

- 5.1.6 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 Schedule 2 Part C.
- 5.2 Level 3 Non-Conformances shall be escalated to the Managing Director level of the Purchaser.
- 5.3 Where a Level 3 Non-Conformance occurs 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**").
- 5.4 The Level 3 Non-Conformance Notice shall set out:
- 5.4.1 the deadline by which the Service Provider must serve on the Purchaser a draft plan setting out the steps that the Service Provider has taken, or will take, to ensure that no further Non-Conformances of this type shall arise ("**Level 3 Non-Conformance Plan**"); and
- 5.4.2 the period (being no greater than one (1) month from the time of occurrence of the Level 3 Non-Conformance) for the Service Provider to put in place steps to ensure that no further Non-Conformances of the same type occur (the "**Level 3 Rectification Period**").
- 5.5 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.
- 5.6 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.
- 5.7 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.
- 5.8 The Purchaser shall record all Level 3 Non-Conformances and monitor and feedback on remedying any such Level 3 Non-Conformances at SSA Status Update Meetings Level 3 Non-Conformance trends.
- 5.9 The Purchaser shall review all Level 3 Non-Conformances weekly until such Level 3 Non-Conformances are classed as closed in accordance with paragraph 4.6 of this Schedule 2 Part C.
- 6 **Level 4 Non-Conformance**
- 6.1 Where:

- 6.1.1 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
- 6.1.2 the Service Provider fails to undertake and rectify a Level 3 Non-Conformance in accordance with the requisite Level 3 Non-Conformance Plan and to the satisfaction of the Purchaser; or
- 6.1.3 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
- 6.1.4 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**" for the purposes of this Schedule 2 Part C.

- 6.2 Where a Level 4 Non-Conformance occurs, the Purchaser shall be entitled to terminate this Agreement by serving a Purchaser Termination Notice in accordance with Clause 13.2.2 of this Agreement.

Part D
Equipment and Facilities

Not used

(Clause 5)

Note: *If there is a Variation or Call Off Notice, the Parties envisage that there may need to be amendments to this Schedule to allow for equipment or facilities to be provided by the Purchaser. If so, this Schedule will provide for:*

- (a) details of the equipment or facilities;*
- (b) the location of the equipment or facilities; and*
- (c) the period in which the equipment or facilities are available.*

Schedule 3
Supply and Support Plan Specifications

(Clause 4.3)

Not used

Note: *If a Variation or Call Off notice requires a Supply and Support Plan, details of what that Supply and Support Plan will cover will be included in this Schedule.*

Schedule 3A

Contract Management

1 SSA Start Meeting

Within 15 Working Days of the Commencement Date, the Purchaser will convene a meeting with the Service Provider for the Parties to establish and define or communicate as appropriate how all obligations under this Agreement will be delivered (the "**SSA Start Meeting**"). The SSA Start Meeting shall include, but is not limited to, the following topics:

- 1.1 defining the format for conducting communications;
- 1.2 the structure of future meetings and attendees of those meetings;
- 1.3 planning and contract management; and
- 1.4 all deliverables under this Agreement.

2 Progress Review & Reporting

2.1 The Parties shall meet on a monthly basis at a location and in a manner to be agreed between the Parties to provide an update on the progress of the performance of the Services and any other obligations under this Agreement and any progress on remedying any non-conformances (the "**SSA Status Update Meeting**"). The agenda for each SSA Status Update Meeting will include a review of the Service Provider's performance of the Core Services and the Optional Services as required. At the SSA Status Update Meeting the Purchaser shall provide the Service Provider with a copy of the Performance Report relating to the period (to be agreed by the Parties) immediately preceding that SSA Status Update Meeting. The Purchaser shall take minutes at each SSA Status Update Meeting which shall be approved by the Service Provider Representative at the next SSA Status Update meeting, circulated to appropriate stakeholders and archived for reference.

2.2 The Purchaser may request the Service Provider to take part in additional review meetings with the Purchaser throughout the duration of this Agreement, in person, by phone call, video conference or other means ("**Additional Review Meeting**"). The agenda of any Additional Review Meeting will include:

- 2.2.1 review of the delivery of the Services;
- 2.2.2 review of numbered summary table of Non-Conformance Notices (to be supplied by the Purchaser);
- 2.2.3 review of all obligations due to be fulfilled by the Service Provider within the next six (6) months of the Agreement.

2.3 Unless otherwise determined by the Purchaser, where possible, the Purchaser shall take a record of each Additional Review Meeting within a communication tracker. The Purchaser shall circulate this record along with an action tracker to appropriate stakeholders and archive these records for reference.

2.4 In addition to the requirements detailed with Schedule 2 (*Services*), every month from the Commencement Date and no later than five (5) Working Days prior to each SSA Status

Update Meeting, the Service Provider shall provide the Purchaser with a progress report containing details of the Service Provider's progress in delivering the Services, including:

- 2.4.1 a brief narrative describing activity since the previous progress report including photos if required;
- 2.4.2 an updated, numbered summary of Service Provider's supply chain risk including material supply issues;
- 2.4.3 an updated, numbered summary of compliance with Fleet Operator Recognition Scheme (FORS) and Work Related Road Risk (WRRR);
- 2.4.4 an updated, numbered summary table of Non-Conformance Notices issued by the Purchaser detailing planned and implemented resolutions;
- 2.4.5 an updated, numbered summary table of contract variations;
- 2.4.6 an updated, numbered summary table of any Risks that have emerged to the Service Provider;
- 2.4.7 an updated, numbered summary of Service Provider's Spares delivery, listing all orders, with order date and delivery date;
- 2.4.8 an updated, numbered summary table containing details of any Disputes between the Service Provider and any third parties in connection with this Agreement.

3 **Document Communication & Management**

- 3.1 In order to enable efficient and traceable communication, the Purchaser will provide the Service Provider with draft templates for communication between the Parties ("**Communication Template**"). The Purchaser will also provide a draft template for one Party to communicate to the other Party any potential issues that may affect the delivery of any obligations under this Agreement ("**Early Warning Template**"). The Parties will review and agree the draft Communication Template and the draft Early Warning Template at the SSA Start Meeting, and the agreed templates with which the Parties shall correspondence shall be known as the "**Agreed Templates**" for the purposes of this Schedule 3A. Before issuing any Agreed Template, the relevant Party shall ensure that the Agreed Template is given a unique communication reference number and date. Agreed Templates and Non-Conformance Notices shall be treated by the Parties as everyday correspondence and may be used to manage the change control process set out in Clause 5 (*Variations*). Each Party shall send Agreed Templates and Non-Conformance Notices to the other Party by email at the email address nominated by the Purchaser from time to time unless otherwise requested by the other Party.
- 3.2 The Purchaser shall provide the Service Provider with access to the Purchaser's preferred method of sharing and exchanging other related documents for the duration of this Agreement. Such method of information sharing may include online internet based methods, such as SharePoint.

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 sums listed under Part C of Schedule 4 (*Service Payments*), for the duration of the Agreement, adjusted as the case may be in accordance with the contractual Variation Procedure. The VAT treatment of supplies pursuant to this Agreement shall be as set out in Clause 8 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 Euros 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 8 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 (without limitation) the costs set out in paragraphs 3.2.1 to 3.2.5 below.

3.2.1 Preliminaries

The following preliminary costs are included:

3.2.1.1 head office, branch office and Service Provider's works support - all head office costs, branch office costs and costs of the Service Provider performing the Services that are directly related to this Agreement including supervisory, liaison, engineering, planning, quality assurance and administrative staff costs (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 (without limitation) 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

For the avoidance of doubt, overheads shall be deemed to include (without limitation) 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 of the Service Provider's recording and provision of information in accordance with any Variation Quote, the costing or administration of the Variation Procedure.

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 Payments Schedule set out in Part C of this Schedule 4 (*Service Payments*).

2 Variations

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

Part C – Service Payments Schedule

Service	Labour Quarterly Cost (€)
Design Authority	5,700
Obsolescence Management	5,700
Continuous Improvement	2,850
FRACAS/DRACAS	8,550
RCM Connectivity Management & Support	15,010

"Quarterly Period" means, in each year of this Agreement, each of the following:

01 January - 31 March

01 April - 30 June

01 July - 30 September

01 October - 31 December

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 5.5.2 are set out in Part E of this Schedule 4 (*Service Payments*).

2 Conversion of Sums into Euros

2.1 Where a sum forming part or all of the value of a Variation is not in Euros, 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 Euros 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**

Staff Grade	Rate	Unit
System Engineer	95	EUR
HW Engineer	95	EUR
SW Engineer	95	EUR
Service Technician	95	EUR
Project Manager	95	EUR
Quality Assurance Engineer	95	EUR

All labour rates will be subject to the Indexation Adjustment set out in Part F of this Schedule 4 (*Service Payments*).

2 Spares

The Spares list will be the same as included in the MSA and will include the following information:

- Description of the item
- OEM name
- OEM part number
- Drawing or part number
- Consumable (C) or Repairable (R)
- Quantity
- Mounted on/Location
- Cost of item
- Recommended spares holding (strategic stock and maintenance stock)
- Lead time

All Spares prices will be subject to the Indexation Adjustment set out in Part F of this Schedule 4 (*Service Payments*).

Part F – Indexation Adjustment

1 Overview

1.1 The Service Payments, Liquidated Damages, labour rates (as set out in Part E of this Schedule 4 (*Service Payments*)) and prices for Spares (as set out in Part E of this Schedule 4 (*Service Payments*)) in this Agreement shall be subject to:

1.1.1 yearly indexation in accordance with paragraph 2 below; and

1.1.2 rebasing every 5 years in accordance with paragraph 4 below,

(the "**Indexation Adjustment**").

2 Indexation

2.1 For the purposes of this Schedule 4 Part F, the following words and expressions shall have the following meanings:

"**Contract Year**" means a year commencing at 0000 hours on 1 April and ending at 2359 hours on the following 31 March or, in respect of the first Contract Year, the period from the Effective Date until 2359 hours on the following 31 March and, in respect of the last Contract Year, the period ending or on the expiry or termination of the Agreement and beginning at 0000 hours on the immediately preceding 1 April; and

"**Indexation Base Date**" means the indexation base date set out in Schedule 1 (*Contract Particulars*) Part A (*Contract Particulars*).

2.2 The Service Payments (in respect of both the Core Services and the Optional Services), any Liquidated Damages payable, the labour rates (as set out in Part E of this Schedule 4 (*Service Payments*)) and the prices for Spares (as set out in Part E of this Schedule 4 (*Service Payments*)) shall be adjusted annually on 1 April in accordance with the following formula:

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

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

I means the indexation factor applied in any calculation performed pursuant to paragraph 1 of this Schedule 4 Part F;

RPIX_y means the value of RPIX for February published in March immediately prior to the start of the current Contract Year;

RPIX_x means the value of RPIX for the Indexation Base Date.

3 Changes to the Index

If the index referred to in paragraph 2.3 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.

3.1 **Base date of Index**

If any of the indices specified in paragraph 2.3 of this Part F of Schedule 4 (*Service Payments*) is superseded by an index with a base date which is later than the base date of the index specified in paragraph 2.3 of Part F of this Schedule 4 (*Service Payments*), the superseding index shall be used with an appropriate adjustment to the relevant Indexation Base Date and base price to neutralise the effect of the change at the date the substitution is made.

3.2 **Provisional Indices**

Where an index is published as “provisional” and is subsequently amended:

- 3.2.1 the calculation of any applicable adjustment may be undertaken using the published provisional index and invoices may be rendered accordingly;
- 3.2.2 any published amendment to the provisional index shall result in recalculation of any applicable adjustment; and
- 3.2.3 such recalculation shall be retrospective for the relevant period, and the Party disadvantaged by the amendment to the provisional index shall be entitled to recover the difference in the value of any invoice calculated on the basis of an amended provisional index.

4 **Rebasing**

4.1 On the fifth (5th) anniversary of the Indexation Base Date, and every five (5) years thereafter on the anniversary of the Indexation Base Date, the Parties shall procure that a rebasing exercise commences in accordance with the principles in paragraphs 4.2 to 4.3 below in order to determine any amendments to the Service Payments, labour rates and/or prices for Spares.

4.2 The rebasing principles shall be:

- 4.2.1 the Service Provider or the Purchaser shall be entitled to propose:
 - (a) labour rates for grades of staff that are not included in Part E of this Schedule 4 (*Service Payments*);
 - (b) prices for Spares that are not included in Part E of this Schedule 4 (*Service Payments*);
 - (c) a change (positive or negative) to the Service Payments, labour rates and/or prices for Spares where the yearly indexation adjustment in Paragraph 2 above does not accurately and sufficiently reflect the costs of the Service Provider in providing the relevant Service(s); and
 - (d) a different formula for yearly indexation that would more accurately reflect the inflationary impacts on the Service Provider going forwards.
- 4.2.2 the Service Provider shall not be entitled to propose:
 - (a) any changes to its profit margin;

- (b) any changes to the Service Payments, labour rates and/or prices for Spares where such change directly or indirectly subsidises the cost or price of another Spare or Service; and/or
 - (c) any changes +/- 10% of the prices currently in the Agreement.
- 4.2.3 all Service Provider proposals for rebasing shall be supported by all information reasonably required by the Purchaser, which may include:
- (a) evidence of the actual costs of the Service Provider in providing the Services and/or Spares;
 - (b) evidence of the prices and/or costs of the same or similar Services and/or Spares in the market;
 - (c) evidence of the prices and/or costs that the Service Provider is charged by its Sub-Contractors or any other suppliers;
 - (d) the overheads and margin of the Service Provider in providing the Services and/or Spares;
 - (e) information relating to employees employed in the delivery of the Services and their terms and conditions of employment.
- 4.2.4 the Purchaser shall be entitled to test in the market the prices and/or costs of the provision of the same or similar Services and/or Spares by issuing a tender or otherwise to other providers of Services or Spares prior to agreeing any rebasing pursuant to this paragraph.
- 4.3 The Parties shall review all information provided pursuant to paragraph 4.2 above and use reasonable endeavours to agree any amendments to the Service Payments, labour rates and/or prices for Spares. If the Parties fail to agree any such amendments within 30 Working Days of all information being made available, either Party may refer the matter to the Dispute Resolution Procedure. Pending resolution of any dispute, no amendments shall be made to the Service Payments, labour rates and/or prices for Spares.

Schedule 5
Insurance

Part A : Service Provider Obligations

1. Required Service Provider Insurances

1.1 The Service Provider shall take out and maintain in full force and effect and at its own cost, the following policies and contracts of insurance (the "**Required Insurances**"):

- (a) property damage and transit insurance for an amount not less than the full replacement cost for any one occurrence with no aggregate limit against any loss or damage (however and wherever it arises including in transit) to each item of the Insured Property described in paragraph 2.1 of Part B (*Insurance required from the Commencement Date to the Expiry Date*) of this Schedule 5 (*Insurance*);
- (b) public and product liability insurance in respect of the Service Provider's liability for death or injury to any person (other than employees of the Service Provider) and loss or damage to any property in an amount of not less than £10,000,000 (or such other sum as may be required by the Office of Rail and Road or its successor for operators of railway assets) in respect of each and every occurrence or series of occurrences consequent upon one event or original cause, and subject to at least one reinstatement for an annual period; and
- (c) the professional indemnity insurance referred to in paragraph 4 of Part B (*Insurance required from the Commencement Date to the Expiry Date*) of this Schedule 5 (*Insurance*).

1.2 From the date of this Agreement to the Expiry Date or, if earlier, the date of termination of this Agreement, the Service Provider shall procure any other insurance as is required by any Applicable Laws and LU Standards including insurance to be effected against legal liability for injury to its employees and to other persons under a contract of service or apprenticeship to them (and shall procure that each Subcontractor shall maintain such insurance in respect of its own employees).

2. Requirements for Property Insurances

The property damage Required Insurances described in paragraph 1.1(a) of Part A (*Service Provider Obligations*) of Schedule 5 (*Insurance*) shall:

- (a) be in the name of the Service Provider and will name the Purchaser as additional insured for its rights and interests;
- (b) include a waiver of subrogation in favour of the Purchaser; and
- (c) comply with the provisions of paragraph 2 (*Property Damage and Transit Insurance*) of Part B (*Insurance required from the Commencement Date to the Expiry Date*) of this Schedule 5 (*Insurance*) for the Part B insurances.

3. Requirements for Third Party Liability Insurances

The liability insurances specified in Paragraph 1.1(b) of Part A (*Service Provider Obligations*) of Schedule 5 (*Insurance*) shall:

- (a) be in the name of the Service Provider and include the Purchaser as additional insured for its respective rights, liabilities and interests (for the purposes of this paragraph 3, the "**Required Additional Insureds**");
- (b) include a provision whereby the insurers agree to indemnify in terms of such insurances the Purchaser against legal liability in respect of which the Service Provider is liable to indemnify the Purchaser under the terms of this Agreement;
- (c) include a waiver of subrogation in favour of the Purchaser;
- (d) contain a provision entitling any other Insured to initiate a claim under the relevant insurance in the event of refusal or failure by the Service Provider to do so; and
- (e) comply with the provisions of paragraph 3 (*Third Party Public and Products Liability Insurance*) of Part B: (*Insurance Required from the Commencement Date to the Expiry Date*) of this Schedule 5 (*Insurance*) for the Part B insurances.

4. **Insurance to be in joint names and for several interest**

The Service Provider shall ensure that each policy or contract of the Required Insurances (except for the PI Insurance) shall:

- (a) severally insure each of the Insureds named in paragraph 1 of Part B (*Insurance Required from the Commencement Date to the Expiry Date*) of this Schedule 5 (*Insurance*) and, subject to the prior consent of the Purchaser, others nominated by the Service Provider;
- (b) contain a multiple-insured clause providing that the insured under the policy are insured on a composite basis applying to each insured as if, save only for limits of liability and/or amount, they were separately and individually insured; and
- (c) contain a non-vitiating clause whereby the vitiating act of one insured party shall not prejudice the right to indemnity of any other insured which has an insurable interest and has not committed any vitiating act,

in the case of paragraphs 4(b) and 4(c) above, in the form of Endorsement 2 in Annex B (*Endorsements*) of this Schedule 5 (*Insurance*), or such other terms as may be expressly approved by the Purchaser in accordance with paragraph 6.2 of this Part A (*Service Provider Obligations*) of Schedule 5 (*Insurance*).

5. **Rights of subrogation**

The Parties shall procure that all Required Insurances under which the Purchaser is not named as an insured contain a term to the effect that the insurers have agreed to waive all rights of subrogation against such persons, in the form of Endorsement 2 in Annex B (*Endorsements*) of this Schedule 5 (*Insurance*), or such other terms as may be expressly approved by the Purchaser in accordance with paragraph 6.2 of Part A (*Service Provider Obligations*) of this Schedule 5 (*Insurance*).

6. **Terms of policies and insurers**

6.1 Each policy of Required Insurance shall:

- (a) provide cover denominated in Sterling;
- (b) be in accordance with normal industry practice of persons engaged in providing services similar to the Services in similar circumstances;
- (c) unless otherwise approved by the Purchaser in its absolute discretion, be placed and maintained with insurers with a Standard & Poor's Corporation long-term credit rating of at least A- (or an equivalent rating from another rating agency of equal repute) including replacing any insurer whose credit rating falls below such rating with an insurer that does meet such rating; and
- (d) be in such form and substance, consistent with the obligations of the Service Provider under this Agreement as may be approved in writing from time to time by the Purchaser (such approval not to be unreasonably withheld or delayed).

6.2 No later than fifteen (15) Working Days prior to effecting any such policy or contract of insurance, the Service Provider shall submit to the Purchaser for its approval:

- (a) the identity of the proposed insurer(s); and
- (b) the principal terms, conditions and warranties of the proposed insurance (including extensions, exclusions and levels of deductibles) or any revision to such insurance.

7. **Cancellation or limitation of cover**

All Required Insurances shall contain an endorsement whereby the Purchaser receives from the insurer in writing:

- (a) not less than thirty (30) days' notice of cancellation or non-renewal for any reason;
- (b) not less than thirty (30) days' notice of any reduction in limit or restriction in coverage or any increase in deductibles, whether at the instance of the insurer or the insured (which, in the case of any such reduction, restriction or increase required by the insured shall not be implemented without the agreement of the Purchaser (not to be unreasonably withheld));
- (c) advice of any default in payment of any premium payable under the policy; and
- (d) advice of any act or omission, including but not limited to known breaches of warranty, or of any event of which the insurer has knowledge and which might invalidate or render a policy void or voidable at the insurer's discretion,

in the form of Endorsement 1 in Annex B (*Endorsements*) of this Schedule 5 (*Insurance*), or such other terms as may be expressly approved by the Purchaser in accordance with paragraph 6.2 of Part A (*Service Provider Obligations*) of this Schedule 5 (*Insurance*).

8. **Loss Payee Provisions**

8.1 All Required Insurances shall provide that claim proceeds, whether interim or final shall be paid to the Purchaser, or, at the Purchaser's discretion, to other parties and where such other party is the Service Provider, the proceeds being released to the Service Provider against its undertaking to reinstate such loss or damage with such supporting information as the Purchaser may reasonable require:

- (a) in respect of loss or damage to the Spares, to be applied in reinstatement of the insured asset in question;
- (b) in respect of loss of or damage to London Underground Limited property, to be retained by the Purchaser; and
- (c) in respect of insurances against liabilities to third parties, to be applied to the aggrieved party or, where that liability has been met by an insured party pursuant to an indemnity or express contractual obligation under this Agreement, shall be paid to the indemnifier or the person liable for such obligations.

8.2 All policies for the Required Insurances shall be endorsed so as to be paid without deduction or set-off, whether in respect of unpaid premiums or otherwise.

9. **Law and jurisdiction**

All policies maintained or procured pursuant to this Schedule 5 (*Insurance*) shall be subject to English law and the exclusive jurisdiction of the English courts.

10. **Payment of Premiums**

The Service Provider shall procure the due and punctual payment of all premiums payable in respect of each policy or contract of insurance taken out in accordance with paragraph 1 (*Required Service Provider Insurances*).

11. **Service Provider to supply insurance policies**

Promptly following any request from the Purchaser, the Service Provider shall provide to the Purchaser for inspection a copy of the certificates and policies of insurance maintained in compliance with paragraph 1 of Part A (*Service Provider Obligations*) of this Schedule 5 (*Insurance*) together with evidence satisfactory to the Purchaser that all premiums payable in respect of such insurances have been paid in full and that such insurances are in full force and effect.

12. **Compliance with Requirements**

The Parties shall (and the Service Provider shall procure that its Subcontractors shall) comply with all reasonable requirements of the insurers and shall not do or cause to be done anything which might render void or voidable any policy of insurance effected in accordance with paragraph 1 of Part A (*Service Provider Obligations*) of this Schedule 5 (*Insurance*) or as a result of which payment of insurance proceeds may be withheld in whole or in part.

13. **Purchaser's Right to Insure**

- 13.1 If and to the extent that any of the Required Insurances are not taken out and maintained as contemplated by this Schedule 5, the Purchaser may, without prejudice to any other rights under this Agreement, itself arrange the relevant policies or contracts of insurance. The Service Provider shall indemnify the Purchaser against all premiums and other losses payable by the Purchaser in exercising its rights under this paragraph 13.1, together with Default Interest from the date on which premiums are paid or other costs incurred until the date of payment by the Service Provider to the Purchaser.

13.2 If the Purchaser procures an insurance policy or policies pursuant to this paragraph 13, the Purchaser shall be entitled to deduct the amount due from the Service Provider to the Purchaser under paragraph 13.1 of Part A (*Service Provider Obligations*) of this Schedule 5 (*Insurance*) from the next Service Payment payable to the Service Provider, in accordance with Schedule 4 (*Service Payments*).

14. **Notification of claims**

The Service Provider shall give to the Purchaser prompt notification of any incident which may reasonably be expected to result in a claim in excess of £150,000 (Indexed), and any incident which may reasonably be expected to result in claims arising from that incident exceeding in aggregate £500,000 (Indexed) in any twelve (12) month period in each case under any of the insurances referred to in paragraph 1 (*Required Service Provider Insurances*) of Part A (*Service Provider Obligations*) of this Schedule 5 (*Insurance*) accompanied by full details of the said incident.

15. **Loss Mitigation**

The Service Provider is responsible for ensuring that, in the event of an incident, all reasonable steps are taken to mitigate further loss. This will include any necessary emergency repairs to property damaged in order to mitigate further damage or for reasons of safety. These repairs must be reasonable in relation to the loss or damage that has been suffered.

16. **Unavailability of Insurance**

16.1 Nothing in this Agreement shall oblige the Service Provider to take out insurance in respect of a risk which is Uninsurable (as defined in paragraph 16.3 below) save where the predominant cause of the risk being Uninsurable is any actions, breaches, omissions or defaults of the Service Provider or a Subcontractor.

16.2 If a risk usually covered by the insurance taken out pursuant to this Schedule 5 or by statutory insurance, in each case required under this Agreement, becomes Uninsurable then:

(a) the Service Provider shall notify the Purchaser of any risk becoming Uninsurable within five (5) Working Days of becoming aware of the same and in any event at least five (5) Working Days before expiry or cancellation of any existing insurance in respect of that risk;

(b) if both Parties agree, or it is determined in accordance with the Dispute Resolution Procedure, that the risk is Uninsurable and that:

(i) the risk being Uninsurable is not caused by the actions, breaches, omissions or defaults of the Service Provider or a Subcontractor; and

(ii) the Service Provider has demonstrated to the Purchaser that the Service Provider and a prudent board of directors of a company operating the same or substantially similar businesses in the United Kingdom to that operated by the Service Provider would in similar circumstances (in the absence of the type of relief envisaged by this paragraph) be acting reasonably and in the best interests of the company if they resolved to cease to operate such businesses as a result of that risk becoming Uninsurable, taking into account amongst other things

(and without limitation) the likelihood of the Uninsurable risk occurring (if it has not already occurred), the financial consequences for such company if such Uninsurable risk did occur (or has occurred) and other mitigants against such consequences which may be available to such company,

then the Parties shall meet to discuss the means by which the risk should be managed or shared (including considering the issue of self-insurance by either Party).

16.3 For the purposes of this Schedule 5 "**Uninsurable**" means, in relation to a risk, either that:

- (a) insurance is not available to the Service Provider in respect of the Services in the worldwide insurance market with reputable insurers of good standing in respect of that risk; or
- (b) the insurance premium payable for insuring that risk is at such a level that the risk is not general being insured against in the worldwide insurance market with reputable insurer of good standing by contractors in the United Kingdom.

17. **Broker's Letter of Undertaking**

The Service Provider shall procure that the insurance broker appointed by the Service Provider to place the Required Insurances delivers to the Purchaser a letter substantially in the form set out in Annex A (*Broker's Letter of Undertaking*) of this Schedule 5 (*Insurance*) in respect of each insurance policy or contract effected as part of the Required Insurances required under Part A and Part B of this Schedule 5, as soon as possible but in any event before the Commencement Date and (where applicable) the subsequent renewal of each such policy.

18. **Saving Provision**

None of:

- (a) the Service Provider's compliance or failure to comply with its obligations under this Schedule 5;
- (b) the existence of the Required Insurances or any other insurance procured by the Service Provider or the absence (in whole or in part) of them; or
- (c) the terms of any policy or contract of insurance, including the limits of indemnity amounts referred to in Part B (*Insurance Required from the Commencement Date to the Expiry Date*) of this Schedule 5 (*Insurance*),

shall relieve or limit the Service Provider of its liabilities and obligations under this Agreement.

Part B : Insurance required from the Commencement Date to the Expiry Date**1. Common to each policy in this Part B:****1.1 Insureds**

- (a) the Service Provider;
- (b) the Purchaser; and
- (c) Subcontractors of any tier to the Service Provider;

each for their respective rights and interests in the Services.

1.2 For the purposes of this Part B of Schedule 5 (*Insurance*), a Subcontractor may either be: (a) named as an additional insured, or (b) the subject of difference in conditions/difference in limits cover to more specific insurance of the Subcontractor. Where (b) applies the Service Provider will indemnify any Subcontractor employed by the Service Provider for the performance of this Agreement:

- (a) in respect of liability which is not the subject of indemnity under any more specific valid and collectible insurance effected by or on behalf of the Subcontractor; and
- (b) in respect of the difference between the limit of indemnity under any more specific valid and collectable insurance offered by or on behalf of the Sub-Contractor and the limit of Indemnity under this policy.

2. Property Damage and Transit Insurance**2.1 Insured Property**

- (a) The Spares and any other property, including property of the Purchaser, the Service Provider, and the directors, employees, officers, servants or agents of any of them, for incorporation in or use in connection with the Services.
- (b) Storage of Spares until delivered to the Purchaser.

2.2 Coverage

"All risks" of physical loss or damage to the Insured Property howsoever caused (including arising in transit) unless otherwise excluded.

2.3 Sum Insured

At all times an amount not less than the full reinstatement or replacement value of the Insured Property, plus provision to include extensions as appropriate.

2.4 Maximum Deductible

£100,000 (Indexed) each and every claim, increased to £250,000 (Indexed) each and every claim for defective workmanship/design claims.

2.5 Territorial Limits