

DATED 23 December 2015

LONDON UNDERGROUND LIMITED (1)

and

CLESHAR CONTRACT SERVICES LIMITED (2)

FRAMEWORK AGREEMENT

for Lot 2 – LUMP SUM PACKAGED WORKS

CONTRACT REFERENCE NUMBER TfL00249/Lot 2/

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SECTION 1

FORM OF AGREEMENT

This Agreement is made on 23 December 2015

BETWEEN

- (1) **London Underground Limited**, a company registered in England and Wales under number 01900907 and having its registered office at Windsor House, 42-50 Victoria Street, London SW1H 0TL (the "**Company**" which expression shall include its successors and assigns); and
- (2) **Cleshar Contract Services Ltd** (company number 02742648) whose registered office is Heather Park House North Circular Road, London NW10 7NN (the "**Contractor**").

RECITALS:

- (1) The Company is an expert in the provision of track maintenance and upgrade works.
- (2) In reliance on that expertise, the Company wishes to appoint the Contractor to provide such works to it and other members of the TfL Group.
- (3) When the Company or any other member of the TfL Group requests works from the Contractor, and the Contractor is able to provide such works, the relevant parties will enter into a separate works contract in accordance with this Agreement.
- (4) Each works contract will incorporate the terms and conditions set out in this Agreement.

WHEREBY IT IS AGREED as follows:

1. General

- 1.1. This Agreement does not place the Company or any member of the TfL Group under any obligation to procure the Services from the Contractor at a particular time or at all. This Agreement is not an exclusive arrangement and nothing in this Agreement operates to prevent the Company or any member of the TfL Group from engaging any other organisation or person to provide services or works similar to or the same as the Works.
- 1.2. The following documents shall comprise the Agreement:
 - (a) this Form of Agreement (Section 1);
 - (b) the Framework Particulars (Section 2); and
 - (c) Conditions of Contract (including the Schedules) (Section 3);

together with all other documents included or incorporated by reference in these documents.

2. Commencement and duration

- 2.1. The Agreement shall commence on the Commencement Date and continues in force for the Term unless terminated earlier in accordance with this Agreement.
- 2.2. Expiry or termination of the Agreement shall not, in and of itself, give rise to the expiry or termination of the Contract and each Contract shall continue for the term set out in the relevant Contract unless terminated earlier in accordance with this Agreement.
- 2.3. The Company shall at its own discretion be entitled pursuant to the process set out in Section 2 to extend the Term, provided that the aggregate extension to the Initial Term shall not exceed the period specified in the Framework Particulars. The provisions of the Agreement shall continue to apply mutatis mutandis to any such extension of the Term. On receipt of such notice from the Company by the Contractor, the Agreement shall be deemed extended accordingly.

3. Order Procedure

- 3.1. At any time during the term of the Agreement, the Company may identify the Works which at its sole discretion it wishes to let under the terms of the Agreement. Any decision by the Company to place an Order under the terms of the Agreement shall be preceded by a Mini-Competition save where the Company, having considered the Applicable Laws and Standards (including the Utilities Contracts Regulations 2006), considers it appropriate to issue an Order to one or more framework suppliers without holding a Mini-Competition.
- 3.2. If pursuant to Clause 3.1, the Company wishes to be provided with a Proposal it shall issue to the Contractor a Request Form, specifying the Works it requires.
- 3.3. On receipt of the Request Form, the Contractor shall:
 - (a) within two (2) Working Days of the date of issue of the relevant Request Form, confirm receipt of such Request Form; and
 - (b) by the date specified in the relevant Request Form (or if no date is specified within seven (7) Working Days of the date of issue of such relevant Request Form) or by such other date agreed in writing between the Company and the Contractor:
 - (i) complete and issue to the Company a Proposal which shall include in full the information requested by the Company in the relevant Request Form and full details of the basis on which the prices have been calculated; or
 - (ii) notify the Company that it does not intend to submit a Proposal.

- 3.4. The Contractor acknowledges and agrees that a Proposal remains valid for at least six (6) months (or such longer period as may be specified in the relevant Request Form) from the date such Proposal is submitted to the Company.
- 3.5. If the Company accepts a Proposal issued pursuant to Clause 1.1(b)(i), it shall notify the Contractor of its intention to place an Order for the Works to be performed and each Order so given shall be final unless varied in accordance with terms of the Agreement or the relevant Contract.
- 3.6. Each Order shall incorporate the terms of the Agreement and shall form a separate and distinct contract between the parties to it and herein referred to as a "**Contract**".
- 3.7. A Request Form and anything prepared or discussed by the Company constitutes an invitation to treat and does not constitute an offer capable of acceptance by the Contractor. The Company is not obliged to consider or accept any Proposal submitted by the Contractor.
- 3.8. The Agreement does not oblige the Company to place an Order or enter into any Contract with the Contractor.
- 3.9. The Contractor is responsible for all and any costs, charges and expenses arising from or associated with the procurement process in this Clause 4 (the "Procurement Process"), and the Company shall not be liable for any costs, charges or expenses borne by or on behalf of the Contractor whether or not the Contractor is awarded a Contract (which for the avoidance of doubt includes any costs, charges and expenses arising from or associated with an abortive or cancelled Procurement Process).

4. Strategic Labour Needs and Training

- 4.1. The Contractor shall comply with the strategic labour needs and training requirements set out in Schedule 14 to the Conditions of Contract.

5. Priority of Documents

- 5.1. The documents forming the Agreement and each Contract are to be taken as mutually explanatory of one another. Subject to Clause 5.2, in the event of any ambiguity, discrepancy or inconsistency between the provisions of all or any of the documents, their priority shall be as follows:

- (a) this Form of Agreement;
- (b) the Framework Particulars;
- (c) the Conditions of Contract and, where relevant, Schedule 10 (Design); and
- (d) the remaining Schedules excluding Schedule 10 (Design).

SECTION 2

THE FRAMEWORK PARTICULARS

Items of Framework Particulars

- (a) The Commencement Date is 21st December 2015
- (b) The Initial Term is four (4) years.
- (c) The extension to the Initial Term shall be no greater than Two (2) Years.

1.1 TfL may at its sole discretion extend the duration of the Contract by up to two (2) years on the same terms (save as to the Schedule of Rates, which shall for the additional period be as set out in paragraph 1.3 to 1.6 below). TfL shall notify the Contractor in writing whether or not it is considering such an extension by no later than the date three years after the Contract Start Date.

1.2 Following the issue of a notice under paragraph 1.1, the Schedule of Rates for such a contract extension may, at the discretion of TfL, be subject to review. The objective of such a review is to ascertain the competitiveness of the Schedule of Rates against the market at that time.

1.3 Any exercise which may be carried out at TfL's option and by TfL in accordance with paragraph 1.2, will be carried out in good faith on the basis of an objective and like-for-like comparison by comparing the standards and prices of Services equivalent to the Services and the costs of providing them in similar circumstances by reputable contractors. This review will be conducted promptly following issue of the notice under Paragraph 1.1 and the Contractor shall provide TfL with all information and assistance reasonably required for this purpose.

1.4 If any such review is carried out, the Parties shall if so required by the Company negotiate and endeavour in good faith to agree any consequential amendments to the Schedule of Rates for the extension period.

1.5 The review and negotiations referred to in Paragraphs 1.1 to 1.4 shall be completed by the date three (3) years and six (6) months after the Contract Start Date.

1.6 If no agreement is reached to vary the Schedule of Rates in accordance with Paragraph 1.5 then the agreed Schedule of Rates for Year Four (4) shall be subject to adjustment to reflect any change in the RPIX between the third (3rd) and fourth (4th) anniversaries of the Contract Start Date.

1.7 Not later than the date three (3) years after the Contract Start Date the Contract Manager on behalf of TfL shall issue a notice to the Contractor confirming whether or not TfL wish in principle to exercise the option to extend the Framework Agreement. Such notice shall set out:

- i. the period of the extension up to the two (2) year maximum;
- ii. whether TfL wish in principle to proceed in accordance with any agreement reached pursuant to Paragraph 1.4; or

iii. whether TfL wish in principle to proceed in accordance with Paragraph 1.6

1.8 Where Paragraph 1.7(ii) applies the Parties shall endeavour in good faith to agree an amendment agreement setting out the agreed terms of the extension and no extension shall take effect and the Framework Agreement shall not be or be deemed to be extended until an amendment agreement has been agreed and signed by the duly authorised representatives of the Parties.

1.9 Where Paragraph 1.7(iii) applies the Contract Manager on behalf of TfL shall issue a notice formally confirming the extension not later than the date six (6) months prior to the fourth (4th) anniversary of the Contract Start Date.

(d) The Defects Liability Period is twelve (12) months following the issuance of the Order Completion Certificate.

(e) If not £10,000,000 per occurrence, the minimum sum for public and product liability insurance in accordance with Clause 17.2(ii) of the Conditions of Contract is: £10,000,000.

(f) The Interest Rate pursuant to Clause 31.2 is 8% above the Bank of England's official Base Rate

SECTION 3

CONDITIONS OF CONTRACT FOR WORKS

1. General Provisions

1.1. Definitions

In this Agreement and each Contract the following words and expressions shall have the following meanings:

"Agreement" means the agreement as described in Clause 1.2 of The Form of Agreement (including any Schedules, annexes or attachments) as may be amended from time to time in accordance with its terms.

"Applicable Laws" means, depending on the context, all or any laws, statutes, proclamations, recommendations, codes of practice, by-laws, directives, Regulations, statutory instruments, rules, orders, rules of court, delegated or subordinate legislation, rules of common law or any European Union legislation (including any declarations of conformity), at any time or from time to time in force in the United Kingdom and which are or may become applicable to the Agreement and each Contract, any agreement or document referred to in the Agreement and each Contract, or the Works.

"CDM Regulations" means the Construction (Design and Management) Regulations 2015 including any approved code of practice, as may be amended, supplemented or replaced from time to time and any guidance requirements issued by the Health and Safety Executive.

"Cessation Plan" means a plan agreed between the Parties or determined by the Company in accordance with Clause 27.1 to give effect to a Declaration of Ineffectiveness.

"Commencement Date" means the date specified as such in the Framework Particulars.

"Company" means the entity named as such in the Agreement and its legal successors in title and assigns.

"Company's Representative" means the person appointed by the Company and named as such in the relevant Order.

"Competent Authority" means any legislative, judicial, regulatory or administrative body or agency (or any subdivision of any of them) of the United Kingdom or of the European Union or any supranational body which has rulemaking power or whose directives, decisions,

instructions, rulings, laws or regulations are directly enforceable against either of the Parties in connection with the performance of the Agreement or any Contract.

"Conditions of Contract" means the Conditions of Contract incorporated in Section 3 of the Agreement, including the Schedules and other documents or parts of other documents expressly referred to in them.

"Confidential Information" means any information given orally or in writing which is a trade or business secret or method; technical know how; personal data which relates to a living individual who can be identified from that information; information relating to any crime, breach of statutory duty or criminal investigations; information relating to the protection of prominent persons, national security, counter-terrorism or other information relating to the provision of police services for any national or international purpose; information relating to the Company's obligations in accordance with sections 118 to 121 of the Railways Act 1993; confidential financial information including but not limited to taxation information and returns to shareholders; and any other information that a party would reasonably expect to be able to protect by virtue of business confidentiality provisions.

"Consequential Loss" means in relation to a breach of this Agreement or any Contract or other circumstances in which a party is entitled to recover any costs, expenses or liabilities suffered or incurred, loss of profit, loss of revenue, loss of contract, loss of goodwill and/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 loss would be likely to be suffered as a result of such breach.

"Contractual Documentation" means all documentation and information agreed to be delivered by the Contractor in accordance with each Contract including without limitation records, reports, documents, papers, unpatented designs, drawings, data specifications, manufacturing or work processes, testing procedures, relevant computer data and all other technical business and similar information originated by or on behalf of the Contractor in accordance with each Contract.

"Contract" means an agreement for the provision of Works by the Contractor to the Company or any member of the TfL Group agreed in accordance with Clause 3 of the Form of Agreement.

"Contract Information" means (i) each Contract and the Agreement in its entirety (including from time to time agreed changes to the Agreement or any Contract) and (ii) data extracted from the invoices submitted pursuant to Clause 15.1 which shall consist of the Contractor's name, the expenditure account code, the expenditure account code description, the document number, the clearing date and the invoice amount.

"Contractor Personnel" means all employees, agents or consultants of the Contractor and the Contractor's subcontractors from time to time.

"Contract Reference Number" means the number shown on the front page of this Agreement.

"Contract Variation Procedure" means the contract variation procedure set out in Schedule 5

"Contractor" means the entity named as such in the Agreement.

"Contractor's Representative" means the person appointed by the Contractor and named as such in the relevant Order.

"Declaration of Ineffectiveness" means a declaration of ineffectiveness in relation to the Contract made by a court of competent jurisdiction in accordance with Regulation 99 of the Public Contracts Regulations 2015 (as amended) or Regulation 45(k) of the Utilities Contracts Regulations 2006 (as amended).

"Defects Liability Period" means in respect of the Works the period identified as such in the Framework Particulars during which period the Contractor is responsible for making good defects and damage in accordance with Clause 12.

"Designed Portion" means the portion of the Works to be designed by the Contractor as stated in the relevant Order.

"Dispute" has the meaning given to the term in Clause 20.1.

"Documentation" means all documents, items of information, data, reports, drawings, specifications, plans, software, designs, inventions and/or other material produced or supplied by or on behalf of the Contractor in the performance of the Contract and whether in paper form or stored electronically.

"Environmental Claim" means receipt by the Company in connection with any pollution or contamination of the environment of:

- (a) any written claim, demand, suit or notice from a third party, including a Regulatory Authority (**"Regulatory Authority"** means any government entity or other public or quasi public authority or privatised utility having responsibility for any matters concerning the environment, or Environmental Law) or any order of the court of competent jurisdiction in connection with an alleged breach of Environmental Law; or
- (b) any charge or condition imposed by any Regulatory Authority or any notice served by any Regulatory Authority requiring Remediation (including any written indication from any Regulatory Authority that a requirement to carry out Remediation will be imposed on the Company unless the Company agrees to carry out Remediation voluntarily).

"Environmental Law" means all and any laws, including common law, legislation, codes of practice, notices, judgments, decrees, regulations, applicable clean-up standards, circulars, guidance notes (statutory or otherwise), as may be enacted, adopted, amended or

supplemented, concerning the protection of human health, or the environment or the conditions of the work place.

"Ethical Sourcing Policy" has the meaning given to the term in Clause 11.3.

"Excepted Liabilities" means the liability of the Contractor for:

- (a) any Liquidated Damages payable;
- (b) any abatements for performance levied in accordance with this Agreement or any Contract;
- (c) losses, expenses, liabilities, claims, demands, actions, costs or charges against which the Contractor is entitled to an indemnity under any policy of insurance (or would have been entitled but for any breach or failure to maintain such insurance);
- (d) losses caused by fraudulent acts or acts of a criminal nature;
- (e) losses caused by death or personal injury to any person; and
- (f) Losses caused by the Contractor committing a Prohibited Act or Safety Breach.

"Existing Contracts" means any and all contracts, whether current, expired or terminated, pursuant to which works have been provided by the Contractor (in the capacity of contractor or subcontractor) to the Company and/or any other member of the TfL Group.

"Form of Agreement" means the Form of Agreement contained in Section 1.

"Framework Particulars" means the Framework Particulars contained in Section 2.

"Free Issue Materials" means materials, apparatus and components supplied by the Company to the Contractor without charge and intended for use by the Contractor exclusively in the provision of Works under each Contract.

"Greater London" has the meaning ascribed to it in the GLA Act.

"Greater London Authority Act" or **"GLA Act"** means the Greater London Authority Act 1999 relating to the formation of the Greater London Authority.

"HGCRA" means the Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009 or as further amended or supplemented.

"Infrastructure Manager" has the meaning ascribed to it in the Railways and Other Guided Transport Systems (Safety) Regulations 2006.

"Initial Term" means the period of time specified as such in the Framework Particulars.

"Intellectual Property Rights" means any intellectual property rights in any part of the world and includes but is not limited to all rights to, and interests in, any patents (including supplementary protection certificates), designs, trade-marks, service marks, trade and business names and get up, moral rights, domain names, copyright and neighbouring rights, databases, semi-conductors, know how, knowledge, trade secrets and any other proprietary rights or forms of intellectual property (protectable by registration or not) whether registered or not in respect of any technology, technique, concept, idea, style, scheme, formula, system, logo, mark or other matter or thing, existing or conceived, used, developed or produced by any person, together with all applications and rights to apply for registration or protection of such rights, Confidential Information relating to those rights, material embodying those rights and in each case rights of a similar or corresponding character.

"Interest Rate" means the percentage above the base rate from time to time of the Bank of England as specified in the Framework Particulars at Section 1.

"Key Personnel" means Contractor personnel identified as such in Key Personnel

and any changes to the same that are made in accordance with Clause 5.

"Liquidated Damages" means the liquidated damages identified as such in the Framework Particulars.

"London Living Wage" means the basic hourly wage (before tax, other deduction and any increase for overtime) as may be revised from time to time by the Living Wage Foundation, the Mayor or any other relevant Competent Authority.

"Losses" any expense, liability, loss, claims, fines, damages, costs (including reasonable legal and other professional fees and disbursements), penalties, settlements and judgments whatsoever or howsoever arising incurred by the Company, its subcontractors, employees or agents or any other member of the TfL Group.

"Mayor" means the person from time to time holding the office of Mayor of London as established by the GLA Act.

"Mini-Competition" means a competitive process which the Company may from time to time utilise to select a Contractor to provide the Works.

"Notified Sum" has the meaning given to that term in Clause 15.5.

"Operator" means a person with statutory duties to provide or secure the provision for Greater London of public passenger services by railway or a person who secures the provision of such services through appropriate contractual arrangements.

"Order" means an order which, unless the parties agree otherwise, shall be substantially in the form set out in Schedule 2, entered into by the Company and the Contractor.

"Order Completion Certificate" means the certificate to be given by the Company to the Contractor in accordance with Clause 6.1 in the form set out in 0.

"Order Completion Date" means the date by which the Works are to be performed as specified as such in each Order or such other date as may be agreed between the parties in accordance with the terms of each Contract.

"Order Price" means the amount stated under the heading "Order Price" in the relevant Order.

"Order Programme" means the programme of work set out in each Order for the provision of the Works which has been submitted by the Contractor and approved by the Company. The programme may be varied from time to time subject to the terms and conditions of the relevant Contract or otherwise by agreement in writing between the Contractor and the Company.

"Order Specification" means the specification appended to the relevant Order.

"Plant and Materials" means any plant, materials, apparatus, components or other items which are intended to be included in the Works.

"Prescribed Period" has the meaning given to that term in Clause 15.6.

"Prohibited Act" means:

- (a) offering or agreeing to give to any servant, employee, officer or agent of the Company any gift or consideration of any kind as an inducement or reward:
 - (i) for doing or not doing (or having done or not having done) any act in relation to the obtaining or performance of the Agreement or any Contract or any other contract with the Company; or
 - (ii) for showing or not showing favour or disfavour to any person in relation to the Agreement or any Contract or any other contract with the Company; or
- (b) entering into the Agreement or any Contract or any other contract with the Company with which commission has been paid or has been agreed to be paid by the Contractor or on its behalf or to its knowledge unless, before such Contracts were entered into, particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Company; or
- (c) committing an offence:
 - (i) under the Bribery Act 2010;

(ii) under legislation creating offences in respect of fraudulent acts; or

(iii) at common law in respect of fraudulent acts,

in relation to the Agreement or any Contract or any other contract with the Company; or

(d) defrauding or attempting to defraud the Company.

"Proposal" means the Contractor's offer to provide the Works in response to a Request Form.

"Quality and Safety Plan" means the quality and safety plan set out in Schedule 6 as amended from time to time.

"Remediation" means any or all investigation, sampling, analysing, removing, remedying, cleaning up, abating, containing, controlling or ameliorating the presence in or effects on the Environment of any contamination or pollution including, but without limitation, the removal, treatment and disposal of material and the treatment and monitoring of ground waters and gases and emissions and the obtaining of expert technical, legal and other professional advice (including all project management functions).

"Request Form" means the request form produced by the Company detailing the Company's requirements for a Proposal from the relevant Contractor.

"Responsible Procurement Policy" means the policy document entitled the "GLA Group Responsible Procurement Policy" dated March 2006 and updated in January 2008 and as may be amended.

"Safety Breach" means a material breach of any obligation under the Agreement or any Contract caused by the gross incompetence of or wilful default by the Contractor (or anyone employed by or acting on behalf of the Contractor) or any of its agents which has materially affected the safe operation of the Underground Network or the safety of the Company's customers, staff or any other person.

"Site" means the place or places as specified in the Framework Particulars provided or made available by the Company where any part of the Works is to be carried out by the Contractor or to which the Works are to be delivered, together with so much of the area surrounding the same as the Contractor shall, with the consent of the Company, use as a laydown area in connection with the Works other than merely for the purposes of access.

"Specification" means the description of the Works set out in Schedule 1 and the relevant Order Specification including any subsequent amendments made in accordance with this Agreement.

"Standards" means the Category 1 and 2 Standards and Draft Category 1 and 2 Standards and such European, British and International Standards and associated Codes of Practice required

by the Company for the Contractor to provide the Works in accordance with good industry practice. A full set of current Standards is available for the Contractor's use on-line at the LU Standards e-library or as notified to the Contractor.

"Term" means the duration of the Agreement which, unless terminated earlier in accordance with this Agreement, shall be the Initial Term as may extended pursuant to clause 2.3 of the Form of Agreement.

"TfL or Transport for London" means Transport for London, a statutory body set up by the Greater London Authority Act.

"TfL Group" means Transport for London and all of its subsidiaries and their subsidiaries (as defined in Section 1159 of the Companies Act 2006) from time to time, together with Crossrail Limited (company number 04212657) and reference to any **"member of the TfL Group"** refers to TfL or any such subsidiary.

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

"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 "London Underground".

"Variation" means any addition, omission or other change to the Specification.

"Variation Order" means the written authorisation from the Company to a Variation Proposal in accordance with the Contract Variation Procedure.

"Working Day" means any day of the week (other than Saturday or Sunday) which is not an English bank holiday, or public holiday.

"Works" means all of the works to be undertaken by the Contractor in accordance with the each Contract.

2. Instructions and Notices

2.1.

- (a) Subject to clause 1.2(c), any notice, communication or document given under, or in connection with, the Agreement and each Contract must be in English and in writing and sent by letter or fax or delivered by hand to the other Party's representatives in each case

to the address stated in clause 1.2(b). The notice, communication or document will be effective as follows:

- i. if sent by letter, it will be effective when it is delivered;
- ii. if sent by fax, it will be effective when it has been transmitted and the transmission report from the fax machine states that the entire fax has been sent successfully; and
- iii. if delivered by hand to the other Party's representative, it will be effective immediately it is delivered.

- (b) The address, fax number and, where applicable, email address of the Company and the Contractor are as follows (or such other address, facsimile number or, where applicable, email address which may be subsequently notified by the relevant Party):

Company: [Address]

Attn:

Facsimile:

[Email:]

Contractor: [Address]

Attn:

Facsimile:

[Email:]

If a Party's details change, it must notify the other Party promptly in writing of any such changes.

- (c) Where stated in the Framework Particulars, notices, communications or other documents may be given by email to the other Party's email address stated in clause 1.2(b). The notice, communication or document will be effective five (5) working hours (where "working hours" are 09:00 to 17:00 in a Working Day) following the time when the sender's electronic mail system dispatches the electronic mail provided that the correct email addresses as detailed in clause 1.2(b) are used.
- (d) This clause 1.2 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

2.2. Entire Agreement

The Agreement and each Contract embodies and sets forth the entire contract and understanding of the parties and shall supersede all prior oral or written contracts understandings or arrangements relating to the subject matter of the Agreement or any Contract. Except in the case of fraud, neither party shall be entitled to rely on any contract, understanding, arrangement, representation or warranty which is not expressly set forth in the Agreement or any Contract.

2.3. No Waiver

No failure or delay on the part of either party to exercise any right or remedy under the Agreement or any Contract shall be construed or operate as a waiver thereof nor shall any single or partial exercise of any right or remedy as the case may be. The rights and remedies provided in the Agreement or any Contract are cumulative and are not exclusive of any rights or remedies provided by law.

2.4. Interpretation

- (a) Headings in the Agreement are for reference only and are not to be used for the interpretation of the Agreement.
- (b) A reference to a Clause or Schedule shall be to a Clause of, or a Schedule to, the Agreement or each Contract (as the case may be) and references to the Agreement or any Contract include its recitals and Schedules.
- (c) Where appropriate, the singular includes the plural and vice versa and words importing a particular gender shall include all genders.
- (d) References to (or to any specified provision of) the Agreement, any Contract or any other document shall be construed as references to the Agreement, that Contract, that provision or that document as in force for the time being and as from time to time amended in accordance with the terms of the Agreement and any Contract.
- (e) Reference to any Applicable Laws and Standards also includes a reference to the Applicable Laws and Standards as from time to time amended, extended or re-enacted.
- (f) References to the "Company" shall include its successors, transferees and assignees.
- (g) References to a person, firm or company shall include any individual company, unincorporated association or body (including a partnership or joint venture) or other entity whether or not having a separate legal personality.
- (h) Where another member of the TfL Group enters into a Contract with the Contractor, references in a Contract to "the Company" shall, unless the context otherwise requires, be to that member of the TfL Group.

2.5. Licences, Consents, Notices and Approvals

- (a) The Contractor shall obtain at its own cost all licences, consents, permits, notices and approvals necessary for the performance of the Works (including, without limitation, those required by any Applicable Laws or Standards) except those stated in the Specification as being the responsibility of the Company.
- (b) The Contractor shall ensure that the conditions or requirements of licenses and consents and other approvals are complied with by its employees, representatives, agents, subcontractors and suppliers.
- (c) Where the Specification states that the Contractor will be required to contribute to the preparation of submissions for licences and consents and other approvals by the Company the Contractor shall afford all necessary assistance to achieve such licences and consents within the timescales stated in the Specification.

3. Assignment, Novation and Subcontracting

- 3.1. The Contractor shall not assign, novate, transfer or subcontract any of its rights or obligations under the Agreement or any Contract or any part thereof without the prior written consent of the Company.
- 3.2. The subcontracting of all or any part of the Works to a subcontractor shall not relieve the Contractor of its obligations to perform the Works under any Contract. The Contractor shall remain responsible for the acts, defaults, omissions and negligence of any subcontractor or assignee and for the employees, directors, agents and representatives of the Contractor, its subcontractors or assignees as if they were the acts, defaults, omissions or negligence of the Contractor.
- 3.3. The Company may novate, assign, transfer or subcontract the Agreement and/or any Contract (or any part thereof) to any Company within the TfL Group at any time without the consent of the Contractor, provided the Company has given prior written notice to the Contractor.
- 3.4. Within seven (7) days of any written request by the Company to the Contractor, the Contractor shall execute a deed of novation in the form set out in Schedule 7.

4. Obligations of the Contractor

- 4.1. The Contractor shall provide the Works to the Company in accordance with:
 - (a) the terms set out in this Agreement; and

- (b) the terms of any Contract which from time to time may be entered into by the Company and the Contractor.

4.2. The Contractor shall ensure and warrants to the Company that the Works will:

- (a) be performed in accordance with good industry practice and by appropriately qualified and trained personnel;
- (b) be performed with all due skill, care and diligence to be expected of appropriately qualified and experienced professionals with experience in carrying out work of a similar scope, type, nature and complexity to that required under this Agreement and each Contract;
- (c) be performed in accordance with the Order Programme and in a regular and diligent manner;
- (d) conform to all Applicable Laws (including but not limited to any law and regulations applicable to the Company or the Underground Network);
- (e) comply with the Standards listed in the Specification, or in the Order and any applicable laws relevant at the time of Contract signature; and
- (f) comply with the requirements of the Company set out in this Agreement and each Contract and all lawful and reasonable directions of the Company.

4.3. Without prejudice to Clause 3.2 the Parties shall co-operate with one another and act reasonably and in good faith in and about the performance of their respective obligations and the exercise of their respective rights under the Agreement and any Contract.

4.4. The Contractor shall use all prudent and commercial steps necessary to mitigate and minimise:

- (a) any actual or potential increase in the Order Price pursuant to Clause 14 to the maximum extent reasonably practical; and
- (b) any actual or potential Losses (including but not limited to costs on or relating to termination of the Agreement or any Contract).

4.5. The Contractor warrants to the Company that it has entered into and executed the Agreement by its duly authorised representatives in accordance with all procedures required by its governing laws and contractual documents.

4.6. The Contractor warrants to the Company that it has the right to grant to the Company and any member of the TfL Group all licences (including without limitation all rights to sub-licence) of all and any Intellectual Property Rights as contemplated in the Agreement and each Contract.

- 4.7. The Contractor shall perform its obligations under each Contract in accordance with the requirements of the ISO 9000 and ISO 14000 series as appropriate to the provision of the Works and the Quality and Safety Plan, , or any equivalent international quality assurance standards as may be accepted as an alternative in the absolute discretion of the Company.
- 4.8. Not used
- 4.9. Unless otherwise stated in any Order, the Contractor shall provide all equipment, support works and other facilities necessary for the performance of its obligations under this Agreement and each Contract.
- 4.10. For the avoidance of doubt, neither a communication from the Company nor the review or acceptance of the Works waives, limits or amends in any way any warranties, liabilities or responsibilities of the Contractor under this Agreement and each Contract.
- 4.11. The Contractor shall be responsible for the accuracy of all Contractual Documentation and shall pay the Company any extra costs occasioned by any discrepancies, errors or omissions therein. The Contractor shall at its own expense carry out any alterations or remedial work necessitated by such errors, omissions or discrepancies and modify the relevant documents or information accordingly.
- 4.12. The Contractor shall train at the sole cost of the Contractor any of the Company's employees, TfL employees and any of their contractors or agents as required by the Company in accordance with the Specification.
- 4.13. [Design
- (a) The Contractor shall carry out his design in accordance with the Specification and the terms of the Agreement and any Contract.
 - (b) The Contractor shall submit the particulars of his design which the Specification requires to the Company's Representative for acceptance. The Contractor shall not proceed with the performance of the Works until the Company's Representative has accepted his design. Reasons for not accepting the Contractor's design shall include (without limitation):
 - i. it does not comply with the Specification or any other part of the Agreement or any Contract;
 - ii. it does not comply with Applicable Laws and Standards;
 - iii. it is not integrated and coordinated with the designs of others where the Contractor is required by the Specification or instructions of the Company's Representative to do so or such integration is necessary for the Contractor to perform the Works;
 - iv. it is not in a format which is accepted for use by the Company's Representative.

- (c) The Contractor shall not be entitled to any changes to the Order Price or Order Completion Date by reason of anything in this Clause 4.13.
- (d) The Contractor may submit his design for acceptance in parts if the design of each part can be assessed fully.
- (e) The Contractor in designing and specifying the Works which he is required to design and specify, warrants, undertakes and represents to the Company that the design:
 - i. is in accordance with the Specification and any other performance or output specification or requirements contained or referred to in the Agreement and each Contract;
 - ii. complies with all Applicable Laws and Standards;
 - iii. is fit for the purpose defined in the Specification.
- (f) The Contractor accepts entire responsibility for the design and specification of the Works which he is required to design and specify and for any mistake, inaccuracy, ambiguity, inconsistency or omission in or between his design and specification of the Works and the documents which are part of the Agreement and any Contract.

Subcontractor Warranties

If required by the Framework Particulars, the Contractor shall within seven (7) days of a request from the Company to do so enter into warranty agreements with such subcontractors as the Company may require in the forms attached and set out in Schedule 9 (Form of Collateral Warranty) in favour of the Company

Form of Collateral Warranty

4.14. Records and Audit

- (a) The Contractor shall, and shall procure that its subcontractors shall, maintain a true and correct set of records including personnel records relating to all aspects of their performance of the Agreement and each Contract and all transactions related to the Agreement and each Contract. For the avoidance of doubt, such records shall include but are not limited to:
 - i. all necessary information for the evaluation of claims or variations;
 - ii. management accounts, information from management information systems and any other management records;

- iii. accounting records (in hard copy as well as computer readable data);
 - iv. subcontract files (including proposals of successful and unsuccessful bidders, bids, rebids etc);
 - v. original estimates;
 - vi. estimating worksheets;
 - vii. correspondence;
 - viii. variation and claims files (including documentation covering negotiated settlements);
 - ix. general ledger entries detailing cash and trade discounts and rebates;
 - x. commitments (agreements and leases) greater than £5,000;
 - xi. details of the work performed;
 - xii. details of the hours worked;
 - xiii. details of the costs incurred;
 - xiv. detailed inspection records; and
 - xv. such materials prepared in relation to the invitation to tender and subsequent tendering process relating to cost breakdowns, reconciliations against best and final offer pricing and project plans, in each case which have not already been provided to the Company.
- (b) The Contractor agrees, and shall procure that its subcontractors agree, to retain all such records in such a manner as the Company may reasonably instruct for a period of not less than twelve (12) years after completion of performance under each Contract. In the absence of specific instructions as to the method of storage, the Contractor shall retain his records in an orderly and logical fashion.
- (c) The Company and its authorised representatives and any party legally authorised to inspect any part of the Underground Network shall have the right to inspect and audit any of the records referred to in this Clause 0 at any time during the period referred to in Clause 4.15(b).
- (d) The Contractor shall promptly provide all reasonable co-operation in relation to any audit or check including, to the extent reasonably possible in each particular circumstance:
- i. granting or procuring the grant of access to any premises used in performance of each Contract, whether the Contractor's own premises or otherwise;

- ii. granting or procuring the grant of access to any equipment (including all computer hardware, software and databases) used (whether exclusively or non-exclusively) in the performance of the Contractor's obligations under each Contract, wherever situated and whether the Contractor's own equipment or otherwise;
 - iii. making any contracts and other documents and records required to be maintained under each Contract available for inspection;
 - iv. providing a reasonable number of copies of any contracts and other documents or records reasonably required by the Company's auditor and/or granting copying facilities to the Company's auditor for the purposes of making such copies; and
 - v. complying with the Company's reasonable requests for access to senior personnel engaged in the Contractor's performance of each Contract.
- (e) The Contractor shall maintain an effective and economical programme for monitoring and maintaining product quality, planned and developed in conjunction with any other functions of the Contractor necessary to satisfy each Contract's requirements.
- (f) The Contractor shall permit the Company's authorised representatives, access and facilities (as required and when notified) for the purpose of systems and product quality audits including but not limited to access to documentation showing results of testing and inspection, certificates of conformance and safety-related documents. The Contractor shall provide the Company with a copy of any or all of the records listed in this Clause 0, free of charge within thirty (30) days of the Company's request for the same.
- (g) The Contractor shall and shall ensure that any sub-contractor or sub-Contractor shall ensure that appropriate security systems are in place to prevent unauthorised access to, extraction of and/or alteration to data during the audit undertaken pursuant to the Agreement and any Contract.

5. Key Personnel

- 5.1. The Contractor shall ensure that each of the Key Personnel devotes substantially their whole time and effort to the performance of the Works. The Contractor shall take all reasonable steps to ensure it retains the services of the Key Personnel and shall not without the Company's prior written consent terminate their employment, remove or change Key Personnel or do any such thing which would cause any of the Key Personnel to resign.
- 5.2. The Contractor agrees to inform the Company of any changes to the Key Personnel where any relevant member of Key Personnel dies, suffers long term sickness or disability, is incapacitated by reason of ill health or accident from performing his or her duties for a period of or periods aggregating thirty (30) days in the preceding three (3) months, is guilty of gross

or serious misconduct, goes on any period of statutory leave (other than holiday) or leaves the Contractor's employment.

5.3. The Contractor shall be responsible for the costs of replacing any member of Key Personnel with an appropriately qualified and competent replacement (including but not limited to, the cost of training any replacement to ensure that they can take over the vacated position efficiently and without disrupting the Works). The Contractor shall use all reasonable endeavours to ensure that any replacement for any member of Key Personnel is engaged and available to perform his or her role as soon as reasonably practicable and at least within seven (7) days of the expiry of the notice period of the relevant member of Key Personnel. Where termination of the relevant member of Key Personnel is due to gross or serious misconduct, a replacement shall be engaged and available to perform his/her role as soon as reasonably practicable and in any event within twenty-eight (28) days. Further, save where the relevant member of Key Personnel being replaced has vacated the position immediately due to death, illness, gross misconduct or some other similar reason, the Contractor shall, at its own cost, ensure that the member of Key Personnel being replaced works in parallel with his or her replacement to hand over to them for a period of seven (7) days or any shorter period agreed between the parties.

5.4. A reasonable period before an offer of engagement is made to a replacement member of Key Personnel, the Contractor shall provide such information about and access to the relevant individual as the Company may reasonably require. The Company shall notify the Contractor if it objects to the appointment of an individual as a member of Key Personnel, together with its reasons for such objection. The Contractor shall comply with any request by the Company that a particular person should not become a member of Key Personnel.

5.5. The Company may change the list of Key Personnel on reasonable notice and subject to the consent of the Contractor, such consent not to be unreasonably withheld or delayed.

6. Order Completion

6.1. The Company shall certify the date when in its opinion the Works have been completed in accordance with the relevant Contract by issuing an Order Completion Certificate.

7. Safety

Health and Safety

7.1. The Contractor shall not endanger in any manner the health and safety of, or unreasonably interfere with the proper performance of the duties of, the Company's employees or third parties or otherwise expose the Company to liability under any Applicable Laws and Standards, including (without limitation) the Health and Safety at Work etc. Act 1974, the Transport and Works Act 1992, or any statutory modifications or re-enactments thereof.

7.2. The Contractor shall act in accordance with the health and safety regulations and requirements stated in the Specification, including (but not limited to):

- i. the provisions of the Company's Contract QUENSH Conditions that are indicated as being applicable to any Contract in the QUENSH menu set out in Schedule 6 ("QUENSH") as amended from time to time; and
- ii. the Company's drug and alcohol principles as amended from time to time.

7.3. Section 14.1.1 (Alcohol and drugs) of QUENSH shall apply to the Agreement and each Contract as if the term "LU Premises" means any of the Company's property and as if references to "LU" are references to the Company.

7.4. The Company may at its discretion carry out on the Contractor's behalf any testing of the Contractor's employees, subcontractors or agents for drugs or alcohol which each Contract requires the Contractor to carry out. The reasonable cost to the Company of carrying out the testing shall be paid by the Contractor.

7.5. Works on and Adjacent to the Railway

The Contractor shall carry out the Works in such a manner as not to endanger or interfere in any way with the Underground Network, railway or any railway operator. The Contractor shall strictly observe all rules and regulations set out or referred to in the Agreement and each Contract and any further instructions, rules and regulations which it may receive from the Company from time to time and the precautions and requirements stated or referred to in the Schedules for the working, protection and return of the railway or for the protection of persons on or adjacent to the Underground Network, railway or railway operations.

7.6. Construction (Design and Management) Regulations 2015

Where the CDM Regulations apply to the Works and the Company appoints the Contractor to act as the principal contractor and/or principal designer in accordance with the CDM Regulations, the Contractor shall comply with all the duties of a principal contractor and/or principal designer as set out in the CDM Regulations.

8. Contractor Personnel

8.1. The Contractor shall be responsible for providing the staff necessary or appropriate to perform its obligations.

8.2. The Contractor warrants that all its staff involved in the Works are entitled to work in the United Kingdom whether as of right or by holding the necessary permits.

8.3. If and when instructed by the Company, the Contractor shall submit to the Company a list of names of all persons who may or do require access to the Site, specifying the capacity in which they are connected with the Works, the reason why they require access to the Site and such other particulars as the Company may reasonably require. The Company may issue Site passes as appropriate, and the Contractor shall comply with any conditions notified by the Company in respect of those Site passes.

8.4. Without prejudice to Clause 19.1(b), if anyone employed by the Contractor, acting independently of the Contractor, commits a Safety Breach or Prohibited Act, then the Company may require the Contractor to exclude that individual from the Works with immediate effect and that individual may only be readmitted to the Works at the Company's absolute discretion.

9. Intellectual Property Rights

9.1. Existing Contracts

The Agreement and each Contract is entirely without prejudice to, and nothing in it is intended to, nor shall, in any way prejudice the rights of any member of the TfL Group in relation to intellectual property under or pursuant to Existing Contracts.

9.2. Vesting of Intellectual Property Rights created under this Agreement or any Contract

All Intellectual Property Rights created wholly or mainly in connection with the performance of, or in order to perform, the Agreement and each Contract shall vest in the Company. The Contractor shall procure that each of its subcontractors (of any tier) or other third party shall assign such Intellectual Property Rights to the Company.

9.3. Ownership of the Contractor's Intellectual Property Rights

Without prejudice to Clause 9.2, all Intellectual Property Rights owned by the Contractor or its subcontractors (of any tier) or other third party and which are not assigned to, or vested in, the Company pursuant to Clause 9.2 shall remain or be vested in the Contractor, its subcontractors (of any tier) or other third party (as the case may be).

9.4. Company's Licence to use the Contractor's Intellectual Property Rights

The Company shall have and the Contractor hereby grants and procures that its subcontractors (of any tier) or other third party grant, to the Company a worldwide, royalty-free, perpetual, irrevocable, non-exclusive licence (with the right to sub-licence such rights to any third party) to use and copy the Intellectual Property Rights referred to in Clause 9.3 for the purposes of:

- (a) understanding the Works;

- (b) operating, maintaining, repairing, modifying, altering, enhancing, re-figuring, correcting, replacing, re-procuring and re-tendering the Works;
- (c) extending, interfacing with, integrating with, connecting into and adjusting the Works;
- (d) enabling the Company to carry out the operation, maintenance, repair, renewal and enhancement of the Underground Network;
- (e) executing and completing the provision of the Works; and
- (f) enabling the Company to perform its function and duties as Infrastructure Manager and Operator of the Underground Network.

9.5. Provision of Supporting Documentation and Other Materials

The Contractor shall:

- (a) promptly, and in any event by no later than such date as the Company may notify to the Contractor, provide at no charge to the Company, copies of any materials and items (including, without limitation, Documentation) in the Contractor's or subcontractor's (of any tier) or other third party's possession or control (or which ought reasonably to be in the Contractor's or subcontractor's (of any tier) or other third party's possession or control) which are referred to or relied upon in using and copying, or required in any way for the use and copying of, the Intellectual Property Rights referred to in Clauses 9.2, 9.3 and 9.4 above; and
- (b) keep copies of such materials, items and Documentation in a secure place where they will not deteriorate and undertake regular (and in any event not less than every three months) integrity testing of the same and provide written evidence of such testing to the Company at regular intervals and in any event upon the Company's request.

9.6. Company's Rights of Retention

If the Contractor has not complied with its obligations under Clause 9.5(a), the Company shall be entitled to retain one quarter of the sums that would otherwise be due to the Contractor under each Contract until the Contractor has complied with its obligations under Clause 9.5(a).

9.7. Company's Rights to the Software

If the Contractor or any of its subcontractors providing software for incorporation into or operation of the Works stops trading, is subject to an insolvency event equivalent to any of those events set out in Clause 19.1 (including their equivalent in any jurisdiction to which the Contractor or any of its subcontractors is subject), makes known its intention to withdraw support of that software or fails to support that software in accordance with the terms of the Agreement and each Contract then the Contractor, at no charge to the Company, shall use its

best endeavours to transfer or procure the transfer to the Company of all Intellectual Property Rights in that software.

9.8. Company's Rights in relation to Other Procurement Activities

For the avoidance of doubt, the Company shall be entitled to use and copy the materials, items and Documentation referred to in Clause 9.5 above and anything in which the Intellectual Property Rights referred to in Clauses 9.2, 9.3 and 9.4 subsist for the purposes of inviting tenders or of procuring works the same as or similar to the Works for the carrying out of any activities in connection with the licence under Clause 9.4 subject always to the Company's requirements for tenderers to treat the same in the strictest confidence.

9.9. Contractor's Indemnity against Third Party Intellectual Property Rights Infringement

- (a) The Contractor shall indemnify and hold harmless the Company and any member of the TfL Group against any actions, claims, losses, demands, costs, charges or expenses that arise from or are incurred by reason of any infringement or alleged infringement of any Intellectual Property Rights belonging to any subcontractor (of any tier) or other third party and against all costs and damages of any kind which the Company may incur in connection with any actual or threatened proceedings before any court or arbitrator or any other dispute resolution forum. If required by the Company the Contractor shall conduct negotiations with any subcontractor (of any tier) or other third party and/or a defence in relation to any action, claim or demand referred to herein on behalf of the Company.
- (b) In the event of a claim of infringement of any Intellectual Property Rights the Contractor shall use all reasonable endeavours to make such alterations or adjustment to the Works as may be necessary to ensure that the use and provision of the Works continues in spite of such claim.

9.10. Ownership of the Company's Intellectual Property Rights

Intellectual Property Rights in all Documentation and in all other material and items supplied by the Company to the Contractor in connection with the Agreement and each Contract shall remain vested in the Company or the person owning such rights at the time the Documentation, material or items were supplied. The Contractor shall, if so requested, at any time, execute such documents and perform such acts as may be required fully and effectively to assure to the Company the rights referred to in this Clause.

Company's Intellectual Property Rights

- 9.11. The Contractor is not entitled to use in any manner whatsoever any Intellectual Property Rights belonging to the Company.

10. Environmental Claims

- 10.1. The Contractor shall indemnify the Company against Losses and Remediation costs in respect of any Environmental Claims which may arise out of or by reason of the Contractor's performance, non-performance or part performance of each Contract to the extent that such Losses and Remediation costs are due to any act, negligence, breach of contract, breach of statutory duty, error, omission or default by the Contractor, its employees, subcontractors or agents.
- 10.2. The Contractor shall notify the Company as soon as it becomes aware that any Remediation is or will become necessary on any part of the Company's Site.
- 10.3. Where the Contractor discovers or suspects that the Site has been contaminated or polluted by another party, the Contractor shall notify the Company of the identity of the other party, where known. The Contractor shall not without the prior written consent of the Company undertake any environmental investigations on Site or commission or undertake any Remediation. The Contractor shall provide the Company with a separate record of the costs of any Remediation as soon as possible after such costs are incurred.
- 10.4. In the event that the Contractor commissions an environmental assessment, the Contractor shall use reasonable endeavours to procure that the environmental assessment includes an acknowledgement by its authors that the Company can rely on any reports, recommendations or summaries prepared in relation to the environmental assessment.
- 10.5. The Contractor shall provide to the Company:
- (a) copies of all environment-related permissions, permits, consents, licenses, registrations and authorisations required for him to carry out the Works (for the purposes of this Clause 10.5, the "authorisations");
 - (b) copies of any amendments to the authorisations;
 - (c) notification of any revocations, suspensions, cancellations, withdrawals, adverse amendments or refusals to provide any of the authorisations; and
 - (d) notification of any event or circumstance that is likely to cause the revocation, suspension, cancellation, withdrawal, adverse amendment or refusal to provide any of the authorisations.

11. London Living Wage

- 11.1. The Contractor shall, to the extent each Contract is for the provision of services necessary to perform the Works to be undertaken within Greater London or on the Underground Network:

- (a) ensure that none of its employees engaged in the provision of services necessary to perform the Works under any Contract is paid an hourly wage (or equivalent of an hourly wage) less than the London Living Wage at the time of Contract Signature.;
- (b) provide to the Company such information concerning the application of the London Living Wage as the Company or its nominees may reasonably require;
- (c) disseminate on behalf of the Company to its employees who are paid no more than the London Living Wage such perception questionnaires in relation to the London Living Wage as the Company or its nominees may reasonably require and promptly collate and return to the Company responses to such questionnaires;
- (d) co-operate and provide all reasonable assistance to the Company and its nominees in monitoring the effect of the London Living Wage; and
- (e) procure that any subcontractor (of any tier) is required to comply with the provisions of this Clause 11 and the provisions of this Clause 11 are included in any subcontract (of any tier).

11.2. The Contractor shall not, and shall procure that any subcontractor shall not, without the prior written consent of the Company, vary or purport to vary the provisions contained in any contract or subcontract in accordance with the operation of this Clause 11.

12. Responsible Procurement

12.1. The Contractor and the Company acknowledge and agree that the Mayor, in accordance with section 155 of the GLA Act has directed TfL and its subsidiaries (including the Company) to do all things reasonably necessary to comply with (inter alia) the Responsible Procurement Policy in its procurement activities.

12.2. The Contractor shall and shall procure that its subcontractors (of any tier) shall comply with, and shall provide such co-operation and assistance as may be reasonably requested by the Company to enable the Company to comply with the Responsible Procurement Policy.

12.3. The Contractor acknowledges and agrees that the Company is required to develop a policy relating to the promotion of the procurement of works in an ethical manner (the "**Ethical Sourcing Policy**") which shall reflect and be consistent with the relevant principles of the Responsible Procurement Policy, and the Contractor shall and shall procure that all of its subcontractors shall comply with such the Ethical Sourcing Policy to the extent it does not conflict with the Responsible Procurement Policy.

12.4. The Contractor acknowledges and agrees that it (and its subcontractors) shall be required to comply with any changes to the Responsible Procurement Policy (and any adjustment or

amendment to the Ethical Sourcing Policy as a result of such amendment or adjustment to the Responsible Procurement Policy).

12.5. The Contractor shall not be entitled to any addition to the Order Price in the event of any change to the Responsible Procurement Policy (and any change to the Ethical Sourcing Policy as a result of such change to the Responsible Procurement Policy).

12.6. The Contractor shall procure that any subcontractor (of any tier) is required to comply with the provisions of this Clause 12 and the provisions of this Clause 12 are included in any subcontract (of any tier).

12.7. The Contractor shall not, and shall procure that any subcontractor shall not, without the prior written consent of the Company, vary or purport to vary the provisions contained in any contract or subcontract in accordance with the operation of this Clause 12.

13. Defects

13.1. Making Good Defects to the Works

Any defects in the Works (including, without limitation, excessive shrinkages, any failure to comply with the terms of the relevant Contract) which appear within the Defects Liability Period and are arising out of or by reason of any act, omission, negligence or breach of contract or breach of statutory duty, wilful misconduct of the Contractor, its employees, agents or subcontractors shall be notified by the Company to the Contractor who shall immediately make good such defects entirely at its own cost unless the Company shall otherwise instruct. The Company shall certify the date when in its opinion the Contractor's obligations under this Clause 13.1 have been discharged.

13.2. Failure to Remedy Defects

If the Contractor fails to fulfil its obligations under Clause 13.1, the Company may, after giving notice and providing a reasonable time for compliance, recover all costs reasonably incurred in engaging others to make good the defects.

14. Pricing

14.1. In consideration of the provision of the Works by the Contractor pursuant to an Order, the Company shall pay the applicable Order Price in accordance with Clause 14 and the pricing conditions in Schedule 4. The Order Price will be calculated on a lump sum basis in accordance with the rates and pricing conditions in Schedule 4.

14.2. The rates and pricing conditions in Schedule 4 shall remain valid for the duration of the Term, save that where the Agreement is extended beyond the Initial Term, the rates for the period of extension shall be as agreed or determined in accordance with Section 1.

15. Payment

15.1. The Contractor shall submit an application for payment (a "**Payment Application**") for the relevant portion of the Order Price in respect of the Works, to the Company's Representative *on the application for payment dates set out in Schedule 4* Each Payment Application shall specify the sum that the Contractor considers will become due on the payment due date and the basis upon which that sum is calculated. The Contractor shall submit any supporting documents that are reasonably necessary to enable the Company to check the Payment Application.

15.2. The payment shall become due for the purposes of the Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009 ("**HGCRA**") on the date on which the Company receives the Payment Application.

15.3. The Company shall assess the Payment Application and shall notify the Contractor in writing not later than five (5) days after the date of receiving the Payment Application of:

(a) the amount (if any) the Company considers to be due at the payment due date (which amount shall be net of any discount to which the Company is entitled); and

(b) the basis on which the amount was calculated,

a "**Payment Certification**". It is immaterial for the purposes of this Clause 15.3 that the amounts referred to in Clauses 15.3(a) or 15.3(b) may be zero. A notification given under this Clause 15.3 shall constitute a payment notice for the purposes of section 110A of the HGCRA.

15.4. The final date for payment for the purposes of the HGCRA shall be thirty (30) days after the date on which the Company's Representative received the Payment Application.

15.5. Subject to Clause 15.6 and Clause 15.7, the Company shall pay the Contractor the sum referred to in the Company's Representative's Payment Certification pursuant to Clause 15.3 (or, if the Company's Representative has not served a Payment Certification, the sum referred to in the Contractor's Payment Application under Clause 15.1) (the "**Notified Sum**") on or before the final date for payment.

15.6. If the Company intends to pay less than the Notified Sum the Company or the Company's Representative (as the case may be) should notify the Contractor in writing not later than one (1) day (the "**Prescribed Period**") prior to the final date for payment of:

(a) the amount (if any) that it considers to be due on the date the notice is served and the basis upon which that sum is calculated; or

(b) if there is more than one basis, each basis and the amount attributable to it.

It is immaterial for the purposes of this Clause 15.6 that the amounts referred to in Clause 15.6(a) or Clause 15.6(b) may be zero. Where a notice is given under this Clause 15.6, the Company's obligation to pay the Notified Sum under Clause 15.5 applies only in respect of the sum specified pursuant to this Clause 15.6.

15.7. Notwithstanding Clauses 15.5 and 15.6, if the Contractor is subject to an event set out in Clause (d) or other like event after the Prescribed Period, the Company shall not be required to pay the Contractor the Notified Sum on or before the final date for payment.

15.8. The Order Price shall be fixed and inclusive of all expenses and disbursements and shall only be changed in accordance with the Contract Variation Procedure.

15.9. The Order Price shall not include VAT and, to the extent that such VAT is properly chargeable, it shall be charged at the rate in force on the date of the Payment Application and will be shown as a separate item on all such Payment Applications.

15.10. In addition to any other rights of the Company whether at law or equity under this Agreement or any Contract, whenever under or arising out of this Agreement or any Contract between the Company and the Contractor:

(a) any sum of money is recoverable from or payable by the Contractor; or

(b) any Losses are reasonably and properly owed to, or incurred by, the Company, or any member of the TfL Group

then the same may be set-off against and/or deducted and/or withheld from any sum then due or which at any time thereafter may become due to the Contractor under this Agreement or any Contract.

15.11. Payment Applications shall be submitted separately for each Contract and all such Payment Applications shall clearly show the Contract Reference Number, the Order number (as indicated on the relevant Order), the date of the Order, the Order Price and any associated Variation Order. Supporting documentary information shall be submitted to the Company's Representative for all Payment Applications submitted by the Contractor. The Company's Representative shall from time to time agree with the Contractor the detailed information required in relation to all such Payment Applications and the Contractor shall provide such information as is reasonably required.

15.12. All sums payable to the Company by the Contractor under each Contract shall be paid in full, free of any present or future taxes, levies, duties, charges, fees or withholdings and without any deduction, restriction, conditions, withholding, set-off or counterclaim whatsoever; and if the Contractor is compelled by law to make any deduction or withholding, the Contractor shall gross up the payment so that the net sum received by the Company will be

equal to the full amount which the Company would have received had no such deduction or withholding been made.

- 15.13. No payment made by the Company will indicate or be taken to indicate the Company's acceptance or approval of any part of the Works or of any act or omission of the Contractor or will absolve the Contractor from any obligation or liability imposed upon the Contractor by any provision of the Agreement and any Contract or otherwise.

16. Variations

- 16.1. The Company may, at any time during the term of any Contract, request the Contractor to provide a quotation for the supply of a Variation in accordance with the Contract Variation Procedure. If a Variation Order is made in respect of such Variation, the relevant parts of the Contract shall be amended accordingly.

- 16.2. Any other variation to the terms of the Agreement and/or any Contract shall be effective only if in writing and signed by both Parties.

17. Indemnity

- 17.1. The Contractor shall be liable for, and shall indemnify the Company, including any of its employees, servants, agents, subcontractors, directors and officers and members of the TfL Group on an after-tax basis against all Losses suffered or incurred by the Company or relevant member of the TfL Group, arising from or in connection with the performance or non-performance of the Contractor under the Agreement and each Contract:

- (a) in respect of death or personal injury to any person;
- (b) in respect of loss of or damage to any property (including the Underground Network and any other property belonging to the Company or for which it is responsible);
- (c) arising out of or in the course of or by reason of any act, omission, negligence or breach of contract or breach of statutory duty, wilful misconduct of the Contractor, its employees, agents or subcontractors; and
- (d) arising under the Company's contracts with third parties,

and shall, at its own cost on the Company's request, defend the Company in any proceedings involving the same.

- 17.2. The Contractor shall not be liable to indemnify the Company or any member of the TfL Group under the indemnity in Clause 17.1 to the extent Losses are solely due to the negligence, breach of duty or breach of contract of the Company.