall use its reasonable endeavours to procure that its Subcontractors (if any) shall not commit any Prohibited Act.
- 17.2 The Purchaser may audit and check any and all such records of the Service Provider as are necessary in order to monitor compliance with this Clause 17 at any time during performance of this Agreement and during the three (3) years after the Expiry Date or earlier termination of this Agreement.
- 17.3 If the Service Provider, any of its shareholders, Subcontractors, or anyone employed by or acting on behalf of the Service Provider or any of its agents commits any Prohibited Act, this constitutes a material breach of this Agreement and shall entitle the Purchaser to serve written notice terminating this Agreement in whole or in part with immediate effect. In the event that this Agreement is terminated in accordance with this Clause 17.3, Clause 16.5 shall apply.
- 17.4 If a Prohibited Act is committed by any Subcontractor or any employee or agent of such Subcontractor or the Service Provider then the Purchaser may serve a warning notice upon the Service Provider instead of exercising its rights to terminate with immediate effect and unless, within thirty (30) days of receipt of such warning notice, the Service Provider removes or procures the removal of the relevant Subcontractor, employee or agent (as the case may be) from further involvement with any aspect of the performance of this

Agreement and (if necessary) procures the provision of the affected works and/or services by another Subcontractor, employee or agent (as the case may be) this constitutes a material breach of this Agreement and entitles the Purchaser to serve written notice terminating this Agreement in whole or in part with immediate effect. In the event that this Agreement is terminated in accordance with this Clause 17.4, Clause 16.5 shall apply.

## **18 INTELLECTUAL PROPERTY RIGHTS**

### **18.1 Licence of Service Provider IPR**

The Service Provider grants, or shall procure the grant, to the Purchaser a non-exclusive, perpetual, irrevocable, royalty-free, sub-licensable and transferable licence to use the Service Provider IPR for:

- 18.1.1 the operation, maintenance, modification, repair, overhaul, refurbishment or sale of the Plant and Machinery, Parts and/or Spares or any related activity, or permitting the Purchaser to use the Plant and Machinery, Parts and/or Spares for the purposes of performing the Services;
- 18.1.2 complying with all Applicable Laws, TfL Standards and all Relevant Consents;
- 18.1.3 using and copying the Manuals and any Technical Information in order to perform any of the above;
- 18.1.4 training personnel to carry out any of the activities described in Clause 18.1.1 and 18.1.3;
- 18.1.5 inviting tenders for any of the activities described in Clause 18.1.1 to 18.1.4 inclusive;
- 18.1.6 in the event of termination of this Agreement other than for a Purchaser Event of Default, procuring fulfilment and performance of the Service Provider's obligations under this Agreement; and
- 18.1.7 the Purchaser performing its obligations under this Agreement.

### **18.2 Subcontractors**

The Service Provider shall ensure that all Subcontracts entered into by the Service Provider shall permit the Service Provider to assign or novate its rights and obligations under such agreement relating to any Intellectual Property Rights to the Purchaser without the consent of the relevant Subcontractor and such Subcontracts shall specify the Purchaser as a permitted assignee.

### **18.3 Documentation**

The Service Provider shall execute such further documents, and do such other things, as the Purchaser may reasonably request in order to obtain for the Purchaser the full benefit of this Clause 18 at no cost to the Purchaser.

### **18.4 Warranties**

The Service Provider represents and warrants to the Purchaser that:

- 18.4.1 the Service Provider IPR constitutes all the Intellectual Property Rights required by the Purchaser for the purposes of this Agreement;
- 18.4.2 it has the right and power to grant the licence set out in Clause 18.1; and
- 18.4.3 use of any Service Provider IPR does not infringe any Intellectual Property Rights of another person.

#### 18.5 **Indemnity**

The Service Provider shall indemnify the Purchaser and any member of the TfL Group against any claim for infringement of any Intellectual Property Rights.

#### 18.6 **Remedy for Infringement**

Without prejudice to the provisions of Clause 18.5, if the use of any Service Provider IPR is, or in the reasonable opinion of the Purchaser is likely to become, an infringement of the Intellectual Property Rights of another person, the Service Provider shall, at its expense, use all reasonable endeavours to procure for the Purchaser the right to continue to use that Service Provider IPR.

#### 18.7 **Ownership of training material**

- 18.7.1 Any training materials that the Purchaser provides to the Service Provider as part of its training obligations under this Agreement shall remain the property of the Purchaser at all times.
- 18.7.2 Any training materials developed by the Service Provider for use in connection with the Services shall be the property of the Purchaser and the Service Provider shall provide a copy of such training materials to the Purchaser prior to undertaking any training or assessment of its staff.

#### 18.8 **Licence of Purchaser IPRs**

- 18.8.1 The Purchaser hereby grants to the Service Provider (to the extent that the Service Provider has such rights) a worldwide, royalty-free, perpetual, irrevocable, non-exclusive, non-transferable licence (with the right to sub-licence any such rights to any third party) to use the Purchaser IPRs for the Agreement Duration solely to enable the Service Provider to perform the Services in accordance with this Agreement.
- 18.8.2 Subject to the licence set out in Clause 18.1.1 above, the Service Provider is not entitled to use in any manner whatsoever any Intellectual Property Rights belonging to the Purchaser.

#### 18.9 **Survival**

Each licence granted under this Clause 18 and/or any liability arising in connection with the same shall survive the termination or expiry of this Agreement.

## 19 LIABILITY, INDEMNITIES

### 19.1 General Indemnity

19.1.1 Subject to Clause 19.1.2, the Service Provider shall be liable for and shall indemnify on demand on an after-Tax basis the Purchaser and any member of the TfL Group, including any of their respective employees, servants, agents, subcontractors, suppliers, directors, representatives and officers (each an "**Indemnified Party**" and together the "**Indemnified Parties**"), against all expenses, liabilities, losses, damages, claims, costs, demands, proceedings and Taxes whatsoever suffered or incurred or arising out of:

- (a) death or personal injury to any person;
- (b) any loss of, or damage to, any property or assets (including the TfL Premises, the Railway Infrastructure and the Plant and Machinery or any other item of Goods;
- (c) any third party actions, claims, demands, costs, charges and expenses (including legal expenses on an indemnity basis) brought against any Indemnified Party;
- (d) breach of statutory duty;
- (e) any Environmental Damage;

arising from or in connection with:

- (i) the performance or non-performance (including any negligent performance) of the obligations of the Service Provider, its Subcontractors or suppliers or the directors, agents, representatives or employees of any of them under or in connection with this Agreement;
- (ii) any acts or omissions, breach, negligence or wilful misconduct by the Service Provider.

19.1.2 The Purchaser does not require the indemnity to apply in relation to physical damage to the Plant and Machinery or injury to third parties or damage to third party property whilst the Plant and Machinery is under the care, custody or control of the Service Provider.

19.1.3 The remedy of Liquidated Damages set out in Clause 10.2 is the sole and exclusive remedy of the Purchaser in relation to breaches of the Performance Regime.

19.1.4 The Service Provider shall not be liable to indemnify any Indemnified Party under the indemnity in Clause 19.1.1 in the case of any loss referred to in Clauses 19.1.1(a) , 19.1.1(b) and 19.1.1(e) to the extent that it results from negligence, breach of duty or breach of Applicable Law on the part of any Indemnified Party.

19.1.5 The provisions of this Clause 19 shall survive termination or expiry of this Agreement for whatever reason.

## 19.2 Notification of claims procedures and assistance in defending claims

19.2.1 The Service Provider shall, as soon as reasonably practicable, notify the Purchaser of any actual or threatened claim (of whatever nature) in respect of which the Purchaser may seek to be indemnified and held harmless by the Service Provider under the provisions of this Agreement.

19.2.2 The Purchaser shall give to the Service Provider and any of its advisers such co-operation, access and assistance as any such person may reasonably require in defending claims in respect of which the Purchaser seeks to be indemnified by the Service Provider under this Agreement.

## 19.3 Consequential Breach and Loss

19.3.1 Neither Party shall be treated as being in breach of this Agreement if such breach arises as a direct, necessary and inevitable consequence of the occurrence of a breach thereof on the part of the other Party.

19.3.2 Neither Party shall be liable to the other for any matter howsoever arising out of or in connection with this Agreement (including in Clause 19.1.1) in respect of any Consequential Loss. Each Party respectively undertakes not to sue the other Party (or make a claim against that Party), TfL or any member of the TfL Group in respect of Consequential Loss. The Service Provider shall remain liable for any costs under clause 16.5.1(a) and which costs shall not be regarded as Consequential Loss for the purposes of this clause 19.3.2

## 19.4 Limit on Service Provider's Liability

19.4.1 Subject to Clause 19.4.2, the Service Provider's liability to the Indemnified Parties under this Agreement (whether arising in contract, tort (including negligence, breach of statutory duty or otherwise)) shall be limited to the amount stated in the Contract Particulars (j).

19.4.2 The Service Provider's liability to the Indemnified Parties under this Agreement in respect of the Excepted Liabilities shall not be subject to the limits referred to in Clause 19.4.1.

## 19.5 No Double Recovery

No Indemnified Party shall be entitled to recover (by way of indemnity or otherwise) more than once in respect of the same loss or damage suffered under this Agreement and/or any document entered into in connection with or pursuant to this Agreement. There shall be no duplication solely by reason of there being multiple beneficiaries to a claim hereunder.

## 19.6 Service Provider's Personnel

19.6.1 For the purposes of this Clause 19.6:

- (a) “**Current Service Provider**” means any person, company or other legal entity which on or before the Commencement Date was the employer of any of the Transferring Employees, and which (for the avoidance of doubt) may include the Purchaser;

- (b) “**Replacement Employer**” means any person to whom a Subsequent Relevant Employee may or does transfer under the Transfer Regulations on termination of the contract (or part of it);
- (c) “**Relevant Claims and Liabilities**” means all liabilities, obligations, proceedings, court or tribunal orders, losses, fines and penalties, damages, expenses, costs (including reasonable legal costs and disbursements) actions, claims and demands;
- (d) “**Subsequent Transfer Date**” means the time and date on which a Subsequent Relevant Employee transfers to a Replacement Employer by virtue of the Transfer Regulations;
- (e) “**Subsequent Relevant Employee**” means a person employed or engaged by the Service Provider or relevant Subcontractor from time to time in respect of any part of the Services who would transfer to a Replacement Employer by virtue of the Transfer Regulations on termination of the contract (or part of it);
- (f) “**Transfer Regulations**” means all or any of the following: TUPE; the Transfer of Employment (Pension Protection) Regulations 2005; any other or further regulations, order or statutory instrument which apply or are capable of applying to a person to whom section 257 of the Pensions Act 2004 applies, as amended, replaced or extended from time to time and including any regulations or other legislation which (either with or without modification) re-enacts, adopts, consolidates or enacts in rewritten form any such regulations; and
- (g) “**Transferring Employees**” means those employees of or those engaged by the Current Service Provider who transfer or have the right to transfer to the Service Provider under the Transfer Regulations.

19.6.2 The Service Provider complies and procures that its Subcontractors comply with any obligations which may arise out of a transfer to the Purchaser or another person under the Transfer Regulations upon the Expiry Date or earlier termination of this Agreement.

19.6.3 At any time during the last twelve (12) months of this Agreement and/or during any period of notice terminating this Agreement, the Purchaser may require the Service Provider to provide, within a specified period of being requested, to the Purchaser (or to any other person or persons nominated by the Purchaser) such information as is reasonably required by the Purchaser or such other persons relevant to the potential liabilities of the Purchaser or any other person arising under the Transfer Regulations including but not limited to information on the following:

- (a) the names of employees (of the Service Provider or its Subcontractors) engaged in providing the Services, their salaries and other conditions of employment, ages and length of service;

- (b) the method of organisation of the employees (of the Service Provider or its Subcontractors) engaged in providing the Services and documentary evidence relating to such organisation;
- (c) the proposals for informing and consulting with affected employees;
- (d) details of collective agreements and union recognition agreements; and
- (e) any other employee liability information within the meaning of the Transfer Regulations, and will in addition provide copies to the Purchaser upon request of any communication with any potential or intended new consultant or the Service Provider's employees or their representatives relating to the effect on such employees of the expiry or termination of this Agreement.

19.6.4 The Service Provider will provide the Purchaser upon request with the name and address of a person within its organisation to whom all queries and requests for information under this Clause 19.6 may be addressed. The Service Provider will if required by the Purchaser warrant that any information provided under this Clause 19.6 is accurate, complete and not misleading, including any information supplied in relation to its subcontractors.

19.6.5 The Service Provider will not and will procure that its Subcontractors will not in the three (3) months prior to the expiry or termination of this Agreement (or, where notice of termination is given of less than three (3) months, during any such period of notice) without the Purchaser's written consent:

- (a) re-organise or substantially alter the number or method of organisation or identity of the employees engaged in performing the Services, except to the extent that any such change is the result of a bona fide business reorganisation of the Service Provider or the relevant Subcontractor which is not related or confined to the employees engaged in providing the Services or relates to the expected expiry or termination of this Agreement; or
- (b) make any increase to the salaries or any significant change to the terms and conditions of employment of the employees engaged in the provision of the Services, except where such increases or changes would have arisen in the ordinary course of the Service Provider's or the relevant Subcontractor's business and are not related to the expiry or termination of this Agreement (either because they are applied to all of the Service Provider's or the relevant Subcontractor's employees, whether or not engaged in performing the Services (or otherwise) or are the result of a bona fide business reorganisation of the Service Provider or the relevant Subcontractor which is not related or confined to the employees engaged in the provision of the Services or relates to the expiry or termination of this Agreement).

19.6.6 Not used;

19.6.7 The Service Provider shall indemnify the Purchaser and all Replacement Employers against all Relevant Claims and Liabilities arising from or related to:

- (a) any claim by a Subsequent Relevant Employee in respect of any default, failure or omission (or alleged default, failure or omission) by any person whatsoever concerning or arising from employment before a Subsequent Transfer Date in respect of which the Purchaser or the Replacement Employer incurs liability cost or expense by reason of the operation (or alleged operation) of the Transfer Regulations; and
- (b) any claim by any former or existing employee of the Service Provider or relevant Subcontractor (other than a Subsequent Relevant Employee) in respect of which the Purchaser or a Replacement Employer incurs liability cost or expense by reason of the operation (or alleged operation) of the Transfer Regulations.

The provisions of this Clause 16.6.7 shall survive the expiry or termination of this Agreement for whatever reason.

- 19.6.8 In this Clause 19.6 “**Relevant Claims and Liabilities**” include those incurred by the Purchaser by reason of any contract term between the Purchaser and a Replacement Employer provided always that in relation to Relevant Claims and Liabilities which the Purchaser may incur to a Replacement Employer, the Service Provider shall not be required to indemnify the Purchaser or the Replacement Employer for more than or with a greater scope than it would if such Relevant Claims and Liabilities were made against or incurred by the Purchaser in providing an indemnity under this paragraph.
- 19.6.9 The provisions of this Clause 19.6 are without prejudice to the Transfer Regulations. For the avoidance of doubt, any remedies available to the Purchaser for any breach by the Service of any provision of this Clause 19.6 shall be in addition to and not in substitution for any remedies available to the Purchaser under any provision of the Transfer Regulations.
- 19.6.10 The Purchaser will (and shall procure that any Replacement Employer will) comply with Regulation 13(4) of TUPE, this Regulation 13(4) being a duty to inform and consult representatives.

## **20 INSURANCE**

The Service Provider and the Purchaser shall comply with the requirements of the insurance regime set out in Schedule 5 (*Insurance*).

## **21 FORCE MAJEURE EVENTS**

### **21.1 Notice of Force Majeure Event**

Neither Party shall be in breach of its obligations under this Agreement to the extent that it is unable to perform that obligation in whole or in part by reason of the occurrence of a Force Majeure Event provided that:

- 21.1.1 if any Party seeks to rely on this Clause 21.1.1 (the "**FM Affected Party**"), as soon as reasonably practicable and in any event no more than five (5) Working Days after the start of the claimed Force Majeure Event, the FM Affected Party shall notify the other Parties in writing of the act, event or circumstance relied on as a Force Majeure Event; and

21.1.2 within a further five (5) Working Days, the FM Affected Party shall notify the other Parties in writing of the date on which such act, event or circumstance commenced, including an estimate of the period of time required to overcome it and its effects, details of any failure by the FM Affected Party to perform its obligations under this Agreement, the effect on the FM Affected Party's ability to perform its obligations under this Agreement and the action being taken to mitigate its consequences in accordance with Clause 21.2 below.

## 21.2 **Mitigation**

21.2.1 An FM Affected Party shall:

- (a) make all reasonable efforts to mitigate the effects of the claimed Force Majeure Event (including, in the case of the Service Provider, complying with the requests of the Purchaser's Representative), to continue to perform its obligations under this Agreement and to resume performance as soon as possible;
- (b) shall furnish written reports every seven (7) days to the other Party on its progress in doing so and any proposals to mitigate the effect of the claimed Force Majeure Event, including any reasonable alternative means for performance of the affected obligations; and
- (c) shall provide any information relating to the claimed Force Majeure Event and its effects that the other Party may reasonably request.

21.2.2 The FM Affected Party shall not be relieved from liability under this Agreement to the extent that it is not able to perform its obligations under this Agreement due to its failure to comply with its obligations under Clause 21.2.1 above.

## 21.3 **Grounds for Termination due to a Force Majeure Event**

Either Party shall be entitled to terminate this Agreement by notice in writing (a "**FM Notice**") to the other Party if one or more Force Majeure Event persists for a continuous period of six (6) months. The provisions of Clause 21.4 shall apply in respect of such termination.

## 21.4 **Consequence of Termination due to a Force Majeure Event**

In the event of termination of this Agreement pursuant to Clause 21.3 each Party shall bear its own costs arising out of such termination and the Service Provider shall comply with its obligations under Clauses 16.5.1(b) to 16.5.1(e) inclusive, but excluding Clauses 16.5.1(e)(i) and 16.5.1(e)(iii), subject in each case to payment of an appropriate amount by the Purchaser to the Service Provider in respect of the Services provided and provided that, in the case of Clause 16.5.1(e)(ii), the Service Provider shall not be obliged to perform obligations from which it is excused under Clause 21 or to make payments to the Purchaser in respect of non performance of such obligations to the extent that such non performance was caused by the occurrence of the Force Majeure Event.

## 21.5 **Effect on payments**

If a Force Majeure Event results in the Service Provider being unable to carry out its obligations, the Purchaser shall cease to be liable to make any payment which would

otherwise have been due on fulfilment of that obligation until and to the extent that the Service Provider has performed that obligation.

#### 21.6 **Cessation of Force Majeure**

Immediately after the end of the Force Majeure Event, the FM Affected Party shall notify the other Party in writing that the Force Majeure Event has ended and shall resume performance of its obligations under this Agreement insofar as the Agreement has not been terminated in accordance with Clause 21.3.

#### 21.7 **Continuing Obligations**

The Parties shall not be released from any of their obligations under this Agreement as a result of a Force Majeure Event, and this Agreement shall, subject to Clause 21.3, remain in effect for the duration of a Force Majeure Event.

### 22 **CONFIDENTIALITY**

#### 22.1 **Obligations of Confidentiality**

Subject to Clause 22.2 the contents of this Agreement, any documents referred to in this Agreement and any information whether written or oral, provided by the Purchaser to the Service Provider or by the Service Provider to the Purchaser in connection with this Agreement shall be treated by the recipient as confidential ("**Confidential Information**"). The Purchaser and the Service Provider shall not (and shall procure that their respective subcontractors, suppliers, officers, employees, advisers and agents and the officers, employees, advisers and agents of its subcontractors and suppliers shall not) without the prior written consent of the other Party or by failure to exercise due care or otherwise by any act or omission:

22.1.1 disclose Confidential Information to any person whomsoever;

22.1.2 use or exploit Confidential Information commercially for its or their own purposes other than in connection with the performance of this Agreement; or

22.1.3 use Confidential Information otherwise than for the purpose for which it was provided.

#### 22.2 **Permitted Disclosure**

The restrictions in Clause 22.1 shall not apply to the disclosure of Confidential Information:

22.2.1 in accordance with any requirement under any Applicable Law (including pursuant to Clause 29) or TfL Standard to do so;

22.2.2 to the disclosing Party's respective professional advisers and auditors who are bound to such Party by a duty of confidentiality which applies to any information disclosed;

22.2.3 to any banks and financial institutions providing finance, or advising on or envisaging the provision of finance for any purpose in connection with this Agreement;

22.2.4 to any Competent Authority;

- 22.2.5 in the case of the Purchaser, to the Mayor of London and/or the Greater London Authority and/or the Secretary of State;
- 22.2.6 in the case of the Purchaser, to any member of the TfL Group;
- 22.2.7 to the extent that the relevant Confidential Information is in the public domain otherwise than by breach of this Agreement;
- 22.2.8 which was made available to the disclosing Party on a non-confidential basis;
- 22.2.9 which is required in connection with a disposition or other transfer of rights permitted in accordance with this Agreement;
- 22.2.10 which is required by law or by order of a Court of a competent jurisdiction (but only to the extent required by such law or order) to be disclosed in connection with any Dispute, litigation or other dispute resolution procedure; or
- 22.2.11 to any member of the Service Provider's Group for the purposes of the performance by the Service Provider of its obligations under this Agreement.

### 22.3 **Confidentiality Undertaking**

Where disclosure is permitted under Clause 22.2, other than Clauses 22.2.1, 22.2.2, 22.2.7 or 22.2.8, the Party disclosing the Confidential Information shall procure that the recipient of the Confidential Information shall be subject to the same obligations of confidentiality as that contained in this Agreement.

### 22.4 **Prior Notice of Disclosure**

If a Party becomes required in circumstances contemplated by Clauses 22.2.1 to 22.2.11 to disclose any Confidential Information, such Party shall give to the other Party as much notice as is practical in the circumstances of such disclosure and shall co-operate with the other Parties, having due regard to the other Parties' views, and take such steps as the other Parties may reasonably require in order to enable it to mitigate the effect of, or avoid the requirements for, any such disclosure. Where the disclosing Party giving notice is the Purchaser, it shall only be obliged to give notice to co-operate with, have due regard to the views of, and take steps as reasonably required by the Service Provider.

### 22.5 **Standard of Care**

In fulfilling its obligations under this Clause 22, each Party shall be required to use the same degree of care to prevent unauthorised disclosure of such Confidential Information as it would use to prevent the disclosure of its own commercial and financial information of the same or similar nature and which it considers proprietary or confidential.

### 22.6 **Announcements**

The Service Provider shall not (and shall procure that each Subcontractor and supplier shall not) without the prior written consent of the Purchaser (such consent not to be unreasonably withheld or delayed) advertise or otherwise give any publicity in any form to any matter relating to this Agreement or announce their involvement in the provision of technical support and material supply services for the Goods.

## 22.7 **Reputation**

The Service Provider shall not knowingly do or omit to do anything in relation to this Agreement which may bring the standing or reputation of any other Party into disrepute or otherwise attract adverse publicity in relation to the other Parties.

## 22.8 **Survival**

The obligations of the Parties under this Clause 22 shall survive the expiry or the termination of this Agreement for whatever reason.

## 23 **CONTRACT MANAGEMENT**

### 23.1 **General**

The Purchaser and the Service Provider agree to comply with their respective obligations as set out below.

### 23.2 **Representatives**

Each Party shall appoint (after consultation with the other Party) one or more Representatives to act on its behalf under this Agreement. Both Parties shall advise the other Party in writing prior to the date hereof of the name(s) and contact details of its Representative(s). Either Party may, on giving reasonable notice to the other Party, appoint an additional Representative or replace an existing Representative. Each Party shall be responsible for the acts, omissions, neglects and defaults of its Representative) as if such acts, omissions, neglects and defaults were the acts, omissions, neglects and defaults of that Party itself. Both Parties warrant that their Representative(s) has full authority to bind it in respect of any decision made or action taken by such Representative(s). For the avoidance of doubt "Representatives" shall include, the Service Provider's Representative and the Purchaser's Representative.

### 23.3 **Communication**

23.3.1 The Parties shall ensure that at all times the authorised Representative, or any other authorised representative, is available to receive, deal with, agree, advise on and explain what the current position is concerning any issues regarding this Agreement, including safety related issues affecting the Plant and Machinery and day to day operational and incident management.

23.3.2 The Parties shall establish appropriate procedures and points of contact for such consultation, liaison and communication.

23.3.3 The Purchaser may use the ASITE Contract Administration Management System ("ASITE") in order to support the commercial administration of this Agreement. If the Purchaser elects to use ASITE:

- (a) the Parties shall use ASITE for all notices required to be issued under this Agreement, including Variation Quotes, Variation Valuations and payment applications made by the Service Provider pursuant to Clause 11.2;
- (b) the Purchaser shall provide the Service Provider with access to ASITE at no additional cost to the Service Provider; and

- (c) the Purchaser shall provide the Service Provider with training on how to use ASITE if required.

#### 23.4 **Contract Management Meetings**

- 23.4.1 A contract management meeting shall be held on a monthly basis on a date and time as agreed between the Parties acting reasonably (the "**Contract Management Meeting**"), and whenever any Party reasonably believes that the performance of another Party's obligations has fallen below an acceptable level (the "**Additional Contract Management Meeting**").
- 23.4.2 Each Contract Management Meeting shall be attended by the Purchaser's Representative or a delegate of the Purchaser's Representative and the Service Provider's Representative or a delegate of the Service Provider's Representative and one or more Senior Representatives of the Service Provider with relevant expertise to consider the agenda items for the Contract Management Meeting.
- 23.4.3 The Purchaser shall take minutes at each Contract Management Meeting which shall be approved by the Service Provider's Representative at the following Contract Management Meeting.
- 23.4.4 The agenda for the Contract Management Meeting shall be agreed by the Parties acting reasonably and may include any of the elements set out in Clause 23.4.6. Each Party shall give reasonable notice to the other Parties of any other items it proposed to be added to the Contract Management Meeting agenda. The final agenda for the meeting shall be published no later than one (1) week prior to the scheduled date of the Contract Management Meeting.
- 23.4.5 The location of any Contract Management Meeting shall be notified alternately by the Parties, unless otherwise agreed, with the location of the first meeting to be specified by the Service Provider.
- 23.4.6 The agenda for a Contract Management Meeting and/or an Additional Contract Management Meeting may include any of the following:
  - (a) a review of minutes from the previous meeting;
  - (b) review of the content of the relevant Performance Report, including performance risk evaluation;
  - (c) reconciliation of Liquidated Damages claims;
  - (d) a review of costs incurred in the preceding Payment Period;
  - (e) a review of the status of current and proposed Variations;
  - (f) a review of audits and audit plans;
  - (g) a review of safety performance and/or quality performance;
  - (h) a review of completed Work Return Forms;
  - (i) a review of the reliability, availability, maintainability and safety of the Services (including failures and Faults);

- (j) reporting on past health, safety and environmental compliance;
- (k) a review of the amendments to the Manuals and training requirements;
- (l) a review of suppliers and Subcontractors;
- (m) relationship review;
- (n) complaints or concerns by the Purchaser regarding alleged underperformance or non-performance by the Service Provider of any of its obligations under this Agreement;
- (o) any other business; and
- (p) planning of the date and location of the next Contract Management Meeting.

23.4.7 Where the Purchaser raises a complaint or concern through a Contract Management Meeting regarding alleged underperformance or non-performance by the Service Provider of any of its obligations under this Agreement, the Service Provider's Representative shall:

- (a) promptly investigate the possible causes of the complaint or concern;
- (b) at the Contract Management Meeting immediately following the date on which the Purchaser raised the complaint or concern and at each subsequent Contract Management Meeting until the date the Purchaser notifies the Service Provider that the complaint or concern has been resolved to the Purchaser's satisfaction:
  - (i) communicate to the Purchaser's Representative any findings by the Service Provider of the investigation described in Clause 23.4.7(a); and
  - (ii) identify the course of action the Service Provider proposes to take or has undertaken (as the case may be) to resolve the Purchaser's complaint or concern; and
- (c) monitor the Service Provider's performance of the obligations under this Agreement relevant to the Purchaser's complaint or concern until the date the Purchaser notifies the Service Provider that the complaint or concern has been resolved to the Purchaser's satisfaction.

## 23.5 Performance Reports

23.5.1 No later than two (2) Working Days prior to each Contract Management Meeting, the Service Provider shall ensure that the Purchaser receives two copies of the Performance Report relating to the period (to be agreed by the Parties) immediately preceding that Contract Management Meeting.

23.5.2 The Service Provider shall provide the Purchaser, within a reasonable time following a request, any additional performance and other reports as are required by the Purchaser.

### 23.6 Mobilisation Programme

- 23.6.1 The Service Provider shall, within the period stated in the Contract Particulars (m), submit a mobilisation programme to the Purchaser for acceptance.
- 23.6.2 The programme shall be provided in the format stated in the Contract Particulars(n);
- 23.6.3 The mobilisation programme shall make clear the activities (and showing sufficient detail) by which the Service Provider proposes to achieve the start of services, and which activities include: obtaining regulatory permissions or licenses, recruitment and deployment of staff, training of staff, design and deployment of systems and processes;
- 23.6.4 The mobilisation programme shall include the following dates: Commencement Date, train delivery dates, end of train testing and trial running;
- 23.6.5 The programme shall make clear the start date, end date and duration of activities and any linkages or dependencies between activities.
- 23.6.6 The programme shall make clear any dependencies on activities undertaken by the Purchaser or any third party.

### 23.7 Maintenance Meetings

- 23.7.1 A maintenance meeting shall be held:
- (a) during the period between the date of this Agreement and the date that is the three (3) month anniversary of this Agreement, on a weekly basis on date(s) and at time(s) agreed between the Parties acting reasonably, in order to discuss the delivery of Maintenance Activities under this Agreement;
  - (b) during the period between the date that is the three (3) month anniversary of this Agreement and the termination or expiry of this Agreement, on a monthly basis on date(s) and at time(s) agreed between the Parties acting reasonably, in order to discuss the delivery of the Maintenance Activities under this Agreement; and
  - (c) on an ad-hoc basis from time to time when requested by either of the Parties, on a date and at a time as agreed between the Parties acting reasonably, in order to address any urgent issues in relation to the delivery of the Maintenance Activities under this Agreement which cannot be deferred until the next meeting described in Clauses 23.7.1(a) and 23.7.1(b) above takes place,
- (together, a "**Maintenance Meeting**").
- 23.7.2 The Maintenance Meeting shall be held at the Designated Depot or such other location as agreed between the Parties acting reasonably.
- 23.7.3 Each Maintenance Meeting shall be representatives nominated by each Party with relevant expertise to consider the agenda items for the Maintenance Meeting.

- 23.7.4 The Purchaser shall take minutes at each Maintenance Meeting which:
- (a) the Purchaser shall circulate to the Service Provider in a reasonable period of time following the Maintenance Meeting;
  - (b) shall set out in detail any actions to be performed by either Party that were agreed between the Parties during the Maintenance Meeting; and
  - (c) shall set out any timeframe agreed between the Parties at the Maintenance Meeting for delivering the actions described in Clause 23.7.4(b) above.
- 23.7.5 The agenda for the Maintenance Meeting shall be issued by the Purchaser acting reasonably and may include any of the elements set out in Clause 23.7.6. Each Party shall give reasonable notice to the other Parties of any other items it proposed to be added to the Maintenance Meeting agenda. The final agenda for the meeting shall be published no later than one (1) week prior to the scheduled date of the Maintenance Meeting.
- 23.7.6 The agenda of the Maintenance Meetings may include any of the following:
- (a) a review of minutes from the previous meeting;
  - (b) a review of maintenance issues in relation to the delivery of the Services identified by the Service Provider or the Purchaser;
  - (c) a review of the use, storage and condition of Spares, Special Tools and other equipment provided by the Purchaser;
  - (d) ideas for the improvement of the use and storage of Spares, Special Tools and other equipment provided by the Purchaser;
  - (e) costs to be incurred in the next Payment Period in relation to the performance of the Services;
  - (f) planning for future Shifts (including issue of Shift Confirmation Notices);
  - (g) planning for the Service Provider's future Spares, Special Tools and other equipment requirements;
  - (h) ideas to improve the delivery of Maintenance Activities under this Agreement;
  - (i) health, safety and environmental compliance planning;
  - (j) potential changes affecting this Agreement;
  - (k) amendments to the Manuals and training requirements;
  - (l) planning for the date of the next Maintenance Meeting; and
  - (m) any other business.

## 23.8 **Operations Meetings**

- 23.8.1 An operations meeting shall be held:

- (a) during the period between the date of this Agreement and the date that is the three (3) month anniversary of this Agreement, on a weekly basis on date(s) and at time(s) agreed between the Parties acting reasonably, in order to discuss the delivery of Operational Activities under this Agreement;
- (b) during the period between the date that is the three (3) month anniversary of this Agreement and the termination or expiry of this Agreement, on a monthly basis on date(s) and at time(s) agreed between the Parties acting reasonably, in order to discuss the delivery of Operational Activities under this Agreement; and
- (c) on an ad-hoc basis from time to time when requested by either of the Parties, on a date and at a time as agreed between the Parties acting reasonably, in order to address any urgent issues in relation to the delivery of Operational Activities under this Agreement which cannot be deferred until the next meeting described in Clauses 23.8.1(a) and 23.8.1(b) above takes place,

(together, an "**Operations Meeting**").

- 23.8.2 The Operations Meeting shall be held at the Designated Depot or such other location as agreed between the Parties acting reasonably.
- 23.8.3 Each Operations Meeting shall be attended by representatives nominated by each Party with relevant expertise to consider the agenda items for the Operations Meeting.
- 23.8.4 The Purchaser shall take minutes at each Operations Meeting which:
- (a) the Purchaser shall circulate to the Service Provider in a reasonable period of time following the Operations Meeting;
  - (b) shall set out in detail any actions to be performed by either Party that were agreed between the Parties during the Operations Meeting; and
  - (c) shall set out any timeframe agreed between the Parties at the Operations Meeting for delivering the actions described in Clause 23.8.4(b) above.
- 23.8.5 The agenda for the Operations Meeting shall be issued by the Purchaser acting reasonably and may include any of the elements set out in Clause 23.8.6. Each Party shall give reasonable notice to the other Parties of any other items it proposed to be added to the Operations Meeting agenda. The final agenda for the Operations Meeting shall be published no later than one (1) week prior to the scheduled date of the Operations Meeting.
- 23.8.6 The agenda of the Operations Meeting may include any of the following:
- (a) minutes of the previous meeting;
  - (b) operational issues in relation to the delivery of the Services identified by the Service Provider or the Purchaser;

- (c) a review of upcoming work and progress on any planned activities, for example in relation to any possessions;
- (d) a review of ideas to improve the delivery of Operational Activities under this Agreement;
- (e) reporting on health, safety and environmental compliance;
- (f) planning of the date of the next Operations Meeting; and
- (g) any other business.

#### **23.9 Exceptional planning activities**

The Purchaser may require the Service Provider to attend ad-hoc planning meetings from time to time on the date(s) and time(s) notified to the Service Provider by the Purchaser for the purpose of planning any large scale activities (such as week-52 possessions). The Service Provider may be required as part of such meetings to produce any planning submissions that may be required by the Purchaser in connection with such large scale activities.

### **24 WAIVER AND VARIATION**

Except as expressly stated in this Agreement no failure or delay by either Party to this Agreement at any time to enforce any of the provisions of this Agreement shall be construed as a waiver by such Party of such provision or in any way affect the validity of this Agreement or any part of it, the respective rights of the Parties (whether arising under this Agreement or under the general law) shall not be capable of being waived or varied otherwise than by an express waiver or variation in writing.

### **25 SURVIVAL**

#### **25.1 Consequence of termination or expiry**

Upon termination or expiry of this Agreement:

25.1.1 the obligations of the Parties under this Agreement shall cease except for:

- (a) any rights and obligations arising as a result of any antecedent breach of this Agreement or any rights and obligations which shall have accrued or become due prior to the date of termination; and
- (b) the provisions of Clauses 1, 5, 11, 16.5, 16.9, 18, 19, 20, 21.4, 22, 23.9, 25, 26, 27, 28, 29, 33, 40, 41, 42, 43, 44, 46 and the related Schedules referred to in or required to give effect to those Clauses which shall survive the termination or expiry of this Agreement and continue in full force and effect.

### **26 LANGUAGE**

All documentation or information required or produced in the course of or in connection with a Party's performance of this Agreement shall be in English.

## 27 ENTIRE AGREEMENT

This Agreement supersedes any previous written or oral agreement between the Parties in relation to the matters dealt with in this Agreement and contains the whole agreement between the Parties relating to the subject matter of this Agreement at the date hereof to the exclusion of any terms implied by law which may be excluded by contract, and shall not be varied otherwise than by an instrument in writing of even date herewith or subsequent hereto executed by or on behalf of each of the Parties hereto. Each Party acknowledges that it has not been induced to enter into this Agreement by any representation, warranty or undertaking not expressly incorporated into it, So far as permitted by law and except in the case of fraud, each Party agrees and acknowledges that its only rights and remedies in relation to any representation, warranty or undertaking made or given in connection with this Agreement shall be a breach of the terms of this Agreement to the exclusion of all other rights and remedies (including those in tort or arising under statute). In this Clause 27 "this Agreement" includes all documents entered into pursuant to this Agreement.

## 28 SEVERABILITY AND ILLEGALITY

### 28.1 Severance

If at any time any one or more of the provisions of this Agreement becomes invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

### 28.2 Performance unlawful etc

If, at any time after the date of this Agreement, the introduction, imposition, variation or change of any Applicable Laws or TfL Standards makes it unlawful or impossible without breaching that Applicable Laws or TfL Standards for a Party (an "**Affected Party**") to give effect to its obligations under this Agreement, then the Affected Party shall notify the other Party of the nature of the circumstances on becoming aware of them.

### 28.3 Mitigation

28.3.1 Without prejudice to any other terms of this Agreement, the Parties shall discuss in good faith any reasonable methods of avoiding the effects of any such introduction, imposition, variation or change referred to in Clause 28.2. including, subject to obtaining any necessary consents, transferring its rights and obligations under the relevant document to any other person, acceptable to the other Parties (at such other party Party's absolute discretion) not affected by that introduction, imposition, variation or change of any Applicable laws or TfL Standards.

28.3.2 The Service Provider and the Purchaser shall be under a duty to mitigate any damages and losses in respect of which they make a claim under an indemnity or otherwise pursuant to this Agreement.

### 28.4 Failure to avoid illegality

If, notwithstanding the provisions of Clause 28.3, the Affected Party is unable to avoid the matters contemplated by Clause 28.2, or the Parties hereto fail to agree on a proposal to avoid its effects, this Agreement in relation to the provision of Services may be terminated by the Affected Party and each Party will bear its own costs.

## **29 FREEDOM OF INFORMATION**

- 29.1 The Service Provider acknowledges that the Purchaser:
- 29.1.1 is subject to the FOI Legislation and agrees to assist and co-operate with the Purchaser to enable the Purchaser to comply with its obligations under the FOI Legislation, and
  - 29.1.2 may be obliged under the FOI Legislation to disclose Information without consulting and/or obtaining consent from the Service Provider.
- 29.2 Without prejudice to the generality of Clause 29.1, the Service Provider agrees and shall procure that its Subcontractors and suppliers (if any) will agree to:
- 29.2.1 transfer to the Purchaser or such other persons as may be notified by the Purchaser to the Service Provider each Information Request relevant to this Agreement or any member of the TfL Group that the Service Provider or its Subcontractors (if any) (as the case may be) receive as soon as practicable and in any event within three (3) days of receiving such Information Request; and
  - 29.2.2 in relation to Information held by the Service Provider on behalf of the Purchaser, provide the Purchaser with details about and/or copies of all such Information that the Purchaser requests and provide such details and/or copies within six (6) days of a request from the Purchaser (or such other period as the Purchaser may reasonably specify), and in such forms as the Purchaser may reasonably specify.
- 29.3 The Purchaser (as may be directed by TfL) shall be responsible for determining whether Information is exempt or excepted information under the FOI Legislation and for determining what Information (if any) will be disclosed in response to an Information Request in accordance with the FOI Legislation. The Service Provider shall not himself respond to any person making an Information Request, save to acknowledge receipt, unless expressly authorised to do so in writing by the Purchaser.
- 29.4 The Service Provider acknowledges that the Purchaser (as may be directed by TfL) may be obliged under the FOI Legislation to disclose Information without consulting or obtaining consent from the Service Provider.

## **30 RESPONSIBLE PROCUREMENT**

- 30.1 The Service Provider shall have regard to the Responsible Procurement Principles and shall comply at all times with the Responsible Procurement Principles insofar as they are relevant to this Agreement, the Service Provider and/or any Subcontractor.

## **31 CRIME AND DISORDER**

- 31.1 The Service Provider acknowledges that the Purchaser is under a duty in accordance with Section 17 of the Crime and Disorder Act 1998 to:
- 31.1.1 have due regard to the impact of crime, disorder and community safety in the exercise of the Purchaser's duties;
  - 31.1.2 where appropriate, identify actions to reduce levels of crime and disorder; and

- 31.1.3 without prejudice to any other obligation imposed on the Purchaser, exercise his functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area,

and in the performance of this Agreement the Service Provider shall assist and co-operate, and use its reasonable endeavours to procure that its Subcontractors assist and co-operate, with the Purchaser where possible to enable the Purchaser to satisfy its duty.

## **32 LONDON LIVING WAGE**

- 32.1 The Service Provider acknowledges and agrees that the Mayor of London, pursuant to section 155 of the GLA Act, has directed the TfL Group (including the Purchaser) to ensure that the London Living Wage is paid to anyone engaged by the TfL Group who is required to perform contractual obligations in Greater London or on the TfL Premises.
- 32.2 Without prejudice to the generality of Clause 32.1, the Service Provider shall and shall procure that its Subcontractors (if any) shall:
- 32.2.1 ensure that none of its employees engaged in the performance of this Agreement in Greater London or on the TfL Premises (but not otherwise) is paid an hourly wage (or equivalent of an hourly wage) less than the London Living Wage;
- 32.2.2 ensure that none of his employees engaged in the performance of this Agreement is paid less than the amount to which they are entitled in their respective contracts of employment; and
- 32.2.3 co-operate and provide all reasonable assistance to the Purchaser and any member of the TfL Group in monitoring the effect of the London Living Wage.

## **33 DATA TRANSPARENCY**

- 33.1 The Service Provider acknowledges that the Purchaser is subject to the Transparency Commitment. Accordingly, notwithstanding any provisions of this Agreement relating to the FOI Legislation or confidentiality, the Service Provider hereby gives its consent for the Purchaser to publish the Contract Information to the general public.
- 33.2 The Purchaser may in its absolute discretion redact all or part of the Contract Information prior to its publication. In so doing and in its absolute discretion the Purchaser may take account of the exemptions/exceptions that would be available in relation to information requested under the FOI Legislation. The Purchaser may in its absolute discretion consult with the Service Provider regarding any redactions to the Contract Information to be published pursuant to Clause 33.1. The Purchaser shall make the final decision regarding publication and/or redaction of the Contract Information.

## **34 DATA PROTECTION AND CYBER SECURITY**

- 34.1 The Service Provider shall comply with all of its obligations under the Data Protection Legislation.
- 34.2 The Service Provider shall follow the 10 Steps to Cyber Security issued by the National Cyber Security Centre (or equivalent or replacement guidance or requirements in place from time to time).

### 35 CONFLICT OF INTEREST

- 35.1.1 The Service Provider acknowledges and agrees that it does not have any interest in any matter where there is or is reasonably likely to be a conflict of interest with performing this Agreement or any member of the TfL Group, save to the extent fully disclosed to and approved in writing by the Purchaser.
- 35.1.2 The Service Provider shall undertake ongoing and regular conflict of interest checks throughout the Agreement Duration and in any event not less than once in every six (6) months and shall notify the Purchaser in writing immediately on becoming aware of any actual or potential conflict of interest with performing this Agreement or any member of the TfL Group and work with the Purchaser to do whatever is necessary (including the separation of staff working on and/or data relating to this Agreement from the matter in question) to manage such conflict to the Purchaser's satisfaction and provided that, where the Purchaser is not so satisfied (in its absolute discretion), the Purchaser shall be entitled to serve written notice terminating this Agreement in whole or in part with immediate effect. In the event that this Agreement is terminated in accordance with this Clause 35, Clause 16.5 shall apply.

### 36 CRIMINAL RECORDS DECLARATION

- 36.1 The Service Provider shall procure from each Relevant Individual (as the case may be) a declaration that he has no Relevant Convictions ("**Declaration**") or disclosure of any Relevant Convictions he has committed. The Service Provider shall confirm to the Purchaser in writing on an annual basis upon request that each Relevant Individual has provided a Declaration. The Service Provider shall procure that a Relevant Individual notifies the Service Provider immediately if he commits a Relevant Conviction throughout the Agreement Duration and the Service Provider shall notify the Purchaser in writing immediately on becoming aware that a Relevant Individual has committed a Relevant Conviction.
- 36.2 The Service Provider shall not engage or allow to act on behalf of the Service Provider or any Subcontractor in the performance of any aspect of this Agreement any Relevant Individual who has disclosed a Relevant Conviction.
- 36.3 The Purchaser may audit and check any and all such records of the Service Provider as are necessary in order to monitor compliance with this Clause 36 at any time during performance of this Agreement.
- 36.4 If the Service Provider fails to comply with the requirements under Clause 36.1 and/or 36.2, the Purchaser may, without prejudice to its rights under Clause 36.5, serve notice on the Service Provider requiring the Service Provider to immediately take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the performance of any aspect of this Agreement unless (in the case of non-compliance with Clause 36.1) within seven (7) days of receipt of the notice the Service Provider confirms to the Purchaser that it has procured all of the Declarations required under Clause 36.1.
- 36.5 A persistent breach of Clause 36.1 and/or 36.2 by the Service Provider shall constitute a material breach of this Agreement and shall entitle the Purchaser to serve written notice terminating this Agreement in whole or in part with immediate effect. In the event that this Agreement is terminated in accordance with this Clause 36, Clause 16.5 shall apply.

- 36.6 If either Party becomes aware that a Relevant Individual has committed a Relevant Conviction, the Service Provider shall take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the performance of any aspect of this Agreement.
- 36.7 Nothing in this Clause 36 in any way waives, limits or amends any obligation of the Service Provider to the Purchaser arising under this Agreement and the Service Provider's obligation to perform this Agreement remains in full force and effect and the Service Provider cannot claim any extra costs or time as a result of any actions under this Clause 36.
- 36.8 The Service Provider confirms that, for the Agreement Duration, its corporate security and personnel processes are sufficient to ensure that no personnel with a Relevant Conviction will carry out any aspect of this Agreement.

### **37 BEST VALUE**

- 37.1 The Service Provider acknowledges that the Purchaser is a best value authority for the purposes of the Local Government Act 1999 and as such the Purchaser is required to make arrangements to secure continuous improvement in the way they exercise their functions, having regard to a combination of economy, efficiency and effectiveness. The Service Provider shall assist the Purchaser to discharge this duty and agrees to negotiate in good faith any changes to this Agreement in order for the Purchaser to achieve best value.

### **38 WORK RELATED ROAD RISK**

#### **38.1 Definitions**

- 38.1.1 For the purposes of Clauses 38.2 to 38.10 (inclusive) and Schedule 10 of this Agreement, the following expressions shall have the following meanings:

- “Approved Progressive Training”** An ongoing programme of personal development that uses a combination of theoretical, e-learning, practical and on the job training to ensure Drivers have the knowledge, skills and attitude to operate safely on urban roads and shall include:
- (a) Safe Urban Driving (“SUD”) training to be undertaken every five (5) years; or
  - (b) a training course, which in the reasonable opinion of the Purchaser is an acceptable substitute to SUD; and
  - (c) one safety related FORS e-learning module to be undertaken every twelve (12) months;
- “Bronze Accreditation”** the minimum level of accreditation within the FORS Standard, the requirements of which are more particularly described at:
- [www.fors-online.org.uk](http://www.fors-online.org.uk)
- “Category N2 Lorry”** means a vehicle designed and constructed for the carriage of goods having a MAM exceeding 3,500

	kilograms but not exceeding 12,000 kilograms;
<b>“Category N3 Lorry”</b>	means a vehicle designed and constructed for the carriage of goods and having a MAM exceeding 12,000 kilograms;
<b>“Car-derived Van”</b>	a vehicle based on a car, but with an interior that has been altered for the purpose of carrying larger amounts of goods and/or equipment;
<b>“Collision Report”</b>	a report detailing all collisions during the previous twelve (12) months involving injuries to persons or fatalities;
<b>“Delivery and Servicing Vehicle”</b>	a Lorry, a Van or a Car-derived Van;
<b>“Driver”</b>	any employee of the Service Provider (including an agency or contracted driver), who operates Delivery and Servicing Vehicles on behalf of the Service Provider while providing the Goods and Services;
<b>“DVLA”</b>	Driver and Vehicle Licensing Agency;
<b>“Direct Vision Standard” or “DVS”</b>	Direct Vision Standard, a performance based assessment and rating tool, as updated from time to time that measures how much direct vision a Driver has from a Category N3 Lorry cab in relation to other road users. Further information can be found at: <a href="http://www.tfl.gov.uk">www.tfl.gov.uk</a>
<b>“FORS”</b>	the Fleet Operator Recognition Scheme, which is an accreditation scheme for businesses operating van and lorry fleets. It offers impartial, independent advice and guidance to motivate companies to improve their compliance with relevant laws and their environmental, social and economic performance;
<b>“FORS Standard”</b>	the standard setting out the accreditation requirements for the Fleet Operator Recognition Scheme, a copy of which can be found at: <a href="http://www.fors-online.org.uk">www.fors-online.org.uk</a>
<b>“Gold Accreditation”</b>	the highest level of accreditation within the FORS Standard, the requirements of which are more particularly described at: <a href="http://www.fors-online.org.uk">www.fors-online.org.uk</a>
<b>“Lorry”</b>	a vehicle with a MAM exceeding 3,500 kilograms;

<b>“MAM”</b>	the maximum authorised mass of a vehicle or trailer including the maximum load that can be carried safely while used on the road;
<b>“Side Underrun Protection”</b>	devices that are fitted between the front and rear axles of Lorries which comply with EC Directive 89/297/EEC and the Road Vehicles (Construction and Use) Regulations 1986;
<b>“Silver Accreditation”</b>	the intermediate level of accreditation within the FORS Standard, the requirements of which are more particularly described at:  <a href="http://www.fors-online.org.uk">www.fors-online.org.uk</a>
<b>“Van”</b>	a vehicle with a MAM not exceeding 3,500 kilograms.

### 38.2 Fleet Operator Recognition Scheme Accreditation

38.2.1 Where the Service Provider operates Delivery and Servicing Vehicles to provide the Goods and Services, it shall within 90 days of the date of this Agreement:

- (a) (unless already registered) register for FORS or a scheme, which in the reasonable opinion of Purchaser, is an acceptable substitute to FORS (the “Alternative Scheme”); and
- (b) (unless already accredited) have attained the standard of Bronze Accreditation (or higher) or the equivalent within the Alternative Scheme and shall maintain the standard of Bronze Accreditation (or equivalent standard within the Alternative Scheme) by way of an annual independent assessment in accordance with the FORS Standard or take such steps as may be required to maintain the equivalent standard within the Alternative Scheme. Alternatively, where the Service Provider has attained Silver or Gold Accreditation, the maintenance requirements shall be undertaken in accordance with the periods set out in the FORS Standard.

### 38.3 Safety Features on Lorries

38.3.1 The Service Provider shall ensure that every Lorry, which it uses to provide the Goods and Services, shall have:

- (a) Side Underrun Protection fitted at a height not exceeding 550mm from the ground, unless the Service Provider can demonstrate to the reasonable satisfaction of Purchaser that the Lorry will not perform the function for which it was built if the Side Underrun Protection is fitted;
- (b) Front Underrun Protection fitted at a height not exceeding 400mm from the ground, unless the Service Provider can demonstrate to the reasonable

satisfaction of the Purchaser that the Lorry will not perform the function for which it was built if the Front Underrun Protection is fitted;

- (c) equipment fitted with an audible means of warning other road users of the Lorry's left manoeuvre;
- (d) prominent signage on the Lorry to warn cyclists and other road users of the dangers of the Lorry's near side blind spot and of getting too close to the Lorry; and
- (e) front, side and rear blind spots completely eliminated or minimised as far as practical and possible, through the use of direct vision, fully operational indirect vision aids and driver audible alerts.

#### 38.4 **Direct Vision Standard**

38.4.1 Where applicable:

- (a) the Service provide shall comply with the Heavy Goods Vehicle Direct Vision Standard contained at Schedule 10 of this Agreement; and
- (b) the Service Provider shall ensure that:
  - (i) from and including 1 October 2018, all Category N3 Lorries used in the provision of the Goods and Services achieve a minimum of a one (1) star Direct Vision Standard rating;
  - (ii) from and including 1 April 2020 all Category N3 Lorries used in the provision of the Goods and Services achieve a minimum of three (3) star Direct Vision Standard rating; and
  - (iii) so far as reasonably practicable, the conditions at all sites and locations within the control of the Service Provider where:
    - (A) the Goods and Services are being delivered, or
    - (B) in connection with the performance of the Goods and Services, any waste is being disposed of or supplies are being delivered to or from,

are appropriate for each Category N2 lorry and Category N3 Lorry being used in the provisions of the Goods and Services. The Service Provider shall not incur any costs or make any changes to the site(s) without the prior written consent of the Authority.

#### 38.5 **Driver Licence Checks**

38.5.1 Where the Service Provider operates Delivery and Servicing Vehicles to provide the Goods and Services, the Service Provider shall ensure that:

- (a) it has a system in place to ensure all its Drivers hold a valid driving licence for the category of vehicle that they are tasked to drive, along

with recording any endorsements, or restrictions on the Drivers licence;  
and

- (b) each of its Drivers engaged in the provision of the Goods and Services has a driving licence check with the DVLA or such equivalent before that Driver commences delivery of the Goods and Services and that the driving licence check with the DVLA or equivalent authority is repeated in accordance with either the following risk scale (in the case of the DVLA issued licences only), or the Service Provider's risk scale, provided that the Service Provider's risk scale has been approved in writing by Purchaser within the last 12 months:
  - (i) 0 – 5 points on the driving licence – annual checks;
  - (ii) 6 – 8 points on the driving licence – quarterly checks; or
  - (iii) 9 or more points on the driving licence – monthly checks.

### 38.6 **Driver Training**

38.6.1 Where the Service Provider operates Delivery and Servicing Vehicles to supply the Goods and Services the Service Provider shall ensure that each of its Drivers attends Approved Progressive Training throughout the Agreement Duration.

### 38.7 **Collision Reporting**

38.7.1 Where the Service Provider operates Delivery and Servicing Vehicles to supply the Goods and Services, the Service Provider shall:

- (a) ensure that it has a system in place to capture, investigate and analyse road traffic collisions that results in fatalities, injury or damage to vehicles, persons or property and for generating Collision Reports; and
- (b) within 15 days of the Commencement Date, provide to the Purchaser a Collision Report. The Service Provider shall provide to Purchaser an updated Collision Report within five (5) working days of a written request from Purchaser.

### 38.8 **Self-Certification of Compliance**

38.8.1 Where the Service Provider operates Delivery and Servicing Vehicles to supply the Goods and Services, within 90 days of the Commencement Date, the Service Provider shall make a written report to Purchaser detailing its compliance with Clauses 38.2.1, 38.3.1, 38.4.1, 38.5.1, 38.6.1 and 38.7.1 of this Agreement (the “**WRRR Self-certification Report**”). The Service Provider shall provide updates of the WRRR Self-certification Report to Purchaser on each three (3) month anniversary of its submission of the initial WRRR Self-certification Report.

### 38.9 **Obligations of the Service Provider regarding subcontractors**

38.9.1 The Service Provider shall ensure that those of its sub-contractors who operate Category N2 Lorries, Category N3 Lorries, Vans and/or Car-derived Vans to supply the Goods and Services shall comply with the corresponding provisions of this Agreement:

- (a) Clause 38.2.1;
  - (b) for Category N2 Lorries – Clauses 38.3.1, 38.5.1, 38.6.1, 38.7.1 and 38.8.1;
  - (c) for Category N3 Lorries – Clauses 38.3.1, 38.4.1, 38.5.1, 38.6.1, 38.7.1, 38.8.1 and, where applicable, the appropriate provisions of the heavy Goods Vehicle Direct Vision Standard Schedule; and
  - (d) for Vans and Car-Derived Vans – Clauses 38.6.1, 38.7.1 and 38.8.1,
- as if those subcontractors were a party to this Agreement.

### 38.10 Failure to Comply with Work Related Road Risk Obligations

38.10.1 Without limiting the effect of any other clause of this Agreement relating to termination, if the Service Provider fails to comply with any of Clauses 38.2.1, 38.3.1, 38.5.1, 38.6.1, 38.7.1, 38.8.1 and/or 38.9.1:

- (a) the Service Provider has committed a material breach of this Agreement; and
- (b) the Purchaser may refuse the Service Provider, its employees, agents and Delivery and Servicing Vehicles entry onto any property that is owned, occupied or managed by Purchaser for any purpose (including but not limited to deliveries).

## 39 COSTS

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

## 40 ASSIGNMENT

### 40.1 Assignment, Transfer and Subcontracting by the Service Provider

#### *Subcontracting*

40.1.1 The Service Provider may subcontract its obligations under this Agreement either in whole or in part to any Subcontractor provided that:

- (a) the written consent of the Purchaser is obtained by the Service Provider prior to the Service Provider entering into any Subcontract; and
- (b) the Service Provider shall notify the Purchaser in writing of the name, contact details and details of the legal representatives of any Subcontractor.

40.1.2 In granting such consent pursuant to Clause 40.1.1(a), the Purchaser may require the Service Provider to procure that a Subcontractor duly executes and delivers to the Purchaser, within fifteen (15) Working Days of the date of the relevant Subcontract, a deed of warranty in the form set out at Schedule 8 (*Form of Deed of Warranty*).

- 40.1.3 The Service Provider shall be fully responsible for any act, neglect, default or breach of this Agreement by any Subcontractor or supplier or the directors, agents, representatives or employees of the Service Provider or of any of its Subcontractors or suppliers as if such act, neglect, default or breach had been carried out by the Service Provider.
- 40.1.4 The Service Provider agrees that any Subcontractors who supply safety critical materials or services will be approved by the Purchaser in accordance with all Applicable Laws and all applicable TfL Standards and in accordance with the Safety Plan and the Quality Plan.
- 40.1.5 The Service Provider shall ensure that it includes in any Subcontract provisions on substantially similar terms to Clause 11 (*Payments*).
- 40.1.6 The Purchaser reserves the right to verify whether there are any grounds for excluding any Subcontractor under Regulation 57 of the Public Contracts Regulations 2015. Where necessary for the purpose of the Purchaser's exercise of its right under this Clause 40.1.6, the Purchaser may request that the information provided by the Service Provider under Clause 40.1.1(b) is accompanied by one (1) or more European Single Procurement Document(s) (within the meaning of Regulation 59 of the Public Contracts Regulations 2015) in respect of the relevant Subcontractor(s). Further, the Purchaser:
- (a) shall require the Service Provider to replace any Subcontractor in respect of which the verification has shown that there are compulsory grounds for exclusion under Regulation 57 of the Public Contracts Regulations 2015; and
  - (b) may require the Service Provider to replace any Subcontract in respect of which the verification has shown that there are non-compulsory grounds for exclusion under Regulation 57 of the Public Contracts Regulations 2015.

#### *Assignment*

- 40.1.7 Without prejudice to Clauses 40.1.1 to 40.1.3, the Service Provider shall not assign (whether absolutely or by way of security and whether in whole or in part), transfer, mortgage, charge, declare itself a trustee for a third party of, or otherwise dispose of (in any manner whatsoever) its rights and/or obligations under this Agreement, and any purported dealing in contravention of this Clause 40.1 shall be ineffective.

## **40.2 Assignment and Novation or Granting of Security by the Purchaser**

#### *Permitted Transfers*

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

#### *Implementation of Transfers*

40.2.2 If the Purchaser wishes to deal with its rights and/or obligations in this Agreement (either in whole or in part) pursuant to Clause 40.2.1, the Service Provider shall execute such documents and do such other things as the Purchaser may reasonably request in order to facilitate and perfect such dealing.

## **41 NOTICES**

41.1 Any notice or communication to be given under or in connection with this Agreement shall be in writing and signed by or on behalf of the Party giving it and may be served by personal delivery, or by prepaid recorded delivery or first class prepaid post to the address or, as the case may be, and for the attention of the relevant Party set out in Clause 41.2. Any such notice or communication shall be deemed to have been received:

41.1.1 if delivered, on delivery;

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

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

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

41.2.1 in the case of the Service Provider:

The representative as defined in the Contract Particulars(l), or otherwise as advised by the Service Provider;

41.2.2 in the case of the Purchaser:

The representative as defined in the Contract Particulars(k), or otherwise as advised by the Purchaser;

## **42 SET OFF**

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

## **43 ACCRUED RIGHTS**

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

## **44 CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999**

No term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a Party to this Agreement.

## **45 COUNTERPARTS**

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

## **46 DISPUTES AND GOVERNING LAW**

### **46.1 Disputes**

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

### **46.2 Governing Law**

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

### **46.3 Exclusive Jurisdiction**

Subject to the terms of Clause 46.1, the English Courts have exclusive jurisdiction in relation to any claim, dispute or difference (“**Proceedings**”) concerning this Agreement and any matter arising from it. For these purposes, each Party irrevocably submits to the jurisdiction of the English Courts.

### **46.4 Forum**

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



**Schedule 1**  
**Services Specification**

The Services Specification is the document titled: "Operations and Maintenance Core Services Specification", and that forms part of this contract agreement.

**Additional Information**

The following document is for Information Purposes Only and is provided on the CD-Rom that forms part of this contract agreement:

 **INFORMATION ONLY - Post-tender Questions and Answers.pdf**

This document describes how the Service Provider intends to resource the delivery of the services, and specifically describes the numbers and types of staff, and their organisation. This information may need to be consulted when considering any Change Proposals per clause 6.8 or Changes to Service Provider Organisation per clause 6.9.



# Operations and Maintenance Core Services Specification

RFLI YELLOW MACHINES

Document Number: CRYP/OMS/180612

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## List of Consulted Stakeholders

Date:	Name:	Position:	Signature:
	[REDACTED]	Maintenance Planning and Performance	
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	[REDACTED]	Lead Engineer – Yellow	

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# 1 Definitions

Unless otherwise indicated in this Services Specification, defined terms used in this Services Specification shall have the same meanings as set out in the Agreement.

**"Agreement"** means the agreement for the operation and maintenance of yellow plant to which this Services Specification applies.

**"AWS"** means Automatic Warning System equipment that provides drivers with an in-cab warning of approaching hazards.

**"CBTC"** means Communication-Based Train Control which is a railway signalling system that makes use of the telecommunications between the train and track equipment for the traffic management and infrastructure control.

**"CCTV"** means Closed-Circuit Television, the use of video cameras to transmit a signal to a specific place, on a limited set of monitors.

**"Commission Regulation (EU) 1078/2012"** means the CSM for monitoring to be applied by railway undertakings, infrastructure managers after receiving a safety certificate or safety authorisation and by entities in charge of maintenance.

**"CSM"** means the Common Safety Method, a process for evaluating and assessing risk which is in accordance with applicable EU regulations.

**"Detailed Shift Plan"** means a detailed plan issued by the Service Provider for a Shift and showing all necessary operations.

**"Engineering Supervisor"** means a person responsible for setting up and managing worksites within a possession.

**"HMRI"** means Her Majesty's Railway Inspectorate, the organisation responsible for overseeing safety on Britain's railways and tramways.

**"Late Cancellation"** means the Purchaser cancelling a Shift at short notice.

**"Maximo"** means the Purchaser's Maintenance Management System (MMS).

**"OTMR"** means On-Train Monitoring Recorder.

**"Performance Specification"** means the performance requirements for the Services as set out in paragraph 6.1 of this Services Specification.

**"Possession"** means taking a section of the railway out of normal operational service, normally for the purposes of undertaking works.

**"PPE"** means Personal Protective Equipment which would include items such as safety helmets, gloves, eye protection, high-visibility clothing, safety footwear and safety harnesses.

**“Purchaser’s Facilities”** means any facilities (offices, buildings, working areas) provided by the Purchaser to the Service Provider for the purposes of fulfilling the Services. The location of such facilities will primarily be the Designated Depot (Plumstead).

**"Risk Control Actions"** means measures undertaken to avoid risk, reduce the likelihood of risk and/or lessen the impact of risk.

**“Risk Assessment”** means an objective and documented process by which risks are identified and their potential likelihood of occurrence and impact quantified.

**“Shift Confirmation Notice”** means a notice issued by the Purchaser that finalises the details of a specific Shift.

**“Stabling Point”** means any location in which rail vehicles may be parked. This will typically include depot facilities and sidings.

**“TPWS”** means Train Protection and Warning System equipment which can stop a train automatically when safety is jeopardised, such as when passing a red signal.

**"Vehicle Specific Keys"** means any keys or access devices required in order to operate any of the Plant or Machinery.

**“Work at Height”** means work in any place where, if there were no precautions in place, a person could fall a distance liable to cause personal injury.

**"Work Order Form"** means a form as notified by the Purchaser to the Service Provider from time to time.

**“Work Site”** means a bounded geographic location in which work is undertaken where access is controlled.

## 2 The Services

The Service Provider shall perform the Services in respect of the Plant and Machinery, which consist of:

- maintenance activities; and
- operational activities.

## 3 Plant and Machinery

The Purchaser has procured a fleet of Plant and Machinery in order to perform and support maintenance activities. This Plant and Machinery will predominantly be used on the CCOS.

The Plant and Machinery consists of two (2) types of engineering vehicle:-

- 1 off Linsinger MG31 Railhead Profiler (the "**Rail Milling Machine**"); and
- 2 off Robel Engineering Vehicles (the "**Engineering Trains**"), and associated:
  - i. plant supplied with the maintenance trains cranes, lifting platforms, baskets; and
  - ii. infrastructure monitoring equipment.

There is also an infrastructure monitoring vehicle (the "**Infrastructure Monitoring Vehicle**" or "**IMV**"), which will be connected between the Engineering Trains as and when required.

### 3.1 Specification for the Rail Milling Machine

See Appendix 2.

### 3.2 Specification for the Engineering Trains

See Appendix 1.

### 3.3 Specification for the Infrastructure Monitoring Vehicle

See Appendix 3.

## **4 Maintenance Activities**

The Service Provider shall maintain the Plant and Machinery in accordance with any Manuals and in accordance with any maintenance regime or bulletins issued by the Manufacturer. The Service Provider is to maintain records of all maintenance undertaken on each item of Plant and Machinery, which shall be maintained on the Purchaser's IT systems in accordance with Appendix 7.

### **4.1 Working Patterns**

The expected working patterns for the Plant and Machinery are as defined in Appendix A8.6

### **4.2 Infrastructure Monitoring Vehicle**

The Service Provider shall be responsible for the maintenance of the "rolling stock elements" of the IMV (i.e. those design elements not directly related to the monitoring equipment, such as the IMV itself and power, control jumpers and connections), which will include the vehicle systems.

The Service Provider shall undertake any necessary activities in support of the maintenance of the IMV, such as shunting movements, connections and isolations of the IMV.

The Service Provider shall be responsible for general cleaning of the exterior of the IMV wagon.

The Service Provider shall be responsible for limited cleaning of the inside of the equipment room of the IMV, such as emptying bins and wiping surfaces.

The Service Provider shall not be responsible for the maintenance of the monitoring equipment installed on board the IMV.

The Purchaser will operate and will undertake limited checking/diagnostics of the equipment installed on board the IMV.

The Purchaser shall appoint a third party to perform maintenance of the equipment installed on board the IMV, including 'swapping out' of equipment modules that are faulty.

The maintenance of such equipment will be performed by a third party appointed by the Purchaser.

### **4.3 Preparation & Shunting**

The Service Provider shall be responsible for the preparation of each item of Plant and Machinery, including configuration.

The Service Provider shall be responsible for signing the Plant and Machinery into service, which will include checking that any machinery or load is within gauge.

The Service Provider shall replenish vehicle fluids including fuel, water and oil as and when required.

The Service Provider shall undertake shunting activities as necessary to prepare and maintain the Plant and Machinery. The Service Provider will conduct all of the shunting/moves in the yard, including moves in and out of the maintenance sheds for maintenance, moves required to prepare the equipment for their shifts and any moves required at the end of the shift.

Points shall be manually operated by ground shunters provided by the Service Provider.

#### **4.4 Fueling**

Fueling of the Plant and Machinery will be undertaken by the Service Provider. The Purchaser will provide the fuel, and this fuel will be made available at a fueling point or through some similar suitable mechanism for the purposes of fueling the Plant and Machinery.

#### **4.5 Cleaning**

The Service Provider shall externally clean the Plant and Machinery and any other equipment provided by the Purchaser. This shall be done on a weekly basis as a minimum, except where weather conditions or availability of the wash equipment prevents this, in which case the Plant and Machinery and/or other equipment shall be cleaned at the earliest opportunity.

Where the Manuals specify a cleaning regime for any equipment, then the Service Provider shall perform cleaning of the equipment in accordance with that regime.

The Service Provider shall internally clean the Plant and Machinery on a weekly basis, or as required by the Purchaser. The Service Provider shall perform a light clean on each item of Plant and Machinery on a daily basis and shall empty all waste receptacles at the end of every Shift.

The Service Provider shall perform a deep internal clean on each item of Plant and Machinery on an annual basis. This can be scheduled as part of other annual maintenance tasks.

The Service Provider shall empty all toilet tanks on each item of Plant and Machinery as and when required (anticipated once per week). The Purchaser shall provide a mechanism for the removal and correct disposal of the resultant waste products.

Any environmental testing that is required of the toilets, toilet/messing areas and water/waste tanks on board each item of Plant and Machinery shall be undertaken by the Service Provider.

#### **4.6 Swarf and Dust Removal for Rail Milling Machine**

The Service Provider will be responsible for extracting any rail milling swarf and grinding dust from the Rail Milling Machine. The Purchaser will provide suitable containers into which the Service Provider can deposit these extracted materials. These extracted materials are the property of the Purchaser, and the Purchaser will be responsible for their disposal.

## 4.7 Maintenance of on-board signalling equipment

Each item of Plant and Machinery is fitted with the CBTC Signalling Equipment for use on the CCOS. In addition, each item of Plant and Machinery is fitted with TPWS/AWS for use on the Network Rail network.

### 4.7.1 Maintenance of CBTC Signalling Equipment

The Service Provider shall perform functional testing on the CBTC Signalling Equipment and in accordance with the Manuals. Repairs, complex testing, calibration and overhaul of the CBTC Signalling Equipment are excluded from the scope of the Services.

The Service Provider shall ensure that the Plant and Machinery is readily accessible and Service Provider's employees and/or other personnel are made available (for the purposes of driving, shunting and isolations of the Plant and Machinery) as and when required by the Purchaser for other on-board signalling maintenance.

The Service Provider shall report any failures of the CBTC Signalling Equipment at the earliest possible opportunity to the Purchaser. The Service Provider's operators shall be trained and competent to operate the CBTC Signalling Equipment and hold any relevant certifications required in order to operate the CBTC Signalling Equipment.

### 4.7.2 Maintenance of TPWS/AWS signalling equipment

All driving cabs in each item of Plant and Machinery will be fitted with AWS and TPWS systems, compatible with standard signalling systems on the Network Rail network. The Service Provider's drivers must be competent to drive the Plant and Machinery using these systems. Functional testing and basic maintenance of the TPWS/AWS system shall be the responsibility of the Service Provider and shall be performed in accordance with the Manuals.

## 4.8 Overhaul

Plant and Machinery overhaul is not included in the scope of the Services. It is expected that the Plant and Machinery will be sent to a specialist overhaul contractor as required.

It is envisaged that the Service Provider shall play an active role in preparing for Plant and Machinery and equipment overhaul and in handing over and handback of Plant and Machinery to the Purchaser's appointed overhauler when required, and that the Service Provider shall assist in providing engineering data such as condition reports and maintenance status details to the Purchaser and/or the appointed overhauler.

## 4.9 Small plant and general tools

The Service Provider shall be responsible for providing any small plant and general tools required to maintain the Plant and Machinery and to provide the Services. The Purchaser may provide further specialist equipment to the Service Provider if required.

Carriage keys (of similar or same type as BR. Cat. No. 0011/034040) shall be classified as small tools and shall be provided by the Service Provider as required in order to perform the Services

#### **4.10 Protection and Control of Safety**

The Purchaser shall have overall responsibility for the protection of and overall safety within the Designated Depot.

The Service Provider shall adhere to any rules that form part of the safety system at the Designated Depot and shall also comply with all Applicable Laws.

The Service Provider shall obtain any necessary safety certificate and/or safety authorisation required in order to undertake the Services.

#### **4.11 Post-Service Check-In**

The Service Provider is to develop a 'check in' process for any items of Plant and Machinery when the items of Plant and Machinery return from a shift. The check in process will include:

- Debrief from the incoming drivers and/or operatives to determine whether there are any defects or possible problems that might need rectification.
- An inspection looking for defects that might prevent the Plant and Machinery from being fit to be used on a subsequent shift.

Following the debrief and inspection, the Service Provider will identify any corrective or other maintenance operations that are required. Where such operation requires replacement of a line replaceable unit (LRU) of the Plant and Machinery, then this replacement work needs to be scheduled at the earliest opportunity (noting that replacing an LRU may take up to 13 hours).

#### **4.12 Documentation of Diagnosis and Rectification Activities**

The Service Provider is to develop a process that documents the problem diagnosis and rectification activities. This will include the following as a minimum:

- Nature of the problem requiring diagnosis
- Date and Time of notification (and for any subsequent actions)
- Rectification actions required - if any
- Supporting information, including any photographic or video data. This information can be shared with train and equipment manufacturers where necessary (and may specifically be needed in respect of Manufacturer Faults).

It is important that the relevant problem diagnosis and rectification records are created and saved at the earliest opportunity, and that records are kept up to date as actions for a specific problem progress.

#### **4.13 Wheel Sets**

In the event of wheel flats or worn wheels, it is not currently possible to undertake wheel turning using a lathe. There are spare wheel sets and bogie frames available in the spares.

#### **4.14 Support from Manufacturers**

The Purchaser shall provide or make available any reasonably required support from the train manufacturers or any third party Original Equipment Manufacturers.

## 5 Operational Activities

The Service Provider will operate the Plant and Machinery in order to complete each Shift in accordance with the Performance Specification. The activities undertaken by the Service Provider will include:

- Preparing the trains and equipment prior to work commencing;
- Driving the trains to the work site;
- Operating the equipment;
- Returning the trains to the Designated Depot or Stabling Point; and
- Providing data collected during the work activities.

### 5.1 Driver and Operational Personnel

#### 5.1.1 Rail Milling Machine

The manufacturer identifies 3 roles to be undertaken during each shift to drive and operate the Rail Milling Machine:

- Driver
- Milling Operator
- Supervisor/Eddy Current

This would suggest 3 people will be required for each shift. However, in principle this could be reduced to two (2), operatives over time with suitably experienced, cross trained staff that could cover all required roles.

#### 5.1.2 Engineering Trains

The recommendation for the Engineering Trains is for one driver to be in each cab during a Shift (double driver manning).

### 5.2 Operations in support of Site Works

The Service Provider may be required during a Shift to support work being undertaken on the Purchaser's infrastructure as part of site work. The Service Provider's activities may include the following:

- Slow speed (creep) movements;
- Coupling and uncoupling as required; and
- Operation of the Rail Milling Machine.

### 5.3 Operations on Network Rail network

The Purchaser may require Services to be undertaken on the Network Rail network. The Service Provider shall ensure that it:

(a) obtains all licenses and certifications required in respect of the Network Rail network that the Purchaser has not already obtained, and

(b) performs the Services in a way that does not invalidate any licences or certifications that the Purchaser holds in respect of the Network Rail network.

The Purchaser may use any Shifts planned for the Plant and Machinery on the CCOS on the Network Rail network alternatively if required.

## 5.4 Incidents

### 5.4.1 Breakdowns

If the Plant and Machinery breaks down on the Railway Infrastructure and requires haulage to remove it to an appropriate Stabling Point, the Service Provider shall be responsible for removing the Plant and Machinery.

### 5.4.2 Accidents

If the Plant and Machinery is involved in any accident resulting in injury to persons or damage to property, immediate notice must be given to the Purchaser's Representative by telephone and confirmed in writing.

The Service Provider shall, support and participate in any incident or accident investigation initiated by the Purchaser, HMRI or any other Competent Authority. The Service Provider shall provide reasonable access to all internal documents relating to such incidents.

### 5.4.3 Train Rescue

Where the Plant and Machinery breaks down in the Designated Depot on any of the routes on the Railway Infrastructure or in any other location, it will be the Service Provider's responsibility to recover the Plant and Machinery back to a suitable place of repair or to undertake repair in situ. Recovery should always be to the Designated Depot whenever possible. Repair in situ shall only be undertaken when no alternative can be proved to be available if this is likely to disrupt routine passenger service in any way.

The rescue and recovery of the Plant and Machinery can only be done on the railway by machines of a similar and/or approved type, therefore the Service Provider shall arrange for machines and operators to be available for such duties as and when required.

Where immediate recovery is not possible or not practical (for instance if doing so will impede passenger service or create a safety hazard), the Service Provider shall ensure that the failed Plant and Machinery is placed or recovered to a suitable location for recovery at the earliest convenience. Safety and security of the Plant and Machinery shall be the responsibility of the Service Provider during this time.

### 5.4.4 Incidents and Emergency support

Where exceptional unplanned activity is required from the Service Provider, for example following an accident or terrorist incident, the Service Provider shall use best endeavours to support any activity requested by the Purchaser or emergency services.

## 5.5 Testing and Commissioning

The Service Provider shall provide drivers during the testing and commissioning phases of the delivery of each item of the Plant and Machinery. This is currently envisaged to be between May to September 2018.

## 5.6 Operating Data

All data produced or collected under the Agreement or this Services Specification (whether produced or collected by the Service Provider during its performance of the Services or otherwise) shall be:

- (a) the property of the Purchaser;
- (b) made available by the Service Provider to the Purchaser in the format reasonably requested by the Purchaser; and
- (c) made available by the Service Provider to the Purchaser for download at all relevant times under the Agreement and this Services Specification.

The Service Provider must make all data available to the Purchaser in any format reasonably requested by the Purchaser, available for download at all relevant times.

Following delivery of each Shift and within any timescales stated in this Services Specification, the Service Provider shall transfer to the Purchaser, in an electronic format to be specified by the Purchaser, all data required by the Purchaser.

Such data may include:

- Milling quality data;
- Track condition data;
- On-Train Monitoring Recorder (OTMR) data;
- Engine Hours;
- Mileage;
- IMV downloads; or
- CCTV images.

The Service Provider shall work with the Purchaser to assist in the development of data capture and transfer processes.

### 5.6.1 On-Train Monitoring Recorder ("OTMR") records

When requested by the Purchaser or following any incident in relation to the Plant and Machinery, the Service Provider shall download OTMR data and make such downloads available to the Purchaser's Representative twenty-four (24) hours a day, seven (7) days a week on request. This data will be reviewed by both the Service Provider's Representative and the Purchaser's Representative. The Service Provider shall keep all OTMR downloads for a period of twelve (12) months, and for a longer period if requested by the Purchaser,

and shall make any OTMR downloads in its possession readily available to the Purchaser's Representative on request.

The Service Provider shall not alter or delete OTMR data without written permission from the Purchaser.

All OTMR records shall be provided to the Purchaser on expiry or termination of the Agreement.

## **5.7 Vehicle Specific Keys**

The Purchaser shall provide the Service Provider with a set of Vehicle Specific Keys for the operation and security of each item of Plant and Machinery where fitted.

Each set of Vehicle Specific Keys shall remain the property of the Purchaser and the Purchaser may ask the Service Provider to return any set of Vehicle Specific Keys on twenty-four (24) hours' notice.

If the Service Provider requires replacement Vehicle Specific Keys due to loss or damage, it shall submit a request to the Purchaser. The purchase of any replacement keys shall be for the account of the Service Provider.

### **5.7.1 Management of Vehicle Specific Keys**

The Service Provider shall develop robust processes for managing Vehicle Specific Keys including:

#### **5.7.1.1 Storage of keys**

The Service Provider shall ensure that each set of Vehicle Specific Keys when not in use is kept in a secure location at all times.

#### **5.7.1.2 Allocation of Keys**

The Service Provider shall keep a record of the details of the staff to whom any Vehicle Specific Keys are issued and must ensure that all staff who receive Vehicle Specific Keys sign their name as evidence that they have acknowledged receipt of the Vehicle Specific Keys.

#### **5.7.1.3 Loss of Keys**

If the Service Provider or any of its staff loses any set of Vehicle Specific Keys, then the Service Provider shall inform the Purchaser as soon as practicably possible.

### **5.7.2 Consequences of Loss or Misuse**

The Purchaser may incur costs as a result of loss or misuse of any Vehicle Specific Keys. The Purchaser reserves the right to charge a reasonable share of such costs to the Service Provider, or may make a claim on the Service Provider's insurance where the event is insurable.

## 6 Services – Performance Requirements

### 6.1 Performance Specification

The following Performance Specification is applicable to the Services:

<b>Engineering Trains</b>		
ID	Requirement	Notes
	The Plant and Machinery will be required to work within two (2) 52-hour possessions per year, or four (4) 26-hour possessions or eight (8) 12-hour possessions.	
	The Service Provider, as part of its routine maintenance activities, shall ensure that wheel diameter parameters entered into the relevant system for the Engineering Trains prior to the start of a Shift, including the CBTC Signalling Equipment, never deviate >0.5% of the actual measured diameter.	

<b>Rail Head Profiling</b>		
ID	Requirement	Notes
	The Service Provider will operate the Rail Milling Machine on behalf of the Purchaser and perform all rail head reprofiling activities.	The Service Provider will undertake the milling operations, but TfL staff may also be present.
	The Service Provider shall ensure that the finished rail profile is within a tolerance of +/-0.1mm of the target profile unless specified differently by the Purchaser.	
	The Service Provider shall ensure that the Rail Milling Machine collects 98% of removed metal and debris from the track.	The Service Provider shall provide the Purchaser with a statement on the Work Return Form of the volume, type and weight of removed metals.
	The Service Provider shall ensure that the Rail Milling Machine remains capable of removing 0.3mm of metal from the top of rail (or less) without affecting finish quality or output.	
	The Service Provider shall ensure that the Rail Milling Machine remains capable of re-profiling a minimum of 2km within a 3-hour working Shift, with a metal removal of at least 0.5mm from the rail crown and delivering this production rate if required by the	

	Purchaser.	
	The Service Provider shall maintain the capability of the Rail Milling Machine to remove up to 3.5mm of metal from the rail crown over 1200m of track (plus additional work to blend to the adjacent un-profiled rail) in a three-hour working Shift without affecting finish quality.	
	The Service Provider shall not cause any track geometry limits to be exceeded. Ramping in and out, as well as differences in operation between rails must not result in a track profile that is not compliant with the variability limits specified in NR/ L2/TRK/2102 Appendix A.	
	The Rail Milling Machine shall be capable of measuring transverse rail profile before and after working to an accuracy of +/-0.05mm of the actual profile.	
	The Rail Milling Machine shall be capable of measuring and reporting longitudinal rail profile before and after working to an accuracy of +/-0.05mm of the actual profile.	
	The Service Provider shall detect and report surface cracks up to 2.7 mm below the surface of the rail track following completion of a Shift for the Rail Milling Machine across a width of 30mm across the rail head using the on-board equipment on the Rail Milling Machine.	
	Recordings made during rail head re-profiling shall be tagged with positional information derived from the signalling system (or alternative system where signalling information is unavailable) to allow each measurement to be placed on the track to an accuracy of +/-0.5m.	
	The Service Provider, as part of its routine maintenance activities, shall ensure that wheel diameter parameters entered into the relevant system for the Rail Milling Machine prior to the start of a Shift, including the CBTC Signalling Equipment, never deviate >0.5% of the actual measured diameter .	

Infrastructure Monitoring Vehicle (IMV)		
ID	Requirement	Notes
	<p>When performing a Shift, the Service Provider shall ensure that the monitoring equipment installed on-board the Infrastructure Monitoring Vehicle is:</p> <ul style="list-style-type: none"> <li>• Fit for Purpose and in full operational condition; and</li> <li>• isolated when such Shift is complete.</li> </ul>	

## 6.2 Rail Head Profiling Measurements

The Service Provider shall provide all rail head re-profiling recordings and eddy current data (the "**Rail Head Profiling Measurements**") to the Purchaser at the end of each Shift for the Rail Milling Machine (or at the beginning of the next Working Day if agreed by the Purchaser).

The Purchaser shall analyse the Rail head Profiling Measurements and if the Purchaser is satisfied with the content of such Rail Head Profiling Measurements, it shall confirm the same to the Service Provider.

If the Purchaser is not satisfied with the content of the Rail Head Profiling Measurements, then:

- (a) the Shift shall be classed as a Failed Shift and the provisions of paragraph 1 of the Performance Regime in relation to Failed Shifts shall apply to that Shift; and
- (b) the Purchaser may (as an additional and separate right) require the Service Provider to repeat such Shift at no additional charge.

## 6.3 IMV Data

If the Purchaser is satisfied with the quality and quantity of the data provided, then the Purchaser shall confirm the same to the Service Provider.

If the Purchaser is not satisfied with the quality and/or quantity of the data provided, then the Purchaser may require the Service Provider to repeat the Shift concerned.

## **7 Information Systems**

The Purchaser will provide access to certain IT and business systems as specified in Appendix 7; and any equipment to permit the Service Provider to access the business systems.

## **8 Worksite Preparation and Management**

### **8.1 Work Site Preparation**

The Purchaser will make any preparation arrangements that are necessary for the Plant and Machinery to be operated within any Work Sites including disconnection/reconnection of signalling equipment, removal/reinstatement of level crossings and foot crossings, road closures, marking up of track geometry, marking of cables and removal/reinstatement of point heating equipment.

### **8.2 Work Site Management**

The Purchaser will undertake Work Site management and control duties including recording the arrival and departure of the Service Provider's personnel from any Work Sites.

### **8.3 Route Planning**

The Purchaser will specify if the Plant and Machinery must operate a particular route in a particular orientation or direction, or enter or exit any Work Sites in a particular orientation or direction (noting that this is part of the work planning process and that the Service Provider will participate in this work planning process).

### **8.4 Possession Arrangements**

Where work is to be performed in a possession then the Purchaser shall be responsible for arranging possessions including possession management staff required for the safe operation of the Plant and Machinery.

The Service Provider shall attend any required possession planning meetings and shall provide any materials needed for possession planning purposes.

### **8.5 Hand Back after Possession Work**

The Service Provider is required to hand the track back to the Engineering Supervisor after completion of any possession work. Service Provider staff will need to have the appropriate competencies to undertake possession working and to perform the hand back.

## **9 Purchaser's Facilities**

### **9.1 Plumstead Depot**

Plumstead Depot shall be the primary facility used for the maintenance of the Plant and Machinery. Refer to Appendix 4.

### **9.2 Stabling Locations**

The main stabling location of the Plant and Machinery will be Plumstead Depot. However, the Purchaser may require the Service Provider to stable the Plant and Machinery elsewhere when working on the Network Rail network or when the Purchaser must perform specialist maintenance that is not capable of being provided at Plumstead Depot.

### **9.3 Access to the Routes and Stabling Points**

The Service Provider shall not have possession of any of the routes on the CCOS or the Purchaser's Stabling Points, but the Purchaser shall provide sufficient access and egress to enable the Service Provider to fulfil the Services. Each of the routes on the CCOS and the Purchaser's Stabling Points shall only be used by the Service Provider for the purpose of carrying out the Services.

## **10 Management of Training**

### **10.1 Training Records**

The Purchaser shall agree a training and competency matrix with the Service Provider for all operations and activities required to deliver the Services.

The Service Provider shall maintain dated records of all training given, assessments completed and certificates of competence issued. The Service Provider shall provide copies of all training records and training matrices on demand to the Purchaser.

### **10.2 Driver Certification**

The Service Provider shall ensure that all of its drivers who operate the Plant and Machinery hold all appropriate certifications for the Plant and Machinery that they will be operating. The drivers shall carry all of their relevant certifications at all times whilst operating the Plant and Machinery during a Shift and shall present such certifications to the Purchaser's Representative upon demand.

The Service Provider's drivers who are operating the Plant and Machinery:

- shall have a relevant level of previous driving experience of machines or plant that are similar to the Plant and Machinery on the Network Rail network; and
- hold all relevant current permits and certification (as defined by the Train Driving License and Certificate Regulations 2010, or "TDLCR") to demonstrate such previous driving experience.

The Service Provider's safety management system for the operation and maintenance of the Plant and Machinery shall incorporate systems whereby each of the Service Provider's driver's competence, general skills and knowledge are continually assessed and remain up to date.

Any of the Service Provider's staff who operate, or may operate, the Rail Milling Machine will need to hold full driver certification (as further described in the TDLCR). This is because the Rail Milling Machine is designed to be driver-operated. The Purchaser will determine the operational activities of the Engineering Trains that the drivers of the Engineering Trains will be trained for. Drivers are expected to undertake the operational activities they are trained for during possession working, in addition to driving the Engineering Trains to and from the worksite.

If a driver has their drivers licence withdrawn or suspended for any reason, the Service Provider shall inform the Purchaser's Representative immediately and ensure that such driver does not drive any vehicles (including the Plant and Machinery) on the Purchaser's infrastructure (including the CCOS, the Designated Depot and any other TfL Premises used to perform the Services).

### **10.3 Track Safety Certifications**

All of the Service Provider's staff who perform the Services shall hold a current Sentinel Personal Track Safety ("PTS") certificate and associated in-date medical certificate with specific competencies for AC and DC track.

For operation on the CCOS, a further competency is required as an additional endorsement on the PTS competence. The training required for this endorsement is envisaged to be delivered initially by the Purchaser to the Service Provider, and then in due course by recognised Sentinel Scheme approved training Service Providers.

All such training shall be carried out by personnel or organisations that are recognised by the Office of Road and Rail to train or examine professional knowledge and competence.

### **10.4 First Aid Competence**

The Service Provider's machine or plant operators undertaking work on any vehicle shall be trained as a minimum to First Aid at Work competence provided by a recognised trainer. This competence shall be kept current for the Agreement Duration.

At least one (1) member of the Service Provider's staff who is on-board an item of Plant and Machinery during its operation shall hold a current First Aid competence.

### **10.5 Working at Height**

All of the Service Provider's staff that are required to Work at Height, or perform activities that have been identified by Risk Assessment as involving Working at Height shall be suitably trained and equipped to do so.

If the Purchaser discovers that the Service Provider's staff have not been suitably trained or equipped to Work at Height, or that Risk Assessments carried out by the Service Provider have not adequately identified all activities that should be classed as involving Working at Height, it the Purchaser may restrict or prohibit such activities until such time as it is satisfied that adequate measures have been taken to assess risk and provide suitable mitigations.

## **10.6 Depot tools and facilities**

Training and ongoing competence management on the usage of the depot tools and facilities shall be provided by the Service Provider, however, initial "train the trainer" type training activity may be provided by the Purchaser or its third party contractors.

## **11 Training Provided by the Purchaser**

### **11.1 Plant, Machinery and Equipment**

The Purchaser, or a third party appointed by the Purchaser, shall provide "train the trainer" training to the Service Provider on traction familiarisation for the Plant and Machinery, route familiarisation and CBTC Signalling Equipment familiarisation. Such "train the trainer" training shall be in the form of one training session to the Service Provider's trainers and the Service Provider shall then ensure that its trainers deliver onward training to the Service Provider's employees, Sub-Contractors and other personnel who are performing the Services.

Where changes are made to any equipment or processes by the Purchaser, it may be necessary for further "train the trainer" training to take place. Where this is the case, the Purchaser shall inform the Service Provider of the date, time and location that it will deliver any such additional "train the trainer" training to the Service Provider's trainers.

The quality of the training delivered by the Service Provider's approved training staff shall be monitored from time to time by the Purchaser. If the training and assessments delivered by the Service Provider's trainers are not of an adequate standard (in the Purchaser's reasonable opinion), the Purchaser may require the Service Provider to produce a recovery plan that demonstrates what changes it will make and what actions it will take to ensure that training is delivered to an appropriate standard (along with timescales for putting such actions into place) for the approval of the Purchaser. The Purchaser reserves the right to prohibit or restrict the Service Provider's staff from performing any aspect of the Services until the Service Provider demonstrates to the Purchaser's satisfaction that it has fulfilled all of the requirements set out in the recovery plan.

### **11.2 Driver Simulator Training**

There are currently no simulators available for driver training purposes.

### **11.3 MMS Training**

The Purchaser shall provide the Service Provider with training for the use of the maintenance management system (the "**MMS**" – 'Maximo') for the Plant and Machinery on a "train the trainer" basis. This may be augmented by specific training provided from time to time by the Purchaser.

## 12 Management of Competencies

The Service Provider shall have and maintain a competence management system, which as a minimum can:

- prove and monitor that all of the Service Provider's personnel are competent to carry out the work they are assigned to;
- identify any medical or competency restrictions before allocating work; and
- prove that all of the Service Provider's personnel hold a current and valid competence to carry out the work that they have been assigned to complete.

### 12.1 Service Provider staff competencies

The Service Provider shall provide suitably qualified and competent personnel as necessary for the performance by the Service Provider of the Services. The Service Provider's selection and recruitment process shall include measures to assess staff aptitude and technical ability to undertake the work on which they will be employed.

The Service Provider shall ensure and be able to demonstrate that as a minimum its staff undertaking the Services have been appropriately trained and assessed. All of the Service Provider's engineers and technicians must be competent to undertake the work to which they are assigned during normal operation and in the event of common types of failure.

The Service Provider shall operate an appropriate monitoring, assessment and development regime to ensure that competence is maintained and remains current.

The Service Provider shall ensure that staff competence is maintained and documented within a competence management system. The Service Provider's competence management system shall indicate training given, years of experience, certificates held in all areas relevant to effective delivery of the Services including, but not limited to:

- train preparation;
- shunting competence;
- site management;
- ground staff;
- route knowledge;
- traction knowledge;
- operational knowledge;
- safety;
- Plant and Machinery maintenance; and
- Fault finding.

The Service Provider shall ensure that each employee or other person engaged to provide the Services is, as a minimum, competent to the levels instructed during that person's initial training.

The Service Provider shall provide full details of the competence management system to the Purchaser and provide updates annually to the Purchaser or at more frequent intervals if

required by the Purchaser. The Service Provider shall permit the Purchaser to undertake audits as necessary to validate the competence management system and where requested by the Purchaser in respect of the competence of individual person.

## **12.2 Staff Availability**

The Service Provider shall supply to the Purchaser, when requested, details of the resources available to perform the Services. This shall include, but not be limited to, the number of drivers assigned to operate the Plant and Machinery, route knowledge coverage, the number of operators assigned to assist with the operation of the Plant and Machinery, and the number of maintenance staff.

The Service Provider's staff shall be made available for the entirety of any Shift with the exception of mandatory breaks, which each of the Service Provider's staff shall be entitled to in accordance with employment regulations (including the Working Time Regulations 1998).

## **12.3 Suitability of Staff**

The Purchaser may at any time refuse to allow any person employed or engaged by the Service Provider, or by the Service Provider's Sub-Contractors, to perform any aspect of the Services or to or to enter upon any of the routes comprised in the CCOS, the Designated Depot or any other TfL Premises, where that employee or other person is, in the reasonable opinion of the Purchaser, unsuitable for the task.

## **12.4 Machine Operator Competencies**

The Service Provider shall ensure that each of employees who operate the Plant and Machinery have the requisite route knowledge and competence to carry out the Services on each route on the CCOS. If any of the Service Provider's employees who operate the Plant and Machinery do not have such knowledge, the Purchaser may instruct the Service Provider to employ at the Service Provider's cost an alternative operator (such as a conductor/pilot) in relation to any Services.

## **12.5 Medical requirements**

The Service Provider shall ensure that the relevant certificates and evidence of medical fitness to drive rail vehicles for all of its employees who are driving the Plant and Machinery are available on request for the Purchaser.

The Service Provider shall ensure that evidence of medical fitness (being, as a minimum, a valid up to date PTS medical certificate or pre-employment medical certificate for all of its employees who are operating (but not driving) the Plant and Machinery) is made available upon request to the Purchaser.

All medical and psychological assessments shall be carried out by doctors or assessors recognised by the Office of Road and Rail.

## **13 Health and Safety**

The Service Provider shall strictly comply with the Purchaser's health and safety requirements as set out in Appendix 5.

The Service Provider shall ensure that all the Service Provider's employees, any Sub-Contractors and other persons engaged in delivering the Services receive safety and skills training in accordance with the Purchaser's health and safety requirements, and the Purchaser may instruct the immediate replacement, at the Service Provider's cost, of any person on and off the CCOS, the Designated Depot or the TfL Premises who is not so trained.

## **14 Quality & Assurance**

### **14.1 Quality System and Quality Plan**

The Service Provider shall maintain an auditable documented Quality Management System ("QMS") either certified to BS EN ISO 9001:2015, or sufficient to meet the requirements of this standard to the satisfaction of the Purchaser. The Service Provider shall notify the Purchaser of any material changes to the QMS.

The Purchaser may request the Service Provider to allow Network Rail access to the QMS or the Purchaser's Quality Plan to carry out quality or safety assurance checks by way of audit or other inspection.

### **14.2 Assurance**

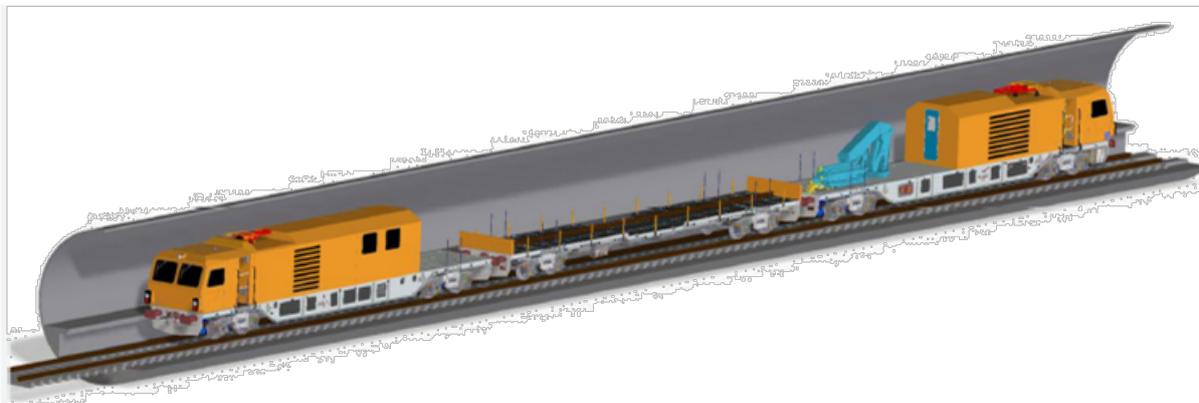
The Service Provider shall provide the Purchaser with details and/or reports upon request of any assurance activities relevant to the Service Provider's ROGS certification in respect of the Services.

### **14.3 Rail Service Provider Qualification**

The Service Provider shall maintain qualification under the prevailing UK Rail Service Provider Qualification Scheme (currently this is RISQS administered by Achilles Information Ltd, 30 Park Gate, Milton Park, Abingdon, Oxfordshire, OX14 4SH) and comply with any reasonable requirements of the Purchaser in respect of Qualification of Service Providers.

## Appendix 1: Specification for Engineering Trains

Each Engineering Train consists of four (4) powered driving vehicles (each with a single cab at the ends and two (2) intermediate transport wagons).



Each powered driving vehicle will be provided with maintenance modules. Some maintenance modules are permanently fixed to the powered driving vehicles and some maintenance modules can be demounted. The maintenance modules are as follows:

- Palfinger Crane with the following attachments:
  - Rail tongs; and
  - Basket system for high level access;
- 10m Scissor Lift with 1m lateral slew;
- Drainage clearance system consisting of:
  - Fresh water tank;
  - Waste water tank;
  - Jet clearance system; and
  - Waste extraction;
- Various stillages for transporting the following:
  - Screen doors;
  - Transformers;
  - Rails; and
  - Replacement Cables;
- Two (2) welfare modules with kitchen and toilet;
- Earthing Pantographs; and
- Automatic Couplers.

## **A1.1 Maintenance Documentation**

The following documents are provided on the CD-Rom that forms part of this contract agreement. NOTE that these documents are provided **For Information Only** and the Purchaser does not guarantee the accuracy or completeness of any information contained therein:

- 1) ROBEL 9 2 1-Maintenance Plan Example\_Redacted.pdf

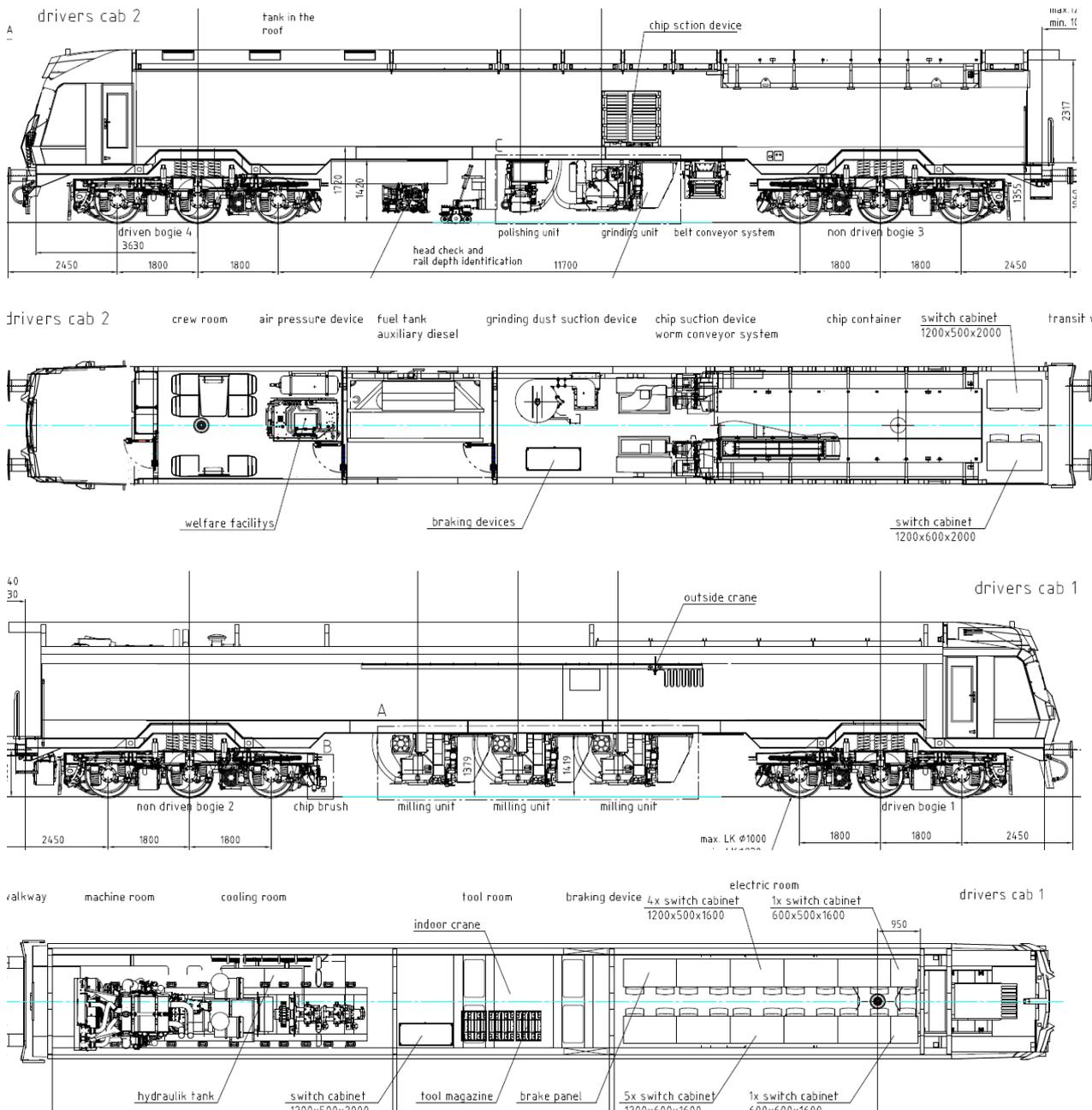
This is information supplied as an example for a similar equipment type.

- 2) Robel Maintenance manual\_VMOI-draft\_2017-05(1)(3).pdf

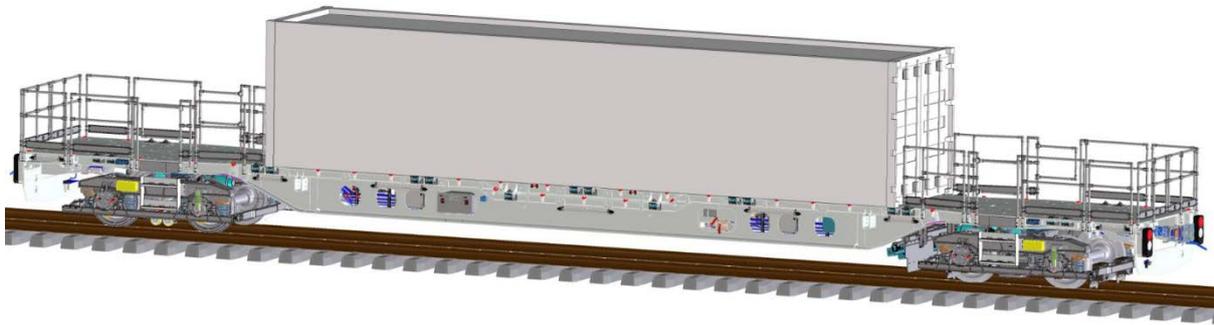
This is a Draft document.

## Appendix 2: Specification for the Rail Milling Machine

The Rail Milling Machine is a 2-car fixed formation train, fitted with three (3) milling units per rail, one grinding unit per rail and one finishing unit per rail as well as eddy current and rail profile measurement systems. The train is fitted with welfare facilities including a toilet.



### Appendix 3: Specification for Infrastructure Monitoring Vehicle



The following monitoring equipment is expected to be fitted to the Infrastructure Monitoring Vehicle:

- Plain Line Pattern Recognition;
- Eddy Current;
- Ultrasonic;
- Rail Profile;
- Rail Roughness;
- Track Geometry;
- Structure Gauging;
- Central Recording System; and
- Train Positioning System.

## Appendix 4: Plumstead Depot

Plumstead Depot shall be the primary facility used for the maintenance of the Plant and Machinery. It is expected that the Service Provider shall base all their activities for providing the services at this location.

Facilities in Plumstead Depot are shared between Service Provider, the Purchaser's staff and other third parties appointed by the Purchaser.

Desks at Plumstead Depot will be "hot desks", however an allocation of desk area will be provided for the Service Provider. All other facilities will be provided by the Purchaser and shared such as messing, toilets, parking and security.

An allocation of locker space shall also be provided for the Service Provider in the shared messing and "dirty"/work area of the main building of Plumstead Depot.

Messing facilities will include food preparation and drink making facilities. There may be vending machines available for all depot staff use.

A shared drying room is available at Plumstead Depot for use by the Service Provider.

There are car parking facilities available at Plumstead Depot for the use of staff working in or operating out of Plumstead Depot. Parking spaces are limited and will be provided on a "first come, first served" basis, and the Purchaser makes no representations or warranties to the Service Provider that all of the Service Provider's staff working at Plumstead Depot will have access to a parking space on any given day. Additional limited spaces for works vehicles are provided within Plumstead Depot. The Service Provider must provide to the Purchaser no later than four (4) weeks following the date of execution of this Agreement details of how many works vehicles the Service Provider will need to use in order to perform the Services, along with details of the type of works vehicles to be used (for example, small van, minibus, car).

All of the Service Provider's staff working in or operating out of Plumstead Depot shall use the security controlled entrance/exit to Plumstead Depot, and shall be subject to the rules and restrictions regarding the use of the facilities at Plumstead Depot (being the buildings and working areas, and including any access points and walkways) as laid down by the Purchaser. As these rules may be subject to change from time to time, it will be the Service Provider's responsibility to ensure that:

- (a) its staff is fully briefed on the rules regarding the depot facilities and any changes to such rules as they become available; and
- (b) adhere to such rules whilst performing any aspect of the Services.

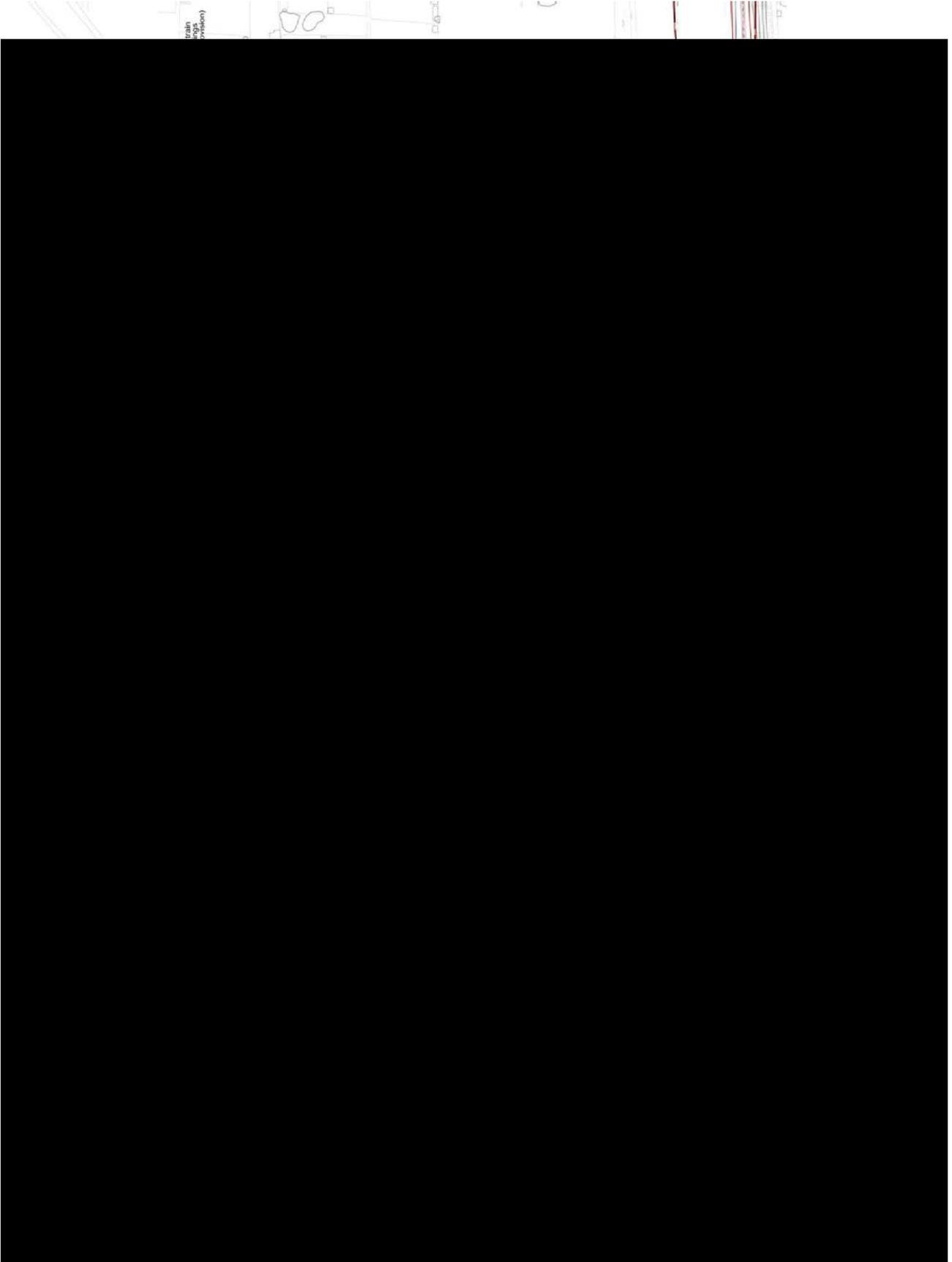


Figure 1. – Plumstead Depot Layout

#### **A4.1 Depot Tools and Facilities**

The following tools and equipment will be provided and available at Plumstead Depot to support the maintenance of the Plant and Machinery:

- Twenty-five (25) tonne jacks – capable of lifting a single car (note that they will not be capable of lifting either half of the milling machine with the bogies attached);
- 40m central Inspection Pit;
- Electrical Shore Supply;
- Twenty (20) tonne Overhead Crane;
- Fifteen (15) tonne Forklift;
- Cleaning Road;
- Fuel road;
- Three (3) stabling sidings;
- Road access; and
- Hand-operated points.

The Service Provider shall ensure that all of its employees, Sub-Contractors and other personnel who are performing the Services are fully trained and receive ongoing competence management on the usage of any of the above tools and equipment. Initial “train the trainer” type training may be provided by the Purchaser or its sub-contractors, and the Service Provider shall ensure in such circumstances that its trainers provide consistent training to the Service Provider’s employees, Sub-Contractors and other personnel who are performing the Services and sustain training competence during the Agreement Duration.

#### **A4.2 Items provided by the Purchaser**

The Purchaser will make available all of the following to the Service Provider:

- fuel,
- water,
- oil,
- lubrication,
- materials,
- spares and
- consumables

These will be issued in accordance with the terms of this agreement to maintain and operate the vehicles.

#### **A4.3 Depot Drawings**

The following document is provided on the CD-Rom that forms part of this contract agreement. NOTE that this document is provided **For Information Only** and the Purchaser does not guarantee the accuracy or completeness of any information contained therein:

- 1) Plumstead Depot.pdf

#### **A4.4 Special Tools**

The following document is provided on the CD-Rom that forms part of this contract agreement and sets out the toolkit supplied with the Rail Milling Machine. The last 2 items (stated as being options) will be supplied by the Purchaser if reasonably required.

NOTE that the below document is provided **For Information Only** and the Purchaser does not guarantee the accuracy or completeness of any information contained therein:

- 1) Linsinger special tools V2.pdf

The Purchaser understands that there are no special tools required for the Engineering Trains.

## **Appendix 5: Health and Safety Requirements**

### **A5.1 Safety Management**

The Service Provider shall maintain and operate the Plant and Machinery in line with the Purchaser's safety management processes and so as to comply with all Applicable Laws and TfL Standards in relation to safety.

### **A5.2 Fatigue Management**

The Service Provider is responsible for managing fatigue in railway staff, including those who have control of safety critical work under regulation 25 of ROGS. Although ROGS requirements apply to safety critical work, many of the principles and controls involved in controlling fatigue will be common to all staff irrespective of whether their work or the activity is safety critical under ROGS or not.

The Service Provider shall use industry good practice in managing fatigue associated with work in the rail industry, including that of travelling to and from a site of work.

The Service Provider shall provide the Purchaser with rosters and time cards if requested within a timely manner. Where the Purchaser requires further inspections or audits due to concerns that have been raised; these will be supported fully by the Service Provider.

### **A5.3 Safety on the line side**

All of the Purchaser's staff involved in the performance of the Services with the requirement to be line side will hold basic first aid awareness competences. As a minimum for maintenance activities where there is more than two (2) members of crew present, at least one (1) member of staff will hold the First Aid at Work competency, unless there are other mitigations in place and agreed with the Purchaser.

All of the Service Provider's staff working on the Railway Infrastructure for maintenance purposes will work in groups of at least 2 members at all times. Where the Service Provider's staff must undertake activities such as inspections (in other words, no maintenance is being undertaken), and the nature of the work is done by a singular individual working alone, such staff member must hold all relevant competencies required for lone works and must follow all accepted lone working practices.

### **A5.4 Risk Management**

The Service Provider shall use the CSM when measuring and managing risk while performing the Services. Risk Assessments will be presented to the Purchaser if requested.

### **A5.5 Hazard Management Support**

During the course of the design and build of the Plant and Machinery, hazards associated with the operation and maintenance of the Plant and Machinery will be identified through the CSM process. Where practicable, they will be mitigated through design modification. Where this is not possible, some hazards will require a procedural mitigation. In these cases, the

Service Provider shall accept the mitigation and incorporate such hazards into its safety management system. Where possible, the Service Provider will be asked to play an active role in the CSM process.

### **A5.6 Safety Management of Issues**

When an incident arises which may have an impact on safety, the Service Provider shall agree with the Purchaser any actions to be taken, and shall implement the Service Provider's actions within the timescales agreed with the Purchaser.

### **A5.7 Common Safety Method**

The Service Provider shall comply with the CSM for Monitoring (Commission Regulation (EU) 1078/2012) when performing the Services.

### **A5.8 Drugs and alcohol**

The Service Provider's staff shall at all times conform to the Purchaser's drugs and alcohol policy in force from time to time (as provided to the Service Provider by the Purchaser).

Random drugs and alcohol testing may be performed on the Service Provider's staff from time to time or post incident by the Purchaser, the Purchaser's appointed third parties or by regulatory authorities.

### **A5.9 Safety reporting**

The Service Provider shall ensure that all of its staff who will be performing the Services are provided with and comply with details of the Purchaser's incident reporting and confidential reporting facilities.

All incidents, accidents and identified hazards shall be communicated to the Purchaser at the earliest opportunity, and in any event no later than twenty-four (24) hours following occurrence or identification.

### **A5.10 Personal Protection Equipment (PPE)**

The Service Provider shall provide to all of its staff appropriate PPE for the activities being undertaken as specified either below, according to task specific Risk Assessments or as required by any relevant TfL Standards.

High visibility PPE for track activities shall conform to high visibility orange body clothing with reflective tape to comply with Railway Group Standard GO/RT 3279 and BS EN 471 Class 2.

Logos or information displayed on PPE shall be agreed with the Purchaser.

For on-track activities and depot activities in the shed or sidings, the minimum requirement shall be "all orange" high visibility workwear (as per Network Rail "All orange" policy) and appropriate task related to the PPE.

The outer layer of the upper body high visibility clothing must be clearly marked on the back with the Service Provider's logo or other logo agreed with the Purchaser (full length waistcoats, long sleeved jackets, or similar garments that comply with such requirements are suitable, but mini vests are not). The logo should be printed directly onto the background material between the vertical retro reflective bands on the rear of the garment.

The use of high visibility trousers or over trousers which comply with GO/RT 3279 and BS EN 471 Class 1 is also mandatory.

The Service Provider's staff shall wear safety footwear that complies with BS EN ISO 20345 and which has a covered protective toecap, mid sole protection and provides support to the ankle when performing on-track or depot (shed or sidings) activities.

The Service Provider's staff shall wear a safety helmet that complies with BS EN 397 and which is fitted with a chinstrap where there is a risk of the helmet falling off when working on or near the line side. Safety helmets worn shall be white in colour, except under the following circumstances where the individuals' safety helmet shall be blue in colour:

- Individual is issued a Track Visitors Permit; or
- Individual is in receipt of a PTS card with a green square symbol on it.

All PPE shall be maintained at all times in accordance with the garment manufacturer's instructions.

#### **A5.11 Risk Assessment**

The Service Provider shall conduct Risk Assessments for all activities performed by the Service Provider in connection with the performance of the Services.

Risk Assessments shall be reviewed on a periodic basis (no longer than one (1) year) or when required either by the Purchaser, a Competent Authority, a Government Authority or as the result of an incident.

The Service Provider shall integrate and adopt any mitigations and Risk Control Actions from the Purchaser's safety management system and engineering safety management system into the Service Provider's safety management system.

It shall be the Service Provider's responsibility to communicate any issues related to the Purchaser's Risk Assessments at the earliest opportunity (and in any event no later than two (2) days from identifying the issue) and agree any required actions or amendments.

## **Appendix 6: Environmental Requirements**

### **A6.1 Disposal of waste materials**

#### **A6.1.1 Scrap materials**

Waste materials produced as a direct result of operation of the Plant and Machinery shall remain the property of the Purchaser, unless specified in writing.

The Service Provider shall dispose of such waste through the waste disposal processes and locations specified by the Purchaser.

Only waste produced as a result of the performance of the Services shall be disposed of through the Purchaser's specified processes and locations.

All waste materials shall be transported to the Designated Depot by the Service Provider unless specified otherwise by the Purchaser in writing.

#### **A6.1.2 Toilet tank waste disposal**

Waste collected in the on-board toilet tanks on the Rail Milling Machine and the Engineering Trains shall be collected and disposed of by a third party contractor appointed by the Purchaser. The Service Provider shall give at least 24 hours' notice to the Purchaser of when it requires the Purchaser's third party contractor to collect and dispose of such waste.

The Service Provider shall ensure that the Plant and Machinery is in the correct configuration, state and location to enable the Purchaser's third party contractor to collect any toilet tank waste at a time agreed with the Purchaser. The location will normally be the Designated Depot.

## **Appendix 7: IT Equipment and Business Systems**

The Purchaser shall provide the Service Provider with sufficient access to its IT network for the performance of the Services. This is envisaged to be via the TfL OneLondon system.

All use of the Purchaser's IT network and business systems shall be in accordance with the Purchaser's information management policies (as provided by the Purchaser to the Service Provider from time to time).

Any access that the Service Provider requires to its own IT systems can only be provided via Internet browser access, providing this does not breach the rules of the Purchaser's information management and communications policies (as provided by the Purchaser to the Service Provider from time to time).

The Service Provider shall store all data pertinent to carrying out the Services on the Purchaser's IT systems as provided to the Service Provider. Such data shall not be password protected or encrypted in any way unless agreed in writing with the Purchaser. Staff personal details required by the Service Provider for administrative purposes (and that would be subject to Data Protection legislation) may be held separately or encrypted.

It is unlikely that access for USB drives or other external peripherals/data storage devices shall be permitted for use with the Purchaser's IT systems.

The Service Provider shall not connect its own IT equipment to the Purchaser's IT network unless specifically authorised by the Purchaser.

The Service Provider shall utilise any software and business systems provided by the Purchaser and which are expected to include:

- MMS - Maximo: the Service Provider shall use this system for the reporting of Faults on the Plant and Machinery and for managing maintenance; and
- Software for use with the Linsinger Rail Milling Machine.

### **A7.1 Access to Maintenance Management System ("MMS")**

The Purchaser shall provide the Service Provider with access to the Purchaser's MMS for the Plant and Machinery.

The Service Provider shall update all maintenance records contained in the MMS as required by the Purchaser in a timely manner and shall ensure that all data entered is correct and complete.

At all times, MMS data shall remain the sole property of the Purchaser.

### **A7.2 MMS User Training**

The Purchaser will provide the initial training required for the Service Provider to be able to use the MMS. Thereafter, the Service Provider is required to train any new staff that need to use the MMS.

## **Appendix 8: Work Planning Process**

### **A8.1 Planning System**

The Purchaser shall establish and operate a Planning System for planning the operational activities. It is expected that the majority of operational activities on the infrastructure will be in the form of Shifts (where a Shift will have a defined start and end time and a planned utilisation of specific Plant and Machinery).

### **A8.2 Updating the Planning System**

The Planning System will contain a rolling look-ahead of operational work and will be updated by the Purchaser on a regular basis, and taking account of any planning discussions that may be held between the Purchaser and Service Provider.

The Planning System will be capable of generating an Annual Work Plan which will include details of the number of Shifts and the utilisation of Plant and Machinery for a given Contract Year. The work plans will evolve throughout the year as details of the work are refined.

### **A8.3 Shift Confirmation**

The Purchaser, taking account of any discussions held with the Service Provider, shall finalise the details of each specific Shift at least five (5) weeks prior to the start of that Shift, and will issue a Shift Confirmation Notice to the Service Provider.

#### **A8.3.1 Purchaser Late Confirmation**

If the Purchaser provides a Shift Confirmation Notice (which includes any revised Shift Confirmation Notice) less than five (5) weeks prior to the start of a Shift, the Service Provider shall still perform that Shift as set out in the Shift Confirmation Notice.

#### **A8.3.2 Purchaser Late Cancellation**

Where the Purchaser cancels a Shift at short notice (being less than five (5) weeks prior to the start of the Shift), then this shall be a Late Cancellation. The Purchaser and Service Provider will endeavour to mitigate the impact of any Late Cancellation, for example through re-deployment of resources and/or undertaking other activities.

### **A8.4 Detailed plans for services**

Following receipt of a Shift Confirmation Notice, the Service Provider (in consultation with the Purchaser as required) shall develop a Detailed Shift Plan for the carrying out of the particular Shift. The Detailed Shift Plan shall be completed at least three (3) weeks prior to the date of the Shift. The Detailed Shift Plan will include:

- identification and arrangements for securing train paths;
- rostering of staff and arrangements for transport and accommodation;
- arrangements for Plant and Machinery orientation, access and egress to and from Stabling Points;

- arrangements for re-fuelling, maintaining, servicing and loading the Plant and Machinery;
- arrangements for all movements of Plant and Machinery between Stabling Points (or other locations), possession entry and exit points and Plant and Machinery orientation at the Designated Depot or other TfL Premises assigned for that Shift; and
- proposals for the timely ordering and delivery of any materials required, including having regard to quantities and logistics.

### **A8.5 Work Order Form**

Forty-eight (48) hours prior to the commencement of a Shift, the Purchaser shall complete a Work Return Form (or any alternative form or procedure that the Purchaser may adopt for this purpose) setting out the instructions for the completion of the Shift.

### **A8.6 Expected Working Patterns**

NOTE: The expected working patterns stated below are liable to change where operational circumstances of the railway dictates.

#### **A8.6.1 Standard Shifts**

The typical weekly working pattern for the Plant and Machinery will be four midweek nights plus two weekend nights. The items of Plant and Machinery will generally be scheduled to leave the Designated Depot at approximately 22:30 for each Shift, returning on or before 04:30 the next day to clear the railway for passenger operations. At weekends (being defined as Friday and Saturday nights), it is intended that the Plant and Machinery will leave the Designated Depot at approximately 22:30 for each Shift, returning on or before 07:30 the next day.

Between the hours of approximately 05:00 (or 08:00 on Saturday/Sunday) and 22:00, it is intended that the Plant and Machinery will be available for the Service Provider to perform maintenance, cleaning and preparation activities.

#### **A8.6.2 Possession Working**

In addition to the above Standard Shifts, it is expected that during each contract year there will be work undertaken by the Plant and Machinery within two (2) 52-hour possessions, or four (4) 26-hour possessions or eight (8) 12-hour possessions, or any reasonable combination of these possession lengths.

#### **A8.6.3 Total Shifts per Year**

The annual number of shifts per train is expected to be about 280 shifts per contract year.

### **A8.7 Train Paths and Railway Access**

The Service Provider is responsible for obtaining any train paths that are required in order to undertake the planned Shifts. Train paths need to be acquired in accordance with any relevant access agreements that are in place. Train paths need to be identified as part of the planning process and sufficient time allowed in the planning process for obtaining any paths.

## **Appendix 9: Track Safety Equipment for Train Certification**

### **Option Scope**

To assist in the process of train certification, the Purchaser may, as an Option, request that the Service Provider provides the following items of track safety equipment:

The safety equipment for the two (2) Engineering Trains is as follows:

- First Aid kit - total 4 off being 1 per cab
- Wedge (hardwood) - total 4 off being 1 per cab
- Box of detonators - total 4 off being 1 per cab
- Red signal flag - total 8 off being 2 per cab
- Short circuit device - total 4 off being 1 per cab
- Hand lamp with dimmed red light - total 4 off being 1 per cab

The safety equipment for the Rail Milling Machine is as follows:

- First Aid kit - total 2 off being 1 per cab
- Wedge (hardwood) - total 2 off being 1 per cab
- Box of detonators - total 2 off being 1 per cab
- Red signal flag - total 4 off being 2 per cab
- Short circuit device - total 2 off being 1 per cab
- Hand lamp with dimmed red light - total 2 off being 1 per cab

The above track safety equipment (excluding the detonators) will need to be provided to the train manufacturers prior to the shipment of the Plant and Machinery to the UK. The detonators will be provided once the trains are in the UK.

### **Exercise of Option**

In order to proceed with the above option, the Purchaser shall provide formal notice to the Service Provider, and this notice will be issued at least two (2) calendar weeks prior to the date of train shipping.

### **Option Price**

The price for the option shall be as defined in the pricing section of this agreement.

## Appendix 10: CTBC Signalling System

The following documents are provided on the CD-Rom that forms part of this contract agreement. NOTE that these documents are provided **For Information Only** and the Purchaser does not guarantee the accuracy or completeness of any information contained therein:

- 1) CBTC Overview.pptx
- 2) CBTC\_DMI layouts\_Annex2\_doc.pdf

## Schedule 2

### Spares, Special Tools and other equipment

#### 1 General

- 1.1 The Service Provider shall use and store (as applicable) all Spares, Special Tools and other equipment provided to it by the Purchaser under this Agreement in such a way so as to ensure that such Spares, Special Tools and other equipment do not suffer any damage or degradation while in the Service Provider's care, custody or control.
- 1.2 The Parties acknowledge and agree that the Purchaser shall be responsible for the storage of Spares, Special Tools and other equipment until they are provided to the Service Provider in order to deliver the Services. While the Spares, Special Tools or other equipment are in the care, custody or control of the Service Provider, the Service Provider shall comply with the requirements of this Schedule 2 (*Spares, Special Tools and other equipment*).

#### 2 Spares

- 2.1 The Purchaser shall store and manage the Spares at a designated facility within the Designated Depot (the "**Purchasers' Designated Store**" for the purposes of this Schedule 2 (*Spares, Special Tools and other equipment*)).
- 2.2 If the Service Provider determines (acting reasonably) that it requires any Spare in order to perform the Services:
- 2.2.1 the Service Provider shall complete a MMS work order request setting out details of the Spare required and the anticipated usage of the Spare by the Service Provider; and
  - 2.2.2 upon receipt of the MMS work order request described in paragraph 2.2.1 of this Schedule 2 (*Spares, Special Tools and other equipment*), the Purchaser shall procure that such Spare is delivered to the Service Provider from the Purchasers' Designated Store on a "free issue" basis as soon as reasonably practicable (having regard to any applicable lead time for that Spare).

#### 3 Special Tools

- 3.1 If the Service Provider determines (acting reasonably) that it requires any Special Tool in order to perform the Services:
- 3.1.1 the Service Provider shall complete a MMS work order request setting out details of the Special Tool required and the anticipated usage of the Special Tool by the Service Provider; and
  - 3.1.2 upon receipt of the MMS work order request described in paragraph 3.1.1 of this Schedule 2 (*Spares, Special Tools and other equipment*), the Purchaser shall procure that such Special Tool is delivered to the Service Provider from the Purchasers' Designated

Store on a "free issue" basis as soon as reasonably practicable (having regard to any applicable lead time for that Special Tool).

#### **4 Storage**

- 4.1 The Service Provider shall store all Spares, Special Tools and other equipment provided to it by the Purchaser under this Agreement at a designated facility within the Designated Depot or such other location agreed between the parties (the "**Service Providers' Designated Store**" for the purposes of this Schedule 2 (*Spares, Special Tools and other equipment*)), and where the designated facility:
- (a) shall be capable of meeting the full requirements of the service; and
  - (b) use of the designated facility by the Service Provider shall be provided free of charge by the Purchaser.
- 4.2 The Service Provider shall ensure at all times that the Service Providers' Designated Store is weather proof, safe and secure, and is insured where required in accordance with Schedule 5 (*Insurance*).
- 4.3 The Service Provider shall notify the Purchaser as soon as reasonably practicable where the Service Provider becomes aware or reasonably suspects that the Service Providers' Designated Store is no longer weather proof, safe, secure or covered by requirements of the insurance regime set out in Schedule 5 (*Insurance*).
- 4.4 If the Service Providers' Designated Store is not located on the Purchaser's property (where this is agreed between the Parties per clause 4.1), the Service Provider shall ensure in particular that the following security measures are in place with regard to the Service Providers' Designated Store:
- 4.4.1 security staff;
  - 4.4.2 CCTV;
  - 4.4.3 burglar alarms; and
  - 4.4.4 fire alarms.
- 4.5 The Service Provider shall not change the location of the Service Providers' Designated Store without the Purchaser's prior written consent.

#### **5 Access, maintenance and vandalism**

- 5.1 The Service Provider shall provide the Purchaser with access to the Spares, Special Tools and other equipment provided to the Service Provider by the Purchaser under this Agreement on request. The Service Provider shall ensure that no other third party has access to the Spares, Special Tools and other equipment provided to the Service Provider by the Purchaser under this Agreement at all times.
- 5.2 The Service Provider shall, for the Agreement Duration, ensure that it maintains a stockpile of Spares at the Service Providers' Designated Store of sufficient quantity for the Service Provider to deliver the Services.

- 5.3 The Service Provider shall take all reasonable steps to prevent vandalism and/or accidental damage to the Spares, Special Tools and other equipment provided to the Service Provider by the Purchaser under this Agreement, while such Spares, Special Tools and other equipment are in the care, custody or control of the Service Provider.
- 5.4 The Service Provider shall ensure that all Spares, Special Tools and other equipment provided to the Service Provider by the Purchaser under this Agreement are regularly maintained and calibrated in accordance with the Manuals.

## **6 Periodic Review**

- 6.1 The Purchaser may, from time to time and in its absolute discretion, conduct a review of the use, storage and condition of Spares, Special Tools and other equipment in the care, custody or control of the Service Provider (which shall be the "**Periodic Review**" for the purposes of this Schedule 2 (*Spares, Special Tools and other equipment*)).
- 6.2 The Service Provider shall cooperate with the Purchaser and provide such access and assistance as the Purchaser may reasonably require in order to conduct a Periodic Review.
- 6.3 The Purchaser may raise any complaints or concerns to the Service Provider at the Maintenance Meetings regarding the use, storage and condition of Spares, Special Tools and other equipment as a result of the Periodic Review.

### Schedule 3

#### Performance Regime

#### 1 SHIFT COMPLETION

- 1.1 Each time that an item of Plant and Machinery arrives at the Finishing Point at the end of a Shift, the Purchaser shall complete the Work Return Form in respect of that Shift with details of the actual work completed in comparison to the instructions provided on the Work Return Form prior to the start of the Shift.
- 1.2 If, following completion of the Work Return Form for a Shift pursuant to paragraph 1.1 above:
- 1.2.1 the Purchaser determines (acting reasonably) that such Shift should be classed as a Completed Shift; or
  - 1.2.2 the Purchaser determines (acting reasonably) that the Service Provider was precluded from completing all or any part of such Shift due to the Purchaser failing to perform any of its obligations under this Agreement,
- then the Purchaser shall issue a Shift Completion Certificate to the Service Provider to certify that such Shift is a Completed Shift.
- 1.3 If the Purchaser issues a Shift Completion Certificate to the Service Provider in accordance with paragraph 1.2 of this Schedule 3 (*Performance Regime*), the Service Provider shall not be required to pay any Liquidated Damages to the Purchaser in relation to the Shifts the subject of that Shift Completion Certificate.
- 1.4 If, following completion of the Work Return Form for a Shift pursuant to paragraph 1.1 above, the Purchaser determines (acting reasonably) that such Shift should be classed as a Failed Shift, then:
- 1.4.1 the Service Provider shall pay to the Purchaser on demand Liquidated Damages at the rate stated in the Contract Particulars(o) for every Failed Shift relating to the Rail Milling Machine;
  - 1.4.2 the Service Provider shall pay to the Purchaser on demand Liquidated Damages at the rate stated in the Contract Particulars(p) for every Failed Shift relating to an Engineering Train;
  - 1.4.3 where a Failed Shift concerns the failure of more than one item of Plant and Machinery (the Rail Milling Machine and Engineering Trains), then Liquidated Damages shall be due in respect of each of the items that are the subject of the failure;
  - 1.4.4 the Purchaser shall record the Failed Shift on the Lost Shifts Tracker; and
  - 1.4.5 the Service Provider shall promptly and at the direction of the Purchaser, repeat the Shift to the standard of a Completed Shift, at no further expense to the Purchaser. Once the Service Provider has completed the Failed Shift to the satisfaction of the Purchaser by means of a repeated Shift, then payment for the Shift will be included in the Service Payments.

- 1.5 The Purchaser shall be entitled to set-off any undisputed amount payable to it under this paragraph 1 against the next Service Payment payable by it to the Service Provider.

## 2 MANAGEMENT ESCALATION PROCEDURE

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

Service	Non-Conformance	Level
Administrative obligations	Failure to perform any of the Service Provider's administrative obligations under this Agreement, including a failure to attend meetings, failure to produce reports, failure to respond to a request for a Variation Quote or a failure to provide a Variation Valuation within the timeframes specified in this Agreement, failure to comply with audit requirements	Level 1
Maintenance Train Performance	Failure to meet a performance item as defined in the Performance Specification for the Maintenance Trains	Level 1
Rail Head Profiling Performance	Failure to meet a performance item as defined in the Performance Specification for the Rail Head Profiling	Level 1
IMV Performance	Failure to meet a performance item as defined in the Performance Specification for the IMV.	Level 1
Shift Start Time	Failure to commence a Shift on time	Level 1
Shift Work Completion	Failure to complete all activities required for a particular Shift	Level 1
Rail Head Profiling Work	Failure to record all required Rail Head Profiling Measurements or carry out eddy current checks that can be used for verification purposes, even if the rail head has been milled and finished to specification	Level 1
IMV Track recording	Failure to operate the IMV in "track recording mode", even if the entire planned recording route for the IMV as	Level 1

	set out in the Work Return Form has been completed.	
Maintenance Train Arrival	Failure to ensure that the Engineering Trains arrive at the required worksite as set out in the route for a particular Shift	Level 1
Maintenance Train Plant and Machinery	Failure to deploy an item of Plant and Machinery as and when required from the worksite onto another route or to the Finishing Point due to a failure that requires recovery to a safe location other than the Designated Depot.	Level 1
Spares, Special Tools and other equipment	Failure to comply with any obligations under this Agreement, including Schedule 2 ( <i>Spares, Special Tools and other equipment</i> ) of this Agreement, in relation to Spares, Special Tools or other equipment.	Level 1

<b>Service</b>	<b>Non-Conformance</b>	<b>Level</b>
Inadequate Control of Vehicle Keys	Unable to locate keys, keys not being in possession of individual as stated in key management process.	Level 2
Inadequate Control of Staff Competences	Staff working without having required competency (e.g. where a specific 'card' is needed).	Level 2

<b>Service</b>	<b>Non-Conformance</b>	<b>Level</b>
Preventing Railway Operation	Delaying start of passenger services due to overrun of work.	Level 3
Serious Health and Safety Incident	Serious Health and Safety incident and that is due to Provider not following procedures.	Level 3
Serious Environmental Incident	Serious Environmental incident and that is due to Provider not following procedures.	Level 3
ROGS breach	Serious breach of ROGS requirements and that may place the Service Provider at risk of losing the "Entity in Charge of Maintenance" license	Level 3

- 2.3 If the Service Provider becomes aware that has or is likely to commit a Non-Conformance, then the Service Provider shall inform the Purchaser as soon as possible.
- 2.4 **Level 1 Non-Conformance**
- 2.4.1 For the purposes of this paragraph 2, a Non-Conformance identified as Level 1 in the table set out in paragraph 2.2 shall be referred to as a "**Level 1 Non-Conformance**".
- 2.4.2 The Purchaser's Representative shall be responsible for responding to and dealing with any Level 1 Non-Conformances.
- 2.4.3 If one (1) or more Level 1 Non-Conformance(s) occur the Purchaser may at its sole discretion submit a notice to the Service Provider setting out the details of the Level 1 Non-Conformance (the "**Level 1 Non-Conformance Notice**").
- 2.4.4 The Service Provider shall within ten (10) Working Days of service of the Non-Conformance Notice by the Purchaser prepare and submit to the Purchaser a draft plan, containing:
- 2.4.4.1 confirmation of the date and details of the Level 1 Non-Conformance;
- 2.4.4.2 proposed steps to be taken by the Service Provider to rectify the Level 1 Non-Conformance;
- 2.4.4.3 proposed steps to be taken by the Service Provider to ensure there is no repetition of the Level 1 Non-Conformance; and
- 2.4.4.4 proposed timeframes for completion of the steps set out pursuant to paragraphs 2.4.4.2 and 2.4.4.3 above (the "**Level 1 Rectification Period**"),
- (the "**Level 1 Non-Conformance Plan**").
- 2.4.5 The Purchaser and the Service Provider shall review the draft Level 1 Non-Conformance plan and agree the final content of the Level 1 Non-Conformance Plan.
- 2.4.6 In the event the Purchaser and the Service Provider do not agree the final content of the Level 1 Non-Conformance Plan, the Purchaser will determine the final content of the Level 1 Non-Conformance Plan in its sole discretion.
- 2.4.7 The Service Provider shall deliver all obligations contained in the Level 1 Non-Conformance Plan within the Level 1 Rectification Period.
- 2.4.8 If the Service Provider completes all obligations set out in the Level 1 Non-Conformance Plan to the satisfaction of the Purchaser and within the Level 1 Rectification Period, the Purchaser shall notify the Service Provider and the Level 1 Non-Conformance

shall be classed as closed. In the event that the Service Provider does not complete the Level 1 Non-Conformance Plan to the satisfaction of the Purchaser and within the Level 1 Rectification Period, the Purchaser shall escalate the Level 1 Non-Conformance to a Level 2 Non-Conformance.

2.4.9 The Purchaser shall record all Level 1 Non-Conformances and monitor and feedback on remedying any such Level 1 Non-Conformances at Contract Management Meetings.

2.4.10 The Purchaser shall review all Level 1 Non-Conformances weekly until such Level 1 Non-Conformances are classed as closed in accordance with paragraph 2.4.8 above.

## 2.5 **Level 2 Non-Conformance**

2.5.1 Where:

2.5.1.1 the Service Provider commits a Non-Conformance that is classed as Level 2 in the table set out in paragraph 2.2 above; or

2.5.1.2 the Purchaser determines, having regard to the gravity of the Non-Conformance, that a Non-Conformance should be treated as a Level 2 Non-Conformance; or

2.5.1.3 the Service Provider fails to notify the Purchaser of the occurrence of a Level 1 Non-Conformance prior to the Purchaser notifying the Service Provider of the same Level 1 Non-Conformance (provided that the Purchaser shall be entitled, having regard to the gravity of the Non-Conformance, to treat this as a Level 3 Non-Conformance rather than a Level 2 Non-Conformance); or

2.5.1.4 the Service Provider fails to provide the Purchaser with a draft Level 1 Non-Conformance Plan within ten (10) Working Days of service by the Purchaser notice of such Non-Conformance; or

2.5.1.5 the Service Provider fails to undertake and/or rectify a Level 1 Non-Conformance in accordance with the requisite Level 1 Non-Conformance Plan and/or within the Level 1 Rectification Period to the satisfaction of the Purchaser; or

2.5.1.6 a further Non-Conformance occurs of the same KPI within two (2) months of the end of the Level 1 Rectification Period; or

2.5.1.7 a further Non-Conformance occurs during the Level 1 Rectification Period of the same type as the Level 1 Non-Conformance and the Service Provider has knowingly and intentionally permitted the occurrence of such further Non-Conformance; or

- 2.5.1.8 three (3) or more Level 1 Non-Conformances occur within one (1) six (6) month period,

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

- 2.5.2 Level 2 Non-Conformances shall be escalated to the Purchaser's Head of Infrastructure.

- 2.5.3 Where one (1) or more Level 2 Non-Conformances occur, the Purchaser may at its sole discretion submit a notice to the Service Provider setting out the details of the Level 2 Non-Conformance (the "**Level 2 Non-Conformance Notice**"). The Service Provider shall within five (5) Working Days of service of the Level 2 Non-Conformance Notice by the Purchaser prepare and submit to the Purchaser a draft plan containing:

- 2.5.3.1 confirmation of the date and details of the Level 2 Non-Conformance(s);

- 2.5.3.2 proposed steps to be taken by the Service Provider to rectify the Level 2 Non-Conformance;

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

- 2.5.3.4 proposed timeframes for completion of the steps set out pursuant to paragraphs 2.5.3.2 and 2.5.3.3 above (the "**Level 2 Rectification Period**"),

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

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

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

- 2.5.6 The Service Provider shall deliver all obligations contained in the Level 2 Non-Conformance Plan within the Level 2 Rectification Period.

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

Period, the Purchaser shall escalate the Level 2 Non-Conformance to a Level 3 Non-Conformance.

2.5.8 The Purchaser shall record all Level 2 Non-Conformances and monitor and feedback on remedying any such Level 2 Non-Conformances at Contract Management Meetings.

2.5.9 The Purchaser shall review all Level 2 Non-Conformances weekly until such Level 2 Non-Conformances are classed as closed in accordance with paragraph 2.5.7 above.

## 2.6 Level 3 Non-Conformance

2.6.1 Where:

2.6.1.1 the Service Provider commits a Non-Conformance that is classed as Level 3 in the table set out in paragraph 2.2 above; or

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

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

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

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

2.6.1.6 a further Non-Conformance occurs during a Level 2 Rectification Period which is the same Non-Conformance as the Level 2 Non-Conformance and the Service Provider has wilfully permitted the occurrence of such further Non-Conformance,

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

2.6.2 Level 3 Non-Conformances shall be escalated to the Purchaser's Director of Operations.

2.6.3 Where one (1) or more Level 3 Non-Conformances occur the Purchaser may at its sole discretion submit a notice to the Service Provider setting out the details of the Level 3 Non-Conformance (the "**Level 3 Non-Conformance Notice**"). The Service Provider shall within five (5) Working Days of service of the Level 3 Non-Conformance prepare and submit a draft plan containing:

- 2.6.3.1 confirmation of the date and details of the Level 3 Non-Conformance(s);
- 2.6.3.2 proposed steps to be taken by the Service Provider to rectify the Level 3 Non-Conformance;
- 2.6.3.3 proposed steps to be taken by the Service Provider to ensure that there is no repetition of the Level 3 Non-Conformance(s); and
- 2.6.3.4 proposed timeframes for completion of the steps set out in paragraphs 2.6.3.2 and 2.6.3.3 above (the "**Level 3 Rectification Period**"),  
  
(the "**Level 3 Non-Conformance Plan**").
- 2.6.4 The Purchaser and the Service Provider shall review the draft Level 3 Non-Conformance plan and agree the final content of the Level 3 Non-Conformance Plan.
- 2.6.5 In the event the Purchaser and the Service Provider do not agree the final content of the Level 3 Non-Conformance Plan, the Purchaser will determine the final content of the Level 3 Non-Conformance Plan in its sole discretion.
- 2.6.6 The Service Provider shall deliver all obligations contained in the Level 3 Non-Conformance Plan within the Level 3 Rectification Period.
- 2.6.7 If the Service Provider completes all obligations set out in the Level 3 Non-Conformance Plan to the satisfaction of the Purchaser and within the Level 3 Rectification Period, the Purchaser shall notify the Service Provider and the Level 3 Non-Conformance shall be classed as closed. In the event that the Service Provider does not complete the Level 3 Non-Conformance Plan to the satisfaction of the Purchaser and within the Level 3 Rectification Period, the Purchaser shall escalate the Level 3 Non-Conformance to a Level 4 Non-Conformance.
- 2.6.8 The Purchaser shall record all Level 3 Non-Conformances and monitor and feedback on remedying any such Level 3 Non-Conformances at Contract Management Meetings.
- 2.6.9 The Purchaser shall review all Level 3 Non-Conformances weekly until such Level 3 Non-Conformances are classed as closed in accordance with paragraph 2.5.7 above.

## 2.7 **Level 4 Non-Conformance**

- 2.7.1 Where:

- 2.7.1.1 the Service Provider fails to submit to the Purchaser a draft Level 3 Non-Conformance Plan by the deadline notified under the relevant Non-Conformance Notice; or
- 2.7.1.2 the Service Provider fails to undertake and rectify a Level 3 Non-Conformance in accordance with the requisite Level 3 Non-Conformance Plan and/or within the Level 3 Rectification Period to the satisfaction of the Purchaser; or
- 2.7.1.3 a further Non-Conformance occurs within two (2) months of the end of the Level 3 Rectification Period and which is the same Non-Conformance as the Level 3 Non-Conformance; or
- 2.7.1.4 a further Non-Conformance occurs during the Level 3 Rectification Period that is of the same type as the Level 3 Non-Conformance and the Service Provider has knowingly and intentionally permitted the occurrence of such further Non-Conformance,

the Service Provider shall have committed a "**Level 4 Non-Conformance**".

- 2.7.2 Where a Level 4 Non-Conformance occurs, a Service Provider Event of Default shall arise and the Purchaser shall be entitled to terminate this Agreement by serving a Purchaser Termination Notice in accordance with Clause 16.2.2 of this Agreement.

### **3 MAINTENANCE – RECOVERY OF COSTS**

- 3.1 The Service Provider shall maintain the Plant and Machinery, Special Tools, Parts, Spares and other equipment provided to it by the Purchaser under this Agreement in accordance with the Manuals.
- 3.2 If the Service Provider fails to comply with its obligations under paragraph 3.1 above, then the Service Provider shall indemnify the Purchaser on demand on an after-Tax basis for from and against all liability for any costs, losses and expenses suffered or incurred by the Purchaser as a result of the Service Provider failing to comply with its obligations under paragraph 3.1, including:
  - 3.2.1 the costs of any Spares that the Purchaser must purchase in order to ensure that the Plant and Machinery, Special Tools and/or other equipment provided to the Service Provider by the Purchaser under this Agreement is in a condition that is consistent with its maintenance requirements under the Manuals; and
  - 3.2.2 the costs of procuring a third party and/or the Manufacturer to perform maintenance and/or repairs on the Plant and Machinery, Special Tools and/or other equipment provided to the Service Provider by the Purchaser under this Agreement in order to ensure that such Plant and Machinery, Special Tools and/or other equipment is Fit for Purpose and is in a condition that is consistent with its maintenance requirements under the Manuals.

**Schedule 4**  
**Service Payments**

## Part A – Pricing Preambles

### 1 PRICING INTRODUCTION

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

### 2 PRICING CONCEPT

2.1 The Service Payments are calculated in accordance with the process set out in Part C of Schedule 4 (*Service Payments*) for the Agreement Duration, adjusted as the case may be in accordance with the Variation Procedure. The VAT treatment of supplies pursuant to this Agreement shall be as set out in Clause 11 of this Agreement.

2.2 Each Service Payment shall be inclusive of all costs and charges whatsoever and shall be deemed to include all costs, overheads, profit, risk allowances and the like required for the Service Provider's performance of this Agreement.

### 3 PRICING APPROACH

3.1 The Service Payments shall be in Sterling and shall include all applicable taxes including any import/export taxes and all other statutory costs and the like but excluding VAT (which shall be dealt with pursuant to Clause 11 of this Agreement).

3.2 Notwithstanding paragraph 2.2 above, the rates and prices for all items and activities required for the Service Provider's performance of this Agreement are deemed to be fully inclusive, and shall include the costs set out in paragraphs 3.2.1 to 3.2.5 below.

#### 3.2.1 Preliminaries

The following preliminaries are included:

3.2.1.1 head office, branch office and other premises or offices support - all head office, branch office and other premises or offices costs directly related to this Agreement including supervisory, liaison, engineering, planning, quality assurance and administrative staff (and includes all associated overheads, communications and data costs, stationery costs, printing costs and postage costs not included in the percentage addition for overheads and profit);

3.2.1.2 all costs of accommodation and sanitary facilities necessary for site staff and all associated costs (including heating, lighting, furniture, first aid, associated consumables and all other safety, health and welfare facilities);

3.2.1.3 site communications - all costs in connection with the provision of telephones and portable telephones including installation costs, rental and calls, costs of usage of public telephones and other communication equipment and consumables required for the Service Provider to perform its obligations under this Agreement;

3.2.1.4 training requirements - course and examination fees, all costs of staff attending medical examinations and training courses to enable the Service Provider to perform its obligations under this Agreement, and all costs of Service Provider-run courses and licensing of staff; and

3.2.1.5 insurance - all costs of complying with the insurance requirements as set out in this Agreement.

### 3.2.2 Mobilisation

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

### 3.2.3 Overheads and Profit

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

### 3.2.4 Attendance and Reporting

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

### 3.2.5 Administration of Change

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

3.3 Items provided by the Purchaser shall be 'free-issue' unless stated otherwise.

## **Part B – Payment**

### **1 Service Payments**

- 1.1 The Service Provider will be entitled to submit a payment application in respect of a Service Payment in accordance with the Service Payments Schedule set out in Part C of this Schedule 4 (*Service Payments*).
- 1.2 The Service Provider shall be entitled to receive the Fixed Price element starting from the Commencement Date (where this date is stated in the Contract Particulars).
- 1.3 Payment of the Variable elements shall be due from the actual Live Operation date, where the planned Live Operation date is as stated in the Contract Particulars as Key Date number 1. The parties shall reasonably agree when Live Operation has been achieved.
- 1.4 The Purchaser will be responsible for any training costs in respect of training provided by the Manufacturers of the Plant and Machinery. The Purchaser will also be responsible for training costs in respect of: signalling system training, training due to changes in technical capability, and any specific training that is a requirement of the Purchaser. The Purchaser will reimburse any reasonable attendance costs for the Service Provider's personnel in respect of the training that is the subject of this clause 1.4, and which is expected to include travel, subsistence and accommodation. A margin of 15% may be added to these costs by the Service Provider.
- 1.5 The Service Provider has included for initial driver and operator training (but excluding costs of training provided by the Manufacturers of the Plant and Machinery which costs are the responsibility of the Purchaser), and for safety, designated person and first aid training.
- 1.6 The Parties shall reasonably agree any training that is required and any plans for delivery of training in order to secure best value.

### **2 Variations**

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

## Part C – Service Payments Schedule

### 1 Calculation of Service Payments

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

$$£SP = \frac{(\text{£FC})}{13} + (nE * \text{£VET}) + (nRM * \text{£VRM}) - LD$$

where:

£SP means the Service Payment for the relevant Payment Period payable by the Purchaser to the Service Provider;

£FC means the annual fixed price element for the Services, being the price in Sterling for the relevant Contract Year, as particularised in the table at paragraph 2 of this Part C to Schedule 4 (*Service Payments*) below;

nE means the number of Completed Shifts in the relevant Payment Period in respect of the Engineering Trains (for example if Engineering Train number one completes 20 shifts and Engineering Train number two completes 18 shifts then the number of completed shifts is 38);

£VET means the variable price element for the Engineering Trains, being the price per Completed Shift in Sterling in respect of the Engineering Trains for the relevant Contract Year, as particularised in the table at paragraph 3 of this Part C to Schedule 4 (*Service Payments*) below;

nRM means the number of Completed Shifts in the relevant Payment Period in respect of the Rail Milling Machine;

£VRM means the variable price element for a Rail Milling Machine, being the price per Completed Shift in Sterling in respect of the Rail Milling Machine for the relevant Contract Year, as particularised in paragraph 4 of this Part C to Schedule 4 (*Service Payments*) below; and

LD means any Liquidated Damages payable by the Service Provider to the Purchaser in accordance with Schedule 3 (*Performance Regime*) for the relevant Payment Period.

### 2 Fixed price element of the Services

Contract Year	Fixed price (£) of the Services per Contract Year
1	£2,824,227.00
2	£2,750,608.00
3	£2,822,389.00
4	£2,873,562.00
5	£2,935,723.00

**3 Variable price element in respect of the Engineering Trains**

<b>Contract Year</b>	<b>Price (£) per Completed Shift in respect of the Engineering Trains</b>
1	£279.32
2	£287.14
3	£295.18
4	£303.73
5	£312.85

**4 Variable price element in respect of the Rail Milling Machine**

<b>Contract Year</b>	<b>Price (£) per Completed Shift in respect of the Rail Milling Machine</b>
1	£139.66
2	£143.57
3	£147.59
4	£151.86
5	£156.42

The prices in tables 2 to 4 of this Schedule 4Part C are fixed during the initial five (5) year term and no annual indexation shall be undertaken during this initial five (5) year term. If the contract is extended per clause 4.2 beyond the initial five (5) year term, then indexation shall be applied annually for the extension period as defined in Schedule 4Part F of this contract agreement.

## **5 Track Safety Equipment for Train Certification**

Provision of Track Safety Equipment per Appendix 9 of the Services Specification (Schedule 1).

Option Price £10,800

### **Exercise of Option**

In order to proceed with the above option, the Purchaser shall provide formal notice to the Service Provider, and this notice will be issued at least two (2) calendar weeks prior to the date of train shipping.

## **6 Additional Information**

The following document is for Information Purposes Only and is provided on the CD-Rom that forms part of this contract agreement:

 **INFORMATION ONLY - Pricing Schedule FINAL.xlsx**

This document describes how the Service Provider has priced the delivery of the services, and specifically describes the numbers and types of staff included within the build up of the fixed price in Table 2 of this Schedule 4 Part C. This information may need to be consulted when considering any Change Proposals per clause 6.8 or Changes to Service Provider Organisation per clause 6.9.

## **Part D – Valuation of Variations**

### **1 Schedule Of Rates And Prices**

- 1.1 The rates and prices that shall be used to determine the value of Variations in accordance with Clause 7.5.2 are set out in Part E of this Schedule 4 (*Service Payments*).
- 1.2 In respect of costs incurred / to be incurred by a third party, the basis of the valuation of this element of the Variation shall be a dated quotation from the third party, to which a ten per cent (10%) addition, to cover all overheads and profit, may be added. Where the Variation relates to goods, works or services which are significant in value and may be provided by a number of different organisations, the Purchaser's Representative may request that the Service Provider provides three (3) dated quotations and for the value of the Variation to be based on the one that provided best value.

### **2 Conversion of Sums into Sterling**

- 2.1 Where a sum forming part or all of the value of a Variation is not in Sterling, the following will apply:
  - 2.1.1 A dated invoice / quotation from the third party will form the basis of the valuation.
  - 2.1.2 A currency conversion will be applied based on the Bank of England's Sterling foreign exchange reference rates as published at:  
<http://www.bankofengland.co.uk/boeapps/iadb/Rates.asp>  
or such other address as may be used by the Bank of England or other body which takes over its function, as at the same date as that on the invoice / quotation.

**Part E – Schedule of Rates and Prices****1 Labour rates**

1.1 The labour rates for any external advisory services that may be required as part of a Variation are:

<b>Grade</b>	<b>Description of role</b>	<b>Rate</b>
<i>Industry expert</i>	Providing consultation at a senior level on strategy and matters arising from the provision of the service.	████ per hour, plus a margin of █████
<i>Specialist/Senior Engineer</i>	Providing consultation at a senior level on technical and engineering issues arising from the provision of the service.	████ per hour, plus a margin of █████
<i>Engineer</i>	Supporting the Engineering function of the services and secondment to developmental projects.	████ per hour, plus a margin of █████
<i>Technician/Practitioner</i>	Providing generic hands on support to the engineering function.	████ per hour, plus a margin of █████
<i>Artisan</i>	Providing Bespoke or unique skillset for specific elements of the service.	████ per hour, plus a margin of █████

1.2 The labour rates for any internal resources required as part of a Variation are:

<b>Grade</b>	<b>Description of role</b>	<b>Rate (£ per hour)</b>
<i>Project Manager</i>	to plan, budget, oversee and document all aspects any new initiatives or projects required in relation to the services.	████ per hour, plus a margin of █████
<i>Senior Engineer</i>	Providing consultation at a senior level on technical and engineering issues arising from the provision of the service.	████ per hour, plus a margin of █████
<i>Engineer</i>	Supporting the Engineering function of the services and secondment to developmental projects.	████ per hour, plus a margin of █████

<b>Grade</b>	<b>Description of role</b>	<b>Rate (£ per hour)</b>
<i>Senior Administrator</i>	Oversee all administrative management duties in relation to the services	■■■ per hour, plus a margin of ■■■
<i>Administrator</i>	Performing a variety of administrative and clerical tasks providing support to managers and employees.	■■■ per hour, plus a margin of ■■■
<i>Route conductor</i>	Skilled drivers providing route guidance enabling Train Drivers without knowledge of a certain route to fulfil the service requirements.	■■■ per hour, plus a margin of ■■■
<i>Drivers (Train Managers)</i>	are only required during the night, if additional drivers are required during the day, these will be in line with salary detailed in the pricing document.	■■■ per hour, plus a margin of ■■■
<i>Chief Operators are only required during the night and only on the Linsinger machine</i>	if additional Chief Operators are required at night or day, these will be in line with salary detailed in the pricing document.	■■■ per hour, plus a margin of ■■■
<i>Data Operators are only required during the night</i>	if additional Data Operators are required at night or day, these will be in line with salary detailed in the pricing document.	■■■ per hour, plus a margin of ■■■

- 1.3 The rates in tables 1.1 and 1.2 of this Schedule 4 Part E are fixed during the initial five (5) year term and no annual indexation shall be undertaken during this initial five (5) year term. If the contract is extended beyond the initial five (5) year term per clause 4.2, then indexation shall be applied annually for the extension period as defined in Schedule 4 Part F of this contract agreement.

## Part F – Indexation Adjustment applicable to any Contract Extension

### 1 Overview

- 1.1 Where the Purchaser extends this Agreement pursuant to Clause 4.2, the Service Payments, any Liquidated Damages and the labour rates (as set out in Part E of this Schedule 4 (*Service Payments*)) shall be subject to annual indexation for the term of the extension of this Agreement in accordance with paragraphs 2.1 to 2.3 below (the "**Indexation Adjustment**").

### 2 Indexation

- 2.1 The Service Payments in respect of the Services, any Liquidated Damages and the labour rates (as set out in Part E of this Schedule 4 (*Service Payments*)) shall be adjusted annually on the Expiry Date, and annually thereafter for the term of any extension of this Agreement pursuant to Clause 4.2 in accordance with the following formula:

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

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

I means the indexation factor applied in any calculation performed pursuant to paragraph 1 of this Schedule 4 (*Service Payments*) Part F;

RPIX<sub>y</sub> means the value of RPIX for the date that is three (3) months immediately prior to Expiry Date; and

RPIX<sub>x</sub> means the value of RPIX for the date that is fifteen (15) months immediately prior to the Expiry Date.

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

### 3 Changes to the Index

- 3.1 If the index referred to in paragraph 2.2 of this Part F of Schedule 4 (*Service Payments*) ceases to be published, then such other appropriate index that may be published in place thereof shall apply or, in the absence of an appropriate replacement index, such index shall apply as the Parties may agree.

## **Schedule 5**

### **Insurance**

- 1 The Service Provider shall procure and maintain for the life of the contract and where appropriate for whatever term after the completion of the contract, insurances that are appropriate to cover Service Provider liabilities from the responsibilities, duties and activities defined by the contract. Evidence of this insurance shall be provided before the commencement of the contract delivery and annually thereafter.
- 2 The Purchaser's insurances for all risks and third party property damage & injury will be extended to provide cover whilst the Service Provider has the Plant and Machinery in its care, custody or control.
- 3 If the Service Provider fails to maintain the insurance policies as provided for in this Schedule 5 (*Insurance*), the Purchaser may effect and keep in force any such insurance and pay such premium or premiums at commercially competitive rates as may be necessary for that purpose and from time to time deduct the amount so paid from any monies due or which become due to the Service Provider or recover the same as a debt due from the Service Provider.
- 4 The provisions of this Schedule 5 (*Insurance*) shall survive the expiry or the termination of this Agreement for whatever reason.

## Schedule 6

### Dispute Resolution Procedure

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

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

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

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

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

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

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

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

- 1 The Purchaser and the Service Provider shall follow the procedure set out in this Schedule 6 (*Dispute Resolution Procedure*) for the management and resolution of Disputes.
- 2 Subject to paragraph 7, any Dispute may in the first instance be referred in writing from the referring Party to the Senior Representatives by notice in writing to the other Party. The written notice from the referring Party shall give brief written particulars of the Dispute, the relief sought and the basis for claiming the relief sought (including the provisions of this Agreement that are relevant to the Dispute). The written notice shall also identify the referring Party's Senior Representative.
- 3 Within 14 days of receipt of the notice pursuant to paragraph 2, the responding Party provides the referring Party with a brief written response. The response includes identification of the responding Party's Senior Representative.
- 4 The Senior Representatives shall meet and try to reach agreement to resolve the Dispute referred to them pursuant to paragraph 1.
- 5 If the Senior Representatives are unable to, or fail to, reach agreement to resolve the Dispute within 14 days after the date of the response under paragraph 3, court proceedings shall not be commenced unless and until the Dispute has first been referred to adjudication (and an Adjudicator's decision has been obtained) in accordance with the procedure in paragraphs 7–30 and notice has been given in accordance with paragraph 30.

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

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

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

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

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

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

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

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

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

11 Where the Adjudicator has been selected in accordance with paragraph 8 the referring Party shall refer the Dispute in writing to the Adjudicator by the Referral Notice in accordance with paragraph 12 within 7 days of the date of the Notice of Adjudication or within 2 days of the date of appointment of the Adjudicator, whichever is later. Upon receipt of the Referral Notice, the Adjudicator must inform every Party to the dispute of the date that it was received.

12 The Referral Notice shall:

12.1 include the facts relied upon by the referring Party in support of its claim(s);

12.2 include a statement of the contractual and/or other basis relied upon by the referring Party in support of its claim(s);

- 12.3 include a calculation of the specific monetary amount (if any) that the referring Party is seeking to recover in relation to each and every claim that is the subject matter of the Dispute;
- 12.4 be accompanied by copies of, or relevant extracts from, this Agreement and such other documents on which the referring Party relies; and
- 12.5 include the addresses of all Parties to the Dispute.
- 13 The referring Party shall send copies of the Referral Notice and the documents referred to in this paragraph 12 to the other Party at the same time as he sends them to the Adjudicator.
- 14 If a matter disputed by the Service Provider under or in connection with a Subcontract is also a matter disputed under or in connection with this Agreement, the Service Provider may, with the consent of the Purchaser, refer the Subcontract dispute to the Adjudicator at the same time as the main Agreement referral. The Adjudicator shall then decide the disputes together and references to the parties for the purposes of the Dispute are interpreted as including the Subcontractor. The parties to the Dispute agree to consider and endeavour to agree in good faith any reasonable request by the Adjudicator for additional time to decide the main Agreement and Subcontract disputes.
- 15 The parties to the Dispute may jointly terminate the Adjudicator's appointment at any time. In such a case, or:
- 15.1 if the Adjudicator fails to give notice of his decision within the period referred to in paragraph 17 and the parties to the Dispute do not jointly extend time for his decision to be made in accordance with paragraph 17, or
- 15.2 if the period referred to in paragraph 17 is extended in accordance with paragraph 19 or by agreement by the parties to the Dispute and the Adjudicator fails to give notice of his decision within such extended period, and the parties to the Dispute do not jointly extend time for his decision to be made in accordance with paragraph 17, or
- 15.3 if at any time the Adjudicator declines to act or is unable to act as a result of his death, disability, resignation or otherwise,
- a person shall be appointed to replace the Adjudicator in accordance with the provisions of paragraph 8. In the event of the parties to the Dispute failing to jointly appoint a person willing and suitable to act as replacement Adjudicator within 3 days, any party to the Dispute may apply to the Nominating Authority to appoint a replacement Adjudicator. In any case where the Adjudicator is appointed as a replacement pursuant to this paragraph 14, the parties to the Dispute shall each send to the Adjudicator, as soon as reasonably practicable, copies of all documents supplied by them to the Adjudicator he replaces.
- 16 The Nominating Authority and its employees and agents shall not be liable to any Party for any act or omission unless the act or omission is in bad faith. The Parties also agree that any employee or agent of the Nominating Authority shall be similarly protected from liability.
- 17 The Party not making the referral may send to the Adjudicator within 14 days of the date of the referral, with a copy to the other Party, a written statement of the contentions on which it relies and any materials it wishes the Adjudicator to consider.

- 18 The Adjudicator shall reach his decision and gives notice of the decision to the parties to the Dispute within 28 days of the date of receipt of the Referral Notice mentioned in paragraph 11, or such longer period as is agreed by the parties to the Dispute after the Dispute has been referred to him. Notice of the Adjudicator's decision (stating that it is given under this Schedule 6 (*Dispute Resolution Procedure*)) shall be in writing and shall include a summary of the Adjudicator's findings and a statement of the reasons for his decision.
- 19 The Adjudicator may extend the period of 28 days referred to in paragraph 18 by up to 14 days, with the consent of the Party by whom the Dispute was referred.
- 20 The Adjudicator's decision shall be binding upon the parties to the Dispute and the Adjudicator unless and until the Dispute is finally determined by legal proceedings, by arbitration (if the parties otherwise agree to arbitration) or by agreement. The Adjudicator may on his own initiative or on the application of a Party correct his decision so as to remove a clerical or typographical error arising by accident or omission. Any correction of a decision must be made within five days of the delivery of the decision to the parties to the dispute. As soon as possible after correcting a decision in accordance with this paragraph, the Adjudicator must deliver a copy of the corrected decision to each of the Parties to this Agreement. Any correction of a decision shall form part of the decision. The Adjudicator may in his decision allocate his remuneration and expenses between the Parties in accordance with paragraph 27. If the Adjudicator's decision changes any payment which is due under this Agreement, payment of the sum decided by the Adjudicator shall be due not later than seven days from the date of the decision or the date on which such payment is due in accordance with the provisions of this Agreement, whichever is the later.
- 21 The Adjudicator:
- 21.1 shall act impartially and as an expert (not as an arbitrator) in the conduct of the reference and in reaching his decision;
  - 21.2 shall consider any relevant information submitted to him by any of the parties to the Dispute and make available to them any information to be taken into account in reaching his decision provided in accordance with the procedure (if any) which the Adjudicator may decide;
  - 21.3 shall reach his decision in accordance with the law applicable to this Agreement;
  - 21.4 may take the initiative in ascertaining the facts and the law in relation to the Dispute;
  - 21.5 may, with the consent of the parties to the Dispute, seek legal or technical advice from consultants whose appointment by the Adjudicator (including terms of remuneration) is subject to the approval of the parties to the Dispute;
  - 21.6 shall, where a translation of any document is required, decide by whom it should be provided in the event that the parties to the Dispute do not agree.
- 22 The Adjudicator shall decide in his discretion on the procedure to be followed in the adjudication. In particular he may, but is not obliged to:
- 22.1 convene meetings upon reasonable notice to the parties to the Dispute at which such parties and their representatives are entitled to be present;

- 22.2 submit lists of questions to the parties to the Dispute to be answered in such meetings or in writing within such reasonable time as he requires;
- 22.3 require the parties to the Dispute to provide him with such information and other facilities as he reasonably requires for the determination of the Dispute;
- 22.4 otherwise take such action and adopt such procedures as do not conflict with any of the provisions of this Agreement and are reasonable and proper for the just, expeditious and economical determination of the Dispute;
- 22.5 inspect any part of the Railway Infrastructure, the Service Provider's Works or the facilities of any relevant Subcontractor.
- 23 The Adjudicator shall not be liable for anything done or omitted in the discharge or purported discharge of his functions as an adjudicator unless the act or omission is in bad faith. The Parties also agree that any employee or agent of the Adjudicator shall be similarly protected from liability.
- 24 All meetings are private and save as required by law the Adjudicator and the Parties shall keep confidential the Dispute, all information of whatever nature provided to him by or on behalf of any Party and his decision.
- 25 The Parties to a contract to which the Dispute relates shall continue to observe and perform all the obligations contained in such contract, notwithstanding any reference to the Adjudicator, and insofar as the same is consistent with any safety review procedures to which the parties to the Dispute are bound, give effect forthwith to the Adjudicator's decision in every respect unless and until as hereinafter provided the Dispute is finally determined by a court in any legal proceedings, by arbitration (if the parties otherwise agree to arbitration) or by agreement. Any party to the Dispute may apply to any appropriate court for enforcement of the Adjudicator's decision. Neither any form of enforcement of the Adjudicator's decision nor any form of challenge to the enforcement of the Adjudicator's decision nor any dispute arising out of or in connection with such enforcement or challenge are regarded and treated as a Dispute for the purposes of this Schedule 6 (*Dispute Resolution Procedure*).
- 26 After the giving of a Notice of Adjudication, the Parties may seek to agree how the Adjudicator allocates the costs and fees excluding his remuneration and expenses which are dealt with in paragraph 27 below of the adjudication as between the Parties. If such an agreement is reached between the Parties, they shall notify the Adjudicator, who shall allocate costs and fees in accordance with such agreement. The Parties agree to be bound by the Adjudicator's allocation of costs and fees and to pay such costs and fees in accordance with the Adjudicator's direction unless and until the direction of the Adjudicator is set aside or revised by a court pursuant to any legal proceedings.
- 27 Subject to any agreement of the Parties, the Adjudicator shall allocate payment of his remuneration and expenses as between the Parties. Unless the Parties otherwise agree, the Adjudicator awards the payment of his remuneration and expenses on the general principle that costs should follow the event, except where it appears to the Adjudicator that in the circumstances this is not appropriate in relation to the whole or part of his remuneration or expenses. The Parties agree to be bound by the Adjudicator's allocation of payment of his remuneration and expenses and pay such remuneration and expenses in accordance with the

Adjudicator's direction unless and until the direction of the Adjudicator is set aside or revised by a court pursuant to any legal proceedings.

- 28 All notices, written submissions and any other written communications between the parties to the Dispute and the Adjudicator shall either be delivered by hand, sent by facsimile or sent by first class pre-paid post or recorded delivery (airmail if posted to or from a place outside the United Kingdom) and, in each case, copied simultaneously (delivered or sent as aforesaid) to the other Parties. Copies by way of confirmation of all communications by facsimile between the parties to the Dispute and the Adjudicator shall also be sent by first class post (airmail if posted to or from a place outside the United Kingdom) not later than the next following Working Day the date of the original facsimile transmission.
- 29 All information of whatever nature provided to the Adjudicator by any party to the Dispute shall be copied to the other parties simultaneously.
- 30 If any party to a Dispute is dissatisfied with the Adjudicator's decision on that Dispute, that party may commence court proceedings for the final determination of the Dispute.

**Schedule 7**  
**Form of Guarantee**

This Schedule is included in the following document which is provided on the CD-Rom that forms part of this contract document:

 [Schedule 7,8,9 - Operation and Maintenance Agreement.docx](#)

**Schedule 8**  
**Form of Deed of Warranty**

This Schedule is included in the following document which is provided on the CD-Rom that forms part of this contract document:

 Schedule 7,8,9 - Operation and Maintenance Agreement.docx

**Schedule 9 Form of Performance Bond**

This Schedule is included in the following document which is provided on the CD-Rom that forms part of this contract document:

 Schedule 7,8,9 - Operation and Maintenance Agreement.docx

## Schedule 10 Heavy Goods Vehicle Direct Vision Standard

### 1 Introduction

1. In this Schedule, the following terms shall have the corresponding meanings:

**“Agreed HGV DVS Plan”** means the Initial HGV DVS Plan as updated and approved in accordance with the terms of this Schedule 10;

**“Initial HGV DVS Plan”** means the initial plan set out at Appendix 1 to this Schedule 10 which sets out and proposes how the Service Provider shall ensure that:

- (a) from and including 1 October 2018, all Category N3 Lorries used in the provision of the Services achieve a minimum of a one (1) star Direct Vision Standard rating;
- (b) from and including 1 April 2020 all Category N3 Lorries used in the provision of the Services achieve a minimum of three (3) star Direct Vision Standard rating; and
- (c) so far as reasonably practicable, the conditions at all sites and locations within the control of the Service Provider] where:
  - (i) the Services are being delivered, or
  - (ii) in connection with the performance of the Services, any waste is being disposed of or supplies are being delivered to or from,
 are appropriate for each Category N2 Lorry and Category N3 Lorry being used in the provision of the Services. The Service Provider shall not incur any costs or make any changes to the site(s) without the prior written consent of the Purchaser;

### 2 HGV DVS Plan

2.1 The Service Provider shall comply with the Initial HGV DVS Plan from the date of this Agreement. Within fifteen (15) Working Days of the date of this Agreement the Purchaser's Representative shall either;

2.1.1 confirm that the Initial HGV DVS Plan is approved, in which case such plan shall become the Agreed HGV DVS Plan; or

2.1.2 provide the Service Provider with any comments on and/or amendments to the Initial HGV DVS Plan.

2.2 Within thirty (30) Working Days (for the purpose of paragraph 2.1.2) or 15 Working Days (for the purpose of paragraph 2.3.2) of receipt of any comments and/or amendments from the Purchaser's Representative in accordance with paragraph 2.1.2 or paragraph 2.3.2 (as applicable), the Service Provider shall:

- 2.2.1 develop the Initial HGV DVS Plan to reflect such comments and/or amendments; and
  - 2.2.2 submit an updated Initial HGV DVS Plan to the Purchaser's Representative for approval.
- 2.3 Within fifteen (15) Working Days of receipt of the updated Initial HGV DVS Plan, the Purchaser's Representative shall confirm that either the updated Initial HGV DVS Plan:
- 2.3.1 is approved, in which case it shall become the Agreed HGV DVS Plan; or
  - 2.3.2 not approved and provide its further comments and/or amendments to the Service Provider and the Service Provider shall revise and re-submit the updated Initial HGV DVS Plan for approval in accordance with paragraph 2.2.

The process set out in this paragraph 2.3 shall be repeated until the updated Initial HGV DVS Plan is approved by the Purchaser's Representative.

- 2.4 Where the Purchaser's Representative, acting reasonably, has not approved the updated Initial HGV DVS Plan, the Service Provider may refer that decision to the dispute resolution process set out in this Agreement.
- 2.5 Without limiting any other provision of this Agreement, the Service Provider shall, at no additional cost to the Purchaser's Representative, and as part of the Services:
- 2.5.1 implement, observe and comply with the Agreed HGV DVS Plan; and
  - 2.5.2 review and amend the Agreed HGV DVS Plan (as necessary) on each 12 month anniversary of the date of this Agreement or earlier if requested by the Purchaser's Representative, to reflect:
    - 2.5.2.1 any changes to the nature of the Services; and
    - 2.5.2.2 any comments and/or amendments made or proposed by the Purchaser's Representative.

### **3 HGV DVS Co-ordinator**

- 3.1 The Service Provider shall nominate an employee with the necessary experience, competency and authority to:
- 3.1.1 be responsible for implementation and compliance with the Agreed HGV DVS Plan; and
  - 3.1.2 act as the Service Provider's authorised representative on all matters concerning the Agreed HGV DVS Plan ("**HGV DVS Co-ordinator**").
- 3.2 The Service Provider shall add the HGV DVS Co-ordinator's details to the list of Key Personnel set out in Schedule 11.

### **4 Self Certification and Reporting**

On each 12 month anniversary of the date of this Agreement, the Service Provider shall submit a report to the Purchaser's Representative which sets out the Service Provider's progress in respect of implementation of the Agreed HGV DVS Plan and confirms (with supporting evidence) that the Service Provider has complied with the Agreed HGV DVS Plan.

**5 DVS Infractions**

5.1 Without limiting the effect of any other provision of this Agreement relating to termination, if the Service Provider fails to comply with the terms of this Schedule:

5.1.1 the Service Provider shall be deemed to have committed a material breach of this Agreement; and

5.1.2 the Purchaser may refuse the Service Provider, its employees, agents/Subcontractors and each Category N3 Lorry and Category N2 Lorry entry onto any property that is owned, occupied or managed by or on behalf of the Purchaser for any purpose (including but not limited to deliveries).

**Appendix 1 Initial HGV Plan**

*Appendix 1 will be the Initial HGV DVS Plan in the event that this was submitted as part of the tender submission. If not, the Initial HGV DVS Plan shall be provided within 10 working days following contract award. The Initial HGV DVS Plan will be developed to form the Agreed HGV DVS Plan.*

## **Schedule 11 Key Personnel**

Any key personnel are as detailed below:

There are no named Key Personnel. However, once live operation commences the Service Provider shall maintain at least 3 (three) competent Operators for the Rail Milling Machine. The date of live operation shall be the actual Live Operation date (where the planned Live Operation date is as stated in the Contract Particulars as Key Date number 1).

## Schedule 12 Strategic Labour Needs and Training (SLNT)

### 1. Introduction

1.1 Without prejudice to the other provisions in this Agreement relating to Service Provider Personnel, this Schedule sets out the Service Provider's obligations in respect of:

- (A) supporting the TfL Group (and Third Parties nominated by the TfL Group) in the implementation of the Skills and Employment Strategy; and
- (B) ensuring that the Service Provider attracts, develops and retains Service Provider Personnel with the skills necessary to:
  - (i) not used;
  - (ii) deliver the Services, throughout the term of the Agreement.

1.2 In this Schedule, the following terms shall have the corresponding meanings:

<b>“Apprentice”</b>	means a member of Service Provider Personnel who is registered as an apprentice or technician with an industry recognised body;
<b>“Agreed SLNT Plan”</b>	means the Service Provider's strategic labour needs and training plan set out at Appendix 3 ( <i>Initial/Agreed SLNT Plan</i> ) to this Schedule, to be prepared in accordance with the SLNT Plan Template and Approved by the Purchaser;
<b>“Effective Date”</b>	Means the Commencement Date as defined in the Contract Particulars;
<b>“Implementation Plan”</b>	means the plan defined in Appendix 4 of this Schedule;
<b>“Initial SLNT Plan”</b>	means the initial strategic labour needs and training plan set out at Appendix 3 ( <i>Initial/Agreed SLNT Plan</i> ), submitted by the Service Provider prior to the Effective Date and to be agreed between the Parties in accordance with paragraph 2 of this Schedule;
<b>“Monthly SLNT Monitoring Report”</b>	means the report to be prepared by the Service Provider in the form set out at Appendix 5 ( <i>SLNT Monitoring Report Template</i> ) and submitted to the Purchaser in accordance with the provisions of paragraph 6 of this Schedule;
<b>“Relevant Employment Vacancy”</b>	means an employment vacancy within the Service Provider's organisation for a member of Service Provider Personnel;
<b>“Service Provider Personnel”</b>	means an employee of the Service Provider or an employee of a sub-contractor of the Service Provider;

<b>“Skills and Employment Strategy”</b>	means the TfL Group’s ten (10) year skills and employment strategy, as amended from time to time. The skills and employment strategy is as per Appendix 1 (Skills and Employment Strategy) of this Schedule;
<b>“SLNT Co-ordinator”</b>	has the meaning set out in paragraph 3.1 of this Schedule;
<b>“SLNT Infraction”</b>	means any breach by the Service Provider of any of its obligations under this Schedule;
<b>“SLNT Output”</b>	means the minimum number of Apprentice positions or equivalent to be delivered by the Service Provider (either directly through its own personnel and the personnel of its Sub- Contractors) under this Agreement, as identified and agreed in the Agreed SLNT Plan;
<b>“SLNT Plan Template”</b>	means the template for the SLNT Plan set out at Appendix 2 (SLNT Template) to this Schedule;
<b>“Trainee”</b>	means a member of Service Provider Personnel who is registered as a trainee with an industry recognised body; and
<b>“Training Plan”</b>	has the meaning set out in paragraph 4.1 of this Schedule.

## 2. Agreed SLNT Plan

2.1 Based on the Initial SLNT Plan, the Service Provider shall:

- (A) further develop the Initial SLNT Plan to reflect the comments and requirements of the Purchaser; and
- (B) submit a revised copy of the Initial SLNT Plan to the Purchaser for Approval within twenty (20) Working Days of the Effective Date.
- (C) provide an Implementation Plan as defined in Appendix 4 of this Schedule based on the revised copy of the Initial SLNT Plan within forty (40) Working Days of the Effective Date;

2.2 If the Initial SLNT Plan is:

- (A) Approved, it shall be adopted immediately and become the Agreed SLNT Plan; or
- (B) not Approved, the Service Provider shall amend the Initial SLNT Plan and re-submit it to the Purchaser for Approval within Ten (10) Working Days or such other time period agreed in writing between the Parties. If the Purchaser does not Approve the Initial SLNT Plan following its resubmission, the matters preventing such Approval shall be discussed between the Parties, and where agreement cannot be reached, then resolution shall be in accordance with the Dispute Resolution Procedure.

- 2.3 Without limiting any other provision of this Agreement, the Service Provider shall:
- (A) comply with provisions of the Agreed SLNT Plan; and
  - (B) at no additional cost to the Purchaser and subject to the provisions of paragraph 2.4 below, review and amend the Agreed SLNT Plan and Implementation Plan:
    - (1) three (3) Months following the Effective Date and
    - (2) every twelve (12) Months following the Effective Date or at other times requested by the Purchaser, to reflect:
      - (a) Good Industry Practice;
      - (b) any changes to the nature of the Services; and
      - (c) any amendments proposed by the Purchaser.
- 2.4 Any changes or amendments to the Agreed SLNT Plan shall not be implemented until approved formally by the Purchaser.
- 2.5 In order to facilitate the efficient implementation of the Service Provider's SLNT requirements as contained in the Agreed SLNT Plan, the Purchaser will also require the Service Provider to prepare an Implementation Plan as contained in Appendix 4 of this Schedule. The Implementation plan
- (1) will need to be completed within three (3) Months following the Effective Date.

### **3. SLNT Co-ordinator**

- 3.1 Within twenty (20) Working Days of the Effective Date, the Service Provider shall nominate a member of the Service Provider Personnel with the necessary skills and authority to:
- (A) be responsible for the implementation and on-going development and maintenance of the Agreed SLNT Plan; and
  - (B) act as the single point of contact with the Purchaser on all matters concerning the Agreed SLNT Plan,
- (the "SLNT Co-ordinator").
- 3.2 The Parties shall add the SLNT Co-ordinator to the list of Key Personnel set out in Schedule 11 of this Agreement.

### **4. Training of Trainees and/ or Apprentices**

- 4.1 Within five (5) Working Days of the date of a Trainee's and/or Apprentice's commencement with the Service Provider, the Service Provider shall prepare and complete a written training plan for such member of Service Provider Personnel. The training plan shall include:
- (A) details of the skills and competencies to be developed and acquired by the

Trainee and/or Apprentice; and

- (B) the timescales by which the Trainee and/or Apprentice should acquire the defined skills and competencies,

(the “**Training Plan**”).

4.2 The Service Provider shall:

- (A) review and update Training Plans for all Trainees and/or Apprentices each Month; and
- (B) make copies of completed and up to date Training Plans available to the Purchaser for inspection.

## **5. Community Relations**

5.1 The Service Provider acknowledges and accepts that members of the TfL Group work closely with Third Party organisations to implement the Skills and Employment Strategy.

5.2 Accordingly, the Service Provider shall:

- (A) at the time of placing an advertisement for a Relevant Employment Vacancy, notify the relevant member of the Purchaser (and/or any Third Parties nominated by the TfL Group) of such advertisement, providing details of the:
- (1) Relevant Employment Vacancy;
  - (2) date of the advertisement; and
  - (3) publication in which the advertisement is scheduled to appear or appeared (as applicable); and
- (B) attend a minimum of two (2) events each year, at a time and location specified by the Purchaser, to publicise employment and training opportunities arising from the provision of the Services.

## **6. Monitoring and Reporting**

6.1 Subject to paragraph 6.2 below, the Service Provider shall provide the Purchaser with a Periodic (a period being each of the 4 weekly periods of the Contract Year) SLNT Monitoring Report detailing the Service Provider’s performance against the Agreed SLNT Plan.

6.2 Failure to provide the Purchaser with a copy of the SLNT Monitoring Report within the timescales set out in paragraph 6.1 above shall constitute a Level 1 Non-Conformance as defined in the Performance Regime of this Agreement.

6.3 The Service Provider shall ensure at all times that it complies with the requirements of the Data Protection Legislation in the:

- (A) development and maintenance of Training Plans; and

- (B) collection and reporting of the information to the Purchaser pursuant to paragraph 6.1 above.

## **7. SLNT Infractions**

### 7.1 Failure to:

- (A) ensure that each SLNT Output for the monitoring period is delivered in accordance with Agreed SLNT Plan; and/or
- (B) review the Agreed SLNT Plan in accordance with paragraph 2.3 of this Schedule (Strategic Labour Needs and Training),

shall constitute a Level 1 Non-Conformance as defined in the Performance Regime of this Agreement.

## **8. SLNT Audit**

8.1 The Purchaser may from time to time undertake any audit or check of any and all information regarding the Service Provider's compliance the provisions of this Schedule.

8.2 The Service Provider shall maintain and retain records relating to the Agreed SLNT Plan and its compliance with the provisions of this Schedule for a minimum of seven (7) years.

8.3 The Purchaser shall use reasonable endeavours to co-ordinate such audits and to manage the number, scope, timing and method of undertaking audits so as to ensure that the Service Provider is not, without due cause, disrupted or delayed in the performance of the Service Provider's obligations under this Agreement.

8.4 The Service Provider shall promptly provide all reasonable co-operation in relation to any audit or check including, to the extent reasonably possible in each particular circumstance:

- (A) granting or procuring the grant of access to any:
  - (1) premises used in the Service Provider's performance of this Agreement, whether the Service Provider's own premises or otherwise;
  - (2) equipment (including all computer hardware and software and databases) used (whether exclusively or non-exclusively) in the performance of the Service Provider's obligations under this Schedule, wherever situated and whether the Service Provider's own equipment or otherwise; and
- (B) complying with the Purchaser's reasonable requests for access to senior personnel engaged in the Service Provider's performance of this Agreement.

**APPENDICES to SLNT Schedule 12****(i) Appendix 1****Skills and Employment Strategy**

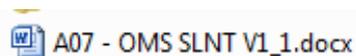
A copy of the TfL Skills and Employment Strategy can be obtained from:

<http://content.tfl.gov.uk/skills-employment-strategy.pdf>

A copy of the document as at December 2011 “Skills and Employment Strategy Update – December 2011” is provided on the CD-Rom that forms part of this contract document:

**(ii) Appendix 2****SLNT Template**

The SLNT Template shall take the form defined in Part 3 (“Initial SLNT Delivery Plan”) of the document A07 – OMS SLNT V1\_1.docx as issued as part of the ITT documentation, and included in the CD-Rom that forms part of this Agreement:

**(iii) Appendix 3****Initial/Agreed SLNT Plan**

The Service Provider has submitted the below Strategic Labour Needs and Training Plan as part of the tender process, and this is deemed to be the Initial SLNT Plan. When the content of such plan is Approved by the Purchaser such plan shall become the Agreed SLNT Plan and replace the Initial SLNT Plan.

- **Initial SLNT Plan**

The following documents as submitted by the Service Provider are included on the CD-Rom that forms part of this contract document:

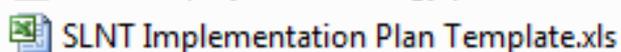


**(iv) Appendix 4**

**Implementation Plan**

The Implementation Plan is required to be undertaken within the timescale specified in Paragraph 2.3 (B) of this schedule. The Implementation Plan is designed to provide additional information to the Purchaser that allows the practical implementation of the bidders SLNT requirements, to be undertaken.

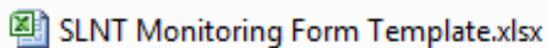
The format of the Implementation Plan is as per the following document that is included on the CD-Rom that forms part of this contract document:



**(v) Appendix 5**

**SLNT Monitoring Report Template**

The format of the SLNT Monitoring Report Template is as per the following document that is included on the CD-Rom that forms part of this contract document:



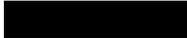
**Schedule 13 Contract Particulars**

**Items of Contract Particulars**

(a) The Key Dates and Conditions are:

No	Title	Key Date	Condition
(1)	Live Operation	Date to be agreed between the Parties for the purposes of the mobilisation programme	Service Provider holds required licenses. Service Provider staff deployed and trained.

(b) The Commencement Date is:	The date of this Agreement
(c) The notice period for extension per clause 4.2:	Two (2) calendar months
(d) Performance Bond to be provided per clause 13.1:	■
(e) Performance Bond amount per clause 13.1.1(a)	■■■■■
(f) Guarantee to be provided per clause 13.2:	■
(g) The Guarantor is:	■
(h) The maximum amount for costs of placing the services with a third party per clause 16.5.1(a):	■■■■ ■■■ ■■■■ ■■■■
(i) The maximum time limit for costs of placing the services with a third party per clause 16.5.1(a);	Nine (9) calendar months

<p>(j) Limit on Service Provider’s Liability per clause 19.4.1:</p>	 <p>Costs or expenses which the Service Provider is obliged to expend or does expend during the term of the Agreement (and any extension thereto) in carrying out its obligations under the Agreement (other than costs or expenses incurred or expended (or obliged to be incurred or expended in remedying any breach or default for which the Service Provider is liable to the Indemnified Parties) shall not be included within this limit.</p>
<p>(k) The Purchaser’s Representative is:</p>	<p>Attention: TfL Director Crossrail Operations (currently )                  Address: 29<sup>th</sup> Floor, 25 Canada Square, Canary Wharf, London E14 5LQ</p>
<p>(l) The Service Provider’s Representative is:</p>	<p>Attention: Commercial Director GBRf (currently )                  Address: 55 Old Broad Street, London EC2M 1RX</p>
<p>(m) The mobilisation programme per clause 23.6 is required within the following timescale:</p>	<p>Two (2 ) Calendar Weeks from the Commencement Date</p>
<p>(n) The form of the mobilisation programme is:</p>	<p>Primavera P6 (version 6.2.1 or later) or MS Project (2010 onwards), or such other form as may be reasonably required by the Purchaser. The programme shall also be supplied in Pdf format.</p>
<p>(o) Liquidated Damages relating to Rail Milling Machine (Schedule 3 clause 1.4.1) and subject to an annual increase stated in Contract Particulars(q)</p>	
<p>(p) Liquidated Damages relating to an Engineering Train (Schedule 3 clause 1.4.2) and subject to an annual increase stated in Contract Particulars(q)</p>	
<p>(q) Annual increase in Liquidated Damages amounts per clause 10.2.2(a)</p>	<p>two per cent (2%) per annum</p>