



Attachment No 6

Template Call Off Terms and Conditions

Freight Procurement - Invitation to Tender Pack

The Template Call Off Terms and Conditions will be appended to the Template Call Off Order Form, which, when completed in respect of a successful tender submitted in respect of a Mini-Competition, together shall comprise a Call Off Agreement. The Template Call Off Terms and Conditions will be included at Schedule 4 (Template Order Form and Template Call Off Terms) of the Framework Agreement.

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BETWEEN:

- (1) **The Customer** (as identified in the Call Off Order Form to which this Agreement is appended); and
- (2) **The Freight Operator** (as identified in the Call Off Order Form to which this Agreement is appended).

WHEREAS:

- (A) The parties have agreed that the Freight Operator will provide the Purchased Capacity (as defined below) and the Customer will purchase the Purchased Capacity (as defined below), to ensure that on and from the Capacity Commencement Date (as defined below), there is freight capacity available in the market which can be utilised, in accordance with a policy objective of the Customer, to prioritise and thereby facilitate the carriage of certain cargos over others during the term of the Agreement through the sale by the Freight Operator of the Purchased Capacity in accordance with the terms set out in this Agreement.
- (B) The Customer has followed the procedure set out in Schedule 5 of the Framework Agreement (*Call Off Procedure*) and has awarded this Call Off Agreement (as defined in the Framework Agreement) to the Freight Operator by way of Mini-Competition (as defined in the Framework Agreement).
- (C) The Customer issued its Statement of Requirements for the provision of the Services (each as defined in the Framework Agreement) on [●].
- (D) In response to the Statement of Requirements (as defined in the Framework Agreement) the Freight Operator submitted a tender to the Customer on [●] through which it provided to the Customer its solution for providing the Services (as defined in the Framework Agreement). On the basis of that tender, the Customer has selected the Freight Operator to provide the services to it in accordance with the terms of this Agreement.

WHEREBY IT IS AGREED as follows:

1. Interpretation

1.1 In this Agreement:

“**Affiliate**” means, in relation to any person, another person that controls, is controlled by, or is under common control with, such person.

“**Aircraft**” means an aeroplane or other machine capable of flight.

“**Applicable Law**” means each law, enactment, order, regulation and mandatory code of conduct applicable to the conduct of the Freight Operator’s business including the provision and sale of the Purchased Capacity.

“**Arbitration Notice**” has the meaning given to it in Clause 30.7 (*Dispute Resolution*).

“**Arrival Terminal**” means [●].

“**Business Day**” means a day (other than a Saturday or Sunday) on which clearing banks are ordinarily open for business in the City of London (UK).

“**Cancellation Sum**” means the lower of:

- (A) the Freight Operator’s Early Termination Fee for the period in which the first Trip of the Purchased Capacity specified in the relevant Customer’s Cancellation Notice falls but pro-rated by reference to the ratio of (i) the amount of Purchased Capacity specified for cancellation in the relevant Customer’s Cancellation Notice to (ii) the amount of Purchased Capacity (inclusive of the Purchased Capacity specified for cancellation in the relevant Customer’s Cancellation Notice) as from the time of the first Trip of Purchased Capacity specified in such Customer’s Cancellation Notice to the end of the term of the Agreement; and
- (B) the Freight Operator’s Actual Costs that have been or will be incurred in relation to the Purchased Capacity specified for cancellation in the relevant Customer’s Cancellation Notice, the Freight Operator having used reasonable endeavours to mitigate or avoid such costs, plus 5% thereof.

“**Capacity Commencement Date**” means [●].

“**Central Government Body**” means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:

- (A) Government Department;
- (B) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive or tribunal);
- (C) Non-Ministerial Department;
- (D) Executive Agency, or
- (E) any other governmental body, department, ministry, entity or other ministerial body, department, ministry or entity not included within paragraphs (A) to (D) above.

“**Claiming Party**” has the meaning given to it in the definition of “Force Majeure” in this Clause 1.1.

“**Clearance**” means, at any time, any consent, licence, approval, permit or other authorisation of whatsoever nature which, at such time, is necessary, or is required, for

the performance by the Freight Operator of its obligations pursuant to and in accordance with this Agreement as a Reasonable and Prudent Operator.

“Consequential Loss” means:

- (A) any indirect cost, expense, loss or damage;
- (B) any consequential cost, expense, loss or damage,
- (C) any incidental cost, expense, loss or damage;
- (D) any special cost, expense, loss or damage;
- (E) whether or not within any sub-paragraphs (A) to (D) above and whether or not direct, any (1) loss of actual or anticipated profit, (2) losses caused by business interruption, (3) loss of or damage to goodwill or reputation, (4) loss of production, (5) loss of margin, (6) loss of revenue, (7) loss of contract; or
- (F) liability to third parties,

in each case even if such cost, expense, loss or damage was reasonably foreseeable or might reasonably have been contemplated by the parties and whether arising from breach of contract, tort, negligence, breach of statutory duty or otherwise.

“Control” means:

- (A) the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to:
 - (i) cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of the Freight Operator;
 - (ii) appoint or remove all, or the majority, of the directors or other equivalent officers of the Freight Operator; or
 - (iii) give directions with respect to the operating and financial policies of the Freight Operator with which the directors or other equivalent officers of the Freight Operator are obliged to comply; or
- (B) the holding beneficially of more than 50% of the issued share capital of the Freight Operator,

and **“controlling”** shall be construed accordingly.

“Conveyance” means either a Vessel, Rolling Stock or Aircraft (as applicable).

“**Customer’s Cancellation Notice**” means a cancellation notice served by the Customer pursuant to Clause 33 (*Cancellation*).

“**Customer’s Early Termination Notice**” means a termination notice served by the Customer pursuant to Clause 10.1(B) (*Termination*).

“**Departure Terminal**” means [●].

“**Disputing Party**” has the meaning given to it in Clause 8.4(E) (*Payment Terms*).

“**Early Termination Date**” means the termination date specified in the Customer’s Early Termination Notice.

“**Early Termination Sum**” means the lower of:

- (A) the Freight Operator’s Early Termination Fee for the period in which the Early Termination Date occurs; and
- (B) the Freight Operator’s Actual Costs that have been or will be incurred in relation to the period commencing on the Early Termination Date and ending on the Expiry Date, the Freight Operator having used reasonable endeavours to mitigate or avoid such costs, plus 5% thereof.

“**Euro**” means the lawful currency of the member states of the European Union that adopt the single currency in accordance with the Treaty Establishing the European Community, as amended by the Treaty on European Union and in accordance with legislation of the European Union relating to Economic and Monetary Union.

“**Expiry Date**” means 23:59 on [●].

“**Force Majeure**” means, in relation to either party (the “**Claiming Party**”) a circumstance beyond the reasonable control of that party including lock outs, strikes and other industrial disputes (save where any lock outs, strikes or other industrial disputes arise as a result of any change to the terms and conditions of employment that apply to the Freight Operator’s employees or personnel (other than where any such change is required to comply with Applicable Law)), provided always that, the following shall not constitute events or circumstances that are capable of constituting Force Majeure:

- (A) a payment default;
- (B) an event or circumstance which arises as a result of, or in connection with, the United Kingdom’s exit from the European Union (including, without limitation, the imposition of controls at the Arrival Terminal or Departure Terminal, or the consequences thereof) (a “**Brexit Event**”) save that if and to the extent that the following are attributable to a Brexit Event and beyond the reasonable control of the Claiming Party they shall be capable of constituting Force Majeure:

- (i) blockades at the Arrival Terminal or the Departure Terminal or other restrictions on the movement of Conveyances; or
 - (ii) a complete failure or lack of necessary capacity of any national customs declaration system at the Arrival Terminal or the Departure Terminal;
- (C) any mechanical or electrical breakdown or failure of any machinery or equipment, including a Conveyance utilised to fulfil the Freight Operator's obligations under this Agreement, which results from any matter which is within the control of the Freight Operator or any member of its Group or any matter which would be or would have been within its control acting and having acted as a Reasonable and Prudent Operator; or
- (D) the failure to initially obtain or the withdrawal, expiration or termination of any Clearance of which the Freight Operator was or should reasonably have been aware and which would be or would have been within its control acting and having acted as a Reasonable and Prudent Operator.

“Framework Agreement” means the framework agreement for the provision of freight capacity entered into between the Customer and the Freight Operator, pursuant to which this Agreement has been entered into and dated [●] 2019 with reference number [●].

“Freight Operator’s Actual Costs” means:

- (A) the costs specified in the tender submitted by the Freight Operator in the relevant Mini-Competition (as defined in the Framework Agreement) as set out in Schedule 7 (Tender) hereto;
- (B) as reduced pursuant to the Freight Operator’s obligations in Clause 9.2(R); and
- (C) as evidenced pursuant to Clause 9.2(S)(ii),

to the extent such costs have not already been recovered by the Freight Operator pursuant to any other Call Off Agreement (as defined in the Framework Agreement) entered into by it (no double counting), and, for the avoidance of doubt, if the Freight Operator’s Actual Costs as evidenced pursuant to Clause 9.2(S) are greater than the costs described in paragraph (A) above, the Freight Operator’s Actual Costs shall be the costs described in paragraph (A) above.

“Freight Operator’s Early Termination Fee” means the early termination fee specified in the tender submitted by the Freight Operator in the relevant Mini-Competition (as defined in the Framework Agreement) as set out in Schedule 7 (*Tender*) hereto.

“Freight Operator Own Capacity” means capacity (measured in Lane Metres) that the Freight Operator sells for its own account on a Trip that also includes Purchased Capacity.

“Government Data” means the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any of the Customer’s confidential information, and which:

- (A) are supplied to the Freight Operator by or on behalf of the Customer; or
- (B) the Freight Operator is required to generate, process, store or transmit pursuant to this Agreement.

“Group” means in relation to a party, that party and each of its Affiliates.

“Insolvency Event” means, in relation to the Freight Operator:

- (A) an order has been made, petition presented (save for any petition which is frivolous or vexatious and is discharged, stayed or dismissed within 10 Business Days of its presentation) or resolution passed for its winding up or for the appointment of a liquidator or provisional liquidator in relation to it other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (B) an administrator, receiver or administrative receiver has been appointed in relation to it;
- (C) a notice has been given or filed with the court of an intention to appoint an administrator, receiver or administrative receiver in relation to it and/or a petition or application has been presented or order made in relation to it for the appointment of an administrator, receiver or administrative receiver;
- (D) it is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or there are unsatisfied written demands that have been served on it pursuant to section 123(1)(a) of the Insolvency Act 1986 or an unsatisfied judgment or court order is outstanding against it; or
- (E) it is, in any jurisdiction, subject to or threatened by any other procedures or steps which are analogous to those set out in paragraphs (A) to (D) above.

“Key Sub-Contractor” means any sub-contractors which perform an integral role in the provision of all or any part of the Purchased Capacity.

“Lane Metre” means a lane metre.

“LCIA” means the London Court of International Arbitration.

“Mediator” has the meaning given to it in Clause 30.5 (*Dispute Resolution*).

“Monthly Statement” has the meaning given to it in Clause 8.2 (*Payment Terms*).

“Non-Claiming Party” has the meaning given to it in Clause 13.1 (*Force Majeure*).

“Non-Disputing Party” has the meaning given to it in Clause 8.4(E) (*Payment terms*).

“Notification” has the meaning given to it in Clause 6.1(A) (*Resale of Purchased Capacity by the Freight Operator*).

“Notification Capacity” means the Purchased Capacity specified in the Notification being referred to.

“PO Number” has the meaning given to it in Clause 8.9 (*Payment Terms*).

“Priority Ticket Complaint” means a complaint by a third party reasonably indicative of a breach by the Freight Operator of its obligations pursuant to and in accordance with Clause 6.1(A) (*Resale of Purchased Capacity by the Freight Operator*), including, without prejudice to the generality of the foregoing, the manner in which or the procedures by which the Freight Operator endeavours to discharge its obligations thereof.

“Priority Ticketing Handbook” means the handbook a copy of which comprises Schedule 6 (*Priority Ticketing Handbook*) hereto provided by the Customer to the Freight Operator containing, among other things, the principles to be applied by the Freight Operator in selling the Purchased Capacity pursuant to and in accordance with Clause 6.1(A) (*Resale of Purchased Capacity by the Freight Operator*), as the same may be later amended, modified, supplemented and/or replaced from time to time by the Customer pursuant to and in accordance with Clause 6.2 (*Resale of Purchased Capacity by the Freight Operator*).

“Priority Ticketing Principles” means:

- (A) the Priority Ticketing Procedures; and
- (B) the Priority Ticketing Handbook.

“Priority Ticketing Procedures” means the procedures pursuant to and in accordance with which the Freight Operator sells the Purchased Capacity, as set out in Schedule 5 (*Priority Ticketing Procedures*), as the same may be later amended, modified, supplemented and/or replaced from time to time by the Customer pursuant to and in accordance with Clause 6.2 (*Resale of Purchased Capacity by the Freight Operator*).

“Purchase Price” means [£/€] [●] per Lane Metre (accompanied)] [and] [£/€] per Lane Metre [●] (unaccompanied)]¹.

¹ Delete as applicable and as set out in the Call Off Order Form, to which these terms and conditions will be appended.

“Purchased Capacity” means the amount of capacity (expressed as a number of Lane Metres) which is to be purchased by the Customer in accordance with Clause 4 (*Sale of Purchased Capacity by the Freight Operator to the Customer*), as more particularly set out in Schedule 1 (*Purchased Capacity*).

“Reasonable and Prudent Operator” means a person in good faith seeking to perform its contractual obligations and in the general conduct of its undertaking exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator operating in material compliance with Applicable Law engaged in the same type of undertaking, in the same industry, and under the same or similar circumstances and conditions.

“Records” has the meaning given to it in Schedule 4 (*Reports and Records*).

“Representative” has the meaning given to it in Clause 18 (*Notices*).

“Required Payment” has the meaning given to it in Clause 8.4 (*Payment Terms*).

“Rolling Stock” means locomotives, carriages, wagons or other vehicles used on a railway (for the avoidance of doubt, the term “railway” includes the train line that runs through the Channel Tunnel).

“Service Document” means a claim form, application notice, order, judgment or other document relating to any proceedings.

“Standard Terms of Carriage” means the Freight Operator’s current terms and conditions of carriage, as appended at Schedule 8 (*Standard Terms of Carriage*), together with any general conditions of sale that accompany such terms and conditions and/or are incorporated therein.

“Sterling” or **“£”** means the lawful currency of the United Kingdom.

“Third Party Claim” has the meaning attributed thereto in Clause 14 (*Indemnity*).

“Ticket Purchaser” means any haulier, holder, consignee, receiver or any person possessing or entitled to possession of the relevant cargo (or any agent acting on their behalf).

“Trip” means each performance of carriage by a Conveyance to or from the Departure Terminal to or from the Arrival Terminal or, in exceptional circumstances and then for so long only as such exceptional circumstances pertain, to or from another terminal that is reasonable in the circumstances.

“**VAT**” means:

- (A) within the European Union, any tax imposed by any member state thereof in conformity with the Directive of the Council of the European Union on the common system of value added tax (2006/112/EC); and
- (B) to the extent not included in paragraph (A), any value added tax imposed by the Value Added Tax Act 1994 and any legislation and regulations supplemental thereto; and
- (C) to the extent not included in paragraphs (A) or (B), any tax corresponding to, or substantially similar to, the common system of value added tax referred to in paragraph (A) of this definition.

“**Vessel**” means vessels, ships, boats or any other vehicles used to transport freight across bodies of water.

“**Withheld Amount**” has the meaning given to that term in Clause 8.4(E) (*Payment Terms*).

“**Working Hours**” means the period from 9:30 a.m. to 5:30 p.m. on a Business Day.

1.2 In this Agreement, unless otherwise specified or the context otherwise requires:

- (A) references to the parties hereto include their respective permitted assignees and/or the respective successors in title to substantially the whole of their respective undertakings;
- (B) references to Clauses, Paragraphs and Schedules are to clauses of, schedules to, and paragraphs in schedules to, this Agreement;
- (C) references to a “**company**” shall be construed so as to include any company or other body corporate wherever and however incorporated or established;
- (D) references to a “**person**” shall be construed to include any individual, firm, company, Central Government Body, government, state or agency of a state or any joint venture, association or partnership (whether or not having separate legal personality);
- (E) references to statutes or statutory provisions include references to any orders or regulations made thereunder and references to any statute, provision, order or regulation include references to that statute, provision, order or regulation as amended, modified, re-enacted or replaced;
- (F) any reference to a “**day**” (including in the definition of “**Business Day**”) shall mean a period of 24 hours running from midnight to midnight (London (UK) time);

- (G) references to a “**month**” is a reference to a period starting on one day in a calendar month and ending on the numerically corresponding day in the next succeeding calendar month save that, where any such period would otherwise end on a day which is not a Business Day, it shall end on the next succeeding Business Day, unless that day falls in the calendar month succeeding that in which it would otherwise have ended, in which case it shall end on the immediately preceding Business Day provided that, if a period starts on the last Business Day in a calendar month or if there is no numerically corresponding day in the month in which that period ends, that period shall end on the last Business Day in that later month (and references to “**months**” shall be construed accordingly);
- (H) references to include, includes, including and included shall be construed without limitation to the generality of the preceding words; and
- (I) words importing the singular shall include the plural and vice versa, and words importing the masculine shall include the feminine and neuter and vice versa.

1.3 The Schedules form part of the operative provisions of this Agreement and references to this Agreement shall, unless the context otherwise requires, include references to the Schedules.

2. Term

This Agreement shall come into force on the date hereof and shall continue until the Expiry Date or earlier termination of the Agreement pursuant to and in accordance with Clause 10 (*Termination*).

3. Purchased Capacity

The Freight Operator shall provide the Purchased Capacity pursuant to and in accordance with the terms of this Agreement (and in terms of timing on the basis provided for in Schedule 1 (*Purchased Capacity*)) on and from the Capacity Commencement Date up to and including the Expiry Date (or earlier termination of this Agreement pursuant to and in accordance with Clause 10 (*Termination*)).

4. Sale of Purchased Capacity by the Freight Operator to the Customer

4.1 The Freight Operator shall sell, and the Customer shall purchase, the Purchased Capacity on the terms of this Agreement, provided that no payment will be due in relation to Purchased Capacity that is not provided in accordance with the table set out at Schedule 1 (*Purchased Capacity*).

4.2 The price payable for the Purchased Capacity shall be the Purchase Price, exclusive of VAT. The Freight Operator shall not be entitled to any payment from the Customer in relation to the Purchased Capacity pursuant to the Standard Terms of Carriage.

4.3 The Purchase Price shall be payable in accordance with Clause 8 (*Payment Terms*).

5. Standard Terms of Carriage

- 5.1 The terms of this Agreement and any right, obligation, representation or warranty, undertaking or liability hereunder shall not be modified, replaced by, influenced or construed by the Standard Terms of Carriage.
- 5.2 The Standard Terms of Carriage shall, however, apply to any Trip made in respect of the Purchased Capacity and the Freight Operator shall be the carrier (howsoever defined in the Standard Terms of Carriage) for the purposes of the Standard Terms of Carriage.
- 5.3 The Freight Operator shall ensure that all Trips attributable to both the Purchased Capacity and the Freight Operator Own Capacity will be made on and subject to the Standard Terms of Carriage.
- 5.4 The Freight Operator shall in respect of any surcharges that may be applicable to Ticket Purchasers who purchase tickets attributable to Purchased Capacity, only:
- (A) change its surcharges (including the imposition of new surcharges) during the term of this Agreement if such change is made generally by it to the standard terms of carriage applicable to all equivalent or comparable routes; and
 - (B) apply such surcharges to the extent that it is entitled to do so by its Standard Terms of Carriage and then only if the relevant surcharge is generally applied also by the Freight Operator to trips made by it on equivalent or comparable routes and to all but not some only of the capacity on a particular trip.

6. Resale of Purchased Capacity by the Freight Operator

- 6.1 The Freight Operator shall:
- (A) until the Customer shall notify it, upon the provision of 2 days' prior written notice, to the contrary (the "**Notification**"):
 - (i) market the Purchased Capacity pursuant to and in accordance with the Priority Ticketing Principles, but otherwise in the same manner and to the same extent it does the capacity sold for its own account (and consistent with its historical marketing efforts for equivalent or comparable routes subject to such change in approach a Reasonable and Prudent Operator would make to reflect the prevailing circumstances from time to time provided that any such change in approach is generally applied (including to any capacity sold for its own account) and not inconsistent with the Priority Ticketing Principles);
 - (ii) use its reasonable endeavours to sell the Purchased Capacity;
 - (iii) any sales of Purchased Capacity shall be on the Standard Terms of Carriage and in accordance with the Priority Ticketing Principles;

- (iv) to make the Purchased Capacity available pursuant to and in accordance with the Priority Ticketing Principles; and
- (v) otherwise comply with the terms of the Priority Ticketing Procedures provided always that to the extent that there is any inconsistency between the terms of the Priority Ticketing Handbook and the terms of the Priority Ticketing Procedures, the terms of the Priority Ticketing Procedures shall prevail,

at no cost to the Customer but, to the extent practicable, as undisclosed agent for it; and

- (B) following a Notification and then from such time and in relation to the Purchased Capacity specified in the Notification:
 - (i) market such Purchased Capacity in the same manner and to the same extent it does the capacity sold for its own account and consistent with its historical marketing efforts for equivalent or comparable routes (subject to such change in approach a Reasonable and Prudent Operator would make to reflect the prevailing circumstances from time to time provided that any such change in approach is generally applied (including to any capacity sold for its own account));
 - (ii) use its reasonable endeavours to sell such Purchased Capacity;
 - (iii) any sales of such Purchased Capacity shall be on the Standard Terms of Carriage and:
 - (a) at the pricing notified from time to time by the Customer; or
 - (b) if no price is notified by the Customer, at the best price then reasonably achievable for the Customer; and
 - (iv) not prefer the sale of any capacity sold for its own account over the sale of such Purchased Capacity,

at no cost to the Customer but as undisclosed agent for it.

6.2 The Customer may, at any time and from time to time upon the provision of 2 Business Days' prior written notice to the Freight Operator, replace, supplement, modify and/or amend the Priority Ticketing Principles, to the extent necessary to facilitate the objective of prioritising the carriage of certain cargo as further set out in the recitals of this Agreement, save that the Freight Operator's consent (such consent not to be unreasonably withheld or delayed) shall be required where any such change thereof:

- (A) would require a change to the Standard Terms of Carriage;
- (B) has a material impact on the Freight Operator's operations; or

(C) would impose a material cost on the Freight Operator,

provided always that any change or amendment in respect of the following shall not require the Freight Operator's consent:

- (i) pricing of the Priority Tickets (as defined in the Priority Ticketing Procedures);
- (ii) identity of Category 1 Goods (as defined in the Priority Ticketing Procedures), provided that the Freight Operator shall not be required to carry anything that would ordinarily be prohibited by its Standard Terms of Carriage;
- (iii) Approved Suppliers and the list of corresponding Supplier Access Codes (each as defined in the Priority Ticketing Procedures);
- (iv) Approved Ticket Purchaser and the list of corresponding Ticketing Access Codes (each as defined in the Priority Ticketing Procedures); and
- (v) the Buffer Capacity (as defined in the Priority Ticketing Procedures) (including the routes, Lane Metres and volumes of HGVs that relate thereto).

6.3 The Freight Operator shall after receiving a Priority Ticket Complaint:

- (A) notify the Customer as soon as reasonably practicable that it has received a Priority Ticket Complaint and provide the Customer with sufficient detail in connection thereto;
- (B) promptly provide the Customer with any further detail that the Customer may reasonably request in connection thereto; and
- (C) where considered appropriate by the Customer (acting reasonably) investigate that Priority Ticket Complaint and provide the Customer with its findings as soon as practicable.

6.4 The Freight Operator shall operate such refund policy in respect of the Purchased Capacity as instructed by the Customer provided that:

- (A) the Freight Operator shall have no obligation to apply the policy to the extent that it is not possible to do so (i.e. if the Ticket Purchaser cannot be identified), or to the extent that doing so would result in a breach of its Standard Terms of Carriage; and
- (B) the administrative costs reasonably incurred in applying the policy shall be for the Customer to the extent that the policy is inconsistent with the Freight Operator's general practice or not required by its Standard Terms of Carriage.

- 6.5 The Freight Operator shall implement any pricing instruction given to it by the Customer in respect of the price of tickets attributable to the Purchased Capacity pursuant to Clause 6.1(B)(iii) above or in respect of the price of Priority Tickets (as defined in Schedule 5 (*Priority Ticketing Procedures*)) as soon as practicable after receiving any such pricing instruction but in any event no later than two days after receiving any such pricing instruction.
- 6.6 If, prior to any Trip of Purchased Capacity on which there is also to be carried Freight Operator Own Capacity, the Freight Operator receives a request for Freight Operator Own Capacity that it cannot fulfil through the sale of Freight Operator Own Capacity, it will promptly notify the Customer and provide all relevant details including of the amount of capacity involved and price that could be secured for that capacity. If the Customer so requires, the Freight Operator shall use its reasonable endeavours to satisfy such request or demand for capacity through the sale of Purchased Capacity. To the extent that the Freight Operator is successful, the Customer will make the relevant amount of Purchased Capacity available to the Freight Operator and the Freight Operator will sell the same at such price and on its Standard Terms of Carriage as undisclosed agent for the Customer.

7. Agency

- 7.1 In acting as undisclosed agent of the Customer under Clause 6 (*Resale of Purchased Capacity by the Freight Operator*), the Freight Operator shall act according to any lawful and reasonable instructions given to it by the Customer.
- 7.2 For the avoidance of doubt, the parties acknowledge that the Freight Operator shall not be paid or entitled to any payment, compensation, remuneration, sum, fees, indemnification or expenses in acting as undisclosed agent of the Customer either during or on termination of this Agreement.

8. Payment Terms

- 8.1 For the avoidance of doubt:
- (A) the operation of Clause 8.2, 8.3 and 8.4 is such that, save where pursuant to the terms of this Agreement the payment obligation is suspended or no longer due, to the extent that payment for the Purchased Capacity is not received by the Freight Operator from the purchasers of Purchased Capacity, it shall be due from the Customer; and
 - (B) no payment will be due in respect of Purchased Capacity not actually made available including by reason of the operation of Clause 13 (*Force Majeure*), cancelled pursuant to Clause 33 (*Cancellation*) or terminated pursuant to Clause 10.1(B) (*Termination*).

Purchased Capacity

8.2 From the Capacity Commencement Date until the Expiry Date or earlier termination of this Agreement pursuant to Clause 10 (*Termination*), the Freight Operator will provide the Customer with a detailed summary (a “**Monthly Statement**”) (in a form reasonably acceptable to, and containing such detail as may be reasonably required by, the Customer) in respect of each Trip of Purchased Capacity in each month (a “**Relevant Month**”) as soon as practicable after the last day of the Relevant Month, setting out (in reasonable detail):

- (A) the amount of Purchased Capacity sold;
- (B) the aggregate of the amounts (net of any VAT or duty) payable to the Freight Operator by the purchasers thereof in respect of the sale by the Freight Operator of the Purchased Capacity (and the pricing mechanism that was applied if no price for resale was specified by the Customer) and details of any VAT or duty included in the amounts payable by the purchasers in relation thereto and in each case the aggregate of those amounts actually received by the Freight Operator;
- (C) the amount of Freight Operator Own Capacity sold (if relevant);
- (D) the aggregate of the amounts (net of any VAT or duty) payable to the Freight Operator by the purchasers thereof in respect of the sale by the Freight Operator of the Freight Operator Own Capacity following a Notification and details of any VAT or duty included in the amounts payable by the purchasers in relation thereto and in each case the aggregate of those amounts actually received by the Freight Operator; and
- (E) the Required Payment and by whom it is payable in accordance with Clause 8.4 below.

8.3 The following shall be or shall be deemed to be the position in relation to the Purchased Capacity sold:

- (A) where there is Purchased Capacity on a Trip that is to be resold in accordance with the Priority Ticketing Principles, any capacity sold to an Approved Ticket Purchaser that is making use of the priority ticketing arrangements and is transporting solely Category 1 Goods (each as defined in Schedule 5 (*Priority Ticketing Procedures*)) shall in all cases be a sale of Purchased Capacity that is to be resold in accordance with the Priority Ticketing Principles and not of any Freight Operator Own Capacity until all of the Purchased Capacity that is to be resold in accordance with the Priority Ticketing Principles on that Trip has been sold; and
- (B) from the time specified in a Notification (the “**Notification Start Time**”) (see illustrative examples included in Schedule 9 (*Clause 8.3(B) Illustrative Example*)):

(i) to the extent that the price that the Notification Capacity on the relevant Trip is sold at is not different from the price at which the Freight Operator Own Capacity on the same Trip is sold at:

(a) the Freight Operator Own Capacity to the extent unsold at the Notification Start Time and the Notification Capacity on the same Trip shall be deemed to have been sold on a pari passu basis (with any rounding to be allocated between the Customer and the Freight Operator on an alternate basis); and

(b) the revenue from ticket sales of the Freight Operator Own Capacity to the extent unsold at the Notification Start Time and the Notification Capacity on the same Trip shall be shared equally between the Customer and the Freight Operator,

in each case until such time (the “**Notification Expiry Time**”) as the whole of the Notification Capacity (if relevant, aggregated as provided in paragraph (iii) below) has been sold or the Freight Operator Own Capacity on the same Trip has been sold;

(ii) to the extent that the price that the Notification Capacity on the relevant Trip is sold at is different from the price at which the Freight Operator Own Capacity on the same Trip is sold at, the Purchased Capacity sold shall be the actual Purchased Capacity sold and the Customer shall have no interest in revenue from Freight Operator Own Capacity sold; and

(iii) where more than one Notification is made in respect of the same Trip:

(a) the Notification Start Time of the earliest Notification in respect of that Trip in respect of which the Notification Expiry Time has not occurred shall be deemed to be the Notification Start Time of the subsequent Notification or Notifications; and

(b) the Notification Capacity in respect of such earliest Notification shall be deemed to be the aggregate of the Notification Capacity specified in such earliest Notification and all such subsequent Notifications.

8.4 Each of the Customer and the Freight Operator shall pay such amounts (and at such times) to each other (as applicable) in accordance with this Clause 8.4:

(A) If the aggregate of the amounts payable by the Customer for the Purchased Capacity in respect of which Trips have been made in accordance with the table set out at Schedule 1 (*Purchased Capacity*) in a Relevant Month less the aggregate of the amounts actually received by the Freight Operator in that Relevant Month in respect of the sale of tickets attributable to the Purchased Capacity deducting any refunds actually paid by the Freight Operator in accordance with Clause 6.4 (*Resale of Purchased Capacity by the Freight Operator*), in each case net of any VAT or duty:

is a positive amount, then that amount shall be paid, together with any VAT in respect of that amount, by the Customer to the Freight Operator; or

is a negative amount, then the absolute value of that amount shall be paid, together with any VAT in respect of that amount, by the Freight Operator to the Customer,

each being a “**Required Payment**”.

(B) If the Required Payment is:

(i) to be made by the Freight Operator to the Customer, the Customer shall submit a written invoice to the Freight Operator as soon as practicable following the receipt by it of the relevant Monthly Statement in respect of such Relevant Month; and

(ii) to be made by the Customer to the Freight Operator, the Freight Operator shall submit a written invoice to the Customer at the same time as the delivery of the relevant Monthly Statement delivered by it pursuant to Clause 8.2 above, in respect of such Relevant Month.

(C) Each invoice delivered pursuant to paragraph (B) above shall fully detail the amount payable by the Customer or the Freight Operator, as applicable (and to which account the Required Payment is to be made) and shall, where VAT is chargeable, include a VAT invoice.

(D) Each Required Payment shall, to the extent not disputed pursuant to and in accordance with paragraph (E) below, be payable in [Sterling/Euro]² and in immediately available funds by the relevant party no later than 30 days after the receipt by it of an invoice meeting the requirements of this Clause 8.

² Delete Sterling or Euro as applicable and as set out in the Call Off Order Form, to which these terms and conditions will be appended.

- (E) Where a party disputes (the “**Disputing Party**”) the amount of the Required Payment to be paid by it to the other party (the “**Non-Disputing Party**”) in respect of a particular Relevant Month pursuant to an invoice delivered by the Non-Disputing Party (so long as such invoice or Monthly Statement which the invoice relates to is disputed by the Disputing Party within five (5) Business Days of receipt of such invoice):
- (i) the Disputing Party may withhold any part of the Required Payment which it reasonably considers is not due and properly payable in accordance with this Clause 8.4 (the “**Withheld Amount**”) until the dispute is settled between the parties in accordance with Clause 30 (*Dispute Resolution*);
 - (ii) the Disputing Party shall otherwise be required to pay the Required Payment less the Withheld Amount in accordance with Clause 8.4(D) above; and
 - (iii) following the settlement of the dispute in accordance with Clause 30 (*Dispute Resolution*) if adversely determined against:
 - (a) the Disputing Party, the Disputing Party shall pay the amount that it is determined is payable to the Non-Disputing Party (taking into account any amounts paid under Clause 8.4(E)(ii)); and
 - (b) the Non-Disputing Party, the Non-Disputing Party shall pay the amount that it is determined is payable to the Disputing Party (including, if relevant, the return of any amounts paid pursuant to Clause 8.4(E)(ii)),

in each case, within three (3) Business Days of the dispute being settled, together with default interest in accordance with Clause 8.5 below applying on and from the date that payment ought to have been made pursuant to paragraph (D) above up to and including the date of actual payment following the settlement of the dispute in accordance with Clause 30 (*Dispute Resolution*).

Default Interest

- 8.5 Any party which fails to pay any sum payable by it under this Agreement on the due date for payment shall pay interest on that sum at the rate of six (6) per cent. per annum for the period from and including the due date up to the date of actual payment (after as well as before judgment).
- 8.6 Where the Customer fails to pay any sum payable by it under this Agreement on the due date and such failure is not remedied within twenty (20) Business Days the Freight Operator is entitled to suspend the provision by it of the Purchased Capacity until payment is received.

- 8.7 Where the Freight Operator fails to pay any sum payable by it under this Agreement on the due date and such failure is not remedied within twenty (20) Business Days the Customer is entitled to suspend the performance of its obligations to make payment to the Freight Operator pursuant to and in accordance with Clause 8 (*Payment Terms*).

Accounting and records

- 8.8 The Freight Operator shall keep or cause to be kept such records as are reasonably necessary to show the basis for calculation of all amounts payable by it and the Customer under this Agreement. The Freight Operator shall on request provide copies of such records to the Customer for the purpose of verifying the accuracy of any invoice.
- 8.9 To enable payment to be made by the Customer under this Agreement, the Freight Operator must be issued with a unique purchase order number ("**PO Number**") details of which shall have been provided by the Customer. All invoices submitted to the Customer must be accompanied by such supporting documentation as may reasonably be requested by the Customer and quote the relevant PO Number and the other information contained in Schedule 3 (*Invoicing Requirements*), and be submitted to Accounts Payable, DfT Shared Service Arvato, 5 Sandringham Park, Swansea Vale, Swansea SA7 0EA. Invoices that do not comply with these requests will be returned and payment will be delayed until they do.
- 8.10 The parties shall not be entitled to any remuneration, expenses, or commission save as set out in this Agreement.

9. Representations, Warranties and Undertakings

- 9.1 The Freight Operator represents and warrants to the Customer at the date hereof that:
- (A) it has obtained all corporate authorisations and all other governmental, statutory, regulatory or other consents, licences or authorisations required to empower it to enter into and perform its obligations under this Agreement;
 - (B) it is validly incorporated, in existence and duly registered under the laws of its jurisdiction of incorporation and it has full power under its constitutional documents to conduct its business as conducted at the date of this Agreement;
 - (C) there are no matters (to the best of its knowledge and belief) that would prevent the provision or utilisation of the Purchased Capacity as envisaged by this Agreement; and
 - (D) no Insolvency Event has occurred in respect of it.
- 9.2 The Freight Operator undertakes to the Customer that it:
- (A) shall provide the Purchased Capacity and shall procure the supply of any items or services required to do so;

- (B) shall fulfil its obligations:
- (i) under this Agreement; and
 - (ii) under the Standard Terms of Carriage in all material respects in respect of the Purchased Capacity;

in compliance with all Applicable Law (and shall also procure that any Key Sub-Contractors act in compliance with all Applicable Law), to the standard of a Reasonable and Prudent Operator (and the Freight Operator shall ensure that the service in respect of the Purchased Capacity is provided to at least as high a standard as the standard to which such equivalent services are ordinarily provided by the Freight Operator (or other members of its Group) on its other routes) and notify the Customer immediately of any significant departure in its compliance thereof;

- (C) shall not in any material respect treat any service made in respect of the Purchased Capacity any less favourably than it does any service made in relation to capacity that it sells for its own account;
- (D) shall promptly provide all information to the Customer as the Customer may reasonably request in connection with this Agreement;
- (E) shall promptly provide the Customer with all information and documents dispatched by the Freight Operator to its shareholders (or any class of them) on a publicly available basis or dispatched by the Freight Operator to its creditors on a publically available basis, generally at the same time they are dispatched;
- (F) shall promptly inform the Customer of any material adverse change to its business, assets and/or financial condition which may impair its ability to perform its obligations under this Agreement or under the Standard Terms of Carriage;
- (G) save as:
- (i) contemplated by Clause 6.1 (*Resale of Purchased Capacity by the Freight Operator*); or
 - (ii) to the extent already in the public domain other than by reason of a breach by the Freight Operator of this paragraph,

shall not disclose to any Ticket Purchaser or any third party that it is acting as undisclosed agent of the Customer.

- (H) shall ensure that it has the necessary infrastructure including, without limitation, personnel and employees, licenses, permits and authorities to the standard of a Reasonable and Prudent Operator necessary for the provision of the marketing

and sale of tickets for the sale of Purchased Capacity in accordance with the terms of this Agreement;

- (I) shall not without the prior written consent of the Customer (such consent not to unreasonably withheld or delayed by the Customer):
 - (i) amend the Standard Terms of Carriage; or
 - (ii) exercise any right contained therein,

during the term of the Agreement if it would, or would be likely to, materially affect either the commercial basis on which the Purchased Capacity would be provided or the manner in which it would be provided to the purchasers thereof;

- (J) shall to the standard expected of a Reasonable and Prudent Operator maintain a robust risk management methodology and provide details of such methodology and risk management information, including a comprehensive risk log detailing risks and steps to be taken in order to mitigate such risks, to the Customer upon request;
- (K) shall (and procure that any of its employees involved in connection with the provision of the Purchased Capacity hereunder shall) comply with any applicable data protection and notification requirements under the Data Protection Act 2018 (the “**DPA**”) and the General Data Protection Regulation (EU) 2016/679 of the European Parliament (“**GDPR**”) (as amended from time to time) and shall duly observe all obligations under all data protection legislation applicable to it, including but not limited to the DPA and GDPR, and Law Enforcement Directive (Directive (EU) 2016/680) which arise in connection with this Agreement;
- (L) shall, if the Customer is required to provide a privacy notice under Article 13 or Article 14 of the GDPR (or its equivalent), provide each individual whose personal data the Customer processes pursuant to this Agreement (or the arrangements contemplated by this Agreement) with a copy (in hard copy and/or electronic form) of the Customer’s privacy notice at or before the time that such individual provides information either to the Customer directly or to the Freight Operator, with a view to the information being passed on to the Customer;
- (M) shall maintain all records as required by Schedule 4 (*Reports and Records*);
- (N) shall procure that a person of authority and having the relevant experience and expertise in the operation of the business of the Freight Operator shall upon the request of the Customer meet with the Customer as soon as practicable and, if so required by the Customer, shall attend regular meetings (at intervals to be determined by the Customer) with the Customer (or its advisers) to discuss the business, operations and/or financial condition of the Freight Operator or the ability of the Freight Operator to perform its obligations under this Agreement;

- (O) shall promptly notify the Customer upon a change of Control in the Freight Operator occurring;
- (P) use its reasonable endeavours to pursue any amounts overdue from the Ticket Purchasers of tickets attributable to the Purchased Capacity (the “**Overdue Amounts**”) which shall in any event be no greater than the endeavours the Freight Operator would ordinarily exercise in respect of capacity sold for its own account and if those amounts are not paid, on or before the relevant invoice is prepared in respect thereof pursuant to Clause 8.4 (*Payment Terms*), the Freight Operator shall, upon the request of the Customer, assign all its rights, title, interest and benefit in and to any Overdue Amounts to the Customer and provide such assistance in the recovery of the Overdue Amounts as the Customer may reasonably require; and
- (Q) provide with any invoice prepared pursuant to Clause 8.4 (*Payment Terms*), details on the amount of any then Overdue Amounts and of the Ticket Purchasers whom such Overdue Amounts are payable by and shall, upon request, provide the Customer with any other details in connection with the Overdue Amounts that the Customer may reasonably request;
- (R) shall use its reasonable endeavours throughout the term of the Agreement to reduce the Freight Operator’s Actual Costs that it may incur in providing the Purchased Capacity, including mitigating or avoiding the incurrence of such costs to the extent practicable in respect of any cancellation pursuant to Clause 33 (*Cancellation*) or period commencing after the early termination of this Agreement pursuant to Clause 10.1(B) (*Termination*);
- (S) shall, as soon as practicable:
 - (i) on a request by the Customer, provide the Customer with details of the likely Freight Operator’s Actual Costs that relate to the relevant termination period/cancellation of Purchased Capacity (together with credible supporting evidence thereof) and details of efforts that can likely be made to mitigate or avoid such costs, if the Customer were to serve a Customer’s Early Termination Notice on a specified date or serve a Customer’s Cancellation Notice in respect of a specified amount of Purchased Capacity; and
 - (ii) upon the service by the Customer of the Customer’s Early Termination Notice or a Customer’s Cancellation Notice, provide the Customer with the Freight Operator’s Actual Costs that relate to the relevant termination period or cancellation of Purchased Capacity as mitigated or avoided to the extent practicable pursuant to Clause 9.2(R) (together with credible supporting evidence thereof);
- (T) notify the Customer where it makes any change to the publically available spot price that it sells Freight Operator Own Capacity for, at the same time as such change is made publically available to the market by the Freight Operator

(where “publically available” includes where such price (but for the avoidance of doubt, not the amount of any applicable discount) is made available to the Freight Operator’s account holders);

- (U) provide the Customer with full, complete and accurate reports and information pursuant to and in accordance with the specification of services included at Schedule 2 of the Framework Agreement, including the section on reporting requirements included therein, and Part C of Schedule 4;
- (V) shall comply, and also procure that any Key Sub-Contractors comply, with the insurance requirements set out in Schedule 7 of the Framework Agreement (*Insurance Requirements*);
- (W) shall comply with Clause 11 (*Records, Audit Access and Open Book Data*) of the Framework Agreement; and
- (X) shall operate any Conveyance used for the provision of the Purchased Capacity under this Agreement in compliance with Applicable Law.

9.3 The undertakings in paragraphs (B), (C), (D), (E), (F), (G), (H), (I), (J), (K), (L), (M), (N), (O), (R), (S), (T), (U), (V) and (W) of Clause 9.2 shall apply from the date hereof and those in paragraphs (A), (P), (Q) and (X) of Clause 9.2 shall apply from the Capacity Commencement Date.

9.4 The Customer represents and warrants to the Freight Operator at the date hereof that it has obtained all corporate authorisations and all other governmental, statutory, regulatory or other consents, licences or authorisations required to empower it to enter into and perform its obligations under this Agreement.

10. Termination

10.1 The Customer may terminate this Agreement:

- (A) immediately upon notice to the Freight Operator in writing where:
 - (i) the Freight Operator repudiates or rescinds (or evidences an intention to repudiate or rescind) this Agreement or any contracts entered into under or as envisaged by this Agreement;
 - (ii) the Freight Operator fails to observe or perform any of its obligations under this Agreement (save where capable of remedy such failure is not remedied to the satisfaction of the Customer within twenty (20) Business Days of such failure to comply) and provided that the circumstances described in paragraph (i) shall be deemed not capable of remedy;
 - (iii) an Insolvency Event occurs in respect of the Freight Operator; or

(iv) in the event that the Framework Agreement is terminated pursuant to and in accordance with sub-clause (c)(iii), (d)(iv) or (e) of Clause 20.1.1 of the Framework Agreement.

(B) at any time, upon notice in writing to the Freight Operator and from the date specified in such notice, in which event the Early Termination Sum will become payable and shall be paid by the Customer to the Freight Operator as soon as practicable thereafter.

10.2 Where this Agreement is terminated by the Customer it shall be entitled to damages and the parties acknowledge and agree, without prejudice to Clause 12 (*Damages as inadequate remedy*), that the objective of this Agreement in so far as the Customer is concerned is a policy objective to prioritise and thereby facilitate the carriage of certain cargos over others during the term of the Agreement through the sale by the Freight Operator of the Purchased Capacity pursuant to and in accordance with the Priority Ticketing Principles, as further set out in the recitals of this Agreement, and that therefore if there is a breach by the Freight Operator of this Agreement damages for direct loss shall neither be sufficient nor represent the loss to the Customer and that the loss to the Customer shall include the cost of procuring alternative capacity with another freight operator or operators and the cost of procuring an operator or agent who is able to sell capacity on behalf of the Customer in accordance with the Priority Ticketing Principles (which might be the freight operator that provides the alternative capacity) and that this shall not be considered to be Consequential Loss. For the avoidance of doubt, any amounts payable pursuant to this Clause shall count towards the cap on liability contained at Clause 11.3 (*Limitations on Liability*).

10.3 The termination of this Agreement shall not affect any provision which is expressly stated to apply after termination of this Agreement or any accrued rights and obligations under this Agreement existing as at termination.

10.4 The Customer may, within 15 Business Days of the Expiry Date or earlier termination of this Agreement pursuant to this Clause 10, require the Freight Operator to, and the Freight Operator shall if so required, securely erase or destroy all Government Data (save to the extent that it is strictly necessary for the Freight Operator to retain any such data pursuant to Applicable Law or for the operation of its business, provided always that any data required to be erased or destroyed for the purposes of Applicable Law shall not be retained). The provisions of this Clause shall continue to apply for 12 months after the expiry or termination of this Agreement.

11. Limitations on liability

11.1 Neither party shall be liable to the other party (and in the case of the Customer to any member of the Freight Operator's Group) whether in contract, tort (including negligence and breach of statutory duty) or otherwise for Consequential Loss provided always that the parties acknowledge and agree that the loss to the Customer described in Clause 10.2 (*Termination*) above shall not constitute Consequential Loss.

11.2 Nothing in this Agreement shall exclude, restrict or limit the liability of either party for:

- (A) death or personal injury resulting from negligence or wilful misconduct; and
- (B) fraud or any other matter, action, or omission if and to the extent that, under Applicable Law, it cannot be excluded, restricted or limited.

11.3 Subject to Clause 11.5 below which lists items that shall not count towards the cap on liability in this Clause, the maximum aggregate liability of the Freight Operator under this Agreement, including but not limited to Clauses 14 (*Indemnity*) and Clause 10.2 (*Termination*), shall be, in all cases, limited to the gross amount payable by the Customer for the Purchased Capacity pursuant to this Agreement for the whole of the term.

11.4 Subject to Clause 11.6 below which lists items that shall not count towards the cap on liability in this Clause, the maximum aggregate liability of the Customer under this Agreement shall be, in all cases, limited to the gross amount payable by the Customer for the Purchased Capacity pursuant to this Agreement for the whole of the term.

11.5 Subject to Clauses 11.1 and 11.2, the Freight Operator acknowledges that the Customer may, without prejudice to any other losses that may be recoverable by it, recover from the Freight Operator the following:

- (A) any amounts payable by the Freight Operator to the Customer in respect of the resold Purchased Capacity pursuant to Clause 8 (*Payment Terms*); and
- (B) to the extent attributable to a breach by the Freight Operator of any term of this Agreement:
 - (i) any compensation or interest paid to a third party by the Customer; and
 - (ii) any fine, penalty or costs incurred by the Customer pursuant to any law, enactment, order, regulation or mandatory code of conduct,

and, for the avoidance of doubt, any amounts recovered by the Customer pursuant to this Clause 11.5 shall not count towards the cap on liability in Clause 11.3 above.

11.6 Subject to Clauses 11.1 and 11.2, the Customer acknowledges that the Freight Operator may, without prejudice to any other losses that may be recoverable by it, recover from the Customer the following:

- (A) any amounts payable by the Customer to the Freight Operator in respect of the Purchased Capacity pursuant to Clause 8 (*Payment Terms*); and
- (B) to the extent attributable to a breach by the Customer of any term of this Agreement:
 - (i) any compensation or interest paid to a third party by the Freight Operator; and

- (ii) any fine, penalty or costs incurred by the Freight Operator pursuant to any law, enactment, order, regulation or mandatory code of conduct,

and, for the avoidance of doubt, any of the amounts recovered by the Freight Operator pursuant to this Clause 11.6 shall not count towards the cap on liability in Clause 11.4 above.

12. Damages as inadequate remedy

The Freight Operator agrees that damages would not be an adequate remedy for any breach by it of the provisions of this Agreement and consequently that the equitable remedy of specific performance of the terms hereof should be available in the event of any breach by it.

13. Force Majeure

13.1 The Claiming Party will not be in breach of this agreement or otherwise liable to the other party (the “**Non-Claiming Party**”) for any delay in performance or any non-performance of any obligations under this Agreement (and the time for performance will be extended accordingly) if and to the extent that the delay or non-performance is by reason of Force Majeure. This Clause 13.1 only applies if:

- (A) the Claiming Party could not have avoided the effect of the Force Majeure by taking precautions which, having regard to all matters known to it before the occurrence of the Force Majeure and all relevant factors, it ought reasonably to have taken but did not take; and
- (B) the Claiming Party has used reasonable endeavours to mitigate the effect of the Force Majeure and to carry out its obligations under this agreement in any other way that is reasonably practicable.

13.2 The Claiming Party shall promptly notify the Non-Claiming Party of the nature and extent of the circumstances giving rise to Force Majeure. As soon as possible after the notification of the occurrence of a Force Majeure, the parties shall, if either party so elects, enter into bona fide discussions with a view to alleviating the effects of such Force Majeure or agreeing alternative arrangements that shall be fair and reasonable taking into account their respective obligations to third parties.

13.3 The Claiming Party shall notify the Non-Claiming Party as soon as practicable after a Force Majeure ceases or no longer causes the Claiming Party to be unable to comply with its obligations under this Agreement. Following such notification, this Agreement shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure, save that the Non-Claiming Party shall be entitled to act in accordance with any binding arrangements that it (acting reasonably) put in place at the time after the Force Majeure in order to mitigate the effect of the Force Majeure. The Non-Claiming Party shall use reasonable endeavours to ensure that the binding arrangements that it enters into in mitigation of a Force Majeure are reasonable and proportionate given the nature and anticipated duration of the Force Majeure.

13.4 The Claiming Party on giving notice in accordance with Clause 13.2 above shall be excused the performance or punctual performance, as the case may be, of the obligations notified for so long as the circumstances notified (or the effects thereof) continue and the Claiming Party shall be deemed not to be in breach of this Agreement to the extent that such breach is caused by the circumstances constituting Force Majeure.

14. Indemnity

14.1 The Freight Operator shall keep indemnified the Customer against any loss, cost (including any cost of enforcement), liability (including any tax liability), claim or damage which the Customer incurs or suffers as a result of, or in connection with any claim brought against the Customer in relation to any Trip of Purchased Capacity made or which should have been made (a “**Third Party Claim**”).

14.2 In respect of a Third Party Claim, the Customer shall act in accordance with the reasonable instructions of the Freight Operator (the Customer having been made whole if the instructions would result in any liability, charge, cost or expense) and, in particular will notify the Freight Operator of any claim as soon as reasonably practicable and, subject hereto to having been made whole, will not settle or compromise any claims, demands or suits against it without the prior written consent of the Freight Operator (such consent not to be unreasonably withheld or delayed).

14.3 At any time before any final compromise, agreement, expert determination or non-appealable decision of a court or tribunal of competent jurisdiction is made in respect of the Third Party Claim or the Third Party Claim is otherwise disposed of or settled by agreement between the Customer and the Freight Operator, the Freight Operator may give notice to the Customer that the Freight Operator elects to assume the conduct of any dispute, compromise, defence or appeal of the Third Party Claim and of any incidental negotiations on the following terms:

- (A) the Freight Operator shall indemnify the Customer against all liabilities, charges, costs and expenses which they may incur in taking any such action as the Freight Operator may request pursuant to subparagraphs (B) and (C) below;
- (B) the Customer shall make available such persons and all such information as the Freight Operator may request for assessing, contesting, disputing, defending, appealing or compromising the Third Party Claim;
- (C) the Customer shall take such action to assess, contest, dispute, defend, appeal or compromise the Third Party Claim as the Freight Operator may request and shall not make any admission of liability, agreement, settlement or compromise in relation to the Third Party Claim without the prior written approval of the Freight Operator;
- (D) the Freight Operator shall keep the Customer informed of the progress of the Third Party Claim and provide the Customer with copies of all relevant

documents and such other information in its possession as may be requested by the Customer (acting reasonably); and

- (E) the Customer shall be permitted at its own cost to participate in (but not control) such Third Party Claim, and to employ separate counsel in connection with such participation not reasonably objected to by the Freight Operator.

14.4 The Customer will use reasonable endeavours to mitigate any loss it may suffer in relation to any claim in respect of which an indemnity applies under this Agreement.

14.5 For the avoidance of doubt, any amounts payable pursuant to this Clause 14 shall count towards the cap on liability contained at Clause 11.3 (*Limitations on Liability*).

14.6 The provisions, rights and obligations contained in this Clause 14 shall continue to apply after termination of this Agreement without limit in time.

15. Confidentiality

15.1 Subject to Clauses 15.2, 15.3 and 15.6 below and other than the fact of entry into this Agreement but not its terms and conditions, the Freight Operator shall treat as strictly confidential all information received or obtained as a result of entering into or performing this Agreement which relates to the provisions or the subject matter of this Agreement or any document referred to herein or the negotiations relating to this Agreement or any document referred to herein.

15.2 The Freight Operator may disclose information which would otherwise be confidential if and to the extent:

- (A) required by the law of any relevant jurisdiction or for the purposes of judicial proceedings;
- (B) required by any securities exchange or regulatory or governmental body to which the Freight Operator is subject or submits, wherever situated, whether or not the requirement for information has the force of law;
- (C) that the information is disclosed on a strictly confidential basis, to its professional advisers, auditors and/or bankers;
- (D) to its officers, directors and employees operators to the extent reasonably necessary for the performance of its obligations under this Agreement;
- (E) that the information has come into the public domain through no fault of the Freight Operator;
- (F) that the Customer has given prior written approval to the disclosure (including, without limitation, in connection with any agreed marketing of the Purchased Capacity); or

- (G) required to enable the Freight Operator to enforce its rights under this Agreement,

provided that any such information disclosed pursuant to paragraphs (A) or (B) shall (to the extent permitted by Applicable Law) be disclosed only after notice to the other party.

15.3 In addition to the provisions of Clause 15.2, the Freight Operator may disclose confidential information to:

- (A) any local authorities, employees or third party freight operators to the extent reasonably necessary to enable the Purchased Capacity to be provided or received (including, for the avoidance of doubt, the disclosure of the definition of “Force Majeure” in this Agreement to the Departure Terminal or the Arrival Terminal or any terminal operators at the Departure Terminal or the Arrival Terminal); and
- (B) any significant account holder of any Group company of the Freight Operator notified by the Freight Operator to the Customer prior to the date of this Agreement, provided that such disclosure is strictly necessary for the purposes of managing the Freight Operator’s (or relevant Group company’s) existing commercial relationship with such account holder and the Customer has previously approved the extent of such disclosure,

and provided further that the Freight Operator shall procure that any such recipients are subject to obligations of confidentiality in terms no less onerous than those set out in this Clause 15.

15.4 The Freight Operator acknowledges that the Customer is subject to the requirements of the Freedom of Information Act 2000 (“**FOIA**”) and the Environmental Information Regulations 2004 (“**EIRs**”). Accordingly, the Freight Operator shall:

- (A) provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its obligations under the FOIA and EIRs;
- (B) transfer to the Customer all requests for information relating to this Agreement that it receives as soon as practicable and in any event within five (5) Business Days of receipt;
- (C) provide the Customer with a copy of all information belonging to the Customer requested in the request for information which is in its possession or control within five (5) Business Days (or such other period as the Customer may reasonably specify) of the Customer 's request for such information; and
- (D) not respond directly to a request for information unless authorised in writing to do so by the Customer.

- 15.5 The Freight Operator acknowledges that the Customer may, under the FOIA and EIRs, disclose information without consulting or obtaining consent from the Freight Operator. The Customer shall take reasonable steps to notify the Freight Operator of a request for information (in accordance with the Customer's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Customer shall be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the FOIA and/or the EIRs.
- 15.6 Nothing in this Clause 15 shall prevent the Freight Operator from responding to press queries regarding Purchased Capacity provided that: (i) such response has been approved (in their discretion) by the Customer's press office/communications department (and the Freight Operator shall not comment on press queries pending such approval); and (ii) such response does not contain confidential information the disclosure of which the Customer has not approved.
- 15.7 Subject to Clause 15.8 below, the Customer shall treat as strictly confidential all information received or obtained from the Freight Operator as a result of entering into or performing this Agreement the disclosure of which would likely prejudice its commercial interests.
- 15.8 The Customer may disclose information which would otherwise be confidential if and to the extent:
- (A) required by the law of any relevant jurisdiction or for the purposes of judicial proceedings;
 - (B) required by any regulatory or governmental body to which the Customer is subject or submits, wherever situated, whether or not the requirement for information has the force of law;
 - (C) that the information is disclosed on a strictly confidential basis, to its professional advisers, auditors and/or bankers;
 - (D) to its officers, directors and employees or those of the Authority, any Other Contracting Authority or Relevant Persons (each as defined in the Framework Agreement) to the extent reasonably necessary for the purpose of administering or performing its obligations under this Agreement or the Framework Agreement;
 - (E) that the information has come into the public domain through no fault of the Customer;
 - (F) that the Freight Operator has given prior written approval to the disclosure; or
 - (G) required to enable the Customer to enforce its rights under this Agreement,

provided that any such information disclosed pursuant to paragraphs (A) or (B) shall (to the extent permitted by Applicable Law) be disclosed only after notice to the other party.

- 15.9 The restrictions and provisions contained in this Clause 15 shall continue to apply after termination of this Agreement without limit in time.

16. Set-Off

All payments to be made by any party to this Agreement shall be made in full and free and clear of any right of set-off and any restriction, condition or deduction because of any counterclaim (save where pursuant to Clause 8.4(E)(i) (*Payment Terms*)).

17. VAT

- 17.1 Any sum payable under this Agreement by one party to another party is deemed to be exclusive of any amounts in respect of any VAT chargeable on the supply for which that sum is the consideration (in whole or in part) for VAT purposes. If anything done by one party under this Agreement constitutes, for VAT purposes, the making of a supply to another party and VAT is or becomes chargeable on that supply, the party receiving the supply shall pay the other party, in addition to any amounts otherwise payable under this Agreement by the party receiving the supply, a sum equal to the amount of the VAT chargeable on that supply against delivery of a valid VAT invoice to the party receiving the supply.

- 17.2 The parties intend that, if the sale of Purchased Capacity to any Ticket Purchaser in accordance with Clause 6 (*Resale of Purchased Capacity by the Freight Operator*) or otherwise would otherwise be treated for VAT purposes as a supply by the Customer to the Ticket Purchaser, such sale should instead be treated for VAT purposes as two separate supplies: one from the Customer to the Freight Operator and one by the Freight Operator to the Ticket Purchaser.

- 17.3 If and to the extent that the Freight Operator, when acting as agent for the Customer in accordance with Clause 6 (*Resale of Purchased Capacity by the Freight Operator*) or otherwise, receives from a Ticket Purchaser any payments in respect of VAT in relation to a supply that is treated for VAT purposes as made directly by the Customer to the Ticket Purchaser, the Freight Operator shall pay such amounts on to the Customer. For the avoidance of doubt, any such amounts paid to the Customer in respect of VAT under this Clause 17.3 shall not constitute for the purposes of Clause 8.4(A) (*Payment Terms*) amounts actually received by the Freight Operator in respect of the sale by it of the Purchased Capacity.

18. Notices

- 18.1 Every notice, request, demand or other communication made under this Agreement shall:

(A) be in writing delivered personally or by first class prepaid post or by e-mail;

(B) be deemed to have been received, in the case of an e-mail, immediately after receipt in legible form and, in the case of a letter, when delivered personally or two (2) Business Days after posting; and

(C) be sent and addressed as follows (as applicable), or to such alternative notice details as a party may notify (in respect of itself) to the other party to this Agreement in accordance with this Clause 18 (provided that such notice shall only be effective on the day falling five (5) Business Days after the notification has been received or such later date as may be specified in the notice):

(i) to the Freight Operator:

Address: [●]

For the attention of: [●]

E-mail: [●]

(ii) to the Customer:

Address: [●]

For the attention of: [●]

E-mail: [●]

18.2 Any notice given under this Agreement outside Working Hours shall be deemed not to have been given until the start of the next period of Working Hours.

18.3 The provisions of this Clause 18 shall not apply in relation to the service of any claim form, application notice, order, judgment or other document relating to any proceeding, claim, suit or action arising out of or in connection with this Agreement.

18.4 For the purposes of discharging and managing their respective obligations under this Agreement, each of the parties shall appoint a representative (the “**Representative**”). The initial Representatives are set out in Schedule 2 (*Representatives*). Each party may change their Representative at any time upon written notice (including, without limitation, by e-mail) to the other party.

18.5 The Representatives shall be readily available and shall correspond on a regular basis throughout the term of this Agreement to discuss the provision of the Purchased Capacity and any issues in relation thereto. Any such issues shall be dealt with expeditiously and constructively with a view to reaching a mutually acceptable resolution as soon as reasonably practicable.

19. Relationship of the Parties

- 19.1 Other than the undisclosed agency arrangement under Clause 6 (*Resale of Purchased Capacity by the Freight Operator*), the parties acknowledge that nothing in this Agreement or any document referred to in it or any arrangement contemplated by it shall be construed as creating a partnership or agency relationship between the parties for any purpose and, save as expressly provided hereunder, no party shall have the power or authority to bind the other party or impose any obligations on it for the benefit of any third party and that the Commercial Agents (Council Directive) Regulations 1993/3053 shall not apply to this Agreement.
- 19.2 The Customer will not be liable for any damages, costs or losses to any person in connection with the provision of Purchased Capacity save for the amounts payable to the Freight Operator pursuant to and in accordance with Clause 8 (*Payment Terms*).

20. Remedies and Waivers

- 20.1 No delay or omission on the part of any party to this Agreement in exercising any right, power or remedy under this Agreement shall:
- (A) impair such right, power or remedy; or
 - (B) operate as a waiver thereof.
- 20.2 The single or partial exercise of any right, power or remedy under this Agreement shall not preclude any other or further exercise thereof or the exercise of any other right, power or remedy.
- 20.3 The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers and remedies provided by law.

21. Invalidity

If, at any time, any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, such illegality, invalidity or unenforceability shall not affect or impair:

- (A) the legality, validity or enforceability in that jurisdiction of any other provision of this Agreement; or
- (B) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Agreement.

22. Entire Agreement

- 22.1 Save as expressly set out in this Agreement, no party gives any warranty, condition, representation, collateral contract, assurance, guarantee, stipulation, liability or obligation whatsoever (without limitation, whether in contract or tort, including

negligence or otherwise, whether express or implied or otherwise and whether arising at common law or by statute, custom, usage, course of dealing or otherwise) in relation to the Purchased Capacity or this Agreement. Each party waives any rights and remedies which it may nevertheless have and the liability of each party is limited accordingly, provided that nothing in this Clause 22 shall limit or exclude any liability for fraud or fraudulent misrepresentation.

22.2 This Agreement constitutes the whole and only agreement between the parties relating to the provision of the Purchased Capacity and supersedes and extinguishes any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature whatsoever, whether or not in writing, relating thereto.

22.3 Each party acknowledges that, in entering into this Agreement on the terms set out in this Agreement, it is not relying upon any representation, warranty, promise or assurance made or given by the other party or any other person, whether or not in writing, at any time prior to the execution of this Agreement which is not expressly set out or referred to herein.

23. Variation

No provision of this Agreement shall be amended except in writing signed by the parties or their duly authorised representatives.

24. Assignment and Transfer

24.1 The Freight Operator shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Agreement without the prior written consent of the Customer.

24.2 The Customer may at its discretion assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under this Agreement and/or any associated licences to:

- (A) any Central Government Body;
- (B) any Other Contracting Authority (as defined in the Framework Agreement); or
- (C) to a body other than a Central Government Body (including any private sector body) which performs any of the functions that previously had been performed by the Customer or any other entity,

and the Freight Operator shall, at the Customer's request, enter into a novation agreement or any other documentation required by the Customer in such form as the Customer shall reasonably specify in order to enable the Customer to exercise its rights pursuant to this Clause 24.2 and Clause 26 (*Further Assurance*) shall apply.

24.3 A change in the legal status of the Customer such that the Customer ceases to be a Central Government Body shall not affect the validity of this Agreement and this Agreement shall be binding on any successor body to the Customer.

24.4 The Freight Operator may sub-contract or otherwise delegate the performance of any services in respect of the Purchased Capacity, provided that the Freight Operator may not sub-contract or otherwise delegate all or materially all of the performance of the services in respect of the Purchased Capacity and, in any event, the Freight Operator shall remain at all times responsible to the Customer for the performance of the Freight Operator's obligations under this Agreement.

25. Third Party Rights

The parties to this Agreement do not intend that any term of this Agreement should be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999, by any person who is not a party to this Agreement.

26. Further Assurance

The parties undertake to perform all such acts and do all such other things as may be incidental to, or necessary to give effect to, the transactions contemplated by this Agreement.

27. Costs and Expenses

Each party shall pay its own costs and expenses in relation to the negotiation, preparation, execution and carrying into effect of this Agreement.

28. [Agent for service

28.1 The Freight Operator irrevocably appoints [●] to be its agent for the receipt of Service Documents. It agrees that any Service Document may be effectively served on it in connection with proceedings in England and Wales by service on its agent effected in any manner permitted by the Civil Procedure Rules.

28.2 If the agent at any time ceases for any reason to act as such, the Freight Operator shall appoint a replacement agent having an address for service in England or Wales and shall notify the Customer of the name and address of the replacement agent. Failing such appointment and notification, the Customer shall be entitled by notice to the Freight Operator to appoint a replacement agent to act on behalf of the Freight Operator. The provisions of this clause applying to service on an agent apply equally to service on a replacement agent.

28.3 A copy of any Service Document served on an agent shall be sent by post to the Freight Operator. Failure or delay in so doing shall not prejudice the effectiveness of service of the Service Document.]³

29. **Governing Law and Jurisdiction**

Subject to Clause 30 (*Dispute Resolution*), this Agreement 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 the parties submit to the exclusive jurisdiction of the English courts to settle any dispute (whether contractual or otherwise) arising out of or in connection with it.

30. **Dispute Resolution**

30.1 The parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with this Agreement within 20 Business Days of either party notifying the other in writing of the dispute, and such efforts shall involve the escalation of the dispute to the finance director (or equivalent) of each party and such persons shall be involved in the negotiations.

30.2 Nothing in this dispute resolution procedure shall prevent the parties from seeking from courts of England in accordance with Clause 29 above an interim order restraining the other party from doing any act or compelling the other party to do any act.

30.3 If the dispute cannot be resolved by the parties pursuant to Clause 30.1 the parties shall refer it to mediation pursuant to the procedure set out in Clause 30.5 unless (a) the Customer considers that the dispute is not suitable for resolution by mediation; or (b) the Freight Operator does not agree to mediation.

30.4 The obligations of the parties under this Agreement shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Freight Operator and Customer shall comply fully with the requirements of this Agreement at all times.

30.5 The procedure for mediation and consequential provisions relating to mediation are as follows:

(A) a mediator (the "**Mediator**") shall be chosen by agreement between the parties or, if they are unable to agree upon a Mediator within 10 Business Days of a request by one party to the other or if the Mediator agreed upon is unable or unwilling to act, either party shall within 10 Business Days from the date of the proposal to appoint a Mediator or within 10 Business Days of notice to either

³ Mark "Not Used" in Call Off Order Form if Freight Operator is UK incorporated.

party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution or other mediation provider to appoint a Mediator;

- (B) the parties shall within 10 Business Days of the appointment of the Mediator meet with the Mediator in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the parties may at any stage seek assistance from the Centre for Effective Dispute Resolution or other mediation provider to provide guidance on a suitable procedure;
- (C) unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the parties in any future proceedings;
- (D) if the parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the parties once it is signed by their duly authorised representatives;
- (E) failing agreement, either of the parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to this Agreement without the prior written consent of both parties; and
- (F) if the parties fail to reach agreement in the structured negotiations within 60 Business Days of the Mediator being appointed, or such longer period as may be agreed by the parties, then any dispute or difference between them may be referred to the Courts of England and Wales, unless the dispute is referred to arbitration pursuant to the procedures set out in Clause 30.6.

30.6 Subject to Clause 30.2, the parties shall not institute court proceedings until the procedures set out in Clause 30.1 and 30.3 have been completed save that:

- (A) the Customer may at any time before court proceedings are commenced, serve a notice on the Freight Operator requiring the dispute to be referred to and resolved by arbitration in accordance with Clause 30.7;
- (B) if the Freight Operator intends to commence court proceedings, it shall serve written notice on the Customer of its intentions and the Customer shall have 21 days following receipt of such notice to serve a reply on the Freight Operator requiring the dispute to be referred to and resolved by arbitration in accordance with Clause 30.7; and
- (C) the Freight Operator may request by notice in writing to the Customer that any dispute be referred and resolved by arbitration in accordance with Clause 30.7, to which the Customer may consent as it sees fit.

30.7 In the event that any arbitration proceedings are commenced pursuant to Clause 30.6:

- (A) the arbitration shall be governed by the provisions of the Arbitration Act 1996;
- (B) the Customer shall give a written notice of arbitration to the Freight Operator (the “**Arbitration Notice**”) stating:
 - (i) that the dispute is referred to arbitration; and
 - (ii) providing details of the issues to be resolved;
- (C) the LCIA procedural rules in force at the date that the dispute was referred to arbitration in accordance with Clause 30.7(B) shall be applied and are deemed to be incorporated by reference to this Agreement and the decision of the arbitrator shall be binding on the parties in the absence of any material failure to comply with such rules;
- (D) the tribunal shall consist of a sole arbitrator to be agreed by the parties;
- (E) if the parties fail to agree the appointment of the arbitrator within 10 days of the Arbitration Notice being issued by the Customer under Clause 30.7(B) or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
- (F) the arbitration proceedings shall take place in London and in the English language; and
- (G) the arbitration proceedings shall be governed by, and interpreted in accordance with, English law.

31. Counterparts

This Agreement may be executed in counterparts, and the counterparts when taken together shall constitute one and the same agreement. This Agreement will only become effective when both parties have released their signed counterparts to one another.

32. Relationship with Framework Agreement

32.1 Subject to Clause 32.2 below, in the event of and only to the extent of any conflict between the Call Off Order Form (pursuant to which this Agreement has been entered into), this Agreement and the provisions of the Framework Agreement, any conflict shall be resolved in accordance with the following order of precedence:

- (A) the Framework Agreement, except Schedule 11 (*Bid*) of the Framework Agreement;
- (B) the Call Off Order Form pursuant to which this Agreement has been entered into;

(C) this Agreement; and

(D) Schedule 11 (*Bid*) of the Framework Agreement.

32.2 Any permitted changes by the Customer to the Template Call Off Terms and Conditions and the Template Call Off Order Form (each as defined in the Framework Agreement) under Clause 5 (*Call Off Procedure*) of the Framework Agreement and Schedule 5 (*Call Off Procedure*) of the Framework Agreement prior to them becoming the Call Off Terms and Conditions and the Call Off Order Form which comprise this Call Off Agreement shall prevail over the Framework Agreement.

33. Cancellation

33.1 The Customer may, at any time, immediately upon the provision of 5 days' prior written notice to the Freight Operator, terminate the rights and obligations under this Agreement in respect of all or any part of the Purchased Capacity to be provided after the time specified in such notice (and which shall not constitute Purchased Capacity thereafter but will instead be free to be sold by the Freight Operator for its own account), in which case the Customer shall pay to the Freight Operator a Cancellation Sum as soon as practicable thereafter.

33.2 For the avoidance of doubt, the exercise by the Customer of its termination right pursuant to Clause 33.1 in respect of only some of the Purchased Capacity shall not affect any rights and obligations under this Agreement in respect of the Purchased Capacity that has not been specified for cancellation in the relevant Customer's Cancellation Notice and is due to be provided by the Freight Operator.

Schedule 1⁴
Purchased Capacity

This Schedule 1 shall not be modified in any material respect without the prior written consent of the Customer.

Leg (one way only) - from [•] to [•]

Day	Trips per day	Scheduled Trip departure time (+/- 4 hours)	Scheduled Trip arrival time (+/- 4 hours)	Lane Metres per Trip (accompanied)	Lane Metres per Trip (unaccompanied)
[•]	[•]	[•]	[•]	[•]	[•]

The table above shall repeat ad infinitum for the term of this Agreement, except as varied by Clause 33 (*Cancellation*)

⁴ Completed Schedule 1 (*Purchased Capacity*) to be appended to the accompanying Call Off Order Form.

**Schedule 2⁵
Representatives**

Initial Freight Operator Representative:	Name:	[•]
	Address:	[•]
	Mobile Telephone:	[•]
	Office Telephone	[•]
	E-Mail:	[•]
Initial Customer Representative:	Name:	[•]
	Address:	[•]
	Mobile Telephone:	[•]
	Office Telephone:	[•]
	E-Mail:	[•]

⁵ Completed Schedule 2 (*Representatives*) to be appended to the accompanying Call Off Order Form.

Schedule 3
Invoicing Requirements

1. Each invoice submitted by the Freight Operator under this Agreement shall include, as a minimum, the details set out in Paragraph 3 together with such other information as the Customer may reasonably require to assess whether the payments that will be detailed therein are properly payable.
2. If the template invoice is not approved by the Customer then the Freight Operator shall make such amendments as may be reasonably required by the Customer. If the Customer uses an e-invoicing system then the Freight Operator shall instead comply with the requirements of that system.
3. The Freight Operator shall ensure that each invoice is submitted in the correct format for the Customer's e-invoicing system, or that it contains the following information:
 - (a) the date of the invoice;
 - (b) the PO Number;
 - (c) the period(s) to which the invoice relates;
 - (d) the correct reference for this Agreement;
 - (e) a contact name and telephone number of a responsible person in the Freight Operator's finance department in the event of administrative queries; and
 - (f) the banking details for payment to the Freight Operator via electronic transfer of funds (i.e. name and address of bank, sort code, account name and number).
4. Each invoice shall at all times be accompanied by supporting documentation. Any assessment by the Customer as to what constitutes supporting documentation shall be conclusive and the Freight Operator undertakes to provide to the Customer any other documentation reasonably required by the Customer from time to time to substantiate an invoice.

Schedule 4
Reports and Records

Part A

1. The Customer may require any or all of the following reports in such form as may be specified by it:
 - (a) delay reports;
 - (b) reports relating to the Purchased Capacity, including the dates on which such capacity was sold, the quantity of such capacity sold and the price payable by purchasers thereof;
 - (c) reports relating to the Freight Operator Own Capacity sold following a Notification, including the dates on which such capacity was sold, the quantity of such capacity sold and the aggregate amount received by the Freight Operator by the purchasers thereof;
 - (d) reports relating to the items set out in Part B and Part C below; and
 - (e) Force Majeure event reports.
2. The Freight Operator shall retain and maintain all the records (including superseded records) referred to in Paragraph 1, Part B and Part C below (the “**Records**”):
 - (a) in accordance with the requirements of The National Archives and industry practice of a Reasonable and Prudent Operator;
 - (b) in chronological order;
 - (c) in a form that is capable of audit; and
 - (d) at its own expense.
3. The Freight Operator shall make the records available for inspection to the Customer on request, subject to the Customer giving reasonable notice.
4. Where records are retained in electronic form, the original metadata shall be preserved together with all subsequent metadata in a format reasonably accessible to the Customer.
5. The Freight Operator shall, during the term of the Agreement and a period of at least seven (7) years following the expiry or termination of this Agreement, maintain or cause to be maintained complete and accurate documents and records in relation to the provision of the services under this Agreement including but not limited to all Records.

6. Records that contain financial information shall be retained and maintained in safe storage by the Freight Operator for a period of at least seven (7) years after the expiry or termination of this Agreement.
7. Without prejudice to the foregoing, the Freight Operator shall provide the Customer:
 - (a) as soon as they are available, and in any event within 60 Business Days after the end of the first six (6) months of each financial year of the Freight Operator during the term of this Agreement, a copy, certified as a true copy by an authorised representative of the Freight Operator, of its un-audited interim accounts and, if applicable, of consolidated un-audited interim accounts of the Freight Operator and its Affiliates which would (if the Freight Operator were listed on the London Stock Exchange (whether or not it is)) be required to be sent to shareholders as at the end of and for each such six (6) month period; and
 - (b) as soon as they shall have been sent to its shareholders in order to be laid before an annual general meeting of the Freight Operator, but not later than 130 Business Days after the end of each accounting reference period of the Freight Operator part or all of which falls during the term of this Agreement, the Freight Operator's audited accounts and if applicable, of the consolidated audited accounts of the Freight Operator and its Affiliates in respect of that period together with copies of all related directors' and auditors' reports and all other notices/circulars to shareholders.

Part B

The records to be kept by the Freight Operator are:

- (a) This Agreement, its Schedules and all amendments to such documents.
- (b) All other documents which this Agreement expressly requires to be prepared.
- (c) Documents prepared by the Freight Operator or received by the Freight Operator from a third party relating to a Force Majeure event.
- (d) All formal notices, reports or submissions made by the Freight Operator in connection with the provision of the services under this Agreement.
- (e) All certificates, licences, registrations or warranties in each case obtained by the Freight Operator in relation to the provision of the services under this Agreement.
- (f) Documents prepared by the Freight Operator in support of claims for the payments under this Agreement.
- (g) Documents submitted by the Freight Operator pursuant to invocation by it or the Customer of the resolution procedure in Clause 30 (*Dispute Resolution*).
- (h) Invoices and records related to VAT or other applicable duties or taxes.

- (i) Financial records, including audited and un-audited accounts of the Freight Operator.
- (j) Records required to be retained by the Freight Operator by law, including in relation to health and safety matters and health and safety files and all consents.
- (k) All documents relating to the insurances to be maintained pursuant to the Framework Agreement and any claims made in respect of them.
- (l) All other records, notices or certificates required to be produced and/or maintained by the Freight Operator pursuant to this Agreement.

Part C

1. When the Customer issues a Notification pursuant to Clause 6.1 (*Resale of Purchased Capacity by the Freight Operator*), the Freight Operator shall record in the relevant daily report, in respect of the Trip(s) to which the Notification relates:
 - a. the amount of Freight Operator Own Capacity then unsold at the Notification Start Time;
 - b. the Notification Expiry Time; and
 - c. the aggregate number of Notification Capacity tickets and Freight Operator Own Capacity tickets sold and revenue attributable thereto during the period between the Notification Start Time and the Notification Expiry Time.
2. On request the Freight Operator will provide the Customer audit access to their sales ledgers and records in respect of the Trip(s) to which a Notification relates.

Schedule 5
Priority Ticketing Procedures

1. Definitions:

In this Schedule, the following definitions shall apply in addition to those set out at Clause 1.1 (*Interpretation*) of this Agreement:

“Approved Supplier” means a supplier whose use of the Purchased Capacity has been approved, a list of which shall be provided to the Freight Operator by the Customer, as the same may be modified from time to time in writing by the Customer;

“Approved Ticket Purchaser” means:

- (A) a Ticket Purchaser who is transporting cargo for and on behalf of an Approved Supplier; or
- (B) an Approved Supplier who is transporting cargo on its own account,

in each case who has been supplied with a Ticketing Access Code by the Customer.

“Buffer Capacity” means the Priority Tickets that will not be released in accordance with the Priority Ticket Sales Timetable, as notified to the Freight Operator by the Customer, the number of which may be increased or decreased by the Customer at any time and from time to time;

“Category 1 Goods” shall mean those goods identified by the Government as being critical to the preservation of human and animal welfare and/or national security (note that the goods within scope or identified as Category 1 Goods may be reviewed by the Government from time to time);

“DfT Capacity Form” means the form to be provided by the Freight Operator that allows persons to make a booking for Priority Tickets;

“Minimum Service Level” means for the purpose of receiving, processing, making or otherwise facilitating bookings or booking requests in respect of Purchased Capacity and otherwise performing the services envisaged by the Priority Ticketing Principles:

- (i) during Operating Hours, operating a full operations team during the term of this Agreement; and
- (ii) outside of Operating Hours, operating a team during the term of this Agreement but only in respect of bookings or booking requests relating to a Trip of Purchased Capacity that is due for departure within 18 hours of that booking or booking request being made;

“Necessary Codes” means in respect of the third party making a booking request for a Priority Ticket, a:

- (A) Supplier Access Code; and
- (B) Ticketing Access Code,

in each case that corresponds (as relevant) to the Ticketing Access Code provided by the Customer to the third party thereof and the Supplier Access Code provided to the Approved Supplier whose cargo will be the subject of the Trip relevant thereto;

“Operating Hours” means Monday to Friday (inclusive) and between the hours of 8:00 to 17:30 PM GMT (inclusive);

“Priority Ticket Sales Timetable” means the timetable, which shall be provided to the Freight Operator by the Customer, setting out the dates on which the Freight Operator is to make the Priority Tickets available for purchase, and as the same may be varied by the Customer at any time and from time to time;

“Priority Tickets” means tickets for Trips attributable to the Purchased Capacity to be sold in accordance with Clause 6.1(A) (*Resale of Purchased Capacity by the Freight Operator*);

“Rules” means the rules set out in the Priority Ticketing Handbook as the same may be amended, varied, supplemented and/or replaced from time to time pursuant to and in accordance with Clause 6.2 (*Resale of Purchased Capacity by the Freight Operator*);

“Supplier Access Code” means the code given by the Customer to each supplier who has been permitted access to Purchased Capacity, as further outlined in the Priority Ticketing Handbook; and

“Ticketing Access Code” means the code given by the Customer to each Ticket Purchaser who has been permitted access to Purchased Capacity, as further outlined in the Priority Ticketing Handbook.

2. Procedure to be followed by the Freight Operator

2.1 The Freight Operator in making available and selling the Purchased Capacity pursuant to and in accordance with Clause 6.1(A) (*Resale of Purchased Capacity by the Freight Operator*) shall:

- (A) subject to paragraphs (E) and (F), take booking requests for Priority Tickets, applying at all times in relation to such booking requests the Rules, through the Freight Operator’s online ticketing system;
- (B) set-up new user accounts for Approved Ticket Purchasers (at the election of the relevant Approved Ticket Purchaser, who shall otherwise be allowed to make booking(s) as a guest by email or telephone);

- (C) provide the Approved Ticket Purchasers with the DfT Capacity Form;
- (D) only release Priority Tickets (other than in respect of the Buffer Capacity) for sale in accordance with and on the dates set out in the Priority Ticket Sales Timetable;
- (E) only approve booking requests (regardless of whether the booking request was made through the Freight Operator's online ticketing system, by email or telephone) for Priority Tickets by: (i) an Approved Ticket Purchaser who has provided the Necessary Codes, and (ii) if the Freight Operator determines on applying the Rules that the booking request is compliant with such rules;
- (F) reject any booking requests that are not compliant with the Rules or where the person making a booking request does not provide the Necessary Codes;
- (G) subject to paragraphs (E) and (F), take booking requests, applying at all times in relation to such booking requests the Rules, by email and telephone;
- (H) subject to paragraph (E) and (F), sell Priority Tickets at the prices set out in the Priority Ticketing Handbook or the prices otherwise notified to the Freight Operator by the Customer and enter into a contract with the purchaser thereof on the Standard Terms of Carriage;
- (I) where it becomes aware that a Ticket Purchaser who has presented a Priority Ticket for admittance on a Trip is not the original purchaser thereof, refuse that Ticket Purchaser entry onto that Trip;
- (K) raise any questions, issues or concerns on the application of, or otherwise relating to, the Priority Ticketing Principles with the Customer;
- (L) take bookings in respect of the Buffer Capacity on the instructions of the Customer;
- (M) collect payments from customers making bookings in respect of the Purchased Capacity pursuant to and in accordance with the Standard Terms of Carriage;
- (N) ensure that customer support services (whether during Operating Hours or not) are provided in the English language;
- (O) perform the services envisaged by the Priority Ticketing Principles at least at the Minimum Service Levels;
- (P) shall publish, and continue to make publically available, details of the Trips in respect of which Priority Tickets will be available including, without prejudice to the generality of the foregoing, on the date and timing of the Trips that relate thereto;

- (Q) shall inform the Customer where it becomes aware that any Supplier Access Code or Ticketing Access Code has been shared or provided to, or is otherwise known by, any party other than the corresponding Approved Supplier or Approved Ticket Purchaser relevant thereto;
- (R) shall provide the Customer with:
- (i) regular updates (including upon request) on the sales of Priority Tickets;
 - (ii) escalate any issues with the process for the sale of Priority Tickets (for example, without prejudice to the generality of the foregoing, a website outage) together with a resolution plan capable of informing any communications or handling response that the Customer may need to develop; and
 - (iii) lists of the Supplier Access Codes used in respect of bookings of Priority Tickets; and
- (T) align the payment obligations of the Ticket Purchasers who purchase tickets attributable to the Purchased Capacity in a way that minimises the cash flow impact on the Customer, such that those Ticket Purchasers are obligated to pay the Freight Operator before the Customer is required to account to the Freight Operator in respect of the Purchased Capacity pursuant to and in accordance with Clause 8.4 (*Payment Terms*).

Schedule 6

Priority Ticketing Handbook

Freight Operator Handbook

1. Overview

- 1.1 Tickets for the Purchased Capacity will be sold at market rate prices, as specified by the Customer from time to time.
- 1.2 Ticket Purchaser, in this context refers to the logistics providers acting on behalf of Suppliers of Category 1 Goods, whether as an in-house function or a third party.
- 1.3 All Ticket Purchasers will need to register with the relevant Customer as an approved haulier before they are able to book tickets for Purchased Capacity with the relevant Freight Operator. Those who register with the relevant Customer are referred to as Approved Ticket Purchasers.
- 1.4 The tickets will be sold directly by the relevant Freight Operator on their then current Standard Terms of Carriage.
- 1.5 Tickets will be sold on a 'first-come, first-served' basis to all Approved Ticket Purchasers. There will be no priority access or early release granted to Approved Ticket Purchasers.
- 1.6 The Approved Ticket Purchaser will agree to terms associated with the usage of Purchased Capacity as part of the registration process with the Customer. There is no obligation on the Freight Operator to enforce or check if these terms are adhered to when the Purchased Capacity ticket is used, e.g. performing a check on the goods being transported.
- 1.7 The Approved Ticket Purchaser must also comply with the Standard Terms of Carriage which will be the Standard Terms of Carriage of the Freight Operator.
- 1.8 It is the responsibility of the Approved Ticket Purchaser to ensure all relevant documentation required for travel is in order for the Trip. This includes, but is not limited to, customs declarations, Dangerous Goods declarations or ECMT Permit, if required. The Freight Operator may not allow the Approved Ticket Purchaser to travel if they have incomplete paperwork (see also 1.25 below).

Handling ticket bookings

- 1.9 The booking of tickets will be available through the existing ticketing mechanisms offered by the Freight Operator.

- 1.10 At the point of booking, the Approved Ticket Purchaser will need to provide their valid Ticketing Access Code (issued by the Customer), and the Supplier Access Code(s) (as issued by the Customer) for the relevant Supplier(s) they will be transporting goods for on the Trip.
- 1.11 Once the ticket has been purchased, the contract for the carriage of goods will be between the Approved Ticket Purchaser and Freight Operator, and the relevant terms will be the Standard Terms of Carriage of the Freight Operator. Any issues which would normally be escalated to the Freight Operator should continue to be handled in this way.
- 1.12 Once purchased from the Freight Operator, tickets for the Purchased Capacity cannot be sold on or transferred to other hauliers. Any ticket which is not being used by the Approved Ticket Purchaser should not be accepted by the Freight Operator.
- 1.13 Where a haulier may be sub-contracting work to a different haulier, the sub-contracted haulier itself must register with the Customer to become an Approved Ticket Purchaser.

Booking process checks

- 1.14 The Freight Operator must check the Ticketing Access Code and Supplier Access Code(s) provided at the point of booking, before the booking is confirmed with the Approved Ticket Purchaser. This is an essential part of ensuring that the Purchased Capacity is used for the intended purpose of supporting the continued flow of Category 1 Goods in light of Disruption Events.
- 1.15 The Freight Operator will be responsible for ensuring that the Supplier Access Code(s) and Ticketing Access Code provided at the time of booking are listed within the latest list issued by the Customer.
- 1.16 **If any of the listed codes are not valid, the booking should be rejected.** If possible, an explanatory note (e.g. code xxxx not recognised) should be sent back to the Ticket Purchaser.

Buffer capacity

- 1.17 A small proportion of the total Purchased Capacity may be retained for use as buffer capacity. This will be restricted from sale as part of the agreed scheduled release of tickets.
- 1.18 **Buffer capacity should only be sold to the Approved Ticket Purchaser on the specific instruction of the Customer.**

Ticket pricing

- 1.19 All tickets for the Purchased Capacity will be sold at market rate, as instructed by the Customer from time to time.
- 1.20 Any surcharges, e.g. for refrigerated capacity, may still be added on to the ticket price, in line with normal market practice. This information will be provided by the Freight Operator to the Approved Ticket Purchaser at the point of booking or invoicing.
- 1.21 There is no discount available to Approved Ticket Purchasers for the Purchased Capacity, even if they purchase multiple tickets, or if they have any existing arrangement with the Freight Operator.
- 1.22 The payment of tickets will be collected by the Freight Operator according to their standard practice.

Cancellation / Rescheduling of tickets

- 1.23 The refund policy will also be as instructed by the Customer from time to time in accordance with Clause 6.4 of the Call Off Terms and Conditions. Accordingly the policy regarding the cancellation and rescheduling of tickets will also be determined by the Customer, but only to the extent that it would not result in a breach of the Freight Operator's current Standard Terms of Carriage.
- 1.24 If an Approved Ticket Purchaser cancels or reschedules their booking from the Purchased Capacity, the Freight Operator should consider the released ticket to be part of the Purchased Capacity once more.
- 1.25 If the Approved Ticket Purchaser is refused travel due to incomplete paperwork or late arrival at the port or terminal, this should be handled in line with the Freight Operator's Standard Terms of Carriage and to the extent generally applied by it.

2. Additional detail for the Freight Operator

Data flows between the Customer and the Freight Operator

- 2.1 The following sections provide an overview of some of the key information flows between the Customer and Freight Operator. This covers key elements of managing and adhering to the ticketing process outlined earlier in this document. This is not exhaustive and should be read in conjunction with the full Specification of Services provided as part of the invitation to tender (Attachment 10) for the Freight Capacity Framework Agreement.
- 2.2 The Customer will provide the Freight Operator with:
 - A list of approved **Supplier Access Codes** - the Ticket Purchaser will need to provide this during the booking process.

- A list of approved **Ticketing Access Codes** - the Ticket Purchaser will need to provide this during this booking process.
- The list of Supplier Access Codes and Ticketing Access Codes will be issued (as two separate Excel format files) by the Customer and updated once a day hereafter and must be incorporated into the Freight Operator's ticketing checks within 1 day of receipt.
- Written instruction or authorisation to allow access to the buffer capacity for the specified Ticket Purchasers where relevant.
- Written instruction or authorisation to allow the release of specific capacity back to the market (if appropriate).
- Written instruction or authorisation to cancel Purchased Capacity.

2.3 The Freight Operator will provide the Customer with:

- Daily updates on the sales of tickets.
- Escalation of any issues with the ticket sales process (e.g. website outage). This should be provided with a resolution plan to inform any comms/handling the Customer may need to develop.
- Ticketing Access Codes and Supplier Access Codes used within bookings.
- Commodity codes from other documentation provided by the Ticket Purchaser to the Freight Operator, if available.

Schedule 7
Tender⁶

⁶ Completed Schedule 7 (*Tender*) to be appended to the accompanying Call Off Order Form.

Schedule 8⁷
Standard Terms of Carriage

⁷ Completed Schedule 8 (*Standard Terms of Carriage*) to be appended to the accompanying Call Off Order Form.

Schedule 9
(Clause 8.3(B) Illustrative Example)

- i. Resale worked example 1 where the price that the Purchased Capacity and the Freight Operator Own Capacity is sold at is not different:
 - 1. A Conveyance has capacity equivalent to 100 tickets. The Customer has purchased capacity equivalent to 50 of these tickets.
 - 2. The Customer elects to hand 25 tickets back for resale before any bookings have been made. Therefore 25 Priority Tickets (as defined in Schedule 5 (*Priority Ticketing Procedures*)) remain available and 75 non-priority tickets are available. 25 belong to the Customer, 50 belong to the Freight Operator.
 - 3. By the time of Trip the Freight Operator has sold 20 Priority Tickets and 30 non-priority tickets. The revenues from the 20 Priority Tickets go to the Customer. The revenues from the 30 non-priority tickets are shared equally on the basis that 15 tickets were sold from the Customer's allocation and 15 from the Freight Operator's allocation.
- ii. Resale worked example 2 where the price that the Purchased Capacity and the Freight Operator Own Capacity is sold at is not different:
 - 1. A Conveyance has capacity equivalent to 100 tickets. The Customer has purchased capacity equivalent to 50 of these tickets.
 - 2. The Freight Operator receives bookings for 20 non-priority tickets before any Priority Tickets are handed back for resale. As no Customer resale tickets are available, all of the revenues from these sales belong to the Freight Operator.
 - 3. The Customer then elects to hand 25 Priority Tickets back for resale. Therefore 25 Priority Tickets remain available and 55 non-priority tickets are available. 25 belong to the Customer, 30 (50-20) belong to the Freight Operator.
 - 4. By the time of Trip the Freight Operator has sold a further 20 Priority Tickets and no further non-priority tickets. All the revenues from the 20 Priority Tickets go to the Customer.
- iii. Resale worked example 3 where the price that the Purchased Capacity and the Freight Operator Own Capacity is sold at is not different:
 - 1. A Conveyance has capacity equivalent to 100 tickets. The Customer has purchased capacity equivalent to 50 of these.
 - 2. The Freight Operator receives bookings for 45 non-priority tickets before any Priority Tickets are handed back for resale. All of the revenues from these sales belong to the Freight Operator.
 - 3. The Customer then elects to hand 25 Priority Tickets back for resale. Therefore 25 Priority Tickets remain available and 30 non-priority tickets are available. 25 belong to the Customer, 5 (50-45) belong to the Freight Operator.

4. By the time of Trip the Freight Operator has sold 20 Priority Tickets and a further 30 non-priority tickets. The revenues from the 20 Priority Tickets go to the Customer.
 5. The revenues from the 30 non-priority tickets are shared equally while both the Customer and the Freight Operator have tickets available – i.e. for the first 10 tickets. Revenues from these sales are split equally.
 6. As the Freight Operator would then have exhausted their available tickets, all the revenues from the final 20 tickets were deemed to be sold from the Customer's allocation and all revenues from these sales would therefore be due to the Customer.
- iv. Resale worked example 4 where the price that the Purchased Capacity and the Freight Operator Own Capacity is sold at is not different:
7. A Conveyance has capacity equivalent to 100 tickets. The Customer has purchased capacity equivalent to 50 of these tickets.
 8. The Freight Operator receives bookings for 25 non-priority tickets before any Priority Tickets are handed back for resale. All of the revenues from these sales belong to the Freight Operator.
 9. The Customer then elects to hand 5 Priority Tickets back for resale. Therefore 45 Priority Tickets remain available and 30 non-priority tickets are available. 5 belong to the Customer, 25 (50-25) belong to the Freight Operator.
 10. The Freight Operator receives bookings for 20 non-priority tickets. Revenues from the 20 non-priority tickets are shared equally while both Customer and Freight Operator have tickets available – ie for the first 10 tickets. Revenues from the sales of those ten tickets are split equally.
 11. As the Customer would then have exhausted their currently available tickets, all revenues from the final 10 tickets are deemed to be sold from the Freight Operator's allocation and all revenues from these sales would therefore be due to the Freight Operator.
 12. Therefore 45 Priority Tickets remain available and 10 non-priority tickets are available. All of the 10 non-priority tickets belong to the Freight Operator (25-5-10).
 13. The Freight Operator receives bookings for 20 Priority Tickets. All of these revenues go to the Customer.
 14. The Freight Operator receives bookings for a further 5 non-priority tickets. As there are no Customer non-priority tickets available all tickets are deemed to be sold from the Freight Operator's allocation and all revenues from these sales would therefore be due to the Freight Operator.
 15. The Customer then elects to hand 20 Priority Tickets back for resale. Therefore 5 Priority Tickets remain available and 25 non-priority tickets are available. 20 belong to the Customer, 5 (10-5) belong to the Freight Operator.
 16. By the time of Trip the Freight Operator has sold a further 5 Priority Tickets and a further 20 non-priority tickets. The revenues from the 5 Priority Tickets go to the Customer.

17. The revenues from the 20 non-priority tickets are shared equally while both the Customer and Freight Operator has tickets available – i.e. for the first 10 tickets. Revenues from these sales are split equally.
18. As the Freight Operator would then have exhausted its available tickets, all the revenues from the final 10 tickets were deemed to be sold from the Customer's allocation and all revenues from these sales would therefore be due to the Customer.
- v. Resale worked example 5 where the price that the Purchased Capacity and the Freight Operator Own Capacity is sold at is not different:
 19. A Conveyance has capacity equivalent to 100 tickets. The Customer has purchased capacity equivalent to 50 of these tickets.
 20. The Freight Operator receives bookings for 25 non-priority tickets before any Priority Tickets are handed back for resale. All of the revenues from these sales belong to the Freight Operator.
 21. The Customer then elects to hand 5 Priority Tickets back for resale. Therefore 45 Priority Tickets remain available and 30 non-priority tickets are available. 5 belong to the Customer, 25 (50-25) belong to the Freight Operator.
 22. The Freight Operator receives bookings for 8 non-priority tickets. Revenues from the 8 non-priority tickets are shared equally as both Customer and Freight Operator have tickets available.
 23. The Customer hands back a further 10 Priority Tickets for resale. Therefore 35 Priority Tickets remain available and 32 non-priority tickets are available. 11 belong to the Customer (5-4+10) and 21 (25-4) belong to the Freight Operator.
 24. The Freight Operator receives bookings for 20 Priority Tickets. All of these revenues go to the Customer.
 25. By the time of Trip, the Freight Operator receives bookings for a further 15 non-priority tickets. Revenues from these 15 non-priority tickets are shared equally as both Customer and Freight Operator have non-priority tickets available.