

1. APPLICABILITY

- 1.1 These Terms & Conditions apply to the provision of rolling stock Movements by, or on behalf of, the Supplier under the terms of Movements Contracts entered into on or after 1 April 2025 (the **Go-Live Date**).
- 1.2 For subsisting movements contracts entered into with ROG Companies *prior to* the Go-Live Date, Customers should refer instead to the prior edition of our general terms and conditions, as set out in document [ROUK/GTC/24/11/2022](#) (click to link).

2. DEFINITIONS

Where used in these Terms & Conditions, the following terms shall have the meanings given to them below:

Ancillary Items means, in the context of any given Movements Contract, any ancillary items, expenditures, services or other matters:

- (a) which are to be incurred, procured, provided or otherwise attended to by the Supplier either:
- (i) as a direct corollary of arranging or performing the Movement(s) in question; and/or
 - (ii) as an additional work scope element, described within the associated Commercial Particulars; AND
- (b) the costs or price for which are specified, within the relevant Commercial Particulars, as:
- (i) being for the account of the Customer; but
 - (ii) not forming part of the Movements Price, and therefore subject to a separate charge.

Ancillary Items Price means, in the context of any relevant Ancillary Items, the price or other stipulated rate of recovery associated with such Ancillary Items, as set out within the Commercial Particulars that form part of the Movements Contract in question (including, where relevant, by reference to any cost pass-through, or costs-plus basis of calculation).

Authorisation to Proceed means a formal confirmation on behalf of the Customer (in one of the permissible forms specified below), that it wishes the Supplier to proceed with the requested Movement(s) on the terms offered (as collectively described in these Terms & Conditions and the relevant Commercial Particulars). The permissible forms in which an Authorisation to Proceed may be given are:

- (a) the issuance by the Customer of a signed and dated copy of the final, agreed Commercial Particulars for the Movements Contract in question; or
- (b) where the Supplier has indicated that this would be acceptable, an email from the Customer to the Supplier confirming its desire to proceed on the basis of the terms offered (as described in these Terms & Conditions and the relevant Commercial Particulars).

If a Customer should seek to give a verbal Authorisation to Proceed, the Supplier may (in its absolute and unfettered discretion) either: (i) decline such Authorisation to Proceed, until the Customer has (within the applicable Validity Period) re-confirmed it by one of the methods in (a) or (b) above; or (ii) accept the verbal Authorisation to Proceed, by confirming the same back in writing to the Customer (including via email).

Commercial Particulars means, in the context of any given Movements Contract, the “*Movements Contract - Commercial Particulars*” document prepared by the Supplier and issued to the Customer, which supplements these Terms & Conditions by setting out the bespoke commercial and operational terms that will (once

confirmed under a valid Authorisation to Proceed) apply in respect of the Movement(s) in question.

Confidential Information means, in the context of any given Movements Contract, the Commercial Particulars applicable to such Movements Contract and any information connected therewith, or with either party, which is (in whole or in part) secret, of potential commercial sensitivity or otherwise not publicly available, including commercial, financial, marketing or technical information, know-how, trade secrets or business methods, or any data, in all cases whether disclosed orally or in writing before or after the date of such Movements Contract.

Customer means, in the context of any given Movements Contract, the entity identified as such in the related Commercial Particulars.

Customer Faults has the meaning given to it within the definition of the term “*Customer Responsible Risks*”.

Customer Responsible Risks means risks arising from, or in connection with, any of the following matters, in respect of which the Customer shall bear the risk:

- (a) failure of, or loss or damage to, the Customer Rolling Stock, any Supplier Provided Rolling Stock and/or any other Supplier property, during the performance of a Movement, as a result of:
 - (i) technical or engineering defects affecting the Customer Rolling Stock;
 - (ii) any incompatibility between the Customer Rolling Stock and the rail network infrastructure (loading gauge, electromagnetic compatibility etc.);
 - (iii) the Customer having provided inaccurate or insufficient information or instructions to the Supplier, in respect of the Customer Rolling Stock or the Movement more generally; or
 - (iv) any other error, omission, breach, non-performance or misrepresentation on the part of the Customer,
 (items (a)(i) to (a)(iv) collectively comprising the **Customer Faults**);
- (b) failure of, or loss or damage to, the Customer Rolling Stock during the performance of a Movement, as a result of:
 - (i) any defect, defective operation or other issue affecting the rail network infrastructure (i.e. track, points, signalling etc., and irrespective of whether such infrastructure is owned, operated and/or maintained by Network Rail or by a third-party infrastructure provider); or
 - (ii) any matter arising from the fault, acts or omissions of any third party, including (by way of illustration only) any depot or station operator, any 3rd party train or freight operating company, any of their respective officers, personnel, contractors or sub-contractors, and any member of the public,
 (items (b)(i) and (b)(ii) collectively comprising the **Network or 3rd Party Issues**);
- (c) loss or damage to any third-party property during the performance of a Movement, as a result of any Customer Fault or any Network or 3rd Party Issues;
- (d) death or personal injury to any person during the performance of a Movement, as a result of any Customer Fault or any Network or 3rd Party Issues; and

- (e) any liability to Railway Costs, where:
- (i) under Network Rail's 'Delay Attribution' process, responsibility has (as between Network Rail and the train operator) been allocated to the train operator; AND
 - (ii) (with reference to the underlying facts and/or the 'Delay Attribution Code' which Network Rail has ascribed to the delay/cancellation in question) the proximate cause of such delay/cancellation relates to anything that falls outside the definition of a Supplier Operating Fault.

Customer Rolling Stock means, in the context of any given Movements Contract, the relevant rolling stock (whether comprised of multiple units, coaching stock, locomotives, wagons and/or any other category of rail vehicle) which the Supplier is being contracted to effect a Movement of, as more fully described in the associated Commercial Particulars (and, for the avoidance of doubt, excluding any Supplier Provided Rolling Stock).

Go-Live Date has the meaning given to it in clause 1.1 of these Terms & Conditions.

Insolvency Event means, in respect of any party, any situation in which that party:

- (a) suspends, or threatens to suspend, payment of its debts (whether principal or interest) or is deemed to be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986;
- (b) calls a meeting, gives a notice, passes a resolution or files a petition, or an order is made, in connection with the winding up of that party (save for the sole purpose of a solvent voluntary reconstruction or amalgamation);
- (c) has an application to appoint an administrator made or a notice of intention to appoint an administrator filed or an administrator is appointed in respect of it or all or any part of its assets;
- (d) has a receiver or administrative receiver appointed over all or any part of its assets or a person becomes entitled to appoint a receiver or administrative receiver over such assets;
- (e) calls a meeting, gives a notice, passes a resolution, makes an application or files documents, or an order is made, or any other steps are taken in respect of obtaining a moratorium or a moratorium is obtained for that party;
- (f) takes any steps in connection with proposing a reorganisation of the party (whether by way of voluntary arrangement, company voluntary arrangement, scheme of arrangement, compromise or arrangement or otherwise) or any such reorganisation is effected in relation to it, or it commences negotiations with all or any of its creditors with a view to rescheduling any of its debts;
- (g) has any steps taken by a secured lender to obtain possession of the property on which it has security or otherwise to enforce its security;
- (h) has any distress, execution or sequestration or other such process levied or enforced on any of its assets; or
- (i) has any proceeding taken, with respect to it in any jurisdiction to which it is subject, or any event happens in such jurisdiction that has an effect equivalent or similar to any of the events in sub-clauses (a) to (h) above.

Movement means, in the context of any given Movements Contract, each movement of Customer Rolling Stock between agreed locations which is to be performed by the Supplier thereunder, as set out in the related Commercial Particulars.

Movements Contract means a consummated agreement between the Supplier and a Customer which fully defines the terms and

conditions applicable to the performance of a defined Movement (or series of Movements), in each case comprised of:

- (a) the general provisions of these Terms & Conditions; and
- (b) the bespoke detail set out in the related Commercial Particulars, all as confirmed pursuant to an Authorisation to Proceed.

Movements Price means, in the context of any Movement or series of Movements, the applicable price set out for the performance of such Movement(s), as set out within the Commercial Particulars that form part of the Movements Contract in question.

Network or 3rd Party Issues has the meaning given to it within the definition of the term "Customer Responsible Risks".

Planned Movement means any Movement which either:

- (a) has been contracted to be performed by the Supplier on a specific date, within the terms of the related Commercial Particulars; or
- (b) has (where the relevant Movements Contract defers the identification and instruction of specific Movements for further liaison, planning and confirmation between the parties on an ongoing or *ad hoc* basis) been duly notified by the Customer and scheduled for performance in accordance with the Weekly Scheduling Process.

Railway Costs means any charges levied under Schedule 8 of the Supplier's track access contract, pursuant to Network Rail's "Delay Attribution" process.

Relevant Third Party means, in relation to any given Customer Rolling Stock, any third party which either: (i) owns; or (ii) holds any other proprietary, security or possessory interest in such Customer Rolling Stock.

Representative means, in the case of either party, the individual authorised to represent such party in the context of a given Movements Contract, as identified in the Commercial Particulars related to such Movements Contract.

Rescheduled Movement means a rescheduled Movement necessitated by the cancellation or abandonment of a Planned Movement.

ROG Company means any of the following companies, within the Rail Operations Group:

- (a) Rail Operations Group Limited;
- (b) Rail Operations (UK) Limited; or
- (c) Rail Operations (Rolling Stock Management) Limited.

Supplier means Rail Operations Group Limited, whose details are more fully set out in the Commercial Particulars.

Supplier Operating Faults has the meaning given to it within the definition of the term "Supplier Responsible Risks".

Supplier Provided Rolling Stock means, if applicable in the context of any given Movements Contract, any locomotive or other rolling stock (including e.g. barrier vehicles or translator vehicles) which may be provided or procured by the Supplier for the purposes of effecting the Movements in question (for instance if the Customer Rolling Stock comprises wagons or is otherwise unable (or not yet authorised) to operate on the network under its own power, so as to require hauling).

Supplier Responsible Risks means risks arising from, or in connection with, any of the following matters, in respect of which the Supplier shall (within the limits of liability set out herein, or in the relevant Commercial Particulars) bear the risk:

- (a) failure of, or loss or damage to, the Customer Rolling Stock and/or any Supplier Provided Rolling Stock during the performance of a Movement, solely and directly as a result of:
 - (i) driver error, or other negligent or incorrect operation by the Supplier (either of the Customer Rolling Stock itself, or of any Supplier Provided Rolling Stock which is hauling the Customer Rolling Stock);
 - (ii) the Supplier having incorrectly or inadequately coupled the Customer Rolling Stock to any Supplier Provided Rolling Stock; or
 - (iii) technical or engineering defects affecting any Supplier Provided Rolling Stock,(collectively, the **Supplier Operating Faults**);
- (b) loss or damage to any Customer or third-party property during the performance of a Movement, as a result of any Supplier Operating Fault;
- (c) death or personal injury to any person during the performance of a Movement, as a result of any Supplier Operating Fault; and
- (d) any liability to Railway Costs, where:
 - (i) under Network Rail's 'Delay Attribution' process, responsibility has (as between Network Rail and the train operator) been allocated to the train operator; AND
 - (ii) (with reference to the underlying facts and/or the 'Delay Attribution Code' which Network Rail has ascribed to the delay/cancellation in question) the proximate cause of such delay/cancellation meets the definition of a Supplier Operating Fault.

Target Date means, in the context of any Planned Movement, the time and date on which (absent any cancellation, abandonment or rescheduling) the parties intend such Movement to be performed by the Supplier (whether as set out in the Commercial Particulars, or otherwise arranged in accordance with the Weekly Scheduling Process).

Validity Period means, in the context of any commercial offer made by the Supplier, under clause 3.2, for the performance of any requested Movement(s), the relevant period for which such offer is expressed to remain valid, as set out in the related draft Commercial Particulars.

Variation means a formal written variation to the terms of any Movement Contract, which complies with the requirements of clause 10 below.

Weekly Scheduling Process means the process and timings to be observed by the Customer when requesting the performance of individual Movements, on a week-to-week basis, as set out in clause 4.1.

3. CREATION OF MOVEMENTS CONTRACTS

3.1 Composition of Movements Contracts

Each Movements Contract shall be comprised of:

- 3.1.1 the general provisions of these Terms & Conditions; and
- 3.1.2 the bespoke detail set out in the related Commercial Particulars for the Movement(s) in question, as confirmed pursuant to an Authorisation to Proceed from the Customer.

3.2 Formation of Movements Contracts

- 3.2.1 Where a Customer approaches the Supplier with a request to perform (or propose terms for the performance of) any Movement(s), the Supplier will (if it

is willing and able to perform such Movement(s)) populate a draft set of Commercial Particulars with the bespoke commercial and operational details that (together with these Terms & Conditions) describe the basis upon which the Supplier offers to undertake such Movement(s).

3.2.2 Where applicable:

- (a) the Customer shall have the opportunity to raise any questions or seek any amendments to the terms offered by the Supplier; and
- (b) to the extent the Supplier is willing to accommodate any requested amendments, it shall prepare an updated draft of the relevant Commercial Particulars, and re-issue the same to the Customer.

3.2.3 Once terms have been agreed between the parties and they are ready to formalise the Movements Contract in question:

- (a) the Supplier shall re-issue the Commercial Particulars in final form; and
- (b) request an Authorisation to Proceed from the Customer, upon the receipt of which the relevant Movements Contract will be consummated and become contractually binding.

3.3 Validity Periods

Each offer extended by the Supplier, pursuant to a draft set of Commercial Particulars, shall remain in place for its stated Validity Period, whereafter:

- 3.3.1 the offered terms will lapse; and
- 3.3.2 the Customer shall need to obtain from the Supplier either an updated or re-confirmed set of Commercial Particulars, before any Authorisation to Proceed can validly be given.

3.4 Primacy of Terms & Conditions

3.4.1 Subject only to any express amendments, supplements or qualifications contained in the related set of Commercial Particulars, these Terms & Conditions shall apply to any and all Movements undertaken by the Supplier pursuant to the terms of a Movements Contract.

3.4.2 As the applicability of these Terms & Conditions is advertised on the face of the Commercial Particulars, and a copy can be freely accessed via the weblink contained therein, the Customer's issuance of an Authorisation to Proceed shall conclusively signify and confirm:

- (a) the Customer's awareness of, and agreement to, these Terms & Conditions; and
- (b) the Customer's acceptance that these Terms & Conditions take precedence over (and apply to the exclusion of) any contrary or alternative provisions which may be referenced in any separately-produced Customer documentation (so that, for instance, if any Customer-generated purchase order purports to provide for longer payment terms than are set out in the Movements Contract, then the terms of the Movements Contract shall prevail and the wording on the face of the purchase order shall be of no force or effect).

4. SCHEDULING MOVEMENTS & THE STATUS OF TARGET DATES

4.1 Weekly Scheduling Process

The Supplier's operating week is based on a Sunday to Saturday cycle, and the cut-off for planning any Movements for 'Week B' is 12:00 noon on the Wednesday of 'Week A'.

Where a Movements Contract defers the identification and instruction of specific Movements for further liaison, planning and confirmation between the parties, on an ongoing or *ad hoc* basis, the Customer acknowledges that this **Weekly Scheduling Process** will apply and need to be adhered to.

4.2 Customer responsibilities

The Customer shall, in respect of the logistics of any Planned Movement, be responsible for:

- 4.2.1 transporting the relevant Customer Rolling Stock to the relevant location for collection, at the start of that Planned Movement;
- 4.2.2 ensuring that the Customer Rolling Stock is in the correct configuration, has a "fitness to run" certificate, and is otherwise in a condition suitable for transportation across the network;
- 4.2.3 ensuring that the relevant Customer Rolling Stock is 'released' in "*Genius*", in a timely fashion, so that the Supplier can create a valid consist in TOPS as per clause 6.3.8 below; and
- 4.2.4 the collection, onward transportation, or other applicable arrangements for the Customer Rolling Stock, upon completion of the Planned Movement by the Supplier.

4.3 Target Dates

Unless stated otherwise in the relevant Commercial Particulars, all Target Dates for the performance of Movements are acknowledged to be for achievement by the Supplier on a reasonable endeavours basis and will, in particular, be subject (amongst other things) to the availability of paths, the rights and discretions of Network Rail and the industry's overarching framework for the allocation and availability of route capacity.

4.4 Network Rail interventions

4.4.1 Customers further acknowledge that the operation of rolling stock on the UK mainline rail network is subject to the direction, instruction and terms of Network Rail, which may be changed at any time and without notice. Accordingly, the parties agree that if:

- (a) any such intervention is made by Network Rail, in accordance with the terms of the operating licence under which access to the rail network is granted; and
- (b) such intervention either:
 - (i) frustrates the Supplier's ability to perform any given Movement;
 - (ii) requires the Movement to be performed in a different way (e.g. being re-routed); or
 - (iii) increases the burden on the Supplier of performing such Movement,

then the parties will promptly liaise and work together in good faith to agree the most suitable way forward, which may include (by way of example only):

- (1) amending the manner in which the affected Movement(s) is/are to be performed (e.g. using alternative diversionary routes);
- (2) amending the Target Date, so as to reschedule the Movement for performance at another time;
- (3) amending the Movements Price (and, if relevant, any Ancillary Items Price) associated with completion of the Movement; or
- (4) cancelling the Movement altogether.

4.4.2 Without prejudice to any agreements reached between the parties under clause 4.4.1 above, neither party shall otherwise have any liability to the other for any actions instigated by a party at the direction of (or in response to any such intervening action on the part of) Network Rail.

4.5 Failure to achieve Target Dates

4.5.1 Unless stated otherwise within the relevant Commercial Particulars, the Supplier shall have no liability in the event of late completion of any Movement (nor any other failure to achieve a Target Date).

4.5.2 Where a Movements Contract does make explicit provision for the payment of liquidated damages by the Supplier, in response to any late completion of a Movement (or other failure to achieve a Target Date), then such agreed liquidated damages shall:

- (a) be deemed to represent the parties genuine pre-estimate of the likely loss or damage to be suffered by the Customer;
- (b) represent the Customer's sole and exclusive remedy in respect of any loss or damage suffered; and
- (c) upon payment, constitute a full and final discharge for any and all claims of the Customer, in connection with the late completion of the relevant Movement (or other failure to achieve the relevant Target Date).

5. CANCELLATION, ABANDONMENT AND RESCHEDULING OF PLANNED MOVEMENTS

5.1 Cancellation of Planned Movements by the Customer

5.1.1 Should the Customer wish to cancel any Planned Movement, it shall notify the Supplier to this effect as soon as is reasonably practicable, and in any event prior to such Planned Movement having been commenced.

5.1.2 Following its receipt of any such notice of cancellation, the Supplier shall not perform the Planned Movement in question and shall promptly demobilise any preparations that were otherwise being made for such Planned Movement.

5.1.3 Where a Planned Movement has been so cancelled at the Customer's request, clause 5.5 below shall apply to determine whether (and, if so, at what level) any cancellation charges will be payable by the Customer.

5.2 Inability to perform Movements on account of Customer failures

5.2.1 The Customer acknowledges that the Supplier may be forced to abandon the performance of a given Movement in the event that (without limitation):

- (a) the Customer fails to make the relevant Customer Rolling Stock available, in the appropriate

configuration, at the designated time and place for its collection, as required under clause 4.2.1 above;

- (b) the Customer fails to provide a “fitness to run” certificate for the Customer Rolling Stock, as required under clause 4.2.2 above; or
- (c) the Customer fails to ‘release’ the relevant Customer Rolling Stock in “Genius”, as required under clause 4.2.3 above;

5.2.2 In such a case (or any similar case where the Supplier is forced to abandon a Planned Movement on account of an act, omission, failure or breach on the part of the Customer), this shall be treated in the same manner as a Customer-requested cancellation, such that clause 5.5 below shall again apply to determine whether (and, if so, at what level) cancellation charges will apply.

In this scenario, given that the Customer’s failure would only become apparent when the Supplier is preparing to take possession of the Customer Rolling Stock for the purposes of the relevant Movement, the “Time of cancellation or abandonment” (for the purposes of the table in clause 5.5) shall be deemed to fall within 24 hours of the Target Date.

5.3 Suspension / termination of Movements Contract

5.3.1 If (in accordance with clauses 11.4 to 11.6 of the Terms & Conditions, the Supplier becomes entitled, and elects, to terminate or temporarily suspend its performance under a given Movements Contract, then clause 5.5 below shall apply to determine whether (and, if so, at what level) cancellation charges will apply to any resulting cancellations of Planned Movements that had been booked to take place (as the case may be):

- (a) after the date of such termination; or
- (b) during the continuance of any such temporary suspension.

In this scenario, the “Time of cancellation or abandonment” (for the purposes of the table in clause 5.5) shall be the date on which the relevant termination occurs, or the relevant suspension of services is imposed.

5.3.2 If and when any suspension of services under clause 11.5 (Supplier’s right to suspend or terminate) is subsequently lifted, any previously Planned Movements will need to be rescheduled by the Customer in accordance with clause 5.6.

5.4 Customer failure to provide purchase order coverage

5.4.1 As described in clause 7.2.1(b) below, the Supplier reserves the right to insist upon the provision of adequate purchase order coverage by a Customer, in advance of undertaking applicable Movement(s) on that Customer’s behalf.

5.4.2 While this is not a remedy that the Supplier would expect to pursue against Customers that have established and maintained a good track record for raising purchase orders and settling invoices in a timely manner, in the event that:

- (a) the Supplier *has* requested the advanced provision of purchase order coverage; and
- (b) the relevant Customer has failed to provide such purchase order coverage by the Target Date,

the Supplier does nevertheless reserve the right: (i) to cancel and not perform the Movement in question until a suitable purchase order has been received; and (ii) to apply a cancellation charge in accordance with clause 5.5 below.

In this scenario, given that the Customer’s failure to provide a purchase order would only ‘time-out’ on the Target Date, the “Time of cancellation or abandonment” (for the purposes of the table in clause 5.5) shall be within 24 hours of the Target Date.

5.5 Cancellation charges

5.5.1 In the circumstances described in clauses 5.1 to 5.4 above, cancellation charges will apply, unless the relevant cancellation or abandonment of a Planned Movement happens more than 2 weeks before the Target Date.

5.5.2 The cancellation charges applicable shall be determined on the following sliding scale, according to when the Planned Movement in question is cancelled/abandoned:

Time of cancellation or abandonment	Cancellation charges applicable
Notice given to Supplier between 14 days and 72 hours prior to Target Date	15% of the applicable Movements Price plus Any uncancellable and/or irrecoverable expenditure already incurred or committed to by the Supplier, in respect of any Ancillary Items connected to the Movement in question (capped at the corresponding Ancillary Items Price, and with the Supplier using reasonable endeavours to avoid/mitigate any such costs).
Notice given to Supplier between 72 and 48 hours prior to Target Date	50% of the applicable Movements Price plus Any uncancellable and/or irrecoverable expenditure already incurred or committed to by the Supplier, in respect of any Ancillary Items connected to the Movement in question (capped at the corresponding Ancillary Items Price, and with the Supplier using reasonable endeavours to avoid/mitigate any such costs).
Notice given to Supplier between 48 and 24 hours prior to Target Date	75% of the applicable Movements Price plus Any uncancellable and/or irrecoverable expenditure already incurred or committed to by the Supplier, in respect of

	any Ancillary Items connected to the Movement in question (capped at the corresponding Ancillary Items Price, and with the Supplier using reasonable endeavours to avoid/mitigate any such costs).
Notice given to Supplier within 24 hours of the Target Date	100% of the applicable Movements Price plus Any uncancellable and/or irrecoverable expenditure already incurred or committed to by the Supplier, in respect of any Ancillary Items connected to the Movement in question (capped at the corresponding Ancillary Items Price, and with the Supplier using reasonable endeavours to avoid/mitigate any such costs).

5.5.3 For the avoidance of doubt, cancellation charges shall not be levied by the Supplier in the circumstances contemplated in clause 4.4, where the provisions of clause 4.4.1 above shall instead apply.

5.6 Rescheduled Movements

Where a Planned Movement has been cancelled, or has had to be abandoned, the Customer may, in accordance with the Weekly Scheduling Process, look to arrange a Rescheduled Movement.

5.7 Cancellation of Movements by the Supplier

The Supplier reserves the right, in response to any unforeseen event or other contingency, to itself cancel any Planned Movement at any time. In such an event:

- 5.7.1 no cancellation charges shall apply; and
- 5.7.2 the Supplier shall make every effort to rearrange a Rescheduled Movement for an alternative date, as soon as reasonably practicable.

The Supplier shall not, however, be liable to the Customer for any losses suffered, nor any other compensation, in respect of the cancellation.

6. GENERAL SUPPLIER OBLIGATIONS

- 6.1 All Movements (and any Ancillary Items) shall be performed, provided or otherwise attended to by the Supplier in accordance with the terms of the related Movements Contract, as collectively comprised by these Terms & Conditions and the relevant Commercial Particulars.
- 6.2 Unless otherwise stated in the relevant Commercial Particulars, the following support services shall be provided by the Supplier as standard and be covered by the quoted Movements Price/Ancillary Items Price:
 - 6.2.1 real-time operational support;
 - 6.2.2 pathing and planning support;
 - 6.2.3 technical on-call support in the event of engineering issues;

- 6.2.4 creation of method statements and safe systems of work; and
- 6.2.5 operational training and briefing of train-crew and support staff.

6.3 In providing the Movements, the Supplier shall:

- 6.3.1 co-operate with the Customer in all matters relating to the Movements, and comply wherever possible (and subject to agreement of a Variation where necessary) with the reasonable instructions of the Customer;
- 6.3.2 perform the Movements with the reasonable level of skill and care to be expected in the Supplier's industry;
- 6.3.3 comply with all applicable statutory and regulatory requirements, standards or practises relating to the Movements;
- 6.3.4 use personnel who are suitably skilled, experienced and qualified to perform the tasks assigned to them;
- 6.3.5 provide any Supplier Provided Rolling Stock or other relevant equipment, tools or items as have been agreed as the responsibility of the Supplier to provide, within the Commercial Particulars that form part of the Movements Contract in question.
- 6.3.6 obtain and maintain (or enter into contracts to obtain the benefit of) any and all licences and consents which are necessary for the carrying out of the Movements, and comply with all applicable standards;
- 6.3.7 inform itself of, and observe, all applicable health and safety legislation, rules and regulations, as relevant to the performance of the Movements;
- 6.3.8 subject to the Customer complying with clause 4.2.3 above, ensure that a valid consist is created in TOPS, at least 60 minutes prior to departure of the applicable Planned Movement
- 6.3.9 notify the Customer promptly upon the Supplier becoming aware of any health, safety or environmental hazards or issues which might or do arise in relation to the performance of the Movements (including any 'near misses');
- 6.3.10 ensure that all the Supplier's employees, sub-contractors and other persons engaged by it in relation to the performance of a Movements Contract have all necessary and up to date competency certification and medical certification and receive safety and skills training in accordance with the requirements of the Movements Contract and any applicable laws and standards.

7. PRICE, PURCHASE ORDERS, INVOICING AND TERMS OF PAYMENT

7.1 Movements Price and Ancillary Items Price

- 7.1.1 The Movements Price for any given Movement (or series of Movements), together with the Ancillary Items Price for any Ancillary Items shall be as set out in the Commercial Particulars applicable to the Movements Contract in question.
- 7.1.2 Movements Prices and Ancillary Items Prices shall all be quoted as exclusive of VAT. In the event that VAT is or becomes chargeable on the relevant supply in question, then this shall be invoiced and payable in addition, at the prevailing rate in force on the date of invoice.

7.2 Purchase Orders

7.2.1 Where a given Customer’s accounts payable department employs a ‘purchase order’ system (or similar), as an administrative/governance process for the approval and validation of invoices submitted, then:

- (a) the Customer undertakes, in a timely manner, to furnish the Supplier with the appropriate purchase order(s)/purchase order number(s) required, to enable the Supplier to submit its invoice(s) in respect of relevant Movements and/or Ancillary Items, promptly upon their completion, delivery or other performance; and
- (b) should the Supplier consider such steps to be prudent or warranted (e.g. to mitigate the risk of it faithfully performing a given series of Movements, only then to encounter delay in its receipt of the corresponding purchase order(s):
 - (i) the Supplier shall be entitled to insist upon the provision of adequate purchase order coverage by the Customer, in advance of the Supplier undertaking the relevant Movement(s) (or Ancillary Item(s)); and
 - (ii) where so requested, the Customer shall provide the Supplier with such purchase order coverage.

For the avoidance of doubt, however, the Supplier shall not raise any invoice against such purchase orders until the relevant Movement(s) (or Ancillary Items) have been duly completed, delivered or otherwise performed.

7.2.2 Notwithstanding clause 7.2.1 above, the Customer – by entering into the relevant Movements Contract – expressly acknowledges and agrees that the Supplier’s contractual entitlement to issue invoices (and to have them settled in accordance with clause 7.4 below), is in no way contingent upon the Customer having first provided a corresponding purchase order (which the Customer acknowledges to be merely an internal process, that has no contractual implications for the Supplier’s rights under any Movements Contract).

7.2.3 As such, once the Supplier has issued its invoice (in the appropriate amount) for any completed Movements or Ancillary Items, then the Customer shall be obliged to settle such invoice in accordance with clause 7.4, irrespective of whether the Customer had first provided a purchase order for such amounts.

7.3 Invoicing

7.3.1 Unless stated otherwise in the relevant Commercial Particulars, the Supplier shall be entitled to submit to the Customer its invoice in respect of any given Movement or Ancillary Item, upon its completion, delivery or other performance.

7.3.2 Invoices shall provide, or be accompanied by, a reasonable description of the Movements performed, and to which such invoice relates, and the resulting calculation of the amount being invoiced.

7.3.3 In certain circumstances, however (for instance if it has any reasonable doubt as to the creditworthiness of the Customer, or where such Customer has any history of late or non-payment, or failure to provide purchase orders), the Supplier may require the Customer to place monies on account for the relevant Movements Price (or any Ancillary Items Price) in advance of the provision of the relevant services.

7.4 Payment terms

7.4.1 Unless stated otherwise in the relevant Commercial Particulars, the Customer shall make settlement of the Supplier’s invoices within thirty (30) days of the invoice date.

7.4.2 All remittances due to the Supplier shall be:

- (a) paid in pounds sterling;
- (b) transmitted to the Supplier’s relevant nominated bank account, as set out in the Commercial Particulars; and
- (c) be settled by the Customer in full, without set-off, deduction or counterclaim in respect of any sum claimed by, or payable to, the Customer for any reason whatsoever.

7.5 Late payment / non-payment

7.5.1 If the Customer fails to settle in full any invoice (or make any other payment due to the Supplier under the terms of any Movements Contract) by its due date, then:

- (a) the Supplier’s applicable rights and remedies under (without limitation):
 - (i) clause 11.5 (*Supplier’s right to suspend or terminate*); and
 - (ii) clause 5.3 (*Suspension / termination of Movements Contract*) above,
 shall apply;
- (b) all current invoices then in issue from the Supplier to the Customer shall immediately fall due for payment, without the need for prior formal notice; and
- (c) the Customer shall become liable to the Supplier for:
 - (i) default interest, in accordance with the Late Payment of Commercial Debts (Interest) Act 1998, on all overdue amounts, calculated at eight percentage point per annum (8% p.a.) above the statutory interest rate published by the Bank of England, and
 - (ii) administration fees as follows:

Invoice Amount	Administration Fee
Up to £999.99	£40 per invoice
£1,000 - £9,999.99	£70 per invoice
Over £10,000.00	£100 per invoice

8. RISK ALLOCATIONS, LIABILITIES AND INDEMNITIES

8.1 Supplier Responsible Risks

8.1.1 As between the parties, and subject to the limitations on liability set out in clause 8.5 below, or in the relevant Commercial Particulars, the Supplier shall be liable in respect of any loss or damage (including loss or damage suffered by or occasioned to third parties) to the extent that the same arises from, or in connection with, any of the Supplier Responsible Risks.

8.1.2 Subject always to the limitations on liability set out in clause 8.5 below, or in the relevant Commercial

Particulars, the Supplier shall indemnify and hold the Customer harmless against any liabilities suffered by or claimed against the Customer in respect of:

- (a) loss or damage to the Customer Rolling Stock during the performance of a Movement, as a result of a Supplier Operating Fault;
- (b) loss or damage to any other Customer property (i.e. other than the Customer Rolling Stock) or third-party property, during the performance of a Movement, as a result of a Supplier Operating Fault; and/or
- (c) death or personal injury to any person during the performance of a Movement, as a result of a Supplier Operating Fault or other negligence on the part of the Supplier.

8.2 Customer Responsible Risks

8.2.1 As between the parties, the Customer shall be liable in respect of any loss or damage (including loss or damage suffered by or occasioned to third parties) to the extent that the same arises from, or in connection with, any of the Customer Responsible Risks.

8.2.2 The Customer shall fully and effectively indemnify and hold the Supplier harmless against any liabilities suffered by or claimed against the Supplier in respect of:

- (a) loss or damage to:
 - (i) the Customer Rolling Stock;
 - (ii) the Supplier Provided Rolling Stock; and/or
 - (iii) any other Supplier property (besides the Supplier Provided Rolling Stock),during the performance of a Movement, as a result of a Customer Fault;
- (b) loss or damage to the Customer Rolling Stock during the performance of a Movement, as a result of any Network or 3rd Party Issues;
- (c) loss or damage to any third-party property during the performance of a Movement, as a result of either:
 - (i) a Customer Fault; or
 - (ii) any Network or 3rd Party Issues; and
- (d) death or personal injury to any person during the performance of a Movement, as a result of either:
 - (i) a Customer Fault; or
 - (ii) any Network or 3rd Party Issues.

8.3 Additional indemnities

8.3.1 Claims by 3rd party owners of Customer Rolling Stock

Where the Customer Rolling Stock to which a Movements Contract pertains is not owned by the Customer itself, the Customer:

- (a) warrants and represents that it has obtained the informed consent and authority of all Relevant Third Parties to enter into the Movements Contract in question, on its stated terms (including all allocations of risk, and all limitations or exclusions of liability which are set out therein, on the part of the Supplier);

- (b) shall procure that the Supplier suffers no separate or additional liability to any Relevant Third Party for any loss or damage to the Customer Rolling Stock (howsoever caused), beyond the limit of the Supplier's liability to the Customer under the applicable Movements Contract; and

- (c) shall fully and effectively indemnify the Supplier against any claims raised or asserted by or on behalf of any such Relevant Third Party.

8.3.2 Liabilities in excess of agreed limitations

The Customer shall (notwithstanding any negligent act or omission, breach, failure or other culpability on the part of the Supplier) additionally indemnify and hold the Supplier harmless against any costs, claims, charges or other liabilities that may be imposed on or claimed against the Supplier, to the extent that either:

- (a) such costs, claims, charges or other liabilities exceed the agreed limitations on the Supplier's liability, as set out in the applicable Movements Contract; or
- (b) the Supplier has expressly excluded any liability to such costs, claims, charges or other liabilities under the applicable Movements Contract.

8.4 Railway Costs and Delay Attribution

If:

8.4.1 something should occur during the performance of a Movement which results in the delay to, or cancellation of, a service operated by a third party; and

8.4.2 in consequence, the Supplier becomes liable to Network Rail for Railway Costs,

then (as between the Supplier and the Customer):

- where (with reference to the underlying facts and/or the 'Delay Attribution Code' which Network Rail has ascribed to the delay/cancellation in question) the proximate cause of such delay/cancellation is one of the Supplier Operating Faults (such that the matter falls within limb (d) of the "Supplier Responsible Risks" definition), the Supplier shall be responsible for bearing such Railway Costs, and shall have no recourse to the Customer for any contribution towards the same; and
- where (with reference to the underlying facts and/or the 'Delay Attribution Code' which Network Rail has ascribed to the delay/cancellation in question) the proximate cause of such delay/cancellation is not one of the Supplier Operating Faults (so that the matter falls within limb (e) of the "Customer Responsible Risks" definition), the Customer shall:
 - be responsible for bearing such Railway Costs;
 - promptly reimburse, or put the Supplier in funds for, such Railway Costs on a full indemnity basis; and
 - make additional payment to the Supplier of an administration fee in an amount equal to ten per cent (10%) of such Railway Costs.

8.5 Limitation of liability and consequential losses

8.5.1 The liability of the Supplier to the Customer under any Movements Contract shall be limited as described in the following table:

Supplier liability	Limit of liability
Loss or damage to Customer Rolling Stock as a result of a Supplier Operating Fault (per clause 8.1.2(a) above)	£10,000,000 per occurrence
Loss or damage to other Customer property (not comprising the Customer Rolling Stock), or to any third-party property as a result of a Supplier Operating Fault (per clause 8.1.2(b) above)	£10,000,000 per occurrence
Death or personal injury to any person, as a result of a Supplier Operating Fault or other Supplier negligence (per clause 8.1.2(d) above)	Unlimited
Any other breach or negligence on the part of the Supplier in the course of performing a Movement (liability for which has not been excluded outright)	The applicable Movements Price for such Movement

8.5.2 Except within the above limits, the Customer:

- (a) waives any and all recourse it may have against the Supplier and/or its insurers in respect of any Supplier Responsible Risks; and
- (b) warrants and undertakes that its insurances contain (and will, upon any renewal or replacement continue to contain) an equivalent waiver of subrogation from its insurers.

8.5.3 Notwithstanding anything express or implied to the contrary in these Terms & Conditions:

- (a) nothing in these Terms & Conditions shall apply to limit or exclude any party's liability in respect of fraud, fraudulent misrepresentation or any other matter which cannot, under applicable law, be lawfully limited or excluded; and
- (b) the Supplier shall in no circumstances be liable for any consequential or indirect loss, which without limitation to the generality of the foregoing shall be defined to include any loss of profit, loss of contracts, loss of savings, or loss of revenue.

8.6 Reasonableness of Risk Profile

8.6.1 In this clause 8.6:

- (a) the agreed limitations on the Supplier's liability (whether under clause 8.5 above or as set out within any relevant Commercial Particulars);
- (b) all exclusions of risk, on the part of the Supplier;
- (c) the delineation drawn between those matters which constitute Customer Responsible Risks versus those which constitute Supplier Responsible Risks; and
- (d) any other provisions of such Movements Contract which apply to allocate responsibility for certain

identified risks, as between the Customer and the Supplier,

are collectively referred to as the **Risk Profile** for the Movements Contract in question.

8.6.2 By entering into any given Movements Contract, the Customer expressly acknowledges and agrees that:

- (a) it has been afforded all reasonable opportunity to review, take advice on and (if thought necessary) seek amendments or qualifications to, the terms applicable to that Movements Contract, including its embedded Risk Profile;
- (b) the Risk Profile has been calibrated with specific reference to what is commercially sustainable for the Supplier, in the context of the services it provides and the Movements Price it is able to charge for those services;
- (c) had the Customer sought to negotiate a higher level of risk assumption by the Supplier than is actually comprised in the Risk Profile, then the Supplier would have had to either:
 - (i) decline to enter into the Movements Contract altogether; or
 - (ii) increase its pricing, to compensate it for that additional assumption of risk; and
- (d) accordingly, in giving its Authorisation to Proceed with the Movements Contract in question, the Customer expressly acknowledges and agrees that:
 - (i) the Risk Profile is fair and reasonable in all the circumstances; and
 - (ii) it has, in the interests of securing the Supplier's services at the Movements Price quoted, knowingly and willingly:
 - (A) assumed the risks and liabilities allocated to it under such Movements Contract; and
 - (B) accepted the various limitations and exclusions that apply to the Supplier's risks and liabilities under such Movements Contract.

8.7 Contest rights

8.7.1 If any third party should raise a claim (an **Indemnified Claim**) against one of the parties, in circumstances where the losses arising from such claim would be the subject of an indemnity, either:

- (a) from the Supplier under clause 8.1.2; or
- (b) from the Customer under clause 8.2.2,

then the relevant party (the **Indemnifying Party**) having the obligation to indemnify the party suffering loss (the **Indemnified Party**) shall be entitled to take (at its own cost) such actions as it reasonably deems fit to defend, avoid or reduce any liability arising in respect of the Indemnified Claim, or to take action against any third party in respect of such Indemnified Claim.

8.7.2 In this regard, the Indemnifying Party shall, subject to clause 8.7.5 below, be entitled to take such actions in the name of the Indemnified Party, if either:

- (a) it is not possible for it to do so in its own name; or

(b) it is not possible for the Indemnified Party to assign its rights to the Indemnifying Party,

but subject always to: (i) the Indemnified Party being indemnified and secured to its satisfaction by the Indemnifying Party against any actual and potential losses, costs, damages and expenses; and (ii) the Indemnifying Party consulting with the Indemnified Party and keeping the Indemnified Party informed of the steps being taken in respect of the Indemnified Claim and as to the progress of any action.

8.7.3 If the Indemnifying Party shall have assumed the defence of any claim, the Indemnifying Party shall only agree settlement of such claim if:

- (a) the Indemnifying Party receives the Indemnified Party's written consent to the settlement;
- (b) there is no admission of liability on the part of the Indemnified Party in the related settlement agreement; and
- (c) such settlement is on terms that it is full and final and the Indemnified Party receives an unconditional release and discharge from such claim.

8.7.4 If any actions are to be taken in the name of the Indemnified Party in the manner contemplated by clause 8.7.2, the Indemnifying Party shall consult with the Indemnified Party in advance of taking any such action and shall take account of such concerns as the Indemnified Party may raise with respect to any prejudicial effect of such action upon the business or reputation of the Indemnified Party.

8.7.5 Notwithstanding clause 8.7.2 above, the Indemnifying Party will not be entitled to take action in the name of the Indemnified Party if the Indemnified Party considers that such an approach would be prejudicial to either:

- (a) the business or reputation of the Indemnified Party; or
- (b) the defence of the claim itself.

8.7.6 If the Indemnifying Party does not intend to exercise its rights, under this clause 8.7, to take any action in respect of any Indemnified Claim, then it shall notify the Indemnified Party to that effect, in sufficient time for the Indemnified Party to respond to the Indemnified Claim within any applicable time limit. The Indemnified Party shall then be entitled to settle or defend such claim, demand or action at its discretion, and the Indemnifying Party shall indemnify it in respect of all costs and expenses (including legal fees) reasonably and properly incurred by it in connection therewith.

8.7.7 Nothing contained in this clause 8.7 shall prevent or hinder the Indemnified Party from paying or settling any Indemnified Claim (and doing so without prejudice to the indemnity from which it benefits), in circumstances where:

- (a) such payment or settlement is required to comply with any final court judgment, order or declaration (or any undertaking required by any court to be given); or
- (b) the failure to make such payment or come to such settlement could imminently result in:
 - (i) any criminal liability of the Indemnified Party; or

(ii) any attachment of any asset of the Indemnified Party; or

(iii) the imposition of any civil penalty or regulatory or administrative sanctions or fines on the Indemnified Party.

8.8 Assistance with claims arising from Network or 3rd Party Issues

8.8.1 This clause 8.8 applies:

(a) in the event of any loss or damage being sustained to:

- (i) any Customer Rolling Stock; and/or
- (ii) any other Customer property (not comprising the Customer Rolling Stock), or any third party property,

during the performance of a Movement; *but*

(b) where such loss or damage has been caused by any Network or 3rd Party Issue, such as to constitute a Customer Responsible Risk.

8.8.2 Where this clause 8.8 applies:

(a) the Supplier shall offer all reasonable assistance to the Customer, the owner of the affected Customer Rolling Stock (if not the Customer) and their respective insurers to facilitate the submission and prosecution of any available claims (be they against Network Rail, any other infrastructure owner, any implicated third party, or under any relevant insurances); and

(b) such assistance shall include the provision of information and the relaying of claims and associated correspondence, but the Supplier shall have no obligation to advise upon or prepare any such claim.

In particular, as the relevant loss or damage in these circumstances would constitute a Customer Responsible Risk, the Supplier shall have no liability itself in respect of the loss or damage in question, nor in respect of any under-recovery, or failure to recover, any amount from the applicable infrastructure owner, third party or insurers.

9. INSURANCE

9.1 Liability insurances

9.1.1 Each of the Customer and the Supplier shall effect and maintain, with reputable insurers, a policy of third-party liability insurance covering legal liability for:

- (a) death or personal injury to any person; and
- (b) accidental loss of or damage to the property of third parties,

caused by or arising directly or indirectly as a result of that party's performance, non-performance, acts or omissions in connection with any Movements Contract (the **Liability Insurances**).

9.1.2 The Liability Insurances of each party shall:

- (a) in the case of the Supplier, be of a scope sufficient to cover all such third-party liabilities as would constitute Supplier Responsible Risks; and
- (b) in the case of the Customer, be of a scope sufficient to cover all such third-party liabilities as would constitute Customer Responsible Risks,

and in each case provide such level of coverage as is appropriate to the nature and potential quantum of that party's liabilities under the relevant Movements Contract (taking into account any expressed limitation on such liabilities).

9.2 Property damage insurance

9.2.1 Customer Rolling Stock – Supplier Operating Faults

The Supplier shall effect and maintain property insurances in respect of risks of loss or damage to the Customer Rolling Stock which arise from any Supplier Operating Fault. In line with the corresponding limitation on the Supplier's liability under clause 8.5.1, such insurances shall be maintained (with reputable insurers) in an amount no less than £10,000,000 per occurrence.

9.2.2 Customer Rolling Stock – other risks

As between the Supplier and the Customer, the Customer acknowledges and confirms that:

- (a) save for the risks associated with any Supplier Operating Fault, it shall be exclusively responsible for effecting and maintaining all relevant property damage insurances in respect of any other risks of loss or damage to the Customer Rolling Stock; and
- (b) such insurances shall include a waiver of recourse against the Supplier (and its insurers) for all matters other than Supplier Operating Faults.

9.3 Insurance Claims

The Supplier and the Customer shall each, in the context of any given Movements Contract:

9.3.1 notify the other promptly upon becoming aware of:

- (a) any loss, damage or other liability arising or being sustained which might become the subject of an insurance claim; or
- (b) any insurance claim being made by it or any third party; and

9.3.2 act reasonably and cooperate in good faith with the other in relation to the preparation and submission of any relevant insurances claims, including the sharing of any information held by such party which would of relevance or assistance to the other in preparing or submitting any such claim.

10. VARIATIONS

- 10.1 At the time of creating any Movements Contract, any desired amendments, supplements or qualifications to these Terms & Conditions must be agreed in writing as part of the relevant Commercial Particulars and shall only apply in the context of that Movements Contract (and not to any other Movements Contracts which may then be in place, or later be put in place, between the two parties).
- 10.2 The Supplier's agreement to any such amendments, supplements or qualifications to these Terms & Conditions in the context of one Movements Contract shall not establish any precedent or course of dealings for the purposes of any future Movement Contracts.
- 10.3 Once a Movements Contract is in force, no amendments thereto shall be valid or binding on either party, unless the same are agreed in writing and signed by the parties respective Representatives. Any such Variation must clearly identify the

specific Movements Contract(s) to which the relevant amendments are intended to apply.

11. SUSPENSION AND TERMINATION

11.1 Supplier Events of Default

The following events shall constitute **Supplier Events of Default**, for the purposes of this clause 11:

- 11.1.1 the Supplier commits a material breach of its obligations under a Movements Contract which either:
 - (a) is incapable of remedy; or
 - (b) while capable of remedy, is not remedied within thirty (30) days of a notice from the Customer requiring such remedy;
- 11.1.2 a Supplier Operating Fault is committed which occasions loss to the Customer;
- 11.1.3 non-payment by the Supplier of any sum owing to the Customer, within fourteen (14) days of its due date for payment;
- 11.1.4 an Insolvency Event occurs in respect of the Supplier; or
- 11.1.5 the Supplier ceases, or threatens to cease, to carry on all or a substantial part of its business.

11.2 Customer termination right

If, in the context of any given Movements Contract, a Supplier Event of Default should occur, the Customer shall be entitled to serve notice on the Supplier to terminate that Movements Contract forthwith.

11.3 Consequences of termination for Supplier default

If the Customer terminates any Movements Contract in accordance with clause 11.2 above:

- 11.3.1 all currently Planned Movements will automatically be cancelled, without further act;
- 11.3.2 no cancellation charges will apply to such cancellations under clause 5.5;
- 11.3.3 the Supplier shall make available for collection by (or on behalf of) the Customer, any Customer Rolling Stock which is, at the time of the termination, within the custody or control of the Supplier;
- 11.3.4 the Supplier shall remain entitled to raise a closing invoice in respect of:
 - (a) any Movements and/or Ancillary Items successfully completed, provided or otherwise performed by the Supplier, under the relevant Movements Contract, up to the date of its termination; and/or
 - (b) any other sums accrued and owing from the Customer to the Supplier under the relevant Movements Contract, up to the date of its termination,and the Customer shall remain obliged to settle such closing invoice in accordance with clause 7;
- 11.3.5 the termination shall be without prejudice to any rights and/or remedies of the parties which have accrued under the relevant Movements Contract, up to the date of its termination;
- 11.3.6 where the Customer has terminated the Movements Contract in response to the occurrence of a Supplier Operating Fault, the Customer's wider rights of recourse under the Movements Contract shall survive such

termination, to the extent required to allow for its recovery of any resulting losses (within the applicable limits of liability); and

- 11.3.7 save as described above, neither party shall have any other continuing obligation to the other, under the terminated Movements Contract.

11.4 Customer Events of Default

The following events shall constitute **Customer Events of Default**, for the purposes of this clause 11:

- 11.4.1 non-payment by the Customer of any sum owing to the Supplier, by its due date for payment;
- 11.4.2 the Customer commits a material breach of its obligations under a Movements Contract which either:
- (a) is incapable of remedy; or
 - (b) while capable of remedy, is not remedied within thirty (30) days of a notice from the Customer requiring such remedy;
- 11.4.3 an Insolvency Event occurs in respect of the Customer; or
- 11.4.4 the Customer ceases, or threatens to cease, to carry on all or a substantial part of its business.

11.5 Supplier's right to suspend or terminate

11.5.1 If, in the context of any given Movements Contract, a Customer Event of Default should occur, the Supplier shall be entitled to serve notice on the Customer, either:

- (a) temporarily suspending its performance under that Movements Contract; or
- (b) to immediately terminate:
 - (i) that Movements Contract; and
 - (ii) any other subsisting Movements Contracts in place between it and the Customer.

11.5.2 Where the Supplier elects to serve notice temporarily suspending its performance under a given Movements Contract:

- (a) it shall specify:
 - (i) the action required of the Customer to satisfactorily remedy the applicable Customer Event of Default, so as allow the suspension to be lifted; and
 - (ii) the timescale in which the Supplier requires such remedial action to be taken by the Customer before the matter is further escalated (including, if the Supplier thinks fit, by the service of a further notice to terminate the Movements Contract outright); and
- (b) any Planned Movements which had been scheduled to take place during the period of suspension shall be cancelled, with clauses 5.3 and 5.5 applying to determine the resulting cancellation charges that will apply.

11.5.3 Where any temporary suspension is lifted, any Planned Movements which had previously been scheduled for dates falling after that lifting of the suspension shall (bearing in mind that the Supplier will also have suspended any associated preparations for such Planned Movements) be subject to re-confirmation by the

Supplier and may require re-scheduling in accordance with the Weekly Scheduling Process.

11.6 Consequences of termination for Customer default

If the Supplier terminates any Movements Contract in accordance with clause 11.5 above:

- 11.6.1 all currently Planned Movements will automatically be cancelled, with clauses 5.3 and 5.5 applying to determine the resulting cancellation charges that will apply;
- 11.6.2 the Supplier shall make available for collection by (or on behalf of) the Customer, any Customer Rolling Stock which is, at the time of the termination, within the custody or control of the Supplier;
- 11.6.3 the Supplier shall be entitled to invoice the Customer in respect of:
- (a) any Movements and/or Ancillary Items successfully completed, provided or otherwise performed by the Supplier, under the relevant Movements Contract, up to the date of its termination; and/or
 - (b) any other sums accrued and owing from the Customer to the Supplier under the relevant Movements Contract, up to the date of its termination,

and the Customer shall be obliged to settle any such invoice(s) in accordance with clause 7;

11.6.4 the termination shall be without prejudice to any rights and/or remedies of the parties which have accrued under the relevant Movements Contract, up to the date of its termination; and

11.6.5 save as described above, neither party shall have any other continuing obligation to the other, under the terminated Movements Contract.

12. ASSIGNMENT AND SUB-CONTRACTING

12.1 Subject to clause 12.2 below, neither party may assign or transfer any of its rights or obligations under any Movements Contract, in full or in part, without the prior written agreement of the other party, such agreement not to be unreasonably withheld or delayed.

12.2 The Supplier may assign or transfer all, or any part of, its rights and/or obligations under a Movements Contract to another ROG Company, without requiring the consent of the Customer. In such a scenario, the Customer shall co-operate with the Supplier in signing such relevant documentation as may reasonably be requested of it, to effect or perfect any such assignment or transfer.

12.3 The Supplier may sub-contract the performance of all, or any part of, its obligations under a Movements Contract to any appropriately skilled and licenced third party, provided always that the Supplier remains primarily liable to the Customer for the performance of such obligations.

13. CONFIDENTIALITY

13.1 The parties shall keep (and procure to be kept) secret and confidential all Confidential Information disclosed or obtained as a result of the relationship of the parties under the Movements Contract (including during its period of negotiation) and shall not use nor disclose the same, save for the purposes of the proper performance of the Contract or with the prior written consent of the other.

- 13.2 The obligations of confidentiality under clause 13.1 above do not extend to any Confidential Information which:
- 13.2.1 is or becomes generally available to the public other than as a result of a breach of this clause 13;
 - 13.2.2 was in its possession, free from any obligations of confidentiality, prior to the Movements Contract being entered into;
 - 13.2.3 the parties agree in writing may be disclosed;
 - 13.2.4 is required to be disclosed under any applicable law, or by order of any court, governmental body or authority of competent jurisdiction.
- 13.3 Each party shall take appropriate steps to ensure compliance with this clause 13 by its Representatives, officers, employees and any sub-contractors.

14. NOTICES

- 14.1 Routine correspondence in relation to the day-to-day organisation, discussion and operation of a Movements Contract may proceed in such manner as the parties' Representatives think fit. However, more formal or legal notices under, or in connection with, any Movements Contract (e.g. notices of dispute or serious dissatisfaction; notices of termination or suspension etc.) shall be sent by letter or email to the nominated address details for the recipient party in question. Such notices are to be served in English, in writing, and shall be considered received as follows:
- 14.1.1 where sent by registered letter or postage, when it is delivered; and/or
 - 14.1.2 where sent by email, when it is received in legible form to the nominated email account of the recipient.
- 14.2 In these regards, the respective contact details for the Supplier and the Customer shall (subject to any subsequent notification to the contrary) be as set out in the relevant Commercial Particulars.

15. FORCE MAJEURE

- 15.1 Neither party shall be liable to the other for a failure to perform its obligations in the event of an occurrence attributable to a Force Majeure Event. The Party that is unable to fulfil its obligations shall notify the other Party as soon as reasonably practicable and, where reasonably possible, shall provide an estimate as to the likely duration for which it will be affected by the Force Majeure Event in question.
- 15.2 For the purposes of this clause 15, a **Force Majeure Event** shall include:
- 15.2.1 any reasonably unforeseeable or unavoidable events such as natural disasters (e.g. flood, fire), riot, war, epidemic or any other circumstances outside the direct control of the affected parties;
 - 15.2.2 vehicles being unable to travel on all or part of the planned route, due to works, maintenance or other intervening incidents that were not known of when the Movement in question was first scheduled;
 - 15.2.3 organised strikes or other industrial action taken by rail companies, infrastructure operators or others within the rail sector and/or at sites which affect a party's reasonable ability to perform; and
 - 15.2.4 rail traffic problems or incidents not caused by the party seeking relief.

- 15.3 Where a Force Majeure Event occurs, each party shall nevertheless use all reasonable endeavours to fulfil its obligations to the other party, to mitigate the impact or duration of the Force Majeure Event and/or to find alternative ways of achieving their goals under the Movements Contract in question (where relevant, by considering possible Variations).
- 15.4 Should any Planned Movements need to be cancelled or abandoned in response to a Force Majeure Event:
- 15.4.1 no cancellation charges will apply to such cancellation/abandonment under clause 5.5; and
 - 15.4.2 once the impacts of the Force Majeure Event have dissipated, any Planned Movements which had previously been scheduled for dates falling after such cessation of the Force Majeure Event, shall be subject to re-confirmation by the Supplier, and may require re-scheduling in accordance with the Weekly Scheduling Process.

16. MISCELLANEOUS

16.1 Entire agreement

- 16.1.1 In the context of any given Movement Agreement, these Terms & Conditions, together with the related Commercial Particulars (and any subsequent Variations agreed in accordance with clause 10), shall constitute the entire agreement and understanding of the parties in respect of the subject matter addressed therein, and supersede any previous correspondence, heads of terms or agreements between the parties relating to such subject matter.
- 16.1.2 In giving its Authorisation to Proceed in respect of any Movements Contract, the Customer acknowledges that such Movements Contract has not been entered into wholly or partly in reliance on, nor has the Customer been given, any warranty, statement, promise or representation by the Supplier, other than as expressly set out within that Movements Contract.

16.2 Exclusive remedies

The respective rights, remedies and liabilities of the parties, as set out in any given Movements Contract, shall comprise their sole and exclusive rights, remedies and liabilities arising out of or in connection with the subject matter of that Movements Contract and shall apply to the exclusion of any other rights, remedies or liabilities that might be available at law, custom and practice or otherwise, whether express or implied.

16.3 Severability

If any provision of any Movements Contract should be held to be, or become, void or otherwise unenforceable for any reason under applicable law, then such provision shall be deemed omitted from the Movements Contract in question, and the validity and/or enforceability of the remaining provisions of the Movements Contract shall not be in any way affected or prejudiced as a result of that omission.

16.4 No implied waivers

16.4.1 No right or remedy of either party under a Movements Contract shall be diminished, waived or extinguished by the granting of any indulgence, forbearance or extension of time granted by that party to the other, nor by any failure of, or delay in ascertaining or exercising any such rights or remedies.

16.4.2 Any waiver of any breach of a Movements Contract shall be in writing, and the waiver by either party of any breach of the Movements Contract shall not prevent the subsequent enforcement of that provision and shall not be deemed to be (or require) a waiver of any subsequent breach of that or any other provision.

16.5 Compliance with applicable laws

The parties shall comply with their obligations at law, including without limitation all applicable anti-bribery, anti-slavery, taxation and data protection legislation and regulation.

17. DISPUTE RESOLUTION

17.1 In the event of any dispute or difference arising between the parties under any given Movements Contract, which cannot be resolved between their Representatives at a project level, the matter will be escalated to the senior management or directors of the parties.

17.2 If the senior management or directors remain unable to resolve the matter to the parties' mutual satisfaction, the dispute may be referred for mediation or other process of alternative dispute resolution.

17.3 Notwithstanding the foregoing, neither party shall be prevented from referring a dispute to the courts of England.

18. GOVERNING LAW AND JURISDICTION

Each Movements Contract and all matters (including, without limitation, any contractual or non-contractual obligations) arising out of or in connection with a Movements Contract, its subject matter or formation, shall be governed by and construed in accordance with the laws of England.