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## TBM RAIL

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### STANDARD SERVICE TERMS AND CONDITIONS

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#### BACKGROUND:

Train Bits and More Limited (“**TBM Rail**”) provides train passenger interior specialist services to its business clients. TBM Rail has skill, knowledge and experience in that field. These Terms and Conditions shall apply to the provision of services by TBM Rail to its clients, to the exclusion of all other terms and conditions.

#### 1. Definitions and Interpretation

1.1 In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:

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| <b>“Agreement”</b>                   | means the agreement entered into by TBM Rail and the Client incorporating the order confirmation overleaf, and these Terms and Conditions (or any variation of them agreed upon by both Parties) which shall govern provision of the Services;   |
| <b>“Business Day”</b>                | means, any day (other than Saturday or Sunday) on which ordinary banks are open for their full range of normal business in London;   |
| <b>“Client”</b>                      | means the party procuring the Services from TBM Rail as identified in the order confirmation overleaf;   |
| <b>“Commencement Date”</b>           | means the date on which provision of the Services will commence, as defined in the order confirmation overleaf;  |
| <b>“Confidential Information”</b>    | means, in relation to either Party, information which is disclosed to that Party by the other Party pursuant to or in connection with the Agreement (whether orally or in writing or any other medium, and whether or not the information is expressly stated to be confidential or marked as such);   |
| <b>“Data Protection Legislation”</b> | means all legislation in force in the UK from time to time relating to data protection and privacy including, but not limited to, the Data Protection Act 2018, EU Regulation 2016/679 General Data Protection Regulation (“ <b>GDPR</b> ”) and any other directly applicable EU regulation relating to data protection and privacy (for as long as, and to the extent that, EU law has legal effect in the UK) and any successor legislation relating to data protection and privacy; |
| <b>“Fees”</b>                        | means any and all sums due under the Agreement from the Client to TBM Rail, as specified in the order confirmation overleaf or as set out in these Terms and Conditions;   |

**“Services”** means the services to be provided by TBM Rail to the Client in accordance with Clause 2 of the Agreement, as fully defined in the Agreement, and subject to the terms and conditions of the Agreement; and

**“Term”** means the term of the Agreement as defined order confirmation overleaf, and if none is mentioned, the time period from the Commencement Date to the date of termination.

- 1.2 Unless the context otherwise requires, each reference in these Terms and Conditions to:
- 1.2.1 “writing”, and any similar expression, includes a reference to any communication effected by email (but not fax) or similar means;
  - 1.2.2 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;
  - 1.2.3 “these Terms and Conditions” is a reference to these Terms and Conditions as amended or supplemented at the relevant time; and
  - 1.2.4 a "Party" or the "Parties" refer to the parties to the Agreement.

## 2. **Provision of the Services**

- 2.1 With effect from the Commencement Date, TBM Rail shall, throughout the Term of the Agreement, provide the Services to the Client.
- 2.2 TBM Rail shall provide the Services with reasonable skill and care, commensurate with prevailing standards in the rail maintenance sector in the United Kingdom.
- 2.3 TBM Rail shall act in accordance with all reasonable instructions given to it by the Client provided such instructions are compatible with the specification of Services provided in the Agreement.
- 2.4 TBM Rail will comply with all statutes, regulations, byelaws, standards, codes of conduct and any other rules relevant to the provision of the Services.
- 2.5 TBM Rail shall use reasonable endeavours to accommodate any reasonable changes in the Services that may be requested by the Client, subject to the Client’s acceptance of any related changes to the Fees that may be due as a result of such changes.

## 3. **Client’s Obligations**

- 3.1 The Client shall use all reasonable endeavours to provide all pertinent information to TBM Rail that is necessary for TBM Rail’s provision of the Services.
- 3.2 The Client may, from time to time, issue reasonable instructions to TBM Rail in relation to TBM Rail’s provision of the Services. Any such instructions should be compatible with the specification of the Services provided in the Agreement.
- 3.3 If TBM Rail requires the decision, approval, consent or any other communication from the Client to continue with the provision of the Services or any part thereof at any time, the Client shall provide it in a reasonable and timely manner.

- 3.4 If any consents, licences or other permissions are needed from any third parties such as landlords, planning authorities, local authorities or similar, it shall be the Client's responsibility to obtain the same in advance of the provision of the Services (or the relevant part).
- 3.5 If the nature of the Services requires that TBM Rail has access to the Client's location of business or any other location, access to which is lawfully controlled by the Client, the Client shall ensure that TBM Rail has access at the times required by TBM Rail.
- 3.6 Any delay in the provision of the Services resulting from the Client's failure or delay in complying with any of the provisions of Clause 3 of the Agreement shall not be the responsibility or fault of TBM Rail, and may result in further Fees payable.

#### **4. Fees, Payment and Records**

- 4.1 The Client shall pay the Fees to TBM Rail in accordance with the provisions of the Agreement.
- 4.2 TBM Rail shall invoice the Client for Fees due in accordance with the provisions of the Agreement.
- 4.3 All payments required to be made pursuant to the Agreement by either Party shall be made within 30 days of receipt by that Party of the relevant invoice, unless stated otherwise in the order confirmation overleaf.
- 4.4 All payments required to be made pursuant to the Agreement by either Party shall be made in cleared funds to such bank as the receiving Party may from time to time nominate, without any set-off, withholding or deduction except such amount (if any) of tax as that Party is required to deduct or withhold by law.
- 4.5 Where any payment pursuant to the Agreement is required to be made on a day that is not a Business Day, it may be made on the next following Business Day.
- 4.6 Without prejudice to sub-Clause 9.4.1 of the Agreement, any sums which remain unpaid following the expiry of the period set out in sub-Clause 4.3 of the Agreement shall incur interest on a daily basis at 4% above the base rate of Natwest Bank plc from time to time until payment is made in full of any such outstanding sums.

#### **5. Liability, Indemnity and Insurance**

- 5.1 TBM Rail shall ensure that it has in place at all times suitable and valid insurance that shall include public liability insurance.
- 5.2 In the event that TBM Rail fails to perform the Services with reasonable care and skill it shall carry out any and all necessary remedial action at no additional cost to the Client.
- 5.3 TBM Rail's total liability for any loss or damage caused as a result of its negligence or breach of the Agreement shall be limited to the Fees payable by the Client in the last 3 months, and in no event (save as mentioned in clause 5.5) shall TBM Rail's liability extend to indirect, consequential or economic loss (including loss of business or profits, or damage to goodwill).
- 5.4 TBM Rail shall not be liable for any loss or damage suffered by the Client that results from the Client's failure to follow any instructions given by TBM Rail.
- 5.5 Nothing in these Terms and Conditions nor in the Agreement shall limit or exclude

TBM Rail's liability for death or personal injury.

- 5.6 The Client shall indemnify TBM Rail against any costs, liability, damages, loss, claims or proceedings arising from loss or damage to any equipment (including that belonging to any third parties appointed by TBM Rail) caused by the Client or its agents or employees.
- 5.7 Neither Party shall be liable to the other or be deemed to be in breach of the Agreement by reason of any delay in performing, or any failure to perform, any of that Party's obligations if the delay or failure is due to any cause beyond that Party's reasonable control.

## 6. Further Fees

- 6.1 In the event that TBM Rail are not given access to the location for work at which the Services will be provided for the Client, and the delay in giving access exceeds 3 hours, TBM Rail's personnel will leave the site and a Fee will be payable per worker per day in accordance with TBM Rail's day rates applicable at the time.
- 6.2 In the event that the Client cancels a site visit, with less than 24 hours notice, a Fee will be payable per worker per day in accordance with TBM Rail's day rates applicable at the time.

## 7. Confidentiality

- 7.1 Each Party undertakes that, except as provided by sub-Clause 7.2 of the Agreement or as authorised in writing by the other Party, it shall, at all times during the continuance of the Agreement and for 2 years after its termination:
    - 7.1.1 keep confidential all Confidential Information;
    - 7.1.2 not disclose any Confidential Information to any other party;
    - 7.1.3 not use any Confidential Information for any purpose other than as contemplated by and subject to the terms of the Agreement;
    - 7.1.4 not make any copies of, record in any way or part with possession of any Confidential Information; and
    - 7.1.5 ensure that none of its directors, officers, employees, agents, sub-contractors or advisers does any act which, if done by that Party, would be a breach of the provisions of sub-Clauses 7.1.1 to 7.1.4 of the Agreement.
  - 7.2 Either Party may:
    - 7.2.1 disclose any Confidential Information to:
      - 7.2.1.1 any sub-contractor or supplier of that Party;
      - 7.2.1.2 any governmental or other authority or regulatory body; or
      - 7.2.1.3 any employee or officer of that Party or of any of the aforementioned persons, parties or bodies;
- to such extent only as is necessary for the purposes contemplated by the Agreement (including, but not limited to, the provision of the Services), or as required by law. In each case that Party shall first inform the person, party or body in question that the Confidential Information is confidential and (except where the disclosure is to any such body under sub-Clause 7.2.1.2 or any

employee or officer of any such body) obtaining and submitting to the other Party a written confidentiality undertaking from the party in question. Such undertaking should be as nearly as practicable in the terms of Clause 7 of the Agreement, to keep the Confidential Information confidential and to use it only for the purposes for which the disclosure is made; and

7.2.2 use any Confidential Information for any purpose, or disclose it to any other person, to the extent only that it is at the date of the Agreement, or at any time after that date becomes, public knowledge through no fault of that Party. In making such use or disclosure, that Party must not disclose any part of the Confidential Information that is not public knowledge.

7.3 The provisions of this Clause 7 shall continue in force, notwithstanding the termination of the Agreement for any reason.

## **8. Force Majeure**

8.1 No Party to the Agreement shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, internet service provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, epidemic, acts of war, governmental action or any other event that is beyond the control of the Party in question.

8.2 In the event that a Party to the Agreement cannot perform their obligations hereunder as a result of force majeure for a continuous period of 2 months, the other Party may at its discretion terminate the Agreement by written notice at the end of that period. In the event of such termination, the Parties shall agree upon a fair and reasonable payment for all Services provided up to the date of termination. Such payment shall take into account any prior contractual commitments entered into in reliance on the performance of the Agreement.

## **9. Term and Termination**

9.1 The Agreement shall come into force on the agreed Commencement Date and shall continue from that date for a specified time period (if confirmed in the order confirmation overleaf) or without time limit (if none set out in the order confirmation overleaf), subject to the provisions of Clause 9 of the Agreement.

9.2 Either Party shall have the right, subject to the agreement and consent of the other Party and exercisable by giving not less than 3 months written notice to the other at any time prior to the expiry of the Term specified in sub-Clause 9.1 of the Agreement (or any further period for which the Agreement is extended) to extend the Agreement for a further period of 3 months.

9.3 Either Party may terminate the Agreement by giving to the other not less than 3 months written notice, to expire on or at any time after the minimum term of the Agreement (which shall be defined in the Agreement).

9.4 Either Party may immediately terminate the Agreement by giving written notice to the other Party if:

9.4.1 any sum owing to that Party by the other Party under any of the provisions of the Agreement is not paid within 30 days of the due date for payment;

- 9.4.2 the other Party commits any other breach of any of the provisions of the Agreement and, if the breach is capable of remedy, fails to remedy it within 20 Business Days after being given written notice giving full particulars of the breach and requiring it to be remedied;
  - 9.4.3 an encumbrancer takes possession, or where the other Party is a company, a receiver is appointed, of any of the property or assets of that other Party;
  - 9.4.4 the other Party makes any voluntary arrangement with its creditors or, being a company, becomes subject to an administration order (within the meaning of the Insolvency Act 1986);
  - 9.4.5 the other Party, being an individual or firm, has a bankruptcy order made against it or, being a company, goes into liquidation (except for the purposes of bona fide amalgamation or re-construction and in such a manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on that other Party under the Agreement);
  - 9.4.6 anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the other Party;
  - 9.4.7 the other Party ceases, or threatens to cease, to carry on business; or
  - 9.4.8 control of the other Party is acquired by any person or connected persons not having control of that other Party on the date of the Agreement. For the purposes of Clause 9, "control" and "connected persons" shall have the meanings ascribed thereto by Sections 1124 and 1122 respectively of the Corporation Tax Act 2010.
- 9.5 For the purposes of sub-Clause 9.4.2, a breach shall be considered capable of remedy if the Party in breach can comply with the provision in question in all respects.
- 9.6 The rights to terminate the Agreement shall not prejudice any other right or remedy of either Party in respect of the breach concerned (if any) or any other breach.

## 10. **Effects of Termination**

Upon the termination of the Agreement for any reason:

- 10.1 any sum owing by either Party to the other under any of the provisions of the Agreement shall become immediately due and payable;
- 10.2 all Clauses which, either expressly or by their nature, relate to the period after the expiry or termination of the Agreement shall remain in full force and effect;
- 10.3 termination shall not affect or prejudice any right to damages or other remedy which the terminating Party may have in respect of the event giving rise to the termination or any other right to damages or other remedy which any Party may have in respect of any breach of the Agreement which existed at or before the date of termination;
- 10.4 subject as provided in this Clause 10 and except in respect of any accrued rights neither Party shall be under any further obligation to the other; and
- 10.5 each Party shall (except to the extent referred to in Clause 7 of the Agreement) immediately cease to use, either directly or indirectly, any Confidential Information, and shall immediately return to the other Party any goods belonging to the other, and any documents or in its possession or control which contain or record any Confidential Information.

**11. Data Protection**

TBM Rail will only use the Client's personal information as set out in TBM Rail's Privacy Notice.

**12. Data Processing**

12.1 In this Clause 12 and in the Agreement, "personal data" and "data subject" shall have the meaning defined in Article 4, EU Regulation 2016/679 General Data Protection Regulation ("GDPR").

12.2 Any personal data to be processed by TBM Rail on behalf of the Client, subject to these Terms and Conditions and/or the Agreement, shall be processed in accordance with the terms of a Data Processing Agreement into which the Parties shall enter before any personal data is processed.

12.3 The Client warrants to TBM Rail that if any personal data is passed to TBM Rail for use in the performance of the Services, they have obtained all necessary consents and permissions from the data subject, or have the legal authority to do so.

**13. No Waiver**

No failure or delay by either Party in exercising any of its rights under the Agreement shall be deemed to be a waiver of that right, and no waiver by either Party of a breach of any provision of the Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other provision.

**14. Further Assurance**

Each Party shall execute and do all such further deeds, documents and things as may be necessary to carry the provisions of the Agreement into full force and effect.

**15. Costs**

Each Party shall pay its own costs of and incidental to the negotiation, preparation, execution and carrying into effect of the Agreement.

**16. Set-Off**

Neither Party shall be entitled to set-off any sums in any manner from payments due or sums received in respect of any claim under the Agreement or any other agreement at any time.

**17. Assignment and Sub-Contracting**

17.1 Subject to sub-Clause 17.2 the Agreement shall be personal to the Parties. Neither Party may assign, mortgage, charge (otherwise than by floating charge) or sub-licence or otherwise delegate any of its rights thereunder, or sub-contract or otherwise delegate any of its obligations thereunder without the written consent of the other Party, such consent not to be unreasonably withheld.

17.2 TBM Rail shall be entitled to perform any of the obligations undertaken by it through any other member of its group or through suitably qualified and skilled sub-contractors. Any act or omission of such other member or sub-contractor shall, for the purposes of the Agreement, be deemed to be an act or omission of TBM Rail.

**18. Time**

All times and dates referred to in the Agreement shall be of the essence of the Agreement.

**19. Relationship of the Parties**

Nothing in the Agreement shall constitute or be deemed to constitute a partnership, joint venture, agency or other fiduciary relationship between the Parties other than the contractual relationship expressly provided for in the Agreement.

**20. Non-Solicitation**

20.1 Neither Party shall, for the Term of the Agreement and for a 6 month period after its termination or expiry, employ or contract the services of any person who is or was employed or otherwise engaged by the other Party at any time in relation to the Agreement without the express written consent of that Party.

20.2 Neither Party shall, for the Term of the Agreement and for a 6 month period after its termination or expiry, solicit or entice away from the other Party any customer or client where any such solicitation or enticement would cause damage to the business of that Party without the express written consent of that Party.

**21. Third Party Rights**

21.1 No part of the Agreement shall confer rights on any third parties and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to the Agreement.

21.2 The Agreement shall continue and be binding on the transferee, successors and assigns of either Party as required.

**22. Notices**

22.1 All notices under the Agreement shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.

22.2 Notices shall be deemed to have been duly given:

22.2.1 when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or

22.2.2 when sent, if transmitted by e-mail and a successful transmission report or return receipt is generated; or

22.2.3 on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or

22.2.4 on the tenth business day following mailing, if mailed by airmail, postage prepaid.



In each case notices shall be addressed to the most recent address, e-mail address, or facsimile number notified to the other Party.

**23. Entire Agreement**

23.1 The Agreement contains the entire agreement between the Parties with respect to its subject matter and may not be modified except by an instrument in writing signed by the duly authorised representatives of the Parties.

23.2 Each Party shall acknowledge that, in entering into the Agreement, it does not rely on any representation, warranty or other provision except as expressly provided in the Agreement, and all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

**24. Counterparts**

The Agreement may be entered into in any number of counterparts and by the Parties to it on separate counterparts each of which when so executed and delivered shall be an original, but all the counterparts together shall constitute one and the same instrument.

**25. Severance**

In the event that one or more of the provisions of the Agreement and/or of these Terms and Conditions is found to be unlawful, invalid or otherwise unenforceable, that / those provision(s) shall be deemed severed from the remainder of the Agreement and/or these Terms and Conditions. The remainder of the Agreement and/or these Terms and Conditions shall be valid and enforceable.

**26. Dispute Resolution**

26.1 The Parties shall attempt to resolve any dispute arising out of or relating to the Agreement through negotiations between their appointed representatives who have the authority to settle such disputes.

26.2 If negotiations under sub-Clause 26.1 of the Agreement do not resolve the matter within 10 Business Days of receipt of a written invitation to negotiate, the parties will attempt to resolve the dispute in good faith through an agreed Alternative Dispute Resolution (“ADR”) procedure.

26.3 If the ADR procedure under sub-Clause 26.2 of the Agreement does not resolve the matter within 20 Business Days of the initiation of that procedure, or if either Party will not participate in the ADR procedure, the dispute may be referred to the courts of England and Wales who shall have the sole and exclusive jurisdiction concerning such dispute.

26.4 Nothing in Clause 26 of the Agreement shall prohibit either Party or its affiliates from applying to a court for interim injunctive relief.

**27. Law and Jurisdiction**

27.1 The Agreement and these Terms and Conditions (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed

by, and construed in accordance with, the laws of England and Wales.

- 27.2 Subject to the provisions of Clause 26 of the Agreement, any dispute, controversy, proceedings or claim between the Parties relating to the Agreement or these Terms and Conditions (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.