

HEAVY HAUL RAIL LIMITED

RAIL SERVICES STANDARD TERMS AND CONDITIONS

1 DEFINITIONS AND INTERPRETATION

1.1 In these Conditions the following words and expressions have the following meanings:

Affiliate means any entity that directly or indirectly controls, is controlled by, or is under common control with a party, where "control" means ownership of more than 50% of the voting shares or equivalent ownership interest in such entity;

Applicable Laws means the laws of England and Wales and any other laws or regulations, regulatory, statutory or governmental requirements, policies, guidelines or industry codes which apply to the rights and obligations of the Parties under the Contract;

Business Day means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business;

Charges means the charges payable by the Customer for provision of the Services as set out in the Commercial Terms (as may be varied in accordance with these Conditions from time to time);

Claim means any claim, action, proceeding, demand or allegation or any threatened claim, action, proceeding, demand or allegation of whatever nature, whether in contract, tort (including negligence) or otherwise;

Commencement Date means the date expressly identified as such in the Commercial Terms or (if earlier) the date on which the Services first commence in accordance with Condition 3.4;

Commercial Terms means the documents entered into between Heavy Haul Rail and the relevant customer which set out the commercial terms agreed between the parties for the provision of the Services and which incorporate by reference these Conditions;

Customer Equipment means any wagons, locomotives, containers, rolling stock, track infrastructure, plant, machinery or other equipment owned, operated or controlled by the Customer in respect of which Heavy Haul Rail agrees to perform the Services;

Equipment means any wagons, locomotives, containers, rolling stock, track infrastructure, plant, machinery or other equipment in respect of which Heavy Haul Rail performs the Services, whether owned by Heavy Haul Rail, the Customer or a third party;

Service Location means the location(s) at which Heavy Haul Rail is to perform the Services as set out in the Commercial Terms, which may include Heavy Haul Rail's premises, the Customer's premises, private sidings, or other locations agreed between the parties;

Service Specification means the specification for the Services as set out in the Commercial Terms and any appendices thereto;

Conditions means these conditions for rail services;

Confidential Information means all non-public business, technical, operational, financial, and commercial information disclosed by one party (the Supplying Party) to the other (the Receiving Party) in any form, whether before, during or after provision of the Services;

Contract means the contract between Heavy Haul Rail and the Customer for the provision of Services, which includes any Commercial Terms agreed by the parties and these Conditions which are incorporated by reference;

Customer means the person(s), firm or company named in the Commercial Terms who purchases the Services from Heavy Haul Rail;

Demand Surcharge means a surcharge that Heavy Haul Rail is entitled to apply at a rate to be communicated in advance to the Customer during times of elevated shipping volumes, heightened demand for capacity, and other strains on the network;

Expiry Date means the date expressly identified as such in the Commercial Terms or (if earlier) the date on which the Services end in accordance with Condition 18;

Force Majeure Event means any circumstance beyond the reasonable control of either party including strikes, industrial action, acts of God, adverse weather, natural catastrophes, war, terrorism, civil commotion, government action, accident, fire, flood, epidemic, pandemic, IT disruption (excluding Heavy Haul Rail's own systems unless caused by external cyber-attack), and failure of third party infrastructure (including Network Rail);

Heavy Haul Rail means Heavy Haul Rail Limited;

Losses means all losses, liabilities, damages, costs and expenses (including legal fees and disbursements);

Performance Measures means the key performance indicators or other measures expressly identified as such in the Commercial Terms (if any);

Private Siding means a railway or siding not owned or leased by or to Heavy Haul Rail;

Railway Industry Standards means applicable railway industry codes, standards and regulations in force from time to time;

Services means the service(s) to be provided by Heavy Haul Rail including wagon repair and maintenance, locomotive repair and maintenance, track repair and maintenance, wagon and locomotive storage, engineering services, and any other rail services Heavy Haul Rail has expressly agreed to provide pursuant to the Contract;

Subsidiary shall have the meaning given in section 1159 Companies Act 2006 and include parent and subsidiary undertakings as defined in section 1162 Companies Act 2006;

Term shall have the meaning given to it in Condition 3.4; and

2 STANDARD RULES OF CONTRACTUAL INTERPRETATION APPLY TO THESE CONDITIONS. HEADINGS ARE FOR CONVENIENCE ONLY.

3 BASIS OF CONTRACT AND PRIORITY

3.1 The Services to be provided by Heavy Haul Rail shall be as set out in the Contract and the Service Specification.

- 3.2 Unless otherwise agreed in writing by Heavy Haul Rail, the Customer's instruction to Heavy Haul Rail to commence the Services or the delivery of Equipment to Heavy Haul Rail for the performance of Services shall be deemed as acceptance of these Conditions by the Customer (notwithstanding that the necessary contractual documentation may not yet have been signed by the Customer).
- 3.3 The Contract will be subject to these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document whatsoever and whenever).
- 3.4 The Contract shall commence on the Commencement Date and shall continue in full force and effect and shall expire on the Expiry Date which is specified in the Commercial Terms (subject to any extension which may be agreed between the parties in writing) or until terminated in accordance with the Contract ("**the Term**").
- 3.5 In the event of any conflict or inconsistency between a term of these Conditions, and a term of the Commercial Terms, the relevant term of the Commercial Terms (or its appendices, as applicable) shall take precedence and apply.

4 HEAVY HAUL RAIL'S OBLIGATIONS

- 4.1 Heavy Haul Rail shall during the Term and in consideration of payment of the Charges by the Customer:
- (a) perform the Services in accordance with the Service Specification and these Conditions, exercising reasonable skill and care;
 - (b) obtain, at its own cost, all necessary licences, permissions, consents, clearances and/or registrations as may be required in connection with the provision of the Services;
 - (c) provide the Services in accordance with Applicable Laws and applicable Railway Industry Standards.
- 4.2 Any time specified in the Commercial Terms for the completion or delivery of the Services is provided as an estimate only and time for completion is not of the essence. Heavy Haul Rail shall not be liable for delays caused by Force Majeure Events, Network Rail infrastructure issues, third party failures, unavailability of parts or materials, or Customer breach. For delays within Heavy Haul Rail's reasonable control exceeding 48 hours beyond the estimated completion time, liability shall be limited to service credits as may be specified in the Commercial Terms.
- 4.3 Heavy Haul Rail may sub-contract any part(s) or the whole of the Services in accordance with Condition 25.1.
- 4.4 The Services do not include the provision of professional, engineering, regulatory, safety or consultancy advice. Any operational guidance or assistance provided by Heavy Haul Rail is provided for information only and the Customer remains responsible for all decisions, compliance and risk assessments relating to the Equipment and the Services.

5 SERVICE STANDARDS AND WARRANTIES

- 5.1 Heavy Haul Rail warrants that:
- (a) the Services will be performed with reasonable skill and care;
 - (b) the Services will be performed in accordance with the Service Specification; and
 - (c) Heavy Haul Rail's personnel performing the Services will be appropriately qualified and competent.
- 5.2 Heavy Haul Rail does not warrant that:
- (a) the Services will remedy all defects in the Equipment;
 - (b) Equipment will be fit for any particular purpose following completion of the Services; or
 - (c) the Services will extend the working life of Equipment by any particular period.
- 5.3 The Customer acknowledges that the condition and performance of Equipment following completion of the Services will depend on factors outside Heavy Haul Rail's control, including the age and prior maintenance history of the Equipment, the Customer's use of the Equipment, and compliance with manufacturer recommendations.
- 5.4 Heavy Haul Rail's liability for breach of the warranties in Condition 5.1 is limited to re-performance of the defective Services at no additional charge to the Customer, provided the Customer notifies Heavy Haul Rail of the defect within 28 days of completion of the Services. This remedy is the Customer's sole and exclusive remedy for breach of warranty.

6 CUSTOMER'S OBLIGATIONS

- 6.1 The Customer warrants and represents that:
- (a) it has authority to enter into this Contract and accept these Conditions on behalf of all persons with an interest in the Equipment;
 - (b) all information relating to the Equipment and the Services is complete, true and accurate;
 - (c) where the Customer provides Equipment for the Services, such Equipment is safe for Heavy Haul Rail's personnel to work on and complies with all Applicable Laws and Railway Industry Standards.
- 6.2 The Customer shall provide to Heavy Haul Rail, not less than 24 hours prior to the commencement of the Services (or such other period as Heavy Haul Rail may reasonably require):
- (a) details of any Equipment which is unstable, has particular safety requirements, or requires special handling;
 - (b) all other information, documentation and particulars reasonably required by Heavy Haul Rail to perform the Services, including maintenance records, technical specifications, safety data sheets, and any information required by any government authority, infrastructure manager, or other relevant third party.
- 6.3 The Customer shall ensure that any Equipment delivered to Heavy Haul Rail for the performance of Services is clearly marked with sufficient detail to enable Heavy Haul Rail to identify the Equipment and perform the Services.

7 HEALTH, SAFETY AND ENVIRONMENTAL COMPLIANCE

- 7.1 Both parties shall comply with all Applicable Laws relating to health, safety and environmental protection in performing their respective obligations under this Contract.
- 7.2 Heavy Haul Rail shall immediately notify the Customer of any health, safety or environmental hazards identified by Heavy Haul Rail in relation to the Equipment or Service Location which could reasonably be expected to affect the safe provision of the Services.

- 7.3 The Customer shall notify Heavy Haul Rail in writing with full particulars of any hazardous materials, substances or conditions associated with the Equipment or Service Location prior to the commencement of Services. Such notification shall include details of all necessary safety precautions, handling requirements and emergency procedures.
- 7.4 Heavy Haul Rail may, in its absolute discretion, refuse to provide or suspend the Services where the Equipment is unsafe or the Service Location presents unacceptable health, safety or environmental risks. Heavy Haul Rail shall have no liability to the Customer for any refusal or suspension of Services under this Condition, except where such refusal or suspension is unreasonable in the circumstances.
- 7.5 The Customer shall indemnify and hold harmless Heavy Haul Rail against all Losses arising from health, safety or environmental hazards associated with the Equipment or Service Location, except to the extent that such Losses are caused by the gross negligence or wilful misconduct of Heavy Haul Rail.

8 EQUIPMENT CUSTODY AND RISK

- 8.1 Equipment delivery and risk transfer shall be governed by the following provisions:
- (a) title to any Equipment shall remain with the Customer at all times until collection is completed in accordance with 7.4; and
 - (b) risk in the Equipment shall pass from the Customer to Heavy Haul Rail upon Heavy Haul Rail taking custody of such Equipment and shall revert to the Customer upon completion of the Services or return of such Equipment to the Customer, whichever occurs first.
- 8.2 While any Equipment is in the custody of Heavy Haul Rail, Heavy Haul Rail shall:
- (a) act as a bailee for reward in respect of such Equipment;
 - (b) take reasonable care of such Equipment and keep it in a safe and secure condition;
 - (c) store such Equipment at a secure location;
 - (d) ensure that such Equipment bears appropriate identifying marks and labels as reasonably required by Heavy Haul Rail;
 - (e) promptly notify the Customer in writing of any damage to, loss of, or theft of such Equipment that comes to Heavy Haul Rail's attention; and
 - (f) maintain appropriate insurance coverage for such Equipment as may be agreed between the parties in the Commercial Terms.
- 8.3 Heavy Haul Rail shall have no responsibility for any Equipment before risk passes to Heavy Haul Rail in accordance with 7.1 or after such risk reverts to the Customer.
- 8.4 The Customer shall collect any Equipment from Heavy Haul Rail within 5 Business Days after notification that such Equipment is available for collection. If the Customer fails to collect any Equipment within such period, Heavy Haul Rail may charge the Customer storage fees at rates to be agreed between the parties. If the Customer fails to collect any Equipment within 14 days after written notice from Heavy Haul Rail requiring collection, Heavy Haul Rail may dispose of such Equipment in such manner as it sees fit and recover its costs of disposal from the Customer.

9 HEAVY HAUL RAIL EQUIPMENT

- 9.1 To the extent that the Customer takes possession or control of any Equipment belonging to Heavy Haul Rail for any purpose associated with the Contract: (a) title to such Equipment shall not pass to the Customer and shall remain vested in Heavy Haul Rail; and (b) risk in the Equipment shall pass to the Customer upon taking possession of such Equipment.
- 9.2 Whilst the Customer is in possession or control of Heavy Haul Rail's Equipment pursuant to Condition 9.1 it shall, and shall procure that its employees, agents and subcontractors: (a) hold the Equipment on a fiduciary basis as Heavy Haul Rail's bailee; (b) store the Equipment separately from all other goods and equipment so that it remains readily identifiable as Heavy Haul Rail's property; (c) not remove, deface or obscure any identifying mark on the Equipment; (d) maintain the Equipment in satisfactory condition and keep it insured against all usual and customary risks for equipment of that nature for its full value; (e) notify Heavy Haul Rail immediately of any insolvency event and within 2 Business Days of any damage to the Equipment; (f) give Heavy Haul Rail such information relating to the Equipment as Heavy Haul Rail may require from time to time.
- 9.3 If the Customer becomes subject to any of the events listed in Condition 18.1(b), or Heavy Haul Rail reasonably believes that any such event is about to happen, Heavy Haul Rail may require the Customer to deliver up the Equipment and, if the Customer fails to do so promptly, enter any premises where the Equipment is stored in order to recover it.

10 ACCESS TO PREMISES

- 10.1 The Customer shall procure that none of its employees, subcontractors enter onto any part of any land or premises owned or controlled by Heavy Haul Rail without the prior consent of Heavy Haul Rail. Access to Heavy Haul Rail's land or premises may be made conditional upon the provision of an accompanying representative by Heavy Haul Rail, and the Customer shall be liable for all resulting costs, which shall be payable in accordance with the payment terms of this Contract.
- 10.2 The Customer shall (at its cost) procure such access to its premises, private sidings, and Service Locations as is necessary for Heavy Haul Rail to perform the Services. Heavy Haul Rail shall procure that none of its employees subcontractors or contractors enter onto any part of the Customer's premises without the Customer having procured consent. Heavy Haul Rail shall procure that any person entering the Customer's premises on behalf of Heavy Haul Rail shall comply with all applicable regulations and instructions that are brought to the attention of Heavy Haul Rail in writing.
- 10.3 Each party shall take all reasonable steps to ensure the health and safety of the other party's employees or subcontractors whilst on their premises and shall consult and liaise with each other with a view to maintaining a safe system of work at such premises.

11 CUSTOMER'S EQUIPMENT AND SERVICE LOCATIONS

- 11.1 This Condition applies where: (a) the Services are to be performed at any private siding, depot, or other location not owned or controlled by Heavy Haul Rail; and/or (b) the Customer provides any Equipment for the Services.
- 11.2 The Customer warrants and undertakes that:
- (a) all Customer's Equipment is properly registered (where applicable), safe and fit for the Services to be performed, free from defects and maintained in accordance with all Applicable Laws and Railway Industry Standards;
 - (b) all Service Locations are safe, properly maintained and compliant with all Applicable Laws and Railway Industry Standards;
 - (c) Heavy Haul Rail has such access rights to the Service Locations and any necessary infrastructure as are reasonably required to perform the Services;

- (d) the Customer has disclosed all material health, safety and environmental hazards associated with the Equipment and Service Locations.
- 11.3 Heavy Haul Rail may refuse, without liability, to perform Services on any Customer's Equipment or at any Service Location where the Customer fails to comply with Condition 11.2.
- 11.4 Subject to Condition 14.3, Heavy Haul Rail's liability for loss of or damage to any Customer's Equipment or Service Location caused by its proven negligence shall be limited to the reasonable cost of repair or, where repair is not possible, the depreciated value of the relevant Equipment or the reasonable repair cost of the Service Location. Heavy Haul Rail shall have no other liability for loss or damage to Customer's Equipment or Service Locations, even if caused by negligence.
- 11.5 Where any Customer's Equipment or private siding is not owned by the Customer, the Customer shall procure that Heavy Haul Rail has no liability to any third party having an interest in such equipment or siding and shall indemnify Heavy Haul Rail against all Claims arising from any loss of or damage to it.
- 11.6 Without prejudice to the Customer's obligations under this Condition 11 and Condition 16 (Insurance), the Customer shall maintain appropriate insurance in respect of all Customer's Equipment, including third party liability insurance and, where applicable, motor or plant insurance covering any road-rail vehicles or similar equipment (including Unimogs), sufficient to cover all loss, damage, injury and liability arising out of the condition or use of such equipment, and shall provide evidence of such insurance on request.

12 CHARGES

- 12.1 Heavy Haul Rail may invoice the Customer for the Charges at any time on or after the commencement or completion of the relevant Services.
- 12.2 In addition to the Charges, the Customer shall pay Heavy Haul Rail's charges for:
- (a) detaining beyond the time allowed for its use of Equipment, tools, or facilities provided by Heavy Haul Rail; and
 - (b) use or occupation of any siding or other accommodation where such detention, use or occupation is at the Customer's request or for its convenience; and
- 12.3 Unless otherwise agreed in writing, all invoices shall be paid in full and in cleared funds within 28 days of receipt, to the bank account notified by Heavy Haul Rail.
- 12.4 If the Customer disputes an invoice in good faith, it may withhold payment of the disputed sum only, provided it notifies Heavy Haul Rail in writing of the dispute and the grounds for it within three (3) Business Days of receipt of the invoice.
- 12.5 Heavy Haul Rail may implement alternative payment terms at any time if it has any reasonable doubt as to the creditworthiness of the Customer or reasonably suspects that the Customer may be unable to pay the Charges as they fall due.
- 12.6 The Charges are stated exclusive of VAT and any other duties or taxes, each of which the Customer shall pay at the prevailing rate in addition to the Charges in accordance with local tax legislation.
- 12.7 All sums payable under the Contract shall be paid in full without set-off, counterclaim, deduction or withholding (other than any deduction or withholding required by law).
- 12.8 The Customer acknowledges and agrees that:
- (a) time is of the essence in respect of its payment of the Charges; and
 - (b) the Charges will remain payable even if the applicable Services are cancelled due to:
 - (i) any action or inaction of Network Rail or its successor (including Great British Railways);
 - (ii) any closure or access issues at the Service Location;
 - (iii) any form of third party industrial action;
 - (iv) a Force Majeure Event.
 - (v) unavailability of parts or materials beyond Heavy Haul Rail's reasonable control.
- 12.9 Heavy Haul Rail shall have no obligation to accommodate any late or short notice change to the Services. Where Heavy Haul Rail agrees, at its discretion, to use reasonable endeavours to accommodate such a change, it does so without guarantee and may levy a supplementary charge and recover any additional costs incurred (including Network Rail or subcontractor charges).
- 12.10 Save where provided elsewhere in the Commercial Terms, Heavy Haul Rail may increase the Charges annually by the annual percentage change in inflation as measured by the UK retail price index ("RPI") or any such replacement index. Such increase shall be applied on each anniversary of the date of execution of the relevant Commercial Terms and shall be based on the published figure for RPI six (6) months prior to the anniversary to which it applies. The right to increase charges under this Condition 12.10 shall not apply to the fuel element of the Charges which shall be governed by the fuel surcharge provisions agreed to in the Commercial Terms.
- 12.11 Heavy Haul Rail may increase the Charges at any time on written notice to the Customer (i) to reflect any increase in the cost to Heavy Haul Rail of performing the Services which results from any circumstance beyond Heavy Haul Rail's reasonable control, including: fuel price rises; exchange rate fluctuations; currency controls or regulations; increased import or export duties or other taxes; port access and handling fees; Government legislation or changes imposed by the Department for Transport (DfT), Office of Rail and Road (ORR), Network Rail or its successor (including Great British Railways); and/or changes to the Mode Shift Revenue Support Scheme; and (ii) as a result of a Demand Surcharge.
- 12.12 The Customer acknowledges that Heavy Haul Rail is obliged to pay certain access charges levied by Network Rail (or any other infrastructure manager or service provider) in respect of its access requirements for the operation of the Contract, through an access contract between Network Rail or any other infrastructure manager or service provider and Heavy Haul Rail ("**Access Charges**"). Heavy Haul Rail may increase the Charges and payments under the Contract in direct proportion to any increase in the level of Access Charges due as a result of Heavy Haul Rail fulfilling its obligations under the Contract from the date of any such increase.
- 12.13 Where any increase to the Charges made pursuant to Condition 12.11 alone would result in the Charges increasing by more than 15% of the then-current Charges in any twelve (12) month period (excluding any increases made pursuant to Condition 12.10 and any increases attributable to Access Charges under Condition 12.12), the Customer may terminate the Contract on sixty (60) days' written notice, provided that such notice is given within fourteen (14) days of receipt of notice of the relevant increase and provided further that the Customer pays Heavy Haul Rail an early termination fee equal to three (3) months' Charges calculated at the rate applicable immediately prior to the notified increase.

12.14 Cancellation by Customer

- (a) Where the Customer cancels Services or any part of the Services after Heavy Haul Rail has confirmed acceptance of the Customer's order (whether such confirmation is provided in writing, by email, or by any other means), the Customer shall pay to Heavy Haul Rail a cancellation charge equal to eighty per cent (80%) of the Charges that would have been payable for the cancelled Services (the "Cancellation Charge").
- (b) The Cancellation Charge shall become immediately due and payable upon Heavy Haul Rail's receipt of the Customer's notice of cancellation and shall be invoiced by Heavy Haul Rail in accordance with the payment terms set out in the Contract
- (c) The Cancellation Charge is without prejudice to Heavy Haul Rail's right to recover any additional Losses it may suffer as a result of the cancellation, including but not limited to any third party charges, Network Rail access charges, or costs incurred in preparing to perform the Services.
- (d) The Cancellation Charge shall not apply where the cancellation is due to:
 - (i) a Force Majeure Event affecting the Customer;
 - (ii) a material breach by Heavy Haul Rail of its obligations under the Contract; or
 - (iii) circumstances where Heavy Haul Rail has agreed in writing to waive the Cancellation Charge.

12.15 Cancellation by Heavy Haul Rail

- (a) Where Heavy Haul Rail cancels Services or any part of the Services after Heavy Haul Rail has confirmed acceptance of the Customer's order (whether such confirmation is provided in writing, by email, or by any other means), the Customer shall be entitled to require Heavy Haul Rail to reinstate and perform the cancelled Services by providing written notice to Heavy Haul Rail within seven (7) days of receiving Heavy Haul Rail's notice of cancellation.
- (b) Upon receipt of the Customer's notice under clause 12.15(a), Heavy Haul Rail shall use all reasonable endeavours to reinstate and perform the cancelled Services within seven (7) days of receiving such notice from the Customer.
- (c) If Heavy Haul Rail fails to reinstate and commence performance of the cancelled Services within seven (7) days of receiving the Customer's notice under clause 12.15(a), the Customer shall be entitled to a service credit equal to fifty per cent (50%) of the Charges that would have been payable for the cancelled Services (the "Service Credit"). The Service Credit shall be applied by Heavy Haul Rail as a credit against future Charges payable by the Customer under the Contract and shall be valid for a period of twelve (12) months from the date on which it accrues
- (d) Heavy Haul Rail shall not be obliged to reinstate and perform the cancelled Services, and no Service Credit shall accrue under clause 12.15(c), where the cancellation is due to:
 - (i) a Force Majeure Event affecting Heavy Haul Rail;
 - (ii) a material breach by the Customer of its obligations under the Contract;
 - (iii) circumstances where Heavy Haul Rail reasonably determines that performance of the Services would be unsafe, unlawful, or impracticable; or
 - (iv) the Customer's failure to comply with any condition precedent to Heavy Haul Rail's performance of the Services.
- (e) The total aggregate amount of all Service Credits accruing to the Customer under clause 12.15(c) shall not exceed twenty per cent (20%) of the total Charges paid by the Customer to Heavy Haul Rail in the preceding twelve (12) months in any twelve (12) month period.
- (f) For the avoidance of doubt, this clause 12.15 applies only to the cancellation by Heavy Haul Rail of individual Services or specific Services after order confirmation and does not apply to termination of the Contract as a whole in accordance with Condition 18 or any other provision of the Contract. Upon termination of the Contract for any reason, no Service Credits shall accrue in respect of any Services that would have been performed after the effective date of termination, and the Customer shall have no entitlement to Service Credits for any future Services not yet confirmed by Heavy Haul Rail at the time of termination.

13 PAYMENT REMEDIES

13.1 If the Customer fails to make any payment due to Heavy Haul Rail under the Contract by the due date, then, without limiting Heavy Haul Rail's other rights or remedies:

- (a) Heavy Haul Rail may withdraw the Customer's terms of payment under Condition 12.3 (whether 28 days or such other period agreed between the parties under the Contract) and require that any future Services to be performed by Heavy Haul Rail pursuant to the Contract are fully paid for in advance (for such time as Heavy Haul Rail acting reasonably deems appropriate); and/or
- (b) the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this Condition 13.1(b) will accrue each day at the rate of 5% a year above the Bank of England's base rate from time to time, but at 5% a year for any period when that base rate is 0% or below;
- (c) Heavy Haul Rail may, without any liability to the Customer, immediately suspend its performance of the Services until payment of the overdue sum has been made in full, or terminate the Services in whole; and
- (d) Heavy Haul Rail may instruct a debt collection agency to recover the overdue sums.
- (e) Where Heavy Haul Rail suspends performance under Condition 13.1(c), it shall notify the Customer in writing of the suspension and the conditions for resumption. Heavy Haul Rail shall resume performance within 5 Business Days of receiving payment in full of all overdue sums together with interest accrued thereon.

13.2 If Heavy Haul Rail reasonably determines that it would be commercially prudent to obtain financial or performance security against the Customer failing to perform any of its obligations hereunder, Heavy Haul Rail may require the Customer to provide such financial security against the failure of the Customer to perform any of its obligations under the Contract as Heavy Haul Rail deems appropriate (including individual or parent company guarantees). Failure to provide such security within the time period stipulated by Heavy Haul Rail is a material breach of the Contract.

14 LIABILITY

14.1 The Customer shall indemnify and hold harmless Heavy Haul Rail from and against all losses, damages, costs, expenses, claims, demands, actions and proceedings (including, without limitation, any Schedule 8, Track Access Agreement, TDA or equivalent compensation, charge or penalty imposed by Network Rail (or any successor infrastructure manager) arising from or in connection with:

- (a) any negligent or wrongful acts, errors or omissions by the Customer, its employees, agents or contractors;
 - (b) defects in Customer Equipment including design defects, manufacturing defects, or maintenance defects;
 - (c) spillage or contamination arising from or in connection with the Customer Equipment;
 - (d) failure of Customer Equipment whilst on the rail network including mechanical failures, electrical failures, or structural failures;
 - (e) the Customer's failure to provide accurate information regarding the Equipment, Goods, or Services required;
 - (f) breach of the Contract by the Customer; and
 - (g) defects in Customer Equipment not caused by Heavy Haul Rail, including any penalties imposed by Network Rail or other infrastructure operators arising from such defects.
- 14.2 The Customer shall maintain comprehensive insurance coverage adequate to cover all potential liabilities arising under this Condition 14 and shall provide evidence of such insurance to Heavy Haul Rail upon request. Such insurance shall include but not be limited to public liability, product liability, and professional indemnity insurance with minimum coverage amounts as may be reasonably required by Heavy Haul Rail.
- 14.3 Nothing in this Contract shall limit or exclude Heavy Haul Rail's liability for death or personal injury caused by its negligence, fraud or fraudulent misrepresentation, liability under the Customer indemnities provided in this Condition 14, or any other liability which cannot be limited or excluded under applicable law.
- 14.4 Subject to Condition 14.3, Heavy Haul Rail excludes all liability for indirect or consequential losses including but not limited to loss of profits, loss of business, loss of revenue, loss of anticipated savings, or loss of goodwill, whether or not such losses were foreseeable or in the contemplation of the parties.
- 14.5 Subject to Condition 14.3, Heavy Haul Rail shall have no liability for any losses arising during periods when Heavy Haul Rail is not at risk for the Equipment, losses arising from Force Majeure events as defined in 19, losses arising from Customer breach of Contract, losses arising from inherent defects in the Equipment, or losses arising from acts or omissions of third parties not under Heavy Haul Rail's control.
- 14.6 Heavy Haul Rail shall have no liability to any third party and the Customer shall indemnify Heavy Haul Rail against all claims made by third parties except to the extent that such claims arise from Heavy Haul Rail's negligence, wilful default, or breach of statutory duty.
- 14.7 Subject to Condition 14.3, Heavy Haul Rail's liability for loss of or damage to Equipment (whether in contract, tort (including negligence) or otherwise) arising out of or in connection with any Service shall be limited to the lowest of:
- (a) the reasonable cost of repair of the Equipment;
 - (b) the depreciated value of the Equipment at the time of loss or damage;
 - (c) two times (2x) the Charges payable for the specific Service giving rise to the liability; or
 - (d) £2,000,000 (two million pounds),
- in respect of any single incident or series of related incidents.
- 14.8 Subject to Conditions 14.3, 14.4, 14.5 and 14.7, Heavy Haul Rail's total aggregate liability to the Customer arising out of or in connection with this Contract (whether in contract, tort (including negligence) or otherwise) in any twelve (12) month period shall not exceed the lowest of:
- (a) two times (2x) the total Charges paid or payable by the Customer to Heavy Haul Rail in the twelve (12) month period in which the liability arises; or
 - (b) £2,000,000 (two million pounds).

15 CLAIMS PROCEDURE

- 15.1 Heavy Haul Rail shall not be liable for any loss of, damage to or defect in Equipment, unless a written Claim is submitted to Heavy Haul Rail within twenty-eight (28) days of the date upon which the Customer became or reasonably ought to have become aware of any such event or occurrence alleged to have given rise to such liability or Claim, provided that if in any particular case:
- (a) the Customer proves that it was not reasonably possible to advise Heavy Haul Rail in writing within the time period set out above; or
 - (b) the Customer did notify Heavy Haul Rail of the same within a reasonable time, and there has been no prejudice caused to Heavy Haul Rail as a result of the delay;
- then Heavy Haul Rail shall not have the benefit of this Condition 15.1.
- 15.2 Notwithstanding the provisions set out in Condition 15.1, Heavy Haul Rail shall in any event be discharged of all liability whatsoever and howsoever arising in respect of the Equipment or the Services, where proceedings have not been commenced (and notified to Heavy Haul Rail) within 12 months of the date of the event or occurrence alleged to have given rise to such liability or Claim.

16 INSURANCE

- 16.1 Each party shall maintain insurance as follows:
- (a) Customer:
 - (i) public liability insurance with a limit of indemnity of not less than £10,000,000 in respect of any one event;
 - (ii) third party property damage insurance with a limit of indemnity of not less than £10,000,000 in respect of any one event;
 - (iii) equipment insurance covering loss of or damage to Equipment with a limit of indemnity of not less than the full replacement value of the Equipment or £5,000,000, whichever is greater; and
 - (iv) statutory employer's liability insurance;
 - (b) Heavy Haul Rail: insurance consistent with prudent railway practice and statutory employer's liability insurance.
- All insurance shall be with reputable insurers.
- 16.2 Each party shall provide certificates of insurance on request. Either party may terminate if the other's required insurance is withdrawn or terminated.
- 16.3 Each party's insurance responds to that party's own liabilities under this Contract.

17 PERFORMANCE IMPROVEMENT

- 17.1 If a party materially fails to comply with any Performance Measures, the other party may serve written notice specifying the failure and requiring remedy within a reasonable period (the "**Remedial Period**").
- 17.2 If the failure is not remedied within the Remedial Period, the other party may terminate the Contract for material breach under Condition 18.1(c).

18 TERMINATION

- 18.1 Either party may terminate the Contract immediately by notice in writing to the other, without liability to the other, if the other party:
- (a) fails to pay any undisputed amount exceeding £5,000 due under this agreement within 14 days of receiving written notice of such failure; or
 - (b) its financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this agreement is in jeopardy; or
 - (c) has committed a material breach of the Contract, which is not capable of being remedied; or
 - (d) has committed a material breach of the Contract, which breach is remediable and is not remedied within 14 days of receipt by the breaching party of written notice of the breach; or
 - (e) breaches any of its obligations under Condition 21;
- 18.2 In addition to the termination rights set out in Condition 18.1, if a Force Majeure Event prevents, hinders or delays Heavy Haul Rail's performance of its obligations for a continuous period of more than three months, Heavy Haul Rail may terminate the Contract by giving 14 days' written notice to the Customer.
- 18.3 The expiry or termination in whole or in part of the Contract for any reason shall:
- (a) be without prejudice to any rights which may have accrued up to and including the time of expiry or termination; and
 - (b) not affect the coming into force or the continuance in force of any provision which is expressly or by implication intended to come into force or continue in force on or after such expiry or termination or which is required to give effect to such expiry or termination.

19 CONSEQUENCES OF TERMINATION

- 19.1 Upon termination of the Contract for any reason whatsoever:
- (a) the Customer shall immediately make payment to Heavy Haul Rail all of Heavy Haul Rail's outstanding unpaid invoices (including any interest which may have accrued due to late payment of such invoices) and, in respect of Services supplied and for which an invoice is due to be but has not yet been submitted, Heavy Haul Rail shall submit such an invoice, which shall be payable by the Customer immediately upon receipt;
 - (b) any provision of the Contract which expressly or by implication is intended to continue or come into or remain in effect following the termination of the Contract shall survive the termination of the Contract; and
 - (c) the Customer shall immediately return to Heavy Haul Rail any and all equipment or property provided by Heavy Haul Rail pursuant to the Contract which is in its possession as at the date of termination, including all of its Confidential Information, together with all copies of such Confidential Information and Heavy Haul Rail may continue to charge for its Services until the same is returned to Heavy Haul Rail.

20 FORCE MAJEURE

- 20.1 If Heavy Haul Rail and/or any of its subcontractors are prevented, hindered or delayed in or from performing any of its obligations under the Contract by a Force Majeure Event, Heavy Haul Rail shall not be in breach of the Contract or otherwise be liable for such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 20.2 Subject to Condition 20.3, the corresponding obligations of the Customer will be suspended and its time for performance of such obligations extended, to the same extent as those of Heavy Haul Rail and/or its subcontractors, save for any Customer obligation to make payment when due.
- 20.3 Failure or inability by the Customer to pay the Charges or any sum due under the Contract shall not be excused by any event of Force Majeure.
- 20.4 Upon the occurrence of a Force Majeure Event, Heavy Haul Rail shall use reasonable endeavours to mitigate the effects of such Force Majeure Event and to resume performance of its obligations under the Contract as soon as reasonably practicable.

21 COMPLIANCE

- 21.1 Anti-Bribery and Corruption
- The Parties shall:
- (a) not and shall procure that each of its directors, employees, agents and representatives shall not, engage in any activity, practice or conduct which would constitute an offence under any anti-bribery and anti-corruption laws, regulations and codes, as amended from time to time, including but not limited to the Bribery Act 2010;
 - (b) shall establish, maintain and enforce its own policies and procedures designed to prevent any person working or engaged by the Customer or any third party in any way connected to the Contract, from engaging in any activity, practice or conduct which would infringe any anti-bribery and anti-corruption laws, regulations and codes, as amended from time to time, including but not limited to the Bribery Act 2010.
- 21.2 Anti-facilitation of Tax Evasion
- (a) The Parties shall
 - (i) not engage in any activity, practice or conduct which would constitute either:
 - a UK tax evasion facilitation offence under section 45(5) of the Criminal Finances Act 2017; or
 - a foreign tax evasion facilitation offence under section 46(6) of the Criminal Finances Act 2017;
 - (b) establish, maintain and enforce its own policies and procedures as are both reasonable to prevent the facilitation of tax evasion by another person and to ensure compliance with Condition 21.2(a);

- (c) notify the other in writing if it becomes aware of any breach of Condition 21.2(a) or has reason to believe that it has received a request or demand from a third party to facilitate the evasion of tax within the meaning of Part 3 of the Criminal Finances Act 2017;
- (d) Each Party shall be directly liable to the other for any breach of Condition 21.2(a) by the relevant Party or any of its 'associated persons' within the meaning of Part 3 of the Criminal Finances Act 2017.

21.3 Data Protection

(a) The Parties shall:

- (i) comply with all applicable laws, statutes, regulations and codes relating to the processing of Personal Data (as defined in the relevant legislation) including but not limited to the Data Protection Act 2018, the UK General Data Protection Regulation (as defined in The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019) or the General Data Protection Regulation ((EU) 2016/679) as amended and updated from time to time;
- (ii) ensure that it has and shall continue to maintain adequate security measures to safeguard the Personal Data from unauthorised processing or access. Unless agreed otherwise with Heavy Haul Rail, the Customer shall apply equivalent security measures and a degree of care to the Personal Data as the Customer applies to its own Personal Data, which the Customer warrants as providing adequate protection from unauthorised processing or access;
- (iii) notify the other Party as soon as possible after becoming aware of any potential Personal Data breaches; and
- (iv) assist each other in ensuring compliance with this Condition 21.3.

21.4 Breach of this Condition 21 shall be deemed a material breach of the Contract incapable of remedy.

22 CONFIDENTIAL INFORMATION

22.1 Notwithstanding termination of the Contract, each party ("**Receiving Party**") shall keep the Confidential Information of the other party ("**Supplying Party**") confidential and secret, the Receiving Party shall only use the Confidential Information of the Supplying Party as necessary for the provision of the Services (in the case of Heavy Haul Rail) or as necessary for the purpose of receiving and making reasonable use of the Services (in the case of the Customer) and for performing the Receiving Party's obligations under the Contract. The Receiving Party shall inform its officers, employees and agents of the Receiving Party's obligations under the provisions of this Condition 22 and ensure that they meet such obligations.

22.2 The obligations of Condition 22.1 shall not apply to any information which:

- (a) was known or in the possession of the Receiving Party before it was provided to the Receiving Party by the Supplying Party;
- (b) is, or becomes, publicly available through no fault of the Receiving Party;
- (c) is provided to the Receiving Party without restriction or disclosure by a third party, who did not breach any confidentiality obligations by making such a disclosure;
- (d) was developed by the Receiving Party (or on its behalf) without direct access to, or use or knowledge of the Confidential Information supplied by the Supplying Party; or
- (e) is required to be disclosed by order of a court of competent jurisdiction.

22.3 This Condition 22 shall survive termination of the Contract.

22.4 The Customer shall not make any announcement or otherwise publicise the existence of or disclose to any person the provisions of the Contract or its relationship with Heavy Haul Rail without the prior written consent of Heavy Haul Rail.

23 NOTICES

23.1 Any demand, notice or other communication given or made under or in connection with the Contract shall be made in writing in accordance with Condition 23.3.

23.2 Any such demand, notice or other communication may only be served in the ways set out in Condition 23.3 and at the addresses specified in the Commercial Terms or at such other address as the relevant party may give notice to the other party for the purpose of service of notices under the Contract.

23.3 Service of notices under the Contract may be effected by any of the following methods of delivery and in each case shall be deemed to have been served on the date and at the time specified next to the delivery method in the table below:

Delivery Method	Deemed Delivery Date and Time
Delivery by hand	At the time the notice is left at the address.
Pre-paid first class post or other next Business Day delivery service	9.00am on the second Business Day after posting.
Email	At the time of transmission provided the sender receives a manually sent confirmation of receipt.

23.4 This Condition 23 does 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.

24 THIRD PARTY RIGHTS

24.1 Save as expressly provided, no third party shall have any right to enforce any term of this Contract under the Contracts (Rights of Third Parties) Act 1999.

25 ASSIGNMENT AND SUBCONTRACTING

25.1 Heavy Haul Rail may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights under the Contract without Customer consent, and Heavy Haul Rail may assign or transfer the Contract to any entity or other person controlled by, in control of, or under common control with Heavy Haul Rail, or in the event of a merger or a sale of all or a substantial portion of Heavy Haul Rail's assets or stock.

25.2 The Customer may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.

25.3 Heavy Haul Rail may subcontract the performance of the Services in whole or in part at any time under this Contract.

26 GENERAL

26.1 Each party shall have the rights and obligations which are set out in Heavy Haul Rail's Privacy Policy which is available at www.heavyhaulrail.co.uk/privacy-policy (or is otherwise available upon request) and which is incorporated by reference into these Conditions.

26.2 Any variation to these Conditions shall have no effect unless expressly agreed in writing and signed by the authorised representatives of the parties.

26.3 At its own expense, each party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may be required for the purpose of giving full effect to the Contract.

26.4 If at any time any part of the Contract is held to be or becomes invalid, illegal or unenforceable for any reason, such provision(s) is deleted or omitted from the Contract and the legality, validity or enforceability of the remaining provisions of the Contract shall in no way be affected or impaired as a result of that deletion or omission.

26.5 Unless otherwise agreed in writing, the Contract and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with English law and each party hereby irrevocably submits to the exclusive jurisdiction of the English courts in connection with any dispute (whether contractual or non-contractual) arising under or in connection with the Contract.

26.6 Dispute Resolution. The parties shall seek to resolve any dispute arising out of or in connection with the Contract through the following three-tier process:

1. Good Faith Negotiations. The parties shall first attempt to resolve any dispute through good faith negotiations between their respective senior representatives. Such negotiations shall commence within fourteen (14) days of written notice of the dispute being given by either party to the other.
2. Mediation. If the dispute is not resolved through good faith negotiations, the parties shall refer the dispute to mediation under the CEDR Model Mediation Procedure. The mediation shall be conducted by a single mediator agreed upon by the parties or, failing agreement within seven (7) days, appointed by CEDR.
3. Court Proceedings. If the dispute is not resolved through mediation within twenty-eight (28) days of referral to mediation, either party may commence court proceedings in accordance with Condition 26.5