# Scottish Rail Holdings Limited

## PURCHASE ORDER TERMS AND CONDITIONS

### 1 Definitions and Interpretation

1.1 In the Agreement, the following terms have the following meanings unless the context requires otherwise:

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| **“Agreement”** | means the agreement between SRH and the Supplier for the supply of Goods and / or Services in accordance with the Purchase Order and these Conditions; |
| **"Associated Persons"** | means any persons (including any employees, secondees, agents, principals, approved sub-contractors or Group Company) who perform services for and on behalf of the Supplier under the Agreement; |
| **"Business Day"** | means a day other than a Saturday, Sunday or public holiday in Scotland when banks in Edinburgh and Glasgow are open for business; |
| **"Commencement Date"** | has the meaning set out in condition 2.2; |
| **“Conditions”** | means these terms and conditions (including any annexures) as amended from time to time; |
| **"Confidential Information"** | means information directly or indirectly Disclosed by a party to the other party in the course of their dealings relating to the Agreement, whether before or after the Commencement Date, in any medium or format (including written, oral, visual or electronic, and whether or not marked or described as ‘confidential’) together with all copies, which by its nature is clearly confidential, information of a commercially sensitive nature relating to a party, its employees, officers, customers, suppliers, business, Intellectual Property Rights, assets or operations (or, where SRH is the disclosing party, relating to any other SRH Group Company or to the Scottish Ministers or their respective employees, officers, customers, suppliers, business, Intellectual Property Rights, assets or operations), or which either party has indicated to the other party that, if Disclosed by the other party, would be likely to cause a commercial disadvantage or financial loss; |
| **"Contract Year"** | means (i) except for the final Contract Year, a period of 12 (twelve) consecutive months commencing on the Commencement Date or on an anniversary of that Commencement Date; and (ii) with respect to the final Contract Year, the period between the Commencement Date or the last anniversary of that Commencement Date (whichever is later) and the date of termination or expiry of the Agreement (which may be shorter than 12 (twelve) months); |

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| **"Control"** | means in respect of an entity, the ability (whether it is legally enforceable or not) to control, whether directly or indirectly, the composition of the board of directors (or other governing body) of that entity, the voting rights of the majority of voting securities of the entity, or the management of the affairs of that entity, as per section 1124 of the Corporation Tax Act 2010. 'Controls', 'Controlling' and 'Controlled' shall have the corresponding meaning; |
| **"Controller"** | shall have the meaning set out in condition 21.1; |
| **"Cyber Security Incident"** | means any vulnerability, virus or security incident which: a) may affect the Services or SRH; b) may affect the Supplier's security systems such that it could potentially affect the Services or SRH; or c) is reported to the Supplier by SRH or of which the Supplier becomes aware, including any breach, event, act or omission in respect of the Supplier Security Systems leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, SRH Disclosed Personal Data or Personal Data transmitted, stored or otherwise processed by the Supplier or its sub-processors; |
| **"Cyber Security Requirements"** | means all Law relating to the security of network and information systems and security breach and incident reporting requirements all as amended or updated from time to time; |
| **"Data Protection Law"** | means all Law relating to data protection and the processing of Personal Data from time to time, including (i) the Data Protection Act 2018 (and regulations made thereunder), (ii) the UK GDPR, (iii) the Privacy and Electronic Communications Regulations 2003 (as amended), (iv) the Data Use and Access Act 2025, (vi) the guidance and codes of practice issued by the Information Commissioner, or other relevant regulatory authority and applicable to a party, and iv) any other applicable Law relating to data protection, the processing of Personal Data and privacy in force from time to time and any successor legislation applying in the UK; |
| **"Direct Agreement"** | means a direct agreement between the Supplier and the Scottish Ministers in such as may be required by the Scottish Ministers from time to time allowing, amongst other things, the Scottish Ministers to intervene prior to any termination of the Agreement or suspension of performance by the Supplier, and / or insist on the Supplier entering into a new contract in materially the same form as the Agreement with the Scottish Ministers or their nominee; |
| **"Disclose"** | means any disclosure of information or data orally or in writing, by demonstration or in any other way and includes permitting a person to access information and "Disclosed" and "Discloses" (and similar terms) shall be interpreted accordingly; |
| **"Dispute"** | has the meaning given to it in condition 35.1; |
| **"EIRs"** | means the Environmental Information (Scotland) Regulations 2004 (and any subordinate regulations made under them from time to time or any superseding or amending regulations) together with any |

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| | guidance and/or codes or practice issued by the Information Commissioner, the Scottish Information Commissioner and/or any relevant government department in relation to such regulations; |
| **"FOISA"** | means the Freedom of Information (Scotland) Act 2002 and any subordinate legislation made under this Act from time to time or any superseding or amending enactments or regulations, together with any guidance and/or codes of practice issued by the Information Commissioner, the Scottish Information Commissioner and/or any relevant government department in relation to such legislation; |
| **"FOISA and Environmental Information"** | means (i) any information as defined under section 73 of FOISA, and (ii) any "environmental information" as defined under Regulation 2 of the EIRs and, for the avoidance of doubt, includes the Agreement and any information (whether the Supplier's Confidential Information, including any commercially sensitive information, or otherwise) disclosed hereunder; |
| **"Force Majeure Event"** | means any event beyond the reasonable control of a party including, without limitation, war, armed conflict, riot, civil commotion, malicious damage, pandemic, epidemic, compliance with any law or governmental order, rule, regulation or direction or any overriding emergency procedures, accident, fire, flood, storm, and strikes or any industrial action by employees of any party other than the party relying on the Force Majeure Event, but shall not mean any event for which a contingency plan is or should be maintained under condition 32; |
| **"Good Industry Practice"** | means using standards, practices, methods and procedures conforming to Law, and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged in the same type of undertaking as that to which the Goods and/or Services relate under the same or similar circumstances; |
| **"Goods"** | means the goods (if any) to be provided by the Supplier to SRH as detailed in the Specification (and any materials, goods or equipment to be provided by the Supplier in the delivery of the Services); |
| **"Group Company"** | means in respect of a party its direct and indirect holding companies and subsidiaries together with all subsidiaries of any such holding companies; |
| **"Industry Standards"** | means the health and safety rules and regulations including codes of practice and conduct in respect of the Goods and/or Services applicable from time to time relating to the performance of the Agreement; |
| **"Information Commissioner"** | means the independent regulator for data protection and information rights law in the United Kingdom; |
| **"Insolvency Event"** | means: |
| | (a) where the Supplier is a company or similar corporate entity, (i) |

the Supplier becomes insolvent or is unable to pay its debts when due or makes a general assignation, arrangement or composition with its creditors; (ii) the Supplier institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or similar law; (iii) a petition is presented for the Supplier's winding-up or liquidation or it has a resolution passed for its winding-up or liquidation; (iv) the Supplier is sequestrated, or it has an encumbrancer take possession of all or any of its property or assets; (v) the Supplier becomes subject to the appointment of an administrator, provisional liquidator, receiver or custodian for all or any of its property or assets; (vi) the Supplier ceases, or threatens to cease, to carry on business; or (vii) any similar event occurs under the law of any other jurisdiction or the laws relating to any similar corporate entity.

(b) Where the Supplier is an individual, (i) a petition is presented for the Supplier's bankruptcy or the sequestration of the Supplier's estate; (ii) a criminal bankruptcy order is made against the Supplier; (iii) the Supplier makes any composition or arrangement with or for the benefit of the Supplier's creditors, or makes any conveyance or assignation for the benefit of the Supplier's creditors, or an administrator is appointed to the Supplier's affairs; (iv) the Supplier becomes apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985; or (v) any similar event occurs under the laws of any other jurisdiction.

(c) Where the Supplier is a partnership or a firm, or a number of persons acting together in any capacity: (i) an event listed in limb (a) or (b) above occurs in respect of any partner in the partnership or firm or any of those persons; (ii) a petition is presented for the Supplier to be wound up as an unregistered company; or (iii) any similar event occurs under the law of any other jurisdiction;

**"Insurance Policies"** means the insurance policies to be maintained by the Supplier as set out in condition 13.1.1;

**"Intellectual Property Rights"** means patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the

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| | world; |
| **"Law"** | means all applicable laws, regulations, consents and approvals, including legislative provisions, sub-ordinate legislation, byelaws, legally binding codes of practice and the common law, at any time relating to or applicable to the operation of the Agreement or at any SRH premises, or any lawful requirement or demand of any court, governmental body or regulatory authority (including the Regulator) having authority over SRH or the Supplier in respect of which compliance is obligatory; |
| **"Network Information and Security Requirements"** | means SRH's network information and security requirements as set out in the SRH Policies (or as otherwise notified by SRH to the Supplier from time to time); |
| **"Payment Terms"** | means the payment terms as set out in Annex 1 of these Conditions; |
| **"Personal Data"** | shall have the meaning set out in condition 21.1; |
| **"Price"** | means the price for the Goods and /or Services as set out in the Purchase Order; |
| **“Purchase Order”** | means a purchase order issued by SRH for the supply of Goods and / or Services; |
| **"Regulator"** | means any regulator or regulatory body (including in the case of SRH, the Information Commissioner, the Scottish Information Commissioner, Transport Scotland and the Scottish Ministers) or any person acting on its behalf or appointed pursuant to its instructions which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Agreement or any other affairs of SRH; |
| **“SRH”** | means SCOTTISH RAIL HOLDINGS LIMITED a company registered in Scotland, Company No SC548826 and having its registered office at 3rd Floor St Vincent Plaza, 319 St Vincent Street, Glasgow, United Kingdom, G2 5LD; |
| **"SRH Disclosed Personal Data"** | means the Personal Data which has been Disclosed to the Supplier by or on SRH’s behalf in connection with the Agreement, and in this context “Disclose” includes directly or indirectly giving the Supplier, or arranging for the Supplier to have, access to Personal Data in any manner and in any form or format whatsoever, including by instructing the Supplier to collect Personal Data directly from data subjects (or anyone authorised by data subjects to provide it); |
| **"SRH Framework Agreement"** | means the Framework Agreement between The Scottish Ministers and SRH dated 18 March 2022, as amended from time to time; |
| **"SRH Policies"** | means SRH’s standards and policies specified in Annex 4 of these Conditions and such other polices as SRH may notify to the Supplier from time to time as applicable to the supply of the Goods and/or |

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| | Services, as all such standards and policies may by updated or varied by SRH from time to time; |
| **"Scottish Information Commissioner"** | means the independent regulator for data protection and information rights law in Scotland; |
| **"Services"** | means the services to be provided by the Supplier to SRH as detailed in the Specification; |
| **"Specification"** | means the specification set out in the Purchase Order; |
| **"Successor Supplier"** | means SRH or any third party supplier appointed by SRH from time to time on expiry or termination of the Agreement; |
| **"Supplier"** | means the person, company or other body from whom SRH orders the Goods and / or Services as specified in the Purchase Order; |
| **"Term"** | has the meaning set out in condition 2.2; |
| **"Termination Default"** | means that the Supplier (a) is in material breach of the Agreement (and if such breach is capable of remedy, the Supplier has failed to remedy such breach within a period of 30 days after being notified in writing by SRH to do so), and/or (b) repeatedly breaches any of the terms of the Agreement in such a manner as to reasonably justify the opinion that the conduct is inconsistent with the Supplier having the intention or ability to give effect to the terms of the Agreement; |
| **"Transparency Information"** | has the meaning given to it in condition 20.7; |
| **"TUPE Annex"** | means Annex 3 of these Conditions; and |
| **"UK GDPR"** | has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018. |

1.2 All of the terms of these Conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified. For the avoidance of doubt:

1.2.1 if no Goods are to be supplied under the Agreement, conditions 3, 4 and 5 shall not apply; and

1.2.2 if no Services are to be supplied under the Agreement, condition 6 and the TUPE Annex shall not apply.

1.3 In the Agreement:

1.3.1 SRH and the Supplier are each a "**party**" and collectively the "**parties**";

1.3.2 the headings of any conditions, paragraphs, Schedules or parts shall not affect the interpretation of the Agreement;

1.3.3 references to statutory provisions include those statutory provisions as amended or re-enacted. A reference to a statute or statutory provision includes subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

1.3.4 a reference to a person includes natural persons, companies, partnerships, bodies corporate and other legal entities;

1.3.5 the singular includes the plural and vice versa;

1.3.6 the meaning of general words is not to be restricted by any particular examples preceding or following those general words;

1.3.7 references to **"liabilities"** includes costs, expenses, damages and losses;

1.3.8 any words following the terms "**including**", "**include**", "**in particular**", "**for example**" or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms;

1.3.9 a reference to **"approval"** or **"consent"** or **"agreement"** or **"notice"** requires such **"approval"** or **"consent"** or **"agreement"** or **"notice"** to be in writing;

1.3.10 if more than one person is detailed in the Agreement as the Supplier, references in the Agreement to the **"Supplier"** will be interpreted and construed as each such person on a joint and several basis;

1.3.11 save where the context otherwise requires, references to conditions and parts of the Annex are to conditions of these Conditions and parts of the Annex to the Agreement; and

1.4 Subject always to condition 2.5, in the case of ambiguity or conflict between any provision contained in these Conditions and any provision contained in the Purchase Order, the provision in the Purchase Order shall take precedence.

1.5 The terms of the Agreement apply to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealings.

1.6 The Supplier waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Supplier that is inconsistent with the terms of the Agreement.

**2 Basis of the Agreement**

2.1 The Purchase Order constitutes an offer by SRH to purchase Goods and / or Services from the Supplier in accordance with these Conditions.

2.2 Unless otherwise agreed by SRH in writing, the Purchase Order shall be deemed to be accepted by the Supplier on the earlier of:

2.2.1 The Supplier notifying SRH of acceptance of the Purchase Order;

2.2.2 Any act by the Supplier consistent with an intention to supply the Goods and / or Services in connection with the Purchase Order; or

2.2.3 delivery of the Goods and / or Services to which the Purchase Order related,

at which point and on which date the Agreement shall come into existence ("**Commencement Date"**) and the Agreement shall continue until the obligations of the parties are fulfilled ("**Term**"), unless the Agreement is terminated earlier in accordance with these Conditions.

2.3 Subject to conditions 2.5 and 34.4 below, these Conditions apply to the Agreement to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.4 All of these Conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified.

2.5 If a separate master agreement has been entered into by SRH and the Supplier for the supply of the Goods and/or Services ("**Master Agreement Goods / Services**") to which the Purchase Order relates prior to the issue of the Purchase Order (and such master agreement remains in force) (the "**Master Agreement**"), then notwithstanding references to the applicability of these Conditions in the Purchase Order and whether or not the terms of the Master Agreement are referenced in the Purchase Order, the terms of the Master Agreement shall apply to the supply of the Master Agreement Goods / Services.

## 3 Provision of Goods

3.1 The Supplier shall supply the Goods to SRH at all times in accordance with the terms of the Agreement.

3.2 To the extent that the Supplier provides SRH with any Goods in accordance with the Agreement:

3.2.1 the Goods must be to SRH's reasonable satisfaction and conform with any samples provided;

3.2.2 the Goods must conform in all respects with the Specification and all other requirements of the Agreement, and shall be of good quality and sound materials, workmanships and design;

3.2.3 the Goods must conform in all respects with all relevant Laws and shall be supplied and delivered in accordance with Good Industry Practice; and

3.2.4 the Goods must be fit for the purpose for which such Goods are ordinarily used, and shall be fit for any purpose made known to the Supplier;

3.3 The Supplier warrants that:

3.3.1 all Goods supplied under the Agreement will be free from defects in design, materials and workmanship and remain so for at least twelve (12) months after the date of delivery of the Goods to SRH;

3.3.2 the Supplier has (and shall at all times maintain) all licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Agreement in respect of the Goods.

3.4 The Supplier warrants to SRH that all necessary tests and examinations have been made or will be made prior to delivery of the Goods to ensure that the Goods are designed and constructed so as to be safe and without risk to the health or safety of any person, including those using the same, and that the Supplier has made available to SRH adequate information about the use for which the Goods have been designed and have been tested and about any conditions necessary to ensure that when put to use the Goods will be safe and without risk to health.

3.5 The Supplier shall assign and transfer to SRH on request, all warranties provided by the manufacturer of the Goods and shall provide copies of all such manufacturer's warranties on request. Where requested by SRH, the Supplier shall cooperate with SRH in enforcing any such manufacturer's warranties, including providing any necessary information or assistance to facilitate any SRH warranty claims.

**4 Delivery**

4.1 The Supplier shall ensure that:

4.1.1 the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition and are clearly labelled as the property of SRH;

4.1.2 each delivery of the Goods is accompanied by a delivery note which shows the date of the Purchase Order, the Purchase Order number (if any), the type and quantity of the Goods (including the code number of the Goods (where applicable)), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and

4.1.3 it states clearly on the delivery note any requirement for SRH to return any packaging material for the Goods to the Supplier. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier.

4.2 Delivery shall be made at such time and to such locations as specified in the Purchase Order, or as otherwise agreed between the parties.

4.3 The signature or acceptance of a delivery note will not constitute evidence of acceptance of the Goods.

4.4 Delivery of Goods must be accompanied by all necessary manuals, instructions and information necessary to allow them to be used safely and efficiently. The Supplier agrees to draw attention to any material amendments to usage manuals, instructions and information where the same relate to repeat order Goods.

**5 Title and Risk**

5.1 Title to and risk in the Goods shall pass to SRH at the time when the Goods have been delivered to SRH and safely unloaded at the location set out in the Agreement (except where prohibited by Law and in such circumstances title to and risk in the Goods shall pass to SRH as soon as permitted by Law after delivery to SRH has been completed).

5.2 The transfer of title to and risk in the Goods shall be without prejudice to any rights of SRH in relation to the Goods, including its right to reject Goods pursuant to the Agreement.

5.3 In the event that SRH determines that any Goods are to be:

5.3.1 returned to the Supplier for replacement or rejected, then title in such Goods shall pass to the Supplier when uplifted by the Supplier or (if later) when the refund is paid to SRH; and

5.3.2 returned to the Supplier for repair, then title in such Goods shall pass to the Supplier when, after uplift by the Supplier, the Supplier determines that the Goods cannot be repaired and need to be replaced.

Risk in such Goods shall pass to the Supplier at the time SRH notifies the Supplier that the Goods are to be returned for repair or replacement or rejected under the terms of these Conditions.

**6 Provision of Services**

6.1 The Supplier shall supply the Services to SRH in accordance with the Agreement and shall meet any performance dates and/or timescales for the supply of the Services as set out in the Purchase Order. To the extent that any element of the specification of Services has not been set out in the Purchase Order, the Supplier shall agree the relevant specification element with SRH before the supply of the Services. SRH may inspect and examine the manner in which the Supplier supplies the Services at any time.

6.2 In providing the Services, the Supplier shall:

6.2.1 co-operate with SRH in all matters relating to the Services, and comply with all reasonable instructions of SRH from time to time;

6.2.2 perform the Services at all times in accordance with Good Industry Practice in the Supplier's industry, profession or trade and the Supplier acknowledges that SRH has relied and shall rely on the skill, care and judgement of the Supplier in the supply of the Services and the execution and performance of the Agreement;

6.2.3 use personnel:

6.2.3.1 who are suitably skilled and experienced to perform tasks assigned to them (and shall ensure such personnel possess the necessary qualifications, skills and experience for the proper supply of the Services), and

6.2.3.2 in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Agreement;

6.2.4 ensure that the Services will conform with all descriptions, standards and specifications set out in the Agreement, and that any related deliverables shall be fit for any purpose that SRH expressly or impliedly makes known to the Supplier;

6.2.5 provide all equipment, tools and vehicles and such other items as are required to provide the Services (unless otherwise agreed by SRH);

6.2.6 use good quality goods, materials, standards and techniques available in the provision of the Services and ensure that any deliverables, and all goods and materials supplied and used in the Services or transferred to SRH, will be free from defects in workmanship, installation and design;

6.2.7 assign and transfer to SRH on request, all warranties provided by the manufacturer of the Goods and/or deliverables provided in connection with the Services, and shall

provide copies of all such manufacturer's warranties on request. Where requested by SRH, the Supplier shall cooperate with SRH in enforcing any such manufacturer's warranties, including providing any necessary information or assistance to facilitate any SRH warranty claims.

6.2.8 comply with all applicable Laws which may apply to the provision of the Services;

6.2.9 not interfere with the operation of any SRH plant, equipment or operations (apart from as expressly set out in the Agreement) without the prior approval in writing of SRH;

6.2.10 observe all health and safety rules and regulations applicable to the provision of the Services and any other security requirements that apply at any of SRH's premises;

6.2.11 perform the Services in such a manner as to be safe and without risk to the health or safety of persons in the vicinity of the place where the Services are being performed (whether such persons are in the vicinity of the said place at the time when the Services are being performed or otherwise) and in such a manner as to comply with any relevant health and safety or other legislation (including any applicable Laws or Industry Standards) and any requirements imposed by a local or other regulatory authority in connection with the performance of services of the type supplied to SRH, whether specifically or generally; and

6.2.12 not do or omit to do anything which may cause SRH to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that SRH may rely or act on the Services.

6.3 In relation to any Supplier equipment, tools and/or vehicles to be used to provide the Services:

6.3.1 all equipment, tools and/or vehicles brought onto SRH premises shall be at the Supplier's own risk and SRH shall have no liability for any loss of or damage to any such equipment, tools and/or vehicles, unless the Supplier is able to demonstrate that such loss or damage was caused directly by SRH;

6.3.2 the Supplier shall maintain all equipment, tools and/or vehicles brought onto SRH premises in a safe, serviceable and clean condition;

6.3.3 the Supplier shall on completion of the Services, promptly remove all Supplier equipment, tools and/or vehicles brought onto SRH premises together with any other materials used by the Supplier to supply the Services and shall leave the SRH premises in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to the SRH premises or any equipment, fixtures or other property objects contained thereon which is caused by the Supplier, its equipment, tools and/or vehicles brought onto SRH premises or any Supplier Personnel.

## 7 SRH Remedies

7.1 If the Supplier fails to deliver any Goods and/or or to perform any Services by the applicable dates specified in the Agreement, SRH may, without limiting or affecting other rights or remedies available to it, exercise one or more of the following rights:

7.1.1 to terminate the Agreement either in whole or in part as regards those Goods and/or Services only by giving thirty (30) days' written notice to the Supplier;

7.1.2 to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;

7.1.3 to recover from the Supplier any reasonable costs incurred by SRH in obtaining substitute goods and/or services from a third party;

7.1.4 to require a refund from the Supplier of sums paid in advance for Services that the Supplier has not provided and/or Goods that it has not delivered; and

7.1.5 to recover from the Supplier any additional costs, loss or expenses incurred by SRH which are in any way directly attributable to the Supplier's failure to meet such dates.

7.2 If the Supplier has delivered Goods that do not comply with the terms set out in condition 3 of the Agreement, then, without limiting or affecting other rights or remedies available to it, SRH may exercise one or more of the following rights, whether or not it has accepted the Goods:

7.2.1 to terminate the Agreement either in whole or in part as regards those Goods only by giving thirty (30) days' written notice to the Supplier;

7.2.2 to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;

7.2.3 to require the Supplier to repair or replace the rejected Goods at the Supplier's sole cost and expense (without delay and in any event within 7 days of any rejection notice), or to provide without delay a full refund of the price of the rejected Goods;

7.2.4 to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;

7.2.5 to recover from the Supplier any reasonable costs incurred by SRH in obtaining substitute goods from a third party; and

7.2.6 to recover from the Supplier any additional costs, loss or expenses incurred by SRH arising directly from the Supplier's failure to supply Goods in accordance with condition 3.

7.3 If SRH elects for to have Goods repaired, it may elect whether that should be done at SRH premises or at the Supplier's premises. The Supplier shall, without delay, uplift Goods which are to be repaired at the Supplier's premises, replaced, or rejected for refund.

7.4 If the Supplier has supplied Services that do not comply with the requirements of condition 6, then without limiting or affecting other rights or remedies available to it, SRH may exercise one or more of the following rights:

7.4.1 to terminate the Agreement with immediate effect by giving thirty (30) days written notice to the Supplier;

7.4.2 reject the performance of the Services and to return any deliverables to the Supplier at the Supplier's own risk and expense;

7.4.3 to require the Supplier to provide repeat performance of the Services at the Suppliers sole cost and expense (without delay and in any event within 7 days' notice of any rejection notice), or to provide a full refund of the price paid for the rejected Services;

7.4.4 to refuse to accept any subsequent performance of the Services which the Supplier attempts to make;

7.4.5 to recover from the Supplier any reasonable costs incurred by SRH in obtaining substitute services or deliverables from a third party; and

7.4.6 to recover from the Supplier any additional costs, loss or expenses incurred by SRH arising directly from the Supplier's failure to comply with condition 6.

7.5 The terms of this condition 7 shall apply to Goods and/or Services as originally delivered and to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.

7.6 The SRH's rights and remedies under the Agreement are in addition to, and not exclusive of, any rights and remedies implied by statute and common law.

**8 Non-Exclusivity and Minimum Orders**

SRH does not undertake to purchase Goods or Services exclusively from the Supplier and does not undertake to purchase any minimum quantities or place any minimum orders from or with the Supplier.

**9 Payment**

9.1 The price for the Goods shall be the Price and shall be inclusive of the costs of packaging, insurance and carriage of the Goods. No extra charges shall be effective unless agreed in writing and signed by SRH.

9.2 The price for the Services shall be the Price and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by SRH, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

9.3 Unless otherwise specified in the Agreement:

9.3.1 in respect of the Goods, the Supplier shall invoice SRH on or at any time after completion of delivery and confirmation from SRH that the Goods are accepted;

9.3.2 in respect of Services, the Supplier shall invoice SRH on completion of the Services and confirmation from SRH that the Services are accepted;

and each invoice shall include such supporting information required by SRH to verify the accuracy of the invoice, including but not limited to the relevant purchase order number.

9.4 The Supplier will comply with all other reasonable requests of SRH in respect of invoicing, including the requirements stated in the Payment Terms.

9.5 In consideration of the supply of Goods and/or Services by the Supplier, SRH shall pay all matured, undisputed and valid invoices within 30 days of the date of a correctly rendered and authorised invoice to a bank account nominated in writing by the Supplier (the "**Agreed Payment Term**"). SRH shall use its reasonable endeavours to seek to shorten the time for payment to 10 Business Days where reasonably possible and appropriate but shall be under no obligation to pay any matured, undisputed and valid invoices arising under the Agreement other than in accordance with the Agreed Payment Term.

9.6 All amounts payable by SRH under the Agreement are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Agreement by the Supplier to SRH, SRH shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services at the same time as payment is due for the supply of the Goods and/or Services.

9.7 The Supplier shall be entitled to charge interest on any undisputed overdue payment at the rate of 2% per annum above the base rate of the Bank of England then prevailing, such interest being charged from the date on which the Supplier notifies SRH of the overdue payment until payment of the amount due has been made. For the avoidance of doubt, a payment will not be considered overdue if paid in accordance with the Agreed Payment Term (as defined in condition 9.5 above).

9.8 SRH will have the right to retain any payments that would otherwise be due to the Supplier where it disputes, in good faith, that the Supplier has properly performed its obligations under the Agreement or where it disputes, in good faith, that such payments are reasonably and properly due under the Agreement. In the event of a dispute arising, amounts agreed to be paid following resolution of the dispute shall be payable within 30 days from the date that the dispute is resolved (although SRH shall use its reasonable endeavours to seek to shorten the time for payment to 10 Business Days where reasonably possible and appropriate but shall be under no obligation to do so).

9.9 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Goods and/or Services, and the Supplier shall allow SRH to inspect such records at all reasonable times on request.

9.10 SRH may at any time, without notice to the Supplier, set off any liability of the Supplier to SRH against any liability of SRH to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Agreement. Any exercise by SRH of its rights under this condition shall not limit or affect any other rights or remedies available to it under the Agreement or otherwise.

**10 Access to Premises**

If the Agreement requires the Supplier to take access to or take occupation of any of SRH's premises in connection with the Agreement, the Supplier shall comply with all reasonable instructions of SRH.

**11 Credit Check**

11.1 SRH will, prior to contracting with any new supplier, run a credit check on the supplier.

11.2 SRH reserves the right to conduct further credit checks during the existence of an ongoing business relationship with any supplier.

**12 Liability and Indemnity**

12.1 The Supplier shall indemnify SRH against all liabilities, costs, expenses, damages and losses (calculated on a full indemnity basis) and all other reasonable professional costs and expenses suffered or incurred by SRH arising out of or in connection with:

12.1.1 any claim made against SRH by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in the Goods, as delivered, or the provision of the Services;

12.1.2 any claim made against SRH by a third party arising out of or in connection with the Supplier's negligence or breach of the Agreement ; and/or

12.1.3 any non-compliance with and/or breach of any obligation of the Supplier under the Agreement, including any negligent or other wrongful act or omission of the Supplier relating to the Agreement.

12.2 Nothing in the Agreement excludes or limits any liability of one party to the other for:

12.2.1 death or personal injury caused by negligence;

12.2.2 fraud or fraudulent misrepresentation;

12.2.3 a breach of any terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982;

12.2.4 any liability that cannot be limited by Law.

12.3 Nothing in the Agreement excludes or limits any liability of the Supplier:

12.3.1 for a breach of any of its obligations under conditions 14, **Error! Reference source not found.**, 19, 20, 21, 22, 26 and the TUPE Annex;

12.3.2 arising under conditions 12.1 and 23.5.

12.4 Neither party may benefit from the limitations and exclusions set out in this condition 12 in respect of any liability arising from its deliberate breach of the Agreement.

12.5 Subject to conditions 12.2 to 12.4, neither party will be liable to the other under or in connection with the Agreement for any indirect or consequential loss or damage whether caused by breach of contract, negligence or breach of statutory or any other duty.

12.6 Subject to conditions 12.2 to 12.4 above, the liability of each party under the Agreement shall be subject to the following financial limits:

12.6.1 the total aggregate liability of SRH to the Supplier arising out of or in connection with the Agreement (whether in contract, delict (including negligence), for breach of statutory duty, or otherwise), shall, in respect of each individual Contract Year, not exceed an amount equal to 100% of the total fees and charges paid or payable by SRH to the Supplier in the relevant Contract Year; and

12.6.2 the total aggregate liability of the Supplier to SRH arising out of or in connection with the Agreement (whether in contract, delict (including negligence), for breach of statutory duty, or otherwise), shall in respect of each individual Contract Year, not exceed £10,000,000 (ten million pounds sterling).

12.7 This condition 12 shall survive termination or expiry of the Agreement.

**13 Insurance**

13.1 The Supplier shall:

13.1.1 maintain in force the following insurance policies at all times during the Term of the Agreement with a limit of at least £10,000,000 (ten million pounds sterling) per occurrence and unlimited as to the number of occurrences (or such higher amount as may be required by Law):

13.1.1.1 Employers Liability Insurance;

13.1.1.2 Public Liability Insurance;

13.1.1.3 Product Liability Insurance where the Supplier provides SRH with any Goods in accordance with the Agreement;

13.1.1.4 Professional Indemnity Insurance where the Supplier provides SRH with any Services in accordance with the Agreement;

(together the "**Insurance Policies**") in respect of the activities of the Supplier and obligations pursuant to the Agreement;

13.1.2 ensure that the Insurance Policies are effected with a reputable insurer reasonably acceptable to SRH, and that the level of cover and other terms are reasonably acceptable to SRH;

13.1.3 provide (on request) evidence which is reasonably satisfactory to SRH that each of the Insurance Policies is in full force and effect (including a copy of all policy documentation, certificates and written confirmations) and that all relevant premiums payable have been paid; and

13.1.4 comply with all terms and conditions of the Insurance Policies at all times and shall not do anything which would or might invalidate or prejudice any of the Insurance Policies or any part thereof or any claim arising thereunder.

13.2 If, at any time, the Supplier fails to produce evidence of insurance cover pursuant to condition 13.1.3, SRH may, on the Supplier's behalf, effect and maintain such insurances (on such terms as it deems appropriate) and pay such premiums as may be necessary for that purpose. In such event, SRH may deduct the amount of any such premiums paid from any sums which may be due or may become due to the Supplier under the Agreement or may, at its option, recover the same from the Supplier.

13.3 If cover under the Insurance Policies shall lapse or not be renewed or be changed in any material way or if the Supplier is aware of any reason why the cover under the Insurance Policies may lapse or not be renewed or be changed in any material way, the Supplier shall notify SRH without delay.

**14 Intellectual Property Rights**

14.1 The Supplier must not infringe any Intellectual Property Right of any third party in the performance of its obligations under the Agreement (save to the extent that SRH has provided

materials to the Supplier for incorporation or use in relation to the Goods and / or Services, and it is that incorporation or use in accordance with the instructions of SRH which causes the infringement).

14.2 The Supplier shall indemnify SRH against all liabilities, costs, expenses, damages and losses (calculated on a full indemnity basis) and all other reasonable professional costs and expenses suffered or incurred by SRH arising out of or in connection with any claim made against SRH for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services (excluding any materials supplied by SRH) or any breach by the Supplier of this condition 14.

14.3 Subject to condition 14.4 and except as agreed otherwise by SRH in writing, all rights (including ownership and Intellectual Property Rights) in any materials (including reports and documents, guidance, specification, instructions, toolkits, plans, data, drawings, software, databases, patents, patterns, models, designs and all other materials in whatever form) or the Goods and/or Services created, produced and/or delivered by the Supplier in accordance with the Agreement shall be owned by SRH and the Supplier shall do all things necessary to effect such ownership, including without limitation assignation and registration in favour of or in the name of SRH. The Supplier shall take all reasonable steps required by SRH to document and give effect to that ownership.

14.4 Except as may expressly be provided for in the Agreement, neither party acquires any interest in or license to use the other party's Intellectual Property Rights owned or developed prior to or independently of the Agreement, but the Supplier grants to SRH and warrants that SRH has all necessary rights, licence or otherwise to use any and all Intellectual Property Rights belonging to the Supplier for so long as SRH may require in connection with the performance of the Agreement. For the avoidance of doubt, all SRH materials are and shall remain the exclusive property of SRH.

14.5 The Supplier shall not use the names or logos of SRH or any other SRH Group Company, or any other word or words or logos resembling the same or any other brands owned or licenced to any of them, without SRH's prior written consent or unless expressly permitted by the terms of the Agreement. Where the Supplier is permitted to use the names or logos of SRH or any other SRH Group Company in accordance with this condition 14.5 it shall comply at all times with any brand guidelines issued to it in respect to such names or logos.

**15 Anti-Bribery, Anti-Corruption and Fraud Prevention**

15.1 The Supplier shall:

15.1.1 comply with all applicable Laws, statutes, and regulations from time to time in force relating to anti-bribery, anti-corruption and fraud prevention, including but not limited to the Bribery Act 2010 and of the Economic Crime and Corporate Transparency Act 2023 (the "**Relevant Anti-Bribery, Anti-Corruption and Fraud Prevention Requirements**");

15.1.2 not engage in any activity, practice or conduct which would constitute an offence under the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;

15.1.3 not engage in any activity, practice or conduct which would constitute fraud, including but not limited to a fraud offence under section 199(6) of the Economic Crime and Corporate Transparency Act 2023;

15.1.4 comply with ScotRail's ethics, anti-bribery and anti-corruption policies in place and as may be updated from time to time and notified to the Supplier ("**Relevant Anti-Bribery, Anti-Corruption and Fraud Prevention Policies"**);

15.1.5 have and shall maintain in place throughout the Term of the Agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Anti Bribery, Anti-Corruption and Fraud Prevention Requirements and the Relevant Anti-Bribery, Anti-Corruption and Fraud Prevention Policies, and will enforce them where appropriate and shall provide ScotRail with a copy of such policies and procedures upon request;

15.1.6 promptly report to ScotRail any offer of or request or demand for any undue financial or other advantage of any kind received or to be received by the Supplier in connection with the performance of the Agreement;

15.1.7 immediately notify ScotRail (in writing) if a foreign public official (as defined under the Bribery Act 2010) becomes an officer or employee of the Supplier or acquires a direct or indirect interest in the Supplier and the Supplier warrants that it has no foreign public officials as direct or indirect owners, officers or employees at the date of the Agreement; and

15.1.8 promptly notify ScotRail (in writing) if it becomes aware of any suspected or actual breach of clause 14.1.3, or has reason to believe that it has received a request or demand to commit a fraud offence within the meaning of section 199(6) of the Economic Crime and Corporate Transparency Act 2023;

15.1.9 if requested, co-operate with and provide reasonable assistance to ScotRail, to enable ScotRail to investigate, or respond to any requests from a relevant government department or agency to investigate, an alleged offence under the Bribery Act 2010 or section 199 of the Economic Crime and Corporate Transparency Act 2023;

15.1.10 annually on request by ScotRail, certify to ScotRail in writing signed by an officer of the Supplier, compliance with this condition 14 by the Supplier and all persons associated with it under condition 14.2 the Supplier shall provide such supporting evidence of compliance as ScotRail may reasonably request.

15.2 The Supplier shall ensure that any Associated Persons who are performing services in connection with the Agreement do so only on the basis of a written contract which imposes on and secures from such person, directly or indirectly, terms equivalent to those imposed on the Supplier in this condition 14 (the "**Relevant Anti Bribery, Anti-Corruption and Fraud Prevention Terms**"). The Supplier shall be responsible for the observance and performance by any and all such persons of the Relevant Anti-Bribery, Anti-Corruption and Fraud Prevention Terms and shall be directly liable to ScotRail for any breach by such persons of any of the Relevant Anti Bribery, Anti-Corruption and Fraud Prevention Terms.

15.3 Breach of this condition 14 shall be deemed a material breach of the Agreement.

## 16 Licences and Consents

16.1 In performing the Agreement, the Supplier shall obtain (and at all times maintain) all licences and consents which may be required in connection with the Agreement from time to time.

## 17 Termination

17.1 SRH may at any time by notice in writing terminate the Agreement with immediate effect (or with effect from such date and time as may be specified in the notice):

17.1.1 in accordance with conditions 7.1, 7.2 and 7.4 of these Conditions;

17.1.2 if there is an Insolvency Event;

17.1.3 if there is a Termination Default;

17.1.4 if there is if there is a change of Control of the Supplier where SRH reasonably believes that such change of Control: -

17.1.4.1 will have a detrimental impact on the financial standing of the Supplier;

17.1.4.2 creates a conflict of interest; or

17.1.4.3 will have a material detrimental effect on the Supplier's ability to perform its obligations under the Agreement,

provided that where SRH wishes to exercise its termination rights under this condition 17.1.4 it will do so within three (3) months of SRH becoming aware of the relevant change of Control;

17.1.5 if there is a breach of any of the SRH Policies;

17.1.6 in accordance with condition 24.4 of these Conditions;

17.1.7 in the event SRH has grounds to terminate any framework agreement pursuant to which this Agreement has been called off;

17.1.8 if SRH discovers that any communication, document or other information in whatever form provided by the Supplier to SRH as part of the process for the award of the Agreement is erroneous, false, misleading or untrue in any material respect;

17.1.9 if in accordance with applicable procurement laws (including but not limited to the Public Contracts (Scotland) Regulations 2015 and the Utilities Contracts (Scotland) Regulations 2016):

17.1.9.1 during the Term of the Agreement, the Agreement has been subject to a substantial modification or other change which would have required a new procurement in accordance with applicable procurement laws; or

17.1.9.2 at the time of the Agreement being awarded, circumstances applied that, in accordance with applicable procurement laws, should have excluded the Supplier from the selection criteria of the procurement.

17.1.10 in accordance with condition 32.2 of these Conditions.

17.2 The Supplier may terminate the Agreement by written notice to SRH, if SRH fails to pay an undisputed invoice or invoices issued in accordance with the Agreed Payment Term set out in condition 9.5 of these Conditions and where both:

17.2.1 the value of the unpaid invoices or invoice is in excess of 20% of the amount payable by SRH for the relevant Contract Year; and

17.2.2 the Supplier has provided a notice in writing to SRH following the expiry of the Agreed Payment Term;

17.2.2.1 stating that that the unpaid invoice or invoices are overdue for payment;

17.2.2.2 that SRH is required to pay the unpaid invoice or invoices within a further period of 30 days from the date of the notice; and

17.2.2.3 confirming the Supplier's intention to terminate the Agreement at the end of the 30 day period specified at condition 17.2.2.2 above if payment has not been made.

17.3 Subject to:

17.3.1 any action of the Scottish Ministers which has the effect of transferring SRH's rights and obligations under the Agreement, and / or

17.3.2 SRH expressing its intention to novate or transfer the Agreement to any incoming successor parent to SRH's train operating companies;

in the event that the SRH Framework Agreement is terminated for whatever reason and howsoever occasioned, and SRH has not provided for the transfer of its rights under the Agreement to a third party, the Agreement will terminate immediately without notice.

**18 Consequences of termination**

18.1 The termination or expiry of the Agreement shall not prejudice or affect any rights of action or remedy which shall have accrued or shall thereafter accrue to either party.

18.2 On termination of the Agreement, the Supplier shall promptly deliver (or procure the delivery) to SRH of all deliverables whether or not then complete, and all property, hardware, data, materials and other equipment owned by SRH but in the possession of the Supplier (or any of its Associated Persons). If the Supplier fails to do so, then SRH may enter the Supplier's premises (and the premises of any of its Associated Persons) and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Agreement.

18.3 Any right of access granted to the Supplier in respect of SRH's premises or premises of a SRH Associated Person under the Agreement will cease on the date of termination or expiry of the Agreement and the Supplier expressly waives any right to compensation on termination of any right of occupancy (or similar). The Supplier shall leave SRH's premises, and SRH Associated Persons' premises, in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to SRH's premises or SRH Associated Persons' premises, or any objects contained thereon, other than fair wear and tear, which is caused by the Supplier or its Associated Persons. SRH shall be entitled to dispose of any property, materials or other items left by the Supplier at SRH's premises or SRH Associated Persons' premises following the termination or expiry of the Agreement (and retain the proceeds of any such disposal (if any)).

18.4 On termination of the Agreement pursuant to condition 17.1.1 to 17.1.8, the Supplier shall indemnify SRH in respect of:

18.4.1 any reasonable additional operational costs, administrative costs and expenses suffered or incurred by SRH as a result of such termination;

18.4.2 the reasonable costs and expenses suffered by or incurred by SRH in providing (or procuring that another party provides,) products or services similar to the Goods or Services on a temporary basis until completion of a tendering or reappointment

process carried out by SRH to the extent that such costs and expenses exceed the Price that would have been payable had the Agreement not been terminated; and

18.4.3 the reasonable costs and expenses suffered or incurred by SRH in carrying out the tendering or reappointment exercise referred to in condition 18.4.2

and all such costs, liabilities and expenses shall be deemed to be direct losses for the purposes of the Agreement.

18.5 Notwithstanding termination or expiry of the Agreement:

18.5.1 Condition 12 (Liability and Indemnity), condition 14 (Intellectual Property Rights), condition 18 (Consequences of Termination), condition 19 (Confidentiality), condition 20 (Transparency and Freedom of Information), condition 20.5 (Data Protection), and condition 30 (Audit) (and any other condition that expressly or by implication is intended to continue in force on or after termination or expiry of the Agreement) shall survive and continue to have effect; and

18.5.2 Condition 13 (Insurance) shall survive and continue to have effect for as long as and to the extent that there are liabilities or potential liabilities of the Supplier to SRH which are (or should be) the subject of Insurance Policies pursuant to the Agreement.

**19 Confidentiality**

19.1 The Supplier undertakes to abide and procure that the Supplier's Associated Persons abide by the provisions of the Official Secrets Acts 1911 to 1989.

19.2 Subject to conditions 19.1, 19.3 and 19.4, the parties shall keep confidential all Confidential Information relating to the Agreement and shall ensure that its employees, officers, representatives and advisers to whom it Discloses the other party's Confidential Information maintain the confidentiality of such Confidential Information. No party shall use any other party's Confidential Information for any purpose other than to perform its obligations under the Agreement.

19.3 Condition 19.2 shall not apply to any disclosure of Confidential Information:

19.3.1 required by any applicable Law, a court of competent jurisdiction or any governmental or regulatory authority;

19.3.2 where a party can demonstrate that such Confidential Information is already generally available and in the public domain otherwise as a result of a breach of condition 19.2;

19.3.3 which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party; and

19.3.4 by either party relating to the Agreement and in respect of which the other party has given its prior written consent to disclosure; or

19.3.5 in the case of SRH, to the United Kingdom parliament or any other department, office or agency of the UK government, the Scottish Ministers or any department, office, agency or officer of the Scottish Government, SRH Associated Persons, the Office of Road and Rail (or any other Regulator) or if otherwise required to do so under the SRH Framework Agreement.

19.4 Notwithstanding the provisions of this condition 19, if requested to do so by SRH, the Supplier shall enter into a confidentiality undertaking pursuant to the terms of the SRH Framework Agreement where necessary to ensure compliance by SRH with its confidentiality obligations under the SRH Framework Agreement.

19.5 Within seven (7) days of the termination or expiry of the Agreement (or if so requested by SRH at any other time by notice in writing to the Supplier), the parties shall promptly:

19.5.1 destroy or return to the other party all documents, records and materials (and any copies) in whatever form containing, reflecting, incorporating or based on the other party's Confidential Information;

19.5.2 erase or render inaccessible all the Confidential Information from its computer and communications systems and devices used by it, or which is stored in electronic form; and

19.5.3 certify in writing to the disclosing party that it has complied with the requirements of this condition 19.5.

19.6 The Supplier will not make any announcement or publicity statement relating to SRH, SRH Associated Persons, the Agreement or its subject matter, without the prior written approval of SRH (except as required by Law or by any legal or regulatory authority).

19.7 The undertakings and other provisions of this condition 19 will survive the expiry or termination of the Agreement.

19.8 The parties agree that damages alone would not be an adequate remedy in the event of breach by the other party of the provisions of this condition 19. Accordingly, either party may, without proof of special damages, seek an interdict or other interim remedy for any threatened or actual breach of this condition 19.

**20 Transparency and Freedom of Information**

20.1 The Supplier acknowledges that SRH is subject to the requirements of FOISA and the EIRs. The Supplier shall adhere to the conditions in this condition 20 and shall:

20.1.1 provide all necessary assistance and cooperation as SRH may reasonably request to enable SRH to comply with its obligations under FOISA and EIRs;

20.1.2 transfer to SRH all requests for information relating to the Agreement that the Supplier receives ("**Request for Information**") as soon as practicable and in any event within 2 Business Days of receipt;

20.1.3 provide SRH with a copy of all information held on behalf of SRH which is requested in a Request for Information and which is in the Supplier's possession or control. The FOISA and Environmental Information must be provided within five (5) Business Days of request (or such other period as SRH may reasonably specify) in the form that SRH reasonably requires; and

20.1.4 not respond directly to a Request for Information addressed to SRH, any SRH Associated Persons or the Scottish Ministers unless authorised in writing to do so by SRH.

20.2 If the Request for Information appears to be directed to FOISA and Environmental Information held by SRH, the Supplier must promptly inform the applicant in writing that the Request for Information can be directed to SRH.

20.3 If SRH receives a Request for Information concerning the Agreement, SRH is responsible for determining in its absolute discretion whether the information requested is to be disclosed to the applicant or whether the information requested is exempt from disclosure in accordance with FOISA or the EIRs.

20.4 The Supplier acknowledges that SRH may, acting in accordance with the Code of Practice on the Discharge of Functions of Public Authorities issued under section 60(5) of FOISA (as may be issued and revised from time to time), be obliged under FOISA or the EIRs to disclose FOISA and Environmental Information requested concerning the Supplier or the Agreement:

20.4.1 in certain circumstances without consulting the Supplier, or

20.4.2 following consultation with the Supplier and having taken its views into account.

20.5 Where 20.4.1 applies SRH must take reasonable steps, if practicable, to give the Supplier advance notice of the fact of disclosure or, failing that, draw the fact of disclosure to the attention of the Supplier after such disclosure to the extent that it is permissible and reasonably practical for it to do.

20.6 Where a Request for Information concerns any commercially sensitive information of the Supplier as advised by the Supplier, SRH will take reasonable steps, where practicable, to consult with the Supplier before disclosing it pursuant to a Request for Information.

20.7 The Supplier acknowledges that any reporting requirement pursuant to condition 20.12 and the contents of the Agreement including any amendments, agreed from time to time, (together the "**Transparency Information**") is not commercially sensitive information of the Supplier. However, if SRH believes that publication of any element of the Transparency Information should be treated as commercially sensitive information, SRH may, in its discretion exclude such information from publication.

20.8 Notwithstanding any other provision of the Agreement, the Supplier hereby gives consent for SRH to publish to the general public, the Transparency Information in its entirety. SRH shall, prior to publication, consult with the Supplier on the manner and format of publication and to inform its decision regarding any redactions but SRH shall have the final decision in its absolute discretion.

20.9 The Supplier shall assist and co-operate with SRH to enable SRH to publish the Transparency Information including the preparation of any reports.

20.10 SRH shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Agreement is being performed, having regard to the context of the wider commercial relationship with the Supplier.

20.11 The Supplier agrees that any further information, including FOISA and Environmental Information it holds that is not included in any response to a Request for Information but which is reasonably relevant to or that arises from the performance of the Agreement shall be provided to SRH upon request, unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of FOISA. SRH may disclose such information under FOISA and the EIRs and

may publish such information having regard to the guidance in section 60 of FOISA. The Supplier shall provide to SRH within five (5) Business Days of request (or such other period as SRH may reasonably specify) any such further information requested by SRH.

20.12 SRH may publish a monthly, quarterly and / or annual statement of all payments over £25,000 (or such other threshold as SRH may be subject to from time to time). In addition, in line with openness and transparency, the Scottish Government publishes a monthly report of all payments over certain thresholds. The Supplier should note that where a payment is made in excess of such thresholds there may be disclosure (in the form of the name of the payee, the date of the payment, the subject matter and the amount of payment).

20.13 This condition 20 shall apply after the termination of the Agreement howsoever arising.

**21 Data Protection**

21.1 In these Conditions the terms **Controller**, and **Personal Data** have the meanings given to them in the Data Protection Law.

21.2 For the purposes of the Agreement, the parties do not consider that the provision of the Goods and/or Services by the Supplier will require the Supplier to process Personal Data on behalf of SRH.

21.3 To the extent that any Personal Data is shared between the parties under the Agreement, the parties acknowledge and agree that:

21.3.1 each shall be an independent Controller of that Personal Data;

21.3.2 the Personal Data shall be limited to the information needed to fulfil the Agreement only, such as representative names and email addresses; and

21.3.3 each party shall comply with the provisions in the Data Protection Law that apply to Controllers.

21.4 In the event that the nature of the Goods and/or Services being provided under the Agreement require the Supplier to process Personal Data on behalf of SRH, the parties shall enter into a separate data sharing or processing agreement (as appropriate).

21.5 Notwithstanding the preceding terms of this condition 21, in relation to any Personal Data handled by the Supplier which has been shared with it by SRH and/or collected by the Supplier on behalf of SRH, the Supplier shall indemnify and keep indemnified SRH against any and all liability, fines, claims, demands, expenses and costs (including legal fees) arising as a result of any breach of any Data Protection Law and/or this condition 21 in respect of that Personal Data.

**22 Information Security**

22.1 The Supplier warrants that the information about any network and information system, data, or electronic communications network used by the Supplier to deliver the Services and / or protect the SRH Disclosed Personal Data ("**Supplier Security System")** (including in respect of any certification or accreditation) is up to date and accurate and that it will update SRH immediately in the event of any changes to such information.

22.2 The Supplier acknowledges that SRH's IT systems support is provided or otherwise managed by the IT team at ScotRail Trains Limited ("**ScotRail IT**"). The Supplier shall notify SRH and ScotRail IT immediately (by email to GC@railholdings.scot copied to DPO@railholdings.scot and also by

telephone to ScotRail IT Helpdesk on 03301092009) if it becomes aware of any Cyber Security Incident and respond without delay to all reasonable queries and requests for information from SRH, or ScotRail IT team on behalf of SRH, about any Cyber Security Incident, whether discovered by the Supplier or SRH or ScotRail IT, in particular bearing in mind the extent of any reporting obligations SRH and / or ScotRail IT may have under the Network and Information Systems Regulations 2018 and Data Protection Laws and that SRH and ScotRail IT may be required to comply with statutory or other regulatory timescales.

22.3 The Supplier will ensure business continuity of the Services at all times (for example having a business continuity and disaster recovery plan in place), with a view to ensuring the continuity of any services to be provided by SRH and which are dependent on the Services.

22.4 The Supplier agrees to cooperate with SRH and ScotRail IT in relation to:

22.4.1 all aspects of the Supplier's compliance with the Cyber Security Requirements (if applicable);

22.4.2 any requests for information, or inspection made by any regulator (including in connection with the Cyber Security Requirements);

22.4.3 any request for information made in connection with any of the information provided in the Network Information and Security Requirements; and

22.4.4 any Cyber Security Incident.

22.5 The Supplier shall (and warrants that it shall) at all times in accordance with Good Industry Practice:

22.5.1 implement, operate, maintain, and adhere to, appropriate policies to cover the Cyber Security Incident management process which shall enable the Supplier, as a minimum, to discover and assess Cyber Security Incidents, and to prioritise those Cyber Security Incidents, sufficient to meet its reporting obligations under condition 22.2; and

22.5.2 mitigate against all Cyber Security Incidents.

22.6 The Supplier shall indemnify SRH against any loss or damage suffered by SRH in relation to any breach by the Supplier of its obligations under the Agreement which causes SRH to be in breach of Cyber Security Requirements.

22.7 The Supplier shall:

22.7.1 comply with the Network Information and Security Requirements;

22.7.2 take reasonable precautions to preserve the integrity of any data which it processes and to prevent any corruption or loss of such data;

22.7.3 make a backup copy of such data and record the copy on media from which the data can be reloaded if there is any corruption or loss of the data; and

22.7.4 in such event and if attributable to any default by the Supplier or any of its Associated Persons, promptly restore the data at its own expense, or at SRH's option, promptly reimburse SRH for any reasonable expenses it incurs in having the data restored by a third party.

22.8 The Supplier shall not be entitled to any additional payments with respect to any changes to Services requested by SRH which are reasonably necessary to comply with changes to Cyber Security Requirements which become known and take effect after the Commencement Date.

**23 Employees and Contract Workers**

23.1 The parties acknowledge and agree the provisions of the TUPE Annex shall apply to the performance of any Services under the Agreement.

23.2 SRH is committed to complying with the Fair Work Convention 2015, the Fair Work Framework 2016 and the Scottish Government's Fair Work First Guidance (each as updated from time to time) and the Supplier shall on request by SRH use its reasonable endeavours to assist SRH in complying with such regulation and guidance.

23.3 In performing its obligations under the Agreement, the Supplier shall (and shall ensure that each of its Associated Persons shall):

23.3.1 comply with all applicable Laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015, United Nations Global Compact and the International Labour Organisation, International Labour Standards and the Human Trafficking and Exploitation (Scotland) Act 2015;

23.3.2 take appropriate measures to ensure the health and safety of their workforce and the wider public; and

23.3.3 engage and deploy suitably experienced, trained and qualified workers in relation to the carrying out the Supplier's duties and obligations under the Agreement.

23.4 SRH may, by written notice to the Supplier, require the removal of any Associated Persons of the Supplier from the performance of the Agreement where continued involvement of any such Associated Persons would in SRH's opinion (acting reasonably) be detrimental to the performance of the Agreement or damaging to SRH's business or reputation.

23.5 The Supplier shall be fully responsible for and indemnify SRH against any liability, assessment or claim for taxation arising from or made in connection with the performance of the Services, where such recovery is not prohibited by law (including reasonable costs and expenses and any penalties, fines or interest incurred or payable by SRH in connection with such taxation) and without prejudice to any other rights that it may have, SRH may satisfy such indemnity (in whole or in part) by way of deduction from any payment due to the Supplier.

23.6 SRH shall determine whether the circumstances set out in Section 61M of the Income Tax (Earnings and Pensions) Act ("**ITEPA**") do apply to the Services provided by the Supplier. The Supplier agrees to provide such information and documentation as SRH may reasonably require from time to time in order to comply with any obligation arising under ITEPA or to comply with any obligation to deduct tax and/or national insurance contributions. If during the Term of the Agreement SRH determines that the circumstances set out in Section 61M of ITPEA apply to the Services provided by the Supplier, SRH shall inform the Supplier and may deduct income tax and national insurance contributions as required from any payment made in respect of the Services.

**24 Equality**

24.1 The Supplier shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex, sexual orientation, pregnancy, maternity,

religion, belief or age, and without prejudice to the generality of the foregoing the Supplier shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 and where applicable, any other Law in respect of the said grounds.

24.2 The Supplier shall not breach the Employment Relations 1999 Act (Blacklists) Regulations 2010, section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992 or commit any breach of Data Protection Laws by unlawfully processing personal data (or otherwise) in connection with any blacklisting activities.

24.3 The Supplier shall at all times have in place, and keep updated, an appropriate diversity and inclusion policy and take all reasonable steps to procure the observance of conditions 24.1 and 24.2 and any applicable SRH Policies by the Supplier and its Associated Persons involved in the performance of the Agreement. The Supplier shall provide SRH with a copy of such policies and procedures upon request.

24.4 Failure by the Supplier to comply with conditions 24.1 and 24.2 shall entitle SRH to terminate the Agreement with immediate effect and without liability on SRH whether in contract, delict (including negligence) or otherwise.

**25 SRH Policies**

25.1 In performing its obligations under the Agreement the Supplier and its Associated Persons shall:

25.1.1 comply at all times with each of the SRH Policies;

25.1.2 not do or omit to do anything which may cause SRH to be in breach of its obligations under the SRH Framework Agreement or to otherwise lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business;

25.1.3 at all times comply with the reasonable instructions of SRH in relation to the provision of the Goods and/or Services and shall provide the Good and/or Services at all times in such manner and in accordance with such standards as SRH may reasonably require to ensure compliance with its obligations under the SRH Framework Agreement.

**26 Anti-Slavery and Human Trafficking**

26.1 In performing its obligations under the Agreement, the Supplier shall:

26.1.1 comply with all applicable anti-slavery and human trafficking laws, statutes, regulations, codes and industry best practice from time to time in force, including but not limited to the Modern Slavery Act 2015, the Human Trafficking and Exploitation (Scotland) Act 2015 and all similar national laws intended to prevent slavery, servitude, forced or compulsory labour, or human trafficking occurring in the business or the supply chain ("**Relevant Anti-Slavery Requirements**");

26.1.2 not engage in any activity, practice or conduct that would constitute an offence under or contravene any Relevant Anti-Slavery Requirements;

26.1.3 comply with SRH's anti-slavery and human trafficking policies in place and as may be updated from time to time and notified to the Supplier (**"Relevant Anti-Slavery Policies"**);

26.1.4 have and shall maintain in place throughout the Term of the Agreement its own policies and procedures to ensure compliance with the Relevant Anti-Slavery Requirements, the Relevant Anti-Slavery Policies and condition 26.1.2, and will enforce them where appropriate and shall provide SRH with a copy of such policies and procedures upon request;

26.1.5 notify SRH as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with the Agreement;

26.1.6 annually on request by SRH, certify to SRH in writing signed by an officer of the Supplier, compliance with this condition 26 by the Supplier and all persons associated with it under condition 26.2. The Supplier shall provide such supporting evidence of compliance as SRH may reasonably request; and

26.1.7 maintain a complete set of records to trace the supply chain of all Goods and/or Services provided to SRH in connection with the Agreement; and permit SRH and its third party representatives to inspect the Supplier's premises, records, and to meet the Supplier's personnel to audit the Supplier's compliance with its obligations under this condition 26.

26.2 The Supplier shall ensure that any Associated Persons who are performing services in connection with the Agreement do so in compliance with the terms of this condition 26 (the **"Relevant Anti-Slavery Terms**"). The Supplier shall be responsible for the observance and performance by any and all such persons of the Relevant Anti-Slavery Terms, and shall be directly liable to SRH for any breach by such persons of any of the Relevant Anti-Slavery Terms.

26.3 The Supplier represents that it, and its Associated Persons:

26.3.1 have not, and are not, the subject of any actual or threatened legal proceedings involving allegations under any of the Relevant Anti-Slavery Requirements;

26.3.2 are not subject to an investigation or prosecution of an alleged offence under any of the Relevant Anti-Slavery Requirements;

26.3.3 are not aware of any circumstances within its supply chain that could give rise to an investigation or prosecution of an alleged offence under any of the Relevant Anti-Slavery Requirements; and

26.3.4 to the best of its knowledge and belief, there is no slavery, servitude, forced or compulsory labour, or human trafficking in its supply chain.

26.4 Breach of this condition 26 shall be deemed an irremediable material breach of the Agreement.

**27 Safety**

27.1 The Supplier shall comply with and perform its obligations under the Agreement in accordance with all relevant safety legislation, regulations, and safety standards including without limitation any bylaws and any industry-specific safety regulations and shall notify SRH as soon as it becomes aware of any health and safety hazards or issues which arise in relation to the Agreement. The Supplier shall, and shall ensure that its Associated Persons shall comply with SRH's health and safety procedures (including those set out in any SRH Policies) and obey all reasonable instructions issued by SRH's authorised personnel whilst on SRH's premises.

27.2 The Supplier shall and shall ensure that its Associated Persons shall comply with all applicable Laws and Industry Standards from time to time applying to the performance of the Agreement and shall employ only staff who have been certified in accordance with all applicable Laws and the relevant Industry Standards.

27.3 The Supplier shall, prior to the commencement of the Agreement, provide SRH with details of potential hazards and safety risks which may result from using, handling or storage of the Goods and shall provide any amendments which are made to these details as and when they are made.

**28 Sustainability**

28.1 The Supplier shall provide the community benefits (and related outcomes) set out in any framework agreement pursuant to which this Agreement has been called off ("**Community Benefits**"). Upon request by SRH, the Supplier shall provide details of the delivery of the Community Benefits (including the outcomes achieved) by the Supplier.

28.2 The Supplier should design, specify and procure materials, products and services with the greatest circular-economy benefits.

28.3 The Supplier must take all reasonable steps to minimise waste, reduce packaging and give preference to materials and products with the greatest re-used or recycled content. Documented evidence must be provided to SRH on request.

28.4 The use of packaging should be minimised and where appropriate made from materials that can be reused, recycled, or recovered wherever feasible including the use of take back and collection services for materials and associated packaging for subsequent reuse, recycling or recovery.

28.5 The Supplier must ensure that all timber used (including packaging) is legally and sustainably sourced and provide documented evidence to SRH on request. Procurement and use of timber and timber products should only be from independently verified, legal and sustainable sources (such as those certified under the Forest Stewardship Council or the Programme for the Endorsement of Forest Certification) or from sources where the forest of origin is licensed by the EU Forest Law Enforcement Governance and Trade scheme.

28.6 The following shall not be used within the delivery of any Supplier activity:

28.6.1 alkylphenols;

28.6.2 asbestos;

28.6.3 chlorofluorocarbons;

28.6.4 formaldehyde (added);

28.6.5 hydrochlorofluorocarbons

28.6.6 polychlorinated Biphenyls;

28.6.7 phthalates;

28.6.8 short Chain Chlorinated Paraffins; or

28.6.9 wood treatments containing creosote, arsenic or pentachlorophenol.

28.7 In the performance of the Agreement the following will apply to the Supplier and its Associated Persons, to align requirements to ISO14001 and ISO50001 accreditation standards:

28.7.1 wherever possible, silenced plant/equipment should be provided and the use of covers, baffles and noise suppressants on projects enforced. Precautions should be taken to protect local communities from nuisance;

28.7.2 risk assessments should identify significant environmental aspects. Impacts and control measures should be documented in work packages;

28.7.3 water should not be discharged or abstracted without permission. This includes discharging over land;

28.7.4 all reasonable steps should be taken to minimise energy usage during the performance of the Agreement;

28.7.5 existing vegetation and habitats should be protected. Access to restricted areas will be prohibited;

28.7.6 in the event of discovery of any unexpected species or archaeology the Supplier must cease work immediately and report these to the relevant authorities;

28.7.7 advice given by specialists in archaeology or ecology will be followed; and

28.7.8 where arrangements for waste storage and disposal are made, SRH may request records of all transfers to ensure the correct procedures have been followed and the quantity of waste reused, recycled, recovered or disposed of to landfill can be assessed.

**29 SME Engagement**

29.1 In procuring any sub-contract packages the Supplier shall review and amend its procurement processes in line with Scottish Government guidance to encourage small and medium sized enterprises ("**SMEs**") and local SMEs to bid for sub-contract opportunities and take all steps in relation to SME engagement as may reasonably be required by SRH (including advertising sub-contracting opportunities locally to where the services will be provided and where appropriate advertising opportunities via Public Contracts Scotland).

**30 Audit**

30.1 The Supplier shall keep and maintain until five (5) years after the Agreement expires or is terminated (whichever is earlier) full and accurate records and accounts of the operation of the Agreement including the Goods and/or Services provided, all expenditures and payments made and reimbursable by SRH and, where applicable, the hours worked and costs incurred in connection with any employees or personnel of the Supplier (and its Associated Persons) on a time charge basis.

30.2 The Supplier shall keep the records and accounts referred to in condition 30.1 above in accordance with good accountancy practice.

30.3 The Supplier shall conduct its own internal audit of its procedures to ensure compliance with its obligations under the Agreement and shall provide the audit results to SRH on request. Such audits shall be conducted, at a minimum, annually.

30.4 The Supplier shall on request and without any charge, afford SRH, any auditors of SRH (including internal auditors and Audit Scotland and any other organisation, company or body which may from time to time have cause to audit the accounts of SRH) and any other person authorised or nominated by SRH, such access to those records, accounts and personnel as may be required by SRH in connection with the Agreement.

30.5 The parties agree that they shall bear their own respective costs and expenses incurred in respect of any audit conducted by SRH under this condition 30, unless the audit reveals a breach of the Agreement by the Supplier, in which case the Supplier shall reimburse SRH for any amounts incorrectly charged and its reasonable costs and expenses (including third party expenses) incurred in relation to the audit which revealed the Supplier's breach of the Agreement.

30.6 Without prejudice to conditions 30.1 to 30.5 above, the Supplier shall also make available to SRH on request any other information, records and documents as reasonably requested by SRH in connection with the performance of the Agreement (in such format as SRH may reasonable request).

30.7 The provisions of this condition 30 shall apply during the continuance of the Agreement and after its termination howsoever arising.

**31 Assignation and sub-contracting**

31.1 The Supplier shall not assign or sub-contract the Agreement or any part thereof to any third party without prior written consent from SRH and sub-contracting by the Supplier (where permitted) shall not in any way relieve the Supplier of its responsibilities under the Agreement.

31.2 All sub-contracts entered into in relation to the Agreement shall require the Supplier to pay its sub-contractor within 30 days. The Supplier shall use its reasonable endeavours to seek to shorten the time for payment to 10 Business Days of the receipt of a valid invoice where reasonably possible and appropriate.

31.3 Subject always to condition 31.1 of the Agreement, the Supplier shall ensure that any Associated Persons who are performing services in connection with the Agreement do so in compliance with the terms of the Agreement. The Supplier shall be responsible for the observance and performance by any and all such persons of the terms of the Agreement, and shall be directly liable to SRH for any breach by such persons of any terms of the Agreement.

31.4 SRH shall be entitled to assign or otherwise transfer its rights and obligations under the Agreement:

31.4.1 without the consent of the Supplier to:

31.4.1.1 any person to whom the whole of SRH's rights and obligations are assigned;

31.4.1.2 any person licensed or to be licensed to operate rail services in the UK; or

31.4.1.3 if applicable, in accordance with the terms of the SRH Framework Agreement, any other party nominated by the Scottish Ministers; and

31.4.2 to any other person with the consent of the Supplier which shall not be unreasonably withheld or delayed.

**32 Force Majeure**

32.1 If either party is prevented, hindered or delayed from or in performing any of its obligations under the Agreement by a Force Majeure Event then (subject to the remaining provisions of this condition 32):

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

32.1.2 as soon as reasonably possible after commencement of the Force Majeure Event, the party whose performance is prevented, hindered or delayed 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 effect of the Force Majeure Event on its ability to perform its obligations under the Agreement;

32.1.3 that party shall use all reasonable efforts to mitigate the effect of the Force Majeure Event upon the performance of its obligations under the Agreement; and

32.1.4 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 the Agreement.

32.2 If the Force Majeure Event continues for more than twenty-eight (28) days after the commencement of the Force Majeure Event, SRH may terminate the Agreement by giving not less than fourteen (14) days' notice in writing to the Supplier.

32.3 The Supplier shall maintain and provide SRH with a copy of a contingency plan to ensure performance of its obligations under the Agreement.

**33 Direct Agreement**

33.1 On demand by the Scottish Ministers or SRH, the Supplier shall, without delay, enter into and deliver to SRH and/or the Scottish Ministers a Direct Agreement.

**34 General Provisions**

34.1 The failure of either party to insist upon the performance of any provision in the Agreement or the failure of either party to exercise, or any delay in exercising, any right or remedy to which it is entitled shall not constitute a waiver or partial waiver of that provision, right or remedy and shall not cause a diminution of the obligations established by the Agreement. No waiver shall be effective unless it is expressly stated to be a waiver in a notice to the other party.

34.2 If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this condition 34.2 shall not affect the validity and enforceability of the rest of the Agreement.

34.3 The Agreement shall not have the effect of making the Supplier the agent of SRH and the Supplier shall not act as agent of SRH or lead any party to believe that such a relationship of agency exists.

34.4 No variation of the Agreement shall be effective unless it is validly executed in writing by or on behalf of both parties.

34.5 The Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous discussions, negotiations, assurances, warranties, representations and agreements between them, whether written or oral relating to its subject matter.

34.6 Any notice or other communications to be given under the Agreement shall be given in accordance with the terms of Annex 2 (Notices) of these Conditions.

34.7 Except as expressly provided otherwise, a person who is not a party to the Agreement has no right under the Contracts (Third Party Rights)(Scotland) Act 2017 or otherwise to enforce any term of the Agreement. Notwithstanding the foregoing, the rights of the parties to terminate, rescind or agree any variation, waiver or settlement under the Agreement are not subject to the consent of any person which is not a party to the Agreement.

34.8 The rights, powers and remedies provided in the Agreement are cumulative and are not exclusive of any rights, powers or remedies provided by law or otherwise.

**35 Dispute Resolution**

35.1 The parties shall use reasonable endeavours to negotiate in good faith and settle any claim, difference or dispute ("**Dispute**") arising between them out of or in connection with the Agreement first between themselves, as follows:

35.1.1 if a Dispute arises then either party may refer the Dispute to the contacts for each party as set out in the Purchase Order for resolution; and

35.1.2 if the parties fail to resolve the Dispute within fourteen (14) days of the start of negotiations under condition 35.1.1 then the Dispute must be referred to senior executives of both SRH and the Supplier who will, within seven (7) days of such referral meet to seek to resolve the Dispute within seven (7) days of that meeting by negotiation in good faith.

35.2 If the parties fail to resolve the claim or dispute in accordance with the procedures at conditions 35.1.1 and 35.1.2, then the parties may, in good faith, seek to resolve that Dispute through mediation under the auspices of the Centre for Effective Dispute Resolution.

35.3 Where the parties agreed to mediation in accordance with condition 35.2 above, the mediator to be appointed and the procedure to be followed in the mediation shall be agreed between the parties within fifteen (15) days of the agreement to mediate, failing which the mediator shall be appointed by the Centre for Effective Dispute Resolution and the procedure established by him.

35.4 The costs and fees associated with the mediation shall be borne equally by the parties.

35.5 If the Dispute has not been resolved within thirty (30) days of the appointment of a mediator, or if either party refuses to agree to mediation or withdraws from the mediation, then the Dispute may be referred to litigation and the parties will be free to pursue their remedies without further reference to this condition 35.

35.6 For the avoidance of doubt, the parties shall continue to perform their respective obligations in accordance with the Agreement and without delay while the Dispute is being resolved pursuant to this condition 35.

35.7 Neither party shall be prevented from, or delayed in, commencing or continuing court proceedings for specific implement or interdict as a result of the provisions of this condition 35.

**36 Governing law and jurisdiction**

36.1 The Agreement, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the laws of Scotland.

36.2 The parties to the Agreement irrevocably agree that the courts of Scotland shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Agreement or its subject matter or formation (including non-jurisdictional disputes or claims).

**ANNEX 1**

Payment Terms and Invoices

## 1. Invoice Information

1.1 The following information must be included on **all** invoices from the Supplier to SRH:

- **Purchase order number**
    - The Supplier must have a purchase order number, issued by SRH for all Goods and/or Services supplied to SRH.
    - The purchase order number must be stated in full on the invoice to SRH.
    - There must be only one purchase order number on each invoice.
    - Invoices that reference more than one purchase order number will cause delays in processing and may require a credit note to be raised.
- **Supplier Sales Order Number**
    - If delivery notes are not used, the Supplier must also quote the sales order number on all invoices to SRH.

1.2 Please ensure that invoices are checked for accuracy prior to being sent.

1.3 All invoices must be sent to SRH at the following address:

Scottish Rail Holdings Limited
Finance Directorate
3rd Floor
St Vincent Plaza
319 St Vincent Street
Glasgow
G2 5LD
Email: finance@railholdings.scot

1.4 The Supplier must have the capability to invoice SRH on an electronic basis, and the Supplier must provide a monthly softcopy electronic invoice statement detailing the invoices raised by the invoice number, invoice value, and corresponding purchase order number. This statement should also detail any unallocated payments the Supplier may have received.

1.5 The Supplier will also notify SRH of the correct escalation path within the Supplier's business for rapid resolution of payment issues, for example, from Credit Controller to Financial Director.

1.6 The Supplier may direct any questions to the SRH Finance Team by Email to: finance@railholdings.scot

1.7 The Supplier agrees that it shall not include or refer to (or otherwise seek to incorporate) any other terms and conditions on any invoice issued in respect of Goods and/or Services provided under the Agreement. In the event that any invoice includes, refers to or otherwise seeks to incorporate terms and conditions other than those set out in the Agreement, such Supplier

terms and conditions shall have no effect and SRH shall be entitled to reject any such invoice and return this for re-issue by the Supplier.

**ANNEX 2**

Notices

**1. Notices**

1.1. A notice given to a party under or in connection with the Agreement shall be in writing and in English.

1.2. This paragraph 1.2 sets out the delivery methods for sending a notice to a party under the Agreement and, for each delivery method, the date and time when the notice is deemed to have been received shall be:

1.2.1. if delivered by hand, at the time the notice is actually delivered at the address;

1.2.2. if sent by pre-paid first class post or other next Business Day delivery service providing proof of postage, at 10.00am on the second Business Day after posting; or

1.2.3. if sent by email, upon receipt by the sender of a successful delivery receipt confirmation from the recipient mail server.

1.3. If deemed receipt under paragraph 1.2 would occur outside of business hours in the place of receipt, it shall be deferred until business hours resume. Business hours means 9.00am to 5.00pm on a Business Day.

1.4. Any notice or other communication to be given by one party to the other for the purposes of paragraph 1.2 shall (unless one party has by no less than ten (10) Business Days' notice to the other party specified another address) be given to that other party at the address and for the attention of the person set out in the Purchase Order.

1.5. In respect of notices sent by email, the notice must be attached to the email as a pdf attachment.

1.6. Either party may change its address for service by serving a notice in accordance with this Annex on no less than ten (10) Business Days' notice to the other party's specified address.

1.7. The provisions in this Annex do not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

**ANNEX 3**

TUPE

**Definitions**

1.1 In addition to the definitions set out in condition 1 of these Conditions, the expressions which follow will be given the meanings set out below where they appear in this Annex:

1.1.1 **"Asserted Transfer Date"** means the date or dates on which the contracts of employment of the Asserted Transferring Employees are asserted to transfer to SRH or any New Supplier or any subcontractor (or the date or dates on which it is asserted such contract of employment would have so transferred but for its termination) upon the cessation of the provision of Services or part thereof;

1.1.2 **"Asserted Transferring Employee"** means any individual whose contract of employment is transferred from the Supplier or any subcontractor by virtue of the Employment Regulations or any person who asserts that his contract of employment has so transferred (or, in either case, would have transferred but for its termination) on cessation of the provision of the Services or part thereof;

1.1.3 **"Employment Regulations"** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended) or any regulations which replace or amend these;

1.1.4 **"New Supplier"** means a supplier (who is not the Supplier) appointed by SRH to supply the Services (or similar services) or part thereof in succession to the Supplier on expiry of the Agreement or the earlier cessation of the provision of the Services or part thereof;

1.1.5 **"Outgoing Supplier"** means the supplier or suppliers (other than the Supplier or any subcontractor) who provided the Services (or similar services) to SRH immediately prior to the Commencement Date; and

1.1.6 "**Supplier's Staff**" means those persons employed or engaged by the Supplier or any subcontractor from time to time in the provision of the Services.

**2. Provisions on Commencement**

0.1 The parties do not anticipate that there shall be a transfer pursuant to the Employment Regulations upon the commencement of the provision of the Services or any part of the Services by the Supplier or any Group Company of the Supplier or any subcontractor.

0.2 The Supplier hereby acknowledges and agrees that it is the Supplier's responsibility to consider whether or not the Employment Regulations apply on the commencement of the Agreement.

0.3 SRH accepts no liability whatsoever for any loss or damage suffered by the Supplier or any Group Company of the Supplier should it subsequently be held by an employment tribunal (or other relevant forum) that the entry into the Agreement by the parties does constitute a transfer within the meaning of the Employment Regulations (and as a result, employees of the Outgoing Supplier or SRH are transferred by operation of the Employment Regulations to the Supplier or any Group Company of the Supplier).

**3. Provisions on Cessation**

3.1 The Supplier agrees to arrange Supplier's Staff, and, if applicable, procure that any subcontractor arranges the Supplier's Staff in relation to the provision of the Services in such a way that no individual at any time (i) forms part of an organised grouping of employees which has as its principal purpose the provision of all or part of the Services or (ii) is wholly or mainly assigned to the provision of all or part of the Services and consequently that no contract of employment of any individual will transfer from the Supplier or any subcontractor to SRH or to any New Supplier by virtue of the Employment Regulations on the cessation or partial cessation of the provision of the Services or otherwise.

3.2 Without prejudice to paragraph 3.1 above, the Supplier will on demand by SRH, indemnify SRH and each New Supplier against (or, at the option of SRH, indemnify SRH on its own behalf and/or on behalf of such New Supplier) and as a separate obligation undertakes to pay to SRH the amount of, all losses, fines, penalties, awards, liabilities, costs, damages and expenses (including reasonable legal expenses on an indemnity basis) which SRH and/or such New Supplier may incur (directly or indirectly):

3.2.1 in connection with the employment or termination of employment of any Asserted Transferring Employee at any time up to the Asserted Transfer Date;

3.2.2 in connection with the employment or termination of employment of any Asserted Transferring Employee from and including the Asserted Transfer Date provided SRH or such New Supplier terminates the employment of any Asserted Transferring Employee (in so far as it has not already terminated) within 30 Business Days of becoming aware of such transfer or alleged transfer; and

3.2.3 as a result of any failure to comply with Regulation 13 or Regulation 14 of the Employment Regulations in respect of any Asserted Transferring Employee.

3.3 The Supplier will and will procure that any Group Company of the Supplier and any subcontractor will within 10 Business Days of receipt of a request (or a request for updated information) by SRH (which may be made at any time during the Term of the Agreement), supply in writing to SRH:

3.3.1 information on which of the Supplier's Staff are and have been involved in providing the Services, whether or not they spend all of their working time on the Services (and, if not, the percentage of their working time generally spent on the Services), what role(s) they carry out and any other information relating to the way the Supplier's Staff carry out the Services as may reasonably be requested;

3.3.2 information as to the particular terms and conditions of employment of the Supplier's Staff at the time of a request for such information, whether contractual or otherwise (including remuneration, benefits, pension benefits and other rewards);

3.3.3 information relating to any collective agreements which relate to the employment of the Supplier's Staff at the time of a request for such information;

3.3.4 information relating to any legally enforceable obligations on the Supplier and any Group Company of the Supplier and any subcontractor in relation to the employment of the Supplier's Staff, at the time of a request for such information, to increase or

otherwise vary the remuneration, benefits and other rewards which such Supplier's Staff may be entitled to;

3.3.5 information on any disciplinary procedure taken against any member of the Supplier's Staff or any grievance procedure taken by any member of the Supplier's Staff within the previous 2 years;

3.3.6 information on any current or pending negotiations with or offers to Supplier's Staff or any of them concerning their terms and conditions of employment (including rates of remuneration) at the time of request for information;

3.3.7 information relating to any court or tribunal case, claim or action brought by any of the Supplier's Staff against the Supplier or any Group Company of the Supplier or any subcontractor within the previous two years;

3.3.8 information relating to any court or tribunal case, claim or action brought by any of the Supplier's Staff which the Supplier or any Group Company of the Supplier or any subcontractor has reasonable grounds to believe may be brought against SRH or any New Supplier and/or any subcontractor arising out of the member of the Supplier's Staff's employment with the Supplier or any Group Company of the Supplier or any subcontractor;

3.3.9 the job title, role, length of service and age of all the Supplier's Staff at the time of a request for such information;

3.3.10 details of any outstanding pending, threatened or potential disputes between the Supplier and/or each Group Company of the Supplier and/or each subcontractor and any of the Supplier's Staff or their elected representatives at the time of a request for such information;

3.3.11 details of any member of the Supplier's Staff who is absent from work at the time of a request for such information (including the reason for, and duration of, the absence); and

3.3.12 such other information as may reasonably be required by SRH relating to such Supplier's Staff which is in the possession of the Supplier and/or each Group Company of the Supplier and/or each subcontractor at the time of the request or which can reasonably be obtained by the Supplier from any other third party.

3.4 The Supplier consents to SRH using the information for its own costing purposes and disclosing the information obtained under paragraph 3.3 to (i) prospective bidders for the provision of the Services (or services similar to the Services) to SRH and/or (ii) New Suppliers.

3.5 The information provided under sub-paragraphs 3.3.1 to 3.3.12 will, where reasonably practicable, be anonymised or coded by the Supplier in such a way so as to prevent the disclosure of Personal Data as defined under Data Protection Laws.

3.6 The Supplier will procure that the information provided under paragraph 3.3 is complete and accurate in all material respects and that it is no longer than 14 days old on the date that it is given.

**4. Deed of indemnity**

4.1 If requested by SRH, the Supplier will, within 10 Business Days of a request to do so, enter into a deed of indemnity with SRH and / or any New Supplier to give effect to the provisions of this Annex.

**ANNEX 4**

SRH Policies

**1. SRH Policies**

| SRH Policy | Policy Location |
|---|---|
| **Anti-Bribery and Corruption Policy** | |
| **Modern Slavery, Child Labour and Forced Labour Policy** | |
| **Alcohol and Drugs Policy** | |
| **Equality, Diversity and Inclusion Policy** | |
| **Sustainable Procurement Policy** | |
| **Health and Safety Policy** | |
| **Cyber Policy, including the Network and Information System Security Requirements** | |
| **IT Acceptable Use Policy** | |
| **Data Protection Policy** | |
| **Accident and Incident Policy** | |
| **Supplier Code of Conduct** | |