

DATED _____ **2014**

LONDON UNDERGROUND LIMITED
and
MATISA MATÉRIEL INDUSTRIEL SA

MANUFACTURE AND SUPPLY
AGREEMENT
for P&C tamping machines

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THIS MANUFACTURE AND SUPPLY AGREEMENT is made on

2014

BETWEEN:

- (1) **LONDON UNDERGROUND LIMITED**, (Registered No: 1900907) a company incorporated under the laws of England and Wales whose registered office is at Windsor House, 42-50 Victoria Street, London SW1H 0TL (the **"Purchaser"**); and
- (2) **MATISA MATÉRIEL INDUSTRIEL SA**, (Registered No: CH-550.0.070.720-1) a company incorporated under the laws of Switzerland whose office is at Rue Arc-en-ciel 2, Case postale, CH-1023 Crissier 1 (the **"Manufacturer"**).

WHEREAS:

- (A) The Purchaser wishes to procure P&C tamping machines for use on the London Underground.
- (B) The Purchaser and the Manufacturer have agreed to enter into an agreement for (among other things) the manufacture and supply of tamping machines on the terms and conditions set out hereinafter.

IT IS AGREED:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement the following words and expressions shall have the following meanings save where the context requires otherwise:

"Acceptance for Service" means:

- (a) in respect of each Unit, that it satisfies the Acceptance for Service Criteria and has been accepted by the Purchaser Representative in accordance with Clause 12.4.2 or 12.4.3(ii); and
- (b) in respect of any other item of Purchased Equipment, that it has been delivered to the Purchaser in accordance with the provisions of this Agreement;

and "Accept for Service" and "Accepted for Service" shall be construed accordingly;

"Acceptance for Service Certificate" means the certificate to be signed by the Parties to evidence Acceptance for Service;

"Acceptance for Service Criteria" has the meaning given in Clause 12.4.1;

"Access Code" means the code of that name governing rights of access to the LUL Network in force from time to time;

"Agreed Qualification" means a written statement in or attached to an Acceptance for Service Certificate specifying any of the Acceptance for Service Criteria which have not been met;

"Agreement" means this Agreement including the Schedules;

"Applicable Laws" means, as the context may require, all or any laws, statutes, by-laws, codes of practice which have force of law, directives, regulations, statutory instruments, rules, orders, rules of court, delegated or subordinate legislation, rules of common law or any European Union legislation at any time or from time to time in force in the United Kingdom or the European Union and which are or may become applicable to this Agreement, any agreement or document referred to herein, any item of Purchased Equipment, the Training Services and/or the Manufacturer's obligations (including their performance) under this Agreement;

“Approved Design” means a design which has achieved Design Approval;

"Change in Law" means the coming into effect after the date of this Agreement of any Applicable Law, other than any Applicable Law which was at the date of this Agreement reasonably foreseeable by an experienced contractor performing works and services similar to those under this Agreement and exercising the foresight that such a contractor ought or ought reasonably to have anticipated at the date of this Agreement;

"Commencement Date" means 2 June 2014;

"Competent Authority" means any legislative, judicial, regulatory or administrative body or agency (or any subdivision of them) of the United Kingdom or the European Union or any supranational body which has rule-making power or whose directions, instructions, rulings, laws or regulations are directly enforceable against a Party in connection with the performance of this Agreement;

"Confidential Information" has the meaning ascribed to it in Clause 30.1;

"Consequential Loss" means in relation to a breach of this Agreement or other circumstances in which an Indemnified Party is entitled to recover any costs, expenses or liabilities suffered or incurred, any loss of production, loss of profit, loss of revenue, loss of contract, loss of goodwill, liability under other agreements or liability to third parties and/or indirect or consequential or other financial loss resulting from such breach and whether or not the Party committing the breach knew, or ought to have known, that such indirect or consequential loss would be likely to be suffered as a result of such breach;

“Contract Information” means (i) this Agreement in its entirety (including from time to time agreed changes to this Agreement) and (ii) data extracted from the invoices submitted by the Manufacturer which shall consist of the Manufacturer’s name, the expenditure account code, the expenditure account code description, the SAP document number, the clearing date and the invoice amount;

"Contract Price" means the aggregate amount payable by the Purchaser to the Manufacturer pursuant to Clause 20 as the same may be amended, supplemented or varied from time to time pursuant to the Variation Procedure;

"Contractual Acceptance Date" means, in relation to each Unit and other item of Purchased Equipment, the date specified in the Project Programme for Acceptance for Service and/or Final Acceptance (as applicable) of such Unit or other item of Purchased Equipment;

"Corrective Action" has the meaning ascribed to it in Clause 10.6.1;

“Critical Spares” means those Spares listed in Schedule 3 Part B;

"Default Interest" means interest on late payment at the rate of two per cent per annum above the base rate of the Bank of England from time to time;

"Defect" has the meaning ascribed to it in Clause 17.1;

"Defect Rectification Period" has the meaning ascribed to it in Clause 17.1;

"Delivery" means the passing of possession of a Unit or other item of Purchased Equipment from the Manufacturer to the Purchaser and **"Deliver"** and **“Delivered”** shall be construed accordingly;

“Delivery Date” means the date identified in the Project Programme for delivery of the Units to the Delivery Location;

“Delivery Location” means the Purchaser’s depot at Ruislip;

“Design” means all design documentation (whether in written or electronic form) produced by or on behalf of the Manufacturer for the Units;

“Design Approval” means approval of the Design pursuant to Clause 6.3.2(b);

“Environmental Damage” means any material injury or damage to persons, living organisms or property (including offence to man's senses) or any pollution or impairment of the environment resulting from the discharge, emission, escape or migration of any substance or energy, noise or vibration save to the extent any of the foregoing are within the requirements of Schedule 1A (Technical Requirements);

“Escrow Agent” means NCC Escrow International Limited (Company Number 03081952) or any successor or replacement to all or any of its functions;

“Escrow Agreement” means an agreement in the form or substantially in the form set out in Schedule 13;

“Excepted Liabilities” means: REDACTED

“Factory Tests” means the factory tests identified in the Test Plan;

“Fault Free Running Period” REDACTED

“Final Acceptance” means, in respect of each Unit, that it satisfies the Final Acceptance Criteria and has been accepted by the Purchaser Representative in accordance with Clause 12.5.2 or 12.5.3(ii) and **“Finally Accept”** and **“Finally Accepted”** shall be construed accordingly;

“Final Acceptance Certificate” means the certificate to be signed by the Parties to evidence Final Acceptance;

“Final Acceptance Criteria” has the meaning given in Clause 12.5.2(ii);

“Final Acceptance RAM Target” has the meaning ascribed to it in Section 4 of Schedule 1A;

“Fit for Purpose” REDACTED

“FM Affected Party” has the meaning ascribed to it in Clause 27.1.1;

“FM Notice” has the meaning ascribed to it in Clause 27.4;

“FOI Legislation” means the Freedom of Information Act 2000, all regulations made under it and the Environmental Information Regulations 2004 and any amendment or re-enactment of any of them; and any guidance issued by the Information Commissioner, the Department of Constitutional Affairs, or the Department for Environment Food and Rural Affairs (including in each case its successors or assigns) in relation to such legislation;

“Force Majeure Event” means any:

- (a) fire, earthquake or flood;
- (b) act of terrorism;
- (c) war, invasion, acts of foreign enemies, hostilities, civil war, revolutions, insurrection, riots or civil unrest; and/or
- (d) strikes, lock outs or other industrial action not solely affecting the Manufacturer's and/or their Subcontractors' employees or those of any of its Subcontractors.

save to the extent that such event is caused by the Manufacturer, any Subcontractor, or their respective agents, officers and/or employees;

“GLA Act” means the Greater London Authority Act 1999;

“Greater London” means that term as it is used in the GLA Act;

"Greater London Authority" means the authority established by section 1 of the Greater London Authority Act 1999 and its successors;

"Group" means, in relation to any company (which for the purposes of this Agreement shall include TfL), that company and any company which is a holding company or subsidiary of that company and any subsidiary of any such holding company; for which purposes **"subsidiary"** and **"holding company"** have the meanings respectively given to them by section 1159 of the Companies Act 2006;

“Information” means information recorded in any form held by or on behalf of the Purchaser;

“Information Request” means a request for any Information under the FOI Legislation;

“Indemnified Parties” has the meaning ascribed to it in Clause 29.2;

“Independent Auditor” has the meaning ascribed to it in Clause 25.10.3;

"Insolvency Event" in relation to any person means:

- (a) such person stopping or suspending or threatening to stop or suspend payment of all or a material part of its debts, or becoming unable to pay its debts, or being deemed unable to pay its debts under section 123(1) or (2) of the Insolvency Act 1986;
- (b) any step being taken by any person with a view to the winding up of such person or any person presenting a winding-up petition in respect of such person which is not dismissed within seven (7) days;
- (c) any step being taken to enforce security over or a distress execution or other similar process being levied or served out against the whole or a substantial part of the assets or undertaking of such person;
- (d) a receiver, administrative receiver, administrator, compulsory manager or other similar officer being appointed in respect of such person;
- (e) such person ceasing or threatening to cease to carry on all or a material part of its business, except for the purpose of and followed by a reconstruction, amalgamation, reorganisation, merger or consolidation on terms approved by the Purchaser (in its absolute discretion) before that step is taken;
- (f) the making by such person of a general assignment or an arrangement or composition with or for the benefit of creditors; or
- (g) any event occurring which, under the laws of any relevant jurisdiction other than England and Wales, has an analogous or equivalent effect to any of the events listed above;

"Intellectual Property Rights" or “IPRs” means all intellectual property rights in any part of the world, including any patent, patent application, trade mark, trade mark application, registered design, registered design application, utility model, trade name, discovery, invention, process, formula, specification, copyright (including rights in the Software and database and topography rights) or unregistered design rights;

“Key Personnel” means the persons listed in Schedule 5 (or any replacements appointed in accordance with Clause 9.1);

“Key Subcontract” means any Subcontract specified in Schedule 6;

"Key Subcontractor" means a Subcontractor that is party to a Key Subcontract;

"Latent Defect" means any Defect existing in a Unit at the date of its Final Acceptance that only becomes apparent to the Purchaser in the period specified in Clause 17.5;

"London Living Wage" means the basic hourly wage current at the date of this Agreement (before tax, other deductions and any increase for overtime) as may be revised from time to time by the Mayor of London or any other body or agency whose directives, decisions, instructions, rulings, laws, or regulations are directly enforceable against the Purchaser;

"LUL Network" means the stations and depots (wherever situate), assets, systems, track and other buildings which are used for the maintenance and provision of the underground service known as the London Underground;

"Manuals" means documents which fully describe how the Units should be operated, serviced, maintained, dismantled, reassembled, repaired and overhauled;

"Manufacturer Event of Default" means any of the events or circumstances listed in Clause 25.1;

"Manufacturer Group" means the Manufacturer and any member of its Group from time to time;

"Manufacturer IPR" has the meaning ascribed to it in Clause 24.1;

"Manufacturer Termination Notice" has the meaning ascribed to it in Clause 25.9;

"Manufacturer's Records" has the meaning ascribed to it in Clause 10.3.1 (A);

"Manufacturer's Works" means the Manufacturer's premises at Rue de l'Arc-en-Ciel 2, 1023 Crissier, Switzerland;

"Mayor of London" means the person elected to hold the office as Mayor of London with the powers and function set out in the Greater London Authority Act 1999;

"O&M Agreement" means the operation and maintenance agreement made between the Purchaser and the O&M Contractor in respect of the Units, Year One Consumables, Critical Spares, Special Tools, consumables and ancillary matters;

"O&M Contractor" means the person appointed by the Purchaser to provide maintenance and other services in relation to the Units;

"Owner" means Lombard North Central plc or such other person to whom the Purchaser may sell the Purchased Equipment following the Purchaser taking title to the same pursuant to this Agreement, and any designated representative of the same;

"Part" means any component, furnishing or equipment forming part of a Unit or Spare;

"Party" means each of the Purchaser and the Manufacturer and **"Parties"** shall be construed accordingly;

"Permitted Delay Event" has the meaning given to it in Clause 15.1;

"Persistent Breach" has the meaning ascribed to it in Clause 25.4.2;

"Prohibited Act" means:

- (a) offering or agreeing to give to any servant, employee, officer or agent of the Purchaser or the TfL Group any grant, gift or consideration of any kind as an inducement or reward:
 - (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with the Purchaser; or

- (ii) for showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the Purchaser;
- (b) entering into this Agreement or any other contract with the Purchaser in connection with which commission has been paid or has been agreed to be paid by the Manufacturer or on its behalf or to his knowledge unless, before the relevant contract or document is entered into, particulars of any such commission and the terms and conditions of any such contract or document for the payment thereof have been disclosed in writing to the Purchaser;
- (c) committing any offence:
 - (i) under the Prevention of Corruption Acts 1889-1916 and/or the Bribery Act 2010;
 - (ii) under any law or legislation creating offences in respect of fraudulent acts; or
 - (iii) at common law in respect of fraudulent acts,
 in relation to this Agreement or any other contract with the Purchaser; or
- (d) defrauding or attempting to defraud the Purchaser;

"Project Programme" means the programme agreed under Clause 8.1.4 (substantially in the form set out in Schedule 2) as may be amended from time to time in accordance with this Agreement;

"Provisional Variation Order" has the meaning ascribed to it in Schedule 8;

"Purchased Equipment" means each Unit, Year One Consumable, Critical Spare, Special Tool, Manual and other item ordered from the Manufacturer in accordance with this Agreement;

"Purchaser Event of Default" means any of the events or circumstances listed in Clause 25.8;

"Purchaser Notice of Proposed Variation" has the meaning ascribed to it in Schedule 8;

"Purchaser Representative" has the meaning ascribed to it in Clause 2.1;

"Purchaser Termination Notice" has the meaning ascribed to it in Clause 25.4.2;

"Relevant Consents" has the meaning ascribed to it in Clause 4.3;

"Relevant Conviction" means any unspent criminal conviction relating to actual or potential acts of terrorism or acts which threaten national security;

"Relevant Individual" means any servant, employee, officer, consultant or agent of the Manufacturer or any Subcontractor carrying out, or intended to carry out, any aspects of this Agreement on the LUL Network or any other property owned by the Purchaser;

"Remedial Plan" has the meaning ascribed to it in Clause 25.3.1(B);

"Remedy Notice" has the meaning ascribed to it in Clause 25.3.1;

"Required Insurance" means the insurances specified in Schedule 9;

"Responsible Procurement Principles" means the seven principles of responsible procurement more particularly described in the GLA Group Responsible Procurement Policy dated March 2006, as updated in January 2008 and as may be further updated from time to time and which is available from the Purchaser on request;

"Retention" has the meaning ascribed to it in Schedule 4;

“Retention Balance” means, for the time being, the aggregate of the amounts retained by the Purchaser under Clause 20.2.1 less any deductions made by the Purchaser under Clause 13.4.2(ii);

“Retention Period” has the meaning ascribed to it in Clause 10.3.1(B);

"Security" means:

- (a) any right of ownership, lien, mortgage, charge, pledge, hypothecation, attachment, security interest, assignment by way of security, right of possession, right of detention or other encumbrance; or
- (b) any other preferential arrangement resulting in a secured transaction or having the same economic or legal effect as any of the foregoing; or
- (c) any agreement to give any of the foregoing; or
- (d) any arrangement to prefer one creditor over another creditor; or
- (e) the interest of the vendor or lessor under any conditional sale agreement, lease, hire purchase agreement or other title retention arrangement; or
- (f) any interest described in (a) to (e) above over any interest described in (a) to (e) above;

“Service Affecting Failure” has the meaning ascribed to it in Schedule 1A;

“Site Tests” means the site tests identified in the Test Plan;

"Software" means, as may be developed, enhanced, modified, adapted, altered or updated from time to time, the lists of instructions, stored in permanent or semi-permanent form, used:

- (a) to define the functions of microprocessors and similar devices installed on any Purchased Equipment or any part thereof or in equipment to be used in conjunction with, or for the operation, testing, commissioning, modification and/or refurbishment of, any Purchased Equipment or any part thereof; and/or
- (b) to run programmes, spreadsheets and/or databases in connection with the operation, testing, commissioning, modification and/or refurbishment of the Purchased Equipment, in each case except for such as are standard commercial products, usable as made, and which have not been modified in order to perform any of the tasks set out in sub-clause (a) above;

"Source Code" means the source code version of any Software which is licensed to the Purchaser pursuant to this Agreement in a form capable of being read and interpreted by humans, together with related interpretative documentation and material;

"Spares" means all spare parts of any description including fluids, parts and assemblies required in connection with the Units supplied or to be supplied by the Manufacturer or any Subcontractor under this Agreement;

"Special Tools" means those special tools listed in Schedule 3 Part B;

"Standards" means the various standards documents and associated codes of practice identified in the Technical Requirements as applicable to work under this Agreement;

"Subcontract" means any contract (a subcontract) awarded by, or to be awarded by, the Manufacturer and any contract awarded by any person who is a party to a subcontract with the Manufacturer or awarded by any party to a subcontract with a Subcontractor, and so on, in relation to, or connected with, the carrying out of the obligations of the Manufacturer under this Agreement;

"Subcontractor" means any party to a Subcontract other than the Manufacturer;

"Taxes" means all present and future taxes, charges, imposts, duties or levies of any kind whatsoever, payable at the instance of or imposed by any Competent Authority, together with any penalties, additions, fines, surcharges or interest relating thereto and **"Tax"** and **"Taxation"** shall be construed accordingly;

"Technical Requirements" means the technical requirements specification set out in Schedule 1A;

"Test Plan" means the test plan to be developed and provided by the Manufacturer in accordance with Clause 12.2 setting out the regime of tests required for Acceptance for Service of the Units;

"Tests" means the tests identified in the Test Plan approved under Clause 12.2.2;

"TfL" or **"Transport for London"** means the body established pursuant to section 154 of the Greater London Authority Act 1999 and any successor body;

"TfL Group" means Transport for London and any member of its Group;

"Training Plan" has the meaning given in Schedule 7;

"Training Services" means those services specified in Schedule 7;

"Transparency Commitment" means the transparency commitment stipulated by the UK government in May 2010 (including any subsequent legislation) in accordance with which the TfL Group is committed to publishing its contracts, tender documents and data from invoices received;

"Unit" means a P&C tamping machine to be manufactured and supplied pursuant to the terms of this Agreement;

"VAB" means Interfleet Technology Ltd, the vehicle acceptance body appointed by the Manufacturer pursuant to the VAB Appointment;

"VAB Appointment" means the appointment to be entered into between the Manufacturer and the VAB;

"Variation" means any change or amendment of whatever scope and/or nature to this Agreement, including any changes to the Technical Requirements and/or the requirements (including timing) of an item of Purchased Equipment;

"Variation Order" means a Provisional Variation Order signed by the Manufacturer and the Purchaser;

"Variation Procedure" has the meaning ascribed to it in Schedule 8;

"VAT" means value added tax as provided for in the Value Added Tax Act 1994 and legislation supplemental thereto and any similar sales, consumption or turnover tax replacing or introduced in addition thereto;

"Working Day" means a weekday (other than a Saturday or Sunday or other public holiday) on which banks are open for domestic business in the City of London; and

"Year One Consumables" means those items listed in Schedule 3 Part A.

1.2 Interpretation

In this Agreement, except where the context otherwise requires:

- 1.2.1 any reference to this Agreement includes the Schedules to it, each of which forms part of this Agreement for all purposes;

- 1.2.2 a reference to an enactment, statutory provision or Standard shall unless otherwise expressly specified in this Agreement include a reference to any subordinate legislation made under the relevant enactment, statutory provision or Standard and unless otherwise expressly specified in this Agreement is a reference to that enactment, statutory provision, Standard or subordinate legislation as from time to time amended, consolidated, modified, reenacted or replaced;
- 1.2.3 words in the singular shall include the plural and vice versa;
- 1.2.4 references to one gender include other genders;
- 1.2.5 a reference to a person shall include a reference to a firm, a body corporate, an unincorporated association, a partnership, limited partnership, limited liability partnership or to an individual's executors or administrators;
- 1.2.6 a reference to a Clause or Schedule (other than to a schedule to a statutory provision) shall be a reference to a clause or schedule (as the case may be) of or to this Agreement and a reference in a Schedule to a paragraph shall mean a reference to a paragraph of that Schedule;
- 1.2.7 if a period of time is specified as "from" or "within" a given day, or "from" or "within" the day of an act or event, it shall be calculated exclusive of that day;
- 1.2.8 references to any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall in respect of any jurisdiction other than England be deemed to include what most nearly approximates the English legal term in that jurisdiction and references to any English statute or enactment shall be deemed to include any equivalent or analogous laws or rules in any other jurisdiction;
- 1.2.9 references to writing shall include any modes of reproducing words in any legible form and shall exclude email except where expressly stated otherwise;
- 1.2.10 a reference to "includes" or "including" shall mean "includes without limitation" or "including without limitation";
- 1.2.11 the contents page and headings in this Agreement are for convenience only and shall not affect its interpretation;
- 1.2.12 references to this Agreement include this Agreement as amended or supplemented in accordance with its terms;
- 1.2.13 a reference to the "Purchaser" or the "Manufacturer" includes its respective (and any subsequent) successors in title, and its respective permitted transferees or assignees;
- 1.2.14 references in the Agreement to costs, expenses and losses which are to be indemnified to, or recovered by, the person incurring the same shall be construed as references to an amount equal to the amount of such costs, expenses and losses together with any amount that represents VAT or other similar tax properly chargeable therein in any jurisdiction;
- 1.2.15 reference to a "third party" is a reference to any person who is not a Party;
- 1.2.16 references in this Agreement to any other agreement or other instrument (other than an enactment or statutory provision) shall be deemed to be references to that agreement or instrument as from time to time amended, varied, supplemented, substituted, novated or assigned; and

1.2.17 references to time of day are to that time in London.

1A. COMMENCEMENT

1A.1 This Agreement shall be deemed to have commenced on the Commencement Date.

2. EXERCISE OF RIGHTS AND PERFORMANCE OF OBLIGATIONS BY A THIRD PARTY

2.1 The Manufacturer acknowledges and agrees that the Purchaser shall nominate a certain person or certain persons (each one a "**Purchaser Representative**") at any time to exercise some or all of its rights or perform some or all of its obligations in connection with this Agreement, in which case the Manufacturer will perform its obligations under this Agreement in accordance with the relevant provisions of this Agreement as if the Purchaser Representatives were, to the extent notified, the Purchaser, and, to that extent, accept the instructions, requests, notifications, claims and demands of the Purchaser Representatives in substitution for the Purchaser accordingly provided that the Purchaser provides the Manufacturer with written notice countersigned by the nominated person(s) and setting out the extent to which such person shall be entitled to exercise the Purchaser's rights and/or perform the Purchaser's obligations, at least five (5) Working Days prior to such nomination becoming effective.

2.2 The Manufacturer shall be entitled to rely and act upon the exercise by a Purchaser Representative of any right permitted in accordance with Clause 2.1 and any performance by a Purchaser Representative of any obligation on the part of the Purchaser shall contribute good and valid discharge of the Purchaser's obligation in question.

3. PURCHASE

3.1 Purchase

The Manufacturer shall supply each item of Purchased Equipment to the Purchaser by the relevant Contractual Acceptance Date for that item in consideration for the Purchaser procuring payment to the Manufacturer of the Contract Price in respect of each such item in each case in accordance with the terms of this Agreement.

4. MANUFACTURER'S GENERAL OBLIGATIONS

4.1 General Undertaking and Warranties

The Manufacturer undertakes and warrants to the Purchaser, for the benefit of the Purchaser and the Owner (where it is not the Purchaser), that it shall design, manufacture, supply, assemble, test, commission, and Deliver each Unit and other items of Purchased Equipment:

4.1.1 so that it is Fit for Purpose;

4.1.2 so that, in relation to the Units, each Unit satisfies the Acceptance for Service Criteria and the Final Acceptance Criteria;

4.1.3 REDACTED;

4.1.4 in accordance with, and so that the Units shall function in accordance with, sound modern design and engineering principles and practices in the rail industry except where these would conflict with Clauses 4.1.1 and 4.1.2;

4.1.5 in accordance with the Technical Requirements and the Project Programme so as to achieve Acceptance for Service of the item of Purchased Equipment on the Contractual Acceptance Date for that item;

- 4.1.6 in compliance with all Applicable Laws and all applicable Standards;
- 4.1.7 in accordance with good industry practice and with all due skill, care and diligence to be expected of appropriately qualified and experienced professional designers and engineers with experience in carrying out work of a similar scope, type, nature and complexity to that required under this Agreement;
- 4.1.8 using materials and goods that comply with the Technical Requirements and the Standards and so that the Purchased Equipment will be of new manufacture and comply with the Technical Requirements;
- 4.1.9 in accordance with the requirements of any Variation Order and in all other respects in accordance with this Agreement; and
- 4.1.10 in respect of the Year One Consumables and Critical Spares, so that each of those is sufficient and adequate to enable maintenance to be carried out on the Units.

4.2 **Compliance**

In performing its obligations under this Agreement, the Manufacturer shall, and shall procure that its Subcontractors shall:

- (A) comply with the version of the Project Programme in place from time to time; and
- (B) comply with all Applicable Laws, all applicable Standards and all directions of the Purchaser and any other Competent Authority.

4.3 **Licences and Consents**

The Manufacturer shall obtain and maintain all consents, approvals, authorisations, acceptances, certificates, licences (including import licences), exemptions, registrations, filings, permits and other matters, give all notices and pay all fees, duties and taxes (including import duties, taxes and levies) in each case which are required or necessary for the proper performance of the Manufacturer's duties and obligations under this Agreement (“**Relevant Consents**”).

4.4 **Import**

In relation to the import of the Purchased Equipment into the United Kingdom prior to Delivery:

- 4.4.1 the Manufacturer shall be responsible for all aspects of importation, including payment of all costs, fees, duties, levies and taxes and (at its own cost and without prejudice to Clause 12.3.1) the making of and implementation of all practical arrangements, save in respect of the payment of import VAT pursuant to Clause 4.4.2;
- 4.4.2 the Purchaser shall be the importer of record, and shall be responsible for payment of any import VAT;
- 4.4.3 the Manufacturer shall ensure the necessary import and customs documentation is duly and correctly completed and provided to the appropriate authorities or, if the Purchaser is required by law to provide such documentation to the appropriate authorities itself, issued to the Purchaser, promptly and in any event within such time as to ensure that all of the Purchaser's legal obligations as importer of record of the Purchased Equipment are fully satisfied on time (and so as not to incur any interest or penalties), including (without limitation) to pay import VAT and any customs duty (notwithstanding that, pursuant to Clause 4.4.4, the Manufacturer will in practice pay any customs duty, or procure that any customs duty is paid, on behalf of the Purchaser). Following the provision by the Manufacturer of any

such documentation directly to the appropriate authorities, the Manufacturer shall ensure that the Purchaser is provided with copies or originals, as appropriate, of all such documentation such that the Purchaser possesses a full set of records to evidence compliance with all such obligations; and

- 4.4.4 without prejudice to Clause 4.4.1, the Manufacturer shall be responsible for payment of all customs duty on behalf of the Purchaser, and shall pay or procure the payment of all customs duty prior to the importation of the Purchased Equipment to the United Kingdom, and shall not be entitled to, and shall not receive, any reimbursement from the Purchaser in respect of such customs duty.

4.5 **Tax Allowances**

The Manufacturer undertakes and confirms to the Purchaser that neither it nor any other person which is a member of the Manufacturer Group, a Subcontractor, a supplier or a provider of finance to the Manufacturer or any of those persons has claimed and that it will not claim and shall procure that no such other person shall claim any capital allowances or analogous Tax allowances in respect of any Unit or any other item of Purchased Equipment.

5. **CHANGE IN LAW**

- 5.1 On the occurrence of any Change in Law, the Manufacturer and/or the Purchaser shall be entitled to seek adjustments to the Contract Price as set out below to compensate for any increase or decrease (as the case may be) in the net cost to the Manufacturer of performing its obligations under this Agreement.
- 5.2 Either of the Purchaser or the Manufacturer may give notice to the other of the purported occurrence of the Change in Law.
- 5.3 The Purchaser and the Manufacturer shall meet within twenty (20) Working Days following the notice referred to in Clause 5.2 to consult and seek to agree the effect of the Change in Law. If within twenty (20) Working Days following this meeting the Purchaser and the Manufacturer have not agreed the occurrence and/or the effect of the Change in Law, either the Purchaser or the Manufacturer may refer the dispute as to the occurrence of a Change in Law and/or the effect of any Change in Law for determination in accordance with Clause 32.
- 5.4 Where it is agreed or determined that a Change in Law has occurred, the Purchaser shall issue a Purchaser Notice of Proposed Variation within ten (10) Working Days following the agreement or determination of the effect of the Change in Law referred to in Clause 5.3 above, and the relevant provisions of Schedule 8 (Variation Procedure) shall apply.
- 5.5 In relation to any adjustment to the Contract Price pursuant to this Clause 5, the net increase or (as relevant) decrease in the cost to the Manufacturer of performing its obligations under this Agreement shall be calculated on the basis that the Manufacturer shall be placed in no better or worse position than it would have been in had the Change in Law not occurred, taking into account:
- (A) any decrease in its costs resulting from any Change in Law; and
 - (B) any amount which the Manufacturer will recover under any Required Insurance as a result of such Change in Law (or would have recovered if it had complied with the requirements of this Agreement or of any policy of insurance required under this Agreement).
- 5.6 The Purchaser and the Manufacturer shall adjust the Contract Price by the amount calculated pursuant to Clause 5.5. The Manufacturer shall not be entitled to any other payment or compensation or, save as expressly provided otherwise in this Agreement,

relief in respect of such Change in Law or associated Variation (or the consequence of either) and the provisions of this Agreement shall be construed accordingly.

6. TECHNICAL REQUIREMENTS AND DEVELOPMENT OF DESIGN

6.1 Technical Requirements

The Manufacturer acknowledges and agrees that it has reviewed and considered the Technical Requirements and is satisfied:

6.1.1 as to their feasibility with respect to the design, manufacture, supply, assembly, testing, commissioning and Delivery of the Units and other items of Purchased Equipment; and

6.1.2 that it will be able to implement them within the timescales set out in the Project Programme.

6.2 Design Procedures

The Manufacturer shall undertake the design of the Units in accordance with the requirements of this Agreement.

6.3 Design Approval Process

REDACTED

6.4 Design Risk

REDACTED

6.5 Liability for Performance

Notwithstanding any other provision of this Agreement, no examination or lack of examination and/or assurance given by the Purchaser in respect of any document submitted by the Manufacturer shall in any way relieve or absolve the Manufacturer from any obligation or liability under or in connection with this Agreement whether in relation to accuracy, safety, suitability, adequacy, performance, time or otherwise.

7. CONFLICTS AND DISCREPANCIES

7.1 Priority of provisions in the Agreement

Unless expressly stated otherwise, where there is a conflict or other discrepancy between a Clause of this Agreement and the provisions of a Schedule, the provisions of the Clause of this Agreement shall prevail.

7.2 Manufacturer's acknowledgements regarding discrepancies and errors

The Manufacturer confirms to the Purchaser that as at the Commencement Date:

7.2.1 it has considered in detail this Agreement and has satisfied itself that no discrepancies or errors exist within the Agreement; and

7.2.2 it has:

(A) obtained all necessary information as to risk, contingencies and all other circumstances which may influence or affect the level of payment arising under or in connection with this Agreement; and

(B) satisfied itself that the performance of its obligations under and in accordance with this Agreement will be in accordance with all Applicable Laws.

7.3 Notification of errors and inconsistencies

Without prejudice to the provisions of Clause 7.5, the Purchaser and the Manufacturer shall notify each other in writing forthwith upon becoming aware of a discrepancy or error within the Agreement and the Manufacturer shall provide proposals for resolving such error or inconsistency. Without prejudice to Clause 7.4, the Purchaser and the Manufacturer shall consult with each other and seek to agree the manner in which any error or discrepancy should be resolved.

7.4 Exclusions of Claims or Relief

REDACTED

7.5 Discrepancies

REDACTED

8. PROJECT PROGRAMME

8.1 Project Programme

8.1.1 The Manufacturer undertakes to carry out the design, manufacture, supply, assembly, testing and commissioning and Delivery of the Units and other items of Purchased Equipment in accordance with the Project Programme.

8.1.2 Unless expressly stated otherwise, the Project Programme shall not be amended in any manner or form without the Purchaser giving its written approval to such amendment.

8.1.3 The matters set out in the Project Programme shall be wholly without prejudice to the Manufacturer's obligation to achieve Acceptance for Service and (as appropriate) Final Acceptance for each Unit and each other item of Purchased Equipment on the Contractual Acceptance Date for that Unit or other item of Purchased Equipment.

8.1.4 The Project Programme shall be agreed between the Parties within 14 (fourteen) days of the date of this Agreement and shall be in substantially the form of the draft set out at Schedule 2. In the event that the Project Programme is not agreed within the timescale set out in this Clause 8.1.4, either Party shall be entitled to refer the matter for resolution under Clause 32.

9. KEY PERSONNEL, MEETINGS AND REPORTS

9.1 Key Personnel

The Manufacturer shall not replace any Key Personnel without:

9.1.1 giving at least sixty (60) days' notice; and

9.1.2 proposing a replacement Key Personnel to the Purchaser who the Purchaser has approved (such approval not to be unreasonably withheld or delayed).

9.2 Management of Delivery

The Parties shall comply with Schedule 1B in relation to design management, project management and programme management.

10. MANUFACTURING FACILITIES AND RIGHTS OF AUDIT AND INSPECTION

10.1 Manufacturing Facilities

The Manufacturer shall ensure, in respect of each Unit, that the assembly of each modular body shell, the installation of all subsystems within each body shell, and the routine testing

of all final assembled vehicles shall be carried out by the Manufacturer at the Manufacturer's Works and the Manufacturer shall not use any other manufacturing facility for the assembly of each modular body shell, the installation of all subsystems within each body shell, and the routine testing of all final assembled vehicles without the prior agreement of the Purchaser.

10.2 Access to Facilities for Purpose of Audits

For the purposes of exercising any of their rights under Clause 10, the Manufacturer shall (a) grant the Purchaser and the Owner access on reasonable prior notice to any of the Manufacturer's premises involved in the design, manufacture, supply, assembly, testing, certification, commissioning and Delivery of the Units and any other item of Purchased Equipment including the Manufacturer's Works and (b) use its reasonable endeavours to procure such access to those premises of its agents and Key Subcontractors.

10.3 Right of Audit and Inspection

10.3.1 The Manufacturer shall, and shall procure that its Key Subcontractors shall:

- (A) maintain a complete and correct set of records pertaining to all activities relating to the performance of the Manufacturer's obligations under this Agreement and all transactions and Subcontracts entered into by the Manufacturer for the purposes of performing its obligations under this Agreement (in respect of the Manufacturer) and the performance by the Key Subcontractor of its obligations under its Key Subcontract (in respect of the Key Subcontractor) (the "**Manufacturer's Records**"); and
- (B) retain all the Manufacturer's Records until the date six (6) years (or such longer period as may be required by law) following termination of this Agreement for whatever reason (the "**Retention Period**").

10.3.2 Notwithstanding any other right of audit that the Purchaser is entitled to under this Agreement, in order to verify the Manufacturer's performance of and compliance with the Agreement the Purchaser and the Owner shall be entitled on reasonable notice (whether in writing or verbally), either itself or using such agents or representatives as it may authorise to:

- (A) audit, inspect or witness any aspects of the manufacturing, testing or commissioning of the Units or any other item of Purchased Equipment or any of their Parts and to audit the design and certification thereof including being present at, and participating in, amongst other things:
 - (a) any inspection and conformance control of subsystems supplied by Key Subcontractors;
 - (b) any inspection and conformance control of a Unit construction at stages to be agreed between the Purchaser and the Manufacturer;
 - (c) any system tests (at stages to be agreed) during construction;
 - (d) any dynamic run testing of completed Units; and
 - (e) any inspection and certification of each Unit's compliance with the Technical Requirements after completion of assembly and dynamic testing;
- (B) inspect the sub-assembly of each Unit;
- (C) inspect any and all of the Manufacturer's Records during the Retention Period as are reasonably necessary to investigate the Manufacturer's (and

any Key Subcontractor's) performance of its obligations under this Agreement;

- (D) audit the management systems of the Manufacturer and those of any Key Subcontractor; and
- (E) inspect and/or audit compliance by the Manufacturer and its Key Subcontractors with the Manufacturer's obligations under this Agreement.

10.4 **Co-operation with Audit Procedure**

To the extent necessary for the purpose of exercising any of the rights granted under Clause 10.3.2 the Manufacturer shall provide, and shall procure that its Key Subcontractors shall provide, all reasonable co-operation to the Purchaser and the Owner including

- 10.4.1 upon request from the Purchaser, acting reasonably, providing electronic or paper copies of any Manufacturer's Records required for the purposes of Clause 10.3.2(C) free of charge and within a reasonable time of any request and
- 10.4.2 making the Manufacturer's employees available for discussion with the Purchaser.

10.5 **No Claim for Relief**

No audit, inspection and/or testing by the Authority pursuant to Clause 10.3.2 shall relieve the Manufacturer (nor any of its Key Subcontractors) from any of its obligations under this Agreement or prejudice any right, power and/or remedy of the Purchaser against the Manufacturer.

10.6 **Corrective Actions Arising**

- 10.6.1 Any actions found to be reasonably necessary having regard to the Manufacturer's obligations under this Agreement as a consequence of the Purchaser undertaking any inspections or audits (a "**Corrective Action**") shall be carried out by the Manufacturer. The Manufacturer shall acknowledge formally within **REDACTED** receipt of any request for a Corrective Action raised by the Purchaser, together with the Manufacturer's confirmation of the timescale allocated by the Purchaser for the Manufacturer to close out the Corrective Action. The Manufacturer shall advise the Purchaser upon its close-out of the Corrective Action, together with details of the Corrective Action applied. The Purchaser shall be entitled to undertake a further audit of any Corrective Actions on the same basis as set out in Clauses 10.2 to 10.5.
- 10.6.2 If the Manufacturer (acting reasonably) disputes any Corrective Action, it shall notify the Purchaser whereupon the Manufacturer and the Purchaser shall consult with each other and seek to resolve such dispute and in default of such resolution either the Purchaser or the Manufacturer may refer the dispute for determination in accordance with Clause 32.

10.7 **Plans for Remedial Action**

REDACTED

10A **DESIGN/BUILD VERIFICATION**

- 10A.1 Once manufacturing has commenced, the Manufacturer shall procure that the VAB carries out audits in accordance with the VAB Appointment to ensure that the Manufacturer is manufacturing the Units and any other item of Purchased Equipment in compliance with the Approved Design.

10A.2 In order (without limitation) to verify that the Manufacturer is manufacturing the Units and any other item of Purchased Equipment in compliance with the Approved Design the Purchaser shall be entitled on reasonable notice (whether in writing or verbally), either itself or using such agents or representatives as it may authorise, to:

10A.2.1 audit, inspect or witness any aspects of the manufacturing of the Units or any other item of Purchased Equipment and to audit the design and certification thereof including being present at, and participating in, amongst other things:

- (a) any inspection and conformance control of subsystems supplied by Key Subcontractors;
- (b) any inspection and conformance control of a Unit construction at stages to be agreed between the Purchaser and the Manufacturer;
- (c) factory acceptance tests and any other system tests during construction;
- (d) any dynamic run testing of completed Units; and
- (e) any inspection and certification of each Unit's compliance with the Technical Requirements after completion of assembly and dynamic testing;

10A.2.2 inspect the sub assembly of each Unit;

10A.2.3 inspect any and all of the Manufacturer's Records as are reasonably necessary to investigate the Manufacturer's (and any Key Subcontractor's) compliance with the Approved Design; and

10A.2.4 inspect and/or audit compliance by the Manufacturer and its Key Subcontractors with the Approved Design.

The rights of the Purchaser under this Clause 10A.2 are without prejudice to Clause 10A.1 and notwithstanding any other right of audit to which the Purchaser is entitled under this Agreement.

10A.3 Clauses 10.4, 10.5, 10.6 and 10.7 shall apply mutatis mutandis to audits carried out under Clauses 10A.1 and 10A.2.

10A.4 The Manufacturer shall not be entitled to deliver the Units to the Delivery Location under Clause 12.3 until the VAB has certified that the Units and any other relevant item of Purchased Equipment have been manufactured in accordance with the Approved Design.

10A.5 The Parties shall comply with Schedule 1B in relation to certification and assurance activities.

11. YEAR ONE CONSUMABLES, CRITICAL SPARES AND CONTINUING SUPPORT

11.1 Quality and Identifiability

The Manufacturer shall ensure that:

- (A) each of the Spares is a brand new part manufactured from materials of sound and satisfactory quality and is Fit for Purpose;

- (B) to the extent of good industry practice, each Spare has a serial number which is clearly identifiable; and
- (C) each Spare is clearly labelled or otherwise identifiable as being the property of the Purchaser.

11.2 **Time for Delivery**

Without prejudice to Clause 4.1, the Manufacturer shall Deliver the Year One Consumables, Critical Spares and Special Tools to the Purchaser by no later than the Contractual Acceptance Dates for such items specified in the Project Programme.

11.3 **Continuing Support**

The Parties shall comply with Schedule 3A in relation to continuing support.

12. **TESTING, ACCEPTANCE AND DELIVERY PROCEDURE**

12.1 **Compliance with the Programmes and Procedures**

The Manufacturer shall ensure that:

- 12.1.1 the Units and other items of Purchased Equipment are delivered, tested and made ready for Acceptance for Service and (as applicable) Final Acceptance by the Purchaser in accordance with the Technical Requirements, the Project Programme, and the other provisions of this Agreement; and
- 12.1.2 no Unit or other item of Purchased Equipment is Delivered to the Purchaser prior to its Contractual Acceptance Date unless otherwise agreed by the Purchaser.

12.2 **Type Test Approvals and Factory Testing**

- 12.2.1 The Manufacturer shall develop and submit to the Purchaser Representative a draft Test Plan in accordance with the Programme.
- 12.2.2 Within **REDACTED**, the Purchaser Representative shall notify the Manufacturer as to whether the draft Test Plan is approved or rejected. The Purchaser Representative shall be entitled to reject the draft Test Plan (and shall provide reasons for such rejection) if:
 - (i) it does not comply with the testing requirements set out in the Standards;
 - (ii) acting reasonably, it does not believe that the draft Test Plan will be sufficient to establish that the Units meet the requirements of this Agreement, including in particular the Technical Requirements.

Following any rejection of the draft Test Plan, the Manufacturer shall promptly address the issues notified to it by the Purchaser Representative and re-submit the draft Test Plan. This Clause 12.2.2 shall apply to any re-submitted draft Test Plan until it has been approved.

- 12.2.3 Following approval of the Test Plan in accordance with **REDACTED** in accordance with the Test Plan.
- 12.2.4 The Purchaser Representative shall be entitled to attend any Factory Tests together with such other representatives of the Purchaser as the Purchaser Representative may nominate. The Manufacturer shall be responsible for procuring such access. The Manufacturer shall provide the Purchaser Representative with not less than **REDACTED** notice of the time, location and subject matter of any such Factory Tests.
- 12.2.5 The **REDACTED**.

- 12.2.6 Any repetition or prolongation of the Factory Tests which is necessary by reason of a failure of the Units **REDACTED** not be entitled to any additional costs, any extension of time or any other relief in connection with such failure.

12.3 Post production/delivery (Site Tests)

- 12.3.1 Following completion of all Factory Tests pursuant to Clause 12.2, and provided the Manufacturer has obtained the required certification from the VAB pursuant to Clause 10A.3, the **REDACTED** Deliver the Units, together with such evidence as the Purchaser may reasonably require that the Units have passed all of the Factory Tests, to the Delivery Location on the Delivery Date.

- 12.3.2 Following Delivery of the Units under Clause 12.3.1, the Site Tests shall be conducted by the Manufacturer at its own expense in accordance with the Test Plan. In conducting the Site Tests:

- (i) the Manufacturer shall comply with the Access Code; and
- (ii) the Purchaser Representative shall be given reasonable notice **REDACTED** by the Manufacturer of all on-track testing or commissioning to be carried out by or on behalf of the Manufacturer so that the Purchaser Representative can make the arrangements referred to in Clause 12.3.3(i) to 12.3.3(v) (inclusive). The Manufacturer acknowledges that, if it does not provide the notice required by this Clause 12.3.2(ii), the Purchaser may not be able to secure the required time slots and the Manufacturer shall not be entitled to any additional costs, any extension of time or any other relief in connection with any resulting delay.

- 12.3.3 The Manufacturer shall be **REDACTED** save for the following, which shall be provided by the Purchaser:

- (i) track access;
- (ii) diesel fuel;
- (iii) pilotmen (to allow access over the LUL Network);
- (iv) safety related staff to create safe testing locations; and
- (v) geometry information and ALC files.

- 12.3.4 In the event that the Units do not pass any Site Test, the Manufacturer **REDACTED**

- (i) carrying out the works required to ensure that the failed Site Test(s) can be passed (the “**Rectification Works**”);
- (ii) (if required by the Purchaser Representative) removing the relevant Unit(s) from the Delivery Location;
- (iii) re-delivering the relevant Unit(s) to the Delivery Location once the Rectification Works are complete on a date to be arranged with the Purchaser Representative; and
- (iv) the repetition and/or prolongation of the Site Test(s) necessary by reason of the failure of the Units to meet the requirements of the Site Test(s);

REDACTED

12.4 Acceptance for Service

- 12.4.1 Where, in relation to a Unit:

- (i) the Manufacturer has provided evidence acceptable to the Purchaser, including all relevant supporting documentation, that the Unit has passed all Tests required by the Test Plan to be performed prior to Acceptance for Service;
- (ii) the Unit meets in all material respects the Technical Requirements;
- (iii) the Unit has no Defects, or items missing from the Unit, except those covered by Agreed Qualifications;
- (iv) the Manufacturer has provided to the Purchaser the Manuals and any other documentation reasonably necessary to enable operation and maintenance of the Unit by the O&M Contractor;
- (v) the Manufacturer has provided to the Purchaser the Training Plan in accordance with Schedule 7 and provided written confirmation to the Purchaser that the training services have been provided in full by the Manufacturer in accordance with Schedule 7 and the Training Plan in respect of all those personnel that the Purchaser requires to be trained; and
- (vi) the Manufacturer has supplied all Year One Consumables, Critical Spares and Special Tools in relation to that Unit in accordance with the provisions of this Agreement,

(together the “**Acceptance for Service Criteria**”) the Manufacturer shall be entitled to request Acceptance for Service in accordance with Clause 12.4.2.

12.4.2 Where the Acceptance for Service Criteria are satisfied in respect of a Unit, the Manufacturer shall be entitled to submit to the Purchaser Representative an Acceptance for Service Certificate for that Unit signed by a duly authorised representative of the Manufacturer certifying that the Acceptance for Service Criteria have been satisfied. The Purchaser Representative shall counter-sign and date that Acceptance for Service Certificate, or refuse to do so under Clause 12.4.3, as soon as practicable (and in any event within five (5) Working Days of submission of that certificate in accordance with this Clause 12.4.2).

12.4.3 The Purchaser Representative may:

- (i) refuse to sign an Acceptance for Service Certificate for any Unit if that Unit does not satisfy any of the Acceptance for Service Criteria in which case it shall, within five (5) Working Days of such refusal, notify the Manufacturer in writing of the reasons for refusing to sign the Acceptance for Service Certificate; or
- (ii) accept any Unit which does not meet any or all of the Acceptance for Service Criteria. Where this right is exercised the Purchaser Representative shall, when counter-signing and dating the Acceptance for Service Certificate, endorse the Acceptance for Service Certificate accordingly and submit details (including any necessary remedial work) on an attachment to the Acceptance for Service Certificate. Such details shall constitute Agreed Qualifications.

12.4.4 Where the Purchaser Representative has submitted to the Manufacturer details of an Agreed Qualification under Clause 12.4.3(ii), the Purchaser Representative may (in its absolute discretion):

- (i) provide written confirmation that the Manufacturer does not need to rectify the matter the subject of the Agreed Qualification, in which case the

Manufacturer shall (without prejudice to any other right of the Purchaser under this Agreement) be under no obligation to rectify such matter; or

- (ii) state the period within which the Manufacturer is required to rectify the matter the subject of the Agreed Qualification, in which case the Manufacturer shall at its own cost rectify such matter within such period.

Where, in relation to any matter the subject of an Agreed Qualification, the Purchaser Representative has not issued an instruction under Clause 12.4.4(i) or (ii), the Manufacturer shall at its own cost rectify such matter within a reasonable period having regard to the circumstances.

12.4.5 Rectification of all matters the subject of Agreed Qualifications shall (unless the Purchaser has provided confirmation under Clause 12.4.4(i) in relation to such matter) be a condition precedent to Final Acceptance of the relevant Unit(s) under Clause 12.5.2.

12.4.6 Where a Unit has not been Accepted for Service by the Contractual Acceptance Date, Clause 13.1 shall apply.

12.5 **Final Acceptance and Fault Free Running**

12.5.1 Clause 13.3 shall apply in relation to **REDACTED** during the Fault Free Running Period.

12.5.2 Where:

- (i) the Fault Free Running Period in respect of a Unit has expired; and
- (ii) the following conditions have been satisfied in relation to a Unit:
 - (A) the Unit has met the **REDACTED**;
 - (B) **REDACTED**; and
 - (C) any matters the subject of any Agreed Qualifications which are required to be rectified under Clause 12.4.4 have been rectified in accordance with Clause 12.4.4,

(together the “**Final Acceptance Criteria**”) the Manufacturer shall be entitled to submit a Final Acceptance Certificate for that Unit signed by a duly authorised representative of the Manufacturer to the Purchaser Representative, and the Purchaser Representative shall counter-sign and date that Final Acceptance Certificate, or refuse to do so under Clause 12.5.3, as soon as practicable **REDACTED**

12.5.3 The Purchaser Representative may refuse to sign a Final Acceptance Certificate for any Unit if that Unit does not satisfy any of the Final Acceptance Criteria, in which case it shall, **REDACTED** of such refusal, notify the Manufacturer in writing of the reasons for refusing to sign the Final Acceptance Certificate. If the reason for such refusal is that the conditions in Clause 12.5.2(B) or Clause 12.5.2(C) have not been met, the Manufacturer shall be entitled to re-submit the Final Acceptance Certificate once the relevant condition(s) have been satisfied and Clause 12.5.2 and this Clause 12.5.3 shall apply to each such resubmitted Final Acceptance Certificate.

12.5.4 Where the **REDACTED**, the Purchaser Representative may (in its absolute discretion):

- (i) Finally Accept the Unit, in which case it shall counter-sign and date the Final Acceptance Certificate; or

- (ii) require the Manufacturer to rectify at its own cost the cause or causes of the failure to meet the Final Acceptance RAM Target. If, following such rectification by the Manufacturer, the Purchaser Representative (acting reasonably) is satisfied that the Unit complies with the provisions of this Agreement, it shall counter-sign and date the Final Acceptance Certificate.

12.5.5 Following Final Acceptance, Clause 20.2.3 shall apply in relation to repayment of the Retention Balance.

13. LIQUIDATED DAMAGES

13.1 Delay Liquidated Damages

REDACTED

13.2 Calculation of Delay Liquidated Damages

REDACTED

13.3 Performance Liquidated Damages

REDACTED

13.4 Calculation and Payment of Performance Liquidated Damages

REDACTED

13.5 Genuine Pre-Estimate of Loss

REDACTED

14. REJECTION

14.1 Rejection

REDACTED

14.2 Consequences of rejection

Forthwith upon rejection of the Units pursuant to Clause 14.1:

- 14.2.1 the Manufacturer shall, **REDACTED**, remove any of its equipment, plant or materials from any of the Purchaser's premises (including the Delivery Location and the LUL Network);

14.2.2 **REDACTED**

- 14.2.3 immediately upon the later of the Manufacturer complying fully with its obligations under Clause 14.2.1 and the Manufacturer making payment under Clause 14.2.2, this Agreement shall terminate (without prejudice to any antecedent claims). For the avoidance of doubt, Clause 25 shall not apply to any such termination.

15. EXTENSIONS OF TIME

15.1 Permitted Delays

For the purposes of this Agreement, the occurrence of one or more of the following shall constitute a "**Permitted Delay Event**":

- 15.1.1 a Force Majeure Event which prevents the Manufacturer from performing its obligations under this Agreement;
- 15.1.2 any breach by the Purchaser of an express obligation under this Agreement; and

- 15.1.3 the suspension of this Agreement in accordance with Clause 18 (other than where the suspension results from the circumstance in Clause **Error! Reference source not found.** or **Error! Reference source not found.**);

but in each case only insofar as any of the events described in Clauses 15.1.1 to 15.1.3 has a direct and material adverse effect on the Manufacturer's ability to achieve Acceptance, Acceptance for Service or (as applicable) Final Acceptance of a Unit and/or (as applicable) any other item of Purchased Equipment by the Contractual Acceptance Date in relation to such Unit and/or item of Purchased Equipment and has not been caused or contributed to by the act, omission or default of the Manufacturer.

15.2 **Qualification to Permitted Delays**

Where any delay in achieving a Contractual Acceptance Date for a Unit or any other item of Purchased Equipment arises, the Manufacturer shall be entitled to an extension to the Contractual Acceptance Date for that Unit or that item of Purchased Equipment (as the case may be) but only to the extent that such delay is directly caused by a Permitted Delay Event and provided that the Manufacturer:

- 15.2.1 notifies the Purchaser of the Permitted Delay Event in accordance with Clause 15.3 and subsequently provides such further information as the Purchaser may reasonably require regarding the nature and likely duration of such event;
- 15.2.2 provides the Purchaser with reasonable access to the Manufacturer's Works and/or the facilities of its Subcontractors for investigating the validity of the potential Permitted Delay Event;
- 15.2.3 uses its reasonable endeavours to mitigate the delay to the Contractual Acceptance Date for that Unit or item of Purchased Equipment (as the case may be); and
- 15.2.4 shall not be entitled to an extension of time to the extent that the Permitted Delay Event was caused by or resulted from any act, neglect or default of the Manufacturer, its Subcontractors and/or employees and/or any breach of this Agreement by the Manufacturer, its Subcontractors and/or employees.

15.3 **Notification of Permitted Delay Event**

No later than it should have reasonably foreseen the same, the Manufacturer shall give notice to the Purchaser of the occurrence of a Permitted Delay Event or, if such event is not reasonably foreseeable, as soon as it becomes aware of such occurrence. Any notice given under this Clause 15.3 shall specify:

- 15.3.1 the Permitted Delay Event upon which the claim for an extension of time is based;
- 15.3.2 full and detailed particulars of the cause and extent of the delay and the effect of the Permitted Delay Event on the Manufacturer's ability to comply with its obligations under this Agreement;
- 15.3.3 details of the documents and records which the Manufacturer will rely upon to support its claim for an extension of time; and
- 15.3.4 details of the measures which the Manufacturer has adopted and/or proposes to adopt to mitigate the consequences of the Permitted Delay Event.

If the Manufacturer fails to notify the Purchaser of any Permitted Delay Event within five (5) Working Days of becoming aware of it, the Manufacturer shall not be entitled to request an extension of time for that Permitted Delay Event and such event shall not constitute a Permitted Delay Event.

15.4 **Grant of Extension of Time**

Subject to the Manufacturer complying with the requirements of this Clause 15 and the Purchaser, acting reasonably, being satisfied that a Permitted Delay Event has occurred, the Purchaser shall, as soon as reasonably practicable, agree with the Manufacturer a reasonable extension of time to the relevant Contractual Acceptance Date and any such extension shall amend the Project Programme and each relevant Contractual Acceptance Date.

15.5 **Extensions of Time – General**

15.5.1 Any extension of time agreed by the Purchaser and the Manufacturer under this Clause 15 to a Contractual Acceptance Date shall not of itself entitle the Manufacturer to any extension to any other Contractual Acceptance Date.

15.5.2 Except as expressly provided elsewhere in this Agreement, any extension of time agreed between the Purchaser and the Manufacturer pursuant to this Clause 15.5 shall be in full compensation and satisfaction for any loss sustained or sustainable by the Manufacturer in respect of any Permitted Delay Event in connection with which that extension is granted.

16. **TRANSFER OF TITLE AND RISK**

16.1 **Title to Items of Purchased Equipment**

16.1.1 Full legal and beneficial title to all items of Purchased Equipment which are manufactured from time to time shall pass to the Purchaser simultaneously with their arrival in the United Kingdom.

16.1.2 Until Delivery of any item of Purchased Equipment to the Purchaser, the Manufacturer shall ensure all items of Purchased Equipment are readily identifiable as the Purchaser's property, including by marking them as the Purchaser's property. The Manufacturer shall provide access to any premises at which such items are stored so that the Purchaser can verify compliance with this Clause 16.1.2.

16.2 **Risk of loss etc**

Risk of loss, theft, damage or destruction of an item of Purchased Equipment shall pass to the Purchaser on Delivery (and for the avoidance of doubt, Delivery of the Units shall take place at the Delivery Location in accordance with Clause 12.3.1). The Manufacturer shall be responsible for the safe custody and transit of any Purchased Equipment until its Delivery.

16.3 **Warranty in respect of Title**

The Manufacturer warrants to the Purchaser that the title to each Unit and each other item of Purchased Equipment transferred to it under this Agreement shall be with full title guarantee and free and clear of all Security.

16.4 **Prohibition on Creating Security**

The Manufacturer undertakes that it shall not at any time create or purport to create any Security over any Unit or any other item of Purchased Equipment (including any Manual or other documentation) to be Delivered in accordance with this Agreement and which has been, or is to be, supplied to the Purchaser under and in accordance with the terms of this Agreement.

16.5 **Ownership of Purchased Equipment**

Any reference in this Agreement to items of Purchased Equipment or other assets being supplied to, delivered (whether by Delivery or otherwise) to and/or owned by the Purchaser shall, in the event that a person other than the Purchaser is the Owner, be construed as a reference to items of Purchased Equipment or other assets being supplied to, delivered to or owned by such person.

17. **DEFECT RECTIFICATION**

17.1 **Definitions**

For the purpose of this Agreement:

"Defect" REDACTED

and is not principally caused by:

- (1) any failure by the Purchaser or any third party appointed by the Purchaser to use, operate and/or maintain the item of Purchased Equipment in accordance with the Manuals and/or any Applicable Laws and applicable Standards;
- (2) fair wear and tear; or
- (3) vandalism, suicide, collision or accidental damage caused by any person other than the Manufacturer, its Subcontractors, its suppliers, directors, agents, representatives or the employees of any of them; and

"Defect Rectification Period" means (without prejudice to the further provisions of this Clause 17), in relation to a Unit (and those Parts forming part of a Unit), the period commencing on the date that Unit has been Accepted for Service and ending on the date twelve (12) months thereafter.

17.2 **Rectification of Defects**

17.2.1 The Manufacturer shall, at its own cost, rectify (which, for the purposes of this Clause 17, means repair, replace, modify or (as appropriate) amend) each Defect which arises, occurs or becomes apparent in relation to any item of Purchased Equipment during the Defect Rectification Period for that item and where necessary shall execute or procure the execution by another of all rectification works.

17.2.2 Where the Purchaser identifies a Defect in an item of Purchased Equipment, the Purchaser shall notify the Manufacturer of such Defect within a reasonable time of its discovery. The Manufacturer shall, after consultation with the Purchaser, determine how the Defect is to be rectified.

17.2.3 The Manufacturer shall commence the rectification of any Defect as set out in Clauses 17.2.1 and 17.2.2 without delay and complete the rectification within a reasonable period having regard to the circumstances.

17.3 **Extended Defect Rectification Period**

Where an item of Purchased Equipment and/or any Part of the same is rectified or replaced due to a Defect, the Defect Rectification Period for the that item shall be twelve (12) months from the date of repair or (as the case may be) replacement certified in writing by the Purchaser.

17.4 **Rectification by the Purchaser**

17.4.1 Where the Manufacturer is obliged to rectify a Defect in accordance with this Clause 17 but has not, for any reason, commenced any rectification work in

relation to that Defect within ten (10) Working Days of being notified of such Defect by the Purchaser, the Purchaser may rectify that Defect using its own or third party personnel or resources.

- 17.4.2 All costs and expenses properly and reasonably incurred by the Purchaser in undertaking any work pursuant to Clause 17.4.1, together with VAT chargeable thereon shall be recoverable by the Purchaser within ten (10) Working Days of demand from the Purchaser as a debt due and owing from the Manufacturer.

17.5 **Latent Defects**

Where, in respect of a Unit, a Latent Defect arises, occurs or becomes apparent during the period commencing on the date of Final Acceptance of the first Unit and ending on the date which is the tenth anniversary of the date of Final Acceptance of the second Unit, the Manufacturer shall:

- 17.5.1 if required by the Purchaser, conduct a detailed investigation to ascertain the cause of the Latent Defect;
- 17.5.2 develop and agree with the Purchaser a plan to rectify the Latent Defect and comply with such plan; and
- 17.5.3 rectify, at its own cost and in accordance with the plan agreed pursuant to Clause 17.5.2, the Latent Defect and undertake all necessary rectification works to both Units (whether or not such Latent Defect has become apparent in both Units),

provided that the Manufacturer shall not be liable for any damage caused by the failure to operate and/or maintain the Units in accordance with the Manuals.

17.6 **Application to Repaired Units**

Where the Manufacturer rectifies a Latent Defect pursuant to Clause 17.5, the Manufacturer shall be liable for any Latent Defect arising, occurring or becoming apparent in the rectified Part during the period from the date of such rectification until the later of:

- 17.6.1 expiry of the period referred to in Clause 17.5; and
- 17.6.2 the period ending twelve (12) months from the date of such rectification.

18. **SUSPENSION**

18.1 **Right to Suspend Work**

REDACTED

18.2 **Protection of Work in Progress**

REDACTED

18.3 **Entitlement to Costs**

REDACTED

19. **HEALTH AND SAFETY**

Where the Manufacturer or any of its Subcontractors carries out any work, including testing and commissioning work on a Unit on the LUL Network or any other site under the control or supervision of the TfL Group, the Manufacturer shall and shall procure that its Subcontractors shall:

- 19.1.1 comply with all applicable Standards and Applicable Laws and carry out such work in a manner which would be adopted by a diligent and skilled contractor;

19.1.2 comply with any direction or instruction (whether written or oral) given by the Purchaser or their respective employees, contractors or agents, including any direction to cease working; and

19.1.3 comply with Schedule 14 (QUENSH).

20. CONTRACT PRICE

20.1 Instalments

In consideration for performance of its obligations under this Agreement but subject to Clause 20.2, the Purchaser shall pay the Manufacturer the Contract Price in instalments as provided for in Schedule 4 as the same may be varied pursuant to the terms of this Agreement.

20.2 Retention

REDACTED

20.3 Provisional sums

20.3.1 Where the Contract Price contains a provisional sum the Manufacturer shall only expend such sum to the extent that he is instructed in writing by the Purchaser Representative to do so. The value of the activity and/or item to which the provisional sum relates shall be assessed in accordance with Clause 20.3.2 and the Contract Price shall be adjusted accordingly. In so far as any provisional sum is not expended (in whole or in part) it shall be deducted from the Contract Price.

20.3.2 The cost of any activity and/or item in respect of which a provisional sum has been applied shall be assessed by the Purchaser Representative on the basis of the rates and prices contained in Schedule 4 and, in relation to any activity and/or item for which there are no applicable rates or prices, on a fair and reasonable basis in all the circumstances reflecting, so far as possible, the then current market rates.

20.4 Prime cost items

20.4.1 Where the Contract Price contains a sum in respect of a prime cost item the Manufacturer shall only expend such sum to the extent that he is instructed in writing by the Purchaser Representative to do so. Subject to the foregoing, the Manufacturer shall be entitled to recover the net amount that it has paid in respect of the prime cost item plus a percentage fee, which shall be calculated by applying the percentage stated in Schedule 4 to such net amount. In so far as any prime cost sum is not expended (in whole or in part) it shall be deducted from the Contract Price.

21. VAT

21.1 Payment of VAT

21.1.1 Where any taxable supply for VAT purposes is made under or in connection with this Agreement by one Party to another, the payer shall, in addition to any payment required for that supply, pay such VAT as is chargeable in respect of it. For the avoidance of doubt, this Clause 21.1.1 shall apply only in relation to VAT chargeable in the United Kingdom, and the Manufacturer shall not be entitled to invoice the Purchaser, and the Purchaser shall not be obliged to make any payment to the Manufacturer in respect of, any similar tax chargeable in Switzerland or any other jurisdiction.

- 21.1.2 The Parties acknowledge and agree that the sale of the Purchased Equipment by the Manufacturer to the Purchaser pursuant to this Agreement is not a taxable supply for United Kingdom VAT purposes and accordingly is not subject to United Kingdom VAT. Consequently, no VAT shall be charged on the Contract Price (and the invoices submitted by the Manufacturer pursuant to paragraph 2 of Schedule 4 shall not be VAT invoices and shall not therefore include VAT).

21.2 **Reimbursement of VAT**

Where under this Agreement one Party is to reimburse or indemnify another Party in respect of any payment made or cost incurred by the other Party, the first Party shall also reimburse any VAT paid by the other Party in question which forms part of its payment made or cost incurred to the extent such VAT is not available for credit for the other Party in question (or for any person with whom the indemnified party is treated as a member of a group for VAT purposes) under sections 25 and 26 of the Value Added Tax Act 1994.

21.3 **VAT Credit Note to be Issued on Repayment**

Where under this Agreement any rebate or repayment of any amount is payable by one Party to another Party, and the first Party is entitled as a matter of law or of HM Revenue and Customs practice to issue a valid VAT credit note, such rebate or repayment shall be paid together with an amount representing the VAT paid on that part of the consideration in respect of which the rebate or repayment is made, and the first Party shall issue an appropriate VAT credit note to the other Party in question.

22. **SECURITY**

22.1 **Not used**

22.2 **Advance Payment Bond**

22.2.1 **REDACTED**

- 22.2.2 The advance payment bond pursuant to Clause 22.2.1 shall be from an issuer who has been approved in writing in advance by the Purchaser, such approval not to be unreasonably withheld or delayed so long as the issuer has a credit rating of not less than A+ or equivalent from at least one of the three main rating agencies (Standard & Poor's, Moody's and Fitch).

22.3 **Failure of Security**

If the Manufacturer fails to provide security as provided for in Clause 22.2, a Manufacturer Event or Default shall arise pursuant to Clause 25.1.

22.4 **Renewal of Security**

- 22.4.1 In the event that both Units have not been delivered by the Manufacturer under Clause 12.3.1 on or prior to the date of expiry of the advance payment bond provided pursuant to Clause 22.2.1 (the "**Original Bond**"), then the Manufacturer shall supply the Purchaser with a replacement advance payment bond (the "**Replacement Bond**") on substantially the same terms as the Original Bond save that the expiry date of the Replacement Bond shall be the date falling 12 (twelve) months after expiry of the Original Bond. The remainder of this Clause 22 shall apply mutatis mutandis to the Replacement Bond.

- 22.4.2 In the event that:

- (A) the Manufacturer is obliged to supply a Replacement Bond under Clause 22.4.1; and

- (B) the Manufacturer has not supplied the Purchaser with the Replacement Bond in accordance with this Clause 22 by the date falling two (2) weeks prior to expiry of the Original Bond,

the Purchaser shall be entitled to draw down the Maximum Amount (as defined in the Original Bond) under the Original Bond.

23. **VARIATION PROCEDURE**

The Purchaser and the Manufacturer shall comply with the provisions of Schedule 8 (Variation Procedure).

24. **INTELLECTUAL PROPERTY RIGHTS**

24.1 **Manufacturer IPR**

“**Manufacturer IPR**” means any existing or new Intellectual Property Rights owned by the Manufacturer, any Subcontractor or other third party that

- (A) are used for or
- (B) arise in connection with

the performance by the Manufacturer of its obligations under this Agreement, including design, manufacture, supply, assembly, testing, commissioning and Delivery of the Units and other items of Purchased Equipment.

24.2 **Licence of Manufacturer IPR**

The Manufacturer grants, or shall procure the grant, to the Purchaser a non-exclusive, perpetual, irrevocable, royalty-free, sub-licensable and transferable licence to use the Manufacturer IPR for:

- 24.2.1 the testing, commissioning, operation, maintenance, modification, refurbishment or sale of the Units and other items of Purchased Equipment or any related activity, or permitting the Purchaser to use the Units and any other item of Purchased Equipment and/or any other item to be supplied pursuant to this Agreement for the purposes envisaged pursuant to the Technical Requirements;
- 24.2.2 modifying, refurbishing, repairing, maintaining and overhauling the Units, and/or any other item of Purchased Equipment supplied pursuant to this Agreement or any related activity;
- 24.2.3 complying with all Applicable Laws, applicable Standards and all Relevant Consents;
- 24.2.4 using and copying the Manuals in order to perform any of the above;
- 24.2.5 training personnel to carry out any of the activities described in Clause 24.2.1, 24.2.2 and 24.2.4;
- 24.2.6 inviting tenders for any of the activities described in Clause 24.2.1 to 24.2.5 inclusive;
- 24.2.7 in the event of termination of the Agreement as a result of the occurrence of a Manufacturer Event of Default, procuring fulfilment and performance of the Manufacturer's obligations under this Agreement, including the manufacture of any Parts, Critical Spares and any other items of Purchased Equipment or other equipment for use in connection with the Units; and
- 24.2.8 the Purchaser performing its obligations under this Agreement.

Notwithstanding anything in this Clause 24, the Purchaser shall not, and no party to whom it sub-licences or transfers any rights under this Clause 24 shall, have the right to manufacture (i) a Unit or (ii) any Part that is the subject of Manufacturer IPR.

24.3 **Subcontractors**

The Manufacturer shall ensure that all Subcontracts entered into by the Manufacturer shall permit the Manufacturer to assign or novate its rights and obligations under such agreement relating to any Intellectual Property Rights to the Purchaser without the consent of the relevant Subcontractor and such Subcontracts shall specify the Purchaser as a permitted assignee.

24.4 **Documentation**

The Manufacturer shall execute such further documents, and do such other things, as the Purchaser may reasonably request in order to obtain for the Purchaser the full benefit of this Clause 24 at no cost to the Purchaser.

24.5 **Warranties**

The Manufacturer represents and warrants to the Purchaser that:

24.5.1 the Manufacturer IPR and the Software constitute all the Intellectual Property Rights required by the Purchaser for the purposes of this Agreement; and

24.5.2 it has the right and power to grant the licence set out in Clause 24.2.

24.6 **Indemnity**

The Manufacturer shall indemnify the Purchaser, TfL and the Owner as provided for in Clause 29.2.4 against any claim for infringement of any Intellectual Property Rights.

24.7 **Remedy for Infringement**

Without prejudice to the provisions of Clauses 24.5 and 29.2.4, if the use of any Manufacturer IPR, Software, Unit, Part and/or any other item of Purchased Equipment or part thereof is, or in the reasonable opinion of the Purchaser is likely to become, an infringement of the Intellectual Property Rights of another person, the Manufacturer shall, at its expense, either:

24.7.1 procure for the Purchaser the right to continue to use that Manufacturer IPR, Software, Unit, Part and/or item of Purchased Equipment; or

24.7.2 (to the extent Clause 24.7.1 is not applicable) modify the Unit, Part and/or item of Purchased Equipment so that it no longer infringes those rights, or replace the item of Purchased Equipment with a non infringing Unit, Part and/or item of Purchased Equipment (or part thereof) provided however that the modified or replacement Unit, Part and/or item of Purchased Equipment (as the case may be) shall at all times comply with all the requirements of this Agreement.

24.8 **Software**

24.8.1 The Manufacturer shall ensure in respect of all Software that is used for the design, manufacture, testing, commissioning, supply, operation, maintenance, modification, refurbishment or sale of a Unit and/or any other item of Purchased Equipment that:

(A) there is orderly documented progress from the functional requirements to the final code and provision for regular verification and testing at each stage of the design process;

- (B) the documentation for Software is such as to enable an appropriately qualified person (who was not involved in the original design) to relate the Software to the performance of the relevant equipment under normal and fault conditions, and to verify its compliance with the functional requirements of that equipment; and
 - (C) where no particular Standard is specified by the Technical Requirements, it is designed and documented following a nationally or internationally recognised standard using recognised quality control methods.
- 24.8.2 The Manufacturer shall in respect of Manufacturer-owned Software, at all times during the period from the Commencement Date until the end of the thirty (30) year design life of each Unit:
- (A) retain updated "as made" copies, in machine readable form, of the final structure of the Software, and of the intermediate stages leading to it (including Source Code and object codes);
 - (B) retain updated usable copies of any ancillary computer programmes used to generate such codes (such as, without limitation, compilers);
 - (C) subject to the provisions of any Escrow Agreement entered into under Clause 24.10, keep copies of the materials referred to in this Clause 24.8.2 in a secure manner and place such that they will not deteriorate;
 - (D) retain the Software designed by the Manufacturer; and
 - (E) allow the Purchaser reasonable access to the Software (excluding Source Code, in respect of which the Escrow Agreement shall apply) and its documentation.

24.9 Cessation of Software Support

If the Manufacturer or any Subcontractor supplying any of the Software stops trading or makes known its intention to withdraw support for that Software, the Manufacturer shall, without additional charge (save where the Subcontractor stops trading or makes such intention to withdraw support known in which case the Purchaser shall pay the reasonable and properly incurred costs of the Manufacturer in complying with this Clause 24.9), use reasonable endeavours to procure the transfer to the Purchaser of all rights in and to the Software in question for the relevant type of Purchased Equipment.

24.10 Source Code

Within twenty (20) Working Days of the Commencement Date the Manufacturer shall execute the Escrow Agreement. The Manufacturer shall place the Source Code in escrow with the Escrow Agent on the terms set out in the Escrow Agreement as soon as reasonably possible after its completion and in any event within twenty (20) Working Days thereof. The Manufacturer shall pay all fees of the Escrow Agent in connection with the placement, storage and release of the Source Code in equal shares and shall provide evidence of the same to the Purchaser on written request.

24.11 Survival

Each licence granted under this Clause 24 and/or any liability arising in connection with the same shall survive the termination of this Agreement.

25. TERMINATION

25.1 Manufacturer Events of Default

The occurrence of one or more of the following shall constitute a Manufacturer Event of Default:

- 25.1.1 the Manufacturer commits a material breach of its obligations under this Agreement;
- 25.1.2 the Manufacturer commits a Persistent Breach as provided for in Clause 25.4;
- 25.1.3 the Manufacturer commits a breach of Clause 10.1 (Manufacturing Facilities);
- 25.1.4 the maximum amount of any liquidated damages payable by the Manufacturer pursuant to Clause 13 shall have accrued;
- 25.1.5 an Insolvency Event occurs in relation to the Manufacturer ;
- 25.1.6 the Manufacturer fails to make payment of any sum not in dispute when due and payable to the Purchaser in accordance with this Agreement within thirty (30) days of a written demand for payment;
- 25.1.7 the Manufacturer fails to take out and/or maintain any of the Required Insurances;
- 25.1.8 Acceptance for Service of the Units shall not have occurred by the date which is three (3) months after the latest Contractual Acceptance Date for Acceptance for Service of the Units;
- 25.1.9 not used;
- 25.1.10 the advance payment bond provided for in Clause 22.2 ceases to be valid and enforceable by the Purchaser as provided for in Clause 22.2; or
- 25.1.11 not used.

25.2 Procedures in relation to Termination for a Manufacturer Event of Default

- 25.2.1 The Manufacturer shall notify the Purchaser forthwith on the Manufacturer becoming aware of the occurrence of a Manufacturer Event of Default.
- 25.2.2 Following the occurrence of a Manufacturer Event of Default (and notwithstanding that the Manufacturer may not have notified it pursuant to Clause 25.2.1), the Purchaser may by notice in writing to the Manufacturer ("**Purchaser Termination Notice**") specifying the Manufacturer Event of Default in question terminate this Agreement either in respect of all of the Purchased Equipment which has not been Accepted for Service or (as specified in the notice) in relation to specific items of Purchased Equipment which have not been Accepted for Service, such termination to take effect from the date specified in the Purchaser Termination Notice (being not less than seven (7) days after the date of the Purchaser Termination Notice or, in the case of Insolvency, forthwith) provided that, in respect of a Manufacturer Event of Default under Clause 25.1.1 which is capable of remedy, the provisions of Clause 25.3 shall apply.

25.3 Remedial Plan

- 25.3.1 Where a Manufacturer Event of Default that is capable of remedy arises under Clause 25.1.1, the Purchaser shall by notice in writing to the Manufacturer signed on behalf of the Purchaser (a "**Remedy Notice**") require the Manufacturer either
 - (A) to remedy such breach(es) referred to in the Remedy Notice within thirty (30) Working Days of that notice or

- (B) within ten (10) Working Days of the Remedy Notice, to put forward a plan (a "**Remedial Plan**") to remedy the breach(es) referred to in the Remedy Notice. Such plan shall be in writing and shall specify the proposed remedy in reasonable detail and the latest date by which it is proposed that that remedy will be completed.
- 25.3.2 Where the Manufacturer puts forward a Remedial Plan in accordance with Clause 25.3.1, the Purchaser shall have twenty (20) Working Days after receipt of it in which to notify the Manufacturer in writing that it does not accept it, failing which the Purchaser shall be deemed to have accepted that Remedial Plan.
- 25.3.3 If the Purchaser notifies the Manufacturer that it does not accept that Remedial Plan, the Purchaser and the Manufacturer shall endeavour in the following five (5) Working Days to agree any necessary amendments to that plan in order for it to be acceptable to the Purchaser. In the absence of agreement in that period of five (5) Working Days, the Purchaser may treat the Manufacturer Event of Default as not being capable of remedy and terminate this Agreement in accordance with Clause 25.2.2 (notwithstanding the proviso thereto). Where the Purchaser and the Manufacturer agree the form of the Remedial Plan, the Manufacturer shall implement such plan and comply with its terms.
- 25.3.4 If any breach specified in a Remedy Notice served under Clause 25.3.1 is not remedied
- (A) before the expiry of the period referred to in Clause 25.3.1(A) (if applicable) or
- (B) in accordance with a Remedial Plan that has been accepted or deemed accepted by the Purchaser, or the Manufacturer otherwise fails to comply with the terms of that Remedial Plan,
- then the Purchaser may exercise its rights under Clause 25.2.2 as if the Manufacturer Event of Default is not capable of remedy.
- 25.4 **Persistent breach**
- 25.4.1 If the Manufacturer breaches any of its obligations (where those obligations are of the same type or nature) under this Agreement, more than twice in any three (3) month period, then the Purchaser may serve a notice on the Manufacturer:
- (a) specifying that it is a formal warning notice;
- (b) giving reasonable details of such breach; and
- (c) stating that such breach is a persistent breach that, if it continues unremedied or if a breach of the same type or nature occurs within three (3) months of the date of service of the notice, may result in a termination of this Agreement in accordance with this Clause 25.4.
- 25.4.2 If, following service of such a warning notice pursuant to Clause 25.4.1, the breach specified has continued unremedied or a breach of the same type or nature has occurred within the three (3) months following the date of service of such notice, then the Purchaser may, no later than the date falling six (6) months following the date of service of the warning notice pursuant to Clause 25.4.1, serve another notice on the Manufacturer specifying that such breach constitutes a "**Persistent Breach**" for the purposes of Clause 25.1.2.

25.5 Consequences of Termination for Manufacturer Fault

Where the Purchaser has served (a) a Purchaser Termination Notice in accordance with Clause 25.2.2 (and, where relevant, the Manufacturer Event of Default has not been remedied pursuant to Clause 25.3), or (b) a notice of termination under Clause 33.6 (Termination for Prohibited Act), the Purchaser shall be entitled (in its absolute discretion) to:

- 25.5.1 procure the completion of all partially complete Units and other items of Purchased Equipment so that they satisfy the conditions necessary for the passing of title to the Purchaser and, upon completion, pay to the Manufacturer that part of the Contract Price for each such Unit or other item of Purchased Equipment not yet paid as at the date of termination less the cost of completion including procurement of the same. Where this gives rise to a negative figure, the corresponding positive amount will be payable by the Manufacturer to the Purchaser together with Default Interest (calculated from the date of termination of this Agreement to the date of payment by the Manufacturer); or
- 25.5.2 be reimbursed for all payments made to the Manufacturer in relation to the supply of Units and other items of Purchased Equipment (other than those in respect of which title has transferred to the Purchaser pursuant to Clause 16). The amount to be reimbursed shall attract Default Interest (calculated from the date of termination of this Agreement to the date of payment by the Manufacturer).

25.6 Additional Remedies

Without prejudice to Clause 38, where this Agreement has been terminated pursuant to Clause 25.2, 33.3, 33.4, 53.2, 54.5 or 56.12, the Purchaser shall be entitled to require the Manufacturer:

- 25.6.1 to assign the benefit of any warranties which have been given by any third parties or Subcontractors to the Manufacturer in respect of the Purchased Equipment; or
- 25.6.2 to provide all drawings of all Parts and all design, technical and maintenance records relating to the Purchased Equipment including all Manuals relating to the Purchased Equipment save to the extent the same have already been provided in accordance with this Agreement and such information shall be treated as Manufacturer IPR for the purposes of this Agreement.

25.7 Voluntary Termination

The Purchaser may terminate this Agreement without cause at any time by giving notice to the Manufacturer of such termination and the date when such termination shall become effective.

25.8 Purchaser Event of Default

A Purchaser Event of Default shall occur when:

- 25.8.1 the Purchaser fails to make payment of any sum which is due and payable to the Manufacturer in accordance with this Agreement and not in dispute and such amount has not been paid (either by the Purchaser or the Owner) within thirty (30) days following a subsequent written demand by the Manufacturer (copied to the Owner at [INSERT LOMBARD CONTACT DETAILS]) for payment; or
- 25.8.2 an Insolvency Event occurs in relation to the Purchaser.

25.9 **Procedures in relation to Termination for a Purchaser Event of Default**

On the occurrence of a Purchaser Event of Default, the Manufacturer may by notice to the Purchaser (a "**Manufacturer Termination Notice**") terminate this Agreement and such termination shall take effect from the date specified in the Manufacturer Termination Notice.

25.10 **Consequences of Voluntary Termination or Termination for a Purchaser Event of Default**

25.10.1 The Manufacturer and the Purchaser each agrees to notify each other of the occurrence of any Purchaser Event of Default as soon as it becomes aware of such occurrence.

25.10.2 Where this Agreement is terminated by the Purchaser in accordance with Clause 25.7 (Voluntary Termination) or where the Manufacturer terminates this Agreement following the occurrence of any Purchaser Event of Default, the Purchaser shall pay to the Manufacturer:

- (a) an amount equivalent to the amount that would be payable by the Purchaser to the Manufacturer in respect of a termination as a result of a Force Majeure Event in accordance with Clause 25.11 (provided that, where the amount would be a negative figure, the corresponding positive amount shall be payable by the Manufacturer to the Purchaser on the same basis as set out in Clause 25.5.1); and
- (b) subject to Clause 25.10.5, the costs, expenses and other liabilities reasonably and properly incurred by the Manufacturer as a direct result of the termination of this Agreement provided that the Manufacturer shall use all reasonable endeavours to mitigate such costs, expenses and/or other liabilities.

25.10.3 The Purchaser shall be entitled to appoint a suitably qualified independent person ("**Independent Auditor**") to audit any or all of the costs, expenses and/or other liabilities incurred by the Manufacturer as a direct result of termination of this Agreement and determine whether the amount of such costs, expenses and/or liabilities were properly and reasonably incurred by the Manufacturer as a direct result of the termination of this Agreement.

25.10.4 Where the Purchaser exercises its rights pursuant to Clause 25.10.3, it shall give written notice to the Manufacturer identifying the Independent Auditor appointed by the Purchaser, the terms of the Independent Auditor's appointment and the proposed timeframes for undertaking the audit. The Manufacturer shall cooperate with the Independent Auditor and grant the Independent Auditor the same rights of audit as the Purchaser enjoys under this Agreement.

25.10.5 The Purchaser shall procure that the Independent Auditor provides a copy of its decision in writing (together with reasons for its decisions) to the Manufacturer. Where the Independent Auditor determines that some or all of a specific cost, expense and/or liability was not properly and reasonably incurred by the Manufacturer as a direct result of termination of this Agreement, the Purchaser shall not be obliged to pay such amount to the Manufacturer.

25.10.6 The costs incurred by the Independent Auditor in undertaking the audit shall be borne by the Purchaser save where the Independent Auditor determines that some or all of a specific cost, expense and/or liability was not properly and reasonably

incurred by the Manufacturer, in which case the costs incurred by the Independent Auditor in undertaking the audit shall be borne by the Manufacturer.

25.10.7 In the event the Manufacturer disputes any findings of the Independent Auditor, such Dispute shall be referred for resolution in accordance with Clause 32.

25.11 **Consequences of Termination for Force Majeure**

Where this Agreement is terminated in whole or in part by the Purchaser as a result of a Force Majeure Event in accordance with Clause 27, the Purchaser will acquire any partially completed Unit or other item of Purchased Equipment that is the subject of the FM Notice (the "**Acquired WIP**") at its fair market value less the amount of progress or advance payments made in respect of such Acquired WIP. Where this gives rise to a negative figure, the corresponding positive amount shall be payable by the Manufacturer to the Purchaser on the same basis as set out in Clause 25.5.1.

25.12 **Consequences of Termination for other reasons**

Where this Agreement is terminated by the Purchaser under Clause 33.3, 33.4, 53.2, 54.5 or 56.12, the provisions of Clause 25.5 and 25.6 shall apply.

25.13 **Rejection**

This Clause 25 shall not apply to any rejection of the Units pursuant to Clause 14.

26. **SURVIVAL OF CLAUSES**

26.1 **Consequence of Termination or Expiry**

Upon termination or expiry of this Agreement, whether in respect of any one item of Purchased Equipment or all Purchased Equipment, the obligations of the Parties under this Agreement in respect of the terminated Purchased Equipment shall cease except for:

- 26.1.1 any rights and obligations arising as a result of any antecedent breach of this Agreement or any rights and obligations which shall have accrued or become due prior to the date of termination; and
- 26.1.2 the provisions of Clauses 1, 7, 10.2 to 10.7 inclusive, 17, 20, 21, 22, 25.5, 25.6, 25.10, 25.11, 25.12, 26, 29, 30, 31, 32, 34, 35, 36, 37, 38, 39, 40, 41, 42, 44, 45, 47 and 51 and the related Schedules referred to in or required to give effect to those Clauses which shall survive the termination or expiry of this Agreement and continue in full force and effect.

27. **FORCE MAJEURE**

27.1 **Consequence of a Force Majeure Event and Notification Requirements**

No Party shall be in breach of an obligation under this Agreement to the extent that it is unable to perform that obligation in whole or in part by reason of the occurrence of a Force Majeure Event provided that:

- 27.1.1 if any Party seeks to rely on this Clause 27 (the "**FM Affected Party**"), as soon as reasonably practicable and in any event no more than five (5) Working Days after the start of the claimed Force Majeure Event, the FM Affected Party shall notify the other Party in writing of the act, event or circumstance relied on as a Force Majeure Event; and
- 27.1.2 within a further five (5) Working Days, the FM Affected Party shall notify the other Party in writing of the date on which such act, event or circumstance commenced, including an estimate of the period of time required to overcome it and its effects, details of any failure by the FM Affected Party to perform its

obligations under this Agreement, the effect on the FM Affected Party's ability to perform its obligations under this Agreement and the action being taken to mitigate its consequences in accordance with Clause 27.2 below.

27.2 **Mitigation**

27.2.1 An FM Affected Party shall:

- (i) make all reasonable efforts to mitigate the effects of the claimed Force Majeure Event (including, in the case of the Manufacturer, complying with the requests of the Purchaser Representative and, in relation to the Manufacturer's Works, using all reasonable endeavours to find alternative facilities at which to carry out its obligations), to continue to perform its obligations under this Agreement and to resume performance as soon as possible;
- (ii) shall furnish written reports every seven (7) days to the other Party on its progress in doing so and any proposals to mitigate the effect of the claimed Force Majeure Event, including any reasonable alternative means for performance of the affected obligations; and
- (iii) shall provide any information relating to the claimed Force Majeure Event and its effects that other Party may reasonably request.

27.2.2 The FM Affected Party shall not be relieved from liability under this Agreement to the extent that it is not able to perform its obligations under this Agreement due to its failure to comply with its obligations under Clause 27.2.1 above.

27.3 **Extensions of Time for Force Majeure**

Subject to Clauses 27.2 and 27.4 the occurrence of a Force Majeure Event which directly causes delay to the supply of a Unit and/or any other item of Purchased Equipment will entitle the Manufacturer to an extension of time as provided for in Clause 15.

27.4 **Termination for Force Majeure**

Notwithstanding the provision of Clause 27.3 entitling the Manufacturer to an extension of time, the Purchaser shall be entitled to terminate this Agreement by notice in writing (a "**FM Notice**") to the Manufacturer if the Acceptance for Service of any Unit or other item of Purchased Equipment has been delayed as the result of a Force Majeure Event for more than an aggregate total of ninety (90) days following the Contractual Acceptance Date for such Unit or other item. The provisions of Clause 25.11 shall apply in respect of such termination.

27.5 **Effect on payments**

If a Force Majeure Event results in the Manufacturer being unable to carry out its obligations, the Purchaser shall cease to be liable to make any payment which would otherwise have been due on fulfilment of that obligation until and to the extent that the Manufacturer has performed that obligation.

27.6 **Cessation of Force Majeure**

Immediately after the end of the Force Majeure Event, the FM Affected Party shall notify the other Party in writing that the Force Majeure Event has ended and shall resume performance of its obligations under this Agreement insofar as the Agreement has not been terminated or varied in accordance with Clause 27.4.

27.7 Continuing Obligations

The Parties shall not be released from any of their obligations under this Agreement as a result of a Force Majeure Event, and this Agreement shall, subject to Clause 27.4, remain in effect for the duration of a Force Majeure Event.

28. INSURANCE

The Manufacturer and the Purchaser shall comply with the requirements of the insurance regime set out in Schedule 9.

29. INDEMNITIES AND LIMITATIONS ON LIABILITY

29.1 Application

The provisions of this Clause 29 shall apply notwithstanding any other provision of this Agreement.

29.2 General Indemnity

The Manufacturer shall be liable for and shall indemnify the Purchaser, TfL and the Owner, including any of their respective employees, servants, agents, subcontractors, directors and officers (together the "**Indemnified Parties**"), against all expenses, liabilities, losses, damages, claims, costs, demands, proceedings and Taxes whatsoever suffered or incurred by the Purchaser, TfL or the Owner in respect of:

- 29.2.1 death or personal injury to any person or damage to any property or assets (including the LUL Network, and any Unit or other item of Purchased Equipment) arising from or in connection with:
 - (A) the Manufacturer's testing and commissioning of the Units (and/or any subsystem or Part forming part of any Unit) and/or any other items of Purchased Equipment; and/or
 - (B) the performance or non-performance (including any negligent performance) of the obligations of the Manufacturer or of its employees, servants, agents, Subcontractors, directors and officers under this Agreement including in respect of the design of any Purchased Equipment or of any Defect or Latent Defect arising from the same;
- 29.2.2 the negligence of, or any breach of this Agreement by, or any breach of statutory duty or wilful misconduct in each case by, any of the Manufacturer, its employees, servants, agents, Subcontractors, directors or officers;
- 29.2.3 any Environmental Damage arising from the acts or omissions of the Manufacturer, its Subcontractors or their respective directors, agents, servants, officers, representatives or employees, or occurring during the design, manufacture, supply, testing, commissioning, Delivery and/or use of a Unit and/or any other item of Purchased Equipment; and
- 29.2.4 any claim for infringement of any Intellectual Property Rights that are supplied by or on behalf of the Manufacturer pursuant to this Agreement including any costs and expenses incurred in defending a claim for infringement and in obtaining such rights, replacement rights or modifications to the existing rights so as to eliminate or avoid the infringement.

29.3 Qualifications

The Manufacturer shall not be liable to indemnify any Indemnified Party under the indemnity in Clause 29.2 in the case of any loss referred to in Clauses 29.2.1 and 29.2.2 to

the extent that it results from negligence or breach of duty on the part of any Indemnified Party.

29.4 **Limitation on Manufacturer's Liability**

REDACTED

29.5 **Consequential Breach and Loss**

REDACTED

30. **CONFIDENTIALITY**

30.1 **Obligations of Confidentiality**

Subject to Clause 30.2 the contents of this Agreement, any documents referred to in this Agreement and any information whether written or oral, provided by the Purchaser to the Manufacturer or by the Manufacturer to the Purchaser in connection with this Agreement shall be treated by the recipient as confidential ("**Confidential Information**"). The Purchaser and the Manufacturer shall not (and shall procure that their respective officers, employees, advisers and agents and the officers, employees, advisers and agents of its Subcontractors do not) without the prior written consent of the other Party or by failure to exercise due care or otherwise by any act or omission:

- 30.1.1 disclose Confidential Information to any person whomsoever;
- 30.1.2 use or exploit Confidential Information commercially for its or their own purposes other than in connection with the performance of this Agreement; or
- 30.1.3 use Confidential Information otherwise than for the purpose for which it was provided.

30.2 **Permitted Disclosure**

This Clause 30 shall not preclude the Purchaser from disclosing Confidential Information:

- 30.2.1 in accordance with any requirement under any Applicable Law (including pursuant to Clause 31) or Standard to do so;
- 30.2.2 to its professional advisers and auditors who are bound to it by a duty of confidentiality which applies to any information disclosed;
- 30.2.3 to any banks and financial institutions providing finance, or advising on or envisaging the provision of finance for any purpose in connection with this Agreement;
- 30.2.4 to any Competent Authority;
- 30.2.5 to the Mayor of London and/or the Greater London Authority;
- 30.2.6 to any member of the TfL Group;
- 30.2.7 to the extent that the relevant Confidential Information is in the public domain otherwise than by breach of this Agreement;
- 30.2.8 which was made available on a non-confidential basis;
- 30.2.9 which is required in connection with a disposition or other transfer of rights permitted in accordance with this Agreement;
- 30.2.10 which is required by law or by order of a Court of a competent jurisdiction (but only to the extent required by such law or order) to be disclosed in connection with any Dispute, litigation or other dispute resolution procedure; or

30.2.11 to any member of the Manufacturer Group for the purposes of the performance by the Manufacturer of its obligations under this Agreement,

nor shall it preclude the Manufacturer, subject to Clause 30.3, from disclosing Confidential Information for the purposes set out in and in accordance with Clauses 30.2.1, 30.2.2, 30.2.3, 30.2.4, 30.2.5, 30.2.6, 30.2.7, 30.2.8, 30.2.9, 30.2.10, and 30.2.11.

30.3 **Confidentiality Undertaking**

Where disclosure is permitted under Clause 30.2, other than Clauses 30.2.1, 30.2.2, 30.2.7 or 30.2.8, the Party disclosing the Confidential Information shall procure that the recipient of the Confidential Information shall be subject to the same obligation of confidentiality as that contained in this Agreement.

30.4 **Prior Notice of Disclosure**

If a Party becomes required in circumstances contemplated by Clauses 30.2.1 to 30.2.11 to disclose any Confidential Information, such Party shall give to the other Party as much notice as is practical in the circumstances of such disclosure and shall co-operate with the other Parties, having due regard to the other Parties' views, and take such steps as the other Parties may reasonably require in order to enable it to mitigate the effect of, or avoid the requirements for, any such disclosure. Where the disclosing Party giving notice is the Purchaser, it shall only be obliged to give notice to, co-operate with, have due regard to the views of, and take steps as reasonably required by the Manufacturer.

30.5 **Standard of Care**

In fulfilling its obligations under this Clause 30, each Party shall be required to use the same degree of care to prevent unauthorised disclosure of such Confidential Information as it would use to prevent the disclosure of its own commercial and financial information of the same or similar nature and which it considers proprietary or confidential.

30.6 **Announcements**

The Manufacturer shall not (and shall procure that each Subcontractor does not) without the consent of the Purchaser (such consent not to be unreasonably withheld or delayed) advertise or otherwise give any publicity in any form to any matter relating to this Agreement or announce their involvement in the design, manufacture, supply, assembly, testing, commissioning, Delivery or support of any Purchased Equipment.

30.7 **Reputation**

The Manufacturer shall not knowingly do or omit to do anything in relation to this Agreement which may bring the standing or reputation of any other Party into disrepute or otherwise attract adverse publicity in relation to the other Parties.

31. **FREEDOM OF INFORMATION**

31.1 The Manufacturer acknowledges that the Purchaser:

31.1.1 is subject to the FOI Legislation and agrees to assist and co-operate with the Purchaser to enable the Purchaser to comply with its obligations under the FOI Legislation, and

31.1.2 may be obliged under the FOI Legislation to disclose Information without consulting and/or obtaining consent from the Manufacturer.

- 31.2 Without prejudice to the generality of Clause 31.1, the Manufacturer agrees and shall procure that its Subcontractors (if any) will agree to:
- 31.2.1 transfer to the Purchaser or such other persons as may be notified by the Purchaser to the Manufacturer each Information Request relevant to this Agreement or any member of the TfL Group that the Manufacturer or its Subcontractors (if any) (as the case may be) receive as soon as practicable and in any event within 3 days of receiving such Information Request; and
 - 31.2.2 in relation to Information held by the Manufacturer on behalf of the Purchaser, provide the Purchaser with details about and/or copies of all such Information that the Purchaser requests and provide such details and/or copies within 6 days of a request from the Purchaser (or such other period as the Purchaser may reasonably specify), and in such forms as the Purchaser may reasonably specify.
- 31.3 The Purchaser (as may be directed by TfL) shall be responsible for determining whether Information is exempt or excepted information under the FOI Legislation and for determining what Information (if any) will be disclosed in response to an Information Request in accordance with the FOI Legislation. The Manufacturer shall not himself respond to any person making an Information Request, save to acknowledge receipt, unless expressly authorised to do so in writing by the Purchaser.
- 31.4 The Manufacturer acknowledges that the Purchaser (as may be directed by TfL) may be obliged under the FOI Legislation to disclose Information without consulting or obtaining consent from the Manufacturer.

32. **DISPUTE RESOLUTION**

If any Dispute should arise under this Agreement, either Party may refer it for resolution pursuant to Schedule 10.

33. **PROHIBITED ACTS**

- 33.1 The Manufacturer shall not and shall use its reasonable endeavours to procure that its Subcontractors (if any) shall not commit any Prohibited Act.
- 33.2 The Purchaser may audit and check any and all such records of the Manufacturer as are necessary in order to monitor compliance with this Clause 33 at any time during performance of this Agreement and during the three (3) years after the date on which the Final Acceptance Certificate has been given in respect of the last Unit.
- 33.3 If the Manufacturer, any of its shareholders, Subcontractors, or anyone employed by or acting on behalf of the Manufacturer or any of its agents commits any Prohibited Act, this constitutes a material breach of this Agreement and shall entitle the Purchaser to serve written notice terminating this Agreement in whole or in part with immediate effect. In the event that this Agreement is terminated in accordance with this Clause 33.3, Clauses 25.5 and 25.6 shall apply.
- 33.4 If a Prohibited Act is committed by an employee of the Manufacturer or by any Subcontractor (or employee or agent of such Subcontractor) then the Purchaser may (at its sole discretion) choose to serve a warning notice upon the Manufacturer instead of exercising its rights to terminate with immediate effect and unless, within thirty (30) days of receipt of such warning notice, the Manufacturer removes or procures the removal of the relevant employee, Subcontractor (or employee or agent of such Subcontractor) (as the case may be) from further involvement with any aspect of the performance of this Agreement and (if necessary) procures the provision of the affected works and/or services by another person or Subcontractor this constitutes a material breach of this Agreement and

entitles the Purchaser to serve written notice terminating this Agreement in whole or in part with immediate effect. In the event that this Agreement is terminated in accordance with this Clause 33.4, Clauses 25.5 and 25.6 shall apply.

34. ASSIGNMENT, TRANSFER AND SUB-CONTRACTING BY THE MANUFACTURER

34.1 Subcontracting

34.1.1 The Manufacturer may sub-contract its obligations under this Agreement either in whole or in part to any Subcontractor provided that the written consent of the Purchaser is obtained by the Manufacturer prior to the Manufacturer entering into any Key Subcontract.

34.1.2 The Manufacturer shall procure that each Key Subcontractor duly executes and delivers to the Purchaser, within 15 (fifteen) Working Days of the date of the relevant Key Subcontract, a deed of warranty in the form set out at Schedule 15.

34.2 Assignment

Without prejudice to Clause 34.1, the Manufacturer shall not assign (whether absolutely or by way of security and whether in whole or in part), transfer, mortgage, charge, declare itself a trustee for a third party of, or otherwise dispose of (in any manner whatsoever) its rights and/or obligations under this Agreement, and any purported dealing in contravention of this Clause 34 shall be ineffective.

35. ASSIGNMENT AND NOVATION OR GRANTING OF SECURITY BY THE PURCHASER

35.1 Permitted Transfers

The Purchaser shall be entitled without the consent of the Manufacturer to assign (whether absolutely or by way of security and whether in whole or in part) transfer, novate, mortgage, charge or otherwise dispose of its rights and/or obligations under this Agreement to any person including for the purposes of financing its obligations under this Agreement.

35.2 Implementation of Transfers

If the Purchaser wishes to deal with its rights and/or obligations in this Agreement (either in whole or in part) pursuant to Clause 35.1, the Manufacturer shall execute such documents and do such other things as the Purchaser may reasonably request in order to facilitate and perfect such dealing.

36. NOTICES

36.1 Form of Communications

Any notice, approval, consent or other communication referred to in this Agreement:

36.1.1 must be in writing; and

36.1.2 (subject to Clause 36.3) must be left at the address of the addressee or sent by pre-paid first class post (airmail if posted to or from a place outside the United Kingdom) to the address of the addressee or sent by facsimile to the facsimile number of the addressee in each case which is specified in this Clause 36.1 in relation to the Party to whom the notice is addressed, and marked for the attention of the person so specified, or to such other address or facsimile number in England or Wales, and/or marked for the attention of such other person as the relevant Party may from time to time specify by notice given in accordance with this Clause 36.1.

The relevant details of each Party at the date of this Agreement are:

Purchaser

Address: Windsor House
42-50 Victoria Street
London
SW1H 0TL

Facsimile: 0207 126 4598

Attention: Director of Legal (Andrea Clarke at the date of this Agreement)

Manufacturer

Address: **REDACTED**

Facsimile: **REDACTED**

Attention: **REDACTED**

36.2 Each such communication (including communications served in accordance with Clause 36.3) shall, unless otherwise shown, be deemed to have been received:

36.2.1 if personally delivered, at the time of delivery;

36.2.2 if sent by first class post, on the third Working Day following the date on which it was posted or, if posted to or from a place outside the United Kingdom, the seventh Working Day after posting; and

36.2.3 in the case of a facsimile, on production of a transmission report from the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient.

36.3 The Manufacturer irrevocably appoints and authorises Matisa (U.K.) Ltd, PO Box 202, Scunthorpe, DN15 6XR ("Matisa UK") to accept service on behalf of the Manufacturer of all legal process and service on Matisa UK shall be deemed to be service on the Manufacturer.

36.4 **Receipt on a Non-Working Day**

A notice received or deemed to be received in accordance with Clause 36.1 above on a day which is not a Working Day or after 5.00 p.m. on a Working Day according to local time in the place of receipt, shall be deemed to be received on the next following Working Day.

36.5 **Change of Address**

Each Party undertakes to notify immediately the other Party by notice served in accordance with this Clause 36 if the address specified herein is no longer an appropriate address for the service of notice.

37. **ENTIRE AGREEMENT**

37.1 **Whole Agreement**

Each Party confirms that this Agreement and any other documents referred to in this Agreement represents the entire understanding, and constitutes the whole agreement, in relation to its subject matter and supersedes any previous agreement between the Parties with respect thereto.

37.2 **Non Reliance**

Each Party acknowledges and agrees that:

37.2.1 in entering into this Agreement it has not relied on any representation, warranty, assurance, covenant, indemnity, undertaking or commitment which is not expressly set out or referred to in this Agreement or any other documents referred to in this Agreement; and

37.2.2 no Party has any other right or remedy in respect of the matters set out in Clause 37.2.1 (whether by way of a claim for contribution or otherwise) in tort (including negligence) or for misrepresentation (whether negligent or otherwise, and whether made prior to, and/or in, this Agreement) save for any liability for fraudulent misrepresentation or fraudulent misstatement.

38. **RIGHTS CUMULATIVE WITH THOSE AT LAW**

38.1 **Rights Cumulative**

Except where expressly stated to the contrary the powers, rights and remedies conferred on the Parties herein shall be in addition and without prejudice to all other powers, rights and remedies available to the Parties by law.

38.2 **Equitable Remedies**

Without prejudice to any other rights or remedies that the Parties may have, the Parties acknowledge and agree that the remedies of injunction and specific performance as well as any other equitable relief for any threatened or actual breach of the provisions of this Agreement by any Party shall be available to the Parties and that no proof of special damages shall be necessary for the enforcement of the provisions of this Agreement.

39. **FURTHER ASSURANCE**

Each Party to this Agreement shall (at its own cost) do and execute, or arrange for the performance and execution of, each necessary act or document to implement its obligations under this Agreement.

40. **SET-OFF**

The Purchaser shall be entitled to withhold from any sum or sums expressed in this Agreement to be payable by it to the Manufacturer, any amounts due or expressed to be due by the Manufacturer to the Purchaser. Any payment payable by the Manufacturer under this Agreement shall be made in full without any set-off or counterclaim howsoever arising and shall be free and clear of, and without deduction of, or withholding for or on account of, any amount which is due and payable to the Manufacturer under this Agreement.

41. **NO WAIVER**

The rights and remedies of the Parties shall not be affected by any failure to exercise or delay in exercising any right or remedy or by the giving of any indulgence by the other Party or by anything whatsoever except a specific waiver or release in writing and any such waiver or release shall not prejudice or affect any other rights or remedies of the Parties. No single or partial exercise of any right or remedy shall prevent any further or other exercise thereof or the exercise of any other right or remedy.

42. **SEVERANCE**

If any provision or part of this Agreement is void or unenforceable due to the operation of any Applicable Law, it shall be deemed to be deleted and the remaining provisions of this Agreement shall continue in full force and effect.

43. **COSTS**

Each Party shall be responsible for their own costs (including legal costs) in relation to the negotiation and execution of this Agreement.

44. **LANGUAGE**

This Agreement is executed in English and all communications under this Agreement shall be made in English.

45. **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

With the exception of the right of

45.1 any member of the TfL Group

45.2 the Owner; and

45.3 any person expressly stated to be indemnified by a Party

to enforce any term of this Agreement which either expressly or by implication confers any benefit upon such person, no term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a signatory to this Agreement.

46. **COUNTERPARTS**

This Agreement may be executed 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 shall together constitute one and the same instrument.

47. **GOVERNING LAW AND JURISDICTION**

47.1 **Governing Law**

This Agreement shall be governed by, and construed in accordance with, English law.

47.2 **Exclusive Jurisdiction**

Subject to the terms of Clause 32, the English Courts have exclusive jurisdiction in relation to any claim, dispute or difference ("**Proceedings**") concerning this Agreement and any matter arising from it. For these purposes, each Party irrevocably submits to the jurisdiction of the English Courts.

47.3 **Forum**

Each Party irrevocably waives any right that it may have to object to any Proceedings being brought in the English Courts, to claim that the Proceedings have been brought in an inconvenient forum, or to claim that the English Courts do not have jurisdiction.

48. **RESPONSIBLE PROCUREMENT**

- 48.1 The Manufacturer shall have regard to the Responsible Procurement Principles and shall comply at all times with the Responsible Procurement Principles insofar as they are relevant to this Agreement, the Manufacturer and/or any Subcontractor.

49. **CRIME AND DISORDER**

- 49.1 The Manufacturer acknowledges that the Purchaser is under a duty in accordance with Section 17 of the Crime and Disorder Act 1998 to:

- 49.1.1 have due regard to the impact of crime, disorder and community safety in the exercise of the Purchaser's duties;
- 49.1.2 where appropriate, identify actions to reduce levels of crime and disorder; and
- 49.1.3 without prejudice to any other obligation imposed on the Purchaser, exercise his functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area,

and in the performance of this Agreement the Manufacturer shall assist and co-operate, and use its reasonable endeavours to procure that its Subcontractors assist and co-operate, with the Purchaser where possible to enable the Purchaser to satisfy its duty.

50. **LONDON LIVING WAGE**

- 50.1 The Manufacturer acknowledges and agrees that the Mayor of London, pursuant to section 155 of the GLA Act, has directed the TfL Group (including the Purchaser) to ensure that the London Living Wage is paid to anyone engaged by the TfL Group who is required to perform contractual obligations in Greater London or on the LUL Network.

- 50.2 Without prejudice to the generality of Clause 50.1, the Manufacturer shall and shall procure that its Subcontractors (if any) shall:

- 50.2.1 ensure that none of its employees engaged in the performance of this Agreement in Greater London or on the LUL Network (but not otherwise) is paid an hourly wage (or equivalent of an hourly wage) less than the London Living Wage;
- 50.2.2 ensure that none of his employees engaged in the performance of this Agreement is paid less than the amount to which they are entitled in their respective contracts of employment; and
- 50.2.3 co-operate and provide all reasonable assistance to the Purchaser and any member of the TfL Group in monitoring the effect of the London Living Wage.

51. DATA TRANSPARENCY

- 51.1 The Manufacturer acknowledges that the Purchaser is subject to the Transparency Commitment. Accordingly, notwithstanding any provisions of this Agreement relating to the FOI Legislation or confidentiality, the Manufacturer hereby gives its consent for the Purchaser to publish the Contract Information to the general public.
- 51.2 The Purchaser may in its absolute discretion redact all or part of the Contract Information prior to its publication. In so doing and in its absolute discretion the Purchaser may take account of the exemptions/exceptions that would be available in relation to information requested under the FOI Legislation. The Purchaser may in its absolute discretion consult with the Manufacturer regarding any redactions to the Contract Information to be published pursuant to Clause 51.1. The Purchaser shall make the final decision regarding publication and/or redaction of the Contract Information.

52. DATA PROTECTION

- 52.1 The Manufacturer shall at all times comply with the Data Protection Act 1998 (including any subordinate legislation made under that Act from time to time) and any policies issued by the Purchaser from time to time in relation to the processing of data and shall not by any act or fault cause the Purchaser to be in breach of these requirements.
- 52.2 The Manufacturer shall:
- 52.2.1 take appropriate technical and organisational security measures satisfactory to the Purchaser against unauthorised or unlawful Processing of Purchaser Personal Data (as those terms are defined in the Data Protection Act) and against accidental loss, destruction of, or damage to such Personal Data;
 - 52.2.2 provide the Purchaser with such information as it may reasonably require to satisfy itself of compliance by the Manufacturer with the requirements of this Clause 52; and
 - 52.2.3 cooperate with the Purchaser in complying with requests or enquiries made pursuant to the Data Protection Act.

53. CONFLICT OF INTEREST

- 53.1 The Manufacturer acknowledges and agrees that it does not have any interest in any matter where there is or is reasonably likely to be a conflict of interest with performing this Agreement or any member of the TfL Group, save to the extent fully disclosed to and approved in writing by the Purchaser.
- 53.2 The Manufacturer shall undertake ongoing and regular conflict of interest checks throughout the duration of this Agreement and in any event not less than once in every six months and shall notify the Purchaser in writing immediately on becoming aware of any actual or potential conflict of interest with performing this Agreement or any member of the TfL Group and work with the Purchaser to do whatever is necessary (including the separation of staff working on and/or data relating to this Agreement from the matter in question) to manage such conflict to the Purchaser's satisfaction and provided that, where the Purchaser is not so satisfied (in its absolute discretion), the Purchaser shall be entitled to serve written notice terminating this Agreement in whole or in part with immediate effect. In the event that this Agreement is terminated in accordance with this Clause 53, Clauses 25.5 and 25.6 shall apply.

54. CRIMINAL RECORDS DECLARATION

- 54.1 The Manufacturer shall procure from each Relevant Individual (as the case may be) a

declaration that he has no Relevant Convictions (“Declaration”) or disclosure of any Relevant Convictions he has committed. The Manufacturer shall confirm to the Purchaser in writing on request and in any event not less than once in every year that each Relevant Individual has provided a Declaration. The Manufacturer shall procure that a Relevant Individual notifies the Manufacturer immediately if he commits a Relevant Conviction throughout the duration of this Agreement and the Manufacturer shall notify the Purchaser in writing immediately on becoming aware that a Relevant Individual has committed a Relevant Conviction.

- 54.2 The Manufacturer shall not engage or allow to act on behalf of the Manufacturer or any Subcontractor in the performance of any aspect of this Agreement any Relevant Individual who has disclosed a Relevant Conviction.
- 54.3 The Purchaser may audit and check any and all such records of the Manufacturer as are necessary in order to monitor compliance with this Clause 54 at any time during performance of this Agreement.
- 54.4 If the Manufacturer fails to comply with the requirements under Clause 54.1 and/or 54.2, the Purchaser may, without prejudice to its rights under Clause 54.5, serve notice on the Manufacturer requiring the Manufacturer to immediately take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the performance of any aspect of this Agreement unless (in the case of non-compliance with Clause 54.1) within 7 days of receipt of the notice the Manufacturer confirms to the Purchaser that it has procured all of the Declarations required under Clause 54.1.
- 54.5 A persistent breach of Clause 54.1 and/or 54.2 by the Manufacturer shall constitute a material breach of this Agreement and shall entitle the Purchaser to serve written notice terminating this Agreement in whole or in part with immediate effect. In the event that this Agreement is terminated in accordance with this Clause 54, Clauses 25.5 and 25.6 shall apply.
- 54.6 If either Party becomes aware that a Relevant Individual has committed a Relevant Conviction, the Manufacturer shall take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the performance of any aspect of this Agreement.
- 54.7 Nothing in this Clause 54 in any way waives, limits or amends any obligation of the Manufacturer to the Purchaser arising under this Agreement and the Manufacturer’s obligation to perform this Agreement remains in full force and effect and the Manufacturer cannot claim any extra costs or time as a result of any actions under this Clause 54.
- 54.8 The Manufacturer confirms that, for the duration of this Agreement, its corporate security and personnel processes are sufficient to ensure that no personnel with a Relevant Conviction will carry out any aspect of this Agreement.

55. **BEST VALUE**

- 55.1 The Manufacturer acknowledges that TfL is a best value authority for the purposes of the Local Government Act 1999 and as such TfL and the Purchaser are required to make arrangements to secure continuous improvement in the way they exercise their functions, having regard to a combination of economy, efficiency and effectiveness. The Manufacturer shall assist the Purchaser (and, where appropriate, TfL) to discharge this duty and agrees to negotiate in good faith any changes to this Agreement in order for the Purchaser (and, where appropriate, TfL) to achieve best value.

56. WORK RELATED ROAD RISK

Definitions

56.1 In this clause 56 the following words and expressions shall have the following meanings save where the context requires otherwise:

“Approved Driver Training” means the Safe Urban Driving course as accredited by the Joint Approvals Unit for Periodic Training details of which can be found at:

www.fors-online.org.uk;

“Bronze Accreditation” means the minimum level of accreditation within the FORS Standard, the requirements of which are more particularly described at:

www.fors-online.org.uk;

“Car-derived Van” means a vehicle based on a car, but with an interior that has been altered for the purpose of carrying larger amounts of goods and/or equipment;

“Class VI Mirror” means a mirror that allows the driver to see what is immediately in front of the vehicle and that complies with Directive 2003/97/EC;

“Close Proximity Sensor” means a device consisting of a sensor system that detects objects in a vehicle’s blind spot and alerts the driver via in-cab visual and/or audio stimuli and which alerts other road users to the planned movement of the vehicle when the vehicle’s indicators are engaged;

“Collision Report” means a report detailing all collisions during the previous 12 months involving injuries to persons or fatalities;

“Driver” means any employee of the Manufacturer (including an agency driver), who operates Freight Vehicles on behalf of the Manufacturer while performing this Agreement;

“DVLA” means Driver and Vehicle Licensing Agency;

“FORS” means the Fleet Operator Recognition Scheme, which is an accreditation scheme for businesses operating van and lorry fleets. It is free to join and offers impartial, independent advice and guidance to motivate companies to improve their compliance with relevant laws and their environmental, social and economic performance;

“FORS Standard” means the standard setting out the accreditation requirements for the Fleet Operator Recognition Scheme, a copy of which can be found at:

www.fors-online.org.uk;

“Freight Vehicle” means a Lorry, a Van or a Car-derived Van;

“Fresnel Lens” means a clear thin plastic lens that is press fitted to a lorry window on the passenger side and that allows the driver to see that which is in the vehicle’s blind spot;

“Gold Accreditation” means the highest level of accreditation within the FORS Standard, the requirements of which are more particularly described at:

www.fors-online.org.uk;

“Lorry” means a vehicle with a MAM exceeding 3,500 kilograms;

“MAM” means the maximum authorised mass of a vehicle or trailer including the maximum load that can be carried safely while used on the road;

“Side Guards” means guards that are fitted between the front and rear axles of a Lorry and that comply with EC Directive 89/297/EEC and the Road Vehicles (Construction and Use) Regulations 1986;

“Silver Accreditation” means the intermediate level of accreditation within the FORS Standard, the requirements of which are more particularly described at:

www.fors-online.org.uk;

“Van” means a vehicle with a MAM not exceeding 3,500 kilograms;

Fleet Operator Recognition Scheme Accreditation

- 56.2 Where the Manufacturer operates Freight Vehicles, it shall within 90 days of the Commencement Date:
- 56.2.1 (unless already registered) register for FORS or a scheme which, in the reasonable opinion of the Purchaser, is an acceptable substitute to FORS (the **“Alternative Scheme”**); and
 - 56.2.2 (unless already accredited) have attained the standard of Bronze Accreditation (or higher) or the equivalent within the Alternative Scheme.
- 56.3 The Manufacturer shall maintain the standard of Bronze Accreditation (or equivalent standard within the Alternative Scheme) by way of an annual independent assessment in accordance with the FORS Standard or take such steps as may be required to maintain the equivalent standard within the Alternative Scheme. Alternatively, where the Manufacturer has attained Silver or Gold Accreditation, the maintenance requirements shall be undertaken in accordance with the periods set out in the FORS Standard.
- 56.4 The Manufacturer shall ensure that those of its Subcontractors who operate Freight Vehicles shall comply with Clauses 56.2 and 56.3 as if they applied directly to the Subcontractor.

Safety Equipment on Vehicles

- 56.5 The Manufacturer shall ensure that every Lorry which it uses to perform this Agreement shall:
- 56.5.1 have Side Guards, unless the Manufacturer can demonstrate to the reasonable satisfaction of the Purchaser that the vehicle will not perform the function for which it was built if Side Guards are fitted;
 - 56.5.2 have a close proximity warning system fitted comprising:
 - (i) a front-mounted, rear-facing CCTV camera with in-cab live feed from the said camera or a Fresnel Lens where the Fresnel Lens provides a reliable alternative to the CCTV camera and where the Manufacturer has obtained the Purchaser’s approval to use the Fresnel Lens, which approval the Purchaser may withhold in its unfettered discretion; and
 - (ii) a Close Proximity Sensor;
 - 56.5.3 have a Class VI Mirror; and
 - 56.5.4 bear prominent signage on the rear of the vehicle to warn cyclists of the dangers of passing the vehicle on the inside.
- 56.6 The Manufacturer shall ensure that every Van which it uses to perform this Agreement shall bear prominent signage on the rear of the vehicle to warn cyclists of the dangers of passing the vehicle on the inside.

Driver Licence Checks

- 56.7 The Manufacturer shall ensure that each of its Drivers has a driving licence check with the DVLA or such equivalent licensing authority as may be applicable before that Driver performs any duties under this Agreement in its capacity as a Driver and that the driving

licence check with the DVLA or equivalent authority is repeated in accordance with either the following risk scale (in the case of DVLA issued licences only), or the Manufacturer's risk scale, provided that the Manufacturer's risk scale has been approved in writing by the Purchaser within the last 12 months:

- 56.7.1 0-3 points on the driving licence – annual checks;
- 56.7.2 4-8 points on the driving licence – six monthly checks;
- 56.7.3 9-11 points on the driving licence – quarterly checks; or
- 56.7.4 12 or more points on the driving licence – monthly checks.

Driver Training

- 56.8 The Manufacturer shall ensure that each of its Drivers who has not undertaken:
 - 56.8.1 Approved Driving Training (or training which, in the reasonable opinion of the Purchaser, is an acceptable substitute) in the last three years, undertakes Approved Driver Training or the said substitute training within 60 days of the Commencement Date; and
 - 56.8.2 a FORS e-learning safety module in the last 12 months, undertakes a FORS e-learning safety module (or e-learning which, in the reasonable opinion of the Purchaser, is an acceptable substitute).

Collision Reporting

- 56.9 Within 15 days of the Commencement Date, the Manufacturer shall provide to the Purchaser a Collision Report. The Manufacturer shall provide to the Purchaser an updated Collision Report on a quarterly basis and within five Working Days of a written request from the Purchaser.

FORS Reports

- 56.10 Within 30 days of its achieving Bronze Accreditation or equivalent within the Alternative Scheme, the Manufacturer shall make a written report to the Purchaser at fors@tfl.gov.uk detailing its compliance with Clauses 56.5, 56.6, 56.7 and 56.8 (the “**Safety, Licensing and Training Report**”). The Manufacturer shall provide updates of the Safety, Licensing and Training Report to the Purchaser at fors@tfl.gov.uk on each three month anniversary of its submission of the initial Safety, Licensing and Training Report.

Obligations of the Manufacturer Regarding Subcontractors

- 56.11 The Manufacturer shall ensure that each of its Subcontractors that operates the following vehicles shall comply with the corresponding provisions of this Agreement as if those Subcontractors were a party to this Agreement:
 - 56.11.1 For Lorries – Clauses 56.5, 56.7, 56.8 and 56.9; and
 - 56.11.2 For Vans – Clauses 56.6, 56.7, 56.8 and 56.9.

Failure to Comply with Freight-related Obligations

- 56.12 If the Manufacturer fails to comply with Clause 56.2, 56.3, 56.4, 56.5, 56.7, 56.8, 56.9, 56.10 or 56.11:
 - 56.12.1 the Manufacturer has committed a material breach of this Agreement which shall entitle the Purchaser to serve notice terminating this Agreement in whole or in part with immediate effect. In the event that this Agreement is terminated in accordance with this Clause 56.12, Clauses 25.5 and 25.6 shall apply; and/or

- 56.12.2 The Purchaser may refuse the Manufacturer, its employees, agents and Freight Vehicles entry onto any property that is owned, occupied or managed by the Purchaser for any purpose (including but not limited to deliveries).

IN WITNESS whereof this Agreement has been executed and unconditionally delivered as a deed the day and year first above written.

THE COMMON SEAL of
LONDON UNDERGROUND LIMITED
was affixed to **THIS DEED**
in the presence of:

Signature of Authorised Signatory

Print name of Authorised Signatory

EXECUTED AND DELIVERED AS A DEED
by **MATISA MATÉRIEL INDUSTRIEL SA**
acting by:

Signature of Director

Print name of Director

Signature of Director

Print name of Director

REDACTED

SCHEDULE 1A: TECHNICAL SPECIFICATION

SCHEDULE 1B: MANAGEMENT OF DELIVERY

1. Design Management

The Purchaser and the Manufacturer will hold regular meetings on Design matters throughout the contract design period. Design matters are to be managed live, and in suitable elemental sections. Design outcomes are to be managed and discussed at the regular meetings. Formal designs, for review and approval by the Purchaser, shall be the output of a successful design management process, with the design solutions and issues all “expected” by the Purchaser. The intention, by holding all discussions live, and reducing review periods, is to avoid abortive work during the build programme.

An initial design meeting will be held following the project kick off meeting. The purpose of this will be to agree:

- what elements of design are required under the contract
- what elements the Manufacturer will be carrying out

The Purchaser can then determine what reviews are required, expected dates, and how data and information is exchanged. In addition, the Parties will agree the process for design sign off, including review personnel from the Purchaser and review periods required. This will all be collated, reviewed with the Project Programme, and all agreed.

At the initial design meeting, an agreement will be made on how design meetings will be held for the contract period. It is envisaged that there are times when this will need to be face to face, but at other times, the use of video conferencing facilities or alternative means are utilised to reduce time and cost requirements.

Design review meetings will take place throughout the contract, these will be more frequent towards the start of the contract, and diminish as the contract moves towards completion.

The Manufacturer shall include for a weekly review meeting with the Purchaser during all periods of the contract when design is being undertaken. This may range from a brief review phone call, a video conference, or a face to face meeting.

During the Design review process, the Purchaser and the Manufacturer will agree on a document management system to be used which will ensure formal document management, and can be used to manage the change control process set out in Schedule 8 (Variation Procedure).

2. Project Management and Programme Management

Within 5 Working Days of the Commencement Date, the Purchaser will convene a project kick-off meeting. The purpose of this meeting is to establish and define how the contract will be delivered. It will include issues such as:

- Named contractual contacts and organisation structure
- Means of conducting communication
- Meetings structure / attendees

- Planning and programming management
- Deliverables

Every four weeks from the Commencement Date, the Manufacturer shall provide the Purchaser with a progress report containing details of the Design, manufacture, supply, assembly, testing, commissioning and Delivery of the Purchased Equipment, including:

- a) an up to date Project Programme
- b) programme disparities with actual
- c) early warning notice of any issues that may affect programme, quality or cost
- d) details of any Disputes between the Parties
- e) details of any Disputes between the Manufacturer and any third parties in connection with the contract
- f) details of any safety or quality issues related to this Contract
- g) details and update on purchased and Delivered items (e.g. Critical Spares / Year One Consumables)

The Parties shall meet to discuss each progress report within five (5) Working Days of the date of its issue and receipt. This shall be held in a manner and location which is agreed by both parties.

3. Certification and Assurance activities New Tamping Machines – VAB/CCB

A) LONDON UNDERGROUND APPROVALS SUMMARY

In order to run and operate on the LUL Network, the Manufacturer shall obtain suitable approvals/acceptance and provide certification that the Units have been verified as conforming against the relevant standards. An accredited and recognised Verification/validation body shall be engaged by the Manufacturer for this purpose.

The design of the Units and associated documentation shall be such that limitations on certification are kept to an absolute minimum (scope and duration).

The Manufacturer's chosen Independent Verification, Assurance and Conformance body (VAB/CCB), referred to in the Conditions of contract as VAB, shall scrutinise and provide verification of the following:

- Compliance with the requirements set out in Standards.
- Compliance with any specified requirements defined in the Technical Requirements.
- Demonstration of acceptable safety risks for the Units in their intended use.

The Manufacturer shall procure that the VAB/CCB scrutinises and provides evidence of compliance to standards in order that the approval of the Unit as a rail vehicle by the

Purchaser and the associated issue of a Certificate of Technical Conformance can take place.

The main elements for verification activities by a VAB/CCB are:

- i. Design Acceptance.
- ii. Engineering Acceptance/Technical Conformance.
- iii. Operations and Maintenance Acceptance.
- iv. Any other activity that provides the Purchaser with acceptance to operate the machine on the LUL Network.

Design Conformance

The VAB/CCB will provide verification of design conformance to the Purchaser on behalf of the Manufacturer in order for the Purchaser to provide Design Approval.

Management of Non-conformities

The Manufacturer shall procure that the VAB/CCB identifies any non-conformities and progresses any concessions that may be desired where achievement of compliance is impracticable, undesirable or unaffordable. Concessions can only be granted by the Purchaser. The Manufacturer shall propose and agree an action plan to handle non-conformities in conjunction with the VAB/CCB.

1. CONFORMITY CHECKLISTS

A conformity check list shall be produced by the Manufacturer with VAB/CCB input to record details of the assessment undertaken and the results obtained. This will be done by utilising as a minimum the Conformity check lists in S-1172, Appendix 2 of Schedule 1A and any relevant Standard.

2. RISK MANAGEMENT

The Manufacturer shall procure that the VAB/CCB verifies that there is sufficient evidence that the safety risks associated with the Units' deployment and use have been fully explored and are tolerable and ALARP. This must include evidence of acceptable safety when the Units are running outside of Protection. This will be done in accordance with the principles of BS EN 50126.

3. OPERATIONAL AND MAINTENANCE ACCEPTANCE.

The Manufacturer shall procure that the VAB/CCB seeks the approval of the Units by the Purchaser and the issue of an Infrastructure Manager's Letter of Acceptance

The Manufacturer shall procure that the VAB/CCB verifies that the Manufacturer has specified and/or provided sufficient supporting documentation to define or facilitate the provision of suitable competence levels of staff, required tools, required workshop facilities etc to enable the safe and effective operation and maintenance of the Units in accordance with Standard S1171.

The output from this activity will allow the Purchaser to demonstrate that there is sufficient operational and maintenance readiness to operate the Units.

B) NETWORK RAIL CONTROLLED INFRASTRUCTURE VERIFICATION/ CERTIFICATION

The Manufacturer shall engage an accredited VAB/CCB to provide assurance and certification that the Units can be operated on Network Rail Controlled Infrastructure for transit operations (hailed in train formation only).

The Manufacturer shall procure that the VAB/CCB provides assurance that the Units are compliant with Railway Group Standards (as applicable) under ROGS and facilitate or provide the following certification:

- Engineering Acceptance Certification.
- Maintenance Conformance Certification.
- Any other certification or conformance verification activities that may be required (such as Entity in Charge of Maintenance etc) as applicable, with the goal of allowing the machines to operate as specified on Network Rail Controlled Infrastructure.

The Manufacturer shall register the Units with the Rolling Stock Library under the appropriate categories.

SCHEDULE 2: DRAFT PROJECT PROGRAMME

REDACTED

SCHEDULE 3: YEAR ONE CONSUMABLES, CRITICAL SPARES AND SPECIAL TOOLS

PART A: YEAR ONE CONSUMABLES

REDACTED

PART B: CRITICAL SPARES

REDACTED

PART C: SPECIAL TOOLS

REDACTED

SCHEDULE 3A: CONTINUING SUPPORT

REDACTED

SCHEDULE 4: CONTRACT PRICE**1. Delivery**

- a. Each Delivery, as defined in the conditions of contract, shall be accompanied by two copies of a delivery advice note, such note shall have a unique number, specify the contract details, a description of the Purchased Equipment, the number of packages, the method of despatch, and such other particulars as it may be appropriate to supply.
- b. The Purchaser shall (without prejudice to its rights under this Agreement) verify the Delivery comprises the items described in the delivery advice note and amend it as necessary before signing both copies and returning one copy to the Manufacturer.

2. Payment

- a. The Purchaser is under no obligation to accept or pay for Purchased Equipment in advance of the dates as set out in the Project Programme in respect of payment milestones.
- b. The Manufacturer shall be entitled to issue to the Purchaser an invoice when the conditions in respect of the relevant payment milestone has been met and provided that:
 - i. The invoice is dated and issued no earlier than the date that the payment milestone to which it relates was met and where relevant contains a copy of the signed delivery advice note(s) to which it relates.
 - ii. Sums contained in the invoice shall be calculated in accordance with this Schedule 4 and show the element(s) of the Contract Price to which they relate and the purchase order number which will be given to the Manufacturer following the award of the contract.
 - iii. The invoice shall be sent to London Underground Limited, Accounts Payable, PO Box 45276, 14 Pier Walk, London SE10 1AJ or other such address as is subsequently notified to the Manufacturer in writing by the Purchaser Representative.
- c. Without prejudice to its rights under the conditions of contract, the Purchaser shall pay the Manufacturer, where an invoice in accordance with the provisions contained in this Schedule 4 has been submitted by the Manufacturer to the Purchaser, undisputed sums due in respect of that invoice within 30 days of the date of receipt thereof.
- d. If the Manufacturer's invoice does not comply with these requirements, then the Purchaser shall be under no obligation to pay the same.

- e. If any sum under the Contract is not paid in accordance with the timescales set out in the conditions of contract and this Schedule 4 and providing that there has been no Dispute as defined in Schedule 10 in respect of the sums then, without prejudice to the Parties' other rights under the Contract, that sum shall bear simple interest from the date payment was due to the date payment is made in full at a rate of 4% per annum above the Bank of England Base Rate current at the date a payment under this Contract becomes overdue.. The Manufacturer is not entitled to suspend works under the Contract or Delivery of the Purchased Equipment as a result of any sums being outstanding.
3. Contract Price Analysis
- a. The attached Contract Price analysis provides a breakdown of the Contract Price, as defined in the conditions of contract.
4. Payment Milestone Chart
- a. The attached Payment Milestone chart provides a breakdown of the Contract Price, in terms of the payments to be made by the Purchaser to the Manufacturer, together with activities in the Project Programme which when complete entitle the Manufacturer to issue its invoice.
 - b. The dates set out in the Payment Milestone Chart shall be agreed between the Parties within 14 (fourteen) days of the date of this Agreement. In the event that the Project Programme is not agreed within the timescale set out in this paragraph 4(b), either Party shall be entitled to refer the matter for resolution under Clause 32.
5. Rates and prices for provisional sums
- The following amounts apply in respect of both Units together (they do not apply to each Unit separately):
- REDACTED**
6. Percentage to be applied in relation to prime cost items
- REDACTED**
7. Retention
- REDACTED**

SCHEDULE 4 ANNEX 1
CONTRACT PRICE ANALYSIS

SCHEDULE 4 ANNEX 2
MILESTONE PAYMENT CHART

REDACTED

SCHEDULE 5: KEY PERSONNEL

The following are the Key Personnel:

REDACTED

SCHEDULE 6: KEY SUBCONTRACTS

REDACTED

SCHEDULE 7: TRAINING SERVICES

REDACTED

SCHEDULE 8: VARIATION PROCEDURE

1. DEFINITIONS

- 1.1 In this Schedule 8 the following words and expressions shall have the following meanings save where the context requires otherwise:

“Provisional Variation Order” means the note to be produced by the Manufacturer pursuant to paragraph 3.2 or 3.3 (as appropriate) containing the information referred to in paragraph 3.4;

“Purchaser Notice of Proposed Variation” means a written request from the Purchaser to vary the Purchased Equipment, the Technical Requirements or any other items or services (including Training Services) to be supplied under this Agreement;

“Variation Procedure” means the procedure set out in paragraph 3.

2. PRINCIPLES

- 2.1 The Purchaser or the Manufacturer may at any time request a Variation to the Purchased Equipment, the Technical Requirements or any other items or services to be supplied under this Agreement only in accordance with the Variation Procedure set out in paragraph 3. A Variation agreed pursuant to paragraph 3 and signed by the Purchaser and by the Manufacturer constitutes a Variation Order.
- 2.2 Until such time as a Variation is made in accordance with the Variation Procedure, the Purchaser and the Manufacturer shall, unless otherwise agreed in writing, continue to perform this Agreement in compliance with its terms prior to such Variation.
- 2.3 Any discussions which may take place between the Purchaser and the Manufacturer in connection with a request or recommendation before the authorisation of a resultant Variation shall be without prejudice to the rights of either Party.
- 2.4 Any work undertaken by or on behalf of the Manufacturer which has not been authorised in advance under this Schedule 8, and which has not been otherwise agreed in accordance with the provisions of this Schedule 8, shall be undertaken entirely at the expense and liability of the Manufacturer.

3. VARIATION PROCEDURE

- 3.1 Discussion between the Purchaser and the Manufacturer concerning a Variation to the Purchased Equipment, the Technical Requirements or any other items or services to be supplied under this Agreement shall result in any one of the following:
- 3.1.1 no further action being taken; or
 - 3.1.2 a request to change this Agreement by the Purchaser; or
 - 3.1.3 a recommendation to change this Agreement by the Manufacturer.

- 3.2 The Purchaser shall be entitled to serve a Purchaser Notice of Proposed Variation on the Manufacturer at any time. Following receipt by the Manufacturer of a Purchaser Notice of Proposed Variation, the Manufacturer shall, unless otherwise agreed, submit two copies of a Provisional Variation Order signed by the Manufacturer to the Purchaser within three weeks of the date of the Purchaser Notice of Proposed Variation. The Purchaser shall give its response to the Provisional Variation Order in accordance with paragraph 3.7 within three weeks (or such longer period as is reasonable having regard to the nature of the proposed Variation) of the date of the Provisional Variation Order.
- 3.3 The Manufacturer shall be entitled to request a Variation to the Purchased Equipment, the Technical Requirements or any other items or services to be supplied under this Agreement at any time by serving on the Purchaser two copies of a Provisional Variation Order signed by the Manufacturer. The Purchaser shall give its response to the Provisional Variation Order in accordance with paragraph 3.7 within three weeks (or such longer period as is reasonable having regard to the nature of the proposed Variation) of the date of the Provisional Variation Order.
- 3.4 Each Provisional Variation Order shall contain:
- 3.4.1 the details of the Purchaser Notice of Proposed Variation (where relevant);
 - 3.4.2 full details of the Variation, including any specifications;
 - 3.4.3 subject to paragraphs 3.5 and 3.6, the proposed increase or decrease, if any, in the Contract Price as a result of the Variation, together with details of proposed payment arrangements;
 - 3.4.4 a timetable for implementation, together with any proposals for acceptance and testing of the Variation;
 - 3.4.5 details of the likely impact, if any, of the Variation on other aspects of this Agreement including:
 - (A) the impact (including any changes) on the timescales applicable to the Agreement, including the Project Programme and any relevant Contractual Acceptance Date;
 - (B) without prejudice to paragraph 3.4.5(A), a review of the Project Programme clearly demonstrating any impact on the critical path;
 - (C) the personnel to be provided;
 - (D) the Contract Price;
 - (E) any documentation to be provided;
 - (F) the training to be provided;
 - (G) working arrangements; and

- (H) other contractual issues;
- 3.4.6 the date of expiry of validity of the Provisional Variation Order (which must be fair and reasonable in all the circumstances and provide the Purchaser with a reasonable period of time to assess the Provisional Variation Order and respond within the timescales set out in paragraph 3.2);
- 3.4.7 provision for the Purchaser to indicate whether, if it does not accept the proposed adjustment to the Contract Price and/or any Contractual Acceptance Date(s), it will require the Manufacturer to implement the Provisional Variation Order pursuant to paragraph 3.8 pending agreement or determination of the proposed adjustment; and
- 3.4.8 provision for signature by the Purchaser and the Manufacturer.
- 3.5 Where the Variation is required as a result of a Change in Law, the Contract Price shall be adjusted in accordance with Clause 5.5 and the proposed changes to the Contract Price set out in the Provisional Variation Order provided by the Manufacturer shall be calculated strictly in accordance with Clause 5.5.
- 3.6 When calculating any proposed change to the Contract Price, the Manufacturer shall:
 - 3.6.1 subject to paragraph 3.6.2, cost such proposed increase on a fair and reasonable basis reflecting, so far as possible, the then current market rates;
 - 3.6.2 use the following rates in calculating proposed changes to the Contract Price:
REDACTED
 - 3.6.3 use reasonable endeavours to oblige its Subcontractors to minimise any increase in costs and maximise any reduction in costs;
 - 3.6.4 demonstrate how any required capital expenditure is incurred in a cost effective manner, including showing that when such expenditure is incurred, any prospective Changes in Law have been taken into account by the Manufacturer; and
 - 3.6.5 demonstrate that it has complied with this paragraph 3.6.
- 3.7 For each Provisional Variation Order submitted by the Manufacturer the Purchaser shall, within the period of the validity of the Provisional Variation Order, evaluate the Provisional Variation Order and, as appropriate:
 - 3.7.1 request further information; and/or
 - 3.7.2 notify the Manufacturer that it is required to discuss and agree the issues set out in the Provisional Variation Order. The Parties shall carry out such discussions as soon as reasonably practicable and if, following such discussions, the Parties cannot agree on the contents of the Provisional Variation Order, the matter may be referred to the Dispute Resolution Procedure to determine if the contents of the

Provisional Variation Order represent a fair and reasonable approach to implementing the proposed Variation; or

- 3.7.2 arrange for two copies of the Provisional Variation Order to be signed by or on behalf of the Purchaser and return one of the copies to the Manufacturer; or
 - 3.7.3 notify the Manufacturer of the rejection of the Provisional Variation Order.
- 3.8 If the Purchaser does not agree the Manufacturer's proposed adjustment to the Contract Price and/or any Contractual Acceptance Date(s) as set out in a Provisional Variation Order (whether following discussions under paragraph 3.6.1 or, if the Purchaser in its absolute discretion considers it necessary or expedient, without having held any such discussions), the Purchaser shall be entitled to require the Manufacturer to implement the Provisional Variation Order pending agreement or determination of the adjustment to the Contract Price and/or the relevant Contractual Acceptance Date(s) (as appropriate). In those circumstances:
- 3.8.1 the Purchaser shall sign the Provisional Variation Order and indicate that it does not agree the proposed adjustment to the Contract Price and/or the relevant Contractual Acceptance Date(s) (as appropriate);
 - 3.8.2 the Provisional Variation Order (other than in respect of the Contract Price and/or the relevant Contractual Acceptance Date(s) (as appropriate)) shall constitute a Variation Order, and paragraphs 3.7.2 and 3.9 shall apply;
 - 3.8.3 the Parties shall carry out further discussions as soon as reasonably practicable and seek to agree the adjustment to the Contract Price and/or the relevant Contractual Acceptance Date(s) (as appropriate). If, following such discussions, the Parties cannot agree on the adjustment to the Contract Price and/or the relevant Contractual Acceptance Date(s) (as appropriate), the matter may be referred to the Dispute Resolution Procedure for determination on the basis of whether the Manufacturer's proposed adjustment is fair and reasonable in all the circumstances and, where the Contract Price is not agreed, compliant with paragraph 3.6; and
 - 3.8.4 following agreement or determination of the adjustment to the Contract Price and/or the relevant Contractual Acceptance Date(s), the Provisional Variation Order (including the adjustment to the Contract Price and/or the relevant Contractual Acceptance Date(s) (as appropriate) as agreed or determined) shall promptly be revised by the Manufacturer to reflect such agreement or determination and shall be signed on behalf of both Parties, and paragraph 3.9 shall apply.
- 3.9 A Provisional Variation Order signed by the Purchaser and by the Manufacturer shall constitute a Variation Order and an amendment to this Agreement, and shall be implemented in accordance with its terms.

SCHEDULE 9: INSURANCE

The Manufacturer shall procure and maintain the insurances as listed below. Such insurances shall be in effect for the duration of the contract unless otherwise specified. Evidence that such insurance is in effect shall be provided in the form of a broker's letter or similar, within 14 days of the contract commencement and at the time of each renewal of such policies.

- 1.1 Insurance to cover liability for death of or bodily injury or illness sustained by employees of the Manufacturer arising out of or in the course of their employment. Such insurance shall be of an amount and on terms that comply with the appropriate statutory obligations in each country in which the Manufacturer operates.
- 1.2 Public Liability insurance of not less than **REDACTED** per incident or series of incidents arising out of one event; such insurance to cover sums for which the Manufacturer shall be legally liable to pay as damages in respect of death or injury or illness or disease to third parties and/or loss of or damage to third party property. Such insurance shall extend to indemnify the Purchaser as principal, and shall be endorsed such that any care, custody or control exclusion shall not apply to property belonging to the Purchaser or for which the Purchaser is responsible.
- 1.3 Product Liability insurance of not less than **REDACTED** per incident or series of incidents arising out of one event; such insurance to cover sums for which the Manufacturer shall be legally liable to pay as damages in respect of death or injury or illness or disease to third parties and/or loss of or damage to third party property arising as a result of a defect, fault or flaw in the goods supplied. Such insurance shall extend to indemnify the Purchaser as principal, and shall be endorsed such that any care, custody or control exclusion shall not apply to property belonging to the Purchaser or for which the Purchaser is responsible.
- 1.4 Not used.
- 1.5 Insurance to cover all risk of loss or damage (including theft) to the Purchased Equipment whilst being manufactured, in transit from one place to another or being stored during a journey, whether by land, rail, sea or air.

SCHEDULE 10: DISPUTE RESOLUTION PROCEDURE

For the purposes of this Dispute Resolution Procedure the following terms have the meanings set out below:

“Adjudicator” means an independent person appointed to act as an adjudicator in accordance with paragraph 8 of this Schedule 10.

“Dispute” means any dispute, controversy or claim arising out of or in connection with this Agreement.

“Nominating Authority” means the President or Vice President or other duly authorised officer of the London Court of International Arbitration;

“Notice of Adjudication” means any notice given by a Party to the other party or parties to the Dispute requiring reference of a Dispute to the Adjudicator in accordance with paragraph 7. The Notice of Adjudication shall include:

- (i) the nature and a brief description of the Dispute;
- (ii) details of where and when the Dispute arose; and
- (iii) the nature of the redress which is sought.

“Referral Notice” means a notice referring a Dispute to the Adjudicator in accordance with paragraph 11;

“Senior Representative” means a representative of a Party at senior executive level.

- 1 The Purchaser and the Manufacturer shall follow the procedure set out in this Schedule 10 for the management and resolution of Disputes.
- 2 Subject to paragraph 7, any Dispute may in the first instance be referred in writing from the referring Party to the Senior Representatives by notice in writing to the other Party. The written notice from the referring Party shall give brief written particulars of the Dispute, the relief sought and the basis for claiming the relief sought (including the provisions of this Agreement that are relevant to the Dispute). The written notice shall also identify the referring Party's Senior Representative.
- 3 Within 14 days of receipt of the notice pursuant to paragraph 2, the responding Party provides the referring Party with a brief written response. The response includes identification of the responding Party's Senior Representative.
- 4 The Senior Representatives shall meet and try to reach agreement to resolve the Dispute referred to them pursuant to paragraph 3.
- 5 If the Senior Representatives are unable to, or fail to, reach agreement to resolve the

Dispute within 14 days after the date of the response under paragraph 3, court proceedings shall not be commenced unless and until the Dispute has first been referred to adjudication (and an Adjudicator's decision has been obtained) in accordance with the procedure in paragraphs 7–28 and notice has been given in accordance with paragraph 29.

6 Each Party bears its own costs and expenses in relation to any reference of a Dispute to the Senior Representatives. Discussions amongst the Senior Representatives and any documents prepared or exchanged in relation to the reference of the Dispute to the Senior Representatives (including, for the avoidance of doubt, the notice under paragraph 2 and any response under paragraph 3) are without prejudice and the Parties shall not make use of or rely upon any without prejudice statements in any proceedings.

7 Notwithstanding the provisions of paragraphs 1, 2, 3, 4, 5 and 6, either Party may give notice at any time of its intention to refer a Dispute to adjudication under the procedure set out in paragraphs 7–29 by giving a Notice of Adjudication to the other parties to the Dispute.

8 Should either Party give a Notice of Adjudication then immediately thereafter the parties to the Dispute shall endeavour to agree upon a person whom they would consider suitable to act as the Adjudicator.

In the event of the parties to the Dispute failing to agree upon a suitable person who is able to act as the Adjudicator, the referring Party shall request the Nominating Authority to select a person to act as the Adjudicator.

The Nominating Authority communicates the selection of the Adjudicator to the Parties within 4 days of receiving a request to do so.

9 Any person requested or selected to act as the Adjudicator in accordance with paragraph 8:

9.1 shall be a natural person acting in his personal capacity; and

9.2 shall not be an employee of any of the parties to the Dispute, and shall declare any interest, financial or otherwise, in any matter relating to the Dispute

10 The terms of remuneration of the Adjudicator shall be agreed by the parties to the Dispute and the Adjudicator with the object of securing the appointment of the Adjudicator within 7 days of the Notice of Adjudication. If any party to the Dispute (but not all parties to the Dispute) rejects the terms of the remuneration of the Adjudicator the same shall be settled (and binding upon the parties to the Dispute) by agreement between the Nominating Authority and the Adjudicator (provided that the level of the Adjudicator's remuneration does not exceed the level originally proposed to the parties to the Dispute by the Adjudicator). If all the parties to the Dispute reject the terms of remuneration proposed by an Adjudicator another person shall be selected as an Adjudicator in accordance with paragraph 8.

11 Where the Adjudicator has been selected in accordance with paragraph 8 the referring Party shall refer the Dispute in writing to the Adjudicator by the Referral Notice in accordance with paragraph 12 within 7 days of the date of the Notice of Adjudication or within 2 days of the date of appointment of the Adjudicator, whichever is later. Upon

receipt of the Referral Notice, the Adjudicator must inform every Party to the dispute of the date that it was received.

12 The Referral Notice shall:

- 12.1 include the facts relied upon by the referring Party in support of its claim(s);
- 12.2 include a statement of the contractual and/or other basis relied upon by the referring Party in support of its claim(s);
- 12.3 include a calculation of the specific monetary amount (if any) that the referring Party is seeking to recover in relation to each and every claim that is the subject matter of the Dispute;
- 12.4 be accompanied by copies of, or relevant extracts from, this Agreement and such other documents on which the referring Party relies; and
- 12.5 include the addresses of all Parties to the Dispute.

The referring Party shall send copies of the Referral Notice and the documents referred to in this paragraph 12 to the other Party at the same time as he sends them to the Adjudicator.

13 If a matter disputed by the Manufacturer under or in connection with a Subcontract is also a matter disputed under or in connection with this Agreement, the Manufacturer may, with the consent of the Purchaser, refer the Subcontract dispute to the Adjudicator at the same time as the main Agreement referral. The Adjudicator shall then decide the disputes together and references to the parties for the purposes of the Dispute are interpreted as including the Subcontractor. The parties to the Dispute agree to consider and endeavour to agree in good faith any reasonable request by the Adjudicator for additional time to decide the main Agreement and Subcontract disputes.

14 The parties to the Dispute may jointly terminate the Adjudicator's appointment at any time. In such a case, or:

- 14.1 if the Adjudicator fails to give notice of his decision within the period referred to in paragraph 17 and the parties to the Dispute do not jointly extend time for his decision to be made in accordance with paragraph 17, or
- 14.2 if the period referred to in paragraph 17 is extended in accordance with paragraph 18 or by agreement by the parties to the Dispute and the Adjudicator fails to give notice of his decision within such extended period, and the parties to the Dispute do not jointly extend time for his decision to be made in accordance with paragraph 17, or
- 14.3 if at any time the Adjudicator declines to act or is unable to act as a result of his death, disability, resignation or otherwise,

a person shall be appointed to replace the Adjudicator in accordance with the provisions of paragraph 8. In the event of the parties to the Dispute failing to jointly appoint a

person willing and suitable to act as replacement Adjudicator within 3 days, any party to the Dispute may apply to the Nominating Authority to appoint a replacement Adjudicator. In any case where the Adjudicator is appointed as a replacement pursuant to this paragraph 14, the parties to the Dispute shall each send to the Adjudicator, as soon as reasonably practicable, copies of all documents supplied by them to the Adjudicator he replaces.

- 15 The Nominating Authority and its employees and agents shall not be liable to any Party for any act or omission unless the act or omission is in bad faith. The Parties also agree that any employee or agent of the Nominating Authority shall be similarly protected from liability.
- 16 The Party not making the referral may send to the Adjudicator within 14 days of the date of the referral, with a copy to the other Party, a written statement of the contentions on which it relies and any materials it wishes the Adjudicator to consider.
- 17 The Adjudicator shall reach his decision and gives notice of the decision to the parties to the Dispute within 28 days of the date of receipt of the Referral Notice mentioned in paragraph 11, or such longer period as is agreed by the parties to the Dispute after the Dispute has been referred to him. Notice of the Adjudicator's decision (stating that it is given under this Schedule 10) shall be in writing and shall include a summary of the Adjudicator's findings and a statement of the reasons for his decision.
- 18 The Adjudicator may extend the period of 28 days referred to in paragraph 17 by up to 14 days, with the consent of the Party by whom the Dispute was referred.
- 19 The Adjudicator's decision shall be binding upon the parties to the Dispute and the Adjudicator unless and until the Dispute is finally determined by legal proceedings, by arbitration (if the parties otherwise agree to arbitration) or by agreement. The Adjudicator may on his own initiative or on the application of a Party correct his decision so as to remove a clerical or typographical error arising by accident or omission. Any correction of a decision must be made within five days of the delivery of the decision to the parties to the dispute. As soon as possible after correcting a decision in accordance with this paragraph, the Adjudicator must deliver a copy of the corrected decision to each of the Parties to this Agreement. Any correction of a decision shall form part of the decision. The Adjudicator may in his decision allocate his remuneration and expenses between the Parties in accordance with paragraph 26. If the Adjudicator's decision changes any payment which is due under this Agreement, payment of the sum decided by the Adjudicator shall be due not later than seven days from the date of the decision or the date on which such payment is due in accordance with the provisions of this Agreement, whichever is the later.
- 20 The Adjudicator:
 - 20.1 shall act impartially and as an expert (not as an arbitrator) in the conduct of the reference and in reaching his decision;
 - 20.2 shall consider any relevant information submitted to him by any of the parties to the Dispute and make available to them any information to be taken into account in reaching his decision provided in accordance with the procedure (if any) which

- the Adjudicator may decide;
- 20.3 shall reach his decision in accordance with the law applicable to this Agreement;
- 20.4 may take the initiative in ascertaining the facts and the law in relation to the Dispute;
- 20.5 may with the consent of the parties to the Dispute seek legal or technical advice from consultants whose appointment by the Adjudicator (including terms of remuneration) is subject to the approval of the parties to the Dispute;
- 20.6 shall, where a translation of any document is required, decide by whom it should be provided in the event that the parties to the Dispute do not agree.
- 21 The Adjudicator shall decide in his discretion on the procedure to be followed in the adjudication. In particular he may, but is not obliged to:
- 21.1 convene meetings upon reasonable notice to the parties to the Dispute at which such parties and their representatives are entitled to be present;
- 21.2 submit lists of questions to the parties to the Dispute to be answered in such meetings or in writing within such reasonable time as he requires;
- 21.3 require the parties to the Dispute to provide him with such information and other facilities as he reasonably requires for the determination of the Dispute;
- 21.4 otherwise take such action and adopt such procedures as do not conflict with any of the provisions of this Agreement and are reasonable and proper for the just, expeditious and economical determination of the Dispute;
- 21.5 inspect any part of the LUL Network, the Manufacturer's Works or the facilities of any relevant Subcontractor.
- 22 The Adjudicator shall not be liable for anything done or omitted in the discharge or purported discharge of his functions as an adjudicator unless the act or omission is in bad faith. The Parties also agree that any employee or agent of the Adjudicator shall be similarly protected from liability.
- 23 All meetings are private and save as required by law the Adjudicator and the Parties shall keep confidential the Dispute, all information of whatever nature provided to him by or on behalf of any Party and his decision.
- 24 The Parties to a contract to which the Dispute relates shall continue to observe and perform all the obligations contained in such contract, notwithstanding any reference to the Adjudicator, and insofar as the same is consistent with any safety review procedures to which the parties to the Dispute are bound, give effect forthwith to the Adjudicator's decision in every respect unless and until as hereinafter provided the Dispute is finally determined by a court in any legal proceedings, by arbitration (if the parties otherwise agree to arbitration) or by agreement. Any party to the Dispute may apply to any

appropriate court for enforcement of the Adjudicator's decision. Neither any form of enforcement of the Adjudicator's decision nor any form of challenge to the enforcement of the Adjudicator's decision nor any dispute arising out of or in connection with such enforcement or challenge are regarded and treated as a Dispute for the purposes of this Schedule 10.

- 25 After the giving of a Notice of Adjudication, the Parties may seek to agree how the Adjudicator allocates the costs and fees excluding his remuneration and expenses which are dealt with in paragraph 26 below of the adjudication as between the Parties. If such an agreement is reached between the Parties, they shall notify the Adjudicator, who shall allocate costs and fees in accordance with such agreement. The Parties agree to be bound by the Adjudicator's allocation of costs and fees and to pay such costs and fees in accordance with the Adjudicator's direction unless and until the direction of the Adjudicator is set aside or revised by a court pursuant to any legal proceedings.
- 26 Subject to any agreement of the Parties, the Adjudicator shall allocate payment of his remuneration and expenses as between the Parties. Unless the Parties otherwise agree, the Adjudicator awards the payment of his remuneration and expenses on the general principle that costs should follow the event, except where it appears to the Adjudicator that in the circumstances this is not appropriate in relation to the whole or part of his remuneration or expenses. The Parties agree to be bound by the Adjudicator's allocation of payment of his remuneration and expenses and pay such remuneration and expenses in accordance with the Adjudicator's direction unless and until the direction of the Adjudicator is set aside or revised by a court pursuant to any legal proceedings.
- 27 All notices, written submissions and any other written communications between the parties to the Dispute and the Adjudicator shall either be delivered by hand, sent by facsimile or sent by first class pre-paid post or recorded delivery (airmail if posted to or from a place outside the United Kingdom) and, in each case, copied simultaneously (delivered or sent as aforesaid) to the other Parties. Copies by way of confirmation of all communications by facsimile between the parties to the Dispute and the Adjudicator shall also be sent by first class post (airmail if posted to or from a place outside the United Kingdom) not later than the next following Working Day the date of the original facsimile transmission.
- 28 All information of whatever nature provided to the Adjudicator by any party to the Dispute shall be copied to the other parties simultaneously.
- 29 If any party to a Dispute is dissatisfied with the Adjudicator's decision on that Dispute, that party may commence court proceedings for the final determination of the Dispute.

SCHEDULE 11: NOT USED

SCHEDULE 12: FORM OF ADVANCE PAYMENT BOND

REDACTED

SCHEDULE 13: FORM OF ESCROW AGREEMENT

REDACTED

SCHEDULE 14: QUENSH

See attached sheet.

SCHEDULE 15: FORM OF KEY SUBCONTRACTOR WARRANTY

THIS DEED is made on • 201•

BETWEEN:

- (1) **LONDON UNDERGROUND LIMITED** (company number 1900907) whose registered office is Windsor House, 42-50 Victoria Street, London SW1H 0TL (the "**Purchaser**" which expression shall include its successors and assigns);
- (2) • whose registered office is situate at • (the "**Subconsultant**"); and
- (3) • whose registered office is situate at • (the "**Manufacturer**").

WHEREAS:

- (A) The Manufacturer has entered into a contract dated • (the "**Contract**") with the Purchaser for the manufacture and supply of tamping machines (the "**Works**").
- (B) The Subconsultant has been invited to provide certain services (the "**Services**") in relation to the Works and [has entered] [will shortly enter] into a deed of appointment with the Manufacturer (the "**Appointment**") for the Services.

NOW IT IS AGREED:

1. Terms and expressions defined in the Appointment shall where the context so permits have the same meanings in this Deed. The following expressions have the meanings set out herein:
 - (a) "Connected Persons" means of any of the Subconsultant's employees, directors, consultants, agents, subcontractors, subconsultants, suppliers, shareholders, professional advisers (including lawyers, auditors, financial advisers, accountants and technical consultants) or underwriters;
 - (b) "Documents" means documents, items of information, data, reports, drawings, specifications, plans, software, designs, inventions and any other materials provided by or on behalf of the Subconsultant in connection with the Services (whether in existence or to be made);
 - (c) "Minimum Records" means all records relating to the Subconsultant's operations, method statements, costs and expenses, subcontracts and financial arrangements

and any document referred to therein or relating thereto and any similar records which the Purchaser may reasonably request.

- (d) "PFI Contractor(s)" means any and all of those contractors who have or will enter into contracts with the Purchaser under the private finance initiative;
- (e) "Prohibited Act" means:
 - (i) offering or agreeing to give to any servant, employee, officer or agent of the Purchaser or the Manufacturer any grant, gift or consideration of any kind as an inducement or reward for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of the Appointment or any other contract with the Purchaser or the Manufacturer or for showing or not showing favour or disfavour to any person in relation to the Appointment or any other contract with the Purchaser or the Manufacturer;
 - (ii) entering into the Appointment or any other contract with the Purchaser or the Manufacturer in connection with which commission has been paid or has been agreed to be paid by the Subconsultant or on his behalf or to his knowledge unless, before the relevant contract or document is entered into, particulars of any such commission and the terms and conditions of any such contract or document for the payment thereof have been disclosed in writing to the Purchaser or the Manufacturer;
 - (iii) committing any offence under the Prevention of Corruption Acts 1889-1916 and/or the Bribery Act 2010, under any law or legislation creating offences in respect of fraudulent acts, or at common law in respect of fraudulent acts in relation to the Appointment or any other contract with the Purchaser or the Manufacturer; or
 - (iv) defrauding or attempting to defraud the Purchaser or the Manufacturer.
- (f) "Safety Breach" means a material breach of the Appointment caused by the gross incompetence, wilful default or reckless disregard to safety of the Subconsultant (or anyone employed or acting on behalf of the Subconsultant) which has materially affected (or which had the potential to materially effect) the safe provision of the Services, the safe operation of the Underground Network and/or the safety of the Purchaser's employees, or the public or any other persons.

- (g) "TfL Group" means Transport for London, a statutory body set up by the Greater London Authority Act 1999 and any of its subsidiaries and their subsidiaries.
 - (h) "Underground Network" means the stations and depots (wherever situate), assets, systems, track and other buildings, which are used in the maintenance and provision of the underground service known as the "London Underground".
- 2. The Subconsultant warrants and undertakes to the Purchaser that;
 - (a) he has exercised and will continue to exercise all the reasonable skill, care and diligence required by the Appointment in the performance of his duties to the Manufacturer under the Appointment; and
 - (b) he has complied with and will continue to comply with the terms of the Appointment.
- 3. The Subconsultant warrants to the Purchaser that he has not selected or specified for use, and that he will not select or specify for use or allow to be used any substance or material which are not in accordance with the Standards, general good building and engineering practice and the requirements of the [specification].
- 4. The Subconsultant further warrants and undertakes to the Purchaser that:
 - (a) the Services will on Completion satisfy all performance or output specifications and other requirements contained or referred to in the Appointment;
 - (b) he has exercised and will continue to exercise all reasonable skill, care and diligence in the selection of goods and materials for the Services in so far as such goods and materials have been or will be selected by or on behalf of the Subconsultant;
 - (c) the Services are integrated with the designs of the Purchaser, the Manufacturer and others as specified in the Appointment;
 - (d) the Services will on Completion comply with all applicable law and all relevant Standards;
 - (e) he shall not commit a Prohibited Act and/or Safety Breach; and
 - (f) the Services will be carried out and completed timeously in accordance with the time constraints set out in the Appointment.

5. The Subconsultant warrants and undertakes to the Purchaser that he has maintained and will continue to maintain all insurances required to be maintained pursuant to the terms of the Appointment and that he has professional indemnity insurance with a limit of indemnity of not less than £[] in respect of each and every claim which may be made against the Subconsultant in relation to the Services. The Subconsultant shall maintain such professional indemnity insurance for a period of 12 years from Completion of the whole of the Works provided that such insurance remains available at commercially reasonable rates and shall notify the Purchaser forthwith if such insurance ceases to be so available. When deciding whether such insurances are available at commercially reasonable rates, no account shall be taken of any increase in the premium or imposition of terms which arise as a result of the Subconsultant's insurance claims record.

6. As and when reasonably requested by the Purchaser, the Subconsultant shall produce for inspection documentary evidence that the insurances referred to in Clause 5 are being properly maintained and that payment has been made of the last premiums due in respect of such insurances.

7. To the extent that the intellectual property rights in any and all Documents have not already vested in the Purchaser or the Manufacturer, the Subconsultant grants to the Purchaser an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any and all Documents and all amendments and additions to them and any works, designs or inventions of the Subconsultant incorporated or referred to in them for the following purposes:
 - (a) understanding the Works;
 - (b) operating, maintaining, repairing, modifying, altering, enhancing, re-figuring, correcting and replacing the works, any Equipment or Plant and Materials;
 - (c) extending, interfacing with, integrating with, connection into and adjusting the works and/or the works of Others;
 - (d) enabling the Purchaser to carry out the operation, maintenance, repair, renewal and enhancement of the Underground Network;
 - (e) enabling the Purchaser to perform his function and duties as Infrastructure Manager and Operator of the Underground Network;
 - (f) executing or completing the Works; and
 - (g) designing, testing and commissioning the Works

provided always that the Subconsultant shall not be liable for the consequences of any use of the Documents as aforesaid for any other purpose. Such licence shall carry the right to grant sub-licences and shall be freely transferable to third parties without the prior consent of the Subconsultant.

8. The Subconsultant agrees:
 - (a) on request at any time to give the Purchaser or any persons authorised by the Purchaser access to the material referred to in Clause 7 and at the Purchaser's expense to provide copies of any such material; and
 - (b) at the Subconsultant's expense to provide the Purchaser with a set of all such material on Completion of the Services.
9. If called upon to do so by the Purchaser, the Subconsultant shall provide the Purchaser with such information relating to the Services as the Purchaser may reasonably require including without limitation copies of and extracts from Documents prepared or provided by the Subconsultant for the purposes of the Works provided that neither the provision of such information nor any inspection of the Works by the Purchaser or its agents nor the approval by the Purchaser or its agents of any material shall limit or discharge, or be deemed to limit or discharge the obligations of the Subconsultant under the Appointment or relieve the Subconsultant from any liability which he has in relation to the Services.
10. The Subconsultant warrants and undertakes to the Purchaser that he shall maintain and retain the Minimum Records for a minimum of twelve (12) years from Completion of the Works with respect to all matters for which the Subconsultant is responsible under the Appointment. The Subconsultant further warrants and undertakes to the Purchaser that the Appointment contains open-book audit rights in favour of the Purchaser and its authorised representatives and that he shall undertake his obligations and exercise his rights under the Appointment on an open-book basis. The Purchaser and his authorised representatives may from time to time audit on an open-book basis and check and take copies of and extracts from any document or record of the Subconsultant including, without limitation the Minimum Records. The Subconsultant further warrants that it shall promptly provide all reasonable co-operation in relation to any audit or checking including, without limitation, granting access to premises, equipment, systems or senior personnel and making documents available. Without prejudice to the foregoing, the Subconsultant acknowledges and agrees that the Purchaser may audit and check any and all records as are necessary in order to monitor compliance with the Subconsultant's obligations under the Appointment with respect to Prohibited Acts and Safety Breaches at any time during performance of the Appointment and during the 12 years thereafter.

11. The Subconsultant shall provide such assistance to the Purchaser as it may reasonably require in connection with the Services.
12. In the event that the Contract or the employment of the Manufacturer thereunder is determined for any reason whatsoever including but not limited to the insolvency or winding-up of the Manufacturer (voluntary or otherwise), the Subconsultant shall without allowing any break or intermission to occur in the performance of his duties:
 - (a) continue to observe and carry out his obligations under the Appointment and this Deed;
 - (b) if so required by notice in writing from the Purchaser treat the Purchaser as client under the Appointment to the exclusion of the Manufacturer whereupon all rights and obligations of the Manufacturer under the Appointment shall thereafter be exercisable and performed by the Purchaser; and
 - (c) accept and enter into any deeds or other documents as are required to put into legal effect any further novation of the Appointment reasonably required by the Purchaser.
- 13.1 The Subconsultant warrants and undertakes to the Purchaser that he will promptly inform the Purchaser of any default by the Manufacturer under the Appointment and that he will not, without first giving the Purchaser at least 21 days' notice in writing, exercise any right he may have to terminate the Appointment or to treat the same as having been repudiated by the Manufacturer or to suspend performance of his obligations under the Appointment.
- 13.2 The Subconsultant's right to terminate the Appointment or to treat it as having been repudiated or to suspend performance of his obligations thereunder shall cease if within the period of the aforesaid notice and subject to Clause 14 hereof the Purchaser shall have given notice in writing to the Subconsultant requiring the Subconsultant to accept the instructions of the Purchaser or its appointee to the exclusion of the Manufacturer in respect of the carrying out and Completion of the Services upon the terms of the Appointment.
14. The provisions of Clauses 12 and 13 hereof are conditional upon any notice given by the Purchaser pursuant thereto stating that the Purchaser or its appointee accepts liability for payment of the last unpaid invoice submitted by the Subconsultant. Upon the issue of any such notice by the Purchaser, the Appointment shall continue in full force and effect as if no right of termination on the part of the Subconsultant had arisen and the Subconsultant shall be liable to the Purchaser or its appointee under the Appointment in lieu of its liability to the Manufacturer. If any notice given by the Purchaser under Clauses 12 or 13 requires the Subconsultant to accept the instructions of the Purchaser's appointee, the Purchaser

shall be liable to the Subconsultant as guarantor for the payment of all sums from time to time due to the Subconsultant from the Purchaser's appointee. For the avoidance of doubt neither the Purchaser nor his appointee shall be liable for any work carried out prior to the date of the Purchaser's notice.

15. The Manufacturer has agreed to be a party to this Deed for the purposes of acknowledging that the Subconsultant shall not be in breach of the Appointment by complying with the obligations imposed on the Subconsultant by Clauses 12 or 13.
16. This Deed may be assigned by the Purchaser to any member of the TfL Group without limitation and otherwise to any other person on two occasions without the consent of the Subconsultant being required and the Subconsultant shall do all such acts, deeds and things as may be reasonably necessary to give effect to any such assignment. No further assignment shall be permitted without the consent of the Subconsultant.
17. The Subconsultant shall not be entitled to contend that any person to whom this Deed is assigned in accordance with Clause 16 is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed (whenever happening) by reason that such person is an assignee and not a named promisee under this Deed.
18. The liability of the Subconsultant under this Deed shall cease 12 years following Completion of the whole of the Works.
- 19.1 Without limitation to Clause 2 above, the Subconsultant hereby warrants to the Purchaser that:
 - (a) except as provided under deeds of warranty required pursuant to the Appointment, it shall not, without the prior written approval of the Purchaser, at any time for any reason disclose to any person or publish or make any statement concerning the Appointment, this Deed or the project to which the Services relate;
 - (b) he shall treat all information obtained under, arising from or in connection with the Appointment, this Deed and the project as confidential, and that other than for the purpose of providing the Services, it shall not disclose any information or documents concerning the Appointment to any other person; and
 - (c) he shall not, without the prior written consent of the Purchaser, disclose any information obtained by him concerning the Purchaser or the TfL Group to any other person.

- 19.2 The Purchaser may require as a precondition to the granting of such consent that any such third party provides a confidentiality undertaking in terms satisfactory to the Purchaser.
- 19.3 Clause 19.1 does not apply to the disclosure of:
- (a) any information which is already in the public domain at the time of its disclosure other than by breach of these provisions,
 - (b) any information disclosed by the Subconsultant to any Connected Persons provided that such recipients agree in writing to be bound by the terms of this confidentiality provision; and
 - (c) any information which is required to be disclosed by any applicable law or statutory requirement, the regulations of any stock exchange, any taxation authorities or by an order of a court or other tribunal of competent jurisdiction or any relevant regulatory body.
- 19.4 The Subconsultant shall procure that the Connected Persons comply with the provisions of this Clause 19 and is responsible to the Purchaser for any act or omission of any Connected Person in breach of such obligations.
- 19.5 The Subconsultant shall notify the Purchaser promptly if the Subconsultant becomes aware of any breach of confidence by a Connected Person and shall give the Purchaser all assistance the Purchaser may reasonably require in connection with any proceedings the Purchaser may bring or other steps the Purchaser may take against that Connected Person or any other person for such breach of confidence.
- 19.6 The Subconsultant acknowledges that damages would not be an adequate remedy for any breach of this Clause 19 by the Subconsultant and that (without prejudice to all other remedies to which the Purchaser may be entitled to as a matter of law) the Purchaser shall be entitled to any form of equitable relief to enforce the provisions of this Clause 19.
- 19.7 At the Purchaser's request and in any event upon the termination or expiry of the Appointment, the Subconsultant shall promptly deliver to the Purchaser or destroy as the Purchaser may direct all documents and other materials in the possession, custody or control of the Subconsultant (or the relevant parts of such materials) that bear or incorporate the whole or any part of the confidential information and if instructed by the Purchaser in writing, remove all electronically held confidential information, including the purging of all disk-based confidential information and the reformatting of all disks.
- 20.1 The Subconsultant shall owe no greater obligations to the Purchaser than he owes to the Manufacturer under the Appointment.

- 20.2 The Subconsultant shall be entitled in any action or proceedings by the Purchaser to rely on any limitation in the Appointment and to raise the equivalent rights in defence of liability as he would have against the Manufacturer thereunder.
21. The rights and benefits conferred upon the Purchaser by this Deed are in addition to any other rights and remedies the Purchaser may have against the Subconsultant including without limitation any remedies in negligence.
22. The Manufacturer agrees that he will not take any steps which would prevent or hinder the Purchaser from exercising his rights under this Deed and confirms that the rights of the Purchaser in Clauses 12 and 13 override any obligations of the Subconsultant to the Manufacturer under the Appointment.
23. Any notice to be given hereunder shall be deemed to be duly given if it is in writing and delivered by hand at or sent by registered post to the registered office or principal place of business in the United Kingdom for the time being of the party to be served and in the case of any such notice sent by registered post shall be deemed to have been received 48 hours after being posted.
- 23.1 Any dispute or difference arising out of or in connection with this Deed may be referred to adjudication in accordance with Schedule 10 of the Contract which shall be deemed to be included in this Deed as if it were recited herein in full (with the necessary changes).
- 23.2 The Adjudicator's decision shall be binding on the parties until the dispute or difference is finally determined by the Courts in accordance with Clause 23.3.
- 23.3 The Courts of England and Wales shall have jurisdiction over any dispute or difference arising out of or in connection with this Deed. The law of England and Wales shall be the proper law of this Deed.
24. Nothing in this Deed confers or is intended to confer on any third party any benefit or the right to enforce any term of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999.

IN WITNESS whereof this Deed has been executed and unconditionally delivered as a Deed by the parties the day and year first above written.

THE COMMON SEAL of
LONDON UNDER GROUND LIMITED
was affixed to **THIS DEED**
in the presence of:

Signature of Authorised Signatory

Print name of Authorised Signatory

THE COMMON SEAL of
[THE SUBCONSULTANT]
was affixed to **THIS DEED**
in the presence of:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary

**[EXECUTED AND DELIVERED AS
A DEED by
[THE CONTRACTOR]**

acting by:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary