

STRICTLY CONFIDENTIAL - LEGAL PRIVILEGE

OVERHAUL AGREEMENT

Between Lokaltog A/S
Nordre Jernbanevej 31
3400 Hillerød

and [Name]
[Address]
[Address]

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INDEX OF EXHIBITS

- Exhibit 1: Tender Conditions incl. appendices 1-6
- Exhibit 2: Services (Tender Bid)
- Exhibit 3: Maintenance Manual
- Exhibit 4: Replacement Spare Components Stock
- Exhibit 5: Insurance Policy

INDEX OF DEFINED TERMS

Confidential Information	has the meaning ascribed thereto in Clause 16.1.
Contractor.....	has the meaning ascribed thereto in the preface.
Contract Price.....	has the meaning ascribed thereto in Clause 13.2.
Lokaltog.....	has the meaning ascribed thereto in the preface.
Part / Parts.....	has the meaning ascribed thereto in the preface.
Party / Parties	has the meaning ascribed thereto in the preface.
Overhaul Agreement	means this agreement with exhibits.
Performance Guarantee Period.....	has the meaning ascribed thereto in Clause 9.3.
Service.....	has the meaning ascribed thereto in the preface.
Tender.....	has the meaning ascribed thereto in the preface.
Time Schedule	has the meaning ascribed thereto in Clause 1.2.

This agreement ("Overhaul Agreement") is entered into on [date] between:

- (1) Lokaltog A/S, a public limited liability company incorporated under the laws of the Kingdom of Denmark (registered under CVR no. 26159040 with the Danish Business Authority) and with its registered address at Nordre Jernbanevej 31, 3400 Hillerød, Denmark ("Lokaltog"); and
- (2) [Name], a company incorporated under the laws of [●] (registered under [●] with [●]) and with its registered address at [address], [country] (the "Contractor").

- Lokaltog and the Contractor hereinafter collectively referred to as the "Parties" and separately as a "Party".

WHEREAS

- (A) Lokaltog has invited tenders to submit a tender on the successive overhaul of 82 engines mounted in the power packs on 41 Coradia LINT trains, each containing 2 engines, as well as a successive overhaul of 82 hydraulic systems powered by the engines (each referred to as a "Part" and jointly as the "Parts"), over a duration of approximately 30 months beginning on 12 March 2018 and ending at the 3 September 2020 pursuant to [Name of tender] published on [date] and announced in the supplement to the Official Journal of the European Union [No.] (the "Tender"). A further description of the Parts is made in the Tender Conditions enclosed as Exhibit 1;
- (B) The Contractor has won the Tender by the tender bid submitted on [date] (enclosed as Exhibit 2). The bid submitted by the Contractor and accepted by Lokaltog concern the entire and successive overhaul of the Parts (the "Service");
- (C) The Parties have on that basis entered into this Overhaul Agreement concerning the Service on the terms and conditions set out in the below.

NOW IT IS HEREBY AGREED AS FOLLOWS:

1 SCOPE OF THE OVERHAUL AGREEMENT

- 1.1 The Contractor shall perform the Service according to the specifications in Exhibit 1 and Exhibit 2 and under the terms and conditions of this Overhaul Agreement. The Contractor is obliged to follow the description of the Service in Exhibit 1 and Exhibit 2, and to comply with the defined process and only use approved spare parts, components, oils and coolants as stated therein. In case of any discrepancies between the contents of Exhibit 1 and Exhibit 2, the contents of Exhibit 1 shall take precedence.
- 1.2 The Contractor undertakes to perform the Service under the highest professional quality and security standards applicable to technical works on railway systems, and to return the exact same Parts to Lokaltog after Service as handed out by Lokaltog and in the same order as they are handed out according to the time schedule in Appendix 1 to the Tender Conditions, cf. Exhibit 1 ("Time Schedule").

2 OPERATIONAL STATUS

- 2.1 Each Part is successively handed over to the Contractor for Service after it has run a maximum of 850,000 kilometers on train since its last overhaul.

- 2.2 Lokaltog will perform disassembly and assembly of trains, hence making each Parts available for pick-up and the Service.
- 2.3 Lokaltog uses the following oils and coolants for the Parts:
- Engine and Hydraulic system: Shell Rimula R6 LME 5W-30(E7/228.51).
 - Coolant: G 05 from Kemi service premixed (mixing ratio 1:1).
- 2.4 The Contractor is obliged to use the same oils and coolants or oils and coolants of equivalent quality while performing the Service. Notwithstanding the generality of the foregoing any oils and coolants used by the Contractor must be fully mixable with the products used by Lokaltog, cf. Clause 2.3.

3 ADDITIONAL SERVICES

- 3.1 In case the Contractor during the performance of the Service learns that a Part or component(s) of a Part is defective in a manner which falls outside the scope of the Tender, the Contractor shall inform Lokaltog of such defect. The notification to Lokaltog shall include (i) information on the most effective means of repair in terms of operational reliability and price, (ii) a fixed price for the completion of the suggested repair, and (iii) a time schedule for the suggested repair.
- 3.2 The Contractor shall inform Lokaltog of any such defect immediately after the defect has been found.
- 3.3 Any additional service of the Contractor shall be agreed between the Parties prior to such additional service being performed. Such agreement shall include as minimum (i) the fixed price for the completion of the suggested repair, (ii) the time of delivery of the repaired Part or component(s) and (iii) any agreed changes to the Time Schedule due to such additional service, if any.
- 3.4 The Contractor cannot be held liable for any delay of the Time Schedule as a result of an additional service to the extent that such delay has been agreed upon under Clause 3.3.

4 TIME SCHEDULE

- 4.1 The Contractor shall perform the Services in accordance with the Time Schedule.
- 4.2 As stipulated in the Time Schedule the successive pick-up of the Parts by the Contractor will commence on [date] and on [date] as the date of delivery of the final part the Service.
- 4.3 In order to ensure that Lokaltog is able to put into service 1 train consisting of 2 pieces of overhauled Parts it is a precondition for shipment of the Parts that a similar and corresponding number of Parts after overhaul are returned to Lokaltog and that the Parts can be mounted and commissioned on the trains again by Lokaltog without need for further works on the delivered Parts. Delivery is considered to have taken place successively when such serviced Parts have been received by Lokaltog, cf. Clause 5.
- 4.4 Lokaltog shall at its own discretion be entitled to postpone the Time Schedule in whole or in part.
- 4.5 Changes of the Time Schedule will be stipulated by Lokaltog in a revised Time Schedule. Any such revised Time Schedule shall apply from the time Lokaltog notifies the Contractor thereof, and shall replace Exhibit 1 to this Overhaul Agreement from the time of such notification. [Any such revised Time Schedule cannot be extended with more than 60 calendar days beyond the Time Schedule without payment of compensation by Lokaltog to the Contractor of documented additional external costs.](#)
- 4.6 In case the Contractor fails to deliver the Services in accordance with the Time Schedule, the Contractor shall [as the sole monetary remedy for the delay](#) pay 0.5 % of the Contract Price for the delayed Parts exclusive VAT for each commenced calendar day the return of the Parts is delayed. The aggregate amount to be paid by the Contractor for any delayed Part cannot exceed 20 % of the Contract Price.

5 TRANSPORTATION OF THE PARTS

- 5.1 Lokaltog will arrange separation of the Parts from other similar parts, and the Parts will, before pick-up, be marked with an identification no. in order to monitor, control and identify the Parts.
- 5.2 The Contractor shall specify how the Contractor would like to collect the Parts before the Service, including any packaging requirements of the Contractor.
- 5.3 The Contractor shall pick-up and effect (i) the transportation of the Parts from the depot of Lokaltog with the address Nordre Jernbanevej 31, 3400 Hillerød or Valdemar Sejrs Vej 9, 4300 Holbæk or Industrivej 18, 4652 Hårlev Denmark cf. Exhibit 1, to the Contractor's facilities at [place] and (ii) the return of the Parts to the depot of Lokaltog with the address Nordre Jernbanevej 31, 3400 Hillerød or Valdemar Sejrs Vej 9, 4300 Holbæk or Industrivej 18, 4652 Hårlev Denmark cf. Exhibit 3.
- 5.4 The Contractor must return the Parts before 2:00 PM (CET) on the scheduled date of delivery, cf. the Time Schedule.
- 5.5 The serial number for each Part to be overhauled will prior to pick-up by the Contractor be registered and documented. For engines the serial number of the original manufacturer will be used, whereas the hydraulic systems will be given serial numbers by Lokaltog. The Contractor is obliged to use these serial numbers as identification for each Part and it is a requirement that the exact same Parts are handed back after the Service.
- 5.6 Upon the Service the Contractor must deliver each component of a Part clean and completely drained of oil and/or coolants etc. and with all connecting pipes and other openings duly shut off. Each Part, including all components, must be ready for filling up and ready-to-work.
- 5.7 The Contractor is responsible for arranging carriage and delivering the Parts at the place named by Lokaltog and undertakes the risk for the Parts from when the Parts are picked-up until they are returned after overhaul. The risk for the Parts transfers back to Lokaltog when the Parts are made available to Lokaltog, i.e. off-loaded, at the prescribed place of delivery.

6 RETURN OF THE PARTS

- 6.1 Upon completion of the Service of each Part, the Contractor shall hand-out any replaced components from such Part, if any, unless otherwise instructed by Lokaltog.
- 6.2 Parts are to be returned to Lokaltog cleaned, painted, sealed, and emptied for testing liquids and coolants after the Service.
- 6.3 If any components of a Part are replaced by the Contractor during the Service, only original spare parts or components (OEM) may be used, or parts or components with same technical quality as the originals, and which are approved by the manufacturer of the originals to be used in the guarantee period without affecting such guarantee.

7 DOCUMENTATION FOR THE SERVICE

- 7.1 Upon return of each Part to Lokaltog the Contractor must provide: (i) a certificate of conformity stating that the overhaul on such Part and its components is free of errors, and that such Part and its components are functional and conforms to the specified constructions, (ii) a protocol of tests with control measurements and tolerances of such Part and its components and (iii) a list containing the identification no. and/or serial no. of such Part.
- 7.2 A final description, according to Exhibit 2, of the Contractor's test programs, test procedures, overhaul procedures, exhaust gas test and their accompanied certificates shall be submitted to and approved by Lokaltog in writing prior to the Contractor's first pick-up of Parts.

8 SUBCONTRACTORS

- 8.1 The Contractor shall not be entitled to use subcontractors without the prior written approval from Lokaltog. The Contractor carries the full responsibility towards Lokaltog for services on the Parts performed by subcontractors.

9 PERFORMANCE GUARANTEE

- 9.1 Subject to Lokaltog's compliance with the Maintenance Manual enclosed as Exhibit 4 to this Agreement, the Contractor guarantees the correct and complete functionality of each Part on which the Service have been performed from the date the respective Part is returned to Lokaltog, the respective Part has been installed in the power pack and the respective train is put into operation again to the time the respective train has run 400,000 kilometers using such Parts.
- 9.2 Lokaltog uses a buffer stock of spare engines and hydraulic systems to ensure that Lokaltog is able to hand out the agreed Parts to the Contractor, cf. Exhibit 1. The Contractor provides Lokaltog with information about any requirements to storage of Lokaltog's buffer stock of spare parts and components to the engines and hydraulic systems. Subject to Lokaltog's compliance with the Contractor's requirements for storage, the Contractor also guarantees the correct and complete functionality of overhauled Parts put to stock from the date the respective Part is installed in the power pack and the train is put into operation again to the time the respective train has run 400,000 kilometers.
- 9.3 In case a Part lacks conformity with Exhibit 1 and/or Exhibit 2 and/or any other defect is ascertained by Lokaltog, the Contractor guarantees that his maintenance and support team, if required by Lokaltog, are able to commence remedies at the relevant depot of Lokaltog, see Exhibit 1, within 24 hours from notification by Lokaltog and guarantees that any defect is rectified and the train is ready to be put back into operation within 12 hours from commencing remedies of such Part ("Performance Guarantee Period").
- 9.4 If the Contractor is not able to rectify the defects within the Performance Guarantee Period, the Contractor shall pay DKK 1,000 exclusive VAT per additional commenced hour used for rectification until remedies are rectified.

10 REMEDY OF DEFECTS

- 10.1 In case of defects of a overhauled Part or component Lokaltog shall notify the Contractor in writing without undue delay and no later than 30 days after Lokaltog discovered or ought to have discovered the defect.

The Contractor may choose to:

- (i) repair such defective Part or component; or
- (ii) replace the defective Part or component

In case of repair, the Contractor shall free of charge deliver a replacement part to be inserted while the faulty Part is being repaired.

- 10.2 If it is necessary to dismount and/or remount the defective Part in order to repair or replace under the performance guarantee, see Clause 9, Lokaltog performs all work in connection with the dismounting and/or remounting at the expense of the Contractor.
- 10.3 To ensure the Contractor's remedy of defects within the Performance Guarantee Period, the Contractor shall consecutively provide Lokaltog with disposal over an appropriate amount of replacement spare components to be stored at the depots of Lokaltog, or, if agreed by the Parties, another location within the proximity of Lokaltog's depots, until all trains with overhauled Parts have run 400,000 kilometers. Establishing such spare components stock is done by the Contractor at no cost for Lokaltog.

- 10.4 The Contractor will simultaneously with the first pick-up according to the Time Schedule at the disposal of Lokaltog deliver replacement spare components in accordance with [Exhibit 4](#). The replacement spare components shall remain the property of the Contractor and shall only be used by Lokaltog as agreed from time to time with the Contractor. Lokaltog undertakes no responsibility for the replacement spare components and shall return the spare parts to the Contractor at the by the time the performance guarantee runs out, cf. Clause 9, at the costs and risk of the Contractor.
- 10.5 If any components are replaced under the performance guarantee, cf. Clause 9.1 and Clause 9.2, the Contractor issues a separate performance guarantee valid for 400,000 kilometers of operation in which period the Contractor warrants the correct and complete functionality of the replaced Parts from the date the respective replaced product is mounted on the power pack and the train is put into operation.
- 10.6 In case the Contractor fails to remedy the defects within the Performance Guarantee Period, Lokaltog may choose to remedy or let a third party remedy the defects on the account of the Contractor and in doing so dispose of the spare components, cf. Clause 10.3 and Clause 10.4.

11 LIABILITY

- 11.1 The Contractor shall be liable for any and all defects in the Contractor's performance of the Service or the performance of Service by its subcontractor(s), if any, cf. Clause 8.
- 11.2 The Contractor's liability includes liability for direct and indirect damages incurred by Lokaltog and damage to the trains and other property owned by Lokaltog or third parties. [Liability for damages to trains and other property owned by Lokaltog or third parties cannot exceed DKK 25,000,000.](#)
- 11.3 Contractor is insured against professional liability and product liability with an insurance sum of DKK 25,000,000 and is to maintain such policy during the entire term of the Overhaul Agreement, cf. [Exhibit 5](#).

12 RIGHT TO SET OFF

- 12.1 Any amount which Lokaltog is entitled to claim from the Contractor under this Overhaul Agreement may be set off against Lokaltog's payment for the Service, provided that Lokaltog has notified the Contractor hereof in advance.

13 PRICE

- 13.1 All amounts in this Overhaul Agreement are fixed-prices and are not subject to any adjustments.
- 13.2 The price for the Service is DKK [•] excl. VAT (Danish kroner [text]) (the "Contract Price"). The Contract Price shall be paid strictly in accordance with the payment terms below.
- 13.3 The price for any additional services requested by Lokaltog shall be agreed from time to time prior to any such additional services being performed, see Clause 3.3.
- 13.4 Invoices shall successively be issued by the Contractor after Service and return of each Part to Lokaltog, cf. the Time Schedule.
- 13.5 Invoices must contain (i) an invoice identification no., (ii) the identification no. of any covered Part(s), cf. Clause 6.1, and (iii) the date of delivery.
- 13.6 Invoices shall be sent only by e-mail to faktura@lokaltog.dk. Lokaltog shall make payment no later than 30 days after receiving an approvable invoice.
- 13.7 The Contract Price and agreed price for additional services shall be exclusive of VAT, but including all other fees or charges.

- 13.8 All payments under this Overhaul Agreement shall be made in DKK to the Contractor's account, [account no. SWIFT/BIC code/IBAN], in [bank], and each payment made shall specify which delivery it relates to by referring to the invoice no.

14 BANK GUARANTEE

- 14.1 The Contractor shall cause a bank, subject to Lokaltog's prior written approval of such bank, to issue the bank guarantee set out in Tender Conditions and Appendix 4 hereto no later than at the time of the signature of this Overhaul Agreement.

15 CONTACT PERSONS

- 15.1 Each of the Parties shall appoint a contact person to whom notifications and other information shall be sent and with whom the day-to-day correspondence shall be exchanged.

16 CONFIDENTIALITY

- 16.1 The Parties shall not, apart from what is required by applicable law, particularly mandatory provisions of stock exchange legislation and regulations, or by any court or other authority of competent jurisdiction, make use of, except for the purposes contemplated by this Overhaul Agreement, disclose to any third party or publish any Confidential Information received by one Party from or in respect of the other Party under or in connection with this Overhaul Agreement. For the purpose of this Overhaul Agreement "Confidential Information" means this Overhaul Agreement and a Party's commercial and operational information and knowhow and any other information not generally known or reasonably ascertainable as obtained by the Parties under or in connection with this Overhaul Agreement.
- 16.2 The Parties shall ensure that their employees and subcontractors including employees, if any, also observe this Clause 16.
- 16.3 The receiving Party may disclose Confidential Information only to those of its employees, advisors or subcontractors, cf. Clause 8, who need to know of such information for the purposes contemplated by this Agreement. In addition, prior to any disclosure of Confidential Information to any employee, advisor or subcontractor, such employee, advisor or subcontractor shall be made aware of the confidential nature of the Confidential Information and shall execute, or shall already be bound by a duty of confidentiality by law or written agreement containing terms and conditions consistent with the provisions of this Clause 16. In any event, the receiving Party is responsible for any breach of the provisions of this Clause 16 by any of its employees, advisors or contractors.
- 16.4 For purpose of this Clause 16 the requirement to observe confidentiality and restrictions on use shall not apply to any information which
- (i) was available to the general public at the time of its disclosure;
 - (ii) becomes available to the general public other than as a result of any non-compliance with this Clause 16;
 - (iii) was or is provided to the disclosing Party by a third party who is lawfully in possession of such information and who has a lawful right to disclose the information; or
 - (iv) was in the possession of the disclosing Party at the time of the execution of the Overhaul Agreement.

17 GOVERNING LAW

17.1 This Overhaul Agreement is governed and construed by and shall be interpreted in accordance with the laws of the Kingdom of Denmark, disregarding the Danish choice of law rules and without regard to the United Nation's Convention of Contracts for the International Sale of Goods (CISG).

18 VENUE

18.1 Any dispute or claim arising out of or in connection with this Agreement which cannot be settled amicably between the Parties, is to be brought before a competent court of law in the district where Lokaltog is domiciled.

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This Overhaul Agreement is executed in 2 (two) original copies, of which each Party has taken one, and each of which shall be deemed an original, but which shall both together constitute one and the same document.

IN WITNESS WHEREOF, the Parties have executed this Overhaul Agreement as of the date first above written.

On behalf of,
Lokaltog A/S:

[Place, date]

[Name]
[Title]

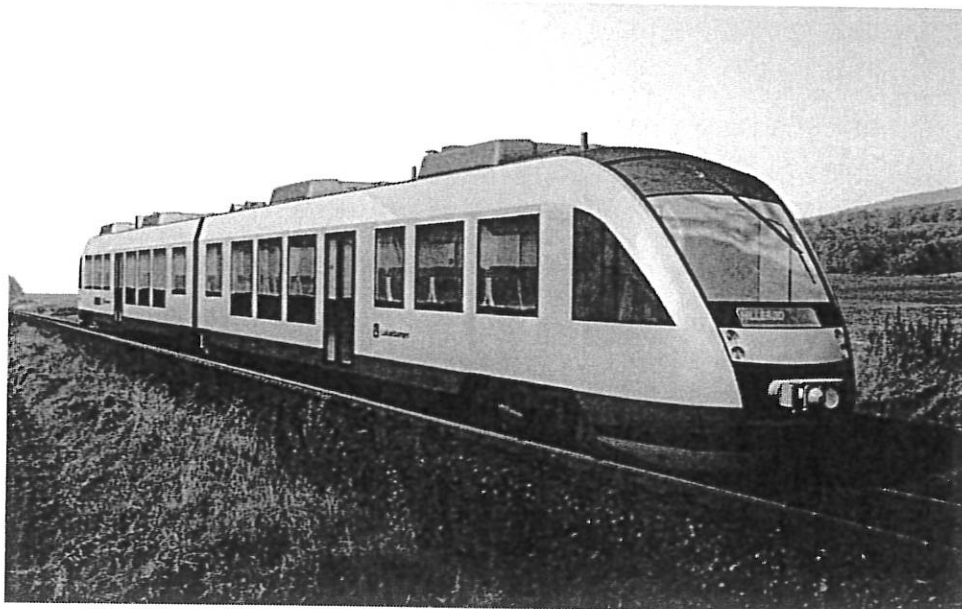
[Name]
[Title]

On behalf of,
[●]:

[Place, date]

[Name]
[Title]

[Name]
[Title]



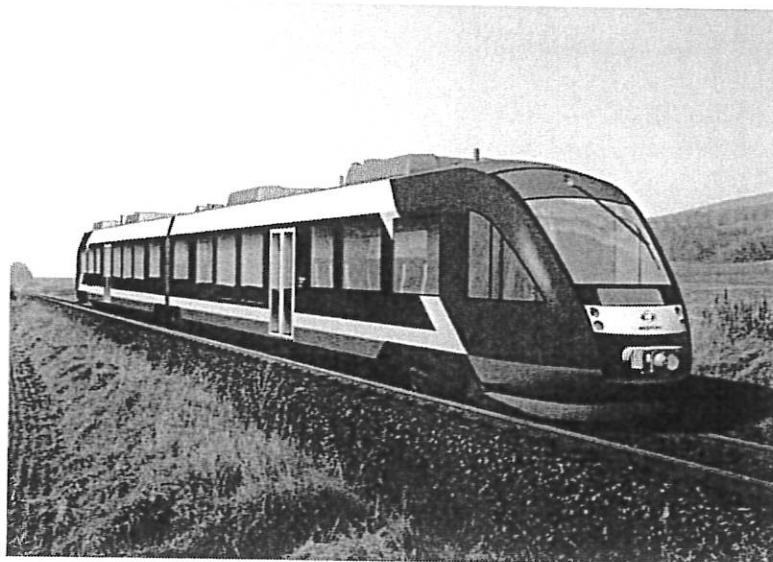
Vedligeholdelseshåndbog
Instandhaltungshandbuch
(Udgave / Ausgabe : 04/12.09)

Bind 1 / Band 1
Generelle henvisninger og opbygning af håndbogen
Allgemeine Hinweise und Dokumentationsaufbau

Bind 2 / Band 2
Systemdokumentation

Bind 3 / Band 3
Komponentdokumentation
Komponentendokumentation

Reservedelskatalog
Ersatzteilkatalog
(Udgave / Ausgabe : 04/10.09)



Vedligeholdelseshåndbog / *Instandhaltungshandbuch*
(Udgave / Ausgabe : 03/11.10)

Bind 1 / Band 1

Generelle henvisninger og opbygning af håndbogen
Allgemeine Hinweise und Dokumentationsaufbau

Bind 2 / Band 2

Systemdokumentation

Bind 3 / Band 3

Komponentdokumentation / *Komponentendokumentation*

Reservedelskatalog / *Ersatzteilkatalog*

LINT™ 41 (Regions TOG A/S - 1.lev.)
(Udgave / Ausgabe : 03/11.09)

LINT™ 41 (Regions TOG A/S - 2.lev.)
(Udgave / Ausgabe : 04/10.09)

LINT™ 41 (Regions TOG A/S - 3.lev.)
(Udgave / Ausgabe : 01/04.10)