

# **Framework Agreement for the Purchase of Goods and/or Services**

Between

**DB Cargo (UK) Limited**

And

**'The Supplier'**

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## BETWEEN

## THE PARTIES

- (1) **DB Cargo (UK) Limited** (Company Number 2938988) whose registered office is at Lakeside Business Park, Carolina Way, Doncaster, DN4 5PN ("**DBC UK**"); and
- (2) **The company or person identified in an Order for Goods and/or Services ("Supplier")**,

each "**a Party**" and together "**the Parties**".

## BACKGROUND

- (A) The Supplier wishes to provide Goods and/or Services to DBC UK on the terms set out in this Agreement.
- (B) DBC UK wishes to purchase Goods and/or Services from the Supplier on the terms set out in this Agreement.

## OPERATIVE TERMS

### 1 Definitions and Interpretation

- 1.1 In this Agreement the words below have the meanings next to them unless the context requires otherwise:

<b>Confidential Information</b>	means all information of a confidential, commercially sensitive and/or proprietary nature in respect of a Party's (or any of its Group companies') business including: information concerning a Party's (or any of its Group companies') relationships with its actual or potential customers or suppliers; any technical, commercial and financial information; business methods; prices; development plans; computer systems and software; products and/or services; know-how; market opportunities; or other matters connected to such Party or its Group companies and/or its or their customers and/or suppliers, including the terms of this Agreement.
<b>Delivery</b>	has the meaning set out in Schedule 1 (and " <b>Delivered</b> " shall be construed accordingly);
<b>Dispute</b>	has the meaning set out in Clause 29;
<b>Dispute Notice</b>	has the meaning set out in Clause 29;
<b>Due Date</b>	has the meaning set out in Schedule 1 and/or Schedule 2 (as the context requires);
<b>Effective Date</b>	in relation to an Order the date upon which the relevant Order is accepted in accordance with Clause 3, or such other date expressly identified as such in the relevant Order;
<b>Force Majeure Event</b>	the occurrence of any event beyond the reasonable control of a Party to this Agreement (excluding any strike, lockout or industrial action involving that Party's employees or any other failure in the Supplier's supply chain) which directly causes that Party to be unable to comply with all or a material part of its obligations under this Agreement where that event does not arise from the act, omission or negligence of that Party;
<b>Forecast</b>	any forecast or other document, statement or representation in whatever form of the likely amount of Goods and/or Services

	DBC UK may require from the Supplier but excluding any Order;
<b>Goods</b>	the goods to be supplied by the Supplier pursuant to an Order;
<b>Group</b>	any Subsidiary, or Subsidiary Undertaking, or any entity under control directly or indirectly, or any Holding Company, for the time being, of any Party; or any ultimate Holding Company, for the time being within the Party's group or organisation; or any entity that controls directly or indirectly, for the time being, any Party; or any Subsidiary, Subsidiary Undertaking or any entity under control directly or indirectly, for the time being, of any Holding Company or any ultimate Holding Company within the Party's group or organisation for the time being;
<b>Holding Company</b>	has the meaning set out in Section 1159 of the Companies Act 2006;
<b>Initial Term</b>	has the meaning set out in Clause 4.2;
<b>Insolvent</b>	a Party is Insolvent where it: <ul style="list-style-type: none"> <li>(a) proposes or passes a resolution for its winding up (save for the purpose of a solvent reconstruction or amalgamation);</li> <li>(b) is subject to an order or notice issued by a court or other authority of competent jurisdiction for its winding up or striking off;</li> <li>(c) enters administration;</li> <li>(d) proposes, makes or is subject to, a company voluntary arrangement or a composition with its creditors generally, an application to a court of competent jurisdiction for protection from its creditors generally or a scheme of arrangement under Part 26 Companies Act 2006;</li> <li>(e) has a receiver or a provisional liquidator appointed over any of its assets, undertaking or income;</li> <li>(f) ceases to trade;</li> <li>(g) is unable to pay its debts within the meaning of section 123 Insolvency Act 1986.</li> </ul>
<b>Intellectual Property Rights</b>	any and all intellectual property rights including but not limited to patents, patentable rights, copyright, design rights, utility models, trade marks (whether registered, registerable or otherwise), trade names, rights in inventions, rights in data, database rights, rights in know-how and Confidential Information, and all other intellectual and industrial property and similar or analogous rights existing under the laws of any country and all pending applications for and right to apply for or register the same (present, future and contingent, and including all renewals, extensions, revivals and all accrued rights of action);
<b>Key Individuals</b>	those individuals listed in Schedule 7;
<b>Key Performance Indicators or KPIs</b>	the key performance indicators set out in Part 2 of Schedule 5;
<b>KPI Credit</b>	the KPI credits identified as such in Part 2 of Schedule 5;

<b>KPI Target</b>	the KPI targets identified as such in Part 2 of Schedule 5;
<b>KPI Termination Event</b>	means the events identified as such in Part 2 of Schedule 5;
<b>Liabilities</b>	has the meaning set out in Clause 17.1;
<b>Liquidated Damages or LDs</b>	the payments identified as such in Part 1 of Schedule 5;
<b>Materials</b>	has the meaning set out in Clause 16.2;
<b>New Service Provider</b>	has the meaning set out in Clause 17.2;
<b>Order</b>	DBC UK's written instruction to supply the Goods and/or Services incorporating, and subject to, the terms and conditions set out in this Agreement using, unless otherwise agreed in writing, the pro-forma purchase order set out in Schedule 3 submitted using DBC UK's SAP system or such other means as DBC UK specifies from time to time;
<b>Outgoing Employee</b>	has the meaning set out in Clause 17.7;
<b>Price</b>	has the meaning set out in Clause 9.1;
<b>Regulations</b>	has the meaning set out in Clause 17.3;
<b>Rejected Goods</b>	has the meaning set out in paragraph 4.1 of Schedule 1;
<b>Relevant Supplier Personnel</b>	has the meaning set out in Clause 17.4.1;
<b>Retained Goods</b>	has the meaning set out in paragraph 2.3 of Schedule 1;
<b>Services</b>	the services to be provided by the Supplier pursuant to an Order;
<b>Specification</b>	the specification for the Goods and/or Services set out in Schedule 2 and/or the Order;
<b>Subsidiary</b>	has the meaning set out in Section 1159 of the Companies Act 2006;
<b>Subsidiary Undertaking</b>	has the meaning set out in Section 1162 of the Companies Act 2006;
<b>Supplier Personnel</b>	has the meaning set out in Clause 17.1;
<b>Variation</b>	has the meaning set out in Clause 25;
<b>VAT or Value Added Tax</b>	value added tax as provided for in the Value Added Tax Act 1994 and legislation (whether delegated or otherwise) supplemental thereto.

1.2 In this Agreement unless the context requires otherwise:

- 1.2.1 references to a Clause or Schedule are to a clause of, or a schedule to, this Agreement; references to this Agreement include its schedules; and references in a Schedule to a paragraph are to a paragraph of that Schedule;
- 1.2.2 references to this Agreement include any Order and mean this Agreement and any such Orders as amended from time to time in accordance with their terms. In the event of a conflict between (a) a term of Clauses 1 to 34 of this Agreement and the Schedules, and (b) a provision of an Order, the relevant provision of the Order shall prevail and apply;

- 1.2.3 the singular includes the plural and vice versa; references to any gender include every gender; and references to persons include corporations, partnerships and other unincorporated associations or bodies of persons;
- 1.2.4 all headings are for convenience, have no legal effect and should be ignored when interpreting this Agreement;
- 1.2.5 the words "other", "includes", "including" and "in particular" do not limit the generality of any preceding words;
- 1.2.6 reference to the Parties include their respective successors in title, and/or respective permitted assigns;
- 1.2.7 a reference to any provision of any statute and all statutory instruments, orders, by-laws, directions and notices made pursuant to it will be construed as a reference to that provision as amended, re-enacted, replaced, or extended at the relevant time;
- 1.2.8 any reference to:
- (a) a "day" shall mean a period of 24 hours running from midnight to midnight;
  - (b) a "business day" shall mean the hours of 09.00 and 17.00 Monday to Friday that is not a public or bank holiday anywhere in the United Kingdom;
  - (c) a "month" or "months" shall mean the period commencing on (and including) the relevant day in the relevant calendar month and ending on (and excluding) the same day in (respectively) the following or final calendar month into which such period extends (provided that, if there is no corresponding day in that calendar month, the period shall end on (and include) the final day of such calendar month);
  - (d) a "calendar month" shall mean the period commencing on (and including) the 1st of the relevant calendar month and ending on (and excluding) the 1st of the immediately subsequent calendar month; and
  - (e) references to times are to London times.
- 1.2.9 in the event of a conflict between a term of Clauses 1 to 34 of this Agreement, and a term of a Schedule, then the relevant term of Clauses 1 to 34 of this Agreement shall prevail and apply.

## **2 Purchase of Goods and Services**

- 2.1 The Supplier will only provide Goods and/or Services to DBC UK pursuant to an Order. All Orders placed with the Supplier by DBC UK will be subject to the terms and conditions set out in this Agreement and incorporate, by reference, any relevant Schedules. Any terms and conditions included in or on the reverse of an Order shall have no legal effect.
- 2.2 DBC UK may cancel or change an Order without charge prior to delivery of Goods or commencement of performance of Services.
- 2.3 No terms or conditions endorsed upon, delivered with or contained in the Supplier's acknowledgement or acceptance of Order, or similar document (whether disclosed or exchanged before or after the date of an Order) shall form part of the Agreement and the Supplier waives any right which it otherwise might have to rely on such terms and conditions.

## **3 Acceptance**

- 3.1 An Order will be accepted by the Supplier expressly by the Supplier giving notice of acceptance (including by signing the acceptance section on the Order).

## **4 Commencement and Duration**

- 4.1 This Agreement shall commence on the Effective Date and, subject to any Initial Term agreed pursuant to Clause 4.2, shall continue until terminated in accordance with Clause 12.

- 4.2 Where the parties expressly agree in an Order that an initial term will apply to the provision of Goods and/or Services (“**the Initial Term**”) DBC UK may only exercise the termination right conferred by Clause 12.1 so that the relevant termination notice expires on or after expiry of the Initial Term. For the avoidance of doubt, nothing in this Clause 4.2 shall prevent or otherwise restrict DBC UK from exercising any other termination right afforded by Clause 12.

## **5 Conditions of Supply**

- 5.1 The purchase of Goods and/or Services by DBC UK pursuant to this Agreement shall, unless otherwise expressly agreed in an Order, be on a non-exclusive basis and the Supplier acknowledges that DBC UK may appoint any other person to provide goods and/or services the same as or similar to the Goods and/or Services provided pursuant to this Agreement.
- 5.2 The Supplier acknowledges that DBC UK shall have no obligation to place Orders pursuant to this Agreement and that any Forecast shall not constitute a binding commitment on DBC UK. DBC UK may provide the Supplier with Forecasts in such detail and within such timescales as DBC UK thinks fit but if any such Forecast proves to be inaccurate, DBC UK shall not have any liability to the Supplier. If the Supplier is unable to fulfil any Forecast, it shall inform DBC UK in writing immediately.
- 5.3 The Supplier acknowledges that the Goods and/or Services provided (including for the avoidance of doubt, any agreed pricing, pursuant to this Agreement) may be for the benefit of other companies within DBC UK’s Group and that any such company may enforce the terms of this Agreement subject to and in accordance with the terms of this Agreement and the provisions of the Contracts (Rights of Third Parties) Act 1999.
- 5.4 The Supplier warrants that the Goods and/or Services and the supply of them by the Supplier will comply in each and every respect with all relevant legal, regulatory and other requirements for the time being in force (including any codes of practice issued by any governmental, regulatory or other authority) and will comply from the date of issue with any codes of practice or policies issued by DBC UK to the Supplier from time to time during the term of this Agreement.
- 5.5 The Supplier warrants that the Goods and/or Services and the supply of them by the Supplier will not infringe the Intellectual Property Rights of any third party.
- 5.6 The Supplier will ensure that the Supplier’s employees, sub-contractors and agents comply with all applicable staff, contractors’ and other applicable regulations of DBC UK whilst on DBC UK’s premises and with any such regulations imposed by any agent or contractor of DBC UK when on their premises (including, where applicable, DBC UK’s Drugs and Alcohol Policy and any other policy concerning matters of health & safety or DBC UK’s statutory and regulatory obligations as a licensed operator of rail services).

## **6 Inspection of Records**

- 6.1 DBC UK, its agents and/or subcontractors and/or independent auditors on DBC UK’s behalf shall have the right at any time to inspect:
- 6.1.1 the Supplier’s records and books relating to the supply of Goods and/or Services to DBC UK including without limitation the Supplier’s records and books for the supply to the Supplier of goods and/or services or raw materials from other suppliers in the supply chain; and
- 6.1.2 the Supplier’s processes of manufacture and/or assembly of the Goods and/or provision of Services and/or any other matter relating to the production, quality, standards or supply of the Goods and/or provision of Services.
- 6.2 Any such inspection processes shall be subject to reasonable prior written notice.
- 6.3 The Supplier shall for a minimum of six (6) years after the Agreement has expired or terminated or for as long as the Parties may agree is appropriate, keep and maintain full and accurate records required under this Agreement, including information required to validate compliance of the Goods and/or Services in accordance with his Agreement.

## **7 Indemnity**

- 7.1 Neither Party excludes or limits its liability for:

- 7.1.1 death or personal injury caused by its negligence; or
  - 7.1.2 fraud (including fraudulent misrepresentation); or
  - 7.1.3 breach of any obligations imposed by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982; or
  - 7.1.4 any other matter for which it would be unlawful to exclude or limit its liability.
- 7.2 The Supplier will indemnify and keep DBC UK indemnified against all losses, liabilities, damages, claims, costs and expenses (including all legal and other professional fees and expenses) incurred or suffered by DBC UK howsoever arising as a result of or in connection with:
- 7.2.1 breach by the Supplier of any term of this Agreement;
  - 7.2.2 any failure or alleged failure of the Goods and/or Services to comply with this Agreement or any other contract between DBC UK and the Supplier;
  - 7.2.3 any tort (including negligence) or breach of statutory duty by the Supplier;
  - 7.2.4 any infringement or alleged infringement of Intellectual Property Rights (or other rights) of third parties in respect of the Goods and/or Services, associated documentation (including, without limitation, instruction manuals), appearance, labelling or advertising; or
  - 7.2.5 any infringement or alleged infringement of DBC UK's Intellectual Property Rights.
- 7.3 For the avoidance of doubt, unless otherwise agreed in writing DBC UK will control any legal proceedings with third parties in respect of which it is being indemnified by the Supplier.
- 7.4 Subject to Clause 7.1, in no circumstances shall DBC UK's liability under an Order (whether such liability arises under contract, tort (including negligence) or otherwise) exceed the relevant Price.

## **8 Insurance**

- 8.1 Unless otherwise agreed and without prejudice to the Supplier's obligations and liabilities pursuant to this Agreement, the Supplier will take out and maintain in force for the duration of this Agreement, with reputable and substantial insurers, the following insurances, to be evidenced by certificates of insurance made available to DBC UK within 7 days of request:
- 8.1.1 employer's liability insurance or similar insurance(s) in accordance with any laws which may be applicable to the Supplier's employees, agents or sub-contractors engaged directly or indirectly in the performance of this Agreement in the amount of at least £10,000,000 for any one occurrence or the amount required by applicable law, whichever is higher;
  - 8.1.2 public liability insurance in the amount of at least £10,000,000 for any one occurrence;
  - 8.1.3 product liability insurance in the amount of at least £10,000,000 for any one occurrence; and
  - 8.1.4 professional indemnity insurance in the amount of at least £10,000,000 for any one occurrence.
- 8.2 The Supplier shall also maintain the professional indemnity insurance referred to in Clause 8.1.4 in full force and effect for a further period of six years following termination of this Agreement.
- 8.3 Unless agreed otherwise by DBC UK in writing such insurances (other than the employer's liability insurance) shall be endorsed to note DBC UK's interest under such insurances and to provide that underwriters waive any rights of recourse, including subrogation rights against DBC UK in relation to this Agreement. Such insurances shall also provide that DBC UK shall be given not less than 30 days notice of cancellation of, or material change to the cover.

## **9 Prices**

- 9.1 The prices for the Goods and/or Services shall be the prices set out in the Order and/or Schedule 6 ("**the Price**").



- 9.2 Unless otherwise agreed in an Order the Price shall be all inclusive and the Supplier shall not be entitled to make any additional charges for administration, packaging, shipping, carriage, insurance or delivery of the Goods and/or Services.
- 9.3 Unless otherwise agreed in accordance with this Agreement, there will be no change to the Price during the term of this Agreement.
- 9.4 The Supplier will honour any rebates agreed as being payable to DBC UK pursuant to an Order or otherwise in Schedule 6 and agrees that to the extent that the Supplier does not, DBC UK shall be entitled to withhold payments otherwise due to the Supplier, as well as pursuing any other remedies available to it. Where rebates are payable, DBC UK will make deductions from any amounts falling due to the Supplier in line with agreed payment terms and payment frequency.
- 9.5 The Supplier will notify DBC UK of and pass onto DBC UK by way of reduced prices the benefit of any cost savings to the Supplier which result from technology and process changes or otherwise.

## **10 Payment**

- 10.1 The Supplier shall invoice DBC UK for the Price in accordance with the terms set out in Schedule 6, or if no such terms are set out in Schedule 6, monthly in arrears.
- 10.2 Except as otherwise agreed in writing by DBC UK, payment of invoices will be made on the seventh (7<sup>th</sup>) day of the calendar month which next follows expiry of 45 days after the date of a valid and proper VAT invoice in the correct format (such format to be agreed with DBC UK). Invoices may not be dated or otherwise issued by the Supplier except in accordance with the terms of Clause 10.1. If DBC UK disputes any invoice in good faith, it shall be entitled to withhold payment of the disputed amount pending resolution of the dispute but will pay the undisputed amount in accordance with the terms of this Clause. The provisions of Clause 10.6 shall not apply to any disputed amounts except, if the dispute is finally resolved in the Supplier's favour, Clause 10.6 shall apply to any period after the dispute has been finally resolved.
- 10.3 Save as the context requires or as otherwise stated in this Agreement, all references to payments made in this Agreement are references to such payments exclusive of any Value Added Tax chargeable in respect of the supply of the Goods and/or Services and where such payments fall to be made under this Agreement, such Value Added Tax shall be added to the amount at the rate applicable, if any, and paid in addition thereto subject to production of a valid and properly numbered VAT invoice.
- 10.4 DBC UK will be entitled at its sole discretion to set off any liability of DBC UK (and/or any company in the same Group as DBC UK) to the Supplier against any liability of the Supplier to DBC UK (and/or any company in the same Group as DBC UK) (in either case however such liability arises and whether or not it is present or future, liquidated or unliquidated and irrespective of the currency of its denomination). Any exercise by DBC UK of its rights under this Clause does not affect any other rights and remedies it may have under this Agreement or otherwise. DBC UK will provide to the Supplier written notice of any exercise of its right of set off under this Clause which involves any company in the same Group as DBC UK. DBC UK will procure the acceptance by the relevant company in the same Group as DBC UK of any set off under this Clause involving a company in the same Group as DBC UK. The Supplier will accept any such set off in relation to a liability owed to the Supplier by a company in the same Group as DBC UK in full and final discharge of such liability.
- 10.5 Where DBC UK is owed sums by the Supplier (whether under this Agreement or otherwise) which are in excess of the amounts payable by DBC UK to the Supplier, DBC UK will be entitled to suspend all payments to the Supplier under this Agreement until the balance owing to DBC UK has been recouped by way of set off against the payments suspended.
- 10.6 If payment is not made when due under Clause 10.1 the Supplier may charge interest at 2% per annum above the base rate of HSBC Bank plc at the time on all unpaid amounts. The time for payment is not of the essence.

## **11 Performance Management**

- 11.1 If the Supplier fails to deliver Goods by the delivery date and/or in accordance with the lead time specified in Part 1 of Schedule 5 or the Order (as applicable) it shall be liable for and shall pay to DBC UK as compensation the corresponding Liquidated Damages.

- 11.2 The Key Performance Indicators and KPI Targets set out in Part 2 of Schedule 5 will apply in respect of all deliveries of Goods made by the Supplier and to the performance by the Supplier of the Services pursuant to this Agreement. If the Supplier fails to meet any KPI Target, it will incur the KPI Credits.
- 11.3 The Supplier shall ensure that any invoice issued pursuant to Clause 10 takes full account of any Liquidated Damages and/or KPI Credits validly incurred in the relevant invoice period.
- 11.4 The Parties agree that all Liquidated Damages and KPI Credits (as applicable) represent a genuine pre-estimate of the relevant loss or damage incurred by DBC UK (or a member of its Group) and could not be construed as a penalty in the circumstances in which they fall due. Payment of Liquidated Damages and/or KPI Credits shall be without prejudice to any other right or remedy of DBC UK under this Agreement or otherwise at law.

## **12 Termination**

- 12.1 DBC UK may terminate this Agreement for convenience and without liability to the Supplier upon giving the Supplier three (3) months' notice in writing unless a different notice period is specified in the relevant Order.
- 12.2 This Agreement may be terminated immediately by notice in writing:
- 12.2.1 by either Party if the other Party is in material breach of any of its obligations under this Agreement and fails to remedy the breach (if capable of remedy) within seven (7) days after written notice by the other Party specifying the breach and requiring the same to be remedied;
  - 12.2.2 by either Party with immediate effect from the date of service on the other of written notice if the Party is Insolvent;
  - 12.2.3 by either Party with immediate effect from the date of service on the other of a written notice if the other Party suffers any analogous event to those set out in Clauses 12.2.2 in any other jurisdiction;
  - 12.2.4 by either Party in the circumstances set out in Clause 14 (Force Majeure);
  - 12.2.5 by DBC UK if the Supplier is in breach of any of its obligations under this Agreement (whether or not such breach is material in nature) and fails to remedy the breach (if capable of remedy) within 14 days after written notice by DBC UK specifying the breach and requiring the same to be remedied;
  - 12.2.6 by DBC UK with immediate effect from the date of service on the Supplier of written notice if the Supplier (or any sub-contractor acting on its behalf) triggers a KPI Termination Event;
  - 12.2.7 by DBC UK with immediate effect from the date of service on the Supplier of written notice if the Supplier has, in the reasonable opinion of DBC UK, harmed the name or business of DBC UK; or
  - 12.2.8 by DBC UK with immediate effect from the date of service on the Supplier of written notice if a person (or persons acting together) take a controlling interest in the Supplier's share capital (for this purpose, a 'controlling interest' being either:
    - (a) the ownership or control (directly or indirectly) of more than 30% of the Supplier's voting share capital or the share capital of the Supplier's Holding Company; or
    - (b) the ability to direct the casting of more than 30% of the votes exercisable at the Supplier's general meetings or those of the Supplier's Holding Company on all, or substantially all, matters);
  - 12.2.9 by DBC UK with immediate effect from the date of service on the Supplier of a written notice in the circumstances set out in Clause 20.2, paragraph 1.3.1 of Schedule 1 or paragraph 10.1 of Schedule 2.
- 12.3 The termination of this Agreement for any reason will not affect the coming into force or the continuation in force of any of its provisions which expressly or by implication are intended to come into force or continue in force on or after the termination.

- 12.4 Any termination of this Agreement under this Clause will be without prejudice to any other rights or remedies of either Party under this Agreement or at law and will not affect any accrued rights or liabilities of either Party at the date of termination.

### **13 Consequences of Termination**

- 13.1 The Supplier acknowledges that DBC UK may wish, prior to, on or after termination or expiry of this Agreement, to invite persons (who may include the Supplier) to tender for the right to provide some or all of the Goods and/or Services after termination or expiry of this Agreement. Accordingly the Supplier agrees that at any time DBC UK may require the Supplier to provide to DBC UK at the Supplier's cost within fourteen (14) days of its request, such information as is reasonably required by DBC UK to develop such tender(s) (subject always to the rights of the Supplier to withhold confidential or commercially sensitive information).

- 13.2 In the event of termination or expiry of this Agreement the Supplier shall (at its cost):

13.2.1 deliver to DBC UK all documents books and records which relate to the Services which are severable from the records of the Supplier. Where any such documents books and/or records are not severable from the records of the Supplier, the Supplier shall maintain such records for such period as is prescribed by UK legislation and shall give to DBC UK reasonable access to the said documents books and/or records as DBC UK may require (including the right to take copies and extracts on reasonable advance notice) and will keep them in good order;

13.2.2 return or procure the return to DBC UK of all and any copies of DBC UK's Confidential Information in the possession or control of the Supplier and/or any sub-contractors appointed in accordance with this Agreement;

13.2.3 provide all assistance, information and co-operation which DBC UK may reasonably require to ensure an orderly migration of the Services to DBC UK or to such new service provider as DBC UK may appoint;

13.2.4 offer to DBC UK any work in progress not yet paid for, at a reasonable price having regard to the status of the relevant work in progress and the basis of the Price agreed under the Order. Any work in progress purchased by DBC UK shall be delivered by the Supplier in a format and at a time reasonably specified by DBC UK and, notwithstanding its is not yet completed, shall be subject to any relevant warranty, indemnity, quality and certification provisions contained in this Agreement;

13.2.5 promptly re-deliver any free issue material issued by DBC UK pursuant to a relevant Order.

- 13.3 In the event of termination or expiry of this Agreement DBC UK shall:

13.3.1 pay to the Supplier all sums validly due and owing for outstanding Orders which DBC UK has agreed will be fulfilled notwithstanding termination of this Agreement;

13.3.2 return or procure the return to the Supplier of all and any copies of the Supplier's Confidential Information in the possession or control of DBC UK.

### **14 Force Majeure**

- 14.1 If either Party is prevented, hindered or delayed from or in performing any of its obligations under this Agreement by a Force Majeure Event, then:

14.1.1 that Party's obligations under this Agreement shall be suspended for so long as the Force Majeure Event continues and to the extent that it is so prevented, hindered or delayed;

14.1.2 as soon as possible after the start of the Force Majeure Event that Party shall give notice to the other Party of the nature of the Force Majeure Event, the date and time at which it started and the likely effects of the Force Majeure Event on its ability to perform its obligations;

14.1.3 that Party shall use all reasonable endeavours to mitigate the effects of the Force Majeure Event on the performance of its obligations under the Agreement; and

- 14.1.4 as soon as practicable after the end of the Force Majeure Event that Party shall notify the other Party and resume performance of its obligations under this Agreement.
- 14.2 If the Supplier is prevented, hindered or delayed from or in performing any of its obligations under this Agreement by a Force Majeure Event, DBC UK may either engage an alternative supplier to provide the Goods and/or Services for the duration of the event of Force Majeure and for a reasonable period thereafter (and provided DBC UK uses reasonable endeavours to minimise its contractual commitments to the alternative supplier, the Supplier will reimburse DBC UK for any additional costs incurred by DBC UK in relation to such alternative supplier) and/or at any time during the event of Force Majeure terminate any Orders by giving immediate notice in writing to the Supplier.
- 14.3 If a Party is prevented, hindered or delayed from or in performing any of its obligations under this Agreement by a Force Majeure Event for a continuous period in excess of seven (7) days the other Party may terminate this Agreement immediately by notice in writing.

## **15 Information Requirements**

- 15.1 Invoices must show date, invoice number, the Supplier name and address, VAT breakdown as well as the Order number and the price for the Goods and/or Services supplied together with any other information or supporting documentation DBC UK may reasonably require.
- 15.2 The Supplier warrants and represents that all information provided to DBC UK prior to the date of this Agreement was materially true, accurate and not misleading. The Supplier agrees to notify DBC UK immediately if any such information becomes untrue, inaccurate or misleading.
- 15.3 The Supplier warrants and represents that it has not relied on any information provided by DBC UK prior to the date of this Agreement and that it has carried out its own due diligence in relation to DBC UK's requirements in relation to the Goods and/or Services.
- 15.4 All specifications, drawings, sketches, models, prototypes, samples, tools, designs, technical information or data or other proprietary information (whether written, oral or otherwise and including personal data as defined in the Data Protection Act 1998) made available to the Supplier by DBC UK (or on its behalf) will remain the property of DBC UK and will be returned promptly to DBC UK (together with all copies) at DBC UK's request. Such information will be treated as strictly confidential, will be kept safely and will not be used or disclosed by the Supplier except as strictly necessary in the performance of this Agreement.

## **16 Intellectual Property**

- 16.1 Nothing in this Agreement shall operate to assign or otherwise transfer any title to, or ownership of any pre-existing Intellectual Property Rights owned by a Party or its third party licensors.
- 16.2 All Intellectual Property Rights in systems, concepts, brands, logos, marks, slogans, digital scans, advertising, promotional or packing material, artistic works, illustrations, documents, instructions, databases, drawings, information, designs, specifications, formulae, test results, software, inventions, tooling, display equipment, labels, models, samples, photographs or other material or products acquired or created by the Supplier or on the Supplier's behalf in the course of performing this Agreement, commissioned by DBC UK or which are made to DBC UK's specification ("**Materials**") will vest in DBC UK. The Supplier assigns to DBC UK all such rights (whether presently existing or to be created in the future) to the fullest extent to which the Supplier is able (and if moral rights exist, the Supplier waives such rights) and regardless of whether or not the Supplier has received payment for the Goods and/or Services purchased pursuant to this Agreement.
- 16.3 The Supplier agrees to execute all documents and to do any other things reasonably necessary to further assure DBC UK's title to the Intellectual Property Rights in the Materials and to allow DBC UK to enforce its rights in the Materials. For the avoidance of doubt, this may involve the Supplier providing DBC UK with the names of the individuals who created the Materials and with information as to the novelty and state of the art of the Materials. Where the Supplier engages the assistance of third parties in preparing or producing the Materials for DBC UK, the Supplier will notify DBC UK, ensure at the outset that such third parties assign any such Intellectual Property Rights to DBC UK (and if moral rights exist, waive such rights) and promptly provide DBC UK with documentation evidencing such assignment and waiver.

- 16.4 All Intellectual Property Rights in systems, concepts, brands, logos, marks, slogans, digital scans, advertising, promotional or packing material, artistic works, illustrations, documents, instructions, databases, drawings, information, designs, specifications, formulae, test results, software, inventions, tooling, display equipment, labels, models, samples, photographs or other material or products supplied by DBC UK to the Supplier or used by the Supplier in the supply of the Goods and/or Services shall at all times be and remain the exclusive property of DBC UK and such items shall be held by the Supplier in safe custody at its own risk and maintained and kept in good condition by the Supplier until returned to DBC UK and shall not be disposed of other than in accordance with DBC UK's written instructions, nor shall such items be used otherwise than as authorised by DBC UK in writing.
- 16.5 The Supplier acknowledges that any rights granted by DBC UK to use or exploit any of DBC UK's Intellectual Property Rights will terminate immediately upon the termination of this Agreement for any reason. All goodwill in respect of DBC UK's Intellectual Property Rights shall remain with DBC UK at all times.

## 17 Supplier Personnel

- 17.1 All losses, damages, costs, claims, liabilities and expenses (including all legal and other professional fees and expenses) ("**Liabilities**") relating to the employment of any of the Supplier's employees, workers, contractors and agents ("**Supplier Personnel**") in respect of the period from the Effective Date up to and including the date of termination of this Agreement are to be borne by the Supplier.
- 17.2 The Supplier will indemnify and keep DBC UK and any new provider of goods and/or services to DBC UK similar to the Goods and/or Services or any part of such Goods and/or Services (a "**New Service Provider**") indemnified against any Liabilities transferred to, imposed upon or incurred by DBC UK and/or any New Service Provider, in each case to the extent arising out of or in connection with the employment of any Supplier Personnel in respect of the period from the Effective Date to the date of termination of this Agreement.
- 17.3 If any of the Supplier Personnel makes any claim (whether successful or not) at any time prior to termination of this Agreement that they have become an employee of, or have rights against, DBC UK or any New Service Provider by virtue of the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("**the Regulations**") or otherwise, the Supplier will indemnify and keep DBC UK and any New Service Provider indemnified against any Liabilities transferred to, imposed upon or incurred by DBC UK or any New Service Provider in each case to the extent arising out of or in connection with any such claim.
- 17.4 The Supplier undertakes that during any notice period to terminate this Agreement it shall not, save with the prior written consent of DBC UK:
- 17.4.1 withdraw or permit the withdrawal of any of the Supplier Personnel engaged wholly or mainly at that time in the provision of the Goods and/or Services (the "**Relevant Supplier Personnel**") from the provision of the Goods and/or Services;
  - 17.4.2 alter in any material respect the terms and conditions of employment of any of the Relevant Supplier Personnel (including, without limitation, any increase in salary, wages or other emoluments (whether pursuant to a general review or otherwise) where the effect of such increase would be to increase the annual salary, wages or other emoluments of any Relevant Supplier Personnel to an annual level above the market rate paid to such personnel across the relevant industry);
  - 17.4.3 assign any member of the Supplier's staff (not already engaged in the provision of the Goods and/or Services) to the provision of the Goods and/or Services; or
  - 17.4.4 engage new employees who would become Relevant Supplier Personnel except to replace Relevant Supplier Personnel who have left the Supplier's employment.
- 17.5 The Supplier undertakes that during any notice period to terminate this Agreement, the Supplier shall provide to DBC UK and/or New Service Provider the following information:
- 17.5.1 details of the Services; and
  - 17.5.2 all information relating to transferring employees required to be supplied under the Regulations.

- 17.6 Following the termination of this Agreement for whatever reason, the Supplier will indemnify and keep DBC UK and any New Service Provider indemnified in full against all Liabilities arising directly or indirectly in connection with any act or omission of the Supplier prior to the termination or expiry of this Agreement in respect of any Supplier Personnel for which DBC UK and/or any New Service Provider is liable by reason of the Regulations.
- 17.7 If, as a result of the application of the Regulations, the contract of employment of any employee of the Supplier shall have effect, following the termination of this Agreement, as if originally made between DBC UK and/or any New Service Provider and that person ("**Outgoing Employee**"), DBC UK and/or any New Service Provider may terminate the contract of employment with such Outgoing Employee and the Supplier shall indemnify and keep DBC UK and any New Service Provider indemnified against all Liabilities incurred in respect of any such dismissal. The Supplier shall also indemnify and keep DBC UK indemnified against all Liabilities incurred by DBC UK arising out of or in connection with any claim (whether successful or not) made by an Outgoing Employee (whether or not such person is dismissed by DBC UK).
- 17.8 A New Service Provider may enforce the terms of this Clause 17 subject to and in accordance with the terms of this Agreement and the provisions of the Contracts (Rights of Third Parties) Act 1999.

## **18 Security**

If DBC UK reasonably determines that it would be commercially prudent to obtain financial or performance security against the Supplier failing to perform any of its obligations under this Agreement, DBC UK shall be entitled to require the Supplier to provide such security in such a form as DBC UK deems appropriate (including guarantees or bonds provided by a Group company of the Supplier). Failure to provide such security within the time period stipulated by DBC UK shall be deemed a material breach of this Agreement.

## **19 Notices**

- 19.1 Any notice given under this Agreement shall be in writing and served by delivering it personally or sending it by pre-paid recorded delivery or registered post to the address and for the attention of the relevant Party set out in Clause 19.2 (or as otherwise notified by that Party hereunder). Any such notice shall be deemed to have been received:
- 19.1.1 if delivered personally, at the time of delivery; and
  - 19.1.2 in the case of pre-paid recorded delivery or registered post 48 hours from the date of posting.
- Provided that if deemed receipt occurs before 9am, on a business day the notice shall be deemed to have been received at 9am on that day, and if deemed receipt occurs after 5pm on a business day, or on a day which is not a business day, the notice shall be deemed to have been received at 9am on the next business day.
- 19.2 The addresses of the Parties for the purposes of Clause 19.1 shall be those set out in the relevant Order or such other address in the United Kingdom as may be notified in writing from time to time by the relevant Party to the other Party.

## **20 Compliance**

- 20.1 Each Party undertakes to perform its duties and obligations under this Agreement in compliance with all applicable laws, rules and regulations, including the following.
- 20.1.1 Applicable anti-corruption laws (including the Bribery Act 2010). The Supplier undertakes promptly report to DBC (i) any actual or suspected material breach by it (or third parties that it has retained to perform its obligations in accordance with this Agreement); and (ii) any requests for bribes or corrupt payments by any person (including from any public official).
  - 20.1.2 The Modern Slavery Act 2015. The Supplier undertakes, warrants and represents that:
    - (a) neither the Supplier nor any of its officers, employees, agents or subcontractors has:
      - (i) committed, or shall commit, an offence under the Modern Slavery Act 2015 (a "**MSA Offence**");

- (ii) been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or
    - (iii) is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;
  - (b) it shall notify DBC immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or subcontractors have, breached or potentially breached any of Supplier's obligations under this Clause 20. Such notice to set out full details of the circumstances concerning the breach or potential breach of Supplier's obligations.
- 20.2 A breach of applicable criminal laws (including any anti-corruption laws and the Modern Slavery Act 2015) by the Supplier (or third parties that the Supplier has retained to perform its obligations in accordance with this Agreement) in connection with the performance of its duties and obligations shall always be deemed a material breach and shall entitle DBC UK to terminate this Agreement and any Orders executed pursuant to it for good cause with immediate effect. In the event that DBC UK has reason to believe that a material breach of an obligation under this **clause 20** has occurred, the Supplier shall cooperate fully and in good faith in order to determine whether a material breach has occurred.
- 20.3 The Supplier hereby undertakes to perform its duties and obligations under this Agreement (and any Orders executed pursuant to it) in compliance with the principles set out in the 'DB Code of Conduct for Business Partners', and the 'DBC UK Anti-Bribery and Corruption Policy', both of which are available at [http://www.uk.dbcargo.com/rail-uk-en/compliance\\_uk.html](http://www.uk.dbcargo.com/rail-uk-en/compliance_uk.html)

## **21 Sub-Contractors**

- 21.1 The Supplier will not be entitled to sub-contract any of the Supplier's obligations under this Agreement, except with the prior written consent of DBC UK.
- 21.2 The appointment of a sub-contractor shall not affect the Supplier's obligations and liabilities under this Agreement and the Supplier shall remain primarily liable to DBC UK and fully responsible for the acts or omissions of its sub-contractors.
- 21.3 Where DBC UK recommends or suggests any particular person to the Supplier as a sub-contractor, DBC UK gives no warranty or assurance in respect of the performance of that person and no liability will be accepted by DBC UK in respect of the performance of that person.
- 21.4 In making a request pursuant to Clause 21.1 the Supplier shall provide DBC UK with the following information about the proposed sub-contractor:
- 21.4.1 its name, registered office and company registration number;
  - 21.4.2 a copy of the proposed sub-contract;
  - 21.4.3 the fees and charges to be paid by the Supplier to the proposed sub-contractor;
  - 21.4.4 the purposes for which the proposed sub-contractor will be appointed, including the scope of any Services to be provided by the proposed sub-contractor;
  - 21.4.5 confirmation that the proposed sub-contractor will comply with the terms of this Agreement as if it were a Party to the same;
  - 21.4.6 where the proposed sub-contractor is also an affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of DBC UK that the proposed sub-contract has been agreed on "arm's-length" terms; and
  - 21.4.7 any further information reasonably requested by DBC UK.

## **22 Assignment**

- 22.1 The Supplier will not be entitled to assign, transfer, sub-license or charge any or all of the Supplier's rights or obligations under this Agreement without the prior written consent of DBC UK.
- 22.2 DBC UK will be entitled to assign or sub-license any or all of its rights or obligations under this Agreement without the Supplier's consent, provided that, in the case of an assignment only, it is to a company which is, at the time, within DBC UK's Group. DBC UK will give the Supplier notice of any such assignment as soon as reasonably practicable.

## **23 Waiver and Cumulative Remedies**

The failure to exercise or delay in exercising a right or remedy provided by this Agreement or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies. A waiver of a breach of any of the terms of this Agreement or a default under this Agreement does not constitute a waiver of any other breach or default and shall not affect the other terms of this Agreement. A waiver of a breach of any of the terms of this Agreement or a default under this Agreement will not prevent a Party from subsequently requiring compliance with the waived obligation. The rights and remedies provided by this Agreement are cumulative and (subject as otherwise provided in this Agreement) are not exclusive of any rights or remedies provided by law.

## **24 No Partnership**

Nothing in this Agreement and no action taken by the Parties pursuant to this Agreement shall constitute, or be deemed to constitute a relationship between the Parties of partnership, association, joint venture or other co-operative entity.

## **25 Variation**

- 25.1 No change, amendment, modification, extension or variation ("**Variation**") to, or concerning this Agreement shall be valid unless it is in writing and signed by or on behalf of each of the Parties.
- 25.2 The Parties may agree a separate procedure for managing commercial, technical and/or operational changes to the supply of Goods and/or Services pursuant to an Order, or all Orders placed pursuant to this Agreement. Any such procedure shall be agreed in writing in accordance with Clause 25.1 and be incorporated as an additional Schedule to this Agreement.

## **26 Costs and Expenses**

Each Party shall pay its own costs relating to the negotiation, preparation, execution and implementation by it of this Agreement and of each document referred to in it.

## **27 Counterparts**

This Agreement may be executed in any number of counterparts, each of which so executed shall be an original, but together shall constitute one and the same instrument.

## **28 Confidentiality and Privacy**

- 28.1 Subject to Clause 28.2 the Parties shall keep confidential all Confidential Information relating to this Agreement and shall use all reasonable endeavours to prevent their employees and agents from making any disclosure to any person of any matters relating hereto.
- 28.2 Clause 28.1 shall not apply to any disclosure of Confidential Information:
- 28.2.1 required by any applicable law;
  - 28.2.2 that is reasonably required by persons engaged by a Party in the performance of such Party's obligations under this Agreement;
  - 28.2.3 where a Party can demonstrate that such Confidential Information is already generally available and in the public domain otherwise than as a result of a breach of Clause 28.1;
  - 28.2.4 by either Party of any document to which it is a party and which the Parties to this Agreement have agreed contains no Confidential Information;



- 28.2.5 which is already lawfully in the possession of the receiving Party, prior to its disclosure by the disclosing Party; and
- 28.2.6 by either Party relating to this Agreement and in respect of which the other Party has given its prior written consent to disclosure.
- 28.3 The Supplier will not make any announcement or publicity statement relating to DBC UK, this Agreement or its subject matter without the prior written approval of DBC UK (except as required by law or by any legal or regulatory authority).
- 28.4 If the Supplier processes personal data (as defined by the Data Protection Act 1998) on behalf of DBC UK the Supplier will:
- 28.4.1 only act on DBC UK's instructions in relation to the processing of such personal data;
- 28.4.2 maintain sufficient and appropriate technical and organisational measures to protect against unauthorised or unlawful processing of such personal data and against accidental loss or destruction of, or damage to such personal data;
- 28.4.3 not transfer any personal data outside of the European Economic Area without DBC UK's prior written consent (and it shall be a condition of any such consent where requested by DBC UK that the Supplier puts in place a data transfer agreement based on the European Commission's standard form of 'model clauses').

## **29 Dispute Escalation**

Without prejudice to either Party's right to seek interlocutory relief in the courts the Parties shall use reasonable efforts to negotiate in good faith and settle amicably any dispute that may arise out of or relate to this Agreement (or its construction, validity or termination) (a "**Dispute**"). If a Dispute cannot be settled through negotiations by appropriate representatives of each of the Parties, either Party may give to the other a notice in writing (a "**Dispute Notice**"). Within seven days of the Dispute Notice being given the Parties shall each refer the Dispute to the senior representatives nominated by each Party who shall meet in order to attempt to resolve the dispute. If the Dispute is not settled by agreement in writing between the Parties within 14 days of the Dispute Notice it shall be resolved in accordance with Clause 30 or, if the Parties do not wish to attempt mediation, Clause 34.

## **30 Mediation**

- 30.1 A Dispute may (only with the agreement of both parties) be referred to mediation in accordance with the Centre for Dispute Resolution (CEDR) Model Mediation Procedure. The mediation shall be conducted by a single mediator appointed by mutual agreement, or (failing mutual agreement within seven days of a notice from either Party to the other calling upon the other so to agree) by the Centre for Dispute Resolution. Both Parties agree to co-operate fully with such mediator, provide such assistance as is necessary to enable the mediator to discharge his duties, and to bear equally between them the fees and expenses of the mediator.
- 30.2 The mediation shall be conducted in England in English. The mediation shall be conducted without prejudice to the rights of any of the Parties in future proceedings.

## **31 Third Party Rights**

- 31.1 To the extent to which any Goods and/or Services provided pursuant to this Agreement are for the benefit of any company in the same Group as DBC UK that company may enforce the terms of this Agreement subject to and in accordance with this Agreement and the provisions of the Contracts (Rights of Third Parties) Act 1999.
- 31.2 Any company in the same Group as DBC UK may enforce the terms of Clause 10.4 subject to and in accordance with this Agreement and the provisions of the Contracts (Rights of Third Parties) Act 1999.
- 31.3 Any New Service Provider may enforce the terms of Clause 17 subject to and in accordance with this Agreement and the provisions of the Contracts (Rights of Third Parties) Act 1999.
- 31.4 Except as provided in Clause 31.1, 31.2 and 31.3 a person who is not a Party to this Agreement shall not have the right under the Contract (Rights of Third Parties) Act 1999 to enforce any of its terms.

- 31.5 Notwithstanding that any term of this Agreement may be or become enforceable by a person who is not a Party to it, the terms of this Agreement may be varied, amended or modified without the consent of any such third Party.

### **32 Entire Agreement**

- 32.1 This Agreement sets out the entire agreement and understanding between the Parties and supersedes any previous agreements between the Parties relating to the subject matter of this Agreement.
- 32.2 The Supplier acknowledges that in entering into this Agreement it does not rely on, and will have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether Party to this Agreement or not) other than as expressly set out in this Agreement.

### **33 Severance**

- 33.1 If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of this Agreement which shall remain in full force and effect.
- 33.2 If any provision of this Agreement is so found to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted, the provision in question shall apply with such modification(s) as may be necessary to make it valid and enforceable.

### **34 Governing Law and Jurisdiction**

English law applies to this Agreement (and any non-contractual obligations arising out of or in connection with it) and the parties agree to submit to the exclusive jurisdiction of the English courts.

## SCHEDULE 1

### Goods

#### 1 Delivery

- 1.1 It is an essential and fundamental term of this Agreement that the Supplier makes delivery of Goods to the premises specified in the Order ("**Delivery**") by the time stated in the Order or if none is specified, within a reasonable period (the "**Due Date**") and Delivery shall include the off loading of Goods from the Supplier's or its carrier's delivery vehicle.
- 1.2 In respect of Goods, proof of Delivery will be established only through an official stamp of DBC UK and/or by the signature of an authorised employee of DBC UK on a Delivery note clearly detailing the Goods and the quantity Delivered.
- 1.3 Where the Supplier fails to deliver the Goods in accordance with this Agreement (or as otherwise required by DBC UK in writing) and/or fails to deliver the Goods by the Due Date (other than as a result of the act or omission of DBC UK), DBC UK may (in addition to any of its other rights):
  - 1.3.1 terminate or vary the whole (or any uncompleted part) of this Agreement without incurring any further obligation to the Supplier;
  - 1.3.2 purchase substitute goods elsewhere;
  - 1.3.3 deduct from the amounts payable to the Supplier any costs, expenses and losses incurred by DBC UK as a reasonably foreseeable consequence of the failure to deliver; and/or
  - 1.3.4 delay payment until Delivery is complete.
- 1.4 Any Delivery note or other document accompanying a Delivery which is signed or stamped by or on behalf of DBC UK is simply an acknowledgement of Delivery and will not constitute an acceptance by DBC UK that the Goods comply with this Agreement. DBC UK will not be considered to have accepted any Goods until after it has had a reasonable time to inspect the Goods or, if later, following a reasonable time after any latent defect in the Goods has become apparent.
- 1.5 If the Supplier notifies DBC UK that it will be late delivering Goods (having regard to the original Due Date), DBC UK may (at its option) agree a revised delivery date with the Supplier. Any revised delivery date must be agreed by DBC UK in writing and shall not affect or prejudice other terms and conditions applicable to the relevant Order. If the Supplier is late delivering, or fails to deliver the Goods, then DBC UK shall be entitled to treat the delivery as late or failed from the original Due Date.

#### 2 Title and Risk

- 2.1 Unless otherwise stated in this Agreement, title to Goods supplied will pass to DBC UK on the earlier of:
  - 2.1.1 delivery of the Goods or (in the case of Delivery by instalments) upon Delivery of each instalment; or
  - 2.1.2 payment for the Goods by DBC UK to the Supplier.
- 2.2 Unless otherwise agreed in writing by DBC UK, risk in the Goods will pass to DBC UK on Delivery.
- 2.3 Where storing any Goods in relation to which title has vested (or will vest) in DBC UK pursuant to this Schedule 1 (including any Goods being assembled or developed in stages) ("**Retained Goods**"), the Supplier shall:
  - 2.3.1 hold the Retained Goods on a fiduciary basis as DBC UK's bailee;
  - 2.3.2 store the Retained Goods separately from other goods held by the Supplier so that they remain readily identifiable as DBC UK's property;
  - 2.3.3 maintain the Retained Goods securely and in good condition.
- 2.4 If the Supplier becomes Insolvent (or DBC UK has reasonable grounds to suspect it may become Insolvent) at any time when holding the Retained Goods then, without prejudice to

any other right or remedy of DBC UK, DBC UK may require the Supplier to deliver up the Retained Goods and, if the Supplier fails to do so promptly, enter any premises of the Supplier (or any third party storing the Retained Goods on its behalf) in order to recover them.

### **3 Warranty**

- 3.1 The Supplier warrants and represents that when Delivered, the Goods:
  - 3.1.1 will meet the Specification;
  - 3.1.2 will be of the correct quantity as specified in the Specification or the Order;
  - 3.1.3 will be of satisfactory quality, fit for the purpose for which Goods of the kind in question are commonly supplied (or any particular purpose made known to the Supplier by DBC UK) and free from any defects; and
  - 3.1.4 will be safe and will not cause death, injury, loss or damage when properly used.
- 3.2 Where any sample of the Goods is supplied to and approved by DBC UK, the Goods will correspond to the approved sample.
- 3.3 Without prejudice to any other rights or remedies of DBC UK if, within 12 months of Delivery or, if longer, within any period specified in the Specification and/or the Order, it is discovered that the Goods supplied do not comply with the requirements of this Agreement then DBC UK shall have the right at its discretion to require the Supplier, free of charge and within thirty (30) days, to either remedy any defect in the Goods or to supply replacement Goods which comply with the requirements of this Agreement.
- 3.4 The Supplier will pass to DBC UK the benefit of all manufacturer and other warranties and guarantees relating to the Goods. The Supplier will ensure that any such warranties or guarantees are fully insured and will produce evidence of such insurance to DBC UK as DBC UK may reasonably request.

### **4 Rejected Goods**

- 4.1 DBC UK has the right to reject any Goods if, having had a reasonable time to inspect them, it discovers that they fail to comply with the requirements of the relevant Order and/or the Specification ("**Rejected Goods**").
- 4.2 Rejected Goods will be collected by the Supplier at the Supplier's cost and (at DBC UK's election) either replaced or credited in full and DBC UK will be under no liability to pay for Rejected Goods. If the Supplier fails to collect Rejected Goods within a reasonable period after notification by DBC UK that they are available for collection DBC UK shall have the right to charge the Supplier storage costs and sell or dispose of the Rejected Goods. If DBC UK sells the Rejected Goods it will provide to the Supplier the proceeds of sale after deducting its storage costs and its reasonable costs and expenses in connection with the sale.
- 4.3 To the extent that the Supplier has been paid by DBC UK in respect of Rejected Goods, DBC UK will be entitled to recover the sums paid, together with the costs incurred for their return, and all losses and expenses incurred by DBC UK as a reasonably foreseeable result of their rejection. The recovery will be by means of either:
  - 4.3.1 deduction from amounts due to the Supplier; or
  - 4.3.2 invoicing the Supplier for payment of the amount in question.

## SCHEDULE 2

### Services

#### 1. Performance of Services

- 1.1. The Supplier will provide the Services in accordance with the Specification, in a proper, lawful, efficient and businesslike manner and the Supplier agrees at all times to observe and perform the lawful directions of DBC UK which are consistent with the terms of this Agreement.

#### 2. Name Disrepute

- 2.1. The Supplier will perform the Services in such a manner as will not bring DBC UK's name into disrepute.

#### 3. Skill and Care

- 3.1. The Supplier warrants that the Services will be performed by appropriately qualified, trained and competent personnel with all due care, skill and diligence, in accordance with best industry practice and to the highest standard of quality as it is reasonable for DBC UK to expect.

#### 4. Key Individuals

- 4.1. The Supplier will procure that any Key Individuals named in Schedule 7 are actively involved in the provision of the Services and if relevant in the manner set out in that Schedule. Should any such Key Individual cease to be involved in the provision of the Services for any reason, the Supplier will with DBC UK's consent appoint a suitable replacement (such consent not to be unreasonably withheld or delayed).

#### 5. Supervision

- 5.1. The Supplier will ensure that the execution of any work undertaken as part of the Services shall be properly and adequately supervised and that all employees shall be properly trained.

#### 6. Screening and Confidentiality

- 6.1. Where DBC UK has requested it, the Supplier will ensure that all of the Supplier's employees have been vetted and screened in such manner as DBC UK may reasonably require and, when requested, have signed a letter of confidentiality addressed to DBC UK.

#### 7. Site Requirements

- 7.1. Where the Supplier or the Supplier's staff have to enter DBC UK's premises to perform the Services (or any part of them), the Supplier will ensure that the Supplier's staff carry suitable identification with them which shall be produced to DBC UK staff upon request. The Supplier must not enlist the services of any of DBC UK's employees to assist with any work carried out in the provision of Services at DBC UK's premises. The Supplier shall ensure that the Supplier's employees comply with DBC UK's local security arrangements and conditions including the right to search the Supplier's staff shall carry out their duties so as to cause minimum inconvenience and disruption to the operation of DBC UK's premises.

#### 8. Timing

- 8.1. The Supplier will comply with any response times or timetables set out in the Order or otherwise agreed with DBC UK, or, where no response time or timetable is agreed, the Supplier will provide the Services at such time as DBC UK may specify (the "**Due Date**").

**9. Time of Essence**

- 9.1. It is an essential and fundamental term of this Agreement that the Supplier provides the Services by the time stated in the Order or if none is specified, within a reasonable period.

**10. Failure to Provide Services**

- 10.1. Where the Supplier fails to provide the Services in accordance with this Agreement (or otherwise required by DBC UK in writing) and/or fail to provide the Services by the Due Date other than by the act or omission of DBC UK) DBC UK may (in addition to any of its other rights or remedies):
- 10.1.1. terminate or vary the whole (or any part) of this Agreement without incurring any further obligation to the Supplier;
  - 10.1.2. purchase substitute services elsewhere;
  - 10.1.3. deduct from any amounts payable to the Supplier any costs, expenses and losses incurred by DBC UK as a reasonably foreseeable consequence of the failure to provide the Services and/or;
  - 10.1.4. delay payment until the provision of the Services has been completed.
- 10.2. Without prejudice to any other rights or remedies of DBC UK if within 12 months of the performance of the Services or, if longer, within any period specified in the Specification it is discovered that the Services do not comply with the requirements of this Agreement then DBC UK shall have the right to require the Supplier, free of charge and within 30 days, to re-perform the Services in compliance with the requirements of this Agreement.

**11. Time of DBC UK's Acceptance**

- 11.1. Any worksheet or similar note provided by the Supplier after the provision of Services which is signed or stamped by or on behalf of DBC UK is simply an acknowledgment that certain services have been provided and will not constitute an acceptance by DBC UK that the Services comply with this Agreement. DBC UK will not be considered to have agreed that the Services comply with this Agreement until after it has had a reasonable time to check the Services have been properly provided.

**12. Worksheets**

- 12.1. If requested by DBC UK, the Supplier will promptly submit to DBC UK all relevant timesheets and work records relevant to the provision of the Services.

**SCHEDULE 3**

**Pro-forma Purchase Order**

**SCHEDULE 4**

**Specification**



**SCHEDULE 5**

**Performance Management**

**Part 1 Liquidated Damages**

<b>Lead time and/or delivery date (if not specified in relevant Order)</b>	<b>LDs</b>	<b>LD Cap</b>

1. If the Supplier fails to meet any lead time and/or delivery date specified above or otherwise agreed in a relevant Order, then it shall be liable to incur the relevant LDs.
2. Payment of LDs shall continue until the earlier of delivery of the delayed Goods, or the payments reach the LD Cap. If payments reach the LD Cap, DBC UK may exercise any other right or remedy available to it under this Agreement.
3. If no particular LDs are specified above or in an Order, a default LD equal to 3% of the relevant Price for the Goods shall apply for each complete calendar day of delay beyond the agreed delivery dates and/or lead time, up to an LD cap equal to 15% of the relevant Price for the Goods.
4. The default LDs and LD Cap described above are agreed between the parties as a genuine pre-estimate of the loss DBC UK incurs as a result of any delay, having regard to the following non-exhaustive factors: (i) scheduled maintenance activities; (ii) resource and production planning; and (iii) delayed, reduced or cancelled customer services (including as a result of non-availability of locomotives, wagons and other rolling stock).

**Part 2 KPIs**

<b>Title</b>	<b>Summary of Criteria</b>	<b>KPI Target</b>	<b>KPI Credit</b>	<b>KPI Termination Event</b>

1. If the Supplier fails to meet any KPI Target, then it shall be liable to incur the relevant KPI Credits.
2. The Supplier may present to DBC UK what it considers to be reasons for its failure to meet any of the KPI Target(s) ("**Mitigation**") and DBC UK shall consider whether the KPI Target(s) should be adjusted (but shall be under no obligation to do so).
3. The Supplier shall submit to DBC UK a plan describing how it will remedy the failure to meet the KPI Targets ("**Remedial Plan**") within seven (7) days of the occurrence of its failure in any one month (unless a different period of time is specified in this Agreement).
4. DBC UK will confirm whether it approves the Remedial Plan within 10 days of its submission. If DBC UK, acting reasonably, does not approve the Remedial Plan, then DBC UK may, at its discretion, terminate the Agreement in accordance with Clause 12.

**SCHEDULE 6**

**Price and Payment Terms**

**SCHEDULE 7**

**Key Individuals**