

Contract Reference []

DATED.....

ENGINEERING SUPPORT GROUP LIMITED

GENERAL TERMS AND CONDITIONS OF
SUPPLY

BETWEEN :

1. Engineering Support Group Limited (Company Number 03038421) whose registered office is Lakeside Business Park, Carolina Way, Doncaster, DN4 5PN ("the Supplier") and
2. ("the Customer")

WHEREAS IT IS AGREED:

1. Definitions

1.1 In this Agreement the following terms shall have the following meanings:

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| "Agreement" | means the Agreement Form describing the Project and these general terms and conditions; |
| "Agreement Form" | means the agreement form describing the Project; |
| "Authorised Representative" | means the person appointed by a party to act on its behalf in carrying out those duties described in the Agreement and named in the agreement Form or any other person nominated by such party to act on its behalf and in each case notified in writing to the other party; |
| "Confidential Information" | means all information of a commercial proprietary or technical nature disclosed whether in writing verbally or by any other means and whether directly or indirectly by one party to the other whether before or after the date of this Agreement including in particular any information relating to either party's know-how trade secrets and business affairs; |
| "Contractual Documentation" | means all documentation drawings and other information agreed to be delivered pursuant to this Agreement including software records reports documents papers relevant computer data and all other technical business and similar information originated by or on behalf of the Supplier pursuant to this Agreement; |
| "Contract Price" | means the price to be paid by the Customer to the Supplier for the performance of the Services as set out in the Agreement Form; |

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| “Force Majeure Event” | means any event beyond the reasonable control of a party including without limitation and to the extent beyond the reasonable control of a party acts of God war riot civil commotion malicious damage compliance with any law or governmental order rule regulation or direction or any overriding emergency procedures accident inability to make use of third party network infrastructure fire flood storm and strikes and industrial action by employees of any party other than the party relying on the Force Majeure Event; |
| “Industry Standards” | means the rules and regulations including code of practice in force from time to time relating to the services to be provided under this Agreement; |
| “Intellectual Property Rights” | means patents registered designs trade marks and service marks (whether registered or not) copyright design right and all similar property rights including those subsisting (in any part of the world) in inventions designs drawings ideas concepts know how innovations performances computer programmes software semiconductor topographies confidential information business names goodwill and the style of presentation of goods or services and in applications for protection thereof; |
| “Project” | means a project task or an individual piece of work or activity identified by a unique number forming part of the Services provided under this Agreement; |
| “Schedule” | means the documents so headed and included in this Agreement; |
| “Services” | means the engineering consultancy services or engineering services to be performed by the Supplier as stated in the Contract Agreement Form and any Variation; |
| “Variations” | means any variation to the Services or the terms of a Project or this Agreement in accordance with clause 9; |
| “Working Day” | means any day excluding Saturday Sunday bank and public holidays in the England. |

- 1.2 In the event of any conflict between the terms and conditions set out in this document and the terms contained in an Agreement Form then the terms contained in the Agreement Form shall prevail.

2. **Provision of the Services**

The Supplier shall perform the Services in accordance with the terms and conditions of this Agreement. Where the Services to be performed are engineering services then the terms of Schedule 2 shall in addition apply to such Services.

3. **Term**

This Agreement shall commence on the date of signature by both of parties of this Agreement. Each Project shall commence on date of signature of the Agreement Form by the Customer. This Agreement shall continue in accordance with its terms until terminated in accordance with its terms. Each Agreement Form shall continue until the Services are complete or this Agreement or the Project is terminated in accordance with its terms.

4. **Obligations of the Supplier**

The Supplier shall at all times in respect of a Project;

- 4.1 provide all equipment support services and other facilities necessary for the performance of a Project unless otherwise stated in an Agreed Form;
- 4.2 keep sufficient records of all acts and things of a material nature including computer data in relation to the provision of the Services in a secure location and at the Customer's reasonable request shall make them available for inspection;
- 4.3 perform the Services in accordance with the methods or standards stated in the Project Form. Where standards or methods are not specified the Services shall be carried out in accordance with Industry Standards and where there are no Industry Standards the Services shall be carried out in accordance with best appropriate industry practice;
- 4.4 only use person(s) who are competent to undertake the Services and hold the appropriate certification relevant to the work being undertaken. These person(s) will execute the Services with due skill care diligence and safety;
- 4.5 faithfully and diligently perform those duties and exercise such powers consistent with them which are from time to time necessary in connection with the Services;

- 4.6 obey all lawful and reasonable instructions of the Customer's Authorised Representative and adhere to relevant Industry Standards and any changes to the relevant Industry Standards which shall be subject to the Variation process;
- 4.7 comply with the Customer's requirements for safety when access is provided to the Customer's premises and shall ensure that its employees agents and sub-contractors comply with such requirements;
- 4.8 provide an Authorised Representative and notify the Customer in writing of any changes in the identity of the Authorised Representative immediately on such change taking place;
- 4.9 be responsible for making appropriate PAYE deductions for tax and national insurance contributions from the remuneration which it pays to its personnel and the Supplier agrees to indemnify the Customer in respect of any claim or demands which may be made by the relevant authorities against the Customer in respect of income tax and national insurance relating to the provision of the Services by the Supplier and producing relevant inland revenue certificates on request;
- 4.10 ensure that all Services and components are obtained from a source of supply approved through its approval of supplier process which will generally be in accordance with Industry Standards;
- 4.11 provide where appropriate a comprehensive method statement for each individual Project to be performed;
- 4.12 will monitor its performance in order to ensure it is meeting its obligations under a Project. The Supplier will on a periodic basis produce a document which details its performance in relation but not necessarily limited to delivery and quality; and
- 4.13 effect and maintain at its own cost insurance policy or policies as detailed in Clause 16.4 of this Agreement with a reputable insurer.

5 Obligations of the Customer

The Customer shall all times in respect of a Project;

- 5.1 provide an Authorised Representative and notify the Supplier in writing of any changes in the identity of the Authorised Representative immediately on such change taking place;
- 5.2 supply all documents drawings and other information to the Supplier in a timely manner necessary to enable the Services to be performed in the agreed timescale; and

- 5.3 effect and maintain at its own cost insurance policy or policies as detailed in Clause 16.4 of this Agreement with a reputable insurer.

6. **Statutory and Other Regulations**

- 6.1 The Supplier shall in performing the Services ascertain and conform in all aspects with the law in relation to such performance including without limitation acts of parliament orders regulations rules and byelaws of any ministerial department or office of Her Majesty's Government local authority and public service or authority.
- 6.2 The Supplier shall keep the Customer indemnified against all claims arising from any breach of the matters in Clause 6.1. Provided always that the Supplier shall not be required to indemnify the Customer for claims arising out of the acts or omission of the Customer its employees or agents and provided further that the Supplier's liability to indemnify the Customer shall be reduced proportionately to the extent that the acts or omissions of the Customer its agents or employees may have contributed to the said claim.

7. **Access and Safety**

- 7.1 Where any Services are to be carried out at the Customer's premises the Customer shall allow full and complete access to the Supplier to the area where the Services are to be performed and provide adequate accommodation and facilities at all reasonable times. The Customer shall provide and the Supplier shall comply with all applicable safety regulations and access requirements relating to the Customer's premises provided to the Supplier's Authorised Representative and shall provide training as may be required to the Supplier's employees agents or sub-contractors. The Customer shall provide at least one training session per Project per premises at no cost to the Supplier.
- 7.2 Except as otherwise agreed in the event that access is required to third party premises including but not limited to the railway infrastructure for the purpose of provision of the Services the Customer shall secure the right of access and the Supplier shall be responsible for day to day arrangements for such access. The Supplier shall adhere to Industry Standards or other specifications applicable to such access and further shall procure that its employees agents and subcontractors comply with such requirements.
- 7.3 The Supplier shall not in the performance of a Project in any manner endanger the health and safety or unreasonably interfere with the proper performance of the duties of the Customer's employees third parties or otherwise expose the Customer to liability under the Health and Safety at Work Act 1974 or the Transport and Works Act 1992 or any statutory modification or re-enactment thereof.

- 7.4 The Supplier shall comply with any additional safety requirements of the Customer as set out in an Agreement Form and shall use all reasonable endeavours to ensure that its employees agents and sub-suppliers comply with such requirements.
- 7.5 In the event that revised safety requirements become applicable to a Project this shall constitute a Variation and shall be dealt with in accordance with Clause 9.
- 7.6 Where appropriate to the Services the Supplier shall provide the Customer with its current company safety statement.

8. Price & Payment

- 8.1 The Supplier shall charge the Customer and the Customer shall pay the Contract Price for the Services performed by the Supplier in accordance with an Agreement Form.
- 8.2 The Contract Price is shown exclusive of VAT and to the extent that such tax is properly chargeable it shall be charged at the rate in force on the date of the invoice and will be shown as a separate item on all invoices.
- 8.3 Unless stated to the contrary the Contract Price is exclusive of all expenses and disbursements incurred by the Supplier in the execution of the Services which may be charged separately by the Supplier to the Customer at the Supplier's then prevailing policies & rates.
- 8.4 If any additional costs are incurred by the Supplier as a result of any negligent or wrongful act or omission of the Customer its employees or agents the Supplier shall be entitled to make a reasonable additional charge in respect thereof.
- 8.5 All Supplier invoices shall be paid by the Customer within 28 days of the date of the Supplier's invoice.
- 8.6 The Customer shall notify all disputed invoices to the Supplier within 10 Working Days of receipt stating the reasons for such dispute. The Customer's and Supplier's Authorised Representatives shall use all reasonable endeavours to resolve such dispute within 10 Working Days. Disputes not resolved within this timescale shall be resolved in accordance with Clause 20.
- 8.7 If either party to this Agreement fails to pay any amount due under this Agreement interest will be charged on the amount outstanding at the rate of 4% over the base lending rate of the Lloyds TSB Bank plc (accruing daily) commencing on the due date calculated daily until all the outstanding sums have been received in full.

- 8.8 Where under this Agreement one party has agreed to reimburse or indemnify the other in respect of any payment made or cost incurred by the other then the first party shall also reimburse any VAT paid by the other which forms part of its payment or costs incurred to the extent that such VAT is not available for credit for the other under Sections 25 and 26 of the Value Added Tax Act 1994.
- 8.9 Title to any goods materials or components supplied or to be supplied by the Supplier to the Customer pursuant to the terms of a Project shall not pass until such time as the Supplier has paid in full for the Services. Notwithstanding that title shall not pass until payment is duly received by the Supplier risk in goods materials and components shall pass upon delivery to the Customer of such goods materials and components.

9. Variation

- 9.1 Subject to the following provisions of this Clause the Customer may at any time request the Supplier to undertake any reasonable Variation to the Services. A Variation is one which will result in services being provided (i) which are not included in the Services or a reduced scope for the Services (ii) which are required other than as a result of any negligent or wrongful act or omission on the part of the Supplier and (iii) which involve additional expense or time to the Supplier.
- 9.2 In the event of such Variation being requested the Supplier shall state in writing the effect the Variation will have on the ability of the Supplier to comply with its obligations under the Agreement Form and what adjustment if any will be required to the Project or its 8 timescale or the Contract Price otherwise payable for the Services. Any adjustment to the Contract Price shall be as is reasonable in the circumstances. The Supplier shall notify the Customer with such details within 5 Working Days of the receipt of the Customer's request or such other period as may be agreed.
- 9.3 The Customer shall notify the Supplier whether or not the Customer wishes to commission the Variation to the Services on the basis of the Supplier's proposal. The Supplier shall not undertake any Variations unless agreed to in writing by the Customer.
- 9.4 All correspondence pursuant to this Clause 9 shall be conducted by the Authorised Representatives of the parties.

10. Assignment & Sub-Contracting

- 10.1 The Customer shall not transfer assign or novate any Agreement Form or this Agreement (or any part of it) without the prior written consent of the Supplier.
- 10.2 The Supplier shall not transfer assign novate or sub-contract this entire Agreement without the prior written consent of the Customer which consent shall not be unreasonably withheld. Any such consent shall not relieve the Supplier from its obligations under an Agreement.

11. Failure to Perform Satisfactorily

11.1 Should the Supplier fail to perform the Services or any part thereof with due diligence or expedition or fail to comply with any reasonable orders given to the Supplier in writing by the Customer in connection with the Services or any part thereof or materially contravene the provisions of this Agreement the Customer shall give 20 Working Days notice in writing to the Supplier to make good or demonstrate the intent to make good the failure or contravention complained of before the Customer is able to exercise any other right or remedy it may have under this Agreement.

12. Warranties & Remedies

12.1 The Supplier warrants that if any of the Contractual Documentation is defective in that the Supplier has failed to conform to the requirements of the Agreement Form or the work is not in accordance with Industry Standards the Supplier will re-perform such work immediately upon request and at no cost to the Customer provided that it is brought to the Supplier's attention within 12 months of completion of the Services. Such re-performance of the Services shall constitute fulfilment of the Supplier's entire obligations and liability to the Customer with respect to such defects in the Contractual Documentation.

12.2 The Supplier warrants that if any of goods materials or components to be supplied as part of the Services are defective or fail to conform to the requirements of the Agreement Form or Industry Standards the Supplier will make good or replace such goods materials or components and such replacement shall constitute fulfilment of the Supplier's entire obligations and liability to the Customer with respect to such defects in goods materials or components supplied.

12.3 The Supplier shall not accept any liability for any plans documents code of practice drawings designs specifications goods free issue materials or components or other information which has not been created produced or developed or supplied by the Supplier pursuant to the Agreement Form and on which the Supplier will rely for the purposes of undertaking the Services other than where the specification requires the Supplier to validate or amend or supply the same and the liability of the Supplier shall be limited accordingly.

12.4 The Supplier shall not be liable for any defect which has been caused by any act or omission of the Customer or any event outside the control or responsibility of the Supplier in providing the Services.

13. Quality, Safety & Environmental Audit

13.1 The Supplier shall arrange at its own cost for its quality, safety and environmental procedures to be regularly audited for compliance with applicable Industry Standards by the responsible authority and shall make the audit results relevant to the Project available to the Customer upon request.

- 13.2 The Supplier shall in addition conduct its own audit of its quality, safety and environmental procedures to ensure compliance with its obligations under an Agreement Form and shall make the audit results relevant to the Project available to the Customer upon request.
- 13.3 The Supplier shall allow the Customer's Authorised Representative access at all reasonable times upon prior written notice to the Supplier's premises to permit such Authorised Representative to conduct their own review of the Supplier's quality, safety and environmental procedures to ensure compliance with an Agreement Form.

14. Termination and Suspension

- 14.1 Either party may terminate an Agreement Form (and this Agreement) with immediate effect by notice in writing to the other party on or at any time after the occurrence of any of the events specified in Clause 14.2 in relation to the other party.
- 14.2 The events are;
 - 14.2.1 a material breach by the other party of any of its obligations under an Agreement Form or this Agreement which (if the breach is capable of remedy) the other party has failed to remedy within 20 Working Days after receipt of notice in writing giving particulars of the breach and requiring the other party to do so;
 - 14.2.2 the passing of the other party of a resolution for its winding-up or the making by a court of competent jurisdiction of an order for the winding-up of the other party or the dissolution of the other party;
 - 14.2.3 the making of an administration order other than pursuant to a reorganisation of either party in relation to the other party or the appointment of a receiver over or the taking possession or sale by an encumbrancer of any of the other party's assets.
 - 14.2.4 the other party making an arrangement or composition with its creditors generally or making an application to a court of competent jurisdiction for protection from its creditors generally.
- 14.3 All rights and obligations of the parties save for the Supplier's insurance obligations pursuant to Clause 16 shall cease to have effect immediately upon termination of this Agreement except that termination shall not affect the accrued rights and obligations of the parties at the date of termination.

15. Intellectual Property Rights

- 15.1 The Intellectual Property Rights in any work to be delivered to the Customer as set out in the Agreement Form and for which the Customer has paid in full shall to the extent permitted by law or by third party contract entered into in good faith be vested in the Customer and use by the Customer of such Intellectual Property Rights shall be limited to the purposes set out in the Agreement Form (if any). The Supplier shall render all such assistance as may be reasonably required in order for such rights to be protected and maintained. The Supplier shall at the expense of the Customer execute all documents and do all such acts and things as may be reasonably required in order to fully and effectively vest in the Customer the rights described in this clause.
- 15.2 The Intellectual Property Rights in any work other than the work to be delivered to the Customer as set out in the Agreement Form including but not limited to the methods and expertise know how concepts and ideas deployed used and developed in the course of the provision of the Services shall remain vested in or vest in the Supplier.
- 15.3 The Supplier shall except in relation to any Intellectual Property Rights in any documents drawings or other information supplied to the Supplier by the Customer grant or procure the grant of all necessary licences to enable the Customer to use the Intellectual Property Rights as described in the Agreement Form and shall be responsible for any infringement or alleged infringement arising out of the proper use by the Customer of such Intellectual Property Rights and shall except in relation to the documents drawings or other information supplied to the Supplier by the Customer indemnify the Customer against all actions claims costs damages and expenses brought against or suffered by the Customer to the extent that the same may result from such infringement or alleged infringement.
- 15.4 The Customer shall indemnify the Supplier against all actions claims costs damages and expenses brought against or suffered by the Supplier to the extent that the same results in the infringement or alleged infringement of the Intellectual Property Rights of any third party arising out of the proper use by the Supplier of any documents drawings or other information supplied by the Customer.
- 15.5 Nothing in this Agreement shall operate to transfer the property or the Intellectual Property Rights in any documents drawings or other information provided by the Customer pursuant to this Agreement and the Supplier shall not use reproduce disseminate adapt or transmit in any form or by any means the documents drawings or other information or any part thereof or permit the same to be so used reproduced disseminated adopted or transmitted as aforesaid or published other than for the purposes of carrying out its obligations under this Agreement.

16. Indemnity and Insurance

16.1 Subject to clauses 16.2 and 16.3 the Supplier shall be liable for and indemnify the Customer its employees and agents against all expense liability loss and claims in respect of;

16.1.1 death or personal injury to any person

16.1.2 loss or damage to property including property belonging to Customer or for which it is responsible

16.1.3 any other loss damage expense or claim

arising as a consequence of the negligence breach of contract or breach of statutory duty of the Supplier its employees agents or its sub-contractors except to the extent that such 11 expense liability loss or claim is due to the act or omission of the Customer its employees or agents.

16.2 The Supplier's liability under Clause 16.1.2 shall be limited to £10 million in the aggregate. The Supplier's liability under Clause 16.1.3 shall be limited in the aggregate to the Contract Price or such other amount as agreed.

16.3 Neither party shall have liability to the other for any indirect or consequential loss arising out of its obligations under or in connection with this Agreement. The definition of consequential loss for this purpose shall include but not be limited to loss of contracts profit revenue and goodwill.

16.4 The policy or policies of insurance required under Clause 4.13 and Clause 5.3 shall be:

16.4.1 insurance which complies with the Employers' Liability (Compulsory Insurance) Act 1969 and any statutory orders made there under or any amendment or re-enactment thereof;

16.4.2 public liability insurance in respect of the Supplier's liability for death or injury for any person in an amount not less than £10million for any one occurrence or series of occurrences consequent on one event or original cause;

16.4.3 public liability insurance in respect of the Supplier's liability for loss or damage for any property arising out of the performance of the Services in an amount not less than £10million for any one occurrence or series of occurrences consequent on one event or original cause;

16.4.4 professional indemnity insurance to ensure that the Suppliers activities under this Agreement are insured and remain insured in an amount not less than £1 million in the aggregate;

16.5 Each party shall from time to time when required by the other party produce to the other party a declaration signed by the insurers in as evidence that the insurances required by Clause 4.13 or Clause 5.3 are in existence.

17. Force Majeure

- 17.1 Other than the payment obligations at Clause 8, if either party is prevented hindered or delayed from or in the performing of any of its obligations under a Contract Agreement Form by a Force Majeure Event then;
- 17.1.1 that party's obligations under an Agreement Form shall be suspended for so long as the Force Majeure Event continues and to the extent that party is so prevented hindered or delayed;
- 17.1.2 as soon as reasonably possible after commencement of the Force Majeure Event that party shall notify the other party in writing of the occurrence of the Force Majeure Event the date of commencement of the Force Majeure Event and the effects of the Force Majeure Event on its ability to perform its obligations under an Agreement Form;
- 17.1.3 that party shall use all reasonable efforts to mitigate the effects of the Force Majeure Events upon the performance of its obligations under an Agreement Form; and 12
- 17.1.4 as soon as reasonably possible after the cessation of the Force Majeure Event that party shall notify the other party in writing of the cessation of the Force Majeure Event and shall resume performance of its obligations under an Agreement Form.
- 17.2 If the Force Majeure Event continues for more than 40 Working Days after the commencement of the Force Majeure Event either party may terminate the Agreement Form by giving not more than 20 Working Days notice in writing to the other party.

18. Confidentiality

- 18.1 During the term of this Agreement and after termination or expiration of this Agreement for any reason whatsoever the party to whom the Confidential Information is disclosed shall;
- 18.1.1 keep the Confidential Information confidential;
- 18.1.2 not disclose the Confidential Information to any other person other than with the prior written consent of the other party or in accordance with the provisions of this Clause;
- 18.1.3 not use the Confidential Information for any purpose other than in the performance of its obligations under this Agreement.

- 18.2 During the term of this Agreement the party receiving the Confidential Information may disclose the same to its employees agents or sub-contractors to the extent that it is necessary for the purposes of this Agreement. In complying with this clause the party receiving the Confidential Information shall procure that each of its employees agents or sub-contractors who receives the Confidential Information conforms with the obligations of confidentiality under this Agreement.
- 18.3 The obligations contained in Clauses 18.1 and 18.2 shall not apply to any Confidential Information referred to therein;
- 18.3.1 to any financier lawyer or accountant or other professional advisor to a party provided that (save with respect to lawyers) the party disclosing such information has obtained an undertaking of confidentiality from such advisors;
- 18.3.2 in connection with obtaining any insurance;
- 18.3.3 which is in the public domain other than as a result of the breach of any obligations of confidentiality;
- 18.3.4 which was made available by the disclosing party on a non-confidential basis;
- 18.3.6 which is required in connection with an assignment transfer or other disposition of rights permitted hereunder where the proposed assignee or transferee has agreed in writing to be bound by the provisions of this Clause;
- 18.3.7 which is required in connection with a sale or other disposition of shares in the Customer or the Supplier provided that any recipient of such information has provided an undertaking of confidentiality substantially in the same form as set out in this Clause;
- 18.3.8 to the extent required by applicable law the rules of any recognised stock exchange or regulatory body or other competent authority; and
- 18.3.9 to the extent that such disclosure is expressly permitted by this Agreement.¹³
- 18.4 In the case where either party is permitted to communicate Confidential Information to a third party such communication shall be on terms imposing restrictions on that third party's use of the Confidential Information similar to those set out in this Clause.
- 18.5 If either party wishes to protect its Intellectual Property Rights under Clause 15 by patenting sending a technical disclosure bulletin to the Science Reference Library or registering a design

or trade mark or obtaining other similar protection of confidentiality this clause shall not prevent either party disclosing the information necessary to obtain such protection or registration.

19. Severability

If any provision or term of this Agreement or any Agreement Form or any part thereof shall become or be declared illegal invalid or unenforceable for any reason whatsoever such terms or provisions shall be divisible for this Agreement or the Agreement Form (as the case may be) and shall be deemed to be deleted from this Agreement or the Agreement Form(as the case may be).

20. Disputes

20.1 If at any time any question dispute or difference shall arise between the Customer and the Supplier in relation to an Agreement Form or in any way connected with the Services the Authorised Representatives of either party shall notify the other as soon as reasonably practicable advising of the existence of such question dispute or difference specifying its nature and the point at issue. The Authorised Representatives of both parties shall use reasonable endeavours to reach agreement within 10 Working Days from receipt of notification or such other period as may be agreed in writing between the parties.

20.2 In the event the Authorised Representatives fail to reach agreement within the period stipulated in clause 20.1 the dispute resolution shall be forwarded to a person or body agreed by both parties. Failing agreement of such person or body within 20 Working Days after the date of such notice the dispute resolution shall be conducted by such person appointed on the application of either party by the Chartered Institute of Mechanical Engineers.

20.3 Performance of an Agreement Form and this Agreement shall continue during the dispute resolution proceedings.

21. Notices

21.1 Any notice or other communication under or in connection with an Agreement Form or this Agreement shall be in writing and shall be deemed to have been duly given if hand delivered to either party's Authorised Representative or sent by registered post or facsimile to a party at the address or relevant telecommunication number for such party or such other address as the party may from time to time designate by written notice to the other.

- 21.2 Any notice or other communication issued under Clause 21.1 shall be deemed to have been received by the addressee 2 Working Days following the date of despatch.

22. Publicity

The text of any press release or other communication to be published by or in the media or interviews concerning the subject matter of an Agreement Form or this Agreement shall require the prior written approval of the other party.¹⁴

23. General

- 23.1 The failure to exercise or delay in exercising a right or remedy under this Agreement shall not constitute a waiver of the right or remedy or a waiver of any other rights or remedies and no single or partial exercise of any right or remedy under this Agreement (as the case may be) shall prevent any further exercise of the right or remedy or the exercise of any other right or remedy.
- 23.2 Except as expressly provided in this Agreement the rights and remedies contained in this Agreement are cumulative and not exclusive of any right or remedies provided by law.
- 23.3 Unless expressly provided in an Agreement Form none of the terms of a Contract Agreement Form or this Agreement are enforceable or are intended to be enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any party or person who is not a party to this Agreement.
- 23.4 This Agreement and any Agreement Form, together with any documents referred to in such documents, constitutes the entire terms and conditions of the appointment and supersedes or extinguishes any prior drafts, agreements, undertakings, warranties and arrangements of any nature, whether in writing or oral, regarding any project or the performance of the Services. This Agreement and an Agreement Form may only be modified or otherwise amended by written agreement of the parties.
- 23.5 Each party acknowledges that he has not been induced to enter into this Agreement by any representation or warranty other than those contained in this Agreement and, having negotiated and freely entered into this Agreement, agrees that it shall have no remedy in respect of any other such representation or warranty except in the case of fraud.

23. Governing Law

This Agreement and each Agreement Form shall be governed by and interpreted in accordance with the laws of England and shall be subject to the exclusive jurisdiction of the English Courts.

24. **Review Meetings**

Where appropriate both parties shall meet periodically a minimum of twice per year to review the performance by each party of its obligations under this Agreement with respect to Projects.

25. **Non Solicitation of Employees**

The parties agree that during and for one (1) year following the completion of a Project the Customer will not directly solicit for employment personnel of the Supplier assigned to this Services or engage the personnel of the Supplier who have provided assistance with respect to a Project.

Schedule 1

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| | <u>AGREEMENT FORM</u> |
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| | | |
|----------------------|-------|--|
| PROJECT TITLE | | |
| PROJECT NUMBER/ISSUE | | |

Engineering Support Group Limited (Company Number 03038421) whose registered office is Lakeside Business Park, Carolina Way, Doncaster, DN4 5PN hereby offers to undertake (the Project) referenced in our proposal (Schedule) entitled Dated(Schedule) below for (the Customer).

Invoice(s) will be raised in accordance with the offer referenced above

Unless previously withdrawn this offer remains valid until :.....

The offer may be accepted by returning a completed signed and dated copy of this Schedule to the Account Manager referenced below.

The (Customers) acceptance of this offer shall be subject to ESG standard Terms and Conditions reference: ESG-P-F013(01) dated: Jan 2007

| | |
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| The Customer's invoicing address: | |
| For the attention of: | |
| Invoicing reference number: | |
| Customer's VAT number | |

AUTHORISATION

| | |
|------------------|---------------------------|
| Signed | Date: |
| Name: | Position: Account Manager |
| On behalf of ESG | |

| | |
|------------------|-------------|
| Signed: | Date: |
| Name: | Position: |
| On behalf of ESG | |

Schedule 2

ADDITIONAL CONDITIONS RELATING TO ENGINEERING PROJECTS

Where the Supplier is to perform engineering Projects the following clauses will be in addition to those detailed in the main Agreement.

Definitions

'Additional Services' means services, which are requested by the Customer and to be provided by the Supplier in addition to but of a similar nature to those in the Agreement Form and in accordance with the Agreement.

'Component' means a part to be or installed on the Rolling Stock and supplied by the Supplier.

'Free Issue Materials' means materials apparatus and components supplied by the Customer to the Supplier without charge and intended for use by the Supplier in the provision of Services to be provided under this Agreement.

'Rolling Stock' means any rail vehicle leased or owned by the Customer in respect of which the Services are to be performed.

1. Obligations of the Supplier

1.1 Where the Supplier is required to supply a Component for fitment to Rolling Stock the Supplier shall;

1.1.1 ensure the Component shall comply in all respects with the specification drawings samples and patterns or any modifications thereof that may be agreed. If no specifications drawings samples or patterns are mentioned in the Contract Agreement Form the Component shall be of such quality and in accordance with Industry Standards;

1.1.2 provide copies of relevant drawings specifications material test certificates and/or certificates of conformity where appropriate.

1.2 The Supplier must inform the Customer where modifications have been undertaken on Rolling Stock to enable vehicle records to be updated.

2. Free Issue Materials

2.1 In the event of the Customer supplying to the Supplier Free Issue Materials the cost of which has been included by the Supplier in assessing the Contract Price the Contract Price shall be reduced by an appropriate amount agreed between the Supplier and the Customer.

2.2 During any or all periods of supply of Free Issue Materials by the Customer to the Supplier ownership of the said materials shall at all times and for all purposes rest solely with the Customer and to this end the Supplier shall ensure that all materials supplied to it by the Customer are properly labelled as the property of

the Customer and are kept separate from and not mixed with any materials owned or in the possession of the Supplier or with any materials supplied to it by somebody other than the Customer.

- 2.3 The Supplier shall properly cover up and store all Free Issue Materials and other property of the Customer whilst the same are in the Supplier's possession and protect the same from damage by exposure to the weather and shall take every reasonable precaution against accident or damage to the same from any cause. The Supplier shall be liable for all loss thereof or damage to such Free Issue Materials whilst the same are in the Supplier's possession other than where such loss or damage is due to the negligence of the Customer or their employees.
- 2.4 Where agreed the Customer shall make available free of charge suitable storage facilities for Free Issue Materials Components and tools.

3. Hazardous Materials

The Supplier shall inform the Customer if any hazardous substances are encountered during the carrying out of the Services and if it is proposed to use such substances he shall comply with any precautions specified by the Customer as to their use handling storage and disposal.

4. Additional Warranty

- 4.2 Where the Services require the Supplier to supply and fit any Components onto a Vehicle the Components shall take on a 12-month warranty from the date of fitting. In the event that a Component fitted by the Supplier develops any defect within this Period the Supplier shall replace the Component following notification of the defect. The replacement Component(s) shall take on a further 12-month warranty period from the date of fitting such re-performance of the Services shall constitute the fulfilment of the Supplier's entire obligations and liability with respect to such defects in the Components.